April 8, 2020

Office of the Comptroller of the Currency, Treasury
Federal Deposit Insurance Corporation
Via electronic submission

RE: ***Community Reinvestment Act Regulations***
Docket ID OCC-2018-0008
RIN 3064-AF22

The City of New York (the City) welcomes the opportunity to provide comments to the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) on the above-referenced notice of proposed rulemaking to amend the Community Reinvestment Act (CRA) regulations (Proposed Rule). The OCC and FDIC regulate a combined 85 percent of all CRA activity, a responsibility with large and long-lasting impacts to low- and moderate-income (LMI) communities nationwide.

Congress passed the CRA in 1977 in response to lingering impacts of redlining and disinvestment in LMI communities and communities of color. The intent of the law, which built on progress of the Fair Housing Act and the Home Mortgage Disclosure Act, is to ensure that financial institutions are providing loans, investments and services in the communities where they take deposits.

The Proposed Rule is a major departure from the original intent of the law and could significantly weaken the requirements that banks invest in traditionally underserved markets. Shifting to a single metric could jeopardize investment in smaller, more complicated transactions. The new "one-ratio" test, in which a bank would be evaluated on the total dollar of eligible activities as a percentage of total deposits, could result in total volume valued over the true impact and quality of CRA activities. The likely impact is prioritization of large, high-value transactions over key activities that are smaller or more complex such as providing home and small business lending, opening bank branches, and ensuring access to low-cost savings accounts.

Additionally, expanding CRA activities to include investments in projects such as a bridge or a stadium could encourage investment in areas that do not directly benefit LMI communities and could dilute high impact investments in current activities. Expanding banks' geographic

assessment areas and instituting new minimum benchmarks could lead to a reduced obligation to serve all LMI communities in a bank's assessment area.

While the nature of banking for many Americans has changed, the need for a strong CRA has not. The CRA remains a critical tool to ensure financial institutions are investing in communities, spurring much needed public-private partnerships that strengthen communities, help families build wealth, and live longer lives. Any proposal that weakens this mandate would violate the Administrative Procedure Act as arbitrary and capricious and contrary to the CRA, and should be rejected. Specifically, the City urges the OCC and FDIC to focus on the following areas in modernizing the CRA.

Protecting the value of current programs, including the Low Income Housing Tax Credit

Any reform to the CRA should not reduce the effectiveness of proven programs, including the Low Income Housing Tax Credit (LIHTC), the single-most important federal source of affordable housing financing today. The LIHTC program provides tax credits to owners and developers to acquire, rehabilitate, or construct new rental housing for lower-income families. The CRA is a major driver in LIHTC investment, and without these investors, the public-private partnership model would not work and the City's ability to provide affordable housing would be diminished.

The expansion of CRA eligible activities and the one-ratio approach could disincentivize investments that are smaller in scale or part of more complicated transactions. Combined, these two aspects could damage the value of the LIHTC by reducing investor interest and driving down pricing. These changes would make investments in the Housing Credit a less appealing mechanism to meet CRA obligations. Many investors would likely scale back these investments significantly and may even stop investing in affordable housing altogether. This would ultimately hurt the ability of cities and states to meet their affordable housing needs in a time when these needs are high across the country, particularly among communities of color that the CRA was created to support.

Additionally, these combined proposals could disincentivize small business loans, community development finance, financial services, and other historic CRA activities. These are critical services that help address disparities in access to banking services and home loans, and contribute to the intergenerational racial wealth gaps and associated impacts, such as poor health outcomes.

Maintaining a local focus in CRA assessments

Even as the nature of banking has shifted due to increased online access to financial services, bank branches remain important, especially to the most vulnerable individuals (e.g. immigrants, elderly, the underbanked) and historically underserved communities.

The one-ratio approach reduces incentives to participate in and provide in-kind and/or community development services (e.g. extended branch hours of operation, language

accessibility, volunteer hours served, technical support provided, etc.) that are currently evaluated separately under the “service test.”

Recognition for retail services provided in LMI communities would be greatly reduced under the Proposed Rule, jeopardizing the success of ongoing efforts to connect individuals in these communities with safe and affordable financial products such as checking and savings accounts.

Requiring responsiveness from banks to feedback from community members, community-based organizations, and other local stakeholders is critical to ensure the CRA activities meet true local needs, especially in areas as diverse as New York City. Any reforms to CRA should encourage rather than discourage banks to engage with local stakeholders. The Proposed Rule falls short of this standard.

