

November x, 2018

Comment regarding "Reforming the Community Reinvestment Act Regulatory Framework"
RE: Docket ID OCC-2018-0008

To Whom it May Concern:

This letter offers comment from the National Alliance of Community Economic Development Associations (NACEDA) to the Office of the Comptroller of the Currency's (OCC) Advance Notice of Proposed Rulemaking (ANPR) regarding the Community Reinvestment Act (CRA).

The recent ANPR process and proposal misses a significant opportunity to improve-upon and maximize credit, services, and investments to low and moderate-income people and places, as well as the mission-oriented community development organizations that deploy those resources and represent local community development needs. Passing CRA exams is not a problem. Ninety-eight percent of banks have passed their exams in recent several years. Despite that fact, the ANPR is almost exclusively oriented toward making CRA compliance easier for currently-regulated financial institutions (banks) and does so at the expense of the lending and credit needs of low and moderate-income people and places.

The ANPR fails in several substantial and fundamental ways.

- 1) It fundamentally undermines the values and spirit of CRA by not having support from the other FDIC and Federal Reserve Board of Governors.
- 2) Efforts in the ANPR to ease compliance through a 'one-ratio approach' come at the expense of serving the credit and investment needs of LMI communities, communities the traditional market economy fails to serve, further compelling wealth and investment disparities in LMI communities, in particular communities of color and rural communities.
- 3) The ANPR does not consider whether additional types of institutions, other than banks, have an obligation to provide loans, investments, and services in the places in which they do business.
- 4) The ANPR fails to incorporate any punitive measures that should be considered when determining a CRA score or grade. Violations of fair lending, fair housing, or other community development-related abuses should be taken into consideration for CRA scoring purposes.
- 5) The ANPR fails to make explicit the role of mission-based associations and membership organizations that have the primary purpose of serving the capacity needs of community development organizations, such as NACEDA's members.

The ANRP fundamentally undermines the values and spirit of CRA by not having support from the FDIC and Federal Reserve Board of Governors

The three CRA regulators have always acted in coordination to make rules. One regulator acting alone, at best, creates an impotent and impractical process and result that could ultimately undercut existing CRA-clarity and credibility among financial institutions. This approach ignores over a decade of work around the concept of CRA reform done by all three regulators, financial institutions, advocates, and community groups. To the extent that the CRA is significantly crippled by this effort, it will undermine safeguards in the financial services sector and have ripple effects on the funding and financing structures of most of our nation's socially-motivated investors, from housing to education to community health and more.

Efforts in the ANPR to ease compliance through a 'one-ratio approach' come at the expense of serving the credit and investment needs of LMI communities, communities the traditional market economy refuses to serve, further exacerbating wealth and investment disparities in low and moderate-income communities, communities of color and rural communities.

The questions posed in the ANPR call into question the fundamental framework of the CRA regulatory process and even presuppose the consideration of deeply problematic changes, including the one-ratio proposal and the ANPR's treatment of assessment areas. Anointing a single ratio as the determining factor of CRA compliance necessarily decreases the significance of assessment areas and a financial institution's obligation to *identify and serve local* needs. Market forces already discourage investment in hard-to-serve areas, such as rural areas and economically struggling communities, which are too often disproportionately populated by people of color. Examiners are required to solicit and consider comments from community members about performance in assessment areas. This critical part of CRA, considering public comments on local performance, will be significantly undermined if the one ratio replaces assessment areas or significantly diminishes the importance of assessment areas and public input on CRA ratings.

Resource deployment around physical bank branches is at the heart of CRA's spirit and intent. Investment, lending, and services around physical bank branches are and will remain critical to the health and prosperity of LMI people and places.

Further, bank activities have impact and consequences well-beyond the geography that surrounds a branch. Banks should have the flexibility to make 5-15% of their approved CRA lending and investments to benefit LMI people that reside in persistent poverty census tracts located anywhere in the United States or the territories.

It is NACEDA's belief, and was the Act's legislative authors' intent, to utilize CRA so that all communities have access to capital, investments, loans, and services. This ANPR misses an opportunity to implement that intent in a modern context. We recommend the OCC reconsider its proposal and ask additional questions.

