Indianapolis Neighborhood Housing Partnership

August 4, 2022

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

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

Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Re: Docket ID OCC-2022-0002

To Whom It May Concern:

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

Throughout its 34-year history, the Indianapolis Neighborhood Housing Partnership® (INHP) has been dedicated to helping people who are working and have low-to-moderate incomes (LMI) achieve long-term, successful homeownership, build generational wealth, and contribute to stabilizing and revitalizing distressed neighborhoods. INHP achieves its mission through three principal interventions:

1. Delivering comprehensive development services aimed at preparing families and individuals for homeownership – Over the last 20 years, INHP has served nearly 30,000 individuals through financial literacy and homeownership education classes, over 4,600 individuals with post-purchase counseling, and over 3,300 families qualified for a mortgage through one-on-one housing counseling.
2. Providing affordable mortgage products to families who are unable to qualify for mortgage funds from traditional lending institutions or in need of a unique products tailored to specific challenges of targeted populations – Since 1988, INHP has closed over $80M in home purchase and home repair mortgages.
3. Financing and developing the supply of affordable homes for ownership – Since 2018, INHP has financed, preserved, or upgraded more than 2,100 affordable housing units through lending, grants, and direct investment.

INHP can tackle tough affordable housing challenges because we are disciplined in our approach and have developed strong public/private partnerships that provide maximum impact to the families we serve and neighborhoods in which they choose to live. Banks work with INHP by providing critical and strategic grants, low-cost debt, equity, and expertise on a wide range of affordable housing and community development projects. CRA has been indispensable to our work and the partnerships we have formed.

The Community Reinvestment Act (CRA) was enacted in 1977 to prevent redlining and to encourage banks to help meet the credit needs of all segments of their communities, including low- and moderate-income neighborhoods and individuals. The CRA was an extension and clarification of the long-standing expectation that banks serve needs of their local communities. CRA has given banks the incentive to engage with nonprofits such as INHP to improve the lives of LMI people and the neighborhoods in which they choose to live and has been an enormously successful public policy.

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

INHP shares many of the agencies' stated goals for the proposed CRA regulation revisions. We think the following are particularly important to modernize CRA:

- Strengthen the achievement of the core purpose of the statute.
- Adapt to changes in the banking industry, including mobile and online banking.
- Provide greater clarity and consistency in the application of the regulations; and,
- Create a consistent regulatory approach among all three banking agencies[1].

The NPR takes some particularly important steps to modernizing CRA, such as, creating a designated community development financing test and clarifying definitions to increase transparency.

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

- Recognize the original intent of the CRA and the existence of ongoing racial inequality by including race as an explicit factor for CRA evaluations.
- Ensure that CRA modernization encourages continued investment in effective community development activities; and,
- Seek to simplify the rule where possible.

Include Race as an Explicit Factor for CRA Evaluation

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

[1] https://www.federalreserve.gov/consumerscommunities/files/cra_npr_key_objectives_20220505.pdf
[2] 87 Fed. Reg., 33,888 (June 3, 2022)

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

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

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

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

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

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

Ensure Continued Community Development Investment

Community Development Financing Test

INHP applauds the agencies for recognizing the crucial role community development plays in CRA by creating a separate Community Development Financing Test (CD Financing Test). CRA has been an effective tool to encourage investment in organizations and activities that can transform communities, investments that would not have happened absent the affirmative obligation found in the statute.

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

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

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

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

Affordable Housing Definition

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

CDFI Activities

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

Impact Factors

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

INHP suggests that the definition of "high opportunity areas" for the purpose the Activities that Support Affordable Housing in High Opportunity Areas impact review factor be expanded to include Qualified Census Tracts (QCTs). In some high-cost communities, QCTs have the lowest median incomes and highest poverty rates and often face the greatest displacement pressures and need higher quality housing built or for existing homes to be renovated to continue to be habitable. It is important to add QCTs to this definition to allow communities who are worried about displacement of low- to-moderate income residents to access CRA motivated financing.

Reconsider New Bank Sizes Thresholds

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

Consider the Complexity of the CRA Regulations

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

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

Conclusion

Thank you for your work developing the NPR and your openness to our comments. If you wish to discuss any points in this letter further, please contact Rob Evans, Executive Vice President, Homeownership Initiatives at revans@inhp.org.

Sincerely,

[redacted]

Rob Evans
Executive Vice President, Homeownership Initiatives
Indianapolis Neighborhood Housing Partnership®