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National Association of Federally-Insured Credit Unions

April 8, 2020

Chief Counsel's Office
Comment Processing
Office of the Comptroller of the Currency
400 7th Street S.W.
Washington, DC 20219

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, DC 20429

RE: Notice of Proposed Rulemaking, Community Reinvestment Act Regulations

To Whom It May Concern:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to recommend that the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), collectively the "Agencies," withdraw the current proposal and postpone any rulemaking to amend regulations implementing the Community Reinvestment Act (CRA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 120 million consumers with personal and small business financial service products. As an initial matter, the dramatic social and economic changes wrought by the COVID-19 pandemic should prompt the Agencies to withdraw this rulemaking until the crisis and its inevitable aftereffects are resolved. Members of Congress and industry associations have already advised financial regulatory agencies that they should temporarily halt rulemakings unrelated to COVID-19. Furthermore, relaxing CRA regulations at this time could unfairly impact communities that need, more than ever, the physical presence and local support of depository institutions.

Substantively, the current proposal has also elicited intense criticism from numerous communities and consumer advocacy groups who fear a weakening of CRA protections.[1] The frequency of this criticism, and diversity of concern, including from 14 State Attorneys General responding to an earlier (but similarly flawed) iteration of the framework, strongly suggests that the proposed revisions to the CRA regulations may not be capable of fulling the CRA's statutory objectives.[2] For this reason, it would be prudent to withdraw the current proposal and ensure that future rulemaking efforts are receptive to the concerns of community stakeholders and other essential regulators, such as the Board of Governors of the Federal Reserve System (Board), whose lack of

[1] *See*, *e.g.*, City of San Francisco, Comment Docket ID OCC-2018-0008-2234 (March 13, 2020); City of Pittsburgh, Comment Docket ID OCC-2018-0008-2076 (February 28, 2020); City of Madison Wisconsin's Mayor's Office, Comment Docket ID OCC-2018-0008-2411 (April 2, 2020); Akron Summit Community Reinvestment Coalition, Comment Docket ID OCC-2018-0008-2118 (March 9, 2020); Delaware Community Reinvestment Action Council, Comment Docket ID OCC-2018-0008-2174 (March 10, 2020).
[2] *See* Comment from State Attorneys General Regarding Reforming the Community Reinvestment Act Regulatory Framework, Comment Docket ID OCC-2018-0008-1208 (November 23, 2018) (noting opposition to a "one-ratio" approach to CRA evaluations and requesting participation of the Federal Reserve in the rulemaking process).

participation, by itself, highlights a troubling lack of consensus regarding an essential regulation for banks.

General Comments

All financial institutions have a duty to serve their communities. Structurally, credit unions are bound to this mandate because they are not-for-profit, member-owned cooperatives that serve defined fields of membership, a term that encapsulates the legal requirement for credit unions and their members to share a common bond. Credit unions also develop business plans, establish facilities, and sell products — many of which can be purchased by banks for CRA credit — tailored to the financial needs of their communities. Credit unions' commitment to lending in low income areas and to minority borrowers is well documented.[3] In contrast, banks are organized as corporations, answerable to shareholders, and can open new accounts wherever and for whomever they please. As the Agencies acknowledge, the CRA was enacted specifically to address a history of *bank* redlining.[4]

While all financial institutions are subject the same core set of fair lending laws, the CRA plays a distinct and unique role in addressing the community investment activities of banks and promoting transparency.[5] Accordingly, it is troubling to see a range of comments from cities, states, community organizations, and consumer advocacy groups flagging serious weaknesses in the current proposal.

The Proposal Would Likely Degrade the Quality of CRA Evaluations.

Under the proposal, a bank's CRA rating would be influenced most significantly by the bank-level and assessment area measures (together forming a single, dominant metric CRA ratio), and less so by other measures (e.g., pass-fail retail lending and community development tests).[6] The bank-level and assessment area measures would be the sum of the *dollar* value of all CRA-qualifying activities divided by the value of retail domestic deposits at the bank and assessment area levels respectively. For these components of the CRA rating, an evaluation score of 11 percent would be required for an outstanding rating and six percent for a satisfactory rating. A three percent rating would be designed as "needs to improve," and less than three percent would mean substantial noncompliance.

