



August 5, 2022

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Federal Deposit Insurance Corporation
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Washington, DC 20429.

**Re: Community Reinvestment Act - Joint Notice of Proposed Rulemaking
Docket ID OCC-2022-0002**

To Whom it May Concern:

AARP, on behalf of our nearly 38 million members and all older Americans nationwide, appreciates the opportunity to provide comments on the Notice of Proposed Rulemaking (NPR) regarding the Community Reinvestment Act (CRA) by the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC, or, collectively “agencies” or “banking regulators”). AARP applauds the banking regulators for taking joint steps to modernize the Community Reinvestment Act of 1977 (“CRA” or “statute” or “law) and to better align the requirements of the CRA with the rapidly changing financial environment facing today’s older Americans.

The CRA is a landmark law that requires banking regulators to encourage certain federally insured depository institutions, including banks and thrifts (“banks” or “financial institutions”) to help meet the credit needs of the communities where they do business, including low and moderate-income (LMI) neighborhoods. The CRA is premised on the principle that “regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business,” and

which provides for “each appropriate federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered.”¹

AARP strongly supports a robust, modern CRA implementation framework, and is committed to working with policymakers to ensure such framework reflects the priorities and interests of older Americans. We appreciate the opportunity to share our perspective on the NPR.

I. AARP Applauds the Agencies for Undertaking Coordinated Action to Modernize and Enhance the Community Reinvestment Act

I. Impetus for the Community Reinvestment Act

The CRA was enacted to serve as “a community development initiative [to] leverage the financial resources of private sector institutions.”² It is one of several major laws enacted in the 1960s and 1970s to address fairness and financial inclusion in access to housing and credit.³ The law is specifically designed to combat persistent and systemic inequity in the financial system for low- and moderate- income persons and communities with a framework to facilitate a financial ecosystem that supports LMI and minority access to credit and community development. The CRA was designed from its inception to tap into the financial strength of the banking industry.⁴

While the CRA does not explicitly contemplate race or ethnicity, disparities in the access to and cost of credit are at the very core of the inequities and challenges that the CRA was enacted to address. In fact, Congress enacted the CRA primarily to address decades of disinvestment and discriminatory lending practices in predominantly minority urban neighborhoods.⁵ Indeed, a primary aim of the CRA was to bring an end to “redlining,” a practice by which banks discriminated against Black and other racial and ethnic customers based on where they lived, rather than creditworthiness –systematically inflating the cost of credit, or denying credit entirely, to certain segments of the population.⁶ This ultimately resulted in limiting access to certain neighborhoods and systematically devaluing others. Beyond redlining, the CRA includes requirements that deal with factors thought to be inhibiting lending in LMI neighborhoods, such as shortage of data on appraisals; limited credit histories of LMI borrowers, and other factors.

¹ 12 U.S. Code § 2901 - Congressional findings and statement of purpose.

² Silver, Josh. “The purpose and design of the Community Reinvestment Act (CRA): An examination of the 1977 hearings and passage of the CRA.” *Conference of Consumer Finance Law, Quarterly Report, Vol. 72, No. 4* (June 2019)

³ Enactment of the CRA followed the passage of two other major so-called “fair lending laws,” including the Fair Housing Act (FHA) in 1968, which prohibits discrimination in renting or buying a home, and the Equal Credit Opportunity Act (ECOA) of 1974, which prohibits creditors from discriminating against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age.

⁴ Silver, Ibid. <https://nccrc.org/the-purpose-and-design-of-the-community-reinvestment-act-cra-an-examination-of-the-1977-hearings-and-passage-of-the-cra/>

⁵ <https://www.stlouisfed.org/on-the-economy/2018/january/community-reinvestment-act-history-future>

⁶ https://financialservices.house.gov/uploadedfiles/hhrg-116-ba15-20190409-sd002_-_memo.pdf

2. Key Features and Limitations of the Existing Framework

Fundamentally, the CRA seeks to encourage financial institutions to “serve the convenience and needs of the communities in which they are chartered to do business,” including low-and-moderate income (LMI) communities, and to do so in a manner “consistent with the safe and sound operation of such institutions.”⁷ The law accomplishes that goal by establishing an obligation that financial institutions help meet the credit needs of communities in which they are located,⁸ and requiring federal banking regulators to conduct regular examinations to evaluate banks’ activities to provide such credit, services and make investments in LMI communities where they operate.⁹

In practice, the CRA provides a framework for financial institutions and community organizations to work together to promote the availability of credit and other banking services in LMI communities and for LMI individuals. Specifically, the CRA requires the agencies to “assess the institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods,” and provides that, upon completing this assessment, the agencies “prepare a written evaluation of the institution’s record of meeting the credit needs of its entire community, including LMI neighborhoods.”¹⁰ The CRA also requires the agencies to make portions of their written evaluations available to the public.¹¹

The CRA does not delineate assessment areas. Instead, regulations promulgated by banking regulators require that banks delineate one or more “assessment areas” in which its record of meeting its CRA obligations will be evaluated, and establish criteria that a bank’s board of directors must use to determine the assessment area(s) in which its primary regulator will conduct its CRA examination.¹² CRA assessment areas typically have a geographical definition—the location of a bank’s main office, branches, and deposit-taking automatic teller machines, as well as surrounding areas (i.e., census tracts) where the bank originates and purchases a substantial portion of loans.¹³

Within assessment areas, CRA examinations evaluate banks’ service to local LMI communities

⁷ <https://www.federalreservehistory.org/essays/community-reinvestment-act>

⁸ The CRA applies only to banks that are insured by the FDIC. The CRA does not apply to bank affiliates, credit unions and nonbank financial companies.

⁹ “The CRA can be thought of as an effort to atone for the public and private sector sins of discrimination, segregation, and the perpetuation of poverty in communities of color and working class communities.”

<https://www.federalregister.gov/documents/2020/10/19/2020-21227/community-reinvestment-act>

¹⁰ 12 U.S.C. 2906(a)

¹¹ 12 U.S.C. 2906(b).

¹² See Kenneth Benton and Donna Harris, “Understanding the Community Reinvestment Act’s Assessment Area Requirements,” Federal Reserve Bank of Philadelphia, Consumer Compliance Outlook, First Quarter 2014

<https://consumercomplianceoutlook.org/2014/first-quarter/understanding-cras-assessment-area-requirements/>

¹³ See Federal Reserve Bank of Kansas City, “Consumer Affairs: Delineation of Assessment Areas,” August 1, 2017, at <https://www.kansascityfed.org/en/banking/fedconnections/archive/delineation-of-assessment-areas-8-1-17>.

and issue grades for three principal categories: Lending,¹⁴ Investment,¹⁵ and Service.¹⁶ The agencies' regulations provide different methods to evaluate a bank's CRA performance depending on its asset size and business strategy.¹⁷ Ultimately, banking regulators evaluate the examinations and issue CRA credits, or points, when banks engage in qualifying activities—such as mortgage, consumer, and business lending; community investments; and low-cost services that would benefit LMI areas and entities—that occur within assessment areas.¹⁸ Under the present framework, banks are evaluated according to a four tier rating system.¹⁹

Finally, the CRA provides that each agency must consider a bank's CRA performance “in its evaluation of an application for a deposit facility by such institution.”²⁰ Thus, a bank's record in fulfilling its CRA obligations stands to have a direct bearing on its ability to win regulatory approval of applications for charters, bank mergers, acquisitions, and branch openings.

