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

Submitted electronically via www.regulations.gov

RE: Docket No. OCC-2018-0008

To whom it may concern:

These comments are submitted on behalf of the National Fair Housing Alliance (NFHA) and the Center for Responsible Lending (CRL) to express our organization's strong support for effective enforcement of the Community Reinvestment Act, and our concern about the approach proposed by the OCC in the above-referenced Federal Register notice, dated September 5, 2018, entitled "Reforming the Community Reinvestment Act Regulatory Framework." The Community Reinvestment Act is a critical component of efforts to stop lending discrimination throughout the nation and the National Fair Housing Alliance fully supports strong and consistent implementation of the Act.

Founded in 1988, NFHA is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Headquartered in Washington, DC, NFHA's comprehensive education, advocacy and enforcement programs provide equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation.

The Center for Responsible Lending is a non-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL's views are informed by its affiliation with Self-Help, one of the nation's largest nonprofit community development financial institutions. Self-Help has provided $6 billion in financing to 70,000 homebuyers, small businesses and nonprofits and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

The Community Reinvestment Act (CRA) is a critical tool that helps the United States work toward overcoming the legacy of redlining. Today, U.S. neighborhoods are more racially segregated than they were 100 years ago, and the homeownership rate for African-American households is virtually unchanged from its rate 50 years ago. Similarly, the homeownership rate for Hispanics is 30 percentage points lower than that of non-Hispanic Whites. And while the CRA has helped to ensure that insured depository institutions make banking and credit services available in neighborhoods across the nation, these disparities continue in large part because systemic disadvantages to wealth-building were stacked against people of color.

Regrettably, today's racial wealth gap and lending disparities are the not-too-distant remnants of the decades of government policies and practices that enabled the redlining of communities of color for the majority of the 20th Century. Not only did this redlining segregate residential neighborhoods across the United States, but it also directly provided a systemic infusion of wealth for White families while simultaneously excluding borrowers of color from homeownership policies and programs. In the post-Depression era, federal policies that opened housing opportunities for returning veterans and their families expressly excluded people of color from the benefits of government-supported housing programs. Among these programs were public housing, the Home Owners Loan Corporation (HOLC), and mortgage insurance through the Federal Housing Administration (FHA), each of which is described in more detail below.

Initiatives under the New Deal were directly aimed at tackling instability in many economic markets, especially housing. The Home Owners Loan Corporation (HOLC) was created in 1933 for the purpose of stabilizing the housing market and protecting homeownership. The HOLC established the low down payment, long-term, fixed-rate, fully-amortizing mortgage, stabilizing the mortgage market by eliminating its volatility and making mortgages less risky for borrowers. But in the process of attempting to eliminate risk in the market, the HOLC adopted standardized and formalized property appraisal processes that essentially mimicked the view in the private market that the presence of African-Americans, certain immigrants and some religious groups directly contributed to neighborhood instability, deterioration and a decline in property values.[1] The HOLC created a neighborhood classification system that rated communities based on a "desirability scale" and was accompanied by Residential Security Maps. On these maps, entire neighborhoods could be coded as "hazardous" simply because of the presence of African-American or other "inharmonious" racial or social groups. This neighborhood classification system had enormous influence over the private mortgage market where it was used to constrict mortgage lending in neighborhoods of color, as well as sthose with any measurable level of integration. This began the practice of redlining, widespread disinvestment from neighborhoods of color and the denial of mortgage credit to their residents.

FHA built upon the mortgage model developed by the HOLC to insure loans for the construction and the sale of new homes. By lowering the required down payment from 30% to 10% and offering lower interest rates, FHA allowed more working families to afford homeownership and

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[1] The most extensive set of HOLC maps available, many accompanied by the descriptions that explain the classification assigned to each neighborhood, can be found on the website "Mapping Inequality," at https://dsl.richmond.edu/panorama/redlining/#loc=4/36.71/-96.93&opacity=0.8.

