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<u>Via Electronic Delivery</u> at www.regulations.gov

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Office of the Comptroller of the Currency
400 7th Street SW
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<u>Re: The Community Reinvestment Act,</u> RIN 1557-AF15, 7100-AG29 and 3064-AF8, Docket ID OCC–2022–0002

Dear Ms. Thomas:

I am pleased to provide these comments in response to the proposed rule entitled "The Community Reinvestment Act." [1]

I. Agencies Ignore the Real Culprit Behind Housing Unaffordability

Spanning the pandemic era from February 2020 through May 2022, home prices soared 43.5 percent.[2] Over the past 12 months, home prices are up 19.7 percent, while residential property prices in the United States, adjusted for inflation, are now 6.7% above the prior all-time record levels of the 2006 bubble. [3]

Home prices are increasing far greater than family income growth is. The home-price-to-median-income ratio now stands at more than 8.1, significantly higher than the levels of well under 5.0 experienced from 1980 to 2000.[4] The mortgage-payment-to-income ratio hit 42 percent in May—tied for the highest level since the creation of the index in 2006.[5] The mortgage payment on a median-priced home with a 20 percent down payment jumped from under $1,300 to more than $2,000 in just the past year as interest rates and home prices surged—a whopping 56 percent increase.

Median apartment rental costs, meanwhile, have jumped 12 percent this past year.[6] Because leases often roll over annually, the Consumer Price Index data from the Bureau of Labor

[1] *Federal Register*, Volume 87, Issue 107, June 3, 2022, pp. 33884-34066.
[2] Federal Reserve Bank of St. Louis, S&P/Case-Shiller U.S. National Home Price Index, Series CSUSHPINSA, https://fred.stlouisfed.org/series/CSUSHPINSA (accessed August 4, 2022).
[3] Federal Reserve Bank of St. Louis, Real Residential Property Prices for United States , Series QUSR628BIS, https://fred.stlouisfed.org/series/QUSR628BIS (accessed August 4, 2022).
[4] Longtermtrends, Home Price to Median Household Income Ration (US), https://www.longtermtrends.net/home-price-median-annual-income-ratio/ (accessed August 4, 2022).
[5] Federal Reserve Bank of Atlanta, Center for Housing and Policy, Home Ownership Affordability Monitor, https://www.atlantafed.org/center-for-housing-and-policy/data-and-tools/home-ownership-affordability-monitor.aspx (accessed August 4, 2022).
[6] Apartment List, Apartment List National Rent Report, July 27, 2022 https://www.apartmentlist.com/research/national-rent-data (accessed August 4, 2022).

Statistics does not yet fully reflect this surge. Since March 2020, numerous cities experienced rent increases well in excess of 30 percent.

So who are the main culprits? Government mortgage subsidies, the Federal Reserve, and local regulations.

Government-sponsored enterprises (GSEs)—namely, Fannie Mae and Freddie Mac—continue to dominate the mortgage market. Investors who purchase GSE bonds and mortgage-backed securities (MBSs) ultimately provide funds for people to finance homes, and these bondholders and MBS investors enjoy implicit government backing. Approximately 90 percent of GSE volume is currently devoted to refinances, investor purchases, lower loan-to-value loans, and pricier homes purchased by higher-income earners. Government-subsidized GSEs enable borrowers to take on bigger loans and spur housing demand, leading to higher home prices and increased taxpayer risk.

Since March 2020, the Federal Reserve has driven down mortgage interest rates and fueled a rise in housing costs by purchasing $1.3 trillion of MBSs from Fannie Mae, Freddie Mac, and Ginnie Mae. The $2.7 trillion the Federal Reserve now owns is nearly double the levels of March 2020.[7] Artificially increasing the amount of capital available for the residential home mortgage market and distorting interest rates has exacerbated home unaffordability.

On the local level, stringent zoning restrictions, density limitations, and aggressive environmental regulation limit the supply of housing while increasing the costs of construction. Regulations often account for more than 30 percent of the costs of rental housing construction.[8] Rent control further compounds the problem by deterring new construction, giving landlords fewer incentives to spend on upkeep and remodeling, and reducing the future supply of housing. New construction the past decade remains far lower than in the decade preceding the prior housing price bubble in part because of these restrictions.[9]

Restoring this bedrock of the American dream by removing federal subsidies from the housing market, restricting the Federal Reserve's power to purchase a limitless quantity of mortgages, and eliminating the artificial barriers to housing supply erected by local leaders. The agencies further distort the housing market by conditioning or granting credit for CRA compliance based on furtherance of development plans and projects favored by the government's central planners. Instead, the agencies should refocus on the core of its congressionally mandated mission: assessing each financial institution's record of meeting the credit needs of its entire community, consistent with the safe and sound operation of such institution.

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[7] Federal Reserve Bank of St. Louis, Assets: Securities Held Outright: Mortgage-Backed Securities, Series WSHOMCB, https://fred.stlouisfed.org/series/WSHOMCB (accessed August 4, 2022).

