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"The Community Reinvestment Act:
Thirty Years of Accomplishments, But Challenges Remain"
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Chairman Frank, Ranking Member Bachus, and distinguished Members of the Committee, it is an honor to be here today to discuss the Community Reinvestment Act (CRA).

The Community Reinvestment Act has helped to revitalize low- and moderate-income communities and provided expanded opportunities for low- and moderate-income households. Going forward, CRA could be strengthened in several ways to ensure its continued role in encouraging sound lending, investment and services in low- and moderate-income communities. At the same time, CRA cannot be expected to resolve the range of financial problems facing low- and moderate-income communities today. This Committee has already taken strong leadership to clean up the mortgage business and drive out abuses, and I am confident that the Committee will continue to lead in resolving the subprime mortgage crisis we face today.

The Community Reinvestment Act

The Community Reinvestment Act of 1977 (CRA) encourages federally insured banks and thrifts to meet the credit needs of the communities that they serve, including low- and moderate-income areas, consistent with safe and sound banking practices. Federal banking agencies examine banks periodically on their CRA performance and rate the institutions. Regulators consider a bank's CRA record in determining whether to approve that institution's application for mergers with, or acquisitions of, other depository institutions. Banks and thrifts must have a satisfactory CRA record if they, or their holding companies, are to engage in newly authorized financial activities, such as certain insurance and securities functions.

Changes to CRA regulations issued in 1995 focused evaluations on objective performance measures rather than previously used process-oriented factors.[1] These regulations require large banks and thrifts to disclose information about their small-business, small-farm, and community-development lending. The regulations provide for tailored examinations of large banks, small banks, and wholesale or limited-purpose institutions that more closely align with the business strategies of each institution type. Large banks are evaluated on a three-part test of their lending, investments, and services, while small banks undergo a streamlined review of lending.

For large banks, the lending test accounts for 50 percent of the bank's CRA rating and evaluates its performance in home mortgage, small-business, small-farm, and community-development lending. Examiners consider the number and amount of loans to low- and moderate-income borrowers and areas, and "innovative or flexible lending practices." Under the investment test, which accounts for 25 percent of the bank's CRA grade, the agency evaluates the amount of the bank's investments, innovation, and responsiveness to community needs. Under the service test, which makes up the remaining 25 percent of the bank's evaluation, the agency analyzes "the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services." The agency assesses an institution's record under these three tests in light of the "performance context" in which the institution is operating, including economic and market factors; the bank's capacities, constraints, and business plans; and "the performance of similarly situated lenders."

Since enactment, CRA has been, and remains today, the subject of extensive debate. Many scholars vigorously question the theoretical and empirical claims that motivated CRA, and many also advocate eliminating the law.[2] These critics argue that CRA is trying to address a nonexistent problem, and that even if intervention is warranted, CRA is an inappropriate avenue. Many critics also suggested that CRA was having little, if any, positive effect, and at a high cost. However, in earlier work, I have systematically rebutted these prior criticisms of CRA and laid a solid theoretical and empirical foundation for the Act.[3] Those findings are summarized here.

CRA Reasonably Addresses Market Failures in Low-Income Communities

At its core, CRA helps to overcome market failures in low-income communities. By fostering competition among banks in serving low-income areas, CRA generates larger volumes of lending from diverse sources, and adds liquidity to the market, decreasing the risk of each bank's loan. Encouraged by the law, banks and thrifts have developed expertise in serving low-income communities, and they have created innovative products that meet the credit needs of working families and low-income areas with manageable risks.

These market innovations have taken several forms. Banks and thrifts have engaged in special marketing programs to targeted communities; experimented with more flexible underwriting and servicing techniques to serve a broader range of households, and funded credit counseling for borrowers. Many larger institutions have developed specialized units that focus on the needs of low- and moderate-income communities. Others have formed partnerships with community-based organizations and community development financial institutions (CDFIs). CDFIs provide local expertise and financial education, and assume portions of risk that banks do not want to bear. Spurred in part by the CRA investment test, banks have invested in CDFIs in record numbers, strengthening their ability to serve low-income markets.

