August 4, 2022

Office of the Comptroller of the Currency
Docket ID OCC-2022-0002
Via: https://www.regulations.gov/commenton/OCC-2022-0002-0001

Board of Governors of the Federal Reserve System
Docket No. R-1769 and RIN 7100-AG29
Via Email: regs.comments@federalreserve.gov

Federal Deposit Insurance Corporation
RIN 3064-AF81
Via Email: comments@fdic.gov

RE: Community Reinvestment Act (CRA) Notice of Proposed Rulemaking (NPR)

To Whom it May Concern:

The Greater Rochester Community Reinvestment Coalition (GRCRC) is writing to comment on
the Notice of Proposed Rulemaking (NPR) to update the Community Reinvestment Act (CRA).
This NPR represents the most significant changes to the CRA regulation and exams in 27 years.
We are pleased that the three agencies were able to come together to put together this proposed
rule, and we appreciate the opportunity to share our views on the proposal.

GRCRC was launched in 1993 to generate and continue discussions about lending patterns in
Rochester. Convened by Empire Justice Center, GRCRC has met with numerous banks and state
and federal regulators during CRA exams and mergers and submitted dozens of data-driven
comments to the appropriate state and federal regulators who have oversight of the banks.
GRCRC, Empire Justice Center, and its predecessor organization, the Public Interest Law Office
of Rochester, have released seventeen analyses of home mortgage lending, small business
lending, and access to credit over the past 30 years (1993-2022). These data driven analyses help

us identify strengths and weaknesses in lending patterns and to generate discussions with the top financial depositories in the Rochester NY MSA.[1]

Empire Justice Center (a member of NCRC) and our GRCRC member organizations have extensive experience in working with banks and their federal and state regulators to ensure banks meet their CRA obligations. We mainly focus on the Rochester NY MSA, and we have worked on CRA exams and/or mergers with banks located in Nassau-Suffolk Counties and in the Albany-Schenectady-Troy NY MSA. Most recently we commented on the CRA performance of Five Star Bank in the Rochester MSA during its performance evaluation.[2]

The CRA has successfully leveraged loans, investments and services. Between 2009 and 2020, banks have made more than $8.46 billion in CRA-eligible home loans and loans to businesses in the Rochester NY MSA, which includes $5.14 billion in home loans to low- and moderate-income (LMI) borrowers or in LMI census tracts and $2.57 billion in loans to small businesses with revenues under $1 million.[3]

We need to build on this progress and address remaining disparities in lending and investments by improving the CRA so it's more effective in bolstering bank reinvestment activity in underserved communities. The agencies propose important improvements in the CRA regulation including increasing the rigor of the Retail Lending Test on CRA exams, expanding assessment areas to better reflect today's market, and collecting more data to scrutinize bank performance. For example, under the proposal,

- Large banks are no longer able to carve out parts of a county for an assessment area; they are required to include whole counties as part of their facility-based assessment areas.
- Retail lending assessment areas are added for large banks based upon their home mortgage lending and small business lending activities outside their facility-based assessment areas and within a specific state geography (usually an MSA or all of the non-MSA counties of a state).

---

[1] The most recent analyses are "#AllTogetherNow: Improving Small Business Lending in the Rochester NY Community" (found at: https://empirejustice.org/wp-content/uploads/2018/01/alltogethernow-s.pdf) and "Too Big to Fail...Too Poor to Bank: How Mainstream Financial Services Can Help Low-Income Working Families Succeed" (found at: https://empirejustice.org/wp-content/uploads/2018/09/Access-to-Credit-Report-2018-FINAL.pdf).

[2] The comments can be found at: https://empirejustice.org/wp-content/uploads/2022/06/Five-Star-CRA-Exam-Comments-pdf-05-2022-1.pdf.

[3] Source: NCRC (ncrc.org) that used Home Mortgage Disclosure Act Data from the FFIEC (pre-2018) and the CFPB (2018-2020). Originations are only to borrowers that are low-or-moderate income or who are in a low-or-moderate income census tract. Business loans are from the FFIEC. Loans to businesses with less than $1 million in annual revenue or which are in LMI census tracts are included. These two figures are independent of each other and will have some loans that are counted in both figures.
https://public.tableau.com/app/profile/ncrc.research/viz/CRAQualifiedLending2009-2020/Dashboard1.

- A review of a bank's community development activities includes an evaluation of their impact and responsiveness in meeting community needs and is based on a set of 10 factors listed in the proposal. Albeit, while most of the factors are descriptions of the types of communities impacted and their needs, the list is a good start.
- In addition, the list of eligible community development activities is expanded and includes climate change mitigation and resilience activities; and for many of these activities to be eligible, the loan, investment, or service cannot displace LMI residents.
- Low-income geographies/borrowers are assessed separately from moderate-income geographies/borrowers, as are smaller businesses and farms (those with revenues of less than $250,000 are assessed separately from those with revenues of $250,000 to $1 million).

Given that it's been 27 years since the last major update to the CRA regulation, it is critical that the agencies ensure that the final rule works for the next quarter century to support banks to meet the credit needs of all the communities in which they do business. Over the next 25 years, our communities will continue to become more racially and ethnically diverse and will face many stresses related to the climate crisis. It is critical that the exams under the final rule assess how well banks are serving BIPOC families, businesses, and communities, and how banks are supporting marginalized communities to meet the challenges of climate change.

