



Date: July 28, 2022
Re: CRA - Comments in response to the Notice of Proposed Rulemaking
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:

Community First is grateful for the opportunity to provide our comments on your proposed Reinvestment Act (CRA) rules. While CRA was enacted in response to decades of hurtful, and illegal segregation, and while the enforcement of CRA has helped to inspire many banks to implement lending and financial products, policies, and programs that have been immensely helpful to the communities across the country, it is critical for CRA to be updated and strengthened.

Community First is an Affordable Housing Agency and our mission is to create safe and sustainable homes as a foundation for stable communities in Milwaukee. Some of Community First's critical initiatives are to stabilize neighborhoods, target low income urban neighborhoods in the City of Milwaukee, stimulate economic development, train and employ ex-offenders in construction teams, and use innovative partnerships to meet our mission.

CRA is important to Community First and the people and neighborhoods we serve in many ways including:

- Developing new mortgage loan programs for credit-worthy first time homebuyers, including people of modest means and people of color.
- Offering down payment assistance for credit-worthy first time homebuyers, including people of modest means and people of color.
- Offering home repair programs for homeowners of modest means.
- Providing financial assistance for nonprofit organizations that provide free or low-cost home repairs for extremely low income, elderly or disabled homebuyers.
- Providing financial support for nonprofit homebuyer counseling agencies (like Housing Resources, Inc. in Milwaukee) that have helped thousands of people to access the American Dream.
- Providing bank staff to volunteer with organizations that provide financial counseling, homebuyer counseling, affordable housing development, or small business development.
- Providing loans and/or investments in dozens of affordable housing or mixed income housing developments.
- Providing loans and/or investments in community facilities located in low and moderate income neighborhoods.
- Providing financial support and technical assistance to minority business development organizations.
- Providing support to workforce development programs, and nonprofit organizations that help with employment readiness.
- Providing investments and technical support to CDFIs (Community Development Financial Institutions), mission-driven, nonprofit lenders that focus their lending on programs and developments that the banks will not lend directly to.
- Providing office space to nonprofits that serve low and moderate income people and neighborhoods.
- Providing low-cost checking accounts for entry-level customers.
- Participating in foreclosure prevention programs.
- Participating in Take Root Milwaukee, which is our homeownership consortium



Despite banks' progress in serving low and moderate income communities and communities of color, there is still much work to be done. While the Notice of Proposed Rulemaking (NPR) contains some positive suggestions, we believe that the proposal will not achieve the impact necessary to achieve racial and economic justice unless critical issues are addressed. We agree with the National Community Reinvestment coalition (NCRC) and the Metropolitan Milwaukee Fair Housing Council, and fair lending advocates from across the country, that CRA rules must do the following:

- Take race into account and directly evaluate banks for lending, investments and services to borrowers and communities of color
- Downgrade banks for harm such as discrimination, displacement, and fee gouging
- Scrutinize the qualitative impact of all lending tied to banks, ensuring that predatory practices like negative amortization, interest only loans, and ARMS with no ceilings on interest rates do not emerge again
- Provide incentives for banks' innovation that achieves results that are significantly beyond results of their peers
- Enhance and require community participation so that CRA activity is tied to community needs
- Ensure that CRA ratings reflect community impact, and bank mergers are denied unless they provide a clear public benefit that regulators will enforce
- Ensure affordable housing tax credits and loans on affordable housing are reviewed separately, and increased
- Require banks to serve all areas (not 60%) where they take deposits and lend, and refrain from raising current asset thresholds which will decrease rural reinvestment
- Prioritize the opening of branches and penalize the closing of branches in underserved areas and
- Elevate broadband/digital equity for all underserved populations, financial access for Native American communities and climate resiliency.

Race and CRA. First and foremost, the agencies have failed the most important test for CRA reform – positively addressing the question of whether it would substantially advance racial equity and close racial wealth gaps. Despite opening the door to hopes that the rules would clearly address the redlining concerns that gave rise to the CRA, the agencies have offered little.

CRA Performance Evaluations must be structured to effectively require banks to serve all communities, especially borrowers and communities of color. Closing the racial wealth gap will make the nation and the economy substantially stronger, elevate the Gross Domestic Product and give the U.S. a more strategic competitive advantage. Examiners should review bank performance in meeting the credit needs of communities of color, similar to how banks are evaluated on their performance in meeting the needs of low and moderate income (LMI) borrowers and communities.

Racial and ethnic discrimination in lending is still an issue in urban, suburban and rural areas across the country. In the City of Milwaukee, Census.gov shows that 39% of the residents are Black, 19% Latino, 5% Asian, 6% two or more races 6% and 34% non-Latino and non-Hispanic White. But looking at all home loans (purchase, improvement or refinance) originated in the City of Milwaukee in 2021, only 14% went to Black borrowers, 12% to Latino, 4% to Asian, 1% to two or more races, but 55% were originated to non- Latino and non-Hispanic White borrowers.

