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The Community Reinvestment Act: A Boost to Low- and Moderate-Income Communities, a Set-Back for Minority-Owned Banks

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I. INTRODUCTION

The Community Reinvestment Act (CRA or Act) requires all banks to meet the credit needs of the communities in which they are chartered.[1] Under the CRA, big banks may no longer overlook low- and moderate-income communities; instead, they must increase their lending in underserved areas.[2] Commentators suggest that the CRA poses significant problems for many minority-owned banks because it forces big banks to compete in markets traditionally served by minority banks.[3] The president of the North Milwaukee State Bank, a minority-owned bank, commented that "[a]s CRA becomes a reality, white-owned institutions are coming after our business customers—customers that they wouldn't take a chance on before."[4]

One example of a minority-owned bank affected by CRA compliance is Victory Savings Bank, the only African-American-owned bank in South Carolina.[5] Today, Victory Savings Bank faces serious competition from larger banks that are "taking away its once-faithful customers."[6] Even black churches are leaving Victory Savings Bank and banking with more "mainstream" banks.[7] Victory Savings

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1. 12 U.S.C. §§ 2901-2907 (1994). Specifically, the Act states 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." 12 U.S.C. § 2901(a)(1).

2. *Cf.* Joseph Moore, Comment, *Community Reinvestment Act and Its Impact on Bank Mergers*, 1 N.C. BANKING INST. 412, 414-15 (1997) (explaining that Congress passed the CRA after neighborhood activists demonstrated that banks were engaging in "redlining," or refusing to make loans in low- and moderate-income communities, and emphasizing that the focus of the CRA was on banks' practice of transferring funds outside of their local communities "not race, ethnicity, [or] gender").

3. *See* Nanine Alexander, *Tough CRA Rules Hurting Minority Banks*, U.S. BANKER, Sept. 1991, at 70; *see also* Veronica Byrd, *Black Bankers Seek Broader Market*, N.Y. TIMES, Sept. 6, 1993, at 33 (explaining that minority-owned banks are facing growing competition as a result of the "heightened enforcement" of the CRA).

4. Alexander, *supra* note 3, at 70 (statement of Snow Mitchell).

5. *See* Rick Brooks, *Minority-Owned Banks Struggle as Customers Defect to Big Rivals*, WALL ST. J., Feb. 7, 1996, S1.

6. *Id.*

7. *See id.*

Bank's owner specifically identified two black congregations which borrowed from NationsBank rather than Victory Savings Bank to construct new sanctuaries.[8] He indicated that the choice was easy for the churches because NationsBank offered the most competitive loan terms in the city.[9] NationsBank's rates were significantly "below the market, [so] there was no way [to] effectively compet[e] with them."[10]

Another example of a minority-owned bank that has directly felt the consequences of big bank activity in low- to moderate-income communities is Boston Bank of Commerce, an African-American-owned institution serving the Roxbury and Mattapan neighborhoods in Boston.[11] This bank was nearly forced out of the mortgage market by a "flood of cheap credit" from Fleet Bank, Bank of Boston, and other banks trying to improve their community lending in an effort to comply with the CRA.[12] Victory Savings Bank and Boston Bank of Commerce illustrate the plight of many minority banks facing fierce competition from their more "mainstream" peers as a result of the CRA.

This Comment discusses the effects of the CRA both as a vehicle to improve banking services in low- and moderate-income communities and as a barrier to the continued success of minority-owned banks. This Comment begins by summarizing the history and nature of minority-owned banks.[13] Next, it briefly describes the nature and purpose of the Community Reinvestment Act[14] and explores the effects of the CRA on both majority- and minority-owned banks.[15] Finally, this Comment identifies strategies minority-owned banks have adopted to better compete with larger financial institutions.[16]

II. HISTORY AND NATURE OF MINORITY-OWNED BANKS

In order to fully explore the impact of the CRA on minority-owned banks, one must first examine three preliminary questions. First, what is a minority-owned bank? Second, in what historical con-

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8. *See id.*

9. *See id.*

10. *Id.* (statement of T.R. McConnell, the chairman and chief executive officer of Victory Savings Bank) (internal quotation marks omitted).

11. *See* John R. Wilke, *Jump in Home Loans to Minorities Has Multiple Payoffs*, CHI. TRIB., Feb. 25, 1996, at 1, 5A.

12. *Id.*

13. *See infra* notes 17-49 and accompanying text.

14. *See infra* notes 50-75 and accompanying text.

15. *See infra* notes 76-124 and accompanying text.

16. *See infra* notes 125-74 and accompanying text.

text did minority-owned banks arise? Finally, what is the nature of these banks?

Federal government criteria classify minority banks as "any depository institution ... [in which] more than [fifty] percent of the ownership or control ... is held by [one] or more minority individuals; and more than [fifty] percent of the net profit or loss of which accrues to [one] or more minority individuals."[17] In addition, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) limits "minority" to African-American, Hispanic-American, Asian-American, or Native-American individuals.[18]

The first minority-owned banks in the United States began operating in 1866.[19] The Freedman's Savings and Trust Company, one of the original minority banks, opened just after the Civil War.[20] A group of African-American businessmen created this bank to establish thrift and prosperity among newly freed slaves.[21] The small group of businessmen who started the Freedman's Savings and Trust Company became the "founding fathers" of the black banking and insurance industries.[22]

Despite the establishment of some minority-owned banks as early as the late nineteenth century, these banks did not experience substantial growth until the latter half of the twentieth century.[23] The Nixon administration prompted part of this growth by advocating the

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17. Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183, 521 (1989).

18. *See id.* Congress passed FIRREA out of concern for the degree to which mergers and acquisitions and financial insolvency were negatively affecting minority banks. FIRREA contains a provision that supports the preservation of minority-owned banks. William T. Marshall, *Preserving the Future*, AM. COMMUNITY BANKER, Aug. 1996, at 16, 20.

19. *See* Douglas A. Price, *Minority-Owned Banks: History and Trends*, ECON. COMMENT. (Fed. Reserve Bank of Cleveland), July 1, 1990.

20. *See* SHELLEY GREEN & PAUL PRYDE, BLACK ENTREPRENEURSHIP IN AMERICA 23 (1990).

21. *See id.* Frederick Douglass, one of the founders of the bank, proclaimed:

> The mission of the Freedman's Bank is to show our people the road to a share of the wealth and well being of the world. It has already done much to lift the race into respectability, and with their continued confidence and patient cooperation, it will continue to reflect credit upon the race and promote their welfare.

Id.

22. *See id.*

23. *See* Kenneth J. Hicks, *The Spectrum of Minority Banks: New American Banker Survey Shows Total of 105*, AM. BANKER, Oct. 18, 1984, at 1, 8. For example, Asian banking began in San Francisco in 1937, but they exploded in the late 1970s and early 1980s due to rapidly growing immigrant communities in Los Angeles and San Francisco. *See* Terrence O'Hara, *Calif.'s Asian Banks Feel the Sting of CRA*, AM. BANKER, Dec. 21, 1993, at 6.

creation of minority-owned banks that would focus their lending activities on the needs of minority communities in order to bring those communities into the "nation's economic mainstream."[24] Specifically, President Nixon signed Executive Orders designed to develop a program to strengthen minority business.[25] During this period, many minority-owned banks prospered, as they were one of the few places minorities could hope to be approved for home loans.[26]

Minority-owned banks "[e]stablished a niche in communities underserved by the mainstream banking industry and [became] critical to the growth and development of these communities."[27] Furthermore, minority-owned bank customers developed a strong sense of allegiance to those banks because minority banks served them even after the larger institutions turned them away.[28] Today, however, this loyalty is beginning to fade as aggressive "mainstream" banks move in to areas that have historically been the domain of the minority-owned banks.

