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Community Reinvestment Act: Regulation and Legislation

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July 17, 2008

Abstract. This report begins with a brief outline of the CRA statute and the regulations. It also assesses the costs and the benefits of the 1977 act. The report then turns to regulatory agencies' recent CRA compliance rules. The two last sections of the report briefly summarize the provisions of the Community Reinvestment Modernization Act of 2007 and conclude with some implications.

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CRS Report for Congress

Community Reinvestment Act: Regulation and Legislation

Updated July 17, 2008

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Prepared for Members and
Committees of Congress

Community Reinvestment Act: Regulation and Legislation

Summary

The Community Reinvestment Act (CRA) addresses how banking institutions meet credit needs in low- and moderate-income (LMI) neighborhoods and certain other criteria. As implemented by the four federal banking regulatory agencies, CRA requires paperwork and generates cost in reporting qualifying activities. Some regard it as government-required credit allocation, while others view it as providing justifiable community investments. The Gramm-Leach-Bliley Act (P.L. 106-102) reemphasized CRA's goals, yet relieved banks from part of the regulatory burden it imposes on banking institutions. According to several studies, CRA is the most burdensome federal regulation on banks. Others suggest that without CRA many depository institutions would not invest in LMI communities.

The federal depository institutions' regulatory agencies — the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision — have been implementing rules governing CRA compliance. In the 2005-2007 period, they have been issuing new rules for CRA compliance, including levels of examination for different-asset-size institutions, and issuing guidance on how institutions may acquire CRA credit by engaging in specific banking activities (e.g., providing small-dollar consumer loans to LMI consumers in their communities). Regulators are also implementing a provision of the Financial Services Regulatory Relief Act of 2006, which qualifies more small depository institutions for fewer CRA on-site examinations.

In the 110th Congress, the Community Reinvestment Modernization Act of 2007 (H.R. 1289) was introduced in the House of Representatives on March 1, 2007, and was referred to the House Committee on Financial Services. It would repeal the recent rules implemented by the regulatory agencies that some believe weakened the enforcement of the 1977 CRA. H.R. 1289 would amend the Bank Holding Company Act of 1956 (BHCA) to subject nonbank affiliates of bank holding companies to CRA if they engage in lending or offer banking product services. Satisfactory CRA ratings would be required of securities companies', mortgage banks', and insurance companies' affiliates of financial holding companies.

H.R. 1289 directs the Secretary of Housing and Urban Development to establish requirements for insurers to submit information annually regarding noncommercial insurance, rural insurance, and investments by insurers. Under this title, the Financial Institutions Examination Council is directed to maintain a comprehensive database containing the hierarchical structure of financial holding companies, bank holding companies, depository institutions, and non-depository institutions. For mergers and acquisitions, financial institutions would be required to have (1) a public meeting and (2) a period for public comment regarding branch closures. It would also amend the CRA to subject all regulated financial institutions, regardless of size or aggregate assets, to a mandatory biennial examination.

This report will be updated as developments warrant.

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Community Reinvestment Act: Regulation and Legislation

Introduction

The Community Reinvestment Act of 1977 (CRA, P.L. 95-128, 12 U.S.C. §§ 2901-2908) and the Community Reinvestment Modernization Act of 2007 (H.R. 1289) address how banking institutions meet credit needs of their low- and moderate-income (LMI) neighborhoods and certain other criteria. The law, P.L. 95-128, as implemented by the four federal banking regulatory agencies,[1] requires much paperwork and expense. According to several studies, CRA is the most burdensome banking law on the books. One study estimated that the ongoing operating cost of complying with the CRA averaged $69,579 per financial institution.[2] From the point of view of consumer advocacy, CRA is regarded as economically justifiable credit allocation that provides large community benefits. The Gramm-Leach-Bliley Act (P.L. 106-102) reemphasized CRA, yet relieved banks from it in part as reflected in the less stringent 2005 CRA rules.

The Community Reinvestment Modernization Act of 2007 (H.R. 1289) was introduced in the House of Representatives on March 1, 2007, by Representative Eddie Bernice Johnson of Texas and was referred to the House Committee on Financial Services. The bill would repeal the 2005 compliance rules for depository institutions issued by the federal regulatory agencies. Some financial analysts and consumer advocacy groups believe that the 2005 rules dilute enforcement of the Community Reinvestment Act of 1977. Among its provisions, H.R. 1289 would extend CRA regulations to the nonbank financial services affiliates of bank holding companies that engage in lending or offer banking products or services.

