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Re: Comment on the Joint Notice of Proposed Rulemaking Regarding the Community Reinvestment Act [Docket ID OCC-2022-0002, RIN 1557-AF15; Docket No. R-1769 and RIN 7100-AG29; RIN 3064-AF81]

On behalf of UnidosUS, we submit these comments in response to the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) request for comment on the proposal to amend regulations implementing the Community Reinvestment Act of 1977 (CRA).

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic[*] civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers at the national and local levels.

For almost three decades, UnidosUS has conducted research and analysis on issues related to improving the financial standing of Latinos, including strengthening the Community Reinvestment Act (CRA) and the Home Ownership and Equity Protection Act (HOEPA), supporting strong fair housing and lending laws, and expanding access to affordable credit. In addition, UnidosUS manages a national network of more than 50 community-based, Housing and Urban Development (HUD)-approved housing counseling agencies.

We draw on experiences as both consumers and as lenders. Our subsidiary, Raza Development Fund (RDF), is the nation's largest Latino community development financial institution (CDFI). Since 1999, RDF has provided $400 million in financing to locally based development projects throughout the country. This work has supported the Latino community through predevelopment loans, organizational

[*] The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout our materials to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race. Our materials may also refer to this population as "Latinx" to represent the diversity of gender identities and expressions present in the community.

assessments, and a range of unconventional lending products, and it has substantially increased UnidosUS's institutional knowledge of how Latinos interact with the mortgage and real estate markets, their credit and capital needs, and the impact of government regulation on lenders.

The CRA is a useful tool to combat lending disparities, but it has failed to fulfill its promise due to serious flaws that must be addressed by the agencies.

This rulemaking represents an historic opportunity to modernize the CRA, which holds promise to improve the banking system for low- and middle-income (LMI) people and for Latinos. As we outline below, thus far there has been progress, yet key improvements are needed to modernize the application of this cornerstone law so that it may live up to its potential and purpose of promoting fair and equal access to banking services for all.

The CRA was first enacted into law in 1977 in response to a clear public record of racial and ethnic discrimination in the banking and credit systems and as protection against the pervasive practice of redlining. Over the years, the CRA helped to revitalize neighborhoods and to encourage banks to be innovative with investments, so that low- and moderate-income (LMI) borrowers, who are historically underserved by banks, can benefit directly from large bank investments that might otherwise not reach their neighborhoods. The law helped to curb the harms of discrimination and unequal treatment that Latinos, immigrants, and other communities of color face when they interact with banks and the marketplace.[1]

At the heart of the CRA's original legislation is the promotion of fair and equal access to banking services in all neighborhoods, regardless of the racial, ethnic, or income composition of its residents. Since enactment, the CRA has led to $1.7 trillion in lending to economically distressed areas and is responsible, at least in part, for gains in credit in LMI communities and communities of color.[2] Our own research has found that "the CRA helped facilitate… as much as 35% of home loans to Latinos, about two to three times the share of loans facilitated to Whites."[3] Finally, a 2017 study found that the CRA had increased the number of credit-visible individuals (meaning that a credit score is recorded with the credit bureaus), and that the number of such individuals in Latino communities had increased by 7%.[4]

Yet despite the law's record of progress over the past four-plus decades, profound financial inequities persist, including racial disparities. For example, a 2022 report by the National Community Reinvestment Coalition (NCRC) analysis found that:[5]

- Total loans to majority-minority neighborhoods fell from 19.1% of all loans in 2018 to 18.5% in 2020.
- Total loans in LMI neighborhoods declined from 16.5% in 2018 to 13.7% in 2020.
- Black and Latino borrowers bought less valuable homes than did White borrowers, and they paid more to do so. For example, the average equity of home purchases of Whites at the time of closing was $80,000 compared to $43,000 for Latinos and $26,000 for Blacks.
- In 2020, loan denial rates for Latino borrowers were 10.7%; Black borrowers experienced a 14.3% denial rate and Whites experienced a 6.2% denial rate.

The CRA can play a greater role in curtailing these inequities, but specific, critical flaws prevent it from doing so. For instance, despite the documented disparities that persist as described above, approximately 98% of banks pass their CRA exams on an annual basis, with less than 10% receiving an

"Outstanding" rating and almost 90% receiving a rating of "Satisfactory." These ratings reflect the relatively low standards that banks must meet to pass a CRA exam.

Importantly, CRA exams also fail to include race and ethnicity data in bank examinations despite the law's original intent, which was to combat redlining, an overtly racist practice. Rather, the exam focuses on income levels, thereby yielding a useful but incomplete picture of inequities in access to credit and banking services.

