

Position Paper on CRA Reform

The 123 undersigned organizations are pleased that the federal bank agencies will be proposing an interagency rule implementing the Community Reinvestment Act (CRA) in the near future. CRA has been instrumental in leveraging bank financing for retail lending and community development in low- and moderate-income (LMI) communities since its passage in 1977.

A critical part of CRA examination is the consideration of the comments and views of community members. This public accountability has served as a powerful motivation for banks to increase their reinvestment activities over the years. In particular, CRA is enforced through the merger review process that includes consideration of the CRA and fair lending record of banks, their expected future performance, and comments from members of the public. The public accountability mechanisms of exams and merger reviews must be enhanced through CRA reform that focuses on making ratings more rigorous, increasing opportunities for public comment and improving the public availability of data used for evaluating CRA performance. This position paper describes important subjects for CRA reform including the following:

- Persistent and worsening racial inequality must be addressed through consideration of race on CRA exams.
- CRA reform must include more objective measures of performance that reduce ratings inflation. Ratings must better reflect distinctions in bank performance.
- Geographical areas on CRA exams must not only include areas where banks have branches but areas beyond branch networks with significant amounts of bank lending and/or deposit activity.
- Opportunities for public comment on merger reviews must be enhanced. Agencies should encourage community benefit agreements (CBAs) and should more regularly employ conditional approvals to rectify weaknesses in CRA and fair lending performance.
- Data must be improved in order to more accurately assess CRA performance, particularly in community development financing and the provision of deposit products. The Section 1071 data on the race and gender of small business and farm loan applicants should be used on CRA exams.
- CRA reform should reward banks for activities that focus on environmental remediation in LMI and communities of color and assist in the transition to a net zero carbon economy. In addition, any management risk guidelines issued by the federal bank agencies must not work at cross purposes with CRA and discourage banks from lending, investing and serving LMI and communities of color as a means to reduce risks associated with climate change.¹
- CRA reform must include subtests that evaluate retail lending, retail services and community development financing and services. Requirements to engage in retail and

¹ See proposed guidelines issued by the Office of the Comptroller of the Currency and the section about mitigating climate risks associated with geographical areas, p. 4. <https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-62a.pdf>

community development activities must not be relaxed for banks that are currently examined for their performance on these activities.

Add consideration of race to CRA exams: include race on CRA subtests and performance measures

Since redlining disproportionately victimized communities of color and glaring racial disparities remain as documented recently by Martinez and Kirchner,² we believe that the federal bank regulatory agencies must incorporate race explicitly on CRA exams. Before the CRA regulatory reforms in 1995, federal CRA exams conducted data analysis regarding applications from and loans to people of color as part of Factor D, which considered special purpose credit programs.³

In addition, on a state level, Massachusetts CRA exams scrutinize lending to various racial and ethnic groups of borrowers. In a NCRC paper on CRA applied to mortgage companies in Massachusetts, we found that fair lending reviews accompanying CRA exams consisted of descriptive statistical analysis comparing the percent of applications submitted by people of color to the percent of the population that was people of color and the percent of applications submitted by people of color to all lenders in the state.⁴

In a recent white paper co-authored with Relman Colfax PLLC, NCRC suggested that performance measures examining lending by race like those in the Massachusetts CRA exams could contribute to CRA ratings under a variety of approaches that would pass the strict scrutiny standard and would be found constitutional.⁵ The paper recommended that on an interagency basis, the federal bank agencies should conduct periodic statistical studies and identify metropolitan areas and rural counties that either experience ongoing discrimination or exhibit significant racial disparities in access to credit.

