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April 9, 2020

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Comments@fdic.gov

Re: Community Reinvestment Act Regulations

RIN: 1557-AE34; RIN: 3064-AF22

Notice of Proposed Rulemaking

Docket ID OCC-2018-0008-1960

To Whom It May Concern:

We are writing on behalf of Public Counsel, in response to the OCC's Notice of Proposed Rulemaking, "Community Reinvestment Act Regulations". We urge you to reconsider your approach to the Community Reinvestment Plan and to end this rulemaking.

Public Counsel is located in Los Angeles, and is the nation's largest pro bono public interest law firm. One of our main goals is to foster economic justice by providing individuals and institutions in underserved communities with access to quality legal representation. In 2018, Public Counsel *helped over 2,300 clients and their families increase their well-being* by obtaining at least one positive outcome in their legal case, resulting in more than \$11 million in revenue for our clients and over \$1 million in savings. Our staff and over 4,800 volunteers *helped over 16,000 individuals* and more than 300 nonprofit organizations, and *conducted impact litigation on behalf of over 12 million people*.

Our Community Development Project supports healthy, vibrant, economically stable communities by providing free legal services to community-based organizations, affordable housing developers and low-income entrepreneurs. Our Consumer Rights and Economic Justice Project regularly assists low-income consumers with issues related to access to credit and foreclosure prevention.

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.

The Community Reinvestment Act (“CRA”, or “the Act”) has had an important role in combatting historic practices of residential segregation and some of its repercussions, including lack of access to capital. The Act holds banks accountable to the needs of communities they have historically ignored or benefitted from. The CRA requires each bank regulator, including the Office of the Comptroller of the Currency (“OCC”), “to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities.” 12 USC §2901(b). However, with the proposed rule-making changes, the OCC seems to be seeking to dramatically lower the bar for banks to comply with the CRA regulatory framework. The proposed changes would make it significantly easier for banks to pass CRA exams without consideration to the needs of local communities, and by taking CRA away from its focus on low and moderate-income neighborhoods.

The CRA has done tremendous good for California and the country. Responses to an annual survey by the California Reinvestment Coalition (“CRC”) showed that banks had lent over \$27 billion in 2016 in low income communities throughout California, and had over \$31 billion in total CRA activity, including investments, philanthropy, and contracting with minority- and women-owned businesses.

The CRA remains a necessary, and relevant, tool for providing housing and financial opportunities to many who would not otherwise be able to reach them. Too many low income, Black, Latino, indigenous, rural, and immigrant communities still lack access to the safe and affordable loans, investments, and household financial services they need. The CRA provides opportunities for strong, rooted, partnerships with community-based organizations for true community reinvestment projects. It is not simply a regulatory hurdle that financial institutions must overcome: it can create positive, lasting, change. Banks do not need relief from the CRA. The proposed performance measures are complex and opaque while, at the same time, they oversimplify how to measure banks’ responsiveness to local needs. CRA exam processes do not need to be watered down. To the contrary, as the numbers show, banks are not struggling to meet the requirements for passing CRA exams: for decades, over 98% of all banks have passed CRA exams with flying colors. Loosening or otherwise expanding what would count for CRA is simply deregulation by another name, and would have harmful effects on the communities that need it most. We cannot afford to do that.

The CRA supports communities by holding banks accountable.

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. We do not support these proposals. The proposed regulations will encourage banks to gravitate to the largest deals anywhere in the country instead of executing

smaller deals more responsive to local needs, in effect gutting the CRA almost entirely. History tells us that if permitted, banks will revert to choosing the easiest, most lucrative activities instead of actually serving the financial needs of their communities.

In our view, the focus of the CRA should remain on activity in low and moderate income (“LMI”) communities, and within banks’ assessment areas. Banks should not be able to credit any of the following toward the CRA: loans and investments in projects that only partially benefit LMI people and neighborhoods; funding athletic stadiums, storage facilities and luxury housing located in Opportunity Zones without any consideration of how many jobs or benefits will accrue to people with LMI; financial education for non-LMI people; or loans and investments to businesses with over a million dollars in annual revenue.

In addition, the NPRM allows for credit to be given for CRA activity outside of their assessment area, *regardless of performance within the banks assessment area*. The one ratio performance measure is the dominant and determinative factor on RCA exams under the NPR. A one-size-fits-all measure based on asset size would cut out the voices of community members that currently work to show banks where credit and capital are most needed. Data furnished by banks to CRC indicate that banks with CRA agreements invested roughly twice as much in communities as banks without such agreements. Community input is critical to the success of CRA and should not be silenced. Community need, and community input, are integral to understanding the context of CRA activities and should be strengthened as part of CRA exams.

Small business owners, affordable housing developments, and families will all suffer without a strong and effective CRA.

Public Counsel works with a range of communities that are affected by the CRA. We are therefore particularly sensitive to the detrimental consequences of the NPR on small business owners, affordable housing developers, tenants, and low- and moderate-income consumers and homeowners.

Entrepreneurs and small businesses need the CRA to grow services in under-capitalized communities

Public Counsel’s work with small business enterprises and entrepreneurs from low-income backgrounds is a pillar of our work to build economic strength in diverse communities. From our efforts, we know that entrepreneurs already struggle to access bank financing – particularly when their businesses are young, small, owned by people of color, or located in low income communities or communities of color. The CRA encourages banks to work with small business, and incentivizes loans to entrepreneurs. However, most small business owners will lose out

under the NPR as the incentives to serve them get redirected in favor of large businesses that already have numerous options for financing. The proposed changes dilute the transformative effect that the CRA can otherwise have.

Households will be detrimentally affected

The CRA has also encouraged banks to maintain branches in low- and moderate-income communities. In doing so, it has expanded access to safe, no-overdraft accounts to help them avoid cascading fees. Despite this, there are still many areas that are bank ‘deserts’, particularly in low income communities of color and rural areas. In many such areas, payday lenders outnumber branches by the dozens. The NPR provides almost no incentive for banks to maintain and open LMI branches, and seems to do away entirely with any consideration of whether banks are offering affordable bank accounts and other consumer products such as payday alternative small dollar loans and age-friendly account products 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.

For LMI people who are homeowners, or aspire to be, the proposed rules are devastating. The elimination of home mortgage lending in LMI communities as an exam criterion takes away any real incentive for banks to lend to our clients. This is further compounded by the one ratio performance measure that, in favoring larger and easier transactions, will also decrease small-dollar home lending.

Affordable rental and multifamily housing would be further threatened

Most California communities face an acute need for affordable rental housing. In the realm of secure housing, for both renters and owners, the CRA incentivizes creative financing projects that have helped affordable housing developers overcome funding cuts from other sources. If the OCC allows the banks to receive CRA credit for a broader range of activities in a less targeted and greater number of locations, while creating a lower bar for satisfactory performance, affordable rental housing finance will drop precipitously. Further, relaxing the definition of affordable housing to include middle-income housing (for people with up to 120% of area median income) in high cost areas such as Los Angeles, will only exacerbate displacement. Banks should be encouraged to lend and invest in hard to develop communities and in creative ways that truly meet local needs and should be downgraded for financing displacement.

We need a stronger CRA, not a weaker one.

There is a great deal of work that still needs to take place under the current CRA. Existing needs for access to capital for both individuals and small businesses, and for affordable housing, remain unmet. We need banks to step up, not away.

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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, a focus on banks meeting local community credit needs, and active community participation to ensure that communities, not big banks, benefit.

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.

Sincerely,

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