KENNETH H. THOMAS, PH.D

[redacted]

MEMO

From: Kenneth H. Thomas, Ph.D.

To: Chair Jerome Powell & Vice Chair Lael Brainard via Docket No. R-1769 and RIN 7100-AG29;
Acting Comptroller of the Currency Michael Hsu via Docket ID: OCC-2022-0002; and,
Acting Chairman of the FDIC Martin J. Gruenberg via Docket No. RIN 3064-AF81

Date: August 5, 2022

Re: Executive Summary of Six Comments on Why the NPR Should be Discarded
and the Current CRA Regulations Should Remain With Some Improvements
<u>Plus the Addition of the 5% Deposit Reinvestment Rule for Branchless Banks</u>

This is an Executive Summary of six comments on this NPR submitted under separate cover. Before summarizing them, I will first review my relevant background on CRA reform.

My comments represent my personal views and not those of any university, financial institution, company, or other organization with which I am or previously have been associated.

My Relevant Background on CRA Reform

My current and past expertise in CRA in general and its reform in particular are relevant to this comment. In short, I have spent the majority of my professional life since 1977 focused on the CRA. I was greatly honored to have known and spent time with former Senator William Proxmire, the "Father of CRA." The following photo was taken in 1995.

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I am proud of the fact that my first book on CRA, Community Reinvestment Performance (Probus Publishing, Chicago, 1993), received the only endorsement he ever gave to any CRA publication:

> *Dr. Thomas' book, Community Reinvestment Performance, is far and away the best analysis of government regulation that I have seen in any field. He spotlights the regulatory problems that continue in CRA and points out precisely how they are being overcome. CRA will benefit enormously from this superlative examination and report.*

I have worked closely with numerous banks, community groups, and regulators on CRA since 1977, including training federal bank CRA examiners. Besides acting as a CRA consultant and being on the boards of various financial institutions, I am a cofounder and founder of two different CRA high impact mutual funds devoted primarily to providing CRA qualified investments to benefit LMI areas and people.

I had the privilege of testifying before Congress and federal bank regulators several times on CRA and related bank regulatory and public policy issues. Many of the recommendations in my books, including various CRA exam procedures and tests, were directly implemented into current bank regulations, and more details in this regard are found in The CRA Handbook (McGraw Hill, New York, 1998) at www.CRAHandbook.com.

I was honored to receive the first "Award of Excellence" from the National Community Reinvestment Coalition (NCRC), along with Representative Joseph P. Kennedy and Comptroller Ludwig.

In summary, I have a vested interest in getting CRA reform "right," which I define as being what Senator Proxmire intended. We got it right in 1995 when I worked with Comptroller Ludwig and his OCC staff on the last major reform of CRA, and that is my goal during the present effort.

The "Joint" NPR is Really A Fed Effort That Will Likely be Remembered as Another Fed Mistake

The so-called "joint" NPR is really a Fed initiative clothed as an interagency effort. This is important because of the Fed's tortured CRA history, which includes its failed efforts to derail the establishment of CRA in 1977 and its repeated efforts to water down the 1993-1995 reform efforts spearheaded by the OCC. Former Fed officials now run Treasury and the OCC.

The nearly 700-page NPR reminds me of a Ph.D. dissertation rather than the CRA regulatory reform that is needed to modernize the law to continue and increase reinvestment in our nation's Low- and Moderate-Income (LMI) communities to benefit LMI households.

I will therefore not dignify the 180 questions in the NPR with answers, because that entire effort should be discarded. This is because it is based on eight different objectives instead of the one and only goal of CRA reform that matters, namely modernizing it to account for branchless banks and digital banking. And, the NPR's solution to that critical modernization objective is totally wrong.

This CRA "mission creep" is not surprising as the NPR is hauntingly familiar to the Fed's September 2020 ANPR. In addition to the Fed's mission creep and its continued efforts to politicize CRA, we must remember that despite their more than 400 Ph.D. economists, their recent track record as our central bank has been very disappointing (e.g., "transitory" inflation). Their current NPR will likely go down in CRA history as yet another Fed mistake.

There is No Need for the NPR: The Current Regulations Need to be Modernized With the 5% Deposit Reinvestment Rule and Updated With Some Previously Suggested Improvements

Everyone agrees that CRA needs to be modernized to reflect the growth of branchless banks and digital banking, but that can best be done with the 5% Deposit Reinvestment Rule. It requires any bank with more than 5% of its deposits from a Metropolitan Statistical Area (MSA) to have a commensurate CRA reinvestment obligation there. The misguided NPR suggests the backwards concept of basing non-facility Assessment Areas on loans rather than deposits.

The intent of CRA and in fact its middle name is about the REINVESTMENT of deposits. Rather than reinvesting them in affluent neighborhoods or "hot spots" where they emanate, the 5% Deposit Reinvestment Rule requires the benefits to be reinvested in CRA "deserts" in the sourcing MSAs.

Similar to a Robin Hood Rule, giant internet, credit card, fintech and other branchless banks, which are harvesting tens of billions from the affluent communities of our largest MSAs, would be required to provide CRA benefits *in the LMI communities* in those same MSAs.

Who can argue with this rule other than the branchless banks that would have new reinvestment requirements OR the "sanctuary" cities of Salt Lake City, Sioux Falls and Wilmington where most of them are based that now receive 100% of the CRA benefits of the deposits from our large MSAs.

Besides this 5% Deposit Reinvestment Rule fix to modernize CRA, it will also benefit from many of the best ideas in the rescinded OCC Final Rule such as a list of qualifying community development activities and a regulatory prequalification procedure, some of which are in the NPR.

Together this modernization fix with some generally accepted improvements can be called "CRA Reform Lite" as compared to the complex and unnecessary 700-page overhaul in the NPR. Yes, CRA needs to be updated and tuned-up not totally overhauled as proposed in the NPR.

All of the other non-modernization goals for CRA reform supposedly being addressed by the NPR can be met through the existing regulations such as increased examiner training and more consistent enforcement among the three agencies.

The agencies, however, must be more mindful of the increased regulatory burden, especially on banks with assets over $10 billion that are most adversely impacted by the NPR. Instead of those 135 banks that control 88% of industry assets, the NPR should have focused on the 32 banks with assets over $100 billion that control three-fourths of industry assets.

Listing of Six Detailed NPR Comments That I Have Submitted Under Separate Cover:

1. "The NPR's Comment Period Should Have Been Extended"
2. "The Fed's Heavy Hand in this NPR"
3. "The Fed's Mission Creep and Overreach on CRA Reform"
4. "The NPR Must Have the 5% Deposit Reinvestment Rule"
5. "The NPR's Major Errors of Commission and Omission"
6. "Why Community Groups, Banks, and Examiners Should Oppose the NPR"

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Acting Chairman of the FDIC Martin J. Gruenberg via Docket No. RIN 3064-AF81

Date: August 5, 2022

Re: First CRA NPR Comment: "The NPR's Comment Period Should Have Been Extended"

This is my first comment on this NPR on CRA Reform, and it is titled *"The NPR's Comment Period Should Have Been Extended."* Before providing more details on this comment, I will first summarize my relevant background on CRA reform.

My comments represent my personal views and not those of any university, financial institution, company, or other organization with which I am or previously have been associated.

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The Importance of Hearing from Both Community and Industry Interests

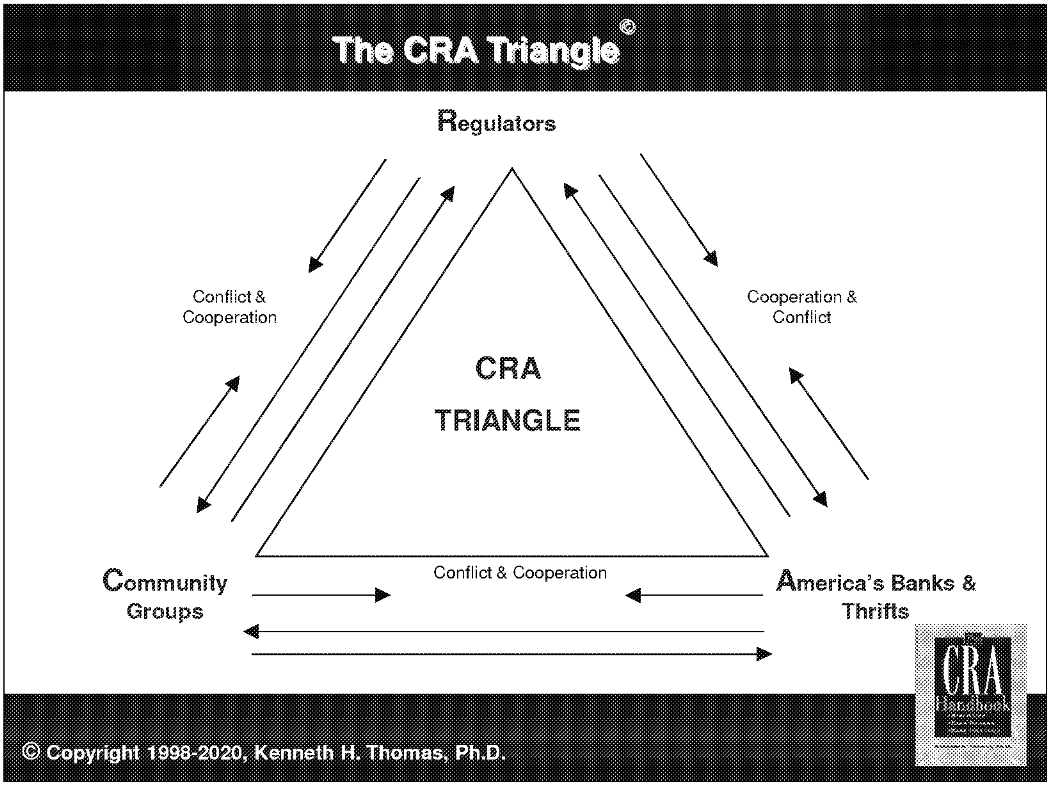
Optimal CRA reform must meet several public policy conditions that can best be understood by reference to the CRA Triangle© as described in The CRA Handbook. There are three corners to this equidistant triangle where there is an ongoing and often volatile dynamic tension among them:

1. **C**ommunity groups, ideally (but not always) representing community interests;

2. **R**egulators influenced and monitored by Congress and the Administration; and

3. **A**merica's banks and thrifts (excluding credit unions) subject to CRA, representing the interests of their owners.

The CRA Triangle represents an ideally balanced and proportioned model of consumer, government, and business interaction with three equal sides and angles where none is more important than another. Community groups and banks together form the base of this triangle, with regulators in the middle position, equidistant to both corners.



In this ideal model, the regulators act as impartial referees between community groups and banks, attempting to fashion a "socially optimal" result benefiting both parties. The reference to optimal public policy in CRA reform is based on reaching the ideal balancing point through consideration of potential conflicts of interest, pressures, and other factors impacting each of the triangle's corners.

