

August 5, 2022

ATTORNEY GENERAL RAOUL SUPPORTS FEDERAL EFFORT TO STRENGTHEN ACCESS TO BANKING SERVICES FOR UNDERSERVED COMMUNITIES

Urges Federal Agencies to Go Even Further in Enacting Regulatory Reforms to Address Persistent Racial and Economic Disparities Exacerbated by the Pandemic

Chicago — Attorney General Kwame Raoul, as part of a coalition of 19 attorneys general, today announced his support of a joint effort by the Federal Reserve Board of Governors, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency to revise and strengthen regulations under the Community Reinvestment Act (CRA).

The CRA is a critical civil rights law enacted by Congress to prevent racially-discriminatory redlining in housing, and encourage banks to help meet the credit needs of their entire communities, including low- and moderate-income neighborhoods and individuals. [In a comment letter](#), Raoul and the coalition express support for the federal agencies' proposed rule, and urge them to go even further in implementing reforms to help tackle persistent racial and economic disparities exacerbated by COVID-19.

"Everyone deserves access to housing. As people continue to feel the financial impact of the pandemic, it is more important than ever to enact policies that level the playing field by addressing racial and economic disparities the pandemic exacerbated," Raoul said. "The current reforms proposed to the Community Reinvestment Act are a step in the right direction, but we must go further by requiring financial institutions to meet the needs of our most vulnerable communities."

Since the CRA was passed by Congress in 1977, it has helped direct trillions of dollars in investments back to low- and moderate-income communities, increasing access to financial services and loans that incentivize the availability of affordable housing and support small businesses.

In the comment letter, Raoul and the coalition express support for many aspects of the proposed rule. However, the attorneys general recommend additional measures to help ensure that regulators have the tools needed to carry out CRA's imperative: that financial institutions be required to address the needs of the most vulnerable communities. Raoul and the attorneys general argue that doing so has never been more important.

In prior comment letters, the states expressed concern that the widening racial wealth gap stemming from historic redlining would be exacerbated by an uneven pandemic recovery. Now, two-and-a-half years into the COVID-19 crisis, the states face an affordable housing crisis, increased homelessness and housing insecurity, and historic levels of inflation that disproportionately threaten low-income communities and communities of color. Regulatory reform under the CRA can play a key role in responding to these challenges.

Accordingly, in the comment letter, Raoul and the states encourage the agencies to focus on:

- Ensuring that the rulemaking vindicates the CRA's core purpose of addressing racial inequities.
- Raising the regulatory bar to ensure that banks are taking meaningful action to meet the needs of low- and moderate-income communities.
- Leveraging incentives to encourage affordable housing development in low- and moderate-income communities without displacement.

Joining Raoul in filing the comment letter are the attorneys general of California, Delaware, the District of Columbia, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Washington.



State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

August 5, 2022

VIA EMAIL

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
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RE: Comments on Notice of Proposed Rulemaking: Regulation BB, 12 CFR Part 228, RIN 7100-AG29, Docket No. R-1769

Dear Secretary Misback:

We, the Attorneys General of the States of California, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Washington write in support of the above-captioned joint notice of proposed rulemaking (NPRM) that the Board, the FDIC, and the OCC have issued relating to the Community Reinvestment Act (CRA).¹ This proposal is a marked improvement over prior proposals that some of the agencies set out in the last several years, which many of the States signatory to this letter opposed.² However, the proposed Rule should be modified to ensure that this once-in-a-generation modernization effort gives the regulators the tools they need to carry out CRA's imperative—that financial institutions be required to address the needs of our most vulnerable communities—in our States and across the Nation.

This imperative has never been more important. In prior comment letters, the States expressed concern that the widening racial wealth gap stemming from historical redlining would be exacerbated by an uneven pandemic recovery. Now, two-and-a-half years into the COVID-19

¹ Community Reinvestment Act, 87 Fed. Reg. 33884 (June 3, 2022) (to be codified at 12 C.F.R. 228; 12 C.F.R. 25; and 12 C.F.R. 345) (“Proposed Rule”).

² The letters sent by the Attorneys General on November 19, 2018, April 7, 2020, and February 16, 2021 are attached hereto.

crisis, the States face an affordable and accessible housing crisis, increased homelessness and housing insecurity, and historic levels of inflation that disproportionately threaten low-income communities and communities of color. CRA regulatory reform can be a key element of addressing these problems.

The States encourage the agencies to focus on three key issue areas: (1) Ensuring that this rulemaking vindicates CRA's core purpose to address racial inequities; (2) Raising the regulatory bar to ensure that banks are taking meaningful action to meet low- and moderate-income (LMI) community needs; and (3) Leveraging incentives to encourage affordable housing development for LMI communities without displacement.

I. Focus on Systemic Racial Inequities.

For the Final Rule to truly reflect CRA's remedial purpose of addressing racist lending and banking practices such as redlining, it must address persistent systemic inequalities and the entrenched intergenerational effects of discrimination.³ For example, while lending to LMI homeowners falls significantly short of their overall share of homeownership, lending to Black homeowners is even more deficient.⁴ More generally, the racial wealth gap between Black and white Americans remains roughly the same today as it had been two years before the Civil Rights Act was passed in 1964.⁵ A CRA modernization effort is incomplete without examining the impact of modern-day lending discrimination, redlining, and continued neighborhood segregation.⁶

Such neighborhood segregation by race remains rampant across the United States. Fifty years after the enactment of fair lending laws, and nearly forty-five years after CRA's adoption, nearly all former redlined neighborhoods nationwide remain racially segregated. And two-thirds

³ Laurie Goodman et al., *Should the Community Reinvestment Act Consider Race?* Urban Institute 30 (Jan. 2022), <https://www.urban.org/research/publication/should-community-reinvestment-act-consider-race>.

