April 8, 2020

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

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

RE: Community Reinvestment Act Regulations
OCC: Docket ID# OCC-2018-0008
FDIC: RIN 3064-AF22

To Whom It May Concern:

Enterprise Community Partners (Enterprise) appreciates the opportunity to provide comments on possible streamlining of and enhancements to the Office of the Comptroller of the Currency's (OCC) and Federal Deposit Insurance Corporation's (FDIC) regulation of the Community Reinvestment Act (CRA). Enterprise is a leading provider of the development capital and expertise it takes to make well-designed affordable homes and rebuild communities. Since 1982, we have raised and invested $43.6 billion in equity, grants and loans to help build or preserve nearly 585,000 affordable homes in diverse, thriving communities. We bring together public and private resources to create strong neighborhoods of opportunity for low- and moderate-income people, and we believe opportunity begins when people have a healthy and affordable place to call home.

Enterprise's efforts to connect communities to opportunity have greatly benefited from CRA. The law has been an important driver of financial institution investments in the Low-Income Housing Tax Credit (Housing Credit), the New Markets Tax Credit (NMTC), and Community Development Financial Institutions (CDFIs). In addition, by incentivizing philanthropic investments and skills-based volunteerism, CRA has supported high-impact nonprofit organizations providing critical services that benefit low- and moderate-income (LMI) communities and individuals.

Even as we are all trying to understand the short- and long-term impacts of COVID-19 on the country as a whole and on LMI individuals and communities more specifically, we know the need for housing affordability, small business investment, neighborhood stabilization, and economic development are likely to be of a magnitude not seen in generations. Capital deployment in an equitable and supportive fashion will be critical in fostering a faster and fairer economic recovery, and CRA, particularly with its disaster-related provisions, will play an important role in informing banks' decisions. Introducing widespread uncertainty as a result of untested, wholesale changes to a long-standing (if imperfect) CRA regime could be highly detrimental to our most vulnerable people and places, leaving us all worse off. We urge you in the strongest terms to delay even modest rulemaking on CRA to allow banks and community stakeholders to thoughtfully plan and respond to the current pandemic.

Along the same lines, CRA rulemaking has always proceeded in concert across all regulatory agencies. We strongly urge the OCC and FDIC to find common ground with the Federal Reserve, which we note has informally put forth a structure that retains many of the aspects of the current exam that help drive CRA's impact and value for LMI individuals and community development while incorporating quantitative and rigorous qualitative measures. Joint rulemaking is important to all stakeholders. From the perspective of banks' community development partners, having a single set of qualifying activities irrespective of regulator allows them to propose the most impactful and necessary projects with a larger set of potential funding sources. Some banks are structured in a way that subjects them to multiple regulators (for example, a consumer bank under the OCC with the parent holding company subject to the Federal Reserve); inconsistent CRA regimes, especially as they may intersect with guidance related to safety and soundness, could lead to confusion and, by extension, inactivity.

Should the OCC and FDIC proceed with the present rulemaking, Enterprise offers its comments to reinforce the need for a consistent, transparent regulatory framework that properly gives banks credit for sound community development work. We recognize the need for CRA to reflect changes in the financial services industry in order to better promote access to responsible loans, investments and banking services for LMI communities. We also want to stress the importance of retaining the original purpose of the law: helping LMI communities gain access to financial services, loans, and community development investments that would otherwise be unavailable. CRA was enacted largely as a response to "redlining," a discriminatory practice in which banks would deny loans to residents living in neighborhoods that they deemed hazardous, often solely based on the presence of large minority populations. Addressing the unmet credit needs of LMI communities and individuals, and particularly people of color, must remain central to any modernized regulations and should be the standard against which any changes are measured.

