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SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

1800 Massachusetts Ave., NW
Washington, DC 20036

202.730.7000

www.SEIU.org

April 6, 2020

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

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

Re: Community Reinvestment Act Regulations,
Docket ID OCC-2018-0008 and RIN 3064–AF22

To Whom It May Concern:

The Service Employees International Union (SEIU) submits these comments in response to the Office of the Comptroller of the Currency's (OCC) and Federal Deposit Insurance Corporation's (FDIC) Notice of Proposed Rulemaking (NPRM) on the Community Reinvestment Act (CRA) regulations.[1] SEIU is a union that represents over 2.2 million working men and women in the health care, education, child care, property services, and public sectors. Some of our members own small businesses, many of our members are cost-burdened when it comes to housing, and most of our members belong to low- and moderate-income (LMI) households whose communities stand to lose credit and voice under the Proposed Rule.

The primary purpose of the CRA is to ensure that banks meet the credit needs of LMI communities.[2] The CRA, along with the Equal Credit Opportunity Act and the Fair Housing Act, was designed to address the legacy of redlining and racial discrimination in the housing and financial services markets. By requiring banks to make efforts to invest, lend, and serve LMI communities, the CRA has become a powerful tool for combatting systemic racism and creating economic opportunity.[3] This law

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[1] Amending Title 12 CFR Parts 25, 195, and 345.
[2] Williams, D. (2019, December 12). *OCC and FDIC Propose Major Changes to Community Reinvestment Act Regulations*. Opportunity Finance Network. https://ofn.org/articles/occ-and-fdic-propose-major-changes-community-reinvestment-act-regulations
[3] Banks Still Need a Nudge to Be Colorblind [Editorial]. (2018, February 15). *Bloomberg*. https://www.bloomberg.com/opinion/articles/2018-02-15/treasury-should-strengthen-the-community-reinvestment-act

has been found to increase home lending by about 20 percent in LMI census tracts and increase small business lending as well.[4] However, research in metro areas finds that redlining still persists in America.[5] We oppose the Proposed Rule because it undermines congressional intent and exacerbates the economic exclusion of poorer neighborhoods and the communities of color that live there.

The Proposed Rule seeks to overhaul the framework by which banks are evaluated in CRA exams by introducing a ratio of qualifying activities to retail domestic deposits as an evaluation measure. This would allow banks to meet their CRA requirements by investing in fewer, larger projects, and disincentivizes them from serving small-scale borrowers. The Proposed Rule expands the types of activities that qualify for CRA credit, which dilutes lending requirements by counting loans that banks would have made in the normal course of business. The Proposed Rule will disrupt the partnership between banks and Community Development Financial Institutions (CDFIs), which are essential for providing access to credit in LMI communities. Lastly, by diminishing the role for community input in the evaluation process, the Proposed Rule removes a critical layer of accountability that ensures that banks are good actors in the neighborhoods where they do business.

Adopting a ratio of qualifying activities to retail domestic deposits as an evaluation measure would weaken the ability of our members to access mortgages and small business loans. This ratio would reorganize the incentive structure within the CRA. It would do this by allowing banks to more easily meet their CRA requirements by investing in a few, large projects while neglecting small-scale borrowers in LMI markets. As a result, the Proposed Rule would accelerate the trend toward fewer but larger-sized community development (CD) investments because larger loans tend to be more profitable and incur fewer administrative costs. Research by the National Community Reinvestment Coalition has found that, from 1996 to 2018, the number of CD loans annually has decreased 18 percent even while the total dollars have increased 481 percent.[6] Our members who own small businesses, such as family child care providers, stand to lose access to credit under this proposal.