⁴ Linna Zhu et al., *Modernizing the Community Reinvestment Act: An Analysis of Low and Moderate Income Mortgage Lending*, Urb. Inst. 4-5, <https://www.urban.org/sites/default/files/2022-06/Slides-ModernizingTheCRA.pdf> (finding that lending to low-income and minority borrowers falls short of their homeownership benchmark).

⁵ Fed. Reserve Bank of Cleveland, *What is Behind the Persistence of the Racial Wealth Gap?* (Feb. 28, 2019), <https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2019-economic-commentaries/ec-201903-what-is-behind-the-persistence-of-the-racial-wealth-gap.aspx>.

⁶ Cal. Task Force to Study and Develop Reparation Proposals for African Americans, *Interim Report* 152 (June 1, 2022), <https://oag.ca.gov/ab3121/reports> (finding that “[l]aws that historically enforced or sanctioned racial housing segregation have produced neighborhood segregation that persists today. Because modern life revolves around a family’s neighborhood—including access to employment, credit scores, housing values, the amount of funding for local schools or parks, and policing—the racist policies that produced neighborhood segregation have created a discriminatory foundation upon which other laws have been built”) (citing, inter alia, Bruce Mitchell & Juan Franco, *HOLC “Redlining” Maps: The Persistent Structure of Segregation and Economic Inequality*, Nat’l Community Reinvestment Coalition (Mar. 20, 2018)).

of areas that were greenlined (i.e., deemed by federal mortgage insurers to be the “safest” neighborhoods for mortgage lending based on racist stereotypes), are still overwhelmingly white.⁷ A study examining segregation and home lending patterns across 20 different metropolitan areas found that modern segregation is so pervasive that to achieve integration at least half of the population would need to move to another neighborhood.⁸

In addition to residential segregation, communities of color continue to face home lending discrimination.⁹ A study of 2020 data found Black mortgage loan applicants were denied at a rate 84 percent higher than their white counterparts.¹⁰ And loans to white borrowers are likely to be on better terms (including lower interest rates) than Black or Latino applicants even with similar credit risk factors; white borrowers’ properties are also likely to receive higher appraisals.¹¹ All of these various forms of lending discrimination come at a high cost to Black and Latino borrowers, estimated at \$765 million in extra interest per year.¹²

Discrimination also manifests in the small business context. While multiple factors contribute to racial disparities in businesses ownership and lending,¹³ the role of lending

⁷ Ryan Best & Elena Mejia, *The Lasting Legacy of Redlining: We Looked at 138 Formerly Redlined Cities and Found Most Were Still Segregated—Just Like They Were Designed to Be*, Five Thirty Eight (Feb. 9, 2022), <https://projects.fivethirtyeight.com/redlining/#explore-top> (analysis of 138 metropolitan areas found overlap between HOLC redlining maps and today’s neighborhood segregation and inequities so precise, researcher called maps “the Rosetta stone of American cities”).

⁸ Mark Nichols, *After a Half-Century of Federal Oversight, Segregated Neighborhoods Are Still Pervasive*, ABC (Feb. 9, 2022), <https://abcnews.go.com/US/half-century-federal-oversight-segregated-neighborhoods-pervasive-abc/story?id=82678035>.

⁹ Consumer Financial Protection Bureau (CFPB), *CFPB, DOJ and OCC Take Action Against Trustmark National Bank for Deliberate Discrimination Against Black and Hispanic Families, Trustmark to Pay \$5 Million Penalty and \$3.85 Million to Increase Mortgage Credit Access in Memphis Neighborhoods Impacted by Redlining* (Oct. 22, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-doj-and-occ-take-action-against-trustmark-national-bank-for-deliberate-discrimination-against-black-and-hispanic-families/> (announcing settlement against Mississippi-based bank that discriminated against Black and Hispanic neighborhoods by “deliberately not marketing, offering, or originating home loans to consumers in majority Black and Hispanic neighborhoods in the Memphis metropolitan area”).

¹⁰ Jacob Passey, *‘The Gap in Credit Access is Growing Along Racial Lines’: Black Applicants are Denied a Mortgage 84% More Often than White Peers*, MarketWatch (Jan. 17, 2022), <https://www.marketwatch.com/story/the-gap-in-credit-access-is-growing-black-applicants-are-denied-a-mortgage-84-more-often-than-white-peers-11642099864>.

¹¹ Robert Bartlett, et al., *Consumer-Lending Discrimination in the FinTech Era*, 143 J. of Fin. Econ. 30, 5 (2019), <https://www.sciencedirect.com/science/article/abs/pii/S0304405X21002403> (finding that Latino and African-American borrowers pay 7.9 and 3.6 basis points more in interest for home-purchase and refinance mortgages, respectively, because of discrimination; these margins represent 11.5% of lenders’ average profit per loan).

¹² *Id.*

¹³ See *Interim Report*, *supra* note 6 at 470 (citing Tiffany Howard et al., *Banks & the Black Community, What Can Major Commercial and Retail Banking Institutions Do to Better Support Black Entrepreneurs and Businesses in the U.S.?*, Cong. Black Caucus Foundation (2020)) (noting how “several

discrimination is clearly one of them. For example, Black-owned businesses were five times more likely to not receive any of the PPP funding they had requested compared with white-owned businesses.¹⁴ And even when they were able to secure a loan, Black business owners received less funding, with an average PPP loan amount less than half of the average for Asian- and Latino-owned businesses, and one-quarter of the average for White-owned businesses.¹⁵

As recognized in the NPRM, the CRA is a core civil rights law, a product of the movement that also produced laws banning credit discrimination like the Fair Housing Act and Equal Credit Opportunity Act.¹⁶ By passing this suite of laws, Congress “created two distinct but complementary toolkits to fulfill” its goals of ending racially discriminatory housing and credit practices.¹⁷ To fulfill this purpose, the Final Rule should provide that CRA evaluations explicitly address race in several ways.

