CALIFORNIA COMMUNITY ECONOMIC DEVELOPMENT ASSOCIATION

April 8, 2020

cra.reg@occ.treas.gov
Comments@fdic.gov

To : Joseph Otting, Comptroller of the Currency, OCC
Jelena McWilliams, Chair, FDIC

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

To Whom It May Concern:

The California Community Economic Development Association (CCEDA) strongly opposes the proposed changes to the Community Reinvestment Act (CRA) regulations. According to Governor Lael Brainard, Federal Reserve Board of Governors, "The Community Reinvestment Act plays a vital role in bringing banks together with community members, small businesses, local officials, and community groups to make investments in their community's future."

CCEDA and its 200 members are on the frontlines providing anti poverty programs, such as LIHEAP and WIC, as well as community building resources in Low and Moderate Income communities and communities of color. And the progress that has been made in serving underserved communities has been a result of CRA and a function of the bank partnerships have been important to generated by CRA and by the work of thousands of organizations like CCEDA. CCEDA and those thousands of community serving organizations, doing the work of the private and public sector at half the price will be devastated if the rule is finalized and banks focus less on people with low- and moderate-incomes and focus less on local communities, and more on gaming the system for tax advantage. Government itself has saved billions of dollars through the direct investment of banks without tax credit or subsidy. Government has monetized its deposit insurance to the benefit of disenfranchised communities nationally. Because of CRA, and regulator direction, donations and grants to feed the COVID-19 impacted unemployed and closed small businesses has happened with lightning speed, and those dollars are already on the streets. CRA will be part and parcel of this disease caused economic downturn and hopeful recovery.

Please end this rulemaking. The COVID-19 pandemic has made it not only more challenging to focus on submitting thoughtful comments, but it will also create unknown needs in our communities once it subsides. We do not know what community credit needs will exist post-crisis, but we do know that the needs will be greater, and that this will require a stronger CRA, not the weaker CRA that this Proposed Rule will create. Please end this rulemaking for the sake of the low income communities and communities of color that we serve and that are what CRA is all about.

Less accountability, less public input, less clarity, less investment. The agencies would lessen the public accountability of banks to their communities by enacting lesser and fewer performance measures

244 S. SAN PEDRO STREET, SUITE 412 LOS ANGELES, CA 90012
(213) 625-0105 TEL WWW.CCEDA.COM

on CRA exams that would lessen the importance of banks' responsiveness to local needs. Public input into this obtuse and onerous evaluation framework would nominal. Despite the agencies' assertions that their proposal would increase clarity and bank CRA activity, the result would encourage significantly fewer loans, investments and services to low- and moderate-communities (LMI).

Less focus on LMI. The agencies would dramatically lessen CRA's focus on LMI people and communities in contradiction to the intent of the law to address redlining in and disinvestment from LMI and communities of color. The NPRM proposal would expand what counts for bank CRA credit to include financial services to 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 who have already turned away from small businesses and small farms, that serve their communities and hire locally, will now have political cover. Distressingly, the proposal would now permit projects that only tangentially 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.

Less focus on local communities. 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, 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.

Encourages displacement. The proposed rule purports to address displacement, but only exacerbates it. The definition of affordable housing would be relaxed to include middle-income housing (for people with incomes up to 120% of area median income) in high-cost areas. 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. Worse still, banks would get credit for financing athletic stadiums, storage facilities, and luxury housing in Opportunity Zones, a capital gains tax shelter at best, which will only fuel gentrification in the very communities vulnerable to it.

Weakening CRA's emphasis on branches and deposit products. CRA has rightly maintained a focus on whether banks have a branch presence in LMI communities, and whether banks make their products accessible to all consumers. But this proposal provides a disincentive, potentially encouraging, for banks to maintain and open LMI branches, and it seems to do away entirely with any consideration of whether banks are offering affordable bank account 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 result of this proposal will be fewer bank branches in LMI and rural communities, and LMI consumers turning more to predatory check cashers and payday lenders.

Failing to downgrade banks for harm. Sadly, redlining and discrimination are still with us. But this proposal does nothing to address this fact, and may very well lead to more redlining as banks are allowed to fail to serve some of their assessment areas. OCC policies provide more excuses than the 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.

