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February 16, 2021

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551
Via email: regs.comments@federalreserve.gov

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

To Whom It May Concern,

On behalf of Banana Kelly Community Improvement Association ("BKCIA") and the Banana Kelly Resident Council, I am writing this letter in response to the Federal Reserve Board's ("Board") Advanced Notice of Proposed Rulemaking ("ANPR") to reform the 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 communities like ours in the Bronx, New York City and throughout the state and country. While federal regulators often refer to our neighborhoods as "low- and moderate-income" and "minority" communities, we prefer to call ourselves vibrant communities of color that have persevered in spite of historic and systemically racist practices redlining, disinvestment and wealth extraction. We know that CRA has been a critical tool for 40+ years to bring outside investment back into our communities, and we strongly hope that the improvements to CRA the Board seeks to make will help undo more of the damage done over generations.

About Us: South Bronx Community residents came together to form Banana Kelly Community Improvement Association (BKCIA) in the late 1970s in response to widespread disinvestment and the resulting devastation of once-thriving neighborhoods. Today we continue to play a crucial role in the revitalization of the Longwood, Hunts Point, Morrisania and Mott Haven neighborhoods of the South Bronx. As a mutual housing association, we know from experience that community control and ownership of land and institutions like housing are crucial ingredients for families to thrive and neighborhoods to improve without massive displacement. This community control and ownership requires an increase in smart, intentional investment, which is what we hope a stronger, modernized CRA will result in.

We appreciate the Board's refusal to join the Office of the Comptroller of the Currency ("OCC") in finalizing their CRA rules in 2020. The OCC ignored public comments, including those we conveyed to the former Comptroller both in writing and in person, and rushed through a problematic rule. Should that rule survive, we believe it will hurt our neighborhoods through a reduction in both the quality and quantity of reinvestments. We commend the Board for putting forth a more thoughtful process that takes a more robust approach to metrics and other 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.

A Note on Language and Terminology: We understand that federal regulators operate in a framework that often includes outdated language. In addition to our opposition to terms such as "minority", we also feel the term "banking desert" should be reconsidered (see Question 25). The term is commonly used to describe the absence of bank branches but this analogy is problematic. Deserts are naturally occurring and important ecosystems that contribute to a healthy planet that we should not seek to eradicate. The term implies that the absence of bank branches in BIPOC/LMI areas is a natural and healthy occurrence. We ask the Board to consider updating language in any new rulemaking and we are happy to offer more feedback on this topic.

Key Principles for CRA Reform: Based on our decades of experience as an organization engaging with our membership base and in numerous coalitions working in historically redlined communities, we believe that any reform to CRA must incorporate the following key principles:

1. **CRA investments should be judged and evaluated based on QUALITY, QUANTITY and IMPACT**
    - Just like the Fair Housing Act, CRA should include an affirmative obligation to serve people and communities of color with responsive, meaningful activities. Both Acts were passed in response to structurally racist practices and policies such as redlining, and neither will ever fulfill the intent of their passage without an anti-racist framing and mission.
    - When considering retail lending, community development finance, local branches, banking products, and services, regulators must develop metrics that consider the quantity, quality and impact of CRA activities.
    - The first rule should be DO NO HARM. It is simply not acceptable for a bank to harm communities at a systemic level through extractive and injurious practices and then to score highly on an exam because they reinvest a small fraction of those extracted dollars back into harmed areas. Regulators should downgrade ratings for harmful and extractive practices, including products, practices, and patterns of lending that lead to harassment, displacement, high costs, and a loss of wealth. (See comments in the sections on multifamily lending and bank branches below for more details.)
2. **Community Voices and Input must be at the heart of the CRA.**

- Community voices and input must be woven into the CRA process at all levels, including the performance context and needs assessment, the evaluation of bank performance, and additional areas where CRA is taken into account, such as branch closures, mergers and acquisitions, and other applications.
- We appreciate your request for comments in this process. We ask that you continue to work with community organizations as you revise metrics and language in the later stages of the rule making process.

3. **Assessment areas must maintain PLACE-BASED, LOCAL obligations**
    - Maintain assessment areas where banks have branches/ATMs, and expand to other areas where banks also do considerable business, such as lending and taking deposits
    - Any assessment area reform must increase the size of the pie: maintain or increase quality reinvestment where it is needed within large cities like New York City, while also directing capital to under-banked regions.

