August 5, 2022

The Honorable Jerome Powell
Chairman
The Board of Governors of the Federal Reserve System
Ann E. Misback, Secretary
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
RE: Docket No. R-1769; RIN 7100-AG29

The Honorable Michael Hsu
Comptroller
Office of the Comptroller of the Currency
Attention: Comment Processing
Chief Counsel's Office
400 7th Street, S.W. Suite 3E-218
Washington, D.C. 20219
RE: Docket ID OCC-2022-0002; RIN1557-AF15

The Honorable Martin Gruenberg
Acting Chair
Federal Deposit Insurance Corporation
Attention: James P. Sheesley, Assistant Executive Secretary
550 17th Street, N.W.
Washington, D.C. 20429
RE: RIN 3064-AF81

Dear Chairman Powell, Comptroller Hsu, and Acting Chair Gruenberg:

Habitat for Humanity International appreciates the opportunity to share its perspective on the joint-agency proposal for regulatory changes to the Community Reinvestment Act, as outlined in the 2022 Notice of Proposed Rulemaking.

Habitat for Humanity invests in communities nationwide by helping low-income families access and sustain affordable homeownership. Families and individuals in need of a hand up partner with Habitat for Humanity to build or improve a place they can call home. With a national network of over 1,100 local and state affiliates working in all 50 states, Habitat has gained broad and deep perspective on the credit needs of low-income families and under-invested communities.

Since its enactment, the CRA has been instrumental in supporting Habitat's affordable homeownership activities, especially our work to extend opportunities to low-income homebuyers in hard-hit, under-served communities. The CRA plays a crucial role in building partnerships between banks and local Habitat affiliates that greatly extend our ability to provide affordable mortgages to qualified, lower-income families. Nationally, banks purchase Habitat's below-market-rate loans to our partner families due primarily to the motivations provided by the CRA. Habitat relies upon these loan sales to further leverage the donations and other financing that makes building our homes possible. The CRA also plays a fundamental role in ensuring capital is available generally in the communities we are helping to revitalize.

While the CRA has been a critical tool for encouraging investment in affordable homeownership and revitalizing communities, improvements are needed to help banks and community organizations address persistent gaps in access to credit.

Overall Feedback

Any changes to implementation of the CRA must ultimately do more to reduce credit inequities for low- and moderate-income (LMI) communities, including lower-income households of color. The Notice of Proposed Rulemaking (NPR) take positive steps in this direction, proposing multiple improvements that will make the CRA stronger and more effective. These include: the introduction of helpful impact review factors to better assess the responsiveness of Community Development activities; the creation of new "Retail Lending Assessment Areas" to cover large banks without branches (such as online banks) and communities without branches; the use of local, peer-group benchmarks to assess large bank retail lending; the inclusion of Special Purpose Credit Programs (SPCPs) as an example of a responsive credit product or program that would lead to a more positive evaluation of a bank's retail services and products; broader requirements for collecting Home Mortgage Disclosure Act (HMDA) data; and disallowance of CRA consideration for revitalization activities that displace or exclude LMI residents.

Additional changes are needed as well. Chief among these are additional, proactive elements to encourage banks to meet the full credit needs of low- and moderate-income households of color.

Proactive Measures on Racial Equity are Needed to Achieve Core Statutory Goals

A revised CRA rule needs to do more to proactively encourage banks to assess and address racial and ethnic disparities in access to credit. This should be understood as a critical component of achieving the CRA's statutory purpose—encouraging banks to meet the credit needs of their *entire* community—rather than something extraneous. Within the low- to moderate-income bracket, a significant share—especially residents and communities of color—continue to be left behind. More targeted solutions are needed to address their credit needs.

Reducing racial exclusion in lending is fundamental to the origins of the Community Reinvestment Act. The CRA was passed in 1977 to combat persistent "redlining" in which banks continued to exclude communities with high shares of households of color from lending, even after the passage of the Fair Housing Act.

