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August 5, 2022

Federal Deposit Insurance Corporation  
RIN 3064-AF81

To whom it may concern;

RE: Community Reinvestment Act, Docket ID OCC-2022-0002

The National NeighborWorks Association (NNA) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) entitled "Community Reinvestment Act" published to the Federal Register on May 5, 2022, by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (collectively, "the agencies"). This NPRM proposes the most significant changes to the Community Reinvestment Act (CRA) regulatory requirements and exams in decades, and the NNA is pleased to opine on the scope of this proposal using community- and practitioner-level perspectives.

The NNA is the trade association representing 235 NeighborWorks affiliate organizations. Each NNA member is a 501(c)(3) nonprofit organization proficient in affordable housing and community development. 88 of these organizations are experienced in conducting lending activities, with more members seeking to expand their work into this realm, and all NNA members conduct services benefitting and supporting underserved communities. NeighborWorks organizations leveraged almost \$17 billion in reinvestment in their communities in Fiscal Year 2021, successfully implementing practitioner-driven services and programming including but not limited to: providing homeownership education and counseling for over 160,000 households, creating 22,000 new homeowners, and owning/managing 195,700 high-quality rental homes. Successful modernization of the CRA rule will ensure reinvestment can effectively enhance opportunity and vitality within all communities across the United States.

Based on discussions with our members and other national partners, the NNA has consolidated the following reactions and recommendations for the agencies to consider as the NPRM is finalized: automatic eligibility for NeighborWorks organizations, expanding the Native Land Areas definition and allowed activities, community development assessment areas, weighting between the community development and retail tests, including race in the CRA data collected, enhancing public input mechanisms, improving transparency by publicizing additional CRA data, including housing counseling as an element of effective CRA performance and allowing operating grants to nonprofits to qualify under the Community Development services test.

## **Expanding Automatic Eligibility to Additional Community-focused Entities**

The NPRM proposes activities undertaken in partnership with a Community Development Financial Institution (CDFI) as automatically eligible for CRA credit. The NNA supports the agencies' highlighting the vital role CDFIs, as these entities are well-vetted and effective drivers of capital. CDFIs consistently display the mission of promoting community development while effectively supporting low- and moderate-income (LMI) communities and households, yielding equitable outcomes.

Over 80 NNA members are Treasury-certified CDFIs, and while many others do not carry the certification, network organizations competently conduct lending activities and partner with banks to ensure reinvestment into LMI communities. The NNA recommends extending the same treatment of automatic CRA eligibility to other mission-driven entities, including nonprofit organizations that hold a charter from NeighborWorks America. These chartered organizations – often referred to as NeighborWorks affiliate organizations – have similar oversight and reporting requirements, and their activities are held to specific standards to retain their chartered status. This accountability among NeighborWorks affiliate organizations is comparable to the careful examination placed on CDFIs to ensure compliance and community benefit. Because of this, extending the same eligibility treatment would align with the intent of the modernized CRA rule. The NNA recommends any activities where a NeighborWorks affiliate organization is an active partner should be explicitly included within the final regulations when describing qualified activities for banks to undergo to receive credit.

Similarly, the NNA recommends the agencies consider extending this treatment to HUD-approved Housing Counseling organizations, HUD-designated Community Housing Development Organizations, and HUD approved nonprofit organizations as appropriate.

## **Native Communities and Native Lands**

Nearly 180 NeighborWorks affiliate organizations actively conduct affordable housing and community development for Native American communities and households. Informed by discussions with NNA Network members with a proficiency in serving Native American communities, the NNA has determined that the agencies can improve the CRA rulemaking as currently proposed. The agencies should also ensure implementation of this rule includes intentional engagement with Native leaders to make certain capital and economic benefit is equitably targeting Native American communities.

