

PRRAC
Poverty & Race Research Action Council
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August 2, 2022

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

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

To whom it may concern:

The Poverty and Race Research Action Council (PRRAC) is a civil rights law and policy organization based in Washington, DC dedicated to promoting research-based strategies to address structural racial inequality and change systems that disadvantage low-income people of color. Much of PRRAC's work focuses on fair housing, with a particular commitment to developing policies to overcome the effects of segregation.

PRRAC appreciates this opportunity to comment on the joint Notice of Proposed Rulemaking (NPR) from the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively the banking agencies) regarding the Community Reinvestment Act (CRA).

We write to support these significant updates to the CRA's regulations and to call for additional changes to further strengthen this vitally important legislation. Since its enactment, the CRA has helped drive significant amounts of bank lending and investment for low and moderate-income communities, in keeping with its purpose of addressing the damaging legacy of redlining and disinvestment. However, we urge the banking agencies to do more to allow the CRA to fulfill its enormous potential to affirmatively further fair housing (AFFH).

Aligning the CRA with the Affirmatively Furthering Fair Housing mandate of the Fair Housing Act

The Fair Housing Act of 1968 created a duty for all federal government executive departments and agencies to administer their programs and activities relating to housing and urban development "affirmatively to further fair housing," 42 USC § 3608(d). This means that the federal government must take proactive measures to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive and integrated communities free from discrimination, 24 C.F.R. §5.151. Executive Order 12892 (January 17, 1994) reaffirmed that the

AFFH duty applies to the banking agencies and expressly stated that the banking agencies must incorporate fair housing into their regulatory oversight responsibilities.

Although the AFFH duty explicitly includes the banking agencies, the CRA's regulatory framework currently does not do enough to further fair housing. The CRA's regulations, in particular those provisions encouraging investment in affordable multifamily rental housing, should be updated to better account for the current concentration of subsidized housing in disinvested, high-poverty areas, and encourage the siting of affordable housing outside of high poverty, segregated neighborhoods, to enable greater housing choice and increase access to opportunity for low and moderate-income households.

The CRA Should Consider Race and Ethnicity

We also urge the banking agencies to use data on race and ethnicity to evaluate bank activity. Massive racial disparities in housing and lending continue to persist decades after the passage of the CRA and other landmark civil rights laws intended to address discrimination in the financial system. These disparities have a direct effect on homeownership rates, wealth accumulation, and life outcomes. There is nothing in the text of the CRA that prohibits consideration of race and there are significant benefits to analyzing race and ethnicity in CRA evaluations. Including race and ethnicity in CRA exams can help to identify and address disparities and reduce systematic inequality that disadvantages people of color in the United States.

Answers to Questions in the Notice of Proposed Rulemaking

Below we provide answers to several requests for feedback in the NPR.

Question 3. Is the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for low- or moderate-income (or, under the alternative discussed above, for low-, moderate- or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low- or moderate-income individuals?

PRRAC believes that affordable housing activities should qualify under a stated purpose or bona fide intent standard if they are funded by a federal housing program that has specific income guidelines such as Project-Based Rental Assistance and the HOME Investment Partnerships Program. State and local housing programs should also qualify if they have similar income guidelines that focus on low- and moderate-income affordability. We also support granting favorable consideration for the impact review of the community development test for housing developed with government programs in high-cost, high-opportunity areas where low- and moderate-income households face the most barriers to accessing affordable housing.

Question 4. In qualifying affordable rental housing activities in conjunction with a government program, should the agencies consider activities that provide affordable housing to middle-

income individuals in high opportunity areas, in nonmetropolitan counties, or in other geographies?

We strongly support using the CRA to expand housing choice, which is an important element of fair housing. Encouraging financing of affordable housing activities in high opportunity, low poverty areas can help to broaden the range of neighborhood options for recipients of tenant-

based rental assistance, including Housing Choice Voucher (HCV) holders, and enhance access to quality schools for families with children. Incentivizing affordable housing activities in high opportunity areas would also help banks develop a more balanced portfolio of affordable housing and promote integration.

We also urge the federal banking agencies to prioritize affordable housing activities in high opportunity areas that provide housing for low- and moderate-income individuals over affordable housing activities for middle-income individuals. Low- and moderate-income individuals are more likely to experience rent burdens as well as challenges in securing affordable housing than middle-income individuals. This is especially true in high opportunity areas. In order to ensure that housing developed in high opportunity areas is truly accessible, there should be consideration of whether properties are following fair housing best practices such as affirmative marketing to attract a wide range of applicants and are leasing to families with Housing Choice Vouchers.

