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Social Responsibility in Bank Credit Decisions: The Community Reinvestment Act One Decade Later

Robert C. Art
Willamette University

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ROBERT C. ART*

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* Associate Professor of Law, Willamette University College of Law. J.D., 1978 De Paul University; LL.M., 1981 Columbia University.
Modifying the behavior, attitudes, and norms of the banking industry and of banking regulatory agencies, in relation to issues of social responsibility, is an accomplishment of major proportions. The Federal Community Reinvestment Act,1 enacted in 1977 with that ambitious goal, has succeeded to a significant extent, and is likely to become increasingly important in coming years. The decade that has elapsed since 1977 provides a basis for assessment of the approach, the numerous inherent flaws, and the successes of the Act.

A vociferous public debate in many urban areas in the mid-1970s focused on the issue of whether banks and other financial institutions that accumulated deposits in neighborhoods having lower-income or racial minority residents owed any responsibility to make mortgage loans available in those neighborhoods. Is it necessary, or even proper, for a depository institution to adopt, as a goal of its overall lending policy, the objective of affirmatively contributing to the economic health of particular neighborhoods? Prior to 1977, the answer to the banking industry was a resounding and unequivocal "No."2 The federal regulatory authorities fully supported and encouraged the conviction of bankers that financial safety and profitability of depository institutions were the only acceptable goals, regardless of the effect on surrounding communities.3

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2. Community Credit Needs: Hearings on S. 406 Before the Comm. on Banking, Housing, and Urban Affairs, 95th Cong., 1st Sess. (1977) [hereinafter referred to as Hearings on S. 406]. See, e.g., statements in opposition to enactment of C.R.A. submitted by the National Savings and Loan League, id. at 279-80; the American Bankers Association, id. at 314; the National Association of Mutual Savings Banks, id. at 334; and the United States League of Savings Associations, id. at 366, 368.
3. See infra note 52. Hearings on S. 406, supra note 2, at 14, 15 (statements in opposition to enactment of C.R.A. submitted by Arthur F. Burns, Chairman of the Federal Reserve
Community groups were incensed with this lack of concern for the social effects of institutional credit decisions. They pointed to evidence that many depository institutions systematically denied loans to creditworthy individuals residing in disfavored neighborhoods, and that the practice was often closely correlated with racial discrimination.\(^4\) Some activists attributed malevolence and responsibility for deterioration of neighborhoods to depository institutions.\(^5\) Many people called for mandatory lending in neighborhoods from which deposits were drawn\(^6\)—proposals which the banking industry argued would be unworkable, counterproductive, and financially disastrous.\(^7\)

The resulting legislation rejected both extremes. The Community Reinvestment Act (C.R.A.) carefully avoided rigid government credit allocation.\(^8\) It sought instead to modify the attitudes and orientations of decision-makers in the banking industry and federal supervisory agencies. The Act resolved the dispute over principles and required good-faith efforts to improve lending practices.\(^9\) In an age in which government regulation commonly took the form of detailed requirements, quotas, and timetables, C.R.A. followed a very different model. It established a direction and goal, and then allowed private industry latitude and discretion in choosing methods to attain the goal.

The mechanism for enforcement was to be "encouragement" from the federal agencies that routinely supervised depository institutions in detail, together with a significant economic sanction for continued refusal to respond favorably to the "encouragement."\(^10\) A financial...
institution that refused to act to improve its record of serving the credit needs of its entire community, including low- and middle-income residents, could be denied permission to open new branch offices, relocate offices, merge, or complete any of a number of other transactions that routinely require regulatory approval.\textsuperscript{11}

The effect of C.R.A. has been uneven, with marked variations among the different branches of the financial services industry\textsuperscript{12} and the four separate federal regulatory agencies, which include the Federal Reserve,\textsuperscript{13} Comptroller of the Currency,\textsuperscript{14} Federal Home Loan Bank Board,\textsuperscript{15} and Federal Deposit Insurance Corporation.\textsuperscript{16} For example, the Federal Home Loan Bank Board (which supervises savings and loan associations) appears to have fully accepted its responsibilities, while the Federal Reserve Board (which regulates commercial banks) retains strong ideological resistance to the goals communities in which they are chartered." 12 U.S.C. § 2901(a)(3) (1982) (emphasis added). C.R.A. also instructs the supervisory agency to "encourage such institutions" to help meet the local community needs. 12 U.S.C. § 2901(b) (1982). The agencies are further instructed to "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods . . . ," and to "take such record into account in its evaluation of an application for a deposit facility . . . ." 12 U.S.C. § 2903 (1982) (emphasis added). The agencies understandably had difficulty determining whether a difference existed between "local" and "entire" communities, and finally determined that no distinction was intended. The mandatory language of the Act is directed exclusively to the agencies, not the depository institutions, but the plainly apparent sanctions apply to the institutions, not to the agencies. No definition of "credit needs" or "community" is to be found in the Act. Depository institutions are expected "to help meet credit needs," but no information is provided covering specifically the method or degree of help, and the goal is qualified by the clause "consistent with safe and sound operation of such institution[s]." 12 U.S.C. §§ 2901(b), 2903(1) (1982). See also infra note 58 and accompanying text.

11. See 12 U.S.C. § 2902(3) (1982). The list includes applications for a new federal charter, deposit insurance, establishment of a new branch, relocation of an office, merger consolidation, and acquisition of assets or shares in another regulated institution. A few types of changes in operation by financial institutions are not included, such as closing an office, and entry into the Federal Reserve System.

12. See 12 U.S.C. §§ 2902-2905 (1982). Not all depository institutions are included within the categories covered by the Act. Notably absent are credit unions, many of which are regulated by the National Credit Union Administration.


15. The Federal Home Loan Bank Board regulates savings and loan associations and savings banks whose deposits are insured by the Federal Savings and Loan Insurance Corporation (including all federally-chartered associations), and savings and loan holding companies. 12 U.S.C. § 2902(1)(D) (1982).

of C.R.A. The primary force for change has not been the agencies themselves, but rather community groups which have accrued important new leverage in negotiations with depository institutions.

In analyzing the significance and effects of the C.R.A., this article begins with the underlying controversy over "redlining" and "credit allocation," and then discusses the standards and the enforcement process created by the Act and regulations. Separate treatment is accorded to each of the primary actors in the process: community groups, depository institutions, and federal supervisory agencies. Finally, the article reflects on prospects for the future of C.R.A. in an age of bank deregulation, and concludes that the significance of C.R.A. will increase rather than diminish.

I. POLICY CONSIDERATIONS: THE PROBLEM OF "REDLINING" AND THE SPECTER OF "CREDIT ALLOCATION"

Decisions of private lending institutions can have a major impact on communities. A spokesperson for the banking industry has described the availability of mortgage credit as "the lifeblood of the neighborhood," and "absolutely essential for neighborhood preservation or improvement." Unavailability of private financing is correlated with depressed housing prices, disrepair, reduced incidence of owner-occupied dwellings, and ultimately a stigma as a declining neighborhood. This stigma is exceedingly difficult to overcome and may lead to further serious deterioration. Federal lending or mortgage insurance does not provide an adequate or effective alternative

17. The records of each of the four regulatory agencies are discussed and compared in part V of this Article.
18. See part III of this Article, discussing the role of community groups, and part IV, section A, analyzing the pragmatic pressures imposed on depository institutions to modify their lending policies.
to private credit, and in fact has at times become part of the problem rather than part of the solution to neighborhood deterioration.21

The controversy leading to enactment of C.R.A. focused on “redlining”22—a term based on the imagery of a financial institution management designating, by red lines on a city map, neighborhoods in which credit will be denied or will only be granted on a discriminatory basis.23 Subsumed within the term as commonly used are at


23. Senator Proxmire, the Congressional sponsor of C.R.A., intended the Act to address
least three elements that, though often closely related, are conceptually distinct: racial and ethnic discrimination, geographic discrimination, and neighborhood disinvestment.

A. Racial Discrimination

Discrimination against racial and ethnic minorities is the aspect of redlining that is most offensive to public policy and that has received the earliest and most thorough legislative attention. Studies in at least a dozen cities have demonstrated that redlining has a disproportionately high impact on minority groups, even after accounting for legitimate risk factors and differences in demand for loans.24

For long periods in our country’s history, institutional lenders routinely denied applications for mortgage credit in areas that were racially integrated or considered to be threatened by integration. Such discrimination was widely accepted as legitimate—mandated by the fiduciary duty owed by financial institutions to their depositors and shareholders.25 Generally-accepted appraisal standards downgraded redlining, and explained:

By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will invest them elsewhere, and they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.


25. This attitude was expressed, for example, in a public statement of the Chairman of the F.D.I.C. in 1961:

There exists a possibility that the financing of a real estate purchase for a member of a minority group might have a serious effect upon values in a neighborhood. If the bank already had a substantial number and dollar volume of mortgage loans in the neighborhood, it would necessarily consider the effect upon those assets . . . . Every bank has a moral, as well as a legal, obligation and responsibility toward the economic welfare of its depositors and stockholders.

W. Dennis & J. Pottinger, supra note 5, at 2-7 (citing U.S. Comm’n on Civil Rights, Housing (1961)). A spokesman for the Mortgage Bankers Association of Metropolitan Washington stated that: “Applications from minority groups are not generally considered in areas that are not recognized as being racially mixed, on the premise that such an investment would be unattractive to institutional lenders.” Id. (citing U.S. Comm’n on Civil Rights, USA, Housing in Wash., D.C., 467 (1962)).
areas “infiltrated” by minority groups. The federal government, acting through such agencies as the Federal Housing Administration, supported and promoted the proposition that the loss of ethnic homogeneity inevitably resulted in loss of property values. That

26. The mode of expression of race-based appraisal policies became increasingly veiled, but the underlying assumptions remained, as indicated by a study tracing the code phrases used for race in various editions of a widely used text, The Appraisal of Real Estate, published by the American Institute of Real Estate Appraisers. The 1935 edition stated that “infiltration” by “colored people” inevitably led to decline in property values. The term used in 1938 was “inharmonious racial group,” and in 1960, “people of a lower economic status and different social and cultural background.” In 1975 reference was made to a “shift in the economic, social and physical forces creating the environment,” a clause that is both apparently neutral and inpenetrably vague. Two years later, however, in 1977, training materials issued by the appraisal institute contained, as an example of appropriate appraisal analysis, the following: “The neighborhood is entirely Caucasian. It appears that there is no adverse effect by minority groups.” Discriminatory references were finally removed as a result of an agreement settling a lawsuit brought by the Department of Housing and Urban Development. The Potomac Inst., Inc., Metro. Hous. Program, Lender's Guide to Fair Mortgage Policies (1980).

27. The F.H.A., operating a mortgage insurance program designed to relieve lenders of risk, was not itself willing to accept the risk of integration. Mandating that all insurable mortgages be “economically sound,” F.H.A. instructed its appraisers in 1938 to:

investigate areas surrounding the location to determine whether or not incompatible racial and ethnic social groups are present, to the end that an intelligent prediction can be made regarding the possibility or probability of the location being invaded by such groups . . . . A change of social or racial occupancy leads to instability and a reduction in values.


28. Racial integration was almost uniformly assumed, by both the private sector and federal agencies, to produce loss of property value, and risk of mortgage default. Dennis, The Dual Housing Credit Market, supra note 19, at 302-05; Lamb, Housing Discrimination and Segregation in America: Problematical Dimensions and the Federal Legal Response, 30 Cath. L. Rev. 363, 371 (1981); see U.S. DEPT. OF HOUS. & URB. DEV., THE DYNAMICS OF NEIGHBORHOOD CHANGE (1975), reproduced in MORT. BANKERS ASS'N OF AM., FINAL REPORT OF THE REDLINING TASK FORCE, in Hearings on S. 406, supra note 2, at 406, 412; FEDERAL RESERVE SYSTEM COMPLIANCE MANUAL I.1.10-11; J. GUTTENTAO & S. WACHTER, REDLINING AND PUBIC POLICY (N.Y.U. Sch. of Bus. Monograph 1980-1) (citing several additional studies); see also D. Listokin & S. Casey, supra note 19, at 7. Standard appraisal techniques not only assumed that racial homogeneity was essential to maintain property values but, as recently as 1975, also provided “rankings of races and nationalities with respect to their beneficial effect on land values.” McMichael's Appraising Manual (1975), cited in Federal Reserve System Compliance Manual I.1.12; TRI-STATE, GREENLINING, supra note 21. Until 1950, the Code of Ethics of the National Association of Real Estate Boards (Realtors) provided that: “A
assumption, when pervasively accepted, can become a self-fulfilling prophecy.29

Current federal legislation, of course, prohibits racial discrimination in housing credit, the most direct statutes being the Equal Credit Opportunity Act of 197730 and the Fair Housing Act of 1968.31 Nevertheless, the attitudes and assumptions of financial institutions, developed over many decades of officially sanctioned racial discrimination in mortgage credit policy, realistically will not change quickly. Although C.R.A. does not directly address racial discrimination, its purpose and effects are consistent with the statutes prohibiting discrimination, because allegations of failure to meet the credit needs of a community are frequently correlated with allegations of racial discrimination.32

B. Geographic Discrimination

A second element of the redlining controversy, and the one most directly addressed by C.R.A., is discrimination that focuses not directly on the race of the applicant for a mortgage loan but rather
on the location of the proposed collateral. Lenders generalize that all properties within certain boundaries are unlikely to retain their value, and hence are poor security for a loan, without regard to the characteristics of the particular credit applicant or the specific collateral. To compensate for the perceived higher risk, loans in that area are avoided, or are offered on terms less favorable than loans in other areas.

In many respects, of course, location of the proposed collateral is an unavoidably central and inherently reasonable criterion in the credit decision. No reasonable government policy would compel or even encourage private depository institutions to grant mortgage loans on property that is, for example, below a flood plain, on a geologic fault line, or clearly unsuited for its proposed use relative to adjoining properties (such as an apartment house proposed to be built next to a rendering plant).

The problem with unrestrained use of location as a primary criterion in mortgage credit decisions is that, in some instances, discrimination against a particular neighborhood may not be rationally based or, even though rational, may produce results that are socially unacceptable. One clear example would be a decision by depository

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33. One aspect of the geographic discrimination phenomenon has been the traditional bias of both private lenders and federal real estate credit agencies in favor of suburbs, at the expense of urban areas, based on the assumption that neighborhoods inevitably decline as they age. M.B.A.A. Task Force, Redlining, supra note 21, at 50 ("Because 'healthy' also suggests relatively new, the implication is clear that anything more than a generation old is nearing the end of its 'economic life'"); M. Przybyszki, supra note 21, at 151-56; D. Listokin & S. Casey, supra note 19, at 9.

34. See, e.g., J. Guttentag & S. Wachter, supra note 28; Earthman, Residential Mortgage Lending: Charting a Course Through the Regulatory Maze, 29 Vand. L. Rev. 957 (1976); Duncan, Hood & Neet, supra note 20, at 510; D. Listokin & S. Casey, supra note 19, at 11; Van Alstyne, supra note 19.

35. Testimony of William A. Beason, Jr., on behalf of National Association of Mutual Savings Banks, in Hearings on S. 1281 before Senate Comm. on Banking, Housing, & Urban Affairs, 94th Cong., 1st Sess. (1975), cited in Note, Redlining: Should Local Government Become Involved?, 10 U.C. Davis L. Rev. 243 (1977); see also Van Alstyne, supra note 19, at 269; D. Listokin & S. Casey, supra note 19, at 5. Additional locational factors mentioned by the above sources include abandonment, demolition, and obvious deterioration of structures in a neighborhood, and all tend to depress the value of nearby buildings. Marked deterioration in government services, including street cleaning, building code enforcement, sanitation, schools, etc., and increases in crime, tend to make property in the area less desirable and less valuable.

36. The four agencies agree that disproportionately few loans are made in low- and moderate-income neighborhoods, compared with higher income areas, and that “[f]actors such as housing demand and safety and soundness considerations do not appear to account fully for the extent of these disparities.” Fed. Fin. Insts. Exam. Coun., C.R.A. Information Statement, 45 Fed. Reg. 63,133 (1980) [hereinafter cited as F.F.I.E.C., C.R.A. Information Statement] (emphasis added). One economist has defended the use by lending institutions of generalizations based on race and neighborhood as rational, in that it avoids the costs of
institutions to withhold credit from a neighborhood that was previously all white and displays no objective evidence of physical or economic deterioration, solely because a few middle-class black families have moved in. Another, less apparent, example would be a decision to extend credit only on single-family dwellings, when virtually all of the housing in the area is multiple-family apartment houses.  

The debate over whether lending institutions' decisions to withhold mortgage credit initiates, contributes to, or merely responds to neighborhood deterioration is one that has continued for decades, and is not likely ever to be conclusively resolved. Nevertheless, it is clear that the unavailability of private mortgage credit is devastating to a neighborhood's health and its ability to initiate or maintain growth or revitalization.

Geographic discrimination takes a wide variety of forms, the most obvious of which is outright refusal to consider applications for mortgage loans in particular areas. Other forms include imposition of more stringent credit terms for loans in some areas than would be required for a similar loan elsewhere. Examples include larger downpayments, higher interest rates, higher "points" and other loan origination costs, lower loan-to-value ratios, and shorter terms.
Many policies which are facially neutral may also have the effect of excluding from consideration disproportionate numbers of loans on properties in certain neighborhoods. For example, imposing a minimum loan amount or maximum age of a building to secure a loan tends to exclude the lower-priced, older buildings which predominate in some urban areas. Some lenders have even specified a minimum building lot width which is wider than most lots in their areas, or have limited their lending to types of structures which are not found in certain neighborhoods. Appraisal techniques may result in a substantially lower appraised value for a building in one location than for similar structures elsewhere, resulting in a smaller loan.\textsuperscript{40}

C. Disinvestment

Central to the redlining controversy that led to C.R.A., but not specifically treated in the Act as enacted, is the concept of “disinvestment”—the removal of financial resources from a community. A major premise of many antiredlining activists is that savings deposited by residents of a neighborhood should remain in that neighborhood in the form of real estate loans.\textsuperscript{41} Data was presented to the congressional committee indicating that many institutions “exported” ninety percent or more of the amount of deposits received locally to other neighborhoods, while denying loans to credit-worthy applicants in the neighborhood where the deposit-taking institutions were located.\textsuperscript{42} In some cases, not even one percent of the local deposits were reinvested in the same neighborhood.\textsuperscript{43} Outrage over this situation was and is central to much antiredlining activism, and undoubtedly contributed to passage of C.R.A.\textsuperscript{44} (as is indicated in use of the term reinvestment in its title).

\textsuperscript{40} Lamb, supra note 28, at 403.

\textsuperscript{41} See, e.g., M. Przybylski, supra note 21, at 192 (“it is clear that the geographic areas that generate a lender's deposits bear a priority claim over other areas for credit services”).

\textsuperscript{42} S. REP. No. 175, supra note 22, at 34 (referring to a Washington D.C. savings and loan association).

