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Submitted Electronically

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Re: Square Financial Services Inc. CRA Strategic Plan

The National Community Reinvestment Coalition (NCRC) appreciates the opportunity to provide comments on the CRA Strategic Plan (the Plan) proposed by Square Financial Services Inc. (SFS or Square). NCRC is a coalition of over 700 community organizations that work with policymakers and financial institutions to champion fairness in banking, housing, and business development.

Overall, the SFS CRA Strategic Plan reflects a strategy of regulatory arbitrage, avoidance and aiming for the bare minimum to meet the letter of the law. SFS uses federal and state banking law as tools for avoiding obligations and has insulated itself from safety and soundness and consumer protection laws by building layer upon layer of avoidance mechanisms to skirt regulatory obligations.

- Avoiding community reinvestment - Square avoids CRA obligations of an appropriate scale by holding assets and delivering financial services outside of its industrial loan corporation (ILC) charter. While Block, Square's parent company, is valued at \$40 billion and conducts a range of banking services through Cash App and After Pay,¹ few of these activities are conducted through the bank, such that SFS's asset size is kept under \$1 billion. Establishing CRA Strategic Plan goals as a percentage of total assets is a methodology commonly used by banks, but it does not make sense in this context. Block has now entered the buy-now-pay-later (BNPL) marketplace with After Pay, which, along with Cash App, offer billions of dollars of transactions in banking services to consumers nationwide while avoiding federal banking regulator oversight.
- Avoiding geographic responsibilities - Square proposes a facility-based assessment area rather than a broader statewide regional assessment area (BSRA); however, only 1% of SFS small business loans are in its proposed assessment area. Furthermore, SFS does not disclose data on its small business lending, avoiding the possibility of an analysis of its lending practices which are national in scope.
- Avoiding regulations - Square proposes a five-year CRA Strategic Plan, thus delaying until 2028 compliance with new CRA rules that will become effective as early as January 2026.
- Avoiding community input - In developing its CRA Strategic Plan, Square actively avoided robust community input reflective of its actual lending footprint.
- Avoiding transparent and responsible practices – Square does not transparently disclose to its small business borrowers the Estimated APR it proposes to charge them, despite this disclosure being widely adopted and required by law for equivalent financing products. Square also appears to commonly double charge these business owners when they renew financing. Block is using the Utah ILC charter to avoid transparent small business data reporting, avoid Federal Reserve oversight, and has a track record of failing to protect consumers from fraud.

An ILC charter, like all federal and state bank charters, is a privilege and not a right. The FDIC must not approve Square's CRA Strategic Plan as written. The Plan does not meet the basic statutory requirements of the CRA which require a financial institution to meet the credit and deposit needs of the entire communities it serves. The FDIC must demand a new methodology for developing CRA goals for ILCs that are part of a legal entity structure delivering financial services with FinTech affiliates. Unless the FDIC does this, SFS and other corporations like it will continue to make a mockery of the CRA.

NCRC recommends the following adjustments to the Square Financial Services, Inc. CRA Strategic Plan:

1. NCRC recommends not more than a three-year Plan term, in recognition of the pending CRA reform that will create a new type of assessment area based on the bank's actual service area.
2. NCRC recommends a commitment of at least \$400 million annually, which is around 1% of the assets of Block and more in line with the CRA investments of most financial institutions that are rated "Outstanding." In addition, Square should add a Broader Statewide or Regional Area

¹ Block Inc. (SQ) valuation measures and financial statistics. Yahoo Finance. <https://finance.yahoo.com/quote/SQ/key-statistics/>.

(BSRA) to its plan to expand the impact of its CRA commitment to a wider range of communities

3. We recommend that Square set a CRA Strategic Plan goal to improve Square Loans to meet standards of responsible practice for their products. This should include disclosing their prices transparently, including the Estimated APR, and ceasing the practice of double charging fees.
4. As a products and services consideration, we recommend that Square commit to developing a more affordable, longer-term loan financing option for businesses to “graduate” up to. Minority and women-owned businesses in Square’s ecosystem should not be paying APRs of 25-45% in perpetuity, refinancing high-cost, short-term credit over and over.
5. Within the Lending Test portion of the CRA plan, we recommend that CRA Lending Test credit not be awarded for selling irresponsible financing products into low- and moderate-income communities, including Square Loans as it is currently offered.
6. Within the community development consideration of the CRA Plan, we suggest that Square commit to specific goals funding the development of responsible, transparent, affordable small business lending programs from CDFIs and others.
7. To address the significant ongoing risks concerning the Cash App platform, Square's Strategic Plan should establish goals for reducing fraud levels to the industry average of other P2P platforms. For example, a goal for “satisfactory” performance would be for the percentage of disputed transactions to equal the industry average levels, perhaps as measured in the BPI report, while an “outstanding” level would fall below industry average, and measured fraud levels above industry average would represent a “needs to improve.”
8. NCRC recommends that Square honor its previous commitments to develop a robust and impactful community benefits agreement that reinvests into communities throughout Square’s service area – communities from which Square is making millions of dollars in revenue.

We have organized our comments into the following five sections. Sections I through V discuss some foundational concerns about the legal structure and practices of SFS and its affiliates. The information in these sections informs Section V, the last section of this comment, which includes an analysis of the SFS CRA Strategic Plan and our recommendations for a revised, rigorous Plan that will meet the requirements of the CRA.

