



STATE OF MICHIGAN

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
LANSING

GRETCHEN WHITMER
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August 4, 2022

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7thth Street SW, Suite 3E-218
Washington, DC 20219

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW
Washington, DC 20551

James P. Sheesley
Assistant Executive Secretary
Attn: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: Proposed Joint Community Reinvestment Act Regulations
OCC Docket ID OCC-2022-0002
Federal Reserve Docket No. R-[●] and RIN 7100-AG [●] / RIN 7100-AF [●]
FDIC RIN 3064-AF81

Dear Comment Processing, et. al.:

The Michigan State Housing Development Authority (the "Authority") appreciates the opportunity to comment on the proposed changes to the existing regulations (the "Proposed Regulations") by which the Community Reinvestment Act ("CRA"), 12 U.S.C. Ch. 30, is implemented jointly by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency.

The Authority has reviewed the Proposed Regulations and as indicated below, has responded to a selection of the questions deemed most pertinent to the Authority's vision of making Michigan a place where all people have quality affordable housing as a foundation to reaching their full potential.

The Authority respectfully suggests that CRA modernization not lose sight of the fundamental purposes that Congress enacted the CRA to address. The current proposed regulations risk dilution of the CRA's goals as drafted. Pursuant to 12 U.S.C. § 2901, the CRA's stated purpose is as follows:

- Regulated finance institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business.
- The convenience and needs of communities include the need for credit services as well as deposit services.
- Regulated financial institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.¹

In the late 1960s and early 1970s, Congress passed a series of statutes attempting to address discrimination in financial opportunities. These included the Fair Housing Act of 1968, the Equal Credit Opportunity Act of 1974, the Housing and Community Development Act of 1974, and the Community Reinvestment Act of 1977. The Congressional Findings of the Housing and Community Development Act of 1974, at 42 USC § 5301, summarize the fundamental point of this collective body of legislation, in which Congress found that “the Nation’s cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from –

1. the growth of population in metropolitan and other urban areas, and the concentration of persons of lower income in central cities.
2. inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment.
3. increasing energy costs which have seriously undermined the quality and overall effectiveness of local community and housing development activities.”²

The Authority has selected a portion of the 180 enumerated questions put forth by the joint agencies as to their proposed CRA rules, having identified those topics most pertinent to the Authority’s work for the people of the State of Michigan. The proposed joint CRA Regulations generally provide the financial entities subject to CRA compliance more flexibility in achieving CRA compliance. This appears to be at the expense, however, of low- and moderate-income persons and communities, in terms of housing stock and quality, homeownership, business development, and community development. Some particular observations, discussed in more detail below, are as follows:

- Bank investment in the Low-Income Housing Tax Credit (“LIHTC”), the primary tax credit that drives low- and moderate-income housing development throughout the United States³, appears diluted from being a primary means of achieving CRA credit in particular geographies to an ancillary option.
- Rather than focus on subsidized versus “naturally occurring” affordable housing, a more helpful distinction is “regulated housing” versus “unregulated housing”.

¹ 12 USC § 2901.

² 42 USC § 5301(a)(1)-(3).

³ See, for example, OCC Community Developments Insights, March 2014 (Revised April 2014) which observes at pg. 1 that “The Low-Income Housing Tax Credit (LIHTC) is the federal government’s primary program for encouraging the investment of private equity into the development of affordable rental housing for low-income households.”


Regulated housing provides metrics for measuring successful impacts on low- and moderate-income communities; data on “naturally occurring” affordable housing is difficult to separate from market forces and so is an unreliable means of accomplishing CRA goals.⁴

- Any CRA compliance system must be designed to address fairness and access to housing and credit, and further serve to identify discriminatory and other illegal credit practices. The joint agencies should base their standards upon data-driven metrics and should encourage investment and lending that carry with them mechanisms for gathering effective data that may demonstrate results.
- Allowing CRA compliance to be satisfied by considering activity in communities outside of the geographical low- and moderate-income communities where banks conduct business, or to award credit for activity that is only incidentally beneficial to low- and moderate-income communities, will serve to undermine access to housing and credit.

The Authority agrees that the CRA regulations are due for update, but any such modernization must not lose sight of the fundamental purposes that Congress has enacted the CRA to address. The Authority strongly suggests that the joint agencies consider and address the positions outlined above, and set forth in greater detail below, when preparing their final CRA rules.

