

## **SHORT FORM - DRAFT CRA COMMENT LETTER**

National Alliance of Community Economic Development Associations (NACEDA)

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### **Summary**

On May 5, 2022, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) proposed to jointly amend their regulations implementing the Community Reinvestment Act (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. The jointly proposed rule is also known as a Notice of Proposed Rulemaking or an NPR. Regulators asked specific, numbered questions throughout the NPR to minimize burden on responding entities and individuals. NACEDA's comment letter largely follows the numbered format offered by the proposing agencies and accompanies those numbered responses with a short number of priority recommendations. But commenters are not required to follow their format.

**Comments on their proposed rule are due to the agencies on August 5, 2022.**

NACEDA drafted this short form letter to encourage targeted and meaningful participation in the commenting process among community based development organizations.

### **The Proposed Rule and How to Submit**

Link to the proposed rule in the Federal Register:

<https://www.federalregister.gov/documents/2022/06/03/2022-10111/community-reinvestment-act>

You should deliver your comment letter separately to each of the three regulating agencies. Here's how:

#### **OCC:**

Go to this link: <https://www.regulations.gov/commenton/OCC-2022-0002-0001>. After clicking on this link, the user will see a form and can either type in comments directly and/or upload a file.

#### **FDIC:**

Email: [comments@fdic.gov](mailto:comments@fdic.gov). Include RIN 3064-AF81 on the subject line of the message.

#### **Federal Reserve Board:**

Email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket and RIN numbers (Docket No. R-1769 and RIN 7100-AG29) in the subject line of the message.

**SHORT FORM SAMPLE LETTER**

**August 5, 2022**

**To:**

Federal Reserve Board of Governors, Docket No. R-1769 and RIN 7100-AG29  
Federal Deposit Insurance Corporation, RIN 3064-AF81  
Office of the Comptroller of the Currency

**From:**

[Your organization name, address, and contact information]

Re: Regulations implementing the Community Reinvestment Act of 1977 (CRA),  
Federal Reserve Board of Governors, Docket No. R-1769 and RIN 7100-AG29 and FDIC RIN  
3064-AF81

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[Your organization] appreciates the opportunity to comment on the Notice of Proposed Rulemaking for the Community Reinvestment Act. In summary, the proposed rule is a marked improvement over the status quo. However, it's far from ambitious.

[Offer a paragraph about your organization, its mission, accomplishments, and a description of the community you serve.]

We hope you find this letter helpful.

**1) The NPR does not go far enough to explicitly consider race and ethnicity of bank customers and communities.**

We were disappointed about the absence and focus on race in the NPR. Regulators dedicated substantial space in the 2021 ANPR inquiring how race can be considered as part of CRA exams. What happened to the responses? Did regulators abandon that path of inquiry? If so, why? What was learned during the ANPR process that caused them to back away? The Community Reinvestment Act was passed in direct response to racism in banking. It's an issue CRA has never fully addressed, and this NPR represents another major instance in the almost five decades of shortcomings. We ask regulators to please collect data related to race in the retail and community development tests; make that data public; and use it consequentially in CRA exams.

Specifically, we ask regulators to:

- Add racial data to the list of factors considered when creating assessment areas.
- Compare lending data by race to peer-banks within assessment areas.
- Formally incorporate HMDA and 1071 data by race into an examination.

- Severely punish banks that are found to have violated civil rights, fair lending, or fair housing laws.
- Add an impact review factor to the community development finance test that considers investments made in historically redlined communities and areas in which the residents are predominantly people of color.

