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Aug 5, 2022

Via Electronic Submission

James P. Sheesley, Assistant Executive Secretary  
Attention: Comments RIN 3064-AF81  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429  
[comments@fdic.gov](mailto:comments@fdic.gov)

Re: FDIC RIN 3064-AF81 Community Reinvestment Act Notice of Proposed Rulemaking

To Whom it May Concern:

Living Cities appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding updating the Community Reinvestment Act (CRA). This NPR represents the most significant changes to the CRA regulation and exams in 27 years. We hope our comment can be of constructive guidance for continuous improvement in serving underserved communities.

Founded in 1991, Living Cities is a collaborative of prominent foundations and financial institutions. We foster transformational relationships across sectors to connect those who are willing to do the overdue work of closing racial income and wealth gaps. Together, we are partnering with cross-sector leaders in cities across the country to imagine and create an America in which all people are economically secure, building wealth, and living abundant, dignified, and connected lives. Our staff, investments, convenings, and networks support efforts that operationalize racial equity and inclusion in local government, create inclusive narratives, bring communities together to devise and act on a shared vision for the future, and eliminate inequities in systems such as entrepreneurship, homeownership, and access to capital.

Between 2009 and 2020, banks have made more than \$2.58 trillion in home loans to low- and moderate-income (LMI) borrowers or in LMI census tracts. They have also made \$856 billion in loans to small businesses with revenues under \$1 million. As an intermediary organization made up of members

who represent financial institutions, Living Cities has witnessed firsthand the progress that has been made. Yet, in the same breath, we know there is outstanding opportunity to build on this progress.

Specifically, while we acknowledge the federal bank agencies' ("agencies") intent to increase the rigor of the proposed rules, we would be remiss if we do not state the importance of these proposed rules being informed by the most recent few years of social tension highlighting racial inequities. To that end, our following comments contend that the CRA can stretch further in directly impacting those communities most underserved with the understanding of indirect positive impacts on all communities.

### **CRA must explicitly consider bank activity by race and ethnicity**

Although the CRA statute does not mention race, it requires banks to serve all communities, which provides room for the agencies to incorporate race in CRA exams. Persistent racial disparities in lending should compel the agencies to incorporate race and ethnicity in CRA exams. An example we are witnessing in our work is banking institutions deciding whether to invest in funds which name race as central to their thesis. Instead, if race is not named as central to their thesis, banking institutions are investing in funds that require a geographic restriction. This makes funds more difficult to manage and only works for place-based funds.

Further, for financial institutions bound by the Equal Credit Opportunity Act's (ECOA) Regulation B, the ability to invest in funds which have a race-based thesis is coming into question. The very regulations put into place to keep banks from making race-based credit decisions are now proving a hurdle when our organization is seeking to close racial wealth gaps by investing in diverse fund managers, which could be interpreted as a race-based credit decision. Being able to get CRA credit for such an investment could help catalyze reducing racial wealth gaps.

Regarding home lending, the agencies proposed to use the Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race, but not to use the results of these analyses to influence a bank's rating. While we believe the agencies can examine banks' record of lending by race, the agencies should at least bolster fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race.

Regarding small business lending, the agencies also proposed using Section 1071, Dodd-Frank Act data on small business lending by race and gender of the business owner, and this data should be used as a screen for fair lending reviews. By including race and ethnicity, CRA can identify and address persistent racial disparities that have direct impacts on outcomes for business founders of color.

### **CRA must explicitly consider codifying public input mechanisms via a race and ethnicity lens**

Since CRA requires banks to meet the needs of communities, the agencies must elevate the importance of public comments regarding the extent to which banks meet local needs. The agencies proposed to continue the current practice of sending any comments on CRA performance to banks and are also considering publishing comments received on agency websites. Posting comments on agency websites will establish a step towards accountability on the part of examiners to consider them.

In addition, the agencies should establish a public registry that community organizations can use to sign up if they want to be contacted about community needs and bank CRA performance. We recommend that the agencies start to publish which organizations they consult with to understand local community needs; commit to collecting input around banking challenges inclusive of organizations led by people of color, women, members of the LGBTQ+ community, and other historically marginalized groups; follow up on needs identified; and detail how community input was factored into the results of CRA performance evaluations.

### **Community Development investment must be maintained**

Redlining has been illegal for over 50 years, and many legal protections now exist to protect consumers and communities from further abuse and punish bad actors. But the damage caused by redlining, particularly redlining required by the US government, has left deep scars and a lasting impact. If we depreciate our commitment to community development, we depreciate our commitment to addressing redlining's historical impact.

Community development, investment, and lending are essential to repairing communities. Yet, under the proposal, Community Development performance would not affect most large banks' overall CRA rating because retail test performance weighs heavier (60%) than Community Development performance (40%).

If an Outstanding retail test rating is not achievable, a bank will receive an overall Satisfactory rating even if its Community Development test score is Needs to Improve, if its retail test score is Low Satisfactory – a standard that all banks are likely to meet or exceed. The value of Community Development would be eliminated in the context of CRA compliance.

