NCRC
National Community Reinvestment Coalition

2019 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 more than 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 over 25 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. There is both a legal and a moral obligation for banks and other financial institutions to invest and lend in low- and moderate-income (LMI) communities. More than a decade after the last financial crisis, many borrowers, and particularly African-Americans, struggle to access homeownership.[1] The nation continues to rebound from a 40 year decline in business startup activity, and underserved communities, including rural areas, struggle to attract private investment.[2]

Redlining, a discriminatory practice outlawed by the Community Reinvestment Act (CRA) and other fair lending laws, remains a potent issue today. The Consumer Financial Protection Bureau (CFPB) alone brought nearly $40 million dollars in enforcement actions against institutions for redlining under the leadership of Richard Cordray as Director.[3] In a groundbreaking study, *Reveal* 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.

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 the 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.*"[4]

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

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1 *The State of the Nation's Housing 2018*. (Cambridge, MA: Joint Center for Housing Studies, Harvard University, 1988.) Retrieved from http://www.jchs.harvard.edu/state-nations-housing-2018.

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

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

4 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.)

Defending CRA: Regulators Have Initiated a Major Rewrite

NCRC's *TreasureCRA* campaign[5] 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[6] . Over 1500 organizations responded to 31 reform questions posed by the agency.[7] The Federal Reserve System has convened over 25 roundtables and symposiums around the country on the law.[8]

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."[9] 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 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).[10]

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 - which 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 banks examiners during CRA exams and during bank mergers and acquisitions.

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

6 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

7 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/

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

9 2 U.S.C. §2901, et al

10 Jill Littrell and Fred Brooks, In Defense of the Community Reinvestment Act. (Atlanta: Georgia State University, 2010.)

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 areas[11]

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 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 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 percent or greater decrease in purchase mortgage lending

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

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 for correct); *Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act*, Federal Reserve Bank of Boston and San Francisco (February 2009).

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 found losses in small business lending also 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 the Enterprises to purchase a set percentage of mortgages to finance single family and multifamily housing for low- and moderate-income borrowers and communities.[12] For 2018-2020, each Enterprise has an annual low-income affordable housing goal, for example, for their single family mortgage purchases set at 24% for properties with borrowers with income of no greater than 80 percent 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.

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

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.[14] 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.

13 12 U.S.C. §§ 4562, 4563

14 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

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 produced 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.

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 roundly rejected and disproven.[15]

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

15 *Don't blame the affordable housing goals for the housing crisis,* NCRC, at: https://ncrc.org/dont-blame-affordable-housing-goals-financial-crisis/

projects and businesses in designated Opportunity Zones. 8,700 census tracts across the country have been designated as opportunity zones[16]. The Internal Revenue Service is currently developing rules around the program. NCRC continues to monitor the program and has offered a series of reforms.[17]

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 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 2019: 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, a rewrite of key fair housing rules at HUD.

Rep. Maxine Waters (D-CA) the new 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. She has also created a new Diversity and Inclusion subcommittee to examine the low representation of minorities and women in the financial services industry. Chair Waters will also utilize the Committee's subpoena power to increase committee oversight and public pressure on financial companies and regulators to support the Committee's objectives.

We also expect Congress 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 the 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.

16 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

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

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

Last fall, the Office of the Comptroller of the Currency (OCC), regulators of the nation's largest banks, released an Advance Notice of Proposed Rulemaking (ANPR), which is the agency's first formal step in overhauling the Community Reinvestment Act (CRA)[18]. 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.[19]

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

18 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

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

Approximated loss of lending at the state level

State	Small Business Lending 10% Loss	Small Business Lending 20% Loss	Mortgage Lending 10% Loss	Mortgage Lending 20% Loss	All Lending 10% Loss	All Lending 20% Loss
Alabama	$164,490,000	$328,980,000	$326,775,300	$653,550,600	$491,265,300	$982,530,600
Alaska	$21,517,400	$43,034,800	$96,846,100	$193,692,200	$118,363,500	$236,727,000
Arizona	$159,475,700	$ 318,951,400	$959,737,700	$1,919,475,400	$1,119,213,400	$2,238,426,800
Arkansas	$92,849,400	$185,698,800	$170,187,500	$340,375,000	$263,036,900	$526,073,800
California	$1,142,008,000	$2,284,016,000	$11,446,404,100	$22,892,808,200	$12,584,604,600	$25,169,209,200
Colorado	$207,848,500	$415,697,000	$1,727,873,100	$3,455,746,200	$1,935,713,500	$3,871,427,000
Connecticut	$91,709,600	$183,419,200	$454,223,100	$908,446,200	$545,761,900	$1,091,523,800
Delaware	$25,345,000	$50,690,000	$121,515,300	$243,030,600	$146,855,800	$293,711,600
District of Columbia	$20,521,600	$41,043,200	$416,320,100	$832,640,200	$436,841,700	$873,683,400
Florida	$496,485,300	$992,970,600	$1,977,292,500	$3,954,585,000	$2,473,689,100	$4,947,378,200
Georgia	$318,212,300	$636,424,600	$1,162,118,500	$2,324,237,000	$1,480,314,800	$2,960,629,600
Hawaii	$9,593,400	$19,186,800	$91,479,500	$182,959,000	$101,054,200	$202,108,400
Idaho	$59,677,900	$119,355,800	$193,232,200	$386,464,400	$252,910,100	$505,820,200
Illinois	$284,781,200	$569,562,400	$1,430,058,600	$2,860,117,200	$1,714,829,000	$3,429,658,000
Indiana	$168,846,900	$337,693,800	$471,903,400	$943,806,800	$640,719,000	$1,281,438,000
Iowa	$70,377,600	$140,755,200	$243,866,300	$487,732,600	$314,243,900	$628,487,800
Kansas	$69,682,100	$139,364,200	$195,391,100	$390,782,200	$265,071,300	$530,142,600
Kentucky	$95,653,200	$191,306,400	$332,572,600	$665,145,200	$427,850,900	$855,701,800
Louisiana	$158,473,700	$316,947,400	$381,657,700	$763,315,400	$540,129,800	$1,080,259,600
Maine	$42,133,400	$84,266,800	$153,474,800	$306,949,600	$195,608,200	$391,216,400
Maryland	$124,924,800	$249,849,600	$1,381,999,700	$2,763,999,400	$1,506,920,300	$3,013,840,600
Massachusetts	$171,564,200	$343,128,400	$1,718,000,200	$3,436,000,400	$1,889,564,400	$3,779,128,800
Michigan	$260,688,100	$521,376,200	$677,817,900	$1,355,635,800	$938,305,700	$1,876,611,400
Minnesota	$109,634,200	$219,268,400	$857,374,000	$1,714,748,000	$967,008,200	$1,934,016,400
Mississippi	$89,471,300	$178,942,600	$120,327,300	$240,654,600	$209,797,700	$419,595,400
Missouri	$182,223,400	$364,446,800	$596,594,300	$1,193,188,600	$778,816,600	$1,557,633,200
Montana	$49,805,500	$99,611,000	$117,082,100	$234,164,200	$166,887,600	$333,775,200
Nebraska	$44,357,100	$88,714,200	$167,810,200	$335,620,400	$212,167,300	$424,334,600
Nevada	$62,398,900	$124,797,800	$299,880,600	$599,761,200	$362,279,500	$724,559,000
New Hampshire	$29,560,900	$59,121,800	$202,495,200	$404,990,400	$232,056,100	$464,112,200
New Jersey	$190,466,100	$380,932,200	$1,131,285,200	$2,262,570,400	$1,321,750,100	$2,643,500,200
New Mexico	$44,138,500	$88,277,000	$225,923,000	$451,846,000	$270,058,900	$540,117,800
New York	$437,106,500	$874,213,000	$2,350,113,500	$4,700,227,000	$2,786,989,100	$5,573,978,200
North Carolina	$344,699,200	$689,398,400	$1,098,899,000	$2,197,798,000	$1,443,595,700	$2,887,191,400
North Dakota	$28,371,100	$56,742,200	$55,399,400	$110,798,800	$83,770,500	$167,541,000
Ohio	$230,916,300	$461,832,600	$745,143,300	$1,490,286,600	$975,473,700	$1,950,947,400
Oklahoma	$124,471,500	$248,943,000	$263,783,300	$527,566,600	$388,254,800	$776,509,600
Oregon	$118,863,000	$237,726,000	$831,314,300	$1,662,628,600	$950,177,300	$1,900,354,600
Pennsylvania	$272,516,000	$545,032,000	$1,063,262,200	$2,126,524,400	$1,335,778,200	$2,671,556,400
Puerto Rico	$60,558,700	$121,117,400	$105,201,000	$210,402,000	$164,761,300	$329,522,600
Rhode Island	$24,918,700	$49,837,400	$110,017,300	$220,034,600	$134,936,000	$269,872,000
South Carolina	$148,385,900	$296,771,800	$467,154,200	$934,308,400	$615,514,800	$1,231,029,600
South Dakota	$39,236,800	$78,473,600	$63,275,500	$126,551,000	$102,506,300	$205,012,600
Tennessee	$170,835,900	$341,671,800	$636,419,700	$1,272,839,400	$807,255,600	$1,614,511,200
Texas	$723,335,700	$1,446,671,400	$2,212,086,900	$4,424,173,800	$2,935,223,600	$5,870,447,200
Utah	$64,463,900	$128,927,800	$492,050,500	$984,101,000	$556,514,400	$1,113,028,800
Vermont	$13,595,200	$27,190,400	$60,028,900	$120,057,800	$73,624,100	$147,248,200
Virginia	$198,081,000	$396,162,000	$1,610,373,700	$3,220,747,400	$1,808,414,100	$3,616,828,200
Washington	$207,828,000	$415,656,000	$1,772,116,800	$3,544,233,600	$1,979,944,800	$3,959,889,600
West Virginia	$31,380,900	$62,761,800	$113,912,100	$227,824,200	$145,293,000	$290,586,000
Wisconsin	$126,421,900	$252,843,800	$576,971,000	$1,153,942,000	$703,392,900	$1,406,785,800
Wyoming	$16,118,000	$32,236,000	$55,792,200	$111,584,400	$71,910,200	$143,820,400
National	**$8,282,297,600**	**$16,564,595,200**	**$44,532,834,000**	**$89,065,668,000**	**$52,808,296,000**	**$105,616,592,000**

A large body of research unequivocally concludes that CRA has increased safe and sound lending and investing in low- and moderate-income (LMI) communities.[20] CRA achieves this via public accountability: each bank undergoes an exam by bank regulators and receives a rating based on the extent to which they are making loans and investments to LMI people and communities. Members of the public can comment on CRA performance as agency examiners are conducting CRA exams.

