THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

August 4, 2022

ATTN: OCC Docket ID OCC–2022–0002; FDIC RIN 3064-AF81; Federal Reserve Docket No. R-1769 and RIN 7100-AG29

Re: Interagency Proposal to Strengthen and Modernize Regulations Implementing the Community Reinvestment Act (CRA)

To Whom it May Concern:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPR) to Strengthen and Modernize Regulations Implementing the Community Reinvestment Act (CRA). As the Comptroller of the City of New York and a member of the New York City Banking Commission, I appreciate the opportunity to offer these comments on the NPR given the importance of this law to communities across the country and in New York City. While I appreciate several strong components of the proposal, significant changes are necessary to realize the intent of the law and its full potential in an evolving world of persistent inequity.

As the chief financial and accountability officer of the City of New York, CRA data and exams are an important part of the mechanisms by which my Office evaluates the institutions in which the Banking Commission authorizes the placement of public deposits. The public disclosure of CRA results are meant to empower consumer banking choices. The availability and affordability of banking services is of utmost importance to NYC's 8 million residents, many of whom have suffered from discriminatory lending and speculative finance. A strong CRA benefits all New Yorkers as they combat the confluence of the worldwide pandemic, climate crisis, and a speculative housing market.

The CRA is one of the major civil rights laws passed in response to the discriminatory policies and practices that initially locked people of color out of banking, credit, housing, employment, and education. It is one of the most important laws we have that holds banks accountable to their obligations to serve and invest in local communities. It has led to trillions of dollars reinvested nationwide for affordable housing, small business support, daycare, schools, economic development, local businesses and community services. The CRA has also fostered affordable mortgages, small business loans and supports, bank branches, and commitments to responsible multifamily lending. The CRA is fundamental to the improvement of health outcomes in low- and moderate-income communities via development and initiatives that address the social determinants of health and create healthier communities.

However, for all its benefits, the CRA has not kept up with significant changes in the banking industry over the past several decades, and the underlying inequities that it was designed to address persist. Too many low-income families, immigrants, and people of color in New York City still lack sufficient access to loans to purchase homes, improve their homes, and start and maintain businesses. Smaller nonprofits struggle to access grants and loans to build and preserve much-needed deep and

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permanent affordable housing and to support community development. Lending to speculators and unscrupulous landlords contribute to harassment and displacement. Meanwhile, an increasing percentage of the institutions that offer financial services are not covered by the CRA.

Currently, approximately 15% of Black households and 18% of Hispanic households in the NY region are completely unbanked, which is over 5 times the rate of white households. As the economic fallout resulting from COVID-19 continues, the hardest hit communities are the ones that were already the nation's most underserved. CDC data has shown that Black and Latino people are being disproportionately harmed by the virus, and the businesses in those communities have not been spared. It has been 40 years since the CRA was passed and the racial wealth gap is wider than ever. The average Black and Latinx households earn about half as much as the average White household and only have about 15% to 20% as much net wealth.[1] Additionally, persistent countrywide racial disparities in banking and lending result in fewer residential and small business loans, fewer branches, more harassment and displacement, and fewer resources for Black, Indigenous, and people of color (BIPOC).

The NPR's proposed changes to the asset limits will allow some banks to reduce their investment in the communities and businesses that will need the most assistance rebuilding. New York cannot rebuild and reopen if banks are not committed to an equitable recovery from the pandemic.

As the first major update of the CRA in over 25 years, this rulemaking presents a historic opportunity for the CRA to meet its intended purpose to address redlining and racial disparities and increase access to banking and capital in low- and moderate- income (LMI) and BIPOC communities. In light of the disastrous proposals of the prior administration, I appreciate that federal regulators are working together to offer several positive steps forward including for instance: more rigorous data-driven lending tests; a focus on smaller businesses; more data disclosure and analysis of bank deposits and products at the largest institutions; lending-based assessment areas; anti-displacement criteria in some community development categories; and expanded discrimination downgrades to include non-credit consumer violations.

However, absent significant revisions, the NPR presents a missed opportunity to ensure that the CRA meets its intended purpose to address redlining and other racial disparities in our financial systems.

