April 8, 2020

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Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, D.C. 20219

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

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

To Whom It May Concern:

The Local Initiatives Support Corporation (LISC) is pleased to offer comments in response to the Joint Notice of Proposed Rulemaking pertaining to reforming the Community Reinvestment Act.

BACKGROUND ON LISC

LISC is a non-profit housing and community development organization and certified Community Development Financial Institution (CDFI) with offices in 35 cities throughout the country, and a rural network encompassing 90 partners serving 44 different states. LISC's work supports a wide range of activities, including affordable housing, economic development, building family wealth and incomes, education, community safety, and community health. In 2019 alone, LISC raised and deployed approximately $1.5 billion of capital into distressed urban and rural communities – including $1 billion that utilized federal Low Income Housing Tax Credits (LIHTC) and New Markets Tax Credits (NMTC). In our experience, the Community Reinvestment Act (CRA) remains the primary driver of bank financing for our activities. LISC estimates that approximately 80% of its capital is raised from CRA motivated investors.

OVERVIEW OF COMMENTS ON THE PROPOSED REGULATIONS

CRA has been a critical, if not the most critical, resource available to facilitate the flow of private capital into underinvested communities. It has been successful not only for the communities and community residents that have benefitted from these investments, but also for the banks – who have managed to find new and profitable investment opportunities that generally perform as well or better than other bank investments.

As successful as the CRA has been, LISC agrees that improvements could be made. The banking industry has undergone significant changes since the CRA regulations were last updated, most notably in the rise of interstate banking, internet banks, mergers of institutions, and mobile banking. A reexamination of the current CRA delivery system is therefore appropriate and, some might argue, even overdue.

And while there are certainly some elements of the proposed regulations that will be welcome by both the banking and community development sectors, ***LISC believes that the proposed regulations as currently drafted will substantially and irrevocably harm the entire ecosystem of community development finance.*** Among other concerns, we believe that the rule:

- Will likely lead to a decline in mortgage lending and small business lending in low-moderate income (LMI) communities;

- Does not sufficiently incentivize banks to engage in impactful community development loans and investments, and in fact, allows banks to fulfill CRA obligations by making loans and investments in activities that may bring little if any benefit to LMI communities or LMI families;

- Will lead to a decrease in LIHTC and NMTC investments, as well as to a decrease in grants to non-profits and CDFIs; and

- Will not sufficiently increase opportunities in communities – most notably rural communities -- that have been historically denied opportunities under CRA.

We discuss these concerns in our comments below, and also propose various alternative approaches which we believe will produce more desirable outcomes for both banks and community stakeholders, including:

- Circumscribe the list of qualifying activities that fit within the community development loans and investment bucket, in particular to remove essential infrastructure and essential community facilities that only "partially," rather than "primarily," benefit LMI individuals and census tracts.

- Replace "double weighting" for certain preferred activities (i.e., investments, loans to CDFIs, loans for affordable housing) with a requirement that these preferred activities comprise a minimum portion (e.g., 50%) of the community development loans and investment bucket.

- Remove Mortgage Backed Securities (MBS) from the category of community development loans and investments, but keep them within broader category of eligible retail investments.

- Provide more guidance as to how the performance context review will be undertaken and will impact CRA scoring, and provide that certain "safe harbor" products (including LIHTC and NMTC investments, for example) will automatically qualify as innovative and responsive under the performance context review.

- Take into consideration originations of community development loans and investments, not just balance sheet activities, such that a significant decrease in overall originations could lead to a lower score.

- Certain community development loans and investments should be deemed to serve an assessment area if they are made anywhere in a state where the bank has one or more assessment areas, so long as the bank has achieved at least a satisfactory rating in that assessment area in the prior rating period.

These and numerous other recommendations are provided below. We are, however, somewhat limited in what we can propose because: (i) the underlying data that could inform our analysis has not been released by the regulators, and in fact was only requested by the regulators after the proposed rule was published; and (ii) in many instances, there simply were not enough details provided by the regulators for us to offer constructive feedback to the proposed regulations.

