Public comment regarding “Reforming the Community Reinvestment Act Regulatory Framework”

RE: Docket ID OCC-2018-0008

To Whom It May Concern:

I’m writing on behalf of the Ohio CDC Association (OCDCA), a membership organization of 250 community development corporations, community-based non-profits, and related stakeholders. Our vision is the creation of a community development environment that comprehensively improves life opportunities for all Ohioans. We believe that the Office of the Comptroller of the Currency’s (OCC) Advance Notice of Proposed Rulemaking (ANPR) regarding the Community Reinvestment Act (CRA) runs counter to creating opportunity and runs the real risk of eroding critical investment in Ohio’s low- and moderate-income (LMI) people and disenfranchised communities.

OCDCA strongly feels the recent ANPR process and proposal misses a significant opportunity to improve upon and maximize credit, services, and investments to LMI 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 since 98 percent of banks have passed their exams over the last several years. In spite of that fact, the ANPR is almost exclusively oriented toward making CRA easier for currently-regulated financial institutions to comply and does so at the expense of the lending and credit needs of LMI people and places.

CRA has leveraged significant amounts of loans and investments for LMI communities. Since 1996, banks have issued almost $2 trillion in small business loans and community development loans and investments in LMI communities. In Ohio CRA has encouraged banks to provide loans and investments for affordable housing and economic development. Our membership has countless examples of CRA investments that have built affordable housing, started small businesses, and in general provided critical capital to these underserved communities. We applaud the numerous banks in Ohio that have successfully and profitably implemented CRA to the benefit of the historically disenfranchised.

In order to bolster CRA’s effectiveness, reforms are necessary to take into account changes in banking and technology. Yet, 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 the 1977 legislation. If the OCC proceeds to significantly diminish the importance of assessment areas on CRA exams, the progress in increasing lending to LMI people and neighborhoods will be halted. The National Community Reinvestment Coalition (NCRC) estimates that LMI neighborhoods could lose up to $105 billion in home and small business lending nationally over a five-year time period. In Ohio, a small decrease in CRA investments would cause these negative impacts:

- 10% Ohio investment loss = $230,916,000 loss in small business lending and $745,143,000 loss in mortgage lending for a total loss of $975,474,000
- 20% Ohio investment loss = $461,833,000 loss in small business lending and $1,490,287,000 loss in mortgage lending for a total loss of $1,950,957,000
OCDC feels the ANPR fails in several substantial and fundamental ways.

1) **An OCC unilateral approach to reform**
   It fundamentally undermines the values and spirit of CRA by not having support from the Federal Deposit Insurance Corporation (FDIC) and Federal Reserve Board of Governors. It’s inefficient to have a different set of rules for different sets of financial institutions. Any reform effort should include all three regulators and be consistent. Anything approved through a unilateral approach is a missed opportunity and automatically questions its intent.

2) **A “one-ratio approach” will cause grade inflation**
   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.

   We are concerned that this approach 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 would consist of the dollar amount of a bank’s CRA activities (loans, investments, and services to LMI borrowers and communities) divided by the bank’s assets. The ratio is supposed to reflect CRA effort compared to a bank’s capacity.

   The idea behind the one ratio is that it will immediately signal to banks whether they are in compliance with CRA and will pass their next exam. While all stakeholders seek clarity in CRA, the one-ratio is a solution in search of a problem since 98 percent of banks have passed their exams over the last several years.

   While not necessary to ease banker anxiety about passing CRA exams, the one-ratio threatens to render CRA ineffective in making sure banks respond to local needs. The CRA statute requires that banks “have continuing and affirmative obligations to help meet the credit needs of the local communities in which they are chartered.” The key word is local. One ratio cannot tell an examiner, a bank, or a member of the public how responsive a bank is to its various service areas. Historically low-income communities, community developers and OCDC work with financial institutions so they may better understand and respond to local needs. This rule would diminish a local lending response to community challenges.

