



August 4, 2022

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
Attention: Ann E. Misback, Secretary
20th Street and Constitution Ave. NW
Washington, DC 20551
RE: Docket Number R-1769, RIN 7100-AG29

The Honorable Michael Hsu
Comptroller
Office of the Comptroller of the Currency
Attention: Comment Processing
Chief Counsel's Office
400 7th Street SW, Suite 3E-218
Washington, DC 20219
RE: OCC Docket ID OCC-2022-0002

The Honorable Martin Gruenberg
Acting Chair
Federal Deposit Insurance Corporation
Attention: James P. Sheesley, Assistant Executive Secretary
550 17th Street NW
Washington, DC 20429
Attention: Comments RIN 3064-AF81

RE: Notice of Proposed Rulemaking -- Community Reinvestment Act

Dear Chairman Powell, Comptroller Hsu, and Acting Chair Gruenberg:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) entitled "Community Reinvestment Act," which was published jointly in the Federal Register on May 5, 2022, by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (collectively, "the Agencies"). This is a critically important rulemaking, and NeighborWorks applauds the Agencies efforts to build on the stakeholder input received through earlier stages of rulemaking to develop a regulatory framework for the Community Reinvestment Act (CRA) that appropriately modernizes the regulations. It is clear that the Agencies took a thoughtful and considered approach to developing a regulatory regime that could provide increased certainty and clarity to regulated

institutions. At the same time, the Agencies have sought to elevate the fundamental purposes of the CRA statute, to effectively meet the needs of low- and moderate-income communities and address inequities in access to credit. NeighborWorks is deeply appreciative of the Agencies' ongoing commitment to providing community stakeholders with meaningful opportunities to engage and shape these regulations.

For nearly 45 years, the Neighborhood Reinvestment Corp. (doing business as NeighborWorks America®), a Congressionally-chartered, national, nonpartisan nonprofit, has worked with our network to create opportunities for people to improve their lives and strengthen their communities by providing access to homeownership and safe, affordable rental housing, increasing financial capability, and promoting community and economic development. NeighborWorks America traces its origins to the same era and circumstances that drove enactment of the Community Reinvestment Act, and it is with this shared history in mind that we offer our perspective on the NPRM.

Please note that these comments have not been submitted to, or approved by, NeighborWorks America's board and do not necessarily represent the views of its board members, either collectively or as individuals. These comments have been formed based on the ongoing work of NeighborWorks America with our network of nearly 250 NeighborWorks-chartered local and regional nonprofits working in urban, suburban, and rural communities across the country. In 2021, NeighborWorks organizations leveraged nearly \$17 billion in reinvestment in their communities, creating 22,000 new homeowners, owning/managing 195,700 high-quality rental homes, providing home-ownership education and counseling for over 160,000 families and individuals, and much more. NeighborWorks is committed to ensuring a CRA framework that supports this—and all other—reinvestment work to make every community in America a community of opportunity.

Introduction

The NPRM clearly reflects tremendous efforts on the part of the Agencies to develop thoughtful, practical proposals that meaningfully address stakeholder input that was offered in response to earlier stages of the rulemaking. NeighborWorks expressed deep concerns about the framework that the OCC previously adopted in its 2020 rule, and we were deeply supportive of the decision to rescind that rule and reengage with the Federal Reserve and FDIC on efforts to develop a joint rule. NeighborWorks is pleased to again have the opportunity to provide input on adjustments to the proposal that would strengthen the rule to ensure that it creates an appropriate framework for assessing banks' financial activities for the next generation. NeighborWorks is acutely aware of the potential dangers of a regulatory regime that is seen as being only short-term, and we urge the Agencies to consider the longevity of the rule when making decisions about its final form. Since its inception, creating certainty and stability have been among the goals of the modernization process, and they should remain a priority to ensure that banks have the confidence to invest in robust CRA programs without fear of constantly shifting regulations.

While over forty years have passed since the Community Reinvestment Act was signed into law, the statute remains vital today to ensure that banks meet the credit needs of the communities that they serve, particularly in low- and moderate-income neighborhoods and communities of color. Despite the passage of four decades, however, there is still evidence that redlining continues in

communities across the country. The pandemic and resulting economic crisis have laid bare the scale of inequality in our communities and the extreme unmet needs in many places. Access to safe, reliable credit is critical for low- and moderate-income individuals and families at all times, but the economic crisis has underscored just how limited this access can be, particularly for people of color and their communities. The experience of the Paycheck Protection Program, and the disparities in access to its resources, were yet another illustration of the extent to which LMI communities and communities of color remain on the periphery of the mainstream US financial system. In this light, it is no longer sufficient to strive for a new CRA framework that is merely equal to the current standards. Since its enactment, CRA's 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 modernized regulations must be enhanced to ensure significant new access and investment to people and places that have long been overlooked or locked out.

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 services, and that the neighborhoods in which they live are able to attract and retain investment for homeowners, small businesses, and others. CRA also provides incentives for banks to partner with NeighborWorks and NeighborWorks organizations (NWOs) 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 enhanced while the regulatory structure is strengthened to better meet the needs of LMI people and communities in a changing banking environment. Consistent, modernized regulations across the three regulatory agencies will ensure that CRA remains a powerful tool to combat disinvestment, uplift communities, and create wealth-building opportunities for LMI households. Unified rulemaking will create a level playing field for financial institutions, and, more importantly, increase the ability of community stakeholder organizations to partner with all institutions to pursue community development projects and meet the needs of underserved people and places.

Overarching Comments

Now more than ever, we must harness the power of this important statute to ensure credit and investment flow to all communities to stabilize markets, create economic opportunities, and realize the full potential of reinvesting in communities. In times of economic upheaval, partnership and collaboration between banks and community development organizations has been critical, most recently exemplified by the response to the foreclosure crisis in the Great Recession. As we work to recover from this current economic crisis caused by the COVID-19 pandemic, we will need the power of CRA to incentivize banks to play a leading role.

One of the greatest opportunities presented by this modernization effort is to craft a CRA framework that incentivizes deep partnerships between banks and the nonprofit community development sector. These partnerships are uniquely situated to identify community needs and structure, capitalize, and deploy strategies and solutions that are highly responsive. Specific provisions for incentivizing these partnerships are included in this letter. Specifically, NeighborWorks urges the Agencies to extend the automatic eligibility for activities undertaken with a Treasury-certified CDFI to activities undertaken with a chartered NeighborWorks network

organization. Additionally, we would request that an impact review factor emphasizing the responsiveness of these activities be similarly augmented to include NeighborWorks organizations. The impact factor for activities that reflect bank leadership through multi-faceted or instrumental support would also serve as an outlet for recognizing the value of activities that more holistically invest in the success of the project and partnership. Finally, NeighborWorks recommends creating a separate metric for grants to nonprofits under the CD Services test to prevent these contributions from being buried by much larger sums in the CD Financing test. Collectively, these provisions incentivize banks to work with nonprofits and invest in their success in communities.