[8] Paul Emrath and Caitlin Walter, Regulation: Over 30 Percent of the Cost of a Multifamily Development, National Association of Homebuilders and National Multifamily Housing Council, June 2018, https://www.nmhc.org/contentassets/60365effa073432a8a168619e0f30895/nmhc-nahb-cost-of-regulations.pdf.

[9] Amherst, The Profile of Single-Family Renters and the Barriers to Homeownership That Got Them Here, November 15, 2021 https://www.amherst.com/insights/the-profile-of-single-family-renters-and-the-barriers-to-homeownership-that-got-them-here/ (accessed August 4, 2022).

II. Agencies should be Cognizant of the Unintended consequences of using Census Data to Enforce CRA

The proposed rule relies heavily on low- and-moderate income census tracts to determine whether banks are meeting Community Reinvestment Act ("CRA") requirements.[10] Presently, this includes the reporting by large banks of aggregate small business and small farm data at the census tract level.[11] The agencies now propose large banks be required to also report automobile loans on the census tract level.[12] They agencies are proposing that all large banks "report on an annual basis the aggregate number and amount of small business loans and small farm loans for the prior calendar year for each census tract in which the bank originated or purchased a small business or small farm loan."[13] And they are considering requiring the "reporting of the number and amount of small business loans and small farm loans for each census tract for which the borrower had business revenue of $250,000 or less."[14] The agencies also propose to require large banks to report deposit accounts by census tract.[15] This builds on the census tract level data for mortgage lending required.[16]

The use of Census data to enforce the CRA affects how banks allocate credit between neighborhoods. Median income measurements for purposes of determining whether lending activity in a neighborhood is eligible for CRA inclusion is based on decennial census data. This, this is fixed for 10-year time periods. However, neighborhoods may improve during those time frames—and a bank may choose to target the fastest or most improving portion of this neighborhood because this represents lower credit risk while still qualifying for as a CRA activity.

A recent study by Hyojung Lee and Raphael W. Bostic concluded, "We find that there are indeed distributional effects that arise from the CRA regulatory structure such that certain CRA-eligible populations fare better in terms of access to credit than others. In particular, we find that, even after controlling for individual and neighborhood characteristics, and even within a narrow range around the income threshold used under the CRA, loan applications in moving-up communities tend to have a greater probability of getting accepted by banks, with an added premium when the communities are CRA-eligible."[17]

Lee and Bostic warned that a potential unanticipated consequence of the CRA is "that it changes the distribution of resources *within* the target population."[18]

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[10] Ibid, 33985.
[11] Ibid, 33994.
[12] Ibid, 33997.
[13] Ibid, 33998.
[14] Ibid, 33998.
[15] Ibid, 34001.
[16] Ibid, 34002.
[17] Hyojung Lee and Raphael W. Bostic, *Bank adaptation to neighborhood change: Mortgage lending and the Community Reinvestment Act*, p. 2, Journal of Urban Economics 116 (2020) 103211.
[18] Ibid.

III. The Agencies Heap Additional Qualifiers on "Naturally occurring affordable housing"—including a form of backdoor rent control [19]

The proposed rule gives second class treatment to "naturally occurring affordable housing" for purposes of community development credits. Most problematic is a proposal that includes a "Written Affordability Pledge" by the property owner to maintain rents affordable to low- or moderate-income individuals for at least five years or the length of the financing, whichever is shorter" as one of four possible criteria qualifying a project as "affordable housing."[20]

This is a backdoor attempt at imposing rent control on more communities. Some see rent control as a quick fix for a long-term problem: For the last 20 years, rental costs have increased at a greater pace than inflation. Experience with those policies demonstrates that they wind up shrinking the supply of housing—harming both renters and property owners.

Nationally, rental costs increased 36 percent in just the last decade.[21] Some urban areas have experienced far steeper jumps in rent. For instance, rental costs in the Seattle metro area jumped 55 percent over the last decade.[22] And rents in the largely rent-controlled San Francisco metro area soared 57 percent—both nearly triple the overall rate of inflation.[23]

Nudging more of the entire nation to model Portland, New York City, and San Francisco will only force renters to live in more dilapidated conditions and dampen interest in building additional units. Rather than ease pressure, rent control compounds the problem of affordability. It does nothing to make housing less costly to build. Meanwhile, rent control has the perverse effect of shrinking future supply by deterring new construction and incentivizing landlords to spend less on upkeep and remodeling.

IV. Agencies Proposal to RequireF Banks to Publicly DiscloseInformation Irrelevant to the CRA Compliance Assessment and Evaluation Exeeds their CRA Authority

The agencies propose providing additional information to the public in CRA performance evaluations for large banks "related to the distribution by borrower race and ethnicity of the bank's home mortgage loan originations and applications in each of the bank's assessment areas." The agencies claim that "providing the data in this disclosure would have no independent impact on the conclusions or ratings of the bank and would not on its own reflect any fair lending finding or violation. Instead, this proposal is intended to provide transparent information to the public."[24]

