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August 4, 2022

RE: **Community Reinvestment Act Proposed Rulemaking [87 FR 33884]**

OCC: 12 CFR Part 25; Docket ID OCC-2022-0002; RIN 1557-AF15
Federal Reserve: 12 CFR Part 228; Regulation BB Docket No. R-1769; RIN 7100-AG29
FDIC: 12 CFR Part 345; RIN 3064-AF81

On behalf of Americans for Financial Reform Education Fund, The Greenlining Institute, Public Citizen, and the 88 undersigned organizations with missions to further financial inclusion, affordable housing, and racial and climate justice, we appreciate the opportunity to comment on the above referenced joint Notice of Proposed Rulemaking ("NPR" or "proposal") by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively "the agencies") to amend the regulations implementing the Community Reinvestment Act of 1977 (CRA), including updates to CRA activities qualify for consideration, and how those activities are evaluated and inform bank ratings.

This thoughtful proposal would provide additional opportunities for investment that communities have been seeking, including opportunities to build climate resiliency, in addition to providing greater clarity and consistency for all stakeholders involved. **The agencies should strengthen the regulations to better ensure that communities most impacted by redlining and environmental injustice receive the intended benefits of the CRA.** Communities of color should explicitly be prioritized for investment, alongside low- and moderate-income (LMI) communities. Additionally, the final rule should further define activities eligible for CRA credit and properly incentivize banks to reduce their contributions to climate risk.

Economic damages caused by climate-related disasters, as well as chronic issues resulting from climate change such as heat stress, flooding, and drought, create disproportionate burdens for LMI communities and communities of color.[1] Black communities have been particularly severely harmed by discriminatory "redlining" practices—practices that restricted access to capital for mortgages, which has resulted in persistent economic inequality to this day.[2] LMI communities and communities of color experience higher levels of poverty, unemployment, and population loss related to climate migration,[3] with these cumulative impacts rendering them more vulnerable to the effects of climate change. Climate vulnerabilities will continue to expand in scope and severity with time, causing a shift in the kinds of investments and financial services communities need in order to be prepared and protected.

Climate change is a risk multiplier that exacerbates racial and economic inequality,[4] 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 LMI communities and communities of color. This proposal takes important steps in the right direction, and should be strengthened to ensure that those most vulnerable to the impacts of climate change can access necessary, fair, and affordable capital and services to meet their financial needs.

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[5] under the proposed definition, 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. The activities in this list will provide communities with more opportunities to actively participate in the transitioning economy through new green investment. 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 and manufactured home communities.

Explicitly utilize race as a metric in CRA examinations in order to ensure that historically redlined communities, and those most vulnerable to climate change, have improved access to credit and services. The proposal considers more investment in underserved communities; however, CRA regulations have failed to use race as a factor in evaluating bank performance and identifying investments eligible for CRA credit. As a result, they have failed to reflect the CRA's origins as a tool to redress the harms caused by banks' practice of redlining. As observed previously by the Federal Reserve Board's Vice Chair for Supervision, Michael Barr, the CRA should play an important role in providing increased

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[1] EPA. "Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts. U.S. Environmental Protection Agency." EPA 430-R-21-003. 2021. https://www.epa.gov/cira/social-vulnerability-report

[2] Mitchell, Bruce and Juan Franco. "HOLC 'Redlining' Maps: The Persistent Structure Of Segregation And Economic Inequality." National Community Reinvestment Coalition. March 2018. https://ncrc.org/holc/

[3] Zonta, Michela and Caius Z. Willingham. "A CRA To Meet the Challenge of Climate Change," Center for American Progress. December 2020. https://www.americanprogress.org/article/cra-meet-challenge-climate-change/

[4] United Nations High Commissioner for Refugees. "Climate Change and Disaster Displacement." 2020. https://www.unhcr.org/en-us/climate-change-and-disasters.html

[5] Proposal at 33905. https://www.federalregister.gov/documents/2022/06/03/2022-10111/community-reinvestment-act

access to capital for historically redlined communities, and in overcoming discrimination.[6] We urge the agencies to take this opportunity to correct that failure. For the purposes of evaluating a bank's CRA performance, income alone is an incomplete metric.

