

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

Re: RIN 3064-AF81

4 August 2022

Dear J. P. Sheesley:

The Autistic Women & Nonbinary Network (AWN) and the Autistic People of Color Fund (The Fund) appreciate the opportunity to comment on the Notice of Proposed Rulemaking (NPR) updating the Community Reinvestment Act (CRA). AWN advocates for autistic women, girls, transfeminine and transmasculine nonbinary people, and trans people of all genders, as part of the cross-disability movements for disability rights and justice and intersectional feminism. The Fund is a disability justice organization committed to providing direct support for autistic people of color by redistributing financial resources and mutual aid as a form of community-funded reparations, while advocating for systemic change to address the impact of structural racism and ableism in political, economic, social, and cultural institutions. We wholeheartedly support the economic stability and financial health of adults with disabilities, including autistic people of marginalized genders and autistic people of color. To ensure this stability, banks must be required to include people with disabilities in their responsibilities under the CRA.

The CRA's objective in meeting the credit needs of low- and moderate-income communities aligns with the credit needs of the disabled community. FDIC data has documented that people with disabilities are more likely than their nondisabled peers to be unbanked, lack access to credit, and be low- and moderate-income. The June 2020 Rule that the OCC issued, now rescinded, also explicitly listed qualifying CRA activities that supported people with disabilities, such as an unsecured consumer loan to a moderate-income person for household assistive technology products and vehicle modifications to improve accessibility; donations to workforce development programs designed to improve employment opportunities for low- and moderate-income people with disabilities; and financial capability training by bank employees to disabled people.

People with disabilities are one of the largest minority groups in the U.S. and growing. Estimated numbers vary from 40 million to over 60 million people. COVID has increased the size of the U.S. population with disabilities, as a result of long-term disabling effects that exacerbate existing disabilities and cause new disabilities.

The term "disability" describes a diverse group of people. A person's disability can be related to vision, hearing, movement, communication, cognition, or psychosocial experiences. A disability can occur at birth, older age, or anytime in between. It can be congenital or can arise because of chronic illness, injury, malnutrition, aging, accident, environmental harm, or violence. The CDC estimates

that one in five people in the United States has a disability. The diversity of types and severity of disability, age of onset, income, and intersection with other marginalized communities defined by race, ethnicity, gender, and sexual orientation can compound discriminatory treatment that limits access to credit and financial inclusion.

The NPR issued jointly by all three regulatory agencies offers a unique opportunity for focus and response to the financial challenges faced by people with disabilities as part of a bank's role and responsibilities under CRA.

The NPR offers a number of provisions that are sensitive to the financial challenges of low- and moderate-income disabled people nationwide and yet still more could be done. As a part of the disability community, we want to focus attention on 11 key issues:

- (1) **New Definition of Community Supportive Services** The new definition of community supportive services as “general welfare activities that serve or assist low- or moderate-income individuals, such as childcare, education, workforce development and job training programs, health services and housing services programs,” elevates the importance of these services in support of low- and moderate-income populations, including people with disabilities. Please consider entrepreneurship development as a further part of the community supportive services definition as an additional pathway out of poverty for people with low and moderate incomes, including disabled people.
- (2) **Workforce Development Services.** We agree with the agencies' inclusion of workforce development services within the new definition of community supportive services. Previously, when workforce development fell under economic development, these activities were tied exclusively to supporting or financing small businesses and farms.. With the change in the proposal, community supportive services will receive consideration if the program's participants are low- or moderate income, which would promote funding for people with disabilities in particular. We believe that investing funding in workforce development activities for people with disabilities and other low-income and disadvantaged populations should be a standard part of impact reviews in the community development tests.
- (3) **Focus on Low- and Moderate-Income Disabled People.** We are pleased that, in the definition of “community supportive services,” there is included “(7) Activities that benefit or serve individuals who receive or are eligible to receive Federal Supplemental Security Income, Social Security Disability Insurance or support through other Federal disability assistance programs.” Other examples of federal disability assistance programs that should be listed include Vocational Rehabilitation (VR) services and Home- and Community-Based Services (HCBS) under Medicaid waivers. Although this Paragraph 7 is one of many examples of groups and activities covered under the new definition of community supportive services, it is at least clear recognition that disabled people are and should be a target for community development activities including “childcare, education, workforce development and job training programs, and health services and housing services programs that serve or assist low- or moderate-income individuals.”

