UNIDOSUS
STRONGER COMMUNITIES. STRONGER AMERICA.

HEADQUARTERS
Raul Yzaguirre Building
1126 16th Street NW, Suite 600
Washington, DC 20036-4845

202.785.1670
202.776.1792
unidosus.org

April 8, 2020

SUBMITTED VIA REGULATIONS.GOV
Office of the Comptroller of the Currency (OCC)
Federal Deposit Insurance Corporation (FDIC)
Docket ID: OCC-2018-0008
RIN: 1557-AE34
3064-AF22
Document Number: 2019-27940

Re: NPRM on Community Reinvestment Act Regulations

Introduction

On behalf of UnidosUS (formerly the National Council of La Raza), we are writing to express our concerns regarding the notice of proposed rulemaking NPRM on Community Reinvestment Act (CRA) Regulations (RIN 1557-AE34) issued by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) (RIN 3064-AF22). Specifically, we disagree significantly with many of the proposed changes and ask that OCC and FDIC instead improve and strengthen the CRA and maintain the original intent of the law and related civil rights laws. We strongly believe that the proposed rules, if implemented, will significantly harm the economic health of our nation's growing Latino community.

UnidosUS is the largest Hispanic* civil rights and advocacy organization in the United States. For more than 50 years, we have worked to advance opportunities for low- and moderate-income (LMI) Latino families so that they can achieve economic security and build wealth. In this capacity, UnidosUS and its network of nearly 300 Affiliates—local community-based organizations across the U.S. and in Puerto Rico—provide education, health care, housing counseling, workforce development, and financial coaching programs to millions of citizens and immigrants.

UnidosUS has published reports, provided testimony, and engaged in advocacy for strong fair housing and fair lending laws, increased access to financial services for LMI individuals, and expanded homeownership opportunities in the Latino community. UnidosUS has conducted original research on the experiences of LMI communities of color in using financial services and has authored numerous reports, including *Latino Financial Access and Inclusion in California* (2013); *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities* (2014); *Small Dollars for Big Change* (2017); *The Future of Banking: Overcoming Barriers to Financial Inclusion for Communities of Color* (2019); and *Latino Homeownership 2007–2017: A Decade of Decline for Latinos* (2019).

* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

Background

Congress enacted the CRA in response to rampant redlining and discrimination in the lending market. In fact, the CRA is considered a hallmark of legislation passed in the halcyon days of the civil rights era. The proposed changes to the CRA will weaken the law and dilute its original purpose.

The CRA was enacted to combat "redlining," the discriminatory practice of marking off with a red pen areas on maps where banks avoided investments based on community demographics.[1] Neighborhoods that were considered high risk, or deemed "hazardous" were often redlined, denying occupants or potential occupants access to capital investment which could have improved the housing and economic opportunities of residents.[2] Additionally, the purportedly "hazardous" neighborhoods were often composed primarily of LMI consumers and communities of color. Even today, two-thirds of neighborhoods that the Home Owners' Loan Corporation (HOLC) classified as "hazardous" from 1935 to 1939 remain inhabited disproportionally by individuals of color.[3]

Due to its requirement for banks to meet the credit needs of their communities and intent to combat redlining, the CRA has become one of the most important tools that LMI households and communities of color have to access mainstream banking services, credit, and investments. The CRA has helped to revitalize neighborhoods and enable nontraditional borrowers—including many Latinos—to gain access to financial services and benefit directly from investments made by mainstream banks that may otherwise have left the community underserved. The law has also been an important tool—albeit indirectly—in mitigating the effects of discrimination and disparate treatment of individuals of color and immigrants within mainstream financial markets.[4] Specifically, according to one study, the CRA has led to $1.7 trillion in lending to economically distressed areas since its enactment and has partially been responsible for the gains in credit in LMI communities and communities of color.[5] A 2017 study found that the CRA increased credit activity by nine percentage points from 2004 to 2012 and the number of credit visible individuals in the community by seven percentage points.[6] Still another study found that between 2010 and 2016, the CRA expanded the number of small business loans in LMI neighborhoods by 38%. Finally, our own research has found that the CRA has bolstered home lending for Latinos and facilitated between 15% and 35% of home loans to Latinos in LMI census tracts. This was about two to three times the share of loans facilitated to Whites in LMI census tracts.[7] With this legal and substantive background in mind, below we address some of the specific questions raised in the NPRM.

Concerns with Agency Disunity

We are concerned over the potential impact of the regulatory agencies not being united in rulemaking. The CRA encourages the Federal Reserve, OCC, and FDIC to oversee the implementation of the law by lenders within their respective jurisdictions. However, the Federal Reserve rightly chose not to join this proposed rulemaking, and OCC and FDIC decided to move forward without the Federal Reserve. UnidosUS supports the general principle that the CRA should be modernized. However, many of the proposed changes in the NPRM would cause significant harm to Latinos and other communities of

color. Before moving forward to a final rule, we would encourage these agencies to work with the Federal Reserve and reopen the rulemaking to make it more inclusive, balanced, and responsive to the communities they serve. It is difficult to avoid the appearance that the OCC has essentially rammed this rule through without the typical buy-in and cooperation of all regulatory agencies and community groups.

A. Qualifying Activities

Response to Question 1: *The proposed measures are not consistent with the CRA's original intent and objective of encouraging banks to conduct CRA activities in the communities they serve.*

We urge OCC to continue using the current general framework of rating banks based on their lending, investments, services, and other factors, including the number of complaints and responses, a bank's public file, evidence of discriminatory practices, and a bank's assessment area. We are troubled that the expansive list of qualifying activities intends to "expand the type of activities that qualify for CRA credit" without respect to whether those activities have any tangible positive effect on LMI communities.[8] The potential for abuse here is obvious: banks could gain CRA credit for activities that may not improve the financial standing of LMI communities and communities of color while reducing lending to such communities.

