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Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency (OCC)
400 7th Street SW, Suite 3E-218
Washington DC 20219

Via email: regs.comments@occ.treas.gov

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

To Whom It May Concern:

We are writing on behalf of the Greater Rochester Community Reinvestment Coalition (GRCRC) regarding the OCC's Advanced Notice of Proposed Rulemaking (ANPR) seeking input on proposed changes to the Community Reinvestment Act (CRA).

GRCRC was launched in 1993 to generate and continue discussions about lending patterns in Rochester. Convened by Empire Justice Center, GRCRC has met with numerous banks and state and federal regulators during CRA exams and mergers, and submitted dozens of data-driven comments to the appropriate state and federal regulators who have oversight of the banks. GRCRC, Empire Justice Center, and its predecessor organization Public Interest Law Office of Rochester, have released seventeen analyses of home mortgage lending, small business lending, and access to credit over the past 25 years. The organizations use data driven analyses to identify strengths and weaknesses in lending patterns and to generate discussions with the top financial depositories in the Rochester NY MSA.[1]

We have significant concerns about the ideas presented in the ANPR and the fact that the OCC is moving forward on its own, without the other two federal regulators. We urge the OCC to start anew, working with the FDIC and Federal Reserve, to preserve and strengthen the CRA, and not weaken it in any way.

CRA Matters!

The CRA is one of the most important laws we have to hold banks accountable to local communities, requiring them to lend and provide services equitably, and to support community development in the areas where they do business. This landmark law was one of many civil rights laws passed in response to

[1] The most recent analyses are "#AllTogetherNow: Improving Small Business Lending in the Rochester NY Community" (found at: https://empirejustice.org/wp-content/uploads/2018/01/alltogethernow-s.pdf) and "Too Big to Fail...Too Poor to Bank: How Mainstream Financial Services Can Help Low-Income Working Families Succeed" (found at: https://empirejustice.org/wp-content/uploads/2018/09/Access-to-Credit-Report-2018-FINAL.pdf).

discriminatory policies and practices that locked people of color out of banking, credit, housing, employment, and education. Since 1996, CRA has leveraged almost $2 trillion in small business loans and community development loans and investments in low-moderate income communities across the country.

GRCRC has been commenting on bank CRA exams for over 20 years. Canandaigua NB&T (CNB) is one of the Rochester NY area banks with which we've been engaging. As seen by the table below, the Community Reinvestment Act, and the coalition's work around it, has encouraged CNB to increase its total CRA-related lending, investments and grants by $229 million, or 221%, over three exam periods between 2007 and 2018, a rate of increase much higher than the bank's 94% increase in area deposits. So, yes, the CRA, along with the input of the local organizations in our coalition, has provided the motivation for CNB, and other banks, to reinvest in the Rochester community.

Canandaigua NB&T Deposits Versus CRA-Related Reinvestments in the Rochester NY Community		
	Deposits (millions)	Reinvestments (millions)
2018 Exam Period (2015-2017)	$2,132	$333
2011 Exam Period (2008-2010)	$1,447	$202
2007 Exam Period (2005-2007)	$1,100	$104
2007-2018 Change (#)	$1,032	$229
2007-2018 Change (%)	94%	221%

As FDIC Board of Directors Member Martin Gruenberg said in a recent speech, we believe it is crucial to, "[P]reserve the foundations of CRA – the community-based focus, the reliance on community input, and the consideration of discriminatory and other illegal credit practices in the CRA evaluation – while adapting CRA to a changing banking environment."[2]

We urge the OCC, in conjunction with the Federal Reserve and FDIC, to propose and implement changes that will make banks more accountable and responsive to local communities, while bringing the regulations more in line with purpose of the CRA legislation—to address redlining. In fact, CRA regulations must be updated to address how redlining is happening today (i.e. access to affordable conventional mortgages, branch closures in low-moderate income neighborhoods and openings in middle-upper income neighborhoods, homeowners insurance redlining), as well as to ameliorate the ongoing impacts of past redlining (i.e. HOLC maps, mortgage redlining and discrimination).

