



August 5<sup>th</sup>, 2022

**James P. Sheesley,**  
**Assistant Executive Secretary,**  
**Federal Deposit Insurance Corporation,**  
550 17th Street, NW,  
Washington, DC 20429


**Regarding: Comments by the National Diversity Coalition to**  
**Federal Deposit Insurance Corporation**  
**12 CFR Part 345**  
**RIN 3064-AF81**  
**Community Reinvestment Act**

Dear Mr. Sheesley,

The National Diversity Coalition (NDC) is a national non-profit organization including the leadership of our nation's major African American, Asian, and Latino organizations as well as major minority and women oriented national nonprofits, businesses, and CDFIs, advocating for greater opportunity, economic empowerment, and financial equality for low-income, minority, and other disadvantaged communities. Our works stems on our mission to strengthen America's diverse communities through positive advocacy for increased corporate philanthropy and reduce income and wealth inequality. NDC has established itself as well recognized non-profit at the Federal as well as the State level through our active advocacy in major banking law reforms and participation in federally administered programs for the underserved. We have been a voice for the voiceless America.

We hereby submit our comments on Joint notice of proposed rulemaking by the Federal Reserve Board, OCC and the FDIC for the aforementioned Regulation on the Community Reinvestment Act. Please find attached our comments.

Sincerely,

  
**Faith Bautista**  
**Chief Executive Officer,**  
**National Diversity Coalition**  
Email: [faith@nationaldiversitycoalition.org](mailto:faith@nationaldiversitycoalition.org)



## **COMMENTS BY THE NATIONAL DIVERSITY COALITION**

### **FEDERAL DEPOSIT INSURANCE CORPORATION**

#### **12 CFR Part 345**

#### **RIN 3064-AF81**

#### **Community Reinvestment Act**

#### **Preamble**

The National Diversity Coalition (NDC) appreciates the opportunity to comment and supports the efforts of the U.S. Federal Reserve Board (Board), the Office of the Comptroller of Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) on the Joint Rulemaking for a new regulatory framework to modernize the regulations implementing the Community Reinvestment Act of 1977 (“CRA”). We concur with you that the CRA Reform is long overdue and current regulations and guidance do not recognize the fast-paced changes in the financial services industry that have occurred since the CRA was enacted. We need a new CRA, which is conducive to the current economic trends and challenges.

We support CRA modernization strategies to promote regulatory rules that will encourage banks to commit capital and credit to a broader range of CRA related activities in their communities. We also support narrowing credit loopholes that have not proven additive to the CRA’s Low-Moderate Income (LMI) focus objectives over time. We believe innovation and responsiveness are crucial and that rooting out “unintended disincentives” is clearly an area where modernization of regulatory oversight is helpful to the process. Also, partnerships with non-profits and CDFIs are another area the regulation should incentivize banks for.

## **General Comments**

### **Quantitative Methods**

We continue to encourage the adoption of quantitative and comparable analytics whenever possible so as to improve transparency and comparability across financial institutions as part of the Board's modernization.

We believe that leveraging future CRA examination methods to emphasize quantitative methods will lead to lower cost of compliance, more objective measurement of compliance, determination of truly "Outstanding" CRA performance, and the facilitation of better CRA policy implementation. We believe this serves both stakeholders and communities better.

### **Need for creativity and sticking your neck out for LMI commitments**

There is a need for creative programs to be set up and operated, above the traditional check points of the banks. The LMI communities, ethnic minorities, and small businesses are an essential part of the economy. The CRA Regulations must require that banks make necessary creative adjustments to its CRA model to engage the diverse communities of our nation. How can the minority get a seat at the table? How does the bank ensure diversity and inclusion at the executive level? What programs or trainings does the bank offer to such employees to increase employee retention? How does the bank retain and maintain jobs and decrease reliance on outsourcing?

Being non-profit organizations working at the grassroots level, we have been providing and working with banks on realistic programs for the communities we serve. If the new CRA Regulations encourage such innovation, it is much likely that the banks will make consecutive plans to maintain its CRA ratings.

