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Community Reinvestment Act

RIN 3064–AF81

Dear officers,

On behalf of more than 500,000 members and supporters of Public Citizen, we provide the following comment on the joint agency proposal to revise regulations implementing the Community Reinvestment Act (CRA).[1] (This proposed rule comes from the Federal Reserve, the Comptroller of the Currency, and the Federal Deposit Insurance Corp., which we will refer to hereafter as the "agencies.") Public Citizen members have an immediate interest in robust implementation of the CRA: some of our members suffer from racial and other forms of discrimination; all our members loathe such discrimination; and all our members thrive in communities when discriminatory lending is erased.

We welcome this rulemaking because of the urgency to meet the underlying legislative intent of the CRA, namely, to combat discriminatory lending. While this problem has festered profoundly in American history, the breadth and depth of discrimination in our nation has become highlighted in the last years

[1] Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corp., *Community Reinvestment Act*, FEDERAL REGISTER (June 3, 2022) https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf

by the Black Lives Matter demonstrations and the disproportionate economic impact of Covid 19 on persons of color, among other things. Improvements in the enforcement of CRA can help combat one form of discrimination as other sources of systemic racism are being tackled by the administration and Congress.

We also appreciate the rigor behind this multi-agency rulemaking.

Along with the pressing issues of race discrimination, changes in banking itself argue forcefully for such deliberation. The banking industry continues to consolidate, leading to fewer competitors. Internet banking changes the nature of what is the "community" in a bank's community reinvestment obligation.

Background

The Community Reinvestment Act serves among a constellation of laws aimed at combatting discriminatory lending. Perversely, it was the federal government itself that built discrimination into the loan-making process. In response to the many foreclosures during the Great Depression, Congress established the Home Owners' Loan Corporation in 1933 (HOLC). This entity provided government support for loans, but it drew red lines on the maps of certain neighborhoods denoting them as higher risk. These neighborhoods had lower income residents and large minority populations. This became the basis for the process referred to as "redlining."[2] The harmful impact of that policy has persisted for decades, with neighborhoods of color suffering lower mortgage approval rates.

Congress began to address the problem beginning in the 1960s, with the 1968 Fair Housing Act and the 1974 Equal Credit Opportunity Act. In 1975, Congress approved the Home Mortgage Disclosure Act (HMDA) to quantify where and to whom banks made loans. The law required banks to make their annual loan making public, delineated by recipients' neighborhood, income, and race.

In 1977, Congress built on these existing laws and approved the Community Reinvestment Act, a law authored by Sen. William Proxmire, (D-Wisc.), chair of the Senate Banking Committee at the time. Sen. Proxmire explained: "By redlining, let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood."[3]

The CRA advanced beyond data collection to an additional mechanism to promote fair lending. As the law states, banks must demonstrate "a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[4] If banks fail to demonstrate such a record of fair lending, regulators will "take such record into account in its evaluation of an application for a deposit facility by such institution."[5] (The regulators are the Federal Reserve Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corp.)

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[2] Amy E. Hillier, *Redlining and the Homeowners' Loan Corporation*, 29 JOURNAL OF URBAN HISTORY 394-395 (2003)
[3] 1 123 Cong. Rec. 17630 (June 6, 1977), https://repository.upenn.edu/cgi/viewcontent.cgi?article=1002&context=cplan_papers
[4] 12 U.S.C. §2901(a)(3)
[5] 12 U.S.C. §2903(a).

To implement this law, regulators identified factors they would consider including: efforts by the bank to ascertain the credit needs of the community such as communication with members of the community; geographic distribution of the bank's credit extensions, credit applications, and credit denials; evidence of prohibited discriminatory or other illegal credit practices; and bank participation in local community development (CD) projects.[6] (CD loans and investments involve larger scale projects, such as multi-unit affordable housing, revitalization of neighborhoods including community centers, and general economic development. An individual home loan is not considered part of community development.) Regulators stressed that outreach with the community would be central. The statute provided that regulators also assign banks a rating– Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance. Regulators also required production of a written report that became a part of the supervisory record of the institution.

