Warner Leads Effort to Urge Banking Regulators to Strengthen Credit Access for Low-Income Communities

May 25 2018

WASHINGTON – Today, U.S. Sen. Mark R. Warner (D-VA) and a group of 15 Senators sent a letter to the Office of the Comptroller of the Currency (OCC), the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the Federal Deposit Insurance Corporation (FDIC), urging them to take steps that would strengthen access to credit for diverse communities under the Community Reinvestment Act (CRA).

The CRA was signed into law in 1977 to provide a framework to ensure that banks serve the needs of all members of their community, regardless of their race, gender, or income. By ensuring that banks provide access to credit for low- and middle-income (LMI) communities, the CRA has helped ameliorate redlining that has disadvantaged minorities and disinvestment that has harmed urban and rural communities. As a result, the CRA has expanded homeownership to more Americans, financed more small businesses, and transformed local economies.

The Senators urged the agencies to take the opportunity to strengthen the CRA by expanding its applicability to regions and institutions that are not currently covered by the CRA and avoid proposals that could undermine the long-standing effectiveness of the law. In addition, the Senators emphasized the need to reflect the impact of digital banking in any new regulations.

"When the CRA became law in 1977, a bank's geographic footprint and the areas surrounding it was a good proxy for the communities served by the bank. That no longer holds true. A bank should be examined under the CRA for how it serves LMI communities where it has a physical footprint and in areas where the bank accepts deposits and does substantial business, and it should receive CRA credit for qualifying loans and investments made in those areas," **wrote the Senators.**

The Senators also advised the federal agencies to avoid proposals that could undermine the effectiveness of the CRA. "While we generally support expansions that benefit LMI communities, we are concerned that permitting expansions for banks with ‘less than satisfactory’ ratings undermines the only formal compliance mechanism that exists under the CRA,” **the Senators warned.** “Furthermore, we believe that narrowing the universe of loans with respect to which a regulator evaluates a bank’s illegal or discriminatory credit practices is inconsistent with a key finding of Congress in passing the CRA: banks must demonstrate that they ‘serve the convenience and needs of the communities in which they are chartered to do business.’”

In addition to Sen. Warner, the letter was signed by Sens. Tim Kaine (D-VA), Cory Booker (D-NJ), Sherrod Brown (D-OH), Catherine Cortez Masto (D-NV), Elizabeth Warren (D-MA), Doug Jones (D-AL), Amy Klobuchar (D-MN), Bob Menendez (D-NJ), Kirsten Gillibrand (D-NY), Dianne Feinstein (D-CA), Brian Schatz (D-HI), Chris Van Hollen (D-MD), Gary Peters (D-MI), Ron Wyden (D-OR), and Debbie Stabenow (D-MI).

The full letter text is found below and here.

The Honorable Jerome H. Powell
Chairman

Board of Governors of the Federal Reserve System

550 17th Street, NW

Washington, D.C. 20552

The Honorable Joseph M. Otting

Comptroller of the Currency

400 Seventh Street SW

Washington, D.C. 20219

The Honorable Martin J. Gruenberg

Chairman

Federal Deposit Insurance Corporation

20th Street and Constitution Avenue, NW

Washington, D.C. 20551

Dear Chairman Powell, Comptroller Otting, and Chairman Gruenberg:

For over 40 years, the Community Reinvestment Act (CRA) has been critical in encouraging depository institutions (banks) to serve the credit needs of rural and urban low- and moderate-income (LMI) individuals, small businesses, and communities. The CRA requires federal banking regulators to regularly assess each bank's delivery of credit to LMI communities and consider that assessment when evaluating a bank's application to expand. In doing so, the CRA has helped ameliorate redlining that has disadvantaged minorities and disinvestment that has harmed urban and rural communities.

We understand that your agencies are considering publishing an advance notice of proposed rulemaking that could suggest significant changes to the implementation of the CRA. We hope that you take this opportunity to strengthen the CRA, broaden its applicability to more regions and institutions, and avoid proposals that could undermine the continuing effectiveness of the CRA.