3. Legacy and Continuing Necessity of the CRA

Today, progress has been made in enhancing the cost and availability of credit to LMI consumers. Since President Carter signed the CRA in 1977, over \$6 trillion has flowed into LMI neighborhoods in the form of home mortgages, small business loans, investments in housing that is affordable to LMI individuals, and other CRA-related investments.²¹ Between 2009 and 2020, alone, banks made more than \$2.58 trillion in home loans to LMI borrowers or in LMI census tracts.²² The CRA has encouraged banks to open new branches, provide

¹⁴ The lending evaluation is rooted squarely in addressing the legacy of redlining. Examiners consider loan to deposit ratios, the percentage of loans in an assessment area, lending to borrowers of different incomes and in different amounts, geographical distribution of loans, and actions on complaints filed against the institution. (Darryl Getter, “The Effectiveness of the Community Reinvestment Act,” Congressional Research Service (CRS) (Feb. 28, 2019), <https://www.crs.gov/Reports/R43661>)

¹⁵ Qualifying investments include “direct lending and investments, or investments in secondary loan markets that qualify as public welfare investments (PWI), or community development investments (CDI) that meet PWI requirements, defined broadly as “affordable housing (including multifamily rental housing) for LMI individuals; community services targeted to LMI individuals; activities that promote economic development by financing small businesses, or small farms (gross annual revenues of \$1 million or less); and activities that revitalize or stabilize low- and moderate-income geographies.” (See Federal Reserve Bank of Saint Louis, “What Qualifies as a CRA Investment?”; <https://www.stlouisfed.org/publications/central-banker/fall-1998/what-qualifies-as-a-cra-investment>)

¹⁶ For purposes of the CRA, this term refers to “a service that has as its primary purpose community development, is related to the provision of financial services, has not been considered in the evaluation of the bank's retail banking services, benefits the bank's assessment area or a broader statewide or regional area that includes the bank's AA and has not been claimed by other affiliated institutions.” (Federal Reserve Bank of Dallas, “A Banker's quick guide to CRA.” September 1, 2005; <https://www.dallasfed.org/-/media/documents/cd/pubs/quickref.pdf>)

¹⁷ Office of the Comptroller of the Currency. Community Reinvestment Act Public Fact Sheet. March 2014. P.2. Accessible at <https://www.occ.gov/publications-and-resources/publications/community-affairs/community-developments-fact-sheets/pub-fact-sheet-cra-reinvestment-act-mar-2014.pdf>.

¹⁸ Ibid, Congressional Research Service, Feb. 28 2019. <https://crsreports.congress.gov/product/pdf/R/R43661>

¹⁹ The four scores are Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance (<https://www.occ.treas.gov/topics/consumers-and-communities/cra/cra-questions-and-answers.html#6>)

²⁰ 12 U.S.C. 2903(a)(2)

²¹ https://ncrc.org/wp-content/uploads/2017/11/CRA-101_b.pdf

²² National Community Reinvestment Coalition (NCRC). “Summary of the Section 203, Strengthening the Community Reinvestment Act of 1977.” April 23, 2021. Based on data from the Federal Financial Institutions Examination (FFIEC) website. Accessible at <https://ncrc.org/ncrc-summary-of-the-section-203-strengthening-the-community-reinvestment-act-of-1977-of-the-american-housing-and-economic-mobility-act-of-2021/>

expanded services, and make a variety of community development loans and investments.²³ It has also encouraged banks to provide substantial commitments to state and local governments, and community development organizations to increase lending to underserved segments of local economies and populations.²⁴ Thus, the CRA has served as a direct catalyst for major progress.

At the same time, despite its successes, the CRA has not kept up with significant changes in the current banking industry, nor has it addressed persistent racial and ethnic disparities and inequities resulting from the legacy of redlining, discriminatory lending practices, and racial segregation. It has been 45 years since the CRA was passed, and the racial wealth gap is wider than ever. Today, the average white family is worth 15 times more than the average Black family.²⁵ Moreover, illustrative of the connection between long-standing discriminatory practices and wealth, the typical homeowner in a neighborhood that was redlined for mortgage lending by the federal government has gained 52 percent less—or \$212,023 less—in personal wealth generated by property value increases than one in a “greenlined” neighborhood over the last 40 years.²⁶

There is abundant evidence that discrimination in lending and credit remains pervasive in diverse and low-income urban neighborhoods. According to an analysis of 61 metro areas across the country, people of color are more likely to be denied a conventional mortgage than their white counterparts, even when they make the same amount of money, tried to borrow the same amount of money, and want to buy in the same neighborhood.²⁷ The communities in which banks operate have grown in complexity in both rural and urban areas and banks must meet the challenge of changing community demographics so that both established and new LMI individuals and communities are duly served.

The homeownership rate is one of the most profound indicators of the racial wealth divide. According to the Harvard Joint Center for Housing Studies, the homeownership gap between white and Black households was 28.7 percent in early 2022. Similarly, the homeownership gap between white and Hispanic households was 24.9 percent.²⁸ Furthermore, as of 2020, Black homeowners were nearly five times more likely to own in a formerly redlined neighborhood than

²³ Ibid, Office of the Comptroller of the Currency, Community Reinvestment Act Public Fact Sheet, P.1 <https://www.occ.gov/publications-and-resources/publications/community-affairs/community-developments-fact-sheets/pub-fact-sheet-cra-reinvestment-act-mar-2014.pdf>

²⁴ Ibid, P.1

²⁵ <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba15-wstate-glantz-20190409.pdf>

²⁶ “Redlining’s Legacy Of Inequality: Low Homeownership Rates, Less Equity For Black Households.” By Brenda Richardson. *Forbes*. Jun 11, 2020. Accessible at: <https://www.forbes.com/sites/brendarichardson/2020/06/11/redlinings-legacy-of-inequality-low-homeownership-rates-less-equity-for-black-households/?sh=7957570f2a7cRichardson>, Ibid.