After examining both the definition and history of minority-owned banks, it is significant to consider the nature of these banks as well. Many researchers have conducted studies over the years comparing the performance of minority-owned banks with the performance of nonminority-owned banks.[29] The results of these studies are contradictory.[30] For example, some indicate that minor-

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24. William M. Isaac, *A Head Start for Development Banks: Clinton Plan Could Build on Minority Institutions*, AM. BANKER, Jan. 7, 1993, at 4.

25. *See* Price, *supra* note 19.

26. *See* Brooks, *supra* note 5. For example, Citizens Federal Savings Bank, in Birmingham, Alabama, grew into one of the country's largest African-American-owned financial institutions with approximately $86 million in assets from an initial capital of $350,000. *See id.*

27. Franklin Smith, *Black Bankers Undaunted by the Freedom Fiasco*, AM. BANKER, July 11, 1991, at 8 (statement of Bruce Gamble, executive director of the Washington-based National Bankers Association, which represents minority-controlled banks) (internal quotation marks omitted).

28. *See* Brooks, *supra* note 5.

29. *See* Iftekhar Hasan & William C. Hunter, *Management Efficiency in Minority- and Women-owned Banks*, ECON. PERSP. (Fed. Reserve Bank of Chicago), March/April 1996, at 20.

30. *See id.* Authors Hasan and Hunter warn that one must exercise caution when comparing minority-owned with nonminority-owned banks on the basis of broadly defined markets or locational attributes. Some studies suggest it is not correct to equate differences in operating performance with differences in ownership and customer ethnicity or both unless the two sets of banks operate in essentially identical or very similar markets, referring to their economic and demographic characteristics. *See id.* (citing R. T. Clair, *The Performance of Black-owned Banks in their Primary Market*, ECON. REV. (Fed. Reserve Bank of Dallas), Nov. 1988, at 11; William C. Hunter, *Chicago Minority Banks and Public Policy*, NW. U. BANKING RES. CENTER (1978); Seyed Mehdian & Elyas Ely-

ity-owned banks are smaller, less profitable, and "more expenditure prone" than similar groups of nonminority banks.[31] In addition, more dated studies showed that minority-owned banks operated with lower ratios of equity capital to assets, utilized more conservative asset portfolio management policies, and experienced higher loan losses than nonminority banks.[32] However, a more recent study found that minority banks had "improved their capital ratios and decreased their holdings of liquid assets, while expanding their use of purchased funds."[33] Furthermore, the recent study showed no significant differences in the pricing and asset liability management decisions in the financial performance of minority-owned banks compared to nonminority-owned banks.[34] In essence, difficulties arise when researchers attempt to devise samples of minority- and nonminority-owned banks which serve similar market areas. Consequently, one finds conflicting results in the studies assessing the performance and long-term viability of minority-owned banks.

Despite these conflicting studies, most commentators agree that minority-owned banks possess at least four characteristics that make their existence and long term survival more tenuous than that of "mainstream" banks.[35] First, minority-owned banks have more difficulty raising capital than "mainstream" banks.[36] This struggle to raise

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asiani, *Productive Efficiency Performance of Minority and Nonminority-owned Banks: A Nonparametric Approach*, 16 J. BANKING & FIN. 933 (1992)).

31. Hasan & Hunter, *supra* note 29, at 20 (citing Mary Colby, *Community Reinvestment Focus Shifts to Commercial Lending*, BANK MGMT., June 1993, at 49).

32. *See id.* at 20 (citing Timothy Bates & William Bradford, *An Analysis of the Portfolio Behavior of Black-owned Commercial Banks*, 35 J. FIN. 753 (1980); John T. Boorman and Myron L. Kwast, *The Startup Experience of Minority-owned Commercial Banks: A Comparative Analysis*, 29 J. FIN. 1123 (1974); Andrew F. Brimmer, *The Black Banks: An Assessment of Performance and Prospects*, 26 J. FIN. 379 (1971); Myron L. Kwast, *New Minority-owned Commercial Banks: A Statistical Analysis*, 12 J. BANK RES. 37 (1981)).

33. *Id.* (citing David R. Meinster & Elyas Elyasiani, *The Performance of Foreign-owned, Minority-owned, and Holding-company-owned Banks in the U.S.*, 12 J. BANKING & FIN. 293 (1988)). However, the studies' authors observed that African-American-owned banks seemed to maintain the financial performance characteristics indicative of the performance of minority-owned banks in the 1960s and 1970s. *See id.*

34. *See id.*

35. *See, e.g.*, Paul S. Nadler, *The Plight of Minority-Owned Banks*, AM. BANKER, Oct. 7, 1991, at 4 (recognizing five "weaknesses" of minority-owned banks: need for capital, lack of quality loans, lack of significant deposits, "marketing dilemma," and high costs of doing business).

36. *See id.* Minority-owned banks find it difficult to raise capital:

> Maintaining adequate capital is a challenge for black-owned banks, according to Carlton J. Jenkins, the managing director at Founders [National Bank of Los Angeles], because 'none of the traditional sources of capital, such as investment bankers, large black corporations, high net-worth investors, pension funds and

capital limits a bank's ability to make loans because lending ability depends on the amount of capital the bank has to protect itself against loan losses.[37] With only a small amount of capital available to prevent loan losses, banks often find they cannot make enough loans to meet the demands of their customers.[38]

In addition to the difficulty in raising capital, most minority-owned banks have smaller deposit sizes than "mainstream" banks.[39] These relatively small deposit sizes have resulted in less profits for minority-owned banks compared to the nonminority banks, making their long-term survival more tenuous than their more "mainstream" peers.[40] In other words, "mainstream" banks depend to a large extent on the significant deposits of their affluent sponsors, but minority banks generally have less affluent sponsors, resulting in less substantial deposits.[41] In fact, a large number of minority bank customers use the banks as "deposit vaults"—depositing the week's paycheck and withdrawing a portion of that deposit every couple of days.[42] Ultimately, this smaller account size translates into additional paperwork and more labor time for each deposit dollar, which increases personnel expenses relative to deposits and results in less profit for the bank.[43]

The profitability of many minority-owned banks is also affected by the fact that many of them have high costs of doing business.[44] For example, minority-owned bank's offices are typically located in "low-income areas that suffer disproportionately from recessions and high

mutual funds have ever seriously focused their resources on minority banks.' Byrd, *supra* note 3, at 36.

37. *See* Mary Colby, *Community Reinvestment Focus Shifts to Commercial Lending*, BANK MGMT., June 1993, at 50.