One of our largest, best-known banks in the Milwaukee area originated only:

- 17 home loans (for purchase, home improvement or refinance) to Black borrowers in the City of Milwaukee in 2021,



- 24 home loans to Black borrowers in the City of Milwaukee in 2020,
- 26 to Black borrowers in the City of Milwaukee in 2019, and
- 39 to Black borrowers in the City of Milwaukee in 2018.

Yet they received an “Outstanding” CRA rating on their most recent Performance Evaluation.

We are deeply troubled by the agencies’ clarification that any disparities in HMDA data will not impact the CRA rating of a bank. If banks’ CRA ratings are not downgraded by lending disparities, where are the teeth in CRA? Banks’ actions regarding extending fairly priced credit, financing community development, opening responsive account products and maintaining branches in communities of color should factor into a bank’s CRA rating. This proposal not only fails to require this, but it also offers little as an alternative approach to addressing redlining and discrimination.

While the Notice of Proposed Rulemaking (NPR) proposal to disclose HMDA mortgage lending data on Performance Evaluations is welcome, it should be only one of the changes made. Merely requiring disclosure of already publicly available data on a report that the public rarely accesses is not meaningful transparency. This proposal should be enhanced to also require all banks to place these home lending data tables and maps showing disaggregated race and ethnicity disparities in a prominent place on their own websites, include similar tables and maps for small business lending by disaggregated race, ethnicity, gender and neighborhood when the Section 1071 data become publicly available, and provide that the data will impact CRA ratings.

One positive aspect of the proposal is the expansion of considerations of discrimination to include transactions beyond credit and lending, such as when discrimination occurs when a consumer tries to open a bank account. But an expanded definition of discrimination is only as helpful as the agencies’ willingness and capacity to diligently look for evidence of discrimination and provide downgrades once it is found. We are aware that the General Accountability Office recently found that fair lending reviews at the Office of the Comptroller of the Currency were outdated and inconsistent. Agency enforcement of redlining or discrimination cases, as well as CRA ratings downgrades for discrimination, are exceedingly rare. Agency fair lending reviews should be more extensive and rigorous, should solicit and rely on feedback from all relevant federal and state agencies as well as community group stakeholders, and should be reflected more substantively on CRA Performance Evaluations. Findings of discrimination, including for disparate impacts relating to displacement financing, fee gouging or climate degradation, should always result in automatic CRA ratings downgrades, if not outright failure. How can a bank that discriminates be said to be doing a “Satisfactory” job serving the community?

The NPR also raises the question as to whether CRA evaluations should consider Special Purpose Credit Programs (SPCPs). Our response is “yes!” However, we are disappointed that although SPCPs are meant to serve groups protected by fair lending laws, the proposal considers SPCP evaluation only regarding their impact on LMI consumers. The final rule must 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, as should all activities that close wealth gaps for racial, ethnic, national origin, Limited English Proficient, LGBTQ and other underserved groups. These efforts are important to the communities we serve, even if their reach is limited.

Mortgages. CRA credit should only be given for mortgage loan originations to owner occupants, unless the originating lender is a mission-driven nonprofit. CRA credit should not be given for banks’ loan purchases from other lenders, nor should credit be given to mortgage loan originations to investors unless the investor purchaser is an LMI or BIPOC buyer or a nonprofit organization.



Regulators should consider providing extra credit for originating mortgages to prospective Community Land Trust homeowners whose homes are on CLT properties. These properties are by design, permanently-affordable to the occupants, and help to fight displacement.

We support the proposal to consider lending to low income borrowers and communities separately from lending to moderate income borrowers and communities. Unless a census tract is shown through the use of established models and data to be in an area not subject to gentrification, we urge the regulators to evaluate lending for each loan purpose (home purchase, refinance, home improvement, or HELOC) separately.

We support a mortgage lending screening test and appreciate agency analysis that suggests that the new scoring model proposed will result in less inflated CRA ratings than the current rules produce. This would be a major advance. We are strongly opposed to any suggestion that a bank could fail to serve nearly 40% of its assessment areas and still pass its CRA exams. This seems a recipe for redlining of LMI and rural communities and communities of color.

Community participation. The agencies should actively solicit community stakeholder input on the performance of banks during CRA exams and bank mergers. How can the banks ensure that community's credit and convenience needs are met unless they actively consult with the community? Many cities, including Milwaukee, have a broad-based CRA Coalition of nonprofits and government agencies that work to identify unmet banking needs, and provide feedback to the banks and to the banks' CRA regulators.

