



October 29, 2021

Comment on OCC Proposal to Rescind its 2020 rule regarding the Community Reinvestment Act Regulations, Docket ID OCC-2021-0014

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) and the 108 undersigned organizations strongly support the proposed rescission of the harmful 2020 Office of the Comptroller of the Currency's (OCC's) final rule on the Community Reinvestment Act (CRA). NCRC is an association of more than 600 community organizations that use CRA on a daily basis to increase access to capital and credit to traditionally underserved communities. Our member organizations and allies often work in partnership with banks to design and execute CRA-related loan products and programs.

The OCC's final 2020 rule would violate the statutory purpose of CRA by diverting banks from lending and investing in formerly redlined communities

The final 2020 rule violated CRA's statutory purpose by threatening to divert bank lending, investing and services from the redlined communities that CRA targeted for reinvestment. The CRA statute requires federal bank regulatory agencies to evaluate and rate banks based on their lending and service in communities, including low- and moderate-income (LMI) communities. Since CRA's passage in 1977, the federal bank agencies developed CRA exams with a series of performance measures that focused on evaluating the extent to which banks made loans, investments and offered services to LMI borrowers and communities.

The OCC's final 2020 rule would have significantly diluted CRA's focus on LMI communities and meeting the variety of credit needs in those communities. The rule defined a new set of activities that qualified for CRA consideration including financing large infrastructure such as bridges. A bank could receive CRA consideration for an activity even if it "partially" benefited LMI borrowers or communities. These rules would have motivated banks to finance large infrastructure as relatively quick and easy ways to comply with CRA while ignoring pressing credit needs in LMI communities.¹

Under the OCC's final 2020 rule, the CRA evaluation measure would increase incentives to finance large-scale projects that did not meet needs in LMI communities. The CRA evaluation measure would be a ratio of the dollar amount of CRA activities divided by bank deposits. In order to increase the numerator in this ratio, banks would focus their attention on large projects. Thus, the new definitions of CRA qualified activities combined with the CRA evaluation measure would divert bank attention from the plethora of credit needs in LMI communities including needs for microloans for very small businesses or mortgages of lower dollar amounts

¹ NCRC Analysis of the OCC's Final CRA Rule, June 15, 2020, <https://www.ncrc.org/analysis-of-the-occs-final-cra-rule/>

in LMI communities. The purpose of CRA, returning lending and investing to formerly redlined communities, would have been frustrated by the final 2020 rule.

The rule had a number of other damaging elements that would have further depressed bank reinvestment in LMI communities. For instance, the retail lending test would have been graded on a pass/fail basis instead of a rating, as it was before the rule. Ratings more accurately reflect distinctions in performance than a pass/fail grade. In addition, the lending test rating for large banks had the largest weight or contribution to the overall rating than ratings on the investment or service tests. This would no longer be the case under the final 2020 rule. Thus, the very subtest of the CRA evaluation that assesses whether a bank is lending in LMI communities, instead of continuing the redlining practice of refusing to lend, would have been rendered toothless. Further, as the OCC's proposal for rescission acknowledged, the definition of banking "deserts" in the final rule "could encompass the vast majority of geographic areas in the country"² and would thus be ineffective in directing bank attention to truly underserved areas of the country.

The 2020 final rule had several other harmful provisions including the following:

- The rule would have minimized the value of public participation by deleting from the regulation the requirement that examiners consider the public's views on a bank's performance. Instead, the regulation would merely require the examiner to consider the public's views on the credit needs and opportunities for banks to satisfy those needs.
- The rule would have eliminated the service test for large banks. Therefore, the consideration of the distribution of banks branches in LMI tracts and the availability of bank services and accounts in these tracts would have been considerably diminished. The final rule's consideration of branches and services in the CRA evaluation measure was convoluted and would have counted less than the previous service test to the overall rating.³
- The final rule would have substantially diminished the incentives of banks to respond to the needs of their assessment areas containing their branches. For instance, smaller banks with five or fewer assessment areas could fail their exams in up to half of their areas and still pass.⁴ This leniency would have been extended to a sizable number of banks under the OCC's final rule.

