
The Community Reinvestment Act: Expanding Access

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When Congress enacted the Community Reinvestment Act (CRA) in 1977, it revolutionized social equity because it sought to expand access to finances to persons and communities routinely denied a fair opportunity to achieve wealth. The Act easily could have been hailed as fundamental civil rights and business opportunity legislation, as the Act encouraged the fair treatment of potential borrowers regardless of race, ethnicity or geographical location. The CRA also expanded opportunity for the financial industry by establishing lending criteria that opened the door to a significantly greater credit market. However, CRA proponents faced the difficult task of overcoming centuries of financial policies within the banking and lending industry that limited access to credit and thereby to wealth, based often on the race and ethnicity of the borrower or borrower community. As a consequence of these financial policies, reviving depressed communities, a core principle of the CRA, remains a national challenge. Many of the most severely depressed communities are located in inner cities.

In 1968 only thirty percent of America's poor lived in urban communities. Twenty years later, that number had increased by thirteen percent.¹ Comparatively, larger cities house a greater concentration of families living at the poverty level than smaller ones.² Today, almost thirty-one percent of all persons living in the United States live in central cities within metropolitan areas;³ however the number of lower-income persons living in central cities remains constant: near the fortieth percentile.⁴ Areas where poor and lower-income persons live generally suffer significant deterioration and blighted conditions. A contributing factor to deterioration and urban decay is the lack of access to credit and banking services that are

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commonly unavailable to the nation's most needy.⁵ This lack of accessible banking and credit services can result in serious consequences to already underdeveloped communities.⁶ For example, something as simple as a bank's choice of location and how it invests in a particular branch has a tremendous impact on the stream of capital within the area in which it is located.⁷ Without banking credit and services, residents in these communities are much less able to purchase homes, establish businesses, or accumulate wealth.⁸

During the 1970s there was much debate about community needs and banking practices which eventually led to the enactment of the Federal Community Reinvestment Act in 1977.⁹ The public debates centered around the issue of whether banks and other financial institutions that provide services to lower-income neighborhoods should be obligated to make mortgage loans available to the residents.¹⁰ Profit making and financial stability had been top priorities for these banking institutions, and the federal regulatory agencies supported this ideology, regardless of the effect it had on individuals residing in these areas.¹¹ The goal of the new legislation was to invigorate attitudes, norms, and behavior modifications in banking industries and the agencies that regulated them.¹²

Community groups and activists concerned with the spiraling deterioration of low-income neighborhoods began to attribute this decline directly to the depository institutions that served these neighborhoods.¹³ Evidence showed that many banking institutions denied loans to residents on a discriminatory basis, ignoring profit making or financial stability.¹⁴ In fact, although applicants may have met the banks' creditworthiness criteria, loans were not dispersed to applicants residing in disfavored neighborhoods.¹⁵ The effects of these discriminatory practices¹⁶ led to enactment of anti-discrimination legislation such as the Equal Credit Opportunity Act,¹⁷ the Consumer Credit Protection Act,¹⁸ and the Home Mortgage Disclosure Act,¹⁹ followed by the Community Reinvestment Act (hereinafter referred to as the CRA, the Act or statute).²⁰

I. POLICY RATIONALE UNDERLYING THE ENACTMENT OF THE CRA

Congress enacted the CRA in response to discrimination by financial institutions against racially and ethnically disenfranchised people and their communities.²¹ Financial institutions have historically practiced redlining, which is a systematic denial of credit to persons living within certain communities.²² 'Redlining' got its name from a lender's process of outlining in red certain poor neighborhoods on a map, in order to indicate areas considered "too high" a risk for lending.²³ Often, however, red lines were drawn not based on financial risks but on racial

considerations.²⁴ Bank officials refused to lend to borrowers based on impermissible grounds like race without regard to the applicants' credit histories.²⁵

This article discusses three factors associated with redlining that played a significant role in the enactment of the CRA: racial discrimination, geographic discrimination, and community disinvestment. It also discusses the impact of discriminatory lending practices on its victims and examines the CRA and its requirements. It concludes with recommendations for a more effective implementation of existing laws with the goal of expanding lending opportunities.

A. Racial and Geographic Discrimination

Notwithstanding instances of business necessity, redlining fails to consider the merits of individual applicants residing in areas that are considered high risk.²⁶ This practice has a negative disparate impact on urban minority applicants who overwhelmingly reside in these areas.²⁷ Lending institutions in the United States have a history of consistently denying applications for mortgage credit in racially integrated communities.²⁸ In the past, the position that there was a fiduciary duty owed by financial institutions to their depositors and shareholders was widely accepted as legitimate grounds for discriminatory practices.²⁹ Federal officials acting under color of law often supported and promoted racial and geographic redlining.³⁰ Current legislation such as the CRA, acts to counter this stale mentality.³¹

There is no indication that Congress perceived the CRA as a means of directly prohibiting racial discrimination in lending; however, the statute's text provides that regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business.³² The statute's purpose and effect are consistent with prohibiting racial discrimination because failure to meet the credit needs of a community often parallel racial discrimination.³³ Consequently, there is a general consensus that the CRA was intended to remedy the problems of discrimination in lending.³⁴ There is evidence that one of the greatest challenges for meeting that goal is the historical racial and ethnic animus in the policies of the financial industry.³⁵

A second factor associated with redlining manifests itself when banking institutions discriminate against residents of distinct geographic areas.³⁶ Here, the focus is on the location of the collateral, rather than race, when considering the applicant for a mortgage loan.³⁷ Geographic discriminatory policies are rooted in the lender's opinion that collateral in certain communities are likely to lose value, resulting in a loss to the lender.³⁸ As a consequence, lending decisions are made without paying attention to the credentials of the particular applicant or the applicant's specific collateral.³⁹ Therefore, because banks presume that loans to individuals in these

communities are high risks, they either avoid lending there entirely or make loans that are less favorable compared to other areas.⁴⁰

The location of the proposed collateral for a loan is a critical criterion to consider when making loan decisions.⁴¹ However, while geographic considerations may be a viable factor in lending decisions, location as a primary criterion in mortgage credit decisions often results in irrationally grounded discrimination if left unchecked.⁴² Irrationally grounded discrimination stems from individual or geographic biases, which are entirely unrelated to the lending information.⁴³ Rationally based discrimination occurs when institutions base their conclusions and decisions on imperfect information concerning investment opportunities in the redlined area.⁴⁴ Regrettably, the unimpeded use of the location of the collateral in the lending decision will, in particular circumstances, produce results that are not socially acceptable on compassionate, moral, or ethical grounds.⁴⁵ It is distressing to see that banks are less willing to lend to individuals who reside in certain areas because these places are either all-minority or predominantly all-minority communities, while contending that this is a sign that the areas are headed for decline. This cycle of denial fulfills its own prophecy.

While the CRA did not address racial discrimination until 1991, it addressed geographic discrimination at the time of its inception.⁴⁶ One author has observed that geographic discrimination takes several forms, including the outright refusal to consider applications for mortgage loans and the imposition of more stringent credit terms.⁴⁷ Geographic discrimination also occurs when lending policies that may seem facially neutral have the effect of excluding from consideration a substantial number of applications for mortgage loans in a particular area.⁴⁸

B. Disinvestment and Credit Allocation

Another major hurdle facing the success of the CRA is the policy of community disinvestments.⁴⁹ Community disinvestment occurs when depository institutions take in funds, usually in the form of deposits, from one community and reinvest the deposits in other areas.⁵⁰ Although the CRA does not expressly address disinvestments, community group challenges to that and other discriminatory policies of the banking industry contributed to the enactment of the CRA.⁵¹

It is easy to determine that Congress intended to cause financial reinvestment in declining urban communities; hence the name Community Reinvestment Act.⁵² To achieve the purpose of the Act, measures would have to be taken that would decrease urban decline, while increasing financial investment in the affected communities.⁵³ It was contemplated that in addition to Congressional mandates, the private sector would need to play a prominent role in making financial services, including credit, accessible

to the target communities.⁵⁴ The challenge would be to convince the private market to use their expertise and capital to reinvest rather than to disinvest in these communities.⁵⁵

Credit allocation was proposed as a solution to the problem of racial and geographic discrimination and neighborhood disinvestment.⁵⁶ Proposals included a quota or set-aside system of providing credit to targeted neighborhoods and identifiable borrowers.⁵⁷ Some community groups demanded that financial institutions that receive deposits from a particular neighborhood reinvest a portion of those deposits back into that neighborhood.⁵⁸ But this idea was rejected as an extreme imposition on private credit decision-making.⁵⁹ However, it was clear that without some specific steps taken to affirmatively address discriminatory policies, disenfranchised persons and communities would continue to be denied access to wealth.⁶⁰

II. THE IMPACT OF DISCRIMINATORY LENDING PRACTICES

In many instances the policies of the financial institutions that “serve” a community will have a major impact on that community’s viability.⁶¹ When financing is not available in low-income communities, what generally results is both decreased homeownership and property values, as well as disrepair and decline.⁶² The dire perception of a declining neighborhood is virtually impossible to overcome for residents within these communities.⁶³

In the 1950s and 1960s some of the nation’s largest metropolitan areas experienced dramatic decay.⁶⁴ Much of the blame was attributed to mainstream financial institutions.⁶⁵ As banking and credit opportunities continued to be inaccessible, many people in these communities turned to alternative sources, including check-cashers, informal and unsecured loan pools, credit cards, loan sharks and family members.⁶⁶ Often these sources resulted in higher interest rates and more rigorous repayment terms.⁶⁷ It is noteworthy that some of these alternatives have been successful and can hardly be criticized for providing the only source of credit revenues in these communities.⁶⁸ However, underground financing cannot match an open and accessible financial market.

Historically, banks have been located in more affluent neighborhoods, leaving the less affluent communities under-served.⁶⁹ Those banks that are located in the urban communities have made slow and sometimes casual progress toward compliance with the CRA.⁷⁰ Since its enactment, community groups have used the Act to generate billions of dollars in lending to specified affected areas.⁷¹ However, it still has not stimulated the type of improvement in low- and moderate-income communities that the Community Reinvestment Act was designed to produce.⁷² A good deal of the dissatisfaction or failure of production has been blamed on the Act itself.

