PURPOSE
BUILT
COMMUNITIES

August 5, 2022

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency

Re: Docket ID OCC-2022-0002; Docket No. R-1769; RIN 7100-AG29; RIN 3064-AF81

To Whom It May Concern:

The Community Reinvestment Act (CRA) is an essential anti-redlining law that has had a positive impact on communities across the country, delivering home mortgages, small business lending, and a range of community development investments, from affordable housing and childcare to health facilities and grocery options. Yet despite its successes, CRA still has untapped potential. Nationwide, disparities by income and by race are increasing, and an increasingly modern financial services system risks further entrenching these inequities as CRA continues to operate from an outdated regulatory regime. In the face of challenging times ahead, we need to ensure that banks are both obligated and incentivized to deepen their investments in the communities they serve.

After years of regulatory work to reach this proposed rule, we are pleased to see the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Board), and the Office of the Comptroller of the Currency (OCC) (together, 'the agencies') propose a constructive update to the CRA regulations that will take several important steps to meaningfully expand impactful community development work.

Evaluating community development activities conducted anywhere in the country, rather than in the places where banks have branch locations, is particularly important. Bank branch locations do not always align with the neighborhoods most in need of investment nor where banks have the capacity to lend. The proposed geographic flexibility is a groundbreaking step to modernize assessment areas and can help bring community development capital to more neighborhoods.

Similarly, including an impact review to measure more than just the dollar volume of community development activities is an important acknowledgement of the nuances within the community development finance system. Community Development Financial Institutions (CDFIs) are rightfully included on this list of impactful activities, as are other important items like communities with low levels of community development financing and supporting affordable housing in high opportunity areas.

Still, there remain several critical areas in which the rule must better balance obligations, incentives, and enforcement so that the outcome results in increased capital flows and not less. The following recommendations will help ensure the final CRA rule meets its stated goals and promises.

Evenly weight the Retail and Community Development Tests.

The proposed rule reduces a bank's incentive to achieve a strong rating on its Community Development Test by setting a disproportionately low weight for community development activities compared to retail lending activities.[1] The Community Development Test and the Retail Lending Test should receive equal weighting – each 50% of a bank's overall CRA rating – to ensure consistent emphasis on diverse community credit needs. As proposed, a bank could achieve a Satisfactory rating with even a Needs to Improve conclusion on the Community Development Test. Greater emphasis on the Community Development Test would allow banks one more option for achieving an Outstanding rating and would motivate banks to excel on both tests considering their even impact on the overall rating.

Ensure banks continue to have a strong obligation to provide community development equity investments.

The proposed rule makes a major structural shift by combining community development loans (debt) and investments (equity) under one Community Development Financing Test. This is a dramatic shift from current regulations that removes the longstanding precedent where equity investments comprise 25% of a bank's overall CRA rating. Equity investments can be costlier and more time-consuming activities than loans but are also a critical form of capital in the community development finance ecosystem. CRA must recognize that not all capital is the same, and therefore the harder and costlier forms of capital should receive greater emphasis in an exam. We offer the following recommendations to ensure the proposed CRA rule neither intentionally nor unintentionally reduces bank motivation to conduct community development equity investments:

1. ***Create a Community Development Lending Subtest and a Community Development Equity Subtest.*** Recognizing the major structural shift that the agencies are proposing by eliminating the existing investment test, we recommend that the new Community Development Test incorporate two subtests – a Community Development Lending Subtest and a Community Development Equity Subtest, each weighted at half of the overall Community Development Test (i.e. a bank's overall rating would be comprised of 50% Retail Lending Test, 25% Community Development Lending Test, and 25% Community Development Equity Test). As part of this approach, we recommend that the Community Development Services Subtest be eliminated given that it has a disproportionately high weight on the exam for a limited number of eligible activities. Eligible activities under the proposed Community Development Services Test should be incorporated in the Community Development Test and the Retail Lending Test. Finally, we recommend updating the proposed impact review factors to reflect a more nuanced evaluation of responsiveness to credit needs, rather than creating a binary categorical checklist of activities.

