

# LEGAL ACTION OF WISCONSIN

Providing free legal services to low-income Wisconsin clients since 1968 • Proporcionando servicios legales gratuitos a clientes de bajos ingresos en Wisconsin desde 1968

**TO:** OCC, FDIC, Federal Reserve Board  
**FROM:** Legal Action of Wisconsin, Inc.  
**DATE:** August 5, 2022  
**RE:** CRA - Comments in response to the Notice of Proposed Rulemaking  
OCC Docket ID OCC-2022-0002;  
FDIC RIN 3064-AF81;  
Federal Reserve Docket No. R-1769 and RIN 7100-AG29

Thank you for the opportunity to submit comments on the proposed Community Reinvestment Act (CRA) rules. Legal Action of Wisconsin, Inc. (LAW) is Wisconsin's largest nonprofit law firm that provides free, high-quality civil legal services to low-income people in 39 of Wisconsin's 72 counties. We ensure access to justice for low-income Wisconsin residents by protecting their housing, safety, family stability, livelihood, and economic stability. In our consumer law practice, we work to counter the most egregious practices that target Wisconsin's low-income consumers. We have a Consumer Priority Committee and a Housing Priority Committee that work to educate and represent low-income consumers and tenants throughout our service territory.

The longstanding failure of the financial industry to serve all communities remains a key force in maintaining the nation's racial and economic inequality. Before the Community Reinvestment Act was passed, very few banks would invest in or lend to people of color or people with low incomes. In fact, banks often overtly discriminate against these communities through redlining the neighborhoods where our clients may live. The CRA was intended to curb redlining and racial discrimination, and to make access to credit more equitable. By requiring banks to address the credit needs of the communities where they take deposits, the CRA has played a crucial role in making credit more available to communities of color and increasing investment in low and moderate income ("LMI") neighborhoods. However, tremendous inequities remain that make it difficult or impossible for many people like LAW's low-income clients to access credit.

In order for the CRA to serve this purpose, and the broad goals of the statute, it is critical that any changes to the CRA framework be limited to measures that will increase equity in bank investments and access to sustainable, wealth-building credit in underserved communities as the statute intended. Without this, LAW clients will continue to be subject to the inequities highlighted below.

## **Race and CRA.**

CRA reform that is focused on advancing racial equity and closing the racial wealth gap will significantly benefit our clients. Redlining and disinvestment have been a systemic feature of the financial system for decades. The CRA was passed with the intent to reverse those specific harms, but the current regulatory structure does not take into account the racial compositions of the communities that banks are required to serve. Communities of color remain at a disadvantage because of the

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insidious discrimination that formerly redlined communities continue to face today. The COVID-19 pandemic has highlighted these disparities. People of color make up a disproportionate number of COVID-19 cases, hospitalizations, and deaths, which is more evident than ever during the ongoing COVID-19 emergency. We appreciate the FRB's direct recognition and consideration of the economic impact of the pandemic on LMI households as part of this CRA rulemaking process. The COVID-19 pandemic has presented challenges for all families, but people of color and LMI communities have borne the brunt of illness and economic devastation because of discrimination and socioeconomic disparities.<sup>11</sup> Although the CRA alone cannot solve these problems, it is a tool that can be used to facilitate a better recovery for communities of color and LMI neighborhoods where our clients may live and work.

Racial and ethnic discrimination in lending is still an issue in urban, suburban and rural areas across the country. In the City of Milwaukee, Census.gov shows that 39% of the residents are Black, 19% Latino, 5% Asian, 6% two or more races 6% and 34% non-Latino and non-Hispanic White. But looking at all home loans (purchase, improvement or refinance) originated in the City of Milwaukee in 2021, only 14% went to Black borrowers, 12% to Latino, 4% to Asian, 1% to two or more races, but 55% were originated to non- Latino and non-Hispanic White borrowers.

One of our largest, best-known banks in the Milwaukee area originated only:

- 17 home loans (for purchase, home improvement or refinance) to Black borrowers in the City of Milwaukee in 2021,
- 24 home loans to Black borrowers in the City of Milwaukee in 2020,
- 26 to Black borrowers in the City of Milwaukee in 2019, and
- 39 to Black borrowers in the City of Milwaukee in 2018.

Yet they received an "Outstanding" CRA rating on their most recent Performance Evaluation.

