California Community Land Trust Network
Perpetual Home Affordability-Stewardship-Community Control

OCC: https://www.regulations.gov/commenton/OCC-2022-0002-0001
FDIC Federal Deposit Insurance Corporation: comments@fdic.gov
Federal Reserve Board of Governors: regs.comments@federalreserve.gov

Re: CRA NPR Comments – OPPOSE UNLESS AMENDED
OCC Docket ID OCC–2022–0002;
FDIC RIN 3064-AF81;
Federal Reserve Docket No. R-1769 and RIN 7100-AG29

To Whom It May Concern:

The California Community Land Trust Network (CACLTN) thanks the agencies for soliciting comments on a unified proposed Community Reinvestment Act (CRA) rule that seeks to retain key components of the CRA, modernize aspects where industry practices have outpaced the rules, and strengthen the ability of the CRA to stabilize and revitalize communities.

The CRA has been hugely impactful in providing credit, investments, and financial services to underserved communities in California. In fact, CACLTN has joined with the California Reinvestment Coalition and allies to negotiate over $75 Billion in loans, investments, and financial services for communities of color and low-income communities in California over the last two years as part of Community Benefits Agreements. Yet significant gaps remain in CRA rules and implementation, and the promise of CRA has not yet been realized. While the agencies make several positive suggestions in the proposed rule, we must oppose this proposal unless critical issues are addressed. The CRA must:

- Take race into account and evaluate banks for service to borrowers and communities of color
- Downgrade banks for harm such as discrimination, displacement, and fee gouging
- Ensure affordable housing tax credits and lending are reviewed separately, and increased
- Require banks to serve all areas (not 60%) where they take deposits and lend, and refrain from raising current asset thresholds which will decrease rural reinvestment
- Prioritize the opening of branches and penalize the closing of branches in underserved areas
- Elevate broadband/digital equity, access for Native American communities and climate resiliency
- Scrutinize the qualitative impact of all lending tied to banks, and end Rent-A-Bank partnerships
- Enhance community participation so that CRA activity is tied to community needs, CRA ratings reflect community impact, and bank mergers are denied unless they provide a clear public benefit that regulators will enforce

CACLTN and the CRA

The California Community Land Trust Network is a membership organization representing 28 Community Land Trusts throughout the state of California from Humboldt County to San Diego. CACLTN supports the work of its member organizations and communities through state level policy advocacy, member and community conferences, peer-peer training, capacity building through the CA CLT Academy, and development of financial/legal tools to enhance CLT development in California.

Community land trusts (CLTs) are community based 501(c)(3) organizations that steward community controlled, permanently affordable housing. CLT's use a renewable 99 year ground lease to ensure that housing and other community-benefiting properties and projects remain under community control. As the affordable housing crisis reaches more and more of California, groups of neighborhood residents, CBOs, and local governments are turning to the CLT model to take housing off of the speculative market and prevent the displacement of low-income, and black and brown communities.

Like all affordable housing organizations, CLTs require low-cost capital. However, unlike large developers that rely on the Low-Income Housing Tax Credit, many CLTs struggle to access bank financing for their projects. The following reasons explain this challenge:

- The classic CLT split ownership model in which the nonprofit owns the land while selling the improvements to a homeowner or affordable housing rental provider, does not conform to the lending products of many banks.
- CLTs use the shared equity homeownership strategy in which home resale prices are capped in order to keep them at levels affordable to lower-income households. Lenders must be acquainted with the shared equity structure and may not make their primary home purchase mortgages available on shared equity projects.
- Many California CLTs focus on small preservation projects, such as the acquisition and rehab of a small apartment building. Many lenders are uninterested in these projects because a lack of scale or other considerations.
- Many CLTs look to create homeownership opportunities for BIPOC lower-income families in the form of limited equity cooperatives. Many banks do not offer blanket mortgages and share loans for housing cooperatives.

Nevertheless, we have been successful in using the CRA to leverage CLT-friendly products and investments from several lenders. For example, in the coming year, we aim to meet with lenders who promised to make capital available for CLT preservation projects and work with them to do so.

For us, an impactful CRA would provide us with more leverage to hold banks accountable on promises they make in bank merger community benefits agreements and other forums. It would incentivize banks to work with CLTs who require more underwriting work from the bank but also yield massive community benefit in the form of permanently affordable housing that reaches not just one but generations of households. And it would stop counting dubious housing investments in low-income census tracts, investments that offer spur gentrification rather than address it, for CRA credit.

Race and CRA

Our CLT members primarily serve communities of color and there are woefully few responsible financial products available to support first time homebuyers. The CRA should require banks to serve all communities, especially borrowers and communities of color. Examiners should review bank performance in meeting the credit needs of communities of color, similar to how banks are evaluated on their performance in meeting the needs of low and moderate income (LMI) borrowers and communities.