38. *See id.* According to William Isaac, a former chairman of the Federal Deposit Insurance Corporation, "[m]any a minority bank was allowed to open on a relative shoestring in terms of capital, and supervision and enforcement were relaxed. These were hardly favors for a group of institutions that were high-risk by definition." Isaac, *supra* note 24, at 4.

39. *See* Nadler, *supra* note 35, at 4; *see also* GREEN & PRYDE, *supra* note 20, at 36-37.

40. *See* GREEN & PRYDE, *supra* note 20, at 36-37.

41. *See* Nadler, *supra* note 35, at 4. As a result of the failure of Freedom National Bank, a long-established minority bank in New York City, many individuals who had more than $100,000 on deposit at the bank lost funds. This loss made people wary of keeping large deposits in minority-owned banks. *See id.* Furthermore, if minority-owned banks "reported mean deposit sizes and personnel costs that were identical to the national averages, we would suspect that they were not serving the lower-income saver that typifies the inner-city population." GREEN & PRYDE, *supra* note 20, at 37.

42. *See* Nadler, *supra* note 35, at 4; *see also* GREEN & PRYDE, *supra* note 20, at 37; Price, *supra* note 19.

43. *See* GREEN & PRYDE, *supra* note 20, at 37.

44. *See* Smith, *supra* note 27, at 8.

rates of business failure and ... crime."[45] Consequently, the banks must implement costly preventative measures in order to maintain a safe banking environment for their customers.[46] The final factor making the survival of minority-owned banks more tenuous is that these banks generally offer smaller, higher-risk loans with lower average yields than do majority-owned banks.[47] This further hinders the profitability of minority banks.[48]

In sum, many commentators suggest that the future of minority-owned banks will be affected by their inability to raise capital easily, their characteristically small deposit size, their high cost of doing business, and their tendency to focus on relatively small, higher risk loans. Perhaps, though, the most significant obstacle to the long-term survival of minority-owned banks is the Community Reinvestment Act.[49]

III. COMMUNITY REINVESTMENT ACT

In 1977, Congress passed the Community Reinvestment Act.[50] The statute mandates that regulated institutions demonstrate that their deposit facilities meet the convenience and needs of their communities, that the convenience and needs of their communities includes credit and deposit needs, and that regulated institutions have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[51] The CRA expressly states that its purpose is to require federal financial supervisory agencies to use their authority to "encourage" regulated institutions "to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions."[52] Significantly, federal financial supervisory agencies have encouraged regulated institutions to focus their lending efforts on those communities whose members have traditionally been loyal minority-owned bank customers.

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45. *Id.*
46. *See* Nadler, *supra* note 35, at 4.
47. *See* Isaac, *supra* note 24, at 4.
48. *See id.*
49. 12 U.S.C. §§ 2901-2907.
50. *Id.*
51. 12 U.S.C. § 2901(a).
52. 12 U.S.C. § 2901(b). The Comptroller of the Currency is responsible for examining national banks; the Office of Thrift Supervision is responsible for federally insured savings associations and savings and loan holding companies; the Federal Reserve examines state member banks; and the Federal Deposit Insurance Corporation examines federally insured state nonmember banks. *See* 12 U.S.C. § 2902(1).

Despite its arguably commendable purpose, the CRA has been the subject of much criticism. Specifically, commentators criticize the Act as lacking strong enforcement mechanisms.[53] The CRA requires that the federal financial supervisory agencies "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution."[54] Following this assessment, the Act mandates that a supervisory agency complete a written evaluation of the bank's CRA performance, rating the institution according to one of four possible grades.[55] Finally, the Act requires that an institution's supervisory agency take its CRA performance into account when evaluating applications related to charters, deposit insurance, branches, and mergers or acquisitions.[56] Thus, the CRA entails the

> recognition that a community's financial needs include credit as well as deposit needs, a purpose of "encouraging" institutions to meet those credit needs, and finally a directive that an institution's CRA performance be one aspect of the examination as well as a factor to be "taken into account" when [a supervisory agency] assess[es] the institution's applications for new or expanded privileges.[57]

The provisions of the Act that require consideration of an institution's CRA performance in applications for expanded privileges act as the only "teeth" of the Act and serve to check perceptions of lazy regulatory attitude toward CRA compliance.[58] In reality, these teeth have limited bite;[59] "only between one and two percent of applications filed with the Federal Reserve have been protested by

53. More specifically, the enforcement efforts of regulators have been under attack by the financial institutions regulated under the Act, community groups, and Congress itself. *See* A. Brooke Overby, *The Community Reinvestment Act Reconsidered*, 143 U. PA. L. REV. 1431, 1431-32 (1995).

54. 12 U.S.C. § 2903(a)(1).

55. *See* 12 U.S.C. § 2906(a)(1). The four possible ratings are: (1) Outstanding, (2) Satisfactory, (3) Needs to improve, and (4) Substantial noncompliance. *See* 12 U.S.C. § 2906(b)(2).

56. *See* 12 U.S.C. § 2903(a)(2).

57. Overby, *supra* note 53, at 1442.

58. For example, in 1989, the Federal Reserve Board rejected applications by Continental Bank Corporation and Continental Illinois Bancorp to acquire the Grand Canyon State Bank, an Arizona bank. *See id.* at 1465. Continental's poor CRA performance was a "determining factor" in this rejection. *See id.*

59. *See* Moore, *supra* note 2, at 423 (stating that only a small number of merger applications have been denied since the enactment of the CRA).

community activist groups on CRA grounds since 1988, and denials of applications on CRA grounds ... are [] rare."[60] Nevertheless, financial institutions must take CRA compliance seriously or face the possibility of having a merger application denied.[61]

In response to complaints regarding enforcement of the CRA, in July 1993 President Clinton asked the regulatory agencies to reform the examination and enforcement system of the Act.[62] A set of revised proposals emerged in October 1994, and regulators approved the final rules in late April 1995. The revised rules began applying to smaller institutions in January 1996, and they will go into effect for larger institutions in July 1997.[63]

The new regulations establish different tests for large and small banks.[64] Small banks are now examined under a five-area system with primary emphasis on small business lending.[65] The new regulations for larger banks replace the efforts/process-based enforcement that had been in place since 1977 with an evaluative procedure designed to measure actual results in meeting the credit needs of the institution's surrounding community, such as loans, investments, and services to a bank's "assessment area."[66] Under the Revised Pro-

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60. Overby, *supra* note 53, at 1466.

61. *See id.* For example, despite the fact that BankAmerica's lead bank, Bank of America, received "outstanding" CRA ratings in 1990 and that Security Pacific's subsidiary banks consistently received "satisfactory" ratings under the Act, in BankAmerica Corporation's application to merge with Security Pacific, the Federal Reserve Board conducted several public hearings and heard testimony from over 175 witnesses regarding CRA compliance. *See id.* at 1467. The merger was ultimately approved, but during the hearing process, community groups received a promise from BankAmerica to pay $12 billion in community-based lending. *See id.*

62. *See* Moore, *supra* note 2, at 423 (stating that the goals of the regulators' reform initiatives were to "(1) base CRA examinations more on results than paperwork, (2) clarify performance standards, (3) make examinations more consistent, (4) improve enforcement to provide more effective sanctions, and (5) reduce the costs and burdens of compliance").

