December 2, 2015

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Chairman
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Dr. Janet L. Yellen
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Re: Federal Register Notice 80 FR 7980, Regulatory Publication and Review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)

Dear Comptroller Curry, Chairman Gruenberg, and Chair Yellen,

Thank you for the opportunity to comment on the need to update regulations that significantly affect whether banks respond to the financial needs of low income communities and communities of color. Our four organizations work together on national issues that affect our communities, including how banks and regulators meet their obligations under the Community Reinvestment Act and many other laws and regulations that protect consumers and communities.

California Reinvestment Coalition advocates on behalf of these communities through original research, supporting and elevating the concerns expressed by our nearly 300 non-profit members, working directly with banks to develop and improve their plans to lend, invest and provide services, and regulatory advocacy including submitting comments like these.

Woodstock Institute is a leading nonprofit research and policy organization in the areas of equitable lending and investments; wealth creation and preservation; and safe financial products, services, and systems. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. Our key tools include: applied research; policy development; coalition building; and technical assistance. Woodstock Institute has been a recognized economic justice leader and bridge-builder between communities and policymakers in this field since it was founded in 1973 near Woodstock, Illinois.

New Economy Project works with community groups to build a new economy that works for all, based on principles of cooperation, democracy, equity, racial justice, and ecological sustainability. Our work focuses on campaigns to challenge corporations that harm communities and perpetuate inequality and poverty; and efforts to build strong local economies, by fostering democratically-structured, community-controlled initiatives such as worker cooperatives, community development credit unions, community land trusts, and mutual housing.

Reinvestment Partners' mission is to advocate for economic justice and opportunity. We advocate for change in the lending practices of financial institutions to promote wealth building of underserved communities and to end predatory lending practices that strip wealth.

We understand the EGRPRA process creates the opportunity to identify regulations that need to be updated and modernized in order to best meet their original purpose and intent. However, we are concerned that the agencies will lean toward eliminating regulations considered outdated, unnecessary or unduly burdensome, rather than updating them to reflect current needs and realities. It should be clear since the financial industry meltdown in 2008, and the consequent avalanche of foreclosures and disinvestment that devastated low income communities and communities of color, that banking regulations need strengthening, not eliminating. Substantial evidence of this fact has been presented at the 2010 hearings on modernizing the Community Reinvestment Act, as well as via numerous public hearings and comment processes, studies, media reporting and countless stories of consumer and community distress and abuse that have been put in front of the regulators and which are impossible to ignore.

The Community Reinvestment Act has led to the investment of trillions of dollars into low- and moderate-income communities across the nation through grants, loans, and other investments by financial institutions. CRA imposes on regulated financial institutions an affirmative obligation to meet the credit needs of the neighborhoods and communities in which they are chartered, consistent with safe and sound financial practices.

Since its establishment, CRA has undergone a variety of modifications, including: the creation of metrics and guidelines for evaluating the CRA performance of differently sized financial institutions; specific regulations outlining how bank activities will be measured and assessed; and, mostly recently, clarifications to the CRA Interagency Questions & Answers on retail banking and community investment. Over the years, regulators and Congress have attempted to streamline the exam process for smaller financial institutions and offer banks the opportunity to create their own strategic plan with community input as opposed to undergoing a traditional, regulatory exam.

CRA is an incredibly important tool for regulators and the general public to ensure that banks are adequately meeting the credit needs of the communities in which they do business. At a time when people and communities are still working to recover from the effects of the housing and financial crisis, CRA plays an even more critical role. Unfortunately, the financial system today looks and operates differently than it did when the law was first created and later modified. We urge regulators to consider how CRA can be updated to adapt to new business models, including online banking, and ensure a safe, sound, and equitable financial system for all people and communities.

I. The CRA Needs Updating to Reflect Modern Banking Needs and Practices

A. <u>CRA assessment areas should be drawn around all geographies where deposits occur or where banks do substantial business.</u>

Currently, regulations at 12 CFR §§25.41, 228.41, 345.41, and 195.41 require banks to delineate CRA assessment areas that include the geographies in which their main offices, branches, and deposit-taking ATMs are located, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed). As banks make greater use of online and other remote delivery systems, centering assessment areas on brick and mortar bank locations is outdated.

