

Concluding Observations on CRA Reform

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The Community Reinvestment Act encourages federally insured bank and thrifts to meet the banking needs of the communities that they serve, including low- and moderate-income areas, consistent with safe and sound banking practices.¹ Across a variety of circumstances over the last forty years, CRA has helped many communities get better access to financial services, and should be strengthened moving forward, not radically overhauled, undermined, or restricted. This is a legitimate fear in communities around the nation. We live in a political era in which many of the CRA's fundamental ideals of economic and social inclusion are under attack. As such, it is important to be extremely careful and methodical in our action, only taking on those issues that can result in a stronger, more effective CRA. This big picture perspective is central to my view of the CRA, and I believe critical to any regulatory developments moving forward.

In short, our foremost guiding principle must be to do no harm. At the same time, however, there are a number of areas for potential improvement or continued focus. I will focus briefly on five topics that I think deserve our time and intellectual energy: (1) updating geographical and institutional reach, (2) advancing the use of technology for safe and affordable services, (3) supporting entrepreneurship and business growth in low- and moderate- income and minority communities, (4) building communities, and (5) focusing on local context. We so often talk about the CRA as a "test" – but let us not forget that the underlying objective is to help build stronger, more vibrant, and more inclusive communities.

Updating Geographical and Institutional Reach

There is a great deal of innovation happening in the financial services sector, much of which revolves around who is delivering financial services, and how. In particular, we have seen massive growth in the fintech sector – some of which is frankly over-hyped. Some of these "innovations" could just as well describe the practices of bank vendors in the 1970s. These innovations serve important roles, of course, but are by no means a revolutionary change in how financial services are offered. Other developments in fintech, however, truly are shaking up finance in important ways for delivering beneficial services to consumers, expanding the role of non-bank participants in the market in serving consumers, and dramatically changing the way bank participants are offering such services as well. Advances in payment systems, improved credit scoring, integrated budgeting tools, low-cost techniques for saving, consumer-friendly mobile interfaces, and more, could help many LMI households. As fintech expands, we need to keep the financial sector accountable to serving all communities.

Some strategies to do so can be accomplished via the CRA, while others are limited by current statutory authority and require parallel mechanisms. There needs to be a level playing field for

¹ See *generally*, Michael S. Barr, *Credit Where It Counts: The Community Reinvestment Act and Its Critics*, *New York University Law Review* 80(2): 513-652 (2005).

both bank and non-bank providers of financial services so that there is not a race to the bottom in sales practices and products. We need strong oversight by the CFPB, state attorneys general, and state financial regulators, as well as the enforcement of equal credit opportunity laws. We also need to continue to innovate with new strategies to reach the under-served, and to support entities such as community development financial institutions that can help pave the way for mainstream banks and thrifts to better serve LMI communities at scale. It is important to view the CRA in this broader context rather than as an independent tool for an isolated set of institutions. At the same time, none of those other tools would be as effective without CRA continuing to help better harness the banking sector to the needs of the real economy.

We have seen dramatic shifts in how banks and thrifts are offering financial services. Many of the largest banks, of course, serve national markets. Banks use an array of web-based and mobile platforms to provide financial services. While branches—and branch personnel—remain quite useful for local community knowledge and personal relationship banking, as well as important access points for financial services and for lending to homeowners and small businesses, they are no longer the only access point for such services. We need to continue CRA's assessment with respect to a bank's physical presence through branches, while also updating CRA to take into account a bank's digitally based geographic reach. One approach might be to permit a much broader assessment area for community development activities so that high-impact and innovative approaches can be deployed not only in metropolitan areas with lots of bank CRA activity, but also in areas of the country not well served today.

As banks grow in scale, scope, and complexity, it is also important to keep their affiliates equally accountable – there can be no loopholes to shirk CRA responsibilities. Bank regulators should fully incorporate affiliate activity in the CRA examination.

The importance of serving communities of color must be emphasized. Many historically underserved minority communities continue to be underserved today, and we need to reckon with the adverse effects of racial disparities in the financial sector despite the intentions of the CRA. Reform efforts need to recall the legacies of racial discrimination and redlining that underpin the Act. Compliance with fair lending laws needs to be included in CRA exams and ratings, for the bank holding company as a whole. Particularly in an age when machine learning and artificial intelligence are increasingly deployed in credit decisions, we need to have a strong disparate impact test that provides a framework to guide the use of these technologies.

