



August 5th, 2022

To the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board,

The Neighborhood Development Collaborative (NDC) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR). NDC is a coalition of 20 nonprofit affordable housing providers in Metro-Denver, and has served over 60,000 households across Colorado. Our mission is to accelerate, advance, and ground our members' work to promote healthy communities and housing stability; and our goal is to ensure everyone has the ability to thrive regardless of race, class, or zipcode.

We write today to give our collective feedback on the "Notice of Proposed Rulemaking" (NPR) draft released in May for public comment. This NPR represents the most significant changes to CRA regulation in a generation, and we strongly support its proposals to increase the rigor of CRA exam subtests, expand geographical areas on CRA exams, and collect more data to scrutinize bank performance.

However, we also believe that the NPR could improve in the following areas: measurement of lending rates to people and communities of color; measurement of the quality of credit provided in low-income and minority communities; measurement of non-branch bank areas with substantial bank activity; improved rigor of fair lending reviews; regulation of Fintech banking activity; and a more consequential rating system for low-income affordable housing investments.

Fundamentally, the CRA was developed as a tool designed to end the racially explicit policies of redlining and housing discrimination with an affirmative goal of "*encourag[ing] depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income (LMI) neighborhoods.*" However, under the current CRA system, low-income and high-income and majority and minority wealth gaps have actually increased; during that same period minority homeownership has remained stagnant. If the goal of the NPR is to reverse this trend, then it needs to be more aggressive in its reforms. Doing anything less risks the perpetuation of a two-tiered economic system in our country, sharply and permanently divided by race and class.

To avoid this future, we recommend the following changes to the NPR:

1. ***Explicitly consider and rate banks on their lending levels to people and communities of color.*** The CRA was enacted to address the racially motivated policies of redlining and discriminatory housing practices. To effectively remedy the ongoing economic fallout for Americans of color, both the quantity and quality of loans offered to people of color must be considered in the CRA score. Today in the Denver-metro area,

Black applicants are denied home mortgage loans at 1.5x the rate at which White borrowers are denied; with some lenders denying Black borrowers at 3.8x the rate of White denials. The racial divide in homeownership rates will only continue to grow if this issue is not explicitly addressed. At a minimum, the new racial collection data should be used to identify banks that are not lending in proportion to local racial demographics. For these banks, the agencies must conduct more comprehensive fair lending reviews probing for discrimination.

2. ***Consider and Weigh Affordable Housing In Proportion to Community Impact Investment as a Key Metric.*** Currently the NPR proposes a welcome update to the definitions of CRA credit-worthy affordable housing investments. However, not all of the proposed changes will be universally beneficial. Investments in projects that create affordable housing through locally mandated inclusionary zoning policies should not be eligible for CRA credits. Not only do these programs generally focus on more middle income households and exclude some of the lowest income households, but in communities with inclusionary policies, investment in almost every housing development will count towards CRA credit, making it even easier for lending institutions to pass CRA exams. Since non-profit affordable housing providers have more difficulty securing loans at low rates to invest in mission-driven low-income housing, banks should be incentivized to invest in these properties in proportion to their benefit to the community. The “pro-rata” rating system for mixed-income housing the NPR proposes is helpful in communities without mandatory inclusionary policies, but again, lacks the needed incentive to affirmatively invest in housing that serves the largest numbers of those most at need in a community.
3. ***Consider the quality of credit in examinations.*** Traditionally, CRA has emphasized access to credit above considerations of the *suitability* of credit. Working from the assumption that credit was a uniform “good” was consistent with lending practices in the marketplace at the time of the last significant rulemaking. However, since that time the proliferation of suboptimal credit has become commonplace. Financial institutions charged consumers \$15.5 billion in overdraft fees in 2021.
 - a. Regulators should empower examiners to penalize banks when evidence exists to show that they have offered unsuitable credit to consumers, if they use their charter to make loans at rates above state interest rate caps, or if a disproportionately high share of their deposit account revenues derive from overdraft and insufficient funds fees.
4. ***Improve the rigor of the Fair Lending Reviews that accompany CRA exams.*** This will better ensure that banks are not discriminating or violating consumer protection laws. Specifically, we recommend:
 - a. Include the Americans with Disabilities Act in the fair lending review.
 - b. Conduct more transparent fair lending reviews, including better coordination with the CFPB, and public disclosure of CRA activity by bank.
5. ***Do not adjust the asset thresholds that determine the bank classification (large, ISB, small).*** Under the proposed changes, 996 banks nationwide would be reclassified as small or intermediate, thereby eliminating the community development finance requirements for the newly “small” banks, and eliminating the service component of the

CRA exam for the newly “ISB” banks. This change will include 13 banks in Colorado that would be reclassified from ISB to Small. Of these 13 banks, Bank of the West is of particular concern given that they have \$455M in assets and are currently a significant partner for affordable housing developers working in the Denver-metro. Downgrading this and other banks have the potential to reduce funding sources for affordable housing and reduce the presence of banking services in low- and moderate- income communities.

