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

James P. Sheesley
Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

RE: Community Reinvestment Act (CRA) [R-1769]

August 5, 2022

To whom it may concern:

The National Coalition for Asian Pacific American Community Development (National CAPACD) with its member organizations and allies, is pleased to submit recommendations to the interagency request for public input regarding the Community Reinvestment Act (CRA) [R-1769]. We are a group of national and local nonprofit organizations concerned with the economic well-being of Extremely Low Income (ELI) and Low- and Moderate-Income (LMI) communities of color, and believe that CRA implementation can be further strengthened to address historic and present-day racial discrimination and economic inequity in our communities. We thank the Federal Reserve Board, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) for the opportunity to provide input on comprehensive CRA regulatory updates.

National CAPACD is a coalition of more than 100 member organizations with a mission to build a powerful coalition of Asian American, Native Hawaiian, and Pacific Islander (AANHPI) community-based organizations working with low-income populations. We utilize a comprehensive set of community development strategies from community organizing to development to advance equity and create vibrant, healthy communities. National CAPACD member organizations employ a diverse set of strategies tailored to meeting local community needs, including: the creation and acquisition of affordable housing & community institutions, assistance for renters and homeowners, services for financial capability and empowerment, community organizing, workforce development, and small business sustainability and entrepreneurship. National CAPACD offers capacity building to support these strategies, and is a U.S. Department of Housing and Urban Development (HUD)-certified intermediary. Each year, National CAPACD deploys sub-grants and technical resources, implements training and leadership development programs, develops resources and tools for local usage, and creates peer learning opportunities for members to share best practices and strategies across the network. In total, National CAPACD members speak more than 40 languages and collectively reach more than 1,000,000 constituents through direct and media outreach.

A Preview of Our Recommendations

There have been numerous changes to the financial services industry since the late 1970s when the CRA was signed into law. The opportunity to modernize the CRA is overdue and essential for expanding access to financial services and credit for LMI communities and communities of color, tackling modern-day redlining, and increasing investments in historically divested neighborhoods. In our recommendations below, National CAPACD will focus on advocating for: the inclusion of race and ethnicity in CRA evaluations, language access and culturally-relevant products and services, coverage of independent mortgage companies and non-bank lenders, displacement prevention, including lower-income households in High Opportunity Areas, refining the definition of "Economic Development" for CRA purposes, giving higher CRA ratings for smaller business loans, financial literacy for low-income individuals, more rigorous standards for retail servicing and community development financing, robust data collection, opportunities for community input, safe and affordable products and services, and CRA regulation education. Before we present these recommendations in more detail, we are providing some background information on AANHPIs, LEP communities, and communities of color in general to demonstrate why CRA reform is critical to our communities.

CRA Reform Must Focus on Low-Income Households and Communities of Color

After the landmark civil rights era Community Reinvestment Act of 1977 was signed into law, trillions of dollars flowed into LMI neighborhoods in the form of home mortgages, small business loans, affordable housing construction, and other CRA-related investments. However, there is still a significant lack of lending and investing in these communities as a result of a larger, systemic history of redlining, neglect, and discrimination faced by communities of color across the country. Low-income communities, communities of color, and communities with Limited-English proficiency (LEP) have not received adequate lending and investments from financial institutions at which they bank. At the same time, it is well documented that economic inequality continues to widen in the United States. This leaves many people and especially people of color, without sufficient economic opportunities and puts them at risk for higher levels of housing instability and displacement. Limited English proficient (LEP) communities face particular challenges in accessing culturally and linguistically-relevant services and systems, and have difficulty finding translated materials and interpreters. Moreover, the CRA should be updated to cover the broader range of financial entities that currently exist, including online banking programs that are now on the rise, and tightened to better define the types of projects and programs that provide direct benefit to LMI communities of color and to disincentivize investments that promote displacement.

Understanding AANHPI Communities

An Over-Reliance on Aggregated Racial Data Masks the Needs of AANHPI Communities

Our communities are extremely diverse and there are issues that affect Asian American as well as Native Hawaiian and Pacific Islander communities differently. Generally, there is more national data on Asian Americans than that of Native Hawaiians and Pacific Islanders, making it difficult for Native Hawaiians and Pacific Islanders to demonstrate need in their communities, especially at the federal level. The 2020 U.S. Census Bureau estimated the total population of Native Hawaiians and Pacific Islanders at 1.6 million, so there is a significant difference in size in comparison to Asian Americans at 24 million.[1] A smaller population size is often one of the most-cited reasons for sampling errors or data analysis adjustments that lead to inaccurate or understated data about Native Hawaiians and Pacific Islanders. Therefore, it is critical to have increased and improved data for these communities to ensure accurate representation and equitable banking practices.

In addition, data disaggregation at the national level is necessary to identify AANHPI subgroups by region and provide more translated materials to LEP communities. For example, the Cambodian population in Long Beach, CA, is nearly half a million residents; however, there are no federal resources available in Khmer, the predominant language spoken by the Cambodian community. Similarly, the Bangladeshi population in New York City is the largest poverty group that lives there, yet there are almost no federal housing related resources readily available in Bangla, the predominant language spoken by this community. There is also a need to focus on providing language services for Native Hawaiian and Pacific Islander communities, based on region.