The CRA also leaves out important elements of the banking system in which disparities persist. For instance, while the CRA is focused on ensuring that the *credit* needs of a community are met, it excludes measures for access to other banking needs, like deposit products. Yet similar disparities exist between access to deposit products and access to credit. For example, FDIC data show that 12% of Latinos are unbanked, compared to 2.5% of Whites, and that 23% of those who earn less than $15,000 a year are unbanked, compared to 0.6% of those who earn at least $75,000.[6] There is also evidence of disparities in the cost of deposit accounts; Latinos pay $14 per month, on average, for ATM, overdraft, and routine service charges on checking accounts, while Black account holders report paying $12 a month. In contrast, Whites pay an average of $5 per month.[7]

Furthermore, the CRA, as currently conceived, excludes financial technology (fintech) companies and online banking products. Yet fintech banking companies have grown rapidly over the past decade and have a large footprint in this sector. A 2021 study by the Federal Reserve Bank of St Louis found that "[i]n 2013, fintech companies accounted for 5% of the personal loan market … By 2018, fintech firms had eclipsed banks with a 38% share of a growing market. Banks' share of personal loans fell from 40% to 28% over the same period, while credit unions' share declined 10 percentage points to 21%."[8] Over the past decade, a few fintech giants emerged, such as PayPal, which is worth $75 billion in assets[9] and has more than 400 million users worldwide.[10] Smaller fintechs grew substantially, such as Chime Bank, for example, which is valued at $25 billion (up from $1.5 billion in 2019[11]) and now has more than 14.5 million customers in the United States.[12] For comparison, if PayPal were a chartered bank, it would be the 39th largest bank in the United States by asset size, and Chime Bank would be the 78th largest bank in the United States.[13] If these fintechs were included in the CRA they would fall in the "large bank" category of tests, of $2 billion or more, which are subject to the most rigorous CRA tests.

Traditional brick-and-mortar banks are responding to the breakneck growth of fintech competitors by creating and adapting their own digital banking services and products. For example, banks are adopting so-called "cyber branches," in which all transactions are conducted online or over the phone.[14] These branches account for more than 4% of total deposits, despite being only 0.2% of all bank branches. And their importance is reflected by their financial reach: the average cyber branch holds more than $3.5 billion in deposits compared to $176 million for noncyber branches.[15] The growing fintech sector and the subsequent response by the traditional banking sector have resulted in nearly 90% of all consumers reportedly using fintech products in some capacity.[16]

Such rapid growth in fintech has not generally, to date, led to a more equitable financial system. For example, according to FDIC data, 11% of Latinos primarily bank online, compared to 27% of Whites. Fewer than 13% of people making less than $30,000 a year primarily bank online, compared to 32% of those making at least $75,000.[17] The current CRA fails to account for all online banking products or non-bank fintech company activities. Efforts to include these in CRA examinations would help to make the financial system both more inclusive and more equitable.

Summary: The Agencies Should Retain the Positive Aspects of the CRA, While Significantly Expanding Its Reach to Meet the Needs of the Community Today

The joint proposal contains several elements that will strengthen the CRA and improve equity and inclusion in the banking system. As we note above, however, several key pieces are also missing from the proposal, and many aspects of the proposal could be improved. In keeping with our approach, our comment is organized into two broad sections: first, we note the aspects of the proposal that we believe to be strong and should be preserved or require minor adjustments; and second, we provide a discussion of the aspects of needed expansions of the CRA that are missing from the proposal or require significant improvement.

In summary, we support:

- Improvements to bolster the rigor of the retail lending test.
- Inclusion of digital delivery systems to capture fintech product activity.
- Incentives to increase investments in affordable housing.
- Improvements in data collection requirements for the community development financing test.
- Provisions to discourage investments that would displace LMI people.
- Consideration of race and ethnicity, in addition to income, in the use of special purpose credit programs (SPCPs).

Conversely, the proposal notably fails to, but also should include:

- Lending activity and deposit product offerings to people of color in CRA exams.
- Consideration of language access services in CRA exams.
- Non-bank financial technology (fintech) companies or consumer loans in the retail lending test that fintech companies tend to provide.

Furthermore, several pieces of the proposal could be improved, including:

- How LMI communities and communities of color provide input and feedback in CRA exams.
- How investments in different forms of alternative housing models are encouraged by considering their inclusion in the community development exam.
- Consideration of race and ethnicity as it pertains to special purpose credit programs.

Specific Aspects of the Proposal Would Make Positive Changes to the CRA

Key proposed changes to the scoring system in the retail lending test would improve scoring transparency and promote more competition among financial institutions.

Currently, as described above, approximately 98% of banks annually pass CRA exams. While just less than 10% receive an Outstanding rating, almost 90% receive a rating of Satisfactory.[18] We agree with the proposal that the CRA would be more effective if its ratings system more accurately revealed distinctions in performance and required more rigorous standards for achieving high ratings.