Thank you again for the opportunity to submit comments on the Proposed Regulations.

Sincerely,

Clarence L. Stone, Jr.  Digitally signed by
Clarence L. Stone, Jr.
Date: 2022.08.04
11:21:02 -04'00'

Clarence L. Stone, Jr.
Director of Legal Affairs
Michigan State Housing Development Authority

PLEASE SEE THE FOLLOWING PAGES FOR COMMENTS
ON SPECIFIC SECTIONS OF THE PROPOSED REGULATIONS

⁴ See, for example, NLIHC “Naturally Occurring Affordable Housing Benefits Moderate Income Households, But Not the Poor”, Nov. 07, 2016, available at <https://nlihc.org/resources>.

**COMMENTS ON THE PROPOSED CRA REGULATIONS
BY THE MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY**

Executive Summary

The Authority agrees that the CRA regulations are due for update, but any such modernization must not lose sight of the fundamental purposes that Congress has enacted the CRA to address. The clear legislative intent of the CRA is to reward financial activity that is primarily benefiting community development and serving Low- and Moderate-Income (“LMI”) communities. Dilution of that focus would represent an improper shift from the CRA operating to benefit communities to the CRA operating to benefit the convenience of financial institutions.

Where CRA-qualified investment activity is subject to regulation derived from federal, state, and local government partnership or subsidies, LIHTC investment, or municipal affordability controls such as alternative property-tax programs, there are necessarily administrative mechanisms in place beyond the financial institution and the owner/developer of the housing to ensure that the investment is properly directed and applied to the benefit of LMI communities.

The Authority is concerned that the proposal of the joint agencies provides very little mention of financial institutions’ investment in the LIHTC. The request for comment solicits very few questions about LIHTC investment activity or its relative weight compared to other activity. LIHTC investment is recognized by the U.S. Department of Housing and Urban Development’s Office of Policy Development and Research as “the most important resource for creating affordable housing in the United States today.”⁵ Preserving and promoting LIHTC investment has been and should continue to be a primary goal of CRA regulation.

⁵ 06/05/20 HUD PD&R statement accompanying Low-Income Housing Tax Credits dataset release.

**SPECIFIC RESPONSES TO THE QUESTIONS OF THE PROPOSED CRA REGULATIONS BY THE
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY**

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?*

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% to receive full consideration, such as a threshold between 60 percent and 90 percent?*

Joint Answer to Questions 1 and 2:

Qualifying financial activity must do more than merely “include” a benefit for low- and moderate-income persons. The clear legislative intent of the CRA is to reward financial activity that is primarily benefiting community development and serving LMI communities. The Proposed Regulation dilutes that focus, representing an improper shift in focus away from benefitting communities in favor of supporting the convenience of financial institutions. Qualifying activity evaluation rubrics must recognize the history of the financial industry and its relationship with minority communities, such as red-lining and denial of credit access, but also be mindful of current and ongoing disparities. The more tangential a recognized community development activity is relative to affordable housing, the less worthy of CRA credit that activity should be, per the intent of the CRA. Minimizing the percentage of activity that serves low- or moderate-income individuals or geographies serves no purpose other than to make CRA credit easier to obtain by financial institutions. While lessening regulatory burdens may be an acceptable goal of regulatory modernization, allowing financial institutions to avoid the fundamental purpose of the regulations is not an appropriate mechanism to achieve modernization. Full CRA consideration should require full commitment of the financial activity and maximized benefit to the LMI community.

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?*

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?*

Joint Answer to Questions 3 and 4:

The joint agencies propose that for development in conjunction with a government-related affordable housing plan, such a plan would be required to have a stated purpose or bona fide intent of supporting affordable rental housing for low- or moderate-income individuals. The joint agencies decline, however, to define affordability standards and instead defer to affordability as defined within the government-related plan, if coupled with the stated purpose or bona fide intent⁶. The concept of “affordable” housing has long been defined by various federal agencies, including the U.S. Department of Housing and Urban Development (“HUD”) and the U.S. Department of Treasury (“U.S. Treasury”), as “housing on which the occupant is paying no more than 30 percent of gross income for housing costs, including utilities.”⁷ The concept of “low income” similarly has a long-held definition: 80 percent of the median family income for the area subject to adjustments for areas with unusually high or low incomes.⁸ Given the universal and codified nature of these definitions, entertaining the possibility of deviating from those definitions creates the possibility of steering CRA activity towards communities that are not intended to be reached by the goals of the CRA. The Authority acknowledges that the provision of housing to communities other than low- or moderate-income individuals is a worthy goal, but that activity is not a goal of the CRA. Inclusion of specific affordability and income standards is therefore both prudent and appropriate, rather than relying upon stated purposes or bona fide intent.

