

Congress of the United States

Washington, DC 20515

September 15, 2024

Suzanne P. Clark
President and Chief Executive Officer
U.S. Chamber of Commerce
1615 H St. NW
Washington, D.C. 20062

Rob Nichols
American Bankers Association
1333 New Hampshire Ave NW
Washington, D.C. 20036

Dear Ms. Clark and Mr. Nichols:

We write today regarding the Chamber of Commerce (Chamber) and American Bankers Association's (ABA) outrageous decision to sue the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation to block reforms to the Community Reinvestment Act (CRA) that would give regulatory agencies a much more comprehensive view of how well banks are meeting the credit needs of everyone.¹ The banking industry has changed drastically since the last major update to the CRA in 1995, and the current, outdated rules are giving banks a free pass, allowing them to meet CRA standards even while engaging in the discriminatory practices the law was designed to stop. These rules must be updated, and your efforts to stop regulators from doing so is unjustified and harmful.

Updated CRA Rules are Long Overdue

The CRA was created to correct a history of racist lending practices by big banks: it mandates that banks lend to all of the communities in which they are chartered to do business.² The pre-CRA history of redlining—denying loans to applicants based on race—is grim: when the Federal Housing Administration (FHA) was first created to boost homeownership in the wake of the Great Depression, the FHA's underwriting manual stated: "incompatible racial groups should not be permitted to live in the same communities."³ Redlining is a major reason that 72% of white Americans—and only 42% of Black Americans—own homes.⁴ The CRA was signed into law in

¹ Texas Bankers Association, Amarillo Chamber of Commerce, American Bankers Association, Chamber of Commerce of the United States of America, Longview Chamber of Commerce, Independent Community Bankers of America, Independent Bankers Association of Texas v. Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, 2:2024cv00025 (2024).

² NPR, "Why Banks are fighting changes to an anti-redlining program," February 15, 2024, <https://www.npr.org/transcripts/1197961870>.

³ Urban Institute, "Assessing the Legacies of Historical Redlining," Matthew Gerken, et. al., January 2023, p. 3, <https://www.urban.org/sites/default/files/2023-01/Addressing%20the%20Legacies%20of%20Historical%20Redlining.pdf>.

⁴ Joint Center for Housing Studies of Harvard University, "In Nearly Every State, People of Color are Less Likely to Own Homes Compared to White Households," Alexander Hermann, February 8, 2023, <https://www.jchs.harvard.edu/blog/nearly-every-state-people-color-are-less-likely-own-homes-compared-white-households#:~:text=At%20just%2041.7%20percent%2C%20Black,they%20exceeded%2040%20percentage>

1977 to combat redlining, affirmatively require banks to serve the entire community, and regularly evaluate banks on how well they meet local credit needs.

The law created an examination process whereby the bank regulators would regularly assess the country's banks to be sure that they were lending to low and moderate-income customers and investing in affordable housing and other community benefit programs. However, in the 25 years since the CRA was last updated, two fundamental weaknesses in the law have become clear.

First, the examination process includes very few standard metrics, which has led to grade inflation. According to an analysis by the National Community Reinvestment Coalition (NCRC), 96% of banks evaluated under the CRA were rated as “satisfactory” or “outstanding” from 1990 to 2019.⁵ At the same time, hundreds of Equal Credit Opportunity Act (ECOA) lawsuits were filed against banks that discriminated against credit applicants on the basis of race and other protected characteristics.⁶ This asymmetry demonstrates the weakness of the outdated CRA rubric at capturing the discriminatory lending practices the CRA was designed to prevent.⁷

Second, the banking industry has changed substantially since the last CRA update; millions of people now bank online and never set foot in a bank branch, and the number of brick-and-mortar banks has plummeted by 20 percent since 2009.⁸ Yet the CRA still measures bank lending activity near physical branches and ATMs. FDIC Chairman Gruenberg captured the fundamental disconnect between the old CRA rubric and the realities of banking today, saying: “A significant amount of the lending that banks do is no longer tied to a branch, to a facility-based assessment area. So, if we didn't make CRA relevant to the lending that banks do, not tied to a branch... over time, CRA would become increasingly irrelevant.”⁹ Using the old CRA rubric to assess whether banks are meeting their lending and community investment obligations is no longer sufficient to protect vulnerable communities from institutional discrimination.

