



August 3, 2022

Re: CRA NPR Comments
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:

The Initiative for a Competitive Inner City (ICIC) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding updating the Community Reinvestment Act (CRA). This NPR represents the most significant changes to the CRA regulation and exams in 27 years.

The CRA has had an enormous impact in providing credit, investments, and financial services to underserved communities throughout the nation. Yet significant gaps remain in CRA rules and implementation and the promise of CRA has not yet been realized. The agencies propose important improvements to the CRA regulations, including increasing the rigor of the subtests on CRA exams, expanding geographical areas on CRA exams, and collecting more data to scrutinize bank performance. However, the proposed rule does not sufficiently address racial inequities and missed some other important opportunities to strengthen the regulations.

ICIC is a national research and economic development organization dedicated to reducing concentrated poverty and closing the racial wealth gap. Through innovative research and programs, we drive inclusive prosperity in under-resourced communities by creating jobs, income, and wealth for local residents. A key component of our work is technical assistance programming for small businesses located in under-resourced communities and/or owned by people of color. Some of our programming is supported by banks, which receive CRA credit for that support. Thus, the CRA is essential to us both because it encourages banks to support our work and because it independently advances our goal of a racially equitable economy without large concentrations of poverty.

CRA should explicitly consider bank activity by race and ethnicity

Although the CRA statute does not mention race, it was intended to combat and reverse the consequences of redlining, which disproportionately harmed people of color and was largely responsible for the creation and maintenance of racially segregated neighborhoods. The statute requires banks to serve all communities. This provides room for the agencies to incorporate race in CRA exams. Persistent racial disparities in lending should compel them to do so. A recent National

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Founded by renowned Harvard Business School Professor Michael E. Porter, the Initiative for a Competitive Inner City (ICIC) drives inclusive economic prosperity in under-resourced communities through innovative research and programs to create jobs, income and wealth for local residents.

Community Reinvestment Coalition analysis showed that racial disparities in loan denials persist and that when people of color receive home loans they accumulate less equity than white borrowers.¹

The CRA should require banks to serve borrowers and communities of color. Closing the racial wealth gap will make the nation and the economy 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 people and communities of color, similar to the way banks are evaluated on their performance in meeting the needs of low and moderate income (LMI) borrowers and communities. Urban Institute analysis shows that LMI communities and communities of color are not the same.² Bank records in extending fairly priced credit to business, home mortgage, and consumer borrowers of color, financing community development, opening responsive account products, and opening and maintaining branches in communities of color should factor into a bank's CRA rating. The proposed rule misses the opportunity to impose such a requirement and offers little as an alternative approach to addressing redlining and discrimination. Even if the agencies believe that they are not legally permitted to mandate consideration of racial lending disparities outside of communities defined by race-neutral criteria, they should at least require them to be part of CRA review within those communities.³ For example, they should require CRA exams to include lending by race and ethnicity in geographic areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending.

The agencies' proposal to disclose HMDA mortgage lending data on performance evaluations does not go far enough. The agencies propose to use the Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race, but not to use the results of these analyses to influence a bank's rating. At a minimum, this proposal should also require all banks to place these home lending data tables and maps 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 affect CRA ratings.

While we believe the agencies can examine banks' record of lending to race, the agencies should at least bolster fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race. In addition, the agencies proposed using Section 1071 data on small

¹ National Community Reinvestment Coalition, *NCRC 2020 Home Mortgage Report: Examining Shifts During COVID-19*, January 2022, <https://www.ncrc.org/ncrc-2020-home-mortgage-report-examining-shifts-during-covid/>.

² Laurie Goodman et al., *Should the Community Reinvestment Act Consider Race?* January 2022, https://www.urban.org/sites/default/files/2022-04/should-the-community-reinvestment-act-consider-race_1.pdf.

³ See Brad Blower et al., *Adding Robust Consideration of Race to Community Reinvestment Act Regulations: An Essential and Constitutional Proposal*, National Community Reinvestment Coalition, September 2021, <https://www.ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/>.

business lending by race and gender of the business owner. These data should be used as a screen for fair lending reviews.