We therefore recommend that the regulators re-publish a proposed rule before issuing final rulemaking. Ideally, this revised proposed rule will address the initial stakeholder comments, provide more detailed information in certain key areas, and also propose new metrics that are based on the analysis of the data submitted by the banks. We would also recommend that the regulators release, alongside the new proposed rule, the data submitted by the banks, so that stakeholders can review all of this information in totality as they prepare additional comments. We believe it would be irresponsible to move straight to a final rule when there is still so much more information that needs to be considered and addressed by stakeholders. Publishing a second proposed rule would be consistent with the approach that was taken by the regulators in 1994, as part of the process of publishing the final CRA regulations in 1995.

ANALYSIS OF THE PROPOSED REGULATIONS

LISC offers comments and recommendations below on three key elements of the proposed regulations: 1) Qualifying Activities; 2) Assessment Areas; and 3) Evaluating Performance.

Qualifying Activities *(Addresses Questions 1-10).*

LISC offers the following comments and recommendations with respect to determining which activities should or shouldn't qualify for CRA credit, and how they should be calculated and weighted.

1. **Emphasis on providing clarity to stakeholders is welcome.**

   LISC appreciates that the regulators are making a concerted effort to try and make the CRA evaluation process, including which activities shall be deemed to qualify for CRA credit, more consistent and transparent. Under the current review process, a bank would only find out during an exam review – which could be three years or more after an investment has been made – that a presumably qualifying activity was deemed ineligible. LISC believes that banks need clear information at the time they make an investment that the investment will qualify for CRA credit.

   Another value to these efforts to increase transparency is that it will also ensure better consistency from CRA examiners, both within agencies and across agencies. Inconsistent examiner treatment is often cited by banks as a weakness in the current examination procedures, so any certainty that can be provided to what qualifies for CRA credit that is understood by both banks and examiners is going to be very useful.

   Recommendations:

   - ✓ *LISC supports the provision in the proposed regulations which allows banks to seek confirmation from the regulators in advance that an activity will qualify, and that the regulators will be obligated to provide a response within six months*. That said, we do caution that the regulators will need to establish a system to enhance their ability to be responsive here, since there is also a presumption that if a bank does not receive a response within six months they may presume the investment will qualify. This could lead to an unintended consequence of projects that are of questionable community development value being allowed simply because the regulators couldn't reach a determination within the allotted time period.

   - ✓ *LISC also supports the regulators' proposal to post a list of illustrative qualifying activities, and updating it frequently*, as another means to provide certainty to banks that certain activities will qualify. We would recommend that before posting such lists, that the regulators first allow for a period of public comment.

   - ✓ In addition to the changes proposed to the regulations, it will also be critical that *the regulatory agencies also evaluate and look for opportunities to improve examiner training, as well as examiner guidance manuals and related documents.*

2. **The addition of consumer lending to the list of qualifying CRA retail activities will significantly crowd out housing and small business investments in LMI communities.**

   Consumer loans (auto loans, credit cards, student loans) are currently voluntary for banks to submit, but now will be included as part of the CRA evaluations. From a pure volume perspective, many banks will be able to meet their presumptive CRA ratios solely with these loans, meaning less emphasis will be placed on mortgage and small business lending in LMI communities.

Consumer loans also tend to be the ones that, if not administered responsibly by banks, can be potentially harmful to LMI borrowers by charging unnecessarily high interest rates and, in the event of missed payments, negatively impacting their credit scores. It would therefore be particularly useful for the regulators to provide more guidance to stakeholders on how they intend to apply a "performance context" review with respect to consumer loans.

Recommendation:

- ✓ To the extent consumer loans are to be included in CRA evaluations, *regulators need to provide specific parameters with respect to the products (rates and terms) that must be offered in order for such a loan to qualify for CRA credit*. For example, the FDIC's small dollar loan pilot program instituted a cap on the annual percentage rate of 36%. These banks have proven that they can offer consumer loan products that are both responsible and profitable. These are precisely the activities that should be encouraged under CRA.

3. **The list of qualifying community development loans and investments (CDLI) is far too expansive and doesn't effectively differentiate between activities that are bringing true value to LMI communities.**

The current regulations define CDLI activities as those that support neighborhood revitalization and stabilization, and also those that support economic development. The proposed regulations have dropped these two very important concepts, and instead offer up a very expansive list of qualifying CDLI activities – many of which may not provide any direct benefits to LMI families or LMI communities.