III. RATING CRA PERFORMANCE

Partially enacted in response to financial institutions evasion in providing banking services to inner city neighborhoods,⁷³ the CRA was innovative in that it was designed to motivate the banking industry to change its misconceptions about lending to residents in historically ignored communities, thus stimulating new credit markets.⁷⁴ The Act creates an ongoing requirement that regulated financial institutions help meet the credit needs of local communities they service.⁷⁵ In addition, institutions were required by the Act to extend credit in a manner consistent with safe and sound banking operations, and were encouraged to extend their vision in conformance with these standards.⁷⁶

Arguably vague and imprecise, no specific conduct was directly prohibited or required by the statute.⁷⁷ As a result, critics often challenge the CRA for lacking specificity.⁷⁸ Although rooted in fact, the criticisms often neglected to recognize the importance of the CRA.⁷⁹ Its overriding purpose was to require depository institutions that enjoyed the benefits of federal charters and federal insurance to be obligated to meet the credit needs of all communities, regardless of ethnicity or geography.⁸⁰

Initially, the statute required nothing more than a good faith best effort on the part of banks to improve lending practices.⁸¹ However, its enforcement regulations imposed three basic substantive requirements on regulated institutions: community delineation, disclosure and compliance.⁸² Defining “community delineation” was left up to the institution.⁸³ Disclosure required banks to post notices in the institution lobbies to inform the public of CRA performance and give those who wished to submit comments the opportunity to do so.⁸⁴ Comments were subject to review by the institutions’ supervisory agencies and given consideration when assessing an institution’s CRA rating.⁸⁵

By 1989, the CRA was amended as part of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) commanding more extensive disclosure requirements.⁸⁶ Disclosure under the amended provisions involved preparation of a public CRA statement and annual review.⁸⁷ The Act further required that the CRA statement include the institution’s community delineation, the actual credit that an institution had promised to extend, and a copy of the institution’s CRA notice.⁸⁸ The institution was also required to keep a record on how it met the needs of the communities within its service area.⁸⁹ Additionally, the 1989 amendments replaced the five-tiered numerical grading system with a new rating system comprised of the following categories: outstanding, satisfactory, needs to improve, and substantial non-compliance.⁹⁰

The Federal Financial Institutions Examination Council (FFIEC), however, implemented yet another revised rating system in 1990.⁹¹ This new rating system purportedly detailed a more comprehensive approach to the issue of CRA compliance

and grading measures.⁹² Five categories were used in the evaluating CRA performance, and in each area the institution could receive one of the four ratings discussed above.⁹³

Despite efforts to create and maintain an impartial grading system, community groups, financial institutions, and regulatory agencies continued to criticize the CRA rating system.⁹⁴ Supervisory agencies proposed a new set of CRA revisions that were approved by regulators in 1995.⁹⁵ Under the modifications, public disclosure requirements remained virtually the same.⁹⁶ The new regulations, however, abandoned the efforts-based regime⁹⁷ and advanced an evaluation procedure based on actual results, using the following categories as testing criteria: lending (lending test), investing (investment test), and serving an institution's assessment area (service test).⁹⁸

Under current CRA regulations, the three above-mentioned tests are utilized to generate a raw rating that is in turn used to compute the institution's composite rating.⁹⁹ Large retail institutions are evaluated under these three criteria.¹⁰⁰ Wholesale or limited purpose institutions are evaluated under a test designed to evaluate their record in making qualified investments in community development lending and in providing community development services.¹⁰¹ Small retail institutions are evaluated under less rigorous testing criteria unless they request evaluation under other statutory testing criteria.¹⁰²

A CRA rating under the lending test evaluates an institution's record in providing and demonstrating equitable lending within its assessment area(s).¹⁰³ The institution's performance in meeting community credit needs is evaluated by measuring the institution's home mortgage lending, small business and farm lending, community development lending,¹⁰⁴ and consumer lending when it constitutes a substantial majority of the bank's business.¹⁰⁵ There are five performance criteria under this test: lending activity,¹⁰⁶ geographic distribution,¹⁰⁷ borrower characteristics,¹⁰⁸ community development lending,¹⁰⁹ and innovative or flexible lending practices.¹¹⁰

The purpose of both the investment test and the lending test is to detail how institutional resources have actually been deployed within the institution's assessment area.¹¹¹ A rating under the investment test is dependant upon the dollar amount of qualified investments made by the institution,¹¹² the innovativeness and complexity of those investments,¹¹³ the responsiveness of qualified investments to credit and community development needs,¹¹⁴ and the degree to which the qualified investments are not routinely provided by private investors.¹¹⁵

The service test "evaluates the bank's record in providing and demonstrating equitable lending by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services."¹¹⁶ There are two areas in which to rate performance: retail banking and community development services. Under the performance criteria for retail banking services, the board evaluates the institution

based on current distribution of branches among the low-, moderate-, and upper-income geographic areas it serves, its record of opening and closing branches within these geographical areas, the availability and effectiveness of alternative systems for delivering banking services to individuals within these geographic areas, and the range of the services offered to low-, moderate- and upper income geographical areas.¹¹⁷ When evaluating an institution's community development services, the board gives consideration to the extent to which the bank provides community development services, is innovative, and responds to community development services.¹¹⁸

Brooke Overby describes these three test criteria as being representative of a more quantitative evaluation procedure used when measuring actual results in meeting the credit needs of an institution's service area.¹¹⁹ Once a bank has been evaluated under each of the tests, a composite CRA rating is compiled.¹²⁰ The evaluator assigns points to each category using one of the four grades mentioned above.¹²¹ He or she gives the greatest weight to the institution's performance under the lending test.¹²²

Although the lending, service, and investment tests were adopted with hopes of providing a more objective system of rating CRA performance, the system has been criticized as arbitrary.¹²³ Critics argue that the overall rating process still evokes discretionary regulation¹²⁴ and a great deal of subjectivity.¹²⁵ They also argue that the discretion vested in agencies to assess an institution's performance merely cautions the institution to engage in and maintain detailed records of its outreach and marketing efforts within its service area in the event that an evaluation were to point toward a poor rating.¹²⁶ The focus then easily moves away from results in favor of appearances.

Among the Act's harshest critics is a most desired ally, the banking industry itself. Part of the paperwork complaint centers on the burden of publishing lending data disclosure reports.¹²⁷ The banking industry has also argued that demanding public disclosure of CRA ratings and lending data is similar to providing community groups with more firepower with which they can force bankers to make unprofitable loans.¹²⁸

These criticisms support limitations rather than expansion into these historically unavailed credit markets. Not all community organizations aggressively protest bank activities; nonetheless, the threat of protest has helped to secure the commitments of some financial institutions.¹²⁹ Activists claim that the protest is the most reliable way to achieve the desired results, so they remain cautious of overly qualitative CRA reviews that may not accurately reflect the institution's results in increasing community lending.¹³⁰ Further, community groups claim that too many banks receive "outstanding" and "satisfactory" ratings despite contrary information provided by watchdog and communities groups.¹³¹

IV. STRENGTHENING THE LINK BETWEEN COMMUNITY DEVELOPMENT AND LENDING

In 1994, the Clinton Administration announced its community development banking initiative,¹³² while Congress enacted the Community Development Banking and Financial Institutions Act (hereinafter CDBFIA).¹³³ The CDBFIA provided Community Development Financial Institutions (hereinafter CDFIs) with fund-matching financial assistance to support the creation of community development corporations (hereinafter CDCs) and to finance community development projects.¹³⁴ This subsequent legislation created an opportunity to produce positive relationships between communities and depository institutions while trying to strengthen the latter's ability to focus on the development needs of its service area.¹³⁵ New rules (such as the CDBFIA) have allowed for indirect third-party intermediary lending and investing through local organizations called CDFIs.¹³⁶ Banks lend money, invest resources and provide financial services to these organizations that in turn re-lend or invest money in the community, enabling the bank to receive CRA "credit" for the funding.¹³⁷ Federal law defines a CDFI as an institution that: (i) has a primary mission of promoting community development; (ii) serves an investment area or targeted population; (iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate; (iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and (v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.¹³⁸ The CDFI industry represents itself as comprised of "private-sector financial intermediaries with community development as their primary mission[,] . . . [making] loans and investments that conventional financial institutions would consider unbankable, [and linking] financing to other development activities."¹³⁹

CDFIs help generate capital to stimulate community economic development.¹⁴⁰ In part, CDFIs stimulate the urban economy by providing financing to local entrepreneurs to operate businesses.¹⁴¹ This and other community-based financing help establish financial independence for the community residents it serves.¹⁴² CDFIs target a largely untapped borrower market of individuals and businesses that have limited access to wealth or the means to access credit for the mainstream credit industry.¹⁴³

A major part of what the Community Development Financial Institutions do is to identify solutions to wealth barriers for low- and moderate-income communities.¹⁴⁴ However, these institutions do not exclusively serve the urban market,¹⁴⁵ they also serve multiple communities in a variety of states.¹⁴⁶ Some CDFIs specifically target sub-groups of the urban community.¹⁴⁷ Others may serve religious organizations.¹⁴⁸ Not all CDFIs are for-profit institutions.¹⁴⁹ A CDFI's financial resources are varied,

often depending on how the institution is structured.¹⁵⁰ CDFIs include Community Development Banks, Community Development Credit Unions, Community Development Loan Funds, Community Development Venture Capital Funds and Micro-Enterprise Loan Funds.¹⁵¹ Nevertheless, it might add strength to the initiative if traditional banks did participate with capital investment and expertise.¹⁵² Also CDFIs represent a progressive means for community revitalization.¹⁵³

The CDBFIA differs from the CRA in that it is designed to address rational discriminatory practices (economic factors affecting the reasons lenders avoid providing credit to low-income areas).¹⁵⁴ Like the CRA, this legislation also has its own problems.¹⁵⁵ First, the CDBFIA limits financial incentives to CDFIs, thereby not addressing the problem of “rational” redlining practiced by “traditional” financial institutions.¹⁵⁶ Second, the CDBFIA requires CDFIs to “[serve] an investment area or targeted population.”¹⁵⁷ Because of this, CDFIs face higher risks than financial institutions not subject to these rules.¹⁵⁸ This causes CDFIs to demand higher returns on their investments to compensate them for increased risk levels.¹⁵⁹ Spreading risk over a diversified portfolio would enhance the value and potentially the profitability to the investor.¹⁶⁰ Broadening the financial incentives to include traditional banks might enhance the competition and, therefore, the benefits to the targeted customer.¹⁶¹

V. COMMUNITY ACTIVISM AND CRA ENFORCEMENT

Various writers have found community activism to be a force in the enactment of the CRA as well as in its continued enforcement. Professor Robert Art says that the motivation behind CRA enforcement has been substantially provided by community-based organizations. He notes that community activism affects the conduct of depository institutions as well as the amount of focus placed on lenders by supervisory agencies.¹⁶² At the time the CRA was enacted, practically all formal rulings by supervisory agencies which concerned CRA issues involved challenges brought by community groups.¹⁶³ Before its enactment, any requests by community groups to meet with an institution’s management were either met with intransigence or were outright refused.¹⁶⁴ The CRA brought demonstrators off the streets and into the conference rooms of lending institutions and supervisory agencies.¹⁶⁵ This move has been criticized for haphazardly bestowing upon community groups an immense source of power. These groups were given both a chance to formally participate in the process of regulatory examinations, and opportunities to influence the policy of lenders and regulators.¹⁶⁶ Nevertheless, in order for a community group to be effective, it must be devoted, possess expertise and show persistence in negotiating.¹⁶⁷

Supervisory agencies tend not to waste their time with complaints or assertions that are not properly supported by statistics or other data.¹⁶⁸ It is possible that community protests of an institution’s CRA performance could spark investigation of

the bank's policies.¹⁶⁹ Public protests have the added impact when a group's allegations of discrimination are broadcast over audio, visual and print media.¹⁷⁰ The fact that public perception and image are important to institutions is leverage that community groups often seize.¹⁷¹ Consequently, as a result of community group involvement, depository institutions have strong incentives to comply with CRA requirements.¹⁷²

On the other hand, one of the most vocal and harsh criticisms of the CRA is the power of the public to protest an application of a financial institution due to the institution's failure to meet CRA requirements.¹⁷³ It is argued that instead of regulatory agencies acting to sufficiently enforce the CRA,¹⁷⁴ protests and negotiations provide for "political regulation."¹⁷⁵ Some believe that community groups should serve as an informational function rather than participating in the enforcement role.¹⁷⁶ However, permitting the public to have a degree of oversight has had the effect of stimulating more CRA activity.¹⁷⁷ The debate over the role of the community in the enforcement of the CRA is perhaps overshadowed only by the on-going debate of the need for the Act altogether.

