Housing Assistance Council
1025 Vermont Ave., N.W., Suite 606, Washington, DC 20005, Tel.: 202-842-8600, Fax: 202-347-3441, E-mail: hac@ruralhome.org

Web site: www.ruralhome.org

April 8, 2020

The Honorable Joseph Otting
Comptroller of the Currency
Office of Comptroller of Currency (OCC)
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Re: OCC-FDIC Joint Notice of Proposed Rulemaking Regarding the Community Reinvestment Act Regulations, 12 CFR Parts 25 and 195
Docket No. OCC-2018-0008

Dear Comptroller Otting:

The Housing Assistance Council (HAC) appreciates this opportunity to submit comments to the Office of the Comptroller of the Currency (OCC) - Federal Depository Insurance Corporation (FDIC) Joint Notice of Proposed Rulemaking (NPR) regarding the Community Reinvestment Act (CRA). Through this NPR, the OCC and FDIC are seeking comments on their proposal to modernize CRA.

HAC is a national nonprofit organization that helps build homes and communities across rural America. HAC also serves as a community development financial institution (CDFI), delivering financial services and loan products to low-wealth communities. HAC has supported and advocated for CRA since its inception and has encouraged its implementation in often overlooked rural communities. In 2016, HAC produced a comprehensive three-part research series entitled *The Community Reinvestment Act in Rural America*.[1] This series highlighted both the limitations associated with CRA and examples of its successes in rural communities. With nearly 50 years of experience supporting and developing affordable housing across rural America, HAC is uniquely positioned to comment

[1] Housing Assistance Council reports on CRA in rural areas, as of 2/11/2020, can be found at the following url: http://www.ruralhome.org/sct-information/mn-hac-research/mn-rrr/1090-rrr-cra-in-rural-america

on CRA's role in rural communities and how the proposed changes might affect those communities.

HOUSING ASSISTANCE COUNCIL'S GENERAL COMMENTS ON CRA MODERNIZATION

First and foremost, the Housing Assistance Council unequivocally supports the Community Reinvestment Act and what it stands for. In any effort to modernize or modify CRA, it is imperative to fully consider the impact of those modifications and to ensure that CRA continues to build upon its unparalleled legacy of expanding access to financial products and services. HAC believes CRA can be modernized and improved, but it is important to acknowledge that CRA has been responsible for more than $1.5 trillion in capital investments to underserved communities.[2] Without CRA, many communities would lack access to capital, revitalization efforts would have not occurred, and disinvestment would be more common. CRA should build upon its established platform for improving communities' access to credit, not jeopardize the ethos, intent, and effectiveness of this vital institution.

HAC also knows that CRA does not work in rural America as well as it should. HAC's comments in response to the proposed NPR are focused on making sure CRA fulfills its yet unrealized potential in rural communities currently, and in any modernization effort.

For A Multitude Of Reasons, The Housing Assistance Council Does Not Support The Proposed NPR As Presented.

HAC understands the need for and the importance of CRA modernization. Regulators have not undertaken major changes to CRA in several years. HAC believes the assessment of CRA is important and appreciates the OCC and FDIC's work on this proposal. HAC also applauds efforts and ideas in the plan to improve CRA's reach and effectiveness in rural communities. These proposed improvements, however, are far outweighed by a considerable number of ill-conceived and unsubstantiated aspects of the plan that run counter to the intent, value, and effectiveness of CRA. As such, the Proposed Rule is not developed to a level where the Housing Assistance Council can support it in its current form.

First and foremost, the NPR lacks adequate research and data to substantiate many elements of the plan. Other elements fall woefully short of the goal to expand the impact of CRA in often underserved communities. HAC is concerned that major changes, such as moving to a metric-based examination, would have deleterious and counter-productive

---

[2] National Association of Affordable Housing Lenders and the Center for Community Lending. 2016. In Defense of the CRA: Making the Case for Community Investment. Accessed 10/30/18 at the following url: http://naahl.org/wp-content/uploads/2016/02/In-Defense-of-CRA-Report.pdf

consequences and would limit public involvement in the process – a central tenet of CRA. Using dollar values as a measure would undoubtedly have a negative impact on rural market activity. Mortgage loans are twice as large in dollar value in suburban and urban communities compared to rural areas and thus inherently limit incentives for CRA activity under this proposed dynamic.[3]

HAC supports the NPR's efforts to expand CRA consideration to include activities in Indian Country and other low- or moderate-income, distressed and underserved rural areas when they are not part of a lender's designated assessment area.

Currently lenders are limited because they primarily receive CRA consideration for activities occurring where they have a physical presence.[4] The NPR's plan – which would allow lenders to receive credit for qualifying activity that occurs in Indian Country and any low- and moderate-income, distressed, and underserved areas, regardless of assessment area designation – is a positive effort to expand access, but this alone will likely not be enough of an incentive to increase investments in these communities.

Chronically underserved communities are often the hardest to reach where investment rarely occurs. Many of these communities are in "high-need" — predominantly rural regions like the Lower Mississippi Delta, Central Appalachia, Border Colonias and Native American Lands. Serving these communities, particularly if they are not in a lender's assessment areas (facility or deposits), essentially requires a lender to go above and beyond normal practices to find and support credit worthy projects and efforts. To ensure banks undertake such investments, CRA will in turn need to go above and beyond in rewarding banks that do this with possibly an additional examination rating or some form of regulatory relief[5] for future bank applications. An incentive to highlight and specifically reward lenders when they engage in the extra efforts necessary to serve high-need regions is suggested. Simply allowing a lender to receive CRA credit alone is not likely enough of an incentive.

