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April 8, 2020

Comptroller Joseph M. Otting
Comptroller of the Currency
Comp 400 7th Street, SW
Washington, D.C. 20219

Chair Jelena McWilliams
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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

Dear Comptroller Otting & Chair McWilliams:

Woodstock Institute submits these comments in response to the OCC/FDIC's Notice of Proposed Rulemaking (the "Proposal") regarding the Community Reinvestment Act (CRA). Woodstock Institute appreciates the need to update CRA regulations in light of the many changes in the banking business and we applaud many of the provisions in the proposed regulations change. However, we have serious concerns that the Proposal as it is currently structured would undermine the intent and purpose of CRA. Local community needs are at the heart of CRA and moving to a purely quantitative assessment renders local community needs practically irrelevant. Under the Proposal, if an activity cannot be converted into a number, it does not count.

CRA has decades of evidence that it effectively engages banks in providing credit to low- and moderate-income (LMI) communities. Modernization of the CRA must preserve what works. We agree with Governor Lael Brainard of the Federal Reserve when she said that one of the "core strengths" of CRA is creating an ecosystem that "encourages banks to engage on the priorities identified by local leaders." Gutting and simplifying the CRA exam by reducing it to a set of mathematical formulas would have a ripple effect throughout the entire CRA ecosystem, resulting in unintended consequences for both banks and communities.

The stated goal of the Proposal is to "reduce the subjectivity and inconsistencies in the current framework." Woodstock supports that goal as well as the goal of modernizing certain out-of-date components, such as the purely facility-based method for drawing assessment areas. The lack of interagency agreement about the current proposal, however, will create confusion among banks and other stakeholders. The regulators should release a CRA modernization proposal only when all three regulators are in agreement and public comments on the current proposal have been fully considered. Woodstock Institute's complete comments follow.

About Woodstock Institute

Woodstock Institute's mission is to create a just financial system in which lower-wealth persons and communities and people and communities of color can achieve economic security and community prosperity. Since its foundation in 1973, Woodstock Institute has been a recognized leader in building bridges between low- and moderate-income communities, financial institutions, regulators and policymakers. We conduct high-quality research on financial products, services, investments, and policies at the local, state, and national levels. Our findings and recommendations inform and influence efforts to build a more equitable financial system.

CRA & COVID-19

The COVID-19 crisis makes CRA more important than ever. LMI communities need safe and affordable financial products now. When the public health emergency has subsided, LMI neighborhoods, in particular, will need support to recover from COVID-19's economic devastation. If the 1918 flu pandemic is any guide, LMI neighborhoods will be hit harder than wealthier communities and will, correspondingly, need more support during the recovery. This excerpt is from a 2009 article about the 1918 flu pandemic:

> Bad diet, crowded living conditions and limited access to healthcare weakened the constitution, rendering the poor, immigrants and ethnic minorities more susceptible to infection. As French historian Patrick Zylberman put it: "The virus might well have behaved 'democratically', but the society it attacked was hardly egalitarian."[1]

We can also learn from the experience of the Great Recession when LMI communities were hardest hit financially. In some LMI communities unemployment soared to 50% and home values, a primary source of wealth, fell by 30-50%. Many of these communities are still recovering from the devastating financial impact. COVID-19 will exacerbate this impact with new negative financial challenges.

CRA is needed to spur loans, investments, and services to LMI communities both now and post-crisis. The most prudent course of action with respect to this rulemaking would be to (1) use the existing framework to steer bank activities to communities in need; (2) continually assess the pandemic's impact on communities, which should include robust community engagement; and (3), with those impacts in mind, make changes to the CRA framework as necessary to drive increased loans, investments, and services to hard-hit LMI communities. For example, do not delete the service test and reduce the importance of bank branches and safe and affordable financial products. Now is not the time to decrease the importance of bank branches that provide confidence in local LMI economies. Regulatory simplification is not of primary importance at this time or in the near future. We recommend that you proceed on CRA rulemaking with an eye towards addressing the most-certain wreckage caused by this crisis.

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[1] Sonja S. Hutchins et al., *American Journal of Public Health,* "Protection of Racial/Ethnic Minority Populations During an Influenza Pandemic," (Oct. 2009). https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4504373/.

