Remarks by

Martin J. Gruenberg

Member, Board of Directors

Federal Deposit Insurance Corporation

The Community Reinvestment Act:

Its Origins, Evolution, and Future

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Introduction

I would like to thank the Association for Neighborhood and Housing Development, Enterprise Community Partners, and the University Neighborhood Housing Program for inviting me to speak this morning. I would particularly like to thank the International Political Economy and Development Program of Fordham University for hosting today's event.

The topic I would like to discuss today is the Community Reinvestment Act (CRA).

As I am sure most of you know, the Community Reinvestment Act was signed into law in October 1977. CRA celebrated its fortieth anniversary a year ago this month. It seems an appropriate moment to look back over the history of CRA, both its origin and evolution, and to consider how that experience should inform consideration of changes to CRA for the future.

Let me say, on a personal note, that my professional career has intersected with CRA from the outset. My first professional experience in Washington was in the summer of 1977 when I worked as an intern in the office of my local Congressman from the Bronx, a wonderful man named Jonathan Bingham. One of my responsibilities that summer was to track the progress of the proposed CRA legislation, which had great relevance for our Bronx Congressional district.

After I finished school I was able to persuade the Congressman to hire me as a legislative assistant in Washington. One of my responsibilities was to spend a week each month in the district working with community groups, financial institutions, and local government officials on housing and economic development projects. It says something that one of the community leaders I came to know then, Jim Buckley, is still at work in the Bronx and helped arrange my participation in today's program. As a result, I have had the opportunity to observe the impact of CRA on community development from its earliest days.

I would like to begin with this observation. The Community Reinvestment Act has proven itself to be a foundation of finance for low- and moderate-income communities in the United States.

I can remember what things were like in Bronx neighborhoods before CRA. In my recollection, bank engagement in those neighborhoods was not active and bank relationships with local community organizations were not strong. Over the course of those forty years, which saw the decline and then the rebuilding of the Bronx, I believe those relationships evolved into productive, professional partnerships, including city and state officials, that contributed substantially to the progress that has been made and replicated in communities across the country. CRA played a critical role in that process.

CRA has become such a part of the fabric of community development in the United States that it can be taken for granted. Often the focus is on the glass half empty rather than half full. As someone who was around when the glass was nearly empty, I have a keen appreciation of the value CRA brings. It also underscores the importance of being thoughtful and prudent in considering how CRA can be adapted to the changing banking environment. In my view it is essential to build on the experience we have gained over these forty years.

In my remarks today, I will comment on the origins of CRA, why it was such a departure from what came before, how it has evolved over its forty year history, and how that history should inform how we proceed in the future.[1] The key point I would like to make is that the foundations of CRA developed over that history - the community-based focus, the reliance on community input, and the consideration of discriminatory and other illegal credit practices in the CRA evaluation - should be the basis on which future changes to CRA are made.

[1] I would like to acknowledge a speech given by Federal Reserve Board Chairman Ben S. Bernanke, The Community Reinvestment Act: Its Evolution and New Challenges, March 30, 2007, which utilized a similar organizational structure.

Origins of CRA

CRA seeks to address one of the most intractable challenges of our financial markets – access to credit, investment, and basic banking services for underserved low- and moderate-income communities, both urban and rural.

As many of you are aware, this market challenge was exacerbated by government programs during the Depression. It is well known that the Home Owners' Loan Corporation, which was established by Congress in 1933 to refinance foreclosed mortgage borrowers, delineated certain neighborhoods in red as higher risk. Those neighborhoods had poorer households, large minority populations, and older housing stock.[2] This was the basis of the term redlining.

The effects of that policy are still felt today. Recent research by economists at the Federal Reserve Bank of Chicago shows that areas denied credit in the aftermath of the Great Depression of the 1930s continue decades later to have diminished property values, lower homeownership rates, and residents with depressed credit scores.[3]

While that research focuses on public programs that systematically excluded low- and moderate-income communities and minority communities from access to capital, others have noted that these policies were a continuation of similar patterns historically exhibited by the private sector, with financial institutions taking deposits from lower income and minority customers while failing to make credit available in the neighborhoods where they lived.[4]

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[2] *See* Amy E. Hillier, Redlining and the Homeowners' Loan Corporation, 29 Journal of Urban History 394-395 (2003); Community Reinvestment Act of 1977, *Federal Reserve History*, www.federalreservehistory.org/essays/community_reinvestment_act.

