August 5, 2022

Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW
Washington, DC 20551

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

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

Re: Community Reinvestment Act Proposed Rulemaking
Federal Reserve: Docket No. R-1769 and RIN 7100-AG29
FDIC: RIN 3064-AF81
OCC: Docket ID OCC-2022-0002

To whom it may concern:

New Economy Project appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding updating the Community Reinvestment Act (CRA). Our comments focus on three critical areas related to the CRA NPR: (1) the longstanding need to focus squarely on race; (2) regulatory examination and enforcement; and (3) the imperative to consider banks' role in climate change.

New Economy Project has deep, decades-long experience working with the CRA. Based in New York City, New Economy Project's mission is to build an economy that works for all, rooted in racial and social justice, cooperation, neighborhood equity, and ecological sustainability. Since our organization's founding in 1995, we have worked closely with hundreds of community organizations to challenge systemic discrimination by Wall Street banks and other financial services companies that harm New Yorkers, and that perpetuate poverty, inequality, and segregation in New York City neighborhoods. We also work with neighborhood groups to create and strengthen wealth-building initiatives, like community land trusts and mutual housing, worker cooperatives, community-based financial cooperatives, public banks, and more.

Over the years, we have seen up close the myriad benefits of CRA. But we have also seen the CRA become an increasingly ineffective tool for securing critical bank services, lending, and investments in low- and moderate-income neighborhoods and communities of color. Similarly, we have observed regulators' consistently lax enforcement of the CRA, as banks across the board typically receive satisfactory or better CRA ratings – even when evidence shows banks clearly flouting the spirit and letter of the CRA, and despite the glaring persistence of redlining throughout the country.

In many respects, the situation is significantly worse, and more complex, than when CRA was enacted in 1977. Most immediately, communities of color must now contend with the disastrous proliferation of high cost, abusive financial products and services – increasingly delivered by predatory financial technology companies that profess to serve, but in fact, strip wealth from, "underserved communities." Online lenders routinely seek to circumvent strong state consumer usury laws like we have in New York, by entering into sham rent-a-bank arrangements, including with banks subject to the CRA.

Meanwhile, banks are systematically pushing out their low- and moderate-income customers, making clear they don't want to serve them, through closing of branches and imposition of high minimum balance requirements and predatory fees, and by failing to address reported fraud on people's accounts. During the first year of the pandemic alone, for example, banks exacted more than $1.6 billion in overdraft and related fees from their NYC customers, according to our estimate.

The CRA is intended as an anti-redlining law, and the updated regulations must incorporate race in CRA exams to the fullest extent authorized. The regulators acknowledge the shortcomings of CRA in the NPR, stating that "[e]ven with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent." The statement clearly refers to the *racial* wealth gap and *racial* disparities.

The banking regulators since 1995 have generally taken the position that they are inhibited from directly considering race in CRA exams. This is of course preposterous on its face, given that the CRA is fundamentally about race, as documented in its legislative history – not to mention virtually every dealing our organization has ever had with banks about the issue. In any event, the regulators should use their fullest authority to incorporate race in CRA exams and CRA enforcement.

The NPR states that the regulators would retain the weak approach of connecting CRA ratings to fair lending exams, with a bank's violation of fair lending laws potentially resulting in a downgraded CRA rating, This mechanism has proven ineffective, and we call on the regulators to go much further.

Take Wells Fargo, which was found this year to have denied a disproportionately high percentage of mortgage refinancing applications from Black homeowners during the pandemic. Although this egregious discrimination was well documented, the regulators conceivably would be unable to take these disparities into account under the proposed CRA revisions, absent a determination of a fair lending violation.

Meaningful regulatory enforcement is critical to a strong CRA. Revisions to the CRA regulations are only as good as their implementation and enforcement. On one hand, the CRA embodies extremely important principles – that banks exist thanks to a public charter, play a critical public function in our economy, and have a continuing and affirmative obligation to serve all communities equitably. Many groups have used the CRA to get banks to the table and win major benefits for their communities. And much community development lending and investment has taken place against the backdrop of CRA, as banks know they will receive favorable consideration in their CRA exams for engaging in these activities.

On the other hand, the regulators have never enforced CRA with rigor or vigor. As advocates frequently note, it is rare for regulators to give a bank a less than satisfactory CRA rating. Regulators have consistently approved bank mergers and other transactions subject to CRA review, even for banks found to have engaged in discriminatory practices, and even when groups present substantial evidence that banks in question are abjectly failing to meet community credit needs.

With respect to online lending, the proposal in the NPR to create new assessment area thresholds for large banks is a step in the right direction. We urge the regulators to further strengthen the regulations by providing that any bank that lends its charter to fintech companies to enable them to circumvent state laws will receive a substantial noncompliance CRA rating (if not lose its charter).

The CRA regulations must be revised to address the climate crisis and its disproportionate impact on frontline communities of color. More than ever, bold action is needed from all quarters to address the climate crisis, and there is ample basis for incorporating climate-related provisions in the CRA regulations.

Severe storms, flooding, wildfires, and drought resulting from climate change are devastating communities across the U.S. and throughout the world. Low- and moderate-income frontline communities of color experience these consequences "first and worst" as a result of longstanding redlining and disinvestment – the very inequities the CRA was intended to address. In a recent blog post, Public Citizen quotes one expert, who explains, "While the primary consequence of red-lining was to undermine the ability of Black families to generate cross-generational wealth…it also left them deprived of local infrastructure investment – and disproportionately exposed to the very flood impacts that now again threaten the availability of home loans."[1]

Banks should receive CRA credit for meaningful investments they make in climate change-related mitigation, resilience, and adaptation measures in low- and moderate-income frontline communities. The CRA regulations must ensure that low- and moderate-income communities have access to fair and affordable credit, as they work to address local climate impacts. Banks must be required to document to their regulators how they engaged with communities to identify and structure climate-related investments, including how they worked with local groups to follow just transition and similar accountability principles.

Regulators also must take into account banks' investments in fossil fuels and other climate-harming activities. These investments are directly related to banks' CRA performance. Banks pour large sums of money into fossil fuel investments that accelerate climate change, taking a major economic and physical toll on frontline communities. Banks then deem these communities as "risky" in terms of safety and soundness, refusing to maintain branches or make affordable loans and investments in the very communities they helped to destabilize. The regulators have the opportunity – and obligation – to include relevant climate change considerations in the revised CRA regulations.

Thank you again for the opportunity to comment on this important rulemaking. Please contact Sarah Ludwig (sarah@neweconomynyc.org), our founder and co-director, and Andy Morrison (andy@neweconomynyc.org), our associate director, with any questions.

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[1]https://www.citizen.org/news/a-community-reinvestment-act-that-meets-the-climate-moment/