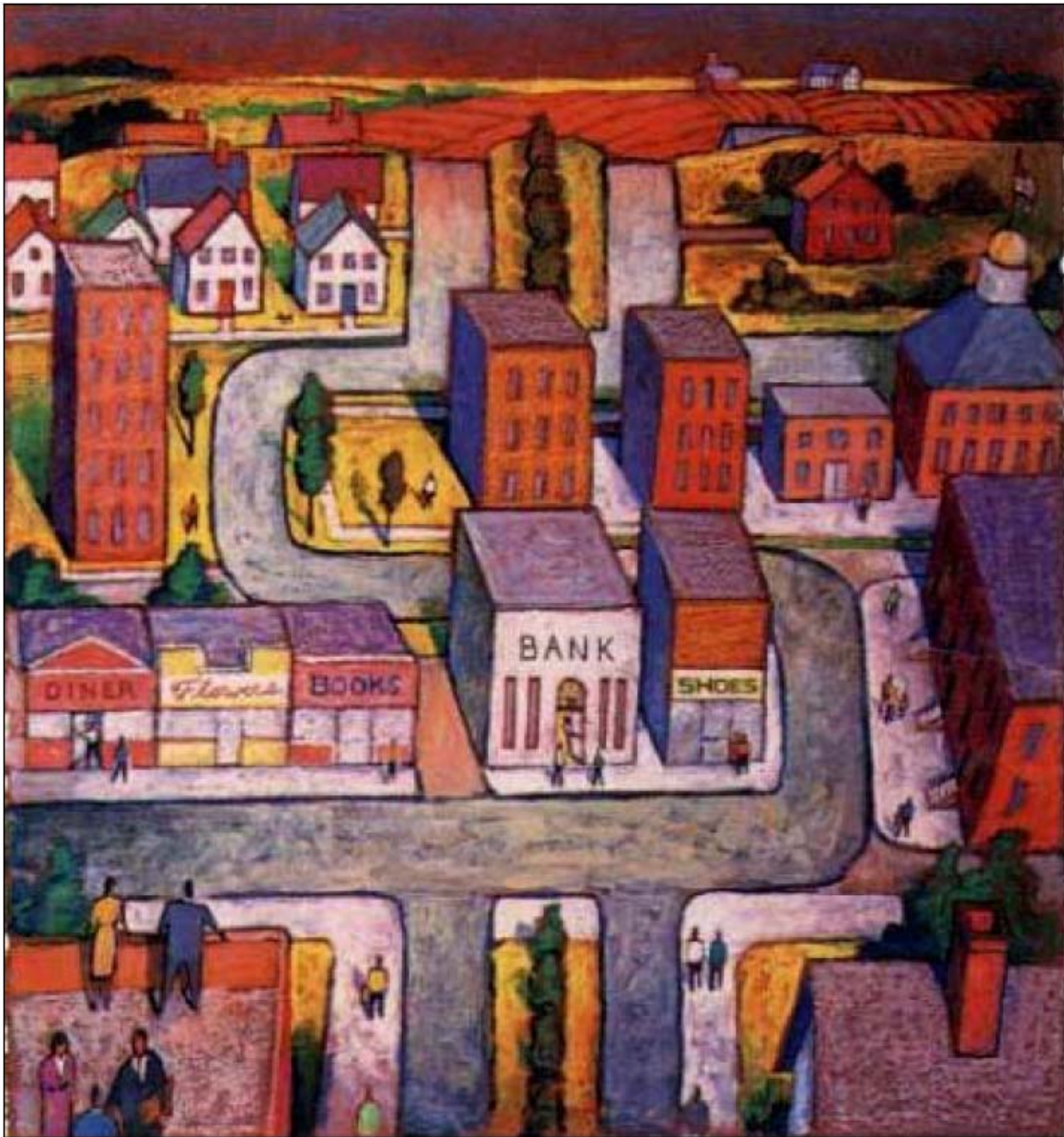


# CRA Manual



**September 2007**

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## **Acknowledgments**

The National Community Reinvestment Coalition (NCRC) is the nation's trade association for economic justice whose members consist of local community based organizations. Since its inception in 1990, NCRC has spearheaded the economic justice movement. NCRC's mission is to build wealth in traditionally underserved communities and bring low- and moderate-income populations across the country into the financial mainstream. NCRC members have constituents in every state in America, in both rural and urban areas.

We would like to acknowledge Josh Silver, Vice President of Research and Publication, who has updated the *CRA Manual* a number of times over the years. More importantly, he has been a major participant during the regulatory changes to CRA during the last several years, helping to prevent a significant weakening of the law. A number of research analysts and interns have also participated in updating this manual over the years.

The Board of Directors would like to express their appreciation to the NCRC professional staff who contributed to this publication and serve as a resource to all of us in the public and private sector who are committed to responsible lending. For more information, please contact:

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## Introduction

The Community Reinvestment Act (CRA) is a remarkable law. Not only does it prohibit discrimination against working class and minority neighborhoods, it also imposes an affirmative obligation on banks to serve these communities. It is not good enough for a bank to establish branches and passively wait for customers to walk into branches. Instead, banks must proactively assess community needs, conduct marketing and outreach campaigns in all communities, and consult with community stakeholders in developing financing options for affordable housing and economic development activities.

Another ingenious aspect of CRA is that it requires community participation. Banks are custodians of community wealth; thus they have an obligation to determine the credit needs of bank customers and depositors. There is no better way for banks to serve credit needs than to listen to members of the community articulate what those needs are. Thus, CRA establishes formal mechanisms for banks and regulators to seriously consider community needs and input. Members of the community can comment at any time on a bank's CRA performance in a formal or informal manner. When federal agencies conduct CRA exams of banks' lending, investing, and service activities in low- and moderate-income communities, federal agencies are required to consider the comments of members of the public concerning bank performance. Likewise, federal agencies are required to consider public comments when deciding whether to approve a bank's application to merge or open and relocate branches.

CRA has spawned an impressive amount of collaboration among banks and community organizations. Every bank in this country has a CRA officer, whose job it is to seek out profitable business opportunities and deals in low- and moderate-income communities. It is important for community organizations to contact CRA officers of several banks in their community and discuss needs and opportunities with the CRA officers. As a result of advocacy and collaboration, CRA has leveraged trillions of dollars of bank financing and services for low- and moderate-income communities over the last three decades. Our nation's low- and moderate-income communities would stand no chance of economic revitalization and empowerment if CRA was not the law of the land.

This manual is a how-to book for community organizations and any other stakeholder wishing to become engaged in the CRA process and economic building activities for low- and moderate-income communities. The first chapter provides a quick summary of the CRA regulation and how members of the general public can become involved in the CRA process. The second chapter outlines the elements of CRA exams for various types of banks in a powerpoint format. The third chapter then provides a detailed description of CRA exams. Commentary is offered on the strengths and weaknesses of CRA exams and issues community organizations should consider when commenting on CRA exams. The fourth chapter provides an overview of the bank application and merger process and how community groups can become involved. The manual then proceeds to one fictitious case study and one actual case study of commenting on CRA exams. Finally, CRA



sunshine requirements are described. CRA sunshine is a frivolous requirement; nevertheless, compliance requirements are straightforward for community organizations and banks.

The intention of this *Manual* is to bolster community group and public participation in the CRA process. If banks and regulators are the only stakeholders involved in a secretive or mysterious CRA process, chances increase that CRA exams and merger applications become rubber stamps without imposing meaningful obligations to serve the community. On the other hand, if the general public is actively engaged in providing thoughtful and penetrating insights and comments on bank performance, CRA becomes a rigorous process, holding banks accountable to serving community needs. Consequently, bank lending, investing, and services increase for low- and moderate-income communities.

During this 30<sup>th</sup> Anniversary of CRA, we hope that the *CRA Manual* helps nurture a public that continues to be actively engaged in the CRA process. We hope that community organizations and members of the public across the country use this *Manual* and offer us input on how to make it more understandable and effective.

September, 2007

## ***SUMMARY OF THE CRA REGULATION: HOW COMMUNITY GROUPS CAN GET INVOLVED IN THE CRA PROCESS***

Passed by Congress in 1977, the Community Reinvestment Act (CRA) states that “regulated financial institutions have continuing and affirmative obligations to help meet the credit needs of the local communities in which they are chartered.” The act then establishes a regulatory regime for monitoring the level of lending, investments, and services in low- and moderate-income neighborhoods traditionally underserved by lending institutions. Examiners from four federal agencies assess and “grade” a lending institution’s activities in low- and moderate-income neighborhoods.

If a regulatory agency finds that a lending institution is not serving these neighborhoods, it can delay or deny that institution’s request to merge with another lender or to open a branch or expand any of its other services. The financial institution regulatory agency can also approve the merger application subject to specific improvements in a bank’s lending or investment record in low- and moderate-income neighborhoods.

In the spring of 1995, the federal agencies released new CRA regulations. The regulations outline how federal agencies are to assess the activities of lending institutions in traditionally underserved neighborhoods. The federal agencies conducting CRA examinations are: the Office of the Comptroller of the Currency (<http://www.occ.gov>) that examines nationally chartered banks, the Office of Thrift Supervision (<http://www.ots.treas.gov>) that examines savings and loan institutions, and the Federal Deposit Insurance Corporation (<http://www.fdic.gov>) and the Federal Reserve Board (<http://www.federalreserve.gov>) - both of whom examine state chartered banks.

The CRA regulations had been revised as part of the Clinton administration’s initiative to create performance-based and objective standards. The new regulations attempt to satisfy community activists by focusing more attention on the lending, investment, and service records of banks. The regulations also attempt to reduce the amount of paperwork required of lending institutions. Gone are previous paper trail generating requirements such as documenting participation by a bank’s board of directors in reviewing CRA compliance. In their place, are examinations that are suppose to flexibly assess lending activities in low- and moderate- income neighborhoods of institutions of various financial capacities.

The CRA regulation establishes various tests for lending institutions of different sizes and a strategic plan option. Under each test, examiners rate banks according to their lending records and responsiveness to community needs. Banks receive a score based on their evaluations of “outstanding”, “satisfactory”, “needs to improve”, or “substantial non-compliance.” The last two scores can result in delays or denials of mergers, acquisitions, or expansions of services.

Lending institutions with assets greater than \$1 billion are subjected to the most rigorous exams. They are evaluated under a lending test that considers the number and percentages

of loans made to low- and moderate-income individuals and communities. Likewise, they are evaluated under an investment test and a service test that consider, respectively, the number and types of investments and services (branches and bank accounts) in low- and moderate-income communities. When conducting the evaluations, examiners are to consider the “performance context” of the lending institutions. In other words, examiners are advised to consider factors such as the business opportunities available to a lending institution and the size and financial condition of the lending institution.

In 2005, the federal agencies established a streamlined exam for “intermediate small banks” defined as institutions with assets of \$250 million to \$1 billion (the asset range is adjusted annually to take inflation into account). These intermediate small banks or mid-size banks undergo a lending test and a community development test. The community development test incorporates elements of the large bank’s investment and service test. The community development test scrutinizes the amount and responsiveness of a mid-size bank’s community development lending, investing, and services. Unfortunately, the mid-size banks are no longer required to report small business or community development lending data.

Small banks, as defined as institutions with less than \$250 million in assets, are evaluated under a test less encompassing than the evaluation for their larger counterparts. Small banks are not subjected to an investment and service test. Their lending test consists of the following five criteria: a “reasonable” loan-to-deposit ratio, the percentage of loans in the bank’s assessment area, the bank’s distribution of loans to individuals of different income levels and businesses and farms of different sizes, the geographic distribution of loans, and the bank’s record of responding to written complaints about its lending performance in its assessment area.

The Gramm-Leach-Bliley Act of 1999 established a less frequent exam cycle for small banks of under \$250 million in assets with passing CRA ratings. Small banks with outstanding ratings will be examined once every five years and those with satisfactory ratings will be examined once every four years. Banks with passing ratings can be examined more frequently if regulatory agencies believe a compelling reason, such as deteriorating CRA performance, makes it necessary to do so. Community groups should contact the regulatory agencies if they believe that a particular small bank should be examined before its lengthened time cycle.

Wholesale and limited purpose banks are also assessed under a test tailored to their capabilities. These banks provide services such as offering credit cards or specialize in large commercial deposits. Lending tests cannot adequately assess wholesale and limited purpose banks because many of them do not accept consumer deposits or make home loans. Instead examiners are to focus their evaluation of these banks on the number of community development loans and investments (such as affordable housing rehabilitation loans, low-income housing tax credits, or investments in organizations that finance small businesses). The tests for mid-size and large banks also consider community development loans and investments.

Any lending institution can opt for developing a strategic plan in lieu of a regulator evaluation. Developed in conjunction with neighborhood organizations, a strategic plan seeks to satisfy the credit needs of a bank's assessment area and must address the lending, investment, and service criteria that would have been part of the usual evaluation. Federal regulators must approve the strategic plan and rate it at least "satisfactory." If a bank receives a lower rating on its plan, it has the option of submitting to the applicable tests for large, small, or limited purpose banks.

A CRA rating can be downgraded if a federal agency uncovers evidence of illegal, abusive or discriminatory lending on fair lending exams that occur at about the same time as CRA exams. Community groups should bring fair lending concerns to attention of CRA examiners.

In addition to the strategic plan option, community groups can be involved in the CRA evaluation process. Federal agencies publish in advance a list of banks that will be evaluated each quarter. Once every three months, NCRC notifies its members about the banks scheduled for upcoming CRA exams. NCRC encourages its members and other neighborhood organizations to offer their comments on the CRA performance of banks in advance of their examinations. Timely comments can influence a bank's CRA rating by directing examiners to particular areas of strength or weakness in a bank's lending, investments, or services in low- and moderate-income neighborhoods. A community group's comment can have an influence on the overall CRA rating for an institution or the CRA rating for a state or one of the tests on the CRA exam. Even changing a rating from Outstanding to Satisfactory in one state or one part of the exam can motivate a bank to increase the number of loans, investments, and services to low- and moderate-income communities.

Also, community organizations can offer written comments on a bank's CRA and fair lending performance when a bank has submitted an application to merge or acquire another bank or thrift. NCRC can assist community organizations in preparing comments on merger applications. The vast majority of merger applications are approved, but comments can still direct regulatory agencies' attention to areas of weakness. The federal agency can approve the merger application, but still indicate in the approval order that the bank should improve upon its area of weakness. In addition, the bank can pledge in writing to address its shortfall by implementing a fair lending reform and/or increasing its lending, investing, and services to traditionally underserved communities.



# **Outline of CRA Exams for Banks of Various Sizes & Capacities**

**Large Banks**

**Mid-Size Banks**

**Small Banks**

**Wholesale and Limited Purpose Banks**

**Strategic Plan Option**

# THE CRA REGULATION: OVERVIEW

---

## LARGE BANKS (Assets $\geq$ \$1 Billion): THREE PERFORMANCE TESTS

- Lending Test
- Investment Test
- Service Test

## SMALL BANKS (Assets $<$ \$250 Million) and Intermediate Small Banks (up to \$1 Billion)

- Small banks are not subject to the three performance tests, but are evaluated under a streamlined evaluation procedure.

## SPECIAL TEST FOR WHOLESALE AND LIMITED PURPOSE BANKS

- Unlike the existing regulation, wholesale and limited-purpose banks will be evaluated under a special test. CRA compliance will be judged primarily on a lender's community development activities.

## STRATEGIC PLAN OPTION

- All lenders have the option of submitting a strategic plan developed with community input detailing how a lender intends to meet its CRA obligation. The strategic plan must contain measurable performance goals.

## DATA DISCLOSURE

- Large banks are required to report small business, small farm, community development lending data. In addition, some lenders will be reporting consumer lending data.

# THE LENDING TEST: Banks With Assets $\geq$ \$1 Billion

## FIVE PERFORMANCE INDICATORS

**Lending Activity:** The number and amount of the bank's loans in the bank's assessment area(s);

**Geographic Distribution:**

- a) The proportion of the bank's lending in its assessment area(s);
- b) The dispersion of lending in the bank's assessment area(s);
- c) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies;

**Borrower Characteristics:**

- a) The number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;
- b) Small business and small farm loans to businesses and farms with gross revenues of \$1 million or less;
- c) Small business and small farm loans by loan amount;
- d) Consumer loans to low-, moderate-, middle-, and upper-income individuals (optional);

**Community Development Lending:** The number and amount of community development loans and their complexity and innovativeness;

**Innovative or Flexible Lending Practices:** The bank's use of innovative or flexible lending practices to meet the credit needs of low- and moderate-income individuals.

## PERFORMANCE CONTEXT

1. Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other data.
2. Lending, investment, and service opportunities in the bank's assessment area(s).
3. The bank's product offerings and business strategy.
4. The institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and other considerations.
5. The bank's past performance and the performance of similarly situated lenders.
6. The bank's public file.

**CRA RATING ON LENDING TEST:**

- Outstanding
- High Satisfactory
- Low Satisfactory
- Needs to Improve
- Substantial Noncompliance

# THE INVESTMENT TEST: Banks With Assets $\geq$ \$1 Billion

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## PERFORMANCE INDICATORS

The dollar amount of qualified investments

The innovativeness or complexity of the qualified investments

The responsiveness of the qualified investments to credit and community development needs

The degree to which the qualified investments are not routinely provided by private investors

## PERFORMANCE CONTEXT

1. Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other data.
2. Lending, investment, and service opportunities in the bank's assessment area(s).
3. The bank's product offerings and business strategy.
4. The institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and other considerations.
5. The bank's past performance and the performance of similarly situated lenders.
6. The bank's public file.

## CRA RATING ON INVESTMENT TEST:

- Outstanding
- High Satisfactory
- Low Satisfactory
- Needs to Improve
- Substantial Noncompliance

# THE SERVICE TEST: Banks With Assets $\geq$ \$1 Billion

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## PERFORMANCE CRITERIA

1. The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies

2. The bank's record of opening and closing branches, particularly branches located in low- and moderate-income geographies or primarily serving low- and moderate-income individuals

3. The availability and effectiveness of alternative systems for delivering retail banking services (e.g. ATMs, banking by telephone or computer, loan production offices) in low- and moderate-income geographies or primarily serving low- and moderate-income individuals.

4. The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. In addition, the extent to which the bank provides community development services and the innovativeness and responsiveness of the services.

## PERFORMANCE CONTEXT

1. Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other data.  
2. Lending, investment, and service opportunities in the bank's assessment area(s).  
3. The bank's product offerings and business strategy.  
4. The institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and other considerations.  
5. The bank's past performance and the performance of similarly situated lenders.  
6. The bank's public file.

## CRA RATING ON SERVICE TEST:

- Outstanding
- High Satisfactory
- Low Satisfactory
- Needs to Improve
- Substantial Noncompliance

# COMMUNITY DEVELOPMENT: Loans, Investments, & Services

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## What is the definition of community development?

- Affordable housing (including multifamily rental housing) for low- and moderate-income individuals;
- Community services targeted to low- and moderate-income individuals;
- Activities that promote economic development by financing small businesses and farms;
- Activities that revitalize or stabilize low- or moderate-income geographies.

## Examples of Community Development Loans:

- Loans for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;
- Loans to not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- Loans in support of community facilities in low- and moderate-income areas or in support of low- and moderate-income persons;
- Loans to community development financial institutions (CDFIs), community development corporations (CDCs), and minority- and women-owned financial institutions;
- Loans to local, state, and tribal governments for community development activities;
- Loans to finance environmental clean-up or redevelopment of an industrial site in low- and moderate-income communities.

## Examples of Community Development

**Investments.** Investments, grants, deposits, or shares in or to:

- Financial intermediaries (e.g. CDFIs, CDCs, minority- and women-owned financial institutions) that primarily lend in low- and moderate-income areas or to low- and moderate-income persons;
- Organizations engaged in affordable housing and rehabilitation, including multifamily rental housing;
- Organizations promoting economic development by financing small businesses including Small Business Investment Companies;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as homeownership counseling, home maintenance counseling, credit counseling, and other financial services education;
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or sustain economic development.

## Examples of Community Development Services:

- Technical assistance to not-for-profit, tribal, or government organizations serving low- and moderate-income housing needs or economic revitalization;
- Lending executives to organizations facilitating affordable housing construction and rehabilitation or the development of affordable housing;
- Providing credit counseling, home buyers counseling, home maintenance counseling, and/or financial planning to promote community development and affordable housing;
- School savings programs;
- Financial services whose primary purpose is community development, such as low-cost or free government check cashing.

# ADDITION TO COMMUNITY DEVELOPMENT DEFINITION

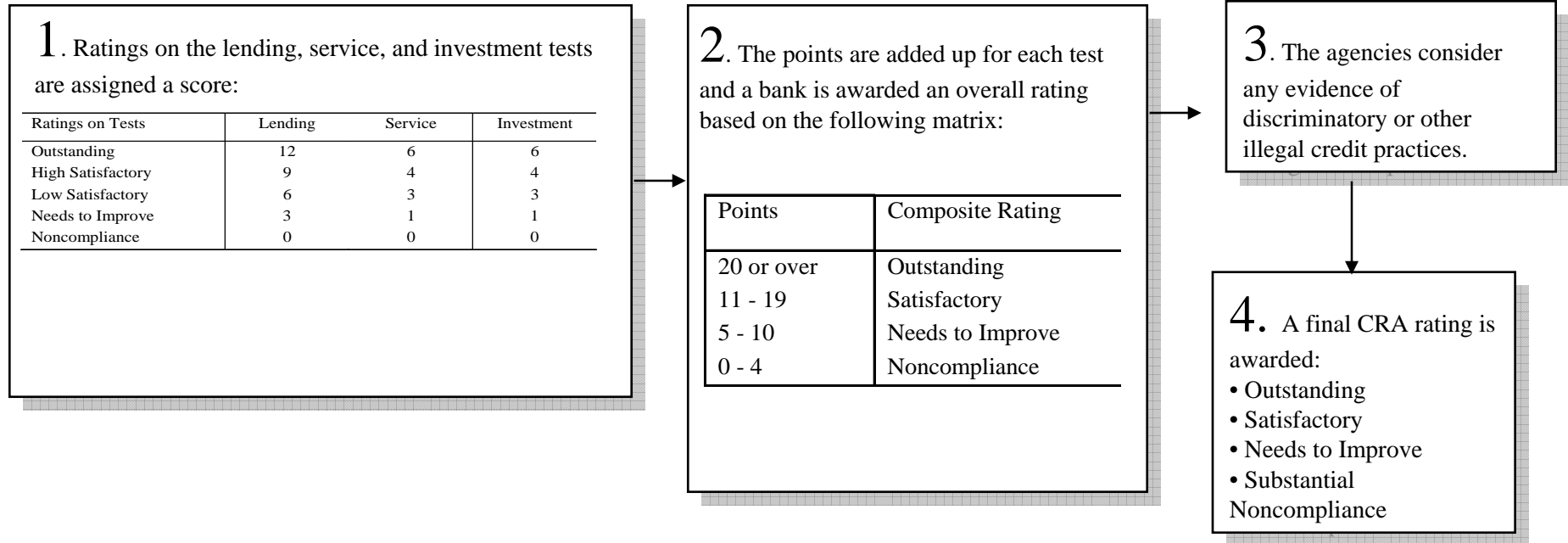
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**Effective September, 2005 for Banks Regulated by FDIC, FRB, OCC & Subsequently for Thrifts Overseen by the Office of Thrift Supervision**

- Change the criterion of community development that entails revitalizing and stabilizing communities
- In addition to targeting low- and moderate-income census tracts, the activities can revitalize designated disaster areas; or distressed or underserved non-metropolitan middle-income census tracts designated by the agencies based on:
  - Rates of poverty, unemployment, and population loss; or
  - Population size, density, and dispersion (remote rural areas)

- This change to the community development criterion was intended to increase the effectiveness of targeting underserved rural areas
- The FFIEC website (<http://www.ffiec.gov>) will maintain a list of underserved or distressed non-metropolitan census tracts

# FINAL CRA RATINGS: Banks With Assets $\geq$ \$1 Billion



- Under the weighting system for determining a CRA rating, a bank must receive at least a rating of “low satisfactory” on the lending test to receive an overall rating of “satisfactory”.
- A bank that receives an “outstanding” rating on the lending test will receive an overall rating of at least “satisfactory.”
- A bank that receives an “outstanding” rating on both the service and investment test and at least a “high satisfactory” on the lending test will receive an overall “outstanding” rating.



