



August 5, 2022

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Re: Community Reinvestment Act Notice of Proposed Rule
OCC: Docket ID OCC-2022-0002;
FDIC: RIN 3064-AF81;
Federal Reserve: Docket No. R-1769; RIN 7100-AG29

To Whom It May Concern,

Tenderloin Neighborhood Development Corporation (TNDC) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) for the Community Reinvestment Act (CRA). Since 1981, TNDC has preserved and built nearly 5,000 homes for seniors, families, and people exiting homelessness. We offer the following recommendations based on our more than 40 years of affordable housing and community development experience with the primary goal of ensuring that the CRA continues to support the development of affordable rental housing in the Tenderloin and across San Francisco's low-income communities. The comments also touch on other affordable housing-related matters and echo broader themes about community participation and the role of CRA in addressing racial inequities in the banking sector.

Summary of Comments

- Include race as an explicit factor for CRA evaluations
- Separate the Community Development Lending and Investment Tests
- Maintain the Large Bank threshold
- Reward activities that support affordable housing in Qualified Census Tracts
- Reconsider requirements for NOAH investments
- Encourage and value community participation





Include Race as an Explicit Factor for CRA Evaluations

Born out of the civil rights movement, the CRA was passed to redress the enduring impacts of redlining such as the racial wealth gap. The NPR, however, does not propose taking race into account for the purpose of CRA evaluation. Instead, the agencies suggest that they may rely on the fact that CRA and fair lending are mutually reinforcing. TNDC strongly encourages the agencies to make full use of their authority to ensure that the CRA substantially advances racial equity.

There are many ways the agencies could lawfully and meaningfully incorporate race into CRA exams. The collection of comprehensive demographic information, including race and ethnicity, would support the agencies' ability to evaluate the CRA's efficacy in directing investment to underserved communities. Agencies could also consider relevant data collected under the Fair Lending Act, State Small Business Credit Initiative, and the Home Mortgage Disclosure Act. To pass their exams, banks should be required to prove that they are serving the entire community. Additionally, CRA credit could be provided to banks that invest in community development financial institution (CDFI) products designed to address racial inequity and/or expand the use of Special Purpose Credit Programs to meet the needs of communities of color.

Separate the Community Development Lending and Investment Tests

TNDC is concerned that the Community Development Financing Test, as currently imagined, will disincentive banks from making equity investments in the Low Income Housing Tax Credits (LIHTC) program, which is the most important program for producing and preserving affordable housing. By combining the Investment Test with the Lending Test, the CD Financing Test will shift CRA activities away from more complex but impactful activities like equity investments, reduce demand and competition for tax credits, and result in less equity available for affordable housing. While loans receiving CRA credit have more favorable terms, the benefits to our projects are modest and we do not have difficulty accessing loans in the marketplace. By comparison, bank investments in LIHTC are essential. With less equity, we will build fewer units or units with less affordable rents.

Reward Activities that Support Affordable Housing in Qualified Census Tracts

As the 2015 Supreme Court ruling made clear, Affirmatively Furthering Fair Housing is intended to both increase access to opportunity *and* strengthen communities that continue to struggle from historic disinvestment. In addition to rewarding lending and investment activities that support affordable housing in high opportunity areas, we encourage the agencies to consider a separate impact review factor for activities that support affordable housing in Qualified Census Tracts (QCTs). In San Francisco, as well as in other high-cost cities, communities in QCTs have the lowest incomes and the highest poverty rates, and often face the greatest displacement pressures. To ensure current residents can





remain in these cities long-term, we must also build high quality affordable housing and renovate existing affordable homes where they live right now.

Reconsider the Requirements for NOAH Investments

Given our preservation work, we are pleased to see that naturally occurring affordable housing (NOAH) is included as part of the affordable housing definition and determined based on rent levels as opposed to resident income. Under the agencies' proposal, NOAH properties would be eligible for CRA consideration if rents for most of the units in a property do not exceed 30% of 60% of area median income (AMI) and the housing benefits low- and moderate-income people. We suggest that the affordability standard for NOAH consideration be adjusted to no higher than 30% of 80% AMI, which is still considered "low income" by HUD. The majority of low- and moderate-income renters live in unsubsidized housing and CRA consideration should not be restricted to financing that benefits only those who are very low-income.

TNDC is concerned, however, that the NPR as currently written would reward banks for lending to speculators who purchase, renovate, and resell unsubsidized affordable housing for significant profit. In California, we have seen a proliferation of rental housing acquisitions by joint powers authorities and their for-profit partners. These entities often receive property tax abatements that far outweigh the rent savings and list their units well above the market rents for the neighborhood. The financing of these purchases is not worthy of CRA consideration. As such, 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 to tenants with incomes $\leq 80\%$ AMI, and subject to compliance monitoring by a public entity.

Maintain the Large Bank Threshold

According to the National Community Reinvestment Committee, the proposed change would result in 217 Large Banks being reclassified as Intermediate Banks, in which case they would only be voluntarily subject to the Community Development Financing Test and no longer required to locate branches in LMI communities. Whereas these banks have complied with their CRA obligations for years, their large-scale reclassification would significantly curtail reinvestment activity and undermine the benefits of the CRA overnight.

Encourage and Value Community Participation

Current CRA rules and implementation, as well as this proposal, do not adequately encourage or value community input and involvement. Comments on exams are not solicited and, when provided, go ignored. Despite the requirement to do so, banks rarely identify bank- or community-specific contacts able to provide rigorous feedback.





To increase transparency and participation, banks and agencies should post all comments received on their websites and be required to provide a response. The agencies should actively solicit stakeholder input on the performance of certain banks for CRA exams and during mergers. Ninety days should be provided for public 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.

Thank you for your work on this Notice of Proposed Rule and for your openness to our comments. We look forward to seeing the revised regulations. Should you have any questions about the content of this letter, please do not hesitate to be in touch with maurilio león at mleon@tndc.org.

Sincerely,



maurilio león
Chief Executive Officer
Tenderloin Neighborhood Development Corporation

