MidPen HOUSING
Building Communities. Changing Lives.

August 4, 2022

OCC:
FDIC Federal Deposit Insurance Corporation:
Federal Reserve Board of Governors:

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:

MidPen Housing Corporation (MidPen) appreciates the opportunity to comment on the Notice for Proposed Rulemaking (NPR) for the Community Reinvestment Act (CRA). MidPen offers the following comments acknowledging the amount of work and thoughtfulness that went into these proposed updates and the effort involved with coordinating multiple agencies for a single NPR. While some elements in the NPR may strengthen the CRA, overall, we are concerned that the changes will have a negative impact on the amount of affordable housing built in the San Francisco and Monterey Bay Areas in California.

MidPen Housing is one of the nation's leading nonprofit developers, owners and managers of high-quality, affordable housing and onsite resident services. Since MidPen was founded in 1970, we have developed over 125 communities and 8,300 homes for low-income families, seniors, and those with supportive housing needs throughout Northern California. **In the last 12 months, MidPen has broken ground on 12 affordable housing communities and the construction of 1,163 additional affordable homes is underway. In connection with this, we have closed 12 tax credit equity partnerships and leveraged Local and State investment to unlock $324,843,073 in limited partner equity.**

Summary of Our Recommendations

- Allow CRA consideration for the total amount of investments made in LIHTC properties and prorated amounts for lending.
- Address racial disparity by collecting race and ethnicity data and evaluating banks on their lending across racial and ethnic groups
- Maintain the Investment Test separate from the Lending Test to ensure investment in the LIHTC program.
- Make the Community Development Finance Test more rigorous with metrics and benchmarks and transparent guidance on how performance translates to a score.
- Require that banks earn at least a "Low Satisfactory" on the CDFT to receive an overall "Satisfactory" grade.
- Allow affordable housing to count for community revitalization or climate resiliency points but do not double count it, which would lead to a reduction in investment.
- Prorate the CRA consideration for investments in Mortgage-Backed Securities to consider only affordable housing or other qualifying developments.
- Remove CRA considerations for investing in NOAH unless significantly more robust safeguards against property flipping are added.

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- Allow for CRA considerations for investing in NOAH only for either nonprofit, mission-driven housing organizations or public entities –with formal requirements for rent limits, affordability periods, and public oversight.
- Maintain the bank size thresholds, keeping institutions as Large Banks and Intermediate Small Banks and therefore still under the CRA.
- Overhaul the Community Engagement requirements to make them meaningful, using Community Benefits Agreements as an example of the possible rigor and oversight.

Consideration for LIHTC Investments
We welcome the proposal that allows consideration for the total amount of *investments* made in LIHTC properties, regardless of the share of affordable units but urges that CRA consideration be pro-rated for *lending* to those same developments. Loans support the market-rate units more than the income-restricted units that serve Low- and Moderate-Income (LMI) renters.

Agencies Must Do More To Address Racial Disparity
When it was adopted, the CRA was a landmark civil rights bill that sought to rectify the injustices of redlining practices by requiring banks to invest in all communities. MidPen strongly encourages the agencies to make full use of their authority to collect data on race and ethnicity and use them in CRA exams the same way they currently evaluate how well a bank serves LMI communities. Disparities in lending between racial and ethnic groups persist even today and shape housing, economic, health, and other quality of life outcomes. MidPen urges the agencies to consider race and ethnicity in any new CRA rulemaking.

Using income as the primary assessment metric overlooks the context that the CRA was meant to address. Comprehensive demographic information – that includes race and ethnicity– supports the agencies' ability to evaluate the CRA's impact on restorative justice and its continued efficacy in driving investment into underserved communities. The agencies can bolster the fair lending reviews accompanying the CRA exams for any bank that performs poorly in the Home Mortgage Disclosure Act (HMDA) analysis of lending by race. Agencies can also use Section 1071 data concerning small business lending by race and gender of the business owner to identify potential cases for more thorough fair lending reviews. Without data on race and ethnicity, agencies can not confidently show that the CRA is driving investment into underserved communities.

One possible way of incorporating this feedback – especially in the absence of a standalone Investment Test – could be by creating new equity metrics for evaluating banks. The Affordable Housing Tax Credit Coalition (AHTCC) has suggested a ratio of an institution's new Community Development equity investments (without mortgage-backed securities) compared to their total deposit base. This could be used to set minimum ratios for specific ratings for banks of a similar size – and aggregated data about the banks' ratios could help establish industry benchmarks. This ratio could help investors and advocates understand a bank's present and past portfolio and how they compare to other banks.

Maintain the Separate Investment Test
The LIHTC program is the country's most significant program dedicated to producing and preserving affordable housing – and it relies on the CRA's steadfast encouragement for banks to invest. MidPen Housing depends on the LIHTC program as our primary tool to finance and build affordable housing to serve the San Francisco and Monterey Bay Areas and is concerned about the changes in the NPR.