Section I: Square’s **legal entity** structure avoids CRA obligations and oversight by the federal banking regulators, in a departure from the original intent of the ILC charter – the early industrial loan corporations operated like finance companies, providing loans to wage earners who could not otherwise obtain credit.²

Section II: Square’s lending is program targets underserved small business owners with what Federal Reserve research accurately describes as “potentially higher-cost and less-transparent credit product.”³ Square does not transparently disclose to its **small business loan** borrowers the relatively high rates it

² Federal Deposit Insurance Corporation. “FDIC’s Supervision of Industrial Loan Companies: A Historical Perspective.” FDIC, <https://www.fdic.gov/bank-examinations/fdics-supervision-industrial-loan-companies-historical-perspective>.

³ See page IV, 2019 Report on Minority-Owned Firms. Federal Reserve Banks. <https://www.fedsmallbusiness.org/survey/2019/report-on-minority-owned-firms>.

proposes to charge them **and** appears to double-charge fees in common circumstances. It also does not disclose small business lending data to the FFIEC, avoiding anyone other than SFS and its regulators understanding the reach of SFS to very small businesses or low- to moderate-income communities.

Section III: Square and its affiliates must not be permitted to avoid robust and effective consumer protection and must implement adequate **consumer protections** to protect its consumers against fraud and predatory lending products. The FDIC must not ignore the practices of SFS affiliates in evaluating its CRA performance, because these practices call into question the ability of SFS and its parent company’s ability to properly manage risk.

Section IV: Square must not avoid engagement with communities throughout its service area and must commit to a robust **community engagement** strategy that does not cease after the adoption of its Plan.

Section V: This section compiles a list of **recommendations** for Square to adequately comply with the CRA.

I. **SQUARE’S LEGAL ENTITY STRUCTURE AVOIDS CRA OBLIGATIONS AND OVERSIGHT BY THE FEDERAL BANKING REGULATORS.**

Square began operations as an industrial bank on March 1, 2021. As of June 30, 2024, Square’s total assets are \$816 million. In contrast, as of June 30, 2024, the total assets of Block, Inc. (the sum of assets reported on its balance sheet), were close to \$40 billion. In another contrast, Block reports in its 2Q 2024 Investor Presentation that “Square represents a \$130 billion gross profit opportunity.”⁴

Square is a wholly owned subsidiary of Block, Inc. The proposed Plan states that Square operates with “support from Block’s foundational functional teams.” Block staff have also been the primary points of contact responding to NCRC’s requests for engagement regarding their CRA Strategic Plan (see Section IV. below). In fact, over the past 14 months of attempting to engage with someone at the company about the Square CRA Strategic Plan, NCRC never heard from, or met with, anyone employed by Square but only interacted with Block employees. The Plan also notes that Square “has been successful in delivering on Block’s mission of economic empowerment and helping small business owners and underserved communities across the United States.”

Square and Block are one and the same – along with the other affiliates described in the CRA Strategic Plan, such as Cash App. Block has developed a legal entity structure that gives it the privilege of a bank charter without the full obligations and oversight of a bank.

Square has delineated its CRA assessment area as the Salt Lake-Provo-Orem UT Combined Statistical Area (“CSA”). However, Square’s service area is nationwide – as noted on page 10 of the Plan, *less than 1% of Square’s small business loans are within its assessment area.* Its CRA Strategic Plan should reflect reality.

⁴ Block Inc. Investor Presentation 2Q24. Q4 Inc. Slide 8.
https://s2.q4cdn.com/661678649/files/doc_financials/2024/q2/2Q24-Earnings-Presentation.pdf.

Square's affiliates must be included in the CRA Strategic Plan, and its resources must be devoted to serving LMI populations (the CRA regulations on strategic plans allow affiliates to be included).⁵ The Plan, therefore, must include goals that are realistically related to the asset size of Block, Inc., and to the service area of Square.

Additionally, as part of a plan that reflects the Block, Inc. financial services affiliates, the community reinvestment capacity of SFS alone must be reconsidered. SFS's consideration of community reinvestment goals computed as a percentage of its balance sheet elides the actual scale of SFS given its originate-to-distribute business model. Most of Square's loans do not appear on its balance sheet. They are sold to investors. While SFS has total assets of \$816 million, it reportedly originated \$4.78 billion in loans in 2023.⁶ As a result, the assets that SFS currently happens to hold do not reflect SFS's community reinvestment capacity. A community development goal based as a percentage of the \$816 balance sheet is not comparable to the balance sheet-based CRA goals of banks that do not share SFS's originate-to-distribute business model. The goals proposed that ignore this incomparability are another exercise in evasion of regulation and responsibility.

NCRC recommends not more than a three-year Plan term, in recognition of the pending CRA reform that will create a new type of assessment area based on the bank's actual service area.

NCRC recommends a commitment of at least \$400 million annually, which is around 1% of the assets of Block and more in line with the CRA investments of most financial institutions that are rated "Outstanding." In addition, Square should add a Broader Statewide or Regional Area (BSRA) to its plan to expand the impact of its CRA commitment to a wider range of communities.

- II. **SQUARE'S LENDING TO LMI COMMUNITIES CAN ONLY BE CONSIDERED FINANCIAL INCLUSION IF ITS CREDIT PRODUCTS ARE PROVIDED RESPONSIBLY. UNFORTUNATELY, THEY ARE NOT. SQUARE DOES NOT TRANSPARENTLY DISCLOSE ITS RELATIVELY HIGH **SMALL BUSINESS LENDING** PRICES TO ITS BORROWERS AND APPEARS TO DOUBLE CHARGE THEM FEES. AND DUE TO ITS ASSET SIZE, SQUARE DOES NOT PUBLISH SMALL BUSINESS LOAN DATA, AVOIDING THE POSSIBILITY OF ANYONE OTHER THAN SFS AND ITS REGULATORS UNDERSTANDING THE REACH OF SFS TO VERY SMALL BUSINESSES OR LOW- TO MODERATE-INCOME COMMUNITIES.**

The heart of Square's CRA Strategic Plan, and its banking activities, is the provision of Square Loans, a small business financing product. This business line focuses on reaching smaller businesses that many banks often neglect to serve well--something we commend. Square reports high representations of women- and minority-owned businesses among its customer base. For example, Square advertises on a

⁵ See the FDIC's version of the CRA regulations on strategic plans, §345.27 Strategic plan, <https://www.fdic.gov/regulations/laws/rules/2000-6500.html#fdic2000part345.27>.

