February 17th, 2020

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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,

East Bay Housing Organizations (EBHO) strongly opposes this Notice of Proposed Rulemaking (NPR), which threatens both the letter and the spirit of the Community Reinvestment Act (CRA). Since its passage in 1977, this landmark civil rights legislation has leveraged a significant volume of loans and investment for low- and moderate-income (LMI) communities and communities of color. Indeed, since 1996, banks have loaned almost $2 trillion to support small businesses and community development projects in LMI communities. This is thanks, in large part, to the CRA. Most equitable development advocates agree that the CRA needs to be updated and improved. But the NPR put forward by the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) is an attack on the principles of public accountability and racial and economic equity at the core of the CRA. Any modification to the CRA must encourage robust public input in order to advance civil rights. The NPR, however, does just the opposite. At minimum, the comment period should be extended to 120 days to allow for thoughtful consideration of this complex and consequential proposal. Ideally, the current proposal should be dropped and the process re-started in a way that centers the needs of LMI communities and the organizations that serve them.

EBHO is a non-profit, member-driven organization with over 500 organizational and individual members. For 35 years, we have worked to preserve, protect, and create affordable housing opportunities for low-income communities in California's East Bay by educating, advocating, organizing, and building coalitions. In Alameda and Contra Costa Counties, where we work, the CRA has motivated banks to provide critical loans and investments for affordable housing and economic development. These investments have supported the development of hundreds of units of affordable housing for LMI communities across the region.

Affordable rental housing is one of the most acute needs in California communities. Under the proposed rules, however, the FDIC and OCC would lower the bar for CRA credits, making it easier for banks to rack up points for conventional activities in more advantaged communities. This could cause a calamitous drop in financing for affordable rental housing—especially when it comes to the U.S. Low-Income Housing Tax Credit Program (LIHTC), the singlemost important source of federal affordable housing funds. The vitality of LIHTCs relies upon investment from banks, which, in turn, are incentivized to purchase tax credits by the CRA. The FDIC and OCC's overly simplistic formula for grading banks, on the other hand, will encourage lenders to walk away from more complex affordable housing deals—those that help seniors, disabled people, and rural residents. The resulting drop in demand for LIHTCs will cause tax credits to decrease in value, thus driving down the amount of money available to meet our country's dire need for more affordable rental housing. The impacts will be all the more severe in locations with high land and construction costs, like California, which are often the regions with the greatest need for affordable housing in the first place.

Further, the FDIC and OCC aim to relax the definition of affordable housing to subsidize middle-income housing (for households with incomes up to 120% of area median income) in high-cost areas. In addition, the NPR would count rental housing as affordable if LMI people *could* afford to pay the rent, even if the actual tenants are not low or moderate income. And it would allow banks to receive credit for financing developments in Opportunity Zones—such as stadiums or upper-income housing—that exacerbate displacement pressures in the very communities most vulnerable to it. (It should be noted that these communities are susceptible to such disruptions in the first place due to decades of redlining and disinvestment—i.e. the very problems that the CRA was meant to address!) Thus, rather than finance efforts to slow displacement and stabilize communities, the NPR would do the opposite. By encouraging banks to migrate their lending to easier and more profitable investments in housing and economic development, the new rules would only speed up displacement. Gentrification, like the redlining that preceded it, threatens the cohesion and well-being of LMI communities. Under the CRA, banks should be encouraged to invest in developments and communities that are more difficult to finance in ways that truly meet local needs. Conversely, lenders should be downgraded for financing displacement.

It is not just affordable housing developments that will suffer as a result of these changes. It is also vital community development activities like education and advocacy. Over our 35 years in operation, EBHO has met with large-scale lenders to discuss the need for affordable housing in all of the Bay Area's diverse communities as well as the importance of our public education and policy advocacy on these issues. Banks, in turn, have provided small but meaningful grants that satisfy their CRA obligations and support our work. We are concerned that, if the requirement to listen to local input as part of the CRA process becomes weakened, then these partnerships will, as well.

Uniting all of these practical considerations is an overarching moral concern that the proposed rules threaten the primary purpose of the CRA—to end financial redlining. The CRA was meant to recognize and remedy the historical fact that, when left to their own devices, banks excluded and exploited LMI communities of color. Specifically, in racially segregated neighborhoods, they would take money from depositors but would not provide conventional loans or other fair and affordable financial services. If people of color sought to improve their situation by moving into a more privileged area, then banks—along with racially motivated residents, realtors, and local officials—would maintain segregation by refusing to issue a mortgage in White neighborhoods. This stripped assets from communities of color, keeping them mired in poverty, and used those assets to underwrite loans and investments in Whites-only neighborhoods. This contributed to our country's unjust racial wealth gap. In the U.S., the average White family now has 10 and 7 times the wealth of the average Black and Latinx family, respectively.

