August 5, 2022

Office of the Comptroller of the Currency
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Chief Counsel's Office
Attention: Comment Processing
400 7th Street, SW
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RE: ***Community Reinvestment Act Notice of Proposed Rulemaking***
OCC Docket ID OCC-2022-0002

To Whom It May Concern,

The City of New York (the City) welcomes the opportunity to provide comments to the Board of Governors of the Federal Reserve System (the Board); Federal Deposit Insurance Corporation (FDIC); and Office of the Comptroller of the Currency, Treasury (OCC) on the above-referenced notice of proposed rulemaking (NPR) to amend the Community Reinvestment Act (CRA) regulations. We are pleased to see that the agencies worked together to issue a joint NPR to modernize and achieve a more consistent CRA framework.

In 1977, Congress passed the CRA in response to the impact of decades of discrimination via redlining and disinvestment in communities with low- to moderate-income (LMI) residents and communities of color. The intent of the law is to ensure financial institutions serve the credit needs of individuals and communities with LMI residents where they take deposits, and provide loans, investments, and services. Over the past forty years, the CRA has proven to be an invaluable tool, leveraging trillions of dollars in loans, investments, and services for communities with LMI residents nationwide and billions annually in the City. In particular, the CRA has supported community development financing – both lending and investment – that is critical to affordable housing development. Any CRA reform proposal aimed at strengthening this critical community investment tool must continue to focus on communities with LMI residents by incentivizing only products and activities affordable to this population. Any changes must bolster investments and add new geographies without diluting current ones. While it is critical that the CRA incentivize banks to meet the needs of communities with LMI residents, it must also limit lending and investment that could be detrimental or have unintended consequences to those communities, including pricing households out of the market. We are glad that the proposal includes consideration of energy efficiency and resiliency, which are key issues facing communities with LMI residents.

The City also strongly supports the continued consideration of full CRA credit for any Low Income Housing Tax Credit (LIHTC) activity that supports affordable housing. The LIHTC program is our nation's most successful tool for encouraging private investment in affordable rental housing. The program provides tax credits to owners and developers to acquire, rehabilitate or construct new rental housing for lower-income families. The CRA is a major driver in LIHTC investment, and without these investors, the public-private partnership model would not work and the City's ability to provide affordable housing would be diminished. A single test for loans and investments may limit incentives to make LIHTC investments. The current proposal is likely to result in banks opting for debt financing, which is often simpler and less risky, rather than LIHTC investments.

Affordable housing development vitally depends on access to both community development loans and investments. Given the complexity of financing affordable housing, most projects rely on several sources of debt and equity in order to close the gap between development costs and affordable rents. As such, community development loans and investments should be considered separately for the purposes of CRA credit. Maintaining separate consideration will encourage both community development loans and investments, while combining them under one test will make these two essential community development finance activities have to compete against each other. In a moment where the need for affordable housing is critical for communities with LMI residents across the country, this proposed methodology could imperil affordable housing production and preservation.

The City requests the Board, FDIC, and OCC consider the following responses and recommendations to the NPR's questions:

Question 1. Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities), or should partial consideration be limited to only affordable housing?

The City strongly supports the continued consideration of full CRA credit for any LIHTC activity that supports affordable housing. However, partial consideration must be limited to affordable housing. Allowing partial consideration for any other community development activities would merely dilute the CRA's intent of serving communities with LMI residents and individuals with LMI. Determining who benefits from a particular community development activity in order to receive partial consideration would be administratively challenging for both banks and the regulating agencies. Rather than attempting to quantify whether and how communities with LMI residents benefit from this wide range of potentially eligible community development activities, partial CRA consideration must continue to be limited to affordable housing to reinforce the original intent of the law.

Question 3. Is the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for low- or moderate-income (or, under the alternative discussed above, for low-, moderate- or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of

80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low- or moderate-income individuals?

The proposed standard for considering government programs that provide affordable housing is appropriate. However, these activities should not be required to meet a specific affordability standard, nor should there be a requirement for income verification. The proposal of relying upon the affordability standards set in each respective government affordable housing plan, program, initiative, tax credit, or subsidy is sufficient to ensure the intent of providing rental housing affordable to individuals and communities with LMI residents.

Question 4. In qualifying affordable rental housing activities in conjunction with a government program, should the agencies consider activities that provide affordable housing to middle-income individuals in high opportunity areas, in nonmetropolitan counties, or in other Geographies?

