April 8, 2020

The Honorable Joseph Otting
Comptroller of the Currency
400 7th St SW
Washington, DC 20219

The Honorable Jelena McWilliams
Chairman, Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Community Reinvestment Act Regulations: Docket ID OCC–2018–0008, Joint Notice of Proposed Rulemaking; Request for Comment on Proposed Community Reinvestment Act Regulations (NPR)

Dear Comptroller Otting and Chairman McWilliams:

The below organizations are involved in the national Strong, Prosperous, and Resilient Communities Challenge (SPARCC) initiative to address the structural barriers facing low-income communities and communities of color that continue to deal with the effects of racial discrimination, historical redlining and financial discrimination. A key focus for SPARCC partners, who include local community organizations, investors, developers, public agencies, community foundations and national partners including the Low Income Investment Fund, Natural Resources Defense Council and Enterprise Community Partners, is to advance effective investment strategies for community development projects that integrate racial equity, climate resilience and health outcomes for current and future residents and build community-wealth and ownership.

The Community Reinvestment Act (CRA) has provided critical financing over many decades to our communities, and yet significant challenges remain. SPARCC partners are working to advance community-driven models of development and investment that put residents' priorities at the center of the decision-making process. This approach focuses on racial equity and power so that communities choose the types of development projects and related policy changes that impact their lives. We are seeing results in SPARCC communities – Atlanta, Chicago, Denver, Los Angeles, Memphis and the Bay Area-- that we believe can become best practices to inform the future of CRA.

We are pleased that the OCC and FDIC have turned their attention to the critical issue of updating CRA regulations to reflect the challenges and opportunities of our modern banking system. We have deep concerns though about the proposed approach outlined in the NPR, especially as it relates to community development (CD). CRA has become one of the country's most powerful community development tools and has introduced much-needed capital and financial services in underserved areas. CRA also has a racial equity component given the law's enactment to address redlining. Yet the proposed rule changes could prove disastrous for our work and similar work in low-income communities across the country.

As currently written, **SPARCC does not support the proposed changes to CRA included in the NPR**. Under the administration's proposal, CRA's current emphasis on responsiveness to local needs and priorities would instead be replaced by a measure of the bank's total dollar volume of activity in a community. **SPARCC firmly believes that dollar outputs do not**

**equate to impact on the ground**. **This harmful shift threatens to remove the community's voice from CRA and incent bank activities in less impactful investments with no assurance of achieving Congress' intent to ensure that credit flows to underserved communities or SPARCC community's racial equity goals or climate and health priorities.**

SPARCC has four main concerns for the proposed rule changes:

1. **Expanding the list of eligible community development activities threatens to crowd-out the most impactful, proven community development tools**. SPARCC is particularly concerned that the unrestricted inclusion of mortgage-backed securities (MBS) and large infrastructure projects as eligible community development activities could significantly reduce bank investment in more impactful CD activities like the Low Income Housing Tax Credit, New Markets Tax Credit, and CDFIs. While MBS serve an important function in the mortgage industry, we believe only de minimis credit for MBS in the CD test under the proposed CD threshold should be permitted because MBS are relatively easy and liquid investments that banks can complete in large quantities, potentially crowding out more impactful CD activities. The proposed changes also threaten to skew bank incentives to quickly fill their CD threshold with large infrastructure investments that are only minimally beneficial to low- and moderate-income communities and which the bank may have already invested in even without the promise of CRA credit. The proposed rule will make it more difficult for environmentally-focused revitalization and remediation of brown fields and other hazardous sites to get funded, creating even more long-term exposure to vulnerable residents. CRA credit should be reserved for the CD activities that are most impactful for communities and that bring marginalized communities and residents to the center of the decision-making process to prioritize a community-driven model of development – a model that uplifts development without displacement.
2. **There is no obligation for a bank to engage in community development equity investments.** CD equity investments – including the Low Income Housing Tax Credit and New Markets Tax Credits, two public-private partnerships with proven track records of success – tend to be more complex, resource-heavy, and time-intensive than other potential CRA-eligible activities, yet CRA-motivated banks have historically viewed these as attractive investment opportunities because of their undeniable impact on the ground and eligibility for credit under the investment test. Given the elimination of the investment test and absence of any requirement to participate in CD equity investments, we are concerned that these particularly impactful products could experience a debilitating reduction in investor interest. When combined with the unrestricted expansion of eligible CD activities to include MBS and infrastructure investments, the threat to CD equity investments becomes even sharper.
3. **Stakeholders do not have adequate data to assess the potential impacts of the proposed 2% community development threshold**. SPARCC appreciates that the regulators have proposed a requirement to engage in CD activities, but as structured this 2% threshold presents serious practical and operational challenges that will ultimately hinder its success. In the absence of full data on current CD activity levels, it is impossible for stakeholders to evaluate whether this 2% threshold is appropriately calibrated, especially when considering the expanded list of eligible activities. We are facing a national housing crisis– in communities large and small, urban and rural – that requires thoughtful and transparent analysis of potential changes to CD investment tools affected by CRA. We oppose any changes that reduce the current amount or impact of CRA CD activity undertaken by banks and urge the agencies to provide full data on current and proposed investment levels before issuing a final rule.