A major goal of CRA modernization efforts should be to expand upon assessment area investments/activity to include more high-need region investments/activities. These efforts should not replace a planned and worthy service area CRA-qualifying investment with a similar investment in a high-need region. An additional incentive could help address

[3] ACS 2018 One-Year Estimates of home values: $251,700 median Outside Metropolitan Areas (suburban/urban) and $136,500 Inside Metropolitan Areas (rural).
[4] State "primarily" because most assessment areas are defined by brick-n-mortar office locations, but lenders can also include areas where a "substantial" amount of activity occurs.
[5] Willis, Mark. 2006. It's the Rating, Stupid: A Banker's Perspective on the CRA. Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act. Article accessed 10/30/18 at the following url: https://www.frbsf.org/community-development/files/its_rating_stupid1.pdf

this scenario by rewarding increased CRA activity that does not simply substitute for facility-based assessment area efforts. The NPR does not adequately address these factors and HAC views this as a missed opportunity.

The Intent of CRA Is Being Diluted with The Proposed Expansion of "What Counts"

The NPR expands and attempts to more clearly define what types of activities receive CRA consideration. The Housing Assistance Council has significant concerns that expanding options may simply result in counting activities that lenders already engage in, not increasing the overall activity, rather diluting CRA in many communities. Community development activity should primarily benefit lower- or moderate-income households. As presented, the NPR could result in less investment in areas of concentrated poverty and need — the very communities for which the CRA was created to help ensure received investments.

More Data and Information Is Needed to Inform Sound CRA Policy and Strategy

HAC supports the collection of new data for CRA, but it will be largely ineffective if the data are not made publicly available in a usable format. Information from the entire CRA process, including statistical software code used to derive examination thresholds, lender assessment areas, and counts of retail and community development loans at the census tract geography, should be publicly available and in a usable, electronic format. The currently available pdf versions of the final CRA examination write-ups and large lender disclosure act data are not in formats which are easily analyzed by public stakeholders. Increased access and transparency throughout the entire process would encourage public involvement, which is important if the CRA is to be truly effective. A greater level of information also benefits financial institutions because transparency safeguards against unsubstantiated claims and contradictions. The NPR does not provide substantial assurances that this level of data and information provision will be provided. The primary data related concern in the NPR appears to be on increased costs incurred by lenders. Yet if data are not made fully available to the public, the NPR has missed a substantial element of any modernization effort to improve transparency.

A Coordinated Effort with All Three CRA Regulators Is Imperative for Any Viable CRA Modernization

The Housing Assistance Council is disappointed that the OCC and FDIC did not include the Federal Reserve as part of this NPR. Uniform implementation and oversight is critical for an effort as far reaching and important as CRA. The Federal Reserve Board recently compiled and made public comprehensive CRA data and put forth innovative ideas, such as creating a bank dashboard so lenders could see how their CRA activities would rate. Similar information would have greatly bolstered the current OCC-FDIC NPR. Additional coordination with the Federal Reserve Board would allow for improved collaboration and uniformity. The current approach sews confusion and unnecessary complexity into what should be a unifying and appropriate modernization of CRA.

CRA Modernization Is Worthy of a Thorough Process Requiring More Time

Given the health and economic catastrophe created by the COVID-19 pandemic, there should be an indefinite suspension of the CRA comment period as numerous groups have called for already.[6] Economic activity in the U.S., and much of the world, has ground to a halt. The current circumstances require the OCC-FDIC suspend the comment process until the U.S. can effectively address the pandemic and ensure public safety. If the current deadline is maintained, it is certain that all voices will not be heard, and the process will be incomplete. The CRA is too important for this to occur. CRA modernization should be conducted correctly — regardless of the timeline. Given the present circumstances, this cannot be achieved with the current comment period deadline. The comment period deadline, which was initially proposed for only 60 days, should have been at least 120 days even under the best of circumstances.

Assessment Areas Is the Most Important CRA Issue For Rural America

HAC agrees that CRA needs review and modernization to address structural elements that limit its effectiveness, particularly in reaching rural communities. There has not been a substantial change to the CRA since 1995. Many elements of financial access have changed during that 25-year period and this will only continue at a faster pace as we go forward in the future. Banking activities, which once occurred in brick-n-mortar locations, can now be done with the swipe of a finger on a cell phone. The number of bank branches, as a result, has been declining for years — with the reduction totaling more than 5,000 offices, or approximately 6 percent of all branches, since 2016.

Likely all can agree that the CRA, which since its inception has largely used bank office locations to determine lender assessment (AKA "service") areas, needs to change to reflect the shift. The method is not as simple, however, because bank branches remain important particularly for less financially savvy customers. Findings from the FDIC's recent National Survey of Unbanked and Underbanked Households reveals that 38 percent of households outside metropolitan areas accessed their accounts through a bank teller, and nearly half of outside metropolitan banked households accessed a teller more than 10 times a year. Both levels of teller utilization are substantially higher than in more urbanized areas. The challenge is to preserve the importance of these locations in the CRA framework while at the same time expanding assessment areas, so they reflect the locations of a lender's customer base.

The CRA's current structure is not conducive to encouraging investment in areas with few bank offices. Banks received CRA credit for engaging in activity in their designated assessment area. The idea is that a lender is obligated to serve all parts of their assessment areas, particularly census tracts that are low- and moderate-income or distressed and underserved rural (outside metropolitan areas). A problem is that some of the more economically distressed places, particularly rural high-need regions like Native American Lands, are often not part of a large bank's

[6] The National Community Reinvestment Coalition called for an indefinite suspension March 24, 2020: https://ncrc.org/national-and-community-groups-call-on-fdic-occ-to-suspend-cra-rulemaking-for-covid-19/

assessment area. The very areas that likely need investment in many cases lack the necessary physical contact with a lender.

A Metric-Based Approach, In Addition to Undervaluing Small Dollar Activity, Limits Public Involvement.

The shift to a metric-based evaluation, with at least its partial focus on dollar amounts, is likely to penalize and limit activity in many rural areas because loans and other CRA related activities would involve fewer dollars. This would be particularly true in rural, and in particular high-poverty rural regions where costs are low reflecting poor economic conditions.

