The “Community Reinvestment Act”

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The “Community Reinvestment Act (CRA) of 1977” established continuing and affirmative responsibilities for banks to meet the credit needs of all communities – expressing including low- and moderate-income (LMI) communities - in a manner consistent with safety and soundness. The three federal bank regulators - the Office of the Comptroller of the Currency (OCC) (within the Department of the Treasury), the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve Board (Board) - set standards for CRA performance by banks. CRA provides for the assessment of bank performance within several areas relevant to housing and community development needs: lending (including mortgage lending), services (such as counseling), and investments (such as investments in affordable multifamily housing). Regulators and advocates can use CRA to push the banking sector to better meet the housing needs of LMI communities, through the regulators’ bank examination process and through commitments made in community benefits agreements

In summer 2022, the bank regulators published a joint CRA rulemaking for public comment, in what is poised to be the first major update of the CRA regulations since the mid-1990s. A final rule is anticipated in spring 2023. This update followed a short-lived attempt by the previous Administration to weaken the CRA: in 2020, the OCC had finalized a new rule on CRA that would decrease lending, investments and services in low- and moderate-income (LMI) neighborhoods, but this harmful rule was rescinded in December of 2021.

In addition, Congress has considered updating this critical law to strengthen CRA as applied to banks and expand CRA to non-bank financial institutions.

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.

Banks are subject to different tests according to their size, as determined by asset thresholds set by the regulators. Large banks undergo a more comprehensive range of tests. The tests assess bank performance across a number of activities in the categories of lending, investments, and services, which implicate single-family and multi-family housing lending and investments, as well as other community development finance and services such as housing counseling. Banks receive CRA credit on exams for these activities, and can receive downgrades for negative performance (for example, due to fair lending violations). On this basis, CRA exams issue ratings, such as outstanding, satisfactory, needs-to-improve, or substantial noncompliance. The 2022 proposed rule would provide for more gradation and rigor in the rating system, in particular within the large bank retail lending test. Currently, about 98% of banks pass their CRA exams on an annual basis with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory.

Ratings influence banks' public relations and business strategies, and failing ratings (needs-to-improve and substantial noncompliance) have additional implications. The federal agencies 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. As described below, mergers also provide the opportunity for community groups to push banks to make specific commitments within community benefit agreements. These commitments can include housing-related loans and resources and other support for community development.

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 also spurs the creation of community benefits agreements (CBAs). 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.

As just one example, 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, economic empowerment and social justice initiatives, as well as loans and investments to Community Development Financial Institutions (CDFIs).

RECENT REGULATORY AND LEGISLATIVE ACTIVITY

The bank regulators jointly published a new CRA draft regulation in summer of 2023, proposing a number of significant updates to the CRA implementation framework. Among other provisions, the proposed rule would enhance the community development definitions to make the banks more responsive to community needs. Specifically, the proposed regulation contains new references to anti-displacement concerns, provides credit for activities remediating climate change for LMI communities, and would allow credit for affordable housing in high-opportunity areas. While those steps are positive, NCRC and other advocates also commented that the proposed rule needed to be further strengthened in order to effectively ensure that financing of "naturally occurring affordable housing" had to provide for long-term affordability, and urged the regulators to provide for tenant protection and fair housing considerations when awarding CRA credit or downgrading banks.

The OCC had issued a final rule in June of 2020 that would have fundamentally weakened CRA, but fortunately, the OCC rescinded that rule in

December of 2022. In its 2020 CRA regulation, the OCC implemented concepts that would have reduced CRA-related lending and investing. 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.

On the legislative front, several recent bills have focused on measures to strengthen CRA. The "American Housing and Economic Mobility Act" would strengthen 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, including in affordable housing and community development. 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, and to bring attention to fair housing and tenant protection concerns. This should include the expansion of housing to high opportunity areas, as well as community development resources for disinvested areas and preservation resources for rising-cost areas.

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 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

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, including with regard to affordable housing and community development resources. This advocacy can potentially include a number of new criteria that may be included in the new regulation, such as anti-displacement protections.

FOR MORE INFORMATION

National Community Reinvestment Coalition, www.ncrc.org.

For CRA exam results, www.ffiec.gov.