Opportunity Zones
WORKING GROUP™
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April 8, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

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

Re: Docket ID OCC-2018-0008/RIN 3064-AF22 (Proposed Community Reinvestment Act Regulations)

To Whom It May Concern:

On behalf of the members of the Opportunity Zones ("OZ") Working Group, we appreciate the opportunity to comment on the Office of the Comptroller of the Currency's (OCC) and the Federal Deposit Insurance Corporation (FDIC) Notice of Proposed Rulemaking (NPR) regarding the Community Reinvestment Act (CRA). Our group includes more than 600 professionals that are primarily investors, syndicators, lenders, community development entities (CDEs), community development financial institutions (CDFIs), for-profit and nonprofit developers, consultants, law firms, and other community development professionals who work together to suggest consensus solutions to technical OZ incentive issues and provide recommendations to make the OZ incentive more efficient in delivering benefits to low-income communities (LICs).

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In particular, our group contains banks and representatives of banks that have made OZ investments that were eligible for CRA consideration. In fact, we wrote to the OCC on October 15 to urge the bank regulators to clarify how OZ investments could qualify for CRA consideration and we include that letter as an attachment to this comment letter.

Although a relatively new incentive, OZs have already attracted private capital into areas in need of investment, which have also been targets of CRA activity. Among the needy areas nominated by governors, 294 contain Native American lands (which are historically underfunded) and 23.3 percent of the zones are in rural areas. The poverty rate of OZs nationwide (27.7 percent) is much higher than the U.S. rate (14.1 percent). The median family income in the United States is $73,965 per year, whereas OZs nationwide have a median family income of $47,316 per year. The share of minorities in OZs are much higher than the U.S. share (56.5 percent to 38.9percent). As the regulations were finalized earlier this year, the data on investments are still being collected. However, so far, Novogradac has documented more than $6.7 billion has been raised to serve these low-income communities.

The CRA shares many of the same purposes as OZs, such as bringing private capital to LICs for community and economic development. We applaud the inclusion of OZ investments as a qualifying activity for purposes of the CRA. The combination of the CRA and OZ incentives would be optimized by ensuring that the CRA regulations support bank involvement in OZs. The CRA and OZs have a large overlap in their targeted geographies and populations. The CRA provides an incentive to banks to provide community development (CD) lending and investment to low- and moderate-income (LMI) individuals and areas. The OZ definition of LICs is similar to, and in most cases overlaps with, the LMI definition.

We believe the OCC and FDIC should ensure that the CRA serves as a robust incentive to investment in OZs. Furthermore, our comments and suggestions, if incorporated into your proposed rule, will facilitate more bank investment in OZs, provide an incentive to banks for the OZ investments with the greatest CD impact, and allow for greater flexibility of the OZ incentive to qualify for CRA.

Since the proposed rule seeks to strengthen the CRA regulations in four key areas – by (1) clarifying which activities qualify for CRA credit; (2) updating where activities count for CRA credit; (3) creating a more transparent and objective method for measuring CRA performance; and, (4) providing for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting – we have organized our responses accordingly.

1. Clarifying which activities qualify for CRA credit

First, as noted above, we would like to applaud the inclusion of OZs in the NPR as an example of areas with the greatest need for economic development, investment, and financing needs that may be underserved by the current regulations. This recognition is warranted considering OZs are either (1) a qualified LIC, using the same criteria as eligibility under the New Markets Tax Credit (NMTC - census tracts that have an individual poverty rate of at least 20 percent and median family income up to 80 percent of the area median) or (2) a census tract that was contiguous with a LIC if the median family income of the tract does not exceed 125 percent of that contiguous LIC.

We are pleased to see that under the NPR, an activity that would qualify for CRA credit is a CD activity that provides financing for or supports qualified opportunity funds (QOFs) that benefit LMI OZs. Furthermore, under the proposal, the expansion of qualifying CD activities would include adding a criterion for QOFs, as defined in 26 U.S.C. 1400Z2(d)(1), that benefit qualified OZs in LMI tracts, as defined in 26 U.S.C. 1400Z-1(a). We agree that adding this criterion would help to incentivize banks to meet the needs of LMI individuals and tracts located in OZs.