Regarding the critical issue of CRA reform, something that has not been done in a major way since 1995, the regulators have a responsibility to make sure they get input from both community and industry interests. This is particularly important when a proposed regulation is long and complex, as is definitely the case with the current NPR.

Comparing the Current Joint NPR to the 1995 CRA Reform Effort and the 2020 OCC/FDIC Joint NPR

The 1995 CRA reform process got it "right" because it was the result of three different proposals (1993, 1994, and 1995) over a roughly three-year period with over 14,000 comments, seven public hearings, and meetings with over 250 stakeholders.

The current "joint" NPR, which is really the handiwork of the Federal Reserve (Fed) as described in a subsequent comment, is unfortunately being rushed with a very short 90-day comment period for a very long and complicated proposal. There have been NO public hearings on the current NPR.

A similar NPR comment period timing issue arose during the joint OCC/FDIC NPR on CRA reform in 2020 when a 60-day comment period was heavily criticized by community groups and others.

As pointed out at https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-19.html and https://www.americanbanker.com/news/regulators-extend-cra-comment-period-bowing-to-congressional-pressure, that comment period was extended to 90 days after considerable community group, industry and congressional pressure

That joint OCC/FDIC NPR (RIN 3064-AF22) released on 12/12/2019 was 238 pages in length and the Federal Register version released on 1/9/2020 was 62 pages in length. By comparison, the current "joint" NPR that was released on 5/5/2022 was 679 pages in length (2.85 times longer) and the Federal Register version released on 6/3/2022 was 183 pages in length (2.95 times longer).

Thus, the current joint NPR is approximately THREE TIMES LONGER and infinitely more complicated than the previous OCC/FDIC NPR. For this reason alone, the current comment period should have been extended at least 30 days and more likely 60 days. However, a 180-day extension resulting in an overall 270-day comment period, three times longer than the current or previous one, could be justified based on the current NPR's length and complexity relative to the previous one.

Multiple Requests for Extension of Comment Period Were Denied by the Regulators

Numerous community groups, members of Congress and a rare joint effort by TEN different banking trade groups requested a minimal 30-day extension for the current NPR. Here is the front-page of the 5/31/2022 banking industry letter spearheaded by the ABA and ICBA:

May 31, 2022

Submitted via email to: comments@fdic.gov, regs.comments@federalreserve.gov, and Senior Deputy Comptroller for Bank Supervision Grovetta Gardineer

James P. Sheesley
Assistant Executive Secretary
Attention: Comments RIN 3064- AF81
Federal Deposit Insurance Corporation
550 17th Street, NW,
Washington, DC 20429.

Grovetta Gardineer
Senior Deputy Comptroller for Bank Supervision Policy
Office of the Comptroller of the Currency
400 7th Street, SW, suite 3E-218
Washington, DC 20219.

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551.

RE: Community Reinvestment Act Regulations [Docket ID OCC-2022-0002, RIN 1557-AF15; Docket No. R-[•] and RIN 7100-AG [•]; RIN 3064-AF81]

To whom it may concern,

On May 5, 2022, the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("The Board"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "the agencies") promulgated a Notice of Proposed Rulemaking, proposing major revisions to the implementing regulations of the Community Reinvestment Act.[1] Our banking trade associations[2] appreciate the efforts that the agencies have undertaken to release this proposal and do not underestimate the difficulty of revising an important and complicated regulatory framework on an interagency basis. We commend the agencies for the hard work they have done so far.

[1] Available at: https://www.fdic.gov/news/board-matters/2022/2022-05-05-notice-dis-a-fr.pdf.
[2] Undersigned trade associations include: the American Bankers Association, the Association of Military Banks of America, the Bank Policy institute, the Community Development Bankers Association, the Consumer Bankers Association, the Housing Policy Council, the Independent Community Bankers of America, the Mortgage Bankers Association, the National Association of Affordable Housing Lenders, and the National Bankers Association. *See* Appendix for a description of these groups.

The regulators on a joint letterhead on 6/29/2022 summarily rejected this request on the grounds that they believed a 90-day comment period was *"reasonable and sufficient…to provide meaningful input."* This was a surprising and disappointing response from this corner of the CRA Triangle charged with protecting the public interest on this critical reform issue.

Board of Governors of the Federal Reserve System
Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation

June 29, 2022

Ms. Lilly Thomas
ICBA Executive Vice President
Independent Community Regulatory Policy
1615 L Street, NW, Suite 900
Washington, DC 20036

Mr. Michael Marshall
ICBA Director of Regulatory Legal Affairs
Independent Community Regulatory Policy
1615 L Street, NW, Suite 900
Washington, DC 20036

Dear Ms. Thomas and Mr. Marshall:

Thank you for providing the letter of May 31, 2022, signed by ten trade associations,[1] requesting an extension of the comment period for the Community Reinvestment Act notice of proposed rulemaking (NPR).[2]

The Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (agencies) issued the NPR on May 5, 2022. The agencies established a comment period for the NPR that ends on August 5, 2022, and believe the length of the comment period is reasonable and sufficient for commenters to review the proposal and provide meaningful input. Therefore, the agencies do not plan to extend the comment period.

To assist your review, the agencies' staffs would be pleased to meet with any of the signatories to answer questions about the NPR.

[1] The trade associations were the American Bankers Association, the Association of Military Banks of America, the Bank Policy Institute, the Community Development Bankers Association, the Consumer Bankers Association, the Housing Policy Council, the Independent Community Bankers of America, the Mortgage Bankers Association, the National Association of Affordable Housing Lenders, and the National Bankers Association.

[2] 87 Fed. Reg. 33,884 (June 3, 2022).

The ABA made the following statement before the House Subcommittee on Consumer Protection and Financial Institutions at https://www.aba.com/advocacy/policy-analysis/examining-the-unified-proposed-rule-to-modernize-the-community-reinvestment-act two weeks later on 7/13/2022:

> **D. Provide Sufficient Time for Banks to Provide Meaningful, Data-Driven Comments**
>
> Leadership of the banking agencies have repeatedly emphasized the need for robust public comments in order to best assure that a final rule is calibrated appropriately. As Acting FDIC Chairman Martin Gruenberg observed at during a recent panel discussion, "Nothing is perfect and it is a large, complicated rule. We assume there is a lot there that we didn't get right or may have missed or could be improved." [7]
>
> Nevertheless, the agencies denied a request by ten banking trade associations to extend the proposal's comment period by only 30 days. We do not understand the agencies' rationale in denying this request or why the agencies are proceeding with a comment period that is too short relative to the scope and magnitude of changes being proposed. As history has demonstrated, complex regulatory overhauls that are rushed tend to have little staying power or require extensive amendments and/or interpretations. Revisions or clarifications during the already abbreviated one-year implementation period would make compliance even more difficult.
>
> In recent years, multiple iterations of CRA modernization have created modernization fatigue. While there may be pressure to "just get it done," regulators, banks, and other stakeholders have come too far and worked too hard to rush the final stage of this important work. Communities, regulators, and banks would benefit from an updated regulatory framework that achieves this initiative's stated objectives *and* stands the test of time.
>
> We will continue to work diligently to provide thoughtful comments on the overall framework that the agencies have proposed. However, policymakers should be aware that the 90-day comment period is insufficient for banks to provide fulsome, data-driven comments on the complicated formulas, benchmarks, and thresholds set forth in the nearly 700-page proposed rule. This is particularly the case for community banks that are classified as "large banks" for CRA purposes.

Why Did The Fed (and FDIC and OCC) Reject the Banking Industry's Legitimate Time Extension?

The ABA (above) properly stated that *"We do not understand the agencies' rationale in denying this request or why the agencies are proceeding with a comment period that is too short relative to the scope and magnitude of changes being proposed."*

Of the several possible reasons in my opinion why the Fed (and the FDIC and OCC) is rushing this NPR to *"just get it done*," the most logical explanation is a purely political one. As pointed out in a subsequent comment, the Fed (and the OCC controlled by a former Fed official) have unfortunately made CRA reform more of a political rather than policy effort.

In my opinion, the politically-minded Fed and its friends in Treasury and the OCC realize the high likelihood that the November 2022 elections will result in a Republican Congress, which could rescind the current NPR in the same way the current Democratic Congress was successful in having the OCC rescind their May 2020 Final Rule. Any extension of the very short 90-day comment period could jeopardize their efforts to get the NPR into a Final Rule.

Another possible reason for the denial of the extension request is that the more time that bankers, community groups and other analysts are allowed to dissect and decipher the very complex current NPR and its multiples formulae, the more they will realize what a mistake the NPR is and why it must be totally rejected.

It took the Fed about 20 months to effectively transform its September 2020 ANPR into the present NPR, so the minimal three-month comment period should have clearly been extended at least a month and probably longer.

As will be documented in subsequent comments, the optimal approach to CRA reform at the present time, the one I believe would be in the best interests of all corners of the CRA Triangle and that would be most consistent with what Senator Proxmire envisioned, is what I call *"CRA Reform Lite"* which would *maintain the existing regs* and:

> (1) modernize them to account for branchless banks using the 5% Deposit Reinvestment Rule (see subsequent comment), and
>
> (2) improve them with some of the best ideas from the OCC's Final Rule like an approved list of and pre-qualification procedures for community development activities.

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Re: Second CRA NPR Comment on "The Fed's Heavy Hand in this NPR"

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The Fed's Heavy-Handed Handiwork With the NPR

What is billed as an *interagency* CRA reform proposal is really the heavy-handed handiwork of the Fed, which was not willing to work with the OCC and FDIC in their January 2020 joint reform effort under the Trump Administration. This comment and future ones will refer to the NPR as the "Fed's NPR" for reasons documented below.

The politically-savvy Fed issued a competing September 2020 version, hoping a new Biden Administration would look more favorably on its approach to CRA reform. Their political bet paid off as their Chair, Jay Powell, was not only reappointed but their CRA reform architect, Lael Brainard, was appointed as Vice Chair by the new President. According to published reports (e.g. https://www.americanbanker.com/list/whos-in-line-for-top-fed-jobs), she was not only interested in being appointed as Treasury Secretary but also the Fed Chair; she apparently was satisfied to get the Fed's Vice Chair appointment.

The new President Biden, however, tapped a former Fed Chair, Janet Yellen, as Treasury Secretary who, in turn, tapped a Fed official, Michael Hsu, as Acting Comptroller of the Currency, resulting in him being an FDIC director. One of his first actions was to rescind the previous Comptroller's final rule on CRA and publicly support working with the Fed and FDIC on interagency reform. The Fed is definitely the dominant bank regulatory agency at the present time.

This background is relevant, as this is the same Fed that tried to kill CRA during and prior to its establishment in 1977 and then did everything it could to undermine the 1993-1995 joint CRA reform efforts by the OCC, FDIC, and OTS. More on the Fed's tortured CRA history is in the following section.