The public should be provided at least ninety days to comment on CRA Performance Evaluations and on bank mergers. Banks and regulators should clearly disclose contact information for relevant staff. Public hearings should be held when public commenters raise concerns about mergers. Regulators must scrutinize bank merger applications to ensure that the community's credit and convenience needs, and public benefit standards would be met.

Community Benefits Agreements (CBAs) should be encouraged as evidence that these standards can be met by the bank, and regulators should condition merger approvals on ongoing compliance with CBAs. Agencies should routinely review all existing consumer complaints, community comments, CFPB and agency investigations during CRA exams and merger reviews. In particular, community groups should be solicited for their views on bank practices relating to discrimination, displacement, climate impacts, and other harms.

Community development. We appreciate that the proposal focuses on encouraging banks to engage in community development activities, such as investing in CDFIs. Such activities can be some of the most impactful ways for banks to support community needs. But we are concerned that providing a lengthy list of eligible activities and making it easier to qualify for credit will exacerbate the current dynamic whereby banks engage in the easiest and potentially least impactful of CD activities. CD activities should be tied to local community needs as identified in Performance Context analysis or community-negotiated Community Benefits Agreements, either as a condition of receiving CRA credit or through the use of enhancing impact scoring. Tribal or local government plans can serve this purpose of credentialing an activity as responsive to local needs, but CRA rules should not require association to government plans as local governments and local plans are uneven. We strongly oppose any raising of current asset thresholds, since doing so would result in less community development financing and branch consideration in rural areas served by community banks that would be subject to easier examinations and lower reinvestment obligations under the proposal if they are reclassified.



Affordable housing. Affordable housing remains a perennial need and priority for our City and for most of the State of Wisconsin. Mission-driven and community-based organizations have developed impressive capacity to use the scarce resources available to create affordable homes. However, the proposal threatens to damage one of the key tools in this limited affordable housing development infrastructure by doing away with the separate Community Development (CD) lending and CD investment tests. By combining CD lending and CD investing, we are greatly concerned that banks will retreat from Low Income Housing Tax Credits (LIHTC), which can be more complex and provide a lower rate of return than CD lending. Any decrease in appetite for LIHTC will likely result in fewer affordable housing deals, as well as higher costs that will translate into decreased affordability for projects that do get built. We urge the regulators to retain separate evaluations for CD lending and CD investing. Further, positive impact points should be given for projects that have deeper affordability, longer affordability terms and covenants, or are in higher opportunity areas.

Anti-displacement. We appreciate the proposal's attempt to address displacement concerns by requiring that rents will remain affordable in order to qualify for CRA credit. But the agencies need to go further to discourage banks from financing displacement. While the proposal appears to refuse CRA credit for certain CD activities if they result in displacement, this requirement must be extended to all community development activity, especially affordable and Naturally Occurring Affordable Housing (NOAH) housing analysis.

Regulations should not allow CRA community development credit unless banks can demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting act, UDAAP and other laws. Banks should adopt procedures such as the California Reinvestment Coalition's Anti Displacement Code of Conduct and engage in due diligence to determine if there are any concerns about the loan applicants relating to eviction, harassment, complaints, rent increases, or habitability of their properties.

It is not enough to cease offering CRA credit for harmful products. Banks must be penalized for harm. Bank regulators should conduct extensive outreach to community groups and engage in community contacts to investigate whether landlord borrowers are exacerbating displacement pressures or harming tenants.

Positive impact points should be given for particularly responsive CD activities that fight displacement, such as support for property purchases by Community Land Trusts and other bona fide, mission-driven nonprofit organizations of rental housing that can be taken off of the speculative market leveraged by policies such as Tenant Opportunity to Purchase Acts (TOPA), Community Opportunity to Purchase Acts (COPA), and other initiatives such as California's state law that provides CLTs, nonprofits and prospective owner occupants the right to match an investor's high bid at foreclosure auction to secure a property for the common good, not personal profit.

Broadband and Native Land Areas. Certain CD activities should be further encouraged by allowing for impact scoring and/or partial credit to the extent of LMI and BIPOC benefit even if that is less than 50%. Here, we think of broadband activities, which can be a gateway to all CRA activity (banking, housing, jobs, education, health, etc.), and support for Native Land Areas. We also support CRA credit for lending, investment and services provided to members of the Native American community, regardless of where they reside, including Black Native American Freemen.

