



August 5, 2022

OFFICERS

John Yang, Co-chair
Asian Americans Advancing Justice | AAJC

Alvina Yeh, Co-chair
Asian Pacific American Labor Alliance, AFL-CIO

Sung Yeon Choimorrow, Treasurer
National Asian Pacific American Women's Forum

Becky Belcore
National Korean American Service & Education Consortium

Jeffrey Caballero
Association of Asian Pacific Community Health Organizations

Tavae Samuelu
Empowering Pacific Islander Communities

Seema Agnani
National Coalition for Asian Pacific Americans Community Development

MEMBER ORGANIZATIONS

Act to Change
Asian American Psychological Association
Asian & Pacific Islander American Health Forum
Asian & Pacific Islander American Scholars
Asian & Pacific Islander American Vote
Asian Americans Advancing Justice | AAJC
Asian Pacific American Institute for Congressional Studies
Asian Pacific American Labor Alliance, AFL-CIO
Asian Pacific Partners for Empowerment, Advocacy & Leadership
Asian Real Estate Association of America
Association of Asian Pacific Community Health Organizations
BPSOS
Center for Asian American Media
Center for Asian Pacific American Women
Council for Native Hawaiian Advancement
Council of Korean Americans
Empowering Pacific Islander Communities
Hmong National Development, Inc.
Japanese American Citizens League
Laotian American National Alliance
Leadership Education for Asian Pacifics
National Asian American Pacific Islander Mental Health Association
National Asian Pacific American Bar Association
National Asian Pacific American Families Against Substance Abuse
National Asian Pacific American Women's Forum
National Asian Pacific Center on Aging
National Association of Asian American Professionals*
National Coalition for Asian Pacific American Community Development
National Council of Asian Pacific Islander Physicians
National Federation of Filipino American Associations
National Korean American Service & Education Consortium
National Queer Asian Pacific Islander Alliance
OCA – Asian Pacific American Advocates Payu-ta, Inc.
Sikh American Legal Defense and Education Fund
South Asian Americans Leading Together
South Asian Bar Association of North America
South Asian Public Health Association
Southeast Asia Resource Action Center

NCAPA is a project of Tides Center

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

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

RE: Community Reinvestment Act (CRA) [R-1769]

To Whom it May Concern:

The National Council of Asian Pacific Americans (NCAPA) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding updating the Community Reinvestment Act (CRA). NCAPA is a coalition of 38 national Asian American, (AA) and Native Hawaiian and Pacific Islander (NHPI) serving organizations. Based in Washington D.C., NCAPA serves to represent the interests of the greater AA and NHPI communities and to provide a national voice for AA and NHPI issues. This NPR represents the most significant proposed changes to the CRA regulation and exams in 27 years– the CRA must now be updated to meet the challenge of persisting racial inequity and major changes in the banking landscape.

CRA has successfully leveraged loans, investments, and services. Between 2009 and 2020, banks have made more than \$2.58 trillion in home loans to low- and moderate-income (LMI) borrowers or in LMI census tracts. They made \$856 billion in loans to small businesses with revenues under \$1 million. We need to build on this progress and address remaining disparities in lending through CRA reform.

CRA will be more effective in bolstering bank reinvestment activity in underserved communities, the more rigorous CRA exams and ratings are. The agencies proposed important improvements in the CRA regulation including increasing the rigor of the subtests on the CRA exams, expanding geographical areas on CRA exams and collecting more data to scrutinize bank performance. However, they did not sufficiently address racial inequities.

Meeting the needs of the Asian American, Native Hawaiian and Pacific Islander community

The AA and NHPI community is a very diverse community that often gets portrayed as a monolithic group, which is exacerbated by frequent display of, and reliance on aggregated data that displays a facade of the model minority myth— such as high levels of income and educational attainment. However, this portrayal cannot be further from the truth for a significant portion of the community. Asian Americans have the highest income inequality in the United States, where the top ten percent of earners make more than ten times the income of the bottom ten percent, whereas the same rate for the national average is 8.7 times. When disaggregated, much of the community's disparities as well as the needs of the community become much more clear.

