CEI

August 5, 2022

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency

Re: Docket ID OCC-2022-0002; Docket No. R-1769; RIN 7100-AG29; RIN 3064-AF81

To Whom It May Concern:

Coastal Enterprises, Inc. (CEI), appreciates the opportunity to comment on the "Notice of Proposed Rulemaking (NPR) on Reforming the Community Reinvestment Act Regulatory Framework." CEI strongly supports the Community Reinvestment Act (CRA), which has been the driver of much-needed investment to LMI communities over the past 40+ years.

CEI applauds the regulators for working together to develop this detailed and thoughtful joint rule. The proposal represents an important step forward in improving and strengthening CRA and adapting it to the realities of modern-day banking.

Introduction

CEI is a 45-year-old Community Development Financial Institution (CDFI) with a mission to grow good jobs, environmentally sustainable enterprises, and a more broadly shared prosperity in Maine and in rural regions throughout the country by integrating financing, business and industry expertise, and policy solutions. CEI envisions a world in which communities all are economically and environmentally healthy, enabling all people, especially those with low incomes, to reach their full potential. Since 1977, the CEI family of organizations has provided $1.4 billion in financing to over 3100 enterprises, creating or retaining over 43,000 jobs; created/preserved over 3300 affordable homes; provided training and counseling to over 68,000 individuals and businesses; created/preserved nearly 7000 child care slots; and provided leadership on state and federal policy initiatives, including consumer protection and community investment issues at the state and federal level. CEI was a founding member of the New Markets Tax Credit Coalition and helped to shape that program, and has been a leader in New Markets, community development venture capital, and other creative and high-mission capital deployment in Maine and beyond. CEI is also a NeighborWorks Organization and a member of the National NeighborWorks Association (NNA), the National Community Reinvestment Coalition (NCRC), the National Rural Housing Coalition, the Opportunity Finance Network (OFN), the CDFI Coalition, the New Markets Tax Credit Coalition, and the National Association of Affordable Housing Lenders (NAAHL).

CRA has been a critical factor in CEI's success in raising and deploying capital, which has contributed in deep and measurable ways to Maine's economic and community development. Like other CDFIs nationwide, CEI receives a majority of the funds that it lends and invests from financial institutions, from small community banks to large national lenders. These funds range from small operating grants, to program related investments, lending facilities, and equity investments in CEI's venture capital subsidiary funds. Without the incentives of CRA, we would have been challenged to raise this capital and our impact would be significantly less.

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We believe a strong CRA is vital to the economic health of LMI communities and people. America's economy, financial system, and society can be strong only if all people and communities can contribute to and benefit from them. CRA has significantly helped to include LMI people and places in the U.S. banking system. However, 45 years of economic data show that deep inequities persist. CRA modernization must strengthen, not weaken, financial inclusion. We believe that the proposed new rule represents a once-in-a-lifetime opportunity to do this.

The proposal overall represents major progress in adapting CRA to the present-day realities of banking. We believe that many of the proposed changes will have the desired result of creating incentives for banks to better serve the credit and community development needs of the communities they serve. In particular:

- We are pleased to see the strong recognition of the critical role of CDFIs in community development finance and in helping financial institutions meet their CRA obligations. The proposed rule would provide credit for activities conducted in partnership with or in conjunction with CDFIs, and includes CDFIs on the list of proposed Impact Review Factors.

- We appreciate the thoughtful and nuanced approach to assessment areas, acknowledging the new realities of banking, from traditional brick and mortar branch-based banks, to completely branchless banks that conduct all their business online, and every permutation in between. We support the inclusion of community development activities conducted anywhere in the country, rather than only in the places where banks have branch locations. The proposed geographic flexibility is a groundbreaking step to modernize assessment areas and can help bring community development capital to more communities, particularly in rural areas.

- We applaud the inclusion of CRA credit for financing that addresses climate change and climate resilience. This issue may well be the defining crisis of our time.

- We welcome and support the focus on rural, persistent poverty counties, and Native American communities.

- We support the inclusion of Naturally Occurring Affordable Housing (NOAH) in the NPR.

- We support the proposed requirements to collect and report a wide range of data, including borrower racial and ethnic demographics and small business characteristics.

