



April 8, 2020

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation,
550 17th Street NW, Washington, DC 20429

Re: RIN 3064-AF22
Community Reinvestment Act Regulations Joint notice of proposed rulemaking; request for comment

To Whom it May Concern:

Prosperity Now is submitting comments on the Office of the Comptroller of the Currency's and Federal Deposit Insurance Corporation's Community Reinvestment Act Regulations Joint notice of proposed rulemaking.

Before we detail our extensive comments below, we request an immediate suspension until the end of the health crisis of the comment period for the proposed changes to the Community Reinvestment Act. The scale of the COVID-19 pandemic is one like we have not experienced in decades. This pandemic threatens the health of millions in our communities. To ensure a fair and informative rulemaking, we ask that you implement a suspension immediately. This is a rulemaking of real importance to the communities with which we work and the pandemic deserves sustained attention, which CRA stakeholders cannot provide in as the COVID-19 unfolds.

Prosperity Now is a national, nonpartisan nonprofit organization based in Washington, D.C. that works to expand economic opportunity for all Americans by promoting and advocating for asset-building policies and programs. A part of our work focuses on access to credit and homeownership, which has long been the primary way for families to build wealth in the United States.

The Community Reinvestment Act (CRA) is a key policy for families and communities to access safe credit, good banking products and services in their neighborhoods. Unfortunately, in too many communities across the United States, lack of access to credit impede families' abilities to secure housing and economic opportunity. The impediments disproportionately impact families and communities of color, further exacerbating the racial wealth divide and inequities in the United States. Unfortunately, the proposal from the OCC and FDIC will aggravate the lack of access to credit and banking services, in full contradiction of the letter and spirit of the 1977 statute.

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We welcome the opportunity to comment on the proposal, which, unfortunately is flawed, and will not serve the communities as the law requires and should be withdrawn by the two agencies. Indeed, the absence of the participation of the Board of Governors of the Federal Reserve underscores the need for the OCC and the FDIC to start again.

Perhaps the most telling admission of the proposal's flaws is that the regulators were forced to extend the 60-day comment period, a brief window for such a substantive policy document, by an additional month, despite the Comptroller, Joseph Otting, stating publicly that it would not be extended.

The proposal is extensive, and the changes would be devastating for local communities that rely on local banks for loan products.

The change to a single metric to gauge bank compliance is flawed

Whereas under current rules, CRA examinations consider lending, services and community development (for larger banks) tests, the new review is based on the ratio of qualified loans divided by certain deposits. This new policy would encourage banks to make fewer, larger loans, rendering small-dollar mortgage and business loans more difficult to access. The metric would discourage lenders from serving borrowers with that may need more hands-on, manual underwriting, approaches that larger, more typical borrowers would not need.

Mistakenly, the proposed CRA evaluation measure combines all CRA-eligible activities into this metric. Current CRA regulations consider community development activities as part of the bank's lending and investment tests. Instead, the proposed rule deemphasizes community development activities and, as written, would likely make the choice between debt and equity products one made in the interest of the lender's CRA evaluation rather than what is best for the borrower or community.

The impact on many communities will be significant. For example, the design of the metric will disincentivize lenders from making investments, lending and adding retail services in rural America and low-cost cities still recovering from the last financial crisis. Indeed, considering the financial crisis emerging from the COVID-19 pandemic, lenders need to be encouraged to make all types and levels of bank products to communities across the nation.

Furthermore, the data sources for the deposits (the denominator in the metric) are not publicly documented. Without absolute transparency, it is unclear how any metric, and any resulting CRA evaluation, could be trusted as accurate.

Large segments of a bank's market will be ignored

The new metric could, as written, allow a bank to fail to serve half of its assessment areas and still pass the exam. Because assessment areas are based, in part, on locations of deposits, it is possible that a bank's assessment areas could be designed to intentionally exclude previously served communities. A bank could also earn CRA credit by investing outside its assessment area, at the expense of communities in its assessment area.

In that vein, another concern is that the proposal would require banks with more than half of deposits outside of their assessment areas to designate assessment areas in any geography in which they have five percent or more of their deposits. Again, this proposed structure would likely direct CRA activity to larger cities and metropolitan statistical areas, at the expense of rural America, Indian Country and other underserved areas.

