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Re: Comments & changes needed on CRA NPR: 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:

I am writing on behalf of Restored Homes Housing Development Fund Corporation ("Restored Homes") to submit comments on the interagency Notice of Proposed Rulemaking ("NPR") to modernize the Community Reinvestment Act ("CRA"). While the proposal incorporates several strong components, we believe that significant changes are required.

Restored Homes is a not-for-profit organization which promotes affordable homeownership opportunities and seeks to eliminate blight and foster the stabilization of communities throughout New York City. Restored Homes is at the forefront of affordable homeownership programs through successfully acquiring, rehabilitating, and marketing properties to low- and moderate- income households. Over the last 15 years, Restored Homes has provided essential housing to over 250 low- and moderate-income families throughout New York City; with the overwhelming majority of its buyers being Black, Indigenous, People of Color ("BIPOC"). Restored Homes has ensured that is buyers were provided with the resources and assistance needed to access mortgages with minimum down-payments and favorable fixed-rate interest terms.

The CRA is one of the most important laws we must hold banks accountable for their obligations to serve and invest in local communities. The law has leveraged trillions of dollars and fostered meaningful investments, financial services, and partnerships in NYC neighborhoods.

Yet, for all its benefits, the CRA has not kept up with significant changes in the banking industry, nor has it addressed persistent racial disparities and inequities. It has been 40 years since the CRA was passed and the racial wealth gap is wider than ever. The average Black and Latino households earn about half as much as the average White household and only have about 15% to 20% as much net wealth**.** Additionally, organizations across the country have documented persistent racial disparities in banking and lending, resulting in fewer residential and small business loans, fewer branches, more harassment and displacement, and fewer resources for BIPOC families and their communities.

This proposal represents the first major update of the CRA in over 25 years and we appreciate the regulators working together to offer several positive steps forward such as: more rigorous data-driven lending tests; a focus on smaller businesses; more data disclosure and analysis of bank deposits and products at the largest institutions; lending-based assessment areas; anti-displacement criteria in some community development categories; and expanded discrimination downgrades to include non-credit consumer violations (e.g., opening fake bank accounts).

However, these changes fall short of what our communities need and deserve. We are, therefore, seeking the following recommendations that will strengthen the proposal and allow CRA to better meet the needs of our communities:

**1. Race & CRA: Systemic racism, discrimination, and the disparities and inequities they perpetuate cannot be adequately addressed with "color-blind" policies**.

While the NPR acknowledged CRA's origin explicitly as an anti-redlining law, we are deeply disappointed that the regulators failed to push for regulations that would have CRA to live up to its intended purpose. The NPR went so far as to acknowledge the shortcomings of the regulatory framework: *"Even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent."* And yet all they propose regarding race within the examination framework is to disclose already public data that will have no impact on the final rating. Additionally, we know that income is not a proxy for race. We expect more in this area.

Regulators should create affirmative obligations to serve and benefit BIPOC people and communities and incentivize activities that close the racial wealth gap.

Regulators should benchmark and disclose all available data by race: home loans (HMDA), small business loans (1071 data), grants to BIPOC-led organizations, branch & community development locations, etc. Disparate trends should lead to downgrades and trigger fair lending investigations.

Regulators should extend place-based anti-displacement criteria to all community development categories: no credit should be awarded for "displacement or detrimental effect on LMI or underserved populations".

And finally, regulators should expand discrimination downgrades to include such incidents of displacement or harm ("detrimental effects") on BIPOC people and communities, such as specific branch closures, harmful landlord practices, or higher cost products that disproportionately impact communities of color.

**2. Loopholes: The proposal fails to close existing loopholes in the CRA, and in fact creates new loopholes that could exclude banks from analysis in many areas.**

Regulators must make sure that all large banks are held to the same standards and close the loopholes that exempt "smaller" large banks with $2B to $10B in assets. The proposal exempts these smaller large banks from data disclosure, auto lending tests, and analysis of where they take deposits and types of bank accounts they offer. This comes on top of reduced obligations for 20% of banks by raising asset size thresholds that reclassify hundreds of banks into the less rigorous intermediate and small bank test categories. Further, no bank should be allowed to pass its exam if it fails up to 40% of its assessment areas or pass in an assessment area where it fails component tests, especially in cases of displacement-financing or branch closures in already underserved LMI and BIPOC communities.

