



COMMUNITY ADVOCATES
Where Meeting Basic Needs Inspires Hope

August 9, 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

To Whom It May Concern:

Community Advocates is grateful for the opportunity to provide our comments on your proposed Reinvestment Act (CRA) rules. While CRA was enacted in response to decades of hurtful, and illegal segregation, and while the enforcement of CRA has helped to inspire many banks to implement lending and financial products, policies, and programs that have been immensely helpful to the communities across the country, it is critical for CRA to be updated and strengthened.

In 1976, Community Advocates was founded as a general advocacy agency with the vision of providing fundamental assistance and information to Milwaukee's low-income and disadvantaged populations living in a community in which each person envisions a future with hope. The agency's mission is to provide individuals and families with advocacy and services to meet their basic needs so they may live in dignity. Addressing peoples' needs at the most basic levels is why the agency was created and it continues to be its main focus to this day.

The CRA is important to us because everyone associated with our organization has a role to play in creating an equitable community that respects and honors the dignity of all people, and the agency's core values of dignity and respect serve as guides for its work each and every day. The removal of all possible barriers to access and participation is a priority, and self-determination is an agency value, which directs services that are customized and tailored to amplify a household's strengths and meet its unique needs. Community Advocates affirms that speaking out for justice for all and working to end inequality is always the right thing to do. The agency is committed to being present for communities of color, to listening and hearing about the pain and suffering from people who have and are experiencing trauma and loss, and to amplifying their voice so that the community can heal and create meaningful change.

In Milwaukee, our clients have benefitted from:

- Down payment assistance for credit-worthy first time homebuyers, including people of modest means and people of color.
- Home repair programs for homeowners of modest means.
- Community facilities located in low and moderate income neighborhoods.
- Low-cost checking accounts for entry-level customers
- Foreclosure prevention programs.

Despite banks' progress in serving low and moderate-income communities and communities of color, there is still much work to be done. While the Notice of Proposed Rulemaking (NPR) contains some positive suggestions, we believe that the proposal will not achieve the impact necessary to achieve racial and economic justice unless critical issues are addressed. We agree with the National Community Reinvestment coalition (NCRC) and the Metropolitan Milwaukee Fair Housing Council, and fair lending advocates from across the country, that CRA rules must do the following:

- Take race into account and directly evaluate banks for lending, investments and services to borrowers and communities of color
- Downgrade banks for harm such as discrimination, displacement, and fee gouging
- Scrutinize the qualitative impact of all lending tied to banks, ensuring that predatory practices like negative amortization, interest only loans, and ARMS with no ceilings on interest rates do not emerge again
- Provide incentives for banks' innovation that achieves results that are significantly beyond results of their peers
- Enhance and require community participation so that CRA activity is tied to community needs
- Ensure that CRA ratings reflect community impact, and bank mergers are denied unless they provide a clear public benefit that regulators will enforce
- Ensure affordable housing tax credits and loans on affordable housing are reviewed separately, and increased
- Require banks to serve all areas (not 60%) where they take deposits and lend, and refrain from raising current asset thresholds which will decrease rural reinvestment
- Prioritize the opening of branches and penalize the closing of branches in underserved areas and
- Elevate broadband/digital equity for all underserved populations, financial access for Native American communities and climate resiliency.

Race and CRA. First and foremost, the agencies have failed the most important test for CRA reform – positively addressing the question of whether it would substantially advance racial equity and close racial wealth gaps. Despite opening the door to hopes that the rules would clearly address the redlining concerns that gave rise to the CRA, the agencies have offered little.

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. Examiners should review bank performance in meeting the credit needs of communities of color, similar to how banks are evaluated on their performance in meeting the needs of low and moderate income (LMI) borrowers and communities.

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 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.

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.

While the Notice of Proposed Rulemaking (NPR) proposal to disclose HMDA mortgage lending data on Performance Evaluations is welcome, 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. This proposal should be enhanced to also require all banks to place these home lending data tables and maps showing disaggregated race and ethnicity disparities in a prominent place on their own websites, include similar tables and maps for small business lending by disaggregated race, ethnicity, gender and neighborhood when the Section 1071 data become publicly available, and provide that the data will impact CRA ratings.