For instance, "essential community facilities" includes schools, libraries, parks, hospitals, police and fire stations; and "essential infrastructure" means roads, bridges, tunnels, telecommunications, transit, water, utilities, sewage, industrial parks, etc. However, it is not clear how the regulators intend to pro-rate credit for essential infrastructure investments (roads, water) that may only partially intersect with LMI communities; and whether this in fact won't lead to banks being able to secure at least partial CRA as a "windfall" under investments that aren't primarily focused on serving LMI communities or LMI families.

It's very easy to pro-rate a housing investment which is a mixed income property where you can easily assess which units benefit LMI persons, but is not as clear how the regulators intend to make this distinction for roads or public buildings that benefit all parts of the city. Will the financing of a road that passes through a LMI census tract be deemed a qualifying activity? Will the financing of a public facility like a fire station that is located in a LMI community qualify for full CRA credit, even though many of the services are provided to residents outside of that community?

Of additional concern, investments in municipal projects are precisely the types of activities that banks would likely invest in without the incentive of CRA financing, because they are often of larger size and are secured by local governments. As discussed further below in Part III, we believe that the new "performance ratio" proposed in these regulations will further fuel investments in these

marginally beneficial activities at the expense of smaller, high touch and more impactful community development investments.

That's not to say that all infrastructure or community facility investments shouldn't qualify. There needs to be an assessment of whether the activities benefit LMI persons or communities before they will be deemed to qualify. For example, a public or nonprofit hospital that primarily serves LMI populations should be given more favorable treatment than a private hospital that may only incidentally serve such populations. And providing financing to water and sewer systems in Flint, for example, may be deemed worthy of CRA credit; whereas a municipal water bond for a city with a much more diverse income base of residents may not.

Another activity in the CDLI bucket that is likely to crowd out more beneficial community development activities is the purchase of Mortgage Backed Securities (MBS). Purchasing MBS's has historically been a favored activity of banks seeking to meet CRA obligations, despite the fact that it doesn't deliver new capital to LMI communities, because it is easy to do and is a very liquid asset – especially compared with other investments like LIHTC and NMTCs.

Recommendations:

- ✓ *For community facilities and essential infrastructure, require that the primary beneficiaries of the project are LMI persons or residents of LMI communities.* This means that at least 50% of the customers, clients or users of the project should be LMI persons or residents of LMI communities. There should be no partial investment credit given for projects in which only a portion of the benefits are derived by these populations – though exceptions could potentially be made for projects that serve rural communities.

- ✓ *Regulators should also consider the extent to which a community facility or infrastructure project would not likely have received bank financing through typical bank channels.* Banks should be rewarded under CRA for making loans or investments that would not normally be undertaken. By contrast, most infrastructure and many community facility investments are public finance projects that are backed by municipalities, often with AA bond ratings. Banks are likely to seek out these investments anyhow, and they should not be allowed to crowd out other more valuable CDLI activities.

- ✓ *MBS activities should not be included in the CDLI bucket*. As noted, these activities generally have minimal community development value. They should be put into the retail loan bucket. Alternatively, there should be a total cap on the amount of MBS activities that can be included for CRA credit under the CDLI bucket (e.g., not more than 20% of the total CDLI activities may be MBS).

- ✓ *Only the potion of MBS loans that are provided to LMI families, or to middle income families (up to 120% of AMI) in LMI communities, should be eligible for CRA credit.* As currently outlined in the proposed regulations, a bank that purchases portfolio of MBS will get credit for the entire purchase, as long as at least 50.1% of the loans are for LMI families. Banks should not be

getting credit for loans made to higher income families, particularly those that aren't even purchasing homes in LMI communities.

4. **Providing a double weighting for certain CDLIs is well intentioned, but is not likely to sufficiently increase -- and in fact could decrease -- these favored activities.**

We are pleased that the regulators have identified certain community development investments, loans to CDFIs, and loans to affordable housing as meriting preferential treatment for CRA purposes. These types of loans and investments tend to be smaller in size and provide outsized benefits to non-profits and communities, so providing preferential treatment for those activities is warranted.