Priority 1: CRA investments should be judged and evaluated based on QUALITY, QUANTITY and IMPACT

Regulators must evaluate banks on the quantity, quality and impact of their activities within the communities they serve to ensure they benefit historically redlined communities: low- and moderate-income people generally and Black, Indigenous, and People of Color (BIPOC) specifically. CRA should incentivize high-quality, responsive, impactful activities and downgrades for displacement and harm.

We appreciate the Board's recognition that the CRA and fair lending responsibilities are mutually reinforcing, and for asking how the CRA can better serve people of color. As incorporated in each section below, and throughout all three priorities, we believe that banks must have an affirmative obligation to serve people and communities of color with responsive, impactful activities. Redlining, discrimination, and racial disparities in lending, banking, wealth, and income have long persisted in this country, and continue to this day. As the Board recognizes, it was the reason for the CRA in the first place, and yet the CRA has never evaluated banks on how well they serve people and communities of color. The regulators should include an affirmative obligation to serve Black, Indigenous, and People of Color (BIPOC) and communities. We invite you to look at the Obama Administration's process in the Fair Housing Act's "Affirmatively Furthering Fair Housing" rule making that took place in 2015.[1] We firmly believe that CRA can and should affirmatively further community reinvestment to benefit historically redlined people and places, and as such we recommend and support such a process inside of similar framing.

While we often consider racist wealth extractive practices like redlining to be mostly a thing of decades past, many banks continue to participate in harmful activities, even if they are one step removed. This could look like investing in predatory and fringe financial institutions, or basing

[1] https://nationalfairhousing.org/affirmatively-furthering-fair-housing/

a business model for branches on high cost fees and services that nickel-and-dime low-wealth customers into debt. In a city like New York, **harmful practices frequently are seen in multifamily lending**. As a city full of LMI renters threatened by rising rents and harassment, regulators need to understand how certain multifamily lending practices can be harmful and extractive to LMI communities. Responsible underwriting based on current rents is crucial, as multifamily mortgages that are underwritten to projected future rents encourage and facilitate the displacement of existing tenants.

For decades we have seen these harmful underwritings practices in the Bronx, going back to Freddie Mac in the late 1980s when hundreds of buildings went into disrepair and foreclosure, while a handful were rescued from future cycles of speculation by innovative and strategic community organizing.[2] In the late 1990s and early 2000s, prices rose again and many unscrupulous landlords profited by running buildings into disarray and disrepair.[3] Between 2005 and 2008, many of these buildings were sold to predatory equity investors who often used securitized debt to push sales prices to levels far disconnected from what actual rents and expenses would ever justify.[4] The result was another market crash and many more buildings falling into disrepair and foreclosure, while community groups again rescued a handful of buildings. In more recent years, prices have doubled past 2008 levels, and we have witnessed many families facing harassment, disrepair and eviction across the Bronx.[5] We have sought to work with multifamily mortgage holding banks to address building issues due to the pressures of over-financing including disrepair, harassment, evictions and foreclosures. Some banks have been more responsive than others, and we believe they should be rewarded for helping to resolve outstanding issues with problem landlords. Similarly, we believe that banks who fail to institute proper underwriting guidelines, perform their due diligence, and refuse to meet with tenant associations and community organizations to address landlord failures should be downgraded for the harm they are making possible through their financing.

Our best practices for multifamily lending developed as part of the Equitable Reinvestment Coalition at the Association for Neighborhood Housing Development include:

- **Responsible underwriting. Underwrite to current in-place rents and realistic maintenance costs**. For rent-stabilized buildings, we recommend a DSCR of at least

[2] Groarke, Margaret. "Organizing Against Overfinancing: The Northwest Bronx Coalition Campaign Against Freddie Mac." *Bronx County Historical Society Journal 39* (Fall), p 69-86. December 2002. https://comm-org.wisc.edu/papers2003/groarke.htm

[3] See "The Phantom Landlord" series in *City Limits Magazine* for an excellent case study. Dime Savings Bank, which was soon after bought by Washington Mutual, offered a huge $25M spreader mortgage to the Palazzolo Investment Group, as they ran buildings into the ground. While promoting their arrival to NYC with an "Affordable Housing Walk-a-thon", Washington Mutual was meanwhile ignoring conditions in these buildings and offering more and more money to the "Phantom Landlord". https://citylimits.org/series/the-phantom-landlord/

[4] See "New York City's Multifamily Housing in Distress." Report by University Neighborhood Housing Program. April 2011. https://unhp.org/pdf/MultifamilyDistress.pdf

[5] See https://unhp.org/blog/multifamily-meeting-march

1.2X[6]. In all cases, there should be no provisions that increase rent burden and displace tenants, be it through rent increases or reduced maintenance and services.

