PRESIDENT'S MESSAGE GEORGE W. MCCARTHY

Equity, Affordability, and the New Lending Landscape

IT MIGHT NOT be instantly obvious how housing finance could be considered a land policy, and even less obvious why pundits like me describe national financial regulation like the Community Reinvestment Act as one of the most important land policies of the 20th century. How in the world could *national* financial regulation influence local land use, and what does the lending and investment activity of banks have to do with land?

As I've noted here before, discriminatory federal lending maps devised by the Home Owners' Loan Corporation and adopted by the Federal Housing Administration (FHA) in the 1930s had enduring impact. Some 90 years later, a 2022 review by the Federal Reserve reported on research that definitively linked these maps to contemporary inequities in economic opportunity, health outcomes, access to green space, heat island effects, COVID mortality, and life expectancy.

We've seen a huge shift in mortgage lending away from regulated banks to nonbank lenders—and these lenders have no affirmative obligation to address historic discrimination.

The Community Reinvestment Act (CRA) was one of three congressional actions following the 1964 Civil Rights Act that were designed to undo the damage inflicted on communities by federal housing finance policies. Decades of capital starvation and discrimination-by-design had hollowed out American cities and immiserated millions of Americans and their communities.

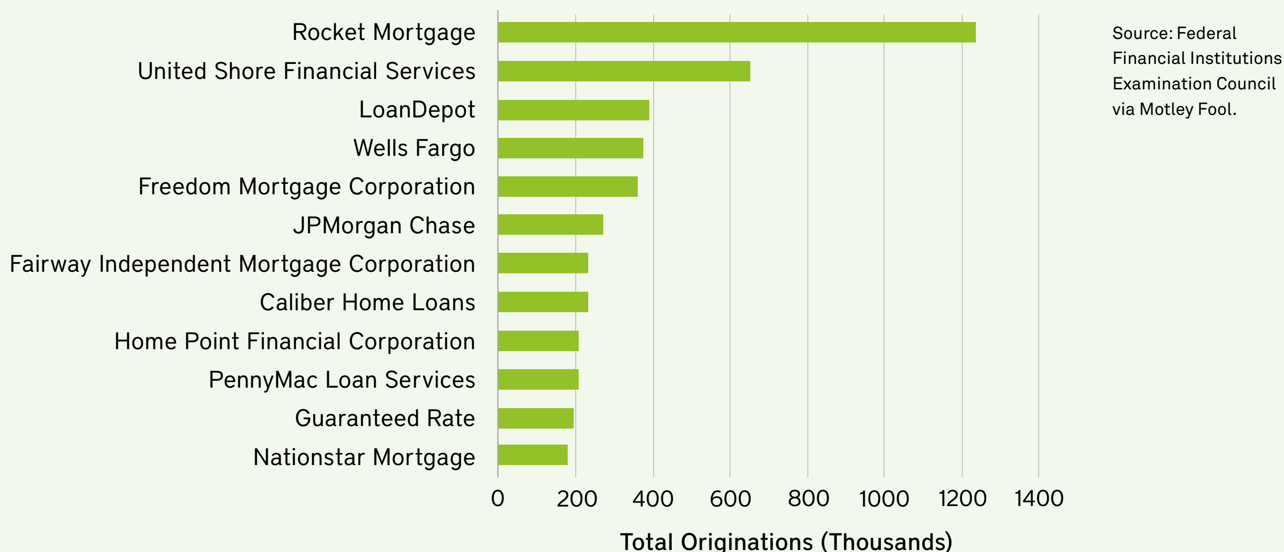
Passed in 1977 on the heels of the Fair Housing Act of 1968, which prohibited discrimination in real estate transactions, and the Home Mortgage Disclosure Act of 1975, which required lenders to report on their activities with geographic precision, the CRA imposed an affirmative obligation on federally regulated banks to serve the credit needs of all communities in their service areas. It did not tell banks what they could *not* do, but rather what they *needed* to do to reverse decades of bad behavior.

Three federal agencies—the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC)—were tasked with ensuring that banks complied with this new regulation. Interestingly, the law was only fully enforced a dozen years later, when regulators were asked to approve banks' geographic expansion, primarily through mergers or acquisitions.

The CRA has been revised many times to respond to the evolving banking industry. Most recently, in 2020, the OCC proposed a modernization rule to address the shift from "bricks and mortar" to digital banking, but the rule was opposed by the Federal Reserve, the FDIC, and thousands of community groups. The proposal was rescinded in 2021, but few observers would argue that the CRA does not need modernizing. Even more pressing than digital banking are concerns about the huge shift in mortgage lending away from regulated banks to nonbank lenders.

According to the Federal Financial Institutions Examination Council, 10 of the top 12 mortgage lenders in 2021 (and four of the top five) were independent mortgage companies. These nonbank lenders have no affirmative obligation to address historic discrimination.

