

NATIONAL
COMMUNITY
REINVESTMENT
COALITION

NCRC

Testimony

**Testimony of
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President and CEO
NCRC**

**Perspectives and Proposals on the
Community Reinvestment Act**

**Before The
United States House of Representatives
House Financial Services Committee
Financial Institutions and Consumer Credit
Subcommittee**

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I. Introduction

Good morning, Chairman Gutierrez, Ranking Member Hensarling, and other distinguished members of the Subcommittee on Financial Institutions and Consumer Credit. My name is John Taylor, President and CEO of the National Community Reinvestment Coalition (NCRC), and I am honored to testify today about the Community Reinvestment Act (CRA).

NCRC is an association of more than 600 community-based organizations that promotes access to basic banking services, including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families.

The current foreclosure and economic crisis was caused in significant part by unregulated and risky lending. The federal government has obligated \$23 trillion in rescuing the financial industry. Two major rationales motivated Congress to enact CRA in 1977. First, Congress believed that all creditworthy borrowers needed to have access to financial services regardless of their income class. It was true in 1977 and still true today that few working class, blue collar citizens can pursue their American Dream or build businesses without fair access to the financial system. Second, banks must have an obligation to serve their communities in return for FDIC deposit insurance and the full faith and backing of the American taxpayer. Today, both rationales must be applied to the entire industry since government financial and institutional support rescued the financial industry from its recklessness. In addition, a broad application of CRA can safeguard the financial industry and return it to profitability by requiring safe and sound lending and investments in neighborhoods.

Modernizing CRA is one of the most important economic and job creating initiatives for Congress, as it would require an industry with trillions of dollars of assets to help create vibrant neighborhoods by providing loans and investments for affordable housing, small business creation, economic development, and support for community facilities like health care clinics. By requiring fairness and responsibility in lending and investment, CRA modernization will promote a more equitable, efficient, and prosperous country. Faced with a 9.7 percent

unemployment rate and median income levels that are lower than they were a decade ago, modernizing CRA would provide a long-lasting economic recovery and help the nation climb out of the current Great Recession.¹

The economic crisis has exacerbated a lack of access to responsible credit for broad segments of the American population. Abusive lending was originally targeted to communities of color but spread outward to white and middle-income suburbs as problematic lending practices outside of CRA-covered institutions intensified. NCRC member organizations report that rural America also experienced a risky lending marketplace as reflected by mortgages with steep balloon payments and high-rate credit card lending to small businesses. The decline in lending and investments is most effectively addressed if Congress reinvigorates the CRA by strengthening its application to banks and applying the law broadly throughout the financial industry.

This testimony will discuss the role of CRA in increasing access to credit and investments, ways to bolster CRA examination criteria, the adequacy of CRA enforcement mechanisms and needed improvements, the adequacy of fair lending reviews, reforms that would enable financial institutions to engage in high-impact economic development, applying CRA to non-bank financial institutions, and other factors inhibiting CRA's effectiveness. In the conclusion, this testimony reiterates our the recommendations for bolstering CRA and explains whether the recommendations include enacting provisions from bills introduced in Congress or whether the recommendations are additional ones from NCRC and not proposed by any existing bills.

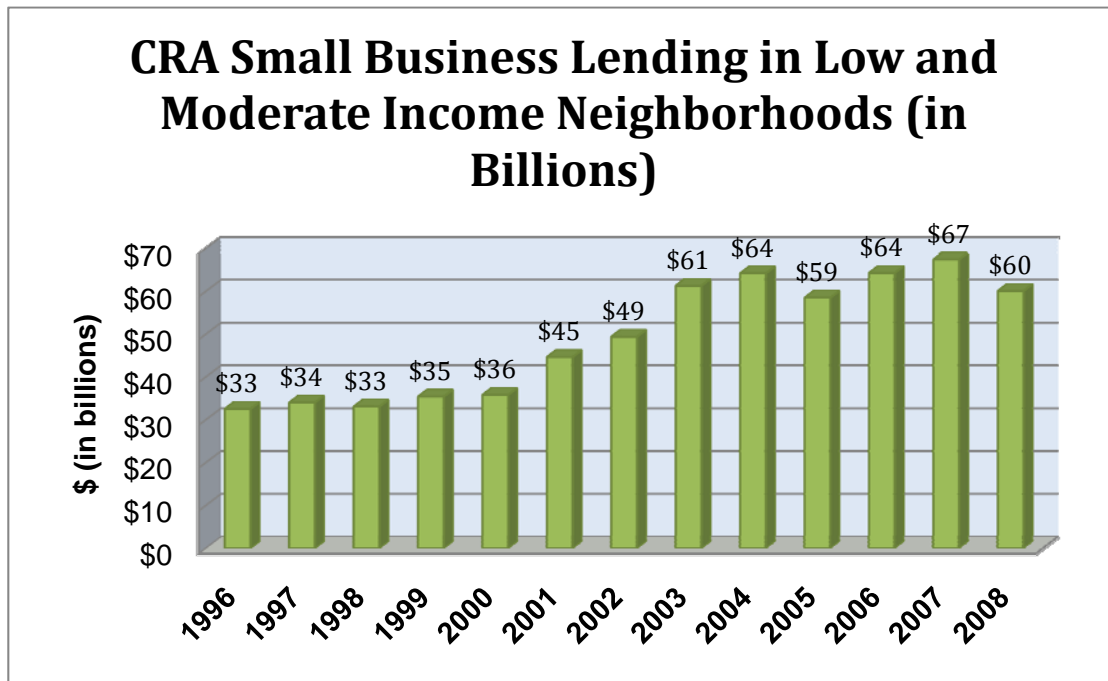
II. Role of CRA in Increasing Access to Credit, Investments, and Services

CRA's public accountability mechanisms have effectively motivated banks to significantly increase their lending, investing, and services in low- and moderate-income communities. Data disclosure requirements, publicly available exams rating CRA performance, and public

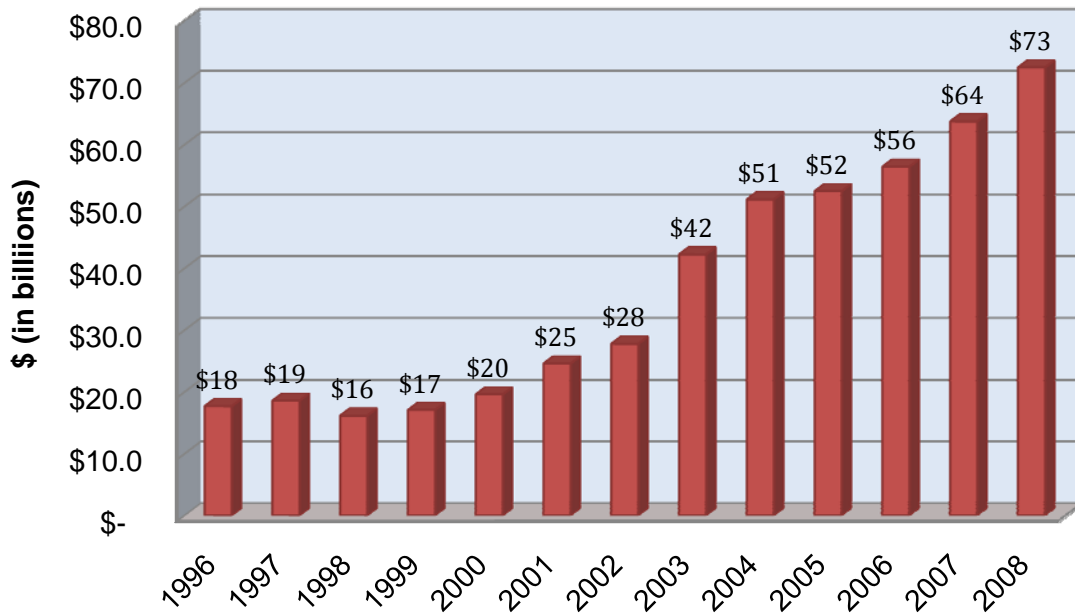
¹ Erik Eckholm, Last Year's Poverty Rate Was Highest in 12 Years: Median Income Fell, Census Finds, *New York Times*, Friday, September 11, 2009. The current rate of unemployment is 9.7 percent, see <http://www.bls.gov/news.release/empstoc.htm>.

participation procedures have encouraged banks to bolster their efforts to responsibly finance housing, small business creation, and community development.

An examination of publicly available data illustrates the dramatic increases in CRA-related financing that promotes holistic community development and responds to a wide variety of credit needs. According to data from the Federal Financial Institutions Examination Council, small business lending in low- and moderate-income tracts surged from \$33 billion in 1996 to \$60 billion in 2008. Over the 13-year time period, the total CRA small business lending in low- and moderate-income tracts totaled \$641 billion. Likewise, community development lending, which financed affordable rental housing, economic development projects, and community facilities, climbed from \$18 billion in 1996 to \$73 billion in 2008. Over the entire time period, community development lending equaled \$480 billion.



CRA Community Development Lending (in Billions)



CRA has also supported healthy increases in home lending. The Treasury Department reports that CRA-covered lenders increased home mortgage loans to low- and moderate-income borrowers by 39 percent from 1993 to 1998. This increase is more than twice that experienced by middle- and upper-income borrowers during the same period.² Likewise, a study by the *Joint Center for Housing Studies* at Harvard University estimates that without CRA, 336,000 fewer home purchase loans would have been made to low- and moderate-income borrowers and communities between 1993 and 2000.³ This time period was before the spike of risky and high-cost lending, providing further evidence that CRA's statutory requirement for safe and sound lending has succeeded in providing increases in responsible lending. In addition, NCRC calculates that CRA-covered lenders issued more than 1.8 million prime home loans worth about

² Robert Litan, Nicolas Retsinas, Eric Belsky and Susan White Haag, *The Community Reinvestment Act After Financial Modernization: A Baseline Report*, produced for the United States Department of the Treasury, April 2000

³ The Joint Center for Housing Studies at Harvard University, *The 25th Anniversary of the Community Reinvestment Act: Access to Capitol in an Evolving Financial Services System*, March 2002.

\$300 billion to low- and moderate-income borrowers during 2007 and 2008. CRA was an important source of home lending during a difficult period for the housing market.

Often overlooked is the contribution of CRA to rural America and the connection between branches and CRA-related lending. A NCRC report, *Access to Capital and Credit for Small Businesses in Appalachia*, conducted for the Appalachian Regional Commission documents that every two years banks issued \$5.4 billion in community development lending and investing in Appalachia.⁴ Also, bank branches had a positive impact on lending rather than only receiving deposits. Small business lending was higher in Appalachian counties with higher numbers of bank branches.

CRA has been an important venue for banks working in partnership with community groups in responding to credit needs. CRA agreements are often negotiated between banks and community groups during the merger application process. NCRC's *CRA Commitments* publication has documented that banks have made \$4.6 trillion in CRA agreements and commitments to low- and moderate-income and minority communities.⁵ Since the *CRA Commitments* publication, Bank of America pledged an additional \$1.5 trillion.⁶ Overall, banks make considerably more home loans in geographical areas covered by CRA agreements than those that are not, as documented in a study conducted by Federal Reserve economists using NCRC's CRA database.⁷

Federal Reserve research reveals that CRA has resulted in banks meeting credit needs in a safe and sound manner. As a result of CRA's prudent lending requirement, the Federal Reserve found that of all the high-cost loans issued in 2006, only 6 percent were made by banks to low- and moderate-income borrowers or neighborhoods and thus even evaluated by CRA exams.⁸

⁴ See http://www.ncrc.org/images/stories/mediaCenter_reports/ncrc%20study%20for%20arc.pdf.