- **Appropriate vetting of borrowers**. Use all available resources to lend to responsible landlords who properly maintain the stock of rent-regulated and affordable housing and respect the rights of tenants. This includes consulting news reports and public lists; monitoring loan conditions, lawsuits, violations, and fines; and consulting with tenants and tenant organizers.
- **Responding to issues in buildings:** Create a formal process to work with tenants and organizers to respond when problems arise in buildings they finance.

We call upon the Board to first make sure that regulators are evaluating all multifamily loans under a set of metrics, such as lending in LMI tracts, different loan purposes, range of building sizes, and how many units are affordable to low- and moderate-income residents. Metrics like these can give an idea as to how equitably the bank is lending to see if they are reaching a range of neighborhoods, rental levels, and building types.

Second, incorporate a robust qualitative assessment to determine the nature and degree of impact (positive or negative) the bank is causing through their multifamily lending. Based on this determination, decide if the bank's rating should stay the same, improve, or be downgraded due to excessive harm. Banks should get credit for committing and adhering to multifamily anti-displacement best practices in all forms of housing, subsidized and unsubsidized. Banks should also get credit for transferring distressed properties to responsible mission driven developers, rather than selling the debt, or supporting the building being sold to the highest bidder that is only seeking to make a profit. (This will be especially important post COVID.) Similarly, they should be penalized for lending to landlords who harass or displace tenants, and/or keep buildings in poor conditions.

(While not our work directly, we offer the following comments based on the work of our partners in the Equitable Reinvestment Coalition convened by ANHD regarding small business and homeowner lending and support.)

We support the board's proposal to evaluate borrower and distribution metrics and have a separate qualitative analysis, with the possibility of additional credit for responsive products and practices. Just like in multifamily lending, there must also be downgrades for harm. The exam must evaluate and **prioritize small loans to very small businesses, BIPOC-owned businesses, and lending in underserved communitie**s. This can be done by looking at low- and moderate-income communities separately; categories of loan size and business size; lending by race/ethnicity of owner and in communities of color; originations vs purchases. As data is available, regulators should also evaluate loan types separately (credit cards serve a purpose but aren't as impactful or in has high demand as traditional loans and lines of credit).

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[6] DSCR = Debt Service Coverage Ratio. It refers to the income required to pay the mortgage. DSCR < 1.0 means that the landlord does not have sufficient income to pay debt payments each month. Thus, a DSCR of 1.2 means the landlord has more than enough income to pay the debt, and less incentive to raise rents or reduce costs.

The qualitative analysis would evaluate the products and practices the bank has implemented to achieve metrics in a meaningful way. Banks that prioritize larger businesses, bypass immigrant communities or borrowers of color, or rely only on credit card loans should be downgraded. Banks that demonstrate responsive products and practices should get positive credit.

Regulators can evaluate how well banks support small businesses in other areas of the CRA as well, such as loans and investments in CDFIs or MDIs identified as meaningfully serving BIPOC, low-income, and immigrant communities; supporting technical assistance; and providing direct grants to small businesses (by the bank or through a nonprofit). Regulators can also evaluate how banks responded to COVID, and who they served, with grants, loans like the Paycheck Protection Program and others, debt relief, and more.

We support the board's proposal to evaluate borrower and distribution metrics and a separate qualitative analysis, with credit for responsive products and practices. Also, the metrics here and throughout cannot allow a race to the bottom. For example, a benchmark set to 70% of the market in New York City would mean that a bank could pass this test with less than 1% of their loans going to low-income borrowers. We cannot allow this type of failure to pass! There must also be downgrades for harm. The exam must evaluate and **prioritize lower-income people and BIPOC to achieve and maintain homeownership**: low- and moderate-income people and communities separately; lending by race/ethnicity; originations vs purchases (prioritize originations); investor vs owner-occupied (prioritize owner-occupied); loan types and purposes separately, connected to local needs.

The qualitative analysis would evaluate the products and practices the bank has implemented to achieve metrics in a meaningful way. Banks should be evaluated on their COVID response, such as forbearance with no lump sums, loan modifications, loan forgiveness. Also, banks should get credit for affordable CRA products that they marketed and originate to LMI borrowers and BIPOC, including products requested by local communities. Banks should also be downgraded for indications of disparate pricing, harmful products, neglect, or displacement.

Regulators can evaluate how well banks support homeownership in other areas of the CRA as well, such as financing the **construction or preservation of affordable homeownership**, including limited equity coops; grants for **housing counseling and financial education**, staff to provide financial education or homebuyer classes; and **foreclosure prevention**.

