

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

July 8, 2022

## Memorandum

**To:** Members, Committee on Financial Services  
**From:** FSC Majority Staff  
**Subject:** July 13, 2022, Subcommittee on Consumer Protection and Financial Institutions hearing entitled, “Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act”

---

The Subcommittee on Consumer Protection and Financial Institutions will hold a hearing entitled, “Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act” on Wednesday, July 13, 2022, at 10:00 am E.T. in room 2128 of the Rayburn House Office Building and on Cisco Webex. There will be one panel with the following witnesses:

- **Seema Agnani**, Executive Director, National Coalition for Asian Pacific American Community Development
- **Catherine Crosby**, Chairperson, National Community Reinvestment Coalition
- **Yoselin Genao-Estrella**, Executive Director, Neighborhood Housing Services of Queens CDC, Inc.
- **Quentin Leighty**, President, First National Bank of Monument, First National Bank at Flying Horse (on behalf of Independent Community Bankers Association)
- **Darryl E. Getter**, Specialist in Financial Economics, Congressional Research Service

### Background

In 1977, Congress passed the Community Reinvestment Act (CRA) in response to redlining and other discriminatory lending practices.<sup>1</sup> Redlining refers to the discriminatory practice of refusing to extend credit or denying credit to borrowers in geographic areas based on demographics such as race or ethnicity.<sup>2</sup> The purpose of the CRA was to require banks “to meet the credit needs of [their] communit[ies], including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound operations.”<sup>3</sup> Despite the intent to curb redlining, race is not explicitly considered on bank CRA exams, and evidence continues to mount that modern-day redlining persists, as people of color and LMI communities often still face obstacles in accessing affordable credit and other financial services.<sup>4</sup>

The Financial Services Committee has held hearings in recent years discussing the CRA’s impact on LMI communities and communities of color, featuring testimony highlighting that despite the Congressional intent of the CRA, it has not been effective in curbing redlining in the modern-day banking

---

<sup>1</sup> See e.g. Federal Reserve Bank of Chicago, [The Effects of the 1930s HOLC "Redlining" Maps](#), (Revised August 2020); Federal Reserve Bank of St. Louis: Federal Reserve History, [Community Reinvestment Act of 1977](#), (Accessed June 5, 2022).

<sup>2</sup> Federal Reserve Bank of Chicago, [The Effects of the 1930s HOLC "Redlining" Maps](#), (Revised August 2020).

<sup>3</sup> OCC, Federal Reserve, FDIC, [Community Reinvestment Act Regulations](#), Federal Register, Vol. 60, No. 86, (May 4, 1995).

<sup>4</sup> See Reveal, [For people of color, banks are shutting the door to homeownership](#), (Feb 15, 2018); See also [NPR, Data analysis: "Modern-day redlining" happening in Detroit and Lansing](#), (Feb. 15, 2018).

system.<sup>5</sup> In his 2019 testimony, journalist Aaron Glantz shared a finding from his investigation into modern-day redlining:

In 61 metro areas across the country, people of color were more likely to be denied a conventional mortgage than their white counterparts, even when they made the same amount of money, tried to borrow the same amount of money, and wanted to buy in the same neighborhood...[d]espite these disparities, 99 percent of national banks received a satisfactory or outstanding grade on their inspections under the Community Reinvestment Act.<sup>6</sup>

Mehrsa Baradaran, Professor of Law at the University of Georgia School of Law, testified that, “[w]hile the nature of banking has changed dramatically since the passage of the CRA, the inequalities and injustices the CRA was designed to remedy have only gotten worse. The law must be updated and strengthened.”<sup>7</sup>

On May 5, 2022, the federal banking regulators overseeing CRA announced a joint proposal “to strengthen and modernize regulations implementing the Community Reinvestment Act to better achieve the purposes of the law.”<sup>8</sup> This hearing will examine recent CRA developments, including how the proposed rule will evaluate bank lending and financial services in the context of increasingly digital banking relationships; whether it will lead to expanded access to financial services and credit to LMI communities and communities of color; and its potential in finally putting an end to modern-day redlining.