COVID-19 has exposed various barriers to accessing resources for AA and NHPs, from the lack of access to health resources to the lack of economic resources. The National Coalition for Asian Pacific American Community Development (National CAPACD), a member of NCAPA, has found that AA and NHPs in poverty were "disproportionately concentrated in COVID-19 hot spot[s] at the height of the pandemic, and these regions include some of the highest housing cost markets in the U.S." With available data for Asian Americans showing that the workers and businesses were hit very hard during the early days of COVID-19. Unemployment rates increased by more than 450 percent from February to June 2020, the greatest spike among racial groups. Meanwhile overall unemployment dropped in May 2020, the unemployment rate for Asian American workers actually increased 0.5 percentage points, indicating a slow recovery at a critical time for the community.

The vast majority of AA and NHPI small businesses also did not have access to federal resources, such as the Payment Protection Program (PPP). The Center for Responsible Lending found that about 91% of Native Hawaiian or Pacific Islander-owned businesses, and 75% of Asian-owned businesses "stand close to no chance of receiving a PPP loan through a mainstream bank or credit union..." With clear vulnerability in the AA and NHPI community on display and the failure in the system to meet the most vulnerable communities during a global crisis is a clear reason for the CRA to help meet that need and build capacity for recovery, regrowth, and resilience.

CRA must explicitly consider bank activity by race and ethnicity

Although the CRA statute does not mention race, it required banks to serve all communities, which provides room for the federal bank agencies to incorporate race in CRA exams. Persistent racial disparities in lending should compel the agencies to incorporate race and ethnicity in CRA exams. A recent national level analysis showed continuing disparities in loan denials by race and when people of color receive home loans, their equity accumulation was less.

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. The National Community Reinvestment Coalition (NCRC) had asserted in a paper co-authored by Relman Colfax PLLC that changes to CRA would comply with legal standards if CRA examined lending by race and ethnicity in geographical areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending. NCRC had also proposed including analyses of lending in underserved neighborhoods with low levels of lending, which are disproportionately communities of color.

While we believe the agencies can examine banks' record of lending to race, the agencies should at least bolster fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race. 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. We also agree with Americans for Financial Reform Education Fund, The Greenlining Institute, Public Citizen that the final rule should also outline publicly available data tools that banks should use to identify climate vulnerable communities, and work towards building relationships and driving investment to those communities.

Language access and culturally relevant products and services should receive an upgrade in CRA credit

As of 2019, 25 million limited English proficient (LEP) people live in the United States; and almost three quarters of AA and NHPs speak a language other than English at home, 31 percent reporting speaking English as less than “very well.” It is crucial to include incentives in the CRA exams in order to meet the needs of LEP communities across the country that are predominantly part of minority communities. NCAPA, in support of National CAPACD’s recommendations agree that the Community Development Financing Test, Retail Services and Products Test, Community Development Services Test, and any other related elements of the CRA examination, should provide appropriately calibrated CRA credits for banks that offer linguistically and culturally appropriate services and resources so that LEP consumers are able to equitably access safe and affordable credit that helps them improve their economic and social well-being.

National CAPACD defines “appropriately calibrated” credit to mean credit that takes into consideration the extra time and effort needed to provide these services. Banks that offer them, particularly when similarly situated banks do not, should receive a boost in CRA credit. This should be explicitly outlined in the non-exhaustive list of eligible CRA activities (more detail than what is currently contained in the Interagency Questions and Answers) the agencies will be putting together for guidance.

Moreover, linguistically and culturally appropriate services and resources should not solely be provided through Artificial Intelligence (AI) or machine translation, such as Google translate, given their limitations. They should be provided through partnerships with community-based organizations with the capacity to reach those most vulnerable.

Community development financing should not lead to displacement of residents

The definition of affordable housing in the final rule must be narrowly tailored to prevent further displacement from being an unintended consequence of the rule. The proposal explicitly states that qualifying revitalization activities “cannot lead to the displacement or exclusion of low- or moderate-income residents in targeted geographies.” [FR 33895]. We agree with National CAPACD’s recommendations that this explicit eligibility standard also apply to affordable housing activities in the final rule as well, and that bank CRA ratings should be downgraded when community development activities create displacement.