One of the major proposals in the OCC's ANPR is the creation of "one ratio" single metric which would greatly diminish the effectiveness of public comments by local community stakeholders and the focus on bank assessment areas (the geographical areas around a bank's branch network that CRA examiners review). The one ratio would total the dollar amount of a bank's CRA activities (loans, investments, and services to LMI borrowers and communities) divided by the bank's assets. The ratio is supposed to reflect CRA efforts compared to a bank's capacity and would influence a bank's CRA rating.[21] The difficulty, however, is that current CRA exams scrutinize lending in metropolitan areas or rural counties where banks have branches and reach conclusions about bank performance in those localities. The one ratio is simply one overall ratio and does not reflect conclusions about performance in various local communities. Under a one ratio approach, it is more likely that banks will underperform in their smaller markets and focus on the big cities in order to increase their ratio.

In their responses to the ANPR, community banks once again proposed to overhaul the "small" and "intermediate small" bank asset thresholds and exam structure in order to limit the extent and frequency of CRA examinations. Under the Bush Administration in 2004-2005, the federal regulatory agencies amended the CRA regulations to replace comprehensive CRA exams with streamlined exams that focus on the lending and community development activities of intermediate small banks with assets between $250 million and $1 billion (these thresholds adjust annually for inflation).[22]

The Independent Community Bankers of America (ICBA) proposed small bank exams with only the retail lending test for banks with assets of up to $1 billion and intermediate small bank (ISB) exams for banks with assets between $1 billion to $5 billion.[23] In other words, most of today's ISB banks would not be tested for community development financing. Examples of this financing are construction loans for rental housing, Low Income Housing Tax Credits, or equity investments in small businesses. NCRC calculates that ISB banks currently make about $3 billion in community development (CD) financing annually or about the same size of the federal Community

20 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/

21 OCC ANPR, pgs. 45056 and 45057.

22 Federal Deposit Insurance Corporation, "Banking Agencies Issue Final Community Reinvestment Act Rules," press release, July 19, 2005, https://www.fdic.gov/news/news/press/2005/pr6605.html; Richard D. Marsico and Josh Silver, "An Analysis of the Implementation and Impact of the 2004-2005 Amendments to the Community Reinvestment Act Regulations: The Continuing Importance of the CRA Examination Process," *New York Law School Law Review* 53 (2008-2009).

23 ICBA comment letter, p. 5.

Development Block Grant program.[24] If most ISB banks are no longer examined for community development financing, most of this annual funding level would be lost, which is a blow that many revitalizing communities including rural areas cannot afford. In addition, ISB exams for banks with assets between $1 billion to $5 billion would eliminate the analysis of branching in low- and moderate-income (LMI) census tracts. Borrowers in LMI tracts depend on branches. Reducing exam attention to branches most likely will diminish the number of branches and loans in LMI tracts.

Finally, the ANPR contemplates providing favorable and broad consideration for activities and financing that benefits middle- and even upper income communities in addition to LMI areas. Banks have also suggested the CRA consideration include support for general philanthropic activities in addition to those targeted to LMI communities.

CRA was enacted to combat a lack of access to credit in LMI and minority neighborhoods. Broadening what is eligible for CRA credit, as contemplated by the ANPR and some banks, conflicts with CRA's purpose and will decrease lending, investing, and bank services in LMI communities.

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 LMI borrowers and communities.

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.

24 NCRC, *Intermediate Small Banks: The Forgotten but Significant Resource for Affordable Housing and Community Development*, November 2017, https://ncrc.org/intermediate-small-banks-forgotten-significant-resource-affordable-housing-community-development/

WHAT'S AT STAKE:
The Community Reinvestment Act (CRA)

10 Bad Ideas & Bank-Centric Proposals for CRA Regulatory Reform
www.ncrc.org/treasurecra

1. An OCC-only approach to CRA reform

On August 28, 2018, the OCC released an advance notice of proposed rulemaking (ANPR) that asks 31 questions on how to reform CRA regulations. The public comment period closes November 19th. NCRC research has found that a significant weakening of CRA could reduce lending in lower-income communities up to $105 billion dollars in the next five years[1]. At the outset, any CRA reforms must be a joint rulemaking that includes the other bank regulators - the FDIC and the Federal Reserve- otherwise OCC-only reforms will promote inconsistency is CRA crediting, examination, and remedial standards. Even as the OCC acknowledges the need for consistent standards in response to CRA stakeholders, the OCC has created inconsistent standards. Over the last year, the OCC weakened CRA standards for OCC-regulated banks – limiting downgrades in a bank's CRA rating when the bank engages in discrimination or other illegal credit practices[2]; creating exceptions for banks with failing CRA ratings that are seeking to merge or expand their operations[3]; and, lengthening some CRA exam cycles[4]. A joint effort must focus first on strengthening standards for community reinvestment and not just streamlining and clarifying CRA for banks.

2. Taking the LMI out of CRA

The OCC's ANPR has asked whether CRA credit "…[should] be limited to loans to LMI borrowers and loans in LMI or other identified areas…"5 The American Bankers Association (ABA) has called CRA credit for initiatives "targeted to" low- and moderate-income (LMI) individuals or [that] have benefits of revitalizing or stabilizing disaster areas or underserved or distressed middle-income areas as an "overly restrictive approach"6. The architects of CRA sought to combat redlining (the practice of banks refusing to consider mortgage applications from 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). While tax credits and other federal programs might encourage investments in infrastructure – roads, bridges and hospitals- and projects that benefit a community more broadly, CRA has historically and should remain targeted on access to credit and financial services for LMI borrowers and communities traditionally underserved by the nation's financial system.

3. Allowing banks to disregard local credit needs

The OCC's ANPR suggests a redefinition of "community" under CRA so that banks can get CRA credit "in the aggregate, at the bank level, in addition to activities in its traditional assessment areas or local geographies." The law explicitly requires that banks demonstrate that they "…serve the convenience and needs of the communities in which they are chartered to do business;"7. The OCC suggests grading banks and dispensing CRA credit for far-off activities, however worthy they may be on their face, without first requiring that the bank meet the needs of the local communities where it takes deposits and without any examination of whether those far-off loans and investments serve the convenience and needs of the communities where they are being made. Recognizing that banks now do significant business online and outside the communities where they have physical bank branches, NCRC has long supported additional assessment areas in those areas where banks do a significant amount of that community's lending, but has emphatically opposed simply giving a bank CRA credit without any analysis of whether the bank is responding to the credit needs of those local communities.

4. A "one-ratio" everything counts approach to CRA bank exams – a recipe for more CRA grade inflation

The OCC's "transformational approach to the CRA regulatory framework"[8] could reduce most or all of a bank's CRA evaluation to a simple mathematical formula and is a recipe for more and not less CRA grade inflation. Already 98% of banks pass their CRA exams[9] – a pass rate that suggests higher levels of lending, investment and financial services in low- and moderate-income (LMI) and underserved communities than actually exists. Reliance on a "one-ratio" approach or a single metric could diminish the local analysis bank examiners undertake, including the geographic distribution of bank lending across various neighborhoods, borrower profiles and whether the bank has first met the mortgage, small business, affordable housing and other credit needs of their local community before receiving CRA credit for what could be more profitable activities elsewhere and outside the bank's assessment area. It might also replace the current exams three separate test and needed separate analyses of bank lending, investments and services (e.g. bank branching).

5. Scrapping examiners' local & more *qualitative* analysis of bank lending and investments

The OCC's ANPR suggests adopting a more rigid **"quantitative**" approach to CRA. Today's CRA exams are designed to focus more on "**the quality**" of a bank's investments. Under the lending test, for example, examiners review how many loans and investments are made in their local community where they have branches and where they take deposits. Examiners not only determine if a sufficient number of loans are made, but they also determine the distribution of loans among low-, moderate-, middle- and upper-income geographies, and identify groups of geographies, by income categories, where there is little or no loan penetration[10]. Examiners determine the distribution of loans by borrower income and by business revenues and also identify categories of borrowers by income or business revenues that have little or no loan penetration. Examiners review complaints relating to the bank's CRA performance and evaluate the bank's record of taking action, if warranted, in response to written complaints. Under the OCC's "transformational approach", important qualitative criteria that measure responsiveness to local needs and the extent of innovation could be reduced or eliminated. Importantly, today banks and bank examiners see bank data supporting the CRA rating – data the public does not see. The OCC's "transformational approach" could diminish or streamline this current localized and qualitative analysis in favor of numeric and quantitative clarity for banks and without making any more information about the loans and projects driving the numerical formula available to the public. One key problem in today's CRA exams is that, unlike the home mortgage data, the public has far less data on and access to the community development projects and small business loans at the neighborhood level on which the examiner's CRA rating is based. The OCC suggestions could sacrifice CRA's current analysis of the quality of a bank's response to the local credit needs

FIGURE 2: Source: https://ncrc.org/wp-content/uploads/2018/10/NCRC.CRA_.10-Bad-Ideas-7.pdf

without making it any more possible for the public to review the bank data and determine if the loans and investments banks are making warrant a particular CRA rating.

6. Exempting more banks from CRA exams 1 – the community development test & affordable housing

The OCC's ANPR gives credence to the view of some bank stakeholders that "…the asset thresholds for the performance tests and standards have not kept pace with bank asset sizes…"[11]. During the last CRA reforms, bank asset-size thresholds were raised and each year since they have been adjusted upward based on changes to the Consumer Price Index. These thresholds determine how banks are examined under CRA and whether they are examined under one, two or all three CRA tests – a lending test, a community development/investment test and a service test. The nation's banks are pushing hard to raise asset-size thresholds further so more banks will have easier CRA exams to pass[12]. In the midst of affordable housing and other credit challenges across the country, more of the nation's banks want to be exempted from CRA examinations of whether they help finance community development projects in their local communities. A review of 2016 CRA exams found that intermediate small banks, for example, provide as much private community development financing each year as the federal government's community development block grant program – a program targeted for elimination in the federal budget almost every year[13].

