VIA ELECTRONIC DELIVERY at
regs.comments@federalreserve.gov

February 16, 2021

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Proposed Community Reinvestment Act Regulations
Docket No. R–1723 and RIN 7100–AF94

Dear Ms. Misback:

On behalf of the over 400 bank members of the Texas Bankers Association, we take this opportunity to submit the following comments in connection with the Advance Notice of Proposed Rulemaking (ANPR) published in the *Federal Register* of October 19, 2020. We commend the federal supervisory agencies for the extensive work, significant outreach to all affected parties and best efforts among the agencies to achieve the requisite consensus with respect to updating the regulations issued under the Community Reinvestment Act (CRA).

The U.S. banking system is unique in the world with over 5,000 FDIC-insured depository institutions consisting of a handful of multinational banks, a significant number of intermediate banks with a regional footprint, and, of course, the vast majority consisting of community-based banks. All these institutions perform critical functions in an efficient and responsive system that has most recently been thoroughly and successfully tested throughout the implementation of the Paycheck Protection Program. To date, SBA data shows that over a half-million PPP loans have been processed in Texas totaling nearly $50 billion. The overwhelming majority of these loans have been made by our banks, literally saving millions of jobs in communities across the Lone Star State.

As the largest state banking organization in the U.S., representing mostly community banks, our comments on the proposed regulations have been brought to our attention primarily by our community bank members. As expressed in our prior submission to the Notice of Proposed Rulemaking advanced in 2019 by the OCC and FDIC, the major concern of our community banks about the pending and now partially adopted changes to the CRA rules is that banks are subject to a system of standards not well-defined and open to criticism from regulators who cannot agree.

Our banks support a number of the individual initiatives set forth in the ANPR but there remains a threshold issue in need of much greater examination by which we mean the apparent premise that the entire CRA regulatory structure necessitates a revamping. For example, the very first question in the ANPR focuses on deposit-taking innovations such as the increased use of mobile and internet delivery channels. This is, of course, an emerging and significant industry development but our question remains why the ramifications of this most recent innovation in bank technology cannot be addressed without a wholesale revision of the underlying CRA regulation.

A second and likewise fundamental question needing to be addressed at this phase of the rule-writing process is the marked departure from the long-standing practice of the federal supervisory agencies to act in concert when amending or otherwise modifying the applicability of CRA regulations. While CRA regulations have been adopted individually by each agency, they have typically been drafted on an interagency basis and released jointly in final form. The last major CRA revision, for example, expressed this important principle as follows:

> The OCC, Board, and FDIC (collectively, ''federal banking agencies'' or ''the agencies'') are issuing this *joint final rule* that revises certain provisions of our rules implementing the Community Reinvestment Act (CRA).[1]

Our third point in the face of this overly broad and now inconsistent inter-agency rendition of the identical statutory mandate, is the broader context of regulatory burden which has been the driving force behind consolidation in the banking industry since passage of the Dodd-Frank Act.[2] As of the most recently published FDIC numbers, there are 5,033 federally-insured banks and savings institutions.[3] This contrasts with a total of 7,657 at year-end 2010[4] which amounts to a decline of approximately 35 percent. Over this 10-year time period, there have only been 214 bank failures,[5] leading only to the conclusion that regulatory/compliance costs are proving devastating to community banks.

Notwithstanding one of the strongest state economies in the nation, Texas has undergone a 25 percent decline in bank charters since passage of the Dodd-Frank Act. We can further report that our surveys indicate that compliance costs have increased from 300 to 500 percent. Community bankers all over our state have indicated that the reason they sold or merged is the straightforward fact that it has become too costly to operate a smaller bank.

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[1] 70 *Fed. Reg.* 44256 (Aug. 2, 2005) (*emphasis added).*

[2] Pub. Law 111–203 (July 21, 2010).

[3] *Quarterly Banking Profile*: Third Quarter 2020.

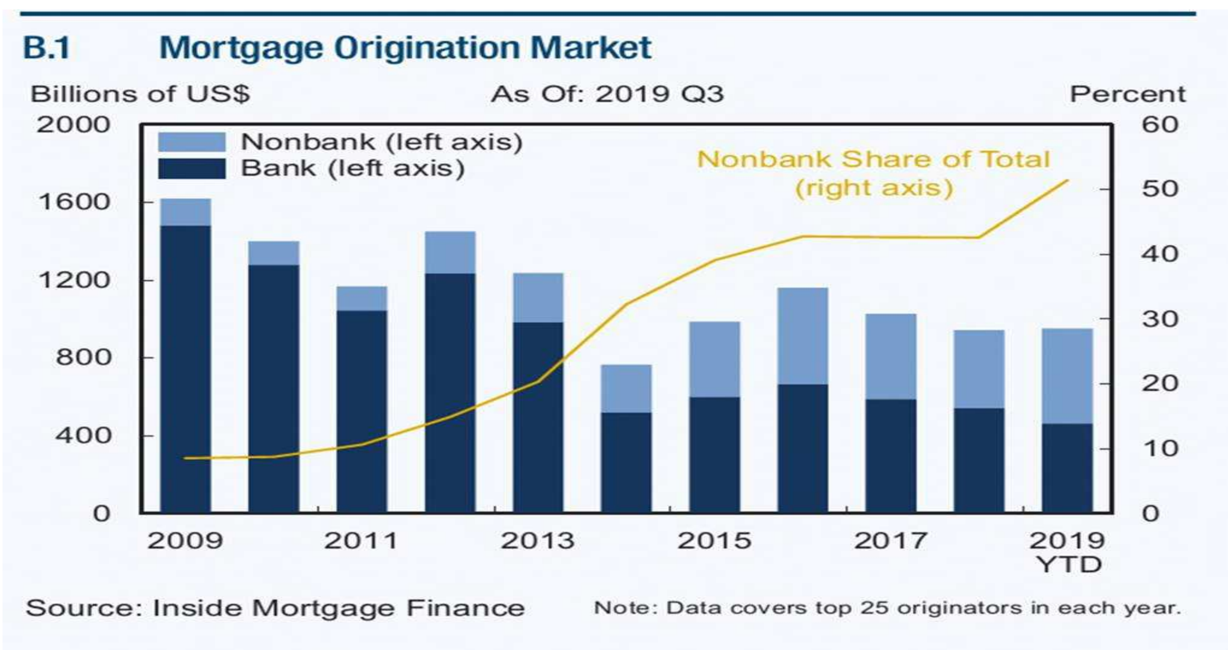
[4] *Quarterly Banking Profile*: Fourth Quarter 2010.

