2/16/2021

Federal Reserve Board
Via email: regs.comments@federalreserve.gov

Re: Comments on Federal Reserve CRA ANPR: Docket Number R-1723 and RIN Number 7100-AF94

To Whom It May Concern,

The Central Valley Urban Institute writes this letter in response to the Federal Reserve Board (Board)'s proposal to reform Community Reinvestment Act (CRA) rules. We appreciate the Board's interest in strengthening the CRA so that banks can better meet the credit needs of low- and moderate-income (LMI) communities and communities of color in our state and throughout the country.

The Central Valley Urban Institute is a non-profit organization that helps minorities communities such as socially, economically, financially and politically.

We thank the Board for refusing to join the Office of the Comptroller of the Currency (OCC) which ignored public comments and rushed through a harmful CRA rule which will lead to less reinvestment, and to reinvestment that is less responsive to community need. We commend the board for initiating a more thoughtful process that relies on data, and that calls out important objectives, such as: more effectively meeting the needs of LMI communities and addressing inequities in credit, promoting community engagement, and recognizing that CRA and fair lending responsibilities are mutually reinforcing. We urge all three bank regulators to join this process and develop a unified CRA approach.

We highlight the following key principles, which should inform any CRA reform efforts: 1. **Take race into account**. The CRA should hold banks accountable to meet the credit needs of borrowers and neighborhoods of color so that it achieves its Congressional purpose of addressing redlining.

2. **End CRA grade inflation and ensure greater reinvestment**. CRA reform efforts should refine the system so that banks are incentivized to do more to serve communities, not the same, or less. 3. **Impose consequences for harm caused**. Banks should suffer downgrades and potentially fail their CRA exams if they discriminate, displace, or exacerbate community credit needs. 4. **Consider both quantity and quality of reinvestment** to ensure bank activity adequately serves low- and moderate-income and Black, Indigenous and People of Color (BIPOC) neighborhoods and people, and helps meet local community credit needs.

5. **Maintain a separate focus on community development (CD) lending and investment.** Community development is critical and deserves its own test. But, combining lending and

investment could disrupt the affordable housing and economic development ecosystems.

6. **Expand scrutiny of financial services such as branches and bank accounts**. The Board does well to highlight the impact that branch and product access can have on bringing people into the financial mainstream and helping them to achieve financial stability and build wealth.
7. **Increase community participation**. The Board acknowledges the important role that community input plays in ensuring that banks are serving LMI communities and communities of color.

8. **Tie bank obligations to bank presence and activity, while also encouraging reinvestment in poorly served areas like rural communities and Native American lands**.
9. **Beware of creating loopholes or alternatives that do not serve the goals of CRA**. Banks will gravitate towards the easiest and cheapest methods of passing their CRA evaluations, so care is needed to prevent allocation of CRA credit for soft but less impactful activities.

We expand on these principles below:

1. **Take race into account**. We thank the Board for raising this issue, but urge the Board to propose strong action that is not clearly stated in the Advanced Notice of Proposed Rulemaking (ANPR). Regulations must hold banks accountable to meet the credit needs of borrowers and neighborhoods of color so that CRA can finally achieve its Congressional mandate to address redlining. As banks are evaluated for helping to meet the credit needs of LMI residents and communities, so too it should be for people and neighborhoods of color. If the Board does not put race on equal footing with income, the rules should at least provide a mechanism so that superior bank reinvestment in neighborhoods of color and to borrowers of color can enhance a CRA rating, and poor service can result in a lower rating. This can be accomplished through impact scoring across all products and services, or through consideration of these issues in evaluating a bank's performance context. Such consideration should take into account any and all disparities in marketing, originations, pricing, terms, default rates, collections, etc. Additionally, a category of "underserved areas" could be defined to center on neighborhoods of color that are not well served by banks such that banks can get CRA credit for lending and investing there, even if these "underserved areas" are located outside of a bank's CRA assessment area. Finally, no bank should pass its CRA evaluation if the regulator finds evidence of discrimination based on race, ethnicity, gender, disability, and other protected classifications, based on its analysis, other agency investigations and findings, outside litigation, community comments, community research, or otherwise. At a minimum, findings of discrimination should result in an automatic CRA rating downgrade.

