



Fair Housing Advocates of Northern California

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

To Whom It May Concern:

This letter is written on behalf of Fair Housing Advocates of Northern California (FHANC) in response to the proposed changes to the Community Reinvestment Act (CRA) regulations. We are very much in agreement with FDIC Board member Martin Gruenberg's statement that the FDIC's and OCC's Notice of Proposed Rulemaking (NPRM) on the Community Reinvestment Act (CRA) "is a deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act." At the very least, FHANC believes that the comment period should be extended, particularly given the COVID-19 pandemic, to allow for thoughtful consideration of this complex proposed rule. However, we believe the regulators should pull the proposal and begin again.

FHANC is a private non-profit agency designed to maximize housing opportunities for all persons regardless of disability, race, color, religion, national origin, familial status, gender, marital status, sexual orientation, age, occupation, ancestry, or source of income. Our mission is to ensure equal housing opportunity and to educate our communities on the value of diversity in our neighborhoods. As a full-service fair housing agency, FHANC provides counseling services for tenants and homeowners focused primarily in Marin, Sonoma, and Solano counties. Our agency also works with local jurisdictions on their obligation to affirmatively further fair housing and undo the historical effects of racial segregation in housing.

The areas FHANC serves have a long history of segregation and lack of viable access to credit for people of color. **Marin County** has a primarily suburban population estimated at 259,666, with approximately 86% White, 72% non-Latinx White, 16% Latinx, and 3% African-American¹. Immigrants, especially those who are Latinx, represent a rapidly growing subset of Marin County's population. As noted by one research team in 2018, Marin County is one of the most racially segregated counties in the Bay Area², with only 3% of African-Americans living in the County, yet comprising nearly 30% of Marin City. The Canal district in the city of San Rafael is the most segregated tract for Latinx households in the entire Bay Area. Latinx individuals comprise more than

¹ <https://www.census.gov/quickfacts/marincountycalifornia>.

² https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area#footnote12_mlsxzk.

A local non-profit helping communities eliminate housing discrimination



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90% of the population in the Canal³, while only 16% of the County's population⁴. Marin's Latinx and African-American populations are largely segregated from other groups. **Solano County**, northeast of Marin, is home to 446,610 residents, with a population of approximately 60% White, 38% non-Latinx White, 27% Latinx, and 15% African-American⁵. The Vallejo-Fairfield metropolitan area is highly segregated, with a White/Black dissimilarity index of 53.5⁶. **Sonoma County**, north of Marin, is home to 499,942 residents. Approximately 87% are White, 63% are non-Latinx White, 27% Latinx, 2% African-American, and 5% Asian. Sonoma's population is highly segregated by race and ethnicity, noted by Menendian and Gambhir as the "whitest County in the Bay Area," calling the County "...a counterpart to Marin in that it is a place where white families are exceptionally segregated from people of color." Of the entire Bay Area, three of the six whitest segregated areas are in the County, near the city of Santa Rosa, which has a White/Black dissimilarity index of 41.1 (see footnotes 18, 20). Latinx, the largest minority group in Sonoma, are "overrepresented and clustered in Cloverdale, Healdsburg, Santa Rosa, and Windsor town."⁷

Marin County's 2020 Analysis of Impediments identified this impediment:

- Lack of opportunities for home ownership by people of color and on-going concerns of gentrification: most residents are priced out of housing in Marin, but this is particularly true for African Americans who lived in Marin City during and post- World War II and who were affected by discriminatory policies that created segregated communities with limited access to opportunities (p.96)⁸.

Similar situations have played out in Sonoma County and Solano County and across the Bay Area. Despite the passage of the Fair Housing Act in 1968, African-Americans and other protected classes have been priced out of the housing market in communities across the country because of the wealth divide. Discriminatory redlining policies kept communities of color from accessing credit and therefore home ownership. During the 1990s and early 2000s, communities of color began to be targeted for subprime, unaffordable loans – termed “reverse redlining” – which eventually led to the financial crash of 2008. Following the wave of foreclosures, banks continued with policies that continued to drain equity and homeownership from communities of color, this time through failing to maintain and market bank-owned homes in African-American and Latinx neighborhoods in the same way it did in White communities.

In 2013, FHANC began conducting investigations into the maintenance and marketing of bank-owned homes in communities of color compared to white neighborhoods. Based on the results from these investigations, FHANC joined a number of other fair housing agencies across the country in filing lawsuits against Bank of America, Deutsche Bank, and Fannie Mae for discriminatory practices, i.e. failing to maintain and market foreclosed homes in communities of color.