VI. CHALLENGING CRA POLICY

There is a long-standing debate waged between proponents of two competing interests: the global interest and the local interest. Global interests reject the belief that depository institutions owe a special duty to their local communities.¹⁷⁸ They challenge the position that banking decisions should be based on what may be best for the traditional geographic community.¹⁷⁹ The local interest position is based on the belief that banks are local industries that rely on deposits of the local community as sources for credit funds.¹⁸⁰ Under this position, when the source of institutional investment is from local residents, those residents should be able to demand a commensurate return on that investment from their local institution.¹⁸¹ Historically, there has not been quid pro quo between the urban community and its banks.¹⁸² In fact, while financial institutions have thrived on money taken from the community, they have failed to reinvest money into that community, causing the community to collapse.¹⁸³ The local interest theory posits that these financial institutions should reverse that trend.¹⁸⁴ This argument is bolstered by what local interest proponents see as the underlying policy of the CRA: banks must address the financial and credit needs of the communities they serve.¹⁸⁵

The fair market position is based on an increasingly changing banking industry. Based in part on the technological revolution in banking, some theorists believe that the CRA is obsolete and fails to fit modern banking systems.¹⁸⁶ Indeed the emerging globalization in the banking industry supports the position that financial institutions no longer have a purely local community constituency.¹⁸⁷ The fair market position would

also suggest that the geographical and racial redlining discrimination that so pervaded the industry in the past would all but disappear in an era of color-blind electronic transactions.¹⁸⁸ Notwithstanding the short-term limitation on that theory, the longer term envisions a fairer market as not only banking services, but real estate and home purchases, and business credit services are conducted electronically.¹⁸⁹ This trend toward a more global constituency and colorblind marketplace supports increased competition and more effective regulations.¹⁹⁰ However, this may be more illusory, as bank ownerships tend toward globalization rather than more diversity.¹⁹¹

Nevertheless, it is more appropriate to modify the CRA to incorporate these new markets than to abandon the Act altogether. This would provide a transitional model while maintaining a system to address existing realities, because notwithstanding the evolutionary trend, today's marketplace is decidedly non-electronic.¹⁹² This is particularly true for many of the communities the CRA is designed to assist.¹⁹³

VII RECENT STEPS TO MODERNIZING THE CRA

The Financial Services Modernization Act, also known as the Gramm-Leach-Bliley Act (hereinafter the GLBA), was enacted in 1999, allowing for the restructuring of the financial services industry.¹⁹⁴ As a result of its enactment, several major revolutionary changes have been implemented. First, key provisions of the Glass-Steagall Act were repealed, thereby allowing for banks to partner with investment banks.¹⁹⁵ In allowing such affiliations, banks may elect either to organize as a financial holding company or form financial subsidiaries.¹⁹⁶ The Act also modified the Bank Holding Act of 1956 to permit proprietors of commercial institutions to engage in various types of lending activities.¹⁹⁷ Finally, under the GLBA subsidiaries can engage in a wider range of activities not permitted by banks themselves.¹⁹⁸

For more than half a century, banking institutions have remained a separate entity from insurance companies and securities firms, as required by law.¹⁹⁹ Because the GLBA is fairly new legislation, Americans have yet to see how this change will impact CRA commands and compliance, or whether the Act will actually allow banking institutions to evade CRA compliance once they have achieved their expansion goals. It has been commented that once a financial holding company has attained a satisfactory or better than satisfactory CRA rating, allowing the institution to expand across industry lines, CRA compliance no longer will exist on a bank's list of concerns.²⁰⁰ Moreover, community groups following the proposed bill and its subsequent enactment have become apprehensive about the "Sunshine Provision" of the GLBA.²⁰¹ This provision requires banking institutions, and any community group with which they are partnered, to enter into and disclose written CRA agreements when grants of \$10,000 or more, or loans of \$50,000 or more are involved and the

agreement is made pursuant to or in connection with the institution's CRA obligations.²⁰² Accordingly, not only must financial institutions file disclosure statements, but community groups who partner with these institutions must also file the statements.²⁰³ This disclosure requirement has brought with it fear that the cost of trying to maintain expense reports detailing how community groups use funds they receive will dissipate group funds and render the groups powerless.²⁰⁴

There is further concern that as a result of new business relationships permitted by the GLBA, financial institutions will no longer be operating as traditional institutions, as they can offer banking services through brokerage firms or insurance companies.²⁰⁵ In an attempt to address this and other concerns, the Community Reinvestment Modernization Act of 2001 was proposed,²⁰⁶ about which a hearing took place in the House on March 6, 2001. One purpose of the proposed legislation was to ensure that community reinvestment kept pace as banks, securities firms, and other financial institutions were allowed to affiliate as a result of the GLBA.²⁰⁷ Some of its objectives included extending community reinvestment obligations to all non-bank financial affiliates; modifying rating requirements such that evaluations are separately rated as per state, metropolitan, and community geographies; establishing general requirements for insurers for submitting and compiling information for the institutions' annual reports; and establishing regulatory and structural reforms pertaining to anti-redlining requirements for financial holding companies.²⁰⁸ The Community Reinvestment Modernization Act did not pass, but community groups continue to remind Congress of the importance of CRA. Many of CRA's supporters believe that this GLBA actually weakened CRA.²⁰⁹

VIII. TECHNOLOGY AND THE CRA: REDEFINING THE DEBATE

As a result of new developments in technology, the banking industry has gradually and continuously modernized utilization, operation and accessibility of its financial services.²¹⁰ Within the past twenty years or so, new and improved advancements in technology have made it possible for banks to move toward a national and international rather than local arena.²¹¹ In our country it is estimated that twenty percent of the nation's financial institutions offer financial services via the Internet.²¹² As cyber-banking becomes more popular, however, supporters of the CRA are increasingly concerned about whether this system of banking will become a more efficient avenue for discriminatory lending practices. Moreover supporters also believe that the lack of access to online banking services to minorities and low- and moderate-income customers is a serious problem.²¹³ This electronic gap between those with access to the Internet and those without is often characterized as the "digital divide."²¹⁴ Although it is a cost effective, convenient and impressive advancement,

Internet banking services are not accessible to those who cannot afford computers or Internet service.²¹⁵

Financial institutions that offer their services via the Internet are not currently regulated by the CRA. Moreover, while they do not have to comply with any of the standards set forth by the Act, most accept deposits beyond the scope of their deposit base.²¹⁶ There are two inquiries that are substantially relevant here: whether these financial institutions should be required to comply with CRA demands²¹⁷ and whether Internet banking is an effective circumvention of the regulation provided by the CRA.²¹⁸

The development of Internet banking has vast implications.²¹⁹ Use of Internet banking has allowed financial institutions to go directly to customers²²⁰ and also benefit from the opportunity to expand their presence beyond their local geographical boundaries.²²¹ While Internet banking continues to expand,²²² bank costs are reduced.²²³ At the same time, developments in on-line banking present a host of problems that call for a reevaluation of the CRA.²²⁴ Some of these difficulties include defining the institution's "assessment area" when Internet banking is involved,²²⁵ dealing with the concept of community disinvestment as it relates to on-line banking,²²⁶ and the potential for the market of on-line banking to be exclusionary and thereby antithetical to the spirit of the CRA.²²⁷ The "community" of a cyberbank is said to be nowhere and everywhere at the same time.²²⁸ Another issue probes the problems related to banks finding creative ways to circumvent regulatory requirements through vehicles such as franchising, Edge Act Corporations,²²⁹ bank holding companies, consumer or non-banks,²³⁰ automatic teller machines, and in recent years, Internet banking.²³¹ The policy of the CRA is premised upon banks reinvesting consumer deposits back into the local communities in which they serve.²³² Because cyberbanks do not physically appear within a community's assessment area it will be difficult to resolve what geography actually constitutes a cyberbank's assessment area within the meaning of the CRA.²³³

Another problem is that of disparate impact.²³⁴ Although it is certainly clear that these new developments in technology regarding banking are a revolutionary break-through, at the same time the banking industry has an opportunity to use this system of banking to their advantage to the exclusion of the interest of the urban community. What could be a more attractive customer base, since those persons who can afford a computer and Internet service are essentially those who are the well-to-do?²³⁵ Why wouldn't a bank want to provide financial services such as loans, credit cards, and other financial services to this group of consumers?

It is more than likely too early to determine whether cyberbanking will be invariably used as a vehicle for circumventing CRA requirements. However, it has been suggested that "the mere existence of a purely Internet bank is a form of red-lining based on income instead of race."²³⁶ Since the CRA was designed to remedy

this type of activity, online banking activities should be subjected to CRA regulation. Regulators have yet to address online banking as it relates to CRA compliance. Thus, an important regulatory issue is how Internet banks will comply with CRA regulations.²³⁷

IX. CRA AND RACE TWENTY-FIVE YEARS LATER

Recurrently, studies show that the availability of mortgage, business and consumer loans is significantly lower within minority and low-income urban communities as compared to whites and suburban communities.²³⁸ Reports maintained by the Federal Financial Institution Examination Council (FFIEC) confirm such studies. The FFIEC's Home Mortgage Disclosure Act data concludes that 1,349,446 blacks, 1,092,097 Hispanics and 8,794,140 whites applied for either home purchase, home refinancing or home improvement loans in year 2000. Of these applications, forty-five percent of black applicants, thirty-one percent of Hispanic applicants and twenty-two percent of white applicants were denied. FFIEC reports also show that those applicants whose income is less than fifty percent of the median family household income were also denied loans at higher rates than those whose income was at or above the median family household income.²³⁹ Although Congress has attempted to limit this disparity through the enactment of fair lending legislation,²⁴⁰ depressed communities continue to suffer from decreased credit availability.²⁴¹

Studies have also demonstrated that credit availability is considerably lower within minority neighborhoods than it is within white neighborhoods with similarly situated socio-economic backgrounds,²⁴² despite the fact that lending in low- and moderate-income communities has proven profitable.²⁴³ In 1992, the Federal Reserve Bank of Boston conducted a study revealing that race played a significant factor in the mortgage lending process in Boston. The study also found that banks denied mortgage loans to black or Hispanic applicants almost sixty percent more often than to whites with comparable socioeconomic characteristics.²⁴⁴ In addition, "studies conducted by the Federal National Mortgage Association (Fannie Mae) and the Office of the Comptroller of Currency (OCC) confirmed this conclusion."²⁴⁵