Use performance measures assessing lending to people of color

In the geographical areas with significant disparities, fair lending performance measures like percent of loans to people of color could contribute to CRA ratings. The performance measures

² Emmanuel Martinez and Lauren Kirchner, *The Secret Bias Hidden in Mortgage-Approval Algorithms*, August 25, 2021, in the Markup, <https://themarkup.org/show-your-work/2021/08/25/how-we-investigated-racial-disparities-in-federal-mortgage-data> and <https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms>

³ For an example, consider the CRA exam of Signet Bank, <https://www.federalreserve.gov/dcca/cra/1996/460024.pdf>

⁴ Josh Silver, NCRC, *Massachusetts CRA For Mortgage Companies: A Good Starting Point For Federal Policy*, July 2021, <https://ncrc.org/massachusetts-cra-for-mortgage-companies-a-good-starting-point-for-federal-policy/>

⁵ 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*, NCRC, September 2021, <https://ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/>

could receive separate ratings or scores and thereby contribute to the ratings for the subtests and for the overall rating. Alternatively, the performance on the racial and ethnic measures could boost a rating if the performance is commendable. We would prefer the first alternative but offer the second in the interests of presenting various options for assuring success against a strict scrutiny standard. Of course, as occurs currently in federal CRA evaluations, if a fair lending review uncovers discrimination, the CRA exam should lower a bank's rating, particularly if the discrimination is not confined to a rogue employee or branch office but is widespread across the institution.

Add a category of underserved tracts to the subtests

In addition to performance measures for people of color, we suggest 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. In a previous report, NCRC described that underserved tracts would be identified via a metric of loans per capita (using households as the denominator in home lending and small businesses as the denominator for small business lending).⁶ Tracts in the lowest quintile of loans per capita would be designated as underserved. The study found that across the nation, 57% of underserved tract residents, on average, were people of color. Therefore, using underserved tracts on CRA exams would be another way to increase the focus on communities of color.

The NCRC and Relman Colfax PLLC white paper identify several other methods for increasing the attention of CRA exams on people and communities of color. For example, CRA regulations should mandate that assessment areas (AAs) cannot arbitrarily exclude communities of color just like AAs currently cannot capriciously exclude LMI tracts. In addition, on the criteria of innovation and flexibility on the subtests, CRA exams should consider innovative Special Purpose Credit Programs that target formerly redlined communities.⁷ Finally, CRA exam performance context analysis should identify communities of color in the AAs that are underserved and whose needs should be addressed by institutions in the area.

⁶ 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/>

⁷ For a recent Department of Housing and Urban Development Memorandum on these programs, see https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Statement_on_Fair_Housing_and_Special_Purpose_Programs_FINAL.pdf

Decrease CRA grade inflation and increase the accuracy of ratings: move from four ratings categories to five to increase nuance in exam grades

About 98% of banks pass their CRA exams and 90% receive the rating of Satisfactory.⁸ The current ratings distribution does not accurately reveal distinctions in CRA performance. It is implausible, for example, that 90% of banks perform in a manner earning a Satisfactory rating. A more nuanced ratings system would likely split up this large group of 90% of banks and identify those that are performing below Satisfactory and barely passing. We urge the agencies to either adopt five ratings for the overall grade (as is the case on the subtests) and/or adopt a point system of 1 to 100 to complement the four ratings and that can more accurately reveal distinctions of performance.

If ratings more accurately reflect distinctions in performance, we believe that communities of color and LMI communities would receive more loans, investments and services. Many banks receiving lower ratings or points (if a point system is adopted) would be motivated to improve their performance by increasing their lending, investments and services in communities targeted by CRA. Research has demonstrated that CRA already boosts lending in LMI communities.⁹ We believe that this impact would be magnified if ratings were more rigorous.

Thresholds and performance ranges could be difficult to implement

The Federal Reserve Board's (FRB's) Advance Notice of Proposed Rulemaking (ANPR) discussed creating numerical thresholds that would contribute to ratings on the subtests.¹⁰ For example, if a bank made a percentage of retail loans that was 70% of its peers or 65% of the portion of households that were LMI, the bank would be presumed to be performing at a Satisfactory level. The ANPR further discussed creating performance ranges with these two benchmarks that would correspond to various ratings.

The ANPR did not discuss how or whether the specific thresholds chosen would reduce the skewing of the ratings and lack of distinctions in the ratings discussed above. Moreover, NCRC demonstrated in its comments that the thresholds and performance ranges likely would need to

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

⁹ Lei Ding and Leonard Nakamura, *Don't Know What You Got Till It's Gone: The Effects of the Community Reinvestment Act (CRA) on Mortgage Lending in the Philadelphia Market*, Working Paper No. 17-15, June 19, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2991557, and Lei Ding, Raphael Bostic, and Hoyjung Lee, *Effects of the CRA on Small Business Lending*, Federal Reserve Bank of Philadelphia, WP 18-27, December 2018, <https://www.philadelphiafed.org/community-development/credit-and-capital/effects-of-the-community-reinvestment-act-cra-on-small-business-lending>.