Congress has modified the CRA several times. In 1989, as part of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), banks were required to prepare a written evaluation, which includes a public section as well as a confidential section.[7] In 1994, as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Congress required banks to provide separate analysis for each metropolitan area where the bank maintains a branch. It also required a report for each state where it operated, and an overall report for the entire region of a bank's operation. In 1995, the regulators implementing that law issued a rule designed to emphasize performance, as critics contended that the CRA previously overemphasized process. The agencies introduced the concepts of "assessment area" and "performance context." The assessment area describes the geographic area within which the performance criteria in the rule would be assessed. The performance context is a measure of how a bank performs compared to its peers in the assessment area.

Over its history, the CRA led to important investments. Since 1996, banks have issued more than $1 trillion in loans for community development, and $1 trillion for small businesses located in low- and moderate-income census tracts.[8] Between 2009 and 2020, banks made more than $2.58 trillion in home loans to low- and moderate-income borrowers or in census tracts considered as low-and moderate-income. They made $856 billion in loans to small businesses with revenues under $1 million.[9] During one recent year, CRA lending included: 2,762,600 small business loans totaling $172 billion; 723,822 home mortgage loans totaling $108 billion; 26,397 community development loans totaling $96 billion; 12,971 multifamily housing loans totaling $33 billion; and 108,255 small farm loans totaling $10 billion. [10]

The Agency's Proposed Rule

Address Communities of Color Directly

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[6] 43 Fed. Reg. 47144, 47152 (Oct. 12, 1978).
[7] 12 U.S.C. §2906.
[8] Jesse Van Toll, *Testimony*, U.S. SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS (April 9, 2020) https://financialservices.house.gov/uploadedfiles/hhrg-116-ba15-wstate-vantolj-20190409.pdf
[9] National Community Reinvestment Coalition, *CRA Qualified Lending*, NATIONAL COMMUNITY REINVESTMENT COALITION (website accessed July 11, 2022) https://public.tableau.com/app/profile/ncrc.research/viz/CRAQualifiedLending2009-2020/Dashboard1
[10] Buzz Roberts, *Testimony*, U.S. SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS, (April 9, 2020) https://financialservices.house.gov/uploadedfiles/hhrg-116-ba15-wstate-robertsb-20190409.pdf

As noted, the pandemic highlights the urgent need for robust enforcement of the CRA. People of color along with low- and moderate-income groups (LMI) have suffered disproportionately during the closure of many businesses, limitations on travel and social interactions. Before the pandemic, LMI groups struggled. It is expensive to be poor.[11] The one in four American families who are unbanked or underbanked[12] spend roughly 10 percent of their income on fees and interest to use their own money. This is equivalent to a typical family's food budget.[13] After the onset of the pandemic, economic hardship has fallen especially cruelly on communities of color. Unemployment among African Americans has been worse than for other Americans.[14] [15] More than 440,000 African American-owned businesses have been closed; that's 41% compared to just 17% of white-owned small businesses.[16]

This urgent need to strengthen the CRA rests on top of a long-standing problem. A study published in 2018 found that "African Americans and Latinos continue to be routinely denied conventional mortgage loans at rates far higher than their white counterparts."[17] African American homeownership peaked at 50 percent in 2004; it is now at 43 percent.[18] Various studies show that even as banks may be making loans into LMI census tracts, they may not be making loans to LMI people of color in these areas. Home Mortgage Disclosure Data Act (HMDA) figures, which does track race, show that home loans to African American borrowers for the last 10 years have been 6 percent of the total, less than half of their proportion in the population.[19] Another troubling study funds that most loans into LMI census tracts are for gentrification and go to middle- and upper-income borrowers.[20] The Federal Reserve warns that economic problems associated with the pandemic may last for years.[21]

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[11] *The High Cost of Being Poor in the U.S.*, COALITION ON HUMAN NEEDS, (September 20, 2016) https://www.chn.org/wp-content/uploads/2019/02/Final-CHN-Natl-Census-Poverty-Report-9.20.16.pdf

[12] *Economic Inclusion, The 2017 National Survey of Unbanked and Underbanked Households*, FEDERAL DEPOSIT INSURANCE CORP. (2017) https://economicinclusion.gov/surveys/2017household/.

