EAST BAY ASIAN LOCAL
DEVELOPMENT CORPORATION
BUILDING HEALTHY, VIBRANT AND SAFE NEIGHBORHOODS

NeighborWorks
CHARTERED MEMBER

8/5/2022

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
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:

East Bay Asian Local Development Corporation (EBALDC) appreciates the opportunity to comment on the proposed updates to the Community Reinvestment Act (CRA) rule. We recognize the thoughtful proposals which seek to retain key components of the CRA, while modernizing aspects of the rules to reflect current industry practices, and strengthen the ability of the CRA to stabilize and revitalize communities. Our comments are focused on the aspects of the proposal which will most impact the development of affordable rental housing, and how the CRA can better serve impacted communities and address racial inequities in the banking sector.

East Bay Asian Local Development Corporation (EBALDC) is a non-profit community development organization with over 47 years of experience in building healthy, vibrant and safe neighborhoods in Oakland and East Bay. We address the specific needs of individual neighborhoods by connecting the essential elements of health and wellbeing through our Healthy Neighborhoods Approach. Emphasizing our historic and continuing commitment to Asian and Pacific Islander communities, EBALDC works with and for all the diverse populations of the East Bay to build healthy, vibrant and safe neighborhoods through community development. We achieve more by building strong partnerships with people, organizations, and businesses to accomplish neighborhood goals.

The CRA's impact in incentivizing credit, investments and financial services to underserved communities in California has been significant. Yet, significant gaps have prevented the CRA from achieving full potential in this mission. We offer the following comments on the proposal, with conviction that unless critical issues in the proposal are revised, the CRA will continue to fall short of success:

Maintain Separate Investment and Lending Tests

Affordable rental housing is highly reliant on bank investments in Low Income Housing Tax Credits (LIHTC) to fill the critical equity gaps which are insufficiently met through market investment opportunities. Banks represent an overwhelming majority of the LIHTC investment (85%) market nationally, and are significantly incented to invest in LIHTC by the Investment Test under the CRA. Bank preferences for lending rather than equity ownership interest in these developments is significant. Under the proposal to combine the investment and lending tests into a single community development financing metric, we anticipate that the value of LIHTC investments will drop significantly as banks pivot to lending over investment to achieve their CRA goals.

Increase the rigorousness of the Community Development Financing Test

We recommend that the Investment and Lending Tests (as discussed above) incorporate metrics and benchmarks that are equally rigorous and objective as those created for the Retail Lending Test. If current data is insufficient to establishing such metrics and benchmarks, the agencies should commit to

establishing them as quickly as possible, using the required bank reporting to collect the data needed to inform the test.

Mortgage Backed Securities (MBS)
CRA credit for MBS should only be counted pro-rata for the portion of the MBS that is from affordable housing or other qualifying investments and only for the first purchase of the security. Further, investments in MBS should be discounted by 50% in comparison to more traditional lending or investment in qualified CRA activities because MBS remain highly liquid and provide significantly less public benefit.

Double Consideration
We support the consideration of affordable housing activities in other categories such as community revitalization and climate resiliency, but think the rules should state clearly that the investments may not be double counted.

Mixed-Income Properties
We support granting full consideration to investments only in mixed-income LIHTC properties, as the amount of investment is already pro-rated to reflect the percentage of affordable homes, but we recommend that any CRA credit for lending to these same properties be pro-rated for the purposes of CRA credit so as to avoid awarding credit for lending activity on market rate housing developments. Similarly, we support proration for both lending and investment activities in non-LIHTC mixed income properties, based upon the percentage of affordable homes.

Partial Consideration for Non-Housing Projects Serving a Broad Range of Incomes
We do not recommend granting partial consideration to non-housing projects that serve a broad geographic area where low- and moderate-income census tracts comprise a minority of total census tracts. This would be both difficult to administer in an objective and consistent manner, and could result in significant expansion of qualified investments, thus diverting resources from projects that specifically target and provide benefits to low- or moderate-income people and communities.

Credit for NOAH Investment
We oppose the proposal to allow CRA consideration for many types of investments in Naturally Occurring Affordable Housing (NOAH). EBALDC is concerned that if implemented as proposed, the CRA would reward banks for purchasing, renovating, and reselling homes for significant profit in neighborhoods that have historically faced divestment – accelerating displacement and gentrification. In addition, in California we have seen a proliferation of rental housing acquisitions by joint powers authorities and their for-profit partners who receive a property tax abatement far outweighing the rent savings and offer units that often remain above the market average for the neighborhood. The financing of these purchases is not worthy of CRA consideration. The agencies should grant partial consideration only for those units that will be owned by mission-driven affordable housing non-profit organizations or public entities, restricted to remain affordable at the lesser of 80% of area median income or HUD's Small Area Fair Market Rent, and subject to compliance monitoring by a public entity.

Anti-Displacement Protections
We support the proposal's efforts to address displacement concerns but request that the agencies consider strengthening these provisions further. We believe that Banks should not receive CRA consideration unless they demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting act, ADAAP and other laws. Banks should adopt procedures such as the California Reinvestment Committee's Anti Displacement Code of Conduct and engage in due diligence of

LLC members to determine whether there are concerning histories of eviction, harassment, complaints, rent increases or habitability by the potential bank borrowers.

Further, we believe the CRA should go further than ceasing to offer credit for harmful products. Banks should be penalized for inflicting or perpetuating harm in vulnerable communities. Bank regulators should conduct extensive outreach to community groups to investigate whether landlord borrowers are exacerbating displacement pressures or harming tenants. Because displacement often has disparate impact on protected classes, examiners should consider disparate displacement financing to be discrimination under the expanded definition, that would also trigger CRA ratings downgrades and subject the bank to potential enforcement action.

Bank Size Thresholds

We recommend that the agencies maintain the current thresholds for determining a Large Bank. According to the National Community Reinvestment Committee, the proposed change would result in 217 currently large banks being reclassified as Intermediate Banks, in which case they would only voluntarily be subject to the Community Development Financing Test. This large-scale loss of banks required to participate in CRA will result in less community benefit than would otherwise be the case and thereby undermine the benefits of CRA. Whereas these banks are used to being evaluated as Large Banks, there is no harm in keeping them in that category.

Race and CRA

At a more global level, the agencies should ensure that CRA substantially advances racial equity and closes the racial wealth gaps by requiring 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, similarly to how banks are evaluated on their performance in meeting the needs of LMI borrowers and communities. Bank records in extending fairly-priced credit, financing community development, opening responsive account products and maintaining branches to and in communities of color should factor into a bank's CRA rating.

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. However, an expanded definition of discrimination is only as helpful as the agencies' willingness and capacity to diligently look for evidence of discrimination. The General Accountability Office recently found that fair lending reviews at the Office of the Comptroller of the Currency were outdated and inconsistent. Agency enforcement of redlining or discrimination cases, and even CRA ratings downgrades for discrimination, are exceedingly rare. Agency fair lending reviews should be more extensive, 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.

Community Participation

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, 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 without rigor or accountability.

Banks and the relevant agencies should post all comments received on their websites and be required to provide a response. The agencies should actively solicit community stakeholder input on the performance of particular banks for CRA exams and during mergers. Ninety days should be provided to the public to comment.

Banks and regulators should clearly disclose contact information for key staff. Bank mergers should default to public hearings when public commenters raise concerns. Regulators should 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 a bank can meet applicable community needs and convenience and needs standards, 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.

Thank you for your work on the proposal and for the opportunity to submit these comments. We look forward to the agencies addressing the matters we raise and the ultimate adoption of the revised regulations.

Sincerely,

[redacted]

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