## **Encouraging innovation and partnerships with non-profits, CBOs and CDFIs**

The CRA Reform must encourage innovation and partnerships between banks and smaller and emerging non-profits, Community-based organizations (CBOs) and Community development financial institution (CDFIs). Though large CBOs are effective in helping the banks reach the LMI groups, there may be less efficiency when it comes to reaching the most underbanked or underserved portions of the population. Special attention and efforts are needed when conducting outreach for such hard-to-reach groups to understand the unique needs of a community in a remote or rural geographic location. It is not a one size fits all case.

It is important that the bank reaches out to the underbanked based on individual geographic location, to ensure fulfilment of CRA commitments at the grassroots level. CRA Regulations must recognize and incentivize for innovative programs that the banks use in partnerships with CBOs and CDFIs to reach the hard-to-reach communities. We believe that the federal regulators should stress to the banks that partnerships with smaller CBOs, non-profits, and emerging CDFIs towards community development and innovation is an effective way to address these concerns.

## **Internet Service Areas**

With regards to small banks not being required to delineate CRA assessment area delineation outside their core areas, we believe the Board needs to carefully assess the reality that in the 21<sup>st</sup> century, small asset size no longer equates to limited area service presence. The internet has vastly expanded the reach of small institutions to make an impact reaching nationally. There have been instances, such as in the area of micro-lending, where single institutions of minor size have enabled nationwide risk taking. We support the recognition of internet reach considerations by the proposed regulations.

## **Over-regulation may be harmful**

We support the necessary checks and balances put in place for the banks, based on sizes. However, we also believe that over- regulating the banks may also lead to the unintended

consequences which are primarily lack of services to the Low-to-moderate income (LMI) communities. Banks must be regulated as per asset size. If CRA is intended to help LMI, how can banks help us if they are overregulated? It will be harder for banks to help the underserved communities.

### **Safety and Soundness**

We support the caution that regulators should not abandon safe and sound safeguards against systemic risk when evaluating loan acquisition effects on asset default, delinquency, and loss provision, among other concerns that are codified in the Dodd-Frank Act.

### **Special Purpose Credit**

We encourage regulators to consider incorporating language encouraging the use of special purpose credit programs to improve the effectiveness of loan participation programs for community development. We believe SPC's have the ability to help remedy obligor shortfalls in qualifying for approval and should be part of a rigorous, and well vetted, set of offerings that when combined with technical assistance programs, results in asset portfolios equal, or even superior, to regular loan participation programs.

### **Consequences for unreasonable retaliations with community members**

We strongly urge the regulation to include provisions for strict actions against any bank that retaliates with the community because of any non-related community action, including comments filed under this joint rulemaking. Since the comments filed under this rulemaking are public record, there is high probability that a bank may take such unreasonable actions against a community or organization, as a negative response or retaliation. It should be noted that such comments are invited from the public and key stakeholders to assist the federal agencies in preparing a robust and effective rule. The intent of CRA has been to help build the underserved

communities, and acts by banks which are unconstructive, unreasonable, and damaging for the overall benefit of the community, must face strict consequences from the federal regulators. NDC has seen an example of such act by a bank in the past, where a community member was removed from the bank's advisory board without due cause and the bank deliberately ceased donations or investments in the community-based organization. Such a harmful act was not only damaging for an organization but for the entire community it served and represented.

### **Question Specific Comments**

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***Question 9.** Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low- or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?*

Only the value of the affordable loans should be considered in a qualifying mortgage-backed security, rather than the full value of the security. Additionally, only the initial origination and purchase of the mortgage-backed security should be considered for affordable housing because re-purchasing the same loans doesn't benefit the LMI borrower after the loan is originated and sold the first time. Alternatively, the CRA credit could "step down" by 50% after each loan sale, which would still provide some CRA credit but would eliminate the tendency for 'loan churning'.