Below, we answer each of the 22 questions posed in the Proposal:

## QUALIFYING ACTIVITIES

*1. Are the proposed criteria for determining which activities would qualify for credit under the CRA sufficiently clear and consistent with the CRA's objective of encouraging banks to conduct CRA activities in the communities they serve?*

> Woodstock opposes giving credit for projects that are not responsive to local community needs and do not primarily benefit LMI communities, the focus of CRA. Adding activities that are not LMI-centered will divert resources away from LMI communities.
>
> Woodstock supports giving CRA credit to banks for purchasing mortgage-back securities (MBS) but only for the dollar value of the MBS for the period that the investment remains on-balance sheet. This change would limit the degree to which a bank receives full credit for MBS investments that are made just prior to a CRA evaluation and held in the investment portfolio solely for CRA credit. Further, Woodstock supports giving credit for MBS only as retail investments and not as community development.
>
> Woodstock opposes valuing retail loans that are sold within 90 days of their origination at only 25% of their origination value. Mortgage lending is facilitated by securitizing loans and quickly selling them in the secondary market. It does not make sense to discount mortgage originations to LMI borrowers just because the bank sells the loans within 90 days of origination. Woodstock opposes any change that discourages loan originations by regulated banks. LMI borrowers need traditional bank mortgages to ensure a robust and equitable housing market.

*2. Are there other criteria for determining which activities would qualify for CRA credit that the agencies should consider?*

> Expanding the criteria, by itself, will dilute the attention given to LMI areas. An approach that could possibly avoid this outcome is to evaluate CRA performance that primarily benefits LMI communities separately from the evaluation of CRA performance based on other criteria. Further, the performance standards for CRA activities that primarily benefit LMI communities should be as high, if not higher, than they are now.
>
> A way to ensure that CRA activities are important to local communities is to require banks to secure endorsements of the activity from local community leaders.

*3. Under the proposal, CD activities conducted in targeted areas, such as Indian country or distressed areas, would qualify for CRA credit. Should there be any additional criteria applicable to the types of CD activities that qualify for CRA credit in these areas? If so, what should those criteria be?*

> The same criteria applicable to CD activities to benefit LMI communities should apply to CD activities to benefit Indian country or distressed areas. As discussed above, the

regulators should be mindful to not adopt changes that threaten to disrupt the flow of capital to LMI communities.

Community development activities eligible for CRA credit should be evaluated based on permanent jobs created; contribution to quality affordable housing and support for local small businesses. One additional criteria could be the endorsement from local community leaders.

Small Business/Small Farm

*4. Under the proposal, 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 would increase to $2 million. Do these increases appropriately incentivize banks to engage in small business and small farm lending activities, or should other changes be made to the revenue and loan size thresholds?*

Approximately 95% of businesses in the United States earn $1 million or less. Expanding the definition of small loan and small business will encourage banks to make bigger loans to bigger businesses, and, correspondingly, banks would make fewer smaller loans to smaller businesses. This would harm small, locally owned businesses with revenues of $1 million or less.

Woodstock has published five reports since 2017 regarding small business lending by banks to LMI communities and to communities of color.[2] In every region analyzed, Woodstock found disparities in the amount of small business lending by banks to LMI communities relative to higher income communities and to communities of color relative to White communities. In terms of community development, especially in the lower income communities, CRA-reported loans by banks that are most crucial for neighborhood businesses are loans under $100,000. They constitute 93 percent of all CRA-reported small business loans.[3] Fifty-five percent of small employer firms that sought financing in 2017 applied for less than $100,000.[4] CRA modernization should *encourage* this category of loans, not dilute it by broadening the definition of "small" to include larger loans and larger business.

[2] All five reports can be found in the "Research Reports" section of Woodstock's website: https://woodstockinst.org/category/research/reports/.
[3] Lauren Nolan and Brent Adams, Woodstock Institute, *Patterns of Disparity: Small Business Lending in Illinois* (Aug. 2019), at 7. https://woodstockinst.org/wp-content/uploads/2019/08/Patterns-of-Disparity-Small-Business-Lending-in-Illinois.pdf
[4] Federal Reserve System, *2017 Small Business Credit Survey: Report on Employer Firms*, 2017. https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2018/sbcs-employer-firms-report.pdf.