We particularly want to emphasize CRA's importance in providing affordable housing and our strong support for regulations that continue to allow for a robust affordable housing finance system. Our analysis of the 2018 1-year American Community Survey microdata[1] indicates that a quarter of all families who rent their homes – nearly 11 million households – spend more than half of their income on rent. In addition, more than 4 out of every 5 renters earning less than half their area's median income are paying in excess of 30 percent of their income for rent

[1] Enterprise Community Partners analysis of U.S. Census 2018 1-year American Community Survey public use microdata as provided by *IPUMS USA, University of Minnesota, www.ipums.org.*

and are thus considered at least moderately cost burdened. Any changes to CRA should shift towards increased support to address housing and community economic development needs. The Housing Credit is our nation's most successful tool for developing and preserving affordable rental housing. Since it was created in 1986, the Housing Credit has helped finance 3.2 million affordable homes, providing more than 7.4 million low-income households in all 50 states and all types of communities, including urban, suburban and rural, with housing they can afford. Without a subsidy like the Housing Credit, virtually no affordable rental housing production or preservation would occur because rent levels affordable to low-income households are too low to cover total development costs and thereby sustain a typical mortgage on the property. The infusion of equity by Housing Credit investors allows the developer to take out less debt on the property, which is then translated into lower rents. CohnReznick, a national accounting firm, has estimated that more than 85 percent of investors in the Housing Credit market are motivated by CRA obligations, making the development and preservation of affordable housing closely tied to where banks have CRA obligations.[2] A strong Housing Credit investor market is critical to the health of our nation's affordable housing delivery system, and Enterprise urges the agencies to ensure that affordable housing remains a robust investment option in any modernized CRA regulatory system.

Enterprise appreciates the NPR's identification of the need for increased consistency, transparency and objectivity in the CRA exam process, but the proposed rule on the whole does not meet the specific objectives for modernization laid out in the introduction to the NPR, most specifically to "encourage banks to serve their entire communities, including LMI neighborhoods, more effectively" and "encourage banks to conduct more CRA activities and to serve more of their communities." As we will discuss below, the sweeping changes proposed to the regulations would jettison assessments (and therefore activities) based on impact, innovativeness, and responsiveness in favor of a structure for community development activities that incentivizes banks to do fewer but larger dollar volume.

One example of what stands to be lost with the shift away from innovation and community need in favor of an exam driven by a deposit-based ratio is support for preservation of unsubsidized affordable housing, often referred to as naturally occurring affordable housing or NOAH. The overwhelming majority of homes that are affordable to LMI families receive no public subsidy; they are largely older properties at risk of lost habitability from deterioration or lost affordability due to market speculation and upgrades that result in higher rents. Enterprise has developed a robust conventional equity product for acquisition and preservation of unsubsidized affordable properties that attracted banks who were drawn to the space because of the value the CRA exam puts on innovation and impact. Preservation funds are relatively higher risk than other CRA-eligible activities, but they serve a critical need in many markets. A shift away from rewarding innovation will significantly curtail these kinds of investments.

We also want to emphasize the importance of retaining a focus on the community voice in CRA. The primary purpose of CRA is to ensure that banks meet the credit and financial services needs of LMI communities, and performance context has been key in helping the regulations achieve this mission. Differences in bank structure and product mix, market competitiveness, the availability of opportunities, economic conditions, and community needs should all continue to

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[2] Cohn Reznick, "Housing Tax Credit Investments: Investment and Operational Performance," (2018).

inform the regulators' evaluation of CRA performance. Increased clarity and consistency of the regulations is a desirable outcome, but regulators must also incorporate the responsibility of lifting up local perspectives and needs, specifically through a commitment to performance context.

Below please find our responses to the questions posed by the agencies in considering changes to the current rule.

A. Clarifying and Expanding What Qualifies for CRA Credit (Questions 1-10)

The proposed rule seeks to clarify and expand the set of activities eligible for CRA credit, require the publication of a non-exhaustive list of eligible activities, and create a process for getting guidance on a particular activity's eligibility during the exam cycle. In the abstract, these types of changes could address concerns about uncertainty that have been identified by stakeholders in the past. Indeed, Enterprise appreciates the attention to CRA-qualifying activities and the need to provide greater clarity and consistency in the evaluation of lending and investments. As proposed for implementation, however, we find that the list of qualifying activities is overly broad and, when considered in conjunction with the deposit-based examination metrics, could serve to water down the efficacy of CRA and allow (if not encourage) institutions to (a) engage in activities that only minimally serve the needs of LMI individuals and communities and/or (b) receive credit for lending or investment activities that have more than ample capital available to them instead of targeting the kinds of activities that would not happen "but for" CRA obligations.