# SMALL BANK (< \$250 Million Assets) “STREAMLINED” CRA TEST

## PERFORMANCE CRITERIA

1. The bank has a reasonable loan-to-deposit ratio (considering seasonal variations) given the bank’s size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments.
2. A majority of its loans and other lending-related activities are in its assessment area(s).
3. The bank has a reasonable distribution of loans and other lending related-activities for individuals of different income levels and businesses and farms of different sizes given the demographics of the assessment area(s).
4. The bank has a reasonable geographic distribution of loans given the bank’s assessment area(s).
5. The bank has a record of taking appropriate action in response to written complaints about the bank’s performance in meeting the credit needs of its assessment area(s).

IF A BANK MEETS  
THE 5  
STANDARDS

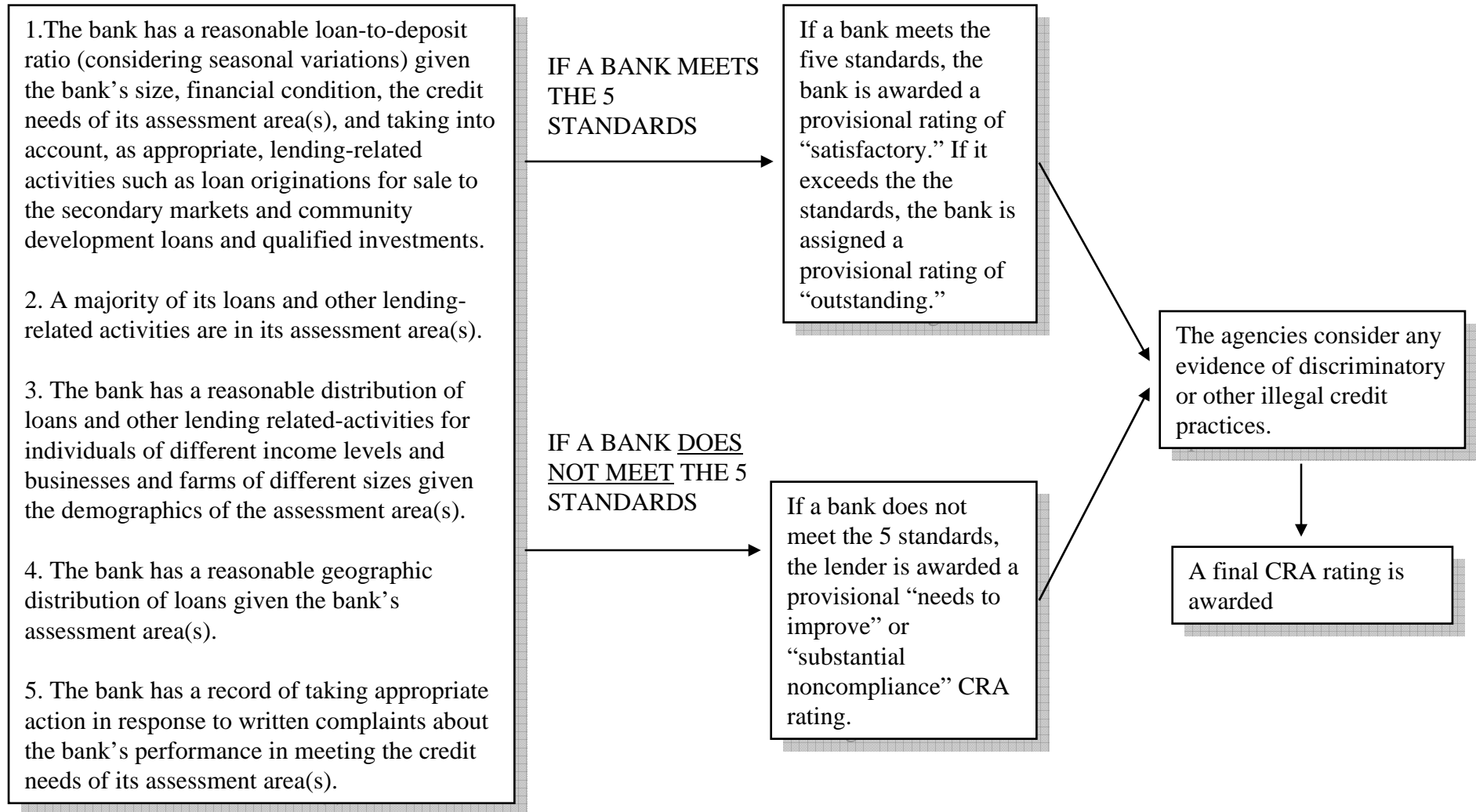
If a bank meets the five standards, the bank is awarded a provisional rating of “satisfactory.” If it exceeds the the standards, the bank is assigned a provisional rating of “outstanding.”

IF A BANK DOES  
NOT MEET THE 5  
STANDARDS

If a bank does not meet the 5 standards, the lender is awarded a provisional “needs to improve” or “substantial noncompliance” CRA rating.

The agencies consider any evidence of discriminatory or other illegal credit practices.

A final CRA rating is awarded



# TEST FOR INTERMEDIATE SMALL BANKS

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- Effective September 2005, mid-size banks regulated by FDIC, FRB, and OCC with assets between \$250 million to \$1 billion are eligible for a streamlined test consisting of a lending test and a community development (CD) test. This asset size threshold will be adjusted upward every year to take inflation into account. All banks in this asset threshold are eligible for the streamlined test regardless of whether they are part of a holding company. OTS adopts this exam for intermediate small thrifts in July 2007

- The lending test is the same as the lending test for small banks with less than \$250 million in assets

- The community development test includes the following criteria:
  - The number and amount of community development loans
  - The number and amount of qualified investments
  - The extent to which the bank provides community development services
  - The bank's responsiveness through such activities to community development lending, investment, and service needs.

- An intermediate small bank must score at least Satisfactory on both the Lending and Community Development Tests to receive an overall Satisfactory rating.

- Intermediate small banks are no longer required to annually report small business, small farm, community development loan data or the property location of HMDA-reportable loans for those loans made outside of metropolitan areas or metropolitan areas in which the mid-size bank has branches.

# CRA TEST FOR WHOLESALE AND LIMITED-PURPOSE BANKS

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## 1. DESIGNATION AS A WHOLESALE OR LIMITED PURPOSE BANK:

To qualify for examination under this test, a lender must apply to the regulatory agencies requesting designation as a wholesale or limited-purpose bank.

A limited-purpose bank is a bank that only offers a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market.

A wholesale bank is a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers.

## 2. PERFORMANCE CRITERIA

A. The number and amount of community development loans, qualified investments, or community development services;

B. The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by the private market;

C. The bank's responsiveness to credit and community development needs.

D. The agencies consider benefits outside of the bank assessment area(s) if the bank has adequately addressed the needs of its delineated assessment area.

3. The agencies consider any evidence of discriminatory or other illegal credit practices.

4. A final CRA rating is awarded:

- Outstanding
- Satisfactory
- Needs to Improve
- Substantial Noncompliance

# THE STRATEGIC PLAN OPTION

**1. DEVELOP THE PLAN:** Instead of being evaluated under the three performance tests (lending, investment, and services) or the small bank test, a lender has the option of developing a “strategic plan” detailing how it plans to meet the credit needs of the community. A strategic plan must include the following elements:

- **Measurable goals** for helping to meet the credit needs of the assessment area(s) covered by the plan, particularly the needs of low- and moderate-income persons and geographies. The plan must detail the goals necessary for a “satisfactory” rating and, at the lenders option, goals for an “outstanding” CRA rating.
- The bank must address each of the **three performance categories** (lending, investment, and services) and shall emphasize lending and lending-related activities.
- The plan may be up to 5 years in duration, but must include annual interim performance goals.

**2. PUBLIC PARTICIPATION:** A lender must seek public participation in the development of the plan by:

- Informally seeking suggestion from members of the public in its assessment areas covered by the plan while initially developing the plan.
- Formally soliciting public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan.
- Making copies of the plan available for review by the public at no cost and copies available for a reasonable fee to cover copying and mailing.

**3. REGULATORY APPROVAL:** The lender must submit the plan for regulatory approval based on the following criteria:

- The public’s involvement in formulating the plan, written comments on the plan, and the lender’s response to comments.
- The extent and breadth of lending or lending related activities, including the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the extent and use of innovative or flexible lending practices.
- The amount and innovativeness, complexity, and responsiveness of the bank’s qualified investments.
- The availability and effectiveness of the bank’s systems for delivering retail banking services and the extent and innovativeness of the bank’s community development services.

**4. FINAL CRA RATING:**

- A lender is assigned a CRA rating based on the performance standards detailed in the plan.
- If a lender does not meet the performance standards for a “satisfactory” rating, the bank has the option of being evaluated under the large bank performance standards or, if applicable, the small bank standards.
- Ratings are adjusted based on any evidence of discriminatory or other illegal credit practices.

# DATA DISCLOSURE

## CRA DISCLOSURE STATEMENT

Lenders with assets over \$1 billion, and small banks that elect to be evaluated under the lending, investment, and service tests, are required to report to the agencies small business and community development lending data. Each year the regulatory agencies will prepare a CRA Disclosure Statement available from the lender and at central data depositories. The CRA Disclosure Statement will contain the following information for each lender:

### Small Business Lending

1. For each county with a population of 500,000 or less in which a bank reported a small business or small business loan:

- The number and amount of small business or small farm loans originates or purchased in low-, moderate-, middle-, and upper-income census tracts;
- A list grouping each census tract according to whether the census tract is low-, moderate-, middle-, and upper-income;
- A list of each census tract in which the bank reported a small business or small farm loan;
- The number and amount of small business and small farm loans.

2. For each county with a population in excess of 500,000 persons, lenders must disclose:

- The number and amount of small business or small farm loans originated or purchased in census tracts whose median family income is 0 - 10 % of area median family income, 10-20%, 20-30%, 30-40%, 40-50%, 50-60%, 60-70%, 70-80%, 80-90%, 90-100%, 100-110%, 110-120%, >120%.;
- A list grouping each census tract according to whether the census tract is 0 - 10 % of area median family income, 10-20%, 20-30%, 30-40%, 40-50%, 50-60%, 60-70%, 70-80%, 80-90%, 90-100%, 100-110%, 110-120%, >120%.;
- A list of each census tract in which the bank reported a small business or small farm loan;
- The number and amount of small business and small farm loans.

3. The number and amount of small business and small farm loans located in the lender's assessment area and outside of the assessment area.

### Community Development

- The number and amount of community development loans originated or purchased.

**Public File:** A lender is required to maintain a public file available for inspection at no cost at its main office and through its branches. The public file must contain...

- All written comments received from the public and the response to those comments by the bank for the last three years.
- A copy of the latest CRA Performance Evaluation.
- A list of the bank's branches, their street addresses, and census tracts.
- A list of branches opened or closed by the bank during the last three years, their street addresses, and geographies.
- A list of services (including hours of operation, available loan and deposit services, and transaction fees) generally offered at the bank's branches.
- A map of each assessment area, including the census tracts.
- If applicable, the CRA Disclosure Statement.
- If applicable, the HMDA Disclosure Statement.
- If applicable, consumer lending data.
- If the bank is a small bank, the lender must include the loan-to-deposit ratio for each quarter of the prior calendar year.
- If the bank has a strategic plan, a copy of the plan must be included in the public file.
- If the bank has a less than satisfactory CRA rating, it must include a description of its current efforts to improve its performance in helping meet the credit needs of its entire community. The description must be updated quarterly.

## Home Mortgage Lending

- If a bank is required to report mortgage lending activity under the Home Mortgage Disclosure Act (HMDA), then it must include a copy of its HMDA disclosure statement in the public file

## Consumer Lending

If a bank elects to be evaluated on one or more of its categories of consumer lending (motor vehicle, credit card, home equity, secured, unsecured loan), and is not a small bank, it must include in its public file:

- The number and amount of loans to low-, moderate-, middle-, and upper-income individuals;
- The number and amount of loans in low-, moderate-, middle-, and upper-income census tracts;
- The number and amount of loans inside and outside of the bank's assessment area.

# OTS-REGULATED THRIFTS: STREAMLINED EXAMS for a Brief Time Period – Ends in July 2007

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## **Small And Mid-size Thrifts < \$1 Billion in Assets**

All federally-chartered savings and loans under \$1 billion in assets are eligible for the small institution exam as of October, 2004. Thrifts in this asset size category are eligible for the small institution exam regardless of whether they are part of a holding company. Only lending test for these thrifts.

## **Large Thrifts > \$1 Billion in Assets**

Large thrifts with assets above \$1 billion are eligible, as of April 2005, for a streamlined exam as well. Large thrifts are still subject to a lending test, which will count for 50 percent of the final grade. Large thrifts can choose any weights that they want for their service or investment tests, or they can choose to opt out of the service and investment tests entirely.

# TIMELINE FOR IMPLEMENTATION OF THE CRA REG

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## January 1996

- Small banks will be evaluated under the streamlined assessment test.
- Banks that elect to be evaluated under the strategic plan option may submit a plan for regulatory approval.
- A bank may elect to be evaluated under the lending, investment, and service test if it submits the necessary data.
- Banks over \$250 million in assets must begin collecting small business and small farm lending data.

## January 1997

Lenders over \$250 million in assets must report to the agencies the small business, small farm, community development, and if applicable, the consumer lending data.

## July 1997

All performance tests and standards become effective for all lenders.

## October 2004

Thrifts with assets under \$1 billion eligible for small institution exam

## April 2005

Large thrifts with assets over \$1 billion eligible for streamlined exam as well

## September 2005

New CRA exams for midsize banks with assets between \$250 million and \$1 billion

## July 2007

OTS rescinds 2004 & 05 changes; conforms exams to those of other agencies

## **DETAILED DESCRIPTION OF CRA AND HOW TO USE IT**

### **INTRODUCTION**

Passed by Congress in 1977, the Community Reinvestment Act (CRA) states that “regulated financial institutions have continuing and affirmative obligations to help meet the credit needs of the local communities in which they are chartered.” The act then establishes a regulatory regime for monitoring the level of lending, investments, and services in low- and moderate-income neighborhoods that have been traditionally underserved by lending institutions. Examiners from four federal agencies assess and “grade” lenders’ activities in low- and moderate-income neighborhoods. If a regulatory agency finds that a particular lending institution is not serving these neighborhoods, it can delay or deny that institution’s request to merge with another lender or to open a branch or expand any of its other services.

This manual will describe how federal agencies grade or assess lenders’ performance under the CRA. First, it will explain who is covered by the CRA, how citizens can be involved in the CRA exam process, and how CRA exams lead to CRA enforcement. Secondly, it will briefly describe the grading system in place before the 1995 revisions to the CRA regulations. Then, it will offer a step-by-step outline of the new grading system. The manual will emphasize how community organizations can be involved in the grading process and how community groups can use the CRA regulations to persuade banks to fund critically needed housing, small business and community development projects in their neighborhoods.

### **WHO ARE THE FEDERAL REGULATORS AND WHICH LENDING INSTITUTIONS ARE COVERED BY CRA?**

Four federal agencies conduct CRA examinations and enforce the CRA. These agencies are the Office of the Comptroller of the Currency (OCC), the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS). The OCC examines nationally chartered banks. The OCC-regulated banks are typically the largest banks in the country such as Bank of America and Wells Fargo. Their name is usually followed by a “N.A.” or “N.T. & S.A.” which signifies a national charter. In contrast, both the Federal Reserve System and the FDIC examine state-chartered banks. State-chartered lenders received their articles of incorporation from a state agency as opposed to nationally chartered lenders that have federal articles of incorporation. Lastly, the Office of Thrift Supervision examines savings and loan associations. Thrifts often have the word “Federal,” or the initials “FSB,” or “FA” affixed to their names.

The CRA covers federally insured institutions. Insured banks and thrifts accept deposits of \$100,000 or less that are protected by FDIC deposit insurance. If a bank or thrift becomes insolvent, the FDIC reimburses its customers for the full amount of their



deposits. The FDIC maintains its insurance fund by assessing fees on lenders. However, in the event of a liquidity crisis that wipes out the FDIC fund, bank customers holding deposits are reimbursed by the U.S. Treasury as was the case with the savings and loan crisis of the 1980s. One of the compelling rationales for the CRA is that insured financial institutions have an obligation to serve community credit needs in exchange for receiving insurance that is funded by taxpayers as a last resort.

Since the CRA only applies to federally insured institutions, many lenders are exempt from CRA coverage and its examination process. For example, mortgage companies are exempt because instead of relying on deposits for loan funds, they raise capital from investors. Credit unions are also exempt from CRA (the exception is that state-chartered credit unions in Massachusetts and Connecticut are subject to CRA laws enacted in those states). Most mortgage companies, finance companies, and credit unions are HMDA (Home Mortgage Disclosure Act) reporters, meaning that they are required to disclose data on their home lending activities to federal agencies and the public. It is important to remember that not all lenders are covered by CRA even though they may be HMDA reporters.

## **HOW COMMUNITY GROUPS CAN PARTICIPATE IN THE CRA EXAM PROCESS**

The four federal agencies examine large banks approximately once every two years. The Financial Services Modernization Act of 1999 stretched out the exam schedule for small banks with assets under \$250 million to once every four years for banks with Satisfactory ratings and once every five years for banks with Outstanding ratings. The legislation does not establish a time schedule for small banks with less than Satisfactory ratings. It also gives Federal banking agencies the discretion to schedule more or less frequent exams for banks with passing grades, as the agencies deem necessary. NCRC will be working with community groups to persuade Federal agencies to perform more frequent exams, particularly for those small banks whose performance has deteriorated significantly from their previous Satisfactory or Outstanding ratings.

Under the CRA regulations, federal agencies provide advance notice to the public of upcoming CRA exams. The notices are issued once every quarter or once every three months. The OCC and the OTS will indicate the month that an exam is to occur while the other three agencies only indicate the quarter in which the exam is to occur. NCRC can provide community groups with information regarding the addresses and phone numbers of the regional offices of the regulatory agencies. Community groups should request to be placed on the agencies' mailing lists so that they can receive notices of CRA exams.

Advance notice of CRA exams is intended to increase opportunities for community groups to participate in the examination process. The federal agencies encourage community organizations and citizens to offer comments in advance of CRA exams on an

institution's community reinvestment record. A community group's timely comments on particular strengths and weaknesses of a lender's reinvestment record can influence a lender's CRA rating. In addition to offering written comments, community organizations can request meetings with examiners to discuss a lender's CRA record.

## **HOW CRA EXAMS LEAD TO CRA ENFORCEMENT**

Lending institutions receive one of four ratings or grades after a CRA exam. The two top ratings of "Outstanding" or "Satisfactory" mean that a federal examiner judges that a lender has met its obligation to satisfy the credit needs of communities in which it is chartered. The two lowest ratings, "Needs to Improve" and "Substantial Noncompliance," reflect a failure on the part of the lending institution to meet the credit needs of communities, particularly low- and moderate-income communities, in which it is chartered. So what are the penalties for a lender if it receives the two lowest ratings?

Poor CRA ratings do not result in immediate sanctions for a lender, but can curtail a bank's future plans for service changes or merging with other financial institutions. If a lender receives one of the two lowest CRA ratings, it does not face any cease and desist order from a federal regulator nor does it face any other immediate adverse regulatory action. Poor CRA ratings, however, can seriously interfere with a lender's future plans. When a lender desires to merge with another institution or open a branch, the lender must apply to the Federal Reserve Board and/or to its primary regulator for permission. If the lender has received low CRA rating, the federal agency reviewing the lender's application has the authority to delay, deny, or condition the lender's application.

The Financial Services Modernization Act of 1999 prohibits a bank or thrift from merging with or acquiring an insurance company or a securities firm if it or any of its affiliates or subsidiaries has less than a Satisfactory rating. Federal agencies have established formal procedures for reviewing bank applications, including detailed procedures for reviewing public comment on the applications. Another chapter in this manual details the types of applications the public can comment on, and the procedures for public comment.

One of the weaknesses in CRA is that it does not immediately penalize a lender for poor CRA performance. Lenders that do not have merger plans or service expansion plans can effectively ignore their CRA obligations of community reinvestment. For example, the Uinta City State Bank, a small bank in Mountain View, Wyoming, is not terribly concerned about its record of 20 Substantial Noncompliance ratings extending back to 1990 since it does not have any intention of acquiring another lender or being acquired by larger bank. About once a year, trade newspapers cover the lender's smug attitude towards its reinvestment obligations.

The strength of CRA is that it impacts the application process. Merger and acquisition activity presents significant opportunities for community groups to intervene in the approval process and raise CRA concerns and issues. Some banks are very desirous of

Outstanding ratings so that they can present a clean reinvestment record to regulators when they ask for permission to merge. NCRC members have succeeded in convincing examiners to issue Satisfactory ratings for banks that previously had Outstanding ratings. These banks will then make efforts to improve weaknesses in their lending and investment record so that they will earn the Outstanding rating on their next exam. The end result of improving performance from a Satisfactory to Outstanding rating is more loans, investments, and services for low- and moderate-income communities. Activists should keep in mind that changes from Outstanding to Satisfactory ratings (and back again) is effective in leveraging reinvestment as well as changes from passing to failing ratings (and back again to passing). This is true regardless of whether the movement in ratings is the overall rating for the bank or a rating for particular geographical areas.

The table below provides a history of CRA ratings that have been assigned to lenders during the last several years. The table reveals that the number of Outstanding and Satisfactory ratings has risen while the number of Needs to Improve and Substantial Noncompliance ratings has declined. This trend is subject to an ongoing debate: community groups allege “grade inflation” that protects lackluster CRA performers while others claim that lender reinvestment performance has improved.

NCRC provides the tools and analysis techniques that enable community groups to evaluate whether lenders in their communities deserve the ratings they have received. Using the techniques recommended by NCRC, community groups can present their case to federal regulatory agencies as to why a particular lender(s) does not deserve the two top ratings or any assigned rating. In addition, community groups should also be aware that an “Outstanding” or “Satisfactory” rating does not protect a lender from a disapproval or conditioning of its application to merge or change its services. Under a conditional approval, a regulatory agency approves the merger but requires the bank to make specific improvements in its CRA and fair lending performance. A federal agency has the authority to rule adversely on a bank application regardless of the last CRA rating if its recent CRA performance has deteriorated or if future CRA performance is likely to decline.