Adding specific examples in the NPR of OZ activities that banks would receive positive CRA consideration is also very helpful considering OZs are a relatively new tax incentive created by the Tax Cuts and Jobs Act signed into law on Dec. 22, 2017. One activity is an investment in a QOF, established to finance construction of a new manufacturing facility in an OZ that is also an LMI census tract. Additional activities include: an investment in a QOF, established to finance renovation of a vacant building into a cultural arts facility, including loft space for artists and a community theater, in an OZ that is also an LMI census tract; and, an investment in a QOF, established to finance the rehabilitation of an acute care hospital facility, including the purchase of new medical equipment, in an OZ that is also an LMI census tract. While these examples are by no means exhaustive of the types of OZ-qualifying activities that should be considered under proposed §§ 25.04 and 345.04, they do provide tacit recognition of the importance of OZs in any discussion of modernizing the CRA regulations.

In an effort to provide even more clarity around when OZ investments might qualify, we recommend the OCC and FDIC establish a safe harbor set of criteria that would provide banks with the presumption that if an OZ investment meets one or more of the safe harbor criteria, such investment would be a qualified CD investment under CRA. Such a policy is important so that banks would know prior to making an OZ investment not explicitly described in the illustrative list that it would qualify. Having to wait for an updated list, or any other process that would render a judgment on whether an OZ investment qualifies after it was made would seriously undermine the value of the CRA incentive. We recommend the safe harbor criteria establish positive CRA consideration and should be given to the extent the OZ investment:

1. Is combined with low-income housing tax credit (LIHTC) or NMTC investments. These investment vehicles have a proven track record of being highly responsive to LMI needs, are difficult to obtain from other sources, and require banks to allocate higher levels of capital to support them;
2. Is combined with the historic tax credit (HTC) for properties located in LMI census tracts or in areas of economic distress as defined by the NMTC statute (section 45D(e) of the Internal Revenue Code), which have historically been areas targeted for positive CRA consideration. Similar to LIHTC and NMTC as noted above, the HTC has a proven track record of positive community development, especially in LMI census tracts or areas of economic distress;
3. Finances housing that is subject to a land use restriction agreement or similar deed restriction that includes at least 20 percent of its units affordable to LMI households;
4. Finances rental housing in LMI census tracts or areas of economic distress targeted to LMI households, as well as middle-income households in markets where there exists a demonstrated lack of supply;
5. Finances single family housing (one to four units) intended for homeownership affordable to LMI households, as well as middle-income households in markets where there exists a demonstrated lack of supply;
6. Revitalizes or stabilizes a community including federally or state declared disaster areas;
7. Is in an LMI census tract or area of economic distress that is currently the focus of mutually reinforcing state, local or private development initiatives to attract private investment and foster startup activity;
8. Is in an area that has recently experienced significant layoffs dues to business closures or relocations;
9. Revitalizes a blighted property in an LMI census tract or area of economic distress;
10. Finances essential infrastructure, community facilities or services primarily benefitting

LMI households; and,

11. Provides significant investment in a new business located in LMI census tract, areas of economic distress or employing LMI individuals.

While we appreciate and support the OCC and FDIC's efforts to add clarity in the CRA regime, publishing a list of highly specific examples of qualifying activities should be sensitive to activities that by their nature do not necessarily, or may not be likely to, help meet LMI community needs. We respectfully submit that improvements to an athletic stadium is one such example and should not be included on a non-exhaustive, illustrative list of examples of activities that would qualify under proposed §§ 25.04 and 345.04. Such an activity should only qualify if it can be clearly demonstrated to primarily benefit LMI individuals. The same can be said about infrastructure activities, which are likely to have benefits for the general population over a wide area. If (as proposed) it is sufficient that such activities only include *some benefit* (emphasis added) for LMI individuals, LMI census tracts, or other areas of need, it could be argued that most infrastructure projects would meet this standard (based simply on the proportion of the general population in a given area who are LMIs individuals). While this may incentivize banks to put money into infrastructure projects, that is not the purpose of the CRA requirements. We recommend that in order to qualify, infrastructure projects would need to be approved by a Federal, state, local, or tribal government plan and have the majority (more than 50 percent) of the benefit be attributable to LMI individuals and communities rather than just "some" LMI individuals and LMI communities as a portion of the broader population.