More specifically, while we support banks receiving positive CRA credit for a variety of activities, we want to stress the need to continue incentivizing strong investments in affordable rental housing. Job creation and economic growth are very important, but even having a full-time job does not guarantee that individuals can find housing that is affordable. Given the current shortage of affordable housing in all markets throughout the country, Enterprise believes that any changes to CRA regulations not only need to retain but also expand the current emphasis on providing affordable housing.

We are concerned by the expanded list of qualifying activities for community development (CD). We find this proposed list of activities to be too expansive, and that it would allow for banks to meet their obligations with much lower-impact investments. Notably, the addition of consumer lending to the list of qualifying CRA retail activities could crowd out CD investments. (The issue is not the consideration of retail lending per se, as the need to ensure capital availability for mortgages to LMI individuals, and small business and farm lending is also core to the statutory intent of reversing discriminatory lending patterns and is currently evaluated; maintaining separate, fully rated CD and retail lending tests, however, will ensure that banks will strive for success in each, particularly if appropriate parameters with respect to rates and terms are applied to consumer loans. Nominal extension of credit in the form of high interest-rate credit cards or auto loans runs counter to the purpose of the CRA.)

As a member of the National Association of Affordable Housing Lenders, we call to your attention the discussion of qualifying criteria in that comment letter and incorporate it by

reference. There are, however, some additional items on the qualifying activities list that we wish to specifically provide comment on.
To address the specific questions of the proposed criteria being consistent with the CRA's objective of encouraging banks to conduct CRA activities in the communities they serve and other criteria for determining eligible activities, we strongly encourage the OCC and FDIC to consider—in the absence of evaluating individual activities based on impact—drawing upon the rich literature on CD investment and impacts to identify the types of activities most needed and most beneficial as the threshold criterion for inclusion in the list of qualifying activities.

To that end, retaining the current criteria of neighborhood stabilization and economic development is warranted. The shift away from revitalization and stabilization and economic development in favor of an enumerated list of activities is predicated on an inability to "identify an objective method for demonstrating job creation, retention, or improvement for LMI individuals or census tracts or other targeted geographies, other than by determining if the activity would create additional low-wage jobs," but expanding the types of activities that qualify for credit doesn't address this perceived problem.

We believe that the proposed approach to community development lending and investment under the umbrella of "essential infrastructure" would give credit for a range of bank activities that they would have been likely to engage in even without CRA obligations. The problem is compounded by allowing pro rata credit to large-scale, high dollar infrastructure improvements that serve an entire city or region rather than primarily benefit LMI individuals or census tracts. By crediting banks for their purchases of municipal bonds, for example, the effect would be to crowd out investment and lending to harder to finance projects that more directly serve the needs of LMI individuals and tracts. We recommend requiring a 50 percent minimum benefit to LMI individuals or tracts for even partial credit to be offered, with a higher threshold of benefit—set at 75 percent, for example—for full credit to be given. We would also suggest that "economic development" activities that impose high social costs on or otherwise exacerbate economic inequality for LMI communities should be ineligible for CRA credit.

While well intentioned, providing double credit for qualifying activities to CDFIs, other CD investments, and affordable housing-related CD loans does not solve the problems of a likely shift away from these critical CD activities caused by the proposed shift to a deposit-based performance metric coupled with the expansive list of eligible (and often easier to do) activities. Because credit is likely easy to come by in many cases from banks' routine business activities and the performance threshold for CD-specific activities may be easy to achieve in many assessment areas, we are concerned that doubling the credit offered for certain activities could have the perverse incentive of delivering less capital rather than more to affordable housing and other CD investments. (A bank that needs $20 million in qualifying activities in an assessment area would only need to deliver $10 million in actual investment.) Rather than try to re-incentivize core CRA activities under an entirely new and untested system, performance should continue to be based on impact, innovativeness, and responsiveness. Retaining those priorities will encourage banks to continue engaging in these critically important activities.

