April 8, 2020

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

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

Re: OCC Docket ID OCC-2018-0008
FDIC Docket RIN 3064-AF22

To Whom It May Concern:

The National Community Stabilization Trust opposes the proposed changes to the Community Reinvestment Act (CRA) regulations published in the January 9, 2020, Federal Register. The National Community Stabilization Trust is a nonprofit, non-partisan organization that works to restore vacant and abandoned properties to productive use and to protect neighborhoods from blight.

Some of NCST's past accomplishments include the following:

- Facilitated the transfer of 27,000 1-4 unit homes from lenders to community organizations, with a total value of more than $1.7 billion.
- Transacted with more than 1,000 local partners and developed ongoing relationships with hundreds of community development organizations and single-family developers.
- Resolved a portfolio of more than 1,200 highly distressed mortgages through Project ReClaim (a joint venture with the Housing Partnership Network).

CRA has been essential to the constructive bank-nonprofit partnerships that help NCST buyers improve communities through putting vacant properties back to productive use and increasing affordable homeownership. The homeowners that purchase the renovated homes that NCST sells often work with local banks that offer down-payment assistance through state, local and federal subsidy programs. The for-profit and nonprofit developers

that repair and improve the homes we sell are small businesses that sometimes rely on bank lines of credit to do business.

The dangers that the proposed CRA changes pose matter because local housing markets can make or break a community. Homeownership is a key building block for stable, vital neighborhoods as well for the health, education and prosperity of individual families. Communities with low rates of homeownership are vulnerable to gentrification-driven displacement in good times or a downward spiral of decline in bad times.

In the neighborhoods where we do the majority of our work, we still see the toxic legacy of redlining – the systematic, government-sanctioned denial of credit to communities inhabited by residents of color. Neighborhoods where banks and FHA did not finance mortgages before 1968 are still plagued by blight and substandard housing. Lack of access to capital for community development or mortgage credit for homeownership continues to fuel a cycle of blight and disinvestment in neighborhoods, which in turn harms families and reduces economic growth. The Community Reinvestment Act was enacted in 1977 precisely because of these concerns, and maintenance of strong CRA obligations will be a critical ingredient in overcoming these challenges.

While we oppose the specific changes to CRA proposed today, this does not mean that we believe the CRA regulations should never be updated. The effort to modernize CRA is appropriate and overdue. The changes that have swept through the banking industry and the economy since the CRA regulations were last substantially revised in 1995 do necessitate reconsideration of many features of CRA's regulatory regime. For example, the ability to gather deposits through the Internet nationwide raises many questions about how to delineate bank Assessment Areas and evaluate bank performance. You deserve credit for raising questions about CRA's dated regulations and attempting to create a system suitable for the 21st century. Unfortunately, the regime outlined in the proposed rules does not achieve the goals you have articulated for it.

It is precisely because these questions are so important that we encourage you not to rush through a CRA final rule without the concurrence of all the banking agencies. We urge you to take the time to consider carefully all of the comments that you will receive in response to the January 9th Notice of Proposed Rulemaking (NPRM) and create a final rule that reflects the consensus among the banking agencies, banks, and community groups and is consistent across all regulators.

Below, NCST describes some of the concerns that are most pressing to us given our specific focus on neighborhood stabilization and the work of our local partners in disinvested housing markets. Specifically, the concerns relate to the proposed CRA Evaluation Measure, the retail lending distribution test, the expanded list of CRA-qualifying activities, and the untested new regime for allocating Assessment Areas for internet deposits. Taken together, these features could collectively have the effect of cutting off loans, investments and services in rural areas and historically disinvested communities. NCST believes there

is a considerable chance that the proposed changes will have the opposite effect of the stated intention to make CRA more data-driven, transparent and impactful.

Proposed CRA Evaluation Measure

A central feature of the proposal is the creation of a ratio of the dollar value of aggregated eligible CRA activities divided by bank deposits, with certain adjustments to look at retail lending distribution, community development investments and bank branches. While we appreciate that this is a more nuanced proposal than the one originally put forth in the ANPRM, the ratio still could have a devastating effect in areas with low property values and on single-family properties. It is simple arithmetic that under this regime places where most houses cost less than $100,000 will be disadvantaged versus places with soaring land costs and property values.

