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November 19, 2018

Comptroller Joseph M. Otting
Comptroller of the Currency
Comp 400 7th Street, SW
Washington, D.C. 20219

Docket No. OCC-2018-0008

Dear Comptroller Otting:

Woodstock Institute submits these comments in response to the OCC's Advance Notice of Proposed Rulemaking (ANPR) regarding the Community Reinvestment Act (CRA). Woodstock has been a long-time champion of the CRA, and is opposed to a dramatic overhaul of the CRA regulations. According to our national partner, the National Community Reinvestment Coalition (NCRC), if CRA is weakened, low- and moderate-income (LMI) neighborhoods in Illinois could lose up to $3.4 billion in home and small business lending over a five-year time period. NCRC submitted comments regarding the ANPR on November 8, 2018. In Woodstock's comments, you will find extensive reference to those "NCRC Comments."[1]

The CRA is one of the only tools that not-for-profits have to help ensure that banks meet the needs of LMI people and communities. Recently, the CRA has helped us negotiate, alongside NCRC and our partners in Illinois, major community benefits agreements (CBAs) with banks doing business in Illinois. These include a $30 billion agreement with Fifth Third Bank, a $16.1 billion agreement with Huntington Bank, and a $3 billion agreement with CIBC.[2] Each of these agreements will make concrete, measurable improvements in the lives of LMI people. "Simplifying" or watering down the CRA puts future achievements such as these at risk. Recurring themes in our comments are: (1) the CRA should remain focused on LMI people and communities even though there are a wealth of other worthy communities and causes; and, (2) "simplicity," for its own sake, ought not to be the goal. Our banking system and the needs of local communities it is meant to serve are complex in many ways. An appropriate regulatory framework must correspondingly be reasonably sophisticated to ensure that banks do not suffer negative unintended consequences and local communities do not have their needs left unmet.

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[1] National Community Reinvestment Coalition, *NCRC Comments Regarding Advance Notice of Proposed Rulemaking (Docket ID OCC-2018-0008)* (Nov. 8, 2018). https://ncrc.org/ncrc-comments-regarding-advance-notice-of-proposed-rulemaking-docket-id-occ-2018-0008-reforming-the-community-reinvestment-act-regulatory-framework/

[2] Fifth Third Bank agreement: https://ncrc.org/fifth-third-bank-and-national-community-reinvestment-coalition-announce-30-billion-community-development-plan/. Huntington Bank agreement: https://ncrc.org/huntington-bank-and-national-community-reinvestment-coalition-announce-161-billion-community-development-plan/. CIBC agreement: http://www.woodstockinst.org/news/press-release/woodstock-negotiates-3-billion-cra-agreement/.

About Woodstock Institute

Woodstock Institute is a leading nonprofit research and policy organization in the areas of equitable lending and investment, wealth creation and preservation, and access to safe and affordable financial products and services. We work locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. Our key tools include: applied research; policy development; coalition building; and technical assistance.

In recent years, Woodstock played a leading role on reforms regarding payday and other high-cost lending, currency exchanges/check-cashers, debt collection, public fines and fees, children's savings accounts, and retirement savings programs for private sector workers. Woodstock also plays a leading role in helping to ensure banks invest in and provide safe and affordable services to LMI communities, communities of color, people with disabilities, and older people.

ANPR: Answers to Questions

1. Are the current CRA regulations clear and easy to understand?

Yes, for the most part, the current CRA regulations are appropriate considering the relative complexity of both the banking system and local community needs. Our banking system is complicated, so correspondingly, effective financial regulation must oftentimes be sophisticated. "Easy to understand" regulations that are too simplistic could have negative unintended consequences if they fail to take into account specific differences among various banking practices and products. The banking industry, generally speaking, has the resources necessary to retain experts who can interpret financial regulations. To the extent the OCC finds that banks are misinterpreting particular regulations, then the OCC should issue guidance clarifying the regulation or consider amending the regulation to resolve ambiguity or lack of clarity. The lack of clarity, standing alone, is not a reasonable basis to amend a regulation unless it appears that banks are unable to properly abide by the regulation. In such instances, the OCC should consider whether the particular unclear regulation, *not the entire regulatory regime*, ought to be amended to provide additional clarity or to resolve ambiguity. Certain particular issues of ambiguity and/or vagueness are described in response to the next question.