This report begins with a brief outline of the CRA statute and the regulations. It also assesses the costs and the benefits of the 1977 act. The report then turns to regulatory agencies' recent CRA compliance rules. The two last sections of the report briefly summarize the provisions of the Community Reinvestment Modernization Act of 2007 and conclude with some implications.

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[1] The federal financial institutions regulatory agencies consist of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

[2] Marrinan Barefoot & Associates, Inc., Anjan V. Thakor, and Jess C. Beltz, *Common Ground: Increasing Consumer Benefits and Reducing Regulatory Costs in Banking,* Madison Wisc.: Herbert V. Prochnow Education Foundation, 1993; and Gant Thornton, "Regulatory Burden: The Cost to Community Banks," Study Prepared for the Independent Bankers Association of America, January 1993, p. 15.

Background

Statute

In reaction to perceptions that banks were not providing housing finance resources to inner cities, preferring instead to make larger, more profitable international loans, Congress enacted the Community Reinvestment Act of 1977 (CRA). It has evolved beyond housing markets, to consumer and business lending, community investments, and low-cost services. To illustrate, in April 2007, the agencies offered banks and thrifts favorable CRA considerations if they established a low- and moderate-income (LMI) homeowner program that would transition troubled borrowers from higher- to lower-cost loans to help mitigate the impact of subprime mortgage lending on the housing market and the economy.[3] Several states also have separate community reinvestment laws applicable to banking institutions under their supervision.

As an obligation associated with the safety net of federal deposit insurance, the current CRA law does not cover credit unions or insurance and securities companies. It imposes no statutorily set rules. CRA *literally requires* that a federal banking regulatory agency evaluate how each of its regulated institutions affirmatively meets "the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution," and "take such record into account in its evaluation of an application for a deposit facility by such institution." It thus encourages socially responsible funding and deposit services to areas and entities of low- and moderate-income. Its application often involves sociological mandates going beyond income.[4]

Regulation

Four federal regulators administer CRA. They are the Office of the Comptroller of the Currency (OCC), for national banks; the Federal Reserve System (Fed), for state banks belonging to it and holding companies owning banks; the Federal Deposit Insurance Corporation (FDIC), for state banks not belonging to the Federal Reserve; and the Office of Thrift Supervision (OTS), for savings associations. Until 1989, this act had little effect because of restrictions on mergers and acquisitions as well as the Glass-Steagall Act of 1933, which restricted the mixing of banking and commerce, as well as the banking industry's preoccupation with the savings and loan debacle. The agencies applied 12 criteria under CRA beginning in 1990, which required banks and thrifts to complete much paperwork. Dissatisfaction among lenders and community groups emerged.[5] President Clinton called for reform in 1993. By 1997,

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[3] Federal Reserve Board, "Federal Regulators Encourage Institution to Work with Mortgage Borrowers Who Are Unable to Make Their Payments," *Joint Press Release,* April 17, 2007, p. 1. [http://www.federalreserve.gov/boarddocs/press/bcreg/2007/20070417/default.html].

[4] P.L. 102-233 as amended by P.L. 102-550 gives losses resulting from branches transferred to minority- and female-owned institutions positive CRA credit. P.L. 102-550 allows cooperation with minority- and female-owned institutions to receive such credit.

[5] Michael S. Barr, "Credit Where It Counts: The Community Reinvestment Act and Its (continued...)

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the agencies' 1995 Joint Final Rule fully reformed CRA.[6] The agencies scheduled joint redrafting of rulings five years later, in 2002. The effects of that effort on banks and thrifts were not fully felt until recently.

Under CRA, agencies "uniformly" evaluate a financial institution given its capacity, constraints and business strategies; demographic and economic data; lending, investment, and service opportunities; and its competitors and peers. Regulators generally apply three tests: *lending*, *investment*, and *service*. The *lending* test evaluates the number, amount, and distribution across income and geographic classifications of mortgage, small business, small farm, and consumer loans. It is generally regarded as being the most important test. The *investment* test grades community development investments. The *service* test examines retail service delivery such as branches and low-cost checking. Application largely involves activity in *assessment areas* (where institutions have deposit-taking operations). "Out-of-area" activity receives less CRA scrutiny.