⁵ NCRC's *CRA Commitments* via http://www.ncrc.org/images/stories/whatWeDo_promote/cra_commitments_07.pdf

⁶ See Bank of America's April 28 press release at http://newsroom.bankofamerica.com/index.php?s=press_releases&item=8152. Last accessed on August 29, 2008.

⁷ Raphael Bostic and Breck Robinson, *Do CRA Agreements Influence Lending Patterns?* Real Estate Economics, Volume 31 (2003).

⁸ Randall Kroszner, former Federal Reserve Governor and currently at Booth School of Business, University of Chicago, *The Community Reinvestment Act and the Recent Mortgage Crisis*, in *Revisiting the CRA: Perspectives on*

The vast majority of the risky lending was issued by non-CRA covered mortgage companies over the years. Additional research by Elizabeth Laderman and Carolina Reid of the San Francisco Federal Reserve Bank documents that loans made by banks in their CRA assessment areas are about half as likely to end up in foreclosure as loans issued by independent mortgage companies.⁹ Federal Reserve Chairman Ben Bernanke concludes, “Our own experience with CRA over more than 30 years and recent analysis of available data, including data on subprime loan performance, runs counter to the charge that CRA was at the root of, or otherwise contributed in a substantive way, to the current mortgage difficulties.”¹⁰

Federal Reserve Governor Elizabeth Duke sums CRA’s contribution to community development well by stating that “From a consumer perspective, the fact that Congress amended the CRA statute in 1989 to make evaluations public provided the transparency necessary to help create a dialogue between banks and community advocates. This dialogue contributed to an increased number of public/private partnerships that were uniquely successful in addressing the economic and community development needs of lower-income communities.”¹¹

III. CRA Examination Criteria Must be Broadened and Bolstered to Further Promote Lending, Investment, and Services in Communities

As successful as CRA has been in promoting sound lending and investing in communities, its full potential has not been realized due to insufficient examination criteria. Exams have been too restrictive in the geographical areas they cover and have also not automatically included mortgage company affiliates of banks that issue high numbers of loans. Moreover, while CRA

the Future of the Community Reinvestment Act, A Joint Publication of the Federal Reserve Banks of Boston and San Francisco, February 2009, <http://www.frbsf.org/publications/community/cra/index.html>

⁹ Elizabeth Laderman and Carolina Reid, Federal Reserve Bank of San Francisco, “CRA Lending during the Subprime Meltdown in Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act,” a Joint Publication of the Federal Reserve Banks of Boston and San Francisco, February 2009, http://www.frbsf.org/publications/community/cra/cra_lending_during_subprime_meltdown.pdf

¹⁰ Letter from Ben. S. Bernanke, Chairman of the Board of Governors of the Federal Reserve System to Senator Robert Menendez, November 25, 2008.

¹¹ Speech of Federal Reserve Governor Elizabeth A. Duke, *CRA: A Framework for the Future*, At the Revisiting the CRA Policy Discussion, Washington, D.C., February 24, 2009, via <http://www.federalreserve.gov/newsevents/speech/duke20090224a.htm>

has been successful in promoting safe and sound lending to low- and moderate-income borrowers and communities, significant racial disparities in lending remains in part because the CRA statute and examinations do not require a consideration of bank service to minorities. Finally, the exam performance measures need to be enhanced and exam rigor would be bolstered by more accurate data on bank lending and investment activity.

As CRA modernization proceeds, the recommendations discussed in this section would be applied and adapted to all institutions with a CRA obligation as well as banks.

Expand Assessment Areas

The geographical locations covered by CRA exams consist of metropolitan areas or counties that contain bank branches. When Congress enacted CRA in 1977, banks received deposits and made loans through branches. While some banks still issue loans predominantly through branches, others make the majority of their loans through brokers and other non-branch means.

Though the CRA regulation stipulates that assessment areas include geographical areas containing bank branches, the regulation also states that assessment areas include other geographical areas in which the bank has originated or purchased a substantial portion of its loans.¹² Despite this regulatory clause, the federal agencies usually adopt a narrow definition of assessment areas for banks or thrifts that issue most of their loans through non-branch channels. For these banks, it is not unusual to encounter CRA exams that cover only the geographical area of the bank's headquarters.

As a result of the narrow definition of assessment areas, the share of all loans made by banks in their CRA assessment areas has dropped significantly. A study by Apgar and Essene demonstrates that between 1993 and 2006, the share of all home purchase loans made by banks in their assessment areas fell from 36.1 percent to 26 percent. For refinance lending, the

¹² See Section 345.41 of the FDIC's CRA regulation available via <http://www.fdic.gov/regulations/community/community/index.html>

comparable figure was 45 percent in 1993, falling to 25 percent in 2006. Meanwhile, out of assessment area lending by banks grew 187 percent during this time period.¹³

In 2007, NCRC identified several lending institutions that engaged in questionable practices, including refusal to make loans under a minimum loan amount (usually \$75,000 or \$100,000), refusal to make loans to row homes, and failure to offer loans within entire cities. NCRC research revealed four banks engaged in these practices. Tellingly, only 11 percent to 13 percent of the loans investigated were in the banks' assessment areas.¹⁴

In addition to enabling discriminatory practices, narrow assessment areas defeat the CRA's objective of banks responding to community needs. In one recent case, a NCRC member organization in Pennsylvania was concerned about the impact of a large bank merger on the bank's continued commitment to the organization's city. The newly merged institution would, in fact, be the largest lender (measured by number of home loans) in the city. Because the bank did not have a branch in the city and the city was not in a CRA assessment area, the bank declined to engage in discussions about future collaboration and community development lending. Although the bank had a major lending presence in the city, the bank was not encouraged by CRA exam procedures to see how it could meet credit needs beyond home lending in that area.

NCRC finds that incomplete assessment area coverage also has significant fair lending ramifications. Using data provided by the Joint Center for Housing Studies at Harvard University, NCRC compared the share of all home loans in metropolitan areas that were made by banks issuing loans in their assessment areas to the minority population and the share of subprime loans.

As described in the table below, NCRC found that when the share of loans made by banks in their CRA assessment areas was lower, the share of loans that were subprime was higher (this

¹³ Ren Essene of the Federal Reserve Bank of Boston and William C. Apgar of the Joint Center for Housing Studies, Harvard University, *The 30th Anniversary of the CRA: Restructuring the CRA to Address the Mortgage Finance Revolution*, in *Revisiting the CRA: Perspectives on the Future of the CRA*, eds. Prabal Chakrabarti et al., A Joint Publication of the Federal Reserve Banks of Boston and San Francisco, 2009.

¹⁴ Contact NCRC on 202-628-8866 for more information regarding our fair lending investigations.

reinforces other research revealing that banks issued considerably less subprime loans than mortgage companies not covered by CRA). When the share of loans in a metropolitan area issued by banks in their CRA assessment area was less than 25 percent, the share of loans that was subprime was 23 percent and the share of the population that was minority was 25 percent (see metropolitan areas in Quartile 1 in the table below). In contrast, when the share of loans in metropolitan areas issued by banks in their CRA assessment area was greater than 42 percent, the share of subprime loans was lower at 16 percent and the percent of the population that was minority was smaller at 15 percent. In other words, when CRA coverage of lending declines, both the percentage of minorities and subprime loans increased. Increasing CRA coverage will therefore provide minorities with a greater choice of loans and lessen racial disparities in lending.¹⁵

CRA Coverage Dwindles as Minority Population and Subprime Lending Increase					
Quartiles	CRA-covered Assessment Areas (%)	MSAs (count)	Population (median)	% Minority (median)	Subprime Share (median)
Q1	25<	90	284,107	25%	23%
Q2	25>33	92	251,101	26%	21%
Q3	33>42.5	92	256,603	28%	19%
Q4	42.5+	87	183,458	15%	16%

Expanding assessment area coverage would have a positive impact on low- and moderate-income borrowers as well as minorities. Harvard's Joint Housing Center finds that banks issue higher levels of loans to low- and moderate-income borrowers and communities inside their assessment areas than outside assessment areas.¹⁶ It stands to reason that banks will issue more loans to traditionally underserved borrowers and communities in areas where they are examined.

¹⁵Data was combined for the years 2005 through 2007 in the table. For more on assessment area coverage, see Ren Essene and William Apgar, "The 30th Anniversary of the Community Reinvestment Act: Restructuring the CRA to Address the Mortgage Finance Revolution" in *Revisiting the CRA: Perspectives on the Future of the CRA*, eds. Prabal Chakrabarti et al., 12-29. A Joint Publication of the Federal Reserve Banks of Boston and San Francisco, 2009.

¹⁶ Joint Center for Housing Studies of Harvard University, 25th Anniversary of the Community Reinvestment Act, op. cit.

Thus, expanding CRA's examination scope will promote housing and economic development in modest income communities.

The Community Reinvestment Modernization Act of 2009 (H.R. 1479) addresses the inadequacies of assessment areas.¹⁷ Under this bill, if a bank has captured one half of 1 percent or more of the local lending market, a CRA exam would designate the geographical area served by the bank as an assessment area. A procedure such as this would ensure that the majority of a bank's loans and other financial activities are scrutinized by CRA exams. In fact, H.R. 1479 also stipulates that a great majority of a bank's loans will be considered by CRA exams.

Mandatory Inclusion of Mortgage Company Affiliates of Banks in CRA Exams

Under CRA, banks have the option of including their non-depository affiliates, such as mortgage companies, on CRA exams. Banks are tempted to include affiliates on CRA exams if the affiliates perform admirably, but will opt against inclusion if the affiliates are engaged in risky lending or discriminatory policies. This is counter to the essential purpose of CRA, which is to ensure that the institution as a whole is meeting credit needs in a responsible manner.

Four non-depository affiliates of banks were identified by NCRC's fair lending investigations to be engaging in redlining or other discriminatory practices. These four affiliates were not included on their bank's CRA examinations. Current CRA examination procedures enable banks' affiliates to engage in such practices undetected. H.R. 1479 would end this serious gap in CRA enforcement by mandating the inclusion of affiliates on CRA exams.

Include Consideration of Bank Service to Minority Borrowers and Communities on CRA Exams

On a CRA exam, lending to low- and moderate-income borrowers and communities is examined in detail. A major part of the lending test consists of scrutinizing the percentage of a bank's loans made to low- and moderate-income borrowers compared to the demographics of the bank's community and the percentage of loans made to low- and moderate-income borrowers issued by the bank's competitors.

¹⁷ See <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1479> for the text of H.R. 1479.

CRA exams have a fair lending component that assesses whether a bank discriminated by rejecting qualified minority applicants or by steering minorities with good credit to subprime loans. While the fair lending test is necessary, it does not assess whether banks are affirmatively making loans to minorities. In other words, a bank can employ non-discriminatory policies but still make relatively few loans to minorities because it does not market to minority communities. If lending to minorities were an explicit criterion on CRA exams then consistently low percentages of loans to minorities would contribute to a lower rating for the bank.