   If the agencies do not create a Community Development Lending Subtest and a Community Development Investment Subtest within the Community Development Test, then the agencies must:

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[1] Dworkin, David, "Could the future of CRA be in doubt?" July 10, 2022, https://nhc.org/the-future-of-cra-is-in-doubt/

2. ***Modify the Community Development Services Subtest to emphasize the responsiveness of community development services and products to borrowers and communities.*** As proposed, the Community Development Services Subtest includes a limited number of eligible activities with minimal impact yet has a disproportionately high weighting on a bank's overall exam. Instead, the Community Development Services Test can be strengthened by making it more closely resemble the "responsiveness" test proposed in the Retail Services and Products Subtest. In this proposed approach, the Community Development Services and Products Subtest would account for the responsiveness of the Community Development Financing Subtest. A critical component of the responsiveness test under the Community Development Services and Products Test should be a bank's overall mix of community development financing types, with an emphasis on equity investments. To ensure "responsiveness" is a meaningful component of the overall exam, the CD Services Subtest could be increased from 10% of the overall Community Development Test to at least 15%, with the Community Development Finance Subtest counting for 35% of a bank's overall rating.

Meaningfully incorporate demographic data in a bank's CRA evaluation to determine whether a bank is meeting the credit needs of the entire community.

Although the CRA statute directs the agencies to evaluate how banks meet the credit needs of their *entire* communities, the proposed rule maintains its current emphasis on serving low- and moderate-income communities and neglects to collect, track, or incorporate racial demographic data in the examination process. Bank redlining practices were very clear in their intent and approach, which was to view people and communities of color as inherently risky, regardless of their financial strength or ability to repay. Redlining was not about income or financial circumstances – it was about race.[2] Purpose Built Communities acknowledges the racist systems of the past and present, and we accept the truth of the role these systems and policies play in relegating many Black and Brown people to under-resourced and disinvested neighborhoods. The failure to acknowledge and accept the reality of these harms collectively holds us back—from healing, progress, and true racial equity. Without data disaggregated by race and ethnicity, the regulators will not be able to fully assess a bank's track record of meeting the credit needs of its entire community, nor can the industry begin to more directly consider or craft products and services focused on racial equity. We must actively and purposefully direct resources to neighborhoods most impacted by the compounding effect of decades of racial injustice. Racial demographic data is needed across CRA activities, including community development, so that the agencies can capture an accurate and complete picture of how banks are meeting the credit needs of their entire communities – including Black and Brown people.

Incorporate Special Purpose Credit Programs (SPCPs) as an Impact Review Factor on the Community Development Finance Test.

SPCPs are a critical tool allowing lenders to create credit products with favorable terms that are targeted to historically underserved classes — including by race.[3] The proposed rule takes a positive step by proposing to provide CRA credit for SPCPs that focus on consumer products and

[2] Lucy Arellano Baglieri and Marla Bilonick, "A Conversation About the Community Reinvestment Act," July 29, 2022, https://www.youtube.com/watch?v=6lqdSCw2cSs&t=2s
[3] Barrow, Olivia, "Increasing Access to Credit in Communities of Color," May 31, 2022, https://www.theregreview.org/2022/05/31/barrow-increasing-access-to-credit-in-communities-of-color/

home mortgage lending, and we strongly support this proposal. However, the rule is silent on SPCPs under the Community Development Test, which would omit credit for banks that establish targeted lending programs for important activities such as affordable rental housing developments, childcare programs, and other community development projects. SPCPs are one of the most important tools available to affirmatively invest in racial equity and should be eligible for CRA credit on both the retail and community development tests.

Commit to ongoing public engagement around the newly proposed Impact Review Factors.

Effective implementation of Impact Review Factors will largely determine the success of the CRA rule; communities cannot afford for the regulators to miscalculate or underemphasize this component of the rule. It will take several years before the regulators have sufficient data to incorporate the Impact Review as a quantitative element of the exam process, and until then the Impact Review will largely be a qualitative consideration. Currently, the impact review is a binary approach that indicates whether a bank has or has not participated in a pre-determined list of activities, rather than the level of responsiveness that the bank's financial support shows to community needs. There remains significant room to improve the impact review portion of a bank's CRA exam and the agencies should commit to seeking additional public input as they consider incorporating this essential element of the rule into a final evaluation.

Clarify community development financing by a consortium or third party.

Banks often provide financing that the recipient uses for its general purposes, rather than for passing through to specific activities, or that will be used to fund future activities that have not yet been identified. In these cases, the bank and the recipient should be permitted to identify a reasonable geographic allocation for this type of financing. For example, a reasonable basis to assign geographic allocation could include the location of the recipient, where the recipient has historically worked, or where the recipient intends to work. The agencies should clarify that this is a valid process and that banks can rely on geographic allocations provided by the recipient/consortium (e.g., through side letters which has been an accepted common practice).

Thank you for this opportunity to comment on the proposed CRA rule. Please contact me with any questions.

Sincerely,

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