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August 5, 2022

Re: Comments & changes needed on CRA NPR: OCC Docket ID OCC–2022–0002; FDIC RIN 3064-AF81; Federal Reserve Docket No. R-1769 and RIN 7100-AG29

To Whom It May Concern:

I am writing on behalf of the Cypress Hills Local Development Corporation (CHLDC) to submit comments on the interagency Notice of Proposed Rulemaking (NPR) to modernize the Community Reinvestment Act (CRA). We believe significant changes are needed in the proposal to make it more responsive to the needs of low and moderate income consumers, small businesses and communities.

CHLDC is a 39 year old, community-governed, not-for-profit community development corporation and settlement house. Our organization builds and manages affordable housing, runs youth and human services programs and provides housing counseling and financial education in East New York, Brooklyn. We have partnered with community residents/activists and small businesses for the past 29 years in the East Brooklyn Reinvestment Committee which has attempted to hold local banks accountable for their obligations under the Community Reinvestment Act. East New York/Cypress Hills is a low- to moderate-income community with a critical need to preserve existing small homes and multifamily housing, an acute shortage of affordable rental units and rising housing costs that impact both owners and tenants. Securing safe, high-quality affordable housing in the community is a major challenge. Brooklyn Community Board 5 identified affordable housing as the leading urgent issue in its Statement of Community District Needs and Community Board Budget Requests for FY2020. 47% of local households are severely rent-burdened, spending more than 50% of income on rent (NYC Community Health Profile for 2018, Brooklyn CD 5). 17.4% of residents live in overcrowded rentals and 30.8% are in housing in fair-to-poor condition (Citizens Committee for Children.) Many housing units have poorly functioning plumbing and electrical systems, roof leaks, moisture infiltration and old appliances. Mold and rodent infestations are common and impact indoor air quality.

The East Brooklyn Reinvestment Committee organizes annual Banking Forums to discuss the banking services and lending needs of residents and small businesses with CRA Officers of local lending institutions/bank representatives and regulators, collaborates with local lenders to craft products tailored to the needs of the community and protests any unfair and predatory actions/products of lenders. At these annual Banking Forums we present an analysis of banks' performance, the results of our own survey of local bank branches and trends in foreclosures and home refinance and repair lending. Over the past 29 years, we are proud to have increased the lending of some banks, attracted the investment of several banks in financial education, housing counseling services and new credit builder products, stopped the automation of a local bank branch and alerted regulators to "on the ground" predators.

CHLDC is a member of the Association for Neighborhood and Housing Development (ANHD), an organization made up of over 80 community groups across New York City with a mission to build community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. ANHD also convenes NYC's Equitable Reinvestment Coalition (ERC) which is dedicated to holding financial institutions accountable for the wealth and racial inequities they helped create and continue to perpetuate. We are proud to be a member of ERC.

Our organization is also an affiliate of UnidosUS, the country's leading Latino civil rights organization and works under their housing counseling network to prevent home foreclosure and evictions and educate renters and homeowners alike about their rights and how they can better maintain the affordability of their housing.

The CRA is one of the most important laws we have to hold banks accountable for their obligations to serve and invest in local communities. The law has leveraged trillions of dollars and fostered meaningful investments, financial services, and partnerships in NYC neighborhoods. The law has enabled our nonprofit community development organization to build/renovate 550 units of affordable housing and create much needed retail and community facilities space. Through the New York Mortgage Coalition we helped 797 LMI residents become homeowners with responsible and affordable mortgage products.

Yet, for all its benefits, the CRA has not kept up with significant changes in the banking industry, **nor has it addressed persistent racial disparities and inequities.** It has been 40 years since the CRA was passed and the racial wealth gap is wider than ever. **The average Black and Latinx households earn about half as much as the**

average White household and only have about 15% to 20% as much net wealth.[1] Additionally, ANHD and our partners across the country have documented persistent racial disparities in banking and lending, resulting in fewer residential and small business loans, fewer branches, more harassment and displacement, and fewer resources for BIPOC people and communities[2].

Our local banks (6 banks – Bank of America, Capital One, Chase, Citibank, HSBC, M & T with 10 branches) have **$1.3 billion** on deposit at their bank branches but have only issued 118 loans totaling in 2020, representing $46.3 million in home loans (59 home purchase, 59 refinance and no home improvement loans,) with only 15% of these loans issued to LMI borrowers. This represents only 10% of local banks deposits being reinvested in our neighborhood and is dwarfed by the performance of mortgage companies and all lenders who issued 924 home loans, totaling $493 million (301 home purchase loans, 619 home refinance loans and 4 home repair loans.) **In other words, local banks only have a 10% share of lending in our community and we need to question why the largest lenders in our country cannot match the performance of mortgage companies.**

This proposal represents the first major update of the CRA in over 25 years and we appreciate the regulators working together to offer several positive steps forward such as: more rigorous data-driven lending tests; a focus on smaller businesses; more data disclosure and analysis of bank deposits and products at the largest institutions; lending-based assessment areas; anti-displacement criteria in some community development categories; and expanded discrimination downgrades to include non-credit consumer violations (e.g., opening fake bank accounts).

