Wendy Takahisa
Head of Community
Reinvestment Act

30 Hudson Yards, 61st Floor
New York, NY 10001-2170

August 5, 2022

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Via Federal eRulemaking Portal:
https://regulations.gov/

James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Via Email: comments@fdic.gov

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Via Email: regs.comments@federalreserve.gov

Re: Community Reinvestment Act (Docket ID OCC-2022-0002, RIN 1557–AF15; Docket No. R-1769, RIN 7100–AG29; RIN 3064–AF81)

To Whom It May Concern:

Wells Fargo & Company ("Wells Fargo")[1] appreciates the opportunity to respond to the Joint Notice of Proposed Rulemaking (the "Proposal") designed to modernize the regulations implementing the Community Reinvestment Act ("CRA") and issued by the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation (collectively, the "Agencies").[2]

[1] Wells Fargo & Company (NYSE: WFC) is a leading financial services company that has approximately $1.9 trillion in assets, proudly serves one in three U.S. households and more than 10% of small businesses in the U.S., and is a leading middle market banking provider in the U.S. We provide a diversified set of banking, investment and mortgage products and services, as well as consumer and commercial finance, through our four reportable operating segments: Consumer Banking and Lending, Commercial Banking, Corporate and Investment Banking, and Wealth & Investment Management. Wells Fargo ranked No. 37 on Fortune's 2021 rankings of America's largest corporations. In the communities we serve, the company focuses its social impact on building a sustainable, inclusive future for all by supporting housing affordability, small business growth, financial health, and a low-carbon economy.

[2] *See Community Reinvestment Act*, 87 Fed. Reg. 33,884 (June 3, 2022).

Wells Fargo maintains a strong commitment to each community we serve and strongly supports the policy objectives underlying the CRA to encourage banks to serve the credit needs of their local communities, including low- and moderate-income individuals and neighborhoods, in a safe and sound manner. Wells Fargo is proud to have been rated "Outstanding" by the OCC on our most recent CRA exam.[3] In particular, the OCC noted that Wells Fargo's "lending levels reflect[ed] excellent responsiveness to the credit needs in the majority of assessment areas."[4]

The Proposal reflects a tremendous amount of work aimed at achieving the laudable goals set out in the Agencies' fact sheet, all of which Wells Fargo supports: (1) "expand access to credit, investment, and basic banking services in low- and moderate-income communities," (2) "adapt to changes in the banking industry, including internet and mobile banking," (3) "provide greater clarity, consistency, and transparency," (4) "tailor CRA evaluations and data collection to bank size and type," and (5) "maintain a unified approach."[5]

Wells Fargo submits this comment letter to highlight areas of the Proposal that we believe may not fulfill the Agencies' stated goals and the CRA's statutory goals of encouraging banks to meet the needs of our respective communities, including low- and moderate-income communities. We also seek to elucidate the Proposal's likely impact on more traditional branch-based banks like Wells Fargo, which proudly supports our communities via a robust branch network, with more than 4,000 retail branch locations and more than 12,000 ATMs across 36 states and the District of Columbia.

I. The Retail Lending Test as Proposed Would Significantly Devalue Critical Small Business Lending

Small businesses are the heartbeat of our communities. They pump life into our neighborhoods, creating vibrant places to live, work, and raise families – and they are crucial to sustaining millions of local jobs. In fact, approximately 50% of all Americans are employed by a small business and 99% of American businesses are small businesses. Our economy is powered by small businesses, and Wells Fargo is committed to helping them succeed. We proudly serve over three million small business customers, which account for more than 10% of small businesses in the United States.

Our analysis of the new Retail Lending Test found that small business lending would be materially devalued under the CRA. The test relies on the dollar volume of eligible loans for most products under both the Major Product Line ("MPL") standard and the MPL weightings to calculate overall Retail Lending Test scores. In contrast, the current framework relies on the unit volume of lending to evaluate the relative weight of retail loan products. This change in approach would have significant impacts on the evaluation of small business lending.

Under the MPL standard, Wells Fargo estimates that small business lending would **not be evaluated in approximately 70% of our assessment areas**. Moreover, in the assessment areas where small business lending would satisfy the MPL standard and be included in the evaluation, we estimate small business lending would only have **a meaningful impact to the evaluation in less than 10% of the assessment areas**.

---

[3] *See* Wells Fargo Bank, N.A. Community Reinvestment Act Performance Evaluation (Feb. 4, 2019), *available at* https://occ.gov/static/cra/craeval/Jun20/1.pdf.

[4] *Id.* at 4, 8.