Keeping the focus on ensuring that LMI communities benefit from the CRA

Expansion of the geographic assessment areas should not come at the expense of the communities that the CRA was created to benefit.

By requiring that a bank meet a minimum ratio of investments to deposits only in a “significant portion” of its assessment areas, the Proposed Rule would allow banks to ignore many of its assessment areas (up to 50 percent, according to the preamble to the Proposed Rule) and still receive a satisfactory or outstanding rating.

Ensuring that banks serve all their assessment areas, not just the ones that are convenient or easy for them to serve, is the best way to meet the goals of the CRA and prevent a return to the redlining and neglect of historically underserved communities.

Furthermore, under the proposed framework, CRA-qualifying community development loans would no longer have to have the primary purpose of serving individuals and communities with low or moderate income. This takes the focus of CRA evaluation off the LMI constituencies, whose interests CRA was designed to advance.

In addition, making financial education that benefits all income groups CRA-eligible, including those with high incomes, diverts resources from LMI communities. While financial education may benefit individuals at all income levels, the original intent of the CRA was to serve LMI communities. Financial education for high-income individuals should therefore not be eligible for CRA credit, as such a change could detract from the services provided to banks’ LMI customers.

Any changes to the CRA should ensure that LMI communities are the primary beneficiaries of CRA-eligible efforts and investments.

Excluding predatory investments from CRA eligibility while facilitating stabilization and revitalization in LMI communities

Cities like New York are experiencing intense housing cost pressures and many disinvested neighborhoods are seeing rising rents and speculative purchases. This major change in urban areas since CRA was passed in 1977 means that there is an increased urgency for investments in LMI communities to benefit specifically LMI residents, not residents at a higher income level who live in an LMI community and may fuel harmful displacement. CRA-eligible investments and activities should stabilize communities and serve the LMI people the CRA was intended to support.

When institutions neglect their responsibilities to the communities they serve, enforcement mechanisms should be clear and effective. The Proposed Rule, by allowing a bank to achieve a less than satisfactory rating in half of its assessment area and still receive a satisfactory rating overall, by relying on as-yet-untested data collection methods, and by decreasing incentives for meaningful engagement with community stakeholders and watchdogs, opens the door to this neglect. At worst, it could allow discriminatory practices that harm LMI communities to go unpunished.

*Municipal bonds and Mortgage-Backed Securities (MBS) must be fully valued and treated the same as other CRA qualified activities***.**

The Notice of Proposed Rulemaking includes provisions under 12 CFR 25.07(a) and (c) regarding qualifying activities value and 12 CFR 25.07(b) regarding the multiplier value of certain qualifying activities that will weaken the impact of CRA and raise certain risks for banks and markets.

Under this proposed provision of the CRA regulations, the calculation of qualifying activities value requires a doubling of the dollar value of certain community development activities, including for some investments and loans. These include activities provided to, or that support, Community Development Financial Institutions (CDFIs), other community development investments, and other affordable housing-related community development loans. However, activities with CDFIs related to mortgage-backed securities (MBS), community development investments in MBS, and community development investments in municipal bonds would *not* be subject to the multiplier, which has the effect of discounting the value of these CRA-qualified activities by 50 percent.

Discounting the value of CRA-qualified municipal bonds and MBS sends the inaccurate message that these safe, valuable, and highly regarded CRA options are not important or needed when in fact, the opposite is true – not only are they necessary, but many times, they are the only options available for banks to fulfill their CRA obligation and remain engaged in their local communities in a positive way.

State and local housing authorities use municipal bonds that finance single-family and multifamily mortgages to fund lower-cost mortgages for LMI borrowers. CRA-qualified

municipal bonds help individual borrowers and multifamily developers create affordable housing. In particular, the Mortgage Revenue Bond (MRB) and tax-exempt multifamily housing bond programs (collectively, Housing Bonds) finance low-interest mortgages for LMI home buyers and to acquire, construct, and rehabilitate multifamily housing for low-income renters. Lower demand for these bonds would imperil these programs and reduce the availability of these loans.

We appreciate the opportunity to comment and urge the OCC and FDIC to adhere to the above principles to ensure that the CRA continues to meet the needs of LMI communities, as it was intended.