October 2017

Unsubsidized affordable rental housing under CRA

Current policy: Unless the renters' low or moderate income (LMI) is verified, usually because of a government subsidy program requirement, CRA consideration for financing affordable rental housing depends on an Agency examiner's determination that LMI renters are likely to occupy the housing. Indeed, Q&A Section __12.(g) (1)-1 explicitly warns that affordable rents alone are insufficient to obtain favorable CRA consideration as affordable housing. Additional analysis of demographic, economic, and market data is required for each property financed. No guidance is offered regarding what data are relevant or how they should be analyzed and interpreted.

Reason for Change: While likely LMI benefit is a valid policy concern, the current policy is unworkable. Over 80% of the nation's 32.8 million rental units affordable to LMI renters are not publicly subsidized and have no restriction on tenant incomes.[1] It is essential that CRA policy positively considers financing for this unsubsidized affordable housing. Lenders need to know how an activity will be treated under CRA when they make financing decisions, but an examiner's determination is only made years later and without clear and consistent standards. Moreover, lenders for unsubsidized housing generally do not collect tenant income data and conducting a demographic, economic, and market analysis for each loan or investment is burdensome for banks and examiners alike. As a result, the current guidance offers little or no encouragement of bank financing for much of the unsubsidized rental housing stock that is both affordable and actually serves LMI households. The policy is particularly unsupportive of fair housing efforts in middle-income "opportunity areas" because examiners are less likely to qualify unsubsidized affordable rental housing outside LMI census tracts.

Proposal: <u>Rental housing not subject to tenant income restrictions should receive favorable consideration as affordable housing if most of the property's rents are affordable when the financing is committed and the property meets *one* of the following three additional standards:</u>

1. <u>The property is located in a LMI neighborhood (i.e., census tract)</u>.
    - It is long-standing CRA policy to recognize activities located in LMI census tracts. Examiners usually recognize unsubsidized affordable housing located there.

[1] HUD, *Worst Case Housing Needs: 2017 Report to Congress,* Table A-12) shows 32.8 million rental units are affordable to renters earning 80% of the area median income. About 6.0 million affordable rental units are subject to federal income restrictions, including 3.0 million HUD assisted units (Source: U.S Department of Housing and Urban Development, FY 2016 Annual Performance Report https://portal.hud.gov/hudportal/documents/huddoc?id=FY_2016_APR.pdf , p. 44); and 3.0 million LIHTC units (Source: U.S Department of Housing and Urban Development, Low-Income Housing Tax Credit Database http://www.huduser.gov/portal/datasets/lihtc.html). The 6.0 million estimate does not account for double-counting of properties that are both LIHTC- and HUD-assisted. As such, it over-estimates the total number of subsidized units and under-estimates the number of unsubsidized units.

2. Most renters in the neighborhood are LMI *and* most rents in the neighborhood are affordable.
   - The income of renters already living in the neighborhood is a better indicator of the likely tenants of a property than the income of all neighborhood residents, many or most of whom are home owners. The median renter has about one-half the income of the median homeowner[2], so it is understandable that there are twice as many LMI-*renter* census tracts as LMI *family or household* census tracts, as the attached table shows for the 50 largest MSAs/MDs. Applying a median renter income standard would qualify affordable housing in many middle-income "opportunity areas", while adhering to the principle of likely LMI occupancy.
   - If most neighborhood rents are affordable, a property owner will be unlikely to charge higher rents because the market will not support it.
   - These criteria are readily determinable when financing is committed, using broadly available data from the U.S. Census Bureau's American Community Survey, which is updated annually. The only data required are: the median rent and the median renter income for the census tract and the area median income (AMI).
   - As the attached table shows, most renters are LMI and most rents are affordable in 58% of all census tracts in the 50 largest metropolitan areas (MSAs) and metropolitan divisions (MDs), far more than the one-third of census tracts where the median family or household income is LMI. There is, appropriately, considerable variation among MSAs/MDs, reflecting differences in AMIs and rent levels. In markets where rents are generally low relative to the AMI, more tracts would qualify (e.g., 79% in Indianapolis and 77% in Cincinnati). Where rents are generally high relative to the AMI, fewer tracts would qualify (e.g., 41% in San Francisco and 43% in New York). Appropriately, gentrifying neighborhoods would generally not meet this standard because rents there are not affordable to LMI households. This sensitivity to local conditions validates the policy approach.