CRA Performance Evaluations must be structured to effectively require banks to serve all communities, especially borrowers and communities of color. Closing the racial wealth gap will make the nation and the economy substantially stronger, elevate the Gross Domestic Product and give the U.S. a more strategic competitive advantage. In order for CRA to be a truly effective tool to address the harms of the redlining that LAW clients may face, the CRA regulatory framework should explicitly include race to properly evaluate whether banks are meeting the credit needs of people and communities of color. Banks are evaluated on their performance in meeting the needs of low and moderate income (LMI) borrowers and communities. Similarly, examiners should review bank performance in meeting the credit needs of communities of color. Borrowers and businesses of color are not equivalent to LMI communities. While some of the issues may overlap, communities of color also have different experiences that should be examined separately from LMI status. To improve

<sup>1</sup> Centers for Disease Control and Prevention, "[Health Equity Considerations and Racial and Ethnic Minority Groups](#)," February 12, 2021

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outcomes for our clients, CRA performance measures that directly examine lending, investing, community development financing and banking services to people of color and in communities of color will help combat the pervasiveness of racial inequities in the banking system. An evaluation should consider all disparities in marketing, originations, pricing, terms, and default rates and how they correlate with race. CRA exams should include racial and ethnic demographic data in performance context analysis and require banks to affirmatively include communities of color in their assessment areas.

We are deeply troubled by the agencies' clarification that any disparities in HMDA data will not impact the CRA rating of a bank. If banks' CRA ratings are not downgraded by lending disparities, where are the teeth in CRA? Banks' actions regarding extending fairly priced credit, financing community development, opening responsive account products and maintaining branches in communities of color should factor into a bank's CRA rating. This proposal not only fails to require this, but it also offers little as an alternative approach to addressing redlining and discrimination. If there is no recourse for disparities in HMDA data, the banks have little incentive to end discriminatory practices, which will continue to harm LAW clients.

While the Notice of Proposed Rulemaking (NPR) proposal to disclose HMDA mortgage lending data on Performance Evaluations is welcome because it may help our clients by potentially thwarting discrimination, it should be only one of the changes made. Merely requiring disclosure of already publicly available data on a report that the public rarely accesses is not meaningful transparency. A proposal that requires all banks to publish home lending data tables and maps that show disaggregated race and ethnicity disparities in a prominent place on the banks' websites will allow our clients and communities to have informed interactions. In addition, it should require banks to publish small business lending data on their websites by using similar tables and maps that show small business lending disaggregated race, ethnicity, gender and neighborhood when the Section 1071 data becomes publicly available and provides that the data will impact CRA ratings.

One positive aspect of the proposal is the expanded considerations of discrimination to include transactions beyond credit and lending, such as when discrimination occurs when a consumer tries to open a bank account. However, an expanded definition of discrimination is only as helpful as the agencies' willingness and capacity to diligently look for evidence of discrimination and provide downgrades once it is found. We are aware that the General Accountability Office recently found that fair lending reviews at the Office of the Comptroller of the Currency were outdated and inconsistent. Agency enforcement of redlining or discrimination cases, as well as CRA ratings downgrades for discrimination, are exceedingly rare. Agency fair lending reviews that are more extensive and rigorous, solicit and rely on feedback from all relevant federal and state agencies as well as community group stakeholders, and are reflected more substantively on CRA Performance Evaluations will continue to bring awareness to disparities that may exist. Findings of discrimination, including for disparate impacts relating to displacement financing, fee gouging or climate degradation, should always result

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in automatic CRA ratings downgrades, if not outright failure. How can a bank that discriminates be said to be doing a “Satisfactory” job serving the community, including those that include LAW clients?

CRA evaluations should consider Special Purpose Credit Programs (SPCPs) and recognize the importance of SPCPs as a critical way for banks to help meet the local credit needs of communities of color, and SPCPs should garner CRA credit and positive impact points that enhance a bank’s CRA rating, as should all activities that close wealth gaps for racial, ethnic, national origin, Limited English Proficient, LGBTQ and other underserved groups. These efforts are important to the communities we serve, even if their reach is limited.

**Mortgages.** CRA credit should only be given for mortgage loan originations to owner occupants unless the originating lender is a mission-driven nonprofit. CRA credit should not be given for banks’ loan purchases from other lenders, nor should credit be given to mortgage loan originations to investors unless the investor purchaser is an LMI or BIPOC buyer or a nonprofit organization.

Regulators should consider providing extra credit for originating mortgages to prospective Community Land Trust homeowners whose homes are on CLT properties. These properties are by design, permanently affordable to the occupants such as LAW clients, and help to fight displacement.

We support the proposal to consider lending to low-income borrowers and communities separately from lending to moderate income borrowers and communities. Unless a census tract is shown by established models and data to be in an area not subject to gentrification, we urge the regulators to evaluate lending for each loan purpose (home purchase, refinance, home improvement, or HELOC) separately. Analyzing these loans separately will allow regulators to identify any disparities that may occur in LMI and BIPOC communities. By identifying and addressing these disparities, many of LAWs clients will be better served.

We support a mortgage lending screening test and appreciate agency analysis that suggests that the new scoring model proposed will result in less inflated CRA ratings than the current rules produce. This would be a major advance. We are strongly opposed to any suggestion that a bank could fail to serve 40% of its assessment areas and still pass its CRA exams. This seems to be a recipe for redlining of LMI and rural communities and communities of color.

