PROPOSALS TO ENHANCE THE COMMUNITY REINVESTMENT ACT

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

SEPTEMBER 16, 2009

Printed for the use of the Committee on Financial Services

Serial No. 111–74

U.S. GOVERNMENT PRINTING OFFICE

54–865 PDF WASHINGTON : 2010

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

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PROPOSALS TO ENHANCE THE COMMUNITY REINVESTMENT ACT

Wednesday, September 16, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10:08 a.m., in room 2128, Rayburn House Office Building, Hon. Barney Frank [chairman of the committee] presiding.

Members present: Representatives Frank, Waters, Maloney, Gutierrez, Watt, Moore of Kansas, McCarthy of New York, Baca, Lynch, Miller of North Carolina, Scott, Green, Cleaver, Ellison, Klein, Wilson, Perlmutter, Donnelly, Foster, Carson, Adler, Himes, Maffei; Bachus, Royce, Manzullo, Biggert, Capito, Hensarling, Neugebauer, Bachmann, Marchant, McCarthy of California, Posey, Jenkins, Lee, Paulsen, and Lance.

The CHAIRMAN. The hearing will come to order. And I am going to make a proposal. We have a lot of interest here, and so we are going to expand the opening statements to 40 minutes, but I wonder if we would have unanimous consent to let our colleague Ms. Johnson speak first and then do the opening statements.

So Congresswoman Johnson is one of a number of Members who has had a great interest in this, our colleague Congresswoman Waters and others have been very much in the forefront here. Congresswoman Johnson has filed a very comprehensive bill to improve and expand the Community Reinvestment Act (CRA) and it really makes me appreciate your being here and we will take your statement now. So please go ahead.

STATEMENT OF THE HONORABLE EDDIE BERNICE JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Ms. JOHNSON. Thank you very much, Mr. Chairman. Good morning, and to also Ranking Member Bachus and members of the committee. I am honored to testify on behalf of enhancing and modernizing the Community Reinvestment Act.

I represent an extremely diverse congressional district that includes low- and moderate-income areas as well as the very wealthiest neighborhoods in Dallas County, Texas. Neighborhoods in my district have historically been subject to redlining by banks, which is the practice of denying loans and services to people based on where they happen to live. Congress has passed a number of laws designed to combat redlining and eliminate housing discrimination, and the CRA is one such law that helps to ensure equal services to all people. Unfortunately, we all know that redlining still occurs, and I am here to discusses some of my concerns with the current law and the need for modernization.

The CRA encourages banks to invest in the communities in which they operate. It is an established system to monitor and rate the way in which banks lend to all their customers, for home mortgages, small business creation, and economic development. The CRA uses the mechanism of public accountability to achieve its goals rather than impose quotas or set specific credit targets. It rates banks on their practices, making them more transparent. The CRA also enables Federal institutions that examine banks to delay or deny a bank's request to merge with another lender, open a branch or extend any of its services, depending on its CRA rating.

The CRA currently applies only to banks and thrifts. It does not apply to any of the financial institutions that lend money, like bank affiliates and independent mortgage companies. During the financial downturn, people have blamed the CRA and its low- and moderate-income recipients of loans for the meltdown in the housing market and thus the financial crisis. However, the facts tell a different story. The vast majority of subprime loans originated at independent mortgage companies and bank affiliates, 75 percent or more by most accounts.

Most subprime lending occurred between 2003 and 2007, decades after the CRA became law in 1977. All stakeholders agree that CRA has worked, banks are making money. Since 1996, banks under CRA have made community development loans totaling more than $407 billion. They have also made $581 billion in small business loans in low- and moderate-income neighborhoods from 1996 through 2007.

In 2007, in my district alone, nearly 200,000 CRA-covered small business loans were made valued at over $4.4 billion. Over 73,000 CRA-covered small business loans were given to small businesses with revenues of less than a billion dollars. Over 12,000 CRA-covered prime home loans were originated, equaling over $1.1 billion.

One important outcome of the enactment of CRA is that responsible lending in these communities is profit for banks and thrifts. The truth about CRA is that it encourages prime lending. It offers incentives for safe and sound loans and foreclosure prevention efforts, including counseling for loan recipients, modifying loans, and investing in funds that finance loan modification. CRA also penalizes banks and thrifts through reduced CRA ratings if they engage in predatory or discriminatory lending or lending or services that have a negative impact on the community.

CRA has thus been an extremely successful law. However, CRA needs to be updated. Representative Luis Gutierrez and I have introduced H.R. 1479, the Community Reinvestment Modernization Act. The CRA Modernization Act increases the responsiveness and accountability of banks to all communities, rural as well as urban. It would require CRA exams in the great majority of geographical areas that banks serve. Currently, CRA examines banks in areas where they have branches, but not in other areas where they lend through brokers. This bill would address racial disparities and lending by requiring CRA exams to explicitly consider lending and services to minorities in addition to low- and moderate-income communities. The bill also requires the reporting of race and gender borrowers of small business loans and would require data collection of deposit and savings accounts.

This bill has worked. It would require the Federal Reserve Board to create a database from foreclosures and loan modifications, which would be linked to the Home Mortgage Disclosure Act data.

The rating system of CRA exams would be enhanced and banks would be required to submit public improvement plans that are subject to public comment when they earn low ratings in any of the service areas. The Federal regulatory agencies would be required to hold more meetings and public hearings when banks merge and when banks seek to close branches.

The CRA Modernization Act would establish CRA requirements for all affiliates and subsidiaries of banks, independent mortgage companies, mainstream credit unions, insurance companies, and securities firms. And this is not to say that many of them are in compliance with CRA without having the responsibility. But any type of loophole that could be found would be sought by financial institutions. So that is why it covers all of these entities.

In 2006, in my district in Dallas County, 72 percent of all black and 56 percent of all Hispanic borrowers were issued subprime loans, whereas 28 percent of all loans to Anglo borrowers were subprime. Even middle- and upper-income minorities experienced significant lending disparities. During 2007, in my district, 32 percent and 28 percent of the loans to middle- and upper-income African Americans and Hispanic women borrowers were high cost, whereas 17 percent of the loans were high cost to Anglo middle- and upper-income women.

The high black and Hispanic lending disparities are driven by non-CRA-covered institutions. These disparities are not only occurring in my district, they are occurring in communities across the United States. It is happening to all of our constituents. Most likely it is happening to yours when you check the record.

This year Representative Gutierrez and I introduced the CRA Modernization Act, which updates the current 32-year-old law to reflect the modern financial landscape, and I hope this hearing will bring much needed awareness and attention to long overdue CRA reform. I believe by modernizing CRA we will see fewer home foreclosures and see smart and safe investments in our communities, exactly what our struggling economy needs right now.

And again I would like to thank you, Chairman Frank, and Ranking Member Bachus, and members of the committee for allowing me to testify on behalf of enhancing and modernizing the Community Reinvestment Act. Thank you very much.

[The prepared statement of Representative Johnson can be found on page 58 of the appendix.]

The CHAIRMAN. Thank you, Representative Johnson. And this is an issue that will be on the agenda of this committee. As people know, we will be for the next couple of months focused legislatively on the whole question of financial reorganization, but the question of the CRA and, in my judgment, making it more effective, improving a good program, will be one of the first things we will turn to later this year or early next year.

I thank you. The witness is excused and I will now begin—

Mr. BACHUS. Mr. Chairman, I would like to say, Congresswoman Johnson, one of the most pleasurable evenings I have ever spent was you and I and one or two others dining in Abuja some years ago, and that was a delightful night. And I think CODELs, although they are sometimes criticized, I think they give Members the opportunity sometimes to discuss issues and get to know one another and their different points of view. I just wanted to express my respect for you.

Ms. JOHNSON. Thank you very much. I do remember that; it was pleasant.

The CHAIRMAN. I thank the gentleman. And we will begin on our side with the gentleman from Texas, Mr. Green, for 3 minutes.

Mr. GREEN. Thank you. Mr. Chairman, I would like to thank Representative Johnson, a fellow Texan also, for her testimony and for this legislation that she has put before us.

Mr. Chairman, I would like to thank you as well and other members, the ranking member for this hearing. I think it is exceedingly important. I think it is important because it gives us an opportunity to not only look at the expansion of the CRA, but also to talk about some of the things that the CRA has done to be of benefit to us and to eliminate some of the confusion that surrounds the CRA.

The CRA was started and implemented in 1977 because of redlining, some areas not able to get loans. CRA mandates that loans be made with safety and soundness in mind. It is important to note that the CRA did not create 3/27s and 2/28s, did not create prepayment penalties that coincided with teaser rates, that the CRA did not require large balloons. The CRA has always been an entity, a piece of legislation, if you will, that dealt with safety and soundness. And it is unfortunate that there is so much confusion surrounding the CRA, but I do thank God for Chairman Bernanke, who has indicated that the CRA was not the cause of the current crisis. Comptroller of the Currency John Dugan has so much as indicated that the CRA is not the culprit behind the subprime mortgage crisis. And of course, Chairwoman Sheila Bair has indicated that the CRA is not at the root of this crisis. And I think this affords us an opportunity to determine how we can expand upon it and make it an even greater benefit to us.

Finally, I am concerned that at a time when the CRA can be of great benefit we find that some banks, by way of anecdotal evidence, and I do hope that we can get some empirical evidence today, by way of anecdotal evidence, are cutting back on their CRA efforts, they are cutting back on their CRA department. Some banks are doing quite well with it, but there are others who have persons who are sort of token CRA representatives who do other things within the bank and the CRA is a part-time effort.

I think that this is a time for us to strengthen the CRA, not weaken it, and I appreciate this opportunity, Mr. Chairman, and yield back the balance of my time.

Mr. GUTIERREZ. [presiding] Congressman Royce, you are recognized for 4 minutes.

Mr. ROYCE. Thank you very much, Mr. Chairman. According to Larry Lindsey, who is a former Federal Reserve Governor, while the CRA was not the main culprit in the financial collapse, they certainly played a role. And in fact Mr. Lindsey said CRA regulations actually led to the creation of subprime mortgages. As Mr. Lindsey recently described, during the housing boom years, it would have been a real, in his words, "CRA black eye" for a bank to reduce the number of loans it was making in a particular area. However, given that the most creditworthy borrowers had already received loans, a less creditworthy group had to take their place. So the former Federal Reserve Governor goes on to note the role that CRA played in the development in the noncomforming secondary mortgage market, which included subprime mortgages.

Whether or not you believe CRA may have been this significant a contributor to the financial collapse, moving forward, I think one of the things that it is critical that we discuss here in this committee is to answer a key question, does CRA require a bank to make loans that are less creditworthy than those the financial institution is making elsewhere? I think that is something that the panelists might want to think on a little bit, who are going to talk to us in a minute. If this is in fact the case, I believe a fundamental reform of CRA is in order. Providing credit to creditworthy borrowers is a useful concept that was abandoned during the housing boom. While this took place throughout the financial system, Congress should not be actively discouraging this practice.

Similarly, government mandates in the form of affordable housing goals led the GSEs to purchase over $1 trillion in subprime loans and Alt-A loans, $1 trillion. Beyond causing the failure of Fannie Mae and Freddie Mac, and by the way when I say failure of Fannie and Freddie, that was 80 percent of the losses right there for those two GSEs. Besides doing that, the proliferation of these loans was a major contributor to the financial collapse.

Artificial government enforced mandates based on altruistic goals have a tendency to result in unintended consequences and cause more harm than good. Instead of looking to the ways in which we could expand the number of institutions that must abide by CRA regs, I think we should reassess the role of this and other government mandates and reassess the role specifically that this played in the financial collapse and consider scaling them back and relying more on the market in these kinds of circumstances.

And I would just like to quote from an article in the L.A. Times on October 25, 2008, "ACORN, for example, has used the CRA as leverage to compel banks to create pools of loans for low- and moderate-income families. Its efforts generated about $6 billion in loans to these borrowers while also generating funds for ACORN's nonprofit housing corporation. Supporters call that a win-win scenario, critics say it is legalized extortion."

Now many have also noted their ability to stall mergers between financial institutions with complaints that are filed by CRA. In fact, according to Stanley Kurtz, a senior fellow at the Ethics and Public Policy Institute, "Bank merger or expansion plans rarely held up under CRA until the late 1980s when ACORN perfected its technique of filing these CRA complaints."

So whether or not as enthusiasts for CRA you believe that they played a role in the financial problems, I think we do come back to that question: Is CRA being used by activist organization like ACORN to generate funds from financial institutions? It seems to me undebatable that the observation made by the Ethics and Policy Institute fellow there is in fact spot on in terms of the methodology here.

I would just like to close by quoting from “The Housing Boom and Bust,” by Tom Sowell, author of “Basic Economics.” But Sowell quotes in here on page 66 of “The Housing Boom and Bust,” “Mortgages made under the Community Reinvestment Act were especially vulnerable during the housing downturn to the detriment of both borrowers and lenders. For example, lending done under Community Reinvestment Act criteria, according to a quarterly report in October 2008, constituted only 7 percent of the total mortgage lending by the Bank of America, but constituted 29 percent of all the losses on the mortgages.”

So again, you just have an enormously disproportionate amount of the loss here coming from the CRA loans.

And thank you, Mr. Chairman.

The CHAIRMAN. You are welcome. Next, will be the Chair of the Subcommittee on Financial Institutions and a coauthor of the bill that Representative Johnson referred to, the gentleman from Illinois, Mr. Gutierrez, for 3 minutes.

Mr. GUTIERREZ. Thank you, Chairman Frank, for holding this very important hearing, positive changes in our banking system. We will be having a hearing on Congresswoman Johnson’s bill in our subcommittee. Give her time to do that and we will look at community reinvestment and the reauthorization and strengthening.

Look, over the past 31 years, the Community Reinvestment Act succeeded in opening up our banking system to communities and consumers who had been excluded from the mainstream banking system. By giving all our communities access to savings accounts, affordable mortgages, and student loans, the Community Reinvestment Act has helped many families achieve their own American dream.

Everybody would think that CRA is only about mortgages. There is a lot more than simply mortgages. There remain, however, some who still question, as we have heard here this morning, the value of CRA and those who would blame the current crisis on this landmark legislation.

I want to address those who would state or insinuate that CRA caused the crisis with a quote from Sandra Braunstein, the Director of the Division of Consumer and Community Affairs of the Federal Reserve System. And she did this right here in this committee room on March 11th, “We have run data on CRA lending, and where loans are located we found that only 6 percent of all higher cost loans were made by CRA-covered institutions and neighborhoods targeted, which would be low- to moderate-income neighborhoods covered by CRA. So I can tell you, she ends, if that is where you are going, CRA was not a cause of this loan crisis.”

Furthermore, at the same hearing Michael Middleton, the president of Middleton Bank and speaking on behalf of the American Bankers Association, stated, “We really find that CRA is a tool, not an obstacle.” And I mention also that all our affordable loans are current, none of them are in default at his bank.

So let all of those who would question the efficacy and value of CRA during this hearing keep those two quotes in mind.

I also notice some of you here want the CRA to be included in the legislation moving forward to create the Consumer Financial Protection Agency. While the impulse to strengthen the enforcement provisions of CRA are noble, this is such an important issue that we should not chance weakening it by including it in a larger regulatory reform package.

Early in this Congress, I pledged to Congresswoman Johnson and members of the National Community Reinvestment Coalition that I would hold a hearing on H.R. 1479, and I renew that pledge today. This fall that hearing will take place on that very important legislation. I look forward to that opportunity.

And lastly, let me just state that statistically the question that Congressman Royce raised, is it necessary to give out these kinds of loans that are risky loans and that are subprime, that the subprimes, that they pushed these subprimes to meet their CRA. The fact is that hundreds of millions of dollars in mortgages were given to Latinos and African Americans that were subprime and they qualified for conventional, not subprime loans. So the community exists because the fact existed in the past, subprime loans are pushed on communities not because of CRA, but to exploit those communities.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Next the gentleman from Texas, Mr. Hensarling, for 6 minutes.

Mr. HENSARLING. Thank you, Mr. Chairman. I do look forward to hearing from our witnesses, but I must admit with three different panels, I do note the absence of ACORN. ACORN has been a very vocal supporter of CRA, they have certainly appeared before this committee before, but I guess between countless acts of voter fraud, shakedowns of financial institutions, offering counsel on how to set up tax-evading brothels exploiting teenage girls, not to mention picking up tens of millions of dollars in taxpayer subsidies, I suppose they just found themselves too busy to make time to appear before us today.

Regardless the subject before us is a serious one, I believe that the Community Reinvestment Act has had a proud genesis. Thirty-two years ago, in 1977, redlining was clearly not insignificant. Too many low-income and minority individuals' credit opportunities were simply limited to a handful of banks that might have been reachable on a city bus route. Thirty-two years later, much has changed. Interstate banking, branch banking, Internet banking, and risk-based pricing have helped revolutionize and democratize credit as never before. If you can gain access to a public library Internet or a toll-free line you can unlock countless, countless opportunities for credit cards and home loans that would have been unthinkable 32 years ago.

Market competition from companies like Lending Tree and bankreg.com, cardhub, and many others, now provide low-income Americans with a platform to access competitive bids on financial products all across the United States of America, not just in localized communities.

Now unfortunately the recession, not to mention legislation passed by this committee regarding home mortgages and credit cards, continues to erode credit opportunities for many low-income Americans. This is regrettable. But that brings us to the great irony of this hearing: 32 years ago, if you look at the Congressional Record, the debate surrounding CRA was that discriminating financial institutions were denying credit opportunities to low-income individuals and minorities. Today, the debate is about greedy financial institutions exploiting low-income individuals and minorities by making too much credit available to those communities. So it somewhat begs the question, which is it, is it too much credit or is it not enough credit? I find it difficult to have it both ways.

Regardless of what CRA was, today it is a costly and redundant anachronism that has contributed to our economic crisis and still enables certain activist groups to functionally shake down and intimidate financial institutions harming credit opportunities for all Americans.

The Federal Reserve data has shown that well over 99 percent of banks are already in full compliance with CRA, and studies show that community banks throughout America can spend anywhere from $20,000 to $90,000 a year to comply. So alluding to the testimony of the gentleman from California, it begs the question, are we simply having banks pay these great sums of money to prove that they are doing something that they would do anyway or are we forcing them to make loans that are not financially stable loans and that indeed contributed to our economic crisis? One should be very, very careful.

When we talk about CRA loans contributing to the economic crisis, I have long contended it wasn't the size of the loans, it was the precedent of the loan, the precedent of having the United States Government put their imprimatur on a system that did not raise up the economic opportunities of the borrower, but instead lessened the credit standards of the lender. And we know for a fact it was in 1997 that the GSEs and CRAs converged in a landmark event, the first securitization of CRA loans, a $384 million offering guaranteed by Freddie Mac. Over the next 10 months, Bear Stearns issued $1.9 billion of CRA mortgages backed by Fannie or Freddie. In between 2000 and 2002, the business accelerated. Fannie issued $20 billion in securities backed by CRA mortgages, and I believe the rest is history.

Now when we get back to compliance cost, every community banker I speak to tells me that if they simply had the money that they are spending on the compliance cost, they could instead capitalize at least a couple of small businesses in their communities. And we know the facts. Since President Obama was inaugurated, and the Congress passed his economic plan, over 3 million of our countrymen have now lost their jobs and we have the highest unemployment rate in a quarter of a century, not to mention a tripling of the national debt.

Now one thing our committee could do that would take a huge step in creating more jobs in America is to simply repeal the CRA. To help those of low income, we must increase their economic opportunities, not decrease the lending standards. And to fight discrimination, does anybody really doubt the Obama Administration will not vigorously enforce the Equal Opportunity Act and the Fair Housing Act? I think not. I think it is time to repeal CRA.

I yield back the balance of my time.

The CHAIRMAN. I yield myself 30 seconds, and I yield 3½ minutes to the gentlewoman from California just to say, no, ACORN hasn't testified here for a while, and while we talk about money for ACORN, I have asked the committee staff to look into the largest single source of funding for ACORN of which I am aware, the Bush Administration. Under the Presidency of George Bush, ACORN received more than $8 million from HUD, having nothing to do with the CRA of course. ACORN got $8 million from HUD under the Bush Administration, averaging about a million dollars a year, for work and housing counseling. I have asked that we check in other areas. But as I said, the Bush Administration so far appears to me to have been the largest single source of funding.

Mr. HENSARLING. Would the gentleman yield?

The CHAIRMAN. I will yield to the gentleman.

Mr. HENSARLING. Well, knowing our chairman's predilection to want to break precedent with anything that President Bush did, I would offer that perhaps this is a great opportunity.

The CHAIRMAN. Oh, I understand that. No, I realize the gentleman may be a little embarrassed about this, because we have heard all this denunciation of ACORN, and in fact it was the Bush Administration that was a major funder of it and gave them over a million dollars a year just in that one program. I don't believe they are now getting the same amounts, I am not aware of it, but of course the Obama Administration has not had time to do very much. The fact is that in every year of the Bush Administration, ACORN got more than $1 million in funding for HUD. And I just have this—I understand that some of my colleagues think the world was created 4,000 years ago and that evolution is wrong, but it wasn't created on January 21, 2009. There was a history of these events and part of that history is a significant finding stream to ACORN from the Bush Administration.

The gentlewoman from California.

Ms. WATERS. Thank you very much, Mr. Chairman, and members. I knew that when we held this hearing this morning that ACORN would be at the center of the discussion because of all of the news that is being shared with the world about an undercover operation that has taken place where there is an attempt to prove that ACORN is a criminal enterprise or organization that is receiving money from the Federal Government. We don't know what has taken place in that undercover operation by private conservatives. Let the investigation go on, but that should not interfere with or in any way intimidate us in our pursuit of equality in the mortgage lending area. We are here to talk about CRA and a bill that is being offered by Congresswoman Eddie Bernice Johnson, and I think it is good that we take the opportunity to discuss CRA every year, every 2 years, to see what it is doing, whether or not it is living up to the mission that was created for it by this committee or whether or not we need to strengthen CRA to make sure that opportunities are being made available to those who have been excluded historically and traditionally.

And so let me just say this. The business about the CRA being responsible for the economic crisis or the subprime meltdown is absolutely not true. To single out CRA and say for some—all of these were CRA loans or most of them were CRA loans and those loans were given to people who could not afford to pay them, pay back those loans and that they were all risky loans and they should not have been made, well, that is a stretch. As a matter of fact, let me just say and remind everyone about redlining and what was taking place prior to CRA and CRA enforcement. When I was a member of the California State Assembly, we spent an awful lot of time trying to undo redlining. This was when financial institutions literally drew a line around communities and refused to make loans. And so CRA has helped to eliminate that.

Now, if you want to talk about what causes the subprime meltdown, let's take a look at Mr. Mozilo and the threat that he made to Fannie and Freddie when he was writing bad loans, and they had salespeople on the street literally writing them out of the back of their cars without experience and some who were committing fraud. If you want to talk about the greed when these loans were packaged, securitized, and then Wall Street investment saw an opportunity to make money on subprime, if we want to get into that discussion, there is a lot that we can talk about, but I think it is quite unfair to use this as an opportunity to assign all of the problems to CRA.

Let us move on with the discussion, let us see where we can strengthen this. I am not so sure that I am one who would like to see it in the consumer financial agency that is being created, but let us talk about its success and its failures, rather than simply accusing CRA of being responsible for the subprime meltdown.

I yield back the balance of my time.

The CHAIRMAN. The gentlewoman from Minnesota for 4 minutes.

Mrs. BACHMANN. Mr. Chairman, thank you. Stan Liebowitz, the Ashbel Smith Professor of Economics at the University of Texas at Dallas, said, perhaps the greatest scandal of the mortgage crisis is that it is a direct result of an intentional loosening of underwriting standards done in the name of ending discrimination, despite warnings that it could lead to widescale defaults. At the crisis core are loans that were made with virtually nonexistent underwriting standards, no verification of income or assets, little consideration of the applicant's ability to make payments, and no downpayment.

He went on to state that flexible lending programs expanded even though they had higher default rates, the loans with traditional standards. And even today on the Web, you can still find CRA loans available through ACORN with 100 percent financing, no credit scores, undocumented income, even if you don't report it on your tax returns.

In light of recent egregious revelations surrounding ACORN and with the American people to date demanding that Congress now defund, fully investigate, and pull the tax-exempt status of ACORN, including the 11 more arrests of ACORN workers in Florida and several undercover videos showing the group engaged in giving individuals allegedly illegal tax and housing advice, many questions have been raised about whether the banks have donated large amounts of money to the organization to satisfy their CRA requirements. Right now we do not have enough transparency in the CRA system to even understand the extent of such donations, and we should take a serious look into that.

Peter Wallison is a Fellow in financial policy studies at the American Enterprise Institute. He said that instead of a direct government subsidy, say, for downpayment assistance for low-income families, the government has used regulatory and political pressure to force banks and other government controlled or regulated private entities to make loans they would not otherwise make and to reduce lending standards so more applicants would have access to mortgage financing. The two key examples of this policy are the adopted in 1977 and the affordable housing mission of the Government-Sponsored Enterprises, Fannie Mae and Freddie Mac.

And Robert Leiken, who is a Senior Fellow at the Brookings Institute and an economic adviser to the Clinton Administration on financial industry deregulation in 2008, said, if the CRA had not been so aggressively pushed, it is conceivable things would not be quite a bad. People have to be honest about that.

Mr. Chairman, again our committee should be focused on preventing another fallout of our financial system and revisiting the CRA to fully determine the role it played, that should be a part of the process. Our committee should be focused on preventing another fallout of the financial system, and discussion of the CRA would be to fully determine the role it played in the financial crisis. To discuss expansion at this level now is truly irresponsible.

I want to thank everyone who is here, and I also thank the chairman for the opportunity to raise these issues, and I yield back.

The CHAIRMAN. I am always glad to give the gentlewoman from Minnesota a chance to raise her issues.

The gentleman from Georgia for 2 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

I certainly take strong issue with what has been said on the other side, with all due respect. I think it is a cheap shot to try to connect what is happening over there at ACORN with the CRA. This is a very credible program. Let me just share with you what Federal Reserve Chairman Ben Bernanke says about this. He says, "Our own experience with CRA over more than 30 years and recent analysis of available data, including data on subprime loans performance, runs counter to the charge that CRA was at the root of or otherwise contributed in any substantial way to the current mortgage difficulties."

Comptroller of the Currency John Dugan said, "The CRA is not the culprit behind the subprime mortgage crisis or the broader credit quality issues in the marketplace."

And FDIC Chairman Sheila Bair said, "I think we can agree that a complex interplay of risky behaviors by lenders and by borrowers and investors, that is what led to the current financial storm. To be sure, there is plenty of blame to go around. However, I want to give you my verdict on the CRA: Not guilty."

This is what the leaders of our system are saying, with all due respect, and I think if you are going to measure CRA, let's measure them right. Let's measure them by what their results have been in helping with a tremendously difficult issue, and that has been to go in and stop the redlining and discrimination of low-income and minority communities. They have done an excellent job, and we need to move forward and reenergize the CRA, and I yield back the balance of my time.

The CHAIRMAN. We have the last two members to speak, the gentleman from Texas. The time is working out equally. The gentleman from Texas, Mr. Neugebauer, for 2½ minutes. Why should he be the only Texan who didn't say anything today?

Mr. NEUGEBAUER. Thank you, Mr. Chairman. As we all know, CRA was put in place in 1977 and the landscape of banking and lending, as has been said, is much different now than it was then. While I am not sure that lenders ever really need to be required to make loans in communities they serve in order for those loans to be made, it is reasonable for our committee to look at how well banks are meeting the needs of their communities. Results of the CRA exams show compliance with that law is 99 percent.

Today's banking environment is much different than it was when the law was enacted, and there is a lot more competition among banks for customers. If customers find that things are not going to work out with one lender, they have the option of seeing another lender. But—and they have options in their own communities, but to use lenders in other areas more easily as well. And so now it is just not about getting a loan from the lender in your region, but you can get loans from lenders from other regions.

Banks are watching their risk more carefully these days, and hopefully lenders have learned from the mistakes of underwriting standards that were too relaxed and forgetting that borrowers have to show an ability to repay. Serving customers must be balanced with safety and soundness, and I am concerned with proposals to separate safety and soundness regulations and consumer regulation.

It is interesting that the Treasury proposal to move CRA regulation and compliance examinations away from the functional regulators to the new agency, the chairman has drafted a legislation that keeps CRA regulation where it is. I am a little mystified. If it is good enough to keep CRA regulation with safety and soundness regulator, I am wondering why we shouldn't keep consumer protection regulation coupled with safety and soundness regulation as well.

No one on this committee wants a creditworthy small business in their community to go without a loan or to hear about a working family who was unable to get a mortgage that they could qualify for. But we also have to ask whether CRA remains necessary to ensure banks are serving these needs in their communities and whether these needs will be served without CRA requirements and, more importantly, the cost of these programs.

With that, I yield back the balance of my time.

The CHAIRMAN. I will yield the remaining 2½ minutes to the gentleman from Indiana, but I will take 15 seconds to answer the gentleman's question. In the consumer area, we have all of those programs which protect individuals. CRA is not individual, you do not under the CRA get a right to get this or that. You do under fair housing, etc. And that is the distinction and one that deals with a broader set of policies. It is not an individual situation.

The gentleman from Indiana is now recognized for 2 minutes.

Mr. CARSON. Thank you, Mr. Chairman. In this weakened financial system, the Community Reinvestment Act will play a vital role in providing credit to disadvantaged communities that are often ignored or discriminated against by financial institutions. This Act became necessary because, for too long, banks have ignored economically challenged neighborhoods and dismissed loan applications offhand regardless of the creditworthiness of borrowers.

CRA directs depository institutions to find ways to responsibly invest in communities with which they do business. This has worked very well for over 30 years, but the time has come to expand and modernize the reach of CRA to all financial institutions. It is important that all Americans, regardless of social and economic factors, have an opportunity to access the capital they need to start or expand small businesses or to purchase property.

In order to rebuild the financial sector, CRA needs to be broadened so that no financial institution will be allowed to engage in discriminatory lending. CRA neither encourages nor condones bad lending. In fact, only those who are creditworthy and have the resources to pay loans back qualify under CRA. CRA has led to an increase in homeownership rates among low-income and minority families, as well as the significant investment in affordable rental housing, community facilities and broader community economic development. Since then, we have taken significant steps toward rebuilding our economy. This will protect investors and empower communities. To achieve this, however, we need to modernize CRA by expanding its reach and making it even more effective.

As we continue the ongoing effort to rebuild our financial system, I believe it is vital that we maintain for CRA, which has provided a foundation upon which low- and middle-income families can begin building their lives.

With that, I yield back the balance of my time.

The CHAIRMAN. We will now ask our witnesses to come forward. I do want to note that unfortunately, because of a family matter, one of our witnesses that we were looking forward to hearing from, Marc Morial, who is the president and chief executive of the Urban League, will not be able to attend.

So I will recognize now the gentlewoman from California with regard to Mr. Morial.

Ms. WATERS. I ask unanimous consent to insert into the record the testimony of Mr. Marc Morial, president of the Urban League. Due to a family emergency, Mr. Marc Morial from the Urban League was unable to testify today, and I request that his testimony be entered into the hearing record.

The CHAIRMAN. Without objection, is is so ordered. Let me now say to the witnesses that any additional material in addition to what they say orally that they want put in the record, whether it is part of their statement or any supporting material, we will without objection accept for the record. So no one needs to ask for any permission on that.

And we will begin with the bank commissioner of the Commonwealth of Massachusetts, Steven Antonakes.

STATEMENT OF THE HONORABLE STEVEN L. ANTONAKES, COMMISSIONER OF BANKS, COMMONWEALTH OF MASSACHUSETTS

Mr. ANTONAKES. Good morning, Chairman Frank, and distinguished members of the committee. My name is Steven Antonakes, and I serve as the commissioner of banks for the Commonwealth of Massachusetts.

Enacted over 30 years ago, CRA is the most significant of all banking laws to address the practice of redlining or refusing to lend in low- and moderate-income communities despite sound lending opportunities. Unfortunately, ongoing disparities between pricing the loans to white and minority borrowers clearly demonstrates that more needs to be done.

Moreover, it will take years for many urban communities to recover from the devastation of the ongoing foreclosure crisis. More so than ever before, access to sustainable homeownership opportunities in low- and moderate-income communities will be essential.

An argument has been advanced by some that CRA is the root cause of the economic crisis in that it encouraged banks to sacrifice underwriting standards to increase homeownership opportunities. In my view, this contention is completely without merit.

First, while CRA requires banks to serve their entire community, the Act specifically prohibits banks from making unsafe and unsound loans. The drafters of CRA recognized that unsustainable loans are even more harmful to consumers and communities than an absence of credit. CRA-covered lenders that engaged in high risk lending, most notably Fremont Investment and Loan, Countrywide, Lehman Brothers, National City, IndyMac, and Washington Mutual should have been strongly criticized by Federal regulators in terms of CRA compliance for originating and funding mortgage loans that borrowers could not afford.

Second, large lenders and Wall Street firms did not develop confusing and risky subprime mortgage loans out of an altruistic sense of obligation to meet the needs of low- and moderate-income communities; they did so out of greed.

Massachusetts' efforts to ensure banks serve their communities predate the passage of CRA in 1977. In 1982, Massachusetts broadened the coverage of the CRA to cover credit unions. In November 2007, Governor Deval Patrick signed groundbreaking foreclosure prevention legislation which extended CRA-type requirements to nonbank mortgage companies.

Given today's changing financial banking landscape, the ongoing financial crisis, and the debate and consideration of the Obama Administration's regulatory reform initiative, it is the appropriate time to consider how CRA can be modernized to make it even more effective in the years ahead.

In addition to extending CRA requirements beyond banks, Congress should consider the following: first, require affiliate lending to be reviewed. Some of the largest banks in this country were either directly or indirectly in the subprime and nontraditional mortgage markets, and yet in nearly every case, the largest banks consistently received satisfactory or outstanding CRA ratings. Current CRA ratings or regulations allow banks to have only their good loans considered and can shield their bad loans in an affiliated institution. Congress and the Federal regulators should close this loophole and require all lending by affiliates to be included in the review of a bank's CRA performance.

Second, increased review standards for the largest institutions. Existing Federal CRA regulations define a large bank as having assets over $1 billion. Some of these institutions are often examined every 4 to 5 years if they have previously received a CRA rating of satisfactory or outstanding. However, as the banking industry has further consolidated, the $1 billion asset threshold has become increasingly antiquated. The scope and frequency of CRA examination should be commensurate with the bank's market share. A significantly more robust annual examination process should be undertaken for the top 20 bank lenders in the country.

Third, downgrade banks that originate unsustainable home mortgage loans. Massachusetts has adopted a suitability standard when reviewing mortgage lenders' CRA performance. Congress should similarly amend the Federal law so that the origination of unsustainable loans has an adverse impact on a bank's CRA rating.

Fourth, mandate the evaluation of loan modification efforts. CRA should be utilized to measure the pace, number, and quality of loan modifications. This type of public analysis will provide greater incentives for banks to move more aggressively to avoid unnecessary foreclosures.

And fifth, downgrade banks whose partnerships harm the underbanked. Congress and regulators should hold banks accountable for activities that harm unbanked or underbanked consumers. The spirit of CRA embodies an accessible banking industry which promotes savings and increased credit opportunities in order to promote upward economic ability. Practices of national banks and Federal thrifts to evade State consumer protection laws by partnering with third parties to offer high cost payday loans, refund anticipation loans, or costly check cashing services are reprehensible. The partnerships should be outlawed. Until they are, CRA should at least be utilized to strongly criticize participating institutions for engaging in these activities.

I thank you for the opportunity to testify and look forward to your questions.

[The prepared statement of Mr. Antonakes can be found on page 78 of the appendix.]

Ms. WATERS. [presiding] Mr. White.

STATEMENT OF LAWRENCE J. WHITE, PROFESSOR OF ECONOMICS, LEONARD N. STERN SCHOOL OF BUSINESS, NEW YORK UNIVERSITY

Mr. WHITE. Thank you, Madam Chairwoman, and members of the committee on both sides. My name is Lawrence J. White. I am a professor of economics at the NYU Stern School of Business and a member of the Financial Markets Working Group at the Mercatus Center at George Mason University. I represent solely myself at this hearing. Thank you for the opportunity to testify at this important hearing on the Community Reinvestment Act of 1977.

My views about the CRA surely differ from those of many other individuals who are testifying at today's hearing. I believe that despite the good intentions and worthwhile goals of the CRA's advocates, the CRA is an inappropriate instrument for achieving those goals. Fundamentally, the CRA is a regulatory effort to lean on banks and savings institutions in vague and subjective ways to make loans and investments that the CRA's proponents believe those depository institutions would somehow otherwise not make. It is a continued effort to preserve old structures in the face of a modernizing financial economy. At base the CRA is an anachronistic and protectionist effort to force artificially a local focus for finance in an increasingly competitive and electronic and ever widening realm of financial services.

Further, ironically, the burdens of the CRA may well discourage banks from setting up new locations in low- and moderate-income neighborhoods and thus providing local residents with better-priced alternatives to high-cost check cashing and payday lending establishments.

There have recently been broader critiques of the CRA, arguments that the CRA encouraged banks to make subprime loans which were then securitized and thus the CRA bears major responsibility for the mortgage meltdown and the subprime debacle. I believe that these critiques are badly aimed; the facts do not support them. The CRA has multiple flaws, but responsibility for the subprime debacle is not among them.

There is a better way.

First, to the extent that lending problems can be traced to discrimination against racial or ethnic groups or involving other categories of personal discrimination, the right tool is more vigorous enforcement of anti-discrimination laws, notably the Equal Credit Opportunity Act of 1974.

Second, vigorous enforcement of the antitrust laws, especially with respect to mergers, is necessary to keep financial markets competitive so that banks and other lenders are constantly under competitive pressure to provide attractive financial services offerings to their customers. If for some reason enforcement of the antitrust laws is deemed not sufficient in this respect, then policy makers should open entry into the business of banking to companies that have a business model of providing good value to low- and moderate-income households.

It is ironic, in my view, that many of the same groups that have advocated more efforts to provide financial services to low- and moderate-income communities were those who also opposed Wal-Mart's efforts to enter the banking business and thereby to offer more and better and lower cost financial services to low- and moderate-income communities.

Consistent with this focus on providing good value to low- and moderate-income households, vigorous competition should not veer off into predatory practices in which aggressive sales personnel take advantage of unsophisticated customers who are insufficiently aware of better alternatives.

Third, to the extent that there are socially worthwhile lending opportunities that somehow are not being satisfied by existing lending institutions, these projects should be funded through the public fisc in an on-budget and transparent process. The Community Development Financial Institutions Fund, authorized by the

Riegle Community Development and Regulatory Improvement Act of 1994 and managed by the U.S. Treasury, is a good example of this kind of public funding mechanism. To the extent that its current funding levels are inadequate, they should be increased.

Finally, if public policy persists with something that resembles the CRA, the annual local lending obligations of banks should be explicitly quantified. These obligations could then be traded among banks so that a system could arise that is similar to the cap-and-trade system that has proved so successful for dealing with sulfur dioxide emissions in a low cost and efficient manner.

Thank you again for the opportunity to testify at this important hearing this morning. I will be happy to answer questions from the committee.

[The prepared statement of Professor White can be found on page 231 of the appendix.]

Ms. WATERS. Thank you. Mr. Taylor.

STATEMENT OF JOHN TAYLOR, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL COMMUNITY REINVESTMENT COALITION (NCRC)

Mr. TAYLOR. Representative Waters, Representative Hensarling, and other distinguished members of the committee, thank you for allowing me to testify. I am testifying on my behalf as well as for 600 organizations that NCRC represents, not to mention thousands of organizations and individuals who care about fair and equal access to credit.

It doesn't seem to matter how many facts we put forward and how many notable economists like Bernanke and others who keep saying over and over again the data does not support that CRA had a negative impact other than perhaps given the benefit of the doubt to some of them, even Larry Lindsey, that it had a very slight impact. It doesn't seem to matter how often we say that, but I was happy to hear Professor White say that the subprime debacle had nothing to do with CRA. The facts don't seem to matter, the myth is going to continue, and so I am not going to address that. You want to ask me a question, I will address that with you.

But let me say this, CRA is a very simple law; it is all of 2 pages long. What it basically says is that banks will have an affirmative obligation to meet the credit needs of the communities that they are chartered to serve, including low- and moderate-income neighborhoods, simple.

Simple and consistent with safety and soundness, just in case there is any doubt. So what does all that boil down to? It boils down to this. Free market? Yes, we want a free market too. That is what we are fighting for. CRA is all about the free market but not free to exploit or free to ignore neighborhoods or free to ignore certain peoples. A free market that really addresses the credit needs and allows people to pursue their version of the American dream the old-fashioned way. Like going to financial institutions and being able to get access to credit and basic banking services. And I once talked to Frank Luntz, hardly a bastion of liberal thought, one of the most notable conservative pollsters there are in this country. And he said that this ought to be—CRA ought to be a Main Street tenet of the Republican Party as it is for the Democratic Party. This shouldn't be partisan because this is about safe and sound lending and people having access to our financial services sector, to that free market that we believe in.

So those folks who were marching the other day, those blue collar workers, the truck drivers and people working bakeries and newspapers, they ought to have the same chance when they walk into a financial institution of getting a decent loan and getting treated as a decent person and not have to be somebody wealthy or some large corporation to be able to get access to credit and capital in this country. That is the law of the land. That ought to remain the law of the land. But there are ways that we can improve this and those opportunities are before us now.

First, we need to expand the coverage. The idea that we have these independent mortgage companies—who, by the way, if you really want to look for the culprit, look to them. They are the ones who create these high-cost loans that the gentlewoman from Minnesota confused with CRA loans. Those are the agencies. Those are the ones issuing those loans that shouldn't have been issued. Here is my professor nodding on the right, my conservative counterpart. Those were these folks. We need to expand CRA to make sure that all segments of the financial services sector—let us face it, we now know, right, there isn't a segment of the financial services sector that isn't supported by the U.S. taxpayer. We now know that.

And those people marching the other day saw the billions of tax dollars, trillions going to banks. Why can't they and working class people in this country and blue collar people who vote for you, why can't they have the same fair and equal access to credit and capital? So we need to expand it to credit unions, independent mortgage companies, to security firms. We need to end this business of banks being able to not count areas where they are doing a lot of lending as part of the CRA assessment area. Right now whole swaths of where they do lending through brokers are not counted in their CRA exam. That needs to change. We need to expand the data enhancements. What we have in the way of small business reporting, where we can pinpoint census tracks by race, by gender, mortgages and mortgage related products that are made, we can't do that for small business lending.

And as a result, we are really lagging in our ability to make sure that access to credit and capital goes to underserved communities, to people of color and to women. We really need to improve that. We need to consider race on exams once and for all.

Frankly, we have—the law focuses on class, right, economics? Making sure that you do not ignore low- and moderate-income communities. But even controlling, looking at CRA and controlling on those exams for income and for housing starts and for creditworthiness, you still see a disparate difference in the treatment of African Americans and Latinos. Mr. Hensarling, in your district, 68 percent of African Americans in your congressional district got subprime loans. Almost over 50 percent, almost 58 percent of Latinos in your congressional district got subprime loans. And we know from Fannie and Freddie when they were purchasing these loans and we looked at their creditworthiness, that half of those, 50 percent of those borrowers qualified for prime loans. Why shouldn't we as a bipartisan house Financial Services Committee and Congress be pushing for stronger, fairer, equal access that should just be the law of the land. And then finally—my final point, Representative Waters. I seem to have 30 seconds on this one. I don't know if—I am going the wrong way.

Ms. WATERS. Your time is up.

Mr. TAYLOR. May I—one sentence? We really need to have—

Ms. WATERS. We are going to come back and do questions. We have to move onto the next one. Thank you. You can say this when you get a question.

[The prepared statement of Mr. Taylor can be found on page 186 of the appendix.]

Mr. Roberts, go ahead.

STATEMENT OF BENSON F. ROBERTS, SENIOR VICE PRESIDENT FOR POLICY AND PROGRAM DEVELOPMENT, LOCAL INITIATIVES SUPPORT CORPORATION (LISC)

Mr. ROBERTS. Good morning, Ms. Waters, Mr. Hensarling, and other members of the committee. My name is Benson Roberts. I work for LISC, the Local Initiatives Support Corporation. We are a community development organization. We work with community groups and banks and States and localities and many other partners to rebuild low-income communities in urban and rural areas around the country.

I want to focus on the community development aspect of CRA. Many other people here today are addressing the crucial home mortgage aspects of CRA. Community development is also a very important part of CRA. By community development, I am talking about rental housing development and finance. I am talking about grocery stores, other retail, and other commercial facilities in low- and moderate-income communities. I am talking about community facilities like health clinics and child care centers that help our citizens have access to the tools for self sufficiency and independence. I am talking about partnerships with community development financial institutions such as Mr. White referenced earlier. CRA has been crucial to this community development activity.

Banks have made billions of dollars of loans and investments for community development, generating over a million affordable rental homes, millions of economic development space and community space. And beyond those numbers, what CRA has done is to help forge partnerships among the banks, the community groups and other, for-profit, developers, States and localities to move these communities back into stability and revitalization. And it has proven both safe and profitable.

Moreover, most Federal housing production and community development programs today rely on these partnerships. Without these public-private partnerships and the private partner in them, these Federal programs are going to be compromised. Less will get done, more government money will be required for each project, and there will be less business discipline in the process because we need the banks to be part of the process in ensuring that these are really done safely and successfully.

So many Federal policies made through this committee depend on having strong bank participation in the process. We want these communities and we want these public programs to be part of the mainstream, not to be isolated from the mainstream. These community development projects have done a great job at rebuilding neighborhoods. We would invite you to go on tour with us or many other people to see for yourselves what this is like. It is really remarkable and really heartening, I think.

Other people have cited Chairman Bernanke. I will do the same. He makes the point that: "This community stabilization work is important for the overall economic recovery. Healthy and vibrant neighborhoods are a source of economic growth and social stability. Community development financial institutions and other community groups are already responding to the evident needs, but they will require many willing partners to ensure success in the long run, including governments, mortgage servicers and mainstream lenders."

How is it going? Unfortunately, not very well these days, I am afraid. While CRA and community development have in the past fared very well, we have seen the effectiveness of CRA with respect to community development erode over the last several years. Now, it is true that things are particularly tough today in this financial crisis, but the trend began well before then. We now have in low-income housing tax credits, declining investments from over $8 billion in 2007 to about $5 billion last year. CRA can and should do more to encourage broadening of the investor base by getting other banks to participate. But the way CRA is structured, it really provides very little workable opportunity for many of the local and regional banks to get involved.

In economic development, we see the same thing, a real decline in lending for economic development in low-income communities. We still see investments flowing for new markets tax credits, but it is very hard to get the loans on those properties. We are worried that investment capital is drying up.

We have lots of recommendations. Some of them Mr. Taylor has suggested we think have a lot of merit. We have other ideas as well. But we really need to make CRA work for the rural communities, the smaller cities, the Gulf Coast, and many, many places in this country that just can't get the capital they need to help America grow and recover.

[The prepared statement of Mr. Roberts can be found on page 170 of the appendix.]

Ms. WATERS. Thank you very much. With that, I will recognize myself for 5 minutes. Mr. Taylor, I would like you to share with us your suggestions about how we can get communities more involved with CRA. I was initially some years ago under the impression that community groups and organizations could go to their local bank and ask to see the books and meet with the managers and find out what was going on in their immediate communities. But I have not found that to be true. Also, I don't believe that local communities are well informed about examinations and how they can be a part of that. So would you help us to understand what we should be doing to ensure enforcement and for participation by our communities?

Mr. TAYLOR. Sure. First off, you are absolutely right. If you pass a law but the sheriff isn't interested in regulating the law, it is going to be made hollow. And that is precisely what has happened.

And it relates a bit to what Mr. Roberts was talking about, the recent weakening of CRA by the regulatory agencies frankly who simply don't have public hearings like they used to, don't count—don't reach out to community groups like they used to regularly just to say how is this bank doing in your community, less frequent exams. There has just been this plethora of moving away from the enforcement under CRA.

So I think that the most important thing and this gives me the chance to say the point I was trying to say, is the enforcement authority—we really need to have an enforcement authority who sees it as their mission to protect the taxpayers, protect consumers, and to ensure that the CRA is adhered to.

CRA is not a law about communities. CRA is a law about individuals, individuals having access to credit and capital and basic banking services. And to think that the Equal Credit Opportunity Act or the Fair Housing Act, as Mr. Hensarling has—and now I get a chance to disagree with Professor White—that they will fill the purpose of CRA belies a misunderstanding of what CRA is about. Because the Equal Credit Opportunity Act and the Fair Housing Act will prohibit you from discriminating if you are making loans. If you choose not to make loans in neighborhoods, then you won't have to worry about the Equal Credit Opportunity Act or the Fair Housing Act. It is CRA that brings you into those neighborhoods, which is why we support President Obama's initiative in the Consumer Finance Protection Agency that he proposed, that it includes CRA because it is one thing to make sure they don't discriminate; it is another thing to make sure that they are doing business in these neighborhoods to begin with.

So consumers can then educate themselves, can be in contact with their banks, can do a lot to communicate. But the truth of the matter is we need the regulatory agencies holding their hands to the fire, having these banks not ignore neighborhoods and making safe and sound loans, primarily prime loans available to people in these neighborhoods.

Ms. WATERS. Thank you. Mr. White, I appreciate your testimony. And even though you disagree with the mission of CRA, I thank you for helping to clarify CRA's role in the subprime meltdown or lack of a role. But I would like to ask you, do you also agree that CRA should be placed in the Consumer Finance Agency under the new regulatory reform that we are discussing?

Mr. WHITE. That is a tough one, Representative Waters, since—as you know from my testimony, I am not an advocate of CRA to begin with. My first preference would be for it not to be there at all. If there is going to be a Consumer Protection Financial Agency, it strikes me that that ought to be focusing on consumer protection and that means protection against predatory practices, against bad information. I don't see CRA as fitting into that particular framework.

Ms. WATERS. Thank you very much.

The CHAIRMAN. The gentleman from Texas.

Mr. HENSARLING. Thank you, Mr. Chairman. Mr. Antonakes,—I am sorry. Did I pronounce that right? I believe in your testimony you said that CRA does not require banks to make unsustainable loans. Does it require them to make sustainable loans if it doesn't require them to make unsustainable loans?

Mr. ANTONAKES. Representative, the law specifically requires them to make loans throughout their local communities that are written under the tenets of safe and sound underwriting practices.

Mr. HENSARLING. So arguably it is mandating that they engage in some universe of sustainable loans. So it would be your opinion that we need a law to mandate banks to make sustainable loans rather?

Mr. ANTONAKES. It is my opinion that until loans are made throughout communities, despite whatever the geographic or the racial makeup of that community may be, that, yes, an affirmative obligation to make loans throughout communities should exist until we can demonstrate statistically that is no longer necessary.

Mr. HENSARLING. In Massachusetts, how many banks practice racial discrimination? And can you tell me their names?

Mr. ANTONAKES. We examine banks on a regular basis. We have primarily a community bank supervision in Massachusetts. We have had some fair lending issues in the past. We don't have any at this current time. However, fair lending—

Mr. HENSARLING. So the banks that are under your jurisdiction, as of today you can't name any that are practicing racial discrimination; is that correct?

Mr. ANTONAKES. We have none that we have current fair lending issue with. That is not to say that examination and supervision should be abandoned however.

Mr. HENSARLING. Are the banks in Massachusetts exempt from the Equal Opportunity Credit Act or the Fair Housing Act?

Mr. ANTONAKES. No, they are not.

Mr. HENSARLING. Do you believe that the Obama Administration is failing to properly enforce these laws?

Mr. ANTONAKES. No, I do not.

Mr. HENSARLING. Mr. Taylor, I heard what I would view as your tortured logic. We will continue to agree to disagree on that particular point. I did hear you say, Mr. Taylor, that CRA is a simple law. To a lot of bankers, it is simply just a very expensive law. And I am still trying to figure out what we are getting at here in the sense of—if we are not forcing banks to make unsustainable loans, they are in the business of making sustainable loans.

So if there is a universe of citizens who are being denied credit opportunities in the sustainable loan universe due to race, yes, as individuals, the opposite of—you have the Equal Opportunity Credit Act, Fair Housing Act. You say that applies to individuals. If they don't make loans, they don't come within the ambit.

Frankly, I would beg to disagree on that particular legal interpretation. So if we are not forcing them to make sustainable loans they would already make, there is some universe of the loans we are asking them to make that they wouldn't otherwise make. So essentially we are asking the government to substitute its judgment for the decisions of creditworthiness that would be derived from a competitive marketplace. I have to tell you as I look at our first trillion dollar deficit, as I look at Social Security going broke, as I look at Medicare going broke, as I look at Medicaid going broke, as I look at the National Flood Insurance going broke, the track record of government in deciding what type of loans and programs are sustainable is not a good one. And so are we not coming up simply with a universe of people who are either going to already get loans that the banks are going to loan them anyway and charging the banks $30,000, $40,000, or $50,000 for the privileging of doing what they are already going to do, we already have laws on the books to make sure they don't discriminate.

Again, it seems like a rather expensive anachronism today. And Mr. Taylor, my time is running out, but I always enjoy hearing from you.

Mr. TAYLOR. Sure. If you don't mind hearing from me another minute.

Mr. HENSARLING. Probably less than a minute, but go ahead.

Mr. TAYLOR. First off, as far as the government running things and their function, I happen to think we have the greatest country in the world, and I think our government has done a very good job, including the Federal Government. By the way, you work here and I don't. And you have worked here for a long time. So I actually don't disparage the Federal Government the way you do. I actually think in many years they have done a good job. I am here to help them do a better job. You keep confusing racial lending with CRA. You need to read the law, with all due respect, Representative. It is an income law. It is about working class, blue collar people having access to credit and capital. And, yes, we would like to see race considered because there still is a disparity in that.

But the key is this: If left to their own demise, financial institutions historically would have really ignored low-wealth neighborhoods in low-wealth populations. That is a fact. What happened is they closed a lot of branches, they closed a lot of shops and in their place in urban and rural areas came the payday lenders, the pawnshops, the subprime and the high-cost lenders. And that happened under several Presidents' watch. That is what we are trying to fix to make this work properly, safely and soundly, and effectively in these low-wealth neighborhoods. Thank you for listening to me.

The CHAIRMAN. I will now recognize myself. First, for some reason, the question of ACORN, I would guess we will amend in all saying mighty obsessions from fairly small acorns will grow. This one organization appears to be totally dominating the thinking of my colleague, not during the period when the Bush Administration was funding it. There was apparently a pass for the Bush Administration. I haven't been able to find any insistence that we cut off funding from ACORN when it was coming from the Bush Administration. There was also this question about their testifying. I checked. The last time they testified when we were the Majority was in June of 2007, which was probably the first time since we had only taken over before. So they did testify once over 2 years ago. The notion that some recent change has occurred has no basis. But I also want to talk about the—the gentleman from Texas talked about contradictions. It seems to me that he has himself evinced one when he first said that the problem with CRA is that it was forcing people to get mortgages where the lending standards were relaxed.

He then said that because of the actions by this committee, the credit card bill and the mortgage bill he said, we have cut off credit to low-income people. I wish that those were more true, that they had gone into effect. The credit card bill which passed doesn't go into effect for some months, although I am inclined to think we may have to push that up because the credit card companies have been abusing it. The restrictions we have put on mortgages haven't gone into effect yet. We passed them. They haven't become law yet because the Senate hasn't passed them. But the theory is this: He says that there are people and those of us who support the CRA who are pushing for relaxation of mortgage standards, of no-doc loans that the gentleman from Minnesota mentioned. Exactly the opposite is the case. It has been we on the Democratic side who have consistently tried to enact regulations and laws to prevent those abusive forms of loans. In 1994, when the Democrats last controlled Congress before 2007, this committee passed—it wasn't me. It was my predecessor. It was the senior Democrat, John LaFalce—the Homeownership and Equity Protection Act, which mandated the Federal Reserve to put restrictions on mortgage lending. And Mr. Greenspan refused to do it. And when some of us then tried during the early parts of 2000 to press for legislation, we were rejected. It was the Bush Administration in 2004 that mandated a significant increase in the number of mortgages for people below the median that had to be bought by Fannie Mae and Freddie Mac.

In 2005, the gentleman from North Carolina, Mr. Watt, the gentleman from North Carolina, Mr. Miller, and myself, working with Mr. Bachus tried to get legislation through to limit exactly the kind of loans that the gentleman from Texas said have caused the problem. And the Republican leadership said, you can't do it. We were ordered not do it. And we have legislation pending now. The fact is that many of us have been concerned about housing for lower-income people, primarily rental housing. And that has been a big debate. I do believe that it is a mistake to push people into homeownership when they are not economically and in some cases socially prepared to do it. I am very proud that Larry Lindsey, who is a major official in the economic area in every one of the last three Republican Administrations, President Reagan and both Presidents Bush, cited me as one of the few elected officials who has been consistently skeptical of this pushing of low-income homeownership. So we have tried very hard to do that.

Now we get to the CRA. The argument was first that the CRA caused it. That is unsustainable. As Bush Administration officials have said—Sheila Bair, George Bush's appointee to head the FDIC—I want to give you my verdict on CRA, not guilty. I ask that the whole testimony go in here. So let the record show that CRA is not guilty of causing the financial crisis. Another Bush appointee, Ben Bernanke. He is the chairman of the Federal Reserve. He is now an Obama appointee. He was a Bush appointee when he said that. Not just as chairman of the Federal Reserve, but previously as the head of the Council of Economic Advisors.

It is not true that CRA caused the problem. Here is what he says, "The available evidence to date, however, does not lend support to the argument that CRA is to blame for causing the subprime loan crisis. Our own experience with CRA over more than 30 years and recent analysis of available data"—this is November of 2008—"including data on subprime loan performance runs counter to the charge that CRA was the root of or otherwise contributed in any substantive way to the current mortgage difficulties."

So since the basic argument has failed, we now have a second level argument. It was the CRA that scared the banks into giving money to ACORN so they could cause the problem. So then the question is, did the CRA scare the Bush Administration? Was HUD under George Bush, which was regularly funding ACORN, intimidated somehow by the fact that there was a CRA even though they weren't covered? Yes, there are some serious problems here. But the notion that it was a CRA actually I have just been—late flash. I will give myself 5 more seconds.

The total funding under the Bush Administration for ACORN is now $14,215,475. I feel like I am running a telethon. So the Bush Administration is now, I think, at first place at $14,215,000. I now recognize the gentleman from Texas. Who is next? Mr. Neugebauer.

Mr. NEUGEBAUER. Thank you, Mr. Chairman. I want to go back to your testimony, Mr. White. You said that banking has changed a lot since CRA was instituted and as you stated, you are not a big proponent of CRA. Is it that you think that task is already—could be accomplished by abolishing CRA or is CRA failing to accomplish its task and you think something different is needed? Can you elaborate on that just a little bit for me?

Mr. WHITE. Thank you, Congressman. I think it is primarily the latter, the intentions are good, but there are better ways than leaning on banks in this vague, ill-defined way to accomplish those goals. As I indicated, first, if you think the problem is racial or other kinds of discrimination, find those who are discriminating and prosecute and fine them and throw them in jail, do the max. Second, if you think it is a problem that they are lazy, they are just not competitive—here are these profitable loans, these worthwhile loans and they are just not finding it worthwhile because they are lazy, they are incompetent, let us get more competition into this area, let us encourage companies that have a successful business model of providing good value to low- and moderate-income households, companies like Wal-Mart that were interested in entering the financial services area, that were stonewalled, that were prevented from entering this area.

Let us encourage them to enter and provide those services. If still there is not enough financial services, then let us do it through the public fisc, let us do it in an on-budget and transparent way; as I indicated the Community Development Financial Institution's Fund is a good framework. And if it is inadequately funded, let us fund it more adequately. That is the way to deal with these issues.

Mr. NEUGEBAUER. And I still want to go back to that last part there, the fund. How would you fund that?

Mr. WHITE. I will pay more taxes. And I think that it is simply the right thing to do, and the Congress, the Obama Administration, the American people should step up and be prepared to fund it more adequately.

Mr. NEUGEBAUER. Mr. Roberts, did you want to respond to that?

Mr. ROBERTS. We are big supporters of the CDFI Fund as well. But the CDFI Fund works because it leverages bank financing. The

CDFI Fund leverages about 30 private dollars for every Federal dollar. So if you take that $30 away, you are going to have to multiple the CDFI appropriation by 30-fold. And then you won't get the partnership and engagement of the local banks because the CDFIs provide financing that complements what banks find more feasible for them to do directly. And you don't get the additional scrutiny of the CDFIs that the banks provide because of their participation and so you are putting it on the Federal Government to make all kinds of very complex underwriting judgments about all kinds of organizations out there. It just doesn't work. This public-private partnership is really what has transformed the effectiveness of the Federal policies and I will also cite Chairman Bernanke in observing that mainstream financial institutions have been pulling away from CDFIs, that CDFIs are liquidity constrained as a result.

They are unable to meet the needs of their communities in part because they cannot raise the private capital anymore in this climate.

Mr. NEUGEBAUER. Mr. Taylor wants his standard last 30 seconds. So I am going to give it to him.

Mr. TAYLOR. Well, I want to keep trying to unconfuse people here, Professor White and others. That a racial discrimination, anti-discrimination law substitute for what the purpose and mission of CRA is. It doesn't. Because CRA is about having an affirmative obligation to go in and offer product. If you offer—

The CHAIRMAN. Time is up.

Mr. NEUGEBAUER. You got your 30 seconds.

The CHAIRMAN. The gentleman from North Carolina. But before I do, I want to correct myself when I said that the Bush Administration had given $14,275,000 to ACORN. That is through HUD. We don't know whether they gave them money elsewhere. That CRA may have been scarier than I thought to the Bush Administration. So the $14,275,000 funding from the Bush Administration to ACORN only applies to HUD funding. We are checking on other funding. The gentleman from North Carolina.

Mr. WATT. Thank you, Mr. Chairman. I think we benefit from having a copy of the CRA law in the record and I therefore ask unanimous consent to submit a copy of the—

The CHAIRMAN. Without objection, it is so ordered.

Mr. WATT. Mr. Taylor is absolutely right, I don't know what all this fuss is about and Mr. White, I am just baffled by your testimony. I am sorry. The notion that antitrust laws should be a substitute for CRA or that Wal-Mart should be a substitute for CRA just—is just beyond me. I don't understand that. Suppose, Mr. White, that all of the banks in my community—I live in Charlotte—independently, they didn't get together collectively and decide this, but all of them decided that they were going to—not going to serve any part of the priority community, would that be a violation of the antitrust laws?

Mr. WHITE. Congressman, I am not a lawyer. I don't practice law.

Mr. WATT. It is obvious if you think the antitrust laws are going to cover a lot of the things that CRA covers. But you have testified here as if the antitrust laws in some way are a substitute for CRA. And then when I asked you a question, you say I am not a lawyer.

Mr. WHITE. Sorry. Let me continue. However, my understanding of the antitrust laws—I was the chief economist at the Antitrust Division—

Mr. WATT. Just answer the question, Mr. White. Do you think if all of these banks, independent of each other, decided that they were not going to serve the minority community or put any branches there or make any loans, that the antitrust laws would have any application to that?

Mr. WHITE. From a conspiracy perspective, obviously, no.

Mr. WATT. Okay. All right. Again, I just don't understand how you can assert to us that the antitrust laws are somehow a substitute for CRA. Do you honestly believe that us authorizing Wal-Mart to get into banking is going to be a satisfactory substitute for CRA? That is what your testimony was, Mr. White.

Mr. WHITE. Congressman, I don't understand what the argument is—

Mr. WATT. I don't understand it either.

Mr. WHITE. Profitable loans that somehow aren't being made by these profit-seeking institutions.

Mr. WATT. I understand that. I agree with that. But I don't know how you wipe the law off the book that says you shall make loans in your community and solve a problem that you just acknowledged is a problem. I agree that we are underserved in our community. Do you think banks have any obligation to serve the communities in which they operate?

Mr. WHITE. Congressman, I don't see this kind of community focus—

Mr. WATT. That is not the question I asked. Do you acknowledge that banks have some obligation to serve the communities in which they operate?

Mr. WHITE. Under the law—again, I am not a lawyer—apparently they do.

Mr. WATT. Okay. All right. And do you disagree with the congressional findings that regulated financial institutions have continuing and affirmative obligations to help meet the credit needs of the local communities in which they are charted? Do you disagree with that?

Mr. WHITE. I don't think that is good public policy. I don't think that is the way financial institutions ought to be bullied or forced.

Mr. WATT. You don't think that ought to be the law?

Mr. WHITE. It is a matter of public policy and I disagree. I respectfully disagree.

Mr. WATT. I would be—I would actually be happy for you just testified you disagree with any kind of CRA obligation. But to come in here and tell me that Wal-Mart is a satisfactory substitute for this obligation just insults my intelligence. And to tell me that the antitrust laws will solve the problem when the antitrust doesn't cover any of this obligation is just—I don't understand that. I don't know how you can with integrity do that to this committee.

Mr. WHITE. Congressman, if the problem is not enough competition, then we want to make sure that—

Mr. WATT. If I thought that was the problem, I would solve it the way you suggested. But the problem is lack of service, not lack of competition.

The CHAIRMAN. The gentleman from California.

Mr. ROYCE. Thank you. I was going to ask Mr. White a question. And it comes from an article written by Stanley Kurtz, as senior fellow at the Ethics and Public Policy Institute. His argument is this. He says ACORN's local CRA enabled pressure tactics served to entangle the financial system as a whole in the subprime mess. This is his thesis. He says by using CRA and ties to sympathetic congressional Democrats, ACORN succeeded in drawing Fannie Mae and Freddie Mac into the very policies that led to the current disaster. And here is the way in which he lays out this case. He says ACORN's efforts to undermine credit standards in the late 1980's taught it a valuable lesson. However much pressure ACORN put on banks to lower credit standards, tough requirements in the secondary market run by Fannie Mae and Freddie Mac served as a barrier to change.

Back then, Fannie and Freddie refused to buy loans that failed to meet high credit standards. If, for example, a local bank buckled to ACORN pressure and agreed to offer applicants a 5 percent downpayment rate instead of the normal 10 to 20 percent, Fannie and Freddie would refuse to buy up the mortgage. That would leave all of the risk of these shaky loans with the local bank. So again and again, local banks would tell ACORN that because of standards imposed by Fannie and Freddie, they could lower their credit standards only by a little.

So the 1980's taught ACORN that their Washington lobbyists would have to bring inside pressure on the government to undercut credit standards at Fannie and Freddie. Only then would local banks consider making loans available to customers with bad credit histories, with very low wages, with virtually nothing in the bank and even with bankruptcies on record. And precisely because ACORN's local pressure tactics were working, banks themselves wanted Fannie and Freddie to loosen their standards still further so as to buy up still more of the high-risk loans they had made at ACORN's assistance.

So by 1993, a grand alliance of ACORN, national Democrats and local bankers looking for someone to lessen the risks imposed on them by CRA and ACORN were uniting to pressure Fannie and Freddie to loosen credit standards still further. He goes on in the article to explain that ACORN called for at least half of Fannie and Freddie's loans to go to low-income customers. At first, the Clinton Administration offered to set aside 30 percent, but eventually ACORN got what it wanted.