### Current CRA Rules

Congress has amended the CRA statute several times since the law’s passage, and the banking regulators have periodically updated CRA regulations since the law’s enactment, with the last major regulatory overhaul occurring in 1995.<sup>9</sup> The federal banking regulators—the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC)—are tasked with implementing the CRA.<sup>10</sup> The current CRA rule applies only to banks with FDIC-insured deposits and does not apply to nonbank financial companies, credit unions, insurance companies, or bank affiliates.<sup>11</sup> Through examinations, the banking regulators monitor and rate banks’ performance in meeting the credit needs of the communities in which they operate.<sup>12</sup> Examiners assess a bank’s CRA efforts with up to three different tests:

- **The lending test** evaluates retail banking activities such as small business, consumer, small farm, and residential mortgage loans in LMI communities.
- **The investment test** evaluates direct lending and investments in secondary markets qualifying as public welfare investments (PWI) or community development investments (CDI).

---

<sup>5</sup> House Financial Services Committee (HFSC), [The Community Reinvestment Act: Assessing the Law’s Impact on Discrimination and Redlining](#) (Apr. 9, 2019).

<sup>6</sup> HFSC, [Testimony](#) of Aaron Glantz at the at the Consumer Protection and Financial Institutions Subcommittee hearing entitled “[The Community Reinvestment Act: Assessing the Law’s Impact on Discrimination and Redlining](#)” (Apr. 9, 2019).

<sup>7</sup> HFSC, [Testimony](#) of Mehrsa Baradaran at the Consumer Protection and Financial Institutions Subcommittee hearing entitled “[The Community Reinvestment Act: Assessing the Law’s Impact on Discrimination and Redlining](#)” (Apr. 9, 2019).

<sup>8</sup> Federal Reserve, “[Agencies issue joint proposal to strengthen and modernize Community Reinvestment Act Regulations](#)”, Press Release, (May 5, 2022).

<sup>9</sup> See Federal Reserve, [Chairman Ben S. Bernanke Speech at the Community Affairs Research Conference, Washington, D.C.: The Community Reinvestment Act: Its Evolution and New Challenges](#), (Mar. 30, 2007); See also, Federal Reserve, [History of the CRA](#) (Accessed Jun. 10, 2022).

<sup>10</sup> CRS, [The Effectiveness of the Community Reinvestment Act](#), R43661, (Updated Jan. 16, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

- **The service test** evaluates the availability of branches and low or no-cost checking accounts in the assessment area.<sup>13</sup>

Not all banks are subjected to each test. Under the current rule, banks are examined for CRA compliance differently based on the asset-size of the institutions which is adjusted annually with inflation. According to the rule:

- **Small banks** have assets of less than \$346 billion as of December 31 of either of the prior two calendar years. These banks are evaluated on the lending test.
- **Intermediate small banks** have assets of at least \$346 million as of December 31 of both of the prior two calendar years and less than \$1.384 billion as of December 31 of either of the prior two calendar years. These banks are evaluated on both the lending test and the investment test.
- **Large banks** have assets in excess of \$1.384 billion. These banks are evaluated on all three tests, including lending, investment, and service.<sup>14</sup>

There are additional categories for non-consumer institutions such as wholesale and limited purpose banks. Approximately 60 financial institutions receive a customized evaluation from their CRA regulator under an approved a strategic plan for CRA compliance.<sup>15</sup>

The points assigned under the tests make up a bank’s numerical CRA score which is then translated into a four-tiered rating system used by the bank regulators: Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance.<sup>16</sup> While regulators consider CRA ratings when banks seek regulatory approval in mergers, acquisitions, charters, or other actions, 99 percent of banks have either a Satisfactory or Outstanding CRA rating, leading some stakeholders to suggest it is too easy for banks to obtain favorable CRA ratings.<sup>17</sup> Another common criticism of current CRA rules is in regard to how race is considered.<sup>18</sup> While the law was originally passed in response to redlining and other forms of discriminatory lending, the rule focuses on income rather than race.<sup>19</sup>

### Comptroller Otting’s 2020 CRA Rule and Regulator Divergence

Joseph Otting became Comptroller in November 2017 and immediately focused on modernizing the CRA.<sup>20</sup> In August 2018, the OCC issued an Advanced Notice of Proposed Rulemaking (ANPR) to update the CRA.<sup>21</sup> The framework described in the ANPR was met with significant criticism and elicited thousands of comments from stakeholders and the public.<sup>22</sup> While the previous major overhaul of CRA rules came about through the joint work of the federal banking regulators; in this case, the OCC issued

<sup>13</sup> Federal Reserve Bank of Saint Louis, “What Qualifies as a CRA Investment?” (Accessed June 7, 2022).

