

**INTERAGENCY QUESTIONS AND ANSWERS REGARDING
COMMUNITY REINVESTMENT**

**COMMENTS OF
POVERTY & RACE RESEARCH ACTION COUNCIL
AND
INCLUSIVE COMMUNITIES PROJECT, INC.**

**OCC Docket ID OCC-2007-0012
Federal Reserve Board Docket No. OP-1290
FDIC RIN 3064-AC97
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I. Introduction.

Thank you for the opportunity to comment on the Interagency Questions and Answers Regarding Community Reinvestment, 72 Fed. Reg. 37921 (July 11, 2007) (the Q&A). The comments that follow are submitted on behalf of two organizations that work to expand housing choices for low income families outside of high poverty, segregated neighborhoods. The **Poverty & Race Research Action Council (PRRAC)** is a civil rights policy organization located at 1015 15th Street NW, Suite 400, Washington, DC 20005 and may be contacted at (202) 906-8023, attention Philip Tegeler, President and Executive Director. PRRAC's primary mission consists of connecting social scientists with advocates working on race and poverty issues, and to promote a research-based advocacy strategy on issues of structural racial inequality. The **Inclusive Communities Project, Inc.** is a not-for-profit organization that works for the creation and maintenance of thriving racially and economically inclusive communities, expansion of fair and affordable housing opportunities for low income families, and redress for policies and practices that perpetuate the harmful effects of discrimination and segregation. ICP is located at 3301 Elm Street, Dallas, TX 75226, and may be reached by contacting Elizabeth K. Julian, President and Executive Director, at (214) 939-9239.

PRRAC and ICP write jointly to suggest amendments to the proposed Q&A, to encourage greater fair housing monitoring by the federal banking agencies, and greater fair housing compliance by regulated banking institutions. Our comments encompass four areas of concern: (1) Community Reinvestment Act (CRA) activities that address, or fail to address, issues of racial isolation and concentration of poverty; (2) CRA treatment of mixed-income affordable housing; (3) CRA geography and racial segregation; and (4) discrimination, CRA examination procedures, reporting and data.

II. The Responsibility of the Oversight Agencies to Dismantle Segregation.

A. The Role of the Federal Government and Banking in Constructing Residential Segregation.

Racial isolation remains a persistent and pernicious feature of residential living patterns in virtually every metropolitan area in the United States. According to the 2000 Census, despite modest declines in some indices, Blacks and African Americans remain the most segregated racial group, followed by Hispanics or Latinos, Asians and Pacific Islanders, and American

Indians and Alaska Natives.¹ Segregation is not the result of individual choice. Instead, there is a well documented history of policy-making in Federal housing, community development, highway construction, and banking oversight activities carried out for the deliberate purpose of enforcing racial separation, especially racial isolation of Blacks. Redlining; that is, the practice of denying credit to inhabitants of racially identified areas, was an invention of Federal housing agencies providing home mortgage insurance. The same agencies also promoted racial separation in home mortgage lending, assuring that federally insured loans would not be made to people of color desiring to move to more integrated and suburban locations.

Federal policies were embraced by private lenders. Discrimination and segregation thus became explicit features of the banking and credit industry. The resulting racial isolation is insidious. Segregation causes concentrations of poverty among people of color.² Despite four decades of civil rights legislation, race discrimination in the credit industry, and in home mortgage lending persists, along with the consequent conditions of isolation, neighborhood deterioration, and poor living conditions.

B. The Affirmative Obligation of Banking Oversight Agencies to Dismantle Segregation.

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 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

¹ See generally, *Racial and Ethnic Residential Segregation in the United States: 1980-2000* (Census Special Reports, U.S. Census Bureau, August 2002).

² There is an extensive literature documenting the dual roles of Federal leadership and private lending in the construction of segregation and the consequent concentration of poverty. One source is *American Apartheid: Segregation and the Making of the Underclass* by Douglas S. Massey and Nancy A. Denton (Harvard University Press, 1993).

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).

It bears emphasizing that 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.³

III. CRA Questions and Answers.

The proposed Q&A seeks comment on a number of specific matters, including new and revised Q&A on twelve separate matters outlined in the July 11 notice. The notice also seeks general comments about the Agencies CRA regulations. 72 Fed. Reg. 37929. PRRAC and ICP answer this solicitation with the comments set forth below.

A. CRA Activities that Address Racial Isolation and Concentration of Poverty.

CRA credit is extended principally to activities that serve Low and Moderate Income geographies. The revised Q&A says that participation in Low-Income Housing Tax Credit (LIHTC) housing development, and New Market Tax Credit (NMTC) economic development are examples of the kind of community development activities that receive favorable CRA ratings. Both of these programs target Low Income geographies. The bias of the CRA in favor of low-income areas is somewhat balanced by 1995 changes to Agency regulations saying that community development activities may include activities that serve Low and Moderate Income households outside of Low and Moderate Income geographies.