However, these changes fall far short of what our communities need and deserve and we cannot support the proposal without significant changes and additions. If the NPR passes as it is, the regulators will have missed this historic opportunity to ensure that the CRA meets its intended purpose to address redlining and other racial disparities in our financial systems.

1. Race Matters in CRA: Systemic racism, discrimination, and the disparities and inequities they perpetuate cannot be adequately addressed with "color-blind" policies.

While the NPR acknowledged CRA's origin explicitly as an anti-

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[1] https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.htm

[2] https://www.congress.gov/116/meeting/house/110580/witnesses/HHRG-116-BA15-Wstate-WeisbergJ-20200306.pdf

redlining law[3], we are deeply disappointed that the regulators failed to push for regulations that would have CRA to live up to its intended purpose. The NPR went so far as to acknowledge the shortcomings of the regulatory framework: *"Even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent."* And yet all they propose regarding race within the examination framework is to disclose already public data that will have no impact on the final rating. Additionally, we know that income is not a proxy for race. We expect and demand more in this area.

Regulators should **create affirmative obligations** to serve and benefit BIPOC people and communities, and **incentivize** activities that close the racial wealth gap.

Regulators should **benchmark and disclose all available data by race**: home loans (HMDA), small business loans (1071 data), grants to BIPOC-led organizations, branch & community development locations, etc. Disparate trends should lead to downgrades and trigger fair lending investigations[4].

Regulators should **extend place-based anti-displacement criteria** to all community development categories: no credit should be awarded for "displacement or detrimental effect on LMI or underserved populations". Regulators need to examine the affordability of housing developments being financed by banks and ask a simple question: can residents of the surrounding community afford these units? If they cannot, CRA credit should not be awarded!

And finally, regulators should **expand discrimination downgrades** to include such incidents of displacement or harm ("detrimental effects") on BIPOC people and communities, such as specific branch closures, harmful landlord practices, or higher cost products that disproportionately impact communities of color.

2. Loopholes: The proposal fails to close existing loopholes in the CRA, and in fact creates new loopholes that could exclude banks from analysis in many areas.

Regulators must make sure that all large banks are held to the same standards, and **close the loopholes that exempt "smaller" large banks with $2B to $10B in assets**. The proposal exempts these

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[3] See quote by Sen. William Proxmire connecting CRA's origin in combatting redlining, page 19 of proposal

[4] NYC example: 22% of the population is Black, but fewer than 5% of loans by CRA-regulated banks go to Black borrowers.

smaller large banks from data disclosure, auto lending tests, and analysis of where they take deposits and types of bank accounts they offer. This comes on top of reduced obligations for 20% of banks by raising asset size thresholds that reclassify hundreds of banks into the less rigorous intermediate and small bank test categories. Further, **no bank should be allowed to pass its exam if it fails up to 40% of its assessment areas, or pass in an assessment area where it fails component tests**, especially in cases of displacement-financing or branch closures in already underserved LMI and BIPOC communities.

No bank classification or major product line threshold should exclude lines of business from analysis. Under the CRA now and as proposed, limited purpose credit card banks are not evaluated on the distribution or impact of their credit card loans and banks can choose not to include activities by affiliate lenders. Under the proposal, banks are evaluated on *"major product lines",* defined as lines of businesses that make up 15% of a bank's total retail dollars. Depending on the size of the loans and comparative volume, this could exclude banks making 100's or 1000's of loans. Lower volume product lines like HELOCs (open-ended loans) are likely to get little-to-no scrutiny across exams, which is especially problematic when banks making 500 or fewer loans don't even report these loans to HMDA.

Limited purpose consumer banks must be evaluated on that limited purpose**; all consumer loans should be evaluated for distribution and impact;** and the **major product line threshold should be 15% of dollars or 50 loans, whichever is lower.**

Regulators should **require all affiliate lenders to be evaluated** and **factor in performance by non-bank lenders with which banks have a formal relationship**, especially to offer a product the bank no longer offers. And no bank should be allowed to buy its way to a passing rating; regulators should **focus on loan originations.**

3. Community input: The communities most impacted by our inequitable financial system must be central to the CRA process.

We appreciate that the regulators recognize the importance of community input, yet we see few changes to the system today where communities are rarely consulted and comments are too often ignored.

