RCAC
www.rcac.org

Corporate Office:
3120 Freeboard Drive, Suite 201
West Sacramento, CA 95691
(916) 447-2854 • Fax (916) 447-2878

August 5, 2022

The Honorable Michael Hsu
Comptroller
Office of the Comptroller of the Currency
Chief Counsel's Office
Attention: Comment Processing
400 7th Street, SW
Suite 3E-218
Washington, DC 20219
RE: Community Reinvestment Act, Notice of Proposed Rulemaking, Docket Number R-1769, RIN 7100-AG29

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
Attention: Ann E. Misback, Secretary
20th Street and Constitution Avenue, NW
Washington, DC 20551
RE: OCC Docket ID OCC–2022–0002

The Honorable Martin Gruenberg
Acting Chair
Deposit Insurance Corporation
Attention: James P. Sheesley, Assistant Executive Secretary
550 17th Street, NW
Washington, DC 20429
Attention: Comments RIN 3064–AF81

Re: Notice of Proposed Rulemaking, Community Reinvestment Act Regulations, docket (R-1769) and RIN (7100-AG29)

To Whom It May Concern:

Please find below Rural Community Assistance Corporation's (RCAC) comments in response to the Notice of Proposed Rulemaking, Community Reinvestment Act Regulations, Docket No. R-1769 and RIN 7100-AG29.

RCAC would like to comment on the proposed Community Reinvestment Act (CRA) Notice of Proposed Rulemaking (NPR). As a Community Development Financial Institution (CDFI) that serves rural and Indigenous communities in 13 western states, we are an active partner with banks that are CRA regulated. We commend the three agencies (FDIC, OCC, and the Federal Reserve Board) for coordinating the draft rule for consistency across all regulators.

We support the following aspects of the CRA Notice of Proposed Rulemaking:

- Providing automatic credit for activities conducted in partnership with or in conjunction with CDFIs. This acknowledges the important role of Treasury-certified CDFIs in providing mission-based capital to underserved communities and will help streamline the credit process for both banks and CDFIs.
- Including CDFIs on the proposed list of Impact Review Factors. Impact Review Factors would capture activities that are particularly impactful and responsive to community credit needs. Including activities that support CDFIs on this list acknowledges the unique role that we play in providing tailored, flexible, affordable, and accessible capital to community partners in underserved communities.
- Evaluating community development activities conducted anywhere in the country, rather than in the places where banks have branch locations. Bank branch locations do not always align with the neighborhoods most in need of investment, and this is particularly true for the communities many CDFIs serve including the rural and Indigenous communities RCAC serves.
- For Indian Country, the proposed changes clearly spell out that banks can receive CRA credits for partnering with and investing in Treasury Department-certified CDFIs as well as emerging CDFIs. Under previous interpretations of CRA rules, banks had to invest within their service areas to qualify for CRA credits, which drastically limited the effectiveness of the program in Indian Country given its lack of banking services.
    - The agencies proposed to define "Native Land Areas" to include the following geographic areas: Indian country, land held in trust by the United States for Indigenous, state American Indian reservations, Alaska Native villages, Hawaiian Home Lands, Alaska Native Village Statistical Areas, Oklahoma Tribal Statistical Areas, Tribal Designated Statistical Areas, American Indian Joint-Use Areas, and state-designated Tribal Statistical Areas. According to the agencies, they developed this list to be comprehensive and responsive to comments received from stakeholders. RCAC supports an inclusive list given the past and ongoing discrimination against Indigenous people and communities.
    - The agencies proposed that community development activities, such as revitalization and essential community infrastructure would count on CRA exams if targeted to Native Land Areas. RCAC fully supports this proposal to specifically list Indigenous Lands as a target geography and to encourage increases in bank financing and investment activities in these areas, to include investments in CDFIs engaged in these activities in Native Land Areas.

We offer the following recommendations, in no order of importance on the CRA NPR.

CRA credit for investments in certain designated geographic areas like persistent poverty areas (PPAs) and census tracts must be given enough weight within the CRA evaluation to incentivize concrete investments.

