SACRAMENTO
Housing Alliance

909 12th street Suite 114| Sacramento CA 95814

P = 916 455.4900

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Re: CRA NPR Comments – OPPOSE UNLESS AMENDED
OCC Docket ID OCC–2022–0002;
FDIC RIN 3064-AF81;
Federal Reserve Docket No. R-1769 and RIN 7100-AG29

To Whom It May Concern:
The Sacramento Housing Alliance (SHA) thanks the agencies for soliciting comments on a unified proposed Community Reinvestment Act (CRA) rule. The proposed rule seeks to retain key components of the CRA, modernize aspects where industry practices have outpaced the rules, and strengthen the ability of the CRA to stabilize and revitalize communities.

The Sacramento Housing Alliance is a nonprofit organization that advocates for safe, stable accessible and affordable homes in the Sacramento, California region. The Sacramento Housing Alliance builds healthy communities through education, leadership, and policy change. Our efforts include using CRA to ensure banks work toward SHA's vision of everyone in the Sacramento region having a home in a healthy and inclusive neighborhood.

The CRA has been hugely impactful in providing credit, investments, and financial services to underserved communities in California. In fact, the California Reinvestment Coalition, its members, and allies have negotiated over $75 Billion in loans, investments, and financial services for communities of color[1] and low-income communities in California over the last two years as part of Community Benefits Agreements. Yet significant gaps remain in CRA rules and implementation, and the promise of CRA has not yet been realized. While the agencies make several positive suggestions in the proposed rule, we must oppose this proposal unless critical issues are addressed. The CRA must:

- Strengthen requirements to both invest in affordable housing in high opportunity areas AND reinvest in areas with historic disinvestment and high concentrations of segregation and poverty;
- Take race into account and evaluate banks for service to borrowers and communities of color;
- Downgrade banks for harm such as discrimination, displacement, and fee gouging;

[1] The use of the terms "people of color" and "communities of color" is meant to be inclusive of African American/Black, Latino/Hispanic, Asian American/Pacific Islander, and Native American persons and neighborhoods.

- Ensure affordable housing tax credits and lending are reviewed separately, and increased;
- Require banks to serve all areas (not 60%) where they take deposits and lend, and refrain from raising current asset thresholds which will decrease rural reinvestment;
- Prioritize the opening of branches and penalize the closing of branches in underserved areas;
- Elevate broadband/digital equity, access for Native American communities and climate resiliency;
- Scrutinize the qualitative impact of all lending tied to banks, and end Rent-A-Bank partnerships; and
- Enhance community participation so that CRA activity is tied to community needs, CRA ratings reflect community impact, and bank mergers are denied unless they provide a clear public benefit that regulators will enforce

Affordable Housing and Community Development. We appreciate that the proposal focuses on encouraging banks to engage in community development activities, such as investing in CDFIs. Such activities can be amongst the most impactful ways for banks to support community needs. But we are concerned that providing a lengthy list of eligible activities and making it easier to qualify for credit will exacerbate the current dynamic whereby banks engage in the easiest and potentially least impactful of CD activities. For the most part, CRA credit should only be provided where the majority of beneficiaries are in fact, LMI or Black, Indigenous or People of Color (BIPOC) regardless of where the activity occurs or with whom. CD activities should be tied to local community needs as identified in Performance Context analysis or community-negotiated Community Benefits Agreements, either as a condition of receiving CRA credit or through the use of enhancing impact scoring. Tribal or local government plans can serve this purpose of credentialing an activity as responsive to local needs, but CRA rules should not require association to government plans as local governments and local plans are uneven. We strongly oppose any raising of current asset thresholds, since doing so would 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 under the proposal if they are reclassified.