Recently proposed Interagency Questions and Answers (79 FR 53838) demonstrate how badly the assessment area rules need updating. One of the questions posed was whether to provide banks with positive CRA credit for providing financial services through untraditional means, such as online and smart phone applications. Banks are increasingly choosing non-branch means of delivery to cut costs and improve competition in consumer markets that prefer technology based services, while the CRA remains anchored around physical branch locations. We and others commented that providing CRA credit to non-branch delivery outside of assessment areas will undermine the purpose of the CRA by giving banks credit for alternative deposit sources, giving them an incentive to close physical branches and thus reducing the geographic scope of CRA while expanding the geographic scope of deposit taking facilities. The method of service delivery would not be an issue if bank CRA activity were assessed in the geographies where depositors are actually making deposits and where banks have the most market penetration.

We propose that the regulations be amended to state that assessment areas must include "the geographies in which the bank has its main office, its branches, and ~~its deposit-taking ATMs~~ <u>*where a substantial number of depositors reside*</u>, as well as ~~the surrounding~~ geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed)."

B. <u>CRA exams should not discourage bank activity in assessments areas designated as "limited scope".</u>

Since the release of the Interagency Questions and Answers in 2013 (78 FR 69671), we have repeatedly heard from various banks that they are discouraged from providing loans, investments and services in "limited scope" assessment areas until all need for those are met in the "full scope" assessment areas. This has served to exacerbate prior neglect of largely rural areas, including most of the state of California save the Los Angeles, San Francisco and occasionally the metropolitan Fresno area in the Central Valley.

This interpretation of the Questions and Answers burdens the communities that most desperately need banks to comply with the CRA.[1] In California, the San Joaquin Valley represents some of the most ignored territory by banks. The Valley has a higher percentage of households that are unbanked and under-banked than other areas in California, and they have less access to branches and affordable bank accounts. Basic bank accounts, which are already too expensive for many households throughout the state, are even less accessible for Valley residents. There are far fewer small business loans proportionally in the San Joaquin Valley than in Los Angeles and the Bay Area. Data show even worse performance for the Valley's African American and Latino owned-businesses than other businesses. As a result of these bank practices, the Valley's vibrant immigrant and native low income populations are not able to access mortgages and small business loans at the same rates as households in metropolitan California, and predatory payday lenders and check cashers have become substitutes for basic banking services.

In North Carolina, we see a gradual but steady decline in the number of bank branches in some of our rural areas. In some cases, branches close to avoid redundancies from mergers and acquisitions. In other cases, banks pull back on their branch network. In either mode, however, the result is the same: there are fewer institutions with CRA assessment areas in rural North Carolina, as illustrated below:

Asheville MSA: 2015, 19 banks and 128 branches. 2010: 23 banks and 148 branches.

Bertie County: 2015, 2 banks and 3 branches. 2010: 3 banks and 7 branches.

Northampton County: 2015, 2 banks and 2 branches 2010: 3 banks and 5 branches.

Anson County: 2015, 5 banks 5 branches. 2010, 6 banks, 8 branches.

Columbus County: 2015, 6 banks and 14 branches. 2010, 10 banks and 17 branches.

The same story can be told in county after county throughout the rural parts of North Carolina. There are fewer bank holding companies with offices in these areas. In some cases, locally owned banks (Cooperative and Waccamaw in Columbus County, for example) have been purchased by out-of-town institutions. The net effect is that these areas gradually lose their ability to see the benefits of the CRA.

We urge the agencies to correct this regulatory problem and to take additional steps to ensure that limited scope assessment areas receive the attention needed from banks. While we understand that it is beyond the capacity of examiners to thoroughly evaluate every portion of a bank's total assessment area, we believe the agencies should select at least one of these areas for full scope review at each exam. To ensure that banks do not channel activity to that limited scope area to the detriment of others, agencies should not tell banks which of the limited scope areas will be subject to full scope review prior to the exam.

C. <u>CRA evaluations should be based on data driven performance contexts that include an assessment of need for loans, investments and services.</u>

All three agencies require CRA examiners to identify the "performance context" in which banks operate. 12 CFR §§ 25.21, 195.21, 228.21, and 345.21. The performance context is defined as a "…broad range of economic, demographic, and institution- and community-specific information that an examiner reviews

[1] Down in the Valley, CRC 2013 available at http://bit.ly/CRCRuralReport.

to understand the context in which an institution's record of performance should be evaluated." [2] Though subsequent regulations require examiners to evaluate a "bank's record of helping to meet the credit needs" through lending, investment and services, the regulations do not require or instruct banks or examiners how to assess what those needs are.

