BETTER MARKETS

August 18, 2025

Chief Counsel's Office
Attention: Comment Processing
(Docket ID OCC-2025-0005)
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, DC 20219

Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments RIN 3064-AG13
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Ann E. Misback, Secretary
Attn: Docket No. R-1869; RIN 7100-AG95
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Community Reinvestment Act Regulations; Docket ID OCC-2025-0005; RIN 1557-AF30; Docket No. R-1869; RIN 7100-AG95; RIN 3064-AG13; 90 Fed. Reg. 34086 (July 18, 2025)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the proposed rescission ("Proposal") of the final 2023 Community Reinvestment Act ("CRA") rule.[2] The Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Fed"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "the Agencies") decided to rescind the 2023 rule and replace it with the CRA rule from 1995. This was done despite broad and enthusiastic support for the 2023 rule from the Agencies and the public, following a long period of comments and analysis.[3] The Agencies' primary stated reason for the rescission is

1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

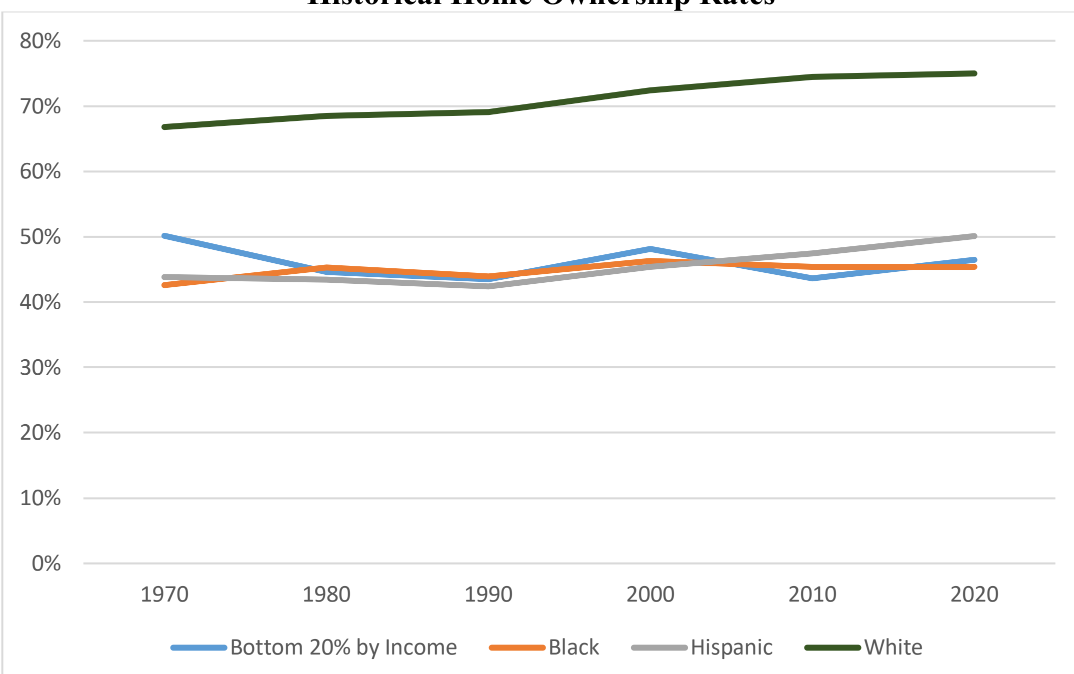
2 Community Reinvestment Act Regulations, 90 Fed. Reg. 34086 (July 18, 2025); https://www.federalregister.gov/documents/2025/07/18/2025-13559/community-reinvestment-act-regulations.

3 *See, e.g.*, Press Release, Board of Governors of the Federal Reserve System, *Agencies Issue Final Rule to Strengthen and Modernize Community Reinvestment Act Regulations* (Oct. 24, 2023), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20231024a.htm.

the uncertainty[4] that resulted from the banking industry's litigation[5] challenging the 2023 CRA rule that would have modernized and updated the community reinvestment expectations for banks. Of course, if that were a valid reason, then all the industry would ever have to do to nullify a rule is file a lawsuit against the rule, given that "uncertainty" is an inevitable and ever-present result of every lawsuit.