[13] Mehrsa Baradaran, *How the Other Half Banks*, HARVARD COLLEGE (2015)

[14] Elise Gold and Valerie Wilson, Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus—Racism and Economic Inequality, Economic Policy Institute, (June 1, 2020) https://www.epi.org/publication/black-workers-covid/

[15] *Unemployment Rates During the COVID-19 Pandemic: In Brief*, CONGRESSIONAL RESEARCH SERVICE, (Jan. 12, 2021) https://fas.org/sgp/crs/misc/R46554.pdf

[16] Rodney Brooks, *More Than Half Of Black-Owned Businesses May Not Survive COVID-19*, NATIONAL GEOGRAPHIC, July 2020, https://www.nationalgeographic.com/history/2020/07/black-owned-businesses-may-not-survive-covid19/, and Governor Lael Brainard, *Modernizing and Strengthening CRA Regulations: A Conversation with Minority Depository Institutions*, FEDERAL RESERVE, October 2020, https://www.federalreserve.gov/newsevents/speech/brainard20201015a.htm

[17] Aaron Glantz, Kept Out, Center for Investigative Reporting, (Feb. 15, 2018) https://revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/

[18] Clint Odom, *Testimony*, U.S. SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS, (April 9, 2019) https://financialservices.house.gov/uploadedfiles/hhrg-116-ba15-wstate-odomc-20190409.pdf

[19] *Mortgage Market Activity and Trends*, CONSUMER FINANCIAL PROTECTION BUREAU, (May 7, 2018), https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-mortgagemarket-activity-and-trends/

[20] *Most CRA-Qualifying Loans In Low- And Moderate-Income Areas Go To Middle- And Upper-Income Borrowers*, Urban Institute, (March 4, 2019), https://www.urban.org/urban-wire/most-cra-qualifying-loans-low-and-moderate-income-areas-go-middle-and-upper-income-borrowers

[21] Chair Jerome Powell, *Current Economic Issues*, FEDERAL RESERVE (May 13, 2020) https://www.federalreserve.gov/newsevents/speech/powell20200513a.htm

Unfortunately, the proposed rule does little to address the blatant problems of racial discrimination among banks obligated to the CRA.

The agencies propose to use data gathered from the Home Mortgage Disclosure Act (HMDA). These will produce exam tables describing lending by race. But the agencies say they will not use these results of when determining the bank's final CRA rating.[22] We believe such results should be reflected in the rating. There should be direct measures of a bank's performance with communities of color. The CRA exams should include racial and ethnic demographic data as part of its performance context analysis. Any final rule should explicitly include communities of color in banks' assessment areas (geographical areas on CRA exams). The Board should also provide CRA consideration for lending and investing in majority minority census tracts outside of assessment areas just as the agencies propose to do for Native American reservations and other underserved areas.

Federal Reserve Vice Chair for Supervision Michael Barr has observed that the CRA should play an important role in providing increased access to capital for historically redlined communities, and in overcoming discrimination.[23] We urge the agencies to take this opportunity to correct that failure. For the purposes of identifying Assessment Areas and any other target geography or population, income alone is an incomplete metric.

Address Environmental Discrimination

Climate change compounds CRA challenges and highlights its shortcomings as currently implemented. More specifically, climate harms are increasing credit needs in climate-vulnerable areas while simultaneously straining the abilities of banks to provide access to credit. Community banks, in particular, face heightened threats from climate change while serving as important sources of credit for farm and rural LMI communities.

We believe the proposed rule incentivizes increased bank attention to climate risk, but it should be strengthened by (1) recognizing additional activities that qualify for CRA points, (2) promoting bank attention to engagements with climate and environmental justice organizations, and (3) encouraging banks to reduce activities that could impair CRA goals, including the financing of greenhouse gas emitting activities and other measures that could impair tribal rights.

Climate change is increasing the frequency and intensity of extreme weather-related events. It renders physical risks – risks that these events will physically impact assets – less predictable, more severe, and

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[22] Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, *Community Reinvestment Act*, FEDERAL REGISTER, (June 5, 2022) https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf

[23] Michael Barr, *Credit Where It Counts: The Community Reinvestment Act and Its Critics*. UNIVERSITY OF MICHIGAN LAW SCHOOL (2005) https://repository.law.umich.edu/articles/60/. Barr states, the "CRA was not enacted to address racial discrimination against borrowers. That role was assigned to the Equal Credit Opportunity Act of 1974 (ECOA). Yet CRA had its origins in claims that banks were "redlining," that is, refusing to lend to potential borrowers living in low-income, minority communities. One cannot fully understand the rationale for CRA unless one sees it as part of the federal government's response to the long history of private sector and official discrimination in housing and credit markets. …. Contrary to the claims of CRA's critics, I argue that racial discrimination, and the effects of such discrimination, likely persists in home mortgage markets, and that the legacy of discrimination provides further theoretical justification for CRA. Moreover, I will argue that CRA in fact plays an important role, alongside ECOA, in overcoming such discrimination."