We want to highlight the importance of ongoing commitments to communities by banks and agree that minimizing secondary market purchases of MBS is warranted. In addressing the

concern about timing purchases close to the end of exam periods, the balance sheet approach introduces new challenges to expanding credit, particularly for long-term affordable housing investments like the Housing Credit. A pure balance-sheet approach allows banks to engage in minimal new activity, except to the extent necessary to make up for principal payments on outstanding loans. When coupled with the double credit for these activities, banks could radically scale back their housing credit activity and still perform well over multiple exam cycles. Should a balance sheet metric be retained, we recommend measuring origination or net new CDLI activity, discounting prior period CDLI to encourage ongoing activities, and benchmarking current exam cycle performance against the prior cycle.

We also urge regulators to refine how Opportunity Fund investments qualify as activities for CRA credit. While all Opportunity Zone (OZ) activities are implicitly directed at LMI census tracts, OZ investments do not have a requirement to benefit the community or its residents. As such, the proposed rule is too open-ended and would enable CRA-motivated capital to flow to investments inconsistent with the spirit of both CRA and Opportunity Funds (such as sports stadiums, luxury housing, self-storage, and other developments with questionable/limited LMI benefits). Enterprise urges the regulators to consider the specific activity and its benefits for the community when evaluating CRA credit for OZ investments. We support CRA credit for OZ investments so long as there is a clear and measurable benefit for LMI individuals and communities resulting directly from the Opportunity Fund's activity. As proposed, however, the rule would only apply a geographic test for Opportunity Fund investments rather than a benefit test. We strongly recommend that any Opportunity Fund investments seeking CRA credit align with current guidance around eligible Public Welfare Investments. Given banks' abilities to seek clarification around eligible activities, we urge a more conservative definition of eligibility in the published guidelines.

We want to acknowledge the broad list of eligible activities in Indian country. Tribal lands have some of the most persistent poverty problems and inadequate housing in the country. Encouraging additional retail lending in those communities as well as encouraging the investment in community facilities is important for achieving greater economic inclusion.

B. Expanding Where CRA Activity Counts (Questions 11-13)

The banking industry has changed significantly since CRA was originally enacted, and regulations have not been properly updated to reflect advancements in technology and data collection. Currently, the regulations provide a strong incentive to lend and invest primarily in the assessment areas (AAs) that receive a full-scope CRA exam. This results in hyper-competitive "hot spots" in some markets and creates community development financing "deserts" in other areas. The proposed rule offers greater flexibility to banks to designate state-wide non-metropolitan AAs. This could be particularly beneficial for rural areas and may mitigate some of the problems of CRA deserts. To further address the issue of hot spots and deserts, we would suggest regulators consider allowing high-performing banks (as determined by the previous exam period) to adopt statewide assessment areas for CD activities. Along the same lines, we are supportive of changes that would allow high-performing banks to expand the scope of their CRA activities outside their AAs. This could help reduce hot spots and make it simpler

for CDFIs and intermediaries with a national footprint to deploy capital based on community need.

Enterprise appreciates the OCC's interest in updating assessment areas to more accurately reflect changes in the financial industry like online lending and branchless banking. Aligning assessment areas and current practices is critical — particularly with the growth of non-traditional institutions such as internet banks, which attract deposits from across the country but have very few or no physical branches. However, we believe that the approach taken in the proposed rule will potentially exacerbate the issues of CRA "deserts" and "hot spots." Creating deposit-based assessment areas for non-branch based banks may encourage more investments in large, high cost markets like New York, Boston, Los Angeles, and San Francisco, where there is already a high concentration of CRA-driven investment. As such, rather than eliminate deserts and hot spots, the effects of the proposed approach are to amplify existing hot spots or otherwise create new ones. (This projection is based on an assumption that internet-based deposit taking is highly correlated with population and wealth concentration; without sufficient data and mapping, however, it is impossible for stakeholders to accurately evaluate the implications of the proposal, including its efficacy at addressing "deserts" and "hot spots" or identifying unintended consequences.)