The New CRA Rulemaking Process and the Meritless Banking Industry Lawsuit

To address these problems, in October 2020, the CRA regulators, the Federal Reserve (Fed), Office of the Comptroller of the Currency (OCC), and FDIC issued an Advance Notice of Proposed Rulemaking (ANPR) which proposed updates to address those two weaknesses. They then integrated the feedback they received in a nearly two-year-long comment period, in the Notice of Proposed Rulemaking (NPR) issued in May 2022.¹⁰ Under the current rule, regulators rate banks based on how they serve the communities they have a physical branch in, however,

⁵ <https://www.ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/>.

⁶ National Community Reinvestment Coalition, “Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data,” May 27, 2020, <https://www.ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/>.

⁷ U.S. Department of Justice, “Equal Credit Opportunity Act,” <https://www.justice.gov/crt/equal-credit-opportunity-act-3>; Staff analysis by Congressional Research Service.

⁸ *Id.*

⁹ American Banker, “Why the torrid pace of branch closings has cooled,” Jim Dobbs, February 27, 2024, <https://www.americanbanker.com/news/why-banks-are-closing-so-many-branches>.

¹⁰ National Community Reinvestment Coalition, “Video: The New Community Reinvestment act Rule: What's in It and What Will it Mean,” November 6, 2023, <https://www.ncrc.org/video-the-new-community-reinvestment-act-rule-whats-in-it-and-what-will-it-mean/>.

under the new, final rule, large banks will have additional assessment areas where they don't have physical facilities but make a significant number of loans, known as "retail lending assessment areas."¹¹ The rule expands the scope of the retail lending test and reformulates the scoring process for large banks, increasing the areas where lenders will be evaluated on how well they are meeting credit needs based on an analysis of their loans to low-income individuals, moderate-income individuals, and small businesses. This will now provide an accurate assessment of whether banks are upholding the equity principles underlying the CRA.¹²

The Chamber and ABA filed suit in February 2024, arguing that the Fed, FDIC, and OCC violated the Administrative Procedures Act (APA) when they issued the rule.¹³ This lawsuit is meritless

In at least nine cases over the last three years, banks that received "satisfactory" or even "outstanding" CRA ratings were charged with redlining in violation of the Equal Credit Opportunity Act (ECOA) and were held accountable by their regulator and the Department of Justice.¹⁴ Each of these cases ended in a consent order resulting in the offending bank paying

¹⁰ Federal Reserve, "Community Reinvestment Act (CRA)," <https://www.federalreserve.gov/consumerscommunities/community-reinvestment-act-final-rule.htm#:~:text=Community%20Reinvestment%20Act%20Rulemaking&text=In%20developing%20the%20final%20rule.of%20mobile%20and%20online%20banking>.

¹¹ Reuters, "US banks face more fair lending scrutiny under new regulations," Pete Schroeder, October 24, 2023, <https://www.reuters.com/business/finance/us-regulators-unveil-updated-fair-lending-rules-banks-2023-10-24/>.