63. *See Community Reinvestment Act: Federal Banking Agencies to Publish Additional Guidance on Revised CRA Rules*, Banking Daily (BNA), Oct. 16, 1996, *available in* LEXIS, Banking Library, BNABD File. Small banks are defined as those with assets of $250 million or less and those not managed by a holding company with total assets of $1 billion or more. *See* Andrew W. Hogwood, Jr., *Small Banks and CRA Reform: No Slam Dunk!*, BANK MGMT., July/Aug. 1996, at 72.

64. *See* J. Tol Broome Jr., *Less Paperwork, More Bank Loans: A Change in Federal Rules is Encouraging Lending to Small Companies*, NATION'S BUS., Sept. 1996, at 38.

65. *See id.* The evaluation areas for small banks are: loan-to-deposit ratio, percentage of loans in the bank's market area, loans originated for community development and small-business purposes, geographic and income-level diversity of loans made, and response to written complaints by consumers. *See id.*

66. *See* Overby, *supra* note 53, at 1469.

posal, three tests are conducted: the "Lending Test," the "Investment Test," and the "Service Test." Regulators combine the institution's ratings on these three tests to determine the bank's overall CRA rating.[67] The Revised Proposal places the most emphasis on lending performance by mandating that an institution must be given a rating of "satisfactory" or better on the lending test in order to receive an overall rating of "satisfactory" or better.[68]

Under the "Lending Test," federal regulators evaluate a bank's performance in meeting community credit needs by measuring its home mortgage lending, small business and farm lending, community development lending, and consumer lending if it constitutes a major portion of the bank's business.[69] The "Investment Test" gauges the extension of institutional resources into the assessment area. Under this test, the evaluator determines the number of "qualified investments" made, the "innovativeness" and "complexity" of the investments, and the "responsiveness" of the institution to community credit and development needs.[70] Finally, the "Service Test" evaluates "the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services."[71] Federal regulators determine the institution's rating under this test by considering the institution's dispersion of branches among its assessment area, its history of opening and closing branches, the degree to which it offers "alternative systems" for delivering banking services to low- and moderate-income individuals, and the variety of services offered.[72]

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67. *See* Stephen D. Burwell & Christine A. McCarthy, *Community Banking*, 14 ANN. REV. BANKING L. 116, 122 (1995).

68. *See id.*

69. *See* Overby, *supra* note 51, at 1470. The institution's rating under the "Lending Test" is based on:

> the institution's responsiveness to the credit needs of its assessment area, the degree of lending in its assessment area, the geographic distribution of loans throughout its assessment area and among individuals of different income levels and businesses, its record in meeting the credit needs of highly economically disadvantaged areas of its assessment area, of low income individuals, or of businesses, its use of innovative or flexible lending practices in a safe and sound manner to meet the credit needs of low- or moderate-income individuals and geographies, and its leadership position in community development lending.

Id. at 1470-1471.

70. *Id.* at 1471-72. "Qualified investments" are characterized by "lawful investments, deposits, membership shares, or grants that have community development as their primary purpose." *Id.* at 1471 n.195.

71. *Id.* at 1472.

72. *See id.*

In sum, the CRA mandates that federal financial supervisory agencies use their status to encourage regulated institutions to meet the credit needs of their local communities.[73] Although the Act has generally been applauded for this purpose, it lacked effective enforcement provisions until a set of revised CRA proposals was approved by Federal Regulators in April 1995.[74] These revised rules measure the *results* of an institution's attempts to meet the credit needs of its local communities rather than its *efforts* at CRA compliance.[75] As these revisions become fully effective, analysts will examine whether they are in fact enhancing enforcement of the CRA.

IV. EFFECTS OF THE CRA

Despite prior enforcement problems, federal financial supervisory agencies appear successful in accomplishing the purpose of the CRA which is to encourage regulated institutions to meet the credit needs of their local communities. Just as drafters of the CRA had hoped, large regulatory institutions responded to the Act and moved into low- and moderate-income communities. At the same time the Act has had an unanticipated effect: some minority-owned banks now struggle to remain open in the face of fierce competition from their more "mainstream" peers. This section of this Comment will first review the effect of the CRA on large regulatory institutions, and then will examine the Act's effect on minority-owned banks.

A. *Effect of the CRA on Majority-owned banks*

The CRA has had four major effects on majority-owned banks. First, "mainstream" banks are coming to the conclusion that making loans in low- and moderate-income communities is profitable. "Since CRA, we've seen larger institutions come in and, lo and behold, discover that making home loans is good business," explained the president of Dwelling House Savings & Loan Association in Pittsburgh.[76] Consequently, the trend among majority-owned banks has been to increase lending to less advantaged borrowers because it has the potential to be profitable.[77] " 'CRA is working . . . .' 'Banks are

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73. *See supra* note 52 and accompanying text.

74. *See supra* notes 62-72 and accompanying text.

75. *See supra* note 66 and accompanying text.

76. Marshall, *supra* note 18, at 21 (statement of Robert M. LaVelle).

77. *See* James S. Granelli, *More Banks Find Profit in Loans to Inner City*, L.A. TIMES, July 24, 1996, at D1.

finding that there are a lot of good loans to be made out there in the low[-] and middle-income community,' " commented the Treasury Department's top banking official.[78] In reference to lending to black churches, a vice president and community investment coordinator for NationsBank noted, " '[t]here is a whole market here that historically as an industry we probably haven't served well, ... [and] more and more institutions are finding out that this is good business.' "[79]

Despite this sudden interest in lending in low-income communities, the performance of the low-income loans will determine whether large banks will remain in these communities. Current studies regarding the performance of low-income loans are inconclusive. "Mainstream" banks have expressed some concern that the mortgages resulting from their aggressive low-income loan programs may "sour" at a rate higher than other loans.[80] For example, in the summer of 1995, the Federal Home Loan Mortgage Corporation told bankers that it had begun noticing higher rates of default on low-down-payment loans.[81] In addition, a senior vice president at NationsBank of Charlotte, North Carolina, indicated that NationsBank is " 'starting to see some loss experience higher than in the general market' ... [with its] affordable-loan programs."[82] On the other hand, some studies indicate that low-income borrowers make great efforts to meet their mortgage payments.[83] Thus, the data conflicts, and the loans are too new to make judgments regarding their performance.[84] In the meantime, however, as "mainstream" banks increase their low-income lending, they will "learn where the line is between a stretch and a bad deal."[85]

In addition to recognizing the potential profitability of low-income loans, large banks are aggressively moving into low- and moderate-income communities because it can be a tremendous help

78. John R. Wilke, *Home Loans to Blacks, Hispanics Soared in '94*, WALL ST. J., July 19, 1995, at A2 (statement of John D. Hawke).

79. Michelle Singletary, *Black Churches' Converts: Banks; Lenders Underwriting Area-Wide Expansion of Religious Facilities*, WASH. POST, Aug. 5, 1996, at A1, A12 (statement of Antonio Doss) [hereinafter Singletary, *Religious Facilities*].

80. *See* Wilke, *supra* note 11, at 5A.

81. *See id.* at 5A-5B.

