THE COMMUNITY REINVESTMENT ACT: ASSESSING THE LAW'S IMPACT ON DISCRIMINATION AND REDLINING

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

OF THE

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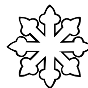

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THE COMMUNITY REINVESTMENT ACT: ASSESSING THE LAW'S IMPACT ON DISCRIMINATION AND REDLINING

Tuesday, April 9, 2019

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCIAL INSTITUTIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Gregory W. Meeks [chairman of the subcommittee] presiding.

Members present: Representatives Meeks, Scott, Clay, Heck, Foster, Tlaib, Porter, Pressley, McAdams, Ocasio-Cortez, Wexton; Luetkemeyer, Lucas, Tipton, Williams, Loudermilk, Kustoff, and Riggleman.

Ex officio present: Representatives Waters and McHenry.

Chairman MEEKS. The Subcommittee on Consumer Protection and Financial Institutions will come to order.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

Today's hearing is entitled, "The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining."

I now recognize myself for 5 minutes to give an opening statement.

Ranking Member Luetkemeyer, members of the subcommittee, welcome to this hearing on modernizing the Community Reinvestment Act (CRA). The work of our subcommittee is critical because we consider the complexities of an evolving banking sector enabled by rapid developments in technology and critically important issues of consumer protection.

Today's hearing is an example of these opportunities and challenges and the importance of not losing sight of our obligations to American families, small businesses, and the least fortunate among us.

The Community Reinvestment Act was enacted into law in 1977 as a direct response to the long, painful legacy of structural discrimination, financial exclusion, and economic suppression of racial minorities in America. Banking, finance, housing, and access to

capital more broadly are key pillars to the opportunity in breaking cycles of poverty and exclusion.

I come from a family of very humble means. My parents' access to financing to purchase their home was among the most important circumstances that laid a path for me to go to college, become an attorney, and ultimately to serve as a Member of Congress. My siblings' lives were equally impacted by my parents' ability to build equity and allow us to grow up in a home.

Conversely, I have relatives who were deprived of this opportunity and whose children's and grandchildren's lives have equally been impacted in a negative form. We could not downplay the legacy of redlining, structural discrimination in the financial sector, and how its impact echoes through time to this very day.

We will hear in the testimony of the witnesses here today how the CRA has contributed to redressing some level of discrimination in access to banking services and lending, including specifically mortgage lending. But we will also hear how shocking patterns of discrimination persist, and how racial minorities continue to find themselves disproportionately denied mortgages and the chance at home ownership.

Sadly, we will also hear how a brutal combination of disproportionate impacts from the financial crisis combined with a retrenchment of bank branches have effectively erased nearly all of the gains in Black homeownership over the past 50 years and led to a situation with a gap between Black and white homeownership, and that Black wealth is at a level comparative to the pre-civil rights era. I repeat: We must do better.

I look forward to hearing from our witnesses their thoughts on effective ways to modernize CRA to address these issues, consideration of Fintech, the rapid increase in urban and rural banking deserts, and the importance of nonbank lenders who are not covered by the CRA.

Ultimately, I believe that we are interested in ensuring that banks and lenders continue to meet their obligations to the unbanked and underbanked, and that evolving business models and emerging technologies do not lead to increased exclusion or new patterns of discrimination.

The CRA undoubtedly needs to be modernized. And last year, the Office of the Comptroller of the Currency (OCC) put forward an advance notice of proposed rulemaking (ANPR), which laid out some important questions for discussion but also raised some red flags for advocates of CRA.

My office submitted a comment letter, which I am entering into the record here, raising some concerns and calling on the OCC to protect the integrity of the CRA. The OCC revived some 1,500 comment letters, and it was rewarding to see that the idea of protecting the integrity of the CRA was a common thread through most, alongside many good ideas for consideration with respect to assessment areas, transparency, accountability, and focus on impacting others.

It has also been very helpful for the Federal Reserve to weigh in, including specifically Governor Brainard, whose comments on CRA modernization have been thoughtful and offer a constructive framework for tackling complex issues.

In private meetings, and now here on record, I urge the OCC, the FDIC, and the Fed to work in concert on CRA modernization in good faith, to take a thoughtful, inclusive approach, and to consider carefully the original intent of the legislation.

I was very encouraged to hear that the OCC, the FDIC, and the Federal Reserve have been working to harmonize their CRA review process and will meet on April 11th, 2 days from now, to begin mapping out a notice of proposed rulemaking. I very much look forward to discussing these issues further today with the panel of witnesses and members of the subcommittee.

With that, I now recognize Ranking Member Luetkemeyer for his opening statement.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. And thank you for bringing this important issue and topic in front of the subcommittee. I am glad we are having this hearing today to discuss how banks meet the credit needs of their local communities.

Throughout my career in the financial services industry, and my time in Congress, I have championed access to credit for all individuals and businesses. Banks should not decide to make loans based on the gender or race of an individual and should not deny loans to individuals based on the neighborhood in which they live.

Similarly, banks should not be forced to deny loans and eliminate accounts of legal operating businesses simply because certain regulators or public officials do not like the industry in which they operate.

It is the role of banks to take into account creditworthiness to determine if an individual business is eligible for access to financial services. While the vast majority of banks work very hard to support and serve their communities, the truth remains that too many Americans are either unbanked or underbanked.

Enacted in 1977 to address the banking needs of underserved communities, the Community Reinvestment Act was well-intended and the original objective was noble. It sought to combat redlining, the practice where individuals were discriminated against based on where they lived and what their neighborhood looked like.

Unfortunately, the CRA as it exists today is very different. Over 40 years later, the CRA has proven to be an overly burdensome requirement for financial institutions while granting broad authority to regulators with little transparency and clarity on how to comply.

Although the CRA has been amended numerous times since 1977, many of the rules associated with CRA are not only from the pre-cellphone era, but they are from the pre-internet era. Since 1977, the banking industry has gone through a major evolutionary shift thanks to constantly changing technology. We now see Fintech companies popping up everywhere looking to meet the challenging credit needs of American consumers.

Local bank branches are seeing shorter lines as consumers turn to online banking. In fact, everyone in this room could go online right now and do nearly all of their banking without leaving their seat. As banks partner with and acquire these Fintech companies, changing the way they serve their customers, so must the CRA change the way it applies to banks.

In reassessing the CRA, banks should be aware of the specific requirements they must meet. For example, the CRA requires regu-

lators to examine the innovativeness banks use to service groups of individuals they previously did not. However, no formal definition of "innovativeness" has been established, leading banks to face a subjective process.

Across the nation, bankers want clarity on how to comply with CRA and better serve low- and moderate-income individuals in their communities. In order to solve the many issues of CRA over the last year, financial regulators have begun the process of utilizing their authority to bring the CRA into the 21st Century and align it with the realities of the banking industry today.

I believe this is the correct approach and regulators should continue their work to fix this outdated regulation. These changes are well overdue, and I look forward to the discussion with the panel today to determine what is not working with CRA as it exists today and what changes must be made going forward.

I thank the panel of witnesses for appearing this morning to discuss this important matter, and I yield back.

Chairman MEEKS. The gentleman yields back.

And, without objection, the chairwoman of the Full Committee, Chairwoman Waters, is recognized for 2 minutes, and I will also give the ranking members an additional 2 minutes if they want it.

I now recognize the chairwoman of the Full Committee.

Chairwoman WATERS. Thank you very much, Mr. Chairman. I thank you for holding this long overdue hearing on the Community Reinvestment Act, a law of immense importance that was put in place to ensure fair access to credit and banking services.

CRA is one of the most important and impactful civil rights laws applicable to federally insured banks. Enacted into law by Congress in 1977, CRA addresses how banks meet the credit and capital needs of the communities they serve. CRA was passed in response to redlining, a pernicious practice by which banks discriminated against prospective customers based primarily on their racial or ethnic background and where they live rather than credit worthiness.

However, recent data compiled by one of our witnesses finds discrimination in lending continues to be a problem and redlining continues to be pervasive in more than 60 metro areas across the country. In addition, in 2018, bank regulators gave 98 percent of banks a passing CRA grade. There is a clear disconnect, and these outcomes are simply unacceptable.

CRA must be strengthened to ensure that neglected communities are fully and fairly served by banks that enjoy the backing of all U.S. taxpayers. Furthermore, policymakers should strive to strengthen CRA's legal framework and explore ways to improve how it is implemented and administered.

Mr. Chairman, I think that the leadership that you and others are providing on this issue at this time is extremely important. The days are over when banks could get CRA credit for a church banquet and a banner on the wall. The days are over when it was 50 cents to the Boy Scouts and 25 cents to the Girl Scouts. It has to be better. It has to be about doing what this law was intended to do. So I thank you for today's hearing, and I yield back the balance of my time.

Chairman MEEKS. I yield 2 minutes to the ranking member of the Full Committee, Mr. McHenry.

Mr. MCHENRY. I thank the chairman.

Chairman Meeks, thank you for holding this hearing.

And thank you, Ranking Member Luetkemeyer.

In 1977, the Community Reinvestment Act was passed. This was 6 years before the first mobile phone became available to the public. And while the objectives of CRA are not a relic, the means to reach it are, in fact, antiquated in our current marketplace.

Today, the CRA is an analog approach in a digital world. Ninety-five percent of Americans own a cellphone, so you can no longer measure a bank's commitment to its community based on the number of physical branches. So we can and we should do better. This should be a bipartisan understanding that we have. So we should do more to ensure that there is equal access to consumer credit.

There are, in fact, banking deserts in this country in both urban and rural areas. So, while the goal of the CRA is laudable, the results aren't quite as sterling as we need them to be. We need to update this regulation, update the law, in fact, if we are able, to ensure that banking is available to people on their terms through the medium they choose.

It is time to reform CRA, not to allow financial institutions a free pass but to ensure they are in the best possible position to serve their communities, serving their communities as those communities deserve to be served by the means that they deserve to be served, like all good consumers. So I hope we can work on this in a bipartisan fashion.

I appreciate the panel, the six of you for being here, and I look forward to the testimony

Chairman MEEKS. Thank you.

We now welcome the testimony of our guests. First, let me introduce Mr. Van Tol, who is the chief executive officer of the National Community Reinvestment Coalition. Mr. Van Tol has been with the NCRC since 2006 and has held a variety of leadership positions.

His work championing fair and responsible banking has resulted in nearly $90 billion in new investments in low- and moderate-income communities through community benefits agreements with 8 banking institutions. He serves on the board of the Maryland Consumer Rights Coalition and the executive committee of the Americans for Financial Reform.

He also sits on a variety of advisory boards, including the Federal Reserve Board, the Consumer Advisory Council, and Fannie Mae and Freddie Mac's Affordable Housing Advisory Councils. He is a member of the consumer advisory councils of several banks, including Bank of America, Fifth Third, and others. Mr. Van Tol received his BA in history and international studies from the University of Wisconsin, Madison.

Second, Ms. Baradaran is the Associate Dean of Strategic Initiatives and the Robert Cotten Alston Chair in Corporate Law at the University of Georgia School of Law. As an associate dean, she focuses on diversity and inclusion efforts and national and international faculty scholarships recognitions. Her teaching portfolio includes contracts and banking law. She is the author of books entitled, "How the Other Half Banks," and "The Color of Money:

Black Banks and the Racial Wealth Gap," both published by the Harvard University Press.

She also has published articles including "Banking and Social Contract," "How the Poor Got Cut Out of Banking," and the "New Deal with Black America," which was selected for presentation in the 2017 Stanford/Harvard/Yale Junior Faculty Forum.

She came to UGA from Brigham Young University where she taught banking regulation, property, and administrative law. She earned her bachelor's degree cum laude from Brigham Young University and her law degree cum laude from NYU, where she has served as a member of the New York University Law Review.

Third, Mr. Odom is senior vice president, policy and advocacy, and the Washington Bureau executive director of the National Urban League. Mr. Odom currently serves as the National Urban League's senior vice president for policy and advocacy and executive director of the Washington Bureau.

Mr. Odom previously served for a decade in the United States Senate as Legislative Director for Senator Kamala D. Harris of California, as Democratic General Counsel of the Committee on Commerce, Science, and Transportation, and as General Counsel to Senator Bill Nelson of Florida.

He also served as a Senior Adviser at the Federal Communications Commission, and practiced law at the law firm of Dow Lohnes & Albertson, now Cooley LLP. He served as a law clerk to the Honorable Henry T. Wingate of the U.S. District Court of the Southern District of Mississippi. He is a graduate of Louisiana State University and the University of Pennsylvania Law School.

Fourth, Mr. Mitchell is the president and CEO of Industrial Bank, and is testifying on behalf of the National Bankers Association. Mr. Mitchell leads the largest minority-owned commercial bank in the Washington metropolitan area and the fifth largest African American-owned financial institution in the country.

Mr. Mitchell is the third-generation president of Industrial Bank, which was founded by his grandfather, Jesse H. Mitchell, in 1934. After receiving his bachelor's degree in economics from Rutgers University in 1984, he began a full-time career at Industrial Bank.

He was elected to the board of directors in 1990 and succeeded his father as president in 1993. Mr. Mitchell is the immediate past chairman of the National Bankers Association, which represents the nation's minority banks. He served two consecutive terms as chairman of the NBA and continues to serve on the board.

At the request of Chairman-Elect Preston Kennedy of the Independent Community Bankers of America (ICBA), Mr. Mitchell now serves on the ICBA 2019/2020 Legislative Issues Committee. He is also a former member of the ICBA Safety and Soundness Committee.

Fifth, Mr. Glantz is a senior reporter for Reveal from The Center of Investigative Reporting. He is author of the book, "Homewreckers," to be published by HarperCollins this fall.

He produces his journalism with impact. His work has sparked more than a dozen congressional hearings, the signing of new laws, and criminal probes by the DEA, the FBI, the Pentagon, and the Federal Trade Commission. His reporting has been honored with a

host of awards, including the George Foster Peabody award, the Selden Ring, and the duPont-Columbia award.

His work has appeared in many leading media platforms, including the New York Times, "NBC Nightly News," "Good Morning America," and the "PBS News Hour," where he has twice been nominated for a national Emmy award. A recent JSK fellow at Stanford University, his previous books include, "The War Comes Home," "Washington's Battle Against America's Veterans," and "How America Lost Iraq."

And, finally, we have Mr. Roberts, president and CEO of the National Association of Affordable Housing Lenders (NAAHL), which is a national alliance of leading banks, community development financial institutions, and other capital providers for affordable housing and inclusive neighborhood revitalization.

Mr. Roberts was the Director of the Office of Small Business Community Development and Housing Policy at the U.S. Treasury Department from 2011 to 2015. He was previously senior vice president for policy and program development at the Local Initiatives Support Corporation, a leading nonprofit investor in low-income community development.

Mr. Roberts has helped to create the low-income housing tax credit, the new markets tax credit, the HOME Housing Partnership program, regulatory change to the Community Reinvestment Act, the Capital Magnet Fund, and Treasury funding for the FHA multifamily risk-sharing loans to finance affordable rental housing and bond guarantees for the CDFIs.

We welcome all of our witnesses today. And I want to remind all of the witnesses that your oral testimony will be limited to 5 minutes. And without objection, your written statements will be made a part of the record.

I now recognize Mr. Van Tol for 5 minutes to give his oral presentation.

STATEMENT OF JESSE VAN TOL, CHIEF EXECUTIVE OFFICER, NATIONAL COMMUNITY REINVESTMENT COALITION (NCRC)

Mr. VAN TOL. Chairman Meeks, Ranking Member Luetkemeyer, and members of the subcommittee, I want to thank you for providing me the opportunity to testify. I am the CEO of the National Community Reinvestment Coalition, which, along with its 600 grassroots member organizations nationwide, champions fairness and fights discrimination in banking, housing, and in business.

I want to start by saying that CRA has been effective. Federal, academic, and NCRC's own studies have documented the way CRA has increased the provision of mortgage loans, small business loans investments, and other financial services in low- and moderate-income neighborhoods and to low- and moderate-income people.

But measuring CRA's impact involves proving a counterfactual: What would happen if it didn't exist? The Federal Reserve Bank of Philadelphia found that a loss of CRA's Census tract designation leads to a 10 to 20 percent decrease in mortgage lending, and we see a similar thing with small business lending.

Conservatively, we estimate a $52 billion to $105 billion loss or shift in lending in LMI areas nationwide were CRA to be significantly weakened or assessment areas transformed. All told, banks

have done over $1 trillion in community development lending since 1996.

The impact is not just by the largest banks. Even intermediate to small banks finance about $3 billion annually in community development projects or about the same amount of annual funding as the community development block grant program in its entirety.

Though CRA could do more for rural America, we also see a positive impact there. For example, in Appalachia we found that CRA-regulated lenders made nearly $2.5 billion annually in community development loans and investments.

But CRA has been limited by changes in the market. CRA's overall impact has declined as the share of loans covered by CRA has declined. In 1993, 41 percent of mortgage loans were directly covered by a CRA review. By 2016, only roughly 30 percent of mortgages were covered.

There are two driving forces here: increased lending by nonbanks; and more out-of-assessment area lending by CRA-regulated banks. This trend is likely to continue and will be exacerbated by the growth of financial technology firms with no CRA obligation.

The fact that regulators are examining less and less bank lending on CRA exams limits its impact to only a portion of the market. Most nonbank lenders trail CRA-regulated banks in lending to LMI borrowers in tracts. In addition, nonbank lending is consistently more likely to be high cost than bank lending. For example, government-insured loans to LMI borrowers by nonbanks were higher cost twice as often as loans to the same borrowers made by banks.

Weak enforcement and implementation has stymied the law. As effective as CRA has been as currently structured and enforced, it has not been enough to reverse the effects of redlining and discrimination: 98 percent of banks receive passing CRA grades.

It hasn't always been this way. The Clinton Administration rigorously enforced CRA, failing as many as 10 percent of banks at one point. Then-Comptroller Eugene Ludwig noted in 1997 that, "Since 1993, home mortgage loans to low- and moderate-income Census Tracts have risen by 33 percent in just 4 years. Mortgage loans to minorities are up almost 38 percent with African Americans and Hispanics accounting for most of that gain."

CRA enforcement has often been encouraged by community activism and by DOJ litigation then leading to regulatory action. The differences between the tenure of Comptroller Curry and Comptroller Otting are also worth noting. Comptroller Curry downgraded CRA ratings for several banks for fair-lending violations and placed conditions on bank mergers.

In contrast, his OCC successors issued guidances weakening CRA enforcement, including imposing limits on downgrades for fair-lending violations and speeding up mergers. Not only has the OCC stepped away from conditional merger approvals, but it is also approving them more quickly.

CRA regulatory reform must be consistent with the law and the legislative history. All three regulators have weighed into the discussion over CRA regulatory reform with differing approaches.

The OCC has suggested a transformational approach to reform with some ideas that would weaken CRA significantly. Voices

across the spectrum have impugned the OCC's notion of a single metric or one ratio that could overly weight a rigid quantitative analysis by regulators and facilitate more CRA grade inflation.

The approach would undermine the qualitative local analysis, which is critical to CRA, that is designed to assess whether banks are meeting credit needs in all communities and then in the neighborhoods they are chartered to serve.

I look forward to making additional recommendations on ways to strengthen the Community Reinvestment Act during the Q&A session. Thank you.

[The prepared statement of Mr. Van Tol can be found on page 114 of the appendix.]

Chairman MEEKS. Thank you. Ms. Baradaran, you are now recognized for 5 minutes.

STATEMENT OF MEHRSA BARADARAN, PROFESSOR OF LAW, UNIVERSITY OF GEORGIA SCHOOL OF LAW

Ms. BARADARAN. Chairman Meeks, Ranking Member Luetkemeyer, and Chairwoman Maxine Waters, thank you very much for having me here.

In passing the CRA in 1977, Senator William Proxmire stated that the Act was based on the widely shared assumption that a bank's public charter conveys numerous economic benefits, and, therefore, it is fair for the public to ask for something in return.

The underlying theory of the CRA is that banks have duties to the public because they benefit from significant government subsidies. This bank-government social contract seems to have been forgotten entirely.

Banks enjoy a monopoly on the Federal Reserve payment system, receive subsidized funding through FDIC-insured deposits, make loans supported by Federal guarantees, and invest in mortgage-backed securities markets enabled by GSCs. And all of this still doesn't cover the bailouts when the industry fails or the unprecedented monetary policy actions of the Federal Reserve, including trillions of dollars in quantitative easing.

Banks need this support, without which their customers would lack sufficient trust to permit them to function properly, for trust is the currency of banks. In return, banks are to serve as the engines at the center of the economy. They provide credit, financial services, and liquidity. It is their role to connect the people to commercial markets and administer government credit policy and monetary policy.

For most of U.S. history, banks were forced to stay local, small, and safe so that they would meet the needs of their communities. Yet, during the deregulatory era started right after the CRA was passed and seems to still be ongoing, these restrictions were eroded. Wave after wave of deregulatory legislation completely transformed the banking sector to one that is large, complex, laden with risks, very profitable, and highly competitive.

Small community banks have struggled to survive this hypercompetitive environment. As banks grew larger through mergers and became more efficient, they dropped their unprofitable branches and their unprofitable customers. Banks also shed their public duties. All of this deregulation happened slowly and prom-

ised more efficiency. But at the end of the day, the government was left holding the bag. Because banks operate using, in the words of Louis Brandeis, "other people's money," they are not like other businesses.

Congress and regulators therefore must be watchful that reforms promising modernization and efficiency do not become a Trojan Horse, hiding even more deregulation, relieving banks of their last remaining public duties. Of course, the CRA should be updated, and compliance should be transparent.

But when regulators promise changes that have ease of compliance or efficiency, we must step back and ask a few questions: Efficient for whom? Why should efficiency be our primary concern? More importantly, what kind of banking sector would best meet the needs of the public, and how can we design laws to achieve that outcome?

We need a banking system that provides equal access to credit and services for all. The problems that the CRA was meant to address have not been solved, and we must remember that these problems that we are talking about are not just numbers.

Poverty, exclusion, predatory lending, segregation, and an intergenerational racial wealth gap affect human lives and real communities. These are the communities that we are talking about when we are talking about CRA duties. Low-cost bank accounts and credit products are not a cure to poverty, but they do help.

These problems are too large and too complex and too entrenched for one law or one industry to solve. Yet, the democratization of banking is necessary. It is still, I think, too important a public imperative to be left solely to the private sector.

If we are serious about financial inclusion, it is time that we consider a public option. Insofar as the States enable credit markets, deposit accounts, and payment systems, all Americans should have equal access to these public utilities.

But short of that, banks have public duties because they benefit from significant public support. The CRA is the only law that places affirmative duties on banks. Most major banking laws have some sort of public benefit test. In other words, before a bank is supposed to merge or add any other activity, all of the laws—the Bank Holding Company Act, the National Bank Act—require that the regulators ask, what is the benefit to the public? In other words, when a bank merges, will communities lose branches?

Today's CRA is meant to encapsulate the entirety of this public benefit test. In recent years, bank mergers have only increased, as has disinvestment from LMI communities. The Fed just set two records last year: the highest ever approval rates for M&A proposals; and the quickest-ever time to approval, especially for mergers that received adverse comments from the public. The only question asked was whether the bank was in compliance with the CRA. That is not enough.

A strong CRA should be one step in an effort to match the large inequalities in the credit system, the conglomeration of the banking sector, and the historic injustice of the racial wealth gap. Thank you.

[The prepared statement of Ms. Baradaran can be found on page 46 of the appendix.]

Chairman MEEKS. Thank you. Mr. Odom, you are recognized for 5 minutes.

STATEMENT OF CLINT ODOM, SENIOR VICE PRESIDENT AND EXECUTIVE DIRECTOR, NATIONAL URBAN LEAGUE WASHINGTON BUREAU

Mr. ODOM. Good morning, Chairman Meeks, Ranking Member Luetkemeyer, and Chairwoman Waters. Thank you for the opportunity to present the National Urban League's views on the Community Reinvestment Act. My name is Clint Odom, and I am the National Urban League's senior VP of policy and director of its historic Washington Bureau.

Established in 1910, the National Urban League is the nation's oldest and largest civil rights and direct services organization. Each year, we serve 2 million people through 90 affiliates in 36 States and the District of Columbia. Our views and recommendations are based on decades of direct experience in urban communities across the country and our historic role in documenting and fashioning remedies to root out the pernicious practice of redlining.

Congress passed the CRA because of concerns that federally insured banking institutions were not making enough credit available in the communities they served. Disinvestment practices allowed depository institutions to accept deposits from African Americans in the inner city but reinvest them in more affluent, suburban areas.

Faced with substantial evidence of redlining, Congress decided that market forces alone could not break down residential segregation patterns. Thus, the CRA was enacted—and we will hear this a lot today—"to reaffirm the obligation of federally chartered or insured financial institutions to serve the convenience and needs of their service areas and to help meet the credit needs of the localities in which they are consistent with the prudent operation of the institution."

Redlining prevented African-American and other communities from securing affordable homes and mortgages in decent neighborhoods and purposely segregated communities. Segregated into slums, African Americans were concentrated into poverty by way of intentional discriminatory policies.

They were denied credit to purchase homes, start small businesses, and to meet everyday living expenses. Blight, crime, and decreased property values often ensued. Cities were left behind with no adequate tax base for basic services. With no desire to invest in these communities, many African-American communities continue to deteriorate today, as you will hear from other panelists.

To be clear, the CRA is one of the most important civil rights and economic justice laws of the 20th Century. In the 21st Century, however, the law is in dire need of reform to better serve low- to moderate-income communities.

CRA-regulated institutions have not always met the needs of their communities, allowing an array of nonbanks to enter the marketplace, many of which provide high-cost and often predatory products. Advocates in industry agree the CRA can and must do more.

My submitted testimony offers several reform suggestions for the committee's consideration. I will highlight three here. First, modernizing the CRA service test to measure how well banks are serving low- to moderate-income communities. The service test must do more to incentivize banks to offer credit products. There is a problem when 98 percent of CRA-regulated institutions get a satisfactory or outstanding rating.

Second, developing regulations to encourage majority institutions to invest in minority-owned institutions. We agree with the American Bankers Association that, "Minority-owned institutions were pioneers in helping underserved neighborhoods before the CRA existed, and their perseverance in serving those markets has made them worthy partners in leading further efforts to build stronger, more economically vibrant communities." It is past time for the agencies to adopt regulations that recognize and thereby encourage investments in and support of minority institutions by majority institutions, something that Congress authorized years ago but still has not implemented in the CRA process.

Third, including nonbanks under CRA regulation. Nonbanks have taken on the responsibility of serving LMI communities. The only place banks have a stronghold in LMI lending is their assessment areas. Including nonbanks under CRA's purview would help ensure LMI communities' needs are met while limiting access to excessive risk-based pricing.

Immediately following the Civil War, Congress enacted the Civil Rights Act of 1866, which stated that every citizen of the United States, including former slaves, had the right to inherit, purchase, sell, hold, or convey property, both real and personal. As a nation, we have been struggling ever since to get this right.

The CRA is as relevant today as it was in 1977, and we urge Congress through its oversight powers to do more to access affordable credit and quality investments in communities of color. Thank you.

[The prepared statement of Mr. Odom can be found on page 91 of the appendix.]

Chairman MEEKS. Thank you.

Mr. Mitchell, you are now recognized for 5 minutes.

STATEMENT OF BENSON DOYLE MITCHELL, JR. BENSON DOYLE MITCHELL, JR., PRESIDENT AND CEO, INDUSTRIAL BANK, TESTIFYING ON BEHALF OF THE NATIONAL BANKERS ASSOCIATION

Mr. MITCHELL. Good morning, Chairman Meeks, Ranking Member Luetkemeyer, Chairwoman Waters, and members of the subcommittee. Thank you for this opportunity of allowing me to testify on the Community Reinvestment Act. It gives me great hope that one of this committee's first hearings of the 116th Congress is shining light on this critical issue.

My name is B. Doyle Mitchell, Jr., and I am president and CEO of Industrial Bank. Industrial Bank has been serving individual customers and small businesses in Washington, D.C., and Prince George's County, Maryland, since 1934.

I am also on the board of the National Bankers Association. The NBA is a leading trade association for the country's Minority De-

pository Institutions, or MDIs. Our mission is to serve as an advocate for the nation's MDIs on all legislative and regulatory matters concerning and affecting our member institutions as well as the communities that we serve.

Many of our member institutions are also community development financial institutions, CDFIs. And many of our member institutions have become banks of last resort for consumers and businesses who are underserved by traditional banks and financial services providers.

The National Bankers Association supports a strong CRA. In enacting CRA, Congress stated that the purpose of the CRA was to "ensure that regulated financial institutions demonstrate that they serve the convenience and needs of the communities in which they are chartered to do business." As such, these institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.

While the CRA has made great strides in ensuring access to credit in low- and moderate-income communities and among minority and low-income borrowers, systemic economic and social challenges remain, perpetuating a lack of access to fair credit services for many, and allowing predatory providers to thrive. Given growing economic inequity in urban, rural, and Native American communities, it is important to get CRA right.

We strongly support the purposes and objectives of CRA. We strongly support modernization that ensures CRA does not lose effectiveness for LMI communities and that it also creates a regulatory framework that streamlines financial institutions' ability to comply with CRA. The success of CRA reform should be measured by whether it will result in more credit and services delivered to LMI communities and doesn't create unnecessary regulatory burdens.

We recommend updating and preserving the flexibility. NBA members believe that the current framework for CRA is effective, but it needs modernization to reflect changes in the financial services landscape. We strongly agree with the notion expressed by regulators and lawmakers alike that CRA examination should be conducted in a more clear, consistent, transparent manner. We believe, however, that this result can be achieved by modifying the existing framework.

We have great concerns about the proposed metric-based, single-ratio framework outlined in the OCC's ANPR, and, thus, we oppose its adoption. We believe that the proposed single-ratio metric is too simplistic to fit all banks. We believe that a single ratio would encourage a minimalistic approach to CRA compliance where financial institutions would become more focused on hitting their ratio rather than thinking comprehensively about potential approaches for meeting credit needs of LMI communities.

We believe that CRA can continue to be a powerful tool to promote investment in LMI communities, and to this end, we offer the following recommendations to the subcommittee on this very important topic: First. create an MDI investment tax credit that can accompany the CRA provisions encouraging majority banks equity investments in MDIs.

The NBA strongly recommends enhanced interagency CRA training for examiners. The NBA recommends the creation of a robust public database of CRA case studies and peer-performance data. We strongly recommend that CRA encourage banks to provide long-term support to MDIs and CDFIs, as we are established institutions that have a successful history of serving the communities that are most distressed.

We recommend that bank investors receive significant and consistent CRA credit throughout the life of an investment, not just the origination of it. We recommend that studies of the assessment areas covered by CRA and the CDFI fund be streamlined. We also recommend that you streamline the reporting requirements of CRA and CDFI. The NBA recommends that CRA help promote financial literacy and inclusion among LMI populations, as well as unbanked, underbanked, and other vulnerable populations.

The NBA applauds the subcommittee for holding this important hearing, and for the Full Committee's ongoing efforts to assert and reassert the importance of CRA in the modern banking marketplace. And we stand ready to answer any questions.

[The prepared statement of Mr. Mitchell can be found on page 71 of the appendix.]

Chairman MEEKS. Thank you.

Mr. Glantz, you are now recognized for 5 minutes.

STATEMENT OF AARON GLANTZ, SENIOR REPORTER, REVEAL FROM THE CENTER FOR INVESTIGATIVE REPORTING

Mr. GLANTZ. Chairman Meeks, Ranking Member Luetkemeyer, Chairwoman Waters, I am pleased to join you and the rest of the subcommittee today to speak about our kept-out investigation into modern day redlining.

Reveal from the Center for Investigative Reporting is the oldest nonprofit organization in the country focused on in-depth investigative journalism, and our weekly radio show airs on more than 400 public radio stations each week. My testimony today was prepared with my colleague, Emmanuel Martinez.

First, a word about why we launched our investigation. We asked a straightforward question: Since 1977, banks have been required by the Community Reinvestment Act to lend in low-income neighborhoods and to low-income people, and yet, 40 years on, the homeownership gap between Blacks and whites is as great as it was during the Jim Crow era.

We wanted to know why. Why wasn't the Community Reinvestment Act reversing the historic damage of racially discriminatory redlining? So to find out, we analyzed 31 million mortgage records, nearly every loan application in America in 2015 and 2016.

And we found 61 metro areas across the country where people of color were more likely to be denied a conventional mortgage loan even when they made the same amount of money, tried to take out the same size loan, and buy in the same neighborhood as their white counterparts: Atlanta; Detroit; Jacksonville; St. Louis; Tulsa; Tacoma; base towns like Killeen, Texas; Santa Fe, New Mexico; and right here in Washington, D.C.

And yet nearly every bank receives a satisfactory or outstanding grade under the Community Reinvestment Act. So we investigated further, and we found lenders were exploiting three big loopholes.

The first we call the "gentrification loophole." Because CRA is race-neutral, we found that many banks loaded up making a ton of loans in rapidly gentrifying neighborhoods that have historically been home to communities of color. We found that, in these neighborhoods, banks offered generous terms: low downpayments; a pass on mortgage insurance; even looking the other way on blemishes on applicants' credit reports. But almost all of those loans went to white newcomers. When people of color tried to get those same loans, we found they were more likely to be denied.

Second, the "bank branch loophole." Other people here have talked about how old CRA is, and how it only applies to banks when they have a branch in the city that takes deposits. We found that in Boston, Philadelphia, and Washington, D.C., the biggest bank in America, JPMorgan Chase, was not assessed under the Community Reinvestment Act.

Chase has a physical presence in these cities. It had an office for the wealthy here in D.C. across the street from the White House, but it wasn't technically a branch, and so it didn't trigger a CRA assessment. The result is that, here in D.C., Chase made more than 1,000 conventional home purchase loans in 2015 and 2016, of which only 23 were to African Americans and 35 were to Latinos.

Now, after we published our investigation, Chase announced plans to expand its network in all three cities, and it will now be following the Community Reinvestment Act in those markets, but the loophole is still there.

And the third loophole is about nonbanks. The Community Reinvestment Act doesn't apply to nonbank lenders at all, and they make up an increasing share of the mortgage market. We took a look at the mortgage companies controlled by Warren Buffet's Berkshire Hathaway.

We found that across the country, Berkshire Hathaway's mortgage lenders put most of their offices in white neighborhoods, hired a primarily white staff of mortgage consultants, and lent overwhelmingly to white borrowers in majority white neighborhoods.

For example, in Atlanta, Berkshire's company made 1,300 loans for conventional home purchase in 2015 and 2016, including just 63 loans to African Americans and 46 to Latinos. And Berkshire is not evaluated under CRA.

So, finally, as a journalist at a nonprofit, nonpartisan news organization, I want to make one thing very clear: We take no position on any policy proposal. We are not here to offer solutions or advice. We are here to present the facts we uncovered in our 2-year loan investigation. One fact is that we found persistent redlining across this country, and another fact is that nearly every bank gets a satisfactory or outstanding grade under the Community Reinvestment Act. Thank you.

[The prepared statement of Mr. Glantz can be found on page 63 of the appendix.]

Chairman MEEKS. Thank you.

And, Mr. Roberts, you are now recognized for 5 minutes.

STATEMENT OF BENSON F. ROBERTS, PRESIDENT AND CEO, NATIONAL ASSOCIATION OF AFFORDABLE HOUSING LENDERS

Mr. ROBERTS. Thank you, Mr. Chairman. Good morning, Ranking Member Luetkemeyer, Chairwoman Waters, Ranking Member McHenry, and the rest of the subcommittee members as well.

The National Association of Affordable Housing Lenders is the only alliance of banks, CDFIs, and other capital providers for affordable housing and inclusive neighborhood revitalization.

We support a strong CRA because America's economy, financial system, and society can succeed only if every person in every community has the opportunity to contribute to them and benefit from them. CRA provides the capital that is vital to the economic health of low- and moderate-income people and communities.

In 2016 alone, banks made 3.6 million CRA loans totaling $419 billion. That is a lot of money. That includes 2.7 million small business loans for $172 billion, 724,000 home mortgage loans for $108 billion, 26,000 community development loans for $96 billion, 13,000 multifamily housing loans for $33 billion, and 108,000 small farm loans for $10 billion.

Importantly, CRA is completely consistent with safe and sound lending principles as the law requires and as experience demonstrates. CRA is sustainable for communities and borrowers and banks alike.

But CRA could do far more. Banks are willing to make more loans and investments if they will get CRA credit for doing them.

The bad news is that the CRA regulation is now 24-years-old. It has fallen far behind fundamental changes to the banking industry, local community needs and opportunities, and the practice of affordable housing and community development, all of which have evolved greatly over the last generation.

When the current CRA rule was finalized in 1995, Congress had just authorized interstate banks. Today, interstate banking comprises a majority of the banking system's assets. These days, mobile banking and other Fintech innovations are helping banks to serve low- and moderate-income people and communities better as a convenient complement to branches, which also remain very important.

And at the same time, CRA has not kept pace with reinvestment needs and opportunities. Low- and moderate-income people and communities are missing out on many loans and investments either because it is unclear that they will count for CRA or their location does not fit outdated CRA rules.

The good news is that many important improvements are possible, even within the current statutory framework. One area ripe for expansion is the financing of community development. Under CRA, community development includes affordable housing, economic development, community services, neighborhood stabilization and revitalization, and disaster area recovery.

CRA has served as a foundation for an entire generation of successful community development practice and public policies, including the low-income housing tax credit, new markets tax credit, the CDFI fund, and the HOME Investment Partnerships program, all of which are far more effective because of the participation of banks

under the CRA. In fact, you could say CRA is the oxygen that community development breathes.

To encourage more financing for community development, CRA policy should allow all large banks to have a consolidated community development test rather than fragmenting community development among the three current tests of lending investment and service; give banks credit for community development activities nationwide if they have already served their local area satisfactorily; evaluate the substance of community development activities in all communities, including rural communities and smaller metro areas where the current examination process effectively discounts and disregards those activities; and clarify the treatment of important activities, like unsubsidized rental housing, economic development in struggling parts of the country, and infrastructure, so that banks can be confident when they make a loan or investment that it will count for CRA. CRA should also provide more credit for long-term community development loans and examine branchless banks on a national basis rather than as local banks.

That concludes my testimony. Thank you.

[The prepared statement of Mr. Roberts can be found on page 100 of the appendix.]

Chairman MEEKS. I thank each of our witnesses for your excellent testimony. And I now recognize myself 5 minutes for questioning.

And I will start out with Mr. Van Tol. In listening to the reporting of Mr. Glantz where he talked about the three loopholes, my concern has long been discrimination that has gone throughout and the new style of banking that is going on now, whether we are talking about Fintech or whether we are talking about, you know, there are a lot of banking deserts taking place.

What would you think is the best way, as we talk about modernizing CRA—and we are in the middle of that—to try to eliminate some of those loopholes? And do you agree with Mr. Glantz's testimony as far as the reporting that he has done with those three items?

Mr. VAN TOL. I agree that those loopholes are an issue. And I think in particular, what we would say is that CRA needs to cover more loans and more lenders so CRA doesn't apply to mortgage companies, which today are a significant portion of the market.

In fact, as I said in my testimony, CRA only applies covering about 30 percent of mortgage loans. That is loans that banks make in their assessment areas, and it is loans that mortgage companies make.

And so we need to apply CRA: one, to mortgage companies; and two, assessment areas should be drawn to cover the vast majority of a bank's lending. When banks are making a lot of loans outside of their assessment areas, effectively what they are doing is skirting scrutiny of CRA by doing that, and so we need to adjust the way that we look at both of those things.