⁶ deBanked, "Square Generated \$4.78B in Business Loans in 2023," deBanked, February 2024. <https://debanked.com/2024/02/square-generated-4-78b-in-business-loans-in-2023/>

page targeted to minority business owners that 37% of its business loans went to minorities, as compared to 26% of traditional lenders' SBA loans.⁷

This section discusses two ways that Square avoids transparent disclosures relative to its small business lending.

First, Square's artificially deflated asset size results in a lack of transparency by allowing the bank to avoid reporting small business data to the FFIEC. The primary sources of information on small business lending by depository institutions are the Federal Financial Institutions Examination Council (FFIEC) and National Credit Union Administration (NCUA) Consolidated Reports of Condition and Income (Call Reports), as well as reporting under the Community Reinvestment Act (CRA).⁸ However, under the current CRA regulations and asset size thresholds, banks under \$1.564 billion in assets do not have to report small business data to the FFIEC. By keeping its ILC entity assets below this threshold, Block avoids having to report small business data to the FFIEC.⁹

Second, the lack of price transparency about the high cost of this financing, and the reported use of a disreputable practice of double charging fees, raises the question of Square helps, or hurts, low- and moderate-income communities.

By our estimation, the typical Estimated APR charged by Square Loans ranges from 26% to 45%.¹⁰ Square Loans does not transparently disclose to customers the Estimated APR it proposes to charge. Instead, Square discloses a dollar cost only, without an APR, preventing effective price comparisons between Square Loans and other options.¹¹

We asked Square to provide actual APR data to ground this discussion. They declined to do so, stating that "The small business loan is a fee-based product; therefore, there is no APR associated with the loan and therefore no APR disclosures." Despite this evasive answer, the APR is nonetheless readily available, commonly disclosed for this type of financing product, and beneficial according to Federal Reserve research, as discussed below.

How many Square customers taking this financing know that it may often be charging them double the rate they may pay on a credit card? How many low- and moderate-income business owners could be

⁷Small Business Loans and Grants: A Guide for Minority-Owned Businesses. Square. <https://www.squareup.com/us/en/the-bottom-line/starting-your-business/small-business-loans-grants-guide-for-minority-owned-business>.

⁸ Source: Consumer Financial Protection Bureau, "Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)," page 17, https://files.consumerfinance.gov/f/documents/cfpb_1071-final-rule.pdf.

⁹ Source: Joint Press Release, Board of Governors of the Federal Reserve System & Federal Deposit Insurance Corporation, "Agencies Release Annual Asset-Size Thresholds Under Community Reinvestment Act Regulations" (Dec. 20, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23111.html>.

¹⁰ This assumes that Square Loans charge a flat fee of 10% to 18%, with an expected repayment of 9 months. While Square Loans have a maximum repayment period of 18 months, we understand the expected repayment period that Square would consider in underwriting averages about 9 months.

¹¹ Dollar cost alone is not a sufficient way to the price of credit. Credit is repaid over time, and so a given dollar cost charged to use \$20,000 for a 6-month period represents a different price than the same dollar fee charged for financing repaid over five years. APR compliments dollar cost to enable more informed price comparison.

saving money by declining Square Loans’ offers and using their credit cards instead, or seeking financing from a more transparent and affordable bank, CDFI, or fintech?

Providing transparent pricing is an important differentiator between serving low-income communities-- and exploiting them. Assertions that Square Loans are advancing financial inclusion and meeting the needs of the community are undercut if Square is charging these vulnerable community members double what they might pay on a credit card without enabling their customers to make informed price comparison and choose a lower-APR option that may be available to them.

We acknowledge that the federal Truth in Lending Act, which requires transparent price disclosure for consumer loans, does not generally apply to loans for business purposes. However, disclosure of Estimated APR has become a common standard adopted by Square’s competitors and could be adopted by Square as well. All nonbanks are required by law to disclose the APRs they propose to charge on small business financing in New York¹² and California.¹³ This explicitly includes “sales-based financing” products like Square Loans that do not have fixed repayment terms and repay as a percentage of the borrower’s revenue, including those offered by PayPal and by merchant cash advance companies. Other small business financing companies around the country, including Bluevine, Camino Financial, LendingClub Bank, Intuit, and others voluntarily disclose their APRs in all states, even where not required by law. What distinguishes Square from these other fintech lenders is not its product structure or even its banking charter. The difference is that Square is using that ILC charter to avoid providing customers with transparent pricing by exploiting the exemption from small business truth in lending disclosure laws that states have provided to traditional banks.

Computing the Estimated APR for Square’s products is straightforward and, to quote a recent judicial decision, “purely factual, noncontroversial, and not unduly burdensome.”¹⁴ After all, the Estimated APR that Square proposes to charge is essentially the annualized yield it expects to earn. As explained in a recent merchant cash advance (“MCA”) industry trade publication editorial, sales-based financing companies like Square begin with an annualized yield (aka Estimated APR) target in mind, then back into setting the other terms of the transaction in order to achieve that Estimated APR. (See “It’s Time for the MCA Industry to Own Up that We Use APR.”¹⁵) Square sells a substantial portion of the loans it originates, and reportedly shares with loan buyers the expected yields of those transactions. Why should the customers paying those expected yields not be given the same transparency? Square has the capability to measure and disclose the proposed APR on small business loans, as evidenced by its

¹² New York State Department of Financial Services. “Superintendent Adrienne A. Harris Adopts Updated Regulation for Disclosure Requirements for Commercial Financing.” February 1, 2023.

https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202302011.

