

United States Senate
WASHINGTON, DC 20510

August 5, 2022

The Honorable Jerome Powell
Chair
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Mr. Michael Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20551

The Honorable Martin J. Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Dear Chair Powell, Acting Comptroller Hsu, and Acting Chair Gruenberg:

We are writing regarding the Federal Reserve, Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation's (FDIC) joint proposed rule to amend regulations implementing the Community Reinvestment Act (CRA).

Congress passed the CRA to address government-enabled disinvestment in communities of color through redlining; geographic disparities in bank branching and lending; and the resulting disparities in bank services and access to credit. With passage of the CRA, Congress made clear that banks have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered," including both credit and deposit services.¹

The proposed rule is a critical step in ensuring that banks are meaningfully serving all communities where they do business. The addition of clearly-disclosed benchmarks to assess banks' lending, investment, and services, coupled with a more formal, 10-point scale to grade performance in each of these areas will give lenders and community stakeholders a more nuanced understanding of banks' performance. Low- and moderate-income communities and communities of color have suffered from a lack of individual lending and services as well as community development financing. The final rule should incentivize banks to strive for an outstanding rating in every test. As you finalize the proposal, we urge you to carefully review the benchmarks and weights between tests to ensure that the final rule results in meaningful consideration of every element of a bank's record of serving all communities: in retail, community development, and services. Further, while benchmarks are important for consistency, the agencies have also recognized that performance context is critical, and we strongly support the continued consideration of qualitative factors in all elements of a bank's CRA evaluation.

¹ 12 U.S.C. 2901

Changes in technology and in the banking industry mean that banks may provide many of their products remotely to customers who are not in close proximity to a bank branch or remote service facility. It is critical that bank services provided through technology also serve all customers, and we applaud the agencies' use of new retail lending assessment areas to ensure that low- and moderate-income individuals and small businesses are benefitting equitably from a bank's services. However, it is clear that physical bank branches remain critical for access to services, particularly for low- and moderate-income consumers and small businesses and farms. We applaud the regulators' continued, primary emphasis on branching and activity in areas where a bank has a physical presence. We also support the agencies' proposal to allow banks to post their public files online and urge the agencies to further increase transparency in the CRA process by requiring the files to be posted online if a bank has a public website.

Below, we outline recommendations for key aspects of the proposed rule.

Consideration of Service to Communities of Color

The agencies' proposal is a strong step to ensuring that banks serve low- and moderate-income individuals and communities in the areas where they do business. However, the proposal does little to strengthen oversight of banks' service to communities of color that have been systematically excluded from our housing and banking systems for centuries. CRA's legislative history demonstrates that the law was intended to address the harm caused by redlining and other policies that lock minority communities out of our financial system.² As you work toward a final rule, we urge you to strengthen data collection and disclosure of banks' service to communities of color, including by requiring public disclosure of data; strengthen review of banks' compliance with fair lending and housing obligations; and consider any disparities by race or ethnicity in CRA evaluations and mergers, acquisitions, or other bank requests. In light of both the legislative history and the continued disparities that communities of color face in our financial system, we must take every opportunity to ensure that our banking system is appropriately serving these communities and act when it is not.

Retail Lending

Lack of mortgage, small business, and small farm credit remain significant impediments in low- and moderate-income areas and for borrowers of color. We support the agencies' use of market benchmarks to ensure that banks are adequately serving the prospective homebuyers, small businesses, small farms, and auto loan borrowers in all of their assessment areas. We also support the agencies' proposal to draw on existing data to calculate these metrics, including the forthcoming 1071 data on lending to small businesses and small farms. The new 1071 data will provide a more accurate picture of lending to small entities than today's metrics, which measure lending based on loan size, as opposed to business size. These more accurate metrics will better assess banks' service to businesses that are presently most underserved by the financial system.

² See statements of Senator William Proxmire, then Chairman of the Senate Committee on Banking and Currency, on June 6, 1977. He stated that the CRA was "intended to eliminate the practice of redlining by lending institutions" (13 Cong. Rec. 17,604). Later that day, he stated "By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will invest them elsewhere, and they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood" (13 Cong. Rec. 17,630).

While we support the overall retail lending framework, we urge the agencies to take steps to ensure that multifamily lending is serving low- and moderate-income communities and communities of color if the geographic distribution of multifamily lending is considered in the retail lending test. Multifamily loans do not inherently produce fair and affordable housing. The geographic dispersion of multifamily lending must be paired with robust affordability metrics and appropriate steps within the retail lending test as well as the community development test to ensure that high-cost housing does not result in displacement of the low- and moderate-income individuals who are the intended beneficiaries of CRA. It would be contrary to the clear congressional intent of CRA if the revised retail test incentivized multifamily lending that provides high-cost, luxury units that are only affordable to upper-income households.

Community Development

Low- and moderate-income communities, communities of color, and rural areas have struggled to access financing for community and economic development, and it is critical that CRA maximize its impacts in these underserved communities. It is essential that the agencies maintain their proposal that an activity has a primary purpose of community development, demonstrated by a majority of the funding or benefits produced going to low- and moderate-income communities, to receive community development credit. If the agencies elect to allow an activity that has a bona fide intent of community development to receive credit, even if less than half of the project is directed to CRA's designated beneficiaries, the agencies must adopt additional guardrails, like requiring a minimum percentage of the project to serve low- and moderate-income communities or individuals, to ensure that this provision is not misused.