GRCRC urges the agencies to improve their CRA proposal in the following ways:

- Explicitly consider bank activity by race and ethnicity
- Rescind the proposal to raise bank asset thresholds
- Expand to all large banks the additional provisions and data reporting requirements for the banks with over $10 billion in assets
- Link activities related to addressing climate change to low-income communities, distressed communities, and BIPOC communities
- Expand the collection of the auto lending data to better support a fair lending analysis and ensure that banks are providing consumers with fair (not discriminatory) and affordable auto loans
- Adjust proposed examination procedures to further reduce grade inflation

While we focus our comments on these parts of the proposal, we also support the comments of the National Community Reinvestment Coalition; the letter recommending stronger climate resiliency provisions signed by Americans for Financial Reform Education Fund, The Greenlining Institute, Public Citizen, Empire Justice Center, and dozens of other organizations; and the comments urging that the final rule be race-conscious signed by Americans for Financial Reform Education Fund, Empire Justice Center, and other organizations.

CRA must explicitly consider bank activity by race and ethnicity

Although the 1977 CRA statute does not mention race, it includes language that provides room for the federal bank agencies to incorporate race in CRA exams. In the statute:

- Banks are obligated to "help meet the credit needs of the local communities in which they are chartered."[4] "Local communities" include BIPOC communities; banks cannot carve them out of their assessment areas.
- Bank regulators, when examining a financial institution, are required to assess that "institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution," and to take such assessments into account in the "evaluation of an application for a deposit facility by such institution."[5] The inclusion of low-moderate income (LMI) neighborhoods in the 1977 legislation could be considered a politically palatable proxy for "minority" neighborhoods.
- Federal regulators, in a 1992 update, were required to submit a report to Congress "comparing residential, small business, and commercial lending by insured depository institutions in low-income, minority, and distressed neighborhoods to such lending in other neighborhoods."[6] Congress was thinking about more than LMI neighborhoods when it required the comparisons of lending to include minority and distressed neighborhoods, in addition to low-income neighborhoods.

While the CRA requires that a bank be assessed on how well it is meeting the credit needs of its entire community, including low-moderate income (LMI) neighborhoods, the inclusion of LMI neighborhoods could be considered a proxy for "minority" neighborhoods or BIPOC communities. The Federal Reserve Board acknowledges this in its 2020 ANPR when it summarizes the important legislative history behind the statute. The FRB's ANPR says, "Congress enacted the CRA in 1977 primarily to address economic challenges in predominantly minority urban neighborhoods that had suffered from decades of disinvestment and other inequities. Many believed that systemic inequities in credit access—due in large part to a practice known as ''redlining''—along with a lack of public and private investment, was at the root of these communities' economic distress."[7]

---

[4] Pub. L. 95-128, title VIII, Sec. 802, Oct. 12, 1977, 91 Stat. 1147.

[5] 12 USC Sec. 2903

[6] Pub. L. 102-550, title IX, Sec. 910, Oct. 28, 1992, 106 Stat. 3874.

[7] Federal Reserve Board, Advanced Notice of Proposed Rulemaking (ANPR), Community Reinvestment Act Regulation BB Docket No. R-1723, RIN 7100-AF94, Federal Register, Vol. 85, No. 202, Monday, October 19, 2020, Proposed Rules, p. 66412, https://www.federalreserve.gov/aboutthefed/boardmeetings/files/cra-fr-notice-20200921.pdf.

The use of LMI neighborhoods as a proxy for BIPOC communities has not worked. Redlining and its legacy continue to harm BIPOC families, Black and Brown-owned small businesses, and communities of color. Persistent and wide-ranging racial disparities in lending, income, and wealth remain to this day.

An in-depth national analysis of the 2019 HMDA data by The Markup and the Associated Press, shows that applicants of color were substantially more likely to be denied mortgage loans than similarly qualified white applicants (see graphic below).[8]

Applicants of color denied at higher rates

To illustrate the odds of denial that our analysis revealed, we calculated how many people of each race/ethnic group would likely be denied if 100 similarly qualified applicants from each group applied for mortgages in [the United States ▾]

5 White applicants denied

7 Latino applicants denied

7 Asian/Pacific Islander applicants denied

8 Native American applicants denied

9 Black applicants denied

Source: 2019 HMDA Data, illustrations from ProPublica. We applied the odds ratios from our regression to White applicants' actual denial rates to calculate the number of denials for each racial and ethnic group above. These numbers are not the actual denials or actual number of applications in each location, but rather have been standardized for comparison. We rounded to the nearest person.

NCRC's most recent national level analysis on mortgage lending shows that the proportions of home purchase loans going to Black borrowers, Latinx borrowers, and LMI borrowers grew slightly between 2018 and 2020, while proportions going to non-Hispanic white borrowers, Asian borrowers, majority minority neighborhoods, and LMI neighborhoods decreased slightly. Despite the increased market shares held by Black and Latinx borrowers, the report showed continued disparities in loan denials by race. In 2020, Black home purchase loan applicants were

---

[8] Note that disparities within metro areas were also found and can be viewed in the graphic. https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms#mortgage-1-metro-differential

denied 2.3 times more often than white applicants, and Latinx applicants were denied 1.7 times more often than white applicants.[9]

Empire Justice Center's 2015 report, "The River Runs Dry II," shows that in the Rochester NY MSA,

> For every year from 2010 to 2013, African American applicants were denied at least twice as often as white applicants, with denial rates ranging from 16.6% in 2011 to 20.6% in 2013. Whites had the lowest denial rates of any race/ethnicity; ranging from 8.8% in 2010 to 8.2% in 2013. When lending picked up in 2012 and 2013, denial rates increased for African American and Latino applicants, while rates held relatively steady for white and Asian applicants. As a result, by 2013, Latino applicants were denied twice as often as whites, and African Americans were denied 2.5 times as often.[10]