OCC and FDIC have also proposed adding a criterion for qualified opportunity funds, as defined in 26 USC 1400Z-2(d)(1), that benefit qualified Opportunity Zones (OZs) in LMI tracts, as defined in 26 USC 1400Z-1(a). While FDIC and OCC suggest that this would "incentivize banks to help meet the needs of LMI individuals and tracts located in Opportunity Zones," it has yet to be proven that OZs can successfully bolster local economies without inducing gentrification. Moreover, the data relied on are not reliable. The census tract data that the Treasury used to identify and locate OZs is derived from old census population household income survey data from before 2010. Moreover, even if 2010 data were used, the 10-year span between the present day and when the data was gathered is significant enough to question its reliability. A census tract in 2010 that was low income or LMI (50–80% of AMI, for example) could look very different today. Given the potential of OZs to spur gentrification rather than create a benefit for low-income people, this proposed addition to the CRA could incentivize types of investments that do nothing to address the economic needs of LMI communities.
Moreover, the very design of Opportunity Zones does nothing to ensure that the dollars invested are equitably experienced by community members. There are no requirements to follow community leadership or involve communities in planning and approval processes.[9] While OZs do encourage long-term investment in communities, the lack of community oversight means that investors with little to no interest in the communities themselves can reap immense tax benefits without intentionally choosing investments that would directly improve economic outcomes for low-income residents. In fact, OZs do not explicitly require that investments directly benefit communities but do allow investors to prioritize large-scale market-rate investments.

Among the many activities that could count for CRA credit to the detriment of LMI communities is the well-publicized ability for banks to earn credit for financing upgrades to sports stadiums.[10] As proposed, the NPRM would allow banks to meet their obligations to LMI communities by financing

upgrades to sports facilities within Opportunity Zones (OZ). Research suggests that sports stadiums have consistently had a net-negative effect on economic development in LMI neighborhoods.[11] In the instances in which they do result in job creation, the quality of the jobs created is inadequate and rarely employ community members at a family-sustaining wage. Moreover, sports stadiums are typically funded largely by municipal dollars. This means that taxpayers in LMI neighborhoods would see their tax dollars put toward initiatives that leave their communities with fewer public resources. Federal regulators should not reward banks for contributing large-dollar sums on projects that do not help—and sometimes worsen—the economic standing of LMI neighborhoods. Instead, the CRA is intended to challenge banks to invest in small and local initiatives that bring real benefits to LMI communities.

In its current state, the proposal to grant CRA credit to banks that invest in Opportunity Zones is a sure way to accelerate inequality and further harm LMI communities. However, creating standards that require investors to directly benefit existing residents and community members could turn OZs into something more uniformly beneficial for communities. At present, investors can voluntarily choose to follow the Opportunity Zone Reporting Framework, developed by the U.S. Impact Investing Alliance, the Beeck Center for Social Impact and Innovation at Georgetown University, and the Federal Reserve Bank of New York. Its five guiding principles are community engagement, equity, transparency, measurement, and outcomes.[12] If OZs are to obtain CRA credit, these guiding principles should become stringent requirements that must be met for CRA credit to be obtained. Anything less is an invitation to further weaken the economic standing of LMI communities.

Unfortunately, Opportunity Zones are not the only initiatives that would qualify for CRA credit under the proposed rule while offering next to no benefit to LMI communities. We are also troubled by a list of financial literacy programs that could receive credit, including financial education or literacy curricula at local community centers, “train the trainer” programs designed to train teachers to provide financial literacy education to their students, and bank employees providing financial education in connection with a school savings program. While any increased engagement in financial education is welcome, the approach demonstrated in §§ 25.04(c)(9) and 345.04(c)(9) of the NPRM would have too few controls, and there would be inadequate oversight of the activities to ensure the achievement of the CRA goals.

Two provisions in particular—"in-kind donation of computer equipment to a non-profit that conducts personal money management courses for LMI individuals” and “providing homebuyer education to potential buyers of single-family housing developed under a state program for middle-income individuals and families in high-cost areas” are clear examples of activities that would qualify for CRA credit without actually providing community members with financial inclusion and economic opportunity. Although well intentioned, most research suggests that most stand-alone financial literacy programs have proven to have little to no impact.

Financial literacy programs, especially in low-income populations—the target communities of the CRA—work best when banks invest in rigorous financial coaching models in partnership with community-based organizations with proven track records. As summarized by Hastings, Madrian and Skimmyhorn in their 2013 article, there is mixed evidence about the efficacy of financial education,[13]

especially for low-income populations.[14] Rather, as displayed in the Urban Institute's 2015 seminal study comparing financial education with financial coaching,[15] a well-structured financial coaching program can increase savings amounts and the number of deposits, paying bills on time, credit scores and familiarity with a credit report, and the likelihood of having a budget, while reducing debts, the likelihood of borrowing money from family and friends, the use of payday loans, and financial stress levels.[16]

Furthermore, bank-designed curricula may be more aligned with the bank's business goals, rather than consumer needs. Encouraging their deployment in the communities that the CRA serves could overemphasize marketing at the expense of fulfilling the law's intent of ensuring equal access to banking services. The focus of the CRA should remain on lending and providing impactful investments in LMI communities.

Current CRA regulations define community development activities as loans, investments, and services that have a primary purpose of "community development." While certain activities such as a bank's investment in mortgage-backed securities (MBS) are already considered a qualified investment and provides banks credit, this type of activity should not receive significant CRA consideration. Rather, banks should only receive credit for consumer lending when they can demonstrate that their products are responding to local needs and are accessible and affordable.

