THE GREENLINING INSTITUTE

360 14TH STREET, 2ND FLOOR
OAKLAND, CA
GREENLINING.ORG

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

August 5, 2022

RE: Community Reinvestment Act Proposed Rulemaking (87 FR33884)
[OCC: Docket ID OCC-2022-0002; FDIC: Docket No. R-1769 and Federal Reserve Board: RIN 7100-AG29; RIN 3064-AF81]

To Whom It May Concern:

The Greenlining Institute appreciates this opportunity to comment on the Interagency Notice of Proposed Rulemaking (NPR) by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Reserve Board regarding the Community Reinvestment Act (CRA). The Greenlining Institute and our coalition submit this letter in support of strengthening the Community Reinvestment Act and realizing the promise of the CRA serving the needs of communities of color and addressing the lasting impacts of historic and modern redlining. The Community Reinvestment Act has been an effective tool in driving reinvestment in low-income communities, but we know that more must be done to direct investments to the communities that need it most.

Founded in 1993, The Greenlining Institute works toward a future when communities of color can build wealth, live in healthy places filled with economic opportunity, and are ready to meet the challenges posed by climate change. We proactively drive investments and opportunities into communities of color alongside a coalition of over 40 grassroots, community-based organizations, including minority business associations, community development corporations, and civil rights organizations. Our multifaceted advocacy efforts address the root causes of racial, economic, and environmental inequities to meaningfully transform the material conditions of communities of color in California and across the nation.

Greenlining, alongside our partners, has leveraged the Community Reinvestment Act to negotiate twenty community benefit agreements alongside our community partners in the last forty years, amounting to over half a trillion dollars in investments to address years of redlining and disinvestment in critically underserved neighborhoods. These agreements have specifically addressed the lack of affordable housing, lack of access to affordable mortgages, and the lack of support for small business owners in communities of color throughout California. And while the interagency proposed rule attempts to increase these investment opportunities, it misses the mark by failing to advance racial economic and environmental equity. While we appreciate efforts by the federal agencies to make thoughtful changes to the Community Reinvestment Act through this proposed rulemaking, we also believe that this is a missed opportunity to address structural racial inequities that persist in our communities, perpetuating economic, health, and environmental disparities. The federal regulators must adopt explicit race-based criteria that holds banks accountable to serving communities of color.

The CRA should prioritize racial equity

Despite not including any questions or considerations for how to include race in CRA exams, the rule explicitly references the practice of redlining and emphasizes the lasting impact of redlining on communities of color, including a persistent racial wealth gap. The proposed rule states that "even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent and the typical White family has eight times the wealth of the typical Black family and five times the wealth of the typical Hispanic family.'"

Since the last time that the CRA was substantially updated in 1995, racial disparities in lending and wealth creation have persisted or worsened.

- The wealth gap and the homeownership gap between Black and White Americans in modern times is roughly the same as it was before the passage of the Civil Rights Act of 1964.
- Black and Hispanic households are around 5 times more likely to be unbanked as White households.
- LMI Asian American and Pacific Islanders (AAPI) are far less likely to own a home compared to White people of the same income group – 37% compared to 55%. Further, LMI Native Hawaiians and Other Pacific Islanders (NHOPI) are more than 2 times less likely to own a home at 22%, and are nearly twice as likely to be denied home purchase loans compared to White borrowers.
- The legacy of redlining has resulted in neighborhoods lacking adequate investment by banks while also commonly bearing disproportionate environmental burdens, leading to increased vulnerability to climate change and negative health outcomes.

- Black-owned businesses are more likely to be denied credit even after controlling for differences in creditworthiness.
- Banks and the fintech industry have begun using algorithms that rely on data rooted in the impacts of redlining to make decisions about the creditworthiness of loan applicants, leading to bias that overcharges people of color and leads to higher rates of loan denials for people of color compared to White applicants.