The fact that the vast majority of banks pass their CRA exams belies any contention that banks are having serious trouble complying with the CRA. According to one analyst, over 96 percent of banks receive a satisfactory CRA rating or better. [3] This point and others are outlined in a recent piece by Kenneth Thomas for *American Banker*.[4] Thomas observes: (1) the CRA is relatively *not* complex compared to other banking laws and regulations such as the Bank Secrecy Act; and, (2) the 1995 CRA reform and the subsequent 2005 CRA enhancement with separate rules for midsize banks are not complex.

2. Are the current CRA regulations applied consistently?

Uncertain. Woodstock does not have access to the data that would be necessary to answer this question, but we recognize that certain reforms could be considered that would promote greater consistency. Woodstock supports the reforms contained in the NCRC Comments at 22-25. Namely, Woodstock supports

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[3] Thomas, Kenneth H., American Banker, *Comptroller Curry: How About Some Real CRA Reform?* (Apr. 9, 2014). https://www.americanbanker.com/opinion/comptroller-curry-how-about-some-real-cra-reform

[4] Thomas, Kenneth H., American Banker, *Dear Regulators: Don't Take CRA's revamp too far* (Oct. 2018). https://www.americanbanker.com/opinion/dear-regulators-dont-take-cras-revamp-too-far

(a) Establishing numerical bands or ranges on the lending test that correspond to the grades. For example, if a bank's percentage of loans to LMI borrowers was one standard deviation higher than the average percentage of all lenders in the geographical area, then the bank would receive a High Satisfactory or Outstanding grade.
(b) Evaluating investments and community development lending relative to peer performance, and attach specific weights to the quantitative and qualitative criteria. The NCRC Comments at 24 provide an example with respect to the amount of community development financing by the top 25 banks on their most recent CRA exam.
(c) Establishing consistency among the prudential regulators with respect to CRA regulations and interpretations. Woodstock is opposed on both consistency and policy grounds to the lengthening of the CRA exam cycle, lessening the negative impact of discrimination and consumer protection violations on a bank's CRA rating, and watering down the CRA by making it easier for banks with failing grades to merge with other financial institutions.
(d) Establishing a 100-point scale for CRA rating. A 100-point scale would promote clarity, consistency, and transparency (*See* NCRC Comments at 22). It could also incentivize banks to better perform under the CRA because a numeric grade is more easily communicated to the general public that the current grades. For example, bragging about a 99 makes more sense than bragging about a 23.

3. Is the current CRA rating system objective, fair, and transparent?

Yes, but it could be improved as outlined above.

Considering that 96 percent of banks pass their CRA exams, Woodstock believes that CRA grading should be more vigorous. More vigorous grading would translate into better CRA performance, which would benefit LMI communities. With respect to small business loans, examiners also need to consider the type of small business loans banks are offering, rather than aggregating term loans, lines of credit, and credit cards, into a single category. Those different types of loans serve very different purposes and should not be considered fungible in determining whether banks are meeting the credit needs of businesses. The distinction among loan types would not apply to all lenders because some, such as American Express, FSB, offer only credit cards. Other banks, including Bank of America and Wells Fargo, offer both term loans and credit cards, and CRA examiners should consider the mix of loan types in their assessment of CRA performance. For example, examiners could compare separately for each loan type the percentage of small business loans in LMI census tracts with the percentage of each loan type in all census tracts within the bank's service areas. Examiners should also look at the extent to which banks that are not lending proportionately to businesses in LMI census tracts are financing financial technology (fintech) lenders that are making high-cost loans to businesses in those areas.