¹³ Department of Financial Protection and Innovation. “DFPI’s Commercial Financing Disclosure Regulations Approved to Become Effective as of December 9, 2022.” June 14, 2022. <https://dfpi.ca.gov/2022/06/14/dfpis-commercial-financing-disclosure-regulations-approved-to-become-effective-as-of-december-9-2022/>.

¹⁴ Department of Financial Protection and Innovation. “SBFA Summary Judgment Statement.” December 5, 2023.

<https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/12/23-12-05-SBFA-Summary-Judgment-Statement.pdf>.

¹⁵ FTN. “It’s Time for the MCA Industry to Own Up That We Use APR.” FinTalkNow, September 23, 2024.

https://fintalknow.com/apr_calculation.

Canadian operations,¹⁶ where Square must specifically adjust the terms it offers in order to comply with Canada’s 60% cap on the effective annual rate.¹⁷

Federal Reserve research has published five studies and papers addressing the need for transparent APR disclosure for merchant cash advance style products, such as Square Loans.¹⁸ For example, Federal Reserve researchers themselves use APR to describe these fixed-fee sales-based products.¹⁹ They find that, for example, given a sample disclosure, “a majority of participants commented that APR was among its most helpful details.”²⁰ In another study, they also find, “Virtually all the focus group participants [considering products structures like Square Loans] said they want clearly stated product features and costs and an easier way to compare product offerings. Among their suggestions were interest rates **expressed as APRs**, straightforward explanation of all fees, and required statements about payment policies, including late fees and prepayment penalties” (emphasis added).²¹

Square reportedly further increases the effective APR it charges customers by using a widely reviled practice of double-charging fees, known in the merchant cash advance industry as “double dipping.”²² Here is a brief explanation of how this “double dipping” works. Square Loans charge a fixed fee that is spread across the full repayment of the financing. According to customers, Square often proposes new financing once an existing loan is 75% repaid.²³ If the customer takes a new financing offer, the new loan proceeds are first applied towards repaying the 25% outstanding on the previous financing. When

¹⁶ Square. “Small Business Loans and Business Financing.” <https://squareup.com/ca/en/loans>.

¹⁷ Canada Gazette. “Regulations Amending the PCB Regulations and the Regulations Designating Regulatory Provisions for Purposes of Enforcement (Canadian Environmental Protection Act, 1999).” December 23, 2023. <https://www.gazette.gc.ca/rp-pr/p1/2023/2023-12-23/html/reg3-eng.html>.

¹⁸ See, (1) Federal Reserve Bank of Cleveland. “Clicking for Credit: Experiences of Online Lender Applicants from the Small Business Credit Survey.” August 2022. <https://www.clevelandfed.org/publications/cd-reports/2022/sr-20220816-clicking-for-credit-experiences-of-online-lender-applicants-from-sbcs>; (2) Board of Governors of the Federal Reserve System, “Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites.” December 2019. <https://www.federalreserve.gov/publications/files/what-small-business-borrowers-find-when-browsing-online-lender-websites.pdf>; (3) Board of Governors of the Federal Reserve System, “Searching for Small Business Credit Online.” Consumer and Community Context, Nov 2019, Vol 1, No 2, <https://www.federalreserve.gov/publications/files/consumer-community-context-201911.pdf>; (4) Federal Reserve Board of Governors, “Browsing to Borrow: ‘Mom & Pop’ Small Business Perspectives on Online Lenders.” June 2018. <https://www.federalreserve.gov/publications/files/2018-small-business-lending.pdf>; (5) Federal Reserve Bank of Cleveland, “Alternative Lending through the eyes of ‘Mom & Pop’ Small-Business Owners.” August 2015. <https://www.clevelandfed.org/newsroom-and-events/publications/special-reports/sr-20150825-alternative-lending-through-the-eyes-of-mom-and-pop-small-business-owners.aspx>

¹⁹ See, e.g., Wiersch, Ann Marie, Barbara J. Lipman, Kim Wilson, and Lucas Misera. 2022. “Clicking for Credit: Experiences of Online Lender Applicants from the Small Business Credit Survey.” Federal Reserve Bank of Cleveland, Community Development Reports. <https://doi.org/https://doi.org/10.26509/frbc-cd-20220816>

²⁰ Lipman, Barbara J., and Ann Marie Wiersch. “Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites.” Federal Reserve Board of Governors, December 2019, p. 16. <https://www.federalreserve.gov/publications/files/what-small-business-borrowers-find-when-browsing-online-lender-websites.pdf>.

²¹ Federal Reserve Bank of Cleveland. “Alternative Lending through the Eyes of ‘Mom-and-Pop’ Small-Business Owners.” Page 3. August 2015. <https://www.clevelandfed.org/publications/cd-reports/2015/sr-20150825-alternative-lending-through-the-eyes-of-mom-and-pop-small-business-owners>.

²² See, e.g., “PSA: Concerning the Square Loans Fee.” The Seller Community. <https://squareup.com/help/us/en/article/7458-square-loans-faq>.

²³ Id.

this occurs, the “fixed fee” associated with the 25% that outstanding balance is effectively double charged--the fixed fee was charged once when the first financing was originated, and then a second time on the same 25% of the capital that remains outstanding when it is effectively refinanced into a new transaction. Disclosure of this irresponsible practice is required by law in New York state.²⁴ If this is confusing to follow for readers here, consider how confusing it may be for Square’s customers, who often may not realize they have been double charged. (See video footnoted for another explanation.²⁵)

This double charging of fees is entirely voluntary and preventable by Square. Square could just as easily avoid this double charge by disbursing the full amount of the new financing, rather than applying it first to accelerate the repayment of the outstanding balance. Alternatively, it could reduce the fee for the second transaction to avoid the double charge. (In other words, if a 25% outstanding balance remained on the original financing, it could provide a credit for 25% of the fee on that financing.)

