

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

January 9, 2020

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: January 14, 2020, “The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting’s Proposal”

The Subcommittee on Consumer Protection and Financial Institutions will convene a hearing entitled, “The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting’s Proposal” on Tuesday, January 14, 2020, at 2:00 p.m. in room 2128 of the Rayburn House Office Building. This single-panel hearing will have the following witnesses:

- **Ms. Gerron Levi**, Director, Policy & Government Affairs, National Community Reinvestment Coalition
- **Mr. Eric Rodriguez**, Senior Vice President, Policy and Advocacy, UnidosUS
- **Ms. Paulina Gonzalez-Brito**, Executive Director of California Reinvestment Coalition
- **Ms. Hope Knight**, President & CEO, Greater Jamaica Development Corporation
- **Ms. Faith Bautista**, President & CEO, National Diversity Coalition

The Community Reinvestment Act

The Community Reinvestment Act (CRA), enacted into law by Congress in 1977,¹ addresses how banks meet the credit and capital needs of the communities they serve. As part of landmark civil rights legislation passed in the 1960s and 1970s, CRA was created in response to redlining, a practice by which banks discriminated against prospective customers based primarily on where they lived, or their racial or ethnic background, rather than creditworthiness. In passing CRA, Congress affirmed that “regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business”, and for “each appropriate federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.”²

Current CRA Implementation and Bank Examinations

Under the current CRA framework, the primary banking regulators – specifically the Federal Reserve Board of Governors (FRB), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC) – conduct regular examinations to evaluate banks’ activities to provide credit, services and make investments in low and moderate income (LMI) communities where the banks operate. CRA applies only to banks with federally insured deposits, and excludes bank affiliates,

¹ P.L. 95-128, 91 Stat. 1147, title VIII of the Housing and Community Development Act of 1977, 12 U.S.C. § 2901 et seq.

² 12 U.S. Code § 2901 - Congressional findings and statement of purpose.

credit unions and nonbank financial companies.³ CRA examinations focus on LMI loans and investments by institutions in designated assessment areas.’ Assessment areas are defined by banks, and must “consist of one or more [Metropolitan Statistical Areas] or metropolitan divisions or one or more contiguous political subdivisions, such as counties, cities or towns . . . [and] must include geographies in which the bank has its main office, branches and deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans.”⁴ Within assessment areas, CRA examinations evaluate banks’ service to local LMI communities and issue grades for the tests in the following three principal categories:

- **Lending:** an evaluation of a bank’s lending activities to LMI communities. Examiners consider loan to deposit ratios, the percentage of loans in an assessment area, lending to borrowers of different incomes and in different amounts, geographical distribution of loans, and actions on complaints filed against the institution.⁵
- **Investment:** direct lending and investments, or investments in secondary loan markets that qualify as public welfare investments (PWI), or community development investments (CDI) that meet PWI requirements, defined broadly as “affordable housing (including multifamily rental housing) for low- and moderate-income individuals; community services targeted to low- and moderate-income individuals; activities that promote economic development by financing small businesses or small farms (gross annual revenues of \$1 million or less); and activities that revitalize or stabilize low- and moderate-income geographies.”⁶
- **Service:** “a service that has as its primary purpose community development, is related to the provision of financial services, has not been considered in the evaluation of the bank’s retail banking services, benefits the bank’s [assessment area (AA)] or a broader statewide or regional area that includes the bank’s AA and has not been claimed by other affiliated institutions.”⁷

