



**National
Urban League**

Office of the Comptroller of the Currency
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Federal Deposit Insurance Corporation
550 17th Street, NW
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Board of Governors of
The Federal Reserve System
20th & Constitution Ave.,
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OCC: 12 CFR Part 25; Docket ID OCC-2022-0002; RIN 1557-AF15

Federal Reserve: 12 CFR Part 228; Regulation BB Docket No. R-1769; RIN 7100-AG29

FDIC: 12 CFR Part 345; RIN 3064-AF81

Re: OCC, FDIC and the Federal Reserve Board's proposed changes to the Community Reinvestment Act (87 FR 33884)

Dear Acting Comptroller Hsu, Acting Chair Gruenberg, and Chair Powell & Governors –

The National Urban League writes to express its opinion with respect to the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board's (FRB) proposed changes to the implementation of the Community Reinvestment Act (CRA), as published in the Federal Register on May 5, 2022.

The National Urban League is the nation's largest civil rights and urban advocacy organization focused on economic empowerment of African Americans and other underserved communities. We have 92 affiliates in over 36 states, serving over 2 million people annually. Over fifty of our affiliates offer financial coaching and housing counseling programs with support from CRA regulated institutions, and our affiliates are parties to numerous CRA community benefit agreements nationwide. This experience provides the National Urban League with intimate knowledge and familiarity of the ways in which the CRA is enforced as well as how best to improve the effectiveness of this crucial civil rights law to better ensure that it continues to meet its original intent.

The National Urban League believes that the proposed changes to the current regulatory framework must make the statutory purpose of the *Community Reinvestment Act of 1977* and its subsequent amendments more likely to be achieved in this modern era, learning from the lessons of the past and with an eye towards achieving greater equity. Any analysis that the National Urban League undertakes will be done through this lens.

The changes contemplated by the May 5th proposed rule, while a step forward in meeting the CRA's original intent of incentivizing banks to increase access to lending opportunities

for low- and moderate-income (LMI) American families of color, could be further improved by a number of additional changes. The proposed rule along with suggested changes would enhance the ability of the CRA in overcoming the legacy of our nation's long and unfortunate history of excluding communities of color from fair, sustainable credit and homeownership opportunities.

We welcome the opportunity to provide insight and recommendations to ensure the law better serves its purpose to incentivize safe and sound lending and investments for LMI families and communities whose credit needs would not be met absent the CRA.

HISTORICAL BACKGROUND

The United States government has long recognized the value of banking, lending, and depository services for its citizens. Moreover, it has recognized the power that such banking services could provide to the Black community and other underserved communities. One of the first post Civil War acts of Congress to benefit the newly emancipated Freedman was the creation of the Freedman's bank.¹

The government was not alone in its understanding of the power of banking and lending. Former slave owners also recognized the power of financial instruments and wielded that power over newly emancipated Freedmen. In a precursor to modern day payday lending, former slave owners used contracts of adhesion to extend credit to sharecroppers in a successful scheme to extend de-facto slavery for another hundred years.²

The similar use of credit and lending to negatively impact the black community's access to banking was magnified by a series of underwriting and lending regulations beginning in the 1930s. These regulations included in part the Federal Housing Administration restricting insurance of home mortgages to whites-only neighborhoods. These regulations resulted in only two percent of \$120 billion in dollars in new housing subsidized by the federal government between 1934 and 1962 going to non-whites.³ Indeed, the widely documented and government-sanctioned practice of demarking predominantly black communities as unsuitable for lending based primarily on racial considerations known as redlining had only been officially deemed illegal by the federal government a mere decade before enactment of the CRA.

Recognizing the historical context around the CRA is critical for understanding the original intent of the law and how best to measure its efficacy in the modern context. Lending discrimination carried out by federal government policy based primarily on the consideration of one's race played a key role in helping standardize the practice

¹ Office of the Comptroller Currency, "The Freedman's Savings Bank: Good Intentions Were Not Enough; A Noble Experiment Goes Awry." Available at: <https://www.occ.treas.gov/about/who-we-are/history/1863-1865/1863-1865-freedmans-savings-bank.html>.