<u>Federal Regulations Should Affirmatively Aim to Close the Racial Wealth Gap</u>

Systemic racism, discrimination, and the disparities and inequities they perpetuate cannot be adequately addressed with "color-blind" policies; we know that income is not an adequate proxy for race.[2] The CRA requires banks to serve all communities and is intended to remedy racial exclusion, which provides room for federal bank regulators to incorporate race in CRA exams to a greater extent than they do presently. I am deeply disappointment that, despite the acknowledgement that the CRA originated as an anti-redlining law, the regulators failed to push for regulations that would have the proposal live up to the CRA's intended purpose in this historic proposal to modernize the Act, purportedly in part to address racial disparities and discrimination. The September 2021 white paper from the National Community Reinvestment Coalition and Relman Colfax clearly lays out a legally permissible mechanism for the CRA to examine lending by race and ethnicity in geographical areas

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[1] *See* Aditya Aladangady and Akila Forde, *Wealth Inequality and the Racial Wealth Gap*, FED NOTES, Oct. 22, 2021, *available at* https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.htm.
[2] *See* Laurie Goodman et al., *Should the Community Reinvestment Act Consider Race?,* URBAN INST., Jan. 2022, *available at* https://www.urban.org/sites/default/files/2022-04/should-the-community-reinvestment-act-consider-race_1.pdf.

experiencing ongoing discrimination or exhibiting significant racial disparities in lending that I urge the regulators to adopt.[3]
The only aspect of the current proposal that provides any assessment on the basis of race is the required disclosure of already-public Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race—and this disclosure will have no impact on the final rating.

More must be achieved in this area to address the systemic racism that undergirds and pervades our banking systems. Regulators should create affirmative obligations to serve and benefit BIPOC people and communities and incentivize activities that close the racial wealth gap. Regulators should benchmark and disclose all available data by race: home loans (HMDA), small business loans (1071 data), grants to BIPOC-led organizations, branch & community development locations.[4] Disparate trends should lead to downgrades and trigger fair lending investigations; for example, though 22% of the NYC population is Black, fewer than 10% of all loans to purchase a home – fewer than 5% of loans by CRA-regulated banks – go to Black borrowers each year. Regulators should extend place-based anti-displacement criteria to all community development categories: no credit should be awarded for displacement or detrimental effect on LMI or underserved populations. And finally, regulators should expand discrimination downgrades to include incidents of displacement or harm ("detrimental effects") on BIPOC people and communities, such as specific branch closures, harmful landlord practices, or higher cost products that disproportionately impact communities of color.[5]

<u>Higher Asset Level Thresholds and Exemptions for "Smaller" Large Banks Create Loopholes That Will Significantly Reduce Community Development Finance Funding</u>

The current proposal may create loopholes that could exclude banks from analysis in many areas. For example, higher asset level thresholds encourage banks to reduce their level of community development financing and customer services. Moreover, federal regulators should make sure that all large banks are held to the same standards and close the loopholes that exempt "smaller" large banks with $2B to $10B in assets. The current proposal exempts these "smaller" large banks from data disclosure, auto lending tests, and scrutiny as to from where these take deposits and the types of bank accounts they offer. This proposal compounds the harms of reducing obligations for 20% of banks by raising asset size thresholds that reclassify hundreds of banks into the less rigorous intermediate and small bank test categories. Over $1 billion of community development finance will be lost under this proposal.[6] The agencies' proposal to change the CRA regulations should at the very least expect the same range of reinvestment activity as CRA currently does for all banks. In this respect, the proposal goes backwards with no justification about how any reduction in burden for these banks would somehow offset the loss of reinvestment activity from a public benefits perspective. The banks impacted have been engaging in community development or service provision for several years without any apparent deleterious impacts.