While the CRA has made progress in broadening access to credit for LMI communities, significant racial and ethnic credit disparities remain *among LMI households*. For example, just looking at low-income households (earning less than 50% of area median income) and moderate-income households (earning 51-80% of AMI), Harvard's Joint Center for Housing Studies found in each case a Black-white homeownership gap of 26 percentage points and an Hispanic-white gap of 22 percentage points. (JCHS, *State of the Nation's Housing 2022*). Greater intentionality by banks and their community partners is needed to achieve equitable credit access for low- and moderate-income residents of color.

The agencies that oversee implementation of the CRA need to find a way that is consistent with legal standards and the statutory text of the CRA to do to more to encourage banks to evaluate and overcome racially unequal barriers to credit and homeownership access, so that more banks succeed in meeting the full lending needs of their communities.

In this spirit, we applaud the agencies' proposal to list Special Purpose Credit Programs (SPCPs) as an example of a responsive credit product or program that would lead to a more positive evaluation of a bank's retail services and products. SPCPs are vehicles through which banks and nonprofit entities can design their lending programs to specifically address barriers faced by racially and economically disadvantaged borrowers so that fewer are excluded from accessing credit.

Habitat also supports the agencies' proposal to require broader collection of Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race. Certain banks that are not currently mandatory reporters under HMDA would be required to collect and maintain, or report, mortgage loan data. This would promote greater transparency about a bank's lending performance by race and ethnicity. It would also help more lenders identify populations that are not successfully accessing credit, and craft effective lending strategies and products that increase access.

However, additional measures are also needed:

1. The agencies should take additional steps to encourage investment in Special Purpose Credit Programs. We recommend that SPCPs also be listed as 1) a qualifying activity for Community Development investments, and 2) an impact factor for guiding qualitative reviews of Community Development activities. Many community-based nonprofit organizations are developing their own SPCPs that are deeply impactful and effective in engaging under-served homebuyers of color. Greater lending capital and investment in SPCPs operated by nonprofit community organizations would help them broaden their reach and better serve low- to moderate-income communities.

2. The National Community Reinvestment Coalition and Relman Colfax PLLC have put forward an interesting proposal to require CRA examination of lending by race and ethnicity in geographical areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending. We encourage the agencies to take a closer look at this proposal. While broader collection of HMDA data would promote greater transparency about a bank's lending performance by race and ethnicity, the results would not be incorporated into a bank's assessment. The proposal from NCRC and Relman Colfax would take a further step in this direction.

3. Lastly, regulators should consider adding a qualitative measure for evaluating the impact of Community Development activities based on how well the investments address racial disparities in mortgage lending and affordable housing.

Whichever strategies are ultimately chosen to broaden access to credit while keeping within legal confines, the final CRA rule needs to do more to illuminate and address racial and ethnic disparities in lending among lower income households.

Responses to Specific Questions in the NPR

Defining Affordable Housing and Eligible Affordable Homeownership Activities

Question 8: How should the agencies consider activities that support affordable low- or moderate-income homeownership in order to ensure that qualifying activities are affordable, sustainable, and beneficial for low- or moderate-income individuals and communities?

First, Habitat applauds the agencies' clarification that "affordable housing" includes: "(iii) activities supporting affordable low- or moderate-income homeownership; and (iv) purchases of mortgage-backed securities that finance affordable housing."

We also appreciate the listed examples of eligible activities, including, but not limited to:

- construction loan financing for a non-profit housing developer building single-family owner-occupied homes affordable to low- or moderate-income individuals;
- financing or a grant to a non-profit community land trust focused on providing affordable housing to low- or moderate-income individuals;
- a shared-equity program operated by a non-profit organization to provide long-term affordable homeownership; and
- financing or grants for organizations that provide down payment assistance to low- or moderate-income homebuyers.

We further support the agencies' emphasis on activities undertaken with a governmental or non-profit organization that have a stated purpose of supporting or providing affordable housing.