C. Providing an Objective Method to Measure CRA Activity (Questions 14-19)

Enterprise supports the stated goal of making CRA exams more objective, but objectivity does not mandate jettisoning measures of impact and responsiveness to local need. In short, not every dollar deployed has the same value to communities, and it is folly to assume simple arithmetic is an accurate or appropriate proxy for many of the positive outcomes the proposed rule seeks to achieve, as detailed on pages 13-15 of the NPR.

We recognize that variability, subjectivity, and lack of transparency often create uncertainties in the CRA exam process and therefore in the benefits banks provide to communities. At the same time, however, some of that ambiguity stems from the fact that community needs vary widely across the country and bank footprints and business models are unique.

As set forth in the NPR, the measurement of CRA activity would be fundamentally changed. Instead of three separate fully rated tests for lending, investment, and service, a bank's score will be almost wholly determined by a new CRA evaluation measure (EM) that calculates the total dollar volume of a bank's CRA-qualifying activities as a share of the bank's domestic retail deposits. The EM is the only part of the exam that is fully rated, with retail lending distribution and CD activities evaluated only on a pass-fail basis with the CD minimum functionally subsumed under the larger EM.

The notice clearly lays out that the agencies considered retaining separate CD and retail lending tests, and we strongly recommend that alternative if you still believe changing the examination structure is warranted. The agencies note that empirical benchmarks could have been established for each test and that banks could have had "certainty and clarity" and an ability to monitor performance during the exam period. Ultimately, the agencies rejected retaining the separate tests on the grounds that they "would not have focused on increasing the overall dollar volume of

qualifying activities in the areas that need it most and would not have helped address CRA deserts and hotspots." As we have explained throughout this comment letter, the proposed changes to the evaluation and list of qualifying activities fail to meet this same standard.
The proposed rule's EM introduces too many problems to achieve the NPR's stated objectives for reform and modernization and could even undermine fulfillment of Congress's statutory intent. We also note that while the NPR has rhetorically shifted away from a "single ratio," the inherent structure of the EM (to be applied at the AA and bank levels) is fundamentally unchanged from the test opposed by the vast majority of respondents to 2018's Advanced Notice of Proposed Rulemaking.

As proposed, banks meeting an 11 percent threshold on the EM would presumptively rate Outstanding, while those whose EM ratio is between 6 and 11 percent would presumptively rate Satisfactory (assuming in both cases that the retail lending distribution tests and CD minima are passed). There is no way to assess whether the proposed performance thresholds are appropriate or consistent across bank sizes, footprints, and business models.

We are concerned that the EM overlooks the inherent complexity—and value created—in community lending and investing. It presents a concerning possibility that CRA regulations will become less responsive to community needs, thus frustrating statutory intent. By taking an oversimplified, quantitative approach without consideration for qualitative narratives such as innovation and hard work, this approach would also overlook activities that provide unique and critical benefits to underinvested communities, such as affordable housing investments in rural communities.

Because the EM devolves the full sweep of CRA activities to a mere ratio, there will be tremendous pressure within banks to calculate the ratio of CRA-eligible activities stemming from routine lending in the normal course of business, identify the dollar volume yet remaining to achieve the 11 percent ratio that the NPR deems Outstanding, and then seek out the fastest and simplest options to deploy capital to meet the threshold. This EM-driven shift will come at the expense of smaller dollar loans, community development loans, and loans that require more complex underwriting, all of which would be to the detriment of communities. Many of the activities that would likely be discouraged under the proposed rule, such as investments in the Housing Credit and NMTC, are highly responsive to community needs but also longer-term, less liquid, and provide modest returns compared to many debt products.