TOP 12 U.S. MORTGAGE LENDERS BY ORIGINATIONS, 2021



Source: Federal Financial Institutions Examination Council via Motley Fool.

Beyond Home Mortgage Disclosure Act compliance, their lending activity is very weakly regulated. They are not, however, beyond the reach of land policy qua financial regulation.

Nonbank lenders rely on industry giants for capital. According to the Urban Institute, the government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, purchased around 60 percent of mortgages originated in the United States in 2021. The FHA and the US Department of Veterans Affairs (VA) accounted for an additional 16 percent. Importantly, nonbanks originated around 70 percent of the loans purchased by the GSEs and more than 90 percent of the government-backed loans in 2021. So, if one wanted to continue affirmative efforts to serve the housing finance needs of historically underserved markets, the pathway is fairly obvious: look for existing or new policy frameworks that provide opportunities, by way of regulating the GSEs, to affect the lending behavior of nonbanks.

As luck would have it, the housing finance giants are publicly controlled. Both Fannie Mae and Freddie Mac were placed in federal conservatorship by the Federal Housing Finance Agency (FHFA) in 2008 when they became insolvent during the foreclosure crisis. In 2017, the FHFA implemented the Duty to Serve program, which imposed statutory requirements on the GSEs to serve three specific underserved markets: manufactured housing, affordable housing preservation, and rural housing. Under Duty to Serve, Fannie Mae and Freddie Mac are required to submit three-year plans that describe how they will better serve those markets. The plans are finalized based on public input and reported on annually to Congress.

In 2021, the FHFA imposed additional obligations on the GSEs to expand access to safe, decent, and affordable housing opportunities; they are now required to prepare, implement, and report annually on Equitable Housing Finance plans that describe how they will "meaningfully address the racial and ethnic disparities in homeownership and wealth that have persisted for decades."

The decade following the first enforcement of the CRA in 1989 was a golden era for community development as advocates mobilized to pressure banks to meet CRA obligations. Almost immediately, hundreds of billions of dollars of new lending flowed to CRA service areas. The national homeownership rate rose from 64 percent to 68 percent, with growth in low- and moderate-income neighborhoods double the national rates.

Community development corporations prospered, and the community development finance industry was incubated.

We are at a similar moment for the Duty to Serve and Equitable Housing Finance plans—something I've taken to calling "the New CRA." The FHFA is building more muscular regulatory oversight, and with the Lincoln Institute's help, the civic sector is again mobilizing to ask for better plans, better enforcement, and better results.

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Last year, we convened 20 of the largest nonprofit affordable housing developers to launch the Underserved Mortgage Markets Coalition (UMMC). Its objective is to speak with one voice to push, and collaborate with, the GSEs to meet their mission under the Duty to Serve and Equitable Housing Finance plans. Together we are working with the GSEs to design better lending products to finance the purchase of manufactured homes, build the capacity of Community Development Financial Institutions to originate new mortgages in hard-to-reach markets, and persuade the FHFA to support new pilot lending programs to test new products and processes to better serve these markets.

President Jimmy Carter signs the Community Reinvestment Act into law in 1977. Credit: Federal Reserve.

The UMMC is demystifying the secondary mortgage market—where lenders and investors buy and sell loans and servicing rights—and proposing realistic solutions to make real systems change. In its first full year as a coalition, the UMMC notched an important victory when the FHFA rejected new Duty to Serve plans submitted by the GSEs, asking for more ambitious plans with more specific goals like those reflected in a comprehensive blueprint the coalition had prepared. Recent UMMC efforts include a scorecard showing how well the GSEs followed the blueprint and a dashboard that will provide accessible, detailed quantitative data on their performance.

The Duty to Serve and Equitable Housing Finance plans are not a substitute for the Community Reinvestment Act. The CRA remains the most important land policy in our national arsenal of financial regulation, and is responsible for huge amounts of new credit that flowed back to communities that were denied access for decades.

But times have changed. When the CRA was passed, there were an estimated 18,000 banks insured by the FDIC. Today, there are 4,844. On top of that, many banks are closing or shrinking their retail mortgage business, ceding the space to nonbank lenders. We can try to reform the CRA to reflect this new market reality, or we can meet the market where it is.

Racial and ethnic homeownership gaps remain distressingly high, as does an unacceptable and stubborn racial wealth gap. If we hope to make a dent in either, we'll need to find a way to expand homeownership in unprecedented ways.

Nobody expected the CRA to redress all the shameful impacts of misguided lending policies. The Duty to Serve and Equitable Housing Finance plans are wonderful supplements to the CRA. Perhaps a portfolio of lending regulations is a better approach than one size fits all. It is our hope that the UMMC will empower practitioners and advocates to ask the GSEs and the FHFA for what they need to take on these immense challenges.