The proposal raises the question whether CRA evaluations should consider Special Purpose Credit Programs (SPCPs). But although SPCPs are meant to serve groups protected by fair lending laws, the proposal ponders SPCP evaluation only as to their impact on LMI consumers. 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. 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 so important even if their reach is limited.

The proposed rule includes a desirable expansion of the definition of discrimination to include transactions beyond credit and lending, such as where 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. The Government Accountability Office recently found that fair lending reviews at the Office of the Comptroller of the Currency were outdated and inconsistent.⁴ 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 disparate impacts relating to displacement financing, fee gouging or climate degradation, should always result in automatic CRA ratings downgrades, if not outright failure. A bank that discriminates cannot be said to be doing a satisfactory job serving the community.

CRA exams should give banks an incentive to lend and conduct community development activities in communities of concentrated poverty

The CRA should not only take race into account but also do a better job of addressing the needs of large communities of concentrated poverty, where the spatial clustering of poverty exacerbates the challenges faced by low-income residents and the small businesses that serve them. The current use of LMI census tracts as the geographic areas of interest for CRA reviews does not sufficiently identify those communities. LMI communities include individual census tracts that are not adjacent to other high-poverty tracts as well as tracts in which the vast majority of residents are college students, prison inmates, or nursing home residents, who are not intended to be the primary beneficiaries of CRA lending or community development activities. CRA evaluations should give banks more credit for

⁴ U.S. Government Accountability Office, "Fair Lending: Opportunities Exist to Enhance OCC's Oversight of Banks' Lending Practices," GAO-22-104717, June 21, 2022, <https://www.gao.gov/products/gao-22-104717>

lending and community development activities in large communities of concentrated poverty than in other LMI census tracts. For metropolitan areas with populations of at least 250,000, ICIC has developed a definition of “under-resourced communities” that identifies groups of two or more contiguous tracts that are characterized by large combined populations, high non-student poverty rates, low median household incomes, and college student and group quarters populations that fall below specified percentages.⁵ For smaller metropolitan, rural, semirural, and exurban areas, we have applied similar poverty and income criteria and student and group quarters exclusions at the level of the individual county (or portion of the county excluded from our under-resourced community definition) to identify communities of concentrated poverty. CRA evaluations should use these or similar definitions to determine the communities in which banks should be given the greatest incentive to lend and finance community development.

Small business revenue threshold should remain at \$1 million

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 less than \$250,000 in gross annual revenue (as proposed), as well as (2) lending to businesses with less than \$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. Yet we are surprised and disappointed by the proposal to define small businesses as ones with \$5 million or less in gross annual revenue, an increase from the current revenue threshold of \$1 million. 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 (and which could change). Approximately 95 percent of small businesses, 97.7 percent of minority-owned businesses and 98.3 percent of women-owned businesses have less than \$1 million in annual revenue,⁶ so to raise the threshold to \$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 businesses owned by women or people of color and for businesses with less than \$1 million in revenue. Larger businesses do not need the CRA’s encouragement to borrow from banks but banks may gravitate to larger businesses and away from small businesses if permitted to do so.

⁵ See Peter Eberhardt, Howard Wial, and Devon Yee, *The New Face of Under-Resourced Communities*, Initiative for a Competitive Inner City, October 2020, pp. 5-6, <https://icic.org/wp-content/uploads/2020/10/The-New-Face-of-Under-Resourced-Communities.pdf>. The definition also excludes exurban and semi-rural areas at the fringes of metropolitan areas.

⁶ See https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf.