82. *Id.* at 5B (statement of Catherine Bessant). Ms. Bessant also noted that a modestly higher loss rate is permissible as long as it is predictable so the bank can properly price mortgages when repackaged as securities. *See id.*

83. *See id.* at 5A.

84. *See id.*

85. *Id.* at 5B(statement of Catherine Bessant).

in their pursuit of mergers and acquisitions.[86] In fact, "[t]he banking industry is undergoing a consolidation of massive proportions, on a scale not seen since the 1920s and 1930s."[87] The fourth quarter of 1995 reflected the current trend of consolidation. In that quarter, the Federal Reserve Board approved three giant bank mergers which rearranged the ranking of the top ten banks in the nation.[88] "For institutions on the sale block . . . a rating of 'outstanding' by regulators in fulfilling obligations under the Community Reinvestment Act should make it easier to get federal approval for any merger," according to an analyst at Keefe, Bruyette & Woods in New York.[89] Consequently, some banks in the merger market have made outstanding community lending commitments in an attempt to impress regulators.[90] For example, prior to its acquisition of First Interstate Bancorp, Wells Fargo & Company promised forty-five billion dollars for lower-income and small-business loans over ten years.[91] As a result of these increased CRA compliance efforts, "outstanding" ratings have more than doubled in four years, while "needs to improve" ratings have dropped more than fifty percent.[92]

In spite of some banks' efforts to impress regulators, expansion applications are increasingly contested. Approximately fifty percent

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86. *See* Moore, *supra* note 2, at 425 (stating that CRA commitments by banks generally insure that their merger applications will be approved by federal regulators).

87. Geoffrey P. Miller, *Legal Restrictions on Bank Consolidation: An Economic Analysis*, 77 IOWA L. REV. 1083, 1086 (1992); *see also Mergers & Acquisitions: Increasing Mega-Mergers, Unusual Twists Feature Fourth Quarter Actions*, BANKING POL'Y REP., Jan. 15, 1996, *available in* Lexis, Banking Library, CURNWS File [hereinafter Mergers and Acquisitions]. On October 3, 1996, the president of the San Francisco Federal Reserve Bank, Robert Parry, predicted that the current trend toward bank consolidation will continue over the next several years but at a slower pace. *Community Reinvestment Act: Small Banks Report Positive Changes in Complying with CRA Rules*, Banking Daily (BNA), Oct. 4, 1996, *available in* LEXIS, Banking Library, BNABD File [hereinafter *Small Banks*].

88. *Mergers & Acquisitions, supra* note 87. The three bank mergers approved by the Fed included: Rhode Island-based Fleet Financial Groups acquisition of Connecticut-based Shawmut National Corporation, North Carolina-based First Union Corporations purchase of New Jersey-based First Fidelity Bancorporation, and Michigan-based NBD Bancorp, Inc. acquisition of Illinois-based First Chicago Corporation. *See id.*

89. Granelli, *supra* note 77, at D1, D7 (statement of Thomas F. Theurkauf, Jr.).

90. *See* Wilke, *supra* note 11, at 1.

91. *See id.*

92. *See id.* at 5B. Some suggest that part of the favorable increase in CRA ratings is attributable to "grade inflation." *Id.* (statement of Robert Gnaizda, director of a San Francisco advocacy group called the Greenlining Institute). Furthermore, banks that face a weak CRA rating will often bring in legal counsel to appeal the decision. *See id.* However, Federal Reserve regulators insist that the better ratings reflect improved lending performance, as is indicated by the reports that lenders have filed. *See id.*

of the merger transactions approved by Federal regulators during the fourth quarter of 1996 were contested,[93] and a large number of the protests against mergers and acquisitions were filed under the CRA.[94] In reality, however, CRA based protests rarely block a deal.[95] Nevertheless, even regulators acknowledge that they can make the approval process longer[96] and more expensive.[97] Thus, the protests provide tremendous incentive for banks to comply with the CRA.

Arguably, the new, more stringent CRA enforcement provisions will push large banks even further into low- to moderate-income communities.[98] Regulators have toughened the rules and will start basing CRA ratings on an institution's actual lending record rather than on documentation of the efforts an institution has made to increase lending in inner-city and underserved communities.[99] " 'The old act was based more on documentation. The new [act] says you have to get results,' " according to the chairman of the Southern Delaware Bankers Coalition for Community Reinvestment and assistant compliance officer with JC Penney National Bank in Harrington, Delaware.[100] "With the new CRA regulation emphasizing performance, not process . . .'we believe the CRA will be given the chance to do the work it was intended to do,' " indicated the president of the

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93. *See Mergers & Acquisitions*, *supra* note 87. The majority of the complaints were initiated by community activist organizations who expressed concern that the transactions would reduce or even eliminate needed services to minorities and low- and moderate-income individuals. *See id.* They further argued that none of the banks involved were doing an adequate job of serving their communities under the CRA requirements. *See id.*

94. *See id.* For a discussion of the small percentage of merger applications that have been protested by community activists since 1988, see *supra* note 60 and accompanying text. The percentage of mergers contested on CRA grounds in the fourth quarter of 1996 jumped close to fifty percent. *See supra* note 93 and accompanying text. Thus, it appears that the number of merger applications that are contested on CRA grounds is rising. *See generally* Moore, *supra* note 2, at 427 (stating that, although in the past only a small number of merger applications have been rejected on CRA grounds, CRA compliance is slowly becoming a controlling factor in the assessment of proposed mergers).

95. *See* Granelli, *supra* note 77, at D7. One explanation for the infrequent denial of merger applications is that companies often withdraw their applications as they become aware of negative signals from the Fed. *See Mergers and Acquisitions*, *supra* note 87.

96. *See* Moore, *supra* note 2, at 429 (referring to examples of community group protests that caused delays in the merger approval process).

97. *See* Granelli, *supra* note 77, at D7. *See also* Moore, *supra* note 2, at 425 (explaining proposed legislation designed to streamline the merger approval process by making it more efficient and less expensive).

98. Large banks will not be examined under the new procedures until July of 1997. *See Small Banks*, *supra* note 87.

99. *See supra* notes 62-72 and accompanying text.

100. Kimberly Quillen, *Reinvestment Act to Affect Delaware Banks*, DEL. BUS. REV., July 24, 1995 (statement of Thomas Chambers).

Federal Reserve Bank of San Francisco.[101] Theoretically, as the large banks focus more on lending and less on paperwork, they will move deeper into "underserved" communities, acquiring even more of the customers that were traditionally loyal to minority-owned banks.