NeighborWorks is encouraged by the Agencies' approach to constructing a robust CRA evaluation framework. Though additional adjustments are needed, we applaud the Agencies' efforts to apply specific, quantitative metrics where appropriate while also employing qualitative measures where necessary. Furthermore, the Agencies preserve a role for examiner discretion, which is absolutely necessary, even in the most thoughtfully designed system. NeighborWorks is also encouraged by the emphasis the proposal places on community development (CD), though we believe that for the system to function even greater weight needs to be applied. NeighborWorks is concerned that the proposed weighting of the exam will have severe unintended consequences, with the potential to undermine the entire system. By proposing to weight the Retail Lending Test at 60%, the Agencies have inadvertently devalued the Community Development Test, potentially to the point of irrelevance. Additional discussion on this topic and recommended solutions are included in Section XVI.

Community development work is at the core of what the Community Reinvestment Act was intended to accomplish, counteracting the history of structural exclusion through redlining and disinvestment experienced by certain, primarily minority, communities. The historical ties between race and the redlining that CRA was meant to address cannot be ignored, and NeighborWorks encourages the Agencies to meaningfully include racial indicators, both explicitly and by proxy, in the evaluation framework. The Agencies should embrace transparency around this component of the evaluation and publicize the Home Mortgage Disclosure Act data showing banks' performance across racial categories. We have included some specific suggestions for how this might be done in the comments to follow.

As a nation, we find ourselves in a moment of historical struggle—a devastating pandemic, the related economic fallout, and a renewed spotlight on issues of racial and social justice. While it is undeniable that these forces shape the contents of our comments, it is critical that the regulations be written with an eye to the future, not just the current crises. Throughout the business cycle, banks should be expected to serve their communities, and in moments like the present they should be expected to be part of economic recovery efforts.

Another important component of the rulemaking is ensuring that the framework reflects the diverse communities that make up our nation. This includes ensuring that the CRA appropriately incentivizes investment in rural communities by applying tailored criteria where necessary to reflect the unique conditions and demographics of these places. Similarly, the framework should emphasize activities in Native communities where access to capital has been historically scarce. And finally, and no less importantly, the rulemaking must focus on redlined communities and communities of color that have been challenged by underinvestment. To appropriately meet the needs of these populations, in addition to the specific suggestions contained throughout this letter,

NeighborWorks encourages the Agencies to holistically review the rule through these lenses to ensure that the various components work together to meet these goals.

At present, nearly all banks receive a rating of “satisfactory” or better. Given the extent of disinvestment and unmet community credit need, NeighborWorks believes that a new CRA framework should raise the bar, not seek to replicate the current standard. Much of the unmet need represents profitable business opportunities, consistent with safe and sound lending requirements. Rather than maintain the status quo, CRA modernization should create a strong incentive for banks to deploy more capital into the communities where it is needed. At the same time, the new standards must not be so lofty as ensure that ‘Outstanding’ ratings are unachievable. Setting expectations beyond those that can be achieved through a reasonable degree of effort could have the unintended consequence of undermining the existing spirit of constructive competition that CRA creates. An unduly stringent examination may erode support for the system within financial institutions, driving a collective embrace of mediocrity rather than the desired “race to the top.” These concerns cannot be understated, as they address the fundamental underpinnings of the proposed structure proposed by this rulemaking.

In addition, to establishing appropriate regulations to incentivize increased reinvestment in communities and modernize the regulations for the present and future banking environment, the Agencies must focus on appropriate implementation. To meet the promise of revamped regulations, examiners must be provided comprehensive, uniform training, a project which NeighborWorks would welcome the opportunity to further discuss. Effective administration of the CRA requires well-trained examiners with the necessary expertise in community development. The Federal Reserve, FDIC, and OCC 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.

Responses to Specific Questions

In addition to these overarching comments, NeighborWorks wishes to provide input on specific components of the NPRM, as well as respond to selected questions posed by the Agencies. The following sections are organized to correspond with the NPRM, and where comments relate to a specific question, that question is noted.

III. Community Development Definitions

A. Primary Purpose:

NeighborWorks is supportive of codifying in the regulations a standard for determining whether a CD activity has a “primary purpose” of community development. While pro rata credit is appropriate in the context of housing, where mixed-income developments are often a desirable outcome, pro rata credit should not be offered for other types of CD activities where benefit to LMI census tracts is not the primary purpose. Providing this type of pro rata credit would be likely to divert substantial resources away from projects where benefits are targeted to LMI people or communities (Q1).

B. Affordable Housing:

Given the tremendous unmet need for affordable housing across the United States, support for affordable housing acquisition, preservation, rehabilitation, and development should be a centerpiece of CRA's community development activities. It is important that the new regulations maintain the existing emphasis on ensuring that LMI individuals benefit—or are likely to benefit from—affordable housing. With this criterion in mind, NeighborWorks recommends that the Agencies take a somewhat narrow approach to defining which affordable housing activities are automatically eligible for consideration, while preserving discretion for more nuanced projects to be approved on a case-by-case basis. Particularly in the case of unsubsidized affordable housing, which represents approximately 80% of the nation's low-cost housing stock, it is critical to include it in the CRA framework, though other tools, including the Duty to Serve requirements for Fannie Mae and Freddie Mac, will also be needed to preserve these assets over the long term.

NeighborWorks objects to the proposal to include any rental housing undertaken in conjunction with a government plan, program, initiative, tax credit, or subsidy. Notwithstanding the fact that the majority of units would meet this criterion, it is too broad and ill-defined a criterion to fulfill its purpose. While some government bodies are actively supportive of affordable housing through their planning and programs, others are not. Instead, NeighborWorks recommends focusing the definition of affordable housing on the rents charged and the populations served to determine eligibility. Although NeighborWorks recommends removal of this prong of the definition, if it is to be retained, we recommend including Tribally Designated Housing Entities to the list of eligible government bodies.

NeighborWorks is supportive of providing CRA consideration to all properties financed with Low Income Housing Tax Credits (LIHTC) commensurate with the investment in the project, as well as affordable housing developments where more than 50% of the units are affordable at 80% AMI and tenant incomes are documented to be at or below 80% AMI. Furthermore, NeighborWorks encourages the Agencies to adopt the LIHTC income averaging flexibilities, which can be used to create deeper affordability, as part of this income standard.

