

August 5, 2022

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Re: Comment on the Joint Notice of Proposed Rulemaking Regarding the Community Reinvestment Act [Docket ID OCC-2022-0002, RIN 1557-AF15; Docket No. R-1769 and RIN 7100-AG29; RIN 3064-AF81]

On behalf of UnidosUS and the undersigned organizations, we submit these comments in response to the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) request for comment on the proposal to amend regulations implementing the Community Reinvestment Act of 1977 (CRA).

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic* civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers at the national and local levels.

The CRA is a useful tool to combat lending disparities, but it has failed to fulfill its promise due to serious flaws that must be addressed by the agencies.

This rulemaking represents an historic opportunity to modernize the CRA, which holds promise to improve the banking system for low- and middle-income (LMI) people and for Latinos. As we outline below, thus far there has been progress, yet key improvements are needed to modernize the application of this cornerstone law so that it may live up to its potential and purpose of promoting fair and equal access to banking services for all.

The CRA was first enacted into law in 1977 in response to a clear public record of racial and ethnic discrimination in the banking and credit systems and as protection against the pervasive practice of

* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout our materials to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race. Our materials may also refer to this population as "Latinx" to represent the diversity of gender identities and expressions present in the community.

redlining. Over the years, the CRA helped to revitalize neighborhoods and to encourage banks to be innovative with investments, so that low- and moderate-income (LMI) borrowers, who are historically underserved by banks, can benefit directly from large bank investments that might otherwise not reach their neighborhoods. The law helped to curb the harms of discrimination and unequal treatment that Latinos, immigrants, and other communities of color face when they interact with banks and the marketplace.*

Yet despite the law's record of progress over the past four-plus decades, profound financial inequities persist, including racial disparities. For example, a 2022 analysis by the National Community Reinvestment Coalition (NCRC) found that total home loans to people of color and LMI people recently declined, and loan denial rates are higher for Blacks and Latinos than for Whites.†

The CRA can play a greater role in curtailing these inequities, but specific, critical flaws prevent it from doing so. For instance, despite the documented disparities that persist, as described above, approximately 98% of banks pass their CRA exams on an annual basis, with less than 10% receiving an "Outstanding" rating and almost 90% of receiving a rating of "Satisfactory." Importantly, CRA exams also fail to include race and ethnicity data in bank examinations despite the law's original intent, which was to combat redlining, an overtly racist practice. Rather, the exam focuses on income levels, thereby yielding a useful but incomplete picture of inequities in access to credit and banking services.

The Agencies Should Retain the Positive Aspects of the CRA, While Significantly Expanding its Reach to Meet the Needs of the Community Today

The joint proposal contains several elements that will strengthen the CRA and improve equity and inclusion in the banking system. As we note above, however, several key pieces are also missing from the proposal, and many aspects of the proposal could be improved. We ask that the agencies make the following changes to the proposal: First, include an evaluation of financial institution's lending and deposit product offerings to people of color in CRA exams. Second, strengthen and expand opportunities for impacted communities to provide input in CRA examinations. Third, include incentives for financial institutions to provide language access services.

Financial institution lending and deposit product offerings to people of color should be included, and scored, in CRA exams.

Although the impetus for enacting the CRA was to combat redlining, a practice that predominantly impacted Black communities and other communities of color (including Latino communities), the proposal fails to include race and ethnicity data in CRA exams. The need to include these data is consistent with the purpose of the law and remains highly relevant to achieving its core purpose. Lending disparities persist today and remain largely unaddressed.

* UnidosUS, Comments in response to the ANPRM on the Community Reinvestment Act [Docket No. R-1723, RIN 7100-AF94] (Washington, DC: UnidosUS, 2021), https://www.unidosus.org/wp-content/uploads/2021/08/unidosus_cracomment_federalreserveboarddocketnor1723221.pdf.