Chairman MEEKS. And would you also agree that we can't just go—I was concerned too by the initial findings of the OCC, although I give them credit for at least starting some of this dialogue—with the metric base, single ratio, that we have to be more

imaginative than that to make sure there are more items that are included—would you concur with that?

Mr. VAN TOL. I concur. One ratio is really problematic. What it says is you take the sum of activities a bank does to fulfill CRA measured by some measure of capacity, their assets or deposits, and you do simple division, and if they get above a certain threshold, you pass.

What that would do is it would drive a lot of activity away from local communities, which was the original intent of CRA. It would drive activities to the most profitable, lowest risk, lowest effort type activities, likely very large mortgages in low- and moderate-income Census Tracts to middle- and upper-income people because that is how you would sort of gain a dollar figure amount.

So we are not supportive. We are opposed to the one metric. We think it would be detrimental for low- and moderate-income communities and for communities of color.

Chairman MEEKS. Now, Mr. Mitchell, I am concerned also—you are a CDFI, and you talked about the strengthening of CRA. And I know some of the larger banks don't have the same model that you utilize because CDFIs are basically there to help the communities.

How would you talk about the differences between how the CRA should work and apply, because we even have some CDFIs, not yours, that have not complied or have—and I found it amusing that some CDFIs, more so than some of the bigger banks, do not get CRA credit where the big banks, generally, I think some 96 percent, all were found either satisfactory or better as far as CRA's concern.

Mr. MITCHELL. One of the concerns, Mr. Chairman, is that CRA and the CDFI requirements don't sync up. There are loans that can get CDFI credit that will not get CRA credit and vice versa.

The assessment areas can be different. If we have an assessment area for CRA purposes, it may or may not sync up. Generally it would sync up with the CDFI Census tracts. But there are differences between the two.

Chairman MEEKS. Should they sync up?

Mr. MITCHELL. Yes, absolutely. And so should the reporting requirements.

Chairman MEEKS. Mr. Odom, I want to—because what is critically important and central, I think, is access to credit. And when I look at—I am running out of time already—what took place with the Great Recession, can you describe how that affected it, particularly in African-American and Hispanic communities, the loss of wealth and whether CRA could have had a hand in helping us if it was assessed properly?

Mr. ODOM. The Great Recession had a deleterious on Black home ownership. Lots of African Americans, minorities and other people across the country lost their homes. A lot of bank branches closed during that same period of time. There has been a lot of reference here to banking deserts. Some of that root cause of banking deserts relates back to the Great Recession.

A stronger CRA, especially one that doesn't—where policymakers don't blame the CRA for the mishaps, certainly like the Great Re-

cession, goes a long way in avoiding those kinds of problems in the future.

Chairman MEEKS. Thank you. I now recognize the ranking member of the subcommittee, Mr. Luetkemeyer, for 5 minutes for questions.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

We have a law that is 40 years old, and everything needs to be reformed. I think, over the course of 40 years—I don't know anything that can go 40 years without some sort of tweaks to it.

I think all of you indicated in your testimony that we need to look at different ways to be able to tweak this law, and I support that.

One of the things that has happened is the—I think, as our ranking member indicated, we are living in a world now with these sorts of devices that, whenever the CRA was implemented, those were probably not even on the drawing board yet.

So, with regards to the many innovations in Fintech, which have increased access to credit for Americans, what changes can be made to CRA that will promote innovation in lending while also ensuring that banks provide services to the communities in which they reside, Mr. Mitchell?

Mr. MITCHELL. Well, as I said, one of the things that we believe strongly in at the NBA and in the CDFI banks is that larger banks, I think, as one of my colleagues mentioned, can invest in MDIs. We have historically had a wonderful history and a successful history of investing in CRA-designated areas and CDFI-designated areas, and we believe we do it well.

Our history has shown that we—Industrial Bank is the fifth oldest Black-Owned institution in the country, and yet there are others much older than us. And so we are proponents that the CDFI fund, and large banks should be encouraged under CRA to invest in our institutions.

Mr. LUETKEMEYER. Mr. Roberts, do you want to answer that question as well?

What do you think—how should regulators consider CRA credit for bank partnerships with nonbank institutions and Fintech firms? How would you go about that?

Mr. ROBERTS. I think there are tremendous opportunities for those kinds of partnerships. And they can help further extend access to depository accounts as well as mortgages and small business lending. And those partnerships should be covered by CRA because the banks are playing important roles in them.

In order to do that, though, there does need to be some revision to the way assessment areas work so that those activities can be recognized.

Mr. LUETKEMEYER. This discussion that I am having here goes now into an area about, is a lending institution providing different kinds of products and services across the board? This is one of the things about which I had long discussions with Mr. Otting at the Comptroller's Office with regards to his proposal.

And I think part of his proposal is to try and enlarge the number of things that can be counted toward a CRA, to be able to encourage investment in different areas that have not been allowed in the past, things like churches, community buildings and groups, infra-

structure, the number of ATMs and facilities in areas. And I think you mentioned, Mr. Roberts, also community development and affordable housing.

So can you elaborate a little bit on how you would anticipate some of that coming out? Because I think if there is credit for it, I think there is encouragement in those areas for banks to be a part of that in an area—in lending in an area where maybe they haven't been in the past or didn't get credit for it.

Mr. ROBERTS. I think you are very correct.

The key here—I would say there are two key elements. The first is we have to make sure that these activities are benefiting low- and moderate-income people and communities. And to the extent that they are broader, there can be a pro rata approach so that the focus on low- and moderate-income is maintained within the broader community.

And, second, there needs to be a lot more clarity about what counts.

Banks often won't know until an examiner comes through 3 or 4 years down the line whether an activity is going to count for CRA. So, if you are a bank and you are operating in dozens or even hundreds of assessment areas, and you have multiple metrics to hit in each of those areas, you really don't have time to focus on things that might not count.

Mr. LUETKEMEYER. That is interesting. Because I think a lot of times the institutions are not given credit for being part of the community and doing those things. This is one of the things that I think that Comptroller Otting is looking to do, is he recognized that there is a lot of lending going on that institutions are not being given credit for, that is enhancing the ability of a community to be successful, to grow, to provide opportunities for people.

And I guess my last concern would be nonbank regulation. Would any of you like to talk for just a second with regard to the high cost of the predatory products of nonbank lenders, what we need to do to get ahold of that?

Mr. Van Tol?

Mr. VAN TOL. Well, I think we need to apply CRA to them. Look, CRA-regulated lending is safer, sounder, and it is cheaper.

Mr. LUETKEMEYER. What effect do you think it would have on those lending products?

Mr. VAN TOL. On nonbank lending products?

Mr. LUETKEMEYER. Yes.

Mr. VAN TOL. I think that bringing those companies into CRA's scrutiny would be a positive thing.

Mr. LUETKEMEYER. Would it curtail the products that are being offered?

Mr. VAN TOL. Pardon me?

Mr. LUETKEMEYER. Would it curtail the products being offered and raise costs?

Mr. VAN TOL. I don't believe so, no.

Chairman MEEKS. The gentleman's time has expired.

I now recognize the gentlelady from California, the chairwoman of the full Financial Services Committee, Ms. Waters, for 5 minutes.

Chairwoman WATERS. Thank you very much, Mr. Chairman. I would like to continue this discussion with Mr. Van Tol about extending the CRA to these nonbanks.

I was informed that more than half of all of the mortgages issued last year came from nonbanks, such as Quicken Loans, and they have a larger share of the market than before the crisis, and that 6 of the 10 mortgage lenders are nonbanks.

And so, while I absolutely support credit unions and the ability to serve their constituency, all of that, I mean, fair is fair.

Can you tell me what has been the response to the question from not only members but from the nonbank lenders themselves about CRA? Has there been any real discussion that you can share with us?

Mr. VAN TOL. Sure. Let me go back to something that Professor Baradaran said. She outlined the ways in which banks are really subsidized by the Federal Government. And I will note that the entire system of mortgage lending in a way is subsidized by the Federal Government. At the height of the crisis, we extended $30 trillion in loans, investments, and guarantees to ensure that liquidity continued to flow throughout the mortgage system.

So I would say that, in fact, mortgage lenders are subsidized in a similar way, and the rationale to apply CRA to them exists. They are not in favor of it. I think some of them—we certainly see an institution like Quicken Loans does many CRA-type things in its headquarters City of Detroit, and would probably do relatively well on a CRA exam.

Many of the lenders—or higher-cost lenders are not doing the same kinds of positive things that they are, and we would be in support of applying CRA obligations to the whole market. We believe it brings scrutiny that will drive down the price of those mortgages, and will encourage mortgage lenders to do more positive things for low- and moderate-income communities and communities of color.

Chairwoman WATERS. Thank you.

I want to move to Mr. Glantz. I want to thank you for the research that your organization has done. And much of what you have said is absolutely known by this Congress and that we need to take that research into consideration in forming legislation.

What is it that would allow a bank operating, for example, as you described with Chase in Washington, D.C., to be called not a branch?

Mr. GLANTZ. The Chase office that was across the street from the White House, still is, is part of their wealth management operation. And in the FDIC dataset, it is identified as a limited service office. So it is making loans to the clients who go to that institution.

It is not a branch that takes deposits, however. And the way CRA is written, a branch is only a branch if it takes deposits.

So, that is what Chase was doing in these three markets we mentioned: Philadelphia; Boston; and Washington, D.C. And as I also mentioned, they have since announced a branch expansion in those cities.

Chairwoman WATERS. Is it fair to conclude that, despite the fact it does not take deposits, that when you look at the overall com-

pany and you consider that their profits come from maybe all over the country and from various communities, is it fair to consider that perhaps that should not be the definition or the criteria for CRA enforcement, that we should be looking at making them CRA-enforced also?

Mr. GLANTZ. As I said, Madam Chairwoman, we are not here to make policy recommendations. But I would note that Chase was a very active market player in D.C., Philadelphia, and Boston, and in fact made over 1,000 conventional home purchase loans during our study period and only 23 to African Americans. So they were not assessed, but they were an active market player.

Chairwoman WATERS. And do you have any comments about the nonbanks, any research?

Mr. GLANTZ. One of the things that we noticed when we were out on the streets—a lot of our field reporting focused on Philadelphia, and that is how we ended up looking at Trident Mortgage, which is the Berkshire Hathaway affiliate there. It was the largest home purchase lender in Philadelphia, but it lent overwhelmingly to white borrowers.

And it did not deny very many applications from people of color. It simply did not get applications from people of color. And that is what caused us to begin looking into Trident, because it was the market leader, and it was not seeing any applications from people of color.

Chairwoman WATERS. Thank you so very much. I went over my time.

I yield back the balance of my time, and I thank you very much.

Chairman MEEKS. The gentlelady yields back her time.

I now recognize the gentleman from North Carolina, the ranking member of the full Financial Services Committee, Mr. McHenry, for 5 minutes.

Mr. MCHENRY. Thank you, Mr. Chairman, and thank you for holding this hearing today. I think it is important for us to note that the Community Reinvestment Act at the time was a landmark piece of legislation that has for decades served us well.

And we have had this technology shift, a dramatic shift, actually born out of mainly the iPhone, right? And I mentioned in my opening statement, 95 percent of Americans have a cellphone, and that is a dramatic increase from 5 years before.

About 80 percent of Americans have a smartphone. And that actually breaks down the total population. Then every subgroup of the population, ethnically, racially, is similar to that overall standard.

We also have 13 million Americans who don't have a bank account or are considered in the realm of unbanked. We have urban areas that are left unbanked. We have rural areas left unbanked. We still have work to do.

But this technology shift is something I am really interested in. How do you acknowledge that, and how do we change CRA to actually meet something that was not contemplated at the time?

And the reach can be so much better if those regulations—the impact can be so much greater if we update these regulations appropriately. And that is what I really want to get to.

So how do you acknowledge the use, really of—that branch banking isn't what it used to be 15 years ago because of technology? And how do we update and acknowledge that impact?

Mr. Roberts, can you touch on that?

Mr. ROBERTS. Yes. Thank you, Mr. McHenry.

There are two things that could be done. One is to take into account mobile access much better under the CRA's service test, which today focuses primarily on branch location, which continues to be important but needs to be supplemented by a greater consideration of mobile access.

And the second is to deal better with banks that really are branchless today. You can have an internet bank that could be headquartered in Salt Lake City or Wilmington. Its only obligation under CRA is to Salt Lake City or Wilmington, even though it is taking deposits nationally and it is providing loans and other services nationally. And so that is just outdated. These are not corner community banks in Salt Lake City. These are really nationwide institutions, and they need to be considered that way.

Mr. MCHENRY. Mr. Odom?

Mr. ODOM. There is no getting around the impact that technology has had on the financial services sector and many other sectors of the economy.

They often, though, create a false promise of being able to radically transform the environment. Cell phones, in order for them to work as a payment device, have to have certain applications, have to be backed up by credit cards, have to be backed up by bank accounts.

Within my neighborhood, where the National Urban League is headquartered, we don't have any vendors who take Apple Pay, for instance. Also—and I am sure Mr. Mitchell could verify this—a lot of the small business relationships will probably always require some amount of face-to-face interaction between the borrower and the lender.

So, while I am very encouraged by the rise of Fintech, there are always going to be matters that have to be cared for, especially in communities of color. Even where technology adoption is at a high level, there are still some aspects of it that are going to require face-to-face kinds of interactions.

Mr. MCHENRY. Right. But also, technology is imperfect, too. Because if you can't afford a cell phone bill, you are cut off from job interviews, access to transit, in many cases, and financial services.

So I am not saying it is a pure solution, but it should be acknowledged in some way and incorporated in sort of a regulatory environment.

Mr. ODOM. Absolutely. Minorities are overindexed for smartphones and for cell phones. That is not usually the problem. It is usually filling out a very detailed application on a 5-inch screen.

Mr. MCHENRY. Right.

Mr. ODOM. Sometimes presents—

Mr. MCHENRY. And that is an overall financial services problem—

Mr. ODOM. You are correct.

Mr. MCHENRY. —and regulatory problem as well, not solved by this hearing.

But thank you all for your testimony. I am sorry it has gone so long.

Thank you. I yield back.

Chairman MEEKS. The gentlemen's time has expired.

I now recognize the gentleman from Georgia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you very much, Mr. Chairman.

This is indeed an extraordinary group of individuals that we have before us. I mean, your presentations have been very eye opening.

And I certainly want to say hello to Ms. Baradaran.

Did I get that right?

Ms. BARADARAN. "Baradaran," yes, close.

Mr. SCOTT. "Baradaran."

Ms. BARADARAN. Yes. Go Dogs.

Mr. SCOTT. Go Dogs. And you have the red and black on.

Ms. BARADARAN. Yes, you noticed.

Mr. SCOTT. I love Georgia. Welcome. Welcome to the committee, ma'am.

Ms. BARADARAN. Thank you.

Mr. SCOTT. Now, about 100—I think 108 years ago, one of the greatest writers, literary geniuses, and educators, W.E.B. Du Bois, made this statement. He said, "Race is and will be the central issue and problem facing our great nation in the 20th Century." We are now in the 21st Century, and his proclamation rings even truer today, and nowhere does it ring truer than within the racial discrimination in housing, for a home.

And you all have stated some very brilliant things. But I want to, first of all, because I am cochairman of the bipartisan Caucus on FinTech, and this is a big issue, and I want to get some exchange from you all about how we can better address that.

Now, my Republican colleague, Barry Loudermilk, and I have introduced the FINTECH Act. And I hope you all take a look at that. It basically sets guardrails.

But we need a vehicle because, Mr. Glantz, Mr. Odom, all of you, raised some interesting points.

But, Mr. Glantz, I know that you are not here—you said it three times; I counted it—to make policy. But we are. And you gave some very profound and somewhat disturbing information.

You said, number one—and this is where our technology and our Fintechs come in—nonbank lenders are not even covered under the CRA. Now that opened my eyes to something of which I wasn't even dimly aware. We need to start there and deal with that.

And then you said that every bank dealing with the CRA got top grades from the CRA. But then you said that you have evidence that targets high rates of racial discrimination. How is that? Can you explain?

Because if we don't answer these questions, then this hearing is not going to be as worthwhile as it should be. If we have the CRA out there doing this, and then you have 98 percent of all the people dealing with it getting top grades, but from all of your devastating

testimony, you are saying it is rampant, fulfilling W.E.B. Du Bois' projection into the 21st Century.

So can you help me with that, Mr. Odom, Mr. Van Tol, Ms. Baradaran, each of you, please?

Mr. MEEKS. You have 48 seconds.

Mr. SCOTT. I'm sorry. Maybe we can get it someplace else.

Mr. MITCHELL. If I may start, Mr. Scott, I will say this: Discrimination results from a lot of things. Some of it is conscious bias, and some of it is unconscious bias. And some of the unconscious bias is probably not going to wane too much. And that is why I mentioned that I think some of the policies that help to address lending discrimination or disparities in certain areas should address supporting those institutions like MDIs and CDFIs that do that lending in a vast majority of what we do as institutions ourselves.

Mr. SCOTT. All right.

Thank you, Mr. Chairman.

Chairman MEEKS. The gentleman's time has expired.

The gentleman from Colorado, Mr. Tipton, is recognized for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman. I appreciate you holding this hearing.

And I think I hear general consensus that when we are looking at the CRA right now, that it is failing in some instances to be able to adequately supply credit and financial opportunities to some of the low- and middle-income communities.

But it seems to me a lot of the focus is just on urban America. I would like to be able to expand that out a little bit to rural America.

As Ranking Member McHenry noted, we have 13 million-plus people who are unbanked or are underbanked in the country, and a lot of those are probably in areas much like mine. I have a district that butts up against Utah, New Mexico, Arizona, Wyoming, and a broad swath of rural Colorado.

And, last year, that was part of the purpose of actually introducing legislation, which ultimately became law, for mobile banking, to be able to allow customers to be able to open up a bank account simply by scanning their driver's license, to be able to start to create some of that access.

And as we are listening to the conversation right now and some of the branch bank closings that we are seeing, just in my State, we lost 19 more bank branches than were opened in 2018.

I thought it was interesting that the Federal Reserve Board report noted that mobile banking is rising over the course of the recent years. And the report goes on to suggest that mobile banking can help address some of the challenges that consumers face in the decline of those physical branches.

And so, Mr. Roberts, you had addressed this just a bit in regards to Mr. McHenry's questions that have come up. If we are losing these local branches and the access to being able to go in, with mobile banking, can it help customers actually address and access some of the needed financial service products, and wouldn't it make sense to be able to expand CRA activity past those delineated assessment areas into areas where the bank's actual activity is taking place?

Mr. ROBERTS. Yes, Mr. Tipton, that would be very helpful.

Part of the challenge for CRA is that, for the larger banks that cover multiple States, urban and rural communities, they get very little attention in their CRA examination on their work in rural areas.

In some ways, that is understandable, because if you are an examiner and you have a lot of territory to cover for a bank, you want to focus on the places that are generating the most deposits. But those are always the largest metropolitan areas, and then you never really look at what is going on in the rural communities.

So we think there should be changes to consolidate the examination of rural areas within a State, so they will have more market presence within that examination process, and to make sure that the substance of the activity, and not just the top line numbers, are really considered so that banks can get recognized for doing the important but oftentimes very difficult work in rural communities.

Mr. TIPTON. And I appreciate that. Because as I listen to the conversation—and you are exactly right: the focus is on concentrations of population and resources.

And one of the frustrations that many of us who come out of rural America have is that the loss of 10 jobs could extrapolate into the loss of several thousand jobs, as an example, into those urban areas. And we don't want those people to be forgotten. They have families as well that they want to be able to provide for and to make sure that we are actually incentivizing our banks to be able to do what, I can tell you that our community banks in my district want to be able to do, and that is to be able to reinvest in those communities, to be able to help them grow, and to be able to create those opportunities for families to be able to stay in the areas that they live and they love.

And this question—Mr. Roberts, maybe you can start, and we can just go down the line with our panel here.

In terms of CRA examination results, being able to get those in a timelier fashion, rather than a few years later—you don't know exactly what you are doing—and to be able to give clarity, which has been brought up by the panel as well, what actually qualifies for CRA, would those be useful things to make sure that we are incorporating?

Mr. ROBERTS. Absolutely. If you look at the biggest 6 banks, the most recent examination for any one of them covers 2013. I think for 3 others of the 6, it is 2012, and for 2 others, it is 2011. So, if you are not getting feedback, either as a bank or as a community about performance, it becomes as meaningless as an X-ray that you don't receive for 2 or 3 years.

Chairman MEEKS. The gentleman's time has expired.

Mr. TIPTON. Thank you, Mr. Chairman.

I yield back.

Chairman MEEKS. The gentleman from Missouri, Mr. Clay, the Chair of our Subcommittee on Housing, Community Development, and Insurance, is recognized for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman.

And, Chairman Meeks, let me thank you for holding this hearing and shining a light on predatory practices of redlining of mortgages

and small business loans. And I look forward to working with you in that area to eradicate it, to eliminate it in our economy.

So let me try this. Ms. Baradaran, in an article published in The Washington Post, you wrote about the need for more government intervention, not less, in order to address the racial wealth gap.

In communities like mine, in St. Louis, which have suffered from historical discrimination in housing, banking, and healthcare, we have seen a regression as many people are still trying to recover from the financial crisis of 2008.

In your testimony, you suggest that the CRA test should resemble the stress test that the Federal Reserve administers, focusing on outcomes and not just actions taken.

Could you discuss that a little and tell us, should we incentivize lending in say opportunity bank zones, or should we prohibit all of that discrimination in the area based on ZIP Codes? I would just like to hear your thoughts on that.

Ms. BARADARAN. Thank you.

So one of the things that happened before the crisis is we had a bunch of regulatory box-checking for safety and soundness. So CAMELS and all of this stuff was basically, you know, do you pass? Do you not? And what happened during the crisis is those things did not catch the outcomes: Is this banking sector safe or not?

And so the stress test in the Federal Reserve said: Let's look at outcomes, let's look at the totality of what the bank is doing, and see, do you have enough capital or not? So, if we are looking for the CRA to fix the racial wealth gap—which we should be, because the Federal Government created it in the first place through those redline maps—then we should look at the outcomes: Are you infusing capital and wealth into these communities, or are you not? Not, "did you do this or did you do that," because those things are not outcome-tested.

Mr. CLAY. So it is just checking a box really, the CRA examinations now?

Ms. BARADARAN. It sometimes amounts to that. And as the other panelists said, it is really easy to find loopholes. And if banks are not incentivized—these are low-profit loans, a lot of times. And so banks are going to be incentivized to find those high-profit areas or somehow find a loophole in that. And so outcome-oriented tests, like the stress test, block those loopholes, and they look at what is the result.

Mr. CLAY. And if we are going to online lending, then wouldn't a good indicator be where you place these loans by ZIP Code?

Ms. BARADARAN. Yes. And let me say something about Fintech, because we keep bringing that up. Every Fintech company uses a bank partnership to access that payment system. Fintech is not this nonbank product. They link up with a few banks around the country that use loopholes to get into that payment system.

And if you want to use Venmo or Square as a consumer, you need a bank account. So, one in four Americans is unbanked, and those people needed brick-and-mortar services to put their cash, to pay their bills, and they are spending 10 percent of their income just to use their money.

Mr. CLAY. Thank you for that.

And, Mr. Van Tol, being that redlining and other forms of discrimination primarily impact low- to moderate-income and racial and ethnic minority populations, what steps should policymakers consider in strengthening the CRA?

Mr. VAN TOL. Well, among other things, they can strengthen the fair lending reviews that are conducted as part of the CRA exam. That is really the way that race comes into CRA. Unfortunately, the OCC has weakened those reviews, resulting in fewer CRA downgrades for racial discrimination. That is one significant way it could be strengthened.

There are other ways. The American Housing and Economic Mobility Act, which was introduced as S. 787 and H.R. 1737, would modernize CRA, apply it to more loans, to more lenders.

We are supportive of designating areas that are receiving relatively low loans per capita as underserved areas and providing CRA credit for that. That would result in more urban areas and more rural areas that are receiving very little in the way of lending, more scrutiny under CRA, and would go a long way to addressing redlining and historic disinvestment in those communities.

Mr. CLAY. Thank you all for your responses.

I yield back.

Chairman MEEKS. The gentleman's time has expired.

I now recognize the gentleman from Texas, Mr. Williams, for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman, for calling this hearing today.

The business of banking has changed drastically since the Community Reinvestment Act was signed into law in 1977. One area in particular that I think is outdated is the geographic assessment area. Many people now are turning to online banking and other methods that make physical branches less relevant than they were back in the 1970s.

So my question, Mr. Odom, to you, is, how would you modernize the assessment areas to ensure that most people are being helped under this law?

Mr. ODOM. Well, this is a subject that is being taken up in the advanced notice of proposed rulemaking. And I think some of the parties who have submitted comments on that point are here today.

It is not certain to me that the rise of—that the geographic assessment area is fundamentally flawed. I understand the rise of Fintech, as we have heard today, is something of which to take notice. But all of those relationships are going through established banks that have geographic presence in certain parts of the country.

So I am very eager to hear what the regulators do in the rulemaking with respect to the definition of how they assess geographic areas, but I am not sure that is the home run to fix the CRA.

Mr. WILLIAMS. Okay. I have heard that the number of qualified investments for CRA credit is too narrow. In many cases, banks are cautious to loan money to projects that are innovative out of fear that they will not ultimately count towards CRA requirements.

So, Mr. Van Tol, how would you recommend amending the definition of qualified investment to allow for innovation and a greater number of activities to be eligible as CRA investments?

Mr. VAN TOL. Well, let me just make a distinction. I think when I was in school, if half of the class failed at an exam, we said: Well, we weren't quite clear on what we needed to do to pass.

But in this case, 98 percent of banks pass. They are actually doing a good job of passing the exam. It is not the case that they don't know in the aggregate how to pass the exam. They do it all the time. Most of them pass, the vast majority of them.

What they don't always know is, am I going to get credit for this investment at this time? They do need clarity to know, in real time, whether or not an investment strategy that they are undertaking qualifies for CRA credit.

I think, in many cases, it is a matter of guidance. It is a matter of providing feedback. It is a matter of training examiners and making sure that there is consistency, not necessarily a matter of changing the definition or qualifying more activities.

Again, banks already qualify a great number of activities. They are passing their exams with flying colors.

Mr. WILLIAMS. Thank you.

Mr. Roberts, in your testimony, you listed a bunch of ways that the CRA can be improved upon, one of which is getting the performance metrics right for CRA performance.

So how do you think banks should be rated for their performance with CRA activity?

Mr. ROBERTS. What we could use is more clarity and transparency for how those metrics are applied. Some have commented on the idea of a simple ratio of dollar volume of lending activity relative to a bank's size. We are concerned that that could generate some unintended consequences.

For example, rural areas in smaller metros often have more affordable home prices, but that also means that the mortgage amounts are smaller there. It is already hard to make money on small balance mortgages. But if the metric is just getting to a dollar target, then banks will be incented to really focus on higher-cost markets where they could make a loan to a high-income borrower in a low-income neighborhood for, say, $750,000, rather than 10 loans for $75,000 in a low-income rural area.

So we just have to get the metrics right. But I think, with better clarity, both about how things are measured and how they are then added up within the exam, we can make some progress.

Mr. WILLIAMS. Okay. I believe I am done with my questioning, and I yield my time back.

Chairman MEEKS. I now recognize Mr. Luetkemeyer for 5 minutes.

Mr. LUETKEMEYER. Thank you.

I have one quick question for Mr. Van Tol. You made the comment a while ago that you didn't believe there was an extra cost to putting any rules and regulations on lenders, on nonbank lenders. Did you intend to say that?

Mr. VAN TOL. No, I don't believe I said that.

Mr. LUETKEMEYER. You don't think there would be any extra cost to putting some rules and regulations on nonbank lenders?

Mr. VAN TOL. No, that is not what I said.

Mr. LUETKEMEYER. Okay. I misunderstood. What did you say then?

Mr. VAN TOL. Well, I think that applying CRA to those companies would impose a cost. I think that it actually might lower the cost—

Mr. LUETKEMEYER. Okay. My follow-up question then would be, do you think that would restrict services and products to people as a result of that?

Mr. VAN TOL. No, I think the evidence of CRA is that it has expanded services and loans to—

Mr. LUETKEMEYER. You just contradicted yourself there, sir.

Chairman MEEKS. The gentleman's time has expired.

I now recognize the gentleman from Illinois, Mr. Foster, for 5 minutes.

Mr. FOSTER. Thank you, Mr. Chairman.

And thank you to our witnesses.

And I guess I would like to start by thanking Ms. Baradaran for your shout-out to Senator Bill Proxmire. I grew up being driven around in a rusty Studebaker with one of these triangular Masonite signs with Bill Proxmire's name on it. My mom actually ran the finance operation for Bill Proxmire's reelection campaign. And the entire finance operation for a Senate reelection campaign back then was one part-time faculty housewife.

And so that tells you why you had Senators for enough time to think deeply about the problems that our country faces. I think the encroaching of Fintech and the implications for community reinvestment are just a perfect example of that.

Now, when you look at this, it is clear that we are going to need some new metrics for reinvestment, what is meant by reinvestment when you look at these Fintechs that collect money nationwide.

And there seems to be two different goals there. One of them, socioeconomic and racial equality, is one of the things we are trying to incentivize. The other one is to balance the outcomes for different communities, particularly rural and urban. And I would like to ask first about that one.

We were talking about Colorado recently. And in Colorado, we know what the solution is there. The silver mine runs out of silver, and you get a ghost town, and everyone moves to Denver, and they are doing okay. So should the Community Reinvestment Act have prevented that or not?

What do we do when the coal runs out or stops being mined in communities?

Do we have a responsibility to communities to keep them alive when there is no longer an economic reason for them to exist? And to what extent should we lean against that natural operation of the free market?

Does anyone want to take a shot at that?

Mr. ODOM. There have actually been some banking institutions in the face of these headwinds—technological changes, changes in the economy—have actually doubled down on bank branch activity. There have been some—probably have seen some commercials with Capital One actually creating bank branches that do more than just take deposits, take applications, and do other sorts of things.

I think the appropriate balance is not to assume that the secular trends that we are seeing in rural areas or urban areas with respect to bank branches being gone or lending activity being gone is a permanent one. I think there are good actors out there who are trying to figure out what the right mix is.

Mr. FOSTER. Yes. But how hard should we try to convince them to continue reinvesting in this ghost town that is developing?

Mr. VAN TOL. Well, the beauty of the CRA, as currently constructed, is that it is responsive to local needs, the performance context in the community. So, if the economy is bad, you would expect CRA to motivate institutions to invest in economic development. And certainly not in every area can the banks dramatically transform the town, but you do see those kind of investments.

And that is a structure that we are very concerned, that the OCC has proposed looking at the definition of community and defining it more broadly. We urge that the definition—intention of CRA, being responsive to local community needs, really measuring what is going on in the community, measuring how well a bank is responding to those needs.

Certainly, not one bank can save a town like you described. But it can recognize that the need there is very different from a place that has a thriving economy, with lots of people moving to it. There you would be concerned about displacement, gentrification, maybe the economy being too hot.

Mr. FOSTER. Right. Along those lines, the second goal is socioeconomic and racial equality. And so, for example, you might want to adopt policies that if someone was—their neighborhood was undergoing gentrification, you might do something to make them stand up and survive the gentrification better than they otherwise would have or provide opportunities, low-cost rental, things that would not necessarily be provided by the free market.

Has anyone ever tried to just write down a metric that might incentivize the broad range of all of these different goals that we have? Maybe thinking about opening up a sandbox for the Fintech to play in, let them take the money that they are collecting nationwide and try to gain a certain role and see if that forces them to put money where it is actually accomplishing our goals.

Has anyone tried to make a general purpose metric that might steer the money where we are all trying to find a way to make it go?

Ms. BARADARAN. Let me go back to Senator Proxmire. What Senator Proxmire understood here is that in some of these communities, the investments are not going to be the highest profits. But that is okay because banks have public duties. Not all rural communities are created equal. Some of the people have left. But there are still lots of communities where people are not leaving.

Banks are easy, global. Money moves faster than people can leave their hometowns. And so, in these communities where people still exist, they are going to school, they are thriving in these communities, but their banks are gone. And so those are the communities that we are focused on. And some of them are not going to be highest profits, but banks still have public duties, even though there aren't high profits.

Mr. MITCHELL. If I can just add to that, you have a CDFI fund that produces a positive return on investment for the taxpayers, and it is woefully underfunded. And every year during the budget process, it seems to be on the chopping blocks for elimination when it should be increased.

Chairman MEEKS. The gentleman's time has expired.

I now recognize the gentleman from Georgia, Mr. Loudermilk, for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

And I appreciate the opportunity to have this hearing today.

Something that is very important, from my knowledge of the Community Reinvestment Act, is that it served a great purpose in this nation. And we are, in fact, a better nation because of changes in our society, changes in business models and such.

And I commend the OCC for looking at bringing the CRA up to date. When you look at the changes in society, you look at the changes predominantly in technology. It is technology with Fintech. These are bringing banking services to areas that were traditionally unbanked or underbanked. And it is important, as my colleagues said, to have sandboxes, the ability to get into these areas and see how these new technologies can actually enhance the original purpose of the CRA.

And so I believe and I think giving the OCC the ability to make reforms collectively with all three of the banking agencies to make sure that the CRA is meeting its original purpose and doing it effectively and with the new technologies is very important.

But one of the problems that I have particularly seen and heard, especially with our community bankers in Georgia, is inconsistency with a lot of the CRA exams. For instance, some of the services, loans and investments, may receive CRA credit at one bank but not another.

One example that was given earlier is, does partnering with a nonprofit qualify for a CRA credit? That could be interpreted in different areas by different examiners.

So, Mr. Mitchell, do you have any recommendations about how we can address the inconsistencies in these exams?

Mr. MITCHELL. First of all, training. I think also having a database that shows which projects qualify. Individual banks from time to time, as has come up several times this morning, are not sure whether a particular project that they invest in or may invest in or lend to would qualify. And I think if there is a database that answers these questions, then the bankers can go online and see that someone else has invested or lent to a particular project that did qualify. So the clarity and training among examiners is critical.

Mr. LOUDERMILK. Mr. Roberts, I saw your head nodding. Do you have something you would like to add to that?

Mr. ROBERTS. I agree. But I would also suggest that the banking agencies should have specialized examiners for CRA. The same examiner who is doing anti-money laundering exams and other kinds of compliance exams, or safety and soundness exams, simply isn't going to know enough about not just CRA but also how banks are really responding to local community needs. To understand that is just a very important factor and would go a long way toward consistency.

Mr. LOUDERMILK. Mr. Roberts, while I have you, going from inconsistencies and how we can address those, I want to go to the extensive time that it takes to actually receive exam results. To me, it seems like the longer banks are waiting for their exam results to come back, the less confidence they have that they are meeting the goals and, therefore, delay serving certain communities and demographics that they would really like to be able to target for CRA and for the credit.

And as we have seen and has been testified to, the CRA compliance is generally strong and banks are generally interested in fulfilling these needs.

Do you think that these delays cause significant problems in banks meeting these needs, and how can we address it?

Mr. ROBERTS. Tremendous problems. Banks are really flying blind. They don't know whether the examiners and agencies think they are doing a good job or not. They can't see the areas that might be identified for improvement. They can't see the areas where they are excelling and can double down and do even more in that area.

And communities can't see what the banks are doing and how well they are doing so that they can engage more constructively with the banks.

Mr. LOUDERMILK. What can we do to fix this? Is that part of some of the modernization that we need to look at in reforms?

Mr. ROBERTS. Yes. We recommend that performance evaluations be published within 12 months of the close of an examination period.

So, if you have a 3-year examination period that ended at the end of 2018, you should have your CRA rating by the end of 2019.

Mr. LOUDERMILK. Thank you. I yield back.

Chairman MEEKS. The gentleman's time has expired.

I now recognize the gentlelady from Michigan, Ms. Tlaib, for 5 minutes.

Ms. TLAIB. Thank you, Mr. Chairman.

Thank you all so much for being here and for your incredible work.

I want to share a story. I used to walk down my block for over 30 years. But even down my block, where I knew every single homeowner—it was a predominantly beautifully diverse block. Some were even born in their home, right? Some were able to keep their home for 70 years, through 3 generations.

And growing up kind of in the 1980s and 1990s in the City of Detroit, I mean leading the Nation, like 70 percent, in some neighborhoods, of home ownership, was pretty incredible. It stabilized not only our school system, but our environment. Even economically, we saw more and more neighbors being able to stabilize themselves and be able to provide an incredible future for their children.

And the percentage of African Americans who owned their homes dropped in Michigan more than any other State, down to 40 percent, from just over half in 2000. The decrease has been greatest for middle-aged Black Americans in Michigan, between ages 45 and 64. I think it was 60 percent in 2000 to down to 41 percent in 2016.

Much of that decline was in the City of Detroit. We flipped from a majority home ownership to now 54 percent of my residents are renters.

I essentially have been listening to this hearing, and really understanding what the purpose of CRA was, which was, you know currently now understanding there are loopholes, and it needs to be updated. It is based on geography. And banking institutions are skimming the larger, more profitable low- and moderate-income communities and lending to higher-income borrowers. That is the data I have been reading. So the loans meet the CRA requirements and regulations.

Mr. Mitchell, let's say you are in a low/moderate-income neighborhood, like the one where I grew up in, the one where I am raising my boys in, where the borrower is making 125 percent of the AMI and a borrower making 75 percent of the AMI, in your opinion, which borrower would the banking institution most likely lend to?

Mr. MITCHELL. Well, that depends. We have a history, as an MDI and a CDFI, of getting behind the numbers and looking at the story. It is an integral part of how we do business.

And this is why you should have concerns about nonbank lenders because they don't have the ability to do that. Their algorithms don't do that.

So we look at the story. And we look at what you are telling me, and we back it up with our own due diligence and research. And it depends because we can lend to either one.

Ms. TLAIB. Yes, but under the CRA, though, the banking institution would still receive the same CRA credit for lending to a higher-income borrower in an LMI neighborhood as they would a low-income borrower, correct?

Mr. MITCHELL. Yes. We would do both in that case.

Ms. TLAIB. And my concern is, where there is little incentive to lend to LMI communities, the CRA is of little benefit to my constituents at this time because banks will not issue mortgages for less than $50,000, forcing them to borrow from nonbanking institutions such as Quicken Loans, as the chairwoman mentioned, which is a leading mortgage loan creator in my district, which leads me to the next question. And this one is for Mr. Odom.

Mr. Odom, would you say that because nonbanking institutions are obligated to follow CRA, that borrowers are more subject to payday lending and discrimination and redlining because of this loophole?

Mr. ODOM. I believe that certainly plays a role, Congresswoman. We have seen the rise of nonbank institutions, particularly in the Census tracts associated most closely with African American and minority owners. They filled a void; they filled a vacuum that has been created by a lack of lending by a lot of CRA-covered institutions.

We have talked a lot about nonbanks and banks today. And I think the message that I would like to send to you is, whatever regulatory structure we land on, it should be a leveling up of our regulations, not a leveling down.

A lot of the organizations, a lot of nonbank organizations, rightly are young. They are new. They have not grown up in a regulatory

environment. But we have to resist the impulse to say, well, because we have new entrants who are taking market shares, the incumbents should follow their lack of regulation.

That is what we are seeing here. We have not figured out what this regulation is going to look like, but we should be going to the highest measure, not the lowest common denominator.

Ms. TLAIB. Thank you. And, Mr. Chairman, if I may—

Chairman MEEKS. The gentlelady's time has expired.

Ms. TLAIB. If I may, I just wanted to submit an article entitled, "Loophole in law for the poor spurs gentrification," into the record.

Chairman MEEKS. Without objection, it is so ordered.

The gentlemen from Tennessee, Mr. Kustoff, is recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman.