First, the States agree with the agencies’ proposal to expand the definition of discrimination to include “any discriminatory or other illegal practice” (for example, those related to deposit accounts), even if those practices are not directly connected to extensions or denials of credit.¹⁸ We also support the proposals to clarify that unfair, deceptive, or abusive practices—as well as discriminatory activities by banks’ subsidiaries and affiliates—are inconsistent with banks’ obligations to meet community credit needs.¹⁹ Further, in determining whether discrimination has occurred, the States encourage the agencies to not only focus on fair housing/lending actions by the federal Department of Justice, but to also consider evidence of discrimination obtained by state and local agencies, in addition to any other evidence ordinarily reviewed by the agencies in their evaluations.

Second, as proposed in the NPRM, banks’ Home Mortgage Disclosure Act (HMDA) data on bank lending and investment by race should be part of the CRA evaluation process.²⁰ However, the Proposed Rule only provides for disclosure of this already-public data and

factors contribute to the racial disparity in American business ownership such as systemic barriers to securing start-up capital and the relatively small size of Black businesses”).

¹⁴ Silvia Foster-Frau, *Racial Bias Affected Black-Owned Small Businesses Seeking Pandemic Relief Loans, Study Finds*, Wash. Post (Oct. 15, 2021) https://www.washingtonpost.com/national/ppp-bias-black-businesses/2021/10/15/b53e0822-2c4f-11ec-baf4-d7a4e075eb90_story.html (finding that only 43% of Black-owned firms, compared with 79% of white-owned firms, received all of the PPP funding they sought; 41% of Black-owned businesses closed during the pandemic, the most of any racial or ethnic group).

¹⁵ Sabrina T. Howell, et al., *Racial Disparities in Access to Small Business Credit: Evidence from the Paycheck Protection Program*, Nat’l Bureau of Econ. Res. 2, 5, 30 (Nov. 19, 2021), https://www.nber.org/system/files/working_papers/w29364/w29364.pdf.

¹⁶ Proposed Rule, 87 Fed. Reg. at 33888.

¹⁷ See *id.* (recognizing that “CRA and fair lending are mutually reinforcing”); Ben Horowitz, *Fair lending laws and the CRA: Complementary tools for increasing equitable access to credit*, Fed. Res. Bank of Minneapolis (Mar. 8, 2018), <https://www.minneapolisfed.org/article/2018/fair-lending-laws-and-the-cra-complementary-tools-for-increasing-equitable-access-to-credit>.

¹⁸ Proposed Rule, 87 Fed. Reg. at 33989.

¹⁹ *Id.* at 33989-90; see also *id.* at 33927 (Question 52) (addressing affiliate activities generally).

²⁰ *Id.* at 34002-03.

expressly states that this disclosure will not have a direct impact on banks' ratings.²¹ Federal regulators have recently pointed directly to HMDA data to show critical lending disparities such as "higher interest rates and denials among Black and Hispanic consumers in the mortgage market"²²; such disparities should be taken into account in CRA examinations.²³

Third, the Final Rule should award CRA credit under the retail services and products test for Special Purpose Credit Programs (SPCPs) that assist would-be homeowners of color.²⁴ While the Request for Feedback recognizes SPCPs, it only does so in the context of LMI borrowers; the agencies should recognize that the "special social needs" that SPCPs are designed to address²⁵ explicitly include race.²⁶ In short, while the agencies appropriately recognize continued problems with discrimination and segregation, and CRA's origins as a means of combatting them, they can do more to directly address racial discrimination in the CRA compliance context.

II. Raise the Bar for Banks' CRA Performance.

In addition to ensuring that the Final Rule vindicates CRA's focus on racial inequality, it is critical that the Final Rule live up to the agencies' expressed intent to "broaden the reach of CRA activity and raise the bar" for evaluating banks' service of low- and moderate-income communities.²⁷ The States support the NPRM's proposed new responsiveness metrics evaluating whether banks' credit and deposit services are responsive to actual community needs, and propose refinements below.

²¹ *Id.* at 34003.

²² CFPB, *Mortgage Refinance Loans Drove an Increase in Closed-End Originations in 2020, New Report Finds* (Aug. 19, 2021), <https://www.consumerfinance.gov/about-us/newsroom/mortgage-refinance-loans-drove-an-increase-in-closed-end-originations-in-2020-new-cfpb-report-finds/>. Germane to CRA, CFPB stated in the news release regarding this study that HMDA "data help show whether lenders are serving the housing needs of their communities." *Id.*

²³ Once small business lending data is available under Section 1071 of the Dodd-Frank Act, this data should be treated similarly. See CFPB, *Small Business Lending Data Collection Rulemaking*, <https://www.consumerfinance.gov/1071-rule/>; see also Proposed Rule, 87 Fed. Reg. at 33992-93, 33997-98.

²⁴ Proposed Rule, 87 Fed. Reg. at 33968.

²⁵ *Id.* at 33966.

²⁶ See Liam Reynolds et al., *How People-Based Special Purpose Credit Programs Can Reduce the Racial Homeownership Gap*, Urb. Inst. (Apr. 22, 2022) <https://www.urban.org/urban-wire/how-people-based-special-purpose-credit-programs-can-reduce-racial-homeownership-gap>; Acting Comptroller of the Currency Michael J. Hsu, Keynote address to the Black Homeownership Collaborative's Fair Housing Month Virtual Forum "Advancing Fair Access to Quality and Sustainable Credit" (Apr. 19, 2022), <https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-51.pdf> (discussing San Diego Black Homeowner Program which uses grant funds, down payment assistance, and homebuyer counseling to help minority homebuyers).