[5] *See* Community Reinvestment Act Proposal Fact Sheet (May 2022), *available at* https://www.occ.treas.gov/news-issuances/news-releases/2022/nr-ia-2022-47b.pdf.

Wells Fargo believes that these are unintended consequences and contrary to the Agencies' long-standing and continuing recognition of the importance of small business lending. The Proposal explains that the Retail Lending Test was designed to continue to prioritize small business lending as a core wealth-building product under the CRA. For example, the Proposal notes that the change in MPL weightings was intended to "recognize[] the continued importance of home mortgage and small business lending to low-and moderate-income communities, which have been a focus of the CRA, while also accounting for the importance of consumer loans to low- and moderate-income individuals."[6]

Wells Fargo respectfully submits that these outcomes are also contrary to the Agencies' long-standing recognition that small balance loans to small businesses can be critical initial steps to building wealth, financial stability, and good credit history, which assist small businesses to qualify for additional credit as their needs grow. Wells Fargo strongly supports this principle as well. For example, Wells Fargo proudly offers small business products with low initial lines of credit, which can grow with the business as it expands and thrives. Such introductory products are impactful and appropriate particularly for new small businesses, including businesses owned by diverse customers. Smaller businesses are also more likely to need small balance loans. Accordingly, Wells Fargo recommends that the Agencies continue to evaluate retail loans based on the unit volume of loans rather than evaluating on the dollar volume, to encourage such impactful lending and avoid a potential disincentive to such lending.

Wells Fargo appreciates that relying on the number of loans for both the MPL standard and the weighting may create another consequence contrary to the Agencies' intent by significantly raising the importance of automobile lending. Wells Fargo agrees with the Agencies that automobile financing is an important consumer lending product but also not a core product under the CRA. While transportation and transit-oriented development have been raised as a need, automobile lending has not been identified as an unmet community need in our CRA Performance Evaluations and would be formally evaluated for the first time under the CRA. Additionally, the automobile lending data on which the new Retail Lending Test metrics would rely do not currently exist and even when gathered would be based only on originations for banks with assets of more than $10 billion, which would include a fraction of total bank automobile financing activity. The Retail Lending Test adjustments to accommodate automobile lending and the concomitant negative impacts on small business lending suggests that automobile lending may not be appropriate for inclusion in the quantitative Retail Lending Test measures. However, if automobile lending remains an MPL in the Retail Lending Test, Wells Fargo respectfully recommends that the Agencies consider capping the weighting and impact of automobile loans in each assessment area to further the Agencies' goals of prioritizing home mortgage and small business lending.

Given these seemingly unintended and material negative consequences under the proposed Retail Lending Test, Wells Fargo respectfully submits that a phased implementation of the new Retail Lending Test in particular would be prudent to allow the Agencies, banks, and other stakeholders time to evaluate and adjust to such significant changes. Such a measured approach is further warranted because many of the data points on which the new quantitative measures would rely are unavailable to be tested, including automobile lending, small business lending as reported under the proposed rule to implement Section 1071 of the Dodd-Frank Act, and deposit data by depositor address for banks with assets of more than $10 billion. As discussed below, Wells Fargo also believes that given the lack of data necessary for implementation under the Proposal and the potential for other unintended consequences, the dates for implementation of the final rule should also be extended.

[6] *See* 87 Fed. Reg. at 33,947.

II. The Proposed Weighting of the Four New Tests Undervalues and Could Disincentivize Community Development Financing

Community development financing is critical to addressing community credit needs and the revitalization of low- and moderate-income communities. The importance of affordable housing, economic development, and community services cannot be overstated. However, under the Proposal, the Community Development Financing Test is only valued at 30%, significantly less than the Retail Lending Test at 45%. To continue to meaningfully encourage such important community development activities, Community Development Financing should be impactful to a bank's overall rating.

Wells Fargo respectfully recommends that the Proposal be revised to increase the weighting of Community Development Financing Test to be on par with the Retail Lending Test. Wells Fargo respectfully submits that such parity would reflect the Agencies' strong support of vital community development financing and appropriately incentivize such activities.

III. Certain Limitations within the Community Development Definitions Could be Counter to the Goal of Encouraging More Community Development Financing

Wells Fargo is a leader in making community development loans,[7] and appreciates the Agencies' recognition of critical community development financing activities and the Proposal's expansion of eligible activities to support banks in meeting the complex needs of their communities. In particular, Wells Fargo strongly supports the Agencies' specific recognition of Native Land Areas and disaster preparedness and climate resiliency.

