February 26, 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:

As Senior Vice President and Director of Research at the Initiative for a Competitive Inner City (ICIC), I am writing to express ICIC's strong opposition to the proposed changes to the Community Reinvestment Act (CRA) regulations. At a minimum, the regulatory agencies should share the data that underlie their assumptions and analysis. Ideally, they should discard the proposal and start over.

A national nonprofit research and advisory organization founded in 1994 by Harvard Business School Professor Michael Porter, ICIC is the leading authority on U.S. inner-city economies and the businesses that thrive in them. Its mission is to drive economic prosperity in America's inner cities to create jobs, income, and wealth for local residents.

Over the past two decades, ICIC has conducted four small business education and recognition programs that serve businesses located in LMI communities, communities of color, and other under-resourced communities in large cities throughout the nation. Together, our Inner City 100 awards program, Inner City Capital Connections program, Goldman Sachs 10,000 Small Businesses (which we administer on behalf of the Goldman Sachs Foundation), and Santander Bank's Cultivate Small Business program (which we administer on behalf of Santander) have served more than 13,000 small businesses in these low- and moderate-income communities, providing them with the capacity, coaching, capital, connections, and contracts they need to create jobs and wealth in their communities, as well as much-deserved recognition. These programs would not have been possible without our partnerships with numerous banks, including Bank of America, Berkshire Bank, Boston Private, Century Bank, Eastern Bank, Metro Credit Union, People's United Bank, Regions Bank, and Simmons Bank, in addition to Goldman Sachs and Santander Bank. If the proposed rule is adopted, these and other banks will focus less on supporting small businesses in under-resourced communities and ICIC's ability to assist those businesses will be impaired. The result: less entrepreneurship, fewer jobs, and less wealth in the communities where the need is greatest.

My comments will emphasize flaws in the proposed rule that will harm small businesses in the types of under-resourced communities that ICIC serves. I will also briefly address other flaws related to public input, accountability, and related procedural issues.

The proposal would reduce banks' focus on LMI, departing from a core CRA principle and disadvantaging small businesses in LMI communities. The agencies would dramatically lessen CRA's focus on LMI people and communities and the small businesses that serve them. This is contrary to the intent of the law to address redlining in and disinvestment from LMI communities and communities of color. The NPRM proposal would expand what counts to allow bank CRA credit for things like financial literacy classes geared toward higher-income people. Even though 95 percent 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. If the agencies' proposal is adopted, banks will turn away from less lucrative lending to the small businesses that serve their communities and hire locally. Distressingly, the proposal would now permit projects that only "partially" benefit LMI people and neighborhoods, such as large infrastructure and energy projects. The losers in this will certainly be entrepreneurs and small businesses in LMI communities and low income residents of those communities.

The proposal would reduce banks' focus on local communities, departing from a core CRA principle and disadvantaging small businesses in those communities, The OCC and FDIC propose a new 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 lending to businesses located anywhere, as well as for subprime credit card lending to LMI consumers anywhere. Although 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 such 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 will only serve to weaken the connection between banks and local communities. Banks will have less of an incentive to lend to small businesses located in communities where their branches are located and less of an incentive to support small business technical assistance and education programs that serve those businesses.

The proposal encourages displacement of low-income people, threatening the small businesses that serve their neighborhoods. 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 percent 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. By encouraging the displacement of low-income residents, the proposal also threatens the existence of the many small businesses that are located in low-income neighborhoods and serve their residents.

