**Comment regarding Proposed Rule on "Community Reinvestment Act Regulations"**
Agency Name: OCC
Docket ID: OCC-2018-0008-151

April 8, 2020

The Honorable Joseph M. Otting
Comptroller of the Currency

The Honorable Jelena McWilliams
Chairman, Federal Deposit Insurance Corporation

Dear Comptroller Otting and Chairman McWilliams:

The undersigned Ohio legal services organizations, namely Southeastern Ohio Legal Services, Community Legal Aid Services, Legal Aid Society of Columbus, Legal Aid Society of Cleveland, Advocates for Basic Legal Equality, Inc, Legal Aid Society of Southwest Ohio LLC, and the Ohio Poverty Law Center (collectively, "Legal Aid Programs"), respectfully submit the following joint comments in response to the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation's proposed changes to the Community Reinvestment Act (CRA) contained in Docket ID OCC-2018-0008 and RIN 3064-AF22. The Legal Aid Programs offer the following comments collectively, although certain of the individual organizations may choose to submit additional comments separately on issues not addressed herein.

The Legal Aid Programs are nonprofit law firms located throughout the State of Ohio that serve each of the State's eighty-eight counties with the mission to represent Ohio's low income and elderly in seeking justice and resolving fundamental issues faced by those populations. These firms provide high quality services at no cost to the clients and represent on issues such as consumer protection, public utilities, and housing. These programs were at the vanguard of representing borrowers and homeowners during the Great Recession and its resultant foreclosure crisis from 2007-2010. We draw upon our shared wisdom and experience, gleaned in part from that crisis, in submitting the following comments and requesting that the comment process be suspended until the current COVID19 health crisis has passed. Housing has always been a vital human need, but this crisis brings unprecedented challenges that makes maintaining current housing more important than ever.

**Pausing the Proceedings Is Best for Everyone**

Over the past few weeks, the United States has joined the rest of the globe in facing the COVID19 viral outbreak. It is now a pandemic at a scale mankind has not faced in at least a century. The disruptions that all will face in day to day life are only beginning to take shape. Essentials such as healthcare and education are already crippled. Industries such as entertainment, tourism, and other services have literally halted overnight as large swaths of the population are ordered to stay at home. Global markets have suffered historic losses, with the Dow suffering its worst first quarter ever.[1] It is reasonable to believe that the economy is perched atop an even worse market crash.

During the foreclosure crisis, Congress acted relatively swiftly to assist financial institutions through its Troubled Asset Relief Program, commonly known as the bank bailout. Congress also sought to assist mortgage borrowers through loan modification programs such as the Homeowner Assistance Modification Program. It is safe to assume that Congress will again need to act to protect borrowers and homeowners. As such, modifying or relaxing the Community Reinvestment Act, a cornerstone protection for borrowers, during a period of heightened uncertainty, creates a multitude of problems for borrowers everywhere. With unemployment claims surging at record numbers[2] and state computer systems crashing due to the overload of new claims,[3] it is a near certainty that large numbers of borrowers will default on their mortgages due to this health crisis and its effect on the economy. With this economic superstorm brewing, pausing this process will provide both the OCC and the FDIC an agility and nimbleness down the road that can reshape the CRA into a tool that will protect borrowers, prevent redlining, and preserve access to credit for low and moderate income (LMI) families across the nation.

Additionally, pausing the comment process will free up non-profit organizations and agencies currently preparing responses to provide immediate help to the vulnerable population currently hit by the pandemic. There is significant overlap between that population and the population the CRA aims to protect. Both include lower income, disadvantaged groups that often live paycheck to paycheck. Freeing up these resources will allow these agencies to assist with immediate life crises such as eviction, foreclosure, denial of unemployment benefits, and access to health care. The scale of need is massive, and like-minded agencies need all hands-on deck to assist with the immediate problems. Once normalcy and stability return to the world's economies and health, the comment process should then resume so that the Community Reinvestment Act can be adapted to a post-coronavirus world.

