LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

PRRAC
Poverty & Race Research Action Council

October 13, 2026

Secretary of the Treasury Scott Bessent
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Chairman Travis Hill
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429

Comptroller of the Currency Johnathan V. Gould
Office of the Comptroller of the Currency
400 7th St., SW
Washington, DC 20219

Re: Community Reinvestment Act Regulations; Docket No. OCC-2026-0694 or RIN 1557-AF57 or RIN 3064-AG31 (91 Fed. Reg. 52114, Aug. 12, 2026)

*Via regulations.gov and https://www.fdic.gov/resources/regulations/federal-register-publications/*

Dear Secretary Bessent, Chairman Hill, and Comptroller Gould,

On August 12, 2026, the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") published a Notice of Proposed Rulemaking ("NPRM") seeking to make changes to the Community Reinvestment Act Regulations ("Proposed Rule").[1] The Lawyers' Committee for Civil Rights Under Law ("The Lawyers' Committee") and Poverty and Race Research Action Council ("PRRAC") strongly oppose the Proposed Rule and urge FDIC and OCC to withdraw this NPRM immediately.

The Lawyers' Committee is a nonpartisan, nonprofit civil rights organization founded in 1963 by the leaders of the American bar at the request of President John F. Kennedy to secure equal justice for all through the rule of law by targeting the inequities confronting Black Americans

[1] Community Reinvestment Act Regulations, 91 Fed. Reg. 52,114 (proposed Aug. 12, 2026) (to be codified at 12 C.F.R. pts. 5, 24, 25, 35, 345, 346).

and other people of color. The Lawyers' Committee uses legal advocacy to achieve racial justice and ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real. As part of this work, the Lawyers' Committee has participated as counsel or amicus curiae in cases addressing race, ethnicity, and national origin discrimination in a wide range of subjects, including education, employment, health care, and fair housing. The Lawyers' Committee submitted a comment on December 15, 2025, challenging what were then proposed rule changes by CFPB to the Equal Credit Opportunity Act's ("ECOA") Regulation B on the grounds that the rule changes would run counter to both the legislative intent and the legal precedent courts have established in deciding ECOA cases.

The Poverty & Race Research Action Council ("PRRAC") is a national civil rights organization bridging law, policy, social science, and grassroots organizing to advance racial and economic justice. PRRAC provides needed strategic infrastructure to grassroots movement organizations and coalitions, including legal analysis, policy design, and research translation.

The Proposed Rule threatens to significantly shift hundreds of millions of dollars in Community Reinvestment Act (CRA) motivated capital away from affordable housing projects and reduce the focus on low and middle income ("LMI") communities. The Proposed Rule also drastically reduces community development ("CD") responsibilities for hundreds of banks which will significantly reduce demand for Low-Income Housing Tax Credit ("LIHTC") and related funding and put hundreds of millions of dollars in affordable housing capital at risk. If finalized, the Proposed Rule will also make it more difficult to monitor discriminatory lending practices and enforce civil rights law by exempting hundreds of financial institutions from antidiscrimination reporting requirements and lowering the CD benchmark by up to 85% below the current industry standard.

The Proposed Rule is problematic for many reasons. Of particular concern to PRRAC and The Lawyers' Committee is how it would negatively impact funding for affordable housing development. The proposed changes run counter to the CRA's central purpose of combatting the effects of redlining and credit discrimination. The proposed changes will exacerbate the housing affordability crisis by significantly weakening bank obligations designed to promote investing in LMI communities. The loss in access to capital will make it more difficult for developers to build affordable housing, disproportionately affecting Black communities and other communities of color. The federal government's legacy of racial exclusion and disparate treatment has left a lasting imprint on Black wealth, credit access, and housing stability. Affordable housing development is a fundamental civil rights issue and a necessary intervention to address systemic disinvestment.

**A. The proposed changes to the CRA will drastically reduce the flow of capital directed toward affordable housing and exempt many financial institutions from civil rights compliance obligations.**

1. By lowering Community Development benchmarks, the Proposed Rule would allow banks to decrease their qualified investments significantly while maintaining a favorable rating from regulatory agencies.

