

Wisconsin Community Action Program Association



August 2, 2022

To: FDIC (Federal Deposit Insurance Corporation): comments@fdic.gov
Federal Reserve Board of Governors: regs.comments@federalreserve.gov

From: Brad Paul, Executive Director, WISCAP

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

WISCAP is a consortium of sixteen local community action agencies and two single purpose agencies across Wisconsin providing customized services to address poverty, income inequality, and helping households build plans to a thriving self-sufficiency in strong communities. A strong community reinvestment act that reflects 21st Century values and challenges is crucial to improving the quality of lives and communities during these challenging times.

As households with modest incomes struggle to stay in their homes, credit ratings and budgets impacted by the pandemic, we need mechanisms that will refinance high interest loans to people with equity, but poor institutional credit measurements. We need banks to prioritize addressing the impacts of racial inequities and a transparent way to highlight those that fall short of their public responsibilities.

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 stronger, elevate the Gross Domestic Product, and give the country a more strategic competitive advantage. Accordingly, 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 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% originated to non-Latino and non-Hispanic White borrowers.

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We are concerned that disparities in HMDA data will not impact the CRA rating of a bank. If a bank's CRA ratings are not downgraded for lending disparities, where are the teeth within CRA? A bank's 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.

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 an agency's 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.

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 a bank's 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.

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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, 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 through the use of 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.

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 nearly 40% of its assessment areas and still pass its CRA exams.

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 with 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 the State of Wisconsin. Mission-driven and community-based organizations have developed an 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 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.

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Anti-displacement. We appreciate the proposal's attempt to address displacement concerns by requiring that rents will remain affordable to qualify for CRA credit. 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.

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.

We appreciate the opportunity to comment on the 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 and homeownership. Thank you for considering these comments.

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