

From: Wilcox, William (MYR) <william.wilcox@sfgov.org>
Sent: Monday, August 01, 2022 4:04 PM
To: Comments
Subject: [EXTERNAL MESSAGE] City and County of San Francisco Comments on CRA NPR: RIN 3064-AF81
Attachments: CRA Comment Letter City and County of San Francisco - FDIC.pdf

Dear Acting Chairman Gruenberg and FDIC Staff,

Attached is the comment letter on the Community Reinvestment Act Notice of Proposed Rulemaking (RIN 3064-AF81). Thank you for your consideration of our comments and please let us know if we can provide any additional information.

Best,

William Wilcox

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August 1, 2022

Submitted via:
comments@fdic.gov

Martin J. Gruenberg, Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

**RE: Community Reinvestment Act Regulations Notice of Proposed Rulemaking
RIN (3064-AF81)**

Dear Board of Governors of the Federal Reserve System,

The City and County of San Francisco appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding updating the Community Reinvestment Act (CRA). This NPR represents the most significant changes to the CRA regulation and exams in 27 years.

CRA has played an important role in directing private investment into affordable housing and ensuring necessary financial services are equitably available for low-income residents. We applaud the significant improvements included in the NPR, and appreciate the opportunity to offer comments and suggestions for further improvements:

Racial Justice

Persistent racial disparities in lending make it essential to incorporate race and ethnicity in CRA exams. Racial disparities in lending cannot be addressed unless they are specifically analyzed, and banks are held accountable. We support the proposed use of [Home Mortgage Disclosure Act \(HMDA\) data](#) to produce exam tables describing lending by race, but urge you to incorporate those findings into banks' CRA exam ratings.

We echo the recommendations from NCRC and other advocates to bolster fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race, and to use Section 1071 small business and farm lending data by race and gender on CRA exams when the Section 1071 data becomes available.^[6]

Community Development Finance Test

Housing affordability remains one of the greatest challenges facing San Francisco and private investment in lending and Low-Income Housing Tax Credits (LIHTC) is a major source of funding for our affordable housing projects.

Given the important role of LIHTC, we would strongly encourage that the Community Development Financing Test be once again bifurcated to separately consider lending and investment. Otherwise, we expect to see a significant reduction in demand for LIHTC because it requires a significantly greater amount of time, effort and niche expertise to underwrite and deploy in comparison to lending. Additionally, originating loans for affordable housing is much more similar with traditional lending activities that banks already have capacity to carry out. Purchasing LIHTC investments requires that banks take an ownership interest in a development and offers less certain returns. Investing in LIHTC is a more costly and risky approach than lending. Banks make roughly 85% of the investments in LIHTC and removing the investment test will lower demand and thus pricing and funds available to affordable housing, meaning fewer units will be built for the same amount of federal investment. The impact evaluation alone is not enough to address this issue because this review is not well defined, not linked to clear metrics, and therefore is extremely unlikely to provide adequate incentive for banks to continue LIHTC investment at their current levels, let alone grow their investments as low-income communities desperately need.

The Community Development Finance Test should also have guidelines illustrating how performance on the ratio would correspond to a score. The assessment should be based on the lower performing of the national or assessment area ratio. The agencies should develop guidance and a new appendix to replace Appendix A with more detailed descriptions of how ratings would correlate to how a bank's performance compares against benchmarks. Impact evaluations should also include additional credit for lending or investing in affordable housing at competitive or advantageous terms – with negative assessment for predatory practices such as using litigation to stop non-profits from using their Right of First Refusal in LIHTC transactions.

CRA credit for investments in mortgage-backed securities (MBS) should only be counted pro-rata for the portion of the MBS that is from affordable housing or other qualifying investments. Investments in MBS should be discounted by 50% in comparison to more traditional lending or investment in qualified CRA activities because these securities remain highly liquid and provide comparably less public benefit. Furthermore, affordable housing should be allowed to count under other categories such as community revitalization and climate resiliency, but should not be double counted as this would lead to decreases in investment.