- Wells Fargo has a legacy of serving Native American, Alaska Native, and Native Hawaiian communities for more than 60 years, and is committed to seeing the communities achieve financial sustainability and prosperity. Wells Fargo proudly serves these communities through 56 branches on or near tribal lands across 12 states and provides capital and financial services to more than 400 tribal entities. Since 2018, Wells Fargo has donated more than $50 million to nonprofit organization serving Native American, Alaska Native, and Native Hawaiian communities, particularly in the areas of COVID-19 relief, housing affordability, financial health, environmental sustainability, small business growth, and scholarships.

- Wells Fargo understands that climate change is one of the most urgent environmental and social issues of our time, and we are working across our value chain to help accelerate the transition to a low-carbon economy and reduce the impacts of climate change on our business, communities, employees, and customers. We are actively working to help investors, customers, employees, and communities anticipate, adjust to, and understand the climate-related risks we face. In March 2021, we announced a number of goals to accelerate our transition to an equitable and sustainable future, including deploying $500 billion in sustainable finance by 2030.[8]

---

[7] *See* Wells Fargo Bank, N.A. Community Reinvestment Act Performance Evaluation at 4.

[8] Wells Fargo press release "Wells Fargo Sets Goal to Achieve Net Zero Greenhouse Gas Emissions by 2050," (March 8, 2021) available at https://newsroom.wf.com/English/news-releases/news-release-details/2021/Wells-Fargo-Sets-Goal-to-Achieve-Net-Zero-Greenhouse-Gas-Emissions-by-2050/default.aspx.

However, Wells Fargo respectfully comments on other components of the proposed Community Development Definitions at §_.13 that we believe may run counter to the Agencies' goals and intention to encourage more community development activity.

First, the Agencies have proposed common elements for place-based definitions.[9] Two of those elements as currently drafted may materially restrict the types of meaningful activities that could be considered for CRA credit: (1) that the activity be conducted "in conjunction with a Federal, state, local, or tribal government plan, program, or initiative" and (2) that the activity "must not displace or exclude low- or moderate-income residents." Wells Fargo respectfully offers recommendations below on how these two requirements could be revised to carry out the Agencies' intent without unduly excluding impactful community development activities.

With respect to the requirement that there be a government nexus, the Proposal does not provide details on how the requirement that the activity be conducted in conjunction with the government could be evidenced or what level of engagement with the government would be required, but notes that the intention of this requirement is to "ensure that the activity is responsive to identified community needs."[10] If the expectation is an agreement or similar formal documentation from the government recognizing the activity as part of a plan, program or initiative, such a restriction would exclude impactful activities with non-profits or in the private sector that do not have a formal government plan and yet could effectuate the same community development purposes. Rather than include such a requirement, Wells Fargo respectfully recommends that the Agencies allow flexibility to demonstrate that other activities with similar community development purposes also meet an identified community need.

With respect to displacement, the Proposal notes that the requirement to not displace low- or moderate-income residents is "to ensure that qualifying activities do not have a detrimental effect on low- or moderate-income individuals or communities or on other underserved communities."[11] Wells Fargo strongly supports the Agencies' intent in crafting this requirement but believes that the proposed regulation text may be overly restrictive as currently drafted and may not provide communities the flexibility necessary to assess how best to address their needs. For example, climate resiliency activities may require displacement out of necessity, in situations where residents must relocate because communities have become uninhabitable due to climate change.[12] A community may also determine that displacement generates benefits to the larger community, including substantial benefits for low- and moderate-income residents, such as a project to build a hospital in a health care desert. Wells Fargo respectfully recommends that the Agencies instead allow flexibility to consider whether there are factors that inform the overall impacts on low- and moderate-income residents, which could include an evaluation of any displacement mitigation plans and the net impact on the community and low- and moderate-income residents in particular.

In addition to the above comments, Wells Fargo respectfully responds to two specific points on which the Agencies solicited feedback.

---

[9] These would include Revitalization (§_.13(e)), Essential Community Facilities (§_.13(f)), Essential Community Infrastructure (§_.13(g)), Recovery Activities in Designated Disaster Areas (§_.13(h)), Disaster Preparedness and Climate Resilience (§_.13(i)), and Qualifying Activities in Native Land Areas (§_.13(l)).

[10] *See* 87 Fed. Reg. at 33,903.

[11] *See id.*

[12] *See, e.g., Dispossessed, Again: Climate Change Hits Native Americans Especially Hard*, New York Times (June 27, 2021, updated Oct. 28, 2021), *available at* https://www.nytimes.com/2021/06/27/climate/climate-Native-Americans.html.