² Office of the Comptroller of the Currency (OCC), Community Reinvestment Act (CRA) Regulations, Federal Register, Vol. 86, No. 178, Friday, September 17, 2021, Proposed Rules, p. 52030

³ NCRC Analysis of OCC Final Rule

⁴ NCRC v. OCC, complaint, page 35 lines 4-8, <https://democracyforward.org/wp-content/uploads/2020/06/CRA-Complaint-06.25.20.pdf>

The vast majority of comments on the final 2020 rule were in opposition and the OCC now realizes an interagency approach is best for updating CRA

The final 2020 rule was so flawed that the great majority of commenters, banks as well as community groups, opposed it.⁵ Several banks were concerned that boiling down the CRA evaluation and rating to a single dominant measure would ironically pose new and difficult data reporting requirements such as the need to convert all activities including community development service activities to dollars. In addition, they expressed concerns that the CRA evaluation measure did not adequately account for economic cycles, such as recessions, when the dollar amount of CRA activities would decrease.

In its proposed rescission, the OCC correctly stated that “the disproportionate effect of the COVID-19 pandemic on minorities and rural and LMI communities provided further evidence of the need to revisit the June 2020 Rule with the goal of better addressing the financial services needs of vulnerable communities coming out of the pandemic.”⁶ This acknowledged that the final 2020 rule would have further neglected communities of color disproportionately impacted by the pandemic by diverting bank attention from needs in LMI and underserved communities in favor of large infrastructure projects.

In addition, the OCC recognized the desirability of interagency rulemaking that establishes consistent rules for all banks and provides a better opportunity for “improvements to a modernized CRA regulatory framework.”⁷ As described below, communities have improved opportunities to revitalize economically if banks are operating under a consistent and rigorous interagency rule.

Transition rules must promote the same rules for OCC banks as for banks supervised by the Federal Reserve Board and the Federal Deposit Insurance Corporation

In its proposed rescission, the OCC included transition rules for a few elements of the final 2020 rule that are already in effect and that OCC-regulated banks have been following. Since October 2020, OCC-regulated banks have been able to qualify activities under the definitions of the final 2020 rule. For example, a bank on its next CRA exam could receive credit for a community development activity such as a large infrastructure project that partially benefits LMI communities. A bank that in good faith engaged in an activity sanctioned by its regulator cannot be unfairly penalized by a ruling that the activity cannot qualify on its next CRA exam.

⁵ The OCC’s final rule admits that the minority of commenters supported it. The final rule stated, “Although commenters disagreed with the approach outlined in the proposal, the agency ultimately agreed with the minority of commenters who expressed support for the proposed framework.” See Office of the Comptroller of the Currency (OCC), *Final Rule, Community Reinvestment Act Regulations, Docket ID OCC–2018–0008*, Federal Register, Vol. 85, No. 109, Friday, June 5, 2020, p. 34738, <https://www.federalregister.gov/documents/2020/06/05/2020-11220/community-reinvestment-act-regulations>

⁶ OCC, CRA Regulations, Federal Register, September 2021, p. 52030.

⁷ Ibid.

However, this example illustrates the damage that has already been done by the final 2020 rule. Thus, it is imperative to rescind all aspects of the final 2020 rule as quickly as possible.

Until the agencies promulgate new CRA regulations on an interagency basis, the OCC must require that banks it regulates abide by the current rules followed by FDIC- and Federal Reserve-supervised banks. If a uniform set of rules do not apply to all banks, community development projects in LMI and underserved communities would be more difficult to execute. For example, if community-based organizations are seeking a consortium of banks to finance a complex affordable housing and economic development project in a LMI community, the organizations will have a harder time assembling bank partners if some of the banks in their area adhere to a different CRA rule. OCC-regulated banks could be less interested in this project than an easier large scale infrastructure project outside of the underserved communities. Until all banks operate under the same set of CRA rules, the level of financing for critically needed projects in LMI and underserved communities will be depressed.

In its proposal, the OCC asked specific questions about transition rules. The responses below demonstrate why the transitions back to the previous interagency rule should occur as quickly as possible. The OCC appears to be undecided about whether to continue with some elements of the final 2020 rule. NCRC urges reversion back to the previous rule without any lingering elements of the 2020 rule:

Data reporting should resume immediately for banks re-classified as large banks

According to the OCC, some large banks were re-classified as intermediate small banks (ISBs), under the final 2020 rule, by increasing the asset threshold to \$2.5 billion as the upper limit for ISB classification. Therefore, many of these formerly large banks likely ceased data reporting of CRA small business and farm loans since ISB banks do not report this data.⁸ These banks have not operated their data reporting systems for approximately one year (the final 2020 rule's asset size categories were effective October 2020).

