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Office of the Comptroller of the Currency (RIN 1557-AF15)
Board of Governors of the Federal Reserve System (RIN 7100-AG29)
Federal Deposit Insurance Corporation (RIN 3064-AF81)

Via regulations.gov

Re: Community Reinvestment Act Joint Notice of Proposed Rulemaking

Dear Prudential Banking Regulators:

Inclusiv appreciates the opportunity to provide comments on the agencies' Community Reinvestment Act (CRA) Joint Notice of Proposed Rulemaking. Although the proposed rule includes many critically needed updates to the CRA that will support meaningful financial inclusion for low-income people and communities, it fails to confront the deep and pervasive racial discrimination in our financial system that the CRA was intended to address. We recommend the agencies strengthen the proposed rule by focusing on racial justice, holding banks accountable for discriminatory business practices in communities of color, and creating strong incentives for banks to increase their investment in responsible and locally-responsive financial institutions like BIPOC-led community development credit unions and community development financial institutions.

Inclusiv is the national network of community development credit unions committed to promoting financial inclusion and equity through credit unions. The Inclusiv network represents 470 credit unions serving more than 17 million people in predominantly low-income urban, rural, and reservation-based communities across 47 states, DC and Puerto Rico. More than 46% of our members are governed by and predominantly serving people of color; and near 60% are also CDFI certified. Inclusiv channels capital and builds capacity of these institutions dedicated to serving low-income and underserved consumers with fair and responsible financial products and services and the supports to help consumers succeed with those services. We design, implement, and track numerous initiatives aimed enabling members to use their credit unions to build wealth and assets.

Racial justice should be a key component of CRA exams

Although the proposed rule includes a number of needed updates to the CRA that will increase its efficacy, the agencies' decision to omit any meaningful racial-justice focused analyses undermines the very purpose of the CRA. When the CRA was enacted in 1977, it was broadly understood to be an anti-redlining law.[1] Given the growth of the racial wealth gap over the last three decades[2] and the volume of research demonstrating worse financial[3] and health[4] outcomes, as well as increased neighborhood-level climate risk[5] for people living in historically redlined communities, the agencies' omission of race and ethnicity as factors in CRA exams is striking. The agencies should, at a minimum, revise the proposed rule to include analyses of both home mortgage and small business lending data by race and ethnicity, which could be incorporated into the CRA without legislative updates.[6] In addition, the Community Development Financing Test should prioritize partnerships with locally-responsive minority depository institution (MDI) credit unions and BIPOC-led Community Development Financial Institutions (CDFIs) serving disinvested communities of color in urban and rural areas. Inclusiv data demonstrates that MDIs lend deepest in their communities and yet confront the same historic disinvestment as their communities, leaving them with limited capital reserves and an inability to grow and scale their lending. Prioritizing investments in these institutions will begin to reverse historic inequities in access to capital.

Assessment areas and CRA exam performance

Assessment Areas

The proposed facilities-based and retail lending assessment area framework will better align banks' determination of their assessment areas with current banking practices. The agencies should add an explicit racial equity lens to the assessment area framework to help ensure the CRA directs capital to historically redlined communities.

The agencies' prohibiting large banks from delineating partial county assessment areas and their reaffirmation that assessment areas must not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts are helpful steps to reduce banks' gerrymandering of assessment areas to avoid including low- and moderate-income areas. To further strengthen the proposed assessment area framework, the agencies should affirm—and enforce in practice—that assessment areas must not arbitrarily exclude census tracts based on the race or ethnicity of residents.

Retail lending assessment areas for large banks should be determined using home mortgage, consumer, and small business lending data, rather than just home mortgage and small business data, to ensure banks' assessment areas accurately reflect where they conduct a significant portion of their business. In addition, retail lending assessment areas should be improved by automatically including all affiliate and subsidiary lending activity in the determination of retail lending assessment areas, except when a bank subsidiary is subject to its own CRA exam.

