HOUSING
PARTNERSHIP
NETWORK

Social Mission.
Private Enterprise.

August 5, 2022

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1769; RIN 7100-AG29

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Re: RIN 3064-AF81

Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Re: Docket ID OCC-2022-0002

To Whom It May Concern:

Thank you for the opportunity to comment on the joint notice of proposed rulemaking (NPR) to amend regulations implementing the Community Reinvestment Act (CRA).

Housing Partnership Network (HPN) is a business collaborative of one hundred high-performing nonprofits that develop and finance affordable housing and community development projects. HPN members work in all 50 states, creating affordable housing and improving neighborhoods. HPN operates businesses that help improve the efficiency and impact of our members, such as a property and casualty insurance company that insures their apartments.

HPN's members are larger nonprofits that are able to tackle tough affordable housing challenges because they have strong business skills that enable them to manage real estate efficiently, and they also have a social mission to help residents improve their lives. HPN's members own and manage more than 327,000 affordable apartments, develop single-family homes and provide capital to underserved communities. Banks work with both HPN and its members by providing debt, equity and expertise on a wide range of affordable housing and community development projects. CRA has been indispensable to these partnerships. Congress passed the Community Reinvestment Act (CRA) in 1977 to prevent redlining and to encourage banks to help meet the credit needs of all segments of their communities, including low- and moderate-income neighborhoods and individuals. The CRA extended and clarified the long-standing expectation that banks will serve the needs of their local communities. Over the years, CRA has given banks the incentive to engage with community developers such as HPN and our members to improve neighborhoods and has been an enormously successful public policy.

HPN applauds the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively 'the agencies') for releasing a joint-rulemaking. Consistency across bank charter type, size and business model is key to achieving uniform application of the CRA obligation.

HPN shares many of the agencies' stated goals for the proposed CRA regulation revisions. We think the following are particularly important to modernize CRA: "Strengthen the achievement of the core purpose of the statute. Adapt to changes in the banking industry, including mobile and online banking. Provide greater clarity and consistency in the application of the regulations. Create a consistent regulatory approach among all three banking agencies." [1]

HPN believes the NPR takes some very important steps towards modernizing CRA such as creating a designated community development financing test and clarifying definitions to increase transparency.

As you consider the NPR, HPN urges the agencies to do the following:

1) Recognize the original intent of the CRA and the existence of ongoing racial inequality by including race as an explicit factor for CRA evaluations;

2) Ensure that CRA modernization encourages continued investment in effective community development activities;

3) Seek to simplify the rule where possible.

[1] https://www.federalreserve.gov/consumerscommunities/files/cra_npr_key_objectives_20220505.pdf

I. Include Race as an Explicit Factor for CRA Evaluations

The NPR acknowledges that CRA was passed in response to redlining and that the "[racial] wealth gap and disparities in other financial outcomes remain persistent."[2] However, we were disappointed to see that the NPR does not propose taking race into account for the purpose of a CRA review. Instead the agencies suggest that they may rely on the fact that CRA and fair lending are mutually reinforcing.

We recognize that the proposed rule does require information from the Home Mortgage Disclosure Act (HMDA) data for large banks which includes race and ethnicity for the bank's home mortgage loan originations and applications. However, the NPR is clear that it would have no independent impact on the conclusions or ratings of the bank and would not on its own reflect any fair lending finding or violation.

A focus on race is well within the statutory confines of CRA. There are explicit references to race in the legislation including allowing investments with Minority Depository Institutions (MDIs), women-owned financial institutions, or low-income credit unions in minority communities to count for CRA credit. The law also requires reporting to Congress comparing depository institutions' lending in "minority neighborhoods" as well as other distressed areas. CRA examinations have too often used income as a proxy for race, which is insufficient to target deeply entrenched systems of racial inequity.