It remains unclear if innovative proposals, especially for investments and services, will meet CRA acceptance. Bankers, on behalf of proposed recipients, may need pre-clearance from their regulators, should any proposal be in doubt. Examiners may credit a program for one institution/community yet disallow a like arrangement elsewhere.

Table 1 shows how regulators use "points" to grade large retail institutions. In reaction to criticisms that CRA ratings were vague if not subjective, this point-scoring metric provided a significant degree of objective evaluation. Qualitative benefits to communities may raise a grade above what points allow. Examiners assign multi-state institutions ratings as a whole, and for each state of operation or metropolitan area if in two or more states. Larger banks receive more CRA scrutiny than smaller ones. Since large institutions generally operate in urban areas with community-advocate networks, many believe that rural areas, which are generally served by fewer and smaller banks and have relatively few community activist groups, have benefitted less from CRA.

[5] (...continued)
Critics," *New York University Law Review*, May 2005, pp. 110-112.

[6] 12 C.F.R. Parts 25 (OCC), 228 (Federal Reserve), 345 (FDIC), and, 563e (OTS).

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Table 1. Points Assigned for CRA Performance under Lending, Investment, and Service Tests (Large Retail Institutions)

	Lending	Investment	Service
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

Total Points	*Composite Rating Point Requirements*
20 or over	Outstanding
11-19	Satisfactory
5-10	Needs to Improve
0-4	Substantial Noncompliance

Source: Federal Financial Institutions Examination Council, "Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestments; Notice," *Federal Register*, vol. 66, no. 134, July 12, 2001, pp. 33639-33640. An institution may not be Satisfactory unless it receives at least Low Satisfactory on the lending test. Examiners thus cap total points at three times the lending test score.

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Small institutions are relieved of certain requirements. Regulators have set the standard at $1 billion in assets for "large" banks that must undergo the above comprehensive three-part examination, and created a tier for compliance by "intermediate small" banks between $250 million and $1 billion in assets. Ratings for smaller institutions, those with less than $250 million in assets, look solely at the following lending-related activities:

- loan-to-deposit ratios,
- percentage of loans in service territory,
- lending to borrowers of different income and in different amounts
- geographical distribution of loans, and
- actions on complaints about performance.

Following periodic examinations, the four agencies rate each institution in descending order, as the equivalent of grades A to D:

- Outstanding
- Satisfactory
- Needs to Improve, or
- Substantial Noncompliance.

Grades of Outstanding and Satisfactory are acceptable. Covered institutions must post a CRA notice in their offices and make a record of their overall CRA performance publicly available. The overwhelming majority of institutions have received at least the expected Satisfactory rating in recent years. According to the Fed, about 12% of all banks and thrifts examined have an Outstanding rating, 87%

have a Satisfactory rating, and less that 0.5% had a Needs to Improve or Substantial Noncompliance rating.[7]

Regulators cannot sanction institutions that fall short of the agencies' CRA requirements. CRA comes into force when an institution applies for a "deposit facility," which generally occurs when moving offices and, especially, when buying another institution. Denial of deposit facility applications (most importantly mergers and acquisitions) is the main tool applied against banking organizations not in compliance. Regulators generally rely on ratings when considering CRA-based objections to banking fusions. However, denials of deals because of CRA have been rare. Less than 0.5% (68) of 13,500 applicants were assigned either Needs Improvement or Substantial Noncompliance. Of these 68 applicants, only 25 of the more than 13,500 applications for the formation, acquisition, or merger of bank holding companies or state-member banks have been denied by the Federal Reserve Board since 1988.[8] As a result, these numbers reveal very little about how CRA ratings influence regulators' denial of a bank and thrift expanded activities, since an institution could receive a rating of Needs Improvement or Substantial Noncompliance and still get approval. One reason is that applicants are able to resubmit their applications later when they make the necessary CRA improvements. Consequently, a rating below "Satisfactory" carries only a psychological penalty — including potentially bad press.

