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MEMO

From: Kenneth H. Thomas, Ph.D.

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Re: Second Comment on OCC/FDIC CRA NPR: "Patience Needed With CRA Reform"

The FDIC and OCC's [joint Notice of Proposed Rulemaking](#) (NPR) on CRA Reform appears to be highly unpopular based not only on the continued stream of [negative press](#) from most community groups, congressional representatives, and others but also a review of most of the NPR comments.

This was most evident after the two recent hearings by the House Financial Services Committee, the first composed of five community groups and the second with Comptroller Joseph Otting. Before any rush to judgment on the current CRA reform effort, which appeared to be the case in those hearings and many submitted NPR comments to date, it may be informative to step back and look at the facts.

Specifically, it is worth looking at what happened in 1995 during our last major CRA reform effort. Having had the opportunity to work with then Comptroller Gene Ludwig and his outstanding team at the OCC, I believe this historical review is essential.

The most important thing we learned from the last major CRA reform in 1995 is that *a major CRA reform process takes a lot of time with a lot of input from a lot of stakeholders to do it right*. As documented below, there were a few different versions of the 1995 reforms which took many years and [thousands of comment letters, hundreds of individual meetings, and several public hearings](#).

Having had the honor of knowing former Democratic Sen. William Proxmire, the "Father of CRA," it is important to me that any reform be done very carefully and comprehensively with the proper balancing of the legitimate interests of community groups, regulators, and the banking industry, the three elements of "[The CRA Triangle](#)."

The NPR by the FDIC and OCC is a start in this reform process, but we have a long way to go. Unfortunately, many critics of the NPR, including community groups, journalists and most of the House Financial Services Committee, are viewing the NPR as the end-product of the reform process, instead of the beginning of it.

The purpose of this comment is to remind interested parties that they should be patient with the current CRA reform process for the five key reasons discussed below. This is the second of several comments I will submit on this NPR on CRA Reform. Before providing more details and documentation on this comment, I will first summarize my relevant background on CRA reform.

My Relevant Background on CRA Reform

My current and past expertise in CRA in general and its reform in particular are relevant to this comment. In short, I have spent the majority of my professional life since 1977 focused on the CRA. I was greatly honored to have known and spent time with former Senator William Proxmire, the “Father of CRA.”

I am proud of the fact that my first book on CRA, Community Reinvestment Performance (Probus Publishing, Chicago, 1993), received the only endorsement he ever gave to any CRA publication:

Dr. Thomas’ book, Community Reinvestment Performance, is far and away the best analysis of government regulation that I have seen in any field. He spotlights the regulatory problems that continue in CRA and points out precisely how they are being overcome. CRA will benefit enormously from this superlative examination and report.

I have worked closely with numerous banks, community groups, and regulators on CRA since 1977, including training federal bank CRA examiners. Besides acting as a CRA consultant and being on the boards of various financial institutions, I have launched two different CRA mutual funds devoted primarily to affordable housing.

I had the privilege of testifying before Congress and federal bank regulators several times on CRA and related bank regulatory and public policy issues. Many of the recommendations in my books, including various CRA exam procedures and tests, were directly implemented into current bank regulations, and more details in this regard are found at www.CRAHandbook.com in The CRA Handbook (McGraw Hill, New York, 1998)

In summary, I have a vested interest in getting CRA reform “right,” which I define as being what Senator Proxmire intended. We got it right in 1995 when I worked with Comptroller Ludwig and his OCC staff on the last major reform of CRA, and that is my goal during the present effort.

1. The NPR is a Proposal Not the Final Rule

The NPR is a *proposal* put out for comments. No one, including the heads of the FDIC or OCC, expect that all or even most if it will be in the final regs. That is why it is now better to focus on submitting meaningful comments rather than attacking the messenger, which apparently was the strategy at the [most recent House Financial Services Committee hearing with Comptroller Otting](#).

The NPR has many worthwhile ideas, such as the [previously proposed 5% deposit reinvestment rule](#), which should result in tens of billions of dollars being reinvested in our “forgotten cities.” Critics of that particular proposal unfortunately either do not understand it OR clearly understand it and oppose it, because the resultant proper reallocation of CRA benefits will adversely impact their state, as we learned from one member of the House Financial Services Committee at the recent hearing.