The Fed fortunately kept its heavy hand off CRA since those 1995 regs. Banks with their 98% CRA passing ratings and communities with their $500 billion of annual CRA benefits and $100 billion M&A Community Benefit Agreements are apparently doing well with the existing regs.

In my opinion, community groups, banks, and their CRA examiners are generally comfortable with them, as they do not have to learn the complicated new procedures and formulae in the roughly 700-page proposal that looks hauntingly familiar to the Fed's previous proposal. Yes, a Fed proposal in interagency clothing.

The FDIC's Acting Director properly acknowledged the *"leadership"* of the Fed's Vice Chair and staff in this reform effort. In fact, the Fed's staff released an April 26 internal memo to the Fed's Board detailing the proposed reform a week before it was jointly announced by the agencies.

The Fed's Tortured CRA History

Interagency CRA reform is an admirable goal, and it is probably the only positive feature of this nearly 700-page NPR. Interagency disagreement, however, may be better than an unnecessary and complicated major overhaul by a heavy handed Fed with a tortured CRA history cloaked as an interagency effort.

Any discussion of CRA reform or other efforts by the Fed must be mindful of its history regarding this very important law. While the Fed and its Reserve Banks have taken many positive steps regarding CRA in recent years, we must never forget its CRA past.

Although representatives of the Fed and its Reserve Banks say all the right things about CRA, history will show they are 45 years late, since the Fed tried to kill CRA during and prior to 1977.

The banking industry, as expected, opposed this new law as a form of "credit allocation," but what was unexpected was the fierce opposition of the Fed. Thus, began the Jekyll and Hyde bank regulator that publicly put on a pro-CRA face but privately encouraged banks and others to lobby Congress to weaken the law. This was a first for a federal bank regulator in modern times.

Then Fed Chairman Arthur Burns, later disgraced in monetary circles for pandering to President Nixon's demands to lower interest rates, was very clear in his opposition to CRA, not only arguing it was unduly burdensome to banks but also that it was a form of credit allocation.

Yes, the same Fed now waving the pro-CRA flag did everything it could to stop it. Fortunately, Senate Banking Committee Chairman Proxmire prevailed when President Carter signed the law in 1977.

CRA remained largely untouched until the S&L Crisis and subsequent laws requiring the publication of CRA ratings and performance evaluation beginning July 1, 1990. With ratings and Performance Evaluations (PEs) public, there was an interest in reforming CRA.

The first December 1993 proposal from the OCC, which was clearly pro–consumer, resulted in over 6,700 comment letters. While everyone expected a conflict between the community and industry positions, no one expected the publicized infighting by the regulators themselves, specifically between the pro-CRA OCC and the generally perceived anti-CRA Fed at that time.

Members of the Fed's Board publicly criticized the OCC's 1993 proposal. One Fed governor stated that he was *"perfectly willing to tear it up, throw it into the fireplace, and go back and start again"* Other Fed governors condemned the proposal as the *"wrong"* approach and a *"fundamental policy mistake"* resulting in not only credit but also *"resource allocation."*

In addition to concluding that *"the time to say no is now,"* one Fed governor publicly stated that the Fed would oppose the proposal if bankers complained loudly enough. Even the presidents of the Federal Reserve Banks piled on, with the banker–friendly San Francisco Fed arguing against the disclosure of CRA public examination schedules.

The Fed, with the help of the banking lobby that it called to action, was successful in watering down many of the toughest provisions of the 1993 proposal. The OCC was not happy but went back to the drawing board, and its September 1994 proposal generated over 7,200 comments.

The end result of approximately 14,000 total comment letters (on average more than one for every bank and thrift at the time) and seven public hearings was the third and final April 1995 reform proposal. The banking lobby, with the strategic help of the Fed, won almost every CRA reform battle it fought. These regulations went into effect in 1995, and are essentially the ones under which we have been operating since that time.

My research of thousands of CRA PEs in the 1990s documented that the Fed was, by far, the most lax CRA enforcer, responsible for what I then called "CRA Grade Inflation." Much has changed for the better at the Fed and its Reserve Banks since then. Nonetheless, while the Fed can change interest rates and the direction of markets and the economy (unfortunately, too often in the wrong direction as we have seen lately), they cannot change CRA history.

Fed Stakeholder Input of Limited Value

The Fact Sheet accompanying the Fed's previous ANPR stated that, by *"building on stakeholders' support"* and *"reflecting stakeholder views"* it *"seeks to provide a foundation for the agencies to converge on a consistent approach that has broad support among stakeholders."*

The Fed further claimed that the ANPR *"incorporates views from external stakeholders provided in meetings, roundtables, and comment letters as well as from all three of the banking regulatory agencies responsible for administering the CRA."*

Several comments by Fed Board members and other Fed officials about the current NPR likewise cite stakeholder input, but what exactly is this input?

In June, 2019 the Fed released the results of "stakeholder feedback" on CRA reform, a summary of perspectives from over 400 bankers and community groups at 29 roundtables around the nation.

Unlike the preferred approach of publishing written comments from all interested stakeholders, the Fed used an anonymous approach of not identifying which banks or community groups said what, other than Fed-filtered feedback.

Rather than providing specific proposals identifying their authors' rationale, the Fed merely summarized general findings using wide-ranging terms like "many" stakeholders said this (33 times), "several" said that (24 times), and "some" said something else (52 times), leaving readers to speculate who said what and for what reasons. This again demonstrated the banker-friendly Fed.

Besides ignoring feedback from academics, consultants, vendors, and other CRA stakeholders, not one of their 29 roundtables were in my home state of Florida, the nation's third largest. Thus, this claimed stakeholder input by the Fed is of limited value. The anonymous bankers in the Fed report wanted the asset size thresholds increased, but this is not surprising, since bankers will almost always ask to reduce their regulatory burden.

With the Fed taking the industry's position of substantially increasing Small Bank, Intermediate Small Bank (ISB), and Large Bank asset thresholds in the current NPR, this is an unfortunate flashback to the early 90s. Hence, another reason why CRA history is important.

For example, the Fed stakeholder report indicated that some banks in the current Large Bank category anonymously suggested that they are at a disadvantage relative to much larger banks in their CRA examinations. The real problem, however, is not with the Large Bank Exam Procedures but with the examiners administering them. The Fed needs to look in its CRA mirror.

Experienced and good CRA examiners (as compared to inexperienced ones) will properly consider the Performance Context and evaluate and rate CRA performance relative to a bank's size, business strategy, and other relevant contextual facts.

As The CRA Handbook documents, many of the problems that banks and community groups have with CRA exams and ratings is not because of the banks or their performance but rather with inexperienced and poorly trained CRA examiners (the worst being "rogue" examiners) and their resultant PEs and ratings. Improved examiner training consequently should be a top priority at the Fed and other regulators, as was pointed out in The CRA Handbook nearly 25 years ago.

The Fed's CRA Political Calculus

It is widely known that the Fed has become increasingly political, as first documented by the analysis of former Fed Chair Alan Greenspan's calendar dating back to 1996. That and the subsequent analysis of Ben Bernanke's calendar concluded they were two of the three most political Fed Chairs in recent times. Calendars of Fed Chairs and other top officials are now public without requiring painstaking FOIAs.

The current Fed Chair, after many very public disagreements with the former President, understandably wanted to keep his job under the new President. In my opinion, he obligingly kept rates at record lows last year despite unprecedented fiscal stimulus and money supply growth.

This dreadfully dovish policy further overheated the stock market and economy, but he was reappointed. It is my further opinion that Fed Chairs, often considered the second most powerful people in the Beltway, will do what they can, like most politicians, to maintain personal power, even at the expense of the dollar's purchasing power.

This Death of Fed Independence resulted in considerable "mission creep" causing it to lose focus on its main mission of maintaining price stability and full employment. The Fed was recently criticized for research on "social policy topics" like climate change and social justice reflecting political and normative views of unelected officials in what is supposed to be an independent agency.

In addition to the previously cited politicking by Fed chieftains to keep their jobs, the Fed came up with some clever political moves to try to get the NPR approved. I am referring to the NPR's significant but unnecessary increases in asset thresholds of both Small Banks and Intermediate Small Banks (ISBs) and even Large Banks to hopefully get industry approval, especially from the ICBA that mainly represents smaller banks.

The Fed's NPR not only safe harbors Small Banks and ISBs to a great extent to hopefully get their approval, but they also left the controversial Strategic Plan option and Wholesale and Limited Purpose Bank exam procedures largely untouched to get the approval of larger banks that currently or may potentially use those exam procedures..

The Fed therefore put most of the NPR's regulatory burden on Large Banks over $2 billion in assets and especially on a new category of Very Large Banks with more than $10 billion in assets. Those 135 banks represent 88% of industry assets. Why not just the 32 banks with more than $100 billion in assets, thus capturing 75% of industry assets? There is no documentation whatsoever for these increased asset thresholds and the new category of banks.

The Fed's political calculus of hopefully dividing and conquering the industry to get the NPR into a Final Rule was clever, but probably not enough when ISBs realize they are subject to the new complicated Retail Lending Test and Small Banks realize the regulatory "trickle down" effect may likely impact their simple Lending Test.

The CRA NPR: The Fed's Next Big Mistake

Milton Friedman, one of the two greatest economists of the last century, best summarized the Fed: *"There is no institution in the United States that has such a high public standing and such a poor record of performance; it has done far more harm than good."*

While Professor Friedman was referring to the Fed's monetary policy record over many decades, the same can be said of their CRA public policy record. It is my opinion that the NPR, the true handiwork of the Fed, will be its next big public policy mistake.

The 30-page 4/26/2022 Memo from the Fed Staff to the Fed Board and the 700-page NPR (https://www.federalreserve.gov/consumerscommunities/files/board-memo-20220505.pdf) resemble the work of Ph.D.'s with little to no real-world banking or examining experience.

Actually, the 700-page NPR with 180 questions reads like a Ph.D. dissertation, but this is not surprising since the Fed has over 400 Ph.D. economists, including those who predicted "transitory inflation" last year.

Based on my review of tens of thousands of Performance Evaluations since they became public on July 1, 1990, including those of Small, Intermediate, and Large Banks, I have concluded that the current asset thresholds and exam procedures have served the banking industry and their communities well.

As noted above, the NPR clearly places the greatest regulatory burden on banks with assets over $10 billion, but there is no justification for that new category or the increase in asset thresholds for the existing bank categories. A subsequent comment will document why the NPR should have focused on the largest banks with assets over $100 billion, as they control three-fourths of all industry assets.

Consequently, other than the needed modernization of CRA to account for branchless banks and digital banking using the recommended 5% Deposit Reinvestment Rule and certain improvements generally agreed upon by banks and community groups alike (e.g., the "laundry list" of qualifying community development activities), there is no need for the radical overhaul proposed by the NPR.

As previously noted, based on the 98% passing rate of CRA exams and the substantial (i.e., approximately $500 billion per year) CRA benefits provided to local communities, it is my considered opinion that the Fed's entire NPR and CRA reform effort, other than the above-referenced modernization and improvements, is a mistake and therefore totally unnecessary.