While the proposal overall represents important progress, there are some areas where we believe the rule needs modification to achieve the desired outcome of increased capital flow, especially to low- and moderate-income communities and people. Following are CEI's highest priority recommendations:

1. **Include Explicit Consideration of Race**. We strongly agree with OFN that "the proposed rule misses important opportunities to advance racial equity, a goal well within the intent of the legislation." Our comments below largely quote or agree with those of OFN.

   The original intent of CRA was to address racial inequality but income has been used as a proxy for race since the law passed. Recent analysis from the Urban Institute demonstrated that income is not an adequate substitute for race.1 While CRA does examine service to low- and moderate-income (LMI) people and communities, LMI is not a proxy for minority; most LMI people are White and many Black and Latinx people are not LMI. At the same time, rates of home and business ownership for people of color – which are critical to overcoming racial wealth gaps – are significantly below those for Whites, even after considering inter-group income disparities. For CRA to fully realize its potential and statutory purpose, there must be an ongoing focus on increasing lending and investment in communities of color.

The law itself is not race-blind - there are already explicit references to race in the legislation including allowing investments with MDIs, WDIs, and LICUs 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.

CEI is disappointed that the NPR does not propose significant additional policy to advance racial equity beyond retaining the current provisions that bank assessment areas are prohibited from reflecting illegal discrimination or arbitrarily excluding low-or moderate-income census tracts, and that CRA ratings can be downgraded as a result of discriminatory practices. The only new proposal specifically directed toward race is that, for large banks, the agencies would disclose the distribution of race and ethnicity of the bank's home mortgage loan originations and applications in each of the bank's facility-based assessment areas, and as applicable, in its retail lending assessment areas; but this data is not proposed to be used in bank evaluations. It is also not clear how much of this data will be released to the public.

We agree with many of our peers that this is insufficient given the persistent racial inequities in access to capital, credit and economic opportunity. There has been little progress in closing the racial wealth gap since the passage of CRA. The CRA is a primary tool in regulators' toolbox to bridge the racial wealth gap and this proposed rule should do more of this critical work. To this end, incorporating race into the CRA can be achieved in the following ways:

- Adding performance measures and creating benchmarks and metrics to assess lending, investing and services to people or color and communities of color;
- Providing CRA credit for banks that invest in CDFI products designed to address racial inequity;
- Enforcing 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;
- Requiring banks to collect and disclose comprehensive racial and demographic data as part of the CRA exam and allowing banks to fail CRA exams if they are not lending to people of color or serving the needs of the community;
- Including data collected under the Fair Lending Act, SSBCI program, and HMDA as part of the bank's evaluation;

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[1] Laurie Goodman, Linna Zhu, Ellen Seidman, Janneke Ratcliffe, Jun Zhu, "Should the Community Reinvestment Act Consider Race?", Urban Institute. Published December 20, 2021. https://www.urban.org/research/publication/should-community-reinvestment-act-consider-race

- Adding racial demographics to the list of factors to consider when delineating assessment areas; and
- Expanding the use of Special Purpose Credit Programs to meet the needs of communities of color.

CEI also urges the agencies to review the extensive proposals developed by the National Community Reinvestment Coalition (NCRC) and Relman Colfax PLLC for incorporating race into exams without violating the Constitution and related existing legal standards.[2]

2. **Evenly weight the Retail and Community Development Tests.** CEI joins with many of our peers in this recommendation. The proposed rule sets a disproportionately low weight for community development activities compared to retail lending activities. As David Dworkin points out, this will effectively reduce a bank's incentive to achieve a strong rating on its Community Development Test.[3] The Community Development Test and the Retail Lending Test should be equally weighted at 50% of a bank's overall CRA. As proposed, a bank could achieve a Satisfactory rating with even a Needs to Improve rating on the Community Development Test, while a bank with a Satisfactory rating on the Retail Test would not be able to achieve an Outstanding rating even if its Community Development lending and investment were Outstanding. Greater emphasis on the Community Development Test would offer banks a better chance and more incentive to achieve an Outstanding rating.

   Further, we recommend eliminating the Community Development Services test altogether, and instead evaluating CD Services as one of the Impact Review Factors. A weighting of 10% is too low to be meaningful. Some of our peers have recommended instead that the CD Services test be given more weight (15 or 20%). We are also open to this approach but are concerned that this may then reduce the importance of CD lending and investment. We also share the concern of the Low Income Investment Fund, LISC, OFN, and others, that the rule as proposed lessens the incentive to make equity investments and grants.