Instead, the regulations require examiners to consult a plethora of data[3] that rarely answers the central question, what are the needs that banks' should be helping to meet? Existing requirements both unduly burden examiners and the community organizations, local governments, economic development agencies and banks they consult in the hopes of constructing a cohesive narrative using conflicting and likely incomplete information, and fail to align with the purpose of the CRA exam which is to measure how well a bank meets lending, investment and service needs.

In fact, materials[4] recently developed by the San Francisco Federal Reserve Bank warn that examiners often have a hard time identifying community credit needs and community development opportunities because "they lack the grassroots knowledge that a bank should have due to their presence in the local markets." The guide advises examiners to ask "How does the bank assess community needs and identify community development opportunities and partners?" Examiners are instructed to encourage banks to "think of the performance context as a chance to tell their story about how the bank has developed a CRA strategy, in light of its size, resources, and opportunities."

Instead, we propose that the agencies work with banks, community organizations and experts in relevant fields to develop clear instructions for how to measure the need for loans, investments and services in bank assessment areas. There is significant data available to determine this, such as the FDIC's studies of unbanked and underbanked communities, which can be used to determine the need for financial services in bank assessment areas and as such, to determine how well a bank is meeting those needs. The Federal Reserve Bank of San Francisco has identified other sources of data that can be used to determine the need for financing to support increased home ownership, affordable multifamily housing, and economic development.[5]

We recognize that many rural areas have fewer community organizations with the relevant expertise, so in those instances examiners should seek out input on community needs from alternative agencies in nearby areas. In North Carolina, for instance, many community development corporations and housing

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[2] Interagency Questions & Answers Regarding Community Reinvestment, §ll.21(b)—1. Federal Register, Vol. 75, No. 47, March 11, 2010. Available at http://www.ffiec.gov/Cra/pdf/2010-4903.pdf

[3] These include median income levels, distribution of household income, nature of housing stock, housing costs; any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources; the bank's product offerings and business strategy as determined from data provided by the bank; institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s); the bank's past performance and the performance of similarly situated lenders; and other data that examiners consider relevant.

[4] Understanding Community Development Needs through the CRA Performance Context December 2014, available at http://www.frbsf.org/community-development/publications/working-papers/2014/december/community-development-needs-cra-performance-context/

[5] Community Development Data Guidebook November 2014, available at http://www.frbsf.org/community-development/files/Community-Development-Data-Guidebook.pdf

counseling agencies have closed since 2008. While the North Carolina experience is due to changes in state budget allocations, other states may have their own challenging contexts.

Methodology to measure the need for loans, investments and services would relieve many burdens now faced by examiners, banks, community organizations and others. First, making the methodology and data sources public removes the mystery and subjectivity of exams. Second, community advocates will not have to contend with the CRA race to the bottom that results from basing CRA exams on peer banks rather than community need. Third, banks and community organizations could craft public CRA plans with benchmarks based on the data that examiners can then use to assess how well banks have met those goals. Finally, it will help to address the rampant grade inflation among CRA ratings that rewards 97% of banks with a "satisfactory" CRA rating or better despite worsening needs in communities nationwide.

A related point regarding the use of publicly available data is the need to modernize the investment and services tests of CRA evaluations. Contrasting with the availability of data about a bank's loans to home owners and small businesses, there is virtually no standardized data about a bank's investments or services in most CRA evaluations. The data exists. Banks know the number, location, size and economic impact of investments and services often including the number of jobs created, newly created or preserved affordable housing units, customers who were previously unbanked, overdraft fees paid and attrition rates of account owners. The agencies can make both the investment and services tests more meaningful and predictable by using publicly available data to measure the need for both and then asking banks to provide quantifiable data that demonstrates how well they have met these needs.

D. Prudential regulators should encourage banks to develop CRA plans with a broad base of community organizations.

Bank merger and other applications require banks to project future activity and impact, including how a merger will impact their customers in a variety of ways. By contrast, banks are not required to project activity they will pursue to meet their obligations under the Community Reinvestment Act. We believe that prudential regulators should encourage CRA plans, particularly in the context of mergers that must show a clear public benefit to the community.