6. ***Match assessment areas with the geographies where banks are issuing loans—whether or not the bank has branches in the region*** Since many banks have increased their lending and bank services via brokers, the internet, and other non-branch channels, this will better equip CRA exams to assess bank performance and ensure that banks are fulfilling their role as chartered institutions across all communities they operate in..
7. ***Address the gap in CRA coverage for digital banks that partner with non-bank fintechs*** to offer demand deposit FDIC-insured accounts and consumer credit.
 - a. In a 2020 report, the Federal Reserve Bank of Kansas City identified twelve chartered institutions providing “*banking as a service*,” each with multiple non-bank fintechs. In some instances, partner banks hold hundreds of thousands, if not millions, of accounts through these relationships. Currently, CRA exams do not consider these activities, and some partnerships provide loans at interest rates of more than 36 percent and sometimes as high as 400 percent.
 - b. Clarify that when banks partner with non-banks to use their chartered status to hold deposits, then those banks should have deposit-based assessment areas and those assessment areas should be located in the states that hold the largest shares of their deposits.
 - c. Clarify that when chartered institutions partner with non-bank lenders to make loans at rates greater than what is legally permissible under state laws, those institutions will suffer downgrades to their CRA performance evaluations.
8. ***Remove provision in the “Definitions for Community Development” section stating that financial education services can count towards CRA credit regardless of the income of the client.*** - Low income households are most in need of financial education services. People with higher incomes are more likely to be able to afford to pay for financial counseling themselves—removing the need for banks to receive CRA credits for an activity that is likely profitable on its own.
9. ***Strengthen the CRA by setting interest rates for banks based on CRA performance and other community benefitting practices.*** Currently, the CRA exam has a very high pass rate—the primary penalty for not passing a CRA exam is simply to be subject to more frequent examinations. This results in a regulatory tool with limited “teeth.” To create true incentives for banks to fulfill their public purpose, we recommend that the interest rates that banks get from the federal government be lowered based on CRA performance, along with an evaluation of the ratio at which banks invest in community development activities compared with institutional investments. This is especially critical at a time when institutional investment is emerging as the next great threat to

homeownership and generational wealth for low-income communities and communities of color. Alternative, but less impactful options would include discounting CRA exam fees for institutions with outstanding results, or requiring public comment on the performance measures in the improvement plan for lending institutions that receive a "low-satisfactory" or below on an exam.

In addition to the above recommendations, we would like to offer our feedback on the agencies' questions specifically pertaining to the Community Development Definitions:

Question 1. Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities), or should partial consideration be limited to only affordable housing?

Partial consideration for community development activities beyond affordable housing is important to stimulate investment in these activities without awarding credits for activities that do not serve LMI communities, however, to access partial credit, there should be a threshold for the percentage of LMI tracts/individuals served through a project in order to be eligible for the partial credit. This will ensure investment still flows to those activities that prioritize community development in LMI communities.

Question 2. If partial consideration is extended to other types of community development activities with a primary purpose of community development, should there be a minimum percentage of the activity that serves low- or moderate-income individuals or geographies or small businesses and small farms, such as 25 percent? If partial consideration is provided for certain types of activities considered to have a primary purpose of community development, should the agencies require a minimum percentage standard greater than 51 percent to receive full consideration, such as a threshold between 60 percent and 90 percent?

We recommend that partial consideration only be given to activities intended to serve at least 25% LMI tracts/individuals. The primary purpose standard should be set at 80% to receive full CRA credit for community development activities.

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?

Many local governments are taking a more active role supporting the creation of affordable housing in their jurisdictions, and generally we support the standard of having a "stated purpose or bona fide intent" to provide affordable housing for low- or moderate- income individuals.

However, in some high-cost markets the government interest in supporting housing efforts has only arisen as moderate- to high-income individuals have begun to have more difficulties finding housing. In Colorado, some housing funds are used to subsidize projects serving up to 170% AMI, with elected officials pushing for a 200% AMI limit.

To avoid resources and CRA credits intended to serve low- to moderate- income individuals being cannibalized by this emergent housing need at higher income levels, we urge the agencies to require both an affordability standard and verification that the standard is being met. Guidelines should require that units eligible for CRA credits are rented at no more than 30% of 80% AMI, even when the program is supported by or operated by a government entity.

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?

While access to high opportunity areas is essential to creating equitable opportunities, we believe it is important to continue to focus CRA consideration on low- to moderate-income individuals. NDC would like to see increased support for strategies that increase the amount of housing affordable to low- and moderate-income individuals in high opportunity areas, which would support desegregation efforts.

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?

NDC supports the agencies' conclusion in the NPR that NOAH rental properties should be considered under a standard that defines affordability as 30% of 60% AMI. This decision will preserve resources for LMI renters who are most in need of housing support.

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 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?