CRA rules should give banks credit for using alternative underwriting standards

Banks commonly use credit scores, collateral, and business or home equity as their primary means of assessing borrowers' likelihood of repaying loans. This practice makes it more difficult for individuals, including small business owners, to obtain loans if they have poor or no credit histories, no or minimal collateral, or no business or home equity, even if they also have solid histories of making timely payments on other recurring financial obligations. People of color, low-income people, and the owners of unincorporated small businesses are among those most harmed by banks' over-reliance on credit histories to make loan decisions. CRA rules should encourage banks to use alternative factors, such as timely payment of bills, rent, and small-dollar loans not included in credit scores, to make loan decisions for applicants who do not score highly on conventional underwriting criteria.⁷ Banks should receive extra credit on their CRA exams if they use these alternative criteria in making loan decisions for all loan applicants who would not otherwise be eligible for loans.

Reducing CRA ratings inflation: progress on the lending test of the large bank exam but not as much on the other subtests

Currently, about 98 percent of banks pass their CRA exams on an annual basis. Fewer than 10 percent receive an Outstanding rating and almost 90 percent receive a Satisfactory rating.⁸ CRA has successfully leveraged more loans, investments and services for LMI communities but it would be more effective in doing so if the ratings system more accurately revealed distinctions in performance. More banks would be identified as significantly lagging their peers, which would motivate them to improve their ratings and increase their reinvestment activity.

The agencies bolstered the rigor on the large bank retail lending test by introducing performance ranges for comparisons among a bank's lending and demographic and market benchmarks. This quantitative approach would decrease ratings inflation and result in more failing and low satisfactory ratings on the lending test. As a result of this proposed reform, several banks would likely respond by boosting their retail lending to underserved communities.

The agencies proposed improvements to the other subtests of the large bank exam but did not establish as many guidelines for the performance measures, which could contribute to inflation on the subtests. The community development finance test, for example, will consist of a quantitative measure of a bank's ratio of community development finance divided by deposits. The bank's ratio will be compared to a local and national ratio. The agencies, however, did not provide enough guidelines to

⁷ This proposal is based on one of Beneficial State Foundation's Equitable Bank Standards, which the foundation developed in partnership with community bankers, finance experts, economic justice advocates, and academic researchers. See Beneficial State Foundation, *Equitable Bank Standards*, EB.01, April 2022, <https://beneficialstate.org/wp-content/uploads/2022/03/Equitable-Bank-Standards-EB.01.pdf>.

⁸ Josh Silver and Jason Richardson, *Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data*, National Community Reinvestment Coalition, May 2020, <https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/>.

examiners for comparing the bank's ratio to either the local or national ratio, making it possible for an examiner to inflate a rating by choosing the lowest comparator ratio.

The possibilities of misplaced examiner discretion can also occur on the retail services test and the community development services test. The retail services test contains quantitative measures comparing a bank's branch distribution to market and demographic benchmarks but does not provide enough instructions to examiners about how to weigh these benchmarks. We believe that it is possible for the agencies to further develop guidelines for how to use the performance measures on the community development and services subtests of the large bank exam to produce a uniformly rigorous CRA exam and guard against ratings inflation.

CRA rules should provide stronger incentives to open and maintain branches in communities where the need is greatest

The agencies propose to revise the Retail Services and Products test. We urge them to retain core consideration of branch access as part of the CRA and to expand bank branch obligations in a more meaningful way. Analysis by the National Community Reinvestment Coalition shows a tremendous and detrimental march by banks to close branches, especially in low-income communities, rural communities, and communities of color.⁹ More local branches mean more local jobs, more small business lending in the community, and fewer visits to fringe financial providers such as check cashers and payday lenders. The CRA rules should clearly penalize branch closures and poor coverage in LMI communities, rural communities, and communities of color and encourage through impact scoring the opening of new branches in those communities.

Assessment areas are expanded to include online lending but performance in smaller areas needs to be considered more carefully

For several years, advocates have urged the agencies to examine lending that occurs online. The agencies propose to create retail assessment areas where a large bank does not have branches when a bank has issued 100 home loans or 250 small business loans. This proposal would result in the great majority of total lending being incorporated on exams and would, therefore, hold non-traditional banks more accountable for serving LMI communities.

We ask the agencies to expand upon their proposal to include partnerships with banks and non-banks for retail lending. When a bank partners with more than one non-bank, the lending of all the non-banks needs to be totaled together for calculating if the threshold is exceeded for purposes of creating assessment areas.