more likely. A recent report from the National Oceanic and Atmospheric Administration (NOAA) shows that in 2021 alone there were 20 climate-related weather disasters with losses exceeding $1 billion each in the United States.[24] Warned NOAA, "It is concerning that 2021 was another year in a series of years where the planet suffered a high frequency, a high cost, and large diversity of extreme events that affect people's lives and livelihoods—concerning because it hints that the extremely high activity of recent years is becoming the new normal." The government agency noted that 2021 marked the seventh straight year in which 10 or more separate billion-dollar disaster events impacted the U.S.[25]

Communities most vulnerable to climate change are more likely to be communities of color.[26] The legacy of redlining and its contribution to inferior infrastructure in areas occupied by communities of color leaves these areas with heightened vulnerability to climate-related harms.[27] Recently updated flood maps reveal that, in two-thirds of states, minority neighborhoods face more flood risk than the state average.[28] One expert explains, "While the primary consequence of red-lining was to undermine the ability of Black families to generate cross-generational wealth . . . it also left them deprived of local infrastructure investment—and disproportionately exposed to the very flood impacts that now again threaten the availability of home loans." [29]

Farmers are also particularly vulnerable to climate change. Studies show that record-level heat and drought of climate change increasingly challenge crop production.[30] Sen. Jon Tester (D-Mt.) observed that largely as a result of impacts of climate change to farmers in his state, government subsidies accounted for 40% of farmer income.[31]

While climate change is increasing the need for credit for many communities of color, LMI individuals and farmers, it also further challenges the abilities of banks to provide access to credit in climate-vulnerable areas. Community banks are particularly constrained as the realities of climate change collide

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[24] National Centers for Environmental Information, *Billion-Dollar Weather and Climate Disasters*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (website viewed July 19, 2022) https://www.ncei.noaa.gov/access/billions/

[25] Adam Smith, *2021 U.S. billion-dollar weather and climate disasters in historical context*, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (Jan. 24, 2022) https://www.climate.gov/news-features/blogs/beyond-data/2021-us-billion-dollar-weather-and-climate-disasters-historical

[26] Morello-Frosch, Rachel and Manuel Pastor, James Sadd, Seth Shonkoff. "The Climate Gap: How Climate Change Hurts Americans & How to Close the Gap." University of Southern California. May 2009. https://dornsife.usc.edu/pere/climategap/

[27] Tim McDonnell, *How New Flood Risk Maps Could Undermine Marginalized Neighborhoods*, QUARTZ (July 5, 2020) https://qz.com/1876202/new-flood-risk-maps-could-undermine-marginalized-neighborhoods/

[28] *Defining America's Climate Risk*, FIRST STREET FOUNDATION, (website viewed July 19, 2022) https://firststreet.org/

[29] Tim McDonnell, *How New Flood Risk Maps Could Undermine Marginalized Neighborhoods*, QUARTZ (July 5, 2020) https://qz.com/1876202/new-flood-risk-maps-could-undermine-marginalized-neighborhoods/

[30]Corey Lesk, et al, *Stronger Temperature–Moisture Couplings Exacerbate The Impact Of Climate Warming On Global Crop Yields* NATURE FOOD ((September 2021) https://www.nature.com/articles/s43016-021-00341-6.epdf?sharing_token=0MFzgyezlY2l2RVSPFYl8tRgN0jAjWel9jnR3ZoTv0Nxppe7iyc5DE0aCBOZw3qYUSDEWDpVcYa-n-8smVqkj3kf-crK8k6SmirhXLpDvkmt1B7mP6eD4MbBgdWjTvelU5Fw-Cbc5rBGSn98iallrM3j5e3dbSRopylaq_wiQxsi3p2o2XOrOW0oW2QSEDmZS2kY4Z-go4NODZbp1PKgT8iUll48X9xg_nJeT8FmsbYLB1CYHeIg9jwF-uxzbMq3&tracking_referrer=medialibrary.climatecentral.org