² R.H. Anderson, A Religious Movement to End Predatory Payday Lending. *Tikkun* 30(1) (2015). Available at: <https://www.muse.jhu.edu/article/566074>.

³ La-Brina Almeida, Massachusetts Budget & Policy Center, "A History of Racist Federal Housing Policies" (August 6, 2021). Available at: <https://massbudget.org/2021/08/06/a-history-of-racist-federal-housing-policies/>.

nationwide. It is important to note that prior to the passage of the CRA and other crucial civil rights laws in the preceding years, it was completely legal in America to deny an individual housing or a loan purely on the basis of race without any regard for their creditworthiness. It is with this in mind that the National Urban League and its affiliates continue to be extensively engaged in efforts to ensure that the CRA continues to serve its original purpose.

The importance and impact of the CRA's incentives-driven approach to promoting fair lending practices and addressing previous injustices cannot be understated. Under the CRA, banks have a "continuing and affirmative obligation" to help meet the credit needs of LMI individuals and neighborhoods, as prescribed by the statute. CRA also incentivizes financial institutions to provide a wide variety of low-cost services and investments aimed at addressing the specific mortgage, consumer, and business lending needs of a bank's assessment area.

Financial institutions have an obligation to serve low-wealth communities because of the material benefit they receive from the federal safety net provided by the government through taxpayer dollars. These benefits, including deposit insurance and the Federal Reserve's (Fed) Discount Window, are ones which banks universally agree are worth the burden and the toil of regulations such as mandatory capital reserves that provide a cushion in the event that the bank faces an unexpected liquidity crisis.

The CRA was designed to combat and reverse this scheme of discrimination and redlining in bank lending by requiring banks to better meet the lending needs of the LMI communities surrounding them. This law was enacted in large part because communities of color continued to face barriers accessing credit despite the passage of federal fair lending laws, including the Fair Housing Act, the Equal Opportunity Act, and the Home Mortgage Disclosure Act (HMDA).

CURRENT REGULATORY FRAMEWORK

The CRA requires three federal banking regulators—the Fed, OCC, and the FDIC—to work together to promote consistency in the implementation of the CRA regulations and examination procedures. Financial institutions are required by CRA to designate assessment areas where they provide banking services without excluding any surrounding underserved areas. A bank's designated assessment area must "consist of one or more Metropolitan Statistical Areas or metropolitan divisions or one or more contiguous political subdivisions, such as counties, cities or towns ... and must include geographies in which the bank has its main office, branches and deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans."⁴

⁴ Federal Reserve Bank of Dallas, "A Banker's quick guide to CRA" (Sep. 1, 2005). Available at: <https://www.dallasfed.org/~media/documents/cd/pubs/quickref.pdf>

Regulators are required to use this critical information to conduct periodic examinations that evaluate how well banks are fulfilling the objectives of CRA in their designated assessment areas, and to issue performance ratings based on the following grading system: Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance. Under the current CRA regulations, regulators review a bank's total balance sheet to determine the extent to which they are meeting the lending needs of the communities in which they are chartered to do business. To this end, regulators use the following test to inform their review of a bank's balance sheet:

Lending Test: This test, which currently serves as the CRA's most important evaluation, evaluates a bank's total lending activities within an assessment area to LMI individuals. These include the number, amount, and distribution of mortgage, small business, and consumer loans made by a bank across all income and geographic locations. Regulators also take into account the number of complaints submitted by consumers against the bank.

Investment Test: The investment test evaluates a bank's community development activities such as the purchasing of mortgages that have already been originated in the secondary mortgage market, including affordable housing for multifamily rental units and loans to small businesses in the assessment areas with annual revenues under \$1 million.

Service Test: This test examines a bank's retail service delivery, including the availability of branches and low-cost checking in a bank's specific assessment area.

