TESTIMONY OF
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BEFORE FOR THE
THE U.S. HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

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"THE COMMUNITY REINVESTMENT ACT: ASSESSING THE LAW'S IMPACT ON DISCRIMINATION AND REDLINING"

INTRODUCTION

Chairman Meeks and Ranking Member Leutkemeyer, good morning and thank you for the opportunity to present the National Urban League's views on the Community Reinvestment Act.

I am Clint Odom, the National Urban League's Senior Vice President of Policy and Advocacy and the Executive Director of its Washington Bureau. Established in 1910, the National Urban League is the nation's oldest and largest civil rights and direct services organization. Each year, we serve 2 million people through 90 affiliates in 36 states and the District of Columbia in over 300 communities. Our affiliate locations are as diverse as the states represented on this Subcommittee.

Our mission is to enable African Americans and other underserved communities to secure economic self-reliance, parity, power, and civil rights. We help our constituents attain economic self-reliance through homeownership, job training, good jobs, entrepreneurship and wealth accumulation.

The subject of today's hearing falls within our economic empowerment discussion both nationally and in our local communities. Our views and recommendations are based on decades of direct program experience in urban communities across the country and our historic role in documenting and fashioning remedies to root out the pernicious practice of redlining.[1] More

[1] The National Urban League has played a significant role in documenting the extent of redlining in American cities and in using the courts to fashion remedies to address redlining prior to the passage of the CRA. In 1970, the National Urban League and the Center for Community Change published a study entitled, "The National Survey of Housing Abandonment," which documented the extent of redlining in heavily minority areas in seven American cities. And, in 1976, one year before the passage of the CRA, the National Urban League and other national civil rights organizations sued federal bank regulators under the Fair Housing Act for failing to enforce the fair lending provisions of the law. Under the settlement agreement reached to resolve the litigation, the federal bank regulators were required to take various remedial steps, including collecting and analyzing Home Mortgage Disclosure Act data and providing training for regulatory examiners. Wade Wilson & Karen McGill Lawson, Leadership Conference on Civil Rights, Leadership Conference Education Fund, *CRA and the Financial Modernization*

recently, in the aftermath of the worst financial crisis since the Great Depression, our President and CEO, Marc Morial, testified before this Committee[2] in 2009 and the Senate Banking Committee in 2008 about proposals to reform the CRA and to push back against the now widely-discredited notion that CRA lending practices somehow were responsible for the mortgage crisis.

BACKGROUND

Congress passed the Community Reinvestment Act of 1977 (CRA) because of concerns that federally-insured banking institutions were not making enough credit available in the local areas in which they were chartered and acquiring deposits. Disinvestment practices allowed depository institutions to accept deposits from African Americans in inner-city neighborhoods, and reinvest them in more affluent, suburban areas.

Faced with substantial evidence of redlining – the practice of denying credit to certain communities, typically communities of color – Congress decided that market forces alone could not break down residential segregation patterns. The grant of a public bank charter creates a continuing obligation for that bank to serve the credit needs of the public where it was chartered. As a consequence, the CRA was enacted to "re-affirm the obligation of federally chartered or insured financial institutions to serve the convenience and needs of their service areas" and "to help meet the credit needs of the localities in which they are, consistent with the prudent operation of the institution."

Redlining prevented African Americans from securing affordable homes and mortgages in decent neighborhoods and purposely segregated communities. Segregated into slums, African Americans were concentrated into poverty by way of intentional discriminatory policies and practices. African Americans were denied credit to purchase homes, start small businesses, and to meet everyday living expenses. Blight, crime, and decreased property values resulted. Cities were left behind with no adequate tax base for basic services. With no desire to invest in these

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Movement at 5-6 accessed at http://www.protectcivilrights.org/pdf/reports/healthy_communities/cra_report_chapters.pdf According to the Department of Treasury, the "CRA was enacted in response to concerns about redlining and disinvestment as well as a desire to have financial institutions 'play the leading role' in providing the 'capital required for local housing and economic development needs.'" MEMORANDUM FOR THE OFFICE OF THE COMPTROLLER OF THE CURRENCY, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE FEDERAL DEPOSIT INSURANCE CORPORATION at 1 & Appendix A (April 3, 2018) accessed at https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf

[2] Testimony of the Honorable Marc H. Morial, President and CEO, National Urban League Before the Senate Committee on Banking, Housing and Urban (Oct. 16, 2008); Testimony of Mark H. Morial, President and CEO National Urban League Before the House Committee on Financial Services, "Proposals to Enhance the Community Reinvestment Act" (Sept. 16, 2009).

communities, too many African American and minority neighborhoods continue to deteriorate, as you will hear in great detail from other witnesses today.

