INCLUSIVE ACTION

August 5, 2022

Acting Comptroller Michael J. Hsu
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Chair Jermone H. Powell
Board of Governors of the Federal Reserve Bank
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Acting Chair Marin J. Gruenberg
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 2042

Re: Comment on the Joint Notice of Proposed Rulemaking Regarding the Community Reinvestment Act [Docket ID OCC-2022-0002, RIN 1557-AF15; Docket No. R-1769 and RIN 7100-AG29; RIN 3064-AF81]

To Whom It May Concern,

Inclusive Action for the City appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding the update of the Community Reinvestment Act (CRA). This notice of proposed rulemaking represents the most significant changes to the CRA regulation and exams in 27 years.

Inclusive Action for the City (Inclusive Action) is a non-profit, community development financial institution (CDFI) that pairs transformative access-to-capital programming with research-informed advocacy to create intergenerational wealth for Los Angeles County's underserved and BIPOC entrepreneurs. Inclusive Action supports small businesses through three intervention areas to address urgent, cyclical, and long-term systemic challenges: microfinance, business coaching, and research-informed advocacy to influence policy. Our microfinance programs provide capital and business coaching to low-to-moderate income entrepreneurs who are historically underserved by traditional financial institutions and deprived of opportunities to invest in their businesses. Our research-informed advocacy efforts work towards the equitable inclusion of micro-entrepreneurs and the "smallest small businesses" in our region's economy.

The Community Reinvestment Act is an important policy tool to encourage banks to invest and lend to CDFIs. In turn, CDFIs play a vital role in supporting and implementing the CRA's primary objective: to provide capital to businesses and residents in underserved and redlined communities. Inclusive Action appreciates the efforts by federal agencies to make thoughtful changes to the CRA. It is imperative that mission-driven CDFIs' input on the CRA's shortcomings and recommendations to address existing inequities be heavily considered and adopted.

THE COMMUNITY REINVESTMENT ACT SHORTCOMINGS & RECOMMENDATIONS

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The CRA has extensively provided credit, investments, and financial services to California's underserved communities and small businesses. CRA has successfully leveraged loans, investments, and services. Between 2009 and 2020, banks have made more than $2.58 trillion in home loans to low- and moderate-income (LMI) borrowers or in LMI census tracts. Additionally, banks have made $856 billion in loans to small businesses with revenues under $1 million. Despite these accomplishments, significant gaps remain in CRA rules and implementation. As a result, the promise of CRA has yet to be realized, such as reducing the racial wealth gap, resolving inequities in lending to BIPOC businesses, and ensuring data transparency and holistic community engagement and input in CRA investments.

While the federal CRA regulator agencies, the Office of Comptroller of Currency (OCC), Federal Reserve Bank (FRB), and Federal Deposit Insurance Corporation (FDIC), put forth a set of considerate recommendations for the proposed rulemaking. Inclusive Action believes the CRA can continue building on its progress and be more effective if it addresses the following shortcomings:

Exclusion of Race and Ethnicity from Examination

The CRA was created out of the need to resolve systemic disparities produced by public and private sector racial discrimination policies and redlining policies and initiatives. Despite the origins of CRA, the CRA does not mention race and ethnicity as examination criteria but maintains banks are required to serve all communities. While the CRA has diverted capital to predominantly low to moderate-income communities, it's important to underscore that low to moderate-income areas should not be a proxy for race and ethnicity alone. Case in point, the racial wealth gap and the homeownership gap between people of color and their White counterparts have remained unchanged since the CRA was enacted in 1977. It’s equally important to note the racial wealth gap within small businesses. According to the National Bureau of Economic Research, Black and minority-owned businesses are more likely to be denied credit even after controlling for differences in creditworthiness. Even at the peak of the COVID-19 pandemic, when the United States government called upon banks to distribute federal SBA Paycheck Protection Program (PPP) loans, existing racial inequities surfaced to the top. In May 2021, Los Angeles County reported Black neighborhoods such as Inglewood saw less than 32% of businesses get PPP loans compared to the 61% of businesses in adjacent white communities. In the case of the PPP allocation process, the SBA revised the program design to ensure CDFIs, minority development institutions (MDI), and community development corporations (CDC) obtained a three-week window to allocate PPP funds to BIPOC businesses that traditional banks neglected.