AANHPI Poverty Levels Differ According to Geographic Region, Race, and Ethnicity

Data show that communities of color experience poverty at greater rates than their White counterparts. For example, the U.S. Census Bureau found in its *Income and Poverty in the United States: 2020* report that the percentage of people living below the poverty rate was 19.5% for Blacks, 17.0% for Latinx (any race), 10.1% for Whites, 8.2% for Whites (not Latinx), and 8.1% for Asian Americans.[2] While Asian Americans were reported to have the lowest rate of poverty, it is misleading in aggregation. To demonstrate this, the Pew Research Center reported that income inequality most rapidly increased among Asian Americans between 1970-2016,[3] and their findings for "Asians" included "Pacific Islanders".[4] As an aggregated group, the findings reflected that the top 10% of the income bracket experienced tremendous economic growth while those in the lowest 10% income bracket experienced highly concentrated poverty due to the income gap. The top 10% of AANHPIs made 10.7 times more in income than the bottom 10%. Had the data been disaggregated, it would be more clear which AANHPI subgroups are experiencing the greatest income inequalities.

Poverty data also varies by region. We have found that AANHPIs in poverty were disproportionately concentrated in COVID-19 hot spots[5] at the height of the pandemic, and these regions include some of the highest housing cost markets in the U.S.[6] A *Demographic Snapshot: NYC's Asian and Pacific Islander (API) Immigrant Population* report shows that Asian American ethnic poverty rates significantly differ within the same city. The Bangladeshi community was reported to have a poverty rate of 32%, Pakistani community at 29%, Japanese community at 14%, and Filipino community at 12%.[7] Failure to sufficiently disaggregate wealth data on Asian Americans exacerbates the model minority myth and perpetuates a false narrative that all Asian Americans do not

[1] https://www.census.gov/newsroom/press-releases/2021/population-changes-nations-diversity.html
[2] https://www2.census.gov/programs-surveys/demo/tables/p60/273/tableB-1.xlsx
[3] https://www.pewresearch.org/social-trends/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians/
[4] https://www.pewresearch.org/social-trends/2018/07/12/methodology-15/#race-and-ethnicity
[5] https://www.nationalcapacd.org/aapis-in-poverty-are-disproportionately-concentrated-in-covid-19-hot-spots/
[6] https://www.nationalcapacd.org/covid-19-hot-spots-include-some-of-the-highest-housing-cost-markets-in-the-country-2/
[7] https://www1.nyc.gov/assets/immigrants/downloads/pdf/Fact-Sheet-NYCs-API-Immigrant-Population.pdf

experience much poverty when in reality, many live in high-cost metropolitan areas and struggle to make ends meet.

It is also important to note that Table B-1 in the Census' *Income and Poverty in the United States: 2020* report does not show data separately for Native Hawaiians, Pacific Islanders, American Indians, Alaska Natives, or those reporting two or more races.[8] By not disaggregating, there can only be a skewed understanding of how to better serve these communities or none at all. Disaggregated data is very important to understanding different racial and ethnic poverty rates, and the overall challenges and needs experienced by communities of color.

Predatory Products and Services Strip Wealth from People of Color

Despite the fact that discrimination in lending is still widespread, 98% of banks pass their CRA exams. The Black homeownership rate is as low as it was when discrimination was legal, and overall homeownership rates for families of color are 30 points lower than for White families. Abusive payday lenders that charge excessively high interest rates are largely concentrated in communities of color. LEP communities are also vulnerable to predatory lending and abusive and/or deceptive servicing practices. During the 2006 Home Ownership and Equity Protection Act hearings, LEP borrowers and advocates raised concerns with the Federal Reserve regarding borrowers who negotiated their loans in a non-English language but received English-only documents with less favorable terms than promised. A 2014 Government Accountability Office (GAO) report found statistically significant disparities in the rate of loan modification denials, cancellations, and re-defaults for LEP borrowers and other protected groups as compared to non-Hispanic white borrowers after analyzing certain loan modification data under the Department of Treasury's Home Affordable Modification Program (HAMP).[9]

Displacement in Gentrifying AANHPI Neighborhoods is a Result of Divestment and Increasing Rent

Communities of color, low-income communities, and LEP communities face housing instability.[10] They are at high risk of displacement in gentrifying neighborhoods that they have long occupied. For low-income AANHPIs, the single biggest threat to housing stability is displacement due to rising rents and eviction. In fact, the majority of AANHPIs living in poverty are concentrated in the most expensive and hot-market Metropolitan Statistical Areas (MSAs).[11] The COVID-19 pandemic has only exacerbated this problem and increased the risk of homelessness. Low-income AANHPIs in particular feel the current housing crisis resulting from rapid gentrification; more than 50% of the total AANHPI poverty population lives in the top 10 MSAs compared to 25% of the nation's poverty population. Over 73% of AANHPIs in poverty live in MSAs where the regional median rent is higher than the national median rent of $1,012 per month, as compared to 44% of the general poverty population. Similarly, at the neighborhood level, 64% of AANHPIs in poverty live in higher rent zip codes in comparison to 37% of the general poverty population. This translates to extremely unstable housing, high rates of overcrowding, an inability to build savings due to the large percentage of income that goes toward paying rent, and a disproportionate risk of losing homes. National CAPACD members have reported that elders in their communities are skipping meals and

[8] https://www2.census.gov/programs-surveys/demo/tables/p60/273/tableB-1.xlsx
[9] https://www.gao.gov/assets/gao-14-457.pdf
[10] https://www.urban.org/urban-wire/hispanic-homebuyers-will-be-critical-next-housing-market-recovery-heres-why-they-may-struggle & https://www.cnn.com/2020/06/05/success/black-and-latino-housing-gaps-coronavirus/index.html
[11]https://www.aapineighborhoods.org/data-for-organizing/

increasing collection of recycling to make rental payments; if displaced, they are at risk of becoming homeless.