By early 1994, the Clinton Administration floated plans for committing $1 trillion in loans to low- and moderate-income home buyers which would amount to about half of Fannie Mae's business by the end of the decade. Wall Street analysts attributed Fannie's willingness to go along with the change to the need to protect itself against still more severe congressional attacks. And this sweeping debasement of the credit standards was touted by Fannie Mae's Chairman, Chief Executive Officer, and Obama advisor, James A. Johnson. This is also the period when Fannie Mae ramped up its pilot programs in local partnership with ACORN, all of which became precedence and models for the pattern of risky subprime mortgages at the root of today's crisis. At both the local and national level, ACORN served as the critical catalyst, levering pressure created by the Community Reinvestment Act and pull with Democratic politicians to force Fannie Mae and Freddie Mac into a pattern of high-risk loans and a disastrous disregard of the most basic financial standards. I know there are other factors in here because I know in 1992 the CRA Act—the GSE Act was passed setting those mandates that Congress basically set those housing mandates for the GSEs.

But Mr. White, I was going to ask you if you believe that lowering those standards, getting standards down to zero percent or 3 percent or 5 percent in connection with the push to have half of the portfolio held by the GSEs in subprime and alt-A contributed to housing bubble and to the problem?

Mr. WHITE. Congressman, I have no knowledge at all about ACORN's actions, what they did, what they didn't do. So I really cannot comment on that. As my testimony indicated, everything I know about who was originating the subprime mortgages, who is investing in them, they are primarily non-CRA covered institutions. Where you did have CRA-covered institutions like Washington Mutual, like Wachovia, like the depository side of Countrywide, like Citi, they were investing because they saw this as a profitable investment, not because of CRA.

There is excellent empirical work that has been done by economists at the Federal Reserve Bank of San Francisco, Elizabeth Laderman and Carolina Reid. I urge everyone in this room to read that article. It is excellent.

The CHAIRMAN. Thank you, Mr. White. The time has expired. I recognize the gentlewoman from New York.

Mrs. MCCARTHY OF NEW YORK. Thank you very much, Mr. Chairman. And I thank you for the hearing. I am really finding this extremely interesting. I am also one of those Representatives who has very wealthy people in my community. The majority of them are probably middle-income families and I have underserved areas. But listening to this conversation from both sides of the aisle, from everything I understood, CRAs were to help all people, not just minorities.

Now, I have an area—a community came to me several years ago. They had no bank, they had no food store. All they had were payday loan places to go cash their checks. Yes, they have small homes. But they are all hard workers and over the years we have been able to have CRAs come in. We have had community developments coming in. And I have to say, you drive down Main Street nowadays, and it is a busy place. You have a beauty shop, you have a bank, you have the supermarket. These are things that work.

Now, did anybody ever come in there? It is not that the residents didn't want it. And by the way, from what I can see, banks, when they do go into these communities, make money. That is why I am seeing a battle going on right now in my district because I have credit unions that want to go into the underserved area and now all of a sudden, I have banks that want to come into the underserved area. Nobody is telling them to go in there. They want to go in there. They work. They need to cash their paycheck. They need to take out loans to buy a home.

These are things that are going on. So my concern is, if we did what were the CRAs, who would come in to some of these communities? We have rural areas in the west, that whole towns are shut down and a community development can go in there and help them. CRAs can go in and help them rebuild their towns. We have seen it. But you have to have faith in the community. And I think that is the important thing. Mr. Taylor, you have been shut off so many times, getting 30 seconds right at the end.

From hearing your testimony, I certainly agree with you on the majority of issues that you are talking about. But when I talk about modernizing or reforming the Community and Reinvestment Act, what the effect such as payday loans and other services that may be underserved in low-income areas are the only things that they have to rely on. What is going to happen to people when they need to cash their check? And I will give you some time to answer those questions.

Mr. TAYLOR. Sure. And that is a very good example of the regulatory malaise that we have suffered over the last several years where full service bank branches have been able to close their branches and in their place have popped up these hybrid, high-cost alternative basic banking services like payday lenders, pawnshops, and check cashers. And community groups, many of our members have struggled with financial institutions to try to get them to open branches all over the country in underserved areas.

And they do it kicking and screaming. But I have to say—and I will give you examples, like Houston' fifth ward, which is a predominantly African-American community that didn't have a single bank branch in it. We challenged this bank to try and open a branch there. They said there is no way, it is not profitable. They forget the fact that while the average income may be less, there is a denser population, so there is more incomes. Low- and moderate-income neighborhoods does not mean everybody is not working. It means about 15 percent of them are not. That means 85 percent of the people in those neighborhoods are working and they need basic banking services.

So what happened to this bank? They opened a branch in Houston's fifth ward. They predicted that maybe in 5 years, they would be profitable. Within the first year, it became the most profitable branch in this bank's network, that first year. And this is true in Roxbury where I come from, in other communities around the country where they have opened branches and they have found indeed there is a pent-up demand, indeed they can make a profit. So I think what we really need to do is—I would like to see those payday lenders go out of business altogether. I would like to see the check cashers have a nominal impact in these neighborhoods.

I would like to see the same kind of basic banking services that are available to upper- and middle-upper-income white Americans available to blue collar, white, black, brown Americans throughout this country. I think that would be a Democratic society and a fairer system.

Mrs. MCCARTHY OF NEW YORK. We have heard the argument here on those kind of hearings from the other side of the aisle, that a lot of their constituents like going to the payday and they don't want to see them closed. But just to close your argument, and I know you have said it a million times. Kenneth Lewis, CEO of the National Urban League Annual Conference spoke there. And he basically talked about how Bank of America supports CRAs, they have had good relations with it, and they see it as a future for many, helping middle-income and lower-income families. So I thank you for your testimony and I yield back the balance of my time.

The CHAIRMAN. The gentleman from Texas, Mr. Marchant.

Mr. MARCHANT. Thank you, Mr. Chairman. I would like to focus my questions on the expansion of the CRA into other financial institutions. For Mr. Taylor, is it your opinion that the—if the CRA even if the CRA was properly enforced under current law that it would not provide sufficient community investment or community loans?

Mr. TAYLOR. If it was properly enforced, it would be helpful, but it wouldn't do as much as we could do to bring more capital and credit to underserved neighborhoods.

Mr. MARCHANT. But to the banking commissioner, you testified that you currently do not have any banks that—in Massachusetts. Is this State charter or State and Federal charter?

Mr. ANTONAKES. State charter.

Mr. MARCHANT. State charter that are in noncompliance and that are written up under CRA?

Mr. ANTONAKES. Not at the current time. There was a time in which we had a significant portion that were not compliant. But at the current time we have—I believe it is—I believe we have—all of our banks are in compliance.

Mr. MARCHANT. Under H.R. 1479, the CRA has expanded the independent mortgage companies, mainstream credit unions, insurance companies, security firms, and investment banks. Now, if—from the argument of simplicity and the argument of enforcement, if the opinion is that CRA is not being enforced currently among the banks and it has not been effective, how would you add all of these additional entities in there which obviously have very complicated implications as their loan portfolios?

Mr. ANTONAKES. I would argue that the law is not consistently applied and certainly there are ways to improve and that is what we are discussing today. And 30 years is a long time in banking, in the industry and banking practices have changed. Secondly, there are new players in the market. And I think that is what has to be reflected as well. Let me say this about our application of CRA to credit unions. We have applied CRA to credit unions since 1982, and there has been a lot of discussion regarding regulatory reform, about a regulatory arbitrage and a race to the bottom.

In Massachusetts, if you are a State-chartered credit union, you will comply with CRA. You can flip to a Federal charter if you want to lawfully and you can get out from under that obligation. In 27 years, no Massachusetts State-chartered credit union has ever flipped its charter to evade its CRA responsibilities. Is there an increased compliance cost associated with CRA? Yes, there is. One I think we have to make sure is appropriate and commensurate with the market share of the institution. Those credit unions that have flipped charted in a few instances for other reasons have all told us that we maintained our CRA program after we started operating under a Federal charter because it was good business.

Mr. TAYLOR. Can I answer that?

Mr. MARCHANT. I would like to hear Mr. Taylor's opinion.

Mr. TAYLOR. First off, I do want to thank you because it sounds like you are really thinking this through and it is a very thoughtful question. And it gives me the opportunity to say you are absolutely right, a number of these agencies would have to either create new departments to be able to regulate under CRA or, as it should be, it moves over to the Consumer Finance Protection Agency. We could have one agency that works on this law along with the others that applies to all the financial services sector so that you can streamline the process for having this oversight with the single agency rather than having multiple agencies now develop new departments.

Mr. MARCHANT. Expanding it into, for instance, investment banks, securities firms, what would be the name of a security firm?

Mr. TAYLOR. The name of a security firm?

Mr. MARCHANT. Would it be Goldman Sachs? I am trying to understand—

Mr. TAYLOR. Yes, it would be. But it would be obviously.

The CHAIRMAN. It would have to be; there aren't many others left.

Mr. TAYLOR. Obviously, those without a retail presence would have a different obligation. Their obligation would be to make sure that they are actually securitizing loans that relate to low- and moderate-income products that have been generated by the financial services sector. If they say, for example, we are not going to securitize any loans that are not—let us take mortgages—not on houses that are worth less than $400,000, well, that pretty much cuts out most of the middle class and low- and moderate-income people altogether.

So they have an obligation to report what they are doing and not doing to—also to be able to do investments in institutions that act as intermediaries and partners with the financial institutions, banks to have those security firms and investment banks invest in them so they can develop jobs, housing, rental housing. Yes.

The CHAIRMAN. Time has expired. I now recognize the gentleman from Texas. And he has agreed to yield me 30 seconds. We heard from the gentleman from California that if you are Fannie Mae and Freddie Mac—I want to add a couple of facts. I am quoting now. "In 1996, the Department of Housing and Urban Development required that 42 percent of Fannie and Freddie's mortgage financing should go to borrowers with income levels below the median. Clinton administration." "In 2004, HUD revised these goals, increasing them to 56 percent and additionally mandated that 12 percent of all mortgage purchases be 'special affordable' loans, made to borrowers with incomes less than 60 percent of the median, a target that ultimately increased to 28 percent for 2008." "After this authorization to purchase subprime securities, subprime and near-prime loans increased from 9 percent in 2001 to 40 percent in 2006."

Now, obviously, we are talking here about the Bush Administration from 2001 to 2006 and the Bush Administration that brought this up from 42 to 56 and specifically mandated 12 percent be for people below median. And I do not like to quote without giving credit. So let me note that I am quoting from the Hensarling amendment added to the mortgage bill at the motion of the gentleman from Texas. The gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. Let me move quickly. Friends, thank you for your testimony. Just for the record, if you agree that the CRA was not, not, N-O-T, a cause of this financial crisis, will you kindly raise a hand? Let the record reflect that all have concurred that the CRA is not the cause.

Now, Mr. Taylor, you have been very courageous today and I thank you. You have indicated that facts don't seem to make a lot of difference in this conversation, this dialogue. I would like to say argument, but I am not sure that it really is an argument at this point. And do you agree that you have said that the facts don't make a lot of difference? Is this true? Did you say this?

Mr. TAYLOR. Yes, I did.

Mr. GREEN. Would you agree then it is not about facts when facts don't make a difference? Would you agree with this premise?

Mr. TAYLOR. Yes.

Mr. GREEN. If it is not about facts, what is it about, Mr. Taylor?

Mr. TAYLOR. I suppose it is politics, it is posturing. Unfortunately, what it is not about is trying to make sure that this free market, this financial services system works to the benefit of all people, including working class people and people who are working their way up the economic ladder. Because if you don't have access to quality products from banks and others so that you can build wealth, you are not going to be very successful in this democracy, in this capitalist system. That is what this is all about unfortunately. I honestly don't get some of the Republicans. I don't get it at all frankly because they ought to be embracing the CRA because it is about making the free market work in a safe and sustainable way and making sure that their constituents who are not wealthy people, but some of them are presumably working class people, that they have the opportunity to try to build wealth and realize their version of the American dream. I don't get it.

Mr. GREEN. Let me intercede and make a couple of comments quickly and perhaps you will have an opportunity to respond to some other things. You mentioned Texas, and Houston, Texas. I am aware of what you speak. And the truth be told, once the first bank came in and started to rake in the dollars in the coffer and the coffers started to expand, other banks decided that this is really not a bad idea. And we now have many banks that have gone into some of these neighborhoods simply because someone forced literally the first to go in, forced in a sense they were cajoled and encouraged. No one did it physically.

Mr. TAYLOR. That there was a law that required it—the CRA.

Mr. GREEN. The CRA as strong as it is didn't do enough to help us to the extent that I would like to see us helped. Finally, I want to make a comment to no one in particular, but just the people. It is easy to be your brother's keeper when you don't have to keep your brother. We have a lot of folks who talk about keeping their brothers until it is time to be the brother's keeper. And at that point, CRA becomes invidious, community development bloc grants become too much for those who have too little. They always seem to find a way to be their brother's keeper until it is time to keep their brothers. I yield back the balance of my time.

The CHAIRMAN. The gentleman from New Jersey.

Mr. LANCE. Thank you, Mr. Chairman. I yield 30 seconds to Mr. Hensarling.

Mr. HENSARLING. I thank the gentleman for yielding just to respond to our chairman's comments. As I listened to his words, it seems like he doesn't debate the facts. He just simply wants to assess the blame. And I know that no one will miss President Bush more than our chairman. But I don't see him denying the fact—

The CHAIRMAN. Will the gentleman yield?

Mr. HENSARLING. It is not my time.

The CHAIRMAN. Will the gentleman yield? No. I don't deny the fact. I just would note that in 2004, when the Bush Administration upped those homeownership goals, I objected to them. So I am very much acknowledging the facts and putting the blame where it lies, on George Bush, not CRA.

Mr. HENSARLING. Assuming the gentleman still continues to yield time—and I know that the gentleman quoted from an amendment of mine. I will take the chairman at his word that he fought that proposal. I assume that it is in the record. But again, it was the chairman who said, I believe, when it comes to dealing with safety and soundness issues on Fannie and Freddie, that he wanted to roll the dice. And so I will return—

The CHAIRMAN. Let me ask for unanimous consent for an additional minute. And I will take 30 seconds and yield to the gentleman. Yes, I did say that. I was talking about affordable rental housing and I am a little surprised that the gentleman said he will take me at my word. I will provide for him the quotation from Bloomberg in 2004 when I specifically was quoted as objecting in the article by Jim Tyson to that increase in homeownership goals saying it was bad for Fannie and Freddie and bad for the homeowners.

Yes, I was willing to do more and gamble for what was rental housing. And I will supply to the gentleman that quotation from 2004 and put it in the record and yield to him the rest of his time.

Mr. HENSARLING. Well, certainly it is not necessary and I apologize if it appeared that I wasn't taking the chairman at his word. I take the chairman at his word. I don't recall that specific debate, but I take you at your word. But again, I think the facts speak for themselves as to what happened, what contributed to the cause in the subprime debacle. We will continue to debate it. Again, all I have heard from the chairman is not necessarily debating the facts, simply who is to blame. And I thank the gentleman from New Jersey for yielding.

Mr. LANCE. Thank you.

The CHAIRMAN. With unanimous consent, we will give the gentleman 5 minutes.

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

The CHAIRMAN. And the rest of the members will ask him not to yield to us again.

Mr. LANCE. Thank you, Mr. Chairman. Number one, let me say that from my perspective, I certainly respect the point that the

CRA is not responsible for the subprime crisis. I have a great respect for Larry Lindsey and also for Ben Bernanke. Number two, I hope that this Congress defunds ACORN. And I am sorry that there was funding by the Bush Administration, and now by the Obama Administration, and I think ACORN has widely been discredited.

Number three, I think that banks are chartered to be responsible to their communities both at the State and the Federal level. Number four, however, to get to my line of questions, the Congressional Research Service has indicated that some bankers have identified CRA as the most burdensome regulation placed upon them. And this has been the experience based upon discussions I have had with bankers in the district in New Jersey I represent. Does the panel have recommendations on how to simplify the regulations that currently exist regarding CRA? Yes, sir?

Mr. ROBERTS. Yes. There are some regulations that are too complicated. There are a lot of restrictions on where banks can get credit for making loans and investments. Instead of saying go and lend to low- and moderate-income places, the rules basically say, we are only going to give you credit if you invest within a certain radius of where you are. And if you want to join with other banks and work together, we are not going to give you credit if some of those other loans go elsewhere. And this rule makes it very hard to get things done. Another example is: in New York, a key part of the financing for rental housing are letters of credit. It has been almost impossible for the banks to get CRA recognition for their letters of credit. They are incredibly important to the system.

Mr. LANCE. That would be a commonsense reform in which we should engage statutorily in your judgment. Mr. Taylor, your views?

Mr. TAYLOR. First, I don't know how old that document is you are reading from. Do you have it in front of you? Because it sounds pretty dated. Because actually it is dated, right?

Mr. LANCE. I do not have a date on it.

Mr. TAYLOR. We actually follow this pretty well and I think the complaints from the banking institution as regards to CRA regulation have been pretty quiet and pretty subdued over the last several years. Furthermore, you should probably know, you probably already do know that the bankers and the American Bankers Association support expanding CRA to credit unions and others.

Mr. LANCE. I am not suggesting—

Mr. TAYLOR. No. I am saying that if they support expanding it, I doubt that they would continue to argue that it is too burdensome for them. I just haven't heard that. And what I have read is that of all the regulations that are imposed on them, it is really not the—

Mr. LANCE. The bankers with whom I have spoken in my district—

Mr. TAYLOR. Can I have their names, sir? I am just kidding.

Mr. LANCE. I would be happy to supply the bankers with whom we have discussed this.

Mr. WHITE. Well, first let me address what John was just saying. Of course, the bankers would want to have the pain expanded, misery loves company. That doesn't come as a surprise. As I indicated in my testimony, if you are going to keep CRA and do anything about it, quantify it. Change it from this vague leaning on type of regulation, quantify it.

Mr. TAYLOR. Quotas.

Mr. WHITE. Make it clear.

Mr. LANCE. Thank you. Commissioner Antonakes, do you have a view on how we might improve the system?

Mr. ANTONAKES. Sure, Congressman, I do. I think we have to acknowledge that diversity of our banking system is very important in this country. The large money center banks had to leverage during this period the community banks have continued to lend. So I do think we have to increase the risk base manner in which we supervise with CRA compliance. There is a very big difference in how we should—

Mr. LANCE. —versus the largest banks in the—

Mr. ANTONAKES. The largest banks in the country.

Mr. LANCE. And I yield back the balance of my time. Thank you, Mr. Chairman.

Mr. GREEN. [presiding] The Chair now recognizes Mrs. Capito for 5 minutes.

Mrs. CAPITO. Thank you, Mr. Chairman, I am going to pass on questions in the first panel. Thank you.

Mr. GREEN. The Chair recognizes a person who should have been recognized, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you.

I am having a really weird experience serving in Congress. And I guess over the last few months, I am experiencing things that I just didn't believe to be a part of life, real life. And it is just amazing and that is—and I guess I just didn't understand how we are supposed to function here. I didn't come up to function in a way that I have seen, which is no matter what, we are required, I think in this body to challenge indisputable, unarguable facts, no matter what, we just ignore it. Since I have been here, I see people talking right past each other. And I don't even know why some of this conversation is going that is taking place.

I have a lot of follow up with what Congressman Mel Watt had earlier said. He introduced the CRA to the record. He wanted it to be placed in the record. I want to quote from the Act. I know that is not the way we are supposed to conduct business here, but I think this is important. According to the Act, "lending is supposed to be consistent with the safe and sound operation of such institutions from the Act." That is not my philosophy, it is not biblical. It is the facts, it is what is in the law. I will yield to anyone on the panel, in Congress, in the audience, or on the Redskins. If they can read from the Act anything that says something contrary to what I just read. I will yield to anyone on the planet.

Yes, sir, I want you to stand up and state your name.

Mr. PINTO. I am going to be on the next panel. My name is Ed Pinto. I am representing myself—

Mr. GREEN. Mr. Cleaver, let me do this, this is a little bit irrelevant. Why don't we hear from the gentleman on the next panel, and I am confident that we will be back.

Mr. CLEAVER. Well, we may not need to hear from him. If he doesn't have the bill, and is not going to read from the bill, it is irrelevant to the question I asked. Do you have a bill?

Mr. PINTO. I have the—

Mr. CLEAVER. Were you getting ready to read from the bill?

Mr. PINTO. I have the post bill, I don't have the existing bill.

Mr. CLEAVER. Maybe I wasn't clear. I want anybody to read from the bill anything contrary to what I just read.

Mr. Chairman, I yield back the balance of my time.

Mr. GREEN. Let me do this. We will make sure that you have a copy of the bill and when we return, you'll have an opportunity to read.

Friends we have two votes, this should take approximately 30 minutes. We will recess for approximately 30 minutes—hold it for a moment, I am being given some additional intelligence.

We have one additional member who would like to ask questions, I am told he is immediately available, Mr. Ellison, and as soon as he comes in, we will take him and have him ask his questions.

Mr. Ellison, we will recognize you for 5 minutes.

Mr. ELLISON. All right, thank you.

Thank you, Mr. Chairman. I am multi-tasking here. Mr. Taylor, as you know, the CRA offers great flexibility to cover institutions with how they can comply. Have these particular institutions found innovative ways to which to do so such as funds that invest directly in underserved communities?

Mr. TAYLOR. Yes. In fact, the banking industry has been very creative and I think somewhat aggressive in trying to find and work with organizations like LISC and other intermediary organizations, with community development organizations, community development and financial institutions, a number of other mechanisms to try and serve on the underserved populations. And then some of the larger banks have created whole community development departments, investment departments and community development, affordable housing programs, very innovative, creative and very effective programs.

Mr. ELLISON. Thank you. Should Congress consider including broker dealers under the CRA?

Mr. TAYLOR. Say it one more time.

Mr. ELLISON. Should Congress consider including broker dealers under the CRA?

Mr. TAYLOR. What has happened in the evolution of the financial services sector is that in lieu of branches, many of these financial institutions, the banks, have been using brokers and broker dealers as a way of accessing or creating large—sending product into communities. And I think it is high time that this got looked at within their CRA exam as part of what they are doing and not doing in underserved communities.

Mr. ELLISON. Thank you.

This question is to everybody, feel free to dive in. What are your thoughts regarding whether authority relating to the CRA should continue to remain with the functional regulators or should be moved to a new consumer financial protection agency. I invite anybody to answer that one.

Mr. ANTONAKES. Congressman, I will start. I support the creation of the CFPA as a rulemaking body, I think primary enforcement should be retained with the prudential regulators, however I believe that CFPA should have the ability to step in if they deemed deem enforcement to be unsatisfactory by the Federal regulators.

Mr. ELLISON. So like back stop jurisdiction.

Mr. ANTONAKES. Correct.

Mr. ELLISON. Others?

Mr. TAYLOR. I think it is imperative that the Consumer Finance Protection Agency include oversight of CRA. What more evidence do we need from the existing regulatory agencies who treated this law like a stepchild regulation for most of its history. Ignored it for many periods and really have just simply ended the public hearings, created great inflation, CRA great inflation where beginning in the 1990's, you looked at for the first 5 years, 5 percent of banks failed the CRA ratings, some years it was as close at 10 percent, so now it is consistently less than 1 percent, even in the period where we had the worst lending practices in modern history.

So we need someone whose mission it is to look out for the taxpayer, to look out for the consumer, to look out for the homeowner, the small businessperson so we need the CFPA to have oversight on this.

Mr. ELLISON. I would like to follow up on that question. I am aware that there have been different grades that the industry has received with regard to CRA compliance, and now it is like less than 1 percent, before it was not nearly that high. And yet we have seen the proliferation of fairly disturbing practices. How do you account for that?

Mr. TAYLOR. Well, I can't. But I can tell you having served on the Consumer Advisory Council of the Federal Reserve and worked with all these Federal agencies, we have been frustrated over the years, terribly frustrated in trying to get them to focus, indeed focus on a lot of predatory lending and the problems that brought this Nation economically to its knees. And we just haven't been able to make any headway. Even the recent rules that the Fed finally released, they released them in July 2008, long after the economy had collapsed, long after they knew that these were problematic. So the sheriff dropped the ball, they did not enforce the law.

Mr. ELLISON. But the sheriff got an "A." The sheriff was passing out—

Mr. TAYLOR. I don't know who gave the grade.

Mr. ELLISON. You know what I mean, though. Mr. Roberts, do you want to dive in?

Mr. ROBERTS. Right. If you make an analogy here between CRA grades and school grades, on CRA, you can get an "A," "B," "D" or "F;" you can't get a "C." And that is required by the Congress. So if you are a regulator, you are going to give somebody who is really a "C" student a "B" or going to give them a "D?" "D" is pretty bad.

Mr. ELLISON. So what you are saying is we need to reform the way we rank CRA compliance?

Mr. ROBERTS. Absolutely. I would add a "C" grade, a low satisfactory grade. And then I think we need to have both carrots and sticks to encourage good performance and discourage poor performance.

Mr. ELLISON. Okay, okay, very good. Mr. White, you didn't weigh in on this one.

Mr. WHITE. I was asked this question before by Representative Waters. I don't see CRA as being part of the CFPA.

Mr. GREEN. You will have to make it brief, because we have a vote.

Mr. ELLISON. Well, that is all the time I have, thank you very much.

Mr. GREEN. We will stand in recess for approximately 30 minutes.

Mr. WHITE. Will you need this panel?

Mr. GREEN. The panel is excused. Thank you for your attendance and for your testimony.

[recess]

Mr. GREEN. We shall now reconvene the hearing. I would like to introduce the third panel and thank the persons who are part of this panel for waiting and being so patient. We have with us: Judith A. Kennedy, president and chief executive officer of the National Association of Affordable Housing Lenders; Michael A. Stegman, Ph.D., director of policy and housing at the MacArthur Foundation; Mr. Edward Pinto, real estate financial services consultant; Ms. Leslie Andersen, chief executive officer, Bank of Bennington, on behalf of the American Bankers Association; and our final witness will be Mr. Orson Aguilar, executive director of The Greenlining Institute.

All witnesses having been introduced, I shall now ask that each witness have 5 minutes to summarize your testimony, after which you will be subjected to questions. We will start with Ms. Kennedy.

STATEMENT OF JUDITH A. KENNEDY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION OF AFFORDABLE HOUSING LENDERS (NAAHL)

Ms. KENNEDY. Thank you, and good afternoon. As I was preparing for this testimony, I kept thinking about a eulogy Senator Ted Kennedy delivered 3 years ago at a service for Senator Proxmire. Senator Ted Kennedy opened by saying that Senator Proxmire was a true American profile in courage. I assumed it was because of the infamous, famous, genocide treaty that the Senator worked so hard to have enacted. But in fact, Senator Kennedy recognized Proxmire for his Banking Committee work first, saying nearly 30 years after he passed it, his Community Reinvestment Act has produced literally hundreds of billions of dollars worth of private sector investment in our Nation's urban and rural communities.

And not many others can claim such an accomplishment. He made America a better place with CRA. I absolutely agree. After the memorial service, you won't be surprised to hear that the Senator, his wife, and I talked about what was happening in the GO zone and how to use CRA to better help redevelopment.

Our mission, NAAHL's mission is 100 organizations, banks, nonprofits, foundations, and others all devoted to funneling those hundreds of billions of dollars of private capital leveraging scarce funds. You heard Buzz Roberts, one of our board members, speak earlier about leveraging 30 to 1. On affordable rental housing, CRA leverage is about 25 to 1. So it has been a huge success story and I think probably not well-known. For example, we had $100 billion invested in low-income housing tax credits in 20 years, and $8 billion in new markets tax credits in just 7 or 8 years. Every year, for the last 5 years, CRA-reportable HMDA data confirmed $400 billion in loans made by banks to low- and moderate-income people—$50 billion way understates loans made on family affordable rental housing.

So you won't be surprised I am here to say, don't throw the baby out with the bathwater, and don't cut the baby in half. This is huge business, and it does not involve lowering of standards. We should recognize though that the regulations haven't caught up with best practice by banks under CRA. We should also recognize that CRA's success story has been focusing on community development needs, i.e. the needs of low- and moderate-income people. So as you go forward, our recommendations are really going to be around. Don't lose the focus, don't undermine the success by asking CRA to do what other laws were intended to do.

First and foremost we say, please address the weaknesses in the current regulatory structure. The deferred maintenance in updating the regulations, the process by which the examinations go on, all are badly in need of updating.

But second, do no harm, for more than 30 years, this law has encouraged insured depositories to meet the credit needs of their communities on safe and sound terms, and any changes in the law should be carefully considered, practical to implement, and incentivize lenders to engage in high-impact activities. But finally, address the dual mortgage problem. In 2001, NAAHL partnered with former, now deceased, Fed Governor Ned Gramlich to highlight the craziness of a dual mortgage market. In 2004, we did another symposium and we could never communicate adequately the chaos that the unregulated alternative network of mortgage originators was wreaking, we now know.

So is CRA is a success story? Absolutely. Maybe one of the successes is CRA has created a cadre of bankers and banks who now get it. They recognize that you can do good in underserved, as Caroline McCarthy spoke of today, on fair terms and make money.

We think it is going to be critical that CRA is revitalized for preservation of affordable rental housing. Let me give you one Alabama example, I can't help it, not just Rosa Parks Homes, in the last 5 years, 41 banks in Alabama, through our nonprofit Alabama's Multifamily Consortium, have developed two 56-unit elderly properties in Birmingham. Beautiful blessings on their communities.

One of the more interesting things that has happened with CRA money recently in the State of California where they have these budget problems, our member Low Income Investment Fund has been essentially asked by daycare centers and charter schools to reinsure the State of California. When California can't provide subsidy money owed to daycare centers and charter schools in low-income areas, somebody still has to still provide the milk. And so our Low Income Investment Fund has been using CRA dollars from banks to extend bridge loans to these entities to provide what they need for the low-income kids so parents can go to school—go to work, maybe go to school too.

[The prepared statement of Ms. Kennedy can be found on page 144 of the appendix.]

Mr. GREEN. We will come back to you when the questions are asked. Let us move forward.

Let me make this comment for the record: all statements will be placed in the record without objection, so as you summarize, know that you are doing so with the understanding that your statement will be a part of the record. Mr. Stegman?

STATEMENT OF MICHAEL A. STEGMAN, PH.D., DIRECTOR, POLICY AND HOUSING, JOHN D. AND CATHERINE T. MACARTHUR FOUNDATION

Mr. STEGMAN. Good afternoon. While I appear here as an employee of the MacArthur Foundation, the opinions I express this afternoon are my own.

I have been a longstanding student of the Community Reinvestment Act, and believe there is solid evidence it has been directly responsible for increasing lending for low-income home purchases and, in Chairman Bernanke's words, serving as a catalyst inducing banks to enter underserved markets that they might otherwise have ignored.

In my professional experience, I have never come across a CRA mortgage program whose underwriting guidelines didn't require certification of our income or that employee deeply discounted teaser whose payments were guaranteed to explode shortly into the loan term. Or enabled the low- or moderate-income borrower to decide for herself what her monthly loan payments would be are allowed deeply negative amortization. In fact, most CRA programs with which I am familiar also require escrow accounts to assure the borrowers timely payment of real estate, taxes, and insurance obligations. This explains why an accumulating body of research confirms that CRA-driven mortgage portfolios outperform other market segments in recent years. A case in point is research that my UNC colleagues and I have conducted over much of the past decade, which tracks the performance of a $4.5 billion portfolio of nearly 50,000 CRA loans originated by 36 lenders across the country.

Our search finds—and controlling for loan vintage origination date, borrower credit and loan characteristics—the estimated cumulative default rate for a comparable group of subprime borrowers was about 3½ times greater than that experience with the CRA borrowers.

Next, I will weigh in on the ongoing discussion of the policy rationale from posing community reinvestment requirements on financial institutions. The most common argument is grounded in institutions receipt of Federal deposit insurance and related charter benefits. While this is a powerful argument and one most frequently cited for expanding CRA coverage based on the extension of FDIC insurance to an array of Wall Street investment and insurance firms, I think there is an even more compelling argument for extending CRA requirements to many more mortgage-related institutions.

I embrace former Federal Reserve Governor Lawrence Lindsey's public goods argument for imposing CRA obligations on financial institutions, that is, it is in the national interest and for the common good that low- and moderate-income populations fully participate in the American economy and that this is not possible unless the financial services and credit needs are as well served as those of higher income populations. A public goods argument recognizes that shrinking share of the mortgage mart accounted for by CRA covered loans, covered institutions and that absent a duty to serve that would apply to the broader financial services sector the credit needs of underserved population will continue to be under supply because the economic returns of providing such services to them cannot be fully captured by any individual supplier. Much about credit markets and financial service providers has changed since the CRA was enacted and even since the Clinton era reforms. We now recognize that the terms of credit are as important as the availability of mortgage finance in underserved communities, and the principle of sustainable mortgage finance is important to consider within a CRA context. As is the notion of negative credit for institutions or their subsidiaries or affiliates that provide abusive loan products, inside or outside their assessment areas.

There is also more market concentration today among CRA-covered institutions than in past decades. Today, America's 10 largest CRA-covered institutions have combined deposits of more than $3.1 trillion and a 45 percent market share. In my view, not only should this top tier of depository have affirmative obligation to meet the credit needs of the designated communities, but Congress should impose upon them an additional duty to lead the financial services industry in the development commercialization and scale up of innovative, affordable and sustainable credit products and financial services in low-income communities. One needs look no further for such a precedent than a new rule being promulgated by Fannie Mae and Freddie Mac's now regulator.

The Federal Housing Finance Agency has imposed on the GSEs a duty to serve specified mortgage finance needs of underserved markets that are above and beyond Fannie and Freddie's affordable housing goal purchase requirements. I believe that this top tier of CRA-covered institutions should have a similar duty to serve as beacons of innovation and creativity that is over and above their traditional CRA requirements. Whatever form enhanced CRA might take, it goes without saying that the bedrock principle should be retained that no CRA mandate should impair an institution's safety and soundness, nor should it ever require banks to become subsidizers of last resort. However, there is an important difference between the requiring covered institutions to offer financial services or credit products that are unprofitable over the long-term.

[The prepared statement of Dr. Stegman can be found on page 176 of the appendix.]

Mr. GREEN. I am going to have to intercede. We will come back to you, and you will have an opportunity to continue. Mr. Pinto, you are recognized for 5 minutes.

STATEMENT OF EDWARD J. PINTO, REAL ESTATE FINANCIAL SERVICES CONSULTANT

Mr. PINTO. Mr. Chairman, members of the committee, thank you very much for this opportunity to testify. I have 15 years experience in affordable housing lending. I was Fannie Mae's Chief Credit Officer from 1987 to 1989. While at Fannie, I had the pleasure to work extensively with the late Gale Cincotta, the founder of National People's Action. Some of you may be aware that Miss Cincotta is affectionately known as the mother of CRA. She and I collaborated over a 3-year period to develop a carefully designed program whereby Fannie would purchase CRA loans originated by local banks. I would like to remind you of some of the things that Ms. Cincotta would say before committees like this about high-risk lending. She spent 30 years, "Fighting abuse, fraud and neglect of the FHA program that has destroyed too many neighborhoods, too many family's dreams of homeownership." She warned that "poor lending practices lead FHA to have a national default rate 3 to 4 times the conventional market and in many urban neighborhoods it routinely exceeded 10 times."

I have spent the last 14 months researching what caused the real estate bubble and the subsequent financial meltdown estimating CRA lending volumes and loan performance was particularly difficult and opaque. For example, my research found that FHA's percentage of new foreclosure starts has steadily increased over the last 60 years from 0.06 percent in 1951, to 2.36 percent in 1998 when Gale testified, to 4.4 percent estimated for this year.

Gale was appalled at FHA's default rate in 1998. Based on my CRA research, I believe she would call CRA lending toxic. She would tell you that the American nightmare foreclosure, as she called it 11 years ago, has now spread to virtually every corner of these United States. Over a 17-year period, 1992 to 2008, this was a total of $6 trillion in announced CRA commitments—680 times the cumulative volume of $9 billion during the entire first 15 years of CRA. Ninety-four percent of this $6 trillion was made by just 4 banks, and you all know their names: Wells Fargo; JPMorgan Chase; Citibank; and Bank of America. It is those four banks and banks they purchased or merged with that accounted for 94 percent of those commitments. I don't have time to explain how CRA enabled these and other "too-big-to-fail" banks to accomplish this.

Single family loan production originated pursuant to CRA totaled almost $3 trillion over the period 1993 to 2008. Ninety percent, here is where I agree with the other witnesses, 90 percent of CRA lending was not classified as high rate subprime, even though most of it had subprime and other high risk characteristics.

How do I define subprime? FICO scores that are below 660 representing credit impairment or very high LTVs, or other qualifying terms that are high risk, excessively high risk. It is estimated that the GSEs alone purchased 50 percent of CRA production to help meet their mandated affordable housing goals. The combination of CRA originations and non overlapping GSE AH acquisitions over $7 trillion over the same period.

There is little in the way of concrete information on CRA performance but consider the following: Third Federal Savings and Loan in Cleveland has a 35 percent delinquency rate and every single loan was fixed rate, every single loan did not have the characteristics that people talk about as being bad. They had characteristics that were high risk and they have led to a 35 percent delinquency rate versus 2 percent for the rest of its entire portfolio. Third Fed's involvement represents a case study as to how CRA was sued to weaken credit standards and I refer you to footnote number 1 in my written presentation.

Sure, Bank of Chicago has a 19 percent combined delinquency and non accrual rate for its entire single family mortgage portfolio and they were the Nation's first community development bank.

Fannie Mae and Freddie Mac acquired trillions of dollars in high LTV loans that were to meet the affordable housing goals, many of which were CRA over the period 1993 to 2007. They acquired 62 percent of all such loans. They acquired trillions in credit-impaired loans over the same period; again, many of them were CRA. These trillions drove up the Nation's homeownership rate and after being level for 30 years. The GSA's delinquency rate on 1.5 trillion high risk loans 85 percent of which are affordable housing with 15.5 percent in June of this year. That is 6½ times the 2.4 percent delinquency rate on the GSA's traditionally underwritten loan. This flood of high risk and CRA and age lending drove house price bubble that I have a chart in my prepared remarks.

In 1998, Ms. Cincotta expressed a wish that FHA's default rate would be on par with the GSEs. Unfortunately, she got her wish, CRA and age loans acquired by the GSAs have a delinquency rate equal to FHA.

Mr. GREEN. Mr. Pinto, I have to intercede. We will have to intercede and we will move now to Ms. Andersen. Thank you.

[The prepared statement of Mr. Pinto can be found on page 162 of the appendix.]

STATEMENT OF LESLIE R. ANDERSEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, BANK OF BENNINGTON, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION (ABA)

Ms. ANDERSEN. Mr. Chairman and members of the committee, my name is Leslie Andersen. I am president and CEO of the Bank of Bennington headquartered in Bennington, Nebraska. I am pleased to be here today to present the views of the American Bankers Association on the Community Reinvestment Act. ABA believes that compliance with the spirit and the letter of the Community Reinvestment Act is healthy. Forging partnerships and developing a deeper understanding of the perspectives of all parties has led to an open and effective system that now most closely reflects bank's involvement in serving our communities. This evolution has not been without difficulties, but it has lead to improvements, and this afternoon I would like to talk briefly about the changes that have taken place as CRA has evolved and suggest changes that will further strengthen it.

CRA implementation has matured and clearly demonstrates that banks do serve their communities well. The bank regulators' initial attempt to meet the mandate of the Act put emphasis on process rather than performance. CRA examinations became paper trails for talking the talk, rather than the recognition that banks were walking the walk. The dissatisfaction on the part of bankers, community organizations, and regulators led to important changes in the regulatory requirements and examination process. These include balancing the burden between smaller and larger institutions, enlarging the range of lending that received CRA credit in rural communities and requiring consideration of any evidence of discriminatory lending or violations of consumer protection laws.

Moreover, the CRA examination process is now an open one incorporating public opinion as well as the regulators' review of banks' compliance.

Now it would be an exaggeration to say that banks are content with the burdens that remain, but the new CRA regulations are certainly a marked improvement over the old regulations and now better reflect banks' contributions to their communities. The bottom line is that banks that do not serve the credit needs of their entire community do not prosper.

Drill down in a CRA public evaluation and you will read about how we compete for market share across all income levels in all neighborhoods. It is therefore not surprising that the banking industry excels at satisfying community credit needs. Looking forward, bankers believe that the CRA process must continue to evolve to meet changing markets and participants.

There are several ways that improvements can be made. First, regulators need to adjust the process to encourage responsiveness to market changes. For example, there seems to be widespread consensus that financial literacy for all consumers is critical to allow individuals to function appropriately in today's increasingly complex economy. However, ABA members report being constrained by examiner interpretations of the regulations and guidance about what types of financial education they can offer their communities that will pass supervisory muster as CRA.

In addition, although there has been progress made since the last time ABA testified on this subject, we continue to press the agencies for giving the appropriate CRA credit as community development activity to investments in minority owned and women owned institutions.

Second, the CRA regulations and examination are still too complex and should be simplified. Maintaining CRA simplicity is important for any modernization effort. Adding burdensome data reporting requirements will not materially improve an examiner's ability to evaluate a bank's record of CRA performance, but will create expenses that could be used to actually support the community. Third, the reach of CRA should be extended to cover all depositories. CRA itself is tailored to the banking industry. However it contains core concepts that should be applied to other depository institutions, particularly credit unions who are increasingly seeking community based charters. These core concepts include: helping to meet the financial needs of the institution's entire chartered community safely and soundly; applying standardized but flexible criteria to measure performance; and providing public visibility for the resulting evaluation.

In conclusion, ABA believes there has been a significant evolution of the implementation of the Community Reinvestment Act. We believe that changes to simplify the process, add flexibility, and provide viability for all depository institutions will continue to improve CRA for the future. I would be happy to answer any questions the committee has.

[The prepared statement of Ms. Andersen can be found on page 67 of the appendix.]

Mr. GREEN. Thank you.

Mr. Aguilar?

STATEMENT OF ORSON AGUILAR, EXECUTIVE DIRECTOR, THE GREENLINING INSTITUTE

Mr. AGUILAR. Good afternoon. Mr. Chairman and members of the committee, thank you for being here to listen to my testimony. My name is Orson Aguilar, and I am executive director of an organization called The Greenlining Institute. I am here to provide eight simple suggestions for how we can make CRA better. First, I would like to say CRA has been successful and one of the things you also notice is we have had a love/hate relationship with CRA. Even though it has done a lot, we think it could do a lot more if implemented in a manner in which we agree with many of the points made by our colleagues in the banking sector. Despite the CRA's success, more can be done, and I am going to provide recommendations.

First, I think we need a new vision for CRA. The landscape has changed, as people said, it has been 32 years since we first implemented CRA. We need to focus on wealth creation. Credit to me is about putting people in debt. I want to see CRA enhance economic opportunities, enhance wealth creation so that all communities can participate in capitalism.

In my written testimony, I give some specifics on issues we can focus on, homeownership, business ownership, business contracts, equity investments, checking accounts and the list goes on. But if we can focus on wealth creation, I believe it gives us a solid vision for moving forward.

Second, focusing on wealth creation we can see that we can do more in areas of consumer protection. I will give you a quick example. There are a lot of complaints about overdraft fees at banks. One of the things that we have realized is that these types of practices not only strip wealth, but also make people, especially people from the communities that I come from, not want to continue working with banks. We think it is a negative for the banks in the short-term, but it will be very negative for them in the long-term.

Third, CRA should leave room for creativity and leadership. We also believe it has become too much of a numbers game, some banks that so extraordinary leadership often get satisfactory and some banks who get outstanding it is hard to tell why. Some of the things that we would like to consider is that there should be more room for flexibility and individual creativity and leadership on certain CRA factors.

Fourth, we need to measure the effectiveness of CRA for all Americans. And we can only measure the effectiveness with more comprehensive demographic data. Many people assume within this committee today we have heard diversity data being used in the context of discrimination. We like to think of it in terms of how do measure progress to make sure that all sectors of our Nation whether it be women, African Americans, Latinos, Asians or Native

Americans are succeeding in some of the key indicators that I listed below. There is also a false assumption that if we just stick to income data, that we will be able to capture communities of color. As we have seen, even when you look at subprime lending and control for FICO scores and income, you still see African Americans and Latinos twice or even 3 times as likely to receive subprime loans.

I would like to say diversity is growing, there is a growing consensus that diversity is a safety and soundness issue. The Federal Reserve of Boston said this back in 1992, that diversity at all levels should be evaluated and there is increasingly more conversation and discussion about how diversity leads to greater effectiveness.

Fifth, CRA needs to be more to support small business. We believe small business contracts do a lot to increase the viability and soundness of these banks, therefore we urge that every CRA regulator gather data on the race and gender of contracts awarded. If we work with many of the banks, many of the banks provide that information to Greenlining and other organizations, they could do this at no additional cost to them.

Sixth, we need to extend CRA to other institutions. If we stick with the mission and vision of wealth creation, we realize that there are other banking institutions or other institutions in general that provide activities for wealth creation. This should be brought into CRA in a manner that makes sense for them and in a manner that speaks to their strengths.

Seventh, we need a more effective rating system. As we have discussed, 99 percent of the banking institutions receive satisfactory or outstanding. We do believe that there should be perhaps more ratings, we mentioned an outstanding-plus, for example, to encourage more competition amongst the banks to achieve for higher leadership and more creativity.

Finally, philanthropy should be a stronger part of CRA, especially during these times where you see a lot of foundations cutting back on their investments to our communities. Philanthropy should be weighted more heavily on the CRA exam.

With that, I would be happy to take any questions.

[The prepared statement of Mr. Aguilar can be found on page 61 of the appendix.]

Mr. GREEN. Thank you.

I will now yield to Mr. Watt for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Pinto, let me just ask you a couple of questions, are FHA loans and CRA loans synonymous?

Mr. PINTO. No, I estimate about 15 percent of all the CRA loans were FHA.

Mr. WATT. All right. Ms. Cincotta, is she still living?

Mr. PINTO. She died, I belive, in 2001. She was instrumental in getting CRA passed in 1977.

Mr. WATT. Okay. I guess I am a little reluctant to argue with somebody who is not here. You seem to be testifying in her behalf to the facts that you believe she would want you to report, many of which I have read and don't relate necessarily to CRA at all. If a bank doesn't choose to classify something as a CRA loan, would you treat it as a CRA loan anyway?

Mr. PINTO. No.

Mr. WATT. And the fact that banks have high default rates on those loans that they haven't classified as CRA, you would think would be an indictment of CRA in general?

Mr. PINTO. I don't think I referred to any of those banks.

Mr. WATT. And you think Ms. Cincotta would consider it an indictment?

Mr. PINTO. I said I don't think I referred to any banks that have delinquency rates on CRA loans—I cited—

Mr. WATT. Well, your testimony suggested that really none of this stuff that you testified about really—I reviewed over 40,000 pages of documents, the process relative to estimating CRA lending volumes and loan performance was particularly opaque and difficult, yet you go on to generalize about a bunch of things related to CRA that you acknowledge your research doesn't document. I can't figure out what it is you are saying about CRA, which is what this hearing is about.

Mr. PINTO. Okay, Third Federal CRA loans—

Mr. WATT. I understand, but I want to know about CRA, what are you saying about CRA? Do you support CRA? Or do you think Ms. Cincotta would come in here today and tell us that we should do away with CRA?

Mr. PINTO. What I am suggesting is that I have submitted a prima facie case that CRA loans have performed poorly, I provided evidence of that.

Mr. WATT. I haven't seen any evidence in this statement, because you started out by saying that you couldn't get the information that correlates what you have analyzed with CRA.

Mr. PINTO. No.

Mr. WATT. The question I want to know is, you think Ms. Cincotta, if she were here today, would come in here and tell this committee that we should do away with CRA?

Mr. PINTO. I think Ms. Cincotta would say, find out how the CRA loans have performed in reality before you make any changes and you can find that out.

Mr. WATT. Well, that is fair. I am not going to argue with Ms. Cincotta's—that conclusion. It is kind of hard for me to argue with somebody who is not here.

Mr. PINTO. Well, I am here, and I would make the same statement.

Mr. WATT. Well, but you know everything you have said here you represented on behalf of Ms. Cincotta.

Mr. PINTO. It is my opinion, yes.

Mr. WATT. You are kind of hiding behind somebody who is deceased, and I think that is a little unfair to reach conclusions. I hope her family would support what you are saying here today because unless you are suggesting that she would support doing away with CRA or substantially watering it down, I am not sure I understand what it is you came to talk about. We all want to make it more transparent, but I take it that banks who were doing things that were irresponsible were making a conscious decision that they shouldn't be doing those things under CRA, because CRA specifically says that you ought to do what is in the interest of safety and soundness. Do you read CRA to say something different than that?

Mr. PINTO. I read the regulations which have the force of law in implementing CRA which require the banks that want to receive an outstanding CRA rating have to use "innovative and/or flexible lending practices." And I would argue that the way those innovative and flexible lending practices have been implemented particularly by a subset of very large banks for their CRA lending has led to toxic lending.

Mr. WATT. I appreciate it. Let me say I am delighted, I didn't mean to go off on Mr. Pinto, I am delighted we have some people here who have been in this business and really supporting CRA, including ABA and others who have worked closely with banks in our communities to make lending available responsibly in every community that we represent. I thank you and I yield back.

Mr. GREEN. Mr. Hensarling is recognized for 5 minutes.

Mr. HENSARLING. Thank you, Mr. Chairman. Mr. Pinto, a lot of questioning is surrounding your statement on page 4 of your testimony. Let's revisit it. Ninety percent of CRA lending was not classified as high rate subprime even though much of it had subprime and high credit risk characteristics. Later on, under this narrow misleading definition, only 10 percent of CRA lending ended up being classified as subprime. Ironically, the reason that these were not high rate loans is that the big banks and the GSEs were subsidizing the rates as recent events have painfully demonstrated. Could you elaborate on that portion of your testimony, please?

Mr. PINTO. Yes, my research has found that 90 percent of CRA loans were done as fixed rate, they were done as not high rate loans, they were done without the characteristics that many people call the subprime characteristics. I have heard the numbers 2/28 and 3/27 are thrown out. The numbers I would focus on are 97 percent and 100 percent. The 97 percent loan was introduced as a result of CRA and affordable housing goals. The 100 percent loans are introduced as a result of same thing. And as my testimony indicates, Fannie and Freddie purchased trillions of dollars of those loans. Those loans were very high risk, they have been known as high risk for decades but they were pushed by affordable housing and CRA.

Mr. HENSARLING. What is your data point for that, that they were pushed by CRA?

Mr. PINTO. I would quote the 1992 GSE Act, the Safety and Soundness Act which Congress passed, where the GSEs were required to undertake a review of its underwriting guidelines and examine the "implications of implementing underwriting standards that establish a downpayment requirement for mortgagors of 5 percent or less allow a use of cash on hand as a source for downpayments and approved borrowers have a credit history of delinquency if the borrower can demonstrate a satisfactory credit history for at least a 12-month period ending on the date of the application for the mortgage."

The GSEs high-risk affordable housing acquisition is 50 percent of which were CRA loans were made as a direct result of these congressionally mandated reviews.

Mr. HENSARLING. On page 5 of your testimony, footnote 2, it says, "I believe that Fannie Mae purchased and securitized $201 billion of CRA loans in 2002, bringing a CRA cumulative total to

$394 billion since 2000. CRA acquisitions totaled 25 percent of Fannie's total loan acquisitions in 2002 and 50 percent of its affordable housing loans." Where do you find that fact?

Mr. PINTO. There is a press release that I can submit that Fannie Mae produced, that goes through all these numbers, it a Fannie Mae press release. That is what I meant by the term opaque and difficult. I was able to, by reviewing these 40,0000 documents, generally on mortgage defaults, etc, find bits and piece that piece this puzzle together, but it was very difficult. I said it was difficult, but I didn't say it was impossible. And the information I provide in my testimony is the result of that thorough research.

Mr. HENSARLING. So you conclude on page 5 of your testimony, CRA created the supply and the GSEs created the demand. Do you care to elaborate upon that?

Mr. PINTO. There is no coincidence that the explosion of CRA commitments that started in 1992 coincides directly with the passage of the GSE Safety and Soundness Act of 1992; they were tied together. Again, I can provide evidence from supporters of CRA in books that they have written that document that correlation. And what that correlation meant was the CRA supporters realized that the bank couldn't hold these books on their portfolios indefinitely, you needed to liquidate them. And the way to get them liquidated, meaning off their books and sold was to have Fannie and Freddie buy them. And that was really the purpose of the 1992 Act as evidenced by the provision that I read and the mandates that were inserted into the Act.

Fannie and Freddie ended up being the demand for the Act, for the CRA loans, they were buying them, they were a willing buyer and the banks who wanted to merge the four banks who bought up all the other banks that ended up being the other 94 percent they wanted to merge and so it was a marriage made in heaven, they were the supply.

Mr. HENSARLING. A couple of quick questions in the remaining time for Ms. Andersen. There are a couple of points in your testimony that are a little bit confusing to me. I think on page 1, you essentially say that the ABA supports the Community Reinvestment Act. On page 4, you say banking institutions—I am paraphrasing—that do not serve the credit needs of their entire community do not prosper. Does your organization need to be told and mandated to serve your communities of interest?

Ms. ANDERSEN. No, sir it does not. As a community banker, the heart of what we do is serving our community, and the Community Reinvestment Act simply documents what we do in the course of business.

Mr. HENSARLING. I understand the "misery loves company" portion of your testimony. I yield back.

Mr. GREEN. Mr. Cleaver is recognized for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman.

The Community Reinvestment Act, I will read again from the Act, the CRA Act literally, literally requires that a banking regulatory agency evaluate how each of its regulated institutions affirmatively meets "the credit needs of its entire community, including low- and moderate-income neighborhoods consistent with the safe and sound operation of such institutions."

And so, Mr. Pinto, you were going to lead from the CRA Act, something that would contradict what I just read.

Mr. PINTO. Yes, as you know, regulations promulgated pursuant to an Act have to enforce the law as the same as the Act, and the regulations promulgated to implement CRA provide that the bank wants to receive an outstanding CRA rating it has to use extensive use of "innovative and/or flexible lending practices." I would argue that is inconsistent.

Mr. CLEAVER. What page is that on?

Mr. PINTO. It is not in my testimony; it is in the regulations.

Mr. CLEAVER. I sure would like to—I am sure you are absolutely 100 percent correct. I think the Nation needs to see it. Ms. Kennedy?

Ms. KENNEDY. I think there is some confusion about the regulation, it does encourage institutions to be innovative. And what that has meant over the years is that institutions that want an outstanding CRA rating partner with blue chip, nonprofit experts, think of Neighborhood Housing Services of Kansas City, which counsel families who have very little money to bring to the closing table, to prepare them for homeownership. So I think Mr. Pinto's interpretation of the regulation and his interpretation of all of the public and private studies that have written over the last 10 years that argue with Mr. Pinto's conclusion, and in fact, Mike Stegman is the expert on this, but the University of North Carolina Center for Community Capital recently, and NeighborWorks America recently all confirmed the default rates on CRA loans are lower than the average loan, let alone subprime.

There is one other fact I want to get on the record, because I think it is really important Fannie Mae and Freddie Mac were directed in 1992 that they could, if they wanted to, in order to support communities with credit needs. They never did that. Mr. Pinto reflects the generation of Fannie Mae executives who resisted that. But the tragedy is that in 2005, Fannie Mae and Freddie Mac went to HUD, and this was documented on the front page of The Washington Post last spring, went to HUD and persuaded HUD to give them credit for affordable housing which were securities backed by subprime loans that yielded higher than market rates. They didn't take less of a return, they found a way to game the system and take more of a return, even as they were saying publicly that 50 percent of the loans should have been prime.

Mr. CLEAVER. I was actually on the Fannie Mae advisory committee at that time, appointed by a Republican because I don't get into this ideological stuff that doesn't make sense, but at any rate, if you would, Mr. Pinto, read the beginning of the statement that you just read in response to Mr. Hensarling's question, just the first few lines.

Mr. PINTO. It is on page 8 of my submitted testimony. The regulator requires banks to demonstrate that they make extensive use of "innovative and/or flexible lending practices" to get an outstanding rating. A single family is 50 percent of the weight of outstanding.

Mr. CLEAVER. That was not the thing that I was speaking of. You had just read a statement asking for—that spoke of a reconsideration or a consideration of, just moments—

Mr. PINTO. I am sorry, what?

Mr. CLEAVER. Just before the Chair called on me, you read a statement where you talked about a new direction with regard to CRA because Congress had—

Mr. PINTO. Oh, from the 1992 Act?

Mr. CLEAVER. Yes.

Mr. PINTO. The 1992 Act requires the GSEs to undertake a review of their—

Mr. CLEAVER. All right, thank you. I am cutting you off because I—the point I am trying to make, and maybe I am making it poorly, is that there is nothing in this Act that contradicts this Act. Do you agree with me, Mr. Pinto?

Mr. PINTO. I do not. How can you have a regulation that I read and which has the force of law, and is interpreting that Act and then say that can't—that isn't contradictory. The fact of the matter is it is, and—

Mr. CLEAVER. So Congress passed the CRA and then unpassed it?

Mr. PINTO. They effectively amended it.

Mr. CLEAVER. The same legislation?

Mr. PINTO. No, they effectively amended it through regulations.

Mr. CLEAVER. In 1992?

Mr. PINTO. In varying years.

Mr. CLEAVER. When they asked for a review. That is what you said, review.

Mr. PINTO. A review, that is what Congress said, yes.

Mr. CLEAVER. Okay, just as a preacher, I think about synonyms of review, examination, right? If you disagree with any of my synonyms, examination, commentary, critique, reappraisal.

Mr. PINTO. I agree that Congress will always provide a fig leaf so that the fingerprints are not quite as clear.

Mr. CLEAVER. Do you know when they had the fig leaf meeting, when the people gathered in the room to decide how to deceive the American public with the fig leaf? Do you have any dates at the meeting when they conspired to do this? Because those people don't need to be in public office if they met and conspired to fig leafs.

Mr. PINTO. All I know is that within 24 months of that direction from Congress, Fannie Mae and Freddie Mac started buying loans like—

Mr. CLEAVER. You never used the word "directive," you used the worth "review." I am just a Methodist preacher.

Mr. PINTO. I am just a simple observer.

Mr. GREEN. The gentleman's time has expired.

Mr. CLEAVER. Thank you, Mr. Chairman.

Mr. GREEN. We will hear from Mr. Royce for 5 minutes.

Mr. ROYCE. Thank you, Mr. Chairman. In 1992, Mr. Pinto, the Democratic-controlled Congress passed the GSE Act, which established the current regulatory structure over Fannie and Freddie. And in this legislation, Congress mandated that the GSEs devote a percentage of their businesses to three specific affordable housing goals each year. As I said in my opening statement, these affordable housing goals first established in 1992 led the GSEs to purchase over $1 trillion in subprime and alt A loans. Beyond causing the failure of Fannie and Freddie because these accounted for roughly 80 percent of the losses, the proliferation of these loans was a major contributor to the overall financial collapse. In my questioning to Mr. White on the previous panel, I detailed the illustrative lobbying that ACORN put on on behalf of CRA, and they used CRA to argue for relaxing the previously stringent standards of Fannie and Freddie.

Can you comment on this connection? Is there any connection between CRA and these looser standards that led to Fannie and Freddie's collapse?

Mr. PINTO. I didn't bring it with me, but I can point you to the book—I believe it is the one Gregory Saunders published. And he is pro-CRA. He is very much in favor of CRA. And he outlined the process that ACORN and others went through in 1992 and prior to 1992 to get the affordable housing law implanted in the Fannie and Freddie Safety and Soundness Act. I can describe it, but I would rather provide the information directly from that book. All I can say is that this language that I read from, that asked for this study was part of that process. And there was no missing the signal of what Congress—at least the people who wrote this particular provision—meant. Because as I say in my testimony, in 1990, only 8 percent of the loans in the United States, conventional conforming loans that were used for purchasing of homes were over 90 percent. By 2007, it was 29 percent. It went up every year.

Mr. ROYCE. It was 10 percent down or 20 percent down in 90 percent of the cases.

Mr. PINTO. 92 percent of the cases, 10 percent or more

Mr. ROYCE. 10 or 20 down as people will recall. And then what happened as a consequence of changing it?

Mr. PINTO. I have the year by year, which I can provide. Just bear with me a second. I have too many papers. It went from 8 percent to 10 percent to 12 percent to 14 percent. It eventually got to, as I say, the 29 percent in 2007. But it was a year by year. It just went up and up and up and up. And Fannie and Freddie—

Mr. ROYCE. And the usual loans then were 3 percent, were 0 percent.

Mr. PINTO. And in 1994, the 3 percent down loans were introduced as private loans. In 2000 or 2001, the 100 percent private loan was introduced. Fannie and Freddie were the major purchases of the 95 percent loan and then they became the major purchases of 97 and then they became the major purchases of 100 percent. Again, on the flip side of supply, the CRA loans were these exact same loans.

Mr. ROYCE. So what we also see during that period of time—and you have a graph of housing bubble. And you would argue that by going to 0 percent down—of course I remember the number of loans that were being flipped at that point in time. I think in 2005, it was 30 percent of all loans in the United States according to the Fed. You had people making loans. You had an impetus to get the downpayments down to zero or as near zero as possible. You had a consequence of that where it was driving a bubble in housing market on top of the fact that low interest rates by the Fed—the

Fed set the rates too low, underinflation rates, which was a mistake. But this on top of it was the icing on the cake helping drive the bubble. Let me ask you another question. I heard from a former employee of Freddie Mac that executives at the company wanted to send a message to the market when they began purchasing subprime and alt-A loans or alt-A mortgage backed securities for their portfolio, that these loans were okay. In other words, if we buy Countrywide, it is a signal to the market. They were told that was just part of the request, basically sending the message to the market that buying subprime is okay. Do you think there was some such strategy?

Mr. PINTO. I do. In fact, I believe HUD was very instrumental in getting Fannie and Freddie to do that. I believe the date was not 2004. It was 1995 or 1996 when Fannie and Freddie got that authority and they started buying those securities shortly thereafter. They ended up buying—I forget the exact amount—30 percent of all of those securities that were ever issued that were subprime. And when they initially started doing it, I believe they received a lot of applause from HUD and other regulators because it was viewed as having exactly that potential impact.

Mr. ROYCE. Thank you, Mr. Pinto. Thank you, Mr. Chairman.

Mr. GREEN. Thank you. Mr. Pinto, welcome to the committee.

Mr. PINTO. Thank you. It is a pleasure.

Mr. GREEN. It is my honor to have you before us, Mr. Pinto. Mr. Pinto, you allege that a friend, a dear friend passed in 2001; is that correct?

Mr. PINTO. I believe it was 2001, yes.

Mr. GREEN. And do you agree that the subprime fiasco developed after 2001?

Mr. PINTO. I do not.

Mr. GREEN. Do you agree that what we are calling the current crisis took place after 2001?

Mr. PINTO. I do not.

Mr. GREEN. When do you contend that it took place?

Mr. PINTO. It started in 1992, as the chart in my testimony indicates.

Mr. GREEN. I understand. And different people have different opinions about it. Do you agree that—well, maybe I shouldn't ask you this, whether you agree. Have you had an opportunity—some people have unique powers. Have you had an opportunity to talk to your friend since 2001?

Mr. PINTO. I will use the same quote as the Secretary stated, "I don't channel these people."

Mr. GREEN. If you haven't talked to your friend—in court we have something known as hearsay, which is not admissible in court. Admissible here. But it seems to me that you are introducing something that we might call "never said." Your friend never said the things that you have attributed to her. Do you agree that she never said these things about the CRA since she died in 2001 and you have indicated that these things—much of it took place since her death?

Mr. PINTO. What I had stated—and I have not indicated that she would be in favor of—

Mr. GREEN. But did your friend say these things?

Mr. PINTO. She said the things that I have in quotation marks. Anything that is not in quotation marks—

Mr. GREEN. But did you not indicate that your friend would be opposed to CRA now?

Mr. PINTO. I believe that she would ask you to find out what happened because the same thing has happened with CRA—

Mr. GREEN. Did she say those words to you?

Mr. PINTO. She said them with respect to FHA.

Mr. GREEN. Did she say those words with reference to CRA?

Mr. PINTO. She was saying them with reference to FHA.

Mr. GREEN. So your answer is, she did not?

Mr. PINTO. She has not said anything to me since 2001. She probably hasn't said anything to you either.

Mr. GREEN. Well, she never said anything to me when she was alive. But it seems to me that you are communicating with her quite well. My concern is that you would take what you see as conjecture of a person who is no longer with us, who was supportive of something and attribute words that this person may or may not agree with. I will tell you that I think that is a little bit of a stretch when you start to quote people who cannot speak for themselves. I call that "never said" when you are talking about persons who are no longer with us. But be that as it may, let me ask you, Ms. Kennedy. You quoted some statistical information with regards to low-income tax credits. You gave some numbers. I would like for you to repeat them and give us your source, please.

Ms. KENNEDY. The source of $400 billion a year in loans to low- and moderate-income persons or—and/or in low- and moderate-income neighborhoods is HMDA data, publicly available HMDA data. The source for the $100 billion in banks tax credit investments is publicly available performance evaluations of the banks on all of the regulators' Web sites. The source for the $30 billion of new market tax credit investments is the Web site of the Treasury.

Mr. GREEN. Thank you. Ms. Andersen, you mentioned credit unions as institutions that should be given some consideration to—with reference to CRA. Credit unions usually say that they are performing quite well and they make loans in these low- and moderate-income areas, hence they should not come under the purview of CRA. What would your response be to these contingents?

Ms. ANDERSEN. I would say that all depository institutions have a responsibility to their communities and serving their communities. Through CRA, I am serving my community. We don't know that credit unions are serving their communities. It is a documentation issue.

Mr. GREEN. All right. And, Mr. Stegman, I had to terminate your testimony before you finished. There was something more that you wanted to add. I will allow you some time.

Mr. STEGMAN. Thank you, Mr. Chairman. Just a few things. If we keep in mind that CRA-eligible loans refer to loans that are made to families with incomes under 80 percent of the area median income to really make the argument that families of very modest means drove housing bubble to the point where prices doubled and tripled over 3, 4, 5 years in these markets is simply unsustainable. That argument just doesn't hold water at all. The Fannie Mae losses on the alt-A portfolios which are disproportionately responsible for losses are not to families with incomes under 80 percent of median. They don't involve income certification. They are to people with high credit scores and liar loans predominantly. The 2005 decision to allow these toxic securities to count as—towards affordable housing goals is quite contrary to historic kind of policy and the intent of Congress under the 1992 law. So it just strikes me—and lastly the issue of innovation and CRA regulations requiring innovation, there is nothing in the regulations there is nothing implicit or explicit between CRA regulations and how examiners conduct their examinations that lead to liar loans; to option pick-a-pay loans; to debt income ratios of 60 percent or more for mortgages that don't have escrow accounts, that have exploding ARMs. There is just no connection between CRA and what examiners encourage and look for in order to get an outstanding grade.

Mr. GREEN. I am going to have to thank you for your testimony. I will remind members, you as well, that the entirety of your testimony will be made a part of the record. Friends, I know that there is much more that can be said and probably should be said. But at this point, I have to say that we would like to include certain statements for the record. Without objection, the statements of the following organizations will be made a part of the record: the Independent Community Bankers of America; National People's Action; the National Association of Federal Credit Unions; the Credit Union National Association; the National Alliance of Community Economic Development Associations; and finally, the Association For Neighborhood and Housing Development.

We thank all of you for your testimony. The Chair will note that some members may have additional questions for the witnesses which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to the witnesses and to place their responses in the record.

Mr. CLEAVER. Mr. Chairman, after you gavel the meeting closed, as a former judge, I would like to ask you after the meeting adjourns to explain the difference between a study and a law.

Mr. GREEN. All right, sir. Thank you very much. The hearing is now adjourned.