Unfortunately, the bottom line is that even after decades of claimed focus on community reinvestment, working Americans are financially no better off today, and in some cases they are worse off, than they were decades ago. Moreover, American families have recently been battered by inflation, income stagnation, wealth deprivation, and an economy rigged against them, no matter how hard they work. For example, homeownership rates for Black, Hispanic, and low-income families have either flatlined or only modestly increased since the 1970s, while homeownership rates for White families have steadily increased (see Chart 1).[6]

Chart 1
Historical Home Ownership Rates



Source: U.S. Census Bureau decennial surveys

4 Community Reinvestment Act Regulations, *supra* note 2 at 34089.

5 *Tex. Bankers Ass'n v. Office of the Comptroller of the Currency*, 728 F. Supp. 3d 412 (N.D. Tex. 2024).

6 U.S. Census Bureau. Data for 1970, 1980, and 1990 obtained from the IPUMS USA database, *available at* https://usa.ipums.org/usa/sda/. Data for 2000, 2010, and 2020 obtained from the Current Population Survey, *available at* https://www.census.gov/programs-surveys/cps/data.html.

Homeownership rates for underserved families have stagnated at the same time that nearly every bank has passed its CRA examinations.[7] The Agencies' seemingly cavalier decision to abandon many years of deliberation, public input, and analysis focused on investment in Main Street America, ostensibly because of uncertainty caused by banking industry-led litigation, is as baseless as it is shameful. That Congressionally-mandated and long-overdue investment by banks appropriately focused on low- and moderate-income families and communities that had been illegally denied credit, investment, and banking services for decades. Such flagrantly illegal conduct—often done under color of law with explicit or implicit government approval—contributed significantly to intergenerational wealth deprivation and gaps, poverty, and a debilitating lack of hope. Those decades didn't just deprive people of homes and wealth; millions of American families were robbed of the American Dream. While the 2023 CRA rule wasn't perfect and needed improvement, as detailed by Better Markets' comments and analysis,[8] it still would have resulted in critical investments in many communities and provided some protection for low- and moderate-income families against discrimination by banks.

There is no legitimate basis to revert to the 1995 CRA rule, and to do so is a grievous mistake that will inflict terrible financial damage on communities across the country. This action will harm millions of American families and small businesses while reducing or eliminating the obligation of banks to invest in their communities.

To prove just how wrongheaded it is to revert to the 1995 rule, compare the economy, financial system, and way of life in 1995 to today, 30 years later in 2025. There is little, if any, resemblance to the America we see today, especially in financial services. Online and mobile banking functionality was just getting off the ground in the mid-1990s, with Wells Fargo being the first bank to offer online banking at the end of 1994.[9] In contrast, the latest data show that as of 2023, more than two-thirds of bank customers report their primary method of bank account access as mobile or online banking, and only 15% of bank customers rely primarily on a physical bank

---

7 Josh Silver & Jason Richardson, *Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data*, NCRC (May 2020), https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/.

8 *See, e.g.*, Dennis Kelleher & Peter Rappoport, *The Banking Regulators' Proposed Community Reinvestment Act Rule Will Not Work, But Dramatically Improving It Is Not Complicated*, BETTER MARKETS (Sept. 18, 2023), https://bettermarkets.org/wp-content/uploads/2023/09/BetterMarkets_CRA_Rule_Will_Not_Work_09-18-2023.pdf; Better Markets Comment Letter, *Supplement Filing Regarding the Community Reinvestment Act (CRA) Proposed Rule Reviewing Fed Data Demonstrating That the CRA Rule Will Not Work and Redlining Will Continue* (Aug. 7, 2023), https://bettermarkets.org/wp-content/uploads/2023/08/Better_Markets_Supplemental_Comment_Letter_CRA.pdf; Better Markets Comment Letter, *Proposal to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated* (Aug. 5, 2022), https://bettermarkets.org/wp-content/uploads/2022/08/Better_Markets_Comment_Letter_Community_Reinvestment_Act.pdf.