It is clear that given the unequal and discriminatory lending practices we have historically seen and described above, the CRA rule should be made stronger, rather than made weaker as the proposed rule is written.

Furthermore, FHANC has formed a number of different partnerships with many lenders – Wells Fargo, Mechanics Bank, Union Bank, Bank of the West, Opus Bank, and a number of others – who see supporting our agency's foreclosure and pre-purchase programs as part of fulfilling their CRA obligations. These programs help low- to moderate-income people, including people of color access as well as remain housed. It is clear that the weaker and less clear the proposed rule is the more likely it will signal to banks that they do not have to take their CRA obligations seriously and may be a discouraging factor in forging or continuing their partnership efforts.

³ https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area#footnote12_mlsxzlk.

⁴ <https://www.census.gov/quickfacts/marincountycalifornia>.

⁵ <https://www.census.gov/quickfacts/solanocountycalifornia>.

⁶ http://www.census.gov/quickfacts/us/rank_dissimilarity_white_black.html.

⁷ https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area#footnote12_mlsxzlk.

⁸ <https://www.marincounty.org/-/media/files/departments/cd/housing/fair-housing/2020-ai/2020aienglishvfinal.pdf?la=en>

In addition, public accountability of banks to their communities would be diminished because of unclear performance measures on CRA exams which would not accurately account for banks' responsiveness to local needs; and it would be far more difficult for the public to provide input into this evaluation framework. Despite claims that the proposed rule would be clearer and increase bank CRA activity, it's apparent that there would be far fewer loans, investments and services to low- and moderate-income (LMI) communities.

Too many smaller banks will be able to opt out of the new rules, reducing their current community development obligations. And larger banks are likely to change their charters to take advantage of easier OCC rules. Banks should be strongly committed to reinvesting in the community, a core CRA principle. In addition, the proposed rule allows for less focus on LMI people and communities, which is in direct contradiction to the intent of the law. We must continue to address redlining in and disinvestment from LMI and communities of color, as evidenced from FHANC's investigations outlined above. The NPRM proposal would expand what counts to allow bank CRA credit for things like financial literacy classes geared towards upper income people. Even though 95% of businesses have less than \$1 million in revenue, and need financing under \$100,000, the proposal would double existing thresholds, allowing banks to get even more CRA credit for loans of up to \$2 million to businesses with up to \$2 million in revenue. And banks could get credit for loans as high as \$10 million for family farms, even though the vast majority of family farms are much smaller. As such, banks will turn away from less lucrative lending to the small businesses and small farms that serve their communities and hire locally. Unfortunately, the proposed rule would permit projects that only "partially" benefit LMI people and neighborhoods, such as large infrastructure and energy projects. The losers in this will certainly be low income people, entrepreneurs, small businesses and small farms.

The OCC and FDIC propose a new bank level evaluation framework that allows banks to count ALL eligible loans and investments made anywhere, including outside the areas where bank branches are located. CRA implementation has focused on banks serving the local communities where they are operating. Now, big banks could seemingly get a large amount of CRA credit for subprime credit card lending to LMI consumers anywhere. While the proposal does seek to expand reinvestment obligations to the increasing number of banks that do not have a branch model (such as fintech and internet banks), it does so in a way that few banks will actually be covered, and only accounts for where deposits are taken, not where these non-branch banks are making loans and making money. As proposed, the rule will likely do nothing to address the critical issue of bank deserts, and only serve to weaken the connection between banks and local communities.

The proposed rule supposedly addresses displacement, but in fact only makes it worse. The definition of affordable housing would be broadened to add in middle-income housing in high-cost communities. In addition, the NPRM would count rental housing as affordable housing if LMI people could afford to pay the rent, even if the actual tenants are not low or moderate income. Even worse, banks would get points for advancing credit to athletic stadiums, storage facilities, and luxury housing in Opportunity Zones, which will hasten gentrification in those communities at greatest risk.

CRA has emphasized the importance of banks having branches in LMI communities, and whether banks make their products accessible to all consumers. The proposed rule gives virtually no incentive for banks to maintain or open LMI branches, and there does not appear to be any attention on if banks are offering reasonably priced bank accounts and other consumer products, such as payday alternative small dollar loans and age friendly account products, which are needed by LMI and senior communities. The end consequence will be a reduced number of bank branches in LMI and rural communities. LMI consumers will be forced to rely on predatory check cashers and payday lenders.