And thank you for calling this important hearing this morning.

I do want to thank all of the witnesses for testifying this morning.

Mr. Roberts, if I could, my district is west Tennessee, so I have the suburbs of Memphis and then west Tennessee and some rural parts of west Tennessee.

Recently, I had the opportunity to speak to a roundtable of bankers from all around my district. And one of the topics was CRA modernization. One bank in my district told me that they were recently required to open up a branch for CRA purposes and that, because of that, it is losing about $100,000 a year annually.

As we look at the CRA and the way it is constructed and what is required of the different communities, it seems like regulators increasingly have included in their CRA examinations criteria, in my opinion, that may not be related to CRA, including compliance with other financial laws or consumer regulations that have their own standards and penalties for violations. An example for banks in my district is that the banks are being subjected to fair lending questions during their CRA exams.

With all of that said, we have talked a lot this morning and you all have talked a lot about modernization. How do you envision modernizing CRA to best suit the needs of the 21st century financial institutions and the communities that they serve, including some of these rural communities?

Mr. ROBERTS. Yes, Mr. Kustoff. Rural communities certainly need much better consideration under CRA. They are often overlooked in the CRA process because they are smaller than the larger cities, and so the examiners tend to focus more on them. But there are a number of things that could be done to remedy that.

Mr. KUSTOFF. And what are some of those areas?

Mr. ROBERTS. One thing we would suggest is that oftentimes rural areas need economic development. Mr. Foster had raised the anecdote of a town that loses its primary employer. And CRA should do much more to recognize economic development efforts in distressed communities, urban and rural.

So it is not just a numbers game. Even a small loan or investment can sometimes make a big difference in a small community. But it gets overlooked because of its size. So those are some of the things we would suggest.

Mr. KUSTOFF. I appreciate that.

Lastly, if I could, financial literacy—I do think that the banks in my communities do a pretty good job of trying to educate through financial literacy. And, in fact, this week is Financial Literacy Week in Tennessee with our community banks.

What I have heard from my banks is that unless financial literacy is done in very specific areas, it doesn't count towards those CRA requirements.

Do you believe that these requirements should be or could be modernized, if you will, to allow for education done within a bank's footprint to be counted towards the CRA?

Mr. ROBERTS. Yes, I think it could be done, and you can maintain a faithfulness to the low- and moderate-income focus of CRA by simply taking a look at what share of the broader community is low- and moderate-income and provide pro rata credit for those broad activities based on that so that you don't reject those activities entirely because they are not specifically targeted, but you recognize that a community that is, say, 40 percent low- and moderate-income is really benefiting in a different way from a community that is 10 percent low- and moderate-income.

Mr. KUSTOFF. Thank you. And I yield back the balance of my time.

Chairman MEEKS. The gentleman yields back the balance of his time.

I now recognize the gentleman from Utah, Mr. McAdams, for 5 minutes.

Mr. MCADAMS. Thank you, Mr. Chairman.

I want to thank the panelists for their testimony today. And I want to thank you, Mr. Chairman, for holding this important hearing.

I also want to give a special shout out to Professor Baradaran. I have had 20 years to practice her name, as we are personal friends going back some time. So not only is she a BYU grad from my State of Utah, but she practiced law at the same firm I did, Davis Polk & Wardwell, in New York. So it is great to see you, Professor.

Ms. BARADARAN. Good to see you Ben, Mr. McAdams.

Mr. MCADAMS. The CRA has been an important tool in my district, at both serving the credit needs and driving investment to many of Utah's communities, and I want to ensure that we don't weaken the CRA in any of our reform efforts. But I have also seen the shortcomings of the current CRA structure.

As the mayor of Salt Lake County, I often teamed up with many of the financial institutions in Utah to pursue innovative investments. For example, Salt Lake County pioneered many of the first Pay for Success or Social Impact Bond programs in the nation. We expanded access to early childhood education, we targeted homelessness, and we reduced recidivism in our jails. And we couldn't have done these projects without our financial partners.

What I learned while working on these projects for CRA credit was that it—what I learned while working on these projects is that the financial institutions we partnered with often didn't do these projects for CRA purposes. They said it sometimes just wasn't worth the hassle. It wasn't worth jumping through the hoops to prove to their regulators that the projects were CRA eligible. Often-

times, they wouldn't have that certainty until long after they had needed to make a commitment for the projects, so there was a lot of uncertainty in their CRA boxes they had to check.

Instead, they would rather do the same lending or investment activity they had done the previous decades without any indication that these projects were really what the community needed because they knew that those investments would be CRA eligible.

So the system we have today kind of forced them or incentivized them to do the status quo and go through the motions of that rather than innovate and think more creatively about how they can reach into the populations we are trying to help.

When considering CRA reform, I want to preserve both the spirit and intent of the CRA to benefit low- and middle-income communities and individuals, but I also want to push financial institutions to innovate, to push beyond their comfort levels, and to try new data-driven projects without the fear that they would be punished by their regulators for taking a chance on their communities.

Professor Baradaran, I think there was a great discussion about—and I appreciated in your comments about the focus on outcomes rather than simply checking the box. So as a local mayor, I saw that as well, that we just encouraged and rewarded checking the box rather than focus on outcomes, and shifting to that focus on outcomes.

So first, just an editorial comment. I would like to see local input on what some of those outcomes might be, but then once outcomes are identified as we are looking at what strategies might be deployed in our communities to extend opportunities to those populations that we are targeting, what can we do to create some certainty, maybe approval of a CRA-eligible activity earlier in the process to know that these strategies would be—what I would like to see CRA accomplish is to encourage innovation and forward thinking rather than risk-averse activities in the CRA to encourage that type of innovation and risk taking.

And to some extent, I worry about—I think the shift to outcomes is important, but I worry that doing that introduces even more uncertainty into the process and discourages financial institutions from innovating and pushing the limits. So maybe, Professor Baradaran, and than any others who want to comment on that?

Ms. BARADARAN. Yes. Utah is actually a perfect example. And the problem that you as mayor looked at is homelessness, right? So you have this huge problem and then the solution that you had, but you needed bank funding. And Utah happens to be the home of many of these Fintech banks whose assessment area is really undefined because they are basically partnering with these global Fintech networks.

And so here you have a problem and then you have these CRA duties, and there should be a way to match those. This is where aligning incentives needs to be done at the regulatory level—banks should definitely get CRA credit for partnering with public institutions and mayors and other places who have sort of shovel-ready projects ready to go.

And so, yes, there is some uncertainty with outcomes, but I think it is—you know, when students come to me and say, tell me exactly what to do to pass this test, I would rather say, look, know the ma-

terials and you will get a good grade. I think that is what I would say to banks is, do your duties and you will pass the CRA. Don't look for the least you can do just to check that box.

Mr. VAN TOL. And CRA gives credit for innovation. Part of the problem is innovation as defined is really something that has never been done before rather than something that is really responsive in an innovative—and to a local need. And so we are supportive of specialized CRA examiners of more training for examiners, of more guidance, of more certainty in realtime as to whether or not an investment is going to qualify or not.

To your point, they will do the investment and then argue later that it will qualify. Many of them do qualify and are successful in doing that. It is the hassle and the not knowing whether or not they are going to get credit that creates—

Chairman MEEKS. The gentleman's time has expired.

Mr. MCADAMS. Thank you.

Chairman MEEKS. I now recognize the gentleman from Virginia, Mr. Riggleman, for 5 minutes.

Mr. RIGGLEMAN. Thank you, Mr. Chairman.

Thank you all for being here. I know it has been a long morning going into afternoon, so thank you very much for being here.

I want to start out by reading directly from the Federal Financial Institutions Examination Council's website on the purpose of the Community Reinvestment Act. I am actually doing this for a reason, believe it or not.

So the CRA, "is intended to encourage depository institutions to help meet their credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations."

And I just want to—where my questions come from, my district in Virginia—and I know it is hard to believe, but I have the most rural district in Virginia that is bigger than the State of New Jersey and parts of Delaware. Also, when it looks at the disparate income in my district—and, again, I don't know if you guys have—I don't know if any of you have actually had to deal with districts like this, but in the northern part of my district we have a median family income of $91,000 per year. In the southern part of my district, near the North Carolina border, it is $35,000 to $37,000 per year and that is a $55,000 to $60,000 delta.

The questions that I am asking are actually based on the fact that when this says low- and moderate-income neighborhoods, I have low- and moderate-income regions. I have one county that is massive that has 7,800 people.

So when you see these questions I am about to ask, and I am going to roll through them because I know you guys have been busy, but I am very interested in what you think about some of the issues that we are facing in the parts of my district that I have.

I fully support the mission of the CRA. I think a lot of it, when I talk to the bankers in my district, it is about the enforcement supervision. I had one banker in my district who told me a story about how an examiner was in his institution, and after reviewing a loan filed, the examiner okay'd it for CRA credit.

And a year later another examiner came in from that same institution and even—listen, this banker has been serving his commu-

nity for years, and then said that actually the file was wrong and it did not actually—he could not get a CRA loan for that exact same file.

And that frustration in my district has been pretty noticeable. Not only that, again, I think is because we have a limited number of banks and we have such a large area. I know this is a yes-or-no question. And it is because I want to go to the next thing and we could take a while, but—and I wouldn't think anybody—does anyone on this panel think that this sort of examination on CRA, and that is where you have this sort of inconsistency in regulatory models, helps institutions meet the credit needs of their communities, yes or no?

Mr. ROBERTS. No.

Mr. RIGGLEMAN. No. Thank you. I just don't think anyone on this panel or otherwise could argue against a regulatory structure that is clear, consistent, and works for all impacted parties, including the lenders.

And, again, when I go back to these questions, it really comes back to the simple fact that I have such a unique challenge in my district, even under CRA, that it just puts us in a really incredible position in trying to get loans for these disadvantaged communities that are so widespread.

And I would think that if we had a regulatory structure that is clear, consistent, and does work for all impacted parties, including the lenders, the reason I think it is so important is because I want to incentivize financial institutions of all sizes to comply with the laws and regulations, right, in coming on the government to ensure equal and tailored treatment. So it is a little bit of a switch here because I think fair treatment is the rationale for the CRA.

And I will say, Mr. Van Tol, I had a question for you. And it really does come down to my banks and the questions that I have. And by the way, there is no vitriol in this whatsoever. Why does NCRC oppose recommendations to relieve regulatory burden on small and intermediate banks under CRA by increasing the thresholds for these respective CRA tests?

The question really is, is it appropriate to subject a $1.3 billion bank to the same community development standards as a $100 billion institution even based on the facts I gave you about our district?

Mr. VAN TOL. Well, as I said earlier, those institutions in their immediate small banks do about $3 billion in community development loans and investments each year, and that is the size of the entire HUD CDBG budget, which is a critical source of community development financing in rural communities.

So if you were to exempt those institutions, you would likely see $3 billion a year in community development investments in your district and elsewhere, especially in rural communities, go away. And that is why we are opposed to it. We think it is a significant source of community development financing for underserved rural communities and urban communities alike.

Mr. RIGGLEMAN. Yes. And I appreciate that. And I think part of it too is that just based on size, it is also the consistency of the regulatory burden that they sort of carry. And I think that is the problem that I had with this is that if it is a one-size-fits-all with incon-

sistent regulatory structures, you really can have a lot of confusion, which happened when I started companies also, right. You have multiple—you have confusion.

I know I have 28 seconds left. Mr. Roberts, in that 28 seconds, can you explain why counting farm loans based on distribution or volume versus dollar amount is important to ensure equal proliferation of CRA?

Mr. ROBERTS. Sure. Because those loans are small. And if all you are looking at is their dollar volume, those loans are just not going to move the needle on a CRA review.

Mr. RIGGLEMAN. Yes. Thank you very much. I know my time is up, and I appreciate all of you. Thank you, sir.

Chairman MEEKS. The gentleman's time has expired. And I now recognize the gentleman from Washington, Mr. Heck, for 5 minutes.

Mr. HECK. Thank you, Mr. Chairman.

I would like to direct a question to Mr. Van Tol, Professor Baradaran, and Mr. Mitchell. When the CRA was originally adopted, it had to do with making sure that people weren't being locked out of access to mortgages to buy homes in redlined areas.

Obviously, we still need to be incredibly vigilant for that policy objective. But frankly, I worry also that the threat has changed and we have not adapted to it. It is also now, frankly, whether or not somebody can find a home to purchase.

In the 1970s, by comparison, we were building 12,000 homes per million people—12,000. Today, we are building 4,000 homes per million people. And so there frankly aren't anywhere near enough homes to go around for people who aspire to homeownership, and that disproportionately burdens people of color and people of low income.

So I am frankly wondering if there is any way in which the CRA can help address this in redlined areas. My personal point of view, developed over a long period of time, is that we frankly have a problem with respect to construction lending in particular. And I wondered if the CRA can or should be modified to encompass construction lending, especially for workforce housing.

We have passed out of this committee a very ambitious, which I enthusiastically supported, ending homelessness bill. But we still have the issue, I believe, of market rate housing, especially workforce housing, enabling people to stay in the communities they live in and be able to actually buy a home, not because they can't access a mortgage but because they can't find the home to buy because, again, 4,000 homes per million as opposed to 12,000 homes per million when we passed the CRA.

So, Mr. Van Tol, Professor, and Mr. Mitchell, is this something we should explore?

Mr. VAN TOL. Yes. The answer is, yes, CRA can do something about that. Let me start by noting that we have done a study which found that 75 percent of redlined areas that were redlined in the 1930s are still economically distressed today. And so that remains an issue. The affordable housing supply problem is a huge problem. And certainly, CRA, for example, can motivate construction lending. That counts on a CRA exam.

I think the problem is, again, going back to the local convenience and needs of communities, there is a real mismatch between where the supply is. We know of many communities in the midwest where there are ample numbers of houses. It is just people can't get a loan, either because it is a very small loan size or the house needs too much rehab, et cetera, et cetera.

And yet, there are places like Washington, D.C. where you have a very hot housing market where you have an incredible mismatch between the supply and the demand. We have actually started a bipartisan affordable homeownership council to deal and address with this issue because it is becoming an issue, especially in gentrifying areas where you have this incredible mismatch between the production of housing.

Remember, the community development part of CRA does motivate institutions to invest in the development of affordable housing, including multifamily housing. And so, again, if you are to remove or raise the limits or exempt certain institutions from that requirement, you are going to see less production of housing, not more.

Mr. HECK. Thank you.

Professor Baradaran?

Ms. BARADARAN. Yes. And this is where the outcome-oriented goals are really important, like the stress test. So the CRA says it is not just about mortgages, it is about the convenience and needs of each community. And each community is different. Not all banks are the same. And so this is where you have to align these are the needs of the community.

And exactly as you said, affordable housing. Cities like Detroit are in hyper vacancies where you can buy a house for $5,000, but no one is going to give you the financing, whereas in San Francisco, you can barely afford to get a house unless you are a billionaire. These are two different cities, and so those CRA requirements need to be matched to the convenience and needs of that area.

Mr. HECK. Mr. Mitchell?

Mr. MITCHELL. To use your example of construction lending in, say, a CRA community, it requires that the examiners, again, provide some clarity. If I am going to lend to a construction lender who is wealthy and is going to build market rate housing, would that count even though it is in a low- or moderate-income community? I am not sure. That is something that the examiner would have to determine.

If they are going to build affordable housing, then, yes, it would—

Mr. HECK. If I may interrupt, sir, and I apologize, I have so little time left.

But I am particularly focused on starter homes or starter units because that is a place where I think the market has failed us. And the fewer starter homes that are available, the more people remain in a rental. The higher the occupancy rate, the higher the rents go. The higher the rents go, the more people become rent-burdened. The more people become rent-burdened, the more people need subsidies. That more people require subsidies, the more homeless there are.

It is an ecosystem, and I am totally convinced that we have to look at this in the context of it being an ecosystem. And, again, I

am interested in how the CRA might be a means of helping, especially starter homes, workforce housing.

My time is up. Thank you all so very much.

Chairman MEEKS. The gentleman's time has expired.

I now recognize the gentlelady from Massachusetts, Ms. Pressley, for 5 minutes.

Ms. PRESSLEY. Thank you, Mr. Chairman, for your leadership on this and so many other critically important issues.

I represent Massachusetts's 7th District, one of the most diverse and unequal districts in the country. In fact, a recent report by the Federal Reserve Bank of Boston found evidence of a widening wealth gap among families of color compared to their white counterparts. Across the City of Boston, close to 80 percent of white consumers own a home compared to less than one-fifth across minority communities.

Many of my colleagues have already touched on the civil rights origins of the CRA and the need to strengthen the bill to ensure the banks and other financial institutions are doing right by low-income communities. I fundamentally agree. It is one of the reasons why I am so proud to have introduced the American Housing and Economic Mobility Act with Senator Warren and many of my colleagues, which would make housing more affordable and reverse decades of discriminatory policies that have denied Black and Brown families.

Our bill would also strength the CRA, extending it to nonbank mortgage companies, promoting greater investment in the communities that need it most, and strengthening penalties for institutions that fail to follow the rules.

Mr. Odom, as you mentioned in your testimony, homeownership among Black families and other communities of color continues to lag at historic levels. How will strengthening the CRA lead to increased responsible mortgage lending and expand sustainable economic mobility for low-income communities of color?

In the Massachusetts 7th, just in a 3-mile radius, Cambridge to Roxbury, median household income drops by $50,000. So how would strengthening the CRA address that?

Mr. ODOM. Strengthening the CRA allows us to get the kind of data to track what is going on in the marketplace. The CRA is responsible for the data that we have seen presented by Mr. Glantz and his partner today. We would be totally in the dark if we didn't have the kind of CRA reporting requirements about where money is going and who is getting it.

So first, I think from an informational standpoint, the CRA is critical in creating that type of transparency, that ability for lawmakers to at least see where the problems are and do something about it.

Second, I would say that it is important to strengthen the CRA because it is critical to the maintenance of our communities. We talked historically in my testimony about the fact that so many of the people who are in that 20 percent homeownership that you mentioned, African-American families, they are actually contributing to the depository institutions. Small businesses are putting their money into these institutions. And the money, at least histori-

cally, as what motivated CRA, it flies elsewhere. It flies to the 80 percent of your district or homeownership that you mentioned.

So it is important to keep this compact between local communities and local banks, because without them—in my testimony, we talked about the high incidence of blight, unemployment, and lack of opportunity that results when you don't have access to capital.

And third, I will put in a plug for Black-owned businesses or minority businesses generally. Minority businesses tend to be underfunded compared to other groups, even in loans of last resort like SBA loans. I think the current data says that something like 3 percent of minority businesses have access to small business loans.

By keeping a requirement in place, in law, by keeping a light of accountability on this, we are hoping we can keep our communities intact and make them attractive. And when they are attractive, the capital will follow hopefully.

Ms. PRESSLEY. All right. Very good.

Mr. Glantz, your investigation found some troubling evidence of the ongoing prevalence of redlining and discrimination in our banking system, trends you largely associate with the fact that the CRA, as currently drafted, is race neutral.

Now, many States have moved forward with drafting their own proposals to combat racial discrimination by the financial institutions in their States by explicitly requiring them to track lending data by race and ethnicity. What are your thoughts on this approach, and do any other panelists have an opinion on the matter?

Mr. GLANTZ. I would note that Massachusetts is one of the States that has its own Community Reinvestment Act law. However, when we look at the lending in the Boston and Cambridge MSAs, we found that among the communities, Census Tracts where there were at least 100 home mortgage loans, there were 320 of them, and all but 7 of them were majority white neighborhoods.

And of those 7 neighborhoods that got more than 100 conventional home purchase loans, in 2015 and 2016 in Boston and Cambridge, those 7 majority people of color neighborhoods, the majority of the loans from financial institutions went to whites. And that is what we found in our investigation.

Ms. PRESSLEY. Thank you.

Chairman MEEKS. The gentlelady's time has expired.

Ms. PRESSLEY. Thank you, Mr. Chairman.

Chairman MEEKS. All time has expired.

Without objection, I would like to submit for the record a statement from me in regards to the OCC; testimony from the Bank Policy Institute; and a statement from the Credit Union National Association.

I would like to thank our witnesses. You were excellent. You were very informative. You have given us a lot to think about.

And I would hope that the FDIC, the Fed, and the OCC have been listening to this hearing and will take into consideration all of your testimony and all of your thoughts as we drive and strive to have a CRA that is effective for all Americans.

I thank my colleague, Ranking Member Luetkemeyer, and my Republican colleagues for indeed, as we talked a broad range, we talk about urban America and the need for CRA to be appropriately applied in rural America. I think it will help make us all

balance the playing field so that everyone can get an opportunity to enjoy the American Dream and the right of homeownership and creating wealth.

I will end as I started, if it wasn't for my parents having the opportunity to buy a home and to have that home appreciate in assets, I would not have had the ability to pay for my college education nor would my siblings.

So this is a goal that I think that we all should have because the better informed as far as the opportunities are concerned, the better it is for all of us. And you have truly contributed a great deal to us by testifying this morning.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing is now adjourned.

[Whereupon, at 12:25 p.m., the hearing was adjourned.]

A P P E N D I X

April 9, 2019

TESTIMONY OF MEHRSA BARADARAN

Professor of Law, University of Georgia School of Law

**before the
United States House of Representatives
Subcommittee on Consumer Protection and Financial Institutions**

Thank you very much for this opportunity to comment on "The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining." While the nature of banking has changed dramatically since the passage of the CRA, the inequalities and injustices the CRA was designed to remedy have only gotten worse. The law must be updated and strengthened. In my testimony, I will first step back from the details of CRA reform to consider the social contract between banks and the people and the ways in which the historic context of the CRA points to banks' public obligations. Second, I will show how changes in the banking sector that occurred during the deregulatory era have exacerbated the problems the CRA was meant to remedy. And lastly, I will suggest ways the CRA can be reformed and modernized to be responsive to those who need it and also suggest that it might be time for even stronger medicine.

BANKING AND THE SOCIAL CONTRACT

The underlying theory of the CRA is that banks have public duties because they are essentially public institutions. Banks cannot function, and have never functioned, without extensive federal government support. In passing the CRA in 1977, Senator William Proxmire, Chairman of the Senate Committee on Banking, Housing and Urban Affairs alluded to the dependent nature of the bank-state relationship. He stated that the CRA was based on a "widely shared assumption" that "a [bank's] public charter conveys numerous economic benefits and in return it is legitimate for public policy and regulatory practice to require some public purpose . . ." The Senator claimed that banks are "a franchise to serve local convenience and needs" and therefore "it is fair for the public to ask something in return."[1] This is the social contract that banks have with the public—the quid pro quo is that the federal government insures bank deposits, protects banks from liquidity shortages, and provides access to the central payments system; banks, in turn, play an essential intermediary role in carrying out the economic policy priorities of the government, financing the expansion of the economy, and serving the credit and transactional needs of their customers and local communities.

Every aspect of banking—deposits, loans, and simple financial transactions—relies on a robust network of support from the federal government. Banks need this support, without which their customers would lack sufficient trust to permit them to function properly. Trust is the currency

[1] Warren L. Dennis, *The Community Re-Investment Act of 1977: Its Legislative History and its Impact On Applications For Changes in Structure Made By Depository Institutions To The Four Federal Financial Supervisory Agencies* (Lafayette, Ind.: Credit Research Center, Krannert Graduate School of Management, Purdue University, 1978).

of banks and historically, only the full faith and credit of the US Treasury has been able to infuse banks with the support necessary to induce public trust.[2]

Banks enjoy access to very low risk and inexpensive funding in the form of customer deposits, which is made possible by FDIC deposit insurance backstopped by the US Treasury.[3] This federal government support amounts to a state subsidy, which makes the banking sector unlike any other business that has to compete for funding. Federally-insured deposits enable banks to lend out the great majority of the deposits they receive and enjoy the money-multiplier effect that "fractional reserve lending" enables.[4] The reliance on customer deposits is what led Supreme Court Justice Louis Brandeis to consider banks to be essential public utilities. Brandeis explained that banks operate using "other people's money" and therefore "deposit banking should be recognized as one of the businesses 'affected with a public interest.'"[5]

Many bank loans are also supported by the federal government. Mortgages and student loans are guaranteed, bundled, or subsidized by the FHA or the Government Sponsored Entities (GSEs) Fannie Mae, Freddie Mac, Ginnie Mae, and Sallie Mae.[6] And when these institutions fail, they too have the implicit backing of the Federal Government as we saw with numerous GSE bailouts during the financial crisis of 2008. These GSEs enable banks to make exponentially more loans than what their customer deposits alone would allow. At the crux of our banking system, then, is a state-enabled credit system.

Each time a bank sends or accepts money from another financial institution, they are using the Federal Reserve's payments system. Only banks have access to this payments system, which means that banks enjoy a monopoly on the central financial network of U.S. commerce.[7] Individuals

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[2] BRAY HAMMOND BANKS AND POLITICS IN AMERICA FROM THE REVOLUTION TO THE CIVIL WAR (1991); Charles W. Calomiris & Gary Gorton, *The Origins of Banking Panics: Models, Facts, and Bank Regulation* in FINANCIAL MARKETS AND FINANCIAL CRISES (R. Glen Hubbard ed., 1991); Gary Gorton & Lixin Huang, *Bank Panics and the Endogeneity of Central Banking*, 53 J. Monetary Econ. 1613 (2006); Gary Gorton & Lixin Huang, *Banking Panics and the Origin of Central Banking* (Nat'l Bureau of Econ. Res., Working Paper 9137, 2002).

[3] The FDIC insurance fund is backstopped by the US Treasury: when the FDIC fund dipped into default in 2018, the US Treasury stood behind the fund. James A. Wilcox, *MIMIC: A Proposal for Deposit Insurance Reform*, 9 J. Fin. Reg. and Compliance 338 (2001). Joe Peek and James A. Wilcox, *The Fall and Rise of Banking Safety Net Subsides*, in *Too Big to Fail: Policies and Practices in Government Bailouts,* ed. Benton E. Gup (Westport, CT: Praeger Publishers, 2004), 177-178.

[4] Piergiorgio Alessandri & Andrew G. Haldane, "Banking on the State," November 6, 2009, based on presentation at *Federal Reserve Bank of Chicago 12th Annual International Banking Conference on 'The International Financial Crisis: Have the Rules of Finance Changed?*, September 25, 2009, 1

[5] Louis D. Brandeis, *Other People's Money and how the Bankers use it* (New York: Frederick A. Stokes Company, 1914) 18.

[6] David J. Reiss, *Accessible Credit, Sustainable Credit and the Federal Housing Administration*, 36 Banking & Fin. Services Pol'y Rep. 1 (2017). Board of Governors of the Federal Reserve System, Federal Reserve Monthly Statistical Releases: Consumer Credit (2018); Office of Management and Budget, Budget of the U.S. Government FY2019 Analytical Perspectives Table 19-1 (2018). Over $6.5 Trillion mortgages, the majority of the market, are backed by GSEs. Urban Institute, Housing Finance at a Glance, (April 2018), https://www.urban.org/sites/default/files/publication/98669/housing_finance_at_a_glance_a_monthly_chartbook_june_2018_0.pdf (43.7% Fannie Mae, 27.3% Freddie Mac, and 28.9% Ginnie Mae) (there is a total of 10.6 trillion dollars in total household mortgages). Ibid. The Federal Government has over 2.5 trillion dollars in total guaranteed loans as of year-end 2017. OFFICE OF MANAGEMENT AND BUDGET, BUDGET OF THE U.S. GOVERNMENT FY2019 ANALYTICAL PERSPECTIVES Table 19-1 (2018). CONGRESSIONAL BUDGET OFFICE, Fair-Value Estimates of the Cost of Selected Federal Credit Programs for 2015 to 2024, (May 22, 2014), https://www.cbo.gov/publication/45383.

[7] Morgan Ricks, *Money as Infrastructure*, 3 Colum. Bus. L. Rev. 757 (2018).

and businesses are required to have a bank account in order to send and receive checks free of charge, but those who do not or cannot have a bank account must pay fees each time they use or send money.

Bank deposits, bank loans and bank transactions—all supported by the Federal Government. And that's just the tip of the iceberg of government support of the banking sector. When a bank has a liquidity crisis, it can rely on the Federal Reserve's discount window, which provides banks loans at below market interest rates.[8] And let us not forget that during the financial crisis, the Federal Reserve rescued a failing banking industry with equity infusions, loans, guarantees, asset purchases, and other forms of financial support.[9]

And still, there's more. Since the financial crisis, the Federal Reserve has practiced unprecedented monetary policy. Three rounds of Quantitative Easing (QE) have left the Fed holding over $4 trillion in bank assets—assets that were so worthless they were pushing the banks that held them towards insolvency.[10] Another less well-known example of bank-friendly monetary policy is Interest On Excess Reserves ("IOER"). In a payment that seems to violate what people may assume to be the laws of the market and basic common sense, the Federal Reserve pays banks billions of dollars in interest on the excess cash the banks are holding in reserves at the Fed. In fact, these are excess funds that were created by the Fed during QE in the first place.[11] In just one year, the Federal Reserve paid about $7 billion in interest to commercial banks, including more than $100 million to Goldman Sachs and more than $900 million to JPMorgan Chase.[12] The hope of this payment is that the banks would play the intermediary role outlined in the social contract and that the payments would "pass through" the banks and make it to the public to spur the economy, but the IOER is in fact being absorbed by the banks and bolstering the profits and returns to shareholders.[13]

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[8] The interest rate at the discount window is 0.5% higher than the Fed Funds rate, which is currently 2.5%. Kimberly Amadeo, *Federal Reserve Discount Window and How it Works* The Balance (2018), https://www.thebalance.com/federal-reserve-discount-window-3305923; Board of Governors of the Federal Reserve System, "Monetary Policy," http://www.federalreserve.gov/monetarypolicy/openmarket.htm (accessed January 18, 2015).

[9] Most of the bailout provisions relied on the Federal Reserve's 13(3) emergency lending powers. Niel Willardson & LuAnne Pederson, "Federal Reserve Liquidity Programs: An Update" (June 2010), *available at* http://www.minneapolisfed.org/research/pub_display.cfm?id=4451 ; Alexander Mehra, *Legal Authority in Unusual and Exigent Circumstances: The Federal Reserve and the Financial Crisis* (U. Pa. J. Bus. L. 2011 update), at https://www.law.upenn.edu/journals/jbl/articles/volume13/issue1/Mehra13U.Pa.J.Bus.L.221(2010).pdf

[10] https://www.federalreserve.gov/monetarypolicy/bst_recenttrends.htm

[11] Due to the massive amounts of money created by QE, bank reserves swelled to over $1.7 trillion as of October 2018. This overage is called excess reserves and even though it was created by the Federal Reserve, banks earn interest on these reserves. These reserves comprise a substantial portion of the nation's monetary base. The Federal Reserve is using this payment, called an "administered rate" as its primary monetary policy tool post QE. Federal Reserve Bank of St. Louis, Required Reserves of Depository Institutions, (Nov. 8, 2018) https://fred.stlouisfed.org/series/REQRESNS. *See* Walker F. Todd, *The Problem of Excess Reserves, Then and Now*, Working Paper 763, LEVY ECONOMICS INSTITUTE (May 2013)

[12] House of Rep. Committee on Financial Services, Hearing: Monetary Policy and the State of the Economy (Feb. 10, 2016).

[13] This policy, which was meant to encourage lending by banks, has turned into a subsidy that in fact discourages lending because banks can earn more by "lending" customer deposits to the Federal Reserve than they can pursuing consumer or business loans. Excess funds can be rolled over at no cost and liquidated on the same day, making excess reserves more attractive than lending. Darrell Duffie & Arvind Krishnamurthy, *Passthrough Efficiency in the Fed's New Monetary Policy*

The social contract between banks and the public is that they enjoy a monopoly on payments system, receive subsidized funding through insured deposits, benefit from loan guarantees and rely on a smorgasbord of protection and support during a crisis. In return, they must be instruments of economic policy by connecting the citizenry to credit and financial markets.[14] Viewed from this lens, it becomes clear that the government and by extension "the people" must be entitled to demand a banking sector that serves all of us, and not just the few from whom they can make the most profit.

This was exactly the insight on which the CRA was based. Senator Proxmire's words bear repeating today as Congress considers making changes to the CRA. In passing the original CRA legislation, the Senator explained that banks are like public institutions because their "collective decisions help to shape the communities we live in, our economic well-being, and have a profound impact on our daily lives." A bank charter, granted by the government, "entitles the holder to government support, [including] the authority to operate new deposit facilities," which "conveys a substantial economic benefit to the applicant." He said that a bank charter was "a *semi-exclusive franchise* to do business... with a financial back-up from the U.S. Treasury" and "ready access to low cost credit through the Federal Reserve Banks or the Federal Home Loan Banks." "In return for these benefits," the Senator explained:

> "...financial institutions are required by law and regulatory policy to serve the 'convenience and needs' of their communities. The 'needs' of a community clearly include the need for credit services as well as deposit services.... The proposed legislation directs the bank regulatory agencies to use their influence to award applications for deposit facilities in a way that will benefit local communities as well as bankers."[15]

The Erosion of the Social Contract during the Deregulatory Era

The nature of banking and bank regulation has changed significantly since the original passage of the CRA; deregulation, fast-paced technological change and a globally networked banking sector have transformed the financial industry. The deregulatory era that began shortly after the passage of the CRA was a slow and steady shift in both the conceptual and practical understanding of the bank-state relationship. Instead of treating banks as quasi-public institutions with spillover gains for private individuals, they were treated as purely private enterprises ruled by market forces to be set free from government meddling. In the brief history that follows, I will show how the social contract was slowly eroded as the industry went through wave after wave of deregulation, leaving

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Setting 2016 Economic Policy Symposium Proceedings, https://kansascityfed.org/~/media/files/publicat/sympos/2016/2016duffie.pdf?la=en; Morgan Ricks, *Money as Infrastructure*, 3 COLUM. BUS. L. REV. 757 (2018). Walker F. Todd, *The Problem of Excess Reserves, Then and Now*, Working Paper 763, Levy Economics Institute (May 2013) http://www.levyinstitute.org/publications/the-problem-of-excess-reserves-then-and-now.

[14] Mehrsa Baradaran, *Banking and the Social Contract*, 89 NOTRE DAME L. REV. 1283 (2014).

[15] 123 Cong. Rec. 406 (1977).

the CRA the lone survivor of the many laws and regulations that once required banks to fulfill their obligations to the public.

A major front of deregulatory efforts was the repeal of restrictions on bank size and location. Unit banking, wherein a single bank operates in a single region, was the norm in U.S. banking for almost two centuries.[16] When the CRA was passed, strict regulatory prohibitions on bank size and location were still in effect. These restrictions were meant to force banks to stay tied to one community in order to serve that community's credit needs as well as to restrict the size and conglomerate power of the banking sector.[17] During the deregulatory era, the banking industry fought these restrictions on size and scope, claiming that they should be treated like other corporations. Indeed, technology, globalization, and modern capital market development required that regulations be updated. However, in addition to lifting onerous and outdated restrictions, the government also abandoned previous banking policy goals, such as avoiding concentrations of power and favoring localism for the sake of equality in access.[18] Over several decades, barriers to bank expansion and consolidation fell and banks began to branch nationwide and grow through mergers and acquisitions. [19] The official repeal of unit banking came in 1994 through the passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act, which allowed banks to open branches across state lines.[20] The purpose of the Act was baked right into the title: to increase bank "efficiency."[21] Congress and the regulators' focus changed from their post-New Deal goal of keeping

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[16] Most banks did not open branches outside of a state, or even within a state in many cases, for much of U.S. banking history. The McFadden Act, enacted in 1927, specifically prohibited interstate branching by allowing each national bank to branch only within the state in which it is situated. McFadden Act, § 3, 44 Stat. 1228 (1927). However, prior to the McFadden Act, most states prohibited interstate branching and many prohibited branching within the state. Federal Reserve Committee on Branch, Group, and Chain Banking, *Branch Banking in the United States* (Federal Reserve System, 1992), 8, 210. Eighteen states banned branch banking within the state, nine allowed it, and fourteen allowed it with certain restrictions. Ibid. at 215-16. A majority of states in 1895 had no mention of branches in their laws. In some states silence has been taken as permitting and in others as forbidding branches.

[17] Richard S. Carnell, Jonathan R. Macey, and Geoffrey P. Miller, *The Law of Financial Institutions,* 5th ed. (New York: Aspen Publishers, 2013), 13; Calomiris & Haber, *Fragile by Design,* 459.

[18] FDIC, HISTORY OF THE EIGHTIES – LESSONS FOR THE FUTURE, 177-178 (2018) ("Before the 1980s, new charters had been granted on the basis of community need. Under the Reagan administration, the FHLBB and the Office of the Comptroller of the Currency approved any application as long 'as the owners hired competent management and provided a sound business plan.' The devastating consequences of adding many new institutions to the marketplace, expanding the powers of thrifts, decontrolling interest rates, and increasing deposit insurance coverage, coupled with reducing regulatory standards and scrutiny, were not foreseen.").

[19] "The relaxation of restrictions on intrastate branching and interstate banking that took place in the 1980s and early 1990s facilitated both mergers and consolidations. While only 16 states permitted unrestricted intrastate branching in 1984, by 1994 the number had risen to 40. Similarly, while 42 states restricted interstate combinations of banking charters in 1984, by 1994 only Hawaii retained this restriction. The Interstate Banking and Branching Efficiency (or Riegle-Neal) Act of 1994 allowed full interstate branching, which made possible the interstate consolidation of charters within banking companies." FDIC, "Community Banking Study," (December 2012), 2. Available at https://www.fdic.gov/regulations/resources/cbi/report/cbi-full.pdf. Another felled barrier was inter-state branching, which means that a single bank can operate branches in more than one state without having to comply with the corporate and banking forms of that state. Federal law lifted the restrictions in 1997, but the federal law allowed banks to branch only through acquisitions or mergers.

[20] Bill Medley, *Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994*, Federal Reserve History (September 1994), https://www.federalreservehistory.org/essays/riegle_neal_act_of_1994.

[21] Farlex Financial Dictionary, Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, https://financial-dictionary.thefreedictionary.com/Riegle-Neal+Interstate+Banking+and+Branching+Efficiency+Act+of+1994 ("The Act streamlined banking regulation in the United States . . . .").

banks small, local, and safe to ensuring that banks stayed competitive, which meant that they were profitable and efficient.

Mergers have meant the creation of large TBTF banks, but they have also meant banking deserts and the wholesale abandonment of low-profit customers. The pursuit of efficiency led to cost-cutting and branch closing, especially in low-profit areas. Between 1984 and 2017, the amount of bank branches fell by over 66% from 14,500 to below 5,000.[22] Most stand-alone banks were swallowed up by the large banks or they simply failed. Large banks are much more efficient and profitable than small banks and soon they dominated the banking market.[23] The result of a series of mergers and expansions was predictable—today, a handful of behemoth banks control most of the country's assets and small community banks struggle to compete.[24] The financial crisis accelerated the decline of small community banking. From 2008-2013, banks shut 2,000 branches—93% of which were located in zip codes where the household income was below the national median.[25] LMI communities have lost branches as high income communities have gained them.[26] Projections show that 40% more bank branches will close in the next few years.[27] According to new bank merger data published by the Federal Reserve, the Fed set two records in 2018: the highest-ever approval rate for

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[22] Allison Prang, *Thousands of Bank Branches are Closing, Just Not at These Banks*, WALL ST. J. (June 15, 2018 2:35 p.m. EST), https://www.wsj.com/articles/the-bank-branch-is-dyingjust-not-at-these-banks-1529055000.