\textsuperscript{43} Id. One Chicago lender derived over $10 million in deposits from certain redlined neighborhoods but failed to make a single loan in those areas. S. REP. No. 187, 94th Cong., 2d Sess., at 6 (1976). See also V. Benedek, supra note 37, at 15 (approximately 0.2% of deposits in two savings and loan associations and two banks were returned as loans); N.Y.C. Comm’n on Human Rights, Redlining in the Bronx: An Analysis of Mortgage Lending Activity by the Dollar Savings Bank (1978) (0.18% of deposits were lent locally); N.Y.C. Comm’n on Human Rights, Redlining in Rockaway 5 (between 3.3% and 5.8% of deposits were invested in the community); N.Y. Pub. Int. Res. Group, Seeing Red: Bank Redlining in Central Harlem 11 (1979) (reinvestment ratios between 1% and 6%).

Disinvestment is closely related to geographic discrimination, but the two nevertheless are conceptually distinct. Disinvestment, but not geographic discrimination, is likely to occur in neighborhoods that are healthy, thrifty, and mature, with low turnover of real estate and low demand for mortgage credit. Thus, surplus savings flow to other areas where the demand is greater. Conversely, geographic discrimination, but not disinvestment, is likely to be present in a neighborhood in which credit-worthy applicants are denied for no justifiable reason and in which savings deposits are very low. Funds from other areas are needed to meet local demand, but are not forthcoming.

D. Credit Allocation

One approach to the issues of racial and geographic discrimination and neighborhood disinvestment would be a policy of "credit allocation"—a term nearly as ambiguous and controversial as the term "redlining." The most extreme program of credit allocation would consist of government-mandated extensions of credit to particular types of loans, particular neighborhoods, or even particular borrowers.

At the hearings of the Senate committee that drafted the legislation,45 many community groups focusing on the disinvestment issue demanded a requirement that financial institutions invest in a particular neighborhood some proportion of the deposits received from that neighborhood. Early drafts of the bill were not quite so restrictive, but did mandate lending in what was termed the "primary savings service area" of the depository institution.46 Predictably, the banking industry attacked that proposal as an unworkable and excessive intrusion into private credit decisions,47 and the proposal was abandoned.48

45. All congressional committee drafting and consideration of C.R.A. took place before the Senate Banking Committee. See Hearings on S. 406, supra note 2; S. Rep. No. 175, supra note 22. The House of Representatives held no hearings on C.R.A., and there were no comparable provisions in the House version of the 1977 Housing & Community Development Act (of which C.R.A. is a part). W. DENNIS & J. POTTINGER, supra note 5, at 9-10.

46. See S. 406, 95th Cong., 1st Sess. (1977), reprinted in Hearings on S. 406, supra note 2, at 3. "Primary savings service area" was defined as a "compact area contiguous to a deposit facility from which such facility obtains or expects to obtain more than one-half of its deposit customers." Id. § 3(4); S. Rep. No. 175, supra note 22, at 60.

47. Bankers, bank regulators, and some senators argued that the approach was too rigid and raised the threat of credit allocation and unsound lending practices. See Hearings on S. 406, supra note 2, at 314-15 (statement of A.A. Milligan, on behalf of American Bankers Association), 12 (letter from Comptroller of the Currency); Additional Views of Senators Morgan, Tower, Garn, Lugar, and Schmitt, in S. Rep. No. 175, supra note 22, at 81-85. An additional objection was that focusing on ratios of local deposits to local loans would not
Less extreme forms of credit allocation, however, are so well-established they are no longer controversial. The government in many ways promotes results which would not occur in the economists' hypothetical free market. Residential real estate finance has been a particular favorite of the federal government. The Federal Home Loan Bank Act49 established our system of savings and loan associations for the primary purpose of providing residential real estate loans.50 Originally, in fact, savings and loan associations were restricted to lending exclusively on real estate within a very short geographic radius of a deposit-taking office.51

Secondary market agencies such as the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Association ("Freddie Mac") were established to divert capital into real estate finance that otherwise would be invested in other sectors of the economy.52 The Federal Housing Administration and the Veterans Administration home loan programs are further examples of government involvement in real estate finance for purposes that are considered socially desirable.

benefit some of the neighborhoods that were most in need of increased lending, and also too poor to deposit enough funds to meet their own housing credit needs. Also, it was argued, focusing on the extent of lending near deposit-taking offices would permit or even encourage lenders to maintain offices only in wealthy neighborhoods. See Hearings on S. 406, supra note 2, at 251, 265 (statement of Garth Marston, Chairman of F.H.L.B.B.), 15 (letter from F.D.I.C.), 294 (statement of M. Todd Cooke, president of Philadelphia Savings Fund Society), 299 (statement of Ronald Graywinski, a Chicago banking executive).

48. The Senate Committee Bill, S. 1523, 95th Cong., 1st Sess. §§ 401-406 (1977), imposed no ratios but did refer to "primary savings service area." Id. § 404(1); S. Rep. No. 175, supra note 43, at 60. The Conference Committee Bill, H.R. 6655, 95th Cong., 1st Sess. §§ 801-806 (1977), substituted the phrase "entire community." Id. § 804(1). For analysis of this aspect of the legislative history, see McCluskey, supra note 31, at 38-41.


50. According to Garth Marston, Chairman of the F.H.L.B.B., "Congress has long since determined that the nation's mortgage credit and housing needs are well served by the creation and support of specialized housing credit financial institutions, the savings and loan industry." Hearings on S. 406, supra note 2, at 239, 242.


52. Moran, The Federally Sponsored Credit Agencies: An Overview, 71 Fed. Res. Bull. 375 (1985) (describing the Federal Home Loan Banks, Fannie Mae, Freddie Mac, and similar agencies). "The sponsored agencies are expected to facilitate a more desirable outcome at times when market forces might allocate credit in ways that are not socially optimal." Id.
Whether such federal efforts are properly designated as "credit allocation" is a matter of interpretation. Clearly, however, the concept of federal government influence on private credit decisions originated many decades prior to the Community Reinvestment Act of 1977.

II. A New Mandate: The Act and Its Enforcement Process

A. The Legislative Concept and Requirements

The C.R.A. was a compromise between the demands of community groups for rigid credit allocation and the denial by bankers and regulators that any problem meriting legislative attention existed. More importantly, it was an effort to guide private investment decisions in a manner deemed socially responsible, while avoiding the economic inefficiencies and bureaucratic intrusiveness of some federal regulatory schemes. Congress sought to preserve private control over specific private institutional lending decisions, but to influence the attitudes, norms, and behavior of the decision-makers.

The brief two-page Act imposed no formulas, quotas, or specific standards. The primary congressional sponsor of C.R.A. stated explicitly that no rigid form requirements of credit allocation were intended. Instead, the legislation announced the previously controversial principle that "regulated financial institutions have continuing and affirmative obligation [sic] to help meet the credit needs of the local communities in which they are chartered." The four federal supervisory agencies were directed to "encourage" those institutions to conform to that principle, "consistent with the safe and sound operation of such institutions." The core of the C.R.A. is the following provision:

In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall—

(1) Assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of each institution; and

53. Senator Proxmire, the primary congressional sponsor of C.R.A. stated: "this was not a credit allocation plan and I certainly don't see it that way. Whatever we can do to prevent it from being a credit allocation bill I want to do." Hearings on S. 406, supra note 2, at 154.
(2) Take such record into account in its evaluation of an application for a deposit facility by such institution.\(^{56}\)

This formulation obviously is vague and imprecise. The terms "credit needs" and "entire community" are not defined. The phrase "consistent with safe and sound operation" leaves the door wide open for assertions by depository institutions that any greater lending in its community would be unsafe and unsound. The direction to the agencies to "take such record into account" permits the agencies to approve applications for deposit facilities despite a finding that an institution is not meeting the credit needs of its community, if other considerations militate in favor of approval.\(^{57}\) No specific conduct by financial institutions is either directly prohibited or directly required.

Because of these characteristics, C.R.A. is routinely lambasted by its critics as being so vague as to be nearly meaningless. Nearly every commentator discussing C.R.A. points out its lack of specificity.\(^{58}\)

Those criticisms are accurate, as far as they go, but they overlook the central significance of C.R.A. The Act settled the core philosophical dispute over whether depository institutions enjoying the benefits of federal charters and federal deposit insurance\(^{59}\) owe any duty to consider the impact on neighborhoods when determining its lending policies. The C.R.A. was a legislative mandate for a change in policy and an unmistakable rebuke to financial institutions and the federal supervisory agencies that had previously sanctioned and even encouraged redlining.\(^{60}\)


\(^{57}\) The Federal Reserve Board has stated explicitly that such factors may result in approval of a bank's application despite an unsatisfactory C.R.A. record. Information Statement Re Community Reinvestment Act, 66 Fed. Res. Bull. 30 (1980).


\(^{59}\) Among other benefits, federally supervised depository institutions are protected from competitive forces by federal restrictions on entry into the industry and federal ceilings on interest rates that may be paid on savings accounts. They have access to low-cost credit through the Federal Reserve and Federal Home Loan Banks. Hearings on S. 406, supra note 2, at 9 (statement of Senator Proxmire).

\(^{60}\) Wisniewski, supra note 38, at 383-407; Dennis, The Community Reinvestment Act of
B. The Regulatory Framework and Criteria

The sparse provisions of the C.R.A. have been supplemented, during the ten years since enactment, by a series of regulations, examination procedures, and policy statements issued by the federal financial supervisory agencies. Additional guidance is provided by published rulings on specific requests for regulatory approval of branch offices and other changes.

The basic regulatory framework was jointly developed by the four agencies. In so doing, these agencies were seeking to promote uniformity and to minimize the possibility that depository institutions might modify their charters in such a way as to transfer to the jurisdiction of an agency perceived as having a more permissive policy on C.R.A. enforcement. The four agencies promulgated regulations and examination procedures that are identical except for minor technical and procedural variations.


61. See supra text accompanying notes 13-16.

62. Comptroller of the Currency Robert Bloom, for example, noted that: "any agency taking a significantly stronger approach to CRA issues in handling applications for structure changes, would run a serious risk of losing banks through conversions. And of course, bank regulators, just as Mr. Dooley's Supreme Court, 'follow the election returns.'" R. BRANDEL & M. LARGE, supra note 29, at 23 (citing AMERICAN BANKER, Aug. 14, 1978, at 26). A similar dynamic applies to bank regulation by states. In New York, for example, a large number of banks converted from state charters to federal charters to take advantage of more liberal federal regulatory provisions. The state responded by liberalizing its own rules. Note, supra note 22, at 136-37 (citing N.Y., TEMP. ST. COMM'N ON BANKING, INS., & FIN. SERVS., REPORT OF THE COMMISSION 20-23, 70-73 (1984)). New York's own provision regarding community credit needs operates by making the federal C.R.A. (both the legislation and the regulatory rules) applicable to state-chartered banking institutions, thereby avoiding the possibility of differences in standards. Id. at 131, 144; N.Y. BANKING LAW § 28-b(3) (McKinney Supp. 1986); N.Y. ADMIN. CODE tit. 3, § 76-3 (1984).


64. Uniform Community Reinvestment Act Examination Procedures were approved in 1980 by the Federal Financial Institution Examination Council, an organization of the four agencies. See, e.g., FEDERAL RESERVE SYSTEM COMPLIANCE HANDBOOK II.1.38-54. This is the first time the agencies have combined to create uniform procedures. Id. at II.1.38.

65. 43 Fed. Reg. 47,144 (Oct. 12, 1978). Because the four sets of regulations are substantively identical, future citations will refer to only one set, that of the F.H.L.B.B.
The record-keeping and mechanical requirements of the regulations are quite limited and not significantly burdensome.66 Each regulated institution must (1) delineate its communities,67 (2) adopt a “Community Reinvestment Statement” (hereinafter C.R.A. Statement),68 (3) maintain a file of public comments available for inspection by any member of the public,69 and (4) post a notice in its lobby.70 Although not particulary time-consuming or expensive to prepare, these documents are critical in defining and monitoring the institution’s performance.

The delineation of communities is of key importance because it defines the areas within which the institution will be held accountable for providing satisfactory and nondiscriminatory credit services. Earlier proposals would have established a statutory formula for the delineation, or would have delegated the function to the regulatory agencies.71 The actual regulations leave the decision to the regulated institutions, subject to review by the supervisory agency.72 An institution may be tempted to delineate its community in a manner that is inordinately narrow or gerrymandered to exclude neighborhoods the bank considers undesirable. Alternatively, an institution might designate an area that is so large that it unreasonably dilutes the effect which the institution may have on any more discrete neighborhood within the area.73 Attention to the needs of “low- and mod-

67. 12 C.F.R. § 563e.3 (1986).
68. 12 C.F.R. § 563e.4 (1986). The Statement contains a map of the community, and a list of the types of credit the institution proposes to make available. The regulation’s requirements may be satisfied in the space of a brochure printed on both sides of a single page. See, e.g., The Dime Savings Bank of New York, Community Reinvestment Statement—New York City and Long Island Area (July 1, 1980).
69. 12 C.F.R. § 563e.5 (1986).
70. 12 C.F.R. § 563e.6 (1986). The prescribed language of the notice states that the public has a right to obtain a copy of the Community Reinvestment Statement, inspect the files, and complain to the institution and its regulator.
72. 12 C.F.R. § 563e.3(a), (b)(3) (1986). Depository institutions are cautioned against arbitrarily excluding lowand moderate-income neighborhoods from their delineations. 12 C.F.R. § 563.3(a) (1986). See also the agencies’ uniform C.R.A. Examination Procedures, in Federal Reserve System Compliance Manual II.1.43-45 (1983). In practice, the supervisory agencies appear to prefer “nice circles” emanating from the deposit-taking facility. W. Dennis & J. Pottinger, supra note 5, at 10-3.
73. Figures from a 1976 study of redlining by four Bronx thrift institutions are illustrative. If their community was defined as the Bronx, the lending record of the four institutions would
erate-income neighborhoods" is clearly at the heart of C.R.A.'s expectations, even though the Act also refers to the "entire community." Designation of the community, therefore, is a primary focus of the agencies' review and of community groups' protests. The C.R.A. Statement specifies types of credit to be offered, and may also describe the overall program to ascertain and help meet credit needs. Institutions are accountable, first, for developing a reasonable plan and, second, for providing those services equitably to all segments of the community, including the low- and moderate-income neighborhoods.

To assess the record of performance of a particular institution, the agencies established twelve criteria phrased in rather general terms. The twelve criteria include the institution's program to communicate with members of the community and market its credit services; the institution's extension of credit for housing, small business, and small farms; the geographic distribution of credit applications and be relatively poor: only 10, 18, 19, and 28 percent, respectively, of their loans were made in their (Bronx) community. If the community was defined as the New York metropolitan area (five boroughs and three nearby counties), however, their lending record was exemplary: 95, 88, 99, and 88 percent, respectively, of their loans went to the (metropolitan New York) community. McCluskey, supra note 31, at 43.

The legislative history of C.R.A. leaves no doubt that the Act was intended to improve the availability of real estate credit in areas in which institutional lenders were historically reluctant to lend, which were usually low- and moderate-income neighborhoods. See id. at 9-14 to 9-20. The statute's language is, "the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods . . . ." 12 U.S.C. § 2903(1) (1982).


12 C.F.R. § 563e.4 (1986).

C.R.A. Regulations, 43 Fed. Reg. 47,146-55 (Oct. 12, 1978). The twelve criteria (paraphrased and summarized) are as follows:

(a) Communication with members of the community, and other activities to ascertain credit needs.
(b) Marketing and other efforts to make the availability of credit services known in the community.
(c) Participation by the institution's board of directors in C.R.A. policy and performance.
(d) Any practices to discourage credit applications (prescreening).
(e) The geographic distribution of credit applications, extensions, and denials.
(f) Any discriminatory or other illegal practices.
(g) The record of opening, closing, and providing services at offices.
(h) Participation in community development projects.
(i) Extension of credit for housing, small business, and small farms.
(j) Participation in government loan programs for housing, small business, and small farms.
(k) Ability to meet credit needs, based on condition of the institution, the economy, and other factors.
(l) Other relevant factors. Id. at 47,148, § 25.7. Many of the factors overlap, reflecting either their generality or the fact that the list was drafted by a committee (with members representing the four agencies).
approvals; and the extent of participation by the institution’s board of directors in C.R.A. policy and performance. Another factor is the institution’s financial condition, thereby reserving the possibility that poor performance in serving credit needs will not be penalized if the institution is financially unable to perform better. Conspicuously absent is a system of weighting, or any indication of the relative importance of the different criteria.  

Lenders are encouraged to participate in the many programs that are directed towards assisting low- and moderate-income neighborhoods while minimizing lenders’ risk. Examples include Neighborhood Housing Services, Federal Housing Administration Insurance, Community Development Block Grants, Urban Development Action Grants, and the section 8 Housing System Program. To increase the flow of mortgage investment capital, the secondary mortgage market agencies such as Fannie Mae and Ginnie Mae are very important. Programs of the Small Business Administration, the

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80. Neighborhood Housing Services was originated by F.H.L.B.B., with subsequent participation by the other three supervisory agencies. The program’s purpose was to coordinate concentrated cooperative efforts of several lending institutions, municipal officials, and community groups to improve target areas. The program has demonstrated considerable success, while minimizing the risk incurred by any individual participating lending institution. Duncan, Hood & Neet, supra note 20, at 534-39; Ryan, REDLINING, ANN. SURV. AM. L. 57, 75-83 (1977); Statement by Nancy H. Teeters, Member, Board of Governors of the Federal Reserve System, before the Subcommittee on Domestic Monetary Policy of the House Committee on Banking, Finance, and Urban Affairs, May 29, 1980, 66 Fed. Res. Bull. 471 (1980).

81. By relieving the lending institution of risk of loan default, F.H.A. insurance appears to offer an ideal solution for depository institutions under pressure to lend in neighborhoods they consider risky. However, because F.H.A. loans may also have negative effects on neighborhoods, see supra note 21, the lender must be careful to avoid practices that would violate the Equal Credit Opportunity Act and C.R.A. An example would be granting conventional loans only in white or upper-income neighborhoods, and granting government-insured loans only in black or lower-income areas. Dennis, The Dual Housing Credit Market, supra note 19, at 314-15.

82. These programs of the Department of Housing and Urban Development are described in, e.g., F.H.L.B.B. Off. of Community Inv., LEVERAGING (undated) (copies on file at Pacific Law Journal).

Farmers Home Administration, and state and local governments offer further possibilities for promoting C.R.A.’s purposes.

The agencies went to substantial lengths to reassure lenders that mandatory credit allocation was not intended. The examination procedures state there are no “hard and fast rules or ratios.” The Act does not “require financial institutions to make high risk loans that jeopardize their safety.” Examiners were admonished not to insist upon any specific action, such as making a certain type of loan, or to unduly burden an institution. The degree of flexibility is so great that one commentator has wondered “whether it is a game of regulatory hide and seek, or regulation by telepathy.”

On completing a compliance review, an examiner prepares a narrative statement, discussing each of the criteria, offering suggestions for improvement, and reporting violations. In addition, the examiner assigns a numerical rating, which is not disclosed to the institution (at least not formally), ranging from one, representing the best record, to five, representing the worst. This scale parallels and supplements the one to five system used for examinations based on financial “safety and soundness” factors.

When a depository institution applies for approval of a new office, the supervisory agency considers C.R.A. factors as an aspect of the “convenience and needs” formula. An application may be approved despite an extremely unfavorable rating on C.R.A. compliance, due to other considerations based on safety and soundness, and on competition among financial institutions.