[Whereupon, at 1:53 p.m., the hearing was adjourned.]

A P P E N D I X

September 16, 2009

Congresswoman Eddie Bernice Johnson
Financial Services Committee
Community Reinvestment Act Testimony
September 16, 2009

Good Morning, Chairman Frank, Ranking Member Bachus, and members of the Committee, I am honored to testify on behalf of enhancing and modernizing the Community Reinvestment Act (CRA). I represent an extremely diverse congressional district that includes low- and moderate-income areas as well as the very wealthiest neighborhoods in Dallas County, Texas. Neighborhoods in my District have historically been subject to redlining by banks—the practice of denying loans and services to people, based on where they happen to live. Congress has passed a number of laws designed to combat redlining and eliminate housing discrimination, and the CRA is one such law that helps to ensure equal service to all people. Unfortunately, we all know that redlining still occurs, and I am here to discuss some of my concerns with the current law, and the need for modernization.

The CRA encourages banks to invest in the communities in which they operate. It established a system to monitor and rate the way in which banks lend to all of their customers—for home mortgages, small business creation, and economic development. The CRA uses the mechanism of public accountability to achieve its goals—rather than impose quotas or set specific credit targets, it rates banks on their practices, making them more transparent. The CRA also enables the federal institutions that examine banks to delay or deny a bank's request to merge with another lender, open a branch, or expand any of its services, depending on its CRA rating.

The CRA currently applies only to banks and thrifts. It does not apply to other financial institutions that lend money, like bank affiliates and independent mortgage companies. During the financial downturn, people have blamed the CRA—and its low- and moderate-income recipients of loans—for the meltdown in the housing market, and thus, the financial crisis. However, the facts tell a different story. The vast majority of subprime loans originated at independent mortgage companies and bank affiliates—75% or more, by most accounts. Most subprime lending occurred between 2003 and 2007, decades after the CRA became law in 1977.
All stakeholders agree that the CRA has worked. Since 1996, banks under CRA have made community development loans totaling more than $407 billion. They have also made $581 billion in small business loans in low- and moderate-income neighborhoods from 1996 through 2007.

In 2007, in my district alone, nearly 200,000 CRA-covered small business loans were made – valued at over 4.4 billion dollars. Over 73,000 CRA-covered small business loans were given to small business with revenues less than 1 billion dollars. Over 12,000 CRA-covered prime home loans were originated equaling over 1.1 billion dollars. One important outcome of enacting CRA is that responsible lending in these communities is profitable for the banks and thrifts.

The truth about CRA is that it encourages prime lending. It offers incentives for safe and sound loans and foreclosure prevention efforts, including counseling for loan recipients, modifying loans, and investing in funds that finance loan modification. CRA also penalizes banks and thrifts through reduced CRA ratings if they engage in predatory or discriminatory lending, or lending or services that have a negative impact on the community.

CRA has thus been an extremely successful law; however, CRA needs to be updated. Representative Luis Gutierrez and I have introduced H.R. 1479, the Community Reinvestment Modernization Act. The CRA Modernization Act increases the responsiveness and accountability of banks to all communities, rural as well as urban. It would require CRA exams in the great majority of geographical areas that banks serve. Currently CRA examines banks in areas where they have branches but not in other areas where they lend through brokers. This bill would address racial disparities in lending by requiring CRA exams to explicitly consider lending and services to minorities in addition to low- and moderate-income communities. The bill would also require the reporting of race and gender of borrowers of small business loans and would require data collection of deposit and savings accounts. It would require the Federal Reserve Board to create a database on foreclosures and loan modifications, which would be linked to Home Mortgage Disclosure Act (HMDA) data.

The rating system of CRA exams would be enhanced and banks would be required to submit public improvement plans that are subject to public comment when they earn low ratings in any of their service areas. The federal regulatory agencies would be required to hold more meetings and public hearings when banks merge and when banks seek to close branches. The CRA Modernization Act would establish CRA requirements for all affiliates and subsidiaries of banks, independent mortgage companies, mainstream credit unions, insurance companies, and securities firms.

In 2006, in my district in Dallas County, 72 percent of all Black and 56 percent of all Hispanic borrowers were issued subprime loans, whereas, 28 percent of all loans to white borrowers were subprime. Even middle- and upper-income minorities experienced significant lending disparities. During 2007 in my district, 32 percent and 28 percent of the loans to middle- and upper-income African-American and Hispanic women borrowers were high-cost, whereas, 17 percent of the loans were high-cost to white middle- and upper-income women. The high Black and Hispanic lending disparities are driven by non-CRA-covered institutions.

These disparities are not only occurring in my district, they are occurring in communities across the United States. This is happening to my constituents, and most likely it is happening to yours.

This year, Rep. Gutierrez and I introduced the CRA Modernization Act, which updates the 32-yaer old law to reflect the modern financial landscape. I hope this hearing will bring much needed awareness and attention to long overdue CRA reform. I believe that by modernizing the CRA, we will see fewer home foreclosures and see smart and safe investments in our communities—exactly what our struggling economy needs right now.

Again, I would like to thank Chairman Frank, Ranking Member Bachus, and members of the Committee, for allowing me to testify on behalf of enhancing and modernizing the Community Reinvestment Act (CRA).

Testimony of Orson Aguilar
Executive Director, The Greenlining Institute
Hearing of the House Financial Services Committee:
"Proposals to Enhance the Community Reinvestment Act"
September 16, 2009

Introduction

The Community Reinvestment Act (CRA) has helped expand economic opportunities for millions of Americans. For many families, CRA has made the American Dream possible by ensuring that loans for homes, small businesses, and other opportunities for asset building are available and accessible to all communities.

Banks have also benefited from CRA. Many banks have found new and profitable markets in communities that they might have otherwise overlooked.

In essence, CRA has led to win-win opportunities where banks, customers, and communities have benefited from increased bank investments in underserved communities. CRA has worked best where true partnerships have formed between banks, community-based organizations, and government agencies.

Overall, CRA has advanced the principles of an ownership society by creating opportunities where people and families can create and own assets.

Still, CRA is not perfect. Despite CRA's track record of success, more can and should be done to invest in America's neighborhoods.

As we speak today, too many families are losing their homes and too many small businesses are shutting down. Too many neighborhoods are decaying due to crime and abandonment. While CRA is not a sole panacea for addressing these ills, a modernized CRA can do much to advance the economic growth that can alleviate problems at their source and improve life and opportunity in all communities.

Threats to Economic Recovery and Long-Term Growth

Too many Americans are not participating in a meaningful way in our financial system. A growing number of individuals and families lack fundamental access to asset building opportunities. Their lack of access and participation hamstrings both their growth and the health and wealth of the entire society.

For example, millions of Americans still lack basic checking accounts, much less savings accounts. The homeownership gains made in recent years are being rolled back. College is becoming more expensive and people are saving less for their children's education. Millions of Americans do not have retirement accounts. Small businesses are not growing sufficiently to create jobs. And too many Americans are not investing in the stock market.

This lack of opportunity to build wealth will hurt not only communities, but also businesses that rely on healthy consumers. By not addressing these issues, including through the modernization of CRA, we risk limiting economic opportunities for years to come.

Taking CRA from Debt to Wealth Creation

CRA's original intent was to advance the credit needs of underserved communities. To succeed in the future, CRA's goal should be focused on creating wealth building opportunities for the millions of Americans living from paycheck to paycheck. CRA should focus on a variety of asset and wealth building initiatives and regulators should use a coordinated approach to track progress.

Regulators can focus on several asset building, wealth creating opportunities. Indicators that regulators can focus on include but are not limited to the following:

1. Homeownership;
2. Business ownership;
3. Business contracts;
4. Equity investments;
5. Checking accounts;
6. Savings accounts;
7. Retirement accounts;
8. Ownership of stock; and
9. Employment.

Such a wealth creation focus can facilitate processes for regulators to measure progress and highlight best practices in each of these areas, as well as to identify and stop bank practices that strip wealth from consumers.

For example, regulators could quickly put an end to high overdraft fees that frustrate consumers and deplete their accounts.

CRA exams can measure progress and efforts for many wealth-creation indicators. A clear focus on wealth creation would also encourage banks to leverage their strengths that, if applied, could benefit more communities.

CRA Should Leave Room for Flexibility and Creativity

As currently structured, CRA can at times be regimented and even inflexible. In an attempt to modernize CRA, banks should be able to receive CRA credit in part by meeting the needs of communities through creative and responsible solutions.

Take one example: the current job crisis. Many of the wealth building opportunities mentioned above are irrelevant to individuals that don't have jobs. Given today's high and rising unemployment rate, it is incumbent upon financial institutions to play a role in job recovery.

In this example, CRA could help advance employment opportunities in the hardest-hit communities. Unfortunately, insufficient initiatives, uncoordinated regulatory efforts, and rigid rules currently dis-incentivize more proactive efforts by banks to address an issue like the employment crisis. Moving forward, banks and regulators should be given flexibility to address emergency situations and to allow for the rapid deployment of innovative ideas and approaches.

CRA has far more potential than has ever been explored by the regulators and possibly even by consumer advocates. Its potential has been hindered by a bureaucratic and uncoordinated approach by the regulators that has sometimes stifled creativity and leadership.

Measuring Effectiveness for All Americans: The Need for More Demographic Data

As improvements are made to CRA, its future effectiveness will be adequately measured only with more meaningful demographic data, specifically to ensure that progress is made for all Americans, including African Americans, Latinos, Asian Americans/Pacific Islanders, and Native Americans.

Some falsely assume that diversity data is requested to show or prove discrimination. Although diversity data can be used to demonstrate discrepancies in bank practices, the proper use of data demonstrates progress and measures impact for all Americans. Without the capacity to track progress over time, progress cannot be achieved.

There is also a false assumption that using income data is sufficient since communities of color are more likely to be in lower-income categories. Unfortunately, income data is often not reflective of the specific realties facing diverse communities.

For example, data from recent reports show that Latinos and African Americans were more likely to receive subprime loans even when controlling for income and FICO scores. A colorblind approach to homeownership would have failed to reveal this, which offers a key lesson for future homeownership efforts aimed at African Americans and Latinos.

The compilation of demographic data should not be limited purely to the consumer side. Diversity of senior management is also a safety and soundness issue for banks and corporations. The Federal Reserve of Boston commented in 1992 that management diversity at all levels ought to be evaluated and when there is no diversity or when the diversity is disproportionate with the population served, it should be red flagged.

This also affects CRA possibilities since a more diverse management will likely look at problems and opportunities differently. A focus on management diversity at banks is consistent with efforts at the Securities and Exchange Commission that may enable investors to understand key diversity data of corporations before investing in them. Considering the correlation between effectiveness and diversity, both investors and the public would benefit as banks disclosed diversity data to regulators.

Supporting Small Businesses with Contracting Opportunities

Fifteen years ago, the Greenlining Institute ran a full page ad in the New York Times entitled "Who's Afraid of Alan Greenspan?", protesting the Federal Reserve's failure to collect business lending data by race, ethnicity, and gender.

To his partial credit, Chairman Bernanke has demonstrated that he is more neutral, rather than strongly opposed, to this change in business lending data collection, leaving it to Congress to make the change in conformity with standards for HMDA data. The Federal Reserve should either modify the regulation or actively urge Congress to put the changes into effect as quickly as possible.

Providing business contracts to small minority owned businesses also enhances the safety and soundness of the small businesses receiving loans and capital from financial institutions. Therefore we would urge that every CRA regulator gather data on every race and gender in contracts awarded. This is already being done among major banks. For example, Wells Fargo, Bank of America, Citi, Chase, Union Bank and U.S. Bank regularly gather such data on an annual basis. There are little to no costs involved in implementing this as a part of CRA.

Extending CRA for Maximum Effectiveness

Financial services critical to wealth creation are now provided by institutions not covered by CRA. Moving forward, CRA should apply to the insurance industry and other financial institutions, including hedge funds and private equity firms. We also urge that every industry that benefits in any way from federal government fiscal or monetary policy be subject to CRA.

Ratings

The CRA rating system has never figured out how to reward unique leadership efforts. We therefore see plenty of evidence of "satisfactory" ratings for extraordinary leadership and conversely "outstanding" ratings for failures of leadership and effective service to the community.

Although there has been some improvement in the CRA grading system, 99 percent of very large financial institutions routinely receive a satisfactory or outstanding rating. We have recommended for many years that the regulators, either on their own or through congressional authority, create a more rigorous rating system.

For example, the system could include more grades, including a new rating of "outstanding plus", that are restricted to less than 5 percent of financial institutions. Financial institutions that fail to meet the standards of their competitors would receive "needs to improve" ratings so that at a minimum, at least 10 percent of the institutions receive this rating. This would operate similar to a 'curve' in a classroom.

In the current CRA system, CRA ratings are referenced mainly during mergers and acquisitions. In this era of banks that are "too big to fail" future mergers and acquisitions will be less likely. A dwindling number of mergers and acquisitions deflates the opportunity for consumers to comment on the CRA ratings of banks and lessens the overall importance of CRA ratings. Creating systematic opportunities, such as annual hearings for consumers to comment on the performance of banks, is essential to enhancing CRA in our current economic reality.

Several proposals have been offered by stakeholders for enhanced enforcement mechanisms to ensure the effectiveness of CRA. These include potential fines and penalties for non-compliance, as well as incentives to be leaders in the field.

Philanthropy

Philanthropy is an important component of CRA that is rarely recognized or promoted by regulators. Philanthropy as a part of community reinvestment is not simply a hand-out; it instead is an investment that builds the capacity of the financial institution's consumer base, present and future.

At a time when foundations are cutting back, philanthropic investments by financial institutions are essential to creating informed customers and building positive partnerships with communities that financial institutions serve. A stronger emphasis on philanthropic investments by CRA regulators will encourage banks to invest strategically in their consumer base, which makes for a safer and sounder banking system.

Conclusion

CRA works best when people implementing the law believe in its spirit and intent, when committed financial sector executives care for the communities they serve, and when non-profit partners have the capacity to produce results. The partnership spirit of CRA should be cherished, nurtured, and protected in any changes moving forward.

Despite early indicators that the economy may be on its way to recovery, many communities are being left behind. Modernization of CRA is therefore especially timely and integral to a recovery for all communities.

CRA has the potential to be one of the most powerful tools to create win-win partnerships benefiting both consumers and financial institutions. It can ensure more transparency, responsibility, and innovation in the activities of financial institutions in our nation's communities. A renewed emphasis on community wealth creation, in addition to its current focus on access to credit, can further expand its effectiveness.

About Orson Aguilar

Orson Aguilar is the second Executive Director in the 15-year history of the Greenlining Institute, a multi-ethnic coalition - originally founded to combat "redlining" by banks and create reinvestment into low-income communities - of nearly forty community-based, faith-based, and civil rights/immigrants rights groups. He is an expert in banking and housing policy, economic development, youth leadership training, and other social justice policy issues.

Orson's first-hand, personal experience of poverty predates his professional pursuit of its alleviation. He grew up in the largest apartment complex in Boyle Heights (East Los Angeles) where he attended public schools and experienced not only material poverty, but also its corollary realities of environmental injustice and gang violence.

Today, in his role at the helm of the Greenlining Institute, Orson focuses on private and public policies that promote investments and equity in low-income and minority communities like East Los Angeles. He has played key organizing and advocacy roles in corporate mergers and acquisitions that have resulted in billions of dollars in investments for the poor. Orson has also been instrumental in developing Greenlining's Fair Growth and Sustainable Development Program that seeks to ensure that our poorest citizens also benefit from the nation's desire to "go green".

Orson was recently named upcoming Latino leader by the nation's largest Hispanic newspaper, La Opinion. He is a past Commissioner for the City of Oakland's Budget Advisory Committee, chairs the Board of Directors of the Mission Economic Development Agency (MEDA), and is a member of the University of California's Santa Cruz's Alumni Association Board.
Prior to the Greenlining Institute, he was a fellow with the Congressional Hispanic Caucus Institute. Orson received his Masters in Public Affairs at the Lyndon B. Johnson School of Public Affairs and graduated from UC Santa Cruz with a degree in Psychology. He currently lives in Oakland with his wife, Dr. Claudia Canizales Aguilar.

Testimony of

Leslie R. Andersen

On Behalf of the

AMERICAN **BANKERS** ASSOCIATION

Before the

Committee on Financial Services

United States House of Representatives

Statement of Leslie R. Andersen
On behalf of the American Bankers Association
Before the
Committee on Financial Services
United States House of Representatives
September 16, 2009

Chairman Frank, Ranking Member Bachus, and members of the Committee, my name is Leslie R. Andersen. I am President and CEO of Bank of Bennington, headquartered in Bennington, NE. Bank of Bennington was founded 86 years ago and was primarily an agricultural bank. Over the years the community has grown and changed and is now a bedroom community for Omaha. While our bank continues to serve agricultural customers, our trade area also includes the Omaha metropolitan area. I am pleased to be here today to present the views of the American Bankers Association (ABA) on the Community Reinvestment Act (CRA), enacted by Congress more than 30 years ago. ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ over 2 million men and women.

ABA believes that compliance with the spirit and letter of the Community Reinvestment Act by banks and savings associations is healthy. Forging partnerships among bankers, community organizations, and regulators has resulted in the development of a deeper understanding of the perspectives of all parties, which in turn has led to an open and effective system that now more accurately reflects banks' involvement in serving their entire communities. This evolution of the process has not been without difficulties, but it has led to improvements. Today, we would like to review the changes that have taken place as CRA has evolved and also suggest additional changes that will further strengthen CRA. But first, we would like to point out an inconsistency we believe exists. Unlike banks and savings associations, not all depository institutions report on or clearly demonstrate their performance in this area. To this end, as Congress considers regulatory reforms which close the gaps in oversight under the current regime, we believe Congress should also close the gaps in CRA, covering depository institutions chartered as credit unions, to ensure that they, like banks and savings associations, are subject to a transparent process that demonstrates their record of helping to meet the credit needs of the entire constituency they are chartered to serve.

In my testimony today, I will cover the following three points:

- The banking agencies' implementation of the Community Reinvestment Act has matured so that CRA examinations demonstrate bankers' successful record of serving their entire communities.
- The existing CRA regulatory process for banks and savings associations provides appropriate mechanisms for public involvement and agency enforcement and does not require Congressional action at this time.
- Going forward, we believe that the CRA regulatory process must be improved by favoring simplicity, encouraging greater flexibility, and comprehensive application to other similarly-situated depository institutions.

I. The CRA Exam Process Has Been Updated to Better Reflect the Success of Banks in Serving Their Communities.

The Community Reinvestment Act is a relatively simple mandate to the banking regulators to encourage, and to assess the record of, banks in helping to meet the credit needs of the entire local community in which the institution is chartered, consistent with their safe and sound operation. It is the statutory bedrock principle of CRA that access to credit must be predicated on safe and sound operations. Observing this principle is what assures regulators, banks and the public that proper CRA loans strengthen our communities—not undermine them. Revisions to the CRA regulatory process during the past 30+ years have been extensive. Bank regulators' initial attempt to meet the mandate of the Act put the emphasis on process rather than performance. Banks were assessed on 12 factors that were more about getting through compliance wickets than about actually delivering credit to the citizens and businesses that needed the capital. The CRA examination process became a paper trail for talking the talk, rather than recognition that banks were walking the walk.

By the early 1990s there was almost unanimous dissatisfaction with the CRA regulatory process. This dissatisfaction on the part of bankers, community organizations and regulators led to important changes in the regulatory requirements under CRA and to the examination process itself. After extensive discussions of all interested parties, the federal banking agencies issued substantially revised CRA rules in 1995. Among the changes included in 1995 were the recognition that CRA evaluations should be streamlined for small banks, that performance by larger banks could be achieved by providing loans, investments and services, that all banks should be evaluated in the proper context taking into consideration their capabilities and their markets, and that what constituted community development should be pegged to activities with favorable impact on identified community needs. While application of these concepts has been accompanied by growing pains for agencies, community groups, and banks – and it would be an exaggeration to say banks are content with the burdens that remain – the reality is that the current CRA regulations are a marked improvement over the pre-1995 CRA regulations.

As a companion to these extensive changes, the post-1995 CRA examination process reflects banks' contributions to their communities far better than the old examination procedures. By differentiating between large banks and small banks, the regulations have balanced documentation and reporting requirements with measurement of performance. Now, more than 88 percent of the banking assets of the nation fall under the more detailed large-bank examination procedures. At the same time, more than 90 percent of banks by number, which represent less than 12 percent of industry assets, are spared some reporting burdens that are unnecessary to evaluating their commitment and service to their communities.

CRA compliance is strong: 99 percent of banks and savings associations receive composite CRA ratings of Satisfactory or better. This is succinct evidence that CRA today better reflects banks' success in serving the credit needs of their local communities. Some may scoff at this achievement, but the fundamental truth is that banks are tested in the marketplace every day to demonstrate their responsiveness to the needs of their local communities. CRA performance is not designed to be graded on a bell-curve. Those that do not serve the credit needs of their entire community do not prosper. It is, therefore, not surprising that the banking industry excels at satisfying community credit needs. Those community organizations that wish to influence a bank's rating have a regulatorily assured right and process to comment on any bank's record that they choose and have that considered by the federal regulator responsible for evaluating that charter's performance. Every federal banking agency regularly publishes lists of institutions about to be examined to ensure the public can comment.

Banks are in the business of promoting financial intermediation—of bringing together those with capital and those who need capital. We do not build communities on our own. Our role is to help individuals and businesses build our communities safely and soundly—and we compete vigorously among ourselves for the privilege. Drill down in a CRA public evaluation and you will read about how we compete for market share across all income levels and all neighborhoods. You will also see how we help individuals reach their dreams; provide enterprising business men and women a boost toward success, and partner with community organizations to serve populations of modest means or neighborhoods with special needs.

To illustrate what I am talking about my bank has developed a credit builder program designed specifically for the Burmese refugee community living in Omaha. Our successes include helping these new Americans achieve the American dream of home ownership.

II. The CRA Regulatory Process Provides Appropriate Mechanisms for Public Involvement and Agency Enforcement.

The fact that you can read about my bank's performance and the performance of every bank in this country is no small feat. The CRA process is largely transparent, with significant opportunity for community groups and other interested parties to comment during the regular review of an institution's CRA performance. This is accomplished through the availability of the bank's CRA Public Evaluation and through an open solicitation by regulators to the community to comment on the institution's CRA performance. The value of public CRA evaluations in documenting an institution's lending to its community is that it brings to bear the power of public scrutiny as the engine of encouragement. It enables the members of the community themselves to understand and compare the institutions that serve them—and to respond with their voice and their patronage.

Elements of this open process include tens of thousands of pages published each year detailing bank performance, all of which are readily available on the Internet. In addition, the CRA regulations require all banks and savings associations to maintain a CRA public file containing the institution's latest CRA Public Evaluation, a map of the community served by the institution, and any comments from the community since the last CRA examination, among other things. This file is available for review by both members of the public and examiners at any time, and regulations require posting of a lobby notice in every branch of the bank notifying the public of this resource.

We also note that while the Community Reinvestment Act is not an anti-discrimination statute like the Fair Housing Act or the Equal Credit Opportunity Act, the regulators have added to the CRA examination process a requirement that examiners take into account any evidence of illegal discrimination in lending or other illegal consumer credit practices. The bank regulators have done so under the premise that illegal or discriminatory credit practices are a detriment to meeting the credit needs of a community and that a bank that engages in discriminatory practices is not truly serving the credit needs of its community. Because banks and savings associations, unlike other lenders, are ***regularly examined*** for their compliance with fair lending laws and consumer protection laws, agencies have a record of each bank's compliance when they conduct CRA examinations.

Furthermore, the banking agencies' application authority over new or expanded charters provides more than sufficient public and agency leverage to ensure that applicants are held accountable for their CRA performance before they are permitted to undertake new charters or combine existing franchises. Thus, we conclude that the CRA examination process is one that has improved over time, in particular by differentiating the burden between smaller and larger institutions, enlarging the range of lending that receives CRA credit in rural communities, and ensuring favorable CRA consideration is given for activities that benefit underserved communities and areas affected by natural disasters. Given the transparency of the evaluation process, the authority to impact the application process and the many avenues for the interested public to comment on, provide input to, or criticize the bank's public record, no other enforcement mechanism for CRA is needed.

A bedrock principle upon which CRA is based is that it inextricably links the law's purpose of helping meet community credit needs with operational safety and soundness of an institution. CRA is a direct outgrowth of the federal "needs and convenience" standard that is a fundamental authority of the prudential regulator to judge and decide. The existing CRA enforcement mechanism works well. Divorcing CRA from prudential oversight, as has been recommended, would separate the statutory enforcement mechanism from regulatory oversight. The CRA is not a consumer protection law and any re-assignment of CRA responsibility to a specialized consumer protection agency untutored in, and un-constrained by, a safety and soundness mission would unnerve the regulatory process. ABA appreciates Chairman Frank's understanding of this issue and his desire to keep CRA evaluation and enforcement aligned with the bank's prudential federal regulator.

III. The CRA Examination and Regulatory Process can be Improved.

Looking forward, bankers believe that the CRA regulatory process should be simplified to reduce unnecessary burden. We believe more flexibility should be added to the regulations to encourage responsiveness of the institution to its particular community's needs. In addition, CRA must continue to evolve to meet changing markets and participants and should be extended to assure that all depository institutions are appropriately evaluated on their record of meeting the credit needs of their chartered constituency.

Simplify the Regulatory Process: Since the 1995 reform effort, the depository institution industry has continued to evolve and consolidate. Proportionately, and in absolute dollars, more banking assets are covered by the large institution test today than were covered in 1995 when the small bank/large bank distinction was first established and set at $250 million in assets. In 2005, three of the banking agencies redefined the size breakdowns by inserting a new "intermediate small" bank category and corresponding new evaluation process. The fourth agency subsequently followed this needless complication. Rather than invent unnecessary distinctions among banks, the agencies should return to the simple dichotomy of small versus large institutions and to the apportionment of industry assets covered by those respective divisions that reflect the boundary set in 1995 when approximately 80 percent of industry assets were covered by the large institution test. The premise underlying this change was recognition by the regulators that small, community-based organizations are integrally tied to their communities and it would be a mistake to undermine the ability of community banks and savings associations by imposing unnecessary costs and burdens. To go from the simplicity of two examinations (one for small banks and one for large banks) to three examinations was simply an unwarranted complication. Accordingly, the small-to-large bank threshold should be set at no less than $1 billion (adjusted to maintain the 1995 division of industry assets under large bank coverage) and all banks under that threshold should be examined using streamlined criteria.

Maintaining CRA simplicity is important for any modernization effort. Adding burdensome data reporting requirements will not materially improve an examiner's ability to evaluate a bank's record of CRA performance but will create expenses that could be better applied to actually supporting the community. Narrowing the definition of community development or creating hurdles to what qualifies as a community development activity, as some have suggested, will also only complicate the evaluation process and deter banks – especially community banks – from considering the full range of opportunities that may deserve their support and that would benefit local communities.

Add Flexibility: Regulators need to adjust the regulations and examination process to encourage responsiveness of institutions to changing markets. The definitions used to determine whether a loan, investment or service satisfies the community development criteria that qualify for CRA credit are still too narrow in scope. For example, there seems to be widespread consensus that financial literacy for all consumers is critical to allow individuals to function appropriately in today's increasingly complex economy. However, ABA members report being constrained by examiner interpretations of the regulations and guidance about what types of financial education they can offer their communities that will pass supervisory muster under CRA. ABA believes that all forms of bona fide financial literacy activities should receive favorable consideration in a CRA evaluation. Congress could step in to compel the recognition of such a policy if the agencies do not voluntarily revise their regulations or interpretations.

Although there has been progress since the last time ABA has testified on this subject, we continue to press the agencies for giving investments in minority-owned and women-owned institutions appropriate CRA credit as community development activity. In addition, as sensible a policy as streamlining small bank examination criteria was in 1995 to recognize their primary lending mission, ABA believes that it was not intended and should not be applied to exclude such banks from receiving due credit for community development activities they voluntarily elect to conduct. Accordingly, we continue to urge the banking agencies to apply the small bank examination criteria as broadly and flexibly as possible so that any form of community development activity legitimized by the regulatory definitions can receive positive credit when offered for consideration by a small bank during its examination.

Extend CRA's Reach to Cover All Depositories: In the 30 years that have passed since the adoption of CRA, the market for credit and for financial assets has continued to diversify. Although CRA itself is tailored to the banking industry, its core concepts of helping to meet the financial needs of the institution's entire chartered community safely and soundly; applying standardized but flexible criteria to measure performance; and providing public visibility for the resulting evaluation are applicable to other sectors – especially to credit unions that also have a Congressional mandate to serve persons of modest means and who are increasingly seeking community-based charters. It is not that CRA in its current regulatory detail should be applied as is to other financial sectors; but rather we see that the appropriate level of performance documentation combined with a high degree of transparency can be a model for other regulators to encourage their depository institutions to publicly demonstrate their commitment to the communities "in which they are chartered."

Conclusion

The American Bankers Association believes that the current state of bank compliance with the spirit and letter of the Community Reinvestment Act is healthy and that bankers, regulators and nonprofit community organizations have all learned from each other over the years in forging partnerships to promote their communities. We believe that there has been significant evolution of the implementation of the CRA over the years, and that evolution will need to continue, including, parallel requirements for other depository institutions. We recommend changes to simplify the process and add more flexibility, which will improve CRA for the future.

TESTIMONY OF

STEVEN L. ANTONAKES

COMMISSIONER OF BANKS

COMMONWEALTH OF MASSACHUSETTS

On

PROPOSALS TO ENHANCE THE COMMUNITY REINVESTMENT ACT

Before the

COMMITTEE ON FINANCIAL SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

September 16, 2009, 10:00 a.m.

Room 2128 Rayburn House Office Building

Introduction

Good morning, Chairman Frank, Ranking Member Bachus, and distinguished members of the Committee. My name is Steven L. Antonakes and I serve as the Commissioner of Banks for the Commonwealth of Massachusetts. The Division of Banks (Division) is the primary regulator of nearly 250 Massachusetts state-chartered banks and credit unions with total combined assets in excess of $225 billion. The Division is also charged with the licensing and examination of nearly 1,000 non-bank mortgage lenders and brokers, approximately 5,000 individual mortgage loan originators, and an additional 3,500 non-bank financial entities, including check cashers, money transmitters, finance companies, and debt collectors.

I commend you, Mr. Chairman for scheduling this timely and important hearing on strengthening and expanding the Community Reinvestment Act (CRA). CRA was enacted over 30 years ago. The banking industry has since undergone transformational changes, including years of bank consolidation resulting in a small handful of nationwide money center banks that hold a dominant share of the banking market; widespread securitization of mortgage loans; outsourcing of mortgage origination channels resulting in broader access to credit, but weaker controls; and significant improvements in technology which produced new delivery systems, automated underwriting, and risk-based pricing.

However, ongoing disparities between the pricing of loans made to white borrowers versus black and Hispanic borrowers clearly demonstrates that more needs to be done. Unfortunately, it will take years for many urban communities to recover from the devastation of the ongoing foreclosure crisis. More so than ever before, access to sustainable homeownership opportunities in low- and moderate-income neighborhoods will be essential. Simply put, we can not allow the events of the past few years to undo the significant gains in homeownership among our nation's black, Hispanic, and Asian communities that CRA helped enable.

Given today's very different banking landscape, the ongoing financial crisis, and the debate and consideration of the Obama administration's financial regulatory reform initiative, including the creation of a proposed Consumer Financial Protection Agency, it is the appropriate time to consider the CRA's strengths and weaknesses; the law's ongoing relevance; and whether and how the CRA can be modernized to make it even more effective in the years ahead.

In my testimony today, I will primarily focus on three areas. First, I will address the false notion that CRA had a role in causing our ongoing financial difficulties. Second, I will relate the Massachusetts experience over the past 27 years to broaden CRA to cover institutions beyond banks, including state-chartered credit unions and most recently licensed non-bank mortgage companies. Finally, I will conclude my testimony with some thoughts on how the federal Community Reinvestment Act can be further improved to enhance the accessibility of credit in low- to moderate-income neighborhoods and individuals and to ensure such credit is sustainable over the long term.

CRA Played No Role in the Ongoing Financial Crisis

As our foreclosure crisis has deepened, an argument has been advanced recently by some that the subprime crisis was caused, in part, by CRA in that it supposedly encouraged banks to sacrifice underwriting standards to promote increased homeownership opportunities. I started my regulatory career over 19 years ago as a bank examiner charged with conducting CRA examinations. I later managed the Division's CRA examination effort. CRA is arguably the most significant of all banking laws passed in the 1960s and 1970s to address the issue of redlining or refusing to lend in low- and moderate-income communities despite sound lending opportunities. In my view, the supposition that CRA is the root cause of the rise in foreclosures we are seeing today and the turmoil in the credit markets is completely without merit.

First, while CRA requires banks to serve all communities within which they do business, the Act specifically prohibits banks from making unsafe and unsound loans. The drafters of CRA recognized that unsustainable loans are more harmful to consumers and communities than an absence of credit availability. In addition to the obvious safety and soundness concerns, CRA-covered lenders that engaged in high risk lending -- most notably Fremont Investment and Loan, Countrywide, Lehman Brothers, National City, IndyMac, and Washington Mutual, among several others -- should have, at a minimum, been strongly criticized by federal regulators in terms of CRA compliance for originating, funding, and/or purchasing mortgage loans that borrowers could not afford and for the devastating resulting impact on neighborhoods.[1] High CRA ratings awarded in these instances were inappropriate. Accordingly, the misapplication of CRA, not the law itself, was the problem. Banks should have been punished instead of rewarded for marketing, originating, and funding loans that were not affordable or sustainable.

Second, banks, lenders and Wall Street firms did not develop later generations of subprime mortgage loans with increased risk layering and often confusing terms out of an

[1] While Fremont Investment and Loan was ultimately assigned a less than Satisfactory CRA rating by the FDIC in 2008, it previously scored an "Outstanding" CRA rating. Virtually all large banks that had significant concentrations of non traditional mortgage loans also scored "Satisfactory" or "Outstanding" CRA Ratings

altruistic sense of obligation to meet the needs of low- and moderate-income individuals and communities. Although reduced documentation and option adjustable rate mortgages have existed for many years, they traditionally served a niche, higher income market. There are very few instances in which a reduced documentation loan and its corresponding higher pricing structure would be appropriate for first time homebuyers. Moreover, a finite market should have existed for those interested in paying above market prices in order to provide less documentation to qualify for mortgage credit. Instead, stated income loans became the product of choice. Pushing stated income loans to low-income borrowers for homes they could not afford served only one purpose – greed.

State Consumer Protection Efforts and Massachusetts Application of CRA

The states have long been recognized as laboratories for innovation. Accordingly, many of the nation's key financial consumer protections were first implemented on the state level. For example, Massachusetts had systems for deposit insurance that predated the creation of the Federal Deposit Insurance Corporation. In addition, the federal Truth-In-Lending Act was primarily based on the Truth-In-Lending Act which was enacted in Massachusetts two years earlier. In addition, to date, 35 states, including Massachusetts, and the District of Columbia have enacted subprime and predatory lending laws[2].

More recently, a Massachusetts state law enacted in November 2007, as part of Governor Deval Patrick's sweeping foreclosure prevention legislation[3], now prohibits a lender from making a subprime, adjustable-rate mortgage to a first-time homebuyer unless the applicant affirmatively opts out of a fixed-rate product and receives counseling from a counselor certified by the Division. The purpose of the law was to create a

[2] Source: National Conference of State Legislatures, www.ncsl.org

[3] See Chapter 206 of the Acts of 2007.

"vanilla" fixed-rate product that was more appropriate for a subprime borrower. This concept has essentially been included in the Obama administration's regulatory reform plan to exempt certain products from higher regulatory scrutiny.

State efforts to strengthen loan origination practices and develop and implement the Nationwide Mortgage Licensing System (NMLS) to improve the supervision of non-bank mortgage lenders, brokers, and loan originators is another example of state innovation which provided the framework for federal action. The states began developing the NMLS in 2003 as a means for identifying and tracking mortgage entities. Congress embraced this effort through the 2008 passage of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The SAFE Act sought to raise minimum standards throughout the United States by giving states until July 31, 2009 to pass laws licensing loan originators and to utilize the NMLS. In just a year's time, 48 states and the District of Columbia have enacted legislation to implement the SAFE Act's requirements and another state's legislation remains pending.

Some assert that preserving the rights of the states to promulgate higher consumer protection standards, such as CRA, will balkanize consumer protection standards and create excessively burdensome inconsistencies. Advocates of this position argue they will be forced to operate under a "patchwork quilt" of varying state laws. However, the facts don't support this assertion. When a high federal standard is established – generally based on laws tested at the state level – the states tend to harmonize to the federal standard.

The SAFE Act is a very recent example of a coordinated state-federal approach that is accomplishing important consumer protection goals in addressing weaknesses in mortgage regulation and doing so in a nationally consistent manner. The states implemented the provisions of the SAFE Act in a rapid and seamless manner. As a result of new federal standards that created a floor and not a ceiling, mortgage regulation and applicable law has never been more consistent.

Additionally, the notion that state enforcement will result in disparate standards is also without evidence. States have shown consistency and coordination on landmark nationwide enforcement actions.

But what also must be noted is the importance of preserving that ability of states to act in the absence of adequate federal consumer protections. For the past decade the states have filled significant voids to address issues such as predatory lending, foreclosure scams and data security breaches. There is significant benefit to well-coordinated state-federal regulation in terms of the varying perspectives and incentives. Also, mandating that the federal standards serve as a "floor not a ceiling" to state action will help promote stronger consumer protection and need not lead to the much-maligned "patchwork quilt".

In addition to conducting regular safety and soundness examinations of all state-chartered banks and credit unions, the Division also conducts consumer compliance examinations and CRA and fair lending examinations of all state-chartered banks and credit unions. In Massachusetts, the Division created administrative requirements mandating that state-chartered banks serve their entire communities prior to the passage of the federal Community Reinvestment Act. A specific Massachusetts Community Reinvestment Act was later enacted in 1982.[4]

[4] See Massachusetts General Laws, Chapter 167 §14 and its implementing regulations at 209 CMR 46.00 *et seq*

Massachusetts Experience Extending CRA to Credit Unions

The Massachusetts CRA has always had broader coverage than the federal law. Massachusetts remains the only state to examine all credit unions, including community, industrial, and other common bonds, for their CRA performance[5]. Extending CRA to credit unions is not as simple as just cutting and pasting the bank regulations and applying them to credit unions. Massachusetts passed the nation's first credit union act and has chartered some of the oldest credit unions in the country. The Division's extensive experience in supervising credit unions and our understanding of the credit union movement has helped us to craft some unique distinctions in the regulations to account for the differences between banks and credit unions.

First, for credit unions that do not serve a geographic area (i.e. industrial credit unions), the notion of an "assessment area" has limited value. Since they can only lend to credit union "members" and since their membership is based on where someone works and not where they live, such credit unions can not be expected to serve a geographic assessment area. Therefore, the Massachusetts CRA regulations[6] allow such credit unions to define their entire membership as their assessment area for the purpose of compliance with CRA.

Second, for small industrial credit unions, the parts of the examination dealing with geography are not considered under the small institution performance standards. This includes the percentage of loans originated inside the assessment area and the geographic distribution of loans. Rather, the Division reviews the credit union's loan-to-

[5] Connecticut performs CRA examinations of community-based credit unions.
[6] See 209 CMR 46.00 *et seq*

share ratio, its lending to members of different incomes, and its fair lending performance and record of responding to complaints.

Finally, for large credit unions (those over $1 billion in assets), the Division does not conduct an Investment Test. Since credit unions are severely limited by statute from most investment activity, including investments that might be considered under the Investment Test for large institutions, such a review would be meaningless. Therefore, the Division uses the Lending and Service Tests to evaluate a large credit union's CRA performance.

Massachusetts Effort to Extend CRA to Mortgage Companies

The Massachusetts 2007 foreclosure prevention law also extended Community Reinvestment Act-like requirements to licensed mortgage lenders originating 50 or more mortgage loans a year in the Commonwealth. Thus, Massachusetts became the first state in the nation to extend CRA to non-depository lenders. This is further evidence of how deeply Massachusetts believes CRA is part of the answer to the current economic difficulties and not part of the problem.

The CRA mandate requires the Division to conduct public examinations of licensed mortgage lenders to determine their record of meeting the mortgage credit needs in the Commonwealth. Similar to the Massachusetts experience in supervising credit unions for CRA, the Division has had to make adjustments to its regulations for mortgage lenders. Most importantly, the whole idea of an assessment area is irrelevant for the non-bank mortgage lending industry. These companies do not take deposits and, in many cases, do not have any branches. In fact, many companies do not even have a physical presence in Massachusetts. Therefore, the Division has eliminated any requirement for a mortgage lender to define a specific assessment area and will, instead, evaluate the mortgage lender's performance in meeting the mortgage credit needs throughout the Commonwealth, including both lending and services.

In an effort to increase the pace of lenders responding to homeowners hardest hit by the foreclosure crisis, successful loan modifications completed for delinquent borrowers (or lack thereof) are also assessed during the Division's examination process. In addition to loan modifications, other efforts to prevent foreclosures are reviewed, including loans and services designed to keep delinquent homeowners in their homes.

Finally, the Division has included a suitability standard in its regulations for mortgage lenders. The federal CRA regulations include an assessment of a bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies. The Massachusetts regulations have extended this concept to not only review whether a mortgage lender uses flexible or innovative practices, but also consider the suitability of such products or practices for low- and moderate-income individuals.

The first mortgage lender CRA examinations are being completed by the Division at this time. The first public ratings and public evaluations will be made available shortly.

Suggestions to Improve CRA

In my testimony, I have provided information relative to how Massachusetts has expanded the reach of CRA to include credit unions and non-bank mortgage lenders. In addition, I offer the following ideas for modernizing the CRA and making it made more effective in fulfilling its goals of ensuring access to credit throughout the United States, including communities and individuals of low- and moderate-income.

Require Affiliate Lending to Be Reviewed

Earlier in my testimony, I rejected the false contention that CRA was a contributing factor to the current economic crisis. However, there is another fallacy that is being spread by a few of the defenders of large banks; namely that CRA-covered banks had nothing to do with the subprime mortgage mess. It is true that the vast majority of community banks did not engage in subprime or non-traditional mortgage lending, did not buy subprime loans, did not fund subprime lenders, and did not securitize subprime mortgage-backed assets. However, some of the largest banks in this country were either directly or indirectly involved in the subprime and non-traditional mortgage markets. And yet, in nearly every case, the largest banks have consistently received "Satisfactory" or "Outstanding" CRA ratings.

If CRA mandates that a bank only lend consistent with safe and sound banking practices, how is it then that these large, nationwide banking institutions were able to consistently achieve "Satisfactory" or Outstanding" CRA ratings? Part of the answer may be that the current CRA regulations basically allow banks to only have their "good" loans considered and their "bad" loans can be shielded in either a subsidiary or affiliate institution. The joint CRA regulations of the four federal bank regulators specify that a bank, "at a bank's option", can have the lending, investment, and service activities of an "affiliate" considered. An affiliate can be a subsidiary, a parent organization, or other affiliated company.[7] Because of the way the CRA regulations are written, a bank can structure its lending, investments, and services so that activities that enhance its CRA performance are either done directly by the bank or through an affiliate at its choosing. Activities done by an affiliate that might detract from a bank's CRA performance would not be evaluated since no bank would opt to have such activities considered. Even worse, the affiliate option is parsed further to the bank's assessment area. So, for example, a bank could have the activities of an affiliate considered in one assessment area if those activities helped, and opt not to have the activities considered in other assessment areas if the bank thought they might hurt its CRA rating.

A review of some of the largest banking institutions in the country, including some that have recently failed, reveals that most have participated in subprime and non-traditional lending through affiliated institutions. Others have been involved in the subprime market by funding non-bank subprime lending or by buying pools of subprime mortgages. I am not aware of any bank that has opted to have such activities conducted by non-bank affiliates considered as part of its CRA examination.

The regulatory option for affiliate activities has essentially created a loophole for large banks with multiple subsidiaries and other affiliates to game the system. It has also contributed to the belief by some CRA defenders that CRA-covered banks did not play any role in the recent subprime meltdown. I would strongly encourage Congress and the

[7] *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company See 12 CFR 228 12(a) (Board of Governors of the Federal Reserve System), 12 CFR 345.12(a) (Federal Deposit Insurance Corporation), 12 CFR 25.12(a) (Office of the Comptroller of the Currency), and 12 CFR 563e.12(a) (Office of Thrift Supervision).

federal regulators to change this system so that all lending and activities by affiliates of a bank be a mandatory part of the review of a bank's CRA performance.

Increase Review Standards for the Largest Institutions

Existing federal CRA regulations define a large bank as having assets over $1 billion. These institutions are often, in practice, examined every 4 to 5 years if they have previously achieved a CRA rating of "Satisfactory" or "Outstanding". However, as the banking industry has further consolidated, the $1 billion asset threshold has become increasingly antiquated. It seems entirely inappropriate for a $1 billion community bank to be examined under the same schedule and methodology as the nation's largest and most complex institutions which often have assets from $500 billion to over $1 trillion and command large and increasing market share. For example, the nation's largest mortgage lender, Bank of America, was last examined for CRA by the Comptroller of the Currency as of December 31, 2006 for which it received an "Outstanding" rating. Its prior CRA examination was conducted as of December 31, 2001 and it received an "Outstanding"[8] rating. The five years between examinations matches the previous interval since the bank's prior examination in 1996.

Any attempt to improve the application of CRA should seek to ensure that the scope and frequency of CRA examinations is commensurate with a bank's market share. Currently, the focus and scrutiny on smaller banks relative to CRA remains disproportionate to the supervision of our nation's largest banks when you consider the dominant market share the nation's largest banks command. Efforts to further streamline examinations and compliance costs for small banks should be considered while a

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[8] See http://www.ffiec.gov/craratings/default.aspx.

significantly more robust annual examination process should be undertaken for the top 20 bank lenders in the country.

Inconsistent implementation of the federal CRA law is just one more area in which the nation's community banks are held to a different standard than the nation's largest institutions. The nation's behemoth banks are in essence the architects of our financial system, basically dictating the practices and products that dominate the marketplace, and consistently gaming the system of regulatory oversight that is charged with ensuring safety and soundness and protecting consumers. Whether it is by avoiding deposit thresholds designed to enhance competition among institutions, or simply remaining operational long past the point of insolvency, the largest banks are more often than not held to a different standard than community banks.

Downgrade Banks that Originate Unsustainable Home Mortgage Loans

As I noted earlier, our new mortgage lender CRA regulations include a suitability standard. Consideration should be given to require such an assessment under the federal CRA. The origination of unsustainable loans should have an adverse impact on a bank's CRA rating. Accordingly, CRA examinations should be expanded to consider loan performance and any patterns of early payment defaults.

Mandate the Evaluation of Loan Modification Efforts

Existing efforts to modify delinquent mortgage loans have been disappointing. Moving forward, CRA could be utilized to measure the pace, number, and quality of loan modifications for homeowners seeking assistance within the existing Services Test. This type of public analysis of a bank's efforts to modify loans, where appropriate, would perhaps provide the further incentive necessary to take action to avoid unnecessary foreclosures.

Downgrade Banks Whose Partnerships Harm the Underbanked

Congress and regulators should also hold banks accountable for activities conducted outside as well as within their assessment areas that result in the gouging of unbanked or underbanked consumers. The true spirit of CRA embodies an accessible banking industry which promotes savings and increased credit opportunities in order to promote upward economic mobility. Accordingly, CRA should be utilized to downgrade the CRA ratings of banks that engage in partnerships with third parties to offer payday loans, refund anticipation loans, or costly check cashing services. These third party relationships are often utilized by national banks and federal thrifts to evade state consumer protection laws and usury laws by arguing that federal preemption extends to these third party providers. Ideally, these "partnerships" to offer high rate loans or charge high fees for consumers to cash public assistance and social security benefit checks should be outlawed. Until that is accomplished, CRA should be utilized to strongly criticize participating institutions for engaging in these activities regardless of whether they occur within or outside a bank's assessment area.

Conclusion

I commend the Committee for taking the time to consider how CRA can be strengthened and expanded. We have witnessed significant changes since CRA's passage and the last round of significant amendments to its implementing regulations in 1995. Given these changes, I believe now is the right time to modernize the law by expanding its coverage and enforcement, and by ensuring that loans made in low- and moderate-income communities are sustainable. Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

Exhibit A – 209 CMR 46.00 Community Reinvestment

Exhibit B – 209 CMR 54.00 Mortgage Lender Community Investment

Exhibit C – Regulatory Bulletin 2.3-102 CRA Ratings Policy

Exhibit A

209 CMR 46.00: COMMUNITY REINVESTMENT

Section

46.11: Authority, Purposes, and Scope

(1) Authority. The Commissioner issues 209 CMR 46.00 pursuant to authority granted by M.G.L. c. 167, § 14, as most recently amended by St. 1996, c. 238.

(2) Purposes. 209 CMR 46.00 is intended to carry out the purposes of the Community Reinvestment Act (CRA) by establishing the framework and criteria by which the Commissioner assesses an institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, and by providing that the Commissioner takes that record into account in considering certain applications pursuant to 209 CMR 46.29.

(3) Scope.

(a) General. 209 CMR 46.00 applies to all institutions as defined in 209 CMR 46.12.

(b) Foreign institution acquisitions and national banking associations. 209 CMR 46.00 also applies to a Massachusetts branch of a bank chartered by another state, the federal government, or a foreign country that results from an acquisition. Enforcement of 209 CMR 46.00 relative to out-of-state national banking associations with a branch in the Commonwealth shall be the responsibility of the Office of the Comptroller of the Currency, pursuant to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Public Law 103-123).

(c) Advisory rulings. Each official interpretation by the Federal Financial Institutions Examination Council (FFIEC) or appropriate Federal banking regulatory agency of the regulations issued under the Community Reinvestment Act (12 USC 2901 et seq.) that is similar in substance to a provision of 209 CMR 46.00 shall, until rescinded by the FFIEC, be deemed by the Commissioner to be an advisory ruling issued under M.G.L. c. 30A, § 8; provided, however, that the Commissioner may reject an interpretation of the FFIEC or appropriate Federal banking regulatory agency.

46 12: Definitions

For purposes of 209 CMR 46.00, the following definitions apply:

Affiliate, any company that controls, is controlled by, or is under common control with another company. The term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

Area median income, area median income means:

(a) the median family income for the MSA/CBSA, if a person or geography is located in an MSA/CBSA; or
(b) the statewide nonmetropolitan median family income, if a person or geography is located outside an MSA/CBSA.

Assessment area, a geographic area delineated in accordance with 209 CMR 46.41 or another delineation for certain credit unions made pursuant to 209 CMR 46.41(8).

Automated teller machine (ATM), an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the institution at which deposits are received, cash dispersed, or money lent.

Branch, a staffed banking facility established or acquired as a branch under Massachusetts law.

CBSA, a core based statistical area as defined by the Director of the Office of Management and Budget.

CMSA, a consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget.

Commissioner, the Commissioner of Banks.

Community development, community development means:

(a) affordable housing (including multifamily rental housing) for low- and moderate-income individuals;
(b) community services targeted to low- and moderate-income individuals;
(c) activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or

(d) activities that revitalize or stabilize the fishing industry.
(e) Activities that revitalize or stabilize -
(1) Low- or moderate-income geographies,
(2) Designated disaster areas; or
(3) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency; or
(4) Any other such area as determined by the Commissioner based on -

(A) Rates of poverty, unemployment, and population loss; or
(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

Community development loan, a loan that:

(a) has as its primary purpose community development; and
(b) except in the case of a wholesale or limited purpose institution:

1. has not been reported or collected by the institution or an affiliate for consideration in the institution's assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in Appendix A to 12 CFR 203, the Board of Governors of the Federal Reserve System's implementing regulations for the Home Mortgage Disclosure Act); and

2. benefits the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s).

Community development service, a service that:

(a) has as its primary purpose community development;
(b) is related to the provision of financial services; and
(c) has not been considered in the evaluation of the institution's retail banking services under 209 CMR 46.24(5).

Consumer loan, a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(a) Motor vehicle loan, a consumer loan extended for the purchase of and secured by a motor vehicle;
(b) Credit card loan, a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a "credit card," as this term is defined in 209 CMR 32.02;
(c) Home equity loan, a consumer loan secured by a residence of the borrower;
(d) Other secured consumer loan, a secured consumer loan that is not included in one of the other categories of consumer loans; and
(e) Other unsecured consumer loan, an unsecured consumer loan that is not included in one of the other categories of consumer loans.

Credit Union, a corporation chartered under M.G.L. c. 171. A credit union is also an "institution" as defined in 209 CMR 46.00, except where otherwise specified by the provisions of 209 CMR 46.00.

Geography, a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

Home mortgage loan, a "home improvement loan" or a "home purchase loan" as defined in 12 CFR 203.2 (the Home Mortgage Disclosure Act).

Income level, income level includes:

(a) Low-income, an individual income that is less than 50% of the area median income, or a median family income that is less than 50%, in the case of a geography.
(b) Moderate-income, an individual income that is at least 50% and less than 80% of the area median income, or a median family income that is at least 50% and less than 80%, in the case of a geography.
(c) Middle-income, an individual income that is at least 80% and less than 120% of the area median income, or a median family income that is at least 80% and less than 120%, in the case of a geography.
(d) Upper-income, an individual income that is 120% or more of the area median income, or a median family income that is 120% or more, in the case of a geography.

Institution, a bank or credit union chartered under the laws of the Commonwealth or an out-of-state bank, an out-of-state national bank or a foreign bank with a branch office in the Commonwealth; provided, however, this definition shall not include a credit union where otherwise specified under 209 CMR 46.00.

Limited purpose institution, an institution that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose institution is in effect, in accordance with 209 CMR 46.25(2).

Loan location, a loan is located as follows:

(a) a consumer loan is located in the geography where the borrower resides;
(b) a home mortgage loan is located in the geography where the property to which the loan relates is located; and
(c) a small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

Loan production office, a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

MSA, a metropolitan statistical area or a primary metropolitan statistical area as defined by the Director of the Office of Management and Budget.

Qualified investment, a lawful investment, deposit, membership share, or grant that has as its primary purpose community development, and lawful investments in the following:

(a) corporations for the purpose of micro-lending in the area of small business, small farms, and the fishing industry;
(b) corporations for the purpose of providing technical assistance to nonprofit housing corporations, small businesses and farms for the purpose of establishing creditworthiness;
(c) contributions to any private nonprofit organization organized for improving the social and economic conditions, such as community development programs, small business technical assistance, and educational institutions, in communities in which the institution has an office;
(d) contributions for the purpose of relieving suffering or distress resulting from disaster or other calamity, such as hurricane or flood, occurring in any part of the Commonwealth; and
(e) the small business capital access program (CAP), pursuant to M.G.L c. 23A, § 57.

Small institution, (1) Definition - an institution that, as of December 31 of either of the prior two calendar years, had total assets of less than $1 billion. Intermediate small institution means a small institution with assets of at least $250 million as of December 31 of both of the prior two calendar years and less than $1 billion as of December 31 of either of the prior two calendar years.

(2) Adjustment - The dollar figures in the small bank definition of this section shall be adjusted annually and published by the Commissioner, based on the year to year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted for each twelve-month period ending in November, with rounding to the nearest million.

Small business loan, a loan included in "loans to small businesses" as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

Small farm loan, a loan included in "loans to small farms" as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

Wholesale institution, an institution that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale institution is in effect, in accordance with 209 CMR 46.25(2).

46.21: Performance Tests, Standards, and Ratings, in General

(1) Performance tests and standards. The Commissioner assesses the CRA performance of an institution in an examination as follows:

(a) Lending, investment, and service tests. The Commissioner applies the lending, investment, and service tests, as provided in 209 CMR 46.22 through 46.24, in evaluating the performance of an institution, except as provided in 209 CMR 46.21(1)(b), (1)(c), (1)(d), and (1)(e).
(b) Community development test for wholesale or limited purpose institutions. The Commissioner applies the community development test for a wholesale or limited purpose institution, as provided in 209 CMR 46.25, except as provided in 209 CMR 46.21(1)(d).
(c) Small institution performance standards. The Commissioner applies the small institution performance standards as provided in 209 CMR 46.26 in evaluating the performance of a small institution or an institution that was a small institution during the prior calendar year, unless the institution elects to be assessed as provided in 209 CMR 46.21 (1)(a), (1)(b), or (1)(d). However, credit unions which are small institutions will be evaluated in the context of their membership by-law provisions, as prescribed under M.G.L. c. 171, § 9. An institution may elect to be assessed as provided in 209 CMR 46.21(1)(a) only if it collects and reports the data required for

other institutions under 209 CMR 46.42.
(d) Strategic plan. The Commissioner evaluates the performance of an institution under a strategic plan if the institution submits, and the Commissioner approves, a strategic plan as provided in 209 CMR 46.27.
(e) Credit union performance standards. The Commissioner applies the lending and service tests, as provided in 209 CMR 46.22 and 46.24 in evaluating the performance of a credit union, except as provided in 209 CMR 46.21(1)(c) and (1)(d). The investment test does not apply to credit unions. However, a credit union that achieves at least a "satisfactory" rating under the lending and service tests may warrant consideration for an overall rating of "high satisfactory" or "outstanding" depending on the credit union's performance in making qualified investments and community development loans to the extent authorized under law, in accordance with 209 CMR 46.61(6)(c).

(2) Performance context. The Commissioner applies the tests and standards in 209 CMR 46.21(1) and also considers whether to approve a proposed strategic plan in the context of:

(a) demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to an institution's assessment area(s);
(b) any information about lending, investment, and service opportunities in the institution's assessment area(s) maintained by the institution or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;
(c) the institution's product offerings and business strategy as determined from data provided by the institution;
(d) institutional capacity and constraints, including the size and financial condition of the institution, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the institution's ability to provide lending, investments, or services in its assessment area(s);
(e) the institution's past performance and the performance of similarly situated lenders;
(f) the institution's public file, as described in 209 CMR 46.43, and any written comments about the institution's CRA performance submitted to the institution or the Commissioner;
(g) the credit union's defined membership by-law provisions, as prescribed in M.G.L. c. 171, § 9, and the lending and investment authority restrictions under M.G.L. c. 171; and
(h) any other information deemed relevant by the Commissioner.

(3) Assigned ratings. The Commissioner assigns to an institution one of the following five ratings pursuant to 209 CMR 46.28 and 46.61: "outstanding"; "high satisfactory"; "satisfactory"; "needs to improve"; or "substantial noncompliance" as provided in M.G.L. c. 167, § 14. The rating assigned by the Commissioner reflects the institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution.

(4) Safe and sound operations. This regulation and the CRA do not require an institution to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the Commissioner anticipates institutions can meet the standards of this part with safe and sound loans, investments, and services on which the institutions expect to make a profit. Institutions are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- and moderate-income geographies or individuals, only if consistent with safe and sound operations.

46.22: Lending Test

(1) Scope of test.

(a) The lending test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering an institution's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of an institution's business, the Commissioner will evaluate the institution's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at an institution's option, the Commissioner will evaluate one or more categories of consumer lending, if the institution has collected and maintained, as required in 209 CMR 46.42(3)(a), the data for each category that the institution elects to have the Commissioner evaluate.

(b) The Commissioner considers originations and purchases of loans. The Commissioner will also consider any other loan data the institution may choose to provide, including data on loans outstanding, commitments and letters of credit.

(c) An institution may ask the Commissioner to consider loans originated or purchased by consortia in which the institution participates or by third parties in which the institution has invested only if the loans meet the definition of community development loans and only in accordance with 209 CMR 46.22(4). The Commissioner will not consider these loans under any criterion of the lending test except the community development lending criterion.

(2) Performance Criteria. The Commissioner evaluates an institution's lending performance pursuant to the following criteria:

(a) Lending activity. The number and amount of the institution's home mortgage, small business, small farm, and consumer loans, if applicable, in the institution's assessment area(s);
(b) Geographic distribution. The geographic distribution of the institution's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

1. the proportion of the institution's lending in the institution's assessment area(s);
2. the dispersion of lending in the institution's assessment area(s); and
3. the number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the institution's assessment area(s);

(c) Borrower characteristics. The distribution, particularly in the institution's assessment area(s), of the institution's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

1. home mortgage loans to low-, moderate-, middle-, and upper-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in affordable housing in their neighborhoods;
2. small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;
3. small business and small farm loans by loan amount at origination; and
4. consumer loans, if applicable, to low-, moderate-, middle-, and upper- income individuals.

(d) Community development lending. The institution's community development lending, including the number and amount of community development loans, and their complexity and innovativeness;

(e) Innovative or flexible lending practices. The institution's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
(f) Fair lending. The institution's performance relative to fair lending policies and practices pursuant to written policies and directives issued by the Commissioner; and
(g) Loss of affordable housing. The institution's number and amount of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units.

(3) Affiliate lending.

(a) At an institution's option, the Commissioner will consider loans by an affiliate of the institution, if the institution provides data on the affiliate's loans pursuant to 209 CMR 46.42.
(b) The Commissioner considers affiliate lending subject to the following constraints:

1. no affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and
2. if an institution elects to have the Commissioner consider loans within a particular lending category made by one or more of the institution's affiliates in a particular assessment area, the institution shall elect to have the Commissioner consider, in accordance with 209 CMR 46.22(3)(a), all the loans within that lending category in that particular assessment area made by all of the institution's affiliates.

(c) The Commissioner does not consider affiliate lending in assessing an institution's performance under 209 CMR 46.22(2)(b)(1).

(4) Lending by a consortium or a third party. Community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested:

(a) will be considered, at the institution's option, if the institution reports the data pertaining to these loans under 209 CMR 46.42; and
(b) may be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

1. may claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or
2. may claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(5) Lending performance rating. The Commissioner rates an institution's lending performance as provided in 209 CMR 46.61 (Ratings).

46.23: Investment Test

(1) Scope of test. The investment test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). A credit union will not be evaluated under the investment test except as provided under 209 CMR 46.61(6)(c).

(2) Exclusion. Activities considered under the lending or service tests may not be considered under the investment test.

(3) Affiliate investment. At an institution's option, the Commissioner will consider, in its assessment of an institution's investment performance, a qualified investment made by an affiliate of the institution, if the qualified investment is not claimed by any other institution.

(4) Disposition of branch premises. Donating, selling on favorable terms, or making available on a rent-free basis a branch of the institution that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(5) Performance criteria. The Commissioner evaluates the investment performance of an institution pursuant to the following criteria:

(a) the dollar amount of qualified investments;
(b) the innovativeness or complexity of qualified investments;
(c) the responsiveness of qualified investments to credit and community development needs
(d) the degree to which the qualified investments assist existing low- and moderate-income residents to be able to remain in affordable housing in their neighborhoods; and
(d) the degree to which the qualified investments are not routinely provided by private investors.

(6) Investment performance rating. The Commissioner rates an institution's investment performance as provided in 209 CMR 46.61 (Ratings).

46.24: Service Test

(1) Scope of test. The service test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of an institution's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(2) Area(s) benefited. Community development services must benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s).

(3) Affiliate service. At an institution's option, the Commissioner will consider, in its assessment of an institution's service performance, a community development service provided by an affiliate of the institution, if the community development service is not claimed by any other institution.

(4) Performance criteria -- retail banking services. The Commissioner evaluates the availability and effectiveness of an institution's systems for delivering retail banking services, pursuant to the following criteria:

(a) the current distribution of the institution's branches among low-, moderate-, middle-, and upper-income geographies;
(b) in the context of its current distribution of the institution's branches, the institution's record of opening and closing branches, particularly branches located in low- and moderate-income geographies or primarily serving low- and moderate- income individuals;
(c) the availability and effectiveness of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the institution, banking by

telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and
(d) the range of services provided in low-, moderate-, middle-, and upper- income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(5) Performance criteria -- community development services. The Commissioner evaluates community development services pursuant to the following criteria:

(a) the extent to which the institution provides community development services; and
(b) the innovativeness and responsiveness of community development services.

(6) Service performance rating. The Commissioner rates an institution's service performance as provided in 209 CMR 46.61 (Ratings).

46.25: Community Development Test for Wholesale or Limited-Purpose Institutions

(1) Scope of test. The Commissioner assesses a wholesale or limited purpose institution's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(2) Designation as a wholesale or limited purpose institution. In order to receive a designation as a wholesale or limited purpose institution, an institution shall file a request, in writing, with the Commissioner, at least three months prior to the proposed effective date of the designation. If the Commissioner approves the designation, it remains in effect until the institution requests revocation of the designation or until one year after the Commissioner notifies the institution that the Commissioner has revoked the designation on his/her own initiative.

(3) Performance criteria. The Commissioner evaluates the community development performance of a wholesale or limited purpose institution pursuant to the following criteria:

(a) the number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the institution, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;
(b) the use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and
(c) the institution's responsiveness to credit and community development needs.

(4) Indirect activities. At an institution's option, the Commissioner will consider in its community development performance assessment:

(a) qualified investments or community development services provided by an affiliate of the institution, if the investments or services are not claimed by any other institution; and
(b) community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in 209 CMR 46.22(3) and (4).

(5) Benefit to assessment area(s).

(a) Benefit inside assessment area(s). The Commissioner considers all qualified investments, community development loans, and community development services that benefit areas within the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s).
(b) Benefit outside assessment area(s). The Commissioner considers the qualified investments, community development loans, and community development services that benefit areas outside the institution's assessment area(s), if the institution has adequately addressed the needs of its assessment area(s).

(6) Community development performance rating. The Commissioner rates an institution's community development performance as provided in 209 CMR 46.61 (Ratings).

46.26: Small Institution Performance Standards

(1) Performance criteria. (a) Small institutions with assets of less than $250 million. The Commissioner evaluates the record of a small institution that is not, or that was not during the prior calendar year, an intermediate small institution, of helping to meet the credit needs of its assessment area pursuant to the criteria set forth in paragraph (2) of this section. (b) Intermediate small institutions. The Commissioner evaluates the record of a small institution that is, or that was during the prior calendar year, an intermediate small institution, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (2) and (3) of this section. A credit union that is, or that was during the prior calendar year an intermediate small institution will be evaluated pursuant to the criteria set forth in paragraph (2) of this section and under the service test as provided in 209 CMR 46.24.

(2) Lending test. A small institution's lending performance is evaluated pursuant to the following criteria:

(a) the institution's loan-to-deposit ratio, adjusted for seasonal variation and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;
(b) the percentage of loans and, as appropriate, other lending-related activities located in the institution's assessment area(s);
(c) the institution's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;
(d) the geographic distribution of the institution's loans, provided, however that a credit union shall be evaluated in the context of its relevant membership by-law provisions; and
(e) the institution's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s) and its performance with regard to fair lending policies and practices.

(3) Community Development Test An intermediate small institution's community development performance is also evaluated pursuant to the following criteria:

(a) The number and amount of community development loans;

(b) The number and amount of qualified investments;

(c) The extent to which the institution provides community development services; and

(d) The institution's responsiveness through such activities to community development lending, investment, and service needs.

(4) Small institution performance rating. The Commissioner rates the performance of an institution evaluated under 209 CMR 46.26 as provided in 209 CMR 46.61 (Ratings).

46.27: Strategic Plan

(1) Alternative election. The Commissioner will assess an institution's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(a) the institution has submitted the plan to the Commissioner as provided for in 209 CMR 46.27;
(b) the Commissioner has approved the plan;
(c) the plan is in effect; and
(d) the institution has been operating under an approved plan for at least one year.

(2) Data reporting. The Commissioner's approval of a plan does not affect the institution's obligation, if any, to report data as required by 209 CMR 46.42.

(3) Plans in general.