²⁷ Glantz, Aaron and Martinez, Emmanuel, “For people of color, banks are shutting the door to homeownership,” *Reveal*, Feb. 15, 2018. <https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/>

²⁸ Harvard Joint Center for Housing Studies, “The State of the Nation’s Housing 2022.” <https://www.jchs.harvard.edu/state-nations-housing-2022>

in a greenlined neighborhood, resulting in diminished home equity and overall economic inequality for Black families.²⁹

The disproportionate impact of the foreclosure crisis on Black and Hispanic homeowners also contributes to this gap. From 2007 to 2011, Black and Hispanic borrowers age 50 and older with prime mortgage loans experienced foreclosure rates that were nearly double the rate of white borrowers. Older Hispanic borrowers with subprime loans had the highest foreclosure rates, but borrowers of all races/ethnicities experienced high rates of foreclosures on subprime loans.³⁰ The homeownership rate for Black households ages 55–64 fell from a peak of nearly 67 percent in 2005 to just 53.6 percent in 2019, resulting in a gap of 28 percent with white homeowners in this age group. In the 65 and over age group, the homeownership rate for Black households peaked at 71 percent in 2003 and then dropped to about 59 percent in 2019—doubling the gap to nearly 25 percentage points.³¹

These disparities are reflected in the inability of a significant share of Black and Hispanic families to accumulate and pass on wealth to the next generation. The cumulative effects of government and private sector discrimination is evidenced in the homeownership gap and in health disparities. While it is not uncommon for white individuals to receive financial gifts or no-interest loans from older family members to qualify for affordable home mortgages, it is quite uncommon among Black, Hispanic, and other racial minorities.

Likewise, the inability to build sufficient savings or home equity to afford a home in a high-opportunity neighborhood often consigns individuals to communities that challenge their health status. These neighborhoods often coexist with undesirable infrastructure and facilities, such as interstates and power plants. This has direct consequences for health both in the immediate term (e.g., asthma, lead paint effects) and longer term (e.g., cardiovascular disease). These neighborhoods also frequently lack grocery stores with fresh food near homes, though there may be an abundance of fast-food establishments, factors which impede the ability to enjoy high-quality nutrition that promotes healthy outcomes.

Thus, despite its successes, the reforms envisioned by the CRA still fall far short.

As such, in 2022, the need for the CRA is stronger than ever, particularly as many of the underlying conditions it aims to combat stubbornly continue to persist.³²

²⁹ “Redlining’s Legacy Of Inequality: Low Homeownership Rates, Less Equity For Black Households.” By Brenda Richardson. *Forbes*. Jun 11, 2020. Accessible at <https://www.forbes.com/sites/brendarichardson/2020/06/11/redlinings-legacy-of-inequality-low-homeownership-rates-less-equity-for-black-households/?sh=7957570f2a7c>

³⁰ Lori A. Trawinski, “Nightmare on Main Street: Older Americans and the Mortgage Market Crisis,” AARP Public Policy Institute, July 2012. https://www.aarp.org/content/dam/aarp/research/public_policy_institute/cons_prot/2012/nightmare-on-main-street-AARP-ppi-cons-prot.pdf

³¹ *Id.* at 26.

³² Testimony of Aaron Glantz. April 9, 2019. <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba15-wstate-glantz-20190409.pdf>

4. The Compelling Case for CRA Modernization

Since its passage in 1977, Congress has tweaked the CRA on several occasions since its enactment,³³ but at no point sought to comprehensively modernize, revitalize, or reimagine the CRA. Similarly, since the agencies initially promulgated rules to implement the law in 1978,³⁴ the agencies have together significantly revised and sought to clarify their CRA regulations twice, in 1995 and 2005 – with the most substantive interagency update occurring in 1995.

As the NPR observes, the financial services industry has undergone transformative changes since the CRA was enacted in 1977, and since the agencies last adopted significant changes to the CRA’s implementing regulation and exams, in 1995.³⁵ The intervening years have seen major changes to the banking system, including the removal of national bank interstate branching restrictions and the expanded role of mobile and online banking. At the same time, during this period, persistent racial and socio-economic disparities have not been corrected by CRA.

In recent years, a consensus has grown in support of modernizing CRA regulations to encourage banks to offer deposit and credit products designed to help rent-burdened customers save for homeownership and build strong credit scores that will enable them to succeed in obtaining mortgage credit on favorable terms. To better understand how such modernization could impact consumer access to banking products and services and a bank’s CRA performance, the agencies have reviewed feedback from the banking industry, community groups, academics, and other stakeholders on several occasions. AARP, in turn, has been an active participant in the process, and has offered its perspective on certain aspects of how the CRA should be modernized.

- On April 3, 2018, the Treasury Department published a Memorandum of Recommendations for CRA modernization, calling for updating the definition of assessment areas, “to reflect the changing nature of banking arising from changing technology, customer behavior, and other factors”, increasing clarity of CRA examinations, improved timelines for publication of CRA evaluations, and creating incentives to increase impact to benefit target communities. On August 28, 2018, the OCC issued an Advanced Notice of Proposed Rulemaking (ANPR), soliciting public comments on the OCC’s proposals for modernizing the CRA.
- On December 12, 2019, the OCC and FDIC released a joint Notice of Proposed Rulemaking to update the CRA regulations “to make the regulatory framework more

³³ For example, in 1989 the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) mandated CRA evaluation reports include two sections, with one kept confidential, and the other publicly available. In 1991, Congress required that examination data relevant to the determination of an institution’s rating be included in the publicly available section of CRA reports. The public section of CRA reports was to include the newly introduced four-tier rating of each institution, including 'Outstanding', 'Satisfactory', 'Needs to Improve', or 'Substantial Noncompliance', as well as supporting justification for the rating. In 1995, the CRA examination was customized to account for differences in bank sizes and business models. In 2005, the bank size definitions were revised and indexed to the Consumer Price Index.

³⁴ 43 FR 47144 (Oct. 12, 1978)

³⁵ NPR, P. 15.

objective, transparent, consistent, and easy to understand.”³⁶ On May 20, 2020, the OCC issued a CRA final rule (OCC 2020 CRA final rule), retaining “the most fundamental elements of the proposal,” but delaying the implementation date until January 2024.

- On September 21, 2020, the Federal Reserve issued a CRA ANPR (Board CRA ANPR) requesting public comment on an approach to modernize the CRA regulations by strengthening, clarifying, and tailoring them to reflect the current banking landscape and better meet the core purpose of the CRA.

5. The May 2022 Joint Notice of Proposed Rulemaking

The challenge confronting policymakers in 2022 is to refresh the CRA regulations while continuing to honor the purpose of the CRA by encouraging banks to engage in local community and economic development initiatives and without losing the core focus on geography.

On May 5, 2022, the agencies announced a Notice of Proposed Rulemaking to update the CRA regulations in adherence with eight objectives: to (1) strengthen the achievement of the core purpose of the statute; (2) adapt to changes in the banking industry, including the expanded role of mobile and online banking; (3) enhance clarity and consistency in the application of the regulations; (4) tailor performance standards to account for differences in bank size and business models and local conditions; (5) tailor data collection and reporting requirements and use existing data whenever possible; (6) promote transparency and public engagement; (7) confirm that CRA and fair lending responsibilities are mutually reinforcing; and (8) create a consistent regulatory approach that applies to banks regulated by all three agencies.³⁷

Among other notable reforms, the NPR would give banks credit for online banking, adopt a metrics-based evaluation approach, stratify the assessment process of a bank’s size and activity, better define eligible CRA credit activities, and significantly increase the data collection and reporting requirements of some banks.