By ignoring race during the CRA exam, this proposal falls far short of the agencies' own objective to "strengthen the achievement of the core purpose of the statute." HPN urges the agencies to view CRA through its history as civil rights legislation meant to address the impacts of racial discrimination in banking. The CRA was passed to combat systemic inequity, and therefore it is critical that the NPR focus on increasing lending and investment in communities of color. There are many ways the agencies could lawfully and meaningfully incorporate race into CRA exams, including:

[2] 87 Fed. Reg., 33,888 (June 3, 2022)

- Adding performance measures to assess lending, investing and services to people of color and communities of color.
- Provide CRA credit for banks that invest in community development financial institution (CDFI) products designed to address racial inequity.
- Enforce anti-discriminatory activity across all elements of CRA, including avoiding arbitrarily excluding communities of color when banks designate assessment areas. This may also include incentives to invest in areas that meet certain criteria, like majority-minority census tracts, to explicitly support communities of color.
- Collect and disclose comprehensive racial and demographic data as part of the CRA exam and also require banks to show they are serving the entire community to pass their exam.
- Include data collected under the Fair Lending Act, The State Small Business Credit Initiative (SSBCI), and HMDA as a part of the bank's evaluation.
- Add racial demographics to the list of factors to consider when delineating assessment areas.
- Expand the use of Special Purpose Credit Programs to meet the needs of communities of color.
- Make the relevant portions of the CRA exams public.

When considering how to incorporate race in CRA, HPN suggests that the agencies consult the work of the National Community Reinvestment Coalition (NCRC) and Relman Colfax PLLC for ways to incorporate race into exams without violating the Constitution and other legal standards. [3]

II. Ensure Continued Community Development Investment

Community Development Financing Test

HPN applauds the agencies for recognizing the crucial role community development plays in CRA by creating a separate Community Development Financing Test (CD Financing Test). CRA has been an

[3] https://ncrc.org/ncrc-issues-initial-analysis-of-historic-community-reinvestment-act-overhaul-proposal/

effective tool to encourage investment in organizations and activities that can transform communities, investments that would not have happened absent the affirmative obligation found in the statute.

HPN is concerned, however, that as currently imagined the CD Financing Test could be a disincentive for banks to make equity investments in proven community development programs such as Low Income Housing Tax Credits (LIHTC) and New Markets Tax Credits (NMTC). Unlike the current investment test, the CD Financing Test would consider these equity investments in the same category as loans. HPN is concerned that this combined evaluation of community development loans, investments, and services would cause a shift in banks' CRA activities away from more complex, time consuming but impactful activities like making equity investments in new social purpose ventures. To protect against this, HPN suggests that the agencies require a minimum amount of CD Financing activities to be in the form of an equity investment in order for a bank to receive a passing rating.

We are also concerned that the weight of the CD Financing Test in the total CRA evaluation would lessen its priority for banks and ultimately decrease the capital available for community development. As currently proposed, Community Development performance would not affect most large banks' overall CRA rating because retail test performance weighs heavier (60%) than Community Development performance (40%). The proposed weight of 40% given to community development does not reflect the importance of these activities in meeting the core purpose of CRA.

Under the new ratings system, very few banks would be able to achieve an *Outstanding* rating. We share the concern of the National Association of Affordable Housing Lenders (NAAHL) and other stakeholders that if an *Outstanding* retail test rating is not achievable, a bank will receive an overall *Satisfactory* rating even if its Community Development test score is *Needs to Improve* as long as its retail test score is *Low Satisfactory*, a standard that nearly all banks are likely to meet or exceed. This imbalance may lead to banks dramatically scaling back their community development activities without impacting their overall rating, which could have devastating consequences on affordable housing and other community development investments.

To correct for this, HPN recommends rebalancing the retail test performance and community development test performance so that each would account for 50% of a bank's rating. This would ensure that community development performance is still an integral part of a bank's CRA rating. It is critical that rewriting CRA rules does not have the unintended consequence of discouraging community development investment or innovation.

Affordable Housing Definition

HPN supports the clear inclusion of housing financed with the low income housing tax credit (LIHTC), HOME Investment Partnerships Program (HOME) and project based rental assistance (PBRA) activities in the definition of affordable housing for the purpose of CRA. These are critical, effective tools to build and support affordable housing.