FDIC member Martin Gruenberg has called the proposal, and in particular the bank level and assessment area metric, "deeply misconceived," warning that it would "fundamentally undermine

[3] *See* Appendix A.
[4]*See* Notice of Proposed Rulemaking, Community Reinvestment Act Regulations, 85 Fed. Reg. 1204, 1205 (January 9, 2020).
[5] *See* Federal Reserve Bank of Minneapolis, "Fair lending laws and the CRA: Complementary tools for increasing equitable access to credit" (March 8, 2018).
[6] *See* Statement by Martin J. Gruenberg, Member, FDIC Board of Directors, Notice of Proposed Rulemaking: Community Reinvestment Act Regulations, 3 (December 12, 2019), available at https://www.fdic.gov/news/news/speeches/spdec1219d.pdf

and weaken" the CRA.[7] As others have observed, the bank-level and assessment area measures, by focusing on the dollar value of qualifying activities and combining them into a single input, places less emphasis on the bank's performance in the individual activities, which could degrade the quality and character of a bank's actions to help local communities. Furthermore, the internal benchmarks used for calibrating the related ratings for the bank-level and assessment area measure (e.g., outstanding, satisfactory, etc.) are not disclosed at the level of detail needed to perform transparent analysis of the Agencies assumptions.[8]

Other issues that could impair the quality of CRA ratings generated using the proposal's framework include:

- Allowing a bank to concentrate its CRA activity in as little as 50 percent of its assessment areas, while disinvesting in the other 50 percent, and still receive a satisfactory or even outstanding CRA rating.[9] Banks with 50 percent or more of their deposits held in non-branch facilities would be required to create additional assessment areas in communities that account for five percent or more of their deposits, based on physical addresses of depositors; but for this to work, new data regarding the addresses of depositors must be collected, and this could be withheld from public disclosure.[10]
- Redefining community development activities – loans, investments, and services – to no longer require that they have a primary purpose of community development targeted for low- and moderate-income individuals and areas, small businesses or small farms, or underserved or distressed rural areas.[11]
- Reducing the importance of the retail services test by affording only minimal recognition for branches in low- and moderate-income areas. This could hasten existing divestiture of physical branches among the largest banks. Already there is evidence that the largest banks in the U.S. are shuttering branches in poor neighborhoods while opening new ones in affluent communities.[12]

Conclusion

Criticism of the proposal and its core framework from within the FDIC, states, and community reinvestment groups strongly suggests that the redesigned CRA rules miss the mark and will likely degrade the usefulness of an essential check on bank accountability and complement to fair lending law. Given the frequency and volume of this criticism, along with a troubling lack of consensus

[7] *Id*. at 1.
[8] *Id*. at 5.
[9] *Id*. at 6.
[10] *See* 85 Fed Reg. at 1228.
[11] *See* 85 Fed Reg. at 1255. Under proposed § 345.03, the definition of a qualifying loan alters references to a "primary purpose" of community development, and instead cross-references new criteria that would accommodate a "*partial purpose*" to serve LMI communities.
[12] *See* Bloomberg, "JPMorgan Leads Banks' Flight from Poor Neighborhoods" (March 6, 2019), available at https://www.bloomberg.com/news/articles/2019-03-06/as-u-s-banks-shut-branches-jpmorgan-leads-shift-toward-wealthy.

within the financial regulatory community, the Agencies should withdraw the current proposal.[13] Additionally, given the unique exigencies posed by the COVID-19 pandemic, the Agencies should postpone a future re-proposal until at least 2021.

NAFCU appreciates this opportunity to comment on the proposed amendments to the CRA regulations. Should you have any questions or require additional information, please do not hesitate to contact me or Andrew Morris, Senior Counsel for Research and Policy, at (703) 842-2266 or amorris@nafcu.org.

Sincerely,

B. Dan Berger
President & CEO

[13] *See* Speech by Governor Lael Brainard, Board of Governors of the Federal Reserve System, "Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose" (March 12, 2019) ("We continue to believe that a strong common set of interagency standards is the best outcome.").

