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The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining

Consumer Protection and Financial Institutions Subcommittee

Introduction: Public input and accountability are the keys to CRA's success

I thank Chairman Meeks and the members of this subcommittee for providing me the honor of testifying this morning regarding the Community Reinvestment Act's (CRA) impact in combating discrimination and redlining. I am the CEO of the National Community Reinvestment Coalition (NCRC). NCRC and its more than 600 grassroots member organizations create opportunities for people to build wealth. NCRC members include community reinvestment organizations; community development corporations; local and state government agencies; faith-based institutions; community organizing and civil rights groups; minority and women-owned business associations, as well as local and social service providers from across the nation. We work with community leaders, policymakers and financial institutions to champion fairness and fight discrimination in banking, housing and business.

In this testimony, I will talk about how CRA has increased lending in redlined and underserved neighborhoods. I will provide data and review studies to support my belief that CRA's emphasis on public input and local accountability has increased lending. I will also remark upon the current status of regulatory reform efforts and legislation to modernize CRA. Senator Elizabeth Warren and Representative Cedric Richmond have introduced the American Housing and Economic Mobility Act of 2019 (S. 787 & H.R. 1737), which includes updates to the CRA statute.[1]

On a daily basis, NCRC and our member organizations use CRA. We comment on CRA exams and merger applications. We engage regulators, bankers and community stakeholders in conversations about how best to meet community needs for credit and capital. One major outcome of our CRA work has been negotiating community benefit agreements (CBAs) with banks totaling over $90 billion since 2016. Notable CBAs include those with Keybank, Fifth Third, Santander, IBERIABANK and First Tennessee. The CBAs are usually negotiated in the context of a merger application and help banks demonstrate the statutorily required public benefit in terms of increased lending, investments and services in underserved communities.

Our work is made possible by the CRA requirements of public input and accountability. CRA has worked best when it is enforced, and part of the enforcement mechanism is public engagement. When Senator Proxmire and other lawmakers were crafting CRA in 1977, their focus was on redlining in low- and moderate-income (LMI) communities and communities of color. As envisioned by the CRA statute, the antidote to redlining was CRA exams scrutinizing lending on a local level. The public release of CRA ratings is a powerful motivation for banks to improve their lending and investing in underserved communities. Federal Reserve Governor Lael Brainard stated in a recent speech at the NCRC Just Economy conference, "The public nature of

[1] See Congress.gov for the bill text:
https://www.congress.gov/search?q=%7B%22congress%22%3A%22116%22%2C%22source%22%3A%22legislation%22%2C%22search%22%3A%22affordable%20housing%22%7D&searchResultViewType=expanded

CRA evaluations provides a strong incentive for good performance as well as a platform for public input on community needs."[2]

CRA works in tandem with the Home Mortgage Disclosure Act (HMDA) data to increase public accountability. Congress passed HMDA in 1975 to provide sunshine on banks' lending patterns and ascertain whether banks were meeting credit needs or whether some banks were engaging in redlining. The racial and income disparities in lending revealed by the first year of HMDA data in 1976 helped motivate the passage of CRA. HMDA has been used in CRA exams ever since to identify and rectify gaps in banks' meeting community credit needs. Other data, including small business lending and community development data, has also been used in CRA exams but we will describe below how this data needs to be improved in order to bolster bank activity in LMI communities.

Think of it this way: powerful institutions are unlikely to meet community needs if they do not need to seek regulatory approval for major activities and transactions, and if they and their regulatory agencies are not required to consider public comments about community needs. The genius of CRA is providing the public with a visible seat at the table so that their views are integral to the process. It makes intuitive sense that the victims of discrimination and redlining should have a key role in crafting solutions to this systemic injustice. Furthermore, residents of redlined and underserved communities also have the best insights into how their credit needs can be best met, which can vary significantly from one community to another.

Government and the banking industry played a major role in creating distressed and impoverished neighborhoods in prior decades. During the New Deal, the Roosevelt administration established the Home Owners Loan Corporation (HOLC). HOLC examiners classified neighborhoods on the basis of risk. Over time, banks did not lend in the riskiest and most hazardous neighborhoods, where a majority of residents were often people of color and also recent immigrants from southern and eastern Europe. The redlines on the maps delineating neighborhoods deemed risky by mortgage lenders was the origin of the term redlining. In subsequent years, the Federal Housing Administration (FHA) would not insure loans in redlined neighborhoods.[3] The private sector—including banks—adopted and expanded the practice of redlining.

Redlining goes back to the 1930s and has been an insidious and destructive practice ever since. CRA has been instrumental in rectifying discrimination and increasing access to credit and capital in underserved communities. At the outset, however, I want to make clear that CRA by itself cannot overcome the impacts of decades of discrimination and segregation, which remain quite visible and harmful to the nation's economic and social health. Persistent poverty and low levels of wealth in segregated communities must be addressed by a variety of public sector

[2] Governor Lael Brainard, "The Community Reinvestment Act: How Can We Preserve What Works and Make it Better?" At the 2019 Just Economy Conference, National Community Reinvestment Coalition, Washington, D.C., March 12, 2019, https://www.federalreserve.gov/newsevents/speech/brainard20190312a.htm

[3] Bruce Mitchell and Juan Franco, *NCRC, HOLC Redlining Maps: The Persistent Structure of Segregation and Economic Inequality*,(Mar. 20,2018), https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf [https://perma.cc/JXW4-Q9UE].

policies at the national and local levels, including vigorous fair lending/housing laws and zoning reforms.

CRA needs an update, but care must be taken to keep exams focused on underserved and local communities

CRA needs an update that increases the emphasis on rating and evaluating performance on a local level. In order to build on public input and accountability, CRA reform must:

- Apply CRA to independent mortgage companies and financial technology companies;
- Expand assessment areas to capture the great majority of bank lending and business activity;
- Mandate inclusion of mortgage company affiliates on CRA exams;
- Include people and communities of color on CRA exams and address needs of neglected populations and areas (banking deserts) including senior adults, veterans, rural and Native American communities;
- Improve data in CRA exams, particularly small business and community development data;
- Enhance the rigor of CRA ratings to combat grade inflation and stimulate more lending, investing and services;
- Provide more public input in the merger application process and recognition of community benefit agreements.

CRA reform needs to pay attention to underserved urban areas but also augment its attention to rural and Native American communities. Reforms to assessment areas' procedures and data improvements as discussed below can be especially helpful and steer more community development towards rural areas. The overall objective must be to increase the reinvestment pie, that is, increase lending and investing, so that no community feels like CRA reform is zero sum (someone's benefit comes at the expense of another's loss). Increases in public accountability involving reforms to assessment areas, public input, ratings and data will enlarge the reinvestment pie. Ratings reform is critical since 98 percent of banks currently pass their exams; more nuance in ratings would likely increase reinvestment in all communities.

In contrast, concepts introduced by the Office of the Comptroller of the Currency (OCC) and other stakeholders during last year's Advance Notice of Proposed Rulemaking (ANPR) process would undermine CRA's pillars of public input and local accountability and would thus result in significant declines in CRA-related loans, investments and services. In particular:

- The one-ratio concept would largely reduce CRA's evaluations to considering performance on a national level and would thus violate the purpose of the CRA statute requiring banks to meet needs in local communities. The statute further directs agencies to evaluate bank performance in states, metropolitan areas and rural areas where banks have branches. NCRC's ANPR letter further discusses how the one-ratio concept would contravene the statute's emphasis on local level evaluations.[4]

- In its ANPR questions, the OCC asked whether CRA be broadened to consider activities that benefit entire communities in addition to LMI neighborhoods. If enacted, these regulatory changes would strike at the heart of CRA's statutory emphasis in revitalizing redlined LMI communities. In 1977, CRA hearings preceding its passage emphasized the importance of addressing a dearth of credit in LMI and communities of color. Accordingly, Senator Proxmire, the major author of CRA, was careful to insert the requirement that banks address the credit needs of LMI communities. The need to stay true to the statutory emphasis on LMI communities is discussed in detail on our ANPR comments.[5]
- The OCC also asked whether CRA should favorably consider activities that are not directly related to meeting credit needs or community development needs. This would be a significant watering down of CRA and would result in less lending in underserved communities.

NCRC estimates that any significant dilution of assessment areas and local evaluations would result in a dramatic loss in home and small business lending over a five-year time period that would range from $52 billion to $105 billion.[6] Moreover, the losses would be stark on a state and Congressional district level.

