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The Honorable Joseph M. Otting
Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

RE: OCC_FRDOC_0001-0213 / Docket ID OCC-2018-0008
Federal Register Number 2018-19169
Advanced Notice of Public Rulemaking on Reforming Community Reinvestment Act Regulatory Framework

Dear Comptroller Otting:

I am writing on behalf of the National Housing Conference (NHC) to offer comments on the Advanced Notice of Public Rulemaking on Reforming the Community Reinvestment Act Regulatory Framework. I appreciate the time you made to meet with myself and many of our members to get our feedback prior to issuing this ANPR, as well as the extended 75-day comment period we requested to allow time for broader consultation with our members and thoughtful consideration of this important topic.

NHC has been defending the American Home since 1931. We believe that everyone in America should have equal opportunity to live in a quality, affordable home in a thriving community. NHC convenes and collaborates with our diverse membership among the housing and community development sectors to advance our policy, research and communications initiatives to effectuate positive change at the federal, state and local levels. We have advocated for nearly every major piece of housing legislation including the Wagner Steagall National Housing Act of 1937, the Fair Housing Act of 1968 and the Housing and Economic Recovery Act of 2008 to name just a few. Politically diverse and nonpartisan, NHC is a 501(c)3 nonprofit organization.

The Community Reinvestment Act of 1977 (CRA)[1] was enacted in response to concerns over disinvestment in low-income communities and persistent allegations of "redlining," the practice of avoiding investment in minority neighborhoods codified by the Home Owners' Loan Corporation (HOLC) in 1933 and the Federal Housing Administration in 1934.[2] While the Fair Housing Act of 1968 prohibited redlining and other forms of housing discrimination, these practices proved difficult to reverse. Even as lenders abandoned the formal practice of "redlining", the long-term legacy of its impact on communities as well as on the underwriting culture persisted. Research by economists at the Federal Reserve Bank of Chicago as recently as 2018 continues to demonstrate that areas denied credit in the aftermath of the Great Depression of the 1930s continue to have lower property values, lower

[1] Pub. L. 95–128, title VIII, § 807, as added Pub. L. 101–73, title XII, § 1212(b), Aug. 9, 1989, 103 Stat. 527; amended Pub. L. 102–242, title II, § 222, Dec. 19, 1991, 105 Stat. 2306; Pub. L. 103–328, title I, § 110, Sept. 29, 1994, 108 Stat. 2364.

[2] Remarks by Martin J. Gruenberg, Member, Board of Directors, Federal Deposit Insurance Corporation on The Community Reinvestment Act: Its Origins, Evolution, and Future at Fordham University, Lincoln Center Campus; New York, New York, October 29, 2018

homeownership rates, and lower credit scores nearly 90 years later.[3] As Americans left cities for new suburban bedroom communities in the 1960s and 1970s, there was a growing disparity between where banks raised their deposits and where they invested, particularly in housing and mortgage finance. Congress sought to incentiving banks to invest in the communities where their branches were located. A high CRA rating was intended to provide that incentive.

When he introduced the CRA in 1977, Senate Finance Committee Chairman William Proxmire expressed hope that by incenting banks to rebuild and revitalize communities threatened by decline, the bill would ultimately prove good for the banking industry. This vision proved prescient beyond anyone's expectations.[4] Today, there is broad support for CRA among banks of all sizes, and throughout the housing industry as well as among civil rights and community advocates. To understand why the CRA continues to remain so important, one need only look at the numbers of minority homeownership in the 50 years since the passage of the Fair Housing Act. Overall, minority homeownership plummeted during the Great Recession, falling from 52% in 2004 to 46% in 2016.[5] The homeownership rate for African Americans is lower today than it was when the Fair Housing Act was passed in 1968. That is a national tragedy and serves as a clarion call for us to get this effort to modernize and improve CRA done right.

CRA requires federal banking regulators to examine covered financial institutions and determine how well they meet the needs of the communities where they are located. Banks receive ratings from Outstanding to Needs to Improve or Substantial Noncompliance. The vast majority are rated as Satisfactory.[6] CRA only applies to depository institutions insured by the FDIC. CRA does not apply to trust banks, credit unions, and other nonbank entities. While these institutions play a growing role in banking and lending, they are not covered by the statute and we are not recommending reopening the CRA statute at this time. Instead, we believe that significant improvements in the effectiveness of CRA can be achieved through a unified regulatory process undertaken by the three CRA bank regulators: the OCC, the Federal Reserve Board, and the Federal Deposit Insurance Corporation, which together administer CRA for the insured depository institutions that they supervise.