A key element of the proposal is a new evaluation framework for evaluating CRA performance for banks. The agencies propose an evaluation framework that would establish the following four tests for large banks: Retail Lending Test; Retail Services and Products Test; Community Development Financing Test; and Community Development Services Test.³⁸

In July 2022, the House Financial Services Committee heard testimony from a diverse panel of stakeholders regarding the need to modernize the CRA. During the hearing, witnesses called for the law “to be updated to cover the broader range of financial entities that exist now and needs to

³⁶ See Department of the Treasury, OCC; and FDIC, “Community Reinvestment Act Regulations,” 85 Federal Register 1204-1265, January 9, 2020

³⁷ NPR, P-7.

³⁸ Under the NPR, intermediate banks would be evaluated under the Retail Lending Test and the status quo community development test, unless they choose to opt into the Community Development Financing Test. Small banks would be evaluated under the status quo small bank lending test, unless they choose to opt into the Retail Lending Test. Wholesale and limited purpose banks would be evaluated under a tailored version of the Community Development Financing Test. (Ibid.)

be tightened to better define the types of projects and programs that provide actual, direct benefit to LMI communities of color and to disincentive the types of investments that promote displacement in LMI communities.”³⁹ Other witnesses characterized the NPR as “a positive development and it’s a step in the right direction.”⁴⁰

II. AARP Supports Many of the Key Recommendations in the Joint Notice of Proposed Rulemaking; Suggests Improvements

The preeminent goal of CRA modernization must be to promote equitable reinvestment of deposits and resources held in banking and lending institutions in geographic communities with aging infrastructure, buildings, and populations, and to transform such communities into vibrant places in which seniors can live and work affordably and with stability.

1. Overarching AARP Considerations Regarding Older Americans

As a preliminary matter, prior to directly addressing the NPR, AARP reiterates its previous and overarching request that any modernization of CRA regulations should emphasize the following five objectives, which are of particular relevance to older Americans:

- 1) *Provide credit for the development of innovative housing types dispersed throughout the community to enable older homeowners to relocate to more suitably sized, affordable housing with access to transportation;*
- 2) *Offer affordable financing for older individuals to make necessary alterations to their homes and to cope with the costs of home maintenance;*
- 3) *Offer protections to LMI communities who face displacement as older neighborhoods are redeveloped;*
- 4) *Ensure that older adults continue to have access to conveniently located local bank branches serving their needs; and,*
- 5) *Encourage flexible servicing practices for older LMI borrowers.*

Further, with respect to all these goals, AARP urges that the CRA regulations prioritize banks’ basic obligation to meet “the credit needs of its entire community, *including LMI neighborhoods*,”⁴¹ over the goal of adopting simpler compliance metrics.

³⁹ Written testimony of Seema Agnani, Executive Director, National Coalition for Asian Pacific American Community Development, July 13, 2022. P.2. <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-agnanis-20220713.pdf>

⁴⁰ Written testimony of Yoselin Genao Estrella, Executive Director Neighborhood Housing Services of Queens CDC. July 13, 2022. P.3. <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-genao-estrellay-20220713.pdf>

⁴¹ 12 U.S.C. 2903(a)(1) (emphasis added).

2. Discussion of AARP Perspective on Specific CRA Modernization Priorities

a. CRA Modernization Should Emphasize the Availability of High-Quality Credit for Older LMI Individuals and their Communities According to their Needs and Priorities

To save and invest, individuals need access to the banking system and high-quality credit. The provision of access to affordable credit for LMI communities and individuals is the beating heart of the CRA.

In recent years, as banks have consolidated and are using technology to a much greater extent, many communities have seen bank branches close, especially in rural areas. Lack of access to basic banking services in person may especially hinder older adults, people with disabilities, and people with low incomes who may not have reliable access to technology. It may also make banking less safe if it is more difficult to detect fraud or financial exploitation.

AARP supports the NPR's proposal to define criteria that would better identify the types of activities that meet the community development activity definition, including 11 categories that establish specific eligibility standards for a broad range of community development activities.⁴² We agree the proposed new definitions reflect a greater emphasis on activities that are responsive to community needs, especially for the needs of LMI individuals and communities. We also support the decision to pursue a "balanced evaluation framework" that looks at "all distribution systems."

Affordable loan products should include low-cost personal installment loans and other alternatives to high-cost payday and auto title lending.

- *Housing*

The current dire housing shortage has a negative impact on older renters and homeowners alike. One effect of the pervasive shortage of affordable housing is that it sustains rents at high rates that disproportionately burden older renters.⁴³ The shortage of affordable housing options may also limit opportunities for older homeowners to move to more suitably sized housing in their community that has universally designed features and provides better access to the goods and services they need to live independently.

A high percentage of older households continue to reside in the aging homes in which they raised their families. Many of these homes are now over 40 years old, too large for their needs,

⁴² NPR, P-31

⁴³ One measure of excessive cost burden is paying over 30 percent of income on housing. In 2017, 72 percent of renters earning less than \$15,000 were cost-burdened, as were 50 percent of those making between \$30,000 and \$44,999. Among owners age 65 and over, 79 percent of households with incomes under \$15,000, 45 percent of homeowners earning \$15,000–29,999, and 14 percent of owners with incomes of at least \$30,000 were cost burdened. (See Harvard Joint Center for Housing Studies, *Housing America's Older Adults 2019*. P. 8-9.)

Accessible at

https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Housing_Americas_Older_Adults_2019.pdf

and difficult and expensive to maintain.⁴⁴ Lack of financial resource forces them to defer maintenance, weatherization, and necessary repairs, which in turn lowers their home's equity and further increases their housing cost burdens. In turn, this also subjects owners to potentially costly future financial shocks such as a plumbing emergency or roof repair.

Banks should engage in activities that meet the needs of local communities to provide a variety of affordable and adaptable housing options dispersed throughout the community. AARP applauds the steps by the agencies to simplify the path for lenders to earn CRA credit from the development of housing options that are affordable, adaptable, and that better suit the needs of aging homeowners. This should include credit for financing accessory dwelling units (ADUs), duplexes, fourplexes, manufactured housing and other alternatives to traditional large-lot single family homes. We also urge the agencies to clarify that banks are entitled to receive CRA credit for loans to support improvements and repairs to existing dwellings, including for small dollar loans and to install accessibility features.

- *Transportation*

Many older individuals live in low-density neighborhoods without convenient transportation options.⁴⁵ This is an increasingly urgent problem, given the importance of housing and mobility to an aging American population.⁴⁶ Older adults and others who reside in such communities and do not drive may find it extremely difficult to access needed good and services, and may become socially isolated.⁴⁷ Serving the healthcare needs of older individuals living in low-density neighborhoods can be more expensive, as providers must also rely on private transportation.⁴⁸ This can result in fewer available services. Banks should engage in activities that support convenient transportation options for older individuals who may no longer drive and that enhance walkable access to essential goods and services.