Racist public policies led to a need for CRA and the original intent of the CRA was to affirmatively obligate banks to reinvest locally in neighborhoods that were historically deemed "too risky." Therefore, explicit race-based criteria that hold banks accountable to serving communities of color are necessary to genuinely address decades of race-based disinvestment. The Community Reinvestment Act should be an antidote to historical redlining and the continuous disparities that exist amongst communities of color. Financial institutions should be specifically obligated to meet the credit needs of communities of color. The FDIC, OCC and the Federal Reserve Board need to address systemic racism and discrimination by financial institutions in a *comprehensive and explicit way*, both by incentivizing banks to meet the credit needs of communities of color by creating specific products and services, placing branches in minority-majority neighborhoods and investing in community development projects that serve communities of color, and by downgrading banks for discriminating against underserved communities and failing to serve communities equitably, regardless of whether these disparate negative impacts are the result of intentional or unintentional bias.

We propose the following ways the rule can be amended to begin addressing racial inequities:

Require lending to communities of color: The Community Reinvestment Act should require banks to serve all communities, especially borrowers and communities of color. The interagency proposed rules already proposed updates to the retail lending and services test to include performance measures based on peer performance in a bank's demographic and market benchmarks, continuing to assess a bank's lending and investment activities to LMI communities, but using peer performance as benchmark. The federal regulators should expand these benchmarks and include lending by race and ethnicity as a metric to evaluate lending. Greenlining proposes that banks are assessed by their lending to each racial or ethnic group both in comparison to their peers and based on the percentage of each racial or ethnic group in the assessment area. In addition, banks should be assessed by their lending in predominantly minority neighborhoods and race should be used as a metric to identify additional assessment areas. This assessment must also be an important consideration of their final CRA rating.

Historically, the federal regulators and other government agencies have used low-to-moderate income as a proxy for race, but recent studies have shown that this is insufficient for meeting the needs of communities of color. The Urban Institute found that LMI neighborhoods do not highly overlap with minority neighborhoods and that minority neighborhoods, both LMI and middle and upper income, do not receive their fair share of home loans from CRA-covered banks. In

Greenlining's studies of home lending in California, low-income White borrowers are more likely than low-income borrowers of color to receive a home loan proportional to their percentage of the population in several regions of the state.

Assess both quality and quantity of lending and investments to communities of color: A bank's record in extending fairly priced credit, financial community development, opening responsive account products and maintaining branches to and in communities of color should factor into a bank's CRA rating. While the interagency proposed rules include assessing bank's based on their compliance with anti-discrimination and consumer protection legal reviews, the rules must go further in their review of the quality of lending. Reviews of lending must include an affordability analysis and impose penalties (downgrading their CRA rating) when banks offer abusive, high-cost loans. Greenlining reported that Black and Brown borrowers are overcharged by both CRA-covered traditional institutions and online lenders compared to similarly situated White borrowers. It is critical that the federal regulators assess not just that loans are being made to communities of color, but that these loans are fair, affordable, meet credit needs and do not put borrowers at risk of debilitating debt.

In addition, CRA exams should consider innovative Special Purpose Credit Programs that target formerly redlined communities of color. Question 106 asks "Should special purpose credit programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals?" and our response is that these programs should not only be considered for their impact on LMI individuals, but for their importance in helping banks meet the local credit needs of communities of color. Special Purpose Credit Programs should provide CRA credit and enhance a bank's CRA rating, as should all activities that increase the quality and accessibility of credit and work towards closing the racial wealth gap. The federal regulators should explicitly name Special Purpose Credit Programs as a tool for banks to use to meet the credit needs of communities of color in order to incentivize greater use.

Accountability for not lending to communities of color and discrimination: Currently, federal regulatory enforcement of redlining or discrimination cases, as well as downgrades in CRA ratings for discrimination, are rare. We hope that the agencies' expanded definition of discrimination will lead to greater enforcement and accountability for the banks that engage in discrimininatory behavior. In addition to the definition included in the proposed rule, findings of discrimination, including for disparate impacts relating to displacement financing, fee gouging or climate degradation, should always result in automatic CRA rating downgrades. In addition, if a bank does not lend to a specific group, this should lower their CRA rating or result in a noncompliance rating.