List of Qualifying Activities

*5. The agencies plan to publish the illustrative list on their websites and to update the list both on an ongoing basis and through a notice and comment process. Should the list instead be published as an Appendix to the final rule or be otherwise published in the Federal Register? In addition, how often should the list be updated?*

Woodstock supports the additional clarity that a list provides to both banks and other stakeholders. However, as discussed above, the activities included must be defined to primarily benefit LMI communities and should not include big projects that only partially benefit LMI communities. Credit for financial literacy programs ought to be limited in the way it is now. The bank should receive credit only if the recipients are LMI.

Woodstock opposes dropping neighborhood "revitalization and stabilization" and "economic development" from the definition of community development. These are important concepts that ought to continue to help determine the activities that qualify as community development.

To enable regulators to be nimble and flexible in refining and updating the list, it should not be appended to the final rule. Ensconcing it in regulatory cement would stifle the innovation and creativity of banks interested in pursuing a project that furthers the objectives of the CRA but is not on the list.

The list should be updated every two years and should include a public comment process. Each update should reflect a consensus by all three regulators as to what counts for CRA credit. It would be detrimental to both communities and banks to have a mish-mash of standards as to what gets credit and what does not.

*6. The proposal includes a process for updating the illustrative list on an ongoing basis through submission of a form to seek agency confirmation. What process, including any alternative process, should the agencies adopt to update the illustrative list of qualifying activities?*

Woodstock supports establishing a process that creates additional certainty and clarity for banks and other stakeholders. However, we seek transparency and would like the process to include a means by which impacted communities can have the opportunity to comment on proposed activities.

*7. Are certain types of retail loans more valuable to LMI individuals and geographies than other types? If so, which types? Should the regulations recognize those differences? If so, how? For example, could multipliers be used to recognize those differences and provide incentives for banks to engage in activities that are scarce but highly needed?*

As a general matter, LMI individuals need increased access to safe and affordable financial products, including loan product and deposit account products, e.g., checking accounts with no overdraft fees. Beyond that, different communities have different

needs, which is why a determination of local community needs is crucial to fulfilling the objectives of the CRA.

Multipliers

*8. The use of multipliers is intended to incentivize banks to engage in activities that benefit LMI individuals and areas and to other areas of need; however, multipliers may cause banks to conduct a smaller dollar value of impactful activities because they will receive additional credit for those activities. Are there ways the agencies can ensure that multipliers encourage activities that benefit LMI individuals and areas while limiting or preventing the potential for decreasing the dollar volume of activities (e.g., establishing a minimum floor for activities before a multiplier would be applied)?*

Woodstock fully supports the multiplier for investments in Community Development Financial Institutions (CDFI) whereby investments in CDFIs receive double credit. Regulators should take steps to ensure that providing double credit through a multiplier does not result in banks providing only half the investment amount. One possible solution is to require that preferred activities, such as investments in CDFIs, comprise a minimum portion a bank's community development loans and investments. Investments below the minimum would be given no credit. Finally, an average of peer banks' investments in CDFIs could serve as a guideline for when double credit is provided.

CDFIs, through investments, loans, and other services, are highly effective in providing benefits to LMI communities – partly because they are responsive to local community needs, just as banks' CRA activities should be. The proposed CRA Evaluation ratio, however, which rewards high-dollar activities, risks undermining the purpose of the multiplier by steering investments away from CDFIs and toward higher-dollar options.

Community Development Services

*9. The proposal quantifies the value of CD services based on the compensation for the type of work engaged in by the employees providing the services as reflected in the Bureau of Labor Statistics calculation of the hourly wage for that type of work. Would using standardized compensation values reduce the burden associated with tracking CD services while still appropriately valuing CD services? If so, how should the agencies establish the standardized compensation values?*

This is a strained approach at tacking a dollar value on CD activities that do not directly involve the spending of dollars. This approach serves as a good example of the drawbacks of an overly quantitative approach. The main factor to determine the value of CD services should be the degree to which the services are responsive to local community needs. By contrast, the proposed approach, like the "one-ratio," would encourage higher-wage activities even when such activities are not responsive to community needs.

Retail Services

*10. Should the range of retail banking services provided—such as checking accounts, savings accounts, and certificates of deposit—be considered under this proposal? If so, how could retail banking services be quantified? For example, could the types of checking and savings accounts that are offered by a bank (e.g., no fee, fixed fee, low interest-bearing, high interest-bearing) be considered in performance context?*

Woodstock strongly supports providing CRA credit and consideration to banks' efforts to provide safe and affordable products and services to LMI borrowers. Safe and affordable products and services are key to expanding access to mainstream financial services for the unbanked. Unbanked households are especially vulnerable to high-cost alternative financial service providers like payday lenders and check cashers.

