We Stay / Nos Quedamos, Inc.

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A Coalition of Homeowners, Tenants, Property Owners, Institutions, and Business Persons Who are Resolved to Remain a Part of the Melrose Community and Become Equal Partners With the City of New York in Our Community's Redevelopment.

April 8, 2020

RE: RIN 1557-AE34, Federal Register Number 2019-27940, Docket ID OCC-2018-0008

Comments regarding "Reforming the Community Reinvestment Act Regulatory Framework"

To Whom It May Concern:

I am writing regarding the OCC and FDIC's Notice of Proposed Rulemaking (NPR) seeking input on proposed changes to the Community Reinvestment Act (CRA). My name is Jessica Clemente, Chief Executive Officer of We Stay/Nos Quedamos, a nonprofit Community Development Corporation in the South Bronx, New York. We are members of the Association of Neighborhood and Housing Development and the National Association of Community Latino Asset Builders.

I have significant concerns about the ideas presented in the NPR that would significantly weaken the CRA, leading to less investment, fewer loans and branches, and less meaningful investment. I'm also very concerned that the OCC and FDIC ("the agencies") are moving forward without the cooperation of the Federal Reserve Board, which has correctly stepped away from this flawed proposal. Banks should not be operating under different rules around community reinvestment.

The CRA is one of the major civil rights laws that were passed in response to discriminatory policies and practices that locked people of color out of banking, credit, housing, employment, and education. It is one of the most important laws we have that holds banks accountable to local communities, requiring them to lend and provide services equitably, and to support community development in the areas where they do business. It has led to trillions of dollars reinvested nationwide, and billions each year here in New York City.

But, for all of its benefits, inequities persist. Too many low-income people, immigrants, and people of color in New York City still lack sufficient access to loans to purchase homes, improve their homes, and start and maintain businesses.

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Smaller nonprofits struggle to access grants and loans to build and preserve affordable much-needed deep and permanent affordable housing and support community development. **15% of Black households and 18% of Hispanic households in the NY region are completely unbanked, which is over 5 times the rate of white households**. Meanwhile, many low-income tenants and tenants of color are being harassed and displaced when banks lend to unscrupulous landlords.

All of this underscores the need to preserve and strengthen the CRA, making sure that the right priorities are reflected. In that context, we have deep concerns about some of the proposal:

We Oppose the One-Ratio Approach

The proposal maintains a one-ratio approach, despite hundreds of comments opposing it during the ANPR comment period. It values dollars over impact, quantity over quality, thus incentivizing larger deals over smaller, more impactful ones. This means fewer loans to first-time homebuyers, low-income homeowners, and small businesses; fewer financing options for smaller nonprofits to build and preserve deep affordable housing; fewer grants to nonprofits for tenant organizing or direct services.

It creates arbitrary target goals before ever considering community needs. Further, under this new approach, banks can do high volumes of investment in some areas, while excluding others entirely. **In fact, a bank could fail 50% of its assessment areas and still pass its exam with a satisfactory or outstanding**!

All of this comes at the expense of community input, community partnerships, and any activity that cannot be quantified, such as branch openings and closings; hours of operation; and qualities of bank accounts**. There is no meaningful way to incorporate community comments** on local credit needs or on bank performance; community input comes second to target dollar goals. Similarly, there is no systematic way to incentivize high-impact activities. The proposal removes the systematic analysis of how responsive and innovative a bank's activities are. And **there is still no way to downgrade a bank for harmful activities,** such as higher cost loans or lending to predatory bad acting landlords who harass and displace tenants.

There is less attention to the distribution of retail and small business loans and no mention of race at all. **There are no ideas proposed to increase access to banks and banking for people of color, no ideas to minimize displacement among these populations, and no attempt to strengthen the fair lending portion of CRA exams.** Quite the opposite is happening as the exam eases the analysis of the geographic and income distribution of retail lending, small business lending, and consumer lending. There is no analysis of different loan sizes to small businesses or the distribution of mortgages in lower-income tracts, and no evaluation of the types of products offered to lower-income consumers. Banks can get credit for high-cost, high-interest credit cards and other predatory loans and products offered to lower-income consumers!

Expansion of What Counts for CRA Credit

The proposal greatly expands what counts for CRA credit with activities that benefit larger businesses and higher-income families, as well as activities that are not directed primarily at lower-income people or communities.

This includes small loans and small businesses up to $2 million in loan size and revenue (up from $1 million), community development activities that only partially benefit lower-income communities, and some activities with no requirements at all to benefit lower-income people or small businesses. **In fact, a bank could get CRA credit for investing in an opportunity zone fund that finances luxury housing or athletic stadiums in low-income opportunity zones.** Further, a bank could exclusively finance middle-income rental housing developments in high-cost markets like New York City, despite the persistent need for deep affordable housing for very low, low, and moderate-income families; over 40% of New Yorkers are low-income alone, with incomes below 50% AMI[1]. And because housing investments get double-credit, banks would have less incentive to do the extra work to finance low-income housing when they can more easily get double credit for larger middle-income developments or loans on rent-stabilized buildings as part of their normal course of business, regardless of the quality of the housing or behavior of the landlord.