Micro and Small Businesses Owned by Entrepreneurs of Color and LEP Individuals Have Unique Needs and Face Barriers to Accessing Capital

Our communities are also business owners who are in need of access to credit and trusted financial institutions. According to the 2020 Annual Business Survey (ABS), approximately 1 million employer businesses in the U.S. are owned by entrepreneurs of color, compared to approximately 4.4 million employer businesses owned by White entrepreneurs.[12] Between 2018 and 2019, Latinx-owned employer firms grew by 4.6% and in 2019, were 6.0% (346,836) of all businesses in the U.S. with approximately $463.30 billion in annual receipts.[13] In 2019, there were approximately 581,200 Asian American-owned employer firms with $874.6 billion in annual receipts, 134,567 Black-owned employer firms with $133.7 billion in annual receipts, 7,331 Native Hawaiian and Pacific Islander-owned employer firms with $8.5 billion in annual receipts, and 26,064 American Indian and Alaska Native-owned employer firms with $35.8 billion in annual receipts.[14] In total, non White-owned employer firms had approximately $1.5 trillion in annual receipts, compared to White-owned employer firms, which had approximately $12.7 trillion total in annual receipts.[15] As this illustrates, there is a disparity in the number of employer businesses owned by entrepreneurs of color in comparison to that of White entrepreneurs.

Entrepreneurs of color have certain racial and ethnic needs that require more targeted investments. According to National CAPACD's 2019 report, *Small Business, Big Dreams: A Survey of Economic Development Organization and Their Small Business Clients in Low-Income Asian American and Pacific Islander Communities*, many AANHPI entrepreneurs rely on friends and family for access to capital. Research released in 2018 by the Small Business Administration (SBA) Office of Advocacy (using 2014 Annual Survey of Entrepreneurs data) concluded that AANHPIs were more likely than any other racial category to utilize personal resources for financing their start-up costs. AANHPI micro-entrepreneurs experience significant challenges securing capital from mainstream U.S. financial institutions, due to: poor credit (28% of survey respondents), difficulty in navigating the loan application process (20% of survey respondents), linguistic barriers (18%), and lack of knowledge regarding capital availability (17%). AANHPI business owners have great need for trusted resources that can provide culturally-competent, one-on-one technical assistance and business counseling.

In addition to these challenges, AAHNPI entrepreneurs fear that they may be displaced from the neighborhoods that they've long occupied as a result of gentrification and rising commercial rent costs. In our *Small Business, Big Dreams* report, we found that there are approximately 300 businesses employing approximately 1,500 individuals in Philadelphia's Chinatown. Many of these businesses are in the food, professional services, or retail industry. Of the Philadelphia-based entrepreneurs surveyed in our report, 25% expressed concern about the threat of displacement and hoped for more affordable commercial rent options and legacy business ordinances as policy solutions.[16] These entrepreneurs also shared the difficulties that they face securing loans and meeting quickly evolving market needs due to a lack of in-language services such as translated materials or interpreters from both private and public agencies.

[12] https://www.census.gov/library/visualizations/2021/comm/employer-and-nonemployer-firms.html
[13] https://www.census.gov/newsroom/press-releases/2021/characteristics-of-employer-businesses.html
[14] https://www.census.gov/newsroom/press-releases/2021/characteristics-of-employer-businesses.html
[15] https://www.census.gov/library/visualizations/2021/comm/employer-and-nonemployer-firms.html
[16] https://www.nationalcapacd.org/wp-content/uploads/2019/03/CAPACD_SmallBusinessReport_final_web.pdf

Summary of Major Proposals to Improve the CRA

The proposal for CRA reform presented by the regulators is the most significant opportunity to make meaningful changes to the CRA in close to 30 years. What is put forth in the proposed rule is a significant improvement on current practices and has the potential to benefit many more underinvested and underserved communities. However, given the current opportunity during this critical moment in history, we would like to see it go further in some critical areas to achieve even better results for communities of color and ultimately all communities.

Below is a summary of the core recommendations National CAPACD is proposing that we believe, if adopted, will make the final version of the rule stronger:

- **Race and Ethnicity Should Be an Explicit Part of Any CRA Evaluation**
- **Language Access and Culturally Relevant Products and Services Should Receive an Upgrade in CRA Credit**
- **Independent Mortgage Companies and Other Non-Bank Lenders Should Be Covered**
- **Community Development Financing Should Not Lead to Displacement of Residents**
- **Affordability Standards for Housing Should Adequately Capture Low Income Households, Particularly in High Opportunity Areas**
- **The Definition of Economic Development for CRA Purposes Is an Improvement on Current Practices but Still Needs Some Changes**
- **Smaller Businesses or Business Loans of Lower Value Should Receive Higher CRA Ratings**
- **Financial Literacy Should Not Be Expanded to Cover All Income Levels**
- **The Retail Servicing and Community Development Financing and Serving Tests Need to Be More Rigorous**
- **Data Collection Needs to Be as Robust as Possible**
- **Community Input Is Essential**
- **Products and Services That Are Eligible for CRA Credit Must Be Safe and Affordable**

This is a rare and important opportunity to help reshape a critical piece of legislation, and we are grateful to the regulators for giving us a platform to share our recommendations on how to modernize the CRA to make sure the banking system reaches all the communities it serves, particularly the low-income families and households of color that have faced the greatest challenges accessing safe and affordable financial products and services.