(a) Term. A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the Commissioner will evaluate the institution's performance.

(b) Multiple assessment areas. An institution with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(c) Treatment of affiliates. Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(4) Public participation in plan development. Before submitting a plan to the Commissioner for approval, an institution shall:

(a) informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;
(b) once the institution has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and
(c) during the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the institution in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(5) Submission of plan. The institution shall submit its plan to the Commissioner at least three months prior to the proposed effective date of the plan. The institution shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any

written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(6) Plan content.

(a) Measurable goals.

1. An institution shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

2. An institution shall address in its plan all three performance categories and, unless the institution has been designated as a wholesale or limited purpose institution, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the institution's capacity and constraints, product offerings, and business strategy.

(b) Confidential information. An institution may submit additional information to the Commissioner on a confidential basis which shall not be deemed a public record as defined in M.G.L. c. 4, § 7 or be subject to the public disclosure provisions of M.G.L. c. 66, § 10, but the goals stated in the plan must be sufficiently specific to enable the public and the Commissioner to judge the merits of the plan.

(c) Satisfactory and outstanding goals. An institution shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. If an institution submits, and the Commissioner approves, both "satisfactory" and "outstanding" performance goals, the Commissioner will consider the institution eligible for an "outstanding" performance rating.

(d) Election if satisfactory goals not substantially met. An institution may elect in its plan that, if the institution fails to meet substantially its plan goals for a satisfactory rating, the Commissioner will evaluate the institution's performance under the lending, investment, and service tests, the community development test, or the small institution performance standards, as appropriate.

(7) Plan approval.

(a) Timing. The Commissioner will act upon a plan within 60 calendar days after the Commissioner receives the complete plan and other material required under 209 CMR 46.27(5) and (6). If the Commissioner fails to act within this time period, the plan shall be deemed approved unless the Commissioner extends the review period for good cause.

(b) Public participation. In evaluating the plan's goals, the Commissioner considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the institution to public comment on the plan.

(c) Criteria for evaluating plan. The Commissioner evaluates a plan's measurable goals using the following criteria, as appropriate:

1. the extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;
2. the amount and innovativeness, complexity, and responsiveness of the institution's qualified investments; and
3. the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.

(8) Plan amendment. During the term of a plan, an institution may request the Commissioner to approve an amendment to the plan on grounds that there has been a material change in circumstances. The institution shall develop an amendment to a previously approved plan in accordance with the public participation requirements of 209 CMR 46.27(4).

(9) Plan assessment. The Commissioner approves the goals and assesses performance under a plan as provided for in 209 CMR 46.61 (Ratings).

46.28: Assigned Ratings

(1) Ratings in general. Subject to 209 CMR 46.28(2) and (3), the Commissioner assigns to an institution a rating of "outstanding," "high satisfactory," "satisfactory," "needs to improve," or "substantial noncompliance" based on the institution's performance under the lending, investment and service tests, the community development test, the small institution performance standards, the intermediate small institution standards, or an approved strategic plan, as applicable.

(2) Lending, investment, and service tests. The Commissioner assigns a rating for an institution assessed under the lending, investment, and service tests in accordance with the following principles:

(a) an institution that receives an "outstanding" rating on the lending test receives an assigned rating of at least "satisfactory";
(b) an institution that receives an "outstanding" rating on both the service test and the investment test and a rating of at least "high satisfactory" on the lending test receives an assigned rating of "outstanding";
(c) no institution may receive an assigned rating of "satisfactory" or higher unless it receives a rating of at least "satisfactory" on the lending test;
(d) an institution that receives a "satisfactory" rating on the lending test and either the service or investment test, and receives a rating of "needs to improve" on the third test, receives an assigned rating of "satisfactory"; and
(e) a credit union that receives a "satisfactory" rating on the lending test and receives a rating of "needs to improve" on the service test, receives an assigned rating of "satisfactory".

(3) Effect of evidence of discriminatory or other illegal credit practices. Evidence of discriminatory or other illegal credit practices adversely affects the Commissioner's evaluation of an institution's performance. In determining the effect on the institution's assigned rating, the Commissioner considers the nature and extent of the evidence, the policies and procedures that the institution has in place to prevent discriminatory or other illegal credit practices, any corrective action that the institution has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, the institution's compliance with written policies and directives with regard to fair lending, and other relevant information.

In connection with any type of lending activity described in §46.22(1)(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes but is not limited to: (i) Discrimination against applicants on a prohibited basis in violation, for example of the Equal Credit Opportunity Act or Fair Housing Act; (ii) Violations of M.G.L. Chapter 183C, Predatory Home Loan Practices; (iii) Violations of section 5 of the Federal Trade Commission Act; (iv) Violations of section 8 of the Real Estate Settlement Procedures Act, and (v) Violations of the provisions of M.G.L. Chapter 140D regarding a consumer's right of rescission or other violations of M.G.L. Chapter 140D and its implementing regulations 209 CMR 32.00.

46.29: Effect of CRA Performance on Applications

(1) CRA performance. Among other factors, the Commissioner takes into account the record of performance under the CRA of each institution submitting applications for the following:

(a) establishment of any branch by all state-chartered institutions;
(b) establishment of Massachusetts branches by out-of-state banks, out-of-state federal banks, and foreign banks;
(c) a merger or consolidation with or the acquisition of assets or assumption of liabilities of any state-chartered institution by a Massachusetts bank or bank holding company, including its subsidiaries;
(d) a merger or consolidation with or the acquisition of assets or assumption of liabilities of a state-chartered institution by an out-of-state bank, an out-of-state federal bank, or an foreign bank or bank holding company, including its subsidiaries;
(e) a wholly-owned subsidiary pursuant to M.G.L. c. 167F, § 2, paragraph 7;
(f) an automated teller machine;
(g) a mobile electronic branch; and
(h) any other approval of the Commissioner, provided that there are no other countervailing financial safety and soundness or other policy considerations.

(2) Interested parties. In considering CRA performance in an application described in 209 CMR 46.29(1), the Commissioner takes into account any views expressed by interested parties that are submitted.

(3) Denial or conditional approval of application. An institution's record of performance may be the basis for denying or conditioning approval of an application listed in 209 CMR 46 29.

(4) Alternative branch opening application procedures. The Commissioner shall establish alternative branch opening application procedures for institutions which received a rating of "outstanding" as of their most recent state or federal examination. These procedures shall include such other standards and procedures as the Commissioner deems appropriate.

46.41: Assessment Area Delineation

(1) In general. An institution shall delineate one or more assessment areas within which the Commissioner evaluates the institution's record of helping to meet the credit needs of its community. The Commissioner does not evaluate the institution's delineation of its assessment area(s) as a separate performance criterion, but the Commissioner reviews the delineation for compliance with the requirements of 209 CMR 46.41.

(2) Geographic area(s) for wholesale or limited purpose institutions. The assessment area(s) for a wholesale or limited purpose institution must consist generally of one or more MSAs/CBSAs (using the MSA/CBSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the institution has its main office, branches, and deposit-taking ATMs.

(3) Geographic area(s) for other institutions. The assessment area(s) for an institution other than a wholesale or limited purpose institution or a credit union under 209 CMR 46.41(8) must:

(a) consist generally of one or more MSAs/CBSAs (using the MSA/CBSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and
(b) include the geographies in which the institution has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the institution has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the institution chooses, such as those consumer loans on which the institution elects to have its performance assessed).

(4) Adjustments to geographic area(s). An institution may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(5) Limitations on the delineation of an assessment area. Each institution's assessment area(s):

(a) must consist only of whole geographies;
(b) may not reflect illegal discrimination;
(c) may not arbitrarily exclude low- and moderate-income geographies, taking into account the institution's size and financial condition; and
(d) may not extend substantially beyond a CMSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA/CBSA. If an institution serves a geographic area that extends substantially beyond a state boundary, the institution shall delineate separate assessment areas for the areas in each state. If an institution serves a geographic area that extends substantially beyond a CMSA boundary, the institution shall delineate separate assessment areas for the areas inside and outside the CMSA.

(6) Institutions serving military personnel. Notwithstanding the requirements of 209 CMR 46.41, an institution whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(7) Use of assessment area(s). The Commissioner uses the assessment area(s) delineated by an institution in its evaluation of the institution's CRA performance unless the Commissioner determines that the assessment area(s) do not comply with the requirements of 209 CMR 46.41.

(8) Credit unions not serving defined geographic areas. Notwithstanding the requirements of 209 CMR 46.41, a credit union whose membership by-law provisions are not based on residence may delineate its membership as its assessment area.

46.42: Data Collection, Reporting, and Disclosure

(1) Institutions will comply with all data collection, reporting and disclosure regulations as promulgated by the appropriate Federal banking agencies.

(2) Credit unions are exempted from the data collection, reporting, and disclosure requirements for small business, small farm, and community development loans; provided, however, if the credit union, except a credit union that meets the definition of a small institution, is subject to reporting under the Board of Governors of the Federal Reserve System's implementing regulations for the Home Mortgage Disclosure Act (12 CFR 203), it shall report the location of each home mortgage loan application, origination, or purchase outside the MSAs/CBSA in which the credit union has a home or branch office (or outside any MSA/CBSA) in accordance with the requirements of 12 CFR 203.

(3) Optional data collection and maintenance.

(a) Consumer loans. An institution may collect and maintain in machine readable form (as prescribed by the Commissioner) data for consumer loans originated or purchased by the institution for consideration under the lending test. An institution may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If the institution maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The institution shall maintain data separately for each category, including for each loan:

1. A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
2. The loan amount at origination or purchase;
3. The loan location; and
4. The gross annual income of the borrower that the institution considered in making its credit decision.

(b) Other loan data. At its option, an institution may provide other information concerning its lending performance, including additional loan distribution data.

46.43: Content and Availability of Public File

(1) Information available to the public. An institution shall maintain a public file that includes the following information:

(a) all written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the institution's performance in helping to meet community credit needs, and any response to the comments by the institution, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the institution or publication of which would violate specific provisions of law;

(b) a copy of the public section of the institution's most recent CRA Performance Evaluation prepared by the Commissioner. The institution shall place this copy in the public file within 30 business days after its receipt from the Commissioner;

(c) a list of the institution's branches, their street addresses, and geographies;

(d) a list of branches opened or closed by the institution during the current year and each of the prior two calendar years, their street addresses, and geographies;

(e) a list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the institution's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, an institution may include information regarding the availability of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the institution, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(f) a map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list, provided however, a map of the assessment area does not need to be maintained if the institution is a credit union whose membership by-law provisions do not correspond to a defined geographic area; and

(g) any other information the institution chooses.

(2) Additional information available to the public.

(a) Institutions other than small institutions. An institution, except a small institution or an institution that was a small institution during the prior calendar year, shall include in its public file the following information pertaining to the institution and its affiliates, if applicable, for each of the prior two calendar years:

1. if the institution has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

a. to low-, moderate-, middle-, and upper-income individuals;
b. located in low-, moderate-, middle-, and upper-income census tracts; and
c. located inside the institution's assessment area(s) and outside the institution's assessment area(s); and

2. the institution's CRA Disclosure Statement. The institution shall place the statement in the public file within three business days of its receipt from the Commissioner.

(b) Institutions required to report Home Mortgage Disclosure Act (HMDA) data. An institution required to report home mortgage loan data pursuant to the implementing regulations for the Home Mortgage Disclosure Act regulations (12 CFR 203) shall include in its public file a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the institution for each of the prior two calendar years. In addition, an institution that elected to have the Commissioner consider the mortgage lending of an affiliate for any of these years shall include in its public file the affiliate's HMDA Disclosure Statement for those years. The institution shall place the statement(s) in the public file within three business days after its receipt.

(c) Small institutions. A small institution or an institution that was a small institution during the prior calendar year shall include in its public file:

1. the institution's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

2. the information required for other institutions by 209 CMR 46.43(2)(a), if the institution has elected to be evaluated under the lending, investment, and service tests.

(d) Institutions with strategic plans. An institution that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. An institution need not include information submitted to the Commissioner on a confidential basis in conjunction with the plan.

(e) Institutions with less than satisfactory ratings. An institution that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The institution shall update the description quarterly.

(3) Location of public information. An institution shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(a) at the main office and, if an interstate institution, at one branch office in each state, all information in the public file; and
(b) at each branch:

1. a copy of the public section of the institution's most recent CRA Performance Evaluation and a list of services provided by the branch; and
2. within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(4) Copies. Upon request, an institution shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The institution may charge a reasonable fee not to exceed the cost of copying and mailing, if applicable.

(5) Updating. Except as otherwise provided in 209 CMR 46.43, an institution shall ensure that the information required by 209 CMR 46.43 is current as of April 1 of each year.

46.44: Public Notice by Institutions

An institution shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in 209 CMR 46.62. Only a branch of an institution having more than one assessment area shall include the bracketed material in the notice for branch offices. Only an institution that is an affiliate of a holding company shall include the next to the last sentence of the notices. An institution shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional institutions.

46.45: Publication of Planned Examination Schedule

The Commissioner publishes at least 30 days in advance of the beginning of each calendar quarter a list of institutions scheduled for CRA examinations in that quarter.

46.46: Alternative Examination Procedures

The Commissioner shall establish alternative examination procedures for institutions which were rated "outstanding" as of their most recent state or federal CRA compliance examination. After

January 1, 1998, such alternative examination procedures will also apply to institutions which were rated "high satisfactory" as of their most recent state or federal examination. The purpose of such alternative procedures shall be to reduce the cost to institutions. The alternative procedures shall in no way limit public participation.

46.61: Ratings

(1) Ratings in general.

(a) In assigning a rating, the Commissioner evaluates an institution's performance under the applicable performance criteria in 209 CMR 46.00, in accordance with 209 CMR 46.21, and 209 CMR 46.28, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(b) An institution's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The institution's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(2) Institutions evaluated under the lending, investment, and service tests.

(a) Lending performance rating. The Commissioner assigns each institution's lending performance one of the five following ratings.

1. Outstanding. The Commissioner rates an institution's lending performance "outstanding" if, in general, it demonstrates:

a. Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
b. A substantial majority of its loans are made in its assessment area(s);
c. An excellent geographic distribution of loans in its assessment area(s);
d. An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
e. An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in their neighborhoods, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
f. Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
g. It is a leader in making community development loans,
h. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
i. An excellent record relative to fair lending policies and practices.

2. High satisfactory. The Commissioner rates an institution's lending performance "high satisfactory" if, in general, it demonstrates:

a. Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
b. A high percentage of its loans are made in its assessment area(s);
c. A good geographic distribution of loans in its assessment area(s);
d. A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
e. A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in their neighborhoods, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
f. Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
g. It has made a relatively high level of community development loans;
h. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
i. A good record relative to fair lending policies and practices.

3. Satisfactory. The Commissioner rates an institution's lending performance "satisfactory" if, in general, it demonstrates:

a. Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
b. An adequate percentage of its loans are made in its assessment area(s);
c. An adequate geographic distribution of loans in its assessment area(s);
d. An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
e. An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in their neighborhoods, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
f. Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
g. It has made an adequate level of community development loans;
h. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
i. An adequate record relative to fair lending policies and practices.

4. Needs to improve. The Commissioner rates an institution's lending performance "needs to improve" if, in general, it demonstrates:

a. Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
b. A small percentage of its loans are made in its assessment area(s);
c. A poor geographic distribution of loans, particularly to low- and moderate-income geographies, in its assessment area(s);

d. A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
e. A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in their neighborhoods, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
f. Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
g. It has made a low level of community development loans;
h. There is possible evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
i. A poor record relative to fair lending policies and practices.

5. Substantial noncompliance. The Commissioner rates an institution's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

a. A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);
b. A very small percentage of its loans are made in its assessment area(s);
c. A very poor geographic distribution of loans, particularly to low- and moderate-income geographies, in its assessment area(s);
d. A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the institution;
e. A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, including loans to assist existing low- and moderate-income residents to be able to remain in their neighborhoods, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;
f. No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies;
g. It has made few, if any, community development loans;
h. Origination of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
i. A very poor record relative to fair lending policies and practices.

(b) Investment performance rating. The Commissioner assigns each institution's investment performance one of the five following ratings.

1. Outstanding. The Commissioner rates an institution's investment performance "outstanding" if, in general, it demonstrates:

a. An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;
b. Extensive use of innovative or complex qualified investments; and
c. Excellent responsiveness to credit and community development needs.

2. High satisfactory. The Commissioner rates an institution's investment performance "high satisfactory" if, in general, it demonstrates:

a. A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position,
b. Significant use of innovative or complex qualified investments; and
c. Good responsiveness to credit and community development needs.

3. Satisfactory. The Commissioner rates an institution's investment performance " satisfactory" if, in general, it demonstrates:

a. An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;
b. Occasional use of innovative or complex qualified investments; and
c. Adequate responsiveness to credit and community development needs.

4. Needs to improve. The Commissioner rates an institution's investment performance "needs to improve" if, in general, it demonstrates:

a. A poor level of qualified investments, particularly those that are not routinely provided by private investors;
b. Rare use of innovative or complex qualified investments; and
c. Poor responsiveness to credit and community development needs.

5. Substantial noncompliance. The Commissioner rates an institution's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:

a. Few, if any, qualified investments, particularly those that are not routinely provided by private investors;
b. No use of innovative or complex qualified investments; and
c. Very poor responsiveness to credit and community development needs.

(c) Service performance rating. The Commissioner assigns each institution's service performance one of the five following ratings.

1. Outstanding. The Commissioner rates an institution's service performance "outstanding" if, in general, the institution demonstrates:

a. Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- and moderate-income geographies or to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals; and
d. It is a leader in providing community development services.

2. High satisfactory. The Commissioner rates an institution's service performance "high satisfactory" if, in general, the institution demonstrates:

a. Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has not

adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and
d. It provides a relatively high level of community development services.

3. Satisfactory. The Commissioner rates an institution's service performance "satisfactory" if, in general, the institution demonstrates:

a. Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and
d. It provides an adequate level of community development services.

4. Needs to improve. The Commissioner rates an institution's service performance "needs to improve" if, in general, the institution demonstrates:

a. Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- and moderate-income geographies or to low- and moderate-income individuals;
b. To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- and moderate-income geographies or to low- and moderate- income individuals;
c. Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals; and
d. It provides a limited level of community development services.

5. Substantial noncompliance. The Commissioner rates an institution's service performance as being in "substantial noncompliance" if, in general, the institution demonstrates:

a. Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- and moderate-income geographies or to low- and moderate-income individuals;
b. To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies or to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- and moderate-income geographies or low- and moderate-income individuals; and
d. It provides few, if any, community development services.

(3) Wholesale or limited purpose institutions. The Commissioner assigns each wholesale or limited purpose institution's community development performance one of the five following ratings.

(a) Outstanding. The Commissioner rates a wholesale or limited purpose institution's community development performance "outstanding" if, in general, it demonstrates:

1. A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
2. Extensive use of innovative or complex qualified investments, community development loans, or community development services; and
3. Excellent responsiveness to credit and community development needs in its assessment area(s).

(b) High Satisfactory. The Commissioner rates a wholesale or limited purpose institution's community development performance "high satisfactory" if, in general, it demonstrates:

1. A significant level of community development loans, community development services or qualified investments, particularly investments that are not routinely provided by private investors;
2. Frequent use of innovative or complex qualified investments, community development loans or community development services; and
3. High responsiveness to credit and community development needs in its assessment area(s)

(c) Satisfactory. The Commissioner rates a wholesale or limited purpose institution's community development performance "satisfactory" if, in general, it demonstrates:

1. An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
2. Occasional use of innovative or complex qualified investments, community development loans, or community development services; and
3. Adequate responsiveness to credit and community development needs in its assessment area(s).

(d) Needs to improve. The Commissioner rates a wholesale or limited purpose institution's community development performance as "needs to improve" if, in general, it demonstrates:

1. A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
2. Rare use of innovative or complex qualified investments, community development loans, or community development services; and
3. Poor responsiveness to credit and community development needs in its assessment area(s).

(e) Substantial noncompliance. The Commissioner rates a wholesale or limited purpose institution's community development performance in "substantial noncompliance" if, in general, it demonstrates:

1. Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;
2. No use of innovative or complex qualified investments, community development loans, or community development services; and
3. Very poor responsiveness to credit and community development needs in its assessment area(s).

(4) Institutions evaluated under the small institution performance standards

(1) Lending test ratings.

(a) Eligibility for a satisfactory rating. The Commissioner rates a small institution's performance "satisfactory" if, in general, the institution demonstrates:

1. A reasonable loan-to-deposit ratio (considering seasonal variations) given the institution's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;
2. A majority of its loans and, as appropriate, other lending-related activities are in its assessment area(s);
3. A distribution of loans to and, as appropriate, other lending related-activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the institution's assessment area(s);
4. A record of taking appropriate action, as warranted, in response to written complaints, if any, about the institution's performance in helping to meet the credit needs of its assessment area(s) and reasonable performance with regard to fair lending policies and practices; and
5. A reasonable geographic distribution of loans given the institution's assessment area(s).

(b) Eligibility for a high satisfactory or an outstanding rating. A small institution that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for an overall rating of "high satisfactory" or "outstanding."

(c) Needs to improve or substantial noncompliance ratings. A small institution also may receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(2) Community development test ratings for intermediate small institutions

(a) Eligibility for a satisfactory community development test rating. The Commissioner rates an intermediate small institution's community development performance "satisfactory" if the institution demonstrates adequate responsiveness to the community development needs of its assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the institution's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the institution's assessment area(s).

(b) Eligibility for an outstanding community development test rating. The Commissioner rates an intermediate small institution's community development performance "outstanding" if the institution demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the institution's capacity and the need and availability of such opportunities for community development in the institution's assessment area(s).

(c) Needs to improve or substantial noncompliance ratings. An intermediate small institution may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(3) Service test rating for credit unions that are intermediate small institutions

A credit union that is an intermediate small institution will be rated under the service test in accordance with 209 CMR 46.61(2)(c).

(4) Overall rating

(a) Eligibility for a satisfactory overall rating. No intermediate small institution may receive an assigned overall rating of "satisfactory" unless it receives a rating of at least "satisfactory" on both tests.

(b) Eligibility for an outstanding overall rating.

1. An intermediate small institution that receives an "outstanding" rating on one test and at least "satisfactory" on the other test may receive an assigned overall rating of "outstanding."

2. A small institution that is not an intermediate small institution that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of "outstanding." In assessing whether an institution's performance is "outstanding," the Commissioner considers the extent to which the institution exceeds each of the performance standards for a "satisfactory" rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(c) Needs to improve or substantial noncompliance overall ratings. A small institution may also receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(5) Strategic plan assessment and rating.

(a) Satisfactory goals. The Commissioner approves as "satisfactory" measurable goals that adequately help to meet the credit needs of the institution's assessment area(s).

(b) Outstanding goals. If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as "satisfactory," the Commissioner will approve those goals as "outstanding."

(c) Rating. The Commissioner assesses the performance of an institution operating under an approved plan to determine if the institution has met its plan goals:

1. If the institution substantially achieves its plan goals for a satisfactory rating, the Commissioner will rate the institution's performance under the plan as "satisfactory."
2. If the institution achieves all of its goals for a satisfactory rating, and exceeds some or all of its plan goals for a satisfactory rating, the Commissioner will rate the institution under the plan as

"high satisfactory."
3. If the institution exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the Commissioner will rate the institution's performance under the plan as "outstanding."
4. If the institution fails to meet substantially its plan goals for a satisfactory rating, the Commissioner will rate the institution as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, unless the institution elected in its plan to be rated otherwise, as provided in 209 CMR 46.27(6)(d).

(6) Credit Unions evaluated under the lending and service tests.

(a) Lending performance rating. The Commissioner assigns each credit union's lending performance one of the five following ratings.

1. Outstanding. The Commissioner rates a credit union's lending performance "outstanding" if, in general, it demonstrates:

a. Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, and consumer loans, if applicable, in its assessment area(s);
b. A substantial majority of its loans are made in its assessment area(s);
c. An excellent geographic distribution of loans in its assessment area(s), provided however, a geographic analysis is relevant in the context of the credit union's membership by-law provisions;
d. An excellent distribution, particularly in its assessment area(s), of loans among members of different income levels, given the product lines offered by the credit union;
e. An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), and low-income members, including loans and other efforts to assist existing low- and moderate-income members to be able to remain in their neighborhoods, consistent with safe and sound operations;
f. Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income members or geographies;
g. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
h. An excellent record relative to fair lending policies and practices.

2. High satisfactory. The Commissioner rates a credit union's lending performance "high satisfactory" if, in general, it demonstrates:

a. Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, and consumer loans, if applicable, in its assessment area(s);
b. A high percentage of its loans are made in its assessment area(s);
c. A good geographic distribution of loans in its assessment area(s), provided however, a geographic analysis is relevant in the context of the credit union's membership by-law provisions;
d. A good distribution, particularly in its assessment area(s), of loans among members of different income levels, given the product lines offered by the credit union;
e. A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), and low-income members, including loans and other efforts to assist existing low- and moderate-income members to be able to remain in their neighborhoods, consistent with safe and sound operations;

f. Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income members or geographies;
g. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
h. A good record relative to fair lending policies and practices.

3. Satisfactory. The Commissioner rates a credit union's lending performance "satisfactory" if, in general, it demonstrates:

a. Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, and consumer loans, if applicable, in its assessment area(s);
b. An adequate percentage of its loans are made in its assessment area(s);
c. An adequate geographic distribution of loans in its assessment area(s), provided however, a geographic analysis is relevant in the context of the credit union's membership by-law provisions;
d. An adequate distribution, particularly in its assessment area(s), of loans among members of different income levels, given the product lines offered by the credit union;
e. An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), and low-income members, including loans and other efforts to assist existing low- and moderate-income members to be able to remain in their neighborhoods, consistent with safe and sound operations;
f. Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income members or geographies;
g. There is no evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
h. An adequate record relative to fair lending policies and practices.

4. Needs to improve. The Commissioner rates a credit union's lending performance "needs to improve" if, in general, it demonstrates:

a. Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, and consumer loans, if applicable, in its assessment area(s);
b. A small percentage of its loans are made in its assessment area(s);
c. A poor geographic distribution of loans, particularly to low- and moderate-income geographies, in its assessment area(s), provided however, a geographic analysis is relevant in the context of the credit union's membership by-law provisions;
d. A poor distribution, particularly in its assessment area(s), of loans among members of different income levels, given the product lines offered by the credit union;
e. A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), and low-income members, including loans and other efforts to assist existing low- and moderate-income members to be able to remain in their neighborhoods, consistent with safe and sound operations;
f. Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income members or geographies;
g. There is possible evidence of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
h. A poor record relative to fair lending policies and practices.

5. Substantial noncompliance. The Commissioner rates a credit union's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

a. A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, and consumer loans, if applicable, in its assessment area(s);
b. A very small percentage of its loans are made in its assessment area(s);
c. A very poor geographic distribution of loans, particularly to low- and moderate-income geographies, in its assessment area(s), provided however, a geographic analysis is relevant in the context of the credit union's membership by-law provisions;
d. A very poor distribution, particularly in its assessment area(s), of loans among members of different income levels, given the product lines offered by the credit union;
e. A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), and low-income members, including loans and other efforts to assist existing low- and moderate-income members to be able to remain in their neighborhoods, , consistent with safe and sound operations;
f. No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income members or geographies;
g. Origination of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units; and
h. A very poor record relative to fair lending policies and practices.

(b) Service performance rating. The Commissioner assigns each credit union's service performance one of the five following ratings.

1. Outstanding. The Commissioner rates a credit union's service performance "outstanding" if, in general, the credit union demonstrates:

a. Its service delivery systems are readily accessible to members and geographies of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly to low- and moderate-income members or in low- and moderate-income geographies;
c. Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- and moderate-income members or in low- and moderate-income geographies; and
d. It is a leader in providing community development services.

2. High satisfactory. The Commissioner rates a credit union's service performance "high satisfactory" if, in general, the credit union demonstrates:

a. Its service delivery systems are accessible to members and geographies of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly to low- and moderate-income members and in low- and moderate-income geographies;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income members and low- and moderate-income geographies; and
d. It provides a relatively high level of community development services.

3. Satisfactory. The Commissioner rates a credit union's service performance "satisfactory" if, in general, the credit union demonstrates:

a. Its service delivery systems are reasonably accessible to members and geographies of different income levels in its assessment area(s);
b. To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly to low- and moderate-income members and in low- and moderate-income geographies;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income members and low- and moderate-income geographies; and
d. It provides an adequate level of community development services.

4. Needs to improve. The Commissioner rates a credit union's service performance "needs to improve" if, in general, the credit union demonstrates:

a. Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- and moderate-income members or to low- and moderate-income geographies;
b. To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly to low- and moderate-income members or in low- and moderate-income geographies;
c. Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income members or low- and moderate-income geographies; and
d. It provides a limited level of community development services.

5. Substantial noncompliance. The Commissioner rates a credit union's service performance as being in "substantial noncompliance" if, in general, the credit union demonstrates:

a. Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- and moderate-income members or to low- and moderate-income geographies;
b. To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly to low- and moderate-income members or in low- and moderate-income geographies;
c. Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- and moderate-income members or low- and moderate-income geographies; and
d. It provides few, if any, community development services.

(c) Other eligible criteria for a high satisfactory or an outstanding rating. A credit union that achieves at least a "satisfactory" rating under the lending and service tests may warrant consideration for an overall rating of "high satisfactory" or "outstanding." In assessing whether a credit union 's performance is "high satisfactory" or "outstanding," the Commissioner will also consider the credit union's performance in making qualified investments and community development loans to the extent authorized under law.

(7) Component test ratings. The Commissioner shall develop, by written policy or directive, a matrix system which sets forth the methodology for aggregating an institution's scores on the lending, service, and investment tests to arrive at an assigned rating.

46.62: CRA Notice

(1) Notice for main offices

COMMUNITY REINVESTMENT ACT NOTICE

Under the Community Reinvestment Act (CRA), the Commissioner of Banks (Commissioner) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Commissioner also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the Commissioner; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the Commissioner publishes a list of the institutions that are scheduled for CRA examination by the Commissioner in that quarter. This list is available from the Commissioner of Banks at One South Station, Boston, MA 02110. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at institution) and to the Commissioner of Banks at One South Street, Boston, MA 02110. Your letter, together with any response by us, will be considered by the Commissioner in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Commissioner. You may also request from the Commissioner an announcement of our applications covered by the CRA filed with the Commissioner. We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of ______ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(2) Notice for branch offices.

COMMUNITY REINVESTMENT ACT NOTICE

Under the Community Reinvestment Act (CRA), the Commissioner of Banks (Commissioner) evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Commissioner also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by Commissioner, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) a map showing the assessment area containing this branch, which is the area in which the Commissioner evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire institution is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the Commissioner publishes a list of the institutions that are scheduled for CRA examination by the Commissioner in that quarter. This list is available from the Commissioner of Banks at One South Station, Boston, MA 02110. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at institution) and to the Commissioner of Banks at One South Street, Boston, MA 02110. Your letter, together with any response by us, will be considered by the Commissioner in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Commissioner. You may also request from the Commissioner an announcement of our applications covered by the CRA filed with the Commissioner. We are an affiliate of (name of holding company), a bank holding company. You may request from (title of responsible official), Federal Reserve Bank of _______ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(3) Notwithstanding the requirements of this section, the information and disclosures required under the CRA Notice may be combined with or as an alternative, attached to in the form of an addendum, the information and disclosures required under the Federal Community Reinvestment Act (12 USC 2901 et seq.), or any regulations thereunder.

REGULATORY AUTHORITY

209 CMR 46.00: M.G.L. c. 167, § 14.

Exhibit B

209 CMR 54.00: MORTGAGE LENDER COMMUNITY INVESTMENT

Section

54.11: Authority, Purposes, and Scope

(1) Authority. The Commissioner issues 209 CMR 54.00 pursuant to authority granted by M.G.L. c. 255E, § 8.

(2) Purposes. 209 CMR 54.00 is intended to carry out the Mortgage Lender Community Investment (MLCI) purposes of M.G.L. c. 255E, § 8 by establishing the framework and criteria by which the Commissioner assesses a mortgage lender's record of helping to meet the mortgage credit needs of the Commonwealth, including low- and moderate-income neighborhoods and individuals, consistent with the safe and sound operation of the mortgage lender, and by providing that the Commissioner takes that record into account in considering certain applications pursuant to 209 CMR 54.26.

(3) Scope.

(a) General. 209 CMR 54.00 applies to all mortgage lenders as defined in 209 CMR 54.12.

(b) Advisory rulings. Each official interpretation by the Federal Financial Institutions Examination Council (FFIEC) or appropriate federal banking regulatory agency of the regulations issued under the Community Reinvestment Act (12 USC 2901 et seq.) that is similar in substance to a provision of 209 CMR 54.00 shall, until rescinded by the FFIEC, be deemed by the Commissioner to be an advisory ruling issued under M.G.L. c 30A, § 8; provided, however, that the Commissioner may reject an interpretation of the FFIEC or appropriate federal banking regulatory agency. The Commissioner may provide such adjustments and exceptions, as necessary, to any interpretation to fit the unique circumstances of licensed mortgage lenders.

54.12: Definitions

For purposes of 209 CMR 54.00, the following definitions apply:

Area median income, area median income means:

(a) the median family income for the MSA, if a person or geography is located in an MSA; or
(b) the statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

Branch, a staffed facility licensed as a branch under G.L. c. 255E and 209 CMR 42.13.

Commissioner, the Commissioner of Banks.

Commonwealth, the Commonwealth of Massachusetts.

Community development, community development means:

(a) Mortgage products and other efforts to assist low- and moderate-income individuals to acquire or remain in affordable housing;
(b) community services targeted to low- and moderate-income individuals;
(c) Activities that revitalize or stabilize -
(1) Low- or moderate-income geographies;
(2) Designated disaster areas; or
(3) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency; or
(4) Any other such area as determined by the Commissioner based on -
(A) Rates of poverty, unemployment, and population loss; or
(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community and economic development needs, including needs of low- and moderate-income individuals.

Community development loan, a loan that:

(a) has as its primary purpose community development; and

(b) 1. has not been reported or collected by the mortgage lender for consideration in the mortgage lender's assessment as a home mortgage loan, unless it is a multifamily dwelling loan (as described in Appendix A to 12 CFR 203, the Board of Governors of the Federal Reserve System's implementing regulations for the Home Mortgage Disclosure Act); and 2. benefits the Commonwealth or a broader regional area that includes the Commonwealth.

Community development service, a service that:

(a) has as its primary purpose community development; and
(b) is related to the provision of financial services, including technical services.

Geography, a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.

Home Mortgage Disclosure Act, or HMDA, the Board of Governors of the Federal Reserve System's implementing regulations found at 12 CFR 203.

Home mortgage loan, a "home improvement loan" or a "home purchase loan" as defined in 12 CFR 203.2 (the Home Mortgage Disclosure Act) or a home equity loan or any other extension of credit secured by a residence of the borrower for personal, family, or household purposes.

Highly economically disadvantaged areas, economically distressed areas designated pursuant to 26 USC 1391.

Income level, income level includes:

(a) Low-income, an individual income that is less than 50% of the area median income, or a median family income that is less than 50%, in the case of a geography.
(b) Moderate-income, an individual income that is at least 50% and less than 80% of the area median income, or a median family income that is at least 50% and less than 80%, in the case of a geography.
(c) Middle-income, an individual income that is at least 80% and less than 120% of the area median income, or a median family income that is at least 80% and less than 120%, in the case of a geography.
(d) Upper-income, an individual income that is 120% or more of the area median income, or a median family income that is 120% or more, in the case of a geography.

Loan location, a home mortgage loan is located in the geography where the property to which the loan relates is situated.

Mortgage lender, a mortgage lender, licensed under M.G.L. c. 255E, section 2, that has made 50 or more home mortgage loans in the Commonwealth in the last calendar year reportable under the Home Mortgage Disclosure Act.

MSA, a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

Qualified investment, a lawful investment, deposit, membership share, or grant that has as its primary purpose community development, and lawful investments in the following:

(a) corporations for the purpose of providing technical assistance to nonprofit housing corporations for the purpose of establishing creditworthiness;
(b) contributions to any private nonprofit organization organized for improving the social and economic conditions, such as community development programs, foreclosure prevention initiatives, and educational institutions focusing on financial literacy initiatives, in communities in the Commonwealth;
(c) contributions for the purpose of relieving suffering or distress resulting from disaster or other calamity, such as hurricane or flood, occurring in any part of the Commonwealth; and
(d) contributions to any private nonprofit organization organized for fair housing and fair lending education and training.

54.21: Performance Tests, Standards, and Ratings, in General

(1) Performance tests and standards. The Commissioner assesses the MLCI performance of a mortgage lender in an examination as follows:

(a) Mortgage lender performance standards. The Commissioner applies the lending and service tests, as provided in 209 CMR 54.22 and 54.23 in evaluating the performance of a mortgage lender. However, a mortgage lender that achieves at least a "satisfactory" rating under both the lending and service tests may warrant consideration for an overall rating of "high satisfactory" or "outstanding" depending on the mortgage lender's performance in making qualified investments and community development loans to the extent authorized under law, in accordance with 209 CMR 54.61(2)(c).

(2) Performance context. The Commissioner applies the tests and standards in 209 CMR 54.21(1) in the context of:

(a) demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to the Commonwealth;
(b) any information about lending and service opportunities in the Commonwealth maintained by the mortgage lender or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(c) the mortgage lender's product offerings and business strategy as determined from data provided by the mortgage lender in the Commonwealth;
(d) the mortgage lender's capacity and constraints, including the size and financial condition of the mortgage lender, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the mortgage lender's ability to provide lending or services in the Commonwealth;
(e) the mortgage lender's past performance and the performance of similarly situated lenders in the Commonwealth; and
(f) any other information deemed relevant by the Commissioner.

(3) Assigned ratings. The Commissioner assigns to a mortgage lender one of the following five ratings pursuant to 209 CMR 54.25 and 54.61: "outstanding"; "high satisfactory"; "satisfactory"; "needs to improve"; or "substantial noncompliance" as provided in M.G.L. c. 255E, s. 8. The rating assigned by the Commissioner reflects the mortgage lender's record of helping to meet the mortgage credit needs of the Commonwealth, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the mortgage lender.

(4) Safe and sound operations. 209 CMR 54.00 does not require a mortgage lender to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the Commissioner anticipates mortgage lenders can meet the standards of this regulation with safe and sound loans, investments, and services on which the mortgage lender can expect to make a profit. Mortgage lenders are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit and are suitable for low- and moderate-income geographies or individuals, only if consistent with safe and sound operations

54.22: Lending Test

(1) Scope of test.

(a) The lending test evaluates a mortgage lender's record of helping to meet the mortgage credit needs of the Commonwealth through its lending activities by considering a mortgage lender's home mortgage and community development lending.
(b) The Commissioner considers originations and purchases of loans as reported by the mortgage lender under HMDA. The Commissioner will also consider any other loan data the mortgage lender may choose to provide.

(2) Performance Criteria. The Commissioner evaluates a mortgage lender's performance pursuant to the following criteria:

(a) Geographic distribution. The geographic distribution of the mortgage lender's home mortgage loans, based on the loan location, including:

1. the dispersion of lending in the Commonwealth and whether lending arbitrarily excludes low- and moderate-income geographies; and
2. the number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the Commonwealth;

(b) Borrower characteristics. The distribution, of the mortgage lender's home mortgage loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain in affordable housing in their neighborhoods at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers;

(c) Innovative or flexible lending practices. The mortgage lender's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes. The Commissioner shall also consider the availability of mortgage loan products that are suitable for such low- and moderate-income individuals;

(d) Fair lending. The mortgage lender's performance relative to fair lending policies and practices pursuant to written policies and directives issued by the Commissioner; and

(e) Loss of affordable housing. The mortgage lender's number and amount of loans that show an undue concentration and a systematic pattern of lending resulting in the loss of affordable housing units, including a pattern of early payment defaults.

(3) Third-party lending.

No mortgage lender may include a loan origination or loan purchase for consideration if another mortgage lender or depository institution claims the same loan origination or purchase under 209 CMR 54.00 or the state or federal Community Reinvestment Act.

(4) Lending performance rating. The Commissioner rates a mortgage lender's performance as provided in 209 CMR 54.61 (Ratings).

54.23: Service Test

(1) Scope of test. The service test evaluates a mortgage lender's record of helping to meet the mortgage credit needs in the Commonwealth by analyzing both the availability and effectiveness of a mortgage lender's systems for delivering mortgage loan products, the extent and innovativeness of its community development services, and loss mitigation

services to modify loans or otherwise keep delinquent home loan borrowers in their homes.

(2) Area(s) benefited. Community development services must benefit the Commonwealth or a broader regional area that includes the Commonwealth.

(3) Performance criteria -- mortgage lending services. The Commissioner evaluates the availability and effectiveness of a mortgage lender's systems for delivering mortgage lending services, pursuant to the following criteria:

(a) the availability and effectiveness of systems for delivering mortgage lending services (e.g., Internet, telephone solicitation, direct mail) in low- and moderate-income geographies and to low- and moderate-income individuals, including, to the extent applicable, the current distribution of the mortgage lender's branches among low-, moderate-, middle-, and upper-income geographies;
(b) efforts to work with delinquent home mortgage loan borrowers to facilitate a resolution of the delinquency, including the number of loan modifications, the timeliness of such modifications, and the extent to which such modifications are effective in preventing subsequent defaults or foreclosures; and
(c) the range of services provided in low-, moderate-, middle-, and upper- income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(4) Performance criteria -- community development services. The Commissioner evaluates community development services pursuant to the following criteria:

(a) the extent to which the mortgage lender provides community development services; and
(b) the innovativeness and responsiveness of community development services.

(5) Service performance rating. The Commissioner rates a mortgage lender's service performance as provided in 209 CMR 54.61 (Ratings).

54.24: Reserved

54.25: Assigned Ratings

(1) Ratings in general. Subject to 209 CMR 54.25(2) and (3), the Commissioner assigns to a mortgage lender a rating of "outstanding," "high satisfactory," "satisfactory," "needs to improve," or "substantial noncompliance" based on the mortgage lender's performance under the lending and service tests.

(2) Lending Test. No mortgage lender may receive an assigned overall rating of "satisfactory" or higher unless it receives a rating of at least "satisfactory" on the lending test.

(3) Effect of evidence of discriminatory or other illegal credit practices. Evidence of discriminatory or other illegal credit practices adversely affects the Commissioner's evaluation of mortgage lender's performance. In determining the effect on the mortgage lender's assigned rating, the Commissioner considers the nature and extent of the evidence, the policies and procedures that the mortgage lender has in place to prevent discriminatory or other illegal credit practices, any corrective action that the mortgage lender has taken or has committed to take, particularly voluntary corrective action resulting from self-assessment, the mortgage lender's compliance with written policies and directives with regard to fair lending, and other relevant information.

In connection with any type of lending activity described in 209 CMR 54.22, evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes but is not limited to: (i) Discrimination against applicants on a prohibited basis in violation, for example of the Equal Credit Opportunity Act or Fair Housing Act or M.G.L. chapter 151B; (ii) Violations of M.G.L. Chapter 183C, Predatory Home Loan Practices; (iii) Violations of section 5 of the Federal Trade Commission Act or M.G.L. c. 93A, including regulations of the Office of the Attorney General; (iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and (v) Violations of the provisions of M.G.L. Chapter 140D regarding a consumer's right of rescission or other violations of M.G.L. Chapter 140D and its implementing regulations 209 CMR 32.00.

54.26: Effect of MLCI Performance on Applications

(1) MLCI performance. Among other factors, the Commissioner takes into account the record of performance under the MLCI of each mortgage lender submitting applications for the following:

(a) renewal of a license to conduct business in the Commonwealth by all mortgage lenders;

(b) establishment or renewal of any branch by all mortgage lenders;

(c) any merger with or acquisition of a mortgage lender or mortgage broker by a mortgage lender or any other proposed change in control of a mortgage lender; and

(d) any other approval of the Commissioner, provided that there are no other countervailing financial safety and soundness or other policy considerations.

(2) Interested parties. In considering MLCI performance in applications described in 209 CMR 54.26(1), the Commissioner takes into account any views expressed by interested parties that are submitted.

(3) Denial, deferral, or conditional approval of application. A mortgage lender's record of performance may be the basis for denying, deferring, or conditioning approval of an application listed in 209 CMR 54.26(1).

54.41: Reserved

54.42: Data Collection and Reporting

(1) As part of its MLCI examination, the Commissioner shall require a mortgage lender to collect and report for examination purposes additional data fields beyond what is required under HMDA. The mortgage lender shall be expected to test its data collection and reporting, including its HMDA data, as part of its routine internal controls to ensure compliance with all data reporting requirements as well as its own policies and procedures.

(2) Optional data collection and maintenance.

At its option, a mortgage lender may provide other information concerning its lending performance, including additional loan distribution data.

54.43: Content and Availability of Public Information

(1) Information available to the public. A mortgage lender shall maintain the following information to be made available to the public upon request:

(a) all written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the mortgage lender's performance in helping to meet the mortgage credit needs of the Commonwealth, and any response to the comments by the mortgage lender, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the mortgage lender or publication of which would violate specific provisions of law;

(b) a copy of the public section of the mortgage lender's most recent MLCI Performance Evaluation prepared by the Commissioner; and

(c) a copy of the HMDA Disclosure Statement provided by the Federal Financial Institutions Examination Council pertaining to the mortgage lender for each of the prior two calendar years.

(2) Copies. Upon request, a mortgage lender shall provide within five business days of the request, copies, either on paper or in another form acceptable to the person making the request, of the information required under 209 CMR 54.43(1). The mortgage lender may charge a reasonable fee not to exceed the cost of copying and mailing, if applicable.

54.44 Reserved

54.45: Publication of Planned Examination Schedule

The Commissioner publishes at least 30 days in advance of the beginning of each calendar quarter a list of mortgage lenders scheduled for MLCI examinations in that quarter.

54.46: Alternative Examination Procedures

The Commissioner shall establish alternative examination procedures for mortgage lenders which were rated "outstanding" or "high satisfactory" as of their most recent MLCI evaluation. The purpose of such alternative procedures shall be to reduce the cost to mortgage lenders. The alternative procedures shall in no way limit public participation.

54.61: Ratings

(1) Ratings in general.

(a) In assigning a rating, the Commissioner evaluates a mortgage lender's performance under the applicable performance criteria in 209 CMR 54.00, in accordance with 209 CMR 54.21, and 209 CMR 54.25, which provides for adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(b) A mortgage lender's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The mortgage lender's overall performance, however, must be consistent with safe and sound lending practices and generally with the appropriate rating profile as follows.

(2) Mortgage lenders evaluated under the lending and service tests.

(a) Lending performance rating. The Commissioner assigns each mortgage lender's lending performance one of the five following ratings.

1. Outstanding. The Commissioner rates a mortgage lender's performance "outstanding" if, in general, it demonstrates:

a. An excellent geographic distribution of loans in the Commonwealth;
b. An excellent distribution of loans among individuals of different income levels, given the product lines offered by the mortgage lender;
c. An excellent record of serving the mortgage credit needs of highly economically disadvantaged areas in the Commonwealth and low-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain in affordable housing in their neighborhoods at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers, consistent with safe and sound operations;

d. Extensive use of innovative or flexible lending practices in a safe and sound manner to address the mortgage credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes;
e. Mortgage products demonstrate an excellent suitability for low- and moderate-income individuals;
f. There is no evidence of loans that show an undue concentration and a systematic pattern of lending, including early payment defaults, resulting in the loss of affordable housing units; and
g. An excellent record relative to fair lending policies and practices.

2. High satisfactory. The Commissioner rates a mortgage lender's performance "high satisfactory" if, in general, it demonstrates:

a. A good geographic distribution of loans in the Commonwealth;
b. A good distribution of loans among individuals of different income levels given the product lines offered by the mortgage lender;
c. A good record of serving the mortgage credit needs of highly economically disadvantaged areas in the Commonwealth and low-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain in affordable housing in their neighborhoods at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers consistent with safe and sound operations;
d. Use of innovative or flexible lending practices in a safe and sound manner to address the mortgage credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes;
e. Mortgage products demonstrate a good suitability for low- and moderate-income individuals;
f. There is no evidence of loans that show an undue concentration and a systematic pattern of lending, including early payment defaults, resulting in the loss of affordable housing units; and
g. A good record relative to fair lending policies and practices.

3. Satisfactory. The Commissioner rates a mortgage lender's performance "satisfactory" if, in general, it demonstrates:

a. An adequate geographic distribution of loans in the Commonwealth;
b. An adequate distribution of loans among individuals of different income levels, given the product lines offered by the mortgage lender;
c. An adequate record of serving the mortgage credit needs of highly economically disadvantaged areas in the Commonwealth and low-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain affordable housing in their

neighborhoods at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers consistent with safe and sound operations;

d. Limited use of innovative or flexible lending practices in a safe and sound manner to address the mortgage credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes;

e. Mortgage products demonstrate an adequate suitability for low- and moderate-income individuals;

f. There is no evidence of loans that show an undue concentration and a systematic pattern of lending, including early payment defaults, resulting in the loss of affordable housing units; and

g. An adequate record relative to fair lending policies and practices.

4. Needs to improve. The Commissioner rates a mortgage lender's performance "needs to improve" if, in general, it demonstrates:

a. A poor geographic distribution of loans, particularly to low- and moderate-income geographies, in the Commonwealth;

b. A poor distribution of loans among individuals of different income levels, given the product lines offered by the mortgage lender;

c. A poor record of serving the mortgage credit needs of highly economically disadvantaged areas in the Commonwealth and low-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain in affordable housing in their neighborhoods at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers consistent with safe and sound operations;

d. Little use of innovative or flexible lending practices in a safe and sound manner to address the mortgage credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes;

e. Mortgage products demonstrate a poor suitability for low- and moderate-income individuals;

f There is possible evidence of loans that show an undue concentration and a systematic pattern of lending, including early payment defaults, resulting in the loss of affordable housing units; and

g. A poor record relative to fair lending policies and practices.

5. Substantial noncompliance. The Commissioner rates a mortgage lender's performance as being in "substantial noncompliance" if, in general, it demonstrates:

a. A very poor geographic distribution of loans, particularly to low- and moderate-income geographies, in the Commonwealth;

b. A very poor distribution of loans among individuals of different income levels given the product lines offered by the mortgage lender;
c. A very poor record of serving the mortgage credit needs of highly economically disadvantaged areas in the Commonwealth and low-income individuals, including loans to assist existing low- and moderate-income residents to be able to acquire or remain in affordable housing in their neighborhoods, at rates and terms that are reasonable considering the mortgage lender's history with similarly situated borrowers consistent with safe and sound operations;
d. No use of innovative or flexible lending practices in a safe and sound manner to address the mortgage credit needs of low- and moderate-income individuals or geographies, including loans and other products to assist delinquent home mortgage borrowers to be able to remain in their homes;
e. Mortgage products are unsuitable for low- and moderate-income individuals;
f. Origination of loans that show an undue concentration and a systematic pattern of lending, including early payment defaults, resulting in the loss of affordable housing units; and
g A very poor record relative to fair lending policies and practices.

(b) Service performance rating. The Commissioner assigns each mortgage lender's service performance one of the five following ratings.

1. Outstanding. The Commissioner rates a mortgage lender's service performance "outstanding" if, in general, the mortgage lender demonstrates:

a. Its service delivery systems are readily accessible to geographies and individuals of different income levels in the Commonwealth;
b. To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- and moderate-income geographies or to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) are tailored to the convenience and needs of the Commonwealth, particularly low- and moderate-income geographies or low- and moderate-income individuals;
d. It plays a leadership role in working with delinquent mortgage loan borrowers to facilitate a successful resolution of the delinquency, including a substantial number of loan modifications in a timely manner and which are effective in preventing subsequent defaults or foreclosures; and
e. It is a leader in providing community development services.

2. High satisfactory. The Commissioner rates a mortgage lender's service performance "high satisfactory" if, in general, the mortgage lender demonstrates:

a. Its service delivery systems are accessible to geographies and individuals of different income levels in the Commonwealth;
b. To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences geographies or individuals, particularly low- and moderate-income geographies and low- and moderate-income individuals;
d. Its efforts are substantial in working with delinquent mortgage loan borrowers to facilitate a successful resolution of the delinquency, including frequent and swift loan modifications which are effective in preventing subsequent defaults or foreclosures; and
e. It provides a relatively high level of community development services.

3. Satisfactory The Commissioner rates a mortgage lender's service performance "satisfactory" if, in general, the mortgage lender demonstrates:

a. Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in the Commonwealth;
b. To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) do not vary in a way that inconveniences geographies or individuals, particularly low- and moderate-income geographies and low- and moderate-income individuals;
d. Its efforts are adequate in working with delinquent mortgage loan borrowers to facilitate a successful resolution of the delinquency, including an adequate number of loan modifications completed in a prompt manner and which are effective in preventing subsequent defaults or foreclosures; and
e. It provides an adequate level of community development services.

4. Needs to improve. The Commissioner rates a mortgage lender's service performance "needs to improve" if, in general, the mortgage lender demonstrates:

a. Its service delivery systems are unreasonably inaccessible to portions of the Commonwealth, particularly to low- and moderate-income geographies or to low- and moderate-income individuals;
b. To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility of its delivery

systems, particularly in low- and moderate-income geographies or to low- and moderate- income individuals;
c. Its services (including, where appropriate, business hours) vary in a way that inconveniences geographies or individuals, particularly low- and moderate-income geographies or low- and moderate-income individuals;
d. Its efforts are poor in working with delinquent mortgage loan borrowers to facilitate a successful resolution of the delinquency, including slow responses to requests for modification with few loan modifications completed or for which modifications are not effective in preventing subsequent defaults or foreclosures; and
e. It provides a limited level of community development services.

5. Substantial noncompliance. The Commissioner rates a mortgage lender's service performance as being in "substantial noncompliance" if, in general, the mortgage lender demonstrates:

a. Its service delivery systems are unreasonably inaccessible to significant portions of the Commonwealth, particularly to low- and moderate-income geographies or to low- and moderate-income individuals;
b. To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies or to low- and moderate-income individuals;
c. Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences geographies or individuals, particularly low- and moderate-income geographies or low- and moderate-income individuals;
d. It fails to work with delinquent mortgage loan borrowers to facilitate a successful resolution of the delinquency, including no response to requests for loan modifications or modifications which are ineffective in preventing subsequent defaults or foreclosures; and
e. It provides few, if any, community development services.

(c) Other eligible criteria for a high satisfactory or an outstanding rating. A mortgage lender that achieves at least a "satisfactory" rating under both the lending and service tests may warrant consideration for an overall rating of "high satisfactory" or "outstanding." In assessing whether a mortgage lender's performance is "high satisfactory" or "outstanding," the Commissioner will also consider the mortgage lender's performance in making qualified investments and community development loans to the extent authorized under law.

REGULATORY AUTHORITY

209 CMR 54.00: M.G.L. c.255E, s.8.

Exhibit C

The Commonwealth of Massachusetts

DIVISION OF BANKS

Regulatory Bulletin 2.3-102

January 15, 1998

CRA Ratings Policy

I. APPLICABILITY AND SCOPE

The purpose of this bulletin is to elaborate on the methodology to be used by the Division of Banks (Division) when assigning ratings on the lending, service, and investment tests as part of the Community Reinvestment Act (CRA) examination for both banks and credit unions In addition, this policy describes the number of points needed to achieve each of the five descriptive CRA ratings: Outstanding, High Satisfactory, Satisfactory, Needs to Improve, and Substantial Noncompliance.

II. COMPONENT TEST RATINGS

A. Bank Component Test Ratings

The following matrix sets forth the methodology for aggregating a bank's scores on the lending, service, and investment tests to arrive at an assigned rating. The number of points to be given for each rating on the lending, service, and investment tests is as follows:

Component Test Ratings	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

B. Credit Union Component Test Ratings

The following matrix sets forth the methodology for aggregating a credit union's scores on the lending and service tests to arrive at an assigned rating. The number of points to be given for each rating on the lending and service tests is as follows:

Component Test Ratings	Lending	Service
Outstanding	15	9
High Satisfactory	11	6
Satisfactory	8	4
Needs to Improve	4	1
Substantial Noncompliance	0	0

III. COMPOSITE RATINGS

The number of points needed for institutions to achieve each of the five composite assigned ratings is shown below:

Points	Composite Assigned Rating
20 or over	Outstanding
17 through 19	High Satisfactory
11 through 16	Satisfactory
5 through 10	Needs to Improve
0 through 4	Substantial Noncompliance

III. HISTORICAL NOTES

This bulletin replaces former Administrative Bulletin 5-11 issued on July 1, 1997. No substantive changes were made to this bulletin.

IV. AUTHORITY

G.L. c. 167, s. 14; 209 CMR 46.00.

Statement

of

Judith A. Kennedy

On Behalf of the
National Association of Affordable Housing Lenders
on
Proposals to Enhance the Community Reinvestment Act

House Committee on Financial Services
U.S. House of Representatives

September 16, 2009

®

CELEBRATING 30 YEARS OF SUCCESSFUL COMMUNITY INVESTMENT

INTRODUCTION

My name is Judith A. Kennedy and I am the President and CEO of the National Association of Affordable Housing Lenders. In preparing for the hearing, I kept thinking of Senator Ted Kennedy's moving tribute to CRA three years ago at a memorial service for Senator William Proxmire.

Senator Kennedy eulogized Senator Proxmire as "another profile in courage", and I expected him to describe the long crusade for the United States to adopt the genocide treaty, most often mentioned as Senator Proxmire's signature achievement. But before discussing that treaty, Senator Kennedy paid tribute first to Senator Proxmire's Banking Committee work, saying that

> *"And nearly 30 years after he passed it, his Community Reinvestment Act has produced literally hundreds of billions of dollars worth of private sector investment in our nation's urban and rural communities. How many others can lay claim to such an accomplishment? He made America a better place with CRA."*

NAAHL represents America's leaders in moving those hundreds of billions in private capital to those in need: 100 organizations committed to increasing lending and investing private capital in low and moderate income (LMI) communities. This "who's who" of private sector lenders and investors includes major banks, blue-chip, non-profit lender CDFIs, and others in the vanguard of affordable housing.

NAAHL's mission is to increase responsible, private capital lending and investing to low (under 50% of area median) and moderate (under 80%) income persons and areas. Over the past decade we have worked to thwart attempts to gut CRA, in our belief that CRA has provided incentives for insured depository institutions to increase access to LMI persons and areas, consistent with the institutions' "safety and soundness". For nearly a decade, we have also worked to revitalize CRA through an updating of a very complex and prescriptive regulatory regime, most of which is now nearly 15 years old and does not reflect what we have learned and evolving best practices. NAAHL has also fought repeatedly to restore CRA's good name, prevent overburdening CRA by expanding it to new purposes, and preserve its focus on meeting Community Development credit needs.

The unprecedented private-public partnership fostered by CRA has evolved and matured over the past 30 years. For-profit and non-profit lenders and investors, developers, community leaders, and government at all levels, have all learned to collaborate as partners in devising new solutions and creative strategies for financing affordable housing and other Community Development (CD) activities.

As policymakers consider proposals to enhance the Community Reinvestment Act, NAAHL recommends two simple principles to guide the process.

- *First, and most important, address the weaknesses in the current regulatory structure that discourage bank participation in important Community Development work that benefits LMI communities, and restore meaningful regulatory incentives for high impact activities that reflect contemporary best practices The rules and the process are ripe for change.*

- *Second, do no harm. For more than 30 years CRA has encouraged insured depositories to help meet the credit needs of their communities. Any changes to the law should be carefully considered, practical to implement, and incentivize lenders to engage in high-impact activities that fall outside of their normal course of business.*

Based on our three decades of experience, NAAHL practitioners are delighted to answer your questions to witnesses about how to update CRA and the law's successes and current challenges in helping to meet the credit, economic and Community Development needs of their communities. Thank you for soliciting our input.

Committee Question 1:
Please discuss what role that CRA has played in increasing access to credit, investments, and services in previously underserved communities, as well as how the Act could encourage more CRA-related economic activities in more communities.

SUCCESSFUL COMMUNITY INVESTMENT

- **CRA is a success story in emerging markets and a very big business**. The magnitude of real estate investment from CRA is not well known: banks have invested nearly $100 billion dollars in Low Income Housing Tax Credits (LIHTCs) alone over the past twenty years, and another $30 billion dollars in New Markets Tax Credits in just eight years. In addition, CRA annually funnels another $400 billion dollars in loans and investments to LMI households and communities, financing affordable rental housing, home purchases, charter schools, daycare facilities, and small business and microenterprise loans.

- CRA has created **a cadre of bankers who now recognize the good business potential of lending in underserved areas, on fair terms.**

- CRA has been, and will continue to be, **critical to the preservation and expansion of rental housing affordable to LMI communities, encouraging more than $50 billion annually** in each of the past 5 years in reported private capital lending and investing in affordable rental housing. CD loans and investments also support critically needed urban revitalization, rural development, job creation, and other emerging local needs. They do so in a manner that is not only beneficial to the communities served, but also ensures their profitability, safety and soundness to the banks, often through multi-investor funds that pool banks' funds and diversify their risks.

The following are just a few examples of the little known but very successful work our members do.

- Over the past decade, the **Alabama Multifamily Loan Consortium (AMLC)** has originated more than $75 million in mortgages financing over 4,000 affordable apartments across the state, all at or below 50 percent of median income. For example, in the Birmingham area, AMLC originated loans for the New Haven complex, an elderly 56-unit property in Pratt City, and a new complex under construction, the 56-unit South Hills in Pell City.

- Over the past 17 years, the **California Community Reinvestment Corporation (CCRC)** has provided more than $856 million in affordable housing loans and made 26,000 apartments available to residents who earn 60 percent or less of area median income (AMI), including preserving the "Curtis Johnson Homes" in Los Angeles, where some residents continue to pay as little as $25 per month in rent.

- In 2008, during California's delay in approving its state budget, the **Low Income Investment Fund (LIIF)**, in partnership with San Francisco and Alameda County, provided emergency repayable grants (bridge loans) of over $2.5 million to support the continued operations of child care centers for low income families. But for LIIF's funds, parents would have had to scramble to find alternatives for child care so that they could go to work. All loans to the centers were repaid, 2,600 children received care, and some 300 center jobs were saved. CRA directly enables CDFIs like LIIF to leverage scarce funds and to develop innovative products and strategies to serve disadvantaged communities.

- The Community Investment Corporation of the Carolinas (CICCAR) which began accepting applications in 1991, has financed $158 million for 189 affordable housing developments, producing 8,800 units of low income housing. Those developments are located throughout the Carolinas, financing mostly housing with allocations of LIHTCs, and all were new construction or substantially rehabilitated multifamily, senior, or special needs housing developments.

- A recent survey of our nonprofit lender members found that they currently hold more than $1.5 billion of seasoned multifamily loans.

How the Act Could Encourage More CRA-related Economic Activities in More Communities

- **Since 2001 NAAHL has highlighted the importance of applying the same rules, oversight, and transparency to all of the key participants in the mortgage market.** Some estimate that CRA-regulated depository institutions share of household assets and consumer loans has fallen as much as 40% over the last 30 years. The Federal Reserve has documented that only 6% of higher priced loans in 2006 were made by CRA-covered institutions or their affiliates to lower income persons or neighborhoods in their assessment areas, and only 10% of all loans were CRA-related.

Leveling the regulatory playing field is key to addressing the dual mortgage market problem. Expanding the affirmative obligation of CRA, safety and soundness supervision, and enforcement of consumer protection laws to all primary and secondary market lenders, would also increase the number of participants involved in community investment, lending, and philanthropy.

- **Deferred maintenance in updating the regulations and a very granular approach to examination by some has chilled bank investment in Community Development, and in disaster areas such as the GO Zone. For one example, some exams have undermined the long-established principle that investments in statewide and regional funds receive full CRA credit.** Exams are discounting banks' investments in multi-investor funds when the affordable housing financed by the fund is outside a bank's own assessment areas. This has undermined forty years of successful investment in multi-bank funds that offer banks the opportunity to do jointly what they lack capacity to do separately to meet emerging local needs: pool their funds, diversify their risks, and hire the appropriate skill set for underwriting, originating, and servicing 30 year fixed rate multifamily mortgages on LIHTC affordable rental housing. The dozens of banks in the state financing LIHTC rental housing do not decide where the properties will be located in any given year; those decisions are made by the state's housing finance agency, using locally determined criteria (e.g., priority for places which have never had allocations).

Committee Question 2:
Are the current examination criteria sufficient to ensure that institutions are adequately meeting the lending, investment and service needs of the communities they serve? Please provide recommendations, if any, for improving the CRA examination process.

UPDATING CRA REGULATIONS
The rules and the exam process are ripe for change.

- **Outdated regulations emphasize quantity over quality and actually discourage large bank participation in important Community Development work that benefits LMI communities.** While the CRA law is simple and brief (see attached), hundreds of pages of complex CRA regulations and accompanying "guidance" put a straight jacket on large banks, tying them up in trying to justify activities meeting emerging local needs that are not specifically enumerated in outdated regulations and performance tables.

- **The current unpredictability of "what counts", has stymied innovation and responsiveness to contemporary LMI credit needs.**

- **Regulators need to adjust the regulations and examination process to encourage banks' responsiveness to local needs rather than making measurement easier for examiners.** Examiners should be trained in community and economic development, so that they understand and appropriately value high cost/high impact activities that meet local needs.

Key Policy Recommendations

- Reward high-impact, innovative, high-quality, often costly Community Development lending, services and investments that respond to a local government/community's needs assessment.

- Ensure that the regulations are sufficiently flexible to align with emerging community needs, local policies, new markets, and financial instruments.

- Eliminate unrealistic bank "benchmarks" that have contributed to some market distortions by requiring specific market shares regardless of profitability or responsiveness to community needs.

- Provide meaningful incentives for an Outstanding rating.

- Reform regulatory techniques for evaluating performance. Increasing emphasis on the quantitative versus the qualitative impacts of Community Reinvestment Act (CRA) activities has discouraged risk-taking and innovation, and undercuts support for Community Development Financial Institutions (CDFIs). Provide more flexibility to encourage banks and others with affirmative obligations to reach deeply into underserved areas.

As other opinion leaders have noted:
From "*Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act", Federal Reserve, February 2009:*

- ***Roberto Quercia/Janneke Ratcliffe:*** *Fine-tune the measurements to remain in step with shifting markets.*

- ***Gene Ludwig:*** *Enhance the professionalism of supervision*

Committee Question 3:
Please describe the adequacy of the enforcement mechanism for CRA compliance. What specific changes should be made to improve the regulatory enforcement of CRA?

Make CRA less complicated and more effective. As former OTS Director Ellen Seidman testified in February, 2008

"CRA has become a complex regulatory regime, especially with respect to the service and investment tests. The question of 'what counts' is the subject of endless, and frequently frustratingly unpredictable, discussion, debate and guesswork. Regulatory enhancements are an extremely long process (the most recent started in 2001 and ended in 2007), and development of the questions and answers that provide a practical gloss on the regulations can take almost as long. Moreover, the complexity focuses largely on inputs (e.g., how many branches, how many loans) rather that outcomes (e.g., how many lower-income people served) or—admittedly more difficult—impacts (e.g., how have their lives been improved). The "bean counting" feature of the lending test, especially for residential loans, has resulted not only in excessive focus on home loans, but also on a press for quantity with limited (and only recent) attention paid to quality... for lasting impact over a broad range of issues in an industry that changes quickly, a basic statutory scheme that is broadly directive but now overly prescriptive is preferred."

Committee Question 4:
Please explain what kinds of reforms would enable financial institutions to participate, to a greater degree than currently, in high impact economic development activities in low- and moderate-income areas?