Now regulators must address where the CRA has fallen behind major changes in the banking industry over the past 20 years. One critical area that regulators will address is how investments are counted in and out of designated Assessment Areas (AAs). With the rise of interstate banking and bank consolidation, as well as the merging of investment banking and commercial banking in so many large banks, defining what constitutes a bank's Assessment Area (AA) and how to count investments outside those boundaries is a key area of interest and one that potentially has the greatest impact.

AA definition and application present unique challenges today because banks have alternate channels for accepting deposits that did not exist in 1977, like mobile and online banking. Customers with deposits are much more mobile today. Rural areas have experienced a disproportionate number of bank branch closures not envisioned in 1977. Corporate deposits stemming from commercial banking relationships may also distort assessments based on deposits, as these can be allocated to the office in which they are credited, even if they originate in other jurisdictions. These factors have contributed to a condition known as "CRA hotspots," where CRA investment incentives are concentrated in a few

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[3] The Effects of the 1930s HOLC "Redlining" Maps (Revised August 2018) by Daniel Aaronson , Daniel Hartley , Bhash Mazumder. Federal Reserve Bank of Chicago Working Paper, No. 2017-12, 2017.

[4] Congressional Record, daily ed., June 6, 1977, S.8958

[5] Housing Vacancies and Homeownership (CPS/HVS), Homeownership Rates, US Census Bureau.

[6] The Effectiveness of the Community Reinvestment Act, Congressional Research Service (January 7, 2015) with data provided by the FFIEC.

states, like Utah, South Dakota and Delaware, while other states, where banks are less likely to be chartered, have become "CRA deserts."[7]

One of the most frustrating aspects of the current CRA regulatory regime is variations in application of the rules by different regulators, and by different examiners within the same regulatory agency. This is as problematic for advocates as it is for banks and must be resolved. There are too many credible reports of inadequately trained and inexperienced examiners whose limited knowledge of community development and assisted housing programs makes their reviews more difficult and sometimes problematic.

Another challenging area for banks as well as community advocates is the inconsistency in when reviews are conducted and how long it takes to get a final rating. Some banks are still waiting for their final rating from 2013-2015. By the time they receive them, many of the issues will have been addressed, or conditions will have changed, or concerns that could have been addressed in a timely fashion have been left to fester. Examination and rating schedules must be adhered to, so they can be promptly explained or remediated.

Similarly, providing a greater degree of certainty over what activities will be considered positive contributors to a CRA rating so institutions can plan the future while only having clear insight into the past through delayed exams and reviews would be a positive step.

NHC believes that for CRA modernization effort to be effective and sustainable, it must meet four fundamental tests. Any new CRA regulatory regimen must:

1. Increase investment in communities that are currently underserved;
2. Benefit more low- and moderate-income (LMI) people, particularly people of color, who live in those communities;
3. Ensure that CRA lending and investment does not lead to displacement of the very people it is meant to help; and
4. Make both bank performance and government enforcement more transparent and predictable.

We encourage you and the other agencies to carefully consider the comments received during this ANPR and work together to resolve your differences with the other CRA regulators and issue a revised ANPR that builds on the lessons learned through this process and has the full support of all three agencies. There remains much to understand about the appropriate role of geography in the rapidly evolving world of 21st century banking. The Assessment Area concept remains the cornerstone of CRA, but it requires improvement and adaptation.

One significant area of new ground addressed in the OCC's ANPR is the suggestion that a "metric-based performance measurement" that could include macro benchmarks, frequently referred to as a "single ratio approach." The OCC's ANPR states that "this approach would allow flexibility to accommodate bank capacity and business models while facilitating the comparison among banks of all sizes and business models and the evaluation against an objective, transparent threshold."[8] We will address this in more detail below in our answers to the questions posed by the OCC, however, it is important that we make one point clear from the start. While there is genuine merit in identifying more

[7] The Community Reinvestment Act and Its Effect on Housing Tax Credit Policy, Cohn Reznick, http://ahic.org/images/downloads/Research_and_Education/the_community_reinvestment_act_and_its_effect_on_housing_tax.pdf

[8] Reforming the Community Reinvestment Act Regulatory Framework, Office of the Comptroller of the Currency, 12 CFR Parts 25 and 195, Docket ID OCC–2018-0008, RIN 1557-AE34.

ways to base performance assessments on quantifiable metrics wherever possible and appropriate, there is broad and deep opposition to the single ratio approach among NHC's many members and industry stakeholders. This is true of a single ratio as well as a macro ratio that includes "micro" components of CRA qualifying lending, investments and services. Ultimately, all of the weaknesses and unintended consequences of a single ratio approach occur in each of the three subsets. In fact, not a single member of our CRA Working Group expressed a position in support of the ratio model discussed in the ANPR.