In addition to what is proposed, we would recommend that the agencies identify Special Purpose Credit Programs as an example of eligible activities that support affordable low- or moderate-income homeownership, as touched on above. Furthermore, SPCPs operated by community-based organizations should be listed as an impact review factor for qualitatively assessing Community Development activities, as discussed more below.

Question 9. Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low- or moderate-income individuals?

Yes, we recommend consideration of only the proportional value of the affordable loans in a qualifying mortgage-backed security, rather than crediting the full value of the security.

Furthermore, we support only crediting the initial purchase of mortgage-backed securities—not subsequent purchases. Generally, the first purchase of MBS ought to increase the ability of the original lender to offer subsequent loans to LMI individuals. Subsequent purchases of the same MBS would seem less likely to increase the number of loans made to LMI individuals.

Lastly, we propose that *only the purchase price* for the affordable loans should be considered in calculating the value of the affordable loans eligible for credit. Many of our local Habitat organizations ultimately sell their mortgage notes at a discount relative to the loans' full value, frequently at 80 to 85 cents on the dollar. The rest of the mortgage security is essentially subsidized by the Habitat affiliate. We do not believe banks should be given credit beyond how much they actually paid for the mortgage-backed security.

Defining Revitalization Activities

The agencies propose that "revitalization activities" eligible for CRA consideration under the Community Development category must have four key elements:

1) a geographic focus (e.g., LMI census tracts) where the activities must occur.
2) standardized eligibility criteria that require the activity to benefit local residents, including LMI residents, in the targeted geographies.
3) an eligibility requirement that the activity *must not displace or exclude* low- or moderate-income residents in the targeted geography.
4) the activity must be conducted in conjunction with a government plan, program, or initiative that includes an explicit focus on benefitting the targeted geography.

Question 14. Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)?

Place-based definition activities should generally be required to be conducted in conjunction with a government plan, program or initiative. But in places where no such plans or initiatives exist, it may be sufficient that the activity is led by a mission-driven nonprofit organization with an explicit focus of benefitting LMI households in the targeted census tract(s).

Question 15. How should the proposals for place-based definitions focus on benefitting residents in targeted census tracts, and also ensure that the activities benefit low- or moderate-income residents? How should considerations about whether an activity would displace or exclude low- or moderate-income residents be reflected in the proposed definitions?

We support the proposal to disallow CRA consideration for activities that lead to direct displacement of low-to-moderate income residents—such as demolition of subsidized or naturally occurring affordable homes occupied by these households—unless 1-1 replacement can be provided by the activity.

Question 16. Should the agencies include certain housing activities as eligible revitalization activities? If so, should housing activities be considered in all, or only certain, targeted geographies, and should there be additional eligibility requirements for these activities?

Yes, certain housing activities should be eligible as "revitalization activities" provided that their purpose is either producing or repairing affordable homes for low- to moderate-income households and they do not cause direct displacement. An example would be rehabilitating or replacing vacant and distressed homes to create new opportunities for affordable homeownership for low- to moderate-income households. It may not be necessary to limit this consideration to high-poverty or high-vacancy communities, as we often find there are pockets of distress needing investment in otherwise prosperous communities.

Determining Eligibility for Financial Literacy Programs

Question 27. Should consideration of financial literacy activities expand to include activities that benefit individuals and families of all income levels, including low- and moderate-income, or should consideration be limited to activities that have a primary purpose of benefiting low- or moderate-income individuals or families?

Where possible, financial literacy programs receiving CRA consideration should be limited to activities that have a primary purpose of benefiting low and moderate income individuals. However, this does not mean that such programs should be disqualified if they include higher income individuals. More important than setting income limits is designing these programs to be relevant and accessible to under-served individuals and families. The type of financial literacy program and its marketing approach will drive the constituency reached and its responsiveness to LMI communities.

We would thus encourage the agencies to require eligible programs to have a stated purpose of engaging LMI residents, *as well as a written plan* for doing so. As part of such a plan, we would encourage banks to pursue partnerships with established not-for-profit organizations to help ensure their programs are community-relevant and marketed successfully.