Additionally, NeighborWorks recognizes the important role that unsubsidized affordable housing plays in meeting the housing needs of LMI households. Though it is impractical to document and track the income of renters of unsubsidized housing, NeighborWorks applauds the Agencies for attempting to develop an alternate standard that will maintain the focus on targeting CRA credit to housing that benefits LMI households. Given the extent to which housing units with rents affordable between 60-80% AMI tend to serve middle- and upper-income households, NeighborWorks agrees with the Agencies' approach of setting the base standard for eligible units at those with rents affordable at 60% AMI and allowing for units that meet additional conditions, as discussed in the following paragraph, with rents affordable up to 80% AMI.

While it is paramount that the definition of affordable housing be narrowly tailored to that housing which is likely to serve LMI households, NeighborWorks is cognizant of the challenges of developing and maintaining housing affordable at 60% AMI without subsidy. To that end, NeighborWorks proposes providing CRA consideration for housing with rents up to 80% AMI if the project is undertaken in partnership with a nonprofit organization with a bona fide mission of providing affordable housing. NeighborWorks believes that such a partnership would provide appropriate guardrails and accountability such that LMI households would be the likely beneficiaries of the housing (Q5).

Additionally, NeighborWorks would support providing consideration for units affordable at 80% AMI that are located in census tracts where most renters are LMI households and most rents in the tract are affordable. If most of the rents in a neighborhood are affordable, it is likely that the market will dictate that the rent for the subject property would remain affordable. Furthermore, the incomes of other renters in the neighborhood are the most reasonable predictor of the incomes of the future tenants. Taken together, these two conditions offer sufficient assurances that the property will benefit LMI renters. This definition should be intentionally narrow so as to ensure that properties receiving automatic consideration are in keeping with the purposes of CRA (Q6).

Finally, in rural communities, NeighborWorks recommends providing consideration for housing meeting any of the above prongs of the definition, as well as housing affordable at 80% AMI where the owner has a legally documented commitment to maintain that affordability for a period of at least five years. This additional flexibility is needed to meet the needs of rural communities, where AMIs tend to be lower and access to financial resources necessary to make housing more affordable are scarce.

Single-family rental housing which meets the same conditions as proposed for multifamily rental housing should be eligible for CRA credit, regardless of whether it is located in a rural geography. However, given the impact of institutional investors on both the single-family rental and entry-level home purchase markets, credit should be restricted to properties whose owners own fewer than 50 single-family rental units, unless they are a non-profit with a bona fide mission of providing affordable housing (Q7).

Financing for the development of affordable for-sale housing must also be included in the definition of affordable housing. Homeownership is a critical wealth-building pathway, and efforts to increase the stock of affordable for-sale homes should be incentivized. The proposed definition appropriately tailors activities to those that support LMI households while limiting the potential of CRA credit for activities that promote gentrification. NeighborWorks supports providing credit for the construction or rehabilitation of homes where the sales price does not exceed four times the AMI. Financing the rehabilitation or reconstruction of an already owner-occupied home where no sale is involved should qualify if the owner is either LMI or middle-income (Q8).

NeighborWorks is a committed supporter of shared equity housing and is pleased that the Agencies have included a question specifically recognizing its importance. Shared equity housing models are an innovative strategy for providing access to affordable, stable

homeownership for families that may not otherwise be able to access homeownership, while at the same time ensuring that the subsidy investment remains in the community to preserve affordability over time. While many activities relating to shared equity will fall under the affordable homeownership definitions discussed above, NeighborWorks recommends affirmatively including activities related to the acquisition, development, and preservation of shared equity homes or homes in a community land trust on the list of eligible activities (Q10).

E. Revitalization and Stabilization Activities:

NeighborWorks is supportive of efforts to better define appropriate revitalization and stabilization activities for CRA consideration but is concerned by the proposed requirement that these activities be aligned with a government plan, given the extent to which, as the NPRM notes, these “plans vary widely, including in scope, purpose, level of community engagement, and the rigor of included criteria.” While many cases that qualify under the place-based activity definitions will meet this standard, it cannot be universally assumed to be a meaningful indicator of whether the activity is appropriately targeted to meet identified community needs and should therefore be eliminated (Q14).

The proposed criteria defining the eligible tracts and requiring that place-based activities serve the residents of the targeted tracts, including low-and moderate-income residents, are important for channeling the benefits of these types of activities and are an improvement over the current requirements which are overly reliant on examiner judgment without clear parameters guiding their decisions. NeighborWorks is also encouraged by the Agencies’ focus on ensuring that CRA credit is not given for activities which displace LMI residents. While in some contexts it may be sufficient to limit a review of displacement to literal displacement, as in the NPRM’s example of affordable housing being demolished to create housing serving higher-income households, in census tracts experiencing rapid growth or gentrification it may be necessary to take a more expansive view that can encompass the inflationary pressures that can lead to displacement (Q15).

3. Revitalization Activities

NeighborWorks supports the change to remove housing-related activities from the revitalization activity. While housing may be an important component of a comprehensive revitalization or stabilization strategy, these activities are best assessed under the affordable housing definitions (Q16).

4. Essential Community Infrastructure and Facilities

Given the relative scale—and therefore the relative impact on a CRA exam—of community infrastructure and facilities, ensuring a strong LMI nexus for qualifying public and private infrastructure is essential. Such projects should only be considered eligible CRA activities when they address critical infrastructure needs (roads, broadband, sewer, etc.) directly in LMI places. While NeighborWorks recognizes the challenges of determining the specific population of people who benefit from a public infrastructure investment, it is still possible to identify a set of characteristics or parameters to describe these projects and distinguish them from those where financing

would be readily available at reasonable terms notwithstanding CRA eligibility. For example, the Agencies could define eligible projects as those undertaken with applicable federal or state programs designed to spur infrastructure investments in places where they might not otherwise be able to secure financing. While rural and distressed communities often struggle to secure financing for infrastructure projects, these resources are more readily available in urban and suburban areas. This limitation could ensure that LMI communities are the beneficiaries of these activities and encourage credit to flow to projects where it may not otherwise be available (Q17).

5. *Recovery Activities in Designated Disaster Areas*

Researchers have continuously documented the extent to which disasters disproportionately impact low-income communities as well as the inequitable distribution of recovery resources following a disaster. While there are many factors that contribute to these inequities, experience shows that higher-income areas have much greater access to capital in the wake of a disaster. With these disparities in mind, NeighborWorks recommends the Agencies reconsider the eligibility of disaster recovery related activities in non-LMI tracts. By removing them from the definition, the Agencies could better target and promote efforts that directly serve LMI areas which need these resources most (Q18).