Any move to a metric-based approach also has the potential to limit community involvement. Once a formula is set and the calculation is made, community member input will likely be muted. The formula becomes the objective arbitrator, but it is impossible for a formula to capture the complexity and nuance involved in serving a specific community. Community input is vital to ensure that the financial needs of all people and neighborhoods are being met. The current OCC-FDIC proposal should ensure that this vital element is protected and enhanced, but it proposes the contrary. Any CRA modernization should empower and involve the public in the process by encouraging non-profits to work with communities and banks to ensure financial services reach all community members. Making data and information more publicly available would help with the process. But simply streamlining the regulation by turning the CRA score into a single number will not accomplish this goal.

HOUSING ASSISTANCE COUNCIL RESPONSES TO SPECIFIC QUESTIONS IN THE NPR

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?***

   The proposed criteria for determining which activities would qualify for CRA credit are in one sense clear. Clarity in this instance, however, is not completely consistent with CRA's overall objective. For example, it is not clear how upgrading jumbo video screens at sports stadiums will improve access to finance for lower- and moderate-income communities. Furthermore, high interest rate, small dollar loans with onerous terms are not consistent with investments that stabilize communities, nor are they consistent with the intent of CRA.

   It is uncertain whether this new approach will encourage new activity or simply count activities that would otherwise have been conducted. No research is cited to support these claims. If these changes result in counting as CRA eligible activities which already would have been occurring and at the same time set examination ratings based on the current approach, then CRA related activity will not necessarily increase, and an opportunity will be missed. Little information is provided about what the test thresholds will be based on. The NPR generally refers to some internal research and percentages. More information and transparency are needed in this process.

As with any policy, there are always concerns about unintended consequences. For example, the NPR proposes counting as eligible community development projects that "partially" but not "primarily" impact low- and moderate-income residents. An unintended consequence of this could be fewer investments in areas with primarily lower- and moderate-income residents — the very types of communities that CRA was intended to help. While the NPR proposes using a pro-rated scoring system to ensure similar numbers of low- and moderate-income residents are impacted, this would not address the fact that investments would now be spread out over larger, more affluent areas and neglect the most high need neighborhoods. The CRA currently states the benefits must primarily go to low- and moderate-income individuals.[7] The idea of requiring an activity to "primarily" benefit low- and moderate-income residents is a central tenant of CRA.

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

The Housing Assistance Council has identified an area where the NPR could create a disincentive for rural activity. HAC is concerned that the low- or moderate-income retail loan requirement might have an adverse impact on rural areas. HAC understands and supports all efforts to ensure CRA credit involves activities that benefit low- and moderate-income households and communities. We understand the need to make sure that financing for relatively high-income households, even if they are in a low- or moderate-income area, is not supported by CRA. The regulator's concern regarding gentrification are warranted and the CRA was not designed to support such activity.

In many rural areas, however, the area median income is so low that reaching the low- and moderate-income status would be nearly impossible. The CRA's 2005 regulatory change, which resulted in the creation of outside metropolitan area distressed and underserved census tracts, was implemented to address the issue of extremely low median incomes in rural areas.[8] The same problem would apply if the determination of a CRA acceptable

[7]Congressional Research Service. 2019. The Effectiveness of the Community Reinvestment Act. Report R43661, as of 2/12/2020, found at the following url: https://fas.org/sgp/crs/misc/R43661.pdf
[8] Grover, Michael. 2005. 2005 Revisions define new CRA-eligible geographic areas. Federal Reserve Bank of Minneapolis. As of 2/12/20202 this article is found at the following url: https://www.minneapolisfed.org/article/2007/2005-revisions-define-new-craeligible-geographic-areas

activity focused on area median income. In rural areas, acceptable activity may take the form of short-term, high costs loans, to extremely low-income borrowers.

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 these criteria be?***

   HAC views the NPR's efforts to expand CRA related activity in Indian Country as a positive. For years, many Native American Lands have been overlooked and struggle to receive financial investments.

   Native American Lands, along with other rural high-need regions, are among the hardest communities to reach. In asking lenders to go above and beyond the standard requirement and serve these areas, where few will have actual offices, there must be some additional benefit. HAC noted in its comment to the OCC's ANPR on modernizing CRA that changes, such as adding an additional CRA rating category or providing some regulatory relief for those who serve these communities outside of their primary assessment area, would benefit these communities. Such enhancements put a real value on these activities, above and beyond what a lender might receive from engaging in CRA related activities in another area. Lenders should still be required to serve their primary (facility-based) assessment area, but if they do meet their primary service area need at a high level (satisfactory or outstanding) then they could receive additional credit for work in outside service area low- or moderate-income, distressed or underserved census tracts.

   If no additional incentives are provided, it is likely that increased CRA-related investment in Indian Country or rural high-need regions would only occur in the more affluent areas of these communities.[9] CRA modernization should focus on low- and moderate-income neighborhoods which will likely not be addressed without additional incentives.

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?***

---

[9] Randall Akee. 2009. Checkerboards and Coase: The Effect of Property Institutions on Efficiency in Housing Markets, The Journal of Law & Economics, 52(2):395-410.

The Housing Assistance Council is encouraged by the NPR's attention to rural farming communities and the potential to benefit small farmers. Globalization along with a shift toward large corporate farms has deeply impacted many smaller-scale farming operations and rural agricultural communities.[10] Contrary to popular perception, family farms still comprise a majority of U.S. farms. However, large scale operations account for the vast majority of U.S. value of production.[11] Conversely, small family operations comprise just 16 percent of production.[12]

Increasing the amount of lending involving farms could potentially increase investments in rural communities. HAC's primary concern is that the new small farm loan thresholds not benefit larger corporate agricultural operations. The Housing Assistance Council believes more information is necessary to better understand the potential impact of increasing the small business and small farm revenue thresholds.