Make no mistake, there are many recommendations in the NPR that should be eliminated or significantly modified. In fact, there is increasing support for the “CRA Reform Lite” proposal of maintaining the existing CRA regulations and (1) *updating* them with the 5% deposit reinvestment rule and (2) *improving* them with many of the good ideas in the NPR, including more clarity on what counts for CRA credit, benefits for banks with Outstanding ratings, focusing on LMI borrowers vs. areas, etc.

There are others that believe the best change in the CRA regs is NO change, where the Status Quo would be maintained. The proponents of the Status Quo, CRA Reform Lite or other alternative proposals should use this NPR comment process to document why they believe those options will result in the best public policy outcome for all stakeholders.

It is important to remember that there have been numerous proposed reforms to bank regulations and even the regulators themselves in the last several decades. The fact is that some of these proposed reforms became regulations and law and others became history. Any banking historian can document that the relentless road to reform in banking is littered with regulatory roadkill.

In summary, not all proposed reforms become final regulations. Each proposal deserves an equal opportunity to be studied and commented on during the rulemaking process. The goal should be to provide meaningful comments based on facts, even if there is opposition to much or all of the NPR, rather than summarily attacking it or the regulator who developed it.

2. CRA Reform Takes Time to Get it Right

Reform of important banking regulations takes *time*. Good reform takes a lot of time, and the best reforms may take several years. Discussions on our last major CRA reform began shortly after CRA ratings and performance evaluations became public on [July 1, 1990](#), after the S&L Bailout. This was the first time a bank rating and written evaluation were ever made public in our country.

That disclosure was largely the result of community-minded members of the House Banking Committee, specifically Representatives Joe Kennedy and Henry Gonzalez, two outstanding public servants I had the pleasure to have known. Their efforts were not without opposition, since the banking industry and some regulators, the Federal Reserve (“Fed”) in particular, were against the publication of ratings and a portion of the exam (the public Performance Evaluation).

[The OCC spearheaded the first CRA reform proposal in December 1993, and it was followed by a second revised one in September 1994 with the final joint rule issued in April 1995.](#) We should remember that there was not one but three separate CRA reform proposals resulting in the so-called “1995 CRA reforms.”

The final version became effective on July 1, 1995 with some provisions starting in January 1, 1996 and the remainder in effect as of July 1, 1997, roughly SEVEN YEARS after the first discussions of CRA reform. By comparison, the current CRA reform effort was announced by the Treasury Department in early 2017 with their [first formal report in June 2017](#), so we are relatively early in this process. It will likely take many more years, not months, to get this reform right.

It is possible that we may end up with CRA regulations that look very much like those in effect today from the 1995 reforms, except that they would have been appropriately modernized and improved (i.e., the CRA Reform Lite alternative). Or, we may end up with no reform (i.e., the Status Quo) on one hand or a radically different approach on the other.

Although a 60-day comment period was proposed, actually more time was allowed for review of the NPR based on its publication date. Nonetheless, because of the importance of getting this right, I believe the formal comment period should be doubled to 120 days [as suggested by House Financial Services Committee Chairwoman Waters](#), although some reporters have speculated that some regulators have a [powerful incentive to fast track the reform](#).

3. The Fed's Position on CRA Reform Will Make the Process Longer and More Complicated

The fact that the *Fed did not sign on to the NPR* suggests uncertainty as to [their own reform proposals](#), if any, which will likely lengthen and complicate the CRA reform timetable. History will show that this is not the first time the Fed has thrown a roadblock in front of CRA reform.

[Members of the Fed's Board publicly criticized the OCC's 1993 proposal](#). One Fed governor stated that he was “perfectly willing to tear it up, throw it into the fireplace, and go back and start again.” Other Fed governors condemned the proposal as the “wrong” approach and a “fundamental policy mistake” resulting in not only credit but also “resource allocation.”

In addition to concluding that “the time to say no is now,” one governor publicly stated that the Fed would oppose the proposal if bankers complained loudly enough. Even the presidents of the Federal Reserve Banks piled on, with the banker-friendly San Francisco Fed [arguing against the disclosure of CRA public examination schedules](#).

