Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

August 5, 2022

RE: **Community Reinvestment Act Proposed Rulemaking [87 FR 33884]**

OCC: 12 CFR Part 25; Docket ID OCC-2022-0002; RIN 1557-AF15
Federal Reserve: 12 CFR Part 228; Regulation BB Docket No. R-1769; RIN 7100-AG29
FDIC: 12 CFR Part 345; RIN 3064-AF81

On behalf of the Sierra Club — the largest nonprofit grassroots environmental organization in the U.S., with more than three million members and supporters — we thank you for the opportunity to comment on the above referenced joint Notice of Proposed Rulemaking ("NPR" or "proposal") by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively "the agencies") to amend the regulations implementing the Community Reinvestment Act of 1977 (CRA), including updates to how and which CRA activities qualify for consideration, and how they are evaluated and inform bank ratings.

This proposal provides important opportunities for additional investment in communities, particularly in the area of climate resiliency. We urge the agencies to strengthen the proposal to better ensure that the communities most impacted by redlining and environmental injustice receive the intended benefits of the CRA. It is essential that communities of color be explicitly prioritized for

investment, alongside low- and moderate-income (LMI) communities. Additionally, the final rule should further define activities eligible for CRA credit and properly incentivize banks to reduce their contributions to climate risk, while improving accountability mechanisms for banks who continue to finance projects and companies which have harmful impacts on communities and climate.

As the climate crisis intensifies, we can see the ways in which its worst impacts– including extreme heat, flooding, and drought– affect low-income communities and communities of color first and worst. These climate impacts exacerbate the systemic harms these communities have faced as a direct result of centuries of institutionalized discrimination. That discrimination has taken the form of processes like redlining, or refusing loans to certain communities, which in turn has contributed to subpar infrastructure and left these redlined neighborhoods with heightened vulnerability to climate-related harms, and persistent economic inequality which remains to this day. In addition, low and moderate income communities and communities of color experience higher levels of poverty, unemployment, and vulnerability to climate change. As the crisis persits, these vulnerabilities will only increase over time, making it even more pressing to direct investments and improve financial services into these communities.

For these reasons, it is essential that the agencies update CRA regulations with this reality in mind so that the banking system meets the changing credit needs of all communities. This rulemaking has taken important steps in the right direction, and should be strengthened to ensure that those most vulnerable to the impacts of climate change can access necessary, fair, and affordable capital and services to meet their financial needs.

We believe that the CRA can be a critical tool not only for reducing the racial wealth gap, but also for advancing racial equality, mitigating climate risk, uplifting vulnerable communities, and ensuring no communities are left behind in the transition to a sustainable and clean energy economy. There are several key actions for federal regulators to take to fulfill this, including (1) explicitly listing race as a key metric, (2) expanding the list of climate-related eligible CRA activities, (3) increased community engagement, and (4) penalizing bank investments that contribute to climate risk. We view the last as perhaps the most important of all, as it is essential for the CRA to be used– as intended– to hold banks accountable for the impacts they have on the communities they serve.

1. **Federal regulators should identify the most climate vulnerable communities, and specifically use race as a metric to improve access to credit and services for those who need it most.**

The proposal expands the reach of the CRA to consider more investment in underserved communities; however, CRA regulations have thus far failed to use race as a factor in evaluating bank performance and identifying investments eligible for CRA credit. As a result, they have failed to reflect the CRA's origins as a tool to redress the harms caused by banks' practice of redlining. As observed previously by the Federal Reserve Board's Vice Chair for Supervision, Michael Barr, the CRA should play an important role in providing increased access to capital for historically redlined

communities, and in overcoming discrimination.[1] We urge the agencies to take this opportunity to correct that failure. For the purposes of evaluating a bank's CRA performance, income alone is an incomplete metric.

Communities most vulnerable to climate change are most likely to be communities of color and LMI communities.[2] Therefore, the agencies should ensure that banks are prioritizing those very communities for investment. The final rule should outline publicly available data tools, which banks should use to identify climate vulnerable communities, and work towards building relationships and driving investment to those communities. Examples of tools include the Environmental Protection Agency's (EPA's) Environmental Justice Screening and Mapping Tool (EJScreen)[3] and the White House Council on Environmental Quality's recently released Climate and Economic Justice Screening Tool (CEJST).[4]

2. **The list of climate-related eligible activities under the CRA should be expanded.**

We support the NPR's addition of the "disaster preparedness and climate resiliency" definition under "community development." We also support the proposed non-exhaustive list of climate-related eligible activities[5] under the CRA, which will help communities understand what kinds of climate-related investments they can seek financing support for, and help banks understand which activities can receive CRA credit. Additionally, these investments will provide communities with more opportunities to be active participants in the transitioning economy through new CRA-eligible green investment. However, the current list should be expanded to include workforce training and job creation through local solar or wind development, and energy-efficient, affordable housing that facilitates benefits for residents such as savings on utility bills. Other activities which should be included in this list include community solar and microgrids, operational support for environmental and climate justice organizations, and electrification and water efficiency measures for residential homes, including multifamily properties.

