NALCAB
National Association for Latino Community Asset Builders

April 6, 2020

To: OCC, Ms. Vonda J. Eanes
Director for CRA and Fair Lending Policy Compliance
Office of the Comptroller of the Currency
400 7th Street SW, Washington, DC 20219

Re: Docket ID OCC-2018-0008

Dear Ms. Eanes:

NALCAB – National Association for Latino Community Asset Builders opposes the overall approach to rewriting the Community Reinvestment Act (CRA) regulation described in the Notice of Proposed Rulemaking (NPR) published in the Federal Register by the Office of the Comptroller of Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) on January 9, 2020.

The CRA should be modernized in ways that place greater focus on the needs and opportunities of low- and moderate-income (LMI) people, and communities that face persistent poverty. The approach detailed in the NPR will do the opposite by lowering the bar for banks to meet their community reinvestment requirements. This NPR effectively guts the CRA. It is fatally flawed because the content, if implemented in a final rule, will undermine the original intent of CRA, and because the manner in which the OCC has gone about the rulemaking process has undermined the credibility of the agency on the issue of CRA modernization.

NALCAB is a national non-profit organization with a mission to strengthen the economy by advancing economic mobility in Latino communities. NALCAB is the hub of a national network of more than 120 mission-driven organizations, in both urban and rural communities, in 40 states and DC that build affordable housing, address gentrification, support small business growth, and provide financial counseling on issues such as credit building and homeownership. Our vision is to dramatically scale the flow of public and private sector capital that responsibly meets the asset building needs and opportunities in the communities and families we serve. As a grant maker and a lender that is certified by US Treasury as a Community Development Financial Institution (CDFI), NALCAB regularly partners with banks to make investments that have a positive impact in low- and moderate-income communities. NALCAB participates with other national and regional organizations in a Collaboration to Strengthen the CRA that has engaged regulators and Members of Congress in recent years to advocate for CRA modernization that puts the credit needs of low- and moderate-income people and communities of color first.

It is important to recognize that the future strength and competitiveness of the US economy relies on achieving far broader financial inclusion in our economy and the CRA is key to achieving this. The law was a landmark response to discriminatory practices that targeted communities of color. Unfortunately, these practices continue today. The CRA requires regulated banks to responsibly meet the credit needs of low- and moderate-income people in the communities they serve and it is a fundamental pillar of the multi-billion dollar community development sector. In an economy that is characterized by enormous disparities in wealth that correlate strongly to race, ethnicity and geography, and in the wake of a tax reform that produced windfall profits for banks and their high wealth investors, the CRA is needed now more than ever.

The following are some of our biggest concerns with the content of the OCC's Notice of Proposed Rulemaking.

- The NPR does not explicitly state a goal of increasing the focus of CRA investments on meeting the credit needs of low- and moderate-income people and, in fact, the OCC's approach as proposed in the NPR will do the opposite, in significant part through a "one ratio" approach. The NPR proposes to reduce all CRA investments to a dollar value and to calculate a single ratio of the assigned dollar value of CRA investments divided by retail domestic deposits. By reducing all investments to a dollar value, it will make it harder to measure the quality of CRA investments, or the extent to which they focus primarily on meeting the credit needs of low- and moderate-income people. Relying heavily on a single ratio for the rating also creates an opportunity and incentive for banks to "game the system" by making the easiest, lowest cost investments that technically qualify, regardless of their impact.

- While the NPR identifies "reduce CRA deserts" as a positive outcome it seeks to achieve, the scoring method proposed will in fact increase CRA deserts, particularly in rural and small urban communities that are more difficult for banks to serve. The NPR proposes to allow banks to fail almost half of their assessment areas and still receive a satisfactory rating or better based on the bank's overall "one ratio" score. Banks typically have the most difficulty meeting their community reinvestment requirements in small urban and rural areas. If banks can still achieve a high rating without meeting the credit needs in these harder to serve communities, small urban and rural communities will see significantly less CRA investment.

- The NPR seeks to "create incentives to do more," however, if regulators give banks "double credit" to incentivize certain kinds of investments over others, the result will be less total dollar value of investments. The list of activities for which banks can receive double credit is expansive and includes activities in which banks already invest large amounts such as anything that fits in the incredibly broad definitions of "other community development investments" and "other affordable housing related community development loans." This makes it likely that a bank could get double credit for a large portion of its CRA activities, thereby significantly reducing the real dollars actually invested in LMI communities while receiving the same amount of credit for the purposes of their exam. This is likely to have a significant negative impact on the community development finance sector.

