



August 5, 2022

Via the following means:

- FDIC: RIN 3064-AF81 - [www.fdic.gov/regulations/laws/federal/propose](http://www.fdic.gov/regulations/laws/federal/propose)
- Federal Reserve: [www.federalreserve.gov/consumerscommunities/community-reinvestment-act-proposed-rulemaking](http://www.federalreserve.gov/consumerscommunities/community-reinvestment-act-proposed-rulemaking)
- OCC: Docket ID OCC-2022-0002 - <https://regulations.gov>

**To the Federal Deposit Insurance Corporation, Federal Reserve Board of Governors, and Office of Comptroller for the Currency:**

Thank you for this opportunity to comment on proposed amendments to implementing regulations for the Community Reinvestment Act of 1977, and for coming together as enforcement agencies to issue a joint Notice of Proposed Rulemaking (NPR).

### **Introduction**

The undersigned organizations are part of the Illinois CRA Coalition, a group dedicated to protecting and strengthening the federal Community Reinvestment Acts (CRA) as a tool for building more equitable communities and addressing the racial wealth gap. The Coalition commends the agencies in their effort to strengthen the CRA. We strongly agree with the priorities of the reform effort as they are described in the NPR, including updating the regulation in light of changes in the banking industry, the promotion of transparency and public engagement, and providing greater clarity, consistency, and transparency in the examination process.

The members of the Illinois CRA Coalition Steering Committee have dedicated considerable time and energy into understanding the agencies' NPR on the implementing regulation of the CRA with the aim of mobilizing coalition members to provide thoughtful and constructive comments. While we are pleased at the number of comments that our efforts have spurred, we know that the depth and complexity of this NPR creates a barrier to providing comments in the manner requested by the agencies. Few community organizations or small businesses have the time or expertise to read a 700-page regulatory reform proposal and craft a comment on it with the depth and substance that such an important regulation merits. Although our comment is more

narrative in format and does not explicitly respond to specific questions within the NPR, we trust that the agencies will make the appropriate connections to the NPR's numbered questions. Our comments reflect community-based feedback critical to ensuring that the CRA meets its intended goal – addressing historic redlining through increased access to banking and credit.

The Coalition also commends the agencies for aligning and coordinating their efforts to strengthen the CRA. This proposal represents the most sweeping changes in a regulation that has been unable to effectively respond to the evolution of the banking industry since it was last revised almost 3 decades ago. The proposed changes that expand the geographic scope of CRA exams to better reflect the virtual marketplace for financial products and services, the collection and reporting of additional data to better identify the benchmarks from which performance can be measured and toughening the standards of performance on the various lending subtests will all make the CRA more effective. But there are some important deficiencies in the proposal that could work counter to the goals of the law, areas where limiting regulatory burden seems to be prioritized over realizing the law's objective, and some glaring omissions that need to be addressed.

This letter will focus on 6 broad areas within the reform proposal: (1) the role that CRA should play in promoting racial equity; (2) how the agencies balance the interests of CRA stakeholders; (3) evaluations; (4) community engagement; (5) community development; and (6) small businesses.

## **1. Promoting Racial Equity**

The Federal Reserve Board's Advanced Notice of Proposal Rulemaking (ANPR) dedicated a considerable amount of thought to the issue of considering race in the CRA. Given that precedent, the Coalition is shocked that this issue is not properly addressed in the subsequent version of the proposed rule. With this in mind, we will reiterate that race should be explicitly addressed in the CRA and incorporated into exams. The CRA was implemented to address redlining and racialized patterns of disinvestment in low- and moderate-income (LMI) communities and communities of color. Redlining was enforced by assigning areas as "high risk" based on race, not income. Although in many communities income and race may correlate when analyzing lending disparities, they are distinct considerations both with respect to historical forces that have created the disparities and with respect to the discriminatory practices perpetuating them today. The legacy of redlining and other discriminatory practices still affects borrowers of color to this day, regardless of income. With a structure focused on income, and failing to explicitly address race, the CRA will be ineffective in rooting out the discriminatory practices that continue to maintain these entrenched racial disparities. If the CRA is to function as an effective tool to address ongoing barriers, it needs to address race directly.