Under the Proposed Rule, a large bank (defined as having assets over $10 billion) must meet an annual CD activity metric in its assessment areas before it can receive CRA credit for activities performed outside those areas. The Proposed Rule aims to create a much lower target for CD investment than the current rule; driving demand for LIHTC down and putting affordable housing development at risk. Under proposed Option 1, a large bank would generally qualify for broader geographic consideration of CD loans after meeting a benchmark equal to 0.625% of Tier 1 capital allocated to its assessment areas. The same 0.625% benchmark would apply separately to CD investments and grants. The OCC, the FDIC, and the Federal Reserve Board ("FRB") (collectively, the agencies) describe these standards as establishing the level of activity a bank must conduct before activity outside its assessment areas can receive consideration.[2] The proposal does not formally make 0.625% a passing CRA score. But by putting that number in the rule and describing it as the minimum needed to avoid a "Needs to Improve rating,"[3] the agencies risk turning it into the benchmark banks use to judge whether they have done enough.[4] Instead of striving for higher community impacts, we are concerned that large banks might drop their contributions to meet exactly the 0.625% mark.

Whether through direct investment, CDFIs, or CBA negotiations, the CRA incentivizes banks to make affordable housing investments in order to maintain a favorable regulatory rating.[5] Through these investments, banks meet their CRA requirements and maintain favorable regulatory ratings necessary for larger bank actions like mergers and acquisitions.[6] However, by significantly reducing CD responsibilities for hundreds of banks, the Proposed Rule will allow banks to maintain favorable regulatory status while investing much less in the communities where they are chartered; removing the incentive to invest in community development. The share of all banks

[2] Tier 1 capital is a measure of a bank's core financial strength, made up primarily of common equity and retained earnings. *See* Community Reinvestment Act Regulations, 91 Fed. Reg. 52,114, 52,139 (proposed Aug. 12, 2026) (to be codified at 12 C.F.R. pts. 5, 24, 25, 35, 345, 346).; *See Also* Nat'l Cmty. Reinvestment Coal., *CRA's New Benchmark Could Put 85% of Current Community Development Activity at Risk*, (Sept. 10, 2026), https://ncrc.org/cras-new-benchmark-could-put-85percent-of-current-community-development-activity-at-risk/.

[3] Community Reinvestment Act Regulations, 91 Fed. Reg. 52,114, 52,140 (proposed Aug. 12, 2026) (to be codified at 12 C.F.R. pts. 5, 24, 25, 35, 345, 346).

[4] NAT'L CMTY. REINVESTMENT COAL., *CRA's New Benchmark*, *supra* note 3.

[5] NAT'L CMTY. REINVESTMENT COAL., *Community Reinvestment Act*, https://www.ncrc.org/cra/ (last visited Oct. 12, 2026).

[6] *Id.*

with CD responsibilities would fall from roughly half to less than one-third.[7] By removing these requirements, the Proposed Rule would allow banks to scale back from CD loans and investments; which total over half a billion dollars in CD capital per year.[8] Reducing CD responsibilities will also likely reduce demand for LIHTC; worsening the housing crisis.[9] Banks will also likely commit less capital to Community Development Financial Institutions ("CDFIs"); limiting the pool of capital available to affordable housing developers.[10]

With reduced obligations to create investments, services, and small business loans for underserved communities, financial institutions will likely reduce activities serving low and moderate income communities. A recent review by the National Community Reinvestment Coalition ("NCRC")[11] found that applying the Proposed Rule's 0.625% Tier 1 benchmark to the 69 largest banks that are supervised by OCC and FDIC would reduce CD lending and qualified investments/grants from a combined $102 billion per year to a combined $14.8 billion per year: which is 85% below current levels.[12] A 2017 study on the CRA's effect on the mortgage market found that the loss of CRA eligibility status in a neighborhood leads to a decrease of about 10 to 20 percent (depending on the models and specifications used) in the volume of purchase mortgage originations by CRA-regulated lenders.[13] The decrease is largely due to the withdrawal in lending to minority borrowers and to borrowers no longer targeted by CRA.

2. Raising the asset size thresholds would drastically limit which institutions are subject to CRA monitoring and how they are monitored.

The Proposed Rule will also decrease reporting requirements and water down the activities that are required to earn credit under the CRA. The CRA requires banks to meet the credit needs of the communities where they do business.[14] In order to ensure compliance, banks are grouped into different reporting schedules based on their assets. The asset size threshold is part of an overarching enforcement scheme that determines what reporting obligations banks have under the CRA. These reporting schedules ensure that banks are complying with their requirement under the CRA to meet the credit needs of the communities in which they do business; especially LMI communities.[15]