<sup>14</sup> Joint Press Release, [Agencies release annual asset-size thresholds under Community Reinvestment Act regulations](#), (Dec. 16, 2021).

<sup>15</sup> CRS, [The Effectiveness of the Community Reinvestment Act](#), R43661, (Updated Jan. 16, 2020); *see also*, Federal Reserve, [Community Reinvestment Act: Strategic Plans](#) (Accessed Jul. 8, 2022).

<sup>16</sup> Federal Reserve Bank of Dallas, [A Banker’s quick guide to CRA](#), (Sep. 1, 2005).

<sup>17</sup> *See* CRS, [The Effectiveness of the Community Reinvestment Act](#), R43661, (Updated January 16, 2020); S&P Global Market Intelligence, [‘Satisfactory’ rating category questioned as banking industry nears CRA reform](#), (Aug. 2, 2019).

<sup>18</sup> Stella Adams, [Putting Race Explicitly into the CRA](#) (Feb. 2009), pg. 167; *See also* NCRC, [Position Paper on CRA Reform](#) (Mar. 1, 2022); *See also* Greenlining Institute, [California Needs a State CRA for a More Fair, Equitable Financial System](#) (Jun. 2022); *See also*, Association for Neighborhood & Housing Development, [Community Reinvestment Act Advocacy](#) (Accessed Jul. 7, 2022).

<sup>19</sup> NCRC, [Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal](#), (Sept. 16, 2021).

<sup>20</sup> *See* HousingWire, [Trump administration considering changes to Community Reinvestment Act](#), (Aug. 2018).

<sup>21</sup> OCC, [Community Reinvestment Act: Advance Notice of Proposed Rulemaking](#), (Aug. 28, 2018).

<sup>22</sup> OCC, [Community Reinvestment Act Regulations Comments](#), (Sept. 6, 2018).

the ANPR on its own.<sup>23</sup> The FDIC later joined the OCC in issuing the Notice of Proposed Rulemaking (NPRM) in December 2019, but the Federal Reserve did not.<sup>24</sup> Ultimately, the FDIC did not join the OCC when it issued the final rule in June 2020.<sup>25</sup> In 2020, the Financial Services Committee held a series of hearings on the impact of the OCC's rule on the CRA's intent and ability to address redlining, as well as the rule's impact on LMI communities and people of color.<sup>26</sup> Chairwoman Maxine Waters and Representative Gregory Meeks introduced a Congressional Review Act resolution to reverse the OCC's proposal,<sup>27</sup> which the U.S. House of Representatives passed soon after.<sup>28</sup> Eventually, the Federal Reserve issued its own ANPR to allow the public to provide feedback on an alternative approach.<sup>29</sup>

In July 2021, the Federal Reserve, OCC, and FDIC released a statement announcing that the agencies would be working together to *jointly* pursue a rulemaking to "strengthen and modernize" CRA regulations.<sup>30</sup> In September 2021, the OCC, under the leadership of Acting Comptroller Michael Hsu announced it would rescind the 2020 rule and revert back to regulations adopted jointly by the banking regulators in 1995.<sup>31</sup>

### Key Changes to CRA Exams under the New Proposed Rule

On May 5, 2022, the Federal Reserve, OCC, and FDIC issued a joint NPRM to "strengthen and modernize" CRA regulations.<sup>32</sup> The banking regulators outlined key elements of their unified approach, which include: (1) expanding access to credit, investment, and basic banking services in low- and moderate-income communities; (2) adapting to changes in the banking industry, including internet and mobile banking; (3) providing greater clarity, consistency, and transparency; and (4) tailoring CRA evaluations and data collection to bank size and type.<sup>33</sup>

Under the proposal, examiners would assess a bank's CRA efforts under a new exam framework composed of four tests:<sup>34</sup>

- The **retail lending test** would evaluate a bank's lending record, including small business, consumer, small farm, and mortgage loans in LMI communities. Consistent with current rules, banks would be assessed in areas where they have a facility such as a branch or ATM; under the proposed rule, lending would also be evaluated in areas where banks issue a majority of loans.