⁹ Jad Edlebi, Bruce C. Mitchell, and Jason Richardson, *The Great Consolidation of Banks and Acceleration of Branch Closures Across America: Branch Closure Rate Doubled During the Pandemic*, National Community Reinvestment Coalition, February 2022, <https://www.ncrc.org/the-great-consolidation-of-banks-and-acceleration-of-branch-closures-across-america/>.

To ensure that banks serve smaller metropolitan areas and rural counties, the agencies propose requiring that banks with 10 or more assessment areas must receive at least a Low Satisfactory rating in 60 percent of the assessment areas in order to pass overall. This still may not be an adequate solution because the smaller areas could represent a minority of areas, allowing a bank to pass the 60 percent threshold by focusing on the larger areas. One possible fix is to require banks to achieve at least a Low Satisfactory rating of 60 percent in each of its large metropolitan, small metropolitan, and rural assessment areas.

The proposed changes in size thresholds for small and intermediate small banks (ISB) would reduce community reinvestment activity

By adjusting asset thresholds for qualifying for various CRA exams, the agencies proposed to reclassify 779 ISB banks as small banks, which would involve no longer holding these banks accountable for community development finance. In addition, the agencies proposed to reclassify 217 large banks as ISB banks, eliminating their service test and accountability for placing branches in LMI communities. These changes lack justification since these banks have been successfully performing these activities for several years. We urge the agencies to eliminate this aspect of the NPR because it would reduce reinvestment activity.

Data improvements will help hold banks accountable but all new data should be publicly available

The agencies correctly propose to include new data collecting requirements for deposits, community development activities, and automobile lending. Some of these data, such as deposit and automobile lending data, would not be publicly available. This limits the extent to which the public can hold banks accountable for reaching underserved communities. We ask the agencies to reconsider this decision and also to expand data collection to all large banks instead of just banks with assets of more than \$10 billion in the case of deposits and automobile lending. Furthermore, CRA exams should not only analyze access to deposit accounts for LMI communities but also affordability by comparing and refining, if necessary, fee information collected in call report data.

Accountability for discrimination will increase but the agencies need to bolster their reviews concerning the quality of lending

The agencies propose to include all activities and products including deposit accounts in addition to credit in antidiscrimination and consumer protection legal reviews. This is an important advance but we urge the agencies to expand their reviews to include the quality of lending. For example, Massachusetts CRA exams include analysis of delinquency and defaults rates in home lending. Federal CRA exams should do the same in all major product lines. Moreover, reviews of lending must include an affordability analysis 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. We are also pleased that the agencies added the Military Lending Act to the list of laws to be included in the fair lending review but we urge them to add the Americans with Disabilities Act as well.

Enhancements to community development definitions will increase responsiveness of banks to community needs but the proposed rule needs to be strengthened to better promote affordable housing and discourage displacement

The agencies propose refinements to the definitions of affordable housing, economic development, climate resiliency and remediation, community facilities and infrastructure that we believe will more effectively target revitalization activities to communities such as persistent poverty counties and Native American communities.

The NPR clarifies that financing health services qualifies under the definition of community support services. Essential community facilities now include hospitals and health centers without current documentation requirements, applied inconsistently, that the financing attract and retain residents to the community. This streamlining would boost financing of critical community infrastructure.

However, the community development finance test will include an impact review, which must be further developed and include points and ratings (as other subtests do) so that the test can be even more effective in stimulating responsive community development activities. **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 community development activities. For the most part, CRA credit should only be provided where the majority of beneficiaries are in fact, LMI or people of color, or businesses owned by them, regardless of where the activity occurs or with whom.**

