National Community Reinvestment Coalition

NCRC 2023 Advocacy Week Agenda Background Information

Modernize the Community Reinvestment Act

Background and current status

The CRA requires banks to provide credit and other financial services and investments in the communities in which they do business, including low- and moderate-income neighborhoods. The statute was passed in 1977 and was intended to combat the practice of redlining, which was historically used to deny credit to racial and ethnic minorities. The CRA has been an important tool in holding banks accountable to communities and pushing them to provide meaningful financial benefits to help these communities thrive, such as home loans, small business support, services such as housing counseling, affordable housing development, and other community development resources.[1] The bank regulators charged with implementing the statute—the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller (OCC), and the Federal Reserve Board of Governors—oversee bank performance, and community advocates also play an important role by commenting on bank performance and by negotiating community benefit agreements (CBAs).

While the CRA has made a significant and concrete impact since its passage, it has also long been due for updates to make it more rigorous, even better targeted to meet community needs (including evolving needs such as gentrification and climate change), and modernized so as to reflect the ways banks do business today. Following a joint rulemaking process, with over 5000 comments filed in the Federal Register over the summer of 2022, we are poised to see a new CRA rule emerge from the regulators. In addition, we continue to call upon Congress to enact further reforms to the CRA, to respond to present-day needs and to extend the scope and power of the statute in the interest of economic and racial justice.

Defending the CFPB

Background and current status

The Supreme Court must protect the independence of the CFPB. Unfortunately, the U.S. Court of Appeals for the Fifth Circuit declared the Consumer Financial Protection Bureau's (CFPB) funding structure unconstitutional last fall. The three Trump-appointed judges have concluded that the CFPB's funding mechanism violates the Appropriations Clause of the U.S. Constitution, which states that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."

The CFPB does not receive any funding from Treasury. Under Dodd-Frank, Congress stipulated that the CFPB would receive its funding directly from the Federal Reserve, which is itself funded outside of Congressional appropriation. None

1 Robert B. Avery, Paul S. Calem, and Glenn B. Canner. "The Effects of the Community Reinvestment Act on Local Communities." Paper presented at the Federal Reserve System's Community Affairs Research Conference, Sustainable Community Development: What Works, What Doesn't, and Why, Washington D.C., March 2003. Retrieved from https://www.federalreserve.gov/communityaffairs/national/CA_Conf_SusCommDev/pdf/cannerglen.pdf.

of the prudential regulators rely on the appropriations process for their funding. The Office of the Comptroller of the Currency funds its work through assessments charged to its banks.[2] Insured banks and thrifts pay premiums to cover the Federal Deposit Insurance Corporation's Deposit Insurance Fund.[3]

While the ruling currently applies only to the payday rule and only in the states of the Fifth Circuit, it invites any company that has been the subject of a CFPB enforcement action to file a challenge in court. As a result, all of the CFPB's work over the last 11 years, covering 19 different regulations, could be called into question through future court cases.[4] Markets where the ruling could pave the way for setbacks include mortgage lending, credit cards, debt collection, credit reporting. Essential updates to HMDA would also be at risk, as would protections to enhance fair lending regulation. Notably, it has implications not just for consumers but also for the systems financial institutions rely on to ensure compliance with regulations. Banks would face substantial uncertainty without a clear sense of the rules of the road. It is not clear how banks would react, but it is possible that disruptions to marketplaces could be wide-ranging.[5]

The CFPB has detractors because it has been a success. In the last ten years, the CFPB returned mo re than $13 billion in relief for consumers and ordered more than $1.8 billion in civil penalties on financial institutions during its first ten years.[6] To continue on its impressive record, the CFPB's funding must remain independent of Congressional politics.

Defend Section 1071 of Dodd Frank

Background and current status

Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to collect, maintain, and submit data regarding credit applications by women-owned, minority-owned, and small businesses (WBEs, MBEs, and SBEs) to the CFPB. Unlike the case with the home mortgage lending marketplace and HMDA, there is very little public information about how many WBEs, MBEs, and SBEs apply for loans at financial institutions each year, for example, or how many are denied.