6. *Disaster Preparedness and Climate Resiliency Activities*

The Agencies appropriately note the disproportionate burden of disaster- and climate-related risks to LMI communities. LMI communities are particularly vulnerable to climate-related disasters, and history shows that these communities disproportionately struggle to access resources for prevention and resilience as well as for recovery. NeighborWorks supports providing CRA consideration for activities related to preparedness and resilience but emphasizes the importance of limiting these activities to those that have a clear, direct, and targeted benefit specifically to LMI people or communities. Activities that are generically responsive to climate change, such as wind farms or carbon capture efforts, while beneficial to all people, should not be eligible for CRA consideration

NeighborWorks strongly supports CRA eligibility for activities that assist LMI individuals and communities to prepare for, adapt to, and withstand these risks. As with all other place-based definitions, NeighborWorks recommends eliminating the requirement that these activities take place in conjunction with a government entity. Activities, such as structural improvements to make the building more resilient to high winds or water intrusion, that are associated directly with housing units that meet the affordable housing definition should qualify as affordable housing activities (Q19). These essential activities, as well as activities that promote energy efficiency for qualified affordable housing units, should be treated like any other rehabilitation or improvement to the property (Q20).

F. Activities with MDIs, WDIs, LICUs, and CDFIs

CRA is a powerful tool for incentivizing partnerships between banks and local communities. CRA leverages investments across those communities, often through

nonprofits with a deep commitment to serving these areas, to achieve their shared goals. In proposing to grant automatic eligibility for CRA consideration for any activity undertaken in partnership with a Treasury-certified Community Development Financial Institution (CDFI), the Agencies have recognized this potential. According to the NPRM, activities undertaken with a CDFI “would be presumed to qualify for CRA credit given these organizations would need to meet specific criteria to prove that they have a mission of promoting community development and provide financial products and services to low- or moderate-income individuals and communities.”

Applying this same reasoning, NeighborWorks recommends extending this status to partnerships between banks and nonprofit organizations that hold a charter from NeighborWorks America. NeighborWorks is a Congressionally-chartered organization, and membership in the network for these mission-driven organizations requires rigorous financial and management assessments prior to receiving their charters and on an ongoing basis thereafter. Furthermore, membership in the NeighborWorks network is only available to organizations that demonstrate, on an on-going basis, a commitment to resident leadership, ensuring that the organization continues to represent the interests of the communities in which it works. The accountability and oversight that NeighborWorks America provides to network organizations is akin to the stewardship of Treasury for certified CDFIs, ensuring that NWOs maintain their physical and financial health as well as their mission-driven focus. Activities relating to partnerships with NWOs, including loans and grants, should be explicitly included in the regulations describing qualified activities. Inclusion of this provision would strengthen community-based organizations’ ability to attract investment from financial institutions by providing the clarity and certainty that such investments would receive CRA consideration.

Similarly, we recommend the Agencies consider whether extending this treatment to HUD-designated Community Housing Development Organizations (CHDOs), HUD-approved Housing Counseling Organizations, and HUD-approved Nonprofit Organizations is appropriate.

Additionally, CRA should incentivize banks to robustly partner with Minority Depository Institutions (MDIs) that have a strong track record of serving communities of color. One way the Board could ensure that benefits flow to the intended communities is by codifying the standard recently introduced through the CARES Act that requires that “a majority of both the number and dollar volume of arm’s-length, on-balance sheet financial products...are directed at minorities or majority minority census tracts or equivalents.”

G. Financial Literacy

CRA credit should be given for homebuyer education and counseling and financial capability services only in instances where it primarily benefits LMI customers or communities. Although stopping short of requiring income documentation from beneficiaries, NeighborWorks recommends requiring banks to show that LMI populations are likely to be the primary beneficiaries, either due to the structure of the service, the marketing and outreach efforts, or the partnership through which it is delivered. For example, a financial capability course offered through a school where the majority of students receive free or reduced-price lunch would meet this definition. While

NeighborWorks is supportive of ensuring all homebuyers have access to appropriate information and guidance when navigating the homebuying process, it is not necessary to offer CRA credit to ensure access to these services for higher-income households or neighborhoods (Q27). In addition to homebuyer education and counseling services that are provided directly by banks, the regulations should explicitly list grants and loans to nonprofit organizations to support these purposes as eligible activities.

H. Activities in Native Land Areas

NeighborWorks is eager to include additional incentives for banks to increase their lending and community development activities in Native Land Areas. Mortgage capital is notoriously scarce in these communities, and the work of expanding access needs to be both intentional and rich with relationship building and learning.

The expansive proposed definition of Native Land Areas, which encompasses tribal areas beyond those included in Indian country, is helpful for establishing clarity and encouraging additional investment in these areas. NeighborWorks is supportive of including all of the proposed components of the definition, as well as adding the CHamoru Trust Lands in Guam (Q28). However, this new definition should be used only in the context of CRA and should not take the place of existing definitions for other government programs. In addition to encouraging enhanced focus on Native Land Areas, NeighborWorks encourages the regulators to consider ways to promote activities that serve Native peoples in other places. Myriad factors have played into the historical dispersion of Native peoples beyond Native lands, but many of the limitations in access to credit and economic opportunities persist. As such, community development activities targeting Native populations should be eligible even when they do not take place in Native Land Areas.

Given the extent of the needs and the existing scarcity of capital, NeighborWorks recommends that all activities in Native Land Areas, without regard to income targeting, be eligible for CRA consideration. Expanding eligibility for these communities will allow them to attract and retain the working professionals needed to staff community institutions like schools, businesses, and healthcare centers, that benefit all members of the community (Q29).

IV. Qualifying Activities Confirmation and Illustrative List of Activities

NeighborWorks continues to be supportive of measures to add transparency and clarity around the activities that are eligible for CRA consideration. In particular, we support the Agencies' proposal to maintain and publish an illustrative, non-exhaustive list of CRA-eligible activities. New activities should be added to the list as innovations in the banking industry emerge, and activities should also be removed or refined as circumstances warrant. The non-exhaustive nature of the list must be emphasized in order to avoid unintentionally disincentivizing banks from pursuing activities that are not included in the list for fear that they would not be counted on CRA exams.

NeighborWorks also supports an established pathway for banks, as well as nonprofit organizations seeking CRA-related investments, to seek pre-approval of activities prior to fully underwriting a project. Although NeighborWorks is sympathetic to banks' concern that allowing non-bank

parties to seek pre-approvals, we believe this can be an important mechanism for enabling innovative and untraditional activities to attract CRA investment, paving the way for CRA to reach new and highly responsive activities. This pre-approval mechanism would provide added certainty that can allow banks and nonprofits to work together more efficiently and effectively, speeding up projects by allowing work to proceed expeditiously with confidence that it will be eligible. In order to be successful, the Agencies must adequately resource this pre-approval process to enable timely and expeditious determinations (Q32).