3. **Banks should be encouraged to increase community engagement and relationship building with climate and environmental justice organizations.**

When this proposal is finalized, banks may become more active in investing in disaster preparedness and climate resiliency. It will be critical for banks to form the community-level

---

[1] Barr, Michael S. "Credit Where It Counts: The Community Reinvestment Act and Its Critics."University of Michigan Law School. 2005. https://repository.law.umich.edu/articles/60/. Barr states, the "One cannot fully understand the rationale for CRA unless one sees it as part of the federal government's response to the long history of private sector and official discrimination in housing and credit markets…. Contrary to the claims of CRA's critics, I argue that racial discrimination, and the effects of such discrimination, likely persists in home mortgage markets, and that the legacy of discrimination provides further theoretical justification for CRA. Moreover, I will argue that CRA in fact plays an important role, alongside ECOA, in overcoming such discrimination."

[2] Morello-Frosch, Rachel and Manuel Pastor, James Sadd, Seth Shonkoff. "The Climate Gap: How Climate Change Hurts Americans & How to Close the Gap." University of Southern California. May 2009. https://dornsife.usc.edu/pere/climategap/

[3] "EJScreen: Environmental Justice Screening and Mapping Tool." Environmental Protection Agency. https://www.epa.gov/ejscreen

[4] "Climate and Economic Justice Screening Tool." White House Council on Environmental Quality. https://screeningtool.geoplatform.gov/en/

[5] Proposal at 33905. https://www.federalregister.gov/documents/2022/06/03/2022-10111/community-reinvestment-act

relationships necessary for the success of these new investment opportunities. The rule should include measures that promote relationship building between CRA officers and local environmental and climate justice organizations working in LMI communities and communities of color. One measure regulators should adopt to ensure an inclusive approach is to require banks to describe, in public documents, their outreach to and engagements with organizations— including where and how these efforts were made. Banks should also publicly identify the organizations with which they are establishing CBAs, to ensure that banks are not cherry-picking organizations that would ask for less than what communities need, and what other organizations would request. The proposal should additionally consider incentivizing the use of binding CBAs, since they are powerful tools for communities to outline their local financial needs. Finally, the final rule should reflect that a CRA exam will include an evaluation of adherence to established CBAs.

4. **Penalize bank investments that contribute to climate risk.**

We view this as the most essential element of the proposed updates to the CRA. Bank financing of activities that significantly increase greenhouse gas emissions (GHG) and other environmental pollution, notably fossil fuel industry activities, increases the challenges that climate-vulnerable communities—particularly communities of color—face accessing safe and affordable credit and banking services. As climate-related harms fueled by these emissions damage property, gradually impair household and community financial condition, and reduce services to these communities, banks, in turn, are becoming more reluctant to serve them. Banks are worried, for example, that these impacts will compromise the abilities of these communities to repay loans. This has resulted in banks increasingly avoiding climate-vulnerable areas.[6]

As bank financing of polluting activities disparately impacts access to credit by LMI communities and communities of color, regulators should scrutinize such activities and their disparate impacts during CRA exams, and consider how harms to these communities' access to credit should be taken into account in CRA performance evaluations (fair lending violations are taken into account under current regulations).[7]

The agencies should also consider that the financing of polluting activities, such as building of gas pipelines, can threaten tribal rights to manage tribal community development when these activities occur on their lands without the free, prior, and informed consent of these communities.[8]

---

[6] McDonnell, Tim. "How new flood risk maps could undermine marginalized neighborhoods." Quartz. Updated July 7, 2020. https://qz.com/1876202/new-flood-risk-maps-could-undermine-marginalized-neighborhoods/; See also, Berman, Michael, "Flood Risk and Structural Adaptation of Markets: An Outline for Action." Community Development Innovation Review, Federal Reserve Bank of San Francisco. October 17, 2019. https://www.frbsf.org/community-development/publications/community-development-investment-review/2019/october/flood-risk-and-structural-adaptation-of-markets-an-outline-for-action/

[7] Steele, Graham. "ESG Carrots and Climate Sticks: Evaluating the Roles of Mandates and Incentives in Climate Financial Regulation." Duke University School of Law. July 2020. https://sites.law.duke.edu/thefinregblog/2020/07/14/esg-carrots-and-climate-sticks-evaluating-the-roles-of-mandates-and-incentives-in-climate-financial-regulation-2/

[8] "Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights." Multiple Federal Parties to the MOU. September 2021. https://www.doi.gov/sites/doi.gov/files/interagency-mou-protecting-tribal-treaty-and-reserved-rights-11-15-2021.pdf

Investments that significantly threaten tribal rights should result in lower scores on any relevant tests, such as the community development finance test.

This proposal is a welcome step forward in creating a consistent approach across all three regulatory agencies and we appreciate the opportunity to comment in support of finalizing and strengthening the long-awaited CRA revisions. It is critical that these updates better address the challenges of communities of color in addition to LMI communities, as originally intended, and that those communities have access to safe and affordable investments in climate resilience as they are most likely to be impacted by the ongoing climate crisis. Most pressing of all, it is essential that agencies deploy the full power of this rule to redress persistent failures of banks to adequately serve all communities fairly and equally, and ensure that banks cannot continue to invest in the same industries that are destroying the communities they are meant to serve.

We thank you again for the opportunity to provide input on the proposed rulemaking, and hope you will take our comments into consideration.

Sincerely,

Adele Shraiman
Fossil-Free Finance Campaign, Sierra Club