The CRA's requirement that banking regulators assess the lending activity of U.S. banks based on where they collected consumer deposits without excluding underserved areas has proved to be an effective way to measure the way in which banks are making efforts to meet the local lending needs. Regulators are required to make these periodic CRA examinations available for public review, making them an effective enforcement tool for maintaining CRA compliance. The public release of CRA ratings has also created strong incentives for banks to achieve Satisfactory or Outstanding performance ratings under CRA in large because failing the test poses serious reputational risks that may influence a bank's long-term business prospects in today's financial marketplace.

Regulators are also required to take these performance assessments into account when considering bank merger and acquisition applications by federally regulated banks. Given that bank consolidations—through mergers or acquisitions—are the prevailing trend in the banking industry, the CRA enforcement tools have in effect made passing an important benchmark to meet for banks that are seeking to grow their total lending through consolidation.

These lending incentives are designed to demonstrate to banks that private capital can—and should—play a vital role in providing the credit required for local housing and economic development needs nationwide. As a result, since its enactment in 1977, CRA

has helped increase economic growth to formerly credit-redlined areas, boosted minority homeownership rates, and increased access to credit LMI communities nationwide.⁵

CRA has also fostered stronger bonds between banks and community stakeholders when it comes to fulfilling their CRA-mandated community development needs. On average, CRA-regulated lenders originate a higher proportion of loans to lower-income people and communities than they would if CRA did not exist. Banks have pursued previously untapped lines of business such as forming partnerships with community organizations and other stakeholders to identify and help meet the credit needs of underserved communities. This experimentation in lending, often combined with financial education and counseling as well as the consideration of non-traditional measures of creditworthiness, have helped expand the markets for safe lending in underserved communities and demonstrated its viability.

CRA has been effective in promoting fair lending opportunities as lenders covered by the CRA are far less likely to make higher-cost loans than lenders not covered by the CRA. Once virtually unheard of, the notion of financial institutions creating partnerships with nonprofits who know their communities is now a common phenomenon in large part due to the CRA's efforts. These nonprofits, which typically have the expertise to help banks serve LMI borrowers who cannot qualify for prime loan products, play a crucial role in helping banks to serve non-prime customers successfully. Through community benefit agreements, they help guide and inform banks about how best to meet the unique lending needs of underserved customers.

In addition to providing financial services to lower-income people, banks also provide critical community development loans and investments to address affordable housing and economic development needs. These activities are particularly effective because they leverage the resources available to communities from public subsidies and tax credit programs that are targeted to lower-income people. The CRA has supported countless community development organizations, strategies, and initiatives, and has proven to be a remarkably effective law because it has connected opportunity markets to opportunity capital and financial services.

CDFIs, for example, are one of the major beneficiaries of CRA and the community development industry. These private intermediaries provide capital and technical assistance to communities and people underserved by conventional lending institutions. CDFIs receive grants and investments from banks to invest and revitalize communities, provide loans to microentrepreneurs, and engage in other activities benefitting LMI people and places. According to the New York Federal Reserve, CDFIs had total assets of approximately \$174 billion, as of 2019. CDFIs play a key role serving the needs of LMI people and places, via social impact investing, by way of CRA.

While costs associated with CRA compliance do continue to pose a concern for banks, this burden does not outweigh CRA's benefits to LMI communities nor the benefits

⁵ Congressional Research Service, "The Effectiveness of the Community Reinvestment Act" (Feb 28, 2019). Available at: <https://crsreports.congress.gov/product/pdf/R/R43661>.

federally insured banks receive from the government. For example, according to the Fed, the average CRA costs as a percentage of a bank's assets are typically negligible for a bank if the institution has CRA-dedicated employees who are trained and knowledgeable in ensuring the bank complies with the requirements of the CRA. Given that CRA hasn't changed dramatically since its enactment in 1977 and the current rates of passage, the notion that banks are struggling to pass the CRA has little merit.

Given the historical purpose of the CRA and the current regulatory framework we make the following series of recommendations and encourage you to review the recommendations of our partners listed below:

RECOMMENDATIONS

a. Race Must Be a Factor in Evaluating the Effectiveness of the CRA

The historical record of discrimination and the pattern and practice of excluding communities of color from credit and banking services is clear. It is also clear that the CRA was enacted to reverse this pattern and practice of discriminatory banking. We note that the National Community Reinvestment Coalition (NCRC) in a paper co-authored by Relman Colfax PLLC asserts that race conscious provisions to the CRA are legally sustainable if CRA examined lending by race and ethnicity in geographical areas experiencing ongoing discrimination.⁶ Given that background, any rule promulgated must use race as a factor to adequately address the harm that the use of race conscious regulations inflicted.