No, the agencies should not consider activities that provide affordable housing to middle-income individuals in high opportunity areas, nonmetropolitan counties, or in other Geographies because doing so would dilute the intent of the CRA to serve individuals with LMI. In the City, as well as nationally, individuals with LMI face greater affordability challenges and will benefit most from investments in affordable housing. In the City, this would mean less direct support for individuals and households with LMI residents.

Question 5. Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low- and moderate-income individuals, including properties where a renovation is occurring?

CRA consideration should focus on regulatory agreement status. Using regulatory agreements to categorize types of affordable housing would ensure CRA consideration is given to activities that support long-term affordability overseen by government entities. The agencies should consider activities tied to projects with regulatory agreements that ensure compliance and continued affordability as particularly responsive to addressing affordable housing needs.

Question 7. Should the proposed approach to considering naturally occurring affordable housing be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing? If so, should consideration of single-family rental housing be limited to rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met?

No, the proposed approach to considering naturally occurring affordable housing should not be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily housing. Doing so could incentivize investors buying single-family homes to serve as investment properties rather than encouraging homeownership amongst LMI individuals and families.

Question 9. Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low- or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?

The proposed approach to considering mortgage-backed securities (MBS) can be strengthened to better align with the CRA's intent of increasing credit access for individuals with LMI. The approach should include consideration of other types of affordable housing bonds, especially those issued by state and local housing finance agencies to finance single-family and multifamily mortgages to fund lower-cost mortgages for borrowers with LMI. CRA-qualified municipal bonds can help individual borrowers and multifamily developers create affordable housing. In particular, the Mortgage Revenue Bond (MRB) and tax-exempt and taxable multifamily housing bond programs finance low-interest mortgages for homebuyers with LMI to acquire, construct, and rehabilitate multifamily housing for low-income renters. Lower demand for these bonds would imperil these programs and reduce the availability of these loans. CRA credit should be given for the full amount of the bond or security because the stated purpose or bona fide intent of the entire issuance is the creation of affordable housing. In addition, for multi-project securities, it would be needlessly cumbersome for issuers to track specific projects to specific investors. Finally, only the initial purchase of a mortgage-backed security or municipal housing bond should be considered for CRA credit. Allowing consideration for purchases of securities on the secondary market would lower the interest in initial offerings and directly impact the ability to fund lower-cost mortgages for affordable housing borrowers.

Question 20. Should the agencies include activities that promote energy efficiency as a component of the disaster preparedness and climate resiliency definition? Or should these activities be considered under other definitions, such as affordable housing and community facilities?

Yes, activities that promote energy efficiency should be considered part of the disaster preparedness and climate resiliency definition. The effects of climate change and inequities in environmental quality disproportionately affect LMI residents, who often have the least means to recover from environmental health hazards and climate-related disasters. CRA guidelines can play a role in mitigating these impacts. On a small scale, energy efficiency improvements can maintain habitability, and thus, the resiliency of buildings that house LMI residents in the face of power losses associated with a disaster. On a broader scale, increasing energy efficiency can have beneficial spillover effects by reducing or eliminating onsite combustion of fossil fuels and reducing of demand for nonrenewable electricity, both of which would improve air quality in targeted communities. In addition, measures that reduce energy costs contribute to financial resiliency for households with LMI, who may experience more variation in their income over the year than higher-income households.

Question 21. Should the agencies include other energy-related activities that are distinct from energy-efficiency improvements in the disaster preparedness and climate resiliency definition? If so, what would this category of activities include and what criteria is needed to ensure a direct benefit to the targeted geographies?

Yes. As previously stated, inequities in environmental quality disproportionately affect LMI residents. Supporting non-carbon-based renewable electricity generation would reduce reliance on fossil fuel-based generation. In turn, this would improve air quality in LMI residents' communities, and, if achieved on a broader scale, slow climate change and the incidence of climate-related disasters which can have deeper adverse impacts on LMI households. Energy-related activities that primarily support climate resiliency should include items like solar photovoltaic generation, solar storage, other renewable generation projects, and beneficial electrification of buildings.

Question 27. Should consideration of financial literacy activities expand to include activities that benefit individuals and families of all income levels, including low- and moderate-income, or should consideration be limited to activities that have a primary purpose of benefiting low- or moderate-income individuals or families?