There are major gaps in the data around how SBEs, WBEs, and MBEs access credit. A 2020 CFPB paper on the small business lending market reviewed the lending data made public about Small Business Administration (SBA) programs by banks, pursuant to the Community Reinvestment Act (CRA), and through various voluntary business surveys.8 It noted substantial gaps in lending information, including:

- Basic information on how many SBEs, WBEs, and MBEs are applying for loans and how many (and which) are being denied,
- Information about loan terms and pricing for SBEs, WBEs, and MBEs, and
- Information about and from non-banks and alternative lenders and products, including which are gaining substantial market share, including online marketplace lenders, credit unions, supplier and equipment financing lenders.

In October of 2021, the Bureau released its proposed regulations regarding the Section 1071 small business loan data required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank).[7] The final rule

2 Office of the Comptroller of the Currency. (2019, January 24). *OCC at a Glance*. https://www.occ.treas.gov/about/index-about.html
3 Federal Deposit Insurance Corporation. (2020, May 15). *What We Do*. https://www.fdic.gov/about/what-we-do/index.html
4 National Consumer Law Center. (2022). *Practice Implications of Fifth Circuit Ruling That CFPB Funding Unconstitutional* (NCLC Digital Library). https://library.nclc.org/article/practice-implications-fifth-circuit-ruling-cfpb-funding-unconstitutional#content-1
5 Peck, E. (2022, October 20). *The latest threat to the CFPB could reverberate big time*. Axios. https://www.axios.com/2022/10/20/the-latest-threat-to-the-cfpb-could-reverberate-big-time
6 *Enforcement by the Numbers*. (2022, July). https://www.consumerfinance.gov/enforcement/enforcement-by-the-numbers/
7 Federal Register. "Small Business Lending Data Collection Under the Equal Credit Opportunity Act Regulation B" https://www.federalregister.gov/

will be published in March 2023. Section 1071 of Dodd-Frank required lending institutions to report demographic information about applications for small business loans including race, ethnicity, and gender of the business owners. The new rule will bring much needed, uniform transparency to the small business credit market by collecting data on applications and lending to Small and medium-sized enterprises (SMEs), Women's Business Enterprise (WBEs), and Minority Business Enterprises (MBEs).

Once the 1071 rule is issued, CFPB will need to ensure strong compliance and implementation. CFPB should engage in robust fair lending oversight and enforcement where 1071 data reveals potential discrimination. In addition, 1071 data will be an illuminating new component of the CRA framework, enabling the federal bank regulators to assess bank performance in small business lending.

Congress should oppose bills such as that would weaken Section 1071 small business loan disclosures. These types of bills were introduced in the last Congress but as of this writing no such bills have been introduced in this Congress. We should strive to keep it this way. For example, NCRC would oppose bills that would reduce the number of lending institutions that would report 1071 data or bills that would limit the collection of data relating to an applicant's race or ethnicity. NCRC would also oppose limiting access to the proposed Section 1071 public sector database, which would function similarly the database for HMDA data and would not pose a privacy risk, despite claims by 1071 opponents.

Appropriations: Increase Funding for Housing, Community Development, Civil Rights Enforcement, and Housing Counseling

Background and Funding Asks

Funding asks from NCRC and its members include the following key areas. This includes funding to support a range of important federal programs and agency activities, including funding for community investments such as affordable housing, climate adaptation and energy modernization targeting underserved communities, small business and workforce supports, fair housing and environmental justice enforcement, and housing counseling.

Affordable Housing and Expanded Homeownership (including Counseling)

Significant funding is needed for affordable housing creation and preservation, rental assistance, and broader homeownership. This funding is address severe affordability pressures across the country, including significant levels of housing cost burden and housing instability among renters. Expanded support for affordable homeownership opportunities, including through downpayment assistance and counseling, is critical, especially given persisting the racial gap in homeownership. [8]

Funding asks include:

- Affordable housing resources: Increase funding for a number of critically-needed affordable housing programs. This includes the Housing Trust Fund, the HOME Investments Partnership Program, which goes to states and localities to create and preserve affordable rental housing and affordable homeownership (NCRC Ask: $1.95 billion); USDA Multifamily Housing funds to address rent burdens and support energy efficiency standards

documents/2021/10/08/2021-19274/small-business-lending-data-collection-under-the-equal-credit-opportunity-act-regulation-b

8 Stegman, M., & Loftin, M. (2021, April). *An essential role for Down Payment - Urban Institute*. Urban Institute. Retrieved April 21, 2022, from https://www.urban.org/sites/default/files/publication/104134/an-essential-role-for-down-payment-assistance-in-closing-americas-racial-homeownership-and-wealth-gaps_0.pdf

(largely flowing to rural areas); and funding to provide housing and improve conditions in Tribal areas.