C. Data Collection and Analysis

Assessment of an institutional lender’s record involves a considerable quantity of data, both internal and external to the subject

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85. Id.
86. Id. at II.1.41.
89. Id. Although C.R.A. ratings are not officially disclosed to depository institutions, informal comments by agency staff probably allow an institution to make a fairly accurate guess.

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institution's documents, plus substantial effort and analytic skill. An important starting point is the information made available pursuant to the Home Mortgage Disclosure Act of 1977 (H.M.D.A.), which is applicable to lenders located in metropolitan areas.\textsuperscript{92}

H.M.D.A. reports disclose the number and total amount of real estate loans, itemized by census tract. Detail is provided on borrowers' income level and racial characteristics, participation in federal mortgage insurance programs, loans to borrowers not residing on the property, and home improvement loans.\textsuperscript{93} H.M.D.A. data therefore permits an overview of the geographic and racial distribution of an institution's loans. It may be extremely useful in identifying patterns or raising issues for further investigation.

Data on demand for credit, however, is not included in H.M.D.A. reports. A lender should not be faulted for low absolute levels of lending activity in certain neighborhoods if the causes are beyond the lender's control, such as a low level of demand for credit in that neighborhood. The most obvious means of measuring demand is review of the loan applications received, with the purpose of determining whether there is a pattern of rejection correlated with the race of the applicant or the geographic location of the proposed collateral. The limitation of this approach is that applications may have been "pre-screened" (in violation of Equal Credit Opportunity regulations). Bank personnel might verbally discourage blacks from submitting loan applications, and thereby avoid a written record of rejections.

Even if its current practices are acceptable, an institution may have developed a reputation which discourages certain classes of potential borrowers from applying for loans. Some banks, for example, strive to create a public image as banks catering to high-income individuals and businesses, not as banks seeking or willing to lend in an inner-city neighborhood.\textsuperscript{94} In some instances, banks actively solicit deposits


\textsuperscript{93} 12 U.S.C. § 2803 (1982). More specific requirements are stated in Regulation C, promulgated by the Federal Reserve Board and enforced by all four agencies plus the National Credit Union Administration. 12 C.F.R. § 203 (1982).

The supervisory agencies are compiling the information from individual institutions into statistical tables for metropolitan areas. A 1980 amendment to H.M.D.A. requires the Federal Financial Institutions Examination Council (composed of the four agencies) to prepare tables annually for each standard metropolitan statistical area, indicating lending patterns of depository institutions for various categories of census tracts, grouped according to location, age of housing, income level, and racial characteristics. Housing and Community Development Act of 1980, Pub. L. No. 96-399, Sec. 340, § 304(f), 94 Stat. 1658 (1980).

\textsuperscript{94} See, e.g., In re: Dauphin Deposit Bank & Trust Co., Harrisburg, Dauphin County,
from lower and middle-income neighborhoods, but consistently omit
mention of credit services from advertising directed at those neigh-
borhoods. Those same banks may actively promote mortgage lend-
ing in higher-income neighborhoods (especially suburbs), through
such means as advertising, contacts with local real estate agents, and
mailings to depositors. The result is that "demand," as measured
by credit applications, appears to be present overwhelmingly in the
higher-income neighborhoods. As a result, the regulations and the
demands of community groups place important emphasis on making
the availability of credit known through advertising and other mar-
keting efforts to low- and moderate-income neighborhoods.

Precise measurement of credit demand that has not been expressed
in loan applications is probably impossible. Nevertheless, a number
of means are available to counter or discredit contentions sometimes
raised by lending institutions that lack of demand accounts for low
lending activity in particular neighborhoods. Using sophisticated
statistical methods, data on loan patterns may be adjusted to account
for population density factors in demand. The number of applications

95. See, e.g., Community Reinvestment Act (CRA) Supplement to the Decision of the
Comptroller of the Currency to Approve the Branch Applications submitted by Mich. Nat'l
96. See, e.g., 43 Fed. Reg. 47,144-55 (Oct. 12 1978); Information Statement Re Community
97. Greater New York Savings Bank, for example, argued that the reason that only 6.5%
of real estate investments were in Brooklyn, even though 80% of its deposits were derived
there, was lack of demand. In response, a protesting community group submitted affidavits
of Brooklyn residents who had been denied credit or discouraged from applying, and they
also submitted data indicating that 50% of all single-family housing transactions in Brooklyn
were financed with seller mortgages, presumably because institutional loans were perceived as
being unavailable. W. DENNIS & J. POTTINGER, supra note 5, at 10-43.
or of approved loans is then stated per capita or per housing unit in different areas.98 The loan portfolios of competing depository institutions and mortgage bankers, and Housing and Urban Development (H.U.D.) records of loans insured by the Federal Housing Administration (F.H.A.) may also be used to demonstrate that other lenders are finding demand. One technique accepted by the agencies that provides a rough measure of unsatisfied demand is analysis of municipal real estate registers,99 which document each title transfer and indicate whether a mortgage was taken by an institutional lender or by some other party.100 Underlying this analysis is the presumption that transactions will generally be financed by sellers only if credit from institutional sources is perceived to be unavailable.

Statistical analysis can also disclose racially discriminatory effects of lending policies. Studies using census data on race, income level, and other characteristics have compared lending levels in different neighborhoods that have the same income level within a single city. These studies repeatedly determined that as the percentage of blacks in a neighborhood increases, the percentage of transactions financed by conventional mortgages decreases.101 The supervisory agencies have acknowledged the existence of disparities in lending activity by neighborhood which—contrary to the repeated assertions of lenders—cannot be accounted for by factors affecting demand for mortgage credit.102

Statistical evidence of disproportionately low levels of lending in particular neighborhoods is rebuttable by evidence that a depository institution has attempted in good faith to improve its lending record. Efforts to, for example, increase lending in low- and moderate-income neighborhoods are favorably considered even if they do not result in early tangible success.103


103. The process has been described as an inverse relationship between "bottom line" and
Application of the Act, regulations and examination procedures thus entails consideration of a broad range of factors and large quantities of data. The sophistication and thoroughness of the parties accumulating and analyzing data may become as important as the standards themselves.

III. COMMUNITY GROUPS: THE ACT'S BENEFICIARIES AND DRIVING FORCE

The effect of C.R.A. in practice (though not in official federal policy) depends primarily on the energy, activism, and sophistication of community groups. Community activism affects both the conduct of a depository institution and the degree of attention focused on that lender by the supervisory agency. It can be no mere coincidence that of all of the dozens of formal rulings issued by the supervisory agencies which focus particular attention on C.R.A. issues, virtually all involve challenges brought by community groups.4 It appears

“process.” As the actual lending performance becomes more impressive, an institution will be under less pressure to demonstrate that its efforts, procedures and internal controls are consistent with C.R.A., and vice versa. W. DENNIS & J. POTTINGER, supra note 5, at 9-13 to 9-14.

104. All except four of the agencies' formal rulings mention a community group's challenge in the text of the opinion. The exceptions are: Application of Marine Midland Bank, Buffalo, N.Y., to Convert from a Banking Inst. Chartered Under the N.Y. Banking Law to a Nat'l Banking Ass'n (Comp. Curr. Jan. 28, 1980). In re: Provident Savs. Bank, Jersey City, Hudson County, N.J., Application for Consent to Establish a Branch (Denial), Statement (F.D.I.C. Sept. 29, 1980); In re: Citizens Bank & Trust Co. of Md., Riverdale, Prince Georges County, Md., Application for Consent to Establish a Branch (F.D.I.C. Feb. 9, 1981) (plus a second Order on another application of the same bank decided on the same day); Hutsonville Bank Corp., 67 Fed. Res. Bull. 48 (Fed. Res. Bd. 1981) (not listing the name of a protestant but noting that “all comments received” were considered). One other ruling followed a challenge filed not by a community group but by a competing bank. First Nat'l Boston Corp., 66 Fed. Res. Bull. 162 (Fed. Res. Bd. 1980). See also W. DENNIS & J. POTTINGER, supra note 5, at 9-21 (“Agencies take 'tougher' positions when a protest has been filed then when an application is unprotested. Thus, a lending practice which may be unchallenged in most circumstances becomes the subject of official criticism when a protest is involved.”)

Geographically, community group protests on C.R.A. grounds are concentrated in the northeastern seaboard, the midwest, and California. According to a study for the Federal Reserve Board, the 28 C.R.A. protests it received between the Act's effective date in November 1978 to December 1982 were distributed among the Federal Reserve's twelve Districts as follows:

<table>
<thead>
<tr>
<th>City</th>
<th>Number</th>
</tr>
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<tbody>
<tr>
<td>Atlanta</td>
<td>1</td>
</tr>
<tr>
<td>Richmond</td>
<td>0</td>
</tr>
<tr>
<td>Cleveland</td>
<td>7</td>
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<tr>
<td>Philadelphia</td>
<td>4</td>
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<tr>
<td>New York</td>
<td>4</td>
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<tr>
<td>Chicago</td>
<td>4</td>
</tr>
<tr>
<td>St. Louis</td>
<td>3</td>
</tr>
<tr>
<td>Minneapolis</td>
<td>0</td>
</tr>
<tr>
<td>Kansas City</td>
<td>0</td>
</tr>
<tr>
<td>Dallas</td>
<td>0</td>
</tr>
<tr>
<td>San Francisco</td>
<td>1</td>
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</tbody>
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likely that a similar pattern exists in cases that do not reach the stage of a formal decision.\textsuperscript{105}

\textbf{A. Relations with Depository Institutions}

Beyond any doubt, one of the effects of the Act has been to enhance the bargaining position of community groups involved in redlining issues.\textsuperscript{106} "Arrogance" is the term that community groups repeatedly use to describe the attitudes of some lending institutions prior to the enactment of C.R.A. or prior to filing objections under C.R.A.\textsuperscript{107} (Bankers, perhaps not accustomed to discussing investment policy with picketing groups of blue-collar workers\textsuperscript{108} might well

CON. ADV. COUN., \textit{Federal Reserve's Implementation of C.R.A.}, supra note 63, Table F6.3. A different study, focusing on protests received by F.D.I.C., Federal Reserve Board (F.R.B.), and O.C.C. between enactment of C.R.A. in 1977 and September 1981, concluded that most protests were filed "in the 'old' industrial sectors of the country." Melvin, \textit{The First Thousand Days of the Community Reinvestment Act}, J. COM. BANK LENDING 53-54 (July 1982). The states from which the largest numbers of protests originated, according to this study, are as follows:

\begin{align*}
19 & \text{ New York} & 5 & \text{ Illinois} \\
11 & \text{ Pennsylvania} & 5 & \text{ Michigan} \\
10 & \text{ Massachusetts} & 5 & \text{ Wisconsin} \\
10 & \text{ Ohio} & 30 & \text{ All other states}
\end{align*}

\textit{Id.} at 54.

\textsuperscript{105} Community groups operate on the premise that "the regulators themselves are often ex-bankers which their sympathies can reflect. Hence except in some rare cases, it usually takes some prodding from individuals or groups to get the wheels of examination and regulation rolling." V. \textsc{Benedek}, \textit{supra} note 37, at 7. See also \textit{Tri-State Greenlining, supra} note 21, at 8 ("the effectiveness of the Act will be largely determined by the extent of citizen participation in the regulatory process"). One commentator has concluded that prodigious and persistent efforts by community groups are the reason that C.R.A. and H.M.D.A. have been enforced at all. Comment, \textit{Redlining, Disinvestment, and the Role of Mutual Savings Banks: A Survey of Solutions}, 9 \textit{Fordham Urb. L.J.} 89 (1980).

\textsuperscript{106} Community groups and supervisory agencies appear to agree that C.R.A. has provided important new power to community groups. For statements by community groups, see, e.g., Statement of Roger Hayes, New York City Coalition Against Redlining, in \textit{Hearings on C.R.A. Compliance, supra} note 94, at 2; N.T.I.C., \textit{Guidebook, supra} note 101, at 55. The regulatory agencies recognize that lending institutions often negotiate settlements with community groups to avoid delays and possible denials of application filed by the lenders with the agencies. See, e.g., Canner, \textit{Redlining: Research and Federal Legislative Response}, 68 Fed. Res. Bull. 610 (1982).

\textsuperscript{107} For numerous accounts of banks refusing to negotiate and the reactions of community groups, see V. \textsc{Benedek}, \textit{supra} note 37; N.Y. PUB. INT. RES. GROUP, \textit{TAKE THE MONEY AND RUN: REDLINING IN BROOKLYN, TWO YEARS LATER} (1979) [hereinafter referred to as N.Y.P.I.R.G., \textit{TAKE THE MONEY}] (copies on file at the \textit{Pacific Law Journal}); \textsc{Healey, supra} note 58, at 735-36.

\textsuperscript{108} The backgrounds and attitudes of members of several groups are described, by or from the perspective of their leaders, in V. \textsc{Benedek, supra} note 37. The principal occupations listed are work in steel mills, construction, trades, railroad yards, cafeterias, and the post office, short-order cook, housewife, and domestic. \textit{Id.} at 25, 28, 40, 64. Class differences with
characterize the protesters’ attitudes in a similar manner.) Requests to meet with the management of an institution to discuss redlining issues were frequently met with flat refusal or intransigence, according to accounts written by community organizations. Vocal public demonstrations and campaigns to withdraw deposits were a common reaction by the groups.109

C.R.A. has tended to bring the community groups off the streets and into the conference rooms of lending institutions and supervisory agencies. Groups have found that filing a challenge to an institution’s application for a branch or a merger produces marked improvements in negotiating posture, in some instances causing banks to consider their proposals seriously for the first time.110

Depository institutions are most susceptible to pressure when an application is pending before a supervisory agency. Even when no application is pending, however, banks are virtually required to be responsive to community groups’ requests to discuss credit policy, and even to affirmatively seek contact with the organizations in order to assess community credit needs.111 Bankers who fail to develop bankers—described as living in suburbs and not having knowledge or concern for the institutions’ urban neighborhoods—are frequently voiced, and many activists take pride in accomplishing substantial changes in bank policy without previous background in banking. Id. passim.

109. V. BENEDEK, supra note 37; N.Y.P.I.R.G., TAKE THE MONEY, supra note 107. According to one group in Brooklyn, the president of one savings bank initially stated that Brooklyn has “gone down the tubes” and would receive no loans from his bank, and the president of a savings and loan association said that “Jesus Christ himself could not get a loan in Brooklyn.” After picketing, deposit withdrawal campaigns, lengthy negotiations, and public hearings, those two associations and six others signed agreements with the protesters. Id.

110. One recent example was an agreement by United Virginia Bank to make $10 million in loans to low-income neighborhoods. According to Allen J. Fishbein, of the Center for Community Change, “it was only when the bank had an appeal pending (of another bank) that we had real leverage.” Ansberry, Banks with Interstate Ambitions are Challenged by Law Requiring Commitment to Local Lending, Wall St. J., June 26, 1986, at 58, cols. 1-5 (citing additional examples). The same result was reported, for example, by groups challenging the Society National Bank in Cleveland, V. BENEDEK, supra note 37, at 46-47; Northside Savings Bank in New York City, id. at 67; Shelby Federal Savings and Loan Association in Indianapolis, id. at 72. See also W. DENNIS & J. POTTINGER, supra note 5, at 10-4 (stating that community groups use protests as “levers” to bring the lender to the bargaining table). A newspaper account provides an interesting perspective on a major Chicago bank’s program to extend $100 million in loans, below market interest rates, in lower- and middle-income neighborhoods, and to make direct grants of as much as $400,000 to “neighborhood development concerns.” The bank had never previously been sympathetic to complaints that it did little banking in the city’s disadvantaged areas, according to a leader of community groups, and announced its program only after the groups threatened to protest the bank’s application to the Federal Reserve Board for approval of a $275 million acquisition of another bank. First Chicago Forms Program for Lending in City Neighborhoods, Wall St. J., Mar. 7, 1984, at 4, col. 4.

111. 12 C.F.R. § 563c.7, assessment factor (a); C.R.A. Examination Procedures § 8(a).
good relations with community groups risk unfavorable ratings by regulators, and, perhaps more importantly, challenges to future applications. These challenges can impose substantial costs, even if ultimately unsuccessful.

For a group to be effective, it must develop expertise, devote considerable energies to documentation, and show persistence in negotiations. Supervisory agencies accord little weight to complaints or assertions that are not supported by statistical or other data, and they expect or encourage community groups to attempt to resolve their differences with depository institutions by negotiation. In many cases, the level of sophistication of community groups has been impressive. Multivariate regression analysis has been applied to evaluate the geographic dispersion of loans, using H.M.D.A., deed transfer, and census data. Information may also be obtained through 8-K and 10-K reports filed with the Securities and Exchange Commission by bank holding companies, statistics on deposits issued by the supervisory agencies, annual reports to shareholders, “statements of condition” to regulators, and local real estate transaction registers.

Although confrontation remains a strategy in redlining disputes, many groups have come to recognize the importance of flexibility

The pragmatic importance of good community relations, and means for promoting it, is discussed in detail in W. Dennis & J. Pottinger, supra note 5, at 11-35.

112. Under F.H.L.B.B. standards, for example, a protest is not deemed “substantial,” thereby entitling the protestant to a hearing, unless it is in writing, timely, and contains “specific objections supported by reasons and facts including economic or financial data.” 12 C.F.R. § 542.2(e)(4) (1986). A joint statement indicated that agency staff will investigate the merits of the application and protest, but also said that “The agencies expect the protestants to provide evidence to support their complaints to the extent possible. For example, information on deed transfers may indicate mortgage loan demand . . . .” Fed. Fin. Insts. Exam. Coun., Community Reinvestment Act Information Statement (Sept. 12, 1980), 45 Fed. Reg. 63,134 (1980).


114. National City Corp., 68 Fed. Res. Bull. 427, 429 n.6 (1982). A computer program for tabulating and analyzing H.M.D.A. data by zip code or census tract for neighborhood comparisons is offered by the National Training and Information Center, which also provides training sessions and technical assistance to local community groups engaged in C.R.A. activities. N.T.I.C., Guidebook, supra note 101.

Community groups sometimes withdraw their challenges or even take affirmative steps to recommend the approval of a lender's application to supervisory agencies.\textsuperscript{117}

B. Goals and Results

The demands made by community groups generally focus on increasing mortgage and home improvement lending within their neighborhoods.\textsuperscript{118} Groups often demand commitments from lending institutions to provide real estate loans in a particular neighborhood in a prescribed amount or to accept a prescribed percentage of deposits drawn from that neighborhood.\textsuperscript{119} This approach has been rejected by Congress and by the supervisory agencies, but nevertheless is occasionally successful. Some banks have agreed to provide specific types of loans on specific terms.\textsuperscript{120} Also, community groups often

\textsuperscript{116} See, e.g., the accounts of several antiredlining campaigns in V. Benèdek, supra note 37, at 23, 24, 100, passim. Interviews with both community group and supervisory agency staff members confirmed the point that the most common and successful strategy for community groups and banks is negotiation in private settings. Telephone conversation with Tom Schraw, National People's Action, Chicago, Illinois (July 3, 1985); telephone conversation with James W. Lowell, Community Affairs Coordinator, Division of Consumer and Community Affairs, F.R.B., Washington, D.C. (July 3, 1985). They agree also that the federal agencies sometimes facilitate or arrange such meetings, and that results should be publicly announced not as antirelining agreements but rather as cooperative initiatives for community improvement. Id.