7. Exempting more banks from CRA exams 2 – the CRA service test & bank branches

With significant segments of the nation unbanked or underbanked[14], the OCC's ANPR asks whether branching in LMI areas should be reviewed as banks seek more exemptions from the CRA service test, which reviews bank branching patterns and basic banking services in LMI areas[15]. As another bank regulator noted recently, for many LMI and rural communities bank branches remain critical for the provision of bank loans, investments, and services.[16] While it should be strengthened, the CRA Service test remains an incentive for the nation's largest banks to open/close bank branches in LMI communities equitably and provide other basic banking services. Banking deserts in rural and minority communities have increased since the financial crisis.[17]

8. Letting banks with poor CRA records get bigger and bigger without community accountability

OCC Comptroller Joseph Otting has admitted that part of his CRA reform plan is to make it harder for community groups to "hold [bankers] hostage" when bank merger and expansion deals are up for regulatory approval[18]. In the past, banks with failing CRA ratings have been discouraged from merging with other banks or expanding their operations until their record of serving their local community improves. In November, the OCC created exceptions to that practice[19]. CRA and other banking law have ensured that bank regulators consider a banks CRA rating and receive public input about a banks local lending and investing record when banks seek to grow larger – merge/acquire or expand their operations. Since 2016, banks have negotiated $86 billion in community benefit agreements (CBAs) with local stakeholders because of CRA and its community input provisions during mergers/acquisitions –resulting in banks providing more mortgages, small business and community development loans and investments in LMI communities around the country.

9. Muting the community's voice in how banks are serving local communities

OCC's plan and the industry's ideas go beyond just making it harder for communities to have impact during bank merger/acquisition deals, reducing CRA to a simple but more rigid mathematical formula is not "…consistent with the fundamental underpinning of the CRA regulations- that the differences in institutions and the communities in which they do business preclude rigid rules."[20] Today's CRA evaluations of a lender's local record include procedures for examiners to review community comments about a bank and to interview local grassroots community groups, community-based development or financial intermediaries and government leaders to gather information about a community, its economic base and community development initiatives. Local community contacts help the examiner develop a community profile; determine opportunities for participation by banks in helping to meet local credit needs; help examiners understand the performance of banks in helping to meet local credit needs; provide a context on the community to assist in the evaluation of an institution's CRA performance. CRA is unique in that it puts decision-making about the community's needs and priorities in the hands of local stakeholders: financial institutions that lend and invest, community organizations that deliver services and develop real estate, and state and local governments that direct incentives and subsidies.

10. Expanding CRA Qualifying Activities – another recipe for more CRA grade inflation

As part of the OCC's "transformational approach" which suggests that CRA qualifying activities could be expanded to a range of activities that may or may not be targeted to LMI borrowers and underserved communities, the OCC's asks a series of CRA diluting questions: if "…projects, programs, or organizations with a mission, purpose, or intent of community or economic development…" should be "presumed" to receive CRA credit.[21] While today only those activities targeted to LMI individuals and communities received CRA credit, the OCC asks whether community development activities that "…benefit specified underserved populations or areas...." should be the only ones that receive credit.[22] While today, CRA credit is largely focused on smaller loans and/or smaller or more underserved businesses, the OCC asks whether CRA credit should be extended to "all loans to businesses that meet the Small Business Administration standards for small businesses". The OCC's questions imply a dilution of CRA in ways that will stray from its history, its purpose and weaken and not strengthen access to credit and better financial services for LMI and minority borrowers and underserved communities.

1 NCRC Forecast: Weakening the Community Reinvestment Act would reduce lending by hundreds of billions of dollars (2018)

2 OCC PPM 5000-43

3 OCC PPM 6300-2

4 OCC Bulletin 2018-17

5 OCC's ANPR, Question 21.

6 CRA Modernization, ABA (December 2017).

7 12 U.S.C. 2901(a)(1)

8 OCC's ANPR, P. 14

9 NCRC CRA Grade Inflation Infographic

10 Intermediate Small Institution CRA Examination Procedures and A Banker's Quick Reference Guide to CRA and Large Institution CRA Examination Procedures

11 OCC's ANPR, p. 10

12 ICBA letter to regulators dated May 14, 2015

13 Intermediate Small Banks: The Forgotten but Significant Resource for Affordable Housing and Community Development, NCRC (2017).

14 The 2015 National Survey of Unbanked and Underbanked Households, FDIC

15 See note 12 and OCC's ANPR, Question 27.

16 Remarks of Lael Brainard (May 18, 2018) referencing the Community Advisory Council and Board of Governors and FDIC's Jelena McWilliams in the Wall Street Journal

17 Bank Branch Closures from 2008-2016: Unequal Impact in America's Heartland (2017)

18 Mnuchin's Fight With Activists Inspired Push to Revamp Low-Income Lending Rules, Wall Street Journal, 9/25/2018.

19 OCC PPM 6300-2

20 Community Contact Procedures in the CRA Examination Procedures, Comptrollers Handbook.

21 OCC's ANPR, Question 15.

22 OCC's ANPR, Question 17.

NCRC opposes adoption of a one ratio or single metric approach to CRA exams, adjusting bank asset thresholds solely for making exams easier for banks to pass, diluting attention to LMI borrowers and communities, 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 Mobiliy Act. NCRC supports the reintroduction of 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).[25]

Wide swaths of communities in the U.S. lack adequate small business lending.[26] And recent investigations and enforcement actions by the CFPB and the Department of Justice (DOJ) have exposed ongoing redlining. However, about 98 percent of banks examined by federal regulators receive a passing grade on their CRA exams.[27] 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 percent of banks failed their CRA exams.[28] During the

25 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

26 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.

27 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.

28 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.

first five years of the public availability of CRA ratings, more than five percent 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.[29] 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.

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:

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 LMI communities, 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 bank's have branches.
- Automatically include bank affiliates on CRA exams. Otherwise, significant amounts of lending is not scrutinized by CRA exams.
- 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 should be rescinded.[30]
- Improve public data around community development lending and investments in order to be provided 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.

29 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.

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

- Provide easier ways for local community stakeholders to provide input on bank performance in local communities;
- Maintain an emphasis on branches and collect 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 Mobiliy Act.** NCRC supports the reintroduction of 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.

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

Recent news reports document that a new round of federal bank regulators appointed by President Trump are speeding up their consideration of bank mergers, and giving less weight to community input in the merger process.[31] Input by community stakeholders is key to understanding how well financial institutions are serving their local communities. OCC Comptroller Joseph Otting has admitted that part of his CRA reform plan is to make it harder for community groups to "hold [bankers] hostage" when merger deals are being considered for approval.[32] Legislation passed by Congress last year 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.[33]

For over 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]

31 *Bank Mergers Get Faster Under Trump*, Wall Street Journal, February 13, 2019.

32 Mnuchin's Fight With Activists Inspired Push to Revamp Low-Income Lending Rules, Wall Street Journal, 9/25/2018.*kersBaners vs. Activists: Battle Lines Form Overw-Inc*

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

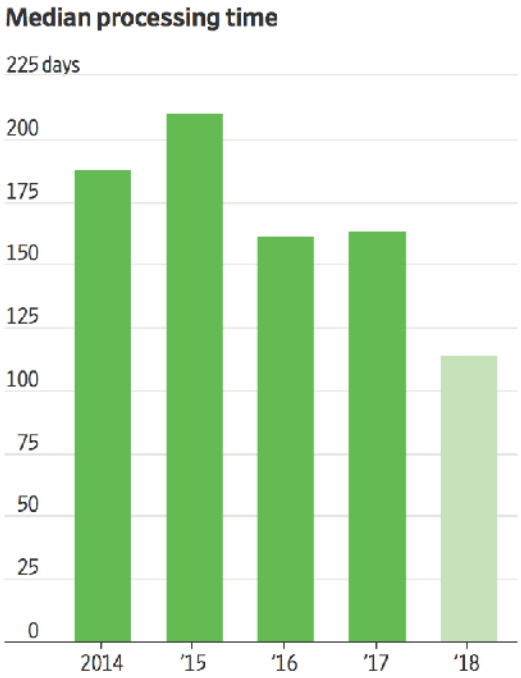
34 "In every case, the responsible agency shall take into consideration...the convenience and needs of the community to be served." (12 U.S.C. § 1283(c)(5)(B)); anti-competitive effects must be "clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience 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).

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 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.

Mergers and Approvals

The Federal Reserve has sped up the time it takes to review bank mergers opposed by community groups, common for large deals.



Note: 2018 data as of the first half of the year
Source: Federal Reserve

FIGURE 3: Source: Bank Mergers Get Faster Under Trump, Wall Street Journal, February 13, 2019.

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' claims of 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.
- **Co-Sponsor the American Housing and Economic Mobiliy Act.** NCRC supports the reintroduction of the *American Housing and Economic Mobility Act*, which was introduced as S. 3503 and H.R. 7262 in the 115th Congress. The bill would require merging banks to develop a community benefits agreement.

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 status in question. Key decisionmakers are signaling that 2019 might be the year that their conservatorship status changes. Both U.S. Treasury Secretary Steve Mnuchin and Acting Director of the Federal Housing Finance Agency (FHFA), Joseph Otting ,have signaled plans to end the Enterprises conservatorship, and President Trump's new nominee to head FHFA, Mark Calabria, has reaffirmed the Administration's commitment to end it[35]. In Congress, U.S. Senator Mike Crapo (R-ID), Chair of the Senate Banking Committee, outlined a proposal in February 2019 to overhaul Fannie Mae and Freddie Mae, including an end of their affordable housing goals and duty to serve requirements[36]. Chair Maxine Waters (D-CA) of 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.[37]

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 *Fannie Mae and Freddie Mac regulator discussing plan to end conservatorship*, MarketWatch, January 19, 2019. *Mark Calabria: Trump administration "committed" to ending conservatorship,* Housing Wire, November 1, 2017.

36 *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

37 Waters Outlines Agenda in First Policy Speech as Committee Chairwoman at: 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.[38] 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.[39] 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 Enteprises failing to purchase enough loans to meet some of the their housing goals in the last few years[40], 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 targets[41].

The Enteprises 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.[42] Both Enterprises both 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, Mark Calabria, President Trump's new nominee for Director of FHFA has called for ending the affordable housing goals, and other steps that could limit access to affordable mortgage credit for LMI families.[43] 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.[44] And, despite the passage of HERA and other policy measures, many believe the Enteprises should be overhauled, their mission changed and their role in the financial marketplace shrunken.

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38 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.

39 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/.

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

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

42 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.

43 *If We Decide to Keep Fannie Mae Around…,* Cato Institute. https://www.cato.org/blog/we-decide-keep-fannie-mae-around

44 *Don't blame the affordable housing goals for the housing crisis,* NCRC, at: https://ncrc.org/dont-blame-affordable-housing-goals-financial-crisis/

Although the homeownership rate increased in 2017, or the first time in 13 years, rates among young adults are even lower than in 1988 and rates between black and white Americans is widening.[45] *The State of the Nation's Housing 2018* 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, widespread increases in student loan debt.