²⁷ Martin Gruenberg, *Modernizing the Community Reinvestment Act: Ensuring Banks Meet the Credit Needs of Their Communities*, Urban Institute 21:20–21:24 (Jun. 3, 2022), <https://www.urban.org/events/modernizing-community-reinvestment-act-ensuring-banks-meet-credit-needs-their-communities>.

a) *Recognize Importance of Community Development Financing by Adopting New Test.*

The States support the agencies' adoption of a new test measuring banks' community development financing activity, which previously were only reviewed at some banks' option and under a broader test for other banks.²⁸ While the proposed quantitative benchmarks are important and useful, we agree with the agencies' proposal to maintain a qualitative aspect to the analysis via an impact review.²⁹

b) *Include CRA Activity Serving Both High-Poverty Census Tracts and Persistent-Poverty Counties as Impact Factors.*

The States support the proposed inclusion of activities serving persistent-poverty counties and areas with low levels of community development financing as impact factors; as the NPRM states, this “would highlight activities serving areas with longstanding economic challenges where community development needs are significant.”³⁰ In addition, and in response to the request for feedback in the NPRM, the States strongly encourage the inclusion of CRA activity serving high-poverty census tracts as an additional impact factor to ensure a balance of investment in rural and urban LMI communities.³¹

A persistent-poverty county has at least 20 percent of its population below poverty over each of the past three decades. Across these counties, racial or ethnic minorities make up more than 60 percent of the population.³² Because the persistent nature of poverty in these counties reflects historic and systemic inequalities, the NPRM's emphasis on increasing investment in these communities aligns directly with the CRA's purpose.³³

²⁸ Proposed Rule, 87 Fed. Reg. at 33970-80.

²⁹ *Id.* at 33974-75.

³⁰ *Id.* at 33913.

³¹ Incentivizing smaller investment projects for both affordable homeownership loans for LMI rural individuals in need of accessible housing and the construction of smaller dollar investment multi-unit accessible affordable rental housing is in line with the CRA's purpose. *See, e.g.*, National Disability Institute, Reforming the Community Reinvestment Act Regulatory Framework, <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/01/cra-remarks.pdf> (stating that “[h]ousing development for LMI often critically miss the unique challenges of providing housing that is both accessible and affordable”).

³² U.S. Gov't Accountability Office, GAO-20-518, *Targeting Federal Funds: Information on Funding to Areas with Persistent or High Poverty* 14 (2020), <https://www.gao.gov/assets/gao-20-518.pdf>; *see also* Tracey Farrigan, *Rural Poverty Has Distinct Regional and Racial Patterns*, U.S. Dept. of Agriculture, Econ. Res. Serv. (Aug. 9, 2021), <https://www.ers.usda.gov/amber-waves/2021/august/rural-poverty-has-distinct-regional-and-racial-patterns/> (“Rural residents who identify as Black or African American and American Indian or Alaska Native were particularly vulnerable. . . . Nearly half the rural poor within these groups resided in high and persistent poverty counties in 2019.”).

³³ David Lipsetz, *Geographic Equity Belongs in Federal Policymaking*, in *Investing in Rural Prosperity* 428 (Andrew Dumont & Daniel Paul Davis, eds. 2021).

In the NPRM, regulators request feedback as to whether to include activities in high-poverty census tracts as well;³⁴ the States support doing so. Because most persistent-poverty counties are in rural areas,³⁵ an exclusive focus on these communities would neglect many LMI communities in urban and suburban neighborhoods. To capture, in the words of the NPRM, “a balance of high needs areas in both metropolitan and nonmetropolitan areas,”³⁶ the States urge the agencies to consider both persistent-poverty counties and high-poverty census tracts as an impact factor.³⁷

c) *Incentivize Investment in CDFIs and MDIs with Presumption of Positive CRA Impact.*

The States are encouraged that the NPRM incentivizes partnership with Treasury-certified Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs),³⁸ as well as a presumption of positive-CRA impact for investments in MDIs and CDFIs.³⁹ These incentives are critical; as noted in the NPRM, these institutions are “key in helping to meet the credit needs of low- or moderate-income individuals and communities.”⁴⁰

d) *Incentivize Credit and Deposit Services and Lending to Small and Minority-Owned Businesses.*

Ensuring that small and minority-owned businesses have access to credit and other banking services is another critical aspect of CRA compliance. The States support the NPRM’s proposed inclusion of serving small businesses as an impact factor, and collecting data on this point.⁴¹ Because the smallest businesses face the greatest challenges in securing these services from banks, the States recommend the agencies evaluate and treat as an impact factor lending to businesses earning between \$250,000 and \$100,000 in gross annual revenue, and give even greater impact credit for lending to small businesses earning \$100,000 and less in gross annual revenue.⁴²

³⁴ Proposed Rule, 87 Fed. Reg. at 33913.

³⁵ U.S. Gov’t Accountability Off., *supra* note 32, at 12; see Joseph Dalaker, Cong. Research Serv., R45100, *The 10-20-30 Provision: Defining Persistent Poverty Counties* 9-23 (2022).

³⁶ Proposed Rule, 87 Fed. Reg. at 33908.

³⁷ The Rule should provide for the most inclusive method of calculating these areas to ensure that communities are not excluded due to differing data sets, rounding, or margins of error. See U.S. Gov’t Accountability Off., *supra* note 19, at 12 (finding that different reports calculating the number of persistent-poverty counties—using the same definition as the NPRM—varied in their results, ranging from 382 to 571 counties, depending upon data set, degree of rounding, and margins of error).

