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April 9, 2020

The Honorable Joseph M. Otting
Comptroller
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20551

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: Docket ID OCC-2018-0008

Dear Comptroller Otting and Chairman McWilliams:

We write with concern regarding the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation's (FDIC) proposed rulemaking on Community Reinvestment Act (CRA) regulations.

Congress passed the CRA after years of hearings in which the Senate Committee on Banking, Housing, and Urban Affairs received testimony and data on the continued effects of government-enabled disinvestment in communities of color through redlining; the geographic disparity in branching and the provision of credit; and the resulting lack of credit available in rural and urban areas.[1] The legislative text clearly states that "regulated financial institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[2] In case there was any question about what community reinvestment meant, the Committee chairman and sponsor of the CRA, Senator William Proxmire, made clear on the Senate floor that this legislation was meant to "reaffirm that banks and thrifts are indeed chartered to serve the convenience and needs of their communities, and as the bill makes clear, convenience and needs does not just mean drive-in teller windows and Christmas Club accounts. It means loans."[3]

More than 40 years after Congress passed this fundamental civil rights law, we can still see the effects of redlining in communities across the country. In too many redlined communities, homeownership and home values remain lower than in the favored neighborhoods nearby.[4] Across the country, including in areas that were not mapped, like rural areas, large areas of poverty persist alongside areas of strong investment, and opportunities for community growth are far from equal. Unfortunately, the agencies' proposed framework seems unlikely to encourage the investment in these disinvested areas that Congress intended.

[1] *See* "Hearings of the Senate Committee on Banking, Housing, and Urban Affairs on S. 1281, To improve public understanding of the role of depository institutions in home financing," May 5-8, 1975; *see also* "Hearings of the Senate Committee on Banking, Housing, and Urban Affairs on S. 406, To encourage financial institutions to help meet the credit needs of the communities in which they are chartered, and for other purposes," March 23-25, 1977.
[2] P.L. 95-128
[3] Statement of Senator Proxmire on Amendment 314 to S. 1523, Congressional Record 123 (1977), pg. 17630
[4] "The Effects of the 1930s HOLC "Redlining" Maps," Daniel Aaronson, Daniel Harley, and Bhashkar Mazumder, Federal Reserve Bank of Chicago, SP 2017-12 Revised February 2019, available at https://www.chicagofed.org/publications/working-papers/2017/wp2017-12.

The OCC and FDIC's proposal to give banks a presumptive CRA grade primarily based on the ratio of the dollar value of all CRA activity to deposits is inconsistent with the clear Congressional intent of the CRA.[5] This framework dilutes the importance of smaller, consumer-facing transactions and community participation and fails to recognize the value of loan originations, complex investments, and services that are at the heart of the CRA.

The ratio framework the agencies have proposed forces dollar values onto activities that are not easily measured in monthly balance sheet totals but which Congress clearly intended to incentivize through CRA. These include mortgage loan originations for low- and moderate-income families and in low- and moderate-income areas. As a result, consideration of the very mortgage loans and consumer credit that Congress discussed when it passed the CRA would be lost or diluted. If loans are securitized, as most mortgage loans are, lenders would receive far less credit for originating them.

Quantifying all CRA activity in a single dollar figure, regardless of the type or complexity of that activity, also encourages banks to meet their CRA obligations with activities that produce the maximum dollar figure with the least effort. In addition to undervaluing mortgage, small business, and small farm loans, this will also disincentivize important community development activities, like Low-Income Housing Tax Credit and New Markets Tax Credit investments that can transform communities, in favor of simpler, high-volume transactions. The proposal thus threatens to undermine affordable housing, community development, and loans to the family-run businesses that are economic drivers.

In addition, by providing an expanded list of activities that receive CRA credit in any jurisdiction or circumstance, the agencies also propose to expand the types of activities that receive CRA credit while removing any assessment of whether an activity meets the needs of the local community. As a result, banks could receive credit for providing financial literacy programs that are not used by low- and moderate-income families;[6] financing hospitals or road construction that only incidentally serve low- and moderate-income people;[7] financing sports stadiums that will result in more displacement of low-income people and people of color than economic opportunity;[8] and investing in opportunity funds that already provide massive tax breaks.[9]

The agencies have also eliminated language that requires CRA activities to have a "primary purpose" of community development.[10] Instead, the proposal would provide prorated credit for where any amount of an activity – even less than 1 percent – would benefit low- and moderate-income people and communities. As a result, activities that almost entirely serve upper-income individuals could now receive CRA credit. While we support efforts to clarify the types of activities that may qualify for CRA credit and avenues for banks to get CRA activities pre-

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[5] We also note that the definition of deposits as proposed by the OCC and FDIC would exclude brokered deposits. On the same day that the FDIC voted to advance this CRA proposed rule, the FDIC voted to advance a proposal revising the definition and treatment of brokered deposits. In addition to the many other complexities of this proposal, it is unclear how the interaction of these two proposals would affect communities.

[6] 85 FR 1212

[7] 85 CFR 1211

[8] 85 CFR 1234

[9] 85 CFR 1212

[10] See definitions of community development loan and community development services at 85 CFR 1254.

approved, we do not believe that this expanded list of approved activities with no minimum level of benefit for low- and moderate-income individuals and communities is the best way to ensure that banks are listening to their communities and meeting local needs as required in the CRA statute.

Finally, we are concerned that the CRA rule as proposed will not address the lack of investment in rural areas, Indian Country, and other markets currently underserved by CRA. While the proposal does clarify when banks can receive CRA credit for activities outside of an assessment area, it is not clear why the agencies believe that banks will elect to use this clarification to perform CRA activities in rural areas and Indian Country, rather than other markets, without additional incentive. Additionally, the OCC's proposal to require banks with more than 50 percent of deposits outside of their assessment areas to designate assessment areas in any geography in which they have 5 percent or more of their deposits is likely to further allocate CRA activity to population centers, rather than to rural or other underserved areas.

It is especially concerning that the OCC and FDIC have ignored the thoughtful input of community organizations, local governments, and banks and moved forward with a proposal to assess CRA performance based on quantitative metrics before collecting the necessary data. Just the day after the agencies published this proposed rule, the OCC put out a Request for Information asking banks to voluntarily provide data essential to evaluate the impact of the agencies' proposal.[11] It is unclear how the OCC and FDIC came to the ratios and numerical targets that will form the basis of CRA evaluations under this proposal without this data, and many banks report that they do not have the data readily available to analyze themselves. Without this data, it will be impossible for members of the public, regulators, and even the banks themselves to determine how this proposal, if implemented, would alter investments in communities.

This proposal threatens to undermine more than 40 years of access to sustainable mortgage credit, small business loans, community development, and partnerships between financial institutions and the communities they serve. It weakens communities' input and expands the activities for which banks receive CRA credit to include things banks are doing in the normal course of business. Underserved communities need more access to mortgage credit, meaningful investments, and safe banking services, not less. We urge you to rescind this proposed rule and to develop a new proposal that reflects evidence, community input, and Congressional intent.

Sincerely,

SHERROD BROWN, United States Senator

CHARLES E. SCHUMER, United States Senator

RICHARD J. DURBIN, United States Senator

TAMMY DUCKWORTH, United States Senator

[11] 85 FR 1285

TAMMY BALDWIN, United States Senator

CHRIS VAN HOLLEN, United States Senator

DIANNE FEINSTEIN, United States Senator

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BRIAN SCHATZ, United States Senator

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