Communities most vulnerable to climate change are most likely to be communities of color and LMI communities.[7] Therefore, the agencies should ensure that banks are prioritizing those very communities for investment. The final rule should outline publicly available data tools that 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)[8] and the White House Council on Environmental Quality's recently released Climate and Economic Justice Screening Tool (CEJST).[9]

Encourage banks to increase community engagement and relationship building with climate and environmental justice organizations, including through the use of Community Benefits Agreements (CBAs). When this proposal is finalized, banks may become more active in investing in disaster preparedness and climate resiliency. For those investments to succeed, banks need to form community-level relationships. The final rule should include measures that promote relationship building between bank 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 and how banks responded. Banks should also publicly identify the organizations with which they are establishing CBAs, to ensure that banks are not cherry-picking organizations that would ask for less than what communities need, and what other organizations would request. The final rule should additionally consider incentivizing the use of binding CBAs, since they are powerful tools for communities to outline their local financial needs. For example, the final rule should reflect that a CRA exam will include an evaluation of adherence to established CBAs.

Consider how bank investments contribute to climate change and disproportionately impair access to credit for communities. Bank financing of activities that significantly increase greenhouse gas emissions (GHG) and other environmental pollution, notably fossil fuel industry activities, increases the challenges that climate-vulnerable communities—particularly communities of color—face accessing safe and affordable credit and banking services. As climate-related harms fueled by these emissions damage

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[6] Barr, Michael S. "Credit Where It Counts: The Community Reinvestment Act and Its Critics."University of Michigan Law School. 2005. https://repository.law.umich.edu/articles/60/. Barr states, the "One cannot fully understand the rationale for CRA unless one sees it as part of the federal government's response to the long history of private sector and official discrimination in housing and credit markets…. Contrary to the claims of CRA's critics, I argue that racial discrimination, and the effects of such discrimination, likely persists in home mortgage markets, and that the legacy of discrimination provides further theoretical justification for CRA. Moreover, I will argue that CRA in fact plays an important role, alongside ECOA, in overcoming such discrimination."

[7] 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/

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

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

property, gradually impair household and community financial condition, and reduce services to these communities, banks, in turn, are becoming more reluctant to serve them. Banks are concerned, for example, that these impacts will compromise the abilities of these communities to repay loans. This has resulted in banks increasingly avoiding climate-vulnerable areas.[10]

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, and consider how harms to these communities' access to credit should be taken into account in CRA exams. Fair lending reviews are already part of CRA exams, and disparate impact related to climate change should be incorporated into that existing framework.[11]

The agencies should also consider that the financing of polluting activities, such as building of gas pipelines, can threaten tribal rights to manage tribal community development when these activities occur on their lands without the free, prior, and informed consent of these communities.[12] Further, CRA regulations should maintain the government's trust responsibility[13] to federally recognized tribes by reducing points on CRA exams for banks that finance the building of infrastructure on tribal lands without tribal consent.

Do not raise the small and intermediate small bank asset thresholds. The agencies propose changing the definition of a small bank from those which have up to $346 million in assets to banks with up to $600 million in assets, and adjusting the intermediate bank threshold to range from $600 million to $2 billion (the current intermediate range is $346 million to $1.384 billion). These proposed asset threshold increases would reduce the level of CRA responsibility for 20% of all banks, which is harmful when underserved communities in rural areas and smaller metropolitan areas rely on smaller banks for community development financing.[14] This could have a detrimental effect on communities which depend on smaller institutions to meet their banking needs,[15] including rural communities dealing with wildfire and flooding challenges.[16] These banks should remain subject to their current level of CRA responsibilities based on

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[10] McDonnell, Tim. "How new flood risk maps could undermine marginalized neighborhoods." Quartz. Updated July 7, 2020. https://qz.com/1876202/new-flood-risk-maps-could-undermine-marginalized-neighborhoods/; See also, Berman, Michael, "Flood Risk and Structural Adaptation of Markets: An Outline for Action." Community Development Innovation Review, Federal Reserve Bank of San Francisco. October 17, 2019. https://www.frbsf.org/community-development/publications/community-development-investment-review/2019/october/flood-risk-and-structural-adaptation-of-markets-an-outline-for-action/