We urge OCC to continue using the current general framework of rating banks based on their lending, investments, services, and other factors, including the number of complaints and responses, a bank's public file, evidence of discriminatory practices, and a bank's assessment area. If OCC wishes to revise the bank rating standard, they should work with scholars, experts, and local community-based organizations to develop a plan with robust and diverse community input.

Answer to Question 3: *For CD development activities to qualify for CRA credit, they should be backed by data and thoughtful research that demonstrates measurable increases to economic opportunity in the communities that the CRA was designed to benefit.*

The NPRM contains a new category of tracts developed by the FDIC and OCC called "underserved areas." Underserved areas are middle-income tracts with limited access to bank branches and relatively small populations. Additionally, FDIC and OCC categorized middle-income tracts with high unemployment and high rates of poverty as "distressed," altering the previous definition of that category.[17] The logic behind these shifts and developments in categories is wholly unexplained by data or research in the NPRM. Rather than conducting research that would inform any needs for development of new tracts, such as assessing the locations of the census tracts or the number to tracts that qualify as underserved or distressed, it appears the regulators proceeded to create or adjust these categories arbitrarily. Moreover, the reason these tracts would be considered underserved or distressed is unclear, with no indication whether the designation is based on access or lack thereof to any specific banking products or services. Without this necessary information, it is impossible for community members to express concern or gain clarification on whether these new categories will address the communities the CRA was originally developed to serve.

Answer to Question 4: *Increasing the small business and small farm revenue thresholds and the size thresholds for a small loan to a business and a small loan to a farm to $2 million would not appropriately incentivize banks to engage in small business and small farm lending activities.*

Latino-owned businesses (LOBs) have been consistently heralded as leaders in the American economy. Latinos are starting small businesses faster than the rest of the startup population and, if they grow at the pace of the U.S. average, could add $1.4 trillion to the U.S. economy.[18] That would add nearly 8% to the $18 trillion U.S. economy. CRA regulations that do not incentivize investment in Latino-owned businesses are tantamount to leaving $1.4 trillion on the table that all Americans could benefit from.

Nationally, there are 4.37 million Latino-owned businesses, generating $700 billion in revenue.[19] They are growing two to three times faster than the national average, standing to create millions of private-sector jobs.[20] Between 2012 and 2017, the number of Latino-owned businesses increased nearly 32% compared to a 13.8% growth rate overall.[21] Latino-owned businesses tend to predominantly hire Latino employees and are an essential source of employment in the Latino community.

According to a Stanford Graduate School of Business study, most Latino-owned businesses are driving these big changes from a very small scale. On average, Latino-owned firms have 8.6 employees compared with 12 at non-Latino firms. LOBs make about $150,000 per year in sales while non-Latino-owned businesses average $573,000 per year. The root of this disparity can be traced in large part to the unlikelihood of banks to invest in LOBs. Ultimately, this lack of investment makes it harder for LOB entrepreneurs to hire within their local community—which would transform their business into a source of prosperity for the whole neighborhood.

According to the U.S. Small Business Administration Office of Advocacy, "Estimates from Survey of Business Owners (SBO)," and earlier "Characteristics of Business Owners (CBO)" data indicate that Black- and Latino-owned businesses have very low levels of startup capital relative to white-owned businesses."[22] Their research indicates that, in 2012, 2.2% of Black firms and 3.5 percent of Latino firms started with $100,000 or more of capital compared with 8.5% of White, non-Hispanic firms.[23]

Start-up capital is the prevailing barrier to the success of these vital businesses. Forbes recently stated this barrier clearly when saying, "Home equity is less available as a source of financing start-ups for Latinos than whites."[24] Given that less than half of Hispanic families own their own homes compared to almost three-quarters of White families, it should be obvious that bank investment is a critical factor in expanding crucial sources of prosperity in Latino communities throughout the country and for the country as a whole.[25]

Moreover, the regulatory agencies have not cited any research indicating why they should increase the threshold for what counts as a small business from $1 million to $2 million. Such an increase would redirect CRA attention from truly small businesses and toward larger businesses that may not need regulatory incentives to receive assistance from banks.[26] The NPRM demonstrates no data analysis or research to legitimize raising the threshold to this extent.

We are concerned that increasing the threshold from $1 million to $2 million would take attention away from the majority of Latino-owned businesses. Adjusting the loan size that counts for small business credit to correspond with inflation would be important to keeping CRA credit scoring relevant and reasonable. However, this adjustment to the revenue size of a small business does not appear to be substantiated by research and does not demonstrate positive outcomes for the communities that the CRA was designed to serve.

Answer to Question 7: *Prime lending is among the most valuable kinds of lending for LMI borrowers and communities and as such should be given more weight than other kinds of loans in CRA evaluations.*

High-cost and subprime lending have had negative consequences for LMI communities and communities of color, especially Latino communities. For this reason, prime lending should be encouraged by weighing more in CRA evaluation. UnidosUS proposes using the Home Mortgage Disclosure Act (HMDA) definition of a high-cost loan as loans 1.5 percentage points above average prime offer rates.[27] This would create a simple, clear distinction between high-cost home loans and prime home loans. We recommend taking a similar approach pertaining to small business loans, such that there are clear and measurable distinctions between prime and high-cost loans and that granting prime loans is incentivized through weighted CRA credit.