Unfortunately, as outlined above, redlining and discrimination continue to exist. But this proposal does nothing to address this fact and may very encourage an increase in redlining practices because banks are permitted to neglect some of their assessment areas. OCC policies allow more exemptions than other regulators for banks that show evidence of discrimination, discourage double CRA rating downgrades for violations of law, and allow banks that discriminate and redline to still pass their CRA examinations. CRA rules should provide

greater scrutiny of, and punishment for, evidence of discrimination, and provide CRA rating downgrades for other forms of harm to the community, such as the financing of displacement. Under this proposal, if regulators are to consider giving banks positive credit for the activities of their affiliated companies, they must scrutinize the affiliated companies for evidence of discrimination, displacement and harm, and downgrade CRA ratings accordingly.

The agencies propose an evaluation system that would further inflate ratings while decreasing the responsiveness of banks to local needs. Currently, only 2% of banks fail their CRA exams; the proposal would likely lower this further. The agencies propose a version of the one ratio measure that consists of the dollar amount of CRA activities divided by deposits. This approach is made even more advantageous for the banks because it significantly increases the activities and the places banks can receive credit (making the numerator larger), and simultaneously decreases deposits by eliminating brokered and municipal deposits (decreasing the denominator).

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, homeowners and projects. Banks, for example may move away from important Low-Income Housing Tax Credit investments in favor of simpler and easier investments.

Further, the proposal would actually allow banks to FAIL in half of the areas on their exams and still get a passing grade. Rural areas and low-income neighborhoods of color that are perceived of as harder to serve will no doubt be more likely to be ignored by banks that can meet their CRA obligations elsewhere.

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 lending test now has ratings and counts for much more of the overall rating. Banks should be required to exceed benchmarks in lending compared to both area demographics and compared to peers, not either or, and the goals should be strong.

The agencies establish numerical targets under the one ratio exam for banks to hit in order to achieve Outstanding or Satisfactory ratings. These targets appear both arbitrary and low. Banks may be able to achieve Outstanding ratings in reliance on large subprime credit card lending, even if that does not well serve LMI consumers. The agencies base the targets on their research, which the agencies do not reveal in the NPRM. The public, therefore, cannot make informed judgements about whether the numerical targets would result in increases in activity, stagnant levels or decreases.

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 aspect of the proposal deviates from the agencies' statutory duties to ensure banks are continuing to respond to community needs. Banks with a five-year exam cycle would likely relax their efforts in the early years of the cycle. Banks would also have less accountability to maintaining acceptable CRA performance when they seek permission to merge with other banks.

This proposed rule seems to intend to diminish community input and participation, particularly given the minimal time given for public comment, despite such complicated and substantial changes to the rules implementing the nation's redlining law. OCC officials have also made statements and actions that suggest that the OCC does not want to hear from people with opposing viewpoints. This is antithetical to a public rule making process. This response to squelch community input is evident within the proposal, which includes arbitrary thresholds that are not justified, references data not shared, creates a formula driven process that will make community input and partnerships less relevant, treats performance context as an afterthought, and is not clear on what role, if any, community input on bank performance will play. As an example as to the lack of transparency and opportunity for community input, the OCC issued a Request for Information (RFI) almost a month after the release of its proposed rule, on January 10th. The RFI seeks data from banks to inform potential

revisions to the CRA regulatory framework and is due the day after the 60-day public comment period closes for the rule. This means communities will not have access to this data, to be used by the OCC to make potential revisions to the rule, prior to submitting public comment.

If the OCC and FDIC continue without getting sufficient prior input or time for public comment, they will create a multi-tiered system of oversight, where banks will have their choice of regulator based on who they think offers the most favorable CRA framework for them. Even under the proposal, small banks under \$500 million in assets can opt out of the new rules and yet lower their current reinvestment obligations. All banks, especially large banks, should have the same, strong, reinvestment obligations. When regulators choose different rules, and banks can choose their regulators, this will negatively impact the communities they are supposed to serve.

