December 5, 2022

Interagency Community Investment Committee (ICIC)
U.S. Department of the Treasury
U.S. Small Business Administration
U.S. Department of Commerce
U.S. Department of Transportation
U.S. Department of Housing and Urban Development
U.S. Department of Agriculture

Re: Notice and Request for Information on Opportunities and Challenges in Federal Community Investment Programs, 87 Fed. Reg. 60236

Dear Committee Representatives:

The National Community Reinvestment Coalition (NCRC) appreciates this opportunity to provide our recommendations on ways your agencies can improve the operations and delivery of federal community investment programs, in order to reduce racial disparities and produce stronger economic outcomes for all communities. NCRC and its grassroots member organizations create opportunities for people to build wealth and participate more fully in the nation's economy. We work with community leaders, policymakers and financial institutions to champion fairness and end discrimination in lending, housing and business. NCRC was formed in 1990 by national, regional and local organizations to increase the flow of private capital into traditionally underserved communities. We have grown into an association of more than 700 community-based organizations that promote access to basic banking services, affordable housing, entrepreneurship, job creation and vibrant communities for America's working families. Our members include community reinvestment organizations; community development corporations; local and state government agencies; faith-based institutions; community organizing and civil rights groups; minority and women-owned business associations, and social service providers from across the nation.

As this RFI implicates a broad web of issues and questions relating to federal program design, we focus below on a number of key themes and principles that we urge your agencies to attend to, both individually and collectively. Federal implementation of many of the grant, tax credit, service delivery, and other programs noted in the appendix is ripe for improvement and can be strengthened in ways that will better serve communities. Past lessons in program administration should also be applied to ensure that the designs of emerging new initiatives (such as those authorized by the Inflation Reduction Act and elsewhere) serve to truly benefit those communities most in need.

We ask the ICIC to give weight to the following considerations, as your agencies identify priorities for program alignment, program improvement, and coordinated oversight:

> Design of affordable housing programs and alignment of housing and non-housing community investments to promote fair housing, housing stability and affordability in tandem with neighborhood improvements, and access to highly-resourced areas.

> Affirmative targeting of resources to underserved communities as well as robust oversight of civil rights protections, including Title VI of the Civil Rights Act of 1964.

> Coordination with the Community Reinvestment Act (CRA), which requires banks to provide financing and services to low and moderate income communities and tracks their performance in that regard, and which acts as source of private-sector support for many federal community investment programs.

> Change practices that impede the justice-impacted from accessing credit.

> Strengthening capacity of Community Development Financial Institutions (CDFIs) to provide targeted community investments so as to maximize the positive impact on underserved communities, and to advance wealth-building opportunities, housing stability, and needed community infrastructure improvements.

1. Fair and affordable housing considerations (responsive to Questions 1, 3, and 7)

As noted in the Appendix to the RFI, ICIC agencies are charged with administration of a number of housing programs that contribute to community development and that entail some form of public-private coordination. These include both homeownership and rental programs, and a number of programs that support additional community development investments in tandem with housing. (Programs include, for example, the Low Income Housing Tax Credit Program, HOME Program, Community Development Block Grants (which can be used for land acquisition for housing, as well as other community needs), Choice Neighborhoods (supporting public housing redevelopment in coordination with that of the surrounding neighborhood), New Markets Tax Credits, National Housing Trust Fund, Project Based Vouchers, and Project Based Rental Assistance, among others.) Subsidies from these programs are often layered together in order to provide sufficient financing to support affordable housing, especially at relatively deep affordability levels, and private sector financing (see the CRA discussion below) and private sector engagement (for example, with developers and property owners) are fundamental aspects of program design in much of our nation's subsidized housing system. Further, non-housing programs (for example, federal infrastructure programs such as transit funding) can potentially assist in promoting housing creation and preservation through competitive grant award criteria.