We are also pleased to see that naturally occurring affordable housing (NOAH) is included as part of the affordable housing definition and determined based on rent levels not resident income. Under the agencies' proposal, NOAH properties would be eligible for CRA consideration if rent for a majority of the units in a property does not exceed 30% of 60% of area median income (AMI) and the housing benefits low and moderate income people. We suggest that the affordability standard for NOAH consideration should be rents set at no higher than 30% of 80% AMI. 80% of AMI is still considered "low income" by HUD and many other federal government programs. The majority of low and moderate income renters live in unsubsidized housing and by restricting CRA consideration to housing affordable to very low income families would be denying CRA consideration for financing much needed homes for low income renters. We think that any potential that such housing would not benefit low and moderate income people is off-set by the standards set forth in the NPR such as that the housing is purchased developed, financed, rehabilitated, improved or preserved by a non-profit organization with a stated mission of affordable housing.

CDFI Activities

HPN applauds the NPR for considering qualified activities in conjunction with certified CDFIs located anywhere in the country, even outside of the bank's assessment area, as part of the CRA evaluation. We appreciate that the agencies recognize the importance of CDFIs as partners to drive credit and capital to underserved markets. CDFIs have shown that when you increase access to credit in underserved areas it can transform communities.

We suggest that activities with nonprofit organizations that hold a NeighborWorks charter receive the same treatment. These mission-driven organizations undergo rigorous financial and management assessments prior to receiving their charters and on an ongoing basis thereafter. Furthermore, membership in the NeighborWorks network is only available to organizations that demonstrate a commitment to resident leadership, ensuring that the organization continues to represent the interests of the communities in which it works.

Impact Factors

We are glad the NPR proposes looking at both quantitative (CD Financing Test) and qualitative (Impact Factors) measures during the CRA evaluation. HPN supports a qualitative look at CRA activities and in particular the inclusion of grants, innovation and CDFI activities as impact factors. However, it is unclear how this will work in practice and if these impact factors will have enough of an effect on activity to blunt any disincentives created by the CD Financing Test. We do not understand how impact review factors will be included as a part of a bank's final rating or if they will all receive the same consideration. We ask that the agencies provide more clarity around impact review factors. The agencies should consider providing multipliers or additional credit for the most critical activities including: investments in CDFIs, equity investments such as those in low income housing tax credits or new markets tax credit projects, fixed-rate facilities that extend beyond a bank's exam cycle and innovative financing that responds to community needs.

HPN suggests that the definition of "high opportunity areas" for the purpose the Activities that Support Affordable Housing in High Opportunity Areas impact review factor be expanded to include Qualified Census Tracts (QCTs). In some high cost communities such as San Francisco, QCTs have the lowest median incomes and highest poverty rates and often face the greatest displacement pressures. To allow current residents to remain, these communities need to build high quality affordable housing or renovate existing affordable homes so that they can continue to be habitable. It is important to add QCTs to this definition to allow communities who are worried about displacement of LMI residents to access CRA motivated financing.

Reconsider New Bank Sizes Thresholds

HPN is concerned that the new bank size threshold could sharply decrease the availability of community development financing. The NPR proposes new thresholds for small and intermediate banks that defines small banks as those with assets of up to $600 million and Intermediate Banks (ISBs) as those with assets of at least $600 million but less than $2 billion. Large Banks, meanwhile, are limited to those with assets of at least $2 billion. These changes would reclassify 779 banks that are currently ISBs as small banks, meaning they would no longer have any community development finance obligations.

III. Consider the Complexity of the CRA Regulations

Finally, we have concerns that the proposed rule is needlessly complex and could result in unintended negative outcomes for community development and affordable housing. To combat this we would urge the agencies to carefully track the data, periodically review the outcomes and correct for unintended consequences such as notable decreases in community development investments.

We also encourage the agencies to create robust examiner training practices, particularly around the impact factors to ensure examiners have the requisite background to make appropriate subjective evaluations.

HOUSING PARTNERSHIP NETWORK

IV. Conclusion

Thank you for your work developing the NPR and your openness to our comments. If you wish to discuss any points in this letter further, please contact Shannon Ross, Vice President, Policy at ross@housingpartnership.net.

Sincerely,

[redacted]

Shannon Ross
Vice President, Policy
Housing Partnership Network