9 *See, e.g.,* FIRST IN ONLINE BANKING, WELLS FARGO, https://history.wf.com/first-in-online-banking/ (last accessed Aug. 11, 2025).

branch for access to banking services.[10] That was virtually 100% in 1995. The Agencies recognized this obvious and fundamental shift in the 2023 final rule by considering the channels through which a bank operates (physical branches as well as online or mobile methods) to determine its reinvestment requirement, rather than basing the entire requirement on physical branch locations, which for a bank that largely (or exclusively) operates online, could have no resemblance to actual bank business:

> [T]he agencies recognize that changes in technology and in bank business models have resulted in banks' entire communities extending beyond the geographic footprint of the bank's main office, branches, and other deposit-taking facilities.[11]

The Agencies claim that they considered several alternatives before deciding on the rescission, including maintaining the 2023 rule, adding amendments to it, or replacing it with a new rule, before ultimately deciding to roll back to a rule that is not only two decades old but has also proven to be ineffective, as detailed earlier. Nevertheless, they decided to throw out years of painstaking effort, diligence, consideration, and input, and do what the banks wanted to the detriment of America's families, small businesses, and communities. Finally, the incongruity and absurdity of the 2023 CRA rule rescission are underscored by the enthusiastic support of the Agencies to fight so-called "debanking," lending support for dangerous and illegal corners of the economy, such as cryptocurrency, while not even mentioning underserved American families who have been marginalized and fighting for fair access to the banking system for generations.[12] Simply put, the American people, especially the most vulnerable families in society that the CRA was intended to help, deserve better from the very Agencies that exist to protect and serve them.

BACKGROUND

Banks enjoy a special status in the American financial system and, accordingly, receive special privileges, including FDIC insurance as well as access to the Federal Reserve's payments system. Without this, depositors would certainly demand higher interest rates to compensate for

---

10 *See, e.g.*, Federal Deposit Insurance Corporation, FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 32 (2023), https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report.

11 Community Reinvestment Act, 89 Fed. Reg. 6574, 6738 (Feb. 1, 2024), https://www.federalregister.gov/documents/2024/02/01/2023-25797/community-reinvestment-act.

12 *See, e.g.*, Press Release, Federal Deposit Insurance Corporation, *Statement from Acting Chairman Travis Hill on Executive Order Titled "Guaranteeing Fair Banking For All Americans"* (Aug. 8, 2025), https://www.fdic.gov/news/press-releases/2025/statement-acting-chairman-travis-hill-executive-order-titled-guaranteeing; Press Release, Office of the Comptroller of the Currency, *Comptroller Gould Issues Statement on Executive Order "Guaranteeing Fair Banking For All Americans"* (Aug. 7, 2025), https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-78.html.

the risk of losing their deposits and almost certainly pull their deposits out altogether in times of stress, causing bank runs, failures, contagion, and financial crises.[13]

The government grants banks these privileges because, among other things, they are supposed to provide the American people with access to credit to fuel the economy, creating jobs and growth, and, ultimately, enabling wealth creation, improving financial well-being, and making the American Dream widely available.[14] Banking touches on every aspect of life: enabling savings, providing basic financial services, and providing credit for personal purchases such as groceries or other day-to-day necessities, or, even more important, home purchases, which for many people will be their most significant source of wealth.[15] In other words, it is nearly impossible to achieve any measure of economic and financial security and success without banking.

Unfortunately, the access to or cost of banking products and services has never been fair or equal in America, with certain Americans, especially Black Americans and other Americans of color, being disproportionately hurt.[16] The country's major attempt to remedy this disreputable situation was when Congress passed the CRA in 1977. In addition to addressing several injustices, it was intended to ensure that banks fulfill the public purpose that justifies their many privileges, i.e., to provide all Americans, including those who are economically marginalized, with the opportunities that access to credit, banking, and the broader financial system affords. The CRA essentially requires the Agencies to evaluate a bank's record of meeting the credit needs of the communities it serves, including low- and moderate-income ("LMI") communities and individuals within communities, under several "assessment factors." The resulting top-line ratings, which are made public, are considered by regulators as they evaluate bank applications for mergers, acquisitions, branch openings, and other elements of a bank's business plan.

However, in the nearly 50 years since its passage, there is little evidence that the CRA has fulfilled its promise.