Federal administration plays a central role in determining the locational characteristics, occupancy demographics, habitability standards, affordability levels, and other features of subsidized housing that present important policy considerations. It can also be a key platform for coordination among subsidies, both across housing programs and in related place-based investment programs. ICIC should assess how its member agencies can individually and jointly take steps to promote fair housing, ensure housing affordability and quality for low-income households (which are disproportionately households of color), and enable access to neighborhood resources for low-income residents.

All federal housing and community development programs are subject to the Fair Housing Act's Affirmatively Furthering Fair Housing obligation, which HUD has defined as follows:

> "affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."

ICIC and its member agencies should ensure that their programs align with and advance this AFFH mandate.

<u>Housing security, affordability, and preservation</u>

When lower- or mixed-income neighborhoods see increases in resources (either due to private market trends, an increased flow of public resources, or a mixture), maintaining a supply of high-quality, stable affordable housing entails intentional policy interventions. Federal programs should not serve to finance or support displacement in the name of community investment. Nor should they support private profit structures that gain from concentrated poverty, geographically concentrated resource scarcity, and resulting economic vulnerability. Rather, federal program structures should push the sectors of the private market with which they interact toward a higher bar in serving communities and households, better meeting acute needs while also taking meaningful steps to remedy structural divides in opportunity. This entails rigorous guardrails to promote housing security and fair housing, reduce cost burden, and ensure that existing residents have ongoing access to new neighborhood resources.

As a core principle, programs that operate in the name of community investment should not only target underserved geographies, but must be designed to serve the existing low and moderate income residents of those communities. Housing investments are no exception. Although mixed-income development strategies can benefit a neighborhood by increasing its resource base, such strategies must be carefully designed so as increase the overall availability of housing and to preserve housing that is affordable to low-income households. Revitalization initiatives, and especially revitalization initiatives of a significant scale, should include extensive commitments to deeply affordable housing. Further, the improvement and preservation of affordable housing is an essential aspect of any redevelopment plan. Past and ongoing lessons from housing redevelopments (including HOPE IV and Choice Neighborhoods) make clear that redevelopment can easily result in displacement, ongoing housing insecurity for original residents, and fair housing concerns, if adequate precautions are missing.

In addition, federal agencies should promote coordinated use of funds in order to ensure that disinvested, concentrated poverty areas receive revitalization resources in the form of infrastructure improvements and commercial resources, alongside resources to improve housing conditions – rather than relying on subsidized housing programs as the sole or primary form of community development for such areas (thus further concentrating poverty while failing to remedy ongoing resource disparities). For example, the LIHTC program's "concerted community revitalization plan" (CCRP) component, which provides that housing in sited high-poverty areas should be embedded within holistic community revitalization initiatives, has not been implemented in a meaningful way. Stronger oversight by individual federal agencies is needed, as well as cross-agency commitments to better coordinate affordable housing investments and other investments.

Interagency program coordination, and coordinated oversight over funding recipients' activities more broadly, remains underdeveloped in the area of community development and its connection to housing. Coordination is generally devolved to state or local entities, even though administration at that level is often highly fragmented. (For example, a locality may have a HUD grant administration office that operates entirely separately from its planning department.) Clearer cross-agency directives to federal recipients about resource alignment are needed, especially as new initiatives (to support a green economy, for example) enable new economic development. As noted in HUD's findings from the Choice Neighborhood Initiative, federal engagement with local policymakers can also be a helpful measure in addressing the challenge of program silos at the community level. A positive feature of the 2015 AFFH regulatory framework was the way in which it encouraged cooperation between public housing authorities and state/local government entities – a feature that could be better systematized in federal initiatives, in order to reach and aid low-income households.

<u>Access to highly-resourced areas (opportunity areas)</u>

Just as it is critical to bring in resources to improve conditions in disinvested areas, it is important to broaden housing choices for low-income people outside areas of concentrated poverty and to provide access to already resource-rich, but often exclusionary, areas. This is also a core fair housing principle: that of remediating racial segregation and exclusion, which is rooted in historical de jure and de facto segregation and perpetuated by ongoing discrimination.