A third major effect that the CRA has had on majority banks is that, as part of their effort to comply with the Act, they are implementing creative new services and lending programs that give them a competitive edge in low- and moderate-income communities. For example, on December 18, 1995, NationsBank announced a $500 million, five-year affordable housing program designed for low- to moderate-income communities.[102] This housing program offers 100 percent home mortgage financing with extremely liberal underwriting standards.[103] The program enables qualified applicants to buy a home at market rates with no down payment, closing costs, or application fees.[104] Potential borrowers under this program will not be penalized for regularly switching jobs or for having "seasonal" employment, and the program does not require private mortgage insurance.[105] According to housing experts, "[t]he pilot program . . . is one of the largest and most comprehensive community reinvestment initiatives in the banking industry."[106] Similarly, in August 1995, Barnett Bank of Jacksonville, Florida agreed to provide twenty million dollars in loans through a program comparable to the one announced by NationsBank.[107] The Federal Reserve governor who oversees community lending insisted that "[t]he new programs 'have not only leveled the playing field but begun to go in the other direction,' . . . as big lenders aggressively move into the inner city to demonstrate to regulators that they are complying with fair-lending laws."[108]

Additional new services and lending programs include First Union's "affordable home mortgage" that requires a down payment of only five percent, and First Tennessee Bank's offering of home-loans to first-time buyers that covers up to ninety-seven percent of the price of a house.[109] Other initiatives by large banks in under-

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101. *Small Banks*, *supra* note 87 (statement of Robert Parry, president of the Federal Reserve Bank of San Francisco).

102. *See* Michelle Singletary, *NationsBank Plans Affordable Housing Plan*, WASH. POST, Dec. 19, 1995, at C2.

103. *See id.*

104. *See id.*

105. *See id.*

106. *Id.*

107. *See id.*

108. Wilke, *supra* note 11, at 5A (statement of Lawrence Lindsey).

109. *See* Brooks, *supra* note 5.

served areas include: credit cards, small business-loans, and twenty-four-hour-a-day telephone banking. "They offer everything under the sun," according to the chief executive of Citizens Federal in Birmingham.[110]

Further indication that "mainstream" banks are making great efforts to comply with the CRA is the fact that several have created community reinvestment programs or divisions specifically designed to give structure to their CRA lending.[111] For example, First Union has established a profit center for community lending similar to its commercial real estate or small business lending units.[112] Before creating this profit center, First Union had no focused effort for handling community development lending.[113] Now, the CRA lending unit will consist of loan officers whose major responsibility will be making community development loans.[114]

In sum, the CRA has had four major effects on the majority-owned banks: (1) they recognize the potential profitability of low-income loans; (2) they realize that moving into low- and moderate-income communities can be helpful in their pursuit of mergers and acquisitions; (3) they offer creative new services and lending programs that are especially appealing to low- and moderate-income communities; and (4) they have created new CRA divisions specifically designed to give structure to their CRA lending.

B. *Effect of CRA on Minority-owned banks*

The "mainstream" banks' efforts at complying with the CRA are beginning to take their toll on minority-owned banks. While all small banks appear to be losing customers to their more "mainstream" peers, minority-owned banks have been hit especially hard because

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110. *Id.* (statement of Bunny Stokes, Jr.).

111. *See* Harry M. K. Johnston, *Comment: The Task for Clinton's Development Banks Is to Reinvent Neighborhood Banking*, AM. BANKER, Mar. 25, 1993, at 4, 6.

112. *See* Michelle Singletary, *He Wants to Prove that Community Lending Pays: At First Union's CRA Unit, Williams Predicts a Profit*, WASH. POST, May 13, 1996, at F9. Roger L. Williams was hired by First Union in January 1996 specifically to head its community reinvestment programs in Maryland, Virginia, and the District of Columbia. He left the Federal Home Mortgage Corp., where he was a vice president managing a nationwide multi-billion-dollar portfolio of nonperforming loans and the sale of multifamily real estate. *See id.*

113. *See id.*

114. *See id.* Williams, who is heading the community reinvestment program for First Union, recognizes that the CRA lending unit contains some risk due to loans that do not produce returns as strong as those of commercial real estate loans, but he points out that top executives have endorsed the strategy and are aware of the challenges in making such loans. *See id.*

the larger banks, after overlooking low-income communities for years, have found that lending to these communities allows them to comply with the CRA, while also helping their bottom lines.[115] An increasingly strict enforcement of the CRA "has impelled majority-owned banks to intrude aggressively into what is often the local market niche of many minority-owned banks and to co-opt the customer base of minority-owned institutions by offering more competitive products than minority-owned institutions are able to offer."[116] A Federal Reserve Board report released on July 18, 1995 showed a significant increase in the number of minority loans compared to the previous year, and this report explained that the higher number of loans was attributable to steps taken by banks to target low-income borrowers in an effort to comply with the CRA.[117] The report also indicated that the number of conventional mortgages for African-Americans rose by 55%, 42% for Hispanics, 24% for Native-Americans, and 19% for Asians.[118]

The movement of "mainstream" banks into low- and moderate-income communities is unmistakably affecting minority-owned institutions. For example, 1993 statistics showed that minority-owned banks accounted for six of thirty-two bank failures which occurred in that year.[119] In addition, a study of federal banking data generated by Sheshunoff Information Services Incorporated, a bank-consulting firm in Austin, Texas, indicated that most minority banks and thrifts in the Texas region are losing ground to both big and small competitors in that state.[120] In September 1995, eighty-two percent, or fourteen out of seventeen minority-owned banks and thrifts, were less profitable than the average for all banks and thrifts in Texas.[121] In contrast, 1990 figures showed only half the minority-owned institutions trailing behind their nonminority peers.[122] Furthermore, some indications suggest that as a result of this intense competition, minority-owned banks are losing a number of their most credit-worthy

115. *See* Brooks, *supra* note 5.

116. Overby, *supra* note 53, at 1529-30 (statement of A. Brooke Overby). Traditionally, minority-owned banks have not offered a large variety of services—most offer only "plain-vanilla products." Brooks, *supra* note 5.

117. *See* Wilke, *supra* note 78, at A2.

118. *See id.* The number of applications from minorities increased significantly over 1993, which partially triggered the increase in loans to these groups. *See id.*

119. *See* Robert B. Cox, *Minority Banks Seen Lagging in CRA Arena*, AM. BANKER, Aug. 20, 1993, at 1, 8.

120. Brooks, *supra* note 5.

121. *See id.*

122. *See id.*

customers to the big banks, leaving them with a riskier pool of borrowers.[123] " 'In a period when everyone else is doing great' because the economy is healthy and loan demand is strong, 'they're doing worse,' " reports an assistant finance professor at Georgia State University in Atlanta.[124]

Thus, although the general purpose of the CRA (to encourage institutions to serve their local communities) seems ideal, the Act has inadvertently had several negative effects on minority-owned banks. Primarily, some of these banks are losing customers and experiencing a decrease in profits.

V. MINORITY BANKS' RESPONSE TO CRA-INSPIRED COMPETITION

Although minority-owned banks face significant new challenges as a result of the CRA, there are at least six strategies they may adopt to ensure their long-term survival. First, some minority-owned banks have joined the recent trend of mergers and acquisitions as a means of competing with the more "mainstream" banks. For example, the African-American-owned Omnibank Corporation, the owner of Omnibank in suburban Detroit, acquired Drexel National Bank and Independence Bank, two African-American-owned banks in Chicago.[125] Omnibank Corporation bought these banks in order to acquire a larger customer base, offer more products, decrease its costs, and, most importantly, remain competitive.[126] Minority-owned Mutual Community Savings Bank in Durham, North Carolina, bought an African-American-owned bank in Greensboro, North Carolina, in order to expand its customer base.[127] Similarly, United National Bank in Fayetteville, North Carolina, recently bought branches in rural towns with the hope of attracting customers using a small-town touch.[128] Finally, First Public Savings Bank of Los Angeles merged with Cathay Bancorp's Cathay Bank. Both of these institutions were formed by Chinese-American business people who had trouble obtaining loans.[129] First Public Savings Bank says it

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123. *See id.*

124. *Id.* (statement of Jocelyn Evans).

