The Community Reinvestment Act and community wealth building: A guide

A supplement to the working paper, "The next system of community investment: Community Reinvestment Act reform in the 21st century"

October 2018

Devin Case-Ruchala

Executive summary and resources for practitioners

In this guide:

THE NEXT SYSTEM PROJECT

The Community Reinvestment Act: An overview

Purpose and history

Thanks to the work of community organizers, the Community Reinvestment Act was passed in 1977 to spur lending and investing in the Black community, other communities of color, and lower-income neighborhoods—to go beyond anti-discrimination legislation and mandate banks affirmatively serve a more fundamental public purpose to bring lending and investment into previously redlined communities.[1]

The CRA requires that deposit-taking banks reinvest capital back into the communities from where they draw those deposits. (That specifically includes “low- to moderate-income,” or LMI, communities making below 80 percent of the median annual income of a given area.) This requirement is based on the recognition that banks receive from the public an economic benefit from their federally issued bank charter and the federal deposit insurance that protects their assets. In turn, the banks’ CRA performance is assessed based on how well they serve the public purpose of supporting the lending and investment needs of their "assessment areas"—the LMI communities surrounding bank branches and deposit-taking ATMs.[2]

The banks' Community Reinvestment Act performance is assessed based on how well they serve the public purpose of supporting the lending and investment needs of the low- and moderate-income communities surrounding bank branches and ATMs.

The CRA's fairly simple language leaves the specifics of examination criteria to the regulatory agencies charged with administering the law. The law does specify penalties for noncompliance, the most severe of which include the inability to establish new branches or to merge with other banks. The exams and ratings to which banks of various asset sizes are subject to today are based on rules approved by regulatory agencies in 1995 and 2005.

Large banks (those with more than $1.2 billion in assets) undergo the most stringent tests. They are measured in three areas: lending, investing, and services. Ratings are based on a 24-point scale, which for large banks is a weighted sum across the three areas (with lending constituting 50 percent of the points, and services and investments constituting 25 percent each).

Intermediate-sized banks are measured only under the lending and community development tests, while small banks are assessed only under the lending test. Based on their score, banks can be ranked as "outstanding," "satisfactory," "needs improvement," or in "substantial noncompliance."

Administration and oversight

Regulation and implementation: The agencies authorized to issue regulations building on the CRA's original statutory language include:

- the Office of the Comptroller of the Currency (OCC) which regulates national banks,
- the Board of Governors of the Federal Reserve System (FRB), which regulates state-chartered, non-FRS member banks,
- the Federal Deposit Insurance Corporation (FDIC), which regulates state-chartered, FRS-member banks, and
- The Federal Financial Institutions Examination Council (FFIEC), or the "interagency council," handles coordination among these three agencies (along with others). The FFIEC also calls public hearings on any proposed revisions to the CRA.

Only Congress can make changes to the statutory language itself. That language defines key aspects of the law, such as bank branches being the mechanism that activates CRA requirements, as well as the enforcement mechanisms.

Criteria for measuring bank compliance: "Interagency Q&As" set the baseline for what meets the definition of "community development" and what counts as CRA-qualified loans, investments, and services. They are developed by the regulating agencies. They are based in part on input from banks, communities, and others, but are updated on an infrequent, inconsistent basis.

Examiners get further guidance in the form of examination procedures from the regulating agencies.

Preparing bank examiners: CRA examiners are trained through the district offices of the respective federal agencies. They are trained, in part, based on the "Interagency Q&As" document. The agencies' offices work with practitioners and funders on the ground, and more recently, have worked to more directly connect banks and other funders with CRA-qualified projects via Investment Connection events.

The community development divisions also produce research on community development best practices; however, this inconsistently gets worked into examiner trainings as these departments often remain functionally separate within the district offices.

Exams and merger reviews: Examiners do their reviews under the supervision of the respective agencies. Those agencies review applications for bank mergers and the CRA exams to be taken into account in approving those mergers. These exams and merger reviews occur at varied, inconsistent intervals.

Public information and input: Members of the public can obtain CRA exam results from the website of the appropriate regulatory agency (e.g. for a national bank, the OCC, at occ.treas.gov). Comments on merger applications can be submitted at any time to the agencies through their websites.

CRA-related data can be found on the FFIEC website, ffiec.gov. That includes data on CRA-qualified mortgage lending compiled under the Home Mortgage Disclosure Act.

Gaps and opportunities

The definition and criteria of community development do not specify community wealth building approaches. Community development activities are defined (in the interagency Q&As) as those "that promote economic development by financing businesses or farms that... have gross annual revenues of $1 million or less."[3] Additional qualifying community development projects are also outlined in the Q&As, such as affordable housing.