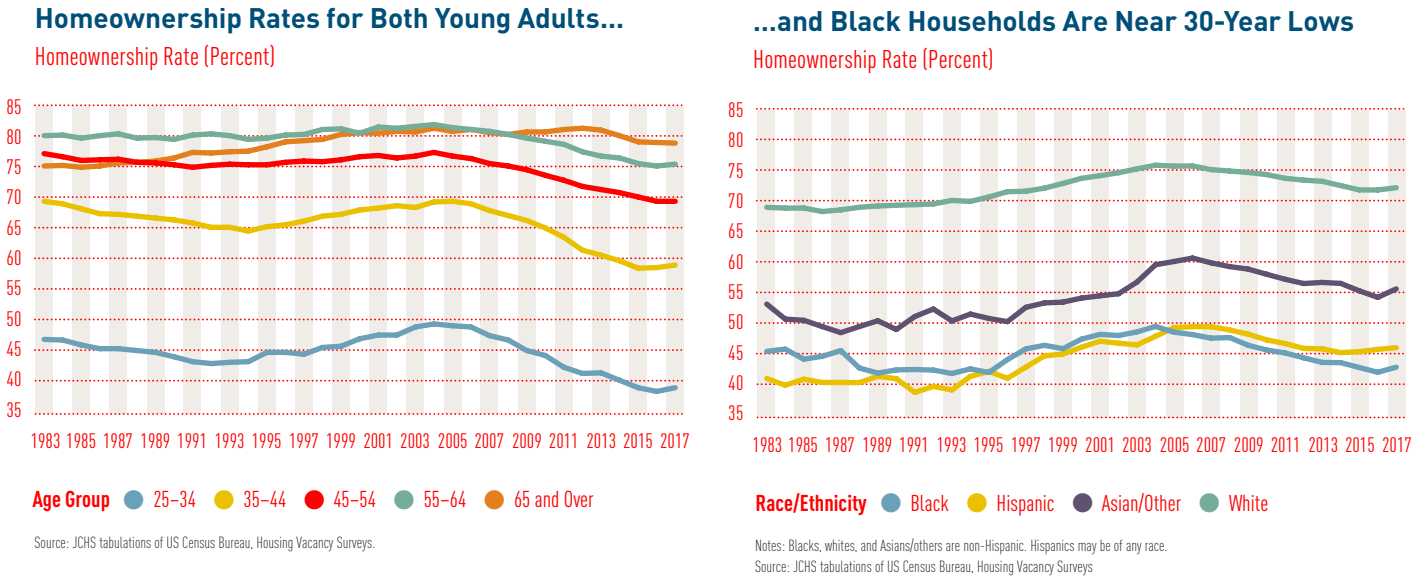

FIGURE 4 AND 5: Source: http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf

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 that encourage lenders in the primary market to better serve underserved segments of the market and to facilitate access to affordable housing. With a new Director assuming the helm at FHFA for a five-term term and other policy changes expected from the Administration, the role of the Enterprises and their affordable housing policies and commitment are expected to diminish moving forward. Already since the financial crisis, for example, the Enterprises pricing to guarantee credit risk and their mortgage purchases have been far more conservative. 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.[46]

45 *The State of the Nation's Housing 2018*. (Cambridge, MA: Joint Center for Housing Studies, Harvard University, 1988.) Retrieved from http://www.jchs.harvard.edu/state-nations-housing-2018.

46 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 market – 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 affordable housing mandates and numeric goals similar to those the Enterprises have today.

In a joint letter, NCRC joined other civil rights and affordable housing advocates in outlining a series principles for any reform legislation.[47] NCRC has also joined small lenders in outlining a set of principles for ending the Enterprises conservatorship responsibly.[48]

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, their policies to facilitate affordable housing supply, as well as improve marketing and outreach to African-American borrowers and other underserved segments that are suffering specific setbacks in access to affordable homeownership.

NCRC's Affordable Homeownership Coalition also expects 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.

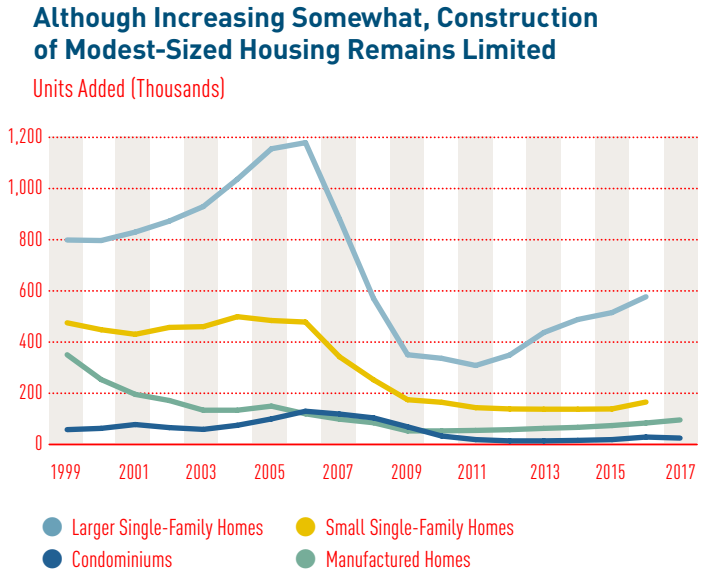

FIGURE 6: Source: http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf

47 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/

48 See reform principles of the *Main Street GSE Reform Coalition* at: https://ncrc.org/main_street_coalition_gse_reform_principles/

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

Since taking office, President Trump's budgets have proposed to save the federal government money by eliminating allocations to the National Housing Trust Fund (NHTF) and the Capital Magnet Fund (CMF)[49]. 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 affordable housing for extremely low income people and at promoting community development investments for underserved and distressed communities, consistent with safety and soundness.[50] The law requires Fannie Mae and Freddie Mac ("the Enterprises) to set aside 4.2 basis points 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 dollars were allocated to states, followed by $219 million in 2017 and $267 million in 2018.[51] In 2016, $9.5 million in CMF grants were awarded, followed by $120 million in 2017 and $143 million this year.[52]

In addition to the language in the President's budget, critics in Congress have attempted numerous times to block funding for the trust funds. Mark Calabria, the President's new nominee to head FHFA, has said that he will only suspend funding as required by the law. HERA, the law, only allows temporary funding cuts if the contributions to the trust funds would cause the Enterprises to be financially unstable, undercapitalized, or would prevent them from completing a capital restoration plan.[53] Whether any of those statutory conditions are met and suspension of funding to the trust funds 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

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49 *An American Budget, FY 2019.* Retrieved from https://www.whitehouse.gov/wp-content/uploads/2018/02/msar-fy2019.pdf (see p. 109)

50 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;

51 NLIHC testimony before the House Financial Services Committee at: https://nlihc.org/sites/default/files/HFSC_NLIHC_Testimony_12_21_2018.pdf

52 *U.S. Treasury Announces $142.9 Million in Awards for Affordable Housing Nationwide*, https://www.cdfifund.gov/programs-training/Programs/cmf/Pages/award-announcement-step.aspx

53 12 U.S.C. 4567(b)

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.

In addition NCRC would support proposals to provide a minimum of $3.5 billion to the NHTF annually; to expand the current 4.2 basis point assessment to a minimum of ten basis points, or to a higher level as necessary to address pressing affordable housing challenges that cannot be met by the Enterprises regular business; to ensure that dedicated housing funds do not compete with appropriated housing programs; and to expand the NHTF and CMF as part of a broader commitment to ensuring access and affordability throughout the housing market.

ISSUE: Prioritize the Affordable Housing Needs of Rural Americans

Nearly 74 million Americans[54], 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.[55] Texas, North Carolina, Ohio, California and Georgia have the largest rural populations, Vermont, Wyoming, Montana, Mississippi, and South Dakota have the highest percentage rural population. [56]

Federal programs from the U.S. Department of Agriculture's (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.[57] At least 40 percent of the funds appropriated each year must be used to assist families with incomes less than 50 percent of area median income (AMI).[58] 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.[59] The Section 515 Program has financed more than 550,000 decent, safe, sanitary and affordable homes, often the only such housing in rural

54 ¸U.S. Census Bureau.

55 Source:https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf

56 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

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

58 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

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

communities.[60] 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.[61]

The Federal Housing Administration (FHA) as well as the government-backed secondary mortgage market – Fannie Mae, Freddie Mac, Farmer Mac (the "GSEs" or government-sponsered enterprises) and Ginnie Mae - also play a critical role in supporting affordable homeownership and housing in rural communities. In all, in 2016, 35.2 percent of loans in rural areas were sold to the GSEs and 17.3 percent were loans guaranteed through Ginnie Mae (e.g. loans insured by FHA or the Rural Housing Service).[62]

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

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.

Who Can Act:

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

60 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.

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

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

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.

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 FHFA and the 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 principles for any housing finance reform legislation.[63] NCRC has also joined small lenders in outlining a set of principles for ending the conservatorship of Fannie Mae and Freddie Mac responsibly.[64]

NCRC's *Affordable Homeownership Coalition* also expects 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.

63 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/

64 See reform principles of the *Main Street GSE Reform Coalition* at: https://ncrc.org/main_street_coalition_gse_reform_principles/

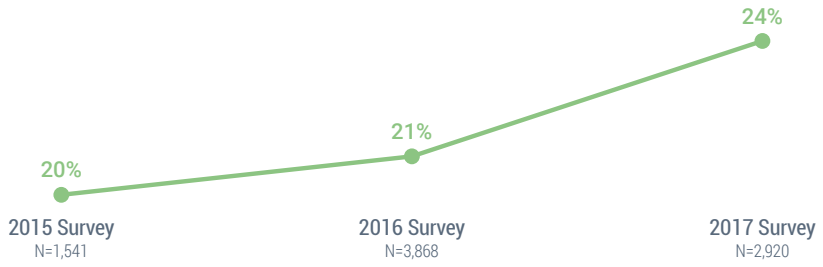
Invest Forward

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 percent from 2010, and in the first six months of 2015 the same firms extended $12.47 billion in credit nationwide.[65] Online lending has been growing as a credit source for small and microbusinesses (Figure 8 and 9).

The share of applicants who seek loans, lines of credit, or cash advances from online lenders has grown over time.