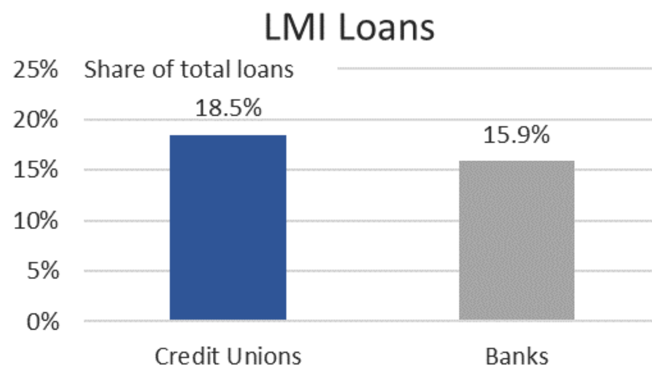
APPENDIX A
Credit Union Mortgage Lending to Low-Income and Minority Borrowers

Summarized below are the findings from NAFCU's analysis of data released under the Home Mortgage Disclosure Act (HMDA). The HMDA dataset is estimated to cover nearly 90 percent of the closed-end mortgage loans originated in the U.S. in 2018.[14] Due to its broad coverage and the fact that it includes information on the originating institution, the location of the property, and a wide range of borrower characteristics, the HMDA dataset provides a vantage point to assess credit union mortgage lending to low-income and minority borrowers, relative to other types of depository lenders.

In the following analysis, we limit our analysis to single-family, owner-occupied, first-lien purchase originations. We compare the dollar value of such loans originated by credit unions versus banks. Any references to banks include thrift institutions.

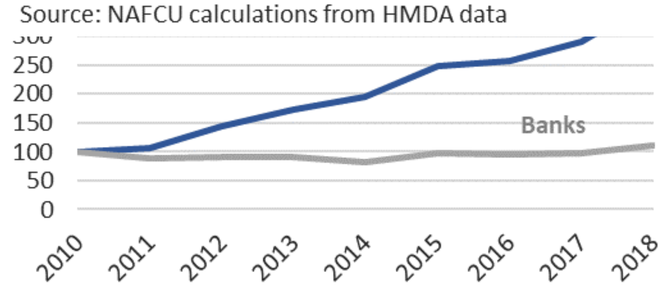
Low-Income Mortgage Lending

In determining what qualifies as a low- and moderate-income (LMI) loan, we follow the convention used in a recent study from Urban Institute for single-family mortgages, where a LMI loan is one that is extended either to a low- or moderate income borrower (one with income that is less than 80 percent of the area median income , or AMI) or one where the property is located within a low-income census tract (where the tract median income is less than 50 percent of the AMI).[15] NAFCU's analysis shows that a substantial share of mortgages originated by credit unions are LMI loans, and that share exceeds bank LMI lending. This disparity in the prevalence of LMI lending between the two depository types persisted throughout the decade of the 2010s, a time when the overall volume of credit union mortgage lending increased substantially relative to banks. The net effect is that while the volume of bank



Notes: See text for definition of LMI. "Banks" category includes thrift institutions. Figures reflect dollar value of first-lien, owner-occupied, single-family purchase originations.

Source: NAFCU calculations from HMDA data



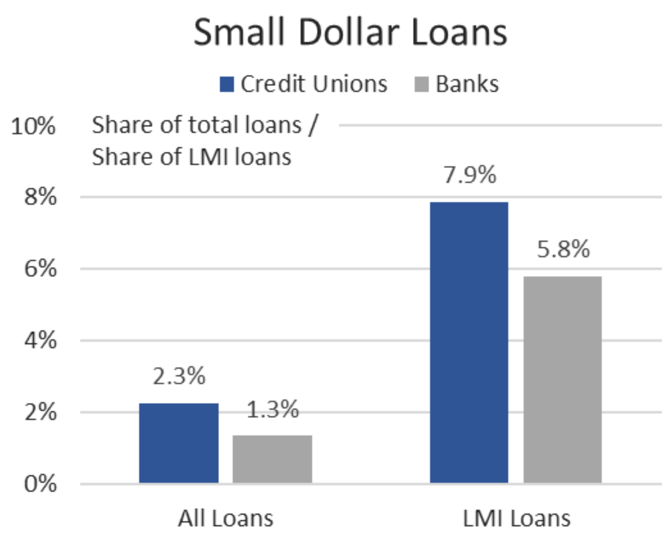
Source: NAFCU calculations from HMDA data