---

13 *See* Better Markets Letter to the Financial Stability Board, *Evaluation of the Effects of Too-Big-To-Fail Reforms* (Sept. 30, 2020), https://bettermarkets.org/wp-content/uploads/2021/07/Better_Markets_Comment_Letter_on_FSB_TBTF_Consultation_Report.pdf*; also see* Dennis M. Kelleher, *The Too Big To Fail Problem is Alive, Well and Getting* Worse, FINANCIAL STABILITY BOARD SYMPOSIUM (Sept. 16, 2019), https://bettermarkets.org/wp-content/uploads/2025/08/FSB_Too_Big_To_Fail_Presentation_09-16-2019.pdf.

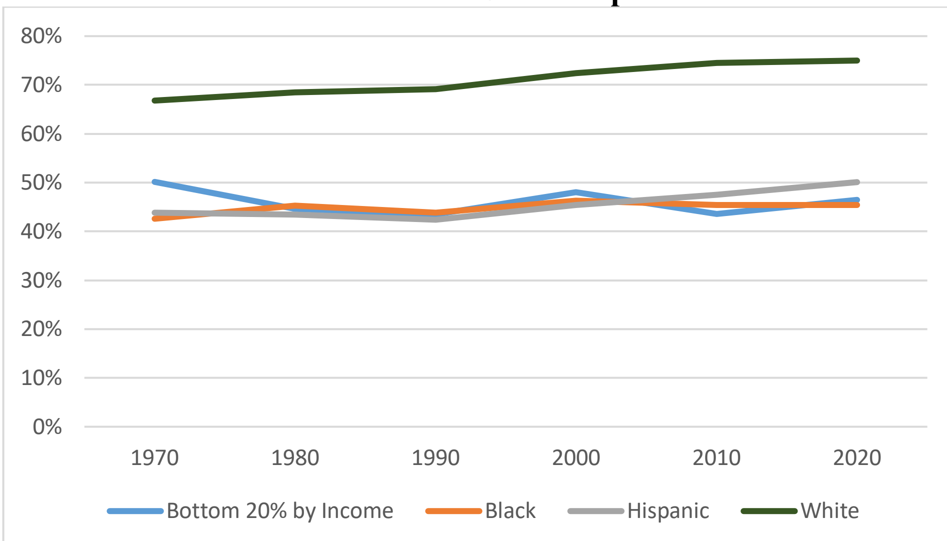
14 *See, e.g.*, Mehrsa Baradaran, *How the Poor Got Cut Out of Banking*, 62 EMORY L.J. 483, 489 (2013), https://scholarlycommons.law.emory.edu/elj/vol62/iss3/1/.

15 *See, e.g.*, Cassandra Jones Havard, *Doin' Banks*, 5 U. PA. J.L. & PUB. AFF. 317, 320 (2020), https://scholarship.law.upenn.edu/jlpa/vol5/iss3/2/.

16 *See, e.g.*, Peter P. Swire, *The Persistent Problem of Lending Discrimination: A Law and Economics Analysis*, 73 TEX. L. REV. 787, 793 (1995).

- First, homeownership among low-income and Black Americans is no greater today than when the CRA was passed 45 years ago and is barely higher for Hispanic Americans, all well below the rates for higher-income and white Americans (see Chart 2).[17]

Chart 2
Historical Home Ownership Rates



Source: U.S. Census Bureau decennial surveys.

- Second, data from the Federal Reserve show that since the late 1980s, the gaps between wealth held by Black and Hispanic families compared to wealth held by White families (see Chart 3) and the gap between wealth held by low-income families and high-income families (see Chart 4) have grown exponentially.[18] This is clear evidence that the CRA has been ineffective.

- Third, beneficial banking relationships are still unattainable for many Americans. According to surveys from the Fed and the FDIC, as recently as 2023, about one in every five households is unbanked or underbanked. These rates are even higher among adults with lower income, adults with less education, and Black and Hispanic adults.[19]

---

17 U.S. Census Bureau, *supra* note 6.

18 BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, SURVEY OF CONSUMER FINANCES, https://www.federalreserve.gov/econres/scfindex.htm (last accessed Aug. 11, 2025).

19 *See, e.g.*, Federal Deposit Insurance Corporation, *supra* note 10; Board of Governors of the Federal Reserve System, REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2021 (May 2022), https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf.