## NCRC Analysis of CRA Ratings

By Year	Outstanding		Satisfactory		Needs to Improve		Substantial Noncompliance		Total
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	
<b>1990</b>	340	10.9%	2,474	79.5%	280	9.0%	19	0.6%	3,113
<b>1991</b>	407	8.3%	4,016	81.6%	453	9.2%	46	0.9%	4,922
<b>1992</b>	653	12.7%	4,067	78.9%	395	7.7%	40	0.8%	5,155
<b>1993</b>	941	14.7%	5,060	79.3%	355	5.6%	26	0.4%	6,382
<b>1994</b>	1,000	18.1%	4,249	76.7%	275	5.0%	15	0.3%	5,539
<b>1995</b>	1,363	24.3%	4,106	73.1%	138	2.5%	7	0.1%	5,614
<b>1996</b>	1,214	26.5%	3,275	71.5%	81	1.8%	11	0.2%	4,581
<b>1997</b>	829	22.4%	2,807	75.7%	59	1.6%	11	0.3%	3,706
<b>1998</b>	681	18.6%	2,915	79.6%	59	1.6%	7	0.2%	3,662
<b>1999</b>	679	18.6%	2,915	79.7%	55	1.5%	7	0.2%	3,656
<b>2000</b>	220	17.5%	1,001	79.6%	30	2.4%	7	0.6%	1,258
<b>2001</b>	132	10.6%	1,088	87.1%	23	1.8%	6	0.5%	1,249
<b>2002</b>	201	9.8%	1,820	89.0%	18	0.9%	5	0.2%	2,044
<b>2003</b>	283	10.1%	2,492	89.2%	17	0.6%	3	0.1%	2,795
<b>2004</b>	329	13.1%	2,170	86.1%	17	0.7%	3	0.1%	2,519
<b>2005</b>	244	15.9%	1,278	83.2%	10	0.7%	4	0.3%	1,536
<b>2006</b>	171	13.1%	1,109	84.9%	20	1.5%	6	0.5%	1,306
<b>2007</b>	18	7.1%	233	91.4%	3	1.2%	1	0.4%	255
<b>Total</b>	<b>9,705</b>	<b>16.4%</b>	<b>47,075</b>	<b>79.4%</b>	<b>2,288</b>	<b>3.9%</b>	<b>224</b>	<b>0.4%</b>	<b>59,292</b>
By Agency	Outstanding		Satisfactory		Needs Improve		Sub. Noncomp		
<b>OCC</b>	1,596	16.4%	7,905	81.4%	200	2.1%	6	0.1%	9,707
<b>FRB</b>	1,306	18.5%	5,484	77.9%	209	3.0%	42	0.6%	7,041
<b>FDIC</b>	5,464	15.8%	27,645	80.2%	1256	3.6%	120	0.3%	34,485
<b>OTS</b>	1,339	16.6%	6,041	75.0%	623	7.7%	56	0.7%	8,059
<b>Total</b>	<b>9,705</b>	<b>16.4%</b>	<b>47,075</b>	<b>79.4%</b>	<b>2,288</b>	<b>3.9%</b>	<b>224</b>	<b>0.4%</b>	<b>59,292</b>

## THE OLD REGULATIONS AND EXAMINATIONS

Until 1996, the four federal banking agencies examined CRA performance under a test consisting of 12 assessment factors. Community organizations should be aware of these assessment factors if they want to compare performance evaluations conducted before 1996 with evaluations conducted in later years. Performance evaluations conducted before 1996 and evaluations in 1996 for large banks (banks with \$250 million or more in assets) will discuss the factors listed below:

*Factor A: Ascertainment of Credit Needs* - CRA examiners evaluated the efforts lenders undertook to ascertain the credit needs of communities such as holding meetings with community organizations.

*Factor B: Marketing and Program Provision* - CRA examiners assessed the extent to which lenders marketed their products and the types of special credit-related programs they offered.

*Factor C: Board of Directors' Participation* - CRA examiners documented the extent of the board of directors' participation in the development of a lender's policies and performance with respect to the CRA.

*Factor D: Impediments to Credit* - CRA examiners determined whether the bank had any practices that discouraged applications for its special credit programs designed to help it meet its CRA obligations. In other words, did the bank intentionally discourage applications for its CRA programs so that it could claim that the programs were not necessary for meeting community credit needs?

*Factor E: Geographic Distribution* - CRA examiners analyzed the geographic distribution of loans, loan applications, and denials.

*Factor F: Discrimination* - CRA examiners probed lender practices to determine if the bank engaged in discrimination or other illegal credit practices.

*Factor G: Services* - CRA examiners documented the lender's record of opening and closing branch offices, and the services provided at the offices.

*Factor H: Community Development Activities* - CRA examiners scrutinized the level of the institution's participation, including investments, in local community development projects.

*Factor I: Loans Originated and Purchased* - CRA examiners documented the level of an institution's residential mortgage loans, housing rehabilitation loans, home improvement loans, small business loans, small farm loans, or the purchase of these loans.

*Factor J: Government Lending Programs* - CRA examiners scrutinized the lender's participation in government-insured, guaranteed, or subsidized programs for housing, small business, or small farms.

*Factor K: Institutional Capacity* - CRA examiners considered the lender's capacity to satisfy different credit needs based on the institution's financial condition and size, local economic conditions, and other factors.

*Factor L: Other factors* - CRA examiners considered other factors that they believed reasonably influenced the lender's ability to meet the credit needs of the communities in which it was chartered.

The 12 assessment factors were often grouped into the following five performance categories used by examiners in their performance evaluations:

- I. Ascertainment of Community Credit Needs - *Factors A, C*
- II. Marketing and Types of Credit Offered - *Factors B, I, J*
- III. Geographic Distribution and Record of Opening and Closing Offices - *Factors E, G*
- IV. Discrimination and Other Illegal Credit Practices - *Factors D, F*
- V. Community Development - *Factors H, K, L*

## **THE REVISED CRA REGULATIONS AND EXAMINATIONS**

In the spring of 1995, the federal banking agencies released revised CRA regulations that changed the criteria used in performance evaluations. The CRA regulations had been revised as part of the Clinton administration's initiative to create performance-based and objective standards. The revised regulations attempt to satisfy community activists by focusing more attention on the lending, investment, and service records of banks. The regulations also reduce the amount of paperwork required of lending institutions. The federal agencies have deleted previous paper trail-generating regulations such as documenting participation by a bank's board of directors in reviewing CRA compliance. Instead of focusing on the CRA process in an institution, the revised regulations attempt to establish a flexible evaluation regime capable of rigorously assessing lending activities in low- and moderate- income neighborhoods of institutions of various financial capacities.

Effective in January 1996, the CRA regulations established different performance evaluations for large banks, small banks, and limited purpose or wholesale banks. The regulations also provide an option for a strategic plan instead of a performance

evaluation. In addition, the regulations instituted additional data reporting requirements including public disclosure of small business lending. This section will describe in detail the performance evaluations for the various banks as well as the strategic plan option. It will also explain what types of data community organizations can obtain from a bank's "public file" or open record of CRA-related material that lenders are required to maintain.

The revised CRA regulation involved different transition periods for various types of lenders. Small banks with assets of under \$250 million dollars have been examined under the revised exams since January of 1996. Large banks with assets of more than \$250 million and limited purpose banks were examined under the revised evaluation criteria since July of 1997. However, as of September, 2005, mid-sized banks with assets between \$250 million dollars and \$1 billion dollars have been evaluated under the newly created "Intermediate-Small Bank" exam. Thus, in September 2005, the new definition of a large bank was one that had \$1 billion or more in assets. Each year thereafter, the asset sizes for small and large banks are adjusted for inflation (this is a procedure NCRC opposed since a significant number of banks will be classified as small in future years and thus qualify for a streamlined exam while they have the capacity to undergo a more thorough exam). The annual inflation adjustments can be found on <http://www.ffiec.gov>.

The revised CRA regulations have created an examination process that is more flexible. Federal agencies believed that banks should be evaluated under a flexible system since local markets and credit needs vary significantly as do the institutional capabilities of banks to offer various types of loans, investments, and services. While this may be a sensible approach, it can lead to lenient exams since examiners have wide discretion to choose both their analytical techniques and the loans, investments, and services that will be the focus of their analysis. This chapter highlights areas in which examiners are given discretion and suggests ways in which community groups can attempt to increase the rigor of the exam process. The chapter also points out areas in which the federal agencies are more specific about how a bank's CRA performance is to be evaluated.

The revised CRA regulations were issued jointly by the four federal financial institution agencies. The regulations can be found in the Code of Federal Regulations (CFR). The OCC's citation is 12 CFR Part 25, the Federal Reserve System's citation is 12 CFR Part 228, the FDIC's citation is 12 CFR Part 345, and the OTS's citation is 12 CFR Part 563e. Identical under each citation, the CRA regulations became effective on July 1, 1995.

## **Large Bank Evaluation**

Large banks are defined in the CRA regulations as having assets of \$1 billion or more. These lenders are evaluated under three different exams: a lending test, an investment test, and a service test as shown on NCRC's exam outline. Examiners assign a rating to each test. The final rating is computed by totaling the ratings of the three tests. All large banks have been evaluated under the three tests since July 1, 1997. The asset limits of

what constitutes a large bank changed in September, 2005 and undergo an annual inflation adjustment.

### **Recent Office of Thrift Supervision Changes for Large Banks**

In 2004, the OTS enacted weak CRA exams for large thrifts in 2004. The agency defined large thrifts as those with assets over \$1 billion. The large thrifts had a lending test, but could choose whether they wanted an investment and service test.

However, effective July 2007, large thrifts with assets above \$1 billion will have a lending test (50% of the overall rating), an investment test (25% of the rating), and the service test (25% of the rating). The large thrift CRA exam is now the same as the large bank CRA exam. Moreover, thrifts can experience downgrades in their CRA ratings for illegal and abusive lending, just as banks.

**Geographic Coverage of the Evaluation.** Under the large bank exam, the first task examiners tackle is defining the geographic area in which a bank's performance is to be evaluated. Examiners are required to assign ratings for the bank's performance in each state where it has branches as mandated by Section 110 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. In addition, examiners must assign a rating to each multi-state metropolitan area if a bank has branches in at least two states in the multi-state metropolitan area. In other words, some metropolitan statistical areas (MSAs) such as Cincinnati extend into more than one state (the Cincinnati MSA covers three states). If a bank had two branches in two of the states in the Cincinnati MSA, then the examiner must assign a rating for the bank's performance in the Cincinnati MSA.

The methodology used in the large bank exam for choosing which geographic areas to examine is the same for the small bank exam and the exam for limited-purpose and wholesale banks. Therefore, the above description is applicable to the other two exams.

**Assessment Areas and Ratings.** Within each state or multi-state MSA in which a lender has branches, a CRA examiner is required to evaluate the CRA performance in one or more assessment areas. The lender itself defines assessment areas that are geographies in which it wants to be evaluated for CRA performance. Lenders have some discretion over the boundaries of their assessment areas except that assessment areas must include the areas where a bank has its main office, its branches, and deposit-taking ATMs. A bank's assessment area(s) may not reflect illegal discrimination nor arbitrarily exclude low- and moderate-income geographies. Typically, assessment areas are entire MSAs or other political subdivisions such as counties, cities, or townships that contain a substantial amount of the institution's loans. In rural areas, assessment areas usually coincide with counties or townships.

While examiners must follow strict guidelines on the number of states and MSAs that will be included in a bank's performance evaluation, the examiner can choose how many of the bank's assessment areas to include in a performance evaluation. For example, if a



bank has more than one assessment area in any given state, the examiner will choose a sample of assessment areas that will be considered in the performance evaluation. When selecting the assessment areas, the examiner considers a range of criteria including the lending and investment opportunities in the different assessment areas as well as the bank's level of lending and investments in the areas.

Ratings in each assessment area are then summed to form total ratings in each state or multi-state MSA. The state and multi-state MSA ratings are then summed to form an overall rating for a lender. The CRA regulations do not establish any formula for determining the weight of the lender's performance in each state or multi-state MSA on the overall rating. The CRA examination guidelines state that the weight of each state or multi-state MSA rating depends, in part, on the portion of the institution's lending, investing, and services in the state or multi-state MSA as compared to the overall lending, investing, and services offered by the institution. If a particular state, for example, has a majority of the institution's lending, investing, and services, it is conceivable that the rating for that state will have the major influence on the overall rating.

CRA exams are also required to contain discussions (but not ratings) for MSAs that have branches but have not been designated as assessment areas by the bank. Likewise, Section 110 of the Riegle-Neal Act requires discussions of the bank's performance in the non-metropolitan part of a state where the bank has branches but has not been designated as an assessment area by the bank.

Community groups can question the definition of a bank's assessment area(s), especially if the group feels that a bank has omitted a low- or moderate-income area that is next to the other geographies in the assessment area. In addition, a community organization can question the examiner's choice of assessment areas to analyze. For example, if a lender is not conducting much business in one of its assessment areas, this might be worthy of analysis as to the reasons why. Perhaps, the lender has not developed special credit products that would satisfy the credit needs of the demographic groups in the assessment area. Finally, community groups can question how much influence the rating in any one state or multi-state MSA should have on the overall rating.

The methodology for selecting assessment areas for the large bank exam is the same for the small bank exam and the exam for limited-purpose and wholesale banks. Therefore, the above description of choosing assessment areas is the same for the other exams.

**Assessment Areas for Internet Banks and other Nontraditional Lenders:** A contentious and unresolved issue concerns assessment areas for Internet banks and other lenders that do not have traditional branches. In most instances, the Federal banking agencies have allowed these lenders to designate a geographical area that includes their corporate headquarters as their only assessment area although many of these lenders offer high numbers of loans across the country. The CRA exams, in these cases, are confined to the one area where the headquarters offices are located. NCRRC believes that the existing CRA regulation allows for a more expansive interpretation of assessment areas

since it states that assessment areas include geographical areas surrounding the bank's branches and deposit-taking ATMs where the bank makes a substantial number of loans. In addition, a bank is instructed to designate separate assessment areas for geographical areas they serve that are in different states.

In one of the early cases of a non-traditional lender, the Office of Thrift Supervision (OTS) conducted an exam for Travelers Bank and Trust, FSB that looks beyond the thrift's designated assessment area (see November 1998 CRA exam that was released in the summer of 1999). Travelers did not have a branch network and instead relied on a network of 85,000 Primerica Financial Service insurance agents to make loans. The agents made over 19,000 loans across the country during the exam's review period.

While the OTS designated only the thrift's home office location (Wilmington, Delaware) as the assessment area, the agency also evaluated lending in four other large metropolitan areas and in states with large rural areas. It cited Interagency Q&A covering section 22 (b) (3) as encouraging CRA examiners to look at lending outside the assessment areas when a thrift's CRA rating would be enhanced by lending outside of the assessment area. (It should be noted that the Q&A states that lending outside the assessment area cannot compensate for weak performance inside the assessment area.) While Travelers had a good record of lending by income level of borrower and geographical area within Wilmington, Delaware, the OTS implies that the CRA exam would be incomplete without an assessment of lending beyond Wilmington since the thrift made less than 2 percent of its loans in Wilmington. The agency states that, as measured solely by loan volume, Travelers' performance in Wilmington alone would have been "seriously deficient for a retail lending institution of its size."

The OTS' treatment of Traveler's lending represents a step forward in considering CRA performance for a large and non-traditional lender. However, the CRA exam still did not look at areas that constituted the majority of the bank's loans. Also, it did not assign ratings to any geographical area except Wilmington. NCRC will be pressing for more comprehensive exams of non-traditional lenders that thoroughly review the CRA performance under the service and investment tests as well as the lending test in the bank's major business areas. The assessment area issue remains far from resolved.

**Activities of Affiliates.** The lender can opt to have its CRA examiner consider the lending, investment, and service activities of its affiliates (in this case, an affiliate is an institution that is controlled by the parent institution undergoing the CRA exam). Banks and thrifts are complex organizations that can often have several affiliates and subsidiaries. When community groups are preparing comments on a CRA exam, they should always consult with the CRA examiner or the lender to ask about the number of affiliates being considered in the CRA evaluation.

The CRA regulation contains provisions that are intended to prevent banks and thrifts from artificially boosting its community reinvestment performance by selectively using its affiliate's reinvestment record. Firstly, no affiliate can claim a loan(s) if another

affiliate is using that loan(s) as part of its data for a CRA exam. Secondly, if a lender wants to use a particular type of loan (home improvement loans, for example) of its affiliates, it cannot select only the home improvement loans received by lower income populations. It must provide complete data to the CRA examiner about how many borrowers of all income groups received the loans. Thirdly, the lending institution cannot use its affiliate's loan data to boost the number of loans it makes in its assessment area. For that portion of the lending test, only the parent's loans will be considered.

A lending institution can also elect to have a CRA examiner consider the affiliate's qualified investments and community development services. The regulations stipulate, however, that the affiliate's activities will not be considered if an attempt is made to use the activities for more than one CRA exam (involving the parent institution or its affiliates).

After the lender specifies the number of institutions to be considered in the evaluation and the examiner selects the assessment areas for the performance evaluation, he or she proceeds with the lending, investment, and service tests.

### **The Lending Test**

The lending test consists of the following five performance indicators: lending activity, geographic distribution, borrower characteristics, community development lending, and innovative or flexible lending practices. What do each of these five indicators mean?

#### *Lending activity*

A bank's lending activity refers to the number of loans made in the bank's assessment area as opposed to the number of loans made outside the assessment area. If a lender is not serving the geography it has defined as its assessment area, then it is failing to meet the credit needs of the communities in which it is chartered and in which it has its main office and most of its branches.

#### *Geographic distribution*

The lending test assesses if a bank's lending is relatively dispersed (spread out) across the bank's assessment area. Is the bank reaching most of the census tracts in the assessment area or does a conspicuous gap exist, meaning that a group of census tracts (such as lower income tracts) are not receiving loans? Also, the test determines if the bank lends in low- and moderate-income geographical areas as well as middle-income and upper-income areas. It is important to remember that the CRA regulations specify that lending must be analyzed by geographical areas of different income levels, not by areas with different percentages of minorities. CRA evaluations can include an analysis of lending by geographical areas with various concentrations of minorities, but they are not required to do so. All types of home loans (home purchase, home improvement, refinancing, and multi-

family), and small business/farm loans are considered in the analysis of lending by geography.

### *Borrower characteristics*

The lending test evaluates the distribution of loans to borrowers of different income levels to ensure that low- and moderate-income borrowers are receiving an adequate share of loans. This analysis can include all types of home loans from home purchase, home improvements, to refinancings. Federal examiners will also analyze consumer lending if such lending represents a substantial majority of the institution's business. Finally, under the borrower characteristics section of the lending test, examiners will assess lending to small business and small farm borrowers of different sizes.

### *Community Development Loans*

The lending test documents how many of a bank's loans "has as its primary purpose community development." Examples of community development loans include loans for housing affordable to low- or moderate-income individuals, social services, economic development activities, and small business financing. The regulations emphasize that community development lending should revitalize and/or stabilize low- and moderate-income geographies. Community development loans are covered in more detail below.

### *Innovative or Flexible Lending Practices*

Examiners ascertain if lenders are using innovative or new loan products to reach underserved borrowers or geographies. For example, these products can include flexible underwriting standards or flexible loan terms that enable the lender to reach borrowers that they were previously not serving. Examination guidelines issued by the four federal agencies instruct examiners to evaluate the success of any innovative or new products in terms of the number and dollar amount of loans offered. Thus, the existence of a new product is not enough for favorable consideration; the new product also must have succeeded in serving low- and moderate-income households and families.

### **Anti-Predatory and Discriminatory Screens**

During the 2005 revisions to the CRA regulation, the federal agencies also established that a bank's rating can be adversely affected by discriminatory and illegal credit practices that include violations of the Equal Credit Opportunity Act, the Fair Housing Act, the Home Ownership and Equity Protection Act, section 5 of the Federal Trade Commission Act, Section 8 of the Real Estate Settlement Procedures Act, and violations of Truth in Lending Act provisions regarding right of rescission. These federal statutes limit certain terms and conditions such as prepayment penalties on high cost loans and

make it illegal to engage in unfair and deceptive acts. Abusive loans are contrary to CRA's mandate for banks and thrifts to meet credit needs in a safe and sound manner.

The standards apply to bank lending in any geographical area and apply to affiliate lending in the CRA assessment areas if the bank included the affiliate in the CRA exam. The CRA rating is not automatically downgraded. The agencies will downgrade ratings depending on the strength of the evidence, how widespread the illegal and discriminatory lending was, and whether the bank committed to reforming practices. Community groups should raise evidence of predatory and discriminatory lending during CRA exams, but should be mindful that the agencies will assess the extent of such lending before downgrading a CRA rating.

**Purchases of loans.** The CRA regulations mention that examiners will consider a bank's purchases of loans in addition to the bank's loan originations. Most CRA exams do not explicitly discuss if purchases are being considered and how they are being considered. Purchasing loans is a worthy activity; it provides the bank that made the loans with more capital for making additional loans. Yet, purchases of loans should not earn as many points as actually making loans. Making loans involves the more difficult tasks (of assessing credit needs and risk levels) than purchasing loans.

Community groups should be vigilant in making sure that too many points are not awarded for purchasing loans on any of the criteria of the lending test. Also, community groups should ask examiners to analyze purchases separately from originations on exams (on too many exams it is difficult to determine how purchases are being treated). Community groups should ask examiners to probe whether a bank's purchases really helped another bank make CRA loans or whether the bank in question purchased a bunch of loans shortly before its CRA exam in order to inflate its rating. Instances of "gaming the exam" by purchasing many loans shortly before exam time have occurred.

The lending test is not a rigid evaluation with a certain number of points assigned to each of the five performance criteria. Moreover, examiners have discretion as to the analytical techniques they use to measure a bank's lending performance under each of the five criteria. While this discretion can result in slipshod analysis or subjective findings, it also provides opportunities for community organizations to argue for their approaches to analyzing lending performance under each of the criteria.

**Good Performance in One Area Compensating for Poor Performance Elsewhere.** A discussion in the *Interagency Guidelines for Examiners* concerning the analysis of lending by geography illustrates how community groups may be able to influence an examiner's analysis by offering their comments in advance of the CRA exam. The manual outlines options for conducting an analysis of lending by geography if an examiner discovers that a lender has an "abnormally low penetration in certain areas." In this case, the examiner may but is not required to determine the institution's "share" of loans in low- and moderate-income geographical areas versus its share of loans in middle- and upper-income areas. Moreover, the examiner can compare the institution's

performance in lower income areas with other lenders. Finally, the examiner can allow for a low level of one type of lending (home improvement loans, for instance) to be compensated for by a higher level of another type of lending (home purchase loans as an example).

Community groups should also engage in this geographical analysis. They can conclude that a high level of one type of loan should not compensate for a low level of another loan in low-income neighborhoods. For example, a community organization can point out to an examiner that since their low-income neighborhood has large-scale rehabilitation needs, a low level of home improvement loans should not be offset by a high level of home purchase lending, especially if some of the lender's peers have found a way to offer a significant amount of home improvement loans in the neighborhood.

**Internet Banks and Compensating Factors.** A hot issue for the lending test is the examination of Internet banks and other banks that do not rely upon traditional branches for delivering services. On May 3, 1999 (*Federal Register*, Vol. 64, No. 84), the Federal banking agencies issued an update to the Interagency Q&A that includes discussion about how the lending test would assess performance by lenders with non-traditional delivery systems. In particular, a Q&A #1 relating to Appendix A of the CRA regulations stated that a non-traditional lender with poor performance in lending to low- and moderate-income borrowers and neighborhoods can be allowed to compensate this with “exceptionally strong performance in community development lending in its assessment area.”

NCRC believes that a number of mortgage companies and other lenders without traditional branches have conducted extensive marketing campaigns in low- and moderate-income areas that have resulted in high numbers of loans being made in these neighborhoods. Therefore, NCRC indicated to the Federal banking agencies that this Q&A should be revised to not allow for exceptionally strong performance in community development lending to compensate for weak performance in lending to traditionally underserved borrowers. The phrase “exceptionally strong” is also vague. Since CRA and the Interagency Q&A are fluid, NCRC will continue working on this issue, and invites community groups to share their thoughts with us and the regulatory agencies on this matter.