Research and data demonstrate CRA's success in combating redlining

By focusing on local accountability, CRA has leveraged significant increases in lending and investing in communities across America, both urban and rural, as Governor Brainard confirmed in her recent speech.[7] Since 1996, banks complying with CRA have made more than $1 trillion in community development lending. Likewise, banks have issued more than $1 trillion in small business lending in LMI census tracts since 1996.[8] An NCRC report, "Access to Capital and Credit for Small Businesses in Appalachia," showed that every two years banks issued $5.8 billion in community development lending and investing in Appalachia. In addition, small

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[4] See NCRC ANPR letter, specifically: https://ncrc.org/ncrc-comments-regarding-advance-notice-of-proposed-rulemaking-docket-id-occ-2018-0008-reforming-the-community-reinvestment-act-regulatory-framework/#Regardless_of_a_banks_structure_and_scope_local_community_assessments_must_occur

[5] NCRC's ANPR comments involve a discussion of the need to retain a focus on LMI communities. See https://ncrc.org/ncrc-comments-regarding-advance-notice-of-proposed-rulemaking-docket-id-occ-2018-0008-reforming-the-community-reinvestment-act-regulatory-framework/#Agency_and_industry_proposals_to_diminish_CRA_examination_and_focus_on_LMI_communities_and_people_would_dilute_CRAs_effect_and_undermine_its_purpose

[6] NCRC Forecast: *Weakening the Community Reinvestment Act Would Reduce Lending by Hundreds of Billions of Dollars*, September 2018, https://ncrc.org/ncrc-forecast-weakening-the-community-reinvestment-act-would-reduce-lending-by-hundreds-of-billions-of-dollars/

[7] Governor Lael Brainard, "The Community Reinvestment Act: How Can We Preserve What Works and Make it Better?" She states, "Perhaps most important, stakeholders overwhelmingly support the CRA and its goals, noting a significant increase in loans and investments in low- and moderate-income communities since the law's enactment."

[8] NCRC calculations of FFIEC data, see https://www.ffiec.gov/craadweb/national.aspx

business lending was higher in Appalachian counties with higher a number of bank branches, demonstrating that bank branches had a positive impact on community lending.[9]

Studies have demonstrated CRA's impacts by comparing bank lending in areas where banks are examined for compliance with CRA compared to areas where banks are not examined for compliance. CRA exams designate assessment areas, which are usually metropolitan areas or counties, where banks have branches. Exams then scrutinize lending and other activities in assessment areas. The studies conclude that CRA examination motivates banks to increase their lending to LMI borrowers and communities in assessment areas compared to geographical areas that are not assessment areas.

The Joint Housing Studies at Harvard University conducted one of the early studies about the impacts of CRA assessment areas on lending in 2002 in commemoration of the 25th anniversary of CRA. The study found banks make a higher percentage of their home purchase loans to LMI borrowers and census tracts in their assessment areas than outside of their assessment areas from 1993 through 2000. In addition, rejection rates for LMI applications were eight percentage points lower in assessment areas than outside assessment areas.[10] According to Harvard, the positive impact of assessment areas on lending was the equivalent to a 1.3 percentage point reduction in unemployment. In other words, CRA scrutiny of lending in assessment areas was equivalent to a significant reduction in unemployment in terms of increasing lending to LMI people and communities.[11]

Daniel Ringo, an economist with the Federal Reserve Board, adopted a different methodology than Harvard but also demonstrated a significantly positive impact of CRA evaluations on lending. He examined impacts on lending when census tracts that were designated as LMI became non-LMI tracts because assessment area boundaries shifted due to the changes in metropolitan area boundaries. In 2003, the Office of Management of Budget (OMB) changed metropolitan area boundaries for a number of metropolitan areas in the United States. CRA determines income levels in census tracts on a relative basis; it considers a tract to be LMI if its median income level is 80 percent or less than the median income for the metropolitan area. If a metropolitan area boundary changes, a census tract that was LMI for CRA purposes could be considered non-LMI because the new metropolitan area has a lower median income level. In contrast, other census tracts that were non-LMI could become LMI because the median of a new metropolitan area is higher.

When a census tract gained eligibility as a LMI tract due to a metropolitan area boundary change, Ringo found that lending by a single bank increased by two to four percent from 2003 to

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[9] NCRC, *Access to Capital and Credit in Appalachia and the Impact of the Financial Crisis and Recession on Commercial Lending and Finance in the Region*, prepared for the Appalachian Regional Commission, July 2013, https://ncrc.org/wp-content/uploads/2013/11/accesstocapitalandcreditInappalachia.pdf

[10] Joint Center for Housing Studies of Harvard University, *The 25th Anniversary of the Community Reinvestment Act: Access to Capital in an Evolving Financial Services System*, March 2002, http://www.jchs.harvard.edu/research/publications/25th-anniversary-community-reinvestment-act-access-capital-evolving-financial

[11] Joint Center for Housing Studies, pg. 61-72.

2004. Also, bank lending increased further over time as banks intensified their efforts in these newly eligible LMI tracts.[12] Similarly, Lei Ding and colleagues at the Philadelphia Federal Reserve Bank updated Ringo's analysis and applied it to Philadelphia when the OMB changed metropolitan area boundaries in 2013. They concluded that when census tracts lose CRA eligibility because they are no longer considered LMI, the number of home purchase loans decreases between 10 to 20 percent.[13]

CRA examination also motivates banks to increase small business lending. In a recent study, Lei Ding and Raphael Bostic of the Federal Reserve and Hyojung Lee of Harvard University measured the impact of OMB changes in metropolitan area boundaries on over 800 census tracts that either became CRA eligible or lost eligibility. Like the earlier studies, losing CRA eligibility resulted in decreases in lending while gaining CRA eligibility resulted in increases in lending. The researchers found that losing eligibility decreased lending to a greater extent than gaining eligibility increased lending. They hypothesized that it takes a relatively long time for banks to establish lending infrastructure in newly eligible tracts so lending increases slowly over time. In contrast, in newly ineligible tracts, an established infrastructure (branches or loan officers or non-profit partners) is abandoned abruptly, leading to a faster decrease in lending.[14] This study should serve as a caution against precipitous changes in CRA income definitions or diminishing the importance of assessment areas, which can lead to quick drops in lending in underserved or formerly redlined neighborhoods.

As well as promoting increased lending, CRA ensures that lending is responsible. CRA requires banks to meet credit needs consistent with safety and soundness. During the peak of the financial crisis, stakeholders turned their attention to identifying the sources of irresponsible lending. Researchers compared the performance of CRA-covered banks to non-CRA covered mortgage companies. Laderman and Reid of the Federal Reserve Bank of San Francisco used the Home Mortgage Disclosure Act (HMDA) data and proprietary data to control for a wide range of lender, borrower and loan characteristics. They found that loans issued by banks in their assessment areas were about half as likely to result in foreclosure as loans issued by non-CRA covered mortgage companies during the time period of 2004-2006, which was the height of subprime and irresponsible lending. In addition, while bank lending outside of their assessment areas was still considerably less likely to result in foreclosure than mortgage company lending, it was more likely to result in foreclosure than bank lending inside of their assessment areas.

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[12] Daniel Ringo, Federal Reserve Board*, Mortgage Lending, Default, and the Community Reinvestment Act*, June 15, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2585215, pg. 4 and 13.

[13] Lei Ding and Leonard Nakamura*, Don't Know What You Got Till It's Gone: The Effects of the Community Reinvestment Act (CRA) on Mortgage Lending in the Philadelphia Market*, Working Paper No. 17-15, June 19, 2017, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2017/wp17-15.pdf

[14] Lei Ding, Raphael Bostic, and Hyojung Lee, Effects of CRA on Small Business Lending, Federal Reserve Bank of Philadelphia, WP 18-27, December 2018, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2018/wp18-27.pdf

Laderman and Reid suggest that the retail branch bank channel contributed to safer and sounder loans than wholesale channels commonly employed by mortgage companies.[15]

Similar to Laderman and Reid, Federal Reserve economists Bhutta and Canner analyzed the 2005 and 2006 HMDA data and found that just six percent of all higher priced loans were issued by banks in their assessment areas to LMI borrowers or census tracts. In other words, 94 percent of all higher priced lending (a proxy for subprime lending according to Bhutta and Canner) were made by mortgage companies or banks outside of their assessment areas and thus had nothing to do with trying to serve LMI borrowers for CRA compliance purposes.[16]

After the crisis, key policymakers on both sides of the aisle affirmed that CRA has been a positive force in communities and had little to do with the financial crisis. Citing the Canner and Reid studies, Federal Reserve Governor Randall Kroszner, an appointee of President George W. Bush, and the Financial Crisis Inquiry Commission (FCIC) concluded that CRA did not contribute to the crisis.[17] The FCIC states "The Commission concludes the CRA was not a significant factor in subprime lending or the crisis."[18]

Comptroller of the Currency John C. Dugan, another appointee of President George W. Bush, states "Questions also have been raised about whether the Community Reinvestment Act ("CRA") was a cause of the subprime mortgage crisis…The available data does not support that claim." He continues that "the OCC and the other federal bank regulators have concluded that rather than causing losses to national banks, the Community Reinvestment Act has made a positive contribution to community revitalization across the country and has generally encouraged sound community development lending initiatives by regulated banking organizations."[19] Likewise, FDIC Chair Sheila Bair, another appointee of President Bush, states, "To be sure, there's plenty of blame to go around (for the crisis). However, I want to give you my verdict on CRA: NOT guilty."[20]

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[15] 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, p. 122.

