



October 29, 2021

This letter offers comment from the National Alliance of Community Economic Development Associations (NACEDA) on the Office of the Comptroller of the Currency's Proposal to Rescind its 2020 rule regarding the Community Reinvestment Act, Docket ID OCC-2021-0014

To Whom It May Concern:

NACEDA strongly supports the OCC rescinding its 2020 final rule regarding the Community Reinvestment Act (CRA).

NACEDA is an alliance of 35 state and regional membership networks for mission-based community development organizations, including community development corporations (CDCs), community-based developers, and community development financial institutions, among others. Our mission is to lead the community development field and its partners in shaping and influencing strategies that advance community prosperity. NACEDA's network touches almost 4000 community-based development organizations across its membership.

Congress passed CRA with the intent of ending redlining and ensuring that banks serve community-identified financial and community development needs, consistent with safe and sound banking practices. The 2020 final rule falls short of serving that goal.

- As outlined in NACEDA's comment letter to the 2018 Advanced Notice of Proposed Rulemaking (ANPR) and repeated in NACEDA's 2020 comment on the Notice of Proposed Rulemaking (NPR), the CRA framework finalized in 2020 is heavily oriented toward making compliance easier for financial institutions at the expense of achieving the best possible outcomes in low- and moderate-income communities.¹
- The 2020 Final Rule utilizes a fundamentally flawed framework for approaching CRA modernization. A modern CRA rule that serves the law's original intent to end redlining and ensure local access to basic financial services would start with the question, "What does the community need?" Instead, the final rule offers to develop a non-exhaustive list of activities developed by regulators and bureaucrats completely disconnected from the communities CRA obligates banks to serve. Thought of another way, the "What counts?" framework finalized in

¹ Woodruff, Frank. "National Alliance of Community Economic Development (NACEDA) - Comment." Regulations.gov, November 19, 2018. <https://www.regulations.gov/document?D=OCC-2018-0008-0768>.

2020 creates a barrier between banks and the communities they serve, undercutting the process by which banks are compelled to learn the social, economic, and financial needs of the communities in which they do business. A dogmatic “What counts?” approach, which is what the final rule offers, is antithetical to the law’s original intent.

- The final rule overemphasizes a very small number of financial ratios in determining a bank’s CRA evaluation. The finalized ratio-based approach disregards whether the community development and financial needs of the community are being served by the bank or its investments. Setting a dollar-figure goal incentivizes financial institutions to meet their CRA obligations by performing the highest-dollar or easiest transactions possible, regardless of whether the transactions meet a community need. Further, banks have a disincentive to fulfill smaller-dollar transactions which may have a greater community impact, given the transaction costs (underwriting, administration, origination, etc.) associated with smaller financial transactions. Again, an approach that puts an overly broad and blunt ratio ahead of community needs is in fundamental conflict with the law’s original intent.
- There was a lack of data and transparency in the rulemaking process. Critical components of the NPR, upon which the final rule is based, could not be analyzed, supported, criticized, or otherwise responded to without access to the data upon which regulators made conclusions. In some cases, regulators have access to banking information that is not and cannot be made public. In other cases, regulators made decisions based on data to which even they do not have access. For example, with the creation of deposit-based assessment areas, regulators cannot determine the quantity or location of these assessment areas. Most financial institutions cannot even make this determination for their own institutions because banks don’t regularly collect deposit address information.

As a result, the public, the regulated financial institutions, and regulators themselves are blind to the potential impact of the final rule.

- NACEDA, and many others, asked all relevant CRA regulators to come to agreement on a framework before engaging in formal rulemaking. The OCC proceeded twice without full participation. Without full regulator participation, the NPR process lacked public credibility.
- Relatedly, the final rule outlines an entirely new set of CRA regulations. It also outlines a process by which small banks could opt-out of this new framework and use the old regulations. The Federal Reserve has publicly outlined some ideas for their version of a modern CRA. If the OCC’s final rule stays in place, some entities serving low- and moderate-income communities (CDCs, municipal governments, and others) will have to become proficient at all three sets of CRA regulations (the old, the new, and the Federal Reserve’s) in order to recruit and procure resources and capital. That makes the work of community development even more difficult and unnecessarily complicated.
- Rulemaking during a national emergency raised barriers for community-based organizations to participate in the process. NACEDA wrote to the OCC and FDIC on March 27, 2020, asking for a suspension of CRA rulemaking due to the world’s unprecedented public health crisis.² In that

² “NACEDA Network Calls for the Suspend CRA Rulemaking Amid Coronavirus Crisis.” NACEDA, March 27, 2020. <https://www.naceda.org/assets/CRA-Rule-Suspension-Letter-to-OCC-FDIC-March-27-2020.pdf>.

letter, we stated that *“Continuing the rulemaking process with an April 8, 2020 comment deadline forces community-based organizations to choose between saving lives and livelihoods now and helping to shape the long-term economic opportunities their communities will be able to access for decades to come. You have the power to relieve community-based organizations of having to make that choice.”* Unfortunately, regulators continued to force community organizations, advocates, banks, and other vital community institutions that have utilized CRA for decades, to make that choice. As a result, the OCC lost an opportunity to gather the quantity and quality of comments necessary for such a complex rule. Stakeholders who were too busy serving the urgent needs of their communities did not comment. The efficacy, efficiency, and quality of the OCC’s final CRA rule suffered as a result.

NACEDA has continued to be heavily critical of the final CRA rule’s fundamental approach, assumptions, strategy, and rigidity. According to NCRC and other researchers and advocates, the OCC’s CRA rule would shift billions of dollars or more away from communities that already struggle with disinvestment, racism, and economic disruption.³ The criticisms outlined here make the final rule beyond repair. It should be rescinded.

To paraphrase Federal Deposit Insurance Corporation (FDIC) Board Member Martin Gruenberg’s statement on December 12, 2019, in opposition to the framework put forward for the OCC’s CRA reform efforts, the framework severely undermines what has been a core strength of CRA for 40 years – the encouragement of bank engagement and dialogue with stakeholders in local communities, including community-based organizations, community development corporations, and others, to understand and better serve historically underserved areas.⁴ For all the reasons outlined in this letter, we ask that the OCC scrap its final rule and start again.

Thank you for considering our comment.

Sincerely,

A handwritten signature in black ink that reads "Frank Woodhull". The signature is written in a cursive, flowing style with a large, prominent loop at the end of the last name.

Executive Director
National Alliance of Community Economic Development Associations (NACEDA)
1660 L Street NW #306
Washington, DC 20036

³ “Proposed Changes To CRA Puts Billions In Lending At Risk Each Year.” NCRC, February 12, 2020. <https://ncrc.org/proposed-changes-to-cra-puts-billions-in-lending-at-risk-each-year/>.

⁴ Gruenberg, Martin J. “Statement by Martin J. Gruenberg, Member, FDIC Board of Directors; Notice of Proposed Rulemaking: Community Reinvestment Act Regulations.” FDIC, December 12, 2019. <https://www.fdic.gov/news/news/speeches/spdec1219d.html>.