Working Solutions
Capital. Consulting. Community.

March 5, 2020

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Comments@fdic.gov

RE: Community Reinvestment Act Regulations
RIN 3064-AF22: Notice of Proposed Rulemaking,
Docket ID OCC-2018-0008

To Whom It May Concern:

Working Solutions CDFI (Working Solutions) strongly opposes the proposed changes to the Community Reinvestment Act (CRA) regulations.

Working Solutions is a non-profit Community Development Financial Instititution (CDFI) who provides microloans in the 9-Bay Area Region. We focus on start-up and early stage businesses. The typical Working Solutions client is in the start-up stage of their business, with less than 2 years in operations, less than 5 employees, and less than $250,000 in revenue.

Over the past 20 years, we have grown tremendously serving over 1000 small businesses. Over the last two years we've been deploying near 200 loans per year and given the market need, we expect to by 2024 annually deploy 400 loans. We expect the makeup of our current active portfolio to remain throughout our growth: 80% LMI (66% low- and 14% moderate-income), 60% women, and 60% entrepreneurs of color.

Working Solutions has $11MM under management through a diverse mix of equity and unsecured debt capital, most of which is from banks driven by CRA incentives. Funds have been revolved for a total investment of almost $24MM in microloans to nearly 1000 small businesses and an additional $24MM leveraged for small businesses. We would not have been able to do what we do without our bank partners, who make up almost 80% of our lending capital stack.

The proposed changes would disincentives banks partnership in small, and specially micro business lending. According to FDIC Board member Martin Gruenberg, the FDIC's and OCC's Notice of Proposed Rulemaking (NPRM) on the Community Reinvestment Act (CRA) "is a deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act."

Less accountability, less public input, less clarity, less investment. The agencies would lessen the public accountability of banks to their communities by enacting unclear performance measures on CRA exams that would not accurately account for banks' responsiveness to local needs. Public input into this obtuse evaluation framework would be more difficult and limited. Despite the agencies' assertions that their proposal would increase clarity and bank CRA activity, the result would be significantly fewer loans, investments and services to low- and moderate-communities (LMI).

Developing a complicated and weaker evaluation system. The agencies propose an evaluation system that would further inflate ratings while decreasing the responsiveness of banks to local needs. Now, 98% of banks pass CRA exams; the proposal would likely push this higher. The agencies propose a version of the one ratio measure that consists of the dollar amount of CRA activities divided by deposits. This approach is made even more bank-friendly by not only dramatically increasing the activities and the places banks can receive credit (increasing the numerator), but at the same time also decreasing what are considered deposits by excluding brokered and municipal deposits (shrinking the denominator).

This ratio measure would likely encourage banks to find the largest and easiest deals anywhere in the country as opposed to focusing on local needs, which are often best addressed with smaller dollar financing for small businesses, homeowners and projects. Banks, for example may move away from important Low Income Housing Tax Credit investments in favor of simpler and easier investments.

The agencies establish numerical targets under the one ratio exam for banks to hit in order to achieve Outstanding or Satisfactory ratings. These targets appear both arbitrary and low. Banks may be able to achieve Outstanding ratings in reliance on large subprime credit card lending, even if that does not well serve LMI consumes. The agencies base the targets on their research, which the agencies do not reveal in the NPRM. The public, therefore, cannot make informed judgements about whether the numerical targets would result in increases in activity, stagnant levels or decreases.

The agencies also propose to allow banks that receive Outstanding ratings to be subject to exams every five years instead of the current two to three years. This aspect of the proposal deviates from the agencies' statutory duties to ensure banks are continuing to respond to community needs. Banks with a five-year exam cycle would likely relax their efforts in the early years of the cycle. Banks would also have less accountability to maintaining acceptable CRA performance when they seek permission to merge with other banks.

Moving away from a core CRA principle, less focus on LMI. The agencies would dramatically lessen CRA's focus on LMI people and communities in contradiction to the intent of the law to address redlining in and disinvestment from LMI and communities of color. The NPRM proposal would expand what counts to allow bank CRA credit for things like financial literacy classes geared towards upper income people. Even though 95% of businesses have less than $1 million in revenue, and need financing under $100,000, the proposal would double existing thresholds, allowing banks to get even more CRA credit for loans of up to $2 million to businesses with up to $2 million in revenue. And banks could get credit for loans as high as $10 million for family farms, even though the vast majority of family farms are much smaller. As such, banks will turn away from less lucrative lending to the small businesses and small farms that serve their communities and hire locally. Distressingly, the proposal would now permit projects that only "partially" benefit LMI people and neighborhoods, such as large infrastructure and energy projects. The losers in this will certainly be low income people, entrepreneurs, small businesses and small farms.