Consumer credit is often an important stepping-stone to larger lines of credit, such as mortgages and business loans—a common need for LMI households. Banks should receive CRA credit for consumer lending when they can demonstrate that their products meet the needs of LMI communities. Banks need to offer consumer credit products that are affordable—at or below market interest rates. This will ensure that LMI communities have access to financial services that meet their needs as intended by the CRA legislation. Additionally, small-dollar loans are often unavailable to LMI individuals and people of color, resulting in an overreliance on fringe banking institutions. Small-dollar lending at low interest rates are scarce and highly needed. As a result, these types of loans should be considered as qualifying activities. Financial institutions can receive CRA credit for small-dollar lending directly or through funding loan loss reserves at other institutions that offer small dollar loans.[28]

Answer to Question 8: *OCC and FDIC acknowledge with the question itself that a multiplier is likely to "cause banks to conduct a smaller dollar value of impactful activities."*[29]

Except for purchasing Mortgage Bank Securities (MBS) and municipal bonds, a multiplier would be added to nearly all community development activities under the NPRM. The question in the NPRM acknowledges that a multiplier could result in less financing.[30] UnidosUS believes use of multipliers is very likely to result in banks significantly reducing the financing given toward community development writ large, that directly benefit LMI people.

The proposed changes could incentivize banks to invest in big projects that do not equitably serve LMI communities. Large-scale investments, such as sports stadiums and hotels, would be financed with or without CRA credit for incidental or collateral benefits to LMI residents. Greatest weight should be assigned based on the percentage of the lender's overall portfolio activity that tangibly and directly

benefits LMI people. Those activities—even at small-dollar levels—that directly improve the financial standing of LMI community members should be given the most weight for CRA credit purposes.

Answer to Question 9: *The CRA should not quantify community development services using a dollar amount or average rates.*

The NPRM suggests that community development services might be quantified using average rates to calculate a specific dollar amount or value for these services. Attempting to quantify community development services using a dollar amount or average rates runs the risk of banks utilizing the rates most favorable to them, regardless of the actual impact on LMI neighborhoods or individuals. It would be more appropriate to measure through standardized methods how many LMI individuals were assisted—and to what degree—by community development services, investments, or grants, rather than how much money was spent on facilitating these services.

Answer to Question 10: *Retail banking services should not be evaluated in a performance context.*

Proposing for retail banking services to be evaluated in a performance context is entirely inappropriate. In response to the advanced notice of proposed rulemaking released by OCC in 2018, which asked whether LMI branches and services should be analyzed, community organizations throughout the country made it clear that affordable banking products and services and the presence of banks themselves were of critical importance. OCC responded to these community concerns by overlooking them entirely, removing the service test and eliminating all analyses of access to banking and to banks themselves. Instead, OCC is proposing to bring these critical, quantifiable areas under the arbitrary bank-written part of the analysis, eliminating external oversight and in direct contradiction to the many community voices that expressed opposition in the previous comment period for the earlier advanced notice of proposed rulemaking.

Strengthening the services test rather than eliminating it is imperative to promoting financial inclusion in LMI communities, especially among Latinos. Latinos have had longstanding challenges connecting to mainstream financial institutions. Since the initial FDIC survey was released in 2009, Latinos have had excessively high rates of unbanked and underbanked households. For example, in 2017, the data shows that Latino households remained disproportionately disconnected from mainstream financial services. Latinos represented 18% of the 2017 U.S. population,[31] 14% of the unbanked population, and 28.9% of the underbanked population. A more inclusive financial system is essential to the economic security of this growing base of the U.S. population and their ability to contribute to the nation's financial system.

Latinos also have an unmet demand for mainstream personal lines of credit. In 2017, 3.1% of Latinos were denied a credit card, personal loan, or line of credit from a bank compared to 2.4% of Whites,[32] a disparity that is likely understated because of Latinos' lower propensity to seek credit. Predictably, disproportionate denial rates appear to have adversely impacted the willingness of Latinos to seek a line of credit from a mainstream bank. For example, 7% of Latinos did not apply for a line of credit from a mainstream bank in 2017 due to fear of denial, compared to 4.5% of Whites.[33]

The Bureau of Labor Statistics consistently reports the employment rate of Latinos as higher than that of the general population. Latinos are working hard to pursue the American Dream, and yet so many are struggling financially. According to our recent research, nearly 40% of Latinos are participating in the gig economy.[34] Of those, almost three in five Latino gig workers report working full time.[35] Still, nearly four out of five Latino gig workers say they are financially struggling or just getting by.[36] Access to banking is a critical element in building wealth and weathering financial volatility. Unfortunately, one in ten Latino gig workers does not have access to a checking or savings account.[37] Our research shows that one in five Latino gig workers is not at all confident that they would be approved for a loan,[38] with the biggest barriers to getting a loan being a lack of credit history and/or poor credit.

In sum, access to financial services is a critical stepping-stone to financial security and asset-building for Latino families. Securing an affordable bank account with a financial institution and avoiding alternative financial services would reduce transaction costs and safeguard savings for Latino households. FDIC and OCC should retain the service test and apply performance context such that affordable savings and checking accounts are incentivized, rather than the reverse. The FDIC and OCC should assess the costs of financial services for LMI and non-LMI customers to create cost comparisons. These cost comparisons can then be used to create qualitative measures to determine if LMI customers are accessing affordable depository services for which banks can obtain CRA credit. Latinos need responsive financial services and not financial literacy programs of unproven efficacy.

B. Assessment Areas

Answer to Question 11: *As proposed in the NPRM, the methods for delineating assessment areas are not clear, simple, or transparent.*

Under the proposed rule, OCC and FDIC's NPRM would allow for deposit data to be used in determining assessment areas. These data may not be fully publicly available and could result in transparency issues such that the public may not be able to fully know what constitutes an assessment area.

Answer to Question 12: *The proposed thresholds of 50% and 5% do not ensure that banks serve their communities. Moreover, the efficacy of these thresholds in the proposal have not been adequately supported by data.*

In order to enforce the CRA, regulators currently look at a bank's "assessment areas," defined in the regulations as locations where a bank has its branches or some other physical presence, to gauge whether the bank is in fact meeting the credit needs of the community in which it does business. The current CRA regulations explicitly recognize the importance of bank branches and financial services as part of the "service" test of the CRA examination, which primarily examines the geographic distributions of banks' branches, as well as how many banks have opened and closed—particularly those that serve LMI communities.

