THE U.S.
IMPACT INVESTING
ALLIANCE

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Re: Interagency Notice of Proposed Rulemaking on the Community Reinvestment Act (FDIC RIN 3064-AF81; Federal Reserve Board Docket No. R-1769 and RIN 7100-AG29; OCC-2022-0002-0001)

To Whom It May Concern:

The U.S. Impact Investing Alliance ("the Alliance") appreciates the opportunity to provide comment in response to the Notice of Proposed Rulemaking ("NPRM" or "proposed rule") put forth by the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency ("regulators" or "the agencies") to reform the Community Reinvestment Act ("CRA") regulations.

The Alliance is committed to catalyzing the growth of impact investing. Members of our boards and councils include individual and institutional investors collectively owning hundreds of billions of dollars of invested assets, in addition to asset and fund managers collectively managing over one trillion dollars in assets.

The Alliance engages with federal policymakers to promote an enabling public policy landscape for the work of impact investors seeking to drive positive social, economic and environmental outcomes in communities across the United States. We have long been supportive of federal policies that incentivize and leverage private capital for public good, particularly in historically underinvested communities, such as low-and-moderate income ("LMI") and communities of color.

The CRA is essential to the place-based work of impact investors and our stakeholders who often invest alongside CRA-motivated institutions to promote local economic development.[1] Given its importance to the impact investing field, the Alliance has maintained close engagement throughout the reform process, including submitting comments in response to the Federal Reserve's Advance Notice of Proposed Rulemaking[2] ("ANPR") and the OCC's rescinding of a harmful 2020 regulation.[3] We refer the regulators to those comment letters to demonstrate our long-term thinking on and commitment to this issue.

The Alliance is supportive of the broad direction by the agencies to pursue an aligned regulatory framework that modernizes and strengthens such a critical policy. Our comments will focus on a few main topics - the community development provisions, the importance of adequate and diverse public input, the need to address grade inflation, and finally, a call on regulators to more directly address racial disparities in the final rule.

Community development provisions

The Alliance supports the proposed Community Development Finance Test, including the improved data collection requirements and the emphasis on qualitative impact assessments that focus more on the impact and responsiveness of activities. We encourage regulators to build out more specific guidelines and metrics for banks to report on the impact of their activities in the final rule or future guidance.

Related to the qualitative impact review, we are pleased to see the inclusion of activities supporting or in partnership with community development financial institutions ("CDFI") or minority depository institutions ("MDI") as an impact factor. Regulators should carefully consider how investments in these institutions are scored to ensure banks are not incentivized to pursue short-term loans as opposed to longer-term forms of support. We appreciate the consideration in the NPRM of further refinement of this impact factor to emphasize the most beneficial activities and long-term support for CDFIs and MDIs, such as equity investments and long-term debt financing, rather than short-term deposits.

CRA-motivated institutions provide one of the primary sources of capital for CDFIs and MDIs, which themselves play a vital role in providing access to capital for the most underserved individuals, small

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[1] Presidents' Council on Impact Investing, In Effort to Modernize CRA, Regulators Are Poised to Strip Community Development Tool, At a Time When Stability Is Paramount, April 2020, http://impinvalliance.org/news-updates/presidents-council-letter-cra.

[2] U.S. Impact Investing Alliance Comments to Federal Reserve Board of Governors, Docket No. R-1723/RIN 7100-AF94 (Advance Notice of Proposed Rulemaking on the Community Reinvestment Act), February 2021, http://impinvalliance.org/news-updates/2021/2/16/us-impact-investing-alliance-submits-comments-in-support-of-strengthened-community-reinvestment-act.

[3] Group of 30 Organizations Committed to Inclusive Economic Growth Write in Support of Strengthened CRA, October 2021, http://impinvalliance.org/news-updates/2021/10/29/group-of-30-organizations-committed-to-inclusive-economic-growth-write-in-support-of-strengthened-cra.

businesses and communities across the country. Impact investors frequently invest in and partner with these institutions in their place-based work. Incentivizing continued engagement by banks through the CRA is paramount for building resilient and thriving community investing ecosystems.

Additionally, the impact factor for "Activities that Result in a New Community Development Financing Product or Service" is an important addition that aligns with the spirit of the CRA to promote an innovative and responsive community investing ecosystem. As explored in our comments in response to the Federal Reserve's ANPR,[4] we would also suggest explicitly clarifying that banks can receive credit for catalytic investments[5] that benefit LMI communities.[6]

We are also supportive of the impact factor included for "Activities Benefiting Native Communities," as Indigenous communities and tribal lands are consistently underserved and likely have unique community development priorities and needs. Regulators should also consider incorporating as an impact factor community development activities that proactively support communities of color by promoting economic equity and wealth building.[7] As is explored later in this letter, a race-conscious framework is necessary to fully unlock the potential of CRA to help revitalize U.S. communities and local economies.

