COMMUNITY REINVESTMENT ACT REGULATION HEARINGS

COMMENTS FROM

POVERTY & RACE RESEARCH ACTION COUNCIL

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Thank you for the opportunity to comment on the Community Reinvestment Act (CRA) Regulations in response to the Federal Register Notice dated June 23, 2010. The comments below are submitted on behalf of the **Poverty & Race Research Action Council** (PRRAC), a civil rights policy organization working to expand housing choices for low income families outside of high poverty and segregated neighborhoods. We write to emphasize the importance of fair housing as part of the "community development" provisions of the CRA.

Background on Banking Agencies' Duty to Affirmatively Further Fair Housing

The Fair Housing Act was passed in 1968 in response to a legacy of private discrimination and government sponsored segregation.[1] The act prohibits discrimination in the sale and rental of housing, and directs the HUD Secretary to "administer the programs and activities relating to housing and urban development in a manner *affirmatively to further* the policies of [the Fair Housing Act]."[2] Additionally, the Act charges other agencies: "All executive departments and agencies shall administer their programs and activities relating to housing and urban development (*including any Federal agency having regulatory or supervisory authority over financial institutions*) in a manner affirmatively to further the [Fair Housing Act] and shall cooperate with the Secretary to further such purposes."[3] President Clinton recognized that section 808 of the

[1] From the start of the federal government's involvement in housing after WWII, government housing policies contributed to racial segregation. Combined with private discrimination, benefits and opportunities were given to white families, while black families were marginalized. Bank redlining disinvested integrated neighborhoods and prevented blacks from moving into predominantly white neighborhoods. White and middle class flight left many urban neighborhoods impoverished and segregated. The consequences of these policies included segregated schools, lack of services and employment opportunities in high poverty areas. *See* Florence Wagman Roisman, A Place to Call Home? Affordable Housing Issues in America, 42 WAKE FOREST L. REV. 333, 336-46 (2007).

[2] 42 U.S.C. § 3608(e)(5)

[3] 42 U.S.C. § 3608(d) (emphasis added)

Fair Housing Act was not being enforced by other agencies. Consequently, he signed Executive Order 12,892 on January 14, 1994, titled *Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing*.[4] This Executive Order affirms the obligations of banking agencies overseeing the CRA to assure that banking institutions follow this policy in their affordable housing efforts.

Beginning in the early 1970s, the federal courts explained that the duty to affirmatively further fair housing requires federal housing agencies to assess the racial impacts of their decisions and strive towards integrated housing patterns. *Shannon v. HUD* required HUD to assess its housing investments to ensure housing programs did not have a segregative or discriminatory effect.[5] *NAACP v. HUD* ruled that Title VIII expressed "an intent that HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases."[6] In *NAACP v. HUD*, First Circuit Judge Breyer added that HUD had "an obligation to assess negatively those aspects of a proposed course of action that would further limit the supply of genuinely open housing and to assess positively those aspects of a proposed course of action that would increase that supply."[7] In *Trafficante v. Metropolitan Life Ins. Co.*, the Supreme Court permitted all those affected by discriminatory housing practices, including white tenants, to sue under the Fair Housing Act.[8] The court reasoned that even whites had a right for redress in policies that resulted in "the loss of important benefits from interracial associations."[9] In *Hills v. Gautreaux*, the Supreme Court described the affirmatively furthering obligation as a housing integration mandate encompassing the totality of the housing market area (Chicago and its suburbs).[10]

CRA Hearing Questions: Refining the Community Development Requirement

The CRA's definition of community development should be clarified to include fair housing requirements that encourage investment in new non-segregated housing locations for low and moderate income families. The current definition simply lists "affordable housing (including multifamily rental housing) for low- or moderate-income individuals."[11] Without more guidance, the CRA will continue to reward banks that invest in segregated low income housing in high poverty neighborhoods – investments which have the potential to increase poverty concentration in those neighborhoods and their schools, and which are contrary to the Fair Housing Act's mandate.

The community development goal in the CRA should encourage development of low income rental housing throughout the metropolitan area, with an emphasis on placing affordable housing in high opportunity suburbs and urban neighborhoods, and affirmative

[4] The Executive Order restates § 3608(d) of the Fair Housing Act. Exec. Order No. 12892, 59 FR 2939 (Jan. 14, 1994).
[5] Shannon v. HUD, 436 F.2d 809 (3d Cir. 1970)
[6] NAACP v. Sec'y of Hous. & Urban Dev., HUD, 817 F.2d 149, 155 (1st Cir. 1987) (emphasis removed)
[7] NAACP v. Sec'y of Hous. & Urban Dev., HUD, 817 F.2d 149, 156 (1st Cir. 1987)
[8] Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972)
[9] Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 210 (1972)
[10] Hills v. Gautreaux, 425 U.S. 284, 302-306 (1976)
[11] 12 C.F.R. § 25.12(g)(1) (2010).

marketing to ensure that low income residents of segregated neighborhoods have access to this new housing. Criteria for a high-opportunity neighborhood should include low poverty, high performing schools, low-crime rates, strong employment opportunities, and access to community services. Parallel CRA-eligible community development investments in high-poverty neighborhoods should focus on economic development and community improvement efforts, not simply adding low-income housing units.

To effectuate the duty to promote fair housing, the CRA should provide incentives to banking institutions to promote desegregation in their community development efforts. The CRA should give positive ratings for banking institutions that finance affordable housing for low and moderate income families outside of high poverty and racially segregated neighborhoods. Conversely, banking institutions that persist in limiting housing choices for low income families in concentrated neighborhoods should receive lower ratings. Other community development efforts in high poverty communities, like small business and education loans, investments in supermarkets, and other job-generating activities should be strongly encouraged and incentivized.

Additional efforts by banking institutions to further fair housing should also be rewarded. For example, banks should provide grants to mobility counseling organizations that help low income families find housing outside of poverty concentrated neighborhoods. Banks should also be encouraged to support fair housing testing and enforcement by private fair housing organizations.

Conclusion

In accordance with the Fair Housing Act, banking agencies and covered institutions have a duty to affirmatively further fair housing. The CRA should emphasize this fair housing obligation in its community development test. It should reward banking institutions that finance affordable rental housing in low-poverty and high opportunity neighborhoods, and it should encourage non-housing investments aimed at improving the quality of life, economic advancement and community services in high-poverty and racially isolated areas.