

August 2, 2022

Martin J. Gruenberg, Acting Chairman
Federal Deposit Insurance Corporation
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Washington, DC 20429
Via Email to comments@fdic.gov

Michael J. Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
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Via online submission <https://www.regulations.gov/commenton/OCC-2022-0002-0001>

Jerome H. Powell
Chair of Board of Governors
Federal Reserve System
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Via Email to regs.comments@federalreserve.gov

Dear Acting Chairman Gruenberg, Acting Comptroller Hsu, and Chairman Powell:

Fifth Ward Community Redevelopment Corporation (CRC) is a 30+ year old nonprofit serving one of Houston's most economically challenged communities. Residents of color in 5th Ward are often challenged by the availability of banking and lending opportunities. As a HUD-certified Housing Counseling Agency, our organization often works with residents facing financial challenges and is well aware of their struggles. Fifth Ward CRC appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding updating the Community Reinvestment Act (CRA).

CRA has successfully leveraged loans, investments and services. We need to build on this progress and address remaining disparities in lending as part of the proposed modifications. With more rigorous exams and ratings, CRA will be more effective in bolstering bank reinvestment activity in underserved communities. The agencies propose important improvements in the CRA regulation, including increasing the rigor of the subtests on the CRA exams, expanding geographical areas on CRA exams and collecting more data to scrutinize bank performance. However, we feel there are still opportunities to increase effectiveness.

CRA must explicitly consider bank activity by race and ethnicity

Although the CRA statute does not mention race, it required banks to serve all communities, which provides room for the federal bank agencies to incorporate race in CRA exams. Persistent racial disparities in lending should compel the agencies to incorporate race and ethnicity in CRA exams. A recent national level analysis showed continuing disparities in loan denials by race and when people of color receive home loans, their equity



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OUR MISSION STATEMENT:

FIFTH WARD CRC CATALYZES RESOURCES TO BUILD AND PRESERVE AN INCLUSIVE 5TH WARD COMMUNITY BY DEVELOPING PLACES AND OPPORTUNITIES FOR PEOPLE TO LIVE, WORK AND PLAY.



accumulation was less.

The agencies proposed 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. 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 business lending by race and gender of the business owner, and this data should be used as a screen for fair lending reviews. By including race and ethnicity, CRA can identify and address persistent racial disparities that have direct impacts on quality of life and health outcomes.

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 proposed 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, follow up on needs identified and detail 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 they are 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. As further described in recent comments, we agree with Nation Community Reinvestment Coalition (NCRC) that an outstanding CRA rating must not be considered evidence that merging banks have satisfied the public benefits legal requirement.

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% of banks pass their CRA exams on an annual basis with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory. 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 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 in order to produce a uniformly rigorous CRA exam and guard against ratings inflation.

Enhancements to community development definitions and activities will increase responsiveness of banks to community needs

The agencies proposed 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 clarified that financing health services qualifies under the definition of community support services and critical community infrastructure. However, the community development finance test will include an impact review which must be further developed and include points and ratings like other subtests so that the test can be even more effective in stimulating responsive community development activities.

The proposed rule supports allowing consideration of community development activities outside of a bank's assessment area. Because many areas across the nation are remote and far removed from credit opportunities, allowing this flexibility to expand and support affordable housing production and preservation and other community development activities outside of the assessment area will incentivize banks to invest in these high-need remote areas.

We also recommend that the final rule recognize the important role housing counseling by HUD approved housing counseling agencies provides in addressing income, race, and ethnic barriers in the market place and provide higher value in support for housing counseling in the CRA evaluation process. The final rule should specifically recognize lender fee-for-service payments for housing counseling services by HUD approved

housing counseling agencies as an eligible activity under the Community Reinvestment Act.

Additionally, the current proposed rule does not include Low Income Housing Tax Credits (LIHTC) as an impact factor for CRA. We propose the agencies include LIHTC when measuring community impact, as allocations of this housing credit prioritize areas within a state or local jurisdiction that can benefit most primarily from expanding affordable housing options and addressing community needs.

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

The agencies correctly proposed to include new data collecting 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 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. Finally, CRA exams should not only analyze access to deposits accounts for LMI communities but also affordability by comparing and refining, if necessary, fee information collected in call report data.

In addition to the expansion of data collection, we ask that data be presented in a form that is accessible to the general public. Increased transparency and accessibility to the data will ensure that communities are well informed of bank performance.

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

The agencies proposed to include all activities and products including deposit accounts in addition to credit in anti-discrimination 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. Massachusetts CRA exams include analysis of delinquency and defaults rates in home lending. Federal CRA exams should do likewise 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. Finally, we are pleased that the agencies added the Military Lending Act in the list of laws to be included in the fair lending review but we urge them to also add the Americans with Disability Act.

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 proposed 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

totalled together for calculating if the threshold is exceeded for purposes of creating assessment areas.

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

Reclassifying banks as small and intermediate small banks (ISB) would reduce community reinvestment activity

By adjusting the asset thresholds qualification 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 since it would reduce reinvestment activity.

Automatic Eligibility for NeighborWorks organizations

The current proposed rule offers an automatic enrollment of activities undertaken with a CDFIs as eligible for CRA credit. National NeighborWorks Association, along with NeighborWorks America, propose that NeighborWorks organizations be considered under similar logic. According to the agencies, CDFIs play a key role in community revitalization as an effective driver of capital and are, therefore “would be presumed to qualify for CRA credit given these organizations would need to meet specific criteria to prove that they have a mission of promoting community development and provide financial products and services to low- or moderate-income individuals and communities.” The same can be said for NeighborWorks organizations, therefore extending the same treatment would align with the intent of the modernized CRA rule. Similarly, we recommend the agencies extend this treatment to HUD-designated Community Housing Development Organizations (CHDOs), HUD-approved Housing Counseling Organizations, and HUD-approved Nonprofit Organizations.

Conclusion

The proposed changes promise 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, to expand the public reporting of their data collection proposals, to bolster their assessment area proposal to make sure that smaller communities are not left out and to refrain from reducing reinvestment requirements for any segment of banks. 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.

To discuss our concerns further, please contact me directly at kpayton@fifthwardcra.org or (832) 715-8185 or Mayra Bontemps at mbontemps@fifthwardcra.org or (832) 344-6068. We look forward to CRA regulations that increase equity in lending, particularly in communities like 5th Ward.

August 2, 2022
CRA Comments

Sincerely,



Kathy Flanagan Payton
President/CEO

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