NATIONAL ASSOCIATION FOR LATINO COMMUNITY ASSET BUILDERS

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Office of the Comptroller of the Currency

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FEDERAL RESERVE SYSTEM

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064-AF81

To Whom it May Concern:

We write in response to the May 5th, 2022, joint Notice of Proposed Rulemaking (NPR) released by the Federal Reserve, the Office of Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) to modernize the Community Reinvestment Act (CRA) regulations. The CRA was enacted in 1977 to combat redlining, the practice of denying credit to borrowers in geographic areas based on demographics such as race or ethnicity. [1] Decades of such discrimination contributed to the racial wealth gap that persists today. NALCAB appreciates the opportunity to submit comments to strengthen this law.

NALCAB – the National Association for Latino Community Asset Builders is a nonprofit intermediary and certified Community Development Financial Institution (CDFI). We represent and serve over 180 nonprofit community development organizations across the country. Over half of our members are lenders, more than 50 of which are certified CDFIs. Many of the people served by the NALCAB Network are low- to moderate-income (LMI) individuals who are first- or second-generation immigrants. These organizations uplift Latino communities by strengthening access to capital, technical assistance, and the ability to start and grow successful businesses.

A main tool of the Federal Government to combat redlining, the CRA requires banks to meet the credit needs of the communities in which they are chartered, including LMI neighborhoods. [2] Despite the intent to

[1] Federal Reserve of Chicago, The Effects of the 1930s HOLC "Redlining" Maps (Revised August 2020)
[2] USCODE-2013-title12-chap30.pdf (govinfo.gov)

curb redlining, evidence continues to mount that modern-day redlining persists, as people of color and LMI communities disproportionately still face obstacles in accessing affordable credit and other financial services.

The joint rule makes important improvements to the CRA regulation including providing greater transparency and clarity for stakeholders, raising the bar for the performance of banks, recognizing the importance of CDFIs, and incorporating safeguards against displacement as well as strengthening disaster and climate resilience in LMI communities. That said, it must be noted that the statutory of intent of the law is equity – which means, 'dealing fairly and equally with *all* concerned'. We offer specific feedback on the joint rule throughout our comments. Here are the main points.

Enhance Qualifying Activities to Better Reflect the Needs of Local Communities – NALCAB urges the agencies to increase protections to help guard against involuntary displacement which Latinos experience at higher rates than their White peers. [3] A study by the National Community Reinvestment Coalition (NCRC) shows that 3 out of 4 neighborhoods "redlined" on government maps 80 years ago continue to struggle economically and are more likely than other areas to comprise lower-income, minority residents. [4] We recommend that race and ethnicity conscious activities be clearly incorporated into qualifying activities and impact scores encouraging banks to engage in activities that are particularly impactful for borrowers of color and communities of color.

Stronger CRA Exams – NALCAB supports stronger exam criteria to ensure that performance test standards and the evaluation framework meaningfully encourage banks to invest in community development and offer sound financial products and practices. While the proposed reforms are a welcome starting point improvements must be made to guard against ratings inflation.

We support the use by examiners of a race conscious performance context to inform an examiner's analysis and conclusions when conducting CRA examinations. For example, if an assessment area has a large population of people of color or a particular racial or ethnic group and/or Limited English Proficient (LEP) residents, that remains disadvantaged regarding access to credit, the performance context should note this. The examiner should then assess whether the bank is addressing the needs of these borrowers.

CRA exams must examine affordability and sustainability of lending to prevent abusive practices. While accountability for discrimination will likely increase under this proposal, reviews of lending should include affordability analyses and impose penalties when banks offer, on their own or in partnerships with non-banks, abusive, high-cost loans that exceed state usury caps and that exceed borrowers' abilities to repay.

