FinTechs and Big Tech Should Honor Obligations to Meet the Finance Needs of All Americans, Not Just the Rich, Privileged and Digitally Connected

BPI Staff

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Traditionally, insured banks have been the only financial institutions subject to the Community Reinvestment Act, as they uniquely benefited from the Federal Reserve's discount window and access to its payment system. For FinTech and Big Tech firms seeking at least the latter right, there no longer seems to be a basis for absolving them of a corresponding responsibility – particularly when doing so would have significant benefits for low- and moderate-income individuals.

Moreover, FinTech and Big Tech companies seeking to provide banking products and services often tout their ability to reach underserved communities and individuals, leading some critics to wonder if the FinTechs and Big Techs aren't just engaged in "inclusion washing" – the practice of touting financial inclusion credentials without justification to gain political support.[1] A simple and effective way to ensure that practices by FinTechs and Big Techs are consistent with their rhetoric would be to subject them to the CRA.

THE CRA

Congress passed the Community Reinvestment Act in 1977 as a way to ensure that U.S. banks met the credit needs of the communities in which they operated, including low- and moderate-income neighborhoods and underserved geographic areas. A main goal in passing this legislation was to combat discriminatory lending practices such as redlining, which excluded entire poor and minority neighborhoods from the banking system and limited their access to credit. Under the Act, a bank that fails to meet its CRA obligations faces consequences, including a prohibition on business expansion until the deficiencies are resolved, and public shaming in the form of a public rating.[2] Millions of poorer and underserved Americans have benefited from the CRA over the past 40+ years.

Senator William Proxmire, the main author of the CRA, justified CRA requirements as a fair exchange for the economic benefits enjoyed by depository institutions by grant of their banking charters. Among the economic benefits Senator Proxmire identified were access to low-cost credit through the Federal Reserve Banks and access to the Federal Reserve's payments system.[3]

The stakes are significant, as a migration of activity outside of the banking system may diminish the effectiveness of the CRA. The CFPB has found that the share of loans originated by independent mortgage companies has increased in recent years, with these companies originating 54.5 percent of all reported loans in 2019.[4] But, while

these institutions are able to reap the financial benefits of providing credit to the consumers, not much is required of them in return.

As the number of nonbank financial institutions in the market increases, there is increased risk that consumers in low- and moderate-income communities, whom the CRA was designed to serve, may once more have limited access to credit or otherwise be subject to discriminatory or predatory lending practices. Of course, many nontraditional institutions that engage in lending activities often claim financial inclusion as part of their mission, so formal obligations to validate those claims should be welcome.

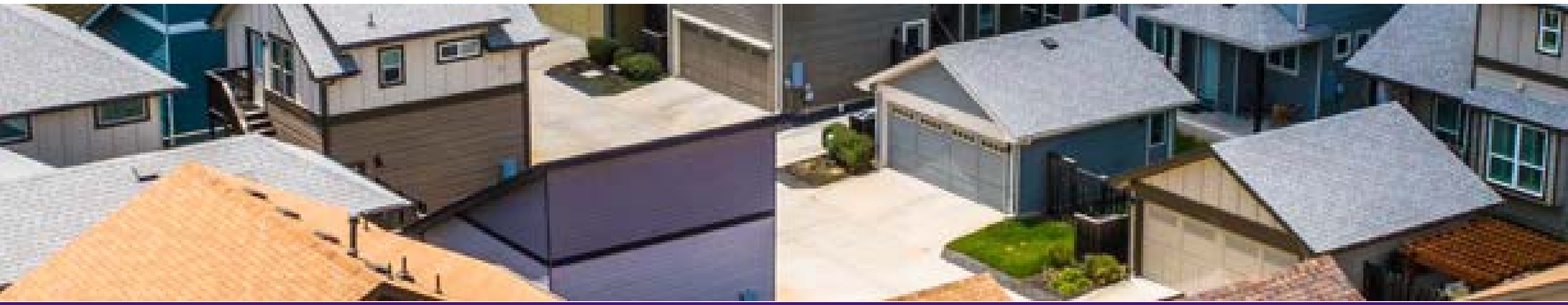
MECHANISMS TO EXPAND CRA TO FINTECHS/BIG TECH

Members of Congress have recognized this imbalance in the lending market. A group of legislators recently reintroduced the American Housing and Economic Mobility Act, which would apply the CRA to nonbank mortgage lenders. And in recent remarks before the National Community Reinvestment Coalition, Federal Reserve Chairman Jerome Powell acknowledged that lending was continuing to move outside the regulated banking sector and that he would support subjecting non-depository institutions to requirements under the CRA.[5]

Access to Federal Reserve master accounts for nontraditional financial institutions presents another route to maintain the relevance of the CRA. The Federal Reserve recently issued a set of proposed guidelines that would establish standards for evaluating applications for Federal Reserve master accounts and access to Reserve Bank financial services.[6] Access to a master account and services would confer upon these institutions the economic benefits identified by Senator Proxmire.