No bank classification or major product line threshold should exclude lines of business from analysis. Under the CRA now and as proposed, limited purpose credit card banks are not evaluated on the distribution or impact of their credit card loans and banks can choose not to include activities by affiliate lenders. Under the proposal, banks are evaluated on *"major product lines",* defined as lines of businesses that make up 15% of a bank's total retail dollars. Depending on the size of the loans and comparative volume, this could exclude banks making 100's or 1000's of loans. Lower volume product lines like HELOCs (open-ended loans) are likely to get little-to-no scrutiny across exams, which is especially problematic when banks making 500 or fewer loans don't even report these loans to HMDA.

Limited purpose consumer banks must be evaluated on that limited purpose; all consumer loans should be evaluated for distribution and impact; and the major product line threshold should be 15% of dollars or 50 loans, whichever is lower.

Regulators should require all affiliate lenders to be evaluated and factor in performance by non-bank lenders with which banks have a formal relationship, especially to offer a product the bank no longer offers. And no bank should be allowed to buy its way to a passing rating; regulators should focus on loan originations.

**3. Community input: The communities most impacted by our inequitable financial system must be central to the CRA process.**
We appreciate that the regulators recognize the importance of community input, yet we see few changes to the system today where communities are rarely consulted, and comments are too often ignored.

Regulators should conduct a comprehensive needs assessment based on local data and community input and conduct proactive outreach to a wide range of stakeholders on needs and bank performance. Both should be used for CRA exams and applications, with details on how comments factor in.

Regulators should consider community advisory boards within local communities to facilitate these processes.

Community Benefits Agreements and community informed CRA plans should be encouraged, and then monitored and enforced through conditional approvals on mergers and review for CRA exams.

Finally, banks must respond in meaningful ways to specific issues raised in community comments, with the option for regulators to require specific actions should the bank not respond adequately. For example, our member organizations have commented on numerous occasions regarding branch closures in already underserved areas, as well as how a bank handles a situation with a problematic landlord who they finance. Too often, regulators are silent when the banks have ignored us, leaving community residents to fend for themselves against an inequitable financial system, and discouraging community members from providing input going forward.

**4. Retail Lending Test: Mortgage lending:**
Homeownership remains an important path to wealth creation and developing intergenerational wealth. Yet too often BIPOC communities are locked out of homeownership opportunities, targeted with predatory products, and face limited opportunities to accumulate wealth due to lower appraisal values. We appreciate the proposed data-driven framework and acknowledge that it could combat grade inflation, but we have concerns about its overall impact without significant changes.

Regulators must prioritize owner-occupied homes over investor-owned properties, and focus on originations, not loans banks purchase from other lenders. Any evaluation of investor properties must focus on their impact on communities, ensuring they build wealth for BIPOC communities while not fueling harm or displacement for these populations. Regulators should adopt a similar approach for purchased loans and require banks to demonstrate how they increase affordable, accessible lending to LMI and BIPOC borrowers. Similarly, regulators should evaluate who gets loans in LMI/BIPOC communities to ensure they are benefiting - and not displacing - LMI and BIPOC people.

Regulators must incorporate an analysis of loan pricing and terms of consumer products to ensure products are meeting local needs and not extracting wealth. This is especially the case for open-ended HELOC loans but pertains to all loans. Likewise, regulators should evaluate how well loan products match local needs. For example, is a bank offering HELOCs when communities call for traditional home repair loans? Do they include limited equity coops where needed? Has a bank ceased to offer loans that communities need, as is the case with the many banks that stopped making mortgages?