BORROWERS WHO APPLIED TO ONLINE LENDERS[3,6] (% of loan/line of credit and cash advance applicants)



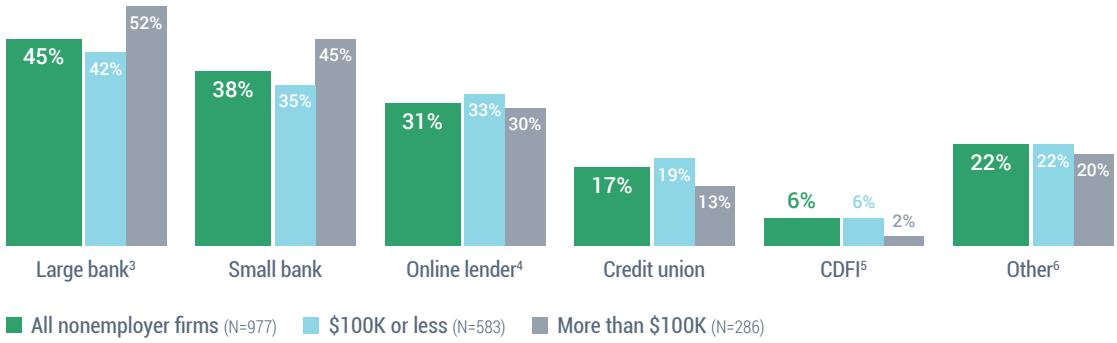
1 *Respondents could select multiple options.*
2 *Respondents were provided a list of large banks (those with at least $10B in total deposits) operating in their state.*
3 *'Online lenders' are defined as nonbank alternative and marketplace lenders, including Lending Club, OnDeck, CAN Capital, and PayPal Working Capital.*
4 *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.*
5 *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.*
6 *In order to make time series comparisons, the survey data have been re-weighted to maintain consistency over time. Therefore, the values and observation counts here may differ slightly from past reports and the appendix file for this report, which uses a different weighting scheme. Please see p. 31 for more detail.*

FIGURE 8: Source: Fed Small Business, Small Business Credit Survey (May 2018) https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2018/sbcs-employer-firms-report.pdf.

65 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.

Larger-revenue applicants were more likely to apply for loans or lines of credit at large banks and small banks compared to smaller-revenue applicants.

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



1 *Respondents could select multiple options.*
2 *Select response options shown in chart. See Appendix for more detail.*
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 alternative and marketplace lenders, including Lending Club, OnDeck, CAN Capital, and Paypal Working Capital.*
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 *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 9: Source: https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2018/sbcs-nonemployer-firms-report.pdf

In July 2018, the OCC began accepting applications for special purpose national bank charters from fintech companies engaged in the business of banking, but not taking deposits.[66] 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.

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 as well as the Financial Inclusion Plan (FIP) requirements originally proposed by the OCC in a draft supplement for a special purpose charter[67].

The Conference of State Bank Supervisors (CSBS) is challenging the OCC's authority to issue special purpose charters for fintechs in court, while their CSBS Fintech Advisory Panel has issued a list of recommendations for state regulators reforming their own state nonbank supervision.[68] Twenty-two state attorneys general have also objected to a proposal by the CFPB to issue "no action" letters and

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

67 *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

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

establish a so-called regulatory "sandboxes" for some fintech products and emerging technologies, that would exempt them from certain consumer protection laws and regulation.[69]

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.[70]

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

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 chartered as national banks so that they align more closely to the CRA obligations for banks, including those around seeking and considering public input from community stakeholders;
- limit federal preemption of stronger consumer protections in state law, including state interest rate caps[71];

69 States attorneys generals letter at: https://www.regulations.gov/document?D=CFPB-2018-0042-0031

70 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.

71 As an example, in 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

- 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 Public Funding & Facilitate Private Funding for HUD-Approved Housing Counseling Agencies to Support a Pathway to Homeownership and Disaster Recovery

Housing counselors not only prepare families for responsible and sustainable homeownership through pre-purchase, post-purchase, delinquency and reverse mortgage counseling, but they have played an increasingly active and effective role in local disaster preparedness, response, and recovery. HUD-approved housing counseling agencies have played key roles in the recovery from many natural disaster events, including Superstorm Sandy; Hurricanes Rita, Irma, and Maria; and the California wildfires.

Research consistently demonstrates that housing counseling works. Analysis by the Federal Reserve Bank of Philadelphia in 2014 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 mortgage.[72] 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.[73] It was also found that counseled borrowers who received modifications were better able to avoid repeated default than were comparable uncounseled borrowers.[74]

72 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.

73 https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Counseling-Works.pdf

74 ibid

Housing counselors help home buyers overcome various barriers to homeownership and to connect with and understand essential programs, such as down payment assistance. A recent study from the Urban Institute found that 53 percent of renters cite saving for a down payment as an obstacle to homeownership.[75] 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 percent. Fifteen percent believe lenders require a 20 percent down payment, and 30 percent believe lenders expect a 20 percent down payment.

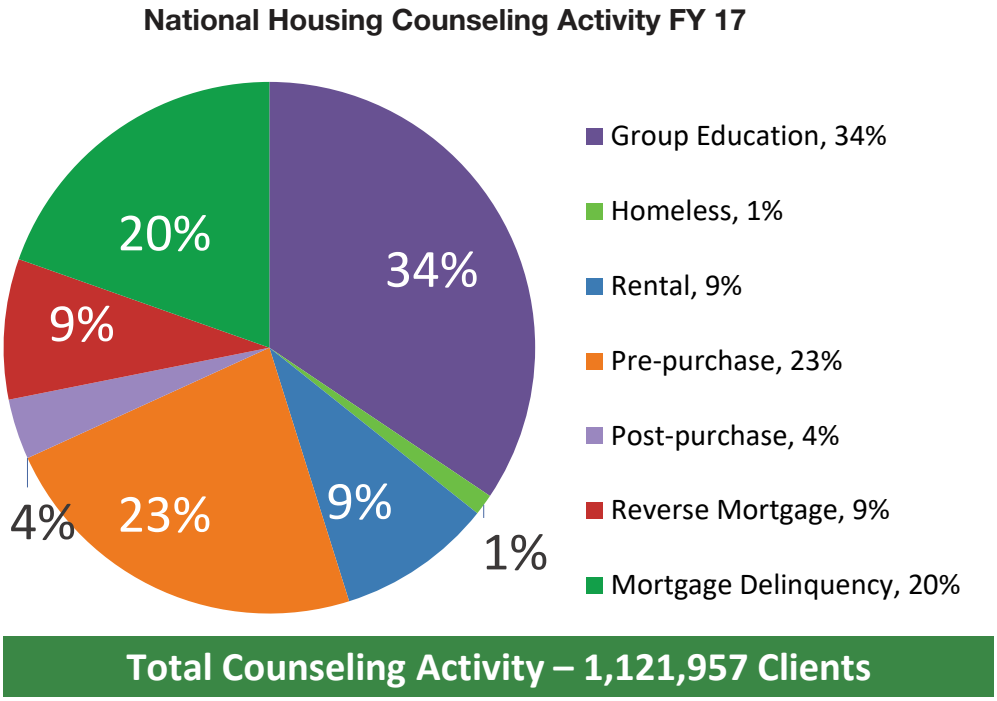


FIGURE 10: Source: https://www.hudexchange.info/onecpd/assets/File/HUDs-Housing-Counseling-Program-The-Importance-of-Research-and-Metrics.pdf

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[76]. 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
- Difficulty paying their mortgage or rent

75 *Barriers to Accessing Homeownership Down Payment, Credit, and Affordability* – 2018, Urban Institute, at: https://www.urban.org/research/publication/barriers-accessing-homeownership-down-payment-credit-and-affordability-2018

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

- 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

With historically low homeownership rates among minorities, there is a growing need for housing counselors to collaborate directly with financial institutions. Lenders have partnered with housing counseling agencies to help potential homeowners prepare their loan application documentation. Housing counseling agencies have also assisted mortgage servicers in reaching out to struggling homeowners to prepare documents for loan modifications or to help transition homeowners into a more affordable rental option.

Who Can Act:

- The U.S. Congress
- U.S. Department of Housing and Urban Development (HUD)
- CFPB
- FEMA

NCRC's Position:

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

The CFPB should clarify the Real Estate Settlement Procedures Act (RESPA) guidelines around fee-for-service payments by lenders to housing counseling agencies. Clarification would ensure financial institutions could more effectively partner with housing counseling agencies to:

- provide consistent referrals for potential homeowners to receive pre-purchase counseling;
- provide referrals for denied applicants to receive products and services from housing counseling agencies; and
- establish fee-for-service agreements with local housing counseling agencies to serve homeowners who are delinquent on their mortgages.

NCRC urges Congress, HUD and FEMA to take immediate steps to ensure that the lowest income households can fully benefit from federal disaster housing resources. Among other resources, disaster recovery resources should include funding for:

- Community Development Block Grant - Disaster Recovery (CDBG-DR) grants that maintain current income targets and affordability restrictions;
- Disaster Housing Assistance Program (DHAP) to assist the lowest income renters with their medium- to longer-term housing needs;
- Community Development Financial Institutions (CDFI) Program Financial Assistance (FA), with a preference for CDFIs that have a track record working in the impacted communities; and
- USDA housing and rural development programs, consistent with disaster relief provided in 2009 after Hurricanes Rita and Katrina, with direction to improve efficiency.[77]

Due to the growing need for disaster recovery NCRC recommends disaster funding be made available year round.

ISSUE: Adopt Policies That Reduce Student Debt & Mitigate It as a Barrier to Homeownership

One of the major obstacles in obtaining a home mortgage for many first-time home buyers is crippling debt incurred from obtaining a college education. A recent survey found that 71 percent of non-homeowners cite repaying student loans as a factor stymieing their ability to purchase a home, and slightly over half of all borrowers say they expect to be delayed from buying by more than five years.[78] In a separate survey from NAR and SALT, 83% of non-homeowner Millennials with student debt say it delays homeownership.[79]

In 2018, the St. Louis Federal Reserve found that the level of U.S. student debt reached a new record with borrowers owing more that $1.5 trillion dollars.[80] Forty-two percent of those who attended college and 30 percent of all adults living in America have incurred education debt.[81]

77 U.S Housing and Urban Development (HUD) Housing Policy Recommendations, NLIHC, at: https://nlihc.org/sites/default/files/HUD-Disaster-Recovery-Recommendations.pdf

78 A survey by the National Association of Realtors (NAR) and SALT, a consumer literacy program provided by American Student Assistance, at: https://www.nar.realtor/newsroom/71-percent-believe-student-debt-delays-homeownership

79 https://www.nar.realtor/sites/default/files/documents/2017-student-loan-debt-and-housing-09-26-2017.pdf

80 https://fred.stlouisfed.org/series/SLOAS

81 https://www.federalreserve.gov/publications/2018-economic-well-being-of-us-households-in-2017-student-loans.htm

The average American will typically owe between $20,000 and $25,000 with a monthly payment between $200 and $300 monthly.[82]

Federal programs and federal investments in higher education have historically played a significant role in limiting student debt and making college education more accessible, particularly for low-income students. The Campus-Based Title IV Programs (the Federal Work-Study Program, the Federal Perkins Loan Program, and the Federal Supplemental Educational Opportunity Grant (FSEOG) Program), and the Federal TRIO programs, for example, have traditionally provided key funding and support services for low-income and first-generation students.