Burden or Benefit? Some bankers have identified CRA as the most burdensome regulation placed upon them and view it as an obligation similar to a tax without offsetting return. They view CRA as forcing them to provide charity-type loans for societal payoffs. To some it might appear to destroy value in the banking industry as banks make fewer profitable community development loans that lower safety and soundness. To others CRA and other banking regulations appear as convenience-and-needs tradeoffs for banks receiving governmental support. In return for benefits of federal deposit insurance, lender-of-last-resort availability, payments systems, Federal Home Loan Bank membership, etc., the government requires them to provide socially directed lending and other services.[9] Other businesses, notably the financial competitors of banks, are not subject to this mandate. Complaints generally center on the time and costs associated with the required paperwork. The American Bankers Association once estimated that CRA cost the banking industry about $2 billion yearly. Others have estimated lesser but still large "burdens."[10] Intensity of examination increases for larger banks, but less than in proportion to size. **Table 2** shows that the number of CRA compliance

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[7] Sandra Braunstein, Director, Division of Consumer and Community Affairs, Before the Subcommittee on Domestic Policy, Committee on Oversight and Government Reform, *Bank mergers, Community Reinvestment ACT enforcement, subprime mortgage lending and foreclosure,* at the Carl B. Stokes U.S. Court House, Cleveland, Ohio, [http://www.federalreserve.gov/BoardDocs/Testimony/2007/20070521/default.htm], p. 2, May 21, 2007.

[8] Ibid., p. 4.

[9] Barr, pp.198-202.

[10] Ibid., pp. 175-177.

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examinations had been trending down, both because of legislation analyzed below and because the number of institutions subject to CRA has been reduced with industry consolidations.

Table 2. Number of CRA Examinations by Year, 1997-2006

Year	Number
1997	1,896
1998	1,866
1999	1,911
2000	1,941
2001	1,912
2002	1,986
2003	2,103
2004	1,999
2005	1,103
2006	1,028

Source: Federal Financial Institutions Examination Council data, last revised July 25, 2007 [http://www.ffiec.gov/hmcrpr/cra06table1.pdf].

CRA proponents suggest that it may not be as burdensome as other regulatory mandates. They note that bankers often lump CRA paperwork in with that for Home Mortgage Disclosure, Equal Credit Opportunity, and Fair Housing Acts, and that collecting and processing statistics constitute most of the burden. Proponents see CRA as stimulating supply to low- and moderate-income credit. According to the National Community Reinvestment Coalition, CRA was instrumental in generating more than $1.5 trillion of home mortgage and small-business loans for central cities since 1977.[11] Analysts have never known CRA to cause a bank to fail or fall below its capital requirements.

Because most CRA credits are used mostly by large banks when they are about to merge, some analysts generally view CRA as promises to large banking organizations when merging. Whether the mergers would have occurred without CRA is unknown. Proponents may treat gross amounts as benefits without looking at how they meet the needs of the under-served. Many pledges seem crafted to ward off community protests. There is evidence, despite statistical difficulties, which suggest that CRA benefits low-income communities and borrowers.[12]

Recent Congresses

The Riegle-Neal Amendments of 1997 (P.L. 105-24) reaffirmed that state community reinvestment laws apply to out-of-state bankers. Two years later, Congress passed the Gramm-Leach-Bliley Act (GLBA, P.L. 106-102). It requires the depository parts of a financial holding company to maintain a CRA rating of at least

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[11] Samantha Friedman and Gregory D. Squires, "CRA Examiners Should Also Look at Racial Statistics," *American Banker Online*, August 29, 2003.

[12] Barr, pp. 146-164.

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Satisfactory, and the same for national banks having financial subsidiaries. GLBA requires disclosure and reporting of agreements made in connection with CRA involving resources of insured depository institutions or affiliates: CRA Sunshine. It provides a Small Bank Stretch-Out. Small banks face routine examination just once every five years if Outstanding, and once every four years if Satisfactory. Such institutions must have assets of $250 million or less. Its language provides that nothing in GLBA will be construed to repeal any portion of CRA.

