NEW YORK HOUSING CONFERENCE

April 7, 2020

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

Submitted electronically via regulations.gov

RE: RIN 1557-AE34, Docket ID OCC-2018-0008, Reforming the Community Reinvestment Act Regulatory Framework

To Whom It May Concern:

I am writing on behalf of New York Housing Conference (NYHC) in response to the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency's (OCC) Notice of Proposed Rulemaking (NPR) seeking comments on the proposed changes to Community Reinvestment Act (CRA). NYHC is a nonprofit affordable housing policy and advocacy organization. We represent a statewide coalition of affordable housing practitioners, advocates and experts in real estate, finance and community development. Our mission is to advance City, State and Federal policies to support the development and preservation of decent and affordable housing for *all* New Yorkers.

CRA requires banks to lend money, provide services and support community development activities in the communities where they are chartered to do business or receive deposits. This pivotal law was passed in 1977 to combat redlining. It mandates that banks address the needs of all the local communities they serve, particularly low- and moderate-income (LMI) neighborhoods. As a result, over the past forty years, CRA has leveraged trillions of dollars in loans, investments and services for LMI communities nationwide and billions annually in New York City, where NYHC is located.[1]

CRA regulations consider affordable housing to be a key component of community development, and as a result, banks represent one of the most important sources of affordable multifamily housing investment due to their investments in Low Income Housing Tax Credits (LIHTC) and Tax-Exempt Private Activity Multifamily Housing Bonds and loans and letters of credit to affordable housing developers. With renters representing over two thirds of New York City's population, and the majority of them living in multifamily apartment buildings, New York greatly relies on affordable multifamily housing development and preservation investment to protect the housing affordability for thousands of New Yorkers.[2] Also, CRA importantly helps create new affordable homeownership opportunities and access to financing for low and moderate-income New Yorkers, offering the chance to build wealth and bring stability to neighborhoods. The Association for Neighborhood and Housing Development estimates that over 330,000 affordable multifamily housing units have been built in New York City alone due to CRA-leveraged private loans and investments since the law's passage.[3]

In New York, CRA has not only created a vital and dependable source of affordable multifamily housing investment, it also has expanded homeownership opportunities and resources, provided vital banking services to underserved neighborhoods, and had an overall positive impact on the economy by creating

[1] ANHD. 2018. The State of Bank Reinvestment in New York City: 2018.
[2] NYU Furman Center. 2018. State of New York City's Housing and Neighborhoods in 2017.
[3] ANHD. 2018. The State of Bank Reinvestment in New York City: 2018.

jobs and promoting small business development in LMI communities. NYHC is deeply concerned that FDIC and OCC's current approach to reforming this critical law, outlined in the NPR, would significantly diminish the value and quality of bank-supported community reinvestment. While we agree CRA is overdue for modernization due to changes in banking and technology, we disagree with the current approach taken by the OCC and FDIC.

NYHC's strongly believes for any CRA reform to be valuable and successful, it must both be the product of joint rulemaking of all three regulators and it must preserve and strengthen CRA's standards for local community reinvestment. Also, CRA should not be overhauled in the midst of a national crisis. We urge the OCC and FDIC to abandon their current proposal and later work jointly with the Federal Reserve to come up with a unified and holistic solution that would not only provide banks with a consistent and transparent CRA evaluation system, but also ensure that the quality and impact of CRA investments for LMI people and communities do not diminish. Given this, we have serious concerns about the following proposals in the NPR:

Proposed Changes Would Reduce the Quality & Impact of CRA Investments in Local LMI Communities

We oppose the NPR's proposed CRA performance evaluation method, the aggregate balance sheet ratio or the one-ratio (as it is commonly called). This metric reduces a financial institution's CRA evaluation to an arbitrary mathematical formula that would make CRA exams considerably less effective in evaluating how banks are responding to local needs. The one-ratio metric would measure the dollar amount of all CRA-qualifying activities and divide that figure by bank's deposits. While we recognize the need to modernize CRA, the proposed metric would not be able to accurately assess a bank's local performance and actually might incentivize banks to make fewer investments in LMI communities.

Currently, CRA exams evaluate and rate bank performance in geographically based assessment areas where banks have branches or ATMs. Due to this local obligation, banks invest in having local CRA teams, with devoted staff and resources tailored to the local needs of community and market. However, the proposed method of evaluation could encourage a bank to strive for one large target number goal and as a result could negatively impact its approach to and the quality of its community lending, services, and investment.