One positive aspect of the proposal is the expansion of considerations of discrimination to include transactions beyond credit and lending, such as when discrimination occurs when a consumer tries to open a bank account. But 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 should be more extensive and rigorous, should solicit and rely on feedback from all relevant federal and state agencies as well as community group stakeholders, and should be reflected more substantively on CRA Performance Evaluations. Findings of discrimination, including for disparate impacts relating to displacement financing, fee gouging or climate degradation, should always result 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?

The NPR also raises the question as to whether CRA evaluations should consider Special Purpose Credit Programs (SPCPs). Our response is "yes!" However, we are disappointed that although SPCPs are meant to serve groups protected by fair lending laws, the proposal considers SPCP evaluation only regarding their impact on LMI consumers. The final rule must explicitly 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.

Community participation. The agencies should actively solicit community stakeholder input on the performance of banks during CRA exams and bank mergers. How can the banks ensure that community's credit and convenience needs are met unless they actively consult with the community? Many cities, including Milwaukee, have a broad-based CRA Coalition of nonprofits and government agencies that work to identify unmet banking needs, and provide feedback to the banks and to the banks' CRA regulators.

The public should be provided at least ninety days to comment on CRA Performance Evaluations and on bank mergers. Banks and regulators should clearly disclose contact information for relevant staff. Public hearings should be held when public commenters raise concerns about mergers. Regulators must scrutinize bank merger applications to ensure that the community's credit and convenience needs, and public benefit standards would be met.

The regulators should encourage merging banks to work with community members to establish a Community Benefits Agreement (CBA), which would provide input to the banks on the needs of the communities they are serving. Regulators should condition merger approvals on ongoing compliance with the CBAs. Additionally, the regulators should routinely review all existing consumer complaints, community comments, CFPB and agency investigations during CRA exams and merger reviews. In particular, community groups should be solicited for their views on bank practices relating to discrimination, displacement, climate impacts, and other harms.

Banks should be encouraged to partner with and financially support the work of;

- local nonprofit housing counseling organizations that help borrowers understand the homebuyer process, guide them into a sustainable homeownership position, and counsel them when they run into obstacles that threaten their continued homeownership
- cross-sector homeownership consortiums that work collectively increase and support sustainable homeownership
- fair housing organizations, which work to eliminate discrimination and segregation
- Community Land Trusts, housing co-ops and other organizations providing alternative mechanisms to achieve affordable, sustainable homeownership
- nonprofit financial navigators, financial education and credit counseling agencies who can identify potential customers for loan pipelines and
- Community Development Corporations (CDCs) and Housing Development Corporations (HDCs) whose staff and boards are connected with the LMI communities they serve.

All of these community partners provide banks with additional on-the-ground knowledge of the strengths and financial needs within the communities they serve, and they help the banks to gain access to new populations and potential customers for their home and small business lending pipelines.

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 or through the use of 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 our City and for most of the State of Wisconsin. 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 greatly 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 likely result in fewer affordable housing deals, as well as higher costs that will translate into decreased affordability for projects that do get built. 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 in order to qualify for CRA credit. But the agencies need to go further to discourage banks from financing displacement. While the proposal appears to refuse CRA credit for certain CD activities if they result in displacement, this requirement must be extended to all community development activity, especially affordable and Naturally Occurring Affordable Housing (NOAH) housing analysis.

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. 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.

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.

Positive impact points should be given for particularly responsive CD activities that fight displacement, such as support for property purchases by Community Land Trusts and other bona fide, mission-driven nonprofit organizations of rental housing that can be taken off of the speculative market leveraged by policies such as Tenant Opportunity to Purchase Acts (TOPA), Community Opportunity to Purchase Acts (COPA), and other initiatives such as California's state law that provides CLTs, nonprofits and prospective owner occupants the right to match an investor's high bid at foreclosure auction to secure a property for the common good, not personal profit.

Conclusion

Community Advocates 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, significant changes need to be made to the final rule. 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.

Sincerely,
Andi Elliott
Community Advocates