



East Bay Housing Organizations

August 5, 2022

James P. Sheesley
Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Community Reinvestment Act NPR Comments
FDIC: RIN 3064-AF81

Mr. Sheesley,

East Bay Housing Organizations (EBHO) appreciates the opportunity to provide comments on the Proposed Rulemaking to the Community Reinvestment Act (CRA). We thank the agencies for soliciting feedback on the proposals, towards the goal of strengthening the ability of the CRA to stabilize and revitalize communities, and better meet the credit needs of low and moderate-income (LMI) communities and communities of color in our state and throughout the country. We respectfully offer the following comments to ensure that the CRA continues to support the development of affordable housing, addresses critical concerns of racial equity and racial wealth disparities, and fulfills its Congressional mandate.

EBHO is a non-profit, member-driven organization with over 400 organizational and individual members. For 38 years, we have worked to preserve, protect, and create affordable housing opportunities for low-income communities in California's East Bay by educating, advocating, organizing, and building coalitions. In Alameda and Contra Costa Counties, where we work, the CRA has motivated banks to provide critical loans and investments for affordable housing and economic development. CRA loans and investments from private lenders have provided critical financing for developing thousands of units of affordable housing units for low-income communities across the East Bay.

The CRA has been hugely impactful in providing credit, investments, and financial services to underserved communities in California. Community Benefits Agreements negotiated by the California Reinvestment Coalition and allies have brought over \$75 billion into low-income communities and communities of color. Since 1996, CRA-regulated banks have loaned \$2 trillion to small businesses and community development projects in LMI neighborhoods. In affordable housing specific, the CRA has been essential to LMI communities and the organizations that serve them, by providing steadfast



encouragement for major investments in the Low-Income Housing Tax Credit and other programs. Since 1986, LIHTC investments alone have enabled the creation of over 385,000 affordable homes, and about 850,000 low-income households in California.¹ Many of our member organizations depend on the LIHTC program to support the financing and creation of affordable housing across the East Bay.

However, significant gaps remain in CRA rules and implementation, and the promise of CRA, to address systemic discrimination and denial of credit for borrowers and communities of color, has not yet been realized. It is imperative that we address those gaps while maintaining and improving critical and proven CRA investments in affordable housing.

Meaningfully Incorporate Race and Ethnicity

It is due time for regulators to incorporate an explicit focus on race into CRA examinations and regulations. The proposed rules completely fail to consider the bank activity toward bank customers and communities by race and ethnicity, instead focusing on income alone. This limitation harms the meaningful intention and promise of the CRA. As asserted in a [paper by the National Community Reinvestment Coalition](#), it is possible to modify the CRA to be more race-conscious, in a lawful manner that complements, rather than supplants, the many other factors the CRA is intended to address.² By including race and ethnicity, the CRA can better identify and address persistent and worsening racial disparities that directly impact communities' quality of life, health, and economic outcomes.

The CRA should require banks to serve all communities, and hold banks accountable to meet the credit needs of borrowers and neighborhoods of color to fulfill its original intent. CRA examinations should review whether banks are helping to meet the credit needs of people and neighborhoods of color, similar to how banks are evaluated on their performance in meeting the needs of low and moderate-income (LMI) borrowers and communities. Furthermore, bank records in financing community development, extending fair credit, and maintaining branches to and in communities of colors should all factor into a bank's CRA rating. The proposal fails to require this, and offers minimal alternatives to addressing discrimination and redlining.

Maintain Separate Focuses on Community Development Lending and Investment Tests

Affordable rental housing is perhaps the most acute need in most California communities, and an immense priority for our state. The proposal concerns us by doing away with the separate community developing lending and investment tests, which threatens to damage one of the key tools in affordable housing development, the Low Income Housing Tax Credit (LIHTC). Community development is critical and deserves its own test, however, combining lending and investment together could greatly disrupt the affordable housing finance system. Bank support for LIHTC equity investments and philanthropic

¹ Affordable Housing Tax Credit Coalition California, "[Low-Income Housing Tax Credit Impact in California](#)" Fact Sheet

² National Community Reinvestment Coalition, "Adding Robust Consideration of Race to Community Reinvestment Act Regulations: An Essential and Constitutional Proposal"



contributions have a huge impact on communities and should be evaluated separately from community development lending. In particular, banks constitute roughly 85% of the LIHTC investment market nationally, and absent CRA consideration, would generally not make these investments. Given the opportunity to obtain equal CRA credit for lending and investing in affordable housing, banks likely will primarily pursue the former, drastically reducing the demand and therefore pricing for LIHTC. This will dramatically decrease the production of affordable rental homes both in California and across the nation. We urge the regulators to retain the separate community development lending and investing evaluations.

Activities That Support Affordable Housing in High Opportunity Areas

We support the proposal to create an impact review factor for activities that directly support the development of affordable housing in high-opportunity areas. Increased affordable housing development in high-opportunity areas will lead to more equitable opportunities for low-income households and people of color to access homes, jobs, and other amenities in communities that have historically excluded them.