Woodstock supports measuring banks' retail lending performance relative to their peers and relative to the demographic characteristics of the banks' assessment area. The pass-fail nature of the proposed retail lending test, however, would replaces an incentive to do an outstanding job (e.g., get an A) with an incentive to do enough not to fail (e.g., get at least a D). Access to safe and affordable credit is especially important in lower income areas, and those areas can be hard-to-serve for a variety of reasons, including credit invisibility, excess debt, fluctuating income, etc. The CRA was intended to encourage banks to the make the extra effort to serve the hard-to-serve communities. A pass-fail test eliminates that incentive entirely if a bank can meet the minimum threshold by serving only its easy-to-serve customers.

Regarding performance context, the Proposal purports to retain an evaluation of performance context, but it is unclear how the qualitative analysis that comprises a performance context evaluation will be reflected in the quantitative metrics. We recommend that the regulation provide significantly more guidance as to the elements of a performance context evaluation and how performance context will affect a bank's score. This would be particularly important if the final regulations eliminate the service test because the service test includes a qualitative evaluation of services, such as the providing of safe and affordable financial products.

## ASSESSMENT AREAS

*11. Are the proposed methods for delineating assessment areas clear, simple, and transparent?*

Woodstock supports expanding assessment area definitions to capture online banks and the growing online deposit base of traditional banks. The current CRA framework is woefully inadequate in how it treats online banks—banks that primarily or exclusively do business over the internet.

Assessment area reform is long overdue. The proposed methods, we believe, will move us in the right direction. Our hope is that the OCC and FDIC will carefully analyze the impacts of these methods and will make future adjustments as needed to ensure that

banks are adequately serving the markets – both rural and urban – in which they are doing business whether through their physical presence, online, or both.

However, we share the concerns of some stakeholders regarding the lack of data regarding the geographic distribution of deposits and the corresponding uncertainty about the impacts of the deposit-based method. Put another way, no one, including many banks, knows how these methods will impact CRA deserts or CRA hotspots.

*12. The proposal would allow banks to choose how broadly to delineate their facility-based assessment areas, but it would require banks with a significant portion, such as 50 percent or more, of their retail domestic deposits outside of their facility-based assessment areas to delineate their deposit-based assessment areas at the smallest geographic area where they receive five percent or more of their retail domestic deposits. Do these approaches strike the right balance between allowing flexibility and ensuring that banks serve their communities? If not 50 percent, what threshold should be used to determine if a bank has a significant portion of its deposits outside of its facility-based assessment areas and why? In addition, is receiving at least five percent of domestic retail deposits from a given area the appropriate threshold for requiring a bank to delineate a deposit-based assessment in that area, or should some other threshold be implemented? If so, why?*

There are too many unknowns to determine whether the 50%-5% rule strikes the right balance. This is one of the reasons why we believe that data on the geographic location of deposits must be made publically available. Without this information, communities would be unable to clearly understand which banks are in their assessment area, and data-driven organizations like Woodstock Institute would be unable to analyze trends and call attention to developments that might require policymaker intervention. Further, because an assessment area can be as small as a single county, it is unknown whether the deposit-based method will meaningfully expand services and investments to LMI communities in need, or rather, allow a bank to satisfy the CRA by doing the minimally required activity in a small area.

*13. The deposit-based assessment area delineation requirements are intended to ensure that banks serve the communities in which they operate. However, under the proposed regulation, it is possible that few banks would be required to delineate a deposit-based assessment area in less populous areas or states, despite having a significant market share in those areas. Does this framework provide sufficient incentives for banks to conduct qualifying activities in these less populous areas? Alternatively, should banks be required to delineate separate, non-overlapping assessment areas in each state, MSA, MD, or county?*

Moving beyond a purely facility-based system for establishing assessment areas is unchartered territory, but assessment area modernization is long overdue. Woodstock recommends that assessment areas be established in all areas where banks have at least 5% of the market share of deposits. A market-share analysis of Ames, Iowa conducted by the National Community Reinvestment Coalition (NCRC) provides a clear illustration of why this method is effective in creating assessment areas around less populous areas. U.S. Bank, NA had a market share of deposits of 13.2% in Ames, Iowa, but the deposits

were only .1% of the bank's overall deposits.[5] A market-share approach would ensure that less populous areas like Ames, Iowa are adequately served by the major banks that operate there.