Strong and meaningful CRA plans reflect community input, motivate banks by setting strong goals for lending, investment and services, and allow communities to work in partnership with banks to ensure that they are treated equitably and fairly by financial institutions. In the context of merger applications, it is difficult for low and moderate income and other historically marginalized communities to meaningfully and actively engage and participate in the process in an informed manner if banks are not transparent about their CRA goals and strategy.

CRA plans are a best practice. In California, several banks of varying sizes and business models have developed strong CRA plans in collaboration with community organizations and advocates in their CRA footprint. With such plans, communities can rest assured that a bank is committed to meeting affirmative goals and that they can work with the bank to develop the most effective lending, investment and service provision opportunities. Without such plans, communities must rely on backward looking analysis of bank performance through periodic CRA performance evaluations. For very large banks, these evaluations often lack sufficient detail about activities in smaller geographies; for all banks, the evaluations contain little information that a community can use to work with the bank in the future. CRA regulators and regulations must do a better job of establishing a stronger standard or baseline relating to CRA obligations and performance. CRA Plans are a vehicle for banks to excel and more clearly demonstrate a commitment to helping meet community credit needs.

In a few instances, the agencies have encouraged merging banks to develop CRA plans where there has been significant evidence that they have not sufficiently acted to meet their CRA obligations in the past. For example, the OCC conditioned its approval of Valley National Bank's (VNB) application to acquire 1st United Bank, Boca Raton on VNB's fulfillment of commitments made to the OCC in a letter dated September 29, 2014 to develop a CRA Plan. The OCC justification for imposing the conditions was to ensure that the VNB merger met the "convenience and needs" standard for merger approval, a standard based on analysis of prospective activity. Ultimately, VNB worked with the relevant organizations to develop and commit to a CRA plan that would address the needs of all of its assessment areas, including newly acquired ones, with particular attention to meeting the needs of LMI borrowers and geographies through lending, investment and services. The CRA plan that the bank developed directly responded to concerns raised in comments to the merger application. The OCC and VNB made the bank's CRA development process transparent; the bank followed it; and the CRA Plan described in detail how it was developed, with whom they met and which strategies that organizations recommended the bank adopted and rejected.

The agencies should continue to encourage banks to develop transparent and ambitious CRA plans that demonstrate a commitment to CRA, outline in practical and measurable ways how bank activities can benefit the communities in which they operate, and provide a road map for all to work together to meet these goals. There should be a reward for institutions that develop and publish multi-year plans, provided that those plans include participation from community group stakeholders, including groups that may have initially opposed a given merger.

E. <u>CRA evaluations should consider economic impact of bank activity on lower income residents.</u>

The CRA exam process should also be updated to reflect the actual impact of bank activity in low and moderate income communities, recognizing that not all additional loans, investments and services are good or meet local needs. As we commented in our response to the most recently proposed Interagency Questions and Answers, we strongly urge the agencies to provide negative CRA credit to banks when examiners identify practices that harm communities. Loans, investments and services can often strip family assets and financial capacity, finance gentrification and displacement among households who have poor housing choices, and contribute to a bifurcated job market in which workers from low income communities are relegated to lower wage, support services jobs.

i. The CRA retail service test should include quantitative and qualitative analysis of how bank services impact low and moderate income communities.

Evaluate based on community need, not peer performance. Banks should be evaluated under the CRA retail service test based on the extent to which they actually meet specific quantity and quality goals established for each institution and assessment area based on their market share, LMI need factors, and other relevant factors unique to the particular performance context in their assessment areas. Banks should not be evaluated solely against their peers, which institutionalizes existing levels of effort and could generate a race to the bottom. Instead, regulators should focus on the extent to which banks are actually meeting a broad range of LMI consumers' need for retail financial services. The focus should not be on mere availability of, or access to, a product or system of delivery which is not actually used by diverse segments of the LMI population. Instead, regulators should consider whether banks not only offer but in fact market and provide products, services, and delivery systems that truly meet the needs of a broad range of LMI people so that no one is left out of the financial mainstream.