Yet another study found "that commercial banks extend significantly smaller loan amounts to black-owned startup firms than to white-owned startup firms whose owners possess otherwise equal equity investments and educational backgrounds."²⁴⁶ This study concluded "that commercial banks provided white startup small business borrowers with \$1.83 in debt capital for each dollar of equity while providing the black business borrower with \$1.16."²⁴⁷

The Home Mortgage Disclosure Act (HMDA) data must include the race, gender, and income of mortgage loan applicants.²⁴⁸ As some experts note, "HMDA data [is] routinely used to compare a lender's denial rates for minority and white loan

applicants, as a measure of their loan performance with regard to minorities.”²⁴⁹ However, these experts also note that “HMDA data alone cannot prove or disprove the existence of lending discrimination because they do not provide enough information to control for all relevant differences between white and minority borrowers.”²⁵⁰ In addition, these experts state that “even though HMDA data now includes borrowers’ race and income, they do not include other critical information such as the wealth and debt levels of loan applicants, their credit histories, the characteristics of properties serving as collateral, the terms of loans for which applications were submitted, or the underwriting criteria used to determine eligibility.”²⁵¹ This can be crucial information, especially as it relates to discrimination in mortgage lending.²⁵²

The CRA is regularly challenged as ineffective legislation because it has failed to generate reinvestment in low- and moderate-income communities and because CDBFIA regulations have been unsuccessful in attempts to remedy the situation.²⁵³ Although community groups have challenged the CRA and its enforcement, criticism concerning the Act’s feasibility and effectiveness has been strongest by members of the banking industry.²⁵⁴ Banks argue that they bear too heavy a burden in relation to other financial institutions that share some of the same functions, yet, are not regulated by the CRA.²⁵⁵ Critics complain that the law only regulates certain financial institutions, placing them at a disadvantage in the marketplace with their competitors,²⁵⁶ and that conforming to regulations requires extensive documentation that is both expensive and time-consuming.²⁵⁷ Another complaint is that loans to low- and moderate-income neighborhoods are neither safe nor profitable.²⁵⁸ However, empirical data suggests that CRA loans are just as safe and profitable as conventional loans.²⁵⁹ Furthermore, depository institutions making loans to low- and moderate-income communities that are regulated under the CRA are granted special protections, including deposit insurance and emergency funding.²⁶⁰

CRA supporters defend the Act on grounds that despite its vague provisions and admitted flaws, the CRA is moving financial institutions toward providing equal lending opportunities. Accessibility to financial services has significant consequences on the lives of individuals as well as small businesses.²⁶¹ The ability to obtain credit also has a moral dimension.²⁶² Access to credit means that individuals are able to attain goals. Access to credit affords an opportunity to gain equity, and equity provides a framework for advancing equal opportunities for wealth.²⁶³

Although there has been much debate about the effectiveness of the Community Reinvestment Act, the law has been underrated. Requests for the repeal of the CRA and the CDBFI do not appreciate the slow success of the Act. The act ambitiously seeks to modify dramatically social mores and fears against racial and economic inclusion. It would be imprudent for Congress to enact legislation that would abolish or undercut these laws.²⁶⁴ To do so would be premature, since these regulations have not been given adequate time to become effective.²⁶⁵ Unfortunately,

while the efficacy of the CRA continues to be challenged, inner city communities are left to deteriorate. The question is whether it is reasonable to expect that the CRA can adequately address a major problem facing these communities and their residents: poor credit.

A. Poor Credit and Sound Banking Practices

Financial institutions usually lend money based on banking practices established to limit risks while maximizing returns.²⁶⁶ This goal is difficult to reach if loans are made to debtors who cannot or do not repay their loans on time or who default entirely. Consequently, lenders lend to those debtors they identify as creditworthy. To assess creditworthiness, lenders look at various factors including income, debt ratios, and payment histories.²⁶⁷ A major problem facing the urban debtor is his or her inability often to meet the lender's minimum creditworthiness standards.²⁶⁸ The reason for this failure itself is likely rooted in racial and ethnic discrimination, as various studies show. First, minorities generally earn less income than whites.²⁶⁹ More specifically, minorities similarly situated to whites in education, training, and job titles earn less than their white counterparts, which supports the conclusion that the difference is race-based.²⁷⁰ This difference in income is compounded by the fact that minorities are charged and therefore pay more for the same product than whites.²⁷¹ As a foreseeable consequence of higher demand on fewer dollars, the ratio between income and debt decreases as does creditworthiness. Limited cash flow often results in late payment of existing debt and even default, further reducing the likelihood of future credit even if the problems that caused the default have been overcome. Lenders look for payment histories of the debtor over a period of years. The effect of a poor credit history limits dramatically the wealth opportunity for the troubled debtor.

Wealth has long been associated with property ownership in America, especially ownership of real property.²⁷² A primary vehicle of attaining wealth has been homeownership.²⁷³ A number of factors play significant roles in producing wealth through homeownership. First, because real property commonly increases in value over time, equity builds to the advantage of the homeowner. Second, once the homeowner has retired the mortgage debt, the money he or she originally spent each month for house payment is now unencumbered income that the homeowner may dispose of in ways to enhance wealth, including through additional investments. It follows that those who do have the opportunity to borrow money can begin to acquire wealth through homeownership because they are creditworthy. As a consequence, this borrower has the very real opportunity to become wealthier. On the other hand, those people who do not have that opportunity because they lack creditworthiness never

realize a gain in equity, and because they continue to pay rent as tenants and never increase “disposable” or net income. In other words, they become poorer.

The Community Reinvestment Act as currently written cannot meet its goals of increasing credit to the urban community because it does not specifically address the problems that exist with providing credit to the high-risk debtor. There are two bases to support legislation that targets this population of debtors without placing significantly additional burden on the private lending market: to curtail the lasting effects of slavery, and to adhere to the Civil Rights Act of 1968.

First, the government has a legal obligation to eliminate the vestiges of slavery and the racial and ethnic discrimination that survived Reconstruction.²⁷⁴ The laws of various states prohibited the lending of money to slaves,²⁷⁵ and slaves were not permitted to own property.²⁷⁶ While the Thirteenth²⁷⁷ and Fourteenth²⁷⁸ Amendments to the United States Constitution purportedly eliminated these laws, they were revived through black codes,²⁷⁹ “Jim Crow” laws²⁸⁰ and state-sanctioned practices.²⁸¹ Although many believe that this part of history is long behind us, it is clear that its effects linger.²⁸² In other words, the state has failed to meet its legal obligation to root out and destroy the remnants of slavery.²⁸³ To meet its burden, the state must specifically address a major effect of slavery and its resultant discrimination: the legally sanctioned restrictions on the opportunity to achieve wealth by denying access to credit.²⁸⁴ This denial has had its greatest impact on growing wealth through homeownership.

Second, since 1986, courts have recognized that the Civil Rights Act prohibits racial discrimination by private and state action.²⁸⁵ Moreover, this act has been interpreted as encompassing “every racially motivated refusal to sell or rent and cannot be confined to officially sanctioned segregation in housing.”²⁸⁶ The right to enjoy all pleasures of citizenship might be infringed by state or local law as well as by custom or prejudice. All such infringement is prohibited.²⁸⁷ The language of the Act includes banking policies and activities that discriminate against persons seeking mortgage lending.²⁸⁸ Yet, still today cases are filed where plaintiffs claim that they were subjects of racial discrimination by a defendant bank in the way the bank handled their mortgage loan applications, or in setting the terms and conditions of the loans. In one case, after a finding by a jury that the bank had engaged in practices that discriminated against the plaintiffs on the basis of their race or color, the defendant bank moved for a judgment as a matter of law.²⁸⁹ The court rejected the motion because the evidence showed that the black plaintiffs’ loans were approved at rates significantly lower than white borrowers’ loans. Expert testimony was that the disparity was racially motivated.

As a result first of the overt exclusion of minorities from credit, and more recently more clandestine acts of exclusion, many minorities have looked away from traditional credit markets. For many disenfranchised communities, alternative

financing services remain a principal source of funds.²⁹⁰ These alternative institutions are often unregulated, and their business practices differ dramatically from the asset-building and wealth-creation services accessed by the majority of Americans.²⁹¹ Reliance on these institutions, especially regarding long-term asset building potential, significantly affects the wealth of lower-income households.²⁹² These institutions consistently provide rates or terms that substantially deviate from industry-wide practice. This type of practice is often called predatory or sub-prime lending. Under federal law, it is an unfair or deceptive practice for a mortgage lender to procure a loan with rates or terms grossly deviant from industry-wide standards.²⁹³ A three-prong test is used to determine whether the practice is unfair or deceptive. A practice is unfair or deceptive if it: (1) causes substantial injury to consumers; (2) violates established public policy; or (3) is immoral, unethical, oppressive, or unscrupulous.²⁹⁴ Practically, however, these markets are often the only ones available to the minority or low-income household.

B. Sub-Prime Markets

Sub-prime loans are loans made to customers “who have a higher credit risk than borrowers in the prime market.”²⁹⁵ “Sub-prime loans are more costly . . . to originate, sell, and service than traditional “A credit” loans.²⁹⁶ There is no standard set of credit risk assessment criteria in the prime market. The sub-prime market typically takes into consideration: 1) a potential borrower’s credit history; 2) the household debt-to-income ratio if the loan is approved; and 3) the combined loan-to-value ratio for home equity loan and other mortgage debt on the property.²⁹⁷ While sub-prime lending is a critical source of credit for millions of families, minority households are disproportionately steered to higher cost sub-prime lending.²⁹⁸ Among lower-income families, twenty-five percent had no access to local banks. One-third of black households and about thirty percent of Hispanic households had no banks in their communities.²⁹⁹ This situation is particularly foreboding for blacks, sixty percent of whom have zero or negative net financial assets.³⁰⁰ In these communities, high-cost sub-prime loans accounted for fifty-one percent of home loans in 1998, compared with nine percent in white areas. Homeowners in high-income black communities are six times more likely to have a sub-prime loan as homeowners in high-income white neighborhoods.³⁰¹ Sub-prime loans are not necessarily predatory, however, and are generally recognized as providing a credit market to those with less than stellar credit.³⁰²

C. Predatory Lending

On the other hand, predatory lending has been publicly denounced as abusive and illegal.³⁰³ Predatory lending is customarily defined as those lending practices that target borrowers on the basis of their race, ethnicity, age, gender or other personal characteristics unrelated to creditworthiness, along with unreasonable loan terms and fraud.³⁰⁴ The key is not to eliminate the legitimate credit-of-last-resort market but to manage it better and to regulate it.

