# 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 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 spring of 2018, the Trump Administration's Treasury Department issued recommendations to the regulatory agencies for modernizing CRA. This fall, the Office of the Comptroller of the Currency (OCC) issued an Advance Notice of Proposed Rulemaking (ANPR) asking stakeholders for their views regarding CRA reform.

## 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 marginalized communities.

## PROGRAM AND ADMINISTRATION SUMMARY

Three bank regulatory agencies ensure that banks comply with CRA: the Federal Reserve Board, the OCC, and the Federal Deposit Insurance Corporation. 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 $1.252 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 of its assessment area(s) through home mortgage, small business, and small farm lending, as well as financing of 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 $1.252 billion in assets are evaluated primarily on lending, with mid-sized banks (between $313 million to $1.252 billion in assets) also receiving 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 a merger application 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 has been effective in increasing access to credit and capital for traditionally underserved communities.

For example, Fifth Third Bank received a needs-to-improve rating, which motivated the bank to work with NCRC and its members to agree to a $30 billion, 5-year community benefits agreement. Key provisions include $11 billion in mortgage lending to low- and moderate-income (LMI) borrowers and neighborhoods, $10 billion in small business lending, and $9 billion in community development financing including affordable rental housing. In the fall of 2018, Fifth Third added $2 billion to its commitment, bringing the total to $32 billion. Since 2016, NCRC and its members also worked with KeyBank, Huntington, Iberiabank, First Financial Bank, Santander, First Tennessee, and Wells Fargo to negotiate agreements. The agreements made since 2016 totaled more than $89.6 billion in loans and investments for communities of color and low- and moderate-income communities.

A recent 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 concludes that home purchase lending in low- and moderate-income tracts would have declined by about 20% had CRA not existed.

The Federal Reserve has demonstrated that CRA-covered banks are less likely to issue high-cost and risky loans than independent mortgage companies not covered by CRA. Studies found that only 6% of all high-cost loans were issued by banks during the years leading up to the Great Recession and financial crisis. CRA exams encourage safe and sound lending by penalizing banks for illegal and abusive loans, and awarding banks for counseling and foreclosure prevention.

## RECENT REGULATORY AND LEGISLATIVE ACTIVITY

The OCC led by Trump Administration appointee Joseph Otting has taken the lead among the three regulatory agencies in considering reforms to the CRA regulation. In early September, the OCC issued an ANPR which does not consist of specific proposals to change the CRA regulation but asks stakeholders a series of questions about CRA. The comment period on the ANPR ended on November 19, 2018. The agency received over 1,300 comments and about 70% were submitted by NCRC, our members, and allies.

In the ANPR, the OCC proposed concepts that would weaken CRA and 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 assets. The difficulty with this measure is that 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. In particular, the one ratio would enable banks to ignore local needs in some geographical areas and allow them to focus on lending and investing in areas where it may be easier to do so. This would violate the intent of CRA which was to rectify redlining and to ensure that banks were responsive to needs in all localities in which they had branches and in which they did business.

In addition, the OCC asked whether the focus on low- and moderate-income people and communities should generally remain. Some bank trade associations have advocated generous CRA credit for activities including financial education even if the activity benefits substantial numbers of middle- and upper-income consumers as well as people with lower incomes. This would again deviate from the purposes of the CRA legislation which was focused on addressing the credit needs in lower-income communities that were redlined.

The OCC should have paid more attention to a Treasury Department memorandum consisting of recommendations issued to the federal bank agencies in the spring of 2018. This memo suggested that the agencies address the issue of mortgage company affiliates of banks. The banks have the option of including their affiliates from CRA exams. This can lead to manipulation of the exam such as excluding the affiliates when they are not lending to low- and moderate-income borrowers. The OCC ANPR did not address the issue of affiliates.

The Treasury memo also suggested that assessment areas or geographical areas on exams be expanded to include not only areas with branches but areas where banks are engaged in significant business activity. Many banks still lend primarily through branches, but some are making considerable numbers of loans outside of branch networks. The OCC did not adequately respond to the assessment area issue in its ANPR. The agency hinted that activities outside of branch networks could be added to the one ratio which is a poor substitute to actual evaluations in geographical areas receiving substantial numbers of loans.

On the legislative front, Senator Elizabeth Warren (D-MA) introduced the "American Housing and Economic Mobility Act of 2018." This ambitious bill has a section called the "Community Reinvestment Reform Act of 2018." It 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 and mainstream credit unions.

## 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 you get started on CRA dialogues in your community.

## WHAT TO SAY TO LEGISLATORS

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

- Oppose bills that would weaken or repeal CRA. Representative Jeb Hensarling (R-TX), Chairman of the House Financial Services Committee, introduced a bill in the 111th Congress that would repeal CRA. Expect similar bills in the future from opponents of CRA.
- Support any proposed bills such as Senator Warren's that update and 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.

In 2019, the federal bank agencies will review comments the OCC received on the ANPR and then will likely decide to issue a Notice of Proposed Rulemaking (NPR) which would consist of specific proposals to change CRA. NCRC will be advocating that the three agencies issue an NPR together and that the NPR does not contain harmful concepts like the ANPR.

## FOR MORE INFORMATION

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

For CRA exam results, www.ffiec.gov.