Pursuing this approach would doom CRA modernization, making agreement between the three regulators unduly difficult, increasing the prospect of a statutory reversal, and ensuring that a future administration would be forced to reopen the entire regulatory process again. It would also likely result in numerous legal challenges by civil rights organizations and fair lending advocates that would tie up OCC staff resources and create added uncertainty to banks making long term lending decisions. Ultimately, this conflict would cost all parties more money, result in less investment in underserved communities and hurt the very people CRA was designed to help.

There are too many areas for agreement in CRA modernization to derail this important initiative in the pursuit of some version of a single ratio approach. We at NHC stand ready to help you make this much-needed effort a success and hope that you will work with us and our members to elucidate areas of broad agreement and develop answers to the complex questions of how to meet the original intent of the CRA in the context of a rapidly modernizing banking environment. In that spirit, we are pleased to provide the following answers to the questions posed by the ANPR.

1. *Are the current CRA regulations clear and easy to understand?*

   CRA regulations must balance often competing requirements of clarity and flexibility. This is an issue the framers of the CRA Act and previous efforts at regulatory change have had to struggle. If the regulatory requirements are too clear, then they won't be flexible enough to allow banks to make strategic business changes within their framework. If they are too flexible, they won't provide the clarity that banks need to incorporate the value of CRA treatment when making lending decisions. This inherent tension is made even more complicated by the diverse set of regulated entities that the CRA regulations must address.

   The Treasury Department recognized this tension when it noted "both banks and communities would benefit from additional flexibility in the CRA performance evaluation process, including increasing clarity in the examination guidance."[9] Treasury noted that "both banks and community and consumer advocates support the need for increased clarity. They also noted that any measurements or metrics utilized by the various examination tests should allow for flexibility based on the performance context of a bank. In addition, to allow for predictability and accountability, they advocated for changes in policies or procedures to be implemented prior to the commencement of a bank's next assessment period, rather than applying these policies or procedures retroactively once an assessment period is already underway."[10] The current regulations have done an admirable job of balancing this equation, but they have been increasingly hamstrung by problems in application discussed below.

   Improving clarity about what activities will get CRA credit will increase the flow of capital for communities, reduce regulatory burden and uncertainty for banks, and streamline and simplify

[9] Community Reinvestment Act – Findings and Recommendations. Memorandum for the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, April 3, 2018, Page 2. (heretofore, Treasury Report)
[10] Treasury Report, page 6

the examination process for agency staff. This is particularly true of community development activities, which can be the most transformative CRA activities in which a bank engages. Banks should receive full credit for CD activities beyond their AA(s) nationwide if they satisfactorily served their AAs, in the aggregate, based on their most recent exam. It is important for a bank to know in real time whether CD activities outside AAs will receive full credit. At the same time, unsatisfactory performance in a bank's AA(s) should have a negative consequence during the following exam period. CD credit outside of a bank's AA(s) should not exceed 20 percent of its current examination credit, thereby ensuring that majority of its investments serve their communities. Meanwhile, branchless banks should have no limit on their CD investments.

2. *Are the current CRA regulations applied consistently?*

No. The breakdown occurs when individual agencies, groups of examiners, or individual examiners stray from this guidance in ways that are neither transparent or predictable. This is an issue that may occasionally be addressed by a more robust role for the FFIEC but is more significantly an issue that needs to be addressed within each regulator. Internal consistency is a critical element of effective regulation when more than one agency is involved.

3. *Is the current CRA rating system objective, fair, and transparent?*

This is an issue that has been raised in a variety of platforms. While the Treasury Department noted that "CRA has too many subjective elements," an issue also stressed in the ANPR, they avoided prescribing an alternate approach. Instead, they recommended that "the research and policy staff of the CRA regulators be involved in developing the performance context in advance of CRA examinations. This approach would allow economists and specialized staff to provide their expertise on the economic and business environment of the communities where the banks are operating as well as reduce the burden on CRA examiners."[11] This is a very different approach than using a ratio, which while simplifying the process, has numerous unintended consequences detailed below. Ultimately, qualified regulatory staff must work with lenders and community stakeholders to ensure that performance context is correctly set at the beginning of the assessment period and is both transparent and flexible enough to allow for market changes. Consistency problems in the CRA examination process are exacerbated by the use of highly subjective terms to rate a bank's lending performance. Current regulations call for rating a bank "Outstanding" if "in general, it demonstrates:

> (A) excellent responsiveness to credit needs in its Assessment Area(s)…
> (B) a substantial majority of its loans are made in its Assessment Area(s);
> (C) an excellent geographic distribution, particularly in its Assessment Area(s),
> (D) and excellent distribution, particularly in its Assessment Area(s), or loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;
> (E) an excellent record serving the credit needs of highly economically disadvantaged areas in its Assessment Area(s), low income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with save and sound operations;

[11] Treasury Report, page 9.