V. Impact Review of CD Activities

As we previously commented during the earlier stages of this rulemaking, a responsive CRA framework must be calibrated to reflect the relative impact of different activities. NeighborWorks does not believe that a quantitative multiplier to reflect impact, as pursued by the OCC in its earlier rulemaking, is a viable model. NeighborWorks is conceptually supportive of the Agencies' proposal to assign an individual impact score to each activity in the Community Development Financing test but is concerned by the lack of clarity regarding how this system would be structured. In response to the Federal Reserve's ANPR, NeighborWorks recommended broadening the point range distribution from the 1-3 scale that was proposed in order to create greater differentiation between those projects which are only minimally impactful and those that have more significant impact. While many of the NPRM's proposed impact review factors represent categories of places in which increased activity should be incentivized, it is not clear how these factors will apply and how they will impact the exam. Examiners should weight performance context heavily while assigning impact scores, as the extent to which an activity is responsive should be viewed relative both to the difficulty of the activity as well as the extent to which it addresses a community need. NeighborWorks is cognizant of the challenges associated with designing an effective impact measurement framework and encourages the Agencies to provide additional opportunities for stakeholder engagement and input as this portion of the rulemaking is refined.

1. Persistent Poverty Counties

NeighborWorks is deeply supportive of including Persistent Poverty Counties on the list of impact review factors. These counties have experienced historic underinvestment, and community development activities in these areas can be particularly challenging. High poverty census tracts, defined as those with poverty rates of 40% or greater, should similarly be included, as they face some of the same challenges. Highlighting these smaller geographies could draw additional attention to them, which might otherwise be lost as part of activities and services to a county as a whole. NeighborWorks does not support adding areas with low levels of community development financing to this category unless there is an accompanying demonstration of high levels of unmet need (Q34).

2. Activities Supporting MDIs, WDIs, LICUs, and CDFIs

In addition to support for these organizations, NeighborWorks recommends that similar consideration be given for activities supporting the nonprofit organizations that hold a NeighborWorks charter. Like the other institutions contemplated by the Agencies for this impact factor, NeighborWorks network organizations have intimate knowledge of local community development needs and opportunities, allowing them to tailor their activities to

be especially responsive to the local community. NeighborWorks would support the proposal to limit the impact review factor to equity investments, long-term debt financing, donations (notwithstanding the recommendation that grants made to nonprofits be accounted for separately as a component of the Community Development Services Test), and services, as these activities are the most effective. Examiners should also take into account the terms under which financing and investments are offered when assigning a rating (Q35).

3. *Activities Serving Low-Income Individuals*

NeighborWorks is particularly supportive of using the impact review to uplift activities serving households with incomes below 50% AMI. Households at this income level are harder to serve, and banks that overcome the obstacles to doing so should be rewarded. While serving even lower-income populations (e.g., households at 30% AMI) can be even more challenging, NeighborWorks agrees with the Agencies that 50% of AMI is the appropriate standard for this impact review factor.

4. *Activities that Support Small Businesses and Small Farms with Gross Annual Revenues of \$250,000 or Less*

As discussed under the Retail Lending Test, NeighborWorks opposes increasing the revenue limitations for eligibility for lending to small businesses and farms, as doing so would have a negative impact on the availability of credit for the small businesses and farms that face the greatest challenges in accessing credit. NeighborWorks anticipates that increasing eligibility thresholds would result in capital moving away from these products, further exacerbating the credit challenges that CRA is intended to address. However, if the Agencies do alter the definitions of small businesses and small farms to include those with revenues above \$250,000, NeighborWorks would be supportive of including an impact review factor for activities supporting farms and businesses with revenues below \$250,000 (Q36).

5. *Activities that Support Affordable Housing in High Opportunity Areas*

Given that CRA is fundamentally an anti-redlining effort, it is particularly important to recognize the importance of creating and promoting housing opportunities in High Opportunity Areas. In addition to giving consideration for activities that create and preserve affordable housing in High Opportunity Areas, NeighborWorks recommends that this impact review factor also include housing counseling and mobility counseling designed to connect consumers with these housing opportunities. NeighborWorks supports adoption of the FHFA standard as proposed, noting the benefits of consistent definitions across regulatory agencies (Q37).

6. *Activities Benefiting Native Communities*

NeighborWorks supports using impact factors to further incentivize activities serving Native communities, both on and off Native Land Areas. NeighborWorks recognizes the difficulty of expanding service and building relationships in places where they historically have not been robust. Overcoming these obstacles will require innovation and commitment, which should be recognized and rewarded. As discussed elsewhere in this

letter, creating strong incentives for investment in Native communities is a priority goal (Q38).

7. *Activities that are a Qualifying Grant or Contribution*

Because grants to nonprofit organizations are so impactful, they cannot be adequately accounted for with an impact factor. As discussed below, NeighborWorks recommends creating a metric within the CD Services Test for grants and contributions to nonprofit organizations. By distinguishing them from other types of CD financing, the value of these contributions can more adequately be enumerated. If the Agencies reject this suggestion, however, NeighborWorks believes that they should be assigned an impact review factor with great weight.

8. *Activities that Reflect Bank Leadership through Multi-Faceted or Instrumental Support*

NeighborWorks is deeply appreciative of the recognition the Agencies have given to the role that this type of activity can play, providing not just capital but deeper technical assistance and capacity building for organizations that serve LMI communities. These efforts cannot be adequately captured by looking solely at the associated dollar value, and an impact review factor is critical to ensuring that they are adequately incentivized.

VI. Assessment Areas (AA) and Areas for Eligible Community Development Activity

Given the changes to the banking landscape since CRA regulations were last revised in the mid-1990s, it would be impossible to consider appropriate reforms without also revisiting issues involving geography. NeighborWorks is encouraged by the Agencies' efforts to ensure that any reforms to AAs do not arbitrarily exclude LMI areas or embed illegal discrimination. When delineating Facility-Based Assessment Areas (FBAs), large banks should not be permitted to exclude portions of counties. Small banks that do not have the capacity to serve an entire county, particularly in parts of the country where counties are very large, should be allowed to serve only a portion of a county or counties. However, FBAs that do not include a full county should be subject to examiner review to ensure that the geographic bounds appropriately reflect the community of borrowers and depositors served by the bank, and that the boundaries do not unreasonably exclude minority communities.