Moreover, we urge the agencies to prioritize developing housing in high opportunity areas that can adequately serve families with children. Children who move to a high-opportunity area at a young age can experience substantial positive long-term economic and educational outcomes.¹ Providing more housing (with a wide range of unit sizes and no age restrictions) for families with children can lead to significant benefits and help fulfill the obligation to affirmatively further fair housing. Developing low-income family housing in these areas should therefore be considered favorably in the impact review of the Community Development Finance test.

Question 5. Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low- and moderate-income individuals, including properties where a renovation is occurring?

We support the policy of awarding CRA credit for projects that create or preserve naturally-occurring affordable housing (NOAH). Incentivizing construction of such housing is an important way to expand the stock of affordable housing across the country and increase the ability of HCV holders to access affordable housing on the open market. We believe that the chosen standard ensuring that a majority of units in a NOAH is affordable to tenants making 60% of AMI is appropriate and will ensure that more housing is accessible to voucher holders and others.

Question 6. What approach would appropriately consider activities that support naturally occurring affordable housing that is most beneficial for low- or moderate-income individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is low- or moderate-income, or in distressed and underserved census

¹ Raj Chetty, Nathaniel Hendren, and Lawrence F. Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 4 Am. Econ. Rev. 855, 899 (2016).

tracts, in order to encourage affordable housing in a wider range of communities, or would this expanded option risk crediting activities that do not benefit low-or moderate-income renters?

Although we support awarding CRA credit for NOAH activities, we urge the banking agencies to adjust their criteria for what qualifies as NOAH to address significant fair housing concerns.

The agencies propose allowing a project to qualify as NOAH if a majority of its units have rent affordable to a tenant making at least 60% of area median income and if it meets at least one of the following criteria:

- 1) The housing is located in a low-or-moderate-income census tract;
- 2) the housing is purchased, developed, financed, rehabilitated, improved, or preserved by a nonprofit organization with a stated mission of, or that otherwise directly supports, providing affordable housing;
- 3) there is an explicit written pledge by the property owner to maintain rents affordable to low-or-moderate-income individuals for at least five years or the length of the financing, whichever is shorter; or
- 4) the bank provides documentation that the majority of the residents of the housing units are low-or-moderate-income individuals or families, for example documentation that a majority of residents have Housing Choice Vouchers.²

While we recognize that some affordable housing investment is needed in low-or-moderate-income census tracts, particularly in those subject to gentrification pressures, we are concerned that the first criterion could have the unintended effect of reinforcing longstanding patterns of racial segregation and concentrated poverty. We believe that there must be greater geographic balance of NOAH activities and urge the banking agencies to expand the types of census tracts in the first criterion so that NOAH can be developed in middle-and upper-income census tracts, especially those considered to be high opportunity areas. Expanding the types of census tracts used to qualify for NOAH will help affirmatively further fair housing by promoting integration, increasing neighborhood choice, and improving access to opportunity for low-income families with young children. Further, where new affordable housing is created in low-income areas, it should be combined with significant non-housing revitalization investments (as in the “Concerted Community Revitalization Plan” aspect of the LIHTC program, which has generally been overlooked in that program’s operation).

In addition, we believe the proposed affordability periods are too short. Longer affordability periods would reduce the risk of displacement for low-and moderate-income families. At a minimum, the banking agencies should align the affordability period with those of federal housing programs. For example, the HOME Investment Partnerships program requires a minimum affordability period of 20 years for new construction and 15 years for rental properties that are rehabilitated using HOME funds for refinancing. Another option could be to align the affordability period with that of the Low-Income Housing Tax Credit program which requires an affordability commitment of 30 years.

The proposed approach to allow housing to qualify as NOAH is intended to provide flexibility to banks which may face difficulty providing the required documentation for the criteria. However,

² Community Reinvestment Act, Joint Notice of Proposed Rulemaking, 87 FED. REG. 33884, 33896 (proposed June 3, 2022).

we are concerned that allowing housing to qualify as NOAH after satisfying just one criterion may be insufficiently rigorous. We urge the banking agencies to consider requiring housing to have an affordability period and to meet at least one other criterion to qualify as NOAH.

The banking agencies must also guarantee that NOAH qualified housing will be of good quality and that residents will receive basic tenant protections. The banking agencies should consider incorporating monitoring of housing quality and any abusive operating practices by recipients of financing into CRA exams.

Question 7. Should the proposed approach to considering naturally occurring affordable housing be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing? If so, should consideration of single-family rental housing be limited to rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met?

We support considering single-family rental housing as NOAH in addition to multifamily housing. This could help expand the range of areas for NOAH investment and increase housing options for HCV holders, particularly in communities that lack multifamily housing due to zoning or other factors.