The proposal creates more rigor for the large bank retail lending test by introducing performance ranges that would allow comparisons of a bank's lending performance across demographic and market benchmarks.[19] This approach would reduce the current ratings convergence that we observe (which fails to adequately distinguish differences in performance) and could result in a wider range of earned ratings on the lending test.

For example, the agencies propose use of a statistical model to project market benchmarks for assessment areas. The model would consider demographic, economic, and housing market characteristics. When the agencies identify assessment areas with market benchmarks that are significantly lower than the predicted market benchmarks, examiners can adjust ratings downward. These changes would provide stronger incentives for financial institutions to improve their retail lending performance because they could compare their own performance to competitors and to the market benchmark.

The proposal also provides examples of how the new retail lending test would address the current ratings convergence. For instance, 10% of banks with assets less than $10 billion would likely receive a Needs-to-Improve on the retail lending test, as would 4% of the banks with assets more than $50 billion. In addition, 46% and 58% of banks with assets below $10 billion and above $50 billion, respectively, would receive Low Satisfactory ratings.[20]

Such changes would be positive, as they would increase the rigor of the test, create a new capacity to publicly compare test results among financial institutions, and may encourage banks to compete with one another to obtain higher scores and better meet the credit needs of LMI communities in the process. For these reasons, this aspect of the proposal should be made part of a final rule.

Digital delivery systems, which include financial technology (fintech) products, are included in the proposal and would allow LMI communities to more fully realize the benefits of such products and services.

The proposal includes an approach for a new evaluation for "digital and other delivery systems," but it would be required only for financial institutions with $10 billion in assets and above. Digital delivery systems include such things as checking and savings accounts that were opened online by a consumer.[21]

Financial institutions with $10 billion in assets and above would also be required to collect deposit data, which includes digital deposit accounts outside of branch networks. The FDIC would publish a summary of aggregate deposit data for financial institutions smaller than $10 billion.[22]

The agencies proposal would test digital and other delivery systems based on three factors:

- Digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts.
- The range of digital and other delivery systems.
- The bank's strategy and initiatives to serve LMI individuals with digital and other delivery systems.

Under the proposal, the agencies would look at how many digital products are provided in LMI census tracts and compare the number of products that they are providing in that tract to the number of products they are providing to wealthier tracts in an assessment area. For example, if an assessment area is comprised of 10% LMI households but only 5% of digital products are going to LMI tracts, then an institution would receive a lower mark.

This new test is a step in the right direction. Including a focus on digital delivery systems represents a major improvement over the scope of the current CRA. However, we are concerned that a lot of fintechs would not be included in the test. Fintechs are acquiring younger and higher-income consumers at higher rates than older and working-class consumers,[23] and, as previously stated, people of color already use online banking at lower rates than Whites. Meanwhile, many new fintech companies are growing quickly and reaching millions of people. For example, Varo Bank is both a chartered and also a fintech, and it recently doubled its customer accounts to four million and tripled its assets to $2.5 billion.[24]

For these reasons, the threshold for the digital delivery systems and deposit data collection requirements should be lowered to include all banks of $2 billion in assets and above to ensure that newer fintechs serve underserved areas including LMI communities and communities of color.

Question 101. Should affordability be one of the factors in evaluating digital and other delivery systems? If so, what data should the agencies consider?

A sub-question asked in the proposal relates to the type of data collected regarding digital delivery systems. As the question implies, the agencies should consider affordability when evaluating digital delivery systems.

Specifically, the evaluation should consider both direct account fees, as well as fees styled by companies as tips and other optional fees. Evidence shows that digital delivery systems offered by fintech companies like Varo and Ally tend to be more affordable than traditional bank offerings. For example, a recent survey by *Forbes* magazine found that online banks had significantly lower overdraft, monthly maintenance, and ATM fees than did traditional banks.[25] However, the survey did not distinguish between digital products that traditional banks offer and non-digital products. Thus, traditional banks charge higher fees whether they offer a product digitally or not.

Furthermore, evidence suggests that some fintechs charge hidden fees that make their products more expensive than advertised. For example, the National Consumer Law Center (NCLC) explains in a 2019 report that "payday advance products, such as Earnin (formerly ActiveHours) … [contain] many of the features of payday loans, with purportedly voluntary 'tips' instead of set fees."[26] Agencies should develop a comprehensive definition of affordability that includes non-traditional methods of payment like tips and apply the standard to digital delivery systems.

The proposal appropriately encourages increased investments in affordable housing.