(F) extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate- income individuals or geographies; and, (G) is a leader in making community development loans."[12]

As is evident in this example, terms like "excellent", "substantial", "extensive" and "leader" are widely open to interpretation. Without clear definitions, allowing for a narrower range of performance while providing for more flexibility than a fixed ratio, examiners have no choice but to assert individual judgements that will vary from agency to agency, bank to bank, market to market, and examiner to examiner.

4. *Two goals of the CRA are to help banks effectively serve the convenience and needs of their entire communities and to encourage banks to lend, invest, and provide services to LMI neighborhoods. Does the current regulatory framework support these goals in light of how banks and consumers now engage in the business of banking?*

One of the remarkable things about both the CRA and the 1995 regulations is how well they continue to serve the needs of their communities and have effectively and constructively encouraged banks to lend, invest and provide services to LMI neighborhoods. Yet much remains to be done and there is significant room for improvement in the current CRA regulations, given the pace and scope of change that has occurred in the banking industry.

An effective regulatory regime must balance the statute's focus on serving specific geographic areas with banking's evolved nature. The banking industry is not monolithic. Some banks have chosen to move to a platform much more dependent – and in some cases exclusively dependent – on mobile banking. Others have not committed to a strategy, as evidenced by many branches throughout the country with more empty teller windows and offices than occupied ones. For most community banks, the branch business model has changed little in 40 years. Ultimately, this process may prove to be one that is addressed more robustly in future regulatory initiatives. Before diminishing the role of branches in CRA compliance, it is essential that we understand how branch prevalence and locations impact LMI communities and individuals as it relates to deposits, mortgage lending, consumer lending, small business lending and other potential impact areas. We must also understand to what extent alternate approaches, like mobile banking, may do a better job or serving these communities.

5. *With the statutory purpose of the CRA in mind, what aspects of the current regulatory framework are most successful in achieving that purpose?*

The CRA regulations and the activities that it governs are too complex to answer this question in a way that would not provide an unbalanced perspective that could be misconstrued by areas not addressed. We believe that the CRA's strengths need to be looked at in the totality of the statute, the regulations and the performance of the regulated entities. Areas for improvement have been identified in other sections of this response.

[12] 12 CFR Appendix A to Part 25, Ratings.

6. *If the current regulatory framework is changed, what features and aspects of the current framework should be retained?*

   Please see response to Question 5

7. *How could an alternative method for evaluating CRA performance be applied, taking into account the following factors: bank business model, asset size, delivery channels, and branch structure; measures or criteria used to evaluate performance, including appropriate metrics; and consideration for qualifying activities that serve areas outside a bank's delineated assessment areas?*

   Current CRA regulation and examination procedures already take into account these areas. Improvements recommended by the NHC are addressed in the body of this letter.

Questions regarding the metric-based framework approach are answered together.

8. *How could appropriate benchmarks for CRA ratings be established under a metric-based framework approach, taking into account balance-sheet items, such as assets, deposits, or capital and other factors, including business models?*
9. *How could performance context be included in such a metric-based approach?*
10. *In a metric-based framework, additional weight could be given to certain categories of CRA-qualifying activities, such as activities in certain geographies, including LMI areas near bank branches; activities targeted to LMI borrowers; or activities that are particularly innovative, complex, or impactful on the bank's community. How could a metric-based framework most effectively apply different weighting to such categories of activities? For example, should a $1 loan product count as $1 in the aggregate, while a $1 CD equity investment count as $2 in the aggregate?*
11. *How can community involvement be included in an evaluation process that uses a metric-based framework?*
12. *For purposes of evaluating performance, CD services are not currently quantified in a standard way, such as by dollar value. Under a metric-based framework, how should CD services be quantified? For example, a bank could calculate the value of 1,000 hours of volunteer work by multiplying it by an average labor rate and then include that number in the aggregate total value of its CRA activity.*

    NHC opposes the use of a ratio approach in the strongest possible terms. The more than 25-year history of housing goals as a principal means of measuring Fannie Mae and Freddie Mac's service to underserved borrowers and communities offers some insights into how metrics should and should not be applied. Their benefit is a data-based approach to one aspect of consumer lending – mortgages – that can provide clarity, focus and clear expected outcomes. Practice has shown that establishing market sensitive outcomes, measuring results over a suitable time period, and strictly avoiding politically motivated changes in the goals levels are critical factors in using a metric like this. The lack of context, community sensitive strategies and focus on specific underserved products and markets led Congress to expand GSE mission evaluation to include the Duty to Serve, for example, bringing the GSE regime into closer alignment with the more comprehensive CRA approach. Congress also aligned the definitions of qualifying geographies with CRA requirements in 2008. The lack of similar numeric goals for service to LMI borrowers and communities for lenders makes establishing a unified and aligned strategy from the primary through secondary market more and unnecessarily difficult.