If the OCC proceeds to significantly weaken CRA regulations and/or the CRA exam process, the progress in increasing lending to low- moderate income neighborhoods will be halted. NCRC estimates that low-moderate income neighborhoods could lose up to $105 billion in home and small business lending nationally over a five year time period.[3] In New York State, the loss would be between $2.79 billion and $5.79 billion. In New York's 25th Congressional district, which encompasses all of Rochester and most of Monroe County, the loss in lending would be between $43.8 million and $87.7 million.

[2] https://www.fdic.gov/news/news/speeches/spoct2918.html
[3] https://ncrc.org/wp-content/uploads/2018/09/CRA-Impact-dollar-loss-V5.pdf

The Metric-Based "One Ratio" Approach Does Not Fit the Local Community Focus of CRA

In the ANPR, the OCC outlines a metric-based framework to modernize CRA. This metric-based framework, also called the "one ratio," would consist of the dollar volume of a bank's CRA activities (loans, investments, and services to low-moderate income borrowers and communities) divided by the bank's assets, deposits or capital. The ratio is supposed to reflect CRA effort compared to a bank's capacity.

It is good to see that the OCC is grappling with how to measure and compare the actual impact of banks' CRA performance. CRA advocates have been trying to do this for years. In fact, Empire Justice Center and the Greater Rochester Community Reinvestment Coalition have previously estimated bank CRA-related lending and investments in the Rochester NY area, as well as metrics of investments per local deposits. This was done in 2007, 2011 and 2018 when commenting on Canandaigua NB's CRA performance,[4] and in 2016 when commenting on JPMorgan Chase's CRA performance.[5]

As you can see in the metrics used by GRCRC in the above-mentioned comment letters (as well as the table below), the ratios used were **locally focused**--local CRA-related loans, grants and investments as a percentage of the bank's local deposits. This shows how well a bank is meeting a local community's needs based on its local capacity—how much of a bank's local deposits are being reinvested in a local community.

Percentage of Canandaigua NB&T's Rochester MSA Deposits Reinvested in Community			
		% Deposits Reinvested	
	Deposits (millions)	Entire Exam Period	Annualized
2018 Exam Period (2015-2017)	$2,132	15.62%	5.21%
2011 Exam Period (2008-2010)	$1,447	13.95%	4.65%
2007 Exam Period (2005-2007)	$1,100	9.40%	3.13%

As seen above, as CNB increased its FDIC deposits in the Rochester MSA across the three exams, the bank increased the percentage of deposits it was reinvesting back into the Rochester NY community. GRCRC believes this is a result of the OCC's regular review of CNB CRA performance, as well as the voice of the coalition, via CRA, during these exams. As a result of CRA, during each of the above exams, GRCRC engaged with the bank about concerns and opportunities, met with the OCC examiners, and submitted a letter commenting on CNB's CRA performance.

We are concerned that a single ratio measuring a bank's CRA performance would make CRA exams considerably less effective in evaluating how banks are responding to local needs, particularly in small and medium metropolitan areas and in rural communities. **Using a single metric, or set of metrics, measured at the national/aggregate level would contradict the CRA statutory requirement 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. The OCC needs to remember

[4] See https://empirejustice.org/wp-content/uploads/2018/01/grcrc-comments-cnbs-cra-2011.pdf, pp. 21-22. https://empirejustice.org/wp-content/uploads/2018/10/CanandaiguaNB_CNB_CRA_-Exam_Comment_Letter_2018.pdf, pp. 12-14.

[5] See https://empirejustice.org/wp-content/uploads/2018/01/grcrc-jpmc-crc-letter.pdf, p. 13.

that banks serve a variety of communities—different in size, composition, economy and needs/opportunities. A single metric or one ratio is unlikely to take these local differences into account.