¹² *Id.*

¹³ Complaint, <https://www.aba.com/-/media/documents/amicus-briefs/02052024-complaint-for-declaratory-and-injunctive-relief.pdf>

¹⁴ Federal Deposit Insurance Corporation, "Community Reinvestment Act Performance Evaluation: Ameris Bank," October 21, 2022, https://crapes.fdic.gov/publish/2022/20504_221031.PDF; Department of Justice, Office of Public Affairs, "Justice Department reaches Significant Milestone in Combating Redlining Initiative After Securing Over \$107 Million in Relief for Communities of Color Nationwide," press release, October 19, 2023, <https://www.justice.gov/opa/pr/justice-department-reaches-significant-milestone-combating-redlining-initiative-after>; Department of Justice, Civil Rights Division, "United States v. Evolve Bank and Trust," July 5, 2023, <https://www.justice.gov/crt/case/united-states-v-evolve-bank-and-trust-wd-tenn>; Federal Reserve Bank of St. Louis, "Community Reinvestment Act Performance Evaluation: Evolve Bank & Trust," November 9, 2020, p. 1, https://www.federalreserve.gov/apps/CRAPubWeb/CRA/DownloadPDF/592448_20201109; Department of Justice, Office of Public Affairs, "Justice Department and State of North Carolina Secure \$13.5 Million Agreement with First National Bank of Pennsylvania to Resolve Redlining Claims in North Carolina," press release, February 5, 2024, <https://www.justice.gov/opa/pr/justice-department-and-state-north-carolina-secure-135-million-agreement-first-national-bank>; Office of the Comptroller of the Currency, "Community Reinvestment Act Performance Evaluation: First National Bank of Pennsylvania," August 30, 2021, p. 2, <https://occ.gov/static/cra/craeval/Jan22/249.pdf>; Department of Justice, Office of Public Affairs, "Justice Department Secures Agreement with Lakeland Bank to Address Discriminatory Redlining," press release, September 28, 2022, <https://www.justice.gov/opa/pr/justice-department-secures-agreement-lakeland-bank-address-discriminatory-redlining>; Federal Deposit Insurance Corporation, "Community Reinvestment Act Performance Evaluation: Lakeland Bank," May 11, 2020, p. 1, https://crapes.fdic.gov/publish/2020/19953_200511.PDF; Department of Justice, "Justice Department Secures \$9 Million Agreement with Washington Trust Company to Resolve Redlining Claims in Rhode Island," press release, September 27, 2023, <https://www.justice.gov/opa/pr/justice-department-secures-9-million-agreement-washington-trust-company-resolve-redlining>; Federal Deposit Insurance Corporation, "Community Reinvestment Act Performance Evaluation: The Washington Trust Company," December 5, 2022, p. 1, https://crapes.fdic.gov/publish/2022/23623_221205.PDF; Office of the Comptroller of the Currency, "Community Reinvestment Act Performance Evaluation: The Park National Bank," July 27, 2020, p. 3, <https://occ.gov/static/cra/craeval/Dec20/9179.pdf>; Department of Justice, Office

millions of dollars in fines. In particular, City National Bank’s egregious history of redlining in Los Angeles County, which resulted in the largest redlining settlement in DOJ’s history, is a glaring example of why robust CRA reforms are desperately needed.¹⁵ Despite being subject to a consent order by the DOJ, the bank has dragged its feet in fulfilling its obligations to open new branches in Black communities.¹⁶ The bank has also failed to share specifics on how the bank’s new loan subsidy fund is helping potential homebuyers in Black and Latinx communities.¹⁷ This lack of urgency and transparency not only calls into question the bank’s commitment to remedying the harm it caused to Black and Latinx communities, but also highlights the broader issue of banks paying lip service to regulatory requirements without making real, on-the-ground changes. Without stronger enforcement, stricter oversight, and greater transparency, banks like City National will continue to undermine the very principles the CRA was designed to uphold.

