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August 5, 2022

RE: **Community Reinvestment Act Proposed Rulemaking [87 FR 33884]**

OCC: 12 CFR Part 25; Docket ID OCC-2022-0002; RIN 1557-AF15
Federal Reserve: 12 CFR Part 228; Regulation BB Docket No. R-1769; RIN 7100-AG29
FDIC: 12 CFR Part 345; RIN 3064-AF81

Americans for Financial Reform Education Fund, along with 25 undersigned organizations, is pleased to submit comments responding to the Joint Notice of Public Rulemaking (NPR) from the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively "the agencies") regarding changes to the Community Reinvestment Act of 1977 (CRA).

The NPR, which proposes the first major regulatory update to the CRA in over 25 years, has many promising elements. We appreciate the agencies' combined approach and thoughtful proposals, including, among others, establishing new assessment areas outside of branch networks for large banks, providing credit for investments in climate resiliency, and denying credit for investments that promote housing displacement. But we also believe that more can and must be done to bring the CRA into the modern era and meet today's urgent challenges.

Over the past 45 years, banking and technology have changed dramatically: today, many consumers access financial services online, while the CRA has maintained its assessment areas focused on physical bank locations. Additionally, while the CRA was intended to address the harms caused by redlining and financial discrimination, the racial wealth gap has not only persisted, but grown since its passage: today, the median white household has nearly 8 times the wealth of the median Black household, and just over 5 times the weath of the median Latinx household.[1] In recent decades, we have become increasingly aware of the causes and devastating effects of climate change, as well as the role of banks in funding both drivers of climate change and the efforts to mitigate its impacts. Finally, as housing prices and housing insecurity have dramatically increased nationwide,[2] the importance of promoting housing stability and opposing lending practices that promote displacement is increasingly critical. This comment provides recommendations for how the CRA can better respond to these challenges, particularly by adopting a race-conscious approach, strengthening CRA exams, increasing community engagement, and addressing climate change and housing displacement.

1. **The CRA must be race-conscious to address the harms it was intended to solve.**

The CRA was passed in response to redlining, a racist lending practice that systematically denied credit to people of color and their neighbors. Yet, the original CRA regulations evaluated bank activities impacting low and moderate income (LMI) people and LMI neighborhoods rather than directly addressing the racial harms caused by redlining. This approach has proven insufficient to address persistent racial inequities in the financial services sector. Unfortunately, the agencies have once again chosen not to take race into account in CRA evaluations in this NPR. Rather, they have opted to expand data reporting requirements so that banks will disclose their Home Mortgage Disclosure Act mortgage lending by race. Under the current proposal, this data, which is already publicly-available, will not impact a bank's score.

We urge the agencies to reconsider this approach and incorporate an explicit consideration of race in CRA evaluation, rather than using income as a proxy for race. This approach would complement rather than replace the current focus on LMI people and neighborhoods. In particular, the agencies should adopt the National Community Reinvestment Coalition proposal that would incorporate affirmative obligations to serve and benefit BIPOC people and communities into CRA evaluations of retail lending, retail services, community development financing and community development services.[3] Regulators should also incentivize activities that help close the racial wealth and homeownership gap, including equity-based initiatives such as down payment assistance for first-generation homebuyers, special purpose credit programs tailored to the specific needs of underserved communities, and small-dollar mortgage loans.

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[1] Federal Reserve, "Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances." 2020.
[2] National Low Income Housing Coalition, "Out of Reach: The High Cost of Housing." 2022.
[3] National Community Reinvestment Coalition, "Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal ." 2021.

2. **Strengthen, not weaken, the CRA**.

About 98% of banks pass their CRA exam, with 90% receiving a Satisfactory rating.[4] We believe that CRA exams provide a unique opportunity to highlight and provide credit for a bank's beneficial activities, while holding banks accountable for harmful practices. We recommend the following approaches to best take advantage of the CRA exam process:

- **Oppose the expanded definition of small and intermediate banks:**

The agencies propose to increase the upper threshold level of a small bank from $336 million in assets to $600 million, and to increase the upper threshold of an intermediate bank to $2 billion. Large banks with assets between $2 and $10 billion would be exempt from data disclosure, auto lending tests, and the expanded assessment areas for mortgage and small business lending, and only banks with over $10 billion in assets would need to provide detailed information about their community development activities. These proposed asset threshold increases would reduce the level of CRA responsibility for 20% of all banks, which is harmful for underserved communities in rural areas and smaller metropolitan areas, who often rely on smaller banks for community development financing.[5] We see no reason to weaken CRA responsibility or remove banks from CRA accountability altogether. Thus we urge the agencies not to raise the asset thresholds for bank classifications.

- **Include downgrades for displacement, fair lending violations, abusive lending practices, and environmental harm:**

The NPR proposes that regulators may downgrade a bank's CRA rating if they are found to commit a fair lending violation. This is a positive move towards increasing accountability for discrimination, and we urge the agencies to also downgrade CRA ratings for other harmful bank practices. These include bank financing of polluting activities that degrade the health and environmental quality of LMI and underserved communities, lending activities that result in housing displacement, and issuing abusive, high cost loans to consumers without attention to their ability to repay. CRA regulators should take these harmful bank practices into account when conducting CRA performance evaluations, and downgrade ratings based on their findings.