Consideration of single-family rental housing should also be tailored to avoid lower income census tracts where institutional investors and others have purchased significant numbers of single-family homes and converted them for rental use. Doing so can help to discourage speculative activity. We also encourage any consideration of single-family rental housing to require a significant affordability period. Consideration should not be provided to support rental properties that engage in housing discrimination, abusive eviction practices, or failure to maintain healthy and habitable living standards.

Question 10. What changes, if any, should the agencies consider to ensure that the proposed affordable housing definition is clearly and appropriately inclusive of activities that support affordable housing for low-or moderate-income individuals, including activities that involve complex or novel solutions such as community land trusts, shared equity models, and manufactured housing?

PRRAC supports expanding the financing of innovative housing models such as community land trusts and shared equity homeownership. These innovative solutions can help provide long-term affordability, protection from predatory speculation in disinvested communities, and more democratic control over housing.

The federal banking agencies should consider requiring terms that bolster community ownership or control over housing such as a condition that resident representation comprises at least one-third of a governing board of a community land trust so that beneficiaries will be able have a role in decision-making. Priority for community development credit should also be given to nonprofit organizations that have a demonstrated history of serving the community within which housing is to be located.

Question 16. Should the agencies include certain housing activities as eligible revitalization activities? If so, should housing activities be considered in all, or only certain, targeted geographies, and should there be additional eligibility requirements for these activities?

PRRAC does not support including housing-related activities in the definition of eligible revitalization activities. Areas targeted for revitalization activities are often areas where low-income housing is already concentrated. Therefore, housing activities that are undertaken as part of revitalization efforts, particularly as part of efforts that lack meaningful goals and other robust measures to ensure successful implementation, risk perpetuating economic and racial segregation. Instead, housing activities should be considered as part of the affordable housing component of the community development test.

Question 37. For the proposed factor of activities that support affordable housing in high opportunity areas, is the proposed approach to use the FHFA definition of high opportunity areas appropriate? Are there other options for defining high opportunity areas?

PRRAC supports the proposed approach to align the definition of high opportunity with that used by the FHFA. This definition includes areas which includes areas designated by HUD as a Difficult Development Area (DDA) or areas designated by a Qualified Allocation Plan as a high opportunity area, and where the poverty rate falls below 10 percent for metropolitan areas or 15 percent for nonmetropolitan areas. This approach is easily understood, publicly accessible, and can be applied across the country.

Other factors that may be considered to define high opportunity areas include dimensions of opportunity such as environmental health and access to transit. Access to high-performing public schools may be an especially worthwhile factor to consider because of its impact on families with children.³ As part of the implementation of its 2015 AFFH Final Rule, HUD created several opportunity indices that draw from Census Bureau data.⁴ These opportunity indices are publicly available and could be used to help define high opportunity areas in a more holistic way.

Question 157. Would the benefits of requiring home mortgage data collection by non-HMDA reporter large banks that engage in a minimum volume of mortgage lending outweigh the burden associated with such data collection? Does the further benefit of requiring this data to be reported outweigh the additional burden of reporting?

Home mortgage data is vital to identifying disparities in home lending and in holding banks accountable under civil rights laws. The benefit of requiring this data reporting and making it publicly available strongly outweighs the additional burden of reporting.

Question 161. How might the format and level of data required to be reported affect the burden on those banks required to report community development financing activity data, as well as the usefulness of the data? For example, would it be appropriate to require reporting community development financing data aggregated at the county-level as opposed to the individual activity-level?

Data reporting should be done at the individual activity level. This would allow for more precise tracking of community development financing including affordable housing activities. The data

³ The Child Opportunity Index gives particular weight to high performing schools, <https://www.diversitydatakids.org/child-opportunity-index>.

⁴ Affirmatively Furthering Fair Housing Data and Mapping Tool (AFFH-T) Data Documentation, <https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-T-Data-Documentation-AFFHT0006-July-2020.pdf>.

should be available on a census tract level as well so that disparities between neighborhoods can be better tracked.

Question 173. Should the agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?

Yes. Disclosing HMDA data by race and ethnicity will promote transparency and serve the public interest by helping to identify disparities by race and ethnicity.

Conclusion

At this critical time in the United States, we must strengthen the protections of the CRA, and align the CRA more intentionally with the Fair Housing Act. While the NPR provides a solid foundation for improving the CRA, we urge the banking agencies to do more so that the CRA can be more effective and fulfill its potential to affirmatively further fair housing. Thank you for the opportunity to comment.

Sincerely,

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