† Jason Richardson, Joshua Devine, and Jamie Buell, *NCRC 2020 Home Mortgage Report: Examining Shifts During COVID* (National Community Reinvestment Coalition, January 18, 2022), <https://www.ncrc.org/ncrc-2020-home-mortgage-report-examining-shifts-during-covid/>.

A recent study by an FDIC economist found differences in loan denial rates and pricing between people of different races and ethnicities. The study explains that even after controlling for credit scores, debt-to-income ratios, and loan-to-value ratios, Blacks and Latinos are still up to 4% more likely than Whites to be denied a mortgage loan.* The study also finds disparities in loan pricing explaining, “Black and Hispanic borrowers paid approximately 6 basis points more in interest rate than White borrowers... and paid more in total loan costs compared with White borrowers.”†

Race and ethnicity data could be included in CRA exams and used to evaluate performance in a similar way that LMI data are used in the retail lending test to determine whether financial institutions are meeting the needs of LMI communities. Under such an approach, the agencies would measure the number of a financial institution’s loans located in census tracts with high concentrations of people of color to the total number of the financial institution’s loans in an assessment area. If a financial institution provides a lower share of its total loans or deposit products to census tracts with high levels of people of color than the share of people of color in an assessment area, then this discrepancy would negatively impact their CRA score. Conversely, if a financial institution extends a higher share of its total loans or deposit products to census tracts with high levels of people of color relative to the share of people of color in an assessment area, then a financial institution would get positive credit in their score.

Both community input, and requirements that banks build better relationships with LMI communities, are critical to improving the inclusiveness of financial institution banking services.

The proposal takes small but positive steps towards including community input by allowing more opportunities for public comment during an exam.‡ However, much more is needed to empower the community in CRA examinations, provide appropriate input into exams, and establish healthy relationships with financial institutions.

Communities impacted by financial institutions should not be involved only during CRA examinations. Instead, they should have opportunities to establish consistent and sustained relationships with financial institutions, to ensure that they are meeting community needs. For example, community committees could be established to provide regular input directly to a financial institution. Such committees could include community-based organizations and individual community members themselves.

Additionally, community-based organizations and community members should be given a prominent role in providing input in CRA examinations. As part of creating specific channels for public input in the exam process, the agencies should allow the public and impacted communities to provide feedback about:

* Stephen J. Popick, “Did Minority Applicants Experience Worse Lending Outcomes in the Mortgage Market? A Study Using 2020 Expanded HMDA Data”, Federal Deposit Insurance Corporation, Center for Financial Research, June 2022, https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery.

† Ibid

‡ Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Notice of Proposed Rulemaking (NPR) to amend the CRA regulations, May 5, 2022, issued version, <https://www.federalreserve.gov/consumerscommunities/files/cra-npr-fr-notice-20220505.pdf>, p. 426.

- The quality of credit and deposit products offered in the area.
- The impact on branch closings in the affected community.
- The impact of mergers on an affected community.
- A financial institution's outreach efforts to LMI people and people of color.
- An institution's existing relationship, or lack thereof, with low-income communities, which should include community stakeholders such as community-based organizations and consumers from an LMI community.

Financial institutions should get credit for providing language access services in credit and deposit products, and in community service activities.

As the agencies consider additional categories to gauge the responsiveness of banks' credit programs and products, they must include language access as an additional category for banks to be evaluated on. Promoting language access in bank services and products opens the door for millions of consumers with limited-English proficiency to access high-quality and affordable banking.

Language barriers limit the ability of nearly 26 million limited-English proficient (LEP) consumers in the United States.^{*} to obtain responsible financial products and their ability to understand the terms of contracts they sign in to. A report by the Urban Institute establishes that LEP is an additional barrier to homeownership.[†] They found that neighborhoods with high LEP concentration had homeownership rates 5 percentage points lower than those with a median concentration of LEP residents.[‡]

We strongly urge regulators to consider products or services geared to borrowers with limited-English proficiency as an additional category to responsive credit products and programs as part of the qualitative consideration. In addition, regulators should give higher ratings to financial institutions that provide community supportive services (whether directly or through an intermediary) geared towards consumers with limited-English proficiency. This can look like financial institutions that provide grants to HUD-certified housing counseling agencies working closely with LEP consumers to forge a path to homeownership.[§] Finally, the CRA must consider outreach efforts that fit within the local context of the communities that banks serve. For instance, a financial institution located in a primarily Spanish speaking community must make the effort to provide the services described above in the appropriate language.