Given the evidence of lending disparities by race, NCRC has called for CRA exams to explicitly examine lending and services to minority borrowers and communities. NCRC's *Broken Credit System* report shows that minority neighborhoods received larger percentages of subprime loans than predominantly white neighborhoods, even after controlling for creditworthiness and other housing stock characteristics.¹⁸

Federal Reserve economists came to similar conclusions about high levels of subprime loans in minority neighborhoods after controlling for creditworthiness.¹⁹ As a result of the targeting of risky lending to minorities, Reid and Laderman conclude that African-American borrowers were 1.8 times more likely than whites to be in foreclosure, whereas Latino and Asians were 1.4 and 1.3 times more likely to be in foreclosure, respectively than whites, after controlling for several lender and borrower characteristics.²⁰ Another NCRC study, *Are Banks on the Map?*, found larger disparities in branching by race of neighborhood than by income of neighborhood in 25 large metropolitan areas.²¹ Overall, it is probable that CRA exam consideration of lending and branching by race of borrower and neighborhood would lessen the racial disparities in access to bank services and loans.

For Congressional districts, Compliance Tech has recently compiled statistics of the percentage of subprime loans to African-Americans, Hispanics, and whites for the year 2006, which was a

¹⁸ *Broken Credit System* available via NCRC on 202-628-8866.

¹⁹ Paul S. Calem, Kevin Gillen, and Susan Wachter, *The Neighborhood Distribution of Subprime Mortgage Lending*, October 30, 2002. Available via pcalem@frb.gov. also Paul S. Calem, Jonathan E. Hershaff, and Susan M. Wachter, *Neighborhood Patterns of Subprime Lending: Evidence from Disparate Cities*, in Fannie Mae Foundation's Housing Policy Debate, Volume 15, Issue 3, 2004 pp. 603-622

²⁰ Laderman and Reid, *ibid*.

²¹ See NCRC's *Are Banks on the Map* via http://www.ncrc.org/images/stories/mediaCenter_reports/ncrc%20bank%20branch%20study.pdf

year of heavy subprime volume.²² Displayed in the appendix to this testimony, the table clearly illustrates the significant disparities in subprime lending by race for Congressional districts of members of the House Financial Services Committee. In fact, NCRC finds in our *Income is No Shield* report series that racial disparities in lending actually increases as the income level of the borrower increases.²³

Prior to the CRA regulatory reforms in the mid 1990's, CRA exams under Assessment Factor D would often assess performance of lending to minorities. An example of this approach is employed in the evaluation of Signet Bank, conducted by the Federal Reserve Bank of Richmond in 1996.²⁴

Racial disparities in lending is a product of multiple factors including a lack of competition in minority neighborhoods, a dual lending market, and steering abusive loans to minorities that qualify for lower priced loans. In addition, the implementation of CRA has contributed to racial disparities by scrutinizing banks' efforts to make loans in low- and moderate-income neighborhoods, but not examining the extent of and the quality of lending in communities of color. Banks do not feel the regulatory push to make loans to communities of color like they do for low- and moderate-income communities. If the regulatory agencies do not reinstate lending and service to minorities as criteria on CRA exams, Congress must amend CRA to add lending, investment, and service to minorities as provided in H.R. 1479.

Repeal Stretch Out of Small Bank CRA Exams

The Gramm-Leach-Bliley Act of 1999 established a less frequent exam cycle for small banks with less than \$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.

²² Maurice Jourdain-Earl, Compliance Tech, Politics and the Subprime Meltdown: An Examination of Disparities by Congressional District, Political Party, Caucus Affiliation, and Race, 2009, via <http://www.ncrc.org/images/stories/pdf/research/politics%20and%20the%20subprime%20mortgage%20meltdown-final.pdf>

²³ National Council of Negro Women and the National Community Reinvestment Coalition, *Assessing the Double Burden: Examining Racial and Gender Disparities in Mortgage Lending (Income is No Shield, Part III)*, June 2009, via <http://www.ncrc.org/images/stories/pdf/research/ncrc%20nosheild%20june%202009.pdf>

²⁴ See Federal Reserve Bank of Richmond, Community Reinvestment Act Performance Evaluation of Signet Bank (Jan. 15, 1996), available at <http://www.federalreserve.gov/dcca/cra/1996/460024.pdf>

Since small banks are especially important in rural areas, the exam stretch-out must be repealed and small banks must be subject to the regular two-year exam cycle as H.R. 1479 would stipulate. An examination once every four or five years will not hold small banks accountable because small banks can relax their CRA efforts during the first two or three years and then intensify their attention to CRA in the last couple of years before their exam. In contrast, a two-year exam cycle is sufficiently short enough so that an exam can effectively scrutinize the entire time period. Thus, small banks will have an added incentive to perform during the entire time period. Small banks do not merge frequently, meaning that the adequacy of the exam is quite important for enforcing CRA.

The argument that CRA imposes regulatory burden for small banks is not convincing. In their analysis of “regulatory burden” for small banks, the federal banking agencies have found that CRA regulations “impose a modest information collection burden on small institutions – an average of 10 burden hours per institution per year.”²⁵ The relatively few trade articles on small bank CRA exams reveal few complaints about burden. In fact, an *American Banker* article titled “Small Banks Give Thumbs-Up to Streamlined CRA Exams” published shortly after the CRA regulation reform in 1995 quotes small bankers saying that the exams were not burdensome and that CRA examiners took less than one day of their time.²⁶ Furthermore, in a recent article for a Federal Reserve CRA volume, Michael Barr comments on a survey conducted by the Independent Community Bankers of America of its member banks. According to the survey, the average employee cost for CRA compliance was about \$84,000 per year for small banks (average assets of \$216 million) and about \$115,000 per year for mid-size banks (average assets of \$666 million). Thus, the average CRA employee costs as a percentage of assets were insignificant—0.017 percent for mid-size banks, and 0.039 percent for small banks.²⁷

In sum, the benefits of two-year CRA exams for small banks in terms of additional responsible loans and investments for communities considerably outweigh any regulatory burden.

²⁵ Federal Register, May 28, 1999 (Volume 64, Number 103), pages 29083 through 29086

²⁶ Small Banks Give Thumbs-Up To Streamlined CRA Exams, Jaret Seiberg of the *American Banker*, Thursday, February 1, 1996.

²⁷ Michael S. Barr, *Community Reinvestment Emerging from the Housing Crisis*, in *Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act*, A Joint Publication of the Federal Reserve Banks of Boston and San Francisco, February 2009, <http://www.frbsf.org/publications/community/cra/index.html>

Exams Must Be Uniformly Rigorous Instead of Inconsistent

CRA Grade Inflation

Expanding the coverage of CRA exams related to assessment areas, affiliates, and consideration of bank performance in serving minorities is necessary but not sufficient in making CRA exams more effective. The rigor of CRA exams is also a critical issue in unleashing the full potential of CRA. Unfortunately, the evidence to-date points to CRA grade inflation as well as inconsistent quality of CRA exams.

Banks receive one of four ratings on their CRA exams: Outstanding, Satisfactory, Needs-to-Improve, and Substantial Non-Compliance. The last two ratings are considered failing ratings. As the table below shows, the current failure rate for banks has hovered between 1 to 2 percent since 2002. When ratings first became public in 1990, more than 10 percent of banks failed their CRA exams²⁸. During the first five years of the public availability of CRA ratings, more than 5 percent of banks failed their CRA exams every year.

²⁸ See <http://www.ffiec.gov/craratings/default.aspx> for the database on CRA ratings.

NCRC Analysis of CRA Ratings

Year	Outstanding		Satisfactory		Needs to Improve		Substantial Noncompliance		Total
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	
1990	340	10.9%	2,474	79.5%	280	9.0%	19	0.6%	3,113
1991	407	8.3%	4,016	81.6%	453	9.2%	46	0.9%	4,922
1992	653	12.7%	4,067	78.9%	395	7.7%	40	0.8%	5,155
1993	941	14.7%	5,060	79.3%	355	5.6%	26	0.4%	6,382
1994	1,000	18.1%	4,249	76.7%	275	5.0%	15	0.3%	5,539
1995	1,363	24.3%	4,106	73.1%	138	2.5%	7	0.1%	5,614
1996	1,214	26.5%	3,275	71.5%	81	1.8%	11	0.2%	4,581
1997	829	22.4%	2,807	75.7%	59	1.6%	11	0.3%	3,706
1998	681	18.6%	2,915	79.6%	59	1.6%	7	0.2%	3,662
1999	679	18.6%	2,915	79.7%	55	1.5%	7	0.2%	3,656
2000	220	17.5%	1,001	79.6%	30	2.4%	7	0.6%	1,258
2001	132	10.6%	1,088	87.1%	23	1.8%	6	0.5%	1,249
2002	201	9.8%	1,820	89.0%	18	0.9%	5	0.2%	2,044
2003	283	10.1%	2,492	89.2%	17	0.6%	3	0.1%	2,795
2004	329	13.1%	2,170	86.1%	17	0.7%	3	0.1%	2,519
2005	247	16.0%	1,281	83.1%	10	0.6%	4	0.3%	1,542
2006	199	14.0%	1,194	84.0%	22	1.5%	6	0.4%	1,421
2007	212	11.9%	1,538	86.4%	26	1.5%	4	0.2%	1,780
2008	195	9.5%	1,823	88.9%	29	1.4%	4	0.2%	2,051
2009	137	7.3%	1,702	90.8%	30	1.6%	5	0.3%	1,874
Total	10,262	15.8%	51,993	80.2%	2,372	3.7%	236	0.4%	64,863

Banks improved their CRA performance over the years as they bolstered their efforts to make loans, investments, and services in low- and moderate-income communities. Yet, the low failure rate in recent years appears to be implausible. A study conducted by the Center for Community Capitalism concluded that CRA service test scores are likely to be inflated when low scores on the lending test and investment test confront banks with the possibility of CRA exam failure.²⁹ In addition, Rick Marsico in his book *Democratizing Capital* reveals how quantitative criteria are

²⁹ Michael A. Stegman, Kelly Thompson Cochran, and Robert Faris, Center for Community Capitalism, University of North Carolina, *Creating a Scorecard for the CRA Service Test: Strengthening Basic Banking Services under the Community Reinvestment Act*, 2001. Also see the Woodstock Institute, *Measuring the Provision of Banking Services for the Underbanked: Recommendations for a More Effective Community Reinvestment Act Service Test*, March 2007. Of the 14 banks in Woodstock's sample with the highest scores on the service test, eight had branch distributions in low- and moderate-income communities that were well below the averages for all lenders as a group in the banks' assessment areas

applied in an inconsistent manner on CRA exams, suggesting that a number of CRA exams have ratings that cannot be justified.³⁰

The inflated ratings reduce the incentives banks have to maintain and increase their responsible lending, investing, and services in low- and moderate-income communities. If banks conclude that they will receive passing ratings regardless of fluctuations in their lending, investing, and service levels, they will not be motivated to maximize their resources and attention to their CRA performance.