3. **Clarify the language** related to consideration for "investments, loan participations, and other ventures undertaken by any bank, including by MDIs and WDIs, in cooperation with other MDIs, other WDIs, or LICUs,"[4] by explicitly including CDFIs in this list.

   The agencies also seek feedback on whether activities undertaken by an MDI or WDI to promote its own sustainability and profitability should qualify for consideration but does not include CDFI banks in this section.[5] There should be clear language explicitly including CDFI banks within this category of mission-driven lenders.

   We also recommend that the regulators add explicit language stating that wholly-owned or controlled subsidiaries of CDFIs be included in these categories. CEI has several mission-focused

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

[3] Dworkin, David, "Could the future of CRA be in doubt?" July 10, 2022, https://nhc.org/the-future-of-cra-is-in-doubt/

[4] Page 92 of NPR.

[5] Page 93 of NPR.

subsidiaries including a venture capital subsidiary that raises bank capital. Currently, this subsidiary separately applies for CDFI certification for each fund that it raises, solely to ensure that banks know they will receive CRA credit for their investments. It should be clear to banks that their investment in a venture fund raised by a CEI subsidiary will receive CRA credit without the fund having to separately receive CDFI certification.

4. **Add NeighborWorks Organizations (NWOs) to the category of entities with which banks can partner and receive automatic CRA credit**. CEI is an NWO and can attest that the standards for joining the NeighborWorks Network and remaining in good standing are rigorous and thorough. Like CDFIs, NWOs play a key role in community revitalization as an effective driver of capital and should therefore, as the NPR states, "be presumed to qualify for CRA credit given these organizations would need to meet specific criteria to prove that they have a mission of promoting community development and provide financial products and services to low- or moderate-income individuals and communities."

5. **Include the Low Income Housing Tax Credit (LIHTC) as an Impact Factor for CRA.** LIHTC is the nation's largest funding source for affordable housing construction, and CRA-motivated LIHTC investments have been a driving force in the success of this program. The rule should recognize the importance and impact of this activity.

6. **Recognize the role of Housing Counseling as a vital component of CRA performance.** CEI is a HUD-certified Housing counseling agency, with staff who provide foreclosure prevention, homebuyer education, reverse mortgage, and financial capability advising. Housing counseling is a proven tool that helps consumers get mortgage-ready and maintain their homeownership. This eligible activity provides significant value for underserved population, especially low-moderate income people and people of color. While lenders recognize the value of HUD approved housing counseling agencies in addressing the troubling and persistent gaps in access to homeownership, there is a needed clarification in what form that support can take. Lender fee-for-service payments for housing counseling services are an important avenue for supporting housing counseling and a clear statement in the rule that these payments are considered eligible supports under the CRA will provide the necessary clarity.

   We join the National Housing Resource Center and others in urging that the final rule specifically recognize lender fee-for-service payments for housing counseling services by HUD approved housing counseling agencies as an eligible activity under the Community Reinvestment Act.

7. **Provide Greater Clarity and Public Input on Impact Review Factors.** Impact Review Factors provide a mechanism to evaluate the responsiveness of a bank's financing and services to community needs. This is where distinctions can be drawn between short-term financing and equity investments, where interest rates and terms can be evaluated, and where a bank can get credit for a small but meaningful grant to a CDFI, NWO, or other community-based organization. However, the NPR does not provide sufficient clarity around how Impact Review Factors will be evaluated or weighted. We appreciate the need for examiner discretion and community context here, but would like to see a fuller discussion and more specificity. We also join OFN in calling for multipliers or additional credit for activities undertaken with certified CDFIs – with an emphasis on providing more credit for grants and equity investments. Public review and input

can also help to ensure that Impact Review Factors are meaningful and responsive to community needs.

