August 5, 2022

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Notice of Proposed Rulemaking, Community Reinvestment Act Regulations, docket (R-1769) and RIN (7100-AG29) - Document ID - OCC-2022-0002

Please find below the comments of the AmPac Business Capital, the dba of AmPac Tri-State CDC, Inc.(AmPac) in response to the Notice of Proposed Rulemaking, Community Reinvestment Act Regulations, Docket No. R-1769 and RIN 7100-AG29.

AmPac is a Community Development Financial Institution (CDFI), an SBA Certified Development Company (CDC), and an SBA Community Advantage and Micro Lender serving throughout the State of California. AmPac is the nation's only faith based 504 lender, engaging the faith based community to promote economic development and job creation that positively impacts the region, the state and the nation. AmPac is headquartered in San Bernardino County, CA and serves businesses throughout the state of CA, and provides direct community support in the local counties of San Bernardino and Riverside Counties, two of the largest counties, in terms of square miles, in the nation. This region has the 13th largest MSA, by population, in the country, housing 10% of California's 39 Million people population. California has the largest minority population and the largest Hispanic population in the country.

In its 14-year history, AmPac has funded almost $1 Billion in loans to support small businesses in buying commercial real estate to support their business growth through the SBA 504 program and small dollar loans to help small businesses with start-up and working capital needs. While this funding has supported livable wage job creation, adding more than 3,000 new jobs in the California economy, the SBA 504 loan program has fallen short nation-wide and in our local area, in serving minority and women owned businesses, especially Black and Latino Owned businesses, and businesses owned 51% by women. In fact, over the last ten years, less than 2%, on average, of 504 loans have gone to Black owned businesses and less than 10% of the loans have gone to Latino owned businesses, despite the growth of these businesses throughout the country.

This SBA product offers a critical solution to addressing the racial wealth. It provides more affordable access to capital for purchasing commercial real estate and makes ownership possible, with the right support for down payment assistance. As is widely known, the racial wealth gap is deep, and the

AMPAC TRI-STATE CDC, INC. dba AMPAC BUSINESS CAPITAL
3110-B INLAND EMPIRE BLVD. ONTARIO, CA 91764
OFFICE 909-915-1706 | EMAIL: INFO@AMPAC.COM | WWW.AMPAC.COM

economic and social benefits of closing it are vast. The financial system, particularly banks' lending practices, has been a driving factor in this gap, and must play a significant role in closing it. Ultimately, **closing the racial wealth gap has the potential to increase the national Gross Domestic Product (GDP) between $1 and $1.5 trillion by 2028**. Closing the gap in access to capital for people and communities of color is a critical pathway to closing the racial wealth gap. Lenders and communities alike will benefit from the resulting economic activity from a fairer, more robust marketplace. The CRA can be a helpful tool in guiding banks' actions to ensure they repair, rather than repeat, centuries of racial and economic inequality.

AmPac is supportive of a change in the proposed rule which states: "The Congress hereby finds and declares that the purpose of this title is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program authorized by this title." Loans made in participation with CDCs under SBA's Development Company Program (SBDC) provide small businesses with long-term fixed rate financing for major fixed assets, such as land, buildings, and machinery. Without the SBDC, many small businesses would lack access to financing on reasonable terms to invest in economic development in local communities across the nation.

In the proposed rule, section III. ("Community Development Definitions), paragraph C. ("Economic development"), AmPac supports the agencies' revisions to the definition of economic development to include "activities undertaken consistent with Federal, state, local, or tribal government plans, programs, or initiatives that support small businesses or small farms as defined by these plans, programs, or initiatives." Further, AmPac supports the agencies' creation of standalone criteria under the community development definition for economic development activities aligned with Federal, state, local, or tribal efforts and supports the inclusion of SBA's Development Company program (SBDC) in this standalone criterion. AmPac supports the agencies' allowing small businesses to qualify if they meet the size standards already used by the respective government plans, programs, or initiatives.

In section IV of the proposed rule ("Qualifying Activities Confirmation and Illustrative List of Activities"), AmPac supports the agencies maintaining a publicly available, illustrative, non-exhaustive list of activities eligible for CRA consideration, and urges the agencies to specifically include in the list, "All loans made in anticipation of or in connection with the SBA's Development Company program (SBDC).