  Further, the proposed method of allowing banks to argue for "partial credit" for investments that have partial benefit to a qualifying population or area will allow banks to argue for small amounts of credit on a wide range of its existing non-CRA motivated business activity, effectively reducing the true community development investments needed to pass the CRA exam. Any CRA qualified investment should be primarily, not partially, targeted to low- and moderate-income people.

- The NPR seeks to "encourage long-term commitment to community reinvestment," however, by dramatically expanding the range of what activities are eligible for CRA credit and allowing banks to argue for partial credit on investments not primarily focused on meeting the credit needs of low- and moderate-income people (including renovations to certain professional sports stadiums), the NPR will actually reduce the volume of high quality community reinvestment and encourage banks to play a numbers game with the CRA exams. It is deceptive to claim to encourage community reinvestment by simply expanding the definition of community reinvestment to include investments that do not primarily focus on LMI people. This in combination with reducing the total dollar value of CRA investments by offering "double credit" for a wide range of activities will undermine the long-term commitment of banks to community reinvestment.

- The NPR seeks to "reduce displacement" of low-income households, however it is likely to incentivize investments that spur displacement. The NPR would allow banks to argue for partial credit for financing activities including athletic stadiums, infrastructure and broadly defined community facilities, including those in Opportunity Zones. NALCAB's research demonstrates that major publicly funded investments in LMI neighborhoods are often catalysts for increased real estate values that can lead to displacement or gentrification, without focused services and investments designed to mitigate potential displacement. The NPR should provide credit for activities designed primarily to prevent or reduce displacement of low- and moderate- income households that live near the location of major public or private real estate or economic development investment.

- "Increase small business lending" is a positive outcome that the NPR states that it seeks to achieve, however, the opposite is likely to happen. The NPR redefines what a small business is to include larger businesses by increasing the maximum qualifying revenue of a small business from $1 million to $2 million. Fewer than 10% of small businesses in the United States earn more than $1 million, so there was no need to increase the revenue in the definition. As a generalization, it is easier for banks to finance larger businesses and this change will incentivize banks to lend to businesses with revenues above $1 million and less to businesses with revenues below $1 million.

- The NPR vaguely states that "preserve community voices" is a positive outcome that the NPR seeks to achieve, however, it does not provide a clear mechanism for determining how comments from the public about a bank's CRA activity can actually have an impact on a bank's CRA rating. The NPR should state that examiners, in determining a final CRA rating, will take into account credible concerns and specific praise raised by members of the public about the bank's CRA activities and performance.

The following are some of factors in the rule making process that have undermined the OCC's credibility with respect to CRA modernization.

- The OCC has disregarded a near consensus of public comments received in response to the Advance Notice of Proposed Rule Making (ANPR) that was released in the fall of 2018. An overwhelming majority of respondents to the ANPR, including many from the banking industry, expressed two key concerns: first, that CRA modernization should focus on the credit needs of LMI communities; and second, that creating a "one ratio" approach to ratings was flawed. The NPR recently published by the OCC reduces focus on LMI people and communities and relies heavily on a "one ratio" approach.

- It is concerning that the OCC issued this NPR without the concurrence of the Federal Reserve and that Mr. Otting, as a member of the Board of the Federal Deposit Insurance Corporation, chose to disregard the strong objections of his fellow board member Martin Gruenberg. Comptroller Otting's decision to move forward with an NPR without the Federal Reserve creates uncertainty and inconsistency among the prudential regulators, which undermines the CRA. In a strongly worded on the record dissent, Mr. Gruenberg described this NPR as, "a deeply misconceived proposal that would fundamentally undermine and weaken CRA." If the NPR becomes a final rule, creating two different CRA rating systems, it will result in confusion and inconsistency between banks overseen by the Federal Reserve versus the OCC – ultimately undermining the CRA.

- The dramatic changes to the CRA regulation proposed in the NPR will significantly impact bank CRA ratings, however the OCC has no way of assessing what the impact will be. While the Federal Reserve has developed a system for assessing the impact of its proposals as compared to actual ratings over the past decade, the OCC has no such method of validating how the proposed rule will change bank ratings. Prior to any final rule being issued, OCC should develop a data-driven methodology for determining the potential impact on CRA ratings and publish its projections.

- Finally, we are concerned that the Comptroller of the Currency, Mr. Joseph Otting, has publicly stated his intent to limit public input in the CRA rating process and, in testimony before the US Congress, has expressed skepticism about whether there is discrimination in bank lending. These troubling perspectives are reflected in the NPR.

Based on all of these concerns, we call on the OCC to withdraw this fatally flawed NPR and suggest that the OCC adopt proposals detailed publicly by Governor Brainard of the Federal Reserve as a basis for further rulemaking.

Respectfully submitted,

Noel Poyo
Executive Director