- **As described in our answers above, the rules need to be revised to provide more consideration to the qualitative impact of CRA activities, especially those supporting Community Development.** The 1995 CRA regulation emphasizing quantity rather than quality has been unproductive. "Community Development lending" gets very little CRA credit despite its high cost and significant impact. For example, multifamily mortgages on multi-subsidized properties affordable to LMI households, charter schools and child care and health facilities are treated as just "icing on the cake" despite their high cost and significant impact.

  In partnership with the late Federal Reserve Governor Ned Gramlich, NAAHL tried to update the rules in 2002 to give Community Development loans meaningful CRA credit. The agencies fixed the weighting problem, but only for "intermediate small institutions." As Mark Willis, now at the Ford foundation and a former banker and city housing director, recently put it, the 1995 rewrite of the CRA regulations "steered the CRA toward rewarding dollar and unit volumes rather than focusing on rewarding those deals that do the most to strengthen and revitalize communities ... many of the measures chosen to measure performance were fatally flawed."

- **Banks' investments in Letters of Credit that take the top loss risk on local public agencies' bonds financing LMI housing should be credited for the amount of the risk.** This innovative bank financing, in pioneering cities like New York, lowers the rate at which the agencies can borrow, allowing them to do more development or preservation of affordable units.

- **Liquidity for performing, seasoned, multifamily mortgages on affordable rental property requires reforms in other Federal supports.** Banks have been steadfast in their CRA commitments to CDFI lenders with strong track records and are some of the few investors left for LIHTCs.

  But recycling precious capital into additional affordable rental housing still lacks Federal support. The Federal Housing Finance Agency (FHFA) stated in its final 2009 rule on Fannie Mae and Freddie Mac's affordable housing goals that it "expects each Enterprise to actively purchase CRA-related multifamily loans from portfolio lenders, among other venues, in meeting the special affordable multifamily housing sub goal" but there has been no evidence that they will do so.

  FHFA should finalize the Housing Economic Recovery Act (HERA) provisions establishing, for the first time, affordable housing goals for the Federal Home Loan Banks (FHLBs), and permit CDFIs to borrow directly from the FHLBs with reasonable collateral requirements. FHFA has made clear its intent to issue the final rule permitting non-depository CDFIs membership in the FHLB system early in the fourth quarter of 2009, and said that "in general, the proposed rule was well-received." But given the liquidity crisis and the fact that the rule was well-received, FHFA should act sooner rather than later.

Committee Question 5:
Have changes in the structure of the financial services industry reduced the effectiveness of CRA? How could expanding CRA to additional financial service providers improve the intent of the law? How specifically would CRA-like responsibilities work in new areas, if they were covered?

Leveling the playing field for all mortgage lenders with licensing, compliance exams, and public availability of loan data, accompanied by affirmative obligations to meet LMI credit needs, as Massachusetts has done, requires legislation but would greatly support responsible community investment.

- **For more than 30 years CRA has encouraged insured depositories to help meet the credit needs of their communities.** It is important to maintain the focus of CRA on LMI borrowers and neighborhoods in local markets where financial institutions have a physical presence and staff. Broadening CRA's objectives to address a wide range of social and economic problems, and expanding the geographic reach beyond where banks can effectively engage in CRA activities risks diluting the positive impacts of the law for Community Development.

- As former Harvard Professor Bill Apgar pointed out, "as a result of the dramatic restructuring of the mortgage market over the past quarter century today the largest share of mortgage capital flows through a wide range of unsupervised or only marginally supervised entities." This alternative network of mortgage originators was not subject to the same CRA, fair lending, and safety and soundness supervision and enforcement as insured depositories, and so a dual mortgage market developed that allowed the unregulated to prey on consumers.

- Recent changes in the financial services industry include the appearance of banks with little customer interface, such as Goldman Sachs and Morgan Stanley, and Internet banks, and also Industrial Loan Corporations (ILCs).

  Treating these banks like wholesale bank charters that permit them to have nationwide assessment areas would expand support for rural areas and regional and national funds.

Committee Question 6:
Please discuss whether federal banking regulators are properly taking into consideration an institution's compliance with fair lending laws in determining the institutions' CRA rating.

Closing the compliance gaps for nonbanks should be a priority to bring more scrutiny and visibility to their practices. Banks are regularly examined for their compliance with fair lending and other consumer protection laws, so agencies have a record of a bank's compliance with these laws when a regulator conducts a CRA evaluation. Mandatory inclusion in the CRA Public Evaluation of a negative finding by examiners resulting in a downgrade in CRA rating is available from a scan of CRA ratings (specifically downgraded ratings) and listings of major factors that support the assigned rating, listed in CRA Performance Evaluations.

Committee Question 7:
Please describe, in detail, other factors that may reduce the effectiveness of CRA.
The factors are described above.

Committee Question 8:
What other changes should be made to the CRA statute, regulations, guidance or compliance examination to improve the effectiveness of CRA and/or reduce regulatory burden associated with compliance?

Meaningful incentives for Outstanding performance in CRA would also help to restore innovative, high impact activity by banks. States are experimenting with tax incentives for opening branches in underserved areas. New York and Louisiana lawmakers have passed legislation that directs state government deposits to insured depository institutions that open branches in underserved communities. Other incentives for Outstanding ratings would include: 1) a safe harbor for the next application following the rating; 2) reduced FDIC insurance premiums; 3) longer periods between exams.

CRA is, by definition, local; it requires banks to meet their community's needs. Greater emphasis on Community Development lending requires bringing qualitative judgment, and serious consideration of the performance context in which the bank operates, back into the rating process. The alternative is a burdensome "numbers' game" that undervalues important CD work that banks do to allow credit to flow to communities that would otherwise be underserved, and is a particular challenge for large national banks that have hundreds of assessment areas.

The lack of predictability about what counts for CRA credit is a deterrent to lending and investing in emerging markets More training for bank examiners about the nature of Community Development lending and investment would help banks and thrifts better achieve the policy goals set forth in Federal Legislation. Community Development lending and investment is quite specialized, more like an art than science. Banks should be given the benefit of the doubt, not the third degree.

- Multifamily Community Development loan originations and loan purchases, as well as CD investments (such as for Low Income Housing Tax Credits) in the statewide or regional areas where a bank has any assessment area;
- Letters of Credit taking the top loss on local public agency bonds; and
- Community Development loans to CDFIs.

The liquidity crisis in affordable rental housing is so severe that **Congress should consider enacting NAAHL's longstanding recommendation for a Federal insurance program modeled on the state of New York's mortgage assurance corporation (SONYMA).** This major tool helps to provide permanent financing for the development of affordable housing in New York. SONYMA insurance has enabled sales to Freddie Mac and Fannie Mae. A Federal mortgage insurance program could enable Community Development lenders to replenish their loan funds, providing for greater amounts of affordable rental housing.

CONCLUSION

CRA's track record in lending and equity investing can be seen in more and more communities, from Birmingham to Los Angeles, and in our own metro area in the Columbia Heights redevelopment, Anacostia's resurgence, and even the expansion of Alexandria's St. Coletta school, one of only a handful of charter schools in the country serving students with autism and multiple disabilities. Given the current crisis in the financial markets, updating the CRA regulations to enable banks to do more of that important work is long overdue.

We agree with Mark Willis, who says:

> *"The brilliance of CRA was its brevity and simplicity. It requires affirmative outreach to communities and left the details to regulators and to interactions between banks and community groups. While this approach left room for innovation, it also expanded expectations beyond what CRA alone could accomplish. To be truly effective going forward, CRA needs more focus on community development; its regulations need more latitude with clear but flexible criteria, and laws that complement CRA should be strengthened."*

Testimony of Ellen Siedman
Director, Financial Services and Education Project, New America Foundation
Before the Committee on Financial Services, United States House of Representatives
February 13, 2008

In 1977, concerned about the denial of credit to lower income communities—both minority and white—Congress enacted the Community Reinvestment Act (CRA). CRA states that "regulated financial institutions have [a] continuing and affirmative obligation to help meet the credit needs of local communities in which they are charted." The statue goes on to require that federal bank regulators both "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of such an institution" and "take such record into account in its evaluation of an application for a deposit facility by such institution."[3] Institutions are given one of four ratings, from Outstanding to Substantial Noncompliance, and examination reports (called Public Evaluations) are made public.

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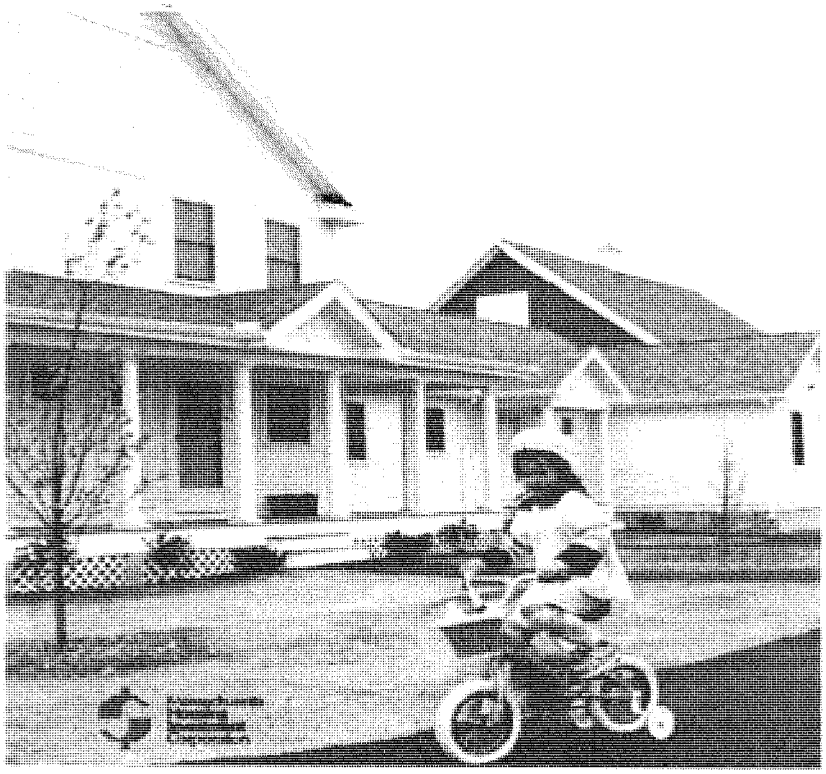
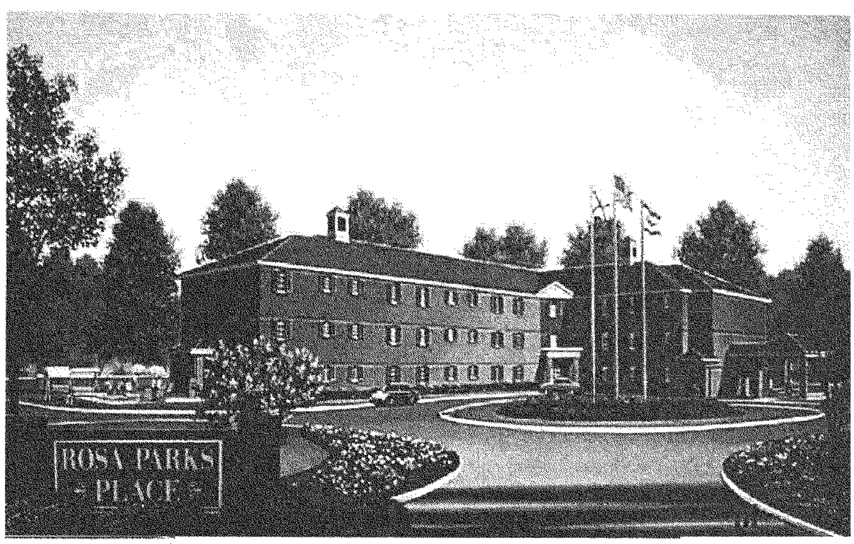
[3] 12 USC 2901





Alabama Multifamily Loan Consortium

National Urban League | *Empowering Communities. Changing Lives.*

TESTIMONY OF
MARC H. MORIAL
PRESIDENT AND CEO
NATIONAL URBAN LEAGUE
BEFORE FOR THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
WEDNESDAY, SEPTEMBER 16, 2009
"PROPOSALS TO ENHANCE THE COMMUNITY REINVESTMENT ACT"

Mr. Chairman, Ranking Member Bachus, thank you for the opportunity to testify today on the Community Reinvestment Act (CRA). I am Marc Morial, President and CEO of the National Urban League. Established in 1910, the National Urban League is heading next year into its centennial celebration as the nation's oldest and largest civil rights and direct services organization serving 2 million people each year in over 100 urban communities.

Economic Empowerment – assisting our constituents in attaining economic self-sufficiency through job training, good jobs, homeownership, entrepreneurship and wealth accumulation – leads the National Urban League's five-pronged strategy to advance the mission of the Urban League Movement and is imperative to closing the "wealth chasm" between African Americans and white Americans. According to our 2009 *State of Black America Report*: nationally, the typical African-American family today possesses less than 10 percent of the net worth of the average white family; almost 30 percent of black families have zero or negative net worth; and far fewer blacks than whites benefit from inherited wealth or assets. [1]

Today's hearing on enhancing, and in our minds, expanding the Community Reinvestment Act, 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.

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[1] "Wealth for Life," by Early G. Graves, Jr., *Black Enterprise Magazine*, in *The State of Black American 2009*, National Urban League, pp 165-170, 2009

Mr. Chairman, last Saturday's (9/12/09) article in the *New York Times* titled "A Year After a Cataclysm, Little Change on Wall St." should give everyone grave concern that if we do not pursue key reforms in our financial services system we are doomed to repeat and perhaps this time fail to recover from the financial abyss that we came so close to falling into. As you know, we are not out of the woods yet as we continue to grapple with the home foreclosure crisis and its related economic impact, as well as high unemployment rates:

- According to Realty Trac, foreclosure activity remained near record level in August (2009). They reported that foreclosure filings — default notices, scheduled auctions and bank repossessions — were reported on 358,471 U.S. properties during the month, a decrease of less than 1 percent from the previous month but still an increase of nearly 18 percent from August 2008. The report also shows one in every 357 U.S. housing units received a foreclosure filing in August. [2]

- In August (2009) the unemployment rate rose to 9.7%, with the black unemployment rate at a whopping 15.1%; adult black men saw their unemployment rate increase significantly from 15.8% to 17%, and adult black women saw an increase from 11.7% to 11.9%. [3]

The Administration and the 111th Congress took vital and necessary steps to stop the economic hemorrhage earlier this year when it justly enacted the nearly $800 billion economic stimulus package. The National Urban League strongly supported these efforts and provided its recommendations for such a package. We must now simultaneously adopt those strategies and reforms that will restore the American dream of homeownership as the strategy by which most Americans are able to build wealth.

We must also adopt strategies that will bolster small and minority owned businesses as key engines of job creation. We know from research that black-owned businesses generate on average one job for every $87,000 in revenue (the average black-owned firm employed eight

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[2] "Foreclosure Activity Remains Near Record Level in August," by RealtyTrac Staff, September 10, 2009.

[3] "August 2009 Monthly Employment Report," National Urban League Policy Institute, September 4, 2009.

people with average revenue of $696,158). [4] We also know that minorities disproportionately enter the workforce through self-employment or employment by minority-owned businesses. [5] Therefore access to bank lending is key to minority business development and minority employment. Yet, according to the National Urban League's *Opportunity Compact*, although banks are the most often used credit source for small firms in general, minority firm owners are less likely to have bank loans of any kind. [6] Research has also found that African American and Latino firm owners face significantly greater loan denial probabilities than white male firm owners and are often charged higher interest rates.[7]

The National Urban League strongly believes that enhancing, expanding, and fully enforcing the Community Reinvestment Act is just such a strategy that is long overdue. We have joined the National Community Reinvestment Coalition (NCRC) and other advocacy groups who have closely followed this issue in support of modernizing the CRA and jointly agree that the "CRA is one of the most important laws for building wealth and revitalizing neighborhoods."[8]

The National Urban League is a longstanding supporter and defender of the CRA given its special importance to low –and moderate-income (LMI) communities and communities of color.

The federal Community Reinvestment Act, passed in 1977 and strengthened in 1995, affirmatively obligates banks to serve the communities from which they take deposits, including low and moderate income communities, consistent with safe and sound lending practices. Whether or not banks are meeting their CRA obligations is determined by federal and state regulators during periodic CRA exams and during a merger or acquisition. Communities have the opportunity to comment on how well banks have met the needs of the community during these exams or the merger process. A number of our Urban League affiliates participate in annual CRA reviews where they are typically interviewed by

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[4] "Make Room for the New 'She' Eos: An Analysis of Businesses Owned By Black Females," by Lucy J. Reuben, Ph.D., in *The State of Black America 2008*, National Urban League, pp 115-124

[5] *The State of Minority Business Enterprises. An Overview of the 2002 Survey of Business Owners*, Minority Business Development Agency, U.S. Department of Commerce.

[6] *The Opportunity Compact, Blueprint for Economic Equality,* National Urban League Policy Institute, pp. 24-25, updated July 2009.

[7] Ibid.

[8] "The Community Reinvestment Act (CRA) Sign-On Statement in Support of CRA Modernization," National Community Reinvestment Coalition (NCRC), Washington, DC, www ncrc.org

their State Banking Departments and other local regulators. They submit written remarks on the efficacy of local bank lending and provide insights into ways to engage banks more deeply in the community re(investment) dialogue.

CRA and the Subprime Crisis: Disarming the Weapons of Mass Deception

In the wake of the subprime meltdown, some politicians and commentators were perpetuating a dangerous myth: that minority and low-income borrowers and measures to expand their opportunities for homeownership, such as the CRA, were responsible for the subprime crisis. [9] However, a number of recent reports and studies have debunked these attacks on the CRA.[10]

Intuitively, the National Urban League and other advocates from across the country knew that CRA's affirmative obligation to serve low and moderate income communities was not the cause of the foreclosure crisis. Still, pundits and politicians were looking for scapegoats on which to blame the crisis, and CRA was one.

Through our analysis and long-standing advocacy for clients at risk of foreclosure, the NUL has seen the rise of abusive subprime loans and exotic mortgages that have fueled the predatory lending and foreclosure crises that legal services advocates have been trying to address these past several years.

Our analysis indicates that the Community Reinvestment Act has been effective in ensuring access to fairly priced credit for low- and moderate-income borrowers and communities as lenders covered by the CRA are far less likely to make higher-cost loans than lenders not covered by the CRA.

Strengthening the Community Reinvestment Act

Our findings also shed some light on certain weaknesses in the CRA. **One key weakness is that the CRA does not currently examine an institution's lending based on race or ethnicity of borrowers or**

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[9] "The Subprime Meltdown: Disarming the 'Weapons of Mass Deception," by Stephanie J. Jones, J.D., in *The State of Black America 2009*, National Urban League, p. 157, see Note 1, 2009.
[10] See extensive research reports cited in "Resource Toolbox," by the National Community Reinvestment Coalition (NCRC), http://www.ncrc.org/index.php?option=com_content&task=view&id=439&Itemid=194

communities, even though a substantial proportion of the lending in communities of color is higher-cost. Another key weakness is that CRA is too limited in the institutions it covers. First, banks generally only have CRA obligations in areas where they have "brick and mortar" deposit-taking branches. Second, banks often have the option when to include affiliates in their CRA evaluations. Third, independent mortgage companies, credit unions and other financial services companies never fall under the purview of CRA. Fourth, while financial institutions have become visible partners in community development, insurance companies have not and remain an obstacle to housing development in low-income, minority communities. We therefore encourage lawmakers to see the issue of CRA modernization in its full light.

The National Urban League has worked with the NCRC and other leading organizations in support of, and in seeking improvements to, the CRA. The following are key recommendations for bringing the CRA into the modern era and strengthening its effectiveness:

- Making mandatory the inclusion of a bank's non-depository lending affiliates and subsidiaries in CRA exams.

- Reforming bank examination assessment area procedures so that the majority of a bank's loans are included in its CRA exams. Modifying how CRA assessment areas are defined to reflect the true areas where banks conduct business, since many banks now lend nationwide, not just from their brick-and-mortar branches.

- Requiring regulatory agencies to provide detailed descriptions of fair lending and safety and soundness reviews conducted as part of CRA exams.

- Requiring that regulators give banks failing CRA performance reviews when fair lending reviews uncover widespread discrimination at those institutions.

- Requiring CRA exams to examine lending and services to minority borrowers and communities. Black and Latino borrowers and communities have long seen disproportionately high shares of subprime lending when compared to white borrowers and communities. Extending CRA coverage to consider borrower and community race and ethnicity will be a significant step in reducing these disparities.

- Requiring that regulatory agencies hold hearings upon request by community representatives to address major bank business decisions or changes such as mergers and acquisitions.

- Requiring all banks and thrifts to submit CRA small business loan data indicating race, gender, and location of the borrower.

- Extending CRA coverage to credit unions.

- Expanding CRA to cover all institutions making mortgages, including all bank affiliates and independent mortgage companies. Substantial shares of higher-cost loans have been originated by the largely unregulated independent mortgage companies and bank affiliates. This higher-cost lending not covered by CRA has harmed borrowers, and destabilized low- and moderate-income communities and communities of color.

- Including provisions similar to the Community Reinvestment Act and HMDA so that insurance redlining does not hinder the upgrading and production of affordable housing for all Americans.

In summary, the National Urban League believes that congressional enactment of the "Community Reinvestment Modernization Act of 2009" (H.R.1479), combined with financial regulatory reform that would establish a Consumer Financial Protection Agency that would bring CRA enforcement under its purview for strong enforcement, would address our recommendations for enhancing and expanding the CRA – and in the end strengthen our economy and local urban communities.

Thank you for the opportunity to testify and I will be pleased to answer any questions.

Statement of

Edward J Pinto

Before the Financial Services Committee

United States House of Representatives

September 16, 2009

Hearing before US House of Representatives Financial Services Committee - September 16, 2009

Submitted testimony by Edward Pinto, real estate financial services consultant, former chief credit officer of Fannie Mae (1987-1989), and expert in designing sustainable affordable housing programs

Chairman Frank and Ranking Member Bachus, thank you for the opportunity to testify today. I am an expert in the field of affordable lending, having 15 years experience both on the state and national level. I have designed and implemented sustainable affordable housing programs. I am also an expert in credit risk methodologies and loan performance metrics. I was Fannie Mae's chief credit officer from 1987 to 1989. Since leaving Fannie, I have consulted extensively on loan performance risk characteristics.

While at Fannie, I had the pleasure to work extensively with the late Gale Cincotta. Some of you may be aware that Ms. Cincotta was the founder and head of National People's Action (NPA) and is known as the "Mother of the Community Reinvestment Act". Ms. Cincotta had experienced first hand the lending debacles created by the misguided efforts of Washington bureaucrats. She and I collaborated over a three-year period to develop a carefully designed program whereby Fannie would purchase CRA loans originated by local banks. We agreed that these banks needed to have skin in the game by remaining on the hook for a substantial portion of the credit risk. This would keep both the lending rules and decision making local and reduce the risk of creating a national lending debacle. She and I also wanted Fannie to track and evaluate underwriting requirements and risk factors so that default rates could be kept at a low level (contrary to HUD's experience) and we agreed to support efforts to tighten underwriting where warranted.

I'd like to remind you of Ms. Cincotta's repeated warnings to this and other congressional committees. She spent 30 years:

> **"[f]ighting abuse, fraud, and neglect of the FHA program that has destroyed too many neighborhoods and too many families' dreams of home ownership…." Statement by Gale Cincotta before the Subcommittee on Housing and Community Opportunity, April 1, 1998**

She repeatedly warned Congress that poor lending practices led the FHA program to have:

> **"a national default rate 3 to four times the conventional market, and in many urban neighborhoods it routinely exceeds 10 times." Id**

She attributed FHA's "American Nightmare of Foreclosure" to the fact that mortgage bankers and brokers:

> **"take advantage of the fact that they share no risk on these loans to cut corners." Id**

FHA's annual percentage of new foreclosure starts has steadily increased over the last 60 years, from 0.06% in 1951 to 2.36% in 1998 to an estimated 4.4% in 2009.

I also need to tell you that I have spent the last 14 months searching for the facts on what caused the real estate bubble and subsequent mortgage and financial meltdown. I have reviewed over 40,000 pages of documents. The process relative to estimating CRA lending volumes and loan performance was particularly difficult and opaque.

I give you this background because if Gale were here today, she would tell you that the federal bureaucrats have done it again, but this time on a much more massive scale. Because of CRA and Fannie and Freddie's (the GSEs") affordable housing goals, "American Nightmare of Foreclosure" has spread to virtually every congressional district of these United States.

Here are the facts that I believe Gale would want me to report to you:

- **Understanding CRA lending performance is of vital importance because it is now clear that CRA-related single family mortgages totaled trillions of dollars over the period of 1993-2007;**
- **Over time CRA origination volume became a growing and ultimately significant portion of conventional conforming origination volume, growing from an estimated 7% of originations in 1993 to 19% in 2007;**
- **As H.R. 1479 points out, announced CRA commitment volume totaled over $6 trillion since CRA's inception in 1977. Starting in 1992, volume exploded. Over the 17 year period 1992-2008, there were a total of $6 trillion in announced CRA commitments. This is an astounding 680 times the cumulative volume of $9 billion for such commitments over the entire first 15 years of CRA's existence;**
- **Ninety-four percent of this $6 trillion in commitments were made by banks and thrifts that were or ended up being owned by just four banks: Wells Fargo, JP Morgan Chase, Citibank, and Bank of America;**

- **CRA single family origination volume also exploded over the period 1993-2008. Single family loan production originated pursuant to CRA totaled an estimated $2.7 trillion over the period 1993-2008;**
- **Ninety percent of CRA lending was not classified as high-rate subprime, even though much of it had subprime and other high credit risk characteristics: This is because CRA lenders generally, along with Fannie and Freddie (the GSEs), did not classify CRA and affordable housing loans that had high risk characteristics (i.e. low FICOs, high LTVs, or high debt ratios) as subprime so long as they did not contain other features such as higher fees or higher rates, interest only or negative amortization, or low initial payment features with adjustable interest rates. Under this narrow and misleading definition, only an estimated 10% of CRA lending ended up being classified as subprime. Ironically, the reason that these were not high-rate loans was that the big banks and the GSEs were subsidizing the rates, as recent events have painfully demonstrated;**
- **CRA originations were of significant assistance to the GSEs in meeting their affordable housing (AH) goals: It is estimated that the GSEs purchased about 50% of CRA production to help meet their AH goals;**
- **The combination of CRA originations and non-overlapping GSE AH acquisitions totaled over $7 trillion over the period 1993-2007;**
- **There is little in the way of concrete CRA and AH single-family loan performance information on either the bank or national level that tracks yearly loan vintages by such standard metrics as LTV, FICO, and debt ratios;**
- **For a glimpse as to possible overall CRA performance consider the following:**
  - **Third Federal Savings and Loan's (Cleveland) has a 35% delinquency rate on its "Home Today" loans versus a rate of 2% on its non-Home Today portfolio. Home Today is Third Federal's CRA lending program, which targeted low- and moderate-income home buyers who prior to March 27, 2009 (the date it suspended the program's innovative and flexible underwriting requirements due to poor performance) would not otherwise qualify for its loan products, generally because of low credit scores and high LTVs. For the reasons noted earlier it did not classify its Home Today loans as subprime lending, however, it noted that the credit profiles of Home Today borrowers "might be described as sub-prime"[1];**

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[1] Third Fed's involvement with CRA represents case study as to how CRA was used to weaken credit standards. Third Fed started its "Home Today" program in 2000 and used it to make loans as those "customers who, generally because of poor credit scores, would not otherwise qualify for our loans products." However, in 2002-2003 Third Fed was targeted by the East Side Organizing Project (ESOP) "for ignoring Cleveland's low-income and minority neighborhoods." ESOP's president, Inez Killingsworth, noted that Third Federal's "2001 Home Mortgage Disclosure Act (HMDA) numbers show that while Third Federal is 'Ohio's leading mortgage lender,' they are redlining a whole section of

- **The Shorebank (Chicago) has a 19% combined delinquency and non-accrual rate for its single-family first mortgage loan portfolio. The Shorebank is the nation's first community development bank. In addition to its 19% rate on single-family first mortgages, it has a 12% rate on its multi-family lending, a 9% rate on its commercial real estate, a 13% rate on its commercial and industrial lending, and a 31% rate on its construction and development lending. All rates are as of 6.30.09. These loan categories account for 98% of its total lending portfolio; and**
- **Bank of America noted on its Q3:08 earnings call with equity analysts that while its CRA loans constituted 7% or $18 billion of its owned residential mortgage portfolio, they represented 29% of net losses, with an annualized loss rate of 1.26%.**

- **There exists a proxy for national CRA performance since approximately 50% of CRA originations since the mid-1990s were acquired by Fannie Mae and Freddie (the GSEs) to help them meet HUD-mandated affordable housing (AH) goals. CRA created the supply and the GSEs created the demand[2]. We do know both the quantity and performance of the GSEs' loans that were AH goals rich. There were two types of AH loans that have special bearing on CRA lending – loans with LTVs above 90% (effectively 95% -100%) and**

Cleveland's east side neighborhoods.". ESOP leader Emma Adams went on to add: "We tried to negotiate in good faith…." Killingsworth added: "We are calling on y'all to take action. We will bring Third Federal to the table and show them how to become a CRA partner, reinvesting in our communities." (found at: http://www.disclosure-us.org/disc-feb2003/esopsummit.html)

Third Fed got the message as its Home Today program started growing by leaps and bounds, more than doubling to $195 million by September 2004 and reaching $299 million by March 2009. By 2007 Third Fed was receiving gushing praise from Killingsworth as she testified before a House subcommittee:

> "(w)e also have a very good relationship with Third Federal Savings & Loan…." (found at: http://oversight.house.gov/documents/20070322180426-24212.pdf)

What Killingsworth neglected to mention was that Third Fed's Home Today program had a delinquency rate at September 2006 of 24%. By June 2009, it had risen to 35%. This is on par with the self-denominated subprime delinquency levels. This result is consistent with a 2009 analysis published by the Federal Reserve Bank of Minneapolis which "indicates that subprime loans in ZIP Codes that are the focus of the CRA (those just below the [income] threshold) have performed virtually the same as loans in the areas right above the threshold."

[2] For example a 2003 press release noted that in 2002, Fannie Mae stepped up its efforts to help its lender partners with CRA goals. It purchased and securitized $201 billion of CRA loans in 2002, bringing its CRA cumulative total to $394 billion since 2000. CRA acquisitions totaled 25% of Fannie's total loan acquisitions in 2002 and 50% of its AH loans.

loans to borrowers with impaired credit (generally represented by borrowers with FICOs below 660)[3]:

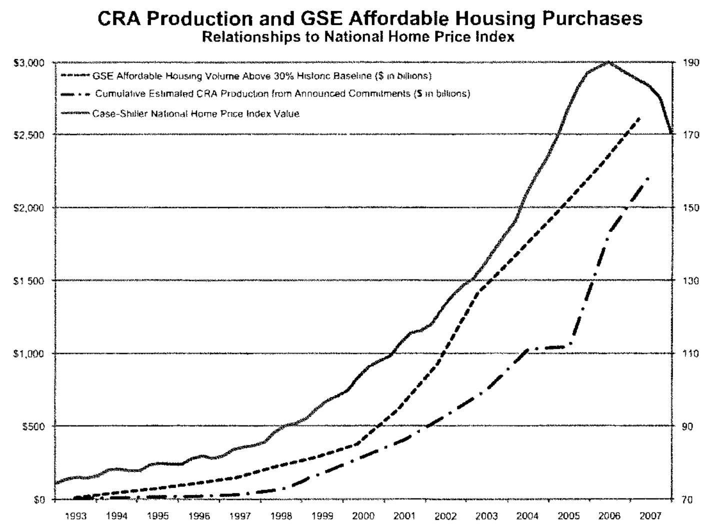
- **Over the last twenty years, the percentage of conventional purchase money mortgages made with the borrower putting less than 10% down more than tripled from 8% in 1990 to 29% in 2007. At the same time the average LTV on these loans rose from 95% to 97%. CRA and AH drove this result. Since the GSEs' AH goals were established 1993 until 2007, the GSEs acquired $1.18 trillion of loans with less than 10% down. This amounted to 62% of all such loans originated nationwide over the same period. By 2005, most of the GSEs acquisitions of loans with less than 10% down were of the 97% and 100% LTV variety;**

- **Over the period 1997-2007 the GSEs acquired a total of $2.2 trillion in credit impaired loans and private securities backed by credit impaired loans. Again the GSEs were leader in this regard;**
- **Largely as a result of high LTV and credit impaired loans, over the period 1993 to 2008 the GSEs acquired over $2.8 trillion in incremental AH loans over the percentage level achieved in 1992;**
- **As a result of the combined CRA and AH volume explosion that started in 1993, the nation's homeownership rate, after being level for over 30 years, began to grow rapidly from 1994 when it was at 64.2%, to 68% by 2001, and peaking at 69.2% in 2004;**
- **The GSEs' delinquency rate on their $1.5 trillion in high risk loans, 85% of which are goals rich AH loans, is 15.5%. at 6.30.09 This is about 6.5 times the 2.4% delinquency rate on the GSEs' traditionally underwritten loans; and**
- **This flood of high risk CRA and AH lending also drove a house price bubble :**

[3] the 1992 GSE Act required the GSEs to undertake a review of their underwriting guidelines and examine:

> "the implications of implementing underwriting standards that—
> (A) establish a downpayment requirement for mortgagors of 5 percent or less;
> (B) allow the use of cash on hand as a source for downpayments; and
> (C) approve borrowers who have a credit history of delinquencies if the borrower can demonstrate a satisfactory credit history for at least the 12-month period ending on the date of the application for the mortgage."

The GSEs' high risk AH acquisitions were made as a direct result of this congressionally mandated review.



In 1998 Ms. Cincotta expressed a wish that FHA's default rate be on par with Fannie and Freddie's. Her wish was granted, but as I have just noted, with a horrible twist. The CRA and AH loans acquired by the GSEs have a delinquency rate par with FHA's rate, which itself has grown by over 60% since Gale's testimony in 1998.

The questions you should be asking are:

Why don't bankers know and disclose how their different products are performing?

Why is it that the Federal Reserve, the OCC, the OTS and other regulators appear to have no idea how CRA loans are actually performing over the last few years. Data from ten years ago cannot be the basis for making decisions on multi-trillion dollar programs.

Why is it that Comptroller Dugan just three weeks ago delivered remarks at the Interagency Community Affairs Conference where he asserted that CRA is not toxic lending, yet he failed to cite any broad-based quantitative evidence?

Why is it after requiring banks to demonstrate that they make extensive use of "innovative and/or flexible lending practices" in order to receive a rating of outstanding, not one regulator had the common sense to track the performance of these admittedly innovative and flexible loans?

Platitudes are not sufficient. I have presented a prima facia case that CRA is toxic lending which leads to unsustainable loans which leads to an unacceptable level of foreclosures.

Gale Cincotta's views on FHA 11 years ago are now equally applicable to CRA and AH lending:

> **"We have been fighting abuse, fraud, and neglect of the FHA program that has destroyed too many neighborhoods and too many families' dreams of homeownership for more than 25 years."**

Section D of H.R. 1479 calls upon the Federal Reserve to create a loan performance database.

I respectively submit that before you take any action on H.R. 1479, you demand that the appropriate regulators request detailed CRA performance data from Wells Fargo, JP Morgan Chase, Citibank, Bank of America, Fannie Mae and Freddie Mac. These six institutions should be able to provide performance information for an estimated 70% or more of outstanding CRA loans.

These programs have subprimed America.

The pain and hardship they have spawned is immeasurable. What is measurable is exactly how the trillions of dollars in past CRA and AH loans are performing.

Once you have that information, it is imperative that you learn from it so that you may implement Gale Cincotta's vision whereby participants in the mortgage lending system have skin in the game. It was this lack of adequate equity and capital by borrowers, lenders, and investors that has put our entire economy at risk.

Only then will America get the sustainable affordable housing programs she deserves.

LISC
Helping neighbors build communities

Testimony of

Benson F. Roberts

**Senior Vice President for
Policy and Program Development**

Local Initiatives Support Corporation

Community Reinvestment Act

House Committee on Financial Services

U.S. House of Representatives

September 16, 2009

Statement of Benson F. Roberts

Good morning, Mr. Chairman and members of the Committee. I am pleased to speak today about the Community Reinvestment Act (CRA). CRA addresses the needs of individual consumers (including home mortgages and depository services), small businesses and small farms, and community development, all to benefit low- and moderate-income people and places. CRA has shown that such financing can be both safe and profitable. Although some have claimed that CRA contributed to subprime lending and foreclosures, the Federal Reserve Board has found that CRA covered only 6% of high-cost (subprime) mortgages.

Since 1980 Local Initiatives Support Corporation (LISC) has worked in numerous partnerships involving banks and thrifts, nonprofit community development corporations (CDCs), and government at all levels to revitalize urban and rural communities. LISC invests roughly $1 billion each year in these partnerships. Over time we have invested $9 billion, generating $28 billion of development activity, including 245,000 affordable homes and 36 million feet of retail and community space. Most of this money has come from the private sector, including banks, mostly in the form of loans and investments. Our work covers a wide range of activities that contribute to sustainable communities, including housing, economic development, building family wealth and incomes, education, and healthy lifestyles and environments. Our first name is Local, and we operate through 30 local offices and a national rural development program, so we see low-income communities and how CRA is working up close.

LISC also collaborates with other nonprofit leaders in the field of community development finance. Enterprise Community Partners and the Low Income Investment Fund share LISC's perspective on the challenges facing our field and endorse the recommendations regarding CRA modifications that I propose.

CRA and Community Development

I will focus my remarks on the relationship between CRA and community development activities, which include lending and investment for: multifamily rental housing; retail and other commercial real estate such as grocery stores and business facilities in low- and moderate-income neighborhoods and rural areas; community facilities such as health clinics and child care centers; construction and rehabilitation of owner-occupied homes; and community development financial institutions (CDFIs) that provide financing and technical assistance that banks cannot offer directly.

Motivated by CRA, banks have made billions of dollars of loans and investments that have generated over one million affordable rental homes and millions of feet of economic development and community service facilities. Although community development financing can be difficult to structure, it has proven to be both safe and profitable. Indeed, one of CRA's signature achievements has been to create partnerships among banks, all levels of government, and both nonprofit and for-profit developers. Most federal housing production and other community development policies now depend on these partnerships, which help leverage limited public funds. Bank participation has also brought business discipline, including sound underwriting and ongoing monitoring, to the community development process, greatly increasing the success of public programs. Community development projects often anchor the stabilization and revitalization of low-income communities, and complement responsible lending to individual consumers and small businesses in the same communities.

Federal Reserve Board Chairman Ben Bernanke recently remarked: "During much of the past century, federal community development efforts were large-scale, top-down affairs. As we have seen in the sphere of international development assistance, centralized, large-scale development efforts--though not without their successes--often imposed a one-size-fits-all approach that failed to take sufficient account of the particular needs and characteristics of local communities. In many cases, the results were disappointing or worse; for example, the so-called urban renewal programs of the 1950s and 1960s had what ultimately proved to be devastating effects on some areas. In response, the policy focus has shifted over time toward using tools that allow more-customized approaches to local needs, such as block grants and housing vouchers. The growth of local CDCs and the passage of the Community Reinvestment Act in 1977, which required most deposit-taking institutions to lend and invest throughout their business areas, exemplified the trend toward a more bottom-up approach to development. . . .

"Indeed, this community stabilization work is important for the overall economic recovery. Healthy and vibrant neighborhoods are a source of economic growth and social stability. CDFIs and other community groups are already responding to the evident needs, but they will require many willing partners to ensure success in the long run, including governments, mortgage servicers, and mainstream lenders. Strong community organizations can accomplish a great deal, but their capacity will be severely limited without the willing partnership of many other institutions."[1]

An Erosion of Efficacy

Unfortunately, however, CRA's effectiveness in encouraging community development has eroded over the past several years. A number of practitioners liken today's financing environment to pre-CRA days. The current problems in housing, finance, and economy have accelerated the process, but the trend was well under way for several years as CRA policies have fallen further behind the transformative changes in the banking and financial systems as well as in low- and moderate-income communities.

Since many of these changes are well known, I will summarize them here only briefly. The CRA statute has changed little in 32 years. At that time, banks and thrifts were the predominate lenders; now, other institutions play important (and sometimes the primary) roles. In 1977, local bank deposits were the source of most loans; in the modern era, capital markets fund most lending and investment. In 1977, banks could not open branches beyond a single state, and some states permitted only single branches; today, major banks operate in multiple states, and many newer kinds of banks have a truly nationwide customer base. When CRA was enacted, community development as we now know it was still experimental; today, as discussed earlier, community development is a vital force for economic development, physical renewal, and affordable housing.

CRA still encourages banks to finance community development to some extent, but its effectiveness has dwindled. As a result, communities already hit by foreclosures and

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[1] "Community Development Financial Institutions: Challenges and Opportunities", speech at the Global Financial Literacy Summit, Washington, D.C., June 17, 2009.

unemployment cannot get the capital they need to create jobs, housing and services they need for their own recovery and to contribute to national prosperity. Without active bank participation, community development activities will depend more on governmental financing sources, whose scarcity ensures that fewer people and communities will benefit, and what does get done will lack the same private business discipline.

- Affordable Rental Housing. Low Income Housing Tax Credits are the federal government's principal tool for producing and preserving affordable rental housing, having financed over 2 million affordable rental homes since 1987 with an extremely low foreclosure rate of less than 0.1% annually. Each LIHTC apartment creates 1.5 jobs and generates state, local and federal tax revenue. However, LIHTC investments have dropped from an estimated $8.4 billion in 2007 to $5.5 billion in 2008 (source: Ernst & Young) and probably even less this year. The withdrawal from the market by Fannie Mae and Freddie Mac, which cannot use tax credits because they are unprofitable and have no taxes to offset, accounts for much of the decline. Banks, and especially the largest banks, are still investing thanks in part to CRA, but not always at previous levels. LIHTC investment is still adequate in some communities where strong and sophisticated banks seek CRA recognition. But LIHTC investments are hard to find in most places. Rural areas, smaller cities, the Gulf Coast disaster area, and some states are having the greatest difficulty. But even some traditionally CRA-rich states cannot find enough LIHTC capital. For example, California reports that 75% of the housing awarded LIHTCs in 2008 could not find investors, and many projects in Massachusetts cannot find investors. Moreover, investors are rejecting well structured but complex projects that address acute housing needs – for example, those serving the homeless, preserving HUD or USDA assisted properties, and in economically distressed regions and neighborhoods.

  Unfortunately, CRA has not been effective in broadening the investor base. Regional and local banks, many of which have not made LIHTC investments before, often want to invest through a national or regional investment pool so they can diversify risks, tap the experience of co-investors, and minimize administrative burdens and technical complexity. However, CRA does little to encourage such investments, because it recognizes only investments near a bank's branch network and, at its federal examiner's discretion, the surrounding region. Each state determines the location of LIHTC properties based on a competitive process and different communities may get projects every year. It is both essential and extremely difficult for a bank to know if an investment decision they make today will result in CRA credit a year or two later when its regulator examines it. As a result, the overall level of affordable housing production, jobs and community revitalization are much lower than they should be.

- Economic development. Practitioners also report a reduction in bank lending for economic development in low- and moderate-income communities. To be sure, banks are losing substantially from commercial real estate, but again, most of these losses have occurred outside the scope of CRA. A principal federal tool for economic development, the New Markets Tax Credit, has so far been able to attract equity investments, but here too, investors are getting more cautious and requiring higher rates of return, and attracting loans for NMTC projects has become very difficult. We are concerned about a possible shortage of NMTC investment capital. Again, CRA could do more to encourage bank participation.

- Community Development Financial Institutions. CDFIs are public purpose lenders, many of them nonprofit organizations. Today, nationwide, there are about 1,000 certified CDFIs with a collective $25 billion in assets at work to rebuild low-income communities through housing, economic development, and community services. As Fed Chairman Bernanke recently observed: "In many ways, the formation of CDFIs represented an important milestone in the ongoing evolution of policy strategies for community development and revitalization." CDFIs raise capital, often from banks, and provide financing that conventional lenders find too risky, complex or time consuming to offer alone. However, as Chairman Bernanke observes, "mainstream financial institutions have reduced their support of CDFIs, both by providing less direct funding and by extending less credit in support of projects done in partnership with them." As a result, many CDFIs are unable to meet their communities' urgent and growing needs.

Recommendations for Modernization

Congress should modernize CRA to make it more effective, especially for community development activities including affordable housing and economic development. In general, it would be advisable to keep the statute broad rather than prescriptive so that regulators can readily update implementation policies as financial services institutions and communities change. Setting clear goals and allowing institutions broad flexibility to achieve them has been important to CRA's success in the past.

1. Recognize community development as a formal objective of CRA. As noted, modern community development was still experimental when CRA was enacted. CRA currently undervalues high-impact but low-volume community development loans and investments in a mostly quantitative analysis. In short, community development offers extra credit in a pass-fail CRA exam. Community development should be an integral component of CRA along with lending to consumers, small businesses and small farms, and depository services.

2. Expand the range of institutions that CRA covers. Today's limited applicability of CRA to insured depositories is archaic, fails to serve communities adequately, and creates an unlevel regulatory playing field among financial institutions. In addition to banks and thrifts themselves, CRA should apply to all activities of bank holding companies and financial services holding companies, as well as lenders that participate in federal credit enhancement programs such as those of the Federal Housing Administration, USDA, Veterans Affairs Department, Small Business Administration, and the Government Sponsored Enterprises. The federal government provides substantial benefits to these institutions. It is appropriate, important and fair for them to share an affirmative obligation to help meet the needs of low- and moderate-income people and communities, consistent with safety and soundness.

3. Reach rural and other underserved areas. A hallmark of the modern financial system is its ability to move capital to places and customers that need it. However, CRA too often fails to encourage capital mobility for the benefit of low- and moderate-income people and communities. As mentioned above, most rural areas, many small to mid-sized cities, and even some states have great difficulty attracting community development financing. A particular dilemma is that many

small, local institutions lack the capacity to address sophisticated community development challenges and CRA does not reward capable, large institutions for community development activities beyond the location of their branch network even if they generally do business nationwide. Credit card banks, internet banks, investment banks, wholesale banks, bank subsidiaries of some financial services holding companies, U.S. satellites of foreign banks, and lenders participating in federal credit enhancement programs are more typically nationwide than local institutions in ways that CRA could not anticipate in 1977. These nationwide institutions should have a CRA responsibility to low- and moderate-income people and communities nationwide, including to rural and other underserved areas. In addition, the statute should recognize (but not require) bank participation with CDFIs even outside of a local bank's geography, as is the case for bank participation with minority- and women-owned banks.

4. Strengthen performance incentives and enforcement tools. The great majority of banks receive a CRA rating of Satisfactory, a rating that does not differentiate among a wide range of performance. In addition, institutions have little incentive to achieve an Outstanding rating. Moreover, the only consequence of a poor rating is that regulators will take that into consideration if the institution seeks to merge with another. While this prospect has some utility, it is too episodic and narrow to make CRA as effective as it should be. Many institutions can effectively ignore CRA entirely because they have no intention to merge. In addition, since it may help a community if a poor CRA performer is acquired by a strong CRA performer, the threat of disapproving such acquisitions is counterproductive. Most recently, the federal government itself has arranged major mergers to protect the financial system, a circumstance in which CRA considerations will understandably recede. Accordingly, we recommend:

    a. More rating levels for institutions. Currently, the statute authorizes CRA ratings that roughly correspond to school grades of A (Outstanding), B (Satisfactory), D (Needs Improvement) and F (Substantial Noncompliance). At minimum, there should be a "Low Satisfactory" rating similar to a school grade of C in addition to a "High Satisfactory" rating.

    b. Remediation plans for low performers. Institutions receiving a Low Satisfactory or lower rating should submit a remediation plan for approval by its regulator following public comment, and then follow the plan.

    c. Incentives for Outstanding performance. One possible approach would be to reduce deposit insurance premiums for banks that receive Outstanding ratings within a revenue neutral system. Participants in federal credit enhancement programs might similarly pay a lower guarantee fee or insurance premium if they receive an Outstanding rating.

    d. Broader enforcement tools. In addition to considering CRA performance if an institution performs poorly, the same regulatory enforcement authorities available to good performance generally should be available with respect to CRA.

This concludes my testimony, I would be happy to address any questions you may have.

Remarks before the House Financial Services Committee: "Proposals to Enhance the Community Reinvestment Act"
September 16, 2009
Michael A. Stegman

Chairman Frank, Ranking member Bachus, and members of the committee; my name is Michael Stegman. I am the Director of Policy and Housing for the John D. and Catherine T. MacArthur Foundation. Prior to joining the Foundation in 2005, I was a professor of public policy at the University of North Carolina where I taught courses in housing policy and community development finance for 40 years, and conducted extensive research on these issues. I have also held senior policy positions at the Department of Housing and Urban Development during the Carter and Clinton Administrations, the latter as Assistant Secretary for Policy Development and Research under Secretary Henry Cisneros.

While an employee of MacArthur, the opinions I express this morning are my own and not necessarily those of the Foundation. I appear as a long-term student of the Community Reinvestment Act who believes there is solid evidence that this legislation has been directly responsible for increasing lending for low-income home purchase and in Chairman Bernanke's words, serving "as a catalyst, inducing banks to enter under-served markets that they might otherwise have ignored".[1] In my view, an enhanced CRA should continue to play a prominent role in expanding the provision of mortgage credit and financial services in

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[1] See, among others, Ben S. Bernanke, The Community Reinvestment Act: Its Evolution and New Challenges, (prepared text) before the Community Affairs Research Conference. *2007-03-30. p. Federal Reserve System (FRB).* http://www.federalreserve.gov/newsevents/speech/Bernanke20070330a.htm; National Community Reinvestment Coalition, NCRC Documents Trillions of CRA Dollars in Communities since 1977, February 15, 2006; Liz Laderman, Has the CRA Increased Lending for Low-income Home Purchases?; Federal Reserve Bank of San Francisco, *FRBSF Economic Letter, June 25, 2004;* Litan, Robert E.; Nicolas P. Retsinas, Eric S. Belsky, Susan White Haag, The Community Reinvestment Act After Financial Modernization: a Baseline Report, U.S. Treasury, April 2000 http://www.treas.gov/press/releases/docs/crareport.pdf; Barr, Michael S. Credit Where it Counts: The Community Reinvestment Act and its Critics, *New York University Law Review,* 80: 513, May 2005.

underserved market in the new financial regulatory system that will emerge over the coming months and years.

I begin my remarks by adding a personal note to Fed Reserve Governor Kroszner's public statement that based on staff analysis; there is no empirical basis to implicate the CRA in the subprime crisis.[2] The personal note is that in all my professional experience, I have never come across a CRA-mortgage program whose underwriting guidelines didn't require certification of borrower income; or that employed deeply discounted teaser rates whose payments were guaranteed to "explode" shortly into the loan term; or that enabled the low- or moderate-income borrower to decide for herself what her monthly loan payments would be, and allowed deep negative amortization. In fact, most CRA programs with which I am familiar also required escrow accounts to assure the borrower's timely payment of real estate tax and insurance obligations.

This is why respected research confirms that CRA-driven mortgage portfolios outperformed other market segments in recent years. A case in point is research that my UNC colleagues and I have conducted over much of the past decade that is tracking the performance of a $4.5 billion portfolio of nearly 50,000 CRA-loans originated by 36 lenders across the country. Absent a CRA-driven motivation for originating these prime loans, most of the low and moderate-income borrowers we are following would not have qualified for any type of mortgage, or if they did, they would have been relegated to the subprime or toxic sectors. Our research finds that after controlling for loan vintage, origination date, borrower, credit, and loan characteristics, the estimated cumulative default rate for a comparable group of subprime borrowers was about 3.5 times higher than that experienced for borrowers in our CRA portfolio. In outperforming other types of mortgage investments, CRA portfolios may have served as a stabilizing factor for many covered institutions.

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[2] Randall Kroszner, The CRA and the Recent Mortgage Crisis, in Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, Federal Reserve Banks of Boston and San Francisco, February 2009.

Next, I will comment on the ongoing discussion of policy rationale for imposing community reinvestment requirements on covered institutions. The most common policy rationale is grounded in institutional receipt of federal deposit insurance and related charter benefits. While this is a powerful argument in its own right, and the one frequently cited for expanding coverage based upon the extension of FDIC insurance to an array of Wall Street investment firms, I believe there is an even more compelling argument for extending CRA requirements to the vast majority of all mortgage-related institutions.

I embrace former Federal Reserve Governor Lawrence Lindsey's public goods argument justifying community reinvestment obligations on financial institutions: that it is in the national interest and for the common good that in order for low and moderate income populations to fully participate in the American economy, the financial services industry must play a leading role in helping to meet their credit and financial services needs in the private marketplace.

A public goods argument recognizes the shrinking share of the mortgage market accounted for by CRA-covered loans[3], and that, absent a duty to serve that would apply to the broader financial services industry, the credit needs of underserved markets will continue to be undersupplied because the costs of providing financial services to these markets would exceed the benefits accruing to any single provider.[4]

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[3] "Over the last three decades, the proportion of loans under the CRA has continued to decline ..[with data from 2006 indicating that "only ten percent of all loans are CRA-related" See, Ren S. Essene and William C. Apgar, The 30th Anniversary of the CRA: Restructuring the CRA to address the Mortgage Finance Revolution, Federal Reserve Banks of Boston and San Francisco, *Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act*, February 2009, p. 12

[4] Lawrence B Lindsey, the CRA as a Means to Provide Public Goods, Federal Reserve Banks of Boston and San Francisco, Revisiting the CRA· Perspectives on the Future of the Community Reinvestment Act, February 2009, pp. 160.

For financial institutions newly brought into the CRA system that lack charter-based local assessment areas, performance evaluations could be based upon the size of their book of business, and, lacking retail distribution channels, there might be a fee in lieu provision that could funnel resources to the new federal National Housing Trust Fund, or other facility or entities that help finance housing opportunities for low and moderate income families.

As we all recognize there is much about credit markets and financial services providers that has changed not only since the CRA was enacted in 1977, but even since the Clinton-era reforms. We now understand that the terms of credit are as important as the availability of mortgage finance to underserved markets; which suggests that the principle of *sustainable* mortgage and credit finance should be factored into CRA regulations; as should the notion of negative credit for institutions or their subsidiaries or affiliates that provide abusive loan products inside or outside of their assessment areas.

In addition to the proliferation of non-CRA-covered mortgage funders, there have been major changes within the existing class of covered institutions; among them being the extraordinary growth of top tier institutions due to the recent frenetic pace of mergers and acquisitions, some facilitated, orchestrated, and even partially financed by the federal government. One consequence of such greater concentration is a diminished institutional value of an 'outstanding" CRA rating, and less frequent trigger events going forward where CRA performance is as consequential as it used to be. This state of affairs also suggests the need for different kinds of incentives to stimulate desired behaviors, such as a reduction in an institution's FDIC or other assessment for earning an Outstanding CRA rating.

Among other things, this suggests the need for different kinds of incentives, such as reducing an institution's FDIC assessment for outstanding CRA record.

Today, America's 10 largest CRA-covered institutions together have deposits of more than $3.1 trillion, which translates to a combined market share of 45 percent. Not only should this top tier of America's financial institutions have an obligation to meet the credit needs of their communities, they should have an additional *duty to lead* the financial services industry in the development and commercialization, and scale-up of innovative, affordable, and sustainable credit products and financial services for low income families and communities.

Just as Congress and the Federal Housing Finance Agency--Fannie Mae and Freddie Mac's new regulator--have imposed a duty to serve specified mortgage finance needs of underserved markets that are in addition to the GSEs' affordable housing goal purchase requirements, the top tier of the nation's CRA-covered institutions should have a similar duty to serve as beacons of innovation and creativity with regard to serving their underserved markets. Such an obligation could be discharged in a variety of ways (such as supporting an independent R&D facility that would conduct random-controlled trials of innovative products and services, and evaluating their costs and benefits to providers and society), and evaluated by regulators separately from their performance assessment on the existing lending, service and investment tests.

Whatever forms an enhanced CRA might take it goes without saying that the bedrock principle should be retained that no community reinvestment mandate should impair an institution's safety and soundness. Nevertheless, I would also argue that there is an important difference between requiring covered institutions to offer financial services or credit products that are unprofitable over the long-term—which the CRA does not do--versus encouraging them to offer products and services to underserved markets that may be less profitable than some other business lines (which an enhanced CRA should do).

In my many years of working on issues relating to the unbanked and under-banked, I have been told by more than one banker that they know of an innovative financial services product that was developed specifically for this market but was terminated or never brought to scale because, while potentially profitable, it failed to pass their institution's internal hurdle rate. Once again, the Federal Housing Finance Agency has addressed this issue in its proposed GSE Duty to Serve rule currently out for public comment. That rule notes that in discharging their responsibilities relating to the purchase of mortgages on housing for low- and moderate-income families it is appropriate that such activities involve "*a reasonable economic return that may provide less of a return than the Enterprises' other activities)...*"[5] CRA should be no different.

While speaking about GSEs, I would be remiss if I didn't note a problematic feature of many federal low-income housing and community development programs and regulations—their inconsistent and incompatible eligibility requirements, including conflicting income limits. This problem has historically prevented communities and affordable housing providers from creatively integrating federal housing resources such as Community Development Block grants, HOME funds, and Low Income Housing Tax Credits, with CRA-lending programs. In the GSE case, the income limits used to define affordable housing goal-eligible mortgages is significantly higher than the income threshold used for the CRA. Harmonizing these thresholds across federal programs would not only improve the efficiency and productivity of the affordable housing system, it would also facilitate GSE-purchase of CRA portfolios, thereby dramatically increasing the liquidity of CRA lenders.[6] I mention this to emphasize that in contrast to previous reform efforts, the next generation of CRA enhancements should be considered in the broader context of affordable housing finance, financial services, and asset-building policies.

[5] FEDERAL HOUSING FINANCE AGENCY, 12 CFR Part 1282; RIN 2590–AA27 Duty to Serve Underserved Markets. for Enterprises Federal Register / Vol. 74, No 148 / Tuesday, August 4, 2009 / Proposed Rules

[6] Statement of Judith A. Kennedy, President and CEO, National Association of Affordable Housing Lenders, on The Community Reinvestment Act , House Committee on Financial Services, U.S. House of Representatives, February 13, 2008. http://financialservices.house.gov/hearing110/kennedy021308.pdf

This need is more important today because the inevitable return to lower leverage and more conservative mortgage underwriting standards will widen the gap between housing prices and the incomes of American families well beyond that which existed during the first two decades of the CRA. This is likely to be the case even as the average housing price-to-family income ratio recedes in the post-bubble market. The average price-to-income ratio for the $4.5 billion CRA portfolio my colleagues and I started tracking in the late 1990s was about 2.6:1 at origination (an average house price of around $88,000 and an average income of about $34,000). This is about the same historical relationship between home prices and family incomes that existed when the CRA was enacted.

Nationally, this ratio remained pretty stable for more than twenty years, drifting up into the 3.5-4.0 range in some higher cost markets at the beginning of this decade. From 2005-2008, however, the ratio soared to double digits in several overheated markets, and since the bubble burst, the ratio has significantly receded toward, but not down to the historical mean.

These market dynamics are important for CRA reform because sustainable mortgage programs designed to serve even the most well-qualified low and moderate income families is likely to leave a sizable affordability gap that may only be filled with some form of subsidy. Because the CRA does not and should not require financial institutions to be the providers of gap financing or the subsidizer of last resort, modernization must be synchronized with government affordable housing programs, preferably in the form of new savings incentives, matched down-payment accounts, and other asset building programs that financial institutions can initiate or participate through partnerships with community-based organizations.

I conclude my testimony with some comments about the current three-test regime. While I acknowledge the concerns of those who argue that the Clinton-era reforms are too quantitative and restrictive to enable institutional creativity, my own research suggests that the least measurable and quantitative of the tests, the Services test, is the weakest link in the examination process. My analysis of almost 2000 CRA examinations conducted between 1996 and 2002 revealed that only 11 of 1,500 banks reviewed received a *Needs to Improve* and none earned a *Substantial Noncompliance* rating.[7] My study also found inconsistencies across regulatory agencies. The analysis suggested that the service Test was often used as a "grade inflator" to boost an institution's overall CRA rating. Underperforming banks—those on the border between a *Needs to Improve* and a *Satisfactory* rating overall—were more likely to receive higher Service Test scores than other institutions. The higher than expected Service Test scores often gave banks just enough cumulative points to eke out a *Satisfactory* rating overall. Not only is it evaluated more subjectively than the other tests, 2005 changes in the CRA which increased the asset threshold of exempt institutions means that today 88 percent of all OTS-regulated institutions and 96 percent of all FDIC-regulated institutions are now exempt from the Service Test."[8]

This makes no sense when millions of American families must replenish their savings and repair their credit records—in 2008 alone American families lost an estimated $6 trillion of housing wealth in real terms[9]. And to add insult to injury, those unfortunate enough to have lost their home in a foreclosure, also saw their credit scores fall by about 35 percent in the first year alone", making it even more difficult for them to qualify for affordable credit. "[10]

[7] See, Michael A. Stegman, Kelly Cochran and Robert Faris, Creating a Scorecard for the CRA Service Test, Policy Brief No. 96, The Brookings Institution, Washington, DC, March 2002; p 5
[8] Roberto Quercia, Janneke Ratcliffe, and Michael A. Stegman, The Community Reinvestment Act: Outstanding· and Needs to Improve, Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, February 2009, p. 54.
[9] The rapidly changing landscape of the real estate market in Los Angeles and beyond, LA Land, Disappearing now: $6 trillion in housing wealth. *Los Angeles Times*, April 30, 2008.
[10] Loan com, The Effect of a Home Foreclosure on Your Credit Report, www.loan.com/home-loans/the-effect-of-a-home-foreclosure-on-your-credit-report.htm.

This is no time to relax requirements on product development and financial services innovation. An enhanced CRA should demand performance and hold institutions accountable. They should encourage and reward financial institutions for entering into meaningful community development partnerships that deliver services at scale. It is time to drive up the volume and institutional participation in the FDIC's small dollar loan program[11]; it is no longer acceptable for a handful of credit unions to outshine major CRA-covered institutions as centers of financial services innovation.

Courtesy overdraft protection programs—which have become major profit centers for commercial banks—is not the way for mainstream banks to compete with payday lenders in the unsecured small loan market. It is time for the country's biggest banks to emulate the Salary Advance Program of the North Carolina State Employees Credit Union (SECU) which, for the past nine years has been delivering a profitable low-cost salary advance loans to its members at an annual percentage rate of 12 percent--about one-fortieth of the cost of a typical commercial payday loan or overdraft fee. This is no pilot program striving to achieve proof of concept. This is a scaled-up program for which cumulative advances of up to $500 each have been made to 110,000 members of the nation's second largest credit union, totaling more than $1.4 billion, with annual charge-offs averaging just two-tenths of one percent of dollars loaned. Unlike any other payday loan product, this one requires customers to set aside 5 percent of every advance in a separate member-owned special savings account in an effort to help reduce their future reliance on the receipt of serial short term loans. As of

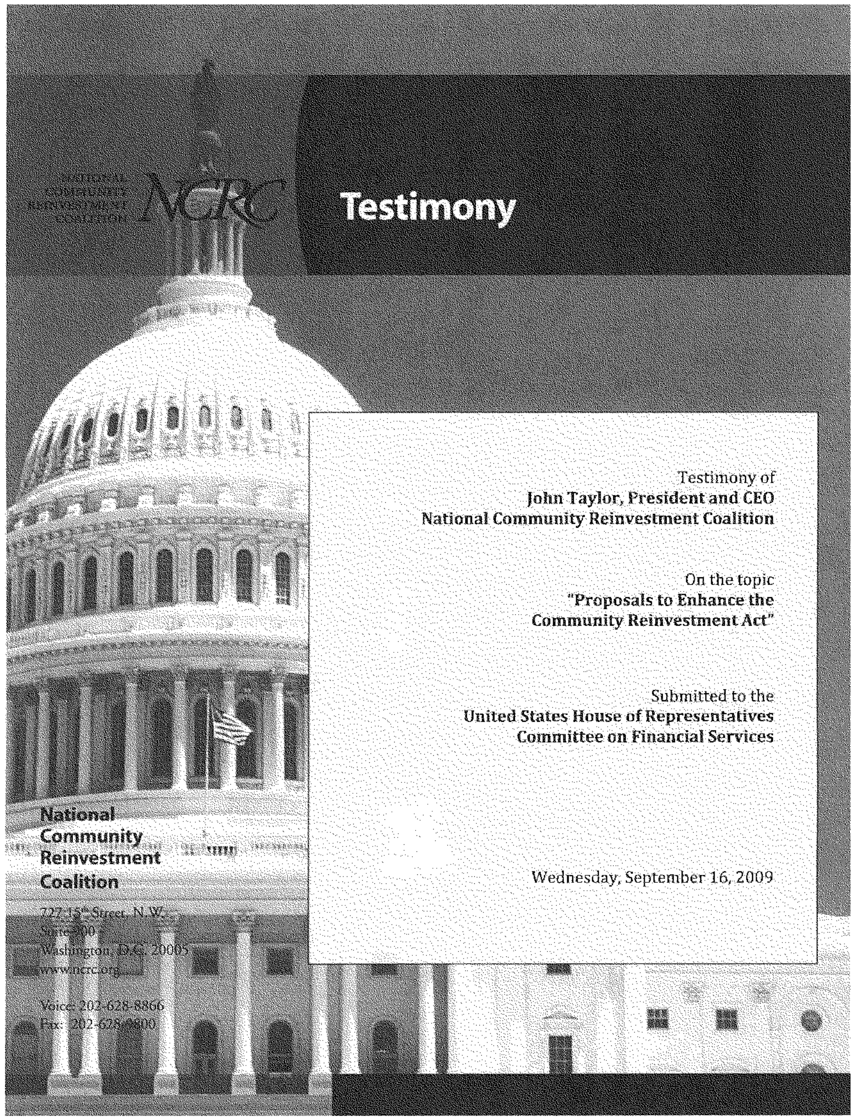
[11]The FDIC's Small-Dollar Loan Pilot Program: A Case Study after One Year, FDIC: Feature Article, www.fdic.gov/bank/analytical/quarterly/2009_vol3_2/smalldollar html

June 2009, these account balances totaled in excess of $17 million, with more than 1600 members having each accumulated savings of over $1000.[12]

Mr. Chairman, there is no reason why this program and many others that have been pioneered by non-CRA institutions cannot be replicated by mainstream banks. A strengthened Services Test under an enhanced CRA should provide an appropriate mix of carrots and sticks that would encourage such copycat behavior.

Thank you.

[12]For more discussion of the salary advance product, see, Michael A. Stegman, Payday Lending, *Journal of Economic Perspectives*, Volume 21, No. 1, winter 2007; and, State Employees Credit Union, Salary Advance Loans, An Overview, updated through June 2009.



Testimony of
John Taylor, President and CEO
National Community Reinvestment Coalition

On the topic
"Proposals to Enhance the Community Reinvestment Act"

Submitted to the
United States House of Representatives
Committee on Financial Services

Wednesday, September 16, 2009

I. Introduction

Good morning, Chairman Frank, Ranking Member Bachus, and other distinguished members of the Committee I am John Taylor, President and CEO of the National Community Reinvestment Coalition (NCRC), and I am honored to testify today before the House Financial Services Committee on behalf of NCRC on the topic of "Proposals to Enhance the Community Reinvestment Act"

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

The current foreclosure and economic crisis was caused in significant part by unregulated and risky lending The federal government will spend \$12 9 trillion in rescuing the financial industry When Congress enacted the Community Reinvestment Act in 1977, a major rationale was that banks had an obligation to serve their communities in return for FDIC deposit insurance. Today, this rationale must be applied to the entire industry since government financial and institutional support rescued the financial industry from its recklessness. In addition, a broad application of CRA can safeguard the financial industry and return it to profitability by requiring safe and sound lending and investments in neighborhoods.

