NATIONAL ALLIANCE OF COMMUNITY ECONOMIC DEVELOPMENT ASSOCIATIONS

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THRIVING NETWORKS | PROSPEROUS PLACES

This letter offers comment from the National Alliance of Community Economic Development Associations (NACEDA) to the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) Notice of Proposed Rulemaking (NPR) regarding the Community Reinvestment Act (CRA), RIN 1557-AE34, Federal Register Number: 2020-03766.

NACEDA approaches the proposed CRA rule by asking if each proposed aspect of the rule that affects community-based organizations serves the law's original legislative intent. Congress passed CRA with the intent of ending redlining and ensuring banks are serving community-identified financial and community development needs, consistent with safe and sound banking practices. The proposed rule falls short of serving that goal.

NACEDA is an alliance of 35 state and regional membership networks for mission-based community development organizations, including community development corporations (CDCs), community-based developers, and community development financial institutions, among others. Our mission is to lead the community development field and its partners in shaping and influencing strategies that advance community prosperity. NACEDA's network touches almost 4000 community-based development organizations across its membership.

This comment letter attempts to interpret and respond to the proposed rule through the lens of those 4000 community-based organizations and community development corporations, particularly the smaller and medium-sized organizations that serve the hardest to reach communities.

This letter offers feedback on the proposed rule in two sections. The first section offers feedback on the general framework, assumptions, and approach of the proposed rule. The letter refers to this section of feedback as the rule's **"Fundamental Challenges."** You will find this section quite critical of the proposed rule. It questions the underpinnings, assumptions, goals, and strategic choices the regulating agencies undertook in development of this rule. The fundamental challenges identified in this section are the foundation upon which the technical details and framework are built. NACEDA asks the regulating agencies to discard most of their current approach because of the shortcomings identified in this section.

However, if the regulating agencies choose to proceed with the general framework as currently constituted, NACEDA recommends a series of technical changes and identifies areas in need of clarification within the proposed rule. These recommendations make up the letter's second section, referred to as **"Technical Responses."**

## I. Fundamental Challenges

As outlined in NACEDA's comment letter to the 2018 Advanced Notice of Proposed Rulemaking (ANPR), the CRA framework alluded to in the 2018 ANPR and detailed in the 2020 NPR, is heavily oriented toward making compliance easier for financial institutions at the expense of achieving the best possible outcomes in low- and moderate-income communities.[1] This interpretation of the proposed rule is supported by several foundational aspects of the NPR.

a) **What counts?** The "What counts?" section of the NPR asks what should count for CRA credit. NACEDA believes this is fundamentally the wrong question. A modern CRA that serves the law's original intent to end redlining and ensure local access to basic financial services would start with the question, "What does the community need?" Instead, the NPR offers to develop a non-exhaustive list of activities developed by regulators and bureaucrats completely disconnected from the communities CRA obligates banks to serve. Thought of another way, the "What counts?" framework puts a barrier between banks and the communities they serve, undercutting the process by which banks are compelled to learn the social, economic, and financial needs of the communities in which they do business. A dogmatic "What counts?" approach, which is what this NPR offers, is antithetical to the law's original intent.

b) **Allowing banks to choose which communities they serve.** As NACEDA has discussed publicly,[2] the rule proposes a bank must meet a benchmark level (ratio) of investments in only a "significant portion" of its assessment areas in order to receive a satisfactory or outstanding rating. The rule suggests a "significant portion" would be defined as something more than 50%. As proposed, a bank could choose half (or some portion) of its assessment areas to serve and still receive an outstanding rating. Taken at face value, serving any portion less than 100% of assessment areas would legalize redlining by allowing financial institutions to systematically choose whether or not to provide financial services and community development investments in areas in which they do business. This too, obviously, is antithetical to the law's original intent. Further, within each assessment area, the rule significantly dilutes requirements that banks serve their entire assessment area, even the areas most difficult to serve. It uses of an overly simple pass/fail lending test. And perpetuates the limitations of simplifying CRA to an unworkable single dollar ratio.