[23] Non-community banks reported a Return on Investment (ROI) that averaged 35 basis points higher than community banks. Ibid. In 1984, disparity in asset sizes between community banks (those with less than $1 Billion in assets) and non-community banks was 12 to 1; in 2011, it was 74 to 1, and as of the 3rd Quarter of 2018 it is 90 to 1. Quarterly Banking Profile, 12 FDIC Qtrly 1 (2018), https://www.fdic.gov/bank/analytical/qbp/2018sep/qbp.pdf. Today, only 8% of bank charters are non-community banks, but these banks account for 63% of all bank branches and 93% *of total assets*. In fact, just the top 5 banks control *over 40%* of all bank deposits. 2018-2022 STRATEGIC PLAN, THE FDIC AND THE BANKING INDUSTRY: PERSPECTIVE AND OUTLOOK, https://www.fdic.gov/about/strategic/strategic/bankingindustry.html; *Quarterly Banking Profile*, 12 FDIC Qtrly 1 (2018), https://www.fdic.gov/bank/analytical/qbp/2018sep/qbp.pdf; The Five Largest U.S. Banks Hold More Than 40% Of All Deposits, Forbes (Dec. 14, 2017), https://www.forbes.com/sites/greatspeculations/2017/12/14/the-five-largest-u-s-banks-hold-more-than-40-of-all-deposits/#50af566916aa.

[24] For example, Bank of America makes 1/3 of all business loans, Wells Fargo provides 1/4 of all mortgages, and Chase holds 12% of all of our collective cash. The six largest banks hold 70% of all assets in the financial system, up from 37% just 5 years ago. Just four of the largest banks (Bank of America, Citigroup, JP Morgan Chase, and Wells Fargo) control almost *50% of all bank assets*. JP Morgan holds $2.4 Trillion in assets, which is the size of England's economy. And they are just getting bigger. The top 4 banks make about 10 times more now than they did five years ago. This expansion and growth not only changed the size, but the nature of the industry. These megabanks became more profitable, took on more risks, and expanded into more markets. Stephen Gandel, "By every measure, the banks are bigger," *Fortune,* September 13, 2013, http://fortune.com/2013/09/13/by-every-measure-the-big-banks-are-bigger/. Trefis Team, "Why Wells Fargo Will Soon Have the Largest Deposit Base Among U.S. Banks," *Forbes*, September 15, 2014, http://www.forbes.com/sites/greatspeculations/2014/09/15/why-wells-fargo-will-soon-have-the-largest-deposit-base-among-u-s-banks/.

[25] Frank Bass & Dakin Campbell, Predator Targets Hit as Banks Shut Branches Amid Profits, *Bloomberg*, May 2, 2013. Available at http://www.bloomberg.com/news/2013-05-02/post-crash-branch-closings-hit-hardest-in-poor-u-s-areas.html.

[26] Bass & Campbell, "Predator Targets Hit as Banks Shut Branches Amid Profits." See also Nelson D. Schwartz, "Bank Closings Tilt Toward Poor Areas," *New York Times,* February 22, 2011. Available at http://www.nytimes.com/2011/02/23/business/23banks.html?pagewanted=all&_r=0 ("In low-income areas, where the median household income was below $25,000, and in moderate-income areas, where the medium household income was between $25,000 and $50,000, the number of branches declined by 396 between 2008 and 2010. In neighborhoods where household income was above $100,000, by contrast, 82 branches were added during the same period.").

[27] Stephen Greer & Bob Meara, Branch Boom Gone Bust: Predicting a Steep Decline in US Branch Density, *CELENT,* April 30, 2013. www.celent.com/reports/branch-boom-gone-bust-predicting-steep-decline-us-branch-density.

bank M&A proposals (95%) and the quickest-ever time to approval, especially for mergers that received adverse comments from the public due to CRA non-compliance, which were approved in less than four months.[28]

In addition to the inevitable conglomeration of the banking sector, several bedrock principles of banking policy were slowly rejected during the deregulatory era, including, most importantly, the idea that banks had unique public responsibilities. Reflecting the historical understanding that banks were to serve the public, the public mission of banks was written into the text of nearly all major banking legislation, including the Bank Holding Company Act (BHCA), The National Banking Act ("NBA"), the Riegle-Neal Act, and others.[29] For banks to gain approval for mergers, expansions, or new activities, these laws require that the bank's primary regulator must determine whether the change will benefit the public and reject the activity if it does not. Before the deregulatory era, regulators considered potential monopoly concerns, excessive bank size, and a community's access to bank services.[30] Today, the question of whether a merger or change in activity

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[28] BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, *Semiannual Report on Banking Applications Activity: July 1-December 2018* (Mar. 2019), https://www.federalreserve.gov/publications/files/semiannual-report-on-banking-applications-20190329.pdf.

[29] For example, under the Bank Holding Act, bank holding companies that wish to acquire or merge with a bank or nonbank or partake in certain nonbanking activities must undergo a public benefit test. 12 U.S.C. § 1842(c)(2) (2011); 12 U.S.C. § 1843(j)(2)(A) (2011). In order to pass the public benefits test under the Bank Holding Company Act, a bank holding company, in its application process, must prove more than simply no adverse effects would arise; it must prove some reasonable expectation of public benefits. However, if the Board finds some adverse effects then it is required to find more than speculative or scant public benefits. Money Station, Inc. v. Bd. of Governors of Fed. Reserve System, 81 F.3d 1128, 1134 (D.C. Cir. 1996). The BHC public benefit test requires affirmative public benefits rather than mere absence of adverse effects. Roger E. Alcaly, *Neither Convenient Nor Needed: The Convenience and Needs and Public Benefits Tests of the Bank Holding Company Act*, 96 BANKING L. J. 325, 328 (1979). Section 1842(c)(2) requires the Federal Reserve Board to consider the convenience and needs of the community affected by the merger or acquisition of a bank by a bank holding company. 12 U.S.C. § 1842(c)(2) (2011). Section 1843(j)(2)(A) lays out a cost benefit analysis of nonbanking activity or acquisition for regulators to consider such as increased convenience, competition, and efficiency that must outweigh adverse effects such as concentration of resources, unfair competition, conflicts of interest, or unsound banking practices. 12 U.S.C. § 1843(j)(2)(A) (2011). 12 C.F.R. § 225.26 (2005). Regulation Y lists public benefit factors the Board must consider when approving non-banking proposals, such as "greater convenience, increased competition, and gains in efficiency." The test asks, for example, whether the merger or proposed activity will lessen competition or whether the change will "meet the convenience and needs of the community." Id. 12 C.F.R. § 225.13(b)(3) (2005). The National Bank Act also requires the OCC to analyze public benefits, such as community development, philanthropy, and the needs of the community, when national banks are formed or acquire or merge with other national or state banks interstate. The Federal Reserve's Regulation Y also includes a public benefit test for approving mergers or new activities by banks. 12 U.S.C. § 24, eighth, eleventh (2008). The Reigle-Neal Act's public benefit test requires interstate bank merger applicants to prove that the merger will not violate concentration limits. 12 U.S.C. § 1831u(b)(2), (3) (2011).

[30] *See,* Mehrsa Baradaran, Banking and the Social Contract, 89 NOTRE DAME L. REV. 1283 (2014) for a review of agency opinions, specifically related to BHC's seeking merger approvals, from the 1970s until today, revealing that the public benefit test has become less meaningful over time. In the 1970s, banks were often denied merger approvals because the proposed merger did not meet public needs and convenience. Regulators often made a rigorous inquiry into the needs of the community and provided examples of how a specific merger would enhance the welfare of the community. *See e.g.* North Shore Capital Corp., 58 Fed.Res.Bull. 809, 810 (F.R.B.), 1972 WL 27551 (denied BHC formation because public needs and convenience was already being met). First Alabama Bancshares, Inc., 57 Fed.Res.Bull. 404, 412 (F.R.B.), 1971 WL 24190 (approving merger because Alabama was one of the least economically developed states and due to anticompetitive monopoly concerns); Texas Commerce Bancshares, Inc., 58 Fed.Res.Bull. 984, 986 (F.R.B.), 1972 WL 27646 (new services included petroleum financing services that the community currently lacked and needed), Western Michigan Corp., 63 Fed.Res.Bull. 506, 508 (F.R.B.), 1977 WL 39198 (lending capacity increased, upgraded agricultural loan services, and new savings programs). A Fed study revealed that the Board consistently cited six types of public benefits: improvements of convenience and needs of the community, increased competition, operational efficiency,

results in a public benefit is reduced to a single factor: compliance with the CRA.[31] The public benefit test that was originally a core part of fundamental banking legislation has been outsourced to the CRA. The CRA thus stands as the last bulwark of the public's interest in the social contract between banks and the government.[32] Yet even as the CRA is meant to encapsulate the entirety of the public benefit inquiry, or perhaps because of it, banks have resisted the mandate to comply with the CRA.[33]

In fact, a sort of double-speak entered into the regulatory lexicon with respect to the public benefit test. When regulators engaged in the required *public* benefit inquiry, the question morphed into a finding of whether a new activity would be "efficient" or "profitable" *for the bank*.[34] For

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expanded financial resources for the firm to be acquired and/or the bank holding company, improved management for the acquired firm, and other benefits unique to the particular case. Michael A. Jessee & Steven A. Seelig, *An Analysis of the Public Benefits Test of the Bank Holding Company Act*, Federal Reserve Bank of New York, Monthly Review, 151 (June 1974). The study further finds that, as of February 1974, only twenty-nine orders of denials were published, and in every denial, the primary reason was reduction of existing or potential competition. *Id.* at 157.

[31] The OCC has stated that it gauges "public benefit" using a cost-benefit analysis and compliance with the Community Reinvestment Act. *See,* Decision of the Office of the Comptroller of the Currency on the Applications of Bank of America Trust Company of Florida, N.A., Boca Raton, Florida, Bank of America Florida Interim National Bank, Boca, Raton, Florida, and Bank of America National Trust & Savings Association, San Francisco, California, Corporate Decision #97-52, 8-9 (June 25, 1997) (available at http://www.occ.gov/static/interpretations-and-precedents/jul97/cd97-52.pdf); Nationsbank Corp. Charlotte, North Carolina, 1993 WL 741754 at *7 (F.R.B.) (fourth-largest commercial bank in US merger application approved where the only mention of "convenience and needs factors" was that the bank had favorable CRA ratings).

[32] The GLB Act was the first major banking regulation that did away with any public benefit inquiry. The act was passed in 1999 after two decades of deregulation. The Act does reinforce the CRA requirements for public benefit by codifying that nothing in the Act changes these requirements. 12 U.S.C. § 1811 (note) (1999). This last concession was a major sticking point in the legislation and was heavily contested, but written into the Act in order to get it passed. *The Gramm-Leach-Bliley Act P.L. 106-102 Financial Services Modernization Working Summary No. 4,* Gibson Dunn & Crutcher, LLP, at 84 (Dec. 16, 1999), *available at* http://cyber.law.harvard.edu/rfi/casebook/gibson.pdf ("The CRA provisions of the Act were the most contentious and were the last major provision to be agreed to."). The compromise was that the GLB Act required the Federal Reserve and the Treasury Department to study whether these programs were generally *profitable*. 12 U.S.C. § 2901, § 2908 (1999). The Federal Reserve found that the majority (61%) were generally profitable for large institutions. Report by the Board of Governors of the Federal Reserve System, submitted to the Congress pursuant to section 713 of the Gramm-Leach-Bliley Act of 1999 (July 17, 2000) (available at http://www.federalreserve.gov/communitydev/files/cra_cratext.pdf). The Dodd-Frank Act also does not include a "public benefit" test anywhere in its text. The act does, however, implement a new policy consideration under the BHCA cost-benefit analysis. Regulators must now also consider whether a merger or acquisition will create detrimental systemic risk to the financial industry and whether that risk outweighs any benefit expected from the merger or acquisition. 12 U.S.C. § 5301 (2012).

[33] See Richard S. Carnell, Jonathan R. Macey, and Geoffrey P. Miller, *The Law of Financial Institutions,* 5th ed. (New York: Aspen Publishers, 2013), 328; Michael S. Barr, "Banking the Poor," *Yale Journal on Regulation* 21 (2004): 121, 603 ("CRA's broad standards and 'enforcement' mechanisms . . . have long been derided by both proponents and detractors of CRA. Community advocates urge stricter rules and harsher consequences of failure. Bankers lament the lack of clear rules or safe harbors and the intrusive role of the public."); Charles W. Calomiris et al., "Housing-Finance Intervention and Private Incentives: Helping Minorities and the Poor," *Journal of Money, Credit & Banking* 26 (1994): 634, 673 (stating that "the vagueness of the CRA has led to arbitrary enforcement"); Keith N. Hylton, "Banks and Inner Cities: Market and Regulatory Obstacles to Development Lending," *Yale Journal on Regulation* 17 (2000): 191, 203 (explaining that enforcement of the CRA has been uneven and unpredictable).

[34] *See* Mehrsa Baradaran, *Banking and the Social Contract*, 89 NOTRE DAME L. REV. 1283 (2014). For example, a merger involving the second-largest banking corporation in Minnesota was approved by the Federal Reserve, in the face of strong anti-competitive concerns, because of "the significant public benefit of *resolving the capital deficiency of an impaired institution* in a private transaction without cost to the federal deposit insurance funds." Another approved merger

example, in the application and accompanying files for the recent BB&T and SunTrust merger, the only reference to the public benefit test was that the banks had a "satisfactory or above" CRA rating.[35] The merger, if approved, will be the largest since the financial crisis, creating the sixth largest bank in the country, and will likely result in large scale bank branch closures across the Southeast.[36] Yet according to recent regulatory decisions, insofar as a bank is in compliance with the CRA, the merger is deemed to benefit the public regardless of how many branches are closed and banking deserts are created.[37]

Not only were banks relieved of public-*serving* functions over the last few decades, but even laws *protecting* consumers from their harmful products were weakened by the regulators tasked with their enforcement. Consumer regulations that were deemed expensive, outdated, inefficient or that hindered bank competition were rolled-back. The OCC and the OTS infamously announced that national banks did not have to follow state consumer protection laws—or state laws designed to protect their citizens—using the doctrine of "federal preemption of state law." Here, the state laws protecting consumers were "preempted" by exactly zero consumer-protecting federal laws.[38] The rationale was that these public-protecting laws rendered banks less efficient and profitable by limiting the kinds and amounts of loans that these banks could make.[39] The OCC's pre-emption of

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determined the public benefit of "[providing] Applicant greater resources for expansion and greater flexibility for diversification of business activities…[which would] allow Applicant to *continue to compete effectively* with other large Rhode Island financial organizations…." Norwest Holding Co., 76 Fed.Res.Bull. 873, 875 (F.R.B.), 1990 WL 319857. Citizen's Financial Group, Inc., 71 Fed.Res.Bull. 473, 475 (F.R.B.), 1985 WL 68579; Citizen's Financial Group, Inc., 71 Fed.Res.Bull. 473, 475 (F.R.B.), 1985 WL 68579 ("[approval] will provide Applicant greater resources for expansion and greater flexibility for diversification of business activities…[and] thus should allow Applicant to *continue to compete effectively* with other large Rhode Island financial organizations….")(emphasis added).

[35] Application to the Board of Governors of the Federal Reserve System by BB&T Corp. at 10, 12, 27, 29, 49–171, 82–83 (March 8, 2019) (OMB No. 7100–0121); Pub. Ex. Vol., at 22, 43, 219–27, Application to the Board of Governors of the Federal Reserve System by BB&T Corp. at Federal Reserve (March 8, 2019) (OMB No. 7100–0121); Req. for Additional Information at 3, Application to the Board of Governors of the Federal Reserve System by BB&T Corp. (March 29, 2019) (OMB No. 7100–0121).

[36] J. Scott Trubey, *SunTrust Merger with BB&T Mean Another Bank HQ Leaving for Charlotte*, THE ATLANTA JOURNAL-CONSTITUTION (Feb. 7 2019), https://www.ajc.com/news/local-govt--politics/suntrust-merger-with-means-another-bank-leaving-for-charlotte/YN1k8G53eaX3KJ08MT4FEI/;
BB&T/SUNTRUST APPLICATION AND RELATED MATERIALS: APPLICATION MATERIALS, https://www.federalreserve.gov/foia/bbt-suntrust-application-materials.htm; Notice by Federal Reserve, Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 84 Fed. Reg. 9340 (March 14, 2019), https://www.federalregister.gov/documents/2019/03/14/2019-04737/formations-of-acquisitions-by-and-mergers-of-bank-holding-companies.

[37] A 1977-1978 Federal Reserve survey concluded that it was difficult to demonstrate whether "the public interest standards of the act have fostered the public welfare significantly." Joseph E. Rossman & B. Frank King, *Convenience and Needs: Holding Company Claims and Actions*, Federal Reserve Bank of Atlanta, Working Paper, 1-2 (Aug. 1977); David R. Allardice, *Convenience and Needs Considerations: A Post-Audit Survey*, Federal Reserve Bank of Chicago, Research Paper No. 78-2, 2-8 (Sept. 1978). Anthony W. Cyrnak, *Convenience and Needs and Public Benefits in the Bank Holding Company Movement*, in THE BANK HOLDING COMPANY MOVEMENT TO 1978: A COMPENDIUM 286 (1978).

[38] The OCC and the Office of Thrift Supervision (OTS) announced comprehensive preemption to protect all national banks and thrifts from state consumer protection laws. The rationale was that these public-protecting laws rendered banks less efficient and profitable by limiting the kinds and amounts of loans that these banks could make. DEP'T of the Treasury, *Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation*, 2, 7 (2009), http://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf; OCC Interpretive Letter No. 999 (Mar. 9, 2004), https://www.occ.gov/topics/licensing/interpretations-and-actions/2004/int999.pdf.

[39] The OCC and the Office of Thrift Supervision (OTS) announced comprehensive preemption to protect all national banks and thrifts from state consumer protection laws. Department of the Treasury, *Financial Regulatory Reform: A New*

state consumer protection laws led inevitably to increased subprime lending, which led to the subprime crisis. So too did the OCC's decisions to permit banks to engage in derivatives trading. Profitability and efficiency had become of such paramount concern that the OCC even supplanted the requirement of "safety and soundness" for "efficiency". In a series of interpretative letters and regulatory decisions, the OCC allowed banks to engage in derivatives speculation using the metric of profitability and efficiency.[40]

During the era of rapid deregulation, there was an ongoing debate among banks, politicians, and scholars about what it meant to be a bank in the modern world. Amidst the deregulatory push, dissenters attempted to speak out. Gerald Corrigan, President of the Federal Reserve Bank of New York, wrote a 1982 essay entitled "Are Banks Special?" Corrigan answered the question in the affirmative and stated that:

> Banks and bank regulators have long since recognized the importance of banks acting in ways that preserve public confidence....Deposit insurance and direct access to [the Fed as] the lender of last resort are uniquely available to banks to reinforce that public confidence. Indeed, deposit insurance and access to the lender of last resort constitute a public safety net under the deposit taking function of banks. The presence of this public safety net reflects a long-standing consensus that banking functions are essential to a healthy economy. However, the presence of the public safety net uniquely available to a particular class of institutions also implies that those institutions have ***unique public responsibilities*** and may therefore be subject to implicit codes of conduct or explicit regulations that do not fall on other institutions.[41]

Corrigan's view was in line with the history of banking, but it was out of sync in the 1980s, and his view lost this ideological battle. The prevailing theory was that banks would operate through market rules and market discipline just like other corporations, but market discipline turned out to be a fantasy. The government would not or could not allow banks to suffer market discipline or failure, because banks, indeed, *are special.*

The truth is that while the banking industry was rejecting any public duties, they were all the while being supported by public funds. It was inevitable that in an era of deregulated banks, there

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Foundation: Rebuilding Financial Supervision and Regulation (2009), http://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf, 2, 7. Interpretive Letter No. 999, John D. Hawke, Jr., Comptroller of the Currency, to Barney Frank, Ranking Member, Committee on Financial Services, U.S. House of Representatives, March 9, 2004, http://www.occ.gov/static/interpretations-and-precedents/aug04/int999.pdf.

[40] For example, Saule Omarova reveals how the Office of the Comptroller (OCC), through a series of interpretive letters, allowed banks to engage in highly risky derivatives transactions by examining only their potential profits. However, derivatives, now a robust industry that dwarfs the nation's capital markets and GDP, were laden with risks and have since exposed many banking institutions to heightened vulnerability. Saule T. Omarova, *The Quiet Metamorphosis: How Derivatives Changed the "Business of Banking"*, 63 Univ. Miami L. Rev. 1041 (2009).

[41] E. Gerald Corrigan, *Are Banks Special?*, Minneapolis Fed. Reserve Bank (Jan. 1 1983), https://www.minneapolisfed.org/publications/annual-reports/are-banks-special (emphasis added).

would be large failures. What was surprising was that the market rules would only be applied when banks were making profits and not when they ultimately failed. Instead of allowing the market to enforce its discipline and allow banks to fail, as was dictated by the repudiation of the social contract, the government stepped in and bailed out the banking industry.[42] The incongruity of it all was articulated by Simon Johnson and James Kwak:

> Never before had so much taxpayer money been dedicated to save an industry from the consequences of its own mistakes. In the ultimate irony, it went to an industry that had insisted for decades that it had no use for the government and would be better off regulating itself—and it was overseen by a group of policymakers who *agreed* that governments should play little role in the financial sector.[43]

Ultimately, this period of transition resulted in an asymmetrical erosion of the social contract with banks. The government had waived the bank's restrictions and obligations, but kept the safety nets. The unprecedented Federal response exposed the myth that banks operate in the free market and were subject to market discipline. To be fair, some bankers and supporters of complete deregulation advocated for a complete market model and an imposition of market discipline without any government support. However, most policymakers and bankers, wary of panic-inducing failures and a system-wide credit crisis, supported a regime of government insurance, bailouts, and guarantees. But the ideological pendulum had swung so far that even post-crisis banking reforms did not challenge the predominant framework of banks as independent market actors.

I am well aware that the modifications being discussed at this hearing are not radical changes to banking regulation, but I believe understanding how the history of incremental deregulatory "reforms" over the last several decades has eroded the social contract is critical to contemplating the future role of the CRA in addressing the needs of vulnerable communities. Congress and regulators must be watchful that reforms promising "modernization" and "efficiency" do not become a Trojan Horse hiding even more deregulation relieving banks of their last remaining duties to the public. When a regulatory change promises more efficiency or ease of compliance, we must take a step back and ask a few questions: efficient for whom? And why should efficiency be our primary concern? Most importantly, we must ask a foundational question: what kind of banking sector would best meet the needs of the public and how can we design laws to achieve that outcome?

THE PEOPLE

The problems that the CRA was created to address have not been solved. If anything, they have become worse:

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[42] See, e.g., Richard A. Posner, A Failure of Capitalism: The Crisis of '08 and the Descent into Depression 45-46 (2009); Brian J.M. Quinn, The Failure of Private Ordering and the Financial Crisis of 2008, 5 N.Y.U. J.L. & Bus. 549, 555-62 (2009) (arguing that a root cause of the financial crisis of 2008 was "financial innovation and the corresponding long-term move towards liberalization and self-regulation").

[43] Simon Johnson & James Kwak, 13 BANKERS: THE WALL STREET TAKEOVER AND THE NEXT FINANCIAL MELTDOWN 164 (2010).

- Today, 1 in 4 families is unbanked or underbanked.[44]
- LMI families that have to use alternative financial services spend approximately 10% of their income—the equivalent of their food budget—in fees and interest just to use their money.[45]
- More than 40% of US the population would have to borrow money if they needed $400 for an emergency expense.[46]
- Families who have to rely on payday, title, or pawn lending to make ends meet pay APRs of up to 400% and often end up in a cycle of debt. This includes many government employees who were furloughed during the shutdown and had to resort to payday loans to meet basic expenses.[47]
- The rise of the high cost payday lending sector was a direct result of deregulation: as community banks failed and left banking deserts in their wake, the payday lenders filled the void. In 1977 when the CRA was passed, payday lending was a non-existent industry—today there are more payday lender locations than McDonalds and Starbucks.[48]
- State usury caps have steadily increased and become difficult to enforce due to state and federal deregulation of historic usury laws. States without an effective cap attract many nationwide lenders who can export the state's rates to their customers.[49]
- Bank closures are not spread out evenly—93% of bank closings are in LMI communities.[50]
- Rural America has lost *over half* of its banks in the last few decades and 1 in 8 communities is a banking desert.[51]

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[44] Economic Inclusion, *The 2017 National Survey of Unbanked and Underbanked Households*, FEDERAL DEPOSIT INSURANCE COMPANY (2017) https://economicinclusion.gov/surveys/2017household/.
[45] Mehrsa Baradaran, HOW THE OTHER HALF BANKS, 1-2. (2015).
[46] https://www.federalreserve.gov/publications/2018-economic-well-being-of-us-households-in-2017-dealing-with-unexpected-expenses.htm
[47] https://www.consumerfinance.gov/ask-cfpb/what-is-a-payday-loan-en-1567/; https://www.marketwatch.com/story/one-potential-winner-from-the-government-shutdown-payday-lenders-2019-01-08
[48] Economist John Caskey and others have noted that it was only when the banks left that the fringe banking industry exploded. Payday lending emerged during the 1990s "to serve a void created by the withdrawal of traditional lenders from the very small loan market." Caskey, *Fringe Banking: Check-Cashing Outlets, Pawnshops, and the Poor*, 3; There Are More Payday Lenders in U.S. Than McDonald's, NBC NEWS, (March 24, 2013), https://www.nbcnews.com/business/economy/there-are-more-payday-lenders-u-s-mcdonalds-n255156. https://www.newyorker.com/business/currency/the-high-cost-for-the-poor-of-using-a-bank.
[49] *Marquette Nat. Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299(1978); Christopher Peterson, *Taming the Sharks* (Akron, OH: University of Akron Press, 2004), 108. Utah Department of Financial Institutions, *Interest Rates* (2019) https://dfi.utah.gov/general-information/consumer-tips/interest-rates/.
[50] NCRC Research, *Banking Deserts in America*, NATIONAL COMMUNITY REINVESTMENT COALITION (June 2017) http://maps.ncrc.org/bankdeserts/index.html;. Frank Bass & Dakin Campbell, *Study Finds Latest Bank Brach Closing Strike Hardest in Poor Neighborhoods*, Bloomberg News (May 2, 2013) https://www.stltoday.com/business/local/study-finds-latest-bank-branch-closings-strike-hardest-in-poor/article_b33a4103-280f-5b3c-9754-3086dc4b0070.html.
[51] Housing Assistance Council, *The Community Reinvestment Act and Mortgage Lending in Rural America* 22 (Jan. 2015) http://www.ruralhome.org/storage/documents/publications/rrreports/rrr-cra-in-rural-america.pdf.

- Banks no longer offer small loans and though some promise "free checking," there are hidden fees and requirements that repel most small balance customers.[52]
- Many LMI customers choose not to have a bank account because of punishingly high fees, which have increased recently. Banks charge average overdraft fees of $33 per overdraft. This has become a profitable business with some large regional banks reporting that fees account for 40% of their income. Together, consumers paid $17 billion in overdraft fees in 2015, according to the Center for Responsible Lending (about $53 for every American).[53]
- In terms of the effects of redlining, median white wealth is twelve times higher than median black wealth. Thirty-seven percent of black families and 33 percent of Latino families have zero or negative wealth.[54] Thirty-four percent of black children grow up in a high poverty area.[55] Black families lost 53% of their wealth during the financial crisis due to foreclosures and the compounding effects of redlining and the racial wealth gap.[56]

In order to get beyond the numbers, it's important to understand the real human costs of poverty and inequality. Children growing up poor are 5 times more likely to die of accidents and much more likely to have serious chronic illnesses.[57] Growing up in poverty exposes children to toxic chemicals and repeated stress and trauma that can make permanent changes to a person's brain structure and function.[58] Today where a child is born determines her future life span, salary, future poverty, career opportunity, likelihood of ending up in prison, and her general life outcomes more

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[52] Most banks require balances of $1,500 to avoid fees on their basic accounts. Lisa J. Servon, *The High Cost, for the Poor, of Using a Bank*, New Yorker (Oct. 9, 2013), https://www.newyorker.com/business/currency/the-high-cost-for-the-poor-of-using-a-bank. Abby Vesoulis, *Millions of Americans Can't Afford a Checking Account. The Post Office Could Fix That*, TIME (Aug. 7, 2018); GOVERNMENT ACCOUNTABILITY OFFICE, COMMUNITY REINVESTMENT ACT, OPTIONS FOR TREASURY TO CONSIDER TO ENCOURAGE SERVICES AND SMALL-DOLLAR LOANS WHEN REVIEWING FRAMEWORK (Feb. 2018), https://www.gao.gov/products/GAO-18-244.

[53] Rebecca Borné, Peter Smith, and Rachel Anderson, *Center for Responsible Lending, How Overdraft Fees Harm Consumers and Discourage Responsible Bank Products,* May 2016; https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_broken_banking_may2016.pdf; Bob Pisani, *Bank Fees Have Been Growing Like Crazy*, CNBC (July 21, 2017 10:38 AM) https://www.cnbc.com/2017/07/21/the-crazy-growth-of-bank-fees.html. According to the Federal Financial Institutions Examination Council, JP Morgan made $1.9 billion from overdraft charges last year, Wells Fargo made $1.8 billion, and Bank of America made $1.7 billion.

[54] INSTITUTE FOR POLICY STUDIES, DREAMS DEFERRED (2019), https://ips-dc.org/wp-content/uploads/2019/01/IPS_RWD-Report_FINAL-1.15.19.pdf.

[55] NATIONAL CENTER FOR CHILDREN IN POVERTY, BASIC FACTS ABOUT LOW-INCOME CHILDREN UNDER 18 YEARS (2016), http://www.nccp.org/publications/pub_1194.html.

[56] The racial wealth gap is a direct consequence of a history of bank redlining. MEHRSA BARADARAN, THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP (2017); RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017); MORITZ KUHN ET AL., INCOME AND WEALTH INEQUALITY IN AMERICA, 1949-2016 (2018), https://www.ineteconomics.org/uploads/general/Wealthinequality_June2018.pdf. ELIZABETH ANDERSON, THE IMPERATIVE OF INTEGRATION (2013); DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (Harv. Univ. Press Reprint ed. 1993). LAURA SULLIVAN ET AL., THE RACIAL WEALTH GAP: WHY POLICY MATTERS 10 (2015), https://www.demos.org/sites/default/files/publications/RacialWealthGap_1.pdf [herinafter *Demos/IASP Paper*].

[57] Priyanka Boghani, *How Poverty Can Follow Children into Adulthood*, PBS FRONTLINE (Nov. 22, 2017) https://www.pbs.org/wgbh/frontline/article/how-poverty-can-follow-children-into-adulthood/.

[58] *Id.*

than nearly any other indicator, including her level of education.[59] In some cities, a child born to a family earning a median income will have access to a good school and opportunities for economic mobility while a child born in a different city will not.[60] These are the communities we are talking about when we talk about LMI communities that the CRA is meant to address; these struggling communities are the same communities that banks have been deserting as they search for higher profits and efficiency.

While meaningful access to financial products is not a cure-all for the effects of poverty and historic injustice, no policy effort to change the financial situation of the poor will be meaningful without such access. Banks must play an active role in fixing these problems at the federal level. These problems are too large and too complicated and too entrenched for one law or one industry to solve, but it is imperative that as Congress and bank regulators consider updating the CRA, they consider the real human effects of public policies.

Remembering, Revising and Reestablishing the Social Contract

The CRA is an endangered species. It once stood among a coherent system of bank regulations and regulatory enforcements designed to ensure that banks play a role in public policy and fulfill their obligation to the public. The CRA is the lone survivor of this regulatory tradition. As such, changes to the CRA must avoid further eroding banks' public obligations. We must deliberately reconsider our public interest in financial inclusion for LMI communities. CRA enforcement must be more transparent and less arbitrary, but "ease of compliance" is not a desired outcome in and of itself. If banks' incentives are just to pass the test with the least amount of work and regulators' incentives are to simplify this process to allow them to do that, we are unlikely to see meaningful changes in the problems of exclusion and inequality outlined above. This problem is too big and too important to reduce to simple box-checking. Certainly, this is not the fault of any individual bank, but it is part of a decades long trend of deregulation—often led by the OCC.

The CRA should be revised and strengthened so that it meets the desired outcomes of the law. Bank compliance should be measured against those outcomes. Consider as an example the way that safety and soundness regulation was reformed after the financial crisis through Comprehensive Capital Analysis and Review ("CCAR") stress-tests. Before the financial crisis, safety and soundness compliance was based more or less on regulatory box-checking: CAMELS ratings, risk-weighted capital, PCA governance, and more. These metrics failed to prevent the financial crisis because they failed to capture the complexity of the banking sector and the ways in which banks could use loopholes, derivatives hedges, or off-balance sheet maneuvers to hide risks. The Federal Reserve decided to administer the stress-testing regime after 2008. Because stress testing metrics are not made public, banks cannot "game the test." The stress test focuses on outcomes; the Federal Reserve simply asks whether a large bank has enough capital to withstand the stress scenario. The test takes account of the entire firm's risks, investments, management, and actions to make this determination. Banks that fail the test must raise more capital. While there is debate about whether the stress tests are rigorous enough, the design of the new regulatory regime focuses on outcomes as opposed to process. The CRA can likewise be reformed to focus on outcomes rather than a list of actions taken.

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[59] ENRICO MORETTI, THE NEW GEOGRAPHY OF JOBS (Mariner Books Reprint ed. 2013)
[60] EQUALITY OF OPPORTUNITY PROJECT: NEIGHBORHOODS, http://www.equality-of-opportunity.org/neighborhoods/ (last visited Mar. 7, 2019). MORETTI, *supra* note 8.

The desired outcome of the CRA is for banks to meet basic community banking needs, to play an active role in helping distressed communities, and to fulfill their public-serving duties. Because banks and communities differ significantly from each other, banks should specify their own outcomes and goals in consultation with community groups. Currently, the CRA allows certain banks to offer a "strategic plan" for CRA compliance. According to the FDIC, "The strategic plan enables the institution to tailor its CRA goals and objectives to address the needs of its community consistent with its business strategy, operational focus, and capacity and constraints."[61] Few banks have taken up this option, but I believe that this is the most outcome-oriented model and should be required of all banks. These strategic plans must be pegged to specific measurable outcomes and not just actions taken. A bank would specify the needs or problems in their region, devise a plan with specified metrics for meeting those needs, including the community partners involved in making and achieving those goals, and make yearly public reports on their progress. This is a way to align incentives in the CRA between the banks, regulators, and the communities they serve. This would require more work for banks and regulators, but would ultimately lead to better results. A few examples of outcome-oriented fixes are the following:

Financial Options rather than Financial Education: Many banks fulfill their CRA obligations by providing financial education classes, yet it is uncertain and unlikely that financial education is effective for LMI communities.[62] Take, for example, the use of expensive AFS products by the unbanked. Many banks offer financial literacy courses advising against these services while they continue to charge overdraft fees to LMI individuals—overdraft fees that push people out of banks and to AFS products. Financial literacy courses also advise against taking out payday loans due to their high interest, but banks do not offer small loans.[63] The missing element is not the education, but the option to have a checking account and small loan options that fits the needs of LMI communities. LMI communities need services, credit, and low-cost accounts—not lectures.

Aligning Incentives: Whenever possible, banks will align their profit incentives with CRA compliance, but often the most profitable investments and loans are not the one that are most useful to the community.[64] Rather than attempting to divert the focus of banks, and only receive an afterthought from those banks in return, the CRA could allow banks to outsource their public duties to organizations like CDFIs, MDIs and other public-serving organizations whose mission it is to meet the financial needs of communities. Banks could make capital investments or provide low-cost loans or other banking services in conjunction with community land trusts, local first-time home-buyer programs, or other local organizations meeting the needs of LMI individuals. These investments should be significant.

Fintech Banks and Assessment Areas: Bank assessment areas must be revised to match changes in the banking sector. The CRA was designed for an era of heavy geographic restrictions and its focus on local assessment areas no longer match a banking sector that sees new Fintech banking options with

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[61] FDIC, *Community Reinvestment Act: Guide to Developing the Strategic Plan*, FEDERAL DEPOSIT INSURANCE CORPORATION 1 (1998) https://www.fdic.gov/news/news/financial/1998/fil9826b.pdf.
[62] Willis, Lauren E. 2011. *"The Financial Education Fallacy." American Economic Review, 101(3).*
[63] Research shows that payday borrowers have exhausted all other sources of credit before relying on payday lenders *Payday Lending in America: Who Borrows, Where They Borrow, and Why*, PEW CHARITABLE TRUSTS (July 19, 2012) https://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why.
[64] CONGRESSIONAL RESEARCH SERVICE, THE EFFECTIVENESS OF THE COMMUNITY REINVESTMENT ACT 2 (Feb. 28, 2019) *available at* https://fas.org/sgp/crs/misc/R43661.pdf.

regularity. Many, including some regulators, tout Fintech as the non-bank solution to financial inclusion, but in reality, most Fintech providers access the payments systems through partnership with banks. And while banks exist globally, and Fintech companies exist virtually, community needs are local. LMI individuals still need local brick and mortar services such as check cashing, cash deposits, and remittance services. CRA obligation on banks with fintech partnerships should push them to respond to these needs. Bank should either provide free bank accounts to all customers using their Fintech apps for CRA credit or alternatively, their assessment area should track the nationwide footprint of the services provided by their partnering Fintech company. These banks should choose a strategic plan within that assessment area to fulfill their CRA duties.

Is it time for a Public Option?

The government supports banks through trust-inducing insurance, bailouts, liquidity protection, and a framework that allows the allocation of credit to the entire economy. Banks, in turn, operate as the central machinery of the economy by providing transaction services, a medium for trade, and individual and business loans that spur economic growth. This entanglement between the state and the banking system is the social contract written into foundational banking legislation, including the CRA. But relying solely on banks for this work has resulted in the exclusion of a significant portion of the public from the bounty of government support. This is not just a problem of the banking market. It threatens our social fabric through the array of disruptive consequences that follow from the lack of normal banking services and the vicious cycle of impossible loan payments. If the state is so heavily involved in the banking system, it has a direct interest in making sure that the banking system does not create or contribute to such vast inequality.

The CRA is the last remaining tool of regulators to require banks to extend credit beyond their preferred customer base, but banks have resisted engaging in "inefficient" or "unprofitable" transactions. And this is the truth that cannot be avoided—serving the needs of these communities may not be profitable. Yet the democratization of banking is too important a public imperative to be left solely up to the private sector. The supply of credit has always been a public policy issue, with banks functioning as intermediaries. Insofar as the state enables credit markets, deposit accounts and the payments system, all Americans should have equal access to these public utilities. Reasonable and safe bank accounts and credit products provide a smoother path both through and out of poverty. If banks are not providing financial services to the poor, and requiring them to do this is ineffective, inefficient, or otherwise politically fraught, then any serious discussion of financial inclusion must consider a public option.[65]

The most promising path toward a public banking option is to use the existing US Postal Service to extend credit and transaction services to individuals. Not only do many countries enjoy a robust postal banking regime, but our own USPS has a history of providing savings accounts and financial services. American banks long ago deserted the most impoverished communities, but post offices, even two centuries later, have remained—still rooted in an egalitarian mission. There have never been barriers to entry at post offices, and their services have been available to all, regardless of income. The post office, America's oldest instrument of democracy in action, can once again level the playing field.[66]

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[65] *How the Other Half Banks: Exclusion, Exploitation, and the Threat to Democracy,* HARVARD UNIVERSITY PRESS (Oct. 2015)
[66] *Mehrsa Baradaran, It's Time for Postal Banking,* 127 HARV. L. REV. F. 165 (2014)

In conclusion, the CRA must be strengthened in ways that recognize the tremendous task it was created to do and remains undone today. Banks are in a unique position to engage in this effort and have historically been tasked with playing a significant role. But a strong CRA should be only one step in an effort to match for the large inequalities in the credit system, the conglomeration of the banking sector, or the historic injustice of the racial wealth gap.