As noted above, all housing and community development programs are subject to the statutory AFFH requirement. HOME and CDBG are squarely linked to HUD's 2015 AFFH regulation (partially restored in 2017), which is cross-referenced in those program regulations and the Consolidated Plan requirements for HUD program participants (states and entitlement jurisdiction counties and localities). Although HUD programs have regulatory site selection requirements that arise from the AFFH duty, housing funded by those programs is often still located in resource-poor areas. Other programs such as LIHTC entirely lack AFFH criteria in their administration. In addition to improved site selection oversight by administering agencies, there is a need for financing to better support opportunity siting of subsidized housing. Federal entities engaged in the housing finance system (including the bank regulators, as noted below) should commit to improving AFFH performance for federal housing programs.

2. Affirmative targeting to underserved communities and strengthened implementation of Title VI of the Civil Rights Act of 1964 (responsive to Questions 1 and 3)

The ICIC should ensure that federal programs operative affirmatively to remedy patterns of disinvestment and disadvantage. This requires not only anti-discrimination oversight, but also deliberate measures to ensure that historical and ongoing disparities in resource distribution are redressed. The Administration's Justice40 Initiative is one such step, but should be viewed as only a starting point.

We recommend that ICIC agencies put in place strong, consistent *ex ante* measures that provide for the targeting of resource to promote equity and for better civil rights performance across their programs. This should include clear set-asides and prioritized/allowable uses for disinvested areas and underserved populations, planning requirements, and transparent and public tracking of decision-making and expenditures. Federal programs that set forth priorities without accountability measures are likely to hazard unequitable outcomes in many places, as disadvantaged communities frequently also lack political power around state and local resource allocation. For example, the Community Block Grant Program has long been criticized for failing to adequately meet the needs of low-income communities, due to its flexibility and lack of oversight. The Treasury's ARPA grant program, though it set forth priority uses, also lacked a system of accountability to ensure that it actually serves to promote equity at the community level.

Further, non-discrimination requirements must be communicated *in specifics* at every stage to recipients, and actively enforced. Expanded, more rigorous enforcement activity will need to enlist a range of strategies. This includes front-end reviews, audits, and a significant increase in activity for agency-initiated compliance reviews and complaint processing. Title VI, which prohibits discrimination in the programs and activities of federal funding recipients, has long been underenforced. Complainants are reliant on agency action to contest instances of disparate impact discrimination using Title VI, for example where a state or local actor is distributing funds in a manner that excludes or disadvantages communities of color without justification. Community development programs administered by ICIC agencies should be accompanied by rigorous Title VI oversight regimens.

Additionally, technical assistance should include training on civil rights requirements and best practices in the context of specific program performance. Technical assistance should be provided to recipients/program participants and also to community groups, including organizations seeking to benefit from funding opportunities.

3. Coordination with the Community Reinvestment Act (responsive to Questions 4, 7, and 8)

We note that this RFI on how to best leverage public investments with private funds to promote equity comes amidst a rulemaking by the three federal bank regulators to modernize the Community Reinvestment Act (CRA), which was created to remedy the harms and vestiges of racial redlining and which has many similar goals. The CRA rulemaking is in its final stages, with a rule likely to be issued in the coming months. While we do not yet know the outcome of that rulemaking, a number its aims overlap with those in this RFI, such as increasing access to banking and capital for underserved populations, promoting equitable community development investments, and advancing equity (as well as nondiscrimination, as in the stated goal of the bank regulators to “confirm that CRA and fair lending are mutually reinforcing”).

Further, many federal programs, including number of those listed in this RFI, are commonly utilized by banks as a way for them to comply with their CRA obligations. Similar principles – those of targeting communities in need, seeking to remedy racial disparities, and providing accountability for harmful activities – should inform both federal community development program design and CRA regulation, and both should align to advance the purposes and intent of civil rights obligations. A strong degree of rigor and intentionality should apply both in federal program design and in guiding the bank regulators in how to evaluate activities submitted for CRA credit.