Notably, communities of color and other underserved populations are not specified. When it comes to affordable housing, there is no mention of ownership structure—in other words, there is no preference for locally, collectively, or publicly owned housing over ownership by large real estate corporations. Qualifying investment criteria includes investments in community development corporations (CDCs) and community development financial institutions (CDFIs). However, community wealth building models (such as co-ops, municipal enterprises, land trusts, and employee stock ownership companies) are not specified, notable given that the agencies regulating CRA-covered institutions recognize these as belonging to "a new generation of community development models."[4]

All of these considerations could simply be added to the list of qualifying criteria outlined in the Q&As, and the definition of community development could assert a more explicit focus on community collaboration, equity, and economic security.

CRA exams do not consistently include community input or rigorously review bank performance. CRA exams present an opportunity to assess banks for their performance beyond what is outlined in the Q&As, such as their innovating and financing of community wealth building approaches. However, this happens inconsistently; examiner training on community development best practices vary and the examiners themselves have varied backgrounds in community development. Also, the exams do not include much elaboration on the justification for a given rating—particularly with regard to the examiners' review of discriminatory lending practices (a separate component of the test) or the examiners' consideration of community input on how well banks met community needs.

Each exam has what is called a performance context that identifies community needs and helps examiners measure bank performance in meeting those needs. However, the performance contexts often lack community input, while banks frequently submit their own performance contexts to examiners.[5]

Standardizing the performance contexts could help resolve these issues. That would include increasing coordination between examiners and community development officers, and agencies increasing their role in elevating the voice of community members.

Enforcement mechanisms lack strict penalties, and growth in the finance sector is happening beyond the reach of the CRA. Banks that have a poor CRA rating do not face a financial or other sanction other than possibly being denied an opportunity to expand their operations or merge with another institution. Public embarrassment may be the most potent consequence a poor CRA performer could face, but banks rarely have to worry even about that: 89 percent of all banks receive a "satisfactory" rating,[6] either because of too-broad compliance criteria, the structure of the examination process itself or inadequate incentives to enforce the law. Meanwhile, more of the lending and investing once done by CRA-covered banks is being taken on by online financial or mortgage companies.

Addressing this would require congressional action to expand the CRA's scope to include these newer types of financial institutions, tighten the performance standards, and add more severe penalties for financial institutions that are in noncompliance with the law.

Barriers to reform

Structural and ideological

Major changes in the U.S. political economy in the last several decades have had the primary effect of aligning political institutions with private interests.

The broad deregulation of the corporate sector and the revolving door between private and government institutions (especially Wall Street, Congress, and corporate America) have obstructed the government's ability to seriously interrogate and redefine its role in the liberal market economy and its responsiveness to public concerns about corporate power. International pressures resulting from globalization helped further entrench this pro-capital orientation.[7]

Further, the ideological opposition to government "intervention" in an otherwise "free market" continues to stymie the assertion in political discourse that private institutions must have a more fundamental public-purpose obligation.[8]

While the CRA took an important initial step in establishing a public purpose obligation for depository banks (given their public charter and access to FDIC insurance), it could go farther in establishing that more broadly to financial institutions outside of deposit-taking.

Institutional and legal

A main barrier to CRA reform is that the regulatory agencies cannot make changes to the law's statutory language; only Congress can.[9] What regulatory agencies can do is interpret and apply the statutory language (through such means as examination requirements) in ways that elevate the standards to which banks are held. That can be difficult because regulatory authority is spread across several agencies, requiring coordination to avoid discrepancies or inconsistencies in regulation and enforcement.

Pushing for significant reform of the CRA is very costly politically. Community support will be key to advancing major reforms to the CRA and laying the groundwork for centering community wealth building models within those reforms.

Those inconsistencies can happen even within agencies: the Federal Reserve district banks, for instance, have resources pertaining to community development best practices and community connections, but this capacity often remains functionally separate from examiner trainings and CRA requirements.

Regulatory willpower and the need for community support

Institutional, structural, and ideological barriers make pushing for significant reforms of the CRA very costly politically. Community support will be key to advancing major reforms to the CRA and laying the groundwork for centering community wealth building models within those reforms.

That reality is echoed by current and former regulators and analysts familiar with the regulatory process as well as being evident in how the original CRA emerged from community organizers' strategizing. Meanwhile, community wealth building models need to be better understood and practitioners, particularly those serving lower-income communities, need more capacity to attract capital.

The "community wealth building resources" section of this guide includes resources where people interested in this aspect of CRA reform can start.

