April 7, 2020

Comments regarding "Reforming the Community Reinvestment Act Regulatory Framework"

RE: RIN 1557-AE34, Federal Register Number 2019-27940,
Docket ID OCC-2018-0008

Contact: Ivy Perez, Policy and Research Manager, ivy.perez@cnycn.org, 646-849-4409

To Whom It May Concern:

I am writing on behalf of the Center for NYC Neighborhoods regarding the OCC and FDIC's Notice of Proposed Rulemaking (NPR) seeking input on proposed changes to the Community Reinvestment Act (CRA).

About the Center for NYC Neighborhoods

The Center for NYC Neighborhoods promotes and protects affordable homeownership in New York so that middle- and working-class families are able to build strong, thriving communities. Established by public and private partners, the Center meets the diverse needs of homeowners throughout New York state by offering free, high quality housing services. Since our founding in 2008, our network has assisted more than 90,000 homeowners. We have provided over $33 million in direct grants to community-based partners, and we have been able to leverage this funding to oversee another $30 million in indirect funding support. Our lending programs have provided over $104 million in interest-free loans to low- and moderate-income homeowners throughout New York state to help them bring a mortgage current, get an affordable mortgage modification, or otherwise avert foreclosure.

The Center is a member of the Association for Neighborhood and Housing Development and the National Community Reinvestment Coalition, and as such endorses their advocacy and positions on Community Reinvestment modernization and the current proposed regulation.

Concerns about the Proposed CRA Evaluation Framework

The Center has significant concerns about the proposed evaluation framework in the NPR because it would significantly weaken the CRA, leading to fewer loans and branches, and less

meaningful investment in the communities we serve. We are also very concerned that the OCC and FDIC ("the agencies") are moving forward without the cooperation of the Federal Reserve Board, which has correctly stepped away from this flawed proposal. Banks should not be operating under different rules around community reinvestment. While the full impact of the COVID-19 crisis is yet to be seen, we know that it is hurting incomes and will likely impact the housing market, which makes it even more important that we carefully consider reforms to CRA and ensure that changes expand access to credit for those who need it most.

Why The CRA Matters

The CRA has been an important force for revitalizing and building wealth in low- and moderate-income neighborhoods throughout New York state. Passed in 1977 as a response to redlining, the CRA has leveraged trillions of dollars of bank investments nationwide and has resulted in tangible successes for New York homeowners and their neighborhoods.

One of the most important functions of the CRA is to promote affordable, high-quality lending products for low- and moderate-income families seeking to become homeowners. CRA imposes obligations on covered banks to lend in low- and moderate-income neighborhoods in the cities where they operate.

The CRA also encourages financial institutions to invest in the communities they serve. At the Center for NYC Neighborhoods, we have seen firsthand the positive impacts of grants and affordable financing from CRA-covered institutions. Here are several New York City programs that receive and are strengthened by CRA funding:

- ***Housing Counseling:*** CRA grants are one of the most important sources of grant funding for housing counseling in New York. Housing counseling programs at community-based nonprofits help families navigate the homeownership journey, whether they are seeking to buy a home, make necessary repairs, or are struggling to afford their mortgage payments. Housing counseling programs are an invaluable service for New York families, and the CRA is an essential tool for their continued success.
- ***Interboro Community Land Trust:*** The Center is a proud founding member of the Interboro Community Land Trust, New York City's first community land trust dedicated to providing permanently affordable homeownership opportunities for New York's low- and moderate-income families. Interboro is currently in the formation stages of development, and received a $1.25 million CRA-eligible grant from Citi Community Development to help accelerate development of Interboro's first units. This will place Interboro on a trajectory to soon become one of the largest community land trusts in the country.

But, for all of its benefits, inequities persist. Too many low-income people, immigrants, and people of color in New York City still lack sufficient access to loans to purchase homes, improve their homes, and start and maintain businesses**.** Smaller nonprofits struggle to access grants and loans to build and preserve much-needed deep and permanent affordable housing and support community development. 16% of Black households and 21% of Latinx households in New York City are completely unbanked, compared to only 2.8%of white households.[1] Meanwhile, many low-income tenants and tenants of color are being harassed and displaced when banks lend to unscrupulous landlords.

Home purchasing lending to LMI households is particularly dismal in New York City: despite 70% of NYC residents being LMI, In 2018, only 8% of all 1-4 family loans originated by banks were to LMI borrowers.[2]

All of this underscores the need to preserve and strengthen the CRA, making sure that the right priorities are reflected. In that context, we have deep concerns about aspects of the current proposal:

We Oppose the One-Ratio Approach

The agencies propose a one-ratio approach to CRA evaluation that consists of the dollar amount of CRA activities divided by deposits, despite hundreds of comments opposing it during the ANPR comment period. The Center is opposed to this form of evaluation because it would make CRA exams considerably less effective in evaluating how banks are responding to local needs in New York City. 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 or homeowners. This means fewer loans to first-time homebuyers, low-income homeowners, and small businesses; fewer financing options for smaller nonprofits to build and preserve deep affordable housing; fewer grants to nonprofits for tenant organizing or direct services. Since banks could fail in one half of the areas on their exams and still pass under the proposal, the likelihood of banks seeking large and easy deals anywhere increases.