Applicable principles in both areas include:

- Accountability for racial discrimination and affirmative obligations to reach underserved communities.

- Quality, quantity, and impact: for CRA, banks should be evaluated on both the quantity and quality of their activities (retail lending, community development finance, branches, banking products, and services), with downgrades for harms (such as products, practices, and patterns of lending that lead to exclusion, displacement, high costs, and other harms).

- Community input and community needs must be central to the process: as with CRA, community development programs must respond to community needs, with accessible and varied mechanisms to solicit and respond to input at numerous stages.

As noted above, CRA performance often implicates or overlays with public sector programs, such as the Low Income Housing Tax Credits (LIHTC), the New Markets Tax Credits, the Community Development Block Grant (CDBG) and HOME Investment Partnerships Program. The layering of bank and public sector programs enables the financing for more affordable housing and community development projects, and enables the financing to reach more underserved populations, particularly lower income populations. The ICIC should consider ways to better coordinate public and private sector financing of affordable housing and community development, while promoting the principles and equity considerations discussed in the sections above. (Such as fair housing, access to resources, and non-displacement.) Formal participation in the ICIC by representatives of the federal banking agencies (the Federal Reserve Board and the Federal Deposit Insurance Corporation, as well as the Office of the Comptroller of the Currency (OCC) which is under the aegis of the Treasury Department) would better enable such coordination.

In addition, the new community development data in the proposed CRA rule can be an important data resource to use in combination with data collected by public sector programs. Further, the ICIC should make better use of HMDA and the other databases that capture private lending activities.

Structuring data collection and reporting to promote increased private sector and philanthropic investment in community financial institutions and better serve communities

The federal bank agencies proposed changes to their CRA regulations in the summer of this year. They proposed new data collection in the area of community development financing including data on affordable housing, small business development and support for community facilities. This data was to be collected on a county level; NCRC agrees that county level collection is a step forward, but we also urge for data to be reported on a census tract level.[1] Census tract collection would be critical to help determine which neighborhoods are receiving an adequate level of community development financing and which neighborhoods remain underserved. Data on a county level would be helpful in identifying relatively underserved counties but would not be useful in more precisely targeting undeserved neighborhoods with additional resources.

The ICIC should work with the bank agencies to finalize their community development data proposals and determine how data collected on existing and new public sector programs and revenue streams could be combined to better inform public policy decision and to better identify underserved communities. In addition, the existing Home Mortgage Disclosure Act (HMDA), CRA data on small business/farm lending, FDIC data on branches and deposits (including possible revisions to this data), and the new Section 1071 data (available in a couple of years) on small business/farm lending would also help provide more robust analysis of how to more effectively target and combine private and public financing to reach communities in need.

An important tool for increasing financial inclusion is to use data identifying underserved communities, as well as tracking individual and community-level racial impacts and disparities. For example, NCRC has recommended to the federal bank agencies that they use metrics such as the number of home loans per households or small business loans per small business on a census tract level to identify underserved neighborhoods. NCRC found that on average, the quintile of neighborhoods served least well per these metrics had a population that was 57% people of color.[2] CRA exams should then measure lending and investing in the underserved neighborhoods and federal programs should target resources to these neighborhoods.

Data collection to better understand and report the impact of community investments in reducing racial, gender, and geographic, or other economic disparities

Data on the location of public and private sector investments should be recorded on an individual basis (data on each loan or investment) for each census tract. The category of financing such as affordable housing or community development should also be recorded. Analyses should then involve econometric research to indicate if this financing has reduced unemployment, increased access to the banking system, increased homeownership and small business ownership, improved the quality of housing, increased property values (without displacement) and other indicators of economic and social well-being. Individualized or

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[1] NCRC Comment Letter On Community Reinvestment Act Interagency Rulemaking, NCRC, August 4, https://ncrc.org/ncrcs-full-public-comment-letter-on-community-reinvestment-act-interagency-rulemaking/.