Comprehensive and Publicly Available Data – NALCAB urges the agencies to include race and ethnicity data in bank performance context. The NPR maintains an emphasis on serving LMI communities and fails to incorporate race and ethnicity in demographic data in the examination process. Disaggregated data by race and ethnicity allows the regulators and the public to fully assess a bank's performance in meeting the credit needs of its entire community. Additionally, the agencies proposed to include new data collecting

[3] The State of Latino Housing, Transportation, and Green Space (salud-america.org)
[4] HOLC "redlining" maps: The persistent structure of segregation and economic inequality » NCRC

requirements for deposits, community development activities and automobile lending. Some of this data such as deposit and automobile lending would not be publicly available which also limits the extent to which the public can hold banks accountable. [5]

Responses to specific questions in the NPR:

NALCAB is pleased to see that the agencies have expanded the number of community development (CD) activities that would benefit LMI communities from four to eleven. We believe the proposed revised community development definitions will increase clarity of eligibility criteria for different community development activities and establish specific eligibility standards for a broad range of community development activities. While an overall improvement from current law, to further better the impact on Latinos and communities of color we offer the following suggestions and responses to questions in the NPR.

Question 10 – What changes, if any, should the agencies consider ensuring that the proposed affordable housing definition is clearly and appropriately inclusive of activities that support affordable housing for low-or moderate-income individuals, including activities that involve complex or novel solutions such as community land trusts, shared equity models, and manufactured housing?

To ensure that the proposed affordable housing definition is clearly and appropriately inclusive of activities that support affordable housing for LMI individuals and minorities, NALCAB supports innovative financing that includes Community Land Trusts and shared equity models. Shared equity models provide LMI communities with the opportunity to build equity through homeownership and ensure residents are not displaced - 69% of Community Land Trust residents are people of color.[6]

Manufactured housing is a significant source of unsubsidized affordable housing in this country. In the US there are close to 22 million people that live in manufactured housing.[7] Investing in this sector of the housing market increases quality housing and homeownership opportunities for those who may not be able to afford the cost of a site-built home. While Latinos occupy just 9% of site-built homeownership units nationwide, they own 13% of all manufactured homes.[8] It is important to preserve affordability in manufactured housing communities vulnerable to displacement due to their age or real estate market appreciation.

Additionally, the agencies propose to replace the current revitalization and stabilization activities component of the community development definitions with six new categories of activities. Each of the categories focus on place-based activities that benefit residents in targeted geographies: (i) revitalization; (ii) essential community facilities; (iii) essential community infrastructure; (iv) recovery activities in designated disaster areas; (v) disaster preparedness and climate resiliency activities; and (vi) qualifying activities in Native Land

[5] Notice of Proposed Rulemaking Community Reinvestment Act (treas.gov) p. 553
[6] Community Land Trusts (CLTs) (community-wealth.org)
[7] Manufactured Homes | Manufactured Housing Share Vs Site Built on the Rise Across The U.S.
[8] "Manufactured Homes: A Key Element in Growing Latinx Homeownership" Prosperity Now, (2021): https://prosperitynow.org/sites/default/files/resources/Manufactured-Homes-Latinx-Commmunities_v2.pdf.

Areas. NALCAB supports that the agencies have adopted an anti-displacement provision for LMI residents in the case of place-based revitalization activities as people of color are particularly vulnerable to displacement. [9] However, we recommend that this anti- displacement safeguard also apply to the housing provisions.

Question 14. Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)? If so, are there appropriate standards for plans, programs, or initiatives? Are there alternative options for determining whether place-based definition activities meet identified community needs?

NALCAB understands the goal of encouraging collaboration among banks and local governments. However, we do not agree with requiring that the place-based activities be conducted in conjunction with a government, plan, program, or initiative. All local governments may not have a program, plan or initiative for the targeted census tracts which would leave the banks unable to find a government partner and therefore these community development activities would not be undertaken. NALCAB suggests that, alternatively, banks partner with local Community Based Organizations with knowledge of and a successful track record of working within the targeted census tract.

Question 15. How should the proposals for place-based definitions focus on benefitting residents in targeted census tracts and also ensure that the activities benefit low-or moderate-income residents? How should considerations about whether an activity would displace or exclude low or moderate-income residents be reflected in the proposed definitions?