The federal banking agencies have not significantly changed their ratings methodology in several years in order to bolster the meaning and value of passing ratings. At the very least, the agencies could have introduced more gradations among the passing ratings in order to reveal more accurately distinctions in bank performance, which would be useful for the general public, religious and nonprofit institutions, and state and local agencies as they figure out which good CRA performing banks they want to reward by placing their deposits. Thus, the full value of CRA ratings as a mechanism for motivating bank lending, investment, and services has not been realized due to the staid approach of the agencies.

Ratings and Point System Reform

H.R. 1479 introduces two more ratings, High Satisfactory and Low Satisfactory, in an effort to produce more meaningful ratings. In addition, a detailed scoring system is needed. Currently, ranges of points correspond to the various CRA ratings. The highest possible point total corresponding to an Outstanding rating is 24 points with a zero indicating total failure or Substantial Noncompliance. But the scale does not make intuitive sense or is sufficiently large enough to meaningfully reflect the range of lending, investment, and service activities. For large bank exams, the complexity of the lending test alone which has five criteria and often scrutinizes four or more types of lending suggests that a scale of 0 to 24 cannot adequately reflect performance in various aspects of the test.³¹ NCRC recommends, therefore, that the agencies

³⁰ Richard D. Marsico, *Democratizing Capital: The History, Law, and Reform of the Community Reinvestment Act*, Carolina Academic Press, 2005.

³¹ See 12 CFR 345.22 for the FDIC's version of the lending test for large banks and see the interagency Q&A document Section 345.28(a)—3 for the description of the ratings matrix or existing point scale. On the large bank lending test, at least three criteria (borrower distribution of loans, geographic distribution of loans, and flexible and

create a scale of 1 to 100 or another scale large enough to meaningfully capture the range of activities. Moreover, a scale of 100 should be used for the overall rating as well as the ratings for the component tests to truly create a meaningful scoring system that causes banks to be more vigilant regarding their CRA performance in all its aspects. The component tests can still have different weights as they do now since the overall rating can be a weighted average of the component tests.

Weighting System to Reflect Affordability and Responsiveness to Local Needs

While CRA exams make some commonsense distinctions and weight aspects of performance to account for the capacities and location of banks, the weighting system does not extend far enough to encourage high levels of responsiveness to local needs. Currently, CRA exams weight some loan types and geographical areas more heavily than others based on the specialty of the bank (whether it primarily a home or small business lender, for example) and based on the percentage of its lending activity in each of its geographical areas.

The weighting system, however, does not distinguish among the responsiveness of financial activities to communities. For instance, on the investment test, purchasing mortgage-backed securities often appears to be weighted as highly as more difficult equity investments in small businesses although a well developed secondary market exists for home lending whereas equity investments in small businesses are relatively scarce. On the lending test, purchases of loans on the secondary market are weighted equally to loan originations although making a loan is often the task that is more time intensive and responsive to local needs.

An example of the lack of distinctions occurs on the CRA exam for First Community Bank, headquartered in Albuquerque, New Mexico. In a section describing community development lending, the exam states that the bank made consumer loans to Indian tribes experiencing lack of

innovative lending practices) can be considered for three or four loan types. Just a portion of the lending test can therefore exhaust the current scale of 0 to 12 for the lending test if the highest possible score could be one point for one loan type and one criterion. Four loan types multiplied by three criteria would equal 12 if the bank scored outstanding for each loan type on each criterion. There are no points left over for the other two criteria on the large bank lending test.

access to mainstream credit. It then also commends the bank for “placing home mortgage loans in the secondary market.” Clearly the first activity of consumer lending on Indian reservations addresses unmet credit needs and should receive community development lending credit, but it is baffling why selling loans to the secondary market should also receive points as community development loans. This lack of differentiation about the responsiveness to credit needs most likely reduces banks efforts to be highly attentive to the most pressing needs if they can also receive points for routine activities such as selling loans on the secondary market.³²

The weighting system also does not distinguish among the affordability of products although the Interagency Question and Answer (Q&A) document hints that banks should strive for affordability. For instance, §__.12(i)-3 of the Interagency Q&A document states that community development services include “reasonably priced remittances” and foreclosure prevention in the form of “affordable,” “sustainable,” “long-term” loan modifications and restructurings. Yet, CRA exams rarely implement the affordability aspect of the Question and Answer document. For example, banks with expensive overdraft programs were never penalized on CRA exams nor encouraged by the exams to be more responsive to the needs for short-term consumer credit by establishing small consumer lending programs.³³

NCRC recommends that a weighting system be established that weights categories of loans, investments, and services that reflect their degree of affordability, responsiveness to local needs, and other CRA and fair lending criteria. Stakeholders will often discuss qualitative versus quantitative aspects on CRA exams, complaining that CRA exams focus too heavily on quantitative measurements and disregarding qualitative distinctions such as degree of difficulty and responsiveness to local needs. A weighting system would help overcome these shortcomings on CRA exams.

³² CRA Performance Evaluation of First Community Bank, March 2009, Federal Reserve Bank of Kansas City, RSSD # 236751.

³³ Overdraft fees are estimated at \$27 billion annually while penalty fees from credit cards are less, at about \$20 billion per year. See Ron Lieber and Andrew Martin, *Overspending on Debit Cards is Painful, but Not for Banks*, New York Times, Wednesday, September 9th, 2009.

Currently, there is a section on CRA exams that reviews innovative and flexible lending practices. This section usually describes and extols affordable loan programs. Yet, too often, the exams flatly state that banks made only a few of these loans, making it difficult to discern whether the bank received a disproportionate amount of CRA points for innovative products that appear to be more symbolic than real. In contrast, a sophisticated weighting system that creates categories of financial activities based on their affordability and responsiveness would make CRA exams more objective and effective in motivating the type of sustainable financing needed in traditionally underserved communities.

Data Enhancements Needed

Accountability depends on transparency. If data are limited in how they reflect lending activity, the general public cannot evaluate the sustainability of loan products, nor can CRA exams effectively create weighting systems that weight categories of loans based on their affordability and responsiveness. In an effort to increase the utility of data, the President's proposal for a Consumer Financial Protection Agency, H.R. 4173 (the Wall Street Reform and Consumer Protection Act of 2009), and H.R. 1479 contain important data enhancements to Home Mortgage Disclosure Act data, small business data, and bank branch and deposit data.

Small business women, in particular, would benefit from these data enhancements since the publicly available small business data would reveal the extent to which banks are making loans to women-owned small businesses. NCRC members have informed NCRC numerous times over the years about the difficulty of even established women-owned small businesses receiving loans and being told to have their spouses co-sign applications even though they qualify for loans on their own.

H.R. 4173 provides critical enhancements to the HMDA data regarding loan terms and conditions. Several loan terms and conditions would be collected, including total points and fees, prepayment penalties, the value of the home, whether the loan is a hybrid loan with a lower teaser rate, and whether the loan is a negative amortization loan.

Using the existing information on loan pricing and the proposed enhancements in H.R. 4173, CRA exams could weight categories of loans that more precisely reflected affordability and

sustainability of the loans. Banks could more readily be penalized on CRA exams if they were highly leveraging borrowers with loans containing high loan-to-value ratios, burdensome prepayment penalties, frequent negative amortization, or other loan terms and conditions that have been demonstrated to contribute to high default rates. In contrast, banks would receive higher ratings if they offered loans that demonstrated their affordability by performing well in terms of borrowers remaining current on the loan (H.R. 1479 would add loan performance data recording whether the borrower was current or delinquent as a component of publicly disclosed data). Finally, more refined home loan data and weighting systems would ensure that banks making both prime and high-cost lending offer a balanced product mix to traditionally underserved borrowers and communities.

The publicly available small business data is considerably more limited than the HMDA data, significantly curtailing its usefulness on CRA exams. Periodic national surveys sponsored by the Federal Reserve Board consistently point towards the likelihood of discrimination in small business lending.³⁴ A powerful way to reduce disparities in lending is to publicly provide data on the number of loans for women and minorities. Yet, the CRA small business data lacks information on the gender and race of the small business owner.

In addition, the federal agencies significantly lessened the quality of small business loan data by exempting intermediate small banks (with assets of \$250 million to \$1 billion) from requirements to collect and report it and thus reduced the quality of data used on CRA exams. As NCRC demonstrated in its report for the Appalachian Regional Commission, intermediate small banks are an important source of credit for small businesses, particularly in rural areas and medium sized cities and towns.³⁵

Both H.R. 4173 and H.R. 1479 would significantly augment the utility of CRA small business loan data for the general public and for CRA exams. Both bills would require that the race and

³⁴ See NCRC's *Access to Capital and Credit for Small Businesses in Appalachia* for a discussion of the literature and the Federal Reserve sponsored surveys via http://www.ncrc.org/images/stories/mediaCenter_reports/ncrc%20study%20for%20arc.pdf.

³⁵ Ibid.

gender of the small business owner would be collected. In addition, the financial institution would be required to collect the type and purpose of the loan, the type of action taken with respect to the application (approval or rejection), the gross annual revenue of the small business owner, and the specific census tract location of the small business receiving the loan. Also, a broader array of banks and non-banks including finance companies and credit unions would be required to report the data. The exemption from data reporting for intermediate small banks would be repealed by both H.R. 4173 and H.R. 1479. Finally, NCRC recommends an amendment to either H.R. 1479 or H.R. 4173 (as it is reconciled with a Senate financial regulatory reform bill) that would require the collection of some form of pricing information such as the Annual Percentage Rate (APR) so that researchers and stakeholders can assess whether small businesses are receiving access to affordable loans.

Upon passage of either H.R. 4173 or H.R. 1479, CRA exams could scrutinize lending to minority and women-owned small businesses. CRA exams could weight loans based on their type, purpose, and responsiveness to needs. In addition, CRA exams could more precisely measure the spatial distribution of small business loans. Currently exams only measure lending in broad income categories of census tracts rather than specific census tracts, meaning that exams may fail to focus on certain neighborhoods that are particularly starved for access to credit. Furthermore, current CRA exams are not refined enough in assessing access to credit for the smallest of the small businesses. Upon passage of H.R. 4173 or H.R. 1479, CRA exams could more accurately assess lending to the smallest businesses with revenues lower than \$1 million since the new data would enable examiners to measure lending to small businesses in various revenue categories below \$1 million in revenue. Finally, a more complete universe of institutions reporting data (including credit unions and the intermediate small banks recently exempted from reporting requirements) would enable CRA exams to measure more effectively how all banks compare to the rest of the financial industry in meeting small business credit needs in a responsible manner.

Another area of data collection and CRA exam analysis in need of reform is assessments of bank branch and service activity. CRA exams currently measure the presence of bank branches in low- and moderate-income neighborhoods in a cursory manner for large banks and barely at all for intermediate small banks. Before the changes to the intermediate small bank exams, NCRC

and New York Law School found that the 92 exams in our study recorded the number of branches in low- and moderate-income neighborhoods 97 percent of the time. After the changes to the intermediate small bank exams, the exams failed to record the number of branches in low- and moderate-income neighborhoods 32 percent of the time. In addition, 53 percent of the exams after the changes did not discuss the percentage or distribution of branches in low- and moderate-income neighborhoods.³⁶

As payday lending and usurious fringe services have increased in low- and moderate-income neighborhoods, sensible public policy would be to increase emphasis on bank branches and the provision of affordable deposit and checking accounts in low- and moderate-income communities. Yet, not enough emphasis is placed on the service test for large banks and a de-emphasis on branches is occurring in the case of intermediate small banks.

