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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6075

September 7, 2022

The Honorable Lael Brainard
Vice Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Mr. Michael J. Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

The Honorable Martin J. Gruenberg
Director and Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Dear Vice Chair Brainard, Acting Comptroller Hsu, and Director Gruenberg:

I am writing to express concern regarding the lack of transparency associated with community benefits plans (CBPs) developed by banks and community groups in connection with the Community Reinvestment Act (CRA).

Greater transparency is critically necessary for Congress and the public to judge the efficacy of the CRA and its implementing regulations. The CRA was enacted to encourage covered banks to extend credit in their communities, particularly low- and moderate-income neighborhoods. One way banks have sought to mitigate regulators' concerns over CRA compliance has been by entering into agreements with community groups on CBPs. Despite banks making massive commitments via CBPs, concentrated poverty and a large population of unbanked individuals persist.¹

Although these CBPs are meant to show compliance with the law, the CBP details are often shielded from public scrutiny. Congress has recognized the troubling degree of CRA-related

¹ See Fed. Deposit Ins. Corp., How America Banks: Household Use of Banking and Financial Services (2020), <https://www.fdic.gov/analysis/household-survey/2019report.pdf>.

agreement opacity for more than 20 years.² To address this concern, Congress enacted a CRA “sunshine” provision as part of the Gramm-Leach-Bliley Act (GLBA), requiring that any agreement between a bank and nongovernmental entity or person made pursuant to or in connection with the CRA must be “in its *entirety* fully disclosed” (emphasis added) to both federal banking regulators and to the public.³ Contrary to Congress’s unambiguous statutory directive, federal banking regulators adopted regulations that allow banks and community groups to hide details of their CRA-related agreements.⁴ For example, the regulations only require that such agreements be made available to the public upon request.⁵ In addition, the regulations explicitly exempt from public disclosure commitments from banks that were made under pressure from community groups, but which do not formally name such community groups as a party.⁶

This circumvention of congressional intent is egregious in its own right, but the growth in prevalence and dollar value of CBPs in recent years only underscores the need to update the regulations implementing the GLBA’s CRA sunshine provision. Earlier this year, for example, one bank announced a staggering \$100 billion CBP in connection with a proposed bank acquisition.⁷ This deal only slightly exceeds a then-record \$88 billion CBP⁸ announced in connection with a separate deal. Although these CBPs were developed in coordination with the National Community Reinvestment Coalition, it is my understanding that some view them as not being CRA-covered agreements and, therefore, not subject to public disclosure under the statute.

It is past time for federal banking regulators to revise their regulations and provide the public with meaningful transparency in this area. As Federal Reserve Vice Chair for Supervision Michael Barr has acknowledged, regulators “have not provided comprehensive data on CRA agreements.”⁹ As your agencies seek to finalize recently proposed updates to the regulations implementing the CRA—an explicit objective of which is to “promote transparency and public engagement”¹⁰—I urge you to establish a public, searchable database on the agencies’ websites containing all CRA-related agreements in full, including CBPs, and provide comprehensive data

² See, e.g., 152 CONG. REC. S13784 (daily ed. Nov. 3, 1999) (statement of Senator Phil Gramm) (“The sunshine provision is very important because it recognizes that banks are making CRA payments as part of compliance practices, that while these payments are made with private funds, they are made under public direction. As a result, this money takes on a very clear government tint because it is paid substantially in part as a way of complying with a Federal mandate that has become a cost of business for people who are engaged in commercial banking in America.”).

³ 12 U.S.C. § 1831y.

⁴ See Disclosure and Reporting of CRA-Related Agreements, 66 Fed. Reg. 2052 (Jan. 10, 2001).

⁵ *Id.* at 2065.

⁶ *Id.* at 2085.

⁷ News Release, *U.S. Bancorp Announces \$100 Billion Community Benefits Plan* (May 9, 2022), <https://ir.usbank.com/news-releases/news-release-details/us-bancorp-announces-100-billion-community-benefits-plan>.

⁸ News Release, *PNC Announces \$88 Billion Community Benefits Plan* (April 27, 2021), <https://pnc.mediaroom.com/2021-04-27-PNC-Announces-88-Billion-Community-Benefits-Plan>.

⁹ Michael S. Barr, *Credit Where It Counts: The Community Reinvestment Act and Its Critics*, 80 N.Y.U. L. REV. 513, 590 (2005).

¹⁰ Community Reinvestment Act, 87 Fed. Reg. 33884, 33885 (June 3, 2022).

on such agreements.¹¹ In addition, I urge you to broaden the definition of “covered agreement” under the regulations to align with congressional intent and mitigate the potential for evasion by banks and community groups.

Thank you for your attention to this matter.

Sincerely,



Pat Toomey
Ranking Member

cc: The Honorable Jerome H. Powell, Chair, Board of Governors of the Federal Reserve System
The Honorable Michael S. Barr, Vice Chair for Supervision, Board of Governors of the Federal Reserve System

The Honorable Michelle W. Bowman, Governor, Board of Governors of the Federal Reserve System

The Honorable Lisa D. Cook, Governor, Board of Governors of the Federal Reserve System

The Honorable Philip N. Jefferson, Governor, Board of Governors of the Federal Reserve System

The Honorable Christopher J. Waller, Governor, Board of Governors of the Federal Reserve System

¹¹ For example, the Federal Reserve provides comprehensive data on banking applications, including the number of applications received, dispositions, and processing times, through a semiannual report. *See* Board of Governors of the Federal Reserve System, Banking Applications Activity Semiannual Report, July 1-December 31, 2021 (Aug. 2022), <https://www.federalreserve.gov/publications/files/semiannual-report-on-banking-applications-20220816.pdf>.