

4 August 2022

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Board of Governors of the Federal Reserve Bank
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

RE: Community Reinvestment Act [Docket ID OCC-2022-0002; Docket No. R-1769 and RIN 7100-AG29; RIN 3064-AF81]

To Whom It May Concern:

TechEquity Collaborative is submitting this comment in response to the Interagency Notice of Proposed Rulemaking regarding the Community Reinvestment Act (CRA) to urge your consideration of the risks that technological tools pose in exacerbating racial inequities in housing. We urge your agencies to update the CRA such that technological tools are a factor when assessing the performance of banking institutions under CRA.

TechEquity Collaborative is a membership organization of thousands of tech workers who think the tech-driven economy can and should work for everyone. TechEquity works at the nexus of tech and the economy to advance policies that address structural inequities, with a focus on housing and workforce & labor. The organization mobilizes tech workers to address economic injustice at its roots, bringing rank-and-file tech workers into long standing movements for justice.

TechEquity's recent research indicates that venture-backed companies play an increasingly influential role in granting access to housing¹. Emerging tenant screening companies promise algorithm-driven assessments that can be delivered to a landlord's inbox in less than a minute. In

¹ TechEquity Collaborative. *Tech, Bias, and Housing Initiative: Tenant Screening*. February 2022. Access here: <https://techequitycollaborative.org/2022/02/23/tech-bias-and-housing-initiative-tenant-screening/>



exchange for speed and convenience, these tools offer opaque algorithms that carry the potential to exacerbate racial disparities in an already discriminatory system.

The genesis of CRA was in redlining practices, and the lasting impact it had on Black and other households' wealth, housing stability, and credit opportunity. The proposed rule references the ways in which financial, credit, and other disparities remain despite the passage of CRA. One reason discriminatory housing outcomes persist is the way in which housing opportunity is still determined by factors that are proxies for race:

- Landlords rely on criminal conviction records when determining who to rent to, despite HUD guidance that this disproportionately screens out Black and Latinx applicants in violation of the Fair Housing Act², and despite the reality that records contain misleading, outdated, or incorrect information delivered without important context³.
- Black people make up 19.9% of the renter population but represent 32.7% of eviction filings.⁴ For such households, eviction history functions as an all-but-automatic application denial, yet court records lack detail on which party initiated the court filing, which party prevailed, and whether the case was settled or dropped— essential information for understanding whether someone can be a successful tenant.
- Credit scores are relied on as a non-discriminatory way to measure risk, but are a product of lending and financial systems that take advantage of certain consumers to profit off of their debt.

These factors make up *traditional* assessment criteria that disproportionately screen out applicants of color and low income applicants; algorithm-driven assessments use these same biased data to code their models, scaling discriminatory outcomes with new speed.

² U.S. Department of Housing and Urban Development, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*. April 2016. Accessed here: https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHAHANDCR.PDF

³ Federal Trade Commission. *Tenant Background Report Provider Settles FTC Allegations that it Failed to Follow Accuracy Requirements for Screening Reports*. December 8, 2020. Accessed here: <https://www.ftc.gov/news-events/news/press-releases/2020/12/tenant-background-report-provider-settles-ftc-allegations-it-failed-follow-accuracy-requirements>

⁴ The Eviction Lab. *Racial and Gender Disparities among Evicted Americans*. December 2020. Accessed here: <https://evictionlab.org/demographics-of-eviction/>



Given the cheap availability of electronic civil and criminal court records across the country, as well as personally identifiable information, the barrier to entry is low. Virtually any team with modern technology and basic coding skills can influence housing outcomes. By one estimate there are 1,954 background screening companies looking into criminal histories alone⁵ yet none are required to register or report determinations.

A TechEquity review of streamlined tenant assessments found that companies emphasize how their technology uses proprietary data to “innovate” longstanding screening practices; their models can take a tenant’s credit score, for example, and compare it against the likelihood that someone with that same credit score and in their particular zip code will miss a rent payment⁶.

What they do not offer, however, is transparency into which data they use and how, or how they design their algorithms to assess risk. That risk of defaulting based on predictive zip code data? That’s for the screening company. In many cases, what the landlord gets back is a mere risk score (from not risky to moderate or high risk)—or a thumbs up or down— rather than the actual background information they have on a tenant.

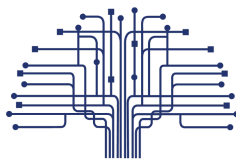
Modern Fair Housing guidance asserts that housing applicants have the right to mitigate adverse screening decisions by providing landlords with explanatory information about their criminal histories before being denied. If risk scores and leasing decisions are obscured by proprietary “black boxes” though, tenants cannot meaningfully exercise their rights under Fair Housing law. What opportunity does one have to provide contextualizing and mitigating information about a prior conviction if one doesn’t even know the reason their application denied?

The potential for tech to serve as yet another barrier to rental housing and robust Fair Housing compliance warrants consideration as your agencies modernize CRA. TechEquity proposes that the new CRA rules should assess banking institutions on whether they are working with housing providers who are using discriminatory technologies that impede Fair Housing.

In addition to the matter of housing technologies, TechEquity joins other advocates in calling on CRA to explicitly include race in the following ways:

⁵ Consumer Financial Protection Bureau, *Market Snapshot: Background Screening Reports*. October 2019. Available at https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf

⁶ TechEquity Collaborative. *Tech, Bias, and Housing Initiative: Tenant Screening*. February 2022. Access here: <https://techequitycollaborative.org/2022/02/23/tech-bias-and-housing-initiative-tenant-screening/>



- Assess bank performance through the percentage of home and small business lending to Black, Indigenous, and people of color borrowers.
- Greater enforcement of disparate lending and discrimination.
- Analyze lending by race and ethnicity in underserved neighborhoods in all CRA exams (including community development financing and retail lending).
- Consider a bank's creation and deployment of Special Purpose Credit Programs.
- Prioritize community input and adherence to community benefit agreements on CRA exams.
- Downgrade banks for harm such as discrimination, displacement, and fee gouging.
- Ensure affordable housing tax credits and lending 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.
- Elevate broadband/digital equity, access for Native American communities, and climate resiliency.
- Scrutinize the qualitative impact of all lending tied to banks, and end Rent-A-Bank partnerships.
- Enhance community participation so that CRA activity is tied to community needs, CRA ratings reflect community impact, and bank mergers are denied unless they provide a clear public benefit that regulators will enforce.

TechEquity urges the OCC, Federal Reserve Board, and the FDIC to meaningfully address decades of disinvestment from Black and other communities of color by downgrading banks that abet technologies that exacerbate racial disparities and undermine civil rights legal protections. Moreover, we urge your inclusion of race in the new Community Reinvestment Act rules. The Community Reinvestment Act must fulfill its initial intent to end the illegal and discriminatory acts of redlining, as well as its modern, tech-enabled vestiges and manifestations.

Sincerely,
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