Kenneth H. Thomas, Ph.D
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MEMO

From: Kenneth H. Thomas, Ph.D.

To: Chair Jerome Powell & Vice Chair Lael Brainard via Docket No. R-1769 and RIN 7100-AG29;
Acting Comptroller of the Currency Michael Hsu via Docket ID: OCC-2022-0002; and,
Acting Chairman of the FDIC Martin J. Gruenberg via Docket No. RIN 3064-AF81

Date: August 5, 2022

Re: Third CRA NPR Comment on "The Fed's Mission Creep and Overreach on CRA Reform"

This is my third comment on this NPR on CRA Reform, and it is titled *"The Fed's Mission Creep and Overreach on CRA Reform."* Before providing more details on this comment, I will first summarize my relevant background on CRA reform.

My comments represent my personal views and not those of any university, financial institution, company, or other organization with which I am or previously have been associated.

My Relevant Background on CRA Reform

My current and past expertise in CRA in general and its reform in particular are relevant to this comment. In short, I have spent the majority of my professional life since 1977 focused on the CRA. I was greatly honored to have known and spent time with former Senator William Proxmire, the "Father of CRA." The following photo was taken in 1995.

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I am proud of the fact that my first book on CRA, Community Reinvestment Performance (Probus Publishing, Chicago, 1993), received the only endorsement he ever gave to any CRA publication:

> *Dr. Thomas' book, Community Reinvestment Performance, is far and away the best analysis of government regulation that I have seen in any field. He spotlights the regulatory problems that continue in CRA and points out precisely how they are being overcome. CRA will benefit enormously from this superlative examination and report.*

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I was honored to receive the first "Award of Excellence" from the National Community Reinvestment Coalition (NCRC), along with Representative Joseph P. Kennedy and Comptroller Ludwig.

In summary, I have a vested interest in getting CRA reform "right," which I define as being what Senator Proxmire intended. We got it right in 1995 when I worked with Comptroller Ludwig and his OCC staff on the last major reform of CRA, and that is my goal during the present effort.

The Purpose of CRA Reform = Modernization

The primary motivation for CRA reform was to modernize the law to account for technological advances such as digital banking and branchless banks. This was originally stated in the referenced Treasury study and later by all of the regulators and even interested members of Congress.

This very simple fact has been forgotten not only by the Fed, FDIC and OCC but also by members of Congress and some community groups who are more interested in promoting their political views rather than modernizing CRA.

All of the regulators and members of Congress begin their sermonizing on CRA by saying how technology has changed since the last major reform of CRA in 1995 (and the creation of Intermediate Small Banks or ISBs in 2005).

But, instead of coming up with credible ways to modernize CRA to account for digital banking and branchless banks, the real purpose of CRA reform, they use this modernization goal as a Trojan Horse to politicize CRA and expand it to meet their own goals.

The Fed was recently criticized for "mission creep" by engaging in research on "social policy topics" like climate change and social justice reflecting political and normative views of unelected officials in what is supposed to be an independent government agency.

The best example of this regulatory mission creep by the Fed is the interagency document titled "Summary of Key Objectives of the Interagency CRA Proposal" from the Fed's website at https://www.federalreserve.gov/consumerscommunities/files/cra_npr_key_objectives_20220505.pdf.

True to the form of all mission creepers, this document first makes a general statement about the purpose of CRA and then mentions the need for modernization because of the *"significant changes in the banking industry*" since 1995 and 2005:

> The Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency recognize that CRA regulations must evolve to address the significant changes in the banking industry that have taken place since the last substantive interagency updates in 1995 and 2005.

Instead of focusing on this one and only one mission of modernization, the mission creepers at the Fed shamefully expanded this singular goal into eight different goals to supposedly "update" CRA:

> Building on previous regulatory actions, feedback from stakeholders, and research, the agencies seek comment on a proposal to update CRA regulations with eight key objectives:
>
> 1. Strengthen the achievement of the core purpose of the statute.
> 2. Adapt to changes in the banking industry, including mobile and online banking.
> 3. Provide greater clarity and consistency in the application of the regulations.
> 4. Tailor performance standards to account for differences in bank size, business model, and local conditions.
> 5. Tailor data collection and reporting requirements and use existing data whenever possible.
> 6. Promote transparency and public engagement.
> 7. Ensure that CRA and fair lending responsibilities are mutually reinforcing.
> 8. Create a consistent regulatory approach among all three banking agencies.

The Fed shamefully demotes the real modernization goal of CRA to the second position on its list of eight goals. This overstepping by the Fed is another example of their mission creep.

The fact is that all of the other seven listed goals can be accomplished within the current regulatory framework through the traditional Q&A process and more effective enforcement of the current regs. Rather, they are taking advantage of the modernization loophole to promote other goals.

An example is the NPR's planned expansion of the definition of community development loans from the current four to 11 categories. However, there are many examples of CRA Performance Evaluations (PEs) under the current regs that already give CRA credit for all of those new categories. Like most of the NPR, much CRA ado about nothing.

Another example is the continued drumbeating by the regulators that the NPR will "*raise the bar*" for CRA performance and lead to fewer Outstanding ratings and more failing and Low Satisfactory ratings. However, this can be done under the current regs by simply increasing enforcement and being "tougher cops" on the CRA regulatory beat instead of coming up with new complex rules.

This point can be documented by simply comparing the portion of failing and Outstanding ratings at the three regulators *under the current regulations*. Such an analysis usually concludes that the OCC is a relatively "easy" CRA grader giving out a much lower percentage of the former and much higher percentage of the latter vs. the opposite ratings by the relatively "tough" grading FDIC.

For example, using the most recent monthly CRA ratings that were just released by the OCC at https://occ.gov/topics/consumers-and-communities/cra/perfomance-evaluations-by-month/2022/cra-performance-evaluations-jul-2022.html, seven (or 31%) of the 22 ratings for July were Outstanding vs. 15 (69%) with Satisfactory ratings; there were no failing ratings.

Of the 12 ratings for the most recent month of July 2022 by the Fed as reported at their website at https://www.federalreserve.gov/apps/CRAPubWeb/CRA/BankRatingResult?sort=OverallRating_Desc&sortdir=ASC, one (8%) was Outstanding and 11 (or 92%) were Satisfactory; there were no failing ratings.

By comparison, just two (or 4%) of the 47 ratings by the FDIC in their most recent release at https://www.fdic.gov/resources/bankers/community-reinvestment-act/monthly-list-of-examined-banks/2022/craaug22.html?source=govdelivery&utm_medium=email&utm_source=govdelivery were Outstanding; 44 (94%) were Satisfactory; and, one (2%) rating in the current report was a failing rating.

As a result, we see that the percentage of Outstanding ratings for the three regulators differ considerably, ranging from a low of 4% at the FDIC and 8% at the Fed to a high of 31% at the OCC, despite the fact that they all use the same 1995 exam procedures.

Looking at all 1,112 CRA ratings by all agencies last year according to www.FFIEC.gov, we find that both the Fed (183) and the OCC (185) had about the same number of ratings. There was only one failing rating between both agencies, and that was at the OCC. Looking at Outstanding ratings, the OCC again led all agencies with 23% in that category vs. 14% at the Fed. However, only 6% of all of the 744 ratings last year by the FDIC were Outstanding.

Thus, these comparative ratings suggest that the OCC is about FOUR times easier than the FDIC and the FED is more than TWO times easier than the FDIC in terms of giving Outstanding ratings last year. Fully 2% of all FDIC ratings were failing compared to 0% at the Fed and just under 1% at the OCC.

If the regulators want to "raise the bar," they can simply become tougher CRA cops (like the FDIC) under the current regs instead of creating an entire new and complicated examination framework as proposed by the NPR.

The Fed and the other agencies they brought into this current NPR must go back to the original Treasury report and their own mission statements and stay focused solely on the goal of CRA modernization. Rather than making modernization #2 on their list of "eight key objectives," this should be the one and ONLY objective of CRA reform, and the proper way to meet that goal is with the 5% Deposit Reinvestment Rule (see subsequent comment).

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MEMO

From: Kenneth H. Thomas, Ph.D.

To: Chair Jerome Powell & Vice Chair Lael Brainard via Docket No. R-1769 and RIN 7100-AG29;
Acting Comptroller of the Currency Michael Hsu via Docket ID: OCC-2022-0002; and,
Acting Chairman of the FDIC Martin J. Gruenberg via Docket No. RIN 3064-AF81

Date: August 5, 2022

Re: Fourth CRA NPR Comment on "The NPR Must Have the 5% Deposit Reinvestment Rule"

This is my fourth comment on this NPR on CRA Reform, and it is titled *"The NPR Must Have the 5% Deposit Reinvestment Rule."* Before providing more details on this comment, I will first summarize my relevant background on CRA reform.

My comments represent my personal views and not those of any university, financial institution, company, or other organization with which I am or previously have been associated.

My Relevant Background on CRA Reform

My current and past expertise in CRA in general and its reform in particular are relevant to this comment. In short, I have spent the majority of my professional life since 1977 focused on the CRA. I was greatly honored to have known and spent time with former Senator William Proxmire, the "Father of CRA." The following photo was taken in 1995.

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The 5% Deposit Reinvestment Rule Fix for CRA Modernization

As documented in a previous comment, modernization of CRA should be the one and only purpose of CRA reform, unlike the Fed's current NPR that makes it #2 of eight total objectives.

The previous NPR released by the OCC and FDIC is to be commended for making the 5% Deposit Reinvestment Rule a key part of their reform proposal. Although that NPR also went well beyond the modernization goal, it at least had the correct fix for the modernization goal of CRA reform.

This cannot be said for the Fed's current NPR, which is a very complicated solution in search of a problem. The Fed clearly understood the need to consider how Assessment Areas must be changed for branchless and other banks obtaining deposits from distant markets with little to no CRA reinvestment of those deposits.

However, like much of their monetary policy, the Fed came up with the wrong answer. The Fed in both the current NPR and its previous ANPR got this totally backwards by focusing on where branchless banks make loans rather than where they get their deposits.

The one and only correct fix for CRA modernization is to focus on deposits because the intent (and middle name) of the Community Reinvestment Act is REINVESTMENT of DEPOSITS.

In fact, I once asked Senator Proxmire why he named this law as he did, and his answer was very clear that the purpose of CRA is to reinvest deposits back into their entire sourced communities including LMI areas.

The 5% Deposit Reinvestment Rule that was included in the previous joint Notice of Proposed Rulemaking by the OCC and FDIC was a variation of a previous reform concept to require banks obtaining deposits from outside their headquarters community to benefit the areas sourcing those deposits. This reform is more important than ever now with so many fintechs and other giant tech barbarians like Google and Amazon lining up outside the banking gate.

