CCEDA

CALIFORNIA COMMUNITY ECONOMIC DEVELOPMENT ASSOCIATION

February 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,

California Community Economic development Association (CCEDA) writes this letter in response to the Federal Reserve Board ("Board")'s proposal to reform Community Reinvestment Act ("CRA") rules. We applaud the Board's interest in and commitment to strengthening the CRA so that banks can better meet the credit needs of underserved low and moderate income ("LMI") communities and communities of color in our state and throughout the country.

California Community Economic Development Asssociation(CCEDA) is a nonprofit statewide membership association that advances the field of community economic development through training and continuing education, technical assistance, and advocacy on public policy on behalf of its membership organizations which are actively engaged in revitalizing low and moderate income neighborhoods in California and across the nation. CCEDA economic development assistance relies on a robust relationship with financial institutions, national, regional and city. It is only because of CRA and the obligation of banks to provide investment, lending and service in their respective communities that CCEDA and its members have been able to build thousands of affordable housing units and create and expand jobs for communities of color.
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**. CRA should hold banks accountable to meet the credits needs of borrowers and neighborhoods of color, so that it achieves its Congressional purpose of addressing redlining.

244 S. SAN PEDRO STREET, SUITE 412 LOS ANGELES, CA 90012
(213) 625-0105 TEL WWW.CCEDA.COM

2. **<u>Revise CRA exams to prioritize real more effective accomplishments</u> 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 harm community credit needs.
4. **Consider both quantity and quality of reinvestment** to ensure bank activity targets low and moderate income and Black, Indigenous and People of Color ("BIPOC") neighborhoods and people, and helps meets local community credit needs.
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 together could provide a <u>disincentive to small busines lending</u> and disrupt the affordable housing finance system.
6. **<u>Maintain the importance of financial services</u> 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, <u>especially during acquisition and merger</u>**. The Board is commended for acknowledging the important role that community and public input has played and will always play in helping to ensure that banks are serving LMI communities and communities of color.
8. **Beware of creating loopholes that do no serve the goals of CRA.** Strategic plans are not CRA commitments and should not be treated as such.
9. **Other community development non-profits should enjoy the CRA benefits of CDFIs.** There are thousands of community development and regional housing development organizations that making significant investments in low and moderate communities that are being ignored by financial instittutions.

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 not clearly suggested in the ANPR. Regulations must hold banks accountable to meet the credits needs of borrowers and neighborhoods of color, so that CRA can finally achieve its Congressional intent of addressing redlining. As banks are evaluated for helping to meet the credits needs of low income 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 which 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 own analysis, other agency investigations, outside litigation, community comments, community research or otherwise. At a minimum, findings of discrimination should result in an automatic CRA ratings downgrade.

2. **<u>Revise CRA exams to prioritize real more effective accomplishments</u> 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 extra credits or positive impact scores only 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 believe that they can bump up to a "Satisfactory" 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 has generally been about giving credit for good performance by banks in 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. And yet, 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 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/or 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. Further, we think 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. We urge that all multifamily loans be considered as part of the retail lending test, and that impact scores enable positive credit for 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 small business lending data that can further inform CRA examinations and allow examiners to reward banks that well serve women and Black, Indigenous and People of Color (BIPOC)-owned businesses through good products like term loans and lines of credit, and penalize banks that serve these communities with Merchant Cash Advance 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 the 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 together could disrupt the affordable housing finance system. 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 data collection on community development activity as current data here 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 established to be LMI in order 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, and projects that serve Extremely Low Income 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. **<u>Maintain the importance of financial services</u> such as branches and bank accounts**. 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, to offer no and 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 Assistance (see, https://calmatters.org/economy/2020/11/how-bank-of-america-helped-fuel-californias-unemployment-meltdown/). The Board should reward banks that increase access to the immigrant community for 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, <u>especially during acquisition and merger</u>**. The Board identifies this as an objective of the rule making, but does not clearly propose ways to achieve the objective. Enhancing the role for 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 during mergers, provide that public hearings will be held on mergers if community concerns are raised, expedite Freedom of Information Act (FOIA) requests during mergers, and encourage banks to develop Community Benefits Agreements 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 be including 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. **Beware of creating loopholes that do not serve the goals of CRA**. *CRA Strategic Plans*. We are 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.

9. **Other community development non-profits should enjoy the CRA benefits of CDFIs:** More than 4,000 community economic development organizations exist in the United States to provide place-based strategies, partnerships, and solutions to strengthen economic vibrancy and quality and of life in low and moderate income communities, <u>that are not CDFIs</u>. Community economic development differs from traditional economic development in that the focus is on making a community a better place to live and work, rather than just creating wealth for others from which much other economic development results. Borne out of inequity and/or crisis, community economic development (CED) provides targeted activities and programs that recognize each community has its own distinct economic, social, ecological, and cultural characteristics. By encouraging the use of local resources in community driven ways that enhance economic opportunities while improving social conditions in a sustainable way, lives are changed. Many of these organizations are the customers and implementors of CDFI financing, but do not enjoy the vast bank support that CDFI certified organizations enjoy. And the fact is that over 75% of these organizations are led by people of color, while less than 50% of CDFIs are led by people of color. Racial justice must extend to bank and capital support.

Conclusion

The Community Reinvestment Act has done so much for LMI communities, creating trillions of dollars in lending and investment opportunities that help families and neighborhoods stabilize and build wealth. But the CRA rules have ignored the 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 weak reinvestment activity, discrimination, redlining, displacement, harm 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 Roberto Barragan at 818-416-2555 and Roberto@cceda.com.

Very truly Yours

Roberto E. Barragan
Executive Director
California Community Economic Development Association
Former Chair, Federal Board of Governors Community Advisory Council

cc: California Reinvestment Coalition