NCRC
National Community Reinvestment Coalition

2020 Policy Agenda
for the 116th Session of Congress

Investing in a Just Economy

About NCRC

NCRC and its grassroots member organizations create opportunities for people to build wealth. We work with community leaders, policymakers and financial institutions to champion fairness in banking, housing and busines.

Our members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority and women-owned business associations, and social service providers from across the nation.

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Who We Are

The Conscience of American Capitalism

NCRC and its grassroots member organizations help create opportunities for people to build wealth. We work with community leaders, policymakers and financial institutions to champion fair access to credit, capital, banking and housing.

We represent Main Street—the hundreds of millions of hardworking men and women across the country who are striving to make better lives for themselves and their families. Our goal is to promote fair and equal access to financial services to ensure that every person living in this country, regardless of their ZIP code, race, ethnicity, gender, age or socio-economic status, has the opportunity to build wealth and realize the American dream.

Since its founding in 1990, NCRC has grown to a coalition of 600 organizations committed to bringing responsible investment back to communities and helping individuals and communities build wealth and opportunity. We work in communities in every state in America.

Our coalition includes:

- Community Development Financial Institutions
- State and Local Governments
- Community Organizers
- Small Business Associations
- Academics
- Housing Counseling Organizations
- Civil Rights Groups
- Community Development Corporations
- Women- and Minority-Owned Business Development Groups
- Faith-Based Institutions

Investing in a Just Economy

For nearly 30 years, NCRC has worked to create a just economy. We believe private capital of various forms must be engaged in building an equitable and fair economy.

Coronavirus Recovery: Requires a broad and ongoing public and private sector response

No challenge since at least the financial crisis of 2008 will test the parameters of what is equitable and fair like the economic recovery from the 2020 coronavirus pandemic. The health and economic recovery from COVID-19 for low- and moderate-income (LMI) families and communities across the country will require a comprehensive and ongoing response from both the public and private sectors. In addition to the federal, state and local policy responses, the nation's financial institutions have both a legal and a moral obligation to respond in unprecedented ways to facilitate recovery in their local communities.

Homeowners, Renters and Small Business: A decade later the financial crisis still lingers

Even before the COVID-19 pandemic, the nation's homebuyers, renters and small businesses were continuing the long recovery from the financial crisis a decade ago.[1] There are pressing challenges, not only for access to mortgage credit, but also related to affordable housing supply. There is a shortage of housing affordable for LMI families – both single-family homes and rental units. The nation's businesses continue to rebound from a 40-year decline in business startup activity,[2] and underserved communities, including rural areas, struggle to attract private investment.

Redlining, a discriminatory practice outlawed by CRA and other fair lending laws, remains a potent issue today. The Consumer Financial Protection Bureau (CFPB) alone brought nearly $40 million in enforcement actions against institutions for redlining under the leadership of Richard Cordray as director.[3] A groundbreaking study from The Center for Investigative Reporting found modern-day redlining persisted in 61 metro areas even when controlling for applicants' income, loan amount and neighborhood.[4] NCRC objected to the OCC and FDIC proposed CRA rule for a number of reasons, including that it could allow redlining to go undetected because CRA examiners would no longer examine mortgage lending by banks in LMI neighborhoods.

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1 *The State of the Nation's Housing 2019* (Cambridge, MA: Joint Center for Housing Studies, Harvard University, 1988). Retrieved from https://www.jchs.harvard.edu/state-nations-housing-2019.

2 *2017 Kauffman Index of Startup Activity* (Ewing Marion Kauffman Foundation). Retrieved from www.KauffmanIndex.org.

3 CFPB Enforcement Actions [Redlining]. Retrieved from https://www.consumerfinance.gov/policy-compliance/enforcement/actions/?page=2#o-filterable-list-controls.

4 Aaron Glantz and Emmanuel Martinez, "For people of color, banks are shutting the door to homeownership," *Reveal,* February 25, 2018, The Center for Investigative Reporting, https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/.

Homeownership remains the best vehicle for low- and moderate-income families and people of color to build wealth and enter the middle class. And small businesses and start-ups are an essential source of new job creation. To ensure the widest and most equitable access to credit across the country, the affirmative obligations, or Duties to Serve, on the nation's financial institutions must be defended and expanded. Leading experts in affordable housing, Adam Levitin and Janneke Ratcliffe, summarized the vital role that Duties to Serve play:

> Fair lending concerns the obligation not to discriminate on unlawful grounds in the actual granting of credit and its terms. But, the Duties to Serve concept is broader and it recognizes that merely prohibiting discriminatory lending is insufficient to address the disparity of financial opportunity.[5]

CRA, the affordable housing goals at Fannie Mae and Freddie Mac, and other provisions in law ensure the nation's largest institutions have continuing and affirmative obligations to reach out and serve traditionally underserved communities and borrowers.

Defending CRA: Regulators Have Initiated a Major Rewrite

NCRC's TreasureCRA campaign[6] has mobilized thousands of community activists around the country to defend core principles embodied in CRA, as bank regulators announce a major regulatory rewrite of the law. The Office of the Comptroller of the Currency (OCC), regulator of the nation's largest banks, took the first formal step to overhaul the law's regulatory framework last fall.[7] More than 1,500 organizations responded to 31 reform questions posed by the agency.[8] The Federal Reserve System has convened more than 25 roundtables and symposiums around the country on the law.[9]

How CRA Operates Today

Under CRA, depository institutions "have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[10] Those obligations are to be met "consistent with the safe and sound operations of such institutions." The law was enacted to end redlining (the practice of banks refusing to consider mortgage applications from

5 Adam J. Levitin and Janneke H. Ratcliffe, *Rethinking Duties to Serve in Housing Finance.* (Cambridge, MA: Joint Center for Housing Studies, Harvard University, October 2013.)

6 The NCRC campaign website is at: https://ncrc.org/treasurecra/.

7 Office of the Comptroller of the Currency (OCC), Advance Notice of Proposed Rulemaking (ANPR), Federal Register, Vol. 83, No. 172, September 5, 2018: https://www.regulations.gov/document?D=OCC-2018-0008-0001.

8 See NCRC's public comment at: https://www.regulations.gov/document?D=OCC-2018-0008-1132. See an analysis of the other public comments at: https://ncrc.org/analysis-of-public-comments-on-the-community-reinvestment-act/.

9 For example, the Federal Reserve Bank of Philadelphia: https://www.philadelphiafed.org/community-development/events

10 2 U.S.C. §2901, et al.

minorities based on the neighborhood they lived in rather than their personal credit and financial situation) and to defeat capital export (banks using the deposits made by persons from low-income neighborhoods to lend to persons in more affluent neighborhoods).

CRA is implemented by the three federal bank regulators (the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Reserve System) through periodic lender examinations of all federally insured depository institutions. These CRA examinations vary in occurrence and detail based on lender asset size, with small lenders under $250 million in assets being evaluated less frequently (usually once every four or five years) and less thoroughly (one test area instead of the three applied to large banks). Upon completion of the examination, regulators award banks one of four ratings based on their compliance with the CRA: outstanding, satisfactory, needs to improve or substantial noncompliance. These ratings are made public at the Federal Financial Institutions Examination Council (FFIEC) website, along with the bank's CRA performance evaluation. Regulators can then use a poor rating to deny lender applications for such things as opening a new office or acquiring another bank. Feedback from community stakeholders on how banks are serving their community is considered by bank examiners during CRA exams and during bank mergers and acquisitions.

All financial institutions should have a CRA obligation

Today CRA covers only a fraction of the marketplace. For mortgage lending, for example:

- 1993, 41% of mortgage loans covered by CRA review
- 2006, 26% of mortgage loans covered by CRA review
- 2016, ~30% of mortgages were in banks' assessment area11

Two forces have driven the decline: increased lending by nonbanks not covered by CRA, and banks covered by CRA lending more online and otherwise outside their CRA assessment area.

Depository institutions are compelled to meet their affirmative obligation under CRA in exchange for taxpayer support, such as bank charter status and federal deposit insurance. Other financial institutions also benefit from direct and indirect government support – economic, regulatory and infrastructure. As the financial marketplace evolves, it is critical that the playing field be level for all financial institutions. Financial technology companies (fintech), such as online marketplace lenders, independent mortgage companies, credit unions and other financial institutions, have continued to gain significant market share since the financial crisis, doing more and more mortgage and small business lending. These institutions also have a responsibility to provide fair access to financial

11 Lei Ding, "Effects of CRA Designations on LMI Lending" (PowerPoint Presentation, Research Symposium on the Community Reinvestment Act, Federal Reserve Bank of Philadelphia, February 1, 2019). Retrieved from https://www.philadelphiafed.org/-/media/community-development/ events/2019/research-symposium-on-cra/ding.pdf?la=en.

services by helping to meet the credit needs of their entire community and should be examined under a CRA framework.

NCRC joined other organizations in supporting the introduction of the Affordable Housing and Economic Mobility Act (S. 3503; H.R. 7262) during the 115th Congress, which extends CRA obligations to more financial institutions and modernizes other aspects of the law.

Despite the need for modernization, CRA is a powerful incentive today

Together with anti-discrimination, consumer protection and disclosure laws, CRA remains a key element of the regulatory framework for the nation's banks, encouraging the provision of mortgage loans, small business loans, investments and other financial services in their local communities and the nation's low- and moderate-income (LMI) neighborhoods.

Although CRA ratings are inflated, the law has proven to change institutional behavior and leveraged significant increases in lending and investment in LMI communities.[12] Recently, researchers at the Philadelphia Federal Reserve Bank found that when census tracts lose CRA eligibility, it leads to about a 10% or greater decrease in purchase mortgage lending by CRA-regulated lenders. Nonbanks help offset about half, but not all, of the decrease in purchase originations by CRA lenders. Similarly, the Federal Reserve researchers also found losses in small business lending based on a national sample, with the largest effects in inner-city neighborhoods.

Defending the affordable housing goals and other obligations

In the secondary mortgage market, Fannie Mae and Freddie Mac (the Enterprises) have "an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families…while maintaining a strong financial condition and a reasonable economic return."[13] The Enterprises have affordable housing goals, which require them to purchase a set percentage of mortgages to finance single family and multifamily housing for low- and moderate- income borrowers and communities.[14] For 2018-2020, each Enterprise has an annual low-income affordable housing goal. For example, their single family mortgage purchases are set at 24% for properties with borrowers with income of no greater than 80% of area median income. Each also has a multifamily goal to purchase multifamily residential housing that finances 315,000 units affordable to low-income families.

12 See for example*: CRA at 40 Symposium:* Cityscape Volume 19, Number 2, HUD (2017); *The Community Reinvestment Act at 40: A Careful Review of the Reviews,* Shelterforce, September 14, 2017; The Community Reinvestment Act After Financial Modernization: A Baseline Report, U.S. Treasury Dept., April 2000 (on market failures and externalities that CRA is designed to correct); *Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act,* Federal Reserve Bank of Boston and San Francisco (February 2009).

13 12 U.S.C. § 4501(7).

14 12 U.S.C. §§ 4562, 4563.

As a result of their affordable housing goals, the Enterprises have provided leadership in developing loan products and flexible underwriting guidelines and have taken other steps to increase the flow of responsible mortgage credit to low- and moderate-income borrowers and communities. For example, the willingness of the Enterprises to purchase three-percent down payment mortgage loans from financial institutions in the primary market over the years has provided homeownership opportunities to millions of working families across the country.

The Enterprises' Duty to Serve rule: the housing trust fund and capital magnet fund of Fannie Mae and Freddie Mac have other affordable housing responsibilities as a result of the affirmative obligations in their charters and the law. In January 2018, Fannie Mae and Freddie Mac began targeted work to encourage mortgage financing in three underserved markets: manufactured housing, affordable housing preservation and rural housing. This work stems from a new Duty to Serve rule finalized in 2017.[15] Both Enterprises can receive Duty to Serve credit by developing mortgage products, purchasing mortgage loans, doing outreach and making investments in the three underserved markets.

The Enterprises also dedicate a portion of their revenues to the National Housing Trust Fund (NHTF) and the Capital Magnet Fund (CMF). The HTF and CMF provide grants to states and state housing agencies and competitive grants to Community Development Financial Institutions (CDFIs) and nonprofit housing organizations to increase affordable housing for low-income families and areas.

The ongoing debate over the future of Fannie Mae and Freddie Mac

As a result of mortgage credit losses suffered during the financial crisis, both Fannie Mae and Freddie Mac were seized by the federal government and placed in conservatorship. They have remained under strict federal oversight ever since, with all of the quarterly earnings from their mortgage credit guarantee business being swept into the U.S. Treasury each quarter for general government spending, largely unrelated to housing. Over the last decade, there were continuous conversations during the Obama Administration and now the Trump Administration about whether to release the Enterprises from conservatorship as well as Congressional proposals to replace the Enterprises or remake them and the government-backed secondary mortgage market entirely. Most bills put forward have proposed to eliminate the affordable housing goals in favor of approaches that NCRC and other advocates have argued will produce less access to affordable mortgage credit for LMI borrowers and their communities. The latest proposal put forth by Senate Banking Committee Chairman Crapo (R-ID) would eliminate the affordable housing goals and the Duty to Serve, among other steps.

15 Federal Housing Finance Agency, *Enterprise Duty To Serve Underserved Markets*, 12 CFR Part 1282 (December 29, 2016). Retrieved from https://www.gpo.gov/fdsys/pkg/FR-2016-12-29/pdf/2016-30284.pdf

Don't blame the affordable housing goals for the housing crisis

Conservative critics who oppose the active role of the federal government in the nation's housing policy have placed blame on the affordable housing goals, as well as CRA, for the housing crisis – a claim numerous federal researchers and NCRC have disproven and roundly rejected.[16]

Key budget and tax issues bear on affordable housing and community development

Changes in the nation's federal tax code and federal budget policies also pressure homeownership, affordable rental housing communities and economic development. With the passage of federal tax reform in 2017, the nation now has a flatter tax code with fewer direct incentives for low- and moderate-income households to buy a home. A lower corporate tax rate has diminished the value of key tax credits that have long facilitated affordable housing projects and other community and economic development investments in underserved communities. While federal spending caps have been lifted somewhat, there have been years of cuts and slower growth in domestic programs critical to local community development efforts, such as the Community Development Block Grant (CDBG), Community Development Financial Institutions (CDFIs) and HOME Investment Partnership, to name a few. With fewer valuable federal tax credits and declining "soft subsidies" in the federal budget, it could be far more difficult to finance affordable housing and community development projects in underserved/disinvested communities.

A new program created by the 2017 tax law proposes to fill in some of the gaps by granting private investors tax benefits for investing in newly created Opportunity Zone funds that are to finance projects and businesses in designated Opportunity Zones. 8,700 census tracts across the country have been designated as Opportunity Zones.[17] The Internal Revenue Service is currently developing rules around the program. NCRC continues to monitor the program and has offered a series of reforms.[18]

A new era of split government in Washington; many regulatory challenges on the horizon

The 116th Congress opened in January 2019 and major issues are on the national agenda on Capitol Hill and at the federal agencies. Democrats now hold the majority in the U.S. House of Representatives for the first time since 2010. Republicans control both the U.S. Senate and the

16 *Don't Blame the Affordable Housing Goals for the Housing Crisis*, NCRC, January 24, 2018. Retrieved from: https://ncrc.org/dont-blame-affordable-housing-goals-financial-crisis/.

17 See more on the program on the Economic Innovation Group website at: https://eig.org/opportunityzones/resources; and at the U.S. Treasury website: https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx.

18 NCRC *Investing in Qualified Opportunity Funds* outline. Retrieved from: https://www.regulations.gov/document?D=IRS-2018-0029-0080.

White House, with most federal agencies now headed by a regulator appointed by President Donald Trump. We expect several NCRC priority issues to top national headlines in 2020: CRA, mortgage data and disclosure rules, next steps on Fannie Mae and Freddie Mac conservatorship and their affordable housing obligations, potential changes at the Federal Housing Administration (FHA), CFPB payday lending rule and other small dollar/short-term lending issues and a rewrite of key fair housing rules at HUD.

Rep. Maxine Waters (D-CA), the chairwoman of the House Financial Services Committee, has outlined an ambitious agenda, including strengthening consumer protection, focusing on affordable housing, homelessness and housing finance issues. At start of the 116th Congress, she created a new Diversity and Inclusion subcommittee to examine the low representation of minorities and women in the financial services industry. Chair Waters has utilized the committee's subpoena power to increase committee oversight and public pressure on financial companies and regulators to support the committee's objectives.

During the 117th Congress, we can expect them to consider the nation's growing issues around affordable housing supply– both single-family and multifamily. NCRC has formed the Affordable Homeownership Coalition to offer a comprehensive set of policy recommendations designed to improve the nation's affordable housing supply and access to affordable homeownership for LMI families. In the changing financial marketplace and with the new political landscape, NCRC's advocacy has gained a new urgency: to protect and strengthen CRA; to preserve the affordable housing goals and the broader obligations on financial institutions to serve low- and moderate-income borrowers and underserved communities; to ensure enforcement of the nation's fair housing and fair lending laws; and to protect federal funding for key affordable housing, community development, small business and for social safety net programs.

Invest Local

The duty that financial institutions have to invest in their communities must be expanded and enforced. The more financial institutions invest in and serve the local economies where they sell their products and services, the more those communities can keep financial resources circulating through their businesses and neighborhoods, building wealth and prosperity for years to come.