Related to "economic development" activities, regulators should ensure any proposed definitional changes maintain credit for the innovative and beneficial investments banks are making into financial intermediaries that support small businesses and job creation, particularly for business owners of color. For instance, the elimination of the "size test" and "purpose test" may limit a bank's ability to receive CRA credit for loans or investments in non-Small Business Investment Company ("SBIC") impact-oriented equity and debt venture capital funds that finance small businesses with annual revenues greater than $5 million. We encourage regulators to clarify that banks can receive credit for economic development activities that include investments and loans in a minority-owned small business or minority-owned financial intermediary. At a minimum, these activities should count for credit if they achieve impact outcomes like job creation, retention and/or improvement for LMI persons or in LMI areas.

Lastly, the Alliance has encouraged regulators to put forth separate tests for loan and investment activity within the Community Development Finance Subtest. Our resistance to a combined total of

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[4] U.S. Impact Investing Alliance Comments to Federal Reserve Board of Governors, Docket No. R-1723/RIN 7100-AF94 (Advance Notice of Proposed Rulemaking on the Community Reinvestment Act), February 2021, http://impinvalliance.org/news-updates/2021/2/16/us-impact-investing-alliance-submits-comments-in-support-of-strengthened-community-reinvestment-act.

[5] Catalytic capital can refer to capital that is patient, flexible, risk-tolerant, concessionary, and/or that leads to follow-on investments by others. See more: https://www.macfound.org/programs/catalytic-capital-consortium/

[6] Sorenson Impact Center, Unlocking Catalytic Capital: Community Reinvestment Act (CRA), January 2021, https://d7c50b97-c4ba-4182-85b9-db32ff97187c.filesusr.com/ugd/b7a6ac_943dcab2c11244909ff0ed8886d086af.pdf.

[7] Randell Leach, Why The Community Reinvestment Act Needs A Racial Equity Lens, Forbes, February 2022, https://www.forbes.com/sites/forbesfinancecouncil/2022/02/25/why-the-community-reinvestment-act-needs-a-racial-equity-lens/?sh=67b7ae0f32b6.

loans and investments stems from the concern that banks would then solely rely on loans to the detriment of investments, given that equity investments often carry higher transaction costs and risk levels. Impact investors have long been advocates for community investing tax incentives, like the Low-Income Housing Tax Credit ("LIHTC") and the New Markets Tax Credit ("NMTC") program, which – largely thanks to the CRA – flow billions of dollars to LMI communities each year. In lieu of a separate test, we encourage regulators to require data collection by banks on separate totals of community development loans and investments, which could then inform future action if an imbalance reveals itself over time.

Importance of public input

At a fundamental level, the CRA is about ensuring banks are adequately serving the needs of their communities. Impact investors consider the prioritization of community voice to be a critical guiding principle in their work, and for good reason. Investments informed by the impacted communities themselves lead to better and more durable outcomes. The same can be said for a bank's activities in its communities, who should be adequately consulted related to how well the institution meets their needs. Regulators should consider how to better ensure a diverse set of community representatives are consulted on local community needs and the performance of specific financial institutions.[8]

Countering grade inflation

We believe the changes in the proposed rule will generally lead to more rigorous CRA exams, but we are concerned that ongoing grade inflation concerns will counteract those improvements. Nearly 98% of banks receive a passing CRA grade, and 90% receive at least a "Satisfactory" rating.[9] As a result, banks have little incentive to improve or deepen their CRA activities, which in turn stifles innovative and responsive community investments by banks and ultimately undermines the policy's ability to hold banks accountable for how well they are serving their communities.

One straightforward solution would be to expand the CRA exam ratings to five categories rather than the current four. Specifically, introducing "Low Satisfactory" and "High Satisfactory" ratings used in the proposed retail lending subtest would better differentiate between banks truly meeting the credit and financial services needs of their communities and those with ample room to improve. We are also supportive of the incorporation of industry and geographical benchmarks to better determine which institutions are leading and which are lagging in terms of CRA activities.[10]

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[8] Josh Silver, Initial Analysis Of The CRA Notice Of Proposed Rulemaking, National Community Reinvestment Coalition (NCRC), June 2022, https://ncrc.org/initial-analysis-of-the-cra-notice-of-proposed-rulemaking/#_ftn8.
[9] NCRC, How Well are Regulators Evaluating Banks Under the Community Reinvestment Act? How Well are Regulators Evaluating Banks Under the Community Reinvestment Act? https://ncrc.org/wp-content/uploads/2015/05/ncrc%20-%20bank%20evaluations%20full.pdf.
[10] NCRC, Position Paper On CRA Reform, March 2022, https://www.ncrc.org/position-paper-on-cra-reform/.

Race-conscious framework

Lawmakers passed the CRA at the tail-end of the civil rights era with the intent of eliminating redlining – or the racist practice of banks intentionally denying loans to Black, Brown and low-income individuals and communities.[11] Despite the many gains made in the community development space in the intervening years, the founding vision of the policy has still not been realized due in part to the fact that it fails to directly consider race.