3) **The ANPR should consider applying CRA to a changing financial sector**
   The ANPR does not appear to even 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) **CRA exams must evaluate bank lending to communities of color**
   In terms of expanding populations served by CRA, exams must explicitly evaluate bank lending and service to people and communities of color. In 1977 Senator Proxmire and the other members of Congress that drafted CRA and secured its passage were clearly concerned about disparities in lending in minority communities, especially inner-city neighborhoods. Since racial
disparities in lending remain stubborn and persistent, CRA must include lending, investing, and service to people and communities of color in its evaluations. A recent study by NCRC found that three out of four neighborhoods marked “hazardous” (redlining) by the federal government 80 years ago are still struggling economically.

The OCC asks whether CRA consideration should be broadened for additional activities and populations. Industry trade associations have been advocating for CRA consideration for projects that have broad benefits such as financing hospitals that are not necessarily located in LMI neighborhoods. However, the OCC must be reminded that the original purpose of CRA was to combat redlining in LMI neighborhoods. If CRA exams award points for financing or activities that do not address lack of access to banking or community development needs in lower income neighborhoods, then CRA will be less effective in channeling resources to the communities that were the focus of the 1977 legislation.

5) **Incentives are needed to encourage investment and have community accountability**

The ANPR appears to fail 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.

OCC Comptroller Joseph Otting has admitted that part of his CRA reform plan is to make it harder for community groups to “hold [bankers] hostage” when bank merger and expansion deals are up for regulatory approval. In the past, banks with failing CRA ratings have been discouraged from merging with other banks or expanding their operations until their record of serving their local community improves. Since 2016, banks have negotiated $86 billion in community benefit agreements (CBAs) with local stakeholders including four in Ohio because of CRA and its community input provisions during mergers/acquisitions – resulting in banks providing more mortgages, small business and community development loans and investments in LMI communities in Ohio across the country.

6) **Allowing banks to disregard local assessment areas and credit needs**

The OCC asks whether branching in LMI communities should continue to be considered on CRA exams. Research has shown that LMI people rely on branches for access to loans and banking services. If CRA exams dropped branches from consideration, the amount of lending and bank services in LMI neighborhoods would decrease significantly.

That said, experimenting with new ways to think about assessment areas is necessary. Investment, lending, and services around physical bank branches are and will remain critical to the health and prosperity of LMI people and places. Further, resource deployment around physical bank branches is at the heart of CRA’s spirit, intent, and regulatory language. However, we also must acknowledge that technology, financial innovation, and societal changes necessitate us rethinking how we utilize CRA as a tool to leverage private sector investment in LMI communities, regardless of bank branch presence.

With that in mind, OCDCA endorses a model by which banks can receive CRA consideration through a waterfall-type approach by which, if banks satisfactorily serve the community development lending, investment and service needs of the communities in which it has
branches, it may receive consideration for community development activities in:

a. LMI communities (<80% AMI) outside its branch footprint; and/or
b. Investments in community development mission-oriented organizations undertaking community development activities that benefit LMI people or places.

7) **Allow for support to non-profit community developers to be clearly counted in a CRA exam**

Further, OCDCA asks regulators to use the public process around CRA reform to provide clarity around CRA-related challenges that hamper the regulations’ overall effectiveness at serving LMI communities. Providing clarity around these issues will help regulated institutions make more flexible and impactful investments that count toward their CRA exam.

Specifically we ask regulators to explicitly state the value and role of mission-oriented community development organizations, such as mission-oriented community development corporations, community-based non-profits, and support organizations (state and regional associations) so that support to these organizations are appropriately valued and counted.

In conclusion, meaningful CRA reform could boost lending and access to banking for underserved communities but the ANPR runs counter to that goal. To ease bank anxiety about unclear aspects of CRA, communications among the federal agencies, banks, and community groups could be improved. However, easing bank anxiety via the one-ratio, diminishing the importance of branches and assessment areas, and devaluing public input will decrease lending and access to banking in the communities that need it the most. We urge the OCC to go back to the drawing board and develop reform proposals with the Federal Reserve Board and the FDIC to strengthen, not weaken CRA.

Thank you for your attention to these comments and concerns. If you have any questions I can be reached at ncoffman@ohiocdc.org or 614-461-6392 x 207.

Sincerely,

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