Invest Forward

Building community prosperity requires a long-term plan to expand and preserve access to credit and capital. We must commit to thoughtful legislative and regulatory reforms and promote policies that not only stabilize our communities, but also position them for future growth. As more lending shifts to online platforms, nonbanks, credit unions and others, the challenge is to ensure that all new forms of lending have the same affirmative obligations to serve their communities.

Invest Fair

Every person in a community, regardless of their race, age or socioeconomic status, should have the opportunity to build wealth. Equal access to financial products and services is critical.

Invest Period

Funding plays a critical role in building community prosperity. The president, the U.S. Congress, regulators and the financial services industry must continue the nation's economic recovery by investing in communities.

Invest Local

ISSUE: Defend CRA From Efforts to Weaken it

This January, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), regulators of the nation's largest banks, released a Notice of Proposed Rulemaking (NPRM), which is the second formal step in overhauling the Community Reinvestment Act (CRA).[19] NCRC research has found that a significant weakening of CRA could reduce lending in low- and moderate-income neighborhoods by $52 to 105 billion dollars over five years.[20]

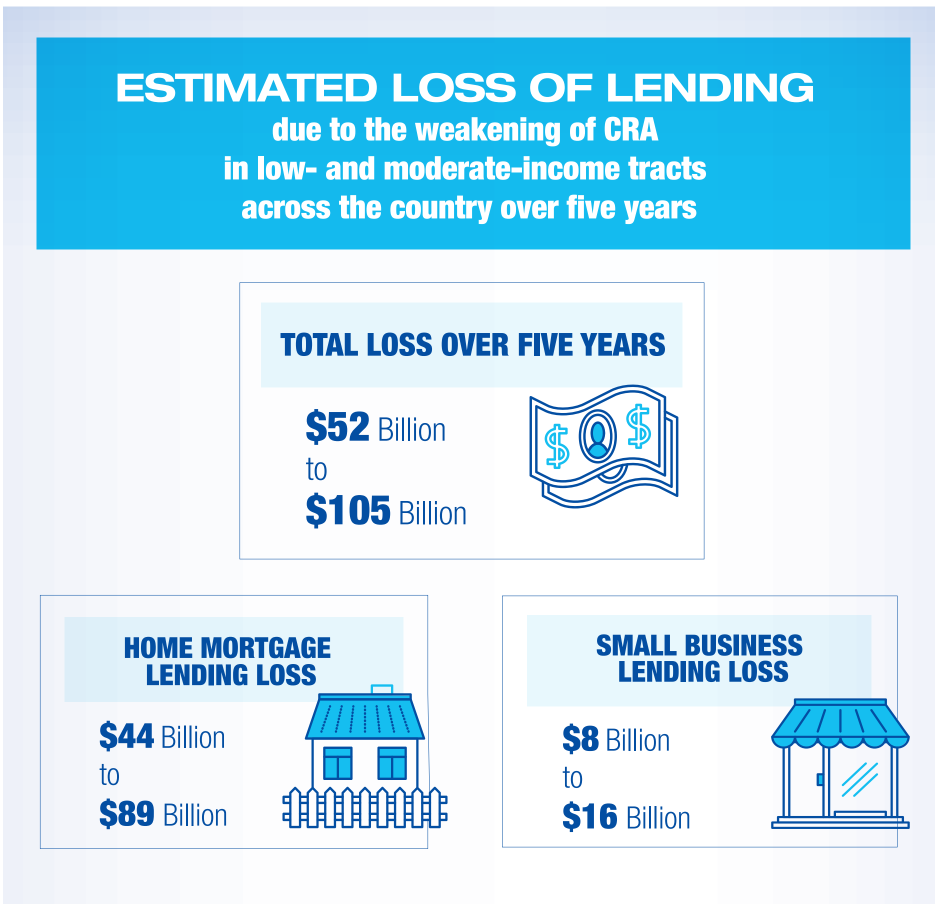

FIGURE 1: https://ncrc.org/ncrc-forecast-weakening-the-community-reinvestment-act-would-reduce-lending-by-hundreds-of-billions-of-dollars/

19 OCC, "FDIC and OCC Propose to Modernize the Community Reinvestment Act Regulations," press release, December 12, 2019, https://www.occ.gov/news-issuances/news-releases/2019/nr-ia-2019-147.html.

20 *NCRC Forecast: Weakening the Community Reinvestment Act (CRA) Would Reduce Lending by Hundreds of Billions of Dollars,* September 2018. Retrieved from https://ncrc.org/ncrc-forecast-weakening-the-community-reinvestment-act-would-reduce-lending-by-hundreds-of-billions-of-dollars/.

A large body of research unequivocally concludes that CRA has increased safe and sound lending and investing in communities with low- and moderate-incomes (LMI).[21] CRA achieves this via public accountability: each bank undergoes an exam by bank regulator and receives a rating based on the extent to which they are making loans and investments to people and communities with LMI. Members of the public can comment on CRA performance as agency examiners are conducting CRA exams.

The agencies' joint CRA proposal would lessen the public accountability of banks to their communities by enacting performance measures on CRA exams that would be complex and opaque while at the same time over-simplifying how to measure banks' responsiveness to local needs. Public input into this unworkable evaluation framework would be more difficult and limited. The result will be significantly fewer loans, investments and services to communities with LMI most in need of more credit and capital.

The dollar volume-based approach to determine a bank's CRA rating is a troubling part of the NPRM. This would consist of the dollar amount of CRA activities divided by bank deposits. It would be computed at the bank level and for each assessment area (AA) or geographical area that is examined. If implemented, it would favor larger and easier transactions and likely decrease bank small-dollar home and small business lending. It would also decrease consideration of how responsive the activities are to local credit and capital needs.

Accountability for banks would also be decreased as banks that receive an "outstanding" rating would now be examined once every five years instead of once every two or three years. This stretch-out reneges on the agencies' statutory duty to ensure banks are continuing to respond to community needs. Banks with a five-year exam cycle would relax their efforts in the early years of the cycle. Banks would also have less accountability in maintaining acceptable recent CRA performance when they seek permission to merge with other banks.

Broadening what would be eligible for CRA credit as contemplated by the NPRM and some banks, conflicts with CRA's purpose and would decrease lending, investing and bank services in communities with LMI. Congress enacted CRA to combat a lack of access to credit in LMI and minority neighborhoods. The NPRM, if implemented, would allow banks to turn their attention away from communities with LMI.

A major change in the proposed regulations concerns the definition of "community development." The agencies would delete economic development and revitalization of communities with LMI from the regulatory definition, and would add essential infrastructure. In practice, banks would be more likely to finance major bridges than smaller scale economic development projects in neighborhoods. The NPRM would also qualify football stadium improvements and middle-income

21 Josh Silver, *The Community Reinvestment Act at 40: A Careful Review of the Reviews*, September 2017, blog in Shelterforce, https://shelterforce.org/2017/09/14/community-reinvestment-act-40-careful-review-reviews/.

housing as CRA-eligible activities. Lending to larger business with up to $2 million in revenues and farms with revenues up to $10 million would be eligible activities. Again, the focus would be diverted from those most in need of credit.

In addition to retail lending (home and small business lending), communities with LMI need community development financing, which supports affordable housing, job creation, small business growth, facilities like child care and health clinics, and larger-scale projects like the development of commercial corridors. Home loans or small business loans would not succeed in creating an economically thriving and vibrant community if the community lacks community development financing. If the agencies reduce the focus of community development on communities with LMI, the regeneration of lending and housing markets would freeze, and market failure would re-emerge in communities with LMI. The progress in revitalizing these communities would be halted, if not reversed.

The OCC holds $12 trillion in bank assets, which comprise 69 percent of all U.S. commercial banking assets,[22] and community banks made up 92% of all FDIC-insured institutions at mid-year 2018, 13 percent of all banking industry assets.[23] This joint NPRM, if fully implemented, would have a significant impact on community lending for a generation or longer.

Who Can Act:

- Office of the Comptroller of the Currency (OCC)
- Federal Reserve System
- Federal Deposit Insurance Corporation (FDIC)
- U.S. Congress

NCRC's Position:

A path forward to sensible CRA reform includes increasing the public accountability of banks to serve communities. For instance, CRA assessment areas need to be updated to include areas with considerable bank lending and deposit gathering outside of bank branch networks. Updated in this manner, CRA exams would result in more loans and investments reaching borrowers and communities with LMI.

CRA reform should also address persistent racial disparities in lending by strengthening the fair lending reviews on CRA exams or adding an examination of bank activity to communities of color in CRA exams. At the very least, the agencies could add a category on CRA exams of underserved census tracts, which would likely include a high number of communities of color.

22 OCC, "About Us," https://www.occ.treas.gov/about/index-about.html.

23 FDIC, *2018 Annual Report.* Retrieved from https://www.fdic.gov/about/strategic/report/2018annualreport/ar18section1.pdf.

In addition, performance measures should be reformed to have more benchmarks and ratings should include a point scale or a fifth rating to reveal more gradations in performance, as opposed to the current system which judges almost 90% of banks as Satisfactory and about 10% as Outstanding (with few with failing CRA ratings).

Regulators should also improve public data around community development lending and investments in order to provide greater clarity to lenders about what is CRA-qualifying and to help identify areas around the country in need of greater community development lending and investing.

NCRC opposes combining CRA activity together in a dollar-volume-based metric on CRA exams, adjusting bank asset thresholds solely for making exams easier for banks to pass, diluting attention to borrowers and communities with LMI, diminishing the importance of bank branches on exams, and expanding CRA-qualifying activities beyond the realm of lending and community development.

Co-Sponsor the American Housing and Economic Mobility Act. NCRC supports the *American Housing and Economic Mobility Act*, which was introduced as S. 3503 and H.R. 7262 during the 115th Congress. Among other provisions, the bill would strengthen and modernize CRA to cover more financial institutions, enact steps to combat CRA grade inflation and require improvement plans when banks score poorly on their CRA exams.

ISSUE: Improve Accountability for CRA Activities With Tougher Bank Examinations

CRA is key to driving better basic banking services, increased mortgage and business lending and improving community development in low- and moderate-income communities nationwide. Across the country, numerous examples of financial disinvestment and malpractice highlight the need for strong enforcement of CRA and improvement in CRA exams and ratings. There is a sizable segment of U.S. households going unbanked and under-banked and relying on alternative financial services (e.g., money orders, check cashing services, pawn shop loans, auto title loans, paycheck advance/deposit advances or payday loans).[24] (See Figures 3 and 4.)

Wide swaths of communities in the U.S. lack adequate small business lending.[25] And recent investigations and enforcement actions by the CFPB and the Department of Justice (DOJ) have

24 Federal Deposit Insurance Corporation, *FDIC National Survey of Unbanked and Underbanked Households*, October 2017. Retrieved from: https://www.fdic.gov/householdsurvey/; see also "Connecting Unbanked Communities to Mainstream Financial Services: The Vital Role of Bank On Coalitions," (remarks by Martin J. Gruenberg, Chairman, Federal Deposit Insurance Corporation, Bank On 2017 National Conference, Washington, DC, May 23, 2017). Retrieved from https://www.fdic.gov/news/news/speeches/spmay2317.pdf

25 The Woodstock Institute, *Patterns of Disparity: Small Business Lending in the Chicago and Los Angeles-San Diego Regions* (January 2017); retrieved from http://www.woodstockinst.org/research/patterns-disparity-small-business-lending-chicago-and-los-angeles-san-diego-regions; see also NCRC, *Home Mortgage and Small Business Lending in Baltimore and Surrounding Areas* (November 2015) https://ncrc.org/wp-content/uploads/2015/11/ncrc_baltimore_lending_analysis_web.pdf ; and NCRC, *Small Business Lending Deserts and Oases* (September 2014) https://ncrc.org/wp-content/uploads/2014/09/ncrc-analysis-small-business-lending-deserts.pdf.

exposed ongoing redlining. However, about 98% of banks examined by federal regulators receive a passing grade on their CRA exams.[26] In comparison, in the 1990s – a period of significant investment in low- and moderate-income communities – many more banks failed. When ratings first became public in 1990, around 10% of banks failed their CRA exams.[27] During the first five years of the public availability of CRA ratings, more than 5% of banks failed their CRA exams every year. That number has steadily trended downward, but the higher ratings are not reflected by the experiences of low- and moderate-income, economically distressed and rural communities.

In addition, out-of-date CRA exams contribute significantly to lenient oversight of banks and diminish expectations of continued and affirmative responses to credit needs.[28] In a 2017 study, NCRC found that of the top 100 banks by asset size, 35 have not had a CRA exam since 2012. Of these, nine have not had an exam since 2010 and seven since 2011. In a more recent study conducted in 2019, NCRC found that about 25% of the exams were out-of-date and that the largest bank exams were most likely to be out-of-date. [29]

Who Can Act:

- The Office of the Comptroller of the Currency (OCC)
- Federal Reserve System
- Federal Deposit Insurance Corporation (FDIC)
- U.S. Congress

NCRC's Position:

The OCC and the FDIC joint NPRM significantly change CRA examinations. Under the joint proposal, banks could fail in up to one-half of assessment areas (AAs) on their CRA evaluation measure and retail distribution test, and still receive an overall Satisfactory or even Outstanding rating. This change would exacerbate banking and credit deserts since banks could focus on passing in AAs where they consider it easier to conduct business. This would likely be the larger areas with more population, higher employment and income levels, and a more advanced infrastructure to facilitate banking activities.

26 NCRC, *How Well Are Regulators Evaluating Banks Under the Community Reinvestment Act?* (May 2015). Retrieved from https://ncrc.org/wp-content/uploads/2015/05/ncrc%20-%20bank%20evaluations%20full.pdf.

27 John Taylor and Josh Silver, NCRC, *The Community Reinvestment Act: 30 Years of Wealth Building and What We Must Do to Finish the Job* (Boston and San Francisco: Federal Reserve Banks of Boston and San Francisco, 2009). Retrieved from http://www.frbsf.org/community-development/files/cra_30_years_wealth_building.pdf.

28 NCRC, *The Community Reinvestment Act and Geography,* April 2017, p. 5. Retrieved from https://ncrc.org/wp-content/uploads/2017/05/cra_geography_paper_050517.pdf.

29 Josh Silver, *An Evaluation of Assessment Areas and Community Development Financing: Implications for CRA Reform,* NCRC, July 2019. Retrieved from https://ncrc.org/an-evaluation-of-assessment-areas-and-community-development-financing-implications-for-cra-reform/.

CRA examinations should provide a more accurate measure of lending, investment and the provisions of basic banking services in low- and moderate-income communities. CRA has been enormously successful in motivating banks to increase their lending, investing and services in communities with LMI, but the full potential of CRA has not been realized due to growing gaps in CRA's coverage. Regulators should:

- Update the geographical areas on CRA exams called assessment areas to include local areas with substantial amounts of lending and other business activity in addition to areas where banks have branches.
- Automatically include bank affiliates on CRA exams. Otherwise, CRA exams do not scrutinize significant amounts of lending.
- Conduct more rigorous fair lending reviews, including lending to communities of color, and better coordinate with other federal banking regulators and the CFPB. An OCC Bulletin diluting the impact of fair lending reviews must be rescinded.[30]
- Improve public data around community development lending and investments in order to be provide greater clarity to lenders about what is CRA-qualifying and to help identify areas around the country in need of greater community development lending and investing.
- Provide easier ways for local community stakeholders to provide input on bank performance in local communities.
- Maintain an emphasis on branches and collect more, better, data on the number and percent of deposit accounts and basic banking services that are offered to low- and moderate-income customers.
- Better review for harmful practices (e.g., excessive overdraft fees).
- Examine for loss mitigation practices, particularly with the expiration of the federal Home Affordable Modification Program (HAMP) and Home Affordable Refinance Program (HARP).
- Ensure examinations are conducted regularly and released timely.

Co-Sponsor the American Housing and Economic Mobility Act. NCRC supports the *American Housing and Economic Mobility Act*, which was introduced as S. 3503 and H.R. 7262 in the 115th Congress. Among other provisions, the bill would update CRA assessment areas and automatically include bank affiliates on CRA examinations.

30 OCC Bulletin, *Impact of Evidence of Discriminatory or Other Illegal Credit Practices on Community Reinvestment Act Ratings*, PPM 5000-43, August 15, 2018. Retrieved from https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-23.html.

ISSUE: Heighten Oversight of Bank Mergers and Acquisitions and Require Specific Description of Public Benefits of Mergers

Input by community stakeholders is key to understanding how well financial institutions are serving their local communities. OCC Comptroller Joseph Otting has admitted he wants to make it harder for community groups to "hold [bankers] hostage" when merger deals are being considered for approval.[31] Legislation passed by Congress in 2018 rolling back several provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act, a law passed in response to the financial crisis, could lead to more merger and acquisition activity by banks.[32] These changes combined with proposals in the OCC/FDIC CRA NPRM which states that banks receiving Outstanding ratings would be subject to CRA exams once every five years, as opposed to the current schedule of once every two to three years, could compromise the merger process by stale exams that are less likely to reflect recent past CRA performance.[33]

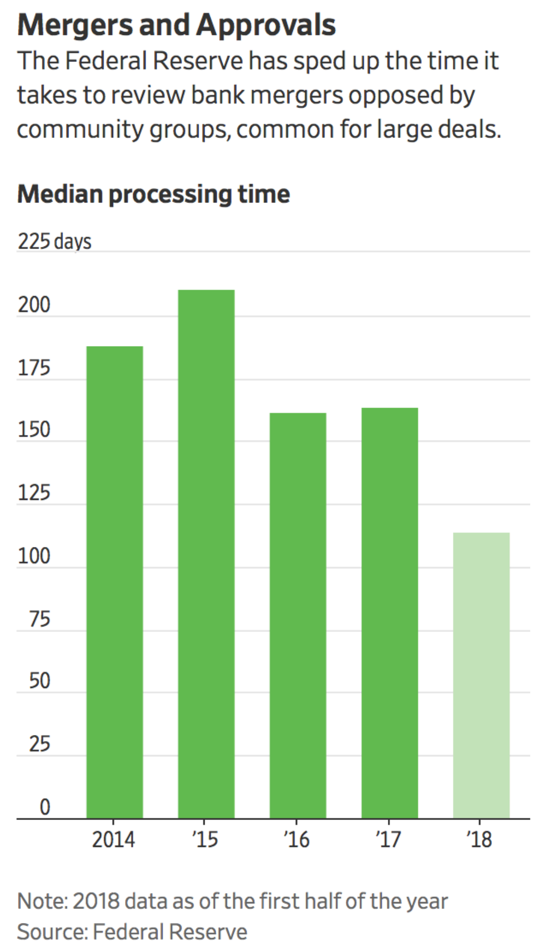

FIGURE 2: Source: Bank Mergers Get Faster Under Trump, Wall Street Journal, February 13, 2019.