Investments as a percentage of capital by the nation's largest banks are not likely to work out so well for mid-sized cities like Rochester, nor for the lower income people and small businesses in these communities. Large national targets like the one ratio will incentivize banks, particularly large national banks, to focus on larger investment deals or larger MSAs, while ignoring more modest sized deals and communities like Rochester, as well as rural communities. Any metric must measure how well banks like JPMorgan Chase, Bank of America and KeyBank, which are among Rochester's top depositories, are serving mid-size and smaller communities that put a substantial portion of their money into the banks as deposits.

Local Community Input Is at the Heart of CRA

CRA exams currently evaluate and rate bank performance in geographical areas called assessment areas where banks have branches. Examiners are required to solicit and consider comments from community members about performance in assessment areas. This critical part of CRA, considering public comments on local performance, will be significantly undermined if the one ratio replaces assessment areas or significantly diminishes the importance of assessment areas and public input on CRA ratings.

In our 2016 comment letter about KeyBank's proposed acquisition of First Niagara Bank, the importance of meeting the needs of localities was laid out in the list of commitments we urged KeyBank to incorporate in its community benefits plan. These included: strong local market goals commensurate with local depository market shares, local market advisory councils, maintenance of a minimum percentage of its branches in low-moderate income neighborhoods, sharing of local data about goal progress, and the hiring of local CRA mortgage officers.[6] We shared many of these ideas with KeyBank at in-person meetings in Washington DC with organizations from across the country and in Rochester NY with GRCRC members. As a result, KeyBank signed a strong community benefits agreement in March of 2016.[7]

Our experience with KeyBank during its merger process shows that it's critical to engage local communities impacted by a merger, and to co-create a plan for future lending and investment. In fact, banks should be required to develop a proactive CRA plan at the time of mergers to ensure that the newly expanded institution leads to more resources for local communities, and not fewer, as is too often the case.

Modernize CRA While Focusing on Historically Redlined People and Communities

The OCC seeks to expand the types of activities that count for CRA credit – including activities that do not target low-moderate income people and communities. The OCC is proposing to count more activities outside of assessment areas; expand the universe of activities that automatically qualify for CRA credit without scrutinizing if they actually benefit LMI populations; expand allowable CRA small business lending to larger businesses; and quantify non-monetary activities such as service hours. We

[6] https://empirejustice.org/wp-content/uploads/2018/09/P-COM_GRCRC_Key_Bank_Comments_2016.pdf, pp. 3-4.
[7] https://empirejustice.org/resources_post/press-release-empire-justice-center-and-local-advocates-announce-agreement-with-keybank/

are deeply concerned that these proposals could dilute the impact of CRA and, even worse, take focus away from the populations it was meant to benefit, which are historically redlined people and communities.

The CRA should never have been targeted to only low-moderate income people and communities. Senator Proxmire and the other members of Congress that drafted the CRA and secured its passage were clearly concerned about disparities in lending in minority communities, especially inner-city neighborhoods. Still, racial disparities in lending remain stubborn and persistent.

In research conducted by Empire Justice Center, even after controlling for income, Rochester NY area Black applicants were denied home purchase loans at higher rates than White applicants. Middle income Blacks were denied 2.5 times as often as middle income Whites.[8] In another study, businesses located in majority nonwhite census tracts were much less likely to get loans than expected by their presence. While 18% of the Rochester NY area's businesses were in nonwhite neighborhoods, they obtained only 9% of the area's 2015 small business loans.[9]

There are several ways the OCC could expand allowable CRA activities without diluting the original purpose of CRA and while maintaining the focus on increasing access to banks and banking and supporting community development.