[2] Bruce Mitchell, PhD. and Josh Silver, *Adding Underserved Census Tracts As Criterion On CRA Exams,* NCRC, January 2020, https://ncrc.org/adding-underserved-census-tracts-as-criterion-on-cra-exams/.

household data (by race, gender and income) should be analyzed to assess impacts such as wealth building for people of color, women and low- and moderate-income people. The data capturing private sector financing such as HMDA has data by borrowers as well as neighborhoods, so this data can be combined with public sector data to shed light on outcomes.

The current state of data reporting on financial institutions' community development lending and financing is rudimentary. Two sources can be used to assess CD performance - the FFIEC CRA Disclosure reports, and the CRA exams. The disclosure reports only contain data on the total number and amount of CD loans made during the year. For example, we know that during 2020 Wells Fargo NA made 641 loans amounting to nearly $5.4B. The details of the geographies where the lending took place, the type of activity, and the individual loan amounts remain a mystery. The CRA exams provide the necessary detail missing above, but are reported episodically (whenever the exam was completed, so there is no consistency in the dates, making comparative analysis difficult), and are embedded in the report narrative, making extracting and analyzing the data difficult. Reporting CD lending and investment data in a separate report organized by year, institution, geography (at the census tract level would be ideal), activity type, investment project, and amount would enable researchers to make comparative performance analyses.

4. Change practices that exclude the justice-involved population from accessing credit (responsive to Question 7)

While we remain disheartened by the perpetual obstacles that exist to prevent formerly incarcerated individuals from finding employment, we take a measure of satisfaction that many respond by starting businesses. Formerly incarcerated individuals are more likely than others to become entrepreneurs.[3] Unfortunately, they encounter challenges when they apply for credit. The lack of credit availability undermines small business development, job creation, and also contributes to recidivism. The implications for the treatment of these populations holds significant weight as more than 1.1 million small business owners have a criminal history.[4]

Some government loan programs include questions that ask applicants to document their involvement within the justice system. The questions extend beyond cases of conviction, do not sunset, and may ask for misdemeanors and citations. These questions will increase the chance that creditworthy small businesses do not qualify for credit. It may also lead to discouragement. As a whole, these practices further the penalties imposed on justice-involved populations – even those that were never convicted of a crime – without a clear rationale.

Some SBA programs ask for information about the criminal background of applicants. The SBA contends that a criminal history infers that an applicant poses a higher credit risk and a

[3] Hwang, K. J. (2022). From Prison to Entrepreneurship: Can Entrepreneurship be a Reentry Strategy for Justice-Impacted Individuals? *The ANNALS of the American Academy of Political and Social Science*, *701*(1), 114–133. https://doi.org/10.1177/00027162221115378.

[4] Bushway, S. D., Woods, D., Agniel, D., & Abramson, D. (2021). *The Prevalence of Criminal Records Among Small Business Owners*. RAND Corporation. https://www.rand.org/pubs/research_briefs/RBA1295-1.html

greater likelihood of confiscating funds, but research has demonstrated that there is no correlation between criminal history and loan performance. Conditions in the Payroll Protection Program excluded individuals who were formerly convicted of a felony from receiving a loan. The practice disqualified 212,000 small businesses with 343,000 employees from PPP relief.[5]

Through its 7(a), 504, and Community Advantage loan programs, the SBA serves as a primary actor in the provision of credit to small and new businesses. There are "good character" provisions in these programs as well as the 8(a) and Veteran-Owned Small Business programs that address eligibility for government contracts.[6] The SBA has claimed in court that it can treat criminal history as a credit risk on the grounds that it can speak to an applicant's "higher likelihood of incarceration" and "potential for misuse of funds."[7]

The SBA, Commerce, and Treasury should review the underwriting procedures of its partner lenders to ensure that applications do not include questions about past involvement in the justice system. Similarly, federal programs that provide relief, such as disaster or pandemic-related programs, should not have provisions that prevent justice-involved business owners and farmers from receiving assistance. Finally, rather than make the claim that justice involvement necessarily implies credit risk, the SBA should conduct research to document the plausibility that there is a relationship between justice involvement and creditworthiness.