³⁸ Proposed Rule, 87 Fed. Reg. at 33913, 34019.

³⁹ *Id.* at 34021.

⁴⁰ *Id.* at 33907.

⁴¹ *Id.* at 33998, -99 (Question 156), 34002.

⁴² *Id.* at 33938 (Question 75).

- e) *Provide CRA Credit for Revitalization Activities that Benefit LMI Residents in Indian Country.*

The NPRM has an appropriately strong focus on encouraging targeted revitalization investments, as well as disaster prevention and climate mitigation projects, in Native Land Areas.⁴³ Regulators have noted the myriad challenges to ensuring access to financial services in Indian Country,⁴⁴ and robust CRA recognition of positive investment activities there can be a powerful tool for overcoming them. The States in particular support the regulators' recognition that only activities that do not "displace or exclude" LMI residents should be given CRA credit.⁴⁵

- f) *Provide CRA Credit for Financing Activities that Support Broadband Services.*

Similarly, the NPRM appropriately encourages financial investments in broadband services.⁴⁶ In our modern digital world, broadband services play a vital role in creating access to financial services, as well as jobs, healthcare, and education; this was particularly evident during the COVID-19 pandemic.⁴⁷ The digital divide in America has long persisted due to the costs of developing or accessing broadband services,⁴⁸ and robust CRA incentives can provide a critical tool to overcome investment costs and connect American communities.

- g) *Limit CRA Credit to Activities Benefiting LMI Communities.*

The States oppose the agencies' proposal to expand CRA credit to include all financial literacy activities, regardless of whether they primarily benefit low- or moderate-income individuals or families.⁴⁹ As stated in the NPRM, this could result in a reduction in services to LMI communities;⁵⁰ on a broader level, activities that receive CRA credit should, by their very nature, be targeted at the communities that require reinvestment. On a similar note, the States

⁴³ *Id.* at 33910-11.

⁴⁴ *See, e.g.,* Lael Brainard, *Strengthening the CRA: A Conversation with Representatives of Native Communities*, Fed. Res. Board of Governors (July 19, 2022) <https://www.federalreserve.gov/newsevents/speech/brainard20220719a.htm> (noting, inter alia, that rate of Native Americans who are unbanked is triple rate for U.S. households overall).

⁴⁵ Proposed Rule, 87 Fed. Reg. at 34021. *See* general discussion of displacement *infra*.

⁴⁶ *Id.* at 34020-21.

⁴⁷ Jordana Barton, *Closing the Digital Divide: A Framework for Meeting CRA Obligations*, Fed. Reserve Bank of Dallas 1 (2016); Emily A. Vogels et al., *53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak*, Pew Research (Apr. 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

⁴⁸ John Cassidy et al., *Closing the Digital Divide: How States Can Expand Broadband Access*, Deloitte (Dec. 1, 2021), <https://www2.deloitte.com/us/en/insights/industry/public-sector/state-broadband-access-digital-divide.html>.

⁴⁹ *Id.* at 33909 (Question 27).

⁵⁰ *Id.* at 33909.

support the proposal to limit CRA credit eligibility for loans purchased from the originator, to prevent banks from inappropriately gaining CRA credit for churning loans at no benefit to the community.⁵¹

h) *Encourage Banks to Enter into Community Benefit Agreements.*

In the NPRM, the agencies set out a “non-exhaustive, illustrative” list of activities that qualify for CRA credit⁵² and ask whether they should adopt a similar list of activities that would *not* qualify.⁵³ While such lists may be useful to help banks plan their CRA activities, they are no substitute for feedback from community-based organizations regarding the actual needs on the ground. Thus, the agencies should encourage banks to enter into community benefit agreements to meet specific local needs.⁵⁴

i) *Expand the Retail Services and Products Test to Apply Its Full Evaluation to All Large Banks.*

The States support the NPRM’s proposals to expand the retail services and products test to ensure that banks “offer products that are responsive to low- and moderate-income communities’ needs.”⁵⁵ While the States are encouraged by these proposals, we urge the agencies to apply this full evaluation to all large banks, rather than limiting parts of the evaluation solely to large banks with over \$10 billion in assets.⁵⁶ As the NPRM recognizes, “[g]iven their financial resources and market position,” large banks of all sizes “collectively play a significant role in serving low- and moderate-income individuals and communities.”⁵⁷ Consequently, all large banks should be held to the same standard and be subject to the full retail services and products test to ensure they meet the needs of LMI communities.

j) *Address Service and Lending Inequities Caused by Lack of Bank Branches.*

While the NPRM appropriately recognizes the growing importance of bank access by non-traditional means, the agencies also recognize that “[l]ocal branches remain important to communities for accessing credit, and as such the availability of branches and services provided is important for the evaluation of retail services.”⁵⁸ This is an apt observation given the continued disparities in local access to mainstream banking options in communities of color. A recent study showed that since 2010, the number of banks in majority-black neighborhoods

⁵¹ *Id.* at 33930-31.

⁵² *Id.* at 33911.

⁵³ *Id.* at 33912 (Question 31).

⁵⁴ *See, e.g.,* Cal. Reinvestment Coalition, *Community Benefit Agreements*

<https://calreinvest.org/publications/bank-agreements/> (listing agreements with banks that have resulted in more than \$90 billion invested in California communities).

⁵⁵ Proposed Rule, 87 Fed. Reg. at 33956.

⁵⁶ *Id.* at 33964, -967.

⁵⁷ *Id.* at 33922.