Before the COVID-19 pandemic, Inclusive Action prioritized allocating capital in the form of credit and loans to BIPOC, women, and immigrant-owned businesses, who are traditionally denied credit by traditional banks and vulnerable to Payday shark loans. Although Inclusive Action is based in an LMI community, Inclusive Action recognizes without being intentional in setting target goals pertaining to servicing specific races and ethnicities, our small business lending practice can just as easily overlook harder-to-reach race and ethnic groups in our community.

RECOMMENDATION: Consider Bank Activity by Race and Ethnicity

The CRA examination must consider race and ethnicity to resolve the growing racial wealth gap and fulfill the original intention of the CRA to rectify the intentional government disinvestment in redlined communities. The CRA federal agencies should consider implementing the following four criteria to the CRA process:

- Examine banks' performance in meeting the credit needs of communities of color, similar to how banks are evaluated on their performance in meeting the needs of low and moderate-income (LMI) borrowers and communities.
- Include evaluating banks that close branches in communities of color or conduct discriminatory practices such as fee gouging and denial of consumers from opening banks in communities of color.
- Implement extensive and rigorous fair lending reviews. Both Section 1071 data on small business lending by race and Home Mortgage Disclosure Act (HMDA) should be utilized in bank fair lending reviews by race. The CRA federal agencies should penalize banks by downgrading their CRA rating when they are found to conduct discriminatory practices or fail to meet the needs of communities of color in their fair lending review.
- Review for language access services at their branches and online. In Los Angeles County alone, 56% of people speak a language other than English at home, and 51% of small businesses in the City of Los Angeles are owned and operated by immigrants.

CRA's Lack of Consistency and Coordination with Nonbank Financial Entities

The unbanked and underbanked are vulnerable to predatory non-bank financial service lenders, who in the state of California demand 460% APR, 15% upfront finance fee, and additional renewal fees on a two-week $300 loan. High-interest non-bank lenders are alarming, given that five in 10 loan products in underserved communities derive from non-bank entities. Even more so, in 2019, non-bank short-term business loans were the fastest-growing non-bank loan product segment, and small business owners paid an estimated $3.6 billion in fees and interest. These non-bank financial service lenders are troubling because the Consumer Financial Protection Bureau (CFPB) and state authorities regulate them as opposed to CRA regulator agencies. More importantly, they are not required to provide fair credit or obligated to implement CRA community development activities in the communities they harm. Furthermore, there is no consistency between states regulating non-bank financial service lenders or coordination between the CRA federal regulators and the Consumer Financial Protection Bureau.

As a CDFI located and operating in BIPOC and LMI communities across Los Angeles County, Inclusive Action routinely services local small business owners that have obtained a high-interest predatory loan from a non-bank retail service lender. These predatory lenders have supplanted the role of a conventional bank for residents seeking to acquire personal and business loans in a timely and accessible manner. At times, Inclusive Action must provide clients additional capital to supplement their low-interest (3% -8%) loan from us for business operations to pay off an existing predatory loan. These non-bank financial service lenders leverage the vulnerability of residents, especially in unbanked and underbanked communities, who do not have existing relationships with local banks.

RECOMMENDATION: CRA Federal Agencies to Provide Guidance to States to Implement a State-Level CRA

Non-bank financial loan providers such as payday lenders are both a threat and a debt trap for financially vulnerable borrowers in CRA target communities. While none of the federal CRA agencies, FDIC, FRB, and OCC, can directly regulate Payday lenders regulated by the CFPB and state jurisdictions. Inclusion Action recommends that the CRA federal agencies coordinate with states and the CFPB to provide guidance to implement a state-level CRA that emulates the federal CRA. A state-level CRA should enforce non-bank financial lenders such as Paydays to invest in community development initiatives where they have physical branches or a digital footprint in which they provide a set number of affordable loans to residents in a community. State-level CRAs' should also consider financial technology companies, especially those that partner with banks or provide a set number of online personal, business, or student loans in a particular region.