Currently, the agencies propose to use the Home Mortgage Disclosure Act (HMDA) to collect data on the race and ethnicity of home mortgage loans. These findings will be included in large banks' CRA evaluations but will not have a direct impact on ratings. Race should be affirmatively considered when measuring CRA performance within the new testing framework. There have been conversations about the legal challenges associated with this; however, as regulators, advocates and practitioners, we must work together to overcome these barriers. It is possible for changes to CRA to meet current legal standards if the CRA examines lending by

race and ethnicity in geographies experiencing ongoing discrimination or exhibiting significant racial disparities in lending. Further, quantifying race can include an analysis of lending in underserved communities with low levels of lending, which are disproportionately communities of color.

To this end, the Coalition recommends incorporating race into the CRA in the following ways:

1. Adding racial demographics to the list of factors to consider when delineating assessment areas;
2. Creating benchmarks and metrics to evaluate lending and services to communities of color within the retail lending, retail services, community development financing, and community development services subtests of CRA evaluations;
3. Incorporating a HMDA data (and Section 1071 data when it is available) analysis of lending by race into an institution's CRA performance; and
4. If a financial institution is found to have violated any civil rights, equal protection, or consumer protection laws, and irrespective of whether the institution settles without admitting guilt or if the violations are dated, the institution should be immediately downgraded to "Needs to Improve" in its current or next CRA assessment.
5. In addition, if a fair lending investigation is pending, this should be noted during a CRA exam and appropriate follow-up taken once the investigation is concluded.

## **2. Balance of Interests**

The framework established by the CRA needs to be mindful of the infrastructure required for financial institutions to comply, but that "mindfulness" was not the purpose of the CRA and should not override the law's goals. Reducing or minimizing regulatory burden on the financial industry must not come at the expense of reducing the standards for compliance or reducing reinvestment activity in LMI communities. The financial industry has the resources (human and financial) to withstand additional reporting requirements and to meet a higher level of performance if that burden results in measurable and sustainable benefit to LMI communities.

The Coalition stands firm that: (a) under no circumstances should any CRA reform proposal create a scenario resulting in less reinvestment activity; (b) any opportunity to include more data from which to evaluate performance should be realized so long as there is demonstrable benefit as a result of the added reporting requirements; and (c) all data used to assess the performance of covered financial institutions should be made publicly available given the poor track record of the agencies in holding covered institutions to a reasonable standard. More specifically:

- The differentiation for performance and data reporting currently proposed for those covered institutions with assets over \$10 billion should be applied to all large banks;
- Direct and indirect consumer loans must be included in the retail lending test and retail products and services test, and be included in the identification and creation of Retail Lending Assessment Areas;
- CRA consideration for financial literacy should not be extended to all income groups;
- It is not acceptable for the agencies to allow financial institutions to fail 4 out of every 10 communities they serve in order to pass their overall CRA exam. No covered

institution should be allowed to fail any of the communities they are chartered to serve if they expect to meet the intent and requirements of the CRA.

- The standard for determining when to evaluate lending products should be based on the number of loans, not solely on percentage of lending dollar volume. For large banks, the threshold should be 15% or 50 loans on all products (including consumer loans), whichever is smaller. For small banks, the threshold should be 15% or 30 loans on all products (including consumer), whichever is smaller.
- The proposed performance threshold of 30% or lower for receiving a “Substantial Noncompliance” rating under the Retail Lending Test’s initial screen is dangerously low. Section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act has already set a related benchmark for lending activity performance of 50%. This should also be the standard for CRA exams.
- All financial institutions capture and utilize detailed data regarding their deposit clients. This information must be used to create deposit-based assessment areas from which the agencies can assess performance as intended by CRA, i.e., where financial institutions gather deposits and where they deploy those deposits in the form of financial products and services.
- The proposed asset threshold and bank classification changes would reduce community development financing and branching. For the 779 Intermediate Small Banks that would be reclassified as small banks, there would no longer be an incentive for community development finance. For the 217 large banks that would be reclassified as Intermediate Banks, their service test activities (including branches in LMI areas) would no longer be reviewed. All banks should have an incentive to originate community development loans and investments. Similarly, all banks should have essential service activities reviewed, including but not limited to the accessibility of their products, services and branch network for LMI communities and individuals.

### **3. Evaluations**

#### *Addressing Rating Inflation*

Over the years, many advocates, including those in our coalition, have expressed concern over the rampant rating inflation among CRA exams. Currently, over 98% of banks pass their CRA exams, while many communities still struggle with disinvestment, and disparities in mortgage lending persist. That passage rate does not accurately reflect how well banks are meeting their communities’ credit and community development needs.