Include HMDA race and ethnicity data in CRA exams: In response to Question 173 ("Should the agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?"), the federal regulators should include HMDA race and ethnicity data on large bank exams. However, this data is already public and this will not increase transparency. At a minimum, the federal regulators should obligate banks to publish HMDA data on their public websites where they are easily accessible and transparent. Rather, the federal regulators should use the HMDA data to evaluate banks and any disparities in lending to communities of color that is revealed in the HMDA data, should impact a bank's CRA rating.

Include Section 1071 race and ethnicity data in CRA exams: Section 1071 requires the Consumer Financial Protection Bureau (CFPB) to enhance publicly available small business data to include the race and gender of small businesses applying for credit. In reference to Question 62 ("Should the CRA compliance date for updated "small business," "small business loan," "small farm," and "small farm loan" definitions be directly aligned with a future compliance date in the CFPB's Section 1071 Rulemaking, or should the agencies provide an additional year after the proposed updated CRA definitions become effective?") and the proposal to replace current CRA small business data with Section 1071 data, Greenlining supports the proposal and believes that the federal regulators should immediately adopt the use of Section 1071 data when the updated CRA definitions become effective. This data will enable regulators to identify racial and gender disparities in lending and assess if a bank is engaging in ongoing discrimination to minority-owned and women-owned businesses. In addition, the federal regulators should use this data as a screen to identify where additional fair lending review is needed and to downgrade banks for discriminatory behavior. The federal regulators should also include data tables on CRA exams tabulating small business and farm lending by race and gender of the small business owner just as they proposed to do with the HMDA data. It goes without saying that this additional data should have an impact on a bank's CRA ratings.

The CRA should address historically redlined communities facing climate injustice

Climate change is a risk multiplier that exacerbates racial and economic inequality,[1] and it is progressing at an alarming rate. The agencies must update CRA regulations with this reality in mind so that the banking system meets the changing credit needs of all communities. This rulemaking has taken important steps in the right direction, and should be strengthened to ensure those most vulnerable to the impacts of climate change can access necessary, fair, and affordable capital and services to meet their financial needs.

We propose the following ways the rule can be amended to better address climate justice:

The agencies should further expand the list of climate-related eligible activities under the CRA. We support the NPR's addition of the "disaster preparedness and climate resiliency" definition under "community development." We also support the proposed non-exhaustive list of climate-related eligible activities[2] 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

[1] United Nations High Commissioner for Refugees. "Climate Change and Disaster Displacement." 2020. https://www.unhcr.org/en-us/climate-change-and-disasters.html
[2] Proposal at 33905. https://www.federalregister.gov/documents/2022/06/03/2022-10111/community-reinvestment-act

activities can receive CRA credit. We recommend that additional eligible activities be listed under this definition, including but not 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.

Race should be explicitly used as a metric in order to ensure that climate vulnerable communities receive improved access to credit and services. Communities most vulnerable to climate change are most likely to be communities of color and LMI communities.[3] Therefore, the agencies should ensure that banks are prioritizing those very communities for investment. The final rule should outline publicly available data tools, which banks should use to identify climate vulnerable communities, and work towards building relationships and driving investment to those communities.. Examples of tools include the Environmental Protection Agency's (EPA's) Environmental Justice Screening and Mapping Tool (EJScreen)[4] and the White House Council on Environmental Quality's recently released Climate and Economic Justice Screening Tool (CEJST).[5]

Encourage banks to increase community engagement and relationship building with climate and environmental justice organizations. When this proposal is finalized, banks may become more active in investing in disaster preparedness and climate resiliency. It will be critical for banks to form the community-level relationships necessary for the success of these new investment opportunities. The rule should include measures that promote relationship building between CRA officers and local environmental and climate justice organizations working in LMI communities and communities of color. One measure regulators should adopt to ensure an inclusive approach is to require banks to describe, in public documents, their outreach to and engagements with organizations— including where and how these efforts were made.