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[7] NAT'L CMTY. REINVESTMENT COAL., *The Proposed 2026 CRA Rollbacks: Key Takeaways and Why it Matters*, (Aug. 3, 2026), https://ncrc.org/2026-cra-rollbacks/.
[8] *Id.*
[9] *Id.*
[10] *Community Development Financial Institution*, ENTERPRISE CMTY. PARTNERS, https://www.enterprisecommunity.org/capabilities/community-development-financial-institution (last visited Oct. 12, 2026).
[11] NAT'L CMTY. REINVESTMENT COAL., *About NCRC*, https://ncrc.org/about/ (last visited Oct. 12, 2026).
[12] NAT'L CMTY. REINVESTMENT COAL., *CRA's New Benchmark*, *supra* note 3.
[13] Lei Ding and Leonard I. Nakamura, *'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*, FRB OF PHILADELPHIA WORKING PAPER No. 17-15 (June 22, 2017) https://ssrn.com/abstract=2991557.
[14] NAT'L CMTY. REINVESTMENT COAL., *Community Reinvestment Act*, *supra* note 5.
[15] *See Community Reinvestment Act (CRA)*, FED. DEPOSIT INS. CORP., https://www.fdic.gov/banker-resource-center/community-reinvestment-act-cra (last visited Oct. 13, 2026); *See also What is a Performance Evaluation?*,

The proposed changes balloon the asset size threshold exponentially. Under the current rule, small banks (banks subject to the least CD reporting requirements) are banks with assets of $412 million or less. Intermediate banks (which have additional reporting requirements) are institutions that have between $412 million and $1.649 billion in assets. Finally, large banks (which have the most expansive reporting requirements) are institutions with over $1.649 billion in assets.[16] Under the Proposed Rule, small banks would be banks with up to $1 billion in assets; up from $412 million. Intermediate banks would have between $1 billion and $10 billion in assets; up from the current threshold of $412 million to $1.649 billion. Finally, large banks would be institutions with over $10 billion in assets; up from the current threshold of $1.649 billion and over.[17]

The proposed changes could reduce the importance of CD investments altogether. Communities need different types of capital to meet different needs. To meet these needs, banks develop CD investments and partner with CDFIs to offer CRA-incentivized capital to these communities. Among other activities, CDFIs provide capital to LMI neighborhoods by offering supportive financing to non-profit and for profit developers focused on building multifamily housing.[18] However, the proposed changes significantly reduces which banks are subject to CRA enforcement; driving down the likelihood that CD investments benchmarks are met.

These changes would also result in reduced scrutiny of the CD practices of hundreds of bank branches, CD investments, and banking services. The proposal would raise the small bank threshold from $412 million to $1 billion, eliminating CRA evaluations for roughly 814 banks, or about 40% of the banks currently subject to that requirement.[19] Additionally, 417 banks would no longer be required to annually report small business lending. As a result, only the largest 6% of banks would face separate reviews of their CD loans/investments and branch services or of their CRA small-business loan reporting requirements. The proposal would eliminate 11% of CRA small business lending data nationwide.[20] Without this data, it becomes more difficult to monitor discriminatory lending practices and, as a result, address disparities in access to capital.[21]
Along with the described data collection limitations, the Proposed Rule also stretches what actions qualify for CRA credit. Under current guidance, infrastructure projects in an LMI area generally receive CRA credit only when they help keep or attract residents or businesses. The proposal would change the standard by allowing credit for infrastructure that "benefits or serves" a targeted area,

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FED. DEPOSIT INS. CORP., https://www.fdic.gov/banker-resource-center/what-performance-evaluation (last visited Oct.13, 2026).

[16] *The Proposed 2026 CRA Rollbacks: Key Takeaways and Why it Matters*, NAT'L CMTY. REINVESTMENT COAL., (Aug. 3, 2026), https://ncrc.org/2026-cra-rollbacks/.

[17] *Id.*

[18] *Lending and Investing,* CORP. FOR SUPPORTIVE HOUS., https://www.csh.org/csh-solutions/lending-community-investment/ (last visited Oct. 12, 2026).

[19] *Id.*

[20] *Id.*

[21] *See Community Reinvestment Act*, Fed. FIN. INST. EXAMINATION COUNCIL (last updated Jan. 7, 2026) https://www.ffiec.gov/data/cra.

even when the project delivers little meaningful benefit to LMI residents and does not help preserve or strengthen the community.[22] For example, a data center or self storage facility, that delivers little meaningful benefit to LMI residents and creates few permanent jobs, could qualify as a CD investment under the Proposed Rule.[23] The Proposed Rule would also weaken the standard for earning CRA credit for economic development activities. Under current guidance, an activity must generally satisfy both a size test and a purpose test, including showing that it creates, retains or improves jobs for low-and moderate-income people, benefits low-and moderate-income areas or works through qualifying intermediaries.[24]

### B. The CRA is a primary driver of affordable housing development

Currently, the CRA is one of the largest, most reliable drivers of housing development dollars in LMI communities, which are disproportionately Black communities and other communities of color. The CRA has helped redirect financial investment by incentivizing neighborhoods that have been historically starved of development dollars.[25] A key element of the CRA statutorily compels financial institutions to look beyond traditionally attractive markets and actively seek out investment opportunities in LMI areas.[26] This statutory obligation drives the affordable housing development industry.