The agencies propose a definition for affordable housing that would include four components:

- Affordable rental housing developed in conjunction with federal, state, and local government programs.
- Multifamily rental housing with affordable rents.
- Activities supporting affordable low- or moderate-income homeownership.
- Purchases of mortgage-backed securities that finance affordable housing.

The agencies propose that affordable housing be developed in conjunction with federal, state, local, or tribal government programs that have a stated purpose or "bona fide intent" to promote affordable housing will be considered as part of community development. To encourage mixed-income developments that combine affordable units with market rate housing, such housing would be considered even if fewer than a majority of the beneficiaries of the housing are low- or moderate-income (LMI) individuals (defined as those earning at or below 80% of AMI).

The affordable housing activities described above will receive credit based on a "pro rata" basis. The agencies describe the following example: "if a bank makes a $10 million loan to finance a mixed-income housing development in which 10 percent of the units will be set aside as affordable housing for low- or moderate-income individuals, the bank may treat $1 million of such loan as a community development loan."

The focus on integrating federal, state, and local entities appropriately incentivizes coordination and collaboration and some affordable housing activities in any development. This is important because most affordable housing projects layer multiple funding sources, and recognition of the credit will enable a more comprehensive view of a range of investments in affordable housing.[27]

The proposal contains improvements in data collection requirements for the community development financing test.

To improve the accuracy and effectiveness of the community development financing (CDF) test, the agencies propose to collect improved data that will include additional points of public interest. Under the proposal, large banks would be required to report community development data on an individual project level, describing the category of community development (such as affordable housing or economic development), the dollar amount, and indicators of the impact of the activity such as serving persistent poverty counties, serving low-income individuals and families, and other related indicators as found in the proposal.[28] The agencies propose to report these data at a census tract or county level.

Collection of this level and quality of data would be a strong positive development. It would help make the community development finance test more rigorous by providing key details on activities by each bank and would allow examiners to compare bank performance with additional local and regional specificity. Such information could help to demonstrate whether a bank is responsive to local needs by financing activities that could otherwise go unfunded. The additional intra-regional data also are useful to help stakeholders more accurately determine areas that are currently receiving considerable financing for community development and to identify areas in which additional investment is needed.

As noted above, affordable housing development often requires multiple stakeholders, and these data would illuminate the integration of funding sources and partnerships to achieve them. Such data should help to provide a clearer picture of the number and percentage of community development loans or investments that have significant impacts. These proposed data collection improvements significantly strengthened the CRA and will provide stakeholders, administrators, and researchers with valuable information to make informed and effective decisions as well as clearly highlight where more strict oversight or investment is needed.

The proposal includes provisions to discourage investments that would displace LMI people.

The agencies' proposal provides additional clarity that revitalization activities must not displace LMI populations, by creating important requirements to prevent displacement:

- In the revitalization, stabilization, and Place-Based Activity Changes, each definition has the eligibility requirement that an activity must not *displace or exclude* low- or moderate-income residents in the targeted geographical area.
- Furthermore, the agencies' focus on requiring activities that benefit LMI households must prevent displacement and exclusion of LMI households for community development.

The anti-displacement provisions and language are critical for the Latino community, which often faces displacement when there is new housing development. This is true both generally as well as when there is an environmental disaster, when displacement is most likely.[29] Displacement, particularly without additional or supplementary housing supports, has significant negative consequences. It disrupts social networks, can lead to longer commutes (and thus higher commuting costs), and can initiate a difficult chain of moves and disruptions for the displaced.[30] A final CRA rule must adequately protect against displacement, or it would not be upholding CRA's requirement that banks serve the needs of LMI populations and communities.

The Proposal Omits Critical Elements That Would Better Encourage Racial Equity and Inclusion in the Financial System

Financial institution lending and deposit product offerings to people of color should be included, and scored, in CRA exams.

Although the impetus for enacting the CRA was to combat redlining, a practice that predominantly impacted Black communities and other communities of color (including Latino communities), the proposal fails to include race and ethnicity data in CRA exams. The agencies propose to use the Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race but fail to incorporate those findings into banks' CRA exam ratings, where they would have greater impact.

The need to include these data is consistent with the purpose of the law and remains highly relevant to achieving its core purpose. Lending disparities persist today and remain largely unaddressed. As mentioned above, a 2022 analysis by NCRC found that:[31]

- Total loans to majority-minority neighborhoods fell from 19.1% of all loans in 2018 to 18.5% in 2020.
- Total loans in LMI neighborhoods declined from 16.5% in 2018 to 13.7% in 2020.
- Black and Latino borrowers bought less valuable homes than did White borrowers, and they paid more to do so. For example, the average equity of home purchases of Whites at the time of closing was $80,000 compared to $43,000 for Latinos and $26,000 for Blacks.
- In 2020, loan denial rates for Latino borrowers were 10.7%; Black borrowers experienced a 14.3% denial rate, and Whites experienced a 6.2% denial rate.