Acknowledging displacement, but worsening the problem. The proposed rule purports to address displacement, but only exacerbates it. The definition of affordable housing would be relaxed to include middle-income housing (for people with incomes up to 120% of area median income) in high-cost areas. In addition, the NPRM would count rental housing as affordable housing if LMI people could afford to pay the rent, even if the actual tenants are not low or moderate income. Worse still, banks would get credit for financing athletic stadiums, storage facilities, and luxury housing in Opportunity Zones, which will only fuel gentrification in the very communities vulnerable to it.

Weakening CRA's emphasis on branches and deposit products. CRA has rightly maintained a focus on whether banks have a branch presence in LMI communities, and whether banks make their products accessible to all consumers. But this proposal provides almost no incentive for banks to maintain and open LMI branches, and it seems to do away entirely with any consideration of whether banks are offering affordable bank account and other consumer products, such as payday alternative small dollar loans and age friendly account products, which are needed by LMI and senior communities. The result of this proposal will be fewer bank branches in LMI and rural communities, and LMI consumers turning more to predatory check cashers and payday lenders.

Failing to downgrade banks for harm. Sadly, redlining and discrimination are still with us. But this proposal does nothing to address this fact, and may very well lead to more redlining as banks are allowed to fail to serve some of their assessment areas. OCC policies provide more excuses than the other regulators for banks that show evidence of discrimination, discourage double CRA rating downgrades for violations of law, and allow banks that discriminate and redline to still pass their CRA examinations. CRA rules should provide greater scrutiny of, and punishment for, evidence of discrimination, and provide CRA rating downgrades for other forms of harm to the community, such as the financing of displacement. Under this proposal, if regulators are to consider giving banks positive credit for the activities of their affiliated companies, they must scrutinize the affiliated companies for evidence of discrimination, displacement and harm, and downgrade CRA ratings accordingly.

Inviting regulatory arbitrage. In pressing ahead without fair consideration of prior input, and without providing sufficient time for public comment now, the OCC and the FDIC are creating a two (or three) tiered system of oversight. Banks will be able to choose their regulator based on which provides a friendlier CRA framework. Even under the proposal, small banks under $500 million in assets can opt out of the new rules and yet lower their current reinvestment obligations. All banks, especially large banks, should have the same, strong, reinvestment obligations. When regulators choose different rules, and banks can choose their regulators, communities lose.

What we need. Real CRA reform would include:

- A retained focus on low and moderate income people and communities.
- A focus on lending that meets community needs, prioritizing loan originations, not purchases of loans that were made by other banks or for-profit companies. Mortgage lending should focus on owner occupants (not investors), and small business lending should focus on smaller loans and smaller businesses. The Consumer Financial Protection Bureau should finalize a strong small business data collection rule so that the bank regulators and the public can clearly see which banks are serving, which banks are harming, and which banks are ignoring LMI communities and communities of color.
- A hybrid approach to assessment areas that ensures that traditional banks and modern branchless banks are actually serving communities. Banks with retail branch presence should service those areas where they operate. Banks without retail branch presence should have reinvestment obligations that consider where deposits are from, and where loans and profits

are made. Non retail bank reinvestment obligations should be developed with an eye towards increasing reinvestment in bank deserts, which this proposal does not do.

- A qualitative and quantitative analysis. Homeowners, small businesses, and impactful community development projects often require smaller loans and investment. Innovation and impact should be valued under CRA. A proposal that only considers what is easily monetized does not have community needs at its center.
- An end to CRA grade inflation. 98% of banks do not deserve to pass their CRA exams. This proposal will only make the problem worse. The goal should be to increase LMI lending and investment from current, inadequate levels, not to devise a system that counts more things in more places and will lead to larger numbers while actually resulting in less lending, less investment, less impact, and less community benefit.
- A greater emphasis on the service test, not the elimination of it, so that branches in LMI communities retain their importance in CRA, as they have retained their importance to communities. The CRA statute references deposit products and banks should ensure that affordable and accessible bank account and consumer products are available to LMI, of color and immigrant communities (including language translation and interpretation services) so that everyone can build wealth and avoid predatory alternative financial providers.
- Greater community input, not less. The CRA requires that the starting point for reinvestment decisions should be community needs, not a list from a federal banking regulator or the desires of big banks. Performance context, transparency of data regarding bank performance to enable better community input, public hearings during mergers, and the development of Community Benefits Agreements should all be encouraged and bolstered.

This deeply flawed proposal would result in LESS lending and investment in the very communities that were the focus of CRA when passed by Congress in 1977. This proposal will make things easier for banks, all the while retreating from key statutory and regulatory core principles of CRA, such as a focus on low and moderate income people and communities, a focus on banks meeting local community credit needs, and active community participation to ensure that communities, not big banks, benefit.

The OCC should share the data behind its assumptions and analysis, extend the comment period to 120 days, and ultimately, pull this proposal so that CRA reform can proceed in a more thoughtful way that will actually benefit the communities CRA was designed to build up.

Thank you for your consideration of our views.

Sincerely,

[redacted]

Sara Razavi
CEO
Working Solutions

cc: California Reinvestment Coalition
National Community Reinvestment Coalition