The banking sector is a critical community development investor. The CRA is a key driver for bank partnerships with CDFIs, and it is an impetus for funding CDFIs to expand access to capital to people and places beyond the boundaries of a bank's business model. In the absence of bank investment, particularly into CDFIs, people's ability to start a small business, purchase a home, or to begin building one's credit is even more limited. RCAC's loan program is unique — in additional to supporting affordable housing financing, it provides the early funds that small rural communities need to determine water and wastewater project feasibility, pay pre-development costs prior to receiving state and federal funding, and provides affordable and long term household water well and septic systems. To support our efforts to meet this critical need, RCAC pushes for a strengthened and targeted CRA that moves banks to do more and do better to promote prosperity in rural and Indigenous communities throughout the country.

Clarify that investments in rural census tracts that are in MSA counties should be included in evaluating a bank's investment in rural communities and bank investments in rural census tracts (irrespective of being within a MSA) should be a separate and additional Impact Factor.

Community development in rural communities is especially challenging. This is due to a number of factors, including limited public and private sector resources and capacity relative to urban and suburban areas; low household incomes; and difficulty reaching the scale that makes housing and economic development projects "pencil out." Accordingly, HAC believes community development activities in rural communities should be an additional community development impact factor to ensure banks are incented (and recognized) for their rural community development lending, investment, and services.

HAC recommends, further, that this impact factor apply to community development activities in rural portions of MSAs whose economies and housing markets are truly rural. In refining this impact factor in the final rule, the regulators should draw on more precise, census-tract based definitions of "rural." For example, the Census Bureau estimated in 2016 that 54 percent of the rural population, under their classification of urban and rural census tracts, lived within MSAs. Other examples of more granular, rural-focused approaches include the FHFA's recent Duty to Serve rule and HAC's definition of rural and small town census tracts.

This is particularly important in western states where counties are very large and often contain an MSA with large rural regions within the county. San Bernardino County in California presents a prime example. With more than 20,000 square miles, San Bernardino is the largest county in the continental United States and is larger in land area than several states. San Bernardino is classified as a Metropolitan Area by OMB, and under such criteria, the entire county is considered "urban" by proxy under this classification. The county does contain a large population center in and around the cities of San Bernardino and Riverside, but 98 percent of the county's land mass would be considered rural by almost any measure. In fact, the Mojave Desert located in San Bernardino County is considered "Metropolitan" under OMB's scheme. There are numerous instances across the west like San Bernardino where large counties have substantial portions of their landmass classified as urban in nature under OMB Metropolitan criteria, when in fact they are largely rural in landmass. Coconino County, Arizona, and Kern County, California are other counties classified like San Bernardino in this discrepancy between rural classifications. Sub-county units of geography such as census tracts or block groups are often more precise and uniform indicators of rurality than counties.

CRA must explicitly consider bank activity by race and ethnicity.

The agencies proposed to use the Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race, but not to use the results of these analyses to influence a bank's rating. In addition, the agencies proposed using Section 1071 data on small business lending by race and gender of the business owner, and this data should be used as a screen for fair lending reviews. By including race and ethnicity, CRA can identify and address persistent racial disparities that have direct impacts on quality of life and health outcomes.

Meaningfully incorporate demographic data in a bank's CRA evaluation to determine whether a bank is meeting the credit needs of the entire community.

Although the CRA statute directs the agencies to evaluate how banks meet the credit needs of their entire communities, the proposed rule maintains its current emphasis on serving low- and moderate-income communities and neglects to collect, track, or incorporate racial demographic data in the examination process. Without data disaggregated by race and ethnicity, the regulators will not be able to fully assess a bank's track record of meeting the credit needs of its entire community, nor can the industry begin to consider more directly, or craft products and services focused on racial equity. Ideally, racial demographic data is needed across CRA activities, including community development, so that the agencies can capture an accurate and complete picture of how banks are meeting the credit needs of their entire communities – including communities of color.

Prioritize CDFI investments in the most underserved areas.

