April 4, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: April 9, 2019 "The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining"

The Subcommittee on Consumer Protection and Financial Institutions will convene a hearing entitled, "The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining" on Tuesday, April 9 at 10:00 a.m. in room 2128 of the Rayburn House Office Building. This single-panel hearing will have the following witnesses:

- **Mr. Jesse Van Tol**, Chief Executive Officer, National Community Reinvestment Coalition (NCRC)
- **Ms. Mehrsa Baradaran**, Associate Dean for Strategic Initiatives & Robert Cotten Alston Chair in Corporate Law, University of Georgia School of Law
- **Mr. Clint Odom**, Senior Vice President Policy and Advocacy and Washington Bureau Executive Director, National Urban League
- **Mr. Benson Doyle Mitchell, Jr.** President and CEO, Industrial Bank, Representative of National Bankers Association
- **Mr. Aaron Glantz**, Senior Reporter, Reveal from The Center for Investigative Reporting
- **Mr. Benson F. "Buzz" Roberts**, President and CEO, National Association of Affordable Housing Lenders

Additional witnesses may be invited.

The Community Reinvestment Act

The Community Reinvestment Act (CRA), enacted into law by Congress in 1977,[1] addresses how banks meet the credit and capital needs of the communities they serve. CRA was passed in response to redlining, a practice by which banks discriminated against prospective customers based primarily on where they lived, or their racial or ethnic background, rather than creditworthiness. Through redlining practices, banks systematically raised the cost of credit or denied credit entirely to certain segments of the population. In passing CRA, Congress affirmed that "regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business", and for "each appropriate federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit

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[1] P.L. 95-128, 91 Stat. 1147, title VIII of the Housing and Community Development Act of 1977, 12 U.S.C. § 2901 et seq.

needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions."[2] Congress has amended CRA several times since 1977.[3]

CRA Implementation and Bank Examinations

Under CRA, the primary banking regulators – specifically the Federal Reserve Board of Governors (FRB), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC) – conduct regular examinations to evaluate banks' activities to provide credit, services and make investments in low and moderate income (LMI) communities where the banks operate. CRA applies only to banks with federally insured deposits, and excludes bank affiliates, credit unions and nonbank financial companies.[4] Institutions' CRA examinations focus on their LMI loans and investments in designated 'assessment areas'. Assessment areas are defined by banks, and have the purpose of capturing "one or more of the geographic area(s) that is delineated by the bank and used by the regulatory agency in evaluating the bank's record of helping to meet the credit needs of its community." Additionally, assessment areas must "consist of one or more [Metropolitan Statistical Areas] or metropolitan divisions or one or more contiguous political subdivisions, such as counties, cities or towns . . . [and] must include geographies in which the bank has its main office, branches and deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans."[5]

Within assessment areas, CRA examinations evaluate banks' service to local LMI communities and issue grades for the following three principal categories:

- **Lending:** an evaluation of a bank's lending activities to LMI communities. This evaluation is rooted squarely in addressing the legacy of redlining. Examiners consider loan to deposit ratios, the percentage of loans in an assessment area, lending to borrowers of different incomes and in different amounts, geographical distribution of loans, and actions on complaints filed against the institution.[6]
- **Investment:** direct lending and investments, or investments in secondary loan markets that qualify as public welfare investments (PWI), or community development investments (CDI) that meet PWI requirements, defined broadly as "affordable housing (including multifamily rental housing) for low- and moderate-income individuals; community services targeted to low- and moderate-income individuals; activities that promote economic development by financing small businesses

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[2] 12 U.S. Code § 2901 - Congressional findings and statement of purpose.

[3] For example, in 1989 following the savings and loans crisis, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) into law. FIRREA mandated CRA evaluation reports include two sections, with one kept confidential, and the other publicly available. In 1991, Congress required that examination data relevant to the determination of an institution's rating be included in the publicly available section of CRA reports. The public section of CRA reports was to include the newly introduced four-tier rating of each institution, including 'Outstanding', 'Satisfactory', 'Needs to Improve', or 'Substantial Noncompliance', as well as supporting justification for the rating. In 1995, the CRA examination was customized to account for differences in bank sizes and business models. In 2005, the bank size definitions were revised and indexed to the Consumer Price Index.

[4] Some stakeholders have suggested expanding CRA to cover these entities. For example, *see* Government Accountability Office, "Community Reinvestment Act: Options for Treasury to Consider to Encourage Services and Small-Dollar Loans When Reviewing Framework," (Feb. 14, 2018), 44-46, https://www.gao.gov/products/GAO-18-244; and Federal Reserve Banks of Boston and San Francisco, "Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act," (Feb. 2009), https://www.frbsf.org/community-development/publications/community-development-investment-review/2009/february/future-cra-community-reinvestment-act/.