To close these loopholes, the proposal to allow a bank to pass its exam even if it fails up to 40% of its assessment areas must be seriously diminished. And no bank should be permitted to pass an assessment area where it fails component tests, especially in cases of displacement-financing or branch closures in already underserved LMI and BIPOC communities. No bank classification or

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[3] *See* Brad Blower et. al, *Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal*, NAT'L CMTTY. REINV. COAL. and RELMAN COLFAX, Sept. 2021, *available at* https://www.ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/

[4] Under the current proposal, data on deposit and automobile lending will not be made publicly available, which limits the extent to which the public can hold banks accountable for reaching underserved communities. I ask the agencies to reconsider this decision.

[5] In addition, I urge the regulators to add the Americans with Disabilities Act to those laws included in a fair lending review.

[6] *See* Josh Silver, *Initial Analysis Of The CRA Notice Of Proposed Rulemaking*, NAT'L CMTTY. REINV. COAL., June 1, 2022, *available at* https://ncrc.org/initial-analysis-of-the-cra-notice-of-proposed-rulemaking/.

"major product line" threshold should exclude lines of business; depending on the size of loans and comparative volume such exclusions could preclude banks making thousands of loans from analysis. Limited purpose consumer banks must be evaluated on that limited purpose and all consumer loans should be evaluated for distribution and impact. Any line of business that results in 50 loans or more than 15% of lent dollars, whichever is lower, should be evaluated as a major product line. Regulators should require all affiliate lenders to be evaluated and factor in performance by non-bank lenders with which banks have a formal relationship, especially to offer a product the bank no longer offers.

Federal Regulations Need to Further Clarify Processes for Community Engagement and Accountability

The communities most impacted by our inequitable financial system, and their input, must be central to the CRA process. Despite regulators stating that "the proposal also clarifies the agencies' treatment of public comments in connection with CRA examinations," no significant changes from the current system which provides little clarity or guidance as to how the comments factor into the component analysis or final ratings are perceptible. Too few details were provided regarding how proposals by the regulators regarding advance notice of exams, sharing comments with banks on community needs and their performance, requiring comments on banks be made public, and establishing new ways for the public to provide input on needs and bank performance will improve these processes, nor how they factor into the examination process any more than they do today. In fact, the only section of the examination process that explicitly references public comments is the retail lending test, where benchmarks are the main driving factor and public comments are just one of several additional factors regulators are considering adding.

Regulators should conduct a comprehensive needs assessment based on local data and community input and establish a proactive process to solicit local input on needs and bank performance from a wide range of stakeholders, with an emphasis on BIPOC-led and serving organizations, and in BIPOC communities, representing the wide range of community development areas. This could include letters, hearings, and listening sessions. Regulators should consider utilizing community advisory boards within local communities to facilitate this engagement process. Regulators should evaluate how well banks solicit and incorporate feedback from similar stakeholders and provide clarity on how comments factor into ratings—ideally based on how banks meet local needs with products and practices, as well as steps banks must take in response to concerns raised with them. Community Benefits Agreements and community-informed CRA plans should be encouraged, and then monitored and enforced through conditional approvals on mergers and review for CRA exams. Finally, banks must respond in meaningful ways to specific issues raised in community comments, with the option for regulators to require specific actions should they fail to respond adequately. Too often, regulators are silent when the banks have ignored feedback from local organizations, leaving community residents to fend for themselves against an inequitable financial system and discouraging community members from future engagement.

Federal Regulators Must Address Barriers to Homeownership

Homeownership remains an important path to wealth creation and developing intergenerational wealth. Yet too often, BIPOC communities are locked out of homeownership opportunities, targeted with predatory products, and face limited opportunities to accumulate wealth due to lower appraisal values. Affordable, accessible residential mortgages are critical forms of credit needed to achieve homeownership and stay in their homes, yet consumers are forced to also rely upon other forms of credit, such as auto loans, credit cards, credit builder loans, and small dollar loans. The current proposal offers a more comprehensive, data-driven approach to the CRA lending test that will derive ratings based on how bank mortgage lending compares to a set of market and community

benchmarks. I appreciate this proposed data-driven framework and acknowledge that it could combat grade inflation but have concerns about its overall impact without significant changes.