D. Race Neutral Affirmative Action through the CDBFI

The CDBFI is a vehicle through which high-risk lending institutions can be established. These institutions use a set of lending criteria different from those commonly used by market lenders. Significant activity should be geared toward establishing credit as a major step in creating wealth.

For many Americans, the first step toward achieving improved financial status is homeownership. Consequently, a significant focus must be on access to mortgage lending. The CDBFI lender can provide, among other things, longer terms, minimally higher interest rates, graduated payment plans, and adjustable interest rates fixed at the time of the loan for certain defined periods. These lenders would be permitted, for example, to review payment/credit histories over more recent periods, say one or two years. In addition, such loans could be guaranteed by the federal government. These programs would be race-neutral because while they would be designed to eliminate the remaining vestiges of slavery in the lending marketplace, any debtor could opt for the non-conventional mortgage. As with traditional financial institutions, performing loans would be subject to sale to the secondary market.³⁰⁵

Second, the CRA could be written to include financial incentives to private lenders to increase or institute high-risk lending criteria to encourage lending to the target markets. The establishment, for example, of high-risk lending tax credits would inure to the benefit of private lenders that “took on” less creditworthy borrowers. Loans under such a program would be governed by the same lending and underwriting criteria used by the high-risk mortgage lending institutions discussed previously. Such a program would also address banks’ concerns about their loss of competitiveness with non-regulated financing institutions.

X. CONCLUSION WITH RECOMMENDATIONS

The CRA has spearheaded changes in the way banks invest money in certain communities and lend money to black and Hispanic applicants. These minority applicants have traditionally been excluded from access to financing because of their

race and ethnicity and because of historical patterns of discrimination that today may appear to be race-neutral, like income. The CRA acknowledges the occurrence of historical patterns of discrimination as well as overt discrimination, and it was implemented in principal part to eliminate the effects of discrimination in lending and investing. However, the gap is so wide and has existed for so long, that a complete turnaround has not occurred. That will take a long time, but it will take an even longer time if the CRA is not pursued aggressively and more quickly. The challenge to proponents for change is to devise programs that can be implemented quickly in anticipation of more profoundly visible results.

First, banks should have incentives to lend to historically redlined groups. Banks and other financial institutions are customarily for-profit, and as such, are expected to be motivated by the economic bottom line. If the goals of the CRA are to be met, it would be easier if affected financial institutions were willing partners rather than reluctant participants. Incentives should be designed with this in mind. Shareholders would be loath to challenge, for example, making higher-risk loans that help the bank maximize its own profits. Maximization could be in the form of traditional incentives, including tax credits and abatements for institutions that provide a certain percentage of their lending to historically redlined geographical areas or to historically underserved racial, ethnic, gender and economic groups. Banks could enjoy such benefits as long as they provided the loans and investment capital to the targeted recipient.

Second, strong advocacy by affected persons has proven helpful in spurring compliance with the CRA. These watchdog groups, when adequately funded, can play a major role in bridging the gap in funding access. Among other things, they can establish community banking resource centers that provide personal computers with Internet access so that individuals without access otherwise can pursue Internet banking opportunities. This provides access to a broader financial community and arguably to a less hostile credit market.

However, the Internet and other technological innovations may be a double-edged sword for minority borrowers.³⁰⁶ On the one hand, with race- and ethnicity-blind applications, the borrower appears to be on a playing field level to their white counterparts.³⁰⁷ However, this apparent neutrality is easily countered by the availability of geographic and demographic information published on the Internet or that is otherwise easily available.³⁰⁸

Third, banks should be required to report wealth and debt levels, credit history, characteristics of property serving as collateral, terms of loan and underwriting criteria used to determine eligibility for all loans denied. This information should be reported via the Home Mortgage Disclosure Act, thereby providing a means to monitor a bank's use of impermissible lending criteria as well as discouraging the bank's use of such criteria.

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Fourth, the CDBFI should implement comprehensive procedures designed to eliminate barriers to credit and enhance wealth to disenfranchised groups including the following:

- Charging a higher rate of interest to poor credit risks and placing the difference between the higher rate and market rate into a fund to pay off non-performing loans from the target population participating in this program.
- Requiring prerequisite action to default, including debt management counseling services through non-profit or governmental agencies. This pre-default requirement could also be required as a condition to closing the loan.
- Having the federal government establish a lending program that includes selling money to participating financial institutions at a lower cost. This would “buy down” the borrower’s cost of money so that program participants could pay market or near-market interest rates.
- Giving program borrowers the opportunity to refinance their loans at lower pre-determined rates at pre-determined time periods of acceptable performance. For example, say a participating debtor at a high risk for default borrows at fourteen percent. At the time the loan is made, the lender agrees that if debtor timely pays the notes over, say thirty-six months, the loan will be refinanced at eleven percent (or market rate times 1.5, whichever is lower) and after an additional thirty-six month period to eight percent (or then market rate whichever is lower). In this way, lenders and the state can begin to seriously address eliminating a lingering vestige of slavery: the denial of access to wealth.

Notes

1. Peter Dreier, *America’s Urban Crisis: Symptoms, Causes, Solutions*, 71 N.C. L. REV. 1351, 1364 (1993) (defining poor as those living below the official government poverty line (\$13,924 for a family of four in 1989)).
2. *Id.* at 1364.
3. U.S. CENSUS BUREAU, POPULATION ESTIMATES OF METROPOLITAN AREAS, METROPOLITAN AREAS INSIDE CENTRAL CITIES, METROPOLITAN AREAS OUTSIDE CENTRAL CITIES, AND NONMETROPOLITAN AREAS BY STATE FOR JULY 1, 1999 AND APRIL 1, 1990 POPULATION ESTIMATES BASE (July 29, 2000), available at <http://eire.census.gov/popest/archives/metro/ma99-06.txt>.
4. Joseph Dalaker & Bernadette D. Proctor, U.S. Census Bureau, *Poverty in the United States: Current Population Reports: Consumer Income* (July 29, 2000), available at <http://www.census.gov/prod/2000pubs/p60-210.pdf>.

5. See Willy E. Rice, *Race, Gender, "Redlining," and the discriminatory Access to Loans, Credit, and Insurance: An Historical and Empirical Analysis of Consumers Who Sued Lenders and Insurers in Federal and State Courts, 1950-1995*, 33 SAN DIEGO L. REV. 583 (1996); *Senate Banking Panel Says Bush Bill Would Hurt Distressed Urban Communities*, 59 BANKING REP. (BNA) 377, 391 (1992) ("It is clear that one of the contributing factors to the violence in South Central Los Angeles is that financial institutions appear to have turned their banks (sic) on this community.").
6. Robert C. Art, *Social Responsibility in Bank Credit Decisions: The Community Reinvestment Act One Decade Later*, 18 PAC. L.J. 1071, 1075 (1987).
7. *Id.*
8. *Id.*
9. 12 U.S.C. §§ 2901-2909 (2001) (§2909 repealed 1994).
10. *See* Art, *supra* note 6, at 1072.
11. *Id.* *But see* Mark David Wallace, *Life in the Boardroom after FIRREA: A Revisionist Approach to Corporate in Insured Depository Institutions*, 46 U. MIAMI L. REV. 1187 (1992) (challenging the popular theory that profit-making actually gave rise to corporate stability that in turn enhanced institutional growth and success).
12. Art, *supra* note 6, at 1073.
13. *Id.*
14. Michael S. Little, *A Citizen's Guide to Attacking Mortgage Discrimination: The Lack of Judicial Relief*, 15 B.C. THIRD WORLD L.J. 323 (1995) (discussing several studies that show pervasive and systematic discriminatory lending practices).
15. Brooke Overby, *Symposium: Shaping American Communities: Segregation, Housing & the Urban Poor: The Community Reinvestment Act Reconsidered*, 143 U. PA. L. REV. 1431, 1450 (1995).
16. Robert D. Bullard et al., *The Costs and Consequences of Suburban Sprawl: The Case of Metro Atlanta*, 17 GA. ST. U. L. REV. 935 (2001) (stating that studies over the past three decades have clearly documented the relationship between redlining and disinvestment decisions and neighborhood decline, and that redlining accelerates the flight of banks, food stores, restaurants, and shopping centers from inner-city neighborhoods).
17. 15 U.S.C. §§ 1691 (1993).
18. 15 U.S.C. §§ 1601-1693 (1993).
19. 12 U.S.C. §§ 2801-2811 (1993) (§ 2811 repealed 1988).
20. Overby, *supra* note 15 at 1446; 12 U.S.C. §§ 2901-2909.
21. *See* Rice, *supra* note 5, at 584.
22. *Id.* at 584-85.
23. Gary A. Hernandez et al., *Insurance Weblining and Unfair Discrimination in Cyberspace*, 54 SMU L REV. 1954 at n.2 (2001).
24. *See* Art, *supra* note 6, at 1078.
25. David H. Harris, Jr., *Using the Law to Break Discriminatory Barriers to Fair Lending for Homeownership*, 22 N. C. CENT. L. J. 101, 106 (1996) ("Despite the enactment of the Fair Housing Act, the Community Reinvestment Act, the Equal Credit Opportunity Act, and the Home Mortgage Disclosure Act, redlining continues, according to some bank officials who have admitted privately that they refuse to loan money to persons living in or near property located in certain zip codes.").
26. *See* Art, *supra* note 6, at 1080.

27. Christopher P. McCormack, *Business Necessity in Title VIII: Importing an Employment Discrimination Doctrine into the Fair Housing Act*, 54 *FORDHAM L. REV.* 563, 564 (1986).
28. Art, *supra* note 6, at 1077. *But see, e.g.*, Suja A. Thomas, *Efforts to Integrate Housing: The Legality of Mortgage-Incentive Programs*, 66 *N.Y.U. L. REV.* 940, 978 (1991) (proposing mortgage incentive programs that would place participants in integrated communities at low interest rates, as this would benefit people of all races and arguably replace the race-based denials by offering incentives to lenders to encourage integration by making substantial loans in integrated communities).
29. Art, *supra* note 6, at 1077.
30. *See id.* at 1078 n.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.”).
31. *Id.* at 1078.
32. 12 U.S.C. § 2901(b) (2001).
33. *Id.*
34. Art, *supra* note 6, at 1076.
35. *Id.* at 1079.
36. *Id.*
37. *Id.* at 1079-80.
38. *Id.* at 1080.
39. David Evan Cohen, *The Community Reinvestment Act—Asset or Liability?*, 75 *MARQ. L. REV.* 599, 619 (1992) (“Nationally, African American loan applicants are rejected twice as often as white applicants.”).
40. David K. Hales, *Reallocating Credit: An Economic Analysis of the New CRA Regulation*, 15 *ANN. REV. BANKING L.* 571, 573-4 (1996) (discussing incentives to help encourage lenders to lend in those areas otherwise excluded because the potential borrowers are perceived as higher risk).
41. Stephen Trzcinski, *The Economics of Redlining: A Classical Liberal Analysis*, 44 *SYRACUSE L. REV.* 1197, 1224-7 (1993) (challenging the liberal and conservative analyses of the Federal Reserve Bank of Boston study showing a disparity in lending between white and minority borrowers.)
42. *Id.*
43. Overby, *supra* note 15, at 1451.
44. *Id.*
45. Gary Swidler, *Making the Community Reinvestment Act Work*, 69 *N.Y.U. L. REV.* 387, 391 (1994).
46. 12 U.S.C. §§ 2901-2907 (1993); *Nat’l State Bank, Elizabeth, N.J. v. Long*, 469 *F.Supp.* 1068, 1069-70 (D. N.J., 1979) (concerning a suit by national banks against the New Jersey Commissioners of Banking, claiming that CRA and HMDA legislation preempted state law. The New Jersey law at issue was the anti-redlining law. The court acknowledged that neither the CRA nor HMDA expressly prohibited redlining. The court also recognized that Congress had specifically declared that national banks were subject to state laws aimed at discrimination in Credit transactions) (citing 15 U.S.C. §1691d (e) – (g)).
47. Art, *supra* note 6, at 1081.
48. Cassandra Jones Havard, *Synergy and Friction—The CRA, BHCS, SBA and Community Lending*, 86 *KY. L.J.* 617, 622 (1997-98) (discussing the effect of geographical redlining on already declining communities).