Similarly, community facilities located in LMI census tracts, such as hospitals and schools, should not automatically be considered qualifying activities; rather, it should be necessary to demonstrate that a majority of the benefits of such facilities will inure to LMI individuals. Not only would this policy be consistent with qualifying activities under current regulations, but also given the explicit dollar volume targets under the performance evaluation criteria, it is crucial to ensure that qualifying CRA activities have a clear benefit to LMI individuals. We note the NPR does not include the more general aspects of economic development that involves a bank having to demonstrate that its activities support job creation, retention, and improvement for LMI individuals, LMI census tracts, and other areas targeted for redevelopment by Federal, state, local, or tribal governments. We believe investments that support permanent job creation, retention, improvement through workforce development and job or career training programs that target unemployed or low- to moderate-income persons are important, promote economic development and are measurable. For example, an investment in an OZ to fund a full-service hotel that will create a significant number of jobs, the majority of which are accessible to LMI individuals, can be obtained through projected outcome data from the project sponsor or using economic impact modeling software to estimate the number of construction jobs.

The NPR indicates that the OCC and FDIC would maintain a publicly available non-exhaustive, illustrative list of examples of qualifying activities that meet the criteria in the rule. The list would also include examples of activities that the agencies have determined, in response to specific inquiries, do not qualify. The NPR would also establish a process for a bank to submit a form through the agency's website to seek agency confirmation that an activity is a qualifying activity.

In addition to updating the illustrative list on an ongoing basis, the NPR provides that the list would also be revised through a public notice and comment process, to add activities that meet the criteria and to remove activities that no longer meet the criteria. While we are supportive of the agencies updating the list both on an ongoing basis to coincide with publishing the list of requested items in the Federal Register for public comment and feedback, and updating the list following this process once every three months through publication on the agency's websites, it should not be considered a substitute for establishing a safe harbor set of criteria as explained above.

2. Updating where activities count for CRA credit

The NPR discusses the need to expand CRA exams to assess bank lending in areas beyond bank branches to recognize the evolution of modern banking and the fact that many banks receive large portions of their deposits from outside their facilities-based assessment areas. We recommend the OCC and FDIC **not** establish "deposit-based" assessment areas for geographical areas outside of where the bank has its physical footprint. Rather, if an institution has demonstrated they have been responsive to needs in their assessment areas, e.g., a "Satisfactory" or greater CRA rating, we believe additional consideration for a proportional amount of CRA-eligible activity that's undertaken outside the bank's assessment area for activities that target particularly highly distressed areas or targeted populations in the same or neighboring state, would better incentivize the bank to address local needs in traditionally underserved areas. Essentially, focusing on the demographic, economic, and financial condition of an area would be a better measure of local needs than basing the analysis merely on where a bank accepts deposits outside its facilities-based assessment areas.

However, should the OCC and FDIC proceed with implementing the concept of "deposit-based" assessment areas, we recommend that the basis for requiring banks to add "deposit-based" assessment areas would only be when a significant part of those deposits flow from low- or moderate-income census tracts outside the facility-based assessment area(s). Moreover, if "deposit-based" assessment areas are adopted, we suggest the trigger for mandating such "deposit-based" assessment areas be based on a ratio of domestic deposits obtained from low- or moderate-income census tracts outside the assessment areas compared to all domestic deposits maintained by the bank. The trigger might be 10 percent or 15 percent or more. The "deposit-based" assessment areas should encompass tracts where the deposits are concentrated and the immediately surrounding areas, similar to the requirement in facility-based assessment areas to include the tracts around a branch where a bank generates lending activity.

An alternative to "deposit-based" assessment areas for your consideration are areas where the bank has actually marketed and provided credit and where it could reasonably be expected to have marketed and provided credit. Some of those areas might be beyond or otherwise different from a bank's current CRA assessment areas especially in the case of internet, wholesale or limited purpose banks. Taking this approach would re-focus the analysis on whether the bank is providing equal access to credit in such areas consistent with the spirit and intent of the CRA regulations.

As the NPR notes, permitting banks to receive CRA credit for qualifying activities conducted outside of their assessment areas at the bank level could reduce the number of CD hot spots and help to redirect investments to areas where there is a great need for CD activities but few banks that engage in those activities (known as CD deserts). In an effort to provide more clarity around what areas outside a bank's assessment areas should be considered, we offer the following examples that the CDFI Fund has incorporated into their application review process that target highly distressed areas or certain populations:

1. ECONOMICALLY DISTRESSED COMMUNITIES - Census tracts with poverty rates greater than 30 percent; OR Census tracts if located within a non-Metropolitan Area, having a median family income that does not exceed 60 percent of statewide median family income, or, if located within a Metropolitan Area, having a median family income that does not exceed 60 percent of the greater of the statewide median family income or the Metropolitan Area median family income; OR Census tracts with unemployment rates at least 1.5 times the national average.

