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Office of the Comptroller of the Currency
https://www.regulations.gov/commenton/OCC-2022-0002-0001

Federal Deposit Insurance Corporation
comments@fdic.gov

Federal Reserve Board
regs.comments@federalreserve.gov

RE: Comments on the Proposed Rule to the Community Reinvestment Act

To Whom It May Concern:

Housing Opportunities Made Equal (HOME) of Greater Cincinnati is appreciative of the opportunity to comment on the Notice of Proposed Rulemaking (NPR) in regards to modifying the Community Reinvestment Act (CRA). This NPR about the modification of the CRA serves as the most significant change to the CRA exams and regulation in 27 years.

HOME of Cincinnati is a non-profit corporation seeking to make Greater Cincinnati a completely open housing market. HOME is an advocate of fair housing and works to assist protected classes and mistreated tenants. HOME's mission is to eliminate unlawful discrimination in housing in the Greater Cincinnati area. HOME also seeks to decrease segregation and increase Black Homeownership in the Greater Cincinnati area.

The CRA has successfully leveraged loans, investments, and services that benefited low- and moderate-income (LMI) borrowers and communities. Between 2009 and 2020, banks have made more than $2.58 trillion in home loans to low- and moderate-income borrowers or census tracts. In addition, banks have made $856 billion in loans to small businesses with revenues under $1 million. Specific to the Cincinnati MSA in that same timeframe between 2009 and 2020, banks have invested more than $23 billion in mortgage loans to LMI borrowers or LMI census tracts, and lent more than $5 billion to small businesses. However, banks must intentionally address the remaining lending discrepancies through CRA reform.

The more rigorous CRA exams and ratings are, the more influential the CRA will be in reinforcing bank reinvestment activity in underserved communities. The agencies are proposing imperative advancements in the CRA regulation, including increasing the rigor of the subtests on the CRA exams, expanding geographical areas on CRA exams, and collecting more data to scrutinize bank performance. However, the agencies did not sufficiently address racial inequities. The following comment details these points and HOME's recommendations to improving the CRA through proposed rulemaking.

CRA Must Explicitly Include Race and Ethnicity

According to national studies using a segregation disparity index, Cincinnati is one of the most segregated cities in the United States. For example, black homeownership in the Cincinnati Metropolitan Area (MSA) is around 33%, while White homeownership is approximately 73%—a 40% gap. This gap is one of the worst compared to other MSAs.

In Cincinnati, zoning, lending, education policies, residential real estate practices, taxes, and public and private investments have all contributed to the vast discrepancy in the wealth gap and homeownership rates for Black and White families. Over the years, Black families have endured discriminatory practices that have contributed to racial segregation, such as outright deed restrictions, redlining, urban renewal programs that demolished thousands of homes in Black neighborhoods, changes in zoning codes, and predatory lending practices. Today, the practice in the City of Cincinnati of granting tax abatements to all new construction and substantial renovation through the Residential Community Reinvestment Area Tax Abatement Program has had the effect of privileging White neighborhoods and homeowners over Black neighborhoods and homeowners.

In order to fully address and overcome segregation in Cincinnati, modifications of the CRA need to explicitly account for race and ethnicity. This is critical to addressing the historical harms of racist policies of redlining and other public and private policies that have disadvantaged communities of color, while also addressing the continuing disparities in access to mainstream banking services and credit opportunities for communities of color. A recent national level analysis showed continuing differences in loan denials by race, and when people of color receive home loans, their equity accumulation was less.

According to HMDA data from 2018 – 2020, banking institutions in Hamilton County, Ohio were nearly twice as likely to deny a Black applicant than a White applicant. From 2018 to 2021, Black applicants were rejected at a rate of 27%, 26%, 22%, and 20% in each respective year, while White applicants' denial rates were 14. %, 13%, 10 %, and 10%. The HMDA data shows that Black applicants in Hamilton County, Ohio, are twice more likely to be denied a mortgage loan from a Banking institution than a White applicant.

The federal agencies proposed to use the HMDA data to produce exam tables detailing lending by race but not to include the results of these analyses to affect a bank's rating. A paper authored by NCRC and Relman Colfax PLLC purported that changes to the CRA would adhere to legal standards if CRA rated lending by race and ethnicity in geographical areas experiencing continuous discrimination or exhibiting significant racial disparities in lending.

