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March 10, 2020

Joseph M. Otting
Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Docket ID OCC-2018-0008
RIN 1557-AE34
Via email: cra.reg@occ.treas.gov

Jelena McWilliams, Chair
Board of Governors
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
RIN 3064-AF22
Via email: Comments@fdic.gov

RE: Notice of Proposed Rulemaking, Community Reinvestment Act Regulations

Dear Comptroller Otting and Chair McWilliams:

Delaware Community Reinvestment Action Council, Inc., (DCRAC) opposes the proposed changes to the Community Reinvestment Act (CRA) regulations.

DCRAC transforms financial lives for the many who are one unanticipated expense away from a financial crisis through its mission of equitable treatment and equal access to credit and capital. Through Money School, Law Firm, and Credit Union, DCRAC banks the unbanked, reviews documents and contracts, provides legal representation, and prepares financially ready families to take advantage of opportunities. These programs change lives and operate because of CRA.

DCRAC is a member of the National Community Reinvestment Coalition (NCRC) and fully supports NCRC's commentary and proposals on the CRA.

NCRC has conducted an analysis using publicly available call report data. NCRC found that under the proposed rules banks could issue as little as 5% of their retail loans to LMI borrowers or communities and still "pass" their CRA exams with Satisfactory ratings. That

5% could well be too generous. Banks could keep the same loans on their balance sheets for several years and not have to make any additional retail loans to LMI borrowers or communities and still pass.

There is much to be concerned about this Notice of Proposed Rulemaking (NPRM).

Federal Reserve is not on board

CRA directs the federal regulatory agencies to enforce the federal statutes regarding fair lending – the Federal Reserve, Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency. The Federal Reserve is not in agreement with the proposed NPRM.

We urge the FDIC and OCC to discard this proposal and to work with the Federal Reserve Board to write and propose an interagency rule that will augment the progress achieved under CRA instead of reversing it.

Activities that were never at risk of redlining are CRA eligible

Outcries over racial discrimination traced to lending and the insidious practice of redlining prompted Congress to enact the Community Reinvestment Act. With this proposal, CRA is watered-down to irrelevance.

Today, much of America has recovered from the 2007-2008 financial crisis, with the predictable exceptions of neighborhoods that have a large minority population, poorer homeowners, and older houses.

This NPRM incentivizes a bank to exclude those communities, much like the HOLC, FHA, and FDIC did in the 1930s. In this instance, by granting CRA credit for building stadiums (never at risk of, and never will be at risk of, redlining).

Under this proposal, infrastructure, stadiums, and housing projects benefitting middle-income families in high cost areas count as CRA activities. Just to be clear, these activities were never at risk of redlining. What they do is allow banks to bulk up the numerator in their quest for presumptive CRA rating.

Other serious objections, to name a few, include:

- The new definition of community development, which deletes reference to economic development, revitalization, and stabilization.
- Applying a multiplier to community development activities.
- De-emphasis on bank services making LMI communities vulnerable to predatory debt.
- CRA credit for an athletic stadium in an Opportunity Zone.
- Raising threshold for small business from $1 million in revenue to $2 million in revenue.

Assessment areas include geographies that were never at risk of redlining

The statutory purpose "reinvest in communities where they collect deposits" of 1977 did not envision the unbanked and under-banked in America. According to FDIC's own 2017 survey, 6.5 percent of households (8.5 million households) in the United States were unbanked and an additional 18.7 percent of U.S. households (24.2 million households) were underbanked.

The newly proposed deposit-based assessment area does not recognize that most low-income consumers of banking products do not have large deposits nor do they maintain sufficient deposits at month-end to be counted toward the denominator. Wealthier customers on the other hand create deposit-based assessment areas in geographies that are not at risk of redlining. Instead of creating CRA opportunities where the need arises, it is more likely to create CRA deserts everywhere.

Currently, there are procedures for banks to receive CRA credit outside their assessment area.

The Presumptive CRA Ratings will allow a bank to reduce their commitment in the very communities that CRA must serve

The original CRA was intentionally vague about the standards regulators should use in their evaluations. In the Advanced Notice of the Proposed Rule Making, two-thirds of the commentators opposed reducing CRA to one ratio. Nevertheless, despite overwhelming opposition, this NPRM calls for only one (meaningless) ratio.

NCRC has found that under these rules banks could issue as little as 5% of their retail loans to LMI borrowers or communities and still "pass" their CRA exams with Satisfactory ratings.

The February 17, 2020 article in the Wall Street Journal is a continued reminder that America needs the affirmative protections of the CRA. Under this NPRM, nothing is stopping a bank from making loans to a car buyer who is so underwater that the only way the math works is for the buyer to sign a contract for a new car, and soon after contact the lender on the old car for a voluntary repossession.

Infrastructure, stadiums, and housing projects benefitting middle-income families in high cost areas allow banks to bulk up the numerator.

Banks could choose half of its assessment area, ignore the rest, and still receive an outstanding rating. Which half is the bank going to choose? Isn't this legalized redlining?

The proposal doubles credit for most community development investments. A bank can easily reach 2% of deposits by investing in an opportunity zone or a stadium or a hospital.

Most banks can reach the 4% (+2% CD investment) or 9% (+2% CD investment) threshold without a single bank branch in an LMI neighborhood. Rather than incentivizing LMI presence, the single ratio dis-incentivizes branches in LMI communities.

When a bank can achieve a presumptive outstanding rating by doing even less than they do today, our communities are likely to see further reductions in grant support and an equally important investment in the community: talent.

Even if at some time in the future call reports capture relevant data, the very fact that a bank needs to do less than they do today to achieve presumptive CRA ratings calls into question the motives for this NPRM

Fairness to moderate- and low-income communities dies in opacity of call reports that do not shed light on borrowers, neighborhoods, or communities. They tell us only one thing—that a bank need not do anything more, in fact, much less to meet its CRA obligations.

Finally, some critical questions are unanswered

How is the public to know that a bank may have a CRA obligation to their community? Will the agencies receive comments from community groups on the CRA performance of a bank?

There are too many concerns with this proposal. We urge the FDIC and OCC to discard this NPRM, and instead work with the Federal Reserve Board and propose an interagency rule that will augment the progress achieved under CRA instead of reversing it.

Thank you for the opportunity to comment and your consideration of these comments.

Sincerely,

Rashmi Rangan
Executive Director
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