Evaluate equity of branch location. Banks do not provide branch services equitably in communities of color and low and moderate income neighborhoods. In New York City, for example, most communities of color have less than one bank branch per 10,000 residents, compared to at least two and often many more branches per 10,000 residents in predominantly white neighborhoods. Mystery shopping bank branches in New York also revealed that bank customers in communities of color often experience significantly longer wait times and poorer customer service than customers in predominantly white neighborhoods. Banks' inequitable distribution of branches must be considered as part of the CRA service test, whether or not banks have developed alternative delivery systems to reach low and moderate income communities.

Evaluate equity of branch products and services. Many low and moderate income neighborhoods and communities of color not only lack access to bank branches, but also to a wide range of banking products and services. Regulators should use already-available data and require banks to report additional data on whether banks are meeting the banking needs of all communities in their assessment areas.

Evaluate LMI customer retention. Regulators should consider whether or not low and moderate income bank customers are able to keep their accounts open and in good standing over time. Some banks close low and moderate income customers' accounts for no good reason. For example, callers to New Economy Project's NYC Financial Justice Hotline report that banks have closed their accounts after they filed fraud disputes or sometimes for no apparent reason at all. In addition, many low and moderate income people are driven out of the banking system by abusive overdraft fees. Regulators should consider banks' track records of keeping low and moderate income customers as part of the service test.

Regulators should also consider how banks can better reduce the number of unbanked or underbanked consumers within their assessment areas. One option might be to use census data and results from the FDIC's National Survey of Unbanked and Underbanked Households overlaid with a bank's assessment areas. Specific goals for reducing the unbanked/underbanked population should then be included in the bank's community reinvestment goals and plan.

Evaluate bank account products and data. Several major banks have developed bank accounts and other services specifically designed to provide services to those who are unbanked or underbanked, such as Bank of America, Citibank, and Union Bank. Only JPMorgan Chase, however, has publically released even limited information about whether their Liquid prepaid card product is providing services to previously unbanked and underbanked customers (see https://www.fdic.gov/about/comein/2013/2013-05-16_presentation_wilk.pdf). While we commend Chase for providing such information, the regulators should require all institutions to provide even more detailed information about account products and whether they are meeting the needs of LMI communities and communities of color.

Evaluate ID policies. These banks, however, continue to reject NYC's Municipal ID card (IDNYC) and other secure municipal IDs as a primary form of identification – consequently failing to serve all communities equitably, as required by the CRA – despite the fact that the OCC, the Financial Crimes Enforcement Network, the Federal Reserve, and the Federal Deposit Insurance Corporation issued a letter giving a regulatory green light to banks to accept the IDNYC as a primary form of identification.

Banks' refusal to accept secure municipal IDs like IDNYC – and the impact of that refusal on low-income people who do not otherwise have access to bank accounts – should be a strong negative consideration when evaluating banks' performance under the CRA service test.

Track, publicize, and evaluate data. Banks should track information about their efficacy in reaching unbanked or underbanked people as well as their track record of providing affordable and sustainable products and services to low and moderate income people and communities , if they do not already, and provide it to regulators and to the public. CRA regulators should use the data to measure whether banks are meeting the needs of low and moderate income people and communities in bank CRA performance evaluations.

The FDIC and other regulatory agencies should organize available data on community banking service needs into sets of common bank assessment areas, such as metropolitan statistical areas, and provide it to CRA examiners to use as part of the performance context section of CRA evaluations. Examiners and banks can then use the data to determine whether banks are meeting the needs of these communities by looking at factors such as whether the number of unbanked and underbanked households decrease over time, how many previously unbanked and underbanked households became bank customers, and how many low and moderate income people who did have bank accounts no longer have accounts and why their accounts were closed.

ii. Banks should be downgraded for consumer services that strip financial capacity and resources, such as overdraft programs.

We urge the agencies to consider expensive overdraft programs and excessive reliance on fee revenue generated at the expense of the most economically vulnerable consumers as a basis for downgrading a bank in a CRA service test evaluating. Typical overdraft programs do not help meet consumers' financial service or credit needs; they worsen their financial health. The excessive price, short-term payment requirement, and lack of underwriting combine to accomplish the very opposite of what the Community Reinvestment Act is intended to promote. Because it strips communities of scarce resources, it also negates the impact of products and services that do help to meet the credit needs of the communities it serves.

