Fifth Avenue Committee
621 DeGraw Street, Brooklyn, NY 11217
t: 718.237.2017
f: 718.237.5366
www.FifthAvenueCommittee.org

NeighborWorks® CHARTERED MEMBER

April 8, 2020

Comments regarding "Reforming the Community Reinvestment Act Regulatory Framework"

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

To Whom It May Concern:

I am writing regarding the OCC and FDIC's Notice of Proposed Rulemaking (NPR) seeking input on proposed changes to the Community Reinvestment Act (CRA). As the Executive Director of Fifth Avenue Committee, Inc. (FAC)—a nonprofit comprehensive community development corporation, chartered member of the NeighborWorks America network and a member of the Association for Neighborhood and Housing Development (ANHD) —in Brooklyn, NY, I have significant concerns about these proposed changes and the impact they will have on the low and moderate income people and communities we serve in New York City.

The changes would lead to fewer loans and bank branches in high need areas and communities, fewer dollars invested overall as well as in the areas that most need it. It is also very concerning to me 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.

FAC is based in Brooklyn, New York and was founded in 1978 with the mission to advance economic and social justice by building vibrant, diverse communities where residents have genuine opportunities to achieve their goals, as well as the power to shape the community's future. FAC works to transform the lives of over 5,500 low- and moderate-income New Yorkers annually so that we can all live and work with dignity and respect while making our community more equitable, sustainable, inclusive, and just.

FAC's early work focused on neighborhood revitalization through comprehensive community development in Lower Park Slope, Brooklyn a community ravaged by the racist policies and practices of redlining and the disinvestment and 'urban renewal' that followed. Over 40 years later, the organization remains committed to addressing the significant housing and economic justice issues that continue to plague the communities it serves. Issues like extreme income inequality, lack of access to meaningful opportunities, a broken public housing system, predatory and speculative investments and the gentrification and displacement of long-time residents that follows as well as unaccountable development that does not benefit those in greatest need in our communities.

The existence of the CRA is absolutely critical to FAC's work. It is one of the major civil rights laws passed in response to discriminatory policies and practices that locked people of color out of banking, credit, housing, employment, and education for decades. It is one of the most important laws we have to hold financial institutions accountable to local communities, requiring them to lend and provide services equitably, and to support community development in the areas where they do business. It has led to trillions of dollars reinvested nationwide, and billions each year here in New York City.

The CRA has ensured that four of FAC's current banking partners—JPMorgan Chase, Wells Fargo, TD Bank, Bank of New York—have lent or invested more than $120 million to support over 400 units of deeply affordable housing for low income seniors, formerly homeless individuals and survivors of domestic violence that FAC is currently building and preserving in Brooklyn and Queens, New York. It has led to approximately one hundred thousand dollars annually in core grant funding from financial institutions that supports FAC's financial coaching, workforce development and bridge programming in addition to our affordable housing preservation, development and property management. With COVID-19's human and financial toll unfolding at this time, the CRA is a vital tool for ensuring that our financial institutions support the communities and people who lack access to the supports and resources necessary to survive and thrive.

As an organization whose mission is to advance economic and social justice, FAC is deeply aware of the ongoing need for the CRA and the protections and assurances it provides. In fact, there is still a great deal of inequity in our communities. Overwhelmingly, it is low-income people, immigrants, and people of color who do not have access to responsible loans that would allow them to purchase a home, make improvements and repairs or start a business. Smaller nonprofits struggle to access grants to support our comprehensive community development programs benefitting poor and working-class families. In a high cost city like New York, where the vacancy rate is less than 3%, and the vast majority of the people FAC serves paying more than 50% or more of their income in rent or homeless, access to loans and equity to build and preserve affordable is critical. Fifteen percent (15%) of Black households and 18% of Hispanic households in the NY region are unbanked—a rate that is more than 5 times that of white households. Meanwhile, we often see low-income tenants and tenants of color harassed and displaced when banks lend to unscrupulous landlords. We also see long term moderate-income homeowners who are facing foreclosure because they've been the target of predatory lending or lack access to responsible lending. The CRA is a tool that holds the banks accountable to communities and the broader public interest.

All of this underscores the need to <u>preserve and strengthen</u> the CRA, making sure that the right priorities—those that the CRA was founded on—are reflected. With this in mind, I would like to make clear the elements of the proposed changes that I find deeply concerning.

FAC Opposes the One-Ratio Approach

The proposal maintains a one-ratio approach, despite hundreds of comments opposing it during the ANPR comment period. It values dollars over impact, quantity over quality, thus incentivizing larger deals over smaller, more impactful ones. 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.

It creates arbitrary target goals without considering community needs. It would allow banks to make a high volume of investment in some areas, while excluding others entirely. **In fact, under the proposed changes a bank could fail 50% of its assessment areas and still pass its exam with a satisfactory or outstanding**!

All of this comes at the expense of community input, community partnerships, and any activity that cannot be quantified, such as branch openings and closings; hours of operation; and qualities of bank accounts. **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.