Finally, Woodstock acknowledges that a bank's performance of CRA activities outside its assessment areas might be appropriate under certain circumstances. The Proposal is not sufficiently clear on when this would be appropriate. One possible approach it to require a bank to achieve a certain benchmark within its assessment area before awarding CRA credit for activities outside the assessment area.

## CRA Performance Measures

One-ratio

Woodstock opposes a purely quantitative evaluation of CRA activity because it ignores the non-monetary or difficult-to-monetize ways in which a particular activity is responsive to local community needs. Also, allowing banks to aggregate their CRA activities into dollars will allow them to focus on simpler, higher-dollar investments and to pay minimal attention to strategic but smaller CRA activities and to the entire universe of LMI communities within their assessment areas.

*14. The proposed rule would define retail domestic deposits as total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC–E, item 1, of the Call Report, excluding brokered deposits. Is there another definition— including the alternatives described above—that would better reflect a bank's capacity to engage in CRA qualifying activities?*

Woodstock has no objection to the definition of deposits in the Proposal.

Bank Branches

*15. The proposal focuses on quantifying qualifying activities that benefit LMI individuals and areas and quantifies a bank's distribution of branches by increasing a bank's quantified value of qualifying activities divided by retail domestic deposits (a bank's CRA evaluation measure), expressed as a percentage, by up to one percentage point based on the percent of a bank's branches that are in specified areas of need. Does this appropriately incentivize banks to place or retain branches in specified areas of need, including LMI areas? Does it appropriately account for the value of branches in these areas?*

No, treating branch distribution as extra credit of minimal value lessens the importance of branches in the CRA evaluation framework. Bank branches still provide a valuable service to communities and are particularly vital in "banking deserts," areas with little to no access to mainstream financial services. While the role of branches has changed due to the increase in direct deposits and mobile and online banking, there is a unique and

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[5] Josh Silver, *The Community Reinvestment Act and Geography, How Well do CRA Exams Cover the Geographical Areas that Banks Serve*, NCRC, April 2007, at 9. https://ncrc.org/wp-content/uploads/2017/05/cra_geography_paper_050517.pdf.

important role that a bank branch plays in LMI communities where the branch location allows a better window on the credit and investment needs of the community and branch personnel have relationships with community leaders. Diminishing the importance of this branch presence and the relationships that result is a mistake.

According to the *2017: FDIC Survey of Unbanked and Underbanked Households*,[6] visiting bank tellers continues to be the most common method used by banked households to access bank accounts. The FDIC finds that, even though the use of mobile banking is increasing, the use of bank tellers remains "quite prevalent, particularly among segments of the population that had higher unbanked and underbanked rates." As has long been the case, LMI communities have disproportionately high unbanked and underbanked rates. This means that bank branches are *especially appropriate* in the CRA context.

Further, branches provide services that may not be available through Automatic Teller Machines (ATMs), such as help completing loan applications or sending remittances. Some customers, particularly the elderly, may not be comfortable with ATMs or mobile technology and prefer to bank in person, as they always have. Lack of internet access is also a concern. The Federal Reserve's Vice Chairman of Supervision, Randall Quarles, has said a lack of online access in rural areas coupled with the lack of a bank branch pose particular challenges to elderly customers without a car.[7] Reinvestment Partners published a report focused on bank branches in rural communities. As the report states, "the presence of a bank branch in a rural community projects economic vitality and its closure poses a threat to the community and future economic development."[8]

Bank branches have impacts on banking activity beyond customers' access to their bank accounts. As the article *Do Bank Branches Still Matter* explains, branch closings have a prolonged negative effect on small business credit.[9] A branch closing reduces the number of new small business loans by 13 percent for several years, and the decline is concentrated in low-income and high-minority neighborhoods.

Retail Lending Distribution Tests

The regulators have justified concerns about displacement and gentrification, and not applying the "Geographic Test" to home mortgages would eliminate the incentive for banks to make mortgage loans in LMI communities. This is a drastic change that we

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[6] FDIC, *2017: FDIC Survey of Unbanked and Underbanked Households* at https://www.economicinclusion.gov/surveys/2017household/account-type-access-methods-bank-branch-visits-findings/ (Oct. 23, 2018).