[3] https://www.chicagofed.org/publications/working-papers/2017/wp2017-12

[4] *See, e.g.*, Mehrsa Baradaran, The Color of Money: Black Banks and the Racial Wealth Gap, The Belknap Press of Harvard University Press (2017); Kenneth Jackson, Crabgrass Frontier: The Suburbanization of the United States, Oxford University Press (1985).

During the 1960s and 1970s Congress passed legislation designed to address discriminatory lending such as the Fair Housing Act of 1968 and the Equal Credit Opportunity Act of 1974. It also established federal programs to subsidize the cost of housing and promote community development in low- and moderate-income neighborhoods.[5]

Attention was also focused on expanding access to private sector lending and investment. Particular attention was given to the role of banks in meeting the credit needs of low- and moderate-income communities and the problem of redlining. It was recognized that while the public sector had an important role to play, community development depended fundamentally on private sector investment and access to credit through banks.

The Home Mortgage Disclosure Act of 1975 (HMDA) was the first legislation that sought to respond to this issue. Its purpose, as described in the Act, was "to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located."[6]

The law required each depository institution to compile and make available to the public the total dollar amount of mortgage loans that were originated or purchased by the institution during each fiscal year, and to itemize the number and dollar amount of loans by census tract. For the first time, community organizations, regulatory agencies, and the general public had access to information to assess whether the lending activity of an institution was meeting community needs.

[5] Housing and Community Development Act of 1974 (Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633) authorized the Community Block Grant Program (42 U.S.C. 5301 et seq.), Section 8 Program (42 U.S. Code § 1437f), and amended the Section 236 rental assistance program authorized under the National Housing Act (12 U.S.C. 1715 z-l).
[6] 12 U.S.C. §2081, *et seq.*

The Community Reinvestment Act of 1977 went significantly further than HMDA, moving from information disclosure by depository institutions to, in the words of the Act's preamble, "a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[7]

The provisions of CRA as originally enacted were straightforward but groundbreaking. The law states, "It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions."[8]

The key operative provision of the Act states, "In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall 1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and 2) take such record into account in its evaluation of an application for a deposit facility by such institution."[9]

The "appropriate Federal financial supervisory agency" included the Federal Reserve Board, the Comptroller of the Currency, and the FDIC, which I will refer to as the federal banking agencies. The law specified that the term "application for a deposit facility" included a charter for a national bank or federal savings and loan association, deposit insurance, the establishment of a domestic branch, or the merger or consolidation with, or the acquisition of the assets or liabilities of a regulated financial institution.[10]

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[7] 12 U.S.C. §2901(a)(3).
[8] 12 U.S.C. §2901(b).
[9] 12 U.S.C. §2903(a).
[10] 12 U.S.C. §2902(3).

CRA established important precedents that previously had not been part of the financial regulatory framework. It created an affirmative obligation on the part of every federally insured bank and thrift to meet not just the deposit needs, which was the previous requirement, but also the credit needs of all the communities they served, including low- and moderate-income neighborhoods. It also required the federal banking agencies to assess the performance of the institutions in meeting the requirement, and to consider performance in evaluating a range of applications that the institutions might submit. This introduced an entirely new set of statutory responsibilities for both the banks and the regulatory agencies.

The first regulation adopted to implement the new law stipulated the factors to be considered by the agencies in assessing a bank's record of performance in helping meet the credit needs of its entire community, including low- and moderate-income neighborhoods.[11] These included:

- activities conducted by the bank to ascertain the credit needs of its community, including the extent of the bank's efforts to communicate with members of the community regarding the credit services being provided by the bank;
- the geographic distribution of the bank's credit extensions, credit applications, and credit denials;
- evidence of prohibited discriminatory or other illegal credit practices;
- the bank's participation in local community development projects; and
- the bank's origination of residential mortgage loans and small business and small farm loans within its community.[12]

[11] 43 Fed. Reg. 47144, 47152 (Oct. 12, 1978).
[12] *Id.;* 12 CFR §345.7 (1979).

