

PRRAC

Poverty & Race Research Action Council

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November 7, 2014

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW.
Washington, DC 20219.
email: regs.comments@occ.treas.gov

Re: Community Reinvestment Act; Interagency Questions and Answers Regarding
Community Reinvestment; OCC Docket ID OCC-2014-0021, 79 Fed. Reg. 53838
(September 10, 2014)

To whom it may concern:

The Community Reinvestment Act, the Fair Housing Act, and the Equal Credit Opportunity Act are among the laws enacted to end private and public acts of discrimination in the credit industry. Civil rights laws impose an additional obligation on agencies of the Federal government; the obligation not just to prevent discrimination, but to further fair housing. More specifically, 42 U.S.C. Section 3608(d), places the duty to affirmatively further fair housing on all “executive departments and agencies [in] their programs and activities relating to housing and urban development.”

This provision expressly applies to the federal banking agencies that oversee Community Reinvestment Act (CRA) compliance, including the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the Agencies). The duties imposed on the Agencies by the Fair Housing Act were extended in 1994, in Executive Order 12892, which reiterates the obligation of all federal agencies, and the institutions they oversee, to affirmatively further fair housing in all programs affecting housing and community development. The Executive Order is explicit about the obligations of the federal banking oversight agencies to incorporate fair housing into their regulatory oversight responsibilities:

Section 808(d) of the [Fair Housing] Act, as amended, provides that all executive departments and agencies shall administer their programs and activities relating to housing and urban development (*including any Federal agency having regulatory or supervisory authority over financial institutions*) in a manner affirmatively to further the purposes of the Act

and shall cooperate with the Secretary of Housing and Urban Development to further such purposes... As used in this order, the phrase “programs and activities” shall include programs and activities operated, administered, or undertaken by the Federal Government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility (including regulatory or supervisory authority over financial institutions).

The duty to affirmatively further fair housing is more than the obligation to prevent individual acts of discrimination. Rather, by enacting 42 U.S.C. §3608(d), Congress intended that the Agencies use their oversight authority, including their bank examination procedures, and the power to deny applications for deposit facilities to assist in ending discrimination *and* segregation.¹

HUD has recently put forward a proposed rule to further implement the affirmatively furthering fair housing obligation,² and we urge the OCC and the Department of Treasury to follow suit. In the meantime, the CRA “Questions and Answers” currently have no examples of this overarching legal obligation, and it would very helpful for the agency to include some sample questions and answers to encourage lenders to consider residential goal as an important aspect of CRA lending.

Innovative or flexible lending practices: We recommend inclusion of additional examples in this section to encourage banks to support development of affordable housing rentals in high opportunity areas with high performing schools:

- In connection with a multifamily housing lending program, an institution may implement a preference for affordable or assisted housing developments located in low poverty communities with high performing schools, including support for affirmative marketing to low income families currently living in high poverty communities.

In response to specific question (7), the proposed revised guidance is incomplete if it continues to suggest that it is sufficient to only provide low income housing development assistance in poor, segregated neighborhoods. Indeed, such one-sided lending is inconsistent with the Fair Housing Act.

In response to specific question (9), it would be most helpful if the guidance cited specific recommended models for alternative credit histories.

¹ The legislative history of 42 U.S.C. §3608(d) is summarized in *NAACP, Boston Chapter v. Secretary of Housing and Urban Development*, 817 F.2d 149, 155 (1 Cir. 1987). For a case in which a court concluded that Federal banking regulators were subject to the duty, *see, Jones v. Comptroller of Currency*, 983 F. Supp. 197 (D.D.C. 1997).

² “Affirmatively Furthering Fair Housing,” 78 Fed. Reg. 43,710 (July 19, 2013).

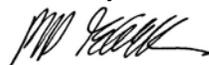
Community Development Loans: For the reasons stated above, it is important to signal to banks the importance of affordable housing lending in non-traditional areas. We would recommend amending the first example in this section as follows, consistent with the OCC's legal obligations under the Fair Housing Act:

- borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons, and specifically targeted to expanding affordable housing choices in low poverty neighborhoods and communities.

In response to specific question (26), we would urge the agency to evaluate an institution's responsiveness to credit and community development needs by specifically looking at the overall balance of a lending institution's investments in low income multifamily family rental housing across a range of geographies, including at least an equal investment in affordable family rental housing in neighborhoods and communities that have low rates of poverty. This approach is consistent with the recent Department of Justice settlement agreements with Citi and Bank of America that encourage the banks, consistent with the CRA, to provide "funds to facilitate the construction, rehabilitation, or preservation of Critical Need Family Housing developments (housing developments selected by the bank that (i) are located within Small Area DDAs or State-Defined High Opportunity/Low Poverty Areas, and (ii) none of the units have age restrictions for any of the occupants."

Thank you for the opportunity to address these issues. As noted above, banking agencies and covered institutions like the OCC have a duty to affirmatively further fair housing pursuant to 42 U.S.C. §3608, and the proposed "Questions and Answers" should reflect this obligation and expectation.

Sincerely,



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