As seen in the table (noted as "Table 7") at the end of this letter, the plurality of home purchase mortgage loans made in the Rochester NY MSA in 2020 went to low-moderate income households, followed by loans in low-moderate income census tracts. Low-moderate income households received 39% of the area's home purchase loans and 55% of those made by the area's top 8 banks. Majority non-white census tracts received the lowest percentages of home purchase loans, and Black and Latinx households received the next lowest percentages. While 18% of the population in the Rochester MSA is Black or Hispanic, they received only 11% of the area's home purchase loans and 15% of the loans originated by the area's top 8 banks. And while 14% of the Rochester MSA's population lives in majority non-white census tracts, these neighborhoods received only 6% of the home purchase loans and only 10% of the loans made by the top 8 banks. While these numbers reflect slight improvements in lending when compared to years past, (from 3-4% in non-white census tracts in years past), they still indicate racial disparities in access to mortgage credit. Unless the CRA explicitly focuses on race and the racial composition of neighborhoods, banks will not work to extend lending to these families and communities.

Today, the Black-white homeownership gap is larger than it was at the beginning of the civil rights movement, 30 points in 2020 compared to 27 points in 1960.[11]

Moreover, Black and Brown communities are disproportionately suffering from the climate crisis. Redlined communities were unable to secure the financing they needed for home repair,

---

[9] https://www.ncrc.org/ncrc-2020-home-mortgage-report-examining-shifts-during-covid/

[10] "The River Runs Dry II: The Persistent Mortgage Drought in Rochester's Communities of Color," p. 10, as found at: https://empirejustice.org/wp-content/uploads/2018/01/river-runs-dry-ii-1.pdf.

[11] https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-032221.html; https://www.cnbc.com/2020/08/21/why-the-homeownership-gap-between-white-and-black-americans-is-larger-today-than-it-was-over-50-years-ago.html

green spaces, drainage systems, and other measures needed to respond to environmental and climate-induced harms. They continue to be disproportionately harmed by environmental hazards and are more vulnerable to climate extremes. In two-thirds of states, minority neighborhoods shoulder more undisclosed flood risk than the state average.[12] And urban heat islands tend to correlate with areas of cities that have been historically redlined and under-invested.[13]

Ideally the final rule is race-conscious with an affirmative obligation to serve BIPOC people and communities. By including race and ethnicity, the CRA can be a tool to identify and address persistent racial disparities that directly impact the families and communities harmed by government policies and institutional actions for hundreds of years.[14] Our history of intentional governmental efforts to redline communities of color need to be countered by intentional efforts to address the ongoing impacts of redlining.

While we appreciate the transparency of the agencies' proposal to use the Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race, we are disturbed that the results of these analyses will not be used to influence a bank's rating. We believe the agencies are missing a huge opportunity to address the ongoing impacts of redlining and to further advance fair lending, civil rights, and the Fair Housing Act.

GRCRC urges the agencies to consider one or more of the following to make the final rule more explicitly race-conscious:

- Use the proposals put forth by several well-respected CRA and legal advocates to make CRA more race conscious. These include:

    o A paper co-authored by NCRC and Relman Colfax PLLC that argues that CRA would comply with legal standards if regulators examined lending by race and ethnicity in geographical areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending[15]
    o An NCRC proposal to include analyses of lending in underserved neighborhoods with low levels of lending, which are disproportionately communities of color[16]

---

[12] https://qz.com/1876202/new-flood-risk-maps-could-undermine-marginalized-neighborhoods/
[13] https://www.nytimes.com/interactive/2020/08/24/climate/racism-redlining-cities-global-warming.html
[14] See https://isoureconomyfair.org/ about the intertwining of U.S. economic history with the forced removal of, and harm to, Indigenous peoples, the enslavement of Africans, and harms to other people in the U.S. to grow the economy and benefit those with the most resources. See Gallery 12 for information on the HOLC and redlining.
[15] https://www.ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/
[16] https://ncrc.org/adding-underserved-census-tracts-as-criterion-on-cra-exams/

- A July 25, 2022, brief by Calvin Bradford that documents an affirmative legal obligation for the federal regulators to incorporate racial analyses as part of the CRA examination procedures

- Include in mortgage and small business lending analyses, a review of lending in underserved census tracts with the lowest levels of lending. These tracts are disproportionately communities of color.
- Conduct more in-depth fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race and/or in an analysis of the Section 1071 data on small business lending by race and gender of the business owner.
- Include in each bank's CRA performance evaluation an explanation of how the HMDA and Section 1071 data analyses, along with the appropriate tables, supported the examiner's fair lending conclusions.
- Expand the use of Special Purpose Credit Programs to address gaps in access to credit for BIPOC people and communities, for BIPOC-owned small businesses, and for BIPOC-owned small farms.[17]
- Provide incentives like impact scores for CRA-eligible activities that close the racial wealth gap.

Rescind the sections in the NPR to raise bank asset thresholds and add a category for the largest banks

The proposed rule includes a proposal to raise bank size asset thresholds for qualifying for various CRA exams. This is one of the more harmful proposals in the NPR as it would result in a significant reduction in CRA responsibility for 20% of all banks.