While the NPRM indicates that the agencies used data to draw conclusions, but none of it is disclosed in the NPRM. We have a specific concern about very large banks with a national footprint, which are the institutions that might have an incentive under your proposal to do much more work in the expensive markets on the coasts and neglect markets in the Midwest and the South.

As discussed below, the retail lending test does not compensate for this built-in bias in the Evaluation Measure. The framework disadvantages regions of the country with lower home prices and mortgage loan originations for low- and moderate-income families and in low- and moderate-income areas. We are not suggesting that the affordable housing needs in expensive markets are unimportant or insignificant. Nevertheless, this proposal dilutes the importance of smaller, consumer-facing transactions and community participation.

Quantifying all CRA activity in a single dollar figure, regardless of the type or complexity of that activity, also encourages banks to meet their CRA obligations with activities that produce the maximum dollar figure with the least effort. This may discourage more complex, but critical community development activities like New Markets Tax Credit investments or bank participation in single family loan funds in favor of simpler, large loans or Mortgage Backed Securities (MBS) purchases. The proposal thus threatens to undermine affordable housing, community development, and loans to the family-run businesses that are vital to neighborhood reinvestment.

The agencies establish numerical targets under the Evaluation Measure for banks to hit in order to achieve Outstanding or Satisfactory ratings. However, the agencies base the targets on their own research, which the agencies do not reveal in the NPRM. There is no way for NCST to make informed judgements about whether the numerical targets would result in increases in activity, stagnant levels, or decreases. It is difficult to respond to this NPRM because stakeholders can't see the data that the agencies use to determine the ratings that banks would receive.

It is ironic that if this NPRM becomes a final rule, consideration of the very mortgage loans that Congress discussed when it passed the CRA in 1977 would be lost or diluted. As a

publication on the history of the CRA notes, "Even a middle income borrower might be denied a loan for a house in a redlined neighborhood. Senator William Proxmire, a Wisconsin Democrat who was then chairman of the Senate Banking Committee and who engineered the CRA's passage remarked that 'many creditworthy areas were denied loans,' a trend he argued 'undoubtedly aggravates urban decline.'"[1]

Proposed Retail Lending Test

The NPRM acknowledges the amount of opposition that the "Single Metric" generated in the response to the ANPRM. The NPRM supplements the CRA Evaluation Measure with a retail lending test and a Community Development test that attempt to ameliorate the problems that commenters pointed out with the Single Metric. The proposed retail lending test would track originations by loan count rather dollar volume. This test examines the distribution of bank loans compared to peers or to the market, but this retail lending test would be pass or fail. It is an improvement over looking only at dollar volume, but it is still problematic that there is no incentive for banks to exceed the minimum threshold.

In addition, the NPRM asks "Should 50 percent be the threshold used to determine 'significant portion of a bank's assessment area' and 'significant amount of deposits' for purposes of determining whether a bank has received a rating in a significant portion of its assessment areas? Or should another threshold, such as 80 percent, be used?" (FR, page 1226) It seems absurd on its face to let a bank fail in 49% of its assessment areas yet give it a satisfactory or outstanding rating. An 80 percent threshold is much more logically consistent with the purpose and history of CRA to drive bank lending and investments to underserved communities, but pass/fail tests for retail lending and community development still will not provide a counterweight to a CRA rating based mostly on dollar volume. If the agencies persist with this flawed Evaluation Measure, then banks should receive the same type of ratings on the retail lending test that they do on the overall Evaluation Measure AND the retail lending test should apply to a larger percentage of the banks' footprint.

CRA Qualifying Activities

The NPRM also clarifies what activities qualify for CRA credit. While NCST supports efforts to clarify the types of activities that may qualify for CRA credit and avenues for banks to get CRA activities pre-approved, we do not believe that this expanded list of approved activities is the best way to ensure that banks are listening to their communities and meeting local needs as required in the CRA statute. Taken together, the proposed changes to CRA qualifying activities drastically dilute the emphasis established in the 1995 regulatory changes to CRA of revitalizing LMI communities with affordable housing, small business development and community facilities.

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[1] *Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act*, Federal Reserve Bank of San Francisco, page 85.