Regulators should conduct a comprehensive needs assessment based on local data and community input and conduct proactive outreach to a wide range of stakeholders on needs and bank performance. Both should be used for CRA exams and applications, with details on how comments factor in. Groups like ANHD publish in-depth studies of the condition and affordability of and threats to affordable housing in our neighborhoods – these studies should be consulted. Regulators should regularly participate in community listening sessions in BIPOC and LMI areas, similar to the East Brooklyn Reinvestment Committee's "Annual Reinvestment Forum" and follow-up with lenders re: community's recommendations. In 29 years of hosting these forums, we have found that regulators are mostly silent and rarely follow-up on any issues raised.

4. Mortgage lending:

Homeownership remains an important path to wealth creation and developing intergenerational wealth. Yet, too often BIPOC communities are locked out of homeownership opportunities, targeted with predatory products, and face limited opportunities to accumulate wealth due to lower appraisal values. We appreciate the proposed data-driven framework and acknowledge that it could combat grade inflation, but we have concerns about its overall impact without significant changes.

Regulators must prioritize owner-occupied homes over investor-owned properties, and focus on originations, not loans banks purchase from other lenders. **Banks really need to examine the practice of house flipping in LMI communities to ensure that banks are not financing the destabilization of communities.** Regulators should scrutinize the financing of small one to four family homes purchased by corporations and LLC and require lenders to report on the numbers and the flipping (purchase and resale within two years) that occurs. The track record and integrity of these corporations should also be investigated. We have found that homeowners that have defaulted on mortgages and senior homeowners are aggressively targeted by unscrupulous house flippers to under-value and sell their homes. The flippers then carry out cosmetic upgrades and resell properties for exorbitant profits - - displacing LMI homeowners, displacing tenants in two to four family homes and fueling escalating home purchase prices.

Regulators should require banks to demonstrate how purchase loans and purchase and rehab loans increase affordable, accessible lending to LMI and BIPOC borrowers. Similarly, regulators should **evaluate who gets loans in LMI/BIPOC communities** to ensure they are benefiting - and not displacing - LMI and BIPOC people.

We need banks to offer traditional home repair products and CRA credit should be offered to those banks that do so. For almost three decades the East Brooklyn Reinvestment Committee and CHLDC have been requesting that banks provide home repair financing in our small homes, majority-minority community. East New York has a beautiful two family homes housing stock that was developed mostly before 1920s - - these older homes need systems repairs (e.g. new roofs, boilers, etc.) and using credit cards and home equity loans to replace and upgrade these systems and retrofit homes can be incredibly expensive. Banks need to address this acute need by directly lending to LMI homeowners and partnering with government and nonprofits to issue these smaller loans.

5. Retail Lending Test: Small Business lending: Very small and micro businesses, as well as BIPOC-owned and immigrant-owned businesses of all sizes lack access to the capital they need to open and sustain their businesses. The CRA must do more to direct capital to them.

We support the proposed analysis of loans to businesses under $250,000 in revenue and suggest adding a category for businesses under $100,000 in revenue as well. However, we are concerned that the new definition of "small business" will give credit for lending to businesses with up to $5 million in revenue. 90% of businesses in NYC - 93% of businesses in LMI tracts - have less than $1 million in revenue; surveys consistently demonstrate the unmet credit needs of businesses well below that size[5]. Under the CRA today, banks already get credit for "small business" loans defined as loans under $1 million, in which a significant volume goes to businesses over $1 million in revenue. The CRA must focus on unmet credit needs which fall among BIPOC-owned businesses and businesses under $1 million in revenue, and smaller sizes within that. The distribution test will give credit for any of the small business loans in LMI tracts, but with no analysis by race of owner or business size, loans could skew towards larger and/or white-owned businesses and less so to persistently underserved small, micro, BIPOC-owned, and immigrant-owned businesses. As such, **regulators must focus on small and BIPOC-owned businesses in LMI/BIPOC communities**, to ensure they are benefiting - and not displacing - these marginalized business owners.

6. Responsible Multifamily lending:

Nearly two-thirds of New York City residents are renters, with just about half of all tenants living in private, unsubsidized rent-stabilized housing that is typically more affordable and more protected than market-rate housing. Responsible lending is critical to maintaining this stock of housing, whereas **unsustainable loans, and loans to**

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[5] Federal Reserve Board CRA data tables
https://www.federalreserve.gov/consumerscommunities/data_tables.htm

landlords that harass and displace tenants or keep buildings in poor conditions, threaten this important stock of housing. While we appreciate the proposal's intent to ensure unsubsidized ("NOAH") housing remains affordable, even post-renovation, it barely moves the needle on what is needed to deter displacement and preserve safe, stable, affordable housing.

Regulators must do better by conducting a comprehensive **evaluation of multifamily mortgage lending** for distribution, affordable units, building conditions, and underwriting. They should give credit for adopting and adhering to **anti-displacement best practices like ANHD's Multifamily Best Practices and NY State's Department of Financial Services guidance**[6] and **downgrade for incidents of harm and displacement** of LMI and BIPOC tenants.

