November 19, 2018

Via regulations.gov

Office of the Comptroller of the Currency (OCC)
Legislative and Regulatory Activities Division
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Re: Reforming the Community Reinvestment Act Regulatory Framework; Docket ID OCC-2018-0008

To Whom It May Concern:

New Economy Project offers these comments regarding the OCC’s Advanced Notice of Proposed Rulemaking (ANPR) on the Community Reinvestment Act (CRA). The OCC’s unilateral proposal of a CRA “modernization” framework falls utterly short of improving the CRA, and is clearly intended to advance the destructive deregulatory agenda embraced by Comptroller Otting and others in the administration.

The framework set forth in the ANPR would undermine the CRA by:

- Weakening the CRA’s critical focus on community credit needs in low-income neighborhoods and neighborhoods of color;
- Failing to address banks’ multiple roles in facilitating predatory lending and perpetuating poverty and segregation; and
- Encouraging ineffective, one-size-fits-all standards for assessing CRA lending, investment, and services.

The OCC should rescind this ANPR and issue a CRA proposal only if it advances the letter and spirit of the CRA. Our comments outline just some of the ways the OCC could improve the CRA.

New Economy Project’s mission is to build a just economy, based on cooperation, racial equity, and ecological sustainability. Since our organization’s founding in 1995 (as the Neighborhood Economic Development Advocacy Project, or NEDAP), we have worked closely with a wide array of community-based organizations to challenge systemic discrimination and predation by Wall Street banks and other financial services providers. Our focus has been on systemic inequities in our banking system that harm New Yorkers and serve to perpetuate poverty,
inequality, and segregation. We have a long track record of working with the CRA, and have seen, on one hand, the systematic watering down of the CRA regulations, and on the other hand, just how pivotal the CRA still proves to be.

Further watering down the CRA is clearly a move in the wrong direction. The OCC should significantly rework its proposed framework to focus on updating the CRA assessment area definition, including evaluating banks’ performance in communities of color and requiring local needs assessments; using the CRA to hold banks accountable for the actual effects of all of their products and services on people and communities; ensuring that banks that discriminate or engage in abusive, deceptive, or unfair practices do not receive Satisfactory or better CRA exam grades; and focusing on local needs rather than national metrics.

Assessment Areas & Local Racial Equity Focus

The ANPR purports to address a real problem, insofar as the current CRA rules for determining banks’ assessment areas have not kept pace with changes in how banks actually provide services and make loans. Many banks conduct a significant portion or even most of their business outside of their assessment areas. To address this discrepancy, assessment areas should be redefined to include not only geographies in which banks have branches or deposit-taking ATMs, but also geographies in which banks conduct a significant percentage of their credit card lending, account-opening or other business, or hold a significant market share of loans, services, or investments.

The OCC’s proposed revision, however, would consider activities outside of banks’ traditional assessment areas only in the aggregate. This approach is flawed, because it fails to take local needs or impact into account. The CRA regulations and Interagency Q&As issued over the last 15 years have moved the CRA farther and farther away from a focus on local needs, notwithstanding the CRA’s clear legislative intent. The OCC should not continue this pattern; rather, the agency should ensure that banks fulfill their obligation to help meet the credit needs of communities they serve.

Any updates to CRA assessment areas should focus on community needs and on addressing longstanding bank redlining. CRA exams often report on banks’ activities in the aggregate for entire metropolitan statistical areas (MSAs) or other broad geographies that are home to millions of people. Any analysis at the MSA level, for example, glosses over the role banks play in perpetuating segregation and inequality. Neighborhood-level discrimination and other inequities are concealed in such aggregated data.

To determine whether banks are serving all neighborhoods equitably, within bounds of safe and sound banking principles, the OCC should compare banks’ lending, services, and investments in predominantly white and non-white neighborhoods. Online banking is not an adequate substitute for physical branch locations, and should not be counted in neighborhood-based analyses. CRA exam reports should document any disparities by race or income level, by neighborhood or among demographic groups, and the results of these analyses should factor heavily in banks’ CRA exam results. These approaches would also help banks identify opportunities for community development investments, new branches, and other activities.
Metrics and Performance Evaluation
The ANPR includes a proposed new metrics-based framework for CRA. Like the assessment areas proposal, this broad proposal represents a step in exactly the wrong direction. For starters, a broad metrics-based framework is entirely unworkable for assessing whether large banks are in fact meeting the convenience and needs of specific communities they serve. In addition, depending on how it is applied, a metrics-based framework is likely to crowd out community input, critical to the exam process.