Historical recounts and present realities of the Federal government's relationship with Native populations in the United States display very clearly the importance of CRA modernization. As the agencies review public comments and finalize this rulemaking, they must ensure this population is not further excluded, but instead supported by inclusion of this credit opportunity to spur services and capital within Native American communities.

It is crucial to recognize the diverse array of lived experiences by Native American communities, both on and off reservations. The NNA strongly encourages the agencies to consider all Native communities when determining how banks can enhance their capital investment. Not only must the agencies seek collaborative strategies to spur investment in rural, remote, and reservation areas left out of lending opportunities, but they must also include the communities made up of Native families living in suburban and urban areas. According to an FDIC survey in 2019, Native communities had the highest

rates of unbanked households at 16.3%<sup>1</sup>, three times the national average. Native American-led organizations, tribal associations, Native CDFIs, and other Native-led organizations have the most thorough knowledge of their community's needs, and the agencies must implement robust guidance for banks to foster a connection with these leaders and craft an investment strategy to ensure stable and generative outcomes.

According to the Native CDFI Network, there are over 69 Native CDFIs located in 27 states representing not only rural reservations, but Native American communities in urban and suburban areas as well. Successful implementation of a modernized CRA must find a way to prioritize Native American/ tribal projects in a way that entices banks to invest. Unless banks are specifically assessed regarding their investment in tribal communities, the NNA has significant concerns that tribal investments will continue to fall behind those of other communities across the United States. The agencies can assist in countering prejudicial assumptions that currently disincentivize banks from supporting Native communities. Coordination with established Native-led groups such as CDFIs, Tribally-Designated Housing Entities (TDEs), and tribal- or Native-led organizations is an avenue toward effective partnership and will lead to and equitable use of CRA credit.

***Question 28.*** *To what extent is the proposed definition of Native Land Areas inclusive of geographic areas with Native and tribal community development needs?*

The credit limitations are vast among Native Land Areas and other Native communities that do not fall under the Native Land Area definition. The NNA strongly encourages deferring to as flexible of a definition as possible when determining a "Native Land Area", more so than limiting to a rigid and unchanging definition. The NNA will also note that hunting, fishing, and treaty rights lands are not explicitly captured within the proposed definition and should be considered so long as the ultimate recipients are of Native origin.

Some populations captured within the Native Land Area definition have access to credit and successful economic development opportunities, while others have no access to capital to improve livelihoods of families in their community - particularly Native communities in rural and remote areas. According to 2013 findings from the University of Arizona's Native Nations Institute, the average straight-line distance from the center of a reservation to the nearest bank branch was 12.2 miles, with some tribes reporting the geographic center being more than 70 miles from the nearest bank<sup>2</sup>. Because of the nuanced distinctions on how the Federal government, banks, and lending institutions have – or more often have not – engaged and benefitted Native communities, partnerships with Native CDFIs are key to best determine the true credit needs. A geographical framework determining CRA credit areas is not the sole way that banks should be directing their activity toward Native communities, and robust consultation with these leaders will help agencies gain a better sense of what Federal data is reliable, which interventions and activities are most effective, and how targeting investments can improve. The NNA recommends the agencies, in conjunction with Native-led organizations and CDFIs, consider a metric determining capital access in Native American communities and include an additional weighting factor for banks investing in rural and remote Native American communities which may not have any credit or capital access at all.

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<sup>1</sup> [Federal Deposit Insurance Corporation](#)

<sup>2</sup> [University of Arizona Native Nations Institute](#)

The NNA is also concerned that a final definition of “Native Land Areas” could become an all-encompassing term for Native American communities, and as such applied across other Federal policies. It is important for any Federal governing body to consider the changes in population and any subsequent demographics within the geographically determined Native Land Areas when crafting a new policy or program targeting Native American families. As the agencies finalize the definitions of Native Land Areas, the NNA strongly suggests such a definition is used solely for the implementation of the CRA credit. A meticulous attention to the data, geographic barriers, and other codified definitions must be revisited and expanded as often as new policies, programs, and initiatives are undertaken to ensure a fuller picture is captured of this community.