2. **End CRA grade inflation and ensure greater reinvestment.** CRA reform efforts should result in banks doing more to serve communities, not merely provide the same level of reinvestment. Approximately 96% of banks "pass" their CRA ratings. Community groups do not believe that 96% of banks are doing a "Satisfactory" or "Outstanding" job of serving communities. The ratings status quo is not accurate, fair or acceptable. The Board does not help matters by suggesting that new benchmarks should be set so that bank CRA ratings should approximate historic ratings distributions. Instead, benchmarks should be aggressive so that banks are motivated to do more, and so that those that do not do more suffer lower ratings. Additionally, we disagree with the

board's proposal to do away with the sub ratings of "High Satisfactory" and "Low Satisfactory." These sub ratings give banks something to strive for, and, importantly, help the public distinguish among the performance of the numerous banks that receive an overall "Satisfactory" CRA rating. Finally, the board should consider restricting ratings upgrades to banks that can move from an overall "Satisfactory" rating to an "Outstanding" rating. Banks that poorly serve the community in some areas should not be able to bump up to a "Satisfactory"

rating by performing a particular service or activity that the Board signals will garner extra credit.

3. **Impose consequences for harm caused.** Banks should suffer downgrades and potentially fail their CRA exams if they discriminate, displace, or harm communities. CRA provides banks with credit for helping to meet community credit needs. But in discriminating, displacing, gouging, and abusing customers, banks can exacerbate the credit needs of communities through higher costs and lost equity, foreclosure, eviction, impaired credit scores, garnishments, job loss, and deferred or denied ability to build wealth through homeownership or business ownership. CRA does not well account for such harm, often handing out "passing" CRA ratings to banks that do well in certain areas, while putting on blinders when it comes to the ways in which those same institutions also do much harm. CRA examiners should consider the quality of loans and investments to LMI communities and communities of color, and whether certain communities are particularly vulnerable to displacement and gentrification based on existing methodologies. This could take the form of examiners using their judgment to rebut a presumption of a Satisfactory rating or to lower a recommended ratings conclusion for lending that comes with high costs, abusive terms, high defaults, numerous and predatory debt collection and other harmful features; or lending that is underwritten to higher than current rents in a census tract subject to displacement pressures. Currently, one financial institution is seeking a national bank charter while relying on a CRA plan that promises online bank accounts and double-digit interest rate consumer loans targeted to Latino and LMI consumers which have resulted in numerous defaults subjecting consumers to abusive debt collection practices. This is the opposite of CRA. The Board should require the collection and CRA consideration of data on marketing, pricing, terms, defaults, and collections to aid examiners and the public in forming determinations as to whether bank practices are helping or exacerbating community credit needs. Displacement and consumer harm, as well as violations of the Americans with Disabilities Act (ADA), should be explicitly added to discrimination and violation of consumer protection laws as triggers for CRA ratings downgrades. All of these considerations should be informed by community input.

4. **Consider both quantity and quality of retail reinvestment to ensure bank activity benefits LMI, people of color and neighborhoods of color, and meets local needs.** CRA rules should retain a primary focus on low- and moderate-income people and communities (while also including a new focus on people and communities of color). This means that financial literacy, affordable housing, and Community Development services should clearly benefit LMI and of color residents. We thank the board for moving away from a system that focuses on a dollar-based ratio to one that looks at units, smaller loans, and impact. We also think that the board should retain separate consideration of lending to low-income borrowers and communities, and to

moderate-income borrowers and communities, and not lump LMI together. We think that qualitative factors should be considered to reward impact, perhaps through the use of impact scoring, which can penalize discriminatory, displacing, and harmful conduct.

- *Mortgages.* We believe that retail mortgage lending should not give banks equal credit for loan originations and loan purchases, but instead should prioritize loan originations to owner-occupants and only give loan purchase credit when banks purchase loans from

nonprofit, mission-driven lenders that are well-serving the community. CRA should discourage single-family mortgage lending that fuels displacement in gentrifying communities, by providing less or no credit for mortgages to middle- and upper-income borrowers in impacted LMI neighborhoods. All multifamily loans should be considered as part of the retail lending test, and that impact scores should enable positive credit for the adoption of and adherence to anti-displacement measures such as CRC's Anti-Displacement Code of Conduct, and downgrades for displacement mortgages. Mortgage servicing, forbearance, post-forbearance, debt collection, REO, and related activities should impact ratings, perhaps through impact scoring.

- *Small business.* The Board highlights the needs of smaller businesses for smaller loans, but does not propose that the rules prioritize them. In fact, the board proposes to increase the threshold for what the CRA considers a small business loan and a small business, from $1 million to $1.6 million. While small businesses may need larger loans, and larger businesses may as well, the CRA should retain its focus on loans under $1 million and on businesses with under $1 million in revenue, as the needs of such businesses for such loans is great and woefully unmet, especially in light of COVID-19 and its harsh impact on small businesses, especially those owned by people of color. The Board can provide that serving the smallest businesses and those owned by people of color and in neighborhoods of color could garner extra credit perhaps through impact scoring. We look forward to the release of Section 1071 race, ethnicity, gender, and neighborhood data on small business lending which can further inform CRA examinations and allow examiners to reward banks that well serve women and BIPOC-owned businesses through good products like term loans and lines of credit, and penalize banks that serve these communities with Merchant Cash Advance loans and other high priced loan products.