Woodstock's *Patterns of Disparity* reports show that only one business out of five in low-income tracts and one of four in moderate-income tracts, has a loan, line of credit, or credit card from a large financial institution.[5] Therefore, rating the performance of 96 percent of financial institutions as satisfactory seems to set very low expectations. The significance of the impact of more stringent CRA examinations in motivating better bank performance is evident in the Fifth Third Bank's willingness to develop a $30 billion CBA (referenced on page one), which resulted from the bank's desire to address its "Needs to Improve" CRA rating, without any merger or acquisition pending.

[5]Spencer Cowan, Woodstock Institute, *Patterns of Disparity: Small Business Lending in the Fresno and Minneapolis-St. Paul Regions* (Nov. 2017). http://www.woodstockinst.org/wp-content/uploads/2017/11/Patterns-of-Disparity-Small-Business-Lending-in-Fresno-and-Minneapolis-St.-Paul-Regions-1.pdf

In addition to the lending test, regulators need to be more critical in enforcement of the CRA investment and service tests. On the investment test, regulators should prioritize investments in community development financial institutions (CDFIs) and community lenders over other activities, such as investment in mobile banking services. Under the service test, regulators should provide more incentive for banks to maintain brick-and-mortar branches in LMI neighborhoods. We discuss the continued importance of branches in response to Question No. 27.

4. Two goals of the CRA are to help banks effectively serve the convenience and needs of their entire communities and to encourage banks to lend, invest, and provide services to LMI neighborhoods. Does the current regulatory framework support these goals in light of how banks and consumers now engage in the business of banking?

Yes. The NCRC Comments at 11-13 reference and discuss the "large body of research" pointing to the CRA benefiting LMI communities. In our experience, the CRA makes it possible for groups like ours to bring banks to the table. Recently, Woodstock helped convene a meeting between PNC Bank and community groups in Rockford, Illinois. While the negotiating process between PNC and the community groups is still ongoing, we feel that securing the meeting with the bank – or any bank – would have been extremely difficult, if not impossible, without the CRA. Additionally, the CRA was the tool that enabled Woodstock and our partners to negotiate the CBAs referenced on page one.

This question's reference to how consumers "*now* engage" in banking presumably refers to the expansion of online and mobile banking. We agree that the CRA regulations should be supplemented to properly account for banks that do not operate relative to their geographic location. Woodstock supports the "assessment area reform" described in the NCRC Comments at 13-17. We oppose any changes that would lessen the importance of branch banking, particularly considering that bank tellers remain the most common method used by banked households to access their bank accounts (*See* Question No. 27).

5. With the statutory purpose of the CRA in mind, what aspects of the current regulatory framework are most successful in achieving that purpose?

The focus on local LMI geographies is a vital piece of the CRA's success. Overall, the current regulatory framework of the CRA is successful in achieving its purpose. The framework should be adjusted, as discussed above, to account for internet banks. Without question, the CRA deserves credit for making homeownership and small business ownership possible for many members of LMI communities.

6. If the current regulatory framework is changed, what features and aspects of the current framework should be retained?

All the features and aspects of the current framework should be retained except for the specific pieces discussed in this letter and in the NCRC Comments. By no means should the OCC overhaul the CRA regulations. We are also opposed to the OCC's recent practice of pursuing regulatory reform by itself without the cooperation of the other prudential regulators. An unlevel playing field is bad for both industry and consumers.

7. How could an alternative method for evaluating CRA performance be applied, taking into account the following factors: bank business model, asset size, delivery channels, and branch structure; measures or criteria used to evaluate performance, including appropriate metrics; and consideration for qualifying activities that serve areas outside a bank's delineated assessment areas?