The agencies propose to raise the small bank asset threshold from $346 million to $600 million. This would reclassify 779 intermediate banks as small banks that would no longer be accountable for community development finance. Likewise, the agencies propose to adjust the top end of the intermediate bank asset threshold from $1.384 billion to $2 billion. This would reclassify 217 large banks as intermediate banks, eliminating their service test and accountability for placing branches in LMI communities.

---

[17] https://www.urban.org/urban-wire/how-people-based-special-purpose-credit-programs-can-reduce-racial-homeownership-gap; https://nationalfairhousing.org/resource/using-special-purpose-credit-programs-to-expand-equality/

Under the proposal, the Rochester NY MSA-based Lyons National Bank would change from a large bank to an intermediate bank.[18] Lyons NB is the Rochester area's 8th largest depository with 4.76% of the market. Almost all of the bank's 12 branches are in rural areas. If Lyons NB is reclassified as an intermediate bank, the bank will no longer be obligated to provide the services that our rural communities need. Moreover, as the bank expands into the more urban areas of the Rochester market, it will no longer be required to open new branches in LMI neighborhoods. Overall, the proposed raising of asset thresholds lacks justification since the banks currently classified as intermediate (intermediate small) and large banks have been successfully performing these activities for several years. We urge the agencies to eliminate this aspect of the NPR since it would reduce reinvestment activity.

In addition, the agencies propose to add another category of large banks—those with assets of over $10 billion for which certain provisions of the Retail Services and Products Test and Community Development Services Test would apply, and for which some new data requirements would apply. These new data requirements include requirements for deposits data, retail services data on digital delivery systems, retail services data on responsive deposit products, and community development services data. In addition, all banks, including wholesale and limited purpose banks, with assets of over $10 billion would have data requirements for automobile lending.

GRCRC urges the agencies to rescind the proposal to raise top end of the bank asset size thresholds for small and intermediate banks and to expand to all large banks the proposed provisions and data requirements for large banks with assets over $10 billion.

Improve proposal to examine auto lending under the retail lending test to ensure loans are fair and responsible

An auto loan is often the first loan a consumer gets to begin building credit. It is critical that the loan is responsible and sustainable; a usurious or abusive loan can put the borrower in a cycle of subprime credit that is almost impossible to break. As the agencies note in the NPR, "Automobile loans can be important in areas where jobs are a significant distance from where people reside and where public transportation is not readily available. Safe and sound automobile loans can also serve as a means of building a credit history."

This is particularly true in the Rochester area, as well as the rest of Upstate and Western New York, where working families need cars to get to work. Many families' work schedules are not

---

[18] According to a map developed by Josh Silver, *MAP: Here's Where Changes To CRA Asset Thresholds Will Undermine Community Reinvestment*, NCRC, July 2022, https://www.ncrc.org/map-heres-where-changes-to-cra-asset-thresholds-will-underminecommunity-reinvestment/

fixed and can change at the last minute. Entry level jobs are in locations that don't have reliable public transportation or affordable housing.

For individuals in rural areas, public transit is not even an option. This makes Upstate New York a haven for subprime auto lenders and unscrupulous "Buy Here Pay Here" dealers who know that most of these individuals would not be able to get an affordable loan from a bank.[19]

As seen by GRCRC members Empire Justice Center, Genesee Coop Federal Credit Union, and Legal Assistance of Western New York, car loans have abusive and discriminatory interest rates and costly add-ons like extended warranties, so that loans have high loan-to-value ratios ranging from 125-175%. Long loan terms mean that the car stops running before the loan is paid. The dealer then refinances the amount of the unpaid loan into a new loan. All of this results in higher and higher loan-to-value ratios and extremely high default rates--25% for subprime auto loans made at "Buy Here Pay Here" dealerships, compared to only 1% default rates for low-interest auto loans made by traditional banks.

The agencies propose defining an automobile loan as a consumer loan extended for the purchase of and secured by a new or used passenger car or other vehicle, for personal use, as defined in Schedule RC-C of the Call Report, and to treat automobile lending as the sole consumer loan type evaluated under the metrics-based Retail Lending Test.

While we applaud the agencies for including auto lending as part of the metrics-based Retail Lending Test, the proposal can be strengthened in several respects.

Collecting and maintaining automobile lending data would be optional for all banks with assets of $10 billion or less. This could leave out many large banks that are doing a substantial portion of their retail lending as auto lending. We urge that the automobile lending data collection and inclusion in the CRA exam (if threshold requirements are met) be expanded to all large banks and to all wholesale and limited purpose banks with assets over $10 billion.

To assure that banks are making fair and responsible the auto loans, it is critical that banks be required to report and be examined on all auto loans they originate or purchase, including those made through auto dealerships, where many of the predatory and discriminatory practices occur. We ask the agencies to explicitly state in the final rule that all auto loans (originated, purchased, direct, indirect, through the bank, through a dealer) are included in this part of the Retail Lending Test.

---

[19] This lays out the harms and abuses at the national level: https://ourfinancialsecurity.org/2022/05/blog-structural-racism-flourishes-in-the-auto-lending-market/

The proposal would require only banks with assets of over $10 billion to collect and maintain the following data for automobile loans originated or purchased by the bank during the evaluation period: (i) a unique number or alpha-numeric symbol that can be used to identify the relevant loan file; (ii) the date of loan origination or purchase; (iii) the loan amount at origination or purchase; (iv) the loan location (state, county, census tract); (v) an indicator for whether the loan was originated or purchased by the bank; and (vi) the borrower's annual income the bank relied on when making its credit decision. In addition, a bank with assets of over $10 billion would also be required to report the aggregate number and amount of automobile loans for each census tract in which the bank originated or purchased an automobile loan and the number and amount of those loans made to low- and moderate-income borrowers.