[16] Neil Bhutta and Daniel Ringo, Assessing the Community Reinvestment Act's Role in the Financial Crisis, Feds Notes, May 2015, https://www.federalreserve.gov/econresdata/notes/feds-notes/2015/assessing-the-community-reinvestment-acts-role-in-the-financial-crisis-20150526.html

[17] Governor Randall S. Kroszner, *The CRA and Recent Mortgage Crisis*, speech delivered at the Confronting Concentrated Poverty Forum, Board of Governors of the Federal Reserve System, December 2008, https://www.federalreserve.gov/newsevents/speech/kroszner20081203a.htm

[18] Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, *The Financial Crisis Inquiry Report*, http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf

[19] Written Testimony of Comptroller of the Currency John C. Dugan & Appendix C: Impact of the Community Reinvestment Act on Losses Incurred by National Banks, April 2010, https://www.occ.gov/news-issuances/news-releases/2010/nr-occ-2010-39.html

[20] Remarks to The New America Foundation conference: "Did Low-income Homeownership Go Too Far?," December 2008, https://www.fdic.gov/news/news/speeches/archives/2008/chairman/spdec1708.html

Legislative and regulatory reforms for updating CRA

The large body of research and the experience of banks and nonprofit community-based organizations have established beyond a reasonable doubt that CRA has effectively increased lending in communities that had experienced discrimination and redlining. However, the full potential of CRA has not been realized because it has not been updated to keep pace with changes in the banking industry, including the increases of lending beyond branches. In addition, outmoded examination procedures and data limitations have impeded progress.

The next part of my testimony will describe necessary reforms.

Expand CRA to non-bank institutions

The financial industry will continually undergo transformation. When Congress passed CRA in 1977, secondary markets were not as well developed and home lending depended on deposits to a greater extent than it does today. Since CRA's passage, independent mortgage companies have become a major presence in the lending marketplace and can use secondary market outlets including the government-sponsored enterprises (GSEs) to finance their lending activities. In recent years, mortgage companies have aggressively used FHA lending to significantly expand their market share. In fact, independent mortgage companies now make more than 50 percent of all home loans.[21]

CRA must be applied to independent mortgage companies since they will remain a potent force in the marketplace. If they remain unregulated, the temptation for abusive lending will be too great. In the years preceding the financial crisis, independent mortgage companies were issuing the bulk of abusive and high cost loans. As stated above, CRA-covered lending of banks involved only six percent of high cost loans; 94 percent of the high cost loans were beyond the purview of CRA. Spectacular failures of large mortgage companies including Ameriquest and New Century attest to the unsustainable model of unregulated lending.[22]

Even today, mortgage company lending is more likely to be high-cost than bank lending. In a forthcoming study, NCRC will show that mortgage company lending to both LMI and middle-income and upper-income consumers or tracts is consistently more likely to be high cost than bank lending, and not just because it is government-insured lending. Government insured loans to LMI borrowers or tracts by mortgage companies were of a higher cost 23 percent of the time, over twice as often as loans to the same borrowers or tracts made by banks. Even to middle- and upper-income borrowers or tracts, the bank versus mortgage company disparity is very high, with non-banks reporting 19 percent of their government-insured loans to middle- or upper-income borrowers or tracts as high cost compared to 6 percent for banks.

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[21] Jason Richardson, *2017 HMDA Overview: Non-banks dominated home lending*, NCRC, May 2018, https://ncrc.org/2017-hmda-overview/

[22] For background regarding Ameriquest and New Century see, https://en.wikipedia.org/wiki/New_Century and https://en.wikipedia.org/wiki/Ameriquest_Mortgage

CRA requires banks to serve credit needs consistent with safety and soundness. This statutory requirement is a primary reason why bank lending has been safe and sound in contrast to independent mortgage companies, particularly in the years leading up to the crisis. Moreover, in a forthcoming research piece, NCRC will demonstrate that the average bank makes a higher percentage of its loans to LMI borrowers and communities than the average mortgage company.

CRA has been applied to independent mortgage companies successfully by the state of Massachusetts for several years. State-level CRA exams include a retail lending test, a fair lending review involving the use of HMDA data and a review of community development activities.[23] Building upon the Massachusetts experience, the American Housing and Economic Mobility Act of 2019 applies CRA to independent mortgage companies.

Increased lending by independent mortgage companies and bank lending outside of assessment areas have combined to result in a minority of home lending being covered by bank assessment areas (more about needed assessment area reform below). In 2016, just 30 percent of all home lending occurred in bank assessment areas. This is similar to 26 percent in 2006 and 41 percent in 1993. Key to increasing assessment area lending is applying CRA to independent mortgage companies.[24]

In addition to expanding CRA to independent mortgage companies, policymakers need to thoughtfully extend CRA requirements to financial technology companies (fintechs). Fintechs have started to apply to the FDIC and OCC for bank charters. Their CRA plans are inadequate, particularly their proposed assessment areas, which have so far included only the metropolitan area of their headquartered city although their lending is national in scope. CRA reform must include bolstering the CRA responsibilities of fintechs. Below, we discuss how assessment area reform can better cover fintech lending and deposit-taking activity.

Assessment areas must be expanded to cover lending beyond bank branches

CRA exams currently rate and reach conclusions about bank performance in assessment areas or geographical areas encompassing bank branches. The Urban Institute and Federal Reserve economist Neil Bhutta estimate that current assessment areas capture between 70 to 74 percent of banks' home lending.[25] Since current assessment areas cover a great majority of bank lending, the policy challenge, therefore, is to update assessment area procedures instead of starting from scratch. Assessment areas need to remain where traditional banks have branches. In addition,

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[23] For Massachusetts CRA exams of independent mortgage companies, see https://www.mass.gov/info-details/2019-mortgage-lenders-examined-for-cra-compliance

[24] Lei Ding, *Effects of CRA Designations on LMI Lending*, Presentation, Federal Reserve of Philadelphia, February 1, 2019.

[25] Neil Bhutta, Jack Popper, and Daniel R. Ringo, *The 2014 Home Mortgage Disclosure Act Data*, in the Federal Reserve Bulletin, see Figure 13 and accompanying narrative, https://www.federalreserve.gov/pubs/bulletin/2015/articles/hmda/2014-hmda-data.htm; Laurie Goodman, Jun Zhu, and John Walsh, *The Community Reinvestment Act: Lending Data Highlights, November 2018*, Urban Institute, https://www.urban.org/research/publication/community-reinvestment-act-lending-data-highlights

they need to capture the great majority of lending of branchless banks. Currently, CRA exams evaluate a minority of non-traditional bank lending as documented by a NCRC white paper.[26]

It is likely as non-branch lending increases, the percentage of loans covered by current assessment area procedures will decrease. Therefore, the agencies need to act now while they have the ability to capture emerging trends in lending instead of waiting and then having to play catch up to the market. Furthermore, as discussed above, banks make more loans to LMI people and communities inside as opposed to outside their assessment areas. Thus, assessment area reform is critical to improving the ability of banks to combat the legacy of redlining and discrimination.

Assessment areas can be designated to include geographical areas such as states, metropolitan areas or rural counties where banks do not have branches but have significant volumes of loans, deposits or other business activity. Some OCC exams, including the Bank of the Internet, adopt an existing question and answer (Q&A) from the Interagency Q&A document to designate assessment areas in this manner.[27]

Using loan data, NCRC believes that the agencies can require non-traditional banks and fintechs to create assessment areas that capture the great majority of their loans. An example of lending by state for Lending Club during the time period of 2012 and 2013 shows that assessment areas can be meaningfully created for an online lender (a two-year time period is a typical time period covered by a CRA exam).[28] Lending Club makes data on its lending activity by state and for three-digit zip codes publicly available, a practice NCRC recommends for all fintechs.

Several states have sizable numbers of Lending Club loans in this time period even before Lending Club's substantial lending increases of more recent years. During 2012 and 2013, Lending Club made more than 188,000 loans; most of these were consumer-related loans and/or refinancing and consolidation of outstanding debt. Ten states each had more than three percent of Lending Club's loans.[29] On the other end of the scale, 28 states each had less than 1.5 percent of Lending Club's loans. In sum, it is quite feasible for at least the top 10 or 20 states to constitute assessment areas; these states had high numbers of loans and reasonably high percentages of Lending Club's loans (for more detail about this analysis, see NCRC's Congressional testimony submitted last year regarding fintech oversight).[30]

To further investigate how assessment areas would work for a non-traditional bank, NCRC tabulated loans by three-digit zip code and metropolitan areas for Texas, one of Lending Club's high-volume states. We found five metropolitan areas and one area, North Texas, that could

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[26] NCRC, *The Community Reinvestment Act and Geography: How Well Do CRA Exams Cover the Geographical Areas that Banks Serve*, May 2017, https://ncrc.org/the-community-reinvestment-act-and-geography/

[27] See Bank of the Internet's CRA exam, https://www.occ.gov/static/cra/craeval/nov16/716456.pdf

[28] See https://www.lendingclub.com/info/statistics.action for summary data tables and to download data.