In fact, the CRA and other interventions have done little to close the Black-White wealth gap, and economists believe the divide has actually worsened in recent decades.[12] This reality was especially stark at the height of the COVID-19 pandemic when Black small business borrowers were routinely denied loans at a significantly higher rate compared to White borrowers.[13] Allowing these deeply entrenched inequities to continue threatens U.S. economic competitiveness. By one measure, failing to bridge the racial wealth gap will sacrifice $8 trillion in GDP over the next few decades.[14]

Through this rulemaking, the regulators have the opportunity to course correct by more directly addressing racial disparities in the updated regulations. Over 15 leaders representing businesses, investors, nonprofits and community lenders support this call for a more race-conscious CRA.[15] Furthermore, longtime CRA experts have thoughtfully analyzed how the agencies could do so in a way that is on strong legal and constitutional footing.[16]

First, banks should be required to collect and disclose disaggregated racial and demographic data, and regulators should incorporate race-conscious data into CRA exams. Regulators make some improvements toward this in the NPRM. In particular, we were encouraged by the NPRM's proposed public disclosure of Home Mortgage Disclosure Act ("HMDA") data related to the racial and ethnic demographics of a bank's home mortgage loan borrowers. This provision does not go far enough, however, and regulators should ensure that this data is incorporated into CRA exams in the final rule.[17]

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[11] NCRC, The Purpose And Design Of The Community Reinvestment Act (CRA): An Examination Of The 1977 Hearings And Passage Of The CRA, June 2019, https://ncrc.org/the-purpose-and-design-of-the-community-reinvestment-act-cra-an-examination-of-the-1977-hearings-and-passage-of-the-cra/.

[12] Catarina Saraiva, Black-White Wealth Gap Getting Worse, 160 Years of US Data Show, Bloomberg, https://www.bloomberg.com/news/articles/2022-06-07/black-white-wealth-gap-getting-worse-160-years-of-us-data-show.

[13] Stacy Cowley, Minority Entrepreneurs Struggled to Get Small-Business Relief Loans, New York Times, April 2021, https://www.nytimes.com/2021/04/04/business/ppp-loans-minority-businesses.html.

[14] Ani Turner, The Business Case For Racial Equity: A Strategy For Growth, Altarum, April 2018, https://altarum.org/RacialEquity2018.

[15] Coalition on Inclusive Economic Growth, Comments in Response to Interagency Notice of Proposed Rulemaking on the Community Reinvestment Act (FDIC RIN 3064-AF81; Federal Reserve Board Docket No. R-1769 and RIN 7100-AG29; OCC-2022-0002-0001), August 2022, https://impinvalliance.org/cieg-crareform.

[16] NCRC, Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal, September 2021, https://www.ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/.

[17] Bulbul Gupta and Lenwood Long, Ensuring the Community Reinvestment Act addresses the racial wealth gap, as intended, ImpactAlpha, June 2022, http://impinvalliance.org/news-updates/2022/6/16/ensuring-the-community-reinvestment-act-addresses-the-racial-wealth-gap-as-intended.

While public transparency around this information is a laudable goal, it is important that banks are held accountable for how well and equitably they are serving their communities, including minority borrowers. Relatedly, the Alliance supports the proposal to include section 1071 small business and small farm lending data by race into CRA exams when available.

Second, ensuring banks adequately serve LMI neighborhoods and borrowers is critical, though insufficient, according to researchers, in terms of encouraging lending to minority borrowers.[18] Put simply, continuing to rely on LMI as a proxy for race will ultimately limit the CRA's ability to live up to its founding purpose. As one solution, regulators should explore granting special consideration in CRA exams for lending in predominantly minority LMI communities and to minority LMI customers, which would still hold the current prioritization of LMI borrowers at the forefront. Regulators should consider the proposal put forth by the National Community Reinvestment Coalition to identify underserved census tracts with low levels of lending that are also disproportionately minority communities.[19]

Finally, regulators should consider what further analysis should be done to identify additional avenues to more directly confront racial disparities through the CRA.

Conclusion

The NPRM represents a significant step forward on the path to a strengthened, modernized CRA, and we hope the agencies will carefully consider the suggested improvements when drafting the final rule. Chief among them is the long overdue need to recenter the intent of the policy to combat racial inequalities directly in the regulations. We look forward to future engagement and appreciate the opportunity to comment.

Sincerely,

[redacted]

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[18] Laurie Goodman, Linna Zhu, Ellen Seidman, Janneke Ratcliffe and Jun Zhu, Should the Community Reinvestment Act Consider Race? Urban Institute, December 2021, https://www.urban.org/research/publication/should-community-reinvestment-act-consider-race.
[19] Bruce Mitchell, PhD. and Josh Silver, Adding Underserved Census Tracts As Criterion On CRA Exams, NCRC, January 2020, https://ncrc.org/adding-underserved-census-tracts-as-criterion-on-cra-exams/.