Banks impose hefty overdraft fees, typically about $35, when they make the choice to pay a customer's transaction, fully aware that the customer's account lacks sufficient funds. These programs are largely automated and designed to extract the maximum fee revenue from customers who, by definition, cannot afford the transactions the bank is pushing through. These programs cost consumers $15 billion annually even though banks can easily – and used to historically - decline transactions that would overdraft accounts, in real-time and without any cost.

Overdraft fees have been found to be the leading reason a person loses his or her bank account. A study by Pew Charitable Trust show that 13% of people who paid an overdraft penalty say they no longer have a checking account and 28% report closing a checking account in response to overdraft fees. Involuntary account closure is particularly concerning for communities of color, who are already far more likely to be unbanked. Once individuals become unbanked, re-entry is difficult due to account screening blacklists, and they are more likely to use expensive alternative financial services and have fewer mechanisms for saving.

We urge the agencies to analyze overdraft opt in rates, the amount of fee revenue, the income and race of the customers from whom the banks extract the bulk of that fee revenue, the amount of money lost by low and moderate income communities to these fees, and the rate of involuntary account closures as part of CRA service tests. The agencies should then downgrade the CRA ratings of banks that have high opt in rates, rely excessively on overdraft fee revenue – particularly if a significant portion derives from the bank's most financially vulnerable customers, deplete low and moderate income communities of critically needed wealth, and have high rates of closing accounts after imposing heavy overdraft fees over time.

iii. Banks should be downgraded for financing gentrification and displacement

Our organizations have become increasingly concerned that banks are seeking, and regulators are approving, CRA credit for activities whose community reinvestment and development value are dubious at best, and that lead to displacement and gentrification at worst. As one example, CRC recently heard from tenant advocates in San Francisco that First Republic Bank (as well as other banks), was originating displacement mortgages – loans to speculators who seek to purchase rent controlled buildings, evict all of the tenants using a loophole in state law, and convert the building to upscale condominium or Tenancies in Common homeownership units.

The only thing more distressing than the knowledge that this was happening, was the idea that banks might be seeking CRA credit for making these loans in LMI communities. To its credit, First Republic Bank has since agreed to stop originating these displacement mortgages and, importantly, agreed to try to work with nonprofit partners that can purchase these buildings so as to preserve these low cost housing units as well as to preserve the tenancies of affected households, most likely to include people who are long term residents, elderly, low income, and people of color. But conversations with the Bank and with regulators confirmed our suspicions that the bank most likely sought, and the regulators most likely gave, CRA credit for harmful displacement mortgage activity. Regulators must be more transparent about which products, activities and services banks are receiving credit for, solicit input from affected communities about the impact of these practices, and scrutinize these products and activities to ensure that harmful products result in CRA downgrades, not CRA credit.

Banks should also suffer CRA rating downgrades as a result of any involvement in the REO to Rental craze, whereby institutional and cash investors are purchasing large numbers of foreclosed REO properties (and distressed mortgage loan pools) with the intent of converting homeownership opportunities into rentals.

In late June, CRC released "REO to Rental in California: Wall Street Investments, Big Bank Financing, and Neighborhood Displacement." The report raises concern that REO to Rental is: squeezing out first time homebuyers and nonprofit affordable housing developers; displacing tenants; increasing violations of tenant protections and fair housing laws; circumventing local real estate professionals (including professionals of color), and changing neighborhoods. Eighty percent (80%) of community groups surveyed felt that large institutional investors had a "negative" impact on their communities. There is also great concern that neighborhoods will suffer if thousands of REO to Rental properties are sold en masse at the expiration of the two to five year periods that mark many of the rental securitization transactions which are financing the expansion of REO to Rental.

And none of this community harm could occur without financing. Banks have financed and facilitated these concerning trends by funding investor groups that are buying up REOs to convert to rentals. More dangerously, banks, including JPMorgan Chase and Wells Fargo, have also aided investors in turning the rental income streams from these properties into securities. As one example, JPMorgan Chase is reportedly originating a $1.2 billion loan secured by mortgages on 7,265 income producing single-family homes owned by Blackstone and Invitation Homes in what is the largest single-family rental securitization to date. Reports by Tenants Together and Right to the City affiliates, amongst others, have noted concerns about the impacts of big Wall Street landlords on tenants. Regulators should not only downgrade banks that support REO to Rental, but should also clarify that bank efforts to prioritize homeowners and nonprofit organizations in the sale of REOs and distressed loan pools will qualify for positive CRA credit. This is timely and important as such actions on the part of banks at this point in time can make a large impact on community stabilization efforts.

iv. CRA credit should be based on the impact that community development lending, investment and services have in low and moderate income communities.