Lack of Data Transparency

Data transparency is critical to hold banks publicly accountable for their harmful activities or lack of CRA compliant activities. CDFIs like Inclusive Action utilize data and insights from bank lending activities to make data-informed decisions and create financial products and programs to fulfill unmet access to capital needs in predominantly low to moderate income and BIPOC communities. In the proposed CRA update, federal agencies are to collect data on bank deposits, community development activities, and automobile lending. However, not all collected data will be publicly available such as bank deposits and automotive lending. Limited publicly available data hinder the extent to which the public can hold banks accountable and limit mission-driven CDFIs like Inclusive Action from developing data-informed financial products to serve the unmet needs of underserved communities.

RECOMMENDATION: Prioritize Data Transparency

In order to ensure data transparency is prioritized, the CRA should consider implementing the two following requirements:

- Make all proposed collected data publicly available, including Section 1071 data on small business lending; sensitive data on borrowers should be aggregated and made publicly available.
- Hold all banks accountable for collecting and sharing proposed CRA data requirements instead of solely large banks with assets of more than $10 billion in deposits and automobile lending.

Fragmented Community Development and Public Engagement Process

The CRA serves as one of the most crucial financial inclusion policies to hold banks accountable and invest in underserved and historically redlined communities. While the CRA has made a significant impact since its inception in 1977, the banking and financial services sector has undergone substantive changes since then. The last substantial update to the CRA was in 1995. Since then, the banking industry has expanded into mobile banking, reaching an estimated 65.3% of those in the United States in 2022. Additionally, non-bank newcomers to the financial services sector, such as financial technology services such as Paypal, Venmo, CashApp, and AfterPay, along with cryptocurrency, have emerged in recent years and provide bank-like services like cash transfers, deposits, and more. While Inclusive Action is appreciative of being able to submit a comment on the Notice of Proposed Rulemaking (NPR) regarding updating the CRA, it's troubling that 27 years have passed since the last substantial update. The lack of frequent CRA public engagement opportunities, such as commenting on the NPR, hinders the federal agencies' ability to gather crucial contemporary input from community stakeholders needed to update the CRA in a timely fashion to address new changes in the banking and financial service sector. The lack of consistent CRA public engagement processes also impacts the scope of community development activities because local stakeholders and organizations like CDFIs that partner with banks can miss opportunities to weigh in on the CRA and how CRA funds are allocated.

RECOMMENDATION: Expand Scope of Community Development Activities

Inclusive Action supports the CRA federal agencies' proposal to expand the scope of eligible community development activities. Inclusive Action recommends as a CDFI and mission-driven community-oriented nonprofit to expand the scope of community development activities to prioritize the needs of BIPOC and immigrant communities. The CRA agencies should consider exploring four categories: economic development, public health, environmental, and social. Economic development initiatives include financial literacy training, community-owned real estate financing, and financial products and programs for immigrant and immigrant-owned businesses. The CRA agencies should consider public health initiatives, especially in light of the COVID-19 pandemic, shuttles and ride-share subsidies for medical appointments and supporting community-based organizations' vaccine pop-ups. Environmental developmental CRA activities should promote access to clean air, water, and green technology for BIPOC and underserved communities; environmental initiatives include but are not limited to investing in climate resilience, climate preparedness, and disaster relief. Lastly, Inclusive Action recommends the CRA expand the scope of social community development programs to include funding for infrastructure and programs to address the digital divide, language accessibility services, affordable housing, and financial support for resources and programs for immigrant communities.

RECOMMENDATION: Agile CRA Community Input and Update Process

The CRA must be responsive to the fast-changing banking sector. Mobile banking penetration is expanding, and new cryptocurrency technologies are emerging. The CRA federal agencies must develop agile processes with equitable language access support to ensure community input is gathered and assessed on bi-annual bases. Inclusive Action recommends conducting bi-annual assessments that will enable federal agencies to make incremental updates to the CRA to adapt to sectoral changes and the needs of communities today. Since the advent of the COVID-19 pandemic, Inclusive Action has witnessed the needs of the underserved communities the CRA seeks to serve shift dramatically. In the event of a public health crisis or environmental emergencies, a prolonged period between CRA update processes could hinder the impact CRA investments can make to support dire community development needs.