- 2) The asset categories as proposed (large, intermediate, small) will notably reduce community development financing, particularly in rural areas and small cities.** The proposed bank asset sizes move about 900-1000 banks into a lower asset category than they would occupy under the status quo. And regulators have chosen to reduce community development responsibilities for banks in smaller asset categories. Research from NCRC estimates that well over \$1b in community development financing could be lost as a result. If that estimate proves to be anywhere close to accurate, it would be a significant failure for the regulating agencies.
- 3) The newly formed “Retail Lending Assessment Areas” must be subject to a community development test.** We strongly urge regulators to reconsider community development responsibilities in RLAAAs. The NPR outlines how RLAAAs would be formed in entire MSAs or the non-MSA area of a state. Those area sizable chunks of geography for which banks should have some level community development responsibility, even if only a version of the status quo community development test.

Relatedly, we were disappointed regulators chose not to delineate facility-based assessment areas (FBAAs) around loan production offices (LPOs). We ask regulators to reconsider.

However, if regulators choose not to delineate FBAAs around loan production offices, we maintain that loan production offices should automatically trigger at least one retail lending assessment area, which should also include a required community development test. LPOs are too often the only lending or banking-related presence in rural areas and small towns. The NPR gives banks the option to claim credit for banking services provided at their LPOs. Responsibilities should come with that opportunity.

- 4) Regulators should give more consideration and acknowledgement to banks that utilize effective, creative, and exemplary local community engagement strategies.** In past CRA commenting opportunities, national advocates have been very critical of how little attention regulating agencies have paid to local community engagement strategies banks employ to identify community needs in LMI areas. We maintain that criticism and offer a potential solution that fits within the framework offered by the NPR. We propose that exemplary community engagement strategies in LMI areas be recognized as a standalone impact review factor when regulators are considering CRA credit for an eligible community development activity.

- 5) **We encourage regulators to begin thinking *now* about how to roll out a new rule to stakeholders, in addition to banks.** Few people in the community development field remember how the last set of CRA changes were implemented over 25 years ago. Regulators must make a significant effort to reach community based development nonprofit organizations and other stakeholders. The Federal Reserve Bank System, for example, has a dedicated function to CRA education that has served the field well for years. However, NACEDA fears that that function (and related functions in the other regulating entities) will provide woefully insufficient levels of education to the field. This is particularly important because this process has become so complicated and technical that many community-based organizations currently feel ill-equipped to meaningfully participate.
- 6) **The community development financing test for intermediate banks must be required, not optional.** Under the proposal, intermediate banks are subject to a status quo community development test or the option for the new community development finance test. NACEDA urges regulators to make all intermediate banks subject to the community development finance test. Subjecting large and intermediate banks to the new test creates consistency among banks and examiners, and it provides others in the community development industry (non-bank investors, funders, community development nonprofits, public officials, researchers, and others) with a consistent understanding of how banks are regulated on their community development activity.
- 7) **The NPR does not do enough to clarify the role of community-based development organizations (CBDOs) in CRA.** The NPR sometimes recognizes the important role CDCs and CBDOs play, such as in the eligible activities section in which a qualifying housing activity has a ‘primary community development purpose,’ if developed by one of these organizations.

A currently active federal definition of a CDC is offered in the Office of Community Services within HHS. We ask regulators to adapt and adopt this definition to identify organizations that qualify as a CDC for CRA purposes.

In addition, there are several places in the NPR in which the role of these organizations can be clarified and, at the same time, help regulators and banks achieve their stated CRA-related objectives. For example, a similar ‘primary purpose’ standard could be applied to economic development activities that include a CBDO.

- 8) **Maximize the amount of data that will be publicly available as part of the CRA examination and pre-approval process.** We appreciate the level of detail agencies propose to publish as part of CRA exams. We also urge transparency and published determinations as part of the bank-accessible pre-approval process proposed.

We urge the agencies to also make public all data associated with a CRA exam to further the agencies’ stated goals of making CRA exams more consistent and transparent. This is

particularly important for the gathering and publication of community development finance-related data. This type of data has the potential to be transformative for the community development field. We encourage regulators to play a leadership role in this regard.

And whenever possible, the agencies should use plain language in these publications to make the information accessible to community members. This information would benefit all stakeholders – fellow regulators, financial institutions, and community advocates.

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