The proposal would retain a retail test that examines home, small business and consumer lending to LMI borrowers and communities but this retail test would be only pass or fail. In contrast, the retail test now has ratings and counts for much more of the overall rating. Moreover, the proposal would eliminate the service test that scrutinizes bank branching and provision of deposit accounts to LMI customers. Replacing this test is a formulaic measure that would result in branches in LMI areas counting for very little in the one ratio and hence would

[1] Prosperity Now Scorecard, available at https://scorecard.prosperitynow.org/data-by-location#city/3651000

[2] ANHD, The State of Bank Reinvestment in New York City: 2018. Available at https://anhd.org/report/state-bank-reinvestment-new-york-city-2018

encourage banks to close them. We sees this as highly problematic given the aforementioned rate of unbanked and underbanked non-white households in New York City.

The agencies establish numerical targets under the one ratio exam for banks to hit in order to achieve Outstanding or Satisfactory ratings. However, the agencies base the targets on their research, which the agencies do not reveal in the NPRM. We are concerned about the impact of these new targets on smaller loans and investments as well as potentially unequal regional impacts. Further, under this new approach, banks can do high volumes of investment in some areas, while excluding others entirely. In fact, a bank could fail 50% of its assessment areas and still pass its exam with a satisfactory or outstanding.

The proposed metrics come at the expense of community input, community partnerships, and any activity that cannot be quantified. There is no meaningful way to incorporate community comments on local credit needs or on bank performance: community input comes second to target dollar goals. Similarly, there is no systematic way to incentivize high-impact activities. The proposal removes the systematic analysis of how responsive and innovative a bank's activities are. And there is still no way to downgrade a bank for harmful activities, such as higher cost loans or lending to predatory bad acting landlords who harass and displace tenants.

We Oppose the Proposed Expansion of What Counts for CRA Credit

The agencies propose to expand what counts for CRA credit to include activities that benefit larger businesses and higher-income families, as well as activities that are not directed primarily at lower-income people or communities. This includes small loans and small businesses up to $2 million in loan size and revenue (up from $1 million), community development activities that only partially benefit lower-income communities, and some activities with no requirements at all to benefit lower-income people or small businesses. In fact, a bank could get CRA credit for investing in an Opportunity Zone fund that finances luxury housing or athletic stadiums in low-income opportunity zones. In a high-cost city like New York City, struggling with the displacement of low-income residents, Opportunity Zones are not the best way to bring capital to disinvested areas. Instead, they promise to enhance profit related to projects that would likely have happened anyway. Providing CRA credit to investors in these ventures does not fulfill the spirit of the law.

Further, a bank could exclusively finance middle-income rental housing developments in high-cost markets like New York City, despite the persistent need for deep affordable housing for very low, low, and moderate-income families. And because housing investments get double-credit, banks would have less incentive to do the extra work to finance low-income housing when they can more easily get double credit for larger middle-income developments or loans on rent-stabilized buildings as part of their normal course of business, regardless of the quality of the housing or behavior of the landlord.

Under the NPRM, financing large infrastructure such as bridges would be a CRA eligible activity, which would divert banks' attention from community development projects in LMI communities. Even financing sports stadiums in Opportunity Zones would be an eligible activity. The agencies also propose to expand CRA loans to small businesses and farms valued at $1 million to $2 million for small businesses, and up to $10 million for family farms.

Ultimately, the proposal would drastically dilute the goals of the CRA as established in the 1995 regulatory changes to CRA: namely, to revitalize LMI communities with affordable housing, small business development and community facilities.

Principles for CRA Modernization:

To the extent that CRA reform occurs, such reforms should be undertaken with the goal of strengthening and modernizing it. While reforms are necessary to take into account the changes in banking and technology that have occurred since the law was enacted in 1977, these changes should not weaken the effect of the law. The outcome of reform should not be to make banks less accountable and less responsive to community needs. Such reform would be counter to the purpose of CRA legislation. We propose the following principles for CRA modernization:

Expand CRA to Cover Nonbank, Online, and Affiliate Lenders

Today many of the fastest-growing mortgage lenders in the US are not covered by the CRA. According to an analysis by the Association for Neighborhood Housing and Development, nearly 30% of home purchase loans and over 55% of refinance loans were made by nonbank lenders.[3] The figures are even higher for FHA loans: over 90% of FHA home purchase loans and refinance loans were originated by nonbank lenders.[4] These nonbank lenders and FinTech companies should meet CRA requirements as well. We cannot allow for a bifurcated mortgage system in which middle- and upper-class borrowers have access to well regulated banks while lower income families are relegated to less regulated lenders whose pricing may be less advantageous to LMI borrowers. Additionally, banks should be required to report affiliate data on their CRA exams as large banks are increasingly channeling home loans through non-CRA mortgage companies.