- *Consumer*. A bank's consumer lending should be considered under CRA when it constitutes a major product line. As noted above, such consideration should include rates, terms, defaults, collections, and related data, as well as community input, to determine whether such lending is helping to meet community credit needs, or is harmful.

5. **Maintain a separate focus on community development lending and investment.** Community development is critical and deserves its own test. But, combining lending and investment could disrupt the affordable housing and economic development ecosystems. We support the proposal to establish a separate community development test, but oppose the suggestion that

the CD lending and CD investments tests would be combined. We are very concerned that doing so would disfavor Low Income Housing Tax Credit Investments, which can be complex and expensive for banks to transact and may provide a lower return than CD lending. Similarly, equity investments and contributions are vital to communities while providing lower returns to banks, and must therefore continue to be valued and evaluated separately. The board also proposes to encourage patient CD lending which could further favor CD lending as compared to CD investing. Both lending and investment are critical to affordable housing and economic

development such that they should be examined separately. We think the rules should prioritize annual lending and investments. Impact scoring could be used to reward patient and portfolio CD activity, as well as impactful CD efforts.

Data and impact. We commend the board for proposing additional data collection on CD activity as data is sparse. Standards regarding affordability should not be relaxed, so that at least 50% of units in a building should be deed-restricted affordable housing and the residents must be LMI for a CD loan to qualify for CRA credit for creating affordable housing. Impact scoring can further refine credit for multifamily housing by incentivizing green buildings, Transit Oriented Development (TOD), and projects that serve Extremely Low Income (ELI) residents, homeless persons, disabled persons, and/or seniors. Impact scoring should also reward banks that adopt and adhere to CRC's Anti Displacement Code of Conduct, ANHD's Best Practices for Multifamily Housing, or similar policies that are effectively designed to mitigate gentrification and displacement. Impact scoring can also reward innovative and wealth-building measures such as providing tenant services like homeownership counseling for affordable housing tenants.

6. **Expand scrutiny of financial services**. We strongly support the Board's focus on enhancing the services test by providing a more detailed review of services, branches, and bank product impacts on communities. Bank presence remains important to LMI communities and communities of color and banks should be examined for their presence in these communities, as well as their record in opening and closing branches. While critically important, branch presence is not the only indicator of how well banks are providing financial services to communities. The Board should evaluate the nature of products offered and their usage by LMI and of color residents. Banks should be encouraged to offer bank accounts tailored to meet the unique needs of seniors as well as survivors of domestic violence. Banks should be encouraged to participate in the Bank On program which offers no/low cost and no overdraft accounts, to provide remittance and money order services, to provide ATM surcharge-free access to public assistance delivered on cards, and to reasonably operate other state-controlled assistance programs like Unemployment Insurance benefits. The Board should reward banks that increase access for the immigrant community to products and services through the provision of translation and interpretation services, and acceptance of alternative forms of identification including Individual Tax Identification Numbers (ITIN) for account opening and mortgage and small business loan qualification. We appreciate the Board suggesting that more data on bank products should be collected to inform CRA ratings and the public's appreciation of bank activities.

7. **Increase community participation.** The Board identifies this as an objective of the rule making,

but does not clearly propose ways to achieve the objective. Enhancing the role of community contacts, input, comments, participation, and performance context in the CRA process will help to ensure that bank activity is more closely tied to community needs. Enhanced data collection and public access will enable community members to better inform the regulators and provide input. The Board should establish a minimum of ninety (90) days for public comment on merger and other bank applications, provide that public hearings will be held on such applications if community concerns are raised, expedite Freedom of Information Act (FOIA) requests during

applications, and encourage banks to develop Community Benefits Agreements (CBAs) with community groups. CBAs can help banks and regulators identify community credit needs and should be incorporated into the merger process, with agreed upon CBAs written into any merger approvals and included in future bank CRA reviews and examinations. CRA examiners should conduct more community contacts and review community group and related research to determine community needs, bank performance, whether products and services are helping or hurting communities, whether Minority Depository Institutions (MDIs) and Community Development Financial Institutions (CDFIs) are truly serving communities (more below), and to inform subjective examiner determinations such as through impact scoring.