The previous proposal would require all banks with 5% or more of their deposits in any area to reinvest a commensurate portion of their CRA benefits there. The OCC and FDIC's NPR limited this 5% Deposit Reinvestment Rule to banks with more than half their deposits from outside their current facility-based Assessment Area without requiring any commensurate CRA benefit. However, they at least focused on deposits instead of the Fed inappropriately focusing on loans.

Eliminating "Carpetbagger Banks"

Under the current regs, branchless banks can place up to 100% of their CRA benefits in their home office community where they have a physical presence. In the case of credit card banks, the primary beneficiaries are three "sanctuary states," namely Delaware, South Dakota, and Utah that provide a safe harbor with favorable state usury ceilings.

As a result, tens of billions of dollars of community development (CD) loans and investments and tens of thousands of hours of CD services have benefited Wilmington, Sioux Falls, and Salt Lake City rather than our large MSAs sourcing their deposits like New York, Chicago, LA, Dallas, and Houston. Despite containing less than 2% of the nation's population, these three sanctuary states are reaping nearly 100% of the CRA benefits primarily sourced by our large MSAs.

This huge misallocation of CRA resources is inconsistent with Senator Proxmire's Community *Reinvestment* Act, where he intended that federally-insured deposits be *reinvested* back into their community rather than some credit card-friendly city a few thousand miles away.

The best example of this problem is my hometown of Miami, part of the nation's seventh largest metro area, with 40% of the deposits of the third largest state. My previous concern over what I called "carpetbagger banks", which come to this deposit-rich state to harvest seniors' savings to lend elsewhere, was mainly directed toward the giant banks that now dominate Florida like Bank of America and Wells Fargo with a combined one-third market share.

This has changed somewhat in recent years where many out-of-state regional banks have bought Florida's local banks and are doing a better job of reinvesting in local communities than interstate giants like Bank of America and Wells Fargo.

Some of this improvement in local lending, however, is the result of the federal law monitoring nonlocal loan-to-deposit ratios for interstate branch banks. Unfortunately, neither this law (The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994) nor CRA do anything to prevent credit card and other branchless banks from taking local deposits and reinvesting them elsewhere as is currently being done.

Synchrony Bank's Siphoning of South Florida Deposits to Benefit Salt Lake City

Consider, for example, the roughly $100 billion Synchrony Bank, formerly GE Capital Retail Bank, the nation's sixth largest credit card issuer, with reported deposits in its Salt Lake City area main office.

Like many other credit card banks, it regularly advertises its above-market deposit rates in South Florida media. It is reasonable to assume that with this targeted advertising in an MSA with 2% of the nation's population and even greater share of its wealth that at least 5% of that bank's deposits come from South Florida.

Synchrony Bank's most recent CRA exam as of December 31, 2018 reported $464 million of CD investments and $548 million of CD loans totaling more than $1 billion benefiting their home Salt Lake City Assessment Area within its most recent three-year review period. There was an additional $250 million of CD investments benefiting undisclosed outlying areas for a grand total of $1.25 billion of CRA benefits, representing more than 1% of their deposits.

There is no public information on the portion of their deposits emanating from their home Salt Lake City MSA, but we do know that the entire Salt Lake City MSA and state of Utah represent just 0.4% and 1.0%, respectively, of the nation's population.

Under the proposed 5% Deposit Reinvestment Rule for such banks, assuming at least 5% of Synchrony Bank's deposits come from the Miami MSA, they would be required to reinvest at least 5% of their reported $1.25 billion of CRA benefits or a total of $62.5 million here.

There is a critical need for such funds considering that Miami is Ground Zero for the nation's affordable housing crisis, especially with the large number of Wall Streeters and other One Percenters relocating to South Florida during and after the Pandemic.

While that bank may deserve its Outstanding CRA rating for their performance in the Salt Lake City MSA, this is certainly not the case for the Miami MSA and other large ones being targeted by these banks and getting little to nothing in return for financing their credit card operations.

For example, the New York MSA, with 6% or our nation's population and even greater share of wealth, probably represents around 10% of that bank's deposits. Assuming that is the case, this proposal would have entitled New York to at least $125 million in CRA benefits from Synchrony Bank over that same period, and those funds could have helped New York's huge affordable housing and homeless problem.

Three Sanctuary States Are Receiving Disproportionate CRA Benefits

Most of the largest credit card banks plus many other internet and branchless banks are based in one of the three credit card "sanctuary" states providing favorable usury laws. With just 1.6% of our population and 1.7% of our businesses, these three states together represent a whopping $1.9 trillion in deposits or 11% of all FDIC-insured deposits as of June 30, 2021. In fact, Utah ranks 5th, South Dakota ranks 6th, and Delaware ranks 11th in terms of total deposits despite their respective population rankings of 30th, 46th and 45th.

With fewer than 2% of the nation's population and businesses in these three states, it is reasonable to assume as much as 95% of their reported deposits or $1.8 trillion originate from other states. Assuming roughly 1% of deposits of these banks are used for CRA loans and investments, which is not unusual for many credit card banks, this would mean that as much as $20 billion would be regularly reinvested in our large cities rather than these three credit card sanctuaries.

To put this into perspective, the OCC recently estimated that all banks provided $482 billion of CRA (community development and non-community development) lending in 2017, representing some 4.1% of bank deposits.

The 5% Deposit Reinvestment Rule would not impose an undue regulatory burden, since it is standard operating procedure for branchless banks to geocode their deposits at least down to the zip code level. In fact, a senior officer of one such very large credit card bank told me that they would have a CRA responsibility in about seven major MSAs (including Miami and New York) as a result of the 5% Deposit Reinvestment Rule instead of their home MSA.

Also, these branchless banks would now have many more CD options around the country, instead of competing with other giant banks for limited opportunities in those sanctuary states. Moreover, community banks there would likewise benefit, since they often find it difficult to compete for CRA credits with the giant branchless banks headquartered there.

Our Forgotten Cities like Miami deserve their fair share of CRA benefits from the credit card, internet and other branchless banks that target them for funding, but this will happen only if they are required to proportionally reinvest their deposits in the spirit of CRA as originally proposed with the 5% Deposit Reinvestment Rule.

The Fed's NPR Benefits Branchless Banks

The giant branchless banks that would be impacted by the variant of the 5% Deposit Reinvestment Rule in the OCC/FDIC Joint NPR cleverly convinced friendly regulators, industry and community groups that it would increase CRA "hot spots" to the disadvantage of CRA "deserts," since most of their deposits come from metro areas.

This is a blatant misrepresentation of this rule, which requires deposits from rich neighborhoods (or hot spots) in big cities be reinvested in poor neighborhoods (or deserts) *in those same cities.* Call it a "Robin Hood Rule," where deposits from the rich in our big cities benefit their poor.

For example, the tens of billions of deposits in branchless banks coming from South Florida's affluent hot spots like Coral Gables and Pinecrest would now be reinvested in distressed deserts like Liberty City and Little Haiti. Who could argue with such needed reinvestment, other than "carpetbagger" banks and their home states like Delaware, South Dakota, and Utah currently benefiting from South Florida's deposits?

Branchless banks also disingenuously cited a data burden, even though they geocode deposits down to the zip code and smaller level. Deposits are the raw material of banking, and every good banker knows the geographic source of their deposits. Any banker who does not know the geographic source of their bank's deposits, their basic input or raw material, should not be in banking.

The current NPR adopted the Fed's previously suggested approach of essentially allowing branchless banks to place their CRA benefits *anywhere in the nation*. Even worse is the backwards suggestion of evaluating branchless banks' CRA performance in areas where they make *loans* rather than source deposits.

This distorted view of a Retail Lending Assessment Area (instead of the OCC's deposit-based one) is contrary to the letter and intent of CRA. Also, it encourages bad public policy if a bank is only lending in affluent communities and redlining distressed ones sourcing deposits.

For this reason, the branchless banks will not be required to reinvest into their sourced deposit communities under the current NPR but can continue their current practice of lending wherever they are or want, since a lending based Assessment Area is based on their lending.

Thus, the Fed's NPR not only protects branchless banks from having to evaluate and meet credit needs in local deposit sourcing communities but also allows them to continue their current carpetbagging practices to the detriment of Forgotten Cities like my hometown of Miami.

KENNETH H. THOMAS, PH.D
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<u>MEMO</u>

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To: Chair Jerome Powell & Vice Chair Lael Brainard via Docket No. R-1769 and RIN 7100-AG29;
Acting Comptroller of the Currency Michael Hsu via Docket ID: OCC-2022-0002; and,
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Date: August 5, 2022

Re: Fifth CRA NPR Comment on "<u>The NPR's Major Errors of Commission and Omission</u>"

This is my fifth comment on this NPR on CRA Reform, and it is titled *"The NPR's Major Errors of Commission and Omission."* Before providing more details on this comment, I will first summarize my relevant background on CRA reform.

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Incomplete Grade for This Fed NPR Ph.D. Dissertation

The nearly 700-page NPR, which was apparently written by some of the more than 400 Ph.D. economists at the Fed (https://www.federalreserve.gov/econres/theeconomists.htm) reads more like a Ph.D. dissertation than an NPR.

If I was forced to grade it, it would get nothing better than an *"Incomplete,"* since only a fraction (actually one of eight of the stated objectives) of the NPR is devoted to the real mission of CRA reform, namely modernization.

Unfortunately, the section of the NPR dealing with the critical modernization issue totally misses the point and, in fact, has the wrong answer (i.e., Retail Lending Assessment Areas) to the right problem (i.e., regulating branchless and other "carpetbagger banks" siphoning deposits from local communities to benefit their distant home community). Most of the rest of the NPR has unnecessarily complicated answers to the wrong problems.

As pointed out in my related comments, this entire NPR should be discarded in favor of what can be called *"CRA Reform Lite,"* which includes (1) the 5% Deposit Reinvestment Rule for branchless banks and (2) several of the improvements in the rescinded OCC Final Rule.

Some of these OCC improvements include the list of eligible community development activities and an advance notification of whether or not an activity would be eligible for CRA credit as described at https://www.occ.gov/topics/consumers-and-communities/cra/qualifying-activity-confirmation-request/index-cra-qualifying-activities-confirmation-request.html.

While the Fed's NPR was wise to cherry pick the best ideas from the rescinded OCC Final Rule, it was unwise in its failure to adopt its Deposit-Based Assessment Area concept instead of coming up with the uncommon concepts of a Retail Lending Assessment Area and Outside Retail Lending Area.

Assuming the Fed's NPR is not totally discarded as it should be, the Ph.D. and other architects should have the courtesy of at least knowing their major errors of commission and omission. The following lists identify the five major errors of commission and omission in the NPR, although there are many many more.

NPR's Five Major Errors of Commission

1. *Expanding CRA reform's goal of modernization to a complex and unnecessary major overhaul*

   This fateful error, which is discussed in detail in an accompanying comment, is a prime example of the mission creep the Fed has been criticized for by members of Congress and other outside Fed watchers.

