To the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation:

Transform Finance[1] appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) issued by the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board (FRB), and the Office of the Comptroller of the Currency (OCC) ("the agencies") regarding updating the Community Reinvestment Act (CRA). This NPR represents the most significant changes to the CRA regulation and exams in 27 years.

The CRA was one of several laws enacted in the 1960s and 1970s to address fairness and financial inclusion in access to housing and credit. However, even with the implementation of the CRA, the wealth gap remains persistent, and the availability and use of investment capital is a main factor driving disparate levels of well-being across communities. Black, Indigenous, and People of Color (BIPOC) communities in particular have long suffered from under-investment, leading to disparities in wealth, jobs, education, and health, as compared to white communities.[2]

To fully meet its goal of incentivizing banks to meet the credit needs and contribute to the development of the local communities in which they are chartered, the CRA must be recognized as a participatory process that recognizes community members as capable advisors and experts. The purpose of this comment is to propose additional measures to meaningfully accomplish the agencies' commendable goal of updating the CRA to promote transparency and public engagement, based on Transform Finance's framework of Participatory Investing.

Introducing Participatory Investing

Participatory Investing (PI) is the process and practice of investing with meaningful input, decision-making power, and/or ownership from community stakeholders.[3] Practically, investments that engage communities are more likely to succeed and achieve the goals of the CRA. The direct experience of living in a community provides essential information that can help guide the CRA's stated purpose of promoting community development activities from banks that are highly impactful or responsive to low- and moderate-income communities.

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[1] Transform Finance is a research, education, and implementation partner that supports all stakeholders to challenge legacy investment approaches, seed transformative investment models, and build movement power. We help investors and intermediaries move capital in accordance with the Transformative Finance principles: provide ownership and governance opportunities for non-investors, add more value than they extract, and fairly balance risks and returns. We help social change actors leverage the power of investors to achieve movement goals. We also help change enablers, like philanthropic actors and government, support these new approaches to capital.

[2] Neil Bhutta et al., "Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances" (Sept. 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-inthe-2019-survey-of-consumer-finances-20200928.html

[3] Andrea Armeni and Curt Lyon, "Grassroots Community Engaged Investment: Redistributing power over investment processes as the key to fostering equitable outcomes" (April 2021) https://static1.squarespace.com/static/54cfca5be4b06d2d0d7c0f1d/t/6065dc5d38b2ae3f783b1df6/1617288341085/Transform+Finance+Grassroots+Community+Engaged+Invesment+2021-04-01.pdf

But aligning the CRA with PI can also achieve broader and more transformational impact. Better aligning bank activities with the goals of communities will advance the Federal Government's stated commitment to racial equity and support for underserved communities.[4] PI can build long term power in the communities that participate by forging productive connections between grassroots and institutional stakeholders, building community knowledge around local finance and economic development, and funding projects that are supported by and reciprocally support existing movements in the community.

There are various mechanisms to achieve PI, ranging from "more community engaged" to "less community engaged." The deepest forms of community engagement involve meaningful (often majority) governance by grassroots stakeholders, with individuals participating that are closest to the communities most in need of support. These arrangements are more likely to be deeply tied with existing movements in that community, and will therefore seek to lift up individuals, organizations, and ideas within those movements in new areas of power.

The more formal and encompassing the governance mechanism, the more likely the institution is to build community power through their PI. Deep forms of community engagement include community advisory boards, special planning committees, or separate buckets of capital that allow grassroots stakeholders to directly move bank investments. These governance mechanisms have permanence and longevity, which is critical for transformation. They contrast with less community engaged mechanisms, such as surveys for community input, public comment periods which may be poorly or unequally advertised, one-time town halls or other forums. These informative community engagement processes allow banks to gather input from the community, but fall short of meaningful control of outcomes. Hence they fall on the "weaker" side of PI.

Community engagement is also less meaningful when the grassroots stakeholders participating aren't reflective of the community. Low-income residents within marginalized communities being served by bank activity should be prioritized, along with trusted grassroots organizations that represent them. Larger, "grasstops" organizations, representatives from larger businesses and chambers of commerce, and well-known individuals with fewer ties to the communities being served should be prioritized less in deciding who is engaged in PI processes.