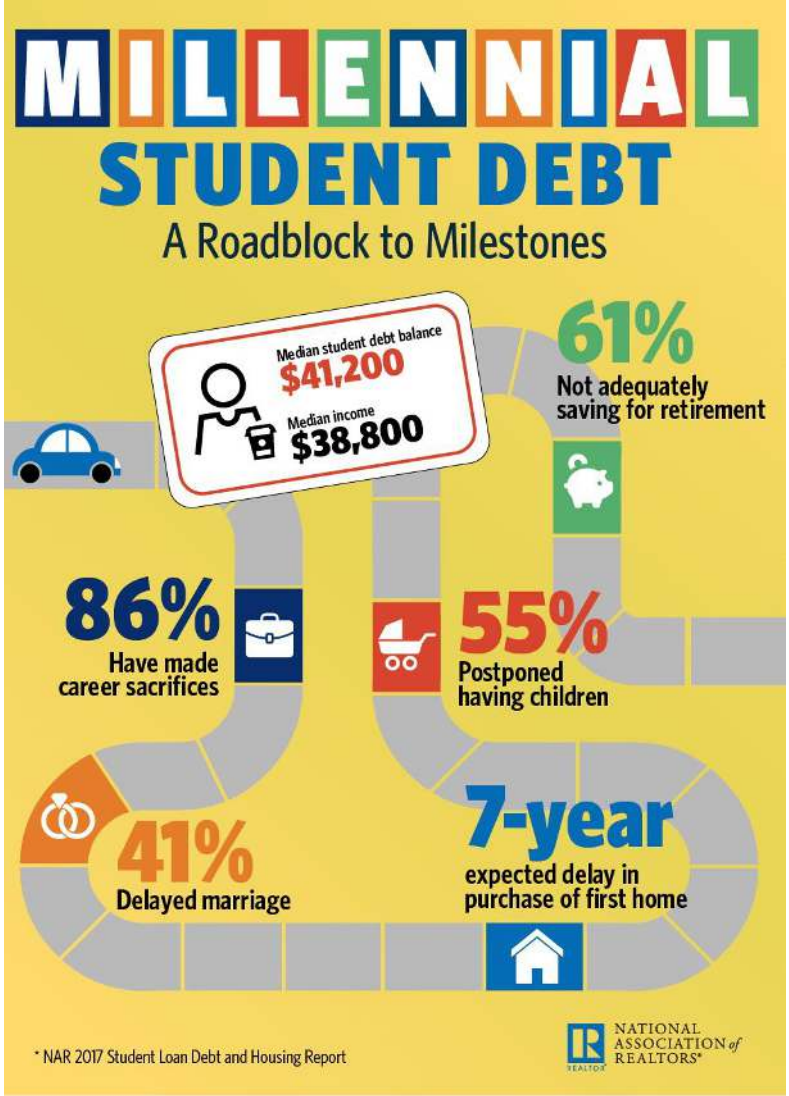


FIGURE 11: Source: https://www.nar.realtor/sites/default/files/2017-millennial-student-debt-infographic-09-18-2017-950w-1310h_0.png

One of the ways Americans manage student debt is through income-driven repayment (IDR) plans, which are managed by the U.S. Department of Education.[83] These programs, which are designed to make student loan debt more manageable by reducing monthly payments, have seen an increase over the past few years. A recent report from the Department of Education found loans being repaid through IDR plans have increased 625 percent from the 2011 to 2015.[84] While Fannie Mae and Freddie Mac have adopted changes, the Federal Housing Administration (FHA) does not acknowledge the discounted payment under an IDR, which can negatively affect a borrower's debt-to-income ratio[85].

82 ibid

83 https://studentloans.gov/myDirectLoan/ibrInstructions.action

84 https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf

85 *Home Loan Criteria Out of Sync with Today's Student Debt Reality,* The Century Foundation, July 11, 2018, at: https://tcf.org/content/commentary/home-loan-criteria-out-of-sync-with-todays-student-debt-reality/?agreed=1

Who Can Act:

- U.S. Congress
- U.S. Department of Education
- Federal Housing Administration

NCRC's Position:

NCRC supports the reintroduction of the *Aim Higher Act*, which includes several proposals to lower the cost of college and student debt levels, including:

- Improves Pell Grants, which serve as the bedrock college access program for low-income students;
- provides students with better up-front and ongoing information about college financing through annual loan counseling;
- eliminates loan origination fees;
- strengthens long standing access programs such as TRIO & GEAR UP;
- simplifies the repayment process;
- restores the Perkins Loan Program as a source of federal student aid for undergraduates and graduates by reserving a portion of direct loan volume to be distributed to institutions.

FHA debt-to income calculations should reflect actual payments made under an IDR plan.

ISSUE: Encourage Responsible Investment in Opportunity Zones & Robust Data Collection, Including on Outcomes

Created by the Tax Cuts and Jobs Act of 2017, Opportunity Zones are a new tax incentive to encourage private investors with unrealized capital gains to make long-term investments in low-income urban and rural communities nationwide. The U.S. Treasury has designated over 8,700 census tracts across the country as Opportunity Zones, out of over 42,000 tracts that were eligible[86]. The U.S Department of Treasury and the IRS are in the process of implementing rules around how the program will work, including information-reporting requirements; what kind of

86 See more on Opportunity Zones at the IRS website at: https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions; and an Opportunity Zones map at https://eig.org/opportunityzones/resources

investments qualify; and, how much and how long investors have to invest in order to defer or reduce taxes on capital gains.[87] President Trump has also appointed a White House Revitalization and Opportunity Council composed of various government officials.[88]

Governors in each state nominated generally low-income census tracts as Opportunity Zones, though a small number were designated because they were next to low-income communities. With the exception of a few "sin" businesses, the activities and projects that can be financed in Opportunity Zones are broad. Funds set up to invest in Opportunity Zones can finance commercial and industrial real estate, housing, infrastructure, and current or start-up businesses. For real estate projects to qualify for financing, the investment must result in the properties being "substantially improved."

There have been widespread discussions about whether the Opportunity Zone designation will trigger responsible community development or widespread gentrification[89]. An early analysis of the Opportunity Zones designated have found less than 4 percent of zones have recently experienced high levels of socioeconomic change, a proxy for gentrification and displacement risk.[90] However, another analysis found that in some states socioeconomic change was more prevalent, such as New York where 13 percent of Opportunity Zones have already experienced high levels of socioeconomic change, with Delaware, Connecticut, and Maryland being next highest at 8, 7, and 6 percent.[91] And, in some cities a much higher share of census tracts have undergone high levels of socioeconomic change – Seattle at 40 percent; Oakland at 37 percent; Washington, DC at 32 percent and New York City at 21 percent.[92]

87 See the IRS, at: https://www.irs.gov/newsroom/treasury-irs-issue-proposed-regulations-on-new-opportunity-zone-tax-incentive

88 https://www.whitehouse.gov/presidential-actions/executive-order-establishing-white-house-opportunity-revitalization-council/

89 "'*Opportunity Zones' Offer Tax Breaks and, Maybe, Help for Communities"*, New York Times, February 19, 2019. Similar discussion were raised around the New York City neighborhood originally selected for the Amazon headquarters which was an opportunity zone.

90 Opportunity Zones: The Map Comes into Focus at: https://eig.org/news/opportunity-zones-map-comes-focus

91 *Did States Maximize their Opportunity Zone Selections?,* Urban Institute, July 2018 at:

92 Ibid.

Tract Characteristics by Opportunity Zone Designation Status

Characteristics	Designated	Eligible, nondesignated	All tracts
Economic (average or average %)			
Median household income	$33,345	$44,446	$58,810
Poverty rate	31.75%	21.12%	16.61%
Unemployment rate	13.14%	9.26%	8.12%
Housing (average or average %)			
Median home value	$145,187	$170,919	$232,818
Median rent/month	$768	$885	$1,023
Homeownership	44.62%	56.65%	62.99%
Severe rent burden	26.46%	24.32%	22.31%
Vacancy rate	15.83%	13.67%	11.97%
Demographic (average %)			
White alone	39.57%	55.37%	61.72%
Black alone	24.04%	17.25%	13.29%
Hispanic	29.93%	20.01%	17.04%
Asian Americans and Pacific Islanders alone	2.92%	4.04%	4.80%
Younger than 18	23.60%	22.78%	22.41%
Older than 64	13.61%	14.53%	15.22%
Education (average %)			
Age 25+ with high school degree or less	54.81%	49.59%	42.03%
Age 25+ with bachelor's degree or higher	17.61%	21.06%	29.00%
Geography (%)			
In a metropolitan area	78.15%	78.63%	83.44%
In a micropolitan area	11.40%	11.19%	9.19%
Non–core-based statistical area	10.46%	10.18%	7.37%

Source: Community Development Financial Institution Fund and Urban Institute analysis of 2012–16 US Census Bureau American Community Survey.

Notes: This table includes all 50 states, the District of Columbia, and Puerto Rico. It does not include American Samoa, Guam, the Northern Mariana Islands, or the Virgin Islands because of data limitations. All differences between "designated" and "eligible, nondesignated" are significant at the 1 percent level except for geographic characteristics. Census tracts in non–core-based statistical areas are not in metropolitan or micropolitan areas.

FIGURE 12: Source: https://www.urban.org/sites/default/files/publication/98445/did_states_maximize_their_opportunity_zone_selections_7.pdf

Who can Act:

- Department of Treasury
- Internal Revenue Service
- U.S. Congress

NCRC Position:

NCRC urges robust data collection, reporting and public disclosure around Opportunity Zones investments and outcomes annually and at the census tract level. We also support additional public benefit standards for Opportunity Zone investments to ensure that residents of and businesses located in Opportunity Zones benefit and that Opportunity Zone Fund have policies in place around displacement and affordable housing.

Regulators should ensuring that the proposed substantial improvement test would prevent predatory land banking, where investors could gain a profit by simply buying and holding a piece of valuable land.[93]

The White House Opportunity and Revitalization Council must formalize a community advisory council or arm to receive regular and on-going input from community stakeholders with diverse perspectives and expertise on the community development needs of low- and moderate-income and traditionally underserved communities.

Bank investments in Opportunity Zones must not automatically qualify for credit under the Community Reinvestment Act.

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

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 (AFFH) rule and the 2013 Disparate Impact rule. Both rules interpret key provisions of the 1968 Fair Housing Act aimed at ending housing discrimination.