Banks must also do more to affirmatively prevent the negative effects of gentrification, including proactive evaluations to determine whether their lending activity is displacing communities of color, or in many cases resulting in increased homelessness. If a bank takes deliberate steps to decrease displacement while financing a housing project, they should receive a boost in credit.

Moreover, we welcome the inclusion of “naturally occurring affordable housing” as an eligible activity in the proposal, as this type of housing helps prevent displacement. Credits should be given to institutions

that work in partnership with mission driven, community-based developers that are preserving and improving existing sources of affordable housing for low income residents.

Finally, we support the inclusion of activities that construct or rehabilitate affordable housing in high opportunity areas as one of the impact review factors that should be considered highly responsive. These are areas with extremely low poverty rates and where residential development costs are high. Many low-income AA and NHPI households live in these “hot markets” and are at heightened risk of being displaced. Financing activities in high opportunity areas where these communities are able to stay in their homes should also receive extra CRA credit. The proposal rightfully points out that projects in these areas are “especially impactful” given that affordable housing needs are “heightened,” and this type of investment “helps provide low- and moderate-income individuals with more choices of neighborhoods with strong economic opportunities.” [FR 33914]

Public input mechanisms: agencies propose improvements that must be codified

Since CRA requires banks to meet the needs of communities, the agencies must elevate the importance of public comments regarding the extent to which banks meet local needs. The agencies proposed to continue the current practice of sending any comments on CRA performance to banks and are also considering publishing comments received on agency websites.

Posting comments on agency websites will establish accountability on the part of examiners to consider them. In addition, these comments can be referenced during future merger applications to determine if the banks addressed significant concerns of the public. Also, the agencies should establish a public registry that community organizations can use to sign up if they want to be contacted about community needs and bank CRA performance. Furthermore, we request that the agencies start to publish which organizations they consult with to understand local community needs, commit to collecting input from a diverse range of organizations that includes organizations led by people of color and women, follow up on needs identified and detail how community input was factored into the results of CRA performance evaluations.

We also agree with [Acting Comptroller Hsu](#) that the agencies must hold frequent public hearings on large bank mergers. CRA exams, if they are made more rigorous by a final rule, will help hold merging banks accountable. However, merging banks must also submit a community benefits plan as part of their merger applications which could include community benefits agreements negotiated with community organizations. As further described in recent comments we agree with NCRC that an outstanding CRA rating must not be considered evidence that merging banks have satisfied the public benefits legal requirement.

Finally, NCAPA also agrees with National CAPACD that community input should carry as much weight as any information provided by the banks related to community needs, and should be considered alongside institutional capacity and issues related to safety and soundness.

Products and services that are eligible for CRA credit must be safe and affordable

We agree with National CAPACD that it is also important to state that issues of safety and soundness are related to consumer safety as well as institutional preservation. The products and services provided to consumers by banks need to be safe and affordable. Low-income AA and NHPI communities are routinely targeted by abusive financial actors offering predatory products and services that strip them of wealth and security. Banks that offer high cost, predatory products or have unreasonably high

delinquency rates should have their CRA ratings downgraded or face other consequences that lower CRA performance. We also think an ability-to-repay (ATR) standard would be a strong addition to the final rule. Financial products that use ATR as part of the underwriting process should receive extra credit for those products. This makes sure borrowers are able to afford a particular loan product before “green lighting” the application.

Reducing CRA ratings inflation

Currently, about 98% of banks pass their CRA exams on an annual basis with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory. CRA has successfully leveraged more loans, investments and services for LMI communities but it would be more effective in doing so if the ratings system more accurately revealed distinctions in performance. More banks would be identified as significantly lagging their peers, which would motivate them to improve their ratings and increase their reinvestment activity.

The agencies bolstered the rigor on the large bank retail lending test by introducing performance ranges for comparisons among a bank’s lending and demographic and market benchmarks. This quantitative approach would decrease ratings inflation and result in more failing and low satisfactory ratings on the lending test. As a result of this proposed reform, several banks would likely respond by boosting their retail lending to underserved communities.