NCST has a particular concern about the proposed changes to qualifying neighborhood stabilization activities. The NPRM states that "Although the agencies chose not to include in the proposal certain ambiguous or unclear terms used in current regulations, the agencies do not intend to reduce the activities that qualify for CRA credit. For example, the qualifying activities criteria would no longer use the current regulatory phrase "revitalize and stabilize" to describe the activities that would qualify in targeted areas, such as distressed or underserved areas; instead, the proposal describes in greater detail the criteria for activities that would qualify in these locations." (FR, page 1213)

While we appreciate that some neighborhood stabilization activities are on the list, using a list like this may be too constricting. Economic development activities such as financing retail establishments like grocery stores may not qualify if they don't meet the small business loan standards and weren't part of a government plan. Yet this lending would have neighborhood revitalization and job creation business benefits.

Additionally, the activities enumerated in the NPRM include several activities that are not nearly as helpful to distressed communities as the neighborhood stabilization activities that were previously encouraged. For example, financing large infrastructure such as bridges would be a CRA eligible activity, which could divert banks' attention from community development projects in LMI communities. For example, a bank is unlikely to focus on a loan for a dilapidated house in a small town in Ohio if the dollar value of a loan to a bridge or water treatment plant is much higher. When combined with the "CRA Evaluation Measure" proposal, this expanded list of CRA activities could give banks a powerful incentive to ignore small mortgages or rehab financing and satisfy CRA requirements through infrastructure lending. Similarly, the proposal increases the size of loans for small businesses and farms that could receive CRA credit from $1 million to $2 million for small businesses and as high as $10 million for family farms.

Finally, the agencies have eliminated language that requires CRA activities to have a "primary purpose" of community development. Instead, the proposal would provide prorated credit for where any amount of an activity – even less than 1 percent – would benefit low- and moderate-income people and communities. As a result, activities that almost entirely serve upper-income individuals could now receive CRA credit. In addition, by providing an expanded list of activities that receive CRA credit in any jurisdiction or circumstance, the agencies also remove any assessment of whether such activity meets the needs of the local community. As a result, banks could receive credit for providing financial literacy programs that are not used by low- and moderate-income families; financing hospitals or road construction that only incidentally serve low- and moderate-income people; financing sports stadiums that will result in more displacement of low-income people and people of color than economic opportunity; and investing in "opportunity funds" that already provide massive tax breaks.

Changes to Assessment Areas

One of the most difficult questions that the agencies have raised is how to determine where to examine banks' CRA performance. The NPRM appropriately recognizes changes in the

banking industry such as the increased use of online banking and nationwide deposit taking. The NPRM's reforms to where CRA exams will be conducted, however, are problematic and would reduce transparency.

The agencies propose to establish new Assessment Areas (AAs) on exams that are outside of branch networks but where banks collect a significant amount of deposits. The proposal to require banks with more than 50 percent of deposits outside of their AAs to designate AAs in any geography in which they have 5 percent or more of their deposits may further drive CRA activity to population centers, rather than to rural or other underserved areas. It seems logical to surmise that concentrations of deposits would be in wealthy, urban areas, thus this proposal could have consequences that differ from the stated goals of the NPRM to drive investment to underserved areas.

The proposed changes are likely to divert attention from areas served by branches since the agencies propose to make it easier for banks to engage in CRA-qualified activities outside of areas with branches. Currently, banks can engage in community development activities beyond areas with branches only after satisfactorily serving areas with branches. Under the NPRM, there would be no such restriction, allowing banks to find the easiest places to engage in community development without first responding to needs in the communities with branches.

Conclusion

In conclusion, the NPRM proposal is deeply flawed, especially the proposed CRA Evaluation Measure, the retail lending distribution test, the expansion of CRA qualifying activities, and the new regime for Assessment Areas for internet deposits. Moving forward with this proposal, especially when not all CRA regulators are aligned, would violate the agencies' obligation under the statute to ensure that banks are appropriately serving all communities and would disadvantage lower-cost markets, especially as relates to property rehab and homeownership.

Please contact me at ksiglin@stabilizationtrust.org if you wish to discuss these comments. Thank you for your consideration of NCST's views.

Sincerely,

Kristin Siglin
Vice President of Policy & Partnerships