[29] These states are CA, NY, TX, FL, IL, NJ, PA, OH, GA,VA.

[30] NCRC's congressional testimony on fintech oversight, February 2018, https://ncrc.org/ncrcs-congressional-testimony-fintech-oversight/

possibly be considered a rural area, with more than 1,000 loans each. The five metropolitan areas range in size and location across the state and include Houston, Austin, Ft. Worth, Dallas and San Antonio. El Paso is the seventh largest area by loan volume with more than 500 loans. Using Lending Club as an example, designating metropolitan areas and rural counties as assessment areas for non-traditional lenders is feasible and can include a diversity of areas.

NCRC believes that assessment areas for fintechs and non-traditional banks must include rural areas. Populations in rural areas are less likely to be connected to the internet. While only four percent of people living in urban areas lack adequate broadband services, about 40 percent of residents of rural and tribal areas lack access.[31] If fintechs and non-traditional banks do not make efforts to serve rural areas, the digital divide disadvantaging rural communities will only widen.

The American Housing and Economic Mobility Act adopts an approach that NCRC has described in this testimony. The bill retains assessment areas where bank branches are located and adds assessment areas for geographical areas beyond bank branches where significant amounts of lending and other business activity occur. The bill stipulates that in total, assessment areas must include at least 75 percent of the lending and other business activity. Covering the great majority of lending is important because NCRC research has found that lending test ratings are likely to be inflated in instances in which lower percentages of lending are covered by assessment areas. In her recent speech at NCRC's Just Economy conference, Governor Brainard suggested an assessment area reform approach similar to that proposed by NCRC and the American Housing and Economic Mobility Act.[32]

Assessment area reform is a win-win for communities and banks. By covering the great majority of lending and business activity, it would level the playing field for traditional and non-traditional banks. It would increase lending, investments and bank services in LMI communities. Finally, we believe that an industry and community organizations consensus can be achieved on assessment area reform. For example, in comments regarding the ANPR last fall, the Central Bank of the Midwest largely agrees with NCRC's proposal for updating assessment areas. The bank states, "This new approach (beyond branches) would depend on a bank's level of lending, by either number or dollar of loans, in areas that would not qualify as an assessment area under the current rule. If lending in these areas exceed a defined threshold, whether it be a percent of

[31] *2016 Broadband Progress Report*, Federal Communications Commission, Jan. 29, 2016, retrieved at https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report

[32] Governor Lael Brainard, "The Community Reinvestment Act: How Can We Preserve What Works and Make it Better?" March 2019 speech at the NCRC conference, she states, "Similar to banks, community organization commenters support updating the CRA regulations as they relate to a bank's assessment area. They suggest retaining assessment areas around a bank's branches in order to retain the CRA's focus on local low- and moderate-income neighborhoods, while adding areas where banks conduct significant activity without branches." See, https://www.federalreserve.gov/newsevents/speech/brainard20190312a.htm

loans to total capital, percent of loans to total loans…these geographic areas would be included as a separate assessment area."[33]

Mortgage company affiliates must be automatically included

CRA exams allow banks to either include or exclude their mortgage company affiliates on CRA exams. It is hard to think of a process that is not more prone to abuse. The natural tendency is for affiliates to be included on evaluations if they are lending to LMI borrowers and neighborhoods in a safe and sound manner and to be excluded from exams if they are not.

An example of optional inclusion enabling abusive practices is Suntrust Mortgage Company, which Suntrust excluded from its CRA exam of 2013. Federal agencies reached a $1 billion settlement with the mortgage company over widespread abuses associated with underwriting FHA mortgages and mortgage servicing that occurred in the time period covered by the CRA exam.[34] Yet, because of the optional treatment of affiliates, Suntrust's CRA exam did not consider the mortgage company's lending practices and whether these practices should result in a ratings downgrade. The optional treatment is inconsistent with the interconnectedness of affiliates and their parents. Suntrust's CRA exam states, "SunTrust Mortgage Company is the primary originator of home purchase and refinance loans for the organization."[35]

The American Housing and Economic Mobility Act requires non-bank mortgage companies that are affiliates or subsidiaries of banks to be automatically included in CRA exams. In a memo to the federal regulatory agencies last year, the Department of Treasury asked the agencies to further analyze mortgage company affiliate lending and consider reforms to treatment of affiliates on CRA exams.[36] Mortgage company affiliates cannot remain outside of CRA exam purview. They are large volume lenders and we must ensure that their lending activity does not exclude underserved communities or is abusive. Continued progress on redlining and discrimination would be greatly facilitated by automatic inclusion of mortgage company affiliates on CRA exams.

People and communities of color must be considered on CRA exams

One very effective mechanism for increasing CRA's effectiveness in combating redlining and discrimination would be to increase its attention to communities of color. The CRA statute does

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[33] See page four of the bank's comments via https://www.regulations.gov/docket?D=OCC-2018-0008

[34] Department Justice, *Federal Government and State Attorneys General Reach Nearly $1 Billion Agreement with SunTrust to Address Mortgage Loan Origination as Well as Servicing and Foreclosure Abuses*, June 2014, https://www.justice.gov/opa/pr/federal-government-and-state-attorneys-general-reach-nearly-1-billion-agreement-suntrust

[35] CRA Exam of Suntrust Bank, Federal Reserve Bank of Atlanta, March 2013, https://www.frbatlanta.org/-/media/Documents/banking/cra_pes/2013/675332.pdf, p. 2.

[36] Memorandum for the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation from the Department of Treasury, Community Reinvestment Act – Findings and Recommendations, p. 24, https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf

not specifically mention communities of color, but addressing disinvestment and redlining in communities of color was prominently on the mind of drafters.

The 1977 hearings considering the CRA legislation featured numerous testimonies documenting disparities in lending to communities of color. Senator Proxmire, who chaired these hearings and drafted the legislation, referenced these disparities, especially in inner city neighborhoods, as compelling Congress to pass CRA. Senator Proxmire states:

> By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.[37]

Racial disparities in lending have not significantly narrowed, in part, because CRA has not applied explicitly to people and communities of color. Last year, the journal *Reveal* released a well-publicized report documenting ongoing racial disparities in lending across several metropolitan areas.[38] The HMDA data has also shown a multi-year stagnation in lending to minorities. For example, lenders have issued between five to six percent of their home purchase loans to African Americans in each of the last 10 years although African Americans are about 13 percent of the population.[39] In a study conducted shortly after the financial crisis, NCRC found that 35 percent of subprime loans were issued to borrowers who could have qualified for fixed-rate, prime loans in the Washington, D.C., area. Even controlling for other factors, Latinos were 70 percent more likely and African Americans 80 percent more likely than their white counterparts to receive a subprime loan. This finding suggests that race, in and of itself, alters the likelihood of receiving a subprime loan. We also found that people of color were more likely to experience foreclosure than similarly situated whites.[40]

In a recent report, NCRC found that race was consistently the most significant predictor of mortgage lending patterns in Baltimore City. The percentage of white residents of a neighborhood was significantly and positively correlated, while the percentage of black residents in a neighborhood was significantly and negatively correlated with the amount of loans approved in Baltimore City between 2011 and 2013. In a regression analysis of demographic and socioeconomic factors including indicators of race, ethnicity, education and wealth, the percentage of white residents in a neighborhood was the most important factor in the prediction

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[37] Congressional Record, June 6, 1977, p. 17630.

[38] Aaron Glantz and Emmanuel Martinez, *For People of Color, Banks are Shutting the Door on Homeownership*, February 15, 2018, https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/

[39] See Table 2A of the Consumer Financial Protection Bureau, *Data Point: 2017 Mortgage Market Activity and Trends*, May 7, 2018, https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-mortgage-market-activity-and-trends/

[40] NCRC, Foreclosure in the Nation's Capital: How Unfair and Reckless Lending Undermines Homeownership, April 2010, https://ncrc.org/foreclosure-in-the-nations-capital-how-unfair-and-reckless-lending-undermines-homeownership/

of lending volume, while percentage Asian and the median home value were significant, though less important, predictors in the model. This points to the preeminence of race as a factor in lending within Baltimore City.[41]

We recognize that serving the credit needs of minorities is not explicitly mentioned in the CRA statute. However, we believe that the agencies must improve examination of lending to people and communities of color on CRA exams. Before the last changes to the CRA regulation in 1995, CRA exams analyzed lending to minorities as part of the fair lending section, which was more detailed in clearly discussing anti-discrimination screening methodology than the fair lending reviews on current exams.[42] The fair lending review section on current exams usually discusses findings in a few brief sentences, either stating that no violations occurred or making vague references to a violation and whether that violation resulted in a downgrade. The detail in the fair lending review section should be restored with both a descriptive data analysis of lending trends to minorities and a description of the methodology such as econometrics or mystery shopping to test whether the bank is discriminating.

