

Testimony to the Joint Regulatory Hearing on the Community Reinvestment Act  
Arlington, Virginia  
July 19, 2010

My name is Michael Van Buskirk. I am the president of the Ohio Bankers League. Thank you for the opportunity to participate in your efforts to gather ideas to improve the rules implementing the Community Reinvestment Act.

In an effort to provide perspective on my testimony I would offer a brief personal background and historical framework before suggesting a simple addition to the CRA rule I believe would enhance the law's effectiveness.

CRA was Title VII of the 1977 Housing Act. I was a House of Representatives aide at the time and served a minor staff role on the conference committee.

In 1979, as CRA was being implemented, I was recruited to work for an Ohio bank holding company. One of my responsibilities became assistance to affiliate banks in their economic and community development efforts. It seemed logical therefore for me to become the corporate CRA officer. In that role I wrote the CRA policy governing our banks' compliance. Although crude by today's standards it did attract some attention and resulted in invitations to speak at both OCC and Federal Reserve conferences on community development. Somewhat later the Federal Reserve Board appointed me to its Federal Reserve Board's Consumer Advisory Council. During my term there I chaired the council's community reinvestment committee which held regional hearings.

CRA is actually a family affair. The first denial of an application on CRA grounds came from the OCC. While we had not yet met, my wife had gone from the Senate where she was the chairman's housing counsel to develop the OCC's consumer examination system. That included its enforcement of CRA. She made the decision to deny the bank's application. So CRA has literally been a family affair since its inception.

William Proxmire, then chairman of the Senate Banking Committee, sponsored the act. It had an unusual genesis. If my memory is correct, in 1975 the mayor of Seattle, Washington had written Proxmire about an application to build a new branch, somewhat ironically in a neighborhood known as Capital Hill. The mayor wanted the branch to offer mortgage loans. The bank did not plan to do so.

The mayor wrote Senator Proxmire asking for his intervention. Proxmire forwarded the letter to what was at the time an acting Comptroller. The OCC replied the only factor it considered in reviewing a branch application was deposit potential. Proxmire countered in a letter that the National Bank Act required both deposit and credit needs be addressed to justify regulatory approval. The exchange of letters continued without the OCC conceding the point. Proxmire authored CRA to end the argument.

I would add a forgotten piece of historical perspective. One concern of opponents of his proposal was compliance cost. Proxmire argued during the conference committee that his proposal would not require a single bank to produce a single additional piece of paper.

My recollection is that every federal banking agency testified in the Senate hearings against CRA - not because they opposed its purpose but because they felt they had no objective way to determine what credit needs in a community actually were.

Congress passed the housing bill including an unaltered CRA. Regulators faced a task they had said they could not do – evaluating whether banks were adequately meeting a community’s credit needs within the bounds of safety and soundness. Necessity is the mother of invention. Regulators required banks to seek and retain customer and public comments. They mandated public access to those comments. As it has turned out in practice the rule has not generated the ongoing broad community dialogue hoped for. Few banks receive comments from their customers. More subsequently significant to CRA compliance, bank regulators adapted to CRA the public comment period which already existed for applications. This adaptation has become known as the protest. This protest process is essentially an objection by an individual or, more commonly, an organized advocacy group against approval of a merger or branch application.

In theory the protest provides an opportunity for community members to provide evidence of inadequate performance by a bank. In practice, I would argue it suffers from serious shortcomings.

- There is little incentive for community or customer input unless and until a bank has made application for a depository facility. Most banks rarely file such applications. In my experience bank CRA files are largely devoid of input from residents in their service areas. And the protest process has evolved so that a bank with a good record commonly can suffer reputational damage and often economic loss even when its application is unconditionally approved.
- While on-site examiners regularly review every FDIC insured depository’s CRA record, that “grade” seems to have little standing. I have probably met over a thousand bank CEOs in my career. Without exception they have cared passionately about developing the economic and social health of the community or communities their banks serve. It wasn’t altruism although my experience suggests this industry attracts people who have that trait. Banks, particularly community banks, cannot be successful if the market or markets they serve are not economically and socially healthy. However, very few see reason to take on the expense of qualifying for the top CRA grade because it carries no apparent benefit.
- Regardless of a bank’s regulatory rating on community reinvestment, a “protest” on an application often results in delays in approval of applications. Those delays can have significant financial cost. Potentially more serious to the goals of CRA, the protest process can result in serious reputational damage to the bank even if an application is approved unconditionally.

There is a simple change to current rules I believe would:

- incent customers and communities to give real time input on a bank's performance,
- incent a bank to endeavor to excel in service to low and moderate income areas,
- incent more meaningful CRA exams, and
- provide some protection against unjust damage to banks whose records were in fact outstanding.

The idea is not new. I proposed it some years ago when it resulted in interagency discussion but did not gain majority support. I am not even sure I came up the idea first. I raise it again now because I still believe it offers real potential to advance the goals I heard William Proxmire espouse and that I believe in.

I would ask you to consider giving a bank with a CRA examination rating of "outstanding" immunity from delay resulting from a protest of an application unless that protest raises an issue that examiners did not consider in their most recent exam.

This safe harbor would motivate banks to strive for excellence by rewarding those that achieve it. It would incent year round input from the community into a bank's performance, providing useful information for banks that seek excellence, and providing examiners focal points resulting in more timely, thorough reviews during examinations.

As I have thought about this idea, the only logical objection I can identify is that current examinations are not adequate. I do not believe that to be the case. Interviews with OBL member banks about their experiences suggest well trained, committed examiners and thoughtful, painstaking reviews. However, if there is any merit at all to that objection, I would respectfully suggest the remedy is to improve the examination, not to continue to treat the examination as largely irrelevant.

I have no illusions this change is a panacea. Nevertheless, my 33 years of experience with CRA suggests it would provide banks incentive to intensify efforts in community development. I believe it would create broader, real time dialogue between communities and banks and the banks' regulators on improving reinvestment. It would provide some check against the frivolous or malicious protest.

Banks have long been identified in public policy as central to the economic health of our nation. Consequently, we have created law and regulation to protect bank soundness and to seek justice in treatment of customers - important national goals. We must recognize that process can create counterproductive consequence. Bank regulations, ranging from deposit insurance to the alphabet soup of consumer regulations, carry significant costs. Once banks had few non-bank competitors. Today they have many. Few of the business costs imposed on banks by government apply to their non-bank competitors.

I believe the explosion of mortgage brokers was a byproduct of their avoidance of most government imposed costs of doing business. We saw the perverse effect of the resulting economic incentive for the consumer to use a mortgage retailer where they were least protected by government.

Congress must be much more mindful of imposing equivalent regulatory burden on all providers of functionally equivalent financial products. I understand that is beyond the scope of this inquiry. But what you must continue to do is search out every opportunity for more efficient enforcement.

Clearly, what I propose would not by itself make great progress at eliminating the disparity in compliance costs between bank and non-bank competitors. CRA is only one of hundreds of government imposed costs of doing business for a bank. Nevertheless, today we have made the cost of doing business the highest for the financial service provider where we believe the consumer is best protected. That cause is having an effect.

We sometimes treat bank profitability as alien to the interests of a bank's community and its customers. Capital will flow to the financial service provider which gives its investors a fair return. Without bank capital there cannot be community reinvestment. We need to achieve better balance.

Thank you for the opportunity to testify.

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