Modernizing CRA is one of the most important economic and job creating initiatives for Congress, as it would require an industry with trillions of dollars of assets to help create vibrant neighborhoods by providing loans and investments for affordable housing, small business creation, economic development, and support for community facilities like health care clinics By requiring fairness and responsibility in lending and investment, CRA modernization will promote a more equitable, efficient, and prosperous country. Faced with a 9 7 percent unemployment rate and median income levels that are lower than they were a decade ago, modernizing CRA would provide a long-lasting economic recovery and help the nation climb out of the current Great Recession [1]

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

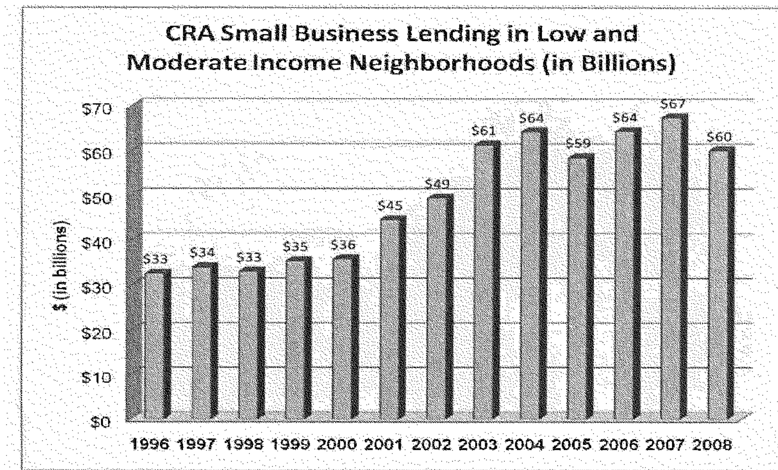
II. Role CRA of CRA in Increasing Access to Credit, Investments, and Services

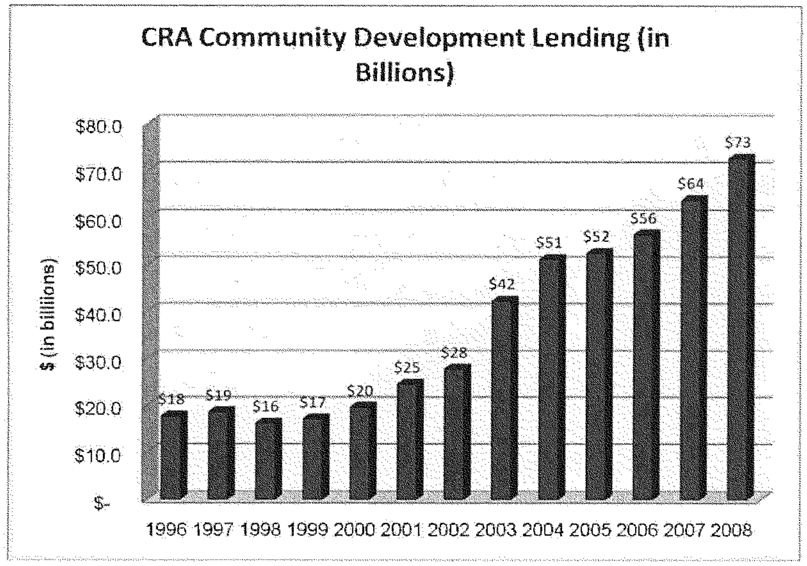
CRA's public accountability mechanisms have effectively motivated banks to significantly increase their lending, investing, and services in low- and moderate-income communities. Data disclosure requirements, publicly available exams rating CRA performance, and public participation procedures have encouraged banks to bolster their efforts to responsibly finance housing, small business creation, and community development

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

[1] Erik Eckholm, Last Year's Poverty Rate Was Highest in 12 Years Median Income Fell, Census Finds, *New York Times*, Friday, September 11, 2009

climbed from $18 billion in 1996 to $73 billion in 2008 Over the entire time period, community development lending equaled $480 billion





CRA has also supported healthy increases in home lending The Treasury Department reports that CRA-covered lenders increased home mortgage loans to low- and moderate-income borrowers by 39 percent from 1993 to 1998. This increase is more than twice that experienced by middle- and upper-income borrowers during the same period [2] Likewise, a study by the *Joint Center for Housing Studies* at Harvard University estimates that without CRA, 336,000 fewer home purchase loans would have been made to low- and moderate-income borrowers and communities between 1993 and 2000.[3] This time period was before the spike of risky and high-cost lending, providing further evidence that CRA's statutory requirement for safe and sound lending has succeeded in providing increases in responsible lending In fact, during 2007 alone, CRA-covered banks and thrifts issued $134 billion of prime home loans to low- and moderate-income borrowers across the country

[2] Robert Litan, Nicolas Retsinas, Eric Belsky and Susan White Haag, *The Community Reinvestment Act After Financial Modernization A Baseline Report*, produced for the United States Department of the Treasury, April 2000
[3] The Joint Center for Housing Studies at Harvard University, *The 25th Anniversary of the Community Reinvestment Act Access to Capital in an Evolving Financial Services System*, March 2002

Often overlooked is the contribution of CRA to rural America and the connection between branches and CRA-related lending A NCRC report, *Access to Capital and Credit for Small Businesses in Appalachia*, conducted for the Appalachian Regional Commission documents that every two years banks issued \$5 4 billion in community development lending and investing in Appalachia [4] Also, bank branches had a positive impact on lending rather than only receiving deposits Small business lending was higher in Appalachian counties with higher numbers of bank branches

CRA has been an important venue for banks working in partnership with community groups in responding to credit needs. CRA agreements are often negotiated between banks and community groups during the merger application process NCRC's *CRA Commitments* publication has documented that banks have made \$4 6 trillion in CRA agreements and commitments to low- and moderate-income and minority communities [5] Since the *CRA Commitments* publication, Bank of America pledged an additional \$1 5 trillion during its takeover of Countrywide.[6] Overall, banks make considerably more home loans in geographical areas covered by CRA agreements than those that are not, as documented in a study conducted by Federal Reserve economists using NCRC's CRA database [7]

Federal Reserve research reveals that CRA has resulted in banks meeting credit needs in a safe and sound manner As a result of CRA's prudent lending requirement, the Federal Reserve found that of all the high-cost loans issued in 2006, only 6 percent were considered on bank CRA exams and were made by banks to low- and moderate-income borrowers or neighborhoods [8] The vast majority of the risky lending was issued by non-CRA covered mortgage companies over the years Additional research by Elizabeth Laderman and Carolina Reid of the San Francisco

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[4] See http //www ncrc org/images/stories/mediaCenter_reports/ncrc%20study%20for%20arc pdf
[5] NCRC's *CRA Commitments* via
http //www ncrc org/images/stories/whatWeDo_promote/cra_commitments_07 pdf
[6] See Bank of America's April 28 press release at
http newsroom bankofamerica com index php?s=press_releases&item=8152 Last accessed on August 29, 2008
[7] Raphael Bostic and Breck Robinson, *Do CRA Agreements Influence Lending Patterns?* Real Estate Economics, Volume 31 (2003)
[8] Randall Kroszner, former Federal Reserve Governor and currently at Booth School of Business, University of Chicago, *The Community Reinvestment Act and the Recent Mortgage Crisis*, in Revisiting the CRA Perspectives on the Future of the Community Reinvestment Act, A Joint Publication of the Federal Reserve Banks of Boston and San Francisco, February 2009, http //www frbsf org/publications/community/cra/index html

Federal Reserve Bank documents that loans made by banks in their CRA assessment areas are about half as likely to end up in foreclosure as loans issued by independent mortgage companies.[9] Federal Reserve Chairman Ben Bernanke concludes, "Our own experience with CRA over more than 30 years and recent analysis of available data, including data on subprime loan performance, runs counter to the charge that CRA was at the root of, or otherwise contributed in a substantive way, to the current mortgage difficulties."[10]

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

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

As successful as CRA has been in promoting sound lending and investing in communities, its full potential has not been realized due to insufficient examination criteria Exams have been too restrictive in the geographical areas they cover and have also not automatically included mortgage company affiliates of banks that issue high numbers of loans Moreover, while CRA has been successful in promoting safe and sound lending to low- and moderate-income borrowers and communities, significant racial disparities in lending remains in part because the CRA statute and examinations do not require a consideration of bank service to minorities

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

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

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

Finally, the exam performance measures need to be enhanced and exam rigor would be bolstered by more accurate data on bank lending and investment activity.

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

Expand Assessment Areas

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

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

Significantly as a result of the narrow definition of assessment areas, the share of all loans made by banks in their CRA assessment areas has dropped significantly. A study by Apgar and Essene demonstrates that between 1993 and 2006, the share of all home purchase loans made by banks in their assessment areas fell from 36 1 percent to 26 percent For refinance lending, the comparable figure was 45 percent in 1993, falling to 25 percent in 2006. Meanwhile, out of assessment area lending by banks grew 187 percent during this time period.[13]

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[12] See Section 345 41 of the FDIC's CRA regulation available via http //www fdic gov/regulations/community/community/index html

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

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

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

NCRC finds that incomplete assessment area coverage also has significant fair lending ramifications Using data provided by the Joint Center for Housing Studies at Harvard University, NCRC compared the share of all home loans in metropolitan areas that were made by banks issuing loans in their assessment areas to the minority population and the share of subprime loans As described in the table below, NCRC found that when the share of loans made by banks in their CRA assessment areas declines, the share of loans that were subprime increased (this reinforces other research revealing that banks issued considerably less subprime loans than mortgage companies not covered by CRA) When the share of loans in a metropolitan area issued by banks in their CRA assessment area was less than 25 percent, the share of loans that was subprime was 23 percent and the share of the population that was minority was 29 percent

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Publication of the Federal Reserve Banks of Boston and San Francisco, 2009

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

In contrast, when the share of loans in a metropolitan areas issued by banks in their CRA assessment area was greater than 42 percent, the share of subprime loans declined to 16 percent and the percent of the population that was minority also decreased to 15 percent (data for individual metropolitan areas available upon request) In other words, when CRA coverage of lending declines, both the percentage of minorities and subprime loans increased Increasing CRA coverage will therefore provide minorities with a greater choice of loans and lessen racial disparities in lending [15]

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

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

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

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

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

Mandatory Inclusion of Mortgage Company Affiliates of Banks in CRA Exams

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

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

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

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

CRA exams have a fair lending component that assesses whether a bank discriminated by rejecting qualified minority applicants or by steering minorities with good credit to subprime loans While the fair lending test is necessary, it does not assess whether banks are affirmatively

[17] See http thomas loc gov cgi-bin query z?c111 H R 1479 for the text of H R 1479

making loans to minorities In other words, a bank can employ non-discriminatory policies but still make relatively few loans to minorities because it does not market to minority communities. If lending to minorities were an explicit criterion on CRA exams then consistently low percentages of loans to minorities would contribute to a lower rating for the bank

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

Federal Reserve economists came to similar conclusions about high levels of subprime loans in minority neighborhoods after controlling for creditworthiness.[19] As a result of the targeting of risky lending to minorities, Reid and Laderman conclude that African-American borrowers were 1 8 times more likely than whites to be in foreclosure, whereas Latino and Asians were 1 4 and 1 3 times more likely to be in foreclosure, respectively than whites, after controlling for several lender and borrower characteristics.[20] Another NCRC study, *Are Banks on the Map?*, found larger disparities in branching by race of neighborhood than by income of neighborhood in 25 large metropolitan areas [21] Overall, it is probable that a consideration of lending and branching by race of borrower and neighborhood would lessen the racial disparities in access to bank services and loans

For Congressional districts, Compliance Tech has recently compiled statistics of the percentage of subprime loans to African-Americans, Hispanics, and whites for the year 2006, which was a year of heavy subprime volume.[22] Displayed in the appendix to this testimony, the table clearly

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[18] *Broken Credit System* available via NCRC on 202-628 8866
[19] Paul S Calem, Kevin Gillen, and Susan Wachter, *The Neighborhood Distribution of Subprime Mortgage Lending*, October 30, 2002 Available via pcalem@frb.gov also Paul S Calem, Jonathan E Hershaff, and Susan M Wachter, *Neighborhood Patterns of Subprime Lending Evidence from Disparate Cities*, in Fannie Mae Foundation's Housing Policy Debate, Volume 15, Issue 3, 2004 pp 603-622
[20] Laderman and Reid, ibid
[21] See NCRC's *Are Banks on the Map* via
http //www ncrc org/images/stories/mediaCenter_reports/ncrc%20bank%20branch%20study pdf
[22] Maurice Jourdain-Earl, Compliance Tech, Politics and the Subprime Meltdown An Examination of Disparities by Congressional District, Political Party, Caucus Affiliation, and Race, 2009, via

illustrates the significant disparities in subprime lending by race for Congressional districts of members of the House Financial Services Committee. In fact, NCRC finds in our *Income is No Shield* report series that racial disparities in lending actually increases as the income level of the borrower increases [23]

Prior to the CRA regulatory reforms in the mid 1990's, CRA exams under Assessment Factor D would often assess performance of lending to minorities An example of this approach is employed in the evaluation of Signet Bank, conducted by the Federal Reserve Bank of Richmond in 1996 [24]

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

Exams Must Be Uniformly Rigorous Instead of Inconsistent

CRA Grade Inflation

Expanding the coverage of CRA exams related to assessment areas, affiliates, and consideration of bank performance in serving minorities is necessary but not sufficient in making CRA exams more effective The rigor of CRA exams is also a critical issue in unleashing the full potential of

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http //www ncrc org images stories/pdf/research/politics%20and%20the%20subprime%20mortgage%20meltdown-final pdf

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

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

CRA Unfortunately, the evidence to-date points to CRA grade inflation as well as inconsistent quality of CRA exams

Banks receive one of four ratings on their CRA exams. Outstanding, Satisfactory, Needs-to-Improve, and Substantial Non-Compliance. The last two ratings are considered failing ratings. As the table below shows, the current failure rate for banks has hovered between 1 to 2 percent in recent years. When ratings first became public in 1990, more than 10 percent of banks failed their CRA exams[25] During the first five years of the public availability of CRA ratings, more than 5 percent of banks failed their CRA exams every year.

Year	Outstanding		Satisfactory		Needs to Improve		Substantial Noncompliance		Total
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	
1990	340	10.9%	2,474	79.5%	280	9.0%	19	0.6%	3,113
1991	407	8.3%	4,016	81.6%	453	9.2%	46	0.9%	4,922
1992	653	12.7%	4,067	78.9%	395	7.7%	40	0.8%	5,155
1993	941	14.7%	5,060	79.3%	355	5.6%	26	0.4%	6,382
1994	1,000	18.1%	4,249	76.7%	275	5.0%	15	0.3%	5,539
1995	1,363	24.3%	4,106	73.1%	138	2.5%	7	0.1%	5,614
1996	1,214	26.5%	3,275	71.5%	81	1.8%	11	0.2%	4,581
1997	829	22.4%	2,807	75.7%	59	1.6%	11	0.3%	3,706
1998	681	18.6%	2,915	79.6%	59	1.6%	7	0.2%	3,662
1999	679	18.6%	2,915	79.7%	55	1.5%	7	0.2%	3,656
2000	220	17.5%	1,001	79.6%	30	2.4%	7	0.6%	1,258
2001	132	10.6%	1,058	87.1%	23	1.8%	6	0.5%	1,249
2002	201	9.8%	1,820	89.0%	18	0.9%	5	0.2%	2,044
2003	283	10.1%	2,492	89.2%	17	0.6%	3	0.1%	2,795
2004	329	13.1%	2,170	86.1%	17	0.7%	3	0.1%	2,519
2005	247	16.0%	1,261	83.1%	10	0.6%	4	0.3%	1,542
2006	199	14.0%	1,194	84.0%	22	1.5%	6	0.4%	1,421
2007	212	11.9%	1,538	86.4%	26	1.5%	4	0.2%	1,780
2008	195	9.5%	1,823	88.9%	29	1.4%	4	0.2%	2,051
2009 to date	53	6.1%	805	92.6%	10	1.2%	1	0.1%	869
Total	**10,178**	15.9%	**51,096**	80.0%	**2,352**	3.7%	**232**	0.4%	**63,858**

Banks improved their CRA performance over the years as they bolstered their efforts to make loans, investments, and services in low- and moderate-income communities Yet, the low failure rate in recent years appears to be implausible. A study conducted by the Center for Community Capitalism concluded that CRA service test scores are likely to be inflated when low scores on

[25] See http://www.ffiec.gov/craratings/default.aspx for the database on CRA ratings

the lending test and investment test confront banks with the possibility of CRA exam failure [26] In addition, Rick Marsico in his book *Democratizing Capital* reveals how quantitative criteria are applied in an inconsistent manner on CRA exams, suggesting that a number of CRA exams have ratings that cannot be justified [27]

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

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

Ratings and Point System Reform

H.R. 1479 introduces two more ratings, High Satisfactory and Low Satisfactory, in an effort to produce more meaningful ratings In addition, a detailed scoring system is needed. Currently, ranges of points correspond to the various CRA ratings. The highest possible point total corresponding to an Outstanding rating is 24 points with a zero indicating total failure or Substantial Noncompliance But the scale does not make intuitive sense or is sufficiently large

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

[27] Richard D Marsico, *Democratizing Capital The History, Law, and Reform of the Community Reinvestment Act*, Carolina Academic Press, 2005

enough to meaningfully reflect the range of lending, investment, and service activities For large bank exams, the complexity of the lending test alone which has five criteria and often scrutinizes four or more types of lending suggests that a scale of 0 to 24 cannot adequately reflect performance in various aspects of the test.[28] NCRC recommends, therefore, that the agencies create a scale of 1 to 100 or another scale large enough to meaningfully capture the range of activities. Moreover, a scale of 100 should be used for the overall rating as well as the ratings for the component tests to truly create a meaningful scoring system that causes banks to be more vigilant regarding their CRA performance in all its aspects The component tests can still have different weights as they do now since the overall rating can be a weighted average of the component tests

Weighting System to Reflect Affordability and Responsiveness to Local Needs

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

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

[28] See 12 CFR 345 22 for the FDIC's version of the lending test for large banks and see the interagency Q&A document Section 345 28(a)—3 for the description of the ratings matrix or existing point scale On the large bank lending test, at least three criteria (borrower distribution of loans, geographic distribution of loans, and flexible and innovative lending practices) can be considered for three or four loan types Just a portion of the lending test can therefore exhaust the current scale of 0 to 12 for the lending test if the highest possible score could be one point for one loan type and one criterion Four loan types multiplied by three criteria would equal 12 if the bank scored outstanding for each loan type on each criterion There are no points left over for the other two criteria on the large bank lending test

the secondary market are weighted equally to loan originations although making a loan is often the task that is more time intensive and responsive to local needs In addition, the weighting system does not distinguish among the affordability of products although the Interagency Question and Answer (Q&A) document hints that banks should strive for affordability. For instance, §__ 12(i)-3 of the Interagency Q&A document states that community development services include "reasonably priced remittances" and foreclosure prevention in the form of "affordable," "sustainable," "long-term" loan modifications and restructurings. Yet, CRA exams rarely implement the affordability aspect of the Question and Answer document. Subprime loans, even those offered by the handful of banks and thrifts that dissolved in part because of their risky lending, appeared to receive the same weight as prime loans on CRA exams Banks with expensive overdraft programs were never penalized on CRA exams nor encouraged by the exams to be more responsive to the needs for short-term consumer credit by establishing small consumer lending programs [29]

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

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

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

CRA exams more objective and effective in motivating the type of sustainable financing needed in traditionally underserved communities.

Data Enhancements Needed

Accountability depends on transparency. If data are limited in how they reflect lending activity, the general public cannot evaluate the sustainability of loan products, nor can CRA exams effectively create weighting systems that weight categories of loans based on their affordability and responsiveness In an effort to increase the utility of data, the President's proposal for a Consumer Financial Protection Agency, H R 3126 (the Consumer Financial Protection Agency Act of 2009), and H.R. 1479 contain important data enhancements to Home Mortgage Disclosure Act data, small business data, and bank branch and deposit data

H R 3126 provides critical enhancements to the HMDA data regarding loan terms and conditions Several loan terms and conditions would be collected, including total points and fees, prepayment penalties, the value of the home, whether the loan is a hybrid loan with a lower teaser rate, and whether the loan is a negative amortization loan

Using the existing information on loan pricing and the proposed enhancements in H R 3126, CRA exams could weight categories of loans that more precisely reflected affordability and sustainability of the loans Banks could more readily be penalized on CRA exams if they were highly leveraging borrowers with loans containing high loan-to-value ratios, burdensome prepayment penalties, frequent negative amortization, or other loan terms and conditions that have been demonstrated to contribute to high default rates In contrast, banks would receive higher ratings if they offered loans that demonstrated their affordability by performing well in terms of borrowers remaining current on the loan (H R 1479 would add loan performance data recording whether the borrower was current or delinquent as a component of publicly disclosed data) Finally, more refined home loan data and weighting systems would ensure that banks making both prime and high-cost lending offer a balanced product mix to traditionally underserved borrowers and communities

The publicly available small business data is considerably more limited than the HMDA data, significantly curtailing its usefulness on CRA exams Periodic national surveys sponsored by the

Federal Reserve Board consistently point towards the likelihood of discrimination in small business lending.[30] A powerful way to reduce disparities in lending is to publicly provide data on the number of loans for minorities and women Yet, the CRA small business data lacks information on the gender and race of the small business owner

In addition, the federal agencies significantly lessened the quality of small business loan data by exempting intermediate small banks (with assets of $250 million to $1 billion) from requirements to collect and report it and thus reduced the quality of data used on CRA exams As NCRC demonstrated in its report for the Appalachian Regional Commission, intermediate small banks are an important source of credit for small businesses, particularly in rural areas and medium sized cities and towns.[31]

Both H.R. 3126 and H R 1479 would significantly augment the utility of CRA small business loan data for the general public and for CRA exams Both bills would require that the race and gender of the small business owner would be collected In addition, the financial institution would be required to collect the type and purpose of the loan, the type of action taken with respect to the application (approval or rejection), the gross annual revenue of the small business owner, and the specific census tract location of the small business receiving the loan In addition, a broader array of banks and non-banks including finance companies and credit unions would be required to report the data

Upon passage of either H R 3126 or H.R. 1479, CRA exams could scrutinize lending to minority and women-owned small businesses CRA exams could weight loans based on their type, purpose, and responsiveness to needs In addition, CRA exams could more precisely measure the spatial distribution of small business loans Currently exams only measure lending in broad income categories of census tracts rather than specific census tracts, meaning that exams may fail to focus on certain neighborhoods that are particularly starved for access to credit Furthermore,

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

[31] Ibid

current CRA exams are not refined enough in assessing access to credit for the smallest of the small businesses. Upon passage of H R 3126 or H.R. 1479, CRA exams could more accurately assess lending to the smallest businesses with revenues lower than $1 million since the new data would enable examiners to measure lending to small businesses in various revenue categories below $1 million in revenue Finally, a more complete universe of institutions reporting data (including credit unions and the intermediate small banks recently exempted from reporting requirements) would enable CRA exams to measure more effectively how all banks compare to the rest of the financial industry in meeting small business credit needs in a responsible manner

Another area of data collection and CRA exam analysis in need of reform is assessments of bank branch and service activity CRA exams currently measure the presence of bank branches in low- and moderate-income neighborhoods in a cursory manner for large banks and barely at all for intermediate small banks Before the changes to the intermediate small bank exams, NCRC and New York Law School found that the 92 exams in our sample recorded the number of branches in low- and moderate-income neighborhoods 97 percent of the time After the changes to the intermediate small bank exams, the exams failed to record the number of branches in low- and moderate-income exams 32 percent of the time In addition, 53 percent of the exams after the changes did not discuss the percentage or distribution of branches in low- and moderate-income neighborhoods.[32]

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

H R 3126 and H R 1479 would be instrumental in rectifying deficiencies in the level of data and analysis of bank branches and service on CRA exams The bills would require banks and credit unions to maintain and disseminate data on their branches, ATMs, and other depository facilities,

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

as well as maintain and disseminate the census tract locations of their depository facilities. (Note Deposit accounts include checking, savings, credit union share accounts, and other types of account) The number and dollar amount of deposit accounts for the residential and commercial customers for each deposit facility would also be collected The place of residence/business of bank/credit union customers would be provided on a census tract basis, making it possible to analyze the income level and race/ethnicity percentage of the census tracts of these customers The bills would require these data would be used as part of CRA exam analysis

Existing CRA exams do not adequately scrutinize the distribution of branches across neighborhoods of various income levels Both H R. 3126 and H R 1479 would not only augment the amount of data on bank branches available for CRA exams but also provide detail on the number and dollar amount of various deposit accounts CRA exams would therefore not only measure the distribution of branches but would assess if the branches are actually effective in delivering deposit accounts to customers from neighborhoods of various income levels and racial characteristics. CRA exams, therefore, would become more effective in promoting basic banking services as alternatives to high-cost payday, cash checking and other fringe services The Woodstock Institute, a NCRC member, recently conducted a study illustrating the rich types of analyses that could be conducted with more detailed data on branches and deposits.[33]

IV. Adequacy of Enforcement Mechanisms and Needed Improvements

The remarkable accomplishment of CRA is that the law has been as successful in leveraging high volumes of responsible loans and investments for low wealth neighborhoods despite mediocre regulatory enforcement at best to negligent enforcement at worst That CRA has been as successful as it has suggests that more vigorous regulatory enforcement could promote significant increases in loans, investments, and services for traditionally underserved communities In addition to ratings inflation, the agencies have not seized upon the profound mergers and acquisitions over the last several years as opportunities to enforce the law They

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

rarely hold public hearings or hold lenders accountable for improving CRA performance after mergers The methods for rectifying the uneven enforcement of CRA is to further bolster the public participation mechanisms and enact meaningful sanctions and corrective mechanisms for poor CRA and fair lending performance

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

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

Currently, if a bank is unsatisfied with its CRA rating, it can appeal its rating to its regulatory agency. These appeals occur in secret, so the frequency of the appeals and how often the appeals result in higher ratings are unknown It is possible that the appeal process could play a significant role in ratings inflation. A few years ago, NCRC assisted a member in West Virginia in commenting on a major bank's CRA exam The examiner initially failed the bank, whereupon the bank promptly appealed its rating. NCRC guessed that an appeal was occurring and helped our member organization write a letter asserting that the initial rating was justified. The regulatory agency chose to ignore our letter and instead gave the bank a passing CRA rating.

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

Public Improvement Plans and Increased Attentiveness to Local Needs

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

If a low CRA rating in an assessment area triggered requirements for a bank to improve its performance, a bank would be more likely to adequately serve all geographical areas, including smaller cities and rural areas in addition to large cities. Under the Community Reinvestment Modernization Act of 2009, H R. 1479, if a bank receives a rating of Low Satisfactory or worse in any assessment area, H R 1479 would require it to submit a CRA improvement plan to its regulatory agency, describing how it intends to bolster its CRA performance in that assessment area [34] The general public would have an opportunity to comment on the CRA improvement plan. The regulatory agency must either approve the CRA improvement plan or send it back to the bank for modifications After the agency approves the CRA improvement plan, the bank must submit quarterly reports so that the regulatory agency and general public can monitor performance under the terms of the plan

Consequences for Failed Ratings

The lack of fines or other sanctions for failed CRA ratings can encourage banks to repeatedly fail CRA exams and neglect communities of significant resources for development. The most notorious case of repeated failure is a small bank called Uinta County Bank that serves a rural community in Wyoming [35] The bank has racked up 20 Substantial Non-Compliance ratings from the Federal Reserve Board since 1990 In its most recent exam in 2006, the bank had a paltry loan-to-deposit ratio of 8 percent. In other words, it was receiving deposits from the community but refused to loan those deposits back into the community Another repeat offender is Saint Casimir's Bank in Baltimore, Maryland The bank received five Substantial Non-Compliance

[34] The concept of an improvement plan builds upon a procedure mandated by the current CRA regulation At section 345 43 of the FDIC's version of the regulation, a bank with a less than Satisfactory rating shall allow the public to inspect a description of its efforts to "improve its performance in helping to meet the credit needs of its entire community " This description is to be updated quarterly

[35] Information on CRA exams of banks discussed in this section can be found via http www ffiec gov

ratings and eked out a Needs-to-Improve rating on its last exam in 2007 Larger banks with considerable resources also fail to reinvest in communities. For example, North Shore Bank, an institution with $942 million in assets, turned in a Needs-to-Improve rating in 2007. Ocean Bank, located in Miami, Florida and possessing $5 billion in assets, failed its CRA exam with a Needs-to-Improve rating in 2006

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

Expectations of Affirmative Responsiveness to Needs

CRA exams and decisions on mergers often miss opportunities for enforcement when CRA exams pass banks or when agencies approve mergers. Even when banks merit a passing rating or a merger approval, their CRA and fair lending performance can still be uneven, which is not often acknowledged by the bluntness or unsophisticated nature of exams and merger approvals Banks are complex institutions, offering a multitude of loans, services, and investments. While they may perform reasonably well in a number of areas, a significant fair lending or CRA issue may remain in one or more of their products and practices When agencies regularly refuse to acknowledge uneven performance in their public evaluations of banks, they reduce the legitimacy of the process and further damage the process by discouraging public participation. Community organizations and members of the public withdraw from the process as they become cynical about their grievances being addressed

NCRC therefore recommends a section in both CRA exams and merger approvals called "expectations of affirmative responsiveness to needs" The expectations section would describe strengths and weaknesses in bank performance Depending on the extent and duration of the weakness in performance, the section would then recommend or require certain improvements

More Public Hearings and Meetings during Merger Applications

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

In Congressional testimony in 2007, an official representing the Federal Reserve testified that the Federal Reserve has held only 13 public meetings on mergers since 1990. This is less than one meeting per year in an era in which consolidations have profoundly changed the banking industry. In addition, the Federal Reserve representative stated that since 1988, the Federal Reserve received 13,500 applications for the formation of banks or the merger of institutions involving bank holding companies or state-chartered banks that were members of the Federal Reserve System Yet, only 25 of these applications were denied, with 8 of these denials involving consumer protection or community needs issues [36]

Likewise, the Treasury Department found that from 1985 through 1999, less than 8 percent (692 out of 92,177) of applications received adverse comments from community groups Of these 692, the agencies denied just 8 for any reason, 4 percent of the 692 were withdrawn by the bank and 1 percent was returned to the banks. Ultimately, the agencies denied 8 out of 92,177 applications or less than .01 percent of the applications during the 15 year time period [37]

The agencies also have not fully engaged the public in deliberations over mergers with profound impacts In 2006, Wachovia acquired the largest lender of exotic mortgages, World Savings, yet there was no public hearing on this merger that posed significant fair lending and safety and

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[36] See http://www.federalreserve.gov/newsevents/testimony/braunstein20070521a.htm for Ms Braunstein's testimony

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

soundness issues Likewise, Regions proposed to take over Amsouth Bank in 2006. Although this merger involved two of the larger banks in the South, the Federal Reserve declined to hold a public hearing in spite of the clear ramifications for the recovery of the Gulf States after Hurricane Katrina The Federal Reserve also declined to hold a hearing on the merger of Bank of New York and Mellon although the Bank of New York had received low ratings on two of three tests on their two most recent CRA exams [38]

winxpusr 9/12/09 11:00 PM
Comment: Capitalize?

jsilver 9/12/09 11:00 PM
Comment: Yes, capitalize, I referenced a CRA exam.

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

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

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

banks about the complexities and impacts of the mergers on the banks' abilities to meet community needs.

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

CRA agreements and fair lending pledges were often negotiated in the 1990's between banks and community organizations during the merger application process These agreements committed a bank to either fair lending reforms and/or specific levels of lending, investments, and services in specified geographical areas after mergers The agreements become less frequent as banks began to notice that agreements were not scrutinized by the agencies Federal agencies would usually note in merger approval orders that CRA agreements were not required by the CRA regulation. In addition, they routinely stated that they will not consider any CRA agreements in the merger approval process [39] In the last several years, instead of negotiating agreements during mergers, banks would sometimes issue impressive sounding unilateral pledges that were difficult, if not impossible to verify, because the pledges did not specify the incomes of the beneficiaries nor the geographical areas served While agreements were once innovative and organic mechanisms for addressing the profound impacts of mergers, they have become infrequent and debased.

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

Establish a Private Right of Action

An effective mechanism to combat CRA grade inflation and unjustified merger approvals would be a private right of action for community organizations and members of the public The current

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

regulatory agencies were lax in their CRA and fair lending enforcement during the last eight years, in part, because they knew that they were immune from citizen lawsuits A couple of pioneering lawsuits in the 1990s were dismissed by judges claiming that community organizations had no standing to sue [40] Key merger approvals have been either illegal or highly questionable For example, the Federal Reserve Board approved Citigroup's application to acquire the Travelers insurance company before Congress passed the Gramm-Leach-Bliley Act allowing banks to acquire insurance companies Recently, BB&T's acquisition of 300 of Colonial's branches did not involve a public comment period although the failure of Colonial Bank did not pose a systemic threat to the United States' financial system or economy

The right of private action would hopefully be used sparingly because CRA exams, merger reviews, and enforcement would be significantly improved by Congress passing provisions in H.R 1479 and H R 3126. Yet, even when vigorous enforcement is the norm, a right of private action provides a necessary check and balance ensuring agency accountability in enforcing laws A right of private action is standard in other spheres of law such as environmental law, it is sorely needed in CRA and fair lending where enforcement has been glaringly inconsistent

V. Adequacy of Fair Lending Review on CRA Exams

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

In most cases, even for the largest banks in the country, the fair lending section of the CRA exam reports in one to three sentences that the regulatory agency tested for evidence of illegal and

[40] See Brescia, op cit

discriminatory lending and that no such lending was found [41] There is no discussion of what precisely had been done to reach this conclusion

A clear case of inadequate fair lending and other illegal practices review involved Superior Bank This savings and loan was one of the first well-known failures of an institution that offered large volumes of ill-advised exotic and high-cost loans The Office of Thrift Supervision's 1999 exam described Superior's loans as innovative and extolled the loan terms and conditions such as payment deferrals (which could result in negative amortization) and high loan-to-values [42] The exam did not examine how often these risky features were utilized and whether they were combined The fair lending section found no violations of fair lending or other laws Soon after this exam, Superior failed

Providing more detailed descriptions of fair lending reviews should be straightforward. The agencies used to provide detailed descriptions in the fair lending section of CRA exams in the mid-1990s For example, the Federal Reserve Bank of Richmond conducted matched file reviews of more than 300 loan applications in a CRA exam dated January 1996 of Signet Bank [43] The exam also described regression analysis, which sought to determine if race was a factor in loan rejections. The analysis considered variables not available in the HMDA data such as credit histories, the stability of employment, and applicant debt obligations. This type of substantive fair lending review provides the general public with confidence that the regulatory agency performed a detailed anti-discrimination analysis. Ironically, it was after the CRA regulations were reformed during the mid-1990s in an effort to improve the rigor of the exams that these descriptions of fair lending reviews disappeared from the CRA exams

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

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

[42] See http //files ots treas gov/cra/CRAF_08566_19990927_60 rtf

[43] Ibid

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

High impact economic development is holistic economic development that ties together housing, small business, economic development, and community development initiatives. When a neighborhood(s) is in need of comprehensive development, the chances of revitalizing a neighborhood(s) improves when all of these activities are undertaken together and targeted towards the neighborhood(s)

Better Data on Community Development Loans and Investments

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

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

Allow for Investments in National Funds Provided Local Needs are Met

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

NCRC recommends that CRA examination procedure allow points for investments in national funds provided that the banks have first met the needs for community development loans and investments in their assessment areas. When determining if banks have met needs in assessment areas, the expansive definition of assessment areas in H R 1479 and discussed above must be used The expansive definition reflects more meaningfully all the geographical areas in which banks have a business presence and make a significant number of loans. Community development possibilities are maximized if banks are also asked to ensure that they are meeting needs for community development financing in areas in which they are making significant amounts of home and small business loans

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

Poor Record of Non-CRA Covered Institutions

The lightly regulated and non-CRA covered segments of the financial industry have caused profound damage to the country's economy and to the community wealth-building assisted by the CRA-related lending and investing of banks Financed by Wall Street investment banks and hedge funds, non-CRA covered independent mortgage companies, and unscrupulous mortgage brokers engaged in high volumes of ill-advised and risky loans The Federal Reserve Board found that from 2004 to 2006, independent mortgage companies extended between 55 percent and 63 percent of the high-cost piggyback loans.[44] When risky lending was targeted to neighborhoods that benefited from CRA-related housing and community development financing, the risky lending undid the wealth creation of the CRA lending and investing by causing high levels of foreclosures, property value declines, abandonment, vandalisms, and crime The independent mortgage companies also experienced massive losses as a result of their lending activity The Federal Reserve revealed that 167 of the 169 lending institutions that ceased operations in 2007 were independent mortgage companies [45]

CRA's impact has been deterred by more responsible institutions as well Non-CRA covered credit unions and insurance companies have not been major actors in the subprime fiasco but they have not served minority and working communities in a satisfactory manner, thereby decreasing the levels of responsible loans and insurance products available in traditionally underserved communities Just last week, NCRC released a report, *Credit Unions True to Their Mission (Part II),* concluding that the non-profit and tax exempt credit unions, which have a statutory duty to serve people of "small means," issue lower percentages of home loans than banks to minorities, women, and low- and moderate-income communities [46]

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

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[44] Robert B. Avery, Kenneth P Brevoort, and Glenn B Canner, *The 2007 HMDA*, the Federal Reserve Bulletin, December 2008, available via http //www federalreserve gov/pubs/bulletin/2008/pdf/hmda07final pdf
[45] Avery, Brevoort, and Canner, op cit
[46] See http //www ncrc org/images/stories/mediaCenter_reports/creditunionreport090309 pdf

Over the years, the National Credit Union Administration (NCUA), the regulator of credit unions have changed credit union charters in a manner that should enable them to achieve desirable CRA and fair lending performance The NCUA provided large credit unions with community charters that enable them to serve large areas such as Los Angeles County By 2007, community credit unions numbered 1,177, and had 16 2 million members and $123 billion in assets In addition, the NCUA allowed large credit unions to add underserved areas consisting of low- and moderate-income neighborhoods to their service areas.

By 2007, credit unions serving underserved areas had increased to 673, had 17 9 million members, and held $150 billion in assets[47] Moreover, large credit unions with over $1 billion in assets have $356 billion in total assets While mainstream credit unions clearly have the assets, resources, and geographic reach to serve minorities, women, and low- and moderate-income communities, the evidence from this three year study suggests that they do not serve these communities as well as CRA-covered banks Finally, the study finds that state-chartered credit unions in Massachusetts covered by a state-CRA law perform better than federally-chartered credit unions not covered by CRA in reaching traditionally underserved populations in Massachusetts

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

[47] Report to the NCUA Board from the Outreach Task Force, February 26, 2008, via http //www ncua gov/ReportsAndPlans/plans and reports/2008/OutreachTFReport-022608 pdf

Controlling for factors affecting the availability and the price of insurance (such as average loss cost, age of home, market value of the house, housing conditions, household income), a study conducted by an economist with the National Association of Insurance Commissioners suggests that insurance unavailability in urban areas can not be explained by the higher risk of loss in these areas.[48] Using a series of regression analyses, the study reveals that, holding other factors equal, minority homeowners were less likely to acquire insurance through the voluntary market After controlling for risk of loss, a 10 percentage point increase in the portion of minorities in a zip code is associated with a 2 percentage point increase in the portion of "FAIR plans," which are government-sponsored insurance plans of last resort for those who cannot obtain insurance in the private market. Moreover, average premiums are higher in cities and even higher in minority and low-income neighborhoods Geographical areas with higher concentrations of minority and non-English-speaking residents are also associated with higher prices for insurance

Similarly, Schultz[49] uses a regression analysis controlling for factors influencing agents' placement decision and finds that "agents are not located where their potential economic gain is greatest " In this study, the risk of loss was not found to be significantly different in predominantly minority areas, compared to predominantly white ones Thus, risk of loss could not explain the finding that fewer agents were placed in predominantly minority areas Schultz concludes that there seems to be a bias against placing agents in inner-city neighborhoods with high concentrations of minorities This bias persists even after controlling for loss costs, agents commissions, and profitability. Moreover, underwriting rules, such as the minimum property value and the maximum age of home rule, had a disproportionate effect on low-income neighborhoods [50]

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

[49] Jay Schultz (1997) "Homeowners Insurance Availability and Agent Location' Chapter Four of *Insurance Redlining Disinvestment, Reinvestment, and the Evolving Role of Financial Institutions* by Squires, G Urban Institute Press Washington, D C

[50] 44% of the houses in low-income quartiles had a value below $35,000 and 20% of the insurance companies in Missouri excluded houses valued under $35,000 Furthermore, 71% of the homes in low income quartiles were not eligible when underwriting guidelines exclude houses built prior to 1950

Resources of and Opportunities for Non-CRA Covered Institutions

If CRA was applied to credit unions, insurance companies, securities firms, and other non-bank institutions, the resources available for CRA-related financing of comprehensive community development would multiply Credit unions, now a mature and mainstream industry, have collectively $825 billion in assets The assets of money market funds equal $3 5 trillion [51] Non-life insurance premiums in the United States were $652 billion during 2007.[52] Hedge funds constituted $2 5 trillion in assets [53] In sum, if CRA were applied broadly across the financial industry, traditionally underserved communities would experience hundreds of billions of more dollars in loans, equity investments, insurance, and securities products.

How CRA Would be Applied to Non-Bank Institutions

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

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

[51] See http //www ici org pdf/fm-v18n3 pdf
[52] IFSL Research, Insurance Update 2008, International Financial Services, London, November 2008
[53] See http //en wikipedia org/wiki/Hedge_fund

credit unions The service test would measure the neighborhood distribution of loan offices for mortgage companies and agents for insurance and securities companies

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

VIII. Other Factors that Reduce Effectiveness of CRA

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

As discussed above, the federal bank agencies pass 99 percent of banks and thrifts on CRA exams They have also significantly lessened public hearings during bank mergers and rarely require any measurable improvements in CRA and fair lending performance after mergers This regulatory neglect occurred during the worst years of irresponsible lending Although non-CRA covered institutions were major actors behind the crisis, the federal agencies should have been extra vigilant in enforcing CRA and fair lending obligations during this time period. While bank retail lending was responsible during this time period, the non-CRA covered activity by some large banks such as securitizing risky loans was not sufficiently scrutinized and curtailed by the agencies, which had opportunities to act during merger applications [54]

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

IX. Other Changes to CRA Statute or Procedure

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

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

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

Conclusion and Recommendations

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

NCRC's comprehensive series of recommendations include.

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

- Change assessment area definitions so that the great majority of bank loans are covered by CRA exams per the procedure in H.R. 1479

- Require that mortgage company affiliates of banks and all other non-bank affiliates in bank holding companies are covered by CRA as mandated by H R 1479.
- Require that CRA exams scrutinize lending, investing, and service to minorities and communities of color as mandated by H R 1479.
- Institute a weighting system for CRA exams that weight categories of loans, investments, services according to their affordability and responsiveness to local needs (NCRC recommendation not in any existing bills)
- Create meaningful scales of points such as 1 to 100 on CRA exams to meaningfully evaluate the multiple levels of CRA performance (NCRC recommendation not in any existing bills) Add High- and Low-Satisfactory as possible overall ratings as required by H R 1479
- Enhance HMDA data to include more information on loan terms and conditions as required by H.R 1479 and H R 3126
- Enhance small business loan data to include the race and gender of the small business owner and other characteristics as required by H R 1479 and H R 3126
- Improve the data on bank branches and deposits and require analysis of branches and deposits by income and minority level of neighborhoods as required by H R 1479 and H R 3126

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

- Institute a public comment process allowing community organizations to appeal preliminary CRA ratings (NCRC recommendation not in any existing bills).
- Require public improvement plans, subject to public comment and review, whenever a bank scores Low-Satisfactory or worse overall or in any assessment area as mandated by H R. 1479
- Impose real consequences for failed ratings including fines (NCRC's recommendation not in any existing bills) and extending H R 1479's sanction to banks of cutting off access to the government-sponsored enterprises

- Institute a requirement that CRA exams and merger applications have a section called "Expectations of Affirmative Responsivess to Needs" that recommends or requires banks to address weaknesses in their CRA and fair lending performance (NCRC recommendation not in any existing bills)
- Require the federal agencies to consider any verifiable CRA agreements and fair lending pledges during merger applications (NCRC recommendation not in any bills)
- Require the federal agencies to hold frequent public hearings and meetings during the merger application process as mandated in H R 1479.
- Institute a private right of action whereby community organizations and other members of the general public can challenge agencies' CRA ratings and decisions on merger applications (NCRC recommendation not in any existing bills)
- Require detailed discussions of methodology, loan types examined, and the results of fair lending reviews on CRA exams (NCRC recommendation not in any existing bills).

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

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

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

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

Move Jurisdiction of CRA to the Proposed Consumer Financial Protection Agency

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

Appendix Tables

Subprime Lending by Race

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

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

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

National Community Reinvestment Coalition

September 2009

Representative	Congressional District	% Subprime Loans to Whites	% Subprime Loans to African Americans	% Subprime Loans to Hispanics	Overall % Subprime
Ackerman, Gary [D]	NY-5	10 28%	23 68%	29 88%	12 78%
Adler, John [D]	NJ-3	21 38%	48 37%	39 01%	26 27%
Baca, Joe [D]	CA-43	30.47%	48 76%	45 64%	41 76%
Bachmann, Michele [R]	MN-6	21 11%	45 02%	40 16%	23 10%
Bachus, Spencer [R]	AL-6	18 30%	50 86%	44 21%	23 69%
Barrett, James [R]	SC-3	21 23%	56 19%	32 33%	25 88%
Bean, Melissa [D]	IL-8	21 24%	44 35%	41 41%	24 36%
Biggert, Judy [R]	IL-13	20 45%	50 75%	40 43%	24 12%
Campbell, John [R]	CA-48	10 23%	27 08%	32 46%	14 32%
Capito, Shelley [R]	WV-2	25 45%	37 16%	31 52%	26 68%
Capuano, Michael [D]	MA-8	13 15%	45 59%	42 43%	23 08%
Carson, André [D]	IN-7	30 13%	62 06%	64 84%	39 15%
Castle, Michael [R]	DE-00	19 12%	44 78%	33 56%	26.46%
Childers, Travis [D]	MS-1	34 95%	67 76%	47 48%	42 13%
Clay, William [D]	MO-1	30 29%	69 12%	46 38%	48.91%
Cleaver, Emanuel [D]	MO-5	28 62%	65 56%	41 18%	37 40%
Donnelly, Joe [D]	IN-2	30 27%	63 72%	43 63%	32 66%
Driehaus, Steve [D]	OH-1	23 00%	56 93%	47 51%	30 82%
Ellison, Keith [D]	MN-5	18 87%	61 44%	52 47%	26 71%
Foster, Bill [D]	IL-14	20 54%	49 67%	42 48%	26 14%
Frank, Barney [D]	MA-4	18 39%	40 14%	38 67%	20 18%
Garrett, E [R]	NJ-5	16 77%	45 09%	28 84%	19 01%
Gerlach, Jim [R]	PA-6	15 19%	46 10%	37 07%	19 14%
Grayson, Alan [D]	FL-8	24 50%	50 32%	46 04%	33 45%
Green, Al [D]	TX-9	33 51%	72 65%	54 26%	51 58%
Gutierrez, Luis [D]	IL-4	21 21%	54 63%	44 57%	36 08%
Hensarling, Jeb [R]	TX-5	32 33%	67.30%	58 52%	41 79%
Himes , Jim [D]	CT-4	12 24%	47 49%	42 29%	20.71%
Hinojosa, Rubén [D]	TX-15	33 97%	44 19%	58.22%	53 29%
Hodes, Paul [D]	NH-2	21 74%	44 09%	32.26%	23 84%
Jenkins , Lynn [R]	KS-2	26.46%	45 99%	35 78%	28 30%
Jones, Walter [R]	NC-3	15 98%	51 19%	25 88%	22 42%
Kanjorski, Paul [D]	PA-11	30 31%	53 36%	51.47%	35 77%
Kilroy, Mary Jo [D]	OH-15	21 99%	56 13%	45 88%	25 24%
King, Peter [R]	NY-3	18 11%	48 91%	38 40%	22 52%

Klein, Ron [D]	FL-22	21 39%	52 50%	42 90%	29 71%
Kosmas, Suzanne [D]	FL-24	24 21%	47 32%	41 62%	30 54%
Lance , Leonard [R]	NJ-7	13.88%	38.00%	33 01%	18 52%
Lee , Chris [R]	NY-26	21 06%	41 85%	30 23%	23 25%
Lucas, Frank [R]	OK-3	33.60%	60 42%	44 41%	35 98%
Lynch, Stephen [D]	MA-9	17 20%	47 06%	40 70%	24 65%
Maffei , Dan [D]	NY-25	20 13%	45 45%	37 01%	23 35%
Maloney, Carolyn [D]	NY-14	4.09%	11 54%	18.71%	4 97%
Manzullo, Donald [R]	IL-16	26 03%	63 08%	45 60%	29 61%
Marchant, Kenny [R]	TX-24	19.87%	57.49%	47 07%	29 86%
McCarthy, Carolyn [D]	NY-4	20 09%	53 67%	46 19%	35 04%
McCarthy, Kevin [R]	CA-22	22 02%	50.29%	42 90%	32 20%
McCotter, Thaddeus [R]	MI-11	21 31%	51 41%	42.71%	24.15%
Mchenry, Patrick [R]	NC-10	22 47%	59 09%	41 19%	26.52%
Meeks, Gregory [D]	NY-6	35 40%	49 56%	44 17%	44 25%
Miller, Gary [R]	CA-42	12 80%	30 67%	29 74%	18 66%
Miller, R [D]	NC-13	14 41%	48 83%	35 62%	23 07%
Minnick, Walt [D]	ID-1	21 39%	33 33%	37 05%	22 73%
Moore, Dennis [D]	KS-3	17 75%	55 96%	36 99%	21 97%
Moore, Gwen [D]	WI-4	29 37%	71.50%	51.85%	45.60%
Neugebauer, Randy [R]	TX-19	30 97%	64 85%	65 37%	38 68%
Paul, Ronald [R]	TX-14	25 56%	56 67%	43.27%	30 18%
Paulsen , Erik [R]	MN-3	17 14%	56 91%	41.81%	21 72%
Perlmutter, Ed [D]	CO-7	20 20%	51 72%	44 37%	25 94%
Peters , Gary [D]	MI-9	16 88%	51 74%	40 55%	20 62%
Posey , Bill [R]	FL-15	25 60%	48 36%	46.86%	33.93%
Price, Tom [R]	GA-6	12 61%	38 75%	27 77%	15 83%
Putnam, Adam [R]	FL-12	29 99%	56 00%	50 19%	38 77%
Royce, Edward [R]	CA-40	13 94%	33 06%	35 67%	21 77%
Scott, David [D]	GA-13	23 80%	48 49%	43 74%	39 74%
Sherman, Brad [D]	CA-27	17 67%	38 80%	37 22%	27 33%
Speier, Jackie [D]	CA-12	7 08%	19.29%	22 46%	12 60%
Velazquez, Nydia [D]	NY-12	13.35%	50 47%	39 78%	26 56%
Waters, Maxine [D]	CA-35	24 78%	42.00%	43 70%	38 96%
Watt, Melvin [D]	NC-12	18 32%	49 37%	37 71%	28 78%
Wilson, Charles [D]	OH-6	29 14%	59 09%	37.97%	30 78%

TESTIMONY

Lawrence J. White, Professor of Economics
New York University Stern School of Business

Before the United States House of Representatives
House Committee on Financial Services Hearing entitled,
"Proposals to Enhance the Community Reinvestment Act"

10:00 a.m. on Wednesday September 16, 2009
2128 Rayburn House Office Building

Chairman Frank, Ranking Member Bachus, Members of the Committee: My name is Lawrence J. White. I am a Professor of Economics at the NYU Stern School of Business, and a Member of the Financial Markets Working Group at the Mercatus Center at George Mason University. I represent solely myself at this hearing. I have attached a brief biographical summary at the end of this statement.

Thank you for the opportunity to testify at this important hearing on the Community Reinvestment Act of 1977 (CRA). I will not try to summarize the CRA or the extensive literature on it in this brief statement. I have written about the CRA in the past (White 1993, 2000, 2002, 2009a, 2009b). Recent comprehensive reviews of the CRA can be found in Apgar and Duda (2003), Barr (2005), and Bernanke (2007), and recent symposiums on the CRA can be found in the Western New England Law Review, Vol. 29, No. 1 (2006) and in Chakrabarti et al. (2009).

My views about the CRA surely differ from those of many of the other individuals who will testify at today's hearing. I believe that, despite the good intentions and worthwhile goals of the CRA's advocates, the CRA is an inappropriate instrument for achieving those goals.

Fundamentally, the CRA is a regulatory effort to "lean on" banks and savings institutions,[1] in vague and subjective ways, to make loans and investments that (the CRA's proponents believe) those depository institutions would otherwise not make. It is a continued effort to preserve old structures in the face of a modernizing financial economy. At base, the CRA is an anachronistic and protectionist effort to force artificially a local focus for finance in an increasingly competitive, increasingly electronic, and ever-widening realm of financial services. Further, ironically, the burdens of the CRA may well discourage banks from setting up new locations in low-income neighborhoods and thus providing local residents with better-priced alternatives to high-cost check-cashing and payday lending establishments.

There is a better way. First, to the extent that lending problems can be traced to discrimination against racial or ethnic groups or involving other categories of personal discrimination, the right tool is more vigorous enforcement of anti-discrimination laws -- notably, the Equal Credit Opportunity Act of 1974.

[1] For the remainder of this statement I will use the word "banks" to include both commercial banks and savings institutions, unless otherwise indicated.

Second, vigorous enforcement of the antitrust laws, especially with respect to mergers, is necessary to keep financial markets competitive, so that banks and other lenders are constantly under competitive pressure to provide attractive services offerings to their customers. If, for some reason, enforcement of the antitrust laws is deemed not sufficient in this respect, then policymakers should open entry into the business of banking to companies that have a business model of providing good value to low- and moderate-income (LMI) households. Consistent with this focus on providing good value to LMI households, vigorous competition should not veer off into predatory practices, in which aggressive sales personnel take advantage of unsophisticated customers who are insufficiently aware of better alternatives.

Third, to the extent that there are socially worthwhile lending opportunities that somehow are not being satisfied by existing lending institutions, these projects should be funded through the public fisc, in an on-budget and transparent process. The Community Development Financial Institutions Fund, authorized by the Riegle Community Development and Regulatory Improvement Act of 1994 and managed by the U.S. Treasury, is a good example of this kind of public funding mechanism. To the extent that its current funding levels are inadequate, they should be increased.

Finally, if public policy persists with something that resembles the CRA, the annual local lending obligations of banks should be explicitly quantified. These obligations could then be traded among banks, so that a system could arise that is similar to the "cap and trade" system that has proved so successful for dealing with sulfur dioxide emissions in a low-cost and efficient manner (Klausner 1995, 2009; Richardson 2002).

The remainder of this statement will expand on these ideas.

The Drawbacks of the CRA

Consider the basic concept of the CRA: Banks are somehow neglecting loan opportunities in the communities in which they have establishments -- primarily, in low- and moderate-income (LMI) communities -- and must be forced to lend in those communities. Another version of this argument is that a bank that gathers deposits from customers that are located geographically close to that bank's physical location is "draining" deposits out of the community when it lends those funds elsewhere.

At its base, this concept rests on the notion either that (a) banks are lazy (or ill-intentioned) and are inefficiently passing up profitable opportunities to lend to creditworthy customers in LMI communities, and so they must be forced to do so; or (b) they are monopolies with market power and excess profits that can be used to cross-subsidize the unprofitable loans in the LMI community that they can be forced to make. Either version has the flavor of the pre-1970s world of banks and banking, where competition was not especially vigorous and state and national regulations often impeded entry and prevented banks from branching outside their home communities, which thereby often created pockets of local market power.

Further, the notions that banks have special obligations toward "their" communities and that the communities need and deserve this protection, again smack of that pre-1970s world of localized finance.

Let us instead consider lending in the context of the first decade of the twenty-first century. In that context, there are at least five bases for questioning the wisdom of the CRA. First, if loans are profitable, profit-seeking banks should already be making them. In this case, CRA is redundant at best (but is still costly, because of the costs of compliance and of regulatory monitoring). Of course, banks make mistakes and may not be the perfect maximizers of introductory economics textbooks. But the CRA is based on the notion that banks systematically overlook profitable opportunities in LMI communities. And that seems unlikely in today's environment.

Alternatively, there may be spillover effects that cause single loans to be unprofitable but that would cause a group of loans to be profitable. In that case, we should expect to see banks forming joint ventures or other types of coalitions to "internalize" the externality and make these profitable loans.

On the other hand, if the loans are not profitable, then (a) they require a cross-subsidy from the excess profits from other (super-profitable) activities of the bank; but in the increasingly competitive environment of financial services there will be little or no excess profits; or (b) they will involve losses for the bank; or (c) they will be shirked and avoided, with accompanying cynicism. Neither of these last two prospects should be the basis for good public policy.

Second, why should a bank have a special obligation to lend to a specific local geographic area? What is special about local geographic areas or about the specific placement of physical bank locations? Should the bank also have an obligation to hire only employees who live in that same geographic area? Must it buy its desks from local merchants?

The localism orientation of the CRA is an anachronism that runs counter to the broad sweep of public policy in the financial services area, which has been to erase protectionist measures (such as restrictions on intra-state and interstate branching, and the forced compartmentalization of financial services) and to place more trust in competition.

Further, the "draining deposits" notion ignores the substantial value to a LMI community of a bank that offers primarily deposit services and a few related services (such as check-cashing and cash transfer, and perhaps some personal loans). To the extent that community leaders are concerned that the community's citizens are using higher-cost alternatives, such as check-cashing offices and payday lenders, they should welcome banks, even if the banks provide a limited menu of services. Ironically, the lending obligations of CRA (and the extra burden of exiting an area if the operations there turn out to be unprofitable) may well discourage the establishment of branches in LMI areas in the first place. Barriers to exit are barriers to entry.

Third, why place this special obligation on banks? After all, there are many other categories of lenders for most of the types of loans that banks make. Are banks special? If so, in what ways are they special, and are those ways relevant for CRA purposes?

Banks are special in at least two important ways: (a) They (along with credit unions) provide federally insured deposits, which is an important benefit for financially unsophisticated customers who seek a safe place for their transactions accounts and for simple savings; deposit insurance also provides stability for the overall banking system by forestalling the kinds of depositor runs on banks that plagued American banking before 1933 (and that Britain revisited in September 2007 with their Northern Rock debacle); and (b) Commercial banks especially are important sources of credit for small and medium-size enterprises (SMEs).

Both special features are good arguments for vigorous antitrust enforcement, to ensure that bank mergers do not create anticompetitive environments in local markets for deposits and for SME lending. Neither provides an argument for imposing CRA requirements to make loans that they would not be inclined otherwise to make.

Fourth, in a dynamic setting, banks' choices of locations will surely be influenced by the regulatory burdens that accompany those choices. As was discussed above, to the extent that they see decisions to locate in LMI areas as carrying extra regulatory burdens (and as involving greater difficulties of exit in the event that the location proves to be unprofitable), banks are less likely to locate in those areas in the first place.

Fifth, the vagueness of the CRA's language -- that banks should meet "the credit needs of its entire community, including low- and moderate-income neighborhoods..." -- has led to vagueness and subjectivity of enforcement. Initially, enforcement focused on a bank's efforts toward serving its community and the documentation of those efforts; after 1995, enforcement focused more on documenting lending outcomes; in essence, pre-1995 regulation focused on inputs, while post-1995 regulation focuses more on outputs. Although the latter is surely an improvement over the former, nevertheless the inherent vagueness of "needs" inevitably leads to the vagueness and subjectivity of enforcement. This can't be the basis of good public policy.

In sum, the CRA is fundamentally at odds with the modern sweep of public policy with respect to financial regulation and with the reasons and arguments that underlie the direction that policy has taken. It emphasizes protectionism and localism and distrusts competition in an era when the sweep of policy is to reduce and eliminate local barriers and to rely more on competition than on forced lending. And, by discouraging entry in LMI areas, the CRA may well be contrary to the long-run interests of the communities that it is intended to help.

There have recently been broader critiques of the CRA: that it encouraged banks to make subprime mortgage loans (which were then securitized) and thus the CRA bears major responsibility for the housing bubble of 1999-2006, and then for the mortgage-related securities crisis of 2007-2008.

These broader critiques are badly aimed. The bulk of the subprime lending of the earlier years of this decade was made by nonbank lenders – that is, by "mortgage banks" that either securitized the mortgages themselves or that quickly sold the mortgages to securitizers. These nonbank lenders were not covered by CRA requirements. Further, the major financial difficulties that were related to investments in these mortgage securities were experienced mostly by investment banks (such as Bear Stearns, Lehman Brothers, Morgan Stanley, and Merrill Lynch) and by a large insurance conglomerate (AIG) – none of which were covered by the CRA. Where banks did experience difficulties that were related to subprime mortgages, such as CitiBank, Washington Mutual, Wachovia, IndyMac, and Countrywide, it appears that they were heavily involved in subprime lending because of its perceived profitability (and their under-appreciation of the risks) and not because of CRA pressures.

Recent empirical studies by Laderman and Reid (2009) and by Bhutta and Canner (2009) support the absence of a link between the CRA and the mortgage meltdown.

The CRA has multiple flaws, but responsibility for the subprime mortgage lending and securities debacle is not one of them.

Better Public Policies

These criticisms of the CRA should not be interpreted as a statement that no governmental actions are warranted. As I stated at the beginning of this statement, there is a better way to achieve the goals of the CRA's advocates.

First, discrimination by lenders of any kind with respect to racial or ethnic or other prohibited categories should be vigorously prosecuted under the Equal Credit Opportunity Act and any other available statute, such as the Fair Housing Act of 1968.

Second, the antitrust laws should be vigorously enforced, so as to keep financial markets competitive. However, if enforcement of the antitrust laws is deemed inadequate for encouraging sufficient competition in banking, then policymakers should allow entry into the business of banking by more companies, including those that have a business model of providing good value to LMI households. It is indeed ironic that the same community groups that advocate for an expanded role for CRA so as to provide more banking services for LMI households were also those who lobbied the Federal Deposit Insurance Corporation (FDIC) and the Congress during 2005-2007 (in alliance with the banking lobbyists, with whom the community groups are usually at odds with respect to efforts to expand the CRA's burdens on banks) to thwart Wal-Mart's efforts to enter the banking business by obtaining an industrial loan company charter from the state of Utah.

Instead, Wal-Mart and other retailing and industrial companies should be encouraged to enter banking, preferably through a modification of the Bank Holding Company Act of 1970 or (as a last resort) through the granting of FDIC insurance to the otherwise qualified holders of Utah industrial loan company charters.[2]

Third, to the extent that there is a good social case for local lending and investment that local lenders somehow do not satisfy, those loans and investments should be funded through the public fisc, in an on-budget and transparent process. The Community Development Financial Institutions Fund is a good example of this kind of funding, and it should be expanded to replace whatever socially worthwhile projects would be eliminated if CRA were repealed.

Finally, if the CRA remains in force, its vague and subjective regulatory enforcement should be replaced by a set of specific annual lending obligations that would encompass both originations and portfolio holdings. These obligations would then be tradable among banks. Those banks that were less efficient at originating and holding these types of loans could pay other banks that were more efficient at the activities to take over these obligations. This system, in addition to making more transparent the obligations that are often opaque, could achieve the kinds of efficiencies that have attracted attention to the "cap and trade" system for controlling sulfur dioxide emissions by electric utilities.

Conclusion

The CRA is not a good public policy tool for achieving the goals of it advocates. There are better ways. I urge this Committee to consider those alternatives.

I would be happy to answer any questions from the Committee.

[2] The potential problems for the safety and soundness of banks that would be posed by such companies' ownership of banks would be no more serious than the problems that are caused by current ownership structure, and they can be handled by the same regulatory tools that are currently used; see White (2009 forthcoming)

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Biographical Summary

Lawrence J. White is Arthur E. Imperatore Professor of Economics at New York University's Stern School of Business and Deputy Chair of the Economics Department at Stern. During 1986-1989 he was on leave to serve as Board Member, Federal Home Loan Bank Board, and during 1982-1983 he was on leave to serve as Director of the Economic Policy Office, Antitrust Division, U.S. Department of Justice. He was Secretary-Treasurer of the Western Economic Association International, 2006-2009. He is currently the General Editor of The Review of Industrial Organization.

Prof. White received the B.A. from Harvard University (1964), the M.Sc. from the London School of Economics (1965), and the Ph.D. from Harvard University (1969). He is the author of The Automobile Industry Since 1945 (1971); Industrial Concentration and Economic Power in Pakistan (1974); Reforming Regulation: Processes and Problems (1981); The Regulation of Air Pollutant Emissions from Motor Vehicles (1982); The Public Library in the 1980s: The Problems of Choice (1983); International Trade in Ocean Shipping Services: The U.S. and the World (1988); The S&L Debacle: Public Policy Lessons for Bank and Thrift Regulation (1991); and articles in leading economics and law journals.

He is editor or coeditor of eleven volumes: Deregulation of the Banking and Securities Industries (1979); Mergers and Acquisitions: Current Problems in Perspective (1982); Technology and the Regulation of Financial Markets: Securities, Futures, and Banking (1986); Private Antitrust Litigation: New Evidence, New Learning (1988); The Antitrust Revolution (1989); Bank Management and Regulation (1992); Structural Change in Banking (1993); The Antitrust Revolution: The Role of Economics, 2nd edn. (1994); The Antitrust Revolution: Economics, Competition, and Policy, 3rd edn. (1999); The Antitrust Revolution: Economics, Competition, and Policy, 4th edn. (2004); and The Antitrust Revolution: Economics, Competition, and Policy, 5th edn. (2009). He was the North American Editor of The Journal of Industrial Economics, 1984-1987 and 1990-1995.

Prof. White served on the Senior Staff of the President's Council of Economic Advisers during 1978-1979, and he was Chairman of the Stern School's Department of Economics, 1990-1995.

Prof. White's webpage is found at http://pages.stern.nyu.edu/~lwhite/. His e-mail address is Lwhite@stern.nyu.edu.

Fannie, Freddie to Suffer Under New Rule, Frank Says (Update1)
2004-06-17 16:56 (New York)

Fannie, Freddie to Suffer Under New Rule, Frank Says (Update1)

(Adds homebuilding industry comment in 12th paragraph.)

By James Tyson

June 17 (Bloomberg) -- Fannie Mae and Freddie Mac would suffer financially under a Bush administration requirement that they channel more mortgage financing to people with low incomes, said the senior Democrat on a congressional panel that sets regulations for the companies.

The new rule compels the companies to put 57 percent of their mortgage financing by 2008 toward homes for people with incomes no greater than area median income. Fannie Mae and Freddie, the two largest U.S. mortgage finance companies, must currently meet a 50 percent threshold.

The White House ``could do some harm if you don't refine the goals,'' said Representative Barney Frank, a member from Massachusetts on the House Financial Services Committee.