build wealth. Unfortunately, only White Americans were able to access FHA-insured loans, and the FHA Underwriting Manual furthered the existing practice of redlining communities of color. In fact, the FHA Underwriting Manual went further than the HOLC classification system by advocating for the use of deed restrictions. Section 228 of the manual read: "Deed restrictions are apt to prove more effective than a zoning ordinance in providing protection from adverse influences."[2] In Section 284, the manual goes on to suggest that deed restrictions should include a "[p]rohibition of the occupancy of properties except by the race for which they are intended."[3] FHA also placed limitations on construction loans which required that builders agree not to sell any of those homes to African-American homebuyers, and it provided oft-used model restrictive covenants for builders.[4] Thus, through generations of discriminatory housing and lending policies the American government institutionalized residential segregation and created the foundations upon which the modern wealth gap continues today.

In 1968 the Fair Housing Act was passed to outlaw housing and lending discrimination, and it explicitly prohibits redlining in lending as well. But discrimination in the nation's lending markets persisted, and nearly a decade after the Fair Housing Act was passed, Congress found the urgent need to better address the credit needs of low and moderate income communities, many of which are majority people of color. In 1977, it passed the Community Reinvestment Act for this purpose. With the Act, Congress hoped to target the needs of low-and-moderate communities and regularly review the performance of depository institutions in doing just that.

Today, the CRA plays a crucial role in holding financial institutions accountable for making credit available to all borrowers. Through CRA agreements and other compliance mechanisms, banks can target much needed investments in communities that have lacked access to quality credit, and potentially affect whole local economies. These targeted solutions can take many forms, including access to down payment assistance programs and sustainable mortgage products that open lending opportunities for historically underserved borrowers, among others. It is critically important that the CRA regulations remain intact and continue to underscore the importance of proactively meeting the needs of borrowers who have been excluded from the advantages that White and upper-income borrowers had for the majority of the 20th Century, and continue to have today.

NFHA and CRL offer the following comments on questions raised by the OCC in the ANPR.

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[2] 1938 FHA Underwriting Manual, available at http://www.urbanoasis.org/projects/fha/FHAUnderwritingManualPtII.html#301.

[3] Federal Housing Administration Underwriting Manual, 1938, cited in Abrams, Charles, "The Segregation Threat in Housing," in Straus, Nathan, "Two-Thirds of a Nation: A Housing Program," Alfred A. Knopf, New York, 1952.

[4] Abrams, op. cit. p. 220.

1. Current regulatory approach

    a. **Maintain the focus on underserved borrowers and communities.** As the ANPR notes, the CRA underscores the obligation that banks have to serve the convenience and needs of their entire communities, including low and moderate income areas, and raises the question about whether the current regulations give appropriate weight to both. In considering whether the current regulation strikes the right balance between encouraging banks to serve the needs of their entire communities and ensuring that they serve the needs of underserved – often low and moderate income – communities, it is important to remember the historical context for the law.

    Up until just a few years before the CRA was enacted, it lawful for banks to discriminate in lending and other banking services based on race, national origin and other personal characteristics. In fact, as described above, the federal government played a major role in creating and sustaining racially and ethnically segregated communities. A federal agency, the Home Owners Loan Corporation, created a methodology for rating residential security that was based explicitly on race and national origin, along with maps applying that rating methodology to cities all across the country. On those maps, neighborhoods that were deemed undesirable – often based on the race and ethnicity of their residents – were coded in red. This is the origin of the term, "redlining." The Federal Housing Administration (FHA) then institutionalized that methodology, denying insurance for mortgages to people of color and for residences in communities of color. Banks, insurance companies and real estate agents employed this methodology. The result was that mainstream mortgage credit was completely unavailable for families of color who wished to become homeowners. Instead, our bifurcated financial system forced borrowers of color into the fringe banking system for their credit needs, where they have paid more for riskier products. It helped to drive the significant disparity in homeownership rates for whites as compared to African-American and Latino families, and the accompanying enormous disparities in wealth that we see today.

