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The Real Estate Roundtable

October 13, 2026

VIA EMAIL AND THE FEDERAL eRULEMAKING PORTAL

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Attn.: Stephanie M. Barody, Senior Examination Specialist,
Compliance and CRA Examinations Branch; and
Jennifer M. Jones, Deputy Executive Secretary

Office of the Comptroller of the Currency
400 7th Street SW, Suite 1E-216
Washington, DC 20219

Attn.: Emily Boyes, Esq., Special Counsel

Re: RIN 3064-AG31 and OCC-2026-0694

Dear Ms. Barody, Ms. Boyes, Ms. Jones and FDIC and OCC colleagues:

The Real Estate Roundtable (“RER”)¹ is grateful for the opportunity to comment on rulemaking (the “Rulemaking Proposal”), jointly proposed by the Office of the Comptroller of the Currency (“OCC”) and the Federal Deposit Insurance Corporation (“FDIC”), which would bring about changes to their respective regulations implementing the Community Reinvestment Act (“CRA”).²

¹The Real Estate Roundtable brings together leaders of the nation’s top publicly-held and privately-owned real estate ownership, development, lending and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy, with respect to which banking is both a primary and critically important part.

²Public Law 95-128, 91 Stat. 1147 (1977)(codified at 12 U.S.C. §2901 et seq. (as amended) and implemented by the OCC at 12 CFR part 25, subparts A through D, and by the FDIC at 12 CFR part 345)(hereinafter, “CRA”).

The RER and its members lead an industry which generates more than 20 percent of America’s gross national product, employs more than 9 million people and produces nearly two-thirds of the taxes raised by local governments for essential public services. RER members are heavily engaged in the ownership, development and management of real estate, and regularly engage in capital formation and lending activities in support of these investments.

Many RER members borrow from banks (the “RER Members’ Banks”) regulated by the OCC, FDIC and the Board of Governors of the Federal Reserve System (“Federal Reserve” and with the OCC and FDIC, collectively, the “Federal Banking Agencies”). The Federal Banking Agencies promulgate and administer regulations interpreting the CRA.

Many of the RER Members’ Banks lend for real estate development through separate banking subsidiaries. It is not uncommon for a banking conglomerate to be comprised of subsidiaries which include, for example, a New York state-chartered Federal Reserve member bank (regulated for CRA purposes only by the Federal Reserve) and an affiliated national bank subsidiary (regulated for CRA purposes only by the OCC). In at least those cases and many others, having a single, clear and harmonious set of CRA regulations would reduce costs and limit uncertainty, thereby better enabling banks to perform the mission of the CRA, which is to meet the credit needs of [the banks’] entire commun[ities], including low- and moderate-income neighborhoods.”³

Background and District Court Decision as a Prelude to the Rulemaking Proposal

The CRA became law nearly fifty years ago, in 1977, to among other things eradicate a practice called “redlining” in which some banks refrained from lending to certain customers, primarily in low- to moderate income neighborhoods. In 1995, the then-existing Office of Thrift Supervision jointly issued with the Federal Banking Agencies comprehensive regulations implementing the CRA (the “1995 Regulations”),⁴ and in doing so, created a thorough examination and supervisory framework for regulated banks and thrifts for purposes of determining CRA compliance. If the Rulemaking Proposal is adopted and finalized in its proposed form, much of the 1995 Regulations would continue to be in full effect.

The 1995 Regulations delineated which institutions would be evaluated, which activities would be considered in examinations, how ratings would be assigned and provided other regulatory guardrails for purposes of determining compliance with the CRA. While the 1995 regulations were comprehensive, the regulations were geographically, technologically and substantively bounded.

As technology and the business of banking advanced --and with that advancement, the geographic reach of banks in the U.S. lengthened-- the RER gathers that over time the Federal

³CRA, 12 U.S.C. §2903(a)(1).

⁴60 Fed. Reg. 22,156 (May 4, 1995) and were codified principally at 12 C.F.R. Parts 25, 228, 345, and 563e.

Banking Agencies increasingly saw the need to revise CRA regulations to make the rules fit the business of banking after the 20th century.

In 2024, the Federal Banking Agencies jointly issued comprehensive regulations⁵ to align CRA-related regulation with the modern banking system in the U.S., but these regulations were enjoined by a federal district court⁶ on the basis that the regulations were outside of the statutory scope of the CRA and banks were already sustaining “irreparable harm” through “nonrecoverable compliance costs”⁷ such as the following:

- An estimated first-year compliance burden of approximately \$91.8 million, based on an OCC clarification concerning expenditures that would be incurred if full compliance were required during the first 12 months;
- Agency estimates of approximately 105,500 to 235,000 hours for reporting, recordkeeping, and disclosure obligations; and
- Additional institution-specific expenditures relating to systems changes, database updates, program planning, vendor arrangements, personnel, and compliance infrastructure.⁸

Unlike the 1995 Regulations promulgated by each of the Federal Banking Agencies, only the OCC and FDIC made the Rulemaking Proposal.⁹

Executive Summary

Because of the compliance costs and the potential for conflicting CRA regulations among the Prudential Regulators as inherent problems of the Rulemaking Proposal, the RER recommends that CRA rulemaking efforts continue but only with all three Federal Banking Agencies promulgating CRA rules, and only in a manner which is harmonized by each of the Federal Banking Agencies. In the meantime, banks under the regulatory jurisdiction of the Federal Banking Agencies should continue to be subject to existing law and regulations until a harmonized body of new CRA rules are proposed and put into final form jointly and altogether by each of the Federal Banking Agencies.¹⁰

⁵89 Fed. Reg. 6,574 (Feb. 1, 2024), originally effective April 1, 2024, and codified in relevant part at 12 C.F.R. Parts 25, 228, and 345.