We support the agencies' proposal to combine community development lending and investments into a single community development financing test for large banks so that there are no longer unintended consequences from a mismatch in the type of funds a project needs and what bank will receive credit to provide. At the same time, we urge the agencies to take steps to ensure that investment, which can be essential in serving the hardest-to-serve communities, is not diminished as a result of the new framework. We also support the agencies' addition of the 11 categories of activities that are eligible for community development credit, including: affordable housing; disaster preparedness and climate resilience; activities with minority depository institutions (MDI), women's depository institutions (WDI), low-income credit unions (LICU), and Community Development Financial Institutions (CDFI); and activities on Native Lands. While many of these activities were eligible for credit under the Interagency Questions and Answers, adding the categories to the regulation emphasizes the importance of each of these types of projects and helps support bank activity in each of these areas.

The agencies have also proposed to publish a list of the types of activities that have received or would be eligible for CRA credit, as well as a process for banks to request confirmation that an activity is eligible for credit before undertaking it. A formal process for all institutions to receive agency feedback on whether a project is eligible for CRA credit would increase the diversity of CRA projects that banks undertake, and we urge the agencies to develop a consistent process for providing banks with timely feedback. We also understand that many stakeholders have requested additional clarity through a list of eligible activities. While a list would add clarity, an overly prescriptive list could also limit banks' willingness to engage in projects that are not

specifically enumerated. We therefore urge you to develop a list of broad types of activities that are eligible for credit, but which leaves room for creativity to meet local needs and challenges.

We also urge the agencies to further tailor definitions of affordable housing and naturally-occurring affordable housing. We agree that a rent affordability standard of no more than 30 percent of 60 percent of area median income (AMI) is appropriate in many circumstances, particularly when additional subsidy is included, to ensure that financing is available to support housing for low-income renters. When a higher standard is necessary to support naturally-occurring affordable housing, including economically distressed rural counties, we urge you to add additional safeguards while allowing for rents affordable at up to 80 percent of AMI. Further, in all cases, it is insufficient to only verify that rents meet the designated affordability standard in the first year of a project. Too often, we hear from renters who experience dramatic rent increases that make their monthly housing costs unaffordable, even when their landlord has secured long-term financing by underwriting to an affordable rent. Similarly, the fact that a building is located in a low- and moderate-income area does not mean it is or will remain affordable to low-income renters, and using this geographic standard could perpetuate gentrification and displacement of existing residents in low-income areas.

We urge the agencies to require that rental housing property operators certify that rents will remain affordable by the standard designated for that property for a minimum of 10 years or provide annual rent roll documentation demonstrating affordability at that standard to receive CRA credit. If banks are to receive credit for ongoing investments or outstanding loans for affordable housing, that housing must be truly fair and affordable to low- and moderate-income renters and communities of color, and examiners should verify that properties remain affordable in order for a bank to receive credit for outstanding financing.

We also urge the agencies to revise the definition of financial literacy to require that financial literacy activities serve low- and moderate-income individuals to receive CRA credit. CRA is explicitly intended to ensure that low- and moderate-income consumers are adequately served by the banking system. Providing CRA consideration for financial literacy activities to anyone, regardless of income, directly conflicts with the CRA's core mission, and this part of the regulation must be revised to adhere to law.

Services

A bank's service offerings, including the distribution of branches, service offerings at those branches, and the provision of high-quality credit and deposit products that meet customers' needs, are a critical component of CRA evaluation. We support the agencies' emphasis on both the placement of branches and the responsiveness of offerings and hours at those branches.

In addition to the activities that the agencies have proposed to evaluate, we also urge you to evaluate a bank's offering of low-cost, small dollar lending products that are affordable to low- and moderate-income consumers and offer a safer alternative to predatory payday lending products. Further, we urge you to add consideration of banks' efforts to serve borrowers with limited English proficiency (LEP) within the services test. The Consumer Financial Protection

Bureau (CFPB) reports that LEP individuals face barriers to accessing financial services³, and the FDIC has found that individuals who spoke only Spanish were five times as likely to be unbanked as English-speaking households.⁴ It is difficult to imagine that a customer could fully understand the implications of a financial product or service if the terms of that product or service are communicated in a language they do not speak. To ensure that all consumers have access to safe, affordable financial products they understand, assessing banks' service to LEP customers is critical.

We also urge you to ensure that the community development services test evaluates whether the bank and its employees use their unique skills to support low- and moderate-income communities and communities of color. The current proposal would allow bank branches in nonmetropolitan areas to receive community development services credit for activities that are not related to financial services, like serving food or organizing a clothing drive. While charitable actions are worthwhile, the CRA is about providing financial services to a community. Community development services should focus on the unique skills bank employees can provide to the many nonprofits and customers in every community, rural and urban, who would benefit from them.

We applaud the agencies' collaboration on a single proposal that would maintain consistent CRA compliance standards across all federally-insured banks while increasing transparency and modernizing the CRA to account for the changing operations of our banking system, and we urge you continue working together to finalize a single interagency rule.

Sincerely,



Sherrod Brown
United States Senator



Charles E. Schumer
United States Senator

³ "Statement Regarding the Provision of Financial Services to Consumers with Limited English Proficiency," Consumer Financial Protection Bureau, 86 FR 6306, January 21, 2021, available at <https://www.federalregister.gov/documents/2021/01/21/2021-01116/statement-regarding-the-provision-of-financial-products-and-services-to-consumers-with-limited>

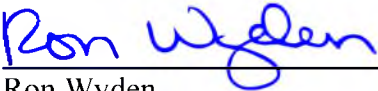
⁴ "2015 FDIC National Survey of Unbanked and Underbanked Households," Federal Deposit Insurance Corporation, October 20, 2016, available at <https://www.fdic.gov/householdsurvey/2015/2015report.pdf>




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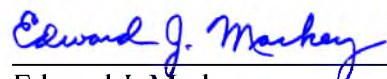
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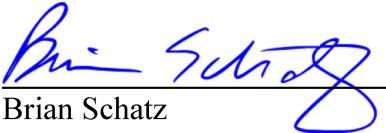
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