Woodstock is opposed to an alternative method for evaluating CRA performance. The "one-ratio" approach has some superficial appeal in terms of simplicity, but simplicity is not the goal. The one-ratio approach – comparing a bank's deposits or assets to its aggregate CRA-qualifying activities – would enable a bank to over-perform in certain geographic areas and completely disregard other geographic areas. In this way, a bank could avoid having to be responsive to the local needs of a particular area. The recent meeting with PNC that Woodstock helped convene with community groups in Rockford is a perfect example of the importance of a localized – as opposed to only generalized – evaluation of a bank's CRA performance. Communities such as Rockford and Chicago are able to use the CRA to motivate banks to consider and respond to their needs.

Woodstock supports maintaining the three tiers of large bank, intermediate small bank (ISB), and small bank for purposes of CRA review. Eliminating the ISB category would make CRA compliance easier for those banks, but ease of compliance is not the goal of the CRA. Community Development financing, in particular, would suffer if ISBs no longer had a community development test (*See* NCRC Comments at 35).

The method by which compliance thresholds adjust year-to-year already accounts for increases in bank asset sizes. Changing the thresholds as requested by the industry would presumably result in more banks being subject to less scrutiny. As a general matter, Woodstock opposes so-called "regulatory relief" that is unnecessary and potentially harmful to ordinary consumers. Georgetown law professor Adam Levitin offered testimony to the U.S. Senate Banking Committee on June 8, 2017, that, we believe, should dispose of the false narrative about the banking industry's need for regulatory relief.[6] Further, in a recent report by the General Accounting Office (GAO), the GAO characterized the regulatory environment as having a "modest effect" on community banks.[7]

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?

Woodstock supports the benchmarks outlined in the NCRC Comments: (1) numeric benchmarks on the lending test that correspond to the grades; and, (2) investment test ratios benchmarked to peer performance (*See* NCRC Comments at 22-24).

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

A strictly metric-based approach, by design, does not permit a performance context analysis, and weighting does not solve for this. *See* below. The fact that performance context is incompatible with a metric-based approach points to the main reason why Woodstock is opposed to the "one-ratio" – it fails to take into account local needs. As discussed earlier, an effective regulatory framework is not necessarily simple. It oftentimes must be just as sophisticated as the system it is intended to govern.

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?

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[6] Adam Levitin, Written Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, "Fostering Economic Growth: The Role of Financial Institutions in Local Communities" (June 8, 2017). https://www.banking.senate.gov/public/_cache/files/cfee4732-9f53-4a58-86f1-27a25d9086f4/E8DC189DC1FD5D1D6EBAB7D28241185A.levitin-testimony-6-8-17.pdf

[7] General Accounting Office, *Community Banks: Effect of Regulations on Small Business Lending and Institutions Appears Modest, but Lending Data Could be Improved* (Aug. 6, 2018). https://www.gao.gov/reports/GAO-18-312/

There are a few reasons why creating metrics as described above is a bad policy. From a process standpoint, it would be a regulatory nightmare – assigning different values to the country's differing geographies and needs. Having $1 equal to $1 is at least a metric that everyone can agree is accurate. Even assuming metrics could be achieved somehow, local community needs would change – a lot or a little – year after year, presumably requiring the metrics to be adjusted. A failure to make the proper adjustments would directly frustrate the purpose of the CRA in that banks would be directing resources according to an inaccurate formula instead of based on actual local community need.

Moreover, any metric whereby $1 equals more than $1 would be theoretically acceptable only if the benchmark was increased by a comparable amount. For example, if a bank is required to engage in $2 of CRA activities and metrics are adopted as described in this question, then the benchmark would need to be raised to $3. Otherwise, the bank would be able to – under the example in this question – make only the $1 CD equity investment and forgo making the $1 loan. Presumably, this scenario is why some banks favor this approach. It enables them to achieve the same level of CRA rating by doing less.