CRA also facilitates coordination among banks to reduce information costs. Because the law requires all insured depositories to lend in their communities, it reduces "free rider" problems. It has spurred the development of multi-bank community development corporations and loan consortia to serve low- and moderate-income communities more effectively. Moreover, banks get CRA consideration for both originating and purchasing loans, creating a trading system. Institutions can also get credit under the CRA investment test for purchasing loan securities. The development of this secondary market has increased liquidity and transparency.

A positive lending cycle thus began in many communities once ignored by mainstream lenders. Under CRA, lenders know that other banks will be making loans to a community, reducing all institutions' liquidity risk, speeding the gathering and dissemination of information, and producing positive information externalities. Increased lending by responsible originators to low-income communities has occurred under CRA and such responsible lending has not led to the kind or extent of excessively risky activity under taken outside of CRA's purview.

Studies have found that CRA improved access to home mortgage credit for low-income borrowers during the 1990s, as CRA regulatory intensity increased.[4] Between 1993 and 1999, depository institutions covered by the CRA and their affiliates made over $800 billion in home mortgage, small business, and community development loans to low- and moderate-income borrowers and communities.[5] The number of CRA-eligible mortgage loans increased by 39 percent between 1993 and 1998, while other loans increased by only 17 percent. Even excluding affiliates, banks increased their lending to low- and moderate-income borrowers and areas by 10 percent over this period, compared with no growth at all for these lenders in their other markets. As a result, the share of all mortgage lending by CRA-covered institutions and their affiliates to these borrowers and areas increased from 25 to 28 percent.

A series of factors beyond CRA also contributed to these gains. Strong economic growth and low inflation during the 1990s led to rapid income growth, low unemployment rates, and low real interest rates. Innovation helped drive down the costs of lending. Consolidation in the financial services sector enhanced competition among national players with economies of scale and scope. And other laws—such as fair lending and secondary mortgage market regulations—operated in intensified ways during this period.

Controlling for the effects of these factors, however, CRA lenders increased their CRA-eligible home purchase lending faster than those not regulated by CRA from 1993 to 1999.[6] The Joint Center for Housing Studies at Harvard University concluded: "CRA-regulated lenders originate a higher proportion of loans to lower-income people and communities than they would if CRA did not exist."[7] By one estimate, the Joint Center found that CRA's effect on increasing home mortgage lending to low-income borrowers was equivalent to a 1.3 percentage point decrease in unemployment. Another study found that CRA boosts the number of small businesses that can access credit by four to six percent, increasing payrolls and reducing bankruptcies—without crowding out other financing available to small businesses or adversely affecting bank profitability or loan performance.[8] In sum, recent evidence shows that CRA provides important benefits to low-income communities.

Critics of CRA assert that it leads to unprofitable lending. But the weight of evidence suggests otherwise. In a Federal Reserve Board survey of CRA-covered institutions, most responded that CRA lending was profitable or marginally profitable, and not overly risky.[9] Pushing further into low-income markets under CRA has not weakened banks' profitability and soundness. In the small "special programs" that serve as banks' CRA laboratories, employing new and innovative strategies, most institutions reported low delinquency and charge-off rates. In fact, most institutions surveyed reported a net charge-off rate of zero for these programs.

Reforms put into place in 1995 reduced compliance costs for all banks and streamlined CRA regulations even further for the smallest institutions. Evidence suggests the reforms worked. In 2002, the Independent Community Bankers of America surveyed its membership about the cost of CRA regulation.[10] Although the study is designed to highlight the high compliance costs of

CRA, the data reported in the study suggest otherwise. The mean employee cost for CRA compliance was $84,445 per year for small banks (average assets of $216 million) and about $30,000 more per year for larger "community" banks (average assets of $666 million). Average CRA employee costs as a percentage of assets were thus negligible—0.017 percent for larger "community" banks, and 0.039 percent for small banks. These costs seem manageable.