CDFIs in some of the most economically distressed regions of the country have been successfully meeting the needs of local communities and people for decades. In persistent poverty places, CDFIs often provide the only access to affordable financial services. Either through branches operated by CDFI depositories, or through providing mortgages and small business loans, CDFIs expand the continuum of responsible financial assistance available to local people in places with limited access to traditional bank branches. Proposed changes to the Community Reinvestment Act recognize the importance of CDFIs by specifically highlighting bank investments in CDFIs in several places throughout the proposed rule. However, it also proposes removing some evaluation requirements on the types of investments in CDFIs that are counted toward a bank's CRA requirement. While this change may remove some barriers to CDFI investments, RCAC requests it should be paired with either scoring or impact evaluation criteria that give greater weight to investments in CDFIs that serve the most underserved areas. CDFIs are required to serve low-income areas, yet this expectation is not enough to guarantee CDFI lending reaches communities of color and rural, Indigenous communities and other PPAs. The new CRA regulations must create incentives to reward banks that invest in CDFIs to facilitate deep impact in the most underserved areas. One way to do this would be to distinguish investments in CDFIs that participate in Deep Impact Lending.

Deep Impact Lending is a distinction the U.S. Department of Treasury already uses to recognize the most impactful lending to the most underserved communities and constitutes a subset of the "qualified lending" criteria for lending in low-income, rural areas, and lending to targeted populations, including communities of color, as well as other criteria. Deep Impact Lending was most recently used to direct deployment of the CDFI Fund's $9 billion dollar Emergency Capital Investment Program.

CDFI investments are critical to bringing capital to communities and regions that otherwise suffer from disinvestment; strengthening local economies and entrepreneurs, improving housing and access to safe drinking water, and empowering local people to determine their desired destiny. The CRA final rule must prioritize investment in deep impact lending CDFIs that work in the most underserved areas and to underserved borrowers.

Create greater accountability for small and intermediate banks, particularly those that serve rural areas.

As the agencies move to strengthen the CRA, local banks with a rural presence should not be able to bypass accountability. Increasing carve-outs will make it harder to close existing gaps in these regions, particularly for communities of color in rural areas.

Many of the proposed updates to the CRA that provide greater accountability in rural areas only apply to the large and, in some cases, intermediate banks. Further, the proposal would increase the threshold for large, intermediate, and small banks, lowering the number of banks that would be subject to those measures. However, underserved rural areas are more likely to be served by smaller and intermediate size banks not impacted by these new accountability measures. The proposed rule would increase the small bank threshold from $330 million to $600 million in assets, increasing the number of banks considered small by 779 banks nationally. Banks from $600 million to $2 billion would be considered intermediate banks, resulting in 217 fewer large banks.

This means more banks would not be required to be evaluated on their community development financing or be subject to the new retail services and products test in their communities. There will be less accountability for and less capital flow to rural regions, communities of color and PPAs. The agencies' rule must strengthen, not exempt, small banks' community development investments in rural communities, particularly in communities of color and persistent poverty communities.

While prioritizing the impact of investments in certain geographic areas, examiners should consider multiple factors, including communities with a low level of lending activity and capital investment.

Under the proposed rule, in addition to evaluating banks on the dollar value of community development financing, examiners will consider several factors to identify projects that are particularly impactful. RCAC supports the proposed inclusion of factors that identify geographic areas particularly in need of community development investment, including PPAs, areas with a low level of community development financing and Native communities.

The need to include these geographic factors is made evident by the implementation impacts of the New Markets Tax Credit program. Between 2003 and 2017, 65 percent of NMTC allocations in PPAs were concentrated in six urban communities. By contrast, just 5 percent of NMTC allocations during this time were invested in rural, persistent poverty counties.

Reducing CRA Ratings Inflation: Progress On The Lending Test Of The Large Bank Exam But Not As Much On The Other Subtests.

Currently, about 98 percent of banks pass their CRA exams annually, fewer than 10 percent receive an Outstanding rating, and almost 90 percent receive a Satisfactory rating.[i] The idea that 90 percent of all banks are performing in the same manner is implausible, as is the near-perfect pass rate. CRA successfully leveraged more loans, investments, and services for low- and moderate-income communities but it would be more effective in doing so if the ratings system more effectively revealed distinctions in performance.[ii] Banks performing in a mediocre or unsatisfactory fashion would be motivated to increase their reinvestment activity if their performance was more accurately depicted by a broader range ratings system. RCAC agrees with the suggestion from NCRC and recommends for either five ratings overall (there are four ratings currently) or instituting a point system that could also reveal more distinctions in performance.