[1] Woodruff, Frank. "National Alliance of Community Economic Development (NACEDA) - Comment." Regulations.gov, November 19, 2018. https://www.regulations.gov/document?D=OCC-2018-0008-0768.
[2] Woodruff, Frank. "Redlining Would Be Relegalized by CRA Reform Proposal." Shelterforce, January 9, 2020. https://shelterforce.org/2020/01/09/redlining-would-be-relegalized-by-cra-reform-proposal/.

c) **The use of a single ratio to create a presumptive rating.** In NACEDA's response letter to the Advanced Notice of Proposed Rulemaking on November 19, 2019 we state, *"Anointing a single ratio as the determining factor of CRA compliance necessarily decreases the significance of assessment areas and a financial institution's obligation to identify and serve local needs."* A single-ratio approach disregards whether the community development and financial needs of the community are being served by the bank or its investments. Setting a dollar-figure goal incentivizes financial institutions to meet their CRA obligations by performing the highest-dollar or easiest transactions possible, regardless of whether the transactions meet a community need. Further, banks have a disincentive to fulfill smaller-dollar transactions which may have a greater community impact, given the transaction costs (underwriting, administration, origination, etc.) associated with financial transactions. Again, an approach that puts an overly broad and blunt ratio ahead of community needs is in fundamental conflict with the law's original intent.

d) **Lack of data and transparency in the rulemaking process.** Critical components of this proposed rule cannot be analyzed, supported, criticized, or otherwise responded to without access to the data upon which the OCC and FDIC make conclusions. In some cases, regulators have access to banking information that is not and cannot be made public. For example, the threshold levels that determine a bank's CRA rating (such as 11% for an Outstanding Rating) are based on data only regulators have access to.

   In other cases, regulators are basing assumptions and setting rules with information to which even they do not have access to. For example, with the creation of deposit-based assessment areas, regulators cannot determine the quantity or location of these assessment areas. Most financial institutions cannot even make this determination for their own institutions because banks don't regularly collect deposit address information.

   As a result, the public, the regulated financial institutions, and regulators themselves, are blind to the potential impact of this rule.

e) **Ends primary purpose of serving low- and moderate-income.** The proposed rule frequently uses the phrase "primary or partial" purpose to serve low- and moderate-income communities. Again, while considering the rule through the lens of ensuring implementation of the law's original legislative intent, the addition of "or partial" diverts focus away from that intent. Eligible activities must have a primary purpose to serve LMI. Adding "or partial" makes the proposed non-exhaustive list of eligible activities so expansive as to become meaningless and irresponsibly and unnecessarily unwieldy.

   The NPR goes further to allow financial education of any kind to anyone to be CRA eligible. CRA credit for critical financial education (including housing counseling and debt counseling among other activities) must be limited to LMI people and families. This type of free education is already scarce enough among these populations without this rule further watering down a bank's incentive to provide it.

Reducing incentives to serve low-income people also threatens a promising trend. Health providers have begun investing in the low-income communities where their patients live because one's ZIP code is as important as one's genetic code. The CRA has fostered collaboration between health providers, banks, community organizations, and public sector agencies to build new housing, community centers, grocery stores, and other amenities that improve the social determinants of health. The proposed rule would undermine health providers' ability to accelerate their investments — including with their community benefit grants and loans — and cut off resources flowing into these neighborhoods. It is particularly alarming that CRA rulemaking would impede these partnerships just as the Coronavirus pandemic is exacerbating health and economic inequities in tragic and enduring new ways.

**f) Where it counts.** NACEDA recognizes the need for the concept of assessment areas to adapt to changes in the banking industry caused by consolidation and internet banking, among other trends, while continuing to recognize the importance of physical branches. As previously stated, however, the efficacy or consequences of new deposit-based assessment areas, as outlined in the NPR, cannot be sufficiently analyzed due to lack of data. Nevertheless, NACEDA fears a 5% deposit-based threshold for the creation of a deposit-based assessment area will further consolidate CRA-related resources in urban areas and existing geographies with large numbers of banks or "hot spots."