**The Performance Context.** When evaluating the lending record of the institution, the examiner is also directed to consider the “performance context” in which the lender operates. The performance context is a series of external factors such as economic conditions and internal factors including the financial condition of the lender that influence the lender's opportunities and capacity to make loans. For instance, examiners will expect banks in regions experiencing economic booms to offer a higher level of loans than banks in areas suffering economic downturns. When considering institutional factors, examiners should expect larger banks to offer more loans than smaller banks.

Public comments submitted by community organizations and citizens are critical to assist examiners in determining the performance context for the lending test. Examiners are instructed to contact and interview representatives of community organizations or public sector agencies when determining the performance context and range of market opportunities available to lenders. Community or government representatives can direct examiner attention to demographic and economic data about a locality that examiners may not realize and that may have a strong bearing on the lending opportunities in a locality. For example, social service providers such as health clinics or childcare providers can point towards a rising population of single mothers with low but steady incomes that could qualify for home loans. Or a local government official can highlight a public sector mortgage subsidy program that some banks use to offer affordable loans but that other banks (including the bank being examined) have not yet utilized.

**Rating for the Lending Test.** After conducting a lending analysis using the five criteria listed above and considering the performance context, the examiner assigns one of the five ratings for the bank's lending test.

The top score a bank can earn on the lending test is 12 points for an outstanding; 9 for a high satisfactory; 6 for a low satisfactory; 3 for a needs-to-improve; and 0 for noncompliance. These points are not disclosed in CRA exams. If community groups are developing their own ratings for banks, they should assign points to each component of the five-part lending test. For example, a community group can assign a maximum of 3 points each to the geographic distribution and borrower characteristics criteria of the lending test. Two points each can be assigned to the lending activity, community development lending and innovative practices criteria. Then under each criterion, the bank would be assigned points up to the maximum for that criterion. A final rating would be a sum of the points for the five criteria.

Again, it must be emphasized that examiners have flexibility in assigning the rating for the lending test. The CRA regulations contain vague language regarding performance each of the criteria in the lending test. For example, an "excellent" geographic distribution of loans across an assessment area is awarded with outstanding performance while a "good" geographic distribution of loans is regarded as satisfactory performance on that criteria of the lending test. What constitutes "excellent" and "good" is open to interpretation to both examiners and the public at large.

### **The Investment Test**

After the lending test is completed, the examiner proceeds to the investment test for large banks. The investment test considers "qualified investments." Qualified investments are defined in the regulation as investments whose primary purpose is community development. In other words, qualified investments should be regarded as community development investments whose primary purpose is the provision of affordable housing, community services, or the financing of economic and small business development. Large banks are evaluated under the following four criteria under the investment test:

*The Dollar Amount of Qualified Investments*

*The Innovativeness or Complexity of Qualified Investments*

*The Responsiveness of Qualified Investments to Credit and Community Development Needs*

*The Degree to Which the Qualified Investments are not Routinely Provided by Private Investors*

As with the bank's lending activities, the bank's investment activities are evaluated within a "performance context." Local economic conditions, investment opportunities, as well as the bank's financial condition and business strategy are some of the factors an examiner weighs when considering the amount, innovativeness, and responsiveness of qualified investments.

**Innovative Criterion:** Some community groups expressed a concern that the innovativeness criteria could receive too much weight and discourage investments that were necessary, but were no longer considered innovative. For example, banks make investments in low-income housing tax credits, which have been used to finance hundreds of thousands of affordable rental units. While this investment addresses a critical need, it may not be considered innovative by an examiner. NCRC agreed that a lack of innovative or new types of investments should not be necessary in order to receive a passing rating on the investment test, provided that the bank made a sufficient number of investments and satisfied the other criteria of the investment test. Certainly, innovative investments should enhance a rating on an investment test, and can make the difference between a Satisfactory and Outstanding rating.

The Federal banking agencies agreed that the innovative criteria by itself should not determine if a bank passes the investment test. Accordingly, the *Interagency Q&A* document adopted a Q&A regarding Section 28 of the CRA regulation which stated that a lack of innovative practices does not mean failing the lending and service tests, in addition to the investment test.

**Rating for Investment Test:** The examiner assigns a rating to the bank's investment performance. The bank can earn up to six points for an outstanding rating on its investment test, which is half of the "double-weighted" lending test. A bank earns 4 points for a high satisfactory rating, 3 for a low satisfactory, 1 for a needs-to-improve, and 0 for substantial noncompliance.

Community groups developing ratings for an investment test should devise their own point scheme and share it with examiners. For example, a community group can decide that the dollar amount of qualified investments is the most important criteria, and assign the bank's performance a maximum of three points under those criteria. Up to one point



would be assigned to the remaining three criteria. Under each criterion, the bank would be assigned points up to the maximum for that criterion. The bank's score on each criterion would be summed and translated to the rating for the investment test.

Community organizations and citizens should offer their interpretations on how to assess the bank's investment performance since the regulatory language is vague. For example, a bank would perform in an outstanding manner on the innovativeness criteria if it made "extensive" use of innovative or complex qualified investments. It would perform in a satisfactory manner if made "significant" use of innovative investments. Since no specific regulatory guidelines distinguish "extensive" from "significant," the assignment of points to the innovative criteria is a judgment call. Likewise, the regulatory language for attaching points to each of the other three criteria of the investment test is also ambiguous.

### **The Service Test**

The third component of a CRA exam for a large bank is the service test. The service test has the following criteria:

*Distribution of Bank Branches*

*Record of Opening and Closing Branches*

*Alternative Service Delivery Systems*

*Range of Services*

*Community Development Services*

As with the lending and investment tests, the bank's service record is considered in the performance context or the series of economic, demographic, and institutional factors that affect a lender's ability to offer services. The service test should not be regarded lightly since convenient access to a bank is especially critical to low- and moderate-income individuals that are not as familiar with banking as their more affluent counterparts. Low- and moderate-income individuals will not apply for loans or place deposits in a bank if its branches are far from their neighborhoods. In addition, payday lenders and other fringe financial institutions flood neighborhoods that lack traditional bank branches.

It initially appeared that examiners will place primary importance under the service test to branches. In the fall of 1996, the four federal banking agencies first published an *Interagency Question and Answer* publication stating that the "service test performance standards place primary emphasis on full service branches..." ATMs and other alternative delivery systems will be considered "only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals." Thus, if a bank's alternative service mechanisms such as banking via

telephone cannot reach lower income customers as effectively as physical branches nor explain bank products as well as loan officers in branches, then a bank should not receive good marks on its service test if most of its branches are located in middle- and upper-income neighborhoods. CRA examiners need to be reminded about the primary importance of branches as a counterweight to the abusive fringe lenders.

The range of services offered is also an important evaluation criterion under the service test. For example, are the bank's branches in low- and moderate-income neighborhoods open as many hours as its branches in middle- and upper-income neighborhoods? Does the bank provide bi-lingual services to geographies with heavy concentrations of non-English speaking residents? Finally, a bank's level of community development services is also considered under the service test. A type of community development service offered by a bank would be a homeownership-counseling course. In the summer of 2007, the federal agencies stated that credit counseling that assists borrowers in avoiding foreclosures also qualifies as community development.

Other examples of community development services are remittances and Individual Development Accounts. Remittances consist of wire transfers of money from residents in the United States to their families residing in other countries. Banks will receive CRA points for providing remittances in connection with a low cost account to low- and moderate-income consumers. Banks have also become involved in offering an innovative type of matched savings account called an Individual Development Account (IDA). Private and public sector entities match an individual's contribution to an IDA. IDAs are used for education and job training expenses or to buy a home or start a new business. The Federal banking agencies state in Q&A #2 to section 24 in the *Interagency Q&A* document that a bank's participation in IDAs will be considered under the service, investment, and/or lending tests, depending on the extent of a bank's participation in an IDA program.

A total of 6 points can be earned on the service test for an outstanding rating. Four points equals high satisfactory; 3 for low satisfactory; 1 for needs to improve; and 0 for non-compliance. Since the regulations are silent as to how points should be distributed among the criteria, community groups should devise their own point scheme, and share it with examiners. For example, a community group could decide that a bank should earn up to two points for distribution of bank branches, and one point each for the other four criteria. Then, under each criterion, the bank would be assigned points up to the maximum for that criterion. A final rating would be the sum of the points for the criteria.

Like the lending and investment tests, the regulatory language is vague on what constitutes outstanding, satisfactory, or sub-par performance on each of the criteria. For example, a bank's performance is outstanding under the distribution criteria if its delivery systems are "readily accessible" to geographical areas of different income levels. Its performance is satisfactory if the delivery systems are "accessible" to areas of different income levels. Since the language is vague, community organizations and citizens ought

to point out to examiners what their interpretations of “readily accessible” and “accessible” is.

### **Final CRA Ratings for Large Banks**

The ratings assigned to the lending, investment, and service tests are summed to derive an overall rating for a large bank’s performance in an assessment area. As stated above, the lending test carries the most weight for the overall CRA rating. For example, if a bank scored an outstanding on the lending test, it would receive 12 points for the lending test rating. In contrast, if the bank earned an outstanding rating for the service and investment tests, it would receive 6 points for each test. The points for each test are then summed to derive the overall CRA rating. A total of 20 or more points earns an outstanding rating; scores of 11 through 19 receive a satisfactory rating; scores of 5 through 10 receive a needs to improve rating; and scores of 0 through 4 result in a substantial noncompliance rating.

To reflect the primary importance of lending in the rating scheme, a bank that receives an outstanding on the lending test will receive at least an overall rating of satisfactory. In addition, a bank must have at the minimum a rating of low satisfactory on the lending test to receive an overall CRA rating of satisfactory.

Before a final CRA rating is assigned to a large bank, the examiners must determine if evidence exists of discrimination and other illegal credit practices. If these illegal practices are identified, the examiner is to consider the nature and extent of the practices, any policies and procedures the bank has instituted to prevent the practices, and any corrective action the bank has taken to eliminate the practices and/or compensate the victims. The regulations are not specific on how an examiner’s assessment of the extent of the illegal practices and any corrective actions affect a CRA rating in terms of reducing the total points awarded on the three tests. Again, this is a vague area that community groups should seize upon to offer their interpretations on how a CRA rating should be impacted by discrimination and other illegal actions.

Of course, if the bank has not committed any illegal actions, the final CRA rating derived from summing the scores on the three tests remains unaffected.

### **SMALL BANK EVALUATION**

Small banks are classified as banks with less than \$250 million in assets. The CRA regulations focus their evaluations on their lending performance. CRA-related investments and bank services are considered under the small bank examination, but only to the extent of improving a satisfactory lending performance into an outstanding CRA rating. In order to obtain a rating of satisfactory, a small bank must pass minimum thresholds on its lending test. If it does not, CRA-related investments and services will

not improve its rating from substantial noncompliance or needs to improve to satisfactory.

The lending test for a small bank consists of five performance criteria. When evaluating the bank's performance under each criterion, examiners also consider the performance context for the bank. In other words, the examiner considers the range of external and internal factors such as the level of loan demand and the bank's financial condition when evaluating the bank under each of the five performance criteria. Below is a further description of the five criteria and what factors examiners consider under each criteria.

#### *Loan to Deposit Ratio*

CRA examiners determine if the bank's loan-to-deposit ratio is "reasonable." Is a small bank receiving deposits from a locality and then using the deposits to meet the credit needs of the community? Or is a bank evading its CRA obligations by simply allowing deposits to accumulate? The regulations do not specify any particular ratio as reasonable. Instead, "reasonable" means that the loan-to-deposit ratio is sufficient considering the performance context. For example, examiners will expect a higher level of lending in localities experiencing employment growth than in economies experiencing recession and declines in loan demand.

If a loan to deposit ratio does not appear "reasonable," examiners are instructed to consider proxy indicators for this part of the small bank test. Specifically, a high number and dollar volume of sold loans or innovative community development loans may compensate for a low loan-to-deposit ratio according to the *Interagency Examination Guidelines*.

#### *Majority of Loans in Assessment Area*

This criterion ensures that local credit needs are met. A bank must make a majority of its loans in its assessment area to receive a "satisfactory" rating under this performance criterion. If the majority of a small bank's loans are not in its assessment area, the bank receives a less than "satisfactory" rating on this criterion. The weight of a less than satisfactory rating on this criterion to the overall CRA rating is influenced by the performance context. For example, an examiner may conclude that a local recession meant that the bank was compelled to pursue a significant part of its CRA-related lending outside of its assessment area. In this case, the bank would still receive a less than satisfactory rating on this criteria, but it would not influence the overall CRA rating as much as in a situation where economic conditions were favorable in the bank's assessment area.

### *Distribution of Loans to Borrowers*

Examiners analyze the distribution of loans to borrowers of different income levels and businesses and farms of different sizes. A “reasonable” distribution of loans to households of various income levels and to businesses and farms of different sizes earns a satisfactory rating on this criterion. An outstanding rating would be earned if the bank “exceeds” a reasonable distribution of loans according to the CRA regulations. As is the case under many other performance criteria, the regulations offer no precise definition of a “reasonable” distribution or a distribution that would exceed “reasonable.” This vagueness invites citizens and community organizations to offer their interpretations to examiners in advance of CRA evaluations.

### *Distribution of Loans by Geography*

Examiners determine if a small bank has a reasonable distribution of loans by geographical areas of different income levels. A “reasonable” distribution earns the bank a satisfactory rating while a distribution exceeding “reasonable” is awarded with an outstanding rating on this performance criterion. Examiners are instructed to take into account the characteristics of a small bank’s assessment area when judging geographic distribution of loans. Some small banks may have relatively small assessment areas with very few geographic areas that are distinguishable by income level. If this is the case, then this criterion may not have a large influence on the overall CRA rating. On the other hand, many small banks operate in assessment areas such as counties or metropolitan areas that have geographical areas with different income levels. Then, of course, this criterion becomes important to the overall CRA rating.

### *Responsiveness to Public Comments*

The examiner determines to what extent a small bank took action to respond to comments submitted by the public regarding its performance in meeting the credit needs in its assessment area(s). Citizens and community organizations should monitor how responsive a small bank is to their concerns, especially since this is one of the performance criteria of the small bank exam.

### **Recent Office of Thrift Supervision (OTS) Changes**

In 2004, the OTS expanded the number of thrifts eligible for the small institution exam. The agency defined small thrifts as those with assets under \$1 billion. The small thrifts had a streamlined exam that consisted only of the lending test. In a rule reversal, the OTS now applies the small thrift test to thrifts with assets under \$250 million. The new rules became effective in July of 2007.

## **The Final CRA Rating for Small Banks**

The federal banking agencies are more specific about the most important criteria on the small bank exams than the large bank exams. The *Interagency Question and Answer* publication indicates that lending by borrower income and lending by geography have the greatest impact on the final CRA rating. The *Q & A* states that a small bank with outstanding performance in the lending by borrower and geography is likely to receive an overall outstanding rating. On the other hand, a small bank will receive an overall grade of satisfactory if it has a satisfactory performance on the lending by borrower and geography indicators and an outstanding performance on the other three indicators.

While a small bank is evaluated under a lending test with five criteria, it can receive favorable consideration for CRA-related investments and services. A small bank with a satisfactory rating on the five lending criteria can receive an outstanding level if it offers qualified investments and has a good record of providing banking services and branches to low- and moderate-income neighborhoods. The regulations do not specify what level of qualified investments or what level of services would be necessary to move a satisfactory lending record to an overall CRA rating of outstanding. Community organizations and citizens should offer their own interpretations about a level of community development investments or services that would help a small bank earn an outstanding rating.

Finally, federal examiners will determine if the bank has engaged in any discriminatory practice and/or other illegal credit actions. A bank's CRA rating is adjusted downward if there is any evidence of illegal actions.

## **EVALUATION FOR MID-SIZED BANKS**

As of September 2005, mid-size banks no longer have the three part lending, investment, and service test. Mid-size banks with assets between \$250 million to \$1 billion now have a CRA exam that consists of a lending and community development test (which incorporate elements of the investment and service test). As mentioned above, the assets levels that define a mid-size bank are adjusted annually for inflation. The mid-size CRA exam for thrifts conducted by the OTS is now the same as those for banks regulated by the FDIC, the Office of the Comptroller of the Currency, and the Federal Reserve Board. The OTS had weakened CRA exams for mid-sized thrifts in 2004, but reversed itself in 2007.

Importantly, mid-size banks must have at least a Satisfactory rating on both tests in order to pass their CRA exam. (The federal agencies call mid-size banks and thrifts "intermediate small" institutions).

## **Lending Test**

With the mid-sized banks, the lending test is the same as in small bank CRA exams mentioned above with the following criteria.

- 1) loan to deposit ratio
- 2) the percentage of loans in the assessment area
- 3) distribution of loans by borrower income level
- 4) distribution of loans by income level of tract
- 5) response to any complaints.

(see previous section on Small Banks above for more detail).

## **Community Development Test**

The community development test requires mid-size banks to offer community development (CD) loans, CD investments, and CD services. The new exams allow for flexibility in how much of each activity banks can offer. However in the ruling establishing the CD test, the agencies stated that they “do not intend to suggest that a bank may simply ignore one or more categories of community development or arbitrarily decrease the level of such activities.”

The community development test for mid-size banks consists of the following criteria according to the CRA regulation:

- (1) The number and amount of community development loans;
- (2) The number and amount of qualified investments;
- (3) The extent to which the bank provides community development services; and
- (4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

The criteria do not include innovativeness of community development activities, unlike the large bank exam. Some felt that mid-size banks should not be judged explicitly on innovativeness since mid-size banks do not have the financial wherewithal of large banks enabling them to offer complex or innovative CD financing. Yet, mid-size banks are judged on how responsive their CD activities are to the needs of the community. Community groups should comment to CRA examiners regarding the extent to which mid-size banks are responding to specific neighborhood needs for various types of CD financing.

The other significant issue for the new community development test regards branching in low- and moderate-income (LMI) communities. The regulatory agencies stated that

community development services include low-cost checking accounts and low-cost remittance services for LMI customers. They then state that CRA examiners will consider the “provision and availability of services to low- and moderate-income people, including through branches and other facilities located in LMI areas.” The agencies also adopted a Q&A stating that “presence of branches in low- and moderate-income geographies helps to demonstrate availability of banking services to low- and moderate-income individuals.” The additional language is more specific in establishing an expectation that banks should actually place branches in LMI census tracts so that CRA examiners can assume that bank services and deposit accounts reach LMI customers. The new language suggests that examiners will scrutinize whether branches are actually present in LMI census tracts. Yet, community groups should monitor and comment on mid-size bank CRA exams to make sure examiners are scrutinizing bank branch locations.

### **Data Disclosure Changes**

Mid-size banks will no longer publicly disclose their small business, small farm, and community development lending data. Under the final rule, mid-size banks are not required to report the property location (census tract location) of home loans made outside of metropolitan areas (MSAs) or in MSAs in which they do not have branches. Mid-size banks will still have to report on the borrower race, ethnicity, gender or income in cases in which property location is not reported.

The loss of small business and farm loan data is significant since mid-size banks specialize in small business and farm lending. NCRC will seek to restore the small business and farm loan reporting requirements and restore the detail in HMDA data for mid-size banks.

## **EVALUATION FOR WHOLESALE AND LIMITED PURPOSE BANKS**

The CRA regulations offer another evaluation for a category of banks known as “limited purpose” and “wholesale” banks. Limited purpose banks are defined as banks that offer a narrow product line such as credit card or motor vehicle loans. Wholesale banks do not provide home mortgage, small business, or consumer loans to retail customers. Since these banks do not offer traditional home or small business loans, large bank evaluations focusing on traditional lending would not be appropriate for limited purpose and wholesale banks.

The CRA regulations for wholesale and limited purpose banks focus on community development lending, investments, and services. While these banks do not have the institutional capacity to offer traditional loans such as home mortgages, they have the financial wherewithal to invest in loan consortia that funds nonprofit affordable housing development. As stated above in the discussion about large bank evaluations, community



development refers to activities that revitalize and stabilize low- and moderate-income neighborhoods. Community development services include activities such as homeownership counseling that facilitates the provision of financial services.

The performance criteria for evaluating the CRA performance of wholesale and limited purpose banks include the following:

*The Number and Amount of Community Development Loans, Qualified Investments (also known as community development investments), or Community Development Services*

*The Use of Innovative Community Development Loans, Investments, and Services Not Routinely Provided by the Private Market*

*The Bank's Responsiveness to Credit and Community Development Needs*

*Community Development Activities Outside the Bank's Assessment Area Provided the Bank has Adequately Addressed the Needs of its Assessment Area*

Unlike the large bank exam, the evaluation for limited purpose and wholesale banks does not assign points for distinct parts of the exam. As with the large bank evaluation, the CRA regulations do not provide specific quantitative targets for each criteria, but rather vague qualitative measures. For example, to earn an outstanding rating for the number and amount of community development loans, investments and services, a bank should offer a "high" level of community activities. An "adequate" level and a "poor" level of community development activities would earn satisfactory and needs to improve respectively.

The regulations also do not specify the relative importance of each of the criteria. Appendix A of the regulations states that weak performance under one of the criteria can be compensated by strong performance under another criteria. Therefore, since the regulations do not specify the weight of the criteria, community groups and citizens should offer their interpretations to federal examiners as to what aspects of the performance of a limited purpose or wholesale bank to emphasize.

Before awarding a CRA rating to limited purpose and wholesale banks, federal examiners determine if there is any evidence of discriminatory or illegal practices. If a bank has committed such practices, the final rating is lowered.

### **Community Development Loans, Investments, and Services**

Since community development activities form a vital part of the evaluations for large banks, mid-size banks, as well as limited purpose and wholesale banks, it is important to offer examples and describe in sufficient detail what constitutes community development activities. As stated above, community development activities revitalize or stabilize low- and moderate-income geographical areas by financing the provision of affordable

housing, economic development projects, or the provision of community facilities such as health clinics.

The *Interagency Questions and Answers* jointly released by the four federal agencies emphasizes that community development activities must revitalize low- and moderate-income areas and/or directly benefit low- and moderate-income residents. For example, offering credit cards to low- and moderate-income residents of distressed neighborhoods are not community development loans. Credit cards may provide convenience, but they do not contribute to overall economic development of a neighborhood. In contrast, a loan for a shopping center development in a low- or moderate-income area that employs residents of the area would be considered a community development loan because it passes both criteria of neighborhood revitalization and direct benefits to neighborhood residents.

Although some activities would not qualify as community development, it should be remembered that they could count under other parts of a CRA evaluation. For example, a consumer loan to a low-income borrower would not qualify as a community development loan, but could count as a loan under the lending test (if consumer loans constitute a substantial majority of a bank's loan portfolio).

In addition to clarifying the definition of community development activities, the *Interagency Q & A* also suggests that comprehensive community development initiatives will receive the most favorable consideration by federal examiners. The *Q & A* states that community development activities that "serve as a catalyst for other community development activities" will receive the greatest weight in a CRA evaluation. For example, suppose a local government and a community development corporation have created a comprehensive revitalization plan for a neighborhood that includes a huge mixed-use residential and commercial development spanning several blocks. A bank that offered a multi-million dollar construction loan for the development would receive highly favorable consideration under the community development test since that loan will catalyze a great amount of community development activities. Such a loan would receive a greater weight than another loan that offered rehabilitation financing on a five unit affordable housing development. While the loan for the small multi-family affordable housing development is desirable, it does not generate as much revitalization activities as the loan for the mixed-use development.