While there are other provisions in the proposed rule for the Community Reinvestment Act (CRA) that elevate this critical tool to leverage resources to serve low-income communities, rural communities, and communities of color, significant gaps remain in CRA rules and implementation, and the promise of CRA will not be realized unless changes are made to the proposed rule. The CRA must:

- Explicitly consider bank activity by race and ethnicity
- Include Public input mechanism
- Reduce inflated CRA exams
- Enhance community development definitions

AMPAC TRI-STATE CDC, INC. dba AMPAC BUSINESS CAPITAL
3110-B INLAND EMPIRE BLVD. ONTARIO, CA 91764
OFFICE 909-915-1706 | EMAIL: INFO@AMPAC.COM | WWW.AMPAC.COM

- Improve data gathering to hold banks accountable and make the data publicly available
- Expand assessment areas to include online lending and performance indicators in smaller areas
- Evaluate how reclassifying banks as small and intermediate small banks (ISB) would reduce community reinvestment activity

CRA must explicitly consider bank activity by race and ethnicity
Although the CRA statute does not mention race, it required banks to serve all communities, which provides room for the federal bank agencies to incorporate race in CRA exams. Persistent racial disparities in lending should compel the agencies to incorporate race and ethnicity in CRA exams. A recent national level analysis showed continuing disparities in loan denials by race and when people of color receive home loans, their equity accumulation was less.[1] The public information in the fair lending review on CRA exams has been cursory and has usually consisted of a few sentences stating that no discrimination was found.[2]

The agencies proposed to use the Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race, but not to use the results of these analyses to influence a bank's rating. NCRC had asserted in a paper co-authored by Relman Colfax PLLC that changes to CRA would comply with legal standards if CRA examined lending by race and ethnicity in geographical areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending.[3] NCRC had also proposed including analyses of lending in underserved neighborhoods with low levels of lending, which are disproportionately communities of color.[4]

As to the issue of whether geographic limitations should apply, AmPac joins the Alliance of African American led CDFI's (Alliance) in its concern that allowing CRA consideration in conjunction with a CDFI regardless of where it exists, could have the effect of incentivizing bank activities with only the largest of CDFIs, thus draining capital resources for those CDFIs with the primary mission of serving local communities, a state, or a region. A possible solution for consideration to ensure that banks participate with the most local of CDFIs, this could also incentivize substantial participation with local CDFIs regardless of where they exist, as a condition precedent to an "outstanding" rating. AmPac joins the Alliance and requests that the NPR ensure that necessary safeguards are in place to ensure that banks first focus on their delineated assessment areas.

While we believe the agencies can examine banks' record of lending to race, the agencies should at least bolster fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race. In addition, the agencies proposed using Section 1071 data on small business lending by race and gender of the business owner, and this data should be used as a screen for fair lending

[1] NCRC 2020 Home Mortgage Report: Examining Shifts During COVID » NCRC
[2] https://ncrc.org/adding-underserved-census-tracts-as-criterion-on-cra-exams

[3] Adding Robust Consideration of Race to Community Reinvestment Act Regulations: An Essential and Constitutional Proposal » NCRC
[4] Adding Underserved Census Tracts as Criterion on CRA exams » NCRC

AMPAC TRI-STATE CDC, INC. dba AMPAC BUSINESS CAPITAL
3110-B INLAND EMPIRE BLVD. ONTARIO, CA 91764
OFFICE 909-915-1706 | EMAIL: INFO@AMPAC.COM | WWW.AMPAC.COM

reviews. By including race and ethnicity, CRA can identify and address persistent racial disparities that have direct impacts on quality of life and health outcomes.

Public input mechanisms: agencies propose improvements that must be codified

Since CRA requires banks to meet the needs of communities, the agencies must elevate the importance of public comments regarding the extent to which banks meet local needs. The agencies proposed to continue the current practice of sending any comments on CRA performance to banks and are also considering publishing comments received on agency websites.

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 addressed significant concerns of the public. Also, the agencies should 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. Furthermore, we request that the agencies start to publish which organizations they consult with to understand local community needs, commit to collecting input from a diverse range of organizations that includes organizations led by people of color and women, follow up on needs identified and detail how community input was factored into the results of CRA performance evaluations.

We also agree with Acting Comptroller Hsu that the agencies must hold frequent public hearings on large bank mergers. CRA exams, if they are made more rigorous by a final rule, will help hold merging banks accountable.[5] Regulators must scrutinize bank merger applications to ensure that community credit needs, convenience and needs, and public benefit standards are met. Community Benefits Agreements should be encouraged as evidence that these standards can be met by the bank, and regulators should condition merger approvals on ongoing compliance with CBAs. Agencies should routinely review all existing consumer complaints, community comments, CFPB and agency investigations during CRA exams and merger reviews. In particular, community groups should be solicited for their views on bank practices relating to climate, displacement, discrimination, and other harms.