From the outset, the agencies made clear that the institutions would be evaluated on their outreach and engagement with the community, their compliance with antidiscrimination and other consumer protection statutes, and the geographic distribution of their loans. The intention to address redlining on the basis of income and race was evident, as was the community-based focus of the law.

To implement the Act, the agencies assigned banks a rating based on how they addressed those factors, and took those ratings into account when deciding whether to approve mergers, acquisitions, or the opening of branches. The examination culminated in the assignment of a rating – Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance – and a written report that became a part of the supervisory record of the institution.[13]

<u>Evolution of CRA</u>

<u>FIRREA – 1989</u>

The first significant statutory changes to CRA came as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).[14] They were included in the legislation in order to provide some local community benefit in a bill that was otherwise providing billions of public dollars to make good on the deposit insurance guarantees from the failure of hundreds of thrift institutions resulting from the thrift crisis of the 1980s. The changes were intended to enhance the public transparency and community accountability of the CRA evaluation process.

The changes required that upon the conclusion of each CRA examination, the appropriate federal banking agency prepare a written evaluation of the institution's record of meeting the

[13] *See* 12 U.S.C. §2906.
[14] Pub. L. No. 101-73, title XII, §1212, 103 Stat. 527 (Aug. 9, 1989).

credit needs of its entire community, including low- and moderate-income neighborhoods. The law also required that each written evaluation have a public section and a confidential section.[15]

The public section of the report was required to state the agency's conclusions for each assessment factor identified in the regulations, discuss the facts supporting such conclusions, and contain the institution's rating and a statement describing the basis for the rating. The law stipulated the four possible ratings that had previously been provided by rule.[16]

Including a public section containing both the rating of each institution and the conclusions along with the facts supporting the conclusions for each rating was an unprecedented statutory transparency requirement. It underscored the expectation of public accountability as an essential part of the CRA review process to achieve responsiveness to community credit needs.

Riegle-Neal Act – 1994

The second significant set of statutory changes to CRA occurred as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.[17] The changes were intended to ensure that the reduced barriers to interstate banking and branching would not undermine the community-based focus of CRA. This was an important precedent for adapting CRA to a changing banking environment, which has relevance for today.

First, Riegle-Neal added to the written evaluation required by FIRREA an additional requirement that the information in the written evaluation be presented separately for each metropolitan area in which a bank maintains one or more branch offices. The metropolitan area basis for the CRA review thus became a statutory requirement.[18]

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[15] 12 U.S.C. §2906.
[16] 12 U.S.C. §2906(b).
[17] Pub. L. No. 103-328, title I, §110, 108 Stat. 2364 (Sep. 29, 1994).
[18] 12 U.S.C. §2906(b)(1)(B).

Second, in the case of a bank that maintains branches in two or more states, the appropriate federal banking agency must prepare a written evaluation of the entire institution's record of performance. For each state in which the institution maintains a branch, the agency must prepare a separate written evaluation of the institution's state level record of performance.[19]

Third, each state level written evaluation must present the information separately for every metropolitan area in which the institution maintains a branch, and separately for the remainder of the nonmetropolitan areas of the state. If the institution maintains a branch in a nonmetropolitan area, then it must describe how the agency has performed the examination of the institution, including a list of the individual branches examined.[20]

It is clear that the intent of the Act was to ensure that the growth of interstate banking and branching would not undermine the community-based focus of the CRA evaluation.

1995 Rulemaking

In 1995, the federal banking agencies undertook a comprehensive review of the standards for evaluating CRA requirements. There was a concern shared by community and consumer groups and the banking industry that CRA examinations had come to overemphasize process and underemphasize performance. This review resulted in a rulemaking in which the agencies introduced the lending, services, and investment tests for evaluating CRA performance, with which I am sure you are familiar.[21]

It was also in this rulemaking that the federal banking agencies introduced the term "assessment area".[22] The assessment area described the geographic area within which the performance criteria in the rule would be assessed. In order to simplify the process of delineating

[19] 12 U.S.C. §2906(d)(1).
[20] 12 U.S.C. §2906(d)(3).
[21] 60 Fed. Reg. 22156 (May 4, 1995).
[22] 12 CFR §345.41 (1996).