CRA Should Have Done More to Combat Abuses in the Subprime Market

Despite the fact that CRA appears to have increased bank and thrift lending in low- and moderate-income communities, such institutions are not the only ones operating in these areas. In fact, with new and lower-cost sources of funding available from the secondary market through securitization, and with advances in financial technology, subprime lending exploded in the late 1990s, reaching over $600 billion and 20% of all originations by 2005. More than half of subprime loans were made by independent mortgage companies not subject to comprehensive federal supervision; another 30 percent of such originations were made by affiliates of banks or thrifts, which are not subject to routine examination or supervision, and the remaining 20 percent were made by banks and thrifts. Although reasonable people can disagree about how to interpret the evidence, my own judgment is that the worst and most widespread abuses occurred in the institutions with the least federal oversight.

The housing crisis we face today, driven by serious problems in the subprime lending, suggests that our system of home mortgage regulation, including CRA, is seriously deficient. We need to fill what my friend, the late Federal Reserve Board Governor Ned Gramlich aptly termed, "the giant hole in the supervisory safety net."[11] Banks and thrifts are subject to comprehensive federal regulation and supervision; their affiliates far less so; and independent mortgage companies, not at all. Moreover, many market-based systems designed to ensure sound practices in this sector—broker reputational risk, lender oversight of brokers, investor oversight of lenders, rating agency oversight of securitizations, and so on—simply did not work. Conflicts of interest, lax regulation, and "boom times" covered up the extent of the abuses—at least for a while, at least for those not directly affected by abusive practices. But no more.

As has become all too evident, the subprime market has been plagued by serious problems. Some subprime borrowers who could have qualified for loans from prime lenders end up in the subprime market, paying higher rates: Preliminary research suggests up to 35% of subprime borrowers could qualify for prime mortgage loans.[12] Some minority borrowers may have been improperly "steered" to higher cost lenders by brokers or real estate professionals. Even after accounting for neighborhood and borrower characteristics that influence lending decisions, there is "a strong geographic concentration of subprime lending in those neighborhoods where there is a large population of African American homeowners" and "African-American borrowers, regardless of the neighborhood where they are located, have relatively high likelihood of obtaining a subprime compared to a prime loan."[13]

Moreover, studies have documented abusive practices in the subprime sector.[14] These practices have included "flipping," repeatedly refinancing a loan in a short period of time. Flipping subjects a borrower to high fees, including prepayment penalties, which diminish the borrower's home equity without providing significant benefit. Loans have been "packed" with additional products (such as credit life insurance) without the borrower understanding that the products were optional or unsuitable.[15] Loans have included fees unrelated to risk or servicing, and which are structured to disguise the loans' true costs.[16] Some brokers have made home mortgage loans without regard to the borrower's ability to repay.[17] These so-called "asset based" loans often were made by brokers who earned high fees and were less concerned about their reputations among lenders.[18] In other cases borrowers have testified that "unscrupulous mortgage brokers, lenders, home improvement contractors, appraisers, and combinations thereof" engaged in "outright fraud" as well as "deceptive or high-pressure sales tactics," and often "prey[ed] on . . . the elderly, minorities, and individuals with lower incomes and less education."[19]

While credit risk is a key determinant of whether a borrower receives a prime or subprime loan, "credit risk alone may not fully explain why borrowers end up in the subprime market."[20] For example, borrowers who are older, Hispanic, or search less for interest rates are more likely to end up in the subprime market.[21] Having a subprime loan is an important determinant of refinancing with a subprime loan even after controlling for relevant factors related to risk and creditworthiness: Some 60% of subprime borrowers who refinanced did so with subprime loans rather than prime ones,[22] indicating that many subprime borrowers get stuck in that market.

The higher price that borrowers pay is a function not only of using a subprime lender, but also of negotiating with mortgage brokers, who dominate the subprime market. Brokers are compensated for getting borrowers to pay higher rates than those for which the borrower would qualify. Such "yield spread premiums" are used widely.[23] In loans with yield spread premiums, there is wide dispersion in prices paid to mortgage brokers. Within the group of borrowers paying yield spread premiums, African Americans paid $474 more for their loans, and Hispanics $590 more, than white borrowers; thus, even if minority and white borrowers could qualify for the same rate, in practice minority borrowers are likely to pay much more.[24]