[31] Senate Banking Committee, *Nomination Hearing*, SENATE BANKING COMMITTEE (Feb. 3, 2022) https://www.banking.senate.gov/hearings/01/25/2022/nomination-hearing

with their geographically rooted nature. These banks can't readily move or shift their assets; they exist to serve communities and particular needs. Community banks are particularly important for the home mortgage needs of LMI communities, according to a Federal Reserve report.[32] For many community banks, the largest proportion of their assets include not only mortgage loans but also other loans that are highly vulnerable to climate change. Ceres, a non-profit focused on sustainability explains that because community banks focus on relatively few sectors, such as small business or agriculture, these loan portfolio "are more exposed to the physical risks of climate change." These are the very assets the CRA was enacted to support for local communities. Ceres observes that there "are already examples of climate-related disasters that have fundamentally impacted the safety and soundness of community banks and credit unions."[33] With more limited measures to manage climate-related risks, community banks would benefit most from activities that reduce climate change impacts, including activities that reduce emissions.

The proposal provides important explicit attention to climate change-related risk through the addition of "disaster preparedness and climate resiliency" as a category of activities eligible for "community development" credit. Proposed activities include those that help "communities prepare for, adapt to, and withstand climate-related disasters and risks" and "mitigate the effect of disasters and climate-related risks."[34] The proposed non-exhaustive list of such activities should help communities understand the kinds of climate-related investments for which they are likely to secure financing support, and help banks understand the activities for which they can receive CRA credit. These investments will provide communities with more opportunities to be active participants in the transitioning economy. Nevertheless, we recommend that additional activities be listed, including community solar and microgrids, operational support for environmental and climate justice organizations, and electrification and water efficiency measures for residential homes, including multifamily properties.

Further, the rule should encourage banks to increase community engagement and relationships with climate and environmental justice organizations, including through the use of Community Benefits Agreements (CBAs). When this proposal is finalized, banks will likely become more active in investing in disaster preparedness and climate resiliency, which we welcome. The rule should ensure that banks are not favoring organizations and communities that are willing to request less of the banks, and that banks are instead attempting to meet the needs of all LMI communities and communities of color. One measure 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—and the outcomes of such engagements. And banks should also identify the organizations with which they are establishing CBAs. The proposal should otherwise incentivize use of binding CBAs, since they are powerful tools for communities to outline their local financial needs. Finally, the rule should reflect that a CRA exam will include an evaluation of adherence to established CBAs.

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[32] Paul Calem, et al, *Is the CRA Still Relevant to Mortgage Lending?* FEDERAL RESERVE BANK OF PHILADELPHIA *(AUGUST 2019) https://www.philadelphiafed.org/-/media/frbp/assets/events/2019/community-develeopment/research-symposium-on-the-community-reinvestment-act/research-symposium-on-the-community-reinvestment-act-calem-lambiehanson-wachter.pdf*

[33] *Financing a Net Zero Economy*, CERES (September 2021) https://www.ceres.org/sites/default/files/reports/2021-09/Ceres%20Financing%20a%20Net%20Zero%20Economy%20FINAL.pdf

[34] Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corp., *Community Reinvestment Act*, FEDERAL REGISTER (June 3, 2022) https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf

CRA rules should incentivize banks to reduce activities that undermine goals of the CRA— including activities that further impair the abilities of communities of color to access credit, and that challenge the rights of tribal communities to plan and pursue their own community development activities.

Banks that finance the fossil fuel industry and other enterprises that increase greenhouse gas emissions (GHG) can impair property values. For reasons described above, these impaired property values are often most acute in communities of color. With impaired property values, banks may become reluctant to lend—increasing lending costs or even withholding loans. [35] The Comptroller of the Currency declares that banks should seek to avoid such disparate impacts to communities of color as they confront climate change.[36] But a Federal Reserve summary of the statutes and regulations relating to fair lending laws reflects that this admonition may be of limited utility. Fair lending statutes and regulations allow banks to escape anti-discrimination rules where it is a "business necessity." In the context of climate change, this means that if lending to a climate hotspot area threatens the safety and soundness of a bank, the bank can take measures—including, presumably, less lending and/or higher lending costs— to ensure its safety. As a result, many communities that haven't willingly assumed the financial risks related to climate change are forced to bear these risks. Given these realities, the most effective, and often likely only, approach to reducing disparate impacts is to reduce the underlying source of those impacts—greenhouse gas emissions.[37] As bank financing of polluting activities disparately impacts access to credit by LMI communities and communities of color, regulators should scrutinize such activities and their disparate impacts, and consider how harms to these communities' access to credit should be taken into account in CRA exams. Fair lending reviews are already part of CRA exams, and disparate impact related to climate change should be incorporated into that existing framework.

