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August 2, 2022

Via Email

Martin J. Gruenberg
Director of the Federal Deposit Insurance Corporation
550 17th Street, NW,
Washington, DC 20429]

RE: Comments on Notice of Proposed Rulemaking, 12 CFR Part 228, FDIC RIN 3064-AF81

Dear Director Gruenberg:

As Attorney General for the State of Colorado, I appreciate the opportunity to comment on the Notice of Proposed Rulemaking (NPR) that will update the Community Reinvestment Act (CRA).

Modernizing the CRA is of vital concern to my office, and I commend the Office of the Comptroller of the Currency, Federal Reserve, and the Federal Deposit Insurance Corporation (collectively, "agencies") for updating the regulations that implement this critical Act. Over the past decades, the CRA attempted to increase the accessibility of loans, investments, and financial services to low- and moderate-income (LMI) consumers. With this NPR, the agencies propose to make the CRA more effective in bolstering reinvestment in these underserved communities, in alignment with the evolving landscape of banking. I applaud many of the agencies' proposed improvements.

But more can be done. I urge the agencies to take more affirmative steps to address barriers to financial well-being that disproportionately impact communities of color, continue to hold intermediate banks accountable, ensure that banks are offering safe and affordable deposit and small-dollar credit products that are responsive to the needs of LMI consumers, incentivize banks to engage in more meaningful community development activities, and encourage access to mobile and digital banking.

As the first state in the nation with a state-wide Office of Financial Engagement (OFE), Colorado is uniquely positioned to understand the CRA's on-the-ground impacts and comment on this NPR. The Colorado OFE was established through 2021 legislation to grow Coloradans' financial resilience and well-being through community-derived goals and strategies.[1] As the first statewide office of its kind, the OFE seeks to build cross-sector partnerships so that government agencies, community organizations, financial institutions, and financial services providers can work together in creating a more inclusive financial eco-system that equips Colorado households' ability to thrive.

Racial equity, the OFE, and the CRA

The agencies should use HMDA data by race and ethnicity in analyzing bank performance.[2] The agencies should also incorporate small business lending data by race and ethnicity when the CFPB finalizes its rulemaking under § 1071 of the Dodd-Frank Act.

Racial disparities in banking access plague Colorado, as they do states nationwide. In a 2019 report, the FDIC found that more than 10% of Colorado's Hispanic households were unbanked, while less than 2% of Caucasian households were unbanked.[3] Native American communities have the highest rates of unbanked households, at more than 16% nationwide.[4]

Being unbanked or underbanked is costly: according to the Financial Health Network, unbanked and underbanked Americans spent $189 billion in fees and interest on financial products in 2018, the latest year for which there is complete data.[5] In addition to the hard costs, unbanked or underbanked individuals face less obvious consequences, such as limited access to credit. Nationally, approximately 26 million Americans are "credit invisible," meaning they have no credit history with any nationwide credit reporting agencies. In that case, consumers are essentially locked out of the current credit scoring system. According to a report by the Consumer Financial Protection Bureau (CFPB), Black and Hispanic people, those living in low-income neighborhoods, and those in rural communities have higher credit invisibility rates.[6]

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[1] §§ 24-31-1101-1102 C.R.S.

[2] Responsive to Question 173, 87 FR 34003.

[3] FDIC, How America Banks: Household Use of Banking and Financial Services, Five-Year Estimates for 2015-2019, Colorado *available at* https://household-survey.fdic.gov/five-year?type=state&geo=Colorado&year=2015-2019.

[4] FDIC, How America Banks: Household Use of Banking and Financial Services, 21, (2019) *available at* https://www.fdic.gov/analysis/household-survey/2019report.pdf. Colorado-specific data is not available for native communities.

[5] Karen Graham and Elaine Golden, Financially Underserved Market Size Study 2019, Financial Health Network *available at* https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2020/01/31170215/2019-Market-Size-Report.pdf.

[6] Kenneth P. Brevoort, Philipp Grimm, and Michelle Kambara, Data Points: Credit Invisibles, The CFPB Office of Research *available at* https://files.consumerfinance.gov/f/201505_cfpb_data-point-

These disparities are one of the reasons that the Colorado OFE is specifically tasked with using "community-informed strategies that dismantle systemic barriers to building ownership and wealth for all, especially low-income communities and communities of color." Here in Colorado, we believe that financial inclusion strategies must proactively address systemic barriers that disproportionately affect communities of color to have a meaningful impact on closing the racial wealth divide. Similarly, and as the NPR makes clear, one of the purposes of the CRA is to end practices of racial discrimination.