CRA has not yet done enough to integrate the prime and subprime markets, as evidenced by these problems.[25] In some ways, CRA is well positioned to help overcome the bifurcation between the prime and subprime markets by enhancing competition from banks and thrifts. Overcoming that bifurcation would improve market efficiency, reduce racial discrimination, and speed the process of correcting other market failures. Competition from banks and thrifts can help to drive out abusive practices and improve price transparency in these markets. However, given the large role played by independent mortgage companies and brokers, bank and thrift competition under CRA is not enough, on its own, to drive out bad practices. In recent years, there was intense competition among mortgage market participants to provide harmful products. Further federal regulation is thus also necessary to combat abusive practices, prevent a race to the bottom in bad lending behavior, and restore integrity to our housing markets. We need to ensure that all participants in the mortgage process have the right incentives to engage in sound lending practices and are subject to the right kind of regulatory oversight.

CRA Performance Context Should Include Affiliates of Banks and Thrifts

One suggestion going forward is that it is both possible under existing law and desirable as a matter of policy to take account of affiliate activity while respecting the fact that CRA applies only to insured depositories. For example, CRA regulations already provide that evidence of illegal credit practices will affect an institution's CRA rating.[26] The laws governing such credit practices are equally applicable to banks and thrifts and non-depository creditors. Illegal credit practices of an affiliate that has been included at the option of the depository institution for purposes of a CRA examination are relevant to its rating, but so too should be the illegal credit practices of affiliates not so included. Given the cost of regularly examining all affiliates for such practices, enforcement of other credit laws should occur through risk-based examinations of affiliates.[27] In addition to direct enforcement of such credit laws, the results of such compliance examinations should be taken into account in the performance context under CRA.

Banks should include activities of affiliates and bank regulators should determine whether such activities are serving the credit needs of their community. For example, some borrowers may be ending up in a bank's subprime unit, or subprime affiliate, or obtaining an inappropriate loan, when in fact they could qualify for a mortgage on better terms. The regulators now give CRA consideration for "promoting" borrowers from the subprime to the prime market,[28] and banks and thrifts should thus have in place procedures to ensure that borrowers with good credit histories get access to their prime mortgage units and products, and that all borrowers get access to the best loan for which they qualify, from whatever part of the company offers the product.

In principle, the OCC considers a bank's subsidiaries' assets in determining the performance context in which a bank operates.[29] Similarly, the assets and activities of all of the affiliates of a bank should also be considered in assessing the performance context within which a bank meets its obligations under CRA. After all, a bank's affiliates are hardly irrelevant to the bank's business decisions, including how to meet the credit needs of their communities. The Gramm-Leach-Bliley Act made a financial holding company's commencement of newly authorized activities, or its merger with newly authorized entities, contingent on satisfactory CRA performance by all of the affiliate banks or thrifts. A bank's affiliates have a strong interest in ensuring adequate CRA performance by all the insured depositories of the holding company.

Holding companies provide scale economies to their subsidiaries in complying with bank regulations.[30] Banks that are part of holding companies face lower regulatory burdens from the same regulation than their non-affiliated counterparts of similar size. Thus, affiliation should generally be weighed, not ignored, in determining tradeoffs between regulatory burdens and benefits. Banks that are part of holding companies have available to them the range of expertise of the holding company, which is useful for developing programs to meet community needs under CRA. The holding company and its subsidiaries can offer a range of services to the bank in helping the bank meet its CRA performance goals, such as innovative loan products, securitization, or expertise in investment and other matters. These affiliates do affect a bank's CRA performance, and the bank should therefore be assessed, taking the expertise and resources of the parent institution into account. The agencies should thus include the assets and activities of affiliates in assessing performance context for CRA examinations of banks and thrifts.

CRA Should Encorage Innovation and Quality in Lending and Community Investment

The success of CRA in encouraging home mortgage lending is in part a consequence of the ability of regulators to count home mortgage loans. However, as such lending became more commonplace, bank and thrift examiners generally failed to take sufficient account of whether financial institutions moved beyond the production of more home mortgages, to assess whether financial institutions were truly meeting the needs of low- and moderate-income communities. Such an assessment might include a qualitative judgment about whether the home mortgage loans offerred were innovative in meeting the needs of low-income households—and not just innovative in meeting the needs of investors. Such an assessment might also have taken greater account of the extent to which major institutions developed specialized units to serve low-income communities. And such an assessment might have given more weight to innovative and complicated community development lending and investment. These more nuanced and qualitative assessments are important to understanding how well a financial institution is serving its whole community. As a result of examiners' generally more narrow focus on loan production, these aspects of financial institutions' innovation have been undervalued in recent years, and many major financial institutions have cut back on such innovation. A renewed focus on truly innovative work would help restore CRA's role in fostering a culture and structure of community development in major firms.