As discussed above, discrimination in banking has been the practice and pattern of banking institutions and the federal government for hundreds of years. Under the proposed rule, the regulators assert that the necessity for the use of race as a direct factor in assessing the effectiveness of the CRA is negated by increasing oversight of lending to microbusinesses. They believe that evaluating loans to small businesses with revenues under \$250,000 would capture minority and women owned businesses given that those groups are more likely to own businesses in that category.⁷

⁶ Brad Blower, General Counsel, NCRC; Josh Silver, Senior Policy Advisory, NCRC; Jason Richardson, Director of Research and Evaluation, NCRC; Glenn Schlactus, Partner, Relman Colfax PLLC; Sacha Markano-Stark, Attorney, Relman Colfax PLLC, *Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal*, September 2021. Available at: <https://www.ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/>

⁷Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Notice of Proposed Rulemaking (NPR) to amend the CRA regulations, May 5, 2022, issued version, <https://www.federalreserve.gov/consumerscommunities/files/cra-npr-fr-notice-20220505.pdf>, p. 114.

- While the above proposal is a step in the right direction, we recommend that requiring banks to gather and report disaggregated racial and demographic data as part of CRA examinations would give a more accurate and meaningful picture of whether and to what extent banks are meeting their continuing and affirmative obligations under the CRA.
- Furthermore, we would recommend that any data collected under the State Small Business Credit Initiative program, Section 1071, and HMDA be a part of a bank's evaluation.
- The agencies' proposal also provides more incentives for banks to finance minority-depository institutions, women-owned depository institutions and community development financial institutions (CDFIs). All of these institutions engage in lending focused on traditionally underserved communities including communities of color. While their reach remains relatively small compared to their larger counterparts we are encouraged by the emphasis on increasing funding to these kinds of financial institutions.
- We recommend that the federal bank agencies consider developing a category of underserved tracts. The subtests of the CRA exam would then examine lending, service and community development activities in these tracts just as the exams now do for LMI tracts.
- We would recommend that CRA regulators conduct periodic statistical studies in an effort to identify metropolitan areas and rural counties that have persistent racial discrimination in lending. Those areas found to be experiencing racial disparity could be taken into consideration when examining banks within that area. The racial or ethnic group considered on the CRA exam would be identified based on the interagency analysis of disparities. It should also be noted that those banks significantly outperforming lending and credit disparity statistics for the geographical area in which it resides could be given extra credit during CRA exams. Of course, if a fair lending review uncovers discrimination, the CRA exam should lower a bank's rating, particularly if the discrimination is widespread across the institution.

b. The Rule Must Curtail CRA Bank Grade Inflation

About 98 percent of banks pass their CRA exams on an annual basis, with less than 10 percent receiving an Outstanding rating and almost 90 percent of them receiving a rating of Satisfactory.⁸ To better differentiate banks by lending performance in LMI areas, the regulators have proposed a quantitative scheme that analyzes a bank's CRA performance by a community benchmark and a market benchmark. These benchmarks

⁸ Josh Silver and Jason Richardson, *Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data*, NCRC, May 2020. Available at: <https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/>

would set lending standards that would be pegged to a bank's CRA grade. This benchmark method differs from current CRA standards, which does not specify how much lending is necessary to achieve a low-satisfactory CRA rating or an outstanding CRA rating.

- We recommend that the final rule include the quantitative benchmark method of determining a bank's CRA grade. This approach should decrease ratings inflation and result in more failing and low satisfactory ratings on the lending test. As a result of this proposed reform, several banks would likely respond by boosting their retail lending to underserved communities.

c. The Rule Must Incentivize Community Development

Community development loans and investment are critical to the revitalization of underserved communities. Communities of color and LMI communities have suffered from underdevelopment for generations and in the alternative gentrification. It is critical that CRA maximize its impacts in these underserved communities.