Affordable Housing. Affordable housing remains a perennial need and priority for our state. Mission-driven and community organizations have developed impressive capacity to use the scarce resources available to create affordable homes. However, the proposal threatens to damage one of the key tools in this limited affordable housing development infrastructure by doing away with the separate CD lending and CD investment tests. By combining CD lending and CD investing, we are greatly concerned

that banks will retreat from Low Income Housing Tax Credits (LIHTC), which can be more complex and provide a lower rate of return than CD lending. Any decrease in appetite for LIHTC will result in fewer affordable housing deals, as well as higher costs that will translate into decreased affordability for projects that do get built. We urge the regulators to retain separate evaluations for CD lending and CD investing. Further, positive impact points should be given for projects that have deeper affordability, longer affordability terms and covenants, or are in higher opportunity areas.

Affordable Housing in High Opportunity Areas: In response to question 4 on page 33898, SHA urges rule makers to recognize CRA credit for affordable housing in "High opportunity areas" only when that publicly-regulated housing is held for and rented to low-income households (households with incomes below 60 percent (60%) AMI. Where Low Income Housing Tax Credits are used and some units are rented at 80 percent (80%) AMI levels, investing or lending for those units should be CRA-recognized only when offset by even deeper targeted units within the same development (e.g., 40% AMI units).

Finally, SHA urges rule makers to limit the CRA credit that may be earned by investing in affordable housing outside of areas of disinvestment and historic discrimination. A bank should not be able to meet its full CRA obligations without investing where it's deposits are taken. For example, exclusively investing and/or lending in high opportunity area affordable housing developments will exacerbate historic harms in areas that have suffered from chronic disinvestment and should be considered insufficient by bank regulators. CRA credits must support *both investments in affordable housing in high opportunity areas AND reinvestment in areas suffering from historic discrimination and concentrations of poverty*. Therefore, SHA recommends establishing some expenditure percentage limitation for CRA credit for such affordable housing deals in high opportunity areas.

Anti-displacement. We appreciate the proposal's attempt to address displacement concerns by requiring that rents will likely remain affordable in order to qualify for CRA credit. But the agencies need to go further to discourage banks from financing displacement. While the proposal appears to refuse CRA credit for certain CD activities if they result in displacement, this requirement must be extended to all community development activity, especially affordable and NOAH housing analysis. Regulations should not allow community development credit unless banks can demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting act, UDAAP and other laws. Banks should adopt procedures such as CRC's Anti Displacement Code of Conduct and engage in due diligence on the Beneficial Owners of LLC property owners - data they already collect - to determine if there are any concerns relating to eviction, harassment, complaints, rent increases, or habitability of potential bank borrowers. It is not enough to cease offering CRA credit for harmful products. Banks must be penalized for harm. Bank regulators should conduct extensive outreach to community groups and engage in community contacts to

investigate whether landlord borrowers are exacerbating displacement pressures or harming tenants. Because displacement often has a disparate impact on BIPOC and protected classes, examiners should consider disparate displacement financing to be discrimination, perhaps under the expanded definition, that should trigger CRA ratings downgrades and subject banks to potential enforcement action.

Positive impact points should be given for particularly responsive CD activities that fight displacement, such as support for property purchases by Community Land Trusts and other bona fide, mission-driven nonprofit organizations of rental housing that can be taken off of the speculative market leveraged by policies such as Tenant Opportunity to Purchase Acts (TOPA), Community Opportunity to Purchase Acts (COPA), and other initiatives such as our state law that provides CLTs, nonprofits and prospective owner occupants the right to match an investor's high bid at foreclosure auction to secure a property for the common good, not personal profit.

Broadband and Native Land Areas. Certain CD activities should be further encouraged by allowing for impact scoring and/or partial credit to the extent of LMI and BIPOC benefit even if that is less than 50%. Here, we think of broadband activities, which can be a gateway to all CRA activity (banking, housing, jobs, education, health, etc.), and support for Native Land Areas. We also support CRA credit for lending, investment and services provided to members of the Native American community and (Black Native American) Freedmen, regardless of where they reside.