Affordable housing. Affordable housing remains a perennial need and priority. Mission-driven and community organizations have developed impressive capacity to use the scarce resources available to create affordable homes. However, the proposed rule threatens to damage one of the key tools in this limited affordable housing development infrastructure by doing away with the separate community development lending and community development investment tests. By combining community development lending and community development investing, we are 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 community development 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 community development lending and community development 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 likely remain affordable in order to qualify for CRA credit. But the agencies need to go further to discourage banks from financing residential and commercial displacement. While the proposal appears to refuse CRA credit for certain community development activities if they result in displacement, this requirement must be extended to all community development activity. Regulations

should not allow community development credit unless banks can demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting, UDAAP, and other laws. Banks should engage in due diligence on the beneficial owners of LLC property owners— data they already collect—to determine whether there are any concerns relating to eviction, harassment, complaints, rent increases, or habitability of potential bank borrowers. 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. Because displacement often has a disparate impact on people of color and businesses they own, examiners should consider disparate displacement financing to be discrimination, perhaps under the expanded definition, that should trigger CRA ratings downgrades and subject banks to potential enforcement action. Positive impact points should be given for particularly responsive community development activities that fight displacement, such as support for property purchases of rental housing by community land trusts and other bona fide, mission-driven nonprofit organizations.

Public input mechanisms: agencies propose improvements that must be codified

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. The agencies propose to continue the current practice of sending any comments on CRA performance to banks and are also considering publishing comments received on agency websites.

Posting comments on agency websites will establish accountability on the part of examiners to consider them. In addition, these comments can be referenced during future merger applications to determine if the banks addressed significant concerns of the public. Also, 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, following up on needs identified, and detailing how community input was factored into the results of CRA performance evaluations.

We also agree with **Acting Comptroller Hsu** that the agencies must hold frequent public hearings on large bank mergers. CRA exams, if made more rigorous by a final rule, will help hold merging banks accountable. However, merging banks must also submit a community benefits plan as part of their merger applications which could include community benefits agreements negotiated with community organizations. In addition, we agree with the National Community Reinvestment Coalition that an Outstanding CRA rating must not be considered evidence that merging banks have satisfied the public benefits legal requirement.

Other issues

The agencies should require any bank that receives a less than Satisfactory score on its CRA exam to submit a specific plan to remedy the shortcomings identified in the exam.

Broadband access is especially lacking in LMI communities and communities of color¹⁰ and broadband can be a gateway to many types of CRA activity (banking, jobs, education, health care, etc.). CRA rules should encourage broadband development by allowing for impact scoring and/or partial credit to the extent of LMI and people of color benefit even if that is less than 50 percent.

We ask the agencies to reconsider their proposal to expand CRA consideration for financial literacy with no income limits; scarce counseling resources need to be targeted to LMI and other underserved populations.

We support the proposed rule's consideration of low-income as distinct from LMI persons in the Retail Services and Products and Community Development tests. This change will give banks a greater incentive to lend to benefit the people and communities that are the most important beneficiaries of the CRA.

Conclusion

The NPR is a good start and promises to make parts of CRA exams more rigorous but we urge the agencies to extend the rigor of the large bank lending test to the other tests. We also ask the agencies to incorporate race in CRA exams, provide banks with a greater incentive to lend and conduct community development activities in communities of concentrated poverty, maintain the current size thresholds for small businesses and for small and ISB banks, give banks credit on CRA exams for using alternative underwriting standards, give banks greater incentives to maintain and open branches in the communities that need them most, bolster their assessment area proposal to make sure that smaller communities are not left out, expand the public reporting of their data collection proposals, include the quality of lending on CRA exams, strengthen proposed provisions that promote affordable housing and discourage displacement, and enhance public input mechanisms. If CRA is improved while maintaining public input and accountability, we believe the proposed rule could help reduce inequalities, disinvestment and other disadvantages in America's overlooked communities.

¹⁰ See Sara Atske and Andrew Perrin, Home Broadband Adoption, Computer Ownership Vary by Race, Ethnicity in the U.S., Pew Research Center, July 2021, <https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/>; Emily A. Vogels, Digital Divide Persists Even As Americans With Lower Incomes Make Gains in Tech Adoption, Pew Research Center, June 2021, <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>.

Sincerely yours,



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