Regulators must prioritize owner-occupied homes over investor-owned properties and focus on originations, rather than loans that banks have purchased from other lenders. Any evaluation of investor properties must focus on their impact on communities, ensuring they build wealth for BIPOC communities without fueling displacement or other harms. Recent research by a Fed staffer indicates that despite permitting banks to meet their CRA retail lending obligations by purchasing loans due to a belief that purchases increase credit availability in LMI communities by enhancing the liquidity of LMI loans, there is no evidence that CRA-induced purchases have had any effect on credit availability in LMI communities. Instead, banks within their assessment areas appear to purchase loans that would otherwise be sold to a government-sponsored enterprise (GSE) and that the GSEs ultimately acquired after a delay of less than 4 months.[7] Regulators should require banks that are largely purchasing loans to demonstrate how they increase affordable, accessible lending to LMI and BIPOC borrowers. Similarly, regulators should evaluate who receives loans in LMI/BIPOC communities to ensure that the loans are benefiting—and not displacing—LMI and BIPOC people.

Regulators must incorporate an analysis of loan pricing and consumer product terms to ensure that products are meeting local needs—instead of extracting wealth. Likewise, regulators should evaluate how well loan products match local needs. The Home Mortgage Disclosure Act ("HMDA") now collects and discloses details on loan pricing and terms, including closing costs, points and fees, reverse mortgages, interest-only mortgages, interest rates, and more. But the proposal fails to incorporate any of these factors. The retail services and products test gives credit for responsive products, such as affordable mortgages, but does not evaluate usage of said products, nor does either test lower a rating for failing to offer such products or for offering high-cost, extractive products.

Regulators must not allow a race to the bottom, as could happen in a high-cost market like NYC where a bank can pass with just 1.4% of home loans to low-income borrowers, who make up 27% of NYC's population. The proposed considerations for "market failures" should be adopted and apply to New York City, even with the high cost of housing.

Federal Regulators Must Prioritize Loans to Underserved Small, Micro-, BIPOC-owned, and Immigrant-Owned Businesses

Although small business loans were incorporated into the CRA over 25 years ago, very small and micro- businesses, as well as BIPOC-owned and immigrant-owned businesses of all sizes still lack access to the capital they need to open and sustain their businesses. The CRA must do more to direct capital to them.

I support the proposed analysis of loans to businesses under $250,000 in revenue and suggest adding a category for businesses under $100,000 in revenue as well. However, I am concerned that the new definition of "small business" will give credit for lending to businesses with up to $5 million in revenue. 90% of businesses in NYC - 93% of businesses in LMI tracts - have less than $1 million in revenue; surveys consistently demonstrate the unmet credit needs of businesses well below that size. The CRA must focus on unmet credit needs which fall among BIPOC-owned businesses and businesses under $1 million in revenue, with a focus on businesses have revenues that fall under even smaller tranches. The distribution test will give credit for any of the small business loans in LMI tracts, but with no analysis of whether the business is BIPOC-owned or as to business size, loans

[7] Kenneth Brevoort, *Does Giving CRA Credit for Loan Purchases Increase Mortgage Credit in Low-to-Moderate Income Communities?*, July 1, 2022, FEDS Working Paper No. 2022-47, available at https://ssrn.com/abstract=4170363.

could skew towards larger and/or white-owned businesses and less so to persistently underserved small, micro-, BIPOC-owned, and immigrant-owned businesses. As such, regulators must focus on small and BIPOC-owned businesses in LMI/BIPOC communities, to ensure they are benefiting—and not displacing—these marginalized business owners.

Regulators must also include analysis of loan pricing and terms to ensure products are meeting local needs and not extracting wealth, as could be the case with high-interest credit cards or other higher-cost products.

Federal Regulations Should Facilitate Responsible Multifamily Lending and Downgrade Banks for Financing Predatory Landlords That Harm and Displace LMI and BIPOC Tenants

The CRA must incentivize responsible multifamily lending and downgrade banks for financing predatory landlords that harm and displace LMI and BIPOC tenants. Nearly two-thirds of New York City residents are renters, with just about half of all tenants living in private, unsubsidized rent-stabilized housing that (typically more affordable and more protected) and the other half in market-rate, non rent-stabilized housing. Responsible lending is critical to maintaining affordable housing, whereas predatory credit, and credit to landlords that harass and displace tenants or keep buildings in poor condition, threaten this important stock of housing.