[7] Lang, Hannah, American Banker, *'10 miles is a long way by horse and buggy': Fed studies rural branch closings* (Oct. 4, 2018). https://www.americanbanker.com/news/fed-listens-to-assess-impact-of-rural-branch-closings

[8] Wolfram, Tanya, Reinvesment Partners, *The Last Bank in Town: Branch Closures in Rural Communities*, at 8 (Oct. 2016). https://reinvestmentpartners.org/file_download/inline/f6dd7f32-7c21-4dcb-a13b-8127eafd6894

[9] Hoai-Luu Q. Nguyen, *Do Bank Branches Still Matter? The Effect of Closings on Local Economic Outcomes* (Dec. 2014). http://economics.mit.edu/files/10143. A later version of this study was published in October, 2015, by the University of California at Berkeley.

believe is an over-correction that would perpetuate economic segregation. Gentrification and displacement are serious problems, but eliminating CRA credit for *all* mortgages made in LMI communities to borrowers who, while not LMI, are also not rich is going too far. In Chicago, a middle-income family of four earns $71,300 to $107,000 per year. Making a mortgage to such a family in an LMI community does not contribute to gentrification or displacement. The FDIC/OCC should develop an approach that is more finely tuned to the gentrification/displacement problem.

*16. Under the retail lending distribution tests, the proposal would consider the borrower distribution of any consumer loan product line that is a major retail lending product line for the bank. The agencies defined a major retail lending product line as a retail lending product line that comprises at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period, but also considered setting the threshold between 10 and 30 percent. Should the agencies consider a different threshold? Additionally, applying the retail lending distribution test to only major retail lending product lines means that not all retail lending product lines will be evaluated for every bank. Are there any circumstances in which applying the retail lending distribution test to a consumer lending product line should be mandatory, even if it is not a major retail lending product line (e.g., if the consumer lending product line constitutes the majority of a bank's retail lending in number of originations)? Additionally, the proposal would only apply the retail lending distribution tests in assessment areas with at least 20 loans from a major product line. Is 20 loans the appropriate threshold, or should a different threshold, such as 50 loans, be used?*

Using a percentage of the bank's retail lending as a threshold is not the best approach. A large bank could be the major mortgage lender in a locality, but the bank's overall mortgage lending could still fall below 15% of its total loan portfolio. The threshold should simply be the number of loans in a product line that the bank made in the assessment area. Twenty loans is an appropriate threshold. A higher threshold could exclude product lines even when the number of loans is a significant share of the total lending in a smaller or rural area.

A consideration that applies mostly to consumer lending is the potential for banks to receive CRA credit for consumer loan products that have excessively high fees or interest. CRA credit should not be given for loans with annual percentage rates (APR) that exceed a state's usury limit or 36%, whichever is less. As a general matter, for a consumer living with a structural deficit, i.e., their monthly expenses exceed their monthly income, a loan only makes matters worse unless it is used to refinance or consolidate higher APR loans.

Investment and Activities Test

*17. Under the proposal, a bank evaluated under the general performance standards could not receive a satisfactory or an outstanding presumptive bank-level rating unless it also received that rating in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposit. Should 50 percent be the threshold used to determine ''significant portion of a bank's assessment area'' and ''significant amount of deposits'' for purposes of determining whether a bank has received a rating in a significant portion of its assessment areas? Or should another threshold, such as 80 percent, be used?*

> A bank should not receive a satisfactory or outstanding rating if it fails in nearly 50% of its assessment areas. Eighty percent is better than 50 percent, but such system is likely to exacerbate the gap between the "haves" and "have nots." Because this is a pass-fail threshold, a bank would have no incentive to have satisfactory or outstanding performance in all its assessment areas. This system would likely favor assessment areas that are easier to serve, such as more populous areas with high employment and income and a well-established infrastructure to facilitate CRA activity. Woodstock recommends that the rating be an average of *all* the bank's assessment areas. This would better ensure that hard-to-serve assessment areas are not neglected.