This point is clear: the CRA is one of the most important civil and economic rights laws of the 20th century.[3] As a matter of economic justice, the CRA is every bit as important as the Civil Rights Act that dismantled discrimination in places of public accommodation, employment, and education. To dispute this, one would have to wholly ignore the conditions that gave rise the law's enactment and the contemporaneous enactment of federal laws like the Fair Housing Act of 1968, the Home Mortgage Disclosure Act, the Affordable Housing Goals, and the Duty to Serve rule, to name a few.

However, in the 21st century, the law is in dire need of reform to better serve low- to moderate-income (LMI) communities, especially communities of color. CRA-regulated institutions have not met the needs of the community, allowing an array of nonbanks to enter the marketplace, many of which provide high-cost, and often predatory products. This is a point on which both advocates and industry agree. CRA can and must do more to provide low-cost loans and to make quality investments in communities of color, which was the intent of the law.

CRA was designed to help African Americans enter the financial mainstream and to increase investments in their communities. CRA incentivizes banks to address previous injustices and current market failures that were caused and can be fixed by the federal government and the banking industry.

Financial institutions are not required to help meet the credit needs of their local communities out of the kindest of their hearts. Financial institutions have a continuing and affirmative obligation to serve low-wealth communities because of the material benefit they receive from the federal safety net provided by the government, including deposit insurance and the Federal Reserve's discount window.

Moreover, banks are not forced to lend to these communities at a financial risk or to the detriment of their shareholders. You will hear testimony from experts today who will confirm that most CRA lending is profitable, and not overly risky.

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[3] *History of the CRA*, Federal Reserve Bank of Minneapolis, accessed at https://www.minneapolisfed.org/community/cra-resources/history-of-the-cra-new; Caleb Bobo, *From Dr. King to the Community Reinvestment Act: How His Dream Marches On*, Federal Reserve Bank of St. Louis (Spring 2018) ("[o]ver the next two decades, lawmakers and presidential administrations proposed and approved several changes to the CRA. . . That successful track record, like the origins of the ECOA and HMDA, can also trace its roots to the civil rights movement that King and so many others fought for during the 1950s and '60s that emphasized civil and economic rights.")

Recent research has established that the CRA is meeting it objectives. Credit is more readily available in low- and moderate-income communities. African Americans have greater access to credit. And scholarly research has established that the CRA has been, at least in part, responsible for these gains. Stronger enforcement of the CRA and related fair lending laws, in part due to pressure by the Urban League and other community groups, along with market forces, has generally resulted in an increase in conventional home purchase lending to low- and moderate-income (LMI) borrowers.

LACK OF LENDING IN COMMUNITIES OF COLOR

Nonetheless, LMI households are less likely to receive a loan from a CRA-regulated institution, than higher income borrowers, according to the Government Accountability Office.[4] Households living in higher-income and largely white neighborhoods are nearly 30 percent more likely to receive a loan from a CRA-regulated assessment area lender, than a borrower living in a largely minority, lower-income area.

Lower-income households are more likely to obtain credit or conduct financial transactions through an alternative financial services (AFS) provider, and less likely to have a checking or savings account with a bank or credit union, than their higher-income earners.

Nonbanks, which are not regulated under CRA, have drastically increased in market share, because CRA-regulated institutions are not fully meeting the needs of the community:

- Nonbanks originated 37 percent of all personal loans in 2017, compared to less than one percent in 2010;

- Nonbanks originated over 50 percent of all conventional mortgages in 2018, compared to 20 percent in 2007;

- Approximately 85 percent of all FHA mortgages were originated by nonbanks in 2018, compared to 57 percent in 2010; and

- Nonbank small business lending rose to 35 percent in 2015.

For good or for worse, this trend is likely to continue. All nonbanks are not bad. However, payday lenders, check cashers, *some* independent mortgage banks, and merchant payday lenders

[4] Options for Treasury to Consider to Encourage Services and Small-Dollar Loans When Reviewing Framework GAO-18-244 (Mar 16, 2018).

have the ability and incentive to prey on the financially vulnerable and strip wealth because CRA is not doing its job effectively.