However, the volume of these investments in any given year, even with double weighting, likely pales in comparison to the volume of other loans and investments in the CDLI bucket (e.g., MBS, infrastructure, community facilities), such that the double weighting is not in and of itself a significant incentive to seek out these more beneficial loans and investments. This problem is particularly relevant with respect to grants to CDFIs.

There also continues to be a risk that if a bank is trying to satisfy a certain CDLI ratio (i.e., 2% of its deposits), that it may now see this double weighting as a way to meet that ratio with half the amount of investments it would otherwise have made under the prior CRA scoring regime.

Recommendation:

- ✓ *Replace the "multiplier" for favored activities with a requirement that, in order to receive an outstanding or satisfactory rating, the bank must invest a certain portion of its CDLI activities in these favored activities*, such that a minimum percentage of the deposits at the bank level must be provided as investments (excluding MBS and bonds not issued by state and local housing finance agencies), loans to CDFIs, or loans for affordable housing. The proposed rules currently state that a bank must invest 2% of its deposits in CDLIs in order to get an outstanding or satisfactory rating. The regulators could place an additional requirement that the bank must make at least 50% of its CDLIs (i.e., 1% of its total deposits) in these favored activities.

  We just site these metrics to illustrate the proposed approach. As noted elsewhere in this document, we cannot currently opine as to whether the 2% figure (nor the 1% figure) is an appropriate benchmark, either at the bank level or in each assessment area. We are hopeful that the data OCC is collecting will be released and will help to inform our recommendations.

- ✓ *To the extent a multiplier is retained, significantly expand the multiplier (e.g., by 10x) for grants to CDFIs*.

5. **Counting only on-balance sheet activities, as opposed to new originations, will distort bank behavior and lead to diminished community development lending.**

This approach is a significant departure from the current approach to CRA evaluations, which examines the number and amount of loans originated during an assessment period. Certain products, like mortgage loans and SBA small business loans, are traditionally sold in short order (often within 60 days of issuance), which frees up more capital for those investments. Artificially requiring longer holds in order to get credit for these activities will conflict with current practices and lead to decreased lending in these sectors.

We are also concerned that banks that carry a lot of long term debt on their balance sheet (e.g., revolving credit card debt) and have met their presumptive ratios (and are likely to do so for the foreseeable future) will have no incentive to originate new loans or investments in LMI communities.

This could be particularly problematic for the origination of new LIHTC investments, which can be on a bank's balance sheet for up to 15 years. If a bank gets "double credit" for the LIHTC investments already on its books, and the bank has its 2% CD metric with these and other long term CD products, there may not be a need for the bank to make any additional LIHTC investments for several years. We could envision a scenario where a bank ultimately decides to shutter this line of business, if it's not seen as necessary to secure a high CRA rating -- particularly since other eligible activities in the now expanded CDLI bucket are easier to finance, are more liquid and pose less risk.

Recommendation:

- ✓ *Regulators should review originations during the assessment period, not just balance sheets, as part of the CRA evaluation.* The regulators should reconsider focusing only on balance sheets, for the reasons cited above. If the regulators end up sticking with a balance sheet approach as the primary review method, then they should also provide a mechanism to ensure that the bank has not unreasonably reduced its originations in a community development product line from one assessment period to the next. We would recommend including a presumption that in order to receive a satisfactory or an outstanding score, the banks cannot reduce lending in each of the "favored" CDLI activities (i.e., investments, loans to CDFIs, loans to affordable housing) by more than 20% (and all sectors combined by more than 10%) without reasonable explanation.

- ✓ *Regulators should consider other approaches to incent positive CRA activities.* It seems that there are two benefits to the balance sheet approach: (i) it will limit bank churning of MBS loans to game CRA credit (i.e., buying a package of MBS days before the end of an exam cycle and selling it again days after); and (ii) it will encourage longer term loans to CDFIs. We support both of these objectives, but feel there are other ways to incent this behavior short of discounting new originations altogether. For example, the regulators could indicate that

performance context reviews will specifically analyze the extent to which banks are providing longer term, cheaper capital to CDFIs. And regulators could require banks to hold the MBS for a certain minimum portion of the assessment period (e.g., for six months in any given year, and for the full year of the final year of a performance review) in order to get credit for the activity.

6. **The proposed definition of affordable housing could dilute efforts to serve LMI families**.