H.R. 4173 and H.R. 1479 would be instrumental in rectifying deficiencies in the level of data and analysis of bank branches and service on CRA exams. The bills would require banks and credit unions to maintain and disseminate data on their branches, ATMs, and other depository facilities. The number and dollar amount of deposit accounts for the residential and commercial customers for each deposit facility would also be collected. The place of residence/business of bank/credit union customers would be provided on a census tract basis, making it possible to analyze the income level and race/ethnicity percentage of the census tracts of these customers. The bills would require these data would be used as part of CRA exam analysis.

Existing CRA exams do not adequately scrutinize the distribution of branches across neighborhoods of various income levels. Both H.R. 4173 and H.R. 1479 would not only augment the amount of data on bank branches available for CRA exams but also provide detail on the number and dollar amount of various deposit accounts. CRA exams would therefore not only measure the distribution of branches but would assess if the branches are actually effective in delivering deposit accounts to customers from neighborhoods of various income levels and racial characteristics. CRA exams, therefore, would become more effective in promoting basic

³⁶ Josh Silver, NCRC, and Rick Marsico, New York Law School, “An Analysis of the Implementation and Impact of the 2004-2005 Amendments to the Community Reinvestment Act Regulations: The Continuing Importance of the CRA Examination Process” in *New York Law School Law Review*, 2008-2009, Volume 53, Number 2.

banking services as alternatives to high-cost payday, cash checking and other fringe services. The Woodstock Institute, a NCRC member, recently conducted a study illustrating the rich types of analyses that could be conducted with more detailed data on branches and deposits.³⁷

IV. Adequacy of Enforcement Mechanisms and Needed Improvements

The remarkable accomplishment of CRA is that the law has been as successful in leveraging high volumes of responsible loans and investments for low wealth neighborhoods despite mediocre regulatory enforcement at best to negligent enforcement at worst. That CRA has been as successful as it has suggests that more vigorous regulatory enforcement could promote significant increases in loans, investments, and services for traditionally underserved communities. In addition to ratings inflation, the agencies have not seized upon the profound mergers and acquisitions over the last several years as opportunities to enforce the law. They rarely hold public hearings or hold lenders accountable for improving CRA performance after mergers. The methods for rectifying the uneven enforcement of CRA is to further bolster the public participation mechanisms and enact meaningful sanctions and corrective mechanisms for poor CRA and fair lending performance.

As CRA modernization proceeds, the recommendations discussed in this section would be applied and adapted to all institutions with a CRA obligation as well as banks.

Appeal of CRA Ratings Must be Available for Members of the Public

Currently, if a bank is unsatisfied with its CRA rating, it can appeal its rating to its regulatory agency. These appeals occur in secret, so the frequency of the appeals and how often the appeals result in higher ratings are unknown. It is possible that the appeal process could play a significant role in ratings inflation. A few years ago, NCRC assisted a member in West Virginia in commenting on a major bank's CRA exam. The examiner initially failed the bank, whereupon

³⁷ Geoff Smith, Sarah Duda, and Malclom Bush, *Benchmarking Branch Outcomes: Using Available Data to Analyze and Improve the Delivery of Retail Bank Services to Low-Wealth Communities*, Woodstock Institute, May 2009, available via <http://www.woodstockinst.org/publications/research-reports/>.

the bank promptly appealed its rating. NCRC guessed that an appeal was occurring and helped our member organization write a letter asserting that the initial rating was justified. The regulatory agency chose to ignore our letter and instead gave the bank a passing CRA rating.

If the appeal process was an open one in which the agencies gave all stakeholders an equal opportunity to comment on a preliminary CRA exam, the ratings would more likely be meaningful instead of inflated. The agencies, upon the release of a preliminary exam, would provide a 60 day public comment period. The agencies would allow banks and community organizations to comment on both the overall rating and ratings in any assessment area. Then, they would add a section to the CRA exam explaining whether they adjusted any of the ratings in response to the public comments.

Public Improvement Plans and Increased Attentiveness to Local Needs

CRA exams presently are not effective in holding banks accountable for performance outside of their largest service areas, especially in the case of large banks. A large bank can have several states and metropolitan areas on its CRA exam. The large bank can often make enough loans, investments, and services in its larger markets to pass its CRA exam. Yet, the bank can score poorly in certain states, smaller metropolitan areas, or rural counties and experience no sanctions or encouragements to improve performance in those areas.

If a low CRA rating in an assessment area triggered requirements for a bank to improve its performance, a bank would be more likely to adequately serve all geographical areas, including smaller cities and rural areas in addition to large cities. Under the Community Reinvestment Modernization Act of 2009 (H.R. 1479), if a bank receives a rating of Low Satisfactory or worse in any assessment area, it would be required to submit a CRA improvement plan to its regulatory agency, describing how it intends to bolster its CRA performance in that assessment area.³⁸ The general public would have an opportunity to comment on the CRA improvement plan. The

³⁸ The concept of an improvement plan builds upon a procedure mandated by the current CRA regulation. At section 345.43 of the FDIC's version of the regulation, a bank with a less than Satisfactory rating shall allow the public to inspect a description of its efforts to "improve its performance in helping to meet the credit needs of its entire community." This description is to be updated quarterly.

regulatory agency must either approve the CRA improvement plan or send it back to the bank for modifications. After the agency approves the CRA improvement plan, the bank must submit quarterly reports so that the regulatory agency and general public can monitor performance under the terms of the plan.

Consequences for Failed Ratings

The lack of fines or other sanctions for failed CRA ratings can encourage banks to repeatedly fail CRA exams and neglect communities of significant resources for development. The most notorious case of repeated failure is a small bank called Uinta County Bank that serves a rural community in Wyoming.³⁹ The bank has racked up 20 Substantial Non-Compliance ratings from the Federal Reserve Board since 1990. Another repeat offender is Saint Casimir's Bank in Baltimore, Maryland. The bank received five Substantial Non-Compliance ratings and eked out a Needs-to-Improve rating on its last two exams in 2007 and 2009. Larger banks with considerable resources also fail to reinvest in communities. For example, North Shore Bank, an institution with \$1.1 billion in assets in Illinois, turned in Needs-to-Improve ratings in 2007 and 2009.

An examination process is ineffective in holding institutions accountable when it does not rectify repeat failures. NCRC recommends the implementation of fines, commensurate with the extent of failure, as a method towards ending bank recidivism. In addition, H.R. 1479, in extending CRA to independent mortgage companies, prevents the mortgage company from selling loans to Government Sponsored Enterprises (GSEs), if the mortgage company had failed its CRA exam and then failed to receive regulatory approval for an acceptable public improvement plan. In other words, this punitive penalty would only be implemented when an institution failed its exam and then did nothing to correct its failure. The institution would have to fail twice (the second time for its refusal to correct its mistake) before being cut-off from access to GSEs. The same sanction should be applied to banks.

³⁹ Information on CRA exams of banks discussed in this section can be found via <http://www.ffiec.gov>.

Expectations of Affirmative Responsiveness to Needs

CRA exams and decisions on mergers often miss opportunities for enforcement when CRA exams pass banks or when agencies approve mergers without any requirements for improvement. Even when banks merit a passing rating or a merger approval, their CRA and fair lending performance can still be uneven, which is not often acknowledged by the bluntness or unsophisticated nature of exams and merger approvals. Banks are complex institutions, offering a multitude of loans, services, and investments. While they may perform reasonably well in a number of areas, a significant fair lending or CRA issue may remain in one or more of their products and practices. When agencies regularly refuse to acknowledge uneven performance in their public evaluations of banks, they reduce the legitimacy of the process and further damage the process by discouraging public participation. Community organizations and members of the public withdraw from the process as they become cynical about their grievances being addressed. NCRC therefore recommends a section in both CRA exams and merger approvals called “expectations of affirmative responsiveness to needs.” The expectations section would describe strengths and weaknesses in bank performance. Depending on the extent and duration of the weakness in performance, the section would then recommend or require certain improvements.

More Public Hearings and Meetings during Merger Applications

The merger application process presents significant opportunities for federal agencies to enforce CRA. Yet, the enforcement of community reinvestment obligations through the merger application process has been lacking over the last several years.

In Congressional testimony in 2007, an official representing the Federal Reserve testified that the Federal Reserve has held only 13 public meetings on mergers since 1990. This is less than one meeting per year in an era in which consolidations have profoundly changed the banking industry. In addition, the Federal Reserve representative stated that since 1988, the Federal Reserve received 13,500 applications for the formation of banks or the merger of institutions involving bank holding companies or state-chartered banks that were members of the Federal

Reserve System. Yet, only 25 of these applications were denied, with 8 of these denials involving consumer protection or community needs issues.⁴⁰

Likewise, the Treasury Department found that from 1985 through 1999, less than .8 percent (692 out of 92,177) of applications received adverse comments from community groups. Of these 692, the agencies denied just 8 for any reason; 4 percent of the 692 were withdrawn by the bank and 1 percent was returned to the banks. Ultimately, the agencies denied 8 out of 92,177 applications or less than .01 percent of the applications during the 15 year time period.⁴¹

The agencies also have not fully engaged the public in deliberations over mergers with profound impacts. In 2006, Wachovia acquired the largest lender of exotic mortgages, World Savings, yet there was no public hearing on this merger that posed significant fair lending and safety and soundness issues. Likewise, Regions proposed to take over Amsouth Bank in 2006. Although this merger involved two of the larger banks in the South, the Federal Reserve declined to hold a public hearing in spite of the clear ramifications for the recovery of the Gulf States after Hurricane Katrina. The Federal Reserve also declined to hold a hearing on the merger of Bank of New York and Mellon although the Bank of New York had received low ratings on two of the three tests on their two most recent CRA exams.⁴²

Most recently, the agencies declined to solicit the public's input regarding the emergency mergers involving JP Morgan Chase/Washington Mutual and Wells Fargo/Wachovia. If the agencies believed that the usual application process and public comment period was not possible in these cases, they could have held post merger meetings and public hearings as requested by NCRC member organizations. These mergers had significant impacts on lending and investing. For example, community organizations in the Western part of the country were concerned about JP Morgan Chase's commitment to continue successful affordable housing and community development initiatives of Washington Mutual. By demonstrating the seriousness of the CRA

⁴⁰ See <http://www.federalreserve.gov/newsevents/testimony/braunstein20070521a.htm> for Ms. Braunstein's testimony.

⁴¹ Raymond H. Brescia, "Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act," in *South Carolina Law Review* Vol. 60:617, Spring 2009.

⁴² Bank of New York received a low satisfactory on its lending and service test from the Federal Reserve Bank of New York on both its 2005 and 2003 CRA exams. In other words, the bank was close to failing on two CRA exams in succession. Yet, no public hearing on the merger occurred.

issues, formal agency involvement in these post emergency discussions would have facilitated mutually acceptable arrangements regarding CRA bank activities.