Ensure community development activities meaningfully count toward a bank's overall rating.

The proposed rule reduces a bank's incentive to achieve a strong rating on its Community Development Test by setting a disproportionately low weight for community development activities compared to retail lending activities. The Community Development Test and the Retail Lending Test should receive equal weighting – each 50 percent of a bank's overall CRA rating – to ensure consistent emphasis on diverse community credit needs. While home mortgages and small business loans are absolutely core to bank's responsiveness to local credit conditions, so too are the affordable housing developments, childcare programs, health clinics, community centers, water and wastewater infrastructure, and other local assets, services and amenities that make up neighborhoods. These resources provide an outsized impact in communities but tend to receive less focus from the financial sector.

The final rule should specifically recognize lender fee-for-service payments for housing counseling services as an eligible activity under the CRA.

Housing counseling is a proven tool that helps consumers become mortgage-ready through financial education, pre-purchase counseling, reverse mortgage counseling and credit history counseling. This eligible activity would make a difference for low- to moderate income earners. While lenders recognize the value of housing counseling agencies to address troubling and persistent gaps in access to homeownership, clarification is needed regarding what form that support can take. Lender fee-for-service payments for housing counseling services are an important avenue to support housing counseling, and a clear statement in the rule that these payments are considered eligible supports under the CRA will provide the necessary clarity.

Credit for CRA eligible activities, including housing counseling services and financial literacy activities, should be limited to those populations specifically targeted by the CRA.

Income targeting is a vital component of the CRA and the goal to reach underserved populations. Allowing CRA credit for people at all income levels will undermine the CRA's central purpose.

The Impact Review should also be further developed.

The agencies proposed a qualitative impact review that is aimed at adjusting a community development rating in cases in which a bank may have lower dollar amounts of financing that is nevertheless more responsive to needs. For instance, this can occur when a bank is helping to finance intermediaries that support very small businesses in an area with high unemployment. Such financing could be of lower dollar amounts than other financing of high dollar values but does not directly address the need for job creation.

The agencies created valuable aspects of the qualitative impact review, such as classifying community development financing as impactful if it is directed to areas with persistent poverty, Indigenous communities or counties experiencing a dearth of community development finance. The agencies also proposed improvements for how to consider community development financing for affordable housing, economic development, community facilities and climate remediation and resiliency.

While the qualitative review is needed, it can also be abused and can result in inflating a rating if it is not carefully designed and allows examiners to make vague statements that carry great weight on exams. In particular, the agencies backed away from assigning each community development loan or investment an impact score on a point scale as contemplated in the Federal Reserve's Advance Notice of Proposed Rulemaking.

As an alternative, the agencies could guide the impact review by asking the examiners to calculate the percentage of community development finance that was devoted to PPAs, areas with low levels of finance and the percentage of activities that involved collaboration and partnerships with public agencies, Tribes and community-based organizations. In their instructions and templates for collecting community development data, the agencies should include data fields which would record geographical targeting, partnerships and other features. In this manner, the qualitative evaluation can become more quantitative and objective.

The agencies proposed data collection that involves impacts but should be more specific in the regulation and accompanying guidance. Guidance could encourage banks to record aspects of community development like jobs created or retained, number of LMI families housed, number of hospital beds created, and other statistics regarding the impacts of community facilities and infrastructure. In addition, the agencies could ask banks to indicate in data submissions when activities like affordable housing, economic development and climate remediation occur in tandem. The more robust this data collection process, the more objective the impact review can be in using and capturing data, such as the number and percentage of community development loans or investments that have significant impacts.

The impact review should have its own score, rating, and weight for the overall community development finance test, which the proposal lacks. Instead, the proposal would direct examiners to conduct an impact review judging the impact of the community development finance overall. As currently constructed, the impact review could lead to inconsistent or careless application of examiner discretion and a contribution to the overall community development finance rating that is not justified by a concrete demonstration of the breadth and depth of impactful finance.