The regulations indicate that housing which partially or primarily serves middle income families (80-120% of AMI) in high cost areas shall qualify as affordable housing. While we appreciate that in many high cost markets it is very difficult to build housing for even middle income families, the focus of CRA should remain on LMI families, given the limited resources.

Recommendations:

- ✓ *In order to qualify as affordable housing, the unit must be occupied by a family making less than 80% of AMI, with rents that are affordable (i.e., no more than 30% of income) to a family at that income level.*

- ✓ *With respect to a mixed income property, the bank should get CRA credit for all affordable units in the property provided that at least 20% of the unit are affordable;* and credit for the full investment amount if at least 50% of the units are affordable.

7. **Opportunity Fund investments need further scrutiny**

The proposed regulations provide that any investments in Opportunity Funds that are serving LMI communities should be given automatic CRA credit. While many Opportunity Zone investments are likely to be beneficial to community residents and worthy of CRA consideration, many others will likely be of more questionable value to the community (e.g., luxury housing developments; self-storage facilities, etc.). In contrast to LIHTC and NMTC -- which currently receive automatic CRA credit – Opportunity Zone investment authority is not awarded through any kind of competitive application process, nor is there a compliance regime to ensure proposed community outcomes are met.

Recommendation:

- ✓ *Investments in Opportunity Funds serving LMI communities should not automatically qualify for CRA credit.* We recommend if the Opportunity Zone investment principally serves LMI populations (e.g., an affordable housing project) or otherwise meets parameters established by the regulators with respect to what qualifies for CRA investments, then there should be a presumption of qualification. But if not, then the bank shall need to seek an opinion from the regulator in order for it to qualify, and that such determination shall be made on an expedited basis.

8. **Financial literacy and homebuyer counseling should be more targeted.**

   The proposed regulations indicate that these activities would qualify regardless of the income level of program participants. This is inconsistent with the intent of CRA.

   Recommendation:

   ✓ *Financial literacy should only qualify if the recipients of the services are LMI families; and homebuyer counseling should only qualify if the recipients are low-moderate or middle income (up to 120% of AMI) families.*

Assessment Areas *(Addresses Questions 11-13)*

LISC offers the following comments and recommendations with respect to establishing assessment areas for banks and ensuring that CRA investments flow broadly to all communities of need:

1. **The proposed revisions to Assessment Areas may not sufficiently address the current problem of CRA deserts and lack of investment in rural communities**.

   There is little doubt that the current approach to designating assessment areas and determining whether banks are satisfactorily serving these areas has been failing large parts of this country. Communities that have large concentrations of bank branches and ATMs are going to see more CRA bank activity, and communities without a large banking presence will be left further behind. This is a particularly pronounced in the LIHTC investment market, where credits in "CRA hot" markets can sell for a significant premium over projects in CRA deserts.

   Another weakness of the current model, which the regulators are trying to address through these proposed regulations, is that non-branch banks' assessment areas are tied to where their headquarters are located, meaning that there are heavy concentrations of CRA investments in states that happen to be home to internet and credit card banks.

   The proposed regulations would create a new non-metro statewide assessment area for facility based assessment areas, which we agree will be very helpful for encouraging more activities in rural communities.

   The proposed regulations would also create a new "deposit based assessment area" for non-branch based banks. LISC believes that this will be helpful in deconcentrating investments in cities in states that just happen to be home to internet and credit card banks (e.g., Delaware, Utah, and South Dakota). However, most of these banks have been reporting that their deposit bases tend to also be in the large, high cost markets (New York, Boston, LA, San Francisco, etc.) where there is already a lot of CRA competition. Creating additional assessment areas in these markets will only exacerbate the pricing differentials that we already see without providing any additional credit

flows to communities, particularly rural communities, which have not traditionally benefitted from CRA activity. Getting investments to these communities should be a primary goal of CRA reform.

Recommendation:

- ✓ *For banks with deposit based assessment areas, raise the minimum requirement for delineating an assessment area from 5% of its deposits to 10% of its deposits*. We believe that this will increase the likelihood that non-branch banks will be able to select larger assessment areas (e.g., statewide vs. city-wide), and therefore have more latitude to invest in areas that are not already relatively saturated with CRA activity.