The proposed rule should be strengthened, not weakened, and incorporate the following:

- Low- and moderate-income people and communities should continue to be the main focus.
- Meeting community needs and prioritizing loan originations should be the emphasis, not buying loans made by other banks or for-profit companies. Loans to owner occupants (rather than investors) should be prioritized, and small business lending should focus on smaller loans and smaller businesses. The Consumer Financial Protection Bureau should finalize a strong small business data collection rule so that the bank regulators and the public can clearly see which banks are serving, which banks are harming, and which banks are ignoring LMI communities and communities of color.
- A hybrid approach to assessment areas that ensures that traditional banks and modern branchless banks are actually serving communities. Banks with retail branch presence should service those areas where they operate. Banks without retail branch presence should have reinvestment obligations that consider where deposits are from, and where loans and profits are made. Nonretail bank reinvestment obligations should be developed with an eye towards increasing reinvestment in bank deserts, which this proposal does not do.
- A qualitative and quantitative analysis. Homeowners, small businesses, and impactful community development projects often require smaller loans and investment. Innovation and impact should be valued under CRA. A proposal that only considers what is easily monetized does not have community needs at its center.
- Stop inflating CRA grades. 98% of banks should not be passing their CRA exams. This proposal will simply exacerbate this issue. The goal should be to increase LMI lending and investment which is subpar at present, not to create a new framework that will lead to apparently larger numbers that in reality result in reduced lending, investment, impact, and community benefit.
- More scrutiny of reinvestment in rural areas, including more designations as “full scope review” areas subject to greater oversight and scrutiny than is usual for urban areas. This will result in better service in rural areas being better served, something that will not happen with the proposed rule.
- A greater emphasis on the service test so that CRA prioritizes branches in LMI communities, reflecting how important the branches are to their communities. The CRA statute references deposit products and banks should ensure that affordable and accessible bank account and consumer products are available to LMI, of color and immigrant communities (including language translation and interpretation services) so that everyone can build wealth and avoid predatory alternative financial providers. The elimination of the service test would have a terrible effect on LMI communities.
- Lower CRA ratings when there is evidence of discrimination and harm. Evidence of redlining or discrimination should result in a Needs to Improve or Substantial Noncompliance rating. The agencies should require more robust fair lending exams rather than the current one or two sentences in performance evaluations. The CRA should emphasize race and income. CRA grades should also be lowered for violation of consumer protection laws, and for other negative impacts on LMI people and communities. This includes reduced grades for bank financing of displacement, which causes economic destabilization resulting in evictions, damaged credit histories and decreased ability to be able to qualify for home and small business loans and build wealth.

- Just as rulemaking should with any policies that affect the community, there should be increased input from the community rather than a decrease. The CRA requires that community needs should be where reinvestment decisions originate, rather than a list federal banking regulator provides or what big banks want (since ultimately they will always be motivated by the bottom line rather than what is good for the community). The CRA rule should promote and strengthen performance context, transparency of data regarding bank performance to enable better community input, public hearings during mergers, and the development of Community Benefits Agreements.

Richard Cordray, former director of the Consumer Financial Protection Bureau recently sent a white paper to the CFPB on how the bureau can respond to the crisis and protect consumers during this time of uncertainty. Cordray called for proactive measures including the following:

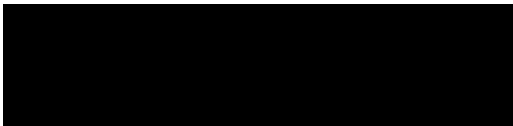
- Find out what is happening from consumers and share news widely
- Help lenders and public officials fashion ways to reduce loan delinquencies and defaults
- Monitor lenders closely to ensure promises made are promises kept
- Help people avoid eviction and/or foreclosure
- Work with other federal and state officials to police fraud and scams
- Provide vigorous oversight over debt collectors
- Stop all non-essential rulemaking work

We agree whole-heartedly with what Mr. Cordray is calling for; and this can only be effective with a stronger CRA rule. The proposed rule is deeply problematic and would result in decreased lending and investment in the same communities that Congress intended to positively impact when it passed the Community Reinvestment Act in 1977. This proposal paves the way for banks to be relieved of their obligations to the community and moving away from the main statutory and regulatory core principles of CRA, such as the emphasis on low and moderate income people and communities, the attention on banks meeting local community credit needs, and robust community involvement to ensure that communities, not big banks, benefit.

The OCC should share the data behind its assumptions and analysis, extend the comment period to 120 days, and ultimately, pull this proposal so that CRA reform can proceed in a more thoughtful way that will actually benefit the communities CRA was designed to build up.

Thank you for your attention to this issue.

Sincerely,



Caroline Peattie
Executive Director
Fair Housing Advocates of Northern California

cc: California Reinvestment Coalition
National Community Reinvestment Coalition