With the growth of online banking and branchless institutions, NeighborWorks agrees that traditional facility-based assessment areas no longer reflect the full geographic landscape of banking, nor does their use facilitate comparison between banks employing a traditional branch-based business model and online lenders. NeighborWorks does not oppose eliminating AAs around Loan Production Offices in cases where regulators concur there is no significant business relationship to the local community.

While most existing FBAs should be preserved, additional AAs should be demarcated to more appropriately define the universe of communities to which banks have a responsibility. In keeping with the spirit of CRA, these additional AAs should be defined by the places where banks do business and where their customers are located. NeighborWorks is generally supportive of the Agencies' proposal to create Retail Lending Assessment Areas (RLAAs) but would offer some recommendations for better balancing the burden they place on banks with their value for enhancing the accountability created by CRA examinations.

NeighborWorks is concerned, however, that the proposed threshold for triggering creation of an RLAA is too low, particularly for large banks. Instead of setting a threshold based on the number of loans, NeighborWorks encourages the Agencies to limit the creation of new RLAAAs by setting a materiality threshold. According to an analysis conducted by the Urban Institute, setting a threshold by which the bank's lending activity in a given AA must represent at least 1% of the market share would significantly reduce the number of new AAs created. NeighborWorks believes that this threshold optimizes the balance between understanding the dynamics of lending at the market-level while reducing burdens where reasonable. Similarly, for each RLAA, only major product lines meeting this materiality threshold should be assessed (Q44). If a bank's lending activity does not capture a significant portion of the local market, it is not necessary to require that this lending be assessed through a new RLAA. Instead, this lending and all other loans made beyond the borders of AAs would be assessed collectively though an Outside AA metric (Q87).

RLAAs are designed to shine light on the lending that—increasingly—takes place outside of traditional AAs. NeighborWorks believes this is an important goal, and intermediate banks should also be required to delineate RLAAAs if more than 50% of their lending occurs outside of their FBAAAs and they meet the materiality threshold outlined above. Similarly, large banks who do a significant majority of their lending within FBAAAs should not be exempt. Given that only a small share of their lending would be a potential trigger for an RLAA, the added burden should be commensurately limited (Q46).

NeighborWorks is pleased by the proposal to provide consideration for CD financing outside of FBAAAs to combat the existing problem of CRA “hot spots” and “deserts.” By reducing artificial incentives to concentrate investments in certain geographies and constraints against receiving credit for investments in others, capital could be better distributed across the country. Though it is imperative that banks continue to meet the community development needs of their AAs, providing consideration for activities beyond these borders could result in a far more efficient and effective allocation of capital than that which is currently in place (Q47). In service of encouraging additional community development activity, NeighborWorks recommends that banks of all sizes should have the option to request consideration of CD activities beyond their FBAAAs (Q48).

Finally, NeighborWorks encourages the Agencies to consider including a requirement that banks meaningfully serve all of their AAs. Allowing banks to strategically select to serve only a subset of their AAs would essentially sanction the redlining of entire communities. Any revision to CRA must continue to require banks to demonstrate a reasonable effort to meet the credit needs of all their AAs/communities. To determine whether a bank is serving all of its AAs, NeighborWorks recommends comparing aggregate performance in AAs on the basis of their characteristics. For example, examiners should assess whether a bank is serving its rural AAs at a comparable level to its urban AAs. Similarly, NeighborWorks would recommend that examiners analyze how a bank's performance in its majority-minority AAs compares to its performance in majority-white AAs.

VII. Performance Tests, Standards, and Ratings in General

NeighborWorks is concerned by the proposal to increase the asset threshold for both large bank and intermediate bank designation. NeighborWorks agrees that it is important to tailor assessment models according to banks' size and business models but would strongly caution against expecting too little of small banks. Smaller financial institutions, which often have some of the deepest ties

to local communities, should not be totally exempt from having to engage in CD activities. Rather, the expectations of their work should simply be scaled appropriately. Small banks may be uniquely situated to engage in locally responsive activities and are more likely to be in rural or other underserved areas.

Given that small banks are exempt from a substantial portion of CRA regulatory requirements, increasing the threshold, particularly by doubling or even tripling it, would reduce the number of banks subject to the full requirements of the statute and could decrease the amount of investment. According to a [study by NCRC](#), raising the small bank asset threshold as proposed from \$346 million to \$600 would reclassify 779 banks as small banks, thereby eliminating any community development responsibilities for these institutions. NCRC estimates that this change could reduce community development finance by \$1.214 billion.

At the same time, increasing the intermediate bank threshold from \$600 million to \$2 billion would reclassify 217 banks that are currently designated as large to intermediate. These banks would no longer be subject to a service test assessing their branching and service provision in LMI communities. According to NCRC, this change would disproportionately impact smaller cities and rural communities, with an estimated 25% of these banks located in rural counties. NeighborWorks believes the burden reduction justification provided in the NPRM is insufficient to justify the reduction to investment and service that these reclassifications would be likely to spur (Q50).

VII. Retail Lending Test Product Categories and Major Product Lines

NeighborWorks recommends limiting the Retail Lending Test to home mortgage lending, small business, and small farm lending (Q66-67). CRA credit should be allocated to activities that provide borrowers access to wealth-building products, not just any kind of credit. In particular, credit products with terms unfriendly to consumers should not be eligible. NeighborWorks encourages the Agencies to limit consumer lending eligibility in CRA to products that responsibly address credit needs. While some consumer loan products such as credit cards and auto loans may serve important functions, all too often these credit products are associated with onerous (and sometimes even predatory) terms. CRA consideration should be narrowly tailored to those products that advance the fundamental purposes of CRA. Multifamily loans are more appropriately assessed under the CD Financing Test and should not be examined as part of the Retail Lending Test (Q60).

Consistent with our past comments, NeighborWorks opposes providing CRA credit on the Retail Lending Test for *all* home mortgages in LMI CTs, without regard to the owner's income. Research from the [Urban Institute](#) has found that 60 percent of banks' mortgages in LMI CTs went to middle- and upper-income borrowers. At worst, this dynamic may contribute to gentrification, while in other circumstances it simply distracts from the core purposes of CRA.

NeighborWorks opposes increasing the revenue limitations for small businesses and farms, as doing so would have a negative impact on the availability of credit for the small businesses and farms that face the greatest challenges in accessing credit. The focus should remain on truly small enterprises and credit availability for small loans, which is much more limited. Because of their scale, these loans are relatively more labor intensive to underwrite and generate less revenue than

larger ones. NeighborWorks anticipates that increasing eligibility thresholds would result in capital moving away from these products, further exacerbating the credit challenges that CRA is intended to address (Q62).