Climate. We are pleased to see the proposal list climate resiliency and disaster preparedness as eligible activities in light of the devastating impacts of climate change on LMI and BIPOC communities meant to benefit from the CRA. The definitions in the proposal are strong and should be retained, perhaps with more detailed examples. But the agencies have again failed to provide for downgrades where banks engage in harm, such as fossil fuel financing. We have seen financial institutions tout green initiatives, which presumably could earn CRA credit, even where such positive efforts were completely undermined and overwhelmed by substantially greater investments in fossil fuel industries, many of which result in an overshare of environmental burden in LMI communities and communities of color. It is not enough to define positive activities. Banks must suffer penalties and downgrades for financing problematic industries. This is especially the case here, as climate degradation by banks has created a vicious circle where redlined communities disproportionately suffer climate harm at the hands of banks which may then deny loans to such neighborhoods on the grounds that they are too risky and pose safety and soundness concerns. The regulators should treat the financing of climate harm as discrimination that can subject banks to CRA ratings downgrades and possible CRA exam failure where this harm disproportionately impacts communities of color, as is often the case.

Race and CRA. First and foremost, the agencies have failed the most important test for CRA reform – will it substantially advance racial equity and close racial wealth gaps? Despite opening the door to hopes that the rules would clearly address the redlining concerns that gave rise to the CRA, the agencies punted.

The CRA should require banks to serve all communities, especially borrowers and communities of color. Closing the racial wealth gap will make the nation and the economy stronger, elevate the Gross Domestic Product and give the U.S. a more strategic competitive advantage. Examiners should review bank 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. Urban Institute analysis shows that LMI communities and communities of color are not the same. Bank records in extending fairly priced credit, financing community development, opening responsive account products and maintaining branches to and in communities of color should factor into a bank's CRA rating. This proposal not only fails to require this, but it also offers little as an alternative approach to addressing redlining and discrimination.

The proposal to disclose HMDA mortgage lending data on Performance Evaluations is disappointing. Merely requiring disclosure of already publicly available data on a report that the public rarely accesses is not meaningful transparency. The agencies further clarify that any disparities in HMDA data will not impact the CRA rating of a bank. At a minimum, this proposal should be enhanced to also require all banks to place these home lending data tables and maps revealing inevitable disaggregated race and ethnicity disparities in a prominent place on their own websites, include similar tables and maps for small business lending by disaggregated race, ethnicity, gender and neighborhood when the Section 1071 data become publicly available, and provide that the data will impact CRA ratings.

The proposal raises the question as to whether CRA evaluations should consider Special Purpose Credit Programs (SPCPs). But, though SPCPs are meant to serve groups protected by fair lending laws, the proposal ponders SPCP evaluation only as to their impact on LMI consumers. The final rule must explicitly recognize the importance of SPCPs as a critical way for banks to help meet the local credit needs of communities of color, and SPCPs should garner CRA credit and positive impact points that enhance a bank's CRA rating, as should all activities that close wealth gaps for racial, ethnic, national origin, Limited English Proficient, LGBTQ and other underserved groups. These efforts are so important, even if their reach is limited.

One positive aspect of the proposal is the expansion of considerations of discrimination to include transactions beyond credit and lending, such as where discrimination occurs when a consumer tries to open a bank account. But an expanded definition of discrimination is only as helpful as the agencies' willingness and capacity to diligently

look for evidence of discrimination and provide downgrades once it is found. The General Accountability Office recently found that fair lending reviews at the Office of the Comptroller of the Currency were outdated and inconsistent.[2] Agency enforcement of redlining or discrimination cases, as well as CRA ratings downgrades for discrimination, are exceedingly rare. Agency fair lending reviews should be more extensive and rigorous, should solicit and rely on feedback from all relevant federal and state agencies as well as community group stakeholders, and should be reflected more substantively on CRA Performance Evaluations. Findings of discrimination, including for disparate impacts relating to displacement financing, fee gouging or climate degradation, should always result in automatic CRA ratings downgrades, if not outright failure. How can a bank that discriminates be said to be doing a Satisfactory job serving the community?