Using a broad ratio approach in the application of CRA that does not distinguish among activities and encourages only meeting an arbitrary "numerator" would be far worse. Large institutions with multi-year plans that make their CRA benchmarks early in a cycle will be less inclined to make additional CRA investments. In some cases, this condition may exist for months or years. Further, benchmarks could be subject to increases that were unsustainable as economic conditions change. Investments in rapidly gentrifying neighborhoods could accelerate, leading to additional displacement of LMI communities. Avoiding this dynamic is precisely why CRA was adopted in the first place.

Altering the metrics using the scale suggested in the ANPR, such as doubling the value of a CD investment over the value of a loan product could have a devastating impact on vitally needed lending at a time when access to credit in LMI communities continues to lag the market significantly. Providing CRA credit for grants and general support of religious institutions, as distinct from providing CRA credit for specific eligible activities undertaken by the religious institution (e.g., operations of a food kitchen; development or management of affordable housing), is an open invitation for abuse, both intentional and unintended.

Extensive consultation among NHC's nearly 200 members, including many of the largest banks in the nation, have failed to identify a single supporter of this proposal. As a result, NHC is committed to actively oppose any CRA rule change that adopts a ratio-driven approach. Conversely, we and our members are eager to work with the OCC and other regulators on developing more precise guidelines on what types of investments and activities do count towards CRA credit, which would give banks the ability to make fully informed investment and lending decisions.

13. *How could the current approach to delineating assessment areas be updated to consider a bank's business operations, in addition to branches and deposit-taking ATMs, as well as more of the communities that banks serve, including where the bank has a concentration of deposits, lending, employees, depositors, or borrowers?*

The CRA statute requires that "the appropriate Federal financial supervisory agency shall prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods… presented separately for each metropolitan area in which a regulated depository institution maintains one or more domestic branch offices."[13] The statute also requires an evaluation for each state in which a bank has a deposit facility. Subsequent CRA regulations require that banks develop an AA based on geographies in which the bank has its main office, its branches, and its deposit taking automated teller machines (ATMs), as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans.

For community development activities, CRA allows banks to consider a broader statewide or regional area (BSRA) that includes its AAs. As the OCC noted in this ANPR, the AA concept was developed in a banking environment where there was no interstate banking and deposits

[13] 12 U.S. Code, Title 12, Chapter 30, §2906(a)(1) and §2906(b)(1)(B).

almost always came from the community surrounding the branch. However, the vast majority of deposits and lending by dollar volume no longer fit into this concept. As a result, some of the largest banks have few or no branches, or have offices in low-population centers like Salt Lake City, Reno and Wilmington, which have led to the creation of so called "CRA hot spots" which distort the CRA's impact. The challenge is to amend the AA approach so that it continues to serve the statutory requirements of the CRA, its original intent, the needs of the communities it is intended to serve, and the business models of a much more diverse range of financial institutions. While difficult, this effort is not impossible.

Performance benchmarks should reflect the level of deposits within each AA. Banks should have the option of allocating deposits among AAs based on the location of its deposit customers or following the current practice of assigning deposits to its branches. Brokered deposits should not be counted in this approach as their origin is not identifiable. Reasonable metrics can be developed to define what is a substantial portion of a bank's loans and definitions of a BSRA can be expanded and clarified. Branchless banks that conduct business nationwide should not have local AAs at all, instead being evaluated on their business activities, so long as they are serving LMI geographies and people.

14. *Should bank activities in the LMI geographies surrounding branches and deposit-taking ATMs, or in other targeted geographic areas, be weighted (and if so, how), or should some other approach be taken to ensure that activities in those areas continue to receive appropriate focus from banks, such as requiring banks to have some minimum level of performance in the metropolitan statistical area (MSA) and non-MSA areas in which they have domestic branches before receiving credit for activity outside those areas?*

Assigning weighted consideration to LMI geographies is a concept that requires careful consideration so areas most in need of bank activities are targeted without unintentionally encouraging gentrification resulting in displacement of LMI people. This is a dynamic economic evolution that requires a more precise throttle control than CRA evaluation periods and census data may allow.

15. *How should "community and economic development" be defined to better address community needs and to incentivize banks to lend, invest, and provide services that further the purposes of the CRA? For example, should certain categories of loans and investments be presumed to receive consideration, such as those that support projects, programs, or organizations with a mission, purpose, or intent of community or economic development; or, within such categories, only those that are defined as community or economic development by federal, state, local, or tribal governments?*

Consistency of definition is a critical component for aligning various federal programs, tax incentives and regulatory requirements, like CRA. Much more important, however, is that banks have a clear understanding of what CD investments will receive CRA treatment. Banks must have confidence at the time they make financing decisions and develop new financing products that CD activities will receive CRA credit. This information is critical to the most successful element of the CRA's regulatory structure, often referred to as the "thumb on the scale." Many types of CD investments are obvious, like the investment in LIHTC deals within CRA assessment areas, but others like naturally occurring affordable housing in LMI tracts require more clarification. For investments that do not fit into a uniform designation, a timely judgement should be delivered by the appropriate examiner that will be binding throughout the examination period and apply to similar investments presented to the same agency by the same bank. The decision should also serve as a precedent for other banks presenting similar CD investments, contingent on their performance context and other appropriate factors.