The AFFH rule implements two of the primary goals of the law: to end housing discrimination and promote diverse, inclusive communities; and, to affirmatively further fair housing – to actively dismantle segregation and foster integration in its place. Until 2015, the second goal, which is less well-known, had been largely forgotten, neglected and unenforced for decades. In 2015, 47 years after the passage of the Fair Housing Act, HUD spelled out exactly what compliance with this Fair Housing Act's mandate would look like.[94]

Among other provisions, the 2015 rule replaced the old Analysis of Impediments (AI) process, largely deemed ineffective,[95] 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 basic resources such as clean water, fresh food, reliable and safe transportation systems, functional education system 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.

HUD's seeks to reconsider every aspect of the 2015 rule the use of data, reporting required by the rule the extent of community participation in the fair housing planning process, and more.

Disparate Impact: In 2013, HUD also 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 impact 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,

94 "AFFH Fact Sheet: The Duty to Affirmatively Furthering Fair Housing" https://www.huduser.gov/portal/sites/default/files/pdf/AFFH-Fact-Sheet.pdf

95 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 Plans*. (2010, October 14). Retrieved from: https://www.gao.gov/products/GAO-10-905

96 Department of Housing and Urban Development, *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.

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].

The CFPB has also announced in May 2018 that it is reexamining its application of disparate impact to credit transactions and that as part of the agency's "future planning" it may consider implementing a rule.[98] Under former CFPB Director Richard Cordray, the agency recognized the disparate impact doctrine and the Director 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.[99]

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 he reinstate the Local Government Assessment Tool that assists local jurisdictions in complying with the rule.

NCRC urges HUD to uphold a strong Disparate Impact 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 reintroduction of the *Consumer First Act*. Among other important provisions, the bill would restore the Bureau's Office of Fair Lending and Equal Opportunity of its supervisory and enforcement powers.

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

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 CFPB blog on the agency's Fall 2018 rulemaking agenda, at: https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/

99 Cordray, R. (2012, April 18). Prepared Remarks by Richard Cordray at the National Community Reinvestment Coalition. Retrieved from https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-by-richard-cordray/

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

When the Consumer Financial Protection Bureau (CFPB) released its Fall rulemaking agenda in October 2017, the agency had removed Section 1071 from pre-rule status back to long term action status – essentially de-prioritizing agency action on and the immediacy of a final rule.[100] Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses (WBEs, MBEs and SBEs). 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.

In Summer 2015, NCRC joined with dozens of national and community-based organizations to urge the CFPB to finalize a rule on Section 1071[101]. Over 80 Members of Congress and 19 U.S. Senators urged the agency move forward.[102] Starting in the Fall of 2015, the agency took several significant steps forward. Section 1071 was moved to pre-rule status and in May 2017, the agency issued a White Paper on the small business lending market, as well as a Request for Information (RFI) which received over 2,700 public comments[103].

SBEs, WBEs and MBEs drive economic and job growth. Small businesses accounted for approximately 60 percent of net new jobs created from mid-2009 through the third quarter of 2016.[104] 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 percent, compared to just a 9 percent increase among all businesses.[105] Nonetheless, the country continues to rebound from a 40-year decline in startup activity.[106]

100 https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/

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

102 *NCRC Applauds Letter From 84 Members of Congress Pressing CFPB on Small Business Lending Data* at: https://ncrc.org/ncrc-applauds-house-letter-pressing-cfpb-on-small-business-lending-data/

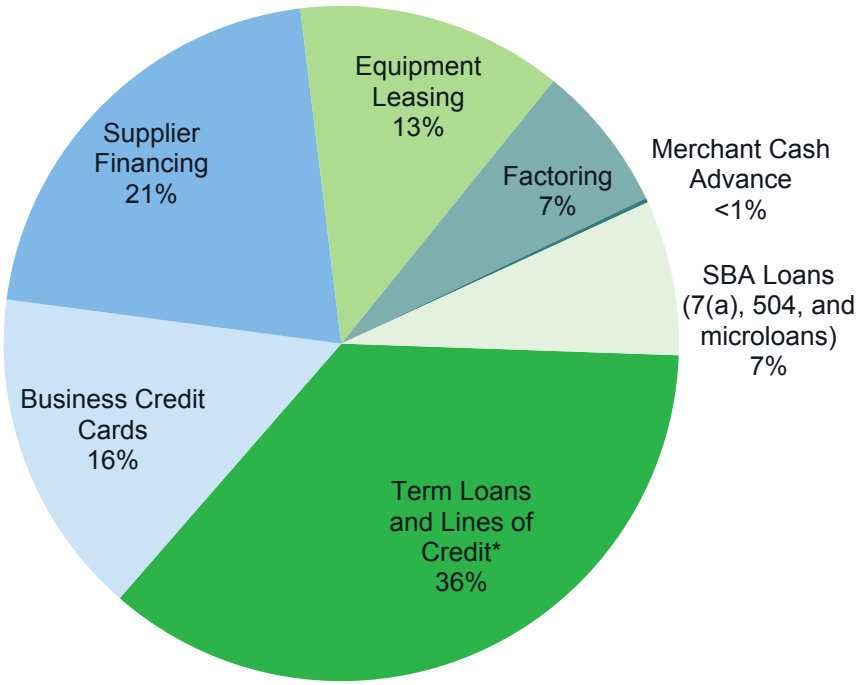
103 *Key dimensions of the small business lending landscape*, CFPB, at: https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf; and, NCRC's response to the the RFI is at : https://www.regulations.gov/document?D=CFPB-2017-0011-0532

104 SBA, *Frequently Asked Questions about Small Business* (August 2017). Retrieved from https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf.

105 *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.

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

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

Despite their significant role, there are significant gaps in the data around how SBEs, WBEs and MBEs access credit. The CFPB *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, or which ones, are being denied
- Information about loan terms and pricing for SBEs, WBEs, and MBEs
- Information from nonbanks and alternative lenders about products, with some gaining substantial market share, including online marketplace lenders, credit unions, supplier and equipment financing

The report found that the lack of data frustrates regulators' ability to address the significant racial and gender disparities in lending.

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. 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 use.

While better small business lending data would improve regulators ability to monitor fair lending,[107] implementation of Section 1071 would provide information on small business lending activity within communities throughout the nation. Public officials could also use the information available through Section 1071 to develop and allocate business and community development investments, and to respond to market failures when necessary.

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

107 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.

contracting and procurement goal with small businesses from 23 percent to 25 percent and actually adhere to that standard. For years, the government has failed to meet its goals of awarding a mere 23 percent 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

When the Consumer Financial Protection Bureau (CFPB) released its Fall rulemaking agenda in October 2018, it announced several plans related to the Home Mortgage Disclosure Act (HMDA), which requires lenders to collect, report and disclose key information about their mortgage lending.[108] First, the agency will re-open a 2015 HMDA rule implementing improvements made to the law by the post-crisis Dodd-Frank Act. The agency will also issue final guidance about what in the new Dodd-Frank data elements banks will have to disclose to the public. Finally, the agency will further implement a 2018 law that exempted the vast majority of the nation's banks from having to update their HMDA reporting.[109]

Even before the 2007-2009 financial crisis, the U.S. Government Accountability Office (GAO) concluded that the current data collected under the Home Mortgage Disclosure Act (HMDA) was insufficient to monitor 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 offering high-cost mortgage loans with abusive terms and conditions to vulnerable consumers.[110] Public officials 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.

108 https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/

109 The agency has already issued interpretative and procedural rule on the 2018 law. The rule clarified that banks and credit unions covered by a partial exemption under section 104 have the option of reporting exempt data variables as long as they accurately report the data. See *Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C)*, at: https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/partial-exemptions-from-requirements-of-home-mortgage-disclosure-act-under-regulation-c/¾ M⊠º@s⊠

110 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).

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.[111] 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 standard 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 percent of depository institutions that were currently reporting.[112]

In response, Congress passed S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act (ERGGCPA) in May of 2018, which raises the reporting thresholds to 500 closed-end loans or 500 open-end lines - a threshold estimated to exempt 85 percent of the nation's depositories from having to report the updated requirements (most lenders make fewer than 500 loans).[113] 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. [114]

***Making Better HMDA Data Public*:** HMDA covers a great majority of loans made in the country. In 2017, 6,762 financial institutions reported information about approximately 16.3 million mortgage applications, pre-approvals, and loans.[115] 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 will be reported for the first time in the spring of 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 the Dodd-Frank Act mandated the collection of credit score information. Creditworthiness information could be released at the census tract level, for example, but it is critical for fair lending

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

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

113 Ibid.

114 Based on 2013 data, the CFPB estimates that updated reporting would be lost for 10 percent of loan records under a 500 closed-end loan volume threshold, and over 5,300 census tracts would lose 20 percent of the updated data about mortgage lending in their communities. NCRC estimated the loss of post-crisis data about loan originations by state and found states with large rural areas face some of the largest losses of updated data about mortgage originations. Additional data would be lost about loan applications and why denials are occurring. This map tool estimates the local impact on loan originations data: http://maps.ncrc.org/s1310/index.html. S. 2155 would mean that communities would also know less about loan applications and denials.

115 Federal Financial Institutions Examination Council, *Home Mortgage Disclosure Act Background and Purpose.* (December 20, 2018). Retrieved from https://www.ffiec.gov/hmda/history.htm.

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 new Dodd-Frank data around multifamily lending, with less precise reporting on loan amounts and property values.

On HMDA and Data Privacy: The CFPB stated in its December policy guidance that:

> "Even though loan-level HMDA data has been made available to the public since 1991, the Bureau is unaware of any instances of re-identification of the data for harmful purposes."

The CFPB also noted that the HMDA data lacks personally identifiable information such as Social Security numbers, date of birth or personal passwords that facilitate criminal identification theft. While some privacy risk is possible with HMDA data, it is generally "low" and acceptable given the public benefits of disclosure in terms of the promotion of a fair lending marketplace, the CFPB concluded. [116]

Privacy risks are most seriously associated with companies like Equifax (143 million consumers had their identities exposed) and Facebook than with, HMDA, a 1975 disclosure law that is aimed at rooting out discrimination.

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 CFPB should not further dilute public reporting on the new HMDA data as it issues final guidance in 2019. 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.

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.