PREPARED REMARKS OF AARON GLANTZ
SENIOR REPORTER, REVEAL FROM THE CENTER INVESTIGATIVE REPORTING
BEFORE MEMBERS OF THE HOUSE FINANCIAL SERVICES COMMITTEE
APRIL 9, 2019

Chairman Meeks, Ranking Member Luetkemeyer, and members of the committee, my name is Aaron Glantz and I am a senior reporter at Reveal from The Center for Investigative Reporting, the oldest non-profit news organization in the country, focusing on in-depth investigative journalism. I have worked as a journalist for 23 years. Reveal's weekly, hour-long radio program airs on more than 500 public radio stations across the country and is listened to by millions of Americans.

These remarks were written with Emmanuel Martinez, a data reporter at Reveal, and the co-author, with me, of our investigation into modern-day redlining. I am grateful for the opportunity to testify today and share what we've learned, and the ways that the Community Reinvestment Act is falling short of its intended mission.

Why this story:

First, a word about why we launched our investigation. We were sparked by two straightforward questions:

Why, 50 years after the Fair Housing Act outlawed racial discrimination in mortgage lending, was the homeownership gap between blacks and whites greater than it was during the Jim Crow era?

Since 1977, banks have been required by the Community Reinvestment Act to lend in low-income neighborhoods and to low-income people.[1] But 40 years later, figures from the Census Bureau showed the average white family was worth 15 times more than the average black one.[2]

So, why wasn't the Community Reinvestment Act reversing the historic damage of racially discriminatory redlining?

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[1] FFIEC, Community Reinvestment Act Purpose and Background: https://www.ffiec.gov/cra/history.htm
[2] "Median Value of Assets for Households, by Type of Asset Owned and Selected Characteristics: 2013," US Census Bureau, released 2017: https://www.census.gov/data/tables/2013/demo/wealth/wealth-asset-ownership.html

To answer these questions, we analyzed millions of publicly available government mortgage records covering two years. Here's what we found:

In 61 metro areas across the country, people of color were more likely to be denied a conventional mortgage than their white counterparts, even when they made the same amount of money, tried to borrow the same amount of money, and wanted to buy in the same neighborhood.[3]

We found this problem in big cities: Atlanta and Detroit, Jacksonville and St. Louis, Tacoma, Washington and right here in Washington, D.C. For African American borrowers, the greatest disparities were in southern cities – Mobile, Alabama; Greenville, North Carolina; and Gainesville, Florida. Latinos were most likely to be turned down in Iowa City. We found the same troubling pattern in military communities like Killeen, Texas, college towns, like Santa Fe, New Mexico; in Little Rock, Arkansas and Tulsa, Oklahoma.

Despite these disparities, 99 percent of national banks received a satisfactory or outstanding grade on their inspections under the Community Reinvestment Act. The law, we found, is full of loopholes that permit banks to evade the purpose of the law. Here are three that we spotlighted in our reporting.

Number one: The Gentrification Loophole
CRA is race-neutral and failed to anticipate gentrification. So banks can claim credit for lifting up communities of color while lending almost exclusively to upwardly mobile white newcomers[4]. We saw this in Point Breeze, an historically African American neighborhood in Philadelphia, where banks put $154 million worth of home loans into the hands of white borrowers between 2012 and 2016, even as they denied nearly twice as many home loans to African Americans as they made in the neighborhood. This was true whether a black applicant wanted to buy a house, refinance an existing loan or take out a home equity line of credit.

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[3] Glantz, Aaron and Martinez, Emmanuel, "For people of color, banks are shutting the door to homeownership," Reveal, Feb. 15, 2018 https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/; and Glantz, Aaron and Martinez, Emmanuel, "How Reveal identified lending disparities in federal mortgage data" Feb. 15, 2018: https://s3-us-west-2.amazonaws.com/revealnews.org/uploads/lending_disparities_whitepaper_180214.pdf

[4] Glantz, Aaron and Martinez, Emmanuel,"Gentrification became low-income lending law's unintended consequence," Reveal, Feb. 16, 2018: https://www.revealnews.org/article/gentrification-became-low-income-lending-laws-unintended-consequence/

Number two: The Bank Branch Loophole
CRA only applies to banks when they have a branch in a city that takes deposits, exempting some of America's biggest banks from scrutiny in some of America's largest cities. That's the reason why JP Morgan Chase, the country's biggest bank, was not assessed under the Community Reinvestment Act here in Washington, D.C. It has a loan-making office for its brand for the wealthy, JP Morgan Private Bank, across the street from the White House, but no branches that take deposits. The result: it made 1,119 conventional home purchase loans here in 2015 and 2016, but only 23 to African Americans.[5] After we published our investigation into Chase in March 2018, the company announced plans to open a network of retail branches in the District, including in low-income neighborhoods and communities of color.[6] Because it is opening these branches, the bank will now be evaluated under the Community Reinvestment Act.

Number three: The Non-Bank Loophole
The Community Reinvestment Act doesn't apply to non-bank lenders, which make up an increasing share of the home loan market.[7] Last May, we published a story on three mortgage companies controlled by Warren Buffett's Berkshire Hathaway.[8] These lenders have become an increasingly important funder of the American dream in many of the country's largest cities. We reported that in 2017 Berkshire Hathaway's mortgage companies made 28,000 loans worth $7.3 billion. In his letter to shareholders, Warren Buffett expressed enthusiasm that their "growth exploded." He said he looked forward to further expansion.

In our investigation, we found that as they expanded, Berkshire Hathaway's mortgage companies did not serve the entire community -- across the country, they put most of their offices in white neighborhoods, hired a primarily white staff of mortgage consultants, and lent overwhelmingly to white borrowers in majority-white neighborhoods.

We tracked Berkshire Hathaway's lending through three of its brands: Trident Mortgage Corporation, HomeServices Lending, and Prosperity Home Mortgage.

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[5] Glantz, Aaron and Martinez, Emmanuel, "Chase rarely lends to people of color in DC – and it's probably legal," Reveal, March 22, 2018:
https://www.revealnews.org/article/chase-rarely-lends-to-people-of-color-in-dc-and-its-probably-legal/
[6] Glantz, Aaron and Martinez, Emmanuel,, "Chase announces major expansion in DC," Reveal, April 19, 2018: https://www.revealnews.org/blog/chase-announces-major-expansion-in-dc/
[7] Andriotis, AnnaMaria, "Banks No Longer Make the Bulk of US Mortgages," Wall Street Journal, Nov. 2, 2016, https://www.wsj.com/articles/banks-no-longer-make-the-bulk-of-u-s-mortgages-1478079004
[8] Glantz, Aaron and Martinez, Emmanuel, "Warren Buffett's mortgage companies set up to cater to white clients," Reveal, May 3, 2018,
https://www.revealnews.org/article/warren-buffetts-mortgage-companies-set-up-to-cater-to-white-clients/

- In Philadelphia, Trident Mortgage made 1,721 conventional home purchase loans in 2015 and 2016, 47 of them to African Americans and 42 to Latinos.
- In Atlanta, HomeServices Lending made 1,358 conventional home purchase loans, 63 to African Americans and 46 to Latinos.
- In Washington, Prosperity Home Mortgage made 2,650 conventional home purchase loans, including 167 to African Americans and 144 to Latinos.

Because the Community Reinvestment Act only applies to banks, none of these institutions are assessed under the Community Reinvestment Act.

I should mention, however, that after our story ran, Trident took steps to improve its image. The company hired a director of community engagement who is African American. In addition, community activists and real estate agents in formerly redlined neighborhoods say the company has reached out to extend credit to people and neighborhoods it didn't not serve before.[9]

Modernizing the Community Reinvestment Act

Our reporting shows the Community Reinvestment Act is not fulfilling its mission. Today, the Treasury Department, OCC, and Federal Reserve are developing proposals to modernize its enforcement.

As a journalist at a non-profit, non-partisan news organization I want to make one thing crystal clear: we take no position on any policy proposal. We are not here to offer solutions or proposals. We are here to simply present the facts we uncovered in our two-year long investigation.

One of the people I interviewed as part of that reporting was Tom Curry, the immediate, prior Comptroller of the Currency. Curry held that position from 2012 to 2017, and during those five years heading OCC, he found 99 percent of banks were doing a satisfactory or outstanding job of complying with CRA. How could that be, I asked him, when we found systemic denials of home loans to people of color in Atlanta, Detroit, St. Louis, Washington, DC and dozens of other cities?

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[9] Glantz, Aaron, "We exposed modern-day redlining in 61 cities. Find out what's happened since," Reveal, October 25, 2018
https://www.revealnews.org/blog/we-exposed-modern-day-redlining-in-61-cities-find-out-whats-happened-since/

This is what he said to me: "I think the results from your studies are unacceptable from the standpoint of what we want as a nation and to make sure that everyone shares in economic prosperity."[10] Curry said that after 40 years the Community Reinvestment Act was showing its age.

We also repeatedly requested an interview with Joseph Otting, the current Comptroller of the Currency. He turned us down. Had Comptroller Otting agreed to talk with us, I would have asked him both about his plans for CRA reform and about his record as an executive at OneWest Bank, the position he held prior to his appointment.

Otting was CEO of OneWest from 2010 to 2015. When he was in charge, government records show only 1 percent of home purchase loans went to African Americans and 3 percent to Latinos,[11] even though the bank was headquartered in Southern California. Nonetheless, it received a "satisfactory" rating under the Community Reinvestment Act.[12]

Had he sat for an interview, I would have asked Otting if that rating was fair, just and correct.

Thank you very much for your time. I look forward to your questions. A description of our methodology is included in our written testimony for the record.

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How we found what we found:

We based our analysis on publicly available government data released through the Home Mortgage Disclosure Act, which requires mortgage lenders to report basic information about loan applications to ensure fair lending practices. The government data reflects nearly every time someone tried to buy a home in a given year and includes information about the borrower, the type of loan that's being sought, and the location of the property.[13]

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[10] Reveal, "The Red line: racial disparities in lending," February 17, 2018, https://www.revealnews.org/episodes/the-red-line-racial-disparities-in-lending/

[11] PBS NewsHour, "How a legal loophole benefits neighborhood newcomers, while leaving long-time residents behind," February 19, 2018 "https://www.pbs.org/newshour/show/blacks-and-latinos-say-they-have-trouble-getting-home-loans-in-philadelphia-heres-whats-happening

[12] Community Reinvestment Act Performance Evaluation: OneWest Bank National Association, Office of the Comptroller of the Currency, August 2, 2015, https://www.occ.gov/static/cra/craeval/jun17/25079.pdf

[13] Home Mortgage Disclosure Act Code Sheet: https://www.ffiec.gov/hmdarawdata/FORMATS/2016HMDACodeSheet.pdf

To determine whether a disparity in lending existed, we used a statistical technique called binary logistic regression, used by academic experts, regulators, and law enforcement. This type of regression assesses the relationship between multiple independent variables and a single binary output. In this case, the output was whether a mortgage was denied.

We separately analyzed data from 2015 and 2016, looking at nine independent variables against loans that were denied. Those factors included:

- The race/ethnicity of applicant
- Gender of the applicant
- Whether there was a co-applicant
- Applicant's income
- Loan amount
- Ratio between the loan amount and the applicant's income
- Racial and ethnic breakdown by percentage for each census tract
- Ratio of a census tract's median income compared to the metro area's median income
- Regulating agency of the lending institution

Lending institutions say credit scores play an important role in their decision to approve or deny an application, providing crucial information about whether an applicant is likely to make his or her loan payments.

Despite its importance in lending decisions, credit score data is not included in the HMDA dataset, so we couldn't control for this important variable, that banks claim is the main controlling factor. However, banks conceal the scores claiming the data to be proprietary, and the Freedom of Information Act specifically exempts the financial information from being released to the public.[14]

Lenders have criticized our analysis for not including credit scores.[15] The Dodd-Frank Act mandates that credit score and debt-to-income ratio be disclosed under the Home Mortgage Disclosure Act. But mortgage lenders have successfully deflected efforts to implement the law – so the data remains secret. Last year, Congress passed a bill that exempts nearly 85 percent of lenders from disclosing such information.[16]

[14] Reporters Committee for Freedom of the Press: https://www.rcfp.org/federal-foia-appeals-guide/exemption-8

[15] Email to Reveal from Mike Fratantoni, Chief Economist, Mortgage Bankers Association: https://www.documentcloud.org/documents/4364490-MBA-Statement-to-Reveal.html

[16] SB 2155 would exempt lenders who originate 500 mortgages/500 open-end lines of credit for each of the two preceding years from new HMDA disclosures added by the Dodd-Frank Act. Many independent

For our analysis, we focused on conventional home purchase loans for one- to four-unit properties where prospective borrowers said they would live, similar to the subset the Federal Reserve analyzes when it tracks lending trends. While a substantial number of applicants of color borrow through the Federal Housing Administration loan market, we wanted to gauge relative access to a bank's standard product – conventional mortgages – between applicants of color and white ones.

The regression analysis showed that people of color were more likely to be denied a conventional mortgage in 61 metros out of a possible 409.

That is not to say that this problem doesn't exist in the other 348 metros.

We had to develop one statistical model – one set of independent variables – and apply it to all metros in the country. Those metros are diverse in terms of population, median income, and housing stock, so it could be that some of those metros not among the 61 need a more specific, well-tailored model to make lending disparities visible.

Reveal conducted two other analyses in addition to the regression. A census tract analysis helps show the geographic aspects of mortgage lending data. This census tract-level data can be used to identify where loans are being made and denied for every census tract in the country juxtaposed with the racial and ethnic demographics of that particular tract.[17]

For example, we used this analysis to zero in on one Philadelphia neighborhood, Point Breeze. We found that black residents make up nearly nearly three-quarters of the neighborhood's population, but nearly 80 percent of the loans there went to white applicants.

We were also able to use this analysis to look at metro areas as a whole. In the Philadelphia metro, we found that white applicants received 10 times as many loans as black applicants, even though they make up a similar percentage of the total population.

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analysts estimate 85 percent of banks would be exempt under this provision. See Associated Press, March 29, 2018:
https://www.bostonglobe.com/business/2018/03/12/senate-bill-would-diminish-banks-mortgage-disclosures/BzHIT3hMp0G7z1pxFFZqLI/story.html

[17] A full explanation of our methodology in analyzing Home Mortgage Act data can be found in our white paper:
https://s3-us-west-2.amazonaws.com/revealnews.org/uploads/lending_disparities_whitepaper_180214.pdf

Lastly, we compiled a market share analysis that we used to find lenders that dramatically favor white borrowers over people of color.

This analysis breaks down the number of applications, loans made and denials by race and ethnicity for each lending institution in each metro in the country. We also included variables that show the proportion – or share – of all applications, loans made and denials for each institution in each metro area.

For example, Trident Mortgage Company is Philadelphia's biggest conventional mortgage lender. The company accounted for 10 percent of all applications in the Philadelphia metro that came from white applicants, and a similar share of the loans that went to white borrowers. But Trident had a significantly smaller percentage in applications received from and loans made to black borrowers, less than 4 percent for each. This analysis shows Trident is a mortgage company that favors white borrowers.

We made all this data and analysis available to the public through our interactive map and through a texting application.[18] The data also can be downloaded in its spreadsheet format.[19]

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[18] Reveal: https://apps.revealnews.org/redlining/
[19] Reveal: https://www.revealnews.org/article/how-we-identified-lending-disparities-in-federal-mortgage-data/

Testimony of B. Doyle Mitchell
President and CEO of Industrial Bank on behalf of the National Bankers Association

Before the House Financial Services Subcommittee on Consumer Protection and Financial Institutions

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

April 9, 2019

Chairman Meeks, Ranking Member Luetkemeyer, Chairwoman Waters and members of the Subcommittee, good morning and thank you for this opportunity to testify on the Community Reinvestment Act. It gives me great hope that one this Subcommittee's first hearings of the 116th Congress is shining light on this critical issue. My name is B. Doyle Mitchell, and I am President and CEO of Industrial Bank. Industrial Bank has been serving individual customers and small businesses in Washington D.C. and Prince Georges County, Maryland since 1934.

I am also a board member of the National Bankers Association (the "NBA"). The NBA is the leading trade association for the country's Minority Depository Institutions ("MDIs"). Our mission is to serve as an advocate for the nation's MDIs on all legislative and regulatory matters concerning and affecting our member institutions as well as the communities they serve. Many of our member institutions are also Community Development Financial Institutions ("CDFIs"), and many of our member institutions have become banks of last resort for consumers and businesses who are underserved by traditional banks and financial service providers.

THE NATIONAL BANKERS ASSOCIATION SUPPORT A STRONG CRA

In enacting CRA, Congress stated that the purpose of CRA was to ensure that regulated financial institutions demonstrate that they "serve the convenience and needs of the communities in which they are chartered to do business." As such, these institutions have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered." While the CRA has made great strides in ensuring access to credit in low and moderate income ("LMI") communities and among minority and low-income borrowers, systemic economic and social challenges remain perpetuating a lack of access to fair services for many and allowing predatory providers to thrive. Given growing economic inequity in urban, rural and Native American communities, it is important to get CRA reform right.

The NBA strongly support the purposes and objectives of CRA. Enacted 40 years ago, CRA has been instrumental in ensuring LMI communities have access to credit and financial services, but the last significant regulatory overhaul of CRA occurred two decades ago. In that time, the financial services industry has radically changed but, CRA has not. We strongly support modernization that ensures CRA does not lose effectiveness for LMI communities and that also creates a regulatory framework that streamlines financial institutions' ability to comply with the CRA. The success of CRA reform effort should be measured by whether it will result in more credit and services delivered to LMI communities that doesn't create unnecessary regulatory burdens on the financial institutions that best serve these communities.

THE NBA RECOMMENDS UPDATING CRA AND PRESERVING FLEXIBILITY

NBA members believe that the current framework for CRA is effective but needs modernization to reflect changes in the financial service landscape. We strongly agree with the notion expressed by regulators and lawmakers alike, that CRA examinations should be conducted in a more clear, consistent and transparent manner. We believe; however, this result can be best achieved by modifying the existing framework – versus inventing a new system.

We have great concerns about the proposed "metric based, single ratio" framework outlined in the OCC's ANPR; and thus, opposed its adoption. We believe the proposed "single ratio" metric is too simplistic to fit all banks and all communities. We believe the proposed system will reduce banks' flexibility to respond to local market conditions. We believe that a single ratio would encourage a minimalist approach to CRA compliance where financial institutions would be more focused on hitting their ratio than thinking comprehensively about potential approaches for meeting the credit needs of LMI communities that the current framework requires.

While imperfect, the strength of the existing framework is that it is flexible. Each bank can develop a strategy that fits its business model, local economic conditions and opportunities. The distressed urban, rural, and Native communities that CDFIs and MDIs serve are often "outliers" relative to more prosperous suburban and robust, high-growth communities. Thus, a formula that fits high or middle-income places is unlikely to fit the communities we serve. No matter how sophisticated, we do not believe a formula- based approach is likely to adequately capture the nuances of every community – and could result in harm to our banks and communities.

We believe that the CRA can continue to be a powerful tool to promote investment in LMI communities. To this end, we offer the following recommendations to the Subcommittee on this very important topic.

Creating an MDI investment tax credit that can accompany the CRA's provisions encouraging majority bank equity investments in MDIs. The Community Reinvestment Act has long provided for CRA credit for majority-owned financial institutions making CRA-qualified investments in MDIs – ranging from selling loan participations to equity investments in MDI holding companies. Unfortunately, this provision standing alone has not encouraged the volume of MDI-majority owned financial institution investment that this CRA provision was intended to encourage. We would urge Congress and federal regulators to consider potential enhancements to this particular provision of the CRA, including the development of an MDI investment tax credit that could be utilized by majority-owned financial institutions who also receive CRA consideration for investments in MDIs.

The NBA strongly recommends enhanced interagency CRA training for examiners. To address discrepancies in implementation of CRA between bank regulatory agencies, we recommend that all CRA examiner trainings be conducted on an interagency basis. To further facilitate common understanding of how CRA exams are conducted, we recommend that bank CRA officers also be permitted to attend such trainings.

The NBA recommends the creation of a robust public database of CRA case studies and peer performance data. The case studies should describe the project or activity and include an explanation of why specific activities are deemed CRA "eligible" or "ineligible." Approximately 83% of NBA CRA officers surveyed indicated that they would benefit from a formal line of communication between their CRA regulator and their bank's CRA team that could provide near real-time feedback on CRA-eligible activity before an investment is made. A database of opinions and case studies can serve as a training tool and source of information for both examiners and bankers.

The NBA strongly recommends that CRA encourage banks to provide long-term support to CDFIs. Specifically, all banks should receive CRA consideration for supporting CDFIs and MDIs regardless of whether such entity is located in and/or serves the bank's Assessment Area. Regulators should also encourage banks to make long-term investments, loans, and deposits to support CDFIs and MDIs by giving instruments held in portfolio the same weight as new originations in an exam cycle.

The NBA recommends that bank investors receive significant and consistent CRA credit throughout the life of an investment. The CRA exam cycle creates barriers for traditional banks to invest in CDFI and MDI banks. Examiners give the most CRA credit to new transactions executed during an exam cycle – which are generally three years apart. For example, a bank can get CRA credit every three years for renewing the same loan to a CDFI or MDI loan fund that matures during an exam cycle. Yet, if a bank makes an equity investment in a CDFI or MDI bank that is typically held in portfolio over a longer period, they get little CRA credit beyond the original investment. Banks also report significant inconsistencies in treatment of older investment activities by examiner and across regulatory agencies.

The NBA recommends that CRA help promote financial literacy and inclusion among LMI populations, as well as unbanked, underbanked, and other vulnerable populations. Access to credit and financial services needs are critically important to the economies of physical places. Thus, CRA should continue to ensure LMI places have robust access to such services. Given the rise of payday lenders and other predatory providers who target vulnerable people, CRA needs a complementary prong that focuses on financial literacy and inclusion.

The NBA supports increasing the federal government's participation in Treasury's Minority Bank Deposit Program. Our MDIs represent some of the smallest financial institutions in the banking industry. They often have limited branch footprints and a limited ability to reach new depositors outside of their geographic footprint – either directly through branches or in marketing resources – so mission-oriented depositors from nonprofits and governmental entities are often a reliable source of deposits for MDIs. Historically, Treasury's Minority Bank Deposit Program has been a reliable source of deposits for NBA member banks, but the federal government's utilization of the program has decreased dramatically in recent years. While not specifically on topic for today's hearing I would be remiss if I did not note the NBAs unequivocal support for the reintroduction of Chairman Meeks' bill codifying the Minority Bank Deposit Program. We would urge that the measure be enacted this Congress. We also urge the relevant oversight subcommittees for this program to identify the particular causes of the program's decline and the affirmative steps Treasury will be taking to increase participation in the program.

CONCLUSION

The NBA again applauds the Subcommittee for holding this important hearing and for the full Committee's ongoing efforts to assert and reassert the importance of the CRA in the modern lending marketplace. CRA has made great strides in ensuring access to credit in LMI communities and among minority and low-income borrowers. Systemic economic and social challenges, however, perpetuate to lack of access to fair services for many and allow predatory providers to thrive. Given growing economic inequity in urban, rural and Native American communities, it is important to get CRA reform right.

In this regard, the NBA and its members banks look forward to working closely with the Committee and Subcommittee to ensure a modernization that ensures CRA does not lose effectiveness for LMI communities and that also creates a regulatory framework that streamlines financial institutions' ability to comply with the CRA. I have attached a copy of the NBA's November 16, 2018 joint comment letter with the Community Development Bankers Association responding to the OCC proposed changes to the CRA which contains more detailed views for your consideration. Thank you again for the opportunity to testify. I will be pleased to answer any questions.

November 16, 2018

Via Electronic Submission

The Honorable Joseph Otting
Comptroller
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

RE: Docket ID OCC-2018-0008; RIN 1557-AE34 - Reform of the Community Reinvestment Act

Dear Comptroller Otting,

The members of the Community Development Bankers Association (CDBA) and the National Bankers Association (NBA) respectfully submit the enclosed comments in response to the Advance Notice of Proposed Rulemaking (ANPR) published in the Federal Register on September 5, 2018, on reform of the Community Reinvestment Act (CRA).

WHO WE ARE & WHO WE SERVE

CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. There are 135 banks with the Department of the Treasury's Community Development Financial Institution (CDFI) designation – which means at least 60% of their total lending, services, and other activities are targeted to low- and moderate-income (LMI) communities. CDFI banks have a primary mission of community development and work in impoverished urban, rural, and Native American communities. Our members are on the front lines serving LMI communities that are too often by-passed by traditional banks and financial service providers.

NBA is the leading trade association for the country's Minority Depository Institutions (MDIs). NBA's mission is to serve as an advocate for the nation's MDIs on all legislative and regulatory matters concerning and affecting our member institutions and the communities they serve. Many of NBA's member institutions are also CDFIs, and like the CDBA, many of our member institutions are the only banks in their communities that serve consumers and businesses who are underserved by traditional banks and financial service providers.

CDBA AND NBA SUPPORT A STRONG CRA

In enacting CRA, Congress stated that the purpose of CRA was to ensure that regulated financial institutions demonstrate that they "serve the convenience and needs of the communities in which they are chartered to do business." As such, these institutions have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered." CRA has made great strides in ensuring access to credit in LMI communities and among minority and low-income borrowers. Systemic economic and social challenges, however, perpetuate a lack of access to fair services for many and allow predatory providers to thrive. Given growing economic inequity in urban, rural, and Native American communities, it is important to get CRA reform right.

CDBA and NBA strongly support the purposes and objectives of CRA. Enacted 40 years ago, CRA has been instrumental in ensuring LMI communities have access to credit and financial services. Yet, the last significant regulatory overhaul of CRA occurred two decades ago. In that time, the financial services industry has radically changed, but CRA has not. We strongly support modernization that ensures CRA does not lose effectiveness for LMI communities. The success of this CRA reform effort should be measured by whether it will result in more credit and services delivered to LMI people.

CDBA AND NBA RECOMMEND UPDATING CRA AND PRESERVING FLEXIBILITY

CDBA and NBA members believe that the current framework for CRA is effective, but needs modernization to reflect changes in the financial service landscape. We strongly agree with the Office of the Comptroller of the Currency (OCC) that CRA examinations should be conducted in a more clear, consistent, and transparent manner. We believe, however, that this result can be best achieved by modifying the existing framework – rather than inventing a new system. Thus, the comments contained herein will focus on updating the current framework.

We have significant concerns about the proposed "metric based, single ratio" framework outlined in the ANPR; and thus oppose its adoption. We believe the proposed "single ratio" metric is too simplistic to fit all banks and all communities. We believe the proposed system will reduce banks' flexibility to respond to local market conditions. We believe a single ratio would encourage a minimalist approach to CRA compliance whereby financial institutions will be more focused on hitting a ratio than thinking comprehensively about the best strategies for meeting credit needs of LMI communities that the current framework requires.

While imperfect, the strength of the existing framework lies in its flexibility. Each bank can develop a strategy that fits its business model, local economic conditions, and opportunities. The distressed urban, rural, and Native communities served by CDFI and MDI banks are often "outliers" relative to more prosperous communities. Thus, a formula that fits high- or middle-income places is unlikely to fit the communities we serve. No matter how sophisticated, we do not believe a formula-based approach can adequately capture the nuances of every community – and could result in harm to our banks and communities.

We believe that CRA can continue to be a powerful tool to promote investment in LMI communities. In doing so, we urge the regulators to both ensure CRA remains strong, as well as strive to eliminate unnecessary regulatory burden. To this end, we offer the following responses to the questions outlined in the ANPR.

I. CURRENT REGULATORY APPROACH

CDBA and NBA members generally believe the CRA framework, regulations, and Question & Answer (Q&A) guidance are clear and understandable. Our members, however, believe inconsistency in implementation by examiners is a substantial problem that should be addressed. CDFI and MDI banks note significant discrepancies in interpretation and application of the rules from one exam to the next. For example, a survey of NBA member institutions' CRA officers found that nearly 60% of respondents indicated that interpretations of relevant provisions of the CRA and what qualifies as CRA activity varies significantly between examiners. Nearly 70% of NBA CRA officers, for example, also noted that they would benefit from having more clarity on CRA-eligible activities before engaging in activities. Despite a common set of regulations and Q&A guidance, bankers cite discrepancies in implementation both between and within Federal agencies. For example, terms like "reasonable" and "substantial" leave interpretation up to the discretion of the examiner and can lead to inconsistencies in examinations. With the changes outlined below, we believe the current framework and regulations can be implemented in an objective, fair, and transparent manner.

CDBA and NBA recommend improving consistency with: (1) enhanced examiner training; (2) robust public information sharing of peer data and case studies; and (3) reinstituting the ability of banks to obtain an agency opinion on CRA eligibility of a proposed activity with public dissemination of those opinions once given.

A. TRAINING:

CDBA and NBA strongly recommend enhanced interagency CRA training for examiners. To address discrepancies in implementation of CRA between bank regulatory agencies, we recommend that all CRA examiner trainings be conducted on an interagency basis. To further facilitate common understanding of how CRA exams are conducted, we recommend that bank CRA officers also be permitted to attend such trainings.

B. PUBLIC CASE STUDY DATABASE:

To enhance transparency, CDBA and NBA recommend the creation of a robust public database of CRA case studies and peer performance data. The case studies should describe the project or activity and include an explanation of why specific activities are deemed CRA "eligible" or "ineligible." Approximately 83% of NBA CRA officers surveyed indicated that they would benefit from a formal line of communication between their CRA regulator and their bank's CRA team that could provide near real-time feedback on CRA-eligible activity before an investment is made. A database of opinions and case studies can serve as a training tool and source of information for both examiners and bankers.

C. CRA METRICS:

CDBA and NBA recommend publication of timely CRA peer performance data to enhance transparency. In lieu of the single ratio, we propose CRA performance metrics tailored to each bank's business model, performance context, and mix of products and services. Similar to financial performance indicators, bank CRA performance benchmarks could be published and available for comparison to other peer banks (by geography, business model, asset size, etc.). Banks should also have the opportunity to describe innovative or other high-impact initiatives that cannot easily be captured with numeric benchmarks. Below are some illustrative potential benchmarks:

- *Is the bank's total lending and services in LMI census tracts proportionate to the LMI population in its Assessment Area?*
- *What is the average number of volunteer hours contributed per employee? How does this compare to peer banks?*
- *What is the total number of LMI residents that participated in and completed financial literacy training with the bank?*
- *What was the average increase in credit score of customers participating in credit repair initiatives?*

D. ASSET THRESHOLDS:

CDBA and NBA also recommend updating asset thresholds on a regular basis and adding in additional gradations in expected performance as banks grow. Currently, a CDFI bank of $1.252 billion has the same CRA requirements as a $10 billion, $100 billion, or $1 trillion bank. The threshold between a small bank holding company and a Large Bank holding company was raised from $1 billion to $3 billion earlier this year and CDBA recommends that the CRA Large Bank threshold be set at a similar amount. Within the Large Bank category, there should be different performance standards and requirements as the asset size and capacity of a bank grows. A $1.252 billion bank is much closer to its community and more likely to reinvest in the communities in which it raised deposits than a larger bank. There is a far greater risk that a bank with assets exceeding $10 billion will raise deposits from one community and reallocate it to meet demand in a different community. For that reason, as banks become larger they should have most robust CRA requirements.

II. METRIC BASED SINGLE RATIO FRAMEWORK:

CDBA and NBA oppose adoption of the proposed "single ratio" metric framework. We believe the new system proposed in the ANPR could be harmful to LMI communities. We also believe it will greatly reduce banks' flexibility to develop strategies and initiatives that address local market conditions and respond to challenges and opportunity unique to each community.

The ANPR requests input on how to implement the "single ratio" system and how certain diverse factors could be measured and weighted to fit into a formula that will be used to calculate the ratio. The factors listed include qualitative factors such as performance context, innovation, community involvement, business models, and others. In short, we do not believe these highly subjective factors can be measured quantitatively. We believe the proposed "single ratio" metric framework is too simplistic to fit all banks and all communities. In addition to reducing flexibility, we note that any formula based system can easily create incentives that generate unintended outcomes. A more thoughtful and holistic approach is better for both our banks and our communities.

For these reasons, CDBA and NBA respectfully decline to comment on Questions 7-12 of the ANPR. Instead, we urge the agency to direct its energies toward modernizing the current CRA framework.

III. REDEFINING COMMUNITY AND ASSESSMENT AREA

Technology is fundamentally reshaping the financial services industry. Modernizing CRA to consider technology-driven delivery channels should be a key priority. CRA needs to incorporate the evolution toward mobile, internet, and other digital delivery mechanisms while recognizing the continuing importance of brick-and-mortar branches. Notably, Federal Reserve and FDIC research reveals that un- and under-banked consumers are more likely than other demographics to access financial services through mobile devices, prepaid debit cards, or other nontraditional means.

The CRA statute requires banks to serve the "convenience and needs" of the communities in which they are chartered to do business and have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered." As technology disrupts and unbinds financial service delivery to geography, regulators need to rethink their interpretation of the "convenience and needs" of the communities that our member institutions serve. CRA regulations could be reoriented to view services delivered via technology as a new form of a micro-sized "branch" office.

A. DELIVERY CHANNELS:

To meet the convenience and needs of customers in the current technology driven era, CDBA and NBA recommend that CRA recognize services provided via digital channels based on the customers' geocoded addresses. If a customer resides in an LMI census tract, services delivered to that customer should be CRA eligible. For a business customer, the address can be tied to the principal business address. We do not believe it is necessary to tailor a service, product, or delivery strategy to LMI customers to be CRA eligible. If a bank, however, does develop a tailored product or service for LMI customers, examiners should afford additional CRA consideration as an innovative or high-impact product.

CDBA and NBA recommend regulators consider products and services delivered through new channels as CRA eligible. We do not support, however, diluting CRA to include activities in non-LMI census tracts and/or those that do not provide a direct benefit to LMI people.

B. BUSINESS MODEL APPROACH TO CRA:

CDBA and NBA recommend that regulators explicitly recognize a variety of bank business models and craft CRA regulations that fit each business model. The banking sector has grown far more diverse over the past two decades due to technology and other factors. Thus, having a "one size fits all" CRA regulatory standard no longer makes sense. We anticipate that the business models, delivery channels, and mix of product and services offered by banks will continuously evolve in response to advancing technology. Within CRA, banking regulators already recognize some non-traditional bank business models.

A bank's business model has a strong bearing on how it reaches and serves customers. A traditional community bank is principally located in, collects deposits, and serves a defined local geography. Thus, their CRA Assessment Area should reflect this targeted geographic focus. By contrast, an internet bank or credit card bank may raise deposits and serve customers on a nationwide basis. Thus, their Assessment Area should include both the local community in which they are chartered and the broader geographies they actually serve. Similarly, limited purpose and wholesale banks principally take deposits from and make loans to a broad geography. Limited purpose and wholesale banks should no longer be permitted to select only local Assessment Areas that are significantly smaller in scope than their real service areas. Large Banks with a national or super-regional focus that have a business model with a mix of retail, internet, credit card, or other delivery strategies should be required to have corresponding CRA strategies that reflect their delivery channels. Lest CRA be adapted to reflect the evolution of alternative business models and delivery channels, technology will continue to exacerbate an inequitable application of CRA between traditional and non-traditional banks and create significant loopholes for some institutions to avoid meaningful CRA obligations.

C. CDFI BANK BUSINESS MODEL:

CDBA and NBA recommend that the regulatory agencies explicitly recognize CDFI banks as a distinct business model and adopt a set of tailored CRA requirements. Certified CDFI banks should have the option to select the CDFI bank CRA regulations or small community bank CRA regulations. CDFI banks are a distinct business model that should be recognized under CRA. CDFI banks have a primary mission of promoting community development and/or serving economically disenfranchised populations. To be certified CDFI, a bank must demonstrate that at least 60% of its total activities (lending, investment, services) are focused on serving low-income communities, low-income people, or otherwise underserved populations.

CDFI banks are innovators and leaders in community development finance and have an outsized impact relative to their modest size. CDFI banks represent only 2% of the 5,765 FDIC insured banks in operation as of 6/30/2018. CDFI banks are among the smallest regulated banks in the United States. The average asset size of a CDFI bank is $400 million, with the largest at $3.17 billion and the smallest at $26 million. Given the unique role and public policy objectives

they fill, we believe CDFI banks should have the option to have their own tailored CRA requirements.

Most importantly, CDBA and NBA recommend that CRA reporting align with the reporting requirement of the U.S. Treasury Department's CDFI Fund. Federal banking regulatory agencies implementing CRA and the Treasury Department are interested in the same outcomes – improving the economic well-being of LMI communities through access to responsible credit and financial services. Yet these agencies have very different definitions, regulatory standards, and reporting requirements. This lack of policy coordination results in voluminous double reporting that creates an unnecessary administrative burden and siphons resources away from entities serving underserved communities. We propose that the agencies work to close the gap by developing common definitions and reporting standards, as well as sharing data. To become a certified CDFI, a bank must demonstrate that at least 60% of its total activities meet the CDFI Fund's Target Market test. A Target Market can be a geographic based Investment Area or people focused Target Population – or a combination of the two. The vast majority of CDFI banks meet the Target Market test using the geographic Investment Area designation.

The requirements of the CDFI Target Market and CRA Assessment Areas -- while sharing similarities -- do not directly align. This circumstance creates additional compliance burden as CDFI banks must maintain separate sets of loan and services data and documentation. Most CDFI banks' Assessment Areas are incorporated in their more broadly defined Investment Areas. Although CDFI Investment Areas are not required to correspond with branch and ATM locations, CDFI banks' Investment Areas typically include their branches and ATMs due to the high concentration of customers in those areas. CRA evaluations focus on activities proximate to a branch and ATM locations whereas the CDFI Target Market test looks at activities across a bank's entire service area. Because CDFI banks typically go above-and-beyond the requirements of CRA to meet community needs both within and outside their Assessment Area, they are often frustrated that examiners do give adequate CRA consideration for activities outside of their Assessment Areas.

CDBA and NBA strongly recommend that the Treasury, the CDFI Fund, and the banking regulatory agencies provide CDFI banks with the option to select a CRA test tailored to the unique business models of CDFI banks that will:

(1) Maximize alignment of definitions used for CRA and CDFI certification, geographic service areas, program application, service tests, and reporting;
(2) Reduce reporting burden by streamlining and sharing data submitted by CDFI banks for Call Reports, CRA, HMDA, CDFI annual re-certification, and CDFI award compliance;
(3) Give CRA consideration for all activities performed within CRA Assessment Areas, CDFI Investment Areas, and that benefit low-income or Underserved Target Populations; and
(4) Give CRA consideration for collecting social impact data and actively participating in CDFI Fund Programs or other Federal, state, or local programs that offer tools to enhance services to their CDFI Target Markets or to reach deeper to serve low-income people and communities.

D. CRA OUTSIDE OF ASSSESSMENT AREAS:

CDBA and NBA recommend that all banks maintain responsibility for serving LMI communities within the physical geography in which they are chartered. Depending on a bank's business model and delivery channels, we suggest that a portion of their CRA obligation could be met with eligible activities that occur outside their local Assessment Area(s). "Outside" of Assessment Area activities should be required to benefit LMI geographies and populations. Alternatively, a list of "priority" activities and/or areas could be developed to make certain activities automatically CRA eligible. For example, many USDA Persistent Poverty counties or Indian Country communities suffer disinvestment and are less often served by national or large regional banks; thus, these could be designated as "priority" CRA community development activities. An internet bank that lacks a geographic concentration of customers could opt to engage in "priority" activities. Other important initiatives that could be deemed "priority" activities include: investing in CDFIs; assisting in the preservation of Low-Income Housing Tax Credit and USDA Rural Development properties with expiring subsidies, providing support for tribal economic development projects or Native owned banks, investing in Opportunity Zones, or developing innovative strategies for serving LMI people and communities. While adding recognition for CRA activities beyond current bank Assessment Area boundaries, no bank should be given a Satisfactory rating if it does a poor job serving the community(ies) in which it is located.