Segregation establishes concentrations of poverty, and promoting credit activities and the provision of financial services solely in low-income areas reinforces segregation. On the other hand, research shows that a focus on financial services to Low and Moderate Income households outside of Low and Moderate Income geographies reduces segregation.⁴ PRRAC and ICP support Q&A that favorably credit activities that serve Low and Moderate Income households outside of Low and Moderate Income geographies. We urge the Agencies to further revise the Q&A and the CRA regulations to explicitly support activities that reduce racial isolation and concentrations of poverty. For example, the defined term “community development” could be revised to include activities that reduce racial isolation and concentrations of poverty. Similar language could be added to the Q&A guidance that explains performance measures for lending,

³ 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).

⁴ Friedman, Samantha and Squires, Gregory D., *Does the Community Reinvestment Act Help Minorities Access Traditionally Inaccessible Neighborhoods?* Social Problems, Vol. 52, Issue 2, pp. 209-231 (Society for the Study of Social Problems, Inc. 2005).

investment, and service activity, and to the guidance that places greater qualitative weight on innovative and complex participations.

B. Mixed-Income Housing.

A number of revised Q&A assure that banks receive credit for participation in mixed-income affordable housing properties. On the one hand, the Q&A tends to place greater weight on a larger mix of affordable units serving lower income families. On the other hand, the guidance does permit examiners some flexibility in evaluating mixed-income housing based on the complexity or innovativeness of the activity. The Q&A also notes that housing built for Upper-income households in a Low- or Moderate-income geography will receive lesser weight or no credit where the housing does not serve Low- or Moderate-income people.

Until well into the 1970s, Federal policies for public and assisted housing promoted racially identified developments serving only extremely low-income households as a means of creating and reinforcing patterns of racial segregation. CRA policy must actively dismantle these conditions. It is therefore essential that the Q&A promote mixed-income housing that creates a wide range of housing opportunity for low income households of color in higher income communities with jobs and good schools. PRRAC and ICP support those Q&A that favor mixed-income housing. We urge the Agencies to strengthen the guidance in order to create incentives for participation in mixed-income affordable housing, both in Low or Moderate Income geographies *and* in Upper Income geographies. We also urge the Agencies to deny CRA credit for participation in affordable housing development that reinforces segregation and concentration of poverty by serving only Low Income households in Low and Moderate Income geographies, or that displaces Low Income households to other segregated, high poverty areas.

C. CRA Geography.

Agency policy prohibits banks from taking race and ethnicity into account for purposes of delineating an assessment area. PRRAC and ICP assume that this prohibition on race-conscious activity is a reaction to the long history of overt discrimination in the lending industry, the persistence of significant racial disparities in loan approvals evidenced in HMDA data, the way the sub-prime mortgage market disproportionately harms borrowers of color, and the continuing evidence of racial disparities in interest rates and other loan terms in the credit industry. Nevertheless, a complete disregard of race coupled with an emphasis on Low and Moderate Income geographies does nothing to address patterns of segregation and poverty.

Activities that increase housing opportunity for racially isolated people of color in higher income areas should receive weight in a CRA examination. Lesser weight should be attributed to activities that stabilize Low or Moderate Income geographies when those activities tend to increase segregation and concentration of poverty. A bank should receive lower ratings when CRA activities are located solely or predominantly in Low or Moderate Income geographies instead of balanced with activities that serve Low or Moderate Income people in Upper Income geographies.

D. Discrimination, Examination Procedures, Reporting and Data.

CRA examination procedures tell examiners to look for individual but not systemic violations of laws like the Fair Housing Act, the Equal Credit Opportunity Act, the Truth in Lending Act, and similar laws. Individual civil rights violations are not assigned a quantitative

weight in an examination. Instead, a CRA rating is affected by an examiner's qualitative evaluation of the nature and extent of the civil rights violations, the bank's procedures intended to prevent acts of discrimination, and bank practices for self-assessment and self-correction. While an examiner will look at a bank's Home Mortgage Disclosure Act (HMDA) data, there is no focus on segregative or integrative effect of an institution's lending, investment, or CRA activities.

CRA ratings affect the decision of an Agency to approve a public privilege; a deposit facility. That privilege should not be available to an institution where an examination uncovers unresolved findings of individual or systemic discrimination. The Agencies could adopt a number of alternative approaches to findings of discrimination. For example, the U.S. Department of Housing and Urban Development (HUD) will deny an application for competitive housing funds where there are unresolved judicial or administrative findings of discrimination, and an Agency could deny an application for a deposit facility on the same basis. Another approach would be for the Agency to automatically reduce a rating by one level (e.g., from "outstanding" to "satisfactory") in the event of an unresolved finding. Even more lenient would be the approach used by the Internal Revenue Service in the LIHTC program: unresolved findings result in a warning letter, which if unheeded would result in a rating adjustment or rejection of an application for a deposit facility.

PRRAC and ICP also urge the Agencies to collect and review data, depicted by race, ethnicity, and location, for all CRA activity. Under current practice, only HMDA data for single family lending depicts credit activities at this level of detail. CRA examinations should measure whether an institution discriminates in all dimensions of its credit activities and banking services. It is only in this way that the racial impact of a bank's lending activities be adequately analyzed.

IV. Conclusion.

PRRAC and ICP appreciate this opportunity to provide comments on the CRA Questions and Answers. Thank you in advance for your consideration.