Eligibility for Volunteer Services

Banks can receive CRA consideration for certain volunteer services related to eligible community development activities. The agencies propose that these "community development services" count toward 10% of a large bank's overall CRA rating. They also propose that community development services be brought into consideration for reviews of intermediate-sized banks, at the bank's request.

Current guidance advises that community development services should be related to financial services or core competencies of bank employees. Examples include serving on boards of directors for community development organizations; providing financial literacy activities targeting LMI individuals; and offering financial technical assistance for community development organizations or small businesses.

There has been some confusion about whether bank employees volunteering to help build affordable homes for purchase by LMI families would also be eligible. While this activity is listed in the OCC's *CRA Illustrative List of Qualifying Activities*, we hear varying interpretations from the field regarding its eligibility.

Question 127. Should volunteer activities unrelated to the provision of financial services be considered in all areas or just in nonmetropolitan areas?

The agencies propose explicitly allowing credit for volunteer activities related to *non-financial* services that meet an identified community development need, but only in nonmetropolitan areas. Presumably, this reflects the agencies' interest—shared by Habitat for Humanity—that credited CRA activities meaningfully increase access to credit in LMI communities. The agencies carve out an exception for nonmetropolitan areas in recognition that banks operating in these areas "may have fewer opportunities to provide community development services related to the provision of financial services."

We would recommend that bank employee volunteering unrelated to financial services be given CRA consideration *in all types of communities*—at least when it involves helping an affordable housing organization build homes for homeownership, given that activity's strong connection to expanding credit and homeownership opportunities for under-served LMI communities. Our network reports that bank employee volunteering on affordable home builds can be useful in urban areas as well as rural areas, as it often leads to deeper, financial partnerships with banks. But Community Development Services as a whole should be credited minimally—acting more as a "tie-breaker" than a core component of an overall rating. Ultimately, financial investments like those captured under the Community Development Financing Test are more impactful and should be weighted accordingly.

The Importance of Community Development Investments in a Bank's Overall Rating

Question 139. Instead of a 50/50 split for intermediate banks [as initially proposed], the agencies request feedback on whether it would be more appropriate to weight Retail Lending activity at 60% and Community Development activity at 40% when deriving the overall rating at the state, multistate MSA or institution level.

No, we strongly encourage the agencies to keep a 50/50 split for intermediate-sized banks. They should be engaging in both activities to receive an overall Satisfactory rating. If there are limited community development opportunities in a given community, intermediate banks are still able to request consideration of their "Community Development Services" (volunteer activities).

Feedback on the Proposed Qualitative Impact Measures for Community Development Activities

While the agencies did not request overall feedback on the proposed impact review factors, we applaud the list offered and recommend one addition (described below).

Especially helpful is the agencies' proposed recognition of the importance of:

- Financing that takes the form of grants or contributions;
- Activities that reflect bank leadership through Multi-Faceted or Instrumental Support (i.e., activities that entail multiple forms of support provided by the bank for a particular program or initiative); and
- Activities that serve households earning less than 50% AMI.

For local Habitat affiliates, grants are especially impactful. Comparatively, loans add costs to our products that reduce the number of people we can serve. Grant dollars also enable many of our Habitat affiliates to sell our mortgages and use the proceeds to grow our impact. Without this review impact factor, evaluations of Community Development activities will be biased toward community development loans given the focus elsewhere in the proposal on dollar volume, and the tendency for loans to be higher in amount than grants.

Emphasizing multi-faceted support will help discourage banks from only providing volunteer services or financial literacy support rather than also offering community development financing or grants that can make a more lasting impact on a community's development and affordable homeownership opportunities. Listing multi-faceted support as an impact review factor could also encourage more banks to offer construction financing to build affordable homes coupled with mortgages to the homeowners that purchase these homes, which is helpful to our affiliates.