Reducing inflated CRA ratings: progress on the lending test of the large bank exam, but not as much on the other subtests

Currently, about 98% of banks pass their CRA exams on an annual basis with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory.[6] CRA has successfully leveraged more loans, investments and services for LMI communities but it would be more effective in doing so if the ratings system more accurately revealed distinctions in performance.[7]

[5] Acting Comptroller of the Currency Michael J. Hsu Remarks at Brookings on Bank Mergers and Industry Resiliency, May 9, 2022 (occ.gov)

[6] Do CRA Ratings Reflect Differences in Performance: An Examination Using Federal Reserve Data » NCRC

[7] 'Don't Know What You Got Till It's Gone' — The Effects of the Community Reinvestment Act (CRA) on Mortgage Lending in the Philadelphia Market by Lei Ding, Leonard I. Nakamura :: SSRN

AMPAC TRI-STATE CDC, INC. dba AMPAC BUSINESS CAPITAL
3110-B INLAND EMPIRE BLVD. ONTARIO, CA 91764
OFFICE 909-915-1706 | EMAIL: INFO@AMPAC.COM | WWW.AMPAC.COM

However, more banks would be identified as significantly lagging their peers, which would motivate them to improve their ratings and increase their reinvestment activity.
The agencies bolstered the rigor on the large bank retail lending test by introducing performance ranges for comparisons among a bank's lending and demographic and market benchmarks. This quantitative approach would decrease ratings inflation and result in more failing and low satisfactory ratings on the lending test. As a result of this proposed reform, several banks would likely respond by boosting their retail lending to underserved communities.

The agencies proposed improvements to the other subtests of the large bank exam but did not establish as many guidelines for the performance measures, which could contribute to inflation on the subtests. The community development finance test, for example, will consist of a quantitative measure of a bank's ratio of community development finance divided by deposits. The bank's ratio will be compared to a local and national ratio. The agencies, however, did not provide enough guidelines to examiners for comparing the bank's ratio to either the local or national ratio, making it possible for an examiner to inflate a rating by choosing the lowest comparator ratio.

The possibilities of misplaced examiner discretion can also occur on the retail services test and the community development services test. The retail services test contains quantitative measures comparing a bank's branch distribution to market and demographic benchmarks but does not provide enough instructions to examiners about how to weigh these benchmarks.

We believe that is it possible for the agencies to further develop guidelines for how to use the performance measures on the community development and services subtests of the large bank exam in order to produce a uniformly rigorous CRA exam and guard against ratings inflation.

Enhancements to community development definitions will increase responsiveness of banks to community needs
The agencies proposed refinements to the definitions of affordable housing, economic development, climate resiliency and remediation, community facilities and infrastructure that we believe will more effectively target revitalization activities to communities such as persistent poverty counties. The NPR clarified that financing health services qualifies under the definition of community support services. Essential community facilities now include hospitals and health centers without current documentation requirements, applied inconsistently, that the financing attract and retain residents to the community. This streamlining would boost financing of critical community infrastructure.

However, the community development finance test will include an impact review which must be further developed and include points and ratings like other subtests so that the test can be even more effective in stimulating responsive community development activities. Finally, we ask the agencies to reconsider their proposal to expand CRA consideration for financial literacy with no income limits; scarce counseling resources need to be targeted to LMI and other underserved populations.

AMPAC TRI-STATE CDC, INC. dba AMPAC BUSINESS CAPITAL
3110-B INLAND EMPIRE BLVD. ONTARIO, CA 91764
OFFICE 909-915-1706 | EMAIL: INFO@AMPAC.COM | WWW.AMPAC.COM

Data improvements will help hold banks accountable but all new data should be publicly available
As an organization, AmPac understands that lending practices to minority communities is a historical and systematic issue that has detrimental effects on financial growth of black and brown communities. The collection of disaggregated race, ethnicity and other demographic data is key to dismantling these unfair lending practices. It is critical for data collection to include disaggregated data for all the key sub-group categories such as race/ethnicity data.

The agencies correctly proposed to include new data collecting requirements for deposits, community development activities and automobile lending. Some of this data such as deposit and automobile lending would not be publicly available, which limits the extent to which the public can hold banks accountable for reaching underserved communities. We ask the agencies to reconsider this decision and also to expand data collection to all large banks instead of just banks with assets of more than $10 billion in the case of deposits and automobile lending. Finally, CRA exams should not only analyze access to deposits accounts for LMI communities but also affordability by comparing and refining, if necessary, fee information collected in call report data.

Accountability for discrimination will increase but the agencies need to bolster their reviews concerning the quality of lending
The agencies proposed to include all activities and products including deposit accounts in addition to credit in anti-discrimination and consumer protection legal reviews. This is an important advance, but we urge the agencies to expand their reviews to include the quality of lending. Massachusetts CRA exams include analysis of delinquency and defaults rates in home lending specifically highlighting mortgage companies.[8] Federal CRA exams should do likewise in all major product lines. Moreover, reviews of lending must include an affordability analysis and impose penalties when banks offer on their own or in partnerships with non-banks abusive, high-cost loans that exceed state usury caps and that exceed borrowers' abilities to repay. Finally, we are pleased that the agencies added the Military Lending Act in the list of laws to be included in the fair lending review, but we urge them to also add the Americans with Disability Act.