- ✓ *Provide "statewide assessment areas" for certain community development loans and investments.* The regulators are proposing that three categories of activities receive preferential treatment: investments, loans to CDFIs, and affordable housing. We propose that for this narrow band of preferred activities, a bank may count the investment as being in its assessment area as long as the investment is made in the state in which it has one or more assessment areas; provided that the bank had received a satisfactory score or higher under a prior review. Under this scenario, for example, a bank whose sole assessment area is the city of San Francisco will be able to claim assessment area CRA credit for a LIHTC investment in Visalia.

- ✓ *Regulators should provide other incentives for banks to invest in CRA deserts, and particularly in persistent poverty rural communities.* Regulators should publicly identify which communities have historically lacked CRA credit opportunities, and provide that investments in such communities shall be viewed favorably with respect to performance context reviews.

2. The proposed regulations do not directly address treatment of investments in national, regional or statewide entities or funds.

Under the current CRA regulatory regime, banks tend to require CDFIs and fund managers to tie the banks' investments to certain specific projects that align with their assessment areas; which drives up transaction costs and concentrates investments in CRA hot markets. The proposed regulations didn't clarify how investments in funds which may overlap with one or more of a bank's assessment areas will be treated.

Recommendation:

- ✓ *CRA regulations should establish clear standards for qualifying investments that are made into funds.* Regulators should analyze the totality of assessment areas in a bank's footprint and classify the bank's principal service area as either national, regional, statewide or local; and assure banks that they will receive CRA credit for making investments in favorable community development activities (i.e., CD investments, loans to CDFIs or loans for affordable housing) in any CDFI or fund that aligns with their principal service area, even if the project is not located in a localized assessment area.

For banks with multiple assessment areas in the geography, the investments could be spread among the assessment areas based upon their relative share of the bank's deposits.

<u>Evaluating Performance</u> *<u>(Addresses Questions 14-19)</u>*

<u>Global Comment</u>: The regulations propose, as the primary metric for evaluating bank performance, a ratio that measures the total volume of a bank's on-balance sheet CRA activity against the total dollar value of bank's deposit accounts; both at the bank level and in each of the bank's assessment areas. While we appreciate that this may provide some level of transparency and objectivity to banks, examiners and community stakeholders, these positive outcomes do not in any manner outweigh the harm that will be caused to the community development financing sector by adopting the performance metric as outlined in these proposed regulations. ***We therefore strongly urge the regulators not to pursue the primary performance metric as outlined in the proposed regulations.***

Supporting arguments to the above, and additional comments and recommendations regarding performance evaluation, are provided as follows:

1. **The performance metric proposed by the regulators will likely cause banks to seek out large scale transactions in high cost markets at the expense of smaller transactions in areas already underserved by banks.**

   Because the regulators will be examining the total dollar amount of activities as a portion of the total deposits, banks will view the largest dollar sized transactions as the easiest path towards fulfilling their CRA obligations. Furthermore, these transactions are likely to be in the highest cost markets, which could lead to even further inequities between the CRA hot markets and those that are not receiving CRA investments.

   Of further concern, as noted earlier, the proposed regulations propose including several high dollar volume activities (e.g., community facilities, infrastructure, and purchases of MBS) under the CDLI category even though they may have very little impact on the lives of LMI persons and communities. These investments will certainly be more attractive to banks seeking to maximize their ratio. A bank could in theory finance a major infrastructure project or a hospital, buy some qualifying MBS's, and quite easily fulfill its 2% requirement without doing any mission-based originations.

   <u>Recommendation:</u>

   ✓ *<u>The regulators should consider using the total number of transactions, not just the total dollar value of loans, as an additional consideration in the evaluation of bank performance.</u>* In this manner, small dollar consumer loans, microenterprise loans, single family loans in low-cost markets, grants to non-profits and many other small but powerful activities will be put on a more equal footing with high dollar transactions.