The agencies proposed improvements to the other subtests of the large bank exam but did not establish as many guidelines for the performance measures, which could contribute to inflation on the subtests. The community development finance test, for example, will consist of a quantitative measure of a bank’s ratio of community development finance divided by deposits. The bank’s ratio will be compared to a local and national ratio. The agencies, however, did not provide enough guidelines to examiners for comparing the bank’s ratio to either the local or national ratio, making it possible for an examiner to inflate a rating by choosing the lowest comparator ratio.

The possibilities of misplaced examiner discretion can also occur on the retail services test and the community development services test. The retail services test contains quantitative measures comparing a bank’s branch distribution to market and demographic benchmarks but does not provide enough instructions to examiners about how to weigh these benchmarks.

We believe that it is possible for the agencies to further develop guidelines for how to use the performance measures on the community development and services subtests of the large bank exam in order to produce a uniformly rigorous CRA exam and guard against ratings inflation.

Enhancements to community development definitions

The agencies proposed refinements to the definitions of 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 persistent poverty counties and Native American communities.

The NPR clarified that financing health services qualifies under the definition of community support services. Essential community facilities now include hospitals and health centers without current documentation requirements, applied inconsistently, that the financing attract and retain residents to the community. This streamlining would boost financing of critical community infrastructure.

However, 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 even more effective in stimulating responsive community development activities. Finally, 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.

Data improvements will help hold banks accountable, but all new data should be publicly available

The agencies correctly proposed to include new data collecting requirements for deposits, community development activities and automobile lending. Some of this data such as deposit and automobile lending would not be publicly available, which limits the extent to which the public can hold banks accountable for reaching underserved communities. We ask the agencies to reconsider this decision and also to expand data collection to all large banks instead of just banks with assets of more than \$10 billion in the case of deposits and automobile lending. CRA exams should not only analyze access to deposit accounts for LMI communities but also affordability by comparing and refining, if necessary, fee information collected in call report data.

Overall, we support as robust a data collection process as is feasible for the examination. The more data collected, the greater our understanding of how banks are meeting the credit needs of consumers and ultimately, the more accurate and effective the evaluation. We support of National CAPACD's following more specific considerations related to data collection, which include but are not limited to the following:

- We agree that once Dodd Frank Section 1071 data is available, this should be used for CRA evaluations on the small business side much like Home Mortgage Disclosure Data (HMDA) is currently used for mortgage lending on CRA exams.
- As mentioned previously, the agencies are proposing to disclose data on mortgage lending by race and ethnicity (HMDA data) in an organized, easy to read format, and to eventually do the same for small business lending when 1071 data becomes available. We strongly support this recommendation. However, we recommend that this data to have a direct impact on CRA performance. We would also like to see the data disaggregated by race and ethnicity as much as possible. The AA and NHPI community alone comprise of more than 50 separate groups in this country. Aggregated data on race masks the different experiences these groups are having with mainstream banking and could lead to an inequitable distribution of financial products and services.
- We support the recommendation to track data in a standardized format with a template and defined data fields that measure both input and impact. This increases consistency, makes it much easier to make comparisons between banks, and helps examiners understand the financing landscape. We think the template could be refined over time to reflect what is learned about lending and servicing.

Accountability for discrimination will increase but the agencies need to bolster their reviews concerning the quality of lending

The agencies proposed to include all activities and products including deposit accounts in addition to credit in anti-discrimination and consumer protection legal reviews. This is an important advance but we urge the agencies to expand their reviews to include the quality of lending. [Massachusetts CRA exams](#) include analysis of delinquency and defaults rates in home lending. Federal CRA exams should do

likewise in all major product lines. Moreover, reviews of lending must include an affordability analysis and impose penalties when banks offer on their own or in partnerships with non-banks abusive, high-cost loans that exceed state usury caps and that exceed borrowers' abilities to repay. Finally, we are pleased that the agencies added the Military Lending Act in the list of laws to be included in the fair lending review but we urge them to also add the Americans with Disability Act.

Assessment areas are expanded to include online lending but performance in smaller areas needs to be considered more carefully

For several years, advocates have urged the agencies to examine lending that occurs online. The agencies proposed to create retail assessment areas where a large bank does not have branches when a bank has issued 100 home loans or 250 small business loans. This proposal would result in the great majority of total lending being incorporated on exams and would therefore hold non-traditional banks more accountable for serving LMI communities.

