Consumer Federation of America

1620 I Street, N.W., Suite 200 * Washington, DC 20006

November 19, 2018

Hon. Joseph M. Otting

Comptroller of the Currency

400 7th St SW Suite 3E-218

Washington, DC 20219

Re: OCC_FRDOC_0001-0213

Federal Register Number 2018-19169

Advanced Notice of Proposed Rulemaking on Reforming Community Reinvestment Act Regulatory Framework

Dear Comptroller Otting:

On behalf of the members of the Consumer Federation of America, I am pleased to offer these comments on the above-referenced Advanced Notice of Proposed Rulemaking. Consumer Federation of America (CFA) is a nonprofit association of some 250 national, state, and local pro-consumer organizations created in 1968 to represent the consumer interest through research, advocacy, and education.

The Community Reinvestment Act has served since 1977 as a critical part of a broad national policy to promote the participation of private capital in serving America's communities and consumers. The Act was prompted in large part by widespread evidence of private lender discrimination in lending patterns. Following the first Home Mortgage Disclosure Act (HMDA) reports, it was evident that many federally insured depository institutions were neglecting important parts of their service areas, primarily neighborhoods serving low- and moderate-income households, and households of color. As the Act's principal author Sen. William Proxmire noted at the time,

> The data provided by that act (HMDA) remove any doubt that redlining indeed exists, that many credit-worthy areas are denied loans. This denial of credit,

> while it is certainly not the sole cause of our urban problems, undoubtedly aggravates urban decline.[1]

The Act established these institutions' obligation to fully serve the credit needs of their communities, in particular low- and moderate-income neighborhoods. Significant disparities in credit access for mortgages, small business loans, and affordable small dollar credit continue to plague America's cities and rural areas. However, a wealth of research, as well as hard fought experience by advocates, community developers and lenders has demonstrated beyond any doubt that the CRA has reduced these disparities and increased the amount of capital available throughout regulated lenders' service areas in significant and important ways. Much of this research is ably summarized in the comment letter submitted by the National Community Reinvestment Coalition, and we strongly endorse the conclusions of that research.

The ANPR asks a series of questions about the regulatory framework that governs regulators' CRA assessments. Other commenters, including NCRC, UnidosUS, and the National Housing Conference have covered many of these questions. We address only a few that we believe represent the most critical issues raised in the ANPR. We strongly urge you to consider these comments, and to work with the Federal Reserve and Federal Deposit Insurance Corporation, as you move to develop a Proposed Notice of Rulemaking. It is critical that the regulatory and examination framework is consistent across all three regulators.

We agree with the National Housing Conference's comment that to be effective and sustainable, any CRA regulatory update must meet the following tests:

1. Increase investment in communities that are underserved;
2. Benefit more low- and moderate-income people, particularly people of color, who live in those communities;
3. Ensure that CRA lending and investment does not contribute to the displacement of LMI households but assists these households in obtaining the credit necessary to buy and rehabilitate homes and build and sustain small businesses so they can participate in economic growth and renewal; and
4. Make both bank performance and government performance as transparent and predictable as possible.

Question 1: *Are the current CRA regulations clear and easy to understand?*

Assessing community investment across multiple business lines and geographies is inherently complicated. It requires a combination of specificity and discretion, both subjective and objective measures. In its recent 2018 review of CRA regulations the Treasury noted that

> "…both banks and community and consumer advocates support the need for increased clarity. They also noted that any measurements or metrics utilized by

1 Congressional Record, Senate, June 6, 1977, p. 17630

> the various examination tests should allow for flexibility based on the performance context of a bank. In addition, to allow for predictability and accountability, they advocated for changes in policies or procedures to be implemented prior to the commencement of a bank's next assessment period, rather than applying these policies or procedures retroactively once an assessment period is already underway."2

There is always room for further clarity in any complex regulatory regime. But we believe that the regulations, as amended over time, have served admirably to encourage significant bank lending to underserved communities.

One issue that has lingered for many years is whether otherwise qualifying activities carried out outside of specific assessment areas should count toward a lender's CRA performance. We believe it is critical to retain the broad framework of assessment areas in order to ensure that the legislation's intent – to ensure that insured institutions serve the credit needs of their entire market area – is met. However, we support the idea that institutions with a track record of success within their assessment areas should not be discouraged from undertaking community development investments that benefit LMI households and communities in other areas in which they operate, or where opportunities arise.