Chart 3

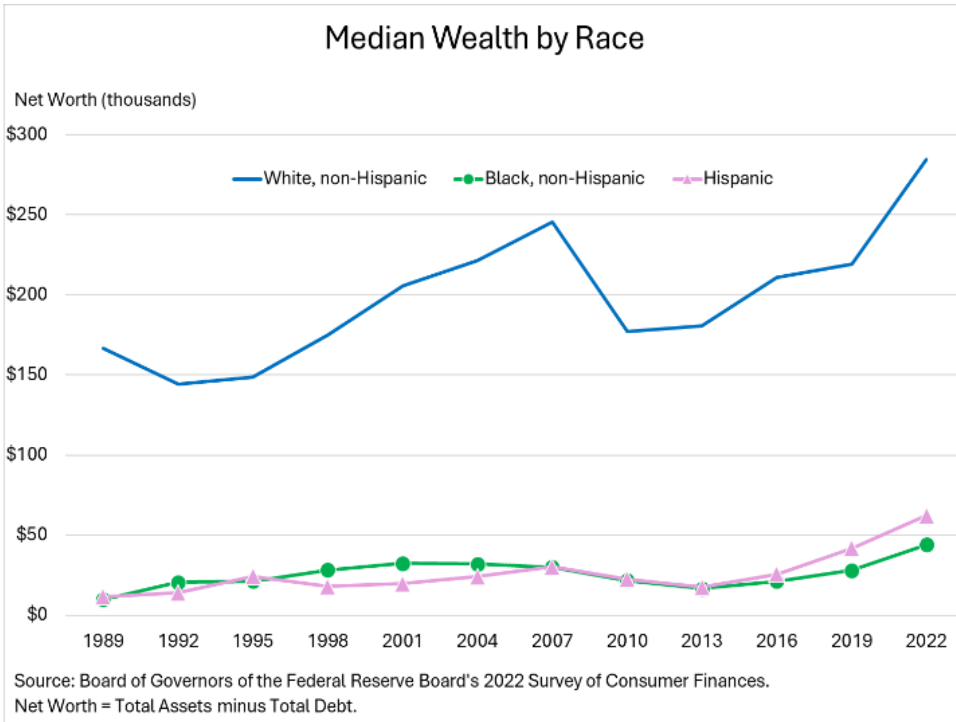
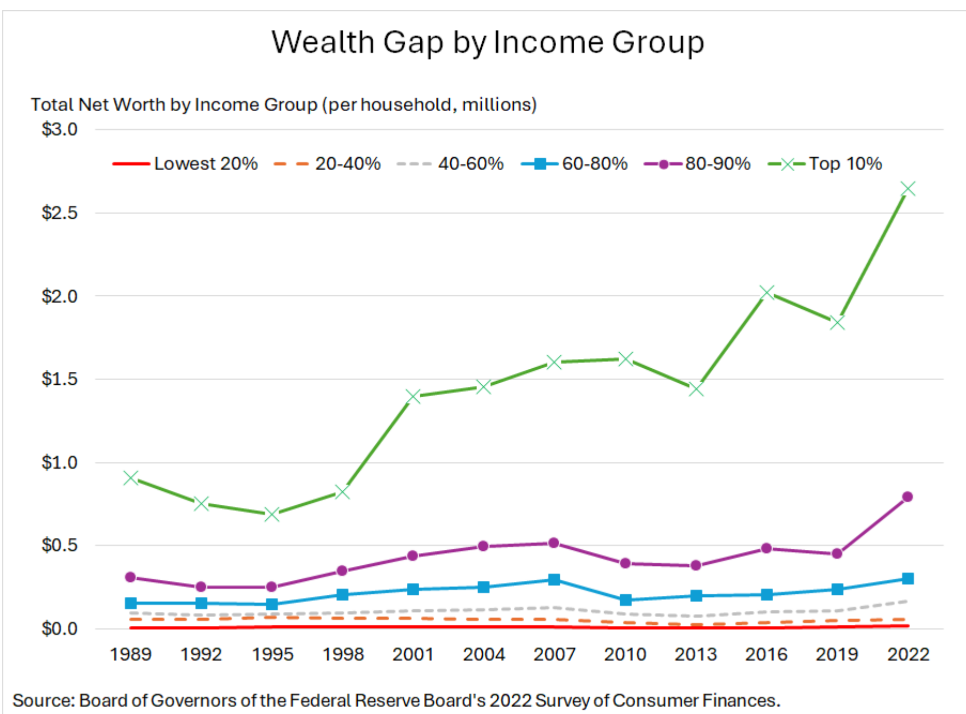