H.R. 1479 rectifies the regulatory inattention to public hearings and meetings. A provision of the bill would require the agencies to hold hearings when a significant number, a dozen or more, of citizens and community organizations have commented on the merger during the public comment period.⁴³ In addition, the bill would require smaller meetings to be convened by the agencies whenever the meetings were requested by a person or group commenting on the merger. Modeled after the procedure formerly employed by the Office of Thrift Supervision, the meeting would involve a discussion moderated by the regulatory agency between the banks and members of the public commenting on the application. While useful, comment letters by themselves are often insufficient in explaining the full ramifications of mergers. Public hearings and meetings allow the agencies to witness a more complete discussion and debate between the community and banks about the complexities and impacts of the mergers on the banks' abilities to meet community needs.

Another mechanism for strengthening merger enforcement in H.R. 1479 is a prohibition against a merger if any of the banks have a Needs-to-Improve or Substantial Noncompliance rating in any assessment area. This provision ensures that banks must adequately serve all communities including rural counties and smaller cities in addition to their larger markets. In addition, it addresses the possibility that the acquired bank has a poor CRA record. NCRC members often encounter merger approvals based on the record of the acquiring bank while the acquired bank has poor CRA performance. Such merger approvals do not ensure that the issues associated with the acquired bank are resolved. If H.R. 1479 is passed, the bill would require more consistent performance by both the acquiring and acquired bank in all assessment areas as a condition of merger approval.

⁴³ A threshold could be 12 comments and requests for public hearings on a small bank and 20 for a large bank.

CRA and Fair Lending Pledges as a Factor Considered on Merger Applications

CRA agreements and fair lending pledges were often negotiated in the 1990's between banks and community organizations during the merger application process. These agreements committed a bank to either fair lending reforms and/or specific levels of lending, investments, and services in specified geographical areas after mergers. The agreements become less frequent as banks began to notice that agreements were not scrutinized by the agencies. Federal agencies would usually note in merger approval orders that CRA agreements were not required by the CRA regulation. In addition, they routinely stated that they will not consider any CRA agreements in the merger approval process.⁴⁴ In the last several years, instead of negotiating agreements during mergers, banks would sometimes issue impressive sounding unilateral pledges that were difficult, if not impossible to verify, because the pledges did not specify the incomes of the beneficiaries nor the geographical areas served. While agreements were once innovative and organic mechanisms for addressing the profound impacts of mergers, they have become infrequent and debased.

NCRC recommends that CRA be amended to require agencies to consider verifiable CRA agreements and fair lending pledges as a factor on merger applications. This provision would not mandate agreements but would encourage agencies to favorably consider any substantial and well-intentioned collaborative agreement as a factor in their decision to approve a merger application. This procedure would bolster banks' abilities to serve community needs by establishing verifiable goals negotiated between banks and the communities they serve.

Establish a Private Right of Action

An effective mechanism to combat CRA grade inflation and unjustified merger approvals would be a private right of action for community organizations and members of the public. The current regulatory agencies were lax in their CRA and fair lending enforcement during the last eight years, in part, because they knew that they were immune from citizen lawsuits. A couple of pioneering lawsuits in the 1990s were dismissed by judges claiming that community

⁴⁴ See for example, <http://www.federalreserve.gov/newsevents/press/orders/orders20080605a1.pdf>. Footnote 35 on page 18 discusses CRA pledges.

organizations had no standing to sue.⁴⁵ Key merger approvals have been either illegal or highly questionable. For example, the Federal Reserve Board approved Citigroup's application to acquire the Travelers insurance company before Congress passed the Gramm-Leach-Bliley Act allowing banks to acquire insurance companies. Last year, BB&T's acquisition of 300 of Colonial's branches did not involve a public comment period although the failure of Colonial Bank did not pose a systemic threat to the United States' financial system or economy.

The right of private action would hopefully be used sparingly because CRA exams, merger reviews, and enforcement would be significantly improved by Congress passing provisions in H.R. 1479. Yet, even when vigorous enforcement is the norm, a right of private action provides a necessary check and balance ensuring agency accountability in enforcing laws. A right of private action is standard in other spheres of law such as environmental law; it is sorely needed in CRA and fair lending where enforcement has been glaringly inconsistent.

V. Adequacy of Fair Lending Review on CRA Exams

Evidence of discriminatory and illegal lending can result in downgrades of CRA ratings for banks if discrimination and illegal lending were widespread and the lender did not take action to end the practices. There is, however, no evidence that the fair lending reviews conducted concurrently with CRA exams are rigorously testing for abusive, discriminatory, and illegal lending.

In most cases, even for the largest banks in the country, the fair lending section of the CRA exam reports in one to three sentences that the regulatory agency tested for evidence of illegal and discriminatory lending and that no such lending was found.⁴⁶ There is no discussion of what precisely had been done to reach this conclusion.

A clear case of inadequate fair lending and other illegal practices review involved Superior Bank. This savings and loan was one of the first well-known failures of an institution that

⁴⁵ See Brescia, *op. cit.*

⁴⁶ For example, a federal agency had this to say on the CRA exam's fair lending review of one large bank with several affiliates, a number of whom make high cost loans: "We found no evidence of illegal discrimination or other illegal credit practices." That was the only sentence in the fair lending review section.

offered large volumes of ill-advised exotic and high-cost loans. The Office of Thrift Supervision's 1999 exam described Superior's loans as innovative and extolled the loan terms and conditions such as payment deferrals (which could result in negative amortization) and high loan-to-values.⁴⁷ The exam did not examine how often these risky features were utilized and whether they were combined. The fair lending section found no violations of fair lending or other laws. Soon after this exam, Superior failed.

Providing more detailed descriptions of fair lending reviews should be straightforward. The agencies used to provide detailed descriptions in the fair lending section of CRA exams in the mid-1990s. For example, the Federal Reserve Bank of Richmond conducted matched file reviews of more than 300 loan applications in a CRA exam dated January 1996 of Signet Bank.⁴⁸ The exam also described regression analysis, which sought to determine if race was a factor in loan rejections. The analysis considered variables not available in the HMDA data such as credit histories, the stability of employment, and applicant debt obligations. This type of substantive fair lending review provides the general public with confidence that the regulatory agency performed a detailed anti-discrimination analysis. Ironically, it was after the CRA regulations were reformed during the mid-1990s in an effort to improve the rigor of the exams that these descriptions of fair lending reviews disappeared from the CRA exams.

Since the regulatory agencies have become lackadaisical in their fair lending reviews, NCRC recommends that Congress mandates in CRA exams detailed descriptions of fair lending review methodology, loan types examined, and results of the reviews. The fair lending review should also probe for other illegal and unsafe practices and products.

VI. Reforms that Would Enable Financial Institutions to Engage in High Impact Economic Development

High impact economic development is holistic economic development that ties together housing, small business, economic development, and community development initiatives. When a neighborhood(s) is in need of comprehensive development, the chances of revitalizing a

⁴⁷ See http://files.ots.treas.gov/cra/CRAE_08566_19990927_60.rtf.

⁴⁸ Ibid.

neighborhood(s) improves when all of these activities are undertaken together and targeted towards the neighborhood(s).

Better Data on Community Development Loans and Investments

Data exists currently on home lending, small business lending, and branching on a census tract level, but no data exists on a census tract level for community development, which includes affordable housing development such as rental housing, equity investments in small business, economic development projects such as shopping centers, and community centers. If data was available on community development on a census tract level, spatial analysis could create more effective strategies for holistic development; that is, geographic targeting home and small business lending and community development lending and investing for neighborhoods in need. In addition, the data on community development would facilitate assessments of spatial equity that would determine if inner city and suburban areas are receiving adequate amounts of community development financing.

NCRC recommends that Congress require the regulatory agencies to collect, publicly disseminate, and use community development data on a census tract level for CRA exams. The data would include categories of community development lending and investing, such as affordable housing (including rental), small business financing, and other categories.

Allow for Investments in National Funds Provided Local Needs are Met

The number of investors in Low-Income Housing Tax Credits (LIHTC) has significantly diminished with the retreat of Government-Sponsored Enterprises from the LIHTC market. National funds help overcome the diminished resources available for LIHTC investments by providing an efficient means for banks to invest in LIHTC projects. At the same time, it is imperative that banks first meet the credit needs of their assessment areas or the geographical areas in which they have branches and/or make loans.

NCRC recommends that CRA examination procedure allow points for investments in national funds provided that the banks have first met the needs for community development loans and investments in their assessment areas. The agencies should establish thresholds such as Outstanding ratings on the investment test in most of the assessment areas before a bank is allowed to invest outside of its assessment areas.⁴⁹ Also, when determining if banks have met needs in assessment areas, the expansive definition of assessment areas in H.R. 1479 and discussed above must be used. The expansive definition reflects more meaningfully all the geographical areas in which banks have a business presence and make a significant number of loans. Community development possibilities are maximized if banks are also asked to ensure that they are meeting needs for community development financing in areas in which they are making significant amounts of home and small business loans.

VII. Impact of Structure of the Financial Industry on CRA and How Could CRA be Applied to Additional Financial Service Providers

Poor Record of Non-CRA Covered Institutions

The lightly regulated and non-CRA covered segments of the financial industry have caused profound damage to the country's economy and to the community wealth-building assisted by the CRA-related lending and investing of banks. Financed by Wall Street investment banks and hedge funds, non-CRA covered independent mortgage companies, and unscrupulous mortgage brokers engaged in high volumes of ill-advised and risky loans. The Federal Reserve Board found that from 2004 to 2006, independent mortgage companies extended between 55 percent and 63 percent of the high-cost piggyback loans.⁵⁰ When risky lending was targeted to neighborhoods that benefited from CRA-related housing and community development financing, the risky lending undid the wealth creation of the CRA lending and investing by causing high levels of foreclosures, property value declines, abandonment, vandalism, and crime. The

⁴⁹ If the most recent CRA exam is more than 2.5 years old, the bank should also provide evidence to its regulatory agency that it is continuing to invest in its assessment areas before being allowed to invest outside. For example, it could produce a list of investments in its assessment areas.

⁵⁰ Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, *The 2007 HMDA*, the Federal Reserve Bulletin, December 2008, available via <http://www.federalreserve.gov/pubs/bulletin/2008/pdf/hmda07final.pdf>.

independent mortgage companies also experienced massive losses as a result of their lending activity. The Federal Reserve revealed that 167 of the 169 lending institutions that ceased operations in 2007 were independent mortgage companies.⁵¹

CRA's impact has been deterred by more responsible institutions as well. Non-CRA covered credit unions and insurance companies have not been major actors in the subprime fiasco but they have not served minority and working communities in a satisfactory manner, thereby decreasing the levels of responsible loans and insurance products available in traditionally underserved communities. Last fall, NCRC released a report, *Credit Unions: True to Their Mission (Part II)*, concluding that the non-profit and tax exempt credit unions, which have a statutory duty to serve people of "small means," issue lower percentages of home loans than banks to minorities, women, and low- and moderate-income communities.⁵²

NCRC analyzed banks' and credit unions' performance on three lending types: home purchase, refinance, and home improvement. Across the three loan types, banks and credit unions were assessed on 69 performance measures scrutinizing: 1) the percent of loans to various groups of borrowers, 2) denial rates confronted by minority compared to white borrowers and lower income compared to upper income borrowers, and 3) approval rates experienced by borrowers. In 2007, banks outperformed credit unions on 44 of the 69 performance indicators (or 64 percent of the time). Credit unions surpassed banks performance only 7 percent of the time, while banks and credit unions performed equally well almost 30 percent of the time. In 2006 and 2005, banks performed better than credit unions on 65 percent of the indicators.