It is also critical to note the imperfect data collection through the Census that undercounts many Native households, thereby inaccurately reflecting income levels and other economic indicators. Some of the categories indicated in the Native Land Area definition as proposed by the agencies are dependent on inaccurate Census data: analysis by the Bureau determined that American Indians living on reservations and Alaska Natives were undercounted by 4.9% in the 2010 survey<sup>3</sup>, and the same populations were undercounted by nearly 6% in the 2020 survey<sup>4</sup>.

Perpetual undercounting of this population by the Census Bureau should in turn prompt the agencies to pursue factual datasets when determining factors contributing to this definition. The NNA therefore encourages the agencies consider additional population indicators informed by discussions with Native CDFI leaders and other Native-led coalitions to ensure data informing the final Native Land Area definition is better vetted, paying particular attention to rural and remote Census tracts.

***Question 29.** In addition to the proposed criteria, should the agencies consider additional eligibility requirements for activities in Native Land Areas to ensure community development activity benefits low- or moderate-income residents who reside in Native Land Areas?*

The NNA strongly urges eligibility requirements for activities in Native communities be as inclusive as possible. Because of the in- and out-flows of individuals and families on and off reservations, it is paramount that this movement is considered when developing eligible activities so the CRA credit can be maximized in light of population changes. As agencies determine the stakeholder base and key community partners when defining eligible community development activities benefitting Native residents, the NNA asserts that tribal organizations and organizations with a majority-Native American board representation be included and allowed to self-certify.

The NNA again recommends banks establish a collaborative relationship with Native leaders, associations, CDFIs, organizations, and other entities with a firm understanding of their community’s needs. Engaging with Native leaders will allow banks and agencies to get the fullest picture of what lending and capital opportunities – if any – currently exist. Oftentimes, Native American communities residing in remote rural areas do not have access to any banking activity, therefore the agencies should determine how to track capital needs and underinvestment informed by Native leaders and use that as a basis for targeting bank activity to those areas. The NNA also suggests the agencies implement an enforcement mechanism to ensure large banks pulling deposits from rural and remote areas then reinvesting into said communities. Failure to develop a cyclical reinvestment model will continue to

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<sup>3</sup> [National Indian Council on Aging, Inc.](#)

<sup>4</sup> [United States Census Bureau](#)

siphon off resources from Native communities in rural and remote areas, running counter to the purpose of CRA.

The NNA also recognizes that TDHEs are not mentioned at any place in the proposed rulemaking. This is a consequential oversight, as TDHEs are crucial institutions that implement and promote affordable housing activities in tribal nations. To truly maximize Native community development, the agencies must recognize TDHEs as community anchors that can assist in appropriate targeting of affordable housing and community development activities under CRA.

Of the CRA-eligible activities within Native Land Areas currently proposed in the NPRM, the NNA recommends the agencies also include economic development activities to display the importance of capital flow into Native American communities. This is yet another opportunity for the agencies to connect banks with the Native CDFIs inside or near Native Land areas to opine on what manners of economic development can be most beneficial to residents. In many cases, particularly in rural and remote reservations, economic development activities including business sustainability, job creation, and affordable housing are pivotal yet severely lacking. Community services or facilities can play a role in strengthening economic vitality of rural Native communities, but do not have as generative or lasting impact as robust economic development. Additionally, the agencies should ensure revitalization activities do not exclude water source and food source protection.

NNA members serving Native American communities raise significant concerns on income targeting requirements, and as such the NNA recommends against strict LMI benefit requirements for CRA credit activities with this population. While LMI targeting is an effective method of community development in other instances, when serving Native American communities, it is crucial to note that income averages are far lower, especially for Native communities in remote areas with little-to-no access to credit. As stated above, datapoints relating to income of Native Americans on and off reservations are imperfect, so a flexible approach allowing CRA credit for community and economic development activities in any Native American community will bolster the capital and quality of life for all members of this community and, in turn, LMI residents.