The proposal to disclose HMDA mortgage lending data on Performance Evaluations is disappointing. Merely requiring disclosure of already publicly available data on a report that the public rarely accesses is not meaningful transparency. The agencies further clarify that any disparities in HMDA data will not impact the CRA rating of a bank. At a minimum, this proposal should be enhanced to also require all banks to place these home lending data tables and maps revealing inevitable disaggregated race and ethnicity disparities in a prominent place on their own websites, include similar tables and maps for small business lending by disaggregated race, ethnicity, gender and neighborhood when the Section 1071 data become publicly available, and provide that the data will impact CRA ratings.

One positive aspect of the proposal is the expansion of considerations of discrimination to include transactions beyond credit and lending, such as where discrimination occurs when a consumer tries to open a bank account. But an expanded definition of discrimination is only as helpful as the agencies' willingness and capacity to diligently look for evidence of discrimination and provide downgrades once it is found. The General Accountability Office recently found that fair lending reviews at the Office of the Comptroller of the Currency were outdated and inconsistent.[1] Agency enforcement of redlining or discrimination cases, as well as CRA ratings downgrades for discrimination, are exceedingly rare. Agency fair lending reviews should be more extensive and rigorous, should solicit and rely on feedback from all relevant federal and state agencies as well as community group stakeholders, and should be reflected more substantively on CRA Performance Evaluations. Findings of discrimination, including for disparate impacts relating to displacement financing, fee gouging or climate degradation, should always result in automatic CRA ratings downgrades, if not outright failure. How can a bank that discriminates be said to be doing a Satisfactory job serving the community?

Community development. We appreciate that the proposal focuses on encouraging banks to engage in community development activities, such as investing in CDFIs. Such activities can be amongst the most impactful ways for banks to support community needs. But we are concerned that providing a lengthy list of eligible activities and making it easier to qualify for credit will exacerbate the current dynamic whereby banks engage in the easiest and potentially least impactful of CD activities. For the most part, CRA credit should only be provided where the majority of beneficiaries are in fact, LMI or Black, Indigenous, or People of Color (BIPOC) regardless of where the activity occurs or with whom. CD activities should be tied to local community needs as identified in Performance Context analysis or community-negotiated Community Benefits Agreements, either as a condition of receiving CRA credit or

[1] General Accountability Office, "Fair Lending: Opportunities Exist to Enhance OCC's Oversight of Banks' Lending Practices," GAO-22-104717, June 21, 2022 available at: https://www.gao.gov/products/gao-22-104717

through the use of enhancing impact scoring. Tribal or local government plans can serve this purpose of credentialing an activity as responsive to local needs, but CRA rules should not require association to government plans as local governments and local plans are uneven. We strongly oppose any raising of current asset thresholds, since doing so would result in less community development financing and branch consideration in rural areas served by community banks that would be subject to easier examinations and lower reinvestment obligations under the proposal if they are reclassified.

*Anti-displacement***.** We appreciate the proposal's attempt to address displacement concerns by requiring that rents will likely remain affordable in order to qualify for CRA credit. But the agencies need to go further to discourage banks from financing displacement. While the proposal appears to refuse CRA credit for certain CD activities if they result in displacement, this requirement must be extended to all community development activity, especially affordable and NOAH housing analysis. Regulations should not allow community development credit unless banks can demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting act, UDAAP and other laws. Banks should adopt procedures such as CRC's Anti Displacement Code of Conduct and engage in due diligence on the Beneficial Owners of LLC property owners - data they already collect - to determine if there are any concerns relating to eviction, harassment, complaints, rent increases, or habitability of potential bank borrowers. It is not enough to cease offering CRA credit for harmful products. Banks must be penalized for harm. Bank regulators should conduct extensive outreach to community groups and engage in community contacts to investigate whether landlord borrowers are exacerbating displacement pressures or harming tenants. Because displacement often has a disparate impact on BIPOC and protected classes, examiners should consider disparate displacement financing to be discrimination, perhaps under the expanded definition, that should trigger CRA ratings downgrades and subject banks to potential enforcement action.

Positive impact points should be given for particularly responsive CD activities that fight displacement, such as support for property purchases by Community Land Trusts and other bona fide, mission-driven nonprofit organizations of rental housing that can be taken off of the speculative market leveraged by policies such as Tenant Opportunity to Purchase Acts (TOPA), Community Opportunity to Purchase Acts (COPA), and other initiatives such as our state law that provides CLTs, nonprofits and prospective owner occupants the right to match an investor's high bid at foreclosure auction to secure a property for the common good, not personal profit.