**g) Proceeding without participation of the Federal Reserve.** NACEDA, and many others, have asked regulators to come to agreement on a framework before engaging in formal rulemaking. The OCC has proceeded twice without full participation, the FDIC once. Without full regulator participation, the NPR process lacks public credibility. If two of the three major sister-regulators cannot even sign onto the 2018 ANPR that largely only asked questions (let alone the 2020 NPR), how should community organizations and other stakeholders be asked to?

The NPR outlines an entirely new set of CRA regulations. It also outlines a process by which small banks could opt-out of this new framework and use the old regulations. The Federal Reserve has publicly outlined some ideas for their version of a modern CRA. At the current trajectory, some entities serving low- and moderate-income communities (CDCs, municipal governments, and others) will have to become proficient at all three sets of CRA regulations (the old, the new, and the Fed) in order to recruit and procure resources and capital. That makes the work of community development even more difficult and unnecessarily complicated.

h) **Rulemaking during a national emergency.** NACEDA wrote to the OCC and FDIC on March 27, 2020, asking for a suspension of CRA rulemaking due to the world's unprecedented public health crisis.[3] In that letter, we state that "*Continuing the rulemaking process with an April 8, 2020 comment deadline forces community-based organizations to choose between saving lives and livelihoods now and helping to shape the long-term economic opportunities their communities will be able to access for decades to come. You have the power to relieve community-based organizations of having to make that choice.*" Unfortunately, regulators continued to force community organizations, advocates, banks, and other vital community institutions that have utilized CRA for decades, to make that choice. Regulators have lost an opportunity to gather the quantity and quality of comments necessary for such a complex rule. Stakeholders who are too busy serving the urgent needs of their communities will not comment. As a result, regulators will not get as robust feedback as we all hoped. The efficacy, efficiency, and quality of the Community Reinvestment Act rules and regulations will necessarily suffer as a result. Further, economists, public health experts, and policy experts estimate it will take years to recover from the current crisis.

This rule will fundamentally alter how the nation's financial system interacts with low- and moderate-income people and places. Simultaneously, due to our current crisis, the economic and social upheaval, and subsequent recovery, will permanently alter the economic landscape in ways no one can predict. That is a lot of uncertainty for communities, banks, and regulators. By proceeding with the current CRA regulations that a) have delivered trillions of dollars to LMI communities and b) over 96% of banks satisfactorily perform, regulators would be providing a level of predictability and stability in a time of historic economic and social peril. Proceeding with rule changes before the crisis subsides misses an opportunity to adjust CRA to the significant economic challenges LMI communities will face in the years to come.

The above section heavily criticizes the NPR's fundamental approach, assumptions, strategy, and rigidity. According to NCRC and other researchers and advocates, the proposed rule would shift billions of dollars or more away from communities that already struggle with disinvestment, racism, and economic disruption.[4] As evidenced as recently as April 7, 2020 LMI communities and people of color are, unsurprisingly, suffering disproportionately from the negative health and economic effects of the recent public health crisis.[5] These criticisms and those outlined in the previous section make the NPR beyond repair. It should be discarded.

## II. Technical Responses

[3] "NACEDA Network Calls for the Suspend CRA Rulemaking Amid Coronavirus Crisis." NACEDA, March 27, 2020. https://www.naceda.org/assets/CRA-Rule-Suspension-Letter-to-OCC-FDIC-March-27-2020.pdf.
[4] "Proposed Changes To CRA Puts Billions In Lending At Risk Each Year." NCRC, February 12, 2020. https://ncrc.org/proposed-changes-to-cra-puts-billions-in-lending-at-risk-each-year/.
[5] Thebault, Reis, Andrew Ba Tran, and Vanessa Williams. "The Coronavirus Is Infecting and Killing Black Americans at an Alarmingly High Rate." *The Washington Post*, April 7, 2020. https://www.washingtonpost.com/nation/2020/04/07/coronavirus-is-infecting-killing-black-americans-an-alarmingly-high-rate-post-analysis-shows/?arc404=true.

