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SAN FRANCISCO

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Submitted via:

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The Honorable Joseph M. Otting
Comptroller
Office of the Comptroller of the Currency
400 7th St. SW
Washington, DC 20219

The Honorable Jelena McWilliams
Chairman
Treasury and Federal Deposit Insurance Corp.
550 17th Street, NW
Washington, DC 20429

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

Dear Comptroller Otting and Chairman McWilliams,

We write to strongly oppose the proposed changes to the Community Reinvestment Act (CRA) regulations. The Proposed Rule would fundamentally undermine and weaken the CRA, eroding important safeguards to prevent discrimination in lending, retail services, and community investment practices against low and moderate-income (LMI) households and communities.

We urge the Proposed Rule to be withdrawn in its entirety for the following reasons:

1. The Proposed Rule would reduce affordable housing and homeownership opportunities

San Francisco has a robust pipeline of 11,000 affordable housing units that rely on private construction financing. Additionally, San Francisco administers a below market-rate homeownership program that has assisted over 2,000 LMI households in purchasing affordable homes. To qualify for the purchase, the homebuyers must be able to secure a bank loan.

Because of existing CRA requirements, banks have been making favorable loans and investments in affordable housing developments and lending to LMI homebuyers. Affordable housing transactions are lengthy and do not yield as much profit for a bank and loan officer as market rate sales. Without the CRA requirements, there will be little incentive for banks to participate in affordable housing transactions.

Yet the Proposed Rule would discourage banks from underwriting these transactions by

- 1) measuring performance simply through total dollars of activity and not factoring in the type of activity,
- 2) allowing large infrastructure and energy projects to be counted in dollars of activity, and
- 3) loosening lending tests that allow banks to pass overall even if they have failed in specific areas.

2. The Proposed Rule would disadvantage small businesses

San Francisco's nearly 100,000 small businesses rely on capital to start and maintain their businesses, which generate nearly half the jobs in San Francisco. These small businesses typically need relatively small amounts of financing by banks to continue to grow.

It is critical that banks continue to provide loans to small businesses, but the Proposed Rule would greatly disadvantage small businesses by providing more CRA credit to banks for lending larger loans to larger businesses, up to \$2 million in lending to businesses with up to \$2 million in revenue.

3. The virtual elimination of the retail services test will undermine long-term efforts to expand safe and affordable banking access

Nearly 150,000 San Francisco households are classified by HUD as low- to extremely low-income according to the 2017 American Community Survey. According to the FDIC, 4.8% of households in the San Francisco-Oakland-Hayward Metropolitan Statistical Area are unbanked, and an additional 13.6% are underbanked (nationally, 6.5% of households are unbanked, and 18.7% underbanked).¹ These households need access to banking services and affordable banking products, yet have been discriminated against historically through redlining and discriminatory lending practices. CRA was enacted to safeguard against these practices, but the Proposed Rule would erode existing protections by virtually eliminating the retail services test, retaining minimal recognition for branches in LMI areas.²

Under the Proposed Rule, banks would be minimally evaluated, if at all, on their efforts to provide affordable products and services intended to expand mainstream financial access to LMI individuals who are currently unbanked. This would undermine the FDIC's long-term effort to address this issue. Low-cost transaction and savings accounts, which the FDIC has helped to promote, will no longer be considered for CRA credit simply because these accounts cannot be quantified under the single metric system that would be set up under the Proposed Rule.

The longstanding commitment by both FDIC and OCC to ensuring that financial institutions meet the financial services needs of all community members, including LMI and people who live in LMI areas, is highly commendable. In addition to examining institutions' compliance with CRA, your agencies have extended this commitment through initiatives such as the FDIC's Model Safe Accounts Template and support for Bank On and the Treasury Department's Financial Empowerment Innovation Fund.