Recommendations

Race and Ethnicity Should Be an Explicit Part of Any CRA Evaluation

Unlike what is currently proposed by the agencies, we believe that the CRA must explicitly consider race and ethnicity in its evaluation process. The grades and ratings given to a particular bank should reflect the extent to which communities of color are effectively served and whether institutions are addressing discriminatory programs and practices. The more attention banks give to these matters, the higher the CRA credit they should receive. The regulators are considering using LMI communities as a proxy for race. A study from the Urban Institute shows that LMI neighborhoods do not overlap highly with neighborhoods of color, and that the CRA's current focus on LMI neighborhoods and borrowers leaves significant gaps in lending to minority neighborhoods and borrowers.[17] Many CRA assessment areas include high concentrations of Black, Latino, and AANHPI populations. The original intent of the legislation will be strengthened by intentionally using race and ethnicity as part of the CRA evaluation.

The agencies are also proposing to include race-based data collected under the Home Mortgage Disclosure Act (HMDA) in public portions of the evaluation process for large banks but they explicitly state that this data will not be used to determine how well banks are meeting their CRA obligations to equitably and inclusively serve all the communities where they do business. Race-based data from HMDA sources and eventually Section 1071 data on race and small business financing should be used to determine an institution's overall grade and be made publicly available so that the CRA can more effectively serve minority borrowers.

Regulators Should Consider Examining Community Development Financing in Expanded Assessment Areas

To prevent practices like redlining, the CRA needs to have meaningful, enforceable requirements for the geographic distribution of CRA investments. Feedback from counselors at our member organizations suggest that online and internet banking is trending upward, and at the same time, predatory lending is increasing. A recent study by the Urban Institute complements this feedback. It shows that 33% of small business lending is done outside bank assessment areas and that banks are less focused on CRA-eligible small business lending to LMI communities and businesses with limited revenue outside bank assessment areas.[18]

The current proposal goes a step in the right direction by expanding the assessment areas for large banks without branches if they meet a threshold for lending activity (defined as annual lending volumes of at least 100 home mortgage loan originations or at least 250 small business loan originations), or what is referred to as retail lending assessment areas (RLAAs). However, the regulators are not proposing that these areas be subject to a community development test. The decision to exempt RLAAs from some type of community development financing test is the wrong approach. These could be large geographies, and it is shortsighted to not subject these areas to a regulatory framework like the CRA that encourages inclusive and equitable financing activities. The rule must also prioritize homeownership opportunities for communities of color and minority-owned small businesses in these expanded footprints.

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[17] https://www.urban.org/sites/default/files/2022-04/should-the-community-reinvestment-act-consider-race_1.pdf
[18] https://www.urban.org/sites/default/files/2022-03/bank-lending-outside-cra-assessment-areas.pdf

Finally, we are intrigued with the idea of adding an underserved tract or assessment area to the evaluation process that our colleagues at the National Community Reinvestment Coalition (NCRC) are recommending. These would be areas with low levels of lending and other forms of investment that would be examined by CRA tests to gauge the retail lending and servicing, as well as the community development financing and servicing taking place within them. An NCRC study suggests the majority of households in these tracts would be people of color.[19] An assessment area like this would also directly target a primary purpose of the CRA, to provide credit to underserved and under-resourced communities.

Language Access and Culturally Relevant Products and Services Should Receive an Upgrade in CRA Credit

The Community Development Financing Test, Retail Services and Products Test, Community Development Services Test, and any other related elements of the CRA examination, should provide appropriately calibrated CRA credits for banks that offer linguistically and culturally appropriate services and resources so that LEP consumers able to equitably access safe and affordable credit that helps them improve their economic and social well-being. These resources are extremely important to LEP households across the country that are predominantly part of minority communities. Today, we see history repeating itself with no-doc mortgages being marketed in neighborhoods where people of color live - often in languages other than English. National CAPACD member organizations like Chhaya CDC in Queens, NY and others are coming across examples of these in their communities.

Examples of eligible activities include grants or contributions to nonprofits or financial intermediaries (small business development centers, HUD certified counseling) that offer culturally or linguistically appropriate products and services, like technical assistance to help start a business or purchase a home, recruiting local branch employees with language and cultural capacity that is well-tailored to local needs (e.g. offering Korean language services where there is a Korean community within the service footprint rather than other languages that do not reflect local population characteristics), and volunteer opportunities for bank employees with language skills and cultural sensitivity training or expertise. We are defining "appropriately calibrated" credit to mean credit that takes into consideration the extra time and effort needed to provide these services. Banks that offer them, particularly when similarly situated banks do not, should receive a boost in CRA credit. This should be explicitly outlined in the non-exhaustive list of eligible CRA activities (more detail than what is currently contained in the Interagency Questions and Answers) the agencies will be putting together for guidance.

Moreover, this should not solely be through Artificial Intelligence (AI) or machine translation given its limitations but through partnerships with community based organizations with the capacity to reach those most vulnerable.

[19] https://ncrc.org/adding-underserved-census-tracts-as-criterion-on-cra-exams/

Affordable Housing

<u>The CRA Should Covered Independent Mortgage Companies and Other Non-Bank Lenders</u>

The CRA should cover independent mortgage companies and other non-depository institutions. According to a recent summary of Home Mortgage Disclosure (HMDA) data by the Consumer Financial Protection Bureau (CFPB), the share of mortgages originated by non-traditional, independent mortgage companies is more than 60%,[20] or the majority of home lending in the United States. Unlike banks who offer these products, these independent entities are not subject to regulations like the CRA, despite the fact that they account for such a significant share of the market.

Since they are not covered, they are under no obligation to offer safe and affordable products that meet the credit needs of low-income families and communities of color in their service footprint. This means that, unlike banks, these independent companies have the freedom to focus their lending on more affluent borrowers and higher profit margins (skimming off the top or cherry picking loans). If we are serious about modernizing the CRA to make it more responsive to the lending landscape that exists now (not 30 years ago), and most importantly upholding the spirit of the CRA by making sure entire communities are serviced by the financial marketplace, these types of non-bank entities should be subject to CRA examination. This is not unprecedented. The state-level CRA law in Massachusetts covers these entities, and has for some time.