In addition, the agencies could develop a list of underserved census tracts based on data analysis showing low levels of loans per capita. A substantial number of these tracts would likely be predominantly minority. Lending, investment and services in these tracts then could be evaluated by CRA exams on the components tests. For example, home and small business lending in underserved tracts can be criteria on the lending test.

A separate analysis of lending, investing and bank services in underserved census tracts would help balance bank lending across neighborhoods, and might relieve some of the displacement pressure in gentrifying LMI census tracts. A recent Urban Institute report has found that most home lending in LMI tracts is to middle- and upper-income borrowers.[43] The report does not engage in a spatial analysis so we do not know yet whether this is a national phenomenon or concentrated in large coastal cities that are experiencing more gentrification.[44] If, however, banks are mostly focused on LMI tracts undergoing gentrification and lending disproportionately to middle- and upper-income borrowers in those tracts, adding underserved tracts on the lending test is likely to redirect some of this lending to communities of color that are distressed, not

[41] NCRC, *Home Mortgage Lending and Small Business Lending in Baltimore and Surrounding Areas*, November 2015, https://ncrc.org/wp-content/uploads/2015/11/ncrc_baltimore_lending_analysis_web.pdf

[42] Examples of people of color analyzed by CRA exams include; Federal Reserve Bank of Richmond, CRA Exam of Signet Bank, January 1996, pgs. 18-20, https://www.federalreserve.gov/dcca/cra/1996/460024.pdf and Office of Thrift Supervision CRA Exam of CenFed Bank, November 1995, p. 9, https://www.occ.gov/static/cra/craeval/OTS/CRAE_01788_19951127_60.pdf

[43] Urban Institute, Most CRA-qualifying loans in low- and moderate-income areas go to middle- and upper-income borrowers, March 4, 2019, https://www.urban.org/urban-wire/most-cra-qualifying-loans-low-and-moderate-income-areas-go-middle-and-upper-income-borrowers?cm_ven=ExactTarget&cm_cat=HFPC+-+3.5.2019&cm_pla=All+Subscribers&cm_ite=https%3a%2f%2fwww.urban.org%2furban-wire%2fmost-cra-qualifying-loans-low-and-moderate-income-areas-go-middle-and-upper-income-borrowers&cm_lm=swilkinsva@gmail.com&cm_ainfo=&&utm_source=MarketingCloud&&utm_medium=newsletters&&utm_campaign=news-HFPC&&

[44] NCRC finds that gentrification mostly occurs in large coastal cities. See NCRC, Shifting neighborhoods: Gentrification and cultural displacement in American cities, March 2019, https://ncrc.org/study-gentrification-and-cultural-displacement-most-intense-in-americas-largest-cities-and-absent-from-many-others/

gentrifying, and in desperate need of credit. This would certainly be consistent with Senator Proxmire's intention to direct credit to redlined communities.

Neglected populations and areas

The CRA reform discussions involving communities of color have also involved discussions of other underserved populations and communities such as older adults, veterans, rural communities and Native American communities.

In terms of neglected populations, the agencies should consider reforms to the regulation and/or the Q&A elevating the needs of these populations. For example, the need for affordable housing for older adults can be addressed by bank community development financing for Section 202 and other senior housing. Although examples of this are discussed on CRA exams, the importance of this type of affordable housing can be highlighted in the Interagency Q&A. Likewise, the importance of home improvement lending that helps retrofit homes for aging in place can also be discussed in the Interagency Q&A, as could needs of veterans.

The concept of identifying underserved census tracts and counties can help direct lending, investment and services to rural and Native American communities. As discussed above, NCRC recommends adding a metric of lending per capita to identify underserved areas. This metric can be combined with the metrics agencies already use to identify distressed and underserved nonmetropolitan areas.[45] Part of the CRA reform effort should be considering whether other additional measures should be used to identify underserved areas.

After underserved counties have been identified, banks can be encouraged to direct community development financing to them. In particular, revisions can be made regarding how activities outside of assessment areas are considered. The agencies can retain their procedure of considering activities in statewide and regional areas that encompass assessment areas. In addition, they could consider activities in underserved counties wherever these counties are located. This would most likely help rural and Native American communities receive increases in community development lending and investing. This would also help alleviate unevenness in community development financing by reducing the number CRA "deserts."

CRA ratings must be made more rigorous to combat inflation

During the past several years, more than 98 percent of banks have passed their CRA exams. If the pass rate was not this high, CRA would be even more effective in motivating increases in loans, investments and services to LMI communities, formerly redlined communities and communities still experiencing discrimination. Econometric studies as discussed above demonstrate that CRA has increased lending in areas undergoing CRA exams, despite such a high pass rate. This is probably the case because a number of banks desire the top rating of Outstanding that only about 10 percent of banks have received in recent years. In addition, banks can score poorly in an individual state but still pass their exams if they serve a number of states.

[45] For a description and list of underserved and distressed rural areas, see https://www.ffiec.gov/cra/distressed.htm

On their next CRA exams, they will then improve their lending, investing and services in the states where they lagged.

Despite the positive results so far, NCRC maintains that CRA would be even more successful in motivating increases in lending if more banks either failed or received lower ratings. Currently, 90 percent of banks receive a Satisfactory rating or roughly a "B" on their CRA exams. It is likely that such a large percentage are not performing at a level to merit Satisfactory ratings. If additional ratings were introduced or a point scale was introduced, more nuance in performance would be revealed and would motivate those barely passing to make more loans in underserved and redlined neighborhoods.

A straightforward way to improve ratings is to add a ratings category such as Low Satisfactory that is a possible rating for component tests currently. The agencies have shied away from this because the CRA statute only mentions the current four overall ratings. However, another way to improve rigor is if the overall ratings were accompanied by a publicly released point score.[46] For example, an Outstanding rating could be achieved if a bank had a score of 90 to 100, while a Satisfactory rating could be achieved if a bank had a score of 70 to 90. An Outstanding rating accompanied by a score of 90 would not be as remarkable as an Outstanding rating accompanied by a score of 99. Likewise, a Satisfactory rating accompanied by a score of 70 is just barely passing while a Satisfactory rating accompanied by a score of 89 is essentially a High Satisfactory rating.

The importance of CRA ratings reform cannot be emphasized enough. In the first years after CRA ratings became public, the failure rate ranged from five percent to 10 percent from 1990 to 1994 as shown below. After that, the failure rate plummeted to about two percent. Significant increases in lending to LMI borrowers occurred in the early to mid-1990s when banks were motivated to improve in response to their initial ratings. A Treasury Department study found that CRA-covered lenders increased their home mortgage loans to low- and moderate-income areas and borrowers by 39 percent from 1993 to 1998, which is more than twice the increase (of 17 percent) to middle- and upper-income borrowers and areas.[47]

We are not necessarily advocating a return to failure rates of 10 percent. However, we are affirming that more nuance and range in ratings will likely spur continual improvement in performance as opposed to stasis. Other reforms including what counts as community development can inadvertently impact ratings distributions and must be enacted with care. In an upcoming report assessing the CRA performance of the top 50 banks by asset size, NCRC finds that 60 percent of them received Outstanding on their investment test, which is an extraordinarily high percentage. The question is whether these results are warranted or inflated, which may depress further reinvestment efforts. If we make additional activities that are not focused on LMI

[46] CRA exams today have a point score range of 1 to 24 that is not intuitive, and the points are not publicly released.

[47] 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.

communities count as community development, the investment test ratings could become even more inflated.

The American Housing and Economic Mobility Act would require a fifth rating and would allow the agencies to add a point scale. More nuance and rigor in CRA ratings will stimulate more lending, investing and services in underserved neighborhoods.