Limited Oversight of Bank Performance Assessments & Accountability

The CRA's bank performance evaluations are critical to ensuring the primary objective of directing investments into underserved communities. In addition, the CRA performance evaluations also inform the CRA federal agencies of banks' areas of improvement for growth. However, due to an inflated examination process, banks can obtain a passing overall CRA rating without improving their CRA reinvestment activities. Currently, 98% of banks pass their CRA exams annually, with less than 10% receiving an "Outstanding" and almost 90% receive a rating of "Satisfactory." Lack of transparency on banks' performance distinctions hinders public accountability, and poor-performing banks go unnoticed.

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It is also important to note that the proposed federal agencies' reclassification threshold criteria of a "large bank," from the current threshold of $1.384 billion in assets to $2 billion, will negatively impact the federal agencies' ability to hold banks accountable to reinvest in underserved communities. According to the California Reinvestment Coalition, the proposed threshold change will reclassify 15 large banks with over 131 branches in California to intermediate small banks, resulting in over $16.2 billion in assets that will no longer be tested on their retail service to LMI communities. Reclassifying large banks is alarming, especially because large banks have reported record profits following the 2008 crisis, and large banks have gradually approved less than half the amount of loans as community banks. If large banks were to be reclassified as intermediate small banks and therefore held to a lower standard, accountability to reinvest would become even more difficult.

RECOMMENDATION: Strengthen Bank Examinations & Accountability Protocols

CRA examinations ensure banks are accountable to underserved communities and peoples. To best ensure the bank's CRA allocations are most impactful, the CRA federal agencies should consider the following three recommendations:

- Do not reclassify large banks' asset thresholds. As noted previously, reclassifying the large bank thresholds will negatively impact the total available CRA funds allocated to underserved communities and people, making it more difficult to hold large banks accountable to CRA standards.
- Examine and evaluate all banks on their lending activity by race and ethnicity. Explicitly calling out race and ethnicity in the CRA evaluation process will incentivize banks to increase their lending activity to communities of color needing financial resources, especially those in LMI communities.
- Expand how banks are evaluated to their digital reach and footprint. Today, more banks are mitigating services online and expanding their digital footprint. Inclusive Action and other community advocates recommend assessing large banks' digital footprint when they do not have a branch and have issued more than 100 home loans or 250 small business loans. A digital footprint assessment will capture online lending activities and help hold banks accountable, especially banks that have closed a bank branch in an underserved community but continue to serve the community online.

RECOMMENDATION: Strengthen Partnerships with Mission-Driven Lenders

Mission-driven financial institutions such as CDFIs like Inclusive Action offer banks an opportunity to invest their CRA funds into organizations that service the needs of the hardest-to-reach residents. While in select municipalities, such as Los Angeles, the FDIC has established task forces to bring together banks and non-profits, the task force function primarily caters to banks to learn about local non-profits without providing transparent processes for non-profits to collaborate with banks to develop programs or financial products to serve their communities. Inclusive Action recommends FDIC consider two of the following recommendations:

- Establish and require large banks to hold space for monthly CDFI-focused roundtables. This will help build relationships among community-centered financial institutions, while also allowing for larger banks to understand the nuanced needs of hard-to-reach populations.
- Require large banks to partner and invest a select portion of their community development CRA funds into local CDFIs. Because local CDFIs have the ability to reach

those who are unbanked and underbanked, this is a key opportunity to ensure that the true goal of the CRA is met in a right-sized way.

CONCLUSION

We appreciate the opportunity to provide our thoughts to the Notice of Proposed Rulemaking on the update of the CRA. This is an important moment for us to reflect on the progress that has been made, while also looking forward to how we can work together to fill the gaps of the past. Inclusive Action for the City is dedicated to closing the racial wealth gap, and correcting histories of exclusion within the financial field.

We look forward to the updated CRA and understanding how our role can better serve the communities we collectively care about.

Sincerely,

Rudy Espinoza
Executive Director
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