If the regulating agencies choose to proceed with the general framework as currently constituted, NACEDA recommends a series of technical changes and identifies areas in need of clarification within the proposed rule.

a) **The role of community-based organizations needs clarification.** The rule needs clarity on the subjective discretion examiners have during an examination process to a) consider community input and b) identify systematic discrimination and redlining by regulated institutions that the rule's objectives measures may miss. As a new CRA rule is implemented, particularly in the early years, adjustments by all stakeholders will be necessary. Community organizations will be among regulators' first allies in identifying patterns of discrimination, redlining, and misinterpretation. The role of these critical organizations needs strengthening and clarification. Examiners should have broad and clear authority in the final rule to adjust ratings based on feedback from community stakeholders and on relevant information that is unanticipated and/or difficult to quantify.

b) **Identification of community needs and performance context.** The rule is unclear how exams and examiners should balance identified community needs against CRA-eligible activities when the two are in conflict. For example, what happens if a bank performs an activity the non-exhaustive list deems eligible for CRA credit but the examiner cannot match that against a community need? Or if the investment size of an eligible activity is disproportionate to the level of community need?

   Furthermore, who determines the community need and performance context? Currently, the banks' CRA activities are considered and balanced against the performance context. Parts of the rule, however, seem to indicate performance context is considered in light of why a bank couldn't meet target goals. In other words, performance context is used as a crutch to prop up a bank examination that falls short of the objective goals but cannot be used to reduce a banks rating if the bank fails to respond to community context. Heads the bank wins; tails the bank ties.

   The NPR also does not make clear who has final approval of the performance context. Presumably, it would be examiners, though, at times, it seems the banks have too powerful a role to cite performance context, particularly when it can provide a crutch to an undesirable exam.

   In summary, how performance context and community needs balance against an expansive list of approved activities is an area in great need of clarification.

c) **What counts?** If regulators choose to proceed with a non-exhaustive list of approved activities, against NACEDA's and many others' advice, several adjustments should be made.

1. **Grant and capacity investments in community development corporations and similar community-based organizations should be added to the list of eligible activities.** These organizations have worked with banks and governments for decades to serve the economic and place-based needs of low- and moderate-income communities. NACEDA estimates there are potentially 4000 such organizations in the United States. They are critical to successfully implementing CRA-related activities, and their capacity should be an eligible investment for a regulated institution.

2. **Grant and capacity investments in organizations and networks that support the capacity of community development corporations and similar community-based organizations should be added to the list.** Investments and loans under this category would include organizations like national intermediaries, trainers, technical assistance providers, and network organizations like NACEDA and its members. These groups broaden the impact of community development investment in their service areas.

3. **Creative Placemaking.** The use of creative and artistic strategies is commonplace in the community development field. The NPR should make explicit the role of creative placemaking as a strategy that integrates arts and culture to better equip, support, and draw upon existing community assets, preserve and enhance an authentic character of place, and ensure equitable outcomes for low- and moderate-income communities.

   The National Endowment for the Arts describes creative placemaking as follows: "*Creative placemaking projects help to transform communities into lively, beautiful, and resilient places with the arts at their core. Creative placemaking is when artists, arts organizations, and community development practitioners deliberately integrate arts and culture into community revitalization work – placing arts at the table with land-use, transportation, economic development, education, housing, infrastructure, and public safety strategies. Creative placemaking supports local efforts to enhance quality of life and opportunity for existing residents, increase creative activity, and create a distinct sense of place.*"[6]

   Under current CRA rules, creative placemaking is officially an acceptable investment eligible for CRA credit. The Federal Reserve Bank of San Francisco published at least two journals outlining its practice, efficacy in LMI

[6] "CREATIVE PLACEMAKING." National Endowment for the Arts. Accessed April 8, 2020. https://www.arts.gov/artistic-fields/creative-placemaking.

communities, public policy frameworks and financial structures.[7][8] However, examiners, banks, and local practitioners too often are unaware or misunderstand how arts and cultural strategies can be used as an eligible investment. We would like to see the NPR clarify the role of creative placemaking with clear and transparent language that practitioners, banks and examiners can use to receive credit and maximize the economic and social impact of their investments.

