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August 5, 2022

COMMENT LETTER

TO: **Ann E. Misback, Secretary Board of Governors of the Federal Reserve, James P. Sheesley, Assistant Executive Secretary of the FDIC, Chief Counsel's Office, OCC**

FROM: **Irvin Henderson**

RE: **Comments on Proposed CRA Rule**

I appreciate the opportunity to comment about the proposed rule. As a long-term community reinvestment advocate and someone who was very involved in the last substantive reform under Comptroller Gene Ludwig, this rule has intrigued me from the start as it was being considered by the agencies. The question for me was how the prudential regulators would deal with the question of race. Although the CRA was not a race-based statute, increasingly from history and the present, we as citizens are faced with the reality that America has had two credit standards, almost from inception, when consideration is given to the credit and banking services offered to slaves, and of course Native Americans, as trade in the early pioneer days was not favorable or in many cases accessible to neither without predatory practices such as overcharging, two tier interest charges and outright discrimination as the access to capital was not possible for these citizens. Many will say that was yesteryear, but all one has to do is to look at today's payday lenders and other merchants of misery to understand that it is a current day phenomenon as well.

The banking community might opine that they are doing everything they can to mitigate this problem and I vehemently disagree. When Reggie Lewis bought Beatrice, some said this was the end of redlining. But the advocates knew better, as small and large businesses of color continued to be underserved and sometimes just excluded from the access to capital that all viable businesses deserve and require to compete in today's world. Entrepreneurs of color know full well that there are two sets of rules for making credit accessible and the rules are very much predicated by race. Borrowers of color have learned that the proposal has to be twice as good and the records and references twice as relevant in many cases to expect a yes answer. Many of us spend ours of time asking that our proposals only be fairly appraised and know from the beginning that it is a longshot.

Because it is personal, perhaps a personal story will be helpful. I was raised by my Godfather, , who was born on November 22, 1899. He was a plasterer and managed a plastering subcontractor firm. I helped him with his books as a young child and was surprised to find that he did not have a line of credit for materials and did not have overhead pricing in his financial model, but instead used his own labor and supervision hours as the profit and overhead for his business. I asked him why he did not work with some of the banks with which he had accounts for some credit, and he responded that "banks don't lend money for businesses to us". Later when my uncle took over the business in the late seventies, he also had no access to credit, but tried valiantly to correct the overhead mistakes and establish a real business model. He wanted to expand the business by having a cement crew, two plastering crews and a masonry crew. He had ready workers but no working capital. Finally, my cousin began working with them in 1987and by the mid '90's wanted to buy out my uncle, who by then was retirement age, and further develop and diversify the business but was unable to borrow the funds. Three generations spanning the 1920's through the 90's denied access primarily because of race.

As an African American entrepreneur and developer, access to credit, capital and financial services is still not a fait accompli. Special purpose products are slowly being developed by the banks and there are certainly a lot of advisory boards and relationship efforts that have brought our businesses closer to banking, but the perceptions and hidden biases persist. A great business should not have to have a relationship to gain access to capital. These firms ought to be able to work alongside its peers in the same manner and with the same results if the qualifications are the same. Families and individuals that live in formerly and sometimes currently redlined areas should have the same opportunity as suburban families for mortgage access if the neighborhood is under revitalization or has already benefited from alleviating and mitigating problems of environmental justice and economic justice. Alternative forms of income and alternative forms of credit data should routinely qualify to give these citizens and residents access to not just portfolio mortgages and special products, but the secondary market as well, which of course will increase the flow and replenishing of mortgage capital. Structurally, these goals are achievable but the systems and the people responsible must face that it is largely race that is a hurdle, not just income. This major piece of the proposed rule has not been addressed and stands as my greatest criticism.

We touch race so gingerly, trying not to offend, when it is quite offensive what happens to people of color in our country and it is time to consider race for specialty products and to sharpen the tools of anti-discrimination, including the CRA, because it is obvious that there are still two worlds when it comes to financial services and credit. Many strides have been made in fair lending and the occasional case is won, but testing has proven that there are disparate treatments and there are disparate impacts. Mortgages are also a problem area for people of color and as NCRC has proven from 1920 to 1960, that households of color only represented 1% of all mortgages. This combination has a legacy, little home asset-based capital for small business, education or wealth building leads to fewer small business opportunities and fewer jobs, which leads to more poor credit decisions and prey for predators as communities of color continue to be targeted, underserved and marginalized.

As some pundits advocate that race based CRA is wrong and not in the statute, I say neither are many interventions that we as a public society have adopted to make the world livable for all. It is conventional wisdom that the problem exists and that the solutions are enforcement of existing credit opportunity laws and a healthy CRA that admits the disparity between the races and credit and capital are still a major problem today. The Black community will not prosper and have the opportunity to build wealth until we accept the realities and use this sharp tool to alleviate the differences proactively and productively to ensure that fair and equal access to credit and banking services is the law and the practice in America.