CRA Services Test Should Focus on Innovative Products and Services

CRA could also help to focus banks and thrifts on opportunities to provide bank accounts to low-income persons.[31] The CRA service test, which evaluates bank and thrift performance in meeting transaction, savings, and other community needs, has received inadequate attention from bank regulators in CRA examinations. Michael Stegman has documented that banks rarely receive "needs to improve" ratings on the service test, and the service test is often used to increase the overall score of borderline banks.[32] Examiners should focus on the extent to which banks and thrifts are actually attracting low-income customers with innovative retail products and services. Given the importance of technology in serving low-income clients in a cost-effective manner, service examinations should move away from an overwhelming focus on bank branches towards a more quantitative and qualitative assessment of the extent to which technology-based products are expanding access for low-income persons.[33]

The 1995 regulations provide sufficient flexibility for analysis of an institution's performance, but agency examination procedures provide insufficient guidance as to how to measure an institution's activities in ways that actually matter to low-income consumers. The service test, in practice, has received perfunctory attention from examiners, with public evaluations containing little or no analysis of whether low-income consumers actually use bank or thrift products or services. Examinations under the service test could be vastly improved by taking three steps.

First, examiners should evaluate the extent to which institutions offer low-cost accounts and other products designed to meet the account needs of low-income individuals. Low-cost electronic accounts with direct deposit, no overdraft, and an automatic savings plan may hold special promise in this regard. Regardless of the form of the account, examiners should attempt to make a qualitative judgment about the range of product offerings of the institutions, based on research into low-income consumer needs, and taking into account the costs to institutions of providing accounts and the requirements of sound banking practice.

Second, banks and thrifts should be evaluated based on the number of low- and moderate-income account holders at their institution, whether in a traditional, or more innovative, account. Quantitative measures of usage should provide a portrait of an institution's performance under the service test, and data collection on the numbers of accounts provided should not in and of itself be burdensome. Information on account usage is critical to meeting the financial services needs of low-income communities.

Third, the agencies should give negative consideration to activities that undermine the provision of quality services to the poor. For example, participation by banks or thrifts in arrangements with affiliates or other parties that do not provide adequate consumer protection, or raise compliance, operational, or other risks, should receive negative consideration as part of the performance context under the service test.[34] As they have with payday lending, agencies should ensure that banks and thrifts are not merely "renting" their charters to these firms, but are engaged in appropriate monitoring and supervision of practices. This may require targeted, risk-based compliance examinations of these parties or affiliates.

Range of Responses Needed to Restore Integrity and Stability to Financial Markets

Along with maintaining and strengthening CRA, Congress ought to enact a range of complementary policies to address the housing crisis.

With colleagues at the Center for American Progress, I have proposed the Saving America's Family Equity (SAFE) loan plan, under which the Federal Housing Administration, Fannie Mae and Freddie Mac would arrange through responsible originators for the refinancing of loans at terms that reduce the likelihood of default, foreclosure and liquidation. The SAFE loan plan would help the market rapidly and transparently to re-price existing mortgage pools, build capital, and restore financial stability. Investors would take a hit. Speculators would be excluded. But the SAFE loan plan would provide a restructuring process to help responsible borrowers stay in their homes. The SAFE loan plan would contain an automatic shut-off valve that would end the program once market-pricing and liquidity are restored.

In addition to the SAFE plan, judicially supervised modifications of home mortgages should be permissible under certain narrow circumstances when the other available option, foreclosure, is not in any one's interest. Moreover, with significant foreclosures comes concentrated, local economic harm, including depressed property values, abandoned buildings, and crime. Congress should help hard-hit states and localities with additional, timely funding for Community Development Block Grants and HOME funds, as well as targeted state and local aid to counsel borrowers, prevent foreclosures and deal with abandoned and foreclosed properties.