I also urge the agencies to list special-purpose credit programs as an example of a responsive credit product or program that facilitates mortgage and consumer lending targeted to LMI borrowers.[7] The agencies should encourage banks to build partnerships with Community Development Financial Institutions (CDFI) for this purpose. CDFIs have a strong track record of understanding and responding to the needs of communities of color. In addition, the agencies should encourage banks to partner with other community-based organizations and nonprofits to get capital out to underserved communities and communities of color through trusted channels.

Asset thresholds

As proposed, the rules would dramatically increase the asset threshold for intermediate banks from $346M to $600M. As a result, hundreds of banks would no longer be required to submit themselves to the performance tests required of intermediate banks, including the new Community Development Financing test and Retail Lending Test.[8] I urge the agencies to maintain the current asset threshold of $346M for intermediate banks

This proposed change would impact the citizens of Colorado, especially those in rural counties, leaving them without many of the benefits and protections of the CRA. As a result of the proposed rule, 22% of Colorado banks would no longer be subject to the higher CRA standards for intermediate banks. As noted below, this leaves many rural areas where income gaps are significant exempt from the CRA.[9]

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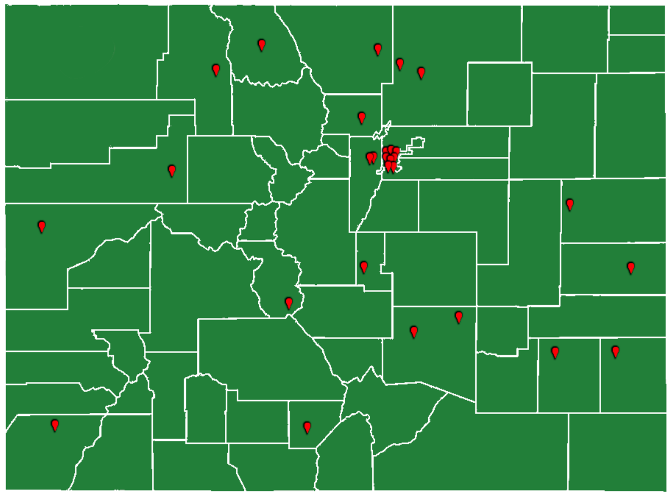
credit-invisibles.pdf; Data Spotlight: Challenges in Rural Banking Access, CFPB *available at* https://files.consumerfinance.gov/f/documents/cfpb_data-spotlight_challenges-in-rural-banking_2022-04.pdf.

[7] *See* 87 CFR 33966.

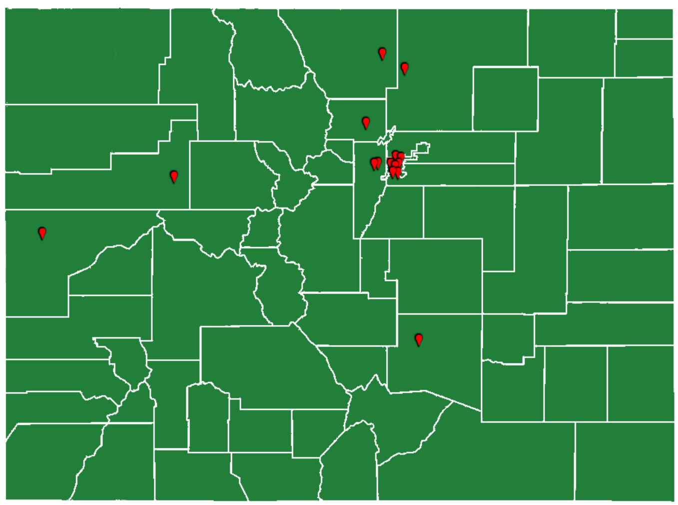
[8] *See* 87 FR 33924

[9] Colorado us one of only six states in which income inequality was greater for rural households than for urban households. Alemayehu Bishaw and Kirby Posey, A Comparison of Rural and Urban America: Household Income and Poverty, Census Blog (12/8/2016) *available at* https://www.census.gov/newsroom/blogs/random-samplings/2016/12/a_comparison_of_rura.html.