Although we commend the agencies on the measures in the proposed rule to address rating inflation, there is much more that can be done on this issue, and there are pieces of the proposal that are counterproductive to combating rating inflation. We were glad to see the proposal’s focus on preventing “loan churn.” Currently, banks buy and sell the same CRA-qualifying mortgages over the years and receive credit for those loans without providing meaningful new investment in LMI communities. Given the long loan term for most mortgages, the same loan can be counted on exams for many banks over the years.

We support the agencies' proposal to give negative consideration to banks where there is evidence of loan churn. We recommend taking this principle a step further and limiting exams to only loans originated by that bank or purchased from the originator. This will provide the necessary secondary market liquidity for lenders to originate more mortgages, while also incentivizing ongoing investment in LMI communities.

The change in bank asset-size classification stands to undermine efforts to combat rating inflation. As the thresholds are being raised, some banks will fall into a smaller institution category with fewer CRA exam requirements than they had under the prior rules. It is of the utmost importance that much-needed updates to CRA rules do not result in less community development financing and investment activity in LMI communities. We urge the agencies to ensure that banks that previously had their branch accessibility and/or community development activities evaluated on CRA exams continue to be examined on those items.

Finally, our coalition urges the agencies to enact a transition plan to bring banks of all sizes up to the new exam procedures. While we understand that the agencies want to tailor exams to banks of different sizes, defaulting to evaluate intermediate and small banks under the current tests will make exams less transparent. As mentioned, the current exam procedures have led to rampant rating inflation. Allowing some banks to continue to operate under current tests will perpetuate that rating inflation and make it impossible to compare performance of banks of different sizes based on their CRA ratings. Instead, we propose that the agencies outline a transition plan with a specified future date or exam cycle when all intermediate and small banks will be evaluated under the new Community Development Financing and Investment Test and Retail Lending Test, respectively. This will make CRA exams more transparent, consistent, and accessible to community members.

#### *Assessment Areas*

Modernizing assessment areas under the CRA is critical to bringing this important law up to date with the dramatic changes to the banking industry that have occurred in recent decades. Internet banking has expanded the area where any individual bank can do business far beyond its branch network, and the arrival of internet banks means some institutions do not rely on branches at all. We are mostly supportive of the NPR's proposals for delineating assessment areas, but we have some concerns and some suggestions to ensure the assessment areas most accurately reflect where a bank does business – in terms of both lending and deposit-taking activity.

First, we support the continued use of facility-based assessment areas. Many consumers, particularly in LMI communities, still prefer to bank through a local branch office rather than online, and a bank's physical presence in a community facilitates deeper, more meaningful, and more frequent connections with community-based organizations, local small businesses, and residents. The NPR would allow intermediate and small banks to delineate their facility-based assessment areas on partial counties. We urge the agencies to reconsider this allowance and instead require that intermediate banks use entire counties or MSAs for their assessment areas. Allowing partial county assessment areas could lead to the exclusion of LMI communities from assessment areas or even lead to redlining. This change is especially important for non-metropolitan or rural areas as industry trends show large banks retreating from these areas, leaving intermediate and small banks as the primary institutions serving those areas.

If the agencies decide to allow intermediate banks to use partial counties for their assessment areas, they must implement a thorough review process. In order to protect against redlining, regulators must ensure that a partial county assessment area does not arbitrarily exclude census tracts whose populations are predominantly people of color or LMI.

We also generally support the agencies' proposed retail-lending assessment areas. Appropriately implementing retail lending assessment areas can further the goals of modernizing and strengthening the CRA. Notably, incorporating this new type of assessment area will better hold non-traditional banks, which may not rely on branches, accountable for serving LMI communities well.

However, we wish to raise three key issues:

- The agencies have proposed static loan number thresholds for triggering a retail lending assessment area, but we worry that banks may manipulate their lending activity outside facility-based assessment areas so as to avoid triggering a new retail lending assessment area. For example, a bank might originate 90 mortgages in an area, then stop originating loans there for the remainder of the year to avoid hitting the 100 mortgage threshold for a retail lending assessment area. CRA modernization must not result in the unintended consequence of stopping the flow of mortgage and small business capital to communities that need loans. We urge the agencies to reconsider the flat loan number thresholds and instead use a metric that cannot be as easily manipulated.
- If the agencies decide to keep the flat loan number thresholds for the retail lending assessment areas, they should implement a review to detect if a bank is manipulating lending activity to avoid CRA obligations. If a bank is found to be manipulating these thresholds to avoid creating new assessment areas, they should receive negative consideration in the exam process for that activity.
- Intermediate banks should also be required to delineate retail lending assessment areas just as large banks would.
- In addition to mortgage and small business loans, consumer lending activity should be included when determining whether to delineate a retail lending assessment area.