Like national economic trends, Native American communities are experiencing gaps in services and funding opportunities for what is often called “the missing middle”. Not only is it essential for community development and affordable housing opportunities offered at the Federal level to address the needs of a community’s lowest income residents, but the households just above that low-income percentage point of a targeted area - who still experience significant barriers due to their income - must also be considered. Moderate income households are not addressed in many rental housing programs used among Native American communities, and this disparity is significantly exacerbated on reservations and in remote, rural areas. As such, placing as few barriers and requirements as possible regarding the income level for beneficiaries of the CRA credit projects as they relate to Native American communities will ensure a well-rounded and holistic path to economic opportunity.

The objective of the CRA is to improve economic conditions in communities left behind by design, and it is counterproductive to penalize Native communities for increasing their incomes due to successful community and economic development interventions by way of strict income targeting. Incentivizing revitalization across the income spectrum in Native communities will prop up the

development in these communities overall, thereby creating and sustaining a stronger community economy.

**Question 30.** *Should the agencies also consider activities in Native Land Areas undertaken in conjunction with tribal association or tribal designee plans, programs, or initiatives, in addition to the proposed criteria to consider activities in conjunction with Federal, state, local, or tribal government plans, programs, or initiatives?*

The NNA supports any consideration of additional activities in Native Land Areas and within Native American communities, so long as that addition is an option and not a requirement. Community and economic development activities should be implemented with as much flexibility as possible without creating an impediment. As stated in a previous comment, when partnerships are considered, it is crucial that trust land, tribally- or Native-led organizations, Native CDFIs, and TDHEs are eligible partner entities to ensure banks are consulting and adhering to the guidance of community-driven bodies to secure robust community impact. The proposed rulemaking as drafted does not make clear if a tribal charter is enveloped under the term “designee”, and the NNA encourages that this be clarified and that tribal charters are eligible partners.

As the agencies finalize the rule and prepare for CRA implementation, the NNA encourages the agencies to issue comprehensive guidance to banks, tribal associations, Native-led organizations, Native CDFIs, as well as Federal, state, local, or tribal governments to better understand how the CRA credit eligibilities can be operationalized in accordance with such plans, programs, or initiatives. Providing clear agency-led communications to engage Native stakeholders with banks seeking to take advantage of the credit will ensure streamlined, effective, and lasting partnerships.

**Question 38.** *For the proposed factor to designate activities benefitting or serving Native communities, should the factor be defined to include activities benefitting Native and tribal communities that are not located in Native Land Areas? If so, how should the agencies consider defining activities that benefit Native and tribal communities outside of Native Land Areas?*

Most Native Americans in the United States live outside of reservation boundaries, yet face similar challenges in accessing credit, particularly those in remote or rural areas with a significant distance from banking institutions. Many Native American households reside just outside the border of the reservation, yet still experience the same barriers when accessing capital, therefore the Native Land Areas definition as proposed falls short in serving all Native American communities within the United States.

Native and tribal communities that are not located in Native Land Areas must be included for CRA credit. As the agencies consider additional definitions to be included within Native Land Areas and determine how to expand that eligibility, the NNA supports the inclusion of all areas where Native American populations are present, including those served by tribal organizations and other organizations with a majority Native-led board. Through robust engagement and discussions with leaders of these entities, the agencies will find an effective mechanism to determine the real needs of Native families to provide effective guidance to banks and other stakeholders to enhance cooperation. As previously stated, allowing these tribally-led organizations to self-certify will lessen the administrative burden on behalf of the agencies as well as the Native-led organizations, ensuring

benefits are efficiently targeted to populations with the greatest need. Additionally, agencies should consider establishing Native Land Area Liaisons to assist with CRA scoring projects for banks in and around 20 miles from Native Land Areas and other Native American communities to ensure CRA credit activities are truly serving these populations.