With the advent of internet banking and the proliferation of smart devices, the current approach for delineating assessment areas should be expanded, but not at the expense of physical bank branches.

Yet, OCC and FDIC propose revising the service test to devalue bank branches. Specifically, the NPRM proposes that "the number of the bank's branches located in LMI census tracts . . . during the same annual period used to calculate the qualifying activities value would be divided by the bank's total number of branches in that annual period and multiplied by 0.01." This proposal would diminish the importance of bank branches in meeting the test for CRA compliance, which could lead to significant branch closures in LMI communities. Moreover, it would disproportionately impact in rural communities that already experience disparities in bank access. This would lead to a corresponding decrease in lending in these communities and reduced access to mainstream financial products.

It is also hard to imagine how banks intend to provide credit to LMI individuals without a physical branch in the area. While often widely praised, experience to-date suggests that many widely touted tech-based "innovations" in the financial sector encouraged by banking regulators have yet to demonstrate significant ability to reduce disparate access among LMI and Latino communities to affordable credit. Absent a persuasive "proof of concept" that alternative approaches reduce such disparities, CRA regulations should not devalue physical branches.

Branch banking is extremely important in providing access to financial services and credit to LMI communities and communities of color. As discussed in our 2019 report, *The Future of Banking*, physical presence still has an impact on whether residents of LMI communities of color are banked, including in their decision on whether or where to open an account and resolving issues with a bank. Bank branches have been closing rampantly throughout the U.S., and we have yet to see actions from federal regulators to prevent this mass extraction of financial access from LMI communities. Research also shows that there is a direct correlation between the number of bank branches and ATMs located in a neighborhood and the credit opportunities available to the surrounding community.

The Federal Reserve Bank of Philadelphia found in a 2019 paper that the CRA has "motivated banks to keep their branches open in LMI communities in the aftermath of the Great Recession."[39] More importantly, it states that "[a]s banks increasingly seek ways to reduce costs, it is likely that more of them will substitute technology such as ATMs or online and mobile banking for in-bank interactions. Understanding 'what matters' about a branch could help identify alternative approaches to ensuring that technological shifts do not leave lower-income communities and borrowers behind."[40]

Research and data analysis should be the underpinning of establishing a market share threshold. The proposed thresholds of 50% and 5% do not ensure that banks serve their communities and are not based on research or any data-driven assessments of the effect that changes to the threshold would have. In short, the NPRM should strengthen, not weaken, CRA's incentive for lenders to retain or open physical branches.

Answer to Question 13: *The CRA should continue to delineate assessment areas based on the physical presence of depository institutions in geographical communities.*

The proposed rule directs the bank regulatory agencies to use their influence to award applications for deposit facilities in a way that will benefit local communities as well as bankers. UnidosUS believes the

proposed language undermines the clear intent of CRA to ensure that financial institutions respond to the diverse needs and interests of the communities in which they are chartered.

The underlying theory of CRA is that banks have public duties because they are essentially public institutions. In passing the CRA in 1977, Senator William Proxmire, alluded to the dependent nature of the bank-state relationship. He stated that the CRA was based on a "widely shared assumption" that "a [bank's] public charter conveys numerous economic benefits and in return it is legitimate for public policy and regulatory practice to require some public purpose . . ." The Senator claimed that banks are "a franchise to serve local convenience and needs" and therefore "it is fair for the public to ask something in return." Senator Proxmire explained "financial institutions are required by law and regulatory policy to serve the 'convenience and needs" of their communities. The "needs" of a community clearly include full credit as well as deposit services for all the community's residents.[41]

A financial institution's first step in complying with the CRA is to delineate the community it serves. Current regulations mandate that a map be used and that the delineated area may not exclude LMI neighborhoods.[42] Additionally, the regulations provide specific methods for delineating a community in one of three ways, including: 1) a Standard Metropolitan Statistical Area (SMSA), 2) an institution's effective lending territory or the local area around each office that makes a substantial portion of its loans, or 3) any other reasonably delineated area that meets the purpose of the CRA and does not exclude LMI areas.[43] With the advent of internet banking and the changing nature of technology, the current approach for delineating assessment areas should be expanded—but not at the expense of weighing physical branches. Our research demonstrates that bank branches remain extremely important in providing access to financial services and credit to LMI communities and communities of color.[44] To reiterate an earlier point, we have yet to see persuasive evidence that new online or other tech-based innovations serve Latino and other LMI customers as or more effectively than physical branches.

According to FDIC's *National Survey of Unbanked and Underbanked Households*, 71.6% of Latinos visited a bank branch in 2017, with more than 25% visiting a branch 10 or more times in 2017.[45] Research also shows that there is a direct correlation between the number of bank branches and ATMs located in a neighborhood and the credit opportunities available to the surrounding community.[46] Unless full-service branches remain included in a bank's CRA rating and are prioritized in that rating, full-service branches within LMI communities and communities of color may be targeted for branch closures, which would disproportionately and disparately reduce the quantity and quality of the financial products and services available to them.

The clear language of the CRA states that banks "have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[47] The key word in this language is "local." The proposed rule's vague language cannot tell an examiner, a bank, or a member of the public how responsive a bank is to its various service areas or different needs in an assessment area. In particular, some banks may be tempted to find the lowest-risk loans with the highest yields in just one or two LMI neighborhoods—without regard to the broader needs of diverse groups in their community. Similarly, other banks may seek out a small number of large-dollar loans and investments only marginally benefitting LMI residents to boost their numerator. Either option would be

problematic. The first clearly disregards the stated intent of the CRA to "help meet the credit needs of the local communities in which they are chartered," while the second potentially offers only illusory benefits to LMI residents themselves. Both options could result in a disparate impact upon racial and ethnic minorities—in violation of the Equal Credit Opportunity Act of 1972 and/or the Fair Housing Act of 1968.[48] Even though CRA ratings have not been as effective in driving investment as we had hoped, this metric would do nothing to strengthen the CRA's effectiveness. Therefore, we urge OCC and its fellow regulators to continue their ratings and examinations using the current framework that includes lending, investment, and services tests—to avoid running afoul of the original intent of the law and to prevent disparate impact upon Latinos. If OCC wishes to revise this standard, it should provide clearer and more robust evidence of the proposed approach's efficacy and work with Congress to amend the law, rather than attempt to change the law through regulations.