49. Swidler, *supra* note 45, at 391.
50. *Id.*
51. *Id.*
52. *Id.*
53. Wendy Cassity, *The Case For A Credit Union Reinvestment Act*, 100 Colum. L. Rev. 331, 349 (2000).
54. Peter P. Swire, *The Persistent Problem of Lending Discrimination: A Law and Economics Analysis*, 73 TEX. L. REV. 787, 805 (1995).
55. *A new Comptroller will head the OCC; Ludwig announces resignation*, 17 NO. 3 BANKING POL'Y REP. 2, 2 (1998) (quoting Federal Reserve Board Chairman Alan Greenspan's call for banks to extend more credit to inner city communities. Greenspan said "many urban, capital poor neighborhoods across America present new and unique challenges for financial services institutions. The need to better understand these markets and find ways to support small business development, homeownership, commercial revitalization, and job creation remains a critical task. The question is how will our changing financial institutions help to address the as yet unmet opportunities?"). See also Mollee Bennett, *Resolving the Community Reinvestment Act Dilemma: Eliminating "Whites Only" Mortgage Lending while Reducing Regulatory Red Tape*, 24 TEX. TECH L. REV. 1145, 1147 (1993).
56. Art, *supra* note 6, at 1083.
57. *Id.* (stating that the most extreme case of credit allocation would require government-mandated extensions of credit to particular types of loans, particular neighborhoods or particular borrowers).
58. See Julie J. Daverio, *The Community Reinvestment Act: Once Again in the Spotlight, But Will Banks, Community Groups, and the Federal Banking Regulators Ever See Eye-to-Eye?*, 15 HAMLIN J. PUB. L. & POL'Y 255, 269 (1994) (recognizing the role of community groups in policy and strategy development to ensure bank reinvestment.)
59. See Art, *supra* note 6, at 1083.
60. *Id.* at 1072.
61. *Id.* at 1075.
62. Bullard et al., *supra* note 16, at 938.
63. *Id.*
64. See Senator Nellie R. Santiago et al., *Turning David and Goliath Into The Odd Couple: How The New Community Reinvestment Act Promotes Community Development Financial Institutions*, 6 J.L. & POL'Y 571, 578 (1998); Gregory D. Squires, *Community Reinvestment: A Social Movement*, in FROM REDLINING TO INVESTMENT: COMMUNITY RESPONSE TO URBAN DISINVESTMENT 1, 2 (Gregory D. Squires ed., 1992).
65. Griffith L. Garwood & Dolores S. Smith, *The Community Reinvestment Act: Evolution and Current Issues*, 79 FED. RES. BULL. 251, 251 (1993).
66. *Id.*; see also E.L. Baldinucci, *The Community Reinvestment Act: New Standards Provide New Hope*, 23 FORDHAM URB. L.J. 831, 831 (1996).
67. Garwood and Smith, *supra* note 65, at 251.
68. *Id.*

69. Craig E. Marcus, *Beyond The Boundaries of the CRA and the Fair Lending Laws: Developing A Market-Based Framework For Generating Low- and Moderate-Income Lending*, 96 COLUM. L. REV. 710 (1996).
70. *Id.* at 719.
71. *Id.* at 712.
72. Jonathan R. Macey and Geoffrey P. Miller, *The Community Reinvestment Act: An Economic Analysis*, 79 VA. L. REV. 291, 296 (1993); *see also* Isaac v. Norwest Mortgage, 153 F. Supp. 2d 900, 902-3 (N.D. Tex., 2001) (concerning violations of the Fair Housing Act based on racial discrimination in bank lending practices and allegations of geographical redlining.)
73. Baldinucci, *supra* note 66, 831-2.
74. *Id.* at 836-7.
75. *See* 12 U.S.C. § 2901(a)(3).
76. *Id.* at § 2901(b).
77. Baldinucci, *supra* note 66, at 834-5.
78. *Id.* (stating that commentaries on the Act routinely note the lack of its specificity).
79. *Id.*
80. *Id.*
81. *See* Overby, *supra* note 15, at 1469.
82. 12 C.F.R. § 228.3 (1993)(repealed in 1997); Overby, *supra* note 15, at 1459.
83. *Id.*
84. 12 C.F.R. § 228.6; Overby, *supra* note 15, at 1460.
85. *Id.* at 1460-61.
86. Baldinucci, *supra* note 66, at 839.
87. 12 C.F.R. § 228.4(a).
88. 12 C.F.R. §§ 228.4(b), 228.5.
89. 12 C.F.R. § 228.4(c).
90. 12 U.S.C. § 2906(b)(2) (2002).
91. Federal Financial Institutions Examination Council, 55 FED. REG. 18,163 (May 1,1990).
92. Overby, *supra* note 15, at 1462.
93. *Id.*; 55 FED. REG. 18,163 (requiring assessment of the following categories (1) Ascertainment of Community Credit Needs, (2) Marketing and Types of Credit Offered and Extended, (3) Geographic Distribution and Record of Opening and Closing of Offices, (4) Discrimination and Other Illegal Practices, and (5) Community Development).
94. Macey and Miller, *supra* note 72, at 289-301.
95. Overby, *supra* note 15, at 1469
96. *Id.*
97. *Id.*
98. 12 C.F.R. §§ 228.21(a)(1), 228.22-228.24 (2002).
99. Overby, *supra* note 15, at 1472.
100. *Id.* at 1469.
101. 12 C.F.R. §§ 228.21(a)(2), §228.25.
102. Overby, *supra* note 15, at 1476.
103. 12 C.F.R. § 228.22(a)(1).

- 104.*Id.*
105.*Id.*
106.12 C.F.R. § 228.22(b)(1).
107.*Id.* at § 228.22(b)(2).
108.*Id.* at § 228.22(b)(3).
109.*Id.* at § 228.22(b)(4).
110.*Id.* at § 228.22(b)(5).
111.Overby, *supra* note 15, at 1471.
112.12 C.F.R. § 228.23(e)(1).
113.*Id.* at § 228.23(e)(2).
114. *Id.* at § 228.23(e)(3).
115. *Id.* at § 228.23(e)(4).
116.*Id.* at § 228.24(a).
117.*Id.* at §§ 228.24(d)(1)-(4).
118.*Id.* at §§ 228.24(e)(1)-(2).
119.Overby, *supra* note 15, at 1469.
120. *Id.* (citing 12 C.F.R. § 228(a) and 12 C.F.R. pt. 228, app. A).
121.*Id.* at 1473.
122.*Id.*
123.*Id.* at 1479.
124. *Id.*
125.Overby, *supra* note 15, at 1480.
126.*Id.*
127.Santiago et al., *supra* note 64, at 586; Patrick A. Broderick & David E. Teitelbaum, *Recent Developments Under the CRA: 1991-1992*, 48 BUS. LAW. 1063, 1065 (1993).
128.Santiago et al., *supra* note 64, at 586-87.
129.*Id.* at 588.
130.*Id.* at 589.
131.*Id.*
132.Duane A. Martin, *The President and the Cities: Clinton's Urban Aid Agenda*, 26 URB. LAW. 99, 117 (1994).
133.Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, §§ 101-158, 108 Stat. 2161.
134.*Id.* at §§ 108(b)(1), 108(e)(1) (specifying authorized uses of financial assistance and conditions of receipt of fund-matching aid).
135.Santiago et al., *supra* note 64, at 597.
136.*Id.* at 591.
137.*Id.* at 592.
138.12 U.S.C. § 4702(5)(A) (1997).
139.Santiago et al., *supra* note 64, at 596.
140.*Id.* at 597.
141.*Id.*
142.*Id.*; Robert W. Shields, *Community Development Financial Institutions Act of 1994: Good Ideas in Need of Some Attention*, 17 ANN. REV. BANKING L. 637, 641 (1998) (stating that CDFIs have

become major forces in developing the country's poorest communities, and finding that the reason for their success is the unique characteristics of CDFIs).

143. Santiago et al., *supra* note 64, at 597.

144. *Id.* at 599.

145. *Id.*

146. *Id.* at 599-600.

147. *See id.* at 600 (stating that some CDFIs serve minorities or women).

148. *Id.*

149. *Id.* at 601.

150. *Id.*

151. *Id.* at 602-09.

152. *Id.* at 609 (representing the author's opinion regarding the effect of amended regulations and their beneficial use for CDFIs)

153. *Id.* at 650. *But see* Martin, *supra* note 132, at 117 (stating that CDFIs' exclusion of existing banks and trusts would over the long run create largely urban or "ghetto banks" rather than getting traditional banks involved in the program).

154. David E. Runck, *An Analysis of the Community Development Banking and Financial Institutions Act and the Problem of "Rational Redlining" Facing Low-Income Communities*, 15 ANN. REV. BANKING L. 517, 532 (1996).

155. *Id.*

156. *Id.*

157. *Id.* at 531 (citing 12 U.S.C. § 4702(5)(A)(ii) (1994)).

158. *Id.* at 533.

159. *Id.*

160. *Id.* at 532 (citing Jeffrey S. Glaser, *The Capital Asset Pricing Model: Risk Valuation, Judicial Interpretation, and Market Bias*, 50 BUS. LAW. 687, 689 (1995)).

161. *Id.* at 532.

162. Art, *supra* note 6 at 1095.

163. *Id.* (noting that agencies take tougher positions on CRA issues when a community group has filed a protest. Thus, a lending practice that may be unchallenged in most circumstances becomes the subject of official criticism when a protest is involved.)

164. *Id.* at 1097.

165. *Id.*

166. *Id.* at 1097-98.

167. *Id.* at 1098.

168. *Id.*, at 1098.

169. *Id.* at 1101-02.

170. *Id.* at 1102.

171. *See e.g.* Art, *supra* note 6, at 1102 n.128 (portraying an example of the effects that fear of negative publicity has on banking institutions).