    When Congress passed the federal Fair Housing Act in 1968, it made lending discrimination, including redlining, unlawful. However, the effects of the prior decades' institutionalized discrimination have lingered on. The CRA was designed to open up access to credit for those to whom it had previously been denied. Congress recognized that banks were serving the convenience and needs of some parts of their communities, but not others. There was no need for legislation to ensure that credit and other banking services were available in some – largely White and more affluent – areas. The intent of CRA was to ensure that those borrowers and communities that had previously been denied access, i.e., low and moderate income borrowers and neighborhoods and people and communities of color, were given access to the types of credit and other banking services that are essential to the health and vitality of all communities.

This access is still a critical need, and the OCC should not take any steps that weaken the CRA's effectiveness in ensuring that access for underserved areas. Shifting the emphasis away from assessing banks' performance at meeting the banking needs of underserved areas and toward assessing their performance across their entire communities, including those where credit, deposit and other banking services have been and continue to be readily available, as the ANPR seems to suggest, would be counter to the intent of CRA and would undermine its impact. NFHA and CRL strongly oppose any such shift in focus.

b. **Expand the scope of what is meant by "convenience and needs."** In assessing banks' performance in meeting the convenience and needs of underserved areas, examiners focus on the mix of products and services that banks offer, and the volume of those services (i.e., the number of customers reached). They do not assess the quality or pricing of those services. Nor do they assess the post-closing services provided by the institution. For example, with mortgages, which are an important focus of CRA assessments, examiners do not look at whether those mortgages are offered on terms that are safe and sustainable for the homeowner, on the quality of servicing and loss mitigation, or on the marketing and maintenance of foreclosed properties (also known as "real estate owned" or "REOs.") Yet all of these things have a profound impact on individual borrowers and the communities in which they reside. If done well, communities benefit. If done poorly, communities suffer.

In the run-up to the financial crisis, communities of color were flooded with overpriced, unsustainable, subprime loans. In fact, high income people of color were often more likely to receive subprime loans than low income White borrowers. Further, communities of color were targeted for such loans, where they were aggressively sold through push marketing. Although concerns about the impact of these toxic loans on the borrowers who received them and the communities in which they lived were brought to attention of the OCC and other federal banking regulators, the regulators failed to take steps to curb the flow of unsustainable credit into these communities. They focused on the volume of loans made, and refused to consider the cost, quality and sustainability of those loans.

As a result, communities of color suffered inordinately high levels of foreclosure, and sustained extensive loss of wealth. According to research from the Pew Charitable Trusts, the inflation-adjusted median wealth of Latino households dropped by 66% between 2005 and 2009, while that of African-American households dropped by 53%.

For White households, the drop was just 16%.[5] But the fact that banks or their affiliates made unsustainable loans in communities of color and low and moderate income areas – loans that ended up causing significant harm to the borrowers who received these loans as well as to their neighbors - did not affect their CRA ratings.

As foreclosures mounted, significant problems emerged with the manner in which mortgage servicers were handling the loss mitigation needs of their customers. Borrowers often found that their servicers' loss mitigation staff were difficult to reach, provided confusing and conflicting information about the options available and the steps necessary to obtain them, requested the same information repeatedly, lost key documents, and failed to provide them with the best loan modifications for which they qualified. In addition, borrowers who were not proficient English speakers often faced particular difficulty because of the lack of both servicer staff who could speak their language and documents translated into the appropriate language. These failures caused significant harm to many borrowers, who ended up with excessively expensive loan modifications or lost their homes to foreclosure, and whose credit records were severely damaged, constraining their future access to credit and making it more expensive than it would otherwise have been. Again, these failures and shortcomings by servicers, which had such a negative impact on so many borrowers, did not affect the banks' CRA ratings.

As foreclosed homes made their way into banks' REO portfolios, additional problems emerged. NFHA has conducted extensive field investigations of banks' management and marketing practices with regard to their REO properties in communities of color as compared to those in predominantly White communities, and has found substantial and widespread disparities. In White communities, foreclosed properties are well-maintained and marketed effectively. A prospective buyer might not be able to tell that the property had been through foreclosure. In communities of color, however, it is often the case that properties are poorly maintained, with multiple deficiencies such as leaky roofs, missing gutters, broken windows, unsecured doors, yards that are overgrown and full of trash, and the like. They often lack professional "for sale" signs, and if they are marketed at all, it may be as a foreclosure or distressed sale. If these properties are purchased, they have a greater likelihood of being purchased by an

[5] Pew Charitable Trust, "Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics," July 26, 2011. Available at http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/.

investor than an owner occupant.[6] As a result of its investigations, NFHA has filed Fair Housing Act complaints or filed litigation against a number of major lenders, including Wells Fargo, Bank of America, Deutsche Bank, US Bank and others. The problems and resulting enforcement actions have been brought to the attention of the OCC and other regulators, but to the best of our knowledge, these fair housing problems have not affected these banks' CRA ratings.

