

RE: Notice of Proposed Rulemaking, Community Reinvestment Act Regulations
March 12th, 2020

To Whom it May Concern:

Elevate Energy opposes the proposed changes to the Community Reinvestment Act (CRA) regulations and agrees with dissenting FDIC Board member Martin Gruenberg that the FDIC's and OCC's Notice of Proposed Rulemaking (NPRM) on the Community Reinvestment Act (CRA) "is a deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act." The agencies would lessen the public accountability of banks to their communities by enacting unclear performance measures on CRA exams that would not accurately measure bank's responsiveness to local needs. Public input into this evaluation framework would be more difficult and limited. Despite the agencies' assertions that their proposal would increase clarity and bank CRA activity, the result would be significantly fewer loans, investments and services to low- and moderate-income (LMI) communities.

Elevate Energy is an Illinois-based nonprofit that works nationwide. We design and implement energy efficiency, solar, and healthy housing programs that lower costs, protect the environment, and ensure that the benefits of clean energy reach those who need them most. At Elevate, we help homeowners, owners of affordable rental apartment buildings, and nonprofit buildings to manage their energy use. Our organization is working toward a world where everyone has clean and affordable heat, power, and water in their homes and communities – no matter who they are or where they live. Elevate Energy strongly opposes the proposed changes and any other rule that would take focus and resources from LMI communities in contradiction to the intent of the law to address redlining in and disinvestment from LMI and communities of color.

Under the NPRM, financing large infrastructure such as bridges would be a CRA eligible activity, which would divert banks' attention from community development projects in LMI communities. Even financing "athletic" stadiums in Opportunity Zones would be an eligible activity. Small businesses and farms that could benefit from CRA would have higher revenues, increasing from \$1 million to \$2 million for small businesses and as high as \$10 million for family farms. The agencies are drastically diluting the emphasis, established in the 1995 regulatory changes to CRA, of revitalizing LMI communities with affordable housing, small business development and community facilities.

While the NPRM recognizes changes in the banking industry such as the increased use of online banking, the NPRM's reforms to the geographical areas on CRA exams are problematic and would reduce transparency. The agencies propose to establish new areas on exams that are outside of branch networks but where banks collect a significant amount of deposits. However, the deposit data collected now does not include customer geographical locations when customers open accounts via the internet. Thus, neither the agencies nor the public can assess the impacts of this proposal by estimating the numbers of banks with new areas and what parts of the country would have increased attention. The public does not have a fair chance to offer comments on the effectiveness of significant proposed changes whose impacts are unknown.

The proposed changes are likely to divert attention from areas served by branches since the agencies propose to make it easier for banks to engage in CRA-qualified activities outside of areas with branches. Currently, banks can engage in community development activities beyond areas with branches only after satisfactorily serving them. Under the NPRM, there would be no such restriction, allowing banks to

find the easier places anywhere in the county to engage in community development without first responding to needs in the communities with branches.

The agencies propose an evaluation system that would further inflate ratings while decreasing the responsiveness of banks to local needs. Now, 98% of banks pass CRA exams; the proposal would likely push this up to 100%. The agencies propose a one ratio measure that consists of the dollar amount of CRA activities divided by deposits. This ratio measure would likely encourage banks to find the largest and easiest deals anywhere in the country as opposed to focusing on local needs, which are often best addressed with smaller dollar financing for small businesses or homeowners. Since banks could fail in one half of the areas on their exams and still pass under the proposal, the likelihood of banks seeking large and easy deals anywhere increases.

The proposal would retain a retail test that examines home, small business, and consumer lending to LMI borrowers and communities, but this retail test would be only pass or fail. In contrast, the retail test now has ratings and counts for much more of the overall rating. Moreover, the proposal would eliminate the service test that scrutinizes bank branching and provision of deposit accounts to LMI customers. Replacing this test is a formulaic measure that would result in branches in LMI areas counting for very little in the one ratio and hence would encourage banks to close them.

The agencies establish numerical targets under the one ratio exam for banks to hit in order to achieve Outstanding or Satisfactory ratings. However, the agencies base the targets on their research, which the agencies do not reveal in the NPRM. The public, therefore, cannot make informed judgements about whether the numerical targets would result in increases in activity, stagnant levels or decreases. The agencies have violated a basic premise of rulemaking, which is to enable the public to assess the impacts of a vitally important rule to communities.

The agencies also propose to allow banks that receive Outstanding ratings to be subject to exams every five years instead of the current two to three years. This stretch out reneges on the agencies' statutory duties to ensure banks are continuing to respond to community needs. Banks with a five-year exam cycle would likely relax their efforts in the early years of the cycle. Banks would also have less accountability to maintaining acceptable recent CRA performance when they seek permission to merge with other banks.

Under the NPRM, small banks with assets less than \$500 million could opt for their existing streamlined exams instead of the new exams. The new exams would require banks to engage in community development financing while the existing small bank exams do not. A significant subset of these banks which are now required to engage in community development finance would not be required to continue to do so, another loss for the community that is not justified (the NPRM says that small banks may actually perform better on the new exams than their larger counterparts).

Instead of weakening CRA, the agencies must enact reforms that would increase bank activity in underserved neighborhoods. The agencies do not address persistent racial disparities in lending by strengthening the fair lending reviews on CRA exams or adding an examination of bank activity to communities of color in CRA exams. At the very least, the agencies could add a category on CRA exams of underserved census tracts (as measured by loans per capita), which would likely include a high number of communities of color. The agencies also require banks to collect more data on consumer lending and community development activities but do not require banks to publicly release this data on a county or census tract level. Finally, the agencies do not require mandatory inclusion on exams of bank mortgage company affiliates, many of whom engaged in abusive lending during the financial crisis.

This deeply flawed proposal would result in less activity for communities most in need that were the focus of Congressional passage of CRA in 1977. The changes – less focus on people that are LMI, a simplistic one ratio, a bank could fail in one half of its areas and retail lending and branching would count for less of the rating – would increase grade inflation accompanied by a decrease in lending, investing and bank services to LMI consumers and LMI communities. This backtracking will violate the agencies' obligation under the statute to ensure that banks are continually serving community needs. The agencies violate cardinal principles of rulemaking in terms of fulfilling their statutory responsibilities under CRA and not proposing a rule based on clear and transparent data analysis about the rule's impacts. The FDIC and OCC need to discard the NPRM and instead work with the Federal Reserve Board and propose an interagency rule that will augment the progress achieved under CRA in terms of reinvesting in LMI communities, not halting or reversing this progress.

The Community Reinvestment Act is appropriately named- it was and is intended to promote reinvestment into communities, especially those that are most neglected. The proposed rule is unnecessarily lenient and creates an ambiguity that will allow current resources to be diverted away from the CRA's originally intended recipients. Therefore, the proposed changes are completely antithetical to the CRA, making compliance easier on banks while restricting the opportunity of small businesses, farms, and everyday people. We oppose the proposed rule and call for it to be withdrawn. Sincerely,

Elevate Energy