Chart 4



Put simply, there are still far too many households in America without fair and adequate access to banking products and services, and that lack of access disproportionately impacts the most vulnerable Americans—people of color, the less educated, and those with lower incomes. Not only is access to banking less available to these families, but the fees charged on bank accounts are also higher in LMI and majority-minority communities.[20] In other words, being unbanked or underbanked has a significant negative impact on people's lives. As Federal Governor Michael Barr stated:

> The consequences of not having access to mainstream financial services can be severe. High-cost financial services reduce disposable income for those least able to afford it. . . . Lack of access to mainstream financial services also undermines the ability of the poor to save and to access credit, reducing their long-term wealth.[21]

The Agencies also recognized the seriousness and importance of this issue, stating in the Proposal that led to the 2023 CRA rule:

> Even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent.[22]

Clearly, the CRA's implementation needs improvement—from quantitative metrics used by bank examiners, to better and more accessible data sets and a recognition of the significant technological shifts since the last update in 1995. While not perfect, the 2023 rule took important steps in the right direction toward that goal. This rescission, unfortunately, erases that progress.

<u>SUMMARY OF THE PROPOSAL</u>

The Agencies' decision to rescind the 2023 CRA final rule is primarily based on the uncertainty that the industry's litigation has caused. The Agencies also explain that there has been a "change in agency priorities" since the 2023 rule was finalized.[23]

With the rescission, the Agencies purport to have two main goals:

(1) restore certainty in the CRA regulatory framework for stakeholders; and

---

[20] *See* Marco Migueis, Michael Suher, & Jessie Xu, *Cost of Banking for LMI and Minority Communities*, Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series (2022), https://doi.org/10.17016/FEDS.2022.040.

[21] Michael S. Barr, *Banking the Poor*, 21 YALE J. ON REG. 121, 134 (2004), https://repository.law.umich.edu/articles/62/.

[22] Community Reinvestment Act, 87 Fed. Reg. 33884, 33888 (June 3, 2022), https://www.federalregister.gov/documents/2022/06/03/2022-10111/community-reinvestment-act.

[23] Community Reinvestment Act Regulations, *supra* note 2 at 34089.

(2) limit regulatory burden on banks.[24]

Both goals are focused on ***benefitting banks***, not on benefitting American families, who should be able to depend on the CRA to make sure that banks are lending fairly and serving local communities. Unlike the Proposal that led to the 2023 final rule, several objectives have clearly been dropped by the Agencies, including:

- Update CRA regulations to ***strengthen the achievement of the core purpose of the statute***;
- ***Adapt to changes in the banking industry***, including the expanded role of mobile and online banking;
- Provide ***greater clarity and consistency in the application of the regulations***;
- Promote ***transparency and public engagement***; and
- Confirm that ***CRA and fair lending responsibilities are mutually reinforcing***.[25]

COMMENTS

Unfortunately, the Proposal prioritizes the interests of the banking industry ahead of underserved communities and Main Street Americans who look to the CRA for fair and equitable treatment by banks. Our comments are as follows:

1. <u>The decision to rescind the 2023 CRA final rule is a mistake.</u> This is especially true considering the alternatives that the Agencies considered related to this Proposal, which included maintaining the 2023 rule, adding amendments, or replacing it with a new rule. As the Agencies admit in the identification of their objectives with the Proposal, detailed earlier, their focus is now on reducing burden and uncertainty ***for the banking industry***. Unfortunately, the focus on providing underserved communities with fair and equitable access to the financial system, which should lead to homeownership and wealth creation, has been forgotten or, worse, purposefully ignored.

2. <u>The Proposal is arbitrary and capricious. The Agencies are sweeping aside, without adequate justification, an extensive body of research, data, analysis, and public input that resulted in a strong, affirmative, interagency statement that the 2023 rule would achieve the Agencies' objectives related to the CRA.</u> In advance of the 2022 Proposal and for more than a year between the 2022 Proposal and the 2023 final rule, all three Agencies engaged in a thoughtful and thorough review of data, research, and public comments. Based on this data and analysis, they concluded that the 2023 rule rightly encourages "banks to expand

[24] *Id*.