\textsuperscript{118} The goals and results of many community group protests to C.R.A. applications are described in W. Dennis & J. Potteringer, supra note 5, at 10-7 to 10-16 (F.H.L.B.B.), 10-23 to 10-33 (F.R.B.), 10-37 to 10-39 (O.C.C.), 10-42 to 10-48 (F.D.I.C.).


focus on increasing advertising and other efforts to market credit services in their neighborhoods.

Additional concerns of community groups include obtaining financing for special projects, establishing procedures for review of rejected loan applications, and a variety of other goals which were perhaps not originally anticipated by Congress. One central-city community group, for example, sought contributions from a bank to turn vacant lots into mini-parks, noting that the bank made large charitable contributions to the local orchestra and garden center. Another group included in its C.R.A. protest charges of discrimination in employment practices. A group of tenants obtained agreements from lenders to enforce clauses in existing mortgages requiring the mortgagors/landlords to maintain and repair their buildings. The lenders also agreed to lend additional amounts to the landlords if necessary, and to allow the tenants some input into lending decisions involving the determination of who their landlords would be.

In summary, the C.R.A. has provided community groups important new power. They now have standing to formally participate in the process of regulatory examination of institutions, a significantly

121. See, e.g., N.T.I.C., GUIDEBOOK, supra note 101, at 24; NEIGHBORHOOD-BASED REINVESTMENT STRATEGIES: A CRA GUIDEBOOK 42-58, 67-75 (U.S. Dept. Hous. & Urb. Dev. Oct. 1980) (describing the goals and results of several community group protests). See generally the issues discussed in the formal opinions issued by supervisory agencies, described infra at part V, of which almost all were prompted by community group action.

122. V. BENEDEK, supra note 37, at 44-45 (involving Society National Bank in Cleveland). The community group also was able to prove that the bank granted home improvement loans directly to homeowners in higher-income areas, but not in low- moderate-income areas. In the disfavored areas, the bank would only purchase homeowners' notes from a building contractor. The result was that the lower-income residents were forced (since they had no other financing available) to deal with a particular contractor whose work was said to be shoddy and overpriced. Id.; Society Nat'l Corp., 66 Fed. Res. Bull. 351 (Fed. Res. Bd. 1980). See also V. BENEDEK, supra note 37, at 96 (involving two San Diego thrift institutions).


124. N.T.I.C., GUIDEBOOK, supra note 101, at 91. See also V. BENEDEK, supra note 37, at 64.
enhanced posture for negotiation with lending institutions, and opportunities to influence the policy of both lenders and regulators. In exercising these powers, some groups have shown considerable expertise, energy, and imagination.

IV. THE EFFECT ON DEPOSITORY INSTITUTIONS

The responses of banks and savings and loan associations to C.R.A. have been varied. At minimum, C.R.A. has added a new element to institutions’ relations with their regulators and with community groups. At maximum, C.R.A. has promoted major changes in lending policy.

A. Incentives to Comply

The single sanction readily apparent on the face of the C.R.A. is not, in practice, the direct cause for changes in lending policy. The Act provides that a depository institution’s record in meeting community credit needs must be considered by the supervisory agencies before approving an application for a merger, acquisition, or office change.\(^\text{125}\) After a decade of experience with administration of the Act, it is safe to say that poor C.R.A. performance will not result in denial of an application except in the most extreme, egregious cases, and perhaps not even then. The number of denials on C.R.A. grounds is miniscule and, for at least one of the supervisory agencies, zero.\(^\text{126}\)

Other factors, however, cumulatively provide substantial incentives to depository institutions. Principal among those factors are delay in processing the application, adverse publicity, and embarrassment.

A protest by a community group to an application results in protracted investigation and hearings by the supervisory agencies.\(^\text{127}\)

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126. Statistics on applications denied by each of the agencies, and analysis of the instances involved, are contained in part V of this Article.
127. In the Federal Reserve System, for example, applications typically are decided in an average of 3.7 months, but protested applications take between 3 and 13 months, with the usual case lasting 6 months. The F.R.B. is concerned that community groups could “impose expensive delays on applicants in order to extricate agreements . . . .” G. Canner, CREDIT ALLOCATION, supra note 119, at 5, 5 n.22. Delay occurs even if the protest turns out to be groundless, because of the need for notification periods, and the increased agency scrutiny. See Note, COMMERCIAL BANK MERGERS: THE CASE FOR PROCEDURAL AND SUBSTANTIVE DEREGULATION, 95 HARV. L. REV. 1914, 1916-18, 1927 (1982) (noting that judicial review is rarely sought because the prospects of additional delay and major expense causes the parties to a merger to abandon the deal).
The delay in processing may cause arrangements for the planned acquisition of real estate to lapse, planned construction to be disrupted, or competition from other institutions to arise. At minimum, the lender will be denied, for a period, the business advantages contemplated, such as an increase in market share or deposits.

Publicity resulting from an investigation or from a community group protest can only have adverse effects on a bank or savings and loan association. Public relations and image are important to depository institutions.\(^\text{128}\) Perhaps the most important, though unquantifiable, factor is the discomfort experienced by the management of depository institutions when accused of violating federal law and being derelict in their community responsibilities. In addition to stigma among social associates, management is compelled to explain to the board of directors of a depository institution why the application has not received timely processing, and why the institution's prestige and business opportunities are at risk.\(^\text{129}\)

At one time, management could and did argue that fiduciary duty to the shareholders and depositors compelled a lending policy that was not concerned with impact on a particular neighborhood.\(^\text{130}\) As a result of C.R.A., that argument is discredited, and the economic realities are reversed. Currently, failure to be concerned with impact on a particular neighborhood constitutes a breach of the responsibilities of management. The only available arguments, now, are that management has done enough in that direction.

The effect of criticism from regulatory agencies also should not be underestimated, despite the unlikelihood that the agencies will...

\(^{128}\) As one illustration, fears of negative publicity caused a Tennessee bank to withdraw an application with the O.C.C. The bank's chief executive officer was concerned that denial of the application, caused by C.R.A. reasons, would be misinterpreted by the public, since the Comptroller does not announce his reasons. W. DENNIS & J. POTTINGER, supra note 5, at 10-40.

\(^{129}\) Derivative actions against management for loss of a valuable business opportunity through negligence are even a possibility. Healey, supra note 58, at 737 (citing remarks of Neal L. Peterson, General Counsel, Federal Reserve Board, reported in AM. BANKER, Jan. 26, 1979, at 6); W. DENNIS & J. POTTINGER, supra note 5, at 11-11.

\(^{130}\) See, e.g., Statement of Grover J. Hanson, Chairman, First Federal Savings and Loan Association of Chicago, in Hearings on S. 1281 before Senate Comm. on Banking, Housing, and Urban Affairs, 94th Cong., 1st Sess. 85 (1978), cited in Note, Redlining: Should Local Government Become Involved?, 10 U.C. DAVIS L. REV. 243, 249 (1977); Earthman, Residential Mortgage Lending: Charting a Course Through the Regulatory Maze, 29 VAND. L. REV. 956, 980-84 (1976) (discussing the potential liability to management of institutions which made socially-responsible high-risk loans, due to the lack of clear authority for such a policy); Willie, A Regulator's View of Banks in Community Development, 29 VAND. L. REV. 935 (1976) (in which the Chairman of the F.D.I.C. conceded that past examination procedures discouraged rehabilitation or development loans).
outright deny an application. Depository institutions are subject to extensive and sometimes highly discretionary supervision throughout their operations. C.R.A. has tended to reverse the nature of supervisory criticism. Where once the agencies would criticize for lending locally (if higher returns were available elsewhere), now the agencies will criticize for failing to lend locally.

The dangers of noncompliance with C.R.A. are especially clear for institutions planning interstate expansion or other acquisitions. Any institution, however, has some incentive to comply. Even relatively minor decisions, such as relocating an office, trigger C.R.A. reviews, and cannot always be predicted. Economic conditions change over time, as do business decisions and philosophies. When an application is filed, review entails consideration of the record not only during the year of application but also in previous years. Inattention to C.R.A. in one year may therefore jeopardize future options.

131. One representative of the thrift industry noted, in regard to C.R.A. implementation, that "the supervisory agencies have rather awesome powers and broad discretion in the exercise of those powers. This is particularly true with respect to examinations, the approval of mergers and acquisitions, and the approval of applications for new deposit facilities." R. Dockson, Testimony on Behalf of the California Savings and Loan League and the Conference of Federal Savings and Loan Ass'ns on the Community Reinvestment Act of 1977, before the Comptroller of the Currency, F.D.I.C., F.H.L.B.B., and F.R.B., 13 (Apr. 13, 1978).

132. This factor arose repeatedly in interviews by the author of officials of the four federal regulatory agencies. A member of the Federal Reserve Staff, for example, described major changes in the conduct of several banks on issues related to C.R.A., due to supervisory pressure and persuasion applied over several years. Telephone conversation with James W. Lowell, Community Affairs Coordinator, Division of Consumer and Community Affairs, F.R.B., Washington, D.C. (July 3, 1985).


134. A depository institution that expects to file an application for approval of a merger, acquisition, or office change is more exposed to pressure than one that does not foresee any transaction that would trigger the requirement for regulatory approval. Note, Legislating Against Mortgage Redlining: The Need for a Firmer Commitment, 12 Rutgers L.J. 151, 180 (1980); Comment, Redlining, Disinvestment, and the Role of Mutual Savings Banks: Survey of Solutions, 9 Fordham Urb. L.J. 89 (1980). In states with "unit banking" laws, in which branching is not possible regardless of an institution's C.R.A. record, C.R.A. may have less effect. W. Dennis & J. Pottinger, supra note 5, at 9-5.

135. W. Dennis & J. Pottinger, supra note 5, at 11-7. Also, at least one agency has suggested that disregard of C.R.A. might lead to adverse consequences even when no application was pending or contemplated. F.H.L.B.B. officials stated that a savings and loan association following that policy "is probably not in compliance with the nondiscrimination requirements" based on the "effects test," and could be subject to a cease and desist order. C.R.A. Examination Procedures Discussed, 3 On the Home Front, No. 2, at 2 (F.H.L.B., San Francisco 1982) (copies on file at the Pacific Law Journal).
As a result of all of these factors, depository institutions have strong incentives to be attentive to the record of C.R.A. compliance that they are developing, and responsive to the requests of community activists. Even the threat of a protest tends to bring depository institutions to the bargaining table.\textsuperscript{136}

\textbf{B. Costs and Effects}

Institutions have demonstrated substantial ingenuity in developing community investment strategies. In a broad variety of permutations, institutions have embarked on programs to lend in declining neighborhoods for construction, purchase, or rehabilitation, and to offer these loans at favorable rates. Counselling services or special consideration is provided for loan applicants who might otherwise be denied, and efforts are made to stimulate loan applications from some neighborhoods.\textsuperscript{137} Some banks have formed consortia for concentrated lending in target communities, thereby reducing the risk assumed by each lender.\textsuperscript{138} Many banks have participated in revitalization programs subsidized or assisted in a variety of manners by local and federal governments, but relying principally on private

\begin{itemize}
\item 136. Ansbury, \textit{supra} note 110, at 58, cols. 1-5 (reporting comments by a Federal Reserve official, community groups, and bankers).
\item Interviews with both community group and supervisory agency representatives emphasized that one of the primary aspects of a community group's leverage or negotiating power is the delay that could arise in the processing of a bank's application if the group files a protest. Telephone conversation with Tom Schraw, National People's Action, Chicago, Illinois (July 3, 1985); telephone conversation with James W. Lowell, Community Affairs Coordinator, Division of Consumer and Community Affairs Coordinator, Division of Consumer and Community Affairs, F.R.B., Washington, D.C. (July 3, 1985). \textit{See also} V. Benedek, \textit{supra} note 37, at 52 (delay of four months in application of Society National Bank in Cleveland), 67 (delay of 15 months in case of Northside Savings Bank of New York, leading to a dramatic change in policy by the bank and withdrawal of opposition by the community group), 98 (mere threat of delay lead to quick concessions due to competition before the regulator from two other institutions applying for a branch in the same location).
\item 137. For description of such efforts see Dennis, \textit{The Dual Housing Credit Market}, \textit{supra} note 19 (including 28 examples of policies or programs instituted by banks under C.R.A. pressure); D. Marino & L. Rosser, \textit{Savings and Loan Service Corporations as Instruments of Reinvestment} (Woodstock Inst. 1977); M. Adams & L. Rosser, \textit{Community Development Subsidiaries of Bank Holding Companies as Vehicles of Reinvestment} (Woodstock Inst. 1977), \textit{reprinted in} Dennis, \textit{The Dual Housing Credit Market}, \textit{supra} note 19, at 338-59.
\item 138. One example is the Crown Heights Revitalization Group formed by 14 New York City banks to stimulate investment and to operate an office that assists potential borrowers in "packaging" applications for multi-family rehabilitation and other types of loans (i.e. assembling and organizing the necessary data into a formal and complete presentation). Also in New York, 26 savings banks are members of a program which reconsiders loan applications which have been denied, and grants them if the denial is considered improper. \textit{Mortgage Review Fund} (brochure, undated, obtained in 1981) (copies on file at the Pacific Law Journal).
\end{itemize}
Lenders also use programs operated by Federal Housing Administration (F.H.A.), Veterans Administration (V.A.), and Small Business Administration (S.B.A). Of course, many of these strategies do entail greater administrative effort and expense than the lenders would prefer.

The record-keeping burden imposed directly by C.R.A. is quite limited. The only paperwork that is mandated is the C.R.A. Statement (usually only a few pages), and the duty to maintain a file of comments received from the public. Nevertheless, the fact that C.R.A. activities are subject to regulatory review prompts some banks to maintain additional documentation. Advisors to lending institutions recommend preparation of extensive documentation of all factors that reflect favorably on the bank in a C.R.A. review. For example, institutions are counselled to prepare a response to every negative comment in the public file, to consider ways “to generate honestly deserved favorable comments,” and to document all contacts with community groups. In addition, depository institutions may be well advised to record the factors considered in delineating the community to be served and the credit services to be provided, and to document any C.R.A. training given to staff.

V. THE FEDERAL SUPERVISORY AGENCIES

C.R.A. mandated, and has begun to accomplish, a shift in the attitudes and policies of the four federal financial supervisory agencies. The mission of the agencies, the Federal Home Loan Bank Board, the Comptroller of Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board, had always been to assure that depository institutions serve the “convenience and needs” of their communities.141 Prior to C.R.A., however, the agencies

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139. See, e.g., F.H.L.B., N.Y., PROGRESS THROUGH PARTNERSHIP, A REPORT ON COMMUNITY INVESTMENT ACTIVITY IN DISTRICT 2 (N.Y., N.J., P.R.), June 1978 to Dec. 1979 (no date) (stating that approximately 99 savings and loans nationally were participating in the F.H.L.B.B. Community Investment Fund, providing dozens of examples) (copies on file at the Pacific Law Journal); Dennis, The Dual Housing Credit Market, supra note 19 (providing 21 examples).

140. W. DENNIS & J. POTTINGER, supra note 5, at 9-24. Accord Healey, supra note 58. However, a Federal Reserve staff member with years of experience in C.R.A. matters stated that only a very few banks (usually very large ones) maintain documentation beyond what is minimally necessary. Telephone conversation with James W. Lowell, Community Affairs Coordinator, Division of Consumer and Community Affairs, F.R.B., Washington, D.C. (July 3, 1985). One community group reported, in regard to a particular savings and loan association, that “every time they talked to one person in the neighborhood, they recorded it.” V. BENDEHK, supra note 37, at 16.

141. The “convenience and needs” formula is used in 12 U.S.C. §§ 1816 (1982) (for certificate to do business), 1828(c)(5) (for mergers), 1942(c) (for acquisition of bank shares).
interpreted this mission as requiring an exclusive focus on financial "safety and soundness," promoted by pursuit of maximum income consistent with very limited risk, for the benefit of the institution's depositors and shareholders.\textsuperscript{142} Thus, for example, if a depository institution located in New York (and originally chartered for the purpose of serving the "convenience and needs of its community"),\textsuperscript{143} could earn a higher interest rate on real estate loans in California, the supervisory agencies would criticize the institution for failing to export capital.\textsuperscript{144} The detrimental impact on local loan applicants and local neighborhoods simply did not enter the equation.

In the congressional hearings that led to C.R.A., the agencies made their attitudes and orientations clear. They agreed that depository institutions that do not meet community credit needs exist, but could not cite a single example of an institution being denied an application for that reason.\textsuperscript{145} The agencies opposed the notion that matters of social policy or neighborhood improvement were within their mission.\textsuperscript{146}

These attitudes of the management and staff of the supervisory agencies appear to be changing as a result of C.R.A., though the rate of progress ranges between slow and glacially slow. Enforcement of C.R.A., like enforcement of civil rights and consumer protection statutes, is often considered inconsistent with the agencies' traditional

\begin{itemize}
\item \textsuperscript{142} Scott, \textit{The Patchwork Quilt: State and Federal Roles in Bank Regulation}, 32 STAN. L. REV. 687, 696-97 (1980); S. REP. No. 175, supra note 22, at 33-35.
\item \textsuperscript{143} See supra notes 50 & 51 and accompanying text.
\item \textsuperscript{144} See, e.g., statements by Garth Marston, Chairman of the F.H.L.B.B. in the hearings on C.R.A. \textit{Hearings on S. 406, supra note 2}, at 239, 248, 266 ("In 1974 the usury limit in the District [of Columbia] was 8 percent. In Virginia and Maryland, it was 10 percent. Why lend money in the District?"). Expressing a similar view, the Federal Reserve Board described the ability of a multibranch bank to use deposits received in one area to make loans elsewhere as an advantage, not a disadvantage. Midland Bank Ltd., 67 Fed. Res. Bull. 729 (1981).
\item \textsuperscript{145} \textit{Hearings on S. 406, supra note 2}, at 397 (statement of Senator Proxmire, commenting on the testimony presented at the hearings).
\item \textsuperscript{146} Id. at 236 (Prepared Statement of Garth Marston, Chairman, F.H.L.B.B.). Similarly, in hearings two years prior to enactment of C.R.A., the agencies discounted the incidence of redlining and denied that depository institutions had any obligation to lend in their own neighborhoods. \textit{Home Mortgage Act of 1975: Hearings on S. 1281 Before the Comm. on Banking, Housing and Urban Affairs} 94th Cong., 1st Sess. (1975). According to the F.H.L.B.B., for example, "evidence of intentional discrimination against specific areas has been elusive at best," and "thrift institutions are wisely under no legal obligation to invest in any given neighborhood." Id. at 594, 597, 600 (statement of Thomas Bomar, Chairman, F.H.L.B.B.). According to the Federal Reserve, "[t]o insist that capital should not flow out of a lender's market is to risk inhibiting...[economic growth in the nation as a whole]." Id. at 20, 21 (letter from Arthur F. Burns, Chairman, Board of Governors, Federal Reserve System). According to F.D.I.C., "there is serious question whether banks should be encouraged to make real estate loans in certain deteriorated neighborhoods . . . ." Id. at 19 (letter from Frank Wille, Chairman, F.D.I.C.).
\end{itemize}
concentration on "safety and soundness," and is assigned a low priority.\footnote{147} The agencies have taken steps to obtain necessary data for C.R.A. reviews. Most agencies, for example, require depository institutions to maintain registers or logs of loan applications, which provides a basis for analysis of lending policy according to racial characteristics, income levels, and neighborhoods.\footnote{148} "Geocoding" of approved loans is used to analyze the geographic distribution of loans, with particular attention to low- and moderate-income neighborhoods, and to neighborhoods with minority populations. In most agencies, computerized systems are used to identify statistical disparities that justify particular attention by bank examiners.\footnote{149} The agencies also assist lending institutions in using federal programs which permit them to increase lending in low- and moderate-income neighborhoods without incurring excessive risk or accepting below-market rates of return.\footnote{150}