Special Purpose Credit Programs & Clarifying Eligible Activities

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[1] https://ncrc.org/the-purpose-and-design-of-the-community-reinvestment-act-cra-an-examination-of-the-1977-hearings-and-passage-of-the-cra/#_edn7
[2] https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.htm
[3] https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/the-black-white-racial-wealth-gap_rwg.report.pdf
[44] https://ncrc.org/holc-health/
[5] https://www.mdpi.com/2225-1154/8/1/12/htm
[6] https://www.ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/

The proposed rule's inclusion of special purpose credit programs as activities eligible for CRA consideration is an effective way to encourage banks to lend responsibly to people of color and others who have been systematically shut out of the mainstream financial system. In addition, the agencies' proposal to provide guidance on activities that will be eligible for CRA consideration is a step in the right direction as uncertainty about whether certain activities will qualify for CRA consideration has stymied some CDFIs' efforts to work with banks to provide responsive, affordable credit products to low-income borrowers and borrowers of color.

Affiliate Activities Must Be Scrutinized for Fair Lending and Consumer Protection Violations
Banks are increasingly making loans through fintech affiliates that too often flout state consumer protection laws or trap borrowers in debt with predatory loan terms. These activities should not be eligible for CRA consideration, but the agencies must scrutinize this activity when assessing the extent to which banks are meeting community credit needs. Any affiliate activity that takes advantage of the bank's charter to evade state consumer protections or that runs afoul of federal consumer protections, should result in a significant ratings downgrade.

CRA Ratings
The new "high satisfactory" and "low satisfactory" ratings are important updates to the CRA, but the proposed implementation of those ratings misses a key opportunity to influence bank behavior and drive capital to historically redlined and underserved communities. Although the agencies' proposal to create and publish the results of standard quantitative tests in CRA exams is helpful in increasing transparency and accountability, the fact that banks' overall CRA ratings will not reflect the new delineation between "high satisfactory" and "low satisfactory" ratings is disappointing. Compounding this issue is the fact that the agencies propose maintaining the current regulatory procedures for considering CRA performance on applications for mergers and other activities. Given that CRA exams will soon show the level of a bank's performance within the 90% of banks that receive satisfactory CRA ratings, it is critical that low-performing banks are held accountable for "low satisfactory" ratings. The agencies should require additional public and regulatory scrutiny of mergers, branching decisions and other activities for banks with "low satisfactory" ratings, and should require these banks to put plans in place to improve their ratings.

Performance Downgrades Resulting from Discriminatory or Illegal Practices
The agencies' proposal to broaden the scope of discriminatory and illegal practices that could result in a performance downgrade from discriminatory or illegal credit practices to any discriminatory or illegal practices is an effective way to hold banks accountable for discrimination and unfair practices. To further strengthen the proposed rule, the agencies should automatically include any discriminatory or illegal practices by bank affiliates or subsidiaries and should apply all downgrades at the institution, rather than MSA or state level. A bank that has been found to engage in discriminatory practices in one MSA is likely engaged in similar practices elsewhere and has exposed that it lacks the internal controls to prevent illegal activity. This is an institution-wide issue, not a single MSA or state issue, even if the legal or regulatory finding is specific to one geography.

The Community Development Financing Test must be responsive to local needs

The agencies' proposed community development financing test includes many provisions that could support financial, climate and racial justice if enforced rigorously, but key provisions regarding the test results, CDFIs and MDIs, climate resiliency, and homeownership supports need to be strengthened.

Community Development Financing Test Results

The metric used to measure banks' community development financing activities does not adequately measure banks' performance in community development. Treating loans and investments interchangeably disincentivizes banks to engage in higher-impact but more complex, risky or labor-intensive activities. For example, banks have supported CDFI credit unions by making investments via non-member deposits and by making loans to provide secondary capital (an equity-like loan). Non-member deposits are federally-insured and zero risk, whereas secondary capital is a subordinate loan that carries some, though a very small, risk of default. Historically, it has been much easier for credit unions to secure non-member deposits from banks than secondary capital. But secondary capital (subordinated) loans are far more valuable to the institution and the community. Secondary capital counts towards an institution's net worth enabling it to leverage as much as 10:1 in new deposit growth. An Inclusiv analysis of secondary capital investments made in credit unions during the recession (under TARP – ARRA) found that from 2010-2015 credit unions receiving that capital increased their lending by a factor of 60 times the investment. In other contexts, loans may be easier for banks to make than investments, so examiner scrutiny of community development financing activities is critical. Although the impact and responsiveness of community development financing activities will be qualitatively assessed in the impact review and short-term deposits in MDIs may be omitted from CRA consideration to discourage banks from gaming the system, the agencies should consider using the impact review to discount less impactful or less responsive activities in addition to assigning a qualitative impact review score.