NeighborWorks supports tailoring CRA examinations to a bank's business model by evaluating only major product lines and developing an appropriate system of weights to reflect the differences in models. Excluding minor product lines where banks do only a small amount of lending would simplify assessments without sacrificing their power. NeighborWorks suggests, however, that a 15% threshold for identifying major lines of business should be applied against either the dollar volume of lending that the product lines represent *or* the number of loans that the product lines represent. In some parts of the country where home prices are very high, home mortgage loans may be similar in size to small business or small farm loans. However, in communities where home prices are much lower, a threshold based only on dollar volume would underrepresent the significance of the home mortgage product line. This situation may be more common in minority and/or rural communities, and it is imperative that the retail lending test be applied to these places.

As NeighborWorks noted during the previous stages of this rulemaking, it is important to focus on the number of loans being made, not simply the total dollar volume of lending. By proposing a retail lending test based on the number of loans made, the Agencies have avoided creating the disincentives to small dollar lending created by an approach that focuses solely on aggregate lending. The Agencies' proposal captures the importance and responsiveness of smaller dollar loans to the needs of lower-income borrowers and smaller businesses and farms and does not provide an incentive to make only larger loans to reach performance levels. Availability of smaller loans and investments, which are less profitable for banks, can be a serious and chronic challenge for these communities.

In addition to the metrics laid out in the NPRM, NeighborWorks recommends that the Agencies include a metric measuring the racial distribution of loans. Careful consideration should be given to how to structure such a metric, and we encourage the Agencies to engage stakeholders in a conversation about how best to do so. However, we believe that disparities in lending along racial lines are too significant to not be examined in an intentional, transparent way.

NeighborWorks supports giving CRA consideration to both loan originations and first-time purchases of loans held on a bank's balance sheet, though the former should be more heavily weighted. Loan origination requires a much more significant investment of effort, which should be recognized by the exam. At the same time, first-time loan purchases provide important liquidity, allowing smaller lenders, including CDFIs, to originate additional loans. By way of illustration, in 2020, 17 of the 81 CDFIs within the NeighborWorks network reported selling loans they originated. The ability to sell their loans and recoup their capital is a key element in expanding their service and being able to achieve scale (Q64). Solely churning loans should not be worthy of CRA credit and limiting consideration to first-time purchases should be sufficient to address issues of exam manipulation (Q65).

IX. Retail Lending Test Evaluation Framework for FBAs and RLAA

In earlier stages of this rulemaking, NeighborWorks expressed concern about current CRA examinations holding banks to too low a standard. NeighborWorks is pleased that the Agencies

gave serious consideration to this concern and went to great lengths to create an examination framework intended to incentivize banks to both do more and to do better. The Retail Lending Test should be structured to create transparency and accountability around banks' lending to LMI borrowers and people of color, and to reward banks for their efforts to meet these communities' needs. However, NeighborWorks is concerned that the proposed test structure is too aggressive and needs to be recalibrated to ensure banks retain the incentive to stretch to meet the higher targets.

One way to improve the mechanics of the proposed exam is to modify the numerical scores associated with each of the performance categories, as outlined in the table below. First, NeighborWorks recommends further differentiating a High Satisfactory score from a Low Satisfactory Score. If the point values assigned to each of the satisfactory ratings were increased, an institution rated satisfactory on this portion of the exam would still have the potential to be rated by compensatory activities on the CD components of the exam. By maintaining the mathematical possibility of reaching this rating, the exam could retain the incentive for enhanced performance.

	NPRM Scoring	Proposed Alternative
Outstanding	10	10
High Satisfactory	7	8
Low Satisfactory	6	5
Needs to Improve	3	2
Substantial Noncompliance	0	0

XI. Retail Services and Products Test

When evaluating bank service, it is important to look at both systems and products. Systems include the distribution of a bank's branches (including current distribution and record of opening and closing), branch-based services (e.g., hours of operation, bilingual services, disability accommodation, payroll and check cashing services, lending and remittance services), and non-branch delivery channels. The types of products that should be assessed include both checking and savings accounts. Examiners should focus primarily on those accounts tailored to meet the needs of LMI individuals and businesses. While both facets are critical to meeting the needs of LMI customers, NeighborWorks recommends applying more weight to the delivery systems portion of the test.

While much of the banking landscape has evolved in recent years, and notwithstanding explosive growth in online banking, bank branches retain a critical role in serving the needs of communities, particularly for low-income and elderly populations. These populations often lack adequate broadband access to meaningfully and safely take advantage of internet-based tools. CRA must be structured to incentivize maintaining a physical presence in communities where it is most needed—including LMI neighborhoods, rural communities, Native lands, and distressed communities. Banks that operate in banking deserts, including Native lands and other areas of

persistent poverty, should receive extra consideration for these efforts. In addition to ensuring inclusion of these groups, the presence of brick-and-mortar bank branches facilitates deeper engagement with local communities and small businesses. The specific expertise of CRA officers and bankers located within communities must continue to be valued. These on-the-ground personnel are best equipped to identify true community needs on the basis of their firsthand knowledge of the community and their relationships with community stakeholders.

NeighborWorks supports the inclusion of a qualitative metric assessing bank product offerings. A bank could operate around the clock, but it would be for naught if it didn't offer products tailored to the needs of LMI consumers. We strongly support the proposal to evaluate products based on their usage and impact. Usage is a good indicator of responsiveness and availability and can paint a clearer picture of the extent to which banks are serving their communities. When considering a bank's product range, examiners should also be watchful for predatory products and deceptive practices, particularly in the consumer lending space. These products are the antithesis of wealth building, and examiners should make downward adjustments in a bank's evaluation as appropriate.

In order to truly deliver on its fundamental purpose as an anti-redlining statute, CRA must actively and intentionally seek to redress the harms of the past. Special purpose credit programs (SPCPs) are a critical tool for directing capital to communities that have been historically excluded. NeighborWorks strongly recommends that the Agencies clearly articulate that SPCPs focused on meeting the needs of not only LMI borrowers—as proposed in the NPRM—but also people and communities of color are highly responsive products (Q106).

Finally, the foreclosure crisis and the pandemic have shown that having a strong network of counseling agencies at the ready when crisis hits is incredibly important to economic recovery, both for households and the nation as a whole. Counselors and counseling agencies serve as beacons to homeowners, renters, and others searching for help navigating through crisis. Voluminous research has shown the efficacy of counseling, from financial capability and pre-purchase counseling to homeownership and foreclosure counseling. Traditionally, housing counseling has relied heavily on grants, a challenge to the long-term sustainability of the industry. To help ensure that appropriate counseling resources remain available, CRA consideration should be given to lenders for fee-for-service payments to housing counseling providers serving LMI clientele. The lending industry benefits from housing counseling on many levels, and recognizing these payments as CRA-eligible will help create default resistance buyers, owners and renters by ensuring a well-earned, ongoing funding source for housing counseling.