Climate. We are pleased to see the proposal list climate resiliency and disaster preparedness as eligible activities in light of the devastating impacts of climate change on LMI and BIPOC communities meant to benefit from the CRA. The definitions in the proposal are strong and should be retained, perhaps with more detailed examples. But the agencies have again failed to provide for downgrades where banks engage in harm, such as fossil fuel financing. We



have seen financial institutions tout green initiatives, which presumably could earn CRA credit, even where such positive efforts were completely undermined and overwhelmed by substantially greater investments in fossil fuel industries, many of which result in an overshare of environmental burden in LMI communities and communities of color. It is not enough to define positive activities. Banks must suffer penalties and downgrades for financing problematic industries. This is especially the case here, as climate degradation by banks has created a vicious circle where redlined communities disproportionately suffer climate harm at the hands of banks which may then deny loans to such neighborhoods on the grounds that they are too risky and pose safety and soundness concerns. The regulators should treat the financing of climate harm as discrimination that can subject banks to CRA ratings downgrades and possible CRA exam failure where this harm disproportionately impacts communities of color, as is often the case.

Small business lending. We applaud the proposed focus on small business lending to smaller businesses. We urge the regulators to require evaluation of both 1) lending to businesses with under \$250,000 in gross annual revenue (as proposed), as well as 2) 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.

However, we are surprised and disappointed by the proposal to define small businesses as ones with \$5 million or less in gross annual revenue. According to the CFPB, 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, so to establish the definition at \$5 million seems counterproductive. The CRA rules should focus examiner attention on section 1071 data reporting, once public, to ensure equal access to fairly priced credit for women and BIPOC-owned businesses and for businesses with less than \$1 million in revenue. Most larger businesses do not need CRA to encourage banks to lend to them, yet banks may gravitate to larger businesses and away from small businesses if permitted to do so.

Branches and the Retail Services and Products Test. The agencies propose to revise the Services test. We urge the regulators to retain core consideration of branch access as part of the CRA, and to expand bank branch obligations in a more meaningful way. NCRC analysis shows a tremendous and detrimental march by banks to close branches, especially in low income, BIPOC, and rural communities. A recent analysis by the Committee for Better Banks, shows that branch openings fail to proportionally locate in these same communities. We know that local branches mean more local jobs, more small business lending in the community, and fewer visits to fringe financial providers like check cashers and payday lenders. The CRA rules should clearly penalize branch closures and poor coverage in LMI, BIPOC and rural communities, and encourage through impact scoring the opening of branches in such communities.

Accounts and the Retail Services and Products Test. We support and urge proposals to provide both a quantitative and a qualitative review of responsive deposit and retail credit products. Banks should be evaluated not only for offering, for example, Bank On accounts, but for actually connecting consumers with such accounts. We strongly believe that regulators should review the quality of all bank credit and deposit products, especially in the consumer arena. This includes marketing, language access, terms, rates, fees, defaults, and collections. All bank subsidiaries, affiliates and Rent-a-Bank partnerships should be evaluated. Rent-a-Bank partnerships, in evading state law protections, are particularly pernicious and should be banned. In addition to auto loans, all consumer loans should be evaluated if they constitute a major product line. And again, it is imperative that there be a qualitative review of language access, pricing, fees, rates, delinquencies, collections, complaints by consumers and community groups, and investigations and enforcement actions by federal and state agencies. We are very concerned that combining all



these critical components of CRA - meaningful access to branches, accounts, and responsive credit products - will give them insufficient consideration in a test that represents only 15% of a bank's CRA rating.


Assessment areas. We appreciate the proposal to expand CRA coverage beyond branch locations, as we have urged for years. The Retail Lending Assessment Areas are positive, though we suggest the thresholds be lower (50 mortgages or 100 small business loans should trigger CRA responsibility) and that bank obligations to serve these areas extend beyond retail lending to other bank offerings in order to ensure that more rural communities are covered and that they are better served.

But the agencies fail to create deposit-based assessment areas that require banks to reinvest dollars back into the communities from which the deposits derive. This is this whole idea behind CRA. Every large bank knows exactly where its deposits reside, and they should be required to disclose this publicly and to accept CRA assessment areas where significant deposits are domiciled. This is the only way to keep up with emerging industry and consumer trends, to ensure that deposits through deposit-gathering third parties are assigned to local communities, and to prevent abuses and evasions from CRA regulations.

There are a number of points in the proposal where the agencies would impose lesser obligations on banks with between \$2 billion and \$10 billion in assets compared to banks with over \$10 billion in assets. We strongly feel that all large banks should be subject to all the responsibilities outlined for the largest banks. Finally, while we support expanding CRA beyond branches, the CRA should retain a focus on local communities and we urge the agencies to prioritize Facilities (branch) Based assessment areas, perhaps through greater weighting of bank performance there.

Conclusion

Community First 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, significant changes need to be made to the final rule. Changes must ensure that all credit-worthy borrowers have equal access to fairly-priced credit, that banks are penalized for harm caused to communities, that community input is valued and elevated, and banks are incentivized to meet critical community needs relating to affordable housing, homeownership, small business development, broadband, and rural and Native American community access. Thank you for considering these comments.


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