First, with respect to naturally occurring affordable housing under §_13(b)(2), the Agencies solicited feedback on whether the currently proposed requirement that rents be no more than 30% of 60% of area median income ("AMI") should be increased to 30% of 80% of AMI.[13] Wells Fargo respectfully recommends that the definition use the 80% AMI threshold. Increasing the threshold would encourage the financing of affordable rental housing and also foster more robust mixed-income communities.

Second, the Agencies solicited feedback on whether under §_.13(a)(1)(i) pro-rata credit should be given to additional community development activities or be limited to affordable housing. While recognizing the importance of affordable housing, Wells Fargo respectfully recommends expanding partial consideration to other qualifying community development activities.[14] The Agencies cited critical community development projects that have significant benefits to low- and moderate-income residents and broader communities, including "financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities."[15] Allowing pro-rata credit would incentivize such projects that will materially improve our communities across the country.

Finally, Wells Fargo recognizes that it would be impractical for the regulation text to provide in-depth details on the wide range of activities that may qualify for CRA consideration, and accordingly, strongly supports the Agencies' proposal to "maintain a publicly available list of illustrative examples that would quality for CRA consideration."[16] Such a list would provide necessary clarity and transparency to allow banks to appropriately manage their activities. Wells Fargo respectfully recommends that the list be available with the publication of the final rule to provide banks advance notice of what specific activities may be eligible.

IV. Retail Lending Assessment Areas and Outside Retail Assessment Areas Would Capture a Small Amount of Additional Lending for Traditionally Branch-Based Banks and May Unduly Divert Valuable Resources from Facilities Based Assessment Areas.

For traditional branch-based banks that have a substantial majority of their CRA activities assessed within their Facilities Based Assessment Areas ("FBAAs"), the introduction of new Retail Lending Assessment Areas ("RLAAs") and the Outside Retail Lending Area ("ORAA") under the Retail Lending Test may divert valuable resources from FBAAs, while only capturing a small percentage of additional loans. Wells Fargo currently has more than 550 FBAAs, which captures more than 80% of its mortgage and small business lending. Additionally, Wells Fargo estimates that under the proposed thresholds (100 mortgage or 250 small business loans), Wells Fargo would create nearly 100 new RLAAs, yet those RLAAs and the ORAA would represent less than 10% of its overall performance, once all retail lending products are considered and weighted at the institution level.

The Agencies solicited feedback on whether a large bank that has a majority of its retail lending captured in its FBAAs should be exempt from RLAAs and the ORAA.[17] Wells Fargo respectfully submits that where the vast majority of a bank's retail lending is captured within FBAAs, it should be exempt from additional assessment areas under the Retail Lending Test and be evaluated solely in their FBAAs.

---

[13] *See* 87 Fed. Reg. 33,895.

[14] *See* 87 Fed. Reg. 33,892.

[15] *Id.*

[16] *See* §_.14(a), 87 Fed. Reg. at 34,021.

[17] *See* Questions 46 & 87, 87 Fed. Reg. at 33,921, 33,949.

In proposing the new Retail Lending Assessment Areas ("RLAAs"), the Agencies explained that they are "designed to provide a pathway to evaluate banks in a way that provide parity between banks that lend primarily through branches and those banks with different business models."[18] However, for traditional branch-based banks, the Proposal instead increases the disparity between business models. Unlike other banking models, the vast majority of retail lending is already examined for branch-based banks. Imposing RLAAs and the ORAA on such banks could divert resources from FBAAs, while capturing a very small percentage of lending that would be minimally probative of the bank's overall performance.

However, should the Agencies retain a loan threshold to trigger the creation of new RLAAs or the ORAA, Wells Fargo respectfully submits that the current thresholds based on the number of loans, without regard to the size of the bank or of the market, serve to create a false consistency. One hundred mortgage loans in large metropolitan area would not represent the same impact on the community as 100 mortgage loans in a rural community. Moreover, for large banks to which this requirement would apply, such lending volumes would not represent a significant volume of the bank's total lending and/or may not be a statistically significant volume of lending to meaningfully assess a bank's lending performance to low- and moderate-income individuals and communities.

If banks do not have a majority of their lending within FBAAs (as suggested above), Wells Fargo respectfully recommends that the Agencies require banks to establish RLAAs only where the RLAA is meaningful both to the bank's overall lending and to the local community. While the exact levels may need to be determined once data are available, Wells Fargo respectfully requests that the Agencies consider that RLAAs should be established where the volume of lending (as measured by the number of loans) represent both (1) a minimum threshold of a bank's total lending to measure its importance to the bank, and (2) a minimum market share to measure the impact on the community.

