PARTNERSHIP for FINANCIAL EQUITY

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Parts 24, 25, 35, and 192
Docket ID OCC-2022-0002
RIN 1557-AF26
Chief Counsel's Office
Attention: Comment Processing
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

FEDERAL RESERVE SYSTEM
12 CFR Parts 207 and 228
Regulation BB
Docket No. R-1830
RIN 7100-AG75
Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Parts 345 and 346
RIN 3064-AG03
James P. Sheesley,
Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Comments from the Partnership for Financial Equity
on Community Reinvestment Act; Supplemental Rule
May 13, 2024

Partnership for Financial Equity (PFE) appreciates the opportunity to comment on the interim final rule that amends the applicability date of the facility-based assessment areas provision and

public file provision included in the 2023 CRA Final Rule. This Final Rule represents the most significant changes to the CRA regulation in 29 years and represents an important and overdue modernization of this vital law.

PFE (formerly known as the Massachusetts Community & Banking Council) is a nonprofit organization established in 1990 to bring together community organizations and financial institutions in Massachusetts to affect positive change in the availability of credit and financial services across the Commonwealth by encouraging community investment in low- and moderate-income communities and communities of color. PFE is funded through the financial support of member financial institutions, together with sponsorships of our annual Financial Equity Summit, and the Board of Directors consists of an equal number of representatives from leading community organizations and financial institutions.

We offer this comment letter in response to the Interim Final Rule relating to the Community Reinvestment Act ("CRA") as published in the Federal Register on March 29, 2024 (the "Interim Rule"). The Interim Rule delays the effective implementation date of certain provisions of the Final Rule issued by the Agencies on October 24, 2023 to modernize CRA for current lending requirements and trends ("CRA Modernization Regulations"). PFE is broadly supportive of efforts to update CRA given the dramatic changes to the banking and lending landscape since the last attempt to update the regulations regarding this landmark law, but our organization also has concerns regarding the uncertainty regarding these regulations, both as created by the Interim Rule and the ongoing litigation currently pending in the U.S. District Court for the Northern District of Texas ("Litigation") with respect to the CRA Modernization Regulations.

The issuance of the Interim Rule created even more uncertainty for banking institutions and community organizations with CRA Modernization Regulations. Many of our financial institution members had undertaken significant steps to update their assessment area to comply with the "Facility Based Assessment Area" definition in the CRA Modernization Regulations, given the original effective date of April 1, 2024. This included education of senior management and members of the Board of Directors, conducting analyses of their branching footprints, and making strategic decisions on community investments based on the new definitions. However, by waiting to issue the Interim Rule only days before the April 1 effective date for these provisions, our members had to immediately pivot their plans at the last moment, resulting in additional special meetings of key committees and boards and yet other shifts in strategic planning. Community organizations also experienced this uncertainty, as organizations which had planned to invest in geographic areas that would fall within bank assessment areas in the new rule suddenly discovered that financial institutions were no longer required to include their footprint in their assessment area, resulting in potential donations and investments being taken off the table until 2026. This last-minute change also comes on the heels of the OCC's 2020 Rule which was retracted a year later, as national banks have now operated under four different CRA guidelines in four years. This ongoing uncertainty does not serve the goals of CRA or the needs of our communities, and we strongly urge the Agencies to give clear and definitive rules

and guidance for our members that are not a risk of being retracted or changed in mid-implementation.

These issues are exacerbated further by the Litigation, particularly with respect to the injunction issued in that matter enjoining enforcement against members of the Plaintiff organizations in that matter. Plaintiffs argue that the Final Rules "are of such scale and complexity that banks must take immediate steps" to comply. And those steps, they argue, require "substantial costs that will be unrecoverable even if the Rules are struck." But all sides agree that CRA needs to be modernized and that some version of the rules is likely to be eventually implemented. The suit has introduced all sorts of uncertainty to banks seeking to be in position to comply with new rules at a now indeterminate time. Some banks will continue to incur costs to comply while the Final Rule is being litigated and others will delay, placing covered institutions in very different competitive positions when this dispute is resolved.

The last significant revision to CRA regulations occurred in 1995, in response to a directive to the agencies from President Clinton to review and revise the CRA regulations to make them more performance-based, and to make examinations more consistent, clarify performance standards, and reduce cost and compliance burden. In the intervening 29 years, much has changed about banking and community development and the need for a modernization of the rule is urgent. Letting a lawsuit drag on and eventually be decided by the Supreme Court in a year or two or more from now will likely mean that new regulations will not become enforceable until 2028 or later. For the sake of low- and moderate-income communities in the United States, that timeline is unacceptable.

On behalf of our member banks and community organizations, we encourage the federal regulators to reach an out-of-court resolution with the plaintiffs. This resolution would provide certainty to banks and community groups, enshrine key modernization principles and ensure a timeline that is predictable. To be clear, we are not asking regulators to capitulate and agree with the plaintiffs motion on all counts. While the plaintiffs raise important points about the reach of the new rules, our organization is on record as supporting extending CRA to areas beyond facility-based assessment areas and the insertion of race into the regulations. That said, we do believe that common ground can be found that will allow all parties - including community-based organizations who are unfortunate bystanders to this litigation - to move forward with a CRA modernization that we can stick to now and in the immediate future.