\footnote{147} A survey by F.D.I.C. of F.R.B., O.C.C., and F.D.I.C. managers and examiners in 1979 found that compliance with consumer protection laws and regulations was considered to be the least important aspect of examinations. \textit{Gen. Acct. Off., Examinations of Financial Institutions Do Not Assure Compliance with Consumer Credit Laws 7} (1981) \citep[hereinafter cited as G.A.O., \textit{Study}]{GEN_ACO_EXAMINATIONS_OF_FINANCIAL_INSTITUTIONS_DO_NOT_ASSURE_COMPLIANCE_WITH_CONSUMER_CREDIT LAWS}. In 1980, some managers and examiners expressed similar views, and also concerns regarding limited career opportunities in their consumer compliance role. \textit{Id.} at 8. The Chairman of F.D.I.C. indicated that the agency was aware of the concerns and was working to change the perceptions. Letter from Irvine H. Sprague, Chairman, F.D.I.C., to William J. Anderson, General Accounting Office (Oct. 24, 1980), reprinted in \textit{id.} 49, 55. A study for the F.R.B. in 1978 found widespread perceptions among examiners that enforcement of civil rights law might be inconsistent with their efforts to maintain the safety and soundness of banks, was not considered highly important by the Federal Reserve Board, and would not materially advance the examiners' careers in the System. \textit{W. Dennis, The Detection and Correction of Credit Discrimination: A Report to the Board of Governors of the Federal Reserve System} 9 (1978). Five years later, in 1983, another study of F.R.B. staff found that few compliance examiners "feel comfortable" advising banks to improve C.R.A. performance, and several "thought that their performance in these areas was limited by the attitude of the management of their Reserve Banks." \textit{Con. Adv. Coun., Federal Reserve's Implementation of C.R.A., supra note 63, at 4.6.}


\footnote{149} F.H.L.B.B. has an automated Loan Application Register System (LARS), F.D.I.C. has a Computer Assisted Supervisory System (COMPASS), and O.C.C. has a Fair Housing Home Loan Data System (FHHLDS). F.R.B. has no computerized system for reporting and processing data relevant to discrimination in lending policy regulated depository institutions. Section 340(e) Report, supra note 148, at S-2, 3-1 to 3-5. The Federal Financial Institutions Examinations Council, in response to \textsection 340(e) of the Housing and Community Development Act of 1980, \textit{Pub. L. No. 96-399} (1980), has prepared a study of the feasibility of a single system to be used by all four agencies. \textit{Id.; Fed. Fin. Insts. Exam. Coun., Fair Lending and Community Reinvestment, 47 Fed. Reg. 41,421, 41,422 (1982).}

\footnote{150} \textit{See, e.g., Compt. Curr., Program Guidebook to Help Meet Community Credit...}
Beyond these basic administrative measures, however, the C.R.A. compliance program appears to be extremely limited. Among the most powerful forms of "encouragement" would be suggestions or informal communications from agency staff to lender management, particularly in the course of periodic bank examinations. In actual practice, however, these enforcement powers are rarely used. Separate studies by the General Accounting Office,\footnote{G.A.O., Study, supra note 147.} a congressional subcommittee,\footnote{Hearing on C.R.A. Compliance, supra note 94.} and others,\footnote{Ctr. for Community Change, Neighborhood Revitalization Project, Adequacy of C.R.A. Enforcement, reprinted in Hearing on C.R.A. Compliance, supra note 94, at 172 [hereinafter cited as Ctr. for Community Change, Adequacy]; Statement of Howard Golden, President of the Borough of Brooklyn in Hearing on C.R.A. Compliance, supra note 94, at 8. The Brooklyn President, whose office has made substantial comment on almost every application for expansion of a bank in Brooklyn, concluded that "the intent and mandate of CRA was not sufficient to overcome the historic reluctance regulators have to seriously question, pressure, and force banks to operate in the community interest." Id. at 9.} have found that neither informal contacts nor examination reports are regularly and effectively used to promote C.R.A. compliance.

The supervisory agencies' bank examiners tend to focus on technical or procedural requirements, such as proper posting of required notices. They direct inadequate attention to the far more difficult, time-consuming analytic task of identifying geographic discrimination and other practices violative of C.R.A.'s basic purposes.\footnote{G.A.O., Study, supra note 147; Ctr. for Community Change, Adequacy, supra note 153; CON. ADV. COUN., THE FEDERAL RESERVE'S IMPLEMENTATION OF C.R.A., supra note 63.} Bank examiners typically have not contacted community groups, thus limiting their review to data supplied by the bank.\footnote{G.A.O. Study, supra note 147; Ctr. for Community Change, Adequacy, supra note 153.}

\begin{figure}[h!]
\centering
\includegraphics[width=\textwidth]{figure.png}
\caption{Illustration of the importance of C.R.A. enforcement.}
\end{figure}
recently changed. When violations are identified, compliance techniques are mild and permissive, rarely going beyond mere moral suasion.

Ultimately, the coercive aspect of C.R.A. becomes most apparent in formal decisions on applications for branches or mergers. These decisions, which are publicly disclosed, perform a function comparable to that of judicial decisions, interpreting a statute and applying it to concrete fact situations. The formal rulings of the agencies are

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157. G.A.O., Study, supra note 147; Ctr. for Community Change, Adequacy, supra note 153. According to the General Accounting Office, the agencies continued to rely on moral suasion even after persistent violations, commonly simply repeating their ineffective efforts, without even using a more strongly worded letter or request for evidence of correction. Id. at 34-35. In response to these findings, the F.D.I.C. noted that legal proceedings are expensive, and that "supervisory pressures brought to bear over a period of time" frequently produce the desired result. Letter from Irvine H. Sprague, Chairman, F.D.I.C. to William J. Anderson, G.A.O. (Oct. 24, 1980), reprinted in G.A.O., Study, supra note 147, at 49, 57.

According to a community group report, there is "overwhelming rating inflation of CRA examinations," with less than five percent receiving ratings less than satisfactory, and even those receive no supervisory follow-up between examination cycles. Ctr. for Community Change, Adequacy, supra note 153. Data released by the Federal Financial Institutions Examinations Council on C.R.A. ratings issued in 1983 tends to support that conclusion. The data combines the ratings issued by F.R.B., F.D.I.C., and O.C.C, which used the same adjectives to describe each rating, and can be summarized as follows:

<table>
<thead>
<tr>
<th>C.R.A. Rating</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - commendable, need no further improvement</td>
<td>1,099</td>
<td>20.2%</td>
</tr>
<tr>
<td>2 - satisfactory, but may need further encouragement</td>
<td>4,414</td>
<td>76.3%</td>
</tr>
<tr>
<td>3 - less than satisfactory</td>
<td>173</td>
<td>3.2%</td>
</tr>
<tr>
<td>4 - much less than satisfactory</td>
<td>10</td>
<td>0.2%</td>
</tr>
<tr>
<td>5 - unsatisfactory</td>
<td>2</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

**Totals**: 5,429 100.0%

Data for the F.H.L.B.B.1, which assigned different adjectives to the same numerical scale, was described in text format that can be summarized as follows:

<table>
<thead>
<tr>
<th>C.R.A. Rating</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - outstanding*</td>
<td>91</td>
<td>4.2%</td>
</tr>
<tr>
<td>2 - good*</td>
<td>2,050</td>
<td>95.1%</td>
</tr>
<tr>
<td>3 - satisfactory</td>
<td>13</td>
<td>0.6%</td>
</tr>
<tr>
<td>4 - needs improvement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 - unsatisfactory</td>
<td>1</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

**Totals**: 2,155 100.0%

* Data for ratings 1 and 2 were not separately stated. Lenders Community Inv. Rep., CRA Aggregate Ratings Published by Bank Regulators 3 (Community Inv. Publ., Silver Spring, Md. Sept. 1984).
particularly crucial because of the extremely imprecise nature of the C.R.A. They inevitably send messages to the banking industry as to the types of conduct that are deemed unacceptable by the regulatory agencies, and the consequences to be expected.

Denial or conditional approval of a bank application is certainly not the only, nor even necessarily the most effective, means of promoting compliance. Nevertheless, the record of formal rulings is an important element in assessing the agencies' commitment to enforcing C.R.A., and is watched carefully by the banking industry.

To date, in most agencies, the incidence of formal sanctions is so minimal as to suggest that a noncomplying depository institution faces no significant danger of denial of an application to branch out or merge. In the years since the effective date of C.R.A., the nation's thousands of regulated depository institutions have filed thousands of applications, including approximately 100 that were formally protested. The number denied or conditionally approved on C.R.A. grounds by all four agencies is minimal, perhaps only four. The number approved subject to conditions is only slightly larger, perhaps twenty-eight.158

158. The two compilations of data on disposition of depository institution applications involving significant C.R.A. issues produced somewhat differing results, probably due to differences in format and methodology. A community organization offers data that can be summarized as follows:

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<td>Denied</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>conditions</td>
<td>0</td>
<td>23</td>
<td>1</td>
<td>3</td>
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<tbody>
<tr>
<td>Denied</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Approved with conditions or commitments</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>Approved without conditions or commitments</td>
<td>19</td>
<td>18</td>
<td>11</td>
<td>26</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>2</td>
<td>Not. avail.</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Withdrawn following negotiated agreements</td>
<td>9</td>
<td>7</td>
<td>7</td>
<td>5</td>
</tr>
</tbody>
</table>

Con. Adv. Coun., Federal Reserve's Implementation of C.R.A., supra note 63, Table F6.1. Whichever set of figures is accepted, it is clear that the number of applications receiving unfavorable action is miniscule in relation to the total number of applications considered.
To consider the supervisory agencies as a whole, however, is insufficient. Analysis of the publicly-available data regarding the policies and the results of the C.R.A. enforcement programs indicates distinctly divergent patterns among the four agencies.

A. Federal Home Loan Bank Board

The Federal Home Loan Bank Board (F.H.L.B.B.) regulates savings and loan associations, which have traditionally represented the primary institutional source of residential mortgage credit, a major focus of C.R.A. In comparison to the other federal regulatory agencies, the F.H.L.B.B. has demonstrated exceptional vigor and commitment to effectuating the policies embodied in the C.R.A. Its success, however, has been seriously impeded by the severe financial difficulties experienced by savings and loan associations in recent years (problems more serious than those facing other branches of the banking industry).

The investment portfolios of savings and loan associations consisted overwhelmingly of residential mortgages with long terms and fixed interest rates. The associations, therefore, suffered severely as rapidly rising interest rates and new competition from money market funds caused income from old loans to fall below the expense of attracting new deposits. Profitability of the savings and loan industry began a steady decline in 1978, becoming negative in 1981 and 1982. Hundreds of savings and loan associations were forced into dissolution or into merger to avoid dissolution. A modest

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Using as an example a single agency in a single year, the F.R.B. considered 1,597 applications in 1982. Id. at 1.2.

159. In 1976, the savings and loan industry originated approximately 55% of all institutional home mortgage lending. 1981 ANN. REP., 15 FED. HOME LOAN BANK Bd. J., No. 4, 22 (1982). By 1981, however, due to severe economic problems this percentage was down to eight percent. Id.

Although the F.H.L.B.B. has authority in some respects over all thrift institutions having federal charters or federal deposit insurance, its authority under C.R.A. is limited to those with federal charters. State-chartered associations, representing approximately half of the assets held by all savings and loans in the nation, do not require the F.H.L.B.B.’s approval to open new branches, even if they have federal deposit insurance. W. DENNIS & J. POTTINGER, supra note 5, at 9-5, 10-5.


recovery began in 1983 and 1984, but earnings are still well below the performance of the early 1970s.\footnote{163}

An economic environment more adverse for initial implementation of C.R.A. could hardly be imagined. A depository institution threatened with economic collapse clearly cannot be expected to aggressively market credit services that might aggravate the problem. Moreover, it would be pointless to promote mortgage credit in low- and moderate-income neighborhoods when prevailing market interest rates are so high that even most high-income families cannot afford to borrow.\footnote{164}

Despite the circumstances, the F.H.L.B.B. has acted with some vigor to implement C.R.A. The Board is the only one of the four supervisory agencies to commit its own funds for C.R.A.-oriented lending. A “Community Investment Fund” of ten billion dollars advances funds to savings and loan associations for specific community investment projects, at an interest rate of one-half percent below the otherwise prevailing Federal Home Loan Bank rate. The participating association bears the risk of default by the ultimate borrower.\footnote{165} The program has been described as “by far the biggest 'carrot' so far devised to encourage reinvestment,” accompanying the C.R.A. “stick.”\footnote{166}

The F.H.L.B.B. has taken the lead, among the four supervisory agencies,\footnote{167} in issuing nondiscrimination requirements addressing a variety of practices associated with redlining.\footnote{168} The intent is to limit the basis of lending decisions to objective criteria demonstrably related to creditworthiness of the applicant and value of the property offered as security, and to exclude all unsubstantiated assumptions about groups and areas.\footnote{169}


\footnote{164. The average effective mortgage commitment rate offered by thrift institutions in October 1981 was over 18%. 1982 \textit{ANN. REP.}, 16 FED. HOME LOAN BANK Bd. J., No. 4, 23-24 (1982).}

\footnote{165. NAT’L TRAIN. & INFO. CTR., PASS THE BUCK . . . \textit{BACK: THE C.R.A. HANDBOOK} 115 (1979).}

\footnote{166. \textit{Id.} For a description of projects and results, see 1982 \textit{ANN. REP.}, 16 FED. HOME LOAN BANK Bd. J., No. 4, 34-37 (1982).}

\footnote{167. S. REP. 175, \textit{supra} note 43, at 33.}

\footnote{168. 12 C.F.R. §§ 528, 531 (1986). Prior to C.R.A., the F.H.L.B.B. had established a reputation as the most active of the four agencies in antidiscrimination efforts. Searing, \textit{supra} note 39, at 1127-43; Lamb, \textit{supra} note 28, at 411.}

\footnote{169. 12 C.F.R. § 531.8(b), (c) (1986). Building age and location data may not be used as a basis for discouraging or refusing to accept a loan application, 12 C.F.R. § 528.3 (1986); denying a loan or discriminating in fixing any of its terms or conditions, 12 C.F.R. § 528.2(a) (1986); and may not be used in a discriminatory manner in appraisal, 12 C.F.R. § 528.2a(a).}
Use of age or location of the collateral as factors in the appraisal and loan review process is severely restricted. Excluded from consideration are the race, color, religion, sex, or national origin of the loan applicant and of other persons in the dwelling or its vicinity. The Board further cautions that consideration of the income level of the area in which the collateral is located can lead to discrimination against minorities.

The F.H.L.B.B. applies the "effects test" of discrimination both to loan underwriting standards and to more general decisions concerning the types and terms of loans to be offered. A lending standard that is discriminatory in effect may not be used, even in the absence of actual intent to discriminate, unless it "achieves a genuine business need which cannot be achieved by means which are not discriminatory in effect or less discriminatory in effect."

Thrift institutions are cautioned about "credit rationing," a term the Board uses to describe such measures as restricting the types of loans offered, requiring larger down payments, and increasing the credit requirements for approval of a loan application. The institutions are to evaluate whether any such measures have a disproportionately negative impact on particular groups or areas, even if unintended or not immediately apparent.

Formal rulings on applications submitted by thrift institutions point to all of these regulations, which connect closely with the C.R.A. standards. Although the Board has not yet issued any denials of applications on C.R.A. grounds, this fact in context does not demonstrate laxity in enforcement. F.H.L.B.B. staff informally advise savings and loan associations of the likelihood of unfavorable action.

(1986).

The F.H.L.B.B., it has been noted, is the only one of the four agencies to regularly use the term "redlining" without quotation marks and without any implication that it may not exist. W. Dennis & J. Pottinger, supra note 5, at 10-7.

170. 12 C.F.R. § 528.2(a) (1986).
171. 12 C.F.R. § 531.8(c)(6) (1986).
172. The "effects test," as developed in Supreme Court decisions (based on legislation other than C.R.A.) "proscribes not only overt discrimination but also practices that are fair in form but discriminatory in operation." Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971). Once the plaintiff shows a discriminatory effect, the burden shifts to the defendant to prove a sufficient business justification of the practice. Id. Albermarle Paper Co. v. Moody, 422 U.S. 405 (1975).
173. 12 C.F.R. § 531.8(b) (1986).
174. Statement on Credit Rationing, F.H.L.B.B. Res. No. 79-547 (Nov. 1, 1979), 44 Fed. Reg. 65,182-83 (Nov. 9, 1979). The Statement was prompted by "periods of economic stringency," but since every financial institution always "rations" credit in the sense of selecting a finite number of investments from among a much larger number of opportunities, the Statement should have general applicability.
by the Board. The associations withdraw applications likely to be denied, thereby avoiding formal public denial.\textsuperscript{175} Withdrawal under such circumstances accomplishes the same purpose as denial.

Resolutions of the Board commonly contain "conditions" to approval, or approve an application "provided that" specified measures are adopted by the savings and loan association. More than seventy resolutions have contained such provisions, which typically require corrective action within a specified short period of time.\textsuperscript{176} The most common requirement is affirmative lending and marketing directed towards low- and moderate-income neighborhoods.\textsuperscript{177} Some associations are required to reexamine the delineation of their communities and make appropriate changes.\textsuperscript{178}

Many associations are instructed to alter credit rationing policies which are discriminatory in effect. Some of those policies are facially neutral but tend to perpetuate past patterns of discrimination. Examples include policies to lend only to previous customers,\textsuperscript{179} to charge increased interest rates or fees for loans in certain geographic areas,\textsuperscript{180} to apply arbitrary standards of "remaining economic life" of a building,\textsuperscript{181} or to consider applications for conventional loans

\textsuperscript{175} Telephone interview with Tom Wall, Director, Office of Community Investment, F.H.L.B.B., Washington, D.C. (May 12, 1982). Mr. Wall indicated that the institution takes steps to improve its C.R.A. record before submitting another application.


\textsuperscript{177} See, e.g., Res. Nos. 79-367, 80-124, 80-352, 80-460, 80-638, 80-721, supra note 176.

\textsuperscript{178} See, e.g., Res. Nos. 80-493, 80-539, supra note 176.

\textsuperscript{179} Res. No. 79-367, supra note 176 (customer-only policy was to be abandoned outright in specified census tracts, and continued in the remainder of the community only if no less-discriminatory means could be found to achieve the same business need); Res. No. 79-637, supra note 176.

\textsuperscript{180} Res. Nos. 79-348, 79-637, 80-638, supra note 176.

\textsuperscript{181} Res. No. 80-618, supra note 176.
with high loan-to-value ratios only upon special request. Finally, some associations are admonished to increase lending in low- and moderate-income neighborhoods and to consider offering additional types of loans. The F.H.L.B.B. has not hesitated to specify necessary changes in a depository institution's lending criteria and programs.

