

October 28, 2021

Benjamin W. McDonough
Senior Deputy Comptroller and Chief Counsel
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Re: Community Reinvestment Act (CRA) Regulations
12 CFR Parts 25 and 195
Agency: Office of the Comptroller of the Currency, Treasury (OCC)
Docket ID: OCC-2021-0014

Dear Mr. McDonough:

I am writing on behalf of the National Housing Conference (NHC) to comment on the Notice of Proposed Rulemaking (NPR) entitled Community Reinvestment Act Regulations, which was published in the Federal Register on September 17, 2021, by the Office of the Comptroller of the Currency (OCC). As stated in previous letters and other communications, we prefer that the OCC withdraw its final rule and resume working with the Federal Reserve Board of Governors (FRB) and Federal Deposit Insurance Corporation on a unified rule.

CRA modernization needs to occur, and it needs to include improved clarity, consistency, and flexibility, including transparent and fair metrics, as the Treasury Secretary and a diverse group of stakeholders have advocated. CRA modernization that improves the lives of underserved people and communities while improving the ability of regulated financial institutions to meet their responsibilities is worth pursuing.

Fundamentally, the NHC believes that it must meet four basic tests for the CRA modernization effort to be effective and sustainable. Any new CRA regulatory regimen must:

1. Increase investment in communities that are currently underserved;
2. Benefit more low- and moderate-income (LMI) people, particularly people of color, who live in those communities;
3. Ensure that CRA lending and investment does not lead to displacement of the very people it is meant to help; and
4. Make both bank performance and government enforcement more transparent and predictable.

Unfortunately, the OCC's final rule failed to address any of these four objectives adequately. Instead, it would likely have reduced the number of investments in underserved communities, harmed low- and moderate-income people, and made both bank performance and government enforcement less transparent and predictable, the exact opposite of the regulators' stated intention.

As you are aware, the Federal Reserve Board of Governors asked in their Advanced Notice of Proposed Rulemaking, "what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and

communities?”¹ CRA stands at the intersection of geography and race. When enacted in 1977,² the CRA responded to concerns over disinvestment in low-income communities and the persistent impact of “redlining,” the practice of avoiding investment in minority neighborhoods codified by the Home Owners’ Loan Corporation (HOLC) in 1933 and the Federal Housing Administration in 1934.³ While the Fair Housing Act of 1968 prohibited redlining and other forms of housing discrimination, the effects of these practices proved difficult to reverse. Meanwhile, as White Americans left cities for new, largely segregated suburban bedroom communities⁴ in the 1960s and 1970s, there was a growing disparity between where banks raised their deposits and where they invested, particularly in housing and mortgage finance. Its impact has left deep scars in communities that persist 50 years after they were outlawed. Research by economists at the Federal Reserve Bank of Chicago demonstrates that areas denied credit in the aftermath of the Great Depression of the 1930s continue to have lower property values, lower homeownership rates, and lower credit scores.⁵

When he introduced the CRA in 1977, Senate Banking, Housing and Urban Affairs Committee Chairman William Proxmire expressed hope that by incenting banks to rebuild and revitalize communities threatened by decline, the bill would ultimately prove good for the banking industry. Congress sought to incentivize banks to invest in the communities where their branches were located and reverse the impact of redlining. A high CRA rating was intended to provide that incentive. Yet even as Americans’ residential migration patterns and banking industry business models have changed dramatically since 1977, the lack of equitable access to credit by communities of color has been alarmingly consistent.

Non-White households’ access to affordable home mortgage loans today falls far short of what CRA’s champions originally envisioned. Overall, Black homeownership plummeted during the Great Recession, falling from 49.7% in Q2 2004 to 40.6% in Q2 2019, lower than when the Fair Housing Act was passed in 1968.⁶ This is a national tragedy. And Black and Hispanic households who have managed to become homeowners pay higher mortgage rates than their White counterparts⁷ and are at much greater risk of losing their homes during the pandemic.⁸

CRA’s rules have addressed race only peripherally, insofar as evidence of racial discrimination can lower a bank’s CRA rating. CRA’s establishment of a “continuing and affirmative obligation” by

¹ Regulation BB: Community Reinvestment Act, Advance Notice of Proposed Rulemaking, Docket Number R-1723, RIN 7100-AF94

² Pub. L. 95–128, title VIII, § 807, as added Pub. L. 101–73, title XII, § 1212(b), Aug. 9, 1989, 103 Stat. 527; amended Pub. L. 102–242, title II, § 222, Dec. 19, 1991, 105 Stat. 2306; Pub. L. 103–328, title I, § 110, Sept. 29, 1994, 108 Stat. 2364.

³ Remarks by Martin J. Gruenberg, Member, Board of Directors, Federal Deposit Insurance Corporation on The Community Reinvestment Act: Its Origins, Evolution, and Future at Fordham University, Lincoln Center Campus; New York, New York, October 29, 2018

⁴ <https://www.nytimes.com/1997/12/28/nyregion/at-50-levittown-contends-with-its-legacy-of-bias.html>

⁵ The Effects of the 1930s HOLC “Redlining” Maps (Revised August 2018) by Daniel Aaronson, Daniel Hartley, Bhash Mazumder. Federal Reserve Bank of Chicago Working Paper, No. 2017-12, 2017.

⁶ US Census HVS Survey Data. <https://www.census.gov/housing/hvs/data/histtab16.xlsx>

⁷ Black homeowners refinance less and pay more for mortgages, new data reveals, by Taylor Allen; PBS and NPR, January 4, 2021 <https://whyy.org/articles/black-homeowners-refinance-less-and-pay-more-for-mortgages-new-data-reveals/>

⁸ <https://www.brookings.edu/blog/up-front/2020/12/18/housing-inequality-gets-worse-as-the-covid-19-pandemic-is-prolonged>

banks to serve their entire communities goes far beyond a fair lending mandate to do no harm. While CRA examines service to LMI people and communities, “LMI” and “minority” are far from the same: nearly two-thirds of LMI households are White, while nearly 40% of Black households and more than half of Hispanic households are not LMI.⁹

Racial discrimination was rewarded in assessments that directly determined mortgage availability. Numeric evaluation of efforts to increase racial equity should, therefore, be a part of CRA assessments as well. Banks already report racial data under the Home Mortgage Disclosure Act (HMDA). This same data reporting should be used to assess performance and establish performance context in CRA evaluations.

One element of the OCC final rule that we recommend being retained while the agencies develop a joint NPR is the list of qualifying activities. We prefer that this list remains in place at this time to minimize disruptions in ongoing investment decisions, which we understand have contributed to valuable investments in Naturally Occurring Affordable Housing (NOAH).

We commend the Acting Comptroller of the Currency for this important change of direction and look forward to working with all three CRA regulators on a lasting modernization of the CRA.

Sincerely,



David M. Dworkin
President & CEO

⁹ <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-households.html>