2. NON-METROPOLITAN COUNTIES -Qualifying census tracts that are located in counties not contained within a Metropolitan Statistical Area (MSA), as defined in OMB Bulletin

No. 15–01 (Update of Statistical Area Definitions and Guidance on Their Uses) and applied to the 2010 census tracts.

3. TARGETED POPULATIONS - As permitted by the Internal Revenue Service (IRS) and related CDFI Fund guidance materials, projects serving Targeted Populations to the extent that: (a) such projects are 60 percent owned by Low-Income Persons (LIPs); or, (b) at least 60 percent of employees are LIPs; or, (c) at least 60 percent of the qualified opportunity zone business' gross income is derived from sales, rentals, services, or other transactions to customers who are LIPs.

4. Small Business Administration (SBA) Designated HUB ZONES - To the extent OZ investments will support businesses that obtain HUB Zone certification by the SBA.

5. BROWNFIELDS - Brownfield sites as defined under 42 U.S.C. 9601 (39).

6. HOPE VI/CHOICE NEIGHBORHOODS INITIATIVE REDEVELOPMENT - Areas encompassed by a HOPE VI or Choice Neighborhoods Initiative redevelopment plan.

7. FEDERAL NATIVE AREAS - Federally Designated Indian Reservations, Off Reservation Trust Lands or Alaskan Native Village Statistical Areas, or Hawaiian Home Lands.

8. ARC/DRA AREAS - Areas designated as distressed by the Appalachian Regional Commission or Delta Regional Authority.

9. COLONIAS AREAS - LICs on the U.S.-Mexico border as designated by the U.S. Department of Housing and Urban Development.

10. FEDERAL MEDICALLY UNDERSERVED AREAS - Federally designated medically underserved areas, to the extent OZ investment will support health related services.

11. FEDERAL/STATE/LOCAL ZONES - Federally designated Promise Zones, Base Realignment and Closure areas, State Enterprise Zone programs, or other similar state/local programs targeted towards particularly economically distressed communities.

12. FEMA DISASTER AREAS - Counties for which the Federal Emergency Management Agency (FEMA) has issued a "major disaster declaration" and made a determination that such County is eligible for both "individual and public assistance," provided that the initial investment will be made within 36 months of the disaster declaration.

13. HEALTHY FOODS FINANCING INITIATIVE (HFFI) DESIGNATED FOOD DESERTS - Census tracts identified as Food Deserts under the HFFI definition (USDA-ERS), to the extent OZ investment will increase access to healthy food.

3. Creating a more transparent and objective method for measuring CRA performance

The NPR describes a methodology for measuring CRA performance based on assessing three fundamental components: (1) CRA Evaluation Measure; (2) Retail Lending Distribution Test; and, (3) Community Development Minimum. We recognize that the CRA Evaluation Measure's focus on the value of on-balance sheet loans and investments would likely encourage longer term loans and investments in LMI communities and we understand the desire of the OCC and FDIC to address timing issues around CRA examinations by shifting the evaluation from being based on originations to a bank's balance sheet activity. However, such an approach would also have a detrimental effect on investments in real estate (e.g., reductions in value, such as depreciation), and lead to banks with existing large balance activity to significantly limit or stop investing. Therefore, we urge the OCC and FDIC to consider originations of equity investments, in addition to balance sheet activity, when evaluating CRA performance. Alternatively, the OCC and FDIC should factor into ratings whether banks have decreased originations of equity investments significantly at the bank level relative to the prior assessment period.

We are concerned that the proposed percentages for presumptive ratings (11 percent for an Outstanding rating, 6 percent for a Satisfactory rating, and 3 percent for a Needs to Improve rating) are based on data that was not disclosed in the NPR. Therefore, it is difficult to comment about the reasonableness of the published benchmarks and request the agencies take the time to further test and explain, with examples, how banks of varying asset size and localities will be affected by the proposed CRA performance measure, especially rural areas with minimal CD opportunity, and obtain feedback on these examples before finalizing the proposal. While not ideal, if the agencies choose to move forward with the data collection as proposed, before implementing such a performance measure, it would be advantageous to use other temporary, albeit more subjective, assessments similar to the format used today until banks have collected sufficient data and can be assured the metric works as designed and meets the goals of the CRA.