It is true that both Congress and federal regulatory agencies are acting quickly to provide relief. Congress passed the CARES act, which is a comprehensive bill that aims to give working and middle class families cash through a stimulus payment, buttresses unemployment with a massive boost in funding, and provides workplace protections for those who must miss work due to illness or childcare needs. Further, the Federal Housing Finance Agency has instructed Fannie Mae and Freddie Mac to suspend foreclosures and evictions for at least 60 days.[4] Additionally, the Department of Housing and Urban Development has also ordered a moratorium on foreclosures and evictions for homeowners with FHA-insured mortgages.[5] These actions will help low and moderate income communities in the short term, but a view toward long term problem solving is necessary, too.

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[1] "Dow dips 400 points on Tuesday, capping its worst first quarter ever", USA Today, 3/31/20, https://www.usatoday.com/story/money/2020/03/31/dow-markets-worst-quarter-since-2008-coronavirus-trump/5093369002/ Retrieved 4/1/20

[2] "Unemployment claims for last week could shatter record amid millions of new layoffs", USA Today, 4/1/20, https://www.usatoday.com/story/money/2020/04/01/coronavirus-several-million-more-jobless-claims-likely-layoffs-mount/5105339002/ Retrieved 4/1/20

[3] "Out of work because of coronavirus, struggling to file for unemployment", NBC News, 4/6/20 https://www.nbcnews.com/news/us-news/out-work-because-coronavirus-struggling-file-unemployment-n1175466 Retrieved 4/6/20

[4] See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Suspends-Foreclosures-and-Evictions-for-Enterprise-Backed-Mortgages.aspx Retrieved 4/1/20

[5] See https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_042 Retrieved 4/1/20

Following the Great Recession, the Community Reinvestment Act came under attack for allegedly encouraging risky lending that laid the foundation for the foreclosure crisis.[6] Yet, those accusations were largely debunked. In fact, the Federal Reserve published its own report stating "the current best evidence suggests that the CRA was not a significant contributor to the financial crisis."[7] Another report posited that subprime mortgages were motivated not by CRA compliance, but rather their profitability.[8] Recent history should teach us that the CRA is a valuable tool that should be strengthened, not weakened, so that people come before profits. Herein lies a tremendous opportunity to sharpen that tool. We should pause these proceedings to seize that opportunity.

In a post coronavirus world, injecting capital into under resourced areas will be more vital than ever. Yet, we must create the framework to do that in a deliberate, carefully constructed manner that benefits lenders and borrowers. When it is time to rebuild our economy, everyone will have a role to play. The United States is a nation of makers, creators and producers. Therefore, it is vital that innovation and entrepreneurship be supported in rural and urban areas, regardless of race, color, or socioeconomic status. Community redevelopment will be more important than ever. The CRA can be reshaped to incentivize fair lending in underserved areas so that lenders can crowd out toxic loan products. The CRA has been proven effective in bringing badly needed capital into under resourced areas.[9] Once the country's post-coronavirus needs are properly assessed, refining the Act and incentivizing targeted lending will create a win-win environment that stimulates growth and innovation that will be badly needed across the country.

Mitigation is already underway. Since the onset of the COVID19 crisis, the Federal Reserve System has taken extraordinary steps by embarking on quantitative easing and emergency lending at levels not seen since the Great Recession. This will help protect Wall Street. The OCC and FDIC should match that level of action to protect Main Street, too, through protecting and strengthening the Community Reinvestment Act, not diluting and relaxing it. What that looks like remains to be seen as the effects of this crisis play out, which underscores the necessity of this pause.

Should the comment process continue without a pause, the undersigned offer the following comments.

**Keeping CRA's Mandate Front and Center**

There is no doubt that the Community Reinvestment Act is overdue for updating. Enacted in 1977, it is not built to adequately address current banking constructs such as fintech. However, as we update these important laws and regulations, we must not forget its core purpose or dilute its enforcement powers. The CRA must necessarily redress past sins and protect everyone's future.

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[6] See "Here's What Really Caused the Housing Crisis", CBS News, 1/10/17, https://www.cbsnews.com/news/heres-what-really-caused-housing-crisis/ Retrieved 4/6/20.