Furthermore, a recent study by an FDIC economist found differences in loan denial rates and pricing between people of different races and ethnicities. The study explains that even after controlling for credit scores, debt-to-income ratios, and loan-to-value ratios, Blacks and Latinos are still 4% more likely than Whites to be denied an FHA loan and 2% more likely than Whites to be denied a conventional loan.[32] The disparity in denial rates is higher for Black and Latino borrowers with lower credit scores compared to Whites. Black people in the 25th percentile of credit scores are 5% more likely to be denied a loan than Whites, and Latinos in the same percentile are 3% more likely to be denied a loan than Whites.[33]

Finally, the study also finds disparities in loan pricing, explaining, "Black and Hispanic borrowers paid approximately 6 basis points more in interest rate than White borrowers for conventional purchase loans … Black and Hispanic borrowers also paid more in more in discount points, received more in lender credits, and paid more in total loan costs compared with White borrowers."[34]

Including such information would be both important and impactful and is practically feasible. For example, race and ethnicity data could be included in CRA exams and used to evaluate performance in a similar way that LMI data are used in the retail lending test to determine whether financial institutions are meeting the needs of LMI communities. Under such an approach, the agencies would measure the number of a financial institution's loans located in census tracts with high concentrations of people of color to the total number of the financial institution's loans in an assessment area. If a financial institution provides a lower share of its total loans to census tracts with high levels of people of color than the share of people of color in an assessment area, then this discrepancy would negatively impact their CRA score. Conversely, if a financial institution extends a higher share of its total loans to census tracts with high levels of people of color relative to the share of people of color in an assessment area, then a financial institution would get positive credit in their score.

Moreover, the agencies should implement a similar assessment for deposit products. As mentioned above, disparities in cost and access to deposit accounts persist today. For example, FDIC data show that 12% of Latinos are unbanked, compared to 2.5% of Whites, and that 23% of those who earn less than $15,000 a year are unbanked, compared to 0.6% of those who earn at least $75,000.[35] Furthermore, Latinos pay $14 per month, on average, for ATM, overdraft, and routine service charges on checking accounts, while Black account holders report paying $12 a month. In contrast, Whites pay an average of $5 per month.[36]

The agencies can adopt a similar assessment for deposit products to that which we propose for the retail lending test. Under this approach, the agencies would measure the number of deposit products that a financial institution provides in census tracts with high concentrations of people of color relative to the total number of deposit products provided in an assessment area. If a financial institution provides a lower share of its total deposit products to census tracts with high levels of people of color than the share of people of color in an assessment area, then this discrepancy would negatively impact their CRA score. Conversely, if a financial institution extends a higher share of its total deposit products to census tracts with high levels of people of color relative to the share of people of color in an assessment area, then a financial institution would get positive credit in their score.

Adding race and ethnicity data to CRA exams would allow the agencies to assess whether a financial institution is meeting its lending and banking obligations in communities of color and to ensure that unfair disparities do not continue to persist over time.

Both community input and requirements that banks build better relationships with LMI communities are critical to improving the inclusiveness of financial institution banking services.

The agencies propose to codify their practice by which they give the public a 60-day notice of banks that are scheduled for CRA examinations. The agencies believe this will improve the public's ability to engage in CRA examinations because it will give stakeholders two months to submit comments with feedback about the performance of specific banks. Furthermore, the agencies' proposal would continue the current practice of sending the public's comments on a bank's CRA performance directly to the banks that are being assessed. Finally, the proposal would require that comments be published on agency websites for public access.[37]

While these are positive steps in the right direction, much more is needed to empower the community in CRA examinations. This level of interaction is insufficient for community members and community-based organizations to provide appropriate input into exams and establish healthy relationships with financial institutions. These mechanisms provide very limited influence for communities that are impacted by a bank's performance. For instance, a comment that is submitted by a community-based organization cannot stop a merger, stop a branch from closing, lower a bank's CRA grade, or have any tangible impact on a bank's performance beyond the reputational hit that a bank may receive from publicly available comments.

Under the current CRA, examiners sometimes engage in an informal practice in which they reach out to well-connected contacts in a community (for instance, to leaders of a community-based organization), to inquire about a financial institution's performance or to ask if the community's lending needs are being met. This practice is helpful in incorporating the perspective of community members who are directly impacted by a financial institution in the exam process, but it is not currently required and runs a risk of self-selection in terms of the input solicited.

Furthermore, communities impacted by financial institutions should not be involved only during CRA examinations. Instead, they should have opportunities to establish consistent and sustained relationships with financial institutions, to ensure that they are meeting community needs. For example, community committees could be established to provide regular input directly to a financial institution. Such committees could include community-based organizations and individual community members themselves.