XII. Community Development Financing Test

NeighborWorks believes that CRA should encourage patient capital, increase clarity, consistency, and transparency of performance expectations, and provide stronger incentives to serve underserved areas. To that end, we support basing the CD financing test on the combined loans and investments held on balance sheet. By including everything on the balance sheet, not just new originations, the test would remove the current incentive to provide artificially short terms for CD activities. Furthermore, by combining loans and investments the Agencies would avoid privileging one over the other, allowing the needs of the project to dictate the financing vehicle. However, examiners should review the mix of loans and investments to ensure that banks continue

to pursue equity investments. Because equity investments are riskier, have less seniority, and require banks to hold more capital than loans, they should be given additional weight.

Access to capital is a perennial challenge for nonprofit housing developers, and some bank activities are more responsive to meeting these needs than others. Enterprise-level investments are powerful tools to help spur larger development activities, while equity investments and below-market loans play very important roles in the capital stack for affordable housing development. In particular, equity investments including LIHTCs, NMTCs, CD REITs, and equity-equivalent investments, which require a higher level of effort and commitment on the part of banks, have outsized impacts for communities. NeighborWorks would support the approach proposed by others to assess the use of an additional metric which look at the total share of equity investments relative to overall CD financing. A bank with a considerably lower percentage of equity investments compared to its peers should be subject to additional scrutiny.

As previously discussed, the move to give CRA consideration for activities that take place beyond the boundaries of AAs, when balanced with a continued emphasis on meeting the community development needs of the AAs, is a very positive step. For too long, CRA has failed to create incentives for community development activities in many of the places most challenged by underinvestment. These places, which include many rural and Native communities, will be better positioned to attract capital under the proposed rule. However, intentional efforts will need to be made to develop and foster relationships between banks and these communities where they did not previously exist. NeighborWorks America, the NeighborWorks network, and other mission-driven nonprofits will be key partners, identifying community development opportunities and connecting banks and communities in new and robust ways.

XIII. Community Development Services Test

As proposed, the Community Development Services Test is not as robust as other sections, despite the importance of CD Services to communities. As proposed, the test does not merit the 10% of the total score allocated to it. Rather than reducing the weighting, however, NeighborWorks recommends that the test be revamped to increase its impact. As proposed, the CD Services test encompasses in-kind support to nonprofits and other entities as well as financial education and counseling. NeighborWorks recommends reassigning the examination of financial education and counseling services to the Retail Services Test, where they are more appropriately measured alongside the products and services that support retail lending. In place of these services, NeighborWorks recommends centering this test around a metric measuring support for the operations of nonprofit community development organizations. This support would be comprised of both in-kind as well as monetary contributions.

NeighborWorks supports retaining grant funding to nonprofits in the CD Services test, as proposed in the Federal Reserve's earlier Advanced Notice of Proposed Rulemaking. In addition to assessing how a bank serves its community through investments of volunteer time, this subtest would be enhanced by the inclusion of a quantitative metric for grants, as measured against a bank's deposits. The relatively smaller scale of grants as compared to other CD financing would diminish the impact of these contributions if they were to be included in the CD Financing Test. despite the essential role that grant funding plays in the success of nonprofit organizations. By

including a standalone metric in the CD Services Test, the Agencies would better recognize the impact of these dollars.

In addition to financial contributions, banks can make meaningful contributions to the work of nonprofit organizations through volunteerism, including through board service, provision of technical expertise, and more. Other service that does not rely on the specialized expertise of bank employees, like participating in community clean-ups or serving meals can be helpful for building morale and internal support for the CRA mission within banks. While these are positive outcomes, they should not be sufficient to earn CRA credit, except in rural communities where they may be important building blocks for deeper relationships. In low-population communities, other types of service opportunities may also be harder to come by, adding to the importance of more general service and volunteerism (Q127).

XVI. Assigned Conclusions and Ratings

As alluded to earlier, NeighborWorks is concerned that the proposed weighting of the exam will have severe unintended consequences. By assigning 60 percent of the score to the Retail Test, the Agencies would devalue the impact of Community Development. Unless a bank scores Outstanding on the Retail Test, it is nearly impossible for it to achieve an overall Outstanding rating, regardless of its CD performance. Perplexingly, a bank that is Satisfactory on retail is likely to receive an overall Satisfactory rating regardless of whether its CD performance is Outstanding or even Needs to improve. If an Outstanding score is out of reach on the basis of the Retail Test, CRA will provide little motivation for CD activity. Especially because CRA drives so much CD activity, such an outcome would be a major setback. This shortcoming must be rectified, lest it undermine the fundamental purpose of incentivizing reinvestment in communities. We urge the Agencies to weight retail and CD activity equally for large banks to provide the maximum motivation to perform well on both.

While diminishing the value of the Retail Test may seem ahistorical in the context of a statute that was specifically aimed at ensuring fair access to retail credit, the modern lending landscape has dramatically shifted. Non-bank entities have captured over 50% of the residential mortgage market, and this share continues to grow. Given that these entities are not covered by CRA obligations, the reach of CRA over this market is constrained, giving additional weight to arguments for refocusing CRA on CD activities.

Conclusion

CRA regulations are one of the most powerful tools that the federal government has for incentivizing and rewarding bank behaviors that are responsive to the needs of their communities, like those served by NeighborWorks network organizations. Historically, CRA has been structured to give additional weight to certain activities on the basis of the value that they bring to the community. As rational actors, not to mention corporations with a fiduciary duty to their owners or shareholders, banks would be incentivized only to engage in those activities which are most profitable, i.e., activities that would likely already take place in the normal course of business. CRA has long been the “thumb on the scale” that pushes more challenging deals or projects (within the confines of safe and sound lending) across the finish line, and it must remain that way. A

modernized framework will provide certainty and clarity for banks while better focusing their activities on those that most impactfully address community needs.

In addition to modernizing the regulations, NeighborWorks encourages the Agencies to focus on the subsequent implementation. 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 should also focus on examiner training, as effective administration of the CRA requires well-trained examiners with the necessary expertise in community development. Additional investments will be required to ensure that examiners across the Agencies have the capacity to apply the regulations in accurately and consistently.

We genuinely appreciate the spirit of openness and collaboration which the Agencies have brought to this process, and we look forward to serving as a partner in this effort to modernize the Community Reinvestment Act regulations.

Sincerely,



Marietta Rodriguez

President & CEO, NeighborWorks America