SMART GROWTH AND REGIONAL COLLABORATION

April 7, 2020

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

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

To Whom It May Concern:

I am writing in strong opposition to regulatory changes to the Community Reinvestment Act (CRA) proposed by the Office of Controller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC).

The Metropolitan Area Planning Council (MAPC) is the Regional Planning Agency serving the people who live and work in the 101 cities and towns in the Metropolitan Boston region, which includes roughly half the state's population and two-thirds of the state's jobs. Established by MGL Ch. 40B, Section 24 in 1963, one of our major goals is to provide equitable housing and good jobs to all of the people in our region, in partnership with municipal governments and community organizations.

The Community Reinvestment Act (CRA) has been crucial to the development of the MAPC region, allowing us to push for sound economic development and fair housing. Under the priorities established pursuant to the CRA, banks are now providing small business and community development loans, along with investments in Low-Income Housing Tax Credits and New Market Tax Credits, thereby allowing our community and municipal partners both to build mixed-income and affordable housing, and provide equitable entrepreneurship opportunities that our region desperately needs.

While we appreciate the need to revisit the CRA rules, particularly considering the changing role of Internet-based banking, the Notice of Proposed Rulemaking (NPR) put forward by the OCC and FDIC would lessen public accountability of banks to their communities. It would enact unclear performance measures on CRA exams that do not accurately measure a bank's responsiveness to local needs. Contrary to assertions that these proposals would increase clarity and CRA activity, we believe it will result in less clarity and significantly fewer loans, investments, and services for low- and moderate-income (LMI) communities. It will dilute the ability for the affordable housing developers and community development corporations (CDCs) we partner with to access funds that could be used to support affordable housing construction and small business loans in LMI communities.

The CRA was enacted in direct response to the damage done to LMI communities during redlining, the intentional and government-sanctioned practice of denying credit to credit-worthy Americans based on race. Any effort to overhaul the CRA should strengthen the resolve to provide equitable credit in the United States, compelling banks to make lending and investments in their communities accessible and responsive to community needs.

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We have highlighted some specific areas of concern with the NPR framework below:

Revised definitions around affordable housing
MAPC take issue with two provisions of the NPR regarding the definition of affordable housing. First, the proposed rules expand the definition of affordable housing to include middle-income housing in high cost areas. While we agree with the broad goal of providing housing to middle-income households, we feel that this change will reduce banks' commitment of resources to LMI households, and it is also likely to significantly reduce banks' lending to households of color, whose incomes are significantly lower, on average, than white households.

In fact, research conducted by the Urban Land Institute's Terwilliger Center for Housing indicates that while middle-income households have housing needs, they are considerably less severe than those facing LMI households[i]. Furthermore, middle-income households tend to have more housing options (such as living with family members or continuing to rent while saving for a down payment), while LMI households may face overcrowding or homelessness in the absence of housing they can afford.

Second, the proposed rules clarify the inclusion of funding "naturally occurring affordable housing" (NOAH) as a qualifying Community Development activity. Under the proposed rules, rental housing will count as affordable if lower-income households could afford to pay the rent, without verification that lower-income households would be the likely tenants based on market analysis. In fact, it is often the case that higher-income households occupy units affordable to lower-income households if they are not deed restricted, particularly in high-cost markets. Protections must be in place to ensure these units are rented to the LMI households who need them, and that at least some of the housing would remain affordable to LMI households over time. We agree that clarified rules could facilitate greater investment in unsubsidized housing that is affordable to LMI households, which benefits LMI communities without exacerbating displacement pressures. However, the proposed rules' explicit reliance only on a project's rent schedule will disincentivize investments benefiting LMI households, especially in high-cost markets like Greater Boston.

We therefore request that the definition of affordable housing be limited to housing accessible by LMI households and that rules governing the inclusion of unsubsidized housing as a qualifying CD activity maintain a substantive check on the likely beneficiaries of the project over time.

Revised evaluation frameworks
The NPR outlines an evaluation system that would further inflate ratings while decreasing the responsiveness of banks to local needs. The proposed "one ratio" measure would divide the dollar amount of CRA activities by deposits. This measure would limit the nuance with which regulators could assess banks, encouraging investment in a few high-dollar projects. When compounded by revised qualifying activities and the aggregated treatment of assessment areas (discussed below), the one ratio measure would likely undermine the original intent of the law.

Since (under the NPR's suggested potential standard) banks could fail in one half of their assessment areas and still meet CRA requirements, the likelihood of banks seeking large and easy deals anywhere would increase. Also, the change would relax requirements that banks serve areas where they have branches first before they can seek deals elsewhere.

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Therefore, we would recommend that the one ratio measure be removed and replaced with a more nuanced evaluation method that would encourage investment in CRA activities that directly benefit residents and workers across assessment areas.