4. **People with disabilities.** Workforce development and housing programs are particularly efficacious for the outcomes of individuals with disabilities. Their needs should be explicitly recognized in the list of eligible activities.

5. **Definition of small business.** The revenue definition of small business is far too high. According to the Consumer Financial Protection Bureau (CFPB), 95% of businesses have revenues under $1 million dollars. The NPR defines small businesses as under $2 million dollars, which would virtually remove the distinction between small businesses and not small businesses. By allowing banks to seek out larger-dollar business investments, capital will be shifted away from the truly small businesses and marginalized communities CRA was intended to serve. Further, it is unclear why regulators chose a $2 million dollar threshold because no explanation or justification is provided. A $1 million dollar definition, perhaps adjusted periodically for inflation, is reasonable.

6. **Bank employee volunteerism.** CRA credit for bank volunteerism should be limited to activities unique to the skill sets relevant to banking and financial expertise, as the current regulation outlines. This part of the current regulation is working adequately – don't change it. Financial expertise provided by bank employees is critical to the capacity and effectiveness of community development nonprofit organizations to implement challenging projects in which banks invest. It builds trust and familiarity among bankers and community organizations.

d) **How it counts.** The proposed method of awarding credit, and therefore of prioritizing investment, is too vague and could heighten an economic downturn in low-income areas.

1. **Single ratio.** The use of a single ratio provides an opportunity for banks to perform less community development activity than they would have otherwise. The ratio allows the option for banks to meet their ratio for a presumptive rating

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[7] *Community Development Investment Review* 10, no. 2 (December 2014). https://www.frbsf.org/community-development/publications/community-development-investment-review/2014/december/creative-placemaking/.

[8] *Community Development Innovation Review* 14, no. 2 (November 13, 2019). https://www.frbsf.org/community-development/publications/community-development-investment-review/2019/november/creative-placemaking-in-government-past-and-future/.

before the end of their exam cycle. The bank would then have the option to cease or slow community development activities for the remainder of their cycle, leaving community financial needs unserved, even though they could reasonably and profitably continue activities with even a modest nudge from regulators.

The single ratio approach is not sensitive to economic shifts and cycles. An overly simplistic ratio cannot respond to market conditions. As such, a ratio approach is not sustainable over the long term and will inevitably leave future regulators and lawmakers (governing over different market conditions) to adjust or abandon it entirely. The ratio may be easy to hit in some years and prohibitively difficult in others. It is antithetical to the definition of a healthy local market, which has reliability, flexibility, consistency, and dependability over the long term. This is a particularly crucial criticism during our current public health and economic crisis, which will drive economic uncertainty for years to come.

A single-ratio approach minimizes the importance and uniqueness of the community development volunteerism banks currently offer low- and moderate-income communities. Practically speaking, in an attempt to monetize volunteerism at something like $30 - 50/hour, there is a disincentive for banks to continue to volunteer under the proposed rule. A bank can get to its numerator a lot faster by financing a large transaction than it can volunteering for a nonprofit at $50/hour. Banks that currently rely heavily on the community service component of the CRA exam, mostly smaller banks, will have to adjust their compliance strategy significantly in order to hit the ratio. This disincentive would especially hurt rural communities and others that already have disproportionately less access to banking services and specialized financial expertise.

2. **Prioritization and preservation of small-scale, high-impact transactions.** The use of a single ratio to create a presumptive rating, at either the footprint or assessment area level, necessarily disincentivizes smaller, higher-impact transactions. The number (or "units") of community development transactions should be just as important.