<u>Community Development Financing Should Not Lead to Displacement of Residents</u>

The definition of affordable housing in the final rule must be narrowly tailored to prevent further displacement from being an unintended consequence of the rule. The proposal explicitly states that qualifying revitalization activities "cannot lead to the displacement or exclusion of low- or moderate-income residents in targeted geographies." [FR 33895]. This explicit eligibility standard should apply to affordable housing activities in the final rule as well, and that bank CRA ratings should be downgraded when community development activities create displacement.

Banks must also do more to affirmatively prevent the negative effects of gentrification, including proactive evaluations to determine whether their lending activity is displacing communities of color, or in many cases resulting in increased homelessness. If a bank takes deliberate steps to decrease displacement while financing a housing project, they should receive a boost in credit.

Moreover, we welcome the inclusion of "naturally occurring affordable housing" as an eligible activity in the proposal, as this type of housing helps prevent displacement. Credits should be given to institutions that work in partnership with mission driven, community-based developers that are preserving and improving existing sources of affordable housing for low income residents.

Finally, we support the inclusion of activities that construct or rehabilitate affordable housing in high opportunity areas as one of the impact review factors that should be considered highly responsive. These are areas with extremely low poverty rates and where residential development costs are high. Many low-income AANHPI households live in these "hot markets" and are at heightened risk of being displaced. Financing activities in high opportunity areas where these communities are able to

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[20] https://www.consumerfinance.gov/data-research/hmda/summary-of-2021-data-on-mortgage-lending/

stay in their homes should also receive extra CRA credit. The proposal rightfully points out that projects in these areas are "especially impactful" given that affordable housing needs are "heightened," and this type of investment "helps provide low- and moderate-income individuals with more choices of neighborhoods with strong economic opportunities." [FR 33914]

Affordability Standards Should Adequately Capture Low Income Households, Particularly in High Opportunity Areas

The agencies are considering setting the affordability standard for rental housing in conjunction with other programs at 30% of 80% of Area Median Income (AMI) and at 30% of 60% of AMI for naturally occurring affordable housing. Both of these standards are too high, and should be closer to 30-50% of AMI in hot market neighborhoods for true affordability. The proposal itself presents data that shows lower standards create a more targeted approach that increases the occupancy rates of LMI households, which better supports the stated intent of the CRA [FR 33895].

For a concrete example, please consider the Chinatown San Francisco Chinatown neighborhood in California. Approximately one million single room occupancy (SRO) units were destroyed or converted to make way for urban renewal, condominiums, and development from the 1970s through the 1990s. While these older buildings are often substandard living conditions, they remain the most affordable option for new immigrants, seniors, people with disabilities, survivors of domestic violence, and low-wage workers. According to the SRO Families United Collaborative census, 62% of families in 2014 were at risk of displacement without leases, and some of the SRO buildings have been flipped to house for tech workers and students with higher rents after evictions. With San Francisco AMI is above $100,000 for a family of four, the median AANHPI household income is approximately $34,000, which is why the SRO Families United Collaborative pushed for a local affordability standard of 20-50% AMI.

Mortgage Backed Securities (MBS) Should Receive Less Credit Than More Direct Community Development Financing and Services

While we support awarding CRA credit for the purchase of mortgage-backed securities by banks, the final rule should include limits on how they can be counted and how often they can be purchased. We agree with feedback provided by stakeholders highlighted in the proposal that "qualifying purchases of mortgage-backed securities are lower in impact and responsiveness to community credit needs than other qualifying affordable housing activities that more directly support housing for low- or moderate-income individuals." [FR 33897] In essence, the purchase of MBS involves less effort in terms of underwriting and other types of due diligence that are required for activities to finance a new affordable housing complex or to prudently underwrite a loan product that is affordable to a low-income borrower.

Given this, credit for MBS should be limited to the original purchase and not subsequent resales to prevent multiple banks from getting credit for the same MBS. Second, credit should be limited to the mortgages that are related to LMI homebuyers. Third, CRA credit for MBS should be lower than more impactful and responsive housing products and services. Finally, if a bank has an unusually high proportion of community development activities tied up in MBS' little direct financing, this should raise red flags for an examiner and lead to a downgrade in credit when performance context does not provide a plausible explanation for this level of investment.

Economic Development and Small Business Support

The Definition of Economic Development for CRA Purposes Is an Improvement on Current Practices but Still Needs Some Changes

Overall, we welcome the proposed changes to what constitutes economic development under the community development test (and is therefore eligible for CRA credit). The purpose test that is currently part of the review process requires that banks show the economic development activities they are financing are creating, retaining, or improving jobs. Given that a substantial portion of small businesses are sole proprietors, particularly for businesses of color, the status quo is too limiting. While banks should get credit for workforce development and job creation, particularly in areas where the needs are most acute, we do not think it should play such a central role in determining what qualifies for CRA credit. It is important to provide pathways for sole proprietorships to take on additional employment, but there are other critical needs that these businesses need support and financing for to grow and thrive.

The three-pronged approach currently recommended is a step in the right direction, but could use a few modifications to make it stronger and more responsive to entrepreneurs with the greatest needs. The first prong should not be anchored to government programs or plans, but we do think extra credit should be given to banks that strategically align their economic development activities with thoughtfully crafted government initiatives. This gives banks the flexibility to finance impactful projects that do not involve public entities, either wholly or in part, while still encouraging partnerships when promising government programs exist.