The agencies must recognize that there are different types of displacement and that in addition to residents being forced to leave because of rising housing costs there is cultural displacement which takes place when a neighborhood transforms to no longer support the activities, services, and/or goods of a particular ethnic group. The loss of culturally driven commercial corridors and minority owned businesses are examples of such displacement. Data on the number of LMI residents benefiting from the revitalization activities should be part of the Community Development data submissions and considered on impact reviews. In order to demonstrate anti-displacement, the bank can document that the activities did not displace LMI residents and minority owned businesses and that any new large-scale Community Development projects did not reduce affordable housing units or displace small businesses or farms. In its documentation, the bank should include attestations from community based nonprofit organizations that displacement did not occur. We also recommend incorporating an impact assessment for these activities before they take place rather than only measuring impact after the activity.

Question 24 – Activities with Community Development Financial Institutions (CDFIs)

The NPR proposes that all activities with U.S. Treasury Department-certified CDFIs automatically be eligible CRA activities. Specifically, lending, investment, and service activities by any bank undertaken in connection with such a CDFI, at the time of the activity, would be presumed to qualify for CRA credit. That said, we agree with Opportunity Finance Network (OFN) in that language must be clearer to ensure there is

[9] Understanding Gentrification and Displacement (utexas.edu)

no ambiguity about the treatment of CDFIs. We urge the agencies to retain and emphasize language that places all CDFIs on an equal footing with Minority Depository Institutions (MDIs) and Low-Income Credit Unions (LICUs) as qualifying for CRA consideration regardless of their location relative to a bank's assessment area.

The agencies also seek feedback on whether activities undertaken by an MDI or Women-owned Depository Institution (WDI) to promote its own sustainability and profitability should qualify for consideration but does not include CDFI banks in this section.[10] There should be clear language explicitly including CDFI banks within this category of mission-driven lenders.

Question 27. Should consideration of financial literacy activities expand to include activities that benefit individuals and families of all income levels, including low-and moderate-income, or should consideration be limited to activities that have a primary purpose of benefiting low-or moderate-income individuals or families?

Regarding financial literacy activities, the purpose and intent of CRA is to focus on historically redlined communities and the impact of this discrimination on generations of excluded populations. This includes LMI communities but also communities of color. Data analysis including the FDIC surveys of unbanked populations show less access to banking for people of color. Financial literacy and housing counseling to people of color of all income levels should count since people of color continue to experience widespread discrimination.

Question 49. The agencies' proposed approach to tailoring the performance tests that pertain to each bank category aims to appropriately balance the objectives of maintaining strong CRA obligations and recognizing differences in bank capacity. What adjustments to the proposed evaluation framework should be considered to better achieve this balance?

NALCAB urges the agencies to reconsider the performance framework as it relates to the weighting of each test and incentivize banks to engage in community development services to help ensure consistent emphasis on diverse community credit needs. The community development services test would assess a bank's record of helping to meet the community development services needs in the bank's facility-based assessment areas, states, multistate MSAs, and nationwide areas. The evaluation would include a review of the impact and responsiveness of these activities to community needs. The current proposed evaluation framework is as follows - retail lending is worth 45%, retail services is worth 15%, community development finance worth 30% and the community development services test is worth 10%.

Under the current proposal, the community development (CD) services test examines how banks offer financial counseling and technical assistance to their communities, this proposal also allows for banks to use other resources and expertise available to them such as their information technologies, legal or human resources departments as part of the eligible activities counted towards the CD services test. NALCAB appreciates the new method of evaluation, however the CD services test must be weighted higher than 10% to ensure that Latino and low-income communities have access to the financial counseling and technical assistance needed to navigate loans and other financial products and services offered, and to ensure the products they are receiving are both safe and non-predatory. Ultimately, the CD services test and its eligible

[10] Page 93 of NPR.

activities will not have the intended impact of incentivizing banks to engage in these projects at just 10%. At that weight the CD services test score cannot change a banks overall score to 'Outstanding' when they are close or fail a bank when they only score well on the retail tests- there is no incentive.

Community development services and the resources it provides like counseling and technical assistance are vital to our communities as Latino households are unbanked at a rate of over 12% according to the FDIC, more than double the rate of White households.[11] Thus, an increased emphasis and weight in the evaluation framework for the CD services test is vital to incentivize banks to work with traditionally underserved populations and communities who often lack the resources to enter into the traditional banking system and should benefit from CRA most.