---

<sup>23</sup> See [Implementation of the Community Reinvestment Act by the Office of the Comptroller of the Currency](#), IF11865, (June 29, 2021).

<sup>24</sup> Federal Reserve, [Federal Reserve Board issues Advance Notice of Proposed Rulemaking on an approach to modernize regulations that implement the Community Reinvestment Act](#), (Sept. 21, 2020).

<sup>25</sup> OCC, [Community Reinvestment Act Regulations](#), Federal Register Vol. 85, No. 109, (June 5, 2020).

<sup>26</sup> FSC Consumer Protection and Financial Institutions Subcommittee, [The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting's Proposal](#) (Jan. 14, 2020); FSC, [The Community Reinvestment Act: Is the OCC Undermining the Law's Purpose and Intent?](#) (Jan. 29, 2020); FSC Oversight and Investigations Subcommittee, [Fake It Till They Make It: How Bad Actors Use Astroturfing to Manipulate Regulators, Disenfranchise Consumers and Subvert the Rulemaking Process](#) (Feb. 6, 2020); FSC Consumer Protection and Financial Institutions Subcommittee, [Modern-Day Redlining: the Burden on Underbanked and Excluded Communities in New York](#) (Mar. 6, 2020).

<sup>27</sup> FSC, [Waters and Meeks Introduce Congressional Review Act Resolution to Reverse Harmful Rule to Weaken the Community Reinvestment Act](#) (Jun. 11, 2020).

<sup>28</sup> FSC, [Waters' and Meeks' Resolution to Reverse the OCC's Harmful Rule Undermining the Community Reinvestment Act Passes the House](#) (Jun. 29, 2020).

<sup>29</sup> Fed, [Community Reinvestment Act - Advance Notice of Proposed Rulemaking](#) (Sep. 21, 2020).

<sup>30</sup> FDIC, [Interagency Statement on Community Reinvestment Act Joint Agency Action](#), (July 20, 2021).

<sup>31</sup> OCC, [OCC Issues Proposal to Rescind its 2020 Community Reinvestment Act Rule](#), (Sept. 8, 2021).

<sup>32</sup> Federal Reserve, [Agencies issue joint proposal to strengthen and modernize Community Reinvestment Act Regulations](#) (May 5, 2022).

<sup>33</sup> FDIC, [Community Reinvestment Act Fact Sheet](#) (May 5, 2022).

<sup>34</sup> Federal Register, [2022-05-05-notice-dis-a-fr.pdf \(fdic.gov\)](#) (Jun. 3, 2022).

- The **retail products and services test** would evaluate a bank’s deposit products, such as low- or no-cost checking accounts, loans, and other financial services. It would also assess how banks deliver those products and services, including branch availability and online banking. As well as the responsiveness of these products and services in LMI communities.
- The **community development financing test** would evaluate a bank’s community development loans and investments, using a quantitative, metrics-based approach, as well as assess the impact of bank lending and investments in LMI communities.
- The **community development services test** would assess a bank’s record of helping to meet the community development services needs in the bank’s facility-based assessment areas, states, multistate MSAs, and nationwide areas. The evaluation would include a review of the impact and responsiveness of these activities to community needs.

CRA exams would continue to be tailored to bank size and type. Under the proposal, a bank would fall under one of three categories, which would also determine which tests they would be subject to:<sup>35</sup>

- **Small banks** have average assets, computed annually, of less than \$600 million in either of the prior two calendar years and would be evaluated under the current small bank lending test. They may opt into the Retail Lending test.
- **Intermediate banks** have average assets of at least \$600 million, but less than \$2 billion, in both of the prior two calendar years. These banks would be evaluated under the new retail lending test and the current community development test but may opt into the community development financing test.
- **Large banks** have average assets of at least \$2 billion in both of the prior two calendar years and would be subject to all four tests of the new framework.