8. **Reconsider raising the asset size of Intermediate and Large Banks.** The agencies propose to raise bank size thresholds, defining small banks as those with assets of up to $600 million, Intermediate Banks (ISBs) as those with assets of at least $600 million but less than $2 billion, and Large Banks as those with assets of at least $2 billion. We share OFN's concern that reclassifying 779 banks that are currently ISBs as small banks would result in less capital for CDFIs, especially in rural areas. NCRC found that the change in classifications from ISB to small banks would disproportionately impact smaller cities and rural communities, estimating that 25% of the banks that would be newly reclassified as small are in rural counties. And the Housing Assistance Council (HAC) notes, that "while the increase in lenders now falling under the small bank examination would increase at similar levels for all geographies, the impact from this policy would be felt disproportionately in rural areas because there are fewer lenders in these markets. In many … rural markets … two or three lenders provide most of the access to financial services. If one of those lenders now fell under small bank threshold, this would have a far greater local impact on access to credit than in larger urban and suburban markets."

9. **Add Rural Community Development activities to the list of Impact Factors.** CEI joins HAC in advocating for this addition. As HAC notes, "Community development in rural communities is especially challenging" as a result of a number of factors: limited public and private sector resources and capacity relative to urban and suburban areas; low household incomes; and difficulty reaching the scale that make housing and economic development projects viable. We agree with HAC that community development activities in rural communities should be an additional community development impact factor to ensure banks are incented (and recognized) for their rural community development lending, investment and services.

Below, we offer responses to some specific questions posed in the proposed rule. We have chosen to respond to questions in areas where CEI has direct experience and knowledge.

Climate Preparedness and Resiliency

With a mission focus on supporting sustainable businesses, CEI provides an array of green financial and advising services, including solar investment, sustainable agriculture and food lending, loans for energy retrofits, and TA for fishermen moving into aquaculture as they adapt to warming waters and changing climate conditions. We are committed to reducing our own carbon footprint as an organization and helping others to do so. We see climate change as the defining crisis of our time, and welcome the inclusion of climate resiliency in this NPR.

Question 19. *Does the <u>disaster preparedness and climate resiliency definition</u> appropriately define qualifying activities as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks? How should these activities be tailored to directly benefit low- or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas? Are other criteria needed to ensure these activities benefit low- or moderate-income individuals and communities?*

Under the current definition, both disaster preparedness and climate resiliency emphasize the suddenness of climate-related events and cite natural disasters such as earthquakes, floods, fires, and storms. However, climate risks are not always sudden and not all of them are what we conventionally think of as "disasters." Climate risks to individuals and businesses can be insidious – warming waters in historic fishing grounds, pest increases that decimate cropland species, or a gradual decrease in growing degree days. In Maine, climate-related risks are inherently tied to our natural resource-based economy. In the fisheries and aquaculture industries, fishermen and lobstermen have been forced to both diversity the fish species that they historically caught and look for new sources of income due to warming waters and migrating species.

At Coastal Enterprises, we host and teach a class targeted to those on the working waterfront who are looking to diversify beyond their regular catch species and learn how to start an aquaculture business. This program, Aquaculture in Share Waters, has trained over 280 aquaculturists in Maine. They are creating climate resiliency in their businesses through diversification of their catch species. This is the type of activity that falls under climate resiliency and should be recognized in the CRA. Banks that provide financial resources in the form of loans and grants to community-based organizations supporting the transition to climate resilient industries and practices should receive CRA credit.

Question 20. *Should the agencies include activities that promote energy efficiency as a component of the disaster preparedness and climate resiliency definition? Or should these activities be considered under other definitions, such as affordable housing and community facilities?*

Yes, energy efficiency is an important part of climate resiliency and should be included in this definition. Climate disasters have significant implications for energy security and pricing. Energy efficiency activities can insulate low-income individuals from price inflation and fluctuations that are caused by natural disasters and climate change impacts.

Question 21. *Should the agencies include other energy-related activities that are distinct from energy-efficiency improvements in the disaster preparedness and climate resiliency definition? If so, what would this category of activities include and what criteria is needed to ensure a direct benefit to the targeted geographies?*

Yes, the agencies should include renewable energy installations (including battery storage) in the activities covered under the disaster preparedness and climate resiliency. Access to affordable renewable energy and distributed storage can decrease and stabilize energy costs and improve energy resiliency during disaster events. To ensure a direct benefit to LMI residents in targeted geographies, there could be off-taking requirements for a certain percentage of the subscribers to be reserved for LMI residents. To get CRA credit, a bank could show evidence of other community benefits such as job creation, living wages, fair lease payments, and sound land-use planning practices. Such evidence could be presented in the form of documentation of robust stakeholder engagement and community benefits agreements between a developer and a municipality or other entity representing residents.