This type of structured engagement would establish a mechanism whereby the community could potentially influence an institution's policies and activities. It could also be a way to allow community members to hold a financial institution accountable for meeting the needs of the community.

Additionally, community-based organizations and community members should be given a prominent role in providing input in CRA examinations. Public input should be provided via townhall meetings, virtual webinars, and written comments.

As part of creating specific channels for public input in the exam process, the agencies should allow the public and impacted communities to provide feedback about:

- The quality of credit and deposit products offered in the area.
- The impact on branch closings in the affected community.
- The impact of mergers on an affected community.
- A financial institution's outreach efforts to LMI people and people of color.

- An institution's existing relationship, or lack thereof, with low-income communities, which should include community stakeholders such as community-based organizations and consumers from an LMI community.

A requirement for specific forms of community input would add a strong incentive for ongoing dialogue with communities and banks, and would empower LMI communities and communities of color in the CRA examination process.

Investments in innovative and alternative housing options should be encouraged and included as part of CRA exams.

Innovative and alternative housing supply options, including, but not limited to, accessory dwelling units (ADUs), manufactured homes, and modular homes, can be a relatively inexpensive way to create low-cost housing units.[38]

An ADU is a self-contained, but separate, habitable living unit. It must have a full kitchen, bathroom, and somewhere to sleep and must be associated with a primary single-family dwelling, but must be smaller than the principal dwelling unit.[39] Manufactured homes are constructed on a permanent chassis and in accordance with the HUD Code. Modular homes are constructed in alignment with local and regional building codes but a large percentage of the home has been primarily built in a factory and shipped to the site.[40] Each of these options represents existing and growing markets for housing that is typically lower cost than traditional single-family construction.

Innovative housing supply options present a strong opportunity to provide additional housing units—especially for Latinos. Estimates show that hundreds of thousands of units will likely be built in California alone (the state with the highest number of Latinos) due to recent legislation that opened up access to accessory dwelling units (ADUs) for virtually all of California's single-family parcels.[41] In 2021 there was a 12% increase in manufactured housing units shipped, and the Urban Institute predicts a continued upward trend with as many as 163,811 yearly shipments by 2026.[42] Latinos comprise a disproportionate share of manufactured housing homeowners.[43]

However, financing for nontraditional housing options presents barriers to use. Financing options often require a large down-payment, a high-interest rate loan, chattel loan, renovation loan, or significant demonstrated capital to receive a loan, making buyers of nontraditional housing worse off compared to traditional homeowners. This historic financing framework for innovative housing solutions has meant current benefits accrue to primarily benefit White and wealthier households who are more likely to have more home equity or larger cash reserves.[44]

At the urging of the Biden Administration in the Housing Supply Action plan, Fannie Mae and Freddie Mac are exploring improved financing alternatives. The Department of Housing and Urban Development is also working to increase the usability of the Federal Housing Administration's Title I loan program for Manufactured Housing, supporting greater securitization of Title I loans through Ginnie Mae's platform, and updating the HUD Code to allow manufacturers to modernize and expand their production lines.[45] These are concrete actions to increase the use of and improve the financing for nontraditional and innovative housing solutions.

In line with the Administration and in support of the current trend to use innovative housing solutions, the agencies should consider including data on investments made by financial institutions related to the funding of innovative types of housing in the community development financing test to incentivize uptake and use of these options. Additionally, the new rule should support banks that demonstrate collaboration with the Government Sponsored Enterprises (GSEs), which have committed to providing financing for manufactured housing as part of their Duty-to-Serve requirements.[46]

Investment in, and Design of, Special Purpose Credit Programs (SPCPs) Should Be Included in CRA Exams.

Question 106. Should special purpose credit programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of a loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals?

Today's credit system is an improvement on the highly subjective lending system that existed when the CRA was first enacted. Yet the work is far from done. Latinos continue to face long-standing challenges in connecting to the mainstream financial system and obtaining credit. Latinos continue to contend with inequitable access to the mainstream financial system, including regarding building credit and creating wealth. Consider:

- Latino adults are almost twice as likely to be denied on credit applications than White adults (36% for Latinos and 19% for Whites).[47]
- Latinos are twice as likely to be credit invisible than Whites.[48] A person is "credit invisible" when they do not have a record of credit with one of the three largest credit rating agencies in the country: Experian, Equifax, or TransUnion. For almost the 20% of Americans who are credit invisible, it is more difficult to buy a home, more expensive to turn on utilities, and harder to get a job.
- Latinos have an average credit score of 701—more than 30 points less than Whites' average credit score of 734.[49]
- Credit history is the second-biggest reason why Latino applicants were denied mortgages, followed by debt-to-income ratio.[50]

The 1974 Equal Credit Opportunity Act (ECOA) provided protection from gender-based discrimination in lending and later expanded it to other protected classes, including race, national origin, creed, religion, and age.[51] At its core, special purpose credit programs are a vehicle to deliver on ECOA's promise that a person should not be denied credit because of their race, gender, or other identities. While such credit assistance programs are only one tool to address the deep-rooted disparities in access to credit, they are an important and promising tool.