7. Access to Banking & Consumer lending: Access to bank branches and affordable, accessible products is critical to building wealth through savings and accessing credit. Yet, banks continue to expand and grow as branches close and **lower-income, and BIPOC communities are consistently left out of the financial system**.

In the proposal, analysis of bank branches, bank products, and access to banking are just one piece of an already small section of the CRA exam, made smaller in the proposal. **Branches must remain a core component** of the retail services test. There must be **stronger consequences for closing branches** in underbanked LMI and BIPOC communities, including downgrades, especially when communities provide comments about the impact of the branch closure and/or lack of branches.

8. Community Development Finance: Loans, Investments, Grants

Community organizations, nonprofit developers, and CDFIs depend upon bank financing leveraged through the CRA to support their missions. We appreciate the attention to volume, the impact review incentives for deeper affordability and grants, and new categories specific to broadband access and climate resiliency. Still, **more can be done to ensure that any activity that gets credit benefits local communities, and that banks are deterred from activities that cause harm**.

First, regulators should **evaluate loans and investments separately** within the community development finance test to ensure banks don't

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[6] ANHD multifamily best practices https://anhd.org/wp-content/uploads/2017/06/ANHD_Best-Practices-in-Multifamily-Lending.pdf ; DFS guidance https://www.dfs.ny.gov/system/files/documents/2020/03/il180925.pdf

cease to make investments. We are most concerned about the possible impact on Low Income Housing Tax Credit (LIHTC) investments, which are a critical source of equity for affordable housing. The investment test also incentivizes other forms of investments, such as EQ2 investments and grants, which could also be impacted if investments aren't required. Further, while we appreciate that adding credit for prior-period loans may incentivize longer-term patient capital, the change cannot allow banks to substantially reduce originations of impactful loans, nor give additional credit for less impactful activities. This would come on top of credit they already get each time they renew or refinance the loan. Regulators should **assess if the prior term credit is for activities that would not have been done without such incentive**. For example, the majority of commercial multifamily mortgages to private landlords are already longer than a CRA cycle and do not need further incentives. Worse, without stronger anti-displacement criteria in the affordable housing category, a bank could conceivably get credit over multiple exam cycles for a loan to a landlord that maintains a building in poor condition, harasses, and/or displaces tenants. Whereas a nonprofit developer may not have the same access to similar types of financing or other long-term loans, both of which they need and for them to be offered with more affordable rates and terms.

Regulators should also **ensure that banks don't get credit - and definitely not "extra credit" - for housing in lower-income communities that is identified as too expensive for the local community**.

Additionally, regulators should **reconsider the presumption that any government plan benefits local communities**. While that may be true in some cases, there are also many instances when government plans run counter to local LMI and BIPOC community needs, and banks should not be incentivized to further such plans[7]. Proactive outreach and community input can inform the benefits and harms of specific activities presented for CRA credit.

There must be **no credit for activities that do not explicitly benefit LMI or BIPOC** people, LMI communities, and majority BIPOC communities.

Finally, regulators must **extend the stronger anti-displacement criteria** to all community development categories (not just place-based categories) and allow **downgrades for activities discounted by that criteria, or otherwise found to contribute to displacement or harm**.

[7] https://anhd.org/blog/why-you-don%E2%80%99t-want-these-city-planners-be-your-doctor

9. Assessment Areas / Local Obligations:

We are pleased that the regulators keep branch/ATM-based assessment areas to evaluate how banks perform where they have a physical presence. We are also excited to see new **lending-based assessment areas** to evaluate the equitable distribution of 1-4 family mortgages and small business loans outside of where banks have branches.

Regulators should create deposit-based assessment areas for all large banks based on where they take deposits and open accounts. Not doing so goes counter to the original intent of the law, which was to make sure banks lend where they take deposits. It also runs counter to the intent to incorporate new models of banking. Under the system as proposed, online banks have no obligation to equitably serve any local communities, including unbanked areas of a large city like New York. Regulators should also **ensure banks are lending and providing access to banking equitably within all new online assessment areas**. Banks should also be providing community development finance in these areas they serve, and do so in a way that "expands the pie", such that they do not reduce service to areas they serve with branches.

Finally, regulators must **ensure banks are serving communities equitably within branch-based and online assessment areas**. For example, several BIPOC communities (including much of the Bronx, Southeast Queens, and Cypress Hills) are persistently underserved by banks despite falling within a very well-banked assessment area overall.

Conclusion

Thank you for the opportunity to comment on the CRA proposal Now is the time to create a **strong, race-conscious CRA that requires and incentivizes positive activities; downgrades for harm and displacement; keeps community input central to the process; and maintains and strengthens local obligations**.

If you have any questions, please contact me at 347.407.4438

Sincerely,

[redacted]

Michelle Neugebauer

Executive Director