Mortgages. CRA credit should only be given for mortgage loan originations (not loan purchases by banks from other lenders) to owner occupants (not to investors), unless the originating lender is a mission-driven nonprofit, or the investor purchaser is an LMI or BIPOC buyer or mission-driven nonprofit organization. We support the proposal to consider lending to low-income borrowers and communities separately from lending to moderate income borrowers and communities. We urge the regulators to evaluate lending for each loan purpose (home purchase, refinance, home improvement, HELOC) separately. CRA consideration should NOT be given for mortgage lending to non BIPOC, middle- and upper-income borrowers in LMI census tracts, as this fuels displacement, unless a census tract is shown through the use of established models and data to be in an area not subject to gentrification. We support the use of a primary product test to determine which bank products to evaluate, but this formula must not allow large banks to evade consideration of a sizable portion of their lending. To

address this issue, we recommend that the primary products test be set at 15% of all bank products or 50 loans in an assessment area, whichever is smaller. We support a mortgage lending screening test and appreciate agency analysis that suggests that the new scoring model proposed will result in less inflated CRA ratings than currently. This would be a major advance. We are strongly opposed to any suggestion that a bank could fail to serve nearly 40% of its assessment areas and still pass its CRA exams. This seems a recipe for redlining of LMI and rural communities and communities of color.

Branches and the Retail Services and Products Test. The agencies propose to revise the Services test. We urge the regulators to retain core consideration of branch access as part of the CRA, and to expand bank branch obligations in a more meaningful way. NCRC analysis shows a tremendous and detrimental march by banks to close branches, especially in low income, BIPOC, and rural communities. A recent analysis by the Committee for Better Banks, shows that branch openings fail to proportionally locate in these same communities. We know that local branches mean more local jobs, more small business lending in the community, and fewer visits to fringe financial providers like check cashers and payday lenders. The CRA rules should clearly penalize branch closures and poor coverage in LMI, BIPOC and rural communities, and encourage through impact scoring the opening of branches in such communities.

Assessment areas. We appreciate the proposal to expand CRA coverage beyond branch locations, as we have urged for years. The Retail Lending Assessment Areas are positive, though we suggest the thresholds be lower (50 mortgages or 100 small business loans should trigger CRA responsibility) and that bank obligations to serve these areas extend beyond retail lending to other bank offerings in order to ensure that more rural communities are covered and that they are better served. But, the agencies fail to create deposit-based assessment areas that require banks to reinvest dollars back into the communities from which the deposits derive. This is this whole idea behind CRA. Every large bank knows exactly where its deposits reside, and they should be required to disclose this publicly and to accept CRA assessment areas where significant deposits are domiciled. This is the only way to keep up with emerging industry and consumer trends, to ensure that deposits through neobanks and other deposit-gathering third parties are assigned to local communities, and to prevent abuses and evasions such as San Francisco-based companies like Square and Schwab establishing out-of-state non branch banks with no proposed CRA responsibility in California despite soliciting a plurality of deposits from California. There are a number of points in the proposal where the agencies would impose lesser obligations on banks with between $2 billion and $10 billion in assets compared to banks with over $10 billion in assets. We strongly feel that all large banks should be subject to all the responsibilities outlined for the largest banks. Finally, while we support expanding CRA beyond branches, the CRA should retain a focus on local communities and we urge the agencies to prioritize Facilities (branch) Based assessment areas, perhaps through greater weighting of bank performance there.

Community participation. Though the agencies suggest that community participation is to be expanded, there is little evidence for that in the proposal. Current CRA rules and implementation, as well as this proposal, do a poor job of encouraging and valuing community input. Community comments on exams are not solicited, and when provided, they are ignored. Community contacts appear a relic of the past, and were never bank-specific, instead asking about community needs and how banks generally were doing. Banks and the relevant agencies should post all comments on bank performance on their

websites and be required to provide a response. The agencies should actively solicit community stakeholder input on the performance of particular banks during CRA exams and bank mergers. Ninety days should be provided to the public to comment. Banks and regulators should clearly disclose contact information for relevant staff. Bank mergers should default to public hearings when public commenters raise concerns. Regulators must scrutinize bank merger applications to ensure that community credit needs, convenience and needs, and public benefit standards are met. Community Benefits Agreements should be encouraged as evidence that these standards can be met by the bank, and regulators should condition merger approvals on ongoing compliance with CBAs. Agencies should routinely review all existing consumer complaints, community comments, CFPB and agency investigations during CRA exams and merger reviews. In particular, community groups should be solicited for their views on bank practices relating to climate, displacement, discrimination, and other harms.

Conclusion

The California Community Land Trust Network appreciates the opportunity to comment on proposed CRA rules. While there are positive aspects of the proposal, and the agencies are to be commended for working together, we cannot support this proposal in its current form. Significant changes need to be made to the final rule to ensure that borrowers and communities of color are considered under the nation's anti-redlining law, that banks are penalized for harm caused to communities - such as through displacement, climate degradation, fee gouging, and discrimination - that community input is valued and elevated, and that complex formulaic evaluation methodologies do not result in banks failing to meet critical community needs relating to affordable housing, homeownership, small business development, broadband, and rural and Native American community access. Thank you for considering these comments.

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