an assessment area, the rule encouraged institutions to establish assessment area boundaries that coincide with the boundaries of one or more metropolitan statistical areas or one or more contiguous political subdivisions, such as counties, cities, or towns. The assessment area includes the geographies where the institution has its main office, branches, and deposit-taking ATMs, and the surrounding geographies in which the institution originates or purchases a substantial portion of its loans.[23]

This rulemaking also introduced the concept of "performance context".[24] An institution's performance under the tests and standards in the rule is judged in the context of information about the institution, its community, its competitors, and its peers for each of its assessment areas. Examiners are required to consider the following information in order to assist in understanding the context in which the institution's performance should be evaluated:

- the economic and demographic characteristics of the assessment area;
- lending, investment, and service opportunities in the assessment area or areas;
- the institution's product offerings and business strategy;
- the institution's capacity and constraints;
- the prior performance of the institution; and
- as appropriate, the performance of similarly situated institutions.[25]

It is clear that the federal banking agencies had a number of objectives with this rulemaking. First, they wanted to make the CRA evaluation more performance based as was reflected in the adoption of the lending, services, and investment tests. Second, they reinforced the community-based focus of CRA with the introduction of local assessment areas as the basis

[23] 12 CFR §345.41 (2018).
[24] 12 CFR §345.21(b) (1996).
[25] 12 CFR §345.21(b) (2018).

for the CRA evaluation. Third, they also underscored the multifaceted nature of the CRA review with the introduction of the performance context evaluation for each assessment area in which the institution does business.

Changes for Small Banks – 1995-2005

It is worth noting that the 1995 rule change and a 2005 rule change, as well as a provision of the Gramm-Leach-BlileyAct of 1999, impacted how small banks are treated under CRA.[26] The 1995 rule streamlined the review process for banks with assets up to $250 million and focused the review on lending activities.[27] The Gramm-Leach-Bliley Act provided that banks with assets up to $250 million with an outstanding rating would not be examined more than once every 60 months, and those with a satisfactory rating not more than once every 48 months.[28]

In 2005 the federal banking agencies adopted a rule change that increased the asset-size threshold for a small bank to $1 billion.[29] Small banks were no longer subject to certain data collection and reporting requirements and were eligible for evaluation under the small bank lending test.[30] The 2005 rule change also created a new category of "intermediate small banks" – those banks with assets between $250 million and $1 billion – for purposes of evaluation under CRA.[31] The overall CRA rating for an intermediate small bank is based on both the rating from the small bank lending test and the rating from a new community development test.[32] The rule

[26] Pub. L. No. 106-102, Title VII, §712, 113 Stat. 1469 (Nov. 12, 1999); 70 Fed. Reg. 44256 (Aug. 2, 2005).
[27] *See* 12 CFR §345.26 (1996).
[28] 12 U.S.C. §2908.
[29] 12 CFR §345.12 (u)(1) (2006).
[30] See 12 CFR §§345.26, 345.42 (2018).
[31] 12 CFR §345.12(u)(1) (2006).
[32] 12 CFR §345.26(a)(2) (2018).

also provided for indexing the small bank asset threshold for inflation.[33] At the end of last year, 89 percent of all banks had assets below the current intermediate small bank threshold.

The 2005 rule change also reinforced the provision that goes back to the original CRA rule that the evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practice in any geography by the bank.[34]

Guidance – 2010-2016

Finally, in 2010, 2013, and 2016 the federal banking agencies adopted guidance that began to consider the issue of bank activity outside of assessment areas.[35] The guidance indicated that CRA regulations allow consideration of community development loans, qualified investments, and community development services that benefit an institution's assessment areas or a broader statewide or regional area that includes the institution's assessment areas.[36] The guidance also allowed for CRA consideration for investments in nationwide funds.[37]

Considerations for the Future

I wanted to use this opportunity today to review the origins and evolution of CRA in order to place current discussions about the future of CRA in context.

Numerous studies have underscored the critically important impact CRA has had in expanding access to credit in low- and moderate-income urban and rural communities since it was enacted.[38] While large challenges remain, such as the significant disparities in access to credit in minority neighborhoods,[39] the progress has been real.

