February 16, 2021

Via email: regs.comments@federalreserve.gov

Docket Number R-1723 and RIN Number 7100-AF94

To the Federal Reserve Board of Governors:

The Illinois CRA Coalition has dedicated considerable time and energy into understanding the Federal Reserve's Advanced Notice of Proposed Rulemaking (ANPR) on the implementing regulation of the Community Reinvestment Act (CRA), with the aim of mobilizing Coalition members to provide thoughtful and constructive comments. While we are pleased at the number of separate comments that our efforts have spurred, we have become aware that the depth and complexity of this ANPR creates a barrier to providing comments in the manner requested by the Federal Reserve. Few, if any, community organizations or small businesses have the time or expertise to answer many of the 99 questions with any depth and substance. Although comments that provide a narrative (like this one) may create a challenge in connecting these comments with specific questions within the ANPR, we urge the Federal Reserve Board to make the effort to do so because they reflect community-based feedback critical to ensuring that the CRA meets its intended goal – addressing historic redlining through increased access to banking and credit.

At the highest level, the Coalition commends the Federal Reserve in its effort to strengthen the CRA. We strongly agree with the priorities of the reform effort as they are described in the ANPR, including the promotion of financial inclusion, updating the regulation in light of changes in the banking industry, incentives for increased community-based lending and support of Community Development Financial Institutions (CDFIs), and providing greater clarity, consistency and transparency in the examination process.

However, since its passage in 1977 – spearheaded by grassroots organizing in Chicago and elsewhere – the CRA has evolved into something seemingly inaccessible and far removed from offering tangible solutions to the pressing needs in low- and moderate-income communities and communities of color, and for individuals and small businesses seeking access to credit. Meanwhile, the racial wealth gap has expanded significantly. Currently, the average white household has about 13x the wealth of the average Black household and no progress has been made on the racial wealth gap since 1968. As a result, questions remain about whether "strengthening" the CRA exam process would result in more substantive and measurable benefit to low-and moderate-income (LMI) communities or communities of color and small businesses, or appropriately address the CRA exam grade inflation that currently results in 95% of financial institutions performing at a Satisfactory level or higher, despite evidence of gross racial disparities in lending practices among financial institutions. And now, the need for CRA reform has become ever more urgent, as the COVID-19 pandemic compounds already existing racial disparities in access to banking and credit.

This letter will focus on five broad areas within the reform proposal: (1) the role that CRA should play in promoting racial equity; (2) how evaluation metrics can promote more lending, greater accessibility, effective oversite and include community input; (3) whether all affordable housing should be treated equally; and (4) how to make the examination process more transparent and consistent.

CRA and Racial Equity

As the Federal Reserve recognizes, at its core, the CRA is a civil rights law intended to address historic redlining that blocked racial minorities, and in particular Black households, from accessing credit. As it relates to the question regarding how CRA regulatory implementation can address the ongoing systemic inequity in credit access for underserved individuals and communities defined by race, ethnicity, gender, income and disability, we believe that additional proxies are insufficient and have been proven ineffective. The precedent set by the Federal Reserve in creating incentives to provide financial products and services to Native Americans can and should serve as the foundation from which to provide similar incentives towards other underserved groups.

In addition, while we agree that the CRA is intended to work in concert with other civil rights laws and are mutually reenforcing, we do not believe it is enough to refer to those laws to ensure that access to credit is not still subject to systemic biases. There is broad consensus that enforcement of the Equal Credit Opportunity Act and the Fair Housing Act is inadequate, and that violations of these laws do not regularly result in sufficiently harsh punishment that results in the modification of practices and behaviors in the industry. As such, we request that the Federal Reserve institute a "Presumption of Needs to Improve" for any financial institution that is found to have substantively violated any civil rights, equal protection or consumer protection laws, including the Americans with Disabilities Act, irrespective of whether they settle without admitting guilt.

Systemic fair lending cases also require the ability to analyze HMDA data and collect other evidence, which requires specialized knowledge and skills often out-of-reach of many individuals and community-based organizations. We therefore also encourage the Federal Reserve to use its research resources to independently conduct fair lending reviews as part of its exam process, and to encourage the OCC and the FDIC to do the same.