As the Supreme Court ruling in 2015 made clear, affirmatively furthering fair housing is intended to both increase access to opportunity and revitalize communities that have struggled with historic disinvestment. We presume that bank activities related to the latter already receive CRA consideration, but to the extent that is not the case we encourage the agencies to consider a separate impact review factor for comprehensive community revitalization efforts in lower-opportunity communities.

Unsubsidized Affordable Housing

The preservation of unsubsidized affordable housing is crucial to housing and community stability. However, we strongly oppose the proposal that allows CRA consideration for too broad a range of investments that would not actually preserve existing affordability for tenants. The proposed consideration will reward banks for lending to speculators who purchase, renovate, and flip unsubsidized affordable housing – leading to displacement and gentrification.

In addition, in California, we have seen a proliferation of rental housing acquisitions by joint powers authorities and their for-profit partners who receive a property tax abatement far outweighing the rent savings and offer units that often remain above the market average for the neighborhood. The financing of these purchases is not worthy of CRA consideration. The agencies should grant partial consideration only for those units that will be owned by mission-driven affordable housing non-profit organizations or public entities, restricted to remain affordable at the lesser of 80% of area median income or HUD's Small Area Fair Market Rent, and subject to compliance monitoring by a public entity.



Anti-Displacement Protections

We appreciate displacement concerns by requiring that rents will likely remain affordable to kely remain affordable in order to qualify for CRA credit. However, the agencies must go further to discourage banks from financing displacement. The proposal appears to refuse CRA consideration for certain community development activities if they result in displacement. This requirement is encouraging but should be extended to all community development activities, particularly the acquisition of unsubsidized affordable housing.

Furthermore, we believe positive points should be given for particular community development activities that impact and combat displacement, including support for property purchases by Community Land Trusts, or other mission-driven nonprofit organizations that can remove rental housing off the speculative market and leverage local policies such as Tenant Opportunity to Purchase Acts (TOPA) and Community Opportunity to Purchase Acts (COPA). Banks should be encouraged to lend and invest in hard-to-develop communities and in creative ways that truly meet local needs. Thus, they should be given positive points for projects with deeper and longer-term affordability, or are in higher opportunity areas, while marked down for financing displacement.

Mixed-Income Properties

We support granting full consideration to investments in mixed-income LIHTC properties (as the credit itself already is pro-rated) but recommend that CRA consideration be pro-rated for lending to such developments. A significant portion of any such loan supports the market-rate units that do not serve LMI populations. Similarly, we support pro-rating consideration for both lending and investment in non-LIHTC mixed-income properties based on the percentage of affordable homes.

Downgrade Banks When They Harm Communities

The CRA should impose appropriate consequences for harm caused. Banks should suffer downgrades and potentially fail their CRA exams if they discriminate, displace, or harm community credit needs. Banks should be required to prevent foreclosures on homeowners and mom-and-pop landlords, and prevent defaults and credit impairment for small business owners and consumers. Banks should be encouraged to adopt and implement policies against displacement financing. A positive aspect of the proposal is that the considerations of discrimination are expanded beyond credit and lending transactions, however, this expansion is only as useful as the agencies' capacity to diligently look for evidence of discrimination, and provide downgrades when found. Unfortunately, agency enforcement of redlining or discrimination cases, as well as CRA rating downgrades for discrimination, are exceedingly rare.

Community Participation

Given that the 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. We



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acknowledge that the agencies suggest that community participation is to be expanded, however, there is little evidence for that in the proposal. Current CRA rules and implementation, as well as this proposal, do a poor job of encouraging and valuing community input. Community comments on exams are not solicited, and when provided, they are ignored. Community contacts are no longer used, and were never bank-specific, rather asking about community needs and how banks generally were performing, without rigor or accountability. Banks and relevant agencies should post all comments on bank performance on their websites, and provide a response. The agencies should actively solicit community stakeholder input on the performance of particular banks during CRA exams and bank mergers. Community Benefits Agreements (CBAs) should be encouraged as evidence that these standards can be met by the bank, and regulators should condition merger approvals on ongoing compliance with CBAs. In particular, community groups should be solicited for their views on bank practices relating to climate, displacement, discrimination, and other harms.

EBHO appreciates the opportunity to comment on proposed CRA rules, and we urge that our comments and those from hundreds of other community-oriented groups will be heeded. Significant changes must be made to the final rule to ensure that borrowers and communities of color are considered under the nation's anti-redlining law, separate evaluations for community development lending and investing are retained to support affordable housing development financing, and that banks are appropriately penalized for harm caused to communities. We look forward to the agencies addressing these matters and the ultimate adoption of the revised regulations.

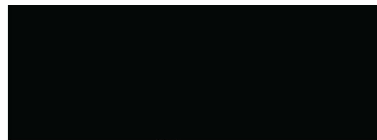
Sincerely,

Gloria Bruce



Executive Director

Megan Nguyen



Policy Associate