The proposed changes will likely crumble the public-private partnership aspect that makes the LITHC and New Markets Tax Credit ("NMTC") programs effective. The vast majority of the private equity investment in affordable housing projects exists solely because banking institutions are fulfilling their CRA obligations. Without the investment tests currently required by the CRA, the private market will not meet the investment needs to sustain the program. The changes will result in lower equity pricing, massive financing gaps, and stall affordable housing construction during a national affordable housing crisis. This is especially true in, and will disproportionately affect, rural and less resourced communities, including Black communities and communities of color.

The LIHTC is the nation's largest affordable housing program with about $14 billion of federal tax credits allocated each year.[27] LIHTC incentivizes private developers to build affordable housing in exchange for valuable tax credits which are sold for liquid funding for development costs. The CRA and LIHTC are symbiotic. CRA obligations create the market demand for this LIHTC investment. By driving institutional capital into LIHTC developments, the CRA actively supports neighborhood stabilization, reduces severe rent burdens for Black families, and supports

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[22] NAT'L CMTY. REINVESTMENT COAL., *supra* note 17.
[23] *Id.*
[24] *Id.*
[25] 12 C.F.R. § 25.11 (2026) (detailing the performance tests and standards used to assess a bank's record of helping to meet the credit needs of its entire community).
[26] 12 U.S.C. § 2903(a)(1).
[27] Ed Gramlich, *Low-Income Housing Tax Credits* in 2026 Advocates' Guide 5-10, NAT'L LOW INCOME HOUS. COAL., https://nlihc.org/sites/default/files/AG-2025/5-10_Low-Income-Housing-Tax-Credits.pdf (last accessed Oct. 13, 2026).

the creation of affordable housing in areas of higher opportunity. The LIHTC program continues to grow, with increased investment from the One Big Beautiful Bill, while federal funding for public housing and housing vouchers is under attack.[28] It is clear that LIHTC is currently the federal government's primary strategy for affordable housing policy. However, the proposed changes to the CRA disrupt the delicate funding balance that incentivizes private actors to pursue LIHTC funded projects .

The proposed changes will likely have a devastating impact on the affordable housing investment landscape. CRA-motivated financial institutions make up 85% of LIHTC funding investments.[29] If these investments shrivel up, the price that LIHTC awardees can garner for tax credits will inevitably decrease, thereby resulting in fewer units actually being constructed for each dollar of federal tax expenditure. Similarly, the NMTC, another program that incentivizes funding into economically distressed communities, also hinges 80% of its investment from CRA-motivated investors.[30]

Additionally, if finalized, this will undermine the goals of the 21st Century ROAD to Housing Act, which became law in July. The ROAD to Housing Act raised the amount banks may invest in public welfare projects, including LIHTC developments, from 15% to 20% of capital and surplus. Though the new law raises the investment caps for these programs, the proposed new changes to the CRA, with less incentives, would likely result in fewer investments.

The proposed changes would be a severe rollback on decades of progress. Financial institutions will inevitably withdraw from LIHTC and NMTC markets causing a drop in the construction and rehabilitation of affordable housing. The system currently in place balances the housing financial ecosystem by ensuring dollars are reinvested locally. Funding channels like these are necessary for nonprofits, CDFIs, and other non-big bank owned housing to financially compete for development funding. At a time when the nation is facing an unprecedented housing affordability crisis, we cannot afford to lose the primary source of private funding for affordable housing. Weakening the CRA's capacity to drive these housing development dollars towards a community's affordable housing needs directly contradicts the statute's legislative intent.

### C. The Proposed Rule runs afoul of the CRA's legislative intent of holding banks accountable to the communities in which they do business and ensuring that they meet the credit needs of those communities where they have historically divested.

