Banana Kelly Community Improvement Association
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August 5, 2022

Attn:

- The Office of the Comptroller of the Currency (OCC): https://www.regulations.gov/commenton/OCC-2022-0002-0001
- The Federal Deposit Insurance Corporation (FDIC): comments@fdic.gov
- The Federal Reserve Board of Governors: regs.comments@federalreserve.gov

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,

On behalf of Banana Kelly Community Improvement Association ("BKCIA"), I am writing this letter in response to the interagency Notice of Proposed Rulemaking (NPR) to modernize the Community Reinvestment Act (CRA). While we appreciate several strong components of the proposal, at this time we are not able support it without significant changes.

About Us: Residents from the South Bronx community came together to form Banana Kelly Community Improvement Association (BKCIA) in the late 1970s in response to widespread disinvestment and the resulting devastation of once-thriving neighborhoods. Today we continue to play a crucial role in the revitalization of the Longwood, Hunts Point, Morrisania and Mott Haven neighborhoods of the South Bronx as well as the East Harlem neighborhood. As a mutual housing association, we know from experience that community control and ownership of land and institutions like housing are crucial ingredients for families to thrive and neighborhoods to improve without massive displacement. This community control and ownership requires an increase in smart, intentional investment, which is what we hope a stronger, modernized CRA will provide.

BKCIA 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. BKCIA is a proud core member of the ERC and have participated in a number of tours and meetings with banking regulators as part of this coalition. Our work with three other Bronx ERC members around bank branch closures led us to form the Bronx Financial Access Coalition[1] between 2020 and 2022. Together we are partnering with the Lower East Side People's Federal Credit Union to launch the Bronx People's Mobile Branch to fill the void left by the banking industry in the Bronx[2].

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. It has helped us acquire and renovate distressed housing in our neighborhoods, funded our work in community organizing and social services, and provided financial education and resources to our residents and community members. It supported community organizations like ours in rebuilding places like the South Bronx over the past four decades.

Unfortunately, CRA has never lived up to its intentions to adequately address persistent racial disparities and inequities in historically redlined areas. Our neighborhood residents continue to suffer the long-term effects of historic redlining and disinvestment, and this became even more evident during the pandemic. Neither has CRA kept up with the significant changes in the banking industry over the past 45 years.

Here in the South Bronx, our residents can much more easily find a check casher than a bank branch, and the branches they do encounter often have long lines and charge high monthly maintenance and overdraft fees. Either option leads to wealth extraction instead of wealth creation for our residents. Meanwhile, many banks lend to problem landlords who harass tenants, raise rents and fail to make basic repairs. A recent study[3] showed that the equity from bank refinancing offered to these landlords is frequently not invested back into building improvements, but instead is typically leveraged for these investors to purchase more and more property. Meanwhile, banks receive CRA credit for this lending that harms tenants and enriches landlords and investors.

This current proposal represents the first major update of the CRA in over 25 years and we truly appreciate the regulators working together to offer several positive steps forward including 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

[1] https://bronxfinancialaccess.nyc/about-us/
[2] https://bronxfinancialaccess.nyc/the-bronx-takes-banking-into-their-own-hands/
[3] *Gambling with Homes, or Investing in Communities* by LISC, UNHP & New School University, March 2022. https://www.lisc.org/our-resources/resource/gambling-homes-or-investing-communities/

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. 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.

Below find our recommendations to strengthen the proposal so the CRA better meets the needs of our community. Here are the nine (9) main areas under which our comments are organized:

1. **Race & CRA:** The CRA is a civil rights law that was passed in response to discrimination, disinvestment and redlining. As the racial wealth gap continues to persist, we can be sure that color-blind policies are not working. The CRA must be race-conscious, with affirmative obligations to serve communities of color and include downgrades for harming these communities.

While the NPR acknowledged CRA's origin explicitly as an anti-redlining law, 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." Unfortunately, the only proposal 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 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.

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".

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 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 current CRA 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 NPR 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. Organizations like ours have been doing the leg work to fight back against harm, and often it feels like we are doing this alone. From fighting speculative landlords to bank branch closures, we have offered many examples over the past few decades of what regulators can do differently.

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. We have many examples of local research undertaken by our partner community and research organizations such as WHEDco[4], UNHP[5], ANHD[6], LISC[7], TakeRoot Justice[8] and the Community Service Society[9].

Regulators should consider community advisory boards within local communities to facilitate these processes.

Regulators should encourage Community Benefits Agreements and community-informed CRA plans, and then monitor and enforce them through conditional approvals on mergers and review for CRA exams.

Finally, regulators should require banks to respond in meaningful ways to specific issues raised in community comments, with the option for regulators to require specific actions should the bank not respond adequately. For example, our member organizations have commented on numerous occasions regarding branch closures in already underserved areas, as well as how a bank handles a situation with a problematic landlord who they finance. Too often, regulators are silent when the banks have ignored us, leaving community residents to fend for themselves against an inequitable financial system, and discouraging community members from providing input going forward.

4. **Retail Lending Test – Mortgage Lending:** must increase access to affordable mortgages for LMI and BIPOC people to access and maintain homeownership

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.