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[19] *Federal Register*, Volume 87, Issue 107, June 3, 2022, p, 33895.
[20] Ibid, p. 34019.
[21] Federal Reserve Bank of St. Louis, Consumer Price Index for All Urban Consumers: Rent of Primary Residence in U.S. City Average, Series CUSR0000SEHA, https://fred.stlouisfed.org/series/CUSR0000SEHA (accessed August 5, 2022).
[22] Federal Reserve Bank of St. Louis, Consumer Price Index for All Urban Consumers: Rent of Primary Residence in Seattle-Tacoma-Bellevue WA (CBSA), CUURA423SEHA, https://fred.stlouisfed.org/series/CUURA423SEHA (accessed August 5, 2022).
[23] Federal Reserve Bank of St. Louis, Consumer Price Index for All Urban Consumers: Rent of Primary Residence in San Francisco-Oakland-Hayward, CA (CBSA), Series CUURA422SEHA, https://fred.stlouisfed.org/series/CUURA422SEHA (accessed August 5, 2022).
[24] Federal Register, Volume 87, Issue 107, June 3, 2022, p, 33889.

The CRA clearly specifies that its purpose is to "require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions."[25] The CRA provides for the assessment of the financial institution's "record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution."[26] The CRA further empowers agencies to implement "regulations to carry out the purposes" of the CRA.[27]

The CRA next requires the agencies to prepare a written evaluation of "the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhood." Such evaluations contain both a public section and a confidential section.[28] CRA clearly specifies that the public section of the report shall "(i)state the appropriate Federal financial supervisory agency's conclusions for each assessment factor identified in the regulations prescribed by the Federal financial supervisory agencies to implement this chapter; (ii)discuss the facts and data supporting such conclusions; and (iii)contain the institution's rating and a statement describing the basis for the rating."[29]

According to the agencies, the data release proposed by this rule will not be relevant to determining whether lenders are fulfilling their lawful obligations under the CRA. Because this information is not part of the data used by the examination in determining whether the institution has met CRA requirements and thus is not even part of the written evaluation, the CRA does not authorize the agencies to require the release of such data. Providing "transparent information to the public" may be a worthwhile policy goal. However, the CRA does not authorize the agencies to demand the release of such information unrelated to the examination and ultimately the compliance evaluation process.

V. Compliance Cost Estimates Lack Sufficient Detail To Determine Accuracy

The agencies claim the total budgetary impact will be under $165 million annually.[30] As such, the agencies claim they need not prepare a written statement identifying or considering a "reasonable number of regulatory alternatives before promulgating the rule." The agencies estimate 450,777 total hours of compliance burden annually based on the number of respondents time expenditure, frequency of responses, and total estimated time per report. Agencies estimate the total compliance costs for these hours will be under $165 million threshold number.[31]

The agencies provide little in the way of the actual calculations used in their estimate of a massive reporting burden for millions of mortgages, auto loans, small business loans, community development loans, and community services provided by tens of thousands of banks.

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[25] 12 U.S. Code § 2901 (b).
[26] 12 U.S. Code § 2903 (a).
[27] 12 U.S. Code § 2905.
[28] 12 U.S. Code § 2906.
[29] 12 U.S. Code § 2906 (b).
[30] *Federal Register*, Volume 87, Issue 107, June 3, 2022, p. 34011.
[31] Ibid, pp. 34013 -34015.

Agencies compute compliance costs at $95.95 per hour on average for 450,777 hours of time. The $165 million cap before the law requires the agencies to consider other proposals to achieve their ends would allow up to $366 an hour for compliance. More details on the breakdown of compliance time along with the services rendered are needed to determine if this cap is exceeded. Obviously, basic staffing time devoted to compliance will cost far less than legal fees hourly. But 500,000 legal or accounting hours at a cost of $400 per hour that would place costs at $200 million.

Furthermore, a study by Greg Buchak et al. stresses that policy on financial intermediaries produce spillover costs: "First, policy analysis of financial intermediation critically requires simultaneously analyzing the impact of the policy on both banks and shadow banks, and accounting for their equilibrium interaction. Any regulation that affects a part of the intermediation market spills over to other markets through competition, and affects which products are offered by which firms and which part of the household income distribution is impacted, as well as equilibrium prices. This observation does not only apply to the residential mortgage market—the focus our study—but to any credit market with a large presence or possible entry of shadow banks with off-balance-sheet lending options."[32]

Yet, the agencies provide no estimate of how the proposed CRA may impact the intermediaries or overall economic growth. Given the proposed extensive place-based subsidy component in the proposed rule, an analysis conducted by the agencies of the potential costs on economic output exists is warranted.

Conclusion

The proposed rule ignores the real drivers of housing unaffordability, did not demonstrate cognizance of the possible unintended consequences of overreliance on Census tract-level data in determining CRA compliance, levy additional barriers to CRA qualification for naturally occurring affordable housing, encourages rent control, demands the release of information unrelated to the examination and ultimately the compliance evaluation process, and provides an insufficient breakdown of estimated compliance costs.

In part for these reasons, the agencies should not finalize the proposed rule.

Sincerely,

Joel Griffith

[32] Greg Buchak, Gregor Matvos, Tomasz Piskorski, and Amit Seru ,Beyond the Balance Sheet Model of Banking: Implications for Bank Regulation and Monetary Policy, NBER Working Paper No. 25149 October 2018, Revised July 2022.