Therefore, we encourage regulators to include SPCPs in the CRA regulation to facilitate access to fair and sustainable credit for low- and moderate-income individuals. Regulators should look at SPCPs as a responsive credit product that can facilitate mortgage and consumer lending to underserved individuals and communities. In this effort, regulators should also incorporate an explicit focus on race and ethnicity in their examination of how SPCPs facilitate home mortgage and consumer lending. This aligns with SPCP's original intent—to ensure credit be granted on one basis alone—the ability of the borrower to repay.[52]

Encouraging financial institutions to use innovative credit assistance programs is a worthwhile effort that can promote fair and equal access to credit. But, without consideration of race and ethnicity in the implementation of SPCPs, a sole focus on low- and moderate-income individuals can fall short of both the CRA and ECOA's original intent.

Financial institutions should get credit for providing language access services in credit and deposit products as well as in community service activities.

As the agencies consider additional categories to gauge the responsiveness of banks' credit programs and products, they must include language access as an additional category for banks to be evaluated on. Promoting language access in bank services and products opens the door for millions of consumers with limited-English proficiency to access high-quality and affordable banking.

Language barriers limit the ability of nearly 26 million limited-English proficient (LEP) consumers in the United States to obtain responsible financial products and their ability to understand the terms of contracts they sign in to.[53] A report by the Urban Institute establishes that LEP is an additional barrier to homeownership.[54] It is not a coincidence that an Urban Institute study found that neighborhoods with high LEP concentration had homeownership rates 5% lower than those with a median concentration of LEP residents, controlling for external factors that influence homeownership (e.g., income, age, and race).[55]

Considering that 63.6%, or roughly 17 million, of all LEP consumers report primarily speaking Spanish,[56] ensuring that financial institutions implement robust translation services is imperative to ensure Latinos can access wealth-building tools. A Kleimann Communications Group study produced for Freddie Mac and Fannie Mae found that providing translated documents would eliminate a significant barrier that prevents or delays LEP individuals from buying a home. Spanish-, Korean-, and Chinese-speaking focus group participants all expressed a preference to receive documents in their primary language.[57] Interestingly, servicers interviewed believed that the language barrier, rather than financial literacy, was the primary obstacle to communicating with LEP borrowers, as their financial literacy was comparable to that of non-LEP borrowers.[58]

We strongly urge regulators to consider products or services geared to borrowers with limited-English proficiency as an additional category to responsive credit products and programs as part of the qualitative consideration. Regulators can encourage financial institutions to consider the banking needs of consumers with limited-English proficiency. For instance, financial institutions can leverage existing resources to ensure consumers with limited-English proficiency can access credit in an equitable manner. Resources like the Federal Housing Federal Agency's (FHFA) Mortgage Translations Online Clearinghouse can enable financial institutions to provide translated mortgage origination documents for consumers with limited-English proficiency. This can address the documented barriers faced by consumers with limited-English proficiency in negotiating loan origination and modifications.[59]

In addition, regulators should give credit to financial institutions that provide community supportive services (whether directly or through an intermediary) geared toward consumers with limited-English proficiency. This can look like financial institutions that provide grants to HUD-certified housing counseling agencies working closely with LEP consumers to forge a path to homeownership.[60]

The CRA exam should positively consider financial institutions successfully offering or supporting linguistically appropriate products and services. Inclusion of language access in responsive credit products and programs, as well as community supportive services, can encourage financial institutions to reach out to consumers and communities with high levels of limited-English proficiency. To successfully do so, the CRA must consider outreach efforts that fit within the local context of the communities that banks serve. For instance, a financial institution located in a primarily Spanish-speaking community must make the effort to provide the services described above in the appropriate language.

The agencies' definition of a responsive deposit product is very strong and should be preserved, but much more clarity is needed to provide a definition of a responsive credit product.

The proposal takes a positive step in including the quality of credit and deposit products in examinations. The agencies say they will evaluate the availability of "responsive" deposit products by taking three features into account:[61]

- Low-cost features.
- Features facilitating broad functionality and accessibility.
- Features facilitating inclusivity of access.