The CRA requires regulators to take safety and soundness into consideration when reviewing CRA investments. This is part of the important balance that regulators assigned multiple responsibilities must assume. However, CRA does encourage lenders to undertake investments that, while profitable, may be less so than other opportunities, especially those serving higher income communities and households. It was the very practice of profit maximizing behavior, coupled with overt and other forms of discrimination, that helped lead to CRA's adoption in the first place. This dynamic has not changed. Part of CRA's intent is to encourage a broad basket of investing and risk taking by covered lenders that considers not only an investment's pure profitability, but also its value to communities the bank is chartered to serve. In this sense CRA acts as a thumb on the scale of lender decision making – the value of CRA credit becomes a consideration in a lenders' assessment of investment value. Permitting qualifying investments outside of assessment areas would add this "thumb on the scale" value to these investments and help encourage lenders to consider community development investments and mortgage lending in areas that might well be underserved broadly by the market. We would support a regime where such investments would receive CRA credit if an institution's performance in the last exam cycle in its designated assessment areas is at least a "high satisfactory" and such non-assessment area investments remain below some reasonable share of current creditable activity.

The complexity of assessing activity reinforces the critical importance of soliciting and taking into consideration community input in the formulation and review of CRA performance. Affected consumers and businesses within lenders' assessment areas must

2 Community Reinvestment Act – Findings and Recommendations. Memorandum for the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, April 3, 2018.

continue to have the opportunity to identify needs within the context of CRA and have the opportunity to comment on lender performance as part of the review process. These stakeholders and constituents have a ground-level view of community credit needs. Examiners must continue to solicit and take into consideration these views in assessing the adequacy of lenders' plans and the outcomes generated by activity presented as fulfilling CRA obligations.

8. How could appropriate benchmarks for CRA ratings be established under a metric-based framework approach, taking into account balance-sheet items, such as assets, deposits, or capital and other factors, including business models?

9. How could performance context be included in such a metric-based approach?

10. In a metric-based framework, additional weight could be given to certain categories of CRA-qualifying activities, such as activities in certain geographies, including LMI areas near bank branches; activities targeted to LMI borrowers; or activities that are particularly innovative, complex, or impactful on the bank's community. How could a metric-based framework most effectively apply different weighting to such categories of activities? For example, should a $1 loan product count as $1 in the aggregate, while a $1 CD equity investment count as $2 in the aggregate?

11. How can community involvement be included in an evaluation process that uses a metric-based framework?

12. For purposes of evaluating performance, CD services are not currently quantified in a standard way, such as by dollar value. Under a metric-based framework, how should CD services be quantified? For example, a bank could calculate the value of 1,000 hours of volunteer work by multiplying it by an average labor rate and then include that number in the aggregate total value of its CRA activity.

Taken together, these questions seek comment on a new approach to CRA performance measurement. In short, the proposal would substitute the current quantitative and qualitative review structure and replace it with a single metric through which a lender's collective efforts would be aggregated into a numeric value, compared with some other numeric value such as total assets, deposits, etc., and the resulting ratio used to benchmark performance.

CFA strongly opposes this approach. Experience has shown that CRA investment involves a range of considerations. Reducing their impact or importance to some series of numeric values and then relating them to some other numeric value would reduce rather than enhance CRA's effectiveness.

There is experience with using single metric approaches to measure effective service to LMI households in the Fannie Mae and Freddie Mac housing goals regulatory approach. First instituted in 1993 and amended regularly by regulation and then legislation in 2008, these goals are meant to establish a benchmark for the companies' performance in serving the LMI market. Comparison to CRA is imperfect – Fannie and Freddie are monoline companies that serve a national market and have as part of their chartered purpose maintaining a stable and liquid housing market, in addition to serving the broadest possible range of credit needs. But even given these significant differences, Congress saw fit to expand how the companies' service is measured by adding a significant new requirement, the so-called "duty to serve" adopted in the 2008 HERA legislation. This change recognized that using a simple uni-dimensional metric fell short of fully measuring the companies' potential and actual contributions to LMI households and community development. The 2008 Act also significantly expanded the number of goals, in recognition of the fact that the former aggregated goals did an unsatisfactory job of accurately and fully illustrating how the companies were serving the market. There are now separate metric-based goals for single family purchase loans for several different tranches of borrowers, similarly for refinances, and for underserved census tracts, as well as in multifamily lending. These changes at once illustrate the insufficiency of a single metric to measure performance, even for a monoline enterprise, as well as how such metrics do not necessarily reduce the complexity in tracking and assessing performance, which should be part of the standard for any changes to the CRA regime.