Regulators must not allow a race to the bottom, as could happen in a high-cost market like NYC where a bank can pass with just 1.4% of home loans to low-income borrowers, who make up 27% of NYC's population. The proposed considerations for "market failures" should be adopted and apply to New York City, even with the high cost of housing.

**5. Retail Lending Test: Small Business lending:**
Very small and micro businesses, as well as BIPOC-owned and immigrant-owned businesses of all sizes lack access to the capital they need to open and sustain their businesses. The CRA must do more to direct capital to them.

We support the proposed analysis of loans to businesses under $250,000 in revenue and suggest adding a category for businesses under $100,000 in revenue as well. However, we are concerned that the new definition of "small business" will give credit for lending to businesses with up to $5 million in revenue. 90% of businesses in NYC - 93% of businesses in LMI tracts - have less than $1 million in revenue; surveys consistently demonstrate the unmet credit needs of businesses well below that size. Under the CRA today, banks already get credit for "small business" loans defined as loans under $1 million, in which a significant volume goes to businesses over $1 million in revenue. We understand the intent to match reporting under Dodd Frank Section 1071, which incorporates businesses up to $5M revenue, but that is simply to capture as many loans as possible for a racial equity analysis. The CRA must focus on unmet credit needs which fall among BIPOC-owned businesses and businesses under $1 million in revenue, and smaller sizes within that. The distribution test will give credit for any of the small business loans in LMI tracts, but with no analysis by race of owner or business size, loans could skew towards larger and/or white-owned businesses and less so to persistently underserved small, micro, BIPOC-owned, and immigrant-owned businesses. As such, regulators must focus on small and BIPOC-owned businesses in LMI/BIPOC communities, to ensure they are benefiting - and not displacing - these marginalized business owners.

Regulators must include analysis of pricing and terms of loans to ensure products are meeting local needs and not extracting wealth, as could be the case with high-interest credit cards, or other higher-cost products. Likewise, they should compare the types of loans made to local needs. For example, small business credit cards versus the more-needed traditional loans and lines of credit.

**6. Responsible Multifamily lending:**
Nearly two-thirds of New York City residents are renters, with just about half of all tenants living in private, unsubsidized rent-stabilized housing that is typically more affordable and more protected than market-rate housing. Responsible lending is critical to maintaining this stock of housing, whereas unsustainable loans, and loans to landlords that harass and displace tenants or keep buildings in poor conditions, threaten this important stock of housing. While we appreciate the proposal's intent to ensure unsubsidized ("NOAH") housing remains affordable, even post-renovation, it barely moves the needle on what is needed to deter displacement and preserve safe, stable, affordable housing.

Regulators must do better by conducting a comprehensive evaluation of multifamily mortgage lending for distribution, affordable units, building conditions, and underwriting. They should give credit for adopting and adhering to anti-displacement best practices like ANHD's Multifamily Best Practices and NY State's Department of Financial Services guidance and downgrade for incidents of harm and displacement of LMI and BIPOC tenants.

Regulators should require banks to respond to issues raised in comment letters or other communications from tenants through tenant associations and/or community organizations.

**7. Access to Banking & Consumer lending:**
Access to bank branches and affordable, accessible products is critical to building wealth through savings and accessing credit. Yet, banks continue to expand and grow as branches close and lower-income, and BIPOC communities are consistently left out of the financial system.

In the proposal, analysis of bank branches, bank products, and access to banking are just one piece of an already small section of the CRA exam, made smaller in the proposal. Branches must remain a core component of the retail services test. There must be stronger consequences for closing branches in underbanked LMI and BIPOC communities, including downgrades, especially when communities provide comments about the impact of the branch closure and/or lack of branches. However, the weighting is finalized, no bank should pass its exam if it fails to serve communities with branches and affordable/accessible products

Regulators should require banks to demonstrate specific steps taken to avoid closure through improved services and outreach, and actions taken to mitigate harm should a branch close.

Regulators should evaluate all banks (not just those with over $10B in assets) on where they take deposits, the quality of their banking products, and usage of affordable products.