The policy on granting hearings to community groups on C.R.A. matters is fairly liberal. Any person who files a "substantial" protest and makes a timely request will be granted an opportunity for oral argument "at a time and place reasonably convenient to the protestants."

Overall, the F.H.L.B.B.'s record of C.R.A. enforcement appears to be the most vigorous of the four agencies. Commitment to the policies of C.R.A. is demonstrated in the investment of F.H.L.B.B. funds for community development projects, regulations addressing racial and geographic discrimination in housing credit in great detail, and rulings on applications submitted by regulated thrift institutions. Although the program is impeded by serious economic problems of the savings and loan industry, the effort is being made.

B. Comptroller of the Currency

In the first few years after C.R.A.'s enactment, the Office of the Comptroller of the Currency (O.C.C.), which is responsible for supervision of national banks, issued several formal rulings on bank applications that indicated an active program of enforcement. More

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182. Id.
183. See, e.g., Res. No. 80-352, supra note 176; Res. No. 80-539, supra note 176 (thrift institution near an Indian reservation was required to lend on the reservation, unless it could demonstrate that the tribal court did not provide a forum for enforcement of security interests).
184. See, e.g., Res. No. 80-493, supra note 176 (thrift institution was to consider offering loans with a loan-to-value ratio up to 95%).
186. A protest (whether based on C.R.A. or any other grounds) is "substantial" if it is in writing, seasonably filed, and contains specific objections supported by reasons, facts (including relevant economic or financial data), and a description of any adverse effects on the protestant which may result from approval of the application. 12 C.F.R. § 543.2(e)(4) (1986). However, an application based on C.R.A. "shall not be considered insubstantial merely because of the form in which it is submitted." 12 C.F.R. § 543(e)(5) (1986).
188. The public record of rulings is limited, because of O.C.C.'s policy of issuing decisions publicly only when they represent "a new or changed policy or presents issues of general importance to the public or the banking industry." 12 C.F.R. § 5.13 (1986). Only eight decisions relating to C.R.A. have been made public. Letters from Robert W. Hefner, Director,
recent rulings have not been publicly released, making assessment of current enforcement efforts difficult.

Between 1978 and 1981, at least four applications were denied, and at least eleven were approved subject to conditions.\textsuperscript{189} Other applications were withdrawn by the applicant bank (perhaps to avoid

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<table>
<thead>
<tr>
<th>Protested</th>
<th>Nonprotested</th>
<th>Total</th>
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<tr>
<td>Conditionally approved</td>
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<tr>
<td>Withdrawn</td>
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<td>4</td>
</tr>
<tr>
<td>Denied</td>
<td>1</td>
<td>3</td>
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</table>

Totals 40 15 55

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\textsuperscript{189} The Office of the Comptroller has prepared summaries of the disposition of bank applications raising C.R.A. issues between 1978 and June 1983. Letters from Robert W. Hefner, Director, Consumer Examinations Division, Comptroller of the Currency, Washington, D.C., to the author (Aug. 31, 1982, with summaries enclosed, and June 28, 1983, stating that his office had no additional information). That data may be reduced to the following chart:
unfavorable action by the Comptroller), and some were approved only after the objections of "protestants" were satisfied. Particularly significant is the fact that the Comptroller identified selected bank applications for special attention on C.R.A. matters as a matter of internal agency procedure, rather than limiting its role to reacting to protests lodged by community groups. O.C.C. appeared to apply the "effects test" of discrimination. Moreover, the agency considered the burden of proof in resolving protests to be on O.C.C. itself, rather than on the protestor or the bank.

The impact that firm supervisory enforcement of C.R.A. can have on lending institution policy is clearly illustrated by two of the early decisions of the Comptroller, relating to two applications for approval of a merger filed by the Bank of Indiana. In response to the first application, the Comptroller found that "the bank has not demonstrated an affirmative approach to any CRA assessment factor." The bank had shown clear tendencies to direct credit to the suburbs but not to the city, had engaged in discriminatory lending policies, and persisted in Equal Credit Opportunity violations even after being cited in Comptroller examinations. The Comptroller was not mol-

190. Id. Of the four protested applications withdrawn by the banks, one did so by agreement with a community group, and another coverted to a state charter. Information regarding the other two was not provided.
191. In at least three cases in which protested applications were approved, community groups reached an agreement with the bank and/or withdrew the protest. Society Bank, as one example, altered its home improvement loan policies, reached an agreement with the protesting community group and agreed to consult with it in the future, and initiated an active program to market credit in underserved areas. Decision, Society, supra note 188, no. 4 (C.R.A. Supplement). The community group's account of the negotiating process is at V. BENDEK, supra note 37, at 54.
In another case, Michigan Bank developed an affirmative marketing program, and promised to acquire and staff a "C.R.A. mobile unit" to ascertain and meet local credit needs and to meet with community groups. Decision, Michigan, supra note 188, no. 5. In both cases, the Comptroller indicated that the banks would be monitored in terms of the actions promised.
192. V. BENDEK, supra note 37, at 103. O.C.C. denied at least three applications and conditionally approved four others in situations in which no protests were filed by community groups. See supra note 189. The Bank of Indiana case represented the first denial by any of the four agencies entirely on its own initiative. W. DENNIS & J. POTTINGER, supra note 5, at 10-37.
193. Under O.C.C. guidelines, examiners interviewing bank personnel are instructed to "determine whether bank policies regarding evaluation [of loan applications] have been reviewed under the 'effects test.'" W. DENNIS & J. POTTINGER, supra note 5, at App.-328. Moreover, when the O.C.C. identified disproportionately low levels of lending in low-and moderate-income neighborhoods, as in the Bank of Indiana case, it required the bank to increase its marketing efforts in the neighborhoods, even without proof of intentional discrimination. See infra note 201; W. DENNIS & J. POTTINGER, supra note 5, at 10-37.
195. Id. (emphasis added).
196. Decision, Indiana (1979), supra note 188, at 3. More specifically, the Comptroller found
lified by cosmetic improvements and commitments undertaken by the applicant during and immediately before the Comptroller's consideration of the application. The application was denied. 197

Nine months later, Bank of Indiana reapplied, presenting a record of major reforms and meaningful commitments for future improvements. 198 These steps included active solicitation of loan applications from low- and moderate-income neighborhoods, surveys of credit needs, numerous meetings with community leaders, seminars for urban small businesses, elimination of discriminatory practices, and commitments of major sums for inner-city loans. This second application was approved, conditioned on still further improvement. 199

When applications were conditionally approved, the reason commonly given was that an analysis of the bank's geographical distribution of loans indicate disproportionately low levels in low- and moderate-income neighborhoods. The fact that few applications for credit were received from those neighborhoods is not a sufficient explanation; the bank was required to agree to increase its marketing efforts to elicit demand for credit from the disfavored neighborhoods. 200 The Comptroller also insisted that a bank's commitment to modify its policies to help meet the credit needs of its community involve the highest levels of management. 201

The applications that did receive full approval often showed evidence of similar policy changes by the applicant banks. Decisions of the Comptroller that approved applications often indicated that the bank improved its program for marketing credit services in less-wealthy areas, improved dialogue with community organizations, and, in some instances, reached agreement with protesting groups.

Decisions on bank applications involving C.R.A. issues have not been publicly released since 1981 and the statistics indicate that none have been denied. 202 One interpretation is that enough applications

197. Id. at 4, 5.
198. Decision, Indiana (1980), supra note 188, no. 6 (C.R.A. Supplement).
200. See, e.g., Decision, Riggs, supra note 188, no. 7.
201. See, e.g., id. Conditions attached to approvals include discussion of C.R.A. issues by the bank board of directors, regular reports to the board, and formation of top-level C.R.A. committees.
202. Reference to one decision in 1984 was located in a secondary source. Protestors had
were denied or conditionally approved in the early years to convey to national banks the message that failure to maintain good C.R.A. performance can have serious consequences. Thereafter, "encouragement" provided through less drastic means received the banks' careful attention, obviating the need for further denials. Another possibility is that O.C.C. is no longer as committed to C.R.A. enforcement. In the absence of current publicly available data, any conclusions would be speculative.

C. Federal Deposit Insurance Corporation

The Federal Deposit Insurance Corporation (F.D.I.C.) was the first supervisory agency to deny a bank's application because of an inadequate C.R.A. record—a decision said to have "sent shock waves through the banking community."203 The publicly disclosed record of F.D.I.C. rulings on bank applications is extremely limited,204 but does include three denials of bank applications for branch offices.205 In a fourth case, F.D.I.C. granted approval subject to certain conditions.206 Although community group objections play an important

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objected to a bank's plan to "focus marketing efforts on upwardly mobile individuals." The Comptroller found that the plan did not necessarily derogate from the bank's commitment to serve all segments of local communities. Applications of Dimension Fin. Corp. to Charter 31 Nat'l Banks in 25 States (Compt. Curr. May 9, 1984), cited and discussed in Lobell, supra note 94, at 1087, 1087 n.71.

203. Mortimer, supra note 199, at 609. Two other commentators said that the decision "set an aggressive tone for the agency." W. DENNIS & J. POTTINGER, supra note 5, at 10-40.

204. The F.D.I.C. has publicly released only seven formal rulings. Telephone conversation with Roger Hood, Assistant General Counsel, F.D.I.C., Washington, D.C. (July 1, 1985). The documents, in chronological order are as follows:


4. F.D.I.C. Order in re Dauphin (Denial), supra note 94.


The above documents will be hereinafter cited simply as "F.D.I.C. Order in re:" followed by the most distinctive word in the bank's name, along with the item number.

205. F.D.I.C. Order in re: Greater New York, supra note 204, no. 1; F.D.I.C. Order in re: Provident, supra note 204, no. 5; F.D.I.C. Order in re: Dauphin (Denial), supra note 94.

206. Citizens Bank & Trust submitted two separate applications, which were approved on the same date and subject to the same conditions. The applicant was required to redelineate
role, at least one of the denials resulted from internal agency procedures without the prompting of a community group.

F.D.I.C. "orders" (rulings on bank applications) provide excellent examples of rigorous standards and effective "encouragement" of banks to more adequately help meet the credit needs of all parts of their communities. For example, Dauphin Bank in Harrisburg, Pennsylvania, had established a pattern and reputation of lending in suburbs of Harrisburg, while ignoring the inner city. The bank made minor changes after a community group filed objections to its application, but was unable to demonstrate tangible improvement in serving the credit needs of inner-city areas. The application was denied. Subsequently, Dauphin Bank directed widely-publicized efforts to inner-city neighborhoods to encourage loan applications, committed funds for real estate loans in lower-income neighborhoods, agreed to participate in the city's rehabilitation programs, and reached a written agreement with the community group that had originally protested the application. Less than a year after the original application, the bank won reconsideration and approval of its application.

Other decisions suggest that commitments and preliminary efforts to improve C.R.A. performance are considered favorably, but that significant demonstrated results are necessary for approval. In support of this position, it may be noted that C.R.A. directs the supervisory agencies to consider the bank's record, not its promises.

Lending policies of a bank that are facially neutral but discriminatory in effect are unacceptable to the F.D.I.C. For example, the

its community so as not to exclude low- and moderate-income neighborhoods, identify those neighborhoods and communicate with their residents, and establish a loan counseling program. F.D.I.C. Order in re: Citizens (Branch), supra note 204, no. 2; F.D.I.C. Order in re: Citizens (Merger), supra note 204, no. 3.


208. F.D.I.C. Order in re: Provident, supra note 204, no. 5.

209. F.D.I.C. Order in re: Dauphin (Denial), supra note 94.

210. Id.

211. F.D.I.C. Order in re: Dauphin (Reconsideration), supra note 120.

212. See, e.g., F.D.I.C. Order in re: Greater New York, supra note 204, no. 1. The bank had begun a program of advertising, contacting real estate brokers, and meeting with community groups, and it purchased municipal housing development corporation bonds. Its increase in local lending activity in Brooklyn was significant, but the absolute level was still very low. The F.D.I.C. Board of Directors found the bank's progress to be "encouraging" but not "sufficiently favorable," and denied the application. The Comptroller of the Currency, in his capacity as one of the three F.D.I.C. Directors, dissented, arguing that the application should have been approved with the understanding that additional progress would be expected in the future. Id. at 2. One commentator found the majority decision (commending the progress but finding it insufficient) to be "somewhat enigmatic." Healey, supra note 58, at 734.
Provident Savings Bank in New Jersey restricted itself to loans on recently-constructed one- and two-family residences—a policy that is not invidious on its face. The effect, however, was a disproportionately high rate of rejection on loan applications from low- and middle-income neighborhoods, because a large proportion of the housing stock in those neighborhoods was older and multiple-family. Minority group applicants also suffered a disproportionately high rate of rejection. In addition, the bank’s delineation of its community unreasonably excluded low- and middle-income neighborhoods, and the bank failed to maintain racial and other data required by regulation. Intentional discrimination by the bank was not conclusively established, but the bank’s application was nevertheless denied.

F.D.I.C.’s most recent denial or conditional approval of a bank application was in 1981, and the agency’s C.R.A. enforcement program since then is difficult to assess. The program may have been impeded somewhat by financial difficulties of some of the banks supervised by F.D.I.C. in recent years. It is quite likely that banks noted the agency’s decisive treatment of bank applications involving C.R.A. issues in the years shortly after the Act’s enactment, and adjusted their conduct accordingly. However, insufficient data from F.D.I.C. is available to adequately gauge its current C.R.A. enforcement program.

D. Federal Reserve Board

The Board of Governors of the Federal Reserve System (F.R.B.) has a public record on C.R.A. enforcement that is noticeably divergent from the three other federal supervisory agencies. Although the F.R.B. joined in the uniform C.R.A. regulations, its public statements and formal rulings indicate an interpretation and application of

213. F.D.I.C. Order in re: Provident, supra note 204, no. 5.
214. Id. Another example of “effects test” analysis is in F.D.I.C. Order in re: Dauphin (Denial), supra note 94.
216. A member of F.D.I.C.’s staff describes C.R.A. as a “living success,” causing banks and community groups to become more sophisticated regarding each other’s concerns, to negotiate, and to reach accommodations. She states that no C.R.A. protests have been received by F.D.I.C. since 1982. Telephone conversation with Patricia A. McCormick, Office of Consumer Programs, F.D.I.C., Washington, D.C. (July 2, 1985).
217. The Board of Governors has given formal consideration to at least 28 bank applications protested on C.R.A. grounds, as follows (in chronological order):
the rules that is markedly less stringent than the other agencies.

The F.R.B. resistance to C.R.A. appears based on ideological grounds, despite the fact that Congress has already weighed the competing policy considerations. The F.R.B. appears to remain unpersuaded that redlining exists or, if it exists, that it is a problem that should be addressed.218 Although all four supervisory agencies

(D.C. Cir. 1979).

The above orders will be hereinafter cited merely by the most distinctive word(s) of the bank name, plus the year of decision where necessary for identification, along with the item number.

218. The attitude was stated in the first order discussing C.R.A. issues: "Other agencies of government may have primary enforcement responsibilities with respect to such matters as discriminatory lending practices, and ... there are constraints upon the extent to which such laws as the Bank Holding Company and Bank Merger Acts should appropriately be used to
agree that C.R.A. was not intended to impose mandatory government allocation of credit, the F.R.B. at times appears fixated on the issue, continuously reiterating its resolve not to participate in or countenance any form of credit allocation. Even when a bank is willing, after negotiations with protesting community groups, to commit to improve credit availability in underserved areas, the F.R.B. is careful to dissociate itself from any provisions that might be deemed credit allocation.

In general, the Federal Reserve System has developed a reputation as, at best, disinterested in antidiscrimination and other social policy programs.

achieve favored social objectives.” Commerce Bancshares, supra note 217, no. 1, at 893. See also several reports in Federal Reserve publications. Bowsher, supra note 23, at 3, 6. (“The success of community groups in convincing the press and public that lenders were not serving older urban areas was primarily the result of skillful publicity rather than substantial confirming evidence.”); Canner, Redlining: Research and Federal Legislative Response, 68 Fed. Res. Bull. 610 (1982) (reporting empirical studies of “alleged redlining activities,” and conceding “wide disparities” in lending in different neighborhoods, but stating that there is “little evidence to indicate that any neighborhood has been simultaneously redlined by all bankers”); T. Buynak, supra note 58.


Under the terms of a negotiated settlement, the protestant community group withdrew its protest, and the bank agreed to a specific dollar target for residential mortgage loans in the group’s community. The F.R.B. approved the bank’s application but issued a press release stating that “the Reserve Bank does not endorse any term of the agreement” that may result in credit allocation. G. Canner, Credit Allocation, supra note 119, at 5 (citing Fed. Res. Bank of St. Louis, News Release (Nov. 30, 1979)). A general statement of the Board’s policy is in G. Canner, Redlining: Research and Federal Legislative Response 610, 611 (1982).