Instead, Square appears to obfuscate this additional cost of refinancing by advertising the following: “Can I prepay the loan? Yes, you can make prepayments at any time at no additional cost. The total amount you owe does not change due to prepayments.”²⁶ While Square advertises that “you can make prepayments at any time at no additional cost,” in practice a prepayment results in a balloon finance charge resulting from accelerated repayments of the fee. Federal Reserve researchers have studied this hidden prepayment charge practice, and found that, “participants tended to make (sometimes mistaken) assumptions that paying more quickly would result in savings, likely based on their past experiences with traditional bank loans.”²⁷ The accelerated repayment that occurs when customers prepay—including prepaying their fixed finance charge—further increases Square’s unusually high annualized yields.

We sincerely believe Square has the potential to be a positive and responsible participant in the small business financing industry. And responsible small business financing options are sorely needed by LMI business owners and business owners of color. The Square Loan product specifically has the potential to be responsible--but if it omits transparent price disclosure and double charges fees, it is not.

²⁴ See New York SB 5470b § 808. Disclosure Requirements for Renewal Financing.

<https://www.nysenate.gov/legislation/bills/2019/S5470>.

²⁵ Descriptions of the “double dipping” practice can be found here: The Business Backer. “Double Dipping.” YouTube. <https://www.youtube.com/watch?v=k62kCK5tZwo>; and Next-Financing. “Double Dipping.” <https://next-financing.com/double-dipping/>.

²⁶ Square. “Small Business Loans and Business Financing.” <https://squareup.com/us/en/banking/loans>.

²⁷ See page 14, Wiersch, Ann Marie, Barbara J. Lipman, Kim Wilson, and Lucas Misera. 2022. “Clicking for Credit: Experiences of Online Lender Applicants from the Small Business Credit Survey.” Federal Reserve Bank of Cleveland, Community Development Reports. <https://www.clevelandfed.org/publications/cd-reports/2022/sr-20220816-clicking-for-credit-experiences-of-online-lender-applicants-from-sbcs>. See also, Lipman, Barbara J., and Ann Marie Wiersch. 2018. “Browsing to Borrow: ‘Mom & Pop’ Small Business Perspectives on Online Lenders.” Board of Governors of the Federal Reserve System, June. <https://www.federalreserve.gov/publications/small-business-perspectives-on-online-lenders.htm>: “For example, some participants assumed their borrowing costs would decline if the loan were paid off quickly even when, as was the case in Products A and C, that repayment was presented as a total amount owed rather than an interest rate. Asked about the impact of faster sales growth on total repayment and interest costs on these two products, a number of participants assumed that, as with conventional loan products, they would incur some savings by repaying early.”

It would be a perverse outcome for CRA to encourage or reward the provision of irresponsible products that Federal Reserve research describes as “potentially higher-cost less-transparent credit products”²⁸ on lower-income communities, and women- and minority-owned businesses. And so, it is crucial for the FDIC to reconsider the role that Square Loans plays in the proposed CRA Strategic Plan, to avoid rewarding exploitation and undermining the goals and credibility of the CRA.

We recommend that Square set a CRA Strategic Plan goal to improve Square Loans to meet standards of responsible practice for their products. This should include disclosing their prices transparently, including the Estimated APR, and ceasing the practice of double charging fees.

As a products and services consideration, we recommend that Square commit to developing a more affordable, longer-term loan financing option for businesses to “graduate” up to. Minority and women-owned businesses in Square’s ecosystem should not be paying APRs of 25-45% in perpetuity, refinancing high-cost, short-term credit over and over.

Within the Lending Test portion of the CRA plan, we recommend that CRA Lending Test credit not be awarded for selling irresponsible financing products into low- and moderate-income communities, including Square Loans as it is currently offered.

Within the community development consideration of the CRA Plan, we suggest that Square commit to specific goals funding the development of responsible, transparent, affordable small business lending programs from CDFIs and others.

- III. **SQUARE AND ITS AFFILIATES MUST NOT BE PERMITTED TO AVOID ROBUST AND EFFECTIVE CONSUMER PROTECTIONS AND MUST IMPLEMENT ADEQUATE CONSUMER PROTECTIONS TO PROTECT ITS CONSUMERS AGAINST FRAUD AND PREDATORY LENDING PRODUCTS. THE FDIC MUST NOT IGNORE THE PRACTICES OF SFS AFFILIATES IN EVALUATING ITS CRA PERFORMANCE, BECAUSE THESE PRACTICES CALL INTO QUESTION THE ABILITY OF SFS AND ITS PARENT COMPANY’S ABILITY TO PROPERLY MANAGE RISK.**

SFS must stop avoiding its responsibilities to consumers and communities by delivering financial services through non-bank entities.

Square’s commitment to responsibly serving customers, particularly protected groups, warrants a significant degree of scrutiny given the historical problem of widespread fraud on the Cash App platform. A 2022 Pew Research study revealed that approximately 59% of African American survey participants used Cash App as their primary peer-to-peer (P2P) payment platform.²⁹

²⁸ See page IV, “2019 Report on Minority-Owned Firms.” Federal Reserve Banks. <https://www.fedsmallbusiness.org/survey/2019/report-on-minority-owned-firms>

²⁹ Anderson, Monica. “Payment Apps Like Venmo and Cash App Bring Convenience—and Security Concerns—to Some Users.” Pew Research Center, September 8, 2022. <https://www.pewresearch.org/short-reads/2022/09/08/payment-apps-like-venmo-and-cash-app-bring-convenience-and-security-concerns-to-some-users/>.