#### *Designated Disaster Areas and Distressed Counties Qualify under Community Development*

In the summer of 2005, the federal agencies adopted additional definitions of community development that pertained to designated disaster areas and distressed and underserved non-metropolitan areas. In response to the devastation of Hurricanes Katrina and Rita, the federal agencies stipulated that community development financing and activities in areas afflicted by natural disaster would qualify for CRA points. Community groups applauded this addition to the CRA regulation but were also worried that banks would

receive a disproportionate amount of CRA points for financing the rebuilding of downtown amenities or other upper scale developments after a natural disaster. In response, the agencies adopted a Q&A that said that banks will receive CRA points for financing community development in designated disaster areas in proportion to how responsive the financing are to needs, including the needs of low- and moderate-income individuals and communities. While it would have been preferable for the agencies to have used the phrase “especially the needs of low- and moderate-income individuals and communities,” this Q&A can nevertheless be relied upon by community groups to make the case that banks need to direct the majority of the community development financing qualifying for CRA points to the needs of low- and moderate-income families and neighborhoods.

The agencies also expanded the definition of community development to include rural non-metropolitan counties that have been economically distressed or underserved. Community advocates and some lenders have expressed concern over the years that CRA has given short shrift to the needs of rural communities. Accordingly, the agencies adopted a revision to the CRA regulation providing CRA points to community development financing and activities in middle-income census tracts in economically distressed or underserved rural counties. CRA’s income definitions are relative in that middle-income is defined by comparing a state-wide median income for rural census tracts to the particular census tract in question. Since a state-wide median rural income can be low, a rural middle-income census tract can still have a relatively low income level. Moreover, just as for disaster areas, community development financing in distressed or underserved counties will receive more CRA points, the more targeted it is to low- and moderate-income census tracts. Finally, it must be remembered that rural counties that are underserved or distressed have dire needs and are often in need of community development financing in middle-income as well as low- and moderate-income census tracts.

The agencies applied the Community Development Financial Institutions (CDFI) Fund definition of distressed areas for targeting counties and census tracts. The CDFI Fund designates a county as distressed if it has 1) an unemployment rate of at least 1.5 times the national average, 2) a poverty rate of 20 percent or more, 3) or a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of 5 percent or more over the five-year period preceding the most recent census.

A bank will receive credit for a community development activity that revitalizes or stabilizes distressed areas if the activity occurs in a middle-income census tract in a non-metropolitan county qualifying as distressed under the CDFI Fund definition. Banks will continue to receive points for community development in rural areas if the activities occur in low- and moderate-income tracts. The final rule regarding community development issued in 2005 was more targeted than the proposed rule. In the final rule issued in the summer of 2005, the regulators deleted upper-income tracts from among the

tracts in a distressed county for which CRA community development financing credit could be claimed.

Also, banks will receive points for community development activity if the activity occurs in a middle-income non-metropolitan area census tract that is in an underserved county. These counties are remotely rural, sparsely populated, and/or located in towns of less than 10,000 people. The Economic Research Service of the US Department of Agriculture developed the definition of remotely rural and sparsely populated places; most of these census tracts are in the Great Plains states.

The federal agencies will provide a list of rural “eligible” census tracts on an annual basis on the website of the Federal Financial Institutions Examination Council (<http://www.ffiec.gov>).

#### *Lag Periods for Designated Disaster Areas and Distressed and Underserved Counties*

The regulatory agencies have implemented various lag periods for awarding CRA points for community development. In the case of distressed or underserved areas, the agencies ruled in a Q&A that community development financing occurring up to one year after the area was no longer considered distressed or underserved would receive CRA points. Community development activities take considerable time to execute and implement. Therefore, the agencies believed that establishing a transition period in which banks still received CRA points for community development made sense in the case of counties experiencing economic revitalization. Community groups were sympathetic to this but wanted to ensure the lag periods were not too long. One year seemed appropriate.

Likewise, the lag period for designated disaster areas was established at 36 months from federal designation of a disaster area. Federal disaster designations typically last for 18 months according to the final Q&As. So the lag period is effectively 18 months after the “expiration” of federal designation of disaster status. The banks wanted a 3 year lag period; community groups had wanted a one year lag period. The regulators basically adopted a 1.5 year lag period from expiration of federal disaster status. The regulatory agencies indicated in the final Q&A that they will establish a longer lag period for natural disasters when circumstances warrant. The preamble to the final Q&As state that areas devastated by Hurricanes Katrina and Rita will have substantially longer lag periods.

#### *Examples of Community Development Activities*

This section offers examples of these activities. The examples are illustrative only and should not be regarded as the exclusive list of community development activities. The preamble to the CRA regulation contains footnotes discussing examples of community development loans, investments, and services. In addition, the four federal financial agencies have issued “interpretive” letters that discuss whether activities contemplated by banks and/or community organizations constitute community development activities. The range of community development activities is in flux. If a community group or a

bank is unsure about what constitutes a community development activity and the contemplated activity is not specifically discussed in the CRA regulation, the Interagency Q&A, or existing interpretive letters, then it is advisable that they request advice from the regulatory agencies.

### *Community Development Loans*

NCRC's outline of the CRA regulation lists a number of examples of community development loans including loans for affordable housing projects or community facilities such as child care centers or health clinics. Community development loans also include bank loans to alternative institutions such as Community Development Financial Institutions (CDFIs) whose purpose is to lend to residents of low- and moderate-income neighborhoods. Another example of a community development loan is a loan for a brownfield project that "finances environmental clean-up or redevelopment of an industrial site" in a low- or moderate-income community according to the CRA regulations. In addition, the Q&A on disaster areas states that CRA points are awarded to financing businesses that employ local residents, including low- and moderate-income residents, and for providing housing or financial assistance to individuals displaced from disaster areas, including low- and moderate-income individuals. These loans are considered community development because they help to revitalize or stabilize communities afflicted by natural disasters or experience immigration by families displaced by natural disasters.

### *Community Development Investments*

Community development investments or qualified investments include investments in low-income housing tax credit projects or state and municipal bonds that specifically support affordable housing and community development. Community development investments can also be equity investments in entities like small business investment companies that promote economic and community development. In addition, the Office of the Comptroller of the Currency (OCC) writes in *Interpretive Letter 703 and Advisory Letter 97-2* that a bank can earn qualified investment "credit" by purchasing community development securities that are backed by community development loans offered in low- and moderate-income communities. Finally, a community development investment can be considered a grant or donation to a nonprofit organization engaged in community development. For example, OCC *Interpretative Letters 701 and 665* state that grants to health clinics and nonprofit organizations offering courses on small business and debt financing would be considered community development investments.

### *Community Development Services*

Community development services include either the provision of technical assistance to nonprofit organizations engaged in community development or “lending” bank executives for a specified time period to these organizations. Moreover, the CRA regulations emphasize that community development services should be related to the provision of financial services. A bank, for instance, will receive favorable consideration if it provides credit counseling, homeownership counseling, or implements school savings programs. As mentioned above, banks receive CRA points for reasonably priced remittances connected to a low-cost account. In addition, banks receive CRA points for electronic benefits transfer and point of sale systems that improve access to financial services and decrease costs for LMI customers, low-cost bank accounts such as Electronic Transfer Accounts, and low-cost bank checking accounts for LMI borrowers.

### *Community Development Activities Outside of Assessment Areas*

Wholesale and limited purpose banks can receive points on their CRA exam for community development loans, investments, and services made across the country. The CRA regulation, however, requires wholesale and limited purpose banks to satisfy the community development needs within their assessment areas before receiving points for community development activities outside of their assessment areas. Retail banks and thrifts can receive points for community development activities that benefit a statewide or regional area surrounding an assessment area (see Q&A 5 to section 12 of the *Interagency Q&A*). Community groups need to be vigilant, and assess if wholesale and retail banks are meeting needs for community development activities in their assessment areas before they receive points for these activities outside of assessment areas.

## **STRATEGIC PLAN OPTION**

All types of banks - large, small, and limited-purpose - can forego the usual CRA exam and instead opt to submit a strategic plan for regulatory approval. A strategic plan outlines a multi-year program of up to five years for satisfying the credit needs of the communities served by the bank. The strategic plan option is intended to offer banks an opportunity to collaborate in a proactive manner with community organizations in devising a plan for offering lending, services, and investments. Therefore, the bank must solicit and document a high level of public participation in developing its strategic plan.

A bank first outlines a plan that includes measurable goals for meeting the credit needs of low- and moderate-income geographies and households. The bank must develop goals for the three performance categories - lending, services, and investments. The CRA regulations, however, state that a bank should emphasize its lending and lending-related activities in its plan. A different emphasis (not specified by the CRA regulations) is

allowed for limited-purpose and wholesale banks since they do not specialize in lending activities. The bank's lending, investment, and service goals must have annual targets during the years the plan covers.

The bank must specify the level of goal attainment that constitutes satisfactory and outstanding performance. In other words, the bank will specify the number and dollar amount of loans, investments, and the level of services that will earn it a satisfactory rating and a higher level of activities that will earn it an outstanding rating. If a bank fails to achieve the level of activities it specified as satisfactory, it will receive one of the lowest two ratings on its next CRA exam. Alternatively, it can elect to be evaluated under one of the three regular exams if it does not meet its goals under the strategic plan.

While the bank is developing its plan, it must seek public comment. It should informally seek suggestions from citizens and community organizations while it is developing its plan. Then, once it has developed its plan, it must offer a 30 day public comment period during which citizens can obtain copies of the plan from the bank and issue their comments on the plan to the bank and its regulator. When a regulatory agency is considering approval of a strategic plan, it will consider the extent of the public's involvement in formulating the plan and the bank's responsiveness to written comments on the plan.

After a federal banking agency has approved a strategic plan, the bank then proceeds to offer the level of loans, investments, and services outlined in the plan until its next CRA exam approximately two years later. Then, during the CRA examination, the bank's regulatory agency will assign a CRA rating depending on the bank's performance in meeting its goals. The rating will be adjusted downward if there was any evidence of discriminatory and other illegal practices.

At any time during the two years before a CRA exam, the bank may ask a regulatory agency to consider amendments to its strategic plan. Amendments may ask for a change in the specified level of lending, services, and investments. The bank has to justify the plan amendments "on the grounds that there has been a material change in circumstances." The regulations do not spell out what these changes are, but it can be assumed that the changes can include an abrupt economic swing or shifts in the internal structure or financial condition of the bank. If a bank asks for a plan amendment, it must solicit comments from the public and offer a 30 day public comment period.

Relatively few lenders have opted for the strategic plan. Community groups have also been skeptical of the strategic plan option. If a lender is considering a strategic plan, community activists must insist on meaningful goals. For example, "one thousand home loans to low- and moderate-income communities over five years" sounds impressive, but should be analyzed carefully. When considered on an annual basis, is this a greater or lower number of loans than the bank was making in previous years? What will be the bank's percent of loans for residents of low- and moderate-income communities? Is this percentage higher or lower than that of peers of similar asset size? Will the bank's

market share of loans in low- and moderate-income communities be greater than its market share of loans in middle- and upper-income communities? Hard questions on the bank's proposed goals must be discussed and analyzed thoroughly.

## **DATA DISCLOSURE REQUIREMENTS**

All banks must adhere to a series of data disclosure requirements. Banks must make the data publicly available in what is known as the "public file." The data includes information on home lending activity, small business lending activity, branch distribution data, and a breadth of other data on lending and services.

The CRA regulations require that the public file must be at the bank's main office and in at least one branch office in each state if the bank is an interstate bank. If the public file is not at a particular branch office, the bank has five calendar days to make it available at a particular branch office in response to request from a citizen. The bank can charge a fee for making the data available, but the fee can not exceed reasonable costs associated with copying and mailing.

Extensive data is available in the public file. Small business data covering the years since 1996 is publicly available. Large banks (with assets more than \$1 billion) must make the small business data available. Small banks and mid-size banks are required to make the data available only if they elect to be evaluated under the large bank exams instead of the small bank exams.

Small business data must be reported on a census tract level. In addition, it must be reported by loan size. Banks report the total number of small business loans, the number of loans of \$100,000 or less, the number of loans between \$100,000 and \$250,000, and the number of loans greater than \$250,000. In addition, banks must report the number of loans to businesses with gross annual revenues of \$1 million or less.

Large banks must report the total amount of community development loans made and purchased. Community development loans, as discussed above, revitalize low- and moderate-income areas and must directly benefit low- and moderate-income persons. Large banks must report community development loans and small banks that opt for the large bank exam must likewise report these loans.

If a bank is a HMDA (Home Mortgage Disclosure Act) data reporter, it must also provide the HMDA data on home loans in its public file. In addition, if a bank elects to have its consumer lending activities evaluated by a CRA examiner, it must provide data on consumer lending by geographic area.

In addition to reporting an extensive amount of lending data, a bank must also provide a wide array of information on its other CRA activities. Banks must place a copy of its most recent CRA performance evaluation in its public file as well as its loan-to-deposit



ratio data if it is a small bank, and a copy of a strategic plan if it has one. Any comments from the public on the bank's CRA performance and a map of the bank's assessment area must be in the public file. If the bank received a less than satisfactory rating on its last CRA exam, the bank must have a plan in its public file indicating how it will improve its CRA performance.

Finally, a bank must provide a list of all of its branches with street addresses, and a list of all the branches it has opened and closed during the last three years. The bank must provide a list of services such as hours of operation, and loans and deposit products available at the branches. Any significant differences in the level of services among the banks' branches must be described.

## **GUIDELINES FOR EVALUATING CRA EXAMS**

CRA's flexible regulatory structure is its blessing and curse. It allows lending institutions to respond to credit needs as articulated by community groups and residents of low- and moderate-income neighborhoods. However, the broad discretion given to CRA examiners has resulted in some poor exams that let lenders who are not meeting credit needs off the hook. At the same time, the flexible regulations have led to some comprehensive exams that reward lenders who are doing the hard work of community reinvestment. The key is to increase the level of community scrutiny to make the exam process uniformly rigorous.

These guidelines will not offer fixed formulas for determining which ratings banks and thrifts should receive. Community groups, however, can keep the following guidelines in mind when they scrutinize CRA exams or are developing comments on upcoming exams:

### *Lending Test*

- Is the lender offering home loans in proportion to the low- and moderate-income population (households and census tracts)? This could be one factor that differentiates outstanding from satisfactory banks on the lending test since it is difficult to offer single-family loans in proportion to low- and moderate-income populations in many MSAs. A portion of low-income households have incomes below the poverty level, which means that homeownership is not an immediate possibility for them.
- If a bank is not coming close to lending in proportion to the low- and moderate-income population, is the lender at least offering the same or a similar percentage of loans to low- and moderate-income populations as the industry as a whole and/or its peers in asset size and business strategies. If a bank is far off the mark of its peers, it may not merit a satisfactory rating on its lending test.
- Is a bank's market share of loans to low- and moderate-income populations the same or greater than its market share of loans to all income groups? Is a poor performance

on one category of loans (for example, home mortgage loans) compensated by a good performance on other categories of loans (home improvement or refinance)? A case-by-case and a market-by-market judgment should be made as to whether good performance in some lending categories should be allowed to compensate for poor performance in others.

- In some parts of the country, the percentage of home loans to low-income households and census tracts may be much less than the percentage of the total population that is low-income. Two major forces are at work: the creditworthiness of low-income borrowers and the high cost of homes in many metropolitan areas. Yet, the question should be asked as to whether the lender has developed affordable loan products that allow it to offer a higher percentage of loans to low-income populations than its peers.
- A lender can compensate for a low percentage of home loans to low-income borrowers by offering a high level of community development loans to low-income communities. Community groups can calculate the total dollar gap resulting from the mismatch between the percentage of low-income households and the percentage of home loans that are offered to low-income households. Does the level of community development lending equal or exceed this dollar gap? Community development loans include loans for affordable rental housing. If a lender is not offering many single-family loans, is the institution making up for this by financing rental housing for low-income populations? Does that bank offer significantly more community development and affordable housing loans than its peers?
- Another way to gauge the level of community development lending is to compute a ratio, comparing the dollar amount of community development loans with the dollar amount of the bank's assets. Compare a particular bank's ratio with peers of its asset size. The bank's overall rating on its lending test should be adjusted according to how a bank compares with its peers in offering community development loans.
- A similar type of analysis can be conducted for consumer loans as for home loans. For instance, community groups can compare the percentage of families or households that are low- and moderate-income with the percentage of consumer loans that are received by this population.
- The distribution of small business and farm loans by census tract category should also be analyzed. Is the lender offering a percentage of small business loans that equals or exceeds 1) the percentage of census tracts that are low- and moderate-income, or 2) the percentage of small businesses and farms that are in these census tracts.
- If the bank is not offering a percentage of loans that is in proportion to the portion of small businesses in low- and moderate-income census tracts, how does the bank's percentage of business loans compare with that of its peers and/or all lenders, as a group?

- If there are sizable gaps in small business lending, do other categories of lending - community development, consumer, or home - compensate? Should other types of loans compensate? The answer to that question depends on the particular market and on the particular bank. If the bank is a small business lending specialist, then poor performance in low- and moderate-income census tracts cannot be excused. For example, if the bank makes several thousand small business loans but less than one hundred home loans, a high percentage of home loans in low- and moderate-income tracts cannot compensate for a low percentage of small business loans in these tracts. The high percentage of home loans in low- and moderate-income tracts translates into relatively few loans for these tracts.
- Is the lender responding to requests from community groups and nonprofit development organizations for community development loans (for social service facilities, economic development projects, affordable multi-family developments, etc)?
- Is the assessment area reasonably defined or does it conspicuously exclude lower income or minority communities that are near the other portions of the assessment area?

#### *The Investment Test*

- How does the number and dollar total of qualified investments compare with lenders of similar asset size?
- Is the lender responsive to requests from community development corporations and others for investments that will revitalize low- and moderate-income neighborhoods? Does the lender work with community groups to provide these investments or does it decline requests for investments?
- Does the lender offer a mix of investments - grants and equity investments, for example, that are responsive to credit needs? Does the lender respond to investment needs for housing, small business, economic and community development?
- Does the lender have information on how many low- and moderate-income people benefit from its investments in terms of housing units built or jobs created? To the extent possible, compare banks on a criterion on how many low- and moderate-income people benefit from their investments.
- Small banks do not have a separate investment test. But they can strive for an outstanding rating by offering qualified investments.

- How does a particular bank's ratio of investments to assets compare to peer banks with a similar asset size and operating in the same geographical area? If a particular bank has a much lower level of investments than its peers, it is making less of an effort, and should receive a lower rating on the investment test.

### *The Service Test*

- Is the lender's percentage of branches that are in low- and moderate-income communities similar to the percentage of census tracts that are low- and moderate-income or the percentage of households that are in low- and moderate-income tracts? Do hours of branch operation differ according to the income level of the neighborhood?
- How does the bank's percentage of branches in low- and moderate-income census tracts compare with that of peers of similar asset size and business strategy?
- Analyze the number and percent of ATMs by income level of tracts, and compare banks against each other on this measure.
- Does the lender offer community development services? That is, does it offer school savings programs or financial counseling for home purchasers or small businesses? Is there information on the scale of these efforts, such as the number of students in counseling courses? Does the bank offer foreclosure prevention counseling?
- Does the lender have mobile branches that serve nursing homes, community centers, and low- and moderate-income census tracts? Does the lender have bank-at-work programs or other types of programs geared to serving low- and moderate-income consumers? Does the lender have data on how many consumers use these facilities? To the extent possible, compare banks on this criterion.
- How many low-cost checking and savings accounts is the bank offering? What are the bank's peers doing? The service test does not have an explicit criterion analyzing the number and percentage of checking and savings accounts by income level of borrower and census tract. Sometimes, however, CRA exams will include this information for types of accounts. To the extent possible, ask local banks for this information and compare them against each other on the number and percentage of accounts offered to low- and moderate-income borrowers and communities.
- Small banks do not have a separate service test. But they can strive for an outstanding rating by offering an impressive array of services.

## **CRA ENFORCEMENT: THE BANK APPLICATION PROCESS AND HOW THE PUBLIC CAN BE INVOLVED**

### **INTRODUCTION**

The federal banking agencies enforce CRA obligations during the bank application process. When a bank has submitted an application to merge with another bank or to change its services, the federal banking agencies review the application and approve the application only if it passes several criteria. The bank's proposed merger or changes in services must not diminish the safety and soundness of the bank. Likewise, a contemplated merger must not lessen competition in a local market to the point where only a few banks can collude to raise prices and/or reduce the level of services. Finally, the proposed merger or changes in services outlined in a bank's application must not harm a bank's CRA performance.

Federal regulators have the discretion to deny, delay, or "condition" a bank's application if a bank has one of the two lowest CRA ratings of needs-to-improve or substantial noncompliance. The top ratings of outstanding or satisfactory do not lead to automatic approval of a bank's application, particularly if future CRA performance is likely to deteriorate significantly. In the vast majority of instances over the last several years, the federal banking agencies have not denied a bank's application on CRA grounds. However, regulatory approval of a bank's application has been made conditional on promised improvements or maintenance of CRA performance.

Community organizations and the general public have a vital role to play in the bank application process. Federal regulatory agencies have formal public comment periods during which citizens and community organizations can offer their insights, analysis, and opinions of the pending bank application. When a bank has submitted an application, banks and community organizations will often start meeting and discussing how a bank's level of community reinvestment can be preserved or increased after the changes in the institutional structure of the bank following the approval of an application. The federal banking agencies have developed provisions in their application procedures that facilitate and encourage community-lender dialogue.

Federal agencies recognize that citizens, as consumers of banking services, have insights on bank applications that cannot occur to regulatory staff who are not directly affected by a bank's application to merge or change its services. Only if federal agencies have well-informed comments from all affected parties - consumers, local governments, local businesses as well as the bank - will the federal agencies have the complete information necessary to weigh all the ramifications of a bank application.

Given the importance of citizen comments to the bank application process, the task of this manual is to describe the application process of the four banking agencies and to explain how community groups and citizens can become involved in the process. Since

there are four federal financial regulatory agencies, this chapter will start with a guide about which agency will consider which bank and thrift applications. Then the chapter will describe in turn the application process of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and finally the Federal Deposit Insurance Corporation.

## **WHICH REGULATOR CONSIDERS WHICH BANK APPLICATION**

The Federal Reserve System has acted on most bank applications in past years since it has jurisdiction over banks with holding companies and some state-chartered banks. The Office of the Comptroller of the Currency (OCC) also decides on a high number of bank applications since they regulate the nationally chartered banks, which tend to be the largest banks in the country. The Office of Thrift Supervision (OTS) will rule on applications that involve savings and loans or thrift institutions. Finally, the Federal Deposit Insurance Corporation (FDIC) will rule on applications submitted by state-chartered banks.

Because the majority of applications involve bank holding companies (BHCs), the Federal Reserve is the federal banking agency that has ruled on most applications. BHCs own both insured depository institutions (banks) and non-insured institutions such as subsidiaries that underwrite securities. In addition to its oversight authority over bank holding companies (also known as financial holding companies), the Federal Reserve System has regulatory authority over state-chartered banks that have elected the Federal Reserve as its primary regulator. Thus, the Federal Reserve will also act on bank applications involving state-chartered banks whose primary regulator is the Federal Reserve.

At times, the OCC and the Federal Reserve will both rule on an application. These applications involve nationally chartered banks that have holding company structures. It is also possible that the OTS and the FDIC may be ruling on a bank application that is also being considered by the Federal Reserve System.

We now turn to the procedures of the four federal financial institutions' regulatory agencies.

## **THE FEDERAL RESERVE SYSTEM'S BANK APPLICATION PROCESS**

The Federal Reserve System's bank application procedure is outlined in a regulation commonly referred to as Regulation Y. Its full name is Bank Holding Companies and Change in Bank Control Regulation.