- We believe that any final rule should require that an activity has a primary purpose of community development, demonstrated by a majority of the funding or benefits produced going to low- and moderate-income communities. The regulators, in the absence of a showing of majority benefits accruing to the LMI community, should require a minimum benefit, below which an activity should not receive a CRA credit.
- The regulators have proposed, in an effort to improve community development activity that, for large banks, a qualitative review should be added to the Retail Services and Products test. In our view, banks should be able to submit data on job creation, retention and improvement to examiners for consideration in the qualitative subtest of the Retail Services and Products test. For the intermediate small bank and small bank tests, the agencies could continue the qualitative reviews of the lending test to consider this information.
- The agencies have also proposed a community development finance (CDF) test. The proposed CDF test will consist of a quantitative measure of a bank's ratio of community development finance divided by deposits. The bank's ratio will be compared to a local ratio at the assessment area level and to a national ratio. The agencies, however, did not provide enough guidelines to examiners for comparing the bank's ratio to either the local or national ratio, making it possible for an examiner to inflate a rating by choosing the lowest comparator ratio or placing more weight on the comparison to the lower ratio.
- The agencies should provide clear guidance of how performance on the ratio would correspond to a score. Any guidance should take into account the performance of a bank's peer group within a given market. Creating too broad of

a statistical comparative group may yield a CRA score that does not accurately reflect a bank's efforts in a given market.

- The agencies have also proposed to publish a list of the types of activities that have received or would be eligible for CRA credit, as well as a process for banks to request confirmation that an activity is eligible for credit before undertaking it. We believe that giving banks clarity about lending decisions with respect to CRA credit is valuable and would help increase CRA lending activity. We also understand that many stakeholders have requested additional clarity through a list of eligible activities. While a list would add clarity, banks may come to view a list as limiting and be unwilling to engage in projects not enumerated. We therefore urge you to clarify that a list of approved activities is not absolute.
- The agency's proposed data collection plan with respect to quantifying the impact of CRA lending should be more specific in the regulation and accompanying guidance. The guidance should encourage banks to record aspects of community development like jobs created or retained, number of LMI families housed, number of hospital beds created, and other statistics regarding the impacts of community facilities and infrastructure. In addition, the agencies could ask banks to indicate in data submissions when activities like affordable housing, economic development and climate remediation occur in tandem. The more robust this data collection process, the more objective the impact review can be in using and capturing data such as the number and percentage of community development loans or investments that have significant impacts.
- Finally, the impact review should have its own score, rating, and weight for the overall community development finance test, which the proposal lacks. Instead, the proposal would direct examiners to conduct an impact review judging the impact of the community development finance overall. As currently constructed, the impact review could lead to inconsistent or careless application of examiner discretion and a contribution to the overall community development finance rating that is not justified by a concrete demonstration of the breadth and depth of impactful finance.

CONCLUSION

Thank you for the opportunity to comment on the proposed changes to CRA implementation. The National Urban League has long been engaged in ensuring the CRA lives up to its promise and has weighed-in several times on the direction of implementation. As a civil rights organization devoted to fair housing for more than 100 years, we will continue to fight to maintain the full force of our federal civil rights laws—including the Community Reinvestment Act—and to ensure that our federal financial regulatory agency leaders fulfill their sworn duty to protect all Americans.

We do this work individually through our policy and program staff nationally and our affiliates locally, as well as our work in partnership. In addition to our own comments, we also invite you to review the following comments from our partners:

- National Community Reinvestment Coalition
- National Fair Housing Alliance
- National Bankers Association
- United States Senate Committee on Banking, Housing and Urban Affairs
- Connect Humanity
- Prosperity NOW

If you have additional questions or we can be of greater assistance to you in CRA implementation efforts, please contact Joi Chaney, our Senior Vice President of Policy and Advocacy & Executive Director of the Washington Bureau, at jchaney@nul.org.

Sincerely,



Marc H. Morial
President & CEO
National Urban League