GRCRC and its convener, Empire Justice Center, have a long history of using publicly available data to analyze how our communities are being served or harmed. We have analyzed HMDA data, CRA small business lending data, US Census data, and delinquency and foreclosure data. We are pleased that the agencies plan to collect and analyze this important set of new data, and we think it can be improved to better assure that all communities, especially BIPOC and LMI borrowers, are accessing affordable and responsible auto loans on a fair basis. We strongly recommend that the agencies expand the data collection and reporting requirements to all large banks, not just banks with assets over $10 billion. The agencies also need to require banks to collect: (i) the annual percentage rate or interest rate of the loan, (ii) the race/ethnicity of the borrower, (iii) the credit score of the borrower, and (iv) whether it was a direct or indirect loan (ie. loan through an auto dealer).

The agencies propose to establish a major product line threshold for automobile lending of 15 percent based on **the average** of the percentage of automobile lending dollars out of total retail lending dollars, and the percentage of automobile loans by loan count out of total retail loan count in the relevant area. The agencies should reconsider this average approach and establish an auto lending product line in each relevant area when a bank reaches the 15 percent threshold on **either** the percentage of automobile lending dollars out of total retail lending dollars **or** the percentage of automobile loans by loan count out of total retail loan count. This method will increase the likelihood that a bank doing a lot of used auto lending (with smaller loans sizes) will have auto lending included as a major product line if its auto loans make up 15% of its retail loans.

Finally, we urge the agencies to reconsider not publishing the auto lending data by lender for all reporting banks and to make that data publicly available. As an alternative, the agencies should publicly disclose summaries of the auto lending data in aggregate, by each reporting bank, and by census tract or Zip Code; county-level summaries would be meaningless in assessing which neighborhoods have access to responsible auto loans.

The CRA must incentivize banks to support addressing climate change in LMI communities of color

Environmental racism is related to climate change because it determines who is most likely to suffer most from the consequences of activities that produce global warming. LMI communities of color find themselves on the front lines of climate change. Thus, climate change and environmental racism pose existential threats to the very communities the CRA was meant to protect. GRCRC is pleased to see that activities to address climate change and reduce climate-related risks are eligible to receive CRA credit under the proposal. We urge the agencies, as they consider how to more explicitly incorporate race into the final rule, to consider how to frame and incentivize this set of community development activities so that lower income BIPOC communities, which are disproportionately at risk of climate disasters, are able to become thriving, resilient communities.

In the proposed rule:

> Disaster preparedness and climate resiliency activities are defined as activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. The proposed definition would encompass activities that help low- or moderate-income individuals and communities proactively prepare for or mitigate the effect of disasters and climate-related risks, for example, earthquakes, severe storms, droughts, flooding, and forest fire.

> Examples of eligible activities could include, but would not be limited to, developing financial products and services that help residents, small businesses, and small farms in targeted geographies prepare for and withstand the impact of future disasters; supporting the establishment of flood control systems in a flood prone low- or moderate-income or underserved or distressed nonmetropolitan middle-income census tract; and retrofitting affordable housing to withstand future disasters or climate-related events. Additional examples of qualifying activities could include, but would not be limited to: promoting green space in low- or moderate-income census tracts in order to mitigate the effects of extreme heat, particularly in urban areas; energy efficiency improvements to community facilities that lower energy costs; financing community centers that serve as cooling or warming centers in low- or moderate-income census tracts that are more vulnerable to extreme temperatures; infrastructure to protect targeted geographies from the impact of rising sea levels; and assistance to small farms to adapt to drought challenges.

> In order for an activity to be eligible, [ ] an activity must benefit or serve residents of targeted census tracts – specifically, low- or moderate-income census tracts, as well as distressed and underserved nonmetropolitan middle-income census tracts.

While not listed in the above list of examples, the agencies intend to have some energy efficiency activities be CRA-eligible under the proposed definition and list of activities. GRCRC

urges the agencies to include in the final definition and list of disaster preparedness and climate resiliency activities the currently eligible energy-efficient improvements that lower utility costs and reduce the use of greenhouse gas emissions, as well as other activities like water efficiency improvements for 1-4 family and multifamily properties that help low- or moderate-income individuals and communities proactively prepare for, adapt to, or withstand natural disasters, weather-related disasters, or climate-related risks. It also seems appropriate for the agencies to include certain energy-related activities that would benefit residents in targeted census tracts as part of a disaster preparedness and climate resiliency definition. These energy-related activities should focus on renewable energy and electrification rather than the use of fossil fuels and fossil gas. For example, an eligible activity might be a community solar project for a community land trust or an affordable housing project.

We believe that the agencies should include strong energy efficiency standards for determining whether an activity provides a sufficient benefit to targeted census tracts and/or to low- or moderate-income residents. These standards are readily available under federal and state energy efficiency programs. Banks can use their community development dollars to help developers meet these standards while still keeping homes and projects affordable for LMI families and communities.

As seen by the Energy Department's new energy conservation standard for manufactured homes, affordability for the developer came at the expense of efficiency and longer-term affordability for the homeowner. The most affordable small, single-section homes escaped the more stringent standards that larger homes built with multiple sections must follow.

"Standards for single-section homes are barely stronger than efficiency standards last updated in 1994, allowing for thin insulation or single-pane windows, said Steven Nadel, executive director of the American Council for an Energy-Efficient Economy.