Approximately 79 percent of all farm sales during the 2012-2017 period involved a farm valued at more than $1 million with somewhere less than half of these falling within the limits of the proposed threshold.[13] The proposed change could provide more CRA eligible farm loans; though, its impact may be offset by the possibility that many of the households involved would not be low- or moderate-income. Most farms – 96 percent – are valued at less than $1 million, limiting the number of potential new cases which adds another element to consider. All efforts should be made to ensure these changes substantially benefit low- or moderate-income and distressed and underserved communities.

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?***

HAC supports increased information provision in CRA and a regularly published illustrative list of activities that are CRA eligible would be a benefit. Making the list

[10] Hoppe, Robert, and David E. Banker. *Structure and Finances of U.S. Farms: Family Farm Report*. Washington, D.C.: USDA Economic Research Service, Family Farm Report, July 2010. http://www.ers.usda.gov/media/184479/eib66_1_.pdf.
[11] USDA, Economic Research Service. *Census of Agriculture Shows Growing Diversity in U.S. Farming: Findings from the 2007 Census of Agriculture.* Economic Research Service. Press Release. Feb. 4, 2009. http://www.usda.gov/wps/portal/usda/usdahome?contentid=2009/02/0036.xml&contentidonly=true
[12] Ibid
[13] USDA. 2019. Census of Agriculture Highlights: Farm Economics. Brief accessed, 2/14/2020, from the following url: https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Economics.pdf

available for public comment through a Federal Register publication would be preferable. Regardless, there should be a formal process whereby the public is solicited for responses and a record can be documented over time. The information provision should be an iterative process which is made through dialogue. The list should be updated as often as possible.

6. ***The proposal includes a process for updating the illustrative list on an ongoing basis through submission of a form to seek agency confirmation. The agencies considered an alternative process where an agency would accept all requests from banks for confirmation that an activity is a qualifying activity, aggregate these requests, publish the list of requested items in the Federal Register for public comment and feedback, and update the list following this process once every six months. What process, including any alternative process, should the agencies adopt to update the illustrative list of qualifying activities?***

   Please see HAC's answer to question #5.

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?***

   HAC believes certain types of loans and credit are more valuable than others. Specifically, HAC places the greatest value on affordability and loan products which do not burden or hurt the borrower. High-cost lending, which usually undermines economic stability, does not represent community investments that HAC believes promote long-term revitalization and growth. We are concerned that the increased acceptance of small dollar loans, such as credit card debt, revolving credit plans and automobile loans, may lead to adverse consequences for borrowers. If the ability to engage in, and receive credit for small dollar loans, crowd out prime rate lending that lenders would have otherwise engaged in under the current CRA process, then a negative impact could occur for a community.

   HAC does not dispute the need for some high-cost, short-term, lending, and we understand that such lending is better achieved by well-recognized and fully regulated lenders rather than less-regulated entities. We are, however, concerned that such loans can lead to revolving lines of credit and increased risks of default. As recently as 2013, federal bank regulators discouraged such activity and rarely gave

CRA consideration for it. Lenders earning CRA credit for activities that may have extremely high costs, fees, and default rates is problematic. An important factor in any discussion of multipliers is that more time and consideration than is found in the NPR should be given to this issue. There should be a solid rationale for the final system that is based on research and evidence.

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 for 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 the multiplier would be applied)?***

   Multipliers are difficult to use unless the specifics underlying why they were chosen and the level for which they are set is fully explained. More research and literature are needed to explain why this activity is being signaled out and why it is now valued at this level. In other words, does evidence suggest that this activity will result in twice the tax base impact over its lifetime compared to another activity, thus justifying the multiplier? We understand, for example, why regulators would encourage small nonprofit, small-dollar community investments but why would this activity then be weighted by 2 specifically? The NPR does not provide enough information, making it impossible to determine if a multiplier will result in an optimal level of investment.

   HAC also understands wanting to ensure activities promoting affordable housing occur, thus giving extra weight to them. We believe the concern over a multiplier increasing small dollar activities will be unnecessarily minimized by the importance of large dollar activities in the proposed CRA calculations. Lenders will likely seek out large dollar projects since the proposed CRA examination, at least in part, measures impact by dollars. Lenders might try and put together several small dollar projects to maximize multipliers, but the general tendency will likely be to include as many large dollar activities as possible.

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. Alternatively, CD services could be valued based on standardized***

compensation value for the banking industry or occupation type. For example, the median hourly compensation value for the banking industry is approximately $36, when calculated using Bureau of Labor Statistics data. Would using standardized compensation values reduce the burden associated with tracking CD services while still appropriately valued CD services? If so, how should the agencies establish the standardized compensation values?

Any payment scale should truly reflect the impact of the activity. For example, the value of a few hours of assistance organizing an affordable housing project, from a local bank's staff in a rural area could be greater than the standard hourly wage it would receive in CRA consideration. The standard pay scale will not necessarily reflect the importance of the assistance and certainly not the ultimate activity resulting from the assistance. The pay scale would just be summing of an hourly worker wage. The same criticism can be applied to community development/investment projects in general. Rural projects will almost always be valued lower than urban and suburban projects if financing costs alone are considered. The importance to the community, however, can be much greater.

Proposed Assessment Area Changes

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?***

    HAC understands the importance of having access to financial services and the role it plays in a community's vitality. Access to affordable retail banking services is an important issue for sparsely populated rural communities with declining and older populations and declining economic conditions. HAC is concerned that this proposal no longer includes the services test portion in proposed CRA exams. In its place is an effort to, at least at some level, consider the level of retail banking services offered. We believe this is important — banks need to be evaluated on the degree to which they provide affordable retail lending services, particularly to those living in low- or moderate-income neighborhoods. However, more information and detail about how such a consideration might make up for the current services test is needed.

An example of how to operationalize the value of retail banking services would be to consider the percentage of interest-bearing accounts a lender provides in low- or moderate-income, distressed, and underserved areas.