The community wealth building framework

Community wealth building aims to promote the inclusive and collective ownership of assets by local residents. Instead of being concentrated in large corporations or traded on stock markets, ownership is broad-based and democratic.

The Democracy Collaborative has highlighted and tracked numerous successful institutional models and policy tools already being used to achieve this end, such as social enterprises, community development corporations, employee stock ownership plans (ESOPs), municipally owned enterprises, community land trusts, and cooperatives.

The shift in the structural arrangement of ownership and control of assets afforded through these models, from ownership and control by a few to ownership and control by many, and the intentional inclusion of traditionally marginalized groups into these new models of ownership and control, is imperative to shifting to an economic system that builds wealth and prosperity for everyone. (See page 9 for reports published by the Collaborative detailing these approaches.)

Holistic reform ideally requires changes to the criteria for assessing bank compliance, expansion of the CRA to financial activity occurring outside of bank branches and depository institutions, and enhancements to the enforcement mechanisms themselves.

Rethinking the CRA as a tool for community wealth building

The opportunities for CRA reform range from tweaking the current regulatory framework (such as the Q&A criteria) to passing new legislation through Congress. One easily accessible reform would be to get regulators to add bank engagement with community wealth building models to the existing assessment criteria. Assuming that this was acommpanied by appropriate investment in grassroots capacity-building and education about these approaches both in the banking sector and within low-income communities and communities of color, associated organizations and lenders could build on the work of the communities to grow these models. This approach would bypass many of the structural barriers to reforms through Congress or the agencies.

However, such changes to the criteria without greater enforcement mechanisms is not likely to result in a significant change in bank behavior, and conversely, enacting a broader law without making changes to the criteria misses an opportunity to make the CRA a more effective tool for community wealth building. Thus, holistic reform ideally requires changes to the criteria, the expansion of the CRA to financial activity occurring outside of bank branches and depository institutions, and enhancements to the enforcement mechanisms themselves.

Given the barriers to such fundamental reforms, the CRA should be seen as just one tool—albeit an important one—in a next system of community investment. Related policies, such as the Dodd-Frank Act, should be supported and bolstered, and other types of financial institutions (such as government-owned banks and cooperative or community-focused banks) should also be considered at the local, state and national level.

A policy agenda for a next system of community investment

The policy points presented here are intended to reflect core objectives that advocates can advance and build upon as political opportunities become available. This is not designed to be an exhaustive list or for a designated time frame. Given the uncertainty of how the political environment will evolve, a CRA reform strategy should operate on all fronts to keep all options available. In other words, waiting for Congress to pass an updated CRA does not foreclose continuing such community actions as commenting on bank exams and merger applications, writing letters to regulators or meeting with agency staff.

More detail on this agenda—the primary policy aims, what regulatory body can act, and where advocacy efforts may be directed—is in the "Policy agenda" section of the working paper, "The Next System of Community Investment: Community Reinvestment Act Reform in the 21st Century."

CRA reforms

1. First, do no harm. Of primary importance to CRA reform is defending the existing law from efforts to remove or weaken it. That includes resisting such efforts as raising the asset size thresholds for small and intermediate-small banks as well as opposing the metric-based rating system proposed in the most recent Notice of Proposed Rulemaking that could severely diminish the CRA's impact by emphasizing quantity over the quality or type of projects.[10]

2. Add community wealth building models to CRA criteria and expand on the definition of community development. The community wealth building models can be added to the Q&A criteria, while changes to the definition of community development would likely require legislative change.

3. Elevate the coordinating role of the regulatory agencies. Encourage the community development divisions at the regulatory agencies to connect banks with community groups and projects (particularly ones geared toward community wealth building approaches) through such channels as Investment Connection events, and better integrate examiners with the research and staff of the community development divisions.

4. Standardize the performance contexts to streamline exams and facilitate public input. This could involve interagency coordination to develop standardized performance contexts for the top 100 metropolitan service areas (rather than examiners writing a new performance context for each exam).[11] That could provide more structure for community input and more transparency for bank assessment.

5. Improve the overall transparency of the law. This can be achieved through more detailed data collection (particularly of the type of business financed, if community wealth building approaches are to be added), regular and public-facing CRA exam schedules, and easier-to-navigate agency websites.

6. Redefine assessment areas and covered institutions. CRA coverage should more uniformly include communities where an examined bank does significant business, even if it does not maintain bank branches there. The CRA should also apply to all financial institutions, or at least to a subset, such as online financial companies, mortgage affiliates, and credit unions.