¹⁰ Federal Reserve Board, Advance Notice of Proposed Rulemaking (ANPR), Community Reinvestment Act Regulation BB Docket No. R-1723, RIN 7100-AF94, Federal Register, Vol. 85, No. 202, Monday, October 19, 2020, Proposed Rules, <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/cra-memo-20200921.pdf>. To see the Federal Register notice, <https://www.federalregister.gov/documents/2020/10/19/2020-21227/community-reinvestment-act> and for a copy of the PDF, <https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-21227.pdf>

be different in order to accurately rate banks, at least in home lending, in metropolitan areas with different housing costs.¹¹ This would make it more difficult to use thresholds and ranges which possibly could need to vary based on the demographics and economic conditions across AAs.

Consider as an alternative, guidance on using demographic and industry peer benchmarks

As an alternative to these thresholds and performance ranges, the agencies could consider altering the guidance on ratings in Appendix A in the regulation.¹² For example, Appendix A now reads that banks could earn Outstanding on the criterion of distribution of loans when they achieved, “An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels.” This guidance is not meaningful. It would be much more helpful to a CRA examiner if it instead advised that Outstanding performance on this criterion is generally achieved if a bank issued a significantly higher percentage of loans to LMI borrowers than its peers and had a percentage of loans that was higher or comparable to the percentage of households that were LMI (the demographic threshold is harder to achieve due to a portion of low-income households not being able to afford homeownership).

Likewise, to achieve Satisfactory on this criterion, the bank would need to offer a percentage of loans comparable to that of its peers.¹³ Finally, banks below and far below their industry peers on the performance measure would earn Needs-to-Improve and Substantial Noncompliance, respectively, on this criterion. This approach adjusts for economic and demographic factors more readily than choosing specific thresholds and performance ranges while also clearly differentiating banks based on their percentage of loans in relation to demographic and peer benchmarks.

Assessment areas must cover the great majority of a bank’s loans or deposits and include a diversity of areas

Recalibrate assessment areas to match with the scope of lending and deposit-taking

Currently, most of a typical bank’s lending activity is covered by AAs on CRA exams.¹⁴ AAs generally correspond to geographical areas where banks have branches. However, as more banks increase their lending beyond their branch network and as newer online lenders continue to be

¹¹ NCRC Comment On Federal Reserve Board’s Advance Notice Of Proposed Rulemaking Regarding The Community Reinvestment Act – February 2021, pp. 49-50, <https://ncrc.org/ncrc-comment-on-federal-reserve-boards-advance-notice-of-proposed-rulemaking-regarding-the-community-reinvestment-act-february-2021/>

¹² Appendix A to Part 228 – Ratings, <https://www.ecfr.gov/current/title-12/chapter-II/subchapter-A/part-228/appendix-Appendix%20A%20to%20Part%20228>

¹³ To earn High Satisfactory on the lending test, the bank would need to have a percentage of loans higher than industry peers and comparable to the demographic benchmark. Low Satisfactory would be earned if a bank was within a range of a certain number of percentage points (3 to 5) below industry peers and below the demographic benchmark.

¹⁴ Bhutta and Popper, *The 2014 Home Mortgage Disclosure Act*; Laurie Goodman, Jun Zhu, and John Walsh, *The Community Reinvestment Act: Lending Data Highlights*, November 2018, Urban Institute, <https://www.urban.org/research/publication/community-reinvestment-act-lending-data-highlights>.

granted bank charters, the designation of AAs where bank branches are located will become less effective in capturing the majority of retail lending.

Research has demonstrated that banks make a higher percentage of their loans to LMI borrowers and census tracts in their AAs than in areas that are not designated as AAs on their CRA exams.¹⁵ This makes intuitive sense because banks will try harder to make loans to LMI populations where they are rated.

