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RE: Federal Deposit Insurance Corporation: 12 CFR Part 345, RIN 3064-AF81
Federal Reserve System: Docket No. R-1769, RIN 7100-AG29
Office of the Comptroller of the Currency: Docket ID OCC-2022-0002, RIN 1557-AF15

July 26, 2022

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

I, in conjunction with Pittsburgh Community Reinvestment Group, greatly appreciate the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding updating the Community Reinvestment Act (CRA). I am a Councilwoman in Bellevue Borough, a suburb of the City of Pittsburgh. This NPR represents the most significant changes to the CRA regulation and exams in 27 years, and I am greatly encouraged to see the historic alignment of the banking regulators in putting forth this NPR. In a borough with roughly 63% renters and a desire to create more homeowners in a developing community, equitable and accessible homeownership is of great importance to me in a community where the Black population has grown by 3% in the past 4 years and understanding the historical relationship between race and opportunity for homeownership.

CRA has successfully leveraged loans, investments, and services. Between 2009 and 2020, banks have made more than $2.58 trillion in home loans to low- and moderate-income (LMI) borrowers or in LMI census tracts. They made $856 billion in loans to small businesses with revenues under $1 million. In the Pittsburgh, PA metropolitan statistical area (MSA), this has led to approximately $13.4 billion in mortgage lending to LMI borrowers or LMI census tracts, and over $7.1 billion to small businesses. We need to build on this progress and address remaining disparities in lending through CRA reform. CRA has never been more critical as we continue to deal with significant racial and economic inequalities in wealth and homeownership, and as we contend with the short-term and long-term effects of the COVID-19 pandemic.

CRA will be more effective in bolstering bank reinvestment activity in underserved communities, the more rigorous CRA exams and ratings are. The agencies proposed 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, the federal agencies did not sufficiently address racial inequities, and have moved us backwards in terms of reinvestment by arbitrarily increasing the asset thresholds for small and intermediate banks.

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. The passage of CRA underscores the history of housing and civil rights legislation that preceded it (the Fair Housing Act of 1968, the Equal Credit Opportunity Act of 1974, and the Home Mortgage Disclosure Act of 1975); as such, the current 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 accumulation was less.

Additionally, research by the Pittsburgh Community Reinvestment Group (PCRG) highlights this trend is prevalent throughout the City of Pittsburgh and Allegheny County. In 2015-2019, the Black-white homeownership gap in the Pittsburgh MSA was 41.6% (73% for non-Hispanic whites, and 31.4% for Black households).[1] Furthermore, from 2013-2020, non-Hispanic white applicants had an origination rate 13% higher than Black applicants, controlling for home-purchase loans, while non-Hispanic white applied for loans at a rate of approximately 16 to 1 compared to Black applicants.[2] This disparity grows when factoring all loan purposes (home renovations and refinancing).[3]

The result of such loan disparities, along with an unequal growth in home value appreciations between Black and white neighborhoods, leaves Black residents in Pittsburgh and Allegheny County much more likely to live in census tracts with higher rates of family poverty, lower educational attainment, higher rates of single mother led households, and lower rates of males participating in the labor force. Our research locally, along with recent reports of Black homeownership decreasing nationally to the lowest levels since legal segregation and redlining, proves that while CRA has had meaningful successes, more work is needed to adequately address the growing racial inequalities in America.

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. The National Community Reinvestment Coalition (NCRC) had asserted in a paper co-authored by Relman Colfax PLLC that changes to CRA would comply with legal standards if CRA examined lending by race and ethnicity in geographical areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending. NCRC had also proposed including analyses of lending in underserved neighborhoods with low levels of lending, which are disproportionately communities of color. The former would be achieved on an interagency basis through a periodic statistical study of metro and rural areas that experience continued discrimination or significant racial disparities in access to credit. The

[1] Pittsburgh Community Reinvestment Group (2022), *Taking Stock: A Decade in Decline for Black Homeownership*.

[2] Ibid.

[3] Ibid.

latter would be achieved through compiling a list of underserved neighborhoods through the same mechanisms already used for LMI tracts in CRA exams.

While I 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.