NNA members serving Native lands often rely on borrowed capital from CDFIs, and the agencies' interpretation of CRA can assist in spurring investment in these areas and for these communities. As articulated in commentary to previous questions, Native CDFIs can grasp a full picture of the credit and capital hardships experienced by Native Americans living on and off reservations. The NNA strongly recommends the agencies consult Native CDFI networks at a national and local level and include their considerations when determining the most effective metrics when defining activities serving Native American communities outside of Native Land Areas. Native-led organizations have robust information advised by community input and can provide key insight on building out CRA credit that can benefit as many Native American households as possible. As such, an effective final rule should develop methods and metrics of targeting based on community-driven and Native-led perspectives.

### **Community Development Activities and Assessment Areas**

The NNA is encouraged by the agencies' efforts to ensure that any reforms to Assessment Areas do not abet illegal discrimination or arbitrarily exclude LMI areas. This is a particularly crucial consideration as the rule supports allowing consideration of community development activities outside of a bank's assessment area and as such expands the scope of CRA. Because many areas across the nation are remote and far removed from credit opportunities, allowing this flexibility to expand and support affordable housing production, preservation, and other community development activities outside of the assessment area will incentivize banks to invest in these high-need remote areas.

### **Weighting Retail and Community Development Tests**

The finalized CRA rulemaking must create a strong incentive for banks to invest more capital in disadvantaged communities, yet the standards should still be achievable to ensure the investment can initially take place. Of the two proposed tests under the NPRM, the weighting of these standards will likely and unfortunately lead to investors "racing to the bottom" by disincentivizing banks from securing an Outstanding on community development activities due to the weighting of the Community Development test.

If the NPRM were to be implemented as proposed, between the two tests there are only two combinations of test conclusions for a bank to receive an Outstanding rating overall, both of which require an Outstanding conclusion on the Retail Test. However, none of the 44 largest banks would currently receive an Outstanding conclusion on the Retail Test, making an Outstanding rating virtually unattainable. As a result, banks may only be incentivized to aim for a Satisfactory rating overall, which can be achieved with only a Needs to Improve conclusion on the Community Development Test. This places community development activities at a low tier and risks banks deprioritizing community development as a key factor to receiving the credit – running counter to the intent of the original legislation.

To avoid this unintended result, the NNA urges the agencies to revisit the weighting between the two tests and consider an equal value - 50% for retail and 50% for community development – as opposed to the proposed skewed metrics. Anything less for the community development test will have a disproportionately negative impact on the effectiveness of the modernized CRA.

### **CRA Exams and Race**

Explicitly racist lending practices and policies have contributed significantly to present-day disparities in wealth attainment and quality of life for non-white communities. The NNA therefore urges the agencies to incorporate race into the CRA to identify and address racial disparities in a way that is purposeful and leading with equitable outcomes.

The proposed rule suggests using Home Mortgage Disclosure Act data as a tool to produce exam tables describing the lending by race, however this information does not contribute toward a bank's rating. Due to present racial disparities in lending and wealth outcomes, the NNA supports lending examinations by race and ethnicity in geographical areas experiencing discrimination or showing racial disparities in lending activities to be incorporated into CRA exams. The purpose of the CRA is to restabilize capital investment in communities often excluded from banking investment initially caused by racist housing and planning practices, and as such a more robust use of data surrounding impacts regarding race will be a crucial indicator on the effectiveness of this rulemaking and equitable lending. The NNA reminds the agencies that Native American/ tribal communities must be included when assessing racial and ethnic disparities in lending by banks.

The NNA is pleased that the agencies included Special Purpose Credit Programs (SPCPs) for special consideration in the NPRM. SPCPs are a powerful community financing tool to assist in closing the homeownership gap between white and nonwhite households by allowing targeted methods for creditors to meet specific economic needs to disadvantaged communities, including communities that have been cut off from credit- and wealth-building opportunities due to their race. The NNA encourages the agencies to include SPCPs in the final rulemaking.