Given the widespread volume of financial activity on the platform, the potential for harm to minorities is likely to have a more severe impact compared to other demographic groups. This necessitates a responsible approach to compliance, the establishment of effective risk controls, and careful management of IT infrastructure, all areas where Square has consistently failed to meet its mandate to customers.

A 2022 comparison of P2P platforms by the Bank Policy Institute (BPI) showed that users of Cash App experienced disputed transactions at rates almost six times higher than other P2P platforms such as Zelle.³⁰ The BPI study found that the percentage of transactions that were disputed on Cash App to be 0.35%, as compared to 0.17% on PayPal, 0.06% on Venmo, and 0.06% on Zelle. BPI also noted that because third party P2P platforms like Cash App were not directly integrated into existing bank infrastructure, banks could not easily flag and share suspected fraudulent activity with other financial institutions.

In 2023, Hindenburg Research released a report detailing the pervasive extent of fraud on Cash App.³¹ Hindenburg's report noted, maintaining poor Know-Your-Customer (KYC) and anti-money laundering controls was a core practice to Square's hands off approach to compliance. This led to illicit actors being able to freely impersonate prominent public figures, create fraudulent accounts en-masse, and engage in high-risk activity in contravention of federal law.

It appears that Square's implementation of risk controls has not significantly improved since the issuance of Hindenburg's report. A recent settlement for a class action lawsuit highlighted significant risks regarding the IT security implementation of the Cash App platform.³² The settlement highlights that data breaches in 2022 and 2023 resulted in the compromise of many customers' accounts. This resulted in significant losses for many customers that have only recently received an opportunity to be compensated.

Square's acquisition of Afterpay raises further concerns regarding consumer protection. The Hindenburg Report also noted that Afterpay has previously violated usury laws in its native Australia through its Buy Now Pay Later (BNPL) products.

Block's Q4 2023 Shareholder Letter notes that the dollar value of loans (Gross Merchandise Volume, or GMV) generated from such products totaled \$8.6 billion across markets internationally³³. This volume likely represents control of a significant percentage of the wider BNPL market. The CFPB has noted in a

³⁰ Payne, Tara. "The Data Shows That Zelle Is The Safest Way For Consumers To Move Their Money." Bank Policy Institute, September 19, 2022. <https://bpi.com/the-data-shows-that-zelle-is-the-safest-way-for-consumers-to-move-their-money/>.

³¹ Hindenburg Research. "Block: How Inflated User Metrics and 'Frictionless' Fraud Facilitation Enabled Insiders To Cash Out Over \$1 Billion." March 23, 2023. <https://hindenburgresearch.com/block/>.

³² District Court of California. Salinas, et al. v. Block, Inc. and Cash App Investing, LLC, Case No. 22-cv-04823. [https://angeion-public.s3.amazonaws.com/www.cashappsecuritysettlement.com/docs/76-2_Settlement+Agreement+\(Cash+App\).pdf](https://angeion-public.s3.amazonaws.com/www.cashappsecuritysettlement.com/docs/76-2_Settlement+Agreement+(Cash+App).pdf).

³³ Block Inc. "Q4 2023 Shareholder Letter." February 22, 2024. <https://www.sec.gov/Archives/edgar/data/1512673/000119312524042835/d718674dex991.htm>.

report on the BNPL market that platforms such as Afterpay tend to offer consumers minimal protections against loan stacking.³⁴

Concerns raised regarding the implementation of Square’s risk controls call for a robust and transparent compliance framework for the responsible integration of BNPL products and services. The wider scale of BNPL lending activity Square can engage in could have significant downstream effects beyond this specific market.

Recent reporting has also emerged regarding Square’s attempts to integrate Afterpay’s BNPL products into the Cash App Card.³⁵ Such attempts could highlight a goal of competition beyond the digital financial services market, towards traditional retail segments more directly linked to consumers.

Wider attempts to fully integrate the Afterpay and Cash App ecosystems have the potential to exacerbate many of the previously raised concerns regarding harm to consumers. As increasingly more consumers alter their shopping trends to make use of BNPL services, Square’s Strategic Plan goals should account for the significant growth driven by this new market, both in the dollar volume Plan commitment, and in how Square will ensure that its affiliates engage in responsible and transparent practices that avoid consumer harm.

To address the significant ongoing risks concerning the Cash App platform, Square's Strategic Plan should establish goals for reducing fraud levels to the industry average of other P2P platforms. For example, a goal for “satisfactory” performance would be for the percentage of disputed transactions to equal the industry average levels, perhaps as measured in the BPI report, while an “outstanding” level would fall below industry average, and measured fraud levels above industry average would represent a “needs to improve.”

- IV. Square must not avoid engagement with communities throughout its service area and must commit to a robust **community engagement** strategy that does not cease after the adoption of its Plan.

Square has avoided and deflected its community engagement responsibilities ever since its inception, making repeated false promises to avoid partnering with community organizations.

Square and NCRC began discussing a partnership in 2018, when Lew Goodwin, at the time Banking Services Lead for Square Capital, and now CEO of Square, expressed an interest in working with NCRC to form a community benefits agreement. In fact, Square sent a letter of intent to John Taylor, NCRC’s former CEO, outlining Square’s “dedication to economic empowerment and its desire to work together constructively through a mutual Community Benefits Agreement between Square and the National Community Reinvestment Coalition.” A copy of this letter is available upon request.

³⁴ Consumer Financial Protection Bureau. “Buy Now Pay Later: Market Trends and Consumer Impacts.” September 2022. https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf.