- Explicitly include bank lending, investing and services to people and communities of color in its CRA evaluations. While there is substantial overlap between low-moderate income people and communities and people and communities of color, there is some opportunity for expansion here.
- Require that all consumer lending (student, auto, credit card, unsecured consumer loans) be considered in CRA evaluations. Such evaluations would need to be both quantitative and qualitative, and include whether or not banks have one or more non-mortgage consumer loan products designed to serve traditionally redlined populations and communities and how well those products do in fact serve the intended local communities. The CRA already allows for other loans to be included, and requires so if consumer loans constitute a substantial majority of an institution's business.[10] Requiring the inclusion of all consumer loans will make CRA evaluations more uniform and comparable across institutions, including for limited purpose banks like credit card banks.
- Require that the lending of bank mortgage company affiliates be included on CRA exams.

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 low- and moderate-income neighborhoods. Expanding to these types of projects would be outside the original purpose of CRA. Banks already have significant leeway around large projects that serve a certain percentage of low-moderate income people and 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.

[8] http://empirejustice.org/wp-content/uploads/2018/01/river-runs-dry-ii-1.pdf, p. 10.
[9] http://empirejustice.org/wp-content/uploads/2018/01/alltogethernow-s.pdf, pp. 6-7.
[10] https://www.occ.treas.gov/news-issuances/bulletins/2014/bulletin-2014-16a.pdf, pp. 5-6.

Modernizing Assessment Areas

The banking world has changed, especially with the rise of online banks. We agree that CRA exams should assess lending and other activities that are happening outside of banks' current assessment areas. However, we are concerned that the OCC's approach to expanding assessment areas would only be for "extra credit" and a way to amass CRA credit to reach the one ratio target, with no incentive to serve local communities.

Rather than simply including the increased bank lending and deposit taking that is happening in geographies beyond bank branches in the total dollar volume of CRA activities, the OCC should instead establish new assessment areas for geographical areas where banks do not have branches but engage in a significant amount of business. These new assessment areas would better facilitate accountability to local needs and public input, while expanding opportunities for banks to engage in CRA activities. Banks should still maintain the local obligation they currently have around branches and ATMs. Any changes cannot lead to a loss of activity in existing assessment areas.

Branches and Branch Products Matter: Location, Access and Affordability

The ANPR devotes very little attention to access to banking and goes so far as to question whether branching in low-moderate income communities should continue to be considered on CRA exams. The need for bank branches remains. Nationwide, a quarter of all households use bank tellers as their primary method of account access, and that jumps to about 45% of seniors and 40% of those earning below $30,000. Not everyone has access to online banking, and barriers exist for specific populations, such as the elderly and immigrants. Mobile and online banking should supplement, not replace, branches.

And branches alone aren't enough if people can't use the products. In the city of Rochester, 23% of adults are outside the credit economy; and of the 77% with some type of credit score, over half have a subprime score.[11] The CRA should also evaluate the cost of branch and online products and how banks are or are not reducing barriers to their products, including cost, identification, and prior banking issues.

In Empire Justice Center's research for its most recent report, "Too Big to Fail…Too Poor to Bank," the organization learned from its consumer focus group that most participants had at least one credit union or bank account and many accessed their accounts online or via a mobile app. At the same time, the consumers found it very important to go to a branch to address a problem with their account or to make deposits. Brick and mortar branches still matter to consumers, and major banks have been closing them in or near low-moderate income areas in the past couple of years. This makes it more difficult for consumers, particularly seniors or those without transportation, to obtain in-person support to address account issues.

Conclusion

Meaningful CRA reform could boost lending and access to banking for underserved communities. CRA ratings must be reformed so the pass rate is no longer 98 percent. Assessment areas must be added that include areas outside of bank branch networks in which banks make high volumes of loans. Lending and

[11] https://empirejustice.org/wp-content/uploads/2018/09/Access-to-Credit-Report-2018-FINAL.pdf, pp. 5-6.

access to banking for people and communities of color must be considered on CRA exams. Mortgage company affiliates of banks must be included on CRA exams.

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

Sincerely,

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