A strong CRA continues to be needed. Black homeownership rates fell by 5 percent from 2001 to 2016 even as white homeownership rates fell by only 1 percent.[1] Meanwhile, Hispanic homeownership has declined 5 percent from its 2007 peak.[2] Access to credit for minority-owned businesses remains challenging. Black-owned companies apply for credit at a rate that is 10 percentage points higher than white-owned companies, and Hispanic-owned companies do so at a 7 percent higher rate. But the approval rates for black-owned companies are 19 percentage points lower than white-owned companies and 6 percent lower for Hispanic-owned companies. Forty percent of black-owned companies and over 20 percent of Hispanic-owned companies that did not apply for financing did not apply because they thought they would not be approved, compared to 14 percent of white-owned firms.[3]

A substantial body of evidence shows the significant positive contribution the CRA has made to LMI communities, helping all communities benefit from increased access to credit and economic growth. One 2017 study found that the CRA increases credit activity by 9 percent and the number of "credit visible" individuals in the community by 7 percent.[4] Another 2017 study linked the CRA to increased small business lending activity in LMI communities.[5] Benefits have also flowed to smaller metropolitan and rural areas; a recent analysis shows that community development financing by banks headquartered in Appalachia reached $8.8 billion from 2007 to 2010.[6] What the CRA does not do is also important: studies have *demonstrated that the CRA does not increase delinquencies or foreclosures and did not contribute to the subprime crisis.*[7]

Some changes to the implementation of the CRA are long overdue. For example, there is a need to reflect technology's significant and continuing transformational effect on the delivery of banking services. In a memorandum dated April 3, 2018, the Department of the Treasury (Treasury) recommends updating the definition of a bank's CRA assessment area to better account for the range of delivery channels that banks offer. When the CRA became law in 1977, a bank's geographic footprint and the areas surrounding it was a good proxy for the communities served by the bank. That no longer holds true. A bank should be examined under the CRA for how it serves LMI communities where it has a physical footprint and in areas where the bank accepts deposits and does substantial business, and it should receive CRA credit for qualifying loans and investments made in those areas.

A related phenomenon is that as bank branch footprints shrink due to a variety of causes—including the increased adoption of digital banking—rural areas increasingly rely on internet banking to deliver access to credit or branches far from their community. To ensure the CRA is an effective tool against rural disinvestment, banking regulators should reassess whether scoping guidance for examiners should encourage the classification of more rural communities as full scope assessment areas instead of limited scope assessment areas.

Another area that we and Treasury agree deserves renewed consideration is the inclusion of bank affiliates' performance under the lending test. Under current regulations, a bank can choose whether its affiliates' loans are included in its CRA performance assessment. This can lead to strategic behavior by banks, who are incentivized to include affiliates' loans when it benefits their CRA performance and exclude them when it harms CRA performance. A bank should not have the discretion to exclude from CRA evaluation loans made by its affiliates; all loans made by a bank's affiliates should be included in the bank's CRA evaluation.

The digitization of banking also means that it is appropriate to re-evaluate the CRA's service test, which assesses the number and types of investments made and services provided by a bank to LMI communities in its assessment area. Clearly, physical branches are no longer the only way for banks to deliver access to credit. Although technology has certainly helped expand access to credit through alternative delivery systems, studies continue to show that physical branches still provide a significant boost to access to credit to their surrounding community. For example, a 2014 study found that, even in crowded markets, a branch closing results in 13 percent fewer small *business loans, and the effect is concentrated in low-income and high-minority neighborhoods.*[8] *We urge you to keep in mind that although digital banking has increased access to credit for many, branches continue to be important, particularly for LMI communities, due to the information-intensive and relationship-specific credit production in those areas compared to higher income areas.*

One suggestion included in the Treasury memorandum that gives us pause is the recommendation that the other banking regulators adopt two recent Office of the Comptroller of the Currency (OCC) policies: one permits banks to open or acquire branches even if a bank has a "less than satisfactory" CRA rating, provided that the applicant demonstrate that the expansion benefits the communities it serves, and the other limits the effect illegal or discriminatory credit practices can have on a bank's CRA rating. While we generally support expansions that benefit LMI communities, we are concerned that permitting expansions for banks with "less than satisfactory" ratings undermines the only formal compliance mechanism that exists under the CRA: the prospect that the banking regulators will deny those banks' expansion applications. To put this in context, banks have received "Satisfactory" or "Outstanding" grades in 98 percent of CRA examinations since 2010.[9] *We believe that limiting exceptions to this enforcement mechanism is likely to result in more benefits to LMI communities through increased CRA compliance than would be achieved by occasionally approving applications from poor performing banks when the expansion would provide increased benefits to LMI communities. Furthermore, we believe that narrowing the universe of loans with respect to which a regulator evaluates a bank's illegal or discriminatory credit practices is inconsistent with a key finding of Congress in passing the CRA: banks must demonstrate that they "serve the convenience and needs of the communities in which they are chartered to do business."*[10]

The recent Treasury memorandum suggests a number of other sensible updates to CRA regulations, such as permitting banking regulators to preclear community development financings as qualifying investments and making those determinations public, and improving the objectivity and comparability of CRA exam performance metrics.

Thank you for your attention to the CRA, one of the most important tools we have for inclusive access to credit and economic growth.

Sincerely,

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