E. RURAL COMMUNITIES:

Rural communities are underserved by Large Banks' CRA community development activities. The Housing Assistance Council, a rural housing advocacy organization, documented this trend in its 2015 report (http://www.ruralhome.org/sct-information/mn-hac-research/mn-rrr/1090-rrr-cra-in-rural-america). For Large Banks, nearly all rural Assessment Areas are considered limited scope and they typically have very few CRA Community Development activities reported in their Performance Evaluations. As the CRA Officer for a Large Bank explained, Large Banks are motivated to conduct CRA community development activities in locations where they will count the most (full scope Assessment Areas). Because most of the Large Banks' branches are clustered in metropolitan areas, those locations get the most attention, generally leaving very little to share with rural (limited scope) Assessment Areas.

Given long-term declining economic trends and retraction of financial services in rural areas, CDBA and NBA recommend that regulators revisit -- and potentially discontinue -- the use of limited scope exams for the largest banks. Allowing the largest banks to satisfy their CRA obligations based solely on activities in metropolitan areas only exacerbates the lack of access to capital and services to rural populations. As an example, big banks have been particularly motivated to invest in Low-Income Housing Tax Credit (LIHTC) projects for CRA credit. In high-demand urban areas, this has created a competitive market with generally high prices for credits. However, LIHTC pricing for developments in underserved, rural areas is often significantly lower, which results in less equity for rural properties. In 2016, a project in Fargo, North Dakota, earned $1.05 per dollar of credits, while a project on the Turtle Mountain reservation located in rural, north central North Dakota garnered a price of $0.82 per dollar of credits. This is in contrast to the $1.20 price that LIHTC credits are able to fetch in cities like San

Francisco and New York. More explicitly encouraging money center banks to support CDFIs serving distressed rural communities can help address this challenge.

Among rural CDFI banks, we are also aware of inconsistent treatment by examiners on when and how infrastructure and broadband investments qualify for CRA. **CDBA and NBA recommend these discrepancies be addressed through enhanced interagency training.**

Finally, within rural communities, there are many census tracts that qualify as "middle distressed" or underserved, but which may have significant low-income populations. Most rural census tracts cover large geographic areas and may include areas of concentrated poverty that can be recognized in census block group level data. **CDBA and NBA recommend that CRA regulation afford banks the ability to get CRA consideration for activities that benefit LMI geographies defined at the block group level when located in middle distressed or underserved tracts.**

IV. EXPANDING ELIGIBLE COMMUNITY DEVELOPMENT ACTIVITIES

CDBA and NBA recommend the following amendments to the current list of eligible Community Development activities under CRA:

A. CDFI INVESTMENTS:

The historic focus of CRA has been, and should continue to be, to ensure financial institutions are providing fair and adequate coverage within the geographies that they are chartered to serve. The financial services industry, however, has radically changed since the last regulatory update 20 years ago. The decline in the number of locally-based banks and the consolidation of banking assets by a small number of $100-plus billion money center banks has had profound effects on access to capital in LMI communities. As more credit decisions are made by geographically remote corporations and credit scoring models replace relationship banking, the ability of LMI communities and borrowers that "don't fit the box" to obtain adequate access to loans is compromised. CRA is intended to ensure that LMI communities that are a source of bank deposits have fair access to credit from those institutions.

During the past 20 years, locally-based, mission-focused CDFI and MDI financial institutions have emerged as uniquely positioned to fill the void created by industry consolidation. Our institutions are highly effective in addressing the credit and service needs of LMI communities because they have deep roots in these markets and understand local needs. As such, they are ideal partners to enable Large Banks to reach underserved LMI communities. Historically, however, the money-center banks have provided little or no support to CDFI banks and MDIs, even though doing so would generally be considered a CRA eligible activity. CRA could and should play a valuable role in incenting money-center banks to work with CDFI banks and MDIs.

AFFIRMATIVE OBLIGATION: CDBA and NBA recommend that CRA encourage all traditional banks to support CDFIs and MDIs as a part of their CRA obligations. In the case of banks over $100 billion in total assets, CDBA recommends that CRA include an affirmative obligation to partner with CDFIs and MDIs as a complement to their local Assessment Area strategies. Providing banks with specific guidance (e.g. dollar amounts, targeting) on appropriate amount and types of CDFI and MDI support activities that will qualify for CRA purposes will help ensure the desired policy outcomes.

A number of NBA member banks have raised concerns about CRA initiatives of Large Banks that have had the effect of undermining the core business of MDIs (e.g. subsidized mortgage programs that directly compete with mortgage products offered by MDIs). Regulators need to provide clear guidance to Large Banks that such an "affirmative obligation" should promote partnerships that both complement the efforts of CDFIs and MDIs and maximize benefit to LMI communities.

CRA SHOULD GIVE CDFIs EQUAL TREATMENT: CDBA and NBA strongly recommend that bank investments in CDFIs receive equal treatment under CRA as investments in Minority Depository Institutions (MDIs) and Low-Income Credit Unions.

Federal policymakers first formally recognized CDFIs 20+ years ago with the creation of the CDFI Fund. For decades, CDFIs have consistently demonstrated strong performance in serving low-income markets. Yet banking regulators do not recognize CDFIs under CRA in the same manner as MDIs and Low-Income Credit Unions. Currently, any bank can get CRA consideration for providing financial or other support to an MDI or Low-Income Credit Union – regardless of whether or not the entity is located within or serves a bank's Assessment Area. By contrast, a bank providing similar support to a CDFI can only be assured of getting CRA credit if the recipient CDFI is located in or substantially serving the bank's designated Assessment Area.

Regulators have not historically recognized CDFIs because they were not explicitly cited in the 1977 CRA statute, which predated the 1994 CDFI Fund authorizing statute. We believe that the statute should be reinterpreted to include CDFIs because their work in targeting low-income and underserved markets is substantially the same as the MDIs and Low-Income Credit Unions. In fact, the CDFI standard for targeting service to low-income communities is far more stringent than the requirements for MDIs and Low-Income Credit Unions. For example, there are 156 MDIs – of which only 36 meet the CDFI standard of targeting at least 60% of their lending into low-income communities (at 8/31/2017). In recent years, the National Credit Union Administration (NCUA) has significantly revised and relaxed the requirements for qualification as a Low-Income Credit Union. Twenty years ago, less than 200 credit unions met this standard, however under the new standard fully one-third (2,000+) of all credit unions qualify. By contrast, only 326 credit unions (5.7% of the nation's 5,696 credit unions) meet the more stringent CDFI requirements.

LONG TERM SUPPORT: CDBA and NBA strongly recommend that CRA encourage banks to provide long-term support to CDFIs. Specifically, all banks should receive CRA consideration for supporting CDFIs regardless of whether such entity is located in and/or serves the bank's Assessment Area. Regulators should also encourage banks to make long-term investments of

capital, loans, and deposits to support CDFIs and MDIs by giving instruments held in portfolio the same weight as new originations in an exam cycle.

CDBA and NBA recommend that bank investors receive significant and consistent CRA credit throughout the life of the investment. The CRA exam cycle creates barriers for traditional banks to invest in CDFI and MDI banks. Examiners give the most CRA credit to *new* transactions executed during an exam cycle – which are generally three years apart. For example, a bank can get CRA credit every three years for renewing the same loan to a CDFI loan fund that matures during an exam cycle. Yet, if a bank makes an equity investment in a CDFI bank or MDI that are typically held in portfolio over a longer period, they get little CRA credit beyond the original investment. Our banks also report significant inconsistencies in treatment of older investment activities by examiner and across regulatory agencies.

B. SMALL BUSINESS:

CDBA and NBA recommend that CRA should give greater consideration to small business lending. CDBA and NBA also recommend expanding the definition of a CRA eligible small business, while still giving greatest CRA consideration to the smallest business loans. Currently, the regulators define an eligible CRA small business loan as one that is $1 million or less to a business with $1 million or less in income. To ease reporting, we strongly urge the regulatory agencies to use the definitions of the Small Business Administration (SBA). The SBA has a well-developed small business "size standards" definition for qualification under its programs. The SBA's size standard definition includes industry, number of employees, and average annual income. A large portion of banks engaged in small business lending use SBA programs; thus, making the standards better align will reduce the data collection and reporting burden.

C. FINANCIAL LITERACY & INCLUSION:

CDBA and NBA recommend that CRA help promote financial literacy and inclusion among LMI populations, as well as unbanked, underbanked, and other vulnerable populations. Access to credit and financial services needs are critically important to the economies of physical places. Thus, CRA should continue to ensure LMI places have robust access to such services. Given the rise of payday lenders and other predatory providers who target vulnerable people, CRA needs a complementary prong that focuses on financial literacy and inclusion.

Our nation needs both strong local communities and an inclusive financial service sector that is fair, serves everyone, and provides opportunity. A revised CRA that includes a focus on financial inclusion will need to recognize a broader range of alternative financial services and delivery mechanisms and develop proxies for measuring financial inclusion – particularly among vulnerable populations. This change will likely mean expanding the definition of CRA qualified activities to include an enhanced emphasis on consumer credit, credit building products, and financial literacy. In addition, this shift will necessitate the development of new methods and proxies for measuring service to low-income, unbanked, underbanked, rural communities with limited broadband, and other vulnerable populations. For example, several CDFI and MDI banks have launched technology-driven consumer products (i.e. debit cards, online small dollar loans, etc.) intended to provide unbanked and under-banked customers with access to responsible

products. While the products are accessible and benefit customers that might otherwise not be served -- or fairly served -- if the customer lives outside of the bank's current Assessment Area, they may eventually detract from a bank's CRA performance if demand for the products grows. Regulatory agencies should encourage, not discourage, product innovation that promotes financial inclusion.

CDBA and NBA recommend that financial education delivered to customers that are LMI or reside in LMI census tracts should be CRA eligible. We also believe the depth and frequency of this activity should be factored into a CRA grade. For example, currently a bank holding monthly financial literacy workshops receives the same consideration as a bank holding a single, one-time workshop.

D. CONSUMER LOANS/SMALL DOLLAR LOANS:

CDBA and NBA recommend that consumer and small dollar loans delivered to customers that are LMI or reside in LMI census tracts should be CRA eligible. Given the small size of consumer loans, collecting and reporting data on these loans can be cost prohibitive, this activity should be optional for the bank to report under CRA.

E. ENVIRONMENTAL AND RENEWABLE ENERGY ACTIVITIES:

CDBA and NBA recommend that lending, investment, and service activities that promote environmental justice for the benefit of LMI communities and low-income and minority populations be added to the list of CRA eligible Community Development activities. Over the past two decades, there has been a growing understanding of the role of the environment and health of LMI communities in contributing to underlying causes of poverty and economic inequity within the community development finance field. In addition, Executive Order 12898 (issued February 11, 1994) requires all Federal Agencies to make Environmental Justice a part of their mission. The order states that *"[a]gencies are to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations."* Since this 1994 order and the last significant update to CRA, the Environmental Protection Agency (EPA) has conducted or supported numerous studies and analysis that document that:

> *"[S]ources of environmental hazards often are located and concentrated in areas having majority populations of people of color, low-income residents, or indigenous peoples"*

Community development practitioners directly observe how these hazards negatively impact economic vitality. For example, lack of access to healthy foods, concentration of sites with environmental contamination, and the harmful effect of lead paint on young children disproportionately occur in LMI communities and affect the aforementioned populations. All of these factors influence the economic vitality of communities and should be considered as part of a community development strategy. In many cases, these are projects that may be too large to be financed solely by a smaller institution. This is another area where larger institutions can partner with CDFI and MDI banks and receive CRA credit. The CRA regulations should recognize

the growing understanding of the complex interrelationship between the environment and the economic outcomes of LMI communities.

VOLUNTEER ACTIVITIES: CDBA and NBA recommend affording greater flexibility for volunteer activities reported under CRA. Currently, a bank can only receive CRA credit for volunteer activities in which they are contributing their financial or professional expertise. Eligible volunteer activities that benefit a nonprofit engaged in community development -- or other activities that are targeted for the benefit of LMI people or communities -- should also be CRA eligible. For example, if a group of bank employees helps build a Habitat for Humanity house, the activity should receive some CRA consideration.

WORKFORCE EDUCATION: CDBA and NBA recommend that all services associated with work force education programs be considered CRA eligible as most such programs are focused helping LMI workers build job skills. Our member banks cite inconsistent treatment of workforce education activities by examiners.

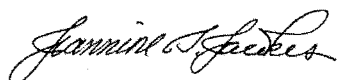
LOAN PURCHASES: CDBA and NBA recommend that loan originations receive greater CRA consideration than purchasing CRA qualifying mortgage backed securities. Community development loans purchased from other lenders as part of a loan participation or loans purchases as part of a lending pool or consortia should be treated the same as a loan origination.

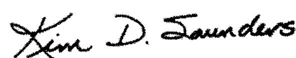
FINANCIAL SERVICE INDUSTRY: While outside the scope of the ANPR, CDBA and NBA believe all players within the financial services sector should have an affirmative obligation to serve LMI communities and people. Banks are currently the only subsector of the financial services industry with such a requirement. As the OCC considers creation of a FinTech charter, we strongly urge that such entities have a CRA type obligation. While outside of the scope of the Federal banking regulators jurisdiction, a similar type of requirement should be applicable to credit unions, pension funds, asset managers, insurance companies, and other diverse financial service firms. Decades ago, a larger portion of our nation's wealth was held in banks. As a more diverse set of players has siphoned assets out of banks, it means fewer resources are available for LMI communities. In the long-term interest of promoting economic vitality and income equality across all communities, we need to ensure that all financial service subsectors reinvest in LMI communities.

In conclusion, CRA is critical to the economic lifeblood of LMI communities. Yet dramatic changes in the financial services industry are making current implementation outdated. We believe that CRA can be a powerful tool to support disinvested communities, but we urge the OCC and other bank regulatory agencies to update CRA lest it risk becoming functionally obsolete. In closing, we wish to reiterate the strong support of the members of CDBA and NBA for the purposes and objectives of CRA. A robust and effectively implemented CRA is critically important to the LMI communities that our members serve. We thank you for the opportunity to discuss how CRA can be updated to better serve low-income people and communities.

We welcome the opportunity to continue this dialogue. Thank you for considering these important matters. Please contact Jeannine Jacokes at (202) 689-8935 ext. 222 or _jacokesj@pcgloanfund.org_ or Kim Saunders at (202) 588-5432 *or* _ksaunders@nationalbankers.org_.

Sincerely,





Jeannine S. Jacokes
Chief Executive Officer

Kim D. Saunders
President and Chief Executive Officer

On Behalf of the Membership of the Community Development Bankers Association and the National Bankers Association:

BankFirst (MS)
Bank of Anguilla (MS)
Bank of Cherokee County (OK)
Bank of Commerce (MS)
Bank of Kilmichael (MS)
Bank of Lake Village (AR)
Bank of St. Francisville (LA)
Bank of Vernon (AL)
Bank of Winona (MS)
BankPlus (MS)
Beneficial State Bank (CA)
BNA Bank (MS)
BOM Bank (LA)
Broadway Federal Bank (CA)
Carver Federal Savings Bank (NY)
Carver State Bank (GA)
CBW Bank (KS)
Central Bank of Kansas City (MO)
Century Bank of the Ozarks (MO)
Citizens National Bank (MS)
Citizens Bank & Trust (MS)
Citizens Savings Bank & Trust (TN)
Citizens Trust Bank (GA)
City First Bank of D.C., N.A. (DC)
City National Bank of New Jersey (NJ)
Commerce Bank (TX)
Commercial Capital Bank (LA)
Community Bancshares of Mississippi (MS)
Community Bank of the Bay (CA)
Farmers & Merchants Bank (MS)
FB&T Mortgage Bank (AR)
First Eagle Bank (IL)
First Independence Bank (MI)
First National Bank & Trust (AL)
First Security Bank (MS)
First SouthWest Bank (CO)
FNBC Bank (AR)
GN Bank (IL)
Guaranty Bank and Trust Company (MS)
Holmes County Bank and Trust Company (MS)
Industrial Bank (DC)
International Bank of Chicago (IL)
International Bank of Commerce (TX)
Legacy Bank and Trust (MO)
Liberty Bank and Trust (LA)
Mechanics and Farmers Bank (NC)
Merchants and Planters Bank (MS)
Metro Bank (KY)
Mission Valley Bank (CA)
Native American Bank, N.A. (CO)
Neighborhood National Bank (CA)
NOAH Bank (PA)
OneUnited Bank (MA)

Pan American Bank (IL)
Peoples Bank (MS)
Planters Bank (MS)
PriorityOne Bank (MS)
Royal Business Bank (CA)
Security Federal Bank (SC)
Security State Bank (OK)
Southern Bancorp, Inc. (AR)
South Carolina Community Bank (SC)
Spring Bank (NY)
Start Community Bank (CT)
State Bank & Trust Company (MS)
Sunrise Banks (MN)
Sycamore Bank
The Cleveland State Bank (MS)
The Commercial Bank (MS)
The First, A National Banking Assoc. (MS)
The Jefferson Bank (MS)
The Harbor Bank of Maryland (MD)
Tri-State Bank of Memphis (TN)
United Bank (AL)
United Mississippi Bank (MS)
United Bank of Philadelphia (PA)
Unity National Bank (TX)
Urban Partnership Bank (IL)
Virginia Community Capital (VA)

TESTIMONY OF
CLINT ODOM
SENIOR VICE PRESIDENT AND EXECUTIVE DIRECTOR
NATIONAL URBAN LEAGUE WASHINGTON BUREAU
BEFORE FOR THE
THE U.S. HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS

TUESDAY, APRIL 9, 2019

"THE COMMUNITY REINVESTMENT ACT: ASSESSING THE LAW'S IMPACT ON DISCRIMINATION AND REDLINING"

INTRODUCTION

Chairman Meeks and Ranking Member Luetkemeyer, good morning and thank you for the opportunity to present the National Urban League's views on the Community Reinvestment Act.

I am Clint Odom, the National Urban League's Senior Vice President of Policy and Advocacy and the Executive Director of its Washington Bureau. Established in 1910, the National Urban League is the nation's oldest and largest civil rights and direct services organization. Each year, we serve 2 million people through 90 affiliates in 36 states and the District of Columbia in over 300 communities. Our affiliate locations are as diverse as the states represented on this Subcommittee.

Our mission is to enable African Americans and other underserved communities to secure economic self-reliance, parity, power, and civil rights. We help our constituents attain economic self-reliance through homeownership, job training, good jobs, entrepreneurship and wealth accumulation.

The subject of today's hearing falls within our economic empowerment discussion both nationally and in our local communities. Our views and recommendations are based on decades of direct program experience in urban communities across the country and our historic role in documenting and fashioning remedies to root out the pernicious practice of redlining.[1] More

[1] The National Urban League has played a significant role in documenting the extent of redlining in American cities and in using the courts to fashion remedies to address redlining prior to the passage of the CRA. In 1970, the National Urban League and the Center for Community Change published a study entitled, "The National Survey of Housing Abandonment," which documented the extent of redlining in heavily minority areas in seven American cities. And, in 1976, one year before the passage of the CRA, the National Urban League and other national civil rights organizations sued federal bank regulators under the Fair Housing Act for failing to enforce the fair lending provisions of the law. Under the settlement agreement reached to resolve the litigation, the federal bank regulators were required to take various remedial steps, including collecting and analyzing Home Mortgage Disclosure Act data and providing training for regulatory examiners. Wade Wilson & Karen McGill Lawson, Leadership Conference on Civil Rights, Leadership Conference Education Fund, *CRA and the Financial Modernization*

recently, in the aftermath of the worst financial crisis since the Great Depression, our President and CEO, Marc Morial, testified before this Committee[2] in 2009 and the Senate Banking Committee in 2008 about proposals to reform the CRA and to push back against the now widely-discredited notion that CRA lending practices somehow were responsible for the mortgage crisis.

<u>BACKGROUND</u>

Congress passed the Community Reinvestment Act of 1977 (CRA) because of concerns that federally-insured banking institutions were not making enough credit available in the local areas in which they were chartered and acquiring deposits. Disinvestment practices allowed depository institutions to accept deposits from African Americans in inner-city neighborhoods, and reinvest them in more affluent, suburban areas.

Faced with substantial evidence of redlining – the practice of denying credit to certain communities, typically communities of color – Congress decided that market forces alone could not break down residential segregation patterns. The grant of a public bank charter creates a continuing obligation for that bank to serve the credit needs of the public where it was chartered. As a consequence, the CRA was enacted to "re-affirm the obligation of federally chartered or insured financial institutions to serve the convenience and needs of their service areas" and "to help meet the credit needs of the localities in which they are, consistent with the prudent operation of the institution."

Redlining prevented African Americans from securing affordable homes and mortgages in decent neighborhoods and purposely segregated communities. Segregated into slums, African Americans were concentrated into poverty by way of intentional discriminatory policies and practices. African Americans were denied credit to purchase homes, start small businesses, and to meet everyday living expenses. Blight, crime, and decreased property values resulted. Cities were left behind with no adequate tax base for basic services. With no desire to invest in these

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Movement at 5-6 accessed at http://www.protectcivilrights.org/pdf/reports/healthy_communities/cra_report_chapters.pdf According to the Department of Treasury, the "CRA was enacted in response to concerns about redlining and disinvestment as well as a desire to have financial institutions 'play the leading role' in providing the 'capital required for local housing and economic development needs.'" MEMORANDUM FOR THE OFFICE OF THE COMPTROLLER OF THE CURRENCY, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE FEDERAL DEPOSIT INSURANCE CORPORATION at 1 & Appendix A (April 3, 2018) accessed at https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf

[2] Testimony of the Honorable Marc H. Morial, President and CEO, National Urban League Before the Senate Committee on Banking, Housing and Urban (Oct. 16, 2008); Testimony of Mark H. Morial, President and CEO National Urban League Before the House Committee on Financial Services, "Proposals to Enhance the Community Reinvestment Act" (Sept. 16, 2009).

communities, too many African American and minority neighborhoods continue to deteriorate, as you will hear in great detail from other witnesses today.

This point is clear: the CRA is one of the most important civil and economic rights laws of the 20th century.[3] As a matter of economic justice, the CRA is every bit as important as the Civil Rights Act that dismantled discrimination in places of public accommodation, employment, and education. To dispute this, one would have to wholly ignore the conditions that gave rise the law's enactment and the contemporaneous enactment of federal laws like the Fair Housing Act of 1968, the Home Mortgage Disclosure Act, the Affordable Housing Goals, and the Duty to Serve rule, to name a few.

However, in the 21st century, the law is in dire need of reform to better serve low- to moderate-income (LMI) communities, especially communities of color. CRA-regulated institutions have not met the needs of the community, allowing an array of nonbanks to enter the marketplace, many of which provide high-cost, and often predatory products. This is a point on which both advocates and industry agree. CRA can and must do more to provide low-cost loans and to make quality investments in communities of color, which was the intent of the law.

CRA was designed to help African Americans enter the financial mainstream and to increase investments in their communities. CRA incentivizes banks to address previous injustices and current market failures that were caused and can be fixed by the federal government and the banking industry.

Financial institutions are not required to help meet the credit needs of their local communities out of the kindest of their hearts. Financial institutions have a continuing and affirmative obligation to serve low-wealth communities because of the material benefit they receive from the federal safety net provided by the government, including deposit insurance and the Federal Reserve's discount window.

Moreover, banks are not forced to lend to these communities at a financial risk or to the detriment of their shareholders. You will hear testimony from experts today who will confirm that most CRA lending is profitable, and not overly risky.

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[3] *History of the CRA*, Federal Reserve Bank of Minneapolis, accessed at https://www.minneapolisfed.org/community/cra-resources/history-of-the-cra-new; Caleb Bobo, *From Dr. King to the Community Reinvestment Act: How His Dream Marches On*, Federal Reserve Bank of St. Louis (Spring 2018) ("[o]ver the next two decades, lawmakers and presidential administrations proposed and approved several changes to the CRA. . . That successful track record, like the origins of the ECOA and HMDA, can also trace its roots to the civil rights movement that King and so many others fought for during the 1950s and '60s that emphasized civil and economic rights.")

Recent research has established that the CRA is meeting it objectives. Credit is more readily available in low- and moderate-income communities. African Americans have greater access to credit. And scholarly research has established that the CRA has been, at least in part, responsible for these gains. Stronger enforcement of the CRA and related fair lending laws, in part due to pressure by the Urban League and other community groups, along with market forces, has generally resulted in an increase in conventional home purchase lending to low- and moderate-income (LMI) borrowers.

LACK OF LENDING IN COMMUNITIES OF COLOR

Nonetheless, LMI households are less likely to receive a loan from a CRA-regulated institution, than higher income borrowers, according to the Government Accountability Office.[4] Households living in higher-income and largely white neighborhoods are nearly 30 percent more likely to receive a loan from a CRA-regulated assessment area lender, than a borrower living in a largely minority, lower-income area.

Lower-income households are more likely to obtain credit or conduct financial transactions through an alternative financial services (AFS) provider, and less likely to have a checking or savings account with a bank or credit union, than their higher-income earners.

Nonbanks, which are not regulated under CRA, have drastically increased in market share, because CRA-regulated institutions are not fully meeting the needs of the community:

- Nonbanks originated 37 percent of all personal loans in 2017, compared to less than one percent in 2010;
- Nonbanks originated over 50 percent of all conventional mortgages in 2018, compared to 20 percent in 2007;
- Approximately 85 percent of all FHA mortgages were originated by nonbanks in 2018, compared to 57 percent in 2010; and
- Nonbank small business lending rose to 35 percent in 2015.

For good or for worse, this trend is likely to continue. All nonbanks are not bad. However, payday lenders, check cashers, *some* independent mortgage banks, and merchant payday lenders

[4] Options for Treasury to Consider to Encourage Services and Small-Dollar Loans When Reviewing Framework GAO-18-244 (Mar 16, 2018).

have the ability and incentive to prey on the financially vulnerable and strip wealth because CRA is not doing its job effectively.

According to Dr. Michael Stegman, a current Milken Institute fellow and former Obama and Clinton administration housing official, "[t]here are now more check cashers and payday lending outlets than there are McDonald's restaurants, Burger Kings, Target stores, JC Penney's locations, Sears, and Walmart combined."

While nonbanks provide more access to capital than traditional banks, they often do so at higher pricing. According to a recent California Berkley study, conventional mortgages originated by nonbanks are more expensive, and priced higher *due to discrimination,* in addition to the lack of competition from CRA-regulated institutions.[5]

The African American homeownership rate reached a peak of nearly 50 percent in 2004; it is now only 42.9 percent. The African American homeownership rate is near where it was before the passage of the Fair Housing Act, and it is expected to continue to decline through the year 2030, according to the Urban Institute.

As it relates to access to capital for small businesses, in the National Urban League's experience, African American microentrepreneurs are more likely to be denied small business loans; be approved for lower amounts at higher rates; self-finance; or self-select out of the application process altogether. African Americans not only struggle in the conventional market, they struggle in securing loans backed by the Small Business Administration (SBA), often described as loans of last resort. African American small businesses have received only approximately 2 percent of the loans originated under SBA's 7(a) flagship loan since 2010 and only 3 percent according to the most recent available data.[6] As a result, many African American microentrepreneurs rely on nonbanks, many who offer predatory products, such as merchant payday loans.

In addition to the lack of lending in communities of color, CRA regulated institutions are not making quality investments in communities of color. Gentrification is an unintended consequence of CRA. Unfair and unbalanced use of CRA investments have helped to create gentrification and displacement, contrary to the purpose and intent of the law. According to a

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[5] Robert Bartlett *et al., Consumer-Lending Discrimination in the Era of FinTech* (Oct. 2018), https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf

[6] Congressional Research Service, *Small Business Administration 7(a) Loan Guaranty Program*, R41146 at 23 (Mar. 4, 2019) accessed at https://fas.org/sgp/crs/misc/R41146.pdf

former CFPB official, the CRA "is based on geography, so it's perfectly possible to comply with CRA and have that pattern... That's not the idea, of course, but the law allows it."[7]

SUGGESTED REFORMS

Several reforms could be implemented to strengthen CRA's impact to ensure CRA regulated institutions provide access to low-cost capital and make quality investments in communities of color, including:

1. **ESTABLISH CLEARER STANDARDS FOR CRA ELIGIBILITY.** We agree with Treasury that CRA modernization should establish "clearer standards for eligibility for CRA credit, with greater consistency and predictability across each of the regulators." We also agree CRA regulators should standardize CRA exam schedules to ensure uniformity and more predictability for regulated institutions;

2. **SET ASSESSMENT AREAS WHERE BANKING SERVICES ARE DELIVERED.** Assessment areas should be where retail banking services are delivered and not wholly related to branch or ATM locations. Assessment areas should also be expanded to any state or MSA where the lender achieves a significant market presence–such as one-half of one percent of all loans. This is the best way to keep CRA up to date and ensure banks are meeting the credit needs of their local communities;

3. **MODERNIZE THE SERVICE TEST TO MEASURE HOW WELL BANKS ARE SERVING LMI COMMUNITIES.** The service test must do more to incentivize banks to offer credit products to communities of color. There is a problem when 98 percent of CRA-regulated institutions get a Satisfactory or Outstanding rating. As National Urban League President and CEO, Marc H. Morial stated in his Congressional testimony in 2010:

   "[A]nalysis of bank branch data used in the service test is not sufficient to understand how effective an institution is at extending retail products to LMI markets... the goal of the CRA service test is not merely to get a sense of branch location but rather to measure how banks are serving the credit and service needs of the community. A different set of data is needed to measure actual bank

[7] Aaron Glantz & Emmanuel Martinez, "Kept Out: Gentrification Became Low-Income lending law's unintended consequence, Reveal (Feb. 16,2018) (attributed to Boston College Law Professor and former CFPB official Patricia McCoy) accessed at https://www.revealnews.org/article/gentrification-became-low-income-lending-laws-unintended-consequence/

services to lower-income communities. Those data would measure such outcomes as the number of low-cost savings accounts opened, the percent of low-income households served, and a comparison of these figures against those of comparable banks. Branch distribution data is a seriously insufficient measure of how well a bank is meeting the needs of the community. Measuring delivery channels encourages the development of more delivery channels, but not necessarily the actual delivery of products and services;"

4. **ROOT OUT RELATIONSHIPS WITH DECEPTIVE FRINGE LENDERS.** Examiners should carefully examine institutions' relationships with high cost fringe lenders and determine whether those fringe lenders' disclosure activities (as opposed to just disclosure notices) costs, terms and conditions have a deceptive impact on their customers;

5. **MEASURE THE RATE OF SAVINGS PRODUCTS OFFERED TO LMI CONSUMERS.** Institutions should also be examined to see whether they effectively market savings products to lower-income consumers;

6. **ASSESS PENALTIES ON INSTITUTIONS WITH DECEPTIVE OFFERINGS.** Institutions should be penalized if their offerings are likely to have a deceptive impact on the average customer.

7. **GIVE BANKS EXAM CREDIT FOR THE USE OF LOW-COST EDUCATION LOANS.** In addition, banks' use of low-cost education loans must play a larger role on bank exams. CRA explicitly encourages CRA regulated institutions to offer and provide low-cost education loans to LMI people and places. Low-cost education loans are the only way for LMI people to move up the economic ladder. Affordable and sustainable financial services allow people to have more money at the end of the month, engage in constructive activity and save for the future. It allows them to purchase affordable and sustainable mortgages in safe and decent neighborhoods, and startup and grow small businesses to create jobs in the community. Wealth stripping products do the exact opposite. CRA-regulated institutions are not playing the leading role in meeting the credit needs of their local communities. Exams must place more emphasis on whether banks are providing low-cost education loans to LMI people;

8. **ADOPT REGULATIONS TO ENCOURAGE MAJORITY INSTITUTIONS TO INVEST IN MINORITY-OWNED INSTITUTIONS.** We agree with the American Bankers Association that "minority-owned institutions were pioneers in helping underserved neighborhoods before the CRA existed, and their perseverance in serving

those markets has made them worthy partners in leading further efforts to build stronger, more economically vibrant communities. It is past time for the agencies to adopt regulations that recognize—and thereby encourage—the investments in, and support of, minority institutions by majority institutions, something that Congress authorized... years ago but still is not implemented in the CRA process";

9. **ASSESS THE PERFORMANCE OF BANK AFFILIATES UNDER CRA.** Regulated institutions' affiliates should be assessed under CRA, regardless of whether the institutions seek to have them assessed. CRA regulations give banks the option to include the activities of their affiliates for consideration in their performance evaluations. Under the current CRA regulations, if a bank's affiliate performs poorly in LMI communities, the bank can unilaterally make the decision to not include this affiliate for consideration in its performance evaluation. Likewise, the bank could choose to include the affiliate only when the affiliate has performed well in LMI communities. This is unfair and does not make sense, given the amount of business affiliates handle for holding companies;

10. **INCLUDE NONBANKS UNDER CRA REGULATIONS.** Nonbanks have taken on the responsibility of serving LMI communities. The only place banks have a stronghold in LMI lending is in their assessment areas. Including nonbanks under CRA's purview, would help ensure LMI communities' needs are met, while limiting access to excessive risk-based pricing. While some claim that increased data collection for regulatory or public uses is onerous, the data is "already provided to private data aggregators in machine-readable form." It would be a smooth transition for nonbanks to comply with CRA;

11. **ASSESS BANK COMPLIANCE WITH CBAs.** CBAs play a central role in helping to ensure the local needs of the community are met by CRA-activities. We agree with NCRC, "CRA examiners must assess bank compliance with CBAs that are negotiated with community groups and include clear goals." Several of the National Urban League's affiliates are party to CBAs with banks in their local communities. Our affiliates have unique insight into their communities, and help regulated institutions better meet the credit and investment needs of LMI people and places.

CONCLUSION

Immediately following the Civil War, Congress passed into law the Civil Rights Act of 1866, which stated that every citizen of the United States, including former slaves, had the same right

to inherit, purchase, lease, sell, hold, or convey property, both real and personal.[8] As a Nation, we have been struggling since to uphold this right and create the conditions to protect this right. The CRA is as relevant today as it was when it was enacted in 1977. The National Urban League urges Congress through its oversight and other powers to ensure CRA-regulated and nonbank institutions are adequately meeting the credit needs of communities of color. The CRA must do more to increase access to affordable credit and quality investments in communities of color to address previous injustices and to correct market failures that necessitated the passage of CRA.

Thank you.

[8] "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding. . . ."

Statement of

Benson F. Roberts

President and CEO

National Association of Affordable Housing Lenders

Community Reinvestment Act

House of Representatives

Financial Services Committee

Subcommittee on Consumer Protection and Financial Services

April 9, 2019

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Good morning, Chairman Meeks, Ranking Member Luetkemeyer, and members of the subcommittee. My name is Benson Roberts. I am president and CEO of the National Association of Affordable Housing Lenders (NAAHL).

NAAHL is the only national alliance of leading banks, community development financial institutions (CDFIs) and other capital providers for affordable housing and inclusive neighborhood revitalization. A list of NAAHL members is attached.

NAAHL strongly supports a strong CRA. America's economy, financial system, and society can thrive only if all people and every community can contribute to and benefit from them. CRA is essential to providing capital that is vital to the economic health of low- and moderate-income (LMI) communities and people.

CRA has been a uniquely valuable policy for low- and moderate-income people and communities. According to the Urban Institute, banks made 3,634,045 CRA loans totaling $419 billion in 2016, including:

- 2,762,600 small business loans totaling $172 billion
- 723,822 home mortgage loans totaling $108 billion
- 26,397 community development loans totaling $96 billion
- 12,971 multifamily housing loans totaling $33 billion
- 108,255 small farm loans totaling $10 billion

Importantly, CRA is consistent with safe and sound lending principles, as the law requires and experience shows. CRA financing is sustainable for both borrowers and banks.

And CRA could do even more. Unlike most federal programs, CRA lending and investment are not subject to federal budget limits. Banks are willing to make more loans and investments if they get CRA credit for them.

The bad news is that the CRA regulations are now 24 years old and have fallen far behind fundamental changes to the banking industry, local community needs and opportunities, and the practice of affordable housing and community development. For example, mobile banking and other fintech innovations are enabling banks to serve LMI customers better, a convenient complement to branch-based services, but CRA does not fully account for this development. Moreover, LMI people and communities are missing out on too many loans and investments either because it is unclear that they will count for CRA or their location does not fit outdated CRA rules. A large bank managing multiple metrics in dozens or hundreds of local CRA "assessment areas" cannot focus on activities that CRA will not or might not recognize.

The good news is that CRA's current regulatory structure is basically sound. Many important improvements are possible without new legislation.

Principles for Effective Regulation

We recommend the following principles to guide the modernization of CRA policies.

- LMI people and places should continue to be CRA's focus, with some accommodation for markets that face persistent economic distress, high housing costs, or a federally declared disaster. To preserve CRA's LMI focus, activities that benefit a broader community should be credited to the extent that LMI people and places are likely to benefit directly. We provide detailed recommendations on eligible activities below.

- More clarity and certainty about what activities count are essential. Too often, a bank cannot be sure when it considers financing an activity whether it will receive CRA credit, which is determined years later when the bank is examined. Greater clarity and certainty will expand capital for communities, streamline compliance for banks, and simplify the examination process for agency staff.

- Data could help more to establish clearer performance benchmarks and contribute to simpler and more streamlined performance evaluations. However, rating a bank based primarily on the dollar volume of its CRA financing would prove unworkable and have unintended negative consequences for both communities and banks. For example, rural and other communities would be disadvantaged because they often need smaller loans.

- Community and institutional context should continue to be an important part of CRA performance evaluations. Differences in bank structure and product mix, market competitiveness, the availability of opportunities, economic conditions, and community needs should all continue to inform the regulators' evaluation of CRA performance. Proper consideration of performance context is essential to preserve flexibility and responsiveness to community needs.

- The effective administration of the CRA requires well-trained examiners. The agencies should jointly develop comprehensive examiner training to ensure consistency and support well-informed judgements about topics such as performance context, innovation, and local needs, as well as community development practices.

- Performance evaluations should be published within 12 months after the close of an examination period. Of the six largest banks, the most recent year covered by a current performance evaluation is 2013. Long-delayed performance evaluations serve neither communities nor banks well.

Supporting Community Development

The role of community development (CD) within the CRA examination should be reinforced and improved. As noted earlier, CD is now a primary focus of CRA, accounting for $96 billion in lending in 2016 and billions of dollars more in investments. CRA has made a uniquely valuable contribution to CD. Indeed, an entire generation of CD finance has been built on the foundation of CRA. Banks' leadership and participation in affordable housing and economic development have contributed greatly to the remarkably positive performance and community impact of these initiatives. Banks have provided important market discipline that has distinguished current

practices from those of the pre-CRA era. For example, Low Income Housing Tax Credit (LIHTC) investments are the best performing asset class in real estate[1] and proved especially robust through the Great Recession.[2] Moreover, CD activities have been far more flexible and responsive to local needs, and engaging of local partners than previous interventions.

