The “Community Reinvestment Act”

By Josh Silver, National Community Reinvestment Coalition

The “Community Reinvestment Act (CRA) of 1977” established continuing and affirmative responsibilities for banks to meet the credit needs of low- and moderate-income (LMI) neighborhoods in a manner consistent with safety and soundness. Congress has considered updating this critical law to strengthen CRA as applied to banks and expand CRA to non-bank financial institutions.

In the summer of 2020, the Office of the Comptroller of the Currency (OCC) finalized a new rule on CRA that would decrease lending, investments and services in low- and moderate-income (LMI) neighborhoods. In December of 2021, the OCC rescinded its harmful rule. In early 2022, it is anticipated that the OCC will join the two other federal bank regulatory agencies, the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (Board), in proposing an interagency rule to update the CRA regulations.

HISTORY AND PURPOSE

Congress passed CRA in 1977 at a time when many banks and other financial institutions would routinely “redline” low-income or minority communities, refusing to invest in them or to extend credit to their residents. Since its enactment, CRA has expanded access to banking services and increased the flow of private capital into LMI communities.

PROGRAM AND ADMINISTRATION SUMMARY

Three bank regulatory agencies ensure that banks comply with CRA: the Board, the OCC, and the FDIC. These three agencies are charged with evaluating the extent to which banks are meeting local credit needs. This takes the form of a periodic CRA examination of a bank, during which the bank is given a rating for its performance.

Under CRA, large banks with assets exceeding $1.322 billion are evaluated with three tests that measure performance in LMI communities (asset levels for the bank size categories are adjusted annually to take inflation into account):

- The lending test evaluates a bank’s record of meeting credit needs in its assessment area(s) through home mortgage, small business, and small farm lending, as well as financing community development projects such as the construction of rental units.
- The investment test evaluates the number and responsiveness of investments, including Low-Income Housing Tax Credits and equity investments in small businesses.
- The service test evaluates the availability of bank branches, basic banking services, and community development services in low- and moderate-income communities.

Banks with less than $1.322 billion in assets are evaluated primarily on lending and mid-sized banks (between $330 million and $1.322 billion in assets) also undergo an examination of their community development performance. Exams for smaller institutions below $250 million in assets occur every four to five years, depending on their previous performance. Banks with assets exceeding $250 million are examined once every two to three years.

CRA exams issue one of four ratings: outstanding, satisfactory, needs-to-improve, or substantial noncompliance. The last two ratings are considered failing ratings. In a particular assessment area, a bank can also receive a low or high satisfactory rating. Even a passing rating, such as satisfactory or low satisfactory, can motivate a bank to do better since ratings influence banks’ public relations and business strategies.

The federal agencies also consider banks’ CRA records when ruling on merger applications. A weak CRA record may be grounds for denying a merger application. Although denials are rare, federal agencies occasionally approve merger applications subject to specific conditions around improving CRA and fair lending performance.

RESULTS

Because it holds lenders publicly accountable and empowers citizens and communities to engage in the regulatory process, CRA is effective in increasing access to credit and capital for traditionally underserved communities. Since 1996, CRA-covered banks have made more than $2.5 trillion in small business and community development loans in LMI tracts. From 2009 through 2018, CRA-covered banks made more than $2.3 trillion on home loans to LMI borrowers or LMI tracts.

A HUD publication reviewed CRA's accomplishments over its 40-year history. Studies conclude that lending is higher in low- and moderate-income census tracts than in tracts with median incomes just above CRA-income thresholds. In addition, a report published by the Federal Reserve Bank of Philadelphia concluded that home purchase lending in LMI tracts would have declined by about 20% had CRA not existed. In addition, the Penn Institute for Urban Research also published a series of CRA research and policy papers, one of which found that CRA has prevented branch closures in LMI communities.

CRA has also inspired community benefits agreements. During merger applications, regulatory agencies and the public at large review the banks' past CRA records and future plans for providing a public benefit after the merger as required by law. These reviews have prompted banks to negotiate community benefit plans with community-based organizations. The plans specify future levels of loans, investments and services banks plan to make to communities of color and LMI neighborhoods.