172. *See generally Id.* at 1095-1104.

173. Andrew Miller, *The New York Proposal to Revise The Community Reinvestment Act: A Quantitative Step Towards Objectivity and Effectiveness*, 43 CATH. U. L. REV. 951, 967 (1994). *But see* Marion A. Cowell Jr., and Monty D. Haggler, *The Community Reinvestment Act in the Decade*

- of Bank Consolidation*, 27 WAKE FOREST L. REV. 83 (1992) (stating that between 1977 and 1984, the Federal Reserve formally reviewed 35 protested applications and denied none on CRA grounds. *See also* Steven J. Eisen and Keith C. Dennen, *The CRA: The Regulators Give it a new Emphasis*, 107 BANKING L. J. 334 (1990) (stating that in 1989 the Federal Reserve Board denied its first bank acquisition application solely on the basis of a poor CRA record); Edward Herlihy et al., *Financial Institutions-Mergers and Acquisitions 1996: Another Successful Round of Consolidation and Capital Management*, 973 PRACTISING LAW INSTITUTE 251, Order No. B4-7179, at 474 (1997) (following application denial on the basis of CRA records since 1993, and reporting that since 1977 more than 5,000 applications subject to CRA evaluation are processed each year, but that fewer than 30 have been denied on CRA grounds).
174. Miller, *supra* note 173, at 967.
175. Santiago et al., *supra* note 64, at 585 (1998).
176. Overby, *supra* note 15 at 1515-16; Keith N. Hylton and Vincent D. Rougeau, *Lending Discrimination: Economic Theory, Econometric Evidence, and the Community Reinvestment Act*, 85 GEO.L.J. 237, 243 n.41 (1996).
177. Paul H. Schieber, *Community Reinvestment Act Update*, 110 BANKING L.J. 62, 63 (1993).
178. Overby, *supra* note 15, at 1483.
179. *See id.* at 1484.
180. Macey and Miller, *supra* note 72, at 304.
181. *Id.*
182. *See e.g.* Marcus, *supra* note 69, at 716-20 (discussing some problems in urban areas which led to the CRA legislation).
183. *See e.g.* Art, *supra* note 6, at 1082 (stating that in some cases not even one percent of local deposits were reinvested in the same neighborhood).
184. Overby, *supra* note 15, at 1453-54 (discussing the problems resulting from disinvestment).
185. *Id.* at 1482.
186. *Id.* at 1483.
187. Lawrence J. White, *Financial Modernization: What's in it for Communities?*, 17 N.Y.L. SCH. J. HUM. RTS. 115,121 (2001).
188. *Id.*
189. *Id.* at 122.
190. *Id.*
191. *Id.*
192. Deborah Goldberg, *Financial Modernization: The Effect of the Repeal of the Glass-Steagall Act on Consumers and Communities*, 17 N.Y.L. SCH. J. HUM. RTS. 67, 75 (2000).
193. *Id.* at 76.
194. Sarah A. Miller, *Financial Modernization: The Gramm-Leach-Bliley Act- Summary (American Bankers Association)*, 1 A.L.I.-A.B.A. 53, 58 (Feb. 2000).
195. White, *supra* note 187, at 121-22 (discussing the changes brought about by the Gramm-Leach-Bliley Act, and finding that this will actually be beneficial to communities because the result will be increased competition and an increase in the availability of services). *But see* Noelle T. Heintz & Robert M. Travisano, *What is Past is Prologue: Why Congress Should Reject Current Financial Reform Bills and Breathe New Life into Glass-Steagall*, 13 ST. JOHN'S J. LEGAL COMMENT. 373, 376-78 (Winter 1998) (noting that Glass-Steagall was passed during the fiscal depression of the

1930s in an effort to restore public confidence in the banking industry. The Depression was blamed primarily on investor use of commercial bank loans for high-risk transactions. The act prevented commercial banks' involvement in securities. It prohibited banks from buying stocks for their own accounts, underwriting, and dealing in securities unless they were "bank eligible securities." In addition, the act imposed other limits on banks' authority regarding certain other debt instruments. These limitations, the authors opine, kept financial service institutions from engaging in transactions that put the public's savings at too high a risk. Finally, the authors warn that destroying the barrier between banking and commerce, as provided under the GLBA, would create a banking crisis.)

196. Miller, *supra* note 194, at 63.

197. *Id.*

198. *Id.* at 58.

199. Don Allen Resnikoff, *The Consumer Advocates v. The Banks: Public Debate of Regulation Issues Survive Passage of the Financial Services Modernization Act*, 12 LOY. CONSUMER L. REV. 284, 284 (2000). The author questions the soundness of the act in that it permits conglomerate firms to pursue banking, insurance, and securities that could lead to financial behemoths that would become the public's burden. Resnikoff opines that these companies would be so crucial to the national economy that the government inevitably would be forced to subsidize them or bail them out at the taxpayers' expense.

200. California Reinvestment Committee, *Federal Financial Modernization Legislation*, available at <http://www.calreinvest.org/campaigns/financial.html>; Goldberg, *supra* note 192, at 68 (discussing how little an effect the provision in the GLBA, which requires Bank Holding Companies to achieve a satisfactory or better CRA rating before electing for FHC status, will actually have). *But see* White, *supra* note 187, at 123-25 (commenting on the well-intentioned but misguided CRA effort, and why it will not work in the twenty-first century).

201. Goldberg, *supra* note 192, at 69-70 (describing the details of the "Sunshine" provision of the GLBA).

202. Consumer and Community Affairs Regulation G FRRS 6-2660.

203. *Id.*; *see also* Tiffany Guynes, *Financial Modernization and the Community Reinvestment Act*, available at <http://www.stls.frb.org/publications/br/2000/a/pages/financial.html>.

204. Center for Community Change, *Community Reinvestment and Fair Lending*, available at <http://www.communitychange.org/cra.htm>.

205. *Id.*

206. H.R. 865, 107th Cong. § 107 (2001).

207. *Id.*

208. *Id.*

209. Center for Community Change, *Community Reinvestment and Fair Lending*, available at <http://www.communitychange.org/cra.htm>.

210. Thomas Beetham, *The Community Reinvestment Act and Internet Banks: Redefining The Community*, 39 B.C. L. REV. 911, 912 (1998).

211. *Id.*

212. Cheryl R. Lee, *Cyberbanking: A New Frontier For Discrimination?*, 26 RUTGERS COMPUTER & TECH. L.J. 277, 279 (2000).

213. *Id.* at 280.

214. *Id.*

215. *Id.*
216. Beetham, *supra* note 210, at 912.
217. *Id.* at 925 (stating that in recent years, banks have found creative ways to circumvent regulatory requirements through such vehicles as franchising, Edge Act corporations, bank holding companies, consumer and nonbank institutions and automatic teller machines).
218. *Id.*
219. *See* Beetham, *supra* note 210, at 923 (discussing the many technical changes taking place in the banking industry).
220. Drew Clark, *Microsoft Shows It's Catching On and Catching Up*, 161 AM. BANKER 20 (1996).
221. *See e.g.* Edward Baig, *Your Friendly Banker, The Web*, BUS. WK., May 12, 1997, at 150-51.
222. *See generally id.* at 151.
223. Beetham, *supra* note 210, at 923-24.
224. *Id.* at 924.
225. 12 C.F.R. § 25.41 (1998).
226. Overby, *supra* note 15, at 1493.
227. *Id.* at 1486 n.269 (explaining how banks are becoming less "banklike" and more like other purveyors of financial services in response to a changing financial environment, and how technology and advances in financial markets have contributed to the homogenization of the U.S. financial markets).
228. Beetham, *supra* note 210, at 923-24.
229. 12 U.S.C. § 611.
230. Nonbanks are institutions chartered as banks that voluntarily restrict their operations so that they either do not accept demand deposits, or do not make commercial loans. *See generally* Luis G. Fortuno, *Non-Bank Banks: Present Status and Prospects for the Future*, 20 Rev. Jur. U.I.P.R. 305 (1986); Davis Turner, *Nonbank Banks: Congressional Options*, 39 Vand. L. Rev. 1735 (1986); 4A Fed. Proc. L. Ed. § 8:798 (2002).
231. *Id.* at 925.
232. *See* 12 U.S.C. § 2901(a)(3).
233. Beetham, *supra* note 210, at 924.
234. Lee, *supra* note 212, at 288.
235. *Id.* at 287.
236. Beetham, *supra* note 210, at 930 (citing Doug Anderson, *PC Banking: A Brief Overview*, CREDIT WORLD, Mar.- Apr. 1997, at 32).
237. Brian Collins, *OTS May Get Full Time Director Soon*, NAT'L MORTGAGE NEWS, Oct. 6, 1997, at 2. *See also* Lee, *supra* note 212, at 285-86 (discussing the failure of the CRA and other anti-discrimination acts to provide safeguards against discrimination by the emerging cyber markets).
238. Runck, *supra* note 154, at 517. *See also* Rice, *supra* note 5, at 584.
239. Richard D. Marsico, *Patterns of Lending to Low Income and Minority Persons and Neighborhoods: The 1999 New York Metropolitan Area Mortgage Lending Scorecard*, 17 N.Y.L. SCH. J. HUM. RTS. 199 (2000).
240. *Id.*
241. *Id.*
242. Dreier, *supra* note 1, at 1362-75.
243. *See, e.g.*, *CRA Lending Can Bring a Profit*, NAT'L MORTGAGE NEWS, Apr. 27, 1992, at 8; Donald

- Mullane, A CRA Success Story, *BANK MGMT.*, Sept. 1991, at 37.
244. Runck, *supra* note 154, at 520 (citing Alicia H. Munnell et al., *Mortgage Lending in Boston: Interpreting HMDA Data* 42-44 (Federal Reserve Bank of Boston Working Paper No. 92-7, 1992); *See also* Leonard Bierman et al., *The Community Reinvestment Act: A Preliminary Analysis*, 45 *HASTINGS L.J.* 383, 392 (1994) (suggesting that loans made by banks with high CRA ratings are no riskier than those made by banks with lower CRA ratings).
245. Runck, *supra* note 154, at 520 (citing Stephen D. Burwell and Christine A. McCarthy, *Developments in Banking Law 1994: Community Banking*, 14 *ANN. REV. BANKING L.* 116, 135-36 (1995)).
246. Runck, *supra* note 154, at 520, (citing Timothy Bates, *Banking On Black Enterprise* 8 (1993)).
247. *Id.*
248. MORTGAGE LENDING DISCRIMINATION: A REVIEW OF EXISTING EVIDENCE 9 (Margery Austin Turner and Felicity Skidmore, eds., 1999), *available at* http://www.urban.org/housing/mortgage_lending.html.
249. *Id.*
250. *Id.*
251. *Id.*
252. *Id.*
253. Marcus, *supra* note 69, at 727.
254. Miller, *supra* note 173, at 964 n.88.
255. *See*, 12 U.S.C. §§ 2901-07 (1994).
256. Miller, *supra* note 173, at 959-60.
257. *Id.* at 964 n.88.
258. *See generally* Macey and Miller, *supra* note 72.
259. *See generally* Kathryn Tholin, *Sound Loans for Communities: An Analysis of the Performance of Community Reinvestment Loans*, The Woodstock Inst. (1993); *see also* Vincent M. Di Lorenzo, *Equal Economic Opportunity: Corporate Social Responsibility in the New Millenium*, 71 *U. COLO. L. REV.* 51 (2000); *but see* Nancy R. Wilsker, *The Community Reinvestment Act of 1977: the Saga Continues . . .*, 46 *BUS. LAW.* 1083 (1991).
260. Miller, *supra* note 173, at 961.
261. Overby, *supra* note 15, at 1498.
262. *Id.* at 1499.
263. *See Id.* at 1505.
264. *Id.*
265. E.L. Baldinucci, *supra* note 66, at 852.
266. *See* Beverly Santilli, *Credit Scoring: Where Does Your Company Fit In?*, *available at* <http://entrepreneurs.about.com/library/weekly/n021101.htm> (describing credit scoring).
267. *Id.*
268. David Scott Black, "Rational" Inner City Disinvestment: A Critique of Lenders' Negative Economic Rights and a Foucaultian Analysis of Creditworthiness Evaluation, 2 *GEO.J. ON FIGHTING POVERTY* 308 (Spring 1995) (questioning whether the creditworthiness criteria are really fair and neutral).
269. *Id.*; *See also* Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical and Legal Interpretation of Redlining Under the Fair Housing Act*, 32 *J. MARSHALL L. REV.* 617 (1999); *See also* Rice, *supra* note 5, at 583.