We ask the agencies to expand upon their proposal to include partnerships with banks and non-banks for retail lending. When a bank partners with more than one non-bank, the lending of all the non-banks needs to be totaled together for calculating if the threshold is exceeded for purposes of creating assessment areas.

In order to ensure that banks serve smaller metropolitan areas and rural counties, the agencies proposed requiring that banks with 10 or more assessment areas must receive at least a Low Satisfactory rating in 60% of the assessment areas in order 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% threshold by focusing on the larger areas. One possible fix is to require banks to achieve at least a Low Satisfactory rating of 60% in each of its large metropolitan, small metropolitan and rural assessment areas.

Reclassifying banks as small and intermediate small banks (ISB) would reduce community reinvestment activity

By adjusting asset thresholds for qualifying for various CRA exams, the agencies proposed to reclassify 779 ISB banks as small banks, which would involve no longer holding these banks accountable for community development finance. In addition, the agencies proposed to reclassify 217 large banks as ISB banks, eliminating their service test and accountability for placing branches in LMI communities. These changes lack justification since these banks have been successfully performing these activities for several years. We urge the agencies to eliminate this aspect of the NPR since it would reduce reinvestment activity.

Strengthen climate change measures on the CRA

AA and NHPI communities, among other communities of color, are often the first impacted by climate change, pollution, rising sea levels, and environmental racism. In fact, 77 percent of Asian Americans agreed that Congress and the president should pass stronger legislation to reduce the effects of climate change and global warming.

According to the U.S. Environmental Protection Agency (EPA) 32% of Asian Americans and 33% of Native Hawaiian and Pacific Islanders live within 3 miles of a superfund site. Asian Americans and NHPs have the highest percentage of people living within 3 miles of a Superfund of any ethnic group. The rates for

other communities of color are similarly bleak— 26% of Black Americans and 29% of Hispanic Americans live within 3 miles of a Superfund site. Given that communities of color are the most impacted by pollution and effects of climate change, the CRA regulation must be strengthened to meet these challenges.

In this regard, we agree with the Americans for Financial Reform Education Fund, The Greenlining Institute, Public Citizen that the agencies should further expand the list of climate-related eligible activities under the CRA. We support the NPR's addition of the "disaster preparedness and climate resiliency" definition under "community development." We also support the proposed non-exhaustive list of climate-related eligible activities under the proposed definition, which will help communities understand what kinds of climate-related investments they can seek financing support for, and help banks understand which activities can receive CRA credit. The activities in this list will provide communities with more opportunities to actively participate in the transitioning economy through new green investment. We recommend that additional eligible activities be listed under this definition, including, but not limited to, community solar and microgrids, operational support for environmental and climate justice organizations, and electrification and water efficiency measures for residential homes, including multifamily properties and manufactured home communities.

Conclusion

The NPR is a good start and promises to make parts of CRA exams more rigorous but we urge the agencies to extend the rigor of the large bank lending test to the other tests. The summary of our recommendations are as follows:

- CRA must explicitly consider bank activity by race and ethnicity
- Language access and culturally relevant products and services should receive CRA credit
- Community development financing should not lead to displacement of residents
- Improve public input mechanisms: agencies propose improvements that must be codified
- Products and services that are eligible for CRA credit must be safe and affordable
- Reduce CRA ratings inflation: progress on the lending test of the large bank exam, but not as much on the other subtests
- Enhancements must be made to community development definitions
- Improve data collection and disaggregation, and make data publicly available
- Agencies need to bolster their reviews concerning the quality of lending
- Performance in smaller assessment areas needs to be considered more carefully
- Do not reclassify banks as small and intermediate small banks (ISB) would reduce community reinvestment activity
- Strengthen climate change measures on the CRA

NCAPA appreciates the opportunity to comment on the CRA NPR. Furthermore, we ask that the agencies consider these recommendations to meet the needs of the Asian American, Native Hawaiian and Pacific Islander community. If CRA is improved while maintaining public input and accountability, we believe the proposed rule could help reduce inequalities, disinvestment and other disadvantages faced by LMI, LEP, immigrant communities, communities of color, and other marginalized communities.

Sincerely,

The National Council of Asian Pacific Americans