March 31, 2020

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

Submitted via https://www.federalregister.gov.

To Whom It May Concern:

Tenderloin Neighborhood Development Corporation (TNDC) appreciates the opportunity to comment on the Notice of Proposed Rulemaking for the Community Reinvestment Act. TNDC is strongly opposed to the proposed changes to the Community Reinvestment Act (CRA). We believe that the CRA remains a crucial piece of legislation, and we fear that the proposed changes will weaken the CRA dramatically. Furthermore, we believe that the CRA rulemaking process should be immediately suspended, due to the extremely serious needs facing communities across the Country during the COVID-19 Pandemic.

TNDC develops community and provides affordable housing and services for people with low incomes in the Tenderloin and throughout San Francisco; we help people with low incomes thrive by building deeply affordable homes and supportive communities. Over the last 35 years, we have built 39 housing projects dedicated to low-income households, with 11 more projects in development. We provide 3,450 homes to over 4,000 households, 80% of which provide housing for households earning less than $15,000 per year.

Before we discuss our specific concerns with the proposed changes to the CRA, we want to urge you to suspend the rulemaking process immediately. Seemingly overnight, organizations like TNDC have been forced to make very difficult decisions, sometimes with literal life and death consequences. Continuing the rulemaking process with an April 8, 2020 comment deadline forces community-based organizations to choose between saving lives and livelihoods now and helping to shape the long-term economic opportunities their communities will be able to access for decades to come. You have the power to relieve community-based organizations of having to make that choice.

Your institutional peers at the Internal Revenue Service (IRS), Federal Housing Finance Agency (FHFA), and the Department of Housing and Urban Development (HUD), among others, have swiftly instituted delays, suspensions, and other emergency procedural actions with the goal of prioritizing focus on the immediate needs this pandemic presents. Please suspend this process now.

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CRA has served as a powerful incentive for traditional financial institutions to invest in our work, resulting in strong partnerships that have helped us finance our housing development activities as well as to provide access to critical services in low-income neighborhoods, such as the Tenderloin, in San Francisco. Beyond our own focus, we are aware of the powerful impact of CRA statewide: in California, banks that responded to an annual survey by the California Reinvestment Coalition lent over $27 billion in 2016 in low income communities throughout the state, and had over $31 billion in total CRA activity, including investments, philanthropy, and contracting with minority- and women-owned businesses.

TNDC's partnerships with banks have provided capital through the use of the Low Income Housing Tax Credit (LIHTC), as well as through favorable-term loan programs for construction, predevelopment, and working capital for housing developments such as the Kelly Cullen Community, located at 220 Golden Gate Avenue in San Francisco. The historic YMCA building, originally constructed in 1910, was rehabilitated to provide 172 units of efficiency studios for chronically homeless individuals in 2012. In addition to housing, the project includes on-site social services for residents, a corner commercial retail space, and the Tom Waddell Urban Health Clinic – a ground floor Department of Health managed clinic providing primary care to homeless and formerly homeless clients. CRA was fundamental to the success of this critical, community-serving project, which included an acquisition loan from US Bank, a construction loan from Citi Community Capital, and permanent loan funding from the Silicon Valley Bank and the Federal Home Loan Bank of San Francisco.

In addition to direct investment in and loans for housing development, our organization, TNDC is supported by CRA-eligible grants that have provided general operating support, as well as direct service grants to programs such as TNDC's Tenderloin After-School Program, which provides wrap around services to resident families. As an organization, TNDC provides more than 56,000 hours of service to support our residents every year.

And yet, despite these successes, the CRA is still very much needed: 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 supports communities by holding banks accountable. I write with particular concern about proposed reforms that could make banks less accountable and responsive to community needs. We do not support these proposals.

Moving away from a core CRA principle, less focus on local communities. 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. 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 subprime credit card lending to LMI consumers anywhere. While 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 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 only serve to weaken the connection between banks and local communities. CRA must continue to serve as an incentive to lend, to invest, and to provide service to residents in low-income communities within its various service geographies, and should continue to be focused on activity in low and moderate income communities.

