Re: CRA NPR Comments – OPPOSE UNLESS AMENDED

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:

San Francisco Housing Development Corporation (SFHDC) thanks the OCC, FDIC, and Federal Reserve for soliciting comments on the proposed Community Reinvestment Act (CRA) rule, which seeks to retain key components of the CRA, modernize aspects where industry practices have outpaced the rules, and strengthen the ability of the CRA to stabilize and revitalize communities.

The CRA has been hugely impactful in providing credit, investments and financial services to underserved communities in California. Yet significant gaps remain in CRA rules and implementation, and the promise of CRA has not yet been realized. While the agencies make several positive suggestions in the proposed rule, we must oppose this proposal unless critical issues are addressed. The CRA must:

- Address racial disparity by collecting race and ethnicity data and evaluating banks on their lending across racial and ethnic groups.
- Maintain the Investment Test as separate from the Lending Test to ensure investment in the LIHTC program.
- Allow CRA consideration for the full amount of investments made in Low Income Housing Tax Credit (LIHTC) properties and prorated amounts for lending.
- Hold banks accountable for harm such as discrimination, displacement, and fee gouging.
- Require banks to serve all areas (not 60%) where they take deposits and lend, and refrain from raising current asset thresholds.
- Prioritize the opening of branches and penalize the closing of branches in underserved areas.
- Enhance community participation so that CRA activity is tied to community needs, CRA ratings reflect community impact, and bank mergers are required to provide a clear public benefit that regulators will enforce.
- Remove CRA considerations for investing in Naturally Occurring Affordable Housing (NOAH) unless significantly more robust safeguards against property flipping are added.
- Allow for CRA considerations for investing in NOAH only for either nonprofit, mission-driven housing organizations or public entities – both with formal requirements for rent limits, affordability periods, and public oversight.

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San Francisco Housing Development Corporation (SFHDC) is a nonprofit organization founded by Black community leaders in 1988 to foster financial stability through the development of affordable housing, the facilitation of homeownership, and economic empowerment. We focus our efforts on the historically Black neighborhoods of the Fillmore/Western Addition and the Bayview/Hunters Point. The CRA plays a critical role in directing banks to fund important community priorities such as our work in affordable housing and economic empowerment. We urge the agencies to focus the CRA rules update squarely on better serving communities of color, particularly the Black community, which has been hardest hit by redlining and other forms of housing and lending discrimination.

While the proposed changes evidence good intentions, we are concerned that the rules as proposed will result in less affordable housing construction and more counterproductive speculative investment in vulnerable communities in the Bay Area. In particular, it is critical to maintain the Investment Test as separate from the Lending Test to ensure continued bank investments in the Low Income Housing Tax Credit (LIHTC) program.

It is also incredibly important to put strong guardrails on incentives for investment in Naturally Occurring Affordable Housing (NOAH) properties. SFHDC preserves NOAH units that would otherwise be demolished or see low income tenants evicted in favor of those able to pay higher rents. Any CRA credit provided for investments in NOAH needs to clearly distinguish between the affordable preservation that SFHDC does and the speculative flipping and displacement undertaken by some purely profit-driven actors. For example, those distinctions could be based on continued low rents/rents based on an affordable percent of income, on continued residency by the existing tenants in those buildings, or on . Without those distinctions, providing credit for investment in NOAH stock could fuel displacement and gentrification in sensitive communities.

The CRA should require banks to serve all communities, especially borrowers and communities of color. Closing the racial wealth gap will make the nation and the economy stronger, elevate the Gross Domestic Product and give the U.S. a competitive advantage. Examiners should review bank performance in meeting the credit needs of communities of color, similar to how banks are evaluated on their performance in meeting the needs of low and moderate-income (LMI) borrowers and communities. Urban Institute analysis shows that LMI communities and communities of color are not the same. 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.