We remain concerned that the interest in objective quantitative measures leads to situations where examiners count activities that are not actually significant. In a recent merger application, Reinvestment Partners noted that a major share of a bank's investment credit was derived from the purchase of a mortgage-backed security. Although the sum of credit given was $12 million, our estimate (from reviewing the specific MBS through Ginnie Mae's investor website), was that approximately two low-to-moderate income households within the assessment area might have benefited from that investment. In spite of that, this action constituted the quantitative majority of their investment activity. Moreover, by holding that MBS for several years, this bank was able to get multiple years of credit. The error is in the choice of instrument. In our opinion, this exemplifies how a preference for quantitative data can lead to situations where examiners place emphasis upon meritless actions.

We urge the agencies to downgrade banks that deplete the financial wellbeing of the most vulnerable communities by providing products that disproportionately harm low income households and households of color, such as payday-like loans, high-cost automated overdraft, or fees for using branch and teller services. It is especially important that examiners consider the total cost of these products because fees have proven to be a primary factor preventing households from moving into or remaining in full banking. The FDIC's surveys indicate that 35% of unbanked consumers say that not having enough money is the main reason they don't have an account, while another 13% note that high or unpredictable fees is the main reason they don't have an account.[6] Further, almost half of unbanked households, 45.9%, were previously banked, and 20% of them noted that fees were the primary reason that they were no longer banked.

Similarly, the agencies should downgrade banks that finance harmful projects and initiatives that currently may receive community development lending, investment and services credit merely because they occur in low income communities. The key questions to ask are, what impact have these activities

[6] 2013 FDIC National Survey of Unbanked and Underbanked Households, Oct. 2014, available at: https://www.fdic.gov/householdsurvey/2013report.pdf, pg. 7.

had on the low and moderate income residents on these communities? Have the bank's activities increased opportunities for existing community members to secure high quality, well paid jobs, affordable housing, and financial services that save them money?

Currently, banks can receive community development credit for financing projects that displace jobs and housing that would otherwise be accessible to low income residents. These developments raise the cost of living in a geography, making it less inhabitable by the low and moderate income communities living there. For example, loans that finance housing developments at rents or prices that are out of reach of community members, and investments in businesses that create jobs out of reach to most community members both do greater harm than good in those communities. The test of whether an activity contributes to community development should be how it impacts the people that make up the community, not merely the economy of a place.

v. CRA credit should not be given to banks for actions taken pursuant to settlement agreements resulting from bank wrongdoing.

Our organizations strongly recommend that no CRA credit be given for legal and regulatory settlement activities. One specific concern is that Bank of America, Citibank, JPMorgan Chase Bank and other similarly situated banks will seek to obtain CRA credit for engaging in activities that are a result of their obligations under the Department of Justice (DOJ) foreclosure settlement or other settlement agreements. These DOJ foreclosure settlement agreements obligate the three big banks to provide relief to communities by offering loan modifications, home loan originations, funding for housing counseling and legal service services, neighborhood stabilization activities, financing of affordable housing and other needed activities, within certain parameters. Most or all of these activities are beneficial to communities and might qualify for CRA credit under normal circumstances.

But to allow CRA credit for these activities would be to condone regulatory "double-dipping." Banks cannot be permitted to receive credit for performance and programs - no matter how positive - they agreed to engage in for the purpose of providing redress and relief to consumers for alleged wrongdoing. In other words, Banks should not be able to seek and receive CRA credit for activities that are meant to compensate consumers and communities for harm the banks caused. The regulators should refuse CRA credit for any activity for which the Bank seeks and receives credit under any enforcement action or settlement agreement with any federal or state regulatory agency.

vi. Banks should be downgraded for violations of fair housing laws and other consumer and community protections.

