April 8, 2020

Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Via regulations.gov

RE: Notice of Proposed Rulemaking, Community Reinvestment Act Regulations
Docket No: OCC-2018-0008 and RIN 3064-AF22

To Whom it May Concern:

The 13 undersigned consumer, community, civil rights, housing and other public interest organizations submit these comments in response to the Office of the Comptroller of the Currency (OCC)'s and Federal Deposit Insurance Corporation (FDIC)'s joint Notice of Proposed Rulemaking (NPRM or OCC/FDIC proposal) on the Community Reinvestment Act (CRA) regulations. The proposed CRA rules would substantially undermine the very purpose of the statute by weakening the requirements that banks meet the credit needs of the communities where they operate, including low- and moderate-income (LMI) areas. The longstanding failure of the financial industry to serve all communities remains a key force driving and maintaining the nation's racial and economic inequality. The Community Reinvestment Act was intended to curb redlining and racial discrimination, and to make access to credit more equitable. Although the CRA alone cannot solve these issues, it has made important strides in addressing them. Finalization of the OCC/FDIC's proposed rule would weaken these gains by dramatically compromising the law's ability to increase equity in bank investments and provide access to affordable credit to underserved communities.

I. Objection to Moving Forward with this Rulemaking During Ongoing COVID-19 Crisis

We must first note our objection to the OCC and FDIC continuing with this rulemaking in the midst of the current COVID-19 crisis that is affecting every corner of life in our country and around the world. We live in a dramatically different world than when the agencies issued this request for notice and comment. The economic needs of all communities, but especially communities of color and lower-income areas, are more pressing than ever, making the CRA a vital tool in providing access to credit and financial services to all neighborhoods where banks operate. Transparency and fairness require allowing for extensive engagement by the broad and diverse constituencies impacted by the OCC/FDIC's proposal, but the present public health emergency and economic crisis present challenges to providing meaningful public input and analysis within the designated timeframe. We reiterate our request for a formal extension of this comment period until at least 90 days after the public health emergency has ended.

More broadly, we urge the OCC and FDIC to pause this rulemaking process and refrain from moving forward with a final CRA rule, or any other agency actions unrelated to addressing

COVID-19, the health and safety of the U.S. population, or the financial and economic collateral damage of the health crisis.

II. Inconsistent with Congressional Intent

Our primary objection to the agencies' proposed changes to CRA regulations is that the proposed rule does not align with the statutory intent behind the CRA to address redlining and disinvestment. The purpose of the CRA is to make sure that banks provide safe and affordable credit to low- and moderate-income communities, communities of color, other underserved areas, and the residents that live in these neighborhoods, but the OCC/FDIC proposal threatens to do the very opposite and decrease access to affordable credit opportunities for the very groups the CRA was designed to include in the financial mainstream.

After passing the Fair Housing Act and the Equal Credit Opportunity Act, Congress passed the CRA in response to discriminatory redlining practices that excluded certain communities from the financial marketplace. By requiring banks to address the credit needs of the communities where they take deposits, the CRA has played a crucial role in making credit available to communities of color and increasing investment in LMI neighborhoods. Over the past two decades, banks have increased their small business and community development lending to trillions of dollars in total to meet their CRA requirements.

A key principle behind CRA is that banks should provide credit and a full range of financial services in all the areas where they do business and enjoy the benefits of a banking charter, deposit insurance, and other public support. Banks should not be permitted to favor some areas over others, or leave areas where they are doing business without investment opportunities. CRA requirements must remain robust so that banks lend to borrowers and small businesses in the communities where they are located to ensure that the benefits they have from a bank charter are equitably shared. Relaxing CRA requirements could lead to a significant reduction in lending for LMI communities and a total loss of tens of billions of dollars or more in loans. This reduction would be particularly harmful in the current environment when LMI borrowers and small businesses may face an increasing need to access affordable credit options to rebuild after the COVID-19 crisis.