8. **Bank obligations should be tied to bank presence and activity, while encouraging reinvestment in underserved areas like rural communities and Indian Country.** CRA rules focus bank CRA activity in assessment areas which are generally around bank branches. CRA reform efforts, in the name of updating CRA to reflect the expansion of online banking, threatens to undermine the CRA concept of banks serving their local communities. CRA assessment areas for banks should be centered around bank branches, deposit-taking (as stated in the CRA statute itself) and non-deposit taking ATMs, and anywhere the bank conducts significant business and tries to interact significantly with consumers, such as via lending, marketing, online deposit-taking, debt collection, and other activities that represent a significant share of bank business, but also represent significant market share in a given community. Non-retail bank reinvestment obligations should follow similar principles and be developed with an eye toward increasing reinvestment in bank deserts. There should be a presumption against national assessment areas, which sever the link between CRA and the notion of banks serving local communities. An assessment area that is everywhere is not tied to anywhere.

   Rural. We thank the board for proposing to significantly enhance CRA activity in rural areas by removing the distinction between full scope (usually urban) areas subject to greater scrutiny, and limited scope (more often, rural) areas subject to less regulatory scrutiny and therefore less investment. This framework has created a dual CRA system, leaving rural communities with no or subpar CRA activity. The new system must scrutinize lending, investment, and services in all communities, including rural communities. This can be an impactful, if long overdue, change.

   Indian Country. Similarly, we appreciate the Board's search for suggestions on how best to structure the rules so banks can better serve Native American communities. One suggestion is to give banks credit for CRA activity in Indian Country even if not in a bank's CRA Assessment Area. We support this proposal if the activity is tied to serving LMI residents and census tracts, and the activity is actually helping meet local credit needs as determined by the impacted Native American community. We also question why banks that currently have Indian Country within

their assessment areas are not well serving them, and whether other banks located near Indian Country have impermissibly excluded such communities from their CRA Assessment Areas. The Board should scrutinize assessment area boundaries, as well as lending and investing activity to determine if CRA, fair housing and fair lending laws are being violated. All banks, but especially those with assessment areas that currently include Indian Country, should be encouraged to conduct more meaningful outreach to and engage with Native American communities, to identify community needs, to lend and invest to meet those needs, to provide financial services such as establishing bank branches that provide accessible bank account access and that offer credit counseling and repair services, and to hire Native American staff.

9. **Beware of creating loopholes or alternatives that do not serve the goals of CRA**. We support the Board's interest in supporting Minority Depository Institutions (MDIs) and Community Development Financial Institutions (CDFIs), as the vast majority of MDIs and CDFIs are well serving their communities and deserve to be supported. But some MDIs are large institutions that suffer the same shortcomings as other banks, discriminating, displacing, and overcharging communities. So, too, the CDFI certification process was not designed to be a stamp of approval (the CDFI Fund is reviewing its certification guidelines currently), and that CDFI status confers various benefits on such corporations may encourage people to start such entities without the purest motives. We propose instead that MDI and CDFI status confers merely a rebuttable presumption that the corporation is well serving the community and that loans and investments in them should earn CRA credit for banks. Examiners should consult community contacts, rates charged, defaults, collections, complaints filed, litigation, CRA records, evidence of discrimination or consumer protection violations, and findings from relevant agencies like the CDFI Fund. Perhaps impact scoring can play a role here. Banks should be encouraged to invest in local CDFIs and those in their existing assessment areas. We are concerned that banks are allowed to chase activities outside of their assessment areas when they are not adequately serving their existing assessment areas, despite regulatory determinations to the contrary.

CRA Strategic Plans. We are also concerned that the CRA Strategic Plans option may become the option of choice for institutions not interested in CRA, as it provides a mechanism to defer CRA Planning until later in a charter or merger application process, through a process that it directs and that is opaque to community groups despite supposed community participation requirements. CRA Strategic Plan requirements need to be strengthened by requiring more transparency regarding planning, groups outreached to, comments submitted, and bank responses, at a minimum. If not, the CRA Strategic Plan option should be discarded.

Conclusion

The Community Reinvestment Act has done so much for LMI communities, creating trillions of dollars in lending and investment that help families and neighborhoods stabilize and build wealth. But CRA rules have ignored communities of color meant to be served by the nation's anti-redlining law, and have set the bar too low for banks by allowing discrimination, redlining, displacement, harm, weak reinvestment, and rejection of community input. CRA rules need to be strengthened to address these concerns.

Thank you for seeking our input and for your efforts to update the CRA to increase responsible lending and investment in LMI communities and communities of color. To discuss this comment letter, further,

feel free to contact Eric Payne.

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Very truly Yours, Eric Payne

Eric Payne: Program Executive

cc: California Reinvestment Coalition