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ROCKY MOUNTAIN COMMUNITY REINVESTMENT CORPORATION
-Your Premier Affordable Housing Lender Partnering with Utah Banks

Via Electronic Submission

August 5, 2022

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551

Chief Counsel's Office, Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

James P. Sheesley, Assistant Executive Secretary. Attention: Comments RIN 3064-AF8
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: Community Reinvestment Act
Joint Notice of Proposed Rulemaking
Board of Governors Federal Reserve System – Docket R-1769, RIN 7100-AG29
Office of the Comptroller of the Currency – Docket ID OCC-2022-0002
Federal Deposit Insurance Corporation – RIN 3064-AF81

Gentle Persons:

Thank you for the opportunity to comment on the proposal by the Federal Reserve Board, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (together the "Agencies") to revise the Community Reinvestment Act ("CRA") regulations.[1]

Rocky Mountain Community Reinvestment Corporation ("RMCRC") supports updating the CRA regulations to, among other things, adapt to changes in the banking industry, particularly those resulting from technological advances, while encouraging banks to serve the nation's communities by making the regulations more objective, consistent,

[1] 87 FR 33884 (June 3, 2022) (the "Proposal").

easy to understand and focused on advancing the needs of low- to moderate-income ("LMI") individuals, families and communities.

Before commenting on the Proposal let me briefly acquaint you with RMCRC and its efforts to address LMI housing challenges.

RMCRC is a not-for-profit corporation formed in 1998 by Utah-based financial institutions ("Banks") to provide a platform addressing LMI affordable housing challenges. Its vision is to eradicate the severe shortage of affordable housing. Initially, lending activity was exclusively focused on LMI neighborhoods in the state of Utah. Over the years, RMCRC has become a major LIHTC lender in the state, providing financing for a majority of all LIHTC projects requiring debt financing.

To mitigate the effects of a concentration of CRA-motivated resources ("Resources") in Utah, RMCRC expanded its geographic reach to include all states that are referred to as the Rocky Mountain or Intermountain Region ("Region") – Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah and Wyoming. As a result, the **Resources provided to RMCRC by Utah-based Banks benefit the entire multi-state region**. Those Resources now advance the utilization of $72.7 million LIHTC credits rather than $9.2 million credits allocated to Utah alone[2]. The beneficial impact expanded from a single-state population estimated in 2022 of 3.4 million to the multi-state estimated population of 25.6 million. Since expanding its geographic reach, RMCRC has become the major LIHTC lender in each of the states in the region.

RMCRC is certified by the U.S. Department of the Treasury as a Community Development Financial Institution ("CDFI") in Utah and is presently seeking CDFI certification for the region it serves. In furtherance of its vision, its mission is to facilitate the development and preservation of safe and clean affordable housing and community facilities that serve LMI households through sustainable direct multi-family lending, technical assistance and community collaboration.

The support of Banks is critical to RMCRC. Annually, the Banks are invited to underwrite lines of credit that are collectively referred to as an Aggregate Line of Credit ("Line"). The 2021-2022 invitation resulted in 36 Banks'[3] underwriting and participating in a Line totaling about $488 million. In addition, over the past two years RMCRC has prepaid about $127 million of the portion of the Line that has funded affordable housing

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[2] Novogradic, Affordable Housing Resource Center, 2020 Federal LIHTC Information by State, https://www.novoco.com/resource-centers/affordable-housing-tax-credits/2022-federal-lihtc-information-state

[3] Ally Bank, Altabank, American Express National Bank, Bank of Utah, BMW Bank of North America, Brighton Bank, Cache Valley Bank, Capital Community Bank, Central Bank, Continental Bank, Comenity Capital Bank, DL Evans Bank, FinWise Bank, First Community Bank, First Electronic Bank, First Utah Bank, Green Dot Bank, Hillcrest Bank, Key Bank, LCA Bank Corporation, Medallion Bank, Merrick Bank Corporation, Nelnet Bank, Optum Bank Inc., Rock Canyon Bank, Sallie Mae Bank, Square Financial Services, Synchrony Financial, Prime Alliance Bank, The Pitney Bowes Bank, Transportation Alliance Bank, UBS Bank USA, Washington Federal, WebBank, WEX Bank, and Zions First National Bank.

projects without securitizing the underlying project loans. This has enhanced the revolving characteristic of the Line and in effect increase it to $615 million.

Of the $615 million, about $253 million fund 141 operating multi-family projects[4] providing about 8,800 units of affordable housing to LMI households. $227 million of the Line is committed to fund 61 projects[5] that will, over the next 24 to 30 months, become operational. These will provide an additional 3,590 affordable housing units. The affordable units financed will total about 12,390 while only adding 789 market units. The remaining $135 million enables RMCRC to issue commitments during the balance of the 2021-2022 fiscal year which concludes August 31, 2022.[6]

Because of its narrowly focused vision and mission RMCRC limits its response to provisions of the Proposal it believes affects Community Development (CD) lending and investments.

To begin, let me express appreciation to all who have been involved in this process of updating the CRA regulations. As you know, better than anyone else, this is no small task and is certainly important to the communities across the nation, particularly the LMI communities. So, thank you for your dedicated efforts.