In several cases, digital banks make loans nationally but only have a single AA where their headquarters are located. To keep pace with the shift to digital banking, AA reform should ensure that evaluations focus on areas where banks are active in lending and deposit-taking. Therefore, the agencies must establish AAs outside of branch networks and bank headquarters.

Regulators should provide clarity regarding where activity is significant enough to merit a designation as an assessment area

The FRB's ANPR proposed a reasonable idea that new AAs be established in areas beyond bank branches wherever a bank makes a threshold of loans such as 100 or 250 loans. The ANPR estimated that about 157 banks would be required to designate so called lending-based AAs under this approach. However, the ANPR did not estimate how many new AAs, on average, these banks would need to create nor did it estimate the impact for banks of different sizes as measured by either assets or volume of deposits or loans. We call on the federal banking agencies to provide a more complete picture of the impacts of lending-based AAs in terms of the percentage of total lending activity covered and the number of AAs for banks classified by size. For online banks that offer deposit products and services and do not provide retail loans, the agencies must explore and describe deposit-based AAs for capturing their activities.

Assessment areas should include a diversity of places, including urban, rural, tribal and counties with high percentages of people of color

We also call on the agencies to not only require new AAs for states with significant loans beyond branch footprints but also a diversity of local AAs including large and smaller metropolitan areas rural counties and Native American reservations. This is important so that in addition to the largest cities being served by the new AAs, smaller cities and rural areas benefit from the likely increase in lending and investing in LMI and other underserved communities.

The number of local areas inside a state to be designated as AAs can be determined based on an analysis of the feasibility of doing so for banks of different sizes that matches their capacities. As stated above, a fuller interagency analysis than what was presented in the FRB's ANPR is needed for stakeholders to make informed comments.

¹⁵ See Ding above and Urban Institute, Housing Finance Policy Center, January 2022, *Bank lending outside CRA assessment areas*, https://naahl.org/wp-content/uploads/2022/01/Urban-CRA_Project-CRA-Assessment-Areas-v12.pdf

The agencies should develop a balancing test that will ensure that an online bank has AAs that capture a substantial share of its lending activity or deposit taking, but that are not so expansive as to undermine the depth of activities undertaken by the financial institution. The two-part test would be applicable to smaller institutions where areas of significant activity would still represent only a small amount in absolute terms of lending or deposit-taking. For example, if including enough AAs to reach 75 percent of total loans (or another share criterion) required the lender to include areas with only a de minimis amount of retail or community development activity, then there would be a risk that the marginal impact or value of each additional AA would be low.

The agencies should assess if assessment areas for lending and community development tests should always be the same

The agencies should assess whether assessment area designation should be the same or different for retail and community development activities. Fewer and larger areas may work better for community development since these activities are more difficult to execute. Opportunities and needs may also be more readily available on a state level than in smaller local areas in some cases.

Exams should consider activities in partnerships when determining assessment areas

Some chartered institutions work with third-party non-banks to provide credit or deposit accounts. Increasingly, the banks offer accounts within a “banking-as-a-service” framework, where the bank performs virtually all of the activities associated within the business of banking as well as those required for compliance. In spite of that scope of commitment, the lending and deposit-taking that occurs through these partnerships is almost uniformly excluded from CRA exam scrutiny.

Regulators should clarify that activity that occurs through third-party relationships should also come with community reinvestment obligations. In cases where banks have multiple partners, the scope of activity should be considered in aggregate for determining qualification for AA coverage. For example, if a bank partners with three non-banks to make a total of 200 loans in a metropolitan area, and the threshold for an AA is 100 loans, then the bank should be evaluated for its performance even if no single partnership produces 100 loans individually. Thresholds for deposit-taking should also be collapsed into aggregated baskets for the purposes of determining AAs.

CRA enforcement must be enhanced by more rigorous merger reviews

The major enforcement of CRA occurs during the merger application process in which the federal bank agencies are required to consider the CRA and fair lending performance of the merging banks as well as the probable (future) impacts of the merger on meeting convenience

and needs of the community to be served. If agencies mostly approve merger applications without rigorous reviews and periodic conditional approvals or denials when warranted, then communities are more likely to experience the negative impacts of mergers such as branch closures and are less likely to benefit from increases in lending, investments and bank services. Moreover, if the rigor of CRA ratings are not bolstered by CRA reform, then the CRA review aspect of merger reviews will not be an effective accountability device motivating banks to affirmatively serve the needs of communities.