The Fed, with the help of the banking lobby that it called to action, was successful in watering down many of the toughest provisions of the last major CRA reform. But, even the Fed's undermining of the 1993-1995 CRA reform effort was nothing in comparison to how it [tried to kill CRA during and prior to 1977](#).

The banking industry, as expected, opposed this new law as a form of credit allocation, but what was unexpected was the fierce opposition of the Fed. Thus, began [the Jekyll and Hyde bank regulator](#) that publicly put on a pro-CRA face but privately encouraged banks and others to lobby Congress to weaken the law. This was a first for a federal bank regulator in modern times

Then Fed Chairman Arthur Burns, later disgraced in monetary circles for pandering to President Nixon's demands to lower interest rates, was very clear in his opposition to CRA in 1977, not only arguing that it was unduly burdensome to banks but also that it was a [form of credit allocation](#).

Yes, the same Fed now waving the pro-CRA flag and throwing millions of dollars of its seemingly unlimited financial resources sponsoring CRA conferences, publications, surveys, etc. did everything it could to kill CRA, but fortunately Senator Proxmire prevailed when President Carter signed the law in 1977.

The Fed has come a long way from its torturous CRA past, and we are hopeful that it will use its considerable power and financial and other resources, especially those at the Federal Reserve Banks, to meaningfully contribute to the current CRA reform effort. Neither the Fed nor FDIC signed on to the [OCC's August 2018 ANPR](#), but the FDIC joined the OCC on the recent NPR, most likely with changes that made it palatable to the FDIC but obviously not the Fed.

If Fed Chairman Powell really believes what he says about the [importance of CRA reform](#), he should get directly involved in this process with the heads of the FDIC and OCC instead of delegating it to a board member and making superfluous sound bites about CRA as [he did during a recent press conference](#).

It is widely believed that [the Fed will not be making any major monetary policy changes this year](#) because of the pending presidential election and the importance of maintaining the Fed's independence. Chairman Powell should therefore have the time this year, at least until the November election, to personally get involved in CRA reform.

4. *We Are Early in the CRA Comment Process*

We are *early in the comment process*, with roughly 10% of the number of comments during the current reform process compared to the [previous 1995 one](#). This fact alone should be enough to make everyone involved in the CRA reform process realize that we have a long way to go to get this right.

The first December 1993 proposal resulted in over 6,700 comment letters, and the second one in September 1994 generated over 7,200 comments. [With over 14,000 comment letters, seven public hearings, and comments from over 250 bankers, community groups and local officials](#), the third and final reform rule by four federal regulators, including the Office of Thrift Supervision, came out in May 1995.

By comparison, the [OCC's August 2018 ANPR](#) resulted in about 1,500 comments, and there have been no public hearings. The House Financial Services Committee's [two hearings in January](#) were limited to community group witnesses mainly opposed to the NPR and the Comptroller's own testimony in front of a generally hostile majority audience. Thus, there is still much to do by all stakeholders.

5. *CRA Reform Has Becoming More of a Political Issue Rather Than a Bank CRA Issue*

CRA reform unfortunately is becoming more of a *political issue* rather than the bank community reinvestment issue it was in the early nineties, and this will further lengthen and complicate the reform process.

Besides continuous commentary criticizing the Comptroller, which seemingly came to a head at the [recent House Financial Services Committee hearing](#), Chairwoman Waters and some fellow panel members took the rare step of [crashing the FDIC Board meeting discussing CRA reform](#) to ["make sure Trump's bank regulators know that we're keeping a close eye on them."](#)

In a peculiarly inaccurate reference to CRA as a ["foundational Civil Rights law,"](#) Senate Banking Committee Democrats also demanded the Comptroller testify on CRA reform. Several House Financial Services Committee members, along with the five community group representatives in their recent hearing, likewise inaccurately referred to CRA as a Civil Rights law, with one Representative steadfastly stating "CRA was and still is, a Civil Rights bill."

The more that CRA is portrayed as something that it is not and the more CRA reform is politicized, the entire reform process will not only become more convoluted and complicated but also lengthened.