CRA Ratings

	Outstanding		Satisfactory		Needs to Improve		Substantial Noncompliance		
Year	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Total
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	1,001	18.1%	4,249	76.7%	275	5.0%	15	0.3%	5,540
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%	2,917	79.6%	59	1.6%	7	0.2%	3,664
1999	679	18.6%	2,915	79.7%	55	1.5%	7	0.2%	3,656
2000	221	17.6%	1,001	79.5%	30	2.4%	7	0.6%	1,259
2001	132	10.6%	1,088	87.1%	23	1.8%	6	0.5%	1,249
2002	201	9.8%	1,821	89.0%	18	0.9%	5	0.2%	2,045
2003	285	10.2%	2,497	89.1%	17	0.6%	4	0.1%	2,803
2004	329	13.1%	2,171	86.1%	18	0.7%	3	0.1%	2,521
2005	248	16.1%	1,282	83.0%	10	0.6%	4	0.3%	1,544
2006	203	14.1%	1,204	83.9%	22	1.5%	6	0.4%	1,435
2007	213	11.9%	1,550	86.4%	26	1.5%	4	0.2%	1,793
2008	207	9.8%	1,863	88.3%	36	1.7%	4	0.2%	2,110
2009	188	8.6%	1,938	89.1%	43	2.0%	6	0.3%	2,175
2010	163	9.1%	1,563	87.4%	60	3.4%	2	0.1%	1,788
2011	120	8.5%	1,239	88.1%	44	3.1%	4	0.3%	1,407
2012	139	8.5%	1,452	89.3%	31	1.9%	4	0.2%	1,626
2013	131	7.3%	1,632	90.4%	39	2.2%	3	0.2%	1,805
2014	149	8.8%	1,506	89.2%	31	1.8%	2	0.1%	1,688
2015	129	9.2%	1,243	88.8%	19	1.4%	8	0.6%	1,399
2016	106	8.8%	1,085	89.6%	19	1.6%	1	0.1%	1,211
2017	86	8.6%	891	89.3%	19	1.9%	2	0.2%	998
2018	67	7.6%	792	90.4%	16	1.8%	1	0.1%	876
Total	11,425	14.6%	63,704	81.6%	2,671	3.4%	265	0.3%	78,065

Data must be improved on CRA exams in order to increase access to credit in underserved and redlined areas

CRA's ability to motivate banks to serve the smallest of the small businesses could be significantly improved by improving data on small business lending. The small business loan part of the lending test is not as rigorous as the home lending section because the small business data is not as refined. To improve the ability of examiners to determine if banks are serving the smallest businesses, small business data must be improved to include more categories rather than just above and below $1 million in revenue. Adopting the categories used by the Census Bureau, the revenue categories reported should include businesses with annual revenues $50,000 and below, $50,000 to $100,000, $100,000 to $500,000, $500,000 to $1 million, $1 million to $5 million and $5 million and above.[48]

The great majority of women- and minority-owned small businesses are very small enterprises. Ninety percent of these businesses have no employees, 85 percent of them have annual receipts under $100,000 and only about two percent of them have annual receipts over $1 million.[49] Therefore, if CRA improved its data and evaluation of lending to the smallest of the small businesses, it is likely that the number of loans to these businesses, including those in redlined neighborhoods, would increase. Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires the Consumer Financial Protection Bureau (CFPB) to improve the publicly available small business data and provide more information on the demographics of the small business borrowers. The bank agencies must work with the CFPB to improve the utility of the data for CRA exams.

Also, consumer lending data and evaluations must be improved. CRA exams must encourage banks to make safe and sound consumer lending that is an alternative to the high cost lending made by payday lenders and other abusive fringe non-bank institutions. However, the current designation of credit card lenders as limited purpose and wholesale lenders not subject to a retail lending test is an abrogation of the responsibility of federal bank agencies to assess whether credit needs are being met in a safe and sound manner. The federal agencies collect data on consumer lending infrequently and mainly when banks ask for optional consideration of consumer lending on CRA exams. As a result, consumer lending is examined irregularly. A recent GAO study found that only 25 percent of large bank exams looked at consumer lending

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[48] NCRC, *Small Business Data: Recommendations to the Consumer Financial Protection Bureau for Implementing Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, August 2014, p. 21, https://ncrc.org/recommendations-to-cfpb-implementing-section-1071-dodd-frank/

[49] Consumer Financial Protection Bureau (CFPB), *Key Dimensions of the Small Business Lending Landscape*, 39-40, May 2017, https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-small-business-lending-landscape/

while only three percent of intermediate small bank exams and six percent of small bank exams evaluated consumer lending.[50]

Similar to the need to bolster small business and consumer lending data, the data on community development lending and investing needs to be improved on CRA exams in order to more effectively counter redlining. According to NCRC calculations, banks have made more than $1 trillion in community development lending from 1996 to 2017, benefiting low- and moderate-income communities, as a result of CRA requirements. While this level of financing is impressive, we do not know enough about where it is going in order to determine whether it is targeted effectively to the most underserved and distressed communities. In a recent speech at the 2019 Just Economy Conference, Governor Brainard suggested that data on community development financing is necessary to assess whether banks are responding to neighborhood needs with their CRA financing.[51]

Community development lending and investing refers to large scale financing of affordable housing or economic development projects that benefit entire neighborhoods. Examples include a 50-unit affordable housing development, construction of a shopping mall or infrastructure such as street/landscape upgrades or broadband access. In contrast, retail lending benefits individual homeowners and small business owners. For successful revitalization to occur in neighborhoods, retail lending and community development finance need to work in tandem. For example, community development financing of a shopping mall will fail to catalyze revitalization if neighborhood residents live in slum housing and cannot access home loans to buy and/or repair their homes. Likewise, the long-term viability of a neighborhood with high levels of homeownership will be imperiled if residents do not have convenient access to grocery stores and other shopping outlets.

HMDA and small business loan data, which provide stakeholders with reasonable measures regarding access to retail lending, can be analyzed on a census tract level. Census tracts, typically containing 4,000 residents, are a proxy for neighborhoods.[52] Census tracts allow CRA examiners, practitioners and advocates to determine economic conditions and lending trends in neighborhoods. However, data on community development finance is absent on a census tract level. Hence, a full picture of whether revitalization will likely succeed on a neighborhood level is lacking.

Currently, CRA exams and related regulations reveal some data on community development financing but the data disclosure is incomplete and frustrates effective analysis. CRA exams have aggregate data on community development lending and investing for banks' assessment areas that are typically metropolitan areas or counties but not for census tracts. In addition to CRA exams, the federal bank agencies provide fragmentary community development data on various

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[50] Government Accountability Office, *Community Reinvestment Act: Options for Treasury to Consider to Encourage Services and Small-Dollar Loans When Reviewing Framework*, GAO-18-244: Published: Feb 14, 2018. Publicly Released: Mar 16, 2018, https://www.gao.gov/products/GAO-18-244

[51] Governor Lael Brainard, "The Community Reinvestment Act: How Can We Preserve What Works and Make it Better?" At the 2019 Just Economy Conference, National Community Reinvestment Coalition, Washington, D.C., March 12, 2019, https://www.federalreserve.gov/newsevents/speech/brainard20190312a.htm

[52] See definition of census tract, https://www.census.gov/geo/reference/gtc/gtc_ct.html

websites. The Interagency Federal Financial Institutions Examination Council website provides summary community development lending data that includes just an overall total in dollars for each bank and all banks in a given year.[53]

The Office of the Comptroller of the Currency (OCC) administers a public welfare investment regulation under which banks provide data to the agency on their investment activity. On a quarterly basis, the agency then publishes data for each bank regarding each investment, its dollar amount, the purpose (affordable housing or economic development) and the metropolitan area or state in which the investment occurred.[54] While this is a useful precedent, it is still incomplete in that not all banks are regulated by the OCC, the data reports only investments, not loans, and the disclosures regarding geographical areas are inconsistent, varying between states or metropolitan areas in the geography data field.

As part of their review of the CRA regulations, the federal bank has been asking stakeholders whether a community development database of some sort should be created. This is a very positive development. In our letter in response to the ANPR, NCRC recommended that like HMDA and small business loan data, the community development lending and investment data must be submitted annually and publicly by banks on a census tract level, a county level and for assessment areas. The community development data should also be reported separately for the major categories of community development, including affordable housing, community services, economic development and activities that revitalize and stabilize low- and moderate-income census tracts.[55] Finally, community development loans, investments and grants should be reported separately since these types of financing respond to different needs.

With annual data broken out by geographical area and purpose, examiners, community groups and banks can track bank performance on a timelier basis and correct areas of weaknesses several months before CRA exams. This is a win-win situation as banks are likely to have higher ratings on their exams while communities receive needed financing sooner.

A pressing issue to be considered is how to better address the needs of underserved areas, whether those be census tracts or counties. If the agencies required better community development finance data, they would have the ability to comprehensively measure retail lending and community development financing for each census tract on a per capita basis and thus determine which neighborhoods have a shortage of financing for comprehensive revitalization. The same analysis can be conducted on a county level to identify underserved counties. Bank activity in these underserved tracts and counties could then receive encouragement on CRA exams. As stated above, the lending, investment and service tests could include criteria that measure bank activity in underserved tracts. Measuring community development lending and investment in underserved tracts would be possible with improved community development finance data.

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[53] See Table 3 of the FFIEC national aggregate tables as an example, https://www.ffiec.gov/craadweb/national.aspx

[54] See Office of the Comptroller of the Currency, *National Bank Public Welfare Investment At-A -Glance" Charts - lists national bank investments made under the 12 CFR 24 authority*, https://www.occ.gov/topics/community-affairs/resource-directories/public-welfare-investments/national-bank-public-welfare-investment-authority.html

[55] See definition of community development in the CRA regulations, https://www.ffiec.gov/cra/regulation.htm

Another way to encourage this activity in underserved tracts or counties is for CRA exams to provide special treatment for financing in the areas outside of a bank's assessment area. Assessment areas are currently areas in which banks have branches. Banks sometimes chafe at the restraint assessment areas impose on pursuing needed community development opportunities. However, community organizations worry that free reign outside of assessment areas could cause banks to neglect needs around their branch locations and could also facilitate pursuit of community development deals in the easiest areas to finance regardless of that community's needs. Better community development data on a census tract and county level can address the concerns of banks and community organizations by identifying priority areas of need outside of bank assessment areas, as well as enabling stakeholders to assess whether banks are also meeting needs in their assessment areas.