If finalized, the Proposed Rule published by FDIC and OCC would allow hundreds of banks to divest hundreds of millions of CD dollars away from LMI communities, running counter to the legislative intent of the CRA. The CRA was born out of deep concern about emerging

[28] An Act to Provide for Reconciliation Pursuant to Title II of H. Con. Res. 14, Pub. L. No. 119-21, 139 Stat. 72 (2025).
[29] Lew Sichelman, *Mortgage Lenders Are Key To Financing Stacks*, NAT'L MORTG. PRO. (Dec. 16, 2024), https://nationalmortgageprofessional.com/news/mortgage-lenders-are-key-financing-stacks.
[30] 26 U.S.C. § 45D; *See also New Markets Tax Credit Program*, CMTY. DEV. FIN. INSTS. FUND, https://www.cdfifund.gov/programs-training/programs/new-markets-tax-credit (last visited Oct. 12, 2026).

decline within American cities, primarily in low-income and minority neighborhoods.[31] Despite the passage of the Fair Housing Act (FHA), which outlawed housing discrimination, and the Equal Credit Opportunity Act (ECOA) in 1974, which banned lending discrimination across several kinds of credit transactions, many grassroots organizations pushed for structural reforms to meaningfully address persistent racially motivated redlining.[32] Realizing that the current laws were not providing enough investment in Black and Brown communities, in 1977 Congress enacted the CRA requiring banks to have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered".[33]

For more than a decade after its enactment, the CRA did not have objective requirements and its implementation suffered from limited oversight.[34] That changed in 1989 when Congress included in the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) an amendment requiring public disclosure of CRA ratings and compliance evaluations.[35] By mandating transparency from covered financial institutions, FIRREA subjected banks to scrutiny from community groups and the media,[36] spurring regulators to enforce existing CRA standards and put more pressure on covered banks to maintain satisfactory compliance ratings.[37] With no choice but to actively invest in the LMI communities from which they profited through activities like taking deposits—banks became focused on maintaining the favorable CRA ratings necessary to pursue their own financial priorities like mergers and acquisitions.[38]

As of today, three federal banking regulators are responsible for implementing the requirements of the CRA: the OCC, the FDIC, and the Federal Reserve Board ("FRB").[39] These agencies evaluate banks' compliance with the CRA's core requirements which require: (1) that financial institutions demonstrate that their deposit facilities serve the convenience and needs of communities in which they are chartered; (2) that the convenience and needs of these communities

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[31] Ben S. Bernanke, Chairman, Bd. of Governors of the Fed. Rsrv. Sys., *Remarks at the Community Affairs Research Conference* (Mar. 30, 2007), 2007 WL 1303871.
[32] Jonathan Rose, *Community Reinvestment Act of 1977*, FED. RSRV. HISR. (May 8, 2023), https://www.federalreservehistory.org/essays/community-reinvestment-act.
[33] NAT'L CMTY. REINVESTMENT COAL., *supra* note 5.
[34] Bernanke, *supra* note 32.
[35] *Id.*
[36] Sandra F. Braunstein, *The Community Reinvestment Act*, BD. OF GOVERNORS OF THE FED. RSRS. SYS. (Feb. 13, 2008) https://www.federalreserve.gov/newsevents/testimony/braunstein20080213a.htm.
[37] *Id.*
[38] NAT'L CMTY. REINVESTMENT COAL., *supra* note 5.
[39] NOTE: Prior to this Proposed Rule, all three agencies assessed bank compliance under the same standards and criteria; however, should this final Rule be implemented, it would mark the first time in the history of the CRA that all three regulators are not operating under the same guidelines, as the Federal Reserve Board has not joined the proposal. *See* Elaina Longjohn, *Understanding the 2026 CRA Proposal & What They Mean for Our Communities*, NEIGHBORHOOD CMTY. DEV. FUND (Sept. 18, 2026), https://www.ncd-fund.org/understanding-the-2026-cra-proposed-changes/; *See also Community Reinvestment Act (CRA)*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/consumerscommunities/cra_about.htm (last updated Mar. 28, 2024).

served by regulated institutions include credit and deposit services; and (3) that these institutions affirmatively meet the credit needs of the local communities in which they are chartered.[40]

The CRA's text and legislative history makes it clear that the Act was designed to remedy what Congress identified as historic barriers to access to credit. The Proposed Rule runs roughshod over the CRA's guiding principles because it dilutes the incentives for banks to meet the credit needs of the communities the CRA is designed to protect.

**D. Conclusion**

By relieving hundreds of banks from their CRA requirements, the Proposed Rule puts hundreds of millions of dollars in CD investments at risk; running counter to the legislative intent of the CRA. These investments provide capital for developers and CDFIs to build and maintain affordable housing. Absent these guidelines, banks can curtail their CD investments without fear of their regulatory rating being downgraded; allowing banks to disfavor LMI communities and further entrench the wealth inequality that the CRA was designed to combat.

Sincerely,

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[40] 12 U.S.C. § 2901(a).