The proposal raises the question as to whether CRA evaluations should consider Special Purpose Credit Programs (SPCPs). But, though SPCPs are meant to serve groups protected by fair lending laws, the proposal ponders SPCP evaluation only as to their impact on LMI consumers. The final rule must explicitly recognize the importance of SPCPs as a critical way for banks to help meet the local credit needs of communities of color, and SPCPs should garner CRA credit and positive impact points that enhance a bank's CRA rating, as should all activities that close wealth gaps for racial, ethnic, national origin, Limited English Proficient, LGBTQ and other underserved groups. These efforts are highly important, even if their reach is limited.

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 will require agencies' willingness and capacity to diligently look for evidence of discrimination and provide downgrades where it is found. The General Accountability Office recently found that fair lending reviews at the Office of the Comptroller of the Currency were outdated and inconsistent.[1] Agency enforcement of redlining or discrimination cases, as well as CRA ratings downgrades for discrimination, are exceedingly rare. Agency fair lending reviews should be more extensive and rigorous, 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 result in CRA ratings downgrades.

Community development. We appreciate that the proposal focuses on encouraging banks to engage in community development activities, such as investing in CDFIs. Such activities can be amongst the most impactful ways for banks to support community needs. But we are concerned that providing a lengthy list of eligible activities and making it easier to qualify for credit will exacerbate the current dynamic whereby some banks engage in the easiest and potentially least impactful of Community Development (CD) activities. For the most part, CRA credit should only be provided where the majority of beneficiaries are in fact, LMI or Black, Indigenous or People of Color (BIPOC) regardless of where the activity occurs or with whom. CD activities should be tied to local community needs as identified in Performance Context analysis or community-negotiated Community Benefits Agreements, either as a condition of receiving CRA credit or through the use of enhancing impact scoring. Tribal or local government plans can serve this purpose of credentialing an activity as responsive to local needs, but CRA rules should not require association to government plans as local governments and local plans are uneven.

We also **strongly oppose any raising of current asset thresholds,** since doing so would result in less community development financing and branch consideration in rural areas served by community banks that would be subject to easier examinations and lower reinvestment obligations under the proposal if they are reclassified.

Affordable housing. Affordable housing remains a perennial need and priority for our state. Mission-driven and community organizations have developed impressive capacity to use the scarce resources available to create affordable homes. However, the proposal threatens to damage one of the key tools in this limited affordable housing development infrastructure by doing away with the separate CD lending and CD investment tests. **By combining CD lending and CD investing, we are greatly concerned that banks will retreat from Low Income Housing Tax Credits (LIHTC),** which can be more complex and provide a lower rate of return than CD lending. Any decrease in appetite for LIHTC will likely result in fewer affordable housing deals, as well as higher costs that will translate into decreased affordability for projects that do get built. We urge the regulators to retain separate evaluations for CD lending and CD investing. Further, positive impact points should be given for projects that have deeper affordability, longer affordability terms and covenants, or are in higher opportunity areas.

Anti-displacement. We appreciate the proposal's attempt to address displacement concerns by requiring that rents will likely remain affordable in order to qualify for CRA credit. But the agencies need to go further to discourage banks from financing displacement. While the proposal appears to refuse CRA credit for certain CD activities if they result in displacement, this requirement must be extended to all community development activity, especially affordable and NOAH housing analysis. Regulations should not allow

[1] General Accountability Office, "Fair Lending: Opportunities Exist to Enhance OCC's Oversight of Banks' Lending Practices," GAO-22-104717, June 21, 2022 available at: https://www.gao.gov/products/gao-22-104717

community development credit unless banks can demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting act, UDAAP and other laws. Banks should adopt procedures such as CRC's Anti Displacement Code of Conduct and engage in due diligence on the Beneficial Owners of LLC property owners - data they already collect - to determine if there are any concerns relating to eviction, harassment, complaints, rent increases, or habitability of potential bank borrowers. It is not enough to cease offering CRA credit for harmful products. Banks must be penalized when they create harm. Bank regulators should conduct extensive outreach to community groups and engage in community contacts to investigate whether landlord borrowers are exacerbating displacement pressures or harming tenants. Because displacement often has a disparate impact on BIPOC and protected classes, examiners should consider disparate displacement financing to be discrimination, perhaps under the expanded definition, that should trigger CRA ratings downgrades and subject banks to potential enforcement action.