Access to Financial Services

The second topic in considering reform of the CRA is the role of financial services. To thrive in today's society, low- and moderate-income households need access to a full range of banking services. A top priority of regulators must be to ensure that disadvantaged households have access to financial services that are both safe and affordable. The FDIC has been a leader in this respect. Integrating better retail financial services products and services into the regulatory process of the CRA is an important next step. Banks should be evaluated not simply on

traditional metrics such as bank branch locations and hours, but on how they are actually providing financial products and services that meet the needs of LMI customers. Banks should be rewarded for offering innovative financial services that are designed to be useful to and protective of LMI households. Some aspects of ensuring safe and affordable accounts may transcend the CRA itself, but CRA can help advance consumer-focused products and services. The lack of real-time access to funds and predatory fees, for instance, are issues that plague many low- and moderate-income borrowers. Safe and affordable bank accounts that offer real-time access to funds and avoid after-the-fact contingent fees are essential for LMI households.

There is much that can be done to address contingent fees and gotcha fees that generate significant revenue for banks but cause great harm to low- and moderate-income households. On that note, one of the greatest ways we may be able to help is to make it easier for people to dump their banks when they are being mistreated. We should increase the capacity of consumers to transport their banking data to other banks or third-party providers. Many other countries around the world do this already, so we know it is not a technology problem, but rather a policy shortcoming. We need to prioritize how banks treat consumers, particularly in terms of privacy, security, transparency, consent, and basic fairness.

Supporting Entrepreneurship and Business Growth

The CRA and banking sector as a whole can be doing more to foster entrepreneurship and small business growth in low- and moderate-income communities. Minority borrowers unduly suffer from a lack of quality loans whose terms are transparent, safe, and affordable, leading to huge risks in a financial services environment that lacks adequate consumer protection. These risks grow as consumers turn to nonbank alternatives, which lack sufficient regulatory oversight. As an initial step to addressing this issue, we should collect better data, including data on race, ethnicity, and gender of business owners, as required for the CFPB, under Dodd-Frank section 1071, which would assist researchers and regulators with more effectively addressing small business problems, both under CRA and more broadly. With better small business data, small business lending in LMI communities could and should play a more important role under CRA.

Building Communities

The next area is the importance of community-building. Community development initiatives, including loans, grants, and equity investments—as well as technical expertise—are critical to advancing and building communities around the country. CRA has helped to build a network for community development finance, including affordable housing, economic development, community infrastructure, and the like, that has significantly increased the capacity of local communities. There is certainly room for innovation in this respect. For example, there are so many community development needs beyond assessment areas that can and should be met by banks; adding flexibility and predictability to CRA evaluations in evaluating these community development activities would help advance local needs not currently being met. Examiners

should focus on the substance of community development activities, taking into account their complexity and impact, not simply the quantity or dollar size of activities.

Local Context

The relevant agency assesses an institution's record in light of the "performance context" in which the institution is operating, including economic and market factors, the bank's capacities, constraints, and business plans, and "the performance of similarly situated lenders." CRA examinations, as well as merger reviews, offer an opportunity for local communities to weigh in on community needs and how well banks are meeting them, and provides an opportunity for banks to explain the context in which they are working as well. CRA exams and ratings are public, providing further opportunity for community feedback and for public accountability. In well-functioning community development markets, banks and community-based organizations work together to help shape how banks can best meet the needs of the community. This performance context is an important part of what makes the CRA work.²

A one-size fits all metric would not do a good job capturing the wide variety of bank business strategies in serving LMI communities and households, and the wide variety of local contexts in which they operate. Such a metric would have difficulty, for example, capturing the changing nature of communities. Such a metric might reward lending to upper income borrowers in gentrifying neighborhoods, rather than focusing on lending to support affordable housing serving low-income residents. Conversely, banks might ignore LMI neighborhoods that need the most help. Local context matters. Community needs should drive CRA lending, investment, and services, and bank examiners should use the local context to understand how well these needs are being met. A single metric would likely drive banks to make the easiest loans to the most well-off communities, not focus on more complex financing and more difficult to serve communities. Such a metric would end up with too little activity in some contexts, might encourage un-economic activity in other contexts, and would become stale over time.

Conclusion

CRA is helping America's communities. Now is not the time to cut it back. Instead, CRA reform, if it occurs, should focus on strengthening CRA in the five key areas I mentioned. Quality and innovation matter as much as quantity, if not more. Local context also matters a great deal. A singular national approach will not adequately address the needs of local communities, which really need to be kept at the center of any future CRA reform. This is an area, I believe, where standards will be more effective than simple rules or metrics. Any reform to the CRA should broaden geographical and institutional coverage while also rewarding quality and innovation in the private sector, not simply counting loans. Lastly, CRA needs to be seen in the context of a broad set of regulatory tools to advance financial inclusion, including a strong CFPB, fair lending

² For a detailed argument, see *Credit Where it Counts*, pp. 596-604.

enforcement, good funds availability and payment system reform, support for CDFIs, and other measures. A holistic approach to financial inclusion is more likely to be successful.