**Community development.** We appreciate that the proposal focuses on encouraging banks to engage in community development activities, such as investing in CDFIs. Such activities can be some of the most impactful ways for banks to support community needs. But we are concerned that providing a lengthy list of eligible activities and making it easier to qualify for credit will exacerbate the current dynamic whereby banks engage in the easiest and potentially least impactful of CD activities. CD activities should be tied to local community needs as identified in Performance Context analysis or community-negotiated Community Benefits Agreements, either as a condition of receiving CRA credit

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or by enhancing impact scoring. Tribal or local government plans can serve this purpose of credentialing an activity as responsive to local needs, but CRA rules should not require association to government plans as local governments and local plans are uneven. We strongly oppose any raising of current asset thresholds, since doing so would result in less community development financing and branch consideration in rural areas served by community banks that would be subject to easier examinations and lower reinvestment obligations under the proposal if they are reclassified.

*Affordable housing.* Affordable housing remains a perennial need and priority for most of the State of Wisconsin and LAW clients. Mission-driven and community-based organizations have developed impressive capacity to use the scarce resources available to create affordable homes. However, the proposal threatens to damage one of the key tools in this limited affordable housing development infrastructure by doing away with the separate Community Development (CD) lending and CD investment tests. By combining CD lending and CD investing, we are concerned that banks will retreat from Low Income Housing Tax Credits (LIHTC), which can be more complex and provide a lower rate of return than CD lending. Any decrease in appetite for LIHTC will result in fewer affordable housing deals, as well as higher costs that will translate into decreased affordability for projects that do get built. This will significantly affect the livelihood of many of LAWs low-income clients. We urge the regulators to retain separate evaluations for CD lending and CD investing. Further, positive impact points should be given for projects that have deeper affordability, longer affordability terms and covenants, or are in higher opportunity areas.

*Anti-displacement.* We appreciate the proposal's attempt to address displacement concerns by requiring that rents will remain affordable to qualify for CRA credit. Regulations should not allow CRA community development credit unless banks can demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting act, UDAAP and other laws. These types of violations are seen by LAW on a daily basis and continuously impact the stability of LAW clients. Banks should adopt procedures such as the California Reinvestment Coalition's Anti Displacement Code of Conduct and engage in due diligence to determine if there are any concerns about the loan applicants relating to eviction, harassment, complaints, rent increases, or habitability of their properties. By investigating a loan applicant, such as a landlord, who is subject to these complaints, a potential exists to prevent further harm from spreading to LAW clients.

It is not enough to cease offering CRA credit for harmful products. Banks must be penalized for harm. Bank regulators should conduct extensive outreach to community groups and engage in community contacts to investigate whether landlord borrowers are exacerbating displacement pressures or harming tenants.

**Accounts and the Retail Services and Products Test.** We support proposals that provide both a quantitative and a qualitative review of responsive deposit and retail credit products. Banks should be evaluated not only for offering, for example, Bank On accounts, but for connecting consumers with

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such accounts. We strongly believe that by reviewing the quality of all bank credit and deposit products, especially in the consumer arena, more consumers will have access to such products. This includes marketing, language access, terms, rates, fees, defaults, and collections. All bank subsidiaries, affiliates and Rent-a-Bank partnerships should be evaluated. Rent-a-Bank partnerships, in evading state law protections, are particularly pernicious and should be banned. In addition to auto loans, all consumer loans should be evaluated if they constitute a major product line. And again, it is imperative that there be a qualitative review of language access, pricing, fees, rates, delinquencies, collections, complaints by consumers and community groups, and investigations and enforcement actions by federal and state agencies. We are concerned that combining all these critical components of CRA - meaningful access to branches, accounts, and responsive credit products - will give them insufficient consideration in a test that represents only 15% of a bank's CRA rating.

## Conclusion

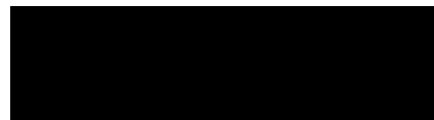
The purpose of the CRA is to combat redlining and disinvestment by requiring banks to serve the communities where they do business and provide safe and affordable credit to people of color, LMI households, and the neighborhoods and businesses that make up their communities. All changes to the CRA should be guided by this purpose, evaluating loans and services to people of color, increasing community building investment to LMI communities and neighborhoods of color, and providing an accurate reflection of how banks are meeting the needs of these communities. LAW appreciates the opportunity to comment on proposed CRA rules. While there are positive aspects of the proposal, and the agencies are to be commended for working together, there are still changes that can be made that would significantly impact the economic stability of LAW clients. Changes must ensure that all credit-worthy borrowers have equal access to fairly-priced credit, that banks are penalized for harm caused to communities, that community input is valued and elevated, and banks are incentivized to meet critical community needs relating to affordable housing, homeownership, small business development, broadband, and rural and Native American community access. Thank you for considering these comments.

Thank you for the opportunity to comment on this important proposal.

Sincerely,



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