Mortgages. CRA credit should only be given for mortgage loan originations (not loan purchases by banks from other lenders) to owner occupants (not to investors), unless the originating lender is a mission-driven nonprofit, or the investor purchaser is an LMI or BIPOC buyer or mission-driven nonprofit organization. We support the proposal to consider lending to low-income borrowers and communities separately from lending to moderate income borrowers and communities. We urge the regulators to evaluate lending for each loan purpose (home purchase, refinance, home improvement, HELOC) separately. CRA consideration should NOT be given for mortgage lending to non BIPOC, middle- and upper-income borrowers in LMI census tracts, as this fuels displacement, unless a census tract is shown through the use of established models and data to be in an area not subject to gentrification. We support the use of a primary product test to determine which bank products to evaluate, but this formula must not allow large banks to evade consideration of a sizable portion of their lending. To address this issue, we recommend that the primary products test be set at 15% of all bank products or 50 loans in an assessment area, whichever is smaller. We support a mortgage lending screening test and appreciate agency analysis that suggests that the new scoring model proposed will result in less inflated CRA ratings than currently. This would be a major advance. We are strongly opposed to any suggestion that a bank could fail to serve nearly 40% of its assessment areas and still pass its CRA exams. This seems a recipe for redlining of LMI and rural communities and communities of color.

Small business lending. We applaud the proposed focus on small business lending to smaller businesses. We urge the regulators to require evaluation of both 1) lending to businesses with under $250,000 in gross annual revenue (as proposed), as well as 2)

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[2] General Accountability Office, "Fair Lending: Opportunities Exist to Enhance OCC's Oversight of Banks' Lending Practices," GAO-22-104717, June 21, 2022 available at: https://www.gao.gov/products/gao-22-104717

lending to businesses with under $100,000 in gross annual revenue. Such an approach would ensure that small businesses are served and would be consistent with the current CRA Small Business Lending reporting regime. Yet we are surprised and disappointed by the proposal to define small businesses as ones with $5 million or less in gross annual revenue. The $5 million threshold under Section 1071 was proposed by the CFPB for a different purpose altogether, namely, to establish reporting obligations under a fair lending rule that has not even been finalized (and which could change). Approximately 95% of small businesses, 97.7 of minority owned businesses and 98.3% of women owned businesses have less than $1 million in annual revenue[3], so to establish the definition at $5 million seems counterproductive. The CRA rules should focus examiner attention on section 1071 data reporting, once public, to ensure equal access to fairly priced credit for women and BIPOC-owned businesses and for businesses with less than $1 million in revenue. Larger businesses do not need the CRA's encouragement to banks, yet banks may gravitate to larger businesses and away from small businesses if permitted to do so.

Branches and the Retail Services and Products Test. The agencies propose to revise the Services test. We urge the regulators to retain core consideration of branch access as part of the CRA, and to expand bank branch obligations in a more meaningful way. NCRC analysis shows a tremendous and detrimental march by banks to close branches, especially in low income, BIPOC, and rural communities. A recent analysis by the Committee for Better Banks, shows that branch openings fail to proportionally locate in these same communities. We know that local branches mean more local jobs, more small business lending in the community, and fewer visits to fringe financial providers like check cashers and payday lenders. The CRA rules should clearly penalize branch closures and poor coverage in LMI, BIPOC and rural communities, and encourage through impact scoring the opening of branches in such communities.