We are also excited to see that capital access through financial intermediaries and support for businesses through technical support are explicitly part of the definition (prongs two and three). Mission-driven entities like Community Development Financial Institutions (CDFIs) play a critical role in providing capital and other forms of assistance to underinvested populations, and technical support is equally as essential to the creation and development of viable businesses. As long as access to capital from other sources is an eligible activity under the first prong of the definition, the second and third prongs are important additions and highlight the value that intermediaries and technical support play in this space.

Finally, like concerns about housing displacement, some AANHPI-owned small businesses also fear they will be displaced through gentrification and rising commercial rents. Economic development activities that lead to business displacement or culturally insensitive commercial financing should result in CRA rating downgrades.

Smaller Businesses or Business Loans of Lower Value Should Receive Higher CRA Ratings

Impact Factor Review (Economic Development)

The agencies are proposing a set of impact review factors that will help determine the community development financing performance of a particular bank. One of the listed factors is activities that support small businesses with Gross Annual Revenues (GAR) of $250,000 or less. As we outline below, how the agencies are proposing to measure impact and responsiveness on CRA tests needs significant work. With this said, having a set of factors is a step in the right direction, including one that focuses on small business support.

Instead of establishing a threshold of $250,000 in this context, a better approach is to award greater credit for servicing businesses with lower GAR's. As mentioned above, smaller businesses have the greatest needs and quite a few are minority-owned. Awarding extra credit for supporting them can incentivize lending to these smaller businesses. In National CAPACD's *Small Business, Big Dreams report,* we found among respondents who sought capital (exclusive of eligibility for debt-based financing) that 20% desired loans between $25,000 and $50,000, 47% receive loans through friends and family, 33% rely solely on their own money, and 23% desired loans over $50,000. In addition, National CAPACD community-based member CDFIs indicated in the report that they typically grant loans between $10,000 and $25,000. National CAPACD has two member organizations that are also CDFIs that successfully deployed loans over $25,000- the Renaissance Economic Development Corporation in New York, NY and Pacific Asian Consortium in Employment in Los Angeles, CA. These smaller loans are sought after by many of our member organizations' clients and also meet their credit needs.

Under the Retail Products and Services Test, the agencies are proposing a category that encourages examiners to consider the credit products and programs that meet the credit needs of small businesses, including microloans (loans of $50,000 or less). The current regulation does not explicitly mention these needs, so this is a welcome addition. Like with businesses that have less revenue, loans of smaller value should be awarded greater credit in most instances. Theoretically, this could mean a loan of $100,000 could receive more credit than one for $250,000. Since the upfront costs associated with smaller dollar loans are similar to larger ones, yet larger loans are more profitable for banks, there is less incentive to offer small dollar products. The CRA could step in and help create that incentive by offering more credit for smaller loans.

Evaluating Small Business Lending

When it comes to evaluating the small business lending record of a particular bank, the proposal divides the analysis into two parts, one related to geography and the other to borrowers. The geographic metric measures the percentage of lending made in low-and moderate income (separated by income level)) census tracts to small businesses with GAR's of $250,000 or less and small businesses with GAR's of more than $250,000 but less than or equal to $1 million. The borrower metric measures the percentage of loans made to small businesses with GAR's of $250,000 or less and small businesses with GAR's of more than $250,000 but less than or equal to $1 million for the assessment area as a whole. The current approach already evaluates businesses at or below $ 1 million. The proposal is adding the separate assessment for those with GAR's of $250,000 or less and asks whether the thresholds should be shifted up or down.

The decision to create a separate analysis for even smaller firms is based on data presented in the proposal that indicates smaller firms tend to have the hardest time obtaining financing. This new approach takes this into consideration and in doing so better satisfies the purpose of the CRA [FR 33938]. The data highlighted also shows that firms with GAR's of $100,000 or less face even greater needs, but they are recommending $250,000 as a way to balance targeting those with the greatest needs, against "capturing a large enough population of firms, particularly employer firms."

We would recommend creating three separate analyses, the two already proposed as well as a separate one for businesses with revenues at or below $100,000. An additional metric would not be overly burdensome, and would add an important dimension to the examination without excluding businesses. Most importantly, it is important to choose an approach that does the most to satisfy the purpose of the CRA, and addressing unmet needs is at the core of the statute. This analysis will do more to support LMI-owned businesses and entrepreneurs of color who are more likely to have businesses with less annual revenue. In addition, sole proprietors represent a significant share of businesses, particularly for lower-income and minority entrepreneurs, and they also tend to be businesses with lower revenues.

Financial Literacy Should Not Be Expanded to Cover All Income Levels

The agencies are considering removing the income level caps for financial literacy programs. Right now, credit is reserved for programs offered to lower income households. Under the proposal, banks would receive CRA credit for financing these programs without regard to the income level of participants. We are opposed to this recommendation. These literacy programs are chronically under-resourced. Given these capacity constraints, a more impactful approach would be to target these programs to the low-income families and communities of color who need them the most. This modification could also be used as a loophole to avoid supporting LMI families and communities of color. Moreover, higher income populations are much less likely to need counseling from these sources, given the greater economic and social capital they have to access resources on their own. Incentivizing literacy programs for these households goes against the main purpose of the CRA, targeting divested and under-resourced communities.

The Retail Servicing and Community Development Financing and Serving Tests Need to Be More Rigorous

All the CRA tests that are set forth in the proposal - the Retail Lending Test, Community Development Financing Test, Retail Products and Services Test, and Community Development Services Test – are marked improvements from current practices, and we commend the agencies for taking the task of modernizing the CRA seriously by designing upgrades that could meaningfully reduce ratings inflation and increase the accuracy and effectiveness of CRA examinations.