A critical step to improve the rigor of merger reviews is to provide more opportunities for the impacted communities to comment. During consideration of merger applications, the agencies will periodically ask the banks follow-up questions in response to community group comments. In addition, banks will sometimes respond to community group comments. In both instances (when the agencies ask questions and when the bank replies), the agencies are inconsistent regarding informing community groups and sharing relevant documents with community groups. Also, when a bank responds in writing, the agencies do not clarify whether there is an opportunity for a rebuttal and when the community group should deliver any response. More opportunities for dialogue provide more information and nuance regarding banks' CRA and fair lending performance for the agencies, which is likely to improve their decisions on merger applications.

Banks have a legal requirement to demonstrate a public benefit as a result of their merger applications.¹⁶ Occasionally, they will negotiate a community benefits agreement (CBA) with community groups that promise specific levels of lending, investment and services in the future for LMI neighborhoods and communities of color. The agencies should encourage CBAs and issue more conditional merger approvals requiring improvements in CRA and fair lending performance in geographical areas where CRA and fair lending performance is lagging or in areas with significant anti-trust concerns.

The input of communities in affected areas, as expressed through CBAs, should be a factor in the decision to approve mergers. To ensure that CBAs are meaningful, regulators should hold institutions accountable to provide evidence that they have met the terms of their stated commitments. Meeting the goals of CBAs should be a factor that influences the rating in the merged banks' next CRA exam. When an exam reveals that a merged institution met or exceeded the terms of a CBA, the entity should receive additional credit. Conversely, when an exam finds that a bank fell far short of the targets in its CBA, this performance should be a negative factor on the CRA exam.

Data improvements imperative to rate banks rigorously and to identify community needs

The ability of CRA exams to measure banks' responsiveness to community needs improves when data on bank activities is enhanced. In particular, CRA exam reviews of community development financing of affordable housing, community facilities and economic development have been hamstrung by a lack of robust data on these activities. CRA exams now present tables

¹⁶ NCRC Comments On DOJ Merger Review Guidelines, October 2020, p. 10, <https://www.ncrc.org/ncrc-comments-on-doj-merger-review-guidelines/>

of varying detail and quality on community development financing in AAs. Also, within the AAs, CRA exams do not contain information about whether census tracts or counties, particularly underserved areas, are receiving adequate amounts of community development financing.

Enhance data on community development activities

Recognizing these shortcomings, the FRB's ANPR asked if data on community development was needed. Stakeholders responded in the affirmative, asking that the data be made available to the public annually, much like existing CRA data, and that the data contain information on the major categories of community development on a census tract level or at least on a county level. At a local level, organizations like the Association for Neighborhood and Housing Development have collected community development data from banks on a voluntary basis for several years, illustrating the feasibility and desirability of collecting this type of data.¹⁷ The Office of the Comptroller of the Currency (OCC) also collects public welfare investment data from banks and provides the public excel documents with data that contains the category of the activities and the geographical area in which the activity occurred for individual banks.¹⁸

Annual community development financing data would enable the agencies to identify census tracts and/or counties that are receiving adequate or above adequate levels of community development financing and which areas remain underserved. This data would therefore be quite helpful in more accurately evaluating the responsiveness of examined banks to needs for community development financing. In addition, data on housing adequacy, employment levels and other economic and demographic trends on a census tract or county level can be used to see how effectively banks are targeting areas in need.