Home Ownership – 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." *Closing the Gaps: Building Black Wealth through Homeownership*, p. 1, Urban Institute (Nov. 23, 2020). Considering how important home ownership is to creating household wealth and the long-standing disparities in home ownership rates by race and ethnicity, the CRA evaluation process 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. Banks need to do better in overcoming barriers to home ownership caused by overly stringent underwriting criteria, appraisal bias, lack of down payment assistance, and other factors. Moreover, promoting home ownership is a strategy for revitalizing communities suffering from disinvestment in their single-family housing stock. Finally, banks must be evaluated on the loan products offered to low- and moderate-income borrowers to ensure that they actually lead to sustainable homeownership.

Small Business - Given that small business ownership is also a critical means to create household wealth, the CRA evaluation process should take into account whether banks offer affordable and flexible small business credit and deposit products that create a foundation for sustainable small businesses development and success in historically disinvested communities of color. According to the U.S. Minority Business Development Agency, lack of access to capital—rooted in lending discrimination and the racial wealth gap—is the greatest barrier to small business ownership and creating sustainable jobs in Black and Brown communities. In addition, racial disparities in small business lending persist even after controlling for differences in creditworthiness, personal wealth and other relevant factors. The COVID-19 pandemic has only exacerbated racial disparities in small business development. The University of California's economics faculty analyzed U.S. Department of Labor Statistics and found that more than 2 out of 5 Black small businesses have been forced to close their doors during the pandemic, which is twice the rate of white businesses. In addition, studies by Color of Change and the National Community Reinvestment Coalition, found disparities in the distribution and quality of small business relief loans under the CARES Act's Paycheck Protection Program. Each concluded that discrimination is a significant barrier to access to PPP loans for minority businesses despite being the most impacted by COVID-19. The CRA can be an effective tool for addressing barriers to access to capital, such as lending discrimination, by providing a strong incentive to financial institutions to increase their lending to Black and Brown entrepreneurs.

<u>Evaluation Metrics</u>

Assessment Areas- In terms of defining "community" when assessing a financial institution's performance in meeting the financial service needs of LMI communities, assessment areas should continue to be primarily based upon the geographic location of a financial institution including, but not limited to, branches, loan production offices and deposit-taking ATMs. Community-based organizations have reported that, for the low- and moderate-income communities and small businesses that they serve, brick and mortar branches are important for solving problems with accounts, more complex business transactions, and for seniors and others who do not have access to reliable internet or the comfort with technology to use online services. Additionally, COVID-19 has exposed the deep inequities in internet access for low-income and rural communities and individuals.

To the extent that there is continued lessening of reliance on physical bank branches in the future, banks need to be appropriately evaluated in terms of how well their marketing practices, financial products, and non-branch physical services (e.g., ATMs and loan production offices) meet the needs of low- and moderate-income communities—particularly communities with a large number of unbanked people and low levels of lending.

For those institutions who are either 100% virtual or who have created internet banks or service platforms from which they can collect deposits, make loans, or do both, a "Top 10" market share threshold for deposits, loans or both would represent a reasonable starting point as a trigger for assessment areas.

Additionally, we do not believe that any financial institution can appropriately serve the entire country in an equitable manner throughout all geographies. Similarly, there is no financial institution in the United States that can provide the financial resources to appropriately address the credit needs of LMI individuals and communities throughout all geographies. Spreading limited resources across such a large geographic market would diffuse the impact of those resources to the point where they are not substantive or helpful. As such, those institutions who aspire to have the entire country as an assessment area should be required to develop a strategic plan from which they identify a reasonable number of markets (based on the institution's capacity, resources and community input) that are banking deserts or underserved by other institutions, perform outreach to ascertain community input and need, and develop a business plan from which to serve those markets in a responsive and substantive manner. There should not be a national assessment area irrespective of the business model of the bank. Similarly, while we appreciate the Federal Reserve's proposal to eliminate full-scope and limited-scope assessment areas, we do not agree with the premise that certain markets be weighed differently than others. All markets deserve to be treated equitably and assessed under the CRA regulatory framework as such.

Retail Lending Screen / Adopt Equity Ratio - The method in which performance will be quantifiably assessed poses a similar challenge given that financial institutions will, for the most part, be assessed against other financial institutions serving the same market. If most banks decided to half-heartedly serve an LMI or minority community, then all will do well in this retail lending screen since the "average" already includes disinvestment by the industry serving the market, and a performance threshold of 30% lowers the bar even more. Grading on a curve does not seem appropriate given the track record of the industry.