C. Objective Method to Measure CRA Performance

Answer to Question 15: The proposed changes would lessen the significance of branches in determining CRA credit.

At present, the service test for large banks counts for 25% of the rating. The proposed changes would lessen the significance of branches in determining CRA credit by making them count for less than 25% of the ratio in many circumstances. If this proposal takes effect, LMI communities will inevitably lose branches. In its current state, as proven by research from the Federal Reserve,[49] the current service test has prevented harmful branch closures in census tracts with predominantly LMI populations and as such should remain unchanged.

Answer to Question 17: Banks should not be allowed to fail in half of their assessment areas.

FDIC and OCC's proposal that banks be allowed to fail in 50% of their assessment areas and still be considered passing in their CRA examinations is harmful and directly contravenes the intended purpose of the CRA to incentivize banks to serve their local communities. Banks must be held accountable in all assessment areas and, therefore, no new threshold should be established, certainly not one where a 50% failure rate produces a satisfactory rating.

Answer to Question 18: *Banks with assets of $500 million or more should not be considered small banks. Moreover, small banks should not have the option of being assessed by a weakened CRA exam that only assesses lending.*

The question on the NPRM errs in asking if the threshold should be $500 million or raised to $1 billion. UnidosUS rejects the $500 million threshold for banks to be considered "small," and we also oppose the proposal that banks would be able to opt into being evaluated under a different, weaker performance standard. Creating a separate CRA exam for small banks would further allow for banks to obtain CRA credit without sufficiently investing in their communities.

Answer to Question 19: We categorically reject the proposal that banks could opt out of the general performance standards.

D. Data Collection, Recordkeeping, and Reporting

Answer to Question 20*:* The agencies should create an effective website resource to facilitate data collection and provide the public with an understanding of the data to be collected. Such a website could also help the public to effectively use the data in assessing bank CRA performance.

Conclusion

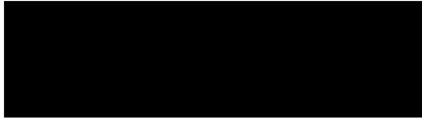
In the four decades since the Community Reinvestment Act was enacted, the law has increased bank lending in LMI communities, increased the share of loan portfolios with CRA-covered loans, and outpaced similar growth in lending to LMI communities among non-CRA-covered institutions. The CRA has helped to spur mainstream regulated financial institutions to innovate in ways that have been helpful to minority LMI borrowers. Moreover, it has encouraged regulated banks to establish and strengthen relationships with local community-based organizations (CBOs) which help advance banks' goal of lending safely and affordably to LMI residents. One of the most important outcomes of these activities is the creation of Community Development Corporations (CDCs) and Community Development Financial Institutions (CDFIs), which have assisted in ensuring prudent and affordable flows of capital and credit from banks into LMI neighborhoods.

Yet, the CRA is not perfect. Currently, 98% of banks pass their CRA exams, while many families and communities of color remain locked out of meaningful financial services including 16.9% of Black households and 14% of Latino households, according to the FDIC.[50] Notably, Latinos represent 18% of the population; as the Latino community grows, especially in rural America where the Hispanic population has doubled since 1990, the CRA remains a critical tool for ensuring that the financial system serves our communities in a fair and inclusive manner.[51]

Of the many issues that UnidosUS has with the proposed rulemaking, it is imperative that we highlight our profound concern that the proposed rule creates multiple loopholes that would allow financial institutions to skirt their responsibility of servicing the community. The new regulations risk rewarding financial institutions for the total amount of dollars spent, rather than on the actual impact for their investments. This creates incentives for banks to make "low-risk, high-reward" investments that may offer little or no tangible benefits for Latino and LMI communities in their service areas. Moreover, the proposed changes could encourage large scale investments with minimal direct benefits to traditionally underserved populations over direct lending products delivered through physical branches in neighborhoods. Absent clearer evidence that recent innovations in the banking sector actually improve LMI communities' equal access to affordable credit and other financial services, we fear the reduction in key services—affordable mortgage, business and small dollar lending, investments in community and economic development projects endorsed by and benefitting community residents, and philanthropic support to address critical community needs—long incentivized by the CRA. The better approach is to measure the actual impacts that the bank's entire body of work—policies, lending, investments, and philanthropy—has in strengthening those communities historically excluded from the financial system for decades prior to the CRA's passage.

We urge the OCC and FDIC to withdraw proposed changes that encourage large-scale investments over direct lending products delivered through physical branches in neighborhoods. We ask that the federal regulators to instead work with Congress and the community to develop research- and evidence-based rules that will lead to greater economic opportunities for Latinos and other LMI communities.

Sincerely,



Eric Rodriguez
Senior Vice President
UnidosUS

Orson Aguilar
Principal, Policy & Advocacy
UnidosUS

Endnotes

[1] Sen. William Proxmire stated that "the CRA responds to nationwide demands that Congress do something about redlining." 123 Cong. Rec. 17,604 (1977).

[2] "Redlining Was Banned 50 Years Ago. It's Still Hurting Minorities Today." *Washington Post*, March 28, 2018, https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/?noredirect=on&utm_term=.019bbd88d58a. (accessed January 17, 2020).