3. **Allowing banks to choose which assessment areas to serve.** The rule proposes a bank must meet a benchmark level (ratio) of investments in only a "significant portion" of its assessment areas in order to receive a satisfactory or outstanding rating. The rule suggests a "significant portion" would be defined as something more than 50%. As proposed, a bank could choose half (or some portion) of its assessment areas to serve and still receive an outstanding rating. Taken at face value, serving any portion less than 100% of assessment areas would legalize redlining. By allowing financial institutions to select a portion of their assessment areas to provide financial services and community development investments, the NPR allows banks to systematically deny services to other assessment areas.

Parts of the rule cite examiner discretion to identify patterns of disinvestment that could, potentially, mitigate a bank completely ignoring some portion of its assessment areas. However, a lot of clarity is needed to address how – and at what thresholds – an examiner can make those types of subjective decisions. NACEDA finds this particular aspect of the NPR very problematic, since it is core to the legislative intent of CRA. However, if regulators choose to pursue such an approach, NACEDA suggests a bank must provide an outstanding or satisfactory level of investments in no less than 100% of its assessment areas in order to receive an Outstanding or Satisfactory Rating. Allowing a bank to serve anything less than 100% of its assessment areas would violate the legislative intent of CRA.

4. **The use of multipliers.** NACEDA urges a very cautious approach to the use of multipliers or other techniques to prioritize some activities over others. As previously stated, regulators should not assume they know what communities need or dictate to communities which activities and strategies they should prioritize. Further, it is far from clear if providing a multiplier would incentivize activity as intended. It seems as though regulators intend to use multipliers to get more resources into a regulator-preferred activity by providing double (or some other multiplier) the credit for each dollar invested. Thought of another way, in this scenario, banks could get the same $1 worth of CRA credit for 50 cents of activity, draining resources from communities even further than this rule already does. The use of a single ratio encourages banks to find and invest in the largest, safest loans possible, which is far from equitable, undermines the spirit of CRA, and removes the incentive for banks to undertake challenging and necessary transactions in the hardest-to-reach areas a bank serves. Using a multiplier (or other technique) to incentivize more difficult equity investments, grants, or smaller-dollar loans into harder-to-reach communities, could work. However, regulators should be transparent and clear about the intentions and goals behind the use of multipliers (or other techniques). NACEDA would recommend regular and frequent recalibration and analysis to ensure the technique is having the intended effect. This calibration and goal setting could involve a regular public feedback process.

5. **Five-year exam cycle.** A five-year exam cycle is far too long of a cycle to ensure banks are responding to community financial needs. Whether intentional or unintentional, redlining and systematic denial of financial services can have decades-long impacts on low- and moderate-income people and places. Regulators owe communities more frequent oversight of banks and the critical financial services they provide. A three-year exam cycle, as is now common, would be the maximum cycle length NACEDA would be comfortable with.

e) **Where it counts** Despite the importance of branches in LMI communities, and the need to update assessment area designations, the proposed changes do not reflect the significance of tracking CRA impact.

1. **Branch-based assessment areas.** By keeping facility-based assessment areas, regulators seem to acknowledge the importance of physical branches, particularly in LMI communities. NACEDA also acknowledges the importance of keeping assessment areas around physical branches. The NPR's approach to provide additional percentage-point credit for branches in LMI areas, however, seems ad hoc and arbitrary. Further, it does far less to promote the importance of branches in LMI areas than the current Service Test. In switching from the previous CRA regulation to the new regulation, banks with branches in LMI areas would be provided some level of CRA credit for doing nothing more than keeping branches open. NACEDA suggests rethinking how the new rule can maintain the priority placed on physical branches in LMI areas. The NPR's impact would reduce the importance of branches in LMI areas relative to the current services test.