In discussing High Opportunity Areas, the joint agencies “recognize that nonmetropolitan counties may have limited opportunities for affordable housing, and that it may be appropriate to consider affordable housing activities in these areas that include middle-income renters.”⁹ The clear legislative intent of the CRA is to reward financial activity that is primarily benefiting community development and serving LMI communities. The Proposed Regulation dilutes that focus, representing an improper shift in focus away from benefitting communities in favor of supporting the convenience of financial institutions

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?*

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?*

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*

⁶ Joint notice of proposed rulemaking, p. 41.

⁷ The “30 percent rule” was identified as the maximum affordable rent for federally subsidized housing in 1981. See *PD&R Edge Home*, August 14, 2017, available at HUDuser.com., and 42 U.S.C. § 1437a(a).

⁸ See, e.g., 24 CFR § 5.603.

⁹ Joint notice of proposed rulemaking, p. 42.

limited to rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met?

JOINT ANSWER to Questions 5, 6, and 7:

The concept of “naturally occurring” affordable housing is controversial in that it lacks commonly accepted concepts, principals, and definitions. A more effective rubric than comparing subsidized to “naturally occurring” housing would be to define “regulated” versus “unregulated” affordable housing. Where affordable housing is subject to regulation derived from federal, state, and local government subsidies, LIHTC investment, or municipal affordability controls such as alternative property-tax programs, there is necessarily an administrative mechanism in place beyond the financial institution and the owner/developer of the housing to ensure that the investment is properly directed and applied. For example, a LIHTC-allocating Housing Finance Agency or tax-increment financing program has existing monitoring and compliance systems and analyses tools in place. Further, unsubsidized affordable housing tends to be driven by a loss of value due to age, obsolescence of systems, and market fluctuations, and the prices charged for such housing are not tied to the renter’s or homeowner’s income. Naturally occurring affordable housing requires subsidies for the housing stock to be updated and rehabilitated; there are no other mechanisms to redress loss of value. Investment in subsidized and regulated housing should continue to be more heavily rewarded with CRA credit to encourage the development of quality affordable housing stock.¹⁰ The unsubsidized housing market does not encourage rehabilitation: it encourages the minimum investment necessary to maximize return on investment.

It would be helpful for the joint agencies to gather data on the volume of regulated affordable housing versus unregulated affordable housing, to be able to compare the scope of housing that is subject to mandated affordability requirements such as through housing subsidies, LIHTC, and other mechanisms, versus unregulated affordable housing. The LIHTC program, and public/private partnerships that grow out of HUD and U.S. Treasury financing programs, include extensive data-gathering and reporting requirements. This highlights the important difference outlined in the response to the preceding question: regulated housing is easily monitored and measured for its impact on a community; unregulated housing offers no objective metrics. Regulated housing involves both rent and income controls that can be adjusted as the economy of local housing markets fluctuate; unregulated housing does not control for variables, and so the outcomes may be skewed by the effects of gentrification, historical and ongoing discriminatory practices, and other socio-economic forces not easily identified without data. Rewarding investment in LIHTC properties as the compliance rubric provides metrics for analyzing investments.

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?*

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*

¹⁰ See, e.g., “Yet more evidence that housing affordability is getting worse,” October 31, 2017, *The Avenue*, Jenny Schuetz, The Brookings Institution.

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?