According to Dr. Michael Stegman, a current Milken Institute fellow and former Obama and Clinton administration housing official, "[t]here are now more check cashers and payday lending outlets than there are McDonald's restaurants, Burger Kings, Target stores, JC Penney's locations, Sears, and Walmart combined."

While nonbanks provide more access to capital than traditional banks, they often do so at higher pricing. According to a recent California Berkley study, conventional mortgages originated by nonbanks are more expensive, and priced higher *due to discrimination,* in addition to the lack of competition from CRA-regulated institutions.[5]

The African American homeownership rate reached a peak of nearly 50 percent in 2004; it is now only 42.9 percent. The African American homeownership rate is near where it was before the passage of the Fair Housing Act, and it is expected to continue to decline through the year 2030, according to the Urban Institute.

As it relates to access to capital for small businesses, in the National Urban League's experience, African American microentrepreneurs are more likely to be denied small business loans; be approved for lower amounts at higher rates; self-finance; or self-select out of the application process altogether. African Americans not only struggle in the conventional market, they struggle in securing loans backed by the Small Business Administration (SBA), often described as loans of last resort. African American small businesses have received only approximately 2 percent of the loans originated under SBA's 7(a) flagship loan since 2010 and only 3 percent according to the most recent available data.[6] As a result, many African American microentrepreneurs rely on nonbanks, many who offer predatory products, such as merchant payday loans.

In addition to the lack of lending in communities of color, CRA regulated institutions are not making quality investments in communities of color. Gentrification is an unintended consequence of CRA. Unfair and unbalanced use of CRA investments have helped to create gentrification and displacement, contrary to the purpose and intent of the law. According to a

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[5] Robert Bartlett *et al., Consumer-Lending Discrimination in the Era of FinTech* (Oct. 2018), https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf

[6] Congressional Research Service, *Small Business Administration 7(a) Loan Guaranty Program*, R41146 at 23 (Mar. 4, 2019) accessed at https://fas.org/sgp/crs/misc/R41146.pdf

former CFPB official, the CRA "is based on geography, so it's perfectly possible to comply with CRA and have that pattern… That's not the idea, of course, but the law allows it."[7]

SUGGESTED REFORMS

Several reforms could be implemented to strengthen CRA's impact to ensure CRA regulated institutions provide access to low-cost capital and make quality investments in communities of color, including:

1. **ESTABLISH CLEARER STANDARDS FOR CRA ELIGIBILITY**. We agree with Treasury that CRA modernization should establish "clearer standards for eligibility for CRA credit, with greater consistency and predictability across each of the regulators." We also agree CRA regulators should standardize CRA exam schedules to ensure uniformity and more predictability for regulated institutions;

2. **SET ASSESSMENT AREAS WHERE BANKING SERVICES ARE DELIVERED.** Assessment areas should be where retail banking services are delivered and not wholly related to branch or ATM locations. Assessment areas should also be expanded to any state or MSA where the lender achieves a significant market presence–such as one-half of one percent of all loans. This is the best way to keep CRA up to date and ensure banks are meeting the credit needs of their local communities;

3. **MODERNIZE THE SERVICE TEST TO MEASURE HOW WELL BANKS ARE SERVING LMI COMMUNITIES.** The service test must do more to incentivize banks to offer credit products to communities of color. There is a problem when 98 percent of CRA-regulated institutions get a Satisfactory or Outstanding rating. As National Urban League President and CEO, Marc H. Morial stated in his Congressional testimony in 2010:

> "[A]nalysis of bank branch data used in the service test is not sufficient to understand how effective an institution is at extending retail products to LMI markets… the goal of the CRA service test is not merely to get a sense of branch location but rather to measure how banks are serving the credit and service needs of the community. A different set of data is needed to measure actual bank

[7] Aaron Glantz & Emmanuel Martinez, "Kept Out: Gentrification Became Low-Income lending law's unintended consequence, Reveal (Feb. 16,2018) (attributed to Boston College Law Professor and former CFPB official Patricia McCoy) accessed at https://www.revealnews.org/article/gentrification-became-low-income-lending-laws-unintended-consequence/

services to lower-income communities. Those data would measure such outcomes as the number of low-cost savings accounts opened, the percent of low-income households served, and a comparison of these figures against those of comparable banks. Branch distribution data is a seriously insufficient measure of how well a bank is meeting the needs of the community. Measuring delivery channels encourages the development of more delivery channels, but not necessarily the actual delivery of products and services;"

