Investing in a Just Economy

For over 25 years, NCRC has worked to create a just economy. We believe private capital of various forms – including a wide variety of financial institutions – must be engaged in building an equitable and fair economy. There is both a legal and moral obligation for banks and other institutions to invest and lend in low- and moderate-income communities. This is particularly true in the wake of the last financial crisis, as the homeownership rate continues to decline[1] and as the nation continues to rebound from a 40-year decline in business startup activity.[2] Homeownership remains the best vehicle for low- and moderate-income families and people of color to build wealth and enter the middle class. And small businesses and start-ups are an essential source of the new job creation. To ensure the widest and most equitable access to credit across the country, the affirmative obligations, or Duties to Serve, on the nation's financial institutions must be defended and expanded.

> "*Fair lending concerns the obligation not to discriminate on unlawful grounds in the actual granting of credit and its terms. But, the Duties to Serve concept is broader and it recognizes that merely prohibiting discriminatory lending is insufficient to address the disparity of financial opportunity.*"[3]

CRA: 40 Years of Fighting Redlining and Defeating Capital Export

2017 marks the 40th anniversary of the Community Reinvestment Act (CRA). CRA is an affirmative obligation in the primary lending market. Under CRA, depository institutions "have a continuing and affirmative obligation to help meet the credit needs of their local communities in which they are chartered."[4] Those obligations are to be met "consistent with the safe and sound operations of such institutions." The law was enacted to end redlining (the practice of banks refusing to consider mortgage applications from minorities based on the neighborhood they lived in rather than their personal credit and financial situation) and to defeat capital export (banks using the deposits made by persons from low-income neighborhoods to lend to persons in more affluent neighborhoods).[5]

CRA is implemented by the three federal bank regulators (the Officer of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve System) through periodic lender examinations of all federally insured depository institutions. These CRA examinations vary in occurrence and detail based on lender asset size, with small lenders under $250 million in assets being

1 HUD Cabinet Exit Memo, *Housing as a Platform for Opportunity*, January 5, 2017. The African-American homeownership rate has fallen 6.7 percentage points to 43 percent. The Hispanic homeownership rate has fallen 2.5 percentage points to 45.6 percent. The white homeownership rate has fallen 4.0 percentage points to 71.9 percent.

2 SBA Cabinet Exit Memo, *SBA: Smart , Bold, Accessible* (January 5, 2017).

3 Levitin, Adam, J., Ratcliffe, Janneke H. (2013). *Rethinking the Duties to Serve in Housing Finance*, Joint Center for Housing Studies, Harvard University.

4 The Community Reinvestment Act, 12 U.S.C. § 2901

5 Littrell, J., & Brooks, F. (2010). *In Defense of the Community Reinvestment Act*, Georgia State University

evaluated less frequently (usually once every four or five years) and less thoroughly (one test area instead of the three applied to large banks). Upon completion of the examination, regulators award banks ratings based on their compliance with the CRA. Regulators can then use a poor rating to deny lender applications for such things as opening a new office or acquiring another bank.

In 1989, during the congressional debate to make a bank's CRA rating public, former U.S. Representative Bob Walker (R-PA) repudiated redlining as "an abominable practice" and defended the law as "about opportunity and access."[6] Rep. Walker's defense of CRA continues to ring true today. Redlining is not an issue of the past. The Consumer Financial Protection Bureau (CFPB) alone has brought nearly $40 million dollars in enforcement actions against institutions for redlining in the past two years.[7]

Together with anti-discrimination, consumer protection, and disclosure laws, CRA remains a key element of the regulatory framework for the nation's banks, encouraging the provision of mortgage loans, small business loans, investments and other financial services in their local communities and for low- and moderate-income neighborhoods. According to date from the Federal Financial Institutions Examination Council (FFIEC), since 1996, CRA-covered banks issued approximately 24 million small business loans in low- and moderate-income census tracts, totaling more than $973 billion (see Figure 1), and made more than 577,000 community development loans worth $883 billion (see Figure 2).[8] Community development loans support affordable housing and economic development projects benefiting low- and moderate-income communities.