Improve data on low-cost accounts and provide deposit data by income level of census tracts

Another needed data improvement that the FRB ANPR discussed concerned bank deposits. In order to implement a number of the proposed FRB performance measures, we agree that deposit collection on a county level needs to be improved. In addition, CRA reform must include better data on the number of low-cost deposit accounts banks develop for customers with modest incomes and data on the number and percentage of deposit accounts banks provide to customers in LMI tracts.¹⁹ CRA exams should also assess whether the deposits accounts are active in LMI tracts with robust numbers of transactions per month or whether they are dormant (the database maintained by the Federal Reserve Bank of St. Louis for the Bank On program is a model for data illustrating transaction history). The scores on the qualitative part of the retail service test

¹⁷ Association for Neighborhood and Housing Development, *The State of Bank Reinvestment in New York City: 2017*, p. 104 for the methodology of collecting community development data, https://anhd.org/sites/default/files/state-of-bank-reinvestment-in-nyc-2017_may-2018_final.pdf

¹⁸ To view spreadsheets of public welfare investments by bank and geographical area, see <https://www.occ.gov/topics/consumers-and-communities/community-affairs/resource-directories/public-welfare-investments/index-public-welfare-investments-resource-directory.html>

¹⁹ We understand that data on the location of deposit accounts by census tract might be more feasible to collect than data by the income level of the customer.

can be adjusted based on the usefulness of the deposit accounts as measured by transaction history.

The Cities for Financial Empowerment Fund and the St. Louis Federal Reserve Bank have collaborated on collecting and disseminating data regarding millions of low-cost deposit accounts on a zip code level.²⁰ This collaboration illustrates that it is desirable and possible to have much improved deposit account data in a publicly available database and on CRA exams.

Use data to assess the quality of lending in terms of affordability and sustainability

Historically, examiners have focused on access to credit but have ignored the quality of lending, with the exception of instances when banks were shown to have violated fair lending rules. This approach has the perverse effect of providing CRA credit when banks make loans with high interest rates or in structures that are not suitable for the needs of borrowers. In extreme cases, banks have partnered with high-cost lenders in partnerships that extend credit through federal preemption at rates in excess of state laws. Examiners should scrutinize lending activities with a view for the quality of the lending, servicing, debt collection practices and its overall suitability for borrowers. When grounds exist to consider the terms of credit as unsuitable, such as when loan performance is unusually poor, examiners should downgrade banks.

The agencies must make greater use of price information in Home Mortgage Disclosure Act (HMDA) data and the forthcoming Section 1071 data. For major consumer lenders, CRA exams should also assess pricing information as well as repayment rates, delinquencies and defaults. Exams conducted by the state of Massachusetts also scrutinize delinquency and default rates in home lending, which the federal agencies should consider emulating.²¹ CRA performance should not be confined to an analysis of access to credit but also the affordability and sustainability of credit. High-cost credit that extracts wealth and burdens borrowers in debt do not meet credit needs in a responsible manner and must be panelized on CRA exams.

Section 1071 data collection on race and gender and small businesses as a replacement for CRA data on small business/farm lending

The CFPB recently requested comment on proposed small business and farm data collection required by Section 1071 of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010. Section 1071 mandates the collection of race and gender of the small business applicant. Section 1071 has the potential to be more detailed than current CRA data on small business and farm lending. The agencies should consider replacing the current CRA data with Section 1071 data and also using Section 1071 to assess lending to minority-owned and women-owned businesses in areas experiencing ongoing discrimination or wide racial and gender disparities in lending along the lines discussed above.

²⁰ Federal Reserve Bank of St. Louis, Bank On National Data Hub, <https://www.stlouisfed.org/community-development/data-tools/bank-on-national-data-hub>

²¹ Josh Silver, *Massachusetts CRA For Mortgage Companies: A Good Starting Point For Federal Policy*, NCRC, July 2022, <https://nrc.org/massachusetts-cra-for-mortgage-companies-a-good-starting-point-for-federal-policy/>

CRA reform must enhance the significance of efforts to combat climate change and improve disaster preparedness and climate resilience

The current definition of community development includes activities like energy efficiency improvements in affordable housing or brownfield redevelopment that help reduce greenhouse emissions, lower electricity costs and improve the quality of our air and water overall and in LMI communities.²² This consideration of climate remediation efforts must continue and be enhanced. The FRB ANPR discussed applying qualitative criteria on the subtests.²³ Impact scores that have a scale of 1 to 5 could be used to evaluate community development activities, with higher impact scores awarded to those activities that include significant climate mitigation or resilience enhancements.