Finally, we were disappointed that deposit-based assessment areas, which had appeared in a previous CRA rule proposal, were not included in the NPR. The CRA's intent is to ensure that banks are reinvesting in the communities where they are taking deposits. Since the last CRA regulation update in the 1990s, the banking industry has evolved and financial institutions no longer rely solely on branches, ATMs and other physical facilities to collect deposits. As a result, facility-based assessment areas alone can no longer accurately reflect where a bank's customers are. However, banks of all sizes do collect and maintain information on the home addresses of their depositors as a normal part of doing business. That information must be used to delineate deposit-based assessment areas. Together, facility-based assessment areas, retail lending assessment areas, and deposit-based assessment areas will ensure that CRA exams hold banks accountable for serving the credit and community development needs of their depositors' communities.

### *Data Transparency*

As community service organizations and advocacy groups, we rely on good, publicly available data to advocate on behalf of our communities. We appreciate the level of detail that the agencies are proposing to publish in CRA exams. We urge the agencies to also make public all data associated with a CRA exam to further the agencies' stated goals of making CRA exams more consistent and transparent. Whenever possible, the agencies should use plain language in these publications to make the information accessible to community members. This information would benefit all stakeholders – fellow regulators, financial institutions, and community advocates.

### *Consumer Lending in Retail Lending Test and Retail Products & Services Test*

While some of our coalition members will be submitting more detailed individual comments regarding the four tests, the Illinois CRA Coalition wishes to highlight a few key priorities regarding the tests. We have collected all our comments on the Community Development tests in their own section, below. For the Retail Lending Test and Retail Products & Services Test, we urge the agencies to incorporate all consumer lending, not just automobile purchase loans, into examinations.

The importance of consumer lending to LMI communities cannot be understated. Access to safe and affordable small-dollar, short-term loans can help keep a consumer from falling into a predatory loan debt trap when an urgent cash need arises. Direct and indirect consumer lending should be evaluated as a product line in the quantitative analysis under the Retail Lending Test and should be evaluated qualitatively under the Retail Products & Services Test to assess affordability, accessibility, responsiveness, and usage of these products among LMI communities and communities of color.

We also urge the agencies to evaluate consumer lending for intermediate banks in addition to large banks. Some banks engage in indirect consumer lending through a non-bank partner making predatory loans; these partnerships are structured to evade interest rate caps and consumer protection laws at the state level and they actively strip wealth from LMI communities and communities of color. Many of the banks engaging in these partnerships would fall into the new intermediate asset size category, so it is crucial that banks of this size are evaluated on their consumer lending activities.

### *Homeownership in Retail Products & Services Test*

Research by the Urban Institute confirms that “[h]omeownership is the primary tool for building wealth, especially for Black households, but homeownership has failed to benefit Black homeowners as much as it has benefited white homeowners because of a long history of unequal treatment. The COVID-19 pandemic now threatens to widen this gap, as Black and Hispanic communities continue to suffer greater health and economic losses than white communities.”<sup>1</sup> Considering how important homeownership is to creating household wealth and the long-standing disparities in homeownership rates by race and ethnicity, the CRA evaluation process

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<sup>1</sup> Closing the Gaps: Building Black Wealth through Homeownership, p. 1, Urban Institute (Nov. 23, 2020).

must include a core component that examines whether banks are providing quality mortgage and home equity loans that offer a path to affordable, sustainable home ownership. Promoting homeownership is a strategy for revitalizing communities suffering from disinvestment in their single-family housing stock. We suggest adding this to the proposed Retail Products & Services Test to examine whether banks offer mortgage products that are responsive to the needs of LMI communities and borrowers. For example:

- Products that address existing barriers to homeownership caused by overly stringent underwriting criteria, appraisal bias, lack of down payment assistance, and other factors.
- Banks must be evaluated longitudinally on the loan products offered to low- and moderate-income borrowers to ensure that they actually lead to sustainable homeownership.