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

No. The specifics underlying delineation of assessment areas are not fully developed or supported by outside research. For example, what is the basis for making the threshold for deposit-based assessment areas 50 percent? If a lender receives 50 percent or more of their deposits in areas where they do not have a bank branch, they will be identified as "depository assessment areas." This may very well be the appropriate threshold to use for correctly identifying cases where a bank's assessment areas can only be drawn to accurately reflect their service area if deposits are considered (internet banks). With the information provided in the NPR, however, it is unclear what the criteria is based on. Given the relatively small share of deposits most rural account holders maintain, it is unlikely that this change would greatly increase rural coverage.

The same limitation exists with the proposal to adjust CRA ratings for the number of branches located in low- and moderate-income, distressed or underserved census tracts. HAC is not disputing the underlying rationale for trying to ensure CRA ratings consider where a lender operates branches, giving extra value to maintaining offices in low- or moderate-income, distressed, or underserved neighborhoods. But the multiplier value chosen is not supported by a reference or citation.

12. ***The proposal would allow banks to choose how broadly to delineate their facility-based assessment areas, but it would require banks with 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 area at the smallest geographic areas where they receive five percent or more of their retail domestic deposits. The requirement to designate deposit-based assessment areas would impact Internet banks that do not rely on branches or ATM facilities to collect deposits as well as traditional banks that, in addition to their branches and ATM facilities, collect a significant portion of their deposits online outside of their branch and ATM footprint. 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 is 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 thresholds be implemented? If so why?

HAC understands that given the changes in banking, particularly the shift to online and mobile banking, CRA must modernize to ensure that bank assessment (service) areas accurately reflect where banks conduct business. While this issue likely impacts a relatively small number of lenders today – namely internet banks – it will be an important concern that needs to be addressed in the long term. It is reasonable to believe that the 50 percent threshold would identify most internet-based banks. Requiring these institutions to identify areas that are tied to deposit locations would be an improvement over the current branch/office-based approach.

As more lenders shift to online and mobile banking, the Rule may become problematic though. There are two primary concerns with this threshold approach and they primarily involve large-asset lenders. For many large asset/deposit lenders, 40 percent of deposits (which falls below the 50% or more threshold) constitutes a large amount of activity. From the proposed threshold, a lender could exclude from its assessment area places where it has thousands of customers, representing up to 49 percent of its total account holders.

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 (although banks with branches in those areas would be required to delineate facility-based assessment branches in those areas would be required to delineate facility-based assessment areas and banks may receive credit from qualifying activities outside of their assessment areas conducted in these areas or states). Does this framework provide enough 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 or county equivalent in which they have at least a certain percentage of the deposit markets share---regardless of what percentage of the bank's retail domestic deposits are derived from a given area—and, if so, what should the percentage of the deposit market share be?***

The NPR framework does not provide enough of an incentive for banks to conduct qualifying activities in less populous areas. HAC supports efforts that encourage CRA-related investments in low- and moderate-income, distressed, and underserved areas — be they rural, suburban or urban. Allowing lenders to receive CRA credit for activities in areas outside of their facility-based service area is likely an inadequate incentive. Currently, nearly all lenders pass their CRA exam. The NPR proposes expanding CRA to count more types of activities toward meeting that CRA obligation yet does not strengthen ratings or reviews. In the current and proposed system, lenders simply do not have an incentive to go beyond their assessment areas.

The Housing Assistance Council recommends incentives above and beyond the current approach presented in the NPR. HAC proposes adding another top rating that only lenders who go above and beyond meeting their service area needs to engage in activities in other areas can earn. Lenders could then use this to differentiate themselves from other institutions. The current four-grade system does not provide sufficient nuance or range to differentiate institutions' level of CRA activity. HAC also suggests some element of regulatory relief be provided to lenders that engage in "above and beyond" activity. One example of regulatory relief may be an expedited or streamlined review. Without some incentives, lenders will not seek out projects in hard to serve rural areas, such as Native American Lands, when they can safely receive credit on more lucrative projects in their service area.

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?***

While deposits certainly shape and reflect a banks capacity to lend, there are likely other factors to consider, such as whether a lender's focus of work aligns with community need and current economic conditions. Therefore, the CRA examiner needs to have latitude to evaluate a specific lender's circumstances. One size is unlikely to fit all.

As noted in the NPR, the currently used form of deposit data is attached to a bank branch and not the account holder location. This creates problems with accurately defining the assessment areas. The NPR does suggest there is another data source that can address this problem:

> *"Deposit data …have limitations because the current reporting framework records deposits by attributing them to a branch location, rather than the account holder's address and uses a different definition of deposits than the proposed rule. The proposed rule would remedy these deficiencies by leveraging data that are readily available but not currently reported in an integrated and accessible manner. Over time, the data collection, recordkeeping, and reporting requirements in this proposal would remedy the current limitations."*

Unfortunately, the NPR does not provide enough information as to what these data are or how they will be collected. The NPR should state and present clearly what the reporters will need to do to address this issue. It is hard to evaluate costs or to truly know if the data source being considered will work for all lenders with the limited information presented.

Examination of CRA Metric Changes

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. Banks with no branches in these areas will not receive any CRA credit for their branch distribution under this method, even if there are very few specified areas of need in the areas they serve. 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?***

    HAC supports the idea of valuing the importance of a lender maintaining a bank office in a low- and moderate-income, distressed, or underserved area. Particularly in rural areas, many of which lack adequate internet access, bank branches play an important role in helping customers navigate the world of financial services. It is important that banks maintain these offices.

    HAC does not believe the approach provides enough of an incentive to retain bank branches. An initial problem, and one found throughout this NPR, is there is no data or research findings cited as a justification for this effort. For example, why was up to a 1 percent point benefit presented? Was there some internal research used to generate this value? There likely is an underpinning for the specifics presented in the NPR and it is important that they be provided.