The problems introduced by the EM are further exacerbated by the intertwined effects of the pass-fail approach to the proposed 2 percent CD minimum and the way scores for individual AAs flow up to the bank-level assessment. Because a bank could achieve an overall score of Outstanding while only reaching a Satisfactory score in just half of its individual AAs, it is possible that banks would focus on passing the 2 percent CD minimum at the bank level through a smaller number of large dollar activities in easy to serve AAs (and given overlapping footprints, further exacerbate the hot spot problem) and much more limited CD activities in other, large AAs, relegating smaller AAs and harder to serve geographies with limited access to CRA-driven investment.

We have additional concerns about the EM using a purely balance sheet approach to evaluation. By examining only balance sheets, and not originations, banks that have met their EM (and CD) targets based on their current balance sheet assessment would limit or halt new investment activity. The Housing Credit would be particularly vulnerable to this reaction because the credit would stay on balance sheets (earning double credit) for a long duration (i.e., ten years). In addition, reviewing only the balance sheet means that the full Housing Credit commitment would not count, even though the full commitment is accounted for in reserves at the time of commitment; legally binding commitments should be included in the assessment.

On the retail lending side of CRA, we are also concerned that the focus on outstandings over originations will disadvantage LMI borrowers and communities by limiting the capital available for home mortgages. By not focusing on origination, the EM would encourage portfolio lending by continuing to give substantial credit for prior-period origination rather than value securitizing mortgages and then revolving capital for new loans.

We note that despite the NPR's overwhelming efforts to assess performance "objectively," a significant subjective loophole is created in the form of possible adjustments to performance ratings based on performance context. Because it is seemingly only used as an adjustment after a presumptive rating is determined, we are concerned that performance context will only be used to explain away weak performance rather than raise the expectations on service to AAs with deep and persistent needs. Banks that anticipate scoring well on the EM (and hitting the CD and lending minimums in enough AAs) will have little incentive to maintain strong community relationships and understand how to most effectively deploy capital that truly benefits LMI individuals and communities.

To conclude, Enterprise supports the current three-part exam structure – lending, services and investments – and we urge that it be maintained, as should the current emphasis on community development (CD) activities (such as the investment test counting for 25 percent of the rating while CD lending contributing a significant share of the lending test's 50 percent of the rating). The current investment test includes a number of critical affordable housing and community development activities, such as grants to non-profit organizations, investments in the Housing Credit and investments in NMTC. Without an explicit investment test, banks may no longer look to Housing Credit or NMTC investments as a key means of fulfilling CRA obligations but may instead turn toward easier and quicker alternatives to reach their CRA targets. We urge the agencies to instead drive equity investments by retaining the three-part test that reflects the vital role of CD equity capital in investing in LMI communities and encourage the regulators to focus on improving the transparency and consistency within the three separate tests.

Conclusion

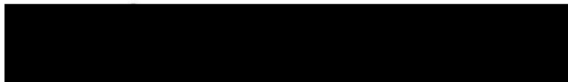
For the past four decades, CRA has been a critical tool to direct private-sector lending and investment to LMI individuals and communities that would otherwise be poorly served by the banking system. While we recognize that the current CRA regime is imperfect and that innovations in how and where financial services are delivered warrant modernizing the rules, we strongly urge the OCC and FDIC to reconsider the wholesale changes being proposed. As proposed, the new rules would functionally hollow out CRA by drastically scaling back banks'

most impactful CRA activities while granting them credit for large dollar activities that may only tangentially benefit LMI individuals and communities.

Rather than publish a deeply problematic rule and introduce significant disruption to the system at a time when far greater support and certainty are needed, particularly as banks and other CRA stakeholders are grappling with the health and financial impacts of COVID-19, the OCC and FDIC should carefully consider all the comments received and work with the Federal Reserve to issue joint rulemaking that builds from the strengths of the existing CRA framework and truly addresses the need for reducing deserts and hot spots, increasing transparency and clarity, and more generally encouraging banks "to meet the credit and deposit needs of their communities."

Thank you for considering these comments. If you have any questions regarding these comments, please do not hesitate to reach out to Andrew Jakabovics (ajakabovics@enterprisecommunity.org) or Sarah Brundage (sbrundage@enterprisecommunity.org).

Sincerely,



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