Having branches in low- and moderate-income areas must continue to be a focus of the CRA. Additional services in low- and moderate-income communities, such as improved access through technology, should count towards CRA provided this does not replace branch access. Many communities across California still rely on cash, in-person or multilingual financial services, which are best handled through branches.

Weakening 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. But this proposal provides almost no incentive for banks to maintain and open LMI branches, and it 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 and rural communities, and LMI consumers turning more to predatory check cashers and payday lenders.

Acknowledging displacement, but worsening the problem. 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% 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. The overly simplistic formula for grading banks that the OCC is contemplating will mean the harder affordable housing deals are not done – those that help seniors, disabled persons, and rural communities. Further, the OCC's suggestion that lending that benefits higher income households could qualify would result in giving banks CRA credit for financing development that would price low- and moderate-income families out of their current communities. In gentrifying parts of the state, there is a need for creative financing to preserve affordable housing opportunities. But creative financing projects will take the biggest beating under an OCC system where banks could take the easiest path to comply. 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. Worse still, banks would get 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.

Failing to downgrade banks for harm. Sadly, redlining and discrimination are still with us. 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 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. Under this proposal, 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.

Developing 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% 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. Banks, for example may move away from important Low Income Housing Tax Credit investments in favor of simpler and easier investments.

Further, the proposal would actually allow banks to FAIL in half of the areas on their exams and still get a passing grade. Rural areas and low income neighborhoods of color that are perceived of as harder to serve will no doubt be more likely to be ignored by banks that can meet 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 or 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 compared to both 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 consumes. 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 maintaining acceptable CRA performance when they seek permission to merge with other banks.

Reducing community input. This proposal appears designed to weaken community input and participation. Why else would such a complicated and substantial change to the rules implementing the nation's redlining law come with a mere 60 days for public comment? Statements and actions by OCC officials also suggest that the OCC does not like to hear from people with whom it disagrees. This is not acceptable for a public rule making process. This reaction against community input is evident in the proposal itself, which includes arbitrary thresholds that are not justified, references data not shared, creates a formula driven process that will make community input and partnerships less relevant, treats performance context as an afterthought, and is not clear on what role, if any, community input on bank performance will play. As an example as to the lack of transparency and opportunity for community input, the OCC issued a Request for Information (RFI) almost a month after the release of its proposed rule, on January 10th. The RFI seeks data from banks to inform potential revisions to the CRA regulatory framework and is due the day after the 60 day public comment period closes for the rule. This means communities will not have access to this data, to be used by the OCC to make potential revisions to the rule, prior to submitting public comment.

Inviting regulatory arbitrage. In pressing ahead without fair consideration of prior input, and without providing sufficient time for public comment now, 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.

What we need. Real CRA reform would include:

- A retained focus on low and moderate income people and communities.
- 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. Mortgage lending should focus on owner occupants (not investors), and 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 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 towards increasing reinvestment in bank deserts, which this proposal does not do.
- A qualitative and quantitative analysis. Homeowners, small businesses, and impactful community development projects often require smaller loans and investment. Innovation and impact should be valued under CRA. A proposal that only considers what is easily monetized does not have community needs at its center.
- An end to CRA grade inflation. 98% 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 counts more things in more places and will lead to larger numbers while actually resulting in less lending, less investment, less impact, and less community benefit.
- More scrutiny of reinvestment in rural areas. More rural counties should be designated as "full scope review" areas subject to greater oversight and scrutiny as is generally the case for urban counties. This will immediately result in rural areas being better served, which will not happen under this proposal.
- 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 LMI, of color 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.

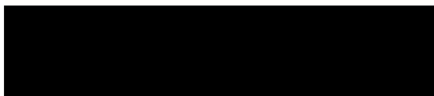
This deeply flawed proposal would result in less lending and investment in the very communities that were the focus of CRA when passed by Congress in 1977. This proposal will retreat from key statutory and regulatory core principles of CRA, such as a focus on low and moderate income people and communities, 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, extend the comment period to 120 days, and ultimately, pull 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.

Thank you for your consideration of our views.

Please do not hesitate to contact me at dfalk@tndc.org should you have any questions.

Sincerely,



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cc: California Reinvestment Coalition
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