Finally, in the retail lending test and services tests, all consumer loans must be evaluated for equitable distribution, and quality, with incentives for impactful activities and downgrade for wealth extraction and harm.

**8. Community Development Finance: Loans, Investments, Grants**
Community organizations, nonprofit developers, and CDFIs depend upon bank financing leveraged through the CRA to support their missions. We appreciate the attention to volume, the impact review incentives for deeper affordability and grants, and new categories specific to broadband access and climate resiliency. Still, more can be done to ensure that any activity that gets credit benefits local communities, and that banks are deterred from activities that cause harm.

First, regulators should evaluate loans and investments separately within the community development finance test to ensure banks don't cease to make investments. We are most concerned about the possible impact on Low Income Housing Tax Credit (LIHTC) investments, which are a critical source of equity for affordable housing. The investment test also incentivizes other forms of investments, such as EQ2 investments and grants, which could also be impacted if investments aren't required. Further, while we appreciate that adding credit for prior-period loans may incentivize longer-term patient capital, the change cannot allow banks to substantially reduce originations of impactful loans, nor give additional credit for less impactful activities. This would come on top of credit they already get each time they renew or refinance the loan. Regulators should assess if the prior term credit is for activities that would not have been done without such incentive. For example, many commercial multifamily mortgages to private landlords are already longer than a CRA cycle and do not need further incentives. Worse, without stronger anti-displacement criteria in the affordable housing category, a bank could conceivably get credit over multiple exam cycles for a loan to a landlord that maintains a building in poor condition, harasses, and/or displaces tenants. Whereas a nonprofit developer may not have the same access to similar types of financing or other long-term loans, both of which they need and for them to be offered with more affordable rates and terms.

Regulators should expand the impact review to include activities that close the racial wealth gap; finance long-term/permanent affordable housing; support mission-driven nonprofit developers; and support activities that explicitly connect to locally identified needs.

Regulators should also ensure that banks don't get credit - and not "extra credit" - for housing in lower-income communities that is identified as too expensive for the local community.

Additionally, regulators should reconsider the presumption that any government plan benefits local communities. While that may be true in some cases, there are also many instances when government plans run counter to local LMI and BIPOC community needs, and banks should not be incentivized to further such plans. Proactive outreach and community input can inform the benefits and harms of specific activities presented for CRA credit.

There must be no credit for activities that do not explicitly benefit LMI or BIPOC people, LMI communities, and majority BIPOC communities.

Finally, regulators must extend the stronger anti-displacement criteria to all community development categories (not just place-based categories) and allow downgrades for activities discounted by that criterion, or otherwise found to contribute to displacement or harm.

**9. Assessment Areas / Local Obligations:**
We are pleased that the regulators keep branch/ATM-based assessment areas to evaluate how banks perform where they have a physical presence. We are also excited to see new lending-based assessment areas to evaluate the equitable distribution of 1-4 family mortgages and small business loans outside of where banks have branches.

Going further, regulators should create deposit-based assessment areas for all large banks based on where they take deposits and open accounts. Not doing so goes counter to the original intent of the law, which was to make sure banks lend where they take deposits. It also runs counter to the intent to incorporate new models of banking. Under the system as proposed, online banks have no obligation to equitably serve any local communities, including unbanked areas of a large city like New York. Regulators should also ensure banks are lending and providing access to banking equitably within all new online assessment areas. Banks should also be providing community development finance in these areas they serve and do so in a way that "expands the pie", such that they do not reduce service to areas they serve with branches.

Finally, regulators must ensure banks are serving communities equitably within branch-based and online assessment areas. For example, several BIPOC communities (including much of the Bronx, Southeast Queens, and Cypress Hills) are persistently underserved by banks despite falling within a very well-banked assessment area overall.

Thank you for the opportunity to comment on the CRA proposal. If you have any questions, please contact me at (212) 584-8981 x17 or sdavola@neighborhoodrestore.org

Sincerely,

Salvatore D'Avola
Executive Director