August 1, 2022

To: Federal Reserve Board of Governors, Docket No. R-1769 and RIN 7100-AG29
Federal Deposit Insurance Corporation, RIN 3064-AF81
Office of the Comptroller of the Currency

From: Joseph Kriesberg, President of the Mass. Association of Community Development Corporations

Re: **Regulations implementing the Community Reinvestment Act of 1977 (CRA),**
Federal Reserve Board of Governors, Docket No. R-1769 and RIN 7100-AG29 and FDIC RIN 3064-AF81

The Massachusetts Association of Community Development Corporations appreciates the opportunity to comment on the Notice of Proposed Rulemaking for the Community Reinvestment Act. In summary, the proposed rule is a marked improvement over the status quo. However, it's far from ambitious.

MACDC was established in 1982 and serves as the capacity building and advocacy arm of the community development movement in Massachusetts. At our core, we are an association of 97 mission-driven community development organizations dedicated to creating places of opportunity where all people can live with dignity while participating in and benefiting from our Commonwealth's economy. We are recognized as a national leader for our work building a high performing and adaptive community development sector in Massachusetts that is supported by private and public investment, as well as sound public policies.

MACDC's 2018-2023 Strategic Plan is built on five core priorities:

1. Build the power and voice of lower-income people and people of color to shape the future of their communities and their own lives;
2. Expand affordable housing in places where low- and moderate-income people can thrive;
3. Reduce income and wealth inequality across the state;
4. Drive the convergence of community development and community health;
5. Promote racial equity within the field and the Commonwealth.

Collectively, our CDC members achieve signficant results as document in our annual member survey. In 2021, our members:

- Created or preserved 1,717 homes
- Created or preserved 6,744 jobs
- Aided 3,416 entrepreneurs
- Provide a wide range of services and housing to 86,124 families
- Generated $1.45 billion of investment into lower income communities.

We offer the following comments and suggestions.

1) **The NPR does not go far enough to explicitly consider race and ethnicity of bank customers and communities.**

We were disappointed about the absence of a focus on race in the NPR. Regulators dedicated substantial space in the 2021 ANPR inquiring how race can be considered as part of CRA exams. What happened to the responses? Did regulators abandon that path of inquiry? If so, why? What was learned during the ANPR process that caused them to back away? The Community Reinvestment Act was passed in direct response to racism in banking. It's an issue CRA has never fully addressed, and this NPR represents another major instance in the almost five decades of shortcomings. We ask regulators to please collect data related to race in the retail and community development tests; make that data public; and use it consequentially in CRA exams.

Specifically, we ask regulators to:

- Add racial data to the list of factors considered when creating assessment areas.
- Compare lending data by race to peer-banks within assessment areas.
- Formally incorporate HMDA and 1071 data by race into an examination.
- Severely punish banks that are found to have violated civil rights, fair lending, or fair housing laws.
- Add an impact review factor to the community development finance test that considers investments made in historically redlined communities and areas in which the residents are predominantly people of color.

2) **The asset categories as proposed (large, intermediate, small) will notably reduce community development financing, particularly in rural areas and small cities.** The proposed bank asset sizes move about 900-1000 banks into a lower asset category than they would occupy under the status quo. And regulators have chosen to reduce community development responsibilities for banks in smaller asset categories. Research from NCRC estimates that well over $1b in community development financing could be lost as a result. If that estimate proves to be anywhere close to accurate, it would be a significant failure for the regulating agencies.

3) **The newly formed "Retail Lending Assessment Areas" must be subject to a community development test.** We strongly urge regulators to reconsider community development responsibilities in RLAAs. The NPR outlines how RLAAs would be formed in entire MSAs or the non-MSA area of a state. Those areas are sizable chunks of geography for which banks should have some level community development responsibility, even if only a version of the status quo community development test.

Relatedly, we were disappointed regulators chose not to delineate facility-based assessment areas (FBAAs) around loan production offices (LPOs). We ask regulators to reconsider.