[5] Federal Reserve Bank of Dallas, "A Banker's quick guide to CRA" As amended effective September 1, 2005; https://www.dallasfed.org/~/media/documents/cd/pubs/quickref.pdf

[6] Darryl Getter, "The Effectiveness of the Community Reinvestment Act," Congressional Research Service (CRS) (Feb. 28, 2019), https://www.crs.gov/Reports/R43661.

or small farms (gross annual revenues of $1 million or less); and activities that revitalize or stabilize low- and moderate-income geographies."[7]

- **Service**: "a service that has as its primary purpose community development, is related to the provision of financial services, has not been considered in the evaluation of the bank's retail banking services, benefits the bank's AA or a broader statewide or regional area that includes the bank's AA and has not been claimed by other affiliated institutions."[8]

For the purposes of CRA examinations and grading, banks are subdivided into three groups, by size that are annually adjusted according to inflation: **small banks**, with assets below $321 million as of December 31, 2018; **intermediate small banks**, with assets between $321 million and $1.284 billion; and **large banks**, with assets in excess of $1.284 billion. In There are two additional non-size categories under CRA. One set are **wholesale and limited purpose banks**. Wholesale banks are not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. Limited purpose banks offer only a narrow product line (such as credit card or motor vehicle loans). [9] Another set are **institutions with strategic plans**. Under CRA regulations, a covered bank may request to develop a strategic plan, for customized CRA evaluation, which is subject to a 30-day public comment period, and ultimately requires approval by the bank's primary regulator. According to the FRB, "strategic plans allow banks to tailor their performance goals to the needs of their community by working directly with the community to develop the goals." [10]

The categorization of a bank informs the frequency, and scope of CRA examination. Indeed, subject to the 1995 revision of CRA examinations procedures, small banks are evaluated solely on the Lending test, intermediate small banks are evaluated on both the Lending test and the Investment test, and large banks are evaluated on all three tests, including lending, Investment, and Service. Accordingly, CRA examinations assign points for each of the three tests, and rates a bank's performance in each category, and overall, as outlined in table 1 below.

Table 1: Points Assigned for CRA Performance[11]

Rating	Lending	Investment	Service
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

Source: Federal Financial Institutions Examination Council.

Combatting Continued Racial Disparities in Lending under CRA

Despite CRA's implementation, modern-day discrimination continues to be pervasive in minority and low-income urban neighborhoods. Reveal from the Center for Investigative Reporting recently published several articles after its yearlong investigation based on 31 million records publicly available

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[7] Federal Reserve Bank of Saint Louis, "What Qualifies as a CRA Investment?"; https://www.stlouisfed.org/publications/central-banker/fall-1998/what-qualifies-as-a-cra-investment

[8] Federal Reserve Bank of Dallas, "A Banker's quick guide to CRA" As amended effective September 1, 2005; https://www.dallasfed.org/~/media/documents/cd/pubs/quickref.pdf

[9] OCC, "Wholesale and Limited Purpose Banks under the Community Reinvestment Act"; https://www.occ.treas.gov/topics/compliance-bsa/cra/wholesale-and-limited-purpose-banks-under-cra.html

[10] FRB, "Community Reinvestment Act (CRA) – Strategic Plans"; https://www.federalreserve.gov/consumerscommunities/cra_strategic.htm

[11] Darryl Getter, "The Effectiveness of the Community Reinvestment Act," CRS (Feb. 28, 2019), https://www.crs.gov/Reports/R43661.

under the Home Mortgage Disclosure Act (HMDA) to identify lending disparities.[12] The investigators at Reveal examined mortgage data, and found that more than 60 metro areas continue to exhibit modern day redlining, despite the fact that 98 percent of banks pass their exams by receiving a satisfactory or outstanding grade under CRA, a law intended to combat redlining. Reveal's data showed black applicants were turned away at significantly higher rates than whites in 48 cities, Latinos in 25, Asians in nine and Native Americans in three.

Other investigations have found pervasive discrimination in lending practices in urban areas. For example, in a 2015 report, NCRC found that lenders had abandoned neighborhoods in Baltimore based on the racial make-up of neighborhoods as well as the preferences of lenders for white borrowers and majority white neighborhoods. NCRC found that white borrowers received 210 percent of the lending that their population size suggests they should, while African Americans received only 37 percent of the loans they should have given their population in 2013.[13]

CRA Modernization

Members of Congress, regulators, banks, and advocacy groups have called for CRA to be modernized. On April 3, 2018, the Treasury Department published a Memorandum of Recommendations for CRA modernization, calling for updating the definition of assessment areas, "to reflect the changing nature of banking arising from changing technology, customer behavior, and other factors", increasing clarity of CRA examinations, improved timelines for publication of CRA evaluations, and creating incentives to increase impact to benefit target communities.[14] Furthermore, a number of consumer advocacy groups led by the National Community Reinvestment Coalition have suggested, "The agencies must expand assessment areas (geographical areas on CRA exams), require the inclusion of mortgage company affiliates on CRA exams, include communities of color on CRA exams, improve data, and increase opportunities for public input."[15]