The ANPR does not consider whether additional types of institutions, other than banks, have an obligation to provide loans, investments, and services in the places in which they do business.

Advocates, community organizations, regulators, and currently-regulated financial institutions, in the past, have all questioned whether additional types of institutions, such as mortgage servicing companies, credit unions, and insurance companies, among others, should be subject to CRA-type regulations. An ANPR process such as this offers an opportunity to officially gather public information about whether including such institutions would be practical and beneficial to serving the lending, service, and investments needs of LMI communities.

There should be a more level playing field across the financial services sector with regard to CRA and community reinvestment obligations. Non-bank mortgage companies, fintech lenders and credit unions with assets more than \$2 billion dollars should be subject to CRA obligations and examinations. Regulators should actively communicate with members of Congress to encourage a more level playing field in the financial services industry by expanding the applicability of CRA.

Regardless, this ANPR fails to even ask that question. That failure misses a significant opportunity. The questions asked are almost exclusively oriented at making regulation less burdensome on currently-regulated financial institutions, which is an unnecessarily narrow approach, given the exploratory nature of an ANPR.

The ANPR fails to incorporate any punitive measures that should be considered when determining a CRA score or grade. Violations of fair lending, fair housing, or other community development-related abuses should be taken into consideration for CRA scoring purposes.

Similarly, advocates, community organizations, regulators, and currently-regulated financial institutions, in the past, have all considered how violations of fair lending/housing, discrimination, and fraudulent abuses should be considered as part of a CRA assessment. NACEDA believes violations such as these by banks must be considered in their CRA ratings. Ratings must be lower for banks that have a track record of failing to lend to specific racial or ethnic demographics in the markets they serve.

Again, however, the ANPR fails to even ask the question. That failure misses a significant opportunity. The questions asked are almost exclusively oriented at making regulation less burdensome on currently-regulated financial institutions, which is an unnecessarily narrow approach, given the exploratory nature of an ANPR.

The ANPR fails to make explicit the role of mission-based associations and membership organizations that have the primary purpose of serving the capacity needs of community development organizations, such as NACEDA's members. These community development

network organizations are critical to add capacity, provide training, and develop new resources for the community development sector's ability to serve LMI communities. Clarity around these association's role is critical.

Summary

For decades, CRA-related investments have preceded and led private sector real estate markets in underinvested communities. The regulation on financial institutions has incentivized private capital investments and loans where it otherwise would not have gone. It has supported the critical community-based and mission-oriented nonprofit development organizations necessary for communities to build prosperous places for *all* its residents. Since 1996, banks have issued almost \$2 trillion in small business loans and community development loans and investments in low- and moderate-income communities.

A strong CRA is necessary.

As the OCC contemplates reform, it must not rush to propose or implement changes that will make banks less accountable and responsive to community needs, which would be counter to the purpose of CRA. If the OCC proceeds to significantly diminish the importance of assessment areas on CRA exams, the progress in increasing lending to low- and moderate-income neighborhoods will be halted. NCRC, for example, estimates that low- and moderate-income neighborhoods could lose up to \$105 billion in home and small business lending nationally over a five-year time period, under the approach outlined in the ANPR.

We are concerned that a one ratio approach, as proposed by the OCC, would make CRA exams considerably less effective in evaluating how banks are responding to local needs in metropolitan areas and rural counties. The one ratio will diminish lending, investment, and service opportunities in already hard-to-serve areas.

In conclusion, the ANPR misses an opportunity to ask critical questions about the future of the Community Reinvestment Act, questions that have been informally proposed for over a decade. The OCC either forgot to include those questions as part of the ANPR or is disingenuous about its stated goal to robustly modernize the Community Reinvestment Act.

Easing bank anxiety via the one ratio and diminishing the importance of branches, assessment areas, and public input will decrease lending and access to banking in the communities that need it the most. The federal agencies also must not establish easier exams for any category of banks that excuse them from current requirements for community development financing. We urge the OCC to go back to the drawing board and develop reform proposals with the Federal Reserve Board and the FDIC.

Thank you for your attention to our comments.

Sincerely,