In the spring of 1997, the Federal Reserve Board reduced the time period for rendering a decision on bank applications as an incentive for banks to improve their managerial performance and their CRA performance. The Federal Reserve Board will now rule on

bank applications involving total assets of less than \$7.5 billion in 21 days or less if the bank has passing criteria on various bank compliance examinations. In order to qualify for the fast track decision-making process, the acquiring bank must have a CRA rating of satisfactory or better, and be “well-managed” and “well-capitalized” as indicated on compliance examinations. The Federal Reserve maintains that it is providing an incentive for banks to perform well in terms of their community reinvestment and safety and soundness criteria by offering the expedited process to banks that have passing marks on these criteria.

The Federal Reserve System is not offering the expedited process to all banks. Mergers or acquisitions that involve combined assets of more than \$7.5 billion will be considered under a decision-making time period that ranges from 30 to 90 days. Proposed mergers with large asset sizes typically affect local communities in many states. The Federal Reserve System, therefore, needs sufficient time to analyze these merger applications. In addition, proposed mergers under \$7.5 billion in combined assets will not be eligible for the expedited process if the size of the acquisition exceeds 35 percent of the existing assets of the acquiring bank holding company.

The Federal Reserve System will also remove a bank application involving assets of less than \$7.5 billion dollars from the fast-track process if a community group or a citizen issues a comment letter posing a “substantive” issue. A substantive issue includes anti-trust issues or convenience and needs issues. Therefore, if a member of the public argues convincingly that a substantive issue needs to be considered carefully by the Federal Reserve System, the Federal Reserve will remove an application from the fast track.

The Federal Reserve System seeks to encourage dialogue among banks and community organizations by considering joint-requests by lenders and community organizations for extending the public comment period. The public comment period is usually a 30 day time period that ends before the Federal Reserve issues a decision on a bank application. During the public comment period, lenders and community groups will meet and discuss how the bank can preserve or strengthen its CRA performance after its institutional structure is changed due to its application being approved by the Federal Reserve Board. Community groups will either file or decide not to file an official comment letter to the Federal Reserve depending on the outcome of its meetings with the lenders. To facilitate discussions among the parties, the Federal Reserve has committed itself to extending the public comment period upon a joint request by lending institutions and community organizations.

Community groups must be keenly aware of when the clock starts ticking for the Federal Reserve’s public comment period and decision-making time period. The public comment time period starts when a bank has advertised in a local newspaper and when the Federal Reserve posts a notice in the *Federal Register* that a bank is submitting an application to the Federal Reserve. These public notices can occur up to 15 calendar days before the Federal Reserve System actually receives the application from the bank. The public notice starts the 30 day public comment period. Community groups need to know that

they may have only 15 calendar days to acquire and analyze the public portions of the bank's application since the bank can submit its application to the Federal Reserve System 15 days after the start of the public comment period.

Under the expedited process, the Federal Reserve offers a 30 day public comment period, and will issue a decision on the bank application 3 to 5 business days after the close of the comment period. Since the public comment period can start 15 days before the Federal Reserve receives an application from the bank, the decision-making time period under the expedited process is 18 to 21 days after the receipt of the bank's application.

Under the non-expedited time period, the Federal Reserve also offers a 30 day public comment period. The Federal Reserve Board will decide on a bank application as soon as 30 days and no later than 90 days after receipt of the application.

Below is more detail on various aspects of the Federal Reserve's bank application process:

### **Faster Federal Reserve Disclosure of Bank Applications**

Because the Federal Reserve Board estimates that the streamlined process will be used about 50 percent of the time, they have promised to speed up their disclosure of public documents relating to the bank's application. Firstly, the Federal Reserve promises to provide the public portions of a bank application within 3 business days of a request. Secondly, the Federal Reserve will maintain a list of all pending bank applications with the dates that the public comment periods end. This list can be accessed via the Federal Reserve's Internet home page (<http://www.federalreserve.gov>) and can be accessed via a 24 hour fax service. Of course, the list will also be mailed out to members of the public upon request.

### **Extensions of Public Comment Period**

The Federal Reserve System has the discretionary authority to extend the public comment period. As stated above, banks and community organizations can make a joint request to extend the public comment period. The Federal Reserve System will grant a "reasonable" extension of the public comment period upon a joint request.

In addition to a joint request, the Federal Reserve will consider requests made by individual citizens and community groups for extensions in the comment period. If a member of the public can offer a reasonable argument as to why a comment cannot be issued before the end of the comment period, the Federal Reserve System will grant an extension of the comment period for up to 15 calendar days. Sometimes, the bank will provide new information in response to a request from Federal Reserve staff or in response to a public comment. Community groups can



point out that they should have an opportunity to respond to the new information so that the Federal Reserve can consider all the facts, including points and counterpoints made by all parties affected by the application.

The Federal Reserve also conducts public hearings concerning pending bank applications. Regulation Y refers individuals and community organizations who want to request hearings to a manual called Rules of Procedures (12 CFR 262.3).

Extensions in the public comment period are important because they automatically lengthen the expedited decision-making time period. Under the expedited process, the Federal Reserve will act 3 to 5 days after the end of the public comment period.

### **Consideration of Comments Submitted After Close of Public Comment Period**

The Federal Reserve is discontinuing its practice of routinely considering comments submitted after the close of the public comment period. Under the new Regulation Y, the Federal Reserve reserves the right to consider late comments, but expects to do so “only in extraordinary circumstances.” The Federal Reserve claims that its improved procedures for notifying the public about pending applications will make it easier for community groups to comment in a timely manner.

### **Community Group Comment Triggers Longer Decision-Making Time-Period**

As stated above, the fast-track decision-making time period can be waived if a community organization or a citizen writes a comment opposing the bank application. The comment has to be “substantive,” meaning that it addresses a statutory factor established by the Bank Holding Company Act such as anti-trust or the convenience and needs of the community. According to the Federal Reserve, a comment will not be considered substantive if “...involves individual complaints, or raises frivolous, previously-considered or unsubstantiated claims or irrelevant issues.”

The Federal Reserve Board issued a letter of supervisory guidance (SR 97-10 on April 24, 1997) that explains in detail the definition of a substantive comment. The letter emphasizes that a substantive comment involves CRA performance issues that were not previously considered by the Federal Reserve System within the last year. However, a substantive comment can involve a previously considered CRA issue if it presents new data or analysis concerning the issue. The Federal Reserve System will also deem allegations of individual cases of discriminatory treatment of loan applications as substantive comments if the allegations point to a pattern or practice of fair lending violations.

Unresolved disputes in the areas of employment discrimination, securities law or unfair trade practices would not qualify a comment as substantive. The Federal Reserve System deems these issues beyond its purview since they do not involve statutory factors in the Bank Holding Company Act. The Federal Reserve would refer these disputes to an appropriate federal or state agency. However, if a court or a state agency holds that a bank has violated one of these laws, then the bank application will be removed from expedited processing.

The substantive comment mechanism means that a bank with a satisfactory and above CRA rating is not guaranteed access to the fast-track decision-making process. If the Federal Reserve System deems a public comment substantive, the Federal Reserve will adopt the longer 60 to 90 day time period regardless of the bank's most recent CRA rating. The regional Federal Reserve Bank will also refer the application to the Federal Reserve Board in Washington, DC for further processing.

If a Federal Reserve Bank denies that a comment is substantive and decides to process an application on the fast track, the person who submitted the comment has a right the request that the Federal Reserve Board in Washington, D.C. review the regional Reserve Bank's decision.

### **Convenience and Needs Must Be Discussed in the Bank Application**

The Federal Reserve Board requires bank holding companies to submit a convenience and needs section of their application. The convenience and needs section discusses credit needs of communities and how the bank intends to serve those needs. A bank will have to include this section regardless of whether its application is being considered under the expedited time period or under the longer 30 to 90 days decision-making time period.

### **Conditional Approval**

The Federal Reserve Board has the discretion to impose any conditions on its approval of a bank application that require the bank holding company to address CRA, safety and soundness, and anti-trust issues. The Board can impose conditions regardless of whether the application is being considered under the expedited or longer decision-making time period.

## **THE OFFICE OF THE COMPTROLLER OF THE CURRENCY'S BANK APPLICATION PROCESS**

Like the Federal Reserve Board, the Office of the Comptroller of the Currency (OCC) reformed its bank application procedures in the late 1990's. And like the Federal Reserve Board, the OCC streamlined its application procedures for banks that performed well on

various criteria including CRA performance and safety and soundness indices. The OCC also heard the concerns of community organizations that pointed out that an expedited decision-making process could overlook significant CRA issues and changes in a bank's community reinvestment performance. Accordingly, the OCC adopted provisions in their new regulation that would remove a bank's application from the fast track when either community organizations or the OCC itself identified a CRA issue that required careful deliberation.

The OCC's regulation covering the bank application process is commonly called Part 5. It covers nationally chartered banks and became effective on December 31, 1996. The citation for the OCC's Part 5 or *Rules, Policies, and Procedures for Corporate Activities* is 12 CFR (Code of Federal Regulations) Part 5.

In its revised Part 5 regulation, the OCC has committed itself to making a decision in 45 days (or 15 days after a 30 day public comment period) for banks that pass certain criteria (days are specified as calendar days in the regulation). These criteria included a "Satisfactory" and above CRA rating, being well capitalized, and operating in a safe and sound manner as indicated by the most recent CAMEL rating.

The OCC did not promise an expedited decision-making process to all banks that passed the qualifying criteria. Part 5 authorizes the OCC to investigate any CRA issue if a community group or a citizen informs the OCC that a bank's CRA performance is worrisome in any particular metropolitan area or a rural portion of a state. In these cases, the OCC will send in a "rapid response" team to conduct a mini-CRA exam during a ten day period beyond the 45 day time period. If at the end of ten days, the OCC determines there are still unresolved issues, the final Part 5 rule allows the agency to remove the application from the expedited time period altogether so that it can take more time to gather and analyze all pertinent information. Alternatively, the OCC can condition its approval of an application contingent upon the bank making measurable progress in its CRA performance.

The OCC also commits itself to conducting investigations of lender CRA performance on its own initiative instead of only responding to the concerns of community organizations. In its *Corporate Manual*, or guidebook on the implementation of Part 5, the OCC states it will identify applications involving suspect CRA performance thorough a series of activities including rapid response mini-CRA exams and holding public hearings or meetings to gather more information. Regarding the bank's past performance, the OCC states that if a bank's HMDA (Home Mortgage Disclosure Act) data shows a significant change in its lending activity since its last CRA evaluation, the OCC may remove the application from the expedited process in order to obtain more information about decreases in CRA-related lending.

The OCC will not limit itself to evaluating the past performance of a bank. In a precedent-setting manner, the OCC clearly commits itself to assessing the future performance of a bank. The OCC will consider the impact of branch closings in low- and

moderate-income areas on the future performance of a bank in meeting its CRA performance. The new Part 5 rule will require that the bank list in its application proposed branch closings. Also, the *Corporate Manual* states that the OCC intends to remove from the expedited process those merger applications that do not specify that a lender intends to “honor” the CRA commitments of the bank it is acquiring. In other words, the OCC is becoming the first regulator to say it will strive to protect the CRA agreements entered into between community organizations and banks. (A CRA agreement usually outlines a multi-year plan of lending, investments, and services in low- and moderate-income communities. The NCRRC publication, *CRA Commitments*, section discusses CRA pledges in detail.)

Below are additional aspects of the OCC’s procedures for considering bank applications:

### **Notifying the Public**

As under the Federal Reserve’s Regulation Y, the OCC’s Part 5 requires a nationally chartered bank to publish a notice in a newspaper(s) of their application and the closing date of the public comment period. The OCC will publish notices of corporate applications it receives each week in its publication, *Weekly Bulletin*, and on its Web site, <http://www.occ.treas.gov/>.

### **Extensions of the Public Comment Period and Public Hearings and Meetings**

According to the *Corporate Manual*, the OCC will grant extensions of the comment period if 1) a bank fails to file all required information in a timely manner to allow for public review, 2) a citizen can make a convincing argument that additional time is necessary to develop comments, 3) an applying bank submits a significant amendment to its filing after the close of the comment period, 4) the OCC decides in response to a request under the Freedom of Information Act to make public a portion of an application for which a bank had requested confidentiality.

As with Regulation Y, extensions of the comment period will lengthen the entire process under the streamlined procedure since the OCC will rule on an application 15 days after the expiration of the public comment period. In addition, the OCC will remove an application from the expedited 45 day decision-making time period if the agency determines that hearings, public meetings, or private meetings are necessary and that these forums will consume more time than is available in the expedited process. A citizen or a community group can request that the OCC conduct a hearing or a meeting. Sometimes, the OCC will conduct one of these forums on its own initiative.

## **Consideration of Late Comments**

In contrast to the Federal Reserve Board, the OCC indicates that it will consider comments submitted after the close of the public comment period. The *Corporate Manual* states that the agency "...will consider comments received after the close of the comment period if doing so would not inappropriately delay action on a filing." The Federal Reserve Board, on the other hand, states that it will consider late comments "only in extraordinary circumstances."

## **Meeting Convenience and Needs**

Part 5 requires a merger application or an application to establish a bank to explain how the bank will meet the convenience and needs of the communities served. In the case of mergers, the OCC will require the acquiring bank to list planned branch closings and other reductions of services following the merger. The bank is advised to indicate in its application how it will "...provide expanded or less costly services to the community" after the merger.

## **Activities Not Requiring an Application**

Under Part 5, a lending institution is not required to submit an application to the OCC if it wishes to establish an operating subsidiary that engages in activities permissible for the parent company. This is also the case if the parent company is acquiring a mortgage company or any other company that conducts permissible activities, and then establishes the acquired institution as an operating subsidiary. This is a considerable loophole. The OCC's *Corporate Manual*, which interprets bank regulations, states that the OCC will require applications and public comment periods in situations raising substantial issues including CRA and fair lending concerns. Community groups must raise these issues and request public comment periods when substantial CRA and fair lending issues arise.

Community organizations need to be watchful of this aspect of the Part 5 regulation. The OCC did not require an application when KeyCorp acquired the subprime lender Champion mortgage company, and then established Champion as an operating subsidiary. But the OCC did require First Union to submit an application and go through a public comment period when the bank was acquiring the Money Store. In response to community groups' comments, the OCC issued a conditional approval that required First Union to impose fair lending safeguards on itself and the Money Store. Subsequently, First Union closed the Money Store in the spring of 2000.

## **THE OFFICE OF THRIFT SUPERVISION'S APPLICATION PROCESS**

The Office of Thrift Supervision (OTS) is the federal regulator for the nation's savings and loan associations. Accordingly, the OTS receives applications from savings and loans seeking to acquire or merge with other thrifts.

The Office of Thrift Supervision offers an expedited 30 day decision-making time period for thrifts that pass specified criteria. Thrifts qualify for the fast track if 1) their CRA rating is satisfactory or better, 2) they are in compliance with the OTS' non-discrimination regulations, 3) their market presence or deposits after the merger or acquisition do not exceed levels deemed to be anti-competitive as specified in 12 CFR Part 563.22 and 4) the combined assets of the proposed thrift combination do not exceed \$2 billion or more.

Applications that do not qualify for the expedited process are considered by a decision-making process that can be up to 60 calendar days (see 12 CFR 516.2). Following is a description of major provisions of the OTS' application procedures:

### **Public Notice of Application**

The lending institution must publish notices in newspapers accessible to communities affected by the application up to seven days before filing the application with the OTS. The OTS may require the lender to publish the notice in languages other than English in areas where a significant portion of the population does not speak English. The lending institution must publish weekly notices. Although the first public notice may appear in newspapers before the application is filed, the public comment period is 30 calendar days after the initial public notice.

### **Public Comment Period**

After a public notice is issued, citizens and community organizations have a 30 day time-period with which to issue comments on the pending merger or acquisition under the current regulations. The comment period starts on the date of the first public notice in a newspaper. The thrift can provide the OTS with its application up to seven days after it issues the first newspaper notice. In these cases, the public has access to the public portions of the application for 23 days of the 30 day public comment period.

### **Meetings**

The OTS, on its own initiative, can hold a meeting when the agency believes that written submissions alone are insufficient to consider the issues raised in the merger proceeding. The OTS can also grant a request made by a community

group for a meeting. If the OTS holds a meeting, it can invite stakeholders besides the institution and community organizations that have commented on the application. The OTS will inform interested parties of the logistics, format, and issues to be considered at the meeting.

The time period for processing an application and deciding upon it may be suspended when the OTS conducts a meeting. If the OTS suspends the processing time, the time period resumes when the OTS determines that it has gathered all relevant facts necessary for considering the application.

## **FDIC'S APPLICATION PROCESS**

The Federal Deposit Insurance Corporation (FDIC) is the fourth regulator that has an application process for mergers and relocations of branches and main offices. The FDIC is the primary CRA regulator for most of the nation's smaller banks with assets under \$250 million. In addition, the FDIC is the federal agency that insures deposits of individuals of up to \$100,000 at all depository institutions. The FDIC, therefore, is the agency that renders decisions on applications for federal deposit insurance. The FDIC's application procedure is outlined in the Code of Federal Regulations (CFR); the citation is 12 CFR part 303.

Like its regulatory counterparts, the FDIC has expedited or "streamlined" application procedures for so-called "eligible" banks and holding companies that meet specified criteria including satisfactory and above CRA ratings. In most cases, the FDIC will act upon merger applications in 45 days. However, public comment periods and decision-making time periods can be extended to further examine lender community reinvestment records. These time periods are likely to be extended if community groups can demonstrate that particular weaknesses in community reinvestment records require further scrutiny.

In the summer of 1998, the FDIC revised its application procedures (the new procedures become effective on October 1 of this year). It was the last of the four financial institution regulatory agencies to do so as required by the Riegle Community Development and Regulatory Improvement Act of 1994. The FDIC was in a position to emulate aspects of the other agencies' reforms. For example, at NCRC's suggestion, the FDIC stated that it will conduct a mini-CRA exam, like the OCC, at a metropolitan level or in a non-metropolitan portion of a state if a significant CRA issue warrants additional investigation during the merger application process. In addition, the FDIC will follow the OTS' lead in requiring banks to post notices of merger and branch applications in languages other than English where a significant amount of the population speak English as a second language.

Like the OCC, the FDIC offers a variety of forums including informal meetings and public hearings for facilitating discussions among the parties affected by a pending application. Below are additional aspects of the FDIC's application procedure:

### **Definition of an Eligible Financial Institution**

An eligible financial institution can have its applications considered in a streamlined time period. A holding company must be well managed and well capitalized, and the great majority of its banks must have satisfactory and above CRA ratings.

However, if an existing holding company wishes to establish a new bank and applies for deposit insurance for the new bank, up to 25 percent of the assets of the holding company can comprise institutions with below satisfactory CRA ratings and have failing passing safety and soundness ratings. Moreover, under merger applications, bank subsidiaries of the acquired holding company representing 10 percent of the post-merger institution can have below satisfactory CRA ratings and have failing safety and soundness ratings.

In response to NCRC's concerns about these exceptions, the FDIC stated that applications involving institutions with these subsidiaries can be pulled off the fast track if warranted. Community groups should be vigilant and should particularly request removing those applications from the fast track that involve bank subsidiaries without passing grades.

### **Removal from the Expedited Time Frames**

The FDIC states that it will remove applications from the expedited decision-making time period if:

1. A community group submits an adverse comment or CRA protest that merits additional consideration. When submitting a CRA protest, community groups should consider the FDIC's "Statement of Policy," which was included in the *Federal Register* in the fall of 1998 along with the revised application procedures. In its statement of policy, the FDIC states that it will consider how a merger would benefit the public through "higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, or other means." If a community group does not feel that a proposed merger will have these benefits, it should document how the merger will impact one or more of the items listed in the FDIC's Statement of Policy.
2. A significant CRA concern exists at the institution-wide level or any geographical area served by the institution. In other words, the institution as a whole may have a satisfactory or better CRA rating, but its rating or CRA performance is less than satisfactory at a metropolitan level or a non-metropolitan area of a state.



3. The FDIC determines that the application presents "a significant supervisory concern, or raises a legal or policy issue, or "other good cause exists for removal" from the fast track time period.

**The FDIC will extend the public comment period if:**

1. The bank fails to file all required information in its application in a timely manner to allow the public sufficient time to review the application. Also, the comment period will be extended when the FDIC turns down a bank's request to make the application confidential, but this delays the availability of the application to the general public.
2. A community group convinces the FDIC that more time is needed to develop information or complete data analyses that has a significant bearing on how the FDIC should act on the application.
3. The FDIC determines that other good cause exists to extend the comment period.

**Mergers**

A bank must publish its first public notice for a merger application no earlier than five days before mailing its application to the FDIC. Over a twenty five-day time period, the bank must publish at least three notices in local newspapers at roughly equal time intervals. The notices must include the names of offices or branches that the bank expects will be closed. The public comment period ends 30 days after the publication of the first notice.

NCRC asked the FDIC to require that the bank wait until the FDIC receives the application before it publishes its first notice. Posting notice before the FDIC receives the application shortens the time during which the public can review the non-confidential portions of the application during the comment period. In response to these concerns, the FDIC stated that it will publish bank applications on its Internet cite ([www.fdic.gov](http://www.fdic.gov)) in addition to mailing notices to community groups on FDIC mailing lists. The FDIC also commits to mailing the non-confidential portions of applications to the public within three days of a request.

The FDIC will issue decisions on merger applications 45 days after the issuance of the first public notice unless the comment period and decision-making period has been extended due to a CRA protest or other good cause.

## **Branches**

If a bank is relocating its main office, it must provide two newspaper notices in local newspapers the same day for two consecutive weeks. The public comment period ends 15 days after the second newspaper notice. The bank must also post a notice in its lobby for the 15 days after the second newspaper notice.

If a bank is establishing or relocating a branch, it must publish a notice once in local newspapers. The notice starts a 15 day comment period. The bank must then also post a notice of the proposed branch relocation in the lobby of the affected branch during the entire 15 day time period.

The branch application is automatically approved unless the FDIC informs the bank otherwise no later than 21 days after the submission of a complete application or 5 days after the end of the public comment period.

## **Deposit Insurance**

If an eligible holding company wishes to establish a new subsidiary and apply for deposit insurance for that subsidiary, it must publish a notice in local newspapers no sooner than five days before it submits its application to the FDIC. The public has 30 days from the publication of the notice to comment unless the comment period is extended for the reasons stated above. The FDIC will act within 60 days of the submission of a complete application.

## **Public Hearing Procedures**

Anyone may request a public hearing before the end of the comment period and must state why written comments alone are insufficient to present relevant issues to the FDIC. The FDIC has the authority to grant a request for a public hearing, deny the request, or schedule another type of meeting between the applicant (bank) and the parties who have submitted comments. A public hearing is a formal meeting during which the bank and the persons who requested a hearing make oral statements regarding the application. The persons requesting the hearing have the right to designate additional parties as witnesses whom can then also testify. The FDIC will resume processing the application after the hearing record closes.

## **Conditional Approvals**

Like the other federal financial institution regulatory agencies, the FDIC can issue a conditional approval of a merger application. A requirement to improve CRA performance in a particular geographic area or for the institution as a whole can be included in a conditional approval. The FDIC, however, enacted a peculiar aspect to its conditional approvals that is different from the other regulatory agencies. The bank holding company submitting a deposit insurance, branch, or merger application agrees in

writing to any “conditions imposed regarding the CRA.” NCRC opposed this provision, believing that it may lead to a watering down of CRA conditions if banks and the FDIC negotiate over the CRA-conditions before the bank agrees in writing. Moreover, if the FDIC is contemplating a conditional approval, it must be because the bank’s CRA performance is problematic. It does not seem appropriate that the bank should wield any sort of veto ability over specific conditions in an approval order. This should be watched closely by community groups.