Colorado banks currently subject to intermediate performance tests[10]



Colorado banks subject to intermediate performance tests under the proposed rule change



I applaud the agencies' decision to adopt a lower asset threshold for - intermediate banks than the recently updated standard used by the Small Business Administration.[11] However, the proposed threshold would still leave many Colorado communities more vulnerable to the perpetuation of inequitable investment. The CRA should hold more banks to the standards of the new Community Development Financing test and Retail Lending Test. The agencies' rule must strengthen, not weaken, banks' community development investments in rural communities.

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[10] *See* FDIC, Institution Directory Details and Financials *available at* https://www7.fdic.gov/idasp/advSearchLanding.asp

[11] *See* 87 FR 33924.

Bank On, the OFE, and the CRA

The agencies should adopt the Bank On national account standards as a ready-made metric for determining whether a deposit product is responsive to the needs of LMI communities.[12] LMI communities across Colorado, and the country, would be well-served by encouraging more institutions to offer these products.

One of the OFE's initial priorities is to expand access to safe and affordable banking services in Colorado by creating a Bank On Colorado coalition. Bank On Colorado will be a collaboration between the Colorado OFE, financial institutions, community-based organizations, and local government to ensure that all residents have the opportunity to be financially healthy.

Like dozens of other Bank On coalitions across the country, Bank On Colorado partners across sectors will work to connect residents to banking products certified as meeting the Cities for Financial Empowerment Fund's Bank On National Account Standards. Bank On Colorado will also help residents with information about using these products effectively and successfully navigating the consumer finance marketplace. In Colorado, at least 23 banks and credit unions already offer products that meet OFE Fund's national account standards.

The agencies should consider the total number of active Bank On deposit products relative to all active consumer deposit accounts offered by an institution.[13] While many large banks offer Bank On accounts, consumers and community groups report that they are not always well-promoted at the branch level. Metrics encouraging banks to actively market and promote Bank On accounts would be vital to ensure they are available in LMI communities. Analysis of Bank On product usage also supports other industry efforts to track the demand for and use of Bank On-certified accounts, such as through the data collection efforts of the Federal Reserve Bank of St. Louis's Bank On National Data (BOND) Hub. Encouraging banks to proactively offer Bank On deposit products and track metrics on the usage of those products is essential to ensuring that low-cost banking services become used by unbanked and underbanked communities.

The agencies should also allow large banks with assets of less than $10 billion the option to partake in the responsive deposit products evaluation. As noted previously, many large banks with assets over $10 billion offer Bank On products. The agencies should also incentivize banks with fewer assets to offer Bank On accounts, which would further increase the availability of safe and affordable deposit products in LMI communities, particularly those in rural areas.

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[12] Responsive to Question 107, 87 FR 33968.
[13] Responsive to Question 109, 87 FR 33968.

Community development activities

I applaud the inclusion of a non-exhaustive list of qualifying community development activities. Further, I encourage the Agencies to develop and publish a non-exhaustive list of activities that do not qualify as community development activities.[14] Such lists offer regulatory clarity and encourage banks to engage in more innovative practices when developing new community development activities.

I urge the agencies to reconsider their decision to exclude the public and community organizations from proposing activities for inclusion on this list. Accepting submissions from community groups would increase the visibility of activities best tailored to meet the needs of LMI and racially diverse communities. By limiting participation in the process to banks, the agencies risk broadening the misalignment between the activities preferred by banks and the activities that best serve communities.

The CRA should support active participation from community organizations in driving conversations about how banks can best leverage their resources to get CRA credit for community development activities. For example, individual financial coaching and counseling have a proven track record of success in helping LMI communities achieve financial well-being through debt reduction, credit score improvement, cash-flow management, resource navigation, and access to financial products and services. Community organizations have a pulse on the needs of the LMI communities they serve and are thus best equipped to engage banks in the culturally competent delivery of these services.

Banks should also be encouraged to make more significant, longer-term community development investments instead of shorter, smaller contributions that often result in administrative burdens for community organizations seeking these funds. Banks have a more effective, positive impact when they invest in infrastructure: banks can provide or subsidize financial coaching CRM and related technology, underwrite credit report pulls costs, provide physical spaces to house program operations, or subsidize translation or marketing costs. Institutions can also underwrite staff time, including administrative staff and coaching or counseling staff.