5. Strengthen the capacity of CDFIs to support communities (responsive to Question 4)

<u>Invest in support for CDFIs, and build their capacity to support small businesses</u>

CDFIs can serve as an essential source of capital and technical assistance for small disadvantaged businesses as they recover from the pandemic. From 2019-2020, Black business owners experienced a 11-28% decline in earnings.[8] BIPOC business owners were more likely to face difficulties in accessing credit through major banks during COVID-19, and relied more on their personal funds. NCRC encourages federal support for CDFIs, as through the Emergency Capital Investment Program and the CDFI Rapid Response Program, which have allocated \$8.7B and \$1.25B to 186 CDFIs and MDIs, respectively.[9]

NCRC recommends that strong support and oversight be provided to local governments as they leverage American Rescue Plan resources in order to create and sustain loan funds that support equitable small business growth and development. NCRC supported the allocation of \$100 million to the Community Navigator Pilot Program, the development of the \$120-million Mission-Driven Bank Fund and the \$10 billion reauthorization and implementation of State

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[5] Bushway, S. D., Woods, D., Agniel, D., & Abramson, D. (2021). *The Prevalence of Criminal Records Among Small Business Owners*. RAND Corporation. https://www.rand.org/pubs/research_briefs/RBA1295-1.html.
[6] Schlussel, D. (2021). *Federal policies block loans to small business owners with a record*. Collateral Consequences Resource Center. https://ccresourcecenter.org/2021/08/02/federal-policies-block-support-for-small-business-owners-with-a-record/
[7] See Defy Ventures v. U.S. Small Business Administration, 469 F. Supp. 3d 459, 476 (D. Md. 2020).
[8] https://cdn.advocacy.sba.gov/wp-content/uploads/2022/08/16104007/Research-Summary_COVID-and-Racial-Disparities_508c.pdf.
[9] https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2022/2022-sbcs-firms-owned-by-people-of-color.

Small Business Credit Initiative. NCRC recommends that ICIC member agencies implementing those new programs do the following:

- Ensure proper ongoing evaluation of these programs, to include a summary of investments made and an analysis of program's social, racial and geographical impact.

- In administering the reauthorized State Small Business Credit Initiative (SSBCI), ensure a greater percentage of SSBCI loans reach LMI communities than in previously reported rounds (42% of transactions, 34% of total dollar amount), and continue monitoring statewide program activity and compliance.

- Strengthen the capacity of CDFIs to access these resources, for example by investing in technology improvements.

<u>The Small Business Administration's (SBA) Community Advantage Program is too complex for most (small) CDFIs lending to micro-businesses.</u>

The SBA's Community Advantage program is a loan guarantee program that is available to mission-based lenders such as non-depository CDFIs. It will guarantee 85 percent of a loan up to $150,000, 5% for loans greater than $150,000, and 90% for International Trade loans.[10] This program expires in 2024.

We recommend that any reauthorization of the program or opportunity to review the guidelines for covered loans should consider the difficulty very small businesses and small CDFIs have in accessing the resources of the pilot. Specifically, small businesses struggle to meet the collateral and equity requirements and the minimum acceptable credit score of 140 under the FICO® Small Business Scoring Service℠ Score (SBSS) credit scoring model. Instead, the Community Advantage Program should rely on credit analysis processes and procedures that the CDFI uses for any (non-SBA) loans, as long as the CDFI is well-run and adequately capitalized.

Thank you for this opportunity to submit our recommendations in response to this RFI. Please contact Megan Haberle, Senior Director of Policy, at mhaberle@ncrc.org, or myself at jvantol@ncrc.org for further discussion.

Best regards,

Jesse Van Tol, President and Chief Executive Officer
Megan Haberle, Senior Director of Policy
Josh Silver, Senior Fellow
Adam Rust, Senior Advisor
National Community Reinvestment Coalition

[10] Details are available on the SBA website here: https://www.sba.gov/partners/lenders/7a-loan-program/pilot-loan-programs