[14] *See* page 12 of "Data Point: 2018 Mortgage Market Activity and Trends" available at https://files.consumerfinance.gov/f/documents/cfpb_2018-mortgage-market-activity-trends_report.pdf

[15] Goodman, Laurie, Jun Zhu, and John Walsh. 2019. "The Community Reinvestment Act: What Do We Know, and What Do We Need to Know?" Washington, DC: Urban Institute.

LMI lending has been essentially flat since 2010, credit union LMI loans have more than tripled. Where credit unions originated just 6 percent of LMI loans in 2010, that number grew to 20 percent by 2018.

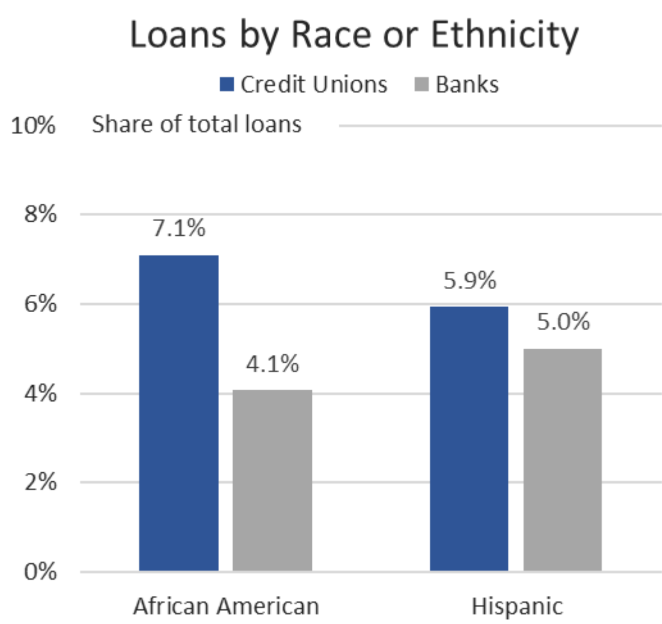
Small Dollar Lending
One factor that makes credit unions a natural fit in LMI areas is their willingness to make small-dollar loans. A recent study looking at the prevalence of purchase loans under $70,000 in the 2016 HMDA data found that such loans are relatively scarce due, in part, to their "lower sales commissions, spreads, and servicing income."[16] But credit unions, guided by the mission of serving their members rather than a profit motive, are far more likely than banks to originate such loans. In so doing, they make the dream of homeownership a reality for thousands of members that may not otherwise have access to mortgage credit.



Notes: Small dollar loans are those with an origination amount of $70,000 or below in 2016, indexed annually to national home price index.

Sources: NAFCU calculations from HMDA data, Case-Shiller U.S. National Home Price Index (annual average)

Lending by Race or Ethnicity
HMDA reporters must submit the race or ethnicity for all natural-person loan applicants.[17] The 2018 data showed that credit unions originated a greater share of their purchase loans to African American and Hispanic borrowers than banks did. There was parity between banks and credit unions as recently as 2012 in share of loans to African Americans and 2015 in share to Hispanic borrowers. While the share of credit union loans to those groups continues to rise annually, banks' share has remained steady.



See text for determination of race and ethnicity

Source: NAFCU calculations from HMDA data

[16] McCargo, Alanna, et.al. 2018. "Small-Dollar Mortgages for Single-Family Residential Properties." Washington, DC: Urban Institute.

[17] For our analysis we use the CFPB's "derived_race" variable. For more information go to: github.com/cfpb/hmda-platform/wiki/Derived-Fields-Categorization.