JOINT ANSWER to Questions 8 and 9:

Allowing credit for any activity that is not directly and primarily beneficial to target populations is not in accordance with the statutory purpose of the CRA. The joint agencies note that the current rule gives credit for mortgage-backed security investment that “*primarily* address[es] affordable housing.”¹¹ The proposed rule dilutes the standard by allowing CRA credit for mortgage-backed security investments that “*contain* qualifying affordable housing loans.”¹² Firm standards, such as a minimum of 51% or higher, provide clarity and measurable standards. If the goals of the CRA require financial institutions to invest in communities that would otherwise not receive investment, or a significant volume of investment, then the CRA is effectively requiring financial institutions to undertake a degree of financial risk that they would not otherwise undertake. Investment in mortgage-backed securities diffuses that risk but correspondingly diffuses the benefit to low- and moderate-income families; allowing CRA credit for subsequent re-investment diffuses the risk and benefit even further. Investment in government-issued securities that are used entirely to fund affordable housing, by contrast, is an investment tool more worthy of CRA credit.

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?*

ANSWER to Question 10:

Any articulated list of activities should be weighted toward those activities shown by data to improve and expand affordable housing. LIHTC investment, for example, is recognized by the HUD’s Office of Policy Development and Research as “the most important resource for creating affordable housing in the United States today.”¹³ There are a spectrum of affordable housing programs, both multifamily and single family, that have demonstrated positive outcomes such as: LIHTC, the HOME Investment Partnerships Program, the National Housing Trust Fund, and a wide variety of state-level lending and incentive programs. These were all novel solutions at one point, but have become proven tools to encourage investment in low- and moderate-income communities. Awarding CRA credit for participation in existing systems that are known to result in quality affordable housing will best accomplish the joint agencies’ goal of assuring responsiveness to affordable housing needs. CRA credit must be tied to, in addition to the financial activity, provision of outcome metrics that demonstrate progress towards the CRA’s goals.

¹¹ Joint notice of proposed rulemaking, p. 38 (emphasis added).

¹² Joint notice of proposed rulemaking, p. 52 (emphasis added).

¹³ See 06/05/20 HUD PD&R statement accompanying Low-Income Housing Tax Credits dataset release ([Low-Income Housing Tax Credits | HUD USER](#)); see also C.P. Scally, A. Gold, and N. DuBois: *The Low Income Housing Tax Credit: How It Works and Who It Serves*, 07/12/18, Urban Institute.

Question 14. *Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)? If so, are there appropriate standards for plans, programs, or initiatives? Are there alternative options for determining whether place-based definition activities meet identified community needs?*

ANSWER to Question 14

The benefits of tying CRA credit for place-based activities to government plans, programs, or initiatives, are firmly articulated program goals, accountability, oversight, and data. Entirely private-sector place-based activity not only lacks any requirement of benefitting the public interest, but also lacks any mechanism to produce objective outcome metrics. In terms of determining whether a particular government program is adequately tied to a particular goal such as affordable housing, disaster preparation, or climate resiliency, a demonstration that the government agencies, plans, or programs involved have articulated goals and standards toward accomplishing those goals will connect the place-based activity to appropriate CRA credit.

Question 16. *Should the agencies include certain housing activities as eligible revitalization activities? If so, should housing activities be considered in all, or only certain, targeted geographies, and should there be additional eligibility requirements for these activities?*

ANSWER to Question 16:

In looking at the topic of Redefining Revitalization and Stabilization Activities,¹⁴ the joint agencies propose “that all place-based activities benefit or serve residents of the targeted census tract(s), *including* low-and moderate-income residents.”¹⁵ Additionally, the “agencies are not proposing that all place-based activities solely benefit or serve low-or moderate-income residents. Rather, the proposal seeks to maintain flexibility for activities to meet a range of community needs while also requiring the *inclusion* of low-or moderate-income residents as beneficiaries of an activity.”¹⁶

Mere inclusion of low- or moderate-income residents as beneficiaries of any activity is insufficient for any CRA credit, in any context. The clear legislative intent of the CRA is to reward financial activity that *primarily* benefits LMI communities. Dilution of that focus would represent an improper shift from the CRA operating to benefit communities to the CRA operating to benefit the convenience of financial institutions.

Further, to the extent that “revitalization” is equivalent to “rehabilitation” of affordable housing stock and/or the infrastructure that directly benefits affordable housing stock, then revitalization appears to be an appropriate effort worthy of CRA credit. Rehabilitation of housing stock is a key need of affordable housing, both multifamily and single family, and nationwide. But absent that focused definition of “revitalization,” the general concept of place-based “revitalization” risks dilution of the CRA’s intended purpose.