However, notwithstanding the stated desire to update the regulations to achieve several laudable objectives, some of those provisions may adversely impact LMI community development investing and lending. Because of the sheer size of the Proposal, coupled with RMCRC's relatively narrow focus and limited resources, it expresses only a limited number of concerns that are a subset of an more exhaustive list of concerns. As a sustaining member RMCRC agrees with the comments submitted by the National Association of Affordable Housing Lenders ("NAAHL").

RMCRC is specifically concerned with the following:

- **The added complexity to the CRA regulations that is introduced by the Proposal and layered over the current complexity may cause the collapse of the regulations**. Such a catastrophic result would cripple the CRA in its entirety, not simply the provisions addressing LMI affordable housing. It appears that each stakeholder involved with the CRA (regulatory, banks and advocacy groups) is focused so much on the individual trees that no one can see the all-

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[4] These projects are in 7 states as follows: 83 projects are in Utah, 26 projects in Arizona, 2 projects in Colorado, 9 projects in Idaho, 10 projects in New Mexico, 5 projects in Nevada, and 6 projects in Wyoming.

[5] Once these projects reach stabilization 61 projects will be added to the affordable housing inventory for a total of 202 project. The 61 projects are disbursed as follows: 18 projects in Arizona, 3 projects in Colorado, 4 projects in Idaho, 2 projects in Montana, 9 projects in New Mexico, 3 projects in Nevada, 18 projects in Utah, and 4 projects in Wyoming.

[6] It is worth noting here that as of August 31, 2022, **78%** of the Banks' commitments will have been utilized.

important view of the entire CRA forest. More – not less – energy, time and resources are spent on figuring out how to comply with the regulatory complexities rather than focus more energy, time and resources on addressing the dynamic needs of the LMI communities.

- **Whenever the Community Development Financing Test is applied it should carry the same, if not more, weight as any other test, such as the Retail Lending Test**. A lower weight would naturally result in less effort and resources applied to community development. More capital, not less, is needed to address the affordable housing challenges facing the nation. What is proposed may well reduce the financial resources applied to the community development needs of the LMI communities.

- The majority of RMCRC's affordable housing lending involves LIHTC, although we are always looking for "naturally occurring affordable housing" ("NOAH") projects that can add to the inventory of income-restricted rental units. More units are needed. LIHTC projects alone will not satisfy the demand. **The standard for NOAH projects should be that rents for a majority of units in a multifamily property should be no more than 30 percent of 80 percent of the area median income ("AMI").** RMCRC's experience in financing the acquisition, renovation, or both of non-LIHTC projects indicates that such projects are not feasible when financial modeling assumes income is no more than 60 percent of the AMI. Setting a lower household income standard may have the unintended consequence of shrinking capital available to NOAH projects – capital that is unlikely to find its way to LIHTC projects. Consistent standards facilitate the flow of capital to where it is needed. Further, CRA was enacted to benefit the entire community, not just that segment earning no more than 60 percent of the AMI.

- **RMCRC supports the proposal to extend automatic CRA community development consideration for community development activities with certified CDFIs.** The certification process of the U.S. Department of the Treasury ensures that a certified CDFI is committed to developing its community which coincides with the CRA's objective of benefiting communities. Through collaboration the CDFIs may become the eyes, ears, hands and feet of banks thereby enhancing the banks' efforts and making them more impactful.

- Congress wisely chose not to define "community", perhaps because it recognized that communities evolve. Community has changed dramatically because of technology. In many respects, it has erased geographic borders, particularly in financial transactions. The internet has become the community. This is particularly true of branchless banks since they identify the deposits of the community and its credit needs through the internet. However, to remain competitive legacy brick and mortar banks also utilize the internet for deposits and lending. Branchless banks don't target a particular geography as much as they target the financial services needs of populations across the country. **The "assessment area" regulatory construct seemed appropriate before the dramatic changes caused by technology. However, it shouldn't be the**

objective to retain facility-based assessment areas as the cornerstone of the CRA regulations. Rather it should acknowledge that the model has changed – facility-based activity remains but takes on a lesser role and has its place alongside internet-based activity. Striking the appropriate balance with an emphasis on identifying and servicing the underserved community should be the foundation of the regulation. Instead of developing a multitude of tests, metrics and benchmarks, responding to which exhausts the limited banking resources, **clear, yet demanding, expectations should be established with a focus on benefiting disadvantaged populations**. Respectfully, continuing to emphasize the concept of "assessment area" seems akin to driving while looking in the rearview mirror to see where to go. Where physical location is present the local communities should be given greater input on addressing the challenges of populations in the community.