For more than 50 years, federal law has required federal regulators to consider the public's interest when approving bank mergers and acquisitions. Both the Bank Holding Company Act and the Bank Merger Act require regulators to consider "the convenience and needs of the community to be served."[34] Regulators must assess whether mergers provide benefits to the public beyond the gains for financial institutions through increased profits and market power. If mergers only benefit financial companies while communities suffer through plummeting loan levels, branch closures and increased prices, then society has been

31 "Mnuchin's Fight With Activists Inspired Push to Revamp Low-Income Lending Rules," *Wall Street Journal*, September 25, 2018.

32 *SunTrust-BB&T Merger: Deregulation is Encouraging the Creation of Regional Megabanks*, Medium, AFR, February 15, 2019.

33 Federal Reserve, *Semiannual Report on Banking Applications Activity, July 1 – December 31, 2018*. Retrieved from https://www.federalreserve.gov/publications/2019-march-semiannual-report-on-banking-applications-activity.htm.

34 "In every case, the responsible agency shall take into consideration…the convenience and needs of the community to be served." (12 U.S.C. § 1283(c)(5)(B)); anti-competitive effects must be "clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served." 12 U.S.C. § 1842(c)(2)). See more at: Mitria Wilson, "Protecting the Public's Interests: A Consumer-Focused Reassessment of the Standard for Bank Mergers and Acquisitions," Banking Law Journal 130, no. 4 (April 2013).

made worse off, since inequality will increase, employment will decrease and economic activity in communities will be depressed.

The best way to assess the potential public benefits of a merger is through a specific and concrete plan described in the bank's application regarding future levels of lending, investments and services in low- and moderate-income communities. But the regulatory agencies do not regularly require submission of these plans.

Who Can Act:

- The Office of the Comptroller of the Currency (OCC)
- Federal Reserve System
- Federal Deposit Insurance Corporation (FDIC)
- U.S Congress

NCRC's Position:

To benefit communities, federal agencies must thoroughly consider input by local community stakeholders during mergers and acquisitions. Regulators should clarify the public benefit standard so that both the public and financial institutions can better understand this factor's importance and its requirements. After mergers, regulators must also consistently monitor and enforce banks' claimed public benefits to ensure that institutions fulfill their promises. The regulatory agencies should:

- Offer a template for banks to outline the public benefits of a proposed merger.
- Require specific descriptions with verifiable performance measures of how future CRA and fair lending performance will improve. The public must have an opportunity to comment on these public benefit plans during the merger application process.
- Not shorten the merger application time periods for banks, including those with Outstanding ratings. Although a bank may have an overall Outstanding rating, its performance in some or many of its assessment areas may not be at an Outstanding level or may have deteriorated since its last CRA exam. The merger application time period must be sufficient to identify and rectify inconsistencies in performance.
- Regularly evaluate whether banks are meeting goals established in either conditional merger approvals or community benefit agreements (CBA).
- Ensure that low ratings such as Low Satisfactory in any assessment area trigger a public hearing requirement so that all parties have time to thoughtfully consider how bank performance can improve after a merger.
- Ensure that a CRA rating not become a safe harbor providing expedited merger approvals or automatic approvals as suggested by some banks in the ANPR comments.

NCRC supports the H.R. 5318 - Bank Merger Review Modernization Act of 2019, which would require merging banks to develop a community benefits agreement. Then, CRA exams would evaluate bank compliance with any community benefit plans. Fair lending reviews that are part of CRA exams would be required to include statistical analysis of HMDA data.

ISSUE: Protect Fannie Mae and Freddie Mac's Affordable Housing Mission and Affordable Housing Goals in Any Reform of the Enterprises

Since the financial crisis and for over a decade, Fannie Mae and Freddie Mac (the Enterprises) have remained in conservatorship - under strict federal oversight with all of their earning swept into the U.S. Treasury each quarter - and with their future in question. Both U.S. Treasury and the Federal Housing Finance Agency (FHFA) have published plans to end the Enterprises' conservatorship. In September 2019, the Treasury released its plan to reform the housing finance system, including proposals to end the conservatorship of Fannie Mae and Freddie Mac.[35] A month later in October 2019, the FHFA expressed its desire to end the conservatorship in its 2019 Strategic Plan.[36]

In Congress, U.S. Senator Mike Crapo (R-ID), chair of the Senate Banking Committee, outlined a proposal in February to overhaul Fannie Mae and Freddie Mac, including an end of their affordable housing goals.[37] Chair Maxine Waters (D-CA) of the House Financial Services Committee has outlined principles around housing finance reform that prioritize maintaining access to the 30-year fixed rate mortgage, among other steps.[38]

The Housing and Economic Recovery Act of 2008 (HERA) enacted a set of reforms to the Enterprises following the financial crisis, and was the culmination of almost a decade of work by Congress, the Federal Reserve Board and other stakeholders. The law significantly reformed their supervisory and regulatory framework, creating FHFA as the Enterprises new regulator. FHFA was given broad new authority over their prudential management and operations, including to set and adjust their capital reserves and to regulate their loan portfolio and the credit risk they take on and hold.

35 US Department of the Treasury, *Housing Reform Plan*, September 2019. Retrieved from https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf.

36 FHFA, *The 2019 Stretegic Plan for the Conservatorships of Fannie Mae and Freddie Mac,* October 2019. Retrieved from https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2019-Strategic-Plan.pdf.

37 Senate Committee on Banking, Housing, and Urban Affairs, "Chairman Crapo Releases Outline for Housing Finance Reform," February 1, 2019, https://www.banking.senate.gov/newsroom/majority/chairman-crapo-releases-outline-for-housing-finance-reform.

38 House Committee on Financial Services,"Waters Outlines Agenda in First Policy Speech as Committee Chairwoman," January 16, 2019. https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=401718

The Enterprises and affordable housing: The Enterprises play a critical role in housing finance, backing over $5 trillion in mortgage loans and guarantees across the country.[39] The Enterprises have an affirmative obligation in their charters to facilitate affordable housing that has been essential to ensuring access to affordable conventional mortgage credit for traditionally underserved borrowers and markets, including those in low-income, rural and minority communities.[40] The Enterprises' affordable housing goals require that the Enterprises guarantee a set percentage of single-family and multifamily mortgages for low- and moderate-income (LMI) borrowers and communities every year. Even with the Enterprises failing to purchase enough loans to meet some of the their housing goals in the last few years,[41] they have undertaken a series of steps focused on LMI borrowers and communities – introducing affordable housing products and pilot programs, adjusting some pricing policies, conducting market research, doing outreach and developing partnerships because they have to meet annual affordable housing goals.[42]

> **The Enterprises' Duty to Serve rule:** Under the 2008 HERA law, the Enterprises also now have a Duty to Serve three underserved markets: manufactured housing, affordable housing preservation and rural housing. Unlike the affordable housing goals, the law focuses on non-numeric approaches and prohibits the Enterprises from designating a specific percentage of their business to comply with their Duty to Serve obligation.[43] Both Enterprises now have plans to purchase loans, develop loan products, conduct outreach and/or make investments in the three underserved markets to receive Duty to Serve credit.

The future of the Enterprises and the government's role in housing finance: In the past, FHFA Director Mark Calabria has called for ending the affordable housing goals, and other steps that could limit access to affordable mortgage credit for LMI families.[44] Despite the conclusions of the nation's Financial Crisis Inquiry Commission and other research, critics have blamed the Enterprises and the housing goals for the crisis.[45] And, despite the passage of HERA and other

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39 Melvin L. Watt, Prepared Remarks of Melvin L. Watt, Director of FHFA, at the American Mortgage Conference, North Carolina Bankers Association, Raleigh, NC, May 18, 2017. Retrieved from https://www.fhfa.gov/mobile/Pages/public-affairs-detail.aspx?PageName=Prepared-Remarks-of-Melvin-L-Watt-Director-of-FHFA-at-American-Mortgage-Conference-North-Carolina-Bankers-Association.aspx.

40 NCRC, *Protecting Duties to Serve and Responsible Next Steps for Reforming the Secondary Mortgage Market* (November 2015). Retrieved from https://ncrc.org/protecting-duties-to-serve-and-responsible-next-steps-for-reforming-the-secondary-mortgage-market/.

41 See housing goals performance at: https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Pages/Fannie-Mae-and-Freddie-Mac-Housing-Goals-Performance.aspx

42 For example, both Enterprises have low down payment programs HomeReady (Fannie) and HomePossible (Freddie) and related pilots, such as Your Path (Freddie), Home of Your Own (Fannie), and those related to student loan debt. Both Enterprises purchase conventional mortgage loans up to 50 percent of debt-to-income ratio, back housing construction loans, and take other steps to facilitate affordable housing.

43 12 U.S.C. § 4565(d)(2)(c). See more about FHFA's Duty to Serve Program at: https://www.fhfa.gov/duty-to-serve.

44 Mark Calabria, "If We Decide to Keep Fannie Mae Around…," *Cato at Liberty,* Cato Institute, February 18, 2015, https://www.cato.org/blog/we-decide-keep-fannie-mae-around.

45 *Don't Blame the Affordable Housing Goals for the Housing Crisis*, NCRC, January 24, 2018. Retrieved from https://ncrc.org/dont-blame-affordable-housing-goals-financial-crisis/.

policy measures, many believe the Enterprises should be overhauled, their mission changed and their role in the financial marketplace shrunk.

The State of the Nation's Housing 2019 by the Joint Center for Housing Studies at Harvard University identified a number of continuing challenges to accessing affordable homeownership, including soaring housing costs, the upward trend in interest rates, limited inventory of affordable houses for sale and widespread increases in student loan debt.[46] There is rebound in homeownership which reflects a substantial pickup in homeowner household growth and a slowdown in renter household growth. (Figure 3). The report found that there was upturn in homeownership rates across all racial and ethnic groups. However, the report also found that though the gap between White and Asian Americans narrowed, the White/Hispanic gap was unchanged, and the White/Black homeownership gap widened over the past two years.

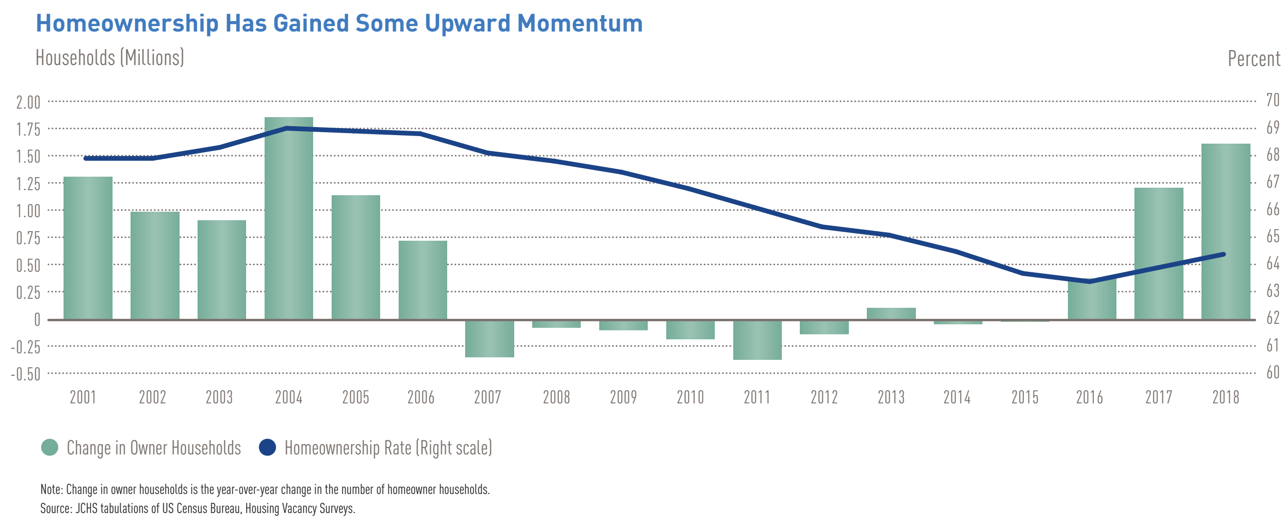

FIGURE 3: Source: https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf

Consistent with the mission in their charter and other legal obligations, Fannie and Freddie have been active in developing conventional loan products and other single-family and multifamily policies in the secondary mortgage market that encourage lenders in the primary market to better serve underserved segments with and to facilitate access to affordable housing. With a new Director assuming the helm at FHFA for a five-year term and other policy changes expected from the administration, how will the role of the Enterprises and their affordable housing policies and commitment further change moving forward? Since the financial crisis, for example, the Enterprises' pricing to guarantee credit risk and their mortgage purchases have already become far more conservative. For example, their guarantee fees have increased 250% since 2009, raising the cost of credit, and the majority of their loan purchases are at a 720 credit score or above.[47]

46 *The State of the Nation's Housing 2019*. (Cambridge, MA: Joint Center for Housing Studies, Harvard University, 1988.) Retrieved from https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf.

47 Federal Housing Finance Agency, *FANNIE MAE AND FREDDIE MAC SINGLE-FAMILY GUARANTEES IN 2017* (AUGUST 2018). RETRIEVED FROM https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/GFee-Report_12-10-18.pdf

Who Can Act:

- Federal Housing Finance Agency (FHFA)
- U.S. Department of the Treasury
- U.S. Congress

NCRC's Position:

NCRC urges Congress to protect, defend and strengthen the affordable housing goals and affordable housing mission and other obligations at the Enterprises. Regardless of how FHFA, the U.S Treasury or the Congress proposes to reform the secondary mortgage – with Fannie Mae and Freddie Mac or without – any new government-sponsored entities as well as any publicly financed securitization infrastructure must be subject to the affordable housing mandates and numeric goals similar to those the Enterprises have today.

In 2019, NCRC joined other civil rights and affordable housing advocates in outlining a series of principles for any reform legislation.[48] NCRC has also joined small lenders in outlining a set of principles for ending the Enterprises' conservatorship responsibly.[49]

NCRC believes that any GSE reform that abolishes or weakens the GSE's affordable housing obligations, including their affordable housing goals, will be disastrous for young and low- and moderate-income (LMI) Americans. While NCRC supports GSE reform, there should be broad and bipartisan opposition to any efforts that introduce less-regulated competitors, fragment the nation's mortgage market, gut the affordable housing goals or eliminate opportunities for hard-working Americans to obtain the American dream of homeownership.

It is time for FHFA and the U.S. Treasury to end the conservatorships of Fannie Mae and Freddie Mac without conditions that would undermine their affordable housing role or obligations. FHFA should also allow the Enterprises to increase their affordable loan product offerings, improve their pricing for low- and moderate-income borrowers and their policies to facilitate affordable housing supply (Figure 4), as well as improve marketing and outreach to African American borrowers and other underserved communities and markets that are suffering specific setbacks in access to affordable homeownership.

48 See joint letter to Senate Banking Chairman Crapo and Ranking Member Sherrod Brown (D-OH): https://ncrc.org/re-request-meeting-discuss-preserving-access-affordability-government-sponsored-enterprise-reform/.

49 See reform principles of the Main Street GSE Reform Coalition at: https://ncrc.org/wp-content/uploads/2019/11/Main-Street-GSE-Reform-Coalition-Principles-2019.pdf.