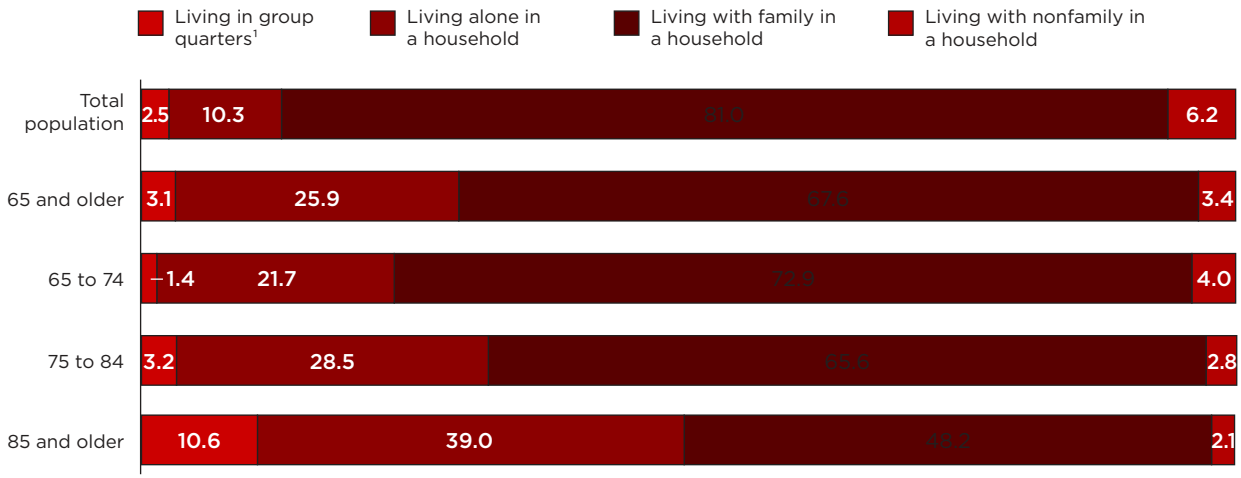
116 CFPB, Disclosure of Loan Level HMDA Data: Final Policy Guidance, p.12, see https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/HMDA_Disclosure_FPG_–_Final_12.21.2018_for_website_with_date.pdf

ISSUE: Adopt Age-Friendly Banking & Sound Reverse Mortgage Policy

With an expected 72 million older adults living in the United States by 2030,[117] the "Silver Tsunami" of American seniors will need age-sensitive financial products and services in order 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 percent of householders aged 65 to 74 and 75 to 84 owned their home, as compared to 69 percent of householders 85 and older.[118] And, home equity for homeowners 62 and older grew to $6.97 trillion in the third quarter of 2018.[119]

Living Arrangements by Age: 2016

(Percent distribution. Data based on sample. For information on confidentiality protection, sampling error, nonsampling error, and definitions, see *www.census.gov/acs*)



[1] Major types of group quarters are adult correctional facilities, juvenile facilities, nursing facilities/skilled nursing facilities, other health care facilities/residential schools for people with disabilities, college/university student housing, military quarters/military ships, and other noninstitutional facilities.
Note: The percentages for each group may not add to 100 due to rounding.
Source: U.S. Census Bureau, 2016 American Community Survey, 1-year estimates.

FIGURE 14: Source: https://www.census.gov/content/dam/Census/library/publications/2018/acs/ACS-38.pdf

Reverse Mortgage Policies: Although there has been a steep rise in reverse mortgage foreclosures, and particularly among widows and widowers (referred to as non-borrowing spouses) [120], these mortgages can be a resource. The Federal Housing Administration's (FHA) Home Equity Conversion Mortgages (HECM) otherwise known as "reverse mortgages" make it easier for older

117 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.

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

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

120 *New FOIA Response From HUD Reveals 646 Percent Increase In Foreclosures Against Seniors In 2016,* California Reinvestment Coalition (CRC), November 15, 2017 at: http://calreinvest.org/press-release/new-foia-response-from-hud-reveals-646-percent-increase-in-foreclosures-against-seniors-in-2016/; and, Federal Reverse Mortgage Program Results In Widows Losing Their Homes After Death Of Spouse

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

While FHA insurance helps protect lenders from credit concerns, there have been a surge in claims paid out on the HECM program. Starting in 2017, FHA implemented a set of changes to the program, including to insurance premiums and appraisal requirements, and more changes are likely.

On the End of LIBOR: Separately, in 2021, the HUD Secretary will have to replace the reference index used to set interest rates in the HECM program. The London Interbank Offered Rate (LIBOR), which has been used to index reverse mortgages that have an adjustable rate, is due to be phased-out and replaced in 2021. As a result, a large population of older Americans are at risk of having their payments recalculated when LIBOR is replaced.

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, *Staying at Home: The Role of Financial Services in Promoting Aging in Community,* NCRC defines six core Age-Friendly Banking principles to effectively serve the older adult population:[121]

- Make financial management affordable;
- Ensure older adults' access to critical income supports;
- Implement financial abuse protections and training;
- Facilitate aging in the community;
- Support aging services and advocacy; and
- Increase the accessibility of locations and services.

121 Karen Kali and Robert Zdenek, *Staying at Home: The Role of Financial Services in Promoting Aging in Community* (August 2016). Retrieved from https://www.frbsf.org/community-development/files/role-of-financial-services-in-promoting-aging-in-place.pdf.

Recommendations to HUD on non-borrowing spouses: NCRC supports recommendations included in a recent report on non-borrowing spouses and the HECM program[122]. 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[123].

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.

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

123 *Waters Introduces Legislation to Help Prevent Unfair Foreclosures on Seniors with HUD Reverse Mortgages,* at: https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400890

Invest Period

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

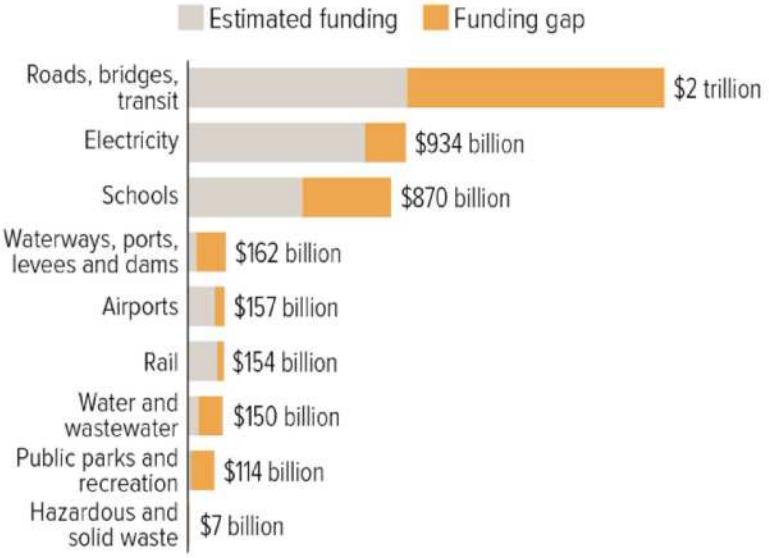
There is bipartisan agreement among Democrats and Republicans at the federal, state and local level that there must be a major commitment to improving the nation's infrastructure, but there is little agreement on how to pay for it. Once again this year, President Trump prioritized rebuilding the nation's crumbling infrastructure in his State of the Union address and he released the outlines of a plan last year seeking to leverage $200 billion in federal funds[124]. Democrats have outlined *A Better Deal* and the Senate Democrats infrastructure plan also includes $62 billion for housing, community revitalization, disaster recovery, and lead remediation.[125] From public housing to public schools, from roads, bridges and transit to waterways, the energy smart grid to airports and other public infrastructure, lawmakers must prioritize investments in the nation's infrastructure and the need is great (see Figure 15). Communities around the country need strong infrastructure to grow, thrive and prosper.

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

Without the support of federal rental assistance, no county in the United States has enough affordable housing for all its extremely low-income renters (those with incomes at or below or 30 percent of the area median income).[126] Between 1996 and 2015, the total number of available public housing units also decreased by

Public Infrastructure Has Been Neglected

Infrastructure needs, funded and unfunded, 2016-2025



Source: American Society of Civil Engineers 2017 Infrastructure Report Card and Failure to Act series, published 2011-2017

Figure 15: Source: https://www.cbpp.org/research/state-budget-and-tax/its-time-for-states-to-invest-in-infrastructure

124 President Trump's infrastructure plan at: https://www.whitehouse.gov/briefings-statements/building-stronger-america-president-donald-j-trumps-american-infrastructure-initiative/

125 The Senate Democrats plan at: https://www.democrats.senate.gov/imo/media/doc/Senate%20Democrats'%20Jobs%20and%20Infrastructure%20Plan.pdf

126 *The Housing Affordability Gap for Extremely Low-Income Renters in 2014,* Urban Institute, April 28, 2017 at https://www.urban.org/research/publication/housing-affordability-gap-extremely-low-income-renters-2014

15% from 1.3 million down to 1.1 million. A decrease in housing supply creates long waiting lists for both public housing and housing choice vouchers, which are often closed or have years-long wait times.[127]

In addition, entry-level housing still accounts for a small share of new single-family construction. Only 163,000 small single-family homes were completed in 2016, for example, or 22 percent of single-family construction— down significantly from the 33 percent share averaged in 1999–2007.[128]

The Shrinking Public Housing Stock (1996-2015)

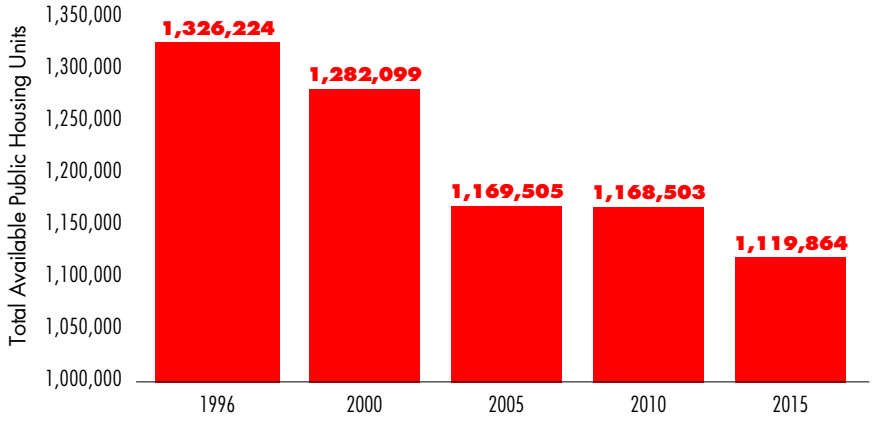


FIGURE 16: Source: A picture of Subsidized Housing (HUD) http://nlihc.org/sites/default/files/A-Place-To-Call-Home.pdf.

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 are built with community benefits agreements.

NCRC supports proposals outlined by the *Campaign for Housing and Community Development Funding*[129], 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.

127 https://nlihc.org/article/housing-spotlight-volume-6-issue-1

128 *The State of the Nation's Housing 20*18. JCHS, at: http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf

129 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.

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NCRC

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