Developing a weaker evaluation system. The agencies propose an evaluation system that would further inflate ratings while decreasing the responsiveness of banks to local needs. Now, 98% of banks pass CRA exams; the proposal would likely push this higher. The agencies propose a version of the one ratio measure that consists of the dollar amount of CRA activities divided by deposits. This approach not only dramatically increases the activities and the places banks can receive credit (increasing the numerator), but at the same time also decreasing what are considered deposits by excluding brokered and municipal deposits (shrinking 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 community development lending 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 are 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 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. We understand that this change is a function of long turnaround times for exams and resulting reports; the agencies should seek more timely reports rather than fewer reports.

Reducing community input. This proposal appears designed to weaken community input and participation. Why else would the OCC insist on a mere 60 days for public comment for such a substantial change to the rules implementing the nation's community reinvestment law? Over the last 3 years it has become apparent that the OCC does not like to hear from people with whom it disagrees. This is not acceptable for a public rule making process. This reaction against community input is evident in the proposal itself, which includes arbitrary thresholds that are not justified, references data not shared, creates a formula driven process that will make community input and partnerships irrelevant, treats performance context as an afterthought, and is not clear on what role, if any, community input on bank performance will play.

Inviting regulatory arbitrage. In pressing ahead without fair consideration of prior input, and without providing sufficient time for public comment now, the OCC and the FDIC are creating a two (or three) tiered system of oversight. Banks will be able to choose their regulator based on which provides a friendlier CRA framework. 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, communities lose.

What we need. Real CRA reform should include:

- A retained focus on low and moderate income people and communities.
- A focus on lending that meets community needs, prioritizing loan originations, not purchases of loans that were made by other banks or for-profit companies. Mortgage lending should focus on owner occupants (not investors), and small business lending should focus on smaller loans and smaller businesses.
- 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 mirror where deposits are from, and where loans and profits are made. Non retail 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 cheaper to implement and more profitable does not have community needs at its center.
- An end to CRA grade inflation. 98% of banks do not deserve to pass their CRA exams. This proposal will only make the problem worse. The goal should be to increase LMI lending and investment from current, inadequate levels, not to devise a system that counts more things in more places and will lead to larger numbers while actually resulting in less lending, less investment, less impact, and less community benefit.
- More scrutiny of reinvestment in rural areas. More rural counties should be designated as "full scope review" areas subject to greater oversight and scrutiny as is generally the case for urban counties. This will immediately result in rural areas being better served, which will not happen under this proposal.
- A greater emphasis on the service test, not the elimination of it, so that branches in LMI communities retain their importance in CRA, as they have retained their importance to

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.

- Downgrading of CRA ratings for discrimination and harm. Evidence of redlining or discrimination should result in a Needs to Improve or Substantial Noncompliance rating. The agencies should bolster fair lending exams which currently can consist of a mere one or two sentences in a performance evaluation. The CRA should focus on race as well as income. CRA grades should also be lowered for violation of consumer protection laws, and for other harm to LMI people and communities. This includes downgrades for bank financing of displacement, which clearly worsens households' community credit needs by creating economic destabilization, evictions, ruined credit histories and decreased ability to be able to qualify for home and small business loans and build wealth.
- Greater community input, not less. The CRA requires that the starting point for reinvestment decisions should be community needs, not bank needs. Performance context, transparency of data regarding bank performance to enable better community input, public hearings during mergers, and the development of Community Benefits Agreements should all be encouraged and bolstered.

This deeply flawed proposal would result in LESS lending and investment in the very communities that were the focus of CRA when passed by Congress in 1977. This proposal will retreat from key statutory and regulatory core principles of CRA, such as the focus on low and moderate income people and communities, the focus on banks meeting local community credit needs, and active community participation to ensure that communities are protected.

The OCC should share the data behind its assumptions and analysis, and end this rulemaking process so that CRA reform can proceed in a more thoughtful way that will actually benefit the communities CRA was designed to build up and better reflect the new facts and realities of our landscape, post COVID-19.

Thank you for your consideration of our views.

Roberto Barragan
Executive Director

cc: California Reinvestment Coalition
National Community Reinvestment Coalition
CCEDA Board of Directors
Federal Reserve Bank