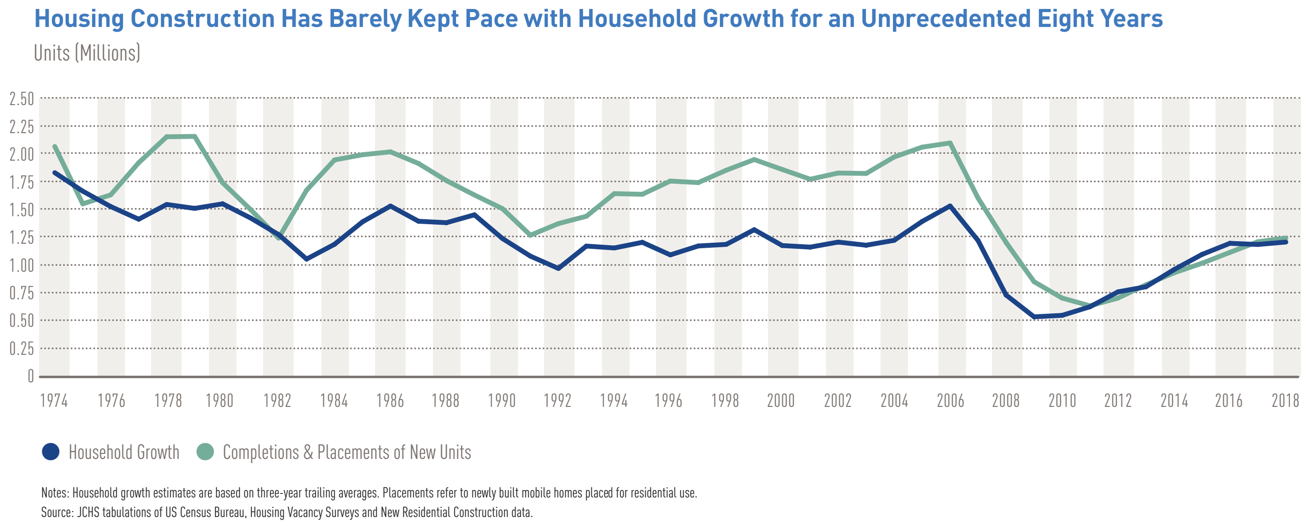

FIGURE 4: Source: https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf

ISSUE: Protect Funding of the National Housing Trust Fund and Capital Magnet Fund regardless of the Enterprises' status

Since taking office, every single budget from President Trump's Administration has proposed eliminating allocations to the National Housing Trust Fund (NHTF) and the Capital Magnet Fund (CMF).[50] The NHTF and the CMF were both created by the Housing and Economic Recovery Act of 2008 (HERA) and are targeted at building, rehabilitating, preserving and operating rental housing for extremely low-income people and at promoting community development investments for underserved and distressed communities, consistent with safety and soundness.[51] The law requires Fannie Mae and Freddie Mac (the Enterprises) to set aside 4.2 basis points[52] for each dollar of unpaid principal balance on total new loan purchases, which are then allocated to the two funds.

After the Enterprises were placed in conservatorship in 2008, former Federal Housing Finance Agency (FHFA) Director Edward DeMarco suspended the allocations to both funds. His successor, FHFA Director Melvin L. Watt lifted the suspension in 2014, and directed the Enterprises to begin setting aside and allocating funds to the NHTF and the CMF. In 2016, the first $174 million in NHTF

50 *A Budget for a Better America, FY 2020,* p. 109. Retrieved from https://www.whitehouse.gov/wp-content/uploads/2019/03/msar-fy2020.pdf.

51 See more on the NHTF at the HUD website at: https://www.hudexchange.info/programs/htf/ and more on the CMF at the CDFI website at: https://www.cdfifund.gov/programs-training/Programs/cmf/Pages/default.aspx. See also No State Has an Adequate Supply of Affordable Rental Housing for the Lowest Income Renters, NLIHC at: https://nlihc.org/gap.

52 Basis points (BPS) refers to a common unit of measure for interest rates and other percentages in finance. One basis point is equal to 1/100th of 1%, or 0.01%, or 0.0001, and is used to denote the percentage change in a financial instrument. The relationship between percentage changes and basis points can be summarized as follows: 1% change = 100 basis points and 0.01% = 1 basis point.

dollars were allocated to states, followed by $219 million in 2017 and $267 million in 2018.[53] In 2019, the total NHTF State allocation has dropped slightly to $247.7 million.

In addition to the language in the president's budget, critics in Congress have attempted numerous times to block funding for the trust funds. FHFA Director Mark Calabria, when asked during a Senate Banking Committee hearing in 2019 on Housing Finance Reform if he still intends to continue the GSEs' annual contributions to the Housing Trust Fund and Capital Magnet Fund even if the GSEs are in the process of raising capital, said he would continue to require the contributions as long as he is statutorily obligated to.[54]

Whether any of those statutory conditions are met or temporary cuts are imposed could depend on how the administration decides to resolve the 10-year conservatorship of Fannie Mae and Freddie Mac.

Who Can Act:

- The President
- Federal Housing Finance Agency (FHFA)
- The U.S. Congress

NCRC's Position:

NCRC continues to oppose any efforts by the White House, Congress or FHFA to defund the NHTF or the CMF. Both Enterprises should also continue to set aside and allocate funds to the NHTF and CMF whether they remain in conservatorship or if steps are taken to end that status.

NCRC supports H.R. 5599, the Fulfilling the Promise of the Housing Trust Fund Act, which would significantly increase funding for the national Housing Trust Fund, which provides states resources to build and preserve rental homes affordable to the lowest-income people in America. The bill redirects a 10-basis point – or 0.1% – "guarantee fee" currently levied by Fannie Mae and Freddie Mac to the HTF. In 2011, Fannie and Freddie were required to increase their guarantee fees for ten years to create extra profits that would go to reduce the federal deficit. This bill preserves the guarantee fee increase but directs the proceeds to the HTF, increasing funding to the program by billions every year.[55]

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53 NLIHC testimony before the House Financial Services Committee, December 21, 2018, https://nlihc.org/sites/default/files/HFSC_NLIHC_Testimony_12_21_2018.pdf.

54 Greg Zagorski, "Banking Committee Examines Administration Housing Finance Plans," *NCSHA Blog,* NCSHA, September 11, 2019, https://www.ncsha.org/blog/banking-committee-examines-administration-housing-finance-plans/.

55 Congressman Denny Heck, "Congressman Heck Introduces Bill to Strengthen Housing Trust Fund," press release, January 14, 2020. https://dennyheck.house.gov/media-center/press-releases/congressman-heck-introduces-bill-to-strengthen-housing-trust-fund

NCRC supports H.R.5187/S.2951 the Housing is Infrastructure Act of 2019 to invest more than $100 billion to improve housing infrastructure and create jobs, including $70 billion to fully address the capital-needs backlog of public housing repairs, $5 billion to create deeply affordable rental homes though the National Housing Trust Fund, $1 billion to address severe housing needs on tribal lands and $5 billion for the HOME Investment Partnerships Program, among other investments. The bill also sets procurement and hiring goals for women- and minority-owned businesses, including developers and construction company owners.[56]

ISSUE: Prioritize the Affordable Housing Needs of Rural Americans

Nearly 74 million Americans,[57] including more than 15 million racial and ethnic minorities, live in rural America, where getting access to credit and capital for affordable housing is especially difficult. That said, the rural population as a whole is shrinking for the first time on record and it is not just due to the migration of young adults to urban areas.[58] Texas, North Carolina, Ohio, California and Georgia have the largest rural populations, while Vermont, Wyoming, Montana, Mississippi and South Dakota have the highest percentage rural population.[59]

Federal programs from the U.S. Department of Agriculture (USDA) such as the Section 502 Single Family Housing Direct Loan Program, the Section 515 Rural Rental Housing Direct Loan Program and the Section 521 Rural Rental Assistance Program are all critical to homeownership and rental housing in rural communities. The Section 502 Direct Loan Program offers mortgages for low-income homebuyers in rural areas.[60] At least 40% of the funds appropriated each year must be used to assist families with incomes less than 50% of area median income (AMI).[61] In the past 60 years, Section 502 Direct Loans have helped more than 2.1 million rural families buy homes and build their wealth by more than $40 billion.[62] The Section 515 Program has financed more than 550,000 decent, safe, sanitary and affordable homes, often the only such housing in rural communities.[63] USDA's Section 521 Rental Assistance (RA) program helps tenants whose incomes are so low they cannot afford the rent in certain USDA-financed properties.[64]

56 House Committee on Financial Services, "Waters Introduces Legislation to Invest in America's Housing Infrastructure," November 21, 2019, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=404844

57 U.S. Census Bureau.

58 USDA, *Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity* (October 2017). Retrieved from https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf.

59 Michael Calhoun, Tom Feltner, and Peter Smith, *Supporting Mortgage Lending in Rural Communities* (The Brookings Institution in Partnership with The Center on Responsible Lending, January 2018). Retrieved from https://www.brookings.edu/wp-content/uploads/2018/01/es_2018_01_10_rural_housing_report.pdf

60 USDA, *Rural Home Loans (Direct Program).* (September 2015). Retrieved from https://www.rd.usda.gov/files/fact-sheet/RD-FactSheet-RHS-SFH502Direct.pdf.

61 FDIC, *Section 502 Direct Loan, Affordable Mortgage Lending Guide*. Retrieved from https://www.fdic.gov/consumers/community/mortgagelending/guide/part_1_docs/agriculture_direct_loan.pdf.

62 The National Rural Housing Coalition, *Section 502 Direct Loan Program* (July 30, 2014). Retrieved from http://ruralhousingcoalition.org/section-502-direct-loan-program.

63 *USDA Rural Rental Housing Loans (Section 515),* The Housing Assistance Council (April 2011). See also, *Housing Programs in the United States,* The Bipartisan Policy Center (June 2012). Retrieved from http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/U.S.%20Housing%20Programs.pdf.

64 *USDA Rural Housing Programs for Seniors,* The Housing Assistance Council (September 2011) Retrieved from http://ruralhome.org/component/content/article/45-announcements/437-seniorhousing.

The Federal Housing Administration (FHA) as well as the government-backed secondary mortgage market – Fannie Mae, Freddie Mac, Farmer Mac (the GSEs or government-sponsored enterprises) as well as Ginnie Mae - also play a critical role in supporting affordable homeownership and housing in rural communities. In all, in 2016, 35.2 % of loans in rural areas were sold to Fannie Mac, Freddie Mac or Farmer Mac and 17.3 % were loans guaranteed through Ginnie Mae (e.g., loans insured by FHA or the Rural Housing Service).[65]

In 2018, both Fannie Mae and Freddie Mac adopted plans pursuant to FHFA's Duty to Serve rule that requires that they purchase loans, develop loan products, conduct outreach and/or make investments in the three underserved markets, including for rural housing, to receive Duty to Serve credit.

	All loans		All rural loans		Loans to rural LMI borrowers		Loans to rural borrowers of color	
	#	%	#	%	#	%	#	%
GSEs	**2,427,505**	**35.2**	**364,719**	**30.3**	**80,680**	**26.7**	**24,132**	**21.9**
Ginnie Mae	1,191,979	17.3	244,573	20.3	59,455	19.7	30,308	27.6
Not sold in 2016 CY	1,346,756	19.5	283,722	23.5	74,531	24.7	24,926	22.7
Other	1,932,929	28.0	311,900	25.9	87,058	28.8	30,643	27.9
Total	**6,899,169**		**1,204,914**		**301,724**		**110,009**	

Source: Center for Responsible Lending analysis of 2016 HMDA data

Figure 5: Source: https://www.brookings.edu/wp-content/uploads/2018/01/es_2018_01_10_rural_housing_report.pdf

Who Can Act:

- U.S. Congress
- U.S. Department of Agriculture (USDA)
- FHFA

NCRC's Position:

Congress and the Trump Administration should prioritize and support capacity building for Section 502 Direct Loans so that more rural Americans can access and use the program. Although the program has recently been automated, it still takes far too long to process loan applications.

65 Id at note 4, *Supporting Mortgage Lending in Rural Communities* report.

Protect federal funding for key programs: The House and Senate Appropriations Committees should also maintain funding for all USDA rural housing programs, including Sections 502, 514, 515, 516 and 521. Congressional appropriators should also provide enough funding to renew all Section 521 rental assistance contracts, oppose implementing minimum rents in Section 521-assisted units or other USDA rentals, and work with USDA Rural Development to find positive ways to reduce Section 521 costs through energy efficiency measures, refinancing USDA mortgages and reducing administrative costs.

Protect affordable housing obligations in any housing finance reform: NCRC also urges Congress to protect, defend and strengthen the affordable housing mission, the affordable housing goals and other obligations at Fannie Mae and Freddie Mac, including their Duty to Serve obligation for rural housing and their contributions to the National Housing Trust Fund and Capital Magnet Fund.

In a joint letter, NCRC joined other civil rights and affordable housing advocates in outlining a series of principles for any housing finance reform legislation.[66] NCRC has also joined small lenders in outlining a set of principles for ending the conservatorship of Fannie Mae and Freddie Mac responsibly.[67]

66 See joint letter to Senate Banking Chairman Crapo and Ranking Member Sherrod Brown (D-OH): https://ncrc.org/re-request-meeting-discuss-preserving-access-affordability-government-sponsored-enterprise-reform/.

67 See reform principles of the Main Street GSE Reform Coalition at: http://thecmla.com/cmla/2019/10/22/main-street-gse-reform-coalition-common-gse-reform-principles/.

Invest Forward

ISSUE: Require Fintech Lenders Have Mandates Around Consumer Protections, Transparency and Financial Inclusion That Mirror Those For Banks

The regulatory framework for financial technology companies (fintechs) and financial innovation is evolving. The growth of the industry has ignited the interest of several federal regulators, as well as numerous lawmakers. Fintechs are non-depository institutions such as online marketplace lenders, payment processors and other nonbank providers that are growing at a rapid pace. Thirteen of the online lending sector's largest firms made $15.91 billion in U.S. loans in 2014, up 700% from 2010, and in the first six months of 2015, the same firms extended $12.47 billion in credit nationwide.[68] Online lending has been growing as a credit source for small and microbusinesses (*Figure 6 and 7*).

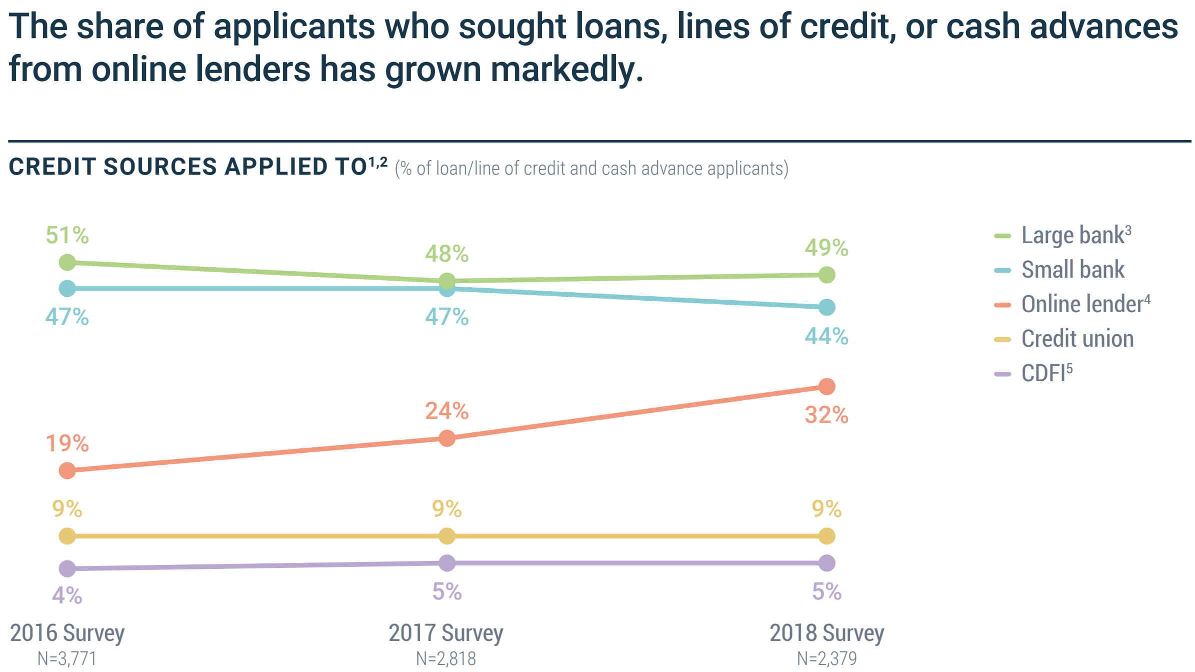
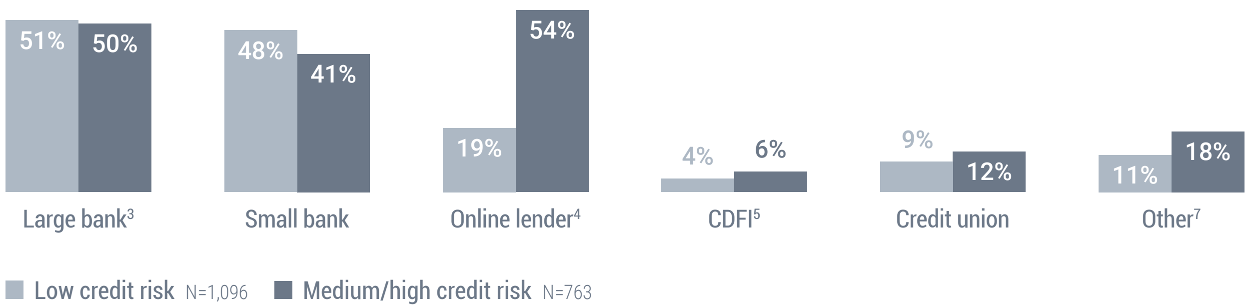


Figure 6: Source: https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf

68 California Department of Business Oversight, "Survey of Online Consumer And Small Business Financing Companies," press release, April 8, 2016, http://www.dbo.ca.gov/Press/press_releases/2016/Survey%20Response%20Release%2004-08-16.asp.

Medium/high credit risk applicants were more likely than low credit risk applicants to apply to online lenders.