In addition, the Center for American Progress (CAP) developed a methodology for identifying census tracts with high levels of environmental and health hazards.²⁴ Higher impact scores could likewise be awarded to community development activities that target LMI tracts or communities of color that have high levels of environmental hazards.

Low-income and majority-minority census tracts are disproportionately more likely to be at risk of the negative impacts of climate change.²⁵ While we recognize that examiners should view exposure to climate change as a risk factor in supervisory reviews and stress tests, agencies should not lose sight of the possibility that risk mitigation efforts could threaten the future availability of capital in affected areas. Secondarily, we acknowledge that minority depository institutions (MDIs), community development financial institutions (CDFIs) and other financial institutions in low-income communities may be disproportionately impacted by climate change. As a result, regulators must carefully devise an approach during the period of transition to a net zero carbon economy that balances safety with equity. Regulatory efforts at climate risk mitigation must not contradict CRA's requirements that banks serve all communities, including LMI and communities of color.

CRA exam components must comprehensively exam bank activities

CRA reform must strengthen, not weaken, CRA exam coverage of activities.

- *Structure of CRA exams:* Component tests or subtests on CRA exams must be comprehensive enough to rigorously evaluate the variety of bank activities including

²²See discussions of energy efficiency and other climate mitigation efforts in Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance, Federal Register / Vol. 81, No. 142 / Monday, July 25, 2016 / Rules and Regulations <https://www.govinfo.gov/content/pkg/FR-2016-07-25/pdf/2016-16693.pdf>

²³ See FRB ANPR cited above.

²⁴ Michela Zonta and Zoe Willingham, *A CRA To Meet the Challenge of Climate Change: Advancing the Fight Against Environmental Racism*, Center for American Progress, December 2020,

<https://www.americanprogress.org/issues/economy/reports/2020/12/17/493886/cra-meet-challenge-climate-change/>

²⁵ For further information, see Staff Reports, Federal Reserve Bank of New York, Understanding the Linkages between Climate Change and Inequality in the United States, No. 991 (November 2021), available at https://www.newyorkfed.org/research/staff_reports/sr991.html.

retail lending, retail services (branches and deposit accounts), community development financing and community development services.

- *Asset levels for large, intermediate small and small banks:* These asset levels must be established carefully so that banks that currently are expected to offer retail and community development financing and services are expected to provide these activities in the future. Significantly raising the asset threshold for small banks means that many banks that today engage in community development financing and services would not do so in the future.
- *Meaningful strategic plans:* A number of digital-first and limited-scope institutions request strategic CRA plans. We recognize that strategic plans can help exams find the right fit with certain business models. At the same time, we are concerned that some institutions may use strategic exams to set low bars for success. Some lenders design strategic plans that skirt the lending test, even though they make loans to consumers as a normal part of their business model.²⁶ The current CRA regulation disallows a bank with a major retail lending operation to exclude lending from its strategic plan. This must be reinforced in an update to the CRA regulations.²⁷

Conclusion

We look forward to commenting on the interagency proposal for reforming the CRA regulations. If the CRA reform adheres to the objectives of empowering public participation, increasing transparency through data improvements, including race on CRA exams and enhancing consideration of climate remediation, we believe that communities of color and LMI communities would benefit through increases in sustainable retail lending and community development.

For any questions, contact Jesse Van Tol, President and CEO, on jvantol@ncrc.org and Josh Silver, Senior Advisor, on jsilver@ncrc.org. Thank you.

Undersigned Organizations

National

Americans for Financial Reform Education Fund

Better Markets

Ceres

Consumer Action

Corporation for Supportive Housing (CSH)

National Alliance of Community Economic Development Associations (NACEDA)

National Association of American Veterans, Inc.