All of these problems have significant impacts on underserved segments of the market: low and moderate income borrowers and communities and borrowers and communities of color. Banks that exhibit these problems cannot be said to be serving the convenience and needs of their entire communities, including low and moderate income areas. Yet the current CRA regulations do not take these problems into account. In order to ensure that the CRA is as effective as possible, and to prevent future problems of the kind that contributed to or resulted from the financial crisis, the regulations must be revised to consider not just the types and volume of credit and banking services offered, but also the cost, quality and sustainability of those products, and the effectiveness of banks' systems for preventing the servicing failures, foreclosures and mismanagement of REOs that have caused such harm.

2. Modernized CRA/Metric-Based Framework

The OCC's ANPR asks whether it would be possible to measure a bank's CRA performance through the use of a single metric that would compare the dollar value of all of its CRA-eligible activities against its capacity, represented by its capital. Our organizations strongly oppose the use of this "one ratio" approach, which we believe would fail to hold banks accountable for meeting the convenience and needs of all of their communities, as required by statute. A single metric would open the door for banks to game the system, cherry-picking the activities and communities for which to seek CRA credit while simultaneously allowing them to ignore other, needed activities and other, underserved communities. Communities of color are likely to fare poorly under such an approach, both those that are low and moderate income and those where incomes are higher but access to credit is nonetheless limited.

Banks' CRA obligations extend to all of the communities in which they do business, and the statute does not provide an option for banks to meet the credit needs of certain communities but not others. Yet a "one ratio" approach to CRA would enable banks to do just that. It is an

[6] See, for example, NFHA's August, 2014 report, "Zip Code Inequality: Discrimination by Banks in the Maintenance of Homes in Neighborhoods of Color," available at https://nationalfairhousing.org/wp-content/uploads/2017/04/2014-08-27_NFHA_REO_report.pdf.

extremely blunt approach to assessing CRA performance that would allow banks to scale up activities that are easiest and most profitable at the expense of those activities that are more complex or innovative. It would allow them to concentrate those activities in a limited number of areas and do little or nothing to meet the credit needs of other areas. It would not allow for the kind of assessment of the quality (affordability and sustainability) of products discussed above. Nor would it provide a means to factor fair lending problems into the CRA rating process. For all of these reasons, we believe that a "one ratio" system would be far inferior to the current approach to assessing CRA performance, and we urge the OCC to abandon this concept.

3. Expanding CRA-Qualifying Activities

Safe, sound and sustainable consumer lending, such as responsible auto and affordably priced small-dollar loans, should be considered as a CRA qualifying activity. The Community Reinvestment Act requires covered financial institutions to meet the credit needs of their entire delineated communities. Meeting the credit needs of consumers goes beyond the provision of mortgage loans and investment lending.

Many consumers, particularly low-wealth and low-income consumers rely on small-dollar loans to make ends meet and cover cash flow challenges. However, because few responsible lenders offer small-dollar loan products, oftentimes consumers must turn to alternative financial service providers to obtain these products. Unfortunately, many non-traditional credit or alternative financial service providers only offer small-dollar loans with exorbitant fees or terms that drive consumers into delinquency and default.

We encourage CRA guidelines that allow small dollar loan qualifications when a covered lender offers such products with low-risk terms and in a way that inures to the benefit of the consumer. This means that excessively high fees, including high APR loans, should not qualify for CRA credit. Loans that exceed a 36% APR should not qualify for CRA-eligible activities. Establishing a 36% threshold for small-dollar loans is a long-standing principle championed by federal regulators, consumer protection organizations, and civil rights groups and is a widely accepted standard for affordable loans[7]. Moreover, small-dollar loans that allow irresponsible underwriting standards, such as high debt-to-income ratios, should not qualify for CRA credit.