- **Hold banks accountable for affiliate lender activities:**

Some banks partner with third-party non-banks to provide credit or deposit services, but their activities in the partnership are generally not scrutinized under the CRA, even if the bank performs nearly all of the banking-related activities. In recent years, a number of small community banks have developed partnerships with fintech partners where they originate loans and then sell them to their partner. These activities should be included in a bank's evaluation,

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[4] Josh Silver and Jason Richardson, National Community Reinvestment Coalition,"Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data." 2020,

[5] Josh Silver, National Community Reinvestment Coalition, "Here's Where Changes To CRA Asset Thresholds Will Undermine Community Reinvestment." 2022..

particularly if abusive lending practices are occuring.[6] Partnership activities should also be considered when determining a bank's assessment areas, the number of loans, and whether a bank should more appropriately be classified as a larger bank due to the large number of loan originations. To the extent that abusive practices are found to have occurred, the bank should be subject to a ratings downgrade.

- **Don't give credit for corporate volunteer activities unrelated to financial services:**

The agencies propose that banks may receive community development services consideration in nonmetropolitan areas for employee volunteer activities that meet an identified community development need, even if unrelated to the provision of financial services. Such activities would include volunteering at a soup kitchen, food drive, or a homeless shelter, among others. The NPR additionally asks whether such volunteer activities should be considered in all areas. While employee participation in these activities is laudable, we disagree that such participation furthers the goals of the CRA. We instead recommend that the agencies maintain the existing standard, which only provides credit for volunteer services related to the provision of financial services, such as sitting on the loan committees of a CDFI or providing financial literacy education.

3. **Increase community engagement in CRA evaluations.**

The CRA requires banks to meet the needs of communities, and there is no one better situated than community members to provide their unique expertise on their banking needs and whether or not the financial institution is meeting them. Therefore, we urge the regulators to ensure that the updated CRA will provide more opportunities for people in impacted neighborhoods to comment and participate in the bank review process. In a positive step, the NPR reports that the agencies are considering publishing the comments they receive on their website, and we hope this will be included in the final rule as a means to expand the reach and impact of public comments. Another measure regulators should adopt to ensure an inclusive approach is to require banks to describe, in public documents, their outreach to and engagements with organizations, including where and how these efforts were made. Banks should also publicly identify the organizations with which they are establishing CBAs, and the final rule should include an evaluation of adherence to established CBAs. Finally, we ask regulators to encourage community engagement and relationship building with climate and environmental justice organizations, in addition to community organizations more traditionally associated with the CRA.

4. **Expand climate-related eligible activities under the CRA.**

In a positive step, the NPR included "disaster preparedness and climate resiliency" as an eligible community development activity, proposing a non-exhaustive list of climate-related eligible activities, including, among others, developing lending products to help LMI people and small

[6] See the National Consumer Law Center's Joint Letter to the FDIC re: Community Reinvestment Act examination of Transportation Alliance Bank, June 30, 2022, which Americans for Financial Reform Education Fund and a number of other consumer advocacy groups signed on to, for an example of the harms that can be caused in these schemes, sometimes referred to as "rent-a-bank."

businesses prepare for disasters, retrofitting affordable housing, promoting green space to mitigate extreme heat, and financing energy efficiency improvements. 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. Together with Public Citizen and The Greenlining Institute, AFREF has provided more thorough comments in response to this NPR that include detailed recommendations on this topic.

5. **CRA exams must not condone or support displacement.**

We appreciate the increased focus on housing displacement in the NPR and support the agencies' proposal to exclude place-based activities that lead to the displacement or exclusion of LMI people in targeted geographies from CRA credit. We also support the proposal to deny CRA credit to multifamily property loans for unsubsidized housing where post-construction or post-renovation rents would be increased to unaffordable levels. However, we urge the agencies to take a stronger approach by extending the anti-displacement standard to all community development activities, not just place-based initiatives. Additionally, banks that adhere to anti-displacement best practices should receive credit for doing so.[7] Conversely, banks that fund displacement should face ratings downgrades.

Thank you for the opportunity to comment in support of strengthening and modernizing the CRA. We appreciate many of the proposed changes to the CRA and hope you will take our recommendations into consideration so that the final rule is most effective in the extent to which all communities are better served by their financial institutions. For more information, please contact Caroline Nagy at caroline@ourfinancialsecurity.org.

Sincerely,
Americans for Financial Reform Education Fund

350 Hawaii
Alaska PIRG
California Reinvestment Coalition
Center for Community Progress
Consumer Action
Delaware Community Reinvestment Action Council, Inc.
Earth Ethics, Inc.
Empire Justice Center
Houston Climate Movement
Illinois People's Action

[7] The California Reinvestment Coalition Anti-Displacement Code of Conduct and the ANHD Multifamily Best Practices are two exemplary models of anti-displacement best practices.

Long Beach Alliance for Clean Energy
Main Street Alliance
Massachusetts Communities Action Network
National Council of Asian Pacific Americans (NCAPA)
National Fair Housing Alliance
National Housing Resource Center
New Jersey Citizen Action
People's Action
Prosperity Indiana
SC Appleseed Legal Justice Center
Texas Appleseed
THE ONE LESS FOUNDATION
The Sunrise Project
VOICE (Voices Organized In Civic Engagement) OKC
Woodstock Institute