125. *See* Byrd, *supra* note 3, at 36.

126. *See id.*

127. *See* Brooks, *supra* note 5.

128. *See id.*

129. *See* Marshall, *supra* note 18, at 20. Cathay Bank was established in 1962. *See id.* Currently, Cathay Bank has ten branches in southern California, fifteen branches in northern California, and offices in Taiwan and Hong Kong. *See id.* First Public Bank was created in 1979 and has five branches, about 100 investors, and a common equity of $22.8 million. *See id.*

merged with Cathay Bank "in the best interests of both [its] shareholders and [its] customers."[130] These interests included meeting the banking needs of a predominantly Asian-American population.[131] The merger eliminated First Public Savings Bank from the list of fourteen savings institutions currently identified as Asian-American, but the hope is that the minority character of the bank will remain in spirit.[132]

Just as minority-owned banks are joining the trend of mergers and acquisitions in order to survive, they are also beginning to seek investments from the large banks to increase their access to capital.[133] The Housing and Community Development Act of 1992 has facilitated this type of fundraising.[134] This Act gives commercial banks explicit CRA credit for investing in minority financial institutions.[135] In fact, minority banks have begun actively seeking capital from majority-owned commercial banks, and some of the nation's biggest banks, such as BankAmerica, Fleet, and NationsBank, have responded by investing millions of dollars in minority-owned institutions.[136] According to the president of minority-owned Liberty Bank & Trust Co. in New Orleans, the new law created a "win-win-win situation. The majority bank wins, because it gets CRA credit; the minority bank wins, because the capital marketplace is limited; and the inner-city businesses win, because the minority banks have more money to lend to them due to the capital infusions they receive

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130. *Id.*

131. *See id.*

132. *Id.*

133. *See* Colby, *supra* note 37, at 50.

134. Housing and Community Development Act of 1992, Pub. L. No. 102-550, 106 Stat. 3672 (1992).

135. *See* Pub. L. No. 102-550, § 909, 106 Stat. 3672, 3874 (1992). The Housing and Community Development Act amended the CRA by adding the following language:

> In assessing and taking into account ... the record of ... [majority-owned institutions], the appropriate Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.

Id.

136. *See* Colby, *supra* note 37, at 50. For example, Minority-owned Boston Bank of Commerce received equity infusions from Bank of Boston, Fleet Bank, and Boston Safe Deposit & Trust Co. In addition, NationsBank invested in Commonwealth National Bank of Mobile, Alabama, and Founders National Bank, a minority-owned financial institution in Los Angeles, received an infusion from BankAmerica. *See id.*

from the majority banks."[137]

In addition to joining the trend of mergers and acquisitions and seeking investments from the large banks, minority banks might expand their customer base and try to establish a more mainstream status in order to survive the fierce competition they face from majority-owned banks. Some minority banks are already moving in this direction. As a result of growing competition, more African-American-owned banks are "reaching out for mainstream status," according to the president of the National Bankers Association, a trade group in Washington that represents minority-owned banks.[138] For example, Citizens Trust Bank, the largest African-American-owned bank in Atlanta, is trying to attract white, Korean, and Hispanic customers for the first time in its seventy-two-year history in an effort to diversify its base in order to gain a competitive edge.[139] Another example of a minority bank seeking a more "mainstream" status is MetroBank, a bank founded by Taiwanese-Americans in 1987, which is among the fastest growing banks in the Houston metropolitan area.[140] This bank recognized that Houston's Asian population was not big enough to fuel the sort of growth it sought, so the bank reached out to other communities.[141]

In addition to establishing a more "mainstream" status, some of the minority banks might seek to improve their own CRA ratings as a means of competing with larger banks.[142] A number of minority-owned banks have been criticized for serving only the wealthiest minorities and turning away the less affluent loan applicants due to fear of losing money on risky loans.[143] For example, an analysis of Home Mortgage Disclosure Act data showed that, although minority banks make significantly more housing loans to minorities, they single out

137. *Id.* (statement of Allen J. McDonald, Jr.).

138. Byrd, *supra* note 3, at 33 (statement of Samuel L. Foggie).

139. *See id.* Citizens Trust Bank advertised with thirteen billboards in English, Korean, and Spanish in predominately white areas with the following slogan on the billboards: "Look to us .... [W]e listen." *Id.*

140. *See* Rick Wartzman, *Minority Player: How Tiny MetroBank Wins Big by Catering to an Ethnic Market*, WALL ST. J., Jan. 15, 1996, at A1.

141. *See id.* MetroBank has not fully realized its vision in reaching out to the African-American community. It has begun taking steps to increase its African-American customer base such as hiring several African-American consultants, but the bank fell short of meeting its goal of making 25 loans to African-Americans in 1995 by five. *See id.* On the whole, Asian banks are under strong criticism for focusing on Asian groups to the exclusion of other underserved ethnic individuals, particularly African-Americans and Latinos. *See* O'Hara, *supra* note 23, at 6.

142. *See* Cox, *supra* note 119.

143. *See* Byrd, *supra* note 3, at 36.

the wealthiest individuals in their communities more than do most other banks.[144] According to a 1993 study by a Washington consultant who analyzes CRA ratings for corporations interested in working with minority financial institutions, minority banks and thrifts had much lower CRA ratings than other banks.[145] Only ten percent of all banks received "needs to improve" or "substantial noncompliance" ratings, but twenty-four percent of minority banks were given these low CRA ratings.[146] Among the minority banks, CRA performance varied and Asian banks received much lower ratings than African-American and Hispanic banks.[147] If these studies are accurate, minority banks might improve their CRA lending to compete with the big banks, which recognized the potential risks involved, but have nonetheless concluded that low- and moderate-income communities are a tremendous potential source of profit.[148] For example, some community development banks, such as South Shore Bank in Chicago, exist solely to provide capital to rebuild low-income areas.[149] Large banks have found a "very profitable niche in making loans in a black area . . . and proved that some black banks were not adequately meeting that need."[150]

Improving CRA performance may not be easy for some minority-owned banks. Their poor CRA ratings may be explained by the nature of the market they serve. More specifically, minority banks often have customers with poor credit histories which makes lending for the banks difficult.[151] The executive vice president at Family Savings bank in South Central Los Angeles explained that "[p]eople with poor credit histories who can't prove that they will be able to repay their loans will not get a loan."[152] Similarly, minority banks serve neighborhoods with higher percentages of low- and moderate-income borrowers.[153] Frequently, an "upper-income family" in an

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144. *See* Cox, *supra* note 119, at 1.

145. *See id.* A 1991 study found that $17.6 billion was the average asset size of banks receiving the highest CRA ratings, whereas the average asset size of banks receiving the lowest CRA ratings was $55 million. *See* Miller, *supra* note 87, at 1110.

146. *See* Cox, *supra* note 119, at 8.