In direct contradiction to the purpose of the CRA, the OCC/FDIC's proposed rule dramatically diverts the focus of CRA requirements away from LMI communities and communities of color. If the proposed rule goes into effect, it will weaken the CRA and facilitate a severe reduction in lending for the communities that are already underserved by the banking sector — the exact opposite of what Congress intended when they passed the CRA.

III. Improper Expansion of Activities Eligible for CRA Credit

The first diversion away from LMI communities and communities of color in the proposed rule is broadening what counts for CRA credit beyond investments that directly benefit LMI communities and communities of color. For example, the definition of affordable housing would

be relaxed to include middle-income housing in high-cost areas, which will not benefit LMI families in those communities. In addition, rental housing investments would be counted as affordable housing if lower-income people could theoretically afford to pay the rent, without requiring any verification that the units would in fact be rented to LMI tenants. Not only are these investments not benefitting LMI residents but may directly harm them if they are displaced due to the lack of truly affordable housing available for them.

Similarly, the current CRA rule allows investments in small businesses with up to $1 million in revenue to be counted for CRA credit, but the OCC/FDIC proposal increases this limit to count investments in small businesses with revenues up to $2 million and farms as high as $10 million. By broadening CRA investments to bigger businesses and farms, the OCC/FDIC proposal has the potential to divert critical resources from the truly small businesses and farms most in need of affordable credit because larger investments in bigger businesses would now count for CRA exams.

The NPRM also extends the definition of CRA eligible activity to financing for large infrastructure projects such as bridges and roads, even though this type of investment is not targeted to benefit LMI residents. Although these investments are important, they should not be counted for CRA credit. It should be noted that many highway infrastructure investments during prior decades exacerbated racial segregation and economic isolation of lower-income neighborhoods and communities of color. Receiving credit for these types of investments would divert funding away from investing in specific community development projects in and for LMI communities.

There should not be any broadening beyond investments that target LMI borrowers and LMI areas for credit on a CRA exam, and all CRA activities in LMI areas should be counted only to the extent they directly benefit LMI residents. Broadening the activities that count for CRA credit would allow banks to choose easier investments unrelated to LMI borrowers' needs, and in some instances investments that may even cause harm and displace LMI residents and communities of color. The purpose of the CRA was to increase access to credit for communities historically marginalized by the financial services sector and encourage banks to meet the credit needs of LMI communities. Counting other types of investments for CRA credit would undermine the Congressional intent behind passing CRA as a response to redlining and take the focus away from LMI communities.

A. Opportunity Zones

The expanded CRA-eligible activities also inappropriately include investments in Opportunity Zones created under the 2017 Tax Cuts and Jobs Act. The proposed rules assume that designated Qualified Opportunity Zones are inherently LMI areas where investment or services should qualify for CRA credit. The regulatory preamble states that the proposed rule would "encourage banks to conduct more CRA activities and to serve more of their communities, including those areas with greatest need for economic development, investment, and financing needs, such as urban and rural areas and opportunity zones, that may be underserved by the current regulations." The proposed rule's qualifying activities sections (§25.04(c)(11) and

§345.04 (c)(11)) appear to *automatically* include any investments under the Opportunity Zone tax break, but it does not *explicitly* require those investments to be in LMI census tracts.

However, the designated Opportunity Zones were poorly targeted, and the selected tracts are not all located in places that lack investment — many are gentrifying areas and some have higher incomes than the CRA's definition of LMI. The shortcomings in the Opportunity Zone low-income definition and designation mean that about one-fourth or over 2,300 Qualified Opportunity Zones have median family incomes that are higher than 80 percent of the area median incomes that would be necessary to qualify for CRA LMI criteria.[1]

Multiple media exposes have demonstrated that many Opportunity Zone investments have benefited super-rich, often politically connected, real estate investors, and gone towards financing luxury buildings that will not benefit - and may indeed harm - LMI residents, as well as going to more affluent and gentrifying areas that should not qualify for CRA credit under any circumstances.