CDFIs & MDIs

The proposed rule's provision that all lending, investment and service activities with Treasury Department-certified CDFIs as well as investments, loan participations and other ventures undertaken in cooperation with MDIs, WDIs and LICUs would be eligible CRA activities regardless of geography is a strong step in the right direction. CDFIs, particularly CDFI credit unions, have an explicit community development mission and deep experience working successfully with low-income people and people of color shut out of the mainstream financial system. The agencies should, however, update the definition of MDIs to include both insured credit unions considered to be MDIs by the National Credit Union Administration as well as state-insured MDI credit unions and Puerto Rico's cooperativas, which are cooperative financial institutions insured by a territory government agency, the Corporation for the Supervision and Insurance of Cooperatives. These institutions are insured, held to a rigorous standard of supervision and should be eligible for CRA-motivated loans and investments on an equal footing to MDI banks.

The agencies' proposal that activities with CDFIs that are not Treasury Department-certified will also be eligible for CRA consideration as long as the activity is an eligible community development activity is also helpful in increasing financial inclusion as financial institutions that are not certified CDFIs but have an explicit mission of serving low- and moderate-income people and people or color fill a key role in meeting community credit needs.

In addition, the agencies should consider the target market and size of the CDFIs, MDIs, WDIs and LICUs with which banks partner. Additional consideration should be awarded in the impact review for bank partnerships with, lending to, and investments in smaller institutions and with institutions serving low-income people of color and communities with significant unmet community development needs.

Climate Resiliency

The proposed rule's focus on climate resiliency is critical given the climate crisis, and agencies should strengthen the rule by shifting its focus to climate justice and resiliency in climate vulnerable communities. Climate change is a threat multiplier that is driving racial and economic inequality at a rate that's faster than our ability to respond. The agencies should award CRA credit only to those activities that benefit climate-vulnerable people, specifically low- and moderate-income (LMI), tribal, and communities of color.

To ensure that banks are prioritizing these communities for investment, the final rule should help banks to identify the climate-vulnerable communities eligible for climate-related CRA consideration. The agencies should use the Environmental Protection Agency's (EPA's) Environmental Justice Screening and Mapping Tool (EJScreen), the White House Council on Environmental Quality's recently released Climate and Economic Justice Screening Tool (CEJST), as well as the CDFI Fund's Target Market Test.
The final rule should also articulate and expand the climate-related activities eligible for CRA credit. This should include the proposed "disaster preparedness and climate resiliency" definition under "community development." This should also include the proposed non-exhaustive list of climate-related eligible activities under the CRA, which will help communities understand what kinds of climate-related investments they can seek financing support for, and help banks understand which activities can receive CRA credit. LMI, tribal, and communities of color are disproportionately burdened by the increase in flooding, drought, wildfires, hurricanes, and other chronic climate events. These communities are also most impacted by the forced migration and related job and population loss as a result of these climate events.

As the impacts of climate change progress, CRA regulations should reflect clear instructions for how banks should adjust to meet the changing needs. We recommend that CRA-eligible green investment include, but not be limited to, community solar and microgrids, operational support for environmental and climate justice organizations, and electrification and water efficiency measures for residential homes, including multifamily properties.

Climate justice activities should also promote financial inclusion as much as possible. For example, when Hurricanes Maria and Ida ripped through Puerto Rico the entire network of more than 100 community-based and community-owned financial cooperativas were up and running, serving their members and communities to meet basic needs with cash for food and supplies, within 24-48 hours. It took mainstream corporate banks on the island weeks and months to reopen branches.

Local credit unions and cooperativas are part of the fabric of their communities. In climate related disasters they work to dispense cash, provide loans for immediate needs and to begin rebuilding while awaiting federal or insurance funds and offer loan forbearance. The future resilience of climate vulnerable communities relies upon strong and healthy local financial institutions. In both Puerto Rico and now in northern New Mexico (where communities have been devasted by recent wildfires) credit unions are lending to support members to rebuild homes with energy efficiency and renewable energy options to reduce energy cost burden and withstand long periods without power. CRA investments for climate related activities must prioritize the investment of capital in the most vulnerable communities.