No, activities should continue to focus on individuals and families with low and moderate incomes. The CRA was enacted to address historic redlining with a range of tests and incentives for banks to help meet the credit needs of communities of LMI residents. The City has been a leading champion of local government financial counseling and coaching programs. Its Financial Empowerment Centers, managed by the Department of Consumer and Worker Protection (DCWP), provide free, one-on-one professional financial counseling and coaching to help New Yorkers with moderate-to-low incomes manage their money; establish or improve their credit; set up a spending plan; open a safe and affordable bank account; contact their lenders about debt, including student loans; develop a strategy to reduce debt or lower payments; access emergency government resources; and more. Since their inception in 2008, Financial Empowerment Centers have helped more than 66,000 clients save more than $10 million and reduce debt by more than $85 million.

To expand the primary audience beyond communities with LMI residents would be contrary to CRA's underlying theory and reduce resources available to the population that most need them. CRA was always intended to level the playing field for LMI individuals to create a financially inclusive American economy. Expanding consideration of financial literacy activities to include those at all income levels, including those with high incomes, diverts resources from communities with LMI residents. Any changes to the CRA should ensure that communities with LMI residents are the primary beneficiaries of CRA-eligible efforts and investments.

Question 34. For the proposed impact review factors for activities serving geographic areas with high community development needs, should the agencies include persistent poverty counties, high poverty census tracts, or areas with low levels of community development financing? Should all geographic designations be included or some combination? What considerations should the agencies take in defining these categories and updating a list of geographies for these categories?

The agencies should include the "persistent poverty counties" and "high poverty census tracts" factors among the proposed impact review factors to meet the community development test for small banks and the service test for intermediate and larger institutions. The tests are applied to geographic areas in which the banks do business and ensure that banks direct community development activities in the business and customer areas that meet LMI community standards.

The City supports these two designations to ensure that banks prioritize the most financially insecure and hard-to-reach communities and would be especially relevant and helpful for large metropolitan areas. For example, according to a 2022 Congressional Research Service Report, the persistent poverty county would include New York City's Bronx County based on previous census and Small Area Income and Poverty Estimates.[1] Additionally, under the definition of high poverty census tracts (at least 50 percent are designated as low income according to the most recent 2020 Census Bureau American Community Survey), 358 census tracts or 15% of total New York City census tracts would qualify. The City recommends that both designations serve as useful indicators to help banks identify assessment areas where their activities and resources should be directed.

The City would also refer the agencies to some evaluations done by the National Community Reinvestment Coalition, which sets forth some benchmarks that may be helpful. These include the dollar amount of community development lending and investing on a per capita basis as well as demographic and economic criteria for designating underserved areas (similar to criteria for identifying underserved and distressed rural middle-income census tracts).[2]

It is important to note that the criteria should not be so flexible that banks may choose which ones to adopt. Evaluating a bank with the persistent poverty counties criterion would work well in the counties cited (Mississippi Delta, Appalachia, and Colonias regions, and in Native Land Areas). However, in New York City, where a county covers an entire borough, the standard can result in overbroad results. Manhattan (New York County) contains both expensive and branch-dense neighborhoods like the Upper

[1] Congressional Research Service, "The 10-20-30 Provision: Defining Persistent Poverty Counties" accessed July 6, 2022 at https://sgp.fas.org/crs/misc/R45100.pdf.
[2] Joshua Silver, "An Evaluation of Assessment Areas and Community Development Financing: Implications for CRA Reform, accessed June 12, 2022 at https://ncrc.org/an-evaluation-of-assessment-areas-and-community-development-financing-implications-for-cra-reform/.

East Side, alongside “at risk” neighborhoods like East Harlem.[3] The City believes banks should not be allowed to meet larger area tests by taking advantage of in-person locations in parts of that area that would be easier to maintain, and therefore favors additional factors such as census tracts and persistent poverty to help mitigate some of these concerns.

Question 41. How should the agencies treat bank business models where staff assist customers to make deposits on their phone or mobile device while the customer is onsite.

The next generation of automatic teller machines now include interactive teller machines (ITMs) and video remote tellers that continue to provide technology-based transactional services but with additional access to live support. The City supports CRA reform that keeps pace with technology but only if they continue to meet the needs of communities of LMI residents. While ITMs provide options for customers to conduct some bank services efficiently, they are not adequate to provide the in-depth supports (counseling, discussing of options) that a physical full-service branch can offer. In-person branches will be more likely to hire employees who speak that community’s common languages and be attuned to the local financial needs of the surrounding area.