***Question 56.** Should the agencies aggregate closed-end home mortgage loans of all purposes? Or should the agencies evaluate loans with different purposes separately given that the factors driving demand for home purchase, home refinance, and other purpose home mortgage loans vary over time and meet different credit needs?*

Aggregating all closed-end home mortgage loans does not necessarily reflect the best interests of low- and moderate-income borrowers because the factors driving demand for home purchases,

refinances and other purpose loans meet different credit needs. Therefore, loans with different purposes should be considered separately.

*Question 57. Should the agencies exclude home improvement and other purpose closed-end home mortgage loans from the closed-end home mortgage loan product category to emphasize home purchase and refinance lending? If so, should home improvement and other purpose closed-end home mortgage loans be evaluated under the Retail Lending Test as a distinct product category or qualitatively under the Retail Services and Products Test?*

At only 15%, we are concerned that the Retail Services and Products category may not be weighted strongly enough to incentivize banks to develop retail loan products which address the unique needs of low- and moderate-income borrowers --especially because the Retail Services and Products test simultaneously measures banks' branch availability and services, remote service facility availability, and digital delivery system and responsive deposit products for banks with > \$10B of assets.

For this reason, we propose that home improvement and "other purpose" closed-end mortgage loans be evaluated under the Retail Lending Test as a distinct product category. The "other purpose" loans would be a broad category intended to capture innovative items that uniquely serve the credit needs of low- and moderate-income borrowers, such as shared equity models and down payment assistance.

The innovativeness of such loans could also be given consideration under the Retail Services and Products Test, so that an innovative new product should be given full CRA consideration under both the Retail Lending and Retail Products and Services test.

To further ease the administrative burden of new programs on banks, retail loans intended to benefit LMI borrowers which are originated with, financed or purchased in collaboration with MDIs, WDIs, LICUs and Treasury Department Certified CDFIs could also receive full CRA credit across each subcategory or all Retail Loan subcategories, similar to the Community

Development Financing test. This could also be an option for banks that haven't yet begun to develop certain retail lending programs, such as 'other' mortgage types or auto loans.

***Question 60.** Should multifamily lending be evaluated under the Retail Lending Test and the Community Development Financing Test (or the Community Development Test for Wholesale or Limited Purpose Banks)? Or should multifamily lending be instead evaluated only under the Community Development Financing Test?*

Multifamily lending should only be evaluated under the Community Development Financing Test.

First, the 'double-counting' of multifamily loans under both the Retail Lending and Community Development Financing test creates a disproportionate incentive for banks to first finance multifamily rental properties before considering retail loans to low- and moderate-income borrowers or to borrowers in historically low-income geographic areas. Banks are already incentivized to finance multifamily projects because they are simple and are usually managed by a professional developer. Allowing 'double-counting' under both the Retail Lending and Community Development Financing tests could create a 'crowding out' effect of retail loans to consumers. We propose instead that multifamily loans receive credit only under the Community Development Financing Test.

Second, we agree with the Agencies that the geographic distribution of a bank's multifamily loans does not indicate whether low- or moderate-income individuals benefit from the loans. We also agree that the location of the housing is likely a less significant indicator of serving local low- or moderate income needs than its affordability to low- and moderate-income residents, which would be reviewed under the Community Development Financing Test.

***Question 64.** Should retail loan purchases be treated as equivalent to loan originations? If so, should consideration be limited to certain purchases – such as from a CDFI or directly from the originator? What, if any, other restrictions should be placed on the consideration of purchased loans?*



Only the initial purchase of the retail loan purchase should be considered as equivalent to loan originations. After this, the CRA credit could “step down” by 50% after each loan sale, which would still provide some CRA credit but would eliminate the incentive to continually re-sell the same loans.

For example, a \$300,000 loan would be considered as \$300,000 when the loan is originated, \$300,000 after it is initially sold, but then \$150,000 the second time it is sold and only \$75,000 the third time it’s sold. This or a similar ‘step down’ approach would prevent loan churning.