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[4] Crotona Park East/ Morrisania Community Needs Assessment Summary of Findings, May 2019. http://www.bit.ly/crotonafindings

[5] The Bronx Banking Guide, 2018 Edition. https://unhp.org/publications/guides/bronx-banking-guide-2018

[6] How Branch Closures Impact Hard Hit Communities, May 2021. https://anhd.org/blog/how-branch-closures-impact-hard-hit-communities

[7] *Gambling with Homes, or Investing in Communities* by LISC, UNHP & New School University, March 2022. https://www.lisc.org/our-resources/resource/gambling-homes-or-investing-communities/

[8] The Predatory Equity Story: Tenant Perspectives on Speculative Landlords, Displacement, and Fighting for Justice, January 2018. https://takerootjustice.org/resources/report_snycpredatoryequity2017/

[9] Corporate Windfalls or Social Housing Conversions? The looming mortgage crisis and the choices facing New York, November 2020. https://www.cssny.org/publications/entry/corporate-windfalls-or-social-housing-conversions

Regulators should prioritize owner-occupied homes over investor-owned properties, and focus on originations, not loans banks purchase from other lenders. Any evaluation of investor properties must focus on their impact on communities, ensuring they build wealth for BIPOC communities while not fueling harm or displacement for these populations. Regulators should adopt a similar approach for purchased loans and require banks to demonstrate how they 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.

Regulators should incorporate an analysis of loan pricing and terms of consumer products to ensure products are meeting local needs and not extracting wealth. This is especially the case for open-ended HELOC loans, but pertains to all loans. Likewise, regulators should evaluate how well loan products match local needs. For example, is a bank offering HELOCs when communities call for traditional home repair loans? Do they include limited equity coops where needed? Has a bank ceased to offer loans that communities need, as is the case with the many banks that stopped making mortgages?

Finally, regulators should not allow a race to the bottom, as could happen in a high-cost market like NYC where a bank can pass with just 1.4% of home loans to low-income borrowers, who make up 27% of NYC's population. The proposed considerations for "market failures" should be adopted and apply to New York City, even with the high cost of housing.

5. **Retail Lending Test – Small Business Lending:** must increase access to the loans and lines of credit very small and BIPOC-owned businesses have long been lacking

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 – and 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. Under the CRA today, banks already receive credit for "small business" loans defined as loans under $1 million, in which a significant volume goes to businesses over $1 million in revenue. We understand the intent to match reporting under *Dodd Frank Section 1071*, which incorporates businesses up to $5M revenue, but that is simply to capture as many loans as possible for a racial equity analysis. 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.

Regulators should include analysis of pricing and terms of loans to ensure products are meeting local needs and not extracting wealth, as could be the case with high-interest credit cards, or other higher-cost products. Likewise, they should compare the types of loans made to local needs. For example, small business credit cards versus the more-needed traditional loans and lines of credit.

6. **Responsible Multifamily Lending:** The CRA must create incentives for responsible multifamily lending and downgrade banks for financing landlords that harm and displace LMI and BIPOC tenants.

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 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 should 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 and downgrade for incidents of harm and displacement of LMI and BIPOC tenants.

Regulators should require banks to respond to issues raised in comment letters or other communications from tenants through tenant associations and/or community organizations.

7. **Access to Banking & Consumer Lending:** The CRA must do a better job increasing access to banks and banking in already underbanked BIPOC communities, with penalties for closing or not serving at all.

In the current 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 even 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. However the weighting is finalized, no bank should pass its exam if it fails to serve communities with branches and affordable/accessible products

Regulators should require banks to demonstrate specific steps taken to avoid closure through improved services and outreach, and actions taken to mitigate harm should a branch close.

Regulators should evaluate all banks (not just those with over $10B in assets) on where they take deposits, the quality of their banking products, and usage of affordable products.

Finally, in the retail lending test and services tests, all consumer loans must be evaluated for equitable distribution, and quality, with incentives for impactful activities and downgrade for wealth extraction and harm.

8. **Community Development Finance:** Loans, Investments, Grants: must increase access to financing for projects that benefit LMI and BIPOC people and communities, especially where bank financing is hard to access.

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.

Regulators should evaluate loans and investments separately within the community development finance test to ensure banks don't 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 also could 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 expand the impact review to include activities that close the racial wealth gap; finance long-term/permanent affordable housing; support mission-driven nonprofit developers; and support activities that explicitly connect to locally identified needs.

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. 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 should extend the stronger anti-displacement criteria to all community development categories (not just place-based categories) and allow downgrades for activities discounted by those criteria or otherwise found to contribute to displacement or harm.

9. **Assessment Areas / Local input:** In addition to maintaining branch-based assessment areas and adding new lending-based assessment areas, regulators must also add assessment areas based on where banks take deposits and open accounts, and assess lending and banking in all assessment areas.

We are encouraged that the regulators kept 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.

Going further, 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 should 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.

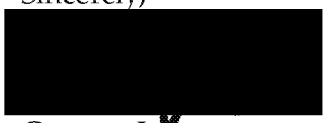
Conclusion

Thank you for the opportunity to comment on the CRA proposal. The CRA is one of the most important laws we have to hold banks accountable to the needs of communities like ours in the South Bronx. For all the many benefits the CRA has brought, it still has a long way to go to live

up to its original intention as an anti-redlining law. As stated above, we appreciate several strong components of the proposal, but we are unable at this time to support it without significant changes. Now is the time to create a strong, race-conscious CRA that requires and incentivizes positive activities, downgrades for harm and displacement of vulnerable families, keeps community input central to the process, and maintains and strengthens local obligations.

If you have any questions, please contact me at gjost@bkcianyc.org.

Sincerely,



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