Accounts and the Retail Services and Products Test. We support and urge proposals to provide both a quantitative and a qualitative review of responsive deposit and retail credit products. Banks should be evaluated not only for offering, for example, Bank On accounts, but for actually connecting consumers with such accounts. We strongly believe that regulators should review the quality of all bank credit and deposit products, especially in the consumer arena. This includes marketing, language access, terms, rates, fees, defaults, and collections. All bank subsidiaries, affiliates and Rent-a-Bank partnerships should be evaluated. Rent-a-Bank partnerships, in evading state law protections, are particularly pernicious and should be banned. But until then, all products originated through the use of exported bank rate caps should be evaluated as lending by that bank. All consumer loans should be evaluated if they constitute a major product line, not just auto loans. And again, it is imperative that there be a qualitative

[3] See https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf

review of language access, pricing, fees, rates, delinquencies, collections, complaints by consumers and community groups, and investigations and enforcement actions by federal and state agencies. We are very concerned that combining all these critical components of CRA - meaningful access to branches, accounts, and responsive credit products - will give them insufficient consideration in a test representing only 15% of a bank's CRA rating.

Assessment areas. We appreciate the proposal to expand CRA coverage beyond branch locations, as we have urged for years. The Retail Lending Assessment Areas are positive, though we suggest the thresholds be lower (50 mortgages or 100 small business loans should trigger CRA responsibility) and that bank obligations to serve these areas extend beyond retail lending to other bank offerings in order to ensure that more rural communities are covered and that they are better served. But the agencies fail to create deposit-based assessment areas that require banks to reinvest dollars back into the communities from which the deposits derive. This is this whole idea behind CRA. Every large bank knows exactly where its deposits reside, and they should be required to disclose this publicly and to accept CRA assessment areas where significant deposits are domiciled. This is the only way to keep up with emerging industry and consumer trends, to ensure that deposits through neo banks and other deposit-gathering third parties are assigned to local communities, and to prevent abuses and evasions such as San Francisco-based companies like Square and Schwab establishing out-of-state non branch banks with no proposed CRA responsibility in California despite soliciting a plurality of deposits from California. There are a number of points in the proposal where the agencies would impose lesser obligations on banks with between $2 billion and $10 billion in assets compared to banks with over $10 billion in assets. We strongly feel that all large banks should be subject to all the responsibilities outlined for the largest banks. Finally, while we support expanding CRA beyond branches, the CRA should retain a focus on local communities and we urge the agencies to prioritize Facilities (branch) Based assessment areas, perhaps through greater weighting of bank performance there.

Community participation. Though the agencies suggest that community participation is to be expanded, there is little evidence for that in the proposal. Current CRA rules and implementation, as well as this proposal, do a poor job of encouraging and valuing community input. Community comments on exams are not solicited, and when provided, they are ignored. Community contacts appear a relic of the past, and were never bank-specific, instead asking about community needs and how banks generally were doing. Banks and the relevant agencies should post all comments on bank performance on their websites and be required to provide a response. The agencies should actively solicit community stakeholder input on the performance of particular banks during CRA exams and bank mergers. Ninety days should be provided to the public to comment. Banks and regulators should clearly disclose contact information for

relevant staff. Bank mergers should default to public hearings when public commenters raise concerns. Regulators must scrutinize bank merger applications to ensure that community credit needs, convenience and needs, and public benefit standards are met. Community Benefits Agreements should be encouraged as evidence that these standards can be met by the bank, and regulators should condition merger approvals on ongoing compliance with CBAs. Agencies should routinely review all existing consumer complaints, community comments, CFPB and agency investigations during CRA exams and merger reviews. In particular, community groups should be solicited for their views on bank practices relating to climate, displacement, discrimination, and other harms.

Conclusion

The Sacramento Housing Alliance appreciates the opportunity to comment on proposed CRA rules. While there are positive aspects of the proposal, and the agencies are to be commended for working together, we cannot support this proposal in its current form. Significant changes must be made to the final rule to ensure:

- borrowers and communities of color are adequately considered under the nation's anti-redlining law,
- banks are penalized for harm caused to communities - such as through displacement, climate degradation, fee gouging, and discrimination,
- community input is valued and elevated, and
- complex formulaic evaluation methodologies do not result in banks failing to meet critical community needs relating to affordable housing, homeownership, small business development, broadband, and rural and Native American community access.

Thank you for considering our comments and recommendations.

Kendra Noel Lewis
Executive Director