The new proposal retains the current four-tier rating system and the ability of certain banks to apply to be evaluated under a strategic plan, which is subject to a public participation process and agency approval.<sup>36</sup> It would also create new data collection, reporting, and disclosure requirements for large banks, as well as an updated public comment process, while continuing to require public filing and notice of bank CRA exams.

While stakeholders have applauded the federal bank regulators for taking a unified approach to revising CRA rules, some advocates have noted that banking regulators’ have missed an opportunity to explicitly incorporate race into the CRA evaluation process despite existing legal standards and the intent of the law.<sup>37</sup> Furthermore, CRA only applies to FDIC-insured banks, even though the marketplace has evolved with more nonbank financial companies and fintech companies providing similar products and services.<sup>38</sup> For example, in 1990, the share of mortgage originations by non-CRA-regulated institutions was about 17 percent, and by 2020, non-bank independent mortgage companies made over 60 percent of mortgages for a home purchase or refinance.<sup>39</sup> However, activities that arise out of fintechs partnering with banks may be captured, with the bank partner being subject to CRA obligations.<sup>40</sup>

---

<sup>35</sup> Id.

<sup>36</sup> OCC, [Community Reinvestment Act: Interagency Notice of Proposed Rulemaking to Implement the CRA](#) (May 5, 2022).

<sup>37</sup> NCRC, [NCRC Issues Initial Analysis Of Historic Community Reinvestment Act Overhaul Proposal](#) (Jun. 1, 2022); California Reinvestment Coalition, [CRC Issues Comment on Proposed Community Reinvestment Act Modernizations](#)(Accessed Jun. 10, 2022); and Association for Neighborhood and Housing Development, [ANHD Statement on New Community Reinvestment Act \(CRA\) Proposal](#)(May 12, 2022).

<sup>38</sup> See American Banker, [BankThink: Fintechs can help banks meet CRA obligations](#) (Feb. 24, 2021).

<sup>39</sup> CFPB, [Data Point: 2020 Mortgage Market Activity and Trends](#) (Aug. 2021).

<sup>40</sup> See e.g., Protocol, [An aging banking law gets an internet overhaul](#) (May 9, 2022).

## Appendix - Legislation

- **H.R. 2768, “American Housing and Economic Mobility Act” (Cleaver).** This bill would address housing affordability and availability, strengthen fair housing protections, and make changes to the CRA regulations and exams. Specifically, under Title II, the bill would subject independent mortgage companies to CRA exams, codify community benefits agreements, specify conditions under which a bank may receive a downgrade and be required to create an improvement plan, require disclosure of deposits from LMI communities, and require the federal banking regulators to revisit CRA rules every five years.
- **H.R. \_\_\_\_\_, “American Community Investment Reform Act”.** This bill would expand the federal CRA regulators to include the CFPB and SEC, and make certain revisions to CRA exams. Specifically, it expands community development activities to include lending and investment by bank and non-bank firms, includes consideration of a bank holding company’s subsidiaries on the company’s evaluation, and requires CRA regulated firms to create an improvement plan if they receive a low rating. It would also make certain changes to the overall performance rating on CRA exams, and prohibits the award of government contracts to CRA regulated firms that fail their CRA exams.
- **H.R. \_\_\_\_\_, “Making Communities Stronger through the Community Reinvestment Act”.** This bill would revise CRA rules to ensure that bank loans and investments are more meaningful and responsive to the needs of low and moderate income communities, communities of color, and meeting the local needs of communities where banks have branches and issue most of their loans. Specifically, this bill would encourage banks to tailor their community development services, require banks to regularly meet with stakeholders to discuss current and future CRA obligations where banks have facilities, encourage banks to issue small-dollar mortgages, introduce stronger consequences for bank activities that are discriminatory or violate consumer financial protection laws, and require the Federal financial supervisory agencies to conduct a study identifying ongoing discrimination or racial disparities in access to credit.