³⁵ Daniels, Melissa. “Afterpay is Bringing Buy Now, Pay Later to the Cash App Card.” ModernRetail, August 9, 2024. <https://www.modernretail.co/technology/afterpay-is-bringing-buy-now-pay-later-to-the-cash-app-card/>.

Since those discussions, Square did receive its charter and began operations as an industrial bank on March 1, 2021. However, Square did *not* follow through with its commitments to develop a CBA or to partner with NCRC and its members. Although Square had formally proposed a partnership with NCRC to develop a community benefits agreement “that would surpass the Community Reinvestment Act requirements and create a relationship that is not only unique but will have far-reaching beneficial impacts on the communities in which our sellers operate,” Square and NCRC later agreed to move forward without a community benefits agreement, but with Square’s commitment that it would engage NCRC and our coalition members as strategic thought partners in its CRA process.

NCRC and our members had hoped to engage Square directly about the concerns raised in this letter. We hoped to learn what efforts Square has been making, what praiseworthy activities they may want to share about, and what considerations they may raise in response to our concerns. Unfortunately, NCRC’s requests for community engagement on Square’s CRA activities were rebuffed and declined for over a year, in contravention of Square’s description of its community engagement activities, its regulatory obligations, and its promises to the community.

Square’s proposed CRA Strategic Plan states that “The Bank has informally sought suggestions from the public on credit needs within its assessment area and activities that would be responsive to those needs.” However, NCRC emailed Square on multiple occasions in the months leading up to the comment period requesting community feedback and was consistently deflected. It is not a fully accurate statement that the Bank “informally sought suggestions from the public” while in fact it was actively avoiding meeting with members of the public who have been requesting to provide suggestions.

Square seems to believe that its community engagement responsibilities for a CRA Strategic Plan can be met by holding the required comment period while actively avoiding input from the community. However, Regulatory expectations establish that, “First, the bank must informally seek suggestions from the public in the assessment area(s) covered by the plan while developing the plan” (see e.g. Interagency CRA Final Rule, pg. 841). NCRC represents communities nationally, including the Salt Lake, Utah area. Yet when NCRC volunteered to engage with Square to help it meet this regulatory expectation, the offers were repeatedly deflected. We believe that a bank’s regulatory requirement to “solicit public comment” is not met in good faith by “respectfully declining” to engage with community groups that have actively sought to provide comment.

In September of 2023, NCRC contacted Block, expressing interest in providing input to the Industrial Bank’s development of its proposed CRA strategic plan. Block representatives responded that it “respectfully declined.” On November 16, 2023, NCRC learned from Block representatives for the first time that the comment period on this CRA Strategic Plan had opened and had already closed two days earlier, and that the Square would thus not need to consider CRA planning again this way until 2028. NCRC had not had the opportunity to provide input, despite its outreach and despite Square’s prior promises.

On November 21, 2023, NCRC wrote a letter to the FDIC and Utah Department of Financial Services regarding this evasion of regulatory responsibility to solicit public comment (attached). Since then, NCRC has repeatedly reached out directly to Square and Block requesting to learn about its CRA Strategic Plan and offer community suggestions. On no occasion was an opportunity for this community input made available to be reflected in the plan now published.

- On 5/23/24, NCRC requested that Square share a copy of its CRA Strategic Plan. The plan was not provided.
- On 5/30/24, NCRC followed up, having received no response.
- On 6/11/2024, NCRC followed up again, asking for a copy of Square’s CRA Strategic Plan.
- On 6/12/2024, Block proposed meeting a month and a half later, the week of 7/22. NCRC provided times available, and Block scheduled a meeting to be held on 7/24/23.
- On 6/14/24, NCRC raised that it had still not received the requested copy of Square’s CRA Strategic Plan. NCRC raised that the strategic plan in place had expired as of March 2024, sought clarification as to what CRA plan was in effect. NCRC also sought a copy of Square CRA public file.
- On 6/21/24, Block wrote that, “After a series of internal conversations and a better understanding of our consultations with the FDIC we would actually like to push back this meeting back to either the week of August 19 or the week of August 26. We also are more than happy to commit to providing a copy of the plan at least one week in advance of the meeting for your review.” This conversation took place on August 28. However, Block did not provide a draft of their CRA Strategic Plan at this meeting.
- On 9/9/24, two days before the public comment period, Square provided a copy of the draft Strategic Plan.

It is also worth noting that most or all of Square’s CRA community engagement process (and deflection of that community engagement) with NCRC was undertaken by Block staff. It is also worth noting that Block staff were engaged in “consultations with the FDIC” about the Plan. This underscores the artificiality of the exclusion of Block activities from the Square CRA Strategic Plan.

NCRC recommends that Square honor its previous commitments to develop a robust and impactful community benefits agreement that reinvests into communities throughout Square’s service area – communities from which Square is making millions of dollars in revenue.

V. CRA STRATEGIC PLAN RECOMMENDATIONS.

Square proposes the following goals in its Plan:

New Originations and qualifying investments on an annual plan basis		
	Qualifying¹⁸ New CD loans and investments in the Bank’s Assessment area / Bank’s average assets¹⁹ for “Satisfactory” rating	Qualifying New CD loans and investments in Utah and contiguous states / Bank’s average assets for “Outstanding” rating
2024	0.75%	1.00%
2025	0.75%	1.00%
2026	0.75%	1.00%
2027	0.75%	1.00%
2028	0.75%	1.00%

Geographic Distribution of Small Business Loans in Assessment Area		
	Satisfactory	Outstanding
2024	23% to small businesses in LMI Census Tracts	30% to small businesses in LMI Census Tracts
2025	23% to small businesses in LMI Census Tracts	30% to small businesses in LMI Census Tracts

2026	23% to small businesses in LMI Census Tracts	30% to small businesses in LMI Census Tracts
2027	23% to small businesses in LMI Census Tracts	30% to small businesses in LMI Census Tracts
2028	23% to small businesses in LMI Census Tracts	30% to small businesses in LMI Census Tracts

As discussed above, this methodology makes no sense for Square’s business model. Square must be viewed together with its affiliates, which currently have assets of close to \$40 billion.