Naturally occurring affordable housing (NOAH) is multifamily housing that is affordable to those who earn less than the area median income but are not rent restricted under Federal law. NOAH units account for 80 percent of all affordable rentals. How these units are treated under CRA is unclear, and as a result, may not receive CRA treatment when banks are allocating investment dollars. The National Association of Affordable Housing Lenders (NAAHL) has developed criteria for granting CRA credit for NOAH units. Housing with affordable rents should qualify for CRA credit if: (1) the housing is located in a LMI census tract; or (2) the housing is located in a census tract where the median renter is LMI and the median rent is affordable; or (3) the owner commits to keep rents affordable for the term of the bank's financing. A presumption of eligibility could be rebutted if the financing was underwritten based on plans for unaffordable rent increases or the housing is in substandard condition. While NHC has not formerly endorsed this proposal, we believe it is a good proxy for NOAH affordability and should be included in any proposed rule for further comment and analysis.

We also must be mindful that community development is not a siloed activity, although it may be treated as though it is in CRA CD evaluations. Communities are complex ecosystems and one of the lessons learned over the past 40 years is that comprehensive community development strategies that address housing, small business investment and job creation are often interdependent. The CRA has provided significant help to disadvantaged communities over the years but improvements can be made in how CRA may encourage more strategic coordination within communities as well as financial institutions resulting in a more holistic approach to community development.

16. *Should there be specific standards for CD activities to receive consideration, such as requiring those activities to provide identified benefits to LMI individuals and small business borrowers or to lend to and invest in LMI communities or other areas or populations identified by federal, state, local, or tribal government as distressed or underserved, including designated major disaster areas (hereinafter referred to as "other identified areas" or "other identified populations")?*

NHC believes standards that include LMI individuals and small business borrowers should be an important component of CRA treatment. In some cases this can be determined by the use of specific federal funding programs in conjunction with the lending or investment, such as Low Income Housing Tax Credits. In others the context of the investment becomes critical. This is particularly true in the case of infrastructure financing, which should only receive CRA credit to the extent it is reasonably expected to serve a material percentage LMI people or places. Additional detail on how to define these thresholds will be examined as part of future NHC commentary on CRA modernization.

17. *Are there certain categories of CD activities that should only receive consideration if they benefit specified underserved populations or areas, such as providing credit or technical assistance to small businesses or small farms; credit or financial services to LMI individuals or*

other identified populations (such as the disabled); or social services for LMI individuals or job creation, workforce development, internships, or apprentice programs for LMI individuals or other identified populations?

Careful consideration of these types of investments should be an important part of a Strategic Plan for banks that choose to use one, and for bank investments within identified assessment areas. NHC is prepared to convene community experts and banks to identify how these types of investment could be treated and what, if any, unintended consequences might arise as a result. Additional comments on the Strategic Plan follow the ANPR question comments below.

18. *Should consideration for certain activities that might otherwise qualify as CD be limited or excluded? For example, how should investments in loan-backed securities be considered?*

    Treatment of loan-backed securities is an area that has received much attention by policy makers, bankers and community advocates. Even among different bank business models, there is a wide range of viewpoints on this issue. Certainly, loan-backed securities consisting solely of whole loans that were originated for that purpose add liquidity to the market to some degree, though not as much as the actual origination. Repackaged loans from mortgage-backed securities, however, should not receive CRA credit. Fewer restrictions should apply to secondary purchases of other asset-backed securities because they are less liquid. For example, if one bank underwrites, purchases and then sells to a second bank a security backed by loans made by a CDFI or state or local housing finance agency, both banks should be recognized for adding substantial value to the community served.

19. *How should financial education or literacy programs, including digital literacy, be considered?*

    Financial education or literacy programs, including digital literacy could be considered, as long as they endeavor to meet certain community and economic development objectives, including but not limited to: bringing underserved LMI consumers into the banking system; raising the credit scores of low-income or credit invisible consumers; preparing low-income families for homeownership; etc. But lending and community development should be the primary objective in CRA; services, while important, should not be weighted as heavily in the bank's overall CRA assessment, consistent with current regulations.

20. *Should bank activities to expand the use of small and disadvantaged service providers receive CRA consideration as CD activities?*

    NHC has not received sufficient feedback from our members on this question to answer it at this time.