Another mechanism offered by the agencies would be the use of special purpose credit programs (SPCPs) as examples of loan products or programs that facilitate lending to LMI individuals. Given the recent statements by the Consumer Protection Finance Bureau, and the interagency statement from seven federal agencies (including those offering this NPR) creating near unanimity of alignment across multidiscipline government agencies, we believe that SPCPs can be an important tool to target redlined neighborhoods and communities of color. Although CRA is statutorily focused is on LMI communities and individuals, we believe that SPCPs included in the final rule should explicitly recognize lending to all people of color and communities of color, in home lending, small business lending, and consumer lending. Ample evidence suggests that non-Hispanic white LMI individuals often see better lending rates than middle- and upper-income people of color in recent HMDA data, further highlighting the need to include all lending to people and communities of color.

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 adequately consider them. In addition, these comments can be referenced during future merger applications to determine if the banks addressed significant concerns of the public. Ensuring that agencies can revisit these comments during their decision-making processes with further hold banks accountable to the communities they operate in. 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. This is critically important for community groups in the Pittsburgh region, which ranges from fully staffed organizations to volunteer run coalitions.

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, through the implementation of the “convenience and needs” public benefits standard required under banking law for mergers. As further described in recent comments we agree with NCRC that an outstanding CRA rating must not be considered evidence that merging banks have satisfied the public benefits legal requirement.

Enhancements to public comments should not be limited to solely the CRA examination process. The agencies asked in the NPR about developing and maintaining a “non-exhaustive list of activities” that do not qualify for CRA considerations as a community development activity. We encourage the agencies to instead focus on a principles-based list of *qualifying* CRA activities, which would be updated through regular requests of public comments from all stakeholders: including, but not limited to, banks and community organizations. PCRG routinely works with banks on CRA qualified projects, we see using all stakeholders in a qualifying activities public comment period as creating a unique opportunity for further collaboration between banks and community organizations.

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, according to an NCRC review of CRA exam results annually from 1990 to 2019, with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory.[4] This represents an improvement in the overall passage rate since 1990, but a decrease of more than half in the rate of Outstanding ratings from its peak in 1996. 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, particularly those on the lower end of the Satisfactory spectrum, 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

[4] Josh Silver and Jason Richardson, NCRC. May 27, 2020. “Do CRA Ratings Reflect Differences in Performance: An Examination Using Federal Reserve Data.” https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/

a bank's branch distribution to market and demographic benchmarks but does not provide enough instructions to examiners about how to weigh these benchmarks. While the Pittsburgh MSA has generally been a robust banking market, the lack of guidance could reduce the effectiveness of the above tests. This could have substantial effects for many of the banks in our footprint that also operate in underserved banking areas like those in Eastern Ohio, such as the Youngstown and Akron MSAs.

We believe that is it 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. There exist concerns that the new weights for the large bank exams could lead to unintended consequences, such as a bank receiving a passing grade overall despite a "needs-to-improve" community development, and a low satisfactory retail lending and service test. We do not support a test that would pass a bank that is otherwise failing to significantly address the concerns of a community. Likewise, we would support banks with "high satisfactory" ratings in either the retail lending or community development lending tests should not be precluded from an "outstanding" final exam score.

Enhancements to community development definitions 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. However, more consideration must be taken by the agencies to prevent displacement of LMI populations through CRA qualified activities, including the development of affordable housing. Specifically, a final rule should protect against rapid rent hikes, and detrimental projects that have disproportionately affected LMI neighborhoods and communities of color, like fossil fuel and other petrochemical facilities.[5] Financial institutions should be penalized, not rewarded, for community development financing that has a negative impact on LMI communities.

The NPR clarified 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. We are also supportive of the expansion of community development activities definitions to include climate remediation and activities with minority depository institutions, women's depository institutions, and Community Development Financial Institutions.

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. Finally, 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. As previously stated, we're asking the agencies to carefully develop a proposed, non-exhaustive list of activities that qualify as CRA activities.

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[5] Ken Ward Jr., ProPublica "How Black Communities Become "Sacrifice Zones" for Industrial Air Pollution". https://www.propublica.org/article/how-black-communities-become-sacrifice-zones-for-industrial-air-pollution

Overall, the community development finance test as proposed represents an improvement to the current rule. However, more guidance is necessary to achieve an equitable and sustainable community development financing test without leading to grade inflation. This should include standards for local and national community development ratios and adopting weights for the components to the financing test. Additionally, the agencies should be careful in how they implement the inclusion of past and present lending in community development ratio. Taking a long-term approach to capital is a worthwhile goal for the agencies but should be limited to community development lending from the previous exam cycle. There is support for using component weights to encourage community development financing while balancing the results of small dollar, high impact financing that can be more responsive to community needs. We believe that a 60/40 split in weighing between the community development financing ratio and the impact review respectively would be an equitable split.