In the NPR, the agencies have suggested significant changes to the Investment Test, which concern us greatly. The Investment Test is the primary incentive for a bank to become involved in LIHTC. The NPR combines this Investment Test with others, diluting the importance of the Investment Test and, therefore, reducing the incentive for banks to invest in LIHTC. That reduced incentive will result in less competition for housing credits, resulting in less equity for affordable housing developers that are awarded credits – for a constant level of federal funding. With less equity, developers will build fewer units or units with less affordable rents – if the development is financially feasible at all. The impact evaluations mentioned in the NPR to make up for this significant change to the Investment Test are not convincing, so MidPen urges the agencies to keep the Investment Test separate and weighted significantly.

If the Investment Test is combined with the Lending Test, as it is proposed, this would have drastic ramifications for our organization, as we already have a daunting task in front of us: building affordable housing in the most expensive regions in the country.

Other Concerns on The Community Development Finance Test

In the NPR, the proposed Community Development Financing Test (CDFT) is built around subjective metrics when it should be rigorous, objective, and on par with the metrics used for the Retail Lending Test. Guidelines detailing how performance would be measured and translated into a score are necessary. The proposed rule is also structured in such a way that a bank could receive a "Low Satisfactory" score on the Retail Test and a "Needs to Improve" score on the CDFT, yet still receive a "satisfactory" overall grade. MidPen recommends that no bank should receive an overall "Satisfactory" unless they receive at least a "Low Satisfactory" grade on the CDFT.

Similar to the aforementioned prorated CRA credit for lending to mixed-rate developments, CRA credit for investing in mortgage-backed securities should only be prorated for the portion of the securities from affordable housing or other qualifying investments. Additionally, because these investments yield comparatively less public benefit and are still very liquid, investments in these securities should be discounted in comparison to more beneficial qualified CRA actions.

Affordable housing should also be permitted under other categories – community revitalization or climate resiliency, for example – but if it is double counted, this will negatively impact reinvestment activity.

Current Credit for NOAH Investment Would Accelerate Displacement

The NPR's proposal to allow CRA consideration for many types of investments in Naturally Occurring Affordable Housing (NOHA) is concerning because of its lack of safeguards. MidPen is concerned that, under the NPR, the CRA would reward banks for purchasing, renovating, and reselling homes for a significant profit in neighborhoods that have historically faced divestment – accelerating displacement and gentrification. The only entities that should be permitted to do this – and for only partial CRA consideration – are mission-driven nonprofits or public entities, who are 1) formally required to keep the units affordable, e.g. to 80% of the Area Median Income (AMI), HUD's Small Area Fair Market Rent (FMR), or with substantial commitments to an affordability period, like 30 years, and 2) subject to monitoring by a third-party, public entity.

Maintain Bank Size Thresholds

The NPR would change the threshold for sizes of banks, reclassifying many and relieving some of CRA requirements. 217 banks currently deemed "large banks" would be reclassified as "Intermediate Small Banks," and, as a result, would only have to voluntarily be subject to the CDFT and excuse them from obligations to place branches in LMI communities.

The agencies also propose reclassifying 779 "Intermediate Small Banks" to "Small Banks," which would excuse them from CRA requirements for community development finance. MidPen urges the agencies not to reclassify these banks because they have been complying with the CRA for several years, and their reclassifications would significantly curtail reinvestment activity.

Reconsider the CRA's Community Engagement

The current CRA rules and their implementation suggest that, even under this NPR, community input will not be solicited or respected. In our experience, agencies do not solicit community comments on exams, and when communities do provide them, agencies often ignore them. The requirement for community contacts has not been taken seriously, and banks rarely find a local, community-specific connection.

To start to rectify some of these situations, banks and the relevant agencies should:

- Post all comments received on their websites and be required to provide a response.
- Clearly disclose contact information for key staff.

The agencies should:

- Solicit community stakeholder input on the performance of particular banks for CRA exams and during mergers and provide ninety days to the public to comment.
- Default bank mergers to public hearings when public commenters raise concerns.
- Scrutinize bank merger applications to ensure that community credit needs, convenience and needs, and public benefit standards are met.
- Routinely review all existing consumer complaints, community comments, CFPB and agency investigations during CRA exams and merger reviews
- Solicit community groups for their views on bank practices relating to climate, displacement, discrimination, and other harms.

Community Benefits Agreements should be encouraged as evidence that a bank can meet applicable community needs and convenience and needs standards, and regulators should condition merger approvals on ongoing compliance with CBAs.

Thank you for your work on this NPR, the work that will go into compiling and responding to the many concerns submitted, and your consideration of the comments we have made here. If you have any questions about the content of this letter, please do not hesitate to reach out to Nevada V. Merriman at nmerriman@midpen-houisng.org or (650) 477-6195.

Sincerely,

[redacted]

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