^{*} "Spotlight on serving limited English proficient consumers" Consumer Financial Protection Bureau (CFPB), last modified November, 2017. https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf.

[†] Edward, Golding, Laurie Goodman, and Sarah Stochak. "Is Limited English Proficiency a Barrier to Homeownership?" Urban Institute. Last modified March 26, 2018. <https://www.urban.org/research/publication/limited-english-proficiency-barrier-homeownership>.

[‡] Edward, Golding, Sarah Stochak, and Laurie Goodman. "New evidence shows that limited English proficiency is a barrier to homeownership." Urban Institute last modified March 26, 2018. <https://www.urban.org/urban-wire/new-evidence-shows-limited-english-proficiency-barrier-homeownership>.

[§] "Housing counselors help Latinos build generational wealth through homeownership" UnidosUS (blog), last modified June 24, 2021. <https://www.unidosus.org/blog/2021/06/24/housing-counselors-help-latinos-build-generational-wealth-through-homeownership/>.

Conclusion: the new proposal is a step in the right direction but is missing critical elements that could make banking more equitable.

The proposal from the Federal bank regulatory agencies will make the tests more rigorous by sharpening the scoring systems and making it easier to compare performance among financial institutions. Yet the proposal omits the use of race and ethnicity data and language access services and should include a more developed approach to requiring community feedback in CRA examinations.

The agencies should ensure that the spirit of the CRA is honored with concrete steps to make banking more inclusive and equitable and should strengthen these mechanisms under the law. We welcome efforts by the agencies to make progress toward this end in the service of Latinos and LMI consumers.

Sincerely,

UnidosUS

Abrazar, Inc.
Americans for Financial Reform Education Fund
Amistades, Inc.
Avenida Guadalupe Association
Brown Fist Productions, LLC
Casa Familiar
Centro Campesino Farmworker Center, Inc. (CCFC)
Centro Cultural of Washington County
Centro de Ayuda para los Hispanos, Inc
Chicano Federation of San Diego County
Consumer Federation of America
Corporación Desarrollo Económico Vivienda y Salud (CODEVYS), Inc.
CPLC Nevada Inc.
Cuban American National Council (CNC)
Cultiva La Salud.org
Dominican Women's Development Center
Downtown Vegas Alliance
Earth Ethics, Inc.
El Concilio/Hispanic American Council Inc
El Paso Community Action Program Project BRAVO, Inc.
Empowering Latino Futures
Fresno Metro Black Chamber of Commerce
Greater Lawrence Community Action Council
HealthPoint Communications
Hispanic Unity of Florida
Housing and Education Alliance, Inc.
Ibero-American Action League, Inc.

Inclusive Action for the City
Innecare
JazzSLAM
La Raza Community Resource Center
La Union del Pueblo Entero (LUPE)
Latino Alzheimer's and Memory Disorders Alliance
Latino Community Foundation of Colorado
MCDC
Mexican American Unity Council, Inc.
Mi Casa Resource Center
Midland CDC
Mission Asset Fund (MAF)
Montebello Housing Development Corporation
Multicultural Family Center
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Resource Center
National Organization for Women
On This Rock LLC
One Stop Career Center of PR Inc
Operation Hope (Financial Literacy)
Opportunity Enterprises Incorporated
PODER
Project Vida
Prosperity Now
Roundhouse
The Resurrection Project
The Rising Youth
Ventura County Community Development
Virginia Coalition of Latino Organizations
Visionary home Builders of CA, Inc.
Woodstock Institute