Recently, NCRC and our members negotiated a community plan that committed PNC Bank to make $88 billion in reinvestment available over a four year time period. The plan included $47 billion in home purchase lending and $14.5 billion in community development lending and investment (CDLI) such as investments in housing tax credit programs, Opportunity Zone investments, economic empowerment and social justice initiatives, as well as loans and investments to Community Development Financial Institutions (CDFIs). Since 2016, the National Community Reinvestment Coalition (NCRC) has facilitated the creation of community benefit plans worth $384 billion with 16 banks.

RECENT REGULATORY AND LEGISLATIVE ACTIVITY

The OCC's final rule issued in June of 2020 would have fundamentally weakened CRA.

In its 2020 CRA regulation, the OCC implemented concepts that would reduce CRA-related lending and investing in future years. In particular, the agency proposed a "one ratio" measure that would consist of all CRA activity (the dollar amount of loans and investments) divided by bank deposits. Under the one ratio measure, banks could choose to forego certain activities such as low dollar mortgage lending to lower-income homebuyers in favor of large deals such as purchases of mortgage-backed securities that are not as responsive to immediate credit needs.

The OCC broadened the activities that would count under CRA. Financing large infrastructure such as bridges would count, which would divert bank attention away from affordable housing and community development in LMI neighborhoods.

To compound matters, rental housing would be considered affordable if LMI households can afford the rent without verifying that they would be the actual tenants. All these changes would again deviate from the purpose of the CRA legislation, which was focused on addressing the credit needs in lower-income communities that were redlined. Fortunately, the OCC rescinded its rule in December 2021.

The Board issued an Advance Notice of Proposed Rulemaking (ANPR) in fall 2020. The ANPR is not a proposed rule change but offered the Board's ideas for updating the CRA regulation. The Board's ANPR is a solid foundation from which to propose changes to CRA's regulations. The ANPR builds upon the existing CRA exam structure and improves the objectivity of performance measures. NCRC, our members, and allies offered thoughts to the Board regarding how to strengthen some of the Board's ideas for reform during a comment period that ended in February of 2021.

We now anticipate that the OCC, the Board and the FDIC will issue a proposed update to the CRA regulations in early 2022. The update will likely be based on the Board's ANPR.

On the legislative front, Senator Elizabeth Warren (D-MA) introduced the "American Housing and Economic Mobility Act of 2021." This ambitious bill strengthens CRA as applied to banks by updating assessment areas to include geographical areas in which banks make considerable numbers of loans and engage in other business activity but do not have branches. It would also mandate the inclusion of mortgage company affiliates on bank CRA exams. Finally, it would expand CRA to include independent mortgage companies.

TIPS FOR LOCAL SUCCESS

CRA is vital to promoting safe and sound lending and investing in communities. Community organizations are encouraged to comment on CRA exams and merger applications. The federal agencies post lists on their websites every quarter of upcoming CRA exams. Additionally, organizations should establish and expand upon dialogues with CRA officers at banks in their service areas to see how banks can increase their support of affordable housing. NCRC can help advocates get started with CRA dialogues in their community.

WHAT TO SAY TO LEGISLATORS

Legislative efforts to weaken CRA may arise at any time. Members should:

- Oppose bills that would weaken or repeal CRA.
- Support any proposed bills such as Senator Warren's that update and strengthen CRA.
- Ask Members of Congress to oppose regulatory efforts to weaken CRA and support those that would strengthen CRA.

WHAT TO SAY TO REGULATORS

We anticipate an interagency proposal to update the CRA regulations in early 2022. Community-based organizations are encouraged to comment on the interagency proposal.

An important means to preserving and strengthening CRA is to use it. Comment on CRA exams and merger applications. Engage with the regulatory agencies and insist that their CRA exams and merger reviews are rigorous.

Keep in touch with NCRC regarding opportunities to comment on any additional proposed changes to CRA regulation.

FOR MORE INFORMATION

National Community Reinvestment Coalition, 202-628-8866, www.ncrc.org.

For CRA exam results, www.ffiec.gov.