National CAPACD

National Community Reinvestment Coalition

²⁶ For an example of this, see NCRC's comment on Figure Bank, NA's application for a charter application, <https://www.ncrc.org/ncrc-comment-letter-on-figure-banks-charter-application/>

²⁷ OCC CRA Regulation, <https://www.ecfr.gov/current/title-12/chapter-I/part-25#>

National NeighborWorks Association
National Urban League
Opportunity Finance Network
Poverty and Race Research Action Council
Public Citizen
The Leadership Conference on Civil and Human Rights
U.S. Conference of Mayors
UnidosUS

Alabama

Alabama Asset Building Coalition
Birmingham Business Resource Center
Building Alabama Reinvestment
Dothan Housing
Ensley District Developers
Fair Housing Center of Northern Alabama
NAACP Economic Programs
Titusville Development Corporation, a CDC

Arizona

Arizona Housing Coalition
Chicanos Por La Causa Action

California

ASIAN, Inc. 美亞輔鄰社
Beneficial State Foundation
caarma.org
California Coalition for Rural Housing
California Reinvestment Coalition
Community Vision Capital & Consulting
Homeownership Council of America
Low Income Investment Fund
Mutual Housing
Peoples Opportunity Fund
The Greenlining Institute
Vermont Slauson EDC

Colorado

African American Trade Association

Urban Land Conservancy

District of Columbia

Latino Economic Development Center

Manna Inc.

New Community Church

Delaware

Delaware Community Reinvestment Action Council, Inc.

Wilmington Neighborhood Conservancy Land Bank

Florida

Affordable Homeownership Foundation, Inc.

Community Reinvestment Alliance of South Florida

Florida Housing Coalition

Little Haiti Housing Association, Inc.

Solita's House

Georgia

Georgia Advancing Communities Together, Inc.

Hawaii

Hawai'i Alliance for Community-Based Economic Development

Illinois

Chicago Community Loan Fund

Housing Action Illinois

Illinois People's Action

Universal Housing Solutions CDC

Woodstock Institute

Indiana

Fair Housing Center of Central Indiana, Inc.

God's Helping Hand Community Housing Development Organization Incorporated

HomesteadCS

Northwest Indiana Reinvestment Alliance

South Bend Heritage Foundation

Kentucky

Urban Coalition of Appraisal Professionals

Louisiana

Jane Place Neighborhood Sustainability Initiative

Massachusetts

ACE

MACDC

Massachusetts Affordable Housing Alliance

Maryland

African American Chamber of Commerce of Montgomery County, Inc.

Community Development Network of Maryland

Housing Options & Planning Enterprises, Inc.

Maryland Consumer Rights Coalition

PFC Black Chamber of Commerce Inc.

Michigan

LINC UP Nonprofit Housing Corporation

U SNAP BAC INC

Minnesota

Community Reinvestment Fund, USA

Jewish Community Action

Lewis Associates

Missouri

Habitat for Humanity of Kansas City

Justine PETERSEN

Metropolitan St. Louis Equal Housing and Opportunity Council

R.A.A. - Ready, Aim, Advocate

Mississippi

Mississippi Communities United for Prosperity (MCUP)

North Carolina

Community Link
Henderson and Company
Historic District Developers
National Trust for Historic Preservation
Olive Hill Community Economic Development Corporation, Inc.
Reinvestment Partners
Town of Apex

New Jersey

New Jersey Citizen Action
Urban League of Essex County

New Mexico

Southwest Neighborhood Housing Services

New York

Association for Neighborhood and Housing Development
Center for NYC Neighborhoods
Central Islip Civic Council Inc.
Devotion USA, Inc.
Empire Justice Center
Fair Finance Watch
Long Island Housing Services, Inc.

Oregon

Ohio CDC Association
Working In Neighborhoods
CASA of Oregon
Housing Oregon

Pennsylvania

Catapult Greater Pittsburgh
Ceiba
Community First Fund
Fair Housing Rights Center in SEPA
NeighborWorks Association of Pennsylvania

PACDC
Pittsburgh Community Reinvestment Group
Southwest CDC

Puerto Rico

One Stop Career Center of PR Inc.

Rhode Island

HousingWorks RI

Tennessee

BLDG Memphis
green|spaces

Texas

Prosper Waco
Southern Dallas Progress Community Development Corporation
SouthFair Community Development Corp
TCH Development, Inc.

Virginia

Piedmont Housing Alliance

Wisconsin

Community Advantage Enterprises, Inc.
Metropolitan Milwaukee Fair Housing Council