The following recommendations identify opportunities for CRA enforcement to incentivize banks to implement PI in each of these categories, which we believe will deepen the impact the CRA incentivizes banks to create.

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[4] Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021) https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/

The agencies should leverage the community development qualitative impact review to involve communities in CRA enforcement

A key part of the NPR is a new evaluation framework for evaluating CRA performance. Two proposed tests are particularly relevant to the process of engaging community members: The Community Development Financing Test, which would assess how well a bank meets community development financing needs by using a standardized review of community development loans and investments and a qualitative impact review of community development financing activities, and the Community Development Services Test, which would evaluate how well a bank's services meet community development needs.[5]

Currently, the agencies' qualitative assessment of a bank's community development performance takes into account the extent to which a bank's community development activities are innovative and complex. In addition, the agencies consider whether a bank's activities reflect leadership and are responsive to community needs.[6] The agencies propose to conduct an impact review of community development activities that would qualitatively evaluate the impact and responsiveness of qualifying activities with respect to community credit needs and opportunities.[7] This proposed change is to address the concern that while community development activities may be innovative and complex, they may not be impactful or responsive to the community's needs.

Transform Finance commends the agencies' goal of more closely monitoring the impact and responsiveness of banks' community development activities, and urges the agencies to adopt both the Community Development Financing Test and the Community Development Services Test. However, the agencies should take additional steps to leverage the community development qualitative impact review to involve communities in CRA enforcement, thus deepening the impact and responsiveness of banks' community development activities. An additional impact review factor that should be included is the extent to which banks engaged stakeholders and organizations in the planning and implementation of their community development activities. Banks should only be eligible to receive an "Outstanding" rating if they utilized deep forms of community engagement to plan and implement their community development activities.

Transform Finance suggests that agencies should be required to consider input from community stakeholders when evaluating the impact and responsiveness of banks' Community Development Financing. Transform Finance urges that the agencies make the process of the qualitative impact review public and transparent, both so that communities can meaningfully engage with the process and to ensure that the potential subjectivity of the qualitative review is not abused to artificially inflate ratings (as currently constructed, the impact review could lead to inconsistent or careless application of examiner discretion).

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[5] NPR, pp. 144-146.
[6] *See* Q&A§ __.21(a)—2.
[7] NPR, p. 107.

Formal mechanisms for community input on strategic plans should be codified

Currently, when reviewing a strategic plan, the agencies consider the public's involvement in formulating the plan, any written public comments on the plan, and the bank's response to any public comments. Banks are required to seek public input by publishing their draft plans in local newspapers, but the plans rarely garner public comments through this method.[8]

To encourage increased public participation, the agencies propose making CRA strategic plans as widely available and as easy to locate as possible by requiring banks to post draft CRA strategic plans on the appropriate Federal banking agency's website and the bank's website along with a means by which members of the public can submit comments on the bank's plan. The agencies also propose to clarify how banks can demonstrate they have meaningfully engaged with their community in drafting their CRA strategic plans by clarifying expectations for the information submitted with the plan.[9]

Transform Finance commends these proposals and urges the agencies to enact them. To codify the impact of these proposals, Transform Finance recommends that the agencies require banks submit specific information including the stakeholders and organizations the bank engaged with in drafting their plan (with particular attention to the representation of minority communities), a description of the process used to publicize the draft plan, and the methods the bank employed to engage such stakeholders and organizations. The public engagement mechanisms the bank employed should be assessed along the PI spectrum (see "Introducing Participatory Investment section). Direct formalized mechanisms of input around strategy, such as an official CRA committee made up of external grassroots stakeholders or other strong forms of PI, should be required for the bank to receive an "Outstanding" rating. The information the bank submits should also include a comprehensive list of the comments and recommendations the bank received and the bank's response to this information. These recommendations would serve to increase the accountability of banks to communities in developing a strategic plan that will meet community credit needs.

Public comments must be publicly available

Genuine community engagement with the CRA requires elevating the importance of public comments regarding the extent to which banks meet local needs. The agencies propose to continue the current practice of sending any comments on CRA performance to banks and are also considering publishing comments received on agency websites. Transform Finance commends this proposal and urges the agencies to make comments publicly available: Posting comments on agency websites will establish accountability on the part of examiners to consider them. In addition, these comments can be referenced during future merger applications to determine if the banks address significant concerns raised by the public.