Dollar Amount of Small Business Loans in Low- and Moderate-Income Tracts (in Billions)

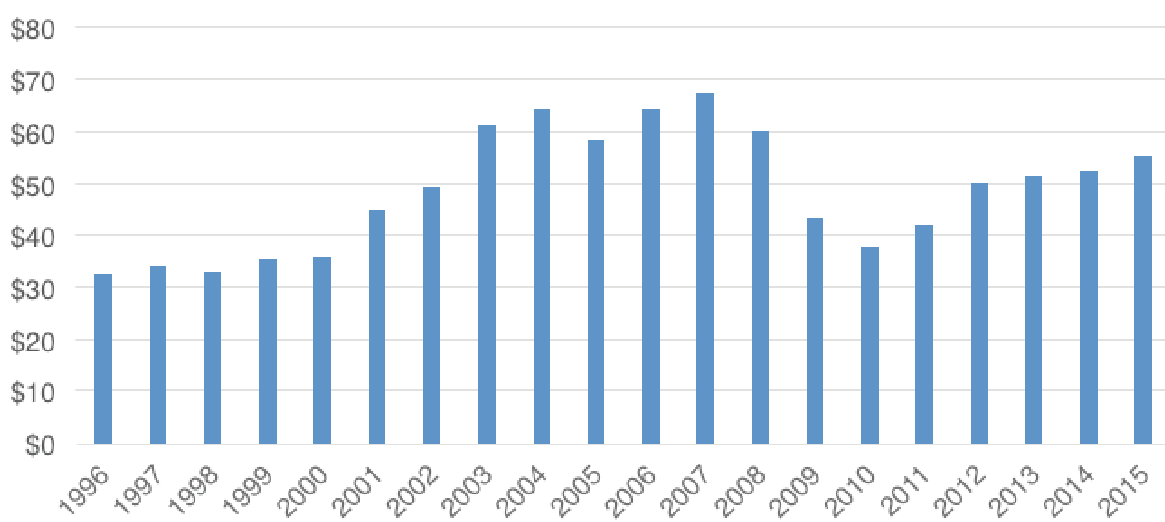


FIGURE 1: NCRC Analysis of FFIEC data (not adjusted for inflation)

6 135 Cong. Rec. S6681-S6775 (daily ed. June 15, 1989) (statement of U.S. Representative Bob Walker).

7 Enforcement Actions [Redlining]. Retrieved from https://www.consumerfinance.gov/policy-compliance/enforcement/actions/?form-id=0&filter0_title=&filter0_topics=redlining&filter0_from_date=&filter0_to_date=

8 Ibid

FIGURE 2: NCRC Analysis of FFIEC data (not adjusted for inflation)

Depository institutions are compelled to meet their affirmative obligation under CRA in exchange for taxpayer support, such as bank charter status and federal deposit insurance.[9] As the financial marketplace evolves, however, it is critical that the playing field be level for all financial institutions. Financial technology companies (fintech) and other nonbanks have continued to gain significant market share since the financial crisis, doing more and more mortgage and small business lending. These institutions also have a responsibility "to provide fair access to financial services by helping to meet the credit needs of [their] entire community" and "promot[e] fair treatment of customers including efficiency and better service."[10]

The Affordable Housing Goals

In the secondary mortgage market, Fannie Mae and Freddie Mac (the Enterprises) also have "an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families…while maintaining a strong financial condition and a reasonable economic return."[11] The Enterprises also have annual affordable housing goals, which require the Enterprises to purchase a set percentage of mortgages to finance single family and multifamily housing for low- and moderate-income borrowers.[12]

9 Rosengren, E., Yellen, J., Olson, J., Chakrabarti, P., Essene, R., & Kroszner, R. (2009). Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act (Rep.). Retrieved from http://www.frbsf.org/community-development/files/revisiting_cra.pdf

10 Office of the Comptroller of the Currency, Exploring Special Purpose National Bank Charters for Fintech Companies (December (citing bank regulatory policy at: 12 CFR 5.20(f)(1)(ii) and (iv))

11 12 U.S.C 4501(7).

12 12 U.S.C. 4562 and 4563.

For decades, the Enterprises have provided leadership in developing loan products and flexible underwriting guidelines and have taken other steps to increase the flow of responsible mortgage credit to low- and moderate-income borrowers and communities. For example, the willingness of the Enterprises to purchase three-percent down payment mortgage loans from financial institutions in the primary market over the years has provided homeownership opportunities to millions of working families across the country.

The Duty to Serve Rule, Housing Trust Fund and Capital Magnet Fund

Fannie Mae and Freddie Mac also have other responsibilities as a result of the law's affirmative obligations on the Enterprises to facilitate affordable housing. In 2016, the Federal Housing Finance Agency (FHFA) finalized a rule requiring the Enterprises to encourage mortgage financing in three underserved markets: manufactured housing, affordable housing preservation and rural housing.[13] Both Enterprises are expected to develop mortgage products, purchase mortgage loans, do outreach and/or make investments in these three markets. The Enterprises also dedicate a portion of their revenues to the Housing Trust Fund (HTF) and the Capital Magnet Fund (CMF). The HTF and CMF provide grants to states and state housing agencies and competitive grants to Community Development Financial Institutions and nonprofit housing organizations to increase affordable housing for low-income families and areas.

The Challenge Post-Crisis and in the Current Political Climate

NCRC and consumer advocates are facing enormous challenges in ensuring that low- and moderate-income borrowers and underserved communities have access to affordable and sustainable credit and that homeownership remains accessible.