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[33] 12 CFR §345.12(u)(2) (2018). The current definitions state that "small banks" are banks with assets of $313 million and below and "intermediate small banks" are banks with assets of more than $313 million but less than $1.252 billion.
[34] 12 CFR §345.28(c) (2006).
[35] *See* 75 Fed. Reg. 11642 (Mar. 11, 2010); 78 Fed. Reg. 69671 (Nov. 30, 2013); 81 Fed. Reg. 48506 (July 25, 2016).
[36] CRA Qs and As §§__.12(h)—6; __.12(h)—7, __.21(a)—3.
[37] CRA Qs and As §__.23(a)—2.
[38] Multiple research papers have identified positive effects of CRA. *See* Lei Ding and Leonard Nakamura, "Don't Know What You Got Till It's Gone" – The Effects of the Community Reinvestment Act on Mortgage Lending in the

The central issue going forward will be to preserve the foundations of CRA – the community-based focus, the reliance on community input, and the consideration of discriminatory and other illegal credit practices in the CRA evaluation - while adapting CRA to a changing banking environment.

For example, online and mobile technologies have changed the opportunities for access to and delivery of financial services. Consideration should be given to how CRA could be adapted to include communities in which banks do substantial business but do not fall within existing assessment areas.

As we consider proposals to address this issue, we should retain the central focus of CRA on local communities. It is instructive that even as Congress removed barriers to interstate banking and branching in 1994, which significantly impacted the banking business, it reaffirmed CRA's core commitment to local communities. That experience is relevant today as we adapt CRA to changing technology and bank activity outside of assessment areas.

A second issue worth considering is how to focus greater attention in CRA evaluations on community development. Currently, community development is considered in the lending, services, and investment tests. Suggestions have been made to create a single community development test complemented by a retail test that would include both lending and services, thereby simplifying the performance test process as well.

Philadelphia Market, Philadelphia Federal Reserve Bank Working Paper 17-15, 2017; Daniel Ringo, Mortgage Lending, Default, and the Community Reinvestment Act, Federal Reserve Board, 2017; R. Bostic and H. Lee, "Small Business Lending Under the Community Reinvestment Act," Cityscape: A Journal of Policy Development and Research, 19(2): 63-84, U.S. Department of Housing and Urban Development, 2017, (https://www.huduser.gov/portal/periodicals/cityscpe/vol19num2/ch6.pdf).

[39] *See*, e.g., "FFIEC Announces Availability of 2017 Data on Mortgage Lending", Federal Financial Institutions Examination Council, May, 7, 2018 (noting that black and Hispanic households continue to experience higher denial rates than non-Hispanic white applicants for conventional home purchase loans) (available at https://www.ffiec.gov/press/pr050818.htm).

Third, finding ways to ensure greater consistency and predictability in CRA evaluations would also have value. Providing greater certainty to bankers and community organizations as to whether proposed investments or loans would receive CRA credit is a commonly shared goal, although it poses challenges in practice.

It is essential, however, that these worthwhile objectives be pursued consistent with the foundations on which CRA has been based.

For example, a "CRA ratio" for a bank that attempts to aggregate all CRA-eligible activities into one quantitative performance ratio for the institution, as has been suggested to provide greater clarity and certainty to the CRA evaluation, could obscure the current community-based focus of CRA and undermine its basic purpose. It could fundamentally change the relationship between banks and local communities.

A reliance on a single ratio of CRA performance could allow banks to pick and choose which communities to serve and which products and services to offer in those communities. It is not clear how it would be made compliant with the statutory requirement that the CRA evaluation be presented separately for each metropolitan area in which a bank maintains one or more branches.

Such an approach could also undermine the incentive that banks currently have to develop constructive partnerships with community organizations. It is these partnerships between community organizations and banks that have been central to community development in low- and moderate-income neighborhoods throughout New York City and around the country.

Conclusion

In conclusion, CRA's simple premise – that banks have an affirmative obligation to serve the local communities in which they do business – is as powerful and relevant today as it was in 1977.

I would like to thank all of the neighborhood and community organizations, and the banking organizations who are here this morning. CRA's effectiveness is ultimately premised on your participation, leadership, and support. We have come a long way in forty years. I have no doubt that we still have a long way to go.

As we move forward, it is important to retain CRA's foundations – the community-based focus, the reliance on community input, and the consideration of discriminatory and other illegal credit practices in the CRA evaluation - developed over a forty year history of expanding access to credit in low- and moderate-income communities, even as we seek to adapt CRA to an evolving banking environment.

Thank you.