⁶*Texas Bankers Ass’n v. Office of the Comptroller*, 728 F. Supp. 3d 412, 439–42 (N.D. Tex. 2024), appeal docketed, No. 24-10276 (5th Cir. Apr. 23, 2024)(hereinafter “*Texas Bankers Ass’n*”).

⁷*Id.*, 728 F. Supp. 3d at 438.

⁸*Id.*

⁹See 12 C.F.R. Part 25, Appendix G (OCC); 12 C.F.R. Part 345, Appendix G (FDIC).

¹⁰See, e.g., Community Reinvestment Act of 1977, 12 U.S.C. §§ 2901-2908; Community Reinvestment Act and Interstate Deposit Production Regulations, 12 C.F.R. pt. 25 (2026) (OCC); Community Reinvestment, 12 C.F.R. pt. 345 (2026) (FDIC).

There are several compelling reasons for our recommendation, and while one is general, others are more technical in nature. Generally speaking, if the OCC and FDIC promulgate final CRA rules without parallel Federal Reserve action, the historically uniform interagency CRA framework may be replaced with materially different regulatory regimes based solely on the charters of our REF Member's Banks (because those banks (including subsidiaries of the same global banks) may be subject to different prudential regulators for CRA compliance purposes). Undue or unnecessary compliance costs jeopardizes yet additional injunctive relief against the FDIC and OCC (along the lines of what the district court ordered in *Texas Bankers Ass'n* in 2024).

Consequences of a Divided CRA Regulatory Regime

Real estate development by members of the RER are financed by markets and syndicates irrespective of regulatory silos. A divided CRA regime could make identical loans receive different treatment, weaken investment incentives for some lenders, complicate mergers and syndicated transactions, and make the flow of capital into underserved markets less predictable.

A better outcome insofar as CRA regulations are concerned is the following:

- The promulgation of a substantively uniform final rule by all of the Prudential Regulators;
- Coordinated transition, examination and interpretive guidance with an eye towards minimizing regulatory differences; and/or
- A system of reciprocity under which each Federal Banking Agency recognizes the other's rules and decision making and applies consistent standards to multi-bank housing and community development transactions.

Real Estate Transactions Require Regulatory Certainty and Harmony

Affordable housing and community development projects frequently rely on several regulated banks performing different roles in myriad capacities. The capital stack for complex real estate transactions may be comprised of multiple sources of grant proceeds, tax credit (*i.e.*, low income housing tax credit ("LIHTC")) participants and multiple banks, with one bank providing at the outset a construction loan, and a different bank lending in a permanent loan, with still other financial institutions ranging from the provider of a warehouse facility or credit enhancement, to a community development financial institution or CDFI.

With multiple banks potentially subject to differing CRA compliance obligations, the overall regulatory compliance exercise for those banks may over time amount to three dimensional regulatory chess:

- The lead lender for the real estate development may be an OCC-supervised bank seeking CRA credit from the OCC's final rule for its loan;

- A bank regulated by the Federal Reserve with uncertainty as to which regulatory regime applies may need to conduct a side-by-side regulatory analysis for purposes of understanding whether the same loan qualifies under Regulation BB, the rule of the Federal Reserve for the CRA;
- The banks lending to the real estate development might disagree over the geographical allocation of CRA credit among assessment areas.

We recognize that the Rulemaking Proposal by the OCC and FDIC includes a formal process through which a bank could seek from those regulators confirmation that a community-development activity qualifies for credit; however, at this point the Federal Reserve has not proposed an equivalent process for such confirmation.

Assessment Area

We understand that the OCC and FDIC may be evaluating an “in-assessment area” benchmark of 1.25% of Tier 1 capital for wholesale and limited-purpose banks, a benchmark which would need to be met before qualifying activities outside of a bank’s assessment area could receive CRA consideration.

Although the objective of encouraging meaningful activity within banks’ assessment areas is understandable, the proposed benchmark could have significant unintended market consequences. In heavily-banked assessment areas, it may drive additional capital toward an already limited supply of CRA-eligible transactions, increasing competition and placing further pressure on pricing and deal economics. Conversely, strong projects in markets outside of major banking centers – especially in tertiary metropolitan and rural communities - will be disadvantaged notwithstanding their underlying credit quality and community impact.

We gather that these concerns have been discussed on industry trade association (*e.g.*, ABA and BPI) conference calls, and in those calls, CRA professionals have cautioned that the resulting market pressures could become unsustainable.

A more flexible framework may be necessary to avoid reinforcing CRA hotspots while simultaneously creating or expanding capital deserts in markets that have fewer regulated banking institutions.

As discussed above, the RER appreciates the OCC and FDIC for the Rulemaking Proposal and believes that this proposed rulemaking represents an important step towards modernizing the rules for CRA.

However, given foreseeable compliance costs, the potential for conflicting CRA regulations among the Prudential Regulators and the possibility of further injunctive action by a federal court (in light of anticipated compliance costs and the decision in *Texas Bankers Ass’n*), the RER recommends that CRA rulemaking efforts continue, but only with all three Federal Banking Agencies promulgating CRA rules in a clear, harmonized manner.

The RER looks forward to continuing to serve as a resource to the OCC and FDIC and all stakeholders to address issues affecting compliance obligations imposed by prudential banking regulations generally and by the CRA in particular. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey D. DeBoer", written over a horizontal line.

Jeffrey D. DeBoer
President and Chief Executive Officer