21. *The current regulatory framework provides for CRA performance evaluations to consider home mortgage, small business, and small farm lending, and consumer lending in certain circumstances. Should these categories of lending continue to be considered as CRA-qualifying activities or should consideration in any or all of these categories be limited to loans to LMI borrowers and loans in LMI or other identified areas?*

Home mortgage lending should be included whenever it is affordable to individuals earning below the area median income, however, NHC recommends that CRA regulators use HUD's income limits which include adjustments for high-cost areas and are used for most federal affordable housing programs and policies. This would improve clarity as well as consistency with other federal housing policies. Economic development activities in "distressed" metropolitan middle-income areas should receive the same CRA credit available for activities in similar nonmetropolitan census tracts. Many metropolitan areas continue to struggle even as other areas thrive. As under the current policy for nonmetropolitan areas, middle-income census tracts would have to be located in counties that meets one or more of the following triggers:

(1) An unemployment rate of at least 1.5 times the national average,

(2) a poverty rate of 20 percent or more, or

(3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

In other circumstances, the CRA regulators should develop a mechanism to promptly respond to requests for confirmation of CRA eligibility so the bank can move forward with confidence and the transaction can close in a timely manner. It would also be helpful if the FFIEC would publish these guidelines as part of their Q&As so that banks and community developers may understand and utilize them.

22. *Under what circumstances should consumer lending be considered as a CRA-qualifying activity? For example, should student, auto, credit card, or affordably priced small-dollar loans receive consideration? If so, what loan features or characteristics should be considered in deciding whether loans in these categories are CRA-qualifying?*

Consumer lending is an area of CRA compliance that can have as many risks as opportunities. Consumer lending treatment should be negotiated between banks and regulators in advance to ensure that LMI consumers will receive a material and measurable benefit. Home equity lines of credit/loans and payday lending should be disregarded entirely unless the remaining equity in the home exceeds 70 percent or the funds are used directly for home rehabilitation or the payday lending model is approved by consumer advocates. Many LMI homeowners and many LMI neighborhoods have limited home equity so they present limited opportunities for home equity lending. Consumer loans used for so called "piggy-back" or "80-20" loans should never receive CRA credit. There should be no credit offered for any support of payday lending. Serious consideration should be given to lender efforts to offer small dollar loans that provide consumers with alternatives to payday lenders, but care must be taken to ensure that the terms on which such credit is offered are fair. Similarly, lender initiatives to offer low fee low balance demand accounts and to structure accounts to minimize overdraft fees should be considered as well.

23. *Under what circumstances should small business loans receive CRA consideration? For example, should consideration be given to all loans to businesses that meet the Small Business Administration standards for small businesses?*

NHC has chosen not to comment on small business issues as they are tangential to our housing mission.

24. *How should small business loans with a CD purpose be considered?*

NHC has chosen not to comment on small business issues as they are tangential to our housing mission.

25. *Should a bank's loan purchases and loan originations receive equal consideration when evaluating that bank's lending performance?*

Whole loan purchases and loan originations should receive equal consideration so long as the whole loans were purchased from the originator.

26. *Should loans originated by a bank to hold in portfolio be weighted differently from loans originated for sale? If so, how?*

Decisions on which loans to hold in portfolio and which loans to sell or securitize should be made solely based on the bank's business model as well as its liquidity and risk management.

27. *Should bank delivery channels, branching patterns, and branches in LMI areas be reviewed as part of the CRA evaluations? If so, what factors should be considered?*

Banking services for LMI people and places remain important, despite rapidly changing technology and differing business branch business models. Credit of branch placement in LMI areas should remain an important element of a bank's CRA obligations so long as branch banking is part of their business model. To the extent that a bank has branches, they should be accessible to LMI area residents on an equitable basis.

28. *The CRA states that the agencies may take into consideration in the CRA evaluation of a non-minority-owned and non-women-owned financial institution (majority-owned institution) any capital investment, loan participation, and other venture undertaken in cooperation with MWLIs, even if these activities do not benefit the majority-owned institution's community, provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. What types of ventures should be eligible for such consideration, and how should such ventures be considered?*

Strengthening the financial condition of MWLIs is the intent of their inclusion in the CRA statute. NHC does not advocate any restrictions on investment in MWLIs. However, Equity investments and loans to certified community development financial institutions (CDFIs) should also receive additional full consideration because they are highly responsive to communities and require banks to allocate higher levels of capital to support them.

29. *Could the reporting of data gathered using a metric-based approach on a regular, periodic basis better support the tracking, monitoring, and comparison of CRA performance levels?*

Please refer to our response to questions 8-12.