CREDIT SOURCES APPLIED TO BY CREDIT RISK OF FIRM[1,6] (% of loan/line of credit and cash advance applicants)



1 *Respondents could select multiple options.*
2 *Time series values shown here differ from the 2018 report as a result of improvements to the weighting scheme. See Methodology for details.*
3 *Respondents were provided a list of large banks (those with at least $10B in total deposits) operating in their state.*
4 *'Online lenders' are defined as nonbank lenders including Lending Club, OnDeck, CAN Capital, PayPal Working Capital, Kabbage, etc.*
5 *Community development financial institutions (CDFIs) are financial institutions that provide credit and financial services to underserved markets and populations. CDFIs are certified by the CDFI Fund at the U.S. Department of the Treasury.*
6 *Self-reported business credit score or personal credit score, depending on which is used. If the firm uses both, the higher risk rating is used. 'Low credit risk' is a 80–100 business credit score or 720+ personal credit score. 'Medium credit risk' is a 50–79 business credit score or a 620–719 personal credit score. 'High credit risk' is a 1–49 business credit score or a <620 personal credit score.*
7 *Respondents who selected 'other' were asked to describe the source. They most frequently cited auto/equipment dealers, farm-lending institutions, friends/family/owner, nonprofit organizations, private investors, and government entities.*

Figure 7: Source: https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf

Online marketplace lending involves loan originations outside of the traditional consumer banking system by collecting information from a borrower and underwriting a loan with a lender entirely over an internet platform, a process designed to be efficient and cost-effective for lenders and user-friendly for borrowers. Lending platforms typically issue loans in amounts ranging from $1,000 to $35,000 with maturities of three to five years, and may include fixed or variable interest rates, origination fees and/or other charges that may not all be apparent to the borrowers.[69]

In July 2018, the OCC began accept applications for special purpose national bank charters from fintech companies engaged in the business of banking, but not taking deposits.[70] National bank charters can confer substantial benefits, including: access to the Federal Reserve's payments system and its discount borrowing rates; the ability to lend nationwide without having to seek permission state by state; and, in most instances, federal preemption – exemption from state banking regulation, such as state interest rate caps and other state-based consumer protections.

69 Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending*, May 10, 2016. Retrieved from https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf. See also PricewaterhouseCoopers' Research Report, *Peer Pressure: How peer-to-peer lending platforms are transforming the consumer lending industry*, February 2015. Retrieved from https://www.pwc.com/us/en/industries/banking-capital-markets/consumer-finance/library/peer-to-peer-lending.html.

70 More on the OCC's Fintech Charter at: https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-74.html.

The OCC's special purpose charter includes some financial inclusion provisions that are designed to be similar to bank obligations under the Community Reinvestment Act (CRA), though the provisions are weaker than CRA and the Financial Inclusion Plan (FIP) requirements originally proposed by the OCC in a draft supplement for a special purpose charter.[71] In response to the charters, the Conference of State Bank Supervisors (CSBS) Fintech Advisory Panel has issued a list of recommendations for state regulators reforming their own state nonbank supervision.[72] Twenty-two state attorneys general have also objected to a proposal by the CFPB to issue "no action" letters and establish so-called regulatory sandboxes for some fintech products and emerging technologies that would exempt them from certain consumer protection laws and regulations.[73]

Early in 2019, the New York Department of Financial Services and others challenged the OCC's fintech charter in court.[74] In October 2019, United States District Court for the Southern District of New York struck down the OCC special purpose national bank charter for fintechs, ruling that they were beyond the OCC's authority. The court found in its final judgement that the National Bank Act's "business of banking" clause requires that only depository institutions are eligible to receive bank charters from the OCC.[75] This ruling puts the future of these charters into question and also how litigation will affect traditional nationally-chartered nondepository institutions, such as nondepository trust companies.

Who Can Act:

- The U.S. Congress
- Office of the Comptroller of the Currency (the OCC)
- Federal Deposit Insurance Corporation (FDIC)
- Federal Reserve System
- U.S. Securities and Exchange Commission (SEC)
- Consumer Financial Protection Bureau (CFPB)
- Federal Trade Commission

71 *Evaluating Charter Applications From Financial Technology Companies,* OCC, Draft Supplement, March 2017 https://www.occ.treas.gov/publications/publications-by-type/licensing-manuals/file-pub-lm-fintech-licensing-manual-supplement.pdf.

72 CSBS, Fintech Advisory Panel recommendations at: https://www.csbs.org/fintechpanel.

73 States' Attorneys General letter at: https://www.regulations.gov/document?D=CFPB-2018-0042-0031

74 New York State Department of Financial Services, "Statement by Acting Financial Services Superintendent Linda A. Lacewell Regarding the Court's Decision to Allow DFS's Lawsuit Against the OCC to Move Forward," press release, May 2, 2019, https://www.dfs.ny.gov/reports_and_publications/statements_comments/2019/st1905021

75 *ullo* v. *OCC,* 378 F.Supp.3d 271 (S.D.N.Y. 2019). Retrieved from https://s.wsj.net/public/resources/documents/occ_judgment_102119.pdf?mod=article_inline

NCRC's Position:

While online lending platforms may have the potential to expand access to credit for the underserved, regulators should:

- Strengthen the financial inclusion requirements for fintechs so that they align more closely to the CRA obligations for banks, and particularly those around seeking and considering public input from community stakeholders;
- Limit federal preemption of stronger consumer protections in state law, including state interest rate caps76
- Enforce against "rent-a-charter" schemes, in which fintechs lend and operate in partnership with a nationally chartered or state-chartered bank in order to get around state interest rate caps and other consumer protections;
- Examine the fair lending implications of innovative and proprietary underwriting algorithms, which may expedite credit assessments for borrowers and reduce costs for lenders, but could also hide discriminatory practices;
- Ensure that small businesses have borrower protections similar to those of other consumers, including against abusive debt collection practices;
- Require transparent pricing terms for borrowers and standardized loan-level data for investors; and
- Ensure rigorous supervision and oversight consistent with safety and soundness.

ISSUE: Improve, better fund and better administer our nation's Housing Counseling Agencies and Down Payment Assistance programs, Disaster Recovery programs and Financial Literacy

Housing Counseling: Housing counselors not only prepare families for responsible and sustainable homeownership through pre-purchase, post-purchase, delinquency and reverse mortgage counseling, they have played an increasingly active and effective role in local disaster preparedness, response and recovery, and research consistently demonstrates that housing counseling works. The most recent analysis by the Federal Reserve Bank of Philadelphia found that a two-hour pre-purchase homeownership workshop and one-on-one pre-purchase counseling improved the participants' financial creditworthiness as they prepared to qualify for a home

76 As an example, the *Affordable Small Dollar Guidelines* by the FDIC has encouraged lenders to offer small-dollar credit with APRs no greater than 36 percent, at: https://www.fdic.gov/news/news/financial/2007/fil07050a.html.

mortgage.[77] Homeowners and prospective homeowners who receive counseling have higher credit scores, less overall debt and lower delinquency rates. For homeowners in danger of losing their homes, post purchase counseling studies have found that housing counseling predicts a higher chance of both receiving a modification and avoiding foreclosure.[78] It was also found that counseled borrowers who received modifications were better able to avoid repeated default than were comparable uncounseled borrowers.[79]

Disaster recovery: The Community Development Block Grant Disaster Recovery (CDBG-DR) program is a special appropriation by Congress that is given to states, cities and counties following a Presidentially-declared disaster to help them during a long term recovery. CDBG-DR grantees are allowed the freedom to use CDBG-DR funding to carry out a wide range of activities related to infrastructure and economic development. Department of Housing and Urban Development (HUD)-certified housing counseling organizations are required to work with CDBG-DR grantees to ensure that information and services are made available to both renters and homeowners.[80]

Following several recent natural disasters such as hurricanes, HUD-approved housing counseling agencies have helped families evaluate their next steps, return to their homes safely and rebuild their communities.[81] Housing counselors' training and direct client service are well-suited to help survivors identify disaster recovery services and address common barriers and challenges, including:

- Loss of employment and income
- Increased expenses from the recovery process
- Loss of important financial documentation
- Difficulties paying their mortgages or rent
- Facing foreclosure or eviction from damaged residences
- Difficulty finding appropriate replacement housing
- Difficulty navigating the complex web of disaster recovery programs
- Slow disaster assistance application responses
- Disaster aid denials from federal, state, nonprofit and insurance companies

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77 Federal Reserve Bank of Philadelphia, *The Effectiveness of Pre-Purchase Homeownership Counseling and Financial Management Skills* (April 2014). Retrieved from https://www.philadelphiafed.org/-/media/community-development/homeownership-counseling-study/2014/homeownership-counseling-study-042014.pdf.

78 Marina L. Myhre, Nicole Elsasser Watson, *Housing Counseling Works (*HUD Office of Policy Development, September 2017). Retrieved from https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Counseling-Works.pdf

79 Ibid.

80 HUD Housing Counseling Program, "Community Development Block Grant Disaster Recovery (CDBG-DR) Basics for Housing Counselors" webinar, https://files.hudexchange.info/course-content/housing-counseling-webinar-community-development-block-grant-disaster-recovery-program-basics/housing-counseling-webinar-cdbg-dr-program-basics-slides.pdf

81 HUD, *Housing Counseling Disaster Recovery Toolkit*. Retrieved from https://www.hudexchange.info/resources/documents/OHC-DR-Toolkit-Overview-of-Housing-Counseling-Disaster-Recovery-Services.pdf

Financial Literacy: Financial literacy, or financial capability, as it has come to be accepted, is the skills, knowledge and tools that equip people to make individual financial decisions and actions to attain their goals.[82] In today's still-recovering economic climate, financial literacy is an essential skill for anyone to have, especially low- to moderate-income Americans, as well as African American and Hispanic and Latinx communities, due to the country's ever-increasing wealth gap.

The Government Accountability Office (GAO) issued a report which found that federal financial literacy efforts lacked meaningful coordination with multiple programs with similar goals and activities.[83] This finding is problematic since annually, across 23 different federal agencies and entities, the federal government allocates roughly $273 million on financial literacy and education programs and activities.[84] Aside from the federal programs, there are a number of financial literacy services and resources provided by local governments and nonprofit organizations. Combined, it was found in a report from the Consumer Financial Protection Bureau (CFPB) that approximately $670 million is spent annually on providing financial education by federal, state and local governments, financial institutions, nonprofit organizations, charitable foundations and others.[85] Roughly 25 times that amount was spent on financial industry marketing efforts.[86]

Down Payment Assistance: Housing counselors help home buyers overcome various barriers to homeownership and connect with and understand essential programs, such as down payment assistance. A recent study from the Urban Institute found that 53% of renters cite saving for a down payment as an obstacle to homeownership. Eighty percent of consumers either are unaware of how much lenders require for a down payment or believe all lenders require a down payment above 5%. Fifteen percent believe lenders require a 20% down payment.[87]

Who Can Act:

- The U.S. Congress
- U.S. Department of Housing and Urban Development (HUD)
- Department of Treasury
- Consumer Financial Protection Bureau (CFPB)
- Federal Emergency Management Agency (FEMA)

82 CFPB, *Financial Literacy Annual Report,* October 2015. Retrieved from https://files.consumerfinance.gov/f/201510_cfpb_financial-literacy-annual-report.pdf.

83 U.S. Government Accountability Office, "Financial Literacy: Overlap of Programs Suggests There May Be Opportunities for Consolidation," Report to Congressional Committees, GAO-12-588, July 2012. Retrieved from https://www.gao.gov/assets/600/592849.pdf.

84 U.S. Department of the Treasury, *Federal Financial Literacy Reform: Coordinating and Improving Financial Literacy Efforts,* July 2019. Retrieved from https://home.treasury.gov/system/files/136/FFLRCoordinatingImprovingFinancialLiteracyEfforts.pdf.

85 CFPB, *Navigating the Market*, November 18, 2013. Retrieved from https://files.consumerfinance.gov/f/201311_cfpb_navigating-the-market-final.pdf.

86 Ibid.

87 Laurie Goodman, Alanna McCargo, Bing Bai, Edward Golding, and Sarah Strochak, *Barriers to Accessing Homeownership Down Payment, Credit, and Affordability – 2018* (Washington, DC: Urban Institute, September 18, 2018). Retrieved from https://www.urban.org/research/publication/barriers-accessing-homeownership-down-payment-credit-and-affordability-2018.

NCRC's Position:

NCRC urges the House and Senate Appropriations Committees to include at least $65 million for the HUD Housing Counseling Assistance (HCA) program. The HCA program funds critical services for homeowners and seniors at risk of foreclosure.

NCRC urges the Department of Treasury to require the 23 federal agencies and entities that have financial literacy and education programs to publicly report annually on their activities and conduct investigations to determine how programs are operating. In addition, they should coordinate with certified housing counselors in the delivery of their programs and services to comply with the Housing Counseling New Certification Requirements Final Rule.[88]

NCRC supports H.R. 2162**,** the Housing Financial Literacy Act of 2019.[89] If enacted, this legislation would give first-time homebuyers who complete a HUD-certified housing counseling course a discount on their Federal Housing Administration (FHA) mortgage insurance premium of 25 basis points (or 0.25 percent).[90]

Issue: Protect Consumers from credit products that are inappropriate to their needs.

Payday lenders, high-cost installment lenders and small business lenders routinely market abusive credit products. These loans distinguish themselves from traditional loans by their tendency to harm consumers – and specifically, to rob them of their wealth. The presence of these loans undermines consumers, veterans and small businesses.

As a best practice, lenders should only make loans that they expect their customers to pay back. That truism does not hold in some subprime credit markets. Some abusive lenders ignore the ability of a borrower to afford a loan, focusing instead only on the ability to collect. Predatory products include the direct deposit advance services offered by some banks, non-bank consumer finance installment loans, all auto title loans and all payday loans. Overdraft fees pose another concern. Financial institutions charged $11 billion in overdraft fees in 2019.[91]

88 HUD, *Housing Counseling: New Certification Requirements,* FR 5339-F-03, December 2016. Retrieved from https://www.regulations.gov/document?D=HUD-2013-0083-0200.

89 Housing Financial Literacy Act of 2019, H.R. 2162, 116th Cong. (2019). Retrieved from https://www.congress.gov/bill/116th-congress/house-bill/2162.

90 Congresswoman Joyce Beatty, "Beatty Bipartisan Financial Literacy Bill Reintroduced in House," press release, April 11, 2019, https://beatty.house.gov/media-center/press-releases/beatty-bipartisan-financial-literacy-bill-reintroduced-in-house.

91 Federal Financial Institutions Examinations Council. Call Report. Schedule RI – Income Statement.

As fintech lenders and "neobanks" continue to expand their presence in financial markets, they should make sure that they apply digital technologies to expand the opportunities for underserved consumers to access affordable and sound products. Conversely, should take proactive steps to test their underwriting models for evidence of disparate impacts against applicants from all protected classes.

A financial institution should not charge overdraft or insufficient funds on any request for payment when it can verify before the transaction is approved that there are not good funds available unless the FI can receive explicit permission of the account holder at the time of the transaction. Banks should create free or low-cost overdraft-free transaction accounts.

Faster payments should provide account holders with the full protection afforded by the Electronic Funds Transfer Act, even with payment systems that use "credit push." Account-holders should have the right to have funds restored to their account during any investigation of unauthorized payments.

Wealth-extracting loan products have the following features:

- Single repayment balloon structures
- Installment loans with amortization schedules that utilize the Rule of 78ths
- The presence of add-on services (credit insurance, auto club memberships, et al.) that fail to provide a net tangible benefit to borrowers
- A general lack of transparency, including minimal efforts to adequately disclose the costs of borrowing.
- "Rollover" features, where a borrower takes out a new loan to satisfy a pre-existing debt, but at the price of being charged an additional fee.
- Underwriting that focuses only on inflows of cash to a borrower's account, ignoring the actual cash flows of a borrower. Sound underwriting considers a borrower's ability to service additional debt, with a lens that spans at least six months.
- Interest rates of more than 36% on small-dollar loans.
- We oppose efforts by federal regulators to use their preemption powers to overpower the ability of states to protect their residents from loans with predatory features.

The CFPB created a no-action letter template for small-dollar lending, utilizing the Bank Policy Institute's recommended product standards. The CFPB's "no-action letter"[92] paves the way for banks to offer reasonable small-dollar loan (SDL) products. In the NAL, an SDL program cannot have rollovers, must underwrite for a borrower's ability-to-repay, and come with transparent disclosures. However, the letter does not place a cap on interest rates.

92 Consumer Financial Protection Bureau. May 22, 2020. No-Action Letter Template. https://files.consumerfinance.gov/f/documents/cfpb_bpi_no-action-letter.pdf

Who Can Act:

- U.S Congress
- Consumer Financial Protection Bureau (CFPB)
- Office of the Comptroller of the Currency (OCC)
- Federal Deposit Insurance Corporation (FDIC)
- States – State AGs and legislatures
- Banks and fintech non-banks

NCRC's Position:

NCRC supports the principle that borrowers should only receive a loan that is appropriate for their financial profile. Lenders should not issue credit solely because they have the means to capture a borrower's next paycheck but should instead supply affordable credit that a borrower can pay back as defined by a full analysis of seasonal cash flows.

- NCRC encourages banks to offer SDLs that meet its standards for sound underwriting. Sound underwriting uses a review of borrower income and expenses, provides an opportunity to repay in installments and puts delinquent borrowers in a repayment plan rather than allow a rollover of outstanding debt. NCRC calls on banks and other lenders to not make loans with single repayment features, with underwriting based solely on the ability-to-collect from the borrower's next deposit, use the Rule of 78ths and routinely trap borrowers in cycles of debt.
- NCRC supports the passage of the ***H.R.5050/S.2833, The Veterans and Consumers Fair Credit Act,*** which overlays the principles of the Military Lending Act to certain types of consumer credit (it does not cover mortgages, auto loans or credit cards). The law would apply an all-in 36% interest rate cap.
- NCRC supports the passage of S. 1595, ***The Stop Overdraft Profiteering Act*** which provides for strong protections against punitive overdraft fees.