V. Clearer Consideration of Qualitative Factors Would Incentivize Innovative Programs that Reach More Low- and Moderate-Income Individuals and Communities

Wells Fargo appreciates the Agencies' goal of increased clarity and consistency. Wells Fargo recognizes that the Agencies will continue to rely on performance context as part of their respective CRA performance reviews. However, Wells Fargo believes that banks would be further encouraged to create innovative and responsive programs if the impact of these activities is clearly reflected in a bank's evaluation.

Wells Fargo works with many community stakeholders to design and implement programs that help to serve some of the most underserved communities. Below are just a few examples of Wells Fargo programs and initiatives that we believe should be considered as factors for an upgrade:

- Dream.Plan.Home.℠ programs offer Wells Fargo mortgage borrowers with closing cost credits, more flexible credit criteria, low down payment requirements, and financial education

- NeighborhoodLIFT provides down payment assistance for first-time homebuyers and home-buyers ready to re-enter the market

- The Open for Business program provides support for Community Development Financial Institutions ("CDFIs") and nonprofit organizations that serve small businesses, including diverse owned businesses

---

[18] 87 Fed. Reg. at 33918.

- The Small Business Resource Navigator, an online portal, connects small business owners to potential financing options and technical assistance services through CDFIs

- The National Unbanked Task Force, formed in support of our Banking Inclusion Initiative and comprised of CEOs and executives of leading advocacy organizations, strives to increase access to affordable products, digital banking, and financial guidance within unbanked communities

- Invested in 13 Minority Depository Institutions and provided each with assistance on financial, technological, and product development strategies

- Supported MoCaFi's government to people payments solution as an onramp to financial inclusion, including their new partnership with the City of Los Angeles's Angeleno Connect card, enabling MoCaFi users to withdraw funds from Wells Fargo ATMs nationwide without incurring fees from Wells Fargo

Our community partners find that these programs have an outsized impact on assisting low- and moderate-income communities and small businesses that is not directly proportional to the number of clients served. Wells Fargo respectfully recommends that for each test, the Agencies more clearly encourage and incentivize such programs by establishing a formal documented process to upgrade ratings through these impactful programs. A documented process would further the Agencies' goals of clarity, consistency, and transparency, while also signaling strong support of such innovative programs.

VI. The Proposed Implementation Period Is Not Adequate to Comply with the Significant Changes in the Proposal and Build Strategies to Address the New Framework in the Proposal

The Agencies have proposed several new data collection and reporting requirements within a one-year implementation period. Given the material changes that have been proposed, the proposed one-year implementation timeline is insufficient to allow banks to execute the appropriate change management processes to comply with the new requirements. Consistent with regulatory requirements and supervisory expectations, banks implement new data requirements through comprehensive change management processes that include, among other steps, developing new policies and procedures; data mapping and changes to information technology resources; testing and validation; and a new reporting infrastructure to comport with Agencies' requirements for the collection of the data.

Equally critical, banks will need time once the various benchmarks against which they will be measured are published to study them and adjust their strategies as appropriate. All four of the proposed tests include new data benchmarks, and much of the data on which these benchmarks rely is not collected today. As a result, banks cannot predict what those benchmarks would show until they have been published and should be permitted a reasonable period of time to react to them before they are implemented and impact CRA conclusions.

A phased and measured approach could be accomplished in multiple ways. Wells Fargo respectfully recommends at a minimum that the Agencies (1) delay the implementation of the quantitative measures to permit further study of their impacts and (2) allow banks additional time after the benchmarks have been published to assess and adjust to those new performance standards. Accordingly, Wells Fargo strongly encourages the Agencies set a minimum of 24 months (following *Federal Register* publication of a final rule) for banks to implement the Proposal's data collection and reporting requirements and an additional 24 months before any new quantitative metrics are used to evaluate CRA performance.

Conclusion

Wells Fargo is a recognized national leader in lending, investing, and providing services to low- and moderate-income communities across the U.S., and we understand that we can only be as successful as the communities we serve. As such, Wells Fargo applauds the Agencies' significant efforts to modernize the regulations that implement the CRA and the Agencies' call for robust public comments on the Proposal. We have highlighted areas where we believe the Proposal could be refined to further the goals of the CRA and the Agencies' objectives and appreciate the Agencies' consideration of the foregoing comments. We would welcome an opportunity to discuss any of the points raised in this comment letter further.

Sincerely,

[redacted]

Wendy Takahisa
Head of Community Reinvestment Act