Similar metrics for consumer lending makes sense. Quality is more important than volume in this category. Large quantities of high-cost credit cards or other high-cost loans are not helpful, and banks should not be incentivized to increase that volume.

As a community-controlled nonprofit affordable housing developer, owner and manager, we support a comprehensive community development finance test. However, within that test, regulators must evaluate loans and investments separately to maintain the requirement to make investments. The high concentration of banks and a strong CRA obligation through the investment test have ensured banks compete for and make LIHTC investments in New York City and elsewhere. These can be complicated deals and provide a critical source of financing for affordable housing. The CRA must incentivize LIHTC and a broad range of investments, including NMTC, EQ2, CRA-eligible grants, and more. Lastly, we appreciate the attention to long-term patient capital, which can be challenging to obtain given the short-erm cycle of CRA Exams. However, the final rules must also incentivize new activity each year and cycle by evaluating outstanding and new activity.

We support both a quantity and quality metric. For loans and investments, dollars are important, but equally important is the impact of that activity. The Board must be careful not to drive banks to make the largest, simplest deals possible to meet a quantitative metric. The quality score should be broader than a scale of 1 to 3, and should prioritize impactful activities as determined by local communities, with a strong emphasis on mission-driven nonprofit entities like ours. Many of these activities may be small by comparison, but the dollars will have a larger impact because of the type of work we do.
For example:

- We prioritize deeply affordable housing for formerly-homeless populations, and very low-income people living below 20%, 30%, and 40% AMI.
- Our housing is permanently affordability.
- We are committed to creating and preserving of quality jobs for BIPOC and LMI people, and not simply low-wage jobs with no path upwards
- Grants, loans and investments to community-based organizations that provide financial education, housing counseling, tenant supports, small business support and community organizing have a multiplier effect in our communities.
- The people CRA was designed to benefit trust us.
- Organizations like ours provide additional services such as childcare and healthcare, and have been able to adjust in the pandemic to make sure our residents stay safe and do not go hungry.
- Support organizing and policy work that will benefit LMI and BIPOC populations.
- We are the ones who fight back against the extractive practices in our neighborhoods. To be our ally, regulators should downgrade banks that engage in or invest in harmful practices, including offering high-cost products, loans to problematic developers, backing business with entities that foster displacement, and partnering with online lenders who charge usurious rates.
- Invest in CDFIs, especially Community Development Credit Unions. As our neighborhoods have been effectively abandoned by most banks, we are raising funds to bring a branch of a successful NYC CDCU to the South Bronx. Banks can mitigate the harm they cause in closing branches or refusing to open branches in our areas by investing in the expansion of successful CDCUs, or helping new CDCUs launch.

We support the Board's framework for evaluating branches. The Federal Reserve put forth a comprehensive analysis of bank branch locations, impact of branches opened and closed, products and practices. In addition to factors in the ANPR, regulators should consider branching in communities of color; branches in unbanked and underbanked neighborhoods (at the census tract or neighborhood level); access for immigrants; and efforts to bring people into mainstream banking.

Unbanked and underbanked communities, predominantly LMI and communities of color have been asking for branches and affordable, accessible services for decades to no avail; the need is only exacerbated as branches close and banks direct people to online services. Banks must provide all their service equitably: physical branches, online banking, and the products offered in both spaces. They must also invest in staff, education, and outreach to underserved populations, on their own and in partnership with local organizations.

For decades, there have been no bank branches between Southern Boulevard and Third Avenue in our South Bronx neighborhoods, despite the presence of major commercial strips like Westchester Ave and E 163rd Street, and the 2 and 5 subway lines that carry New Yorkers to and through our area. One of the three bank branches on Southern Boulevard has just closed (Popular Community) and one of the half-dozen branches in the Hub (149th and Third Ave) has just closed as well (Sterling National Bank). This "banking desert" zone runs about 3 miles, north to south and about 1.5 miles east to west. Most of our residents do not have cars, many are seniors and/or disabled. In this area, fringe financial institutions like check cashers and pawn shops proliferate. It is amazing that collectively banks can score well on their CRA exams while leaving such a historically-redlined area unserved. Upon questioning, the banks claim they struggle to make money on branches in our area, and have few customers. We are currently in negotiations with one of the banks that has closed a local branch about providing start-up funds for a CDCU to expand to our area. Here, in the absence of banks serving our neighborhoods, the community is taking banking into own hands. We ask the Board, how can CRA ensure our neighborhoods have access to quality banking services and branches?

PRIORITY #2: Community Voices and Input must be at the heart of the CRA.