Assessment areas are expanded to include online lending but performance in smaller areas needs to be considered more carefully
For several years, advocates have urged the agencies to examine lending that occurs online. The agencies proposed to create retail assessment areas where a large bank does not have branches when a bank has issued 100 home loans or 250 small business loans. This proposal would result in the great majority of total lending being incorporated on exams and would therefore hold non-traditional banks more accountable for serving LMI communities.

We appreciate the proposal to expand CRA coverage beyond branch locations. The Retail Lending Assessment Areas are positive, though we suggest the thresholds be lower (50 mortgages or 100 small business loans should trigger CRA responsibility) and that bank obligations to serve these areas extend beyond retail lending to other bank offerings in order to ensure that more rural communities are covered

[8] Massachusetts CRA for Mortgage Companies: A Good Starting Point for Federal Policy » NCRC

AMPAC TRI-STATE CDC, INC. dba AMPAC BUSINESS CAPITAL
3110-B INLAND EMPIRE BLVD. ONTARIO, CA 91764
OFFICE 909-915-1706 | EMAIL: INFO@AMPAC.COM | WWW.AMPAC.COM

and that they are better served. However, the agencies fail to create deposit-based assessment areas that require banks to reinvest dollars back into the communities from which the deposits derive. This is this whole idea behind CRA. Every large bank knows exactly where its deposits reside, and they should be required to disclose this publicly and to accept CRA assessment areas where significant deposits are domiciled. This is the only way to keep up with emerging industry and consumer trends, to ensure that deposits through neobanks and other deposit-gathering third parties are assigned to local communities, and to prevent abuses and evasions such as San Francisco-based companies like Square and Schwab establishing out-of-state non branch banks with no proposed CRA responsibility in California despite soliciting a plurality of deposits from California. There are a number of points in the proposal where the agencies would impose lesser obligations on banks with between $2 billion and $10 billion in assets compared to banks with over $10 billion in assets. We strongly feel that all large banks should be subject to all the responsibilities outlined for the largest banks. Finally, while we support expanding CRA beyond branches, the CRA should retain a focus on local communities and we urge the agencies to prioritize Facilities (branch) Based assessment areas, perhaps through greater weighting of bank performance there.

Reclassifying banks as small and intermediate small banks (ISB) would reduce community reinvestment activity

By adjusting asset thresholds for qualifying for various CRA exams, the agencies proposed to reclassify 779 ISB banks as small banks, which would involve no longer holding these banks accountable for community development finance. In addition, the agencies proposed to reclassify 217 large banks as ISB banks, eliminating their service test and accountability for placing branches in LMI communities. These changes lack justification since these banks have been successfully performing these activities for several years. We urge the agencies to eliminate this aspect of the NPR since it would reduce reinvestment activity.

Further the Alliance would oppose increasing the asset threshold for small bank designation as we are concerned that such a change could drastically remove or curtail community development and investment activities currently practiced by a large section of the banking community who do not currently qualify for small bank status. The CRA statute and regulators treat small banks differently based on policy rationale, thus allowing these institutions to comply with CRA more easily, balancing the aims of the statute against any burden on the bank. Banks that operate at $750 million or $1 billion asset size are not equal in burden share to that of small banks, and therefore should be held to existing standards. While adjusting the small asset threshold to inflation seems reasonable, we believe this change might decrease investments in LMI communities.

Conclusion

AmPac Business Capital appreciates the opportunity to comment on proposed CRA rules. While there are positive aspects of the proposal, and the agencies are to be commended for working together, we cannot support this proposal in its current form. Significant changes need to be made to the final rule to ensure that borrowers and communities of color are considered under the nation's anti-redlining law,

AMPAC TRI-STATE CDC, INC. dba AMPAC BUSINESS CAPITAL
3110-B INLAND EMPIRE BLVD. ONTARIO, CA 91764
OFFICE 909-915-1706 | EMAIL: INFO@AMPAC.COM | WWW.AMPAC.COM

that banks are penalized for harm caused to communities - such as through displacement, climate degradation, fee gouging, and discrimination - that community input is valued and elevated, and that complex formulaic evaluation methodologies do not result in banks failing to meet critical community needs relating to affordable housing, homeownership, small business development, broadband, and rural and Native American community access.

Thank you for the opportunity to submit comments.

Sincere regards,

Hilda Kennedy
Founder/President

AmPac TRI-STATE CDC, INC. dba AmPac BUSINESS CAPITAL
3110-B INLAND EMPIRE BLVD. ONTARIO, CA 91764
OFFICE 909-915-1706 | EMAIL: INFO@AMPAC.COM | WWW.AMPAC.COM