Invest Fair

ISSUE: Oppose Efforts to Undermine Fair Housing Enforcement, Including HUD's Affirmatively Furthering Fair Housing (AFFH) and Disparate Impact Rules

In 2018, HUD initiated formal rulemaking to reconsider two Obama-era fair housing rules – the 2015 Affirmatively Furthering Fair Housing rule and the 2013 Disparate Impact rule. Both rules interpret key provisions of the 1968 Fair Housing Act aimed at ending housing discrimination.

Affirmatively Furthering Fair Housing (AFFH): The AFFH rule implements two of the primary goals the law: (1) to end housing discrimination and promote diverse, inclusive communities; and (2) to affirmatively further fair housing – to actively dismantle segregation and foster integration in its place - a less well-known goal.[93] Until 2015, the second goal had been largely forgotten, neglected and unenforced for decades. In 2015, 47 years after the passage of the Fair Housing Act, HUD spelled out precisely what compliance with this Fair Housing Act's mandate would look like.

Among other provisions, the 2015 rule replaced the old Analysis of Impediments (AI) process, widely deemed ineffective,[94] with an Assessment of Fair Housing (AFH) - a data-driven process that no longer allows local governments to ignore the most segregated and impoverished areas in their communities. The AFH process requires program participants to take a meaningful look at historically neglected communities lacking essential resources such as clean water, fresh food, reliable and safe transportation systems, functional education systems for their children, adequate housing and basic commerce. Stakeholders evaluate the lack of public and private investment and its role in exacerbating these issues in communities.

In 2019, the Trump Administration published a notice of proposed rulemaking (NPRM) on the AFFH rule. Over 19,000 comments were submitted to HUD on this rule, including one from NCRC,[95] and the final rule should be expected within the next few months. It should be noted that though the AFFH rule is a part of the Fair Housing Act, the NPRM doesn't address segregation, which was the original intent of the landmark law. The NPRM focuses on affordable housing and promotes deregulation, without consideration of all the other barriers to affordable housing. It cuts back the opportunities for members of local communities to have a say. It would allow jurisdictions to

93 HUD, *AFFH Fact Sheet: The Duty to Affirmatively Furthering Fair Housing.* Retrieved from https://www.huduser.gov/portal/sites/default/files/pdf/AFFH-Fact-Sheet.pdf.

94 A 2009 HUD internal study on AIs and an analysis by the U.S. Government and Accountability Office (GAO) "identified critical deficiencies in these requirements." *U.S. Government and Accountability Office. Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plan*s, October 14, 2010. Retrieved from: https://www.gao.gov/products/GAO-10-905.

95 NCRC Comments Regarding Notice of Proposed Rulemaking (Docket ID OCC-2018-0008 and RIN 3064-AF22), April 8, 2020. Retrieved from https://ncrc.org/ncrc-comments-regarding-notice-of-proposed-rulemaking-docket-id-occ-2018-0008-and-rin-3064-af22/.

create affordable housing goals without requiring them to determine what barriers exist in their communities.

Disparate Impact: In 2013, HUD finalized a Disparate Effects rule – a uniform standard for analyzing evidence of disparate impact in cases brought under the Fair Housing Act.[96] The disparate impact doctrine bars policies that have a discriminatory effect even if there is no intention to discriminate. This tool is very important to fair housing and fair lending advocates combating modern-day redlining where an intention to discriminate can be nearly impossible to prove. In 2015, the U.S. Supreme Court upheld the disparate impact doctrine under the Fair Housing Act in *Texas Department of Housing and Community Affairs vs. Inclusive Communities Project.* [97]
In October 2019, HUD published a proposed rule to amend HUD's interpretation of the disparate impact standard that, in their view, will better reflect the 2015 ruling by the Supreme Court. This proposal was roundly criticized by civil rights advocates, legal experts and business groups across the country. Thirteen former Department of Justice officials and twenty-two State Attorneys General submitted comments in support of disparate impact, as did the United States Commission on Civil Rights and FTC Commissioner Rohit Chopra.[98] More than 45,000 comments were submitted regarding this proposed rule. Thousands of national advocacy groups, think tanks, public and private entities, and Members of Congress submitted comments in opposition to the Trump Administration's proposal.[99]

NCRC commented on this proposed rule, encouraging HUD to continue its current implementation of the disparate impact standard rather than enacting this newly proposed rule.[100] The rule, as proposed, would effectively eliminate the use of disparate impact theory in fair housing cases, making it far more difficult for victims of housing discrimination to seek redress. It also creates defenses that serve no purpose except to protect housing providers that use technology that discriminates against their customers. Now that the disparate impact comment period has passed, the final rule should be published in the next few months.

It should be noted that back in May 2018, the CFPB announced that it would reexamine its application of the disparate impact rule to credit transactions and that as part of the agency's "future planning" it may consider implementing a rule.[101] Under former CFPB Director Richard

96 HUD, *Implementation of the Fair Housing Act's Discriminatory Effects Standard, Final Rule* (February 15, 2013). Retrieved from https://www.hud.gov/sites/documents/DISCRIMINATORYEFFECTRULE.PDF.

97 Maureen Johnston, "Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.," June 25, 2015. Retrieved from http://www.scotusblog.com/case-files/cases/texas-department-of-housing-and-community-affairs-v-the-inclusive-communities-project-inc/.

98 NFHA, *Businesses, Policymakers, Advocates, Experts Submit Thousands of Comments Opposing HUD's Attack on Core Civil Rights Tool* (October 23, 2019). Retrieved from https://nationalfairhousing.org/2019/10/23/businesses-policymakers-advocates-experts-submit-thousands-of-comments-opposing-huds-attack-on-core-civil-rights-tool/.

99 HUD, Proposed Rule, *HUD's Implementation of the Fair Housing Act's Disparate Impact Standard,* 84 Fed. Reg. 42854 (August 19, 2019). Retrieved from https://www.regulations.gov/document?D=HUD-2019-0067-0001

100 https://ncrc.org/ncrcs-disparate-impact-letter-to-hud/

101 Kelly Cochran, "Fall 2018 rulemaking agenda," *CFPB Blog,* October 17, 2018, https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/.

Cordray, the agency recognized the disparate impact doctrine. Director Cordray affirmed the agency's support for a 1994 joint statement by the U.S. Department of Justice and several other federal agencies – including every one of the federal prudential regulatory agencies - that when policies or practices are shown to have a disparate impact on protected categories of borrowers, they may violate fair lending laws.[102]

Who Can Act:

- The U.S. Congress
- U.S. Department of Housing and Urban Development (HUD)
- Consumer Financial Protection Bureau (CFPB)

NCRC's Position:

NCRC supports the 2015 AFFH rule and the reintroduction of the Restoring Fair Housing Protections Eliminated by HUD Act. Among other provisions, the bill requires the HUD Secretary to implement the 2015 AFFH rule and that they reinstate the Local Government Assessment Tool that assists local jurisdictions in complying with the rule.

NCRC urges HUD to uphold a strong Disparate Impact final rule with clear guidelines for both housing and insurance providers. NCRC also urges HUD to maintain strong defense of its Disparate Impact rule during its current ongoing litigation. NCRC also supports H.R. 1500, the Consumer First Act.[103] Among other important provisions, the bill would restore supervisory and enforcement powers to the Bureau's **Office of Fair Lending and Equal Opportunity**.

NCRC also opposes efforts to defund or underfund the Fair Housing Initiatives Program (FHIP) and broader fair housing enforcement.

ISSUE: Finalize a Rule on Section 1071 of the Dodd-Frank Act to Ensure Better Access to Credit for Small Businesses

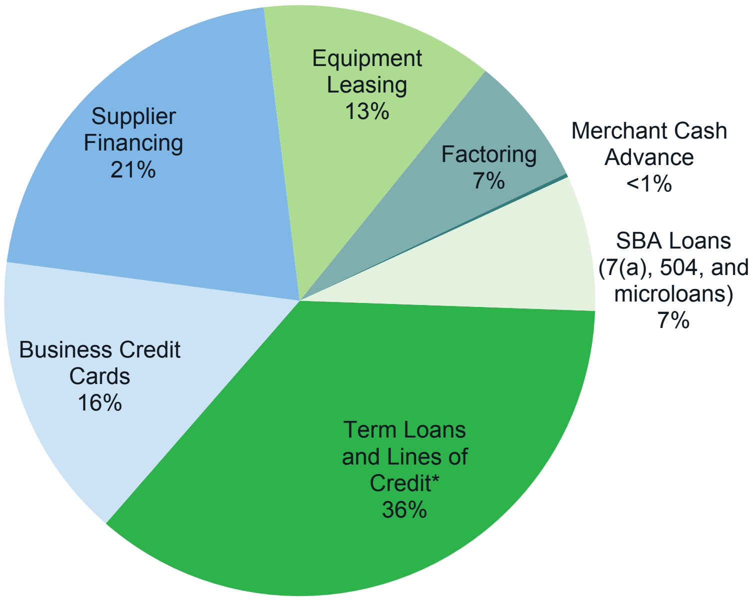
Section 1071 of the Dodd-Frank Act amends the Equal Credit Opportunity Act to require financial institutions to collect, maintain and submit data regarding credit applications by women-owned, minority-owned and small businesses (WBEs, MBEs and SBEs) to the Consumer Financial Protection Bureau (CFPB). Unlike home mortgage applications, there is very little public information about how many WBEs, MBEs and SBEs apply for loans at financial institutions each year, for example, or how many are denied.

102 Richard Corday, Remarks to the National Community Reinvestment Coalition, Washington, DC, April 18, 2012. Retrieved from https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-by-richard-cordray/.

103 Consumers First Act of 2019, H.R. 1500, 116th Cong. (2019). Retrieved from https://www.congress.gov/bill/116th-congress/house-bill/1500

Over the past few years there has been a considerable amount of activity surrounding the implementation of Section 1071. In the Summer of 2015, NCRC joined with dozens of national and community-based organizations to urge the CFPB to finalize a rule on Section 1071.[104] More than 80 Members of Congress and 19 U.S. Senators urged the agency to move forward.[105] In 2017, the CFPB released a white paper and published Request for Information on small business lending for an upcoming rulemaking on Section 1071 which received over 2,700 public comments. [106] (Figure 8)

Estimated Market Share of Financing Products Available to Small Business



Source: Bureau estimates supported by available data. The total aggregate amount of debt financing available to small businesses is estimated at $1.4 trillion. This figure is not meant to represent an exhaustive list of products used by small businesses to finance their business needs. Due to rounding, the statistics may add up to more than 100 percent. *Bank loans, including lines of credit, are measured using the outstanding amounts as presented in the FFIEC Call Reports. Outstanding amounts only describe the amounts that are still owed to the financial institutions by the borrowers. The outstanding amount for lines of credit underrepresents the share of credit actually available to a business as a source of financing. A different measure that might avoid this underrepresentation may be the aggregate committed amounts, or original amounts offered to small businesses as a line of credit. Further, outstanding amounts for term loans made under the SBA's 7(a), 504 and micro loan programs disaggregated for additional detail. These totals are subtracted from the total term loan and lines of credit amounts to avoid double counting.

FIGURE 8: Source: https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf

104 Twenty-one national small businesses, consumer and civil rights groups, and over 60 local organizations led by NCRC sent separate letters to the House and Senate urging action at: https://ncrc.org/wp-content/uploads/2015/06/ncrc%20national%20groups%20small%20business%20letter%20booker%20final.pdf

105 NCRC, "NCRC Applauds Letter From 84 Members of Congress Pressing CFPB on Small Business Lending Data," press release, August 26, 2015, https://ncrc.org/ncrc-applauds-house-letter-pressing-cfpb-on-small-business-lending-data/.

106 Key dimensions of the small business lending landscape, CFPB, at: https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf; and NCRC's response to the RFI is at : https://www.regulations.gov/document?D=CFPB-2017-0011-0532.

Activity seemed to slow after the RFI's release until the CFPB released its Fall rulemaking agenda in October 2017 and moved Section 1071 from pre-rule status to long-term action status – essentially de-prioritizing agency action on the rule.[107] In Spring 2019, however, the CFPB placed Section 1071 back on its current rulemaking status. NCRC testified in November at a CFPB forum on Section 1071.[108]

In December 2019, the CFPB filed a brief with the District Court for the Northern District of California, indicating that in the next six months it intends to complete its internal policymaking process on Section 1071, and by November 2020, it will most likely release an outline of the proposals under consideration.[109]

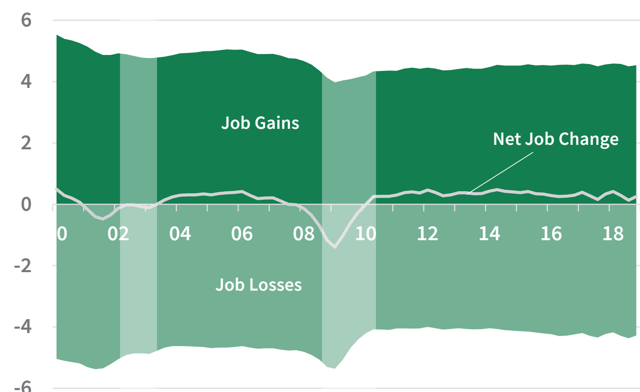
Net New Jobs, 2000-2018

(Millions; BED, Office of Advocacy)

FIGURE 9: Source: https://ncrc.org/age-friendly-banking-and-the-occ-and-fdics-proposed-changes-to-the-community-reinvestment-act/

Net New Small Business Jobs, 2000-2018

Figure 3. Net New Small Business Jobs, 2000-2018
(Millions; quarterly; BED, Office of Advocacy)



Note: Shading indicates recessionary periods.

SBEs, WBEs and MBEs drive economic and job growth. From 2000 to 2018, small businesses created 9.6 million net new jobs while large businesses created 5.2 million, accounting for 64.9% of net new job creation in the period.[110] (Figure 9) Women, African American and Hispanic entrepreneurs represent a larger share of small businesses than ever. Between 2007 and 2016, the number of women-owned businesses increased by 45%, compared to just a 9% increase among all businesses.[111] Nonetheless, the country continues to rebound from a 40-year decline in startup activity.[112]

107 Kelly Cochran, "Fall 2018 rulemaking agenda," *CFPB Blog,* October 17, 2018, https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/.

108 Statement of The National Community Reinvestment Coalition: Data Drives Access to Credit and Capital for Small Business, November 6, 2019. Retrieved from https://ncrc.org/statement-of-the-national-community-reinvestment-coalition-data-drives-access-to-credit-and-capital-for-small-business/.

109 Anne L. Smith, "CFPB Announces Implementation Timeline for Dodd-Frank 1071 Reporting Rule, Days after Hosting Small Business Lending Symposium," Hudson Cook, LLP, December 20, 2019, https://www.hudsoncook.com/article/cfpb-announces-implementation-timeline-for-dodd-frank-section-1071-reporting-rule-days-after-hosting-small-business-lending-symposium/

110 SBA, *Frequently Asked Questions about Small Business* (August 2017). Retrieved from https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/24153946/Frequently-Asked-Questions-Small-Business-2019-1.pdf.

111 *The 2016 State of Women-Owned Businesses Report, Commissioned by American Express* OPEN (New York: American Express, April 2016), Retrieved from http://about.americanexpress.com/news/docs/2016x/2016SWOB.pdf.

112 Kauffman Index, "A Start-Up Slump Is a Drag on the Economy. Big Business May Be to Blame," New York Times, Sept. 20, 2017.

Despite their significant role, there are significant gaps in the data around how SBEs, WBEs and MBEs access credit. The CFPB's white paper on the small business lending market reviewed the lending data made public about Small Business Administration (SBA) programs by banks pursuant to the Community Reinvestment Act (CRA), and through various voluntary business surveys. It noted substantial gaps in lending information, including:

- Basic information on how many SBEs, WBEs and MBEs are applying for loans and how many (and which) are being denied
- Information about loan terms and pricing for SBEs, WBEs and MBEs
- Information about and from nonbanks and alternative lenders and products, including which are gaining substantial market share, including online marketplace lenders, credit unions, supplier and equipment financing

A 2008 Government Accountability Office (GAO) report found that the lack of data frustrates regulators' ability to address the significant racial and gender disparities in lending. For example, available research on minority business lending generally indicates that African American business owners are denied loans more often or pay significantly higher interest rates than White-owned businesses with similar risk characteristics.[113]

Who Can Act:

- Consumer Financial Protection Bureau
- Office of the Comptroller of the Currency (OCC)
- Federal Reserve System
- Federal Deposit Insurance Corporation (FDIC)
- The U.S. Congress

NCRC's Position:

NCRC urges the CPFB to move forward with rulemaking on Section 1071. Section 1071 was passed by Congress in 2010, and smaller businesses continue to confront barriers to credit, which better data would identify and help stakeholders rectify. At a minimum, the rule should fill in the gaps in data about applications and denials, loan terms and pricing, and require data from all lenders and about the various lending products SBEs, MBEs and WBEs used.

SBE, MBE and WBE Procurement: Additionally, to ensure that small, women-owned and minority-owned businesses can continue to grow, the federal government should increase their contracting and procurement goal with small businesses from 23% to 25% and actually adhere

113 General Accounting Office, *Fair Lending: Race and Gender Data Are Limited for Nonmortgage Lending*. (June 2008). Retrieved from https://www.gao.gov/products/GAO-08-1023T.

to that standard. For years, the government has failed to meet its goals of awarding a mere 23% of federal contracts to these businesses. In addition, many federal programs aimed at providing critical technical assistance for small businesses have arbitrary and unnecessary limiting constraints.