30. *How frequently should banks report CRA activity data for the OCC to evaluate and report on CRA performance under a revised regulatory framework?*

    There is broad agreement, from civil rights advocates to lenders of all sizes, that the examination process takes too long from the actual review process to the time it takes to issue a report. There is no prescribed period for regulators to publish CRA performance evaluations. Examinations can take years longer than intended and a final report may be delayed by additional years, leaving banks and consumers with CRA ratings that are too dated to be useful or accurate. This can inhibit a bank's ability to make timely changes to remediate issues prior to the end of the next examination period. Reporting delays may also inhibit a bank's ability to make timely changes to remediate issues or make business decisions on mergers and branch openings. CRA regulators are often reluctant to issue finals reports while investigations into discriminatory or other illegal credit practices related to CRA lending activities are ongoing, further delaying the process, out of concern that an Outstanding or Satisfactory rating may cause reputational harm to the agency.

    Regulators should strictly adhere to the existing policy of completing Large Institution examinations on a three-year examination cycle. CRA exams should begin and end according to specific and transparent timelines set by FFIEC, consistent with data reporting requirements that are material to exam completion. Exams should commence within six months of the end of the previous exam period and a final rating should be issued within one year of the completion of the exam period so that CRA examination periods do not overlap with the prior examination report by more than 18 months. An ongoing investigation that could affect a bank's CRA rating should not necessarily delay publication of the rating as the rating may be changed if warranted when the investigation is completed. In addition, bank regulators should adopt a clear and concise timeline for addressing adverse comments in bank mergers, ensuring that merger application processing times do not exceed 90 days.

31. *As required by law, and to the extent possible, the OCC attempts to minimize regulatory burden in its rulemakings consistent with the effective implementation of its statutory responsibilities. The OCC is committed to evaluating the economic impact of, and costs and benefits associated with, any changes that are proposed to the CRA regulations. Under the current regulatory framework, what are the annual costs, in dollars or staff hours, associated with CRA-related data collection, recordkeeping, and reporting?*

    NHC has not received sufficient feedback from our members on this question to answer it at this time.

Additional Options or Approaches

<u>Strategic Plans</u>

The Strategic Plan option provides clear and predictable activity targets while allowing for the inclusion of institutional and community performance context. The Strategic Plan can be valuable for institutions with non-traditional business models. NHC is concerned that the option of a Strategic Plan is underutilized due to the widespread perception that they are too difficult to develop and amend. Public participation is an important component of developing an effective strategic plan; however banks are currently required to consult with the public if they make amendments to their Strategic Plans, regardless of materiality and scope. Many banks chose not to elect a Strategic Plan due to the complexity of setting numerical targets that may need to be adjusted due to changing business and investment conditions. This is especially true with banks operating in a large number of AAs. Banks should be allowed to amend their Strategic Plans with only the approval of their regulator, provided the amendment is based on changes to the performance context that were previously developed in collaboration with the bank and impacted community groups.

CRA Examiner Training, Development and Resources

Many of the issues involving examination clarity and predictability require regulatory or procedural changes, but others are, at least partially, due to issues involving examiner training, development and resources. If career paths for CRA compliance examiners are not as valued as risk management examiners, then there will continue to be frequent turnover of CRA examiners. Likewise, if CRA examiner training is not well funded across the agencies, inconsistencies in application will be more likely to occur. NHC believes that the OCC as well as the Federal Reserve Board and the FDIC should undertake a comprehensive review of CRA examiner training, development and resources to address these issues. Attracting and retaining high quality CRA examiners with deep knowledge and understanding of their regulated entities is a critical component of an effective CRA regime. Examiners should also undergo joint training with their peers in other agencies to ensure a common understanding of CRA regulations and procedures. Furthermore, periodic CRA examiner training should also include bank CRA compliance officers to build relationships and common understanding of both CRA examination procedures and bank business practices that are influenced by CRA. We encourage the FFIEC to fully explore these issues and make publicly available recommendations on both best practices and funding.

The National Housing Conference has been advocating for impactful national housing and community development policy since it was founded in 1931. The diversity of our membership allows us to approach critical housing policy issues from a range of perspectives and develop solutions to complex challenges. We agree with the OCC and the Treasury Department that CRA modernization is an important priority and stand ready to make this reform effort a success. However, as we have cautioned, CRA modernization must result in a genuine improvement in the existing regimen that has broad bipartisan support. Banks as well as community and consumer advocates all will benefit from improvements that improve clarity, flexibility and impact on LMI communities and individuals. Changes to CRA that fail to meet this test, however, will only serve to add uncertainty and cost to all involved. We look forward to reviewing all of the OCC’s comment letters to this ANPR and working closely with all three CRA regulatory agencies and our nearly 200 members to develop a unified ANPR with the aim of making this initiative a successful one.

Sincerely,

David M. Dworkin

David M. Dworkin, President & CEO