With respect to the third component, the Community Development minimum, we are particularly concerned about the proposed approach that to obtain an Outstanding or Satisfactory rating, banks would be required to make a minimum amount of CD loans *or* *investments (emphasis added)* in each assessment area and bank-wide. We acknowledge that it is a desirable goal to provide a method of assessing CRA performance that would be more objective, clear, and consistent as well as facilitate banks' ability to engage in qualifying activities in communities that need it the most. However, the proposed rule does not provide sufficient assurances that banks would in fact be achieving this goal in communities that need investments. By eliminating a separate Investment Test, the proposed approach, could result in substantially reducing the incentive for banks to make equity investments. We are concerned that enabling a bank to obtain an Outstanding or Satisfactory rating without making any equity investments would impair investments that are needed to meet the needs of LMI communities throughout its assessment areas.

While the NPR introduces the concept of a "multiplier" as a vehicle to further incentivize banks to engage in activities that are scarce but highly needed, such as CD investments in OZs, we do not believe that the multiplier would be a sufficient incentive to encourage banks to make CD equity investments as opposed to lending. Banks typically must reserve more than twice the capital for equity investments than for loans, which imposes a much higher cost on banks for making equity investments than for making loans. This could result in banks choosing to meet their CRA requirements entirely through debt products, especially mortgage debt, which is typically more liquid than equity investments such as those in OZs.

In the case of OZ investments, multiplying the dollar amount by a factor of two could inadvertently reduce the number of OZ equity investments, since some banks may conclude they can earn the same amount of credit on a CRA exam if they reduce their equity investments by half. We believe the objectives of increasing certain types of activities would be better addressed by not counting certain CRA activity for purposes of meeting the community development minimum. For example, mortgage backed securities (MBS), even if they are generated from a pool of mortgages originated for LMI households, are a highly liquid and attractive investment for most banks, and the 200 percent multiplier is an insufficient incentive to encourage banks to invest in other CD qualifying activity. Even if there is a discount for such MBS investments not held on a bank's balance sheet for a sufficient period of time, it is not likely to prove much of a disincentive to purchase MBS.

Instead of awarding double credit to the three types of activities identified — equity investments, loans to CDFIs, and affordable housing loans – we recommend that the OCC and FDIC require that, in order to receive a Satisfactory or Outstanding rating, a minimum level of CD activity (e.g., 1 percent of deposits, under the current 2 percent test) at the bank level should be in these favored CD activities.

We believe a more equitable method to measuring CRA performance should be grounded in the current "large bank" three-test evaluation regime. Retaining an Investment Test (as well as Lending Test and Service Test) in the CRA regulations would ensure that banks continue to have a focused incentive to meet the needs of LMI communities from all three critically important perspectives. Our review of the NPR and a significant number of comment letters in response to the ANPR do not point to criticisms of the *design* of the three-test evaluation. Rather, the issues appear to be primarily systemic in nature including the lack of concrete definitions for key concepts in the original statute as well as the difficulty of setting objective benchmarks that could equally apply to banks with different asset levels and business models, and in diverse communities with distinct investment needs.

With respect to OZ investments, as noted above, a shift away from the current "large bank" three-test evaluation regime towards evaluating together all of a bank's CRA activity (lending, investment, and services) would enable banks to shift toward an increased (and perhaps exclusive) reliance on debt products reducing and perhaps eliminating equity investments such as those in OZs. Such equity investments must be committed for an extended period of time (7 years in the case of NMTC and 15 years in the case of LIHTCs), and such long-term commitments were designed to be, and surely are, more transformative for the communities that CRA is intended to support than traditional debt products, with far-ranging impacts for LMI residents as well as the surrounding neighborhoods.

We encourage the OCC and FDIC to continue to support the CRA's current role in incentivizing these types of investments thereby avoiding the potentially unintended consequence of incentivizing banks to limit (or eliminate) their OZ investments that otherwise may best meet the needs of their LMI communities.

However, if the OCC and FDIC do not reinstate a separate Investment Test, we strongly recommend an increase to the 2 percent community development minimum requirement and for "large banks" as defined under current CRA regulations, the community development minimum must include a minimum percentage of equity investments. As noted above, the OCC and FDIC did not provide data to demonstrate that the ratios established in the performance evaluation, including the community development minimum percentage, represent a meaningful amount of CRA activity. However, given that there is $13 trillion in domestic deposits held by covered financial institutions according to the Federal Deposit Insurance Corporation, the fact that most CD activities are eligible for the 200 percent multiplier and that CD activity typically remains on the balance sheet for an average of at least five years according to the Urban Institute, the community development minimum represents about $26 billion in annual activity. As the LIHTC equity market alone, not to mention any of the other qualifying activities for community development, is estimated to be about $18 billion for 2020, such a minimum is clearly insufficient.