[5] FDIC – Bank Failures in Brief (Oct., 2020).

Fourth and lastly by way of our general comments on this regulatory undertaking, we are constrained to point out that while the banking industry is contending with new, expanded and now inconsistent regulatory treatment, credit unions and other non-bank competitors are left completely out of this picture.

As specifically noted in the preamble to the ANPR, over its 44-year history, CRA has been closely associated with mortgage lending and its origins often tied to "redlining" which was a term derived from the practice of the former Federal Home Owners Loan Corporation (HOLC) which employed color-coded maps.[6] Today, regulator data shows that banks are receiving satisfactory or outstanding CRA ratings in 98% of the cases. Yet there is no question that many urban and minority communities are in substantial need of additional public and private residential financing opportunities.

The principal deficiency in CRA is not that its regulatory structure has failed to stay abreast of changing technologies in the banking industry but that its statutory structure is increasingly out-of-date with the evolution of the U.S. housing finance system. According to the latest report of the Financial Stability Oversight Council, over 50 percent of mortgage originations are now generated outside the banking industry.[7]



Viewed, as it properly should, in the context primarily as a housing and fair lending issue, how does it make sense to increase the regulatory burden in the shrinking segment of the mortgage market while credit unions and other nonbank lenders remain completely outside the coverage of the Act?

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[6] 85 *Fed. Reg.* 66412 (Oct. 19, 2020).

[7] 2019 FSOC Annual Report, p.42.

A recent FDIC study not only confirms the above-cited trend in national mortgage originations but indicates that the declining bank percentage share of loans outstanding has also occurred in other core lines of business including multifamily housing and consumer lending.[8]

Bank Share of Loans by Type of Loans (%)

	1990	2000	2010	2018
1-4 Family Loans	40	30	25	24
Multifamily Loans	44	34	29	33
Consumer Credit	52	35	45	42

For the financial services sector, the current CRA framework places the sole burden on banks to address the range of social and economic challenges facing low and moderate income communities. This is not only unfair, such a myopic focus will actually perpetuate problems the CRA was intended to address. In Texas, banks do more than all of the other financial services providers combined to support LMI communities to include CRA-defined activities as well as valuable community activities that are either not defined by the CRA and regulators or that remain unclear. Banks have and will continue to proudly do their part by supporting financial literacy, business literacy, and educational initiatives. But the whole of community problems require whole community solutions and the CRA should be modernized to reflect these facts.

Conclusion

For these reasons and at this point in the rulemaking process, we respectfully urge the federal supervisory the agencies to pause these proceedings and to act, in the first instance, to coordinate and unify any major changes with respect to the existing CRA regulations. Secondly, it would be appropriate to transpose jointly to an approach whereby the proposed changes in this ANPR and the prior initiatives by the OCC and FDIC, many of which are meritorious, can be considered on a less ambitious scale. And thirdly, may we suggest that a thorough cost-burden study be undertaken prior to adoption of any structural changes such, as per the ANPR, would involve the creation of additional "deposit based" assessment areas or the imposition of a single metric system (algebraic modeling) to serve as the basis for an industry of over 5,000 separate and diverse depository institutions.

We acknowledge, appreciate and certainly support the provision contained in this ANPR as well as those in the other agency plans which would provide banks under a certain size with an "option-out," but the practical effect of size-based exemptions is almost always for the end result to be "upside" enforcement via the examination process. We saw this experience painfully in terms of both its intricacy and across-the-board enforcement with respect to the Basel III capital

[8] Bank and Nonbank Lending over the Past 70 Years (Nov., 2019)

rule which became so complicated that Congress fortunately had to act in 2018 to restore a streamlined leverage ratio alternative.

The CRA system can be improved upon in measured ways, and should certainly not be modified in ways that would further exacerbate its impact upon competitors in the same line of business.

Thank you for the opportunity to submit these views.

Most Gratefully,

Chris Furlow
President & Chief Executive Officer