[25] Community Reinvestment Act, *supra* note 22 at 33885.

access to credit, investment, and banking services in LMI communities;" "adapts to changes in the banking industry, including internet and mobile banking;" and tailors "CRA evaluations and data collection to bank size and type."[26] Yet in the current Proposal, the Agencies suddenly declare that rescission of the entire 2023 rule is the best course of action, citing merely to litigation and regulatory uncertainty facing the banks. Moreover, the Agencies offer no new data or evidence to rebut their prior empirical analysis or to justify their sharp retreat from their 2023 improvements to the old rule.

This change in position without a credible basis violates at least two core principles of rulemaking that apply whenever an agency seeks to deviate from a prior policy position. First, the Supreme Court has made clear that when an agency changes its position, it must at least "show that there are good reasons for the new policy."[27] The Agencies have violated this most fundamental regulatory obligation, since the reasons offered for the rescission—litigation and uncertainty—cannot be regarded as "good" by any measure, let alone when compared to the many benefits of the 2023 rule cited above.

Second, the Supreme Court has made clear that an agency altering course must "provide a more detailed justification than would suffice for a new policy created on a blank slate" whenever the "new policy rests upon factual findings that contradict those which underlay its prior policy."[28] In other words, any new data must be reconciled with prior data. The Agencies have violated this rule in the extreme: they have offered no relevant factual findings to support the Proposal and have therefore made no effort whatsoever to explain how or why the exhaustive findings underpinning the 2023 rule should now be discounted or ignored. In short, they have failed to reconcile the extensive findings for the 2023 rule with the null set of findings for the Proposal, in essence creating a per se violation of the Supreme Court's requirements. For these reasons, as well as others discussed herein, the Proposal is arbitrary and capricious.

3. <u>The Agencies' action rescinding the 2023 rule actually makes the regulatory uncertainty—that it claims to be remedying—worse, not better, by bending to the administration's political agenda</u>. As mentioned in the Proposal, the Agencies state that the 2023 rule is no longer consistent with current priorities.[29] This is a confusing statement because the Agencies have recently said that they are focused on fair access to the banking system for all Americans and also that they are embracing innovation. Unfortunately, these statements have been focused on finding ways to help cryptocurrency and fintech firms gain access to the banking system, not on helping underserved families find fair and equitable treatment

---

[26] *See, e.g.*, Press Release, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, & Office of the Comptroller of the Currency, *Agencies issue final rule to strengthen and modernize Community Reinvestment Act regulations* (Oct. 24, 2023), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20231024a.htm.

[27] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

[28] *Id.* at 515.

[29] Community Reinvestment Act Regulations, *supra* note 2 at 34089.

by banks to build wealth and homeownership. Not only does this focus conspicuously exclude low-income families and communities of color, but the willingness of the Agencies to engage in such drastic swings in policy objectives is only making the problem of uncertainty worse.

4. Ignoring the drastic shift in technology and its impact on how banks deliver services to customers is a mistake that will disadvantage families in every community across the country. Bank regulatory agencies, researchers, and every person living in America recognize the degree to which technology has changed the banking industry during the last two decades. For example, with the growth in online and mobile banking, the way in which consumers and businesses interact with banks and access money looks nothing like it did in 1995. In fact, some customers interact with banks, such as Ally, exclusively online. The 2023 rule recognized these changes and made corresponding changes to the way in which CRA requirements were measured and implemented. The Agencies' decision to revert to the 1995 CRA rule now ignores these realities, does not meet the letter or spirit of the law, and robs local communities of the financial benefits they deserve.

CONCLUSION

We hope these comments are helpful to the Agencies and demonstrate the need for reconsideration of the rescission of the 2023 CRA rule.

Sincerely,

Shayna M. Olesiuk

Shayna M. Olesiuk
Director of Banking Policy
solesiuk@bettermarkets.org

Better Markets, Inc.
2000 Pennsylvania Avenue, NW
Suite 4008
Washington, DC 20006
(202) 618-6464
http://www.bettermarkets.org