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

A metric-based framework requires counting. With respect to community involvement, a regulator could, for example, count the number of CRA comment letters or the number of organizations represented by the comment letters. Ironically, however, this identical approach is *not* being taken with respect to *this* comment process. As we understand it, the OCC is not treating all comments equally. A form letter counts as less than a detailed, original comment letter. In a commenting process – whether in this context or in the CRA context – a qualitative analysis is necessary for the process to accurately capture the weight and merit of the comments. The prudential regulators should identify a non-exhaustive list of the types of community involvement activities for which a bank could secure CRA consideration.

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.

From the standpoint of benefits to the community, one hour of volunteer work by a bank employee does not vary depending on the labor rate, so converting hours into dollars using the labor rate is a misleading and unnecessary exercise in the CRA context. Such a formulation would presumably encourage volunteer work in areas with high labor rates at the expense of areas with low labor rates. Negating the consideration of *qualitative* differences in activities makes the metric an inaccurate reflection of the actual worth of the activity. *See also* Answer to Question No. 16.

13. How could the current approach to delineating assessment areas be updated to consider a bank's business operations, in addition to branches and deposit-taking ATMs, as well as more of the communities that banks serve, including where the bank has a concentration of deposits, lending, employees, depositors, or borrowers?

As explained in the NCRC Comments at 13-15, the current assessment area framework captures the great majority of lending by the largest banks. For banks that, for example, collect less than 50 percent of their deposits from their physical location(s), an additional assessment area formulation could be considered that identifies assessment areas based on a particular market share threshold in a given area and/or in locations where a significant share of the bank's customers are located.

14. 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?

No. As explained in response to Question No. 10, weighting is not recommended. As for activities outside assessment areas, Woodstock supports the NCRC approach, which is described in the NCRC Comments at 16-17. A key component of the NCRC approach is that regulators should require banks to address needs in their assessment areas first before considering CRA credit for activities outside their assessment areas.

15. How should "community and economic development" be defined to better address community needs and to incentivize banks to lend, invest, and provide services that further the purposes of the CRA? For example, should certain categories of loans and investments be presumed to receive consideration, such as those that support projects, programs, or organizations with a mission, purpose, or intent of community or economic development; or, within such categories, only those that are defined as community or economic development by federal, state, local, or tribal governments?

Woodstock supports NCRC's position on this issue as explained in the NCRC Comments at 36-40. Community and economic development for purposes of the CRA are activities related to the provision of financial services targeting LMI people or communities such as financing for affordable housing or loans to small businesses in LMI communities. Outcomes, not mission statements, should be the focus point for examiners.

Again, there are a wealth of good causes in the country, but the CRA is focused on LMI people and neighborhoods. Expanding the focus of the CRA would, in all likelihood, result in the dilution of benefits to LMI people and communities.

16. Should there be specific standards for CD activities to receive consideration, such as requiring those activities to provide identified benefits to LMI individuals and small business borrowers or to lend to and invest in LMI communities or other areas or populations identified by federal, state, local, or tribal government as distressed or underserved, including designated major disaster areas (hereinafter referred to as "other identified areas" or "other identified populations")?

Yes. As explained in response to Question No. 15, the standard should be the extent to which the activity provides benefit to LMI people or communities. As NCRC states in the NCRC Comments at 39, in the case of financial education, for example, such programs should be evaluated according to outcomes, such as the number of people opening and successfully maintaining bank accounts. Woodstock is opposed to approaches that simply count hours. Counting hours incentivizes programs to be long, not beneficial.

Woodstock supports the NCRC Comments with regard to the exception to allow community development credit for underserved and distressed census tracts. Such tracts should be identified based on data analysis conducted by the Federal Financial Institutions Examination Council (NCRC Comments at 39).

17. Are there certain categories of CD activities that should only receive consideration if they benefit specified underserved populations or areas, such as providing credit or technical assistance to small businesses or small farms; credit or financial services to LMI individuals or other identified populations (such as the disabled); or social services for LMI individuals or job creation, workforce development, internships, or apprentice programs for LMI individuals or other identified populations?