There may well be particular portions of CRA performance that could lend themselves to a metric based standard, such as mortgage lending. This could increase lender certainty in planning investments by creating a more easily measured standard against which to be judged. It could also make such judgments less subjective and allow examiners to assign more granular assessments within the measured category, encouraging lenders to establish "stretch" goals that would contribute to a higher overall rating. But the GSE experience is instructive here as well – Congress established a specific set of market measures on which the goals are supposed to be based. If similar metrics were to be applied to any part of CRA they likewise should be based on well understood and transparent market estimates and comparisons, not some arbitrary ratio that conflates investments of different types into a single measure. Any metric based approach to lending should be based on the *number* of loans made, not the dollar volume. Relying on dollar volumes would bias decisions in favor of larger transactions. In fact, there are significant barriers at present to effective small balance mortgage lending, despite the fact that this housing supply is most affordable to LMI households and is found often in LMI communities. Using a metric-based approach that exacerbates this problem would be perverse outcome of CRA regulatory reform.

The ANPR's suggestion that weighting different activities within a metric based system is ill advised. There is no "one size fits all" standard that could be effectively applied within the CRA exam context for the wide variety of activities that count toward a CRA review. The current regulations put particular weight on lending, and less relative weight to investments and services. This seems as far as such "weighting" should go without interfering with the essence of CRA's intention – for lenders to respond appropriately and effectively to the credit needs of the communities they are chartered to serve. Moving to a system where certain activities are inherently "worth more" for CRA purposes would incent lenders to focus on such activities regardless of their relevancy to the credit needs of their assessment areas. Lenders with dozens of assessment areas must tailor their CRA programs to the multifarious needs of those areas. Differential weights for certain activities would bias these approaches to maximize their impact on a CRA rating, rather than on the specific investments' impact on the subject communities.

Question 12 illustrates how problematic the one metric approach can be. By asking whether a lender should be able calculate through some formula the value of volunteer work the ANPR demonstrates how arbitrary and inappropriate this approach would be. Volunteer efforts by lenders certainly can contribute to community health and economic well-being. But the CRA's intent is to assure that the primary services lenders are chartered to provide – lending, capital for investment, and services to support healthy communities – are available and promoted throughout their service areas, not to substitute volunteer labor for hard capital.

A number of the ANPR's questions relate to how assessment areas should be delineated, and whether branch locations and services remain a relevant or important part of this process. Branches remain a critical resource, especially for LMI communities. Research cited by NCRC in its comment letter make a strong case that lending in these communities is significantly higher around branches than in neighborhoods without them. Branches remain an important source of banking services, especially for LMI households, even with the rapid advance of online banking. While there is merit in reexamining how assessment areas should be defined, we strongly oppose removing branches from that consideration.

The ANPR asks a series questions (16, 17, 18, 19) that seek feedback on how to qualify investments for CRA purposes. In general, we believe the Act itself and longstanding experience argues for a standard based on the benefit of the investments to LMI households. Simply defining an activity as community development lending and then allowing it to receive credit without regard to whether it is available and utilized by LMI households and communities would undermine the CRA's basic premise of assuring full service within a lender's service area. On the specific question of whether credit should be given for purchases of asset-backed securities when those assets themselves would qualify for CRA credit, we believe that the legislation's intent is to focus on primary market lending. There is an argument that investing in such securities, such as mortgage backed securities, increases liquidity and therefore expands credit availability. We strongly support counting loans made and then packaged into securities for CRA credit and see no argument to advantage loans held on a lender's balance sheet over those originated for sale into securities. However, the purchase of such securities themselves after they are first created in most circumstances provides minimal direct benefit for borrowers on the ground. There is a very deep and liquid market for mortgage backed and other asset backed securities. There is little justification for counting open market purchases of them in the same way as direct lending. However, purchases of whole loans or securities issued by public agencies and CDFIs would increase liquidity in a market that suffers from too little of it. These kinds of purchases should be considered for CRA credit. Likewise, financial education and literacy programs can be beneficial. But they should receive credit only to the extent that a lender can demonstrate that they are directly benefiting LMI households in their assessment area. Lenders should be encouraged to demonstrate this benefit through data about the programs' beneficiaries, and any evidence that such programs had a tangible impact on consumers' savings and credit behaviors.

Question 21: The current regulatory framework provides for CRA performance evaluations to consider home mortgage, small business, and small farm lending, and consumer lending in certain circumstances. Should these categories of lending continue to be considered as CRA-qualifying activities or should consideration in any or all of these categories be limited to loans to LMI borrowers and loans in LMI or other identified areas?

The lack of mortgage lending in LMI communities and for LMI borrowers was arguably the key driver of CRA's adoption in the wake of early HMDA reports. This should remain a primary focus of CRA evaluation and enforcement. The statute requires lenders to meet the credit needs of their entire communities. Mortgage lending should receive CRA credit to the extent that it serves LMI borrowers anywhere within the service area, and when it is available in LMI communities broadly. Exams should consider and take into account local stakeholder feedback for mortgage lending done within LMI census tracts that does not serve LMI households. On the one hand, providing credit in underserved or LMI tracts should be an important goal under CRA. On the other, lending that accelerates or encourages displacement, or credit to investors that enables the purchase of single-family homes and their conversion to rentals should receive extra scrutiny. Community views of such activity should weigh heavily on examiners' assessment. This is another reason why a simple metric could have the perverse effect of accelerating neighborhood change and displacement while being credited for positive investment under CRA.

