July 28, 2022

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:

Momentus Capital appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding updating the Community Reinvestment Act (CRA). We thank the agencies for soliciting comments on a unified proposed CRA rule that 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.

Through our family of mission-focused organizations including Capital Impact Partners (CIP), CDC Small Business Finance (CDCSBF), and Ventures Lending Technologies, Momentus Capital is working to reinvent traditional financial systems that have failed to address systemic issues of inequality, economic empowerment, and the widening racial wealth gap. We are transforming how capital and investments flow into communities to provide people access to the capital and opportunities they deserve. Our nonprofit Community Development Financial Institution, Capital Impact Partners, has disbursed more than $2.5 billion since 1982 to create access to critical social services, grow entrepreneurs, and create quality jobs. And our small business lending entity, CDCSBF, has funded over $20 billion in small business loans, creating tens of thousands of jobs.

Momentus Capital is leveraging 80 years of combined experience among our organizations, nearly $3 billion in assets under management, and strong community ties, our suite of loan products, impact investment opportunities, technology solutions, and training programs to help entrepreneurs and community-based organizations deliver locally-led solutions that support vibrant local economies with good jobs and high-quality social services. Together, our organizations have delivered $23 billion in financing, created and preserved 250,000 jobs, and served 12,000 small businesses and five million people across their history.

With headquarters in Arlington, Virginia, and San Diego, California, Momentus Capital operates nationally with a focus on larger urban areas and cities in Arizona, Michigan, Nevada, New York, Texas, and the Washington metro area.

NPR Comments

While the NPR makes significant and important changes to the CRA, its failure to address racial disparities in lending is inexcusable. The CRA was created in 1977 out of the civil rights movement to address historical disinvestment in communities across the country by encouraging financial institutions to better meet the credit needs of the communities in which they do business, including those considered low- and moderate-income and communities of color. The purpose of the CRA, and the worsening of the racial wealth gap since its inception, require a re-centering of the CRA on its civil rights origins through the implementing regulations. We highly recommend that the Agencies add race as a critical factor in evaluating CRA. This is an opportunity to ensure that banks play a role bridging the racial wealth gap. Past actions by financial institutions contributed to the racial wealth gap. Future actions should play a role in eliminating the gap.

Persistent racial disparities in lending compel the agencies to incorporate race and ethnicity in CRA exams.

Although the CRA statute does not mention race, it directs the agencies to evaluate how banks meet the credit needs of their entire communities, which provides room for the agencies to incorporate race in CRA exams. We are deeply concerned that the NPR fails to meaningfully incorporate the necessary racial demographic data in a bank's CRA evaluation. The NPR maintains the current emphasis on serving low- and moderate-income communities and neglects to collect or track racial demographic data.

Without data disaggregated by race and ethnicity, the regulators will not be able to fully assess a bank's track record of meeting the credit needs of its entire community, nor can the industry develop or expand financial products and services focused on racial equity. Ideally, racial demographic data is needed across CRA activities, including community development, so that the agencies can capture an accurate and complete picture of how banks are meeting the credit needs of their entire communities–including communities of color.

We believe the agencies should review bank performance in meeting the credit needs of communities of color through a similar framework to how banks are evaluated on their performance in meeting the needs of low- and moderate-income borrowers and communities. By including race and ethnicity, CRA can identify and address persistent racial disparities that have direct impacts on quality of life and health outcomes in communities most in need of investments. These regulatory changes will help to address the racial wealth gap and make our economy and nation stronger.

We optimistically waited for the NPR and expected it to acknowledge the shortcomings of the previous regulations when it came to addressing the racial wealth gap. We urge the agencies to look toward established precedents–including HMDA, Section 1071 of Dodd Frank, the State Small Business Credit Initiative, Special Purpose Credit Programs, and other legislation and regulations that incorporate race-centered components for race-centered problems.

While the NPR does include the consideration of HMDA data, which gathers racial demographic information for home mortgages in a bank's evaluation, it explicitly notes that banks cannot fail their CRA exams because of this HMDA data. As a result, we may now have data that a bank is failing to serve its entire community, as required by the legislative text of the CRA, but there is no enforcement mechanism. At a minimum, this proposal should be enhanced to also require all banks to place home lending data tables and maps revealing inevitable disaggregated race and ethnicity disparities in a prominent place on their own websites.