For the purposes of CRA examinations and grading, banks are subdivided into three groups, by size that are annually adjusted according to inflation: **small banks**, with assets below \$1.305 billion as of December 31 of either of the prior two calendar years; **intermediate small banks**, with assets between \$326 million and \$1.305 billion; and **large banks**, with assets in excess of \$1.305 billion.⁸ There are two additional non-size categories under CRA. One set are **wholesale and limited purpose banks**. Wholesale banks are not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. Limited purpose banks offer only a narrow product line (such as credit card or motor vehicle loans).⁹ Another set are **institutions with strategic plans**. Under CRA regulations, a covered bank may request to develop a strategic plan, for customized CRA evaluation, which is subject to a 30-day public comment period, and ultimately requires approval by the bank’s primary regulator. According to the FRB, “strategic plans allow banks to tailor their performance goals to the needs of their community by working directly with the community to develop the goals.”¹⁰ Subject to the 1995 revision of CRA examinations procedures, small banks are evaluated solely on the Lending test, intermediate small banks are evaluated on both the Lending test and the Investment test, and large banks are evaluated on all three

³ Some stakeholders have suggested expanding CRA to cover these entities. For example, *see* Government Accountability Office, “[Community Reinvestment Act: Options for Treasury to Consider to Encourage Services and Small-Dollar Loans When Reviewing Framework](#),” (Feb. 14, 2018), 44-46.

⁴ Federal Reserve Bank of Dallas, “[A Banker’s quick guide to CRA](#)” Sep. 1, 2005.

⁵ Darryl Getter, “[The Effectiveness of the Community Reinvestment Act](#),” Congressional Research Service (CRS) (Feb. 28, 2019)..

⁶ Federal Reserve Bank of Saint Louis, “[What Qualifies as a CRA Investment?](#)”

⁷ Federal Reserve Bank of Dallas, “[A Banker’s quick guide to CRA](#)” Sep. 1, 2005.

⁸ OCC, “Agencies Release Annual CRA Asset-Size Threshold Adjustments for Small and Intermediate Small Institutions,” (Dec. 31, 2019), <https://www.occ.gov/news-issuances/news-releases/2019/nr-ia-2019-153.html>.

⁹ OCC, “[Wholesale and Limited Purpose Banks under the Community Reinvestment Act](#).”

¹⁰ FRB, “[Community Reinvestment Act \(CRA\) – Strategic Plans](#).”

tests, including Lending, Investment, and Service. Accordingly, CRA examinations assign points for each of the three tests, and rate a bank’s performance in each category, and overall, as outlined in table 1 below.

Table 1: Points Assigned for CRA Performance¹¹

Rating	Lending	Investment	Service
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

Source: Federal Financial Institutions Examination Council.

As the Committee explored in an April 2019 hearing,¹² redlining continues to be pervasive in too many communities across the country. A 2018 investigative report on the status of mortgage lending showed widespread discrimination in bank lending.¹³ After reviewing 31 million records of loan data, the report found that modern-day redlining persists in 61 metro areas across the country. Specifically, black mortgage applicants were turned away by banks at significantly higher rates than whites in 48 cities, Latinos in 25, Asians in nine and Native Americans in three. Yet over the past decade, bank regulators have consistently given approximately 98 percent of banks a passing CRA grade.¹⁴

Recent CRA Reform Developments

On August 28, 2018, the OCC issued an Advanced Notice of Proposed Rulemaking (ANPR), soliciting public comments on modernizing the CRA.¹⁵ The OCC’s ANPR drew nearly 1,500 comments.¹⁶ Several key pillars of the ANPR drew significant resistance from a broad set of respondents, including most notably the consideration of a simple ratio approach to CRA evaluations, focused principally on total CRA activities against total bank assets.

On December 12, 2019, the OCC and FDIC released a Notice of Proposed Rulemaking (NPRM) on CRA modernization.¹⁷ FDIC Board Member Martin Gruenberg voted against the proposal, describing it as “a deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act.”¹⁸ It is notable that the Federal Reserve did not join this NPRM due to remaining concerns about certain elements of the proposed rulemaking.¹⁹ Key elements of the NPRM include:

¹¹ Darryl Getter, “[The Effectiveness of the Community Reinvestment Act](#),” CRS (Feb. 28, 2019).