147. *See id.* Among minority groups, 8% of African-American banks received "needs to improve" or "substantial noncompliance," while 20% of Hispanic banks and 36% of Asian banks received the low ratings. *See id.*

148. *See supra* notes 76-79 and accompanying text.

149. *See* Byrd, *supra* note 3, at 36.

150. *Id.* (statement of William M. Cunningham).

151. *See* Cox, *supra* note 119, at 8.

152. *Id.* (statement of Ron Thigpen).

153. *See id.* Poorer neighborhoods comprised 10% of areas served by all banks, but they accounted for 31% of the neighborhoods served by minority banks. *See id.*

inner-city neighborhood earns much less money than the "upper-income family" in the suburbs.[154] The chairman of the National Bankers Association explained, " '[w]e are dealing with a community that by and large makes only [sixty percent] of the average family income, so we inevitably end up' with borrowers whose credit histories are poor."[155] In addition, minority banks are, on the whole, less stable than larger banks and in less of a position to offer the creative lending that is required to attract and serve the low- and moderate-income communities.[156] Nevertheless, some minority bankers acknowledge that minority-owned banks have room to improve their lending to lower-income borrowers.[157]

In addition to participating in the trend of mergers and acquisitions, seeking investments from large banks, expanding their customer base, and improving their CRA ratings, minority-owned banks should focus on and increase lending to churches in order to remain competitive with the large banks. Five years ago minority banks provided the majority of church loans, but large banks are starting to develop a niche in the church lending market.[158] As churches are growing, they have a tremendous need for financing, and they are considered extremely reliable borrowers.[159] In Washington, D.C., churches in predominately black communities are borrowing millions of dollars to build sanctuaries, social-service facilities, child-care centers, and low-income housing.[160] The big banks are developing relationships with these churches and using their

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154. *See id.*

155. *Id.* (statement of Jesse H. Turner who is also the president and chief executive of Tri-State Bank of Memphis).

156. *See id.* ("We are in a competitive business, and the larger banks have more resources than we have and can afford large signs and plenty of circulars." (statement of Richard T. Greene, president and CEO of a $320 million Harlem thrift, Carver Federal Savings Bank)).

157. *See id.*

158. *See* Marshall, *supra* note 18, at 18.

159. *See* Singletary, *Religious Facilities*, *supra* note 79, at A12; *see also* Marshall, *supra* note 18, at 18 ("In the past, a church loan used to be for an amount of $300,000 to $400,000. Now, church projects are averaging in the millions." (statement of John Hamilton, president of Advance Federal Savings in Baltimore)).

160. *See* Singletary, *Religious Facilities*, *supra* note 79. Some of the big projects in the Washington D.C. area include: The Way of the Cross Church of Christ in Largo recently borrowed $10 million to buy a larger facility for its growing congregation; Ebenezer A.M.E. Church in Fort Washington built an $8.4 million facility and may need to expand again in the near future; New Foundation A.U.E. Zion Church in Southeast Washington developed five town homes in Arlington for approximately $1 million, and in the near future the church hopes to borrow $22 million for additional building projects. *See id.*

church lending as a way to begin serving the black church members.[161] They realize making church loans is good business. Church lending serves to recruit individual customers and comply with the CRA.[162] Advance Federal Savings in Baltimore has relied on church lending as a lucrative source of business lending.[163] Church lending accounts for about fifteen to twenty percent of the institution's loan portfolio, and the church loans are some of the bank's soundest.[164] The president of Advance Federal said that in most cases churches pay off their loans ahead of time and that the bank has experienced only one church loan foreclosure in its history.[165] In the face of heightened competition from big banks, minority banks should aggressively seek to increase and maintain their church lending.

The final strategy minority-owned banks might adopt in order to effectively compete with larger banks is to take advantage of the small, community-oriented nature of their banks. Minority banks "know the community ... [a]nd the community knows and trusts them. The banks aren't these huge bureaucratic voice-mail operations," commented the founder of Communities for Accountable Reinvestment in Los Angeles.[166] Minority-owned banks are in a position to utilize the "old-fashioned approach" of getting to know the customer in order to successfully compete with the bigger banks. In contrast, the tremendous size of some "mainstream" banks makes it more difficult for them than for the smaller, more locally-focused minority-owned banks to develop a relationship with individual customers. According to the top executives of several minority institutions, "being there" is a critical part of their success.[167] "Being there" requires "introducing customers to basic banking and homeownership, easing customer banking angst, perhaps lending to neighborhood churches and small businesses, and helping people in many little ways that may sound mundane but often mean a lot."[168]

Ultimately, despite the new challenges minority banks face as a result of the CRA, several strategies exist that have enabled many of the minority-owned banks to remain competitive with their more "mainstream" peers and these strategies should serve as examples for

161. *See id.* at A12.
162. *See id.*
163. *See* Marshall, *supra* note 18, at 18.
164. *See id.*
165. *See id.*
166. Byrd, *supra* note 3, at 36 (statement of Gilda Haas).
167. Marshall, *supra* note 18, at 16.
168. *Id.*

the minority banks that continue to struggle. First, minority-owned banks can join the recent trend of mergers and acquisitions.[169] In addition, they can seek investments from the large banks as a means of increasing capital,[170] establish a more "mainstream" status,[171] improve their CRA ratings,[172] and increase lending to churches.[173] Finally, minority-owned banks should take advantage of the community-oriented nature of their banks in order to remain competitive with the larger banks.[174]

VI. CONCLUSION

The Community Reinvestment Act encourages financial institutions to meet the credit needs of their local communities, and the Act has experienced success in this endeavor.[175] This success will continue, and even grow, as the new revisions to the CRA become fully effective for both large and small banks. Ironically, however, the Act has inadvertently created fierce competition for some financial institutions—minority-owned banks. The CRA forces large banks into markets traditionally served by minority banks, and the "mainstream" banks offer services and products with which the minority banks often cannot compete.[176] The Act deserves commendation for demanding that large banks increase their lending in underserved areas. Nevertheless, minority banks, institutions that were established in, and to a large degree, designed to serve low- and moderate-income communities, should not be forced out of the banking market to accomplish this goal.

The increased competition for minority banks by no means signals the demise of Victory Savings Bank in South Carolina, Boston Bank of Commerce, or other minority-owned banks. It may mean, however, that banks such as these will struggle for survival so long as CRA is stringently enforced by federal regulators. However, there are many ways minority banks can respond to the new competition they face from "mainstream" banks.[177] As might be expected, many minority-owned banks have already demonstrated their capacity to

169. *See supra* notes 125-32 and accompanying text.
170. *See supra* notes 133-37 and accompanying text.
171. *See supra* notes 138-41 and accompanying text.
172. *See supra* notes 142-57 and accompanying text.
173. *See supra* notes 158-65 and accompanying text.
174. *See supra* notes 166-68 and accompanying text.
175. *See supra* notes 76-114 and accompanying text.
176. *See supra* notes 76-114 and accompanying text.
177. *See supra* notes 125-73 and accompanying text.

prevail in the face of this competition and have adopted strategies that will ensure their long-term survival.[178]

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178. *See supra* notes 125-73 and accompanying text.