Question 62. Should the agencies adopt a size standard for small business loans and small farm loans that differs from the SBA's size standards for purposes of the CRA? Is the proposed size standard of gross annual revenues of $5 million or less, which is consistent with the size standard proposed by the CFPB in its Section 1071 Rulemaking, appropriate? Should the CRA compliance date for updated "small business," "small business loan," "small farm," and "small farm loan" definitions be directly aligned with a future compliance date in the CFPB's Section 1071 Rulemaking, or should the agencies provide an additional year after the proposed updated CRA definitions become effective?

NALCAB supports replacing the current CRA small business data with the CFPB's Section 1071 database because the Section 1071 data would be more comprehensive and include race and gender of the small business owner. As noted in our public comments regarding the Section 1071 rule, we believe the definition of small business to encompass manufacturing businesses with 500 or fewer employees and other businesses with gross revenue up to $8 million.

Question 63. Should the agencies' current small business loan and small farm loan definitions sunset on the compliance date of the definitions proposed by the agencies?

NALCAB suggests that the current definitions of small business and small farm loans should switch to the Section 1071-driven definitions the first full year of availability of the Section 1071 data, as stated above this data will include more comprehensive demographic data of the small business owner.

Question 101. Should affordability be one of the factors in evaluating digital and other delivery systems? If so, what data should the agencies consider?

Yes. According to the most recent FDIC survey of Household Use of Banking and Financial Services, the unbanked ranked cost as a main barrier to establishing accounts. Nearly 49% of FDIC survey respondents stated they did not have enough money to avoid charges associated with not maintaining minimum balances and 34% indicated that bank fees were too high.[12] When asked about fees such as ATM, overdraft and routine service charges, Latinos reported paying $14 a month on average for checking accounts at banks or credit unions while White checking account holders said they are paying an average $5 per month, according

[11] How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey
[12] How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey

to a survey conducted by YouGov. [13] That said, affordability is key to CRA's mandate to serve all communities with banking services and products. The agencies should consider collecting data on monthly fees, fees charged for falling below minimum balances and overdraft fees.

Question 104. Are there additional categories of responsive credit products and programs that should be included in the regulation for qualitative consideration?

We appreciate the important examples of responsive credit products that the agencies have included in the NPR such as small dollar mortgages (loan amounts generally under $100,000), consumer lending that uses alternative credit histories as opposed to credit scores, and microloans with loan amounts usually under $50,000. In addition, products offered in conjunction with CDFIs would be included in this review, which will help increase the volume of these products and in turn increase access to credit products and programs to people of color, who on average, comprise 58% of CDFIs borrowers.

NALCAB urges the agencies to include affordable products geared to borrowers with Limited English Proficiency (LEP) in this category. The Urban Institute documented that 5.3 million households are LEP and that homeownership rates are lower in zip codes with higher rates of LEP households.[14] The CFPB reported that the FDIC has found considerably higher rates of unbanked households among Spanish speakers than among non-Spanish speakers. Moreover, the CFPB cited studies conducted by the California Reinvestment Coalition finding that LEP borrowers had difficulty negotiating loan modifications. [15] CRA should be used to encourage banks to offer responsible products for LEP consumers.

Question 106. Should special purpose credit programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of loan product or program that facilitates home mortgage and consumer lending for low-and moderate-income individuals?

Special Purpose Credit Programs (SPCPs) should be formally recognized by the CRA regulation. Under the Equal Credit Opportunity Act (ECOA) and Regulation B, financial institutions can establish SPCPs to extend credit to persons that probably would not otherwise receive it or would receive it on less favorable terms, 12 CFR 1002.8; 15 U.S.C. § 1691(c). These programs can require applicants to share one or more common characteristics (for example, race, national origin, or gender) and this is what makes SPCPs unique and particularly valuable to Latino borrowers. SPCPs permit lenders to reach historically underserved communities for targeted benefits and can effectively complement other lending efforts.

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, childcare programs and other

[13] The Best Banks of 2022 - Bankrate Awards

[14] Edward Golding, Laurie Goodman, and Sarah Strochak, *Is Limited English Proficiency a Barrier to Homeownership?*, Urban Institute,https://www.urban.org/sites/default/files/publication/97436/is_limited_english_proficiency_a_barrier_to_homeownership.pdf

[15] Consumer Financial Protection Bureau (CFPB), *Spotlight on serving limited English proficient consumers: Language access in the consumer financial marketplace,* November 2017, p. 13, https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf

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. The final regulation must indicate that SPCPs can include programs that focus on either people of color or communities of color.