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[8] 12 CFR __.27(g)(2).
[9] NPR, p. 357-8.

Transform Finance further recommends that the agencies establish a public registry that community organizations can use to sign up if they want to be contacted about community needs and bank CRA performance.

Implementing the CRA through merger reform

The CRA is enforced through the merger review process, in which federal bank agencies are required to consider the CRA and fair lending performance of the merging banks as well as the probable (future) impacts of the merger on meeting convenience and needs of the community to be served. This accountability has served as a powerful motivation for banks to increase their reinvestment activities over the years.

The agencies proposed no changes to how they consider CRA performance when reviewing merger applications. Transform Finance supports the National Community Reinvestment Coalition's position of urging the agencies to improve upon their implementation of the convenience and needs standard required under banking law for mergers through expecting concrete plans, including encouraging community benefit agreements from merging banks concerning how they will increase lending, investment and services to traditionally underserved communities.[10]

Community benefits agreements (CBAs) are a formal agreement between banks and community groups as to how banks will satisfy CRA requirements when they merge. CBAs open doors for LMI communities and communities of color, and can increase lending, investments and philanthropy for underserved borrowers and neighborhoods compared to prior practices.[11] CBAs are a critical component of community participation in the CRA enforcement process.

The agencies should encourage CBAs and issue more conditional merger approvals requiring improvements in CRA performance. The input of communities in affected areas, as expressed through CBAs, should be a factor in the decision to approve mergers. To ensure that CBAs are meaningful, regulators should hold institutions accountable to provide evidence that they have met the terms of their stated commitments. Meeting the goals of CBAs should be a factor that influences the rating in the merged banks' next CRA exam. When an exam reveals that a merged institution met or exceeded the terms of a CBA, the entity should receive additional credit. Conversely, when an exam finds that a bank fell far short of the targets in its CBA, this performance should be a negative factor on the CRA exam.

CRA must explicitly consider bank activity by race and ethnicity

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[10] National Community Reinvestment Coalition, "Position Paper On CRA Reform" (Mar. 1, 2022) https://ncrc.org/position-paper-on-cra-reform/

[11] Alexandria Robinson, "Explainer: How NCRC Brings Banks And Local Leaders Together For Community Benefits Agreements" (Sept. 11, 2019) https://ncrc.org/explainer-how-ncrc-brings-banks-and-local-leaders-together-for-community-benefits-agreements/

The CRA is dedicated to undoing redlining, a racist mechanism. Since the CRA's inception, it has been a powerful tool to ensure much-need investment and capital makes it to LMI communities. However, the effects of redlining remain. Due to deep, persistent patterns of discrimination, even higher income Black people still often have fewer assets and less access to credit than low-income whites. For example, Black homeowners with incomes between $75,000 and $100,000 have higher mortgage interest rates than white homeowners with $30,000 or less in household income, according to an analysis of 2019 American Housing Survey data.[12]

Persistent racial disparities in lending should compel the agencies to incorporate race and ethnicity in CRA exams. Transform Finance joins the National Community Reinvestment Coalition (NCRC) and other advocacy groups urging the agencies to incorporate an explicit focus on race in core CRA regulations and examination procedures (for further information, please reference the NCRC's white paper report "Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal").

Conclusion

The NPR is a good start and promises to make parts of CRA exams more rigorous but we urge the agencies to codify formal mechanisms for public engagement. We also urge the agencies to incorporate race in CRA exams. If CRA is improved through deepening public engagement and the accountability of banks to communities, we believe the proposed rule could help reduce inequalities, disinvestment and other disadvantages in America's overlooked communities.

Questions? Engage with us at info@transformfinance.org

[12] Raheem Hanifa, "High-Income Black Homeowners Receive Higher Interest Rates than Low-Income White Homeowners" (Feb. 16, 2021) https://www.jchs.harvard.edu/blog/high-income-black-homeowners-receive-higher-interest-rates-low-income-white-homeowners