Disconcertingly, even financing "athletic" stadiums in Opportunity Zones would be an eligible activity for CRA credit in the NPRM, without any consideration of the stadium's impact on LMI communities. There is no evaluation of whether a stadium would create jobs or benefits for LMI residents and no consideration of whether building a stadium in a specific community would advantage, or in fact disadvantage LMI communities. Moreover, Opportunity Zone investments are already receiving ample incentives and it does not make sense for them to be counted towards CRA as double credit for one investment.

IV. Misconstrued and Oversimplified One-Ratio Formula

Over the fierce opposition of many of our members and allies, the NPRM retains the deeply problematic "one-ratio" metric, which reduces the CRA exam to a single numerical benchmark. The current CRA exam structure recognizes that CRA investments may vary between communities because banks take deposits from a wide range of neighborhoods with a wide variety of needs. The CRA's adaptability and inclusion of local community input about community needs in the process is crucial to its effectiveness. The NPRM's one-ratio approach is deeply problematic because it takes away this adaptability and inclusion by oversimplifying

[1] Americans for Financial Reform Education Fund (AFREF) calculations using Treasury Opportunity Zone data; Census Bureau's 2012-2017 American Community Survey 5-Year Estimates; Census Bureau's Core Based Statistical Areas, Metropolitan Areas, and Combined Statistical Areas September 2018; Metropolitan Area Median Family Income ACS 2012-2017 Series No. HC01_VC114. The Opportunity Zone low-income definition included areas with poverty rates over 20 percent, median family incomes below 80 percent of the area median incomes, or some areas adjacent to those designated low-income areas. Even census tracts where 20 percent of people live below the federal poverty line can include substantial pockets of affluent or rapidly gentrifying areas. *See* Drucker, Jesse and Eric Lipton. "Meant to lift poor areas, tax break is boon to rich." *New York Times*. September 1, 2019.

the CRA exam into one numerical formula: the total number of a bank's CRA investments as a percentage of its total assets.

Although the OCC/FDIC proposal applies this formula at the bank level and for each assessment area, the structural problems with using a single numerical ratio as the primary evaluator for CRA compliance remain. By reducing the CRA exam to a single numerical benchmark, the one-ratio approach lowers the bar for compliance and reduces community input in the process.

One metric cannot capture a bank's performance in serving a range of different communities and different needs, and will instead drastically reduce the CRA's effectiveness in fostering activities that meet varied needs. This one-ratio measure would likely encourage banks to find the largest and easiest deals to achieve the highest possible score from the fewest possible transactions. If CRA evaluations are reduced to one ratio, banks will seek out investments with the highest margin and least risk and make the minimum amount of loans they need to reach the requisite percentage. With a one-ratio compliance measure, they will be able to do so without consideration of local needs, which will likely lead to a drastic reduction of community investment where it is needed most. This will allow banks to game compliance in a way that will undermine the express purpose of the CRA to meet community needs.

The combination of broadening what counts for CRA credit and using the one-ratio measure as the primary measure of CRA compliance is particularly detrimental because it means banks could pass their CRA exams after making a few select, profitable investments in projects that may not even be beneficial for LMI communities. For example, a bank could provide financing for a bridge and a football stadium while limiting or excluding other underserved areas, including neighborhoods of color, that specifically need financing for community development, such as affordable housing and small business lending, and still meet all their CRA requirements. Since banks could fail in one half of the areas on their exams and still pass under the proposal, the likelihood of banks seeking a few large and easy deals would increase.

We are especially concerned that local input and community engagement could be minimized if this one ratio measure is adopted. Community benefit agreements are negotiated between banks and community groups and commit banks to specific levels of loans, investments, and services to LMI families and communities of color over a multiple year period. The one ratio metric does not allow for proper consideration of this type of crucial community input that makes the CRA more effective in each of the communities served. The agencies would lessen the public accountability of banks to their communities by including unclear performance measures on CRA exams that would not accurately measure bank's responsiveness to local needs. Public input into this numerical evaluation would be more difficult and limited. Any change to CRA that takes away from community investment must not move forward.