The framework, including the OCC’s proposed weightings of CRA-eligible activities, seems like nothing more than an invitation to banks to game the system. Instead, the OCC should require banks to provide loans, investment and services that meet community credit needs, advance equity, and help build community wealth.

CRA Exams Must Include All Affiliates
Banks should not be permitted to pick and choose whether to include affiliates in their CRA exams, but should be evaluated on the full scope of their lending, including that of all affiliates. By allowing them to elect whether to report affiliate lending, banks are able to mask discriminatory and harmful lending. This point is put in stark relief by the long list of banks that acquired notorious predatory mortgage lending companies, but elected not to report their affiliates’ lending for CRA purposes. It is simply untenable that a bank can receive a Satisfactory or Outstanding CRA rating when a major portion of its business consists of predatory lending that is devastating families and communities.

“Innovation” Is Too Often a Smokescreen for Predatory Lending
Banks often tout and receive CRA credit for their “innovative” and “flexible” lending programs. Unfortunately, many “innovative” programs for which banks have earned CRA credit have ultimately proven harmful to the low- and moderate-income people and people of color the banks purported to help—not to mention the ways these programs have stripped wealth from low- and moderate-income neighborhoods and communities.

Wells Fargo’s “deposit advance” payday loan product, with triple-digit interest rates, exemplifies an “innovative” product that is in fact a usurious debt trap for many people. Low- and no-documentation mortgage loan programs are another example. Banks received positive CRA consideration for these programs, even though these were by definition unsound loans that drove millions of people straight into foreclosure and caused long-term distress for millions of families and neighborhoods.

Under the guise of innovation, banks also facilitate predatory lending, helping fintechs and other non-bank financial companies circumvent state usury and consumer protection laws. Payday lenders, for example, “partner” with banks to make loans that violate states’ interest rate caps. Federal regulators, including the OCC, recognized the dangers of “rent-a-bank” arrangements and issued guidance warning banks against using them more than a decade ago. Any updates to CRA regulations should make clear that the OCC will not permit such partnerships and opportunistic rent-a-bank arrangements that facilitate high-cost, predatory, or abusive lending, or any circumvention of state law.
In addition, the OCC should downgrade banks’ CRA ratings if the banks offer high-quality, flexible lending programs, but steer borrowers and prospective borrowers of color to less advantageous products or second-tier products offered by fintech or other partners.

CRA Exams Should Meaningfully Reflect Banks’ Actual Practices

The ANPR fails to address major deficiencies in CRA exam standards that make it possible for banks to receive Satisfactory and even Outstanding CRA ratings, even when banks engage in and have been sanctioned for discriminatory, abusive, deceptive, or unfair practices. Too often, banks receive CRA ratings that suggest that they are meeting community needs, even when it has been well documented that the banks are actively harming low- and moderate-income communities and people.

That is, CRA examinations have historically overlooked, and sometimes even rewarded, discriminatory lending practices—such as redlining and reverse redlining, illegal and abusive mortgage servicing practices, high-cost consumer lending, overdraft abuses, and other harmful activities—in which banks engage, both within and outside their assessment areas.

Any update of CRA regulations should ensure that banks found to engage in illegal or discriminatory activities will automatically receive a CRA rating of Substantial Noncompliance.

Conclusion

The OCC’s proposed framework for updating the CRA prioritizes the convenience and needs of large national banks over the convenience and needs of communities throughout this country, in clear disregard for the purpose and letter of the CRA. Instead, the agency should focus on fulfilling its statutory obligations under CRA, by assessing whether national banks are equitably meeting community credit needs. In short, the OCC should not pursue the changes to CRA regulations set forth in the ANPR.

Thank you for the opportunity to comment.

Sincerely,

New Economy Project