Yes. Eligibility for CRA credit should be based on (1) the population served, and (2) whether the activity is related to the provision of financial services. As discussed above, with respect to the population served, the focus of CRA is on LMI people and communities. Services that benefit other communities or people, such as veterans and people with disabilities who are not LMI, are certainly worthy, but that's not the focus of the CRA. The second factor that determines CRA-eligibility, the type of activity, means that even worthwhile programs, such as apprentice programs, would not *normally*[8] fall within the scope of the CRA. Woodstock supports NCRC's position on this issue, which appears in the NCRC Comments at 38-40.

18. Should consideration for certain activities that might otherwise qualify as CD be limited or excluded? For example, how should investments in loan-backed securities be considered?

Yes. Consideration should be limited for secondary market activities, and more CRA credit should be given for originations because, as NCRC states,

> "[l]oan originations directly respond to credit needs and require more effort on the part of the bank to assess credit needs, affirmatively market products in LMI communities, and consider and underwrite loan applications carefully" (NCRC Comments at 43).

Woodstock supports NCRC's position on this issue. Credit for secondary market activities should be limited but not excluded.

19. How should financial education or literacy programs, including digital literacy, be considered?

As explained in answer to Question No. 16, one way to measure financial education or literacy programs is by the number of people opening and successfully maintaining bank accounts. Financial education or literacy programs should incorporate elements that research shows increase the likelihood of successful outcomes (*See* NCRC Comments at 39).

Woodstock also strongly supports financial education or literacy activities that help bridge the digital financial divide between older and younger generations. As more banking moves to the internet and to mobile devices, consumers who are low adopters of technology, such as older adults, risk being left out of the financial mainstream. A recent Mercator Advisory Group study found that only 15 percent of people age 65 and over used a smartphone to research products and services.[9] To help bridge the digital divide separating older adults from the delivery of banking services, banks should consider providing age-appropriate education to older LMI customers to help ensure that their needs are being met.

20. Should bank activities to expand the use of small and disadvantaged service providers receive CRA consideration as CD activities?

Yes, if the providers are LMI people and/or in LMI communities. As discussed above, there are many worthy causes, and supporting small and disadvantaged service providers is one of them. The scope and intent of CRA, however, is focused on LMI people and communities. Expanding the scope would likely draw resources away from LMI areas.

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

[8] The NCRC Comments at 40 describe circumstances under which an apprenticeship might merit CRA consideration.
[9] Payments Journal, *What Age Segment is Least Likely to Research Products and Services on Their Smartphone?* (Sept. 4, 2018). http://www.paymentsjournal.com/research-products-and-services-on-their-smartphone/

in any or all of these categories be limited to loans to LMI borrowers and loans in LMI or other identified areas?

The categories of lending identified in this question should continue to be considered as CRA-qualifying activities to the extent they are directed at LMI people or communities.

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?

Consumer lending should be subject to examination under the CRA when it constitutes a significant portion of a bank's business. The current regulations provide that consumer lending will be examined when it constitutes "a substantial majority of a bank's business." 12 C.F.R. § 25.22. This threshold is too high. Consumer lending is a major issue in LMI communities, particularly because predatory payday and auto title lenders target them with products that carry triple-digit interest rates. To qualify for CRA credit, a consumer loan must contain fair and reasonable terms and be affordable. Under no circumstances should loans with an annual percentage rate exceeding 36 percent qualify for CRA credit. On the contrary, negative CRA credit should be given for consumer lending that bears predatory characteristics and/or disproportionately traps protected classes of consumers in debt. In addition, banks should not receive CRA credit for loans or services that extend money to customers without determining their ability to repay in full and on time while meeting other financial obligations.

Woodstock published a report in July 2018 called *Aging in Place: A Strategic Plan to Support Older Adult Housing Needs in the Chicago Region*.[10] The report identified a need for banks to provide smaller-dollar, non-collateralized loans to fund home modifications that support older adults' living and aging safely in their homes ("aging in place"). Installing grab-bars in bathrooms is a good example of a home modification to support aging in place. To the extent consumer loans support LMI older adults and older adults aging in place in LMI communities, they should qualify for CRA credit.