Expanding the types of CRA-qualifying activities would disincentivize banks from making the kind of small-scale loans and investments that LMI communities need. The Proposed Rule increases the threshold for CRA-qualifying small business loans to $2 million and allows infrastructure projects

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[4] National Community Reinvestment Coalition. (2019, December 18). *Initial NCRC Analysis Of The FDIC And OCC Notice Of Proposed Rulemaking Concerning The Community Reinvestment Act.* https://ncrc.org/initial-ncrc-analysis-of-the-fdic-and-occ-notice-of-proposed-rulemaking-concerning-the-community-reinvestment-act/

[5] Jan, T. (2018, March 28). Redlining was banned 50 years ago. It's still hurting minorities today. *The Washington Post.* https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/

[6] Axel-Lute, M. (2020, March 5). Pulling the Rug From Under Community Development? *Shelterforce.* https://shelterforce.org/2020/03/05/pulling-the-rug-from-under-community-development/

and affordable housing projects that only *partially* benefit LMI people and areas to qualify for CRA credit. Increasing the dollar thresholds and watering down the requirements for CRA-qualifying activities means banks would obtain CRA credit for making loans they likely would have made even without the CRA. In addition, the Proposed Rule expands the criteria for affordable housing to include rental housing that would be affordable to LMI households regardless of the tenants' actual income level and rental housing for middle-income individuals in high-cost areas. The Proposed Rule will constrict the supply of housing that is affordable for our members, many of whom are cost-burdened or severely cost-burdened renters and homeowners.

The Proposed Rule endangers the partnerships of banks with CDFIs to make the smaller mortgage and small business loans that LMI neighborhoods need. CDFIs provide much-needed financing to LMI communities, and these institutions, in turn, rely on banks partnering and investing with them in order to meet their CRA obligations. In 2018, the 270 CDFI loan funds that form the membership of the Opportunity Finance Network reported a total of $3.9 billion in capital borrowed from banks, which formed more than half their total borrowed funds that year, and, in turn, supported $11.2 billion in outstanding financing to underserved borrowers and communities nationwide.[7] Including the ratio as an evaluation measure in CRA exams, as mentioned above, reduces the need for banks to find ways to make large numbers of small loans for CRA credit, which threatens to choke off the supply of funds to CDFIs that serve our members' neighborhoods.

Reducing a bank's CRA evaluation to a formula diminishes the role of community input in this process.[8] The CRA works because it holds banks accountable by providing for public comment on CRA exams and bank mergers and encouraging partnerships between banks and community groups to identify and meet community needs. This process allows community groups to negotiate reinvestment commitments that work for both the community and the bank. Since FDIC-insured banks are backed by the full faith and credit of the US government, it is therefore reasonable to demand they treat CRA requirements not as a box to check but as an opportunity for deliberation with stakeholders, especially historically marginalized groups. The Proposed Rule overturns this process of voice and negotiation, and eliminates a check on discriminatory or socially irresponsible banking practices.

Taken together, the Proposed Rule changes the incentives for banks in a way that hits at the heart of what makes the CRA a force for good. Implementing these

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[7] Opportunity Finance Network. *Bank Investment Falls Short in Rural America.* https://ofn.org/sites/default/files/resources/PDFs/Policy%20Docs/2020/Bank%20Investment%20Falls%20Short%20in%20Rural%20America%20-%20Reforms%20to%20the%20CRA%20Could%20Help%20-%20Feb%202020.pdf

[8] Capps, K. (2018, August 31). It's Time to Rewrite Fair Lending Rules. (Just Not Like This.). *CityLab.* https://www.citylab.com/equity/2018/08/its-time-to-rewrite-fair-lending-rules-just-not-like-this/568804/

changes risks creating the very situation that the CRA was designed to address, where LMI households make deposits in banks but do not see the benefits of their own capital because banks fail to reinvest it in ways that truly benefit their community. Access to banking, credit, housing financing, and small business financing are critical to the economic security of our members. Given the expected harms to our members, we encourage the OCC and the FDIC to withdraw the Proposed Rule.

Sincerely,

[redacted]

Garrett Andrew Schneider, PhD

Public Division Policy Director
Service Employees International Union
1800 Massachusetts Avenue, NW
Washington, DC 20036