Over the years, the National Credit Union Administration (NCUA), the regulator of credit unions, has changed credit union charters in a manner that should enable them to achieve desirable CRA and fair lending performance. The NCUA provided large credit unions with community charters that enable them to serve large areas such as Los Angeles County. By 2007,

⁵¹ Avery, Brevoort, and Canner, op. cit.

⁵² See http://www.ncrc.org/images/stories/mediaCenter_reports/creditunionreport090309.pdf

community credit unions numbered 1,177, and had 16.2 million members and \$123 billion in assets. In addition, the NCUA allowed large credit unions to add underserved areas consisting of low- and moderate-income neighborhoods to their service areas.

By 2007, credit unions serving underserved areas had increased to 673, had 17.9 million members, and held \$150 billion in assets.⁵³ Moreover, large credit unions with over \$1 billion in assets have \$356 billion in total assets. While mainstream credit unions clearly have the assets, resources, and geographic reach to serve minorities, women, and low- and moderate-income communities, the evidence from NCRC's three year study suggests that they do not serve these communities as well as CRA-covered banks. Finally, the study finds that state-chartered credit unions in Massachusetts covered by a state-CRA law perform better than federally-chartered credit unions not covered by CRA in reaching traditionally underserved populations in Massachusetts.

Just as in the case of credit unions, insurance companies are not serving communities of color as well as they should. While public policy interest in access to insurance has waned in recent years, the research findings of significant disparities in access to insurance from the past appear to apply to the present day situation (no recent evidence suggests the situation has changed). The dearth of current research suggests the need for national data disclosure and CRA for insurance companies so that the provision of insurance to traditionally underserved communities can be carefully assessed.

Controlling for factors affecting the availability and the price of insurance (such as average loss cost, age of home, market value of the house, housing conditions, household income), a study conducted by an economist with the National Association of Insurance Commissioners suggests that insurance unavailability in urban areas can not be explained by the higher risk of loss in

⁵³ Report to the NCUA Board from the Outreach Task Force, February 26, 2008, via <http://www.ncua.gov/ReportsAndPlans/plans-and-reports/2008/OutreachTFReport-022608.pdf>

these areas.⁵⁴ Using a series of regression analyses, the study reveals that, holding other factors equal, minority homeowners were less likely to acquire insurance through the voluntary market. After controlling for risk of loss, a 10 percentage point increase in the portion of minorities in a zip code is associated with a 2 percentage point increase in the portion of “FAIR plans,” which are government-sponsored insurance plans of last resort for those who cannot obtain insurance in the private market. Moreover, average premiums are higher in cities and even higher in minority and low-income neighborhoods. Geographical areas with higher concentrations of minority and non-English-speaking residents are also associated with higher prices for insurance.

Similarly, Schultz⁵⁵ uses a regression analysis controlling for factors influencing agents’ placement decision and finds that “agents are not located where their potential economic gain is greatest.” In this study, the risk of loss was not found to be significantly different in predominantly minority areas, compared to predominantly white ones. Thus, risk of loss could not explain the finding that fewer agents were placed in predominantly minority areas. Schultz concludes that there seems to be a bias against placing agents in inner-city neighborhoods with high concentrations of minorities. This bias persists even after controlling for loss costs, agents commissions, and profitability. Moreover, underwriting rules, such as the minimum property value and the maximum age of home, had a disproportionate effect on low-income neighborhoods.⁵⁶

Resources of and Opportunities for Non-CRA Covered Institutions

If CRA was applied to credit unions, insurance companies, securities firms, and other non-bank institutions, the resources available for CRA-related financing of comprehensive community

⁵⁴ Robert Klein. (1997). “Availability and Affordability Problems in Urban Homeowners Insurance Markets”. Chapter Three of *Insurance Redlining: Disinvestment, Reinvestment, and the Evolving Role of Financial Institutions* by Squires, G. Urban Institute Press: Washington, D.C. The analysis was for 25 metropolitan statistical areas within the 13 largest states for which territory-level loss data could be obtained.

⁵⁵ Jay Schultz. (1997). “Homeowners Insurance Availability and Agent Location”. Chapter Four of *Insurance Redlining: Disinvestment, Reinvestment, and the Evolving Role of Financial Institutions* by Squires, G. Urban Institute Press: Washington, D.C.

⁵⁶ 44% of the houses in low-income quartiles had a value below \$35,000 and 20% of the insurance companies in Missouri excluded houses valued under \$35,000. Furthermore, 71% of the homes in low-income quartiles were not eligible when underwriting guidelines exclude houses built prior to 1950.

development would multiply. Credit unions, now a mature and mainstream industry, have collectively \$825 billion in assets. The assets of money market funds equal \$3.5 trillion.⁵⁷ Non-life insurance premiums in the United States were \$652 billion during 2007.⁵⁸ Hedge funds constituted \$2.5 trillion in assets.⁵⁹ In sum, if CRA were applied broadly across the financial industry, traditionally underserved communities would experience hundreds of billions of more dollars in loans, equity investments, insurance, and securities products.

How CRA Would be Applied to Non-Bank Institutions

H.R. 1479 provides a robust method for applying CRA to non-bank institutions. H.R. 1479, in turn, builds upon the framework of the existing CRA statute and regulation for examining institutions. For retail institutions, the lending test serves as a model. It is straightforward to apply the lending test to mortgage companies and credit unions and measure their lending activity to minorities and low- and moderate-income borrowers and communities. Instead of a lending test, H.R. 1479 would apply a customer evaluation test to retail insurance companies and securities firms that would measure the provision of homeowners and renters' insurance and money market funds and other securities products to minorities and low- and moderate-income customers and communities. Public data disclosure, similar to HMDA data, would enable CRA exams to measure the provision of retail non-bank products to customers and communities.

Non-bank retail institutions would also have an investment and service test similar to the tests for banks. The investment test would measure the provision of investments in affordable housing, small business, and economic development projects. The service test would measure the distribution of branches and deposit accounts by income and minority level of neighborhood for credit unions. The service test would measure the neighborhood distribution of loan offices for mortgage companies and agents for insurance and securities companies.

⁵⁷ See <http://www.ici.org/pdf/fm-v18n3.pdf>

⁵⁸ IFSL Research, Insurance Update 2008, International Financial Services, London, November 2008.

⁵⁹ See http://en.wikipedia.org/wiki/Hedge_fund

H.R. 1479 provides sufficient flexibility while demanding robust exams for institutions of different capacities. For example, wholesale non-bank financial institutions would have an examination that focuses on community development loans, investments, and services just like wholesale banks. Smaller credit unions and mortgage companies would either not have an investment test or they would not be expected to make as many investments as their larger counterparts, depending on the research and public comments received during a public rulemaking process after the implementation of H.R. 1479.

VIII. Other Factors that Reduce Effectiveness of CRA – Regulatory Fragmentation

The fragmentation among regulatory agencies reduces the effectiveness of CRA. The proposed Consumer Financial Protection Agency (CFPA) must receive jurisdiction for CRA. NCRC's July 2009 testimony before the House Financial Services Committee describes in detail the lax regulatory enforcement of CRA. Just as with other consumer protection laws, CRA enforcement suffers from the dynamic of four agencies lessening the rigor of enforcement in order to compete for bank business and fees. Our July testimony describes in detail how the Office of Thrift Supervision significantly weakened their CRA regulations and examinations. Then, in the pressure to compete, the other three agencies also lessened the rigor of their examinations and reduced data reporting requirements.

As discussed above, the federal bank agencies pass 99 percent of banks and thrifts on CRA exams. They have also significantly lessened public hearings during bank mergers and rarely require any measurable improvements in CRA and fair lending performance after mergers. This regulatory neglect occurred during the worst years of irresponsible lending. Although non-CRA covered institutions were major actors behind the crisis, the federal agencies should have been extra vigilant in enforcing CRA and fair lending obligations during this time period. While bank retail lending was responsible during this time period, the non-CRA covered activity by some

large banks such as securitizing risky loans was not sufficiently scrutinized and curtailed by the agencies, which had opportunities to act during merger applications.⁶⁰

The four banking agencies also have much difficulty updating and strengthening CRA. In 2001, the agencies announced the start of a process to update CRA. Several years later, the major accomplishment of this effort was not strengthening, but watering down CRA exams and eliminating small business data reporting requirements for a whole class of banks, that is, small intermediate banks. If Congress modernizes CRA, the fragmentation and indecision among the regulatory agencies could increase. It would be likely that even more agencies would administer CRA since the National Credit Union Administration would enforce CRA as applied to credit unions and other agencies would enforce CRA as applied to mortgage companies, insurance firms, and securities companies. In order to update the CRA regulation, half a dozen or more agencies would have to agree to a new set of rules. The difficulties that the four existing federal bank agencies had in updating CRA would be magnified many times over. In order to avoid this regulatory logjam as CRA is modernized, it is time to modernize the regulatory enforcement of CRA and place CRA under the jurisdiction of the proposed CFPA.

IX. Other Changes to CRA Statute or Procedure

CRA's effectiveness is bolstered when community organizations, public officials, and other stakeholders participate in the CRA process to a great extent and hold lenders accountable for their CRA performance and hold agencies accountable for enforcing CRA. The agencies and examiners are doing a poor job involving community organizations in commenting on CRA exams and mergers. NCRC member organizations report that examiners conducting CRA exams rarely approach them for offering comments on bank performance. Instead, examiners should regularly approach organizations and provide sufficient lead time for community organizations to thoughtfully prepare comments or observations. Examiners should also provide thoughtful questions for organizations to answer about bank CRA performance and needs and opportunities in their area. Finally, there must be an easier way for community organizations to contact

⁶⁰ H.R. 1479 would require agencies to scrutinize securitization activity and penalize banks through lower CRA ratings if the securitization activity facilitates abusive and unsafe lending.

examiners. Currently, it can take several calls to figure which examiner is conducting a CRA exam for a specific bank. A publicly available roster of names and phone numbers of examiners would be helpful as well as information about which examiner is assigned to which exam.

Agencies throughout the federal government should also adopt CRA-like mechanisms in their contracting decisions. Before federal agencies award contracts of \$1 million or higher to banks and other financial institutions, the federal agencies should be required to receive public comments on their CRA and fair lending performance. These federal contracts are substantial; for example, Bank of America has a contract with the Department of Defense to operate “Community Banks” on overseas military installations. The public comment process before contract awards would heighten the accountability of banks to both federal agencies and the general public and thus increase their efforts in community reinvestment.