In addition, based on the proposed changes, large banks will no longer have separate lending, investment and service tests, which currently combine to make up the bank's overall performance score. This is worrisome as this could allow banks to meet their CRA standards by focusing heavily on only one type of activity, ie. lending, while reducing their local investments and services. As a result, this could lead to the reduction of branches and services in LMI areas, and the loss of incentive for banks to make innovative and impactful loans, products and investments targeted for LMI communities.

The one-ratio approach becomes even more problematic and less helpful in assessing a bank's adherence to its local CRA obligation, when taking into consideration that the NPR not only greatly expands what types of activities count for CRA credit (including activities that are not specifically directed at lower-income people or communities such as infrastructure projects and a stadium investment in an Opportunity Zone), but also widens the pool of assessment areas (for banks that receive at least half of their deposits outside their physical branch footprint) that count for CRA investment. By greatly expanding where banks can get CRA credit, it minimizes banks' need to focus on local community needs and partnerships. NYHC feels strongly that any proposals for territory expansion for CRA assessment must first protect the focus of CRA investment in existing assessment areas, as these areas still have a critical need for continued CRA-leveraged investments. The proposals in the NPR will collectively cause a reduction in CRA investments locally, as it prioritizes quantity over quality, and larger deals over smaller, more impactful ones based on local needs.

In addition to the NPR's expanded assessment areas, banks now will also have the ability to focus its investments in some parts of its assessment areas and exclude others entirely under this proposal. In fact, a bank could disregard fifty percent of its assessment area and still pass its CRA exam. This means a financial institution could theoretically target all of its investments in rapidly gentrifying or lower-risk neighborhoods of its assessment areas and ignore high-poverty or higher-risk neighborhoods. In New York City, black and Hispanic New Yorkers are overrepresented in areas of high poverty when compared to their overall shares of the population and could be disparately impacted by this proposal if banks were to target their investments in only some parts of their assessment areas.[4] This proposal goes against the intent of the Community Reinvestment Act to prevent redlining and ensure equitable investments in LMI communities.

Furthermore, CRA examiners currently evaluate bank performance based on both qualitative and quantitative data. Examiners are required to solicit and consider comments from community stakeholders about a bank's performance in its assessment areas. This is a vital part of CRA. This qualitative layer of CRA exams helps ensure that banks are held accountable to the communities in which they operate. The NPR's scoring metric is solely quantitative in its approach to CRA performance measurement, and will not be able to tell an examiner, a bank, or a member of the public how responsive a bank is to the needs of the local communities in its assessment areas. This new approach would result in the loss of the local community's voice on whether a bank's community investments are actually meeting their needs.

Proposed Rule Would Result in a Reduction in Multifamily Affordable Housing Production

NYHC is particularly concerned that the one ratio metric and the expansion of the types of investments and lending that would qualify for CRA credit could make financial institutions less likely to invest in multifamily affordable housing rental projects. Affordable multifamily housing in NY and across the country heavily depends on the equity generated from LIHTC investments to be developed and preserved. An estimated 85 percent of Housing Credit investments are made by CRA-motivated institutions.[5] By expanding the types of activities that get CRA credit, banks may shift the types of projects they invest in, which could lead to a reduction in demand for LIHTC. Less competition for LIHTC would cause a decrease in pricing and result in a reduction in the amount of private equity generated for affordable housing projects. Ultimately, these proposed changes would likely lead to a decrease in affordable housing production, jobs and economic development activity in New York and across the country. In New York State alone, LIHTC annually generates 26,000 affordable housing units, 66,000 thousand jobs and $11 billion in economic activity.[6]

In conclusion, CRA has leveraged trillions of dollars in investment for affordable housing and community development activities since its inception. It is too valuable of a resource for LMI communities for reform to be done rashly, especially in the midst of a national public health crisis. NYHC urges the OCC and FDIC to abort its current quantitative-focused reform approach and instead work jointly with the Federal Reserve Board to craft new reform proposals that both provide clear and consistent CRA grading metrics for banks and protect the quality and impact of investments in local communities.

Sincerely,

Rachel Fee

Rachel Fee
Executive Director, New York Housing Conference

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[4] City of New York. 2018. Where We Live NYC: Where New Yorkers Live.
[5] CohnReznick. 2018. Housing Tax Credit Investments: Investment and Operational Performance.
[6] NYSAFAH. 2017. Report on Economic Impacts of Affordable Housing on New York State's Economy by HR&A Advisors Inc.