- (4) **Presumption of Low- and Moderate-Income Coverage by Proxy.** Historically, banks have been challenged during performance reviews with regulators regarding their level of documentation that the people served are low- and moderate-income. In the NPR, there is a list of activities that create presumptive proof that people being served by a variety of means-tested federal programs would be sufficient proof of low- and moderate-income status. Low- and moderate-income people with disabilities would also be included under other activities listed that benefit an low- and moderate-income population, such as the Supplemental Nutrition Assistance Program (SNAP), Medicaid, the Department of Agriculture’s National School Lunch Program, and HUD’s Section 8 program. These examples of services that people with disabilities are often eligible to receive should serve as proxies for banks to have presumptive proof of low- and moderate-income coverage.
- (5) **Qualifying Non-exhaustive List of CRA Activities** AWN and the Fund support development of a nonexhaustive, but illustrative, list of activities that qualify for CRA credit. It is important to be clear that such a list of activities does not imply that there are no other activities that would qualify. The recently rescinded June 2020 Rule issued by the OCC listed multiple examples of qualifying activities that supported people with disabilities such as:
- (a) An unsecured consumer loan to a moderate-income person for household assistive technology products and vehicle modifications to improve accessibility (Section 25.04(b)(1)(i)).
 - (b) Donations to workforce development programs designed to improve employment opportunities for low- and moderate-income people with disabilities (Section 25.04(c)(3)).
 - (c) Financial capability training by bank employees to people with disabilities (Section 25.04(c)(9)).
 - (d) Loan to upgrade equipment in a public library to accommodate low- and moderate-income disabled patrons (Section 25.04(c)(5)(i)).

These examples stimulated discussions and reinforced opportunities for collaboration with banks. We support inclusion of the examples from the prior OCC list to help promote eligible CRA activities that specifically impact the disability community.

- (6) **Accessibility and Affordability of Retail Products and Services** Under the proposal, only large banks with assets of more than \$10 billion will have their digital and other delivery systems evaluated for availability and responsiveness. The approach of using quantitative measures to evaluate distribution of digital account activity across census tracts of various income levels is a starting point. This requirement should not be optional for large banks with assets below \$10 billion with at least one-third deposit activity being digital. The regulators should qualitatively consider the range of banks’ digital and other delivery systems including online, mobile, and telephone banking for not just the largest banks. A bank should be required to explain its strategies and initiatives to meet low- and moderate-income

consumer needs through digital and other delivery systems including marketing and outreach to low- and moderate-income people to increase uptake of the channels, as well as partnering with community-based organizations serving targeted populations such as disabled people.

Accessibility and affordability of responsive products and services should be compared and contrasted between low- and moderate-income neighborhoods and higher income neighborhoods at the assessment area level. Branch availability, services offered, branch openings and closings and banking hours and services responsive to low- and moderate-income customers, including customers with disabilities, should be a part of the bank examiner evaluation in the retail services and products test.

- (7) **Impact Review Factors.** There are 10 impact factors proposed that will influence community investment and service scores. The 10 factors include the following: whether the activity serves persistent poverty counties, supports Treasury-certified CDFIs, serves low- and moderate-income people and families, is a qualifying grant or donation, and others which could benefit low- and moderate-income people with disabilities. The disability community urges the addition of an eleventh impact factor for the Community Development Financing and Services Tests that specifically reviews “whether the activity serves low- and moderate-income people with disabilities.” We support weighting these impact factors in the analysis as well.
- (8) **Promote and Encourage Public Engagement.** We support that community groups be allowed, in addition to banks, to be able to suggest revisions and additions to the illustrative nonexclusive list of CRA qualifying activities with justifications. Banks should be encouraged to work with community groups and suggest joint proposals. There should be regular requests for public comment on proposed revisions and additions to the list. Examiners should make outreach to historically underserved groups defined by race, ethnicity, or disability a part of their regular exam routine to provide documentation of unmet individual and community needs. Public written and oral comments that provide evidence of patterns (positive or negative) regarding access to credit and bank response should be a factor in conclusions for retail lending and services tests.
- (9) **Financial Literacy Remain Focused on low- and moderate-income people.** AWN, the Fund, and the broader disability community strongly oppose CRA credit for financial literacy activities including education and counseling services for individual people without regard to income levels. People with disabilities have benefited from collaborations with banks of all sizes offering financial education and counseling services both through funding and staff volunteer activities. Consideration of all financial literacy activities could divert limited resources from projects which would specifically be intended to benefit low-or moderate-income people. CRA must retain considerations focused on low- and moderate-income populations in communities that banks serve. Expanding eligibility for financial literacy activities will most likely diminish current efforts and chill potential future investment into activities centered on low- and moderate-income people with disabilities and other underserved populations defined by race and/or ethnicity.

- (10) **Applicability of the Americans with Disabilities Act (ADA)** As part of the anti-discrimination and consumer protection legal reviews, the agencies added the Military Lending Act in the list of laws to be included in the fair lending review. The agencies should consider adding the ADA as a part of fair lending reviews.
- (11) **Ratings.** No bank should receive an outstanding rating without both the community development financing and services and the retail lending and services and products subtests demonstrating improved levels of quantitative and qualitative measures in direct response to the credit needs of low- and moderate-income people with disabilities within and across assessment areas.

Vibrant communities are best supported when economic opportunities are inclusive of low- and moderate-income populations, including disabled people. Unless the agencies intentionally address the challenges facing low- and moderate-income people with disabilities, the financial system will unintentionally exclude disabled people and overlook our communities as targets of community development activities.

Thank you for your attention to and support of our comments.

Sincerely,

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The Autistic People of Color Fund

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