- Tenant-based rental assistance (Housing Choice Vouchers): Increased funding to subsidize low-income households renting in the private market.
- Counseling: funding for HUD's counseling program (NCRC Ask: $100 Million).
- Support for homeownership, including down payment assistance for first generation homeowners.
- Clean energy transitions and funding to help aid energy costs: Low Income Home Energy Assistance Program Advantage to retrofit low-income homes with efficient electric appliances and systems; funding for weatherization and energy modernization for HUD and USDA housing and for other low and moderate income households.

Enforcement: Fair Housing, Civil Rights, and Other Enforcement

Enforcement capacity, including qualified federal agency staff and grants to local enforcement groups, is critical to ensure that nondiscrimination law works as intended, protects communities and individuals, and advances equality in the housing market and other aspects of our economy. Increased funding for fair housing and other civil rights enforcement programs is severely needed.

- Grants for fair housing organizations and for HUD staff capacity on fair housing
- Funding to support environmental justice oversight and enforcement at EPA and DOJ

Small Business, Jobs, and Workforce Supports

According to the Federal Reserves' Small Business Credit Survey, firms owned by people of color faced significant financial stress in 2020 and, despite creditworthiness, were also less likely to have their financing needs met.[9] Further, the average white family had seven times the wealth of a Black family and five times the wealth of a Hispanic family by 2016, a disparity that has persisted since 1963.[10] The causes and solutions to this are complex (rooted in many decades of systemic discrimination) and the solutions multifold (also including the homeownership supports noted above), but economic growth and targeted access to capital is a core need. Support for small business growth is also fundamental to sustaining vibrant communities, especially so given the impacts of the pandemic.

- Increase in funding for the CDFI Fund (NCRC Ask: $1 billion)), as well as funding for CDFI housing resources
- Small Business Association funding, including increased access to capital via SBA loan guarantee programs; and support for entrepreneurs through the SBA's Entrepreneurial Development programs
- Childcare resources, including Child and Development Funding and Headstart (Health and Human Services)

Community Development and Investment Resources

Communities that did not traditionally benefit from public and private investments – in particular communities of color – should be an economic priority as we seek to build a more equitable future. Federal spending should provide significant resources to aid in community development and targeted infrastructure improvements (which in turn provide the fabric that sustains economic growth and stability).

- Community Development Block Grants (U.S. Department of Housing and Urban Development): funding to aid community development and housing needs for low and moderate income households (NCRC Ask: $4.2 billion)
- Clean energy infrastructure, such as support for clean energy workforce and infrastructure projects,; and capacity building to bring new resources to underserved communities.

9 https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color

10 Urban Institute, "Nine Charts about Wealth Inequality in America (Updated)," Features, October 5, 2017. Retrieved from http:// urbn.is/wealth-charts

- Funding for the EPA to increase, retain, and diversify its workforce. The Inflation Reduction Act and the Bipartisan Infrastructure Law recently passed by Congress direct the EPA to distribute billions of dollars in grants to public agencies and community groups, to expand cleanup of contaminated sites near communities of color, and to write new rules in order to prevent the most devastating effects of climate change. These critical efforts will fail if the EPA is not able to increase, retain, and diversify its workforce, which is stuck at nearly the same number of employees working for the EPA now as worked for the agency in the 1980's. To address this Congress must: appropriate enough funds for the EPA to increase staff levels to 20,000; create a specific appropriation for promotion of experienced EPA staff; and urge the EPA to use already-available workplace retention tools, including approving more remote work, preserving scientific integrity, creating a fair 4-tier performance system, and boosting workforce diversity and inclusion.
- Infrastructure funding to support underserved communities, such as transit and other services.

NCRC's FY2024 budget chart can be found online which highlights specific programs that NCRC is tracking. Our appropriations asks are calculated by taking the highest proposed appropriation from congressional reports, past presidential budget requests, or developed in consultation with NCRC members/allies.