The NPR correctly points out that NOAH rental housing is an important component of housing affordability and serves many LMI tenants. It is also the form of rental housing with the most limited protections and compliance requirements. NDC is in strong support of CRA consideration being given to NOAH activities, but also asks that the agencies be mindful of potentially incentivizing exploitative behavior. To reduce this risk, NDC proposes that CRA consideration for NOAH rentals include:

- Require rent levels at or below 30% of 60% of the area median income
- Require a pledge to preserve affordability for 10 years

And offer a selection of additional criteria that can be used to supplement the above requirements. The remaining criteria from the NPR are a good list, but could be supplemented with criteria including:

- The owner of the housing providing a just cause eviction pledge
- The owner of the housing pledging a longer affordability term than is required
- The owner of the housing committing to furnishing bi-annual rental inspection pledges that ensure housing is meeting local habitability standards

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?

With the rise of institutional investment in single-family housing stock, wealth is being siphoned out of communities, and particularly LMI communities where homes are often under-appraised and investors can expect a high yield. Because of this, if the agencies decide to consider single-family rental housing for CRA credit, we strongly recommend that these activities be held to a higher standard than NOAH multifamily rentals.

To address some of the most common exploitative practices, the consideration for single-family NOAH rentals should include:

- Require rent levels at or below 30% of 60% of the area median income, inclusive of an allowance for maintenance costs that are often passed on to the tenant.
- Require a pledge to preserve affordability for 10 years
- Require the owner of the housing providing a just cause eviction pledge
- Require the owner of the housing committing to furnishing bi-annual rental inspection pledges that ensure housing is meeting local habitability standards

This will likely limit the impact of including single-family rentals as a qualifying activity, but in light of investors out competing would be owner-occupants for the equity generated by the home¹; the evidence that points to higher costs for tenants of single-family rentals²; and the increased

¹ Charles, S. L. (2020). A Latent Profile Analysis of Suburban Single-Family Rental Housing (SFR) Neighborhoods. *Housing Policy Debate*, 30(2), 205–227.
<https://doi.org/10.1080/10511482.2019.1657927>;

² Chilton, K., Silverman, R. M., Chaudhry, R., & Wang, C. (2018). The Impact of Single-Family Rental REITs on Regional Housing Markets: A Case Study of Nashville, TN. *Societies*, 8(4), 1–11.
<https://doi.org/10.3390/soc8040093>

likelihood of eviction seen in single-family rentals³; NDC is emphatic about the need for a more rigorous approach to qualify these properties.

Question 8. How should the agencies consider activities that support affordable low- or moderate-income homeownership in order to ensure that qualifying activities are affordable, sustainable, and beneficial for low- or moderate-income individuals and communities?

NDC is very pleased to see the “third prong” for affordable housing which includes efforts to increase and maintain homeownership for LMI individuals.

The agencies can further support affordable low- and moderate-income homeownership by supporting downpayment assistance programs that are both targeted to LMI households and are scaled based on the local housing market. In Denver, downpayment assistance programs are often underutilized because the amounts that are available are insufficient to meet the housing costs in the market.

Question 9. Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA’s purpose of strengthening credit access for low- or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?

It is our understanding that the purchase of MBS are often used as a means of satisfying CRA requirements leading up to a CRA exam. NDC would much prefer to see lending institutions engage in activities that directly support the communities they are working in. NDC supports the proposal to limit CRA consideration to the portion of the security comprising affordable loans and that the consideration be limited to the initial purchase of the MBS.

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?

Many communities in Colorado are too small to benefit from affordable housing development through the low-income housing tax credit programs. NDC recommends that CRA consideration be given to other innovative activities that can bring equity to affordable housing development. Additionally, due to the disparate growth rates of incomes and housing costs, NDC supports

³ Raymond, E., Duckworth, R., Miller, B., Lucas, M., & Pokharel, S. (2016). *Corporate Landlords, Institutional Investors, and Displacement: Eviction Rates in Single-Family Rentals* (No. 04–16; Community & Economic Development Discussion Paper, p. 22). Federal Reserve Bank of Atlanta. <https://www.frbatlanta.org/-/media/documents/community-development/publications/discussion-papers/2016/04-corporate-landlords-institutional-investors-and-displacement-2016-12-21.pdf>

mixed tenure housing models such as community land trusts to move people through the housing continuum towards greater opportunities for wealth building.

Finally, the Neighborhood Development Collaborative would again like to thank the agencies for the thoughtful approach for this much needed update to the CRA and for all of the work that went into considering how the regulations could better support communities served by these institutions. We believe these changes are critical to respond to today's banking landscape and that they will be incredibly impactful, promoting housing affordability, credit access, and other wealth building opportunities.

Sincerely,

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Neighborhood Development Collaborative Member Organizations

Archway Communities

Elevation Community Land Trust

Aurora Housing Authority

Habitat for Humanity of Metro Denver

Boulder Housing Partners

Maiker Housing Partners

Brothers Redevelopment

Mercy Housing

Colorado Coalition for the Homeless

Montbello Organizing Committee

Colorado Housing Assistance Corp.

NEWSSED Community Development Corp.

Community Resources & Housing
Development Corp.

Northeast Denver Housing Center

Del Norte Neighborhood Development Corp.

Rocky Mountain Communities

Denver Housing Authority

Urban Land Conservancy

Denver Urban Renewal Authority

WellPower