[3] Ibid.

[4] It is well known that individuals of color have historically had difficulty accessing credit, and when they are able to do so, obtain lower dollar amounts. For example, the overall rate of mortgage denials for individuals of color was between 13.5% and 18.4%, while the denial rate was only 8.8% for Whites. In 2017, the average value of home purchase loans for individuals of color ranged from $224,000 to $230,000, while the average value for Whites was $254,000. Similarly, access to credit for minority-owned businesses is still a challenge, as approval rates for credit for individuals of color is 6% to 19% lower than that of Whites. In 2006, the average loan amount for high-sales minority firms was $149,000, while the non-minority average was more than twice this amount at $310,000. "Large Numbers of Loan Applications Get Denied. But for Blacks, Hispanics and Asians, the Rejection Rate Is Even Higher." *Washington Post*., May 23, 2018. https://www.washingtonpost.com/realestate/large-numbers-of-loan-applications-get-denied-but-for-blacks-hispanics-and-asians-the-rejection-rate-is-even-higher/2018/05/22/dac19ffc-5d1b-11e8-9ee3-49d6d4814c4c_story.html. (accessed February 3, 2020); data obtained from 2017 Home Mortgage Disclosure Act (HMDA) data), provided by the Consumer Protection Bureau, https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-2017-data-mortgage-lending/; "Fed Small Business, *2016 Small Business Credit Survey: Report on Minority-Owned Firms*." Fed Small Business. https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms (accessed March 8, 2020).

[5] "Banking on Local Communities." *New York Times*, April 15, 2004. https://www.nytimes.com/2004/04/15/opinion/banking-on-local-communities.html (accessed January 17, 2020).

[6] Federal Reserve Bank of Boston. "*Using Credit Reporting Agency Data to Assess the Link between the Community Reinvestment Act and Consumer Credit Outcomes*." Federal Reserve Bank of Boston. March 04, 2014. https://www.bostonfed.org/publications/community-development-discussion-paper/2013/using-credit-reporting-agency-data-to-assess-the-link-between-the-community-reinvestment-act-and-consumer-credit-outcomes.aspx.," (accessed February 4, 2020).

[7] UnidosUS, *Latino Homeownership 2007–2017: A Decade of Decline for Latinos* (Washington, DC: UnidosUS, 2019), http://publications.unidosus.org/handle/123456789/1963. (accessed January 8, 2020.).

[8] NPRM, 85 FR 1213. https://www.federalregister.gov/d/2019-27940/p-174 (accessed February 18, 2020).

[9] Morgan Simon, "Opportunity Zones: We're Doing Them Wrong.," *Forbes*, September 2019, https://www.forbes.com/sites/morgansimon/2019/09/03/opportunity-zones-were-doing-it-wrong/#53c01f0556fa (accessed February 28, 2020).

[10] Noah Buhayar and Jessee Hamilton, “Financing for Sports Stadiums Could Count as Helping the Poor,” *Bloomberg*, December 2019, https://www.bloomberg.com/news/articles/2019-12-16/banks-may-call-nfl-stadium-financing-aid-to-poor-in-rule-change (accessed January 12, 2020).
[11] John Wall Street, “Development of Sports Facilities Usually Regarded as a ‘Net Negative’ for Local Municipalities, Multi-Use Arenas Can Be the Exception,” Sports Illustrated, December 2019., https://www.si.com/johnwallstreet/sports-business/community-reinvestment-act-stadiums (accessed March 3, 2020).
[12] Ibid.
[13] Justine Hastings, et al., *“Financial Literacy, Financial Education and Economic Outcomes.,”* Annual Review of Economics 5: 347–373 2013, https://pdfs.semanticscholar.org/f74d/47265b64ac646d50047791cbf1a214ab89f8.pdf (accessed January 12, 2020).
[14] Angela Lyons, et al., *“Translating Financial Education into Behavior Change for Low-Income Populations,”* 2006 Association for Financial Counseling and Planning Education. https://files.eric.ed.gov/fulltext/EJ1104369.pdf (accessed January 12, 2020.)
[15] Brett Theodos, et al., “*An Evaluation of the Impacts and Implementation Approaches of Financial Coaching Programs*,” Urban Institute. October 2015, https://www.urban.org/sites/default/files/publication/71806/2000448-An-Evaluation-of-the-Impacts-and-Implementation-Approaches-of-Financial-Coaching-Programs.pdf (accessed January 12, 2020).
[16] Haidee Cabusora, et al., *“A Random Control Trial of Financial Coaching,”* The Financial Clinic., October 6, 2015, https://thefinancialclinic.org/wp-content/uploads/2016/12/Clinic_and_Branches_Practitioner_Summary-2.pdf (accessed January 12, 2020.).
[17] NPRM, p. 131.
[18] JP Morgan Chase & Co. “Latino-Owned Businesses May Be the U.S. Economy’s Best Bet.” https://www.jpmorganchase.com/corporate/news/stories/latino-owned-businesses.htm (accessed March 4, 2020).
[19]Rohit Arora, Rohit. CSNBC. “Latinos: A powerful force turbocharging small-business growth and driving $700 billion into the USU.S. economy.”, CNBC, Sept. 25, 2018., https://www.cnbc.com/2018/09/25/latinos-are-a-powerful-force-fueling-small-business-growth-in-the-us.html (accessed March 3, 2020).
[20] Douglas Rivers, et al., *State of Latino Entrepreneurship, 2016*, (Stanford, CA: Stanford Graduate School of Business, 2016), https://www.gsb.stanford.edu/faculty-research/publications/state-latino-entrepreneurship2016. (accessed February 20, 2020).
[21] Ibid.
[22] Robert W. Fairlie, Ph.D., “Latino Business Ownership: Contributions and Barriers for U.S.-born and Immigrant Latino Entrepreneurs,” Office of Advocacy, U.S. Small Business Administration. January 2018 https://www.sba.gov/sites/default/files/Latino-Business-Ownership-Research-Paper_.pdf (accessed February 2, 2020).
[23] Ibid.
[24] Ted Knutson., “Latinos Taking Lead in New Small Businesses,” Forbes, October 7, 2019. https://www.forbes.com/sites/tedknutson/2019/10/07/latinos-taking-lead-in-small-business-start-ups/#255c1ecd3338 (accessed March 3, 2020).
[25] Ibid.
[26] NPRM, p. 26
[27] CFPB, Consumer Financial Protection Bureau, “What is a “‘higher-priced mortgage loan?” Updated September 13, 2017, https://www.consumerfinance.gov/ask-cfpb/what-is-a-higher-priced-mortgage-loan-en-1797/ (accessed February 22, 2020).
[28] UnidosUS. “Bringing Together Voices: Identifying Challenges and Opportunities for Expanding Small Dollar Lending for Immigrants” Dec 12, 2018. http://publications.unidosus.org/bitstream/handle/123456789/1909/BringingTogetherVoices_sp_121718.pdf?sequence=6&isAllowed=y (accessed March 25, 2020).
[29] NPRM. pg 201., https://www.federalregister.gov/d/2019-27940/p-201
[30] Ibid.
[31] U.S. Census Bureau, “Quick Facts,” (Washington, DC: US Census Bureau), https://www.census.gov/quickfacts/fact/table/US/RHI725217. (accessed March 4, 2020).