The Proposed Rule represents an opportunity to maintain or even increase the important, positive effects of CRA on individuals and communities, specifically by seeking out and recognizing financial institutions' efforts to bank the previously unbanked and to partner with local initiatives around financial inclusion. Recent research by the Federal Reserve Bank of Boston, for example, suggests that, by focusing the attention of financial institutions on specific LMI areas, CRA

¹ Federal Deposit Insurance Corporation, "2017 FDIC National Survey of Unbanked and Underbanked Households," accessed at <https://www.fdic.gov/householdsurvey/>

² Proposed Section 345.11, discussed in the Preamble to the Notice of Proposed Rulemaking: Community Reinvestment Act Regulations at 49-50



improved financial access and outcomes for individuals in those areas compared to similar individuals in non-CRA target areas.³

4. The flawed and opaque use of a single metric as the foundation for the CRA evaluation framework will reduce banks' responsiveness to LMI community needs

Commenters in the Advance Notice of Proposed Rulemaking (NPR) previously issued by the OCC made clear that, as the preamble to the Proposed Rule points out, "The majority support objective measurement of CRA performance, although they oppose a single metric."⁴ Yet a single metric at the bank and assessment area level is the foundation of the evaluation framework for this proposed rule. This evaluation approach is flawed in several ways.

First, under this single metric approach, a bank will determine the dollar value of its CRA qualifying activities, at the bank and assessment area level.⁵ Simply adding up the dollar value of qualifying activities – lending, community development investments, and community development services – into a single metric undermines the evaluation of the bank's performance in each of these areas. This one-dimensional approach does not assess the quality and character of the bank's activities and its responsiveness to local needs.

Second, the use of bank retail deposits as the denominator in this single metric is also problematic. Again, the preamble to the NPR acknowledges that deposit data is not currently available as required under the Proposed Rule, but states that "Over time, the data collection, recordkeeping, and reporting requirements in this proposal would remedy the current limitations."⁶ This assumption – that data may improve in the future – is not an appropriate basis for proposing changes to the CRA regulations (especially when current data is acknowledged to have its own deficiencies).

Third, FDIC and OCC have not provided adequate justification for the presumptive numerical standards for the CRA evaluation measure in the Proposed Rule. A bank whose CRA-eligible activities total 11% or more of deposits would achieve a presumptive rating of "outstanding," at least 6% would be satisfactory, and so on. These benchmarks have been set under the Proposed Rule without clear explanation or analysis provided, yet they are the basis for establishing new presumptive standards for CRA performance.

³ Muñoz, Ana Patricia and Kristin F. Butcher, "Using Credit Reporting Agency Data to Assess the Link between the Community Reinvestment Act and Consumer Credit Outcomes" Community Development Discussion Paper No. 2013-2 and Muñoz, Ana Patricia and Kristin F. Butcher, "Policy Brief: The Effect of the Community Reinvestment Act on Consumers' Contact with Formal Credit Markets" Community Development Issue Brief 3, 2013

⁴ Preamble to the NPR at 13.

⁵ Proposed Section 345.10.

⁶ Preamble to the NPR at 62-63.

These presumptive standards undermine one of the most important benefits of CRA – the incentive for banks to develop partnerships with local community organizations and other stakeholders to address community needs – because the banks can satisfy their CRA obligations by simply hitting the metric. Further, the single, dollar value-based metrics favor large, easy-to-accomplish investments and loans over more complex and innovative activities that may take longer to develop but have a more significant impact on the community.

Finally, this proposal would allow a bank to achieve a less than satisfactory rating in nearly half of its assessment areas and still receive a satisfactory or even outstanding rating. Banks would have the flexibility to focus their stronger community reinvestment-qualifying efforts on as few as half of their assessment areas while minimizing their efforts elsewhere.

We encourage the FDIC and OCC to work with stakeholders to draft a new set of rules that focuses on low and moderate-income households and communities and their lending, retail service, and community investment needs. The proposed regulations do not meet these goals and should be retracted entirely.

Sincerely,



LONDON N. BREED, MAYOR



JOSE CISNEROS, TREASURER