2. **Without a separate "investment test" for large banks, banks will have a diminished appetite for investing in LIHTC, NMTCs and historic tax credits; as well as making grants to non-profits.**

   Tax credit investments are generally of longer terms, are more complex and are less liquid than debt financing. The investment test, coupled with the fact that banks understood that investments in LIHTC and NMTC are treated more favorably under a performance context review than MBS, are the primary drivers behind these investments. Approximately 85% of LIHTC investors are CRA-motivated, and close to 100% of NMTC investors are -- meaning any changes to CRA evaluation of these activities are likely to have outweighed impacts on those markets. We have heard from at least one major bank that is a significant LIHTC investor that the bank can currently achieve its presumptive outstanding metric (both the 11% and the 2% subset) without any investments in LIHTC, which raises a question of whether they will be motivated to do so without the separate investment test or a robust performance context review.

   In addition, grants to non-profits are a small compared to banks' lending activities, but have an outweighed role in the community development funding ecosystem, including supporting CDFIs. These grants currently count under the investment test, and are less likely to be offered without a separate investment test.

   Recommendations:

   - ✓ *The regulators should evaluate and stress test the impact that eliminating the investment test will have on the tax credit markets before making this rule final*, and also release to the public the data it is currently collecting so that we may conduct a similar analysis.

   - ✓ As noted previously*, regulators should indicate that certain activities (LIHTC investments, NMTC investments, grants to non-profits and CDFIs) shall be deemed to automatically satisfy elements of a performance context review*. This will incentivize more of these activities within the CDLI bucket, since banks will have certainty at the time of investment that they will satisfy the otherwise qualitative performance context review.

3. **The performance metrics as described in the proposed regulations do not clarify how the "performance context" review will impact the overall score.**

   The current regulatory regime includes a requirement that examiners consider "performance context" when determining whether a loan or investment qualifies; including whether it is innovative or complex and responsive to the needs of the communities.

   The proposed regulations continue to reference performance context, but no longer responsiveness or innovativeness. It is not at all clear in the proposed regulations what will be reviewed with respect to any given loan or investment, much less how this qualitative analysis will be reflected in an otherwise quantitative metric. For instance -- Is the bank required to provide a narrative discussion of its activities across various product lines? If so, what information will need

to be provided? And how are regulators expected to review this information across banks to achieve consistent review results?

Granted, many of these same challenges exist in the current scoring system. But if CRA is to be modernized and also allow for this performance context component – which we believe is a critical element of the current review procedures – then the revised regulations should certainly attempt to address these questions in a much more detailed manner than they currently do.

Recommendations:

- ✓ *The regulations need to provide significantly more information on what will be considered as part of the performance context review, and how this will impact the score.* The regulations reference that a form will be developed for banks to submit that will capture performance context. This form should be made available for public review and comment prior to exam cycles beginning.

- ✓ *Certain preferred activities should deemed to automatically pass a performance context review.* One of the criticisms of performance context reviews is that they are not by their nature quantitative exercises, but rather require subjectivity on the part of examiners. Some of this subjectivity could be mitigated if the regulators would post a list of preferred activities that would automatically be deemed to meet the requirements of a performance context review. Examples of activities that should be deemed to automatically meet the performance context standards could include, for example: NMTC and LIHTC investments; grants and long term (e.g., 7 years or longer) loans to CDFIs and non-profits; small dollar consumer loans with rates below 36% APR; microenterprise loans; loans to non-profit facilities; etc.

4. **The minimum requirements needed to secure a "satisfactory" or "outstanding" score may need to be more robust.**

The requirement that at least 2% of the metric must be comprised of CD loans and investments is likely shallow to begin with; but even more so when one considers the breadth and size of other activities that qualify as CDLI. The problem is we can't say for certainty whether this 2% metric (or the 11% metric) is appropriate, either at the bank level or in each assessment area, without having a baseline understanding of whether or with how much cushion banks are likely to satisfy these measures.

Recommendations:

- ✓ *The regulators should review and release the data it has collected from banks.* It should use this data to revisit as necessary the presumptive ratios, and also put the new metrics out for public comment in a new proposed rule. Specifically, community stakeholders will need to analyze current bank lending across all of the major product lines, including the percentage of each that are in LMI communities or with LMI borrowers, so that we can identify a proper ratio to propose.

- ✓ *The regulations need to be strengthened to ensure accountability across assessment areas.* As currently proposed, a bank could secure a satisfactory or outstanding rating even if they are significantly under-performing in 49% of their assessment areas. There needs to be some accountability across most if not all assessment areas. This 49% figure should be raised to at least 75%, if not higher.