"'This rule gives manufacturers the green light to keep building models with the same problems,' Nadel said. 'It's going to leave many of the lowest-income households paying painfully high utility bills for even more years to come. Going forward, the administration certainly shouldn't make a habit of letting manufacturers make more-wasteful homes and products for lower-income people.'"[20]

GRCRC agrees with the agencies' proposal to limit consideration to activities conducted in low- or moderate-income census tracts and distressed or underserved nonmetropolitan middle-income census tracts. These geographic areas are more likely to be BIPOC or rural communities and tend

---

[20] https://news.bloomberglaw.com/environment-and-energy/climate-minded-housing-efficiency-rule-finalized-amid-criticism

to have more limited resources to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. Higher income areas that are designated as disaster areas have more resources for climate resiliency and can access disaster recovery money via other community development activities. We are also happy to see the anti-displacement criterium included for this set of activities.

We also agree that the agencies include a separate prong that specifically focuses on disaster preparedness and climate resiliency activities that benefit low- or moderate-income individuals in all communities, not just those in targeted geographies. Eligible activities could include activities that help low- or moderate-income individuals in any community with weatherization improvements, electrification of their home or business, or other activities mitigate the impact from future disasters or climate-related risks. The energy efficiency standards should be used here as well. To avoid double-counting, activities claimed here should not be able to be claimed under the Retail Lending Test, although a bank may be able to get credit for an innovative product or service addressing a community need.

We appreciate that the agencies are mindful of the difficulty at the federal level, as well as at other levels of government, to develop plans, programs, or initiatives to address climate change, and are considering other ways to ensure that the activities have a clear objective of meeting needs in targeted communities. GRCRC suggests that if disaster preparedness or climate resiliency plans or programs are not in place for some targeted communities, that the bank uses its own research, other quality research, local non-governmental climate plans, or input from climate-related organizations to demonstrate that its disaster preparedness and climate resiliency activities are appropriately targeted. For example, the Rochester MSA and greater Finger Lakes area has its own Genesee-FLX Climate Action Strategy.[21] This initiative of the Climate Solutions Accelerator could be used to determine activities to best meet the needs of the community. Moreover, reaching out to such organizations is an opportunity for banks to better understand how best to meet community needs while building community relationships.

Finally, we urge the agencies to give banks negative points in this community development area for activities (loans, investments, other financing) that increase greenhouse gas emissions, including oil and gas development, coal and fossil gas power plants, pipelines on tribal lands; or when banks use safety and soundness as an excuse for not meeting the credit needs of a community (especially when they are also investing in the now more risky initiatives that increase greenhouse gas emissions and put all of our communities at greater risk).

---

[21] https://www.climategfl.org/climate-action-strategy.

More is needed to reduce CRA ratings inflation on large bank exams

The agencies propose an evaluation framework that would establish the following four tests for large banks: Retail Lending Test; Retail Services and Products Test; Community Development Financing Test; and Community Development Services Test. Intermediate banks would be evaluated under the Retail Lending Test and the status quo community development test, unless they choose to opt into the Community Development Financing Test. Small banks would be evaluated under the status quo small bank lending test, unless they choose to opt into the Retail Lending Test. Wholesale and limited purpose banks would be evaluated under a tailored version of the Community Development Financing Test.

Currently, about 98% of banks pass their CRA exams on an annual basis with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory.[22] CRA has successfully leveraged more loans,[23] investments, and services for LMI communities, but it would be more effective in doing so if the ratings system more accurately revealed distinctions in performance. More banks would be identified as significantly lagging their peers, which would motivate them to improve their ratings and increase their reinvestment activity.

In their proposal, the agencies bolster the rigor on the large bank retail lending test by introducing performance ranges for comparisons among a bank's lending and demographic and market benchmarks. This quantitative approach would decrease ratings inflation and result in more failing and low satisfactory ratings on the lending test. As a result of this proposed reform, several banks would likely respond by boosting their retail lending to underserved communities.

The agencies propose improvements to the other tests of the large bank exam but do not establish as many guidelines for the performance measures, which could contribute to inflation on the various tests. The community development financing test, for example, will consist of a quantitative measure of a bank's ratio of community development financing divided by deposits. The bank's ratio will be compared to a local and national ratio. The agencies, however, did not provide enough guidelines to examiners for comparing the bank's ratio to either the local or national ratio, making it possible for an examiner to inflate a rating by choosing the lowest comparator ratio.

For the past several years, GRCRC has included an analysis of a bank's CRA-eligible reinvestments in the local community as an annualized percentage of the bank's local deposits. While we generally don't explicitly compare one bank's level of reinvestments to another's in our comment letters, other banks' numbers are in the back of our minds, and we sometimes share

[22] https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/
[23] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2991557

these with the bank being examined or with the federal regulator. As seen in the mortgage lending table at the end of this letter, we compare the lending of the Rochester area's top 8 depositories. The table also includes totals and averages of the top 8 banks to compare to the individual banks, to all the reporters (AFI), and to the other lenders (OFI). Our experience with these analyses provides some ideas for the agencies to consider with respect to a bank's community development financing ratio:

- If a bank captures a certain percentage of a locality's depository market share, then rely more heavily on comparing the bank's ratio to the local ratio (rather than the national ratio); and make that local ratio an average of the locality's top banks (i.e., all the banks above that depository market share threshold). If the bank's local depository market share falls below that threshold, then consider comparing that bank's ratio to the national average.