Service test modernization holds brick-and-mortar and online lending accountable

Including the branch distribution, openings and closures, and other banking services in the newly proposed service test is applauded. In the 20 months following the lockdowns of the COVID-19 pandemic, more than 4,000 physical bank branches closed across the United States – doubling the rate of the prior 20 months, according to a study by NCRC.[6] It's encouraged to see the agencies further broadening of the remote services definition to include other types of remote facilities that take deposits. However, the inclusion of tracking closures needs further guidance from regulators, specifically relating to defining how a "disproportionate amount" of closings or openings in an LMI census tract would impact a service test score. Furthermore, this level of scrutiny should also include whether the services and products offered are comparable across geographic income distributions. This should include a list of the range of credit and deposit products available in branches located in LMI census tracts and other disadvantaged communities. We do not believe regulators should limit the changes to the service only to large banks over $10 billion in assets, but instead cover all large banks.

We support the establishment of the community development service test as a standalone test, especially considering recent branch closures and the growing need for dedicated technical assistance in community development. Under this new test, we encourage the agencies to abandon their proposal to count volunteer activities unrelated to financial services as CRA eligible activities. Agencies should not reward banks for dedicating their time and energy in volunteering outside of their unique expertise when there is such a community need legal, accounting, and other technical expertise-based volunteerism. If stakeholders in the Pittsburgh region believe there to be insufficient need or opportunity for community development assistance, we would be more than happy get them in touch with our community partners, or work with stakeholders directly to create novel opportunities for community development servicing.

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. The Bank On National Data Hub, operated by the St.

[6] NCRC, February 16, 2022. "Study: Banks Doubled the Pace of Branch Closures During the Pandemic"

Louis Federal Reserve Bank and Cities for Financial Empowerment Fund, is a publicly available data source with downloadable information on new and existing deposit accounts by zip-code. With that precedent established, it's not believed that it would be overly burdensome for banks to collect and de-identify depositor's address data and report that at the county and census tract level. However, the agencies should assist the banks in collecting and reporting this data, through the creation of a geocoding tool.

We ask the agencies to reconsider this decision and 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. Lastly, it's encouraged that the agencies to work with additional agencies outside the scope of this NPR to simplify data collection standards, such as the Small Business Administration and the Securities and Exchange Commission. Additional data reporting standards should be harmonized across the federal government to prevent duplicative and otherwise redundant efforts, which could styme the ability of agencies and community groups alike to hold financial institutions accountable.

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 for two consecutive years. This proposal would result in the great majority of total lending being incorporated on exams (90% of home lending and 84% of small business lending) and would therefore hold non-traditional banks more accountable for serving LMI communities. Our partners at PCRG have already identified a handful of banks that meet the criteria of 100 or more home loans, which are performing below the baseline averages of banks with a physical presence in the region. While some financial institutions believe that this may be overreach on behalf of the agencies, I firmly believes that this is well with the statutory requirements of CRA that banks "serve the convenience and needs of the communities in which they are chartered to do business."

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. Additional considerations should be included for consumer lending, as Fintech companies and other largescale online lenders have received bank charters and make consumer loans but not home or small business loans.

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 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. In the Pittsburgh MSA alone, this would result in about a quarter of all banks being reclassified to a lower asset threshold based on the FDIC's Institutional Summaries of Assets compiled in December 2021 and December 2020. Nationwide, this would represent 20.6% of the 4,839 FDIC-insured banks as of December 2021.

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.

Conclusion

I appreciate the alignment between agencies to offer the most robust and likely changes to the Community Reinvestment Act since the reforms passed in 1995. However, the agencies must ensure that these proposed reforms are not weakened in the final rule and allow another three decades to pass without addressing the needs of the most underserved and disenfranchised communities. I'm confident that through the collective public comments of community organizations, financial institutions, and other interested parties that the agencies will enhance CRA in a manner that is consistent with CRA's statutory obligations for a modern era of banking.

This 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, 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.

Thank you for allowing me and our many community and financial partners in the region the opportunity to comment on this proposed rule. If you have any remaining questions, comments, or concerns please do not hesitate to contact.

Respectfully,

Sabreena Miller

Sabreena Miller
Councilwoman, Bellevue Borough, Pennsylvania