It is not only the regulatory, but also the moral, imperative of the CRA to correct for this historic harm. By connecting a bank's regulatory standing to its positive community impact, the CRA has made significant strides toward repairing this legacy of segregation and wealth extraction. But as profit-driven corporations, banks do not do this out of a sense of public obligation. They do it because the regulations and incentives of the CRA encourage them to. The new rules, however, would completely undermine this system of carrots and sticks. It is only reasonable to suspect that banks, in turn, will go back to their old ways. Most advocates agree that the CRA needs to be improved. But this would not improve the Act; it would eviscerate it.

Take, for instance, the proposed "one-ratio" measure for evaluating banks. Under the current system, regulators are required to take a close and specific look at a bank's lending, investing, and service activities in order to evaluate its fairness and community benefits. The one-ratio rule, on the other hand, would replace a qualitative method with a quantitative one—treating all financial activity as equal without regard for its real impacts on LMI people and communities. This, as mentioned above, will encourage banks to forego more difficult, but also more needed, deals in favor of those that are easier and more profitable. For instance, the FDIC and OCC seek to expand the definition of a small business from $1 to $2 million in revenue and increase the small-business loan cap from $1 to $2 million. This would allow banks to meet the one-ratio requirements more readily by lending to more privileged businesses. After all, according to the Consumer Financial Protection Bureau, only 5% of U.S. firms make more than $1 million a year. The numbers are even lower for firms owned by women and people of color. And the easier it is for banks to meet their CRA requirements, the less likely they will be to lend mortgages, such as loans for first-time homebuyers, in LMI communities and communities of color—the very areas the CRA was meant to serve. The National Community Reinvestment Coalition estimates that this will lead to an annual loss of $10 to $20 billion in mortgage lending for LMI areas, halting the historic progress made by the CRA.

The one-ratio measure threatens to render the CRA incapable of holding banks accountable to local needs. The CRA statute requires that banks "have continuing and affirmative obligations to help meet the credit needs of the local communities in which they are chartered." The key word is local. One ratio cannot tell a bank, regulator, or member of the public how responsive a bank is to its various service areas. The CRA exam currently evaluates a bank's performance in each of its "assessment areas," or areas where it has branches. This is critical to allowing local community members to weigh in on the bank's role in their area. The one-ratio approach, by contrast, would undermine community protections and input by evaluating a bank *across the* *nation as a whole*. Specifically, the NPR suggests that a bank could fail to meet its obligations in up to 50% of its assessment areas and still pass the CRA test as a whole. Given the fact that LMI communities are perceived as harder to serve, this will encourage banks to ignore low-income, rural, and racially diverse areas. We must state this in no uncertain terms: *this would constitute a return to redlining*. The idea of turning the CRA from a tool to combat redlining into one that contributes to it is totally unacceptable. Therefore, we strongly oppose the one-ratio proposal, along with the other aspects of the NPR discussed above.

Rather than retreat from civil rights, CRA reform should go even further to address our nation's historic and ongoing inequities. The members of Congress who created this landmark legislation were clearly concerned about disparities in lending in communities of color—especially inner-city neighborhoods, which bore the burdens of social and economic disinvestment as a result. Racial disparities in lending remain stubborn and persistent. Therefore, the CRA must include lending, investing, and service as well as deep accountability to communities of color in all its evaluations. At EBHO, we prioritize work in communities of color and other LMI communities because we know that the most significant disparities in terms of access to affordable housing, economic opportunity, and community development continue to exist in these areas. We also believe that when LMI communities thrive, the whole community benefits. The CRA continues to be a critical tool to increase fairness, equity, and social and economic vibrancy in this regard. Indeed, we need a stronger CRA, not a weaker one. Whether in terms of meeting the pressing need for affordable housing or addressing the racial wealth gap, we need banks to step up, not step away.

We urge the FDIC and OCC to go back to the drawing board and develop a reform measure in conversation with not only the Federal Reserve, but also the communities and organizations most impacted by financial redlining. Thank you for considering our comments.

Sincerely,

Alex Werth, Policy Associate

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Gloria Bruce, Executive Director

East Bay Housing Organizations