Question 22: Under what circumstances should consumer lending be considered as a CRA-qualifying activity? For example, should student, auto, credit card, or affordably priced small-dollar loans receive consideration? If so, what loan features or characteristics should be considered in deciding whether loans in these categories are CRA-qualifying?

Access to affordable and safe small dollar loans is critical to the financial health of many LMI households. As research from the Center for Financial Services Innovation (CFSI) Financial Diaries Project[3] and the JPMorgan Chase Institute[4] has shown, LMI households typically face

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3 *US Financial Diaries – Spikes and Dips: How Income Uncertainty Affects Households,* Schneider, Morduch, December 1, 2013 https://cfsinnovation.org/research/spikes-and-dips-how-income-uncertainty-affects-households/

4 *Weathering Volatility: Big Data on the Financial Ups and Downs of US Individuals*, Farrell and Grieg, JPMorgan Chase Institute, May 2015
https://www.jpmorganchase.com/content/dam/jpmorganchase/en/legacy/corporate/institute/document/54918-jpmc-institute-report-2015-aw5.pdf

significant misalignments of income and expense. Combined with low overall wealth and savings balances, these mismatches drive a significant need for short-term low balance loans. Unfortunately, too many LMI consumers and residents of underbanked communities face few alternatives to payday lenders who charge high fees and often drive consumers into debt traps from which they struggle to escape.

The CRA should not create an incentive for banks to make predatory high-cost, small dollar loans. Payday lending, car title loans, and similar forms of high-cost credit should never be treated as CRA-qualifying activity. Serious consideration should be given to lender efforts to offer small dollar loans that provide consumers with alternatives to payday lenders, but care must be taken to ensure that the terms on which such credit is offered are fair. Although the 36 percent MAPR price limit in the Military Lending Act[5] is only controlling with respect to consumer credit extended to active duty military servicemembers and their dependents, the Department of Defense's 2015 regulations provide a carefully crafted and thoughtful benchmark that could help inform the CRA.[6] The Office of the Comptroller of the Currency should not provide an incentive for national banks to extend credit Congress prohibited in bipartisan MLA—even for nonmilitary borrowers. Similarly, lender initiatives to offer low fee low balance demand accounts and to structure accounts to minimize overdraft fees should be considered as well.

Question 27: Should bank delivery channels, branching patterns, and branches in LMI areas be reviewed as part of the CRA evaluations? If so, what factors should be considered?

Branch locations and the services they provide remain an important part of financial life for LMI households. The Act states that regulated banks are required "…to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business."[7] Even with the rapid advance of mobile banking applications, full service branches remain important to the financial health of LMI consumers. As the comment letter on this ANPR from UnidosUS notes, "Research has not demonstrated that ATMs (deposit-taking or otherwise), telephone banking, or banking services delivered through mobile device applications is an adequate substitute for full-service branch banking in meeting the needs of underserved communities – especially Latinos." Eliminating consideration of branch banking services in CRA exams would disproportionately affect LMI communities and communities of color.

Question 30: How frequently should banks report CRA activity data for the OCC to evaluate and report on CRA performance under a revised regulatory framework?

There is broad agreement among advocates and lenders that lengthy CRA reporting cycles and long lags between exams and the publication of results weakens CRA's ongoing value to lenders, communities and regulators. Adoption of a regime that focuses on increased training of examiners to enable them to carry out exams expeditiously and with deep knowledge of the programs lenders use to meet CRA obligations, along with more frequent reporting on key

5 10 U.S.C. Sec. 987

6 Limitations on Terms of Consumer Credit Extended to Service Members and their Dependents, 80 Fed. Reg 43560 (July 22, 2015), codified at 32 C.F.R. Part 232.

7 12 U.S.C. Sec. 2901

performance indicators, could enhance CRA's value to all stakeholders. Having lenders and communities wait years before understanding how a regulator has assessed performance, or made decisions about how to count certain activities constrains CRA's ability to support timely course corrections and enhance product offerings. We do not have specific recommendations on timing of exams or data, but urge OCC, the Federal Reserve and Federal Deposit Insurance Corporation to try as much as possible to make the schedules as transparent and timely as possible.

Thank you again for the opportunity to comment on this ANPR. We reiterate that it is critical that all three regulatory agencies charged with assessing CRA activity agree on their regulatory approach as this process moves into a proposed and final rulemaking. We look forward to working with you as this process continues.

Respectfully submitted,

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