Assessment Areas Should Reflect Bank Activity

Regulators should maintain assessment areas around branches, and also expand how assessment areas are drawn to reflect where a bank takes deposits, makes loans, and does

[3] ANHD, The State of Bank Reinvestment in New York City: 2018. Available at https://anhd.org/report/state-bank-reinvestment-new-york-city-2018

[4] Ibid.

business. They should strive to capture at least 75% of a bank's lending or banking activity. This is particularly important for online-only digital banks, as well as banks that have a business model that spreads their business outside of their branch network.

In these assessment areas, regulators should assess the percentage of loans to LMI borrowers and people of color, loans to small businesses, and banking products offered and utilized to increase access for underserved populations. Banks that make multifamily loans should be assessed on lending in LMI tracts and also how those loans are contributing to affordable housing and whether or not they are contributing to displacement.

End Grade Inflation

Transparent, reliable CRA ratings are an important mechanism to ensure that communities can assess and respond to differences in performance. Yet, each year, only about 2 percent of banks fail their CRA exams, while the rest receive either Satisfactory or Outstanding performance ratings.[5] CRA modernization should ensure that the CRA examination process provides a meaningful assessment of the totality of a bank's activities. This can be done by expanding the current rating system to include additional levels or by supplementing ratings with a point scale, as is proposed in the ANPR. A record of consumer protection violations, including violations of mortgage servicing and loss mitigation rules, should be taken into account when developing performance ratings.

Acknowledge Racial impact of CRA Activity

New York City is 22% black, yet black borrowers received only a total of 7.6% of home purchase loans in 2017. Likewise, Hispanics comprise 29% of New Yorkers, but received just 7.9% of loans.[6] Recognizing our history of racial discrimination in home lending and community investment, the CRA should require financial institutions to assume an affirmative obligation to serve people of color and their communities.

The legislators who wrote the CRA clearly understood the impact of redlining on communities of color. Senator Proxmire wrote that "by redlining let me make it clear what I am talking about. I am talking about the fact that [financial institutions] will take their deposits from a community and instead of reinvesting them in that community… they will actually or figuratively draw a red line on map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood." Studies he commissioned just prior to the CRA passing showed that 90 percent of loans in metro Washington, DC, were made in

[5] NCRC, Principles for CRA Reform, May 21, 2018. Available at: https://ncrc.org/principles-for-cra-regulatory-reform/#_ftn1.
[6] NHD, The State of Bank Reinvestment in New York City: 2018. Available at https://anhd.org/report/state-bank-reinvestment-new-york-city-2018

surrounding Maryland and Virginia, and of the loans made in DC, 50 percent were in upper-middle class white areas.[7]

Given these origins and the persistent disparities in lending today, the CRA should never have been color-blind. Furthermore, the COVID-19 pandemic is highlighting and exacerbating racial discrepancies: the New York Times reports that African Americans are being infected by, and dying from, Coronavirus at disproportionately high rates because "they are less likely to be insured, more likely to have existing health conditions and, as a result of implicit racial bias, more likely to be denied testing and treatment. And then, the researchers said, there is the highly infectious nature of the coronavirus in a society where black Americans disproportionately hold jobs that do not allow them to stay at home."[8] If there is any change to the populations evaluated under the CRA, it should be to enhance access to credit and banking for people of color.

Continue to Emphasize the Importance of Bank Branches
Physical bank branches continue to play a vital role in communities, especially those that are financially underserved. Any CRA reform effort should maintain the law's current local obligations around branches and ATMs.

Conclusion
We thank you for the opportunity to comment on the Community Reinvestment Act. We urge the OCC not to reduce the CRA's effectiveness through the one-ratio approach and not to make changes to CRA requirements that have the potential to reduce lending in the LMI communities it is meant to support.

Meaningful CRA reform could boost lending and access to banking for underserved communities by incentivizing high quality, high impact activities based on local needs, while discouraging and downgrading for displacement and activities that cause harm. Transparent and consistent exams would support these goals.

This proposal does none of that. It creates a more complicated, less transparent system that will lead to less banking, lending, investments in our communities. The OCC and FDIC should abandon this proposal and go back to the table with the Federal Reserve to come up with a plan that preserves the core of the CRA, truly addresses its shortcomings, and modernizes it to incorporate today's banking world.

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[7] William E. Farrell, "'Redlining' by Lenders is Called Cause of Old Communities' Decay", New York Times, May 26, 1975.
[8] Richard A. Oppel Jr., Dionne Searcey and John Eligon, "Black Americans Face Alarming Rates of Coronavirus Infection in Some States." *New York Times,* April 7, 2020

Thank you for your attention to our comments.

Sincerely,

Ivy Perez, Policy and Research Manager
Center for NYC Neighborhoods, 55 Broad St, New York, NY 10004
ivy.perez@cnycn.org
646-849-4409