3. The owner agrees to maintain affordability to LMI renters for the life of the financing.
   - This alternative would accommodate affordable housing opportunities in neighborhoods where most rents are *not* affordable. Although most property owners in these neighborhoods would be unwilling to commit to ongoing affordability, nonprofit owners would be willing to do so, as might some other owners.

Determination of rent and affordability. In all cases, the rent would have to be affordable to LMI households for a majority of the units in the property, as determined when the financing is committed and based on a 30%-of-income affordability standard. Other federal policy makers have adopted an affordability metric based on the initial rent relative to the local AMI. The

[2] The 2015 median income was $37,900 for renters and $70,800 for home owners. Harvard Joint Center for Housing Studies, *State of the Nation's Housing 2017*, p. 26.
http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_state_of_the_nations_housing_2017.pdf

Federal Housing Finance Agency, in setting affordable rental housing goals for Fannie Mae and Freddie Mac, determines affordability based solely on initial rents, not incomes, "[b]ecause lenders generally do not collect income information on tenants."[3] Banks and other lenders do routinely require a rent roll or pro-forma rent roll as a basis for underwriting. Property owners do not under-estimate rents (and thereby over-estimate affordability) because that would reduce the financing they can obtain. The 30%-of-income affordability metric is the standard for federal housing policies, including Low Income Housing Tax Credits, Section 8 project-based rental assistance, Housing Choice Vouchers, and the HOME Investment Partnerships program.

Optional use of HUD income data. Banks should have the option to either FFIEC area income data or HUD area income data for purposes of qualifying unsubsidized affordable rental housing. The HUD income data are used for federally subsidized affordable housing. They vary in certain respects from the FFIEC data. First, HUD data are adjusted based on the number of persons in a household. Since the size of an occupying household is not easily verifiable and can change over time, we recommend assuming a three- or four-person household as a convention. Second, an area's income limit may not exceed the U.S. median family income level ($68,000 for FY 2017) except when justified by high housing costs. Third, an area's income limit is adjusted due to high housing costs if 85% of the area's annual two-bedroom HUD Fair Market Rent is greater than 35% of the US median income. CRA Q&A guidance §__.12(g)—3 already allows adjustments for high-cost areas but offers no clear method for making such adjustments. Allowing banks the option to use HUD area income data would provide a clear and simple way to operationalize the existing policy.

Rebuttable presumption. Meeting the proposed affordability standard would establish a rebuttable presumption of likely LMI occupancy, thereby qualifying the property as affordable housing. However, an examiner could disallow consideration in rare cases where the property is maintained in substandard condition or it is upgraded such that rents are no longer affordable.

---

[3] 2015–2017 Enterprise Housing Goals; Final Rule, *Federal Register*, Vol. 80, No. 171, September 3, 2015, p. 53423.