[32] UnidosUS, "Latino Banking in 2017: A Snapshot of the FDIC National Survey of Unbanked and Underbanked Households." http://publications.unidosus.org/bitstream/handle/123456789/1910/LatinoBankingin2017.pdf?sequence=3&isAllowed=y (accessed February 12, 2020).
[33] Ibid.
[34] UnidosUS. "*Latinos in the Gig Economy*," February 2020, http://publications.unidosus.org/handle/123456789/2017. (accessed March 6, 2020).
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Federal Reserve Bank of Philadelphia. "The Community Reinvestment Act (CRA) and Bank Branching Patterns." September 2019. https://www.philadelphiafed.org/-/media/community-development/publications/discussion-papers/discussion-paper_cra-and-bank-branching-patterns.pdf?la=en (accessed March 23, 2020)
[40] Ibid.
[41] Michael Berry and Jessie Romero, "Community Reinvestment Act of 1977," Federal Reserve, https://www.federalreservehistory.org/essays/community_reinvestment_act (accessed January 12, 2020).
[42] 12 C.F.R. § 228.41
[43] Ibid.
[44] UnidosUS. "*Profiles on Latino Banking: Technology*." October 10, 2018., http://publications.unidosus.org/bitstream/handle/123456789/1401/lb_technology.pdf?sequence=1&isAllowed=y (accessed January 15, 2020).
[45] "Federal Deposit Insurance Corporation, *2017: FDIC National Survey of Unbanked and Underbanked Households*." October 23, 2018, https://www.fdic.gov/householdsurvey/2017/2017report.pdf (accessed Feb. 2, 2020).
[46] Ozgur Emre Ergungor, "Bank Branch Presence and Access to Credit in Low- to Moderate-Income Neighborhoods," *Journal of Money, Credit, and Banking*, September 2011, https://www.jstor.org/stable/40925690?seq=1 (accessed February 2, 2020).
[47] 12 U.S.C. §§ 2901(a)(1)-(3) (2006).
[48]"Large Numbers of Loan Applications Get Denied. But for Blacks, Hispanics and Asians, the Rejection Rate Is Even Higher." *Washington Post.*, May 23, 2018. https://www.washingtonpost.com/realestate/large-numbers-of-loan-applications-get-denied-but-for-blacks-hispanics-and-asians-the-rejection-rate-is-even-higher/2018/05/22/dac19ffc-5d1b-11e8-9ee3-49d6d4814c4c_story.html. (accessed February 3, 2020); data obtained from 2017 Home Mortgage Disclosure Act (HMDA) data), provided by the Consumer Protection Bureau, https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-2017-data-mortgage-lending/; "Fed Small Business, *2016 Small Business Credit Survey: Report on Minority-Owned Firms*." Fed Small Business. https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms (accessed March 8, 2020).
[48] "Banking on Local Communities." *New York Times*, April 15, 2004. https://www.nytimes.com/2004/04/15/opinion/banking-on-local-communities.html (accessed January 17, 2020).
[48] Federal Reserve Bank of Boston. "*Using Credit Reporting Agency Data to Assess the Link between the Community Reinvestment Act and Consumer Credit Outcomes*." Federal Reserve Bank of Boston. March 04, 2014. https://www.bostonfed.org/publications/community-development-discussion-paper/2013/using-credit-reporting-agency-data-to-assess-the-link-between-the-community-reinvestment-act-and-consumer-credit-outcomes.aspx.," (accessed February 4, 2020).
[49] Lei Ding and Carolina Reid, "*The Community Reinvestment Act (CRA) and Bank Branching Patterns*," Federal Reserve Bank of Philadelphia, Working Papers, WP 19-36, September 2019, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2019/wp19-36.pdf (accessed March 27, 2020).
[50] FDIC, "*2017: FDIC National Survey of Unbanked and Underbanked Households*".
[51] Kimberly Turner, et al., "*The Changing Geography of Hispanic Children and Families*" (Bethesda, MD: National Research Center on Hispanic Children & Families, 2016), https://www.childtrends.org/wp-content/uploads/2016/01/Emerging-Communities.pdf (Accessed January 8, 2020.)
**We give special thanks to Victoria Melendez, Sr. Policy Analyst, for her contribution to this letter.