The one-ratio measure also weakens compliance standards and makes it easier for banks to choose the lowest common denominator of investments, which will often not help and is likely in some cases to disadvantage the very communities the CRA was enacted to protect. Despite the

assertions that the NPRM would increase clarity and bank CRA activity, the result would likely be significantly fewer loans, investments and services to LMI consumers. We urge the OCC and FDIC not to reduce the CRA's effectiveness through the one-ratio approach and not to make changes to CRA requirements that have the potential to reduce lending in the LMI communities or communities of color. Instead of weakening CRA, the agencies should enact reforms that would increase bank activity in underserved neighborhoods and local community input in the process.

V. Misguided Assessment Area Changes

The proposed changes to the CRA assessment area could substantially reduce the coverage and practical application of the CRA and its focus on LMI areas by taking what counts for CRA credit away from the geographies where banks have branches, take deposits, and provide credit and services. The proposed new thresholds (more than 50 percent of deposits outside a branch network's physical footprint or specific distant geographies where more than 5 percent of deposits are taken) were not determined through a close examination of depository institution deposit data overlaid with bank CRA assessment areas, which would be critical to determine how the proposed changes might impact the evaluation of CRA eligible activities. The proposed changes could reinforce longstanding concerns that banks are willing to take deposits in LMI areas but provide credit and other services only in more distant and more affluent neighborhoods. The proposed assessment area changes were not based on sufficient data to determine the potential impact on CRA performance evaluations. These concerns are amplified because the proposed rule would allow banks to receive high ratings even when they only received "satisfactory" ratings in half their assessment areas, making it even easier to avoid providing credit or service to the physical branch-based geographies.

VI. Reduced Accountability for Banks

The agencies also propose to allow banks that receive Outstanding ratings to be subject to CRA exams every five years instead of the current two to three years, which would significantly reduce bank accountability for whether they are meeting their ongoing responsibilities to respond to community needs. It would also significantly reduce transparency, as the public would have access to far fewer CRA exam assessments on how local banks were meeting local credit and financial services needs. Banks with a five-year exam cycle would likely relax their efforts in the early years of the cycle, and there would also be less information on recent CRA performance when they seek permission to merge with other banks if exams are less frequent. Banks with less than $500 million in assets even have the option of opting out of these exams altogether.

The NPRM also converts the retail test, which looks at small business and consumer lending to LMI borrowers and communities, into a pass/fail regime that would have only minimal effect on a bank's overall CRA rating. Banks can fail their retail lending test in half of their assessment areas and still pass their CRA exam. The OCC/FDIC proposal entirely eliminates home mortgage lending in LMI communities as an exam criterion, which is particularly concerning

given that the gap between black and white homeownership is the worst it has been in 50 years.[2] Bank branches in LMI communities are greatly devalued in the one-ratio approach, which will likely lead to fewer bank branches and a decrease in lending.

VII. Conclusion

We are gravely concerned about the ways in which the OCC/FDIC proposal will have the exact opposite effect from what Congress intended when it passed the CRA over 40 years ago. The OCC/FDIC proposed changes would result in less investment for communities most in need and especially a decrease in lending, investing and bank services to LMI consumers and communities of color. We urge the OCC and FDIC to focus first on the immediate public health emergency, halt the CRA rulemaking process, and issue a new NPRM better aligned with statutory goals with a process that allows for a more robust notice and comment period once the crisis has settled.

Thank you for the opportunity to comment on this proposal. If you have any questions, please contact Linda Jun, Senior Policy Counsel at Americans for Financial Reform Education Fund, at linda@ourfinancialsecurity.org.

Sincerely,

Americans for Financial Reform Education Fund
Allied Progress
Center for Community Progress
Consumer Action
Consumer Federation of America
NAACP
National Community Reinvestment Coalition (NCRC)
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Resource Center
New Jersey Citizen Action
U.S. PIRG
Woodstock Institute

[2] Choi, Jung Hyun. “Breaking Down the Black-White Homeownership Gap.” Feb 21, 2020. Available at: https://www.urban.org/urban-wire/breaking-down-black-white-homeownership-gap