¹² Subcommittee on Consumer Protection and Financial Institutions hearing entitled, “[The Community Reinvestment Act: Assessing the Law’s Impact on Discrimination and Redlining](#),” (Apr. 9, 2019).

¹³ [Aaron Glantz](#) and [Emmanuel Martinez](#), [Kept Out: For People of Color, Banks Are Shutting the Door to Homeownership](#), Reveal from the Center for Investigative Reporting (Feb 18, 2018).

¹⁴ See [The Effectiveness of the Community Reinvestment Act](#), CRS, (Feb 28, 2019).

¹⁵ OCC Bulletin 2018-24, Advance Notice of Proposed Rulemaking, “[Reforming the Community Reinvestment Act Regulatory Framework](#),” (Aug. 28, 2018).

¹⁶ Comment letters to OCC on CRA available [here](#).

¹⁷ OCC and FDIC Notice of Proposed Rulemaking, “[Community Reinvestment Act Regulations](#),” (Dec. 12, 2019).

¹⁸ FDIC, “[Statement by Martin J. Gruenberg, Member, FDIC Board of Directors; Notice of Proposed Rulemaking: Community Reinvestment Act Regulations](#),” (Dec. 12, 2019).

¹⁹ According to one report, Fed officials objected to the proposal because it lacks analytical rigor. See Andrew Ackerman, “[Bank Regulators Propose Overhaul of Lending Rules for Poorer Communities](#),” Wall Street Journal (Dec. 12, 2019).

1. **Qualifying activities:** The proposal expands the list of qualifying activities well beyond the current list.²⁰ Qualifying activities would include small business loans (raising the threshold for qualifying small businesses from \$1 million to \$2 million), family farms with revenues up to \$10 million, “essential infrastructure” including stadiums and bridges, and others. The proposal also requires the regulator to maintain on their websites a list of examples of qualifying activities, which must be updated at least every three years, and opened for public comment. The proposal would establish a process for banks to submit proposed projects for approval as qualifying activities, requiring the agencies to provide a response within six months. Concerns have been raised that the proposal, and the accompanying list of sample projects, would increase CRA activity that may be contrary to the law’s purpose by allowing projects that show little or no demonstrable impact to low-income communities.²¹

2. **Assessment areas:** Current CRA evaluations are focused on activity around a bank’s branches and offices, which poses some challenges in assessing online deposit-taking and lending activity. The proposal puts forward two new types of assessment areas. Facility-Based Assessment Areas would include branches, offices, and other physical locations used for deposits mobilizations, as well as surrounding areas where a bank has originated or purchased qualifying retail loans. For banks that source 50% or more of domestic deposits outside Facility-Based Assessment Areas, the proposal establishes Deposit Based Assessment Areas would be geographies where the bank sources 5% or more of its domestic retail deposits. When calculating the overall dollar value of CRA activity, the proposal allows banks to include activities outside of the bank’s assessment areas, raising additional concerns about decoupling the link to the original intent of CRA in redressing redlining. Furthermore, the proposal would expand assessment areas in a manner that relies on data that is not yet collected, raising concerns about its feasibility.²²

3. **Measuring CRA Performance:** Under the proposal, CRA evaluation and scoring relies on the sum of two metrics. The first is a ratio of total qualifying activities to retail domestic deposits, to which is added 0.01 times the ratio of bank branches in LMI census tracts, under-served areas, distressed areas, and Indian country to total branches. A bank’s score will be as follows:
 - 11% or higher → Outstanding
 - 6% to 11% → Satisfactory
 - 3% to 6% → Needs to Improve
 - Less than 3% → Substantial Noncompliance

The structure of the formula and calculation gives overwhelming weight to the ratio of qualifying loans to total domestic retail deposits, with a marginal contribution for branch location. This methodology, combined with the broad expansion of qualifying activities and areas, raises serious concerns about substantial dilution of CRA examination and requirements, and an effective break of the historical link between this CRA proposal and the law’s origins in redressing redlining and systemic discrimination in banking and lending. It is worth noting that, to achieve an Outstanding or Satisfactory rating, a bank must also meet a minimum threshold of community development lending or investing, defined as 2% of the bank’s domestic retail deposits. Here, also, there are

²⁰ OCC, “[Community Reinvestment Act Fact Sheet](#),” (Dec. 12, 2019).