Compliance Results. Financial diversification regulations under GLBA required CRA compliance in banking, and two studies of CRA's efficiency, one by the Treasury Department and another by the Fed. The Treasury Department's study claimed that CRA has been effective.[13] The Fed's study found that most CRA loans for homes and small businesses were profitable, although many were unprofitable.[14] Another study found that CRA Sunshine provision has been a lesser burden to bankers than feared.[15] A Harvard study suggested that CRA has played a large role in increasing the number of depository institution LMI mortgages, but found that non-covered entities have exceeded depositories in market shares, lowering CRA's effectiveness.[16] Community activists remain unconvinced that banking companies are compliant, since they may own sub-prime nondepository lending "affiliates."[17] The purpose of the Community Reinvestment Modernization Act of 2007, discussed below, is to address this noncompliance issue.

New Rules in 2005

In 2005, following years of disagreements, banking regulators reached a consensus on regulatory application of CRA. The Office of Thrift Supervision had made its similar rule effective April 1, 2005, leading the way.[18] Unlike the other agencies, OTS moved the small thrifts' assets threshold for CRA examination purposes to $1 billion. However, in March 2007, OTS revised its CRA regulations to align it with the other regulators. Consequently, the OTS CRA rules are the same as the joint Fed, OCC, and FDIC rulemaking, effective September 1, 2005:

- Banks with assets between $250 million and $1 billion are exempt, as "intermediate small banks," from the previous reporting obligations of banks with assets larger than $250 million.

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[13] Robert E. Litan et al., *The Community Reinvestment Act after Financial Modernization: A Baseline Report*, at [http://www.ustreas.gov/press/releases/docs/crareport.pdf].

[14] Board of Governors of the Federal Reserve System, *The Performance and Profitability of CRA-Related Lending*, at [http://www.federalreserve.gov/boarddocs/surveys/craloansurvey/cratext.pdf].

[15] Duran, "CRA Sunshine Too Onerous?" *American Banker*, July 2, 2001, pp. 1, 4.

[16] Joint Center for Housing Studies, *The 25th Anniversary of the Community Reinvestment Act: Access to Capital in an Evolving Financial Services System*, March 20, 2002.

[17] Rob Blackwell, "CRA Rules Need Tightening," *American Banker Online*, March 4, 2003.

[18] Office of Thrift Supervision, Press Release, February 28, 2005, at [http://www.ots.treas.gov/docs/ 7/77507.html].

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- Intermediate small banks are subject to a two-part test (retail lending and community development) instead of the three-part ones of lending, investment, and service. Satisfactory community development, and also retail lending, ratings would be necessary for an overall "Satisfactory."
- The definition of "community development" is revised to credit rural banks investing in general support for "underserved" rural areas and for "designated disaster areas."
- When illegal lending practices — for example, by a bank's affiliate — reduce the bank's CRA rating is clarified.[19]

The intent of these changes was to make affected banks view CRA activities with respect to results (effectiveness) and not just as arbitrary targets. To the extent that the flexible community development test includes revitalizing "underserved and distressed" rural areas[20] and designated disaster areas, this change may increase the number of CRA investment commitments. In particular, the disaster area provision may allow banks anywhere in America to receive credit for aiding the regional rebuilding from Hurricane Katrina, or the many counties elsewhere that have been damaged by storms, flooding, tornados, etc.[21]

Agency Guidance

The banking agencies have issued somewhat conflicting guidance concerning small-dollar loans and subprime lending for banks' Community Reinvestment Act requirements. In September 2006, the agencies issued guidance on subprime lending.[22] It was restrictive in tone. It warned banks of the risk posed by nontraditional mortgage loans, including interest-only and payment-option adjustable-rate mortgages. The agencies expressed concern about these loans because of the lack of principal amortization and the potential for negative amortization. After a rapid rise of foreclosures on subprime mortgages, in April 2007 the agencies indicated that, since a significant portion of the problem subprime mortgages were made to low- and moderate-income households, those mortgages will be given little positive weight under CRA. Banks would receive benefits for helping delinquent borrowers who may be burdened with unaffordable mortgages.[23] In sum, in 2006 the agencies discouraged subprime lending.

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[19] The text of this joint ruling is available at [http://www.federalreserve.gov/boarddocs/press/ bcreg/2005/20050719/attachment.pdf].

[20] These areas are available from the Federal Financial Institutions Examination Council at [http://www.ffiec.gov/cra/pdf/distressedorunderservedtracts.pdf].