⁴⁴ Id. at 2 (“Of the 24 million homeowners age 65 and over, fully 80 percent lived in detached single-family units in 2017. The majority of these homes are now at least 40 years old and therefore may present maintenance challenges for their owners.”).

⁴⁵ Id. at 3-4. (“Nearly a third of households age 65 and over lived in low-density communities in 2017, and their numbers have been rising rapidly. Indeed, the number of retirement-age households residing in the least-dense third of metro areas jumped 61 percent from 2000 to 2017, to 9.0 million.”).

⁴⁶ Approximately 45 million Americans are now age 65 or older. By 2030, this number will increase to 73 million – or one in five – Americans. Within four additional years, the American population is projected to have greater numbers of older people than children for the first time ever.

⁴⁷ UCLA Lewis Center for Regional Policy Studies, *Bolstering Mobility and Enhancing Transportation Options For Low-Income Older Adults* iv, http://www.lewis.ucla.edu/wp-content/uploads/sites/17/2018/10/UCLALewisCenter_AARP_2018.pdf (“Limited mobility negatively affects social relationships among older adults by reducing opportunities to socialize and often by forcing them to rely on others for assistance in order to reach important destinations.”).

⁴⁸ Id. at 4 (“To reach these households, healthcare workers and other service providers must travel considerable distances and have few transportation options other than cars. In addition, primary healthcare providers are often in short supply in rural communities.”).

- *Healthcare Services and Facilities*

AARP applauds expansion of the definition of community development in the NPR to include financing health care services (under community supportive services) and healthcare facilities (under community facilities). Health is inextricably tied to economic well-being. Health care expenses are higher among older adults than younger age groups and represent a significant share of their total expenses. Proximity to health care services and facilities in LMI neighborhoods would increase compliance with regular doctor's visits as well as treatment for unexpected emergencies. Such normalization of health care services can help avert the development of serious complications that can arise from the compounding of a series of relatively minor conditions that have been neglected.

Under the proposal, essential community facilities would now include hospitals and health centers without the current requirement to document that the financing attract and retain residents to the community. While a laudable goal, this requirement was applied inconsistently in CRA exams, making it more difficult to qualify the activities for CRA consideration. This modification will enable banks to ensure that their investment in healthcare will go towards their CRA credit. This can lead to increased investment and have direct positive impacts on the health and well-being of residents in LMI communities.

The community development finance test will include an impact review. We support further development of this review to include data collection as the basis for points and ratings like other subtests. This will help stimulate more effective community development activities. Such data could include the number of beds in health facilities and number of housing units with lead paint abatement.

We note, however, that health facilities vary in their contributions to the communities in which they operate. For example, ambulatory surgical centers are more likely to cherry-pick profitable surgeries from hospitals while not providing other needed critical services to the community. This may threaten the financial viability of acute care hospitals, which provide many local jobs and offer 24-7 emergency room care. Further, nonprofit hospitals are required to document community benefits, so any harm to these facilities by competing surgical centers could be a double setback for the community. In contrast, primary care, which is generally less profitable than other services, provides strong community benefits and incentives should be provided to banks to address this need.

- *Livable Communities*

Well-designed, age-friendly communities foster economic growth and enhance the well-being and physical health of residents of all ages by providing a variety of safe, affordable, and accessible housing and transportation options, as well as encouraging opportunities for social connectedness and community engagement.

Whether the solution for any particular community is to pursue transit-oriented development, build new sidewalks, bus networks, broadband, or locate grocery stores, banks, and other services within walking distance to housing, the CRA should encourage banks to be engaged at the local community level, to understand community needs, and to find solutions.

- *Access to Broadband*

AARP applauds the NPR's inclusion of a new category specific to broadband internet access. Bridging the digital divide is a challenge and opportunity for all of us, but that is especially the case with older Americans. In fact, a recent AARP survey found many Americans ages 50 and over struggle to access and afford high-speed internet.⁴⁹

- b. **CRA Modernization Should Require Agencies to Consider Consumer Protection Factors in Evaluating the Provision of Products and Services to LMI Individuals and Communities**

AARP supports initiatives by the agencies to ensure that banks fulfill their obligations under the Community Reinvestment Act (CRA) in a manner that does not increase the exposure of LMI borrowers to excess fees, tricks, traps, or unreasonable risk. In evaluating compliance with the CRA, regulators should consider how an institution, and its subsidiaries or partners, comply with state usury laws and other state statutes regulating check cashing and payday lending.

- *Access to Basic Banking Services*

AARP has long urged that CRA modernization encourage financial institutions to expand access to basic banking services at reasonable rates for people with low and moderate incomes. As such, we support the NPR's recommendation that agencies be required to consider whether or not banks offer deposit products that have features and cost characteristics including but not limited to the following types of features, consistent with safe and sound operations: (i) low-cost features, (ii) features facilitating broad functionality and accessibility, and (iii) features facilitating inclusivity of access.⁵⁰

- *Compliance with State Consumer Protection Laws*

Any revisions to the agencies' regulations should require financial institutions to offer consumer protections related to fees and disclosures. This includes requiring fees to be fair, reasonable, and clearly disclosed. Consumers should be able to compare factors such as fees and options easily.

⁴⁹ According to the October 2020 survey, 15percent of adults 50+ do not have access to any type of internet and 60percent say the cost of high-speed internet is a problem. (www.aarp.org/research/topics/technology/info-2021/2021-technology-trends-older-americans.html-CMP=RDRCT-PRI-TECH-040721/?cmp=RDRCT-907b618d-20210416)

⁵⁰ NPR, P-292

Consumer accounts should be protected from unreasonable or illegal debt collection. Financial institutions should not garnish accounts that contain funds exempt from garnishment.

- *Compliance with Civil Rights Laws*

AARP continues to believe that CRA assessments should comply with consumer and civil rights laws. Banks should not receive favorable treatment for their activities under the aegis of the CRA if there are deficiencies in the other products and services that they offer. Under the present framework, financial institutions have received CRA ratings of “outstanding” or “satisfactory” despite track records that showed widespread patterns of discrimination or abusive practices—a discrepancy rooted in narrowly interpreting bank activity under the Act.⁵¹

Scores of “outstanding” or “satisfactory” should meaningfully demonstrate a bank’s commitment not only to serving LMI customers within its assessment areas, but treating its customers fairly in a manner consistent with the law. For example, a bank with a pattern and practice of misleading customers in order to sell products, discriminating against certain categories of borrowers in the price or availability of mortgage credit, or illegally foreclosing on homeowners should not receive a positive rating under the CRA. Other examples include violations of consumer and civil rights laws governing deposit products as well as violations of the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, and the Americans with Disabilities Act.