***Question 65.** Would it be appropriate to consider information indicating that retail loan purchases were made for the sole or primary purpose of inappropriately influencing the bank’s retail lending performance evaluation as an additional factor in considering the bank’s performance under the metrics or should such purchased loans be removed from the bank’s metrics?*

Yes. Retail loan purchases should be made with the consumer’s benefit in mind. If there is indication that the sole or primary purchase is to inappropriately influence the bank’s retail lending performance evaluation, those loans should be removed from the bank’s metrics.

***Question 67.** Should credit cards be included in CRA evaluations? If so, when credit card loans constitute a major product line, should they be evaluated quantitatively under the proposed Retail Lending Test or qualitatively under the proposed Retail Services and Products Test?*

Yes. When credit card loans constitute a major product line, they could be evaluated quantitatively under the Retail Lending Test as Consumer Loans. See #69 for a more detailed response.

***Question 69.** Should the agencies adopt a qualitative approach to evaluate consumer loans? Should qualitative evaluation be limited to certain consumer loan categories or types?*

Consumer loans in general are a critical ‘major product line’ for low- and moderate-income borrowers, who have unique credit needs. Due to gaps in available financing options, many low-income consumers resort to pawn shops and payday loans for financing options, which can have interest rates as high as 400%. Bank-initiated micro-finance and even pre-pay options (which are technically not loans) would be far more ‘safe and sound’ than existing market solutions, but the current market and regulatory structures do not adequately incentivize banks to pursue such options.

Because consumer loans are so important for the LMI population, we propose including them as the final Major Products category under a final category of the quantitative Retail Lending test. Credit cards and auto loans could be bundled under this category. Recognizing that many banks haven’t yet developed microfinance or small dollar loan options for consumers, and that change takes time, we simultaneously propose that consumer loans products developed collaboratively with MDIs, WDIs, LICUs and Treasury Department Certified CDFIs receive full CRA credit for this category. We propose consumer loan products developed in collaboration with fintech companies could receive full credit in this category as well if the recipients are LMI consumers or are located in low-income and underserved geographic areas.

If innovative and responsive, we propose that these same loans be considered under the qualitative Retail Services and Products test.

***Question 84.** Should the agencies use loan count in conjunction with, or in place of, dollar volume in weighting product line conclusions to determine the overall Retail Lending Test conclusion in an assessment area?*

Because some of the proposed categories contain lower dollar loans (such as automobile loans, consumer loans and certain home-related loans), we propose that loan count is used in conjunction with dollar volume. Alternatively, a multiplier could be used to incentivize investment in low dollar-value categories, such as consumer and auto loans.

For example, if a bank issues a \$5,000 car loan to an LMI borrower, a 5.0x multiplier could be applied, increasing the effective dollar volume to \$25,000.

*Question 104. Are there additional categories of responsive credit products and programs that should be included in the regulation for qualitative consideration?*

We believe small dollar loans and micro-finance products should be considered as responsive credit products in the qualitative consideration. Because they are significantly more administratively burdensome and time-consuming than higher dollar-value loans, we also believe they should receive simultaneous consideration under the Retail Services and Products quantitative test.

*Question 105. Should the agencies provide more specific guidance regarding what credit products and programs may be considered especially responsive, or is it preferable to provide general criteria so as not to discourage a bank from pursuing impactful and responsive activities that may deviate from the specific examples?*

While we agree that general criteria are preferable in that it doesn't discourage banks from pursuing impactful and responsive activities that deviate from specific examples, we simultaneously recognize that many banks will request certainty before pursuing a new option. We therefore propose that the Agencies create a clear process for banks and strategic partners to seek pre-approval on a given program before fully implementing new ideas.

National Diversity Coalition appreciates the opportunity to comment on the proposed new CRA regulations and looks forward to working with the OCC, FDIC, FRB to improve the effectiveness of the CRA. Please reach out to us if you have any questions or concerns.

**Sincerely,**

**National Diversity Coalition**

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