   As pointed out in a recent article about the Fed's recent failures, including "transitory" inflation (https://www.americanbanker.com/opinion/after-recent-failures-its-clear-fed-must-be-restructured), one of the many reasons for the Fed's very poor performance as our central bank is its considerable "mission creep." This mission creep unfortunately caused the Fed to lose focus on its main job of maintaining price stability and full employment.

   It was recently criticized for research on "social policy topics" like climate change and social justice, reflecting political and normative views of unelected officials in what is supposed to be an independent agency.

   This same mission creep is evident in the 700-page NPR, which the Fed cleverly clothed as an "interagency" effort. As a result of this mission creep, where the Fed is run more like a university with 12 Federal Reserve bank campuses, the agency has become an economic jack-of-all-trades but unfortunately a master of none, unfortunately including managing inflation and reforming CRA.

2. *Concocting a Lending-Based Assessment Area vs. the needed Deposit-Based Assessment Area for branchless banks*

   This grave mistake not only demonstrates a lack of knowledge of CRA but how banks work. How many of the Ph.D.s and other Fed researchers who developed this CRA Rubik's Cube have worked in a bank or even completed a CRA exam of a bank?

   Having taught banking and finance at Wharton for over 40 years, one of the first things I emphasize is that deposits are the raw material or primary input of banking compared to loans being the primary output.

Senator Proxmire recognized this basic fact when he saw banks harvesting deposits out of Low- and Moderate-Income (LMI) communities but lending the money elsewhere. This is the primary reason why he created CRA, to encourage banks to meet the credit needs of their entire community, including LMI areas.

For this reason the CRA performance of branchless banks must be evaluated on the basis of where the deposits were sourced and whether or not the benefits accrue back to those areas. It does not make sense to evaluate a branchless bank on where it makes it loans, because the redlining or other damage may already have been done by them.

The only reason I can come up with as to why the Fed came up with the curious concept of a Retail Lending Assessment Area is because they wanted to distance themselves as much as possible from the rescinded OCC Final Rule that contained the proper Deposit-Based Assessment Area concept.

Instead of basing the Assessment Area of a branchless bank on deposits, the Fed did the exact opposite and used loans, which suggests that they wanted to be as far away as possible from what they may have considered a "Trump" era rule.

If that was the case, such a politically based decision has no place in public policy. If someone is speeding on the interstate, they should be pulled over and ticketed regardless of who is in the White House. Likewise, good public policy means taking the best ideas from any source to improve CRA and benefit LMI areas and people, again regardless of who is in the White House.

Regardless of the motivation of the Fed and its chief CRA architect, their ANPR and current NPR concepts of a Retail Lending Assessment Area and Outside Retail Lending Assessment Area make no sense and should be eliminated from any further discussion of CRA.

3. *Violating the "KISS Principle" with nearly 700 pages of complex proposals and formulae resulting in 180 questions*

Leonardo DaVinci famously said that *"Simplicity is the ultimate sophistication"* (see link at https://www.goodreads.com/quotes/9010638-simplicity-is-the-ultimate-sophistication-when-once-you-have-tasted). Based on DaVinci's quote, the NPR is a very unsophisticated effort.

The KISS ("Keep It Simple Stupid") Principle is more important than ever in public policy for examination procedures that will be enforced by a large examination force across three different federal agencies where EICs and examiners may not have the willingness or ability to understand and learn complex rules and formulae.

The CRA vehicle has been operating just fine since 1995, and it just needed to be modernized and tuned up. The Fed, however, decided to totally overhaul it with a new engine and body, neither of which were needed or requested.

The more than 400 Ph.D.s and hundreds of other analysts and researchers at the Fed are being paid to come up with answers to help maintain full employment and stable prices as part of their responsibility to improve public policy.

The few answers they came up with in the NPR, like Retail Lending Assessment Areas and Outside Retail Lending Areas, are wrong. Even worse than coming up with the wrong answers, they came up with 180 unanswered questions.

4. *No basis for new regulatory burden on Very Large Banks defined as having over $10 billion in asses when it should have been over $100 billion in assets.*

There is no doubt that the heaviest regulatory burden of the NPR is on the Fed's new category of Very Large Banks with assets over $10 billion. However, there is absolutely no justification by the Fed (or FDIC or OCC) as to why those banks were singled out for such a regulatory burden.

In fact, the day the Fed announced its NPR, one of its Board of Governors (a former banker) effectively dissented at https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20220505.htm:

> *However, there are several provisions in the proposal that will impose significant costs and burdens on banks, specifically those with assets above $10 billion.*
>
> *Under the proposal, these banks would have to collect and report extensive new information on deposit accounts, automobile loans, usage of mobile and online banking services, and community development loans and services, as well as detailed information about branches.*

According to the Fed at https://www.federalreserve.gov/releases/lbr/current/, as of March 31, 2022 there were 135 banks with more than $10 billion in assets representing 88% of all domestic bank assets. However, there are only 32 banks with more than $100 billion in assets, and they represent 75% of all domestic bank assets.

How can the Fed or any agency justify placing the 103 banks with assets between $10 and $100 billion in this new category to be subject to the heaviest regulatory burden of their NPR when they are only picking up 13% more of all domestic bank assets (going from 75% to 88%)?

The Fed's $10 billion definition of Very Large Banks in their NPR makes no sense other than being punitive and piling on to the significant CFPB and other regulatory burdens of these banks.

If the Fed wants big banks to carry the bulk of the CRA burden, they should absolutely and positively focus on the 32 with assets over $100 billion that would capture three-fourths of industry assets.

This would allow the 103 banks in the $10 to $100 billion range to focus on the business of banking rather than complying with the very complex and burdensome NPR, especially as our economy will likely be entering a Recession.

5. *Using higher asset thresholds for Small/ISB Banks to attempt to gain banking industry acceptance*

   It appears that the Fed made a politically calculated decision to totally safe-harbor small banks by nearly doubling their asset thresholds to $600 million to hopefully get the support of the politically powerful and large ICBA representing mainly small banks. Small banks would have the option under the NPR to subject themselves to the new complex Retail Lending Test, but that would be very unlikely.

   The Fed attempted to gain additional industry support for their NPR by greatly increasing the asset threshold for Intermediate Small Banks to $2 billion, although they would be subject to the new complex Retail Lending Test.

   The Fed moreover effectively safe harbored Wholesale and Limited Purpose Banks with a tailored version of their new Community Development Financing Test, and these banks and those with Strategic Plans (also generally left in tact) include some of the largest and most powerful banks.

   Again, all of this was done at the expense of Large Banks with more than $2 billion in assets and most especially Very Large Banks with more than $10 billion in assets, despite a total lack of justification for any of these higher asset thresholds other than apparently gaining NPR support from the ICBA generally representing small banks.

NPR's Five Major Errors of Omission

1. *Failing to discuss any real FINANCIAL motivations for Outstanding CRA ratings*

   The CRA Handbook and its predecessor Community Reinvestment Performance (www.CRAHandbook.com) have long argued for some real FINANCIAL motivation for an Outstanding rating such as reduced taxes, reduced deposit insurance assessments, or reduced borrowing rates for FHLB advances or at the Fed discount window. There are no such financial motivations in the NPR, so why should a bank strive for an Outstanding rating?

   The only real benefit of an Outstanding rating at the present, other than a bank putting it in Press Release or on their website, is what I call Fair Lending Downgrade Insurance (FLDI).

   In the event a bank is hit with a fair lending or similar violation mandating a one-level CRA rating downgrade, this would be hardly noticeable for a bank with an Outstanding rating, since it would just fit in with the 90% or so of banks with Satisfactory ratings. However, FLDI does not work with rare two-level (i.e., Wells Fargo) downgrades.

2. *Refusal to adopt a 5-tier final rating system with High and Low Satisfactory overall ratings*

   The CRA Handbook and its predecessor Community Reinvestment Performance (www.CRAHandbook.com) have likewise long argued for a 5-tier final rating system with both High and Low Satisfactory ratings, although this was not proposed in the NPR.

Separate High and Low Satisfactory ratings currently exist in Massachusetts, which has its own CRA regulations for state-chartered banks, credit unions, and even mortgage companies. However, as a concession to their financial institutions, that state refers to "Low Satisfactory" ratings as just "Satisfactory." This would be a big improvement over the current federal system of just four overall ratings.

Instead of roughly 90% of the industry getting a "Satisfactory" rating, with a five-tier overall rating system we would know which banks excelled with a High Satisfactory ("B") vs. those with just a barely passing Low Satisfactory ("C") rating.

This is yet another example of where the Fed appeared to side with the industry that will always prefer the broader overall Satisfactory rating rather than it being broken down between High and Low Satisfactory categories.

3. *No suggestions to improve CRA examiner training or rate examiners to expose "rogue" examiner*

Regulators never want to admit they have "rogue" examiners, but we all know they exist. The CRA Handbook and its predecessor Community Reinvestment Performance (www.CRAHandbook.com) have again long argued that the best way to expose rogue examiners is to require public ratings of them as is done for faculty members at universities.

Examiners are presently rated by banks after compliance and safety and soundness exams, but these ratings are not public. Also, bankers are reluctant to identify "rogue" examiners for fear of regulatory retaliation. While every agency has policies that specifically prevent such retaliation, no banker wants to risk alienating their prudential regulator.

This is especially the case when a bank considers appealing a questionable or outright erroneous regulatory decision or even going to the agency Ombudsman. This is because the agencies "circle their wagons" to protect their examiners, including rogue ones.

The most problematic rogue examiners are those who want to make a name for themselves among fellow examiners by being the first one to downgrade a bank with multiple Outstanding ratings or even unfairly giving out a failing CRA rating to a bank for the first time.

Rogue examiners may use their unbridled subjectivity to conclude that a bank is not satisfactorily meeting credit and other banking needs within its Assessment Area thereby disallowing any CRA credit for legitimate community development activities outside of that Assessment Area.

Rogue examiners also fail to give CRA credit to a bank that has helped its community during the Pandemic with PPP loan modifications, or other activities as explained in detail in the *American Banker* article at https://www.americanbanker.com/opinion/community-banks-are-getting-too-little-credit-for-ppp-loans.

Just as the regulators regularly encourage bankers and especially directors to attend educational and other seminars to improve themselves, the regulators themselves should improve CRA examiner training with a goal of exposing rogue examiners so they can be retrained.

4. *Failing to address Strategic Plan loopholes like setting low performance goals to ensure Outstanding rating*

The problem with the self-regulating Strategic Plan option is that a bank, with the support of friendly community groups and an apparently automatic approval of the regulatory agencies, can set and easily meet its own benchmarks for a Satisfactory and especially an Outstanding level.

Ally Bank's published Strategic Plan contains detailed data on other approved Strategic Plans in Appendix 7 titled "Support Tables for 'Outstanding' and 'Satisfactory' Goal Levels" (https://www.federalreserve.gov/consumerscommunities/files/ally-strategic-plan.pdf).