Revised definitions of qualifying activities
The NPR proposes the addition of financing large infrastructure such as bridges as a CRA eligible activity. Even financing "athletic" stadiums in Opportunity Zones would be an eligible activity, even though such facilities may add little local economic growth[ii] or housing opportunities, and hurt the surrounding communities by fueling a rapid increase in land values that brings about displacement pressure. Supporting these projects with CRA funds would run counter to the Act's purpose, which is to address the discriminatory lending practices that contributed to the inequalities we see today. As a result, we would recommend that this proposal be removed.

Revised definitions of small business revenue
The NPR would define small businesses and farms as having higher revenues, increasing the limit from $1 million to $2 million for small businesses and as high as $10 million for family farms. Small business creation is usually heralded as an opportunity for Americans to pursue their entrepreneurial spirit and provide jobs for their community. Unfortunately, access to state and local resources to start a business is not necessarily available to everyone. Whether prospective entrepreneurs face bank loan discrimination, speak a foreign language, face difficulties with talent retention, or lack financial resources, local banking institutions need to do more to increase local business ownership by providing flexible, low-interest loans and lines of credit to small business owners, as well as financial education. Therefore, we recommend maintaining the revenue limit for small businesses at $1 million.

Revised assessment areas
While the NPR recognizes changes in the banking industry such as the increased use of online banking, the proposed reforms to the geographical areas on CRA exams are problematic and would reduce transparency. Neither the agencies nor the public can evaluate the agencies' proposal to designate additional geographical areas on exams in the case of internet banks, due to the lack of publicly available data. We therefore ask that the appropriate information be made available so that the public has a fair chance to offer comments on the impact and effectiveness of significant proposed changes.

Revised exams
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 could disincentivize banks from making investments in the early years of an exam cycle to serve their communities. Small banks with assets of less than $500 million could opt for their current streamlined exams instead of the new exams, which require banks to engage in community development financing while the existing small bank exams do not. This is another loss for communities. Therefore, we recommend that the exam cycle remain as a two- to three-year cycle, and we recommend that the new exams be a requirement for all financial institutions.

While the NPR states that it will modernize the CRA, we are concerned that many of these proposed changes will strip the CRA of its original intention and take the onus off banks to uphold their commitment to equitable investment in LMI communities. We believe any proposed changes should not weaken the investment in LMI communities, but strengthen it by:

- Enacting reforms that would increase bank activity that benefits LMI households, bank activity that does not increase displacement pressure, and bank activity with the primary purpose of serving those currently living in underserved neighborhoods.
- Addressing persistent racial disparities in lending by strengthening the fair lending reviews on CRA exams or adding an examination of bank activity to communities of color in CRA exams.
- At the very least, the agencies could add a category on CRA exams of underserved Census Tracts, which would likely include a high number of communities of color.
- Requiring agencies to release to the public data that is collected by banks on consumer lending and community development activities.
- Requiring mandatory inclusion on exams of bank mortgage company affiliates, many of whom engaged in abusive lending during the financial crisis.

As it stands, this deeply flawed proposal would result in less lending, investing, and services for communities that were the focus of Congressional passage of CRA in 1977, and the investment that does occur in these communities would be less likely to benefit underserved households and businesses. This reversal will violate the agencies' obligation under the statute to ensure that banks are continually serving community needs, and only further current inequalities in our region and beyond. We strongly encourage the FDIC and OCC to discard the NPR, and instead work with the Federal Reserve Board to propose an interagency rule that will augment the progress achieved under CRA instead of reversing it.

Thank you for your consideration of this letter. If you or your staff have any questions, please do not hesitate to contact Lizzi Weyant, MAPC Director of Government Affairs at eweyant@mapc.org or 617-933-0703.

Sincerely,

[redacted]

Marc D. Draisen
Executive Director

cc: Senator Elizabeth Warren
Senator Edward J. Markey
Congresswoman Katherine Clark
Congressman Joseph P. Kennedy III
Congressman Stephen F. Lynch
Congressman Seth Moulton
Congresswoman Ayanna Pressley
Congresswoman Lori Trahan
Secretary Mike Kennealy

[i] Urban Land Institute. (2016). Building for the Middle: Housing Greater Boston's Workforce. [online]. Available at: https://ulidigitalmarketing.blob.core.windows.net/ulidcnc/2016/05/ULI-Boston-Building-for-the-Middle.pdf
[ii] Noll, A. (2020). Sports, Jobs, & Taxes: Are New Stadiums Worth the Cost?. [online] Brookings. Available at: https://www.brookings.edu/articles/sports-jobs-taxes-are-new-stadiums-worth-the-cost/ [Accessed 28 Feb. 2020].