Studies continue to show that physical full-service branches still provide a significant boost to access to credit to their surrounding community.[4] While alternate delivery models may approximate branch services for individuals, they are less effective for small business owners. A 2019 study showed that a branch closing results in significant losses for small businesses, especially those in low-income and high-minority neighborhoods.[5] While digital banking has increased access to credit for many, branches continue to be important, particularly for communities with LMI residents, due to the need to obtain and receive information and establish relationships that are critical in obtaining credit and other financing.

Question 47. The agencies propose to give CRA consideration for community development financing activities that are outside of facility-based assessment areas. What alternative approaches would encourage banks that choose to do so to conduct effective community development activities outside of their facility-based assessment areas? For example, should banks be required to delineate specific geographies where they will focus their outside facility-based assessment area community development financing activity?

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[3] “At Risk” is the City’s Department of Consumer and Worker Protection’s designation for neighborhoods where debt defaults are high and savings rate and credit scores are low

[4] Banking Deserts: Lack of Convenient Branches Impairs Low-Income Communities, accessed on June 30, 2022 at https://bancography.com/wp-content/uploads/2022/03/Bancology1219.pdf

[5] Maude Toussaint-Comeau, Yi David Wang, and Robin Newberger, Impact of Bank Closings on Credit Extension to Businesses in Low-Income and Minority, accessed June 14, 2022 at https://journals.sagepub.com/doi/pdf/10.1177/0034644619885343.

The agencies must ensure continued community development financing activities and investments within facility-based assessment areas before contemplating how to encourage banks to look beyond their assessment areas. Expanding CRA consideration for community development financing activities outside of facility-based assessment areas could dilute concerted, high impact investments that directly benefit communities with LMI residents. This expansion could lead to a reduced obligation to serve all communities with LMI residents within a bank's facility-based assessment area. The proposed rule should emphasize the need to meet rigorous requirements within the facility-based assessment areas before going outside of facility-based assessment areas.

Question 60. Should multifamily lending be evaluated under the Retail Lending Test and the Community Development Financing Test (or the Community Development Test for Wholesale or Limited Purpose Banks)? Or should multifamily lending be instead evaluated only under the Community Development Financing Test?

Multifamily lending should be evaluated as a separate product line under the Retail Lending Test, but when multifamily lending qualifies under the Community Development Financing Test, it should be counted toward only that test. The optimal outcome for multifamily properties serving LMI communities and residents occurs when banks are able to balance debt and equity investments in affordable housing as well as lending for multifamily rental properties that are not subject to affordable housing regulatory agreements. Additionally, it is important to ensure that banks do not concentrate their multifamily investment activity in only a few high-dollar volume transactions on buildings without affordable housing regulatory agreements, as owners of small, naturally occurring affordable multifamily buildings often struggle to obtain loans of less than $1 million. For that reason, we support the agencies' proposal to test the number of multifamily loans originated, rather than their aggregate dollar volume, under the Retail Lending Test. However, allowing those loans to count toward both the Community Development Financing Test and Retail Lending Test may reduce banks' incentive to serve specific types of buildings, including naturally occurring affordable rental housing, and affordable housing subject to regulatory agreements. Awarding credit separately for these different types of properties ensures the availability of financing for a range of housing types at a time when support for rental housing has never been more necessary in LMI communities across the country.

Question 101. Should affordability be one of the factors in evaluating digital and other delivery systems? If so, what data should the agencies consider?

Yes, affordability must be one of the factors in evaluating digital and other delivery systems. To meet CRA obligations, digital products should meet the same standards as traditional products: affordable, high-quality, and easily accessed and managed. The use of digital bank products has been on the rise.[6] Affordability of digital products is especially important since there has been a proliferation of alternate financial services of credit and other banking products directly targeting communities with LMI residents: even by 2008, NYC residents were spending more than $225 million per year on check cashing fees alone.[7]

It is important that we define "affordable" broadly: a product should be considered affordable if it is low-cost when it is initially offered as well as throughout any continued use. Banks that offer incentives for product use (cash bonuses for new accounts, signup rewards) should not be able to offset these costs by charging additional fees, such as costs for monthly maintenance or minimum balances. Some of those additional fees, such as dormant and overdraft fees, are likely to disproportionally impact communities with LMI residents, as cash flows may be impacted by variability in income or major expenses. The City supports recent efforts to draw attention to some of these "junk fees" both by the Consumer Financial Protection Bureau and many large banks who are re-examining these fees.[8]

Digital products can leverage customer data to offset bank costs--something that, if not circumscribed, could have harmful impacts to customers. The City recognizes that there are benefits to banks using customer data since it has the potential to provide new products and services uniquely tied to individuals and communities. It may also allow banks to use data to operate more efficiently as it identifies and manages risks. However, there are profound risks to widespread collection and use of customer data if it is not controlled. Fraud and identity theft are far easier with digital products and no-contact relationships.[9] Additionally, banks may inadvertently create data analytics and algorithms based on incomplete or speculative assumptions or fail to monitor disparate impacts on race, ethnicity, gender, or other underserved communities, unfairly impacting portions of their consumer base.