As it is conceivable that the 2 percent threshold could be meaningful for any one particular assessment area, we recommend that in order to obtain a Satisfactory rating, a bank should make CD loans and equity investments representing a minimum of at least 3 percent bank-wide. To obtain an outstanding rating, a bank should meet a community development minimum of at least 3 percent in any of its assessment areas and at least 4 percent bank-wide.

Furthermore, we strongly recommend a minimum percentage of equity investments for large banks to satisfy the community development minimum test should be set by the percentage of equity investments as compared to their total CD activity the bank currently holds on their balance sheet. No bank should be able to obtain a Satisfactory or Outstanding rating while reducing the percentage of its CD equity investments.

The NPR indicates that the OCC and FDIC do not believe that a single transaction limit is necessary and that a single transaction limit could have unintended consequences and discourage banks from conducting activities that would help meet the needs of a specific community. We do not agree with that view.

Eliminating single-transaction limits would be inconsistent with the goal of encouraging CRA investments in a wider range of LMI communities. Absent such limits, banks would be able to engage in a small number of large-dollar transactions, which might be located in areas (such as large urban centers) already receiving ample CRA investments. Instead, we recommend that caps be established on the total dollar value of every type of eligible loan or investment, and that banks should not report eligible loans or investments that exceed this amount unless an exception to the cap is granted by examiners based on discussion of the specific facts and circumstances of a potential loan or investment. To ensure large, catalytic impact projects are not delayed due to examiner review, we recommend that a 30-day timeframe be established for rendering such decisions.

4. Providing for more transparent, consistent, and timely CRA related data collection, recordkeeping, and reporting

The NPR makes it clear that the current framework does not collect data on all CRA activity including CD investments or CD services and we appreciate the need to collect such information going forward. The question is to what degree or level of specificity is appropriate and necessary from a cost/benefit analysis perspective to ensure effective CRA evaluations and public disclosure of those results. Given the myriad of systems currently employed by banks to collect and report on their CRA activities and the need for banks to maintain voluminous records and report new data under the NPR, we recommend a policy that provides sufficient flexibility to enable a bank to successfully transition to the new requirements without adversely affecting their overall CRA rating.

In conclusion, meaningful CRA reform could boost lending, investments, and access to banking for traditionally underserved communities and populations. Clarifying and expanding the types of activities that qualify for CRA credit is a welcomed enhancement to the current regulations but the approach to expanding the areas in which qualifying activities receive credit based on deposits does not adequately ensure the needs of severely distressed LICs and populations will be met. Fortunately, there's an abundance of demographic, economic, and financial data readily available to identify and confirm such areas.

While the NPR endeavors to set forth many new ideas to the examination approach, the OCC and FDIC should proceed with caution in attempting to implement too many reforms simultaneously as it may lead to unintended consequences that cannot be quickly and easily rectified, including impairment of other CD programs and incentivizing activities that do not serve the purposes of the CRA requirements. Retaining the current "large bank" three-test evaluation regime is one way to avoid such outcomes. Overall, we believe that many, if not most, of the NPR's stated objectives could be achieved by modifying the existing model in the various ways described above. This would have the benefit of reducing substantially the cost to implement the revised requirements, while still making significant improvements to the regulations.

Should the agencies decide to continue to move forward, we suggest the agencies thoughtfully review the comments, make the necessary changes for clarity and reduction of undue burden, and issue a revised notice of proposed rulemaking so the industry has time to comment on those changes before the rule is finalized, especially if the performance measures include the needed revisions based on full data analysis. Furthermore, we recommend the agencies allow for "good faith efforts" during the first exam period following the mandatory effective date of this rule. This would include not issuing a Needs to Improve rating based on inaccuracies or deficiencies in data collection or calculations if the bank demonstrates their program was developed and administered in good faith, giving the bank a reasonable amount of time to correct those deficiencies prior to issuing the final Performance Evaluation rating.

Finally, we urge all three banking agencies – the OCC, FDIC and the Federal Reserve – to develop a CRA rule that is issued on an interagency basis. This rule should not be finalized without interagency coordination. Some member banks have multiple charters and are examined by both the FDIC and the Federal Reserve. Having two different methods of evaluation would create significant regulatory burden on these banks and result in confusion for community groups attempting to develop community projects using two different CRA qualification definitions, as well as reviewing Performance Evaluations.

We hope that you find these comments, considerations and recommendations helpful as you update the CRA regulations. Thank you in advance for your time and consideration. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,

Novogradac and Company LLP

By

John Sciarretti, Partner