270. See R. Richard Banks, “Nondiscriminatory” Perpetuation of Racial Subordination, 76 B.U. L. REV. 669, 678 (1996) (reviewing Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*, (1995)); See also Beverly I. Moran, *Exploring the Mysteries: Can We Ever Know Anything About Race and Tax?*, 76 N.C. L. REV. 1629 (1998).
271. See, e.g., Ian Ayres, *Further Evidence of Discrimination in New Car Negotiations and Estimates of its Cause*, 94 MICH. L. REV. 109 (1995); See also Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817 (1991); See also Regina Austin, “A Nation of Thieves”: Securing Black People’s Right to Shop and to Sell in White America, 1994 UTAH L. REV. 147 (1994).
272. See Charles A. Reich, *Property Law and the Economic Order: A Betrayal of Middle Americans and the Poor*, 71 CHI.–KENT L. REV. 817 (1996) (discussing rising corporate wealth and its source of power, which is directly tied to ownership); See also Phyliss Craig–Taylor, *To Be Free: Liberty, Citizenship, Property, and Race*, 14 HARV. BLACKLETTER L.J. 45, 48-49 (1998) (showing that in some American States, real property ownership was a prerequisite to suffrage and seeking public office, supporting an older English theory that only those who owned the country should rule it).
273. Craig–Taylor, *supra* note 271, at 45 (tracing the importance of property ownership from early American notions of productive property to its modern manifestation of home ownership, which is described as the essence of the “American Dream;” see also Lester C. Thurow, *Building Wealth: The New Rules for Individuals, Companies, and Nations in a Knowledge-Based Economy*, 197 (1999) (“Market wealth is important because it directly raises standards of living (home ownership) . . . and generates economic power.”).
274. See *Jones v. Mayer Co.*, 392 U.S. 409, 88 S. Ct. 2186, 20 L. Ed. 2d 1189 (1968) (stating that the Enabling Clause of the Thirteenth Amendment clothed Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States).
275. See William M. Wiecek, *The Origins of the Law of Slavery in British North America*, 17 CARDOZA L. REV. 1711 (1996); see also Anthony R. Chase, *Race, Culture, and Contract Law: From the Cottonfield to the Courtroom*, 28 CONN. L. REV. 1 (1995).
276. See e.g. *State v. Harrison*, 11 La. Ann. 722 (1856).
277. See U.S. CONST. amend. XIII, §§ 1-2.
278. See U.S. CONST. amend. XIV, § 1.
279. See *U.S. v. Booker*, 655 F.2d 562, 565 (4th Cir. 1981); *Knight v. Alabama*, 787 F. Supp. 1030, 1046 (N.D. Ala., 1991) (“[T]he prize of freedom was effectively denied . . . by the enactment of the Black Codes whose intent was the continued subordination of the newly freed slave.”); See also Paul Finkelman, “*Let Justice Be Done, Though the Heavens May Fall*”: *The Law of Freedom*, 70 CHI.–KENT L. REV. 325 (1994).
280. See C. Vann Woodward, *THE STRANGE CAREER OF JIM CROW* 11ff. (3d rev’d ed., Oxford U. Press, 1974) (opining that segregation is based on the ideological roots of slavery, whereby Anglo-Saxons were deemed superior to the African, and suggesting that the Jim Crow system was a system of laws in America that served as the states’ endorsement of “slavery.”)
281. See e.g. *NAACP v. Lansing Bd. of Ed.*, 429 F. Supp. 583 (D. C. Mich. 1976); see generally Woodward, *supra* note 280.
282. See Marco Masoni, *The Green Badge of Slavery*, 2 GEO. J. ON FIGHTING POVERTY 97 (1995); see generally H. Hyman & W. Wiecek, *Equal Justice Under Law* (1982); *Hurd v. Hodge*, 334 U.S. 24 (1948) (challenging the rights of black citizens to purchase or lease homes in a racially restricted

- residential subdivisions); Isaac and ACORN v. Norwest Mortgage, 153 F. Supp. 2d. 900 (N.D. Tx. 2001) (challenging racial segregation in bank policies under the Fair Housing Act).
283. Petal Nevella Modeste, *Race Hate Speech: The Pervasive Badge of Slavery that Mocks the Thirteenth Amendment*, 44 How. L. J. 311, 338 (2001) (“[T]he legislative history of the Thirteenth Amendment shows that its purpose was to eliminate all vestiges of slavery.”).
284. *See generally id.*
285. *See* Local 28 of the Sheet Metal Workers’ Int’l Ass’n v. E.E.O.C., 478 U.S. 421, 106 S. Ct. 3019 (1986) (reviewing 42 U.S.C.A. §§ 1981, 1982).
286. *Id.*
287. *See Id.*
288. *See also* Fair Housing Amendment Act of 1988, 42 U.S.C. §§ 3605; 3617; 24 C.F.R. §§ 100.120-100.130 (1988).
289. Edwards v. Flagstar Bank, 109 F. Supp. 2d 691 (E.D. Mich. 2000).
290. *See* Jim Carr, “Fannie Mae Foundation’s Jim Carr Talks About Wealth Creation,” e-perspectives Online, Banking & Community Perspectives, Federal Reserve Bank of Dallas, at http://www.dallasfed.org/htm/pubs/e-perspec/2001/5_2.html (2001) (“In lower-income and minority communities the language of finance is increasingly pawnshops, check-cashing outlets, payday lenders and rent-to-own stores.”).
291. *Id.* (referencing Norman D’Amours, former chairman of the National Credit Union Administration, who found that the number of unregulated and unlicensed financial services providers, while growing generally nationwide, is increasing exponentially in low- and moderate-income and minority communities).
292. *Id.* (containing the following:
Even at the most modest levels, alternative financial services fees can greatly undermine the asset-building capacity of lower-income households. According to research cited by the Federal Reserve, fringe services for cash conversion and bill paying would cost an average \$20,000-income household between \$86 and \$500 per year, while the same services at a bank would cost only \$30 to \$60 (assuming that low-cost banking services are available and the prospective customer is not disqualified for an account by lack of credit). Yet \$500 per year saved for a period of 10 years at a modest interest rate of only 4 percent would grow to more than \$6,000. That amount would be sufficient for a down payment on a modestly priced home.
Moreover, the actual costs to many households using fringe banking would be even higher if those same households also resort to payday loans, pawnshops, rent-to-own retail or auto title pawn loans. An example Robert Manning offers in his book, *Credit Card Nation*, is of a \$196 Magnavox TV that costs \$9.99 a week for 78 weeks from a rent-to-own shop, for a total of \$779. Compare it with buying the same television with a credit card at 22.8 percent interest from a national discount electronics store over the same time period for a total of \$231. The difference in finance charge would be \$548. Assuming a household relied on fringe lenders for only an additional \$300 worth of services per year, the new total of \$800 of potential savings would grow to nearly \$10,000 over a 10-year period, again assuming a modest 4 percent rate of return.)
293. *See* Federal Trade Commission Act § 5, 15 U.S.C.A. § 45 (1994).
294. Federal Trade Commission Act § 5(a)(1), 15 U.S.C.A. § 45(a)(1) (1994).
295. *See* United Companies Lending Corp. v. Sargeant, 20 F. Supp. 2d 192, 196 (D. Mass. 1998).
296. *See Id.*

297. *See Id.*
298. James Carr and Jenny Schuetz, Fannie Mae Foundation, *Financial Services in Distressed Communities: Framing the Issue*, Finding Solutions 3-4 (2001).
299. *Id.* at 6 (citing a 1995 Federal Reserve Survey of Consumer Finances).
300. *Id.* at 6-7 (citing Ray Boshara et.al., The Corporation for Enterprise Development, *Building Assets for Stronger Families, Better Neighbors and Realizing the American Dream* (1988)).
301. Carr and Schuetz, *supra* note 298, at 11-12 (citing Housing and Urban Development study).
302. United Companies Lending Corp, 120 F.Supp.2d 192.
303. James H. Carr and Lopa Kolluri, Fannie Mae Foundation, *Predatory Lending: An Overview*, 31, 31 (2001) available at <http://www.uwex.edu/ces/flp/famecon/lesson3/pred.pdf> (“[P]redatory loans are characterized by excessively high interest rates or fees, and abusive or unnecessary provisions that do not benefit the borrower, including balloon payments, large prepayment penalties, and underwriting that ignores a borrower’s repayment ability.”).
304. *Id.* at 32 (stating that predatory lenders target people with limited education, limited financial sophistication, lower incomes, and with significant equity in their homes).
305. Congress has established institutions like the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation (FHLMC) for the purpose of promoting the even distribution of real estate investment capital throughout the country. These institutions buy mortgages from originators and sell them to investors. FNMA and FHLMC are privately-owned, government-regulated entities.
306. Keith N. Hylton, *Banks and Inner Cities: Market and Regulatory Obstacles to Development Lending*, 17 YALE J. ON REG. 197, 203 (2000) (discussing the skepticism community borrowers may have).
307. Mino Kubota, *Encouraging Community Development in Cyberspace: Applying the Community Reinvestment Act to Internet Banks*, 5 B.U. J. SCI. & TECH. L. 8, 43 (1999).
308. *See* William M. Keyser, *The 21st Century CRA: How Internet Banks Are Causing Regulators to Rethink the Community Reinvestment Act*, 4 N.C. BANKING INST. 545, 568 (2000) (suggesting that Internet banks be required to comply with CRA but do so by tailoring their evaluation to their industry).