However, these banks should be able to resume collecting data in short order as they most likely have retained their data reporting infrastructure and software programs. If the OCC rescinds its final 2020 rule and reverts to the previous interagency rule by January 2022, these banks should be required to collect data for the year 2022 and not allowed a grace year as the OCC proposes in the NPR (in other words, OCC would not require data collection in 2022 but require it in 2023). The OCC could modestly increase its tolerance for quality and validity errors for the 2022 data submission for these banks as a way to facilitate the reinstated data reporting requirements. The publicly available small business and farm data is critical for assessing whether community needs are being met and therefore data reporting should be resumed immediately.

⁸ OCC, CRA Regulations, Federal Register, September 2021, p. 52033.

The 2020 definition of CRA qualified activities must be rescinded

As discussed above, OCC-regulated banks have operated with the definition of “qualified activities” under the final 2020 rule for approximately the last year.⁹ It would be unfair for the activities that have already been conducted to lose their qualification status since the banks’ regulatory agency issued a rule allowing these activities to count on CRA exams. However, the activities qualified under the final 2020 rule should immediately lose CRA eligibility as soon as the rule is rescinded.

The treatment of outside of assessment area activities cannot be based on the final 2020 rule

The OCC’s final 2020 rule liberalized consideration of outside of assessment area activities, providing possible credit for activities conducted anywhere in the country as opposed to the previous restriction for retail banks to statewide or regional areas outside of assessment areas.¹⁰ Assessment area issues are complicated and should not differ in a piecemeal fashion for banks supervised by different agencies. A deliberative and thoughtful process should carefully consider assessment area reform, including when and how activities outside of assessment areas should count. In addition, improved data, including granular community development loan and investment data, must accompany any assessment area reform so that the agencies and the public have enhanced abilities to measure bank performance inside and outside of assessment areas.

Allowing the final 2020 rule to continue to apply to OCC-regulated banks regarding outside of assessment area activities during a transition period will create inconsistencies among banks’ willingness to consider activities in LMI and underserved communities in assessment areas due to which agency regulates the banks. This could throttle critical community development projects as discussed above. The date of the rescission of the final 2020 rule must also be the date of deletion of the 2020 outside of assessment area procedures.

Community development confirmation process

NCRC has been supportive of a process confirming that activities count under CRA, but has insisted that the process be equally accessible to community-based organizations as banks. Equal access is the best way to promote collaborative community-bank partnerships for community development initiatives in LMI and underserved communities. NCRC would support a confirmation process during the transitional period during which an interagency rule is developed.¹¹ However, the OCC’s confirmation process should be made consistent with the other agencies at the conclusion of an interagency rulemaking.

⁹ Ibid.

¹⁰ OCC, CRA Regulations, Federal Register, pp. 52033-52034.

¹¹ Ibid., p. 52034.



Public file requirements should be robust and include regular availability on the banks' websites

NCRC understands the need for a three-month period upon rescission of the 2020 rule for banks to reinstate the public availability of CRA information in their headquarters' office and at least one branch in each state. In the final 2020 rule, the OCC also required this information to be available on banks' websites.¹² NCRC, however, has found that the availability of CRA exams on OCC-regulated banks' websites to be inconsistent and if the exams are on the websites, the CRA exam information is difficult to locate. The OCC should instruct its banks to make the exams more prominent on their websites. Finally, all applications for new charters or for a change in control should include a publicly-released CRA plan available via the bank(s) involved in the transaction and the regulatory agencies.

Conclusion

NCRC appreciates the OCC's request for comments and urges the OCC to rescind the final 2020 rule as quickly as possible. The rule directly conflicts with the CRA's mandate for banks to serve all communities, including and especially formerly redlined communities. Transitional rules should be designed to replace all elements of the rule quickly, which would facilitate pandemic recovery in underserved communities.

Furthermore, quickly repealing the final 2020 rule would allow the agencies to embark on a genuine interagency process which would tackle critical issues such as improving the availability of data on CRA performance, reforming assessment areas to consider lending beyond bank branches, bolstering the rigor of CRA evaluations and ratings, and explicitly considering race in CRA exams along the lines suggested in a recent white paper co-authored by NCRC.¹³

Thank you for this opportunity to comment. If you have any questions, please contact myself or Josh Silver, Senior Advisor, at NCRC.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse Van Tol". The signature is written in a cursive, flowing style.