## **INTERAGENCY BRANCH CLOSURE PROCEDURES**

The discussion above has focused primarily on the merger application process and procedures for public input into the establishment of a new financial institution or relocation of existing branches. The four federal financial institutions’ regulators have also established procedures that banks must follow when they close branches, which are contained in 12 United States Code Section 1831r-1. Regulatory agencies have the authority to deny merger and many other types of applications. In contrast, they cannot stop branch closures. They can, however, mitigate the adverse affects on low- and moderate-income neighborhoods of branch closures by interstate banks.

Under 12 USC Section 1831r-1, a federally insured depository institution (bank or thrift) must submit notices to the regulatory agencies and to the general public in advance of branch closures. A depository institution must submit a notice 90 days before the planned closure to the appropriate Federal agency. Likewise, it must send a 90 day notice in one of its regular account statements that are mailed out to customers. The lending institution must also post a notice 30 days in advance of the closing on a noticeable part of the branch office.

Interstate banks with branch offices in more than one state must follow detailed procedures and provide opportunities for the public to comment on the planned branch closings. When an interstate bank intends to close a branch in a low- and moderate-income area, it must include, in its public notices, the mailing address of its federal regulator. The bank must also indicate that comments on the closing can be mailed to the regulatory agency (Unfortunately, these public notice procedures do not apply to banks with branches in only one state).

The federal agencies cannot prevent the closing of the branches unless the lending institution did not follow the prescribed public notice requirements. In the case of an interstate bank, the federal agencies, however, do have the authority to act upon comments received by the public that document convincingly the adverse impacts of the branch closure. The agencies will convene meetings among community leaders and depository institutions to explore alternatives to the branch closures. In some cases, the bank will agree to keep the branch open and work with community organizations to increase deposits through aggressive marketing campaigns. In other cases, alternatives to closure can include the establishment of a new branch by another depository institution,

or the establishment of a new mainstream lending institution or a community development credit union taking over the branch in question.

The branch closing regulation has a few caveats. It does not apply to the closing of an automatic teller machine. In addition, it does not apply if a branch is consolidated into another branch that serves the same neighborhood or if a branch is relocated to a different part of the neighborhood. The definition of neighborhood is not specified (beyond vague guidelines) in the regulation in terms of geographical distance nor demographic characteristics. The regulation mentions that moving a branch less than 1,000 feet or a block or two constitutes a relocation, not a branch closing. In less densely populated areas, branch moves can occur over longer distances and not constitute a branch closing. Community groups should recognize that the definition of neighborhood is open to interpretation when they are preparing comments to a federal agency on a branch closing.

Finally, all insured depository institutions are required to adopt policies for branch closings. Such policies must include factors for determining which branches to close and which customers to notify, as well as the procedures for providing the required notices.

## **A Beginner's Guide on How to Evaluate CRA Performance of Banks**

This section of the *CRA Manual* explains how neighborhood advocates and practitioners can grade banks for themselves on major criteria of the large bank exam. Under the CRA regulations, large banks with assets above \$250 million undergo a service, lending, and investment test. Concepts from this analysis can be applied to other types of CRA exams including small and mid-size bank CRA exams.

The first part of this section looks at how a financial counseling agency might consider a bank's performance on the service test. The next part of this section considers how a community development corporation might consider a bank's performance on the lending and investment tests.

Even advocates and practitioners who are beginners with CRA can develop their own grades for banks and/or make their views known during CRA exams and bank merger applications. In addition, advocates and practitioners can send letters to a bank's regulatory agency for the bank's CRA file at any time. These letters would then be considered on the bank's next CRA exam.

When commenting on CRA performance of banks, practitioners and advocates need to be aware that any contracts or agreements that they subsequently negotiate with banks are subject to disclosure to the federal banking agencies. The disclosure requirements themselves are straightforward and explained in this manual. NCRC takes issue with the First Amendment aspect of so-called CRA sunshine – an issue that is also discussed.

### **How to Evaluate a Bank's Performance in Providing Financial Literacy and other Bank Services**

#### **The Service Test of the CRA Exam**

The service test of the large bank CRA exam evaluates a bank's performance in providing branches, financial counseling, and other community development services. If you are a financial counseling agency, how can you tell if a bank is providing an adequate amount of services? Large banks receive one of the following five grades for their service exam: Outstanding, High Satisfactory, Low Satisfactory, Needs to Improve, and Substantial Noncompliance. After reading this guide, you will be able to judge for yourself the grade a bank deserves on the main components of the service test.

Here is a brief guide for assessing a bank's level of services and support for financial literacy counseling.

Let us consider two fictitious banks: First Bank and Main Street Bank. Both of these banks have greater than \$1 billion in assets and operate in the Olympia metropolitan area.

## **Branch Distribution**

First Bank and Main Street Bank both have 10 branches. The most recent CRA exams of the banks indicate that First Bank has five branches in low- and moderate-income census tracts (or neighborhoods), but that Main Street Bank only has two branches in low- and moderate-income census tracts. Half of First Bank's branches are in low- and moderate-income census tracts but only 20 percent of Main Street Bank's are in low- and moderate-income census tracts. Main Street Bank does not perform as well on the measure of branch distribution by income level of neighborhood.

In general, you can obtain an updated list of branches that is more recent than those in the CRA exam by either asking the bank or going to <http://www.fdic.gov>.

## **Deposit and Savings Accounts**

Surprisingly, the current CRA exam service test does not have a criterion that explicitly measures the number of deposit and savings accounts offered to low- and moderate-income consumers and consumers residing in low- and moderate-income neighborhoods. The service test, however, has a criterion that assesses the availability of services by income level of tract. For example, are branch hours of operation similar in low- and moderate-income tracts and middle- and upper-income tracts. Also, some exams will discuss the availability of certain products such as low-cost checking or bank-at-work checking accounts by income level of borrowers or census tracts. Even though the service test does not have an explicit criterion for deposit and savings accounts, this information can and should be factored into the service test.

Going back to our example, let us suppose that First Bank has 3,000 checking accounts and 500 savings accounts for low- and moderate-income consumers. Main Street Bank, in contrast, has 1,000 checking accounts and only 50 savings accounts for low- and moderate-income consumers in the Olympia metropolitan area. Overall, both banks have 10,000 customers with checking accounts and 1,000 customers with savings accounts. In terms of total numbers of accounts and the percent of accounts for low- and moderate-income customers, First Bank performs considerably better than Main Street Bank.

As mentioned above, some CRA exams will have descriptions of the number and percent of accounts for low- and moderate-income customers. In other cases, try asking the bank's CRA officer for this information. A bank's CRA officer is a staff person who is responsible for preparing the bank for compliance with CRA and answering public inquiries about the bank's CRA performance.

## **Community Development Services**

A primary form of community development services is financial counseling that benefits low- and moderate-income consumers. In our example, let us suppose that First Bank provides \$200,000 in grants for nonprofit organizations offering financial literacy,

homeownership counseling, and small business technical assistance counseling. First Bank also provides direct counseling to 200 students annually. Main Street Bank only provides \$20,000 in grants for nonprofits engaged in financial counseling. Main Street Bank does not provide any direct counseling. First Bank is involved in a much higher level of counseling activities than Main Street Bank.

The most recent CRA exam for a bank will discuss the level of community development services. For more up-to-date information, you should contact the bank's CRA officer.

## **Conclusion**

In this example, First Bank would receive a higher score on its service test than Main Street Bank. The specific grades for the two banks would depend on the level of services offered by other banks in the area. When grading banks, it is best to compare banks with similar asset levels and in similar lines of business. CRA examiners make these "peer" comparisons.

While First Bank performs well, you may not want to award First Bank with an outstanding rating until you looked at some other major banks in the area. Main Street Bank, on the other hand, would likely score in the low satisfactory or needs-to-improve range, again depending on how other banks performed in the geographical area. One reason First Bank performed better than Main Street Bank in the number and percent of accounts for low- and moderate-income consumers is that First Bank has a more developed infrastructure for providing accounts to traditionally underserved communities; that is, First Bank has more branches in low- and moderate-income communities and devotes considerably more resources to financial counseling.

The service test contains other criteria including the record of opening and closing branches and the number of alternative delivery systems (such as ATMs, internet accounts, and telephone banking). The example above focused on the essential portions of the service test for financial counseling practitioners.

## ***How Community Development Corporations and Neighborhood Groups Would Evaluate a Bank's Performance***

### **The Lending and Investment Tests**

In this example, we combine some of the criteria of the lending and investment tests of the large bank exam. We focus here on the portions of the tests that are likely to be of most interest to community development corporations (CDCs) and neighborhood groups. CRA examiners use the same ratings for the lending and investment tests as they do for the service test. These ratings are Outstanding, High Satisfactory, Low Satisfactory, Needs-to-Improve and Substantial Noncompliance.

## **Distribution of Loans by Borrower and Neighborhood**

Over the last two years, First Bank issued 30 percent of its loans to low- and moderate-income borrowers in the Olympia metropolitan area while Main Street Bank made 15 percent of its home loans to low- and moderate-income borrowers. Both First Bank and Main Street Bank issue similar numbers of loans on an annual basis – about 1,000 loans in the metropolitan area. These banks are not the largest banks in the Olympia area, but they are in the top 20 banks in terms of the number of loans. All lenders, as a group, made 22 percent of their home loans to low- and moderate-income borrowers.

First Bank made 20 percent of its loans to low- and moderate-income census tracts while Main Street Bank issued 10 percent of its loans to low- and moderate-income neighborhoods. All banks, as a group, made 15 percent of their loans in these neighborhoods.

First Bank performed considerably better than Main Street Bank, and also issued a significantly higher percent of loans to low- and moderate-income borrowers and neighborhoods than all lenders, as a group. Main Street Bank was significantly below the all lender benchmark for loans to low- and moderate-income borrowers and to low- and moderate-income neighborhoods.

CRA exams contain detailed comparisons using a variety of measures for home purchase lending, home improvement lending, refinance lending and small business lending. Above, we considered all home lending together. You can find information on lending by income level of borrower and neighborhood from the most recent CRA exam of the bank. Home loan data is also available via the internet at a federal agency regulatory agency website of <http://www.ffiec.gov>. NCRC provides free data analysis for its member organizations and also provides technical assistance on data analysis and analyzing CRA exams to nonprofit organizations.

## **Community Development Loans and Investments**

Community development loans and investments provide affordable housing, economic development, and social service facilities to low- and moderate-income communities. Community development loans are considered on the lending test and community development investments (also called qualified investments) are considered on the investment test.

Over the last two years, First Bank made a \$1 million construction loan to a housing nonprofit organization and invested \$500,000 in low-income housing tax credits. Main Street Bank made a \$20,000 construction loan for a shopping center development. First Bank made a considerably higher level of community development loans and investments during the last two years. CRA exams also consider the innovative quality of these loans and investments and the degree of difficulty of these loans and investments. For the sake of this example, let us say that First Bank cobbled together, on its own initiative, four



other financial resources for the housing construction project. Main Street, on the other hand, was the last bank to join a number of lenders to form a loan pool for the shopping center. First Bank would score better on the innovative and degree of difficulty criteria of the lending and investment tests.

### **Conclusion**

On these criteria of the lending and investment tests, First Bank scores much better than Main Street Bank. The final ratings for these banks would depend on their performance on the other criteria of the two tests and on the performance of other banks in the area with similar asset levels.

On these criteria, it would be a good guess that First Bank would merit an Outstanding rating while Main Street's rating would be in the range of Low Satisfactory or below.

## **Case Study of CRA Exam and Merger Application Comment: REDEEM and NCRC Work Together to Deter Wesbanco's Planned Mergers due to CRA Failed Rating**

A few years ago, REDEEM, a NCRC member headed by Romona Taylor Williams, became concerned about the poor reinvestment performance of WesBanco, a statewide lender in West Virginia. REDEEM asked NCRC for technical assistance.

REDEEM and NCRC co-authored a comment letter on WesBanco's CRA exam and on a merger application. WesBanco subsequently failed its CRA exam. It also called off one of its two planned mergers because it knew that a failed rating would dim the prospects of regulatory approval of the merger application.

Wesbanco appealed its failed CRA rating to the Federal Reserve Bank of Cleveland. NCRC and REDEEM wrote a letter protesting the appeal. The appeal panel considering the case used its discretion in choosing not to consider NCRC's and REDEEM's protest of the appeal. Subsequently, WesBanco succeeded in its appeal and passed its CRA exam. Its merger with American Bancorp also proceeded.

Despite WesBanco's successful appeal of its CRA rating and the Federal Reserve's incorrect handling of the appeal, NCRC and REDEEM believe that WesBanco will be making more loans to minority and low- and moderate-income communities. The bank now realizes that poor reinvestment performance entails costs -- its merger with American Bancorp was held up for almost a year as it was appealing a failed CRA rating.

Here are the changes WesBanco has undertaken to improve its performance:

- The bank hired a new CRA officer.
- The bank introduced a new home mortgage product geared for low- and moderate-income borrowers. The product has a low-downpayment, minimal closing costs, and flexible underwriting standards.
- The bank also introduced a new home improvement product for low- and moderate-income borrowers wishing to winterize their homes. It also rolled out a new motor vehicle loan product for low- and moderate-income borrowers.

This section of the *CRA Manual* is a case study of NCRC and REDEEM's successful CRA challenge. It contains the original CRA comment letter. Advocates should also be aware of the process for banks appealing failed CRA ratings. Again, it must be reiterated that although WesBanco prevailed on its appeal, success is not only measured by a lower or failed CRA rating but, ultimately, by whether the bank will make more loans to low- and moderate-income communities.



May 2, 2001

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Dear Mr. Banks:

The National Community Reinvestment Coalition (NCRC) and Realizing Economic Development through Education, Enterprise, and Morals (REDEEM) respectfully submit comments regarding the WesBanco, Wheeling CRA exam, and WesBanco's expected merger application with American Bancorp. We believe that WesBanco, Wheeling has a poor community reinvestment and fair lending record— as does American Bancorp.

The Federal Reserve Bank of Cleveland and the Federal Reserve Board must either deny the merger application or, at the very least, condition its approval on specific improvements in WesBanco's community reinvestment and fair lending record. The Federal Reserve Bank of Cleveland should also fail WesBanco on its current CRA exam, since the most current data suggests that the bank has not improved its lackluster CRA performance.

WesBanco, Wheeling barely passed its last CRA exam, dated June 1999. It received a "Low Satisfactory" on its lending test, a "Needs-to-Improve" on its investment test, and a "High Satisfactory" on its service test. The most current HMDA and CRA small business data reveals little, if any, improvement. Moreover, the CRA exam, and the accompanying fair lending review, found "substantive violations of the Equal Credit Opportunity Act." Although the examiner noted "immediate and proactive steps taken by the bank to address these issues," the HMDA data shows little indication that the bank has made a significant improvement in lending to minorities.

## Home Loan Analysis

### Lending to Census Tracts of Different Income Levels

The CRA exam of 1999 noted that WesBanco, Wheeling and its affiliated mortgage company, WesBanco Mortgage Company, made a low percentage of home loans to residents of low- and moderate-income census tracts. The 1999 HMDA data reveals the same deficiency.

*All Single and Multi-Family Lending Statewide:* Across the entire state of West Virginia, WesBanco Wheeling and its mortgage company made only 4.6 percent of its home loans to residents of low- and moderate-income tracts, while all lenders, as a group, made 20.6 percent of their loans to these tracts in 1999. All of WesBanco's subsidiaries (WesBanco Wheeling, WesBanco Mortgage Company, WesBanco Charleston, and WesBanco Parkersburg), likewise, only made 5.9 percent percent of their loans in these tracts. This does not come close to meeting the credit needs of homeowners in low- and moderate-income tracts since a much higher percentage, 17.7 percent, of owner-occupied housing units are in low- and moderate-income tracts.

Wheeling National, an affiliate of American Bancorp, only made 10.8 percent of its single and multi-family loans to residents of low- and moderate-income census tracts. Like Wesbanco, Wheeling National trails its peers by a significant amount in the percentage of loans made to low- and moderate-income tracts. While all lenders, as a group, offer a percentage of loans that is commensurate with the percentage of owner-occupied housing units in these tracts, both Wesbanco and Wheeling National fall considerably short of this demographic benchmark.

*Home Mortgage Lending Statewide:* The data on home mortgage lending reveals the same trends. All lenders, as a group, made 22.1 percent of their home purchase loans to owner-occupants in low- and moderate income tracts in 1999. Wesbanco Wheeling, all Wesbanco affiliates, and Wheeling National made 5.5 percent, 5.5 percent, and 5.4 percent of their home mortgage loans, respectively in these tracts.

The poor record of lending to low- and moderate-income census tracts is magnified when considering that single family lending is a major line of business for WesBanco. All Wesbanco affiliates made 1,389 single-family loans in 1999, while all lenders, as a group, made 42,837 single-family loans. WesBanco has 3.3 percent of the total home loan market. It is also headquartered in West Virginia. The Federal Reserve Bank of Cleveland should expect more in the community reinvestment record of a locally-based lender that has major market share.

## **Lending to Low- and Moderate-Income Borrowers**

*All Single and Multi-Family Loans Statewide:* As was the case of lending to low- and moderate-income census tracts, Wesbanco is considerably behind its peers in the percentage of loans offered to low- and moderate-income borrowers. In 1999, all lenders as a group, issued 30 percent of their single- and multi-family loans to low- and moderate-income borrowers in the state of West Virginia. Wesbanco Wheeling and its mortgage company made 17.3 percent of their 873 loans to low- and moderate-income borrowers. All WesBanco affiliates did not perform much better; they made 18.8 percent of their 1,389 loans to low- and moderate-income borrowers in 1999. The takeover target, Wheeling National, performed better, clocking in at 26.6 percent of its loans to low- and moderate-income borrowers. Wheeling's percentage of loans to these borrowers is still below the industry aggregate benchmark of 30 percent.

Forty-two percent of the households are low- and moderate-income in West Virginia. WesBanco and its takeover target are significantly behind in serving these households in proportion to their share of the state's households.

Product differentiation cannot be used as an excuse to explain WesBanco's poor performance. WesBanco Wheeling and all WesBanco affiliates have a similar distribution of loan types as all lenders. Like all lenders, about 35 percent of WesBanco's loans are home purchase loans, about half are refinance loans, 11 percent are home improvement loans, and a miniscule amount are multifamily loans.

*Home Mortgage Lending Statewide:* All lenders, as a group, issued 34 percent of their home mortgage loans to low- and moderate-income borrowers in West Virginia in 1999. WesBanco Wheeling, all WesBanco affiliates, and Wheeling National made 20 percent, 20.9 percent, and 20 percent of their home mortgage loans, respectively, to this income group. The same pattern of WesBanco and its takeover target trailing its competitors repeats itself with respect to home mortgage lending.

*Home Lending in Charleston, West Virginia:* In REDEEM's hometown of Charleston, the poor community reinvestment performance of WesBanco is evident. All lenders, as a group, made 29.9 percent of their single-family and multi-family loans to low- and moderate-income borrowers in 1999. WesBanco Wheeling and its mortgage company, and all WesBanco affiliates made 18.9 percent and 22.4 percent of their loans, respectively, to these borrowers.

The same trends occur in home purchase lending. All lenders, WesBanco Wheeling, and all WesBanco affiliates issued 31.7 percent, 20.4 percent, and 20.8 percent, respectively, of their home purchase loans to low- and moderate-income borrowers in the Charleston metropolitan statistical area (MSA) in 1999.

## **Lending to Minority Borrowers**

*Single and Multi-Family Lending Statewide:* All Wesbanco affiliates originated 2.2 percent of single and multi-family home loans to minorities, as compared to 3.4 percent of all lenders, statewide. WesBanco Wheeling and its mortgage company made only 1.9 percent of their loans to minorities in 1999. Minorities account for 4 percent of the state's households. So once again, all lenders, as a group, come close to lending in proportion of the state's minority households, while WesBanco issued a considerably smaller proportion of loans to minorities than their share of the state's households.

The only positive note is that Wheeling National matches the industry peer benchmark of 3.4 percent of loans to minorities. The question arises of what will happen to Wheeling National's fair lending performance if it is acquired by a lender that ran afoul of the Equal Credit Opportunity Act?

*Home Mortgage Lending Statewide:* A similar discrepancy exists among Wesbanco and the industry with regard to home mortgage lending to minorities, statewide. All lenders, as a group, made 3.7 percent of their home mortgage loans to minorities while WesBanco Wheeling and all WesBanco affiliates made 2 percent and 2.6 percent of their loans, respectively, to this group of borrowers in 1999. Wheeling National, an affiliate of American Bancorp, only originated 1.8 percent of home purchase loans to minorities, statewide.

*Home Lending in Charleston:* All lenders in Charleston, as a group, originated 4.7 percent of their single- and multi-family loans to minorities. All Wesbanco affiliates originated 4.4 percent of their loans to minorities. Wesbanco Wheeling, however, made only 2.4 percent of its loans to minorities. In home purchase lending, all Wesbanco affiliates originated 4 percent of loans to minorities, lagging behind all lenders in Charleston by 1.2 percentage points.

## **Small Business Lending**

*Small Business Lending in Low- and Moderate-Income Tracts Statewide:* Consistent with home lending, WesBanco made a lower percentage of loans to small businesses in low- and moderate-income tracts than all lenders as a group. In 1999, all Wesbanco affiliates originated 10 percent of their small business loans in low- and moderate-income tracts and WesBanco Wheeling made 14 percent of their loans to these tracts. In contrast, all lenders, as a group, made 18 percent of their small business loans in low- and moderate-income tracts. About 20 percent of all small businesses are in low- and moderate-income tracts. Not only did WesBanco make a considerably smaller percentage of loans than its competitors in low- and moderate-income tracts, it also fell far short of lending in proportion to the percentage of small businesses that are in low- and moderate-income tracts.

Interestingly, the takeover target, Wheeling National Bank made 41 percent of its small business loans in low- and moderate-income tracts in West Virginia during 1999. It is troubling that the bank with the worse performance in small business lending will takeover a bank that is making a considerably higher percentage of small business loans in low- and moderate-income census tracts than all lenders, as a group.

### **Statewide Lending to Businesses with Revenues Less than \$1 Million Dollars**

Sixty-nine percent of all small businesses in West Virginia earn revenues less than \$1 million. In 1999, all lenders, statewide, originated 68 percent of their small business loans to businesses with revenues less than \$1 million. All Wesbanco affiliates originated 98 percent, Wesbanco Wheeling originated 99 percent of such loans, and Wheeling National 67 percent. On the criterion of lending to small businesses with revenues under \$1 million in revenue, Wesbanco performs relatively well.

The performance of lending to small businesses with revenues under \$1 million must be placed in context. Firstly, CRA-covered lenders are not required to report this data if they did not use the revenue size of the business in their loan decision. The aggregate benchmark therefore reflects incomplete data. Secondly, the data itself is crude. Small businesses approaching \$1 million in revenues are not as disadvantaged as small businesses with revenues of \$250,000 or less. It is likely that most of the small businesses with revenues under \$250,000 are in low- and moderate-income tracts. Given that Wesbanco trails its peers in the percentage of loans to small businesses in low- and moderate-income tracts, it is quite possible that WesBanco is also not reaching as many small businesses with revenues under a quarter million dollars as its peers.

### **Conclusion**

The Federal Reserve Bank of Cleveland cannot approve the merger and pass WesBanco on its exam. This bank barely passed its previous exam, earning a low satisfactory on its lending test and a needs-to-improve on its investment test. The examiner also uncovered a violation of the Equal Credit Opportunity Act. The most recent data available to the public indicates that the bank has not improved its community reinvestment and fair lending performance. If the Federal Reserve Bank of Cleveland does not enact any sanctions for non-performance, it will be sending a signal to WesBanco and other local banks that below minimal compliance with the CRA and fair lending laws is acceptable. As a result, fewer loans and investments will reach creditworthy borrowers in underserved communities in West Virginia. And banks will miss profitable business opportunities in these communities.

