November 19, 2018

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

Docket No. OCC-2018-008

Dear Comptroller Otting:

The Housing Assistance Council (HAC) appreciates this opportunity to submit comments to the Office of the Comptroller of Currency (OCC) on its "Reforming the Community Reinvestment Act Regulatory Framework" Advanced Notice of Proposed Rulemaking (ANPR). Through this ANPR, the OCC is seeking stakeholder comments on avenues to modernize CRA and increase lending and investment where it is needed most, reduce reporting burden, and assess performance, all in a manner consistent with the statute’s original purpose.

The Housing Assistance Council 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 Community Reinvestment Act in Rural America.1 With nearly 50 years of experience supporting and developing affordable housing across rural America HAC is uniquely positioned to comment on CRA’s role in rural communities.

Given its organizational focus on rural housing, HAC has prioritized its remarks related to questions and issues that most impact rural communities and consumers.

I. HAC's General Comments on CRA in Rural America

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. 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.

The Community Reinvestment Act is undoubtedly responsible for extending and encouraging financial activity in Low and Moderate Income (LMI) communities and neighborhoods, but its impacts in rural areas have been more modest. Federal bank regulators attempted to encourage more rural CRA-related investments in the past, particularly in 2005 with the expansion of CRA designated LMI tracts to include outside of metropolitan area, distressed and underserved census tracts. Rural CRA activity, however, is still arguably limited, as noted in HAC's 2016 report on CRA in rural communities.

CRA is Immensely Important, But it Has Structural Limitations That Keep it From Fulfilling Its Full Potential in Rural America

Nationwide, more than half of all lenders subject to CRA regulation, (55 percent), are headquartered in rural areas. Most of these banks are small and primarily serve rural communities. Based on asset size, three-quarters of all FDIC-insured banks headquartered in rural areas and are subject to the small-bank CRA exam lenders compared to 52 for suburban banks and 34 percent urban areas. These small asset lenders—that are most likely to have a large percentage of their assessment areas in rural communities—have fewer CRA examination requirements and are evaluated primarily on lending activity, not financial services or community development/investment activities.

Intermediate and large asset lenders, the institutions with more CRA examination requirements, frequently operate bank branches in rural areas. But their activity is often limited relative to their overall operations. This dynamic results in the overwhelming majority of larger asset institutions' community development and investment activity occurring in the areas where they primarily do business—notably suburban and urban communities.

Further, there are rural areas which lack any access to depository institutions and their products. For example, Oglala Lakota County, South Dakota, home to the Pine Ridge Indian Reservation, has no bank branches and effectively no CRA incentives in place for lending. Overall, approximately 274 counties—almost exclusively rural—have one or less bank branch, or only have small-asset lender branches which are not subject to CRA.
requirements such as community investment lending. The prevalence of “CRA deserts” could increase given that the number of bank offices have been declining for years—a reduction of 7 percent or 6,790 offices between 2012 and 2017.

Many Rural Communities are Severely Underbanked

Approximately 274 rural counties have one or no banks, or only small asset banks.

A lack of CRA-related activities, particularly community development and investments, limits the CRA’s effectiveness in rural communities. Changes to assessment area designations could help address this problem. Beyond this, incentivizing intermediate and large asset lenders to support activities in low- and moderate-income areas that are currently not part of their assessment areas would expand access and better fulfill the intent of CRA.

Bank Branches Are Particularly Important to Rural America and Need to Be Maintained

Bank branches and the in-store retail services they provide are important, particularly for less financially literate customers. While the number of bank branches continue to decline, the services they provide are beneficial and lenders should not ignore or provide reduced service to these communities. In many cases, rural customers rely on those services even more than in urban communities. 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 Metropolitananked households accessed a teller more than 10 times a year—both levels of teller utilization are substantially higher than in more urbanized areas.\textsuperscript{11}

II. HAC’s Specific Comments in Response to the ANPR

The OCC’s ANPR primarily addresses three important elements of CRA including:

1) \textit{Assessment Area Definition}: geographic areas an institution is evaluated on;

2) \textit{Exam Approach}: how the CRA rating is determined; and

3) \textit{CRA Activity Eligibility}: the type of activities considered in a CRA assessment

Potential modifications in any of these three areas could have far reaching impacts for the CRA and must be thoughtfully considered. HAC’s comments address these three core elements of CRA in relation to the ANPR questions posited by OCC, with an additional section summarizing Recordkeeping and Reporting.

