April 8, 2020

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

Federal Deposit Insurance Corporation
Executive Secretary Section
550 17th Street, N.W.
Washington, D.C. 20429

RE: Notice of Proposed Rulemaking, Community Reinvestment Act Regulations; RIN 3064-AF22

Dear Comptroller Otting and Chairman McWilliams:

New Economy Project strongly opposes the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC)’s proposed changes to the Community Reinvestment Act (CRA) regulations. The agencies’ proposed CRA regulations would effectively dismantle CRA to advance a destructive deregulatory agenda – made even worse by your agencies’ failure to extend the comment deadline during this period of unprecedented crisis.

Contrary to the agencies’ assertions that their proposed “updates” to CRA would increase clarity and CRA activity, implementing the proposed regulations would in fact harm communities of color and low- and moderate-income communities. It would decrease access to bank branches, as well as responsible and affordable home and small business loans, and remove key incentives for banks to meet local community credit needs.

Maintaining the April 8, 2020 comment deadline in light of the COVID-19 pandemic seriously undermines the credibility of this process, as many people and groups no longer have the resources to participate fully. There is no reason for the agencies not to extend the comment period, except to rush through this cynical and ill-conceived proposed regulation. The agencies should be working to ensure that CRA encourages banks to act swiftly in response to urgent community needs emerging from the COVID-19 pandemic, not issuing regulations that would harm communities of color and low- and moderate-income communities hardest hit by COVID-19.
New Economy Project’s mission is to build a just economy, based on racial and economic justice, cooperation, and ecological sustainability. Since our organization’s founding in 1995 (as the Neighborhood Economic Development Advocacy Project), 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 addressing 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.

The agencies’ proposed CRA regulations would undermine the CRA by:

- Weakening the CRA’s critical focus on community credit needs in low-income neighborhoods and neighborhoods of color—particularly with respect to affordable housing and small business lending;
- Encouraging bank branch redlining, by nearly eliminating consideration of branch locations in low- and moderate-income neighborhoods in CRA exams;
- Awarding CRA consideration for large, easily-financed infrastructure projects, like stadium construction in Opportunity Zones, that do not directly benefit low- or moderate-income people or communities;
- Reducing transparency and public participation in the CRA exam process;
- 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 and FDIC should rescind this Notice of Proposed Rulemaking (NPRM) and join with the Federal Reserve Board to issue updated CRA regulations that advance, rather than undermine, the purpose of the CRA.

Weakening CRA

The agencies’ proposed regulations would dramatically reduce CRA’s focus on low- and moderate-income communities – in clear contradiction of CRA’s intent to address redlining. Instead of weakening CRA, the agencies should enact reforms that would increase responsible and responsive bank activity in neighborhoods of color and in low- and moderate-income neighborhoods. In this NPRM the agencies ignore persistent racial disparities in lending that they could easily take steps to address by strengthening the fair lending reviews on CRA exams and adding examinations of bank activities in communities of color to CRA exams.

The NPRM would relax the definition of affordable housing to include middle-income housing in high-cost areas. In addition, the NPRM would count rental housing as affordable housing if lower-income people could theoretically afford to pay the rent without verifying that lower-income people would actually be tenants. Similarly, the NPRM would loosen the definitions for small businesses and farms, increasing the small business revenue limit from $1 million to $2 million and raising the limit to $10 million for family farms.
Although the proposal would retain a retail test that examines home, small business, and consumer lending to low- and moderate-income borrowers and communities, this test would only be pass or fail. In contrast, the current retail test has ratings that count for a significant portion of banks’ overall CRA ratings. Moreover, the proposal would almost certainly result in branch closures, especially in communities of color and low- and moderate-income neighborhoods, since it would eliminate the test that scrutinizes bank branching and provision of deposit accounts to low- and moderate-income people.

The NPRM would add financing of large infrastructure projects, such as bridges, as a CRA-eligible activity. Even financing stadiums in Opportunity Zones would be an eligible activity. This change is patently ridiculous and runs contrary to the purpose of the CRA.

Reducing Transparency and Public Participation
Although the NPRM recognizes changes in the banking industry, such as the increased use of online banking, the NPRM’s changes to assessment area definitions for CRA exams are deeply problematic and would significantly reduce transparency and public participation in the CRA exam process. Neither the agencies nor the public can evaluate the agencies’ proposal to designate additional geographical areas on exams in the case of internet banks, because there is no publicly-available data on the location of banks’ account-holders. The public does not have a fair chance to offer comments on the effectiveness of significant proposed changes for which impacts are unknown. Similarly, if this proposal were implemented, it would be impossible for community members to determine if they are in fact in a given internet bank’s assessment area, without easy-to-access public data.

Turning a Blind Eye to Predatory Lending
The NPRM 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.

In addition to turning a blind eye to obvious predatory lending, regulators often award banks CRA credit for their “innovative” and “flexible” lending programs. Unfortunately, many “innovative” programs for which banks have earned CRA credit, like “deposit advance” loans or no-documentation mortgages, have been exploitative in nature and proven harmful to the low- and moderate-income people and people of color the banks purported to help—and have served as vehicles for banks to strip wealth from low- and moderate-income neighborhoods and communities of color.

Indeed, CRA examinations have historically overlooked, and sometimes even rewarded, discriminatory lending practices by banks—such as redlining and reverse redlining, illegal and abusive mortgage servicing practices, high-cost consumer lending, overdraft abuses, and other harmful activities—both within and outside their CRA assessment areas. The agencies also do
not require inclusion on exams of bank mortgage company affiliates, many of which engaged in abusive lending during the financial crisis.

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. 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 or second-tier products offered by fintech or other partners.

**Ineffective Assessment of Banks’ Activities**

The agencies propose an evaluation system that would further inflate CRA ratings while decreasing banks’ responsiveness to local needs. The agencies propose a one ratio measure consisting of the dollar amount of CRA activities divided by deposits. This ratio would likely encourage banks to find the largest and easiest deals anywhere in the country, rather than focusing on local needs. Since banks could fail in one half of the areas on their exams and still pass under the proposal, the likelihood of banks seeking large and easy deals and ignoring more complex local needs would increase. Also, the proposal would relax requirements that banks serve areas where they have branches first before they can seek deals elsewhere.

**Conclusion**

This deeply flawed proposal would result in banks making fewer loans and investments and providing ever-more limited services in low- and moderate-income communities and communities of color. This backtracking will violate the agencies’ obligation under the CRA statute to ensure that banks are continually serving community needs. The FDIC and OCC need to discard the NPRM, and instead work with the Federal Reserve Board to propose an interagency rule that will advance the goals of the CRA instead of undermining them.

Thank you for the opportunity to comment.

Sincerely,

Alexis Iwanisziw
Deputy Director,
New Economy Project