Relatedly, the bank regulators should improve public data around community development lending and investments in order to provide greater clarity to lenders about what is CRA-qualifying and to help identify areas around the country in need of greater community development lending and investing.

ISSUE: Improve Public Data About the Mortgage Market and Loan Products

In 2019, the Consumer Financial Protection Bureau took a number of counterproductive actions concerning Home Mortgage Disclosure Act data that could potentially reduce its effectiveness. The CFPB's Advance Notice of Proposed Rulemaking (ANPR) asked for comments on the new and enhanced HMDA variables added by the CFPB's 2015 final rule.[114] The ANPR seemed to pre-judge the new variables, overstating the burdened imposed on banks in collecting the new variables while understating the benefits.

The CFPB's Notice of Proposed Rulemaking (NPR) proposed to raise the HMDA Reporting Thresholds.[115] In other words, thousands of lenders may no longer have to report HMDA data, thereby escaping the accountability imposed by the publicly available data. In addition, the CFPB even stopped producing tables capturing lending trends to borrowers and neighborhoods that facilitated public use of HMDA data.[116] The agency replaced these pre-formatted tables with raw data that only expert researchers can use. None of these actions bode well for the future of HMDA

Even before the 2007-2009 financial crisis, the U.S. Government Accountability Office (GAO) concluded that the data collected under HMDA was insufficient for use in monitoring predatory lending practices. A lack of information on loan terms and conditions, as well as characteristics of borrowers, left regulators and advocates without the tools needed to discourage lenders from

114 CFPB, Notice of Proposed Rulemaking, Home Mortgage Disclosure (Regulation C) Data Points and Coverage Extension of Comment Period, Docket No. CFPB-2019-0020, RIN 3170-AA97, https://www.federalregister.gov/documents/2019/07/03/2019-14174/home-mortgage-disclosure-regulation-c-data-points-and-coverage-extension-of-comment-period.

115 CFPB, Home Mortgage Disclosure (Regulation C); Reopening of Comment Period, https://www.federalregister.gov/documents/2019/08/02/2019-16190/home-mortgage-disclosure-regulation-c-reopening-of-comment-period.

116 NCRC Letter to CFPB Director Requesting Significant Improvement in the Public Dissemination of HMDA Data, December 13, 2019. Retrieved from https://ncrc.org/ncrc-letter-to-cfpb-director-requesting-significant-improvement-in-the-public-dissemination-of-hmda-data/.

offering high-cost mortgage loans with abusive terms and conditions to vulnerable consumers.[117] Public officials also use the information available through HMDA to develop and allocate housing and community development investments, to respond to market failures when necessary and to monitor whether financial institutions may be engaging in discriminatory lending practices. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 made a number of improvements to mortgage lending data collection under HMDA.

In October 2015, the CFPB issued its final rule improving the quality and the type of HMDA data it collects from lending institutions. This new information includes the property value, debt-to-income ratios, pricing information for all loans, loan terms such as the presence of prepayment penalties, and additional borrower characteristics such as age, to help identify emerging risks and abusive lending practices.[118] The new data will also enhance fair lending reviews because agencies will have more data with which to test whether similarly-situated applicants that differ only by race, age or gender are receiving loans with similar terms and conditions. As part of the rule, the CFPB adopted a threshold that applies the new reporting requirements to institutions that made 25 closed-end mortgage loans or 100 open-end/home equity lines of credit (HELOCs). The CFPB estimated that the 25 mortgage loans threshold would have eliminated HMDA reporting for 22 % of depository institutions that were currently reporting.[119]

Unfortunately, the passage of S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act (ERGGCPA) in May of 2018 raised the reporting thresholds to 500 closed-end loans or 500 open-end lines - a threshold estimated to exempt 85% of the nation's depositories from having to report the Dodd-Frank updated requirements (most lenders make fewer than 500 loans).[120] This higher threshold will sacrifice key data about lending in underserved communities that would help to direct public investment, detect abusive lending and promote safe and sound lending.

***Making Better HMDA Data Public*:** HMDA covers a great majority of loans made in the country. In 2018, 5,666 financial institutions reported information for approximately 6.4 million closed-end mortgage loans or about 90% of such mortgages issued that year.[121] Despite its reach, however, HMDA will be effective only if it reveals sufficient data on borrower characteristics and loan terms and conditions to adequately monitor the lending marketplace. In December of 2018, the CFPB published guidance regarding the new Dodd-Frank variables that were reported for the first time

117 See GAO, *Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts*, GAO-09-704 (Washington, D.C.: July 15, 2009); and Consumer Protection: *Federal and State Agencies Face Challenges in Combating Predatory Lending*, GAO-04-280 (Washington, D.C.: Jan. 30, 2004). See also Adam J. Levitin, *The Consumer Financial Protection Agency, Pew Financial Reform Project Briefing Paper #2* (Georgetown Law Center, 2009).

118 CFPB *Home Mortgage Disclosure Act Final Rule* (October 15, 2015). Retrieved from https://www.consumerfinance.gov/data-research/hmda/.

119 CFPB, HMDA final rule. See Table 5 at: https://www.govinfo.gov/content/pkg/FR-2015-10-28/pdf/2015-26607.pdf.

120 Ibid.

121 CFPB, *Data Point: 2018 Mortgage Market Activity and Trends,* August 2019, https://files.consumerfinance.gov/f/documents/cfpb_2018-mortgage-market-activity-trends_report.pdf

in 2019. The CFPB correctly decided to publicly report most of the new data including information on borrower age, additional race and ethnic subcategories for Asians and Hispanics, and new information on loan terms and conditions like debt-to-income ratios and loan-to-value ratios.

However, the CFPB erred in not reporting creditworthiness information in any manner although Dodd-Frank mandated the collection of credit score information. Creditworthiness information could be released at the census tract level, for example. It is critical for fair lending analyses to determine if borrowers with similar characteristics are being treated similarly in terms of loan approvals and/or loan terms. The CPFB also decided against publicly releasing the complete Dodd-Frank data involving multifamily lending and also opted for less precise reporting on loan amounts and property values.

Raising the threshold for reporting data would likely eliminate HMDA reporting for thousands of institutions. If the CFPB raised the threshold to 50 loans, about 36% of depository institutions (banks and credit unions) or 760 institutions would not be reporting HMDA loans. If the CFPB raised the threshold to 100 loans, 53% of the depository institutions, or more than 1,700 banks and credit unions, would not report HMDA data. The CFPB did not propose to raise the threshold to 250 loans; however, it asked for comments on higher thresholds. The CFPB estimated that moving the threshold to 250 loans would exempt 67% of depository institutions, or 2,850 institutions, from HMDA reporting.[122]

Who Can Act:

- Consumer Financial Protection Bureau (CFPB)
- U.S. Congress

NCRC's Position:

NCRC opposes congressional or regulatory efforts to repeal, delay, dilute or block the release of the new and better HMDA data or to exempt more financial institutions from having to report under the law.

The agency should publicly report more information about borrower creditworthiness and multifamily lending, consistent with the fair lending purpose of HMDA and the Dodd-Frank enhancements to the law. It is estimated that the CFPB will issue a final rule on reporting thresholds in May 2020 and will propose changes to HMDA data variables in the summer of 2020. Relatedly, the bank regulators should improve public data around community development lending and investments in order to be provide greater clarity to lenders about what is CRA-qualifying and to

122 NCRC *Notice of Proposed Rulemaking, HMDA Reporting Thresholds,* June 13, 2019. Retrieved from https://ncrc.org/notice-of-proposed-rulemaking-hmda-reporting-thresholds/

help identify areas around the country in need of greater community development lending and investing.

ISSUE: Adopt Age-Friendly Banking Polices

With an expected 72 million older adults living in the United States by 2030,[123] the "Silver Tsunami" of American seniors will need age-sensitive financial products and services to continue living healthy and independent lives. Older adults are indicating a desire to live and grow old in their own homes and communities. Around 79% of householders aged 65 to 74 and 75 to 84 owned their home, as compared to 69% of householders 85 and older.[124] (Figure 10) And, home equity for homeowners 62 and older grew to $6.97 trillion in the third quarter of 2018.[125]

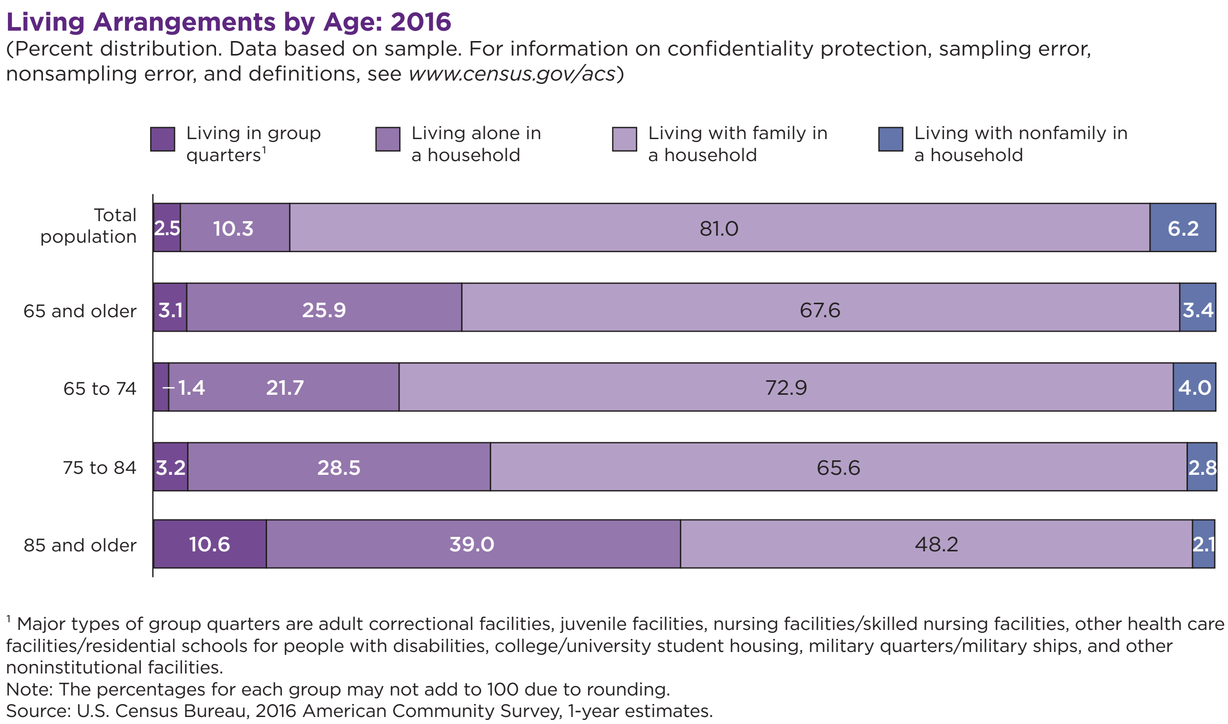


Figure 10: Source: https://www.census.gov/content/dam/Census/library/publications/2018/acs/ACS-38.pdf

Joint Agency Community Reinvestment (CRA) Act Reform and the effect on seniors

CRA was created to combat redlining and systematic discrimination against communities with LMI and communities of color. CRA's imposed affirmative obligation on banks to serve LMI communities helps customers make safe and sound banking decisions. The recent CRA

123 Centers for Disease Control, *The State of Aging and Health in America*. (Atlanta: CDC, 2013.) Retrieved from https://www.cdc.gov/aging/agingdata/data-portal/state-aging-health.html.

124 U.S. Census Bureau, American Community Survey Reports, *The Population 65 Years and Older in the United States: 2016*, October 2018.

125 NRMLA. "Senior Housing Wealth Reaches $6.97 Trillion in Q3 2018," December 18, 2018, https://www.nrmlaonline.org/about/press-releases/senior-housing-wealth-reaches-6-97-trillion-in-q3-2018

joint rulemaking from the OCC and FDIC, if fully implemented, would substantially dilute the CRA, with distinct implications for safe and affordable banking for low- moderate income (LMI) seniors. The following chart highlights the implications for seniors with LMI and banking given the proposed rulemaking, based on NCRC's analysis.[126]

Implications of Proposed Rulemaking on LMI Seniors

Proposed Rulemaking	Effect on Banking for Seniors
It would broaden what bank activities are CRA-qualifying so that CRA dollars may look like they are increasing but may actually decrease for people and communities with LMI.	Under the existing law and regulations, banks could get qualifying CRA credit for creating Age-Friendly Banking accounts for customers with LMI, that feature no-to-low fees and read or view only access. With broadened CRA-qualifying activities, there is less incentive for banks to create Age-Friendly Banking account products.
It would significantly dilute focus of bank activities on consumers and communities with LMI.	In general, the proposal makes it so much easier for banks to pass CRA exams, banks may be disincentivized to do special outreach to certain populations, like older adults with LMI.
It limits consideration of bank branches more than under the current CRA service test. Banks may respond by closing more branches in LMI communities.	While mobile banking is on the rise for seniors, older adults overwhelmingly prefer brick and mortar banks and financial institutions. Bank branches help offer older adults the ability to do their banking with familiar faces whom they trust. Bank branches offer a respite from social isolation, the opportunity to provide light ATM or technology training as well as in-branch training opportunities around financial health, money management and protecting against financial abuse and exploitation.
It would reduce consideration of qualitative criteria that measure responsiveness to local needs, such as offering non-predatory checking accounts and accounts with age-friendly features.	NCRC members have developed relationships with banks to create Age-Friendly Banking pilots or programs in bank branches. The ability for community-based organizations to build relationships with banks to innovate and meet specific needs is drastically diminished by the proposed rulemaking.

Figure 11: Source: https://ncrc.org/age-friendly-banking-and-the-occ-and-fdics-proposed-changes-to-the-community-reinvestment-act/

Reverse Mortgages and the end of LIBOR: The Federal Housing Administration's (FHA) Home Equity Conversion Mortgages (HECM), otherwise known as "reverse mortgages," make it easier for older adult homeowners to age in place. Under a reverse mortgage, funds are advanced to the borrower and interest accrues, but the outstanding balance is not due until the last borrower leaves the home, sells or passes away. Reverse mortgages can provide needed financial support at a time

126 NCRC, *Age-Friendly Banking and the OCC and FDIC's Proposed Changes to the Community Reinvestment Act,* January 30, 2020. Retrieved from https://ncrc.org/age-friendly-banking-and-the-occ-and-fdics-proposed-changes-to-the-community-reinvestment-act/.

when many older adults see increases in health care costs, require improvements or accessibility modifications to their homes, or wish to have added income during retirement, all factors that facilitate aging in place.

The amount that the homeowner receives each month is based in part on an index, the most common being the LIBOR, or London Interbank Offer Rate. LIBOR is used across a large spectrum of financial products, from credit card to student loans and adjustable rate mortgages. In 2021 the LIBOR is expected to be phased out and the Federal Reserve, along with most financial regulators and major banks, formed the Alternative Rates Reference Committee (ARRC) to determine a process to transition the finance industry away from LIBOR to a replacement.

At this time, the HECM loans backed by HUD are still being issued using the soon-to-be discontinued LIBOR. In 2018, more than 31,000 HECMs were reported, mostly to homeowners over the age of 65. Transitioning these loans to the new index will take careful consideration on the part of HUD. NCRC has been an active participant in the ARRC and this process. We have pushed for greater consideration of the possible impact to consumers and the recourse open to them in case of a substantial change in their interest rates. Unfortunately, HUD has been slow to embrace the ARRC process and has not been forthcoming about their plans for the HECM program as the LIBOR transition begins. NCRC calls on HUD to be more open and engaged in this process to ensure that the thousands of homeowners that take out HECM loans each month are protected from harm.

Who Can Act:

- U.S. Department of Housing and Urban Development (HUD)
- The Federal Deposit Insurance Corporation (FDIC)
- Federal Reserve System
- Office of the Comptroller of the Currency (OCC)
- U.S. Congress

NCRC's Position:

The financial industry must do more to ensure that they are equipped to meet the unique banking needs of older adults. In its report, Age-Friendly Banking & Low- To Moderate-Income Older Adults, NCRC defines six core Age-Friendly Banking principles to effectively serve the older adult population:[127]

- Protect older adults from financial abuse
- Customize financial products and services to address older adults' needs

127 Karen Kali, *Age Friendly Banking & Low-to Moderate Income Older Adults: Standards for a Growing Market* (November 2019). Retrieved from https://ncrc.org/afb-standards/?mc_cid=2bfad7e20c&mc_eid=%5bUNIQID%5d&mc_cid=2bfad7e20c&mc_eid=72830ea76f.

- Expand affordable financial management
- Guarantee access to critical income supports
- Facilitate aging in the community
- Improve the accessibility of banking for those with restricted mobility or living alone in remote areas

Recommendations to HUD on non-borrowing spouses: NCRC support recommendations included in a recent report to protect non-borrowing spouses and the HECM program[128] The agency should:

- Remove unnecessary deadlines for the program or, at a minimum, provide waivers of deadlines in appropriate cases.
- Require servicers to communicate clearly with borrowers and non-borrowing spouses about the program and steps needed to qualify for the program, beginning even before the borrower's death.
- Create plain language notification letters to be sent by the agency or servicers with all requirements for the surviving non-borrowing spouse to remain in the home for life, upon the death of the borrower; and with the requirements for legal authority to retain, sell or purchase the property.
- Allow additional time for non-borrowing spouses to cure a default on property taxes or insurance when spouses are actively attempting to repay these charges or are eligible for help through an assistance program such as a Hardest Hit Funds program.
- Require servicers to communicate with non-borrowing spouses at every step of the process, and HUD's Servicing Center should provide accurate, up to date information to any non-borrowing spouse who makes an inquiry about the status of an application for the program.
- Expand the program to include non-borrowing spouses who want to remain in the home when the borrowing spouse is still living but has moved out permanently, for example due to health reasons.