By including race and ethnicity, the NPR can return to the core founding principle of CRA in the true spirit of the civil rights movement.

Providing automatic credit for activities conducted in partnership with or in conjunction with CDFIs.

We appreciate that the NPR acknowledges the important role of CDFIs in providing mission-based capital to underserved communities and focuses on encouraging banks to engage with CDFIs. Such activities can be amongst the most impactful ways for banks to support community needs, and we support that they should receive automatic CRA credit for such activities.

We believe that CRA and CDFIs share a common mission of increasing the allocation of capital in underserved communities by traditional financial institutions—a mission based on the recognition that our society can truly thrive only if all people and communities can participate in our economy and benefit from it. We have seen firsthand that a strong CRA is vital to the economic health of low- and moderate-income communities of color. At the same time, we believe that CRA can realize its full potential only if all banks share the obligation to meet the needs of these communities.

In our experience, CRA has been and continues to be a primary driver of private financing for our activities. Many banks tell us that CRA is a threshold consideration in the volume and location of their community development financing, and our experience is not uncommon. CRA has been a critical, if not the most critical, resource available for facilitating the flow of private capital into underinvested communities. Therefore, we also strongly support the inclusion of CDFIs on the proposed list of Impact Review Factors to capture activities that are particularly impactful and responsive to community credit needs. This will include activities that directly support CDFIs and recognizes their important role.

Target CRA credit for home 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, the investor purchaser is an LMI or BIPOC buyer, or a mission-driven organization. Further, 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.

Ensure that banks are evaluated on activities that truly support to small businesses.

The NPR proposes important steps that focus on evaluating a banks small business lending to smaller businesses. We urge the regulators to require an evaluation of both: 1) lending to businesses with under $250,000 in gross annual revenue; and 2) lending to businesses with under $100,000 in gross annual revenue. This approach would ensure that small businesses are served and would be consistent with the current CRA Small Business Lending reporting regime.

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 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. 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. Over 80% of the loans made under CDC Small Business Finance's small business programs are to businesses with less than $1,000,000 in gross annual revenue. Therefore, the proposal to establish the definition at $5 million would be counterproductive to the goal of supporting real small businesses. We also believe the CRA examiners should evaluate Section 1071 data reporting, once public, to ensure equal access to credit for women and minority-owned businesses.

Remove unnecessary ambiguity to clarify that CRA will promote local community development and small business support through Certified Development Companies

Loans made in participation with CDCSBF under SBA's Development Company Program (SBDC) provide small businesses with long-term fixed rate financing for major fixed assets, such as land, buildings, and machinery. Without the SBDC, many small businesses would lack access to financing on reasonable terms to invest in economic development in local communities across the nation.

In the proposed rule, section III. ("Community Development Definitions), paragraph C. ("Economic development"), CDCSBF supports the agencies' revisions to the definition of economic development to include "activities undertaken consistent with Federal, state, local, or tribal government plans, programs, or initiatives that support small businesses or small farms as defined by these plans, programs, or initiatives." Further, CDCSBF supports the agencies' creation of standalone criteria under the community development definition for economic development activities aligned with Federal, state, local, or tribal efforts and supports the inclusion of SBA's Development Company program in this standalone criterion. CDCSBF supports the agencies' allowing small businesses to qualify if they meet the size standards already used by the respective government plans, programs, or initiatives.

In section IV of the proposed rule ("Qualifying Activities Confirmation and Illustrative List of Activities"), CDCSBF supports the agencies maintaining a publicly available, illustrative, non-exhaustive list of activities eligible for CRA consideration, and urges the agencies to specifically include in the list, "All loans made in anticipation of or in connection with the SBA's Development Company program (SBDC).

The SBA's Development Company program (SBDC) was created by Congress and implemented by SBA to foster economic development. Certified Development Companies (CDCs) continue to fulfill that statutory mission in local communities across the nation. The program supports loans to small businesses that otherwise might not have access to capital on reasonable terms. The proposed revisions to CRA will promote local community development and remove unnecessary ambiguity in the current CRA regulations.