    The actual closing of bank branches might limit the effectiveness of such a formula. It is possible that the majority of branches lenders close will be in higher income areas where alternative methods of banking are most prevalent. This would likely offset reductions in branches in low- or moderate-income, underserved or distressed areas. For example, a bank closing 10 branches in moderate and higher-income areas along with two in distressed or underserved areas will not see any change in their CRA calculation equation. In other words, any impact would be muted at best. The same circumstances would likely occur in rural areas since there simply are more branches in suburban and urban jurisdictions. The formula does not adequately address the relative value or importance of branches in lower- and moderate-income communities.

Another approach would be to deduct CRA value when a lender closes branches in an underserved neighborhood. This value should reflect important information such as the number of low- or moderate-income account holders, other branches operating in the area and loan volume. This approach would give the greatest value to those branches which provide the most services in the hardest to reach areas.

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?***

    A rationale should be stated as to why the 15 percent threshold was chosen. The Housing Assistance Council generally suggests a smaller percent threshold to ensure a lender is fully evaluated on their activity. While a product may represent a relatively small share of a bank's overall lending activity, it may still be substantial, relative to what other lenders are doing, and it may also be very important to certain assessment areas. Assessing aggregate data for a large lender may understate its importance in specific areas or communities. This is a concern particularly in rural areas where a limited volume of lending occurs. A few mortgage loans in a small rural town may not appear initially significant in relation to a lender's overall balance sheet, but that activity could constitute half or more of all mortgage lending in a certain area.

If a lender engaged in more than half of all mortgage lending in an assessment area, this should be part of their evaluation even if this is not a primary line of activity. As with HAC's other comments, it would be best to develop a threshold based on data analysis rather than simply set it at an arbitrary 50 percent.

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 deposits. 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?***

    The Housing Assistance Council agrees that final CRA examination scores and ratings should explicitly consider the degree to which a lender serves all its assessment areas. Currently, the use of limited scope, large bank evaluations, which focus CRA examinations on a limited number of areas where a lender takes in the most deposits, often ignore rural assessment areas which contain a small share of lender deposits. It would be an improvement to explicitly require that a lender must satisfactorily address the credit needs in a significant proportion of their assessment areas to pass their CRA exam.

    The Housing Assistance Council believes the 50 percent threshold is substantially flawed. The threshold is too low, and it would allow lenders to not meet the credit needs for up to half of its assessment areas. **The 50 percent threshold would allow an institution to pass even if it failed to achieve a satisfactory score in more than half of its assessment areas.**

    To ensure that the threshold does not result in lenders earning a satisfactory score and not passing assessment area tests in the communities where most of their depositors reside, the NPR states that share of depositors must be a consideration. This stipulation will likely result in rural areas being overlooked. High-need rural regions, such as Central Appalachia, the Lower Mississippi Delta and Rural Southeast, Border Colonias region, and Native American Lands, may be difficult to serve due to their rurality and struggling economic conditions. These underserved rural areas also likely represent a small share of most large lenders' deposits, resulting in an additional factor by which consumers in these areas may be overlooked.

An improved threshold would focus more on the assessment areas with the most need of improved access to financial services (low- and moderate-income, and distressed and underserved). Regulators should identify the 25 percent of lender assessment areas with the highest share of depositors in these low- or moderate-income, distressed or underserved census tracts, and then require lenders earn a satisfactory or higher rating in 90 percent of these markets. The concept focuses on areas most likely to be overlooked and underserved. If a lender meets the credit needs in these communities, it is reflective of their overall efforts. More research is needed but shifting the focus toward the areas in most need of financial services would be a vast improvement from the currently presented 50 percent threshold.

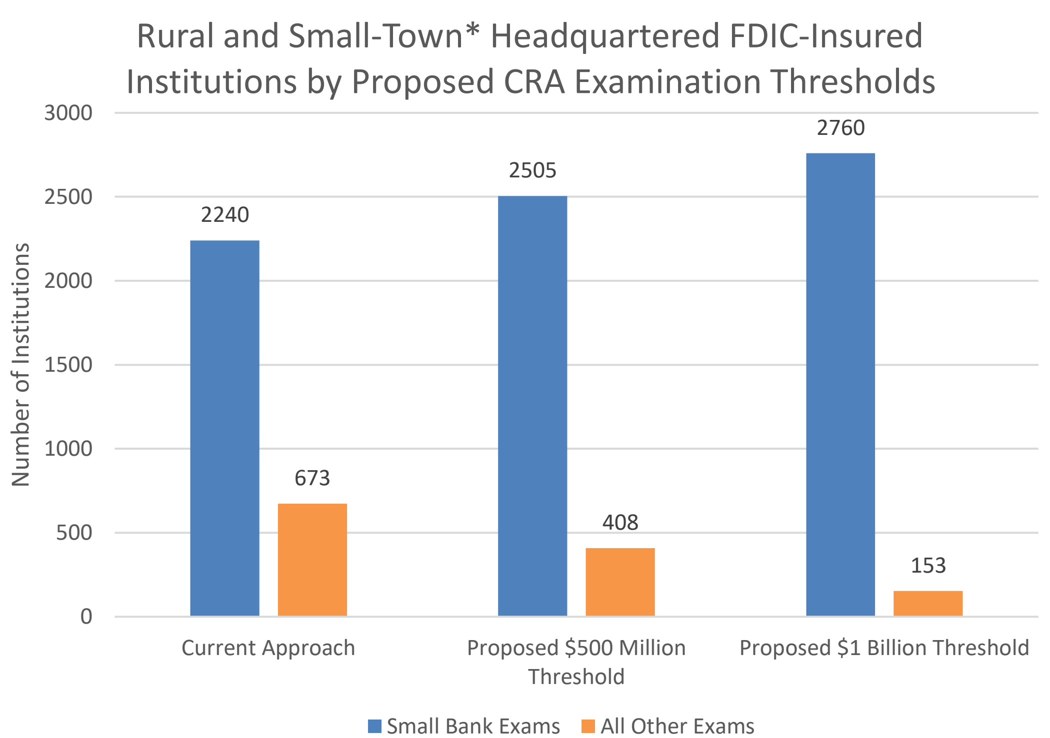
18. ***Under the proposal, banks that had assets of $500 million or less in each of the previous four calendar quarters would be considered small banks and evaluated under the small bank performance standards, unless these banks opted into being evaluated under the general performance standards. Is $500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