The CRA rule should also acknowledge that financed emissions can impact tribal communities not only through climate change-related impacts to important tribal natural and cultural resources, but also through threats to tribal community development. The latter occurs, for example, when oil and gas infrastructure, e.g., pipelines, are permitted on tribal lands without the free, prior, and informed consent of tribal communities. A 2021 Memorandum of Understanding signed by federal agencies to protect tribal treaty rights acknowledges that US agency decision-making and regulatory processes should be "consistent with the federal government's trust responsibility to federally recognized tribes and to fundamental principles of good government."[38] CRA rules should maintain this trust responsibility by reducing points to banks funding infrastructure on tribal lands without tribal consent.

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[35] Tim McDonnell, *How New Flood Risk Maps Could Undermine Marginalized Neighborhoods,* QUARTZ (July 5, 2020) https://qz.com/1876202/new-flood-risk-maps-could-undermine-marginalized-neighborhoods/

[36] Comptroller of the Currency, *Risk Management: Principles for Climate-Related Financial Risk Management for Large Banks; Request for Feedback,* COMPTROLLER OF THE CURRENCY (Dec. 16, 2021) https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-62.html

[37] Federal Reserve, *Federal Fair Lending Regulations and Statutes: Overview* FEDERAL RESERVE (website viewed July 20, 2022) https://www.federalreserve.gov/boarddocs/supmanual/cch/fair_lend_over.pdf

[38] *Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights.* DEPARTMENT OF THE INTERIOR (September 2021_ https://www.doi.gov/sites/doi.gov/files/interagency-mou-protecting-tribal-treaty-and-reserved-rights-11-15-2021.pdf

Finally, the agencies should consider issuing future guidance, following a finalized rule, which identifies already publicly available data tools that banks should be required to use to identify climate vulnerable communities, and work towards building relationships and driving investment to those communities. as well. Examples of tools include the Environmental Protection Agency's (EPA's) Environmental Justice Screening and Mapping Tool (EJScreen)[39] and the White House Council on Environmental Quality's recently released Climate and Economic Justice Screening Tool (CEJST).[40]

Reverse Inflation of Ratings

We welcome the agencies stated objective to make CRA exams more objective and transparent. This includes improvements in performance measures, data collection, and assessment areas that promise to bolster the muscularity of CRA exams. Such improvements will be hollow, however, if the agencies fail to address CRA ratings inflation. When nearly every bank wins a high mark for its CRA exam, even in the face of obvious, abiding problems with lending in LMI areas and communities of color, then the Board is not promoting real progress. Currently, about 90% of banks receive "Satisfactory" as a final grade.[41] Given that racism persists, that discriminatory lending continues, this percentage of banks cannot possibly be performing in a "Satisfactory" manner. When all banks essentially receive the same rating, the motivation to improve dissipates.

Further, the agencies should publish a database that allows for granular comparison of bank performance on community reinvestment. This database should be the basis for ratings. A bank could receive an outstanding rating only if it performed better than its peers; those who perform more poorly than half of their peers would receive a "needs to improve" rating. Those in the bottom 40 percent would be considered as "substantial non-compliance." Ideally, regulators would supplement these findings by assigning a numeric score, from 1-100, so that the public and peer banks could more clearly see how they perform. This would supplement the existing categories, which are required by statute.

We also ask that inflation be addressed with more robust public consideration during the application for additional branches or mergers, the primary "teeth" in the CRA. We address public meetings further below.

Addressing Evolving Bank Geographies

When the CRA became law in 1977, banking largely consisted of single institutions operating in one state, though some did maintain branches. CRA examiners could readily assess how the bank performed in the geographies in the perimeters around those banks and bank branches. Interstate banking subsequently became legal and then common in the subsequent decades. This made examinations more

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[39] "EJScreen: Environmental Justice Screening and Mapping Tool." Environmental Protection Agency. https://www.epa.gov/ejscreen

[40] "Climate and Economic Justice Screening Tool." White House Council on Environmental Quality. https://screeningtool.geoplatform.gov/en/

[41] Josh Silver and Jason Richardson, *Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data*, NATIONAL COMMUNITY REINVESTMENT COALITION, (May 2020), https://ncrc.org/do-cra-ratings-reflect-differences-in-peorformance-anexamination-using-federal-reserve-data/

expansive, but the bricks-and-mortar buildings kept the identification of assessment areas relatively straightforward.