These cases underscore the importance of strengthening the CRA to continue to combat discrimination amid the changing landscape of bank services, a goal that the Chamber and the ABA ostensibly support. In the comment letter on the NPR, the Chamber called the CRA “landmark legislation designed to encourage financial institutions ‘to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions’.”¹⁸ Furthermore the Chamber stated: “[t]he Chamber supports the goals of the CRA and believes that access to safe and affordable credit is central to achieving the American dream and ascending the economic ladder.”¹⁹ The ABA agreed: “[a]ccess to capital is fundamental to economic opportunity in the United States.”²⁰ But filing a meritless lawsuit against the rule that would modernize how we evaluate a bank’s ability to serve the entire community in markets where your members are already doing business indicates the insincerity of the Chamber’s and the ABA’s purported commitments to the CRA’s goals.

of Public Affairs, “Justice Department Secures \$9 Million from Park National Bank to Address Lending Discrimination Allegations,” press release, February 28, 2023, <https://www.justice.gov/opa/pr/justice-department-secures-9-million-park-national-bank-address-lending-discrimination>; Office of the Comptroller of the Currency, “Community Reinvestment Act Performance Evaluation: First Merchants Bank,” June 5, 2018, p. 1, https://crapes.fdic.gov/publish/2018/04365_180605.PDF; Office of the Comptroller of the Currency, “Community Reinvestment Act Performance Evaluation: Cadence Bank,” July 29, 2019, p. 1, <https://occ.gov/static/cra/craeval/mar20/3656.pdf>; Office of the Comptroller of the Currency, “Community Reinvestment Act Performance Evaluation: Trustmark National Bank,” June 24, 2019, p. 3, <https://occ.gov/static/cra/craeval/Apr20/10523.pdf>.

¹⁵ Department of Justice, “Justice Department Secures Over \$31 Million from City National Bank to Address Lending Discrimination Allegations,” press release, January 12, 2023, <https://www.justice.gov/opa/pr/justice-department-secures-over-31-million-city-national-bank-address-lending-discrimination>.

¹⁶ Letter from Ranking Member Representative Waters to the Attorney General Merrick Garland, Assistant Attorney General Clarke, U.S. Attorney Estrada, and Acting Comptroller Hsu, June 18, 2024, https://democrats-financialservices.house.gov/uploadedfiles/06.14.2024_regs_-_cnb.co.pdf.

¹⁷ *Id.*

¹⁸ U.S. Chamber of Commerce, “U.S. Chamber Comments on Community Reinvestment Act,” August 8, 2022, <https://www.centerforcapitalmarkets.com/letter/u-s-chamber-comments-on-community-reinvestment-act/>.

¹⁹ *Id.*

²⁰ American Bankers Association, “Joint ABA and State Bankers Association Letter to the Agencies on the Proposed CRA Overhaul,” comment letter, August 5, 2022, <https://www.aba.com/advocacy/policy-analysis/letter-to-the-agencies-on-the-proposed-cra-overhaul>.

The CRA must be updated to meaningfully address the discriminatory redlining that banks continue to engage in across the country. The proliferation of ECOA lawsuits filed against banks that are simultaneously passing their CRA exams demonstrates that the current CRA rules must be updated to protect bank customers from discrimination. Given our concerns about the Chamber and ABA's actions to prevent these updates, we request answers to the following questions no later than September 26, 2024:

1. How many of your member banks have been sued under the Equal Credit Opportunity Act in the last 10 years?
2. In each of those suits, how much was the bank fined for engaging in discriminatory practices?
3. What percentage of those banks that were the subject of lawsuits received "satisfactory" or "outstanding" CRA exam scores on CRA exams covering the time period when discriminatory practices were identified or alleged?
4. Did your organization conduct a vote or otherwise receive input from your members before deciding to file this lawsuit?
 - a. If so, how did it do so?
 - b. What did the opinions received by your organization indicate about members' opposition or support for the rule?
5. Which of your organization's members have contributed to efforts to challenge this rule?
 - a. Please provide a list of all corporations participating in this effort and the amount of money pledged from each.
6. What percentage of banks affected by the CRA rule changes are located within the jurisdiction of the Northern District of Texas, where the Chamber filed its lawsuit challenging the rule?

Sincerely,



Elizabeth Warren
United States Senator



Ranking Member Maxine Waters
U.S. House of Representatives
Committee on Financial Services