Positive impact points should be given for particularly responsive CD activities that fight displacement, such as acquisition and affordable preservation of existing rent controlled or low rent housing stock. This can be accomplished by property purchases by Community Land Trusts and mission-driven nonprofit organizations of rental housing through Tenant Opportunity to Purchase Acts (TOPA), Community Opportunity to Purchase Acts (COPA), and other initiatives. For example, California law provides CLTs, nonprofits and prospective owner occupants the right to match an investor's high bid at foreclosure auction to secure a property for the common good, but available funds are limited and could benefit from more impact investment by banks. SFHDC participates actively in San Francisco's Housing Preservation Program (formerly known as the Small Sites Program) which is an excellent example of this type of program.

Climate. We are pleased to see the proposal list climate resiliency and disaster preparedness as eligible activities in light of the devastating impacts of climate change on LMI and BIPOC communities meant to benefit from the CRA. The definitions in the proposal are strong and should be retained, perhaps with more detailed examples. However, the agencies should also propose downgrades where banks engage in harm, such as fossil fuel or pipeline financing. We have seen some financial institutions tout green initiatives, which presumably could earn CRA credit, even where such positive efforts were completely undermined and overwhelmed by substantially greater investments in fossil fuel industries, many of which result in an overshare of environmental burden in LMI communities and communities of color. It is not enough to incentivize good behavior, the CRA must also disincentivize bad behavior through downgrades for financing problematic industries. This is especially the case here, as climate degradation by banks has created a vicious circle where redlined communities disproportionately suffer climate harm at the hands of banks which may then deny loans to such neighborhoods on the grounds that they are too risky and pose safety and soundness concerns. The regulators should treat the financing of climate harm as discrimination that can subject banks to CRA ratings downgrades and possible CRA exam failure where this harm disproportionately impacts communities of color, as is often the case.

Mortgages. CRA credit should only be given for mortgage loan originations (not loan purchases by banks from other lenders) to owner occupants (not to investors), unless the originating lender is a mission-driven nonprofit, or the investor purchaser is an LMI or BIPOC buyer or mission-driven nonprofit organization. We support the proposal to consider lending to low-income borrowers and communities separately from lending to moderate income borrowers and communities. We urge the regulators to evaluate lending for each loan purpose (home purchase, refinance, home improvement, HELOC) separately. CRA consideration should NOT be given for mortgage lending to non BIPOC, middle- and upper-income borrowers in LMI census tracts, as this fuels displacement, unless a census tract is shown through the use of established models and data to be in an area not subject to gentrification. We support the use of a primary product test to determine which bank products to evaluate, but this formula must not allow large banks to evade consideration of a sizable portion of their lending. To address this issue, we recommend that the primary products test be set at 15% of all bank products or 50 loans in an assessment area, whichever is smaller. We support a mortgage lending screening test and appreciate agency analysis that suggests that the new scoring model proposed will result in less inflated CRA ratings than currently. This would be a major advance. We are strongly opposed to any suggestion that a bank could fail to serve nearly 40% of its assessment areas and still pass its CRA exams.