- **RMCRC supports the Proposal's intent to build on the "current practice of considering qualifying activities in broader statewide and regional areas…."** [7] However, it encourages the agencies to clarify the recognition of broad regional areas beyond multistate MSA's. In discussing "facility-based assessment areas" the Proposal appears to limit the size of those assessment areas to "a multistate MSA or combined statistical area." [8] Then while considering areas for eligible community development activity outside facility-based assessment areas it indicates the eligibility for activity outside of a facility-based assessment area provided the activity is within the states or multistate MSA's in which the bank has a facility-based assessment area and in a nationwide area.[9] Subsequently in §§__.21, __.24, __.25, __.26, and __.28 and appendices C and D the term "nationwide area" is repeatedly referred to with respect to measuring performance. It is unclear to RMCRC whether CRA credit would be extended to the Banks that support its financing of affordable housing in the Region. To RMCRC's knowledge no multistate MSA's exist in the Region. It is unclear how reference to "a nationwide area" would apply. Reliance upon multistate MSA's ignores the areas of the country, such as the states within the Region, that do not have the population density across state lines necessary to establish multistate MSA's. Without further clarification of the Proposal's intent to build on the current practice of considering activity in broader geographic areas it appears the regional benefit of RMCRC's affordable housing finance efforts across the eight states would not be recognized. Banks would no longer receive full CRA credit for the financial commitment they make. Commitments would undoubtably decline reducing affordable housing projects because the Banks would, understandably, direct their limited Resources to areas where their CRA efforts would be fully recognized. The LMI communities in the Region would be hurt, creating or amplifying a CRA desert and probably intensifying CRA hotspots elsewhere.

[7] 87 FR 33916 (June 3, 2022)

[8] §__.16 87 FR 34022 (June 3, 2022)

[9] §__.18 87 FR 34022 (June 3, 2022)

- **Banks should continue to receive CRA credit for the entire amount of lines of credit extended to CDFI's and other organizations whose missions center on CD investing, lending, or services benefiting LMI individuals, families, and communities.** The Proposal appears to require banks to allocate the lines of credit across the geographic areas served. Requiring the distribution doesn't appear to provide any benefit and ignores the business reality that a portion of a line of credit cannot be geographically distributed because it has not been deployed. As noted above, the Line extended to RMCRC supports future unidentified projects by providing "dry powder" that cannot be allocated to any geography until it commits funds to new projects. Without the "dry powder" RMCRC could not commit to new projects. In addition, increasing the supply of affordable units requires new construction. Term financing is typically secured before construction and requires a commitment to fund from 24 to 30 months before the funding occurs. Were banks not to receive CRA credit for commitments that fund future affordable housing such commitments would evaporate and the increase in affordable housing units would disappear.

- **CRA regulations should recognize the importance of lines of credit to community development-oriented organizations such as RMCRC. CRA credit should be given for the life of a line of credit, whether for a single year or multiple years.** Current regulations only recognize a line of credit in the period in which it originated. In contrast, a community development investment enjoys CRA credit long as the investment remains on the bank's balance sheet. Without the Banks' lines of credit, RMCRC could no longer finance CD projects throughout the Rocky Mountain Region.

- **The regulations should require that performance evaluations be published in a timely manner.** Under the current regulations, no timeframe is required for the regulators to present their evaluations of the banks' CRA efforts. With the passage of time, the value of performance evaluations is seriously diminished. Banks are held in limbo, delaying further efforts to assist LMI communities and frustrating CDFI's and other nonprofit entities that rely on banks' CRA resources to fulfill missions centered on helping LMI communities. Housing options for individuals, families and communities suffering from inadequate affordable housing are unnecessarily delayed to the detriment of society. Performance evaluations should be required to be published as soon as reasonably possible, for instance within six to nine months, from the conclusion of a CRA examination.

To summarize:

- The added complexity to the CRA regulations that is introduced by the Proposal and layered over the current complexity may cause the collapse of the regulations.

- Whenever the Community Development Financing Test is applied it should carry the same, if not more, weight as any other test, such as the Retail Lending Test.

- The standard for NOAH projects should be that rents for a majority of units in a multifamily property should be no more than 30 percent of 80 percent of the area median income ("AMI").

- RMCRC supports the proposal to extend automatic CRA community development consideration for community development activities with certified CDFIs.

- The "assessment area" regulatory construct seemed appropriate before the dramatic changes caused by technology. However, it shouldn't be the objective to retain facility-based assessment areas as the cornerstone of the CRA regulations. Clear, less complex, yet demanding, expectations should be established with a focus on benefiting disadvantaged populations.

- RMCRC supports the Proposal's intent to build on the "current practice of considering qualifying activities in broader statewide and regional areas…." However, it encourages the agencies to clarify the recognition of broad regional areas beyond multistate MSA's.

- Banks should continue to receive CRA credit for the entire amount of lines of credit extended to CDFI's and other organizations whose missions center on CD investing, lending, or services benefiting LMI individuals, families, and communities.

- CRA regulations should recognize the importance of lines of credit to community development-oriented organizations such as RMCRC. CRA credit should be given for the life of a line of credit, whether for a single year or multiple years.

- The regulations should require that performance evaluations be published in a timely manner.

In conclusion, RMCRC encourages the modernization of CRA regulations that encourages increased CRA-qualified efforts, particularly involving CD lending, investing, and services without the counterproductive unintended adverse consequences accompanying the published Proposal.

In advance, thank you for considering RMCRC's recommendations.

Respectfully,

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Steven J. Nielsen
President & CEO
Rocky Mountain Community Reinvestment Corporation