⁵⁸ Proposed Rule, 87 Fed. Reg. at 33958.

decreased 14.6%, while only decreasing 9.7% in all other communities.⁵⁹ When communities lack access to traditional finance outlets like bank branches, alternative finance operations like check-cashing, payday lenders, title loans, and pawn shops fill the void.⁶⁰ These businesses offer credit on much more expensive terms than mainstream financial institutions, depriving LMI communities of much-needed financial resources.⁶¹ Even with remote deposits and mobile banking, branch presence in the community remains important to community engagement and lending relationships.⁶²

Thus, the States encourage the agencies to incentivize banks' providing services in LMI communities. To that end, we support the proposed inclusion of branch openings and closures in the branch availability and services component of the retail services and product test.⁶³ The States further support the proposal to give credit for bank activity intended to reach underbanked communities, such as low- and no-cost banking accounts, alternative credit assessments to issue responsible small-dollar mortgage products to persons without traditional credit profiles, and forgoing punitive overdraft fees.⁶⁴ Additionally, the States are encouraged that the NPRM is considering how to measure whether deposit products are responsive to community needs, and suggest that language access may be an appropriate factor to consider.⁶⁵

k) *Address Lending Discrimination by Automatically Issuing Failing Grades.*

The States are encouraged by the proposal to expand assessment areas for large banks to include entire counties to avoid de facto redlining⁶⁶ and the Proposed Rule's virtual prohibition on banks' being able to receive an overall passing grade if they fail one subtest.⁶⁷ In a similar vein, while the States are encouraged that the agencies "recognize that CRA and fair lending are mutually reinforcing,"⁶⁸ the States believe that the agencies should automatically issue a failing grade to a bank that is found to have engaged in discriminatory practices. As currently proposed, the Final Rule would only provide that a finding of discrimination "could adversely affect a

⁵⁹ Zach Fox et al., *Bank Branch Closures Take Greatest Toll on Majority-Black Areas*, S&P Global (July 25, 2019), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/bank-branch-closures-take-greatest-toll-on-majority-black-areas-52872925>.

⁶⁰ See, e.g., Kristen Broady et al., *An Analysis of Financial Institutions in Black-Majority Communities: Black Borrowers and Depositors Face Considerable Challenges in Accessing Banking Services*, Brookings Inst. (Nov. 2, 2021), <https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/>.

⁶¹ *Id.* (noting that "[i]ncreasing access to banking services could save Black and Latino or Hispanic Americans up to \$40,000 over their lifetime").

⁶² See, e.g., *id.* (noting "crucial role played by local banks in distributing PPP loans during the early months of the COVID-19 pandemic").

⁶³ Proposed Rule, 87 Fed. Reg. at 33958.

⁶⁴ *Id.* at 33966-67.

⁶⁵ *Id.* at 33968 (Question 107).

⁶⁶ *Id.* at 33918.

⁶⁷ *Id.* at 33988.

⁶⁸ *Id.* at 33888.

bank’s CRA performance,”⁶⁹ which leaves too much discretion to bank examiners. No bank that engages in such egregious conduct should receive a passing CRA mark.

l) *Set Minimum Lending Volume Thresholds.*

The States support proposals in the NPRM that focus on ensuring sufficient retail lending to low-income borrowers, such as differentiating between low- and moderate-income borrowers when assessing retail lending,⁷⁰ and rendering a rating of “substantial noncompliance” if banks fail to meet a minimum threshold of lending volume based on the market as a whole.⁷¹ To mitigate concern that some performance thresholds may be unacceptably low in areas where a significant share of lenders are currently underserving community needs, the States propose the agencies consider using a weighted average of a calibrated market benchmark and calibrated community benchmark.⁷² If performance thresholds are low because banks are underserving community needs, this should be made public to encourage action to address these deficiencies, including through community benefit agreements.

m) *Maintain Existing Definitions for Large, Intermediate, and Small Banks.*

The States oppose the NPRM’s proposal to increase the asset thresholds that define large, intermediate, and small banks⁷³ because the proposal will undermine community reinvestment by placing nearly a thousand banks into categories with weaker CRA requirements. As the NPRM observes, the proposed increase in asset thresholds will downgrade nearly a thousand banks—or 20 percent of all banks in the country—from large to intermediate or intermediate to small.⁷⁴ Because CRA regulations subject intermediate and small banks to fewer tests and lower CRA standards,⁷⁵ the resulting change would weaken the CRA’s effects for nearly one in five banks in the country. Such a change represents a step backwards, when the CRA’s robust incentives are needed now, more than ever, to improve financial services for LMI communities.

⁶⁹ *Id.* at 33989.

⁷⁰ *Id.* at 33934.

⁷¹ *Id.* at 33936 (Question 73).

⁷² *Id.* at 33946 (Question 82).

⁷³ *Id.* at 33924.

⁷⁴ *Id.*; John Silver, *Map: Here’s Where Changes to CRA Asset Thresholds Will Undermine Community Reinvestment*, Nat’l Community Reinvestment Coalition (Jun. 30, 2022), <https://nrc.org/map-heres-where-changes-to-cra-asset-thresholds-will-undermine-community-reinvestment/>.

⁷⁵ *See, e.g.*, Proposed Rule, 87 Fed. Reg. at 33919 (“The agencies do not propose applying retail lending assessment area requirements to intermediate or small banks.”); *id.* at 33920 (proposing to evaluate lending outside facility-based assessment areas for large banks and certain intermediate banks); *id.* at 33970 (proposing to require application of the community development financing test only for large banks).