- ✓ *There should be some gradation such that an outstanding has a higher bar to meet than a satisfactory.* The proposed regulations provide the same bars (11%, 2%) to secure either an outstanding or a satisfactory. It would make sense to create different bars for outstanding and satisfactory scores.

5. The demographic and peer comparators need to be more robust.

The proposed regulations establish a second analysis, to accompany the primary ratio, which will factor into the scoring. As proposed, in order to achieve a satisfactory score, a bank must generally either: (i) demonstrate that its percentage of retail lending for LMI borrowers is at least equivalent to 55% of the percentage of LMI households in the assessment area ("demographic comparator"); or (ii) demonstrate that the percentage of loans to LMI borrowers is at least 65% of the percentage of loans issued by all banks operating in the assessment area ("peer comparator").

LISC appreciates the concept here and encourages this type of analysis to be used as part of the evaluation protocols. However, the thresholds proposed in the proposed regulations strike us as too low to encourage increased bank participation in these products. For instance, being able to provide 35% fewer loans that your peers and still be deemed to be "satisfactory" strikes us a very low bar.

Recommendations:

- ✓ *The regulators should release data to justify the selected thresholds.* As noted above, these preliminary thresholds strike us as far too conservative and would discourage new investment activities in many markets. It may also be prudent, based on what the data shows, to incorporate different standards in different markets. Stakeholders will be able to provide more fulsome comments after reviewing the appropriate data.

- ✓ *The proposed rules should create different standards for satisfactory and outstanding scores.* As with the primary metric, there should not be one standard established for both satisfactory and outstanding. A bank should have to stretch further to get an outstanding score.

6. **Without a separate services test, banks are not likely to continue providing critical support services to non-profits and community residents.**

   These activities are difficult to quantify and, even if you could (e.g., salaries of staff time donated to non-profit services) would be infinitely small compared to the loan and investment activities that will be plugged into the denominator of the ratio that they would be inconsequential.

   Recommendations:

   ✓ *Indicate that the performance context reviews will require banks to demonstrate that they are providing these services.* No bank should be able to receive an outstanding or satisfactory score without sufficiently demonstrating that they are providing such essential services in each of their assessment areas.

7. **The regulations do not address how CRA scoring will be modified under the new evaluation regime.**

   Most CRA stakeholders would agree that the current rating system – under which 98% of all banks are rated as either outstanding or satisfactory – is not at all instructive with respect to each bank's performance. Any proposed regulations seeking to modernize CRA should also be proposing ways to modernize the outdated scoring system.

   Recommendations:

   ✓ *The regulators should post a new proposed rule that provides significantly more information about CRA scoring and rating protocols.* Potential ideas the regulators may want to consider include:

   (i) Providing a much larger base score (perhaps on a scale from 0-100, rather than 0-24);

   (ii) Offering intervals within current rating levels (e.g., "high satisfactory, "satisfactory", and "low satisfactory");

   (iii) Providing separate scores and ratings for each of retail lending and CDLI lending, and indicate how those will factor into an overall score (e.g., the CDLI lending score will comprise 50% of the overall score).

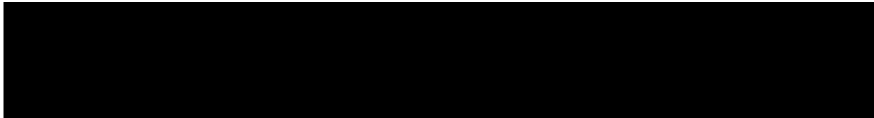
   (iv) Describing more clearly how a banks' performance under related consumer lending laws could impact its CRA scores.

CONCLUDING COMMENTS

The community reinvestment act has been by far the most effective tool for delivering capital to underserved communities and organizations that are dedicated to serving these vulnerable communities. The revisions to the CRA evaluation process that are proposed in these regulations will substantially and irrevocably harm this distribution system. The regulators should consider all of the comments provided in response to this proposed rule thoughtfully, and release a subsequent proposed rule, as well as the data submitted by banks, so that stakeholders can be more fully responsive to the proposals before they are established in a final rule. The regulators must take the time necessary to get this correct. There is too much at stake for all communities.

Thank you for consideration of our comments.

Sincerely,



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