Activities that serve families earning less than 50% of AMI can be especially impactful. Housing affordability needs are greatest for this income bracket. It would be counter-productive, however, to lower this threshold further to 30% of AMI. Providing affordable homeownership opportunities for extremely low-income families is especially difficult in high cost markets, often prohibitively so. And providing housing opportunities for households earning between 31% and 50% of AMI is still impactful, particularly in the homeownership space, as it fills a gap that is too often unmet by the market.

Additionally, we encourage the agencies to add a new impact review factor: "Supporting Special Purpose Credit Programs operated by non-profit community-based organizations." This would be consistent with the agencies' proposal that SPCPs be listed as an example of a responsive credit product or program in evaluating a bank's retail services and products. Many community-rooted nonprofit organizations are developing SPCPs themselves, and could do much more with access to greater lending capital.

Question 35. For CDFIs, should they further emphasize equity investments, long-term debt financing, donations, and services? Other emphases?

> Yes, support for CDFIs in the form of equity investments and long-term debt financing is especially helpful for housing-related community development activities, and should be reviewed accordingly.

Qualitative Measures for Evaluating Large Banks' Retail Services and Products

Question 106. Should Special Purpose Credit Programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals?

> Yes, absolutely. SPCPs help overcome barriers faced by racially and economically disadvantaged LMI borrowers to improve their access to credit. As mentioned above, SPCPs should also be added as an impact review factor for *Community Development* activities, namely "Supporting Special Purpose Credit Programs operated by non-profit community-based organizations."

Raising the Size Thresholds for Banks to be Considered "Intermediate" or "Large"

Question 50. The proposed asset thresholds consider the associated burden related to new regulatory changes and their larger impact on smaller banks, and it balances this with their obligations to meet community credit needs. Are there other asset thresholds that should be considered that strike the appropriate balance of these objectives?

> We would encourage the agencies to revisit their proposal to raise size thresholds for "Intermediate small banks" and "Large banks." We are concerned that this would have the effect of eliminating community development expectations for at least 778 banks, according to the agencies' own analysis. And it would seem even more counter-productive to raise the "intermediate" threshold further, as alluded to in Question 51.

Additional Feedback

- Habitat applauds the creation of new "Retail Lending Assessment Areas" to cover large banks without branches (such as online banks) and communities without branches.
- We support the proposal to use local, peer-group benchmarks to assess large bank retail lending. We believe this approach will decrease ratings inflation and increase the rigor of these evaluations.
- We support wherever possible elevating the importance of public comments on banks' performance, as this would further help ensure that banks that receive high ratings are meeting a full range of community needs, especially those of LMI borrowers and communities.

Conclusion

The Community Reinvestment Act was created to help ensure that all of us—regardless of race, ethnicity or income—have access to safe, affordable credit and opportunities for homeownership. The agencies have proposed multiple, needed regulatory changes that move the CRA closer to achieving that purpose.

Additional proactive measures are needed, however, to encourage full financial inclusion of low- and moderate-income households of color. Such measures are critical to achieving the CRA's statutory goal of strengthening credit access for low- and moderate-income households and communities. In particular, we call on the agencies to do more to encourage investment in Special Purpose Credit Programs by 1) listing SPCPs as a qualifying activity for Community Development investments, and 2) including support for nonprofit SPCPs as an impact factor for guiding qualitative reviews of Community Development activities. We also encourage the agencies to examine other opportunities for assessing and addressing racial and ethnic disparities in lending, including the proposal by NCRC and others to require CRA examination of lending by race and ethnicity in geographical areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending.

With these improvements, and with follow-through on the agencies' new proposals that we've highlighted in our comments, the CRA will be better positioned to live up to its promise and close persistent and harmful gaps in access to credit and homeownership that have left too many Americans and neighborhoods behind.

Thank you for your consideration.

Sincerely,

[redacted]

Robert Hickey
Director, Housing Policy Development and Analysis
Habitat for Humanity International