Improve consideration of equity investments in Community Development Financing Test.

While we appreciate the agencies' consideration of community development financing activities as an integral part of CRA, it may deemphasize proven tools including the New Markets Tax Credit and the Low-Income Housing Tax Credit. Under the new rule, large banks will have a "Community Development Financing test" that combines many of the activities previously evaluated as community development lending and community development investments. We have concerns that this combined evaluation of community development loans, investments, and services would cause a shift in banks CRA activities away from more complex, time consuming but impactful activities like making equity investments in or grants to CDFIs, in favor of making more community development loans. We highly recommend requiring a minimum amount of community development finance activity be in the form of equity investments for a bank to achieve a passing rating.

Incorporate Special Purpose Credit Programs (SPCPs) as an Impact Review Factor on CRA examinations.

The final rule should 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. SPCPs are a critical tool allowing lenders to create credit products with favorable terms that are targeted to historically underserved classes—including by race. The proposed rule takes a positive step by proposing to provide CRA credit for SPCPs that focus on consumer products and home mortgage lending. However, the rule is silent on SPCPs under the Community Development Test, which would omit credit for banks that establish targeted lending programs for important activities such as affordable rental housing developments, entrepreneurs and small businesses, childcare programs and other community development projects. SPCPs are one of the most important tools available to affirmatively invest in racial equity and should be eligible for CRA credit on both the retail and community development tests.

Strengthen the Community Development Services Test.

The community development services test, while accounting for 10% of the overall rating, is too weak to encourage effective development of community development services. In order for services to be a meaningful contribution to the overall community development financing strategy of a bank, the services test must evaluate and give credit for useful and impactful activities that are responsive to the needs of a bank's community. To strengthen the community development services test the rule should add grant contributions to CDFIs and nonprofits with a community development purpose as a measure on the CD Services Test. This is an opportunity to not just emphasize grant contributions to CDFIs but also motivate banks to provide operating support for local community development organizations. The agencies could distinguish between operating grants (which would be eligible on the CD Services Test) and programmatic grants (which would be eligible on the CD Finance Test).

Reconsider new bank size thresholds that could reduce community development financing.

Another area of concern is the agencies' proposal to raise the bank size threshold and the potential impact that could have on community development financing, especially in smaller or rural markets. The NPR would set new thresholds for small and intermediate banks. Under the proposal, small banks are defined as those with assets of up to $600 million and Intermediate Banks (ISBs) are those with assets of at least $600 million but less than $2 billion. Large Banks are those with assets of at least $2 billion. These changes would reclassify 779 banks that are currently ISBs as small banks, meaning they would no longer have community development finance responsibilities. Reducing the number of banks that have community development responsibilities will have a negative impact on the flow of capital to CDFIs and other community-focused organizations.

Expand CRA credit for Assessment Areas.

CRA assessment should be expanded beyond branch location, and we support the proposal to expand CRA coverage. We would, however, recommend lowering the threshold triggers to 50 mortgages or 100 small business loans. Further, the agencies do not propose creating a deposit-based assessment area that would require banks to reinvest dollars back into communities from which they garner deposits. This is an underlying assumption of CRA which needs to be addressed and a deposit driven assessment area proposal must be included in the final rules.

Expand opportunities for public comments regarding the extent to which banks meet local needs.

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. We believe 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. Furthermore, we request that the agencies start to publish which organizations they consult with to understand local community needs, commit to collecting input from a diverse range of organizations that includes organizations led by people of color and women, follow up on needs identified and detail how community input was factored into the results of CRA performance evaluations.

Conclusion

Momentus Capital appreciates the opportunity to comment on proposed CRA rules. While there are positive aspects of the proposal, and the agencies are to be commended for working together, 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 or failing to meet critical community needs relating to affordable housing, homeownership, and small business development.

Thank you for considering these comments.

Sincerely,

[redacted]

Robert Villarreal
Chief External Affairs Officer
Momentus Capital