We support the Board's goal for CRA reform to promote community engagement, however the ANPR provides little detail in how to achieve that goal. In our experience, banks with community advisory boards and other mechanisms to engage with the community are more responsive in their CRA products and practices. Such processes have led to CRA plans informed by community needs, strengthened relationships with community organizations, and led to the creation of new products and practices. For instance, regarding two recent bank branch closings in our neighborhoods, we have had meaningful and productive conversations with the bank that has a community advisory board, while the other bank has not even reached out to any local organizations to inform us of their closing or share a plan. The difference is stark!

We believe that community input must be woven into all aspects of the CRA exam process:

- **Performance context and community needs:** In addition to gathering demographic and statistical data, regulators must conduct proactive outreach and consult research centered on LMI and BIPOC communities to identify local needs and evaluate how well banks are meeting those needs. This needs to be a representative sample by geography, populations served, and area of focus. Regulators should also collaborate with community organizations to incorporate feedback from residents throughout the assessment areas.
- **Bank evaluation:** Regulators should have a similar process to gather feedback on individual banks. They should ensure the public knows about bank exams and engage in proactive outreach to solicit feedback. A similar process can be implemented at the time of mergers, branch openings/closings, and other applications that connect to CRA.
- **Banks should be evaluated on their community engagement.** Banks must also be evaluated on how well they engage community organizations and residents in their CRA plans and implementation.

PRIORITY #3: Assessment areas must maintain PLACE-BASED, LOCAL obligations

We appreciate the ANPR maintains branch-based assessment areas. ATM-based areas should remain obligatory, not optional. We oppose national assessment areas for internet banks. And for more traditional banks, we oppose any area larger than an MSA; even within just the five boroughs / counties of New York City, the CRA is not adequately addressing long standing disparities within our neighborhoods. Of course, the Board knows the difference between the Upper East Side and the South Bronx is stark, and the COVID pandemic has made these disparities all the more visible and fatal.

Related, we appreciate that the proposal seeks to direct capital to underserved areas outside of traditional assessment areas, but as it stands today, low-income, BIPOC neighborhoods are persistently neglected within assessment areas, as is the case in New York City. Too often, when investment comes in, it is for larger scale developments that fuel displacement, rather than for bank branches, affordable bank accounts, small home and small business loans, or other activities that local communities need. The CRA must maintain and strengthen a place-based, local commitment to partnering with and meeting the needs of the populations the CRA was meant to serve: LMI people and communities and people and communities of color. How can banks help our current residents build wealth and ownership? Fueling investment that displaces poor Black and Brown people and replaces them with higher wealth White residents is not the intent of CRA, even if it means the median income for an area increases. This is why simple metrics will not suffice.

Regarding internet banks that claim to operate at a national level, we invite you to consider choosing sample areas for their assessment tests, including areas that are underserved by traditional brick and mortar banks. Use neighborhoods like our alongside well-served areas as case studies to evaluate how equitably they are serving different communities.

As mentioned previously, it is terribly ironic that the vast majority of banks score highly on their exams while collectively failing to adequately serve neighborhoods like ours. Our residents constantly complain about how expensive both the banks and check cashers are, highlighting that at least at the check cashers the fees are posted up front while at the banks many are hidden. No CRA should allow 96% of banks to pass their exam in the face of persistent disparities, unmet banking and credit needs, high-cost products, and patterns of lending that foster displacement.

In addition to the points above, we urge you to advocate for an interagency approach so that all banks are held to the same standards. Further, regulators must preserve the "low" and "high" satisfactory ratings, and not combine the two in any part of the CRA; this allows a distinction between banks that are barely meeting needs and others that are doing more. Banks should be evaluated at the holding company level and evaluated on the totality of their lending, including by affiliates. They should also be held accountable for problematic practices of entities with which they do business, such as through formal referrals and partnerships. Additional data will be very useful for communities to evaluate bank performance. CRA Strategic Plan requirements must be strengthened by requiring more transparency regarding planning, groups outreached to, comments submitted, and bank responses, at a minimum.

Low- and moderate-income and BIPOC communities deserve equal access to affordable, accessible banking and credit; safe, affordable housing; quality jobs; and community services. The CRA must be preserved and strengthened with a robust analysis of quality and quantity; incorporating community input, and keeping a strong local commitment. We are happy to discuss further with you any of the points we have highlighted here, including the language and metrics used in the examination process.

Thank you for this opportunity to comment.

Sincerely,

Hope Burgess

Hope Burgess
President and CEO
Banana Kelly Community Improvement Association