1) \textit{Assessment Areas}

As a national organization focused on rural communities, HAC has a keen interest in the ANPR’s requested input on assessment areas. The ANPR itself, as well as a recent report by the Treasury Department, acknowledge that remote rural populations or parts of Indian country have historically been largely excluded from CRA consideration (pg. 17). To this day, some rural areas, lack a bank branch of any kind, effectively creating "CRA deserts." Thirty-four counties, all rural, currently fall into this category, with 10 of them experiencing persistent poverty.\textsuperscript{12} Even when larger asset lenders operate in rural areas, they often constitute a small portion of their assessment area(s), and as such, receive less attention in general from the lender and examiner. For example, regulators often review large lenders under “limited scope” exams, where they closely review only a portion of a bank’s assessment areas, usually those areas with the most deposits. Research suggests that CRA examiners often conduct a limited scope review of rural areas.\textsuperscript{13} This results in less scrutiny on lender activities in rural communities.

14. \textit{Should bank activities in the LMI geographies surrounding branches and deposit-taking ATMs, or in other targeted geographic areas, be weighted (and if so, how), or should some other approach be taken to ensure that activities in those areas continue to receive appropriate focus from banks, such as requiring banks to have some minimum level of performance in the metropolitan statistical area (MSA) and non-MSA areas in which they have domestic branches before receiving credit for activity outside those areas?}

HAC recommends expanding CRA consideration for eligible activities occurring in LMI, or distressed and underserved census tracts adjacent to a banks’ defined
Office of Comptroller of the Currency  
November 19, 2018

5

**assessment area.** Assessment area tracts should primarily be defined by either the presence of a bank branch or a substantial amount of bank activity (deposits and loans – it should be based on where a lender does their actual activity). A lender must still meet the needs of this area to fulfill a satisfactory CRA rating. In consideration for an outstanding CRA rating, however, a lender could also receive credit for activities occurring in adjacent LMI census tracts.

Restricting the area where activities could receive CRA consideration to adjacent LMI census tracts would ensure the activities occur in communities where the lender likely does some business and have a nearby presence. Requiring lenders first meet the service needs of their assessment areas would help ensure activity is not simply shifted from one census tract to another. Bank branches, and the in-store services they provide, are important and should not be sacrificed.

The inclusion of activity in adjacent census tracts would then expand the possibility of CRA-related activity to more communities, something that is needed if chronically underserved areas are to gain more investment.

There is also a need to encourage CRA-related activity in rural communities not adjacent to conventional assessment areas. The OCC should investigate incentives for activity in community development and related investments that are critical for underserved communities—many of which are in rural areas—whether or not that area is adjacent to an intermediate or large asset lenders’ assessment area. These efforts should not value activity in these areas at the expense of assessment area activity, but in addition to it.

Additionally, if banks go above and beyond what is expected in not only their assessment area (which might include some adjacent census tract activity as noted above), but also engage in investment activities in LMI neighborhoods outside their assessment area, a measure of regulatory relief could also be extended as an incentive to work in rural communities traditionally not impacted by CRA. A suggestion to address this “above and beyond concept” for assessment areas would be the creation of an **Outstanding Plus** rating.

For banks that excel at not only providing services within the communities they serve directly but in underserved or distressed areas outside their assessment area, the OCC may consider granting some regulatory relief. For example, banks with an “Outstanding Plus” rating might have the regulatory process for new applications expedited. Relief for regulatory burden could hopefully offset any lender costs associated with the additional activities.

Whether or not regulatory relief could be an effective incentive is still conceptual. It would be important to ensure that such “relief” does not absolve a lender of necessary oversight or regulation. Increasing demands on small lenders or forcing large asset institutions to expand their service areas is simply not feasible under the current structure. Yet, earning an expanded “Outstanding Plus” rating is not a substantial incentive if it does not include a meaningful benefit.
2) **Exam Approach**

The ANPR seeks comments on introduction of a metric-based CRA examination. The ANPR posits that a metrics-based approach could “simplify and improve the implementation of the CRA while better effectuating the law’s directive of encouraging banks to serve their entire communities...” (pg. 14). The ANPR’s focus appears to be moving away from the qualitative aspects of current CRA evaluations and focusing on a calculated, final score.

**HAC is opposed to an exclusively metric based approach for CRA examinations.** HAC believes that the risks associated with such a change outweigh the potential benefits. First, the feasibility of the proposed metric-based system is questionable. For example, it would be difficult for a metric-based approach to accurately capture the degree to which a bank, that operates in 25 states and multiple markets meets the financial service needs of its entire assessment area. Similarly, context is important and difficult to capture with quantitative measures alone. More should be expected of a lender in markets where they have greater capabilities and where opportunities are more common than normal. An effort to account for the many differences in assessment areas alone using metrics-weighting, etc., would likely lead to a less than perfect outcome and result in considerable complexity.