In particular, better community development data would be instrumental to directing community development financing to rural counties. The data would likely highlight a chronic shortage of community development financing in rural areas, and thus direct the attention of CRA examiners and banks to these areas.

Protocols would need to be established for ensuring the accuracy of data and prohibiting abusive activity like not allowing financing developers that displace low- and moderate-income tenants to be reported as community development loans and investments. Banks can receive favorable consideration on CRA exams for multifamily lending in LMI tracts but NCRC member organizations have reported instances of banks financing unsavory slumlords with these loans. Protocols have been developed over the years for HMDA data and should be feasible to develop in the case of community development data. One of the robustness checks could involve the federal bank agencies consulting any state and local law or best practices about community development, and also investigating community organization concerns about any displacement activity financed by banks in LMI communities.[56]

Better community development loan and investment data would be a win-win for both banks and community organizations by facilitating identification of underserved areas. It would also further CRA's objectives of directing access to credit and capital where it is needed most. If the agencies truly want to reform CRA and increase lending in redlined areas, the first place to start is with better data. The American Housing and Economic Mobility Act would require the collection and dissemination of community development data.

Community benefits agreements and conditional approvals considered on CRA exams and no safe harbors

Banks are legally required to demonstrate future and concrete public benefits after mergers with other banks.[57] In order to implement the public benefit standard, federal agencies will

[56] New York State Department of Financial Services, *DFS Advises State Chartered Banks of Their Responsibilities in Lending to Landlords of Rent-Stabilized or Rent Regulated Multifamily Residential Buildings*, September 25, 2018, https://www.dfs.ny.gov/about/press/pr1809251.htm

[57] Mitria Wilson, *Protecting the Public's Interest: A Consumer-Focused Reassessment of the Standard for Bank Mergers and Acquisitions*, in The Banking Law Journal, April 2013

occasionally issue conditional merger approvals requiring CRA plans and specific improvements in CRA performance. NCRC believes that conditional approvals should be more frequent since mergers are complex transactions that can significantly impact CRA performance and imperil the achievement of public benefits without careful planning. CRA exams should then monitor whether banks implemented CRA plans as part of the merger approvals.

Unfortunately, enforcement of the public benefit standard appears to be waning. Since the beginning of the Trump administration, NCRC is not aware of a single conditional merger approval. Moreover, application processing times for mergers receiving community comments have fallen from a median of 211 days in 2015 to 114 in 2018.[58] This sharp reduction in days suggests that reviews of public benefit, CRA and fair lending requirements are becoming less rigorous.

NCRC appreciates that the OCC's June 2018 memo instructs CRA examiners to determine whether banks are meeting the goals in CRA plans that are required in conditional merger approvals.[59] NCRC also appreciates that the OCC has started implementing its memo in recent CRA exams including Valley National Bank's and Sterling National Bank's exams.[60]

Any conditional merger approval, however, must include a bona fide and verifiable plan that focuses lending, investment and service on LMI borrowers and communities. CRA examiners must also assess bank compliance with community benefit agreements (CBAs). Negotiated with community organizations, CBAs serve the same purpose as conditional approvals in that they ensure that bank CRA performance improves instead of regresses.

A CRA rating must not become a safe harbor providing expedited merger approvals or automatic approvals. Periodically, proposals will surface that Outstanding ratings should confer an easy merger approval process since they indicate impressive CRA performance. However, bank performance may have changed since the last CRA exam. In addition, the merger approval process considers prospective or future performance which can be impacted dramatically by a merger. Instead of a safe harbor, public hearings should be automatic if a bank scores Low Satisfactory or below in any assessment area as would be stipulated by the American Housing and Economic Mobility Act.

The OCC's one ratio concept would diminish assessment areas and public input

In the ANPR, the OCC introduced the concept of the one ratio, which would consist of the dollar amount of a bank's CRA activities (loans, investments and services to LMI borrowers and

[58] See Federal Reserve reports, https://www.federalreserve.gov/bankinforeg/semiannual-report-on-banking-applications-20150924.pdf, and https://www.federalreserve.gov/publications/files/semiannual-report-on-banking-applications-20180928.pdf

[59] OCC, *Description: Supervisory Policy and Processes for Community Reinvestment Act Performance Evaluations*, OCC Bulletin 2018-17, June 2018, https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-17.html

[60] See OCC Valley National Bank CRA Exam, September 2016, https://www.occ.gov/static/cra/craeval/jul17/15790.pdf and OCC Sterling National Bank, January 2017, https://www.occ.gov/static/cra/craeval/jul17/25075.pdf

communities) divided by the bank's assets. The ratio is supposed to reflect CRA effort compared to a bank's capacity and would influence a bank's CRA rating.[61]

The OCC's notion behind the one ratio is that it will immediately signal to banks whether they are in compliance with CRA and can expect to pass their next CRA exam. However, the CRA statute reminds us that banks "have continuing and affirmative obligations to help meet the credit needs of the local communities in which they are chartered."[62] The key word is local. One ratio cannot tell an examiner, a bank or a member of the public how responsive a bank is to its various service areas. The CRA statute requires the federal agencies to evaluate banks in states, metropolitan areas and rural areas where they have branches. Current CRA exams ensure banks are responsive to local needs by establishing assessment areas where branches take deposits. CRA exams scrutinize to what extent a bank makes loans and investments and offers services to LMI people and communities in its various assessment areas.

When reaching conclusions about performance, exams also assess to what extent a bank responds to different needs in its assessment areas. For instance, preserving affordable housing is a priority need in a metropolitan area experiencing rapid housing price increases, whereas financing small businesses and job creation is a priority need for a metropolitan area with high unemployment. If a bank does well in job creation initiatives in the high unemployment metro area, but not so well in financing affordable housing in the expensive metro area, it would probably receive higher marks for its performance in the area with high unemployment than the expensive area. The exam then tallies performance across assessment areas to develop an overall rating. Differences in responsiveness to needs therefore gets factored in exams with assessment areas because assessment areas allow examiners to conduct performance context analysis that identify priority needs like financing small businesses. In contrast, a CRA exam focused on the one ratio is incompatible with performance context analysis.

An exam focused on the one ratio would not be effective in considering public input regarding local needs. Examiners are currently required to consider community comments on local needs and how well banks are responding to them. Examiners take these comments into account when reaching conclusions about bank performance in assessment areas. A one-ratio focused exam, in contrast, would not explicitly factor community input into the conclusions of performance for each assessment area.

The OCC suggests that the ratio could be adjusted to provide more weight to activities that are particularly responsive to distressed communities with high needs for credit. For instance, an investment of $1 million in a distressed community can be weighted by a factor of two, meaning it will count for $2 million in the numerator of the ratio. While this may sound appealing,

[61] Office of the Comptroller of the Currency (OCC), Advance Notice of Proposed Rulemaking (ANPR), Federal Register, Vol. 83, No. 172, Wednesday, September 5, 2018, https://www.gpo.gov/fdsys/pkg/FR-2018-09-05/pdf/2018-19169.pdf, pgs. 45056 and 45057.
[62] Section 802(a)(3) of the CRA statute.

consider how complicated and subjective it would be to do this weighting for banks, particularly large banks, which serve upwards of 20 states and hundreds of counties.

The other downside is that generous and frequent weighting (multiplying loans and investments by 2 or more) could easily result in half or less the dollar amount of loans and investments. The current system can better adjust for responsiveness by weighting the importance of performance in each assessment area, including distressed areas. This avoids crude outcomes like one half the number of loans and investments equaling the same ratio due to weighting.

Another shortfall of the one ratio is that banks are likely to find the largest dollar and easiest loans and investments to undertake regardless of how well they respond to needs. Instead of working closely with community groups and other stakeholders to meet needs in assessment areas, the banks will be mostly engaged in a mathematical exercise to increase their numerator.

While the ANPR suggests that assessment areas will remain on CRA exams, the OCC seems to emphasize weights in ratio calculations, which suggests diminished importance of assessment areas. We are not opposed to metrics or ratios on exams. However, we are opposed to a single metric like the one ratio being determinative of the score on CRA exams.

Some have suggested one ratio measuring performance on a state level. Just like a national one ratio, a state level one ratio would likely overlook unique needs in metropolitan and rural areas in the state. Even a one ratio for each assessment area would likely elevate a mechanical formula over careful examiner judgments and written narrative about how much each activity such as home or small business lending responds to local needs. Instead of becoming more transparent and increasing bank accountability, one ratio-based CRA exams would make the evaluation regime opaque and result in a banking system less responsive to local needs.