While federal legislative change is certainly the best and most effective way to extend community lending obligations to nonbanks, there are alternative approaches that could achieve some similar benefits. Here are a few:

- **Individual state licensing.** Individual states may take action to ensure that nonbank lenders have similar obligations as banks to serve the needs of their community. In addition to application to banks and credit unions, the state of Massachusetts has required state-licensed mortgage companies to comply with community reinvestment requirements since 2008.[7] The Massachusetts law evaluates a mortgage company's lending and services, similar to the CRA. Earlier this year, Illinois also enacted its own version of the CRA that applies to



banks, credit unions and state-licensed mortgage companies. Illinois will assess a set of factors, including activities to ascertain needs of communities, origination of mortgage loans and efforts to resolve delinquencies. Massachusetts and Illinois have provided templates that may be adopted by other states and applied more broadly to include any institution that engages in lending activities.

- **Licensing agencies.** Leaving aside BPI's broader concerns with the OCC's proposed Special Purpose National Bank charter, the OCC did propose to require that applications for that charter include a description of the applicant's commitment to financial inclusion. The agency's goal with this requirement was to ensure that any institution applying for the charter would make financial services available to all customers and that customers would be treated fairly. The agency did not leave that term open to interpretation, but included in its proposed charter handbook detailed guidance on what this should include.[8] This commitment should address the following: the institution's products, services and activities; anticipated markets and communities, including underserved populations or communities, including low- and moderate-income customers; and goals, milestones, commitment measures and metrics. State licensing agencies that offer novel, bank-like charters can use this example to set financial inclusion expectations or requirements for their chartered institutions.

- **Conditions to access Fed accounts.** It is particularly important to consider nonbanks' obligations to their communities as they're seeking access to the ultimate payments pipeline: the Federal Reserve's payments system. Novel charters allow nonbanks to participate in the business of banking while avoiding the constraints and costs of the regulatory and supervisory framework that is applied to traditional commercial banks by a federal banking agency. In addition to making sure underserved communities continue to have access to financial services, nontraditional institutions offering these services and seeking Federal Reserve master accounts should also have similar obligations if they are to reap the benefits of a master account.

  In its proposed guidelines, the Federal Reserve has identified several policy goals that are reflected in the proposal, which include the need to protect consumers and to promote a safe, efficient, inclusive and innovative payment system.[9] In addition to the consideration of the compliance with consumer protection laws as identified in the proposed guidelines, the ability for historically underserved populations to access financial services should also be considered. The proposed guidelines have also acknowledged that Reserve Bank assessments of requests from non-federally-insured institutions, such as these nontraditional financial institutions, may require more extensive due diligence. Because there is currently no formal requirement for nontraditional financial institutions to comply with the CRA or similar requirements, the institution's plans to ensure the needs of the communities in which they operate should be a part of this more extensive due diligence. Without a demonstrated commitment to its community, a master account and access to services should not be granted.

[1] "Financial Inclusion Is a Top Selling Point for Fintech Backers, but the Target Groups Aren't as Interested." Morning Consult, 12 Mar. 2021, morningconsult.com/2021/03/11/fintech-inclusion-regulation-poll/
[2] Litan, Robert E, et al, United States Department of the Treasury, "The Community Reinvestment Act after Financial Modernization: A Baseline Report," April 2000, available at https://www.treasury.gov/press-center/press-releases/Documents/crareport.pdf
[3] Id at p. 44.
[4] This data is derived from the reports of closed-end applications and originations made by financial institutions in 2019. See Consumer Financial Protection Bureau, Data Point 2019: Mortgage Market Activity and Trends, June 2020, available at https://files.consumerfinance.gov/f/documents/cfpb_2019-mortgage-market-activity-trends_report.pdf
[5] Kiernan, Paul and Andrew Ackerman, "Powell Says Low-Income Lending Rules Should Apply to All Firms Offering Consumer Credit," The Wall Street Journal, May 3, 2021, available at: https://www.wsj.com/articles/powell-highlights-slower-recovery-for-low-wage-and-minority-workers-11620065926
[6] 86 Fed. Reg. 25865 (May 11, 2021).
[7] 209 CMR 54.00, available at https://www.mass.gov/regulations/209-CMR-5400-mortgage-lender-community-investment
[8] Comptroller's Licensing Manual Supplement: Considering Charter Applications From Financial Technology Companies, available at https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/considering-charter-apps-from-fin-tech-companies.html
[9] 86 Fed. Reg. at 25866.