Furthermore, we should take this opportunity to implement common sense reforms to the mortgage market, to reduce the likelihood of such a crisis in the future. Chairman Frank, Ranking Member Bachus, and this Committee have successfully championed important legislation to clean up the mortgage process and regulate mortgage brokerage to drive out abuses.[35] Such legislation should be enacted by the other chamber and signed into law. In addition, the Federal Reserve Board's recent proposals to bar unfair and deceptive mortgage practices should be implemented immediately while the Board works to strengthen them further. Moreover, to increase transparency, all borrowers need to be able to get firm price quotes on loans and settlement services in order to comparison shop. We also need to increase public disclosure of broker and lender conduct and regulatory monitoring of credit standards.

In addition, Harvard economist Sendhil Mullainathan, Princeton psychologist Eldar Shafir, and I have argued for a new, opt-out mortgage plan.[36] While the causes of the mortgage crisis are myriad, a central problem was that brokers and lenders offered loans that looked much less expensive than they really were, because of low initial monthly payments and hidden costly features. As Ned Gramlich asked, "Why are the most risky loan products sold to the least sophisticated borrowers?"[37] The question answers itself. And so, many borrowers took out loans that they did not understand and could not afford, with predictable results.

In retirement policy, behavioral research has led Congress to promote "opt out" plans under which employers sign workers up for retirement benefits unless the worker chooses not to participate. This policy has significantly improved people's retirement savings. Under an opt-out home mortgage plan, borrowers would be offered a standard set of mortgages, with sound underwriting and straightforward terms. And that's the mortgage they'd get, unless they opted out. An opt-out system would mean borrowers would be more likely to get straightforward loans they could understand, without blocking beneficial financial innovation.

Conclusion

Now in its thirtieth year, the Community Reinvestment Act has helped to expand access to responsible credit to low- and moderate-income households. That is a laudable achievement. Going forward, CRA regulations should focus on encouraging innovative ways to provide credit to low- and moderate-income households, invest in the development of communities, and offer retail services that meet the needs of those who have been left out of the financial services mainstream. At the same time, Congress should undertake other initiatives to end abusive practices, and to restore integrity and stability to our financial markets. Among these, Congress should consider using the insights of behavioral economics to develop "opt out" policies that make it less likely that households will predictably make costly mistakes. Congress should also take up targeted incentives to encourage the financial sector to better serve low- and moderate-income households. Innovation is a hallmark of America's financial system, and with the appropriate mix of governmental policies and regulatory supervision, we can expect our financial system once again to be vibrant, strong—and inclusive.

Endnotes

[1] See 12 CFR 25 (applying to nationally-chartered banks), 12 CFR 228 (applying to state-chartered banks), and 12 CFR 563e (applying to thrifts).

[2] See, e.g., Jeffery W. Gunther, "Should CRA Stand for 'Community Redundancy Act?'" *Regulations* 23 (3) (2000): 56-60; Jeffrey M. Lacker, "Neighborhoods and Banking." *Economic Quarterly* 81 (2) (1995): 13–38; Jonathan R. Macey and Geoffrey P. Miller, "The Community Reinvestment Act: An Economic Analysis." *Virginia Law Review* 79 (1993): 291-348; Lawrence J. White, "The Community Reinvestment Act: Good Intentions Headed in the Wrong Direction." *Fordham Urban Law Journal* 20 (1993): 281-291.

[3] Michael S. Barr, "Credit Where it Counts: The Community Reinvestment Act and its Critics." *New York University Law Review* 80 (2) (2005): 513-652.

[4] See Michael S. Barr and others, "The Community Reinvestment Act," in C. Guene and E. Mayo, eds., *Banking and Social Cohesion: Alternative Responses to a Global Market* (Charlbury, Oxfordshire: Jon Carpenter, 2001); Robert B. Avery and others, "Trends in Home Purchase Lending: Consolidation and the Community Reinvestment Act." *Federal Reserve Bulletin* 85 (1999); Robert B. Avery and others, "Credit Risk, Credit Scoring, and the Performance of Home Mortgages." *Federal Reserve Bulletin* 82 (1996); Douglas D. Evanoff and Lewis M. Siegal, "CRA and Fair Lending Regulations: Resulting Trends in Mortgage Lending." *Economic Perspectives* 20 (1996); Michael LaCour-Little, "Does the Community Reinvestment Act Make Mortgage Credit More Widely Available? Some New Evidence Based on the Performance of CRA Mortgage Credits." Conference paper presented at the Midyear Meeting of the American Real Estate and Urban Economics Association meeting, Washington, May 4, 1998.