However, if regulators choose not to delineate FBAAs around loan production offices, we maintain that loan production offices should automatically trigger at least one retail lending assessment area, which should also include a required community development test. LPOs are too often the only lending or banking-related presence in rural areas and small towns. The NPR gives banks the option to claim credit for banking services provided at their LPOs. Responsibilities should come with that opportunity.

4) **Regulators should give more consideration and acknowledgement to banks that utilize effective, creative, and exemplary local community engagement strategies.** In past CRA commenting opportunities, national advocates have been very critical of how little attention regulating agencies have paid to local community engagement strategies banks employ to identify community needs in LMI areas. We maintain that criticism and offer a potential solution that fits within the framework offered by the NPR. We propose that exemplary community engagement strategies in LMI areas be recognized as a standalone impact review factor when regulators are considering CRA credit for an eligible community development activity.

5) **Banks should also be encouraged and rewarded for taking advantage of local or state programs designed to specifically leverage bank investments.** Here in Massachusetts, we have created great programs specifically to attract bank investment like the ONE Mortgage program and the Community Investment Tax Credit. These public-private partnerships can be highly effective, but many national banks ignore these programs because they prefer one-size fits all programs and products that can serve multiple states. This undermines the very idea of the CRA, which is about <u>community</u> reinvestment, not <u>national</u> reinvestment.

6) **We encourage regulators to begin thinking *now* about how to roll out a new rule to stakeholders, in addition to banks.** Few people in the community development field remember how the last set of CRA changes were implemented over 25 years ago. Regulators must make a significant effort to reach community-based development nonprofit organizations and other stakeholders. The Federal Reserve Bank System, for example, has a dedicated function to CRA education that has served the field well for years. MACDC, however, fears that that function (and related functions in the other regulating entities) will provide woefully insufficient levels of education to the field. This is particularly important because this process has become so complicated and technical that many community-based organizations currently feel ill-equipped to meaningfully participate.

7) **The community development financing test for intermediate banks must be required, not optional.** Under the proposal, intermediate banks are subject to a status quo community development test or the option for the new community development finance test. NACEDA urges regulators to make all intermediate banks subject to the community development finance test. Subjecting large and intermediate banks to the new test creates consistency among banks and examiners, and it provides others in the community development industry (non-bank investors, funders, community development nonprofits, public officials, researchers, and others) with a consistent understanding of how banks are regulated on their community development activity.

8) **The NPR does not do enough to clarify the role of community-based development organizations (CBDOs) in CRA.** The NPR sometimes recognizes the important role CDCs and CBDOs play, such as in the eligible activities section in which a qualifying housing activity has a 'primary community development purpose,' if developed by one of these organizations.

   A currently active federal definition of a CDC is offered in the Office of Community Services within HHS. We ask regulators to adapt and adopt this definition to identify organizations that qualify as a CDC for CRA purposes.

   Alternatively, or additionally, regulators can also look to state CDC definitions. In Massachusetts, MGL Chapter 40H creates a definition for a CDC and the Department of Housing and Community Development certifies these organizations every four years. Banks should be encouraged to invest in these critical organizations.

   In addition, there are several places in the NPR in which the role of these organizations can be clarified and, at the same time, help regulators and banks achieve their stated CRA-related objectives. For example, a similar 'primary purpose' standard could be applied to economic development activities that include a CBDO.

9) **Maximize the amount of data that will be publicly available as part of the CRA examination and pre-approval process.** We appreciate the level of detail agencies propose to publish as part of CRA exams. We also urge transparency and published determinations as part of the bank-accessible pre-approval process proposed.

   We urge the agencies to also make public all data associated with a CRA exam to further the agencies' stated goals of making CRA exams more consistent and transparent. This is particularly important for the gathering and publication of community development finance-related data. This type of data has the potential to be transformative for the community development field. We encourage regulators to play a leadership role in this regard.

   And whenever possible, the agencies should use plain language in these publications to make the information accessible to community members. This information would benefit all stakeholders – fellow regulators, financial institutions, and community advocates.