- *Prohibition on Certain Abusive Products*

AARP urges the agencies to clarify that certain short-term high-cost loans are inherently problematic for purposes of a CRA examination and passing score. In 2017, an estimated 1.8 million households headed by someone age 50 or older reported taking out a payday, auto title, or similar high-cost loan in the past year. While it is likely that many of the loans in question came from non-bank lenders, the consequences of these loans are potentially much more severe for older adults. The presence of regular income through Social Security and pension benefits makes them targets for exploitative financial practices. Older adults on fixed incomes may have even fewer resources than others to work longer hours or cut back on essential expenses in order

⁵¹ Specifically, we reject this complaint: “Those inside the industry have long complained that examiners have had too much discretion in assessing CRA behavior, at times docking down CRA scores for consumer violation issues not specifically covered by the CRA, but by other consumer protection statutes.” Carolyn Duren and Brian Cheung, “Banking regulator discourages double downgrades in CRA exams,” S&P Global Market Intelligence, November 13, 2017, <https://www.spglobal.com/marketintelligence/en/news-insights/trending/jeeh3jcavsvdpvtwznu0kq2>; U.S. Senate Committee on Banking, Housing, and Urban Affairs, “Hearing on Examining the Efforts, Activities Objectives, and Plans of the Office of the Comptroller of the Currency with Respect to the Conduct of Supervision, Regulation, and Enforcement of Financial Firms Supervised by the OCC,” June 14, 2018, <https://www.govinfo.gov/content/pkg/CHRG-115shrg31583/html/CHRG-115shrg31583.htm>.

to pay down these abusive debts. And many older adults may not have credit cards, particularly in communities of color.⁵²

Similarly, the agencies should address the gap in CRA coverage for digital banks that partner with non-bank fintechs to offer demand deposit FDIC-insured accounts and consumer credit. The loans provided by some of these fintechs carry extremely high interest rates. When such loans are made at rates greater than what is permissible under state laws, the CRA performance evaluation for those partnering institutions should be duly lowered to reflect that activity.

- *Responsive Deposit Products*

Finally, AARP supports the agencies proposed usage of responsive deposit products by considering, for example: (i) the number of responsive accounts opened and closed during each year of the evaluation period in low-, moderate-, middle-, and upper-income census tracts, respectively; (ii) the percentage of total responsive deposit accounts compared to total deposit accounts for each year of the evaluation period; and (iii) marketing, partnerships, and other activities that the bank has undertaken to promote awareness and use of responsive deposit accounts by low- and moderate-income individuals. AARP also supports the NPR's recommendation for facilitating broad functionality and accessibility of deposit products, including in-network ATM access, debit cards for point-of-sale and bill payments, and immediate access to funds for customers cashing government payroll or bank-issued checks.⁵³

- c. CRA Modernization Should Bring About Improved Public Input Mechanisms and Enhanced Accountability

AARP supports the agencies' recommendation to continue the recent practice of publishing 60 days in advance of each calendar quarter the schedule of CRA exams for the next two quarters, which will help provide ample opportunities for the public to comment on exams. We also support the agencies' proposal to continue the current practice of sending any comments on CRA performance to banks. Further, AARP urges the agencies to also commit to publishing comments received on agency websites. We agree with commenters who have suggested that the posting of such comments – especially when, for example, community groups wish to have their comments publicly posted - will establish accountability on the part of examiners. We also appreciate that the posting of such comments will form a public record that can be referenced during future merger applications to determine if the banks and agencies addressed significant concerns of the public and community organizations.⁵⁴

Relatedly, AARP also agrees with commenters who have suggested that the agencies should undertake to document their efforts to reach out to the community and ensure that they are seeking a diversity of organizations (in particular, with regard to age, race, ethnicity, and gender

⁵² Joe Valenti, "Financial Access Challenges for Older Adults," AARP Public Policy Institute, September 2020, <https://www.aarp.org/content/dam/aarp/ppi/2020/09/financial-access-challenges-for-older-adults.doi.10.26419-2Fppi.00108.001.pdf>

⁵³ NPR, P 292-293

⁵⁴ <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-crosby-20220713.pdf> (P.6)

) to comment on needs and performance.⁵⁵In addition, AARP supports recommendations that the agencies consider creating community advisory committees within local communities to support these processes.⁵⁶

d. Race and Ethnicity Should Be Considered in CRA Exams

The CRA is rooted in the fair lending legislation of the civil rights era and was intended to remedy racial exclusion. However, up to the present day, analyses by race and ethnicity have not factored into CRA bank evaluations. The proposed rule would use Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race but would not use the results of these analyses in a bank's rating. Rather, it requires regulators to make assessments on banks' lending and investment activities to LMI communities without regard to the race or ethnicity of the resident populations, using LMI communities as a proxy for race.

In the face of the deep and persistent racial and ethnic disparities in homeownership, wealth and health nationwide as elucidated above, AARP believes it is critical to incorporate race and ethnicity in CRA exams that evaluate how well banks are performing in meeting the specific credit, investment, and community services needs of all LMI racial and ethnic communities and individuals in their assessment areas, both urban and rural. Neighborhoods across the country have become more diverse and the new regulations should reflect that. In addition, a more comprehensive fair lending review should be applied to banks that score low on this measure.

e. CRA Modernization Must Include Safeguards to Effectively Protect Against Displacement of LMI Populations

AARP supports recommendations by the agencies to encourage financial institutions to exercise their influence over large-scale community development, redevelopment, and infrastructure projects in a manner that protects the residents who face displacement.⁵⁷

For displaced persons, particularly those with lower incomes, affordable housing options may not be available nearby, forcing them to seek housing in distant neighborhoods and communities, or even out of state. In these new and unfamiliar locales, they confront the challenges presented by a lack of social support, employment and a personal healthcare provider. Displaced low-income individuals may face homelessness if they cannot afford relocation costs or are trapped in substandard and/or overcrowded dwellings. Further, inappropriate, harmful, and costly nursing home placement may result from displacement.

It should also be noted that the burdens of displacement regularly have a racially disparate effect. The risk of discriminatory displacement is especially acute in the communities where *de*

⁵⁵ Ibid.

⁵⁶ Written testimony of Yoselin Genao Estrella, Executive Director Neighborhood Housing Services of Queens CDC Inc. U.S. House Subcommittee on Financial Institutions hearing entitled ““Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act” July 13, 2022. P. 4. Accessible at <https://financialservices.house.gov/uploadedfiles/hhrg-117-bal5-wstate-genao-estrellay-20220713.pdf>

⁵⁷ NPR, pp. 73-74.

jure and *de facto* segregation policies, including redlining, persisted unaddressed until the Fair Housing Act was enacted in 1968. Historically redlined neighborhoods (neighborhoods with significant Black populations) have been continuously starved of credit and other wealth-building resources, leaving them saddled with an abundance of deteriorated buildings and infrastructure, obsolete and abandoned housing, inadequate transportation, environmental hazards, and other intractable problems. Such conditions artificially depress land values for large tracts of land in LMI neighborhoods, making them prime targets for eminent domain and redevelopment, and as sites for transportation facilities, sports stadiums, hospitals, amusement parks, and the like.