David Erickson of the Federal Reserve Bank of San Francisco has chronicled this history well in *The Housing Policy Revolution: Networks and Neighborhoods.* "In total, it is hard to overestimate the role that the CRA has played in promoting the decentralized housing network. At every turn in the process of developing affordable housing – site acquisition, construction, permanent mortgage financing, repair and rehabilitation – there is a need for financing, and banks and thrifts have provided that credit to [nonprofit community development corporations] and to for-profit real estate developers."[3]

Notwithstanding these achievements, narrow or unclear CRA eligibility rules have constrained banks' ability to bring their capital and expertise to other critical elements of CD – including unsubsidized affordable housing, economic development, and infrastructure – whose eligibility is unclear or not permitted, especially beyond a bank's CRA assessment areas (AAs). Insufficient clarity in this area can also result in inconsistent treatment by examiners of similar activities. We offer detailed recommendations regarding eligible CD activities below.

With regard to how CD fits within the examination structure, we recommend the following improvements.

- A bank should have the option to have either: (1) a CD test that combines CD loans and investments in lieu of the investment test; or (2) CD loans and investments considered separately as currently provided. The interagency hearings in 2010 revealed broad support for a CD test option. An optional CD test would promote: (1) clearer focus on CD activities; (2) greater responsiveness to communities; (3) more flexibility for banks to address community needs; and (4) a focus on the substance of CD activities over their form as a loan or investment. Providing more credit for equity investments would encourage a good balance of activities within a CD test while preserving flexibility.

- CD activities should be at least as important to a large bank's CRA rating as they are currently, when the investment test accounts for 25 percent of the rating and CD lending contributes a significant share of the lending test's 50 percent of the rating. CD should receive even more weight for banks that provide a large volume of CD financing relative to home mortgage and small business lending. A large bank that does not

[1] CohnReznick LLP, *The Low-Income Housing Tax Credit at Year 30: Recent Investment Performance (2013-2014)*, December 2015, p. 229. https://issuu.com/cohnreznick/docs/cr_lihtc_dec2015
[2] CohnReznick LLP, *The Low-Income Housing Tax Credit at Year 30: Recent Investment Performance (2013-2014)*, December 2015, p. 38. https://issuu.com/cohnreznick/docs/cr_lihtc_dec2015
[3] David J. Erickson, *The Housing Policy Revolution: Networks and Neighborhoods*, The Urban Institute Press, Washington, D.C., 2009, page 63.

generally make home mortgages or small business loans should be evaluated primarily on its CD activities.

- CD activities everywhere should be evaluated based on their substance and not just their size. The size of a CD activity is only one measure of its impact. For example, a $1 million loan to a CDFI may be far more impactful than purchasing a $1 million Ginnie Mae mortgage backed security, but also more complex, time consuming, and capital intensive. However, the substance of CD activities is considered only in a relatively few "full scope review" AAs. The problem is especially acute for very large banks with AAs in multiple states. Examiners understandably tend to select the largest AAs within a state for a full scope review because these markets generate the most deposits, but the result is to disregard the substance of CD activity everywhere else, especially in non-metropolitan and smaller metropolitan AAs. For example, a bank may have 30 AAs in California but receive a full scope review in only a few markets, leaving out areas as large as San Diego, San Jose and Sacramento, let alone rural areas. To balance the importance of considering the substance of CD activities with the practical limitations of an examination, we suggest conducting a full-scope review of CD activities: (1) for each AA among the largest 50-100 metropolitan areas nationwide; (2) the other AAs within a state on a combined basis; and (3) to reflect any CD activities in other states, at the institution level.

- Wholesale and limited purpose banks should continue to be evaluated based on their CD activities. These banks offer neither retail lending nor deposit accounts to the general public.

Clarifying which CD activities will get CRA credit would significantly increase the flow of capital for communities, reduce regulatory burden and uncertainty for banks, and streamline and simplify the examination process for agency staff. Additional clarity is especially important for CD activities.

- A bank should receive full credit for CD activities nationwide if it has served its AAs, in the aggregate, at a satisfactory level based on its most recent exam. Current policies regarding credit for CD activities in a "broader statewide or regional area" (BSRA) that includes a bank's AAs are well intentioned, but in many cases are both unnecessarily restrictive and too unclear for banks to follow with confidence.

    - One problem is that current guidance requires that banks meet an undefined AA responsiveness test to allow certain BSRA activities, but AA responsiveness is only determined as part of the examination years later. Banks must be able to know in real time whether their service to AAs will meet the required threshold to qualify those BSRA activities.

    - A second problem is that allowable BSRA boundaries are unnecessarily restrictive and too unclear. An examiner could determine that a bank's BSRA boundary is too

broad and deny credit for an important activity. While a clearer definition of BSRAs would be a step in the right direction, CD financing is often provided on a nationwide basis, either directly or through intermediaries. Crediting CD financing nationwide would be an important simplification for community developers as well as for banks, facilitate financing for underserved areas, and align with today's CD financing practices. We see no over-riding policy reason to deny a bank in, for example, Salt Lake City credit for financing CD in Detroit or Appalachia if it chooses to do so, provided that the bank has a satisfactory rating on its most recent exam. (Note: we separately recommend that a bank should have a satisfactory or better rating for its AAs, in the aggregate, in order to achieve a satisfactory CRA rating overall.)

- Clarity about what activities qualify as CD would remove a significant barrier to reinvestment. Banks need to have confidence at the time they make financing decisions and develop new financing products whether CD activities will receive CRA credit. For most banks it is simply not practical to pursue CD financing that might not qualify for CRA credit. The agencies should provide clearer guidance on common CD activities as described below. For less common or more nuanced activities, the agencies should develop a mechanism to provide timely confirmation of CRA eligibility in advance of a transaction closing. It would also be helpful if the agencies would publish these determinations so that all banks can learn about and rely on them.

  - Unsubsidized affordable rental housing accounts for 80 percent of all affordable rentals, but its eligibility under CRA is unclear. It is important that CRA modernization should resolve this issue because the need for affordable housing has deepened significantly since 1995, public subsidy programs alone cannot solve the problem, and practitioners are focusing more on preserving unsubsidized affordable rental housing.

  - Affordable rental housing undertaken in conjunction with an explicit federal, state, or local government affordable housing policy or program should receive full CRA credit if at least 20 percent of the units will be affordable for the term of the bank's financing. The primary federal affordable housing production policies – LIHTC, tax-exempt multifamily housing bonds, and the HOME Investment Partnerships program – all use 20 percent as their eligibility thresholds. More states and localities are supporting affordable housing through direct funding, tax relief, and inclusionary zoning requirements. Aligning CRA with other governmental policies would promote consistency, clarity, simplicity, and efficiency.

  - Infrastructure financing should receive CRA credit to the extent it is reasonably expected to serve LMI people or places: (1) full credit if LMI people or places will receive most of the benefits; (2) pro-rata credit if LMI people or places will receive 20-50 percent of the benefits; and (3) no credit if LMI people or places will receive less than 20 percent of the benefits. Considering that about 30 percent of all census

tracts and people nationwide are LMI, this approach would provide a reasonable level of credit without diluting CRA's primary LMI focus.

- Economic development activities in "distressed" middle-income metropolitan areas should receive the same CRA credit available for activities in similar non-metropolitan census tracts. Many metropolitan areas continue to struggle even as other areas thrive, a divide that has deepened significantly in recent years.[4]

- Long-term loans and investments made in prior exam periods should be credited for as long as a bank retains them, based on the unpaid principal balance for loans and GAAP accounting treatment for investments. Long-term financing is important, especially to CD activities. Currently, only investments (but not loans) made in prior exam periods continue to generate CRA credit. This system perversely gives banks more credit for making and then renewing a short-term loan than for making a long-term loan in the first place. We also observe that examiners do not consistently recognize the value of investments made in prior exam periods.

Reconsidering Assessment Areas

A central question for CRA modernization is how to balance activities in the areas surrounding branches and elsewhere, especially in a rapidly evolving banking world of digital banking access, nationwide lending and investment practice, and branchless banks, even as branches continue to serve important functions. We propose a comprehensive approach to engage an increasingly diverse banking industry more fully in addressing community needs.

- Branch-based AAs should be retained. The CRA statute clearly requires a separate presentation for each metropolitan area where a bank has a branch. Moreover, it is important to affirm CRA's mandate that banks should serve the communities where they have retail branches.

- A bank with branches should have to serve its AA(s), in the aggregate, at a satisfactory level in order to achieve an overall satisfactory CRA rating. Activity outside a bank's AA(s) can be important but should not compensate for unsatisfactory service to its AA(s). This principle should preserve the local focus of CRA while enabling activity elsewhere to be recognized.

- AA performance benchmarks should reflect the level of deposits within each AA. For this purpose a bank should have the option of either: (1) allocating deposits among AAs based on the location of its deposit customers; (2) following the current practice of

[4] See, e.g., Christopher Rugaber, "Decade since recession: Thriving cities leave others behind," Associated Press, December 14, 2017, https://www.foxnews.com/us/decade-since-recession-thriving-cities-leave-others-behind

assigning deposits to its branches; or (3) a combination of the two. Brokered deposits should be disregarded for this purpose.

- To increase focus on rural areas while streamlining the evaluation process, non-metropolitan portions within a state should comprise a single AA (or in very large states with diverse non-metro regions, a few AAs). Current CRA policies inadvertently but systematically tend to devalue non-metropolitan areas because the typical non-metro AA has a small population, generates relatively limited deposits, and offers limited or episodic CD financing opportunities. It is not surprising that banks frequently have difficulty in consistently finding responsive CD activities in every non-metro AA or that examiners tend to focus more on larger, metropolitan AAs. In addition, as a practical matter, it makes little sense from a CRA perspective for a bank to go the extra mile for a major CD project in an AA that will contribute negligibly to its overall rating. Combining multiple non-metro portions within a state into one or a few AAs would significantly address these factors.

- Branchless banks that conduct business nationwide now have combined assets of $1.5 trillion, a significant and growing segment of the banking industry. These banks should not have local AAs because they do not function as local banks. Instead, they "typically draw their resources from, and serve areas well beyond, their immediate communities".[5] Accordingly, these banks should be evaluated on their LMI activities nationwide. This approach is consistent with CRA's statutory mandate that banks should serve "the communities in which they are chartered to do business"[6] because banks already conduct business nationwide without violating their charters. If the agencies determine that the statute requires the designation of a local AA where the bank is chartered, then the level of deposits from customers located within the AA should set the performance context for evaluating activity there. In short, the AA should receive at least its fair share of reinvestment activity, but not necessarily more than its fair share. We do not support the idea, which some have raised, that a branchless bank should have AAs in the markets where it makes the largest number of loans; those markets would likely be the largest metropolitan areas, further diminishing CRA's attention to less populous areas.

- If a large retail bank's presence in a given AA or state is equivalent to that of a small bank (e.g., deposits less than $321 million[7]), then the small bank examination process (i.e., streamlined lending test only) should apply to that AA or state. The comprehensive large bank examination structure would continue to apply at the institution level, as well

[5] This is the same rationale the agencies cited in 1995 for crediting nationwide CD activities of wholesale and limited purpose banks. *Federal Register*, Vol. 60, No. 86, p. 22160.

[6] 12 U.S.C. 2901

[7] The examination buckets for CRA examinations are based on assets, not deposits, but deposits are more easily identifiable to AAs than are assets. Many banks have roughly comparable levels of assets and deposits.

as to any AA or state where the bank's deposits exceed $321 million, so overall expectations and evaluation for CD, services, and other lending elements would continue to apply there. However, this approach would greatly simplify evaluations for the specific AAs and states where a bank has only a very limited presence.

Getting CRA Performance Metrics Right

While data can be more helpful in setting clearer, more objective and more consistent performance metrics, basing CRA ratings primarily on the dollar volume of a bank's financing will prove unworkable and have unintended negative consequences for both communities and banks.

- Banks' business strategies and product mixes vary widely, even among banks of similar size. It will not be easy for banks to fit in one of a few categories (e.g., traditional, internet, wholesale, limited purpose), especially as product mixes change, hybrid business models evolve, and new banks emerge to serve various market niches. A simple metric cannot provide the needed flexibility to account for the differences between banks.

- Local communities and their needs and reinvestment opportunities also vary widely. It is important to keep CRA focused on banks' responsiveness to community needs. For example, markets with high home prices generate few LMI mortgages, but those markets do not necessarily generate other off-setting financing opportunities. In addition, bank competition is greater in some markets than others.

- Focusing on the dollar volume of CRA activity would disadvantage rural, non-coastal, and other markets with low home prices, as well as the banks that serve these areas. A $150,000 mortgage in Chicago should not count twice as much as a $75,000 mortgage in Appalachia, Toledo, or Montgomery just because Chicago's home prices are twice as high. Worse, one $750,000 mortgage for an upper-income homeowner in a gentrifying LMI neighborhood in Brooklyn should not be worth five mortgages in Chicago or ten in Appalachia, Toledo or Montgomery, especially if the loan has dubious benefit to the LMI community.

- CD activities could lose attention if not considered separately, even if weighted extra. If CRA focuses too narrowly on the dollar volume of financing, a bank may be able to meet its CRA obligations without undertaking highly impactful CD activities that are complex, high-touch, less liquid, more capital intensive, longer-term, smaller, or not maximally profitable.

- National and regional economic cycles could make dollar volume targets alternately too easy or too hard. For example, mortgage and small business lending volumes change substantially as interest rates and the economy rise and fall. Any sustainable metric must

account for such cyclicality or risk imposing undue credit allocation in a downturn, potentially compromising safety and soundness while disserving LMI people and places.

- Maintaining predictable performance targets will be difficult because periodic changes to dollar volume targets will be necessary and appropriate. Not only will it be hard to set the initial volume targets at just the right level, but industry, community, and economic conditions are inherently dynamic. As one example, as mortgage lending migrates from banks to other lenders, the dollar volume of banks' LMI mortgage lending is shrinking even for banks that maintain or increase the LMI share of their mortgage lending. Adjustments to CRA dollar volume targets will inevitably lag market changes and, more fundamentally, will defeat the purpose of predictability. Dollar volume targets would also be vulnerable to policy risk; for example, the affordable housing goals for Fannie Mae and Freddie Mac, which have a few simple percentage-of-business metrics, were increased significantly at least twice.

Much can be done to improve clarity, predictability, transparency, and consistency without adopting a simple dollar volume metric. In particular:

- To promote transparency and consistency, the agencies should clearly explain:
  - How they evaluate the various elements of the performance evaluation (e.g., mortgage lending, small business/farm lending, CD activities, and services), including what performance benchmarks and peer comparisons are used and how they are used;
  - How those elements are weighed within AAs and state rating areas; and
  - How activities among state rating areas and elsewhere are aggregated to reach an overall rating.
- Evaluation of mortgage and small business/farm lending should be based on the number and distribution of loans, not the dollar volume of lending. A dollar-volume focus would devalue small balance loans, which are important to communities but already challenging to make.
  - Home equity lines of credit/loans should be either: (1) disregarded entirely; or (2) evaluated separately from home purchase and refinance mortgages. Many LMI homeowners and many LMI neighborhoods have limited home equity so they present limited opportunities for home equity lending. In addition, the small home equity loan amounts common to LMI borrowers and neighborhoods makes them incomparable with home purchase or refinance mortgages.
  - If a bank's mortgage (or small business/farm) lending is insignificant or not offered to the general public, it should be disregarded. A given product line (e.g., home

mortgages; small business/farm loans; or CD) should receive greater emphasis within the performance evaluation if it comprises more of a bank's activity.

- Giving additional weight to certain preferred activities makes more sense within the current evaluation framework than within a single metric framework. If a bank has a fixed dollar volume target, additional weighting becomes a two-edged sword: on one side, it encourages those activities over others; on the other side, a bank could achieve the same volume target by undertaking fewer of those activities. It will be important to avoid this unintended consequence.

  We would, however, support additional credit for certain activities within a framework closer to the current one. The federal banking agencies should clearly explain how additional credit for certain CRA activities will be applied. In particular:

  - Activities should receive additional credit if they are especially responsive to local or national needs, complex, innovative, feature non-standard terms, or involve multiple financing sources. Such qualitative factors are particularly important to evaluating CD activities. The agencies should specify clearly how such elements are defined and treated. At the same time, we recognize that some examiner discretion will be appropriate.

  - Equity investments – including those based on LIHTC and New Markets Tax Credits and those in CDFIs – as well as loans to CDFIs should specifically receive additional credit because they are highly responsive to LMI needs, are difficult to obtain from other sources, and require banks to allocate higher levels of capital to support them.

  - Activities should receive more credit if located in a community with: (1) low median income (vs. moderate income); (2) a high rate of poverty, unemployment, or out-migration; (3) native tribal authority; or (4) governmental designation for revitalization or redevelopment. The agencies could designate most of these communities based on readily available federal data or information.

  - A bank should receive additional credit if it retains a loan or investment for a long term. Long-term financing is especially important to CD activities but requires a bank to commit capital for a longer period and can be hard to obtain. Loans and investments made in prior examination periods should receive CRA credit based on a loan's outstanding balance and an investment's current value using GAAP. Under current guidance, only prior period investments, but not loans, receive credit.

- A separate service test should be retained because access to basic banking services for LMI people and places remains essential. However, the service test should recognize that, while branches continue to be important, they are becoming a secondary access point for many consumers. Accordingly, the service test's primary focus should be the extent to which banks are reaching depositors located in LMI areas (and, at a bank's option if it has

supporting data, LMI individuals), whether through branches or digital channels. To the extent that a bank has branches, they should be accessible to LMI area residents on an equitable basis. A bank should also receive credit if it provides, directly or through a nonprofit partner, financial counseling and education, including for aspiring and current homeowners and small business owners.

- A strategic plan option should be retained. The CRA Strategic Plan option provides clear and predictable activity targets while allowing for the inclusion of critical institutional and community performance context. The CRA Strategic Plan is particularly important for institutions with non-traditional business models that should not be evaluated under the same process as banks with more traditional business models. In addition to preserving the strategic plan option, the federal banking agencies should improve the strategic plan process to make it more workable for more banks, such as by allowing substantive feedback on draft plans from regulators, providing clear guidance on the role of public comments, and allowing banks to make minor adjustments to the plan during the plan period.

Conclusion

This concludes my testimony. Thank you for considering our views.

NAAHL Member Organizations

Affordable Housing Tax Credit Coalition
Alabama Multifamily Loan Consortium
Ally
American Bankers Association Foundation
American Express
America's Federal Home Loan Banks
Bank of America
Bank of New York Mellon
BB&T
BMO Harris Bank
Boston Private Bank and Trust Company
California Community Reinvestment Corporation
California Housing Finance Agency
Capital One
Centrant Community Capital
Century Housing
Cinnaire
Citi
The Community Development Trust
Community Housing Capital
Community Investment Corporation
The Community Preservation Corporation
Community Reinvestment Fund, USA
Deutsche Bank
Enterprise Community Partners
E*TRADE
Fifth Third Bank
Goldman Sachs
Housing Partnership Network
Illinois Housing Development Authority
JPMorgan Chase
KeyBank
LISC / National Equity Fund
Low Income Investment Fund
Massachusetts Housing Investment Corporation
Massachusetts Housing Partnership
MassHousing
Morgan Stanley
MUFG Union Bank, N.A.
National Housing Trust
NCALL Loan Fund
Neighborhood Lending Partners, Inc.
NeighborWorks America

Network for Oregon Affordable Housing
New York City Housing Development Corporation
Northern Trust
Ohio Capital Corporation for Housing
Opportunity Finance Network
Pembrook Capital Management, LLC
PNC Community Development Banking
Raza Development Fund
RBC Global Asset Management, Inc.
RIHousing
Rocky Mountain Community Reinvestment Corporation
Santander Bank, N.A.
Silicon Valley Bank
TD Bank, Community Development
U.S. Bank
Washington Community Reinvestment Association
Wells Fargo
Woodforest National Bank

Testimony of Jesse Van Tol

CEO

National Community Reinvestment Coalition

April 9, 2019

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

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[1] See Congess.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,

[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

[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

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[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

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[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

[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

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[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]

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[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

[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

[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.

Submitted testimony for the record of Greg Baer, CEO

Bank Policy Institute

Subcommittee on Consumer Protection and Financial Institutions

House Committee on Financial Services

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

April 9, 2019

The Bank Policy Institute (BPI) is pleased to submit the following testimony for today's hearing, "The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining." BPI is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks. Our members include universal banks, regional banks and the major foreign banks doing business in the United States.

BPI fully supports the longstanding goals of the Community Reinvestment Act (CRA) and supports a modernization of the regulatory framework that would enable banks to work even more effectively to strengthen and develop the communities they serve. An updated framework should provide *ex ante* transparency with regard to activities deemed eligible for CRA credit. Revisions to the CRA regulations should also update the determination of CRA assessment areas, particularly in light of the evolving nature of banking in response to changes in technology and consumer preferences, to allow banks to more fully serve the lending, investment, and service needs of low- and moderate-income (LMI) communities and individuals. Finally, we encourage the Federal Reserve, the OCC, and the FDIC to continue to work together to enhance the clarity and consistency of the CRA regulatory framework.

Adopted in 1977 to address geographical discrimination in lending that previous legislation and regulation had failed to eliminate, the CRA sought to ensure that banks met the credit needs of the communities they served, including LMI neighborhoods and individuals. To this end, banks are periodically assessed on the basis of three tests evaluating their provision of loans, investments, and services within one or more assessment areas, as determined by the location of the bank's main office, branches, and deposit-taking ATMs. Banks are assigned an overall rating—Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance—reflecting their performance on each of the three tests in each assessment area. A bank's CRA rating is considered in evaluating bank merger and expansion proposals. There are different regulatory requirements for small, intermediate, and large banks, as well as those designated as limited purpose or wholesale; banks may also work with regulators to develop a "strategic plan" specific to their institution. This regulatory framework has remained in place, without revisits or substantial revisions, for many years.

Objectivity, Transparency, and Clarity

The current regulatory framework contains a number of standards that are vague and/or reliant on a considerable amount of discretion by individual examiners, which has resulted in inconsistent interpretation across banks, and even across performance evaluations for a single institution. For example, evaluation standards prioritizing "flexible" lending practices, "complex" investments, and "responsive" services are left undefined and subject to examiner discretion. In practice, the resulting uncertainty as to which activities will be judged eligible for CRA credit constrains banks to a relatively narrow range of "safe," guaranteed activities, and hinders them from engaging in a meaningfully impactful activity due to fear that it may ultimately be deemed ineligible. This uncertainty created by the subjectivity of the current framework limits the very "innovative" and "responsive" community reinvestment activity that the Act intends to encourage, as banks are unable to engage in development that is tailored to the needs and opportunities of their community. The federal banking agencies should revise the regulations to provide *ex-ante* certainty as to which activity will receive CRA credit. The *ex-ante* transparency provided by an assessment methodology that encourages consistency across examiners and performance periods would allow banks the freedom to better identify and effectively respond to the needs of their community.

Additionally, under the current framework, performance evaluations -particularly for large banks- can take years to complete. Consequently, banks are often left with little opportunity to remediate deficiencies and address gaps in performance in a timely manner. Because evaluations are often effectively outdated the moment they are released, banks do not receive the meaningful feedback from regulators on their recent performance, and thus are less able to address issues in a timely manner as they arise. A streamlined evaluation process would benefit institutions and community stakeholders alike, providing banks with the timely feedback and means necessary to improve and adapt their lending, investment, and services to the current needs of their communities as they evolve.

Further, the disproportionate weighting given to the lending test relative to investment and service tests under the current framework effectively acts as a disincentive to banks from focusing on investment and community engagement/service initiatives, which may be of particular benefit to LMI communities.[1] Investment in projects such as affordable housing and community services like financial literacy education play a meaningful role in strengthening LMI communities, but the predictable measure of dollar-for-dollar CRA credit afforded to lending under the current framework makes it a more attractive option for banks who would otherwise want to engage in these activities. The regulatory framework should better accommodate individual bank business models and strategies. Increased flexibility in the assignment of CRA credit would make it more likely that additional CRA investment or service initiatives would occur.

Lastly, BPI urges Congress to further encourage the regulators to continue to ensure that CRA ratings reflect banks' CRA related activities, not practices or transactions subject to alternative regulatory regimes. In order to maximize the impact of CRA processes and investments, it is imperative

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[1] According to the OCC, FRB, and FDIC "large bank" exam manual, for example, institutions are credited 12 points for Outstanding performance on the lending test, measuring factors like loans to farms and businesses with gross annual revenues of $1 million or less, and 6 points each for an Outstanding rating on investment and service activities like affordable housing rehabilitation and providing low-cost education to low-income borrowers.

that the CRA enforcement apparatus focuses on community reinvestment and not unrelated compliance issues. BPI believes that this kind of singular focus will afford banks the opportunity to maximize compliance with these other regimes while also planning and executing a robust portfolio of CRA activities. The steps that have already been taken by agencies to streamline certain punitive approaches to CRA compliance have been helpful and should be further encouraged.[2]

Assessment Areas

When the CRA was first adopted more than four decades ago, the majority of financial institutions collected deposits and made loans and investments in areas circumscribed by their physical branch locations. Today, many banks subject to CRA operate regionally or nationally, and many others collect deposits, substantially or even exclusively, via digital platforms, maintaining footprints that far exceed the boundaries of their physical branch geographies. While physical branches remain at the heart of the CRA's spirit and purpose, updates to the approach to defining assessment areas—including taking into account the growing role of digital banking—would increase banks' ability to provide credit, investments, and services to LMI and underbanked communities.

Banks' operations may include branches in dozens or even hundreds of geographies subject to individual assessment under the current regulatory framework. These geographies often present varying levels of opportunity for activity and investment, and under the current framework, temporary underperformance in even a small proportion of geographies can disproportionately affect a bank's otherwise overwhelmingly satisfactory or outstanding performance rating. This disproportionate weighting presents a two-pronged obstacle to banks' expansion into a diversity of geographies: it prevents banks that are working to address identified weaknesses in a limited number of assessment areas from opening new branches even in LMI areas, counter to the Act's intent, and may disincentivize banks from operating large branch networks or opening branches in underserved areas where CRA opportunities may be uneven, including communities with little to no access to mainstream banking services. Removing obstacles and providing incentives for branching into underserved areas for banks with overwhelmingly satisfactory or outstanding performance would be a step toward expanding access, and may be particularly impactful for those areas, including rural geographies, where the accessibility of physical branches, and thus inclusion in traditional assessment areas, has historically been low.

The current method of determining assessment areas based on bank headquarters and physical deposit-taking locations has also resulted in an uneven distribution of CRA activity across geographies, creating credit hotspots in which banks often compete for community reinvestment opportunities in areas already saturated with CRA funding. Under the current framework, a bank that wishes to expand its activity to underserved and LMI communities beyond its assessment area receives no *ex ante* guarantee of full CRA consideration, creating a considerable disincentive for such expansion. Electively broadened assessment areas or guaranteed full consideration for activity outside the assessment area would remove or mitigate this disincentive, enabling a more balanced and equitable distribution of CRA lending and development responsive to opportunity and need.

[2] In OCC Bulletin 2018-23, the OCC clarified its policy regarding the impact of evidence of discriminatory or other illegal credit practices on CRA ratings. The agency articulated that it would lower the composite or component performance rating of a bank only with evidence of certain practices directly related to the bank's CRA lending activities. The bulletin can be reviewed here: https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-23.html.

Additionally, the growing number of banks that conduct their business through digital channels and operate few to no physical branches—a business practice not contemplated by the 1977 statute nor in subsequent regulation—do not receive automatic CRA consideration for activity outside the geographies in which they have a physical presence, even if their activity outside those geographies may otherwise be eligible. This creates significant challenges as these banks seek credit opportunities within their limited, and often highly-saturated, assessment areas while being unable to receive credit for their activity in often less well-served areas. A modernization of the CRA framework to address the growing presence of digital banking that provides opportunities for CRA credit outside branch-based assessment areas would allow these institutions to more effectively reinvest in the communities they serve.

Interagency Action

BPI welcomes the recent news that the federal banking agencies will be meeting to discuss CRA reform. We encourage their further engagement on an interagency basis to develop a joint proposal for comment. A decision by the OCC to proceed with its suggested reforms without cooperation from its regulatory counterparts would result in differing standards across the industry. Inconsistency may also pose further challenges for holding companies with different bank charters, producing a set of conflicting standards and requirements that would be costly and time-consuming to navigate. An interagency proposal would ensure consistency of purpose and process between and amongst regulators and regulated institutions. Congress should encourage the federal banking agencies to continue to work in concert toward a unified CRA proposal, thus ensuring that the focus remains on meaningful and impactful community reinvestment reform.

Thank you for allowing BPI to provide testimony at this important hearing. Interagency improvements to the CRA regulatory framework, including enhanced transparency and consistency and an updated approach to assessment areas that would incorporate changes in the banking industry and consumer preference, would draw us closer to the Act's longstanding aims.

Sincerely,

Gregory A. Baer
President & Chief Executive Officer
Bank Policy Institute

CBA

HELPING FINANCE THE AMERICAN DREAM SINCE 1919.

April 9, 2019

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
2004 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Waters and Ranking Member McHenry:

The Consumer Bankers Association (CBA) appreciates the committee's review of the impact of the Community Reinvestment Act (CRA) in the hearing entitled, "The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining" and submits the following comments that outline the industry's commitment to meeting the credit needs of all the communities in which they serve and the need for regulators to modernize CRA regulations that will lead to improved consistency amongst the various regulators and an increase in investment within communities across the country. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country's total depository assets.

CBA strongly supports the mission of the Community Reinvestment Act and believes that our member banks have an affirmative obligation to lend and invest in the communities where they operate. As part of our support for a strong and effective CRA, we believe the regulations can be improved to reflect changes within the marketplace and the realities of modern-day banking. An update to CRA regulations and supervisory process would modernize the process and improve outcomes for the communities they serve.

CBA does not advocate, and would not support, changes to CRA that would undermine its value. We believe the purpose of any reforms to CRA should be to enhance its effectiveness, and ensure its continued value to all communities banks serve, including low- and moderate-income areas. However, the current regulatory framework of CRA is over two decades old and in need of reforms to reflect the enormous changes to banking that have taken place in that time.

To this end, CBA submitted comments[1] in response to the Office of the Comptroller of the Currency's (OCC's) November 2018 Advance Notice of Proposed Rulemaking considering transformational changes to CRA. In our comments, we supported the goals of CRA to ensure banks meet the credit needs of low- and moderate-income areas, subject to safe and sound banking; noted CRA should better address the digital transformation of banking and the changing preferences of consumers; and

[1] See Appendix A

promoted the principle that the enacting regulations should allow for banks to identify areas for investment in communities outside of the traditional scope of the banks CRA footprint and optionality for different banking models and strategies.

CBA also advocates reforms to CRA that would reduce costly and time-consuming technical requirements, permit CRA activities where they are most needed, and provide for more timely evaluations. While CBA appreciates the OCC taking the first step in evaluating these reforms, we encourage all three prudential regulators, the OCC, the Federal Reserve Board, and the Federal Deposit Insurance Corporation, to participate in the reform process in order to provide banks with a single set of consistent regulations.

CBA stands ready to work with Congress and the regulatory agencies to effect positive change for all those affected by CRA, and we appreciate the opportunity to submit these views.

Sincerely,

Richard Hunt
President and CEO
Consumer Bankers Association

APPENDIX A

November 19, 2018

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Via Email: Regs.comments@occ.treas.gov

Re: Docket ID OCC-2018-0008: Reforming the Community Reinvestment Act Regulatory Framework

To Whom It May Concern:

The Consumer Bankers Association (CBA)[1] is pleased to submit these comments to the Office of the Comptroller of the Currency (OCC) on behalf of its members in response to the Advance Notice of Proposed Rulemaking (ANPR) entitled "Reforming the Community Reinvestment Act Regulatory Framework."

CBA commends the OCC for embarking on an exploration of ideas for building a modernized framework for the regulations implementing the Community Reinvestment Act (CRA). The OCC's goal is to help regulated financial institutions more effectively serve the convenience and needs of their communities by encouraging more CRA activities where they are needed most; evaluating CRA activities more consistently; and providing greater clarity regarding CRA-qualifying activities.

As the ANPR states, "A transformed or modernized framework also would facilitate more timely evaluations of bank CRA performance, offer greater transparency regarding ratings, promote a consistent interpretation of the CRA, and encourage increased community and economic development in low- and moderate-income (LMI) areas."

CBA supports the goals of CRA and believes banks have an affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound banking. Since CRA was enacted, billions of dollars have been invested in

[1] The Consumer Bankers Association is the only national trade focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.

communities that have demonstrably benefited them. We do not advocate, and would not support, changes to CRA that would undermine its value to the communities our banks serve.

At the same time, CRA is over 40 years old, and the framework of the current regulations is over two decades old. Since then, banking has been undergoing a rapid transformation — which is unlikely to end soon. With that in mind, we are advocating reforms; but we do so with the understanding we do not want to see CRA lose its overall effectiveness. Indeed, the purpose of reforms should be to enhance the effectiveness of CRA and ensures its continued value to the communities banks serve, including low- and moderate-income areas.

Reforms to CRA regulations should try to achieve at least the following goals, thereby increasing the benefits of CRA to the communities served by banks:

- Provide more clarity and certainty in CRA-eligible activities;
- Address digital transformation and the changing preferences of consumers;
- Permit more flexibility to invest where there is need; and
- Provide optionality for different models and strategies.

These changes should also reduce costly and time-consuming technical requirements; expand the value of CRA by ensuring the most appropriate CRA-eligible activities receive consideration; and provide for more timely evaluations.

We support a dialogue among regulators and stakeholders to work through these issues; and more evaluation to determine how changes would impact consumers, communities, and banks of different sizes and models in different markets. Such transformational changes to the regulation call for rigorous testing with a sufficient number of banks with diverse strategies and markets to fully appreciate the impact on banks, businesses and consumers.

We also recommend all three regulatory agencies – the OCC, the Federal Reserve Board, and the Federal Deposit Insurance Corporation (the Agencies) – work together toward a single uniform framework for CRA. CRA is somewhat unique in requiring separate regulations to be adopted by each regulatory agency for the banks over which it has prudential supervision. With few exceptions, the Agencies have maintained substantially similar regulations since CRA's enactment in 1977. It is important that continue to be true.

NEED FOR GREATER CLARITY AND CERTAINTY

The CRA regulations and interpretations are not always clear and often are not applied consistently. This is due both to the inherent subjectivity in much of the evaluation process – as laid out in the current regulations – and the lack of a responsive vehicle for interpretations and guidance.

There are numerous ambiguities in regulation, and examiners frequently interpret them differently.

- Interpretations are provided infrequently and often lack the specificity needed.
- Different agencies interpret the same rules differently.
- Examiners within the same agency will reach different conclusions on the same issues.
- Banks often lack enough information to know what will qualify until after the fact.
- Changes in interpretations can be made that have a retroactive effect on the banks.

Since the last CRA regulatory revision in 1995, the regulators, via the Federal Financial Institutions Examination Council (FFIEC), have jointly provided CRA guidance through "Interagency Questions and Answers Regarding Community Reinvestment" (Q&A). Though the Q&A can be useful, they are often unclear, and have proved to be a poor vehicle for providing clear and uniform interpretations. Examiners often rely instead on a more informal network of questions and answers within the agency, a process which is opaque to the banks that must comply with the same expectations. Coordinated interagency interpretations of the regulations and supervisory guidelines need to be more frequently provided, clearer, and easier to use.[2]

Terms like "innovative," "responsive," or "flexible," for example, often require examiners to make subjective determinations on a case-by-case basis, making advance planning by the bank problematic. Examiners are often challenged by the lack of clear guidance from their agencies; and different examiners can reasonably reach different conclusions from the same evidence. While some level of qualitative analysis is often appropriate given the nature of CRA evaluations, we believe the rules and interpretations can be made more objective, reducing the level of uncertainty by all stakeholders.

One of the benefits of greater clarity in the rules is to incentivize banks to reach for Outstanding ratings. Some have suggested too many banks are given Satisfactory or better ratings, and the CRA evaluation rating process should operate as an incentive to force banks to do more—that banks are being given too much of a free pass. However, the appropriate measure, as reflected

[2] All significant changes in exam guidance and policy should have a delayed effective date to provide sufficient time for banks to adjust, and should be published for notice and comment before final issuance. Changes in CRA strategy take time to develop and implement. Just as the regulatory agencies need time to draft and finalize policy updates through vehicles such as Q&As and examination procedures, financial institutions need time to update and implement strategies in response to CRA policy changes from the regulatory agencies. Steps involved in this process may require the following:

- Approval from senior management
- Systems and technology changes
- Development of new policies, products and/or procedures
- Training for employees
- Development of partnerships with community organizations

in the language of the statute, supports the approach taken by the agencies.[3] It is not inconsistent with CRA's statement of purpose if the majority of banks receive Satisfactory ratings, provided they can show they are making a reasonable effort and have achieved some measure of success in helping to meet the needs of the communities they serve, including LMI areas. Further, banks have an incentive to achieve Satisfactory or better ratings, because the failure to do so results in a cost, both to their ability to grow and to their reputations.

However, there is little incentive for banks to reach for Outstanding ratings, and the lack of clarity in the rules, as implemented, makes things worse. If getting an Outstanding rating is too far out-of-reach, banks might actually reduce their investment in CRA. Increased clarity in the rules and guidance, coupled with expectations that are more measurable, provide an environment where more banks will seek to reach for Outstanding ratings.

Additional incentives for Outstanding-rated banks would encourage more effort as well. Such incentives might include streamlined exams or regulatory approval, a safe harbor, or expedited process, for regulatory applications. Merely providing clear performance metrics would help as well.

Clarity and certainty are necessary if for no other reason than that good public policy demands it.

DIGITAL TRANSFORMATION AND CONSUMER BEHAVIOR

CRA was signed into law in 1977, when banking was far different than it is today. Even the current regulatory framework, put into place by the regulatory agencies in 1995, reflects an understanding of the way banks operated in the 1990s, before digital transformation had really begun.

Banking has changed dramatically since then, and is continuing to undergo a rapid transformation. Consumers are no longer visiting branches at the same rate or for the same purposes as they did two decades ago. Banking products and services are competing with offerings from nonbanks to serve similar needs, forcing banks to adopt to the digital ways many consumers prefer to transact business—whether low-, moderate-, middle- or upper-income individuals. These changes, among others, are ongoing, and the trends will eventually make the existing CRA framework less and less relevant to banking.

This digital transformation of banking needs to be more adequately evaluated in the CRA context. In its report on core principles for financial service regulation, the Department of the Treasury stated that "[t]he CRA examination process and rating system needs to reflect the variety of ways banks do business and meet the needs of diverse consumers and communities.

[3] The congressional findings and statement of purpose says, in part, "regulated financial institutions have a continuing and affirmative obligation ***to help meet the credit needs*** of the local communities in which they are chartered. 12 USC 2901(a)(3) (emphasis added).

Increasingly, banks use technology, such as automated and online offerings, to extend services outside of physical branches."[4] We completely agree.

The current regulation still places inordinate emphasis on physical full-service branches in evaluating a bank's CRA performance. The importance of branches and their location to CRA performance needs to be reassessed, not because branches are not important, but because their role has changed significantly since the CRA regulations were adopted in 1995.

For many banks, traditional branch networks face challenges. The cost of maintaining brick and mortar locations is increasing as consumers use mobile and other channels as a substitute for more traditional branch channels. In an environment of earnings pressure, there is a strong need to reduce the considerable operating expense of the branch, as teller transactions decline and per-transaction labor costs rise.

Meanwhile, the competition from nontraditional financial service providers, unburdened by the same legacy branch network and to a large extent the regulatory framework, encroaches on banks' valuable customer relationships. Most experts predict the branch is not dead, but the total number of branches will decline, and they will take different forms while consumers and businesses employ more digital channels for their banking needs.