In addition, less than 1% of Square’s small business loans are to borrowers in its “assessment area” so the geographic distribution proposed, while admirable, leaves out 99% of its service area.

Finally, Square did not engage in a good faith, transparent process of community engagement. The FDIC should reject the Plan and must demand more from a bank to meet the statutory requirements of the CRA.

In conclusion, stated below are our recommendations for the Square CRA Strategic Plan:

1. NCRC recommends not more than a three-year Plan term, in recognition of the pending CRA reform that will create a new type of assessment area based on the bank’s actual service area.
2. NCRC recommends a commitment of at least \$400 million annually, which is around 1% of the assets of Block and more in line with the CRA investments of most financial institutions that are rated “Outstanding.” In addition, Square should add a Broader Statewide or Regional Area (BSRA) to its plan to expand the impact of its CRA commitment to a wider range of communities
3. We recommend that Square set a CRA Strategic Plan goal to improve Square Loans to meet standards of responsible practice for their products. This should include disclosing their prices transparently, including the Estimated APR, and ceasing the practice of double charging fees.
4. As a products and services consideration, we recommend that Square commit to developing a more affordable, longer-term loan financing option for businesses to “graduate” up to. Minority and women-owned businesses in Square’s ecosystem should not be paying APRs of 25-45% in perpetuity, refinancing high-cost, short-term credit over and over.
5. Within the Lending Test portion of the CRA plan, we recommend that CRA Lending Test credit not be awarded for selling irresponsible financing products into low- and moderate-income communities, including Square Loans as it is currently offered.
6. Within the community development consideration of the CRA Plan, we suggest that Square commit to specific goals funding the development of responsible, transparent, affordable small business lending programs from CDFIs and others.
7. To address the significant ongoing risks concerning the Cash App platform, Square's Strategic Plan should establish goals for reducing fraud levels to the industry average of other P2P platforms. For example, a goal for “satisfactory” performance would be for the percentage of disputed transactions to equal the industry average levels, perhaps as measured in the BPI report, while an “outstanding” level would fall below industry average, and measured fraud levels above industry average would represent a “needs to improve.”
8. NCRC recommends that Square honor its previous commitments to develop a robust and impactful community benefits agreement that reinvests into communities throughout Square’s service area – communities from which Square is making millions of dollars in revenue.

As always, NCRC is ready and willing to partner with Square to develop a meaningful Plan that more accurately reflects the reality of its business model. Thank you for your consideration.

Sincerely,



Jesse Van Tol
President and CEO
NCRC

ATTACHMENT

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November 21, 2023

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Re: Square Financial Services Inc. CRA Strategic Plan

Dear Chairman Gruenberg, Commissioner Rude, Supervisor Bedore, and Supervisor Farnsworth,

We write to express concern about the community engagement process of Square Financial Services Inc.'s recent application for a CRA Strategic Plan. The National Community Reinvestment Coalition ("NCRC") is a coalition of over 700 community organizations that work with policymakers and financial institutions to champion fairness in banking, housing, and business development.

In September, NCRC contacted Block, the parent company of Square Financial Services Inc. ("Square"), expressing interest in providing input to the Industrial Bank's development of its proposed CRA strategic plan. The company responded that it "respectfully declined." On November 16th, 2023, NCRC learned from Block representatives for the first time that the comment period on this CRA Strategic Plan had opened and had already closed on November 14th, and that the Square would thus not need to consider CRA planning again this way until 2029. NCRC has not had the opportunity to provide input, despite its outreach.

While community input is fundamental to compliance with the Community Reinvestment Act as a general matter, it is critical in the strategic plan process in particular. Regulatory expectations establish that, “First, the bank must informally seek suggestions from the public in the assessment area(s) covered by the plan while developing the plan” (see e.g. Interagency CRA Final Rule, pg. 841). NCRC represents communities nationally, including the Salt Lake, Utah area. Yet when NCRC volunteered to engage with Square to help it meet this regulatory expectation, the offer was deflected. We believe that a bank’s regulatory requirement to “solicit public comment” (see e.g. Interagency CRA Final Rule, pg. 841) is not met in good faith by publishing an advertisement in the paper copy of a newspaper while simultaneously “respectfully declining” to engage with community groups that have actively sought to provide comment.

Square’s deflection of community input is also disturbing to NCRC and our coalition members because it represents the breaking of a promise. In 2018, as Square sought the industrial charter it now holds, the company engaged in a negotiation process with NCRC and our coalition members. Square formally proposed a partnership with NCRC to develop a community benefits agreement “that would surpass the Community Reinvestment Act requirements and create a relationship that is not only unique, but will have far-reaching beneficial impacts on the communities in which our sellers operate.” Square and NCRC agreed to move forward without a community benefits agreement, but with Square’s commitment that it would engage NCRC and our coalition members as strategic thought partners in its CRA process. In the deflection of NCRC’s input in this CRA strategic plan, Square’s commitment made in this negotiation was not upheld.

We respectfully request that the FDIC and Utah Department of Financial Institutions reopen the comment period on Square’s strategic plan to permit input. Thank you for your consideration.

Sincerely,



Jesse Van Tol
President and CEO
NCRC

CC:

Lewis Goodwin, CEO, Square Financial Services, Inc. (lgoodwin@squareup.com)