In Hamilton County, Ohio, many communities of color lack access to banking institutions. For example, in the neighborhood of Bond Hill, Fifth Third Bank is the only Banking institution in the area. A low to moderate-income neighborhood being limited to one banking institution acts as a detriment to the residents. Some residents may not have the means to travel to other banking institutions, so the residents are limited to the products and services offered by the only banking institution. The lack of access to banking institutions furthers the disparity in Black and White homeownership rates.

While HOME thinks the federal agencies can examine banks' record of lending by race as an explicit component of CRA ratings, the agencies should at least boost fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race. Additionally, the agencies proposed using Section 1071 data on small business lending by race and gender of the business owner, and this data should be used as a screen for fair lending reviews. By including race and ethnicity as much as possible, the CRA can identify and rectify continuous racial disparities that directly impact the quality of life and health outcomes.

Strengthen Public Input on CRA Exams and Mergers

Since the CRA requires banks to meet the needs of communities, the federal agencies must heighten the importance of public comments regarding the degree to which banks meet the local community needs. The agencies proposed to continue the current practice of sending any comments on CRA performance to banks and are also considering publishing comments received on federal agency websites.

HOME supports posting comments on agency websites as a further accountability tool for banks and for examiners. In addition, the applicable comments can be referenced during future merger applications to determine if the banks addressed important public concerns. The agencies should also form a public registry that community organizations can access to sign up if they want to be contacted about community concerns and bank CRA performance. HOME requests that the agencies start to publish which organizations they consult with to understand local community needs, commit to collecting input from a diverse range of organizations that includes organizations led by Blacks, Hispanics, other people of color and women, and follow up on needs identified and detail how community feedback was factored into the outcome of CRA performance evaluations.

HOME also believes that the agencies must hold continual public hearings on large bank mergers. If a final rule makes CRA exams more rigorous, they will help hold merging banks accountable. However, merging banks must also submit a community benefits plan as part of their merger applications, including community benefits agreements negotiated with local community organizations. We agree with NCRC that an outstanding CRA rating must not constitute evidence that merging banks have satisfied the public benefits legal requirement.

Reduce CRA Ratings Inflation

About 98% of banks currently pass their CRA exams annually, with less than 10% receiving an Outstanding rating and almost 90% receiving a satisfactory rating. The CRA would be more effective if the ratings system more accurately revealed distinctions in performance, specifically if ratings identified more banks as significantly lagging their peers and motivated them to improve their ratings and increase their reinvestment activity.

The federal agencies strengthened the rigor of the large bank retail lending test by establishing performance ranges for comparison between a bank's lending and demographic and market benchmarks. This quantifiable approach would decrease ratings inflation and result in more failing and low satisfactory ratings on the lending test. In addition, due to this proposed reform, various banks would most likely respond by amplifying their retail lending to underserved communities.

The agencies proposed improvements to the other subtests of the large bank exam. However, they did not establish as many guidelines for the performance measures, which could contribute to inflation on the subtests. For example, the community development finance test will consist of a quantitative measure of a bank's ratio of community development finance divided by deposits. The bank's ratio will be compared to a local and national ratio. However, the agencies did not provide enough guidelines to examiners for comparing the bank's ratio to the local or national ratio, making it possible for an examiner to inflate a rating by choosing the lowest comparator ratio.

The possibilities of misplaced examiner discretion can also arise on the retail and community development services tests. For example, the retail services test contains quantitative measures comparing a bank's branch distribution to market and demographic benchmarks but does not provide enough instructions to examiners about how to weigh these particular benchmarks.

HOME thinks that the agencies can further develop guidelines for how to use the performance measures on the community development and services subtests of the large bank exam to produce a uniformly meticulous CRA exam and guard against ratings inflation.

Refining Community Development Definitions

The agencies proposed refinements to the definitions of affordable housing, economic development, climate resiliency and remediation, community facilities, and infrastructure that we believe will more effectively target revitalization activities to communities such as persistent poverty counties and Native American communities.

The NPR clarified that financing health services qualify under community support services. As a result, essential community facilities will now include hospitals and health centers without onerous requirements that previously have been applied inconsistently. This streamlining will boost the funding of critical community infrastructure responding to health and public health needs.

The agencies include a community development finance impact review which must be further developed. This review must be data-driven and be developed with points and ratings like the other subtests so that the test can be even more effective in stimulating responsive community development activities.

Finally, we ask the agencies to reconsider their proposal to expand CRA consideration for financial literacy with no income limits. Certainly, financial education and financial literacy are important, but any CRA credit or consideration must be centered around serving the needs of low- and moderate-income individuals, families, and communities. There are already too few resources for financial education for LMI and underserved communities, and any expansion to CRA credit without regard to income would further restrict the crucial services provided for LMI populations.