#### **4. Community Engagement**

Community engagement must be prioritized if this CRA reform effort is to be successful for its intended beneficiaries. It has been decades since the last large-scale reform effort, which means that the agencies need to undertake significant and intentional community engagement so that community-based organizations, small businesses, and other intended CRA beneficiaries understand the new rules and how to meaningfully participate in the exam process.

This is particularly important because, as noted in the introduction above, this process has become so complicated and technical that many community-based organizations currently feel ill-equipped to meaningfully participate. This does not have to be the case going forward.

To increase community engagement:

- Use large distribution networks to announce upcoming CRA exams.
- Publish an easily accessible calendar of examinations and include links for stakeholders to provide comments for a bank's examination.
- Increase direct engagement with a diverse group of stakeholders, including community-based organizations and small businesses led by people of color and women.
- Create and maintain an open database for individuals and organizations who opt-in to be contacted by examiners when an evaluation is being done in their communities and service areas.
- Commit to creating outreach materials explaining the changes and participation process in plain language.

To help agencies with the above, we support NACEDA's suggestion on the creation of regional and national community advisory boards (or tasking existing ones). We also support the National Community Reinvestment Coalition's (NCRC) suggestion that agencies follow up on the needs identified during their community engagement efforts and detail how community input was factored into the results of CRA performance evaluations.



## **5. Community Development**

The agencies' proposed changes to community development definitions do little to change activities that qualify for CRA activity, but the increased clarity and certainty will improve the ability of banks to effectively target their CRA activities by explicitly including activities that were previously unlisted in the regulation.

In another effort to increase clarity, the agencies propose the development of an illustrative list of qualifying community development activities and a process for modifying that list. While there are benefits to adding certainty about what receives CRA consideration, the agencies need to ensure the modification process for the list enables adaptation based on unique community needs. The creation of an illustrative list, even in conjunction with a method for modification, could serve to deter participation in activities not included in the list. As proposed, the system for checking whether an unlisted activity is eligible for CRA consideration will only be open to banks.

To improve the qualified activities list:

- Access to the eligibility feedback system should be expanded to other stakeholders. While banks are the entities assessed under the CRA, local stakeholders, such as community-based organizations, have the greatest incentive to develop new programs that meet the needs of their communities.
- The modification process should include a mechanism for challenging the inclusion of activities that are found to be an easy form of CRA activity for banks but have little to no benefit for LMI communities.

We are in agreement with NCRC that the impact review that will be included in the community development finance test needs further development to be effective in stimulating responsive community development activities. While the designation of specific categories creates consistency in what examiners consider for the impact review across banks, the proposal fails to define a methodology for how these qualitative reviews will impact the community development finance ratings. This discretion provided to the examiners creates the possibility of rating increases not commensurate with the impact of the community development activity.

The impact review can be improved by:

- Adding a quantitative measure of community development financing in persistent poverty counties and counties with low levels of finance, and including the percentage of activities that involved collaboration and partnerships with public agencies and community-based organizations.
- Adding a score, rating, and weight for the review as part of the community development finance test.

## **6. Small Businesses**

We would like to see the CRA reflect a more demonstrative effort to address racial disparities in lending for BIPOC small business owners. Although targeted lending in LMI communities was a

necessary step to help address lending disparities, it did not help achieve racial equity as hoped. Consequently, we propose the following conditions:

1. Leverage Section 1071 collection of race data to better track the success of lending to BIPOC small business owners. Since the rule proposes leveraging 1071 for size standards (\$5 million in revenue), this is a prime opportunity to also add examination of lending by race.
2. Ensure the small business component of the Retail Lending Test accurately measures and tests all business lending made to smaller firms, specifically for loans under \$250,000. The loan threshold should not be increased.
3. Ensure that credit products are offered responsibly and sustainably to small business owners, including by examination of Annual Percentage Rate.
4. Include financial literacy training for LMI business owners as an allowable activity.

### **Conclusion**

We appreciate much of what the three regulators have proposed to improve the CRA, but strongly urge that the above suggestions be adopted to ensure that LMI and communities of color realize substantive and measurable improvements in equal access to credit by the financial institutions benefiting from doing business in these areas.

Sincerely,

Housing Action Illinois  
Woodstock Institute  
[additional sign ons]