The data confirm this. In the 2017 FDIC National Survey of Unbanked and Underbanked Households,[5] the FDIC found that mobile banking plays an increasingly important role in how consumers access their accounts. It found mobile banking was used by 40.4% of banked U.S. households to access their account in 2017 — almost double the 23.2% the survey found four years earlier. The trend lines are easy to see: CB Insights found that 92% of millennials use online banking, 79% use mobile banking, and 66% use branch banking.[6]

An analyst at the FDIC put it this way: "A mobile banking application makes it easy to transfer funds within your bank, perhaps to send money to a child's account there or to confirm if you have enough funds to make a purchase or pay a bill."[7] Mobile banking can also be a huge benefit to consumers by effectively extending banking hours and delivery options, in addition to providing useful account information at critical times. According to a Federal Reserve Board survey, 62 percent of mobile banking users checked their account balance on their phone before making a large purchase in the store, and 50 percent decided not to purchase an item as a result of their account balance or credit limit. This is an extraordinary value for consumers.[8]

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[4] U.S. Department of the Treasury to the President on Financial Regulation. U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities, Report to President Donald J. Trump, Executive Order 13772 on Core Principles for Regulating the United States Financial System*, pp. 64-65, (June 12, 2017), https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf.
[5] https://www.fdic.gov/householdsurvey/.
[6] CB Insights - Banks in Fintech: Digitizing Consumer Banking; https://www.cbinsights.com/research/briefing/fintech-digitizing-consumer-banking/.
[7] FDIC 2/28/2018, https://www.fdic.gov/consumers/consumer/news/cnwin18/mobilebanking.html.
[8] www.federalreserve.gov/publications/default.htm.

Banking digitally – whether mobile or web based – appears to be prominent among so-called "credit invisibles" (those consumers, many of whom are lower income, who lack a credit history). In a recent research report by the Bureau of Consumer Financial Protection, it was found that lack of internet access had a stronger relationship to credit invisibility than did the proximity of a bank branch. [9]

Branches still serve a purpose, and they are not disappearing, but they are declining in number as fewer customers use them, and they are transforming to serve consumers in different ways. Nevertheless, CRA still places a disproportionate emphasis on branch location in assessing banks' performance. This makes it particularly difficult for banks to demonstrate they are meeting community needs through the use of non-branch channels, such as mobile banking. This can be an obstacle when a bank has a limited branch network or is closing a branch in an LMI community due to not meeting profitability thresholds, and when – during a CRA exam – the bank needs to demonstrate the LMI community's needs are being served, at least in part, through other means. Changes in the regulation can go a long way to reflecting this digital transformation by reducing the primacy of brick and mortar locations, and permitting different channels, as appropriate, to get equal consideration.

Digital transformation has also created opportunities for banks to engage in account activity in areas that may be outside the bank's traditional assessment areas, whether opening accounts, transferring money, or lending.

A MODERNIZED CRA[10]

The ANPR invites comments on ways to modernize the current framework for CRA. In particular, it suggests consideration of a metric-based performance measurement system with thresholds or ranges (benchmarks) for measuring performance.

We support the effort to develop a more quantitative approach to CRA, as it could have many advantages over the existing approach.

- It could provide objective goals that can be targeted by the bank, permitting the bank to operate with greater certainty;
- It could be flexible enough to allow banks to address their communities' needs in the manner that is most appropriate to their business model and their customers;

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[9] Brevoort & Ficklin, Data Point: The Geography of Credit Invisibility, September 2018; https://www.consumerfinance.gov/about-us/blog/new-research-report-geography-credit-invisibility/
[10] Our comments substantially follow the order of the ANPR questions. Although we have not responded to each question, where we have done so we have numbered the section to correspond to the ANPR numbers. In some cases, we have combined questions from the ANPR and responded to them collectively.

- It could encourage more banks to reach for Outstanding ratings, because there would be greater certainty the investment will be rewarded;
- It could be less subjective and cumbersome than at present; exams would be shorter and more streamlined; and banks would have more resources to invest in their business;
- It could provide clear guidelines that would reduce surprises at exams;

A single corporate-wide numerical measure of CRA activity would not adequately reflect the diversity of bank models, products, services or markets, and adequately express the many ways banks help to meet the needs of their communities, including the low- and moderate-income customers. However, much can be done to improve the current framework through metrics that evaluate components of the total activity on an assessment area level, as part of a larger bank-wide evaluation.

However, as the ANPR questions suggest, there are many challenging issues which would have to be addressed before we can determine whether it would be effective in practice, and not all of them lend themselves to easy solutions.

Different Tests for Different Models

Different banks may prefer to have different tests, depending on their business models or markets. There is precedent for this approach. In addition to the Strategic Plan, there are different evaluations for different size banks (Small Bank, Intermediate Small Bank, and Large Bank) and for different banking models (Wholesale and Limited Purpose banks). We believe these should be retained. It is also possible other options could be available to serve different bank models, so each can most appropriately measure the banks' efforts to help meet the needs of their communities.

Depending on the framework, nontraditional banks (for example, branchless banks) may need to have a separate test, particularly where the absence of a traditional network of physical deposit-taking facilities requires different treatment. At the same time, banks should be able to demonstrate their uniqueness and agree with their regulators to be assessed on somewhat different criteria. Within the Large Bank Test, it may be that the thresholds for ratings should be different for different types of banks, related as much to business models (product mix) as to size, scope, or geography.

Optional CD Test -- Some banks may prefer an optional CD Test, where the CD activities are evaluated separately from retail, employing a ratio metric framework. CD activities do not get the amount of consideration they should. Given their importance, they should always have a strong positive impact evaluation. Yet currently, it is possible for CD lending to have a neutral impact on lending performance. Some banks, therefore, may prefer a separate CD Test, in addition to a measure of their Retail Lending activity.

We also recommend Strategic Plans be retained as a component of any new framework. Strategic Plans provide banks with an opportunity to be examined based on their unique model, and not force them into adopted policies or offering products or services that are not appropriate. We believe the approval process for Strategic Plans can be streamlined to make them more effective and more available than at present.

CRA-Eligible Activities – What Should Qualify

We believe banks should be evaluated on essentially the same set of activities that qualify today under the Large Bank exam methodology, though with some variations as to how they should be assessed. These should at least include:

a. Mortgage loans to LMI borrowers (retaining the existing definition of LMI);
b. Mortgage loans in LMI census tracts;
c. Small businesses/small farm loans to borrowers in LMI census tracts;
d. Small business/small farm loans to borrowers with gross annual revenues up to $1 million;
e. Community Development (CD) loans and qualified investments targeted to LMI or that broadly benefit the community without excluding LMI;
f. Consumer loans (at the option of the bank); and
g. CD and retail services targeted to LMI or that broadly benefit the community without excluding LMI.

In the discussion of CRA-eligible Activities, below, we provide more detail regarding the coverage of these activities.

8. How could benchmarks be established?

The most workable approach to benchmarking may be to rely on CRA-eligible activities assessed against FDIC-insured deposits. The loan-to-deposit (LTD) ratio is one that is both reasonably easy to calculate, publicly available, and relies on precedent. The Small Bank CRA Test, for instance, uses a basic LTD test already, as does the Riegle-Neal host state metric. A similar approach, relying on CRA lending and investment activities may be an effective way to evaluate bank performance.

As noted above, we do not believe a single metric, which would create a single corporate-wide numerical measure of CRA activity, would be a workable approach. However, several benchmarks can be aggregated to create a bank rating. These could be composed of:

1. Ratio benchmarks within the bank's assessment areas for CRA-eligible activities (loans and investments) as a percent of insured deposits within the assessment areas;
2. Retail and CD Services within the assessment areas, evaluated in a manner to be determined;
3. Bank-wide activities-to-deposits ratio benchmark.

The bank's FDIC-insured domestic deposits has several obvious advantages: It is most closely associated with the statutory focus—assessing the activity of the bank in providing credit against the deposit-taking by the bank; and it is relatively stable over time, unlike capital, which can change more rapidly.

A few points to note:

--By focusing on insured deposits, it would be limited to amounts under the FDIC threshold for insurance, more closely aligned with retail bank activity that is the concern of CRA.

--By focusing on domestic deposits, it would eliminate foreign accounts, which would not be relevant to the CRA consideration.

However, a deposit-based denominator may not be appropriate for banks of all sizes and all business models. Different business models require different CRA options while ensuring the CRA intent is not diluted. Knowing what approach is preferable will require an in-depth analysis of the impact on banks and their communities. Therefore, we are not in a position to advocate for any one approach until we can better assess their impact through testing. A ratio that depends on thresholds cannot be evaluated in the abstract, without knowing what the thresholds may be. Further, there may be different approaches that are better suited to different bank models.

9. Performance Context

Context remains important to CRA. Different markets require banks to address different needs under different conditions; economic changes over the course of exam cycles can markedly change the bank's performance opportunities. Some context should continue to be a consideration at the time of the evaluation, even if a more metric-based approach is adopted. Metrics on a periodic (e.g. annual) basis can still give the bank more information about its ongoing performance to assess progress toward its performance goals. However, it is important the metrics would not result in a periodic rating, since they would not have the benefit of the performance context until the full evaluation.

Several situations can arise that call for performance context to be employed. National and broad regional economic and competitive factors can affect a number of banks, and limit their ability to achieve their targeted goal. Individual banks' performance can also be affected by local market considerations and business strategy over the course of the evaluation period. The smaller the markets involved, the more need there would be for performance context. Criteria for how agencies will use performance context to adjust metrics when calculating ratings should be uniform and transparent.

10. Weighting Factors/Multipliers

One of the most challenging issues that arises when attempting to create a single metric is whether or not to create a framework that gives extra weight to some activities. The argument

for weighting ("multipliers") is that activities which are more challenging or difficult will not be undertaken by banks if they can get CRA consideration for easier activities. Multipliers therefore, increase the consideration for certain activities and provide additional incentive for engaging in them. But, weighting some activities more than others creates a significant level of complexity to what is intended to be a fairly straightforward calculation. The multiplier for one investment over another, or an investment over a loan, requires a consideration of the impact of each which is itself somewhat subjective. Further, it would probably have to be done on uniform national level that would not necessarily take into consideration local differences, which can be considerable. In the alternative, locally different multipliers would create an almost intolerable level of complexity and subject the regulation to considerable criticism and second-guessing.

Multipliers could be used on a selective basis to encourage activity within certain markets that are in greater need or that should be getting more attention from a bank investing outside its assessment area. Opportunity zones, federal- or state-designated disaster areas, persistent poverty counties, underserved rural areas, and the like, could be recognized as getting extra consideration, though the use of multipliers.[11]

Any consideration of multipliers should assess the benefits against the costs. Weighting some activities more than others puts the government's finger on the scale in a way that may be too easy to manipulate, too subject to changes in policy, and not sufficiently transparent. It also may result in favoring particular business models or communities over others. Therefore, we urge multipliers, if adopted, to be used sparingly, and in a way that ensures transparency and consistency.

Compliance downgrades

CRA should not be used as a compliance regulation. Downgrades for compliance should be applied only in the narrow circumstances where the violations of consumer regulations directly impact the activities under consideration and mitigating circumstances are considered; and the manner of their application should be transparent.

In most cases, if there is evidence of violations of fair lending or other consumer protection laws, the regulator will enter into a memorandum of understanding (MOU) or a public Consent Order with an institution to pay a penalty, make restitution to injured customers and implement changes to its policies and procedures to prevent future violations. The CRA rating downgrades are released after – sometimes many years after – the violations are already resolved and corrective actions have been taken.

The OCC's recently adopted policy (PPM 5000-43; Oct. 12, 2017) should be the foundation for treatment by all the agencies. According to the release the OCC will be guided by two

[11] Multipliers could also be used to enhance the value of activities that are innovative, complex, flexible, or involve leadership, as noted below. However, these would need to be defined clearly and employed consistently.

principles: (a) there must be a logical nexus between the assigned rating(s) and evidence of discriminatory or other illegal credit practices in the bank's CRA lending activities to ensure alignment between the rating(s) and the bank's actual CRA performance; and (b) full consideration will be given to the remedial actions taken by the bank. We believe the OCC's approach to downgrades should be adopted by all the agencies.

12. CD Services

Community Development Services are valuable to the needs of communities. Whether volunteerism or financial literacy efforts, the efforts of the banks in these areas should be rewarded. Banks will always provide such services to their LMI communities whether or not they are included in the CRA evaluations.

However, services are a challenge in a more metric-based framework. The value of CD services is not easy to quantify, because service hours alone may not adequately measure the impact of the services to the community. Although a metric evaluation of CD services based on the actual value could be included in the aggregate measure of activities to be evaluated, it is worth considering whether to apply a multiplier to the total of hours in order to enhance its impact on the total. An alternative approach that might be appealing would be to include Services as part of the evaluation at the time of the exam, rather than include them in the annual metrics. Banks would rely on the annual metrics to evaluate their ongoing performance, but could use services at the time of the exam to enhance their rating. They would be a positive, only, and may be valuable to bank that is close to the next highest performance rating.

One point to note about service activity and service hours: Volunteer and other such service activities should be included as CD services whether or not they use the employees' *financial* knowledge and experience. This is a limitation often applied under the current regulation, which can create illogical outcomes. Activities that help with community development are not less important if the volunteers are using other skills and talents than their financial expertise.

QUESTIONS 13-14: REDEFINING COMMUNITIES AND ASSESSMENT AREAS

Generally

Under the current regulation, consideration of CD activity outside the assessment area is geographically restricted to a broader statewide or regional area ("BSRA"), and only after the bank first demonstrates it has been responsive to the community development needs and opportunities in its assessment area. This is far too restrictive due to limited geographic opportunity and the difficulty of knowing with any certainty whether the bank has met those needs. The bank has no guarantee that any activity outside its assessment area will get CRA consideration at the time it makes the loan or investment.

It also fails to address the changing nature of banking, both for the banks that are increasingly adding digital capability for their customers and for the banks that are exclusively or largely

digital in their business models. CRA still expects banks to meet the needs of their local communities, as required by statute, but the nature of community has changed and will continue to change. CRA needs to change with it.

We have considered a number of approaches, and each has its advantages and issues.

Whatever approach is adopted it should accomplish three goals:

1. ***It should expand consideration for CRA activities even if they are outside the banks' traditional assessment areas – not limited to broader statewide or regional areas;***
2. ***It should eliminate the artificial competition for limited investments in 'hot spots';***
3. ***It should continue to ensure that banks help meet the needs of their local communities.***

Determining the approach requires a more in-depth analysis of the impact on banks and their communities; but whatever approach is adopted needs to allow for CRA-eligible activities outside a bank's assessment areas without geographic restriction, *provided the bank still meets – or has previously met – some threshold of activity within its traditional assessment areas.* This approach would require banks to be responsive to the needs and opportunities in their communities; and provided there is a more metric CRA evaluation, they would know, with greater certainty, whether their activities outside the assessment areas will receive CRA consideration. Even greater certainty could be provided by allowing CRA consideration for activities anywhere in the country in a subsequent exam cycle if the bank has achieved a Satisfactory or Outstanding on the prior exam.

This would not necessarily require a change in the way assessment areas are designated, but by permitting greater activity outside the assessment areas, may make such a change unnecessary. It would free up CRA-eligible activity where it is needed, while continuing to ensure banks are helping to meet local community needs, as mandated by the statute.

It would eliminate the artificial BSRA restriction, and permit CD activities anywhere nationwide. It would also allow banks to know in advance whether or not activities outside the assessment areas will be given CRA consideration. Greater certainty will lead to more investment and greater benefit to LMI and underserved communities nationwide. However, no bank would be required to engage in activities outside its assessment areas.

Internet-only banks, though they have no physical deposit-taking facilities, have been required by the regulation to first meet the needs of the local assessment area around their headquarters. This has created an unhealthy competition for CRA-eligible activity within limited markets where a number of these institution are based. Expanding the flexibility to engage in CD activities outside the assessment areas would also help to mitigate this 'hot spot' effect, particularly if the measure of meeting needs of their assessment area is tied to deposits from local customers.

There may be other viable approaches, either in the alternative or as options for different bank models, and we would be open to considering how they could be made to serve the needs of the banks' communities.

Activities in Designated Geographies

Regardless of the rules adopted for activity inside or outside the bank's assessment areas, we recommend banks be permitted, or possibly incentivized, to engage in activities within geographic areas designated as particularly in need of investment. These distressed geographies can be identified by the regulators in a formal way – such as federally designated disaster areas, Opportunity Zones, or areas identified as underserved.

Small Presence in Branch-based Assessment Areas

Large banks may at times find CRA to be an impediment to opening a small number of branches or deposit-taking ATMs in a geography, or remaining in a geography with only a limited physical presence. This problem could be ameliorated if large banks, at their option, could choose to be evaluated under the small bank methodology in any state or assessment area where they have a limited physical presence. For instance, if a large bank's presence in a given assessment area or state in which it has a branch or deposit-taking ATM is similar to that of a small bank (i.e., deposits less than $313 million[12]), then the small bank examination process (i.e., streamlined lending test only) should apply to that assessment area or state. The large bank examination structure would continue to apply at the institution level, as well as to any assessment area or state where the bank's deposits exceed $313 million. However, this should be only at the option of the bank, as some may find community development activities better tailored to their business model and the communities they are serving.

QUESTIONS 15-28: CRA-ELIGIBLE ACTIVITIES

Generally

We do not wish to see a reduction in the activities that are considered CRA-eligible. Indeed, we believe the coverage is too narrow in some cases, because it requires community development to be the primary purpose of the activity. Thus, a large number of LMI individuals are excluded from benefiting because they do not live, work or go to school in a majority LMI geography or with a majority of others who are also LMI. Mixed-use developments in urban areas, for example, are often unable to be considered for CRA because of this restriction. Schools with fewer than 50% of students receiving free or reduced lunches cannot qualify for community development for the same reason.

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[12] $313 million in deposits would be a proxy for the Small Bank asset threshold.

Community development activities that are geographically not limited or earmarked to the bank's assessment areas may also be precluded from consideration. Overly restrictive requirements of this type are detrimental to the communities served by the banks, including LMI areas and LMI consumers.

Specific CRA-eligible Activities

As noted in the discussion of ways to modernize CRA, above, we believe banks should be evaluated on the same set of activities that qualify today (with several exceptions noted below). The activities counted in the "numerator" should at least include:

a. Mortgage loans to LMI borrowers (retaining the existing definition of LMI);
b. Mortgage loans in LMI census tracts;
c. Small businesses/small farm loans to borrowers in LMI census tracts;
d. Small business/small farm loans to borrowers with gross annual revenues up to $1 million;
e. Community Development (CD) loans and qualified investments targeted to LMI or that broadly benefit the community without excluding LMI;
f. Consumer loans (at the option of the bank); and
g. CD and retail services targeted to LMI or that broadly benefit the community without excluding LMI.

Qualitative Factors

Extra consideration (multipliers) should be employed for some qualitative considerations, such as:

- Innovation – E.g. New activity – first time a bank did a New Markets Tax Credit would be considered innovative for that bank.
- Leadership – E.g. first at table. Involved from beginning to end. Taking the lead role in the activity.
- Flexible loan terms – E.g. interest rate 25% below market, or term of loan is extended beyond conventional loan terms.
- Complexity – E.g. requires specialized underwriting or multiple (3 or more) funding sources.

As noted elsewhere in this letter, multipliers would add complexity to CRA. Therefore, they must implemented in a uniform and transparent manner. Furthermore, as currently used, these terms are not sufficiently clear or consistent in application; therefore, they must be clearly defined and consistently employed, so banks and other stakeholders understand what they mean and how they affect outcomes.

Mortgage Loans

Under the current regulation, mortgage loans reflect the HMDA Loan Application Register (LAR) as reported. With the changes to HMDA, the Agencies have determined home equity lines of credit (HELOCs) are now included as mortgage loans for CRA purposes as well. Regardless of the merits for HMDA reporting, we believe HELOCs are an entirely different product than mortgage loans, and they should not be included in consideration of mortgages for CRA purposes. This is particularly a concern to the extent regulators consider the distribution and lending patterns of each bank's mortgages. HELOCs are not as common in LMI communities as they are in communities where consumers have more equity in their homes. Relying on performance context to explain these differences places the burden on banks to justify outcomes unnecessarily and increases uncertainty.

Letters of Credit

We recommend letters of credit receive the same consideration as loans made for the same activity. Some agencies have adopted a distinction between the two that is not warranted by their usage, and we recommend the Agencies adopt a consistent policy of treating them the same as loans.

18. Should any activities that may otherwise qualify as CD be limited or excluded?

Consideration should be given whenever a bank provides access to capital that qualifies as CD. Any 'churning' can be addressed other ways. If some CD activities add extra value to communities, extra consideration is possible, but we do not recommend reducing consideration for any activity.

20. Should the use of small or disadvantaged service providers receive consideration?

As a general matter, we are very supportive of the use of vendors representing a diverse population. However, the inclusion of supplier diversity for consideration as CRA CD activity would significantly dilute the focus of CRA.

22. Treatment of Consumer Loans

Generally

CRA has long treated consumer lending as secondary to mortgage, small business, small farm and community development lending. However, the regulation does provide that consumer lending may be evaluated in certain circumstances; that is, if it constitutes a "substantial majority" of the bank's lending,[13] or if the bank wishes it to be considered at its option and has collected and maintained the consumer data. This is appropriate and should remain the case.

[13] The agencies interpret "substantial majority" to be so significant a portion of the institution's lending activity that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded. CRA Q&A, 75 FR 11655, March 11, 2010.

Mandating consumer loan inclusion would create a new set of data collection and reporting requirements, with expanded data integrity requirements.

Small Dollar Consumer Credit

As with other consumer lending, we support the inclusion of small dollar lending products among those that receive consideration for CRA, at the option of the institution. Evidence strongly supports the value of small dollar loans for low- and moderate-income consumers, to help meet gaps in credit availability from pay check to pay check. The most recent report on the unbanked and underbanked by the FDIC states, "Access to small-dollar credit is important for weathering financial setbacks, particularly for households with fluctuating income or lack of savings."[14] There is also growing recognition that small dollar credit by mainstream financial institutions can reduce the use of more costly nonbank payday loan companies, and provide consumers with a means of growing a valuable credit history that can permit them to graduate into more mainstream credit products. As the FDIC notes in the same study, "Almost a quarter of banked households with unmet demand for mainstream small-dollar credit likely have insufficient credit history to have a credit score. [Footnote omitted.] Providing small-dollar bank loans to these households may help strengthen their relationships with banks and allow them to begin building credit."

23. Small business/Small Farm loans

The definition of small business loans was intended to be fairly straightforward and easy to calculate. Banks typically treat small business lending differently from their commercial loans and often employ a separate department that focuses on small business lending. Their thresholds for the product varies to suit their business model and their product offerings. Therefore, rather than forcing banks to adopt a uniform definition, the CRA regulation employs a proxy that is modeled on the call reports, and treats loans of under $1 million as small business loans (loans under $0.5 million small farms). The bank is also required to provide subcategories to designate where these loans are located and how many of these loans are to borrowers with less than or greater than $1 million in revenue (or no information is available). We would advocate retaining this basic reporting framework.

We would not oppose an increase in the threshold for reporting small business loans, but we believe the metric is still a reasonable proxy for small business lending, notwithstanding the passage of time since it was adopted. Increasing the loan amount much above $1 million would also create a greater conflict with the CD lending, if the loan otherwise qualifies. Assuming loans would not be able to be reported under both rubrics or in the alternative, as we have proposed below, banks would prefer to treat most such loans as CD loans rather than small business loans.

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[14] https://www.fdic.gov/householdsurvey/

In regard to what should get consideration under a metric analysis, we would propose banks report the same information on the loan register for small loans originated or purchased to businesses and farms in the bank's assessment area. Among those reported loans, banks would receive consideration for the total dollars originated or purchased in the following categories:

- Small business and small farm loans in LMI tracts; and
- All loans to businesses under the revenue limit ($1 million) anywhere in the assessment areas.

24. Small business loans with CD purpose

Currently, small business/small farm loans (under $1 million) that may also qualify as CD purpose must be included with small business loan reporting, though the treatment has been inconsistent. The category of "Other loan data" has at times been used to give some consideration as CD purpose. In some cases, however, banks have been permitted to treat small business loans under $1 million as CD loans, at their option. We believe giving banks that option is the better alternative, and should be adopted *consistently* in all cases, as it allows recognition for these activities in the manner best suited to each bank. Alternatively, these could be treated the same as HMDA multifamily loans, that are reportable under HMDA and also as CD loans.

25. Should loan purchases and originations receive equal weight?

Yes. Loan purchases free up capital to permit more lending, so we believe they should generally receive equal weight in the evaluation.

26. Should loans originated to be held in portfolio get equal consideration with loans originated for sale?

Generally, different weights for different activities adds complexity and should be avoided if possible. In addition, it can create unintended and unforeseen outcomes by introducing artificial incentives. For example, moving assets off the balance sheet can be good risk management in some cases, and an incentive to make more portfolio loans may create a counter-incentive. For these reasons, we recommend they be treated the same.

27. Branches

Branches – that is, the record of opening and closing branches and their geographic distribution – are currently evaluated as a significant component of the Service Test – one of the three primary tests that comprise the Large Bank evaluation. Yet branches themselves are essentially a channel, serving the needs of customers by providing a means for the customer to access the bank's products and services. Increasingly, banks are employing other channels – in addition to or instead of branches – to provide access for their customers. The use of digital access has expanded dramatically in recent years, and is likely to continue.

Branches continue to play an important role in the way most banks interface with their communities, in both tangible and intangible ways. We expect that will always be true. Branches are not going away, but their role is changing to meet the 21st century needs of customers. Consumers simply do not visit as often and their needs are different when they do. Banks need to keep pace with their customers' needs and expectations. As noted elsewhere, LMI customers are no different. They too use digital channels for many banking services, via mobile devices and otherwise. Indeed, newer technology often provides a better way to serve many of the day-to-day needs of customers, since the bank can come to the customers at their location and at their convenience and provide them with valuable financial tools.

Nevertheless, bank models differ, ranging from those with large and growing branch networks to those with none. When it comes to branches, one size does not fit all. CRA needs to be open to these differences and allow for continuing changes.

Ideally, any framework for CRA should primarily focus on what products and services are being provided and to whom, not the particular channel being used by different banks. If the regulators emphasize branches over other channels, they would be incentivizing a single model, and a single channel, rather than allowing banks to creatively employ new technology to best meet their customers' needs. Therefore, it is important for both branch and nonbranch channels to be given equal weight, and that banks be able to demonstrate they are serving the needs of their entire communities, including low- and moderate-income customers, by employing channels that fit their model and their market.

To the extent the regulations continue to consider branch location, we would encourage consideration be given for branches not located in LMI census tracts based on other factors. For instance:

- All branches located in an LMI tract or near to it (for example, up to 2 miles in urban areas and up to 5 miles in rural areas) are presumed to be included without need of further demonstration; and
- Other branches, to the extent they can be demonstrated to be serving LMI customers or LMI tracts.

CD Activities

One goal of the reform of the activities that receive consideration is to provide more certainty about what qualifies and simplify documentation. Therefore, we recommend:

1. A clear – but non-exclusive – list of activities that automatically qualify for CRA consideration as CD loans and investment that support LMI or revitalize

or stabilize neighborhoods.[15] Other activities may qualify if they can be shown to meet the definition;

2. Simplified requirements to prove qualification for all types of CD activities, by reducing the burden of proof for qualification and expanding the types of qualifying activities; and
3. Expanded access to more activities benefitting LMI, provided they benefit a significant number and are not targeted to higher income. Requiring a majority of LMI to benefit is so restrictive that many activities that are beneficial to LMI fail to receive consideration.

The following CD activities should automatically receive CRA consideration on the basis they either benefit LMI or have a revitalizing or stabilizing effect on neighborhoods. Other activities should be permissible to receive consideration provided they qualify.

- CD activities in partnership with federal, tribal, state or local government, or agency thereof. These would include activities that are jointly undertaken with organizations or government entities and targeted to lower income populations, whether or not they align with the precise LMI targets of CRA.

  Examples could include: special loan programs, such as LIHTC and NMTC, designated SBA programs, federal or state disaster relief programs.

- CD activities in partnership with CRA-qualified public service or social service organizations. For similar reasons as the above, activities done in partnership with social service organizations that have been qualified should automatically receive consideration.

  Regulatory agencies could create and maintain a list of organizations that would presumptively qualify for consideration, and provide for a regular, periodic revision. A simple form could be provided for nonprofits to apply for inclusion on the list. Others would also qualify as appropriate.

- CD Activities in partnership with Community Development Financial Institutions (CDFI) and Community Development Enterprises.

[15] In the alternative, agencies could publish rulings on activities that qualify for CD loans and investments in order to provide certainty for other banks.

The following CD activities should qualify as CRA-eligible <u>if they are in LMI communities, targeted to LMI or likely to benefit a substantial number of LMI individuals:</u>

- Financial education activities[16]

  Examples could include first time homebuyer seminars, small business technical assistance, FDIC Money Smart programs, digital literacy and financial or credit counseling.

- "Naturally occurring" affordable housing loans and investment

  To qualify, the affordability of the units should be the sole determinant, not income of the tenants. There is currently a lack of consistent treatment and an over-emphasis on qualifying details.

- Digital access activities -- Activities that expand digital services to improve access to financial products and services for LMI or underserved individuals or communities, such as loans and investments for broadband infrastructure.

- Economic and workforce development activities -- Economic and workforce development activities that create, retain, or improve jobs for LMI individuals should qualify for CRA consideration, whether or not they are in LMI census tracts.

  The qualification for job retention should not require proof that jobs retained were at risk of loss, as this is overly restrictive and difficult to establish.

- Rural and underserved market activities -- CD activities in rural an underserved markets that benefit LMI individuals and geographies, such as rural broadband projects, or water projects and other infrastructure investment, should receive consideration.

  Many rural and underserved markets are middle income, even though many LMI persons also live in the

[16] It would be reasonable to consider some activities for financial education as automatically eligible for CRA consideration, such as small business technical assistance, FDIC Money Smart programs, or other similar activities, which could be designated as such.

communities. CD activities in these markets, such as broadband and infrastructure, which are broadly beneficial, are likely to benefit many LMI individuals.

- Volunteerism -- All volunteer CD activities that are likely to benefit LMI, underserved/distressed areas, state- or federally-designated disaster areas, or small businesses, should receive consideration, regardless of whether the service provided relates to the provision of financial services.

  In a metric framework, a multiplier may be needed to ensure volunteerism receives appropriate consideration. Hours spent may not adequately measure the impact volunteer services have on the community.

- Activities that benefit schools in LMI areas or that benefit a substantial population of LMI students -- including financial literacy, tutoring, and job readiness activities, among others.

  Currently, banks much demonstrate over 50% of the students are LMI. This creates an unnecessary hurdle for the banks, and unfairly eliminates schools where fewer than 50%, but still a substantial number of students, would otherwise benefit. In some rural markets, for example, middle or high schools get students from lower schools with majority LMI students, but the upper schools do not themselves have majority LMI students. Therefore, activities that benefit schools with a substantial number of LMI students – albeit less than 50% – should be CRA eligible.

  In order to reduce the need burden of demonstrating that some threshold of students is LMI – e.g. by demonstrating they are eligible for free or reduced lunches – banks should be able to rely at their option on the school's obtaining Title I funding.[17]

[17] Title I funding is given to schools where at least 35% of the children in the school attendance area come from low-income families or to schools where 35% of the student population is low-income. To determine the percentage of low-income families, school districts may select a poverty measure from among the following data sources: (1) the number of children ages 5–17 in poverty counted in the most recent census; (2) the number of children eligible for free and reduced price lunches under the National School Lunch Program; (3) the number of children in families receiving Temporary Assistance for Needy Families; (4) the number of children eligible to

QUESTIONS 29-31: RECORDKEEPING AND REPORTING

For most financial institutions, their CRA programs are deeply embedded within their organization and greatly influence their culture as it pertains to community engagement and responding to credit needs. The CRA structures are as varied as the institutions; but in all cases, CRA professionals work closely with a wide range of lines of business (e.g. mortgage lending, small business lending, commercial lending divisions, affordable housing teams, specialized community development lending and investing functions, etc.) as well as staff functions (e.g. volunteerism and philanthropy).

For many, responsibilities are decentralized with first line areas playing critical roles in fulfilling, identifying and reporting CRA-related activities. And for others, even where a higher degree of centralization exists, the time, resources and impacts of first line areas cannot be minimized. As an example, commercial lenders in some institutions may be charged with identifying and documenting loans that meet the community development definition. In other institutions, a centralized team may be responsible for identifying and qualifying these loans. In both instances, interactions with the first line to gather information and ensure appropriate documentation is indispensable.

Many banks could calculate resources that are fully devoted to CRA, but that would (a) only scratch the surface and significantly underestimate the important contribution by lines of business and other staff functions and (b) vary widely between institutions depending on the degree to which certain functions are more decentralized. Regardless of the degree to which responsibilities are centralized, strong and effective CRA programs impact nearly every area and every associate of the institution.

Financial institutions continuously seek ways to improve their CRA programs to make them more effective and more efficient just as is the case with any other business function. And banks have been successful in establishing strong protocols for managing their CRA programs that match the bank's business strategies and capacity. We would urge the agencies not to develop any new reporting requirements that would disrupt existing programs, redirect resources away from providing benefits to LMI populations and LMI areas, and add unnecessary costs without any commensurate benefit.

Rather, we would recommend that the agencies limit data reporting to an annual basis to provide the appropriate assurances to the public of the accuracy of any numeric calculations related to the bank's performance. We believe reviews that are more frequent than annual would be unnecessary, burdensome, and produce results that are not beneficial. And in the instances where interim calculations would be necessary due to a regulatory application, as long as the regularly timed data integrity reviews were being conducted by the agencies,

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receive Medicaid assistance; or (5) a composite of these data sources. The district must use the same measure to rank all its school attendance areas.

measuring the bank's current performance through a numeric calculation would be a very straightforward process.

Public File Requirements

The current requirements for maintaining a public file in branch offices are out of date and should be updated and modernized.

Currently, institutions are required to maintain and update a public file that contains specific information about its CRA performance. A complete public file must be kept in the main office of the bank, as well as one in each state. The file needs to include all written comments from the public relating to CRA performance, as well as responses, from the prior two years; the most recent CRA Performance Evaluation; a map of assessment areas; a list of branches, including branches opened and closed during the current and prior two years; a list of loan and deposit services and transaction fees; the HMDA disclosure statements from the prior two calendar years, if applicable; and if the CRA rating was lower than satisfactory, the quarterly report on its efforts to improve.

We agree with the importance of providing information to customers and ensuring the transparency of CRA. However, the requirement was written at a time when the branch was the principal means of reaching customers. Every bank now has a web site, and all the relevant information can be readily obtained by anyone who wishes to obtain it, without the need to have it readily available in hard copy or downloadable at the main office and in each state. This is a requirement that should be modernized to reflect the realities of consumer behavior.

Thank you for the opportunity to share our comments on the ANPR. We would be pleased to answer any questions and to participate in any further efforts to modernize CRA.

Sincerely,

Steven I. Zeisel
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April 9, 2019

The Honorable Gregory Meeks
Chair
Subcommittee on Consumer Protection and
Financial Institutions
U.S. House Financial Services Committee
Washington, DC 20515

The Honorable Blaine Leutkemeyer
Ranking Member
Subcommittee on Consumer Protection and
Financial Institutions
U.S. House Financial Services Committee
Washington, DC 20515

Dear Chair Meeks and Ranking Member Leutkemeyer:

On behalf of America's credit unions, thank you for holding the hearing entitled, "The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining." The Credit Union National Association (CUNA) represents America's state and federal credit unions and the 115 million members that they serve.

Though credit unions are not—and, indeed, should not be—subject to the requirements of the Community Reinvestment Act, not-for-profit, financial cooperatives play a critical role in helping banks meet their obligations to serve low- and moderate-income households and other traditionally underserved communities. Specifically, many of the loans originated by credit unions on behalf of their members fit within the criteria of CRA-eligible products due to credit unions' own statutory mission of serving people of modest means. Credit unions sell these loans to banks as part of the banks' overall efforts to satisfy their CRA mandate. This process, in turn, serves as a liquidity resource for credit unions as they then seek to continue their lending efforts in traditionally underserved communities. Accordingly, the resulting Community Reinvestment Act partnerships between banks and credit unions are an important piece of credit unions' efforts to extend financial services to rural, minority, and other traditionally underserved communities across the United States. And, between 2010 and 2018, federal credit unions' efforts to expand into underserved areas gave nearly 30 million individuals living in traditionally underserved communities new access to credit union services.[1]

As the Subcommittee examines ways to improve CRA's impact on redlining and discrimination, we urge it to consider ways to strengthen the partnerships between banks and credit unions. Credit unions have a track record of fairly meeting the needs of all members-regardless of their race, gender, or socio-economic background. Thus, facilitating the partnerships between banks and credit unions can serve as an important mechanism for ensuring that the goals of the Community Reinvestment Act are reached.

On behalf of America's credit unions and their 115 million members, thank you again for holding this hearing on the Community Reinvestment Act and your consideration of our views.

Sincerely,

Jim Nussle
President & CEO

Questions for the Record

Rep. Katie Porter

4/9/2019

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

For Mehrsa Baradaran:

- Nonbank retail and mortgage lending are rapidly growing markets. What impact do you anticipate this growth and the emergence of fintech will have on the relevance and impact of CRA?

Fintech and non-bank lenders will exacerbate the problem of banking deserts and the effects of redlining in several ways. First, the unbanked and underbanked need safe and low-cost access to the payments system, which only chartered banks can access. The unbanked and underbanked typically operate transactions in cash and need a brick and mortar location to deposit money. As most banks and financial service companies adopt mobile apps, the need for physical branches will be diminished, which will lead to more branch closures. Despite promises to the contrary, fintech is not the answer to financial inclusion. All fintech companies must rely on the federal reserve payments system through a few partner banks. Each user of a fintech app must have a bank account. Since the creation of the federal reserve, banks have maintained a charter monopoly on the payments system and they are unlikely to relinquish it. Thus, expanding banking services to the unbanked and underbanked must include a public option and guaranteed access to the payments system for all people.

Second, on the lending side, the rise of non-bank mortgage lending creates regulatory oversight issues, including systemic risk and the potential of a repeat of high-cost non-prime loans targeted at minority communities. Most of the discriminatory subprime loans during the financial crisis were non-CRA loans provided by non-bank lenders; minority zip codes were disproportionately targeted with these loans. These lenders have less oversight by banking regulators and are not the focus of safety and soundness concerns, such as capital requirements or stress testing. Thus, they present serious systemic risk problems and may be creating another shadow banking system that could potentially suffer a run. The rise of non-prime loans in the last few years is alarming—especially because many of them are guaranteed by Ginne Mae.[1]

- The acceleration of banking sector consolidation is increasing the prevalence of banking deserts. What impact does the growth of banking deserts have on perpetuating the wealth gap?

  Without small business credit, mortgage credit, student loan credit, and other capital investments that banks provide, communities cannot grow wealth. Thus, the more banks that close, the fewer wealth-enhancing loans are available for the residents of these communities. Moreover, the acceleration of consolidation through merger in the banking sector presents

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[1] https://www.brookings.edu/bpea-articles/liquidity-crises-in-the-mortgage-market/

obstacles for CDFIs and minority owned banks in these areas due to heightened competition. Large banks increase efficiency and thus can lower costs. Moreover, large regional power houses monopolize the most profitable loan opportunities in their area of coverage leaving. CDFIs and minority banks have struggled to compete with these banks and have lost partnership opportunities and investment capital as more banks become large national Bank Holding Companies.

The most important loss to these communities is the increase in CRA deserts that will correlate with increased banking deserts. Without the CRA mandates, many communities will lose access to mortgage loans and community development loans