New Data Must Be Publicly Available

The agencies correctly proposed to include new data collecting requirements for deposits, community development activities, and automobile lending. However, some of this data, such as deposit and automobile lending, would not be publicly available, which limits the extent to which the public can hold banks accountable for reaching underserved communities. We ask the agencies to reconsider this decision and expand data collection to all large banks instead of just banks with assets of more than $10 billion in the case of deposits and automobile lending.

Fair Lending Reviews

The agencies proposed including all activities and products, including deposit accounts and credit, in anti-discrimination and consumer protection legal reviews. This proposal is a significant advance, but we urge the agencies to expand their reviews to include the quality of lending. For example, Massachusetts CRA exams include an analysis of delinquency and default rates in home lending. Federal CRA exams should do likewise in all major product lines.

Moreover, lending reviews must consist of an affordability analysis and impose penalties when banks offer on their own or in partnerships with non-banks abusive, high-cost loans that exceed state usury caps and that exceed borrowers' abilities to repay.

HOME is pleased that the agencies added the Military Lending Act to the list of laws to be included in the fair lending review. However, HOME urges the federal agencies to also add the Americans with Disability Act.

Expanded Assessment Areas

For several years, advocates have urged agencies to expand Assessment Areas and examine online lending. As a result, the agencies proposed to create retail Assessment Areas, where a large bank does not have branches but has issued 100 home loans or 250 small business loans. In the Cincinnati area, this new definition of Assessment Areas will better capture the activity of the largest lenders and banks that operate outside of a traditional branch-based model. For example, Third Federal Savings & Loan Association of Cleveland (Third Federal) has four loan production office locations in the Cincinnati region and is one of the top mortgage lenders. However, because Third Federal does not have any depository locations in the region, Cincinnati is not currently included under Third Federal's CRA assessment area. In another example, Wells Fargo accounted for 494 originated mortgage loans within Hamilton County in the last few years. But since Wells Fargo does not have any depository institutions within Hamilton County, the county is not assessed when Wells Fargo undergoes CRA examination.

HOME believes CRA examinations of banking institutions should account for mortgage services and products within a County, irrespective of whether the bank has a depository branch within the particular county. The current CRA proposal would result in the great majority of total lending being incorporated into exams and hold non-traditional banks more accountable for serving LMI communities. However, HOME requests the federal agencies expand the proposal to include partnerships with banks and non-banks for retail lending. When a bank partners with more than one non-bank, the lending of all the non-banks needs to be totaled together to calculate if the threshold is exceeded for purposes of creating assessment areas.

To ensure that banks serve smaller metropolitan areas and rural counties, the agencies proposed requiring that banks with ten or more assessment areas receive at least a Low Satisfactory rating in 60% of the assessment areas to pass overall. However, this may not be an adequate solution since the smaller areas could represent a minority of areas, allowing a bank to pass the 60% threshold by focusing on the larger areas. One possible fix is to require banks to achieve at least a Low Satisfactory rating of 60% in each of its large metropolitan, small metropolitan, and rural assessment areas.

Small and Intermediate Small Bank Classifications

By adjusting asset thresholds for qualifying for various CRA exams, the agencies proposed to reclassify approximately 779 Intermediate Small Banks as Small Banks, which would involve no longer holding these banks accountable for community development finance activities. In addition, the agencies proposed reclassifying 217 Large Banks as Intermediate Small Banks, eliminating their service test and accountability for placing branches in LMI communities. These changes lack justification since these banks have been successfully performing these activities for several years. We urge the agencies to eliminate this aspect of the NPR since it would reduce reinvestment activity.

Conclusion

The NPR is a good start and promises to make parts of CRA exams more rigorous. As detailed above, there are a few areas of improvement to the proposed changes. HOME strongly believes race and ethnicity should be explicitly considered as part of CRA. HOME also urges the agencies to extend the rigor of the large bank lending test to the other tests, expand the public reporting of their data collection proposals, bolster assessment area proposal to ensure that smaller communities are not left out, and refrain from reducing reinvestment requirements for any segment of banks. If CRA is improved while maintaining public input and accountability, we believe the proposed rule could help reduce inequalities, disinvestment, and other disadvantages in America's overlooked communities.

Thank you for your consideration.

Sincerely,

[redacted]

Elisabeth Risch
Executive Director