Question 164. Should the agencies determine which data points a bank should collect and maintain to demonstrate responsiveness to low- and moderate-income individuals via the bank's digital and other delivery systems such as usage? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

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[6] PWC's 2021 Digital Banking Consumer Survey, accessed June 21, 2022 at https://www.pwc.com/us/en/industries/financial-services/library/digital-banking-consumer-survey.html.

[7] New York City Neighborhood Financial Services Study, accessed June 12, 2022 at https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-NFSS-FullReport.pdf. OFE analysis of data provided by the New York State Banking Department, February 7, 2008. Summary statistics can be found in Neiman, R. (2007). Report and recommendation to the governor pursuant to banking department study regarding geographic and fee restrictions imposed on locations used primarily for the cashing of checks, New York State Banking Department.

[8] Bank of America Announces Sweeping Changes to Overdraft Services in 2022, Including Eliminating Non-Sufficient Funds Fees and Reducing Overdraft Fees, accessed June 22, 2023 at https://newsroom.bankofamerica.com/content/newsroom/press-releases/2022/01/bank-of-america-announces-sweeping-changes-to-overdraft-services.html.

[9] Jo Ann Barefoot, "Digital Technology Risks for Finance: Dangers Embedded in Fintech and Regtech" accessed June 22, 2022 at https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/AWP_151_final.pdf

We strongly encourage that the agencies retain a decisive role in defining banks' data collection to ensure that the CRA continues to remain a robust accountability measure.

Today's financial data is much more detailed and comprehensive, a result of the variety of financial products available to consumers and the widespread use of algorithms. A customer may use multiple financial banking and credit products from the same institution, giving a bank a vast array of real-time income sources and expenditures information. When a bank can self-define what is useful to demonstrate responsiveness, there is the potential for overreach and misuse.

Therefore, the breadth of financial data maintained for evaluating responsiveness should be limited for banks, especially those with assets more than $10 billion who are offering multiple financial products through the bank and affiliates. That data should be limited to: (i) the range of services and products offered through digital and other delivery systems and (ii) digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, respectively, such as the number of savings and checking accounts and use of such accounts that are opened through digital and other delivery systems.

Question 173. Should the agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?

CRA performance evaluations do not currently report data on lending by race or ethnicity. We strongly recommend that this data be reported to align with the equitable goals explicitly announced when the CRA was enacted in 1977. The CRA was created to directly respond to the persistent and deeply troubling discrimination against financial access for communities of color through implicit and explicit redlining.[10]

The CRA is designed to address structural inequalities by requiring banks to play a foundational and ongoing role in community development. CRA ratings are given extra weight when banks require regulatory approval for business acquisitions and mergers.

While the official term of LMI communities may not be race-based, the CRA's intent was clear from its beginning—it was intended to uplift Black, Latino/a, and other historically underserved communities. The capturing of race and ethnicity data is not just a historical obligation, it is a presently needed accountability measure to address redlining and other discriminatory practices.

Data shared through the CRA could be used to evaluate government programs and policies to ensure that they fairly and equitably serve the needs of all racial groups and to monitor compliance with anti-discrimination laws, regulations, and policies. It can also serve as data that helps both banks and local,

[10] 123 Cong. Rec. 17630 (1977).

state, and federal governments research policies and programs, including those that further civil rights or provide funds or services for specific demographic groups.[11]

Not only does historical context of CRA's passage evidence the importance of reporting race and ethnicity-focused data, but the potential uses of that data could magnify the CRA's ability to uplift underserved communities, nationwide.

We appreciate the opportunity to provide comments.

[11] "A Vision for Equitable Data -- Recommendations from the Equitable Data Working Group" accessed June 22, 2022 at https://www.whitehouse.gov/wp-content/uploads/2022/04/eo13985-vision-for-equitable-data.pdf.