- Use the average of a bank's deposits over the exam period, rather than a single year's deposits, to calculate the bank's community development financing ratio. In the past we have used the deposits from the last year of the exam to calculate our reinvestment ratio, and we are rethinking this practice given that in 2020 some banks held more deposits than usual given the federal Covid-relief dollars not yet used. The use of this larger deposit number would have lowered the bank's reinvestment ratio, so we shared ratios using the 2019 deposits and the 2020 deposits. Averaging will remove one incentive to "game the system" to improve the community development financing ratio. Along the same lines, we recommend averaging or annualizing a bank's total community development financing made over an exam period.

- The possibilities of misplaced examiner discretion can also occur on the retail services test and the community development services test. The retail services test contains quantitative measures comparing a bank's branch distribution to market and demographic benchmarks but does not provide enough instructions to examiners about how to weigh these benchmarks.

- If possible, include in the final regulation a schedule for reviewing and updating the comparison benchmarks, as the agencies and banks become experienced in their use.

We ask the agencies to further develop guidelines for how to use the performance measures on the community development financing, the CD services, and the retail services tests of the large bank exam to produce a uniformly rigorous CRA exam and guard against ratings inflation.

In addition to increasing the pass threshold for banks with 10 or more assessment areas (see below), GRCRC also asks the agencies to consider these other ways to guard against grade inflation and to assure that banks are meaningfully serving communities:

- Expand downgrade criteria further to include patterns of displacement or harm to BIPOC tenants
- Require that the activities of all bank affiliates be included on CRA exams. The current practice of allowing banks to choose to include or exclude the activities of other bank affiliates allows banks to cherry pick the affiliates with activities that boost their grades and to funnel other activities that don't benefit communities into other affiliates.
- Include a review of language access under the Retail Services and Products Test to ensure that limited English proficient (LEP) and Deaf and hard-of-hearing communities can access a bank's full range to products and services.
- Reconsider the proposal to expand CRA consideration for financial literacy with no income limits; scarce counseling resources need to be targeted to LMI and other underserved populations.

Quality, quantity, and impact are important components of all aspects of CRA, including Retail Lending

GRCRC is happy to see that the agencies propose to qualitatively evaluate the impact and responsiveness of qualifying community development activities with respect to community credit needs and opportunities using specific impact review factors described in the proposal. We are also pleased to see quality mentioned often when discussing the Retail Services and Products and the Community Development Services Tests. However, quality or impact are rarely mentioned with respect to the Retail Lending Test.

The Retail Lending Test focuses on a bank's volume of lending across a local geography (in low-income tracts and in moderate-income tracts) and to borrowers (i.e. to low-income borrowers and to moderate-income borrowers) within a local geography. There is little, if any, focus on the quality of that lending or set of loan products and whether those products meet community credit needs, which is the purpose of the CRA.

We urge the agencies to deepen the evaluation of bank retail lending and include components to assess that the major product lines of a bank are quality products addressing the credit needs of a local community and positively impacting communities, particularly BIPOC and LMI borrowers and communities. Ways to do this include:

- Evaluate all retail lines for loan pricing and terms to ensure products are meeting local needs and not extracting wealth, as could be the case with high-interest credit cards, or other higher-cost products.
- Prioritize home mortgage loan and small business loan originations over loan purchases
- Downgrade for home mortgage investor loans that harm or displace tenants
- Separate mortgage loan analyses by loan purpose (purchase/refinance/improvement)
- Use community benchmarks when banks, in aggregate, perform far below demographics
- Focus on small business lending to and impact on small businesses, particularly to BIPOC and LMI business owners
- Incorporate a local qualitative analysis of credit products (and usage) to assure they meet local needs. For example, small business credit cards or other high-cost loans, versus the more-needed traditional loans and lines of credit.
- Downgrade for harmful behavior, products, practices, and patterns of lending that lead to displacement, high costs, wealth extraction, discrimination, and harm.

Assessment areas are expanded to include retail lending areas but performance in smaller areas needs to be considered more carefully

For several years, advocates have urged the agencies to examine lending that occurs outside traditional assessment areas, including online. The agencies propose to create retail lending assessment areas where a large bank does not have branches when that bank has issued 100 home loans or 250 small business loans. This proposal would result in the great majority of total lending being incorporated on exams and would therefore hold banks more accountable for serving LMI communities, including non-traditional banks and banks lending outside their facility-based assessment areas.

We ask the agencies to expand upon their proposal to include partnerships with banks and non-banks for retail lending. When a bank partners with more than one non-bank, the lending of all the non-banks needs to added to the bank's lending when calculating the thresholds for retail lending assessment areas.

We also ask the agencies to consider lowering the small business loans threshold from 250 to 100. As seen in *Table 1 to Section _.17, Summary of Potential Effect of Different Retail Lending Thresholds on Large Banks*,[24] this decreased threshold would almost double the number and percent of banks affected, and would increase the percent of lending covered outside facility-based assessment areas by 12%, from 62 to 74%.

---

[24] NPR, p. 134-135.

To ensure that banks serve smaller metropolitan areas and rural counties, the agencies propose requiring that banks with 10 or more assessment areas must receive at least a Low Satisfactory rating in 60% of the assessment areas in order to pass overall. We are concerned that passing in 60% of assessment areas may not be an adequate solution since the smaller areas could represent a minority of areas, allowing a bank to pass the 60% threshold by focusing on the larger areas.