Consider disproportionate impacts that further contribute to climate change and impair access to credit for communities in CRA exams. As bank financing of polluting activities disparately impacts access to credit by LMI communities and communities of color, regulators should scrutinize such activities and their disparate impacts during CRA exams. Additionally, regulators should consider how communities' access to credit is potentially being harmed should be taken into account in CRA performance evaluations.[6] While proactive investments for climate resilience are helpful, without addressing root causes of climate vulnerability, we risk only deepening the potential impacts communities will face in the future. The CRA exam must address both sides of the coin.

---

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

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

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

[6] Steele, Graham. "ESG Carrots and Climate Sticks: Evaluating the Roles of Mandates and Incentives in Climate Financial Regulation." Duke University School of Law. July 2020. https://sites.law.duke.edu/thefinregblog/2020/07/14/esg-carrots-and-climate-sticks-evaluating-the-roles-of-mandates-and-incentives-in-climate-financial-regulation-2/

Additional comments in response to interagency proposals:

Assessment Areas for Retail Lending: The interagency proposed rules create new assessment areas beyond branch locations, wherever a bank has made 100 mortgages or 250 small business loans over a two-year period. We support this proposal to expand CRA coverage beyond branch locations, which have been in rapid decline. The National Community Reinvestment Coalition has found that in the past 12 years, branch presence has significantly declined as traditional financial institutions have begun conducting more and more business online. Branch closures primarily impact low- and moderate-income communities and communities of color. Thus, while expanding assessment areas is a positive step, federal regulators must proactively assess online lending and the responsibility that banks doing business online have to local LMI communities and communities of color. We also ask that this proposed rule consider bank partnerships with non-banks which often contributes to a bank's online presence. The proposed threshold is too high and we propose that the threshold to create an assessment area is lowered to 50 mortgages and 100 small business loans in order to ensure that rural communities are covered.

Community Participation: The proposed rule mentions expanding opportunities for community participation in CRA exams, but does not include specific ways the federal regulators will accomplish this. In response to Question 55 ("The agencies request feedback on the proposed performance context factors in § __.21(e). Are there other ways to bring greater clarity to the use of performance context factors as applied to different performance tests?"), we offer that community participation is one way to understand performance context factors. Rather than keeping community participation open ended and relying on comment letters, the federal regulators should ask specific questions to a diverse set of organizations and stakeholders related to the community's most pressing needs and how banks are currently serving or not serving the community. In addition to shedding light on the performance context, community input should impact CRA ratings and direct examiners to take on more thorough analysis if major concerns are raised (such as fair lending issues or a lack of small dollar business lending). The federal regulators must elevate the importance of community input, including comments during CRA exams and mergers, by posting comments publicly on the agency websites and increasing the time to comment from 30 days to at least 90 days.

In addition, federal regulators should consider whether a Community Benefits Agreement is in place and whether a bank is in compliance with the agreement on CRA exams and merger applications. Community Benefits Agreements are negotiated with community-based organizations and reflect the needs of specific, local communities and should be encouraged as evidence that a bank can meet community convenience and needs standards.

Bank Classification Changes: In response to Question 50 ("The proposed asset thresholds consider the associated burden related to new regulatory changes and their larger impact on smaller banks, and it balances this with their obligations to meet community credit needs. Are there other asset thresholds that should be considered that strike the appropriate balance of these objectives?"), we oppose raising current asset thresholds, since reclassifying some intermediate banks to small banks will result in less community development financing and branch consideration in rural areas served by community banks that would be subject to easier examinations and lower reinvestment obligations. This could have a detrimental effect on communities which depend on smaller institutions to meet their banking needs,[7] including rural communities dealing with wildfire and flooding challenges.[8] The National Community Reinvestment Coalition estimates that as a result of this proposal, 767 banks that are intermediate banks now would be reclassified as small banks, exempting them from community development finance responsibilities. Likewise, 201 banks with large bank obligations would be reclassified as intermediate banks. This reclassification would strip communities of about $1.2 billion dollars of investment each year. These banks would no longer have community development finance responsibilities, resulting in a loss of considerable amounts of community development finance. Communities depend on the investments historically made by these institutions and they should continue. All banks should be subject to the same community development obligations as the largest banks.