2. **Deposit-based assessment areas.** A general consensus exists that the manner in which CRA treats assessment areas needs to be updated due to changes in the banking industry and the advent of internet banking, among other trends. The NPR seems to agree. The impact of deposit-based assessment areas, as described in the NPR, is impossible to assess. It is entirely based on deposit data that does not exist. Acknowledging that, NACEDA has questions for regulators to respond to before publishing a final rule.

    i. The NPR proposes that banks with more than 50% of deposits collected beyond their branch network would be subject to deposit-based assessment areas.
        1. Why did regulators choose the 50% threshold?
        2. How many banks would this currently effect?
        3. What projections do regulators have for how many banks this will impact in five years? Twenty years?
        4. How would a deposit "beyond their branch network" be defined?
        5. Are there any types of deposits that would be excluded from this calculation? Does this include commercial deposits? Municipal deposits? Or bank-to-bank deposits?

    ii. The NPR goes on to create deposit-based assessment areas for the banks that meet the criteria above when a geographic area meets a 5% deposit concentration.
        1. Why did regulators choose a 5% concentration?
        2. Approximately how many assessment areas would this create?
        3. How many deposit-based assessment areas would be created in LMI geographies?

In order to adequately critique or respond to the "Where it counts" section, this is just a starting list of questions commenters would need to have answered. NACEDA would be interested to know the relative economic distribution of deposit-based assessment areas. Is this rule creating assessment areas in large urban areas? Rural areas? Compounding the proliferation of "CRA hot spots"? The lack of data does not allow us to know. However, it is hard to imagine an internet bank having five percent of its deposits in a small-medium city like Baton Rouge, LA; Duluth, MN; Framingham, MA; or Little Rock, AR. It is even harder to imagine an internet bank having 5% of its deposits in a rural area like Tigerton, WI; Ouray, CO; or Caliente, NV. Deposit-based assessment areas are likely to be located in large cities already served by CRA-regulated banks.

In conversations with bank partners, we have learned that internet-only banks could have as few as 5-10% of deposits coming from LMI geographies, rural or urban. That would imply there could be zero deposit-based assessment areas in LMI geographies for at least some internet banks. NACEDA acknowledges this information is anecdotal. But without data, this is all we have. If regulators choose to advance a final rule when blind to its consequences, NACEDA would advocate for much lower thresholds. Banks would be subject to deposit-based areas with 20% of its deposits outside its branch network. And deposit-based assessment areas for these banks would be triggered with a .25% deposit concentration.

3. **No assessment areas.** The NPR indicates banks could get credit at the institution-level for any CRA-eligible activity outside of their assessment areas. As proposed, this would be antithetical to the legislative intent of the Community Reinvestment Act to prevent redlining and ensure banks provide financial services and community development activity where they do business. The NPR's intention may be to encourage investments in national or statewide intermediaries and/or allow banks to pool investments across broader geographies. If so, NACEDA suggests instituting some tighter rules and parameters around when/where that may be appropriate. As described however, it seems as though any and every investment in an eligible activity would get credit.

NACEDA finds the proposal deeply problematic and fundamentally flawed. We offer some technical alterations and additions should the regulating agencies choose to move forward with the current framework – though we urgently ask that you not move forward.

To paraphrase FDIC Board Member Martin Gruenberg's statement on December 12, 2019, in opposition to the proposed rule, the proposed rule severely undermines what has been a core strength of CRA for 40 years – the encouragement of bank engagement and dialogue with stakeholders in local communities, including community-based organizations, community development corporations, and others, to understand and better serve historically underserved areas.[9] For all the reasons outlined in this letter, we ask that you scrap the current proposal and start again.

Thank you for considering our comment.

Sincerely,

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[9] Gruenberg, Martin J. "Statement by Martin J. Gruenberg, Member, FDIC Board of Directors; Notice of Proposed Rulemaking: Community Reinvestment Act Regulations." FDIC, December 12, 2019. https://www.fdic.gov/news/news/speeches/spdec1219d.html.