Question 108. The agencies wish to encourage retail banking activities that may increase access to credit. Aside from deposit accounts, are there other products or services that may increase credit access?

Financial counseling, particularly culturally competent financial counseling, is a product or service that can increase credit access. More responsive counseling should be results oriented so the agencies should encourage banks to ask clients to track progress toward improving credit history or savings. The banks should encourage clients to report results to the banks, which the banks can then include in data submissions to the agencies. We encourage banks to partner with nonprofit community development organizations that have relationships with unbanked and underbanked communities and a record of success in providing culturally competent financial counseling services.

Question 156. Should banks collect and report an indicator for whether the loan was made to a business or farm with gross annual revenues of $250,000 or less or another gross annual revenue threshold that better represents lending to the smallest businesses or farms during the interim period before the CFPB Section 1071 Rulemaking is in effect?

NALCAB appreciates that the agencies are considering a performance measure of loans to small businesses with revenues of $250,000 or less. Thus, during the interim period before Section 1071 is in effect, the CRA data should have a field indicating if the business had revenues in this range.

In addition, another performance measure of loans to small businesses with revenues of $100,000 or less should be considered since businesses with this revenue size are most likely start-ups and disproportionately owned by people of color or women. The data should have an indicator for revenues of $250,000 to $100,000 and another indicator for revenues of $100,000 and less.

Question 158. Should large banks with assets of $10 billion or less be required to collect, maintain, and report automobile lending data? Does the added value from being able to use these data in the construction of metrics and benchmarks outweigh the burden involved in requiring data collection and reporting by these banks?

A 2018 study by the National Fair Housing Alliance finds that consumers are highly likely to experience discrimination when shopping for an auto loan. In auto loan test findings, people of color received more costly pricing options 62.5% of the time, compared to their white counterparts.[16] To further protect against discrimination in auto lending we recommend that large banks report automobile lending data.

Question 175. Is there additional data the agencies should provide the public and what would that be?

To increase the quality and quantity of data available to the public we encourage the agencies to develop a clearly defined list of economic and demographic indicators for metropolitan areas and rural counties such

[16] Discrimination-When-Buying-a-Car-FINAL-1-11-2018.pdf (nationalfairhousing.org)

as housing cost burdens, vacancy rates, unemployment rates and percent of households in poverty that can be used by the public to help develop comments regarding performance context. The demographic indicators should include racial and ethnic breakdowns as well as homeownership and small business ownership rates by race and ethnicity.

Question 177. Should the agencies ask for public comment about community credit needs and opportunities in specific geographies?

Yes, the agencies should ask about community needs and opportunities in specific geographic areas. The agencies could ask, for example, whether the affordable housing shortage affects homebuyers or minority tenants or other specific subgroups of the population such as immigrants or LEP residents. This helps enable examiners to assess whether banks have designed programs and/or products targeting clearly identified needs. Additionally, agency staff should ask about support offered to community-based nonprofit organizations. The questions should not be solely general such as whether funding is adequate but should ask about certain types of financing from grants to line of credit.

Conclusion

Earlier this year Acting Comptroller of the Currency Michael J. Hsu emphasized that increased lending stimulated by CRA reform would help reduce income and racial gaps in homeownership and small business ownership, which would be critical to reducing wealth gaps. NALCAB agrees that overall, the proposed rule makes much needed improvements to the law and we applaud the coordinated interagency approach to CRA modernization. That said, we look forward to working together to make greater enhancements to meet the statutory intent of the law more closely. The CRA aims, "to encourage banks to help meet the credit needs of the local communities in which they are chartered," 12 U.S.C. § 2901(b), and regulators are to, "assess the institution's record of meeting the credit needs of the entire community, including low- and moderate-income neighborhoods," id. § 2903(a)(1). Simply put borrowers and communities of color are part of these communities. Regulators must look at the constituent parts of a community to aid in evaluating performance in the "entire community".

Sincerely,

[redacted]

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