Community Development Financing Test: Greenlining is concerned about the proposal to remove the investment test for large banks and create the community development financing test and community development services test. We are concerned that evaluating financing and investments together under the community development financing test will motivate banks to focus their efforts on lending and retreat from making vital investments. We know that banks will find lending to be less risky and offer a higher rate of return than investments, like investments in Low Income Housing Tax Credits (LIHTC), which is an important tool for affordable housing development. We urge the regulators to retain separate evaluations and considerations for community development lending and community development investing.

If the federal regulators move forward with this proposal to keep the lending and investing evaluations separate, then they should make every effort to evaluate loans and investments for their *equitable* impact using the proposed impact review. The impact review should be consistent and not rely completely on qualitative evidence. Additional impact points should be given for projects that target the most underserved communities: projects that have deeper affordability, longer affordability terms and covenants, are in higher opportunity areas, that create rental units for very low-income tenants, and that provide grants to low-income, communities of color. By collecting and evaluating this information, the impact review can become more quantitative and objective, reducing the risk of grade inflation.

We also urge the regulators to evaluate the community development financing test by calculating the percentage of community development investments out of the total community development

[7] "Data Spotlight: Challenges in Rural Banking Access." Consumer Financial Protection Bureau. April 2022. https://files.consumerfinance.gov/f/documents/cfpb_data-spotlight_challenges-in-rural-banking_2022-04.pdf
[8] "Third National Climate Assessment: Rural Communities." U.S. Global Change Research Program. 2014. https://nca2014.globalchange.gov/highlights/regions/rural-communities

financing and compare that number to its peers. If a bank has a considerably lower percentage of community development investments compared to its peers, the CRA examiner should further probe the reasons for this and award lower points if a bank does not have a compelling rationale based on performance context factors. We also urge the regulators to downgrade CRA ratings for community development financing that would have a negative impact on LMI communities and communities of color. An example is an investment in housing that displaces LMI residents because the investment benefited a predatory property owner. Another example is an investment in a fossil fuel project in a LMI neighborhood or community of color that polluted the area instead of an investment in energy efficiency or renewables. These investments are harmful and should not receive CRA credit.

Conclusion

The Greenlining Institute and the signatories below call on the OCC, Federal Reserve Board, and the FDIC to meaningfully address decades of race-based disinvestment by including explicit race-based language and requiring additional analysis of race within the Proposed Rulemaking of the Community Reinvestment Act. The Community Reinvestment Act must fulfill the initial intent of the law to end the illegal and discriminatory acts of redlining, and its new frotiers, which have most adversely affected communities of color and their opportunities to build wealth, live in healthy places filled with economic opportunity, and are ready to meet the challenges posed by climate change.

If you have any questions about this comment, or would like to discuss the matter further, please contact Debra Gore-Mann at debra.goremann@greenlining.org.

Respectfully,

Debra Gore-Mann
President and CEO
The Greenlining Institute

Tunua Thrash-Ntuk
Board Co-Chair
The Greenlining Institute

Greenlining Coalition

Cassandra Little, Ph.D.
CEO
Fresno Metro Black Chamber of Commerce

Darlene Mar
Communications Chair
Council of Asian American Business Associations of California

Chih-Wei Hsu
Research Associate

Dennis Huang
Executive Director
Asian Business Association

Hyepin Christine Im
President and CEO
Faith and Community Empowerment

Karla Guerra
Policy and Advocacy Manager
The Unity Council

Lexi Howard
Attorney and Community Advocate

Ron Fong
Executive Director
Asian Pacific Islander Small Business Program

Stan Cross
Electric Transportation Policy Director
Southern Alliance for Clean Energy

Victor Hsi
Business Director
Southeast Asian Community Center

Willie Ellison
Board Member
Southern California Black Chamber of Commerce