Low Income Housing Tax Credit (LIHTC) investments, a critical piece of housing financing, is also at risk. The value will almost surely go down as banks compete less for investment opportunities, thus reducing the amount of equity available to develop affordable housing.

At the same time, the proposal minimizes or eliminates the emphasis on meaningful community investments that can't be quantified, such as bank branches, affordable and accessible banking products, hours of operation, languages spoken, impactful volunteer hours, and quality jobs.

Expansion of where banks can get CRA Credit – Loss of obligation to meet local credit needs

The proposal greatly expands where banks can get CRA credit, allowing for investment outside of local assessment areas, which minimizes focusing on local community needs and partnerships. As mentioned above, banks can get a low or failing grade in half of their assessment areas and still pass their CRA exam if they meet their target dollar goals for the entire bank.

The bank-level evaluation combines CRA-qualified dollars loaned invested in all the assessment areas combined, as well as qualified activities anywhere, regardless of assessment area. While some of these areas may need investment, that investment cannot come at the expense of the obligation to meet local needs. Further, all investments, regardless of location, should be analyzed for their impact on historically redlined communities.

Formula for Dis-investment: More complicated, less transparent, and will lead to less investment

The proposal does the opposite of what it claims to do for banks or the community: It is **less transparent, more complicated, and will ultimately lead to less investment and less meaningful investment**. The proposal relies upon deposit and community development data that banks do not yet collect, with little transparency as to how banks will collect and report on the data.

The proposal no longer uses publicly available data, such as the Home Mortgage Disclosure Act (HMDA) data for home mortgages, FDIC data for branches and deposits, and the FFIEC for small business data, thus reducing the ways the public can verify and provide meaningful feedback on bank performance in those categories. The formula to calculate the target metric is complicated and relies upon data never before used on CRA exams, meaning banks will have to spend millions to adapt to this new system that will result in less transparency and less investment in our communities.

Meanwhile, smaller banks below $500 million in assets can opt out of the new system, effectively removing the community development finance requirements for many of those banks.

This is the wrong approach.

All of this is further compounded by the spread of COVID-19 has exposed the long-established gaps in our social infrastructure. These inequities are not new, but will be laid bare and felt more intensely than ever before. In New York, low-income communities of color and immigrant communities will face the brunt not only of the medical crisis that is upon us, but also the growing economic crisis in the form of evictions, mounting debt, job loss, and community disinvestment.

New Yorkers rely on banks in their daily lives for banking services, loans, mortgages, and a place to safely store their money. This applies to all sectors - individuals, businesses large and small, landlords, non-profits, and municipalities. **Low-income people, Black and Brown New Yorkers, small businesses, and tenants have been struggling for years to access affordable banking and services. These struggles are greatly exacerbated during this crisis.**

The attention of all stakeholders has correctly shifted to responding to this crisis – regulation with as large an impact as the CRA cannot be moved forward during this time of crisis. Our additional recommendations to the CRA Guidance include:

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- Maintain grant levels for grantees and waive obligations that can't be met now - allow for organizations to pivot and respond to the current crisis as needed, including both internal (operations and staff) and external (clients and members) supports.
- Provide loan forgiveness for non-profit developers who can't make mortgage payments due to residential and commercial tenants' lost income.
- Give responsible multifamily lending guidance to ensure borrowers are respecting anti-eviction ordinances and supporting tenants who cannot pay.

- Allocate grants and zero-interest loans to non-profits and small businesses to weather the crisis and pay staff – loans should be forgivable or paid back post-crisis

Prompt, responsible action by banks will make a huge difference in the lives of millions of low-income New Yorkers who are impacted by the COVID-19 pandemic.

Any reform must include OUR principles to preserve and strengthen the CRA

1. **Banks should be evaluated on the quantity, quality and impact of their activities within the local communities they serve and based on the needs of these local communities**. This cannot be done with a one-ratio evaluation that simply looks at dollars invested.

    - Incentivize high quality, responsive activities that lift historically redlined people – **people of color and low- and moderate-income people** – out of poverty and help reduce wealth and income disparities.
    - Downgrade banks that finance activities that cause displacement and harm.

2. **Community input and community needs must be at the heart of the CRA**. Strong community needs assessment and community engagement should inform community needs and how examiners evaluate how well banks are meeting those needs.

3. **Assessment areas must maintain local obligations**. The CRA must maintain the current place-based commitment banks have to local communities. Banks should have additional assessment areas where they do considerable business (make loans / take deposits) outside of their branch network.

These types of reforms must maintain or increase quality reinvestment where it is needed, including high need "CRA hot spots" such as New York City, while also directing capital to under-banked regions.

Conclusion

Meaningful CRA reform could boost lending and access to banking for underserved communities by incentivizing high quality, high impact activities based on local needs, while discouraging and downgrading for displacement and activities that cause harm. Transparent and consistent exams would support these goals.

This proposal does none of that. It creates a more complicated, less transparent system that will lead to less banking, lending, investments in our communities.

The OCC and FDIC should abandon this proposal and go back to the table with the Federal Reserve to come up with a plan that preserves the core of the CRA, truly addresses its shortcomings, and modernizes it to incorporate today's banking world.

Thank you for your attention to our comments.

Sincerely,

Jessica Clemente

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[1] https://anhd.org/sites/default/files/ami_cheat_sheet_2019_060519.pdf