

# Community Reinvestment Act: New Life?

10.26.20 | Linda J. Rosenthal, JD



There's an opportunity in the next few months for the nonprofit community to have a say on the modernization and reform of an important piece of civil rights and economic justice legislation – [the Community Reinvestment Act of 1977](#). But the matter is *not before Congress* this time; instead, it's an action by the Federal Reserve Board (FRB). That independent body published a Notice of Proposed Rulemaking on September 22, 2020, with a 120-day public-comment period.

## What is the CRA?

Congress enacted The Community Reinvestment Act (CRA) in the late 1970s to counter the insidious and discriminatory banking practice known as “redlining.” Another goal for this landmark statute was to address the failure of the bankers to make enough investment in all areas in which they operate. Under this law, the Federal Reserve Board and other [specified federal banking regulators](#) encourage financial institutions “to [help meet the credit needs of the communities](#) in which they do business, including [low- and moderate-income \(LMI\) neighborhoods](#).”

In [Proposed CRA Changes Threaten Access to Capital in Underserved Communities](#) (February 11, 2020) *The Nonprofit Quarterly*, Debby Warren discusses the history and benefits of this important statutory scheme. “Although CRA [has not been a panacea](#) for dismantling centuries of institutionalized racism that has so often blocked wealth building in communities of color,” she explains, “the law has had a potent and positive effect in urban neighborhoods and rural communities across the country.”

Nevertheless, in the four decades since enactment of the CRA, the banking environment in the United States has changed significantly. Many banks have consolidated and “the industry is now dominated by very large institutions” that have designed products, services, and marketing campaigns that appear to satisfy the CRA requirements while failing the spirit and intent of that landmark legislation. So “reform could be beneficial,” Ms. Warren writes, but a joint proposal last

December by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) – the two federal regulators *in addition* to the Federal Reserve with jurisdiction over the CRA – is not acceptable. These so-called reform plans are designed, she asserts, to negate the progress intended and achieved over several decades.

The Federal Reserve Board refused to sign on to the proposed changes by the OCC and the FDIC, objecting both to the substance as well as the “hurried process.” So the FRB drafted its own set of new rules which are the subject of the September 22, 2020, Notice of Proposed Rulemaking.

### *The FRB’s Proposed CRA Rules*

“Those who were concerned about the future application of the federal Community Reinvestment Act should be happy,” writes Martin Levine in a recent article in *The Nonprofit Quarterly*, “because there will be a second bite at the apple...” with the FRB’s new proposed regulations. See *Public Commentary Needed Now on Community Reinvestment Act!* (October 1, 2020).

Mr. Levine explains that the “reform” process started out as an initiative to “create a new shared set of ways to make sure the CRA was meeting its goal in a changing banking environment.” But the initially unified approach (that would cover each portion of “the nation’s sprawling banking and lending industry” over which the three entities – FRB, OCC, and FDIC – have jurisdiction) broke down, disintegrating – first – when the OCC “chose to go it alone....” Later, the FDIC joined the OCC in what Martin Levine and other critics describe as a “dangerously flawed” proposal that “will bring about a new form of redlining.”

He lauds the Federal Reserve’s proposal as “providing a second chance to modernize without inflicting the harm contained in the OCC rules.” The Association for Neighborhood & Housing Development is also among the supporters of the Federal Reserve Board’s proposed rules: “It ... serves as a productive alternative to the OCC’s rushed, harmful update to the rules.”

### *CRA Rules Public Input Needed*

In his *NPQ* post, Martin Levine highlights that the FRB is “... providing the public ample time to review this proposal and respond to the questions posed ....”. More commonly, a proposed-comment period is just 60 days. That fact underscores the Federal Reserve Board’s seriousness “about incorporating community input.” He adds that proponents of meaningful reform to the Community Reinvestment Act are “particularly pleased to see direct questions [... from the FRB to the public...] about how the CRA can better serve people and communities of color, combat displacement, and promote impactful activities, such as bank branches, access to banking, lending to the smallest of businesses, and housing for the unhoused and very low-income populations.”

The topics on which the Federal Reserve Board has specifically asked for input and comment include: (a) “how to define a financial institution’s local community for CRA evaluations”; (b) its proposed “Retail Test”; (c) its proposed “Community Development Test” (d) ratings issues; and (e) requirements for collecting data and reporting it.

### *Conclusion*

Unfortunately, the joint rule by the OCC and the FDIC already went into effect on October 1, 2020. That makes speaking up about the more favorable rule proposed by the Federal Reserve Board all the more critical; at least, some benefits of the Community Reinvestment Act of 1977 will remain available over the banking institutions subject to the FRB's jurisdiction.

We've written recently about how important and effective input from the public can be to shape final rules and regulations. Any effort now by the nonprofit community during the unusually generous four-month comment period offered by the Federal Reserve may likely pay off.

— *Linda J. Rosenthal, J.D., FPLG Information & Research Director*