7. Improve the enforcement mechanisms. That can be achieved either within the current CRA regulatory framework (through transparency and enforcement improvements around merger applications) or by imposing stricter penalties on firms that are not in compliance, which would require legislative change.

Associated legislation, agencies, and reinvestment institutions

1. Defend and bolster the Dodd-Frank Act and the Community Financial Protection Bureau. This is necessary to maintain a stable financial system that does not precipitate a financial crisis that strips wealth gains from communities, and that protects against discriminatory and exploitative financial practices.

2. Defend and bolster federal programs and policies that promote community investment. That includes programs in such agencies as the Federal Housing Authority, Fannie Mae and Freddie Mac, the National Housing Trust Fund, Capital Magnet Fund at the Federal Housing Finance Agency, and the department of Housing and Urban Development.

3. Support the creation of community-centered financial institutions. That includes public (i.e. government-owned) banks, community or cooperative development banks, and community-focused credit unions at the city, state, or national level.

Key players, strategies and resources

Avenues for policy advocacy

National Community Reinvestment Coalition (NCRC) and the 2018 OCC Notice of Proposed Rulemaking

The NCRC, representing over 600 community reinvestment organizations, remains the primary defender of the CRA by holding annual conferences for its members, providing training sessions, issuing policy memos, testifying before Congress, and strategizing with regulators on policy reform. Opportunities to become involved with NCRC's work—such as becoming an organizational member or attending the annual conference—are detailed on their website, ncrc.org. In particular NCRC has provided instructions and a template for providing comments on the OCC's most recent Notice of Proposed Rulemaking, which requests comments on important regulatory reforms to the CRA (See ncrc.org/treasurecra/).

Regulatory agencies

Comments on CRA exams or bank applications requiring review of CRA compliance may be submitted via the website of the agency with jurisdiction over a given bank. Using the language of community wealth building in such comments could help bring awareness to alternative models of community investment while keeping up pressure on bank performance.

Organizations with a community wealth building focus should present testimony at hearings held by the interagency councils once they are announced. Hearings are announced by the FFIEC through press releases posted to their website. (Members of the public can sign up for email alerts via the FFIEC website: ffiec.gov/cra.)

Political officeholders and candidates

As momentum builds in favor of CRA policy reforms, public support through the traditional channels of calls to congressional representatives and questions to candidates will be critical. Working in calls for community reinvestment reform to related legislation can also help sow interest. Massachusetts Senator Elizabeth Warren's recently introduced CRA modernization bill is an immediate opportunity for CRA reform advocacy.[12]

Laying the legal groundwork: Supporting extending the "public purpose" requirement

All of the above organizing efforts should intentionally lay the groundwork for congressional passage of a CRA that makes increased capital for community wealth building a "public purpose" financial institutions must fulfill. Laying the intellectual groundwork for that this public purpose is critical to establishing the argument for passing a broader, more robust CRA. Such an assertion could build on the "public convenience and necessity" argument applied to industries serving the public (e.g. communications and power companies) that in part informed the original CRA organizers' drafting of the legislative language (see "The origin of the Community Reinvestment Act" in the working paper, "The Next System of Community Investment: Community Reinvestment Act Reform in the 21st Century.").

Building up local relationships around the CRA and community wealth building

Community groups with CRA-eligible projects requiring financing could urge their Federal Reserve district bank to hold an Investment Connection event. (Investment Connection events were first piloted by the Kansas City Fed, and community groups in that district are most likely to have success with doing more such events. Learn more at https://www.kansascityfed.org/community/investmentconnection.) Furthermore, identifying local community wealth building offices, advocates, or organizations and forming relationships will help build up the network that will increase support for these models.

Reports published by The Democracy Collaborative

"Cities Building Community Wealth." This report provides a clear articulation of the community wealth building framework. It also provides 16 case studies of cities that have taken concerted efforts to take up a community wealth building approach to development (democracycollaborative.org/cities).

"Strategies for Financing the Inclusive Economy." This report outlines current methods for financing wealth building models—"to demystify the financing of broad-based enterprise"—such as cooperatives, employee stock ownership plans, social enterprises, hybrid enterprise, and municipal enterprises (democracycollaborative.org/financinginclusion).

"Policies for Community Wealth Building." This report covers local policies that facilitate wealth building models, such as land trusts, responsible banking ordinances, and city land banks (democracycollaborative.org/cwbpolicy).

"Sparking the conversation in your community: A DIY guide to planning your own community wealth building summit." This guide discusses how to strategically bring the wealth of information, experience and skill sets with community wealth building models to the table to build relationships and educate (democracycollaborative.org/pokroundtable).