Financial institutions have the potential to intervene at numerous points in the redevelopment process, including making provision to ensure that former owners and residents will be able to participate in the redeveloped community and experience its economic benefits. For CRA modernization to succeed, it will be vital that the framework protect against displacement to uphold the CRA's core requirement that banks serve the needs of LMI persons and communities.

f. CRA Modernization Should Discourage Future CRA Rating Inflation

Ratings systems are useful primarily to the extent that they reveal distinctions in performance. According to research from the National Community Reinvestment Coalition (NCRC), currently about 98 percent of banks pass their CRA exams on an annual basis, with just less than 10 percent receiving an Outstanding rating and almost 90 percent receiving a rating of Satisfactory. This phenomenon frustrates the ability of bank regulators and community groups to use CRA exams to identify institutions that are significantly lagging their peers in CRA compliance.

AARP supports the agencies' proposed "quantitative approach" for the retail lending test, and agrees it is likely to arrest ratings inflation and result in more failing and low satisfactory ratings on the test.⁵⁸ At the same time, while this reform is a significant improvement over the status quo in this one (important) metric, we note that the NPR does not impose similar quantitative rigor on the other subtests of the large bank CRA exam, and we urge the agencies to consider whether the incorporation of additional quantitative tools into other CRA tests could reduce ratings inflation prior to finalizing an updated rule. Finally, we note that the NPR would allow examiners to use their discretion regarding how to weight the component tests of the retail services test. The agencies should consider whether and to what extent such discretion would lend itself to inconsistent exams, and ultimately, serve to spur additional ratings inflation.

g. CRA Adjustments Should Aim to Preserve Bank Branches Across the Country, Particularly in Underserved Urban and Rural Communities

Any revision of the CRA regulations must both maintain a strong role for bank branches and fully recognize the role that online banking and mobile apps play in today's financial

⁵⁸ We also note that, at 45percent the lending test would remain the most heavily weighted test. (NPR, pp. 365-366.)

marketplace to ensure that all older adults' financial needs are adequately met. Prior to the pandemic, for roughly half of the age 50 and over population, in-person access to their account at a bank branch or at an ATM or bank kiosk were the most common methods for accessing an account.⁵⁹ Yet the Federal Reserve's own research found that the number of bank branches fell by 7 percent nationwide between 2012 and 2017, with some urban and rural areas seeing sharper declines.

Further, while financial institutions and their customers have adapted well to this new environment, branches will continue to remain essential for many older adults and other bank users—especially customers who value personal service, and who prefer or rely on cash payments.⁶⁰ Even as interest in, and experience with, digital financial engagement has grown in recent years among older adults, there remain serious risks of excluding many older households if branches are not maintained.

The pandemic has altered banking preferences, making remote banking more attractive and necessary for many older adults, some of whom who may find it more convenient and others of whom cannot easily access a brick-and-mortar bank due to distance, illness, physical constraints, or other reasons. A recent Morning Consult survey found that branch visits fell by at least eight percentage points among all generations during the pandemic. Baby Boomers most often utilized online banking (34 percent pre-pandemic, 38 percent amid pandemic). Visiting a bank branch was the second most-used method for Baby Boomers prior to the pandemic (28 percent) but fell to the third spot (17 percent) below mobile apps (29 percent) and online (38 percent) following the arrival of COVID-19.⁶¹ Yet there is evidence the cohorts older than the Baby Boomers may be slower to adopt online banking and mobile apps. As reported in 2021, only four percent of all those age 65 and over preferred online banking and eight percent preferred mobile banking using an app.⁶²

Despite its convenience, however, online and mobile banking can put consumers at risk of financial exploitation if a third party, such as a caregiver, gains access to consumer funds to commit fraud. Banks should put in place processes and procedures for detecting, reporting, and remedying financial fraud and exploitation. Banks and other financial institutions should be required to report suspected financial abuse to Adult Protective Services and law enforcement.

⁵⁹ Federal Reserve Board of Governors, "Perspectives from Main Street: Bank Branch Access in Rural Communities," November 2019, <https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf>.

⁶⁰ Per one discussion of a rural bank branch closing in Duncan, Arizona: "The local branch's closing has been a major blow to residents of Duncan, which is near the New Mexico border and was once a popular stop along the road connecting Phoenix and El Paso, Texas. Local business owners no longer have a place to deposit cash each night, nor anywhere nearby to apply for a loan. Many senior citizens, especially those uncomfortable with digital banking, have felt an outside impact. The absence of a bank branch in Duncan also makes it harder to attract new residents, said Richard Lunt, chairman of the Greenlee County Board of Supervisors, whose family has lived in the area for more than 100 years." Kevin Wack, "When a small town loses its only bank," *American Banker*, February 2, 2020, <https://www.americanbanker.com/news/when-a-small-town-loses-its-only-bank>

⁶¹ American Bankers Association, "National Survey: Bank Customers Turn to Mobile Apps More than Any Other Channel to Manage Their Accounts." October 25, 2021. <https://www.aba.com/about-us/press-room/press-releases/bank-customers-turn-to-mobile-apps-more-than-any-other-channel-to-manage-their-accounts#>

⁶² Yahoo Finance, "How the Pandemic Has Changed Banking – Maybe Forever," January 17, 2021. <https://finance.yahoo.com/news/pandemic-changed-banking-maybe-forever-200029651.html>

h. CRA Modernization Should Ensure that Internet Banks and Other Financial Institutions Operating without a Formalized Local Presence Should Be Assessed at the Local Level Where Their Activities Are Taking Place, Rather Than as a National Assessment Area

AARP has previously urged the agencies to modernize their regulations to account for the emergence of online lending.⁶³ We are therefore pleased that the NPR proposes to expand assessment areas to include online lending. Specifically, we applaud the agencies proposal to create retail assessment areas where a large bank does not have branches when a bank has issued 100 home loans or 250 small business loans.⁶⁴ By expanding the scope of CRA assessment areas to include banks engaged in such online lending, the NPR would effectively ensure that the vast majority of total lending is reflected in CRA assessments and incorporated on CRA exams. This will help the agencies hold non-traditional banks more accountable for serving LMI communities.

i. Reclassifying Banks as Small And Intermediate Small Banks Would Reduce Community Reinvestment Activity

We are concerned the proposed reclassification of small and intermediate small banks would remove accountability for nearly 1,000 banks that have been successfully performing community development or service provision for many years with no apparent drawbacks. Eliminating both the community development finance test for 779 reclassified intermediate small banks, and the service test and accountability for placing branches in LMI communities for 217 reclassified large banks, is not justified and we urge the agencies to remove this provision of the NPR.

j. Enhanced Data Collection Under the CRA in Order to Better Hold Banks Accountable

As AARP made clear in its previous comment letters, quantifiable data is central to the agencies' ability to gain insight into banks' records of meeting credit and community needs.⁶⁵ As such, we support NPR's overarching emphasis on more granular collection and reporting of data to ensure that banks are held accountable to community needs, rather than picking specific customers or product lines in order to advance a CRA rating. We specifically support the NPR's proposal to add new data collecting requirements for deposits, community development activities and automobile lending.⁶⁶ We also urge the agencies to make such data public and to extend the requirements to all large banks regardless of asset size. Lastly, affordability is a

⁶³ AARP comment letter Re Community Reinvestment Act Advance Notice of Proposed Rulemaking Docket No. R-1723; RIN 7100-AF94. February 21, 2021. P.6

⁶⁴ NPR, p. 131-133.