²¹ See Noah Buhayar and Jesse Hamilton, “[Financing for Sports Stadiums Could Count as Helping the Poor](#),” Bloomberg (Dec. 16, 2019).

²² NCRC, “[Initial NCRC Analysis Of The FDIC And OCC Notice Of Proposed Rulemaking Concerning The Community Reinvestment Act](#),” (Dec. 18, 2019).

concerns, as activities that may qualify for community development lending or investments is broadened to include activities that may not have a direct link back to low-income communities.²³

Under the proposal, the CRA exam will include a Retail Lending Distribution Test, which uses a Geographic Distribution Test and a Borrower Distribution Test to evaluate the distribution of loans over an Assessment Area. Concerns with this approach include the elimination of specific evaluation of home mortgage lending in LMI areas, and the fact that these tests now count for less in the overall CRA examination, as banks can fail in half their assessment areas and still pass.²⁴

4. **Small Community Banks and Specialized Banks:** Banks with assets under \$500 million will be able to opt-in to the new CRA framework or continue to be examined under the current CRA framework. The proposal retains the current option for certain banks to develop a strategic plan, which would be subject to public comment, and require regulators to respond within six months of receipt of the strategic plan or request a 90-day extension. The proposal eliminates the current option for wholesale and limited purpose designations, which allows certain specialized banks to be evaluated solely on community development activities. All such banks would not have to conform with the updated CRA evaluation program.

Finally, while some industry stakeholders have voiced support for the plan,²⁵ there have been additional concerns raised by others, including the process being utilized. For example, Members of Congress and hundreds of stakeholders have requested that any significant CRA proposal provide the public with at least 120 days to analyze and comment on the proposal,²⁶ and yet the NPRM gives the public only 60 days to comment. Moreover, some stakeholders have been critical of Comptroller Otting's bus tour on CRA modernization for not being open to the public, with select groups invited to attend.²⁷ Concerns have also been raised that the OCC has taken unusual steps to silence opposition to its CRA reform efforts.²⁸ Furthermore, given the lack of consensus between the Federal Reserve, OCC and FDIC, the result may lead to inconsistent regulatory treatment and regulatory arbitrage with banks choosing whichever framework they prefer.²⁹

²³ *Id.*

²⁴ See FDIC, Statement by Martin J. Gruenberg, *supra* note 18.

²⁵ See Brendan Pedersen, "[Regulators' powerful incentive to fast-track CRA reform](#)," American Banker (Jan. 6, 2020).

²⁶ See FSC, "[Waters, Brown, and Meeks Lead House and Senate Committee Democrats in Letter to Regulators on Proposed CRA Changes](#)," (Dec. 13, 2019), and NCRC, "[More Than 500 Community Organizations Urge FDIC To Not Join Flawed Notice Of Proposed Rulemaking For Community Reinvestment Act](#)," (Dec. 11, 2019).

²⁷ See "[CRC Responds To OCC Visit To Southern California To Discuss CRA Reforms](#)," California Reinvestment Coalition.

²⁸ See "[Coalition Of Community Orgs Seeks Records On Trump Administration's Attempt To Silence Opposition To Gutting Anti-Redlining Rules](#)," California Reinvestment Coalition.

²⁹ See Brendan Pederson, "[What's the Fed's next move on CRA reform?](#)" American Banker (Jan. 3, 2020). *See also* Speech by FRB Governor Lael Brainard, "[Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose](#)," (Jan. 8, 2020).