Small Banks

*18. Under the proposal, banks that had assets of $500 million or less in each of the previous four calendar quarters would be considered small banks and evaluated under the small bank performance standards, unless these banks opted into being evaluated under the general performance standards. Is $500 million the appropriate threshold for these banks? If not, what is the appropriate threshold? Should the threshold be $1 billion instead?*

> The threshold should not be increased to $1 billion because it would take away the current CRA-based incentive for banks with assets in $500 million to $1 billion range to provide community development financing in LMI communities. Based on a 2017 NCRC study, raising the small bank threshold to $1 billion would result in the loss of hundreds of millions of annual community development financing to LMI communities.[10]

*19. Under the proposal, small banks (i.e., banks with $500 million or less in assets in each of the previous four calendar quarters) may choose to exercise an opt into and a one-time opt out of the general performance standards. Should small banks that opt in to the general performance standards be permitted to opt out and be examined under the small bank performance standards for future evaluations and, if so, how frequently should this be permitted?*

> From the communities' perspective, giving small banks a right to opt out after having opted in is counterproductive. A community should be entitled to rely on what to expect from a bank with respect to its CRA obligations.

[10] NCRC, *Intermediate Small Banks: The Forgotten But Significant Resource for Affordable Housing and Community Development*, Nov. 2017. https://ncrc.org/intermediate-small-banks-forgotten-significant-resource-affordable-housing-community-development/.

## DATA COLLECTION

*20. As discussed above, the proposal would require banks to collect and report additional data to support the proposed rule. Although most of this data is already collected and maintained in some form, some additional data collection may be required. For example, banks may need to gather additional data to determine whether existing on-balance sheet loans and investments are qualifying activities. Are there impediments to acquiring this data? If so, what are they?*

As a data-driven organization, Woodstock supports the collection of additional data. The data, including the geographic distribution of deposits, which is key to the numeric evaluation of CRA performance under the proposal, must be publicly available to allow communities to understand the metrics used to measure performance in LMI communities and for external stakeholders to examine deposit-taking trends. To protect consumer privacy, deposit data must be publicly disclosed in an anonymized manner.

*21. What burdens, if any, would be added by the proposed data collection, recordkeeping, and reporting requirements? a. What system changes would be needed to implement these requirements? b. What are the estimated costs of implementing these requirements?*

Given that these questions are intended for banks, Woodstock offers no response other than to repeat the need for all data used to calculate CRA performance to be made publicly available.

*22. The proposal would require small banks to collect and maintain certain deposit-based assessment area data. Are there other ways the agencies can limit the recordkeeping burden associated with the designation of deposit-based assessment areas, including other ways for banks to differentiate between traditional and internet type business models?*

Insofar as the regulations establish deposit-based assessment areas, they should apply to banks of all sizes. Among the primary considerations for assessment area reform are (1) the CRA evaluation process ought to accurately reflect the areas realistically served by banks, and (2) the CRA ecosystem ought to better serve rural areas and "CRA deserts." Woodstock supports the Proposal's creation of deposit-based assessment areas, but we urge the regulators to modify this approach as necessary to further the law's purpose.

## CONCLUSION

Local community need ought to drive a bank's CRA activities, not be an afterthought. The Proposal, even though it has its good points, drastically alters the CRA ecosystem, replacing communities with an all-important list of qualifying activities. The Proposal's emphasis on dollars further diminishes the role of communities. We urge you to take a step back and bring the Federal Reserve back to the table before moving forward with an overhaul of the CRA framework. For LMI people and communities, in particular, there is too much at stake to get this wrong.

Very truly yours,

WOODSTOCK INSTITUTE

<u>About the Authors</u>

Brent Adams, Woodstock's Senior Vice President of Policy & Communication, has 13 years of experience in the financial services area. He has worked as a policy analyst and advocate, drafting and helping to pass the State's Payday Loan Reform Act of 2005 and major reforms to the State's check-cashing law in 2018. He has also served as the State's chief regulatory official from 2009 to 2012 during which he oversaw most licensed professions and the state banking system.

Jean Pogge, the Interim Director of Woodstock Institute, served on the executive leadership team of ShoreBank for over a decade. An experienced nonprofit manager, Pogge has served as President of Woodstock Institute (1988-1992), CEO of Delta Institute (2010-2015) and CEO of Ecotrust Canada (2016-2019). During the 1980s, Pogge was the lead staff person for the first major CRA challenge of First National Bank of Chicago's acquisition of American National Bank and managed the first computerized HMDA study in three cities.