The emergence of automatic teller machines (ATMs) and the internet now challenge this rubric. A few banks exist only on the internet, known as financial technology or "fintech"; many, if not most banks with traditional branches, also offer abundant services through the internet. Currently, regulators use only the main office of a bank with substantial internet operations as the assessment area. This can result in "hot spots," where a such an institution might invest relatively heavily in CRA-related activities near that main office even though it leaves the vast majority of where it makes loans or engages in community development a relative desert. [42]

Mergers have now created behemoth institutions, appropriately dubbed "too-big-to-fail" banks as their implosions during the 2008 financial crisis led Washington to bail out their creditors. Perversely, these mega-banks now undermine the fate of traditional community banks—the workhorse of community reinvestment--either by direct competition with the mega-bank's branches, or with their internet-based services. To survive, many small banks have closed marginal branches or merged. From 1984 to 2017, the number of bank branches fell from 14,500 to less than 5,000.[43] From 2008 to 2013, as the nation struggled to recover, banks shut 2,000 branches. Of these, 93 percent were in ZIP codes where the household income was below the national median.[44] Under the current CRA, which measures compliance based on LMI lending and CD funding based on the geography of a bricks-and-mortar branch, this leaves these ZIP codes with neither a local source for capital nor a means to promote other banks outside these areas to invest there. [45]

The agencies propose to create retail assessment areas where a large bank has issued 100 home loans or 250 small business loans in an area but does not maintain a branch. This means that a bank cannot simply lend to high income borrowers in a region. Studies demonstrate that banks make a higher percentage of their loans to LMI borrowers in areas where they are assessed because they have a branch, than in those beyond those assessment areas.[46] [47] This proposal would result in the great

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[42] One of the most well-known CRA hotspots is Salt Lake City, Utah, in which several non-traditional lenders make their headquarters. The current CRA regulatory regime allows these lenders to designate just Salt Lake City as its assessment area. This procedure will result in Salt Lake City receiving an abundance of traditional CRA investments like Low Income Housing Tax Credits (LIHTC) but will neglect smaller cities and rural areas in Utah as well as in other states in which these branchless banks have significant presence.

[43] Allison Prang, *Thousands of Bank Branches are Closing, Just Not at These Banks*, WALL STREET JOURNAL. (June 15, 2018), https://www.wsj.com/articles/the-bank-branch-is-dyingjust-not-at-these-banks-1529055000.

[44] 5 Frank Bass & Dakin Campbell, *Predator Targets Hit as Banks Shut Branches Amid Profits*, BLOOMBERG, (May 2, 2013) Available at http://www.bloomberg.com/news/2013-05-02/post-crash-branch-closings-hit-hardest-in-poor-u-sareas.html.

[45]Mehrsa Baradaran, *Testimony*, U.S. HOUSE SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS (April 9, 2019) https://financialservices.house.gov/uploadedfiles/hhrg-116-ba15-wstate-baradaranm-20190409-u2.pdf

[46] Lei Ding and Leonard Nakamura, *Don't Know What You Got Till It's Gone: The Effects of the Community Reinvestment Act (CRA) on Mortgage Lending in the Philadelphia Market*, Federal Reserve Bank of Philadelphia (December 2018)

[47] Josh Silver, *How to Consider Community Development Financing Outside Of Assessment Areas By Designating Underserved Counties*, NATIONAL COMMUNITY REINVESTMENT COALITION, (Jan. 29, 2020) https://ncrc.org/how-to-consider-community-development-financing-outside-of-assessment-areas-by-designating-underserved-counties/

majority of total lending being incorporated on exams and would therefore hold non-traditional banks more accountable for serving LMI communities. We support this.