Some possible fixes include:

- Requiring banks to pass in all facility-based assessment areas and in the majority of their retail assessment areas, and to pass all applicable performance tests in order to receive an overall exam score of Satisfactory or above.
- Requiring banks to achieve at least Low Satisfactory ratings in 60% of the bank's assessment areas located in each of the following areas: (1) large metropolitan, (2) small metropolitan, and (3) rural.
- Weighting the assessment areas before calculating the 60%, so banks are encouraged to serve all of their assessment areas.
- Increasing the pass rate to at least two-thirds of assessment areas.

Public input should be diverse, transparent

Since CRA requires banks to meet the needs of communities, the agencies must elevate the importance of public input, particularly the input of communities of color and low-moderate income people, to best understand the extent to which banks meet local needs.

We urge the agencies to commit to collecting input from a diverse range of people and organizations that includes organizations led by people of color and women, to include in a bank's performance evaluation, by geography, who or which organizations they consulted with and how that community input was factored into the bank's performance evaluation, and to make that public input a part of the bank's public record to be reviewed when that bank is part of a proposed merger.

Data improvements will help hold banks accountable, but all new data should be publicly available

The agencies correctly propose to include new data collecting requirements for deposits, community development activities and automobile lending. Some of this data such as deposit and automobile lending would not be publicly available, which limits the extent to which the public can hold banks accountable for reaching underserved communities. We ask the agencies to reconsider this decision and to expand data collection to all large banks instead of just banks with assets of more than $10 billion in the case of deposits and automobile lending. Finally, CRA

exams should not only analyze access to deposits accounts for LMI communities but also affordability by comparing and refining, if necessary, fee information collected in call report data.

Conclusion

GRCRC appreciates the work of the agencies in this joint proposed rule. For example, the proposal includes new retail lending assessment areas in addition to the traditional facility-based ones; expands the number of community development activities; and makes parts of CRA exams more rigorous. However, we are most disappointed that the agencies did not explicitly incorporate race in CRA exams. We urge the agencies to seriously consider the ideas here and from other advocates to incorporate race into the final rule. We also ask for expansion and improvements to the auto lending data and analysis, and to make the data available to the public. And we recommend that the proposed increases in bank asset thresholds be rescinded, and that the agencies tweak the climate resilience CD section to assure activities are targeted to the communities most impacted. If the agencies can further increase the rigor of the CRA and target it to our biggest challenges, we believe the final rule will help reduce inequalities, disinvestment, and other disadvantages in our country's most marginalized communities.

Sincerely,
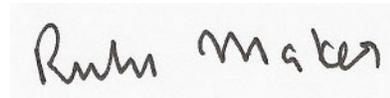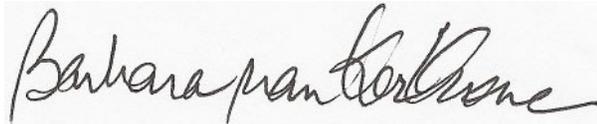
Ruhi Maker, Esq.   Barbara van Kerkhove, Ph.D.
                                                    Researcher/Policy Analyst

Cc: NCRC

Table 7: Top 8 Banks Home Purchase Originations 2020
Rochester, NY MSA

(1st lien home purchase loans on owner-occupied (principal and secondary), 1-4 family, site built units)

Annual HMDA data	AFI	BOA	CNB	Citizens	Five Star	JPMC	KeyBank	Lyons NB	M&T	Top 8	OFI
MSA	11,315	164	1,060	108	230	80	147	350	295	2,434	8,881
City	1,253	68	112	23	81	5	8	3	71	371	882
Black/Latino HH	1,288	78	58	25	76	9	8	15	89	358	930
Low-Mod Income HH	4,388	95	380	48	166	33	31	114	161	1,028	3,360
Low-Mod Income CT	1,577	70	119	30	89	8	14	50	84	464	1,113
Majority Non-White CT	698	56	48	18	64	3	2	2	42	235	463

MARKETSHARE		BOA	CNB	Citizens	Five Star	JPMC	KeyBank	Lyons NB	M&T	Top 8	OFI
MSA		1%	9%	1%	2%	1%	1%	3%	3%	22%	78%
City		5%	9%	2%	6%	0%	1%	0%	6%	30%	70%
Black/Latino HH		6%	5%	2%	6%	1%	1%	1%	7%	28%	72%
Low-Mod Income HH		2%	9%	1%	4%	1%	1%	3%	4%	23%	77%
Low-Mod Income CT		4%	8%	2%	6%	1%	1%	3%	5%	29%	71%
Majority Non-White CT		8%	7%	3%	9%	0%	0%	0%	6%	34%	66%

Loans as % of MSA TOTAL IN:	AFI	BOA	CNB	Citizens	Five Star	JPMC	KeyBank	Lyons NB	M&T	Top 8	OFI
City	11%	41%	11%	21%	35%	6%	5%	1%	24%	15%	10%
Black/Latino HH	11%	48%	5%	23%	33%	11%	5%	4%	30%	15%	10%
Low-Mod Income HH	39%	58%	36%	44%	72%	41%	21%	33%	55%	42%	38%
Low-Mod Income CT	14%	43%	11%	28%	39%	10%	10%	14%	28%	19%	13%
Majority Non-White CT	6%	34%	5%	17%	28%	4%	1%	1%	14%	10%	5%

Source: FFIEC Home Mortgage Disclosure Act (HMDA) 2020 Snapshot Dataset, as of 5/3/2021, downloaded from the HMDA Data Browser at:
https://ffiec.cfpb.gov/data-browser/data/2020?category=states&items=NY
Prepared by: Empire Justice Center,   585-454-4060