Finally, the proposed rule's requirement that eligible climate resiliency activities must be carried out in conjunction with a government plan, program or initiative that includes an explicit focus on benefitting a geographic area that includes the targeted census tracts is overly limiting. Although the focus on benefitting specific tracts is important, the requirement that climate justice activities must be part of a governmental effort unduly limits the impact of the proposed rule and undermines the anti-redlining goals of CRA as many state and local climate resiliency efforts do not have a racial equity focus and often move slowly so may not be responsive to emerging needs, such as disaster recovery. Instead, the rule should focus on the beneficiaries of the activity and reaching people and neighborhoods that are underserved and overburdened by pollution and/or climate risk.

Supporting Homeownership

Banks have a long history of denying affordable, safe mortgage loans to borrowers living in communities of color and immigrant neighborhoods. Indeed, a recent analysis of 2019 Home Mortgage Disclosure Act (HMDA) data found that, even after controlling for credit score, lenders were 50% to 120% more likely to deny loan applications from black applicants than white applicants and there were notable disparities between white applicants and other applicants of color as well.[7] Since then, the COVID-19 pandemic has disproportionately harmed black and Latino homeowners, making it even more challenging for people of color to maintain their homeownership.[8] Both the retail lending and community development financing tests must take race and ethnicity into account to ensure banks work to address these glaring racial disparities in home lending and homeownership and begin to repair the damage they caused over decades of redlining as well as the subprime lending and foreclosure crises.

To push banks to act, it is critical that the CRA rules incentivize banks to support equitable and sustainable homeownership for people of color. The proposed rule highlights some activities that banks could undertake for CRA consideration, including down payment grant assistance for low- and moderate-income homebuyers or providing grants to community land trusts or other forms of shared equity housing. These are critical needs, particularly down payment assistance, and the agencies should press the banks to provide grants and responsible, low-cost loans underwritten without reliance on credit scores, which are systemically biased against people of color[9], to support homeownership in communities of color and low-income communities. Banks' current approach of providing high LTV loans

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[7] https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms
[8] https://www.urban.org/urban-wire/new-data-suggest-covid-19-widening-housing-disparities-race-and-income
[9] https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf

is not sufficient to repair the damage they've inflicted on people and neighborhoods of color.

Since banks have failed to provide affordable, sustainable mortgages to low-income people and people of color at all income levels, community development credit unions have stepped in to fill that gap. Indeed, Inclusiv's 470 member credit unions had $63.5 billion in residential mortgages outstanding as of the end of 2021, underscoring the key role credit unions play in supporting homeownership among their members. If banks are unable or unwilling to do responsible mortgage lending without reliance on credit scores themselves, the CRA should encourage them to partner with credit unions and CDFIs to do this work.

In addition, the proposed rule should encourage banks to participate in the secondary market for responsible, affordable loans underwritten without credit scores. Although this lending has been successful and foreclosure rates for these loans are low, it has been difficult for credit unions to scale their mortgage lending because banks and the GSEs will not buy non-Qualified Mortgages (QMs) on the secondary market. To close this gap, Inclusiv has developed Inclusiv Mortgage which buys both non-QM mortgages made to borrowers with Social Security Numbers as well as mortgages made to borrowers with Individual Taxpayer Identification Numbers (ITINs). Inclusiv Mortgage's portfolio includes a much higher percentage of loans made to black and Latino borrowers than the industry average—25% and 18%, respectively, compared to less than 5% industry-wide. The CRA should incentivize banks to provide long-term liquidity to support this lending by awarding CRA consideration to banks that purchase and hold over the long term loans from CDFI Intermediaries, like Inclusiv Mortgage, and to those that purchase and hold loans directly from MDI and CDFI credit unions.

Thank you for the opportunity to comment. We urge the agencies to strengthen the proposed rule to ensure it effectively holds banks accountable for discriminatory and unfair practices and pushes them to support real, sustainable solutions to the many challenges people of color and low- and moderate-income people are facing. Please contact Alexis Iwanisziw, Senior Vice President, Policy and Communications (aiwanisziw@inclusiv.org), with any questions about these comments.

Sincerely,

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