Auto loans in rural communities, especially to those with thin or no credit files, are another type of consumer loan product that the CRA should incentivize. Without access to a car, it is extremely difficult for folks in rural communities to find and hold a job, and a lack of employment has well known negative impacts of communities: strains on social services, health consequences through loss of insurance and income, and reduced spending at local businesses -- to name a few.

23. Under what circumstances should small business loans receive CRA consideration? For example should consideration be given to all loans to businesses that meet the Small Business Administration (SBA) standards for small businesses?

Woodstock supports NCRC's analysis on this issue (NCRC Comments at 42-43). For reporting purposed, the current definition of small business lending, updated for inflation, is adequate, but the CRA should encourage lending to the smallest businesses. The SBA standard includes businesses that would be considered large in ordinary, day-to-day contexts, so this standard is not helpful for directing banks to serve the types of businesses with the greatest need. Businesses with revenues under $1 million is a better standard, as NCRC explains.

24. How should small business loans with a CD purpose be considered?

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[10] Lauren Nolan and Jason Olsen, Woodstock Institute, *Aging in Place: A Strategic Plan to Support Older Adult Housing Needs in the Chicago Region* (July 2018). http://www.woodstockinst.org/wp-content/uploads/2018/10/Aging-in-Place-Report-10.29.pdf

Woodstock supports the NCRC position on this issue (*See* NCRC Comments at 43). It would be unnecessarily complicated to determine which small business loans should be counted under the retail portion of the lending test and which small business loans should counted under the CD portion of the lending test. The OCC should leave the regulations as they are with respect to counting small business loans.

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

No. *See* Response to Question No. 18.

26. Should loans originated by a bank to hold in portfolio be weighted differently from loans originated for sale? If so, how?

Yes. Loans to be held in portfolio should receive more weight because the bank has elected to carry the risk. By putting more "skin in the game," the bank has made more of an investment in the community and should be rewarded as such.

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?

Yes. The NCRC Comments at 45-47 reference compelling research on this subject. Perhaps the most recently released research on the subject is the *2017: FDIC Survey of Unbanked and Underbanked Households*, which was released on October 23, 2018.[11] Visiting bank tellers continues to be the most common method used by banked households to access bank accounts. The FDIC finds that, even though the use of mobile banking is increasing, the use of bank tellers remains "quite prevalent, particularly among segments of the population that had higher unbanked and underbanked rates." As has long been the case, LMI communities, which is the focus of the CRA, have disproportionately high unbanked and underbanked rates. This means that bank branches are *especially appropriate* in the CRA context.

Further, branches provide services that may not be available through Automatic Teller Machines (ATMs), such as help completing loan applications or sending remittances. Some customers, particularly the elderly, may not be comfortable with ATMs or mobile technology and prefer to bank in person, as they always have. Lack of internet access is also a concern. The Federal Reserve's Vice Chairman of Supervision, Randall Quarles, recently said a lack of online access in rural areas coupled with the lack of a bank branch pose particular challenges to elderly customers without a car. Reinvestment Partners published a report focused on bank branches in rural communities. As the report states, "the presence of a bank branch in a rural community projects economic vitality and its closure poses a threat to the community and future economic development."

For neighborhood businesses, the local branch is a key source of credit and business loans. Given the importance of maintaining existing branches in LMI neighborhoods to preserve small business access to bank loans, regulators should exercise their authority to require banks to obtain non-objection letters from their regulator whenever seeking to close branches in LMI neighborhoods.

Bank branches have impacts beyond customers' access to their bank accounts. As the article *Do Bank Branches Still Matter* explains, branch closings have a prolonged negative effect on small business

[11] FDIC, *2017: FDIC Survey of Unbanked and Underbanked Households* at https://www.economicinclusion.gov/surveys/2017household/account-type-access-methods-bank-branch-visits-findings/ (Oct. 23, 2018).

credit.[12] A branch closing reduces the number of new small business loans by 13 percent for several years, and the decline is exacerbated in low-income and high-minority neighborhoods.