⁶⁵ AARP Comment Letter to Federal Reserve re Community Reinvestment Act, Feb. 16, 2021. P.6

https://www.federalreserve.gov/SECRS/2021/May/20210511/R-1723/R-1723_021621_138038_446617620034_1.pdf

⁶⁶ NPR, P. 553.

crucial consideration in LMI communities and CRA exams should also analyze this metric by comparing and refining, if necessary, fee information collected in call report data.

k. Clarity from Agencies Regarding Merger Reviews

AARP is disappointed that the NPR proposed no changes to how CRA performance is considered when reviewing merger applications. Banks are legally required to demonstrate future and concrete public benefits after mergers with other banks. LMI communities have a solid stake in bank merger determinations, as they bear a larger burden for adverse outcomes, even if unintended. Consequently, we support stronger public accountability for CRA performance in merger reviews both through public input and through public benefits plans. We endorse the agencies conducting frequent public hearings on large bank mergers. We also believe that community benefits plans, which may include community benefit agreements negotiated with community organizations, should be submitted as part of bank merger applications. These plans should establish verifiable performance measures and goals for meeting the credit, investment, and services needs of LMI persons and neighborhoods and of people of color and their neighborhoods.

Further, in the case of completed mergers, the CRA exam following the merger should assess a bank's compliance with the community benefits plan or community benefits agreement, or conditional merger approvals and banks should be rated according to their performance in meeting their goals. We would also strongly caution against counting an Outstanding CRA rating as an automatic demonstration that merging banks have satisfied their public benefits requirement, since performance may have changed since the rating was conferred. The public benefits requirement should maintain with a community benefits plan that demonstrates how the merger will specifically benefit the community, particularly since mergers have been known to result in branch closures.

l. Public Information

As a general matter, AARP urges that CRA data be publicly available.

The CRA regulations presently in effect provide that a financial institution is required to maintain a public file containing specific information, including all written, public comments received for the current year and for the previous two calendar years specifically relating to the bank's performance in helping to meet community credit needs. The file must also contain any bank responses. The NPR would significantly enhance utility and transparency of such information with respect to financial institutions by allowing any bank with a public website to include its CRA public file on the bank's website. Thus, AARP supports this recommendation. We would also recommend that any final rule clarify that at the request of community

organizations, banks would be obligated to post such information on their website.⁶⁷

m. Defining Assessment Areas and Local Communities for CRA Evaluations

AARP supports the NPR's recommendations to more predictably delineate assessment areas around physical locations, such as bank branches, and to ensure that assessment areas are contiguous, do not reflect illegal discrimination, do not arbitrarily exclude LMI census tracts, and are tailored to bank size and performance context.⁶⁸

n. CRA Modernization Should Support the Role of Community Development Financial Institutions in the Financial Ecosystem

As mission-driven lenders, Community Development Financial Institutions, or CDFIs, are often able to originate and service loans that banks may consider too risky, including smaller personal loans, loans to support affordable housing development, and financing for small business development and expansion. As such, AARP supports the NPR's recommendation to extend CRA consideration to bank financing of intermediaries, like Community Development Financial Institutions (CDFIs), that support small businesses with revenues less than \$5 million.

o. Enhancements to Overall Framework and Compliance

As previously expressed, AARP views the agencies' accurate and fulsome reporting of banks' CRA compliance as critically important. The agencies are to "prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods."⁶⁹ That report should contain the agencies' conclusions regarding each regulatory assessment factor, a discussion of the facts and data supporting such conclusions, and a statement describing an institution's rating.

We ask that the agencies assign high priority to this task, thereby incentivizing banks to avoid the reputational risk of CRA noncompliance.

⁶⁷ If a bank does not maintain a public website, the proposal provides that the public file information would be required to be maintained at the main office and, if an interstate bank, at one branch office in each state. (See NPR – P. 424)

⁶⁸ NPR, P. 128.

⁶⁹ See, for example, AARP's April 2020 comment letter to Comptroller Otting.

III. Conclusion

In conclusion, AARP strongly supports the decision by the agencies to pursue comprehensive CRA regulatory modernization. Overall, for the numerous reasons detailed above, we believe that the recommendations in the NPR stand to significantly benefit older Americans and improve the administration of the CRA at all levels. We share the agencies' view that an appropriately modernized CRA regulatory framework that is adapted to reflect modern banking, credit and payment alternatives has the potential to make the CRA vastly more successful and equitable.

While we appreciate the opportunity to comment on specific details of the envisioned modernized regulatory framework, we wish to conclude by noting some overarching factors to guide the agencies as they review the comments received on the NPR and determine how to proceed.

1. As an overarching principle, AARP again urges the agencies prioritize strong consumer lending and affordable housing options; to emphasize the quality of services in addition to the amount; and to scrutinize the degree to which community development funding meets the actual needs of LMI communities and communities of color.⁷⁰
2. AARP urges the agencies to recognize the degree to which consideration of data about race and ethnicity in the regulatory framework and CRA exams can help the CRA better address the discriminatory practices that necessitated its establishment.
3. We urge the agencies to continue to adhere to the precedent of **jointly** developing and implementing regulations and guidance for the Community Reinvestment Act moving forward. All banks subject to the CRA should be evaluated, and ultimately held accountable, based on common criteria derived from their actual activities rather than metrics dependent largely upon the type of charter they hold. The financial crisis and Great Recession made clear the severe consequences of inconsistent standards and supervision among agencies, and institutions should not expect to receive more or less generous treatment based on their regulator.
4. To the extent the agencies are unable to adapt aspects of the CRA to address contemporary banking practices or community reinvestment challenges, the agencies should request such additional authority from Congress as they determine necessary to maintain the integrity and vibrancy of the CRA. This would apply in relation to certain types of non-bank lenders, especially where connected to LMI communities and communities of color or offering services sufficiently comparable to a bank as to be difficult to distinguish from a bank.
5. Finally, we urge the agencies to be diligent and attentive to the priorities, interests, and challenges of older Americans. The agencies have a solemn duty and obligation to do all

⁷⁰ The agencies should have learned through research and experience about the importance of livable communities and the types of lending that encourage and sustain them.

that they can to evaluate and understand how the requirements of CRA regulations impact the communities in which older Americans reside. In that regard, AARP stands ready and eager to assist the agencies meet the needs of older Americans.

Again, thank you for the opportunity to comment on this important rulemaking. If you have any questions or comments, please feel free to contact Debra Alvarez in our Government Affairs Department at (202) 434-3814 or dalvarez@aarp.org.

Sincerely,



David Certner
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Government Affairs