III. Incentivize Affordable Housing.

The Final Rule must incentivize efforts to keep LMI communities housed, encourage affordable housing development, and ensure that LMI communities can access new development. CRA is a critical tool to address the ever-worsening nationwide affordable housing and homelessness crises. One report estimates that there is a 7 million rental home shortage for extremely low-income residents nationwide.⁷⁶ In California alone, the gap for very low and extremely low-income residents is over 1 million rental homes,⁷⁷ and in New York the gap is close to 609,000.⁷⁸ Low-income renters already faced unaffordable rent hikes and displacement before the pandemic; now, still in the throes of COVID-19,⁷⁹ renters face additional threats to their housing stability in the form of rising housing costs and inflation. These challenges hit communities of color hardest, as rent-burdened households in the US are disproportionately non-white and very low income.⁸⁰

a) *Safeguard LIHTC to Ensure LMI Access to Affordable Housing.*

CRA plays a critical role in directing investment into affordable housing projects because banks are incentivized to provide flexible debt and equity generated through the sale of Low Income Housing Tax Credits (LIHTC).⁸¹ State housing finance agencies extensively

⁷⁶ *The Gap: A Shortage of Affordable Rental Homes*, National Low Income Housing Coalition (accessed Jan. 31, 2021) <https://reports.nlihc.org/gap/2017/caFor> (explaining that no state has an adequate supply of affordable rental housing for the lowest-income residents).

⁷⁷ *Affordable Homes Shortfall*, Cal. Housing Partnership, <https://chpc.net/housingneeds/>.

⁷⁸ *The Gap*, *supra* note 76, <https://reports.nlihc.org/gap/2019/ny>.

⁷⁹ See Alexander Casey et al., *Two Months without Pay Pushes Food and Retail Workers to Spend 40% of their Annual Income on Rent*, Zillow (Mar. 25, 2020), <https://www.zillow.com/research/rent-affordability-coronavirus-26707/>.

⁸⁰ Monica Davalos et al., *California's 17 Million Renters Face Housing Instability and Inequity Before and After COVID-19*, Cal. Budget & Policy Center 6-7 (Jan. 2021), <https://calbudgetcenter.org/app/uploads/2021/01/IB-Renters-Remediated.pdf>, Laura August et al., *EnviroScreen 4.0*, Cal. Off. of Environmental Health Hazard Assessment 175-78 (Oct. 2021), <https://oehha.ca.gov/media/downloads/calenviroscreen/report/calenviroscreen40reportf2021.pdf> (citing, *inter alia*, Chris Hess et al., *Racial Disparity in Exposure to Housing Cost Burden in the United States: 1980–2017*, *Housing Studies* (Aug. 24, 2020)) (finding that Black Americans were significantly more likely to live in a household where rent or mortgage payments eat up more than 30 percent of the residents' income).

⁸¹ Letter from Cal. Housing Consortium to Comptroller Otting Re: Docket ID OCC- 2018-0008, “Reforming the Community Reinvestment Act Regulatory Framework” (Nov. 14, 2018), <https://www.regulations.gov/document?D=OCC-2018-0008-1423>. As the California Housing Consortium—whose members have helped develop over 350,000 affordable homes serving LMI households throughout California over the past 35 years—explains, “CRA-motivated banks have been critical partners in this work by providing not only lower cost more flexible debt but, even more critically, equity generated through the sale of [LIHTCs].” See also Steve Dubb, *Community Reinvestment Act at Risk: What’s at Stake?* *Nonprofit Quarterly* (Mar. 11, 2020), <https://nonprofitquarterly.org/community-reinvestment-act-at-risk-whats-at-stake/> (quoting

leverage the LIHTC—what the National Council of State Housing Agencies calls “our nation’s most effective tool for financing the development of rental housing affordable to low-income Americans”—to achieve their affordable housing goals. Approximately 3 million apartments for low-income households have been financed through LIHTC, and the vast majority (roughly 85 percent) of the equity for all LIHTC investments comes from banks subject to the CRA.

LIHTC is a critical tool for the States as they seek to meet the ongoing challenge of the housing crisis. To that end, the States are encouraged that the NPRM makes efforts to protect the CRA’s promotion of housing development and investment through the LIHTC. The States support the NPRM’s proposal to define affordable housing to include rental housing developed in conjunction with government tax credits.⁸² The States likewise approve of the agencies’ proposal to give banks consideration for the full amount of loan or investment for a LIHTC-financed project, regardless of the share of units considered affordable.⁸³ However, the States **strongly oppose** the NPRM’s treatment of community development loans and community development investments together,⁸⁴ as it may have a negative and unintended effect on LIHTC funding. LIHTC investments can be complex and expensive for banks to transact,⁸⁵ and may provide a lower return than community development lending. Thus, banks may favor the latter at the expense of critically needed LIHTC investments.⁸⁶

b) *Ensure LMI Occupancy of Affordable Housing.*

As the global pandemic and economic conditions cause housing costs to soar, families have increasingly been displaced. Despite the struggles families face nationwide, many investors have sought to exploit these circumstances by targeting and flipping housing in low-income neighborhoods, raising costs, and displacing families.⁸⁷

Priscilla Almodovar, CEO of Enterprise Community Partners: “The most efficient, easiest, [most] impactful ways to meet the investment test are LIHTC . . . and NMTC (New Markets Tax Credit)”.

⁸² Proposed Rule, 87 Fed. Reg. at 33894.

⁸³ *Id.* at 33892.

⁸⁴ *Id.* at 33971.

⁸⁵ See, e.g., U.C. Berkeley, Terner Center for Housing Innovation, *The Complexity of Financing Low-Income Housing Tax Credit Housing* (Apr. 26, 2021), <https://ternercenter.berkeley.edu/blog/lihtc-complexity/>.