Small business lending. We applaud the proposed focus on small business lending to smaller businesses. We urge the regulators to require evaluation of both 1) lending to businesses with under $250,000 in gross annual revenue (as proposed), as well as 2) lending to businesses with under $100,000 in gross annual revenue. Such an approach would ensure that small businesses are served and would be consistent with the current CRA Small Business Lending reporting regime. We are surprised by the proposal to define small businesses as ones with $5 million or less in gross annual revenue. The $5 million threshold under Section 1071 was proposed by the CFPB for a different purpose altogether, namely, to establish reporting obligations under a fair lending rule that has not even been finalized (and which could change). Approximately 95% of small businesses, 97.7 of minority owned businesses and 98.3% of women owned businesses have less than $1 million in annual revenue[2], so to establish the definition at $5 million seems counterproductive. The CRA rules should focus examiner attention on section 1071 data reporting, once public, to ensure equal access to fairly priced credit for women and BIPOC-owned businesses and for businesses with less than $1 million in revenue. Including businesses up to $5 million in revenue under the definition may lead banks to neglect businesses with less than $1 million in revenue in favor of higher revenue businesses.

Branches and the Retail Services and Products Test. The agencies propose to revise the Services test. We urge the regulators to retain core consideration of branch access as part of the CRA, and to expand bank branch obligations in a more meaningful way. NCRC analysis shows a tremendous and detrimental march by banks to close branches, especially in low income, BIPOC, and rural communities. A recent analysis by the Committee for Better Banks, shows that branch openings fail to proportionally locate in these same communities. We know that local branches mean more local jobs, more small business lending in the community, and fewer visits to fringe financial providers like check cashers and payday lenders. The CRA rules should clearly penalize branch closures and poor coverage in LMI, BIPOC and rural communities, and encourage through impact scoring the opening of branches in such communities.

Assessment areas. We appreciate the proposal to expand CRA coverage beyond branch locations, as we have urged for years. The Retail Lending Assessment Areas are positive, though we suggest the thresholds be lower (50 mortgages or 100 small business loans should trigger CRA responsibility) and that bank obligations to serve these areas extend beyond retail lending to other bank offerings in order to ensure that more rural communities are covered and that they are better served. But, the agencies fail to create deposit-based assessment areas that require banks to reinvest dollars back into the communities from which the deposits derive. This is this whole idea behind CRA. Every large bank knows exactly where its deposits reside, and they should be required to disclose this publicly and to accept CRA assessment areas where significant deposits are domiciled. This is the only way to keep up with emerging industry and consumer trends, to ensure that deposits through neobanks and other deposit-gathering third parties are assigned to local communities, and to prevent abuses and evasions such as San Francisco-based companies establishing

[2] See https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf

out-of-state non branch banks with no proposed CRA responsibility in California despite soliciting a plurality of deposits from California. There are a number of points in the proposal where the agencies would impose lesser obligations on banks with between $2 billion and $10 billion in assets compared to banks with over $10 billion in assets. We strongly feel that all large banks should be subject to all the responsibilities outlined for the largest banks. Finally, while we support expanding CRA beyond branches, the CRA should retain a focus on local communities and we urge the agencies to prioritize Facilities (branch) Based assessment areas, perhaps through greater weighting of bank performance there.

Community feeback. The agencies should actively solicit community stakeholder input on the performance of particular banks during CRA exams and bank mergers. Ninety days should be provided to the public to comment. Banks and regulators should clearly disclose contact information for relevant staff. Bank mergers should default to public hearings when public commenters raise concerns. Regulators must 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 these standards can be met by the bank, 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.

Conclusion

San Francisco Housing Development Corporation appreciates the opportunity to comment on the proposed CRA rules. While there are positive aspects of the proposal, and the agencies coordination of efforts are commendable, we cannot support this proposal in its current form. Significant changes need to be made to the final rule to ensure that borrowers and communities of color are considered under the nation's anti-redlining law, that banks are penalized for harm caused to communities - such as through displacement, climate degradation, fee gouging, and discrimination - that community input is valued and elevated, and that complex formulaic evaluation methodologies do not result in banks failing to meet critical community needs relating to affordable housing, homeownership, small business development, broadband, and rural and Native American community access. Thank you for considering these comments.

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