Bank regulators must scrutinize financial institutions' compliance with relevant laws and regulations and factor any noncompliance and harmful community impacts into CRA evaluations and ratings that seek to determine whether banks are helping to meet community credit needs. We note that in its most recently released Performance Evaluation, Bank of America was downgraded because the bank entered into settlement agreements with the OCC and DOJ regarding allegations of unfair or deceptive acts or practices, noncompliance with the Fair Housing Act and Equal Credit Opportunity Act (ECOA), and noncompliance with the Service members Civil Relief Act (SCRA) relating to its foreclosure practices. The Performance Evaluation confirmed, "as a result of these findings, the CRA Performance Evaluation was lowered from Outstanding to Satisfactory."

We view this development as generally positive and acknowledge the OCC for lowering the Bank's CRA Rating as a result of fair housing, fair lending, and UDAAP concerns. Yet we find anomalous the determination that that the Bank's CRA rating was deemed "Satisfactory" despite it having been found in noncompliance with key anti-discrimination and consumer protection statutes and principles. The regulators should continue to view fair housing violations as a factor that should lead to a bank CRA rating downgrade. But the regulators should reject any paradigm that suggests the penalty for such violations is merely to knock down a CRA rating one grade regardless of the seriousness of the violation or the extent of the noncompliance. How can discriminatory and anti-consumer conduct that is harmful to customers and communities be considered "Satisfactory?"

Sadly, the foreclosure crisis is not yet over. A recent report by the Center for American Progress finds that fully 16 California counties still have over 20% of homeowners with negative equity, in the first quarter of 2015.[7] And yet, even after years of the crisis and various efforts to address it, financial institutions are still failing to help homeowners stay in their homes and avoid unnecessary foreclosures. For example, banks are still failing to adequately respond to the challenge of successors in interest (widows and orphans) who face additional hurdles in trying to keep the family home after the passing of their borrower relative, despite CFPB, GSE and HAMP rules and guidance that should have stopped these abuses.

Banks should support nonprofit housing counseling and fair lending work, and banks should conduct independent fair lending audits to further foreclosure prevention and fair housing, and to ensure there are no disparate impacts from bank practices. The regulators should identify and downgrade the four large, anonymous institutions that the General Accountability Office found to have engaged in servicing practices resulting in significantly different loan modification outcomes for African American and Limited English Proficient customers, after a review of the servicers' non-public loan modification data.[8]

II. Federal regulators should not allow banks to undermine or claim exemption from state laws.

A long standing problem with federally chartered institutions is their assertion of preemption as a means to evade accountability for non-compliance with state laws. As one example, OneWest and Wells Fargo have put forth the dubious and harmful argument that their foreclosure practices are not subject to California's hard fought, landmark Homeowner Bill of Rights (HBOR) if the loan they are foreclosing on was originated by a federally charted thrift (such as Indymac, Wachovia, etc). The banks claim that they are complying with the state law, though they are not subject to it nor liable for their noncompliance with it. These claims run counter to the experience of California homeowners, and the legal opinions of California advocates, the California Attorney General's office, and a growing number of courts. This argument is highly problematic in that it is the banks' conduct not as lenders but as loan servicers that is in question, and that such conduct is clearly subject to regulation by the state of California and HBOR. The regulators should immediately issue guidance to clarify that federally chartered institutions cannot argue preemption in the context of HBOR and other state servicing laws.

[7] Michela Zonta, Sarah Edelman, Andrew Lomax, "The Uneven Housing Recovery," Center for American Progress, November 2, 2015.
[8] U.S. General Accountability Office, "TROUBLED ASSET RELIEF PROGRAM: More Efforts Needed on Fair Lending Controls and Access for Non-English Speakers in Housing Programs," GAO-14-117: Published: Feb 6, 2014. Publicly Released: Feb 6, 2014.

Conclusion

We expect that the agencies will have received voluminous comments during this lengthy EGRPRA process, most of which will likely focus on eliminating existing regulations. We believe that addressing outdated regulations should include modernizing and adjusting their scope and implementation to reflect current needs and realities. The regulations in place to implement and enforce the Community Reinvestment Act, while they have done a tremendous amount to advance the provision of credit, capital and financial services in low and moderate income communities, desperately need updating as the industry and people's and communities' needs have changed. We stand ready to help you develop these upgrades.

Sincerely,

Andrea Luquetta
Director of Policy and Research