### **Reducing CRA ratings inflation**

Currently, about 98% of banks pass their CRA exams on an annual basis with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory. CRA has successfully leveraged more loans, investments, and services for LMI communities, but it would be more effective in doing so if the ratings system more accurately revealed distinctions in performance. More banks would be identified as significantly lagging their peers, which would motivate them to improve their ratings and increase their reinvestment activity.

### **Government alignment with place-based community development activities should be encouraged, but not required**

The agencies propose a new place-based definition for activities undertaken in conjunction with a federal, state, local, or tribal government plan, program, or initiative that includes an explicit focus on revitalizing or stabilizing identified census tracts. Activities with a race-conscious objective should be considered within identified census tracts.

In addition, while conducting place-based community development activities in conjunction with a government plan, program, or initiative is a strong step towards commitment to targeted LMI census tracts, we offer that the agencies should establish a ranking that favors encouragement to work in conjunction with government plans, programs, and initiatives that are race-conscious. This will allow the flexibility of an activity to continue if it is race conscious and a government plan, program, or initiative is race neutral.

### **Small business lending**

We applaud the proposed focus on small business lending, including the smallest businesses. We urge the regulators to require evaluation of lending to businesses with under \$250,000 in gross annual revenue (as proposed), as well as 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. Yet, we are surprised and disappointed by the proposal to define small businesses as ones with \$5 million or less in gross annual revenue. The \$5 million threshold 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 have less than \$1 million in annual revenue, so to establish the definition at \$5 million seems counterproductive, especially for business founders of color who are the most affected. The CRA rules should focus examiner attention on section 1071 data reporting, once public, to ensure equal access to fairly priced credit for businesses owned by people of color and for businesses with less than \$1 million in revenue.

Alternatively, we propose the adoption of a business size index and standard like the one used by SBA. Setting a discreet threshold for all small businesses not only hinders the ability to understand the specificities of small businesses across industries but ignores the fact that a large majority of businesses owned by people of color have less than \$1 million in revenue.

### **Recalibrate assessment areas to match with the scope of lending and deposit-taking**

Currently, most bank lending activity is covered by assessment areas on CRA exams. Assessment areas correspond to geographical areas where banks have branches. However, as more banks increase their lending beyond their branch network and as newer online lenders continue to be granted bank charters, the designation of assessment areas where bank branches are located will become less effective in capturing most retail lending.

Banks make a higher percentage of their loans to LMI borrowers and census tracts in their assessment areas than in areas not designated as assessment areas on their CRA exams. This makes intuitive sense because banks will try harder to make loans to LMI populations in geographies where they are rated.

In several cases, digital banks make loans nationally but only have a single assessment area where their headquarters are located. To keep pace with the shift to digital banking, assessment area reform should ensure that evaluations focus on areas where banks are active in lending and deposit-taking. Therefore, the agencies must establish assessment areas outside of branch networks and bank headquarters.

We also call on the agencies to not only require new assessment areas for states with significant loans beyond branch footprints but also a diversity of local assessment areas including large and small metropolitan areas, rural counties, and Native American reservations. This is important so that in addition to the largest cities being served by the new assessment areas, smaller cities and rural areas benefit from the increase in lending and investing in LMI and other underserved communities.

### **Financing intermediaries will increase access to capital via social network**

The current NPR does not specifically address financing intermediaries that increase access to capital for small businesses, although both industry and community group stakeholders have stressed the importance of financial intermediaries, such as loan funds, in providing access to financing for small businesses that are not ready for traditional bank financing. Financial intermediaries are culturally competent, spend more time with borrowers, and provide the technical assistance that traditional banks are not able to offer clients. A direct outcome of this example is an investment we provided to a local loan fund whose thesis was to increase access to affordable debt for small and growing businesses owned by Black and brown people in Minneapolis. We later learned that the loan fund co-invested in a successful Black-owned business who was able to purchase a commercial property that would house the ventures of Black woman entrepreneurs that shared the same challenges.

### **Data improvements will help hold banks accountable, and all new data should be publicly available**

The agencies correctly proposed to include new data collecting requirements for deposits and community development activities. Some data, such as deposits, would not be publicly available, which limits the extent to which the public can hold banks accountable for reaching underserved communities. We ask the agencies to reconsider this decision and to expand data collection to 1) disaggregate by race and 2) include all large banks instead of just banks with assets of more than \$10 billion in the case of deposits.

### **Conclusion**

The NPR is a good start and promises to make parts of CRA exams more rigorous, but we urge the agencies to standardize the rigor of its tests and incorporate race where demographic consideration is applicable. As the nation's LMI communities look to recover from COVID-19, the government should raise the bar for bank reinvestment in these communities. If the CRA is amended to these standards and maintains public input and accountability, we believe the proposed rule could help reduce inequalities, disinvestment, and other disadvantages in America's overlooked communities.