Frank's comments echo concerns of executives at the government-chartered companies that the new goals will undermine profits and put new homeowners into dwellings they can't afford.

``At their outer edges they become counterproductive --there are not loans to make that will get repaid,'' Freddie Mac Chief Executive Richard Syron said Monday in an interview, referring to the new financing rule.

Frank said the administration is aiming to reduce the role of the two companies in mortgage financing, and has seized on the higher goals ``as a useful stick by which to beat Fannie and Freddie.''

HUD Defends Rule

Alphonso Jackson, secretary of Housing and Urban Development, said the Bush administration has no hidden motives in seeking to raise the percentage of financing for low-income homeowners

``There is no administration more supportive of Fannie and Freddie than we are,'' Jackson said today in interview. ``We are just actualizing what should have been done years ago.''

An agency within HUD, the Office of Federal Housing Enterprise Oversight, regulates Fannie Mae and Freddie Mac, which own or guarantee about half the $7.3 trillion U.S. mortgage market.

The housing guidelines, subject to a public comment period that ends on July 2, would become law Jan. 1. Referring to both the White House plans and the coming presidential election, Frank said, ``nothing can stop them except a change in November.'' He spoke at a news conference sponsored by the presidential campaign of Senator John Kerry of Massachusetts.

Frank and housing industry representatives such as Jerry Howard, chief executive of the National Association of Homebuilders, say the White House rules fail to focus financing on multifamily housing and other market segments. The regulations also don't address a decline in refinancing and other market changes, they said.

``We don't see how these goals in any way put Fannie Mae and Freddie Mac into specific types of affordable housing,'' Howard said.

The association, which represents Centex Corp., Toll Brothers Inc. and about 215,000 other companies in the housing industry, plans to ask for a 60-day extension of the public comment period, Howard said.

Referring to the housing goals and the two companies, Frank said, ``we want to push them further, but it doesn't make sense to push them in an undifferentiated way.''

Jackson said his critics should withhold judgment until after Jan. 1. ``I don't see how people can say something is not going to work when we have not had a chance to implement it.''

IB

Union Calendar No. 42

111TH CONGRESS
1ST SESSION

H. R. 1728

[Report No. 111–94]

To amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to provide certain minimum standards for consumer mortgage loans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2009

Mr MILLER of North Carolina (for himself, Mr. WATT, Mr. FRANK of Massachusetts, Mr. KANJORSKI, Mr. GUTIERREZ, Ms. BEAN, and Mr. MINNICK) introduced the following bill; which was referred to the Committee on Financial Services

MAY 4, 2009

Additional sponsors: Ms. SUTTON, Mr MEEK of Florida, Mr. BACA, Mr. MEEKS of New York, and Ms. JACKSON-LEE of Texas

MAY 4, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 26, 2009]

A BILL

To amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to provide certain minimum standards for consumer mortgage loans, and for other purposes.

form, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—

"(1) the fee paid directly to the appraiser by such company; and

"(2) the administration fee charged by such company.".

TITLE VII—SENSE OF CONGRESS REGARDING THE IMPORTANCE OF GOVERNMENT SPONSORED ENTERPRISES REFORM

SEC. 701. SENSE OF CONGRESS REGARDING THE IMPORTANCE OF GOVERNMENT-SPONSORED ENTERPRISES REFORM TO ENHANCE THE PROTECTION, LIMITATION, AND REGULATION OF THE TERMS OF RESIDENTIAL MORTGAGE CREDIT.

(a) FINDINGS.—The Congress finds as follows:

(1) The Government-sponsored enterprises, Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), were chartered by Congress to ensure a reliable and affordable supply of mortgage funding, but enjoy a dual legal status as privately owned corporations with Government mandated affordable housing goals.

(2) In 1996, the Department of Housing and Urban Development required that 42 percent of Fannie Mae's and Freddie Mac's mortgage financing should go to borrowers with income levels below the median for a given area.

(3) In 2004, the Department of Housing and Urban Development revised those goals, increasing them to 56 percent of their overall mortgage purchases by 2008, and additionally mandated that 12 percent of all mortgage purchases by Fannie Mae and Freddie Mac be "special affordable" loans made to borrowers with incomes less than 60 percent of an area's median income, a target that ultimately increased to 28 percent for 2008.

(4) To help fulfill those mandated affordable housing goals, in 1995 the Department of Housing and Urban Development authorized Fannie Mae and Freddie Mac to purchase subprime securities that included loans made to low-income borrowers.

(5) After this authorization to purchase subprime securities, subprime and near-prime loans increased from 9 percent of securitized mortgages in 2001 to 40 percent in 2006, while the market share of conventional mortgages dropped from 78.8 percent in 2003 to 50.1 percent by 2007 with a corresponding

increase in subprime and Alt-A loans from 10.1 percent to 32.7 percent over the same period.

(6) In 2004 alone, Fannie Mae and Freddie Mac purchased $175,000,000,000 in subprime mortgage securities, which accounted for 44 percent of the market that year, and from 2005 through 2007, Fannie Mae and Freddie Mac purchased approximately $1,000,000,000,000 in subprime and Alt-A loans, while Fannie Mae's acquisitions of mortgages with less than 10 percent down payments almost tripled.

(7) According to data from the Federal Housing Finance Agency (FHFA) for the fourth quarter of 2008, Fannie Mae and Freddie Mac own or guarantee 75 percent of all newly originated mortgages, and Fannie Mae and Freddie Mac currently own 13.3 percent of outstanding mortgage debt in the United States and have issued mortgage-backed securities for 31.0 percent of the residential debt market, a combined total of 44.3 percent of outstanding mortgage debt in the United States.

(8) On September 7, 2008, the FHFA placed Fannie Mae and Freddie Mac into conservatorship, with the Treasury Department subsequently agreeing to purchase at least $200,000,000,000 of preferred stock from each enterprise in exchange for warrants

for the purchase of 79.9 percent of each enterprise's common stock.

(9) The conservatorship for Fannie Mae and Freddie Mac has potentially exposed taxpayers to upwards of $5,300,000,000,000 worth of risk.

(10) The hybrid public-private status of Fannie Mae and Freddie Mac is untenable and must be resolved to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that efforts to enhance by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit would be incomplete without enactment of meaningful structural reforms of Fannie Mae and Freddie Mac.

FDIC Law, Regulations, Related Acts

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6500 - Consumer Protection

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1977—TITLE VIII (COMMUNITY REINVESTMENT)

AN ACT

To amend certain Federal laws pertaining to community development, housing, and related programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

TITLE VIII—COMMUNITY REINVESTMENT

SEC. 801. This title may be cited as the "Community Reinvestment Act of 1977".

[Codified to 12 U.S.C. 2901 note]

[Source: Section 801 of title VIII of the Act of October 12, 1977 (Pub. L No. 95--128; 91 Stat. 1147), effective October 12, 1977]

SEC. 802. (a) The Congress finds that--

(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

(2) the convenience and needs of communities include the need for credit services as well as deposit services; and

(3) regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.

(b) It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.

[Codified to 12 U.S.C. 2901]

[Source: Section 802 of title VIII of the Act of October 12, 1977 (Pub. L. No. 95–128; 91 Stat. 1147), effective October 12, 1977]

SEC. 803. For the purpose of this title–

(1) the term "appropriate Federal financial supervisory agency" means--

(A) the Comptroller of the Currency with respect to national banks;

(B) the Board of Governors of the Federal Reserve System with respect to State chartered banks which are members of the Federal Reserve System and bank holding companies;

(C) the Federal Deposit Insurance Corporation with respect to State chartered banks and savings banks which are not members of the Federal Reserve System and the deposits of which are insured by the Corporation; and

(D)(2)

section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and a savings and loan holding company;

(2) the term "regulated financial institution" means an insured depository institution (as defined in

section 3 of the Federal Deposit Insurance Act);

(3) the term "application for a deposit facility" means an application to the appropriate Federal financial supervisory agency otherwise required under Federal law or regulations thereunder for--

(A) a charter for a national bank or Federal savings and loan association;

(B) deposit insurance in connection with a newly chartered State bank, savings bank, savings and loan association or similar institution;

(C) the establishment of a domestic branch or other facility with the ability to accept deposits of a regulated financial institution;

(D) the relocation of the home office or a branch office of a regulated financial institution;

(E) the merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a regulated financial institution requiring approval under section 18(c) of the Federal Deposit Insurance Act or under regulations issued under the authority of title IV of the National Housing Act; or

(F) the acquisition of shares in, or the assets of, a regulated financial institution requiring approval under

section 3 of the Bank Holding Company Act of 1956 or section 408(e) of the National Housing Act

(4) A financial institution whose business predominately consists of serving the needs of military personnel who are not located within a defined geographic area may define its "entire community" to include its entire deposit customer base without regard to geographic proximity.

[Codified to 12 U S.C. 2902]

[Source: Section 803 of title VIII of the Act of October 12, 1977 (Pub. L No 95--128; 91 Stat 1147), effective October 12, 1977; as amended by section 1502 of title XV of the Act of November 10, 1978 (Pub. L. No. 95--630; 92 Stat. 3713), effective November 10, 1978, and sections 744(q) of title VII and 1212(a) of title XII of the Act of August 9, 1989 (Pub. L. No 101--73; 103 Stat. 440 and 526, respectively), effective August 9, 1989]

SEC. 804. (a) IN GENERAL.--In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall--

(1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution, and

(2) take such record into account in its evaluation of an application for a deposit facility by such institution.

(b) MAJORITY-OWNED INSTITUTIONS.--In assessing and taking into account, under subsection (a), the record of a nonminority-owned and nonwomen-owned financial institution, the appropriate Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.

(c) FINANCIAL HOLDING COMPANY REQUIREMENT.--

(1) IN GENERAL.--An election by a bank holding company to become a financial holding company under

section 4 of the Bank Holding Company Act of 1956 shall not be effective if--

(A) the Board finds that, as of the date the declaration of such election and the certification is filed by such holding company under section 4(l)(1)(C) of the Bank Holding Company Act of 1956, not all of the subsidiary insured depository institutions of the bank holding company had achieved a rating of "satisfactory record of meeting community credit needs", or better, at the most recent examination of each such institution; and

(B) the Board notifies the company of such finding before the end of the 30-day period beginning on such date.

(2) LIMITED EXCLUSIONS FOR NEWLY ACQUIRED INSURED DEPOSITORY INSTITUTIONS.--Any insured depository institution acquired by a bank holding company during the 12-month period preceding the date of the submission to the Board of the declaration and certification under section 4(l)(1)(C) of the Bank Holding Company Act of 1956 may be excluded for purposes of paragraph (1) during the 12-month period beginning on the date of such acquisition if--

(A) the bank holding company has submitted an affirmative plan to the appropriate Federal financial supervisory agency to take such action as may be necessary in order for such institution to achieve a rating of "satisfactory record of meeting community credit needs", or better, at the next examination of the institution; and

(B) the plan has been accepted by such agency.

(3) DEFINITIONS.--For purposes of this subsection, the following definitions shall apply:

(A) BANK HOLDING COMPANY, FINANCIAL HOLDING COMPANY.--The terms "bank holding company" and "financial holding company" have the meanings given those terms in

section 2 of the Bank Holding Company Act of 1956.

(B) BOARD.--The term "Board" means the Board of Governors of the Federal Reserve System.

(C) INSURED DEPOSITORY INSTITUTION.--The term "insured depository institution" has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act.

(d) LOW-COST EDUCATION LOANS.--In assessing and taking into account, under subsection (a) the record of a financial institution, the appropriate Federal financial supervisory agency shall consider, as a factor, low-cost education loans provided by the financial institution to low-income borrowers.

[Codified to 12 U.S.C. 2903]

[Source: Section 804 of title VIII of the Act of October 12, 1977 (Pub. L. No. 95--128; 91 Stat. 1148), effective October 12, 1977; as amended by section 909(1) of title IX of the Act of October 28, 1992 (Pub. L. No. 102--550; 106 Stat. 3874), effective October 28, 1992; section 103(b) of title I of the Act of November 12, 1999 (Pub. L. No. 106--102; 113 Stat. 1351), effective March 12, 2000; section 1031(a) of title X of the Act of August 14, 2008 (Pub. L. No. 110--315; 122 Stat. 3488), effective August 14, 2008]

SEC. 805. Each appropriate Federal financial supervisory agency shall include in its annual report to the Congress a section outlining the actions it has taken to carry out its responsibilities under this title.

[Codified to 12 U.S.C. 2904]

[Source: Section 805 of title VIII of the Act of October 12, 1977 (Pub. L. No. 95--128; 91 Stat. 1148), effective October 12, 1977]

SEC 806. Regulations to carry out the purposes of this title shall be published by each appropriate Federal financial supervisory agency and shall take effect no later than 390 days after the date of enactment of this title.

[Codified to 12 U.S.C. 2905]

[Source: Section 806 of title VIII of the Act of October 12, 1977 (Pub. L. No. 95--128; 91 Stat. 1148), effective October 12, 1977]

SEC. 807. WRITTEN EVALUATIONS.

(a) REQUIRED.--

(1) IN GENERAL.--Upon the conclusion of each examination of an insured depository institution under section 804, the appropriate Federal financial supervisory agency shall prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.

(2) PUBLIC AND CONFIDENTIAL SECTIONS.--Each written evaluation required under paragraph (1) shall have a public section and a confidential section.

(b) PUBLIC SECTION OF REPORT.--

(1) FINDINGS AND CONCLUSIONS.--

(A) CONTENTS OF WRITTEN EVALUATION.--The public section of the written evaluation shall--

(i) state the appropriate Federal financial supervisory agency's conclusions for each assessment factor identified in the regulations prescribed by the Federal financial supervisory agencies to implement this Act;

(ii) discuss the facts and data supporting such conclusions; and

(iii) contain the institution's rating and a statement describing the basis for the rating.

(B) Metropolitan area distinctions.--The information required by clauses (i) and (ii) of subparagraph (A) shall be presented separately for each metropolitan area in which a regulated depository institution maintains one or more domestic branch offices

(2) ASSIGNED RATING.--The institution's rating referred to in paragraph (1)(C) shall be 1 of the following:

(A) "Outstanding record of meeting community credit needs."

(B) "Satisfactory record of meeting community credit needs."

(C) "Needs to improve record of meeting community credit needs."

(D) "Substantial noncompliance in meeting community credit needs."

Such ratings shall be disclosed to the public on and after July 1, 1990.

(c) CONFIDENTIAL SECTION OF REPORT.--

(1) PRIVACY OF NAMED INDIVIDUALS.--The confidential section of the written evaluation shall contain all references that identify any customer of the institution, any employee or officer of the institution, or any person or organization that has provided information in confidence to a Federal or State financial supervisory agency.

(2) Topics not suitable for disclosure --The confidential section shall also contain any statements obtained or made by the appropriate Federal financial supervisory agency in the course of an examination which, in the judgment of the agency, are too sensitive or speculative in nature to disclose to the institution or the public.

(3) DISCLOSURE TO DEPOSITORY INSTITUTION.--The confidential section may be disclosed, in whole or in part, to the institution, if the appropriate Federal financial supervisory agency determines that such disclosure will promote the objectives of this Act. However, disclosure under this paragraph shall not identify a person or organization that has provided information in confidence to a Federal or State financial supervisory agency.

(d) INSTITUTIONS WITH INTERSTATE BRANCHES.--

(1) STATE-BY-STATE EVALUATION.--In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the appropriate Federal financial supervisory agency shall prepare--

(A) a written evaluation of the entire institution's record of performance under this title, as required by subsections (a), (b), and (c); and

(B) for each State in which the institution maintains 1 or more domestic branches, a separate written evaluation of the institution's record of performance within such State under this title, as required by subsections (a), (b), and (c).

(2) MULTISTATE METROPOLITAN AREAS.--In the case of a regulated financial institution that maintains domestic branches in 2 or more States within a multistate metropolitan area, the appropriate Federal financial supervisory agency shall prepare a separate written evaluation of the institution's record of performance within such metropolitan area under this title, as required by subsections (a), (b), and (c). If the agency prepares a written evaluation pursuant to this paragraph, the scope of the written evaluation required under paragraph (1)(B) shall be adjusted accordingly.

(3) CONTENT OF STATE LEVEL EVALUATION --A written evaluation prepared pursuant to paragraph (1)(B) shall--

(A) present the information required by subparagraphs (A) and (B) of subsection (b)(1) separately for each metropolitan area in which the institution maintains 1 or more domestic branch offices and separately for the remainder of the nonmetropolitan area of the State if the institution maintains 1 or more domestic branch offices in such nonmetropolitan area; and

(B) describe how the Federal financial supervisory agency has performed the examination of the institution, including a list of the individual branches examined.

(e) DEFINITIONS.--For purposes of this section the following definitions shall apply:

(1) DOMESTIC BRANCH --The term "domestic branch" means any branch office or other facility of a regulated financial institution that accepts deposits, located in any State.

(2) METROPOLITAN AREA.--The term "metropolitan area" means any primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area, as defined by the Director of the Office of Management and Budget, with a population of 250,000 or more, and any other area designated as such by the appropriate Federal financial supervisory agency.

(3) STATE.--The term "State" has the same meaning as in

section 3 of the Federal Deposit Insurance Act.

[Codified to 12 U.S.C. 2906]

[Source: Section 807 of title VIII of the Act of October 12, 1977 (Pub. L. No. 95--128; 91 Stat. 1147), effective October 12, 1977, as added by section 1212(b) of title XII of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 526), effective August 9, 1989; amended by section 222 of title II of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2306), effective December 19, 1991; section 110 of title I of the Act of September 29, 1994 (Pub. L. No. 103--328; 108 Stat. 2364), effective September 29, 1994]

SEC. 808. OPERATION OF BRANCH FACILITIES BY MINORITIES AND WOMEN.

(a) IN GENERAL.--In the case of any depository institution which donates, sells on favorable terms (as determined by the appropriate Federal financial supervisory agency), or makes available on a rent-free basis any branch of such institution which is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution, the amount of the contribution or the amount of the loss incurred in connection with such activity may be a factor in determining whether the depository institution is meeting the credit needs of the institution's community for purposes of this title.

(b) DEFINITIONS.--For purposes of this section--

(1) MINORITY DEPOSITORY INSTITUTION.--The term "minority institution" means a depository institution (as defined in

section 3(c) of the Federal Deposit Insurance Act)--

(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

(2) WOMEN'S DEPOSITORY INSTITUTION.--The term "women's depository institution" means a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)--

(A) more than 50 percent of the ownership or control of which is held by 1 or more women;

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women; and

(C) a significant percentage of senior management positions of which are held by women.

(3) MINORITY.--The term "minority" has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

[Codified to 12 U.S.C. 2907]

[Source: Section 808 of title VIII of the Act of October 12, 1977 (Pub. L. No. 95--128; 91 Stat. 1147), effective October 12, 1977, as added by section 402(b) of title IV of the Act of December 12, 1991 (Pub. L. No. 102--233; 105 Stat. 1775), effective December 12, 1991; as amended by section 909(2) of title IX of the Act of October 28, 1992 (Pub. L. No. 102--550; 106 Stat. 3874), effective October 28, 1992]

SEC. 809. SMALL BANK REGULATORY RELIEF.

(a) IN GENERAL.--Except as provided in subsections (b) and (c), any regulated financial institution with aggregate assets of not more than $250,000,000 shall be subject to routine examination under this title--

(1) not more than once every 60 months for an institution that has achieved a rating of "outstanding record of meeting community credit needs" at its most recent examination under

section 804;

(2) not more than once every 48 months for an institution that has received a rating of "satisfactory record of meeting community credit needs" at its most recent examination under section 804; and

(3) as deemed necessary by the appropriate Federal financial supervisory agency, for an institution that has received a rating of less than "satisfactory record of meeting community credit needs" at its most recent examination under section 804.

(b) NO EXCEPTION FROM CRA EXAMINATIONS IN CONNECTION WITH APPLICATIONS FOR DEPOSIT FACILITIES.--A regulated financial institution described in subsection (a) shall remain subject to examination under this title in connection with an application for a deposit facility.

(c) DISCRETION.--A regulated financial institution described in subsection (a) may be subject to more frequent or less frequent examinations for reasonable cause under such circumstances as may be determined by the appropriate Federal financial supervisory agency.

[Codified to 12 U.S.C. 2908]

[Source. Section 809 of title VIII of the Act of October 12, 1977 (Pub. L No. 95-128; 91 Stat. 1147), effective October 12, 1997, as added by section 712 of the Act of November 12, 1997 (Pub. L No. 106-102; 113 Stat. 1469), effective November 12, 1999]

COMPETITIVE EQUALITY BANKING ACT OF 1987

TITLE XII—MISCELLANEOUS PROVISIONS

SEC. 1204. ADJUSTABLE RATE MORTGAGE CAPS.

(a) IN GENERAL --Any adjustable rate mortgage loan originated by a creditor shall include a limitation on the maximum interest rate that may apply during the term of the mortgage loan.

(b) REGULATIONS.--The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section.

(c) ENFORCEMENT.--Any violation of this section shall be treated as a violation of the Truth in Lending Act and shall be subject to administrative enforcement under section 108 or civil damages under section 130 of such Act, or both.

(d) DEFINITIONS.--For the purpose of this section--

(1) the term "creditor" means a person who regularly extends credit for personal, family, or household purposes; and

(2) the term "adjustable rate mortgage loan" means any loan secured by a lien on a one- to four-family dwelling unit, including a condominium unit, cooperative housing unit, or mobile home, where the loan is made pursuant to an agreement under which the creditor may, from time to time, adjust the rate of interest.

(e) EFFECTIVE DATE --This section shall take effect upon the expiration of 120 days after the date of enactment of this Act.

[Codified to 12 U.S.C. 3806]

[Source: Section 1204 of title XII of the Act of August 10, 1987 (Pub L No. 100--86; 101 Stat. 662), effective December 8, 1987]

*Editor's Note: So in statute as enacted Should probably read. "(D) the Director of Office of Thrift Supervision, in the case of a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and a savings holding company,"

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anhd inc.

TESTIMONY OF
DAVID HANZEL, DIRECTOR, BEFORE
THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES

September 16, 2009

Thank you, Chairman Frank and Committee Members, for this opportunity to testify about ways to enhance the Community Reinvestment Act. My name is David Hanzel and I am the Director of ANHD INC. ANHD INC. is a not-for-profit social welfare organization which advocates on behalf of 98 New York City neighborhood-based housing groups. These 98 groups work on the full spectrum of community development activities associated with the Community Reinvestment Act (CRA); ANHD members engage in affordable housing development and management, neighborhood revitalization activities, community organizing, economic development efforts, housing counseling and financial literacy services. Most of these community groups, like the CRA itself, were created in response to the redlining and disinvestment that threatened to destroy our neighborhoods back in the 1970s. Since its inception, ANHD INC. has encouraged New York City's banks to meet their CRA obligations in a way that responds to *local* credit needs.

In New York City, banks have been central to local community development efforts. Indeed, dozens of neighborhoods that came to symbolize blight and abandonment are now thriving, due in large part to the CRA-motivated activities of financial institutions. The ongoing vitality of these neighborhoods and the city as a whole is dependent on banks reaffirming their commitment to providing loans, investment, and financial services that are responsive to local needs.

In order to ensure a robust commitment going forward, we believe it is imperative to strengthen, expand, and develop a more locally driven CRA. Either through statute or regulation, we must require that banks develop local CRA plans, reward those institutions who develop innovative products and programs, and penalize those that have a track record of non-compliance. For example, for financial institutions doing business in New York City, a local CRA plan would emphasize lending to and investing in multi-family rental housing, which is the housing stock that over 80 percent of low- and moderate-income New Yorkers call home. A more robust CRA must also require that regulators consider quantitative and qualitative measures for determining an institution's rating and develop location-specific assessments. For example, community development and multi-family related activities must be a more central component of determining an institution's rating in New York City as opposed to home mortgage originations given the importance of multi-family rental housing to working class New Yorkers.

Over the past few years, it is has become increasingly difficult to obtain loans, investment, and philanthropic support for community development initiatives in New York City given the changing nature of the banking industry. Indeed, as banks have grown in recent years, evolving from community banks into large regional, national and even global financial institutions, they have grown increasingly distant from the local community. What this transformation means for local residents and neighborhoods is that banks are less focused on meeting the credit needs of underserved populations and areas. If we are experiencing this lack of local attention in New York – the headquarters of many large financial institutions – we imagine that is even more severe in smaller cities and rural areas. Furthermore, without a corresponding increase in resources, both financial and human, the impact of a bank's community development efforts are diluted across its expanding footprint.

ANHD recently conducted analysis on the amount and volume of CRA-motivated affordable mortgage originations, community development loans and investments, and philanthropic grants as well as branching and staffing patterns for New York City's 20 largest banks over the three year period of 2006-2008. This analysis, which is summarized in the attached white paper "Community Development At-Risk: The Troubled Future of Bank Reinvestment in New York City," illustrates how the growth and consolidation within the industry has prompted retrenchment in all of these areas. It is important to note that while retrenchment is a symptom of the macro-level trends of growth and consolidation, it is a separate trend as well. Indeed, even those banks that have not grown or lost market share have begun to reduce the amount and type of resources devoted to community development activities. For example:

- Bank A originated 70 percent fewer multi-family loans in 2007 than in 2006.
- Bank B reduced its community development lending by 11 percent in terms of the number of loans and 43 percent in terms of dollars lent for the same two year period.
- Bank C, despite seeing a 17 percent increase in deposits, reduced its philanthropic giving by over 6 percent between 2007 and 2008.

In addition to growth, consolidation, and retrenchment, another trend that is impacting how well banks serve local communities is the widespread grade inflation that has come to characterize the CRA exam process. Over time, the percentage of banks receiving "outstanding" or "satisfactory" ratings has risen as greater emphasis has been placed on the volume of their outputs rather than the outcomes of their CRA-related activities. Banks too have gotten better at understanding what examiners value and have begun to tailor their activities to what examiners look for.

Furthermore, the paper demonstrates that as performance exams became increasingly focused on the volume of outputs rather than outcomes, banks were not incentivized to develop innovative products or dedicate staff to community development activities.

Therefore, the efficacy of the regulatory system as a whole needs to be reviewed as the four federal regulators have not had the means nor the will to utilize the enforcement tools they do have at their disposal to encourage all banks to be responsive to local needs or force underperforming banks to improve their records. Communities would be much better served if regulators pushed banks to defend why their CRA-related activities deserved credit and were able to give extra credit for those activities like affordable housing loans and lines of credit that truly make a difference in the vitality of low- and moderate-income neighborhoods.

ANHD INC. believes the following four steps will go a long way to reversing these trends and ensuring banks dedicate a meaningful amount of resources to lending, investment and services in New York City:

1) Require banks to develop a local CRA plan and submit annual progress reports. Banks with the most effective CRA programs reflect a broad institutional commitment to CRA and community development. This commitment begins with leadership, where senior executives are knowledgeable about, engaged in and committed to a bank's CRA programs. In addition to committed leadership, strong CRA programs require the bank to have adequate levels of staff with appropriate expertise dedicated to each of its local markets.

As noted above, an effective CRA program needs to be locally-focused and flexible so as to meet changing community needs and priorities. In New York City, priorities change from year to year, as new issues arise, and needs also differ among individual neighborhoods. A bank should have a local CRA plan which responds to that reality. Over the last few years, banks have been less likely to have such a plan or enter into CRA commitments with local groups. In order to prevent further retrenchment in CRA-related activities, the regulations governing this important law should be altered to require them and mandate that banks provide annual performance reports.

2) Strengthen the regulatory system by developing regulations that value both the quantity and quality of lending, investment, and services and empower regulators to penalize non-compliance and reward excellence. Three specific recommendations for how to make the CRA regulations more responsive to local needs include:

- Balance Quantitative and Qualitative Measures: The CRA legislation does not state the amount or manner by which financial institutions should fulfill their community obligations and it is unlikely that such standards could be passed statutorily. Thus, regulations should be reworked to ensure exams are not merely checklists that are driven by volume, but the qualitative impact as well.
- Maximize Consistency and Transparency: Currently, there is a great deal of variation across examiners. The FFIEC should determine CRA-eligibility of specific projects or classes of projects to provide banks some assurance that their lending, investment and services will lead to a strong grade.
- Enhance the value of an "Outstanding" rating by developing additional incentives. One proposal would be to give additional credit for "non-standard" deals, lines of credit, philanthropy, etc., which would incentivize and encourage the development and marketing of innovative products and services.

3) Establish a clear CRA commitment for Bank Holding Companies

Numerous investment banks including American Express, Goldman Sachs and Morgan Stanley have recently converted into bank holding companies. The principal reason behind these moves is gaining access to customer deposits, which are a stable source of funding. While the commercial bank owned by the bank holding company bank is regulated, the CRA obligations for the bank holding companies are less clear. Given that the bank holding companies as a whole have benefited from the change in designation, it seems reasonable that the CRA should apply to the larger institution as well.

4) Pass CRA Modernization
The Community Reinvestment Act (CRA) has been one of the most important laws for building wealth and revitalizing neighborhoods since its passage in 1977. However, the financial services sector has changed dramatically in the three decades since and the law has not been altered to reflect the shifts in how banks do business and other trends in the lending industry. In order to ensure the CRA remains an effective law, ANHD INC. has joined with The National Community Reinvestment Coalition in seeking to pass the Community Reinvestment Modernization Act of 2009 (H.R.1479), which was introduced by Rep. Eddie Bernice Johnson (D-TX). H.R.1479 would apply CRA to a variety of non-bank institutions, require federal regulatory agencies to hold more public hearings and meetings when banks merge, enhance accountability through data disclosure and introducing more publicly available ratings, address racial disparities in lending by requiring CRA exams to explicitly consider lending and services to minorities in addition to LMI communities, and bolster the accountability of banks to all communities, among other things. All of these are important mechanisms to ensure an effective CRA going forward.

Again, one element that is not currently included in H.R. 1479 that ANHD INC. feels is central to an effective CRA going forward is greater emphasis on community development and multi-family rental housing.

The past year has seen historic economic turmoil, much of it the result of irresponsible practices within the mortgage and banking industries. This instability, coupled with taxpayer investment, has led to increased scrutiny of the sector and triggered much discussion around the adequacy of the current regulatory system. This is a unique moment and one that lends itself to taking a step back, analyzing how well our low- and moderate-income residents and communities have been served, and devising a set of new tools to ensure the original intent of the CRA is being fulfilled. Regulators and elected officials, in partnership with advocates, must encourage financial institutions to evaluate their CRA-related activities and modify those that are not having a positive impact to ensure our neighborhoods remain vibrant.

Thank you for this opportunity to testify and for your efforts to ensure banks are responsive to the credit needs of low- and moderate-income residents. If you have any questions or would like additional information, please do not hesitate to contact me at davidb.h@anhd.org or (212) 747-1117 x21.

Speeches & Testimony

Remarks by FDIC Chairman Sheila Bair to The New America Foundation conference: "Did Low-income Homeownership Go Too Far?": Washington, DC December 17, 2008

Good morning and thank you for inviting me to speak.

What I'd like to do today is bury two myths that have been circulating lately. The first myth is that the Community Reinvestment Act caused the financial crisis. And the second myth is that working with troubled homeowners to reduce foreclosures lacks urgency and may be akin to a fool's errand.

CRA as a scapegoat

I think we can agree that a complex interplay of risky behaviors by lenders, borrowers, and investors led to the current financial storm. To be sure, there's plenty of blame to go around. However, I want to give you my verdict on CRA: NOT guilty.

Point of fact: Only about one-in-four higher-priced first mortgage loans were made by CRA-covered banks during the hey-day years of subprime mortgage lending (2004-2006). The rest were made by private independent mortgage companies and large bank affiliates not covered by CRA rules.

You've heard the line of attack: The government told banks they had to make loans to people who were bad credit risks, and who could not afford to repay, just to prove that they were making loans to low- and moderate-income people.

Let me ask you: where in the CRA does it say: make loans to people who can't afford to repay? No-where! And the fact is, the lending practices that are causing problems today were driven by a desire for market share and revenue growth ... pure and simple.

CRA isn't perfect. But it has stayed around more than 30 years because it works. It encourages FDIC-insured banks to lend in low and moderate income (or LMI) areas, and I quote, -"consistent with the safe and sound operation of such institutions".

Another question: Is lending to borrowers under terms they can not afford to repay "consistent with the safe and sound operations"? No, of course not.

CRA always recognized there are limitations on the potential volume of lending in lower-income areas due to safety and soundness considerations. And, that a bank's capacity and opportunity for safe and sound lending in the LMI community may be limited.

That is why the CRA never set out lending "target" or "goal" amounts. That is why CRA supporters, many of you here today, have labored for three decades to figure out how to do it safely. It makes no sense to give a loan to someone under terms you know they can't pay back. That's a set up for failure.

Despite our current problems, the homeowner is still one of the best credit risks in the world. Today, the delinquency rate on all home mortgages is only 3.6 percent. For subprime loans, there is a stark difference in the type of loan. The rate of seriously delinquent subprime fixed rate loans is a little more than one-third the rate for subprime adjustable rate mortgages.

Any family willing to work, save money, pay the mortgage on their house is a sound basis of credit and a sound basis for America.

So let the record show: CRA is not guilty of causing the financial crisis.

The housing crisis – time to stop the bleeding

That brings me to the other myth I want to dispel: that we can end the housing crisis without modifying troubled mortgages to make them affordable for millions of people facing foreclosure.

The housing crisis was caused by loose lending practices and unaffordable mortgages. And now unnecessary foreclosures are a very serious threat to a housing recovery.

Millions of Americans are saddled with mortgages they cannot afford and are in danger of losing their homes. The huge surge in foreclosures is hurting everyone by depressing housing values and putting more borrowers at risk. Many are suffering from the recession through lost jobs, lost savings, and lost communities.

As regulators, we need to use our authority and clout to stop it, and get the country out of the foreclosure crisis. This has got to be the top priority.

While there are no magic bullets, and a multi-prong effort is indeed needed, the core issue is lowering borrowers' monthly payments to an affordable and sustainable level. In recent months, we've seen federal and state governments, and consumer groups work with some success to encourage the industry to modify loans. And we're now seeing some larger scale initiatives being taken – something I believe is key to any solution.

But we're still very much behind the curve. We need a fast-track, nationwide effort.

We successfully launched such a program for systematically modifying loans at IndyMac Federal, a California bank we took over in July. To date, we've verified incomes and completed modifications for over 7,500 loans with thousands more in the pipeline.

Using this as a model for a "Loan Mod in a Box" national program, we think we could help 1.5 million families avoid foreclosure using $24 billion in government financing. This would help get at the root cause of the credit crunch and the economic recession.

We're gaining ground and support. The American Bankers Association endorsed our program last week. They believe that many more borrowers across the country can be helped.

Loan mods work when done right

There are some who question the effectiveness of loan modifications. They point to recent data suggesting that many modified loans end up re-defaulting, putting homeowners back in trouble.

I beg to differ. At the very least, the jury remains out.

Last week, the Office of the Comptroller and the Office of Thrift Supervision released a report on mortgages that has been cited to show substantial redefaults on modifications. Unfortunately, it is hard to draw conclusions from the report for three key reasons.

First, the report simply defines a modification as any change to the contract terms. Many past modifications were simply short term fixes that did not create a sustainable payment for borrowers. Comptroller Dugan agrees that sustainable modifications should perform much better.

Second, the report covers a period before most sustainable modification approaches were adopted. In November, Freddie Mac, Fannie Mae, and Hope Now announced that they were adopting many of the features of the FDIC's model

Finally, media stories about the report focused on delinquencies after only 30 days. While those made for big numbers, the 60-day delinquency figures reported by the OCC were much lower. That's more in line with industry standards – which measures delinquencies after 60 to 90 days. Experience shows that a large percentage of 30-day delinquent mortgages will become current again.

Affordable mortgages a must

As we have stressed, a sustainable modification must be based on affordability. The FDIC's approach focuses on creating an affordable and sustainable monthly mortgage payment based on verified income.

Using a combination of interest rate reductions capped at a prime, conforming rate, amortization extensions, and in some cases, principal deferment produces modifications that will last and, we believe, dramatically lower the re-default rate.

Indeed, a recent Credit Suisse study found that modifications based on interest rate changes had a 15 percent re-default rate. And those that had principal forbearance had a 23 percent default rate.

We've been urging servicers to focus on affordability ... income verification ... setting mortgage related payments at 31 to 38 percent of monthly income ... and fixing interest rates and including lifetime interest rate caps.

Some investment analysts are beginning to come around. Just yesterday, Fitch Ratings announced that it was looking to well-structured modifications as a key part of the ratings for servicers. As Fitch Managing Director Huxley Somerville said: "modifications, when properly done, can benefit U.S. homeowners and ... investors."

The FDIC has been reworking troubled loans of failed banks for decades. We have a lot of practical experience. We know how to do this, and believe it needs to be done on a national scale.

Let me raise a final issue.

Largely because we've waited so long to act effectively, we have a new problem: scam artists preying on distressed homeowners. We need to work closely with consumer groups, prominent policy gurus like yourselves, and others to warn distressed homeowners about these scam artists offering help for a hefty fee.

A member of Congress recently called me with a heartbreaking story of a financially strapped family with an unaffordable mortgage who had paid $2,500 to a "foreclosure prevention specialist" to get a loan modification. We were able to refer the family to the proper servicing agent, who, of course, does loan modifications to qualified borrowers at no cost.

Please help us get the word out that borrowers should contact reputable housing counselors through groups such as Neighborworks of America, or work with their servicer directly. It's very important for qualified borrowers to understand that the industry best practice is loan modifications free-of-charge. They do not need to spend thousands of dollars to get help.

It's also important for borrowers to understand that if they have an affordable payment, they should keep paying on their mortgage. Even under the IndyMac program, if the net present value of a modified loan does not exceed the foreclosure value, the loan will have to go to foreclosure.

So that while we can help a lot of people, we can't help everyone. Borrowers risk losing their houses if they purposely become delinquent to try to get a lower mortgage payment. The best thing they can do is stay current on their loans.

Conclusion

Let me end with this: Consumer protection by bank regulators is not an oxymoron. But we need to change how we do it. The rules need reworking to match a changing industry and changing consumer needs.

Instead of playing "catch up," we need to keep pace with the times, making the way we operate flexible and nimble enough to respond quickly to changing, and often unpredictable market demands.

So I want to thank the Center for Community Capital and its many sponsors for your new study of LMI lending. We need more thoughtful, comprehensive research like this so we can design policies and programs that are more effective in delivering credit to families of modest means, which is needed now more than ever.

I look forward to working with you going forward as we work to reshape the nation's consumer protections, and bolster public confidence in our financial system. It's going to be another tough year in 2009. And we're preparing for it. But we'll work through it. And by 2010, we'll be seeing the light at the end of the tunnel.

Thank you very much.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

BEN S. BERNANKE
CHAIRMAN

November 25, 2008

The Honorable Robert Menendez
United States Senate
Washington, D.C. 20510

Dear Senator:

Thank you for your letter of October 24, 2008, requesting the Board's view on claims that the Community Reinvestment Act (CRA) is to blame for the subprime meltdown and current mortgage foreclosure situation. We are aware of such claims but have not seen any empirical evidence presented to support them. Our own experience with CRA over more than 30 years and recent analysis of available data, including data on subprime loan performance, runs counter to the charge that CRA was at the root of, or otherwise contributed in any substantive way to, the current mortgage difficulties.

The CRA was enacted in 1977 in response to widespread concerns that discriminatory and often arbitrary limitations on mortgage credit availability were contributing to the deteriorating condition of America's cities, particularly lower-income neighborhoods. The law directs the four federal banking agencies to use their supervisory authority to encourage insured depository institutions--commercial banks and thrift institutions that take deposits--to help meet the credit needs of their local communities including low- and moderate-income areas. The CRA statute and regulations have always emphasized that these lending activities be "consistent with safe and sound operation" of the banking institutions. The Federal Reserve's own research suggests that CRA covered depository institutions have been able to lend profitably to lower-income households and communities and that the performance of these loans is comparable to other loan activity.[1]

Further, a recent Board staff analysis of the Home Mortgage Disclosure Act and other data sources does not find evidence that CRA caused high default levels in the subprime market. A staff memorandum discussing the results of this analysis is included as an enclosure.

[1] The Performance and Profitability of CRA-related Lending Report by the Board of Governors of the Federal Reserve System, submitted to Congress pursuant to section 713 of the Gramm-Leach-Bliley Act of 1999, July 2000. Refer to www.federalreserve.gov/BoardDocs/Surveys/CRAloansurvey/

The Honorable Robert Menendez
Page Two

As the financial crisis has unfolded, many factors have been suggested as contributing to the current mortgage market difficulties. Among these are declining home values, incentives for originators to place loan quantity over quality, and inadequate risk management of complex financial instruments. The available evidence to date, however, does not lend support to the argument that CRA is to blame for causing the subprime loan crisis.

Sincerely,

Enclosure

CUNA
Credit Union National Association
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cuna.org

September 16, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Frank,

On behalf of the Credit Union National Association (CUNA), I am writing regarding the hearing entitled, "Proposals to Enhance the Community Reinvestment Act." We would like to take this opportunity to express our strong opposition to H.R. 1479, the *Community Reinvestment Act Modernization Act of 2009*, as it applies to credit unions, and to respond to a recent report produced by an organization testifying at today's hearing. CUNA represents nearly 90% of America's 8,000 credit unions and their 92 million members.

We greatly appreciate your long history of supporting credit unions and their efforts to serve their members. However, we are puzzled and disappointed by this legislation which seeks to impose significant regulatory burdens on credit unions. From a credit union perspective, this bill is at best unnecessary and possibly harmful to credit unions and their members.

H.R. 1479 would extend *Community Reinvestment Act of 1977* (CRA) requirements to credit unions. As you have said, if every financial institution were similar to a credit union, CRA would be unnecessary.[1] We must, therefore, oppose this legislation: Credit unions have not – and do not – engage in redlining; credit unions continue to lend when others have reduced credit availability; credit unions serve their members at all income levels; and increasing the regulatory burden on credit unions could prove harmful to member service. In short, credit unions have done nothing to deserve the regulatory framework that has been rightly imposed on banks for their misdeeds.

Credit unions do, however, seek to serve the underserved in a greater capacity. For over a decade, we have asked Congress to enact legislation that clarifies that all credit unions may add underserved areas to their field of membership and restores credit unions' ability to fully serve their business-owning members, including those operating businesses in underserved areas. The data show that credit unions do a much better job at serving low- and moderate-income borrowers than banks despite these restrictions, but imagine what credit unions could do without these unnecessary statutory restrictions.

unnecessary statutory restrictions.

[1] "CRA Review Hearing on the Horizon." Credit Union Times. February 5, 2008. http://www.cutimes.com/News/2008/2/Pages/CRA-Review-Hearing-on-the-Horizon.aspx?k=CRA+Review

The attached white paper describes in detail why credit unions oppose this legislation so strongly, and identifies several significant flaws in the report recently released by the National Community Reinvestment Coalition (NCRC) entitled, "Credit Unions: True to Their Mission? (Part II)."[2] Finally, we identify structural concerns that we have with H.R. 1479 and the detrimental effect it would have on credit unions and their members.

We expect that the NCRC report will receive considerable consideration at today's hearing inasmuch as it suggests that credit unions are not fulfilling their statutory mission to serve their members, including those of modest means. Publicly available data and credible analysis do not support this claim, and rather suggest that credit unions serve their members in all ethnic groups and at all income levels despite the statutory barriers preventing many credit unions from serving underserved communities.

The problems with the NCRC report are many, and it deserves considerable scrutiny. The sheer volume of data produced by NCRC helps to hide the essential fact that, compared to banks, credit union make a larger percentage of loans to low/moderate income borrowers. Disparity ratio analysis is well known to produce false or misleading signals of comparative lender effectiveness. Denial and approval rates are far more effective measures to compare performance; and even NCRC's data show that credit unions consistently approve more and deny fewer lower income and minority applicants than banks do. NCRC's analysis focuses only on prime loans and fails to statistically adjust for statutory restrictions on credit union service as well as the difference in size of the average-sized bank and the average-sized credit union. NCRC's analysis of Massachusetts credit union data is flawed due to substantial compositional problems. The report is conveniently silent on changes in loan volume over time. And finally, NCRC has conflicts of interest which should not be ignored.

Despite the considerable attention we give to the NCRC study, our argument that extending the requirements of the Community Reinvestment Act to credit unions is unnecessary and unwarranted does not stand on the defects of the NCRC report alone. We are confident that credit unions are fulfilling their mission; the data support our confidence; and credit unions would like to be able to do even more. However, we do not believe that credit unions—which have done so much right when everything else in the financial services sector has gone wrong—deserve to pay for the sins of bankers thirty years ago.

On behalf of America's 92 million credit union members, thank you very much for your consideration.

Sincerely,

Daniel A. Mica

Daniel A. Mica
President & CEO

Attachment

[2] http.//www.ncrc.org/images/stories/mediaCenter_reports/creditunionreport090309.pdf

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H.R. 1479, the Community Reinvestment Act Modernization Act of 2009

Executive Summary

This paper describes the details of the credit union opposition to H.R. 1479, and the fundamental flaws in the recently released report by the National Community Reinvestment Coalition (NCRC). Credit unions have not—and do not—engage in redlining; credit unions continue to lend when others have reduced credit availability; credit unions serve their members at all income levels; and increasing the regulatory burden on credit unions could prove harmful to member service. In short, credit unions have done nothing to deserve the regulatory framework that has been rightly imposed on banks for their misdeeds.

Credit Unions Do Not Redline

Congress enacted the *Community Reinvestment Act* in response to redlining of lower income and minority neighborhoods by bank and thrift institutions during the 1960s and early 1970s. The purpose was to ensure that for-profit financial institutions were adequately meeting the financial service needs of all parts of the communities from which they draw deposits. Credit unions did not participate in the redlining activities that provided the impetus for CRA, and there is no evidence to suggest that credit unions are redlining today. Credit unions should not be subjected to added regulatory burdens today for the sins of bankers thirty years ago.

Credit Unions Continue to Lend When Others Have Reduced Credit Availability

The Federal credit union system was established during the Great Depression to help stabilize the credit structure of the United States. Therefore, it should come as no surprise that when the financial markets crumbled, credit unions were there to meet the credit needs of their members. In fact, the most recently available data suggest that at a time when other lenders are reducing credit availability, credit unions continue to lend. In the year ending June 2009, credit union loans outstanding grew by nearly 4%; while during that same period of time, banks reduced their loans by nearly $400 billion, a decline of -4.6%, according to FDIC and NCUA. The bank decline is likely significantly more dramatic than this top-line number suggests because, in the past, banks originated and sold a large volume of loans. The secondary market is now dysfunctional so there is a much smaller volume of loans sales, added to the decline in portfolio loans reported above.

loans. The secondary market is now dysfunctional so there is a much smaller volume of loans sales, added to the decline in portfolio loans reported above.

Credit Unions Serve Their Members at All Income Levels, but Statutory Barriers Prevent Many Credit Unions from Serving Underserved Areas

A much ballyhooed argument for expanding the CRA requirements to credit unions is that credit unions are not meeting their mission to serve their members, including those of modest means. Publicly available data and credible analysis do not support this claim, and rather suggest that credit unions serve their members in all ethnic groups and at all income levels despite the statutory barriers prevent many credit unions from serving underserved communities. Simply put, credit unions do well, but could do even more if Congress were to permit them to do so.

National Community Reinvestment Coalition Report
In September 2009, the National Community Reinvestment Coalition (NCRC) released a report entitled, "Credit Unions: True to Their Mission? (Part II)."[1] The report purports to show that credit unions do not do as well as banks in lending to lower income and minority borrowers, and that therefore credit unions should be subject to the Community Reinvestment Act (CRA). CUNA believes that the report contains numerous and fundamental flaws making it a strikingly poor tool for evaluating lender performance

The report was based on Home Mortgage Disclosure Act (HMDA) data for the years 2005, 2006 and 2007. The NCRC based its analysis on three measures of lending activity:

1. Portfolio composition (portfolio share indicators), defined as the percentage of total loans made to various subgroups of low-and-moderate-income (LMI) and minority borrowers;
2. Denial "disparity ratios" calculated as a lender's denial rate for a target group (e.g., LMI borrowers) divided by the denial rate for a broader group of borrowers (e.g., white borrowers); and
3. Approval "disparity ratios" calculated as a lender's approval rate for a target group (e.g., LMI borrowers) divided by its approval rate for a broader group of borrowers (e.g., white borrowers).

These three broad measures calculated for various demographic groups and subgroups – a total of 23 in all. Specifically, NCRC creates nine portfolio composition comparison groups; seven denial disparity comparison groups; and seven approval disparity comparison groups.

NCRC calculates these measures for three loan-types (home purchase loans, home refinance loans, and home improvement loans) and for two groups of lenders - credit unions and banks - and compares the lender results. In each case, an "advantage" is conferred to the lender with a higher portfolio concentration ratio; lower denial disparity ratio or higher approval disparity ratio. When the comparative measures are nearly identical, NCRC declares a "tie". Using this approach, NCRC creates and analyzes 207 comparative data points for each lender (i.e., 23 demographic groups x 3 loan-types x 3 years of data). The NCRC reports that banks perform better than credit unions on 65% of these fair lending indicators.

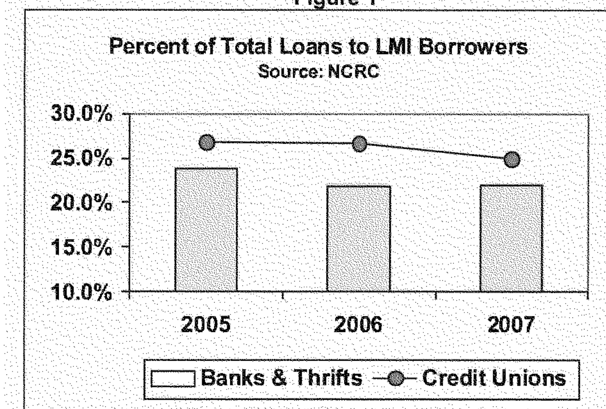
[1] http.//www.ncrc.org/images/stories/mediaCenter_reports/creditunionreport090309.pdf

For the following reasons, the credibility of the report is questionable and the results are incredibly misleading as a result of several very significant flaws.

1. The sheer volume of data produced by NCRC helps to hide the essential fact that, compared to banks, credit union make a larger percentage of loans to low/moderate income borrowers.

This is true in each of the years NCRC evaluates.

Figure 1



2. Disparity Ratio Analysis Produces False of Misleading Signals of Comparative Lender Effectiveness

The NCRC study uses "disparity ratios" to measure lender effectiveness. Disparity ratios are a horrible metric because they simply do not measure lender effectiveness. Ratios of percentages (e.g., disparity ratios) are not appropriate for inter-group comparisons when evaluating dissimilar distributions. The generally higher approval rates and lower denial rates at credit unions make these disparity ratios particularly misleading.

To illustrate the problem with disparity ratios from the NCRC report, consider the following example. The NCRC-produced data in Figure 2 show that both African-American and white borrowers who wanted a home improvement loan in 2007 were much better off seeking such a loan at a credit union.[2] Only 27% of African-American borrowers were denied at credit unions – whereas a whopping 58% were denied at banks. In other words, an African-American applying for a home improvement loan is twice as likely to be denied at a bank as at a credit union. Even more notable, an African-American home improvement loan applicant at a credit union is less likely to get denied than a white applicant seeking the same type of loan at a bank. Clearly the consumer "advantage" lies with credit unions.

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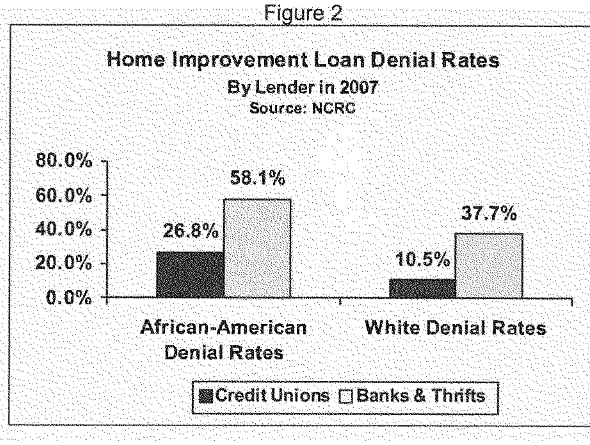
[2] National Community Reinvestment Coalition. "Credit Unions: True to Their Mission? (Part II)." 32.

Figure 2



However, the report ignores this information, and instead uses the denial data to compute denial disparity ratios. Using the denial disparity ratio NCRC reaches the incorrect conclusion that the "advantage" lies with banks![3]

In all, NCRC uses a total of 126 disparity ratios in its analysis—nearly two-thirds (60%) of the 207 total metrics NCRC evaluated—despite the fact that ratios of percentages (e.g., disparity ratios) are not appropriate for inter-group comparisons when evaluating dissimilar distributions.

In other words, disparity ratios can be used to make credit unions appear to be less effective than banks in serving the mortgage needs of LMI and minority borrowers. However, using more straightforward and appropriate measures—simple denial or approval rates—credit unions dramatically outperform banks. Simply put, an LMI or minority applicant is typically much more likely to have their loan application approved at a credit union than at a bank. Rather than suggesting that credit unions should be subject to CRA, NCRC should be advising LMI and minority applicants to seek out a credit union, and encouraging Congress to make credit union membership more available to LMI and minority populations.

3. <u>Denial and Approval Rates Are More Effective Measures to Compare Performance</u>

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[3] The credit union denial disparity ratio is calculated by dividing the credit union African-American denial rate by the credit union white denial rate: CU denial disparity ratio = 0.268/0 105 = 2.55. The bank denial disparity ratio is calculated by dividing the bank African-American denial rate by the bank white denial rate. bank denial disparity ratio = 0.581/0.377 = 1.54.

The underlying data NCRC used to produce these disparity ratios clearly shows that credit unions outperform banks: it shows that credit unions approve mortgage loan applications at higher rates (usually much higher rates) and they deny applications at lower rates (usually much lower rates) compared to banks. This is true in almost every single demographic group analyzed, among every loan type analyzed and across each of the three years of data it analyzed. Specifically, looking at 2007 approval and denial rates, NCRC data shows that credit unions outperform banks in 64 out of 72 of these metrics—89% of the total.

A complete listing for each of the three loan types across each of the three years evaluated is in the Appendix of this document.

4. NCRC's Analysis Focuses Only on Prime Loans

The NCRC analysis focuses only on "prime" loans.[4] This is a glaring oversight for a study that presumes to gauge the effectiveness of lending to lower-income individuals. NCRC defines "prime" loans as those not classified as high-cost loans.[5] However, credit union loan rates tend to be lower (in many cases much lower) than comparable rates on bank loans.[6] Thus, it is possible that, using NCRC definitions, a disproportionate percentage of credit union sub-prime loans are included in the NCRC analysis and a disproportionate percentage of bank sub-prime loans are excluded from the analysis. This would have the effect of creating and/or magnifying many of the reported bank "advantages".

5. NCRC Fails to Statistically Adjust for Statutory Restrictions on Credit Union Service as well as the Difference in Size of the Average-Sized Bank and the Average-sized Credit Union

In a discussion of the legal and structural constraints credit unions face in serving people of modest means, NCRC acknowledges the fact that credit unions and banks legally cannot serve the same groups of people.[7] However, the report simply explains-away or dismisses those substantial differences when it should be statistically controlling for them. Banks and thrifts can serve anyone. Credit unions, on the other hand, are statutorily restricted to serving membership groups described in one of three categories: single common-bond credit union; multiple-common bond credit union; and community credit union.[8] One-third of credit unions, serving 20% of all credit union members, have single-group occupational charters.

While approximately one-quarter of credit unions have community charters, many of these institutions have just recently converted to the wider charter, and they face a specific statutory restriction that prevents them from adding underserved areas to their field of membership.[9] In 2005, the American Bankers Association (ABA), a group which we understand will also be represented at today's hearing, took the National Credit Union Administration (NCUA) to court over this specific statutory restriction two days

[4] Ibid 25.
[5] HMDA reporters are required to provide pricing data whenever a loan rate exceeds the rate on a comparable-maturity Treasury security by more than three percentage points.
[6] GAO-07-29, 27-29.
[7] NCRC. 7-8.
[8] 12 U.S.C. 1759(b)
[9] 12 U.S.C. 1759(c)(2).

after they appeared before a House Ways and Means Committee hearing (referenced throughout the report) to complain that credit unions were not doing enough to serve people of modest means.[10] By definition, credit union membership fields cannot and will not perfectly reflect the income or racial make-up of the geographic community in which they are located.

The report also ignores potentially important differences related to institution size. The average bank has well over $1 billion in total assets whereas the average credit union has less than $100 million in total assets. It is conceivable that size differences might give rise to credit-risk evaluation advantages, though this is not considered in the NCRC analysis.

6. NCRC's Analysis of Massachusetts Credit Union Data is Flawed Due to Substantial Compositional Problems.

The report claims that state-chartered credit unions in Massachusetts outperform Federally-chartered credit unions in Massachusetts because the former class of institutions is subject to CRA.[11] However the NCRC analysis makes no adjustments for field of membership differences between the two classes of institutions. Eighty percent (80%) of the members who belong to state-chartered credit unions in Massachusetts belong to community chartered credit unions. In contrast, less than one-third (28%) of the members of federal-chartered credit unions in Massachusetts belong to community credit unions. In other words, federal credit unions in Massachusetts are operating with much more restricted membership fields than are their state-chartered counterparts. Thus, the NCRC analysis is not an apples-to-apples performance comparison and it is likely that the report's alleged performance disparities are largely a reflection of substantial demographic differences in Massachusetts credit union membership fields.

NCRC fails to note that BOTH state- and Federally-chartered credit unions in Massachusetts outperform U.S. banks on nearly all approval and denial metrics and on many key portfolio share indicators. For example, among Federal credit unions in Massachusetts 27% of home purchase loans originated in 2007 were to LMI borrowers. Among state credit unions in Massachusetts 29% of these loans were to LMI borrowers. In contrast, in the same year, only 22.5% of U.S. bank home purchase loans were made to LMI borrowers.[12] NCRC does not report any data on Massachusetts bank performance.

7. The Report is Conveniently Silent on Changes in Loan Volume Over Time

The NCRC analysis is conveniently silent on changes in loan volume over time – an oversight that ignores how credit unions "stayed in the game" while other lenders substantially curtailed lending in key demographic groups. The years covered by the NCRC analysis were unprecedented in the history of HMDA collection. They include the tail end of the sub-prime boom and the beginning of the subsequent housing market crash. Bank lending in most of the key markets NCRC evaluated declined substantially, while credit union lending either increased or declined at much slower rates.

[10] American Bankers Association v. National Credit Union Administration (2005).
[11] NCRC. 4.
[12] NCRC 30, 39.

For example, CUNA's comparison of 2007 and 2006 lending volume reveals:

- Banking institution loan originations to LMI borrowers declined by 27%, whereas the decline at credit unions was just 8%.
- Banking institution loan originations to African-American borrowers declined by 41%, whereas the decline at credit unions was just 3%.
- Banking institution loan originations to Hispanic borrowers declined by 45%, whereas credit unions their increased originations to Hispanics by nearly 5%.

8. NCRC Has Conflicts of Interest Which Should Not Be Ignored

It is also important to keep in mind that NCRC benefits directly and indirectly when the number of institutions that are subject to CRA increases. Many of its member organizations receive significant funding from banks as part of the banks' CRA investment obligations. In addition, the NCRC has formed a strategic partnership with the nation's "top banks."[13] It is no secret that banks have a longstanding goal of seeing CRA imposed on credit unions. This goal has little or nothing to do with a desire to advance consumer interests and more to do with a desire to saddle credit unions with the same regulatory burdens and costs borne by banks. In any case, policymakers would be better served if NCRC fully disclosed its true interests in this issue.

In contrast to its current banker-backed stance, if NCRC were true to its mission to "increase the flow of private capital into traditionally underserved communities," it would be vigorously supporting expansion of credit union service authority into underserved areas rather than attempting to impose new and unneeded regulatory burdens.

National Credit Union Administration Report

In 2006, NCUA released a report entitled, "Member Service Assessment Pilot Program (MSAP): A Study of Federal Credit Union Service."[14] This report was produced in response to questions raised by Congress and the Government Accountability Office (GAO) with respect to whether Federal credit unions continue to serve their mission and purpose. The report noted that questions about who credit unions should serve are often "framed by an important, and often overriding, limitation about whom they can serve."[15]

It is important to keep in mind that a credit union is not only restricted in terms of who they can serve by their field of membership restrictions, but also by who within that group decides to join the credit union. A credit union can only serve those individuals within its field of membership who affirmatively choose to be members of the credit union.

The data not only suggest that credit unions continue to serve their members well during this time of crisis, but also that credit unions serve their members at all income levels. As the MSAP reported, 96% of Federal credit union members have annual family incomes

[13] http://www.ncrc.org/index.php?option=com_content&task=blogcategory&id=85&Itemid=198

[14] This report, which is available at http://www.ncua.gov/Resources/Reports/MSAP/MSAP-Pilot.pdf, was limited to Federal Credit Unions; the National Association of State Credit Union Supervisors conducted a similar study on state chartered credit unions.

[15] National Credit Union Administration. Member Service Assessment Pilot Program: A Study of Federal Credit Union Service. November 3, 2006. 3.

of less than $100,000.[16] In fact, NCUA found that Federal credit unions predominately serve families earning in the range of $30,000 to $100,000.[17]

NCUA also found that credit unions are offering affordable products to their members. Over 80 percent of credit unions reported that they offer their members free checking and free bill payer service. Of the credit unions that own ATMs, over 80 percent indicated that they offer ATM services to their members free of charge. The average minimum balance for membership is $17, according to NCUA, with the most frequently reported minimum at $5.[18] It begs the question whether over 80 percent of depository institutions subject to CRA provide these services at these prices for their customers; and it demonstrates that credit unions do not need to be subject to the onerous requirements of CRA in order to fulfill their mission.

On the lending side, the MSAP looked at a variety of lending products offered by Federal credit unions. According to NCUA, the most frequently offered type of loan is a credit builder loan that is primarily used by members to build a credit history in cases where the member has either a negative credit history or no credit history. Almost 60 percent of credit unions said that they offer this type of loan. The next most frequent type of loan credit unions offer their members, according to the MSAP, is the micro-consumer loan. Fifty-four percent of credit unions offer this type of loan to their membership. The smallest unsecured loan amount granted by credit unions averaged $436; the smallest secured loan amount granted averaged $1,048.[19]

Credit unions are also providing services in addition to deposit and lending services. The MSAP reported that 42 percent of Federal credit unions provide financial literacy programs; 60 percent offer financial counseling. Sixty seven percent of Federal credit unions donated funds to one or more charity organization in their local community or field of membership; over half collected funds on behalf of charities.[20]

However, if the record of what credit unions are currently doing to serve their members is not sufficient to demonstrate that this legislation is a remedy in search of a problem, please consider the conclusions that NCUA reached with respect to community chartered credit unions. NCUA found that:

> "The less restrictive community charters serve more of the membership earning less than the median than any other charter type. MSAP results also indicate community charters in existence greater than five years serve a higher percent of the membership earning below the median than those community charters less than or equal to five years in existence. Finally, [Federal credit unions] in MSAP that added underserved areas, as well as those designated as low income, serve more of the membership earning less than the median than the FCU system collectively."[21]

[16] Ibid. 28.
[17] Ibid. 34
[18] Ibid. 35.
[19] Ibid. 37.
[20] Ibid. 37-38.
[21] Ibid. 34.

The more credit unions are given the opportunity to serve underserved areas and have community charters, the greater the penetration credit unions have with members earning less than the median income. Unfortunately, credit unions currently face statutory restrictions on adding underserved areas to their field of membership.

While we believe that Congress intended for all credit unions to be eligible to serve underserved areas when it enacted the *Credit Union Membership Access Act of 1998*, only multiple common bond credit unions are permitted to add underserved areas to their field of membership. In 2005, just two days after testifying before the House Committee on Ways and Means that credit unions were not doing enough to serve people of modest means, the ABA took NCUA to court to limit credit unions' ability to serve underserved areas.[22] The ABA agreed to dismiss the case only after NCUA agreed not to approve additional underserved area charters for community chartered credit unions. As a result, community chartered credit unions and single sponsor credit unions may not serve underserved areas.

To the extent that this legislation is intended to encourage credit unions to do even more to serve underserved areas, we respectfully suggest that a more appropriate alternative would be to remove the statutory barriers on credit unions adding underserved areas to their fields of membership. If Congress permits credit unions to serve these areas, history suggests that they will not only do it, but the longer they are serving an area the better they will serve it.

Increasing Regulatory Burden on Credit Unions Could Prove Harmful

Credit unions remain the most highly regulated depository institutions. The regulatory burden associated with the implementation of this bill would undoubtedly and unnecessarily distract credit unions from their core mission, serving their members, and it may overwhelm some smaller credit unions to the point that merger with a larger credit union is the only viable option. Small credit unions generally only have a small number of employees that do not have the time, knowledge or training to deal with additional regulatory burden. When forced to deal with major regulatory changes, such as those required by this bill, these small institutions will often attempt to merge with a larger credit union so that their members can continue to be provided the high quality service they have come to expect.

Overall, the regulatory burden on credit unions and other depository institutions has exploded since the beginning of this decade. This has included additional regulatory requirements in areas such as the *Bank Secrecy Act*, the *Fair Credit Reporting Act*, the *Unlawful Internet Gambling Enforcement Act*, the *Truth in Lending Act*, the *Real Estate Settlement Procedures Act*, the *Credit Card Accountability, Responsibility and Disclosure Act*, as well as privacy laws. Credit unions are concerned that this burden will only increase further as Congress focuses on regulatory restructuring and other issues to address the current financial crisis.

H.R. 1479 would require regulatory approval for credit unions to place new branches when there is generally not such a requirement under current law. Since credit unions are subject to field of membership restrictions, the placing of a new branch does not

[22] American Bankers Association v. National Credit Union Administration (2005).

generally mean that the credit union is expanding the community that it serves in the same manner that a new bank branch expands that bank's service area.

In addition, H.R. 1479 would require a 30-day public comment period not only for placing branches but also for mergers and field of membership expansions when there is no analogous requirement under current law. Further, H.R. 1479 does not include an exception from CRA-review in the case of a supervisory merger of a troubled credit union, which raises safety and soundness concerns.

Moreover, as the National Federation of Community Development Credit Unions, a nonprofit charitable organization dedicated to strengthening the credit unions serving low-income, urban and rural communities, has said:

> "Adding CRA to the compliance costs faced by credit unions may, in fact, have the unintended consequence of decreasing credit union investment in low-income communities. It may divert resources and focus to compliance instead of maintaining or expanding the voluntary investments that credit unions have made, and are increasingly making."[23]

We agree that the diversion of resources to comply with CRA will impact credit union service to all members, including those at low- and moderate-income levels.

H.R. 1479 Is Structurally Flawed

Notwithstanding our strong objection to expanding CRA requirements to credit unions, we would like to identify a structural flaw of H.R. 1479 that would place credit unions at a compliance disadvantage compared to other institution required to satisfy CRA requirements if the bill were to become law.

Expanding CRA to Credit Unions via Amendments to the Federal Credit Union Act will Subject Credit Unions to Litigation that Banks are Immune From Under CRA

Federal courts have uniformly held that third parties cannot challenge a bank's merger or branch placement based on its CRA rating, but that bankers are permitted to sue credit unions and the National Credit Union Administration (NCUA) based on the agency's administration of any part of the *Federal Credit Union Act*. By amending the *Federal Credit Union Act*—instead of the *Community Reinvestment Act*—to extend CRA to credit unions, H.R. 1479 would open the floodgates to allow bankers to challenge any and all credit union field of membership expansions, mergers, and even branch placements based on CRA ratings.