Finally, CRA evaluations have increasingly shifted more to concrete measures and the results have been lenders placing more importance reaching a certain level of activity rather than on maximizing the impact associated with activities. Adoption of a metric-based approach may increasingly move the lender focus toward numbers and away from impact.

A more pressing challenge for OCC is to provide clarity and minimize confusion by treating similar activities the same way. Addressing areas of ambiguity in the process would make it easier to both explain and understand a CRA rating.

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

**HAC recommends a continued emphasis on community involvement without moving to a metric-based approach.** Community involvement is a critical to CRA. Integral to the process are informed community stakeholders who have firsthand knowledge of how a bank serves its assessment area. Increasing public involvement in the process, beginning in the late 1980s early 1990s, has enhanced the importance of lender activity in local communities. More public involvement would further improve and enhance this element of CRA.

Public involvement in CRA would, in general, be enhanced with increased and accessible publicly available data. With increased information, community groups and banks alike will better understand circumstances and serve identified communities.
Conversely, a metric-only approach would likely weaken public involvement. Aggregating lender activities, which a metric-based approach would do, could overlook local conditions. Any one portion of a lender’s assessment area may be essentially marginalized, which could mean public input is also reduced. In an ideal scenario, public involvement would help a lender better identify projects and efforts that it could support. Regulators should then give great latitude in accepting activities from such collaborations since they would be the best way to ensure that a community’s needs are being met.

3) Expansion of CRA Activities

The ANPR states as a goal:

“The OCC invites comments on regulatory changes that could ensure CRA consideration for a broad range of activities supporting community and economic development in bank’s CRA performance evaluations while retaining a focus on LMI populations and areas and sets clear standards for determining whether an activity qualifies for CRA consideration.”

This statement proposes a laudable goal. Likewise, the U.S. Department of Treasury’s recent CRA report notes that: “As currently implemented, CRA eligibility determinations are subject to vague and inconsistent interpretations.” The ANPR appears to focus on how transparency and clarity can be improved and, more importantly, what types of additional activities lenders could receive CRA consideration for undertaking.

HAC’s general recommendation is that CRA related activities should be meaningful and adhere to the original ethos and intent of the statute for equal access to credit for all communities. A larger scope of activities may indeed result in a process that is easier to understand and administer. But ultimately this concept would not accurately reflect the degree to which a lender’s actions represent meaningful community investments. Only activities that represent safe, sound, affordable financing should be undertaken. An equally important underlying principal should be the degree to which the CRA effort helps LMI households and neighborhoods. There can, and should be, flexibility regarding the product or activity as long as it meets these two principals. In addition to urging caution in general, HAC specifically comments on a few of the questions below.

22. Under what circumstances should consumer lending be considered as a CRA-qualifying activity? For example, should student, auto, credit card, or affordable prices, 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?

A simple fundamental principal should guide these efforts: the activity being considered reflects safe, sound, affordable financial services. HAC recommends that if the consumer loan products result in above average default rates, for example, then the loan products would not meet this criterion. Currently, such consumer loan products can be counted if they constitute a large portion of a bank’s activities, with an understanding that it would not be possible to determine how well a bank serves its community without
looking at these activities. In certain circumstances there are limited opportunities for a lender to serve a particular area. HAC acknowledges that the focus of our comments is on rural communities and consumers and we have no desire to be overly prescriptive. If the banking activities represent affordable financial services and reach LMI households, the activities should be considered CRA-eligible. Banking products and practices may change, but regardless, it is important to be certain that the activities that are counted are tied to financing and are directly related to the community.

25. Should a bank’s loan purchases and loan originations receive equal consideration when evaluating that bank’s lending performance?

Treat such activities differently and give loan originations more weight. HAC acknowledges that a loan origination represents a new transaction, while a purchase of an already originated loan does not. Some research suggests that the acceptance or consideration of purchased loans has resulted in the trading of loans among lenders rather than an increase in lending activity. This unintended consequence reinforces the importance for regulators to fully consider the impact of regulatory changes. Regulators should closely examine how many banks may get credit for sequential purchases of the same mortgage-backed securities.