With this said, there is still room for improvement, especially for the Community Development Financing, Retail Products and Services, and Community Development Services tests. Overall, the Retail Lending Test is more rigorous than the other three, relying on quantitative measures to a greater extent. This is particularly the case when it comes to assigning performance levels and scores, which are based on a set of more clearly defined performance ranges that leave less room for subjective examiner judgment. While some degree of qualitative judgment has value, it comes at the expense of consistency and standardization, which could inflate ratings, create uncertainty, and reduce effectiveness.

We believe the agencies must further refine the other major tests to make them more rigorous, particularly in terms of measuring impact that is informed by performance context, which needs much more clarity and definition. The regulators are proposing to collect data on community development activities at the individual project level that are accompanied by impact indicatorsThis is a welcome development, but needs to be fleshed out more to scores and ratings that make evaluations more comprehensive and less affected by unfettered examiner judgment, along with other more specific metrics and ratings tools.

In terms of context, this should translate to an assessment area with more economic development rather than housing needs receiving added credit (boosts in scores) for small business support or similar financing, to more effectively and accurately address the underlying needs of a community. It is essential that activities that are more impactful and responsive to needs receive higher ratings.

The proposal indicates the agencies are contemplating a move in this direction [FR 33975], including assigning additional weight to activities that are determined to be more impactful and responsive. They state the reason they are not presenting a more defined approach at this time is a lack of data, but they would consider a more quantitative approach down the line. We would prefer a firm commitment from the agencies to refine these tests, as well as an agreement to start the process at a specific time in the future. This provides more clarity and accountability to the public.

Data Collection Needs to Be as Robust as Possible

Overall, we support as robust a data collection process as is feasible for the examination. The more data collected, the greater our understanding of how banks are meeting the credit needs of consumers and ultimately, the more accurate and effective the evaluation. More specific recommendations related to data collection include but are not limited to the following:

- We agree that once Dodd Frank Section 1071 data is available, this should be used for CRA evaluations on the small business side much like Home Mortgage Disclosure Data (HMDA) is currently used for mortgage lending on CRA exams.
- The agencies are proposing to disclose data on mortgage lending by race and ethnicity (HMDA data) in an organized, easy to read format, and to eventually do the same for small business lending when 1071 data becomes available. We strongly support this recommendation. However, as mentioned above, we would like this data to have a direct impact on CRA performance. We would also like the data disaggregated by race and ethnicity as much as possible. The AANHPI community alone comprises more than 50 separate groups in this country. Aggregated data on race masks the different experiences these groups are having with mainstream banking and could lead to an inequitable distribution of financial products and services.
- There are different points throughout the proposal where the agencies are recommending that large banks collect data on various CRA metrics. For some of these, they are limiting the mandate to large banks with assets of $10 billion or more. These exemptions should be removed and the final rule should require all large banks to collect this data. Any additional burdens that may be caused by this requirement are outweighed by the value this data provides for the CRA evaluation and overall impact.
- As suggested earlier, we support the recommendation to track data in a standardized format with a template and defined data fields that measure both input and impact. This increases consistency, makes it much easier to make comparisons between banks, and helps examiners understand the financing landscape. The template could be refined over time to reflect what is learned about lending and servicing.
- Data should be publicly available whenever possible. This includes presenting data in ways that are easily digestible to the public, not just researchers and academics. This could include dashboards or reports that illuminate what the data reveals about how the banking industry is meeting the needs of consumers.

Community Input Is Essential

Throughout the CRA process (both upstream and downstream), it is absolutely critical that input from the community is sought out and has a meaningful impact on CRA ratings. Community members have firsthand knowledge of the financing needs that exist as well as the bank servicing practices in their communities. Moreover, the evaluation cannot rely exclusively on the institutions that are being assessed to provide the context and other factors they will be examined against. Community input should also carry as much weight as any information provided by the banks related to community needs, and should be considered alongside institutional capacity and issues related to safety and soundness.

Products and Services That Are Eligible for CRA Credit Must Be Safe and Affordable

It is also important to state that issues of safety and soundness are related to consumer safety as well as institutional preservation. The products and services provided to consumers by banks need to be safe and affordable. Low-income AANHPI communities are routinely targeted by abusive financial actors offering predatory products and services that strip them of wealth and security. Banks that offer high cost, predatory products or have unreasonably high delinquency rates should have their CRA ratings downgraded or face other consequences that lower CRA performance. We also think an ability-to-repay (ATR) standard would be a strong addition to the final rule. Financial products that use ATR as part of the underwriting process should receive extra credit for those products. This makes sure borrowers are able to afford a particular loan product before "green lighting" the application.

The Current Definitions of Small, Intermediate, and Large Banks Should Remain the Same

We disagree with the recommendation to shift the asset size requirements for banks to be classified as small, intermediate, or large. If the new thresholds are finalized, small banks would be those with assets of at least $600 million rather than $346 million, intermediate banks would be those with assets between $600 million and $ 2 billion rather than $346 million to $1.384 billion, and large banks would be those with assets of $2 billion or more rather than $1.284 billion. According to estimates outlined in the proposal, this would result in 778 intermediate banks reclassified as small and 216 large banks reclassified as intermediate [FR 33924].