[7] "Assessing the Community Reinvestment Act's Role in the Financial Crisis", 5/26/15, https://www.federalreserve.gov/econresdata/notes/feds-notes/2015/assessing-the-community-reinvestment-acts-role-in-the-financial-crisis-20150526.html Retrieved 4/6/20

[8] "Did the CRA cause the mortgage market meltdown?", Federal Reserve Bank of Minneapolis, 3/1/09, https://www.minneapolisfed.org/article/2009/did-the-cra-cause-the-mortgage-market-meltdown Retrieved 4/6/20

[9] "Effects of the Community Reinvestment Act (CRA) on Small Business Lending", Federal Reserve Bank of Philadelphia, 12/18, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2018/wp18-27.pdf Retrieved 4/6/20

Since its enactment, the CRA has played a crucial role in protecting economic justice in three ways: lessening segregation, mitigating poverty in rural communities as well as communities of color, and empowering people at the local level to reveal and challenge low-income exploitation. It is vital that these protections continue.

The proposed modifications before us today cause great concern as to whether economic justice will remain preserved. Broadening and diluting the scoring system lends itself to gentrification, not segregation, as high cost housing squeezes LMI communities. Building new soccer stadiums in these gentrifying communities will not ease poverty. Allowing banks to do less CRA-related activities and get more CRA credit while, at the same time, permitting them to ignore large swaths of their geographic assessment areas is a recipe for creating "credit deserts" and the resurrection of the predatory lending-type products and practices that stripped LMI individuals, families, neighborhoods, and communities (particularly communities of color) of their wealth during the Great Recession. And shielding internet banks' geographic selection process from public eyes will not strengthen local leaders' demands for accountability. Finally, in a time when rural areas are seeing an increased underbanked population, we should be encouraging investment and branch building, not encouraging a scheme that could cause further abandonment.

The failure of these policy proposals, and dozens more like them contained the proposed rule, are amplified by a flawed one-ratio evaluation system that lacks transparency and could lead to shirking and evasion. For example, a shrewd bank could easily game this controversial system by making jumbo investments in easy markets with high return rates while ignoring the local voice that the CRA was designed to elevate. Changing the scoring system into a binary "pass-fail" lowers the performance bar and likely translates to less capital for small business, less equity for housing developments, and less collaboration between economic actors. Counterproductively, regulatory manipulation such as this could be rewarded with a longer exam cycle and therefore less oversight.

Modernizing the Community Reinvestment Act should not result in minimizing and marginalizing its impact; instead, it should be brought into the online era in a way that strengthens it in a manner consistent with its historic roots and purpose.

**Let's Do This Right**

The Legal Aid programs represented in this letter understand the time is ripe for action. The rise of online banking, the decay of branch hegemony, and the resurgence of small lending institutions means that we need common sense reforms to continue to serve the CRA's legislative purposes. And the stark rise in income inequality and the entrenchment of racial wealth disparities means that the Act's utility is more in need now than ever – especially with the uncertainty tied to COVID19. Banks that discriminate cannot benefit from those choices. Enshrining that obvious, incontestable statement into the regulatory regime is past due.

We also know that to remain relevant in this new economy, the CRA geographic area must evolve. Community needs cannot be stripped from the Community Reinvestment Act; banks that are supported by local deposits, must satisfy local banking demands. These commonsense principles apply as equally to traditional banks as they do to credit unions, mortgage companies, and "nonbank" lenders. Modifications to the CRA must reflect that truth.

To harness this opportunity, a bigger table is needed.  As we move forward, we must ensure that all three regulators move in alignment. Bringing the Federal Reserve Board into these conversations and advancing tripartite action is essential for a coherent oversight structure. As importantly, the perspectives of housing and community development advocates must be respected; achieving trivial compliance reform by sacrificing the few affordable housing and community stabilization tools at our disposal, particularly at a time when the housing crisis is a swelling wave over our neighborhoods, is reckless and nearsighted. Elements in the proposed rule that reduce the value of equity investments, particularly as compared to debt products, are especially damaging. To combat these unintended consequences, residents, microentrepreneurs, and advocates must be proactively consulted and respected in these conversations, and the country's inevitable regional variations must be accommodatable in any national framework.

**Conclusion**

Now is not the time to be making these decisions.  The COVID19 pandemic is not just depressing our economy – it has triggered an economic coma.  Once the United States emerges from this, we should not repeat the mistakes of the Great Recession by unfairly blaming the Community Reinvestment Act; we should seize this opportunity to reshape it so that economic justice is available on Wall Street, Main Street, and every other street.

Sincerely,

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