Organizations and projects

North American Students of Cooperation Organization (NASCO) is the national member organization for housing (and other) cooperatives serving student populations. Resources pertaining to start, managing, and growing housing cooperatives are available on the NASCO website (nasco.coop).

U.S. Federation of Worker Cooperatives (USFWC) is a national member-based organization for worker cooperatives that primarily does policy advocacy and resource development (usworker.coop).

Democracy At Work Institute (DAWI) expands on the work of USFWC with a focus on communities of color, immigrant communities, and lower income populations (institute.coop).

Opportunity Finance Network is the trade organization for CDFIs serving lower-income communities. advocacy, training, and resource development for 1 Some cooperative lenders are also CDFIs. (ofn.org)

designing the WE is a "social impact design studio" that helps communities take the lead in driving development projects. Their "Undesign the Redline" exhibit explains the history of redlining and invites participantes to "invent the future of undoing structural inequities" (designingthewe.com).

Endnotes

[1] Berry, Michael V. "Historical Perspectives on the Community Reinvestment Act of 1977." *Federal Reserve Bank of Chicago: ProfitWise News and Views.* December 2013.

[2] Getter, Darryl E. "The Effectiveness of the Community Reinvestment Act." *Congressional Research Service.* January 7, 2015.

[3] "Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance." *Federal Register: Rules and Regulations.* Vol. 81, No. 142. Monday, July 25, 2016

[4] Blum Sobel, Elizabeth. "Healthy Communities: A Framework for Meeting CRA Obligations." *Federal Reserve Bank of Dallas.* March 2014.

[5] Silver, Josh. "CRA Performance Context: Why it is Important for Community Development and How to Improve It." *National Community Reinvestment Coalition.* 2016.

[6] Silver, Josh. "The Community Reinvestment Act and Geography: How Well Do CRA Exams Cover the Geographical Areas that Banks Serve?" *National Community Reinvestment Coalition.* April 2017.

[7] Rodrik, Dani. "Has Globalization Gone Too Far?" *Institute for International Economics*. 1997. pp. 49-55.

[8] See, in part, Robert Reich's discussion in his 2015 book *Saving Capitalism*, p.1-7.

[9] Interviews with informants.

[10] "2017 Policy Agenda: Investing in a Just Economy." *National Community Reinvestment Coalition.* 2017.

[11] Silver, Josh. "CRA Performance Context: Why it is Important for Community Development and How to Improve It." *National Community Reinvestment Coalition.* 2016. Silver, Josh. "The One Big CRA Fight Over the One Ratio." *National Community Reinvestment Coalition.* August 21, 2018. https://ncrc.org/the-one-big-cra-fight-over-the-one-ratio/

[12] "Warren Unveils Historic Legislation to Confront America's Housing Crisis." *Elizabeth Warren – Press Releases.* September 26, 2018. https://www.warren.senate.gov/newsroom/press-releases/warren-unveils-historic-legislation-to-confront-americas-housing-crisis

About the author

Devin Case-Ruchala is a graduate student at the University of North Carolina at Chapel Hill, pursuing a political science doctorate in the political economy of finance. Devin has a background in the cooperative sector, including several years served as treasurer and board member of a 50-member housing cooperative in Bloomington, Indiana, and work with Shared Capital Cooperative, a national cooperative loan fund and community development financial institution (CDFI).

The Next System Project

The Next System Project is an ambitious multi-year initiative housed at The Democracy Collaborative which is aimed at thinking boldly about what is required to deal with the systemic challenges the United States faces now and in coming decades. Responding to real hunger for a new way forward, and building on innovative thinking and practical experience with new economic institutions and approaches being developed in communities across the country and around the world, the goal is to put the central idea of system change, and that there can be a "next system," on the map.

Working with a broad group of researchers, theorists, and activists, we seek to launch a national debate on the nature of "the next system" using the best research, understanding, and strategic thinking, on the one hand, and on-the-ground organizing and development experience, on the other, to refine and publicize comprehensive alternative political-economic system models that are different in fundamental ways from the failed systems of the past and capable of delivering superior social, economic, and ecological outcomes. By defining issues systemically, we believe we can begin to move the political conversation beyond current limits with the aim of catalyzing a substantive debate about the need for a radically different system and how we might go about its construction.

Despite the scale of the difficulties, a cautious and paradoxical optimism is warranted. There are real alternatives. Arising from the unforgiving logic of dead ends, the steadily building array of promising new proposals and alternative institutions and experiments, together with an explosion of ideas and new activism, offer a powerful basis for hope.

Learn more at **thenextsystem.org**.

DEMOCRACY
COLLABORATIVE

democracycollaborative.org