[5] Robert E. Litan and others, "The Community Reinvestment Act After Financial Modernization: A Baseline Report" (U.S. Treasury Department, 2000); Robert E. Litan and others, "The Community Reinvestment Act After Financial Modernization: A Final Report" (U.S. Treasury Department, 2001). For further analysis of these reports, see Eric Belsky, Michael Schill, and Anthony Yezer, "The Effect of the Community Reinvestment Act on Bank and Thrift Home Purchase Mortgage Lending" (Harvard University Joint Center for Housing Studies, 2001).

[6] Litan and others, "The Community Reinvestment Act After Financial Modernization: A Final Report"; Belsky, Schill, and Yezer, "The Effect of the Community Reinvestment Act on Bank and Thrift Home Purchase Mortgage Lending."

[7] Harvard University Joint Center for Housing Studies, "The 25th Anniversary of the Community Reinvestment Act: Access to Capital in an Evolving Financial Services System" (2002).

[8] Jonathan Zinman, "Do Credit Market Interventions Work? Evidence from the Community Reinvestment Act" (Federal Reserve Bank of New York, 2002).

[9] Board of Governors of the Federal Reserve System, *The Performance and Profitability of CRA-Related Lending*, report submitted to the Congress pursuant to Section 713 of the Gramm-Leach-Bliley Act of 1999, July 17, 2000.

[10] Grant Thornton LLP, Independent Community Bankers of America, "The High Cost of Community Bank CRA Compliance: Comparison of 'Large' and 'Small' Community Banks" (2002).

[11] Edward M. Gramlich, "Booms and Busts: The Case of Subprime Mortgates," Presented in Jackson Hole, Wyoming, Aug. 31, 2007.

12 FREDDIE MAC, AUTOMATED UNDERWRITING: MAKING MORTGAGE LENDING SIMPLER AND FAIRER FOR AMERICA'S FAMILIES Chap. 5 (Sept. 1996), http://www.freddiemac.com/corporate/reports/moseley/mosehome.htm.

13 Paul S. Calem et al., *The Neighborhood Distribution of Subprime Mortgage Lending*, 29 J. REAL EST. FIN. & ECON. 393, 407 (2004).

14 For a full discussion of such practices, see generally CURBING PREDATORY HOME MORTGAGE LENDING, HUD-TREASURY REPORT (2000). *See also* Michael S. Barr, *Access to Financial Services in the 21st Century: Five Opportunities for the Bush Administration and the 107th Congress*, 16 NOTRE DAME J.L. ETHICS & PUB. POL'Y 447, 455–62 (2002) (describing problems in and opportunities for reform of subprime mortgage market).

15 *See* HUD-TREASURY REPORT, *supra*, at 2.

16 *Id.*

17 *Id.*

18 *Id.* at 76–77.

19 *Id.* at 2.

20 Marsha J. Courchane et al., *Subprime Borrowers: Mortgage Transitions and Outcomes*, 29 J. REAL EST. FIN. & ECON. 365, 373 (2004).

21 *Id.* at 371–72.

22 *Id.* at 375, tbl.1.

23 *See* H. Jackson & J. Berry, *Kickbacks or Compensation: The Case of Yield Spread Premiums* (2003) at 127.

24 *Id.* at 125 (describing differences in "total mortgage broker compensation," which includes both yield spread

premiums and their functional equivalents, broker "discount fees"); *see also* JACK GUTTENTAG, ANOTHER VIEW OF PREDATORY LENDING 8 (Wharton Fin. Inst. Ctr., Working Paper No. 01-23-B, 2000) ("According to the brokers, [a] major determinant of profit per loan is the sophistication of the borrower relative to the sales skills of the loan officer."), *available at* http://fic.wharton.upenn.edu/fic/papers/01/0123.pdf.