¹⁴ Joint notice of proposed rulemaking, p. 67.

¹⁵ Joint notice of proposed rulemaking, p. 73 (emphasis added).

¹⁶ Joint notice of proposed rulemaking, p. 73 (emphasis added).

Question 31. *Should the agencies also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity?*

ANSWER to Question 31:

While the concept of giving financial institutions more clarity as to what constitutes “qualifying activities” is a fair act of transparency, any definitional list – positive or negative - must not dilute the purpose of the CRA. For example, the previously proposed OCC/FDIC revised CRA regulations would have expanded focus from the financial needs of low- and moderate-income persons to the entire communities beyond the low- and moderate-income communities that might be contained within them.¹⁷ Codification of an enumerated list may lead to unintended outcomes where activities are not weighted relative to each other.

Rather than enumerating positive or negative menus of activities, the intent of the CRA is better met by the joint agencies articulating purpose statements of goals to be accomplished. An emphasis placed on data collection and demonstrated progress toward those goals should then be rewarded with CRA credit.

Question 117. *Should activities that cannot be allocated to a specific county or state be considered at the highest level (at the state or institution level, as appropriate) instead of allocated to multiple counties or states based upon the distribution of all low-and moderate-income families across the counties or states?*

ANSWER to Question 117:

The Community Development Financing Test, by the description of the joint agencies, is intended to measure financial institution’s loans and investments against benchmarks that “reflect local context.”¹⁸ The joint agencies expand this concept, however, to also say that “for a bank with a nationwide footprint, this could include qualifying activities that are nationwide in scope.”¹⁹ These two concepts are incongruous, and suggest that nationwide activity, while possibly worthy of CRA credit, is not properly a component of the Community Development Financing Test. Rather than abandoning local community metrics to accommodate financial institutions that are unable to identify local community outcomes, the spirit of the CRA suggests that it should fall to the financial institutions to demonstrate a local, county, or state-level impact of the activity in order to receive CRA credit..

ADDITIONAL NOTE: The Authority is concerned that the proposal of the joint agencies offers very little mention of financial institutions’ investment in the LIHTC. The request for comment solicits very few questions about LIHTC investment activity or its relative weight compared to other activity. Where LIHTC investment is mentioned, it is discussed primarily in the context of benchmarking direct loans and deposit activity relative to geography and bank size.

¹⁷ OCC Notice of Proposed Rulemaking RIN 1557-AF12, 2021.

¹⁸ Joint notice of proposed rulemaking, p. 303.

¹⁹ Joint notice of proposed rulemaking, p. 305.

LIHTC investment is recognized by the HUD's Office of Policy Development and Research as "the most important resource for creating affordable housing in the United States today."²⁰ "The Low-Income Housing Tax Credit (LIHTC) has been a key policy tool for preserving and expanding the supply of affordable rental housing. Between 1987 and 2015, 45,905 projects and 2.97 million housing units have been placed in service. By many accounts, it has been quite successful as a housing production tool, particularly when compared with other federal rental housing production programs."²¹ "Since it was established by the Tax Reform Act of 1986, the Low-Income Housing Tax Credit (LIHTC) program has produced more than 3 million homes, making it the most important source of funding for affordable housing in the United States."²²

Preserving and promoting LIHTC investment has been and should continue to be a primary goal of CRA regulation. Housing investment in low- and moderate-income communities is shown to reduce poverty, reduce homelessness, improve outcomes for children, and improve adult well-being while reducing health costs.²³

²⁰ 06/05/20 HUD PD&R statement accompanying Low-Income Housing Tax Credits dataset release ([Low-Income Housing Tax Credits | HUD USER](#)).

²¹ C.P. Scally, A. Gold, and N. DuBois: *The Low Income Housing Tax Credit: How It Works and Who It Serves*, 07/12/18, Urban Institute.

²² E. Kneebone, C. Reid: *The Complexity of Financing Low-Income Housing Tax Credit Housing in the United States*, April 2021, Turner Center for Housing Innovation, U.C. Berkley.

²³ W. Fischer, D. Rice: *Research Shows Rental Assistance Reduces Hardship and Provides Platform to Expand Opportunity for Low-Income Families*, 12/5/19, Center on Budget and Policy Priorities.