See, e.g., Searing, supra note 39, at 1127-43 (of the four agencies, F.R.B. is the most dilatory and reluctant to enforce antidiscrimination laws); Note, Legislating Against Mortgage Redlining: The Need for a Firmer Commitment, 12 Rutgers L.J. 151, 179 (1980). The F.R.B. has identified very few instances of violations of the 1968 Fair Housing Act or the Equal Credit Opportunity Act, either because discrimination does not exist or because no one has been looking for it. W. Dennis, The Detection and Correction of Credit Discrimination: A Report to the Board of Governors of the Federal Reserve System 141-42 (1978).
When C.R.A. was enacted, commentators expected that enforcement by the F.R.B. would be characterized by "leniency."\textsuperscript{222} Resistance to change became apparent in the Board of Governor's first reference to C.R.A. in an order approving a bank application.\textsuperscript{223} The F.R.B. announced that C.R.A. had not changed previous law or the Board's policies, because credit needs had always been included within the traditional "convenience and needs" standard applied to applications for bank branches and mergers.\textsuperscript{224} The F.R.B. then granted unconditional approval of a protested merger application filed by a St. Louis bank.\textsuperscript{225} The circumstances of the decision were so questionable that it evoked immediate protests from the primary sponsors of C.R.A. in both the House and Senate.\textsuperscript{226} The chief Senate sponsor of the legislation wrote that the F.R.B. had "totally misinterpreted the affirmative obligations principle" of C.R.A., construing it instead as "requiring nothing more than the absence of overt discrimination."\textsuperscript{227}

The F.R.B.'s consumer compliance examiners find few C.R.A.-related problems that they consider serious. The Federal Reserve comparison, the F.H.L.B.B. found no violations for eight years, and 2,800 violations in the year following institution of a revised training program. \textit{Id.} In enforcing Equal Credit Opportunity provisions, the F.R.B. has been shown to be far more solicitous of the interests of financial institutions than the statutory rights of consumers. Comment, \textit{The Federal Reserve and the Equal Credit Opportunity Act: A Marriage of Inconvenience}, 2 ANN. BANKING L. REV. 301, 307-09 (1983).\textsuperscript{222} Healey, \textit{supra} note 58, at 729. The conclusion was based on a statement by the F.R.B.'s general counsel and also on "the traditional economic focus of the 'convenience and needs' test for deciding applications, and the F.R.B.'s policy of imposing the burden of proof on parties protesting a bank's application." \textit{Id.} at 728-29.\textsuperscript{223} Commerce Bancshares, \textit{supra} note 217, no. 1.\textsuperscript{224} \textit{Id.} At the time of the order, C.R.A. had been enacted but was not yet effective. The Board stated that its decision would have been the same even if C.R.A. had been in effect. \textit{Id.} at 579. Because the facts in the case were such that the Board could easily have justified its approval of the application on a finding that C.R.A. was not in fact violated, its deliberate effort to dismiss C.R.A. as merely repeating prior law has been construed as "sending a message to the industry, and perhaps to Congress, that the CRA would have no special impact on its evaluation philosophy." McCluskey, \textit{supra} note 31, at 47 (1983). \textit{See also} Michigan Nat'l Corp., 66 Fed. Res. Bull. 247, 248-49 (1980).\textsuperscript{225} Commerce Bancshares, \textit{supra} note 217, no. 1.\textsuperscript{226} Letter from Senator Proxmire, to Federal Reserve Board Chairman G. William Miller (Aug. 14, 1978), \textit{cited in} R. BRANDEL & M. LARGE, \textit{supra} note 29, at 26-27; Letter from Representative St. Germain, to Federal Reserve Board Chairman G. William Miller (Aug. 15, 1978), \textit{cited in} R. BRANDEL & M. LARGE, \textit{supra} note 29, at 27.\textsuperscript{227} Senator Proxmire's letter stated that C.R.A. called for "aggressive and affirmative lending efforts to provide housing and small business loans in the local community, with particular emphasis on low and moderate income neighborhoods," but that the F.R.B. construed it as "requiring nothing more than the absence of overt discrimination." Letter from Senator Proxmire, to Federal Reserve Board Chairman G. William Miller (Aug. 14, 1978), \textit{cited in} R. BRANDEL & M. LARGE, \textit{supra} note 29, at 27.
System uses the same numerical scale as the other four supervisory agencies for rating C.R.A. performance by individual depository institutions, with one being the best performance and five being the worst. As applied by the Federal Reserve, however, virtually no bank receives a five and only six percent receive a four or three.\(^{228}\) The examiners' ability to identify C.R.A. violations is impaired by the fact the Federal Reserve System is alone among the four supervisory agencies in failing to develop a computer-assisted monitoring system.\(^{229}\) The Federal Reserve System is also alone in failing to require registers of loan applications.\(^{230}\)

Thousands of bank applications for branches or mergers have been considered,\(^{231}\) including more than twenty-five that were protested on C.R.A. grounds that were deemed "substantive" by the F.R.B.\(^{232}\) The total number of applications denied because of unsatisfactory C.R.A. records is zero. The total number of applications approved subject to a "condition" is one. The Board of Governors does not believe that poor C.R.A. performance should inhibit a bank's ability to expand. In the rare instances in which the Board of Governors does recognize a problem (occasionally even without the prompting of a community group protest),\(^{233}\) the most stringent sanction is

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\(^{228}\) In 1982, no bank had a C.R.A. rating of five, and approximately six percent had ratings of three or four. Discussion, supra note 158, at 10 (statement of Mr. Baebel, Senior Review Examiner, F.R.B. Division of Consumer and Community Affairs). The official report for 1982 supplies additional detail, the usefulness of which is impaired by the fact that the percentages add up to 105%. "About 79 percent of the state member banks received a rating of 2; 12 percent, a rating of 1; 13 percent a rating of 3; and less than 1 percent, a rating of 4. No bank received a 5." Bd. Gov. Fed. Res. Sys., 69th Ann. Rep. 159 (1983). In 1984, the Federal Reserve Board rejected a recommendation of its Consumer Advisory Council to revise its C.R.A. rating system. Announcement: Enforcement of Community Reinvestment Act, 70 Fed. Res. Bull. 108 n.2 (1984).


\(^{231}\) In 1982, for example, the Federal Reserve handled 1,596 bank applications covered by C.R.A. Con. Adv. Coun., The Federal Reserve's Implementation of C.R.A., supra note 63.

\(^{232}\) G. Canner, Credit Allocation, supra note 119, at 3 n.13. This study found 20 protested applications. Canner's study, prepared in 1982, should be updated by the four additional decisions in 1983 and 1984, listed as items 25 to 28 in supra note 217.

\(^{233}\) At least 26 nonprotested applications were reviewed from banks with a C.R.A. rating
recitation of "commitments" that the bank chooses to make (rather than "conditions" that are imposed by the F.R.B.) in the order approving the application. Ten orders have referred to commitments which usually relate to bank efforts to improve marketing and communication with the underserved areas of the community, and to training bank personnel to be aware of C.R.A. responsibilities.

A few banks committed themselves to substantial changes in lending policies. For example, one bank located in an urban area in which most residences were three- and four-family dwellings agreed to discontinue its policy against granting mortgage loans on that type of structure, and agreed to participate in housing rehabilitation projects. When any bank policy might be interpreted as an allocation of credit created by circumstances other than market forces, however, the Board of Governors carefully designates that the policy is not a commitment to the Board.

that was less than satisfactory. All were approved, but with commitments or substantive changes to improve C.R.A. performance. Canner, Second, supra note 219, at 816. However, the details of these cases are not publicly disclosed.


Statement of Governor Teeters, in Discussion, supra note 158, at 1. Summaries of the first 21 cases are in Canner, Second, supra note 219, at 819-23.

For examples of Commitments, see National City Corp. (1981), supra note 217, no. 26; AmeriTrust, supra note 217, no. 6; Michigan Nat'l Corp., supra note 217, no. 5; Ohio Citizens Trust Co., supra note 217, no. 3; Mid-Continent Bancshares, Inc., supra note 217, no. 8; Society Corp., supra note 217, no. 11; Bank of New England, supra note 217, no. 27. The banks committed themselves to increased advertising, attendance at meetings of community groups, contacts with local realtors, and designation of a bank officer to meet with the groups. One bank, upon acquiring a thrift institution, committed itself to maintain at least the same percentage of assets invested in local residential mortgages as the thrift had previously, ad to "develop community programs." Citicorp (1984) (acquisition of Illinois thrift institution), supra note 217, no. 26.

See, e.g., Landmark Bancshares Corp., supra note 217, no. 7 (bank agreed to offer certain types of F.H.A. loans at a one-half percent discount, and to reserve $1 million for real estate loans in 1980).

Society Nat'l Corp., supra note 217, no. 11.

G. Canner, Credit Allocation, supra note 119, at 5. As Governor Teeters has
An examination of the particular facts underlying decisions to approve bank applications provides some insight into the Board of Governors’ attitudes and standards. In a number of instances, the decision reached appears plainly incongruent with the seriousness of the violations and problems recited in the Board of Governors’ orders. Worthy of particular attention are the decisions on applications filed by two banks: AmeriTrust Corporation of Cleveland, and Michigan National Corporation of Bloomfield Fields, Michigan.

In the 1980 AmeriTrust case, data prepared by the bank indicated that mortgage lending volume was eighteen times greater in high-income neighborhoods than in low- and moderate-income neighborhoods. Lower demand for credit in the less-wealthy areas accounted for much of the disparity, but far from all of it. According to the Board of Governors, even after adjusting for differences in credit demand, AmeriTrust was 1.6 times as active in providing mortgage loans in higher-income areas as compared to less-wealthy areas, and twice as active in suburbs as compared to the city. Perhaps most disturbing was the F.R.B.’s determination that AmeriTrust was twice as active in largely white areas as compared to largely black areas having similar income characteristics.

Moreover, the bank engaged in practices masking the extent of discrimination in lending. According to the Board of Governors, AmeriTrust prescreened and discouraged loan applications in branch offices located in low- and moderate-income neighborhoods, in clear violation of federal rules, and failed to record other information necessary to monitor discrimination. The Board asserted that it viewed these violations as “extremely serious.”

AmeriTrust’s attempts to determine the credit needs of lower-income areas in its community were ineffective, according to the
Board of Governors, and the bank's advertising in black-oriented media focused on attracting deposits, not offering credit. Relations with community groups were so abysmal that AmeriTrust refused to respond directly to their allegations, and the F.R.B.'s staff was unable to arrange a meeting format to which both sides would agree.

In summary, the Board of Governors determined that AmeriTrust followed an lending policy having discriminatory effects, violated antidiscrimination regulations, and directed minimal efforts towards determining the credit needs of its entire community. Balanced against these extremely negative findings are certain, though rather limited, favorable aspects. The bank offered federally insured loans to small businesses, and participated in three federally insured housing projects (but had since discontinued making F.H.A. and V.A. loans). In home improvement lending, AmeriTrust was "somewhat more active" in black as compared to white areas (but nevertheless had only nineteen percent of its loans in low- and moderate-income areas); AmeriTrust supported some community groups (but two-thirds were outside of the city); and the bank held some government bonds (but none related to housing).

Considering the relative weight of the negative and the positive aspects of the record, the determination by the Board of Governors is startling: "AmeriTrust has taken few steps aimed specifically to help meet the credit needs of low and moderate income areas, but while its record leaves room for improvement it would, absent other conditions, be consistent with approval of these applications." As if in anticipation of litigation, the F.R.B. noted that it was permitted wide discretion, and that AmeriTrust had made certain "commitments," mainly to improve staff training. The F.R.B. also stated that it had considered the benefits of allowing "expansion of well managed financial institutions."

The Board of Governors did, however, impose a "condition"—to date the F.R.B.'s most draconian publicly disclosed sanction against

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244. Id. at 240-41.
245. Id. at 239.
246. Id. at 240-41.
247. Id. at 241.
248. Id. at 241 n.6. The commitments were to (1) improve staff training, (2) offer either credit counselling or referrals to other organizations, (3) make public its real estate appraisal standards, (4) "study the feasibility of making public its lending policies," and (5) make public the commitments numbered (2), (3), and (4). In the litigation that followed, the F.R.B.'s decision was affirmed per curiam. Manchester-Tower Grove Community Org./ACORN v. Board of Governors, 607 F.2d 494 (D.C. Cir. 1979).

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a member bank based on C.R.A. AmeriTrust was required to maintain, for at least one year, a register of all inquiries and applications for real estate loans made in person.\footnote{Ameritrust (1980), supra note 217, no. 6, at 242.} Even this minimal requirement was considered too harsh by two of the Governors, who argued for approval without this "unwarranted burden."\footnote{Id. (concurring statement of Governors Wallick and Caldwell).} In comparison, the F.D.I.C. and F.H.L.B.B. require loan inquiry registers as a matter of routine, even without a specific finding of "very serious" Equal Credit Opportunity violations.\footnote{12 C.F.R. §§ 338.4 (1986) (F.D.I.C.), 528.6 (1986) (F.H.L.B.B.).}

The community group that had led the challenge to AmeriTrust's application concluded that C.R.A. does not work, and that the Board of Governors was concerned that enforcement would induce banks to leave the Federal Reserve System. Their only solace was that approval of the application had been delayed by at least a year, at great cost to the bank and minimal cost to the group.\footnote{V. Benedek, supra note 37, at 36-38.} Two years later, in 1982, community groups filed a challenge to another AmeriTrust application, charging that the bank had failed to adhere to its commitments and conditions. That application was also approved, with yet another "commitment."\footnote{Ameritrust (1982), supra note 217, no. 20. For a view that AmeriTrust several years later has reformed, see infra note 268.}

A comparable decision was issued in the case of Michigan National Corp., which sought approval for acquisition of four banks.\footnote{Michigan Nat'l Corp., supra note 217, no. 5.} The order of the Board of Governors reported a series of extremely serious negative findings, a few minor countervailing factors, and the decision that the overall record justified approval of the application.

The order noted persistent violations of the basic procedural requirements of both H.M.D.A. and C.R.A., and intoned that the "Board views this noncompliance as a serious matter."\footnote{Id. at 248.} The bank granted only 7 mortgage loans per 100,000 units of housing located in low- and moderate-income areas, as compared to 101 such loans per 100,000 units in the remainder of the metropolitan area. More housing loans were made in white neighborhoods than in racially mixed neighborhoods with similar income levels. The bank failed to

\footnotetext{249. Ameritrust (1980), supra note 217, no. 6, at 242.}
\footnotetext{250. Id. (concurring statement of Governors Wallick and Caldwell).}
\footnotetext{252. V. Benedek, supra note 37, at 36-38.}
\footnotetext{253. Ameritrust (1982), supra note 217, no. 20. For a view that AmeriTrust several years later has reformed, see infra note 268.}
\footnotetext{254. Michigan Nat'l Corp., supra note 217, no. 5.}
\footnotetext{255. Id. at 248. The protesting community group experienced "considerable difficulty" obtaining the basic C.R.A. and H.M.D.A. data that by regulation should be freely available, according to the Board's order, and notices were not posted as required. Id.}
systematically determine its community’s credit needs, failed to market its credit services in low- and moderate-income neighborhoods, and oriented its advertising in those neighborhoods to deposits rather than loans. The only favorable factors were that the bank participated in some S.B.A., F.H.A., and Neighborhood Housing Services programs, and owned some securities issued by a state housing development authority. The Board of Governors approved the application, while extracting only “commitments” by the bank.256

Considering not only these two examples but all of the orders published to date, certain patterns become apparent. The orders mention C.R.A. issues only when a community group protests an application (with one possible exception).257 A heavy burden of proof is imposed on protestants, who are taken seriously only if they provide extensive and sophisticated documentation.258 Requests of protestants for a formal public hearing are consistently denied, with a remark in each case that no statute compels the agency to grant such hearings.259 Violations of C.R.A. and H.M.D.A. procedural require-

256. Id. at 248-49. The Bank agreed to designate bank personnel to meet with the public, to train its staff, to participate in additional (unspecified) special lending programs, and to increase credit marketing efforts in lowand moderate-income areas.

257. Hutsonville Bank Corp., 67 Fed. Res. Bull. 48 (1981). The order did not mention any protestant but did note that “all comments received” had been considered. The applicant, which as the only depository institution in town, had discontinued making residential mortgage loans, and had a growing but very low ratio of loans to deposits. The application was approved.

258. Commentators have identified “a policy on the part of the Federal Reserve Board, not fully shared by the other bank agencies, of expecting community groups to undertake the bulk of analysis and carry the burden of proof.” W. DENIS & J. POTTINGER, supra note 5, at 10-22. This perception is amply supported by many of the Board’s orders on protested applications. The actual conduct of the Board is in contrast with its public statements to Congress, which concede that C.R.A. shifted responsibility for determining whether banks are meeting community credit needs from the public to the regulatory agencies. Statement by Nancy H. Teeters, Member, Board of Governors of the Federal Reserve System, before the Committee on Banking, Housing, and Urban Affairs, United States Senate (Feb. 19, 1980), 66 Fed. Res. Bull. 217 (1980); Statement by Gov. Rice to House Committee, 66 Fed. Res. Bull. 379 (1980).

259. See, e.g., First Nat’l Boston, supra note 217, no. 9, at 162 (“there are no material factual differences that would necessitate a hearing”); National City (1981), supra note 217, no. 15 (stating that the parties had ample opportunity for written submissions and that Federal Reserve staff had attended a meeting organized by Protestant); National City (1982), supra note 217, no. 15, at 428 (stating that no material facts were in dispute); Chemical Bank, supra note 217, no. 13 (no facts in dispute); AmeriTrust, supra note 217, no. 20, at 239; Michigan Nat’l Corp., supra note 217, no. 5, at 249 n.10 (a hearing “would serve no useful purpose”); Society Corp., supra note 217, no. 11, at 352 (hearing would serve no purpose). While denying requests for “hearings,” however, the F.R.B. will occasionally arrange “public meetings,” which are “intended to shorten the processing time” needed by the Board to rule on the application. Statement of Governor Teeters in Discussion, supra note 158, at 2. A total of three such “public meetings” have been held. CONS. ADV. COUN., FEDERAL RESERVE’S IMPLEMENTATION OF C.R.A., supra note 63, at 6.6. Private meetings are encouraged, because they
ments are tolerated if the applicant either discontinues the violations or promises to do so.260

The Board of Governors has conceded, both as a general matter and in specific instances, that levels of credit are disproportionately low in lower-income neighborhoods, and that legitimate economic factors do not provide a full justification.261 Yet when statistical evidence documents such a “disparity,” the Board of Governors has been alert to any possibility, however remote or hypothetical, that a variety of market forces might be responsible. The F.R.B. readily accepts partial and unverified explanations, and states that evidence of actual discriminatory intent is not available.262

When exhaustive allow more realistic opportunities for negotiation and compromise. Whether a public forum should be provided when private meetings fail is a matter of considerable controversy. One view is that community awareness and confidence in the system would be enhanced, and that polarization of the parties has already occurred. The contending position is that public confrontations are unfairly harmful to banks and impede resolution of differences, and that the availability of a public meeting could be used by community groups as a bargaining chip to extract concessions. Id. at 6.6, A.13.

260. See, e.g., Michigan Nat’l Corp., supra note 217, no. 5; Society Corp., supra note 217, no. 11; First Nat’l Boston (1981), supra note 217, no. 19. One commentator has concluded that

the Federal Reserve Board will look with favor on all indications that an institution intends to change a previously poor C.R.A. record, and, where such performance does improve, a poor previous record will not be held against an institution . . . .

An applicant may “negotiate” with the Federal Reserve Board, moreover, if its

CRA record to date is poor.

W. DENNIS & J. POTTINGER, supra note 5, at 10-20.


262. In the Society Corp. Order, supra note 217, no. 11, at 353, the Board conceded the existence of a “significant disparity between the proportion of mortgage loan demand accommodated by [the bank] in suburban areas of Cuyahoga County and the demand accommodated in Cleveland.” The Board, however, was content to speculate that this “disparity may be the result of a variety of other factors, such as the institutional structure of the market.” No further explanation and no indication of Board investigation of the matter was included in the order.

Michigan National Bank granted 124 times as many loans in high-income areas as low- and moderate-income areas. The Board hypothesized that this pattern “may be partially the result of” a lower percentage of owner-occupied units in the lower-income areas. Michigan Nat’l Corp., supra note 217, no. 5, at 249. In the National City case, the “disparity between the amount of funds committed by Applicant to housing-related credit in low- and moderate-income areas versus all other areas may be partially the result of factors that affect demand for such credit.” National City (1981), supra note 217, no. 15, at 56. Ohio Citizens Trust granted comparatively few housing loans in certain areas, but the Board again accepted a partial explanation (based on low average household income and urban renewal in the areas). Ohio Citizens, supra note 217, no. 3. Citibank of New York closed proportionately more branch offices (and opened fewer new ones) in minority and low-income areas than in other areas, and the proportion of its mortgage lending in the disfavored areas declined. The F.R.B., however, chose to rely on the premise that mortgage lending was still possible in an area having no branch office. Citicorp (1984) (acquisition of New York bank), supra note 217,
documentation prepared by community groups demonstrates that a bank’s lending patterns are racially discriminatory in effect, the F.R.B. has stated that no evidence of actual discrimination against individuals or of illegal credit practices was presented.\textsuperscript{263} Even when such evidence is presented, the applications are approved.\textsuperscript{264}

\textsuperscript{263} A recent order suggests that statistical analysis, no matter how extensive or sophisticated, will never be adequate to persuade the Board of Governors that discrimination exists. A community group protesting an application of National City Corporation of Cleveland, Ohio, applied multi-variate regression analysis to evaluate H.M.D.A. data, deed title transfer information, and census data. The study’s results, which were not disputed by the bank, demonstrated that the bank extended less conventional mortgage credit in nonwhite neighborhoods than in white neighborhoods. Moreover, when the bank did lend in integrated and predominantly nonwhite areas, the borrowers were primarily white home-buyers. National City, supra note 217, no. 15, at 428-29. The Board of Governors’ response was that multiple regression analysis does “not conclusively establish the significance of any particular variable,” and that “apparently” the bank “receives relatively few mortgage loan applications from lower-income neighborhoods and neighborhoods with a predominantly minority population.” Id. at 429, 429 n.7.