At the very least, the Federal Reserve must issue a conditional approval requiring the bank to develop an improvement plan for its community reinvestment and fair lending performance. This improvement plan must include quantitative measures (similar to the ones discussed above) indicating the number and percentages of loans it intends to make to minority and low- and moderate-income borrowers and communities. The plan must



be required as part of the merger application and submitted during the public comment period so that members of the public can react to it. The Federal Reserve Bank of Cleveland would review the plan, public comments on the plan, and then approve it and/or make changes to it.

After the merger, the Federal Reserve Bank of Cleveland then must require the bank to present loan data and discuss progress with the plan on a quarterly basis with community organizations, public agencies, and other stakeholders in West Virginia. This mechanism will enable the bank to develop partnerships with community groups and local public agencies that will help it identify credit needs, develop affordable loan products, and find marketing avenues for their products.

In sum, the Community Reinvestment Act requires depository institutions to meet the credit needs of all the communities from which they take deposits and in which they are chartered. We believe WesBanco is not meeting credit needs in the communities in which they do business. We believe that the Federal Reserve Bank of Cleveland cannot excuse this and must require the bank to improve upon its CRA performance.

If you have any questions, please contact Josh Silver on (202) 628-8866 and Romana Taylor Williams on (304) 382-0441.

Sincerely,

Josh Silver  
NCRC

Romona Taylor Williams  
REDEEM

cc. Connie Smith, Examiner

### **Methodological Appendix**

NCRC used CRA Wiz, software developed by PCI Services, Inc., to produce the HMDA and CRA small business data analysis and gather demographic data on households and small businesses. NCRC used the 1990 Census data for information on household by race.

NCRC considered the following lender groups for home lending:

WesBanco Wheeling refers to:  
WesBanco Wheeling  
WesBanco Mortgage Company





The Federal Reserve Bank of Cleveland considered this lender group on its 1999 CRA exam of WesBanco Wheeling.

All WesBanco affiliates refers to:

WesBanco Bank Charleston  
WesBanco Bank Parkersburg  
WesBanco Bank Wheeling  
WesBanco Mortgage Company

American Bancorp has only one affiliate making home loans, which is Wheeling National Bank.

NCRC considered the following lender groups for small business lending:

WesBanco Wheeling refers to WesBanco Wheeling only (no mortgage company involvement in small business lending)

All WesBanco affiliates refers to:

WesBanco Charleston  
WesBanco Fairmont  
WesBanco Parkersburg  
WesBanco Wheeling

American Bancorp has only one affiliate making small business loans, which is Wheeling National Bank.

## **CRA Sunshine Requirements for Banks and Community Organizations**

In late December of 2000, the Federal banking agencies released the final regulations implementing the so-called CRA Sunshine rule. Senator Phil Gramm (R-TX) was the author of the sunshine provision, Section 711, of the Gramm-Leach-Bliley Act of 1999. CRA sunshine requires the disclosure of CRA agreements, contracts, and written understandings among banks, community groups, and other non-governmental entities. CRA agreements and written understandings commit banks to make a specified number of loans to and investments in low- and moderate-income communities. The Community Reinvestment Act (CRA) has motivated, but does not require, banks to make these private sector agreements as a means for fulfilling their obligations under CRA to serve all communities, including low- and moderate-income ones, from which they take deposits and in which they are chartered.

The CRA Sunshine law is frivolous. The disclosure requirements do not lead to any regulatory enforcement. The federal agencies do not ensure that either banks or community groups are adhering to the terms of the agreements. Senator Gramm was no fan of CRA; this requirement is an attempt to dissuade banks and community groups to engage in CRA agreements or conduct business together. The best way to deal with CRA sunshine is to not worry too much about it and simply comply. While the CRA sunshine regulation is unnecessary, this section of the CRA manual will make complying with CRA sunshine a straightforward exercise. Some readers may want to skip the detail about what constitutes a “CRA communication” and go to the section regarding disclosure requirements. After reading the actual disclosure requirements, users of this manual should hopefully see that the disclosure requirements are not much beyond those that nonprofits follow when filing tax returns and issuing annual reports.

Community groups do not mind disclosing agreements they have with banks. In fact, many NCRC members announce and disclose these agreements at press conferences and post them on their Internet pages. The difficulty with sunshine is the broad reach of the regulation. Any CRA agreement involving grants more than \$10,000 and loans over \$50,000 to non-governmental entities is subject to disclosure. Furthermore, disclosure requirements are based on the exercise of free speech. Written testimony and even conversations within a three year time period concerning a bank’s CRA performance trigger the disclosure requirements. The disclosure requirements include the initial disclosure of the CRA agreement and annual disclosures of how any funds received by the non-governmental entity are used.

NCRC recommends that community-based nonprofit organizations assume that any grants or loans from banks are part of CRA agreements. It is easier to make this assumption than remember whether your organization engaged in CRA-related speech in the last three years. NCRC then recommends that community-groups follow one of the easier disclosure procedures that is described in this fact sheet (see example below under the disclosure section).

## **Definition of CRA Agreement**

A CRA agreement is in writing. The parties to the agreement include a non-governmental entity (NGEP in regulatory parlance) and a depository institution or affiliate of a depository institution. An agreement provides more than \$10,000 in grants to NGEPs (whether or not parties to the agreement) in any calendar year, or loans to one or more NGEPs of \$50,000 or more. The grants and loans do not have to be actually made in order for an agreement to constitute a CRA agreement. As long as the grants and loans are promised and they exceed the threshold amounts in any calendar year, the written agreement is a CRA agreement. Sometimes, a CRA agreement will not specify a dollar amount but will indicate that a new loan program is to be started or a new branch is to be opened in low- and moderate-income communities. In these cases, the parties must do their best in estimating the value of any grants and loans that may be received by any NGEPs in order to determine if the threshold amounts will be exceeded in any calendar year (see page 2063 of the preamble or Section 35.2 that starts on page 2085 of the Federal Register of January 10, 2001).

The agreement is a CRA agreement if it is made pursuant to, or in connection with the fulfillment of the CRA. Finally, the agreement is a CRA agreement if the NGEP that is party to the agreement had a CRA communication (written or oral) before entering into the agreement (see below section on CRA communication).

## **Related Agreements**

Sometimes a bank and a NGEP will negotiate more than one agreement in a 12 month time period. These agreements must be combined when considering if the grants and loans under the agreements exceed the annual thresholds of \$10,000 for grants and \$50,000 for loans. Any loans qualifying for exemptions (see below) in any of the agreements are not included in determining if the agreements exceed the threshold amounts (see Section 35.5 on page 2088).

## **Substantially Related Agreements**

The “substantially related agreement” provision of the statute applies only to written contracts and not to other agreements. An example of substantially related agreements is a situation in which two different NGEPs approached the bank together and each asked for unrestricted grants totaling \$6,000 to be awarded during the current fiscal year. These written contracts must be combined for purposes of determining if the thresholds are exceeded. In this case, the thresholds are exceeded, meaning that disclosures must be made by the bank and the NGEPs (see page 2064 of the preamble to the regulation).

## **Examples in the Regulation of CRA Agreements**

Example 1: A NGEF meets with a depository institution, states to the bank that it needs to make more community development investments in the NGEF's neighborhood, but the NGEF and bank are unable to make a CRA agreement. Two weeks later, the bank issues a press release saying it will make \$100 million in community development grants in low- and moderate-income communities over the next 5 years. The NGEF is not identified in the press release. This release is not a written agreement or understanding. NCRC agrees with this since unilateral pledges by banks should not constitute CRA agreements subject to disclosure.

Example 2: A NGEF and a bank meet; the NGEF states that the bank needs to offer a new loan program. The NGEF and bank reach a mutual understanding that the bank will make more loans. The bank tells the NGEF that it will issue a press release announcing the loan program. The press release incorporates the key items of understanding reached between the bank and NGEF. It is therefore a written CRA agreement and is subject to disclosure. NCRC disagrees with this since the distinction between Example 1 and 2 is thin. A written understanding should be a document signed by both parties, or a letter from the bank to the NGEF. In any event, while NCRC disagrees with this, it advises community groups to be mindful of this since it is regulation.

Example 3: A NGEF sends a letter to a bank asking for a \$15,000 grant. The bank sends a letter back saying it will provide the grant. The exchange of letters is a written agreement (see section 35.2 on page 2085).

## **Loan Agreements that are not CRA Written Agreements**

*Any Individual Real Estate Loan* – Any individual loan secured by real estate is not a CRA agreement. This applies to all real estate secured loans, not only mortgage or improvement loans. This does not apply to investments in real estate. The regulation contains an example stating that a bank provides a NGEF with a \$1 million loan that is documented in writing and is secured by real estate owned or to be acquired by the NGEF. The agreement is an individual real estate loan, and thus is exempt.

*Any Market Rate Loan to An Individual or Business or Farm or other Entity* – An individual loan is not subject to disclosure if it is not made at substantially below market interest rates and if the borrower does not intend to re-lend it to other parties. This exemption only applies to a single loan, not to a CRA agreement that promises several loans to small business or farms over a specified time period. The regulation does not provide a formula or threshold for determining what below market rate means (Section 35.2 on page 2085 and preamble on page 2056).

## **Exempt Loans Do Not Count in Calculation of Agreement Thresholds**

Any exempt loan is not included in determining whether a written agreement exceeds the dollar thresholds of \$10,000 in grants or \$50,000 in loans to NGEPs in any given year.

## **Agreement with No Time Period or Schedule of Payments**

If a written agreement does not have a time period or does not indicate a time schedule for making grants or loans to NGEPs, the regulation stipulates that all grant dollars or loan dollars are to be considered as provided in the first year for calculating threshold levels. For example, if an agreement specifies \$40,000 in grants to NGEPs, but with no time schedule for disbursing the \$40,000, the regulation assumes that the \$40,000 is to be disbursed in the first year of the agreement. The agreement therefore exceeds the \$10,000 calendar year threshold for grants and must be disclosed (page 2063 of preamble).

## **Fulfillment of CRA**

Section 711 of the GLB Act states that disclosure requirements shall apply to CRA agreements that are made pursuant to the fulfillment of the Community Reinvestment Act (CRA). Fulfillment is defined as a list of factors that the federal banking agencies deem have a material impact on a CRA rating or a decision on a merger application or other type of bank application. NCRC argued that only agreements pledging significantly higher number of loans, investments, and services in more than one assessment area would constitute a list of factors that would have a material impact on a rating or on a bank application. The federal banking agencies ruled otherwise. Their list of factors includes **any** number of loans, investments (including grants), or services that would be considered favorably on a CRA exam (see pages 2061 through 2063 of preamble).

## **CRA Communications**

### **Definition of CRA Communication**

The following four communications are considered CRA communications. If a community group engages in any of these communications in the time periods specified, the group must disclose its CRA agreement if the written agreement meets the dollar thresholds for grants and loans.

- Any written or oral comment or testimony provided to a Federal banking agency concerning the CRA performance of a depository institution and any affiliate of that institution that is evaluated on a CRA exam. Any written or oral communication of this nature if it occurred up to three years before a CRA written agreement.

- Any written comment submitted to a bank about its CRA performance that must be included in the bank's CRA public file. This type of written comment is a CRA communication if it occurred up to three years before a CRA written agreement.
- Any discussion with a bank about the NGEP providing or refraining from providing written or oral comment to a Federal agency about the bank's CRA performance. This type of communication is considered a CRA communication if it occurred up to 3 years before a CRA agreement.
- Any discussion with a bank about the NGEP providing or refraining from providing written comments about the CRA performance of the bank that must be included in the bank's CRA public file. Any discussion of this nature is considered a CRA communication if it occurred up to three years before a CRA written agreement.
- A discussion between a NGEP and a bank about the adequacy of the CRA performance of a bank. A discussion of this nature is considered a CRA communication if it occurred up to one year before a CRA written agreement (see Section 346.3 on page 2100).

### **Knowledge of CRA Communications**

In order to ease burden somewhat, the federal regulatory agencies specified that a communication will qualify as a CRA communication only if specific individuals of a bank and a community group know about the CRA communication. This prevents a bank from monitoring the hundreds of possible conversations among bank staff to make sure that these conversations do not involve discussions about the CRA performance of the bank. These conversations could occur among tellers, loan officers, and middle managers and representatives of the NGEP. Likewise, a NGEP, particularly a large one, would not have to monitor conversations that all of its staff may have with bank personnel.

Therefore, in the case of a bank, the bank is deemed to have knowledge of a CRA communication if any of the following staff has knowledge of the communication:

- A bank employee who authorizes or negotiates a written agreement with a NGEP
- A CRA officer of the bank or the bank CEO if either knows the bank intends to negotiate, is negotiating, or has been contacted by a NGEP that wants to negotiate a CRA agreement
- A bank has knowledge of a CRA communication if a NGEP provided testimony during a public hearing of a federal agency, or if the NGEP provided written comments to the federal agency, or if the NGEP submitted a written comment that must be included in the bank's CRA public file.

A NGEF is deemed to have knowledge of a CRA communication if the following staff have knowledge of the communication:

- A director or other employee of the NGEF who negotiates the agreement
- An executive director who knows the NGEF is negotiating an agreement (see Section 533.3 on page 2108).

### **Knowledge of CRA Agreements and Coalitions of Nonprofit Organizations**

A coalition of nonprofits negotiates a CRA agreement. A nonprofit organization that is part of the coalition does not have to comply with disclosure requirements if:

- The NGEF did not have a CRA communication
- The relevant staff of the NGEF did not have knowledge at the time of the agreement that the coalition had a CRA communication. The relevant staff include the executive director and/or person usually authorized to negotiate CRA agreements (see Section 533.3 on page 2109).

### **Examples of CRA Communication**

The regulation provides some examples that are CRA communications and others that are not. One example states that a NGEF meets with a bank and states that the bank must improve its CRA performance. This is straightforward enough. In another example, however, the NGEF states to a bank that it must make more loans in low- and moderate-income communities. Although the NGEF did not use the words CRA, this is considered a CRA communication since CRA pertains to lending in low- and moderate-income communities.

The arbitrary nature of a regulation basing disclosure on free speech is further illustrated by the following examples that the regulation does not consider CRA communication:

- A NGEF provides testimony or comments about a bank's CRA performance in direct response to a federal agency's request for comments. A CRA examiner may call a NGEF and ask for a NGEF's impression of the bank's CRA performance. This example envisions only specific requests by federal agencies for NGEF's comments. It does not apply if a NGEF is commenting on a bank's CRA performance during a public comment period on a bank merger application. Likewise, it does not apply if the NGEF is commenting in response to a federal agency announcement of quarterly CRA exams.
- A NGEF makes a comment during a widely attended conference on banking issues. However, if a NGEF makes a comment during an official public hearing on a merger application or another bank application, this comment is a CRA communication.

- A NGEF, such as a civil rights group, sends a letter to banks and other businesses asking them for funds. The letter states that the businesses should adhere to their obligation to help make the community a better place to live.
- A NGEF talks with a bank in general terms about what loans, investments, and services are eligible for CRA credit. The NGEF and the bank do not discuss the CRA performance of the bank (see Section 533.3 on page 2108).
- A secondary market NGEF and a bank discuss the possibility of the NGEF purchasing the bank's loans. The NGEF and the bank discuss if the loans are generally eligible for CRA consideration, but the NGEF and the bank do not discuss the CRA performance of the bank.

### **Disclosure Rules**

Two types of disclosure are required for CRA agreements; the initial disclosure of the text and then annual disclosures by banks and NGEFs on loans, grants, investments, and other CRA-related activity. The regulation also describes confidentiality and Freedom of Information Act (FOIA) procedures.

### **Confidentiality Provisions**

The regulations provide for a FOIA procedure if either the bank or the NGEF believes that portions of the agreement and/or annual reports contain confidential material. Either the bank or the NGEF can withhold portions of the agreement while a member of the general public asking for the information submits a FOIA request to the Federal agency. The appropriate federal banking agency then issues a FOIA determination regarding the entire agreement and/or annual reports. However, the regulation requires a bank and a NGEF to release certain information before the FOIA process is concluded. Information that must always be submitted includes:

- Name and address of the NGEF and bank
- The amount of any payment, fees, or loans to be made or provided by any party to the agreement
- Description of how the funds or other resources provided under the agreement are to be used
- The term of the agreement (see page 2066 of the preamble and Section 533.6 on pages 2109 and 2110).



The obligation to disclose a covered agreement to the public terminates one year after the end of the term of the agreement. The NGEF and bank may charge a member of the public a reasonable fee for copying and mailing the agreement.

### **Annual Reports**

As stated above, the CRA sunshine regulations require the initial disclosure of the text of the agreement and then an annual disclosure by the bank and NGEF (the NGEF submits the initial text upon request of a federal banking agency).

Banks are required to submit, on an annual basis, the following information:

- Name and address of bank and the CRA agreement to which the annual report relates
- Aggregate amount of loans, fees, payments and grants (listed separately) made to other parties during the fiscal year. Aggregate amount and number of loans, investments, and services provided under the agreement to any NGEF that is not a party to the agreement.
- Aggregate amount of payments, fees, and loans (listed separately) received by the bank under the agreement from any party.
- A description of the terms and conditions of any payments, fees, or loans under the agreement (see page 2070 of the preamble)

NGEFs are required to report, on an annual basis, information on any grants and loans received and how they used the grants and loans. NGEFs must file an annual report for any fiscal year in which the NGEF receives or uses funds or other resources under the agreement. In its annual report, an NGEF should indicate the date of the agreement and the parties involved in the agreement.

NGEFs are provided a number of options for reporting the information. They must report information for grants and loans that were devoted for general operating purposes. Or, if they know the specific uses of the grants and loans, they can issue a report that describes the specific uses of the grants and loans.

In the case of loans and grants used for general operating purposes, a NGEF must indicate the dollar amount used for:

- Administrative expenses
- Compensation of officers, directors, and employees
- Travel expenses

- Entertainment Expenses
- Payment of Consulting and professional fees; and
- Other expenses and uses (specify expense or use)

### **No Specific Format Required for NGEP Annual Reports**

A NGEP can use the IRS tax form 990 or another IRS tax form if the forms provide information for each of the categories listed above. If the tax form does not provide information for one or more of the categories, the NGEP must submit a supplemental statement indicating how much grant or loan dollars were devoted to the remaining expense categories.

The NGEP can use its usual annual report for reporting the uses of loans and grants for general operating purposes. Its annual report must provide information on all the required expense categories. The report can include a total dollar amount loans and grants received under the agreement. It can then show how many dollars overall (from the CRA agreement and all other sources) were allocated to each expense category. The regulatory agencies will then apportion the CRA agreement dollars to each expense category based on the percentage of overall funds devoted to each expense category (see page 2069 of the preamble).

A NGEP can also report on specific uses of any grant or loan. For example, if the NGEP knew that a \$11,000 grant from a CRA agreement was used to purchase new computers for its staff, the NGEP can submit an annual report that lists \$11,000 and describe this specific purpose. Alternatively, the NGEP's annual disclosure can include a report that indicates how a portion of the CRA agreement grant or loan dollars were used for a specific purpose. The remaining dollars can then be revealed via the reporting format for general operating expenses. (see pages 2068 to 2070 of the preamble and Section 346.7 on page 2103).

### **Example of Annual Report Meeting Disclosure Requirements**

As part of a CRA agreement, suppose a small community group of two staff persons receives a \$11,000 grant in March 2001 from "Local Bank" in Anytown, USA. The community group wants to use its usual annual report to meet the sunshine annual reporting requirements. The community group's annual report indicates that it has a budget of \$100,000.

Further, let us assume that the annual report includes the following expense categories:

Compensation of officers and employees - \$50,000  
Administrative expenses - \$15,000  
Payment of consulting fees - \$10,000

Entertainment expenses - \$1,000

In order to comply with the annual reporting sunshine requirement, the community group can use its annual report and attach a cover letter saying that the community group is reporting on a CRA agreement with Local Bank in Anytown, USA. It would state that it received a grant of \$11,000 from the agreement. The only other disclosure the community group would have to make regards “Travel Expenses.” As stated above, travel expenses are a required expense category for an annual sunshine report. The community group’s regular annual report contained all the other required sunshine expense categories. Let us further assume that the community group used \$1,000 of the grant to travel on a business trip. The community group would indicate in its cover letter that it used \$1,000 for travel expenses. The CRA annual sunshine report is done.

The federal agencies have indicated that they will apportion the CRA agreement dollars using a community group’s annual report that includes all sources of revenue. In the above example, the community group spent \$50,000 or 50 percent of its total revenues on compensation of officers and employees. After subtracting out \$1,000 for travel expenses, the federal agencies would assume that \$5,000 of the agreement dollars was spent on compensation. Multiplying the \$10,000 remaining in the grant (after taking out travel expenses) by 50 percent derived this \$5,000.

Community groups can also use the IRS 990 form for the annual sunshine disclosure in the same manner as its usual annual report.

### **Timing for Initial Disclosure of Agreement Text and Annual Disclosures**

For the initial text of an agreement, a NGEF must provide a copy of the agreement within 30 days of receiving a request from a federal banking agency. A bank must provide the initial text within 60 days of the end of each calendar quarter.

For annual reports, banks and NGEF must file the reports with the appropriate federal banking agencies no later than six months following the end of the fiscal year covered by the reports. NGEFs also have the option of submitting reports to banks and instructing the banks to forward the annual reports to the appropriate federal agencies (see page 2071 of the preamble).

### **Compliance and Penalties for Non-Compliance**

If a NGEF does not file a required report and still does not do so after a 90-day notice by the Federal Reserve Board, the Board shall render the agreement unenforceable by the NGEF. The Board may then assist the bank to identify another NGEF to assume responsibilities under the agreement.

If a court or other body of competent jurisdiction determines that funds received by an individual has been diverted contrary to the purposes of the agreement or for the



individual's personal gain, the Federal Reserve Board shall order the individual to "disgorge" the diverted funds and/or prohibit the individual from being a party to a CRA agreement for a period of up to 10 years (Section 346.9 on page 2105).

### **Transition Rules**

Agreements entered into after January 1, 2001 are subject to the initial text and annual report disclosure requirements.

### **Where to Send CRA Agreements**

Community groups can send their CRA agreements and their annual reports to the bank, and ask the bank to send the agreement to their regulatory agency. Alternatively, the community group can send the agreement directly to the CRA regulatory agency for the bank. The interagency CRA search engine on the Federal Financial Institutions Examination Council (FFIEC) web page will identify the CRA regulatory agency for the bank (the web page is <http://www.ffiec.gov> and then go to the link on the left-hand side of the page called "On Line Information Systems" to get to the Interagency CRA search engine). After determining the CRA regulatory agency for the bank, the community group can send the CRA agreement to a specific address that receives CRA agreements.

The addresses for each agency are:

#### *Federal Reserve Board*

Secretary's Office  
Board of Governors of the Federal Reserve System  
Washington, DC 20551  
RE: Sunshine Reporting

#### *Office of Thrift Supervision*

CRA Sunshine, c/o Dissemination Branch  
Office of Thrift Supervision  
1700 G St., NW  
Washington, DC 20552

#### *Office of the Comptroller of the Currency*

Communications Division  
Office of the Comptroller of the Currency  
250 E Street, SW, Mail Stop 3-2  
Washington, DC 20219

A copy of the agreement can be e-mailed to [crasunshine@occ.treas.gov](mailto:crasunshine@occ.treas.gov)  
Call 202-874-5750 with any questions



*Federal Deposit Insurance Corporation*

FDIC  
CRA Agreements  
Division of Compliance and Consumer Affairs  
550 17<sup>th</sup> St. NW  
Room F-6024  
Washington, DC 20429