Bankers already routinely sue credit unions and NCUA to try to prevent field of membership expansions, and every dollar spent by a credit union or NCUA (which is funded entirely with Federally-insured credit unions' money) is a dollar that would be better allocated to expanding credit unions' service, especially to those of modest means. Perversely, banks are immune from similar suits under CRA because the courts have held that CRA is merely "precatory." This legislation would create a system in which banks could sue credit unions over CRA, but credit unions would not be able to make similar challenges to banks' CRA, despite the fact that over 98 percent of banks

[23] http://www.cdcu.coop/i4a/pages/index.cfm?pageid=992

receive passing CRA grades while many low- and moderate-income people remain without access to fairly priced bank products.

Other Provisions

In addition to our concerns regarding the expansion of CRA requirements to credit unions, we have a number of additional concerns regarding other provisions of this legislation.

Small Business Loan Data Collection

Section 105, Small Business Loan Data Collection, would amend the *Equal Credit Opportunity Act* (ECOA) by requiring credit unions (and other depository institutions) to inquire whether a business was women or minority-owned, and maintain a itemized record of responses much like what is required for mortgage loans under HMDA. Also like HMDA, institutions would be required to compile and report the information to NCUA (Federal credit unions) or FTC (state chartered credit unions) on an annual basis and make the information available to the public.

In essence, the provision discourages institutions from offering small business loans because of the associated regulatory burden. Credit unions already have a strong disincentive to offer business loans to their members by way of the statutory cap on credit union member business lending. At a time when small businesses are unable to secure credit from banks, it seems odd to impose additional burdens on those institutions being urged to help stimulate the economy by lending to small businesses.

Data Collection of Deposit Accounts

Section 106, Data Collection of Deposit Accounts, also requires the unnecessary extension of HMDA-like provisions to credit union members' deposit accounts. This provision would require credit unions (and other depository institutions) to collect and maintain records of the number and dollar amounts of deposit accounts of members for each branch, ATMs where deposits are taken, or other deposit taking service facility. It would require credit unions to geo-code addresses of depositors in order to collect census tract data of the residence or business location of its members, and identify the "type" of depositor as residential or commercial. Further, this information would have to be compiled, maintained, and annually submitted to NCUA as the Federal agency with jurisdiction over Federal credit unions and Federally-insured state-chartered credit unions, and made available to the public just like HMDA data.

Elimination of the Small Institution Exemption from HMDA

Section 308 eliminates the small institution exemption from HMDA. Under current law, credit unions and other financial institutions with assets less than $39 million are exempt from compliance with the requirements of HMDA. Removal of this exemption will require these small institutions not only to comply with current HMDA requirements but also the even more burdensome HMDA requirements prescribed by this legislation. Requiring such small institutions to comply not only with CRA but with a more burdensome HMDA will be very harmful and could cause these small credit unions to seek merger with larger credit unions that are more able to cope with the additional compliance burdens.

Conclusion

CUNA wholeheartedly agrees with those who want credit unions to do more to serve underserved areas. That is why we have been asking Congress for over a decade to permit all credit unions to do this type of service, as well as restore credit unions' ability to serve members who own small businesses. There is a willingness on the part of credit unions to do more, especially in these difficult economic times. However, H.R. 1479, to the extent that it is intended to encourage additional services to these areas, is a step in the wrong direction.

Appendix

Lender Advantage Based on NCRC-Calculated Approval and Denial Rates in 2007
"Advantages" represented by red circles & totaled at the bottom of each table. Differences of less than two percentage points are considered "ties" using NCRC terminology

Home Purchase 2007

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	44.6%	51.7%
Hispanics	50.6%	52.3%
Whites	67.1%	68.7%
LMI Blacks	48.8%	54.5%
LMI Hispanics	57.3%	58.3%
LMI Whites	69.9%	69.2%
Minority Tracts	58.6%	52.7%
White Tracts	73.6%	68.6%
LMI Borrowers	65.9%	65.8%
MUI Borrowers	74.1%	65.9%
LMI Tracts	63.3%	56.5%
MUI Tracts	73.4%	67.4%

Home Purchase 2007

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	26.8%	30.0%
Hispanics	19.2%	27.9%
Whites	10.1%	14.9%
LMI Blacks	30.1%	29.3%
LMI Hispanics	22.1%	25.5%
LMI Whites	12.7%	16.5%
Minority Tracts	17.3%	27.0%
White Tracts	8.5%	14.8%
LMI Borrowers	15.3%	19.2%
MUI Borrowers	7.2%	16.3%
LMI Tracts	15.8%	24.8%
MUI Tracts	8.4%	15.5%

Total Advantage: CU Adv. = 16 Bank Adv. = 3 No Difference = 5 Total = 24

Refinance 2007

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	50.2%	32.7%
Hispanics	56.2%	36.1%
Whites	73.4%	47.4%
LMI Blacks	46.0%	30.8%
LMI Hispanics	49.9%	32.2%
LMI Whites	68.6%	43.4%
Minority Tracts	56.0%	37.6%
White Tracts	70.3%	45.8%
LMI Borrowers	61.8%	39.8%
MUI Borrowers	70.4%	44.9%
LMI Tracts	59.2%	37.2%
MUI Tracts	69.6%	45.6%

Refinance 2007

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	27.0%	45.0%
Hispanics	23.7%	40.4%
Whites	11.4%	30.5%
LMI Blacks	32.6%	49.0%
LMI Hispanics	30.4%	47.3%
LMI Whites	16.2%	36.3%
Minority Tracts	22.5%	38.9%
White Tracts	12.6%	31.3%
LMI Borrowers	20.4%	39.4%
MUI Borrowers	12.0%	31.3%
LMI Tracts	21.4%	39.8%
MUI Tracts	12.9%	31.5%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

Home Improvement 2007

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	62.8%	26.2%
Hispanics	62.9%	31.9%
Whites	79.7%	44.7%
LMI Blacks	56.8%	23.3%
LMI Hispanics	53.0%	25.8%
LMI Whites	73.3%	38.3%
Minority Tracts	61.2%	31.2%
White Tracts	77.4%	42.5%
LMI Borrowers	66.2%	33.1%
MUI Borrowers	78.1%	42.7%
LMI Tracts	64.9%	31.7%
MUI Tracts	76.6%	42.0%

Home Improvement 2007

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	26.8%	58.1%
Hispanics	24.9%	50.4%
Whites	10.5%	37.7%
LMI Blacks	32.9%	63.7%
LMI Hispanics	34.8%	60.6%
LMI Whites	16.3%	47.6%
Minority Tracts	25.8%	51.1%
White Tracts	11.5%	39.1%
LMI Borrowers	21.9%	52.4%
MUI Borrowers	10.8%	37.3%
LMI Tracts	23.2%	51.8%
MUI Tracts	12.1%	39.3%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

Lender Advantage Based on NCRC-Calculated Approval and Denial Rates in 2006
"Advantages" represented by red circles & totaled at the bottom of each table. Differences of less than two percentage points are considered "ties" using NCRC terminology

Home Purchase 2006

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	46.5%	56.1%
Hispanics	52.5%	58.9%
Whites	69.3%	70.5%
LMI Blacks	50.9%	55.6%
LMI Hispanics	58.0%	59.7%
LMI Whites	72.8%	69.6%
Minority Tracts	60.2%	57.4%
White Tracts	75.5%	70.3%
LMI Borrowers	68.3%	66.5%
MUI Borrowers	76.2%	68.2%
LMI Tracts	64.5%	59.7%
MUI Tracts	75.4%	69.5%

Home Purchase 2006

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	25.9%	25.7%
Hispanics	18.7%	23.1%
Whites	9.1%	13.8%
LMI Blacks	28.4%	27.2%
LMI Hispanics	21.3%	24.3%
LMI Whites	11.1%	15.9%
Minority Tracts	15.9%	23.4%
White Tracts	7.6%	13.7%
LMI Borrowers	13.9%	16.2%
MUI Borrowers	6.3%	14.8%
LMI Tracts	14.6%	22.3%
MUI Tracts	7.5%	14.2%

Total Advantage: CU Adv. = 16 Bank Adv. = 3 No Difference = 5 Total = 24

Refinance 2006

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	57.3%	39.3%
Hispanics	61.4%	44.0%
Whites	76.9%	52.5%
LMI Blacks	52.7%	35.8%
LMI Hispanics	55.0%	37.0%
LMI Whites	72.6%	46.9%
Minority Tracts	61.4%	43.6%
White Tracts	74.8%	49.9%
LMI Borrowers	66.8%	42.5%
MUI Borrowers	75.2%	50.3%
LMI Tracts	64.8%	42.3%
MUI Tracts	74.2%	49.9%

Refinance 2006

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	23.3%	38.3%
Hispanics	19.7%	32.7%
Whites	9.4%	26.0%
LMI Blacks	28.6%	43.6%
LMI Hispanics	26.1%	41.5%
LMI Whites	13.5%	32.5%
Minority Tracts	19.3%	32.9%
White Tracts	10.1%	27.0%
LMI Borrowers	16.9%	35.3%
MUI Borrowers	9.4%	26.1%
LMI Tracts	17.5%	34.2%
MUI Tracts	10.4%	26.9%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

Home Improvement 2006

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	66.5%	29.7%
Hispanics	66.8%	36.4%
Whites	81.7%	47.7%
LMI Blacks	60.4%	25.7%
LMI Hispanics	56.5%	28.0%
LMI Whites	75.5%	40.2%
Minority Tracts	65.2%	35.1%
White Tracts	78.8%	45.5%
LMI Borrowers	68.1%	35.1%
MUI Borrowers	80.1%	46.7%
LMI Tracts	67.1%	34.6%
MUI Tracts	78.3%	45.2%

Home Improvement 2006

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	23.1%	54.2%
Hispanics	21.8%	46.0%
Whites	9.3%	35.0%
LMI Blacks	29.3%	60.9%
LMI Hispanics	31.8%	58.1%
LMI Whites	14.6%	45.3%
Minority Tracts	22.0%	47.0%
White Tracts	10.7%	36.4%
LMI Borrowers	19.9%	50.1%
MUI Borrowers	9.6%	33.6%
LMI Tracts	20.7%	48.4%
MUI Tracts	11.1%	36.4%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

Lender Advantage Based on NCRC-Calculated Approval and Denial Rates in 2005
"Advantages" represented by red circles & totaled at the bottom of each table. Differences of less than two percentage points are considered "ties" using NCRC terminology

Home Purchase 2005

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	47.0%	56.9%
Hispanics	55.2%	61.2%
Whites	70.3%	72.9%
LMI Blacks	51.2%	57.4%
LMI Hispanics	60.7%	60.1%
LMI Whites	73.2%	71.1%
Minority Tracts	61.2%	60.0%
White Tracts	76.2%	73.3%
LMI Borrowers	68.8%	68.0%
MUI Borrowers	77.1%	71.2%
LMI Tracts	65.1%	62.0%
MUI Tracts	76.2%	71.8%

Home Purchase 2005

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	24.4%	22.5%
Hispanics	18.6%	20.6%
Whites	9.1%	12.2%
LMI Blacks	29.0%	24.5%
LMI Hispanics	20.7%	22.6%
LMI Whites	10.9%	14.6%
Minority Tracts	15.7%	20.8%
White Tracts	7.5%	12.3%
LMI Borrowers	13.6%	16.7%
MUI Borrowers	6.2%	12.9%
LMI Tracts	15.0%	20.0%
MUI Tracts	7.4%	12.6%

Total Advantage: CU Adv. = 14 Bank Adv. = 6 No Difference = 4 Total = 24

Refinance 2005

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	68.6%	39.3%
Hispanics	66.7%	47.4%
Whites	79.3%	56.2%
LMI Blacks	57.3%	34.0%
LMI Hispanics	60.4%	40.1%
LMI Whites	75.5%	48.9%
Minority Tracts	66.2%	46.0%
White Tracts	77.1%	54.3%
LMI Borrowers	70.1%	44.5%
MUI Borrowers	78.2%	54.8%
LMI Tracts	68.9%	43.8%
MUI Tracts	77.6%	54.1%

Refinance 2005

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	20.3%	37.0%
Hispanics	16.6%	30.1%
Whites	8.1%	23.4%
LMI Blacks	25.5%	43.0%
LMI Hispanics	22.7%	38.3%
LMI Whites	11.8%	30.4%
Minority Tracts	16.5%	30.9%
White Tracts	8.6%	24.3%
LMI Borrowers	15.0%	33.4%
MUI Borrowers	7.8%	23.5%
LMI Tracts	15.5%	33.0%
MUI Tracts	8.8%	24.1%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

Home Improvement 2005

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	69.1%	32.0%
Hispanics	66.2%	39.3%
Whites	82.1%	50.4%
LMI Blacks	62.2%	27.8%
LMI Hispanics	55.6%	30.5%
LMI Whites	76.1%	42.7%
Minority Tracts	65.8%	37.0%
White Tracts	79.9%	47.8%
LMI Borrowers	66.9%	37.1%
MUI Borrowers	81.2%	49.4%
LMI Tracts	66.0%	37.0%
MUI Tracts	79.4%	47.8%

Home Improvement 2005

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	22.0%	52.2%
Hispanics	22.5%	44.4%
Whites	9.2%	33.0%
LMI Blacks	28.7%	58.7%
LMI Hispanics	14.5%	43.0%
LMI Whites	32.5%	56.2%
Minority Tracts	22.6%	45.6%
White Tracts	10.3%	33.0%
LMI Borrowers	19.9%	47.9%
MUI Borrowers	9.2%	31.4%
LMI Tracts	20.7%	47.2%
MUI Tracts	10.8%	34.4%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

HUD Housing Counseling Grant Funding for ACORN Housing Corporation 2001-2008

From 2001 to 2008 HUD awarded a total of $14,215,505 to the ACORN Housing Corporation. Established in 1985, ACORN Housing Corporation (AHC) is a HUD-approved housing counseling intermediary, which provides housing counseling to low- and moderate-income and minority households in 38 cities. AHC housing counselors work closely with families to help them understand mortgages, home improvement loans, mortgage refinancing, reverse mortgages, or develop delinquency payment strategies. AHC has programs to assist first-time homebuyers, Spanish-speaking households, and individuals with high interest rate loans with home refinancing and mortgage assistance. The years listed below apply to the year the grants were awarded. The information contained in this memo is a matter of public record and is found in the Housing Counseling grants press release in each year's Funding Announcement: http://www.hud.gov/library/bookshelf09/fundanoc.cfm

2008:
$1,623,570.30 - Comprehensive Counseling

2007:
$1,628,829 - Comprehensive Counseling

2006:
$1,821,596 - Comprehensive Counseling

2005:
$1,197,255 - Comprehensive Counseling
$ 275,000 - Homeownership Voucher
$ 323,439 - Predatory Lending
$ 78,354 - Colonias
Total: **$1,874,048**

2004:
$1,812,471 - Comprehensive Counseling
$275,000 - Homeownership Voucher Counseling
$325,000 - Predatory Lending Counseling
Total: **$2,412,471**

2003:
$2,024,511 - Comprehensive Counseling
$250,962 - Section 8 Homeownership Voucher - Housing Counseling
$380,282 - Predatory Lending
Total: **$2,655,755**

2002:
$1,167,044

2001:
$1,032,192

Total: **$14,215,475.**

INDEPENDENT COMMUNITY
BANKERS *of* AMERICA

Statement

On behalf of the
Independent Community Bankers of America

Before the

Congress of the United States
House of Representatives
Committee on Financial Services

Hearing on
"Proposals to Enhance the Community Reinvestment Act"

September 16 2009
Washington, D.C.

The Independent Community Bankers of America (ICBA) [1] appreciates the opportunity to offer this statement before the House Financial Services Committee on the topic of enhancing the Communities Reinvestment Act (CRA). ICBA represents 5,000 community banks throughout the country. The nation's community banks are committed to their communities and abide by the policies, such as CRA, that enhance their ability to carry out that commitment.

Summary

As long as community banks are subject to the CRA, ICBA strongly supports the current tiered CRA regulatory system with a streamlined examination for community banks to minimize regulatory and paperwork burden.

It is important to ensure that regulatory requirements, guidelines and actions by examiners are flexible and do not create unnecessary burdens. It is important to ensure that community banks can support their communities based on market needs, local opportunities and the bank's strategic strengths. Community banks should not be required to expend resources that do not directly benefit the local community but should be given credit for activities that benefit the entire community. Performance context should always be carefully considered and applied.

ICBA believes that credit unions, like banks, should be required to prove they are meeting the needs of their communities. ICBA urges Congress to move towards more regulatory equity by applying CRA standards to all credit unions.

ICBA would like to take this opportunity to commend the Chairman for his foresight in removing CRA enforcement authority from the proposed Consumer Financial Protection Agency (CFPA). Unlike statutes such as the Truth in Lending Act, the CRA does not regulate consumer products or rights. The CRA regulates bank services, lending and investments, all of which are integral to overall bank operations, which is the central concern of safety and soundness regulations.

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[1] *The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 268,000 Americans, ICBA members hold more than $908 billion in assets, $726 billion in deposits, and more than $619 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

Community Banks Invest in Their Communities

The Community Reinvestment Act requires that federal bank regulators evaluate how each FDIC-insured institution affirmatively meets "the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution," and take that record into account when evaluating an application for a deposit facility by the institution.

Community banks are locally owned and operated institutions that are integral parts of their communities and engage in community reinvestment and community development on a daily basis. Community banks generally serve only their local communities with deposit, lending and other banking services. Local community bankers frequently play a key role in many civic activities, such as serving on a development corporation board, hospital board, chamber of commerce or school board. In part, this is good business practice for community bankers. But a primary goal is to ensure their local communities are vibrant and thriving. The health of the bank is closely interwoven with the ongoing economic vitality of the local community and its residents.

Access to credit and equity capital is an essential ingredient for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, and enhancing the economies of cities and rural communities. ICBA strongly supports community reinvestment and community development as a means of addressing these needs.

Over the last 20 years, banks have been consolidating into large multi-state operations. One of the collateral effects is that local community groups no longer have access to a local decision-maker in these banks, one who is integrally involved with the community. In contrast, the local community banker understands community needs and can make quick decisions regarding funding for housing, job-creating small businesses and other local economic needs. Such is not the case when a funding request must go through a branch of a multi-state bank and is then forwarded to an office many miles away where the request can become mired in a bureaucracy.

Credit Unions Should Not Be Exempt from CRA

While the banking agencies have made effective improvements to CRA examination procedures that apply to banks and thrifts, an important competitor for community banks – the credit union industry – remains completely exempt from CRA.

When Congress enacted CRA in 1977 the vast majority of credit unions served members of a single group with a limited product line. The credit union world has changed substantially since then, with Congress and the National Credit Union Administration expanding credit unions' product line and geographic reach:

- Credit unions have substantial leeway to offer business loans and aggressively skirt the statutory 12.25 percent cap;
- Many credit unions have converted to community charters, making their geographic footprint equivalent to their community bank competitors; and
- A large number of credit unions now serve so many disparate groups that virtually anyone with a pulse can become a credit union customer.
- There is an increasing number of large, full service, credit unions over $1 billion in assets.

As a result of these and other changes, the credit union industry has become a full and direct competitor with community banks. The Congressional Research Service has reported that through credit union service organizations, "credit unions may provide their members with panoply of sophisticated financial services and products that rivals the offerings of banks and thrifts." The CRS report notes that "over the past 30 years, most of the distinctions between credit unions and other depository institutions have been eliminated or reduced because of deregulation; consequently, the justification for the tax exemption for credit unions has been increasingly questioned."[2]

Today's credit unions have virtually no limit to their customer base; the "common bond" requirement has become meaningless. For example, NCUA gave the Los Angeles Financial Credit Union approval to serve: "Anyone who lives, worships, works in, or attends school in Los Angeles County." This encompasses a county of more than 10 million people and a geographic area larger than the states of Delaware and Rhode Island combined. Other examples abound.

We note that the state of Massachusetts already requires credit unions to comply with the state's CRA statute. While Massachusetts has led the way in correcting this competitive inequity between community banks and credit unions, we must also point out that credit unions in every state remain exempt from taxation.

In 2005, the Tax Foundation undertook an analysis of the credit unions' Federal Tax exemption.[3] The study calculated that the exemption is worth $2 billion annually. For the average credit union, this meant a return on assets ½ percentage points – 50 basis points – higher than the average bank. Only 6 basis points of the subsidy may be used to lower interest rates. Another 11 "are absorbed by higher labor costs."[4] There is little or no effect on deposit rates or other costs.

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[2] Congressional Research Service. "Should Credit Unions be Taxed?" August 2005.
[3] "Competitive Advantage: A Study of the Federal Tax Exemption for Credit Unions," by Professor John A. Tatom, Ph D Tax Foundation, 2005.
[4] Page 22

A host of other studies round out the picture. A 2009 study by the National Community Reinvestment Coalition determined that large credit unions do not serve people of modest means as well as mainstream banks, which must comply with the requirements of the CRA. This study highlighted how banks "consistently exceed credit unions' performance in lending to women, minorities, and low and moderate-income borrowers and communities."[5] A 2003 Government Accountability Office study found that credit unions serve a more affluent clientele than banks. This GAO study concluded that "credit unions overall served a lower percentage of households of modest means than banks."[6]

Another study by the Woodstock Institute concluded that credit unions serve a higher percentage of middle- and upper-income customers than lower-income households.[7] Similarly, a study by the Virginia Commonwealth University concluded that credit unions tend to serve a higher proportion of wealthier households in their customer base.[8]

Today there are more than 146 credit unions with $1 billion or more in assets, providing sophisticated banking products and services to wealthy and middle-income members. Collectively, these credit unions have more than $356 billion in assets.

In one instance, the NCUA acted on these facts. Effective November 27, 2000, NCUA adopted a rule that required all credit unions with a community charter to adopt a Community Action Plan. The rule would have required

> that a community credit union address in either its marketing or business plan or other appropriate separate documentation, such as the strategic plan, project differentiation, etc, how it plans on serving the entire community, including how the credit union will market to the community and what products and services will be offered by the credit union to assist underserved members in the community.[9]

Unfortunately, the membership of the NCUA's board changed soon after the agency adopted the CAP requirements and the rule was repealed. In 2002, JoAnn Johnson – then a board member, later chairman – attempted to justify this action by claiming that credit unions were already serving persons of "modest means." This is easier said than proven. During the 2005 Ways and Means

[5] Credit Unions True to their Mission? (Part II) National Community Reinvestment Coalition, September 2009 www ncrc org
[6] General Accounting Office. "Credit Unions: Financial Condition Has Improved, but Opportunities Exist to Enhance Oversight and Share Insurance Management." October 2003
[7] Woodstock Institute "Rhetoric and Reality: An Analysis of Mainstream Credit Unions' Record of Serving Low-Income People. February 2002.
[8] School of Business, Virginia Commonwealth University. A Study on the Comparative Growth of Banks and Credit Unions in Virginia. 1985-1995 " August 1997.
[9] NATIONAL CREDIT UNION ADMINISTRATION, 12 CFR Part 701, final rule, effective November 27, 2000, section 5, COMMUNITY CHARTERS, COMMUNITY ACTION PLAN (CAP) (since rescinded).

Committee hearing on credit unions' tax exemption NCUA Chairman Johnson and credit union representatives had a difficult time demonstrating that they were meeting their statutory mandate of serving persons of modest means.

ICBA believes that the NCUA had the right idea when it adopted the CAP proposal in October of 2000 and took a giant step backward when it repealed the rule the following year. We strongly recommend that Congress build on the agency's work in 2000 and require credit unions to comply with CRA requirements in the same manner, and with the same asset size distinctions, as banks and thrifts.

CRA and the Consumer Financial Protection Agency

ICBA would like to take this opportunity to commend the Chairman for his foresight in removing CRA enforcement authority from the proposed Consumer Financial Protection Agency (CFPA).

Unlike statutes such as the Truth in Lending Act, the CRA does not regulate consumer products or rights. The CRA regulates bank services, lending and investments, all of which are integral to overall bank operations, which is the central concern of safety and soundness regulations. Separating enforcement of CRA from safety and soundness regulation, at the Administration had originally proposed, could easily result in conflicts between the CRA requirements of the CFPA and the safety and soundness requirements of banking agencies, leaving banks in the middle. It would be far better to leave with the banking agencies jurisdiction over statutes, such as CRA, that directly govern bank operations.

Conclusion

ICBA greatly appreciates the opportunity to weigh in on this important topic. Community bankers are strongly committed to the goals of the Community Reinvestment Act; community investment and development are at the core of each community bank's mission. ICBA commends the bank regulatory agencies for building on a tiered CRA examination system. ICBA also supports greater emphasis on performance context, improved examiner training, and eliminating the data collection requirements for small business and small farm loans. But ICBA also must urge Congress to apply CRA to tax-exempt credit unions in a manner comparable to, and with the same asset size distinctions, as banks and thrifts.

We appreciate the positive steps that the Chairman has taken to assure that CRA compliance be kept with the prudential regulator and separate from the Consumer Financial Protection Agency. CRA compliance should remain with the prudential regulator in order to avoid any potential contradictions in the examination process.

Again, we want to thank Chairman Frank, Ranking Member Bachus and the rest of the committee for the opportunity to provide proposals to enhance the Community Reinvestment Act.

NATIONAL ALLIANCE OF COMMUNITY ECONOMIC DEVELOPMENT ASSOCIATIONS

naceda

building communities state by state

Testimony Before the

Committee on House Financial Services

The Honorable Barney Frank, Chair
The Honorable Spencer Baucus, Ranking Member

Hearing: Proposals to Enhance the Community Reinvestment Act

September 16, 2009
10:00 a.m.
2128 Rayburn House Office Building

Submitted by NACEDA
Jane DeMarines, Executive Director

Enhancing the Community Reinvestment Act

The National Alliance of Community Economic Development Associations (NACEDA) appreciates this opportunity to provide comment for this hearing, as a national representative of more than 3,000 grass roots community economic development corporations, or Community Development Corporations (CDCs). The mission of NACEDA is to empower state and local trade associations to strengthen their communities by building affordable and mixed-income housing, spearheading ambitious neighborhood economic development strategies, and providing essential services for youth, families, seniors, people with disabilities and the homeless. The primary activity of NACEDA members is the development of housing, particularly housing for low-wealth communities and those with special needs. In addition, a Community Development Corporation aims to produce jobs in low-income neighborhoods and maintains 51 percent of its Board of Directors from the community in which it operates. This allows institutions to maintain operational focus on community and to serve the local community in which it is incorporated.

From the macro perspective, NACEDA members produced 1.3 million housing units since 1988 and three quarter million new jobs. These included rental and homeownership. In addition, as federal funding for affordable housing has declined for many communities with cuts to Community Development Block Grant (CDBG) funding, more CDCs are working in coalition to create regional community reinvestment to ensure good use of scarce dollars, particularly for infrastructure.

<u>The Community Reinvestment Act and Performance Measurement Reporting</u>

In 1977, Congress enacted the Community Reinvestment Act (CRA) to control for lender red-lining practices that disproportionately and discriminatorily affected low- and moderate-income populations. Current law requires that all federally-backed lending institutions employ CRA regulations.

Currently lending institutions are evaluated by federal regulators periodically to ensure compliance with the intent of the CRA. The purpose of this periodic evaluation is to measure performance at some level, as determined by the lending institution. This requirement, however, is limited. Neither regulation nor law requires lending institutions to report specific measurements of performance of the institution. Its lack of specific quality performance opens the door potentially for low quality performance and for wide-ranging performance ratings with respect to CRA intent. Recently, 96 percent of the performance examinations of CRA-lending institutions have received "outstanding" or "satisfactory" marks from regulators, yet in 1990, more than ten percent of banks failed their performance exams. This variance in performance rating is indicative of the ambiguous performance requirement, which neither allows lending institutions the opportunity to demonstrate corporate efficacy in CRA compliance. Requiring lending institutions to report more periodically would increase public and peer review, and disclosure of, the lending practices of these institutions, with respect to CRA compliance.

Banking Consolidation and Subsequent Shift from Quality to Quantity

Minimizing the intent of the CRA in preventing discriminatory lending practices, and as lending institutions consolidated in recent years, some lending institutions have shifted their lending practices from quality to quantity in terms of local community lending.

Because higher-income loan applicants have more capital, resources, higher credit scores, and established credit to secure a loan, these applicants can be viewed as more secure for good financial outcomes. Lower-income applicants have the challenges of entering the lending world often without good credit history, lending experience, knowledge of lending institutional and corporate lending practices, and other characteristics that can present less short- and long-term financial opportunity to lending institutions. Consequently, the market could be more prone toward increased volume of loans to higher-income applicants and decreased the volume of loans to lower-income applicants. In addition, managing loans for smaller prospective loan applicants requires on average more human capital and business resources than conventional loans in order to meet adaptively the needs of the local market, unique in terms of screening applicants, monitoring payment efficacy, and maintaining relationships with local communities.

The activity of consolidation of banks has occurred somewhat concurrently with decreased non-profit and community lending, and some banks have almost ceased community lending. Or, they have consolidated within their institutional infrastructure to refocus from community lending to lending with lower risk and less monitoring, which requires investment of time and therefore human capital in creating and maintaining relationships with communities to adapt loans to the local needs of the community. Citibank, for example, one of the country's largest banks, has closed its New York-based community lending group.

Decline in Loans to Non-Profits

The lack of lending presence in local communities has left a void for predatory lenders to fill, and many banks are making fewer community and non-profit loans than in previous years, yet the price tags of the loans are higher than previous years. Absence of community lending also gives opportunity for a lender to maintain more leverage over a market, opens the door for increased uniform lending practices for trusted loan applicants, yet also opens the door for reduction in variation and adaptability of loans to which a local community can apply. **In 2007, one bank in New York City reduced its number of community loans to non-profits for affordable housing by about 50 percent, and also in 2007, one bank committed 38 percent fewer loans to community development organizations than in the prior year. In terms of dollars, one bank reduced its community lending 43 percent.** This drop in non-profit lending is significant to lower-income populations and CDCs because non-profit developers commit to long-term community economic development, whereas for-profit developers do not necessarily and can be more committed to profit than community development. Altogether, the intent of the CRA was to provide incentives to create a level playing field for all prospective lenders, yet the lack of specific reporting requirements does not meet fully this objective.

Recommendations

On behalf of the 45 State and local Community Development Corporations (CDCs), their 3,000 CDC members, and official national CDC partners, the National Alliance of Community Economic Development Associations (NACEDA) recommends to the Committee the following.

1. **Modernize the Community Reinvestment Act to Encourage Local, Community, and Non-Profit Lending.** Since 1977, the intent of the CRA to prevent discriminatory lending has not fully been achieved. In fact, in recent years the corporate lenders, with consolidation and focus on profit, has allowed decreased corporate implementation on the ground of community lending and investment. NACEDA recommends the Committee draft legislation that maintains the key principle that lower- and moderate-income lending needs for community development and non-profits are met best when lenders identify local needs and adapt their lending practices to them.

2. **Require Performance Measure Reporting of CRA Lending Institutions.**
   a. Because CRA law and regulation are vague with respect to the quality of lending performance, lending institutions have not maintained fully the intent of the CRA to prevent discriminatory lending. NACEDA recommends the Committee require respective federal regulators require lending institutions to report to them key measures that demonstrate efficacy in support of CRA nondiscrimination practice, community investment, and corporate practices of lending that adapts to local community needs.

   b. Along these lines, NACEDA recommends Committee language that requires regulators collaborate with lending institutions and stakeholders, including organizations such as NACEDA, to develop these general measurements to ensure compliance with CRA while yet empowering lending institutions to maintain flexibility in generating performance outcomes that adapt to their specific lending needs, which affect the needs of community lending.

3. **Require General CRA Reporting of CRA Lending Institutions**. NACEDA recommends the Committee pass legislation that requires lending institutions to submit to their respective federal regulators their corporate plans for offering and issuing loans to local communities whom the CRA first intended to empower. This reporting would provide disclosure of and support of nondiscriminatory lending practices.

4. **Provide Compensation for Committed Community Development Lenders.**
   a. NACEDA recommends the Committee pass legislation that either empowers federal regulators to provide, or that directly provides incentives to empower lending institutions to increase lending to individuals and local organizations that desire to borrow and invest in lower- and moderate-income communities.

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B. Dan Berger
Executive Vice President
Government Affairs

September 15, 2009

The Honorable Barney Frank
Chairman
House Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Spencer Bachus
Ranking Member
House Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Frank and Ranking Member Bachus:

I am writing to you on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing the interests of our nation's federal credit unions, ahead of tomorrow's hearing entitled "Proposals to Enhance the Community Reinvestment Act."

As you are aware, the Community Reinvestment Act (CRA) was adopted as a punitive measure to punish specific bad actors – namely banks and thrifts – for engaging in discriminatory practices such as redlining and disinvestment. While some may say that CRA was to blame for the subprime crisis, we do not believe that to be the case. Credit unions were not included under CRA because they have not engaged in these illegal and abhorrent activities. Credit unions are inherently invested in their communities, operating unlike other depository institutions with a not-for-profit cooperative structure and a common bond membership. In addition, credit unions embrace the unique relationship that they have with their community and play an important role in providing important financial services to underserved individuals. By law, credit unions can only take deposits and make loans to their membership. As many in Congress have wisely noted, if all financial institutions acted like credit unions, there would be no need for CRA. We firmly believe that placing CRA requirements on credit unions would create new costly regulatory burdens without public benefit—a solution in search of a problem. We oppose all such efforts to do so.

Many credit union members come from the low income and minority populations of our society. Although banks and thrifts are subject to CRA, HMDA data clearly indicates that credit unions

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are outperforming banks and thrifts in terms of loan and price spreads as well as service to these particular segments of the population.

We would also like to take this opportunity to respond to a related report sent last week by the National Community Reinvestment Coalition (NCRC), entitled "Credit Unions: True to Their Mission, Part II." NAFCU believes that the analysis and conclusions drawn by the NCRC, favoring an extension of CRA requirements to credit unions, are deeply flawed.

The NCRC report uses data compiled under the Home Mortgage Disclosure Act (HMDA) as the basis for its erroneous analysis of banks, thrifts, and credit unions performance in serving disadvantaged communities, and to advocate for the extension of the Community Reinvestment Act (CRA) to credit unions. Unfortunately, NCRC fails to accurately represent the data.

An examination of Mortgage Loan Approval Rates[1] under the 2007 HMDA data indicates that credit unions outperform banks and thrifts across the board (see table below). Further, the percentage of credit union borrowers (approved 1-4 family purchase loans) with incomes of less than 80% of the HUD median family income for the area is higher among credit unions (26.1%), as compared to banks and thrifts (21.4%). That is, credit unions have a greater percentage of their loans (26.4%) going to lower income populations than banks and thrifts (only 21.4%), despite banks and thrifts already being subject to CRA.

Mortgage Loan Approval Rate*

Approval Rate,* All Mortgage Loans**

	All Applicants		White Applicants		Minority Applicants	
	Applicant Income		Applicant Income		Applicant Income	
	Less than $40,000	$40,000 or More	Less than $40,000	$40,000 or More	Less than $40,000	$40,000 or More
2007						
Credit Unions	73%	87%	75%	89%	56%	73%
Banks	57%	69%	60%	72%	44%	57%
Thrifts	64%	73%	70%	75%	57%	64%
Source: Federal Financial Institutions Examination Council HMDA Data						

*Loans originated plus loans approved but not accepted as a percent of all loan applications. Minority applicants include those who identified themselves as Native American, Asian/Pacific, Black or Hispanic.

**All loans include home purchases, home improvements, or refinancings, and when race information is collected

[1] Approval rates are used as the denial rate is an inaccurate measure of lending performance. This is because one denial on a small pool of applicants will have a greater impact than on a large pool of applicants.

We also believe that HMDA numbers for banks and thrifts need to be examined carefully. Many have taken to approving expensive, sub-prime loans where they did not make loans before (which some have termed "reverse red-lining"), and this fact is supported by the same HMDA data the NCRC attempts to twist to its advantage. The NCRC report concludes that, based on 2007 HMDA numbers, disparities in white versus minority approval rates are higher at credit unions than at banks. While a superficial examination may lead one to believe this, a complete and accurate analysis of the data reveals that the lower rate spread for banks is artificially enhanced by a substantial amount of sub-prime loans made to minority applicants. According to 2007 HMDA data, banks charged at least 3% higher than the Treasury yield benchmark on 20.8% of loans made to minorities with household incomes under $40,000 and thrifts were outside the spread on 34.7% of their loans to this population, while credit unions were only outside of the yield spread on 4.4% of their loans (see chart below). This vast difference is clear evidence that credit unions are much less likely to issue sub-prime loans to minority applicants than are banks, which were making loans that should not have been made and trapping people into predatory loans they could not afford.

Approved 1-4 Family Purchase Loans
Percentage of Approvals with Rate Spreads* >= 3%

	2007					
Percentage Reporting Above 3 Percent Spread	All Approvals (with race data)		White Approvals		Minority Approvals	
	Household Income		Household Income		Household Income	
	Less than $40,000	$40,000 or More	Less than $40,000	$40,000 or More	Less than $40,000	$40,000 or More
Credit Unions	**3.70%**	**1.80%**	**3.60%**	**1.80%**	**4.40%**	**2.10%**
Banks	**14.70%**	**9.50%**	**13.70%**	**8.80%**	**20.80%**	**13.70%**
Thrifts	**24.80%**	**20.60%**	**22.70%**	**19.00%**	**34.70%**	**28.40%**

Although banks and thrifts are subject to CRA requirements, HMDA data clearly indicates that credit unions are outperforming them in lending to low- and moderate-income communities. An educated analysis of HMDA data distinctly shows that credit unions are making smaller mortgage loans than banks and thrifts, and have a higher percentage of mortgage loans going to low- and moderate-income communities.

The NCRC report also examines the case of Massachusetts, which is one of two states that extend CRA obligations to state-chartered credit unions. NCRC concludes that the state-chartered credit unions in Massachusetts outperform federal credit unions by a small percentage. However, such a comparison is defective; state-chartered credit unions in Massachusetts have the ability to define their fields of membership in their by-laws (an authority not granted to federal credit unions), and therefore have greater control over who they can choose to serve. Furthermore, federal credit unions that are not defined as "multiple common-bond" credit unions are prevented from adding underserved areas to their fields of membership. Ironically, it is the same banks and predatory lenders that help fund the NCRC that have fought for this restriction through litigation like *American Bankers Association, et al. v. National Credit Union Administration* (2005). Still, federal credit unions seek to serve more underserved communities—areas that banks continue to refuse to serve.

NAFCU would like to thank you for the opportunity to share our thoughts and for holding this important hearing on enhancing the Community Reinvestment Act. We believe that credit unions are an example of how depository institutions can reinvest in the community by providing minorities and those with lower incomes more reasonable mortgage loans. We would like to continue to work with you and the Committee to address this important issue. If we can be of any further assistance to you or your staff, please do not hesitate to contact myself or Brad Thaler, NAFCU's Director of Legislative Affairs, at 703-522-4770 or bthaler@nafcu.org.

Sincerely,

B. Dan Berger
Executive Vice President, Government Affairs

cc: Members of the House Financial Services Committee

Testimony Submitted to the Committee on Financial Services
By George Goehl
National People's Action
September 16, 2009

Hearing on Proposals to Enhance the Community Reinvestment Act

Chairman Frank, Ranking Member Bachus, and Members of the Committee, thank you for accepting this statement on behalf of myself and the thousands of community leaders affiliated with National People's Action (NPA). We are pleased that the Committee is taking leadership on improving the Community Reinvestment Act (CRA).

How We Got Here

In the 1970's National People's Action, under the leadership of Gale Cincotta and a host of committed neighborhood leaders from around the country used their personal experience and data made available by the Home Mortgage Disclosure Act to make the case for the passage of CRA. They realized then that the systematic redlining and disinvestment in low, moderate and minority neighborhoods was not only a fundamental injustice, but realized that a two-tiered system of credit allocation was not sustainable. Barring entire swaths of the country from accessing the life-blood of capitalism wasn't just draining the neighborhoods affected, it was a threat to the economic well being of the nation as a whole.

In the 30 plus years since the passage of CRA, NPA and its affiliates have used CRA to work with a host of banks to ensure that quality credit remain equally accessible to all – regardless of address or skin color. As Section 2 of the HR1479 indicates, the CRA has leveraged more than $6 trillion in investments in low- and moderate-income communities. In the past decades that fight has been an uphill battle. Originally, both the lending community and the regulatory agencies opposed the CRA. Virtually all the most successful reinvestment programs and partnerships are variations of models originally created by community-based organizations to develop ways for the private lending industries to provide profitable and sound investments in once redlining and abandoned communities.

In the last decade, the struggle of the 1970's to ensure the flow of private credit has been turned on its head, with NPA and its allies still fighting to keep good credit flowing into our communities, but trying to stop the flood of toxic and predatory credit. Once again, low- and moderate-income and minority neighborhoods have taken the brunt of the damage and, as predicted, the abusive practices that prey on our neighborhoods have taken the entire US economy down with it.

Sadly, those seeking to excuse the excesses of the financial markets have tried to blame the CRA and lending to minorities and lower-income borrowers for the entire world credit meltdown. In reality, of course, it has been the organizations from these communities and the civil rights, and consumer organizations who have been sounding the alarm about the coming financial crisis since the middle 1990s. At that time, NPA began meetings with all the federal financial regulatory agencies to modernization the CRA and to protect all communities from discriminatory and predatory lending. When HUD and Treasury issued their joint reports on predatory lending in 2000, they were built on studies by NPA and other reinvestment organizations.

In the end, the warnings were ignored and billions of dollars in reinvestment were washed away in the subprime tsunami. On its path of destruction toward the entire credit system it first consumed these same minority, racially diverse, and low- and moderate-income communities that had previously been the victims of redlining and massive abuses in discrimination in the use of FHA lending.

The tsunami itself was the result of a perfect storm that demonstrated dramatically the need for the CRA modernization that we had been advocating for years. The relatively simple lending markets of the 1970s had evolved into a complex set of interactions among banks, mortgage lenders, consumer lenders (such as payday lenders), securities firms, and insurance companies. In order for the predatory subprime lending to infect and threaten the entire world credit markets, it took the regulatory failure of not only the Federal Reserve, the Office of Thrift Supervision, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, but also the regulatory failure of HUD and the Securities and Exchange Commission and the enforcement failures of the Department of Justice and the Federal Trade Commission – all encouraged by the policies of prior administrations and the failure of Congress in its oversight and legislative roles.

H.R. 1479 Is a Prescription for Change

H.R. 1479 – The Community Reinvestment Modernization Act of 2009 – represents a critical opportunity to reverse the processes that led us into the present crisis. Its introduction properly states its goals "to enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas". As we have seen, when the markets fail low- and moderate- income and minority markets, they eventually fail all of us. If we fail to enact protections against the exploitation and abandonment of these underserved markets, the weaknesses in the regulatory retaining walls will eventually give way to floods that will undermine our entire credit system.

Therefore, we strongly endorse the creative and comprehensive approach and provisions of H.R. 1479. It seeks to expand the requirement to serve the needs of all citizens and expands community service obligations to all the major players in the financial markets. In today's world, this is the only sensible approach to sustained reinvestment in our economically depressed communities and the key to sustaining all communities. Had CRA kept up with the changing mortgage and financial industries and covered all lenders instead of just depository institutions, much of the current disaster could have been avoided. According to a report issued by the Federal Reserve Board of Dallas earlier this year

> "data...suggest that the CRA prevented the subprime situation from being more severe."[1]

[1] "The CRA and Subprime Lending: Discerning the Difference" Banking and Community Perspectives

But, while we can't change the past, Congress and this Committee can take the steps necessary to ensure a better future. CRA's value is not just as a preventative tool. CRA has the potential, if updated appropriately, to be a major force for cleaning up the mess that's been left behind by the mortgage meltdown and the financial crisis.

A modernized CRA that covers all lenders, that has meaningful grades and adequate enforcement, that involves the communities in the future of their neighborhoods will be the very best way to ensure good, quality credit remains available everywhere. CRA can stimulate reinvestment in small businesses ravaged by the economy, CRA will ensure that a parallel, unregulated mortgage market doesn't run roughshod over neighborhood and CRA can stabilize neighborhoods devastated by the foreclosure crisis. As Michael Barr stated before this committee last year;

> "CRA is well positioned to help overcome the bifurcation between the prime and subprime markets by enhancing competition from banks and thrifts ... [this] would improve market efficiency, reduce racial discrimination, and speed the process of correcting other market failures."

Recommendations for Clarifications and Improvements in H.R. 1479

NPA has been proposing the modernization and expansion of the CRA for over a decade. I have included our most recent CRA proposal to help guide the committee as you move forward. In addition, while we have been and continue to be active supporters of the approach and provisions of H.R. 1479, we believe that there are some critical areas where our own experience and analysis suggests some clarification and improvements.

1. *Clarifying the Need for All Affiliates of a Financial Holding Company to Have Passing CRA Ratings*

While we endorse the need to cover a wider range of individual financial institutions under reinvestment obligations to provide all communities and all citizens with sound and responsible products and services, we also believe that it is important to assess and hold accountable financial holding companies as a whole. In today's markets where most of the major securities and lending companies are part of bank holding companies of some sort, the potential for sound investment and the potential for harm is vested in the totality of the holding company operations. A bank within a holding company may provide fair and sound services but if a mortgage company that is an affiliate of the holding company engages in predatory practices, then the very communities that the bank may claim to serve well may be undermined and damaged by the activities of the mortgage company. The only way for the regulatory agencies and the holding company to begin to meet the challenges of our complex financial markets and corporate

Issue 1, 2009, Federal Reserve Bank of Dallas structures is for the entire holding company to be held accountable for all the actions of all of its affiliates.

Section 110 HR 1479 provides that all of the individual non-bank affiliates of a holding company need to achieve a satisfactory rating. We believe that this language is intended to ensure that the entire holding is held company accountable for the actions of any of its affiliates. This should be made clearer by also specifically including the need for all of the direct banking subsidiaries and affiliates to also achieve a satisfactory rating. Then, the language should make clear that the covered applications (mergers, acquisitions, etc.) of any and all affiliates are subject to the CRA sanctions when any type of banking or non-banking affiliate receives a failing CRA rating.

2. *Including All Communities in the "Assessment Areas"*

What the original regulations for the CRA defined as community service areas are now defined in the bill – and in the current regulations - as "assessment areas". The present CRA examination process allows for CRA evaluations of large regional and national institutions based on an overall rating that combines different assessment areas and that can ignore individual service areas. H.R. 1479 generally defines an assessment area as either an MSA, a state, or an area in which the institution has "not less than 0.5 percent of the total *(lending, securities, insurance)* market" (see, for example (Section 103(a) for depository institutions). Then, the bill indicates that "the communities rated by the evaluation shall include the communities in which the great majority of *(loans, securities, insurance)* have been issued".[2] (Section 107 (b)(1) for Securities and Investment Services).

Focusing on areas where the great majority of products are provided can allow the evaluations to ignore smaller cities, towns, and communities. Moreover, it can allow the evaluations to exclude communities with few loans or other products – thus eliminating the very communities that the Act was originally designed to serve. That is, it could allow the evaluations to cut out minority areas simply because the institution redlined those areas and base the evaluation pure on how well it served higher-income majority communities.

This focus needs to be eliminated. The areas where the institution has a 5 percent or greater market share and all areas contiguous to and within these areas needs to be included, with a provision for the review of each assessment area to ensure that this does not arbitrarily exclude low- and moderate-income or minority areas. As with the original CRA regulations, the service area needs to be clearly defined on a map in the Public File and provisions need to be made for challenges to the service areas.

3. *Including Consistent Language Adding a Focus on Serving Racially Diverse and Minority Communities*

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2 This language is not consistent throughout the bill. The language for securities, for example (Section 107 (b)(1) defines the assessment areas as being either areas where the company has "not less than 0.5 percent" of the market "or" the communities where the great majority of securities are issued

We believe that the bill will be improved by adding consistent and parallel language across the different institutional sections indicating that in addition to serving the needs of low- and moderate-income communities, the Act specifically covers racially diverse and minority communities. In the present version, however, the inclusion of minority communities in service and investment activities and the prohibition against avoiding minority communities appears in some sections for some types of financial institutions, but not in other sections or for all types of financial institutions.

Credit Unions, for example, are prohibited from defining a service area that avoids minority markets, but the same provisions are not required for other banking institutions. When the CRA was first passed, we were told that there was no need to add specific provisions covering minority markets because other fair lending and fair housing laws already served that purpose. Yet in the more than 30 years since the CRA was passed, we have seen continued redlining and an erosion of regulations considering race discrimination.

The present evaluation process completely ignores racial patterns. The banking agencies have made it clear in the past that they have the power to conclude that an institution has engaged in a substantive discriminatory practice and impose sanctions without the need for a court ruling or jury verdict. Nonetheless, institutions that have defined service areas that specifically exclude minority communities have been given high ratings. One institution that developed a written policy of charging higher fees for one racial group over another had its rating changed from Satisfactory to Outstanding right after a federal court ruled the practice discriminatory.

Given this history, we believe that only the direct and consistent inclusion of minority communities in the Act will help to address the continued use of discrimination by covered institutions. In some places in the Bill, "Community Development Investments", for example, are to be assessed in terms of their benefit to low- and moderate-income communities, but the language on minority communities is missing. At each place in the bill where service to low- and moderate-income communities is indicated, the language on service to minority communities needs to be included as well.

Finally, the CRA evaluations need to include an explicit analysis of racial and ethnic disparities.[3] In addition, **the exclusion of minority communities or markets from the service area of an institution should result in an automatic failing grade.** The present language simple gives the regulatory agency to the option of "taking this into account" possible discriminatory activities by their own subjective views.

4. *Including All Affiliates in the Lending Assessment*

While we believe that the intent of the bill is to include all the affiliates of a financial holding company in the assessments and ratings, the bill allocates the assessment of the lending of mortgage companies to HUD while retaining the assessment of banks and banking company subsidiaries to the banking regulators. Presently, one of the major problems with both the CRA

3 Aside from the CRA evaluations themselves, we note that the fair lending examination procedures presently prohibit regulators from examining the lending patterns of non-bank affiliates. This simply encourages steering.

lending evaluations and the fair lending examination process is that it either allows the lender to include or exclude affiliates at its own determination or, as in the fair lending exams, it literally prohibits the regulators from examining the lending patterns of affiliate mortgage companies.

Since most major lenders are now part of financial holding companies, and since the large holding companies often have multiple mortgage affiliates specializing in different types of markets and products, separating the assessment of lending into banking and non-banking companies masks the overall patterns of the holding company. We have detailed in other testimony in the past, and in our own research reports, how patterns that either avoid minority communities or pump subprime and predatory loans into minority communities are split across different lenders within a holding company. In order to provide a clear and accurate picture of a holding company's lending, only the lending assessment for independent mortgage companies should be assigned to HUD, while the banking regulatory agencies should be required to assess the full lending patterns of all financial holding company affiliates.

5. *Requiring a Reinvestment Plan*

The original regulations for the CRA required institutions to assess local credit needs. The revised regulations in 1995 provided for the option of a CRA Strategic Plan that defined specific needs and developed programs to meet these needs. While the present version of H.R. 1479 does provide for a plan for institutions receiving a failing CRA rating, we believe that the original obligation to define the credit needs of the local service areas was a critical process that has been lost.

Just as a lender will not make a loan to a local business unless that business has defined a clear and specific business plan to show how the money will be used and how it will serve safe and sound lending purposes, so financial institutions should be required to have a reasonable plan for how they will serve local credit needs. The regulations for the Strategic Plan provide a reasonable framework for defining such plans in the Act.

Having defined needs and goals would provide for a more concrete way of assessing performance, thus making the evaluations less subjective. As different institutions developed varied plans based on their own approaches and particular market niches and range of products and services, we would all benefit by being able to assess what types of reinvestment and investment strategies and plans worked best in different types of local and regional markets, thereby enhancing the development banking role of the CRA as it was originally intended.

6. *Clarifying the Role of the Public to Challenge CRA Activities and Applications*

The role of communities and the public should be more clearly defined so that all mergers, acquisitions, and branch applications (as well as all plans and assessment area definitions) would require a public hearing.[4] Community reinvestment has worked best when there has been an active dialogue between communities and the financial institutions. Making a more consistent

[4] To avoid meaningless hearings, hearing dates could be set, but the hearing cancelled if, within a reasonable time, no members of the public file to participate.

role for hearings related to significant applications and reinvestment plans encourages this dialogue.

7. The Act Needs to Provide for a Challenge of a CRA Rating

Just as the community organization or member of the public that challenges a covered application needs to provide for a coherent and sound basis for the challenge, the regulatory agencies need to be required to respond to challenges to their ratings. This helps to ensure that the regulatory power is not abused and helps to identify possible weaknesses or problems in the evaluation process.

8. Reconsideration of the Focus for Securities and Investment Services

While the bills has extensive language on what constitute a securities or investment institution covered by the Act, the focus of the assessments and service areas seems to be on offering investment and brokerage services to the customers in an area. Clearly, fair access to investment services is a good idea. Reflecting on the recent credit crisis, however, it is the type and location of the financial products packaged into various forms of securities and insurance products that has the most serious impact on local communities.

What is needed is disclosure of the types of credit products, the locations of the credit products, and the performances of the credit products within the securities and financial investment products. Then, the risks and benefits of these products need to be assessed in terms of the institution's positive or negative effects on a community. In this regard, the securities held by various financial institutions as well as the services provided by brokerage firms or investment houses need to be included in the assessment. For example, if a banking institution has invested in toxic securities, the effect of these on the communities they are supposed to serve needs to be evaluated in the CRA process.

Concluding Remarks

In conclusion, NPA worked on community reinvestment before there was a Community Reinvestment Act. We have worked on the development and evaluation of reinvestment programs that have invested billions into once redlined and underserved communities. We warned the regulators and the government about the gathering storm of subprime lending and developed rescue programs that have saved many homes from foreclosure. Now, we look forward to working with the Committee to enact an even more effective and useful CRA.

★NATIONAL PEOPLE'S ACTION★

Modernizing the Community Reinvestment Act

A modernized Community Reinvestment Act (CRA) is the way to ensure that good, quality credit flows into all communities around the country. CRA can be the primary tool in repairing neighborhoods devastated by foreclosures and supporting small businesses that are key to our financial recovery.

The data universe created by the passage of the Home Mortgage Disclosure Act (HMDA) in 1975 allowed NPA to make the case for the Community Reinvestment Act that passed in 1977. The initial analysis of HMDA data showed that many banks were not lending in the areas where they accepted deposits, signaling racial and economic discrimination. CRA addressed these disparities by forcing banks to meet the credit needs of the communities they serve. Because of CRA, trillions of dollars of good loans were made to qualified borrowers in the past three decades. Good loans and good credit helped to build healthy communities and neighborhoods all across America.

But in the past decade, CRA's effectiveness has been hampered. An evolving mortgage industry has left huge portions of the nation's lending not subject to CRA. A combination of weak regulatory enforcement and a systematic watering down of the law through regulatory changes has left much of the rest of the industry under-regulated. But, even with these handicaps, CRA has been effective. According to a report issued by the Federal Reserve Board of Dallas earlier this year

> "...data...suggest that the CRA prevented the subprime situation from being more severe."[1]

NPA and others have been sounding the alarm for years about the dangers of predatory lending, banking deregulation, insufficient regulatory enforcement, and weakening CRA. Each of these factors contributed to the current economic crisis. Together they destabilized the housing market and caused its collapse. A modern, fairly applied CRA will go a long way to bringing fairness and stability back to the markets.

NPA's proposal for modernizing the Community Reinvestment Act (CRA) aims to increase transparency, accountability and stability in the financial system by modernizing the Community Reinvestment Act to address longstanding shortcomings in the execution of the law.

NPA recommends that the following changes to the Community Reinvestment Act regulations be made:

1. Make CRA Cover All Lending

In the last 20 years the universe of lending has changed dramatically. The neighborhood banks that once provided most of the lending in this country have been relegated to a corner of the market. Unregulated entities such as wholesale lenders, independent mortgage companies and mortgage company subsidiaries of huge Bank Holding Companies now make a bulk of the loans and investments. When all lenders are covered by CRA, all lenders will have incentive to act more proactively and

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[1] "The CRA and Subprime Lending: Discerning the Difference" Banking and Community Perspectives Issue 1, 2009, Federal Reserve Bank of Dallas

responsibly.

Institute a Bank Holding Company (BHC) Lending and Investment Test
BHC's are the umbrella corporation for a host of financial services entities but they are not explicitly examined under CRA. Currently only a handful of the financial services that take place under their name are subject to CRA and, even when an affiliate or subsidiary is subject to CRA, the scope of activities that are covered is insufficient. The buck needs to stop at the top and the BHC must be examined for all the lending and investments that take place under its name.

Require All Lenders, Their Affiliates and Subsidiaries to be Subject to CRA
The power of CRA to ensure fairness in capital markets has been eviscerated by policies that allow institutions to include or exclude lending activities of affiliates of holding companies, creating ways for lenders to hide subprime lending activity and unequal credit allocation. If holding companies channel different loan products through different affiliates, as was the case with Citigroup, then any disparate racial patterns associated with the segmented lending may be hidden. Since CRA rewards lenders for the level of loans, an apparent fair distribution of loans in the merged data may mask, for example, the channeling of prime loans to predominately white and higher income areas and the channeling of FHA and subprime loans to minority and low-and moderate-income areas. Moreover, the CRA assessment factors and grading should include not only the lending activities of affiliates and subsidiaries, but the investment activities and servicing activities of the bank and all affiliates and subsidiaries.

Make Lender Assessment Areas Cover Where Loans are Being Made, Held as Investment, or Serviced
In the 1995 CRA regulatory revisions, the Fed and the other regulators actually permitted institutions to draw their CRA assessment areas in any way they pleased as long as the regulator could be convinced that it was a "reasonable" area for the institution to serve. In spite of some language about not discriminating and not excluding low-and moderate-income areas, what was reasonable was ultimately left to the subjective discretion of the examiner. We are recommending that the regulators retake control of the assessment area delineation process. Institutions should be required to include in their assessment area all areas in which they make (or hold in securities or service) 5% or more of the loans in a community and/or requiring that the institution include all low- and moderate-income and minority areas that fall within the area drawn from any of their offices to the farthest point presently included in their service area (to prohibit skipping over minority and lower-income areas).

Require Local Needs Assessments and Reinvestment Plan Report (or Goals)
In the past, when citizens and organizations have placed comments in the lender's CRA file, these were reviewed as part of the factors related to the lender's assessment of credit needs. These comments, challenges, and other activities provided community organizations and the general public with a vehicle to define credit needs, propose the types of programs or loan products that could serve those needs, and also identify operations of lending programs that needed modification. Eliminating the factors related to assessing community credit needs cut the public out of the CRA examination and rating process, and reduced the CRA to a private relationship between the lender and the regulator.

This valuable process of assessing the community needs must be re-established. Had this process been in place in the past decade, the concerns so adamantly put forth by community groups about high risk predatory loans and their consequences would have provided a warning to both the banks and the regulators that could have shut down these unsound markets before they undermined our entire economy. Therefore, the institution must provide a report that defines the credit needs of all of its service areas in the country and lists the types of loans and services they will provide to meet these needs (including the needs and opportunities for future economic recovery and growth). The report should include a plan for the rehabilitation of communities suffering from concentrations of foreclosures and for the support of affordable housing initiatives through the local rural or metropolitan area. The report should include how the lender intends to provide sound credit services to those markets now served by payday lenders, title lenders, check cashing companies, etc. Reports should be made quarterly on the progress in meeting the goals defined in the above reports.

2. Institute Meaningful Grading System with Real Consequences
The present rating system is limited and arbitrary. Over half of the largest financial institutions receive

rating. For example, while under suit by the City of Baltimore for an appalling record of discriminatory practices, Wells Fargo NA has received a CRA rating of "Outstanding." Obviously, engaging in an entrenched pattern of credit disenfranchisement is hardly an "outstanding" way of meeting the credit needs of a community. CRA grades must reflect the real record of lenders, and regulators should have specific benchmarks against which to rate lenders' activities.

For example, in 1995 when the regulations were revised, the Consumer Advisory Council to the Federal Reserve recommended that institutions that excluded minority areas from their service areas should receive an automatic failing rating. This recommendation should become one of the clear benchmarks in the grading process.

Lenders will take more care with the quality and volume of their lending when they know there are real consequences.

<u>End the Practice of Race-based Loan Denials and Race-based Loan Pricing</u>
For decades, lenders have been using race and other discriminatory practices as a basis for lending decisions. National studies reveal that in upper-income African-American neighborhoods, residents are one-and-a-half times more likely to have a subprime loan than persons in low-income white neighborhoods. Similarly, in neighborhoods where Hispanics comprise at least 80 percent of the population, residents were 1.5 times more likely to have a subprime mortgage loan than the national average rate. We are asking for equal credit allocation, equal credit opportunity, and an end to race-based denials and high costs based on race.

We need to ensure that there is a level playing field for all people trying to access credit. In order to ensure this, the regulations need to assess whether lender are using race as a factor by grading their outcomes. Initially, one of the twelve assessment factors was "evidence of discrimination or other illegal credit practices." But slowly and deliberately, issues of racial and ethnic discrimination were removed from the CRA examination process. Today, the regulatory agencies do not include race or ethnicity in any of their tables for the lending test. All of their analyses are based entirely on various income ranges of borrowers or areas. While Regulators are instructed to 'keep an eye out' for violations of Fair Lending Laws, any findings made are dealt with outside of the CRA exam and not made public

<u>Include Credit Quality in Lending and Investment Tests</u>
After the rampant deregulation of the past two decades, low-income and minority communities began to be flooded with an abundance of bad loans and bad options. Predatory lenders charge outrageous interest rates and fees for financial services in these neighborhoods due to the enduring lack of conventional lending sources. Instead of depository lending institutions, these communities are being served by payday lenders, title lenders, check cashing companies, etc. This has served to create two tiers of lending in the United States, with the people who can least afford it being the ones paying the most for financial services.

Under current CRA regulations, a lender has the option of including or excluding this type of high cost lending from subsidiaries, creating the appearance of a robust lending presence in minority and low to moderate income areas when in reality the credit that is being made available is toxic. This cannot continue. With updated Home Mortgage Disclosure Act data, the Federal Reserve Board, other regulators and community groups will be able to prove categorically the practice of funneling predatory, high cost credit to low-income and minority neighborhoods. Lenders should not be given points for providing toxic credit in place of good credit. A set of benchmark loan characteristics, including reasonable debt-to-income ratios, allowable fees, interest rate caps and non-onerous credit standards should be instituted for regulators to gauge whether a loan is of good quality and in keeping with overall safety and soundness requirements.

Investments that contribute to a two-tiered credit system should be penalized. For example, if a lender is investing in pay-day loan centers, they are directly harming the community and their CRA grade should reflect that. Conversely, efforts made to supplant high-cost credit should be rewarded with lenders receiving credit for investments in quality micro-lending by the institution or through targeted investments to non-profits and Community Development Financial Institutions.

Require Consequences for the Poor Performance of Subsidiaries and Affiliates.
If any affiliate lender or subsidiary of a BHC receives a failing CRA grade, the BHC would automatically receive a failing grade as well. BHC's should not able to avoid the negative effects of a financial failing subsidiary, nor should they be able to remain unaffected by the record of an affiliate or subsidiary that does not live up to its CRA obligations.

Require Reinvestment Improvement Plans for Failing Institutions
Any lender, be it BHC, bank or affiliated mortgage company that receives a CRA rating of Low Satisfactory or below should be required to complete a comprehensive reinvestment improvement plan with measurable goals that will guide their way forward to serving the quality credit needs of their communities. The regulator must approve the plan and community groups must have the opportunity to comment and challenge the plan through hearings. Once a plan is accepted, progress against the goals and programs set out in it will form the basis for any subsequent CRA exams with progress against the plan specifically measured ahead of any higher CRA grade is awarded.

Include Foreclosure Prevention and Neighborhood Revitalization Efforts
All lenders should be graded on their record of providing timely and effective foreclosure prevention services, including loan modifications, for all loans they or their affiliates or subsidiaries service. Failure to provide adequate work-outs should have a negative effect on the ratings of the BHC and the affiliates involved in loan servicing.

Lenders also have a major part to play in cleaning up the mess they helped create in the current foreclosure crisis. Lenders must providing funds to acquire and rehabilitate the vast inventory of vacant properties left in the wake of their irresponsible lending. Both direct lending and investments in non-profits engaged in this type of community development should be rewarded through the exam process while failure to do so on a large enough scale should be penalized.

3. Re-Involve the Community in the Community Reinvestment Act
In the 1995 revisions to the CRA regulations, the regulatory agencies eliminated key aspects of the CRA enforcement, including any evaluation of how well the lending institution had assessed the community's credit needs. In essence, the regulatory agencies eliminated the role of the community and cut the public out of the job of ensuring good credit came to their neighborhoods.

Require Public Hearings on Exams
Since CRA was implemented, community-based organizations have been responsible for the creation of hundreds of Community Reinvestment Act agreements and programs. These
include state-wide and local activities that created channels for good credit to reach communities and neighborhoods across America. These agreements are not defined in the CRA itself. They arose as part of the assessment of community credit needs and out of the active
participation of the communities that the CRA was designed to serve. Often they evolved from the failure of the lending institution to take active steps to comply with the CRA and the failure of the regulatory agencies to enforce the Act. Since there is no 'right to private action' under the CRA, community groups and citizens working with a broad range of development organizations not only defined their credit needs but built the programs and capacity to meet those credit needs through the models provided by these formal CRA agreements. These agreements often arose from comments placed in the CRA file, from direct contacts and negotiations with lenders, and from challenges and testimony at CRA hearings on banking. Even in this period of the mortgage meltdowns, many of these programs perform better than subprime, FHA, and prime loans.

It has been these programs and the community insights and working partnerships with the banks that have provided the models for both reinvestment and the performance evaluations for sound lending and investments. Therefore, the exam process and the application process need to have a formal role for community input, comments, and challenges.

Require Appeal Hearings on Grades
Incredibly, no public CRA appeal process exists. Banks can challenge ratings that they feel are undeserved, but community groups cannot challenge inflated ratings. Community groups are the ones who really know about banks' performances. We all would benefit from a standardized and rigorous process that is open to the public. Claims of grade inflation should be included in a bank's public CRA

4. Consolidate and Simplify Reporting
In order for the new CRA to really be an effective tool for cleaning up the mess of the financial meltdown and to be the first line of defense against future implosions, the public must have usable data that is coordinated and standardized. CRA has resulted in billions of dollars of successful reinvestment and in almost every case these investments were the result of a vigilant public and community that challenged a financial institution to do better. The community cannot do its job without access to usable data.

Coordinate Existing and Proposed Data Disclosures
There are a host of new, existing and proposed programs that aim to strengthen bank performance, fix the fall-out from the mortgage crisis and mitigate the effects of the economic collapse and all of these initiatives will and should produce performance data. It is imperative that this data not fall into a black-hole but be brought to light and made good use of. We are recommending that an independent coordinator, housed in the Office of Management and Budget, be charged with coordinating the release and formatting for data that emerges from such programs as the Troubled Asset Relief Program, the Home for Homeowners initiative, the Home Mortgage Disclosure Act and CRA.

Make All CRA Lending and Servicing Test Data Publicly Available
In order for the newly proposed lending tests to be effective, community groups and the public at large must have access to lending test results to discern the players and their impact on local neighborhoods. These results should be published in a usable format for all regulated banks, their servicers, subsidiaries and affiliates.

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