Consumers also heavily rely on auto loans and this important form of consumer lending should be CRA-eligible. Auto loans are the third most prevalent form of consumer debt behind

[7] See Letter to federal regulators regarding Usurious Bank Loans. https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-bank-usury-joint-regulators-4may2018.pdf

mortgage and student loans. Over 75% of new cars are purchased using an auto loan. However, consumers, particularly consumers of color, face many challenges when they seek to obtain car financing. Abuses in the auto finance industry abound – from predatory loan rates to fraudulent practices. Discrimination is also a key barrier many consumers face.

The National Fair Housing Alliance conducted an in-depth investigation into the lending and sales practices of auto dealers[8]. The findings were stark –

- 62.5% of the time, Non-White testers who were more qualified than their White counterparts received more costly pricing options.
- Non-White testers who experienced discrimination would have paid an average of $2,662.56 more over the life of the loan than less-qualified White testers.
- 75% of the time, White testers were offered more financing options than Non-White testers.
- Dealers offered to help bring down interest rates and car prices using incentives and rebates or by making phone calls to personal contacts for White testers more often than they did for Non-White testers.
- Non-White testers were subjected to dismissive and disrespectful treatment more frequently than their White counterparts.

CRA guidelines must make clear that no discriminatory, abusive or predatory loan will qualify for CRA consideration. Strong standards must be developed to expand consumers' access to quality credit for the products and services that they need.

The importance of consumer credit underscores arguments for extending CRA's application to non-depository financial institutions. Too many consumers rely on small-dollar, auto, credit card, and student loans to meet their daily needs – getting a quality education, putting a roof over their heads, getting back and forth to work, starting small businesses, and fulfilling critically important family obligations. This credit is vital to people's abilities to live their lives. Bringing non-depository credit providers under the CRA umbrella will strengthen the lending markets, improve lenders' performance, ensure the extension of safe, affordable credit, and improve consumer's ability to access the credit they need.

These forms of lending must also be monitored for fair lending violations. As noted throughout this comment, there is still much lending discrimination in the financial markets and CRA evaluations must be aligned with fair lending reviews. A lender's consumer lending activities,

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[8] Rice, Lisa and Eric Schwartz, Jr. 2018. *Discrimination When Buying A Car: How the Color of Your Skin Can Affect Your Car-Shopping Experience*. National Fair Housing Alliance. Accessed on November 19, 2018 @ https://nationalfairhousing.org/wp-content/uploads/2018/01/Discrimination-When-Buying-a-Car-FINAL-1-11-2018.pdf

as well as its mortgage, small business and community development lending, must meet vigorous fair lending tests in order to be CRA-eligible.

4. Record-Keeping and Reporting

The record keeping that is currently required under CRA is very useful to the public, providing important information for consumers, community-based organizations, public officials and others who want to understand how well a bank is serving the community. We recommend two changes that would make these record-keeping requirements more effective. First, all public files should be available on-line. In this day and age, on-line access is a relatively modest requirement, but it would eliminate the need for interested members of the public to travel to a designated office in order to review a bank's CRA files. This would make the public files more accessible to people with disabilities or others for whom travel may be a barrier, and for members of the public who may reside in a different metropolitan area. In addition, we recommend that banks' public CRA evaluations all include maps of each of the bank's CRA assessment areas. This modest change would increase the public's knowledge and understanding of the communities whose convenience and needs the bank is chartered to serve.

In closing, we urge the OCC not to act unilaterally to make changes to the CRA regulations. The goals of the statute are best served by having a regulatory approach that is uniform across all of the federal agencies with responsibility for enforcing this important act. If the OCC and its sister agencies determine that changes to the CRA regulations are needed, we urge you to ensure that any such changes are consistent with Congress' intent to ensure that banks are taking affirmative steps to meet the credit and banking services needs of underserved communities, that they in no way weaken CRA, and that they incorporate the recommendations described above.

Sincerely,

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