### **Robust Public Input Mechanisms in CRA Exams**

The NNA asserts that the public input process when assessing a bank's meeting local needs is key to enhancing accountability. The NNA supports the agencies creating a public registry for organizations to sign up should they wish to be contacted regarding a bank's CRA performance in meeting community needs. A robust engagement with community organizations by the agencies will display a commitment to accountability from a diverse array of entities and allow public input to remain a prominent factor during CRA performance evaluations.

CRA exams will help hold merging banks accountable, particularly if they are made more robust by a final rulemaking. However, merging banks must also submit a community benefits plan as part of their merger applications, which can include community benefits agreements negotiated with community organizations. The NNA echoes the suggestions made by other national housing organizations, urging that 'Outstanding' CRA ratings are not considered as evidence that merging banks have satisfied the public benefits legal requirement. Additional community input processes must inform these mergers to ensure banks take into consideration the implications on the neighborhoods falling within the joint



assessment areas. Furthermore, CRA exams following merger approvals must review compliance with community benefit agreements or conditional merger approvals.

### **Making Data Publicly Available**

The agencies' proposal includes significant improvements in data collection requirements for community development activities, deposits, and automobile lending. The proposed rule does not require all information to be made public, which will likely limit accountability of the banks by the public, particularly when determining a bank's effectiveness in reaching underserved communities. The NNA supports the agencies expanding data collection to all large banks as opposed the current proposal which only applies to banks with assets more than \$10 billion in the case of deposits and automobile lending. The NNA believes this is particularly important to gather and publicize community development finance-related data, which can be transformative for the community development field. Whenever possible, the agencies should consider publicizing this information in plain language to ensure the data and implications are accessible to the community.

### **Recognizing Housing Counseling as a Vital Component of CRA Performance**

The NNA appreciates the agencies recognizing financial literacy and housing counseling as CRA-eligible activities and asserts that these items can assist in addressing housing challenges faced by LMI households and nonwhite households. However, it is also important to recognize that housing counseling plays a unique role in housing stability that does not carry the same weight as financial literacy. The NNA therefore recommends the CRA final rulemaking recognize this distinction and in turn place a higher value in housing counseling as an activity within the CRA evaluation process. Additionally, the NNA recommends the agencies specifically recognize lender fee-for-service payments for housing counseling services as an eligible CRA activity.

### **Community Development Services Test and Nonprofits**

The NNA strongly believes the Community Development (CD) services test could be more robust in the final version of the CRA rulemaking. As proposed in the NPRM, the CD services test only includes in kind support to nonprofits and government/ tribal entities, as well as financial education and counseling. As proposed, the CD test is only weighted as 10% of the overall CRA score and 25% of the CD score. To further engage banks' coordination with community-driven nonprofits, the CD services test can be enhanced by incentivizing collaboration between these entities. Indicating that grant contributions to support nonprofit are measured under this test will diversify the activities within the test and create a pathway for banks to make grants to nonprofits. Grants distributed by community nonprofit organizations, such as NNA member organizations, are often the most reliable resource for the communities the CRA seeks to serve. The NNA echoes the assertion made by other national partners that separating this activity out from the broader bucket of community development loans and investments – and instead assigning a score – would encourage banks to engage in more grant making, allowing yet another reinvestment activity to benefit underserved communities.

The NNA is once again appreciative of the collaborative nature the agencies are implementing when issuing this NPRM. The NNA looks forward to remaining an engaged partner in this effort to modernize the CRA.

Should any questions or points of clarification arise when reviewing the NNA's comments, please contact Elisabeth Coats, Director of Policy and Advocacy, at [ecoats@nwa.us](mailto:ecoats@nwa.us).

Sincerely,



Lou Tisler

Executive Director