The *Preventing Foreclosures on Seniors Act* introduced during the 115th Congress would enact a number of these provisions and others protections.[129]

Guidance on the end of LIBOR: HUD and the prudential regulators should offer guidance on how reverse mortgages can transition from LIBOR to a new reference index without negatively impacting homeowners.

128 *How HUD is Failing to Protect Widows and Widowers of Reverse Mortgage Borrowers: Case Studies and Recommendations,* NCLC, November 2018. Retrieved from https://www.nclc.org/issues/hud-failing-to-protect-widows-and-widowers.html.

129 House Committee on Financial Services, "Waters Introduces Legislation to Help Prevent Unfair Foreclosures on Seniors with HUD Reverse Mortgages," press release, October 27, 2017, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400890.

ISSUE: Support the Equality Act

In May 2019, the House of Representatives passed a bill simply called The Equality Act, which would protect individuals from discrimination on the basis of characteristics such as sexual orientation, gender identity and pregnancy status. The Senate has not voted on the Equality Act.

The Equality Act would expand the protections of the Civil Rights Act by prohibiting discrimination on the basis of sex, sexual orientation, gender identity, sex-based stereotypes or pregnancy, childbirth or related medical conditions. These types of discrimination would be prohibited in the areas of employment, housing and public accommodations, and would be regarded under the Equality Act as illegal forms of sex discrimination.

The Equality Act is intended to address the considerable discrimination faced by LGBTQ+ people in the lending and housing markets, as well as employment and public accommodations. Many studies have shown that people in same-sex relationships are more likely than their opposite-sex/heterosexual counterparts to be rejected when pursuing housing or credit opportunities, such as applying for mortgages. Studies have also shown that LGBTQ+ youth are far more likely to experience homelessness than their straight counterparts, and more likely to be rejected from assistance programs, such as homeless shelters and domestic violence shelters.

The Equality Act is also intended to address discrimination against women based on their pregnancy status, or issues related to giving birth. Women are often denied full and equal access to public accommodations if they are pregnant or breastfeeding.

Who Can Act:

- The U.S. Congress
- The President

NCRC's Position:

NCRC supports the Equality Act. NCRC urges the Senate to approve the Equality Act, and for President Trump to sign the bill into law. Sex discrimination has no part in American society, and when someone is subjected to unequal treatment based on their gender identity, the gender of their spouse/romantic partner or their pregnancy status, they are the victims of sex discrimination.

There are many barriers to full participation in our economy for LGBTQ+ people, and for pregnant women. NCRC's goal is for all Americans to have access to credit and fair housing, regardless of sexual orientation, gender identity or pregnancy status. These factors should not prevent anyone from buying a home, obtaining a loan or having access to a place of business or shelter.

Invest Period

ISSUE: Continue to Invest in the Critical Infrastructure of the Country, including Affordable Housing

Both Democrats and Republicans at the federal, state and local level agree that there must be a major commitment to improving the nation's infrastructure, but there is little agreement on how to do it. In 2019, the Trump Administration established the White House Council on Eliminating Regulatory Barriers to Affordable Housing. Among other things, the council is tasked with identifying federal, state, local and tribal laws, regulations and administrative practices that artificially raise the costs of housing development and contribute to shortages in housing supply.[130] HUD published a request for information (RFI) a few months after the formation of the council looking for comments on federal, state, local and tribal laws, regulations, land use requirements and administrative practices that artificially raise the costs of affordable housing development and contribute to shortages in housing supply.[131]

There is a broadening consensus among housing stakeholders across the political spectrum around restrictive local zoning that the council can harness to accelerate policy change -- some of which has already begun locally. For example, NCRC has co-convened a broad cross-section of the housing industry and community development and civil rights organizations to create the *Affordable Homeownership Coalition (AHC).* The AHC is developing consensus principles and policies in response to the shortage of affordable homes for LMI families.

A national infrastructure plan must include affordable housing*:* Any federal plan to rebuild the nation's infrastructure should also include increased federal investment in affordable housing supply – both rental and single-family.

Without the support of federal rental assistance, not one county in the United States has enough affordable housing for all its extremely low-income renters (those with incomes at or below or 30 % of the area median income).[132] Between 1996 and 2015, the total number of available public housing units also decreased by 15% from 1.3 million down to 1.1 million. A decrease in housing

130 Exec. Order 13878, "Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing," June 25, 2019. Retrieved from https://www.whitehouse.gov/presidential-actions/executive-order-establishing-white-house-council-eliminating-regulatory-barriers-affordable-housing/.

131 HUD, "White House Council on Eliminating Regulatory Barriers to Affordable Housing; Request for Information," November 22, 2019. Retrieved from https://www.federalregister.gov/documents/2019/11/22/2019-25388/white-house-council-on-eliminating-regulatory-barriers-to-affordable-housing-request-for-information

132 Liza Getsinger, Lily Posey, Graham MacDonald, Josh Leopold, Katya Abazajian, *The Housing Affordability Gap for Extremely Low-Income Renters in 2014* (Urban Institute, April 28, 2017). Retrieved from https://www.urban.org/research/publication/housing-affordability-gap-extremely-low-income-renters-2014.

supply creates long waiting lists for both public housing and housing choice vouchers, which are often closed or have years-long wait times.[133]

Investing in Public infrastructure projects: The Trump Administration's FY2021 budget proposes a $1 trillion plan for investment in infrastructure over the next ten years,[134] however reports have shown that, compared to the actual need, the overall increase in infrastructure funding would be quite modest.[135] It should be noted that this proposal is primarily for existing funding. $190 billion was proposed for the one-time funding of a new infrastructure initiative, however, the rest of that $1 trillion infrastructure plan continues current funding levels. The administration also proposes to cut key infrastructure programs and support for highway, mass transit, airport and port infrastructure provided through discretionary appropriations.

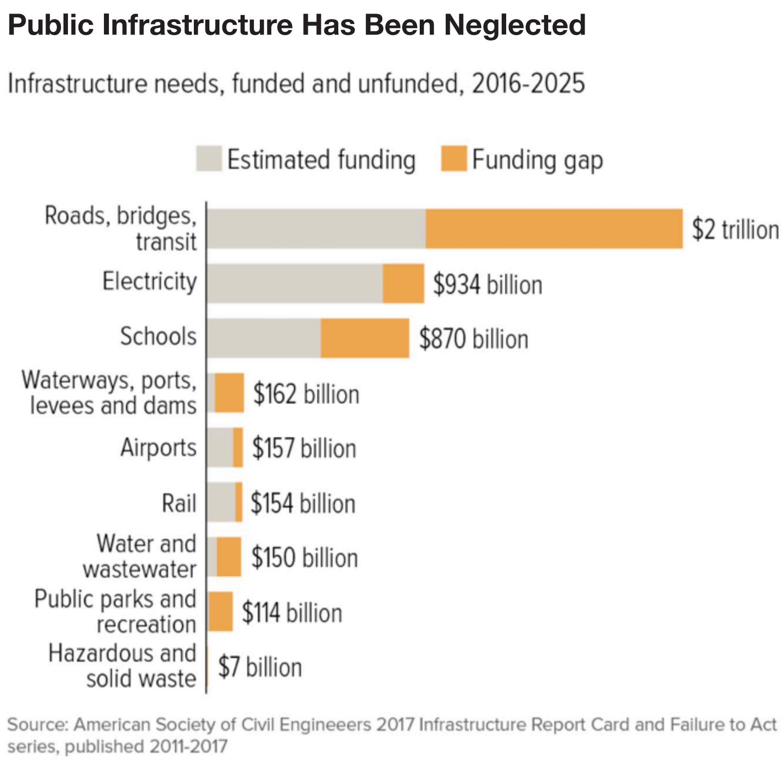


FIGURE 12. Source: https://www.cbpp.org/research/state-budget-and-tax/its-time-for-states-to-invest-in-infrastructure

From public housing to public schools, from roads, bridges and transit to waterways and the energy smart grid to airports and other public infrastructure, lawmakers must prioritize investments

133 National Low Income Housing Coalition, "Housing Spotlight Volume 6, Issue 1," October 11, 2016. Retrieved from https://nlihc.org/article/housing-spotlight-volume-6-issue-1.

134 *A Budget for America's Future, Fiscal Year 2021.* Retrieved from https://www.whitehouse.gov/wp-content/uploads/2020/02/budget_fy21.pdf.

135 Paul N. Van de Water, "2021 Trump Budget Would Increase Hardship and Inequality," (Center on Budget and Policy Priorities, February 20, 2020). Retrieved from https://www.cbpp.org/research/federal-budget/2021-trump-budget-would-increase-hardship-and-inequality.

in the nation's infrastructure and the need is great (see Figure 13). Communities around the country need strong infrastructure to grow, thrive and prosper.

Who Can Act:

- U.S. Congress
- State and local governments

NCRC's Position:

NCRC supports a strong bipartisan plan that invests in and rebuilds the nation's crumbling infrastructure, and that infrastructure projects are built with community benefits agreements.

NCRC supports proposals outlined by the *Campaign for Housing and Community Development Funding,*[136] targeting additional federal resources for affordable housing production, preservation and rental assistance. Additional public resources for affordable housing infrastructure will also leverage more private investments and can strengthen local economies and support job creation.

NCRC supports **H.R.5187/S.2951, Housing is Infrastructure Act of 2019**, which is comprehensive legislation to confront the nation's affordable housing crisis, including public housing and low- and mixed-income housing through infrastructure investments. This will invest over $100 billion in the construction of new affordable housing units, maintenance of existing subsidized housing and support for rural housing through infrastructure investments.

ISSUE: Support for a National Paid Sick Leave Policy

There are not many companies in the United States that provide monetary support or the proper means to their workers when employees must take temporary leave in order to care for a newborn child or other family members. Employees often make tough decisions between their jobs or taking time off to care for a loved one. Only 19% of the professional workforce are offered paid leave, while 89% of employees are forced to take Family Medical Leave Act (FMLA) unpaid leave.[137] In addition, about a third of employees who do take advantage of the FMLA only take half of the 12-week leave because they need an income to support themselves.[138] Men and women equally anticipate needing to take leave, but men lag behind women in actually taking it. 48% of fathers

136 Elayne Weiss and Natalie Brown, *A Place to Call Home: The Case for Increased Federal Investments in Affordable Housing* (National Low Income Housing Coalition, March 2017). Retrieved from http://nlihc.org/sites/default/files/A-Place-To-Call-Home.pdf.

137 Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2019.* Retrieved from https://www.bls.gov/ncs/ebs/benefits/2019/employee-benefits-in-the-united-states-march-2019.pdf.

138 Elise Gould, "Providing unpaid leave was only the first step; 25 years after the Family and Medical Leave Act, more workers need paid leave," Economic Policy Institute, February 1, 2018, https://www.epi.org/blog/providing-unpaid-leave-was-only-the-first-step-25-years-after-the-family-and-medical-leave-act-more-workers-need-paid-leave/.

versus 55% of mothers have taken time off to care for a newborn, and 28% of working men versus 31% of working women have taken time off to care for a family member.[139] A recent report from New America found that six in 10 Americans anticipate needing to take leave from work in the future.

Access to paid leave would also make strides in closing the Racial Wealth Gap. Between 1983 and 2016, the median Black family saw their wealth drop by more than half after adjusting for inflation, compared to a 33% increase for the median White household.[140] Black families are about 20 times more likely to have zero or negative wealth (37%) than they are to have $1 million or more in assets (1.9%).[141] Latino families are 14 times more likely to have zero or negative wealth (32.8%) than they are to reach the millionaire threshold (2.3%). White families are equally likely to have zero or negative wealth (about 15%) as they are to be a millionaire (15%).[142] It should also be noted that Black families are more likely than other racial or ethnic groups in America to need to take leave to care for a family member. (see Figure 13).

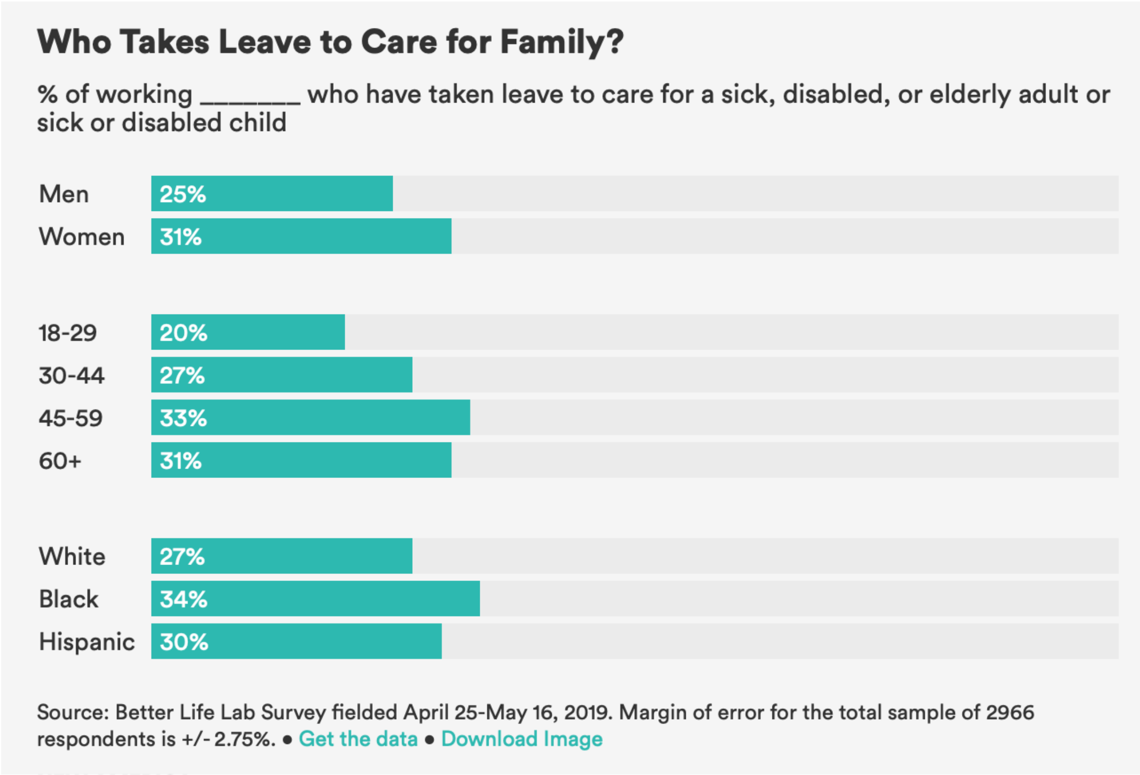


Figure 13: Source: https://www.cbpp.org/research/state-budget-and-tax/its-time-for-states-to-invest-in-infrastructure

139 Amanda Lenhart, Haley Swenson, Brigid Schulte, *Lifting the Barriers to Paid Family and Medical Leave for Men in the United States,* Better Life Lab, New America, December 4, 2019. Retrieved from https://www.newamerica.org/better-life-lab/reports/lifting-barriers-paid-family-and-medical-leave-men-united-states/

140 Chuck Collins, Darrick Hamilton, Dedrick Asante-Muhammed, Josh Hoxie, *Ten Solutions to Bridge the Racial Wealth Divide,* Institute for Policy Studies, April 16, 2019. Retrieved from https://ips-dc.org/report-racial-wealth-divide-solutions/.

141 Ibid.

142 Ibid.

Workers without paid sick days are also less likely to go to the doctor or access preventive care. This barrier to accessing care can be especially harmful to African Americans, who are 60% more likely to have diabetes than their White peers and have substantially higher mortality rates from stroke, heart disease and breast cancer.[143] Just a few days of lost pay is equivalent to losing an entire month's worth of groceries or health care expenses for a typical family without paid sick days. Since African American workers are paid less, on average, than White workers, a loss of income can add up even more quickly.[144]

Currently, there is no federal legislation for mandatory paid family leave. In the private sector, there is the *Family and Medical Leave Act* (FMLA), written in 1993, which provides employees up to 12 weeks of unpaid, job-protected leave for a personal health issue, allows time for a parent to care for a newborn baby or child, or time to care for a loved one who has a serious health condition. Some states have implemented a type of paid family leave legislation, including Arizona, California, Connecticut, Maryland, Massachusetts, New Jersey, Oregon, Rhode Island, Vermont, Washington and Washington D.C. However, there is no federal legislation which upholds paid family leave. The United States is the only developed country without a national paid leave policy.

Who can Act:

- Department of Labor
- U.S. Congress

NCRC's position:

NCRC supports the notion of federal paid family leave to provide monetary support for employees while they take time off for personal reasons. Workers should not have to make the difficult decision of taking care of a loved one or miss out on their family due to the lack of income security. Paid family leave should be a livable policy that provides workers with the necessary means to support themselves and their loved ones. Presently, family leave is an unaffordable option since most companies do not offer simultaneous job protection and payment.

NCRC supports the ***Family And Medical Insurance Leave (FAMILY) Act*** (H.R. 1185/S. 463). The FAMILY Act would create a national family and medical leave insurance program to help ensure that people who work can take the time they need to address serious health and caregiving needs. It would help support working families' economic security, promote gender equity in workplaces, create a more level playing field for businesses of all sizes and strengthen our economy.

143 National Partnership for Women & Families, "African Americans and Their Families Need Sick Days," Fact Sheet, January 2017. Retrieved from https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/african-american-workers-need-paid-sick-days.pdf.

144 Ibid.

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