Analysis of branches and services must remain on CRA exams

Current CRA exams include a service test that assesses a bank's branching patterns and provision of deposit accounts. In the ANPR, the OCC asks a startling question of whether branching patterns, particularly in LMI census tracts, should continue to be evaluated on CRA exams. Branches are critical for helping LMI people obtain loans and basic banking services. Lending transactions, particularly buying a home, are among the most complicated financial transactions most people will undertake. Lower-income consumers often need one-on-one counseling for qualifying and applying for loans. Academic research has revealed that home and small business lending increases in LMI neighborhoods with bank branches.[63] In contrast, when branches close, lending decreases for several years, especially small business lending. This is likely due to the non-automated, labor intensive method of lending to and counseling traditionally underserved populations.[64]

[63] For a literature review of the impact of branches and assessment areas, see Josh Silver, *The Importance of CRA Assessment Areas and Bank Branches*, NCRC, June 2018, https://ncrc.org/the-importance-of-cra-assessment-areas-and-bank-branches/

[64] Hoai-Luu Q. Nguyen, Do Bank Branches Still Matter? The Effect of Closings on Local Economic Outcomes, December 2014, http://economics.mit.edu/files/10143

If CRA exams de-emphasize branches and do not analyze branching patterns by income level of census tract, the exams would likely result in less lending to LMI borrowers and census tracts. Instead of decreasing emphasis on branching, CRA exams should contain more data on the income levels of customers using deposit products so that exams can better judge the effectiveness of banks in serving LMI customers. More data on incomes of deposit customers is especially important for judging online banks.

The agencies must not broaden CRA away from the focus on credit and community development needs of LMI people

Over the years, some industry stakeholders have advocated for broadening the types of activities that can qualify on CRA exams in order to reduce uncertainty as to what counts. However, instead of broadening activities and straying from the statutory focus on CRA, the agencies should consider a Treasury Department recommendation of a system of early determinations when a bank was contemplating a specific project so that the bank knew in advance whether the project would receive consideration on the exam.[65]

Last year, a trade paper discussed a proposal to allow CRA consideration for financing a hospital no matter where it was constructed.[66] While hospitals are vital institutions, new hospitals in affluent parts of a city without ready access to transit have limited utility for LMI people. Other stakeholders cite examples of sewers and other infrastructure projects that cover both LMI and non-LMI census tracts. CRA examination practice and the Interagency Q&A document already have pro rata consideration for the portion of the project that is dedicated for LMI people or tracts. For example, if the sewer spans five tracts and three are LMI, 60 percent of the dollar amount of the project would be recorded on the CRA exam.

Also, proposals have been floated seeking favorable CRA consideration for financial counseling regardless of whether the recipients are middle- and upper-income.[67] However, LMI people remain in most need of financial counseling, because they have less knowledge and experience with bank products or the homebuying process. CRA would divert precious financial counseling resources from the populations most in need if CRA exams provided favorable consideration for counseling regardless of income status of the recipients.

The ANPR discusses whether expanding the range of activities should be considered.[68] For example, should internships at banks for LMI young adults or digital literacy efforts be considered on CRA exams? While these types of initiatives are desirable, the original purposes of CRA should guide final determinations of what counts. Congress enacted CRA to increase access to loans, deposit accounts and other banking services. Consideration for meritorious

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[65] Treasury Department April 2018 Memorandum to the OCC, Federal Reserve Board, and FDIC, https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf, p. 8.

[66] Rachel Witkowski, *Will CRA Finally Get its Makeover*, American Banker, March 9

[67] American Bankers Association, CRA Modernization, *Meeting Community Needs and Increasing Transparency*, December 2017, p. 2, https://www.aba.com/Advocacy/Documents/CRA-WhitePaper2017.pdf#_ga=2.192150499.839944790.1512674294-422164602.1512674294

[68] ANPR, page 45057-45058.

activities that do not directly combat redlining and/or lack of access to banking will result in a regulation that frustrates the purpose of CRA to revitalize credit starved communities.

Asset thresholds for CRA exams: Reform must not reduce requirements for any category of banks

The OCC ANPR invited comments on asset thresholds by stating that "some stakeholders have expressed the view that asset thresholds have not kept pace with bank asset sizes."[69] In addition, Governor Brainard's speech referenced this issue. I want to be very clear: adjusting thresholds is not a mere technical exercise, it can result in considerably less community development financing or branching in LMI communities.

The American Bankers Association (ABA) has advocated eliminating the Intermediate Small Bank (ISB) category altogether.[70] Small banks with assets below $321 million have a CRA exam that looks solely at retail lending. ISB banks with assets between $321 million and $1.284 billion have a retail lending test and a community development test.[71] The community development test scrutinizes community development lending and investing such as construction loans for affordable housing or investments in Small Business Investment Corporations (SBIC).

Eliminating the ISB category means that the ISB banks would just have a retail test. NCRC estimates that ISBs finance about $3 billion annually in community development projects or about the same amount of annual funding as the Community Development Block Grant (CDBG) program. If the community development test is eliminated for ISB banks, their community development financing would plummet by 50 percent or more, according to NCRC's analysis.[72] ISB banks would lack incentives to engage in community development financing. Finally, we also oppose any expansion of the ISB category that results in large banks being re-classified as ISB banks and thus losing their service test. As discussed above, CRA service test analyses of branching remain vital.

NCRC sees no compelling reason to adjust asset thresholds. The benefits of the current exam structure in terms of reinvestment are clear. In addition, the costs and burdens imposed on ISB banks are not significant. The high pass rate on CRA exams suggests that banks know how to comply with CRA without undue burden.

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[69] ANPR, page 45055.

[70] American Bankers Association, Second Published Request for Comments Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (February 13, 2015), p. 7, https://www.regulations.gov/document?D=FFIEC-2014-0001-0077

[71]Joint release of Federal Reserve Board, FDIC, and OCC, *Agencies Release Annual CRA Asset-Size Threshold Adjustments for Small and Intermediate Small Institutions*, December 20, 2018, https://www.occ.gov/news-issuances/news-releases/2018/nr-ia-2018-139.html

[72] NCRC, *Intermediate Small Banks, the Forgotten but Significant Resource for Affordable Housing and Community Development*, https://ncrc.org/intermediate-small-banks-forgotten-significant-resource-affordable-housing-community-development/

The OCC must rescind damaging unilateral changes to CRA and align with the Federal Reserve Board and FDIC

Over the last several months, the OCC has made unilateral changes to CRA that stretch out CRA exams for large banks and weaken fair lending and merger reviews of all banks. The OCC must rescind these changes and align any future changes to the CRA regulation and examination procedures with the Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC).

In a recent bulletin, the OCC describes a 48-month cycle for large banks, a significant increase from the previous 36-month cycle.[73] Less frequent CRA exams reduce accountability and incentives for banks to perform in a consistently vigorous manner in fulfilling their CRA obligations. The OCC has also issued a memo that dilutes the negative impact of discrimination and violation of consumer protection law on a bank's CRA rating.[74] Instead of being emulated by the other agencies, this approach must be rescinded. A bank is not serving credit needs in a satisfactory manner if it is engaging in illegal and harmful activities on a large scale, behavior which now results in rating downgrades.

The OCC has also made it easier for banks with failed CRA ratings to grow through mergers with other financial institutions or acquiring branches.[75] Currently, the only penalty for a failed CRA rating is the possibility of denial of merger or branch applications; one of only a few sticks that motivate banks to pass their CRA exams. A presumption that applications will be denied for failed CRA performance must remain the regulatory practice.

Conclusion

The challenge and opportunity in CRA reform is successfully addressing the gaps in CRA coverage while not disturbing the core mechanisms of public input, transparency and local accountability. Bolstering the effectiveness of CRA in combating redlining and discrimination would include increasing opportunities for public input, improving the quality of data on CRA exams, mandating the inclusion of affiliates on CRA exams, evaluating bank lending, investment and service to underserved communities including communities of color, and expanding assessment areas to consider non-branch lending.

In contrast, the OCC introduces concepts that would make CRA exams more convenient for banks but would reduce banks' abilities to meet convenience and needs of the communities in which they conduct business. The one ratio, broadening consideration of activities that are not related to meeting credit and community development needs, and diverting attention away from LMI people and communities would result in considerably less lending, investment and services for underserved communities. Finally, the American Housing and Economic Mobility Act would bolster CRA effectiveness by updating CRA assessment areas, combat grade inflation, enhance

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[73] OCC Bulletin 2018-17, June 15, 2018, https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-17.html
[74] OCC Bulletin 2018-23, August 15, 2018, https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-23.html
[75] OCC, Impact of CRA Ratings on Licensing Applications, November 2017, https://www.occ.gov/publications/publications-by-type/other-publications-reports/ppms/ppm-6300-2.pdf

community input and the public benefit standard in merger applications, and improve data reporting requirements. Likewise, Governor Brainard indicated an openness to assessment area reform and improvements to community development data.

The economic wellbeing of our communities depends on the path forward on CRA reform. Let’s work together to maintain a CRA system that thrives on public input and accountability.