In another case, the bank’s mortgage credit activity was shown to be nearly six times greater in predominantly white neighborhoods than in predominantly black neighborhoods. Furthermore, lending declined in direct proportion to increases in nonwhite population in a particular neighborhood. The Board of Governors response was that “Protestants have not provided affidavits from individuals who claim to have been discriminated against.” National City (1981), supra note 217, no. 15, at 55. See also Michigan Nat’l Corp., supra note 217, no. 5; Society Nat’l Corp., supra note 217, no. 11; NBD Bancorp, supra note 217, no. 22.

A study prepared for the F.R.B. found that “there are no cases involving credit discrimination against minorities in the entire Federal Reserve System.” CON. ADV. COUN., FEDERAL RESERVE’S IMPLEMENTATION OF C.R.A., supra note 63, at 4.8. To some of the members of the investigating panel, the F.R.B.’s bank examiners appeared “somewhat apathetic about the fair lending exam.” Id. at 4.9.

\textsuperscript{264} Two commentators have concluded that the “Federal Reserve Board’s official attitude is that, generally speaking, there is no point in denying applications because of ‘holes’ in an institution’s C.R.A. record. According to the Board’s general counsel, the purpose of C.R.A. is to encourage improved lending records—not to hamper expansion.” W. Dennis & J. Pottinger, supra note 5, at 10-20. Another study found that bank examiners in certain Federal Reserve Banks “expressed skepticism over whether supervisory action, rather than moral suasion, would be used even if they were able to find substantive violations by state member banks.” CON. ADV. COUN., FEDERAL RESERVE’S IMPLEMENTATION OF C.R.A., supra note 63, at 4.8.
The formal rulings by the Board of Governors are, of course, only one element of the Federal Reserve System's C.R.A. enforcement process, and not sufficient in themselves to justify a reliable generalization. Still, the rulings collectively send a message to banks that are members of the System. Not once has the performance of an applicant bank been found unsatisfactory. That fact, coupled with the public pronouncements of the F.R.B., other aspects of the F.R.B.'s enforcement program, and its overall reputation in civil rights and social issue regulation, must surely detract from the effectiveness of the F.R.B.'s compliance efforts.

Some positive results have been achieved, and there are some indications of improvements in attitudes and policies. Hardly any

265. One means of attaining compliance without producing a record of applications denied would be to informally counsel banks with unsatisfactory C.R.A. performance to withdraw their applications until the banks' performance improve sufficiently—a policy that the F.H.L.B.B. has used with some effectiveness. The Federal Reserve System apparently follows a similar policy occasionally. See Bd. Gov. Res. Sys., 69TH ANN. REP. 159 (1983) (reporting that in 1982 one bank withdrew an application, to provide time for improvements in C.R.A. performance); W. DENNIS & J. POTTINGER, supra note 5, at 10-18. The critical difference between the F.H.L.B.B. and the F.R.B. in this regard, however, is that the F.H.L.B.B. has not established a record of granting formal unconditional approval to banks having extremely negative C.R.A. records.

266. As a Federal Reserve staff member wrote, the orders "were intended to communicate public policy stances with respect to CRA implementation." G. CANNER, CREDIT ALLOCATION, supra note 119, at 3.

267. In 1982, for example, one bank application was withdrawn to allow the bank time to improve its C.R.A. performance, and another was approved following an negotiated settlement between the bank and a protestant. Bd. Gov. Fed. Res. Sys., 69TH ANN. REP. 159 (1983). More than a dozen banks have made commitments to the F.R.B. in response to protest initiated by community groups. Canner, Second, supra note 219.

Although The Consumer Advisory Council of the Federal Reserve Board listed over 50 criticisms and suggestions for improvement of C.R.A. enforcement, it also found favorable aspects. According to the report, the F.R.B. staff's community outreach, its training of consumer compliance examiners, and its use of outside contacts in the examination process are "far greater and more extensive than that of both the Comptroller of the Currency and the Federal Deposit Insurance Corporation." CON. ADV. COUN., FEDERAL RESERVE'S IMPLEMENTATION OF C.R.A., supra note 63, at 3.2. The Federal Reserve Board adopted many of the Council's recommendations, including improved public notice of bank applications, clarification of the functions of Community Affairs Officers in the regional Reserve Banks, increased emphasis on contacts with minority and community groups, and development of additional materials for use by compliance examiners. The F.R.B. decided against prompt action implementing systems for gathering or analyzing racial and other information on loan applicants, or routine use of "testers" for illegal credit discrimination. Announcement: Enforcement of Community Reinvestment Act, 70 Fed. Reg. Bull. 108 (1984).

268. According to the F.R.B.'s Community Affairs Coordinator, C.R.A. implementation has been extremely successful, achieving slow but steady progress in changing attitudes and behavior of the Board of Governors, the Federal Reserve staff, and the regulated banks. Telephone conversation with James W. Lowell, Community Affairs Coordinator, Division of Consumer and Community Affairs, F.R.B., Washington, D.C. (July 3, 1985). Many billions of dollars have been invested in communities that would not have been invested before C.R.A., which caused banks to learn that local investment is good business. The reason that such
VI. PROSPECTS FOR THE FUTURE: THE EFFECTS OF DEREGULATION

A superficial consideration of the current movement toward deregulation of the banking industry might suggest that programs such as the C.R.A. are due for decline or repeal. What is far more

progress is not apparent in the public record, he stated, is that agreements are reached in private meetings of banks and community groups, and banks withdraw applications fairly often to avoid the publicity of denial. The F.R.B. monitors "commitments" carefully, and is prepared to deny an application if necessary. He stated also that AmeriTrust (discussed in supra text accompanying notes 240-53) maintained the required register of loan applications for three years, changed its management and policies, and is now a model of C.R.A. performance. Id.

269. Even the Consumer Advisory Council of the Federal Reserve Board, performing a study on implementation of C.R.A. at the Board's request, was denied information vital to evaluation of the F.R.B.'s staff's operating practices. According to the Council, "[e]xaminers' work papers were not made available . . . ." "records of application protest proceedings excluded confidential trade information, staff recommendations and examination report information," and "a significant portion of staff analyses and recommendations were deleted . . . ." CON. ADV. COUN., FEDERAL RESERVE'S IMPLEMENTATION OF C.R.A., supra note 63, at 2.1. Under such circumstances, it seems not unreasonable to evaluate the F.R.B. on the basis of the information it releases to the public, and to maintain a noncommittal attitude toward indications of reform that is not yet reflected in the public record.

270. See, e.g., McCluskey, supra note 31, at 46 (referring to the "disengagement of the FRB from her sister agencies over the use of CRA ... as a regulatory tool" and the "dichotomy" between the FRB and the other agencies).

271. Depository institutions have been allowed to expand into new lines of business, such as stock brokerage and equity participation in real estate ventures. See, e.g., Statement by J. Charles Partee, Governor, Board of Governors of the Federal Reserve System, before the Subcommittee on Telecommunications, Consumer Protection, and Finance of the Committee on Energy and Commerce, United States House of Representatives (Apr. 2, 1985), 71 Fed. Res. Bull. 409, 411 (1985) [hereinafter cited as Statement of J. Charles Partee, Governor, F.R.B. (1985)]. At the same time, they have been subjected to unaccustomed competition in their traditional functions from, for example, "non-bank banks," companies that either accept deposits or offer loans, but not both, and thus escape the jurisdiction of the federal supervisory agencies. Id. at 410; Statement by Paul A. Volcker, Chairman, Board of Governors of the Federal Reserve System, before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the Committee on Banking, Finance and Urban Affairs, United States House of Representatives (Apr. 17, 1985), reprinted in 71 Fed. Res. Bull. 424 (1985) (referring to "evasion of some of the basic tenets of public policy . . . ." by "non-bank banks" and noting also the potential for evasion by "non-thrift thrifts").

272. The F.R.B.'s Consumer Advisory Council reported in 1983 on comments it had received from many banks and community groups:

Federal responsibility for various social programs was increasingly being questioned, with federal budget deficits and administration policy supporting a shift of these programs to state and local governments. As one Council member aptly stated it, "CRA is trying to accomplish something which was a lot more popular a decade ago than it is now."

CON. ADV. COUN., FEDERAL RESERVE'S IMPLEMENTATION OF C.R.A., supra note 63, at 3.2.
likely, however, is that C.R.A. will be retained and its importance expanded.

Disenchantment with federal regulation of private enterprise, at a general or abstract level, does not extend to specific consumer protection regulations.\(^2\)\(^7\)\(^3\) The deregulation of banking that has occurred in recent years has allowed increased competition among financial institutions and new combinations of financial services.\(^2\)\(^7\)\(^4\)\(^7\)\(^5\) The restrictions that were removed protected, at least in the first instance, the banking industry rather than the public at large.\(^2\)\(^7\)\(^5\) No significant change has been made to consumer protection regulations affecting financial institutions, such as those promulgated under the Equal Credit Opportunity,\(^2\)\(^7\) Fair Credit Billing,\(^2\)\(^7\) Home Mortgage Disclosure,\(^2\)\(^7\)\(^8\) and Consumer Leasing Acts.\(^2\)\(^7\)\(^9\) Public support for this class of regulations, which includes C.R.A., remains strong.\(^2\)\(^8\)\(^0\)

C.R.A. has never been a bureaucratic program producing massive paperwork, detailed regulations, or compulsory changes in specific private decisions. By requiring only that banks actively seek profitable lending opportunities in their own communities, C.R.A. is fully compatible with current political orientations. The most appropriate government response to social problems, many believe, is to promote partnership and cooperation among business and the community—precisely C.R.A.'s approach.\(^2\)\(^8\)\(^1\) Moreover, the practical necessity of

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\(^2\)\(^7\)\(^3\) Garwood, supra note 66. Though expressing his personal views only, Mr. Garwood is Director, Division of Consumer and Community Affairs, Federal Reserve Board, and so in a position to have detailed knowledge of the extent and effects of changes in bank regulation.

\(^2\)\(^7\)\(^4\) Id. at 1298 (referring to such changes as removing restrictions on payment of interest on deposits, on the business that can provide financial services, and on the locations where financial services can be offered); see also Lobell, supra note 94.

\(^2\)\(^7\)\(^5\) Garwood, supra note 66.


\(^2\)\(^8\) A Louis Harris poll found strong public antipathy to regulations that directly control pricing, but "virtually no support for rolling back or dismantling consumer protection regulation." Louis Harris & Assocs., Inc., Consumerism in the Eighties, Study No. 822047 (1982), cited in Garwood, supra note 66, at 1299.

\(^2\)\(^8\)\(^1\) The Federal Reserve's Community Affairs Coordinator emphasizes the importance of sensitivity to political orientations. Telephone conversation with James W. Lowell, Division of Consumer and Community Affairs, F.R.B., Washington, D.C. (July 3, 1985). Promoting "compliance with C.R.A.," he says, is not useful or productive. On the other hand, excellent results have been achieved by promoting "community involvement," and "partnerships" among banks and others in the community. Both Democrats and Republicans are responsive to C.R.A.'s goals, when properly phrased and presented. Id.
relying on private depository institutions to assist in community
development is increased as federal subsidies and programs for that
purpose decline.\textsuperscript{282}

The continuation of federal supervision over depository institutions
also seems assured, though the form and structure of regulatory
agencies may well change, to adapt to modern trends in the financial
services industry. The need for government supervision of institutions
that accept consumers' savings and other deposits has been firmly
established ever since the Great Depression, and periodically rein-
forced by failures of the few depository institutions still unregulated
or uninsured.\textsuperscript{283}

The deregulation that has occurred to date has increased the rate
of mergers, acquisitions, and expansion of financial institutions, and
each of those transactions requires regulatory approval with consid-
eration of C.R.A. issues. Community groups have often seized the
opportunity to negotiate with the institutions for improvements in
community lending practices.\textsuperscript{284} From the point of view of the
financial institution, the danger of denial of the necessary regulatory
approval may be minimal,\textsuperscript{285} but the danger of expensive delay and
embarrassing publicity is great. The financial institutions are likely
to go to substantial lengths to reach agreement with community

\textsuperscript{282} Ansberry, \textit{supra} note 110, at 64, cols. 1-5. The views of Michael Shea, of the
Association of Community Organizations for Reform Now (ACORN), which has been involved
in C.R.A. protests around the country, are representative: "There's been tremendous cutbacks
in federal housing money. We have to look elsewhere for financing." \textit{Id.}

\textsuperscript{283} See, \textit{e.g.}, Statement of J. Charles Partee, Governor, F.R.B. (1985), \textit{supra} note 271,
at 410 ("the normal perception for most industries—that one may simply look to the
marketplace to promote competition and efficiency—must be tempered by a recognition of the
need to maintain confidence in banking institutions . . . "). Collapse of depository institutions
have serious consequences, as the 1985 crisis in several Ohio savings and loan associations
(which were not federally insured) suggest. See, \textit{e.g.}, Statement by Preston Martin, Vice
Chairman, Board of Governors of the Federal Reserve System, before the Subcommittee on
Commerce, Consumer and Monetary Affairs of the Committee on Government Operations,
Ohio do serve to remind us of the potential consequences of the loss of public confidence in
individual depository institutions and of the celerity with which that loss can spread to other
institutions.").

\textsuperscript{284} Garwood, \textit{supra} note 66, at 1304, citing as one example the application of Citicorp
to acquire a South Dakota bank, protested by two New York community groups because of
Citicorp branch closings in New York City. See also Ansberry, \textit{supra} note 110, at 64, cols. 1-
5. "The CRA, however, has assumed even greater significance with the recent rise of interstate
banking and the steady decline in federal funding for low-income housing." \textit{Id.}

\textsuperscript{285} One commentator, involved with C.R.A. since its inception, has concluded that
C.R.A., "with its balancing tests, countervailing interests, and multipronged analysis, rarely
presents an obstacle to bank expansion in the 1980's." Dennis, \textit{Coping With Branch Consol-
n.160.
activists and thereby avoid the filing of a formal protest with the regulatory authorities.286

Changing modes of regulation by the supervisory agencies is probably less of a threat to the goals of C.R.A. than changing technology and economics in the financial services industry. For example, the increasing use of automatic teller machines, often as substitutes for branch offices, may escape C.R.A. review unless the regulations are modified.287 Also, legislation may be needed to extend C.R.A.-type principles to certain nondepository financial services companies. These firms currently are not subject to regulation by the four federal supervisory agencies, and so are not covered by C.R.A., but are increasingly competing with the depository institutions that are subject to C.R.A.288

286. See, e.g., Ansberry, supra note 110, at 64, cols. 1-5. "Rather than risk costly delays, more and more banks, though defending their loan records to low-income borrowers, are negotiating community investment pacts with consumer activist groups." Id. (citing several recent examples). When the stakes are high enough, however, a bank may incur the protest and ultimately prevail before the regulatory agency. See, e.g., Applications of Dimension Fin. Corp. to Charter 31 Nat'l Banks in 25 States (Compt. Curr. May 9, 1984), cited and discussed in Lobell, supra note 94, at 1087, n.71 (application approved despite C.R.A. protest and bank's plan to "focus marketing efforts on upwardly mobile individuals").

287. The regulations currently list as one factor to be included in a C.R.A. evaluation "[t]he bank's record of opening and closing offices and providing services at offices." 12 C.F.R. § 25.7(g) (1986). However, closing an office and opening an automatic teller machine are not events triggering a C.R.A. evaluation. 12 U.S.C. § 2902(3)(a)-(f) (1982). Thus, a depository institution might be able to close its offices in low-income neighborhoods and open automatic tellers in high-income neighborhoods, thereby significantly altering the community impact of its services, without being subjected to C.R.A. review. This situation is one illustration of a more general observation that "new electronic technologies invites evasion of the present branching restrictions," and regulation must adapt to new banking techniques such as automatic tellers to avoid costly and irrational distortions in the banking system. Felsenfeld, Electronic Banking and Its Effects on Interstate Branching Restrictions—An Analytic Approach, 54 Fordham L. Rev. 1019, 1021, 1059-61 (1986).


288. The issue was raised, for example, by Michael Van Buskirk, vice president of BancOne Corp. based in Columbus, Ohio. He stated that subjecting full-service banks to C.R.A. review, while leaving limited-service competitors such as Sears, Roebuck & Co.'s financial centers
CONCLUSION

From some perspectives, the results attributable to the C.R.A. after a full decade of operation are modest and largely unquantifiable. The number of bank requests for approval of proposed mergers, acquisitions, or office changes that have been denied on C.R.A. grounds is negligible. The record of some federal agencies, notably the Federal Reserve Board, suggests only the most grudging enforcement efforts. The total dollar volume of lending to low- and middle-income neighborhoods that is directly motivated by the need to comply with C.R.A. appears large but is difficult to verify,299 despite the numerous anecdotal examples. The Act is so vague and abstract that compliance is difficult to define, much less enforce.

An historical and comparative perspective, however, yields a different conclusion. C.R.A. established a basic principle of bankers’ responsibility, reversing and rebuking the views generally prevailing previously in the banking industry and the supervisory agencies. Financial institutions have unquestionably modified their lending policy to consciously attempt to better serve community credit needs.290 Legal developments of that nature are not rendered unimportant by the fact that issues of implementation are left to be resolved later, or by the fact that the tangible results are difficult to accurately measure.

Using as an analogy a legal development of dramatically greater import, the Supreme Court’s decision in Brown v. Board of Education291 conclusively established for the first time that government-supported segregation was unacceptable. Litigation and controversy has continued since then, and the process has been painfully slow, but the issues in the debate are on an altogether different plane. The issues now are not whether integration is necessary but rather how much is enough and what methods are appropriate. C.R.A., though not remotely as significant as Brown, conclusively

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289. One estimate is that, since the enactment of C.R.A., “more than $3.7 billion has been committed in 117 cities for home mortgage, small business and other loans to predominantly low-income borrowers.” Id. The article did not cite a source for this estimate, however.

290. For examples, see sections III.B. and IV.B., supra, and sources cited therein.

established that depository institutions not only may legitimately lend with a view to improving community conditions, but indeed are obliged to attempt to do so.

The chief force for improvements in depository institutions' efforts to meet community credit needs has been the activism of community groups. C.R.A. has tended to bring the groups off of picket lines on the streets outside banks and savings and loan associations, and into the conference rooms. They now have standing and legitimacy that they did not have before C.R.A. Their power derives largely from the ability to cause delay in the processing of applications for regulatory approval of mergers, acquisitions, and office changes, if their objections are well-documented and cogently presented. Many have been extremely successful and will continue their efforts. The C.R.A. should be improved by establishing a private civil cause of action so that community groups may enforce the law when supervisory agencies decline to do so.

The banking officials and regulators who prior to 1977 resolutely and unapologetically denied that they had any responsibilities to serve the credit needs of local communities are now in the position of explaining how they are doing enough to fulfill those responsibilities. The C.R.A. has performed a valuable function. It deserves to be enforced with far greater vigor than has been demonstrated to date by the federal banking supervisory agencies.