4. **Explicit language should be added to allow investments that increase climate resilience to receive CRA credit.** Now is the time to not only ensure the CRA continues to support equitable community investment, but that communities have greater resources to invest in healthier and climate-ready development, especially for our most impacted low-income and communities of color. The current text states that "Examples of community development loans include, but are not limited to, loans to borrowers to finance renewable energy or energy-efficient equipment or projects that support the development, rehabilitation, improvement, or maintenance of affordable housing or community facilities, such as a health clinic, even if the benefit to low- or moderate-income individuals from reduced cost of operations is indirect, such as reduced cost of providing electricity to common areas of an affordable housing development."
    a. We suggest this language be updated to reflect: "Examples of community development loans include, but are not limited to, loans to borrowers to finance renewable energy, energy-efficiency, **or other climate-resilient equipment** or projects that support the development, rehabilitation, improvement, or maintenance of affordable housing, **green infrastructure**, or community facilities, such as a health clinic, even if the benefit to low- or moderate-income individuals from reduced cost of operations is indirect, such as reduced cost of providing electricity to common areas of an affordable housing development **or improved capacity for the facility to withstand climate impacts (e.g. flooding or sea level rise)**."

Rather than the proposed pass-fail threshold for CD activities, SPARCC recommends that the agencies move forward with a separate, meaningful CD test that acknowledges the distinct benefits and financing challenges associated with CD activities. The CD test should:

- Include all rating categories.
- Include quantitative and qualitative factors, as well as performance context.
- Consider new loans and investments, as well as activity retained from prior exam periods.
- Narrow the eligibility of CD activities to the truly impactful activities that meet CRA's primary purpose.
- Require both debt and equity activities

Finally, we believe that a joint rulemaking process between the three federal regulators ensures the greatest chance for consistency and stability, two critical components in the federal regulatory process. The Federal Reserve Bank of San Francisco (FRBSF) was an important SPARCC partner in our early work with communities and brings critical community development expertise to the conversation. A final rule would greatly benefit from taking the additional time needed to collaborate with the Federal Reserve Bank and to ensure consensus among all three agencies.

We appreciate the opportunity to comment on this important federal regulation. SPARCC partners are committed to working with the agencies to ensure that community development leads to better health, greater availability of fair, affordable and sustainable housing, and greater community power in driving decisions about the types of investments we want to see in our communities. Feel free to contact Sasha Forbes at sforbes@nrdc.org for additional information.

Sincerely,

Enterprise Community Partners
Low Income Investment Fund
Natural Resources Defense Council
MZ Strategies, LLC
Elevated Chicago
Esperanza Community Housing Corporation
Center for Neighborhood Technology
BLDG Memphis
Emerald South Economic Development Collaborative
Southface Institute
Inclusive Action for the City
Georgia STAND UP
The TransFormation Alliance
Metropolitan Planning Council
Enterprise Community Partners, Chicago