Unfortunately, New York City has seen a rise of predatory landlords, such as Greenbrook Partners, who purchased over 130 multifamily buildings during the pandemic. In nearly every case, their first step was to issue eviction notices to all of the tenants in the building, whether rent stabilized or not. In many cases, they then utilized "construction as harassment," performing unnecessary work in a shoddy manner as part of an effort to displace residents from the building. They then bring in higher rent-paying tenants, in order to enrich their investors, lenders, and principals. Lending to landlords like Greenbrook Partners should not quality for CRA, and should in fact lead to downgrading.

While I appreciate the proposal's intent to ensure unsubsidized ("NOAH") housing remains affordable even post-renovation, it barely moves the needle on what is needed to deter displacement and preserve safe, stable, affordable housing.

Regulators must do better by conducting a comprehensive evaluation of multifamily mortgage lending for distribution, affordable units, building conditions, and underwriting. They should give credit for adopting and adhering to anti-displacement best practices like the Association for Neighborhood and Housing Developers (ANHD)'s Multifamily Best Practices and NY State's Department of Financial Services guidance and downgrade ratings for incidents of harm to and displacement of LMI and BIPOC tenants.

Federal Regulators Should Weight Access to Bank Branches and Affordable, Accessible Financial Products More Heavily

Access to bank branches and affordable, accessible financial products is critical to building wealth and ensuring that undeserved, un(der)banked BIPOC, LMI, and immigrant populations are able to join and remain in the financial system. Yet, banks continue to expand and grow as branches close and lower-income and BIPOC communities are consistently left out behind.[8] The tide of branch closures has accelerated rapidly since the onset of the COVID-19 pandemic. NYC lost over 200 branches in 2020 and 2021, including roughly 25% in LMI neighborhoods and 20% in majority

[8] 9.4% of New York City households - over 17% of households in the Bronx - are completely unbanked, with higher rates in several neighborhoods. Unbanked households are largely concentrated in Black and Latinx communities and poorer communities. These neighborhoods typically have fewer bank branches and less internet access than neighborhoods with fewer unbanked households.

Black, and/or Latinx communities that are already unbanked, underbanked, and poorly served by internet access.

In the current proposal, analysis of bank branches, bank products, and access to banking are just one piece of an already small section of the CRA exam, made smaller in the proposal. Branches must remain a core component of the retail services test. There must be stronger consequences for closing branches in underbanked LMI and BIPOC communities, including downgrades, especially when communities provide comments about the impact of the branch closure and/or lack of branches. However the weighting is finalized, no bank should pass its exam if it fails to serve communities with branches and affordable and accessible products

I appreciate several positive aspects of the current proposal including benchmarking of branches in LMI communities, incentives to open branches in unbanked areas and a more rigorous analysis of where the largest banks take deposits and the types of accounts they offer. However, I have significant concerns about the impact of this new approach. Branches and access to banking now fall under the "retail services and products test" which covers more areas but counts for less of the final rating (just 15%). Furthermore, the analysis of consumer and deposit bank products appear to only have the potential to raise the score, with no accompanying product usage analysis. Few details exist on how branch openings and closings factor into rating; although one closure could have a significant impact on a local community, for a bank with a large branch network such a closure would barely impact its overall percentage.

Regulators should require banks to demonstrate specific steps taken to avoid closure through improved services and outreach, as well as actions taken to mitigate harm should a branch close. Regulators should evaluate all banks (not just those with over $10 billion in assets) on where they take deposits, the quality of their banking products, and usage of affordable products. 75 with assets between $2 and $10 billion, have a product that is certified as meeting the Bank On National Account Standards demonstrating that the growing market of safe and appropriate retail products for LMI communities can be supported through expansion of the evaluation framework. Finally, in the retail lending test and services tests, all consumer loans must be evaluated for equitable distribution, and quality, with incentives for impactful activities and downgrades for wealth extraction and harm.