Elimination of the retail test will lead to more unbanked and underbanked communities

The proposal effectively eliminates the retail test, complicating the challenge to improve services to the unbanked, which until the release of this NPR, had been a stated priority of the FDIC. Under this proposal, regulators would no longer evaluate a bank's efforts to provide affordable lending, investment and depository products and services aimed to improve access to the banking system to low- and moderate-income families and communities. In fact, it appears that the proposed single metric for evaluation would eliminate the consideration of low-cost accounts for CRA credit. This undermines one of the longstanding goals of the CRA.

Community development activities will no longer have to prioritize LMI areas

The proposal would no longer require that bank community development activities – the loans, investments, and services that have been a life blood of the CRA – prioritize low- and moderate- income families, communities, small business and farms. Even within the two-percent threshold for community development activity, the proposed rule would so significantly expand the list of eligible activities that it would disincentivize for banks to participate in meaningful activities such as investing in New Market Tax Credits, Low-Income Housing Tax Credits and community development financial institutions. Bank staff volunteer hours, for example, would count as much as more meaningful efforts. The proposal's new treatment of community development activities is a grave error.

Poorly chosen CRA “safe harbors” and other eligible activities

The list of CRA activities includes some problematic choices, which will, as noted above, limit impactful activities. For example, Opportunity Zones would become a CRA safe harbor for bank activities. Investments in Opportunity Zones, which have been widely criticized as a poorly designed program without much transparency, are not guaranteed to meet the needs of low- and moderate-income communities.

Furthermore, the revised income targets are inadequate. For example, loans to family farms with revenues less than \$10 million would qualify for CRA credit. This is a very high threshold, one that very few farms reach. The NPR redefines a small business is redefined from \$1 million in revenues to \$2 million (and then indexed to inflation.) The proposal also targets infrastructure investment and lending. Banks would get credit for funding projects that would get funding anyway, such as hospitals, highways, stadiums and other such developments. Often these projects do not proportionately serve LMI communities.

In summary, the list of proposed qualifying activities will encourage banks to conduct simpler, less meaningful activities and will lead to the exclusion of community input in the CRA process.

Finally, we must note that other administration actions will erode housing choice and access for many families across the United States. In October 2019, we commented on HUD's misguided proposed revised implementation of the Fair Housing Act's Disparate Impact Standard. We also provided comments on HUD's equally wrongheaded proposal on Affirmatively Furthering Fair Housing. Finally, Treasury's proposed revisions to the Community Reinvestment Act regulations are also seriously flawed and should be withdrawn and rewritten. Taken together, these three proposals will undercut housing options, restrict access to credit and limit development of affordable housing. If adopted, these proposals will reduce economic mobility, foster further housing segregation and worsen the racial wealth divide.

Thank you for the opportunity to respond to the Community Reinvestment Act Regulations Joint notice of proposed rulemaking. Feel free to contact Doug Ryan at dryan@prosperitynow.org or at 202-207-0155.

Sincerely,

Prosperity Now

And the following organizations:

The Manufactured Home Federation Of MA, Inc.
Vista Village Community Association
WiNGS
New York Legal Assistance Group
Illinois Asset Building Group
United Way of Northern New Jersey
Connecticut Association for Human Service
Foremost CDC
Omaha EITC Coalition
Ceiba
Colorado Coalition of Manufactured Home Owners
Network for Oregon Affordable Housing
PathStone
Fahe
North Dakota Economic Security and Prosperity
Alliance
Community Financial Resources
Neighborhood Improvement Association

Community Action Duluth
OnTrack Financial Education & Counseling
The Financial Clinic

United Way of Metropolitan Dallas
Dragonfly Financial Solutions LLC
"I Have A Dream" Foundation
Northwest Cooperative Development Center
Training On The Move
CVOEO
LAUNCH
CASA of Oregon
Pueblo Unido CDC
Utah Housing Coalition
NH Community Loan Fund
New Ventures Maine
Park Plaza Cooperative
Augusta Communities
coasap

PathWays PA
Hawai'i Alliance for Community-Based Economic
Development
Better Housing Coalition