⁸⁶ The NPRM addresses this concern, Proposed Rule, 87 Fed. Reg. at 33971, by focusing on the fact that investments are “included in the proposed community development financing metric”; however, this does not address the potential for less profitable investments (such as LIHTC) to lose out under the revised incentive structure. And the NPRM’s reference to impact factors also fails to cure the problem, because they apply to both “loans and investments” and provide no special protection to LIHTC.

⁸⁷ See, e.g., Brett Pulley & Michael Sasso, *Atlanta Mayor Calls for Limits on Investors Buying Up Homes*, Bloomberg (June 15, 2022), <https://www.bloomberg.com/news/articles/2022-06-15/atlanta-s-mayor-calls-for-limits-on-investors-buying-up-homes>.

As we face these realities, the agencies should actively discourage banking activities that result in the displacement of LMI individuals and communities.⁸⁸ It is encouraging that several provisions of the NPRM deny CRA credit for revitalization activities that displace individuals, and the States support these proposals.⁸⁹ To add clarity to the agencies' no-displacement rule, the States recommend that the agencies specify that a revitalization activity displaces a person when it "proximately causes a tenant or homeowner to be permanently removed from their residence."⁹⁰ The States urge the agencies to deny CRA credit and downgrade a bank's CRA rating when the bank's activities cause displacement, which causes a number of compounding harms to vulnerable community members.⁹¹

Additionally, the States support a number of measures discussed in the NPRM aimed at ensuring that banks receive CRA credit for housing-related activities that substantially support the needs of LMI households. These include the agencies' proposal to limit partial community development credit to affordable housing developed in conjunction with Federal, State, local, or tribal government programs that have a stated purpose or bona fide intent to promote affordable housing;⁹² the inclusion of verification measures in the Final Rule to ensure that LMI individuals have a majority occupancy of affordable units;⁹³ and an inclusive affordable housing definition that empowers novel solutions such as community land trusts by non-profit organizations.⁹⁴ To continue to emphasize home purchase and refinancing lending, the States oppose including home improvement and other purpose closed-end home mortgage loans in the closed-end home mortgage loan product category.⁹⁵

⁸⁸ See, e.g., Proposed Rule, 87 Fed. Reg. at 33904 (noting stakeholders' "concerns that housing that benefits middle- or upper-income individuals, particularly in a low- or moderate-income census tract, can lead to displacement of existing residents").

⁸⁹ See *id.* at 33895, -901, -903, 34020, -021.

⁹⁰ The NPRM specifies that affordable housing is not included in revitalization activities. *Id.* at 33889 (listing affordable housing as a separate category of community development from revitalization activities); *id.* at 33901 (defining revitalization activities). Thus, affordable housing activity will not constitute displacement under the language we propose above.

⁹¹ See, e.g., Emily Chong, *Examining the Negative Impacts of Gentrification*, Georgetown Journal on Poverty Law and Policy (Sept. 17, 2017), <https://www.law.georgetown.edu/poverty-journal/blog/examining-the-negative-impacts-of-gentrification/> (stating that displacement "is disproportionately borne by low-income individuals of color, many of whom are elderly individuals. Physical frailty makes it more challenging for elderly individuals to resist the actions that landlords take to remove tenants. Researchers have also found that elderly people are more intensively affected by social changes around them; for example, many older adults cited loss of friendships or community networks as a reason to move. This is a problem that builds on itself—with gentrification, many people are rapidly forced out of their neighborhoods, leading to less community networks and more reason for elderly low-income individuals, who are already facing struggles from rising prices, to give up on their homes and move out of the neighborhood").

⁹² Proposed Rule, 87 Fed. Reg. at 33898 (Question 6).

⁹³ *Id.* at 33897-98 (Question 3).

⁹⁴ *Id.* at 33897 & 33898 (Question 10).

⁹⁵ *Id.* at 33931 (Question 57).

Finally, the States support the agencies' proposal to include activities supporting affordable housing—particularly multifamily housing—in high-opportunity areas as an impact factor.⁹⁶ High-opportunity areas feature better schools, better jobs, and better opportunities to realize the American dream.⁹⁷ Unsurprisingly, these areas also have some of the highest costs of living, putting them out of reach for countless Americans, especially those with low- to moderate-incomes.⁹⁸ Activities that support affordable housing in high-opportunity areas therefore represent an important step in dismantling neighborhood segregation to open up their opportunities for all, consistent with CRA's purpose.

* * *

The Community Reinvestment Act represents a vital promise to correct the historic and ongoing legacy of redlining and racial inequality that persists today. The agencies' once-in-a-generation modernization must ensure that all members of our communities are fully served by financial institutions. For the foregoing reasons, the undersigned state attorneys general support the proposed rule and urge the agencies to further strengthen it.

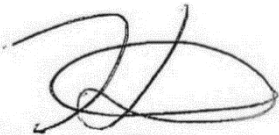
Sincerely,



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⁹⁶ *Id.* at 33898 (Question 3).

⁹⁷ See *Zoned Out: What Options do Renters Have to Access High Opportunity Areas?*, Freddie Mac Multifamily (Dec. 30, 2021), https://mf.freddiemac.com/docs/2021_DTS_Zoning_report.pdf.

⁹⁸ *Id.*; see also Kalima Rose & Teddy K -Nam Miller, *Healthy Communities of Opportunity: An Equity Blueprint to Address America's Housing Challenges*, PolicyLink 3-4, 7-8, 11-12 (2016), https://www.policylink.org/sites/default/files/HCO_Web_Only.pdf.



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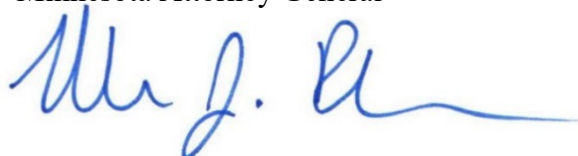
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