<u>Federal Regulators Should Enhance the Rigor of the Community Development Finance Test</u>

Community organizations, nonprofit developers, and CDFIs depend upon bank financing leveraged through the CRA to support their missions. I appreciate the attention to volume, the impact review incentives for deeper affordability and grants, and new categories specific to broadband access and climate resiliency. Still, more can be done to ensure that any activity that obtains credit benefits local communities, and that banks are deterred from activities that cause harm.

Climate change, in particular, has compounded CRA challenges and highlighted its shortcomings. The climate crisis impacts the financial stability and the economic security of every American and has contributed to the blue-lining of LMI neighborhoods. The inclusion of climate resiliency should be lauded but I encourage the regulators to clearly indicate that mitigation activities that decarbonize, electrify and increase energy efficiency are similarly eligible qualifying activities even if they do not fall within other categories. Regulators should further require banks to meet a threshold of climate financing activities based on asset size and other metrics, including financed emissions for large financial institutions that are currently contributing to high levels of emissions, or face penalties. Merely crediting proactive climate resiliency investments without addressing root causes of climate vulnerability risks deepening the disparate impacts faced by LMI and BIPOC communities.

Under the proposal, community development performance would not affect most large banks' overall CRA rating because the relative weights assigned to retail lending (60%) and community development finance (40%) which ensure that a bank will receive an overall Satisfactory as long as they receive a Low Satisfactory for retail lending and anything other than Needs Improvement for Community Development will result in a continued deemphasis on the latter category and a potential diminishment in the total funds dedicated to such covered activities.

The proposed community development financing (CDF) test does not match the rigor of the lending test, and the quantitative and impact review components of the CDF subtest should further be developed. Although the qualitative review is needed, it can also be abused and result in inflating a rating if the review is not carefully designed. In particular, the regulators should reconsider assigning each community development loan or investment an impact score on a point scale as contemplated in the Federal Reserve's Advance Notice of Proposed Rulemaking.

In so doing, regulators should evaluate loans and investments separately within the community development finance test to ensure banks do not cease making investments. I am particularly concerned about the possible impact on Low Income Housing Tax Credit (LIHTC) investments, which are a critical source of equity for affordable housing. The investment test also incentivizes other forms of investments, such as EQ2 investments and grants, which could also be impacted if investments are not required. Furthermore, while I appreciate that adding credit for prior-period loans may incentivize longer-term patient capital, the change cannot allow banks to substantially reduce originations of impactful loans, nor give additional credit for less impactful activities. Since this credit would further supplement credit that banks would already receive for renewing or refinancing the loan, regulators should assess if the prior term credit is for activities that would not have been done without such incentive. For example, the duration of the majority of commercial multifamily mortgages to private landlords is already longer than a CRA cycle and thus banks do not need further incentives. Worse, without stronger anti-displacement criteria in the affordable housing category, a bank could conceivably receive credit over multiple exam cycles for a loan to a landlord that maintains a building in poor condition, harasses, and/or displaces tenants.

Regulators should expand the impact review to include activities that close the racial wealth gap, finance long-term/permanent affordable housing, support mission-driven nonprofit developers, reduce evictions and displacement, and support activities that explicitly connect to locally-identified needs. Regulators should also ensure that banks do not receive credit—and certainly not "extra credit"—for housing in lower-income communities that is identified as too expensive for the local community. Additionally, regulators should reconsider the presumption that any government plan benefits local communities. While that may be true in some cases, there are also many instances when government plans run counter to local LMI and BIPOC community needs, and banks should not be incentivized to further such plans. Proactive outreach and community input can inform the benefits and harms of specific activities presented for CRA credit. There must be no credit for activities that do not explicitly benefit LMI or BIPOC communities. Along these lines, I ask the regulators to reconsider their proposal to expand CRA consideration for financial literacy with no income limits and ensure scarce counseling resources are targeted to LMI and other underserved populations. Finally, regulators must extend the stronger anti-displacement criteria to all community development categories (not just place-based categories) and allow downgrades for activities discounted by those criteria, or otherwise found to contribute to displacement or harm.