[21] Federal disaster declarations listing affected counties are available from the Federal Emergency Management Agency at [http://www.fema.gov/news/disasters.fema].

[22] See the joint press release, Federal Reserve Board, *Federal Financial Regulatory Agencies Issue Final Guidance on Nontraditional Mortgage Product Risks,* September 29, 2006. [http://www.federalreserve.gov/boarddocs/press/bcreg/2006/20060929/defaul.htm].

[23] Richard Cowden, "Regulators Ease Banks' Fears About CRA During Era of Concern Over Subprime Loans," *BNA Banking Report,* April 30, 2007, p. 2; and see John Dugan's remarks at [http://www.occ.treas.gov/ftp/release/2007-44a.pdf].

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In 2007, federal regulators offered CRA credit to banks for helping to mitigate the effects of subprime lending turmoil. At the same time, a set of questions and answers (Q and A) was designed to assist financial institutions in complying with Community Reinvestment Act rules, including provisions to encourage lenders to work with homeowners facing foreclosures.[24] The Q and A were also used to explain the methods the regulators used to allocate CRA credits for banking institutions investments in programs such as low income housing tax credit (LIHTC) funds. These LIHTC funds provide banking institutions a tax credit which lowers the investing institutions' tax liabilities and earns them CRA credits for complying with the Community Reinvestment Act of 1977. Unfortunately, the description of the methods gave the impression that the regulators had made changes to the methods they are using to allocate CRA credits. The result was that institutions and their representatives began to contact Members of Congress and regulators urging them to change it back.

Specifically, the complaints were that the regulators were prorating the CRA credit given to institutions for their investments in low income area community developments, according to the investments' proximity to the geographic area in which the banks operate. This is likely to reduce the incentive for these institutions to make such investments. The regulators began doing this to make sure that the CRA-credited investments were being made in the communities from which the institutions garnered their deposits. In fact, the regulators did not change their methods of allocating CRA credits. The proration was only applicable to investments in national funds whose numbers have grown dramatically in recent years. For these funds, the regulators have always prorated the CRA credits because nation funds are likely to be invested in low income areas outside the bank's geographic area. Therefore, the regulators prorate the CRA credits according to the amount an institution invests in the national fund in relationship to the total investment of the fund, and where the fund makes its investments. If the national fund makes no investments in low income communities in the bank's geographic area, the bank would get no CRA credit for its investment in that fund. On the other hand, statewide and regional investments continue to get 100% CRA credits.

Favorable CRA considerations were offered by the FDIC in its guideline to encourage banks to offer affordable small-dollar loans. While the guideline does not prescribe the specific nature of the small-dollar loans, the FDIC intends these banking products to compete with less-affordable, predatory payday small-dollar loans and to continue to comply with the regulators' safety and soundness requirements. Under these guidelines all fees and interest associated with these loans must be less than 36% per year.[25] The banking industry's reaction to the guidelines

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[24] See Rechard Cowdens, "New Q&A on Community Reinvestment Act Focuses on Activities to Mitigate Foreclosures," *BNA Banking Report,* July 16, 2007, p. 108, and Traiger & Hinckley LLP, *The Community Reinvestment Act: A Welcome Anomaly in the Foreclosure Crisis,* January 7, 2008, 3p.

[25] See FDIC Press Release, "Affordable Small Dollar Loan Guidelines," December 4, 2006, pp. 4, [http://www.fdic.gov/news/press/2006/pr06107a.html]; and Karen Werner, "FDIC Small-Dollar Loan Guidelines at Odds with Broad Reading of New Law, Groups Say,"

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initially has not been enthusiastic, because these types of loans are generally considered to be risky, with limited prospects of profitability.