A regulatory precedent was set with regard to interstate banking and deposit generation that set a threshold of 50%. While still low when applied to the performance of already underperforming financial institutions, it is less concerning than 30%.

A more useful retail lending screen – and one we encourage the Federal Reserve to adopt - would be one based on equity. This "equity ratio" would compare a bank's level of lending in a middle- and upper-income (MUI) community with its lending in an LMI community, with a percentage threshold set to normalize performance.

Access to Data - We encourage the Federal Reserve to require that large financial institutions provide detailed deposit information that will allow regulatory agencies, public policy advocates and community organizations to understand the connection - or lack thereof - between local deposits and local lending. Because all large financial institutions collect and analyze this data for product development and marketing purposes and utilize a small number of software providers to manage this data, the burden in providing this information would be minimal.

Do Not Aggregate Data - Similarly problematic is the proposal to combine low-income and moderate-income categories, and to aggregate all categories of mortgage lending and business lending in the assessment of performance. These individual data points are invaluable in assessing the real impact of CRA-motivated lending and investing. How well – or poorly – a financial institution does to offer products that are responsive to all segments of their service area, including low-income areas, should be a key component of the CRA exam. We strongly urge the Federal Reserve not to combine these categories and to keep them separate.

Evaluate Based on Community Engagement, Investment and Support - The CRA should more meaningfully require community engagement by banks with community-based organizations, including 501(c)3 nonprofit economic development, entrepreneurship and business service organizations, in regional and local community development planning, financial education, housing counseling efforts and other activities. This engagement must show that the bank has committed the time and resources necessary to understand and respond to local needs, and must be matched with actual investment and financial support to be meaningful.

We also request that community outreach associated with each financial institution CRA exam be conducted with a minimum of five individuals or organizations that serve or represent low- and moderate-income communities, communities of color, and small businesses/entrepreneurs. The information collected in such outreach should be made available at the FFIEC level so that other examiners at other agencies can benefit from the interviews, and be publicly available so that local community needs as discussed between regulatory agency representatives and local community organizations can be widely shared and utilized for community building initiatives.

Community Development Services / Technical Assistance - We do not support expanding CRA credit for financial education provided to households at any income level. The CRA is intended to increase access to credit for low- and moderate-income consumers, and to address historic redlining that impacted their ability to get home and business loans and credit. Because of this, only financial education, which includes managing credit as an asset, for low- and moderate-income households and small business owners should count for CRA consideration.

Ratings - We also do not support the proposal to reduce the number of ratings on a state level and on subtests from five to four. This proposal would result in fewer distinctions in performance. In addition, if the proposals for more data are adopted, future CRA exams should be able to distinguish between differing levels of responsiveness and make performance easier to measure. Five ratings must be retained on the state level and on subtests.

<u>Naturally Occurring Affordable Housing</u>

The proposal that naturally occurring affordable housing (NOAH) count toward CRA so long as the rent is affordable and the units are located either in an LMI community or a community where the median renter is LMI is well-intentioned but lacking in detail. Missing from this assessment is any indication that the activity has safe-guards to ensure long-term affordability and to avoid or discourage displacement and gentrification. We do not support this addition unless at least these two protections are in place.

Transparency, Clarity and Consistency

Finally, we believe that past practices at the FFIEC level can serve as a more effective method to achieve consistent treatment of CRA activity by banks than what is currently proposed. Allowing agencies to resume the creation and publication of CRA Interpretive Letters, the re-introduction of the interagency Advance CRA Examination Techniques training for examiners, and the annual publication of the OCC's Community Development Investments directory would all serve as continuing the dynamic guidance by all three Federal bank regulatory agencies to the industry and to community stakeholders as to what can be considered for CRA consideration.

Conclusion

We appreciate the direction that the Federal Reserve Board has embarked upon but caution that it must not end up with proposals that replicate existing CRA ratings inflation or do not result in the substantive and measurable improvement in low- and moderate-income communities, communities of color, and for minority consumers and small business owners. Strengthening and modernizing the CRA at this moment is crucial if we want to recover from the COVID-19 pandemic in an equitable manner.

Sincerely,

Chicago Community Loan Fund
Chicago Lawyers' Committee for Civil Rights
Chicago Rehab Network
Chicago Urban League
Housing Action Illinois
Small Business Majority
The Resurrection Project
Woodstock Institute