[11] 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/

[12] "Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights." Multiple Federal Parties to the MOU. September 2021. https://www.doi.gov/sites/doi.gov/files/interagency-mou-protecting-tribal-treaty-and-reserved-rights-11-15-2021.pdf

[13] "Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights." US Department of the Interior. November 2021. https://www.doi.gov/sites/doi.gov/files/interagency-mou-protecting-tribal-treaty-and-reserved-rights-11-15-2021.pdf

[14] Silver, Josh. "Here's Where Changes To CRA Asset Thresholds Will Undermine Community Reinvestment." National Community Reinvestment Coalition. June 30, 2022. https://ncrc.org/map-heres-where-changes-to-cra-asset-thresholds-will-undermine-community-reinvestment/

[15] "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

[16] "Third National Climate Assessment: Rural Communities." U.S. Global Change Research Program. 2014. https://nca2014.globalchange.gov/highlights/regions/rural-communities

assets, and meet the additional requirements of the proposal, to adequately meet the credit and services needs of their communities.

This proposal is a welcome step forward in creating a consistent approach across all three regulatory agencies and we appreciate the opportunity to comment in support of finalizing and strengthening the CRA regulations. It is critical that the agencies better address the challenges of communities of color in addition to LMI communities, as originally intended under the CRA, and that those communities have access to safe and affordable investments in climate resilience as they are most likely to be impacted by the ongoing climate crisis.

Sincerely,

Americans for Financial Reform Education Fund
The Greenlining Institute
Public Citizen

Action Center on Race & the Economy
Adasina Social Capital
Adrian Dominican Sisters, Portfolio Advisory Board
Aquinas Associates
As You Sow
Association for Neighborhood and Housing Development
Boston Common Asset Management
Boston Impact Initiative
California Reinvestment Coalition
Catholic Charities Diocese of Stockton
Center for Community Progress
Center for International Environmental Law
Climate Finance Fund
Coastal Enterprises, Inc.
Coastside Jewish Community
CODEPINK
Community Reinvestment Fund, USA
Congregation of Sisters of St. Agnes Justice, Peace and Integrity of Creation Office
Congregation of St. Joseph
Consumer Action
Consumer Federation of America
Daughters of Charity, Province of St. Louise
Domini Impact Investments
Dominican Sisters of Springfield, IL
Earth Ethics, Inc.
Elders Climate Action
Empire Justice Center

Endangered Species Coalition
Esperanza Community Housing Corporation
Evergreen Action
Extinction Rebellion San Francisco Bay Area
Figure 8 Investment Strategies
FreshWater Accountability Project Ohio
Friends of the Earth US
Honor the Earth
HumanLinks Foundation
Institute for Agriculture and Trade Policy
Interfaith Center on Corporate Responsibility
Jewish Youth Climate Movement
Little Manila Rising
Louisiana Bucket Brigade
Mazaska Talks
Mercy Investment Services, Inc.
MHAction
Miller/Howard Investments, Inc.
Nathan Cummings Foundation
National Community Reinvestment Coalition
National Council of Asian Pacific Americans
National Fair Housing Alliance
National Housing Resource Center
Natural Investments
New Mexico Climate Justice
Northwest Coalition for Responsible Investment
Organized Uplifting Resources & Strategies
Oxfam America
Positive Money US
Prosperity Now
Public Justice
Rainforest Action Network
Region VI Coalition for Responsible Investment
Reinvestment Fund
Reinvent South Stockton Coalition
RISE St. James
Rising Sun Center for Opportunity
Sammamish Valley Alliance
Seventh Generation Interfaith Coalition for Responsible Investment
SharePower Responsible Investing
Sierra Club
Sisters of Saint Joseph of Chestnut Hill, Philadelphia, PA
Sisters of St. Dominic of Caldwell
Sisters of the Humility of Mary

Strategic Actions for a Just Economy
Texas Campaign for the Environment
Texas Housers
The 22 Fund
The Phoenix Group
The Sunrise Project
Thurston Climate Action Team
Transformative Wealth Management, LLC
Transparency Task Force
Turtle Island Restoration Network
Waterway Advocates
WE ACT For Environmental Justice
1000 Grandmothers for Future Generations
20/20 Vision
21 Acres Center for Local Food and Sustainable Living
350 Ventura County Climate Hub
350.org

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