Banks can also offer the expertise of their employees. In addition to providing financial education, bankers can provide support programs in many areas, including compliance and policies and procedures development, marketing, communications and design, and train-the-coach support on financial topics.

Mobile and digital banking

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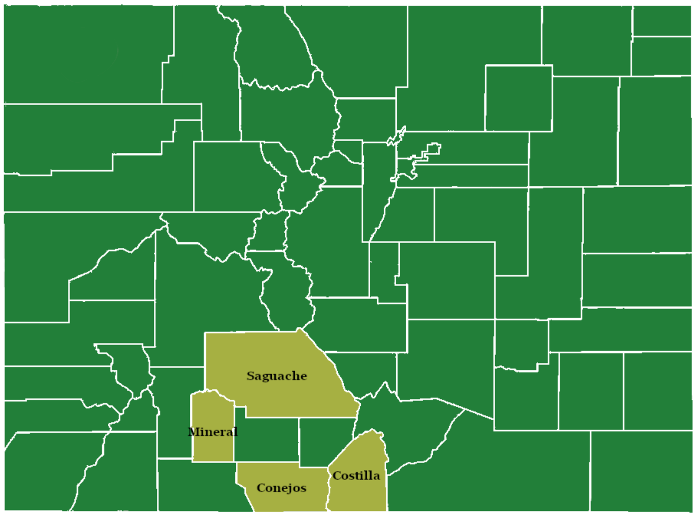
[14] Responsive to Question 31, 87 FR 33912.

The agencies should extend the evaluation of mobile and digital banking options to large banks with assets of less than $10 billion to increase the availability of these products.[15]

Mobile and digital banking are essential services for LMI communities, especially rural communities. As noted in the NPR, mobile or online banking is the primary method banked households use to access their accounts. Many communities rely on mobile and digital banking when a local, brick-and-mortar bank branch is unavailable. Colorado is acutely aware of this problem, with four counties "deeply affected" by the recent spate of bank branch closures.[16]



Small-dollar credit, the OFE, and the CRA

The Colorado OFE also plans to explore cross-sector solutions to expand access to small-dollar credit products that help consumers afford short-term credit needs and build a track record of positive credit history. Similarly, I urge the agencies to encourage and incentivize banks to offer small-dollar loans.

Many financial institutions do not currently offer small-dollar credit products to their customers. Consumers who lack access to credit cards or lines of credit often turn to higher-cost lenders to smooth cash-flow issues and address unexpected expenses. These products often do not offer opportunities for consumers to build positive credit history through credit reporting to major credit bureaus. These consumers remain constrained in their options for credit.

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[15] Responsive to Question 103, 87 FR 33965.

[16] *See* Perspectives from Main Street: Bank Branch Access in Rural Communities, Board of Governors of the Federal Reserve System, figure 1, *available at* https://www.federalreserve.gov/publications/november-2019-bank-branch-access-in-rural-communities.htm#xfigure1-countiesdeeplyaffectedbyban-a0aa696d. Deeply affected means a county that had 10 or fewer branches in 2012 and lost at least 50 percent of those branches by 2017. See

Offering safe, affordable credit products that use data available to the depository institution, including responsibly designed and implemented alternative underwriting (as opposed to only traditional credit history), is another way for banks to be responsive to community needs. These products can and should be an onramp for those who are credit invisible, with limited credit history, and rebuilding credit histories to graduate to lower-cost, longer-term products over time, eventually helping open doors to both small-business development and asset-building capital opportunities. For these reasons, I commend the agencies' consideration of responsibly designed and implemented reliance on alternative credit histories as an innovative lending practice.[17]

Conclusion

In conclusion, many of the proposals put forth by the agencies in this NPR will have a broad and positive impact. I applaud the agencies for the work they have done. However, the inclusion of these amendments to the proposed rule would ensure that the CRA continues to meet the needs of LMI and communities of color, including Colorado communities. I ask that you consider these proposals in light of our experience with the OFE.

I look forward to furthering communications between our office and the opportunity to begin a productive dialog. Please note, I am sending a comment letter to all three agencies.

Sincerely,

[redacted]

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[17] *See* 87 FR 33966