Question 22. *Should the agencies consider utility-scale projects, such as certain solar projects, that would benefit residents in targeted census tracts as part of a disaster preparedness and climate resiliency definition?*

Yes, utility-scale solar or community solar projects that include an offtaker requirement for LMI subscribers should be supported. Typically, these LMI subscribers receive a discounted rate in comparison to other, typically commercial, anchor tenants in the PPA. This is an important equity component to utility-scale solar to ensure that LMI residents benefit from these arrays. Sound and just land-use planning should be considered as well when the arrays are developed in targeted geographies through stakeholder engagement and clear community benefit agreements.

Question 23. *Should the agencies include a prong of the disaster preparedness and climate resiliency definition for activities that benefit low- or moderate-income individuals, regardless of whether they reside in one of the targeted geographies? If so, what types of activities should be included under this prong?*

Yes, the disaster preparedness and climate resiliency definition should include activities that benefit LMI individuals regardless of whether they reside in targeted geographies. While the climate crisis will continue to manifest differently and on various scales across the U.S., all areas will face impacts—either through direct physical changes and disaster events or through more insidious and distributed challenges such as the availability and price of basic resources. Across all geographies, LMI individuals—particularly LMI individuals of color—will be most burdened by these physical and financial impacts, even if they live outside of distressed and underserved low- and middle-income census tracts.

From CEI's experience working with rural communities, we know that poverty is often not concentrated in rural regions in the same way as in metro areas. Along the coast in Maine and elsewhere with tourism-dependent economies, enclaves of extreme wealth and underserved working class and poor communities exist together in the same neighborhoods, oftentimes sharing the same streets and harbors. Without deliberate investment in resilience, those who rely on fishing, outdoor recreation tourism, and other place-based industries will disproportionately face the economic fallout of climate change even as their high-income neighbors are able to leverage their own resources to adapt and mitigate risks. This is an important consideration when designing a CRA that addresses climate justice in rural as well as urban communities.

The CRA can help direct investment to LMI individuals outside of targeted geographies by including activities that would specifically support the climate resilience of LMI households residing outside of targeted census tracts. For example, financing energy efficiency upgrades, weatherization, and renewable energy procurement specifically for LMI households, affordable housing, and small businesses and farms in these areas should be included within this prong of the CRA.

Question 36. *Which of the thresholds discussed would be appropriate to classify smaller businesses and farms for the impact review factor relating to community development activities that support smaller businesses and farms: the proposed standard of gross annual revenue of $250,000 or less, or an alternative gross annual revenue threshold of $100,000 or less, or $500,000 or less?*

CEI supports the proposed standard of $250,000 in gross annual revenue. In our experience as a small business lender, there are significant capital gaps for businesses of this size. While CDFIs such as CEI can help to fill these gaps, often bank capital is also necessary. Supporting the growth and sustainability of these smaller businesses is a critical community reinvestment activity.

Question 106. *Should special purpose credit programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals?*

Yes. As LIIF notes, “SPCPs are one of the most effective tools available for lenders to proactively address historic and ongoing inequities effecting disadvantaged classes, including communities of color.” We join LIIF in recommending the inclusion of community development SPCPs as an impact review factor on the Community Development Finance Subtest, and as an example of a responsive credit product on the Community Development Services and Products Subtest. SPCPs can be a mechanism not only for home mortgage and consumer lending, but also for small business and community development lending.

Conclusion

CEI appreciates the care, expertise, and thoughtfulness that went into the development of this proposal. We hope that our comments are helpful and provide some value in areas where we have experience. We are hopeful that a new regulation will help to increase investment and community development in areas that need it most, especially in rural communities, Native lands, and areas of persistent poverty, as well as to low and moderate-income individuals wherever they may live. We hope that a new Rule will more explicitly incorporate race and ethnicity, in the spirit of the original, anti-redlining legislation. And we are encouraged by the acknowledgement of the work and impact of CDFIs, and hopeful that a revitalized CRA will drive more investment to our field so that we can multiply that impact.

Thank you again for this opportunity to comment.

Sincerely,

[redacted]

Betsy Biemann
CEO