The Community Reinvestment Modernization Act of 2007

Brief Summary of the Provisions

The stated purpose of H.R. 1289 is to enhance the availability of capital and credit for all citizens and communities; to ensure that community reinvestment keeps pace as banks, securities firms, and other financial services providers become affiliates as a result of the enactment of the Gramm-Leach-Bliley Act; and for other purposes. The bill has three titles and 32 sections. The first provision would repeal the regulatory agencies' 2005 rules (discussed above) applicable to the Community Reinvestment Act of 1977 and reinstate the banking agencies' regulations in effect before the publication of the revisions. H.R. 1289 would amend the Bank Holding Company Act of 1956 (BHCA) to make nonbank affiliates of bank holding companies subject to CRA if they engage in lending or offering of banking-product services. At a minimum, a satisfactory CRA rating would be required for securities firms, mortgage banks, or insurance company affiliates of financial holding companies to be CRA compliant if H.R. 1289 becomes law.

Title II (Data Disclosure Requirements) directs the Secretary of Housing and Urban Development to establish requirements for insurers to submit information annually regarding noncommercial insurance, rural insurance, and investments by insurers. It requires the Secretary to make such information public. Under this title, the Financial Institutions Examination Council is directed to maintain a comprehensive database containing the hierarchical structure of financial holding companies, bank holding companies, depository institutions, and non-depository institutions. Title III (Regulatory and Structural Reforms) would amend the BHCA to allow certain expanded financial activities by a bank holding company only if it or its affiliate has neither (1) been adjudicated in federal court nor (2) entered into a consent decree or settlement agreement, premised on a violation of the Fair Housing Act (antiredlining requirements). Under this title, for mergers and acquisitions the financial institutions would be required to have (1) a public meeting and (2) a period for public comment regarding branch closures. It would also amend the CRA to subject all regulated financial institutions, regardless of size or aggregate assets, to mandatory biennial examination.

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[25] (...continued)
BNA's Banking Report, February 12, 2007, p. 1.

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Conclusion

The CRA is now being examined from a number of different perspectives, including its role in regulatory relief, subprime lending relief, and small-dollar loans, as well as expanding CRA to other nonbanking financial services. From the perspective of regulatory relief, CRA has been described by some bankers as burdensome, both in terms of paperwork and the opportunity costs of alternative investments. Consequently, to relieve smaller banks of this regulatory burden, the agencies' 2005 rules changes simplified the compliance requirements for smaller institutions. In addition, Congress passed the Financial Services Regulatory Relief Act of 2006 that reduced the frequency of on-site examinations of smaller banking institutions. Consumer advocates argue that regulatory relief has weakened CRA enforcement.

The Community Reinvestment Modernization Act of 2007 would repeal the 2005 rules and require the nonbanking affiliates of bank holding companies to comply with CRA. It would also extend CRA to other the banking activities of nonbanking affiliates. If bank holding companies are conducting more banking activities through their insurance, securities, and mortgage banking affiliates and away from the holding companies' bank(s), the act could increase low- and moderate-income community lending. This implies that the CRA requirements in H.R. 1289 may directly counter the promised benefits of the Gramm-Leach-Bliley Act of 1999, which regulates the commingling of financial services. The reason is that H.R. 1289 would require CRA compliance of the services provided by the holding companies; for example, securities and insurance activities will now have to comply with the CRA. Under current law, these affiliates are not required to comply with the CRA.

The regulatory agencies' use of CRA credits in their guidance lacks consistency. Consumer advocates supported regulators' efforts to use CRA credits to encourage banking institutions to offer programs that extend small-dollar loans to LMI individuals and families to reduce their dependence on more-expensive payday lenders and auto-title loan providers. The regulators also have consumer groups' support for their efforts to provide financial assistance to subprime borrowers. According to the FDIC general council, Sara Kelsey, "We encourage bankers to play this role and will be supportive of such restructuring efforts, as we were in similar efforts by banks following Hurricane Katrina. Such efforts will be considered as meeting the goals of the Community Reinvestment Act."[26] But, the guidance is in conflict with the September 2005 guidance on subprime lending, which warns of the risk in making these types of CRA-credited loans. This apparent inconsistency suggests that more concrete guidance that balances safety and soundness requirements with lenders' ability to offer credit to LMI individuals and families is necessary to be able to hold banks and their regulators accountable in their role in eliminating the subprime lending and predatory lending concerns.

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[26] Christian Bruce, "FDIC's Legal Counsel Raises Possibility Of Capital Charges Against Securitized Loans," *BNA Banking Report,* March 29, 2007, p. 3-4. [http://pubs.bna.com/ip/bna/bbd.nsf/eh/A0B4E9G9]

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