4. **ROOT OUT RELATIONSHIPS WITH DECEPTIVE FRINGE LENDERS.** Examiners should carefully examine institutions' relationships with high cost fringe lenders and determine whether those fringe lenders' disclosure activities (as opposed to just disclosure notices) costs, terms and conditions have a deceptive impact on their customers;

5. **MEASURE THE RATE OF SAVINGS PRODUCTS OFFERED TO LMI CONSUMERS.** Institutions should also be examined to see whether they effectively market savings products to lower-income consumers;

6. **ASSESS PENALTIES ON INSTITUTIONS WITH DECEPTIVE OFFERINGS.** Institutions should be penalized if their offerings are likely to have a deceptive impact on the average customer.

7. **GIVE BANKS EXAM CREDIT FOR THE USE OF LOW-COST EDUCATION LOANS.** In addition, banks' use of low-cost education loans must play a larger role on bank exams. CRA explicitly encourages CRA regulated institutions to offer and provide low-cost education loans to LMI people and places. Low-cost education loans are the only way for LMI people to move up the economic ladder. Affordable and sustainable financial services allow people to have more money at the end of the month, engage in constructive activity and save for the future. It allows them to purchase affordable and sustainable mortgages in safe and decent neighborhoods, and startup and grow small businesses to create jobs in the community. Wealth stripping products do the exact opposite. CRA-regulated institutions are not playing the leading role in meeting the credit needs of their local communities. Exams must place more emphasis on whether banks are providing low-cost education loans to LMI people;

8. **ADOPT REGULATIONS TO ENCOURAGE MAJORITY INSTITUTIONS TO INVEST IN MINORITY-OWNED INSTITUTIONS.** We agree with the American Bankers Association that "minority-owned institutions were pioneers in helping underserved neighborhoods before the CRA existed, and their perseverance in serving

those markets has made them worthy partners in leading further efforts to build stronger, more economically vibrant communities. It is past time for the agencies to adopt regulations that recognize—and thereby encourage—the investments in, and support of, minority institutions by majority institutions, something that Congress authorized... years ago but still is not implemented in the CRA process";

9. **ASSESS THE PERFORMANCE OF BANK AFFILIATES UNDER CRA.** Regulated institutions' affiliates should be assessed under CRA, regardless of whether the institutions seek to have them assessed. CRA regulations give banks the option to include the activities of their affiliates for consideration in their performance evaluations. Under the current CRA regulations, if a bank's affiliate performs poorly in LMI communities, the bank can unilaterally make the decision to not include this affiliate for consideration in its performance evaluation. Likewise, the bank could choose to include the affiliate only when the affiliate has performed well in LMI communities. This is unfair and does not make sense, given the amount of business affiliates handle for holding companies;

10. **INCLUDE NONBANKS UNDER CRA REGULATIONS**. Nonbanks have taken on the responsibility of serving LMI communities. The only place banks have a stronghold in LMI lending is in their assessment areas. Including nonbanks under CRA's purview, would help ensure LMI communities' needs are met, while limiting access to excessive risk-based pricing. While some claim that increased data collection for regulatory or public uses is onerous, the data is "already provided to private data aggregators in machine-readable form." It would be a smooth transition for nonbanks to comply with CRA;

11. **ASSESS BANK COMPLIANCE WITH CBAs**. CBAs play a central role in helping to ensure the local needs of the community are met by CRA-activities. We agree with NCRC, "CRA examiners must assess bank compliance with CBAs that are negotiated with community groups and include clear goals." Several of the National Urban League's affiliates are party to CBAs with banks in their local communities. Our affiliates have unique insight into their communities, and help regulated institutions better meet the credit and investment needs of LMI people and places.

CONCLUSION

Immediately following the Civil War, Congress passed into law the Civil Rights Act of 1866, which stated that every citizen of the United States, including former slaves, had the same right

to inherit, purchase, lease, sell, hold, or convey property, both real and personal.[8] As a Nation, we have been struggling since to uphold this right and create the conditions to protect this right. The CRA is as relevant today as it was when it was enacted in 1977. The National Urban League urges Congress through its oversight and other powers to ensure CRA-regulated and nonbank institutions are adequately meeting the credit needs of communities of color. The CRA must do more to increase access to affordable credit and quality investments in communities of color to address previous injustices and to correct market failures that necessitated the passage of CRA.

Thank you.

[8] "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding. . . ."