In response to the financial crisis of 2007-2009, many traditional banks have restricted credit to small businesses and homebuyers. Homebuyers, consumers and businesses, for example, have trouble accessing safe and sustainable small dollar loans. Credit score standards remain extraordinarily high by historical standards, placing homeownership out of reach for many potential buyers. Challenges with access to credit also help explain a 40-year decline in business start-up activity.

In addition, critical trends in the financial marketplace have escalated in the primary lending market. The rising market share of fintech, including online lending platforms, as well as other nonbanks, have meant that there is a rising segment of the primary market that have no affirmative obligations – no duty to serve low- and moderate-income borrowers in the way that CRA requires of banks. They also have varying levels of legal and regulatory requirements that create competitive advantages in the financial marketplace.

13 Federal Housing Finance Agency. (2016, December 13). FHFA Issues Final Rule on Fannie Mae and Freddie Mac Duty to Serve Underserved Markets [Press release]. Retrieved from https://www.fhfa.gov/PolicyProgramsResearch/PROGRAMS/Pages/Duty-to-Serve.aspx

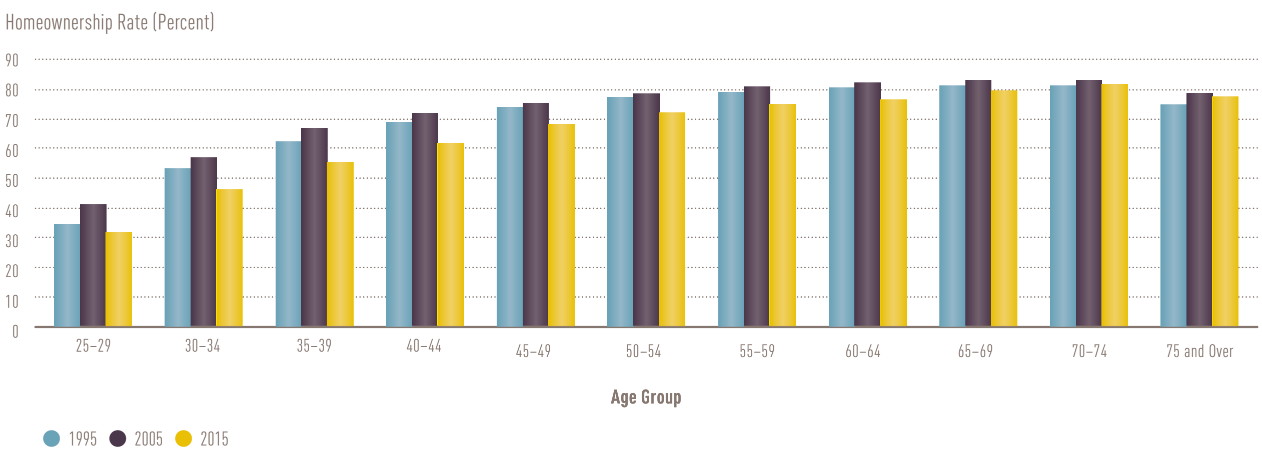
In the secondary mortgage market, the U.S. Congress has considered several proposals in recent years to replace Fannie Mae and Freddie Mac with a reformed housing finance system without affordable housing goals.

The Trump Administration and the 115th Congress

The opening days of the Trump Administration are also presenting some challenges. Upon taking office, the president halted a number of the Obama Administration's actions, including a planned reduction in the Federal Housing Administration's (FHA) Mortgage Interest Premium. He has also directed the secretary of the Department of the Treasury to do a top-down review of the nation's financial regulations – a step widely expected to result in a regulatory repeal of many provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, a law passed in response to the financial crisis. Some in Congress are also seeking to repeal and limit key provisions of the Dodd-Frank Act and restructure the CFPB. There is also a major push by the financial services industry and many in Congress to remove the director of the CFPB and to limit fair housing and fair lending enforcement. The Fiscal Year 2018 budget includes severe cuts in funding to affordable housing, community development and key social safety net programs.

With the changing financial marketplace and the new political landscape, NCRC's advocacy challenge has gained a new urgency: to protect and strengthen the CRA; to preserve the affordable housing goals and the broader affirmative obligations on financial institutions to serve low- and moderate-income borrowers and underserved communities; to ensure enforcement of the nation's fair housing and fair lending laws; and to protect federal funding for key affordable housing, community development, small business and social safety net programs.

Homeownership Rates for Most Age Groups Have Fallen Well Below Pre-Boom Levels



Source: US Census Bureau, Housing Vacancy Surveys.

FIGURE 3: Source: Harvard Joint Center for Housing Studies, *The State of the Nation's Housing 2016*, www.jchs.harvard.edu.