The reasons for the shift are primarily concerns about banks with more limited capacity having difficulties adjusting to regulatory changes. While we are sympathetic to the operational burdens faced by institutions when complying with regulatory requirements, there does not appear to be compelling reasons to support a change from the status quo other than concerns that regulatory shifts can increase burdens in a theoretical sense, particularly when it is weighed against what could be lost. Banks appear to be complying with current practices without significant challenges and there are no estimates that suggest the new regulatory approach will be prohibitively burdensome. Most importantly, since larger banks are subject to greater CRA evaluation and performance standards, the downgrading of banks means fewer will be held to these more rigorous standards, which moves us away from "strengthening the achievement of the core purpose of the statute" [FR 33885] rather than closer to making banks adequately and equitably provide financial products and services to their communities.

The Retail Lending Test Should Modify How to Calculate Major Product Lines, Weight Loan Originations More Than Purchases, and Identify Underperforming Markets

Major Product Lines

Major product lines should be determined by the number of loans of a particular type (business, housing, etc.) rather than by categories of loans that comprise 15% or more of the total dollar amount of retail loans made by an institution in an assessment area, as currently proposed. We agree with the stakeholder feedback highlighted in the proposal that a definition based on loan number rather than a percentage of the whole takes into consideration the greater reliance on smaller value loans for low-income families and households of color [FR 33928]. Under the proposal, it is theoretically possible for a few large business loans to make a bank eligible for CRA evaluation and not a larger number of smaller valued loans. Given that the purpose of the CRA is to make sure typically disinvested communities are able to access safe and affordable financial products and services, we prefer definitions that center around their lending activity.

The regulators state that an emphasis on "retail lending products with the biggest impact" and the need for a more "streamlined" process that does not focus on smaller, more incidental lending as a reason for establishing major product lines [FR 33932].

We recognize that the calculations used to determine retail lending performance does take numbers into consideration, and this could end with a bank getting a less than stellar rating, but ratings only come into play if the category of loans meets the percentage threshold currently proposed by the regulators. No examination takes place without meeting the threshold, which means banks would not be held to account for their lending activity when they are beneath the threshold.

Originations vs. Purchases

The Retail Lending Test should give more weight to loan originations than loan purchases. It takes more time and effort to originate a loan than to purchase one already made. Originating a loan involves underwriting (with all the documentation and other related activities) and other forms of due diligence that purchasers do not have to address. This is particularly important for low-income borrowers and borrowers of color who have fewer resources and connections and are more likely to need one-on-one assistance. Moreover, these groups are less likely to have relationships with mainstream banking institutions and face greater barriers to accessing financial products and services on the best terms. For those banks that do take the time to find safe and affordable products for underserved consumers, originations should carry greater weight on CRA exams.

Underperforming Markets

While the use of benchmarks, like the market benchmark that is used as an evaluative tool under the Retail Lending Test, is a useful way to gauge how well a particular bank is meeting their financial obligations under the CRA, it is possible to have an entire market that is underperforming, which means the benchmark is no longer accurately appraising bank performance. For example, the Retail Lending market benchmark calculates the eligible lending done by all banks in an assessment area divided by the deposits in the aggregate. This is compared to the same lending ratio for a particular bank. If the rate is below the market, this could signal that the bank is not satisfactorily meeting their lending obligations. This no longer works if all the lenders in the assessment area are underperforming. The agencies suggest that a statistical model could be developed using demographic and other relevant data that could identify underperforming markets. We support the design and use of these models to help more accurately gauge bank performance.

Regulators Need to Think About How to Educate Stakeholders About the New Rule Sooner Rather Than Later

Even while the regulators are in the process of finalizing CRA modernization, they should consider the best ways to educate community development organizations, relevant intermediaries, nonprofits, and other stakeholders about the new rule, how it will affect these entities when it is released, and what opportunities the reformed rule provides. This is especially important given that CDFIs and other community-based finance and service providers are being explicitly defined as avenues for CRA credit. The CRA is a complicated, multi-layered regulation, and institutions that play such an important role in reaching the under-resourced need to understand the new regulation and how best to comply with and take advantage of the revised framework.

Conclusion

We appreciate the regulators taking the time and effort to develop a proposal to make the CRA more responsive to the realities of a modern banking system, and most importantly, to consider ways to make this system work for everyone, not just those who already have the economic and social capital to ensure a prosperous future. The latest version of the rule is an improvement on current practices, but it can be made even stronger. In this letter, we have presented a series of recommendations that will go a long way toward improving the rule. We appreciate the opportunity to present feedback on the proposal, and would like to see the final rule incorporate these suggestions. We look forward to the release of the final version of the legislation.

Sincerely,

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San Francisco, CA

Asian Law Alliance
San Jose, CA

Asian Pacific Islander Small Business Program
Los Angeles, CA

Asian Services in Action (ASIA)
Akron, OH

Center for Pan Asian Community Services, Inc.
Atlanta, GA

Chhaya Community Development Organization
Queens, NY

Chinese American Museum of Chicago
Chicago, IL

Chinese-American Planning Council
New York, NY

Chinese Information and Service Center (CISC)
Seattle, WA

Coalition for a Better Chinese American Community
Chicago, IL

EMBARC
Des Moines, IA

Faith Action for Community Equity
Honolulu, HI

Hamkae Center
Centreville, VA

HANA Center
Chicago, IL

Hawaiʻi Alliance for Community-Based Economic Development
Honolulu, HI

Hmong Association of WA
Seattle, WA

Khmer Girls in Action
Long Beach, CA

Little Tokyo Service Center
Los Angeles, CA

Low Income Housing Institute
Seattle, WA

MidTown Cleveland, Inc
Cleveland, OH

Philadelphia Chinatown Development Corporation
Philadelphia, PA

Raksha
Atlanta, GA

Renaissance Economic Development Corp.
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SIPA (Search to Involve Pilipino Americans)
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Thai Community Development Center
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White Center Community Development Association
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National Allies:

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National Fair Housing Alliance
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