The community development finance test will include an impact review which must be further developed and include points and ratings like other subtests so that the test can be more effective in stimulating responsive community development activities. We ask the agencies to reconsider their proposal to expand CRA consideration for financial literacy with no income limits; scarce counseling resources need to be targeted to LMI and other underserved populations. Finally, we ask the agencies to carefully develop their proposed list of illustrative activities that qualify for CRA to avoid the impression that this list is an exclusive list of approved activities.

Commit to ongoing public engagement around the newly proposed Impact Review Factors.

Effective implementation of Impact Review Factors will largely determine the success of the CRA rule; communities cannot afford for the regulators to miscalculate or underemphasize this component of the rule. It will take several years before the regulators have sufficient data to incorporate the Impact Review as a quantitative element of the exam process, and until then the Impact Review will largely be a qualitative consideration. The regulators should commit to seeking additional public input as they consider incorporating a quantitative approach to Impact Review Factors.

Enhancements to community development definitions will increase responsiveness of banks to community needs.

The agencies proposed refinements to the definitions for affordable housing, economic development, climate resiliency and remediation, community facilities and infrastructure that we believe will more effectively target revitalization activities to communities such as PPAs and Indigenous communities.

The agencies clarified that revitalization activities must not displace low- to moderate income (LMI) populations. The anti-displacement provision must be applied to all Community Development activities including affordable housing. A final CRA rule that does not adequately protect against displacement would not uphold CRA's requirement that banks serve the needs of LMI populations and communities. For example, multifamily housing that may initially be affordable but then involves rapid rent increases that pushes out LMI tenants is not serving the greater community needs for housing.

Agencies Must Make Sure That Smaller Areas Receive Weight on CRA Exams.

Another unresolved issue is how to weigh performance in large metropolitan areas, smaller metropolitan areas and rural counties. The agencies generally would weigh performance at an assessment area level based on the share of loans and deposits in that assessment area. This approach by itself would result in the larger areas not only contributing more to the overall rating but possibly obscuring poor performance in smaller metropolitan areas or rural counties.

The agencies attempted to correct for this by requiring that banks with 10 or more assessment areas must receive at least a Low Satisfactory rating in 60 percent of the assessment areas to pass overall. This still may not be an adequate solution since the smaller areas could represent a minority of areas, allowing a bank to pass the 60 percent threshold by focusing on the larger areas. This proposal needs more development. One possibility is to require banks to achieve at least a Low Satisfactory rating in 60 percent of each of its large metropolitan, small metropolitan and rural assessment areas. Any such requirement should also apply to banks with less than 10 assessment areas.

Conclusion

Though we've made substantial progress, the same issues that were present in the rural West over 100 years ago are still present today. Although times and technology have changed, concerns over safe and affordable drinking water, affordable housing, health access, transportation, education, communications, environment, economies, and representation remain as common threads that weave rural and Indigenous Western communities together. The CRA, while imperfect, has been an important tool to catalyze investment in these communities, often where traditional banking opportunities are lacking and have been unable to address the unique challenges and needs of these communities.

Thank you for the opportunity to provide feedback on the proposal, and we look forward to further engagement on this important issue.

Sincerely,

[redacted]

Suzanne Anarde

Chief Executive Officer
Rural Community Assistance Corporation

[i] Josh Silver and Jason Richardson, Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data, NCRC, May 2020, https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/

[ii] For studies documenting the impact of CRA, see Lei Ding and Leonard Nakamura, Don't Know What You Got Till It's Gone: The Effects of the Community Reinvestment Act (CRA) on Mortgage Lending in the Philadelphia Market, Working Paper No. 17-15, June 19, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2991557 and Lei Ding, Raphael Bostic, and Hyojung Lee, Effects of the CRA on Small Business Lending, Federal Reserve Bank of Philadelphia, WP 18-27, December 2018, https://www.philadelphiafed.org/community-development/credit-and-capital/effects-of-the-community-reinvestment-act-cra-on-small-business-lending.