No CRA credit should be given for Middle Income Housing in High Opportunity areas, as is currently proposed. The LMI housing needs in high opportunity areas are immense and giving consideration for middle-income housing in such areas will simply dilute the incentive to meet those needs and is unwarranted.

We support granting full consideration to investments in mixed-income LIHTC properties (because the credit itself already is pro-rated) but recommend that CRA consideration be pro-rated for lending to such developments. A significant portion of any such loan supports market-rate units which do not serve LMI populations. Similarly, we support pro-rating consideration for both lending and investment in non-LIHTC mixed-income properties based on the percentage of affordable homes. However, banks should not receive credit for affordable housing lending if it is the minimum required under a local inclusionary ordinance.

In order to incentivize a greater amount of community development lending and investment, the agencies should maintain the current thresholds for determining a Large Bank. According to the National Community Reinvestment Committee, the proposed change would result in 217 currently large banks being reclassified as Intermediate Banks, in which case they would only voluntarily be subject to the Community Development Financing Test. These banks are already used to being evaluated as Large Banks, there is no harm in keeping them in that category.

CRA Credit for unsubsidized affordable housing

San Francisco has been a national leader in the preservation of unsubsidized affordable housing through our Small Sites Program. We believe the preservation of unsubsidized affordable housing is vital to housing and community stability. However, the NPR allows CRA credit for too broad a category of investments that would not actually preserve the existing affordability for tenants. The existing requirements will reward banks to lending to speculators who purchase, renovate, and flip unsubsidized affordable housing – leading to displacement and gentrification. We strongly oppose providing CRA credit under the existing proposed rule. We would in turn suggest projects only qualify if:

- Projects are rent restricted for a minimum of 30 years or have protections under a state or local managed rent control/stabilization program
- And projects are owned by a mission-driven affordable housing non-profit

In turn, banks should not receive CRA credit if:

- They underwrite a property subject to rent stabilization or rent control ordinances assuming income growth greater than allowable increases under rent control, thus assuming displacement and evictions.
- The naturally occurring affordable housing is single family homes, condominiums or other ownership housing that will not be restructured to be part of a deed restricted affordable homeownership program. Otherwise, CRA may encourage institutional investment to acquire existing owner-occupied properties and remove homeownership opportunities from the market.

The agencies must also go further to discourage banks from financing displacement. The proposal appears to refuse CRA consideration for certain community development

activities if they result in displacement. This requirement should be extended to all community development activity, especially the acquisition of unsubsidized affordable housing.

Banks should not receive CRA consideration unless they demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting act, UDAAP and other laws. Banks should adopt procedures such as the California Reinvestment Committee's Anti Displacement Code of Conduct and engage in due diligence of the owners of LLC property owners - data they already collect - to determine if there are any concerns relating to eviction, harassment, complaints, rent increases, or habitability of potential bank borrowers.

It is not enough to cease offering CRA consideration for harmful products. Banks must be penalized for harm. Bank regulators should conduct extensive outreach to community groups to investigate whether landlord borrowers are exacerbating displacement pressures or harming tenants. Because displacement often has a disparate impact on protected classes, examiners should consider disparate displacement financing to be discrimination under the expanded definition, that would also trigger CRA ratings downgrades and subject the bank to potential enforcement action.

Strengthen the Service Test for CRA

The CRA should help to facilitate access to safe and affordable bank accounts as well as access to capital; examinations should emphasize performance over process and CRA plans should be tailored to the specific goals, needs and assets of the community.

The service test should include a more rigorous assessment of retail banking products and services, with special consideration given to financial institutions that develop and support safe and affordable accounts that meet the needs of LMI communities, particularly those that make special efforts to be more inclusive of populations that face excessive barriers to financial products, such as youth and immigrants.

The NPR represents several significant improvements. We are grateful for the opportunity to recommend ways to strengthen the landscape even further to help reduce inequalities, disinvestment and assist us in improving the lives of San Franciscans.

We urge the agencies to incorporate race in CRA exams, reincorporate the community investment requirements, address deficiencies in the definition of preserving unsubsidized affordable housing and strengthen the service test.