HAC recommends a lower threshold for determining small banks than is presented in the NPR. At a minimum, maintaining the current threshold ($321 million in 2019) but would support using a one-year (four calendar quarter) threshold. Raising the proposed asset threshold to $500 million, would hurt CRA oversight in rural and small-town communities. Under the proposed approach more banks headquartered in rural areas will fall under the small bank CRA examination which has fewer requirements and is less frequently undertaken. An assumption here is that small bank exam lenders would choose to remain under the current CRA small exam approach. As such, this change could potentially reduce oversight in rural markets.

A review of asset data for FDIC-insured lenders finds that 2,240 institutions headquartered in rural areas fit in the current CRA small bank category, but that the NPR's proposed approach increases that number to 2,505 (See Figure 1). Fewer lenders would be subject to the primary and more comprehensive examination process which evaluates lenders on more facets of lending.

While the increase in lenders now falling under the small bank examination would increase at similar levels for all geographies, the impact from this policy would be felt more on rural financial markets because there are fewer lenders serving rural areas. For example, in certain small rural markets, two or three lenders provide most of the access to financial services. If one of those lenders now falls under the small bank exam threshold, the institution would be subject to fewer CRA requirements and less frequent oversight. Because of the large role such a lender plays in an area, the negative impact from these changes is disproportionate.

A $1 billion threshold would increase the number of lenders that fall under the small bank exam even more and, as a result, greater reduce oversight in many rural credit-markets (See Figure 1). The estimated result from that change would result in 95 percent of rural headquartered banks being considered small as compared to 77 percent now. In total, 85 percent of all FDIC-insured lenders would be small bank examination eligible under the $1 billion threshold.



Housing Assistance Council rural and small town classification of census tracts on housing density and commuter patterns. Banks classified according to the census tracts their main office is located in. See the following report (pages 112-113) for more

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 an a one-time opt out of the general performance standards. Should small banks that opt into 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?***

    The Housing Assistance Council opposes the proposed asset threshold increases presented in the NPR. Please see HAC's response to question #18.

New Data Reporting Requirements

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?***

    HAC agrees that CRA-regulated institutions should already collect, in a usable (electronically transferrable) format, most of the data which this CRA proposal requires. The collection and storage of most of this information, which is related to an institution's lending, services, and community development/investment activities, simply reflects sound banking practices. The same technologies that make internet and mobile banking possible should also make such data collection, storage, and transmission relatively affordable and efficient. Likewise, the same technological forces that largely form the rationale for upgrading the CRA regulations make such data collection possible.

    The current limitations associated with bank deposit data, however, is a serious impediment. Martin J. Gruenberg, a member of the FDIC Board of Directors, notes that the OCC-FDIC NPR acknowledges that bank deposit data is currently attributed to a branch office not the account holder location. This could result in inaccurate determinations of deposit-related assessment areas. The NPR states that there is alternative data which can be used to address this issue, but that a system of collecting and/or reporting this data is currently not in place. HAC agrees with Martin Gruenberg when he wrote:

> *"The assumption that the data may improve in the future is not an appropriate basis for proposing changes to the CRA regulation now based on currently available data that is known to have deficiencies.[14]"*

The degree to which this proposal results in the collection of currently uncollected community development investments and services data is positive. However, without making the information publicly available, the NPR misses an opportunity to increase transparency and public involvement. The NPR suggests that some of the data may be made available at the county geography level. If the public does not have access to this information, in both a usable format and at the most precise geography possible, the process will not be fully transparent.

The current CRA examination process lacks transparency. Where data is made available (disclosure data) it is in a format that is only accessible to data scientists. The regulators only make CRA performance examinations available as static pdf documents that do not include raw data, from which the aggregate numbers were calculated, in an analyzable format. This NPR notes, as a benefit of the new process, that it will result in shorter narrative CRA performance evaluation reports. The problem is not only the length, but also the format, is not accommodating to analysis. Simply shortening the evaluation reports by a few pages alone will not change this shortcoming.

By making the underlying data available, the public would be encouraged to take part in the process. The NPR does not adequately address public involvement which has been an important element of CRA over the years. Only with public involvement can a lender be sure to effectively serve its communities. Turning CRA into a metric-based examination will likely limit public participation – the final calculation does not require outside input, but an increase in data accessibility may help to ameliorate such concerns.

The NPR states:

> *"The agencies believe that access to the standardized information required by the proposed rule would help them to better measure, assess, and understand the CRA activity across various areas and across the industry and over time. The proposal's requirements also would provide*

[14] Martin J. Gruenberg. 2019. Statement of Martin J. Gruenberg, Member, FDIC Board of Directors; Notice of Proposed Rulemaking: Community Reinvestment Act Regulations. December 12,2019. Article accessed 1/10/2020: https://www.fdic.gov/news/news/speeches/spdec1219d.html