Jesse Van Tol
President and CEO

¹² Ibid.

¹³ Brad Blower, General Counsel, NCRC; Josh Silver, Senior Policy Advisory, NCRC; Jason Richardson, Director of Research and Evaluation, NCRC; Glenn Schlactus, Partner, Relman Colfax PLLC; Sacha Markano-Stark, Attorney, Relman Colfax PLLC, *Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal*, September 2021, <https://www.ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/>



Organizations in support

National

AFL-CIO
Americans for Financial Reform Education Fund
Center for Responsible Lending
Consumer Action
National Association for Latino Community Asset Builders
National CAPACD- National Coalition for Asian Pacific American Community Development
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National NeighborWorks Association
Prosperity Now
Public Citizen
U.S. Conference of Mayors

Alabama

Birmingham Business Resource Center
Building Alabama Reinvestment

Arizona

Arizona Partnership for Healthy Communities
Chicanos Por La Causa
Local First Arizona
LULAC
Pima County Community Land Trust
Trellis
Wildfire: Igniting Community Action to End Poverty in Arizona

California

Black Cultural Zone Community Development Corporation
California Coalition for Rural Housing
California Reinvestment Coalition
Ephesians Community Development Center
Housing on Merit
Peoples Opportunity Fund
Rural Community Assistance Corporation



District of Columbia

Autistic Self Advocacy Network
Better Markets
Coalition for Non Profit Housing and Economic Development
Committee for Better Banks
Latino Economic Development Center
Poverty and Race Research Action Council

Florida

Affordable Homeownership Foundation
African American Alliance of CDFI CEOs Inc.
Catalyst Miami
Community Reinvestment Alliance of South Florida
Florida Housing Coalition
Metro North Community Development Corp

Georgia

Beyond \$avvy Corporation
Georgia Advancing Communities Together, Inc.
Neighborhood Improvement Association

Hawaii

Hawai'i Alliance for Community-Based Economic Development

Illinois

Chicago Community Loan Fund
Housing Action Illinois
Illinois People's Action
Universal Housing Solutions CDC
Woodstock Institute

Indiana

Fair Housing Center of Central Indiana
HomesteadCS



Northwest Indiana Reinvestment Alliance
Prosperity Indiana
South Bend Heritage Foundation

Iowa

River Cities Development Services

Kentucky

REBOUND, Inc.
River City Housing, Inc.

Louisiana

HousingLOUISIANA
HousingNOLA
Jane Place Neighborhood Sustainability Initiative
Multi-Cultural Development Center
NewCorp, Inc

Massachusetts

Ceres
Massachusetts Affordable Housing Alliance

Maryland

CCCSMD
Maryland Consumer Rights Coalition
Project PLASE, Inc.

Michigan

New Hope Community Development
Southwest Economic Solutions

Minnesota

Community Reinvestment Fund, USA



Missouri

Metropolitan St. Louis Equal Housing and Opportunity Council

Mississippi

HEED
MS Communities United for Prosperity (MCUP)

Montana

Montana Fair Housing

New Jersey

New Jersey Citizen Action

New York

Association for Neighborhood and Housing Development (ANHD)
Devotion USA
Empire Justice Center
Fair Finance Watch
Long Island Housing Services, Inc.

North Carolina

NC Housing Coalition, Inc.
Reinvestment Partners
Welfare Reform Liaison Project, Inc.

Ohio

Friends of the African Union
JOVIS
Mustard Seed Development Center
Ohio CDC Association
Working In Neighborhoods



Oregon

CASA of Oregon
Housing Oregon

Pennsylvania

Ceiba
Chester Community Improvement Project
National Housing Resource Center
Pittsburgh Community Reinvestment Group

Rhode Island

HousingWorks RI

Texas

Southern Dallas Progress Community Development Corporation
TCH Development, Inc

Wisconsin

Clarke Square Neighborhood Initiative Inc.
CR-Social Development Commission
Housing Resources, Inc.
Inner City Redevelopment Corp
Metropolitan Milwaukee Fair Housing Council
Milwaukee Christian Center
Milwaukee Community Land Trust
NAACP
Prism Economic Development Corporation
Southside Organizing Committee
Urban Economic Development Association of Wisconsin, Inc.