There is less attention to the distribution of retail and small business loans and no mention of race at all. **There are no ideas proposed to increase access to banks and banking for people of color, no ideas to minimize displacement among these populations, and no attempt to strengthen the fair lending portion of CRA exams.** Quite the opposite is happening as the exam eases the analysis of the geographic and income distribution of retail lending, small business lending, and consumer lending. There is no analysis of different loan sizes to small businesses or the distribution of mortgages in lower-income tracts, and no evaluation of the types of products offered to lower-income consumers. Banks can get credit for high-cost, high-interest credit cards and other predatory loans and products offered to lower-income consumers!

FAC Opposes the Expansion of What Counts for CRA Credit

The proposal greatly expands what counts for CRA credit with 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.** 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; over 40% of New Yorkers are low-income alone, with incomes below 50% AMI[1]. 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.

Low Income Housing Tax Credit (LIHTC) investments, a critical piece of housing financing, is also at risk. The value will almost surely go down as banks compete less for investment opportunities, thus reducing the amount of equity available to develop affordable housing.

At the same time, the proposal minimizes or eliminates the emphasis on meaningful community investments that can't be quantified, such as bank branches, affordable and accessible banking products, hours of operation, languages spoken, impactful volunteer hours, and quality jobs.

FAC Opposes the Loss of Obligation to Meet Local Credit Needs

The proposal greatly expands where banks can get CRA credit, allowing for investment outside of local assessment areas, which minimizes focusing on local community needs and partnerships. As mentioned above, banks can get a low or failing grade in half of their assessment areas and still pass their CRA exam if they meet their target dollar goals for the entire bank. The bank-level evaluation combines CRA-qualified dollars loaned invested in all the assessment areas combined, as well as qualified activities anywhere, regardless of assessment area. While some of these areas may need investment, that investment cannot come at the expense of the obligation to meet local needs. Further, all investments, regardless of location, should be analyzed for their impact on historically redlined communities.

FAC strongly believes that the Proposed Changes to the CRA are a Formula for Dis-investment: More complicated, less transparent, and will lead to less investment

The proposal does the opposite of what it claims to do for banks or the community: It is **less transparent, more complicated, and will ultimately lead to less investment and less meaningful investment**. The proposal relies upon deposit and community development data that banks do not yet collect, with little transparency as to how banks will collect and report on the data. The proposal no longer uses publicly available data, such as the Home Mortgage Disclosure Act (HMDA) data for home mortgages, FDIC data for branches and deposits, and the

---

[1] https://anhd.org/sites/default/files/ami_cheat_sheet_2019_060519.pdf

FFIEC for small business data, thus reducing the ways the public can verify and provide meaningful feedback on bank performance in those categories. The formula to calculate the target metric is complicated and relies upon data never before used on CRA exams, meaning banks will have to spend millions to adapt to this new system that will result in less transparency and less investment in our communities. Meanwhile, smaller banks below $500 million in assets can opt out of the new system, effectively removing the community development finance requirements for many of those banks.

Any reform must include OUR principles to preserve and strengthen the CRA

1. **Banks should be evaluated on the quantity, quality and impact of their activities within the local communities they serve and based on the needs of these local communities**. This cannot be done with a one-ratio evaluation that simply looks at dollars invested.
   - Incentivize high quality, responsive activities that lift historically redlined people—**those of color and low- and moderate-income people**—out of poverty and help reduce wealth and income disparities.
   - Downgrade banks that finance activities that cause displacement and harm.

2. **Community input and community needs must be at the heart of the CRA**. Strong community needs assessment and community engagement should inform community needs and how examiners evaluate how well banks are meeting those needs.

3. **Assessment areas must maintain local obligations**. The CRA must maintain the current place-based commitment banks have to local communities. Banks should have additional assessment areas where they do considerable business (make loans / take deposits) outside of their branch network. These types of reforms must maintain or increase quality reinvestment where it is needed, including high need "CRA hot spots" such as New York City, while also directing capital to under-banked regions.

What Meaningful CRA Reform Should Look Like

Meaningful CRA reform would boost lending and access to banking for underserved communities by incentivizing high quality, high impact activities based on local needs. Meaningful reform would discourage and downgrade institutions that contribute to displacement or engage in activities that result in fewer investments and opportunities for low income communities and communities of color.

Transparent and consistent exams would support these goals. Unfortunately, the proposed changes do none of this. Rather, they would lead to a more complicated and less transparent system that will mean fewer banks, less lending and investments for the communities and period we serve.

Especially given the anticipated recession that we entering and the compounding effect a hollowing out of the CRA would have on communities that are already suffering and never fully recovered from the Great Recession, I strongly urge the OCC and FDIC to abandon this proposal, go back to the table with the Federal Reserve, and come up with a plan that preserves the integrity of the CRA, truly addresses its shortcomings, and modernizes it to incorporate today's banking world.

Sincerely,

[redacted]

Michelle de la Uz
Executive Director
e. mdelauz@fifthave.org
p. (718) 237 2017 x116