These tables documents very significant differences (FOUR to FIVE times) in the benchmarks to achieve Satisfactory and Outstanding ratings as well as in the relative differences in the benchmarks between the two ratings (up to TEN times). This is clearly way too much disparity in this self-regulating exam option.

There is no other area of bank regulation in Safety and Soundness or Compliance where a bank sets its own regulatory performance evaluation standards for its desired rating. This is totally contrary to the use of CAMELS and other regulatory ratings where banks are objectively evaluated by their regulators, regardless of input from the banks themselves, community group, or other outside parties.

The NPR states that all banks have the option to develop a Strategic Plan. It is therefore possible that this option will become the lowest common denominator of CRA evaluation procedures, if banks prefer this effectively self-regulated approach over the proposed complex and burdensome exam procedures in the NPR.

Thus, the Strategic Plan has the potential to be the CRA exam procedure of first choice and last choice for many banks not willing or able to obtain a Satisfactory or Outstanding rating under the proposed NPR exam procedures.

For the above and other reasons, it is recommended that the Strategic Plan option be eliminated OR significantly improved to correct the many problems identified that are inherent in this exam procedure. This section will summarize five key areas of needed improvement to maintain this option.

The *first* and most important needed improvement is the publication of specific guidelines or benchmarks by the regulators for both Satisfactory and Outstanding ratings, so banks know the answer to one of the most important questions in CRA: *"How much is enough?"* The regulators must then require all submitted plans to have specific measurable goals based on these guidelines.

For example, The CRA Handbook recommends that an Outstanding bank should have community development loans of at least 1% of average assets over the Review Period, and the same is true for community development investments. The combined level of both community development activities would be at least 2% of average assets.

A *second* needed improvement to maintain the Strategic Plan exam alternative is to eliminate the "fail safe" option. Under the current regulations, a bank with a Strategic Plan has the option to provide an indication in that plan of whether or not it elects to be evaluated under another assessment method *if* the banks fails to substantially meet the Strategic Plan goals for a "Satisfactory" rating. Small, intermediate, large, limited purpose and wholesale banks are not provided this fail-safe option, so it is time to eliminate this advantage from an already bank-friendly exam procedure.

A *third* needed improvement with the Strategic Plan alternative is full transparency on any and all material submitted to regulators regarding anything related to the development of the Satisfactory and Outstanding performance benchmarks. For example, a reader of the Ally Bank Strategic Plan, other than the regulator approving it, cannot really understand the basis for their rating benchmarks, since the relevant peer data and the bases for their goals are contained in two confidential exhibits.

A *fourth* needed improvement with the Strategic Plan option is to require banks submitting them to identify if they have given any direct or indirect financial or non-financial aid to any community group or other organization that submits a letter in support of a bank's Strategic Plan.

A *fifth* improvement, proposed in the current NPR, is that all banks submitting Strategic Plans are subject to the data collection, recordkeeping, and reporting requirements identified in the NPR, so there is a level playing field with other banks not using the Strategic Plan option.

Assuming these five necessary improvements are made in the Strategic Plan option, it would be preferable to maintain this option and allow banks the flexibility to determine the most appropriate exam procedure to evaluate its CRA performance.

These improvements will also have the benefit of reducing the grade inflation that exists with several of the Outstanding-rated banks with Strategic Plans. Using published CRA ratings data from the FFIEC for the nearly 80,000 CRA exams conducted and publicly reported since 1990, we find that 14% of all banks under all of the exam procedures received Outstanding ratings, but the banks with Strategic Plans reported more than THREE times that amount with an incredible *45%* Outstanding result.

This begs the following question: *"Are banks with Strategic Plans THREE times better in terms of Outstanding CRA performance than all other banks?"* The present and past analyses I have conducted since 1995 suggest that this is not the case, and that the threefold difference in Outstanding ratings is simply due to grade inflation under the Strategic Plan option.

For these and other reasons identified here and in The CRA Handbook, it is more important than ever that the improvements recommended above be immediately implemented. If this is not the case, the best public policy alternative would be to simply eliminate the Strategic Plan option, since it is the one used by the fewest banks in the nation (about 60), and there is really no place for a self-regulating exam procedure in CRA.

5. *Failing to address Community Benefit Agreements (CBAs) and the need for full disclosure by banks and community groups*

   My recommendations to the Fed and other regulators regarding the need for full disclosure of all aspects of Community Benefit Agreements (CBAs) were made at recent public hearings in March before the Federal Reserve Bank of Minneapolis regarding the proposed merger of U.S. Bancorp and MUFG Union Bank, NA and in July before the Federal Reserve Bank of Chicago regarding the proposed merger of BMO Financial Corp. and Bank of the West. My formal comments on both mergers are a matter of public record.

   The recent record $100 billion five-year CBA that accompanied the cited U.S. Bank deal, the $88 billion PNC CBA, and the forthcoming (estimated $40 billion) five-year CBA for the BMO deal represent *de facto* conditions of approval by the Fed. These CBAs also represent the "Bread and Butter" for many community groups and coalitions, and they have therefore argued that CBAs should be mandatory for all merging banks.

   However, there is a lack of full disclosure of these CBAs, especially the extent to which specific community groups and coalitions directly benefit from them.

   As in the case of previous megamergers, such plans, which are not required by the CRA or any other law, are primarily efforts to expedite the merger, a form of WD-40 to help quiet potentially squeaky community groups that would otherwise likely protest the merger.

   Otherwise, why wouldn't such a plan have been created as part of each bank's past community service and development efforts prior to the merger?

   The NPR should mandate that the Fed, FDIC and OCC must require that each and every aspect of every CBA, including correspondence between the Applicant and parties to the CBA, as well as Annual or other updates, be made public on the website of the resultant bank.

   It is not enough to make a summary of the CBA or even an abridged version available publicly as is presently being done, but rather there must be a public accounting of how the tens of billions of dollars are being allocated, including all direct and indirect benefits to community groups or coalitions.

   As asked in my testimony on these mergers, "*How much of this money is going to communities and how much is going to the groups?*"

   This is critically important because while all community groups should first and foremost be serving their community, some may be more focused on serving their group rather than their community.

   The lack of such complete and full CBA disclosure is a serious public policy problem because these CBAs are really *de facto* conditions of approval whereby the opposing community groups and coalitions support the merger, thus allowing the regulators to approve it.

Section 3 of the Bank Holding Company Act and the Bank Merger Act require this or any proposed merger meet the convenience and needs of the community to be served. But, *how do we know if the public interest is being met when all of the details and financial accounting on these deals are Confidential.*

The CBAs are the real basis for meeting the convenience and needs statute today, and all aspects of them should be public.

This recommendation is not just about these recent CBAs but the 19 CBAs made by the National Community Reinvestment Coalition (NCRC) with megamerging banks totaling $541 billion and the $50 billion of CBAs made by the California Reinvestment Coalition (CRC) per the respective websites of these two coalitions.

These and other coalitions and community groups must understand that this public policy recommendation is in the public interest. That is, they could shine some needed sunlight on this process if they published on their website all of the details and correspondence with the subject banks and regulators on every CBA rather than a brief summary of them as has been done.

Furthermore, the Fed and the other primary regulators should not only monitor these CBAs but also enforce them to help ensure the resultant merger is truly meeting the convenience and needs of the subject community and the overall public interest.

KENNETH H. THOMAS, PH.D
www.CRAHandbook.com
[redacted]

MEMO

From: Kenneth H. Thomas, Ph.D.

To: Chair Jerome Powell & Vice Chair Lael Brainard via Docket No. R-1769 and RIN 7100-AG29;
Acting Comptroller of the Currency Michael Hsu via Docket ID: OCC-2022-0002; and,
Acting Chairman of the FDIC Martin J. Gruenberg via Docket No. RIN 3064-AF81

Date: August 5, 2022

Re: Sixth CRA NPR Comment on "Why Community Groups,
Banks, and Examiners Should Oppose the NPR"

This is my sixth comment on this NPR on CRA Reform, and it is titled *"Why Community Groups, Banks, and Examiners Should Oppose the NPR."* Before providing more details on this comment, I will first summarize my relevant background on CRA reform.

My comments represent my personal views and not those of any university, financial institution, company, or other organization with which I am or previously have been associated.

My Relevant Background on CRA Reform

My current and past expertise in CRA in general and its reform in particular are relevant to this comment. In short, I have spent the majority of my professional life since 1977 focused on the CRA. I was greatly honored to have known and spent time with former Senator William Proxmire, the "Father of CRA." The following photo was taken in 1995.

[redacted]

I am proud of the fact that my first book on CRA, Community Reinvestment Performance (Probus Publishing, Chicago, 1993), received the only endorsement he ever gave to any CRA publication:

> *Dr. Thomas' book, Community Reinvestment Performance, is far and away the best analysis of government regulation that I have seen in any field. He spotlights the regulatory problems that continue in CRA and points out precisely how they are being overcome. CRA will benefit enormously from this superlative examination and report.*

I have worked closely with numerous banks, community groups, and regulators on CRA since 1977, including training federal bank CRA examiners. Besides acting as a CRA consultant and being on the boards of various financial institutions, I am a cofounder and founder of two different CRA high impact mutual funds devoted primarily to providing CRA qualified investments to benefit LMI areas and people.

I had the privilege of testifying before Congress and federal bank regulators several times on CRA and related bank regulatory and public policy issues. Many of the recommendations in my books, including various CRA exam procedures and tests, were directly implemented into current bank regulations, and more details in this regard are found at www.CRAHandbook.com in The CRA Handbook (McGraw Hill, New York, 1998).

I was honored to receive the first "Award of Excellence" from the National Community Reinvestment Coalition (NCRC), along with Representative Joseph P. Kennedy and Comptroller Ludwig.

In summary, I have a vested interest in getting CRA reform "right," which I define as being what Senator Proxmire intended. We got it right in 1995 when I worked with Comptroller Ludwig and his OCC staff on the last major reform of CRA, and that is my goal during the present effort.