On August 28, 2018, the OCC issued an Advanced Notice of Proposed Rulemaking (ANPR), soliciting public comments on the OCC's proposals for modernizing the CRA.[16] The OCC's ANPR drew nearly 1,500 comments.[17] While some elements of the ANPR drew positive feedback, several key pillars of the ANPR drew significant resistance from a broad set of respondents, including most notably the consideration of a "one ratio" approach to CRA evaluations, measuring solely total CRA activities against total bank assets. CRA advocacy groups raised the risk that such an approach would negatively affect transparency of institutions' CRA initiatives and effectiveness, and hamper community feedback to CRA activities. Similarly, the ANPR's approach to redefining assessment areas, and broadening of investment activities to include activities that may not specifically target LMI communities raised major concerns about breaking the link between CRA activities and ensuring access to credit and financial services for

[12] Glantz, Aaron and Martinez, Emmanuel, "Kept Out: For people of color, banks are shutting the door to homeownership," Reveal (Feb. 15, 2018), https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/; Glantz, Aaron and Martinez, Emmanuel, "Kept Out: Gentrification became low-income lending law's unintended consequence," Reveal (Feb. 16, 2018), https://www.revealnews.org/article/gentrification-became-low-income-lending-laws-unintended-consequence.

[13] Richardson, Jason and Mitchell, Bruce and West, Nicole, "Home Mortgage and Small Business Lending in Baltimore and Surrounding Areas," NCRC (November 2015), https://ncrc.org/wp-content/uploads/2015/11/ncrc_baltimore_lending_analysis_web.pdf.

[14] U.S. Department of the Treasury, "Memorandum for the OCC, FRB and FDIC - Community Reinvestment Act - Findings and Recommendations," (Apr. 3, 2018), https://home.treasury.gov/news/press-releases/sm0336.

[15] November 19, 2018 Letter to OCC signed by NCRC and other organizations, https://ncrc.org/reforming-the-community-reinvestment-act-regulatory-framework/.

[16] OCC Bulletin 2018-24, Advance Notice of Proposed Rulemaking, "Reforming the Community Reinvestment Act Regulatory Framework," (Aug. 28, 2018), https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-24.html.

[17] https://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=OCC-2018-0008

economically vulnerable and disadvantaged communities.[18] Perceptions that the OCC may proceed unilaterally with changes to CRA has raised major concerns about asymmetrical CRA evaluations across primary banking regulators, and risks of regulatory arbitrage.

In addition to the ANPR, the OCC made several changes to how it implements CRA through several guidance bulletins, including one issued in October 2017 that eased CRA consequences for banks that violate fair lending laws before the agency later pared back that change with new guidance in August 2018.[19] The OCC also lengthened the exam cycle for large banks through a bulletin published in June 2018.[20] Furthermore, the OCC has proposed some modest community reinvestment requirements for their special purpose national bank charter for fintech companies,[21] however some have raised concerns with the proposed charter.[22]

The FRB has recently begun weighing-in with its own framework for CRA modernization, informed by a comprehensive review of comments submitted to the OCC's ANPR, and FRB's series of meetings, roundtables, and symposium at the Federal Reserve of Philadelphia. In a recent speech,[23] FRB Governor Brainard outlined key pillars for possible CRA modernization, which has received broad support from industry groups and consumer advocates as presenting a balanced and thoughtful approach for tackling realities of an evolving market, while sustaining the core mission of the CRA. Indeed, in her speech, Governor Brainard stated:

> "[I]n our effort to refresh the CRA regulations, we will continue to honor the purpose of the CRA by encouraging banks to engage in local community and economic development initiatives. I am confident that there are ways to update the areas where we evaluate a bank's CRA performance without losing the core focus on place. We should do more to encourage banks to offer deposit and credit products designed to help rent-burdened customers save for homeownership and build strong credit scores that will enable them to succeed in obtaining mortgage credit on favorable terms. We should do more to encourage banks to lend to the underserved entrepreneurs and small businesses that hold the promise of providing jobs and growing local economies. Even as the economy looks strong overall, significant challenges remain for low- and moderate-income areas, making the CRA and its focus on local credit needs more important than ever."

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[18] NCRC, "2019 Policy Agenda for the 116th Session of Congress – Investing in a Just Economy," (Mar. 21, 2019), https://ncrc.org/2019-policy-agenda-for-the-116th-session-of-congress/.

[19] *See* Press Statement, "Waters Statement on the OCC's Weakening of CRA Enforcement," (Oct. 18, 2017), https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=400864, and OCC, "Revisions to Impact of Evidence of Discriminatory or Other Illegal Credit Practices on Community Reinvestment Act Ratings," (Aug. 15, 2018), https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-23.html.

[20] Josh Silver, "NCRC analysis of OCC bulletin 2018-17," NCRC (June 20, 2018), https://ncrc.org/ncrc-analysis-of-occ-bulletin-2018-17/.

[21] https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-74.html

[22] For example, see Ed Mierzwinski, Leading Groups Oppose OCC Proposal to Charter Fintechs, U.S. PIRG (Aug. 1, 2018), https://uspirg.org/blogs/eds-blog/usp/leading-groups-oppose-occ-proposal-charter-fintechs

[23] Governor Lael Brainard, "The Community Reinvestment Act: How Can We Preserve What Works and Make it Better?", FRB (Mar. 12, 2019), https://www.federalreserve.gov/newsevents/speeches.htm.