[25] *See, e.g.*, Bd. of Governors of the Fed. Res. Sys., *In re* Citigroup Inc. & Citifinancial Credit Co., Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issued Upon Consent, May 27, 2004 (alleging subprime affiliate engaging in asset-based lending in violation of HOEPA, requiring co-signators to sell more credit insurance in violation of Regulation B, misleading examiners, and assessing civil money penalties of $70 million and securing agreement to pay restitution to borrowers), *at* http://www.federalreserve.gov/boarddocs/press/enforcement/2004/20040527/attachment.pdf (last visited Mar. 30, 2005). *But see* OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION: CITIBANK, N.A. 7, 11–12 (June 9, 2003) (rating Citibank outstanding after evaluating performance of bank and its mortgage affiliates, including Citifinancial, and noting that fair lending concerns at another affiliate "did not significantly impact our CRA assessment of Citibank" because affiliate did not constitute significant percentage of institution's low- and moderate-income mortgage lending), *at* http://www.occ.treas.gov/ftp/craeval/may04/1461.pdf (last visited Mar. 30, 2005).

[26] 12 C.F.R. § 25.28(c) (2004).

[27] That is, the regulators could determine whether evidence suggests that an affiliate poses a risk of engaging in abusive practices, and then devote examination resources to investigating the extent of any such practices.

[28] Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestments; Notice, 66 Fed. Reg. 36,620, 36,628 (July 12, 2001).

[29] *See* OCC Bulletin 97-26, July 3, 1997 (noting that examiners should consider subsidiaries in bank's performance context); Letter from Julie L. Williams, Acting Comptroller, OCC, to Congressman Bruce L. Vento, May 8, 1998 (noting that "OCC examiners . . . include operating subsidiary assets when assessing a national bank's capacity for community reinvestment").

[30]*See* ELLIEHAUSEN, at 26 (noting economies of scale for compliance with ongoing regulations).

[31] Elsewhere, I have proposed a new tax credit to encourage banks and thrifts to offer low-cost, electronically based bank accounts with no overdraft or hidden fees. See Michael S. Barr, *Banking the Poor,* 21 YALE J. ON REG. 121 (2004). I have also proposed a system under which the IRS would directly deposit tax refunds into bank accounts for low-income households who do not or cannot designate such an account. See Michael S. Barr, *An Inclusive, Progressive National Saving and Financial Services Policy*, 1 HARVARD LAW & POLICY REV. 161 (2007). Together with CRA, such policies could help to transform the financial services marketplace for low-income households.

[32] *See* MICHAEL STEGMAN & ROBERT FARIS, CREATING A SCORECARD FOR THE CRA SERVICE TEST (Brookings Inst., Policy Brief No. 96, 2002) (revealing that only fifteen CRA examinations out of nearly 2,000 conducted over five years resulted in a rating of "needs to improve" on the service test, and no bank earned a "substantial noncompliance" rating on service activities).

[33] *See* Michael S. Barr, *Access to Financial Services in the 21st Century: Five Opportunities for the Bush Administration and the 107th Congress*, 16 NOTRE DAME J.L. ETHICS & PUB. POL'Y 447, 452 (2002); *see also* Michael S. Barr, *Comment Letter of October 26, 2001*, Community Reinvestment Act Joint Advance Notice of Proposed Rulemaking (OCC Docket No. 01-16, Board Docket No. R-1112, FDIC Re: 12 CFR 345, OTS Docket No. 2001-49), *available at* http://www.ots.treas.gov/docs/95338.pdf.

[34] For example, OTS gave Crusader Bank a "needs to improve" rating in 2000 in part because of its payday lending operations; Crusader abandoned its payday lending relationship in 2001.

[35] H.R. 3915, The Mortgage Reform and Anti-Predatory Lending Act of 2007.

[36] For details of the opt-out mortgage proposal, see Michael S. Barr, Sendhil Mullainathan and Eldar Shafir, *Behaviorally Informed Home Mortgage Regulation,* Joint Center on Housing Studies, 2007.

[37] Gramlich, op. cit.