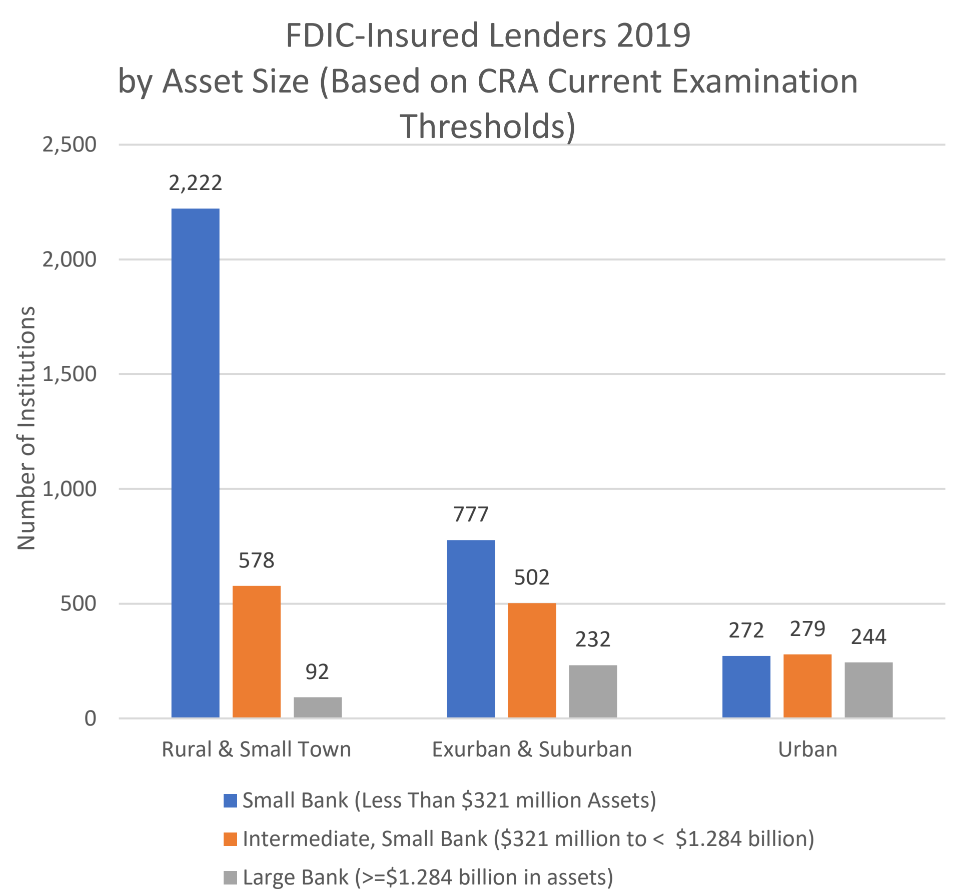
> *the agencies with better, more comprehensive understanding of an individual bank's CRA activity."*

The same logic applies to the public if this information was made available in an easily accessible format. If this regulation will improve access and increase investment, it should be open to scrutiny. There is an opportunity here to make the process fully transparent to all and it is only through such access that we can be sure CRA is effectively reaching all communities.

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?*

The NPR does not adequately or sufficiently provide information or specifics related to the requirement for collecting deposit data. There is an acknowledgment that the data currently available is inadequate (linked to branch office and not account holder), but the NPR does suggest that there is another way to obtain this information somehow. The approach this NPR alludes to should be presented so that all parties can make a sound determination as to how data collection may be best achieved.

Additional research on how best to collect bank deposit data, which links to the account holder address, is necessary. For example, information used to create account holder tax forms can be organized and recorded; however, that would require certain privacy protections. ATM-collected user zipcode data might be useful, but that might not be reflective of all depositors and would be restricted to zipcode geography. An academic analysis of literature involving how data science is evolving in efforts to collect, organize, and manage such data would be a good starting point. Because there is neither a specific approach identified nor a referral to academic work exploring how such an effort might be undertaken, it seems reasonable to assume that the OCC-FDIC proposal would be implemented either using inadequate data (based on branch not account-holder address) or experience a delay until the issue can be addressed.



Source: Housing Assistance Council tabulation of FDIC data on bank office locations (2016, 2017, 2018, & 2019. Data accessed 2/2/2020 from the following url: https://www7.fdic.gov/idasp/advSearch_warp_download_all.asp?intTab=1

Regardless of what approach is provided, small-asset banks may need to engage in collective efforts to limit compliance costs. Small-asset banks might be able to pool resources and develop a single system that effectively collects and reports deposit data. Peer sharing with large-asset banks advising and assisting smaller-asset banks in such efforts could help as well. If larger-asset lenders shared technology and expertise, costs could potentially be lowered. This sharing of technology and expertise, combined with smaller lenders pooling resources, could be part of the answer. Any efforts at technology and expertise sharing would likely require incentives to encourage large-asset lender involvement.

More time and consideration will need to be given to this issue in the future because the movement in banking away from brick-n-mortar office transactions to online

> and mobile activity is not going to stop. The location of bank account holders will be an important element in identifying assessment areas and being able to collect this data in a cost-effective manner will be a necessity. It simply will not be adequate to exempt small lenders from these efforts if the goal for assessment areas to reflect where a bank operates. Many of the smallest asset lenders primarily serve rural areas where they may be one of the only financial institutions operating. Getting these service areas right is important to ensure that all local credit markets receive CRA oversight.

Once again, HAC is pleased to have this opportunity to provide comments on the OCC-FDIC's Joint NPR seeking to modernize the CRA. The Community Reinvestment Act's past successes are impressive and its future possibilities to affect real and measurable change – particularly for those communities who still lack the means of acquiring capital – is inspiring. Given the importance of the Community Reinvestment Act, it is paramount that the changes be fully developed and presented. This process requires a coordinated effort among bank regulators, lenders, housing and community groups, and consumers to ensure CRA reaches all. This proposal falls short of those requirements and HAC opposes this Notice of Proposed Rulemaking as currently constructed. HAC looks forward to working with all entities to continually improve and enhance the promise of CRA for all communities – urban, suburban, and rural.

Please do not hesitate to contact me if you need additional information or clarification of our comments.

Sincerely,

David Lipsetz

David Lipsetz
Chief Executive Officer