The proposal indiscriminately encourages investment in Opportunity Zones without proper safeguards. The proposed rule allows banks to count any investment they make in any Opportunity Zone, regardless of location, toward meeting their CRA obligation. Investment in Opportunity Zones can be a powerful tool for community revitalization if investments are made in communities that are truly disadvantaged, are economically sensible for the community, respond to public and community priorities, and are disclosed publicly to enable accountability and evaluation. However, the Opportunity Zone program lacks the necessary safeguards to ensure that investors follow these key principles. Some Opportunity Zones are home primarily to students or prison inmates, are at risk of gentrification and displacement of low-income residents, or would develop even without the Opportunity Zone incentive. Although investments in small businesses are eligible for the Opportunity Zone incentive, so are investments in residential real estate for high-income people. Funds that invest in Opportunity Zones are not required to do so in accordance with the priorities of local communities and their elected representatives or to disclose the results of their investments. Individual investors can and should make up for the lack of safeguards in the program by doing so voluntarily. However, the proposed rule does not require banks to do so. Indeed, it enables them to get CRA credit for financing athletic stadiums, storage facilities, and luxury housing in Opportunity Zones, which will only fuel gentrification in the very communities vulnerable to it. Moreover, by enabling banks to get credit for investments in Opportunity Zones where they do not do any other business, the proposed rule further dilutes the CRA's focus on banks' obligations to their local communities, including the local businesses that serve them.

The proposal weakens 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, including small business borrowers and depositors. But this proposal provides almost no incentive for banks to maintain and open LMI branches and, therefore, to continue or expand service to small businesses located in LMI communities. It also 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 communities, LMI consumers turning more to predatory check cashers and payday lenders, and fewer loans made to small businesses in LMI communities.

The proposal fails to penalize banks for harm to households and business owners of color. Sadly, banks continue to discriminate against people of color—including those who own businesses—and redline their neighborhoods. 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 those of 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. 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 proposal creates a complicated and 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 percent 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 is made even more bank-friendly by not only dramatically increasing 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. For example, banks may reduce lending to small businesses in under-resourced neighborhoods in favor of funding large real estate projects in gentrifying areas while still receiving CRA credit.

Further, the proposal would actually allow banks to *fail* their exams in half of the areas and still receive a passing grade. Banks will be more likely to ignore low-income neighborhoods of color that they perceive as harder to serve because they can still pass by meeting 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/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 both compared to 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 or business owners. 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 maintain acceptable CRA performance when they seek permission to merge with other banks.

The proposal reduces public and community input and invites regulatory arbitrage. The proposal would lessen the public accountability of banks to their communities by creating unclear performance measures on CRA exams that would not accurately account for banks' responsiveness to local needs. Public input into this obtuse evaluation framework would be more difficult and limited. Despite the agencies' assertions that their proposal would increase clarity and bank CRA activity, the result would be significantly fewer loans, investments and services to LMI communities.

We commend the OCC and FDIC for extending the public comment period on the proposed rule change by 30 days. However, there are features of the proposal that appear to reduce or discourage community input. These include arbitrary thresholds that are not justified, references to data not shared, creation of a formula-driven process that will make community input and partnerships less relevant, and a lack of clarity on what role, if any, community input on bank performance will play.

Finally, in pressing ahead without fair consideration of prior input, 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.

ICIC believes that real CRA reform should include:

- A retained focus on low and moderate income people and communities and the small businesses that serve them.
- 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. 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 under-resourced 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. Non-retail bank reinvestment obligations should be developed with an eye toward increasing reinvestment in bank deserts, which this proposal does not do.
- A combination of qualitative and quantitative analysis that gives more weight to small-dollar loans and investments for small businesses, homeowners, and community development projects in under-resourced areas. These constituencies often require smaller loans and investment. A proposal that only considers the dollar value of loans and investments systematically slights their needs, undercutting the CRA's purpose.

- An end to CRA grade inflation. Ninety-eight percent 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 falsely inflates numbers while actually resulting in less lending, less investment, less impact, and less community benefit.
- 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 communities of color and LMI 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 a list from a federal banking regulator or the desires of big banks. 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 make things easier for banks, all the while retreating from key statutory and regulatory core principles of CRA, such as a focus on low- and moderate-income people and communities and the small businesses that serve them, a focus on banks meeting local community (including small business) credit needs, and active community participation to ensure that communities, not big banks, benefit.

The regulatory agencies should share the data behind their assumptions and analysis. Ideally, they should discard 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 and the businesses whose health is critical to the well-being of those communities.

Thank you for your consideration of our views.

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cc: California Reinvestment Coalition
National Community Reinvestment Coalition