The agencies would consider a deposit product responsive and accessible if: it had no overdraft fees for non-sufficient funds, accounts with no or low minimum opening balance, accounts with no or low monthly maintenance fees, and free or low-cost checking and bill payment services.[62] This is a sensible standard to follow, considering that each of these fees disproportionately impacts LMI people and people of color[63] and that high costs are a primary reason why unbanked people cannot open an account.[64]

The agencies should preserve this standard. It should also give higher ratings to financial institutions that provide deposit products that meet the standards for BankOn account design and lower ratings to those that have higher fees.

The proposal also lays out definitions for what is a responsive credit product. Specifically, they consider a credit product responsive if it meets three criteria:

- Credit products and programs facilitate mortgage and consumer lending for LMI borrowers in a safe and sound manner.
- Credit products and programs that meet the needs of small businesses and small farms, including the smallest businesses and smallest farms, in a safe and sound manner.
- Credit products and programs that are conducted in cooperation with Minority Depository Institutions, Women Depository Institutions, Low-Income Credit Unions, or Treasury Department-certified Community Development Financial Institutions in a safe and sound manner.

However, the proposal fails to define what would constitute an affordable credit product. The agencies should establish standards for both consumer loans and mortgage loans to determine how much credit to give financial institutions in an examination. For example, interest rates on consumer loans, which tend to have higher interest rates, are commonly measured against the Military Lending Act, which establishes a 36% interest rate cap that includes all fines and fees. For mortgage loans, the agencies could create a metric for the average interest rates in the mortgage loan market, and give higher ratings to financial institutions that offer interest rates below the average and lower ratings for those that offer an interest rate near or above the average.

Fintech products and fintech non-banks should be included in the CRA.

The proposal includes some positive elements that would capture fintech activities, especially for financial institutions greater than $10 billion in size. However, it does not include fintechs that are not banks or encompass metrics for consumer loans that are increasingly offered by fintechs.

The agencies should explore ways to fully include non-bank fintechs in CRA examinations. Many fintechs provide financial services, sometimes in partnership with other financial institutions, but are not subject to the CRA. For example, fintech companies sometimes use “rent-a-bank” partnerships which enable them to charge exceedingly high interest rates, as high as 160% APR.[65] Similarly, some fintechs use the Industrial Loan Company designation which also enables companies with that designation to charge high interest rates, in some cases as high as 180% APR.[66] The agencies could require that financial institutions’ fintech partners, affiliates, and subsidiaries be included in CRA examinations. This would ensure that non-bank fintech companies who leverage chartered financial institution relationships to provide financial services are subject to CRA examinations and are encouraged to meet the needs of LMI communities and communities of color.

Additionally, the agencies should consider creating deposit-based assessment areas for fintech companies. The agencies already recognize that online lenders should have local obligations and be evaluated on a local basis, and the same standard should apply to online institutions offering deposits. The agencies do not include deposit-based assessment areas. However, the agencies could commit to an approach for data collection, such as requiring all banking institutions to designate deposit-based assessment areas beyond branch networks that have a certain level of an institution’s deposits (such as 5% or 10%).

Finally, the agencies did not include a threshold to define an assessment area for consumer lending in the retail lending test. For example, the retail lending test sets the threshold for an assessment area at 100 home mortgage loans, meaning that a financial institution needs to make at least 100 mortgage loans in a geographical area for it to be included in the retail lending test. Consumer loans, however, do not have any such standard. These types of loans should be included to enable evaluations of online lenders who tend to offer a high number of consumer loans.[67] For this purpose, the agencies should establish a threshold of 100 consumer loans to be included in a CRA exam.

Conclusion: the new proposal is a step in the right direction but is missing critical elements that could make banking more equitable.

The proposal from the Federal bank regulatory agencies will make the tests more rigorous by sharpening the scoring systems and making it easier to compare performance among financial institutions. Yet the proposal omits the use of race and ethnicity data and language access services and should include a more developed approach to requiring community feedback in CRA examinations.

The agencies should ensure that the spirit of the CRA is honored with concrete steps to make banking more inclusive and equitable and should strengthen these mechanisms under the law. We welcome efforts by the agencies to make progress toward this end in the service of Latinos and LMI consumers.

Sincerely,

UnidosUS

Abrazar, Inc.
American GI Forum - El Paso, Texas
Avenida Guadalupe Association
Brighton Park Neighborhood Council
Carecen
Center for Community Progress
CHES, Inc.
Corporación Desarrollo Económico Vivienda y Salud (CODEVYS), Inc.
Eastmont Community Center
Hispanic Unity of Florida
La Raza Community Resource Center
Latino Community Foundation of Colorado
Montebello Housing Development Corporation
Mountain Christian Church
Northwest Side Housing Center
Spanish Coalition for Housing (SCH)
Valley Restart Shelter
Virginia Coalition of Latino Organizations

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