Federal Regulators Should Create Deposit-Based Assessment Areas and Ensure Equitable Service Between Online and Branch-Based Assessment Areas

I am pleased that the current proposal keeps branch/ATM-based assessment areas to evaluate how banks perform where they have a physical presence. I am also excited to see new lending-based

assessment areas to evaluate the equitable distribution of 1-4 family mortgages and small business loans outside of where banks have branches. In addition to maintaining branch-based assessment areas and adding new lending-based assessment areas, regulators must also add assessment areas based on where banks take deposits and open accounts and assess lending and banking in all assessment areas.

Going further, regulators should also create deposit-based assessment areas for all large banks based on where they take deposits and open accounts. Failure to do so undermines the original intent of the law to ensure banks that lend where they take deposits and fails to incorporate new models of banking. Under the system as proposed, online banks have no obligation to equitably serve any local communities, including unbanked areas of a large city like New York. Regulators should also ensure banks are lending and providing access to banking equitably within all new online assessment areas. Banks should also provide community development finance in the areas they serve and do so in a way that "expands the pie" and does not lead to a reduction in service to areas they serve with branches. To ensure that banks serve smaller metropolitan areas and rural counties, regulators proposed requiring that banks with ten or more assessment areas must receive at least a Low Satisfactory rating in 60% of the assessment areas in order to pass overall. This proposal, however, may not be an adequate solution since the smaller areas could represent a minority of areas, allowing a bank to pass the 60% threshold by focusing on the larger areas. One possible fix is to require banks to achieve at least a Low Satisfactory rating of 60% in each of its large metropolitan, small metropolitan and rural assessment areas. Finally, regulators must ensure that banks are serving communities equitably within branch-based and online assessment areas. For example, several BIPOC communities (including much of the Bronx, Southeast Queens, and Cypress Hills) are persistently underserved by banks despite falling within a very well-banked assessment area overall.

Merger Review

Under the current proposal, the regulators contend that no changes to the consideration of CRA performance when reviewing merger applications is necessary as the improvement of the CRA exams themselves will suffice. Such a position, however, fails to contend with potential changes in CRA performance subsequent to a bank's most recent exam. Regulators should improve upon implementation of the convenience and needs standard and secure concrete plans, including via community benefits agreements, regarding increased lending, investment and services in LMI and BIPOC communities. In addition, public hearings should be the standard, as was the case with the U.S. Bank and MUFG/Union merger, should be the standard. An outstanding CRA rating must not be considered evidence that merging banks have satisfied the public benefits legal requirement.

Conclusion

Thank you for the opportunity to comment on the CRA proposal. The CRA is one of the key tools we have to hold banks accountable to the needs of our local communities. For all the many benefits that the CRA has brought, it still has a long way to go to live up to its original intention as an anti-redlining law. As stated above, I appreciate several strong components of the proposal, but cannot support it without significant changes. The proposal should be lauded for the increased rigor and accuracy of the large bank retail lending test. These changes will reveal distinctions in performance and critically improve data collected on retail lending, community development financing, deposits and basic banking services with the added benefit of making exams more objective and transparent.

Although the NPR promises to make certain parts of CRA exams more rigorous, I urge the agencies to not weaken reinvestment requirements and to extend the rigor of the large bank lending test to the other tests by adding objective quantitative and qualitative measures and more instructions to

examiners regarding how to weigh various components of the tests to prevent another round of CRA ratings inflation.

Now is the time to create a strong, race-conscious CRA that requires and incentivizes positive activities, downgrades ratings appropriately for harm and displacement, keeps community input central to the process, expands public reporting of data collection, bolsters assessment areas, and maintains and strengthens local obligations. A rule that delivers public accountability can help reduce inequalities, disinvestment, and other disadvantages in America's overlooked communities.

If you have any questions, please contact Louis Cholden-Brown, Senior Advisor & Special Counsel for Policy and Innovation at lcholde@comptroller.nyc.gov.

Sincerely,

Brad Lander
New York City Comptroller