Conclusion and Recommendations

Modernizing CRA is one of the most vital legislative initiatives undertaken by the House Financial Services Committee and Congress. If CRA had been applied broadly throughout the financial industry, the foreclosure crisis would not have occurred or would have been considerably less severe because CRA requires that financial institutions serve communities consistent with safety and soundness. In fact, Federal Reserve and other research reveals that CRA has succeeded in motivating profitable and safe and sound bank lending. In addition, applying CRA broadly throughout the financial industry would significantly bolster the government’s economic stimulus efforts by channeling hundreds of billions of dollars to America’s neighborhoods. Moreover, the CRA reforms suggested by NCRC would heighten public participation in the CRA process on multiple levels and would thus increase the accountability of financial institutions to smaller cities and rural areas as well as larger urban centers.

NCRC’s comprehensive series of recommendations include:

Augment CRA Examination Criteria (similar provisions applied to all institutions with a CRA obligation)

- Change assessment area definitions so that the great majority of bank loans are covered by CRA exams per the procedure in H.R. 1479.
- Require that mortgage company affiliates of banks and all other non-bank affiliates in bank holding companies are covered by CRA as mandated by H.R. 1479.
- Require that CRA exams scrutinize lending, investing, and service to minorities and communities of color as mandated by H.R. 1479.
- Repeal the stretch-out of CRA exams for small banks, which is a provision in H.R. 1479.
- Institute a weighting system for CRA exams that weight categories of loans, investments, services according to their affordability and responsiveness to local needs (NCRC recommendation not in any existing bills).
- Create meaningful scales of points such as 1 to 100 on CRA exams to meaningfully evaluate the multiple levels of CRA performance (NCRC recommendation not in any existing bills). Add High- and Low-Satisfactory as possible overall ratings as required by H.R. 1479.
- Enhance HMDA data to include more information on loan terms and conditions as required by H.R. 1479 and H.R. 4173.
- Enhance small business loan data to include the race and gender of the small business owner and other characteristics as required by H.R. 1479 and H.R. 4173.
- Improve the data on bank branches and deposits and require analysis of branches and deposits by income and minority level of neighborhoods as required by H.R. 1479 and H.R. 4173.

Strengthen Enforcement Mechanisms (to be applied to all institutions with a CRA obligation)

- Institute a public comment process allowing community organizations to appeal preliminary CRA ratings (NCRC recommendation not in any existing bills).

- Require public improvement plans, subject to public comment and review, whenever a bank scores Low-Satisfactory or worse overall or in any assessment area as mandated by H.R. 1479.
- Impose real consequences for failed ratings including fines (NCRC's recommendation not in any existing bills) and extending H.R. 1479's sanction to banks of cutting off access to the government-sponsored enterprises.
- Institute a requirement that CRA exams and merger applications have a section called "Expectations of Affirmative Responsiveness to Needs" that recommends or requires banks to address weaknesses in their CRA and fair lending performance (NCRC recommendation not in any existing bills).
- Require the federal agencies to consider any verifiable CRA agreements and fair lending pledges during merger applications (NCRC recommendation not in any bills).
- Require the federal agencies to hold frequent public hearings and meetings during the merger application process as mandated in H.R. 1479.
- Disallow mergers between institutions with a Needs-to-Improve or worse rating in any assessment area per the provision in H.R. 1479.
- Institute a private right of action whereby community organizations and other members of the general public can challenge agencies' CRA ratings and decisions on merger applications (NCRC recommendation not in any existing bills).
- Require detailed discussions of methodology, loan types examined, and the results of fair lending reviews on CRA exams (NCRC recommendation not in any existing bills).

Reforms that Would Enable Financial Institutions to Engage in High Impact Economic Development (would be applied to all institutions with a CRA obligation)

- Require that institutions would report data on community development lending and investing and that the data would be used on CRA exams (NCRC recommendation not in any existing bills).
- Allow investments in national funds provided that needs are met in an institution's assessment area (NCRC recommendation not in any bills).

Apply CRA to Non-Bank Financial Institutions as required by H.R. 1479

- Independent mortgage companies
- Mainstream credit unions
- Insurance companies
- Securities firms
- Investment banks

Move Jurisdiction of CRA to the Proposed Consumer Financial Protection Agency

Require that before Federal agencies contract with banks and other financial institutions, they receive public comments on the CRA and fair lending performance of the institutions (NCRC recommendation not in any bills).

Appendix Tables

Subprime Lending by Race

Racial Disparities in Lending by Congressional District for House Financial Services Committee Members

Statistics from Politics and the Subprime Meltdown by Maurice Jourdain-Earl of Compliance Tech

The table below displays subprime lending by Congressional District. Minorities received disproportionately larger shares of subprime loans. Research shows that most of these subprime loans were issued by loosely regulated mortgage companies not covered by CRA. Thus, these findings demonstrate the need to include unregulated institutions under the Community Reinvestment Act and for CRA exams to scrutinize lending to minorities.

National Community Reinvestment Coalition

September 2009

Representative	Congressional District	% Subprime Loans to Whites	% Subprime Loans to African Americans	% Subprime Loans to Hispanics	Overall % Subprime
Ackerman, Gary [D]	NY-5	10.28%	23.68%	29.88%	12.78%
Adler, John [D]	NJ-3	21.38%	48.37%	39.01%	26.27%
Baca, Joe [D]	CA-43	30.47%	48.76%	45.64%	41.76%
Bachmann, Michele [R]	MN-6	21.11%	45.02%	40.16%	23.10%
Bachus, Spencer [R]	AL-6	18.30%	50.86%	44.21%	23.69%
Barrett, James [R]	SC-3	21.23%	56.19%	32.33%	25.88%
Bean, Melissa [D]	IL-8	21.24%	44.35%	41.41%	24.36%
Biggert, Judy [R]	IL-13	20.45%	50.75%	40.43%	24.12%
Campbell, John [R]	CA-48	10.23%	27.08%	32.46%	14.32%
Capito, Shelley [R]	WV-2	25.45%	37.16%	31.52%	26.68%
Capuano, Michael [D]	MA-8	13.15%	45.59%	42.43%	23.08%
Carson, André [D]	IN-7	30.13%	62.06%	64.84%	39.15%
Castle, Michael [R]	DE-00	19.12%	44.78%	33.56%	26.46%
Childers, Travis [D]	MS-1	34.95%	67.76%	47.48%	42.13%
Clay, William [D]	MO-1	30.29%	69.12%	46.38%	48.91%
Cleaver, Emanuel [D]	MO-5	28.62%	65.56%	41.18%	37.40%
Donnelly, Joe [D]	IN-2	30.27%	63.72%	43.63%	32.66%
Driehaus, Steve [D]	OH-1	23.00%	56.93%	47.51%	30.82%
Ellison, Keith [D]	MN-5	18.87%	61.44%	52.47%	26.71%
Foster, Bill [D]	IL-14	20.54%	49.67%	42.48%	26.14%
Frank, Barney [D]	MA-4	18.39%	40.14%	38.67%	20.18%
Garrett, E. [R]	NJ-5	16.77%	45.09%	28.84%	19.01%
Gerlach, Jim [R]	PA-6	15.19%	46.10%	37.07%	19.14%
Grayson, Alan [D]	FL-8	24.50%	50.32%	46.04%	33.45%
Green, Al [D]	TX-9	33.51%	72.65%	54.26%	51.58%
Gutierrez, Luis [D]	IL-4	21.21%	54.63%	44.57%	36.08%
Hensarling, Jeb [R]	TX-5	32.33%	67.30%	58.52%	41.79%
Himes, Jim [D]	CT-4	12.24%	47.49%	42.29%	20.71%
Hinojosa, Rubén [D]	TX-15	33.97%	44.19%	58.22%	53.29%
Hodes, Paul [D]	NH-2	21.74%	44.09%	32.26%	23.84%
Jenkins, Lynn [R]	KS-2	26.46%	45.99%	35.78%	28.30%
Jones, Walter [R]	NC-3	15.98%	51.19%	25.88%	22.42%
Kanjorski, Paul [D]	PA-11	30.31%	53.36%	51.47%	35.77%
Kilroy, Mary Jo [D]	OH-15	21.99%	56.13%	45.88%	25.24%
King, Peter [R]	NY-3	18.11%	48.91%	38.40%	22.52%

Klein, Ron [D]	FL-22	21.39%	52.50%	42.90%	29.71%
Kosmas, Suzanne [D]	FL-24	24.21%	47.32%	41.62%	30.54%
Lance , Leonard [R]	NJ-7	13.88%	38.00%	33.01%	18.52%
Lee , Chris [R]	NY-26	21.06%	41.85%	30.23%	23.25%
Lucas, Frank [R]	OK-3	33.60%	60.42%	44.41%	35.98%
Lynch, Stephen [D]	MA-9	17.20%	47.06%	40.70%	24.65%
Maffei , Dan [D]	NY-25	20.13%	45.45%	37.01%	23.35%
Maloney, Carolyn [D]	NY-14	4.09%	11.54%	18.71%	4.97%
Manzullo, Donald [R]	IL-16	26.03%	63.08%	45.60%	29.61%
Marchant, Kenny [R]	TX-24	19.87%	57.49%	47.07%	29.86%
McCarthy, Carolyn [D]	NY-4	20.09%	53.67%	46.19%	35.04%
McCarthy, Kevin [R]	CA-22	22.02%	50.29%	42.90%	32.20%
McCotter, Thaddeus [R]	MI-11	21.31%	51.41%	42.71%	24.15%
Mchenry, Patrick [R]	NC-10	22.47%	59.09%	41.19%	26.52%
Meeks, Gregory [D]	NY-6	35.40%	49.56%	44.17%	44.25%
Miller, Gary [R]	CA-42	12.80%	30.67%	29.74%	18.66%
Miller, R. [D]	NC-13	14.41%	48.83%	35.62%	23.07%
Minnick, Walt [D]	ID-1	21.39%	33.33%	37.05%	22.73%
Moore, Dennis [D]	KS-3	17.75%	55.96%	36.99%	21.97%
Moore, Gwen [D]	WI-4	29.37%	71.50%	51.85%	45.60%
Neugebauer, Randy [R]	TX-19	30.97%	64.85%	65.37%	38.68%
Paul, Ronald [R]	TX-14	25.56%	56.67%	43.27%	30.18%
Paulsen , Erik [R]	MN-3	17.14%	56.91%	41.81%	21.72%
Perlmutter, Ed [D]	CO-7	20.20%	51.72%	44.37%	25.94%
Peters , Gary [D]	MI-9	16.88%	51.74%	40.55%	20.62%
Posey , Bill [R]	FL-15	25.60%	48.36%	46.86%	33.93%
Price, Tom [R]	GA-6	12.61%	38.75%	27.77%	15.83%
Putnam, Adam [R]	FL-12	29.99%	56.00%	50.19%	38.77%
Royce, Edward [R]	CA-40	13.94%	33.06%	35.67%	21.77%
Scott, David [D]	GA-13	23.80%	48.49%	43.74%	39.74%
Sherman, Brad [D]	CA-27	17.67%	38.80%	37.22%	27.33%
Speier, Jackie [D]	CA-12	7.08%	19.29%	22.46%	12.60%
Velazquez, Nydia [D]	NY-12	13.35%	50.47%	39.78%	26.56%
Waters, Maxine [D]	CA-35	24.78%	42.00%	43.70%	38.96%
Watt, Melvin [D]	NC-12	18.32%	49.37%	37.71%	28.78%
Wilson, Charles [D]	OH-6	29.14%	59.09%	37.97%	30.78%