The CRA Triangle©

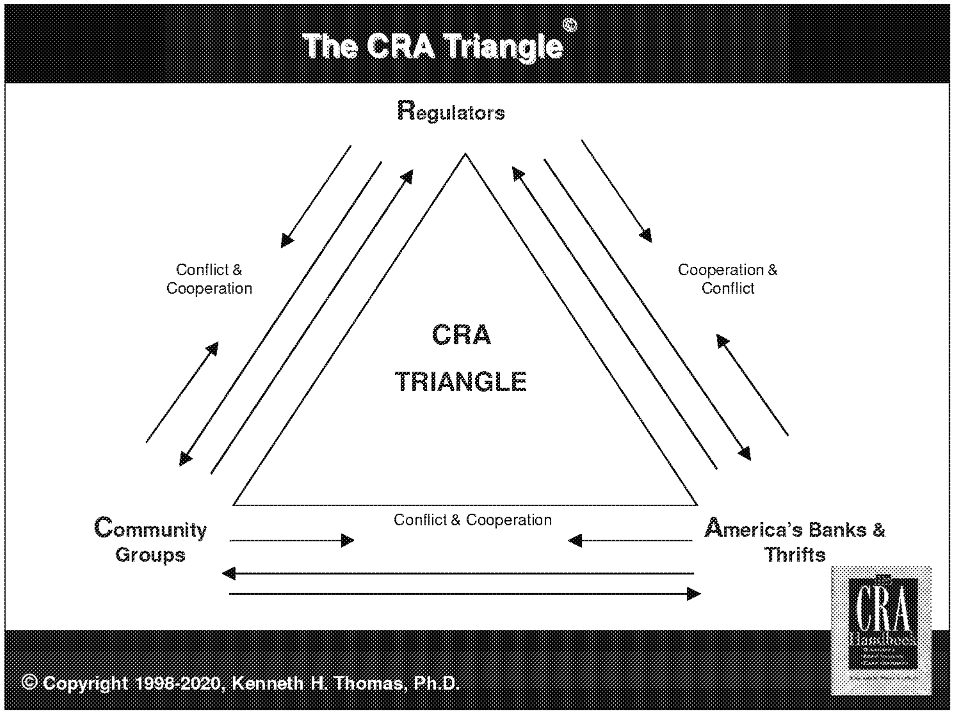
The concept of the CRA Triangle© was first discussed in Community Reinvestment Performance, and it formed the basis for all CRA discussions in that book as well as in The CRA Handbook.

There are three corners to the CRA Triangle:

The "C" is for **C**ommunity groups representing consumer interests.

The "R" is for **R**egulators, influenced and monitored by Congress and the Administration, representing the interests of the "public;" and,

The "A" is for **A**merica's banks and thrifts subject to CRA (excluding credit unions) representing the interests of their stockholders.



The above isosceles form of the CRA Triangle is an ideally balanced and proportioned model with three equal sides and angles where none is more important than another.

Community groups and banks together form the base of the triangle, with regulators in the middle position equidistant to both corners. In this ideal model of the CRA Triangle the regulators act as impartial referees between community groups and banks, attempting to fashion a "socially optimal" result benefiting both parties.

The reference to "optimal" public policy in CRA reform is based on reaching the ideal balancing point within this triangle perspective. This policy ideal must consider the potential conflicts of interest, pressures, and other factors impacting each of the corners of the CRA Triangle.

While it is normally assumed that each corner will act in the best interests of its constituent group, this is not always the case. It is possible, for example, that conflicts of interest can exist at community groups being funded by banks or even at friendly regulators interested in going to work for a bank. Also, a community group or coalition may be more interested in helping its group versus the community it is supposed to serve.

Evaluating the NPR Through The CRA Triangle

The CRA Handbook explains that the best way to analyze anything and everything related to CRA is by evaluating it through its impact on the different corners of the CRA Triangle and the interrelationships among them.

Such an evaluation of the NPR through the CRA Triangle concluded that it is most definitely NOT in the best interests of any of the three corners, and it is therefore inconsistent with good CRA or public policy. In fact, as will be summarized below, the opposite is true.

The following three sections will identify several reasons why each of the three CRA Triangle corners, namely community groups, examiners and the industry, should oppose the proposed NPR.

Why Community Groups Should Oppose the NPR

1. Learning the new complicated system will be challenging for many community groups, as some may not have the willingness or ability to learn the new system.

2. The present system with its $500 billion of annual CRA benefits and huge (e.g., $100 billion) Community Benefit Agreements is working fine for most communities and their groups.

3. Many community groups want a much more race-based CRA vs. the present (LMI) income-based one.

4. About 800 current ISB Banks will become Small Banks without any Community Development Test requirements, thus having a potential adverse impact on hundreds of communities.

5. About 200 current Large Banks will become ISB Banks without separate Investment or Service Tests, thus having a potential adverse impact on their respective communities.

6. Branchless banks will NOT be required to reinvest their CRA deposit benefits in their sourced communities with the NPR's focus on Retail Lending Assessment Areas and Outside Retail Lending Areas. This will result in a continuation of "carpetbagger" banking.

7. Combining community development loans and investments in the NPR's proposed Community Development Financing Test may limit high-impact community development investments that benefit local communities if banks are able to satisfy their community development financing through large community development loans. There is no justification for the elimination of the stand-alone Investment Test.

Why Bank Examiners Should Oppose the NPR

1. Learning the new complicated system will be difficult for many overworked and other examiners who may not have the willingness or ability to learn the new system.

2. A new Congress in November 2022 and/or a new Administration in 2024 may rescind a new joint rule as was done last year by the Biden Administration.

3. Bank examiners prefer the current subjectivity in CRA ratings vs. the mainly objective formulae in the NPR. There will always be some subjectivity in CRA evaluations to properly account for Performance Context factors, as long as the subjectivity is not misused by "rogue" examiners.

4. Many of the cited NPR benchmarks do not exist and will lead to more complicated exams and more work for examiners.

5. The NPR's fourth new category of "Very Large" banks (Over $10 billion in assets) will increase examiner workload, especially as there is no justification for this new bank category.

6. FDIC and OCC examiners may not feel comfortable working in a Fed-dominated regulatory environment.

1. Learning the new complicated system will be very difficult for most CRA officers at community banks who may not have the willingness or ability to learn the new system.

2. The present system with fewer than 2% failing banks is working fine for most (98%) of the industry.

3. The NPR will result in a significant increase in failing CRA ratings. For example, these are the Fed-predicted failing Retail Lending Test ratings: 15% of Small Banks, 7% of ISBs, and 7% of Large Banks. If regulators and community groups want to increase the percentage of failing ratings, this can be done under the existing regs by simply enforcing them more strictly as is presently done by the FDIC.

4. The NPR will result in a significant increase in Low Satisfactory CRA ratings. For example, these are the Fed-predicted Low Satisfactory Retail Lending Test ratings: 24% of Small Banks, 38% of ISBs, and 40% of Large Banks. If regulators and community groups want to increase the percentage of Low Satisfactory ratings, this can be done under the existing regs by simply enforcing them more strictly as is presently done by the FDIC.

5. The NPR will result in a tremendous regulatory burden for Very Large Banks (over $10 billon in assets) and an increased burden for Large Banks (over $2 billion in assets). Yet, there is no rationale by the Fed for these or other new asset thresholds. If the Fed wanted to establish a new category of Very Large Banks, they should have defined it as being those with over $100 billion in assets to capture three-fourths of all industry assets.

6. ISBs will be subject to the new complex Retail Lending Test resulting in a Fed-estimated significant increase in failing and Low Satisfactory ratings for it.

7. The elimination of the Investment Test will discourage banks from making high impact community development investments that currently benefit local Assessment Areas.

8. Small Banks may suffer from the regulatory "trickle down" effect if their CRA EIC and examiners may "unofficially" consider new Retail Lending Test benchmarks in the current simple four-ratio lending test.

9. All of eight stated objectives of the NPR, with the exception of the critical modernization goal, can be met through the existing regs and the Q&A process without the need for a complex major overhaul of a law that has been working fine since 1995.

10. Banking industry trade groups like the ABA and especially the ICBA should not accept rules that unfairly benefit smaller banks at the expense of larger ones; industry trade groups should represent their entire industry.

11. Banks have been under continuous net interest margin and other profitability pressures, and the current economic slowdown and forecasted Recession means that bankers must stay focused on the business of banking rather than being subjected to the tremendously increased regulatory burden of the NPR.

12. Banks bear the regulatory burden of CRA while other financial intermediaries with federal deposit insurance (credit unions) and without it (e.g., mortgage companies and fintechs) have no CRA responsibility. Yet, the NPR is basically silent about expanding CRA to these nonbank competitors to create a more level regulatory playing field..

13. At least one Fed Governor (an ex-banker) got it right in a rare NPR dissenting statement:

    - *"There are several provisions in the proposal that will impose significant costs and burdens on banks, specifically those with assets above $10 billion."*

    - *"Fundamentally, we do not know if the costs imposed under the proposal will be greater than the benefits."*

Tables Summarizing the NPR's New and Complex Tests and Data Requirements by Type of Bank

There are two tables at the end of this comment summarizing the NPR. Both of these tables were created by the law firm of Debevoise & Plimpton and are reproduced with their written permission.

The first table summarizes the different tests in the NPR by type of bank, including the new category of Extra Large banks with assets over $10 billion. This table also includes information for Wholesale and Limited Purpose Banks.

Bank	Asset Size	Subject to New Retail Lending Test?	Subject to New Retail Services & Products Test?	Subject to New Community Development Financing Test?	Subject to New Community Development Services Test?	Subject to Current (Intermediate Bank) Community Development Test?	Subject to Current Small Bank Lending Test?
Extra Large	More than $10b	Yes	Yes *(additional provisions apply)*	Yes	Yes *(additional provisions apply)*	No	No
Large	More than $2b	Yes	Yes	Yes	Yes	No	No
Intermediate	$600m-$2b	Yes	No	(May opt in to replace current Community Development Test)	No	Yes	No
Small	Less than $600m	(May opt in instead of current Small Bank Lending Test)	No	No	No	No	Yes
Wholesale and Limited Purpose	N/A	No	No	Yes – Tailored version of test	No	No	No

Source: Debevoise & Plimpton

The second table summarizes the different data requirements in the NPR by type of bank, again including the new category of Extra Large banks with assets over $10 billion as well as information for Wholesale and Limited Purpose Banks.

<table>
<tr><th>Bank</th><th>Deposit Data</th><th>Retail Lending Data</th><th>Community Development Financing Data</th><th>Community Development Services Data</th><th>Retail Services & Products</th><th>Assessment Area Delineation</th></tr>
<tr><td>Extra Large</td><td>Collect and report based on location of depositor</td><td>Collect and report automobile lending data + certain small business, small farm and home mortgage loans</td><td rowspan="2">Collect and report (in prescribed form) for creation of metrics & benchmarks</td><td>Collect and report (in prescribed form)</td><td>Collect (in prescribed form) + Digital and other delivery systems + Responsive deposit products</td><td>Report</td></tr>
<tr><td>Large</td><td>Optional to collect</td><td>Certain small business, small farm and home mortgage loans</td><td>—</td><td>Collect (in prescribed form)</td><td>Report</td></tr>
<tr><td>Intermediate</td><td>Optional to collect</td><td>—</td><td>Optional to collect (if opt in to CD Financing Test)</td><td>—</td><td>—</td><td>—</td></tr>
<tr><td>Small</td><td>Optional to collect</td><td>—</td><td>—</td><td>—</td><td>—</td><td>—</td></tr>
<tr><td>Wholesale and Limited Purpose</td><td>—</td><td>—</td><td>Collect and report for creation of metrics & benchmarks</td><td>—</td><td>—</td><td>Report</td></tr>
</table>

Source: Debevoise & Plimpton