Beyond this rulemaking, we believe Congress must expand CRA to the non-bank financial sector. Mortgage firms, insurance companies, securities firms and others have become major financiers in communities, but they remain outside the purview of many anti-discrimination laws, including the CRA. As more capital flows through these conduits instead of traditional banks, resources for underserved communities may dwindle.[48]

Public Meetings

By its nature, the CRA involves a bank's connection to its community. The force of the CRA comes from its role in affecting bank mergers. But a bank's community generally enjoys little input during the merger process. One review found that between 1990 and 2007, the Federal Reserve held only 13 public hearings on mergers.[49] Another review found that of 13,500 applications for mergers or formations of banks, only eight were denied based on CRA issues.[50] Another review of 3,819 bank merger applications between 2006 and 2017, the Federal Reserve approved 100 percent.[51]

We believe public hearings should be common. The Federal Reserve should hold such hearings when they are requested, especially when the bank or banks in question have ratings below "outstanding." Rejections to applications for mergers and additional branches should not be rare.

The agencies propose to continue the recent practice of publishing 60 days in advance of each calendar quarter the schedule of CRA exams for the next two quarters. This provides time for the public to comment on exams. 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.[8] We agree, and also believe that agencies should routinely hold public hearings, especially with bank mergers. We appreciate that Comptroller Hsu supports this position.[52]

Other Issues

We welcome the agencies' proposed refinements to the definitions of affordable housing, economic development, climate resiliency and remediation, community facilities and infrastructure. We believe this will more effectively target revitalization activities in communities that suffer persistent poverty.

We urge the agencies to include quality as well as quantity of loan making. This should include delinquency and default rates. The financial crash of 2008 exposed a kind of reverse redlining, where

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[48] Josh Silver, *Why the Community Reinvestment Act Should Be Expanded Broadly Across the Financial Industry*, NATIONAL COMMUNITY REINVESTMENT COALITION, (August 2020), https://www.ncrc.org/why-the-community-reinvestment-act-should-be-expanded-broadlyacross-the-financial-industry/

[49] John Taylor, *Testimony*, HOUSE FINANCIAL SERVICES COMMITTEE, (April 15, 2010) http://archives-financialservices.house.gov/media/file/hearings/111/taylor_testimony_-_4.15.10.pdf

[50] *Id.*

[51] Sen. Elizabeth Warren, *press release related to Bank Merger Modernization Act*, OFFICE OF ELIZABETH WARREN (Dec. 4, 2019) , https://www.warren.senate.gov/newsroom/press-releases/senator-warren-and-representative-garca-announce-introduction-of-the-bank-merger-review-modernization-act-to-end-rubber-stamping-of-bank-merger-applications

[52] Comptroller of the Currency Michael J. Hsu, *Bank Mergers and Industry Resiliency* COMPTROLLER OF THE CURRENCY (May 9, 2022), https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-49.pdf

loan-makers preyed on communities with little experience in the mortgage market, selling overpriced mortgages.[53] CRA lending reviews 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.

The agencies ask whether qualified community development projects outside their assessment area may be counted in their CRA scores. We believe they should. While we assume a bank will be better informed about community development opportunities near their branches, we believe they should be credited if they discover a worthy opportunity elsewhere.

We oppose CRA consideration for affordable housing targeted to middle-income households in high opportunity areas or in nonmetropolitan counties. We do urge the agencies to motivate the creation and preservation of housing in high opportunity areas for LMI households. But LMI households have enough trouble finding affordable housing and should not compete with middle-income households for CRA attention.

The agencies propose to raise the small asset bank threshold from $346 million to $600 million, and the intermediate small bank asset threshold from $600 million to $2 billion. Currently, theses asset thresholds range from $346 million to $1.384 billon. The agencies note this would reclassify 779 banks as small and therein would no longer have community development finance responsibilities. We believe this would lead to an unfortunate decline in community development finance and would be especially problematic in smaller communities. Therefore, we oppose this change.

Conclusion

We applaud the agencies for their thorough review of the CRA. With necessary changes involving direct consideration of race, climate change, ratings inflation and public meetings, we believe this will be an important new rubric for community reinvestment.

For questions, please contact Bartlett Naylor at bnaylor@citizen.org and/or Anne Perrault at aperrault@citizen.org.

Sincerely,

Public Citizen

[53] Ylan Q. Mui, *Ex-Loan Officer Claims Wells Fargo Targeted Black Communities For Shoddy Loans,* WASHINGTON POST (June 12, 2013) https://www.washingtonpost.com/business/economy/former-wells-fargo-loan-officer-testifies-in-baltimore-mortgage-lawsuit/2012/06/12/gJQA6EGtXV_story.html