50 Largest MSAs/MDs: Share of Census Tracts with LMI Renters and Affordability

		Share of Census Tracts in MSA/MD where:			
		Median Renter Household is LMI and Median Rent is Affordable to LMI Households	Median Renter Household is LMI	(For Reference) Median Household is LMI	(For Reference) Median Family is LMI
ANAHEIM-SANTA ANA-IRVINE	CA	44%	59%	28%	32%
ATLANTA-SANDY SPRINGS-ROSWELL	GA	65%	74%	33%	35%
AUSTIN-ROUND ROCK	TX	64%	69%	30%	35%
BALTIMORE-COLUMBIA-TOWSON	MD	65%	71%	34%	37%
BOSTON	MA	59%	72%	30%	33%
CAMBRIDGE-NEWTON-FRAMINGHAM	MA	70%	78%	27%	29%
CHARLOTTE-CONCORD-GASTONIA	NC-SC	70%	74%	33%	34%
CHICAGO-NAPERVILLE-ARLINGTON HEIGHTS	IL	67%	76%	35%	37%
CINCINNATI	OH-KY-IN	77%	81%	36%	36%
CLEVELAND-ELYRIA	OH	71%	79%	36%	38%
COLUMBUS	OH	77%	79%	37%	39%
DALLAS-PLANO-IRVING	TX	59%	67%	36%	38%
DENVER-AURORA-LAKEWOOD	CO	61%	70%	33%	34%
DETROIT-DEARBORN-LIVONIA	MI	50%	76%	43%	47%
FORT LAUDERDALE-POMPANO BEACH-DEERFIELD BEACH	FL	29%	56%	31%	33%
FORT WORTH-ARLINGTON	TX	66%	72%	34%	35%
HOUSTON-THE WOODLANDS-SUGAR LAND	TX	64%	69%	39%	41%
INDIANAPOLIS-CARMEL-ANDERSON	IN	79%	82%	37%	40%
KANSAS CITY	MO-KS	74%	77%	36%	38%
LAS VEGAS-HENDERSON-PARADISE	NV	41%	53%	28%	29%
LOS ANGELES-LONG BEACH-GLENDALE	CA	43%	60%	35%	38%
MEMPHIS	TN-MS-AR	64%	72%	42%	44%
MIAMI-MIAMI BEACH-KENDALL	FL	21%	60%	32%	33%
MILWAUKEE-WAUKESHA-WEST ALLIS	WI	76%	79%	38%	38%
MINNEAPOLIS-ST. PAUL-BLOOMINGTON	MN-WI	77%	83%	29%	28%
MONTGOMERY COUNTY-BUCKS COUNTY-CHESTER COUNTY	PA	74%	80%	28%	26%
NASHVILLE-DAVIDSON--MURFREESBORO--FRANKLIN	TN	71%	75%	29%	30%
NASSAU COUNTY-SUFFOLK COUNTY	NY	64%	78%	17%	18%
NEWARK	NJ-PA	69%	77%	39%	39%
NEW YORK-JERSEY CITY-WHITE PLAINS	NY-NJ	43%	60%	33%	36%
OAKLAND-HAYWARD-BERKELEY	CA	55%	66%	34%	35%
ORLANDO-KISSIMMEE-SANFORD	FL	45%	66%	30%	29%
PHILADELPHIA	PA	43%	66%	36%	38%
PHOENIX-MESA-SCOTTSDALE	AZ	49%	61%	32%	34%
PITTSBURGH	PA	79%	82%	32%	33%
PORTLAND-VANCOUVER-HILLSBORO	OR-WA	74%	79%	24%	27%
PROVIDENCE-WARWICK	RI-MA	74%	82%	31%	34%
RICHMOND	VA	70%	73%	35%	35%
RIVERSIDE-SAN BERNARDINO-ONTARIO	CA	44%	63%	32%	34%
SACRAMENTO--ROSEVILLE--ARDEN-ARCADE	CA	55%	67%	29%	31%
ST. LOUIS	MO-IL	78%	82%	30%	31%
SAN ANTONIO-NEW BRAUNFELS	TX	60%	66%	36%	36%
SAN DIEGO-CARLSBAD	CA	42%	60%	30%	32%
SAN FRANCISCO-REDWOOD CITY-SOUTH SAN FRANCISCO	CA	41%	48%	25%	28%
SAN JOSE-SUNNYVALE-SANTA CLARA	CA	51%	61%	26%	33%
SEATTLE-BELLEVUE-EVERETT	WA	67%	72%	24%	25%
TAMPA-ST. PETERSBURG-CLEARWATER	FL	44%	63%	28%	31%
VIRGINIA BEACH-NORFOLK-NEWPORT NEWS	VA-NC	58%	64%	31%	32%
WARREN-TROY-FARMINGTON HILLS	MI	70%	76%	27%	26%
WASHINGTON-ARLINGTON-ALEXANDRIA	DC-VA-MD-WV	56%	64%	29%	34%
WEIGHTED AVERAGE, 50 MSAs/MDs		58%	69%	32%	34%