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 institution) any capital investment, 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?

Ventures should be eligible for consideration to the extent they help meet the credit needs of local LMI people or communities. A consistent refrain throughout these comments is that, while there are a wealth of worthy causes, the CRA is focused on LMI people or communities. Extending beyond that scope would almost certainly draw resources away from LMI people or communities, which contravenes the CRA's purpose.

29. Could the reporting of data gathered using a metric-based approach on a regular, periodic basis better support the tracking, monitoring, and comparison of CRA performance levels?

No. As explained above, a metric-based approach is simpler, and yes, comparing metrics is easier than comparing grades such as "High Satisfactory" and "Needs to Improve" on various assessment areas. Achieving simplicity, however, would be done at the expense of keeping the CRA responsive to local needs. As stated at the outset of these comments, financial regulation oftentimes needs to be sophisticated in order to appropriately govern the complex financial system.

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

Woodstock favors annual reporting, and supports NCRC's recommendation regarding the annual reporting and public dissemination of community development data on a census tract level, a county level, and for the assessment areas (NCRC Comments at 25-26).

As for the frequency of exams, Woodstock support time periods ranging from 12-24 months, depending on the size of the bank and the number of assessment areas. Large banks with many assessment areas would be examined the least often. Woodstock agrees with NCRC's comment that "less frequent CRA exams reduce accountability and incentives for banks to perform in a consistently vigorous manner in fulfilling their CRA obligations" (NCRC Comment at 24).

31. As required by law, and to the extent possible, the OCC attempts to minimize regulatory burden in its rulemakings consistent with the effective implementation of its statutory responsibilities. The OCC is committed to evaluating the economic impact of, and costs and benefits associated with, any changes that are proposed to the CRA regulations. Under the current regulatory framework, what are the annual costs, in dollars or staff hours, associated with CRA-related data collection, recordkeeping, and reporting?

Woodstock does not have access to data sufficient to answer this question. In considering the value of CRA data, recognize that its importance is not limited to CRA enforcement. CRA data collection is

[12] Hoai-Luu Q. Nguyen, *Do Bank Branches Still Matter? The Effect of Closings on Local Economic Outcomes* (Dec. 2014). http://economics.mit.edu/files/10143. A later version of this study was published in October, 2015, by the University of California at Berkeley.

important also for groups such as Woodstock that use the data to inform policy recommendations. For example, our *Patterns of Disparity* reports (referenced in response to Question No. 3) used CRA data to find that small businesses in LMI communities and communities of color receive less than their proportionate share of bank loans compared to businesses in wealthier and non-minority communities.[13] Based on this finding, we made several policy recommendations, including making CRA exams more rigorous by placing more emphasis on the business lending part of the exam than under the current CRA system.

Conclusion
Simplicity can be seductive, but it is not the main goal (if a goal at all) of a regulatory framework intended to help direct banking resources to local communities, whose needs are varied, changing, and sometimes complex.

Our comments have emphasized the importance of keeping the CRA focused on LMI people and communities. Woodstock supports, however, *legislative* efforts to support communities of all kinds that are underserved by our banking system. Communities of color, for example, have long been subject to structural racism in our financial system that makes it more difficult for them to build and maintain wealth and financial security. Laws should be amended and/or passed to address this glaring problem.

Very truly yours,

Dory Rand
President

Illinois Asset Building Group
Heartland Alliance for Human Needs & Human Rights
Equal Voice Action

[13] The four reports can be found at http://www.woodstockinst.org/category/research/reports/. They cover the following regions: Chicago; Los Angeles-San Diego; Buffalo; New Brunswick; Detroit; Richmond; Fresno; and Minneapolis/St. Paul.