28. The CRA states that the agencies may take into consideration in the CRA evaluation of a non-minority-owned and non-women-owned financial institution (majority-owned institutions) any capital investments, loan participation, and other venture undertaken in cooperation with MWLIs, even if these activities do not benefit the majority-owned institution’s community, provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. What types of ventures should be eligible for such consideration, and how should such ventures be considered?

The CRA should give CDFIs the same status as MWLIs and assign CRA credit for loans to CDFIs regardless of assessment area. CDFI’s play an important role in the creation of affordable housing in rural communities, including Native CDFIs which have capacity to assist underserved tribal communities in accessing credit. These institutions have the expertise necessary to serve often hard to serve areas and populations, something a bank would not necessarily have on its own.

Recordkeeping and Reporting

In a final set of questions, the ANPR addresses record keeping and reporting. The ANPR states, “the OCC also invites comments on how to modernize CRA regulations to promote transparency and consistency in recordkeeping, reporting and examination requirements.” Questions 29 through 31 highlight the timeliness and frequency of bank reporting. HAC offers a general comment that increased transparency and more timely reporting are important. These data should be made available and accessible to the public. It is the public and communities’ responsibility to draw an examiners attention to important community and local dynamics, particularly elements a regulator might not be aware of.
Office of Comptroller of the Currency
November 19, 2018
9

CRA-derived information should not be perceived as necessarily negative, as it could highlight a positive impact or where certain activities are more warranted.

In order to make such arguments, data and information are critical. CRA examination data is currently limited, particularly for smaller lenders. Important data can be found in pdf documents and not in a format that can be empirically analyzed. For important information such as the scores for individual CRA tests (lender, service community development/investment) and the lender defined assessment areas, presenting data in a dataset format (excel, csv, etc.) would help facilitate more involvement in the process. It would also be useful to know what portions of a lender’s assessment are reviewed under a limited scope analysis and how they compared to the overall assessment. Currently, static and inefficient pdf reports are the only avenue to access this information.

With advances in technology, it is reasonable to expect that public data enhancement could be easily accomplished under current CRA efforts as well as a new approach. Such increased data transparency does not place an undue burden on the leaders since the information is already compiled by the examiner. Making this information available in the easiest format for analysis is a sensible way to better harness public involvement in the CRA process.

In conclusion, meaningful CRA reform could boost lending and access to banking for underserved communities, but it should not do so at the expense of vital and longstanding principles of CRA. Access to credit for individuals and community leaders remains a challenge in many rural communities. For activities that occur after a lender has met their assessment area requirements, the OCC should consider recognizing financial services in adjacent LMI census tracts. Regulatory relief could be considered for lender’s rated as outstanding who also go well outside of their assessment areas to further spur activity in underserved LMI rural communities. This would increase the number of LMI rural areas that would be served.

In order to bolster CRA’s effectiveness, reforms are necessary to take into account changes in banking and technology. Yet, as the OCC contemplates reform, it must not rush to propose or implement changes that will make banks less accountable and responsive to community needs, which would be counter to the purpose of the Community Reinvestment Act.

Once again, The Housing Assistance Council is pleased to have this opportunity to provide comments on the OCC’s ANPR entitled Reforming the Community Reinvestment Act Regulatory Framework. The Community Reinvestment Act’s (CRA’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. HAC looks forward to working with you to continually improve and enhance the promise of CRA for all communities – urban and rural. Please do not hesitate to contact me if you need additional information or clarification of our comments.
Office of Comptroller of the Currency
November 19, 2018
10

Sincerely,

David Lipsetz
Chief Executive Officer
Office of Comptroller of the Currency  
November 19, 2018

Notes

5 HAC tabulation of FDIC website bank branch data, accessed 10/30/18 at the following url: https://www5.fdic.gov/idasp/advSearch_warp_download_all.asp?IntTab=1
6 Ibid
8 Ibid
9 HAC tabulation of FDIC website bank branch data, accessed 10/30/18 at the following url: https://www5.fdic.gov/idasp/advSearch_warp_download_all.asp?IntTab=1
12 Using the USDA, ERS Persistent Poverty definition. HAC tabulation of FDIC website bank branch data, accessed 10/30/18 at the following url: https://www5.fdic.gov/idasp/advSearch_warp_download_all.asp?IntTab=1
15 In writing about such incentives, Mark Willis writes: "By their nature, efforts by banks to expand access to credit in low- or moderate-income communities are costly, resulting in a lower profit margin or even a net loss. The government should consider providing an incentive to offset these low margins." 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
Accessed the memorandum and report, 10/30/18, at the following url:
https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf