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MEMO

From: Kenneth H. Thomas, Ph.D.

To: www.Regulations.gov, Docket ID: OCC-2018-008 Doc. #2019-27940

Date: April 4, 2020

Re: Third Comment on OCC/FDIC CRA NPR: "Recommendation
For Improvement or Elimination of the Strategic Plan Option"

This is the third of several comments I will submit on this NPR on CRA Reform with a recommendation for critically needed improvements in the Strategic Plan exam procedure or, alternatively, the elimination of it.

There are six major exam procedures for banks under the current CRA regulations. The FDIC and OCC's joint Notice of Proposed Rulemaking (NPR) on CRA Reform proposes to effectively maintain two of these existing CRA exam procedures (i.e., Small Bank and Strategic Plan), significantly modify one (i.e., Large Bank), and eliminate the remaining three (i.e., Intermediate Small Bank, Wholesale Bank and Limited Purpose Bank).

Since the NPR is eliminating *half* of the existing exam procedures, this is the time to re-evaluate the Strategic Plan option. This comment recommends critically needed improvements in it or, alternatively, its elimination like that of the other three exam procedures cited in the NPR.

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 in The CRA Handbook (McGraw Hill, New York, 1998).

I was honored to receive the first "Award of Excellence" for that book from the National Community Reinvestment Coalition (NCRC), along with Representative Joseph P. Kennedy and Comptroller Ludwig.

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.

The Strategic Plan Option Was Criticized from Day One

The only current exam procedures effectively being left in tact are for Small Banks and those banks with Strategic Plans. This is somewhat ironic, since the Strategic Plan option is the only CRA exam procedure that has been the subject of my continued criticism since this option was established.

The CRA Handbook argued against the Strategic Plan option from Day One for many reasons which were summarized in the *ABA Banking Journal* article titled "CRA Strategic Plan Option: A Bad Idea Gone Wrong."

The most important public policy concern with CRA Strategic Plans is that they effectively represent a *self-regulating* CRA exam procedure. Self-regulation is the first cousin of NO regulation, and this is not consistent with the fact that banking in the U.S. is the most heavily regulated industry in the world.

Because of the public policy importance of CRA, and since CRA ratings and public Performance Evaluations ("PEs") are the only ratings and exams made public in the banking industry, it absolutely requires supervisory regulation rather than anything close to self-regulation.

The primary basis for the self-regulation argument is because a bank with a Strategic Plan sets its own benchmarks for failing or passing an exam, primarily requiring community support before the respective regulator provides their final approval.

While the critical concept of the "CRA Triangle" requires community involvement, different geographic markets have different degrees of community input because of the presence or lack thereof of vocal community groups that are familiar with CRA.

For example, banks operating in much of the South, excluding North Carolina but including my home State of Florida, can be argued to have a relatively easier time dealing with community groups, many of which have a limited working knowledge of CRA, compared to banks operating in the Northeast.

The fact is that some community groups that receive a donation or other financial or nonfinancial support from a bank are generally supportive of it and will not likely challenge corporate activities like M&A and branching and most probably would be supportive of any Strategic Plan presented to them.

Only 47 Banks Have Currently Approved Strategic Plans

The three tables below identify the 47 banks with currently approved Strategic Plans, and they include 33 approved by the FDIC, six by the FED, and eight by the OCC. Nearly 60% or 19 of the 33 FDIC-approved banks are from one of the three "Sanctuary Sates" of Delaware, South Dakota, or Utah that have favorable usury limits for credit card banks.

Many but not all of the remaining 14 banks have unique business strategies that differentiate them from traditional retail banks. However, some of these banks are traditional community banks that may have had difficulty getting a passing rating on one of the existing exam procedures because of problems with one or more of their key lending test ratios.

Two of the six Fed-approved banks are from Utah, with three from California. Only two of the eight OCC-approved banks are from Sanctuary States. Overall, a total of 23 or roughly half of the 47 banks with approved Strategic Plans are from the three Sanctuary States.

FDIC Strategic Plan Institutions

Institution Name	City, State	Date of Approval	Region
1st Financial Bank USA	Dakota Dunes, SD	01/01/2020	Kansas City
Bank of Labor	Kansas City, KS	01/01/2020	Kansas City
Barclays Bank Delaware	Wilmington, DE	04/13/2018	New York
BMW Bank of North America	Salt Lake City, UT	02/01/2019	San Francisco
Celtic Bank	Salt Lake City, UT	10/01/2018	San Francisco
Continental Bank	Salt Lake City, UT	01/01/2018	San Francisco
Discover Bank	Greenwood, DE	01/01/2018	New York
DR Bank	Darien, CT	01/01/2019	New York
EnerBank USA	Salt Lake City, UT	06/08/2017	San Francisco
Evergreen Bank Group	Oak Brook, IL	07/01/2017	Chicago

Farmers-Merchants Bank of Illinois	Joy, IL	01/01/2020	Chicago
FinWise Bank	Sandy, UT	10/01/2018	San Francisco
First Electronic Bank	Salt Lake City, UT	01/07/2020	San Francisco
First Internet Bank of Indiana	Fishers, IN	01/01/2018	Chicago
Five Start Bank	Roseville, CA	01/01/2019	San Francisco
Georgia Banking Company	Atlanta, GA	01/01/2020	Atlanta
Live Oak Banking Company	Wilmington, NC	01/02/2018	Atlanta
Medallion Bank	Salt Lake City, UT	04/01/2015	San Francisco
Merchants Bank of Indiana	Carmel, IN	01/01/2018	Chicago
Merrick Bank	South Jordan, UT	01/01/2017	San Francisco
Northeast Bank	Lewiston, ME	01/01/2020	New York
Northpointe Bank	Grand Rapids, MI	01/01/2017	Chicago
Optum Bank, Inc	Salt Lake City, UT	01/01/2019	San Francisco
Prime Alliance Bank	Woods Cross, UT	01/01/2019	San Francisco
Sallie Mae Bank	Salt Lake City, UT	07/01/2019	San Francisco
The Bancorp Bank	Wilmington, DE	01/01/2020	New York
Tollerson Private Bank	Dallas, TX	07/01/2019	Dallas
Transportation Alliance Bank, Inc.	Ogden, UT	04/01/2019	San Francisco
Tristate Capital Bank	Pittsburgh, PA	01/01/2018	New York
UBS Bank USA	Salt Lake City, UT	01/01/2018	San Francisco
Web Bank	Salt Lake City, UT	07/01/2018	San Francisco
West Town Bank & Trust	North Riverside, IL	01/01/2019	Chicago
WEX Bank	Midvale, UT	01/01/2019	San Francisco

The Federal Reserve has approved the following banks for a strategic plan:

Bank name (RSSD ID Number)	Bank location	Effective date	Reserve Bank
Ally Bank (#3284070) (PDF)	Midvale, UT	November 17, 2016	Chicago
Green Dot (#243375) (PDF)	Provo, UT	July 23, 2015	San Francisco
Seacoast Commerce Bank (#3194638) (PDF)	San Diego, CA	March 1, 2014	San Francisco
Silicon Valley Bank (#802866) (PDF)	Santa Clara, CA	February 3, 2014	San Francisco
Silvergate Bank (#1216826) (PDF)	San Diego, CA	May 23, 2014	San Francisco
Stifel Bank & Trust (#3076248) (PDF)	St. Louis, MO	August 28, 2015	St. Louis

National Banks Evaluated on the Basis of a Strategic Plan under the Community Reinvestment Act (CRA)

Bank Name	Location	No.	Decision Date
Bank of Whittier	Whittier, CA	17548	Approved 08/23/2018
Charles Schwab Bank, fsb	Henderson, NV	718077	Approved 12/19/2018
Charles Schwab Signature Bank, fsb	Henderson, NV	715846	Approved 12/19/2018
Department Stores National Bank	Sioux Falls, SD	24622	Approved 10/08/2015
First Century Bank, N.A.	Gainesville, GA	24169	Approved 08/31/2018
Morgan Stanley Bank, N.A.	Salt Lake City, UT	24908	Approved 12/18/2019
Morgan Stanley Private Bank, N.A.	Purchase, NY	24981	Approved 06/24/2019
MUFG Union Bank, N.A.	New York, NY	21541	Approved 02/03/2017

Some of the Nation's Largest Banks Have Approved Strategic Plans

A critical reason why we must evaluate the merits of retaining the Strategic Plan option during this NPR period is the fact that some of the nation's largest banks have approved Strategic Plans. If, for example, these banks, which have substantial assets under their control, have submitted unrealistically low performance standards for passing CRA ratings, then this could adversely impact their respective Assessment Areas. This would certainly be contrary to good CRA public policy.

The following banks, which are among the nation's 50 largest based on year-end 2019 assets according to the Federal Reserve Board, have approved Strategic Plans:

Bank Name	State	National Rank	Assets (000,000)	Domestic Offices
Charles Schwab Bank, FSB	NV	13	$216,654	1
Ally Bank	UT	16	$167,492	1
Morgan Stanley Bank, N.A.	UT	18	$146,645	1
MUFG Union Bank, N.A.	CA	22	$133,194	351
Discover Bank	DE	28	$112,384	2
Morgan Stanley Bank Private Bank, N.A.	NY	35	$83,036	1
Silicon Valley Bank	CA	37	$69,943	4

Source: Federal Reserve Board

These seven of the 47 banks with approved Strategic Plans have *nearly $1 trillion in assets*. They include five of the nation's largest banks with over $100 billion of deposits, and one of these banks, MUFG Union Bank, N.A., is a traditional retail bank with 348 branches in eight states.

Why Do Fewer Than 1% of Banks Have Approved Strategic Plans?

The first question anyone must ask about Strategic Plans is "Why have so few banks, only 47 of the nearly 5,200 U.S. banks, have approved Strategic Plans?"

These 47 banks represent less than 1% of all banks, so the second question we must ask is "Why do we continue to have a CRA exam procedure that more than 99% of all banks have ignored?

The answer may be that most banks do not like Strategic Plans, including many that have submitted plans but later withdrew them for different reasons. Or, perhaps most banks are happy with their existing exam procedures, where 98% get a passing rating, and do not see a need to consider alternate exam procedures, especially one that requires considerable effort.

This avoidance of the Strategic Plan option, however, may drastically change if the NPR becomes effective as written. This is because many large banks, under the proposed definition of $500 million or more in assets, have negatively commented about various aspects of the proposed exam procedures and may consider submitting a Strategic Plan. Also, many of the 56 limited purpose and wholesale banks with little or no retail business, except perhaps for accommodation purposes, may likewise be filing Strategic Plans, since those two categories of banks would be eliminated under the NPR.

The NPR clearly states under general performance standards and ratings (Section 25.09) that Strategic Plans are "required for banks without retail domestic deposits" or small banks that do not conduct retail lending activities. In what appears to be an "open door" policy for Strategic Plans, the NPR also states that "Other banks may submit a Strategic Plan."

Although banks filing Strategic Plans must still collect, maintain, and report data under the proposed NPR rules, it is possible this rarely used exam procedure may become the preferred CRA option for hundreds rather than tens of banks. Thus, it is more important than ever that this exam procedure be reevaluated and improved to avoid the underachieving and many other problems associated with it.

Regulatory Issues With Strategic Plans

Bankers are not the only ones who have had issues with Strategic Plans. The regulators themselves have gone on record citing numerous problems they have seen with filed plans. The most detailed analysis by the regulators to date on Strategic Plans was by the FDIC in a publication titled "Community Reinvestment Act: Guide to Developing the Strategic Plan."

That document, which was released on March 3, 1998, reviewed all of the Strategic Plans that were available since that option became available in January 1996. Although dated, it is the only such regulatory analysis publicly available, and it is supplemented by a Strategic Plan Checklist and Worksheet. The Fed and OCC both have Strategic Plan guidelines, but neither of them is based on a review of submitted plans as is the case with the FDIC document.

The most relevant finding from the FDIC's analysis is that the most common deficiency with submitted Strategic Plans is the "inadequacy of the proposed goals or the omission of an explanation for the goals:"

> **The most common deficiency in the plans submitted to date has been the inadequacy of the proposed goals or the omission of an explanation for the goals in the performance context. In brief, this is what FDIC staff has noted in strategic plan requests:**
>
> - **Plans with few or no measurable goals.**
> - **Goals that are static, with no supporting rationale.**
> - **Plans that do not address all performance criteria and do not provide any explanation for not meeting all of the criteria.**
> - **Goals that are substantially below historical performance, with no substantiation for the reduced targets.**
> - **Goals that fall below the performance of other lenders in the assessment area.**
>
> **Moreover, FDIC staff frequently sees plans that:**
>
> - **Miscategorize loans, investments and services.**
> - **Include community development loans, investments or services that do not qualify under the regulations.**
> - **Do not provide a basis through the performance context for evaluating the submission.**

The most important public policy concern with Strategic Plans in 1998 and now, more than 20 years later, is the *underachievement* problem of banks setting their Satisfactory and Outstanding targets too low, oftentimes below historical performance or that of peers. Community groups, especially friendly ones submitting a favorable comment supporting underachieving performance goals, may not be aware of historical or peer performance or what the applicant bank is capable of doing.

A Closer Look at the Largest Bank to Submit a Strategic Plan

The best evidence as to why the Strategic Plan option is suboptimal from a public policy perspective is to examine the 47 current plans that have been currently approved to document the very wide disparity as to what counts for a failing or passing rating, especially a Satisfactory vs. an Outstanding rating. This analysis was done in The CRA Handbook and is regularly updated by the author as plans are made public. We will review one such plan here to highlight the problems with this exam option.

Ally Bank, the former General Motors financial arm known as GMAC that was bailed out by the U.S. Treasury during the Financial Crisis, is the second largest bank with a Strategic Plan. Its most recent PE from the Fed is dated 2/21/2017, and it is based on the bank's 2014-2016 Strategic Plan.

The bank's Outstanding rating by the Fed was based on the fact that the bank exceeded its established goals in that plan for Outstanding performance on both its lending and community development goals. However, nowhere in the PE does the Fed actually document that Ally Bank's established goals for Satisfactory and Outstanding performance are reasonable, other than mentioning that its plan was previously approved.

In other words, this is an example of self-regulation where the bank itself rather than the Fed or other independent body established the Satisfactory and Outstanding performance goals. Could the Bank have done more lending and community development activity than the goals it set for itself? This is not that different from a professor allowing students to determine the cutoffs for an "A" vs. a "B" or "C."

Ally Bank's most recent publicly available Strategic Plan is for the period January 2, 2017 through December 31, 2019. It noted that the bank solicited formal public comment for the required 30-day timeframe and further reported that it received eight public comments, which were "all supportive of the 2017-2019 Plan." There is no indication if those comments were from community groups that received current or past financial or non-financial assistance from the bank.

Regarding the establishment of specific performance goals, the plan states that "Ally Bank's measurable goals reflect the latitude described in the Federal Reserve Board's *Guidelines for Requesting Approval for a Strategic Plan Under the CRA*, specifically the Fed's statement that there is "regulatory flexibility regarding a bank's measurable goals." However, that Fed document does not provide any data or documentation in terms of appropriate goals based on previously submitted Strategic Plans similar to the comparable FDIC guidelines for Strategic Plans.

The Ally Bank Strategic Plan contains two informative "Support Tables for 'Outstanding' and 'Satisfactory' Goal Levels," with published performance data on a sample of other approved plans (see below). However, the bank's "extensive analysis" of why its goals are reasonable was not made public since it was contained in the plan's "Confidential Exhibit C:"

> *The 2017-2019 goal amounts are also appropriate in light of the CRA performance of almost 20 peer banks (including those listed in Table 5 above) with assets of $10 billion or more and nationwide lending and deposits but few or no branches or ATMs. Those peer banks had a weighted average of CD Loans/Investments new originations per year of approximately .50 % of average Total Assets while Ally Bank's $2.5 billion overall goal amount represents approximately .66%, which is significantly higher (see extensive analyses at Confidential Exhibit C).*

The "extensive analysis" supporting their goals in that Exhibit C should be made public, if not in the Strategic Plan but certainly in the Fed's PE documenting their Outstanding rating for Ally Bank. This is also the case for their "Confidential Exhibit B" titled "Bases for Measurable Goals." The stated goals for Satisfactory and Outstanding ratings are the crux of any Strategic Plan, and ALL information and data made available to the regulators documenting those goals must be made public as part of the plan, but certainly in the CRA PE, especially when an Outstanding rating is awarded.

As noted above, Ally Bank is a classic example of CRA self-regulation, since *they* established whatever goals *they* thought were appropriate, based on *their* confidential exhibits. This begs the question of whether or not the community groups and others that reviewed the plan had an opportunity to review those two exhibits before they sent in their letters supporting the plan?

Existing Strategic Plan Banks Have Established Widely Divergent Performance Goals for Themselves

Ally Bank's Strategic Plan contains Appendix 7 titled "Support Tables for 'Outstanding' and 'Satisfactory' Goal Levels" using data from other approved Strategic Plans. The first Table 7.1 compares Satisfactory vs. Outstanding goals for approved Strategic Plans of Utah-based banks, where Ally Bank is based. The second Table 7.2 compares Satisfactory vs. Outstanding goals for non-traditional banks with approved Strategic Plans located throughout the nation:

While the first Table 7.1 contains data for 14 approved CRA Strategic Plans of banks based in Utah, it does not contain data for the following approved plans previously noted, but this may be because they were approved after this Ally Bank document was prepared:

1. Celtic Bank (Salt Lake City, UT)
2. Continental Bank (Salt Lake City, UT)
3. FinWise Bank (Salt Lake City, UT)
4. First Electronic Bank (Salt Lake City, UT)
5. Morgan Stanley Bank, N.A., (Salt Lake City, UT)

Appendix Table 7.1: "Satisfactory" vs. "Outstanding" in Approved CRA Strategic Plans of Utah-based Banks

$ in 000s

Bank Name	Bank Location	Total Assets as of 12/31/15	Plan Approved by	Plan Effective Date	Satisfactory Goal [1]	Outstanding Goal[1]	% Increase from Satisfactory to Outstanding
BMW Bank[2]	Utah	9,913,847	FDIC	7/1/2016	$31,500	$46,500	47.62%
CIT Bank[3]	Utah	43,804,359	FDIC	1/1/2013	0.32%	0.42%	31.25%
Enerbank USA[2]	Utah	1,252,887	FDIC	1/1/2013	$2,600	$3,500	34.62%
GE Capital Bank[3]	Utah	21,174,221	FDIC	1/1/2013	0.32%	0.43%	34.38%
Green Dot Bank	Utah	941,501	FRB	1/1/2015	1.25%	1.50%	20.00%
Medallion Bank	Utah	1,082,419	FDIC	1/1/2015	0.40%	0.60%	50.00%
Merrick Bank	Utah	2,597,970	FDIC	1/1/2012	1.05%	1.15%	9.52%
Optum Bank	Utah	4,694,941	FDIC	1/1/2014	0.30%	0.40%	33.33%
Prime Alliance Bank	Utah	205,718	FDIC	12/1/2015	0.50%	1.00%	100.00%
Sallie Mae Bank	Utah	15,055,885	FDIC	7/1/2016	1.20%	1.45%	20.83%
Transportation Alliance Bank	Utah	690,799	FDIC	6/1/2013	0.30%	0.40%	33.33%
UBS Bank USA	Utah	52,653,111	FDIC	1/1/2015	0.50%	0.60%	20.00%
WebBank	Utah	327,521	FDIC	1/1/2014	0.30%	0.40%	33.33%
Wright Express (WEX) Bank	Utah	1,493,454	FDIC	1/1/2015	0.30%	0.40%	33.33%
Simple Average							35.82%
Simple Average w/o Prime Alliance[4]							31.17%
Weighted Average							28.09%
Ally Bank	Utah	111,306,727	RB (pendin	1/1/2017	$1.9B	$2.5B	31.58%

[1] CD Loans and Investment goals from final year of Strategic Plan (the percentages are typically of Total Assets or Average Total Assets; some

[2] These banks have one or more goals expressed in specific dollar amounts (some of which are converted to % of assets above per either

[3] CIT Bank is no longer located in Utah, and GE Capital Bank has closed

[4] Ally Bank gave greater consideration to the Simple Average without Prime Alliance Bank (the smallest in Total Assets) because of its

Table 7.1 provides important insight into the widely divergent performance goals of these banks:

1. Looking at the 12 of the 14 banks using the combined ratio of Community Development (CD) Loans and Investments to total or average total assets for the final year of their Strategic Plan results in Satisfactory goals ranging from 0.30% to 1.25%, a difference of over FOUR TIMES.

2. The comparable Outstanding goals at these banks range from 0.40% to 1.45%, a difference of nearly FOUR TIMES.

3. The last column shows the percent increase required for the goals to move from a Satisfactory to Outstanding rating, and it ranges from a low of just 10% to high of 100%, a difference of TEN TIMES. In other words, some banks would have to improve their Satisfactory performance by just 10% to get an Outstanding rating, while other banks would have to DOUBLE their performance to get that same rating.

4. The previously cited excerpt from Ally Bank's plan states that their $2.5 billion Outstanding goal represents .66% of average total assets. While this comparable level is not included in Table 7.1, it would be *below* that group's .73% average; yet Ally Bank got an Outstanding rating. Their $1.9 billion Satisfactory goal, about .50% of their average total assets, is likewise excluded from Table 7.1, but it too would be *below* the group's average (.56%).

Table 7.2 from Ally Bank's Strategic Plan reports data from another peer group of 13 banks:

Appendix Table 7.2: "Satisfactory" vs. "Outstanding" in Non-traditional Banks with CRA Strategic Plans Approved by the FDIC, FRB and OCC

The following table reflects all three OCC-approved CRA Strategic Plans for non-traditional banks, the two FRB approved CRA Strategic Plans for non-traditional banks (Silicon Valley Bank not included because its CRA Strategic Plan only has goals for "Satisfactory"), and all FDIC-approved CRA Strategic Plans for non-traditional banks with total assets over $1 billion.

$ in 000s

Bank Name	Bank Location	Total Assets as of 12/31/15	Plan Approved by	Plan Effective Date	Satisfactory Goal[1]	Outstanding Goal[1]	% Increase from Satisfactory to Outstanding
BMW Bank[2]	Utah	9,913,847	FDIC	7/1/2016	$31,500	$46,500	47.62%
Charles Schwab Bank[2]	Nevada	139,069,000	OCC	1/1/2016	0.27%	0.37%	37.04%
Department Stores National Bank	South Dakota	367,568	OCC	1/1/2016	0.80%	1.60%	100.00%
Discover Bank[2]	Delaware	85,747,508	FDIC	1/1/2016	0.50%	0.60%	20.00%
Green Dot Bank	Utah	941,501	FRB	1/1/2015	1.25%	1.50%	20.00%
Medallion Bank	Utah	1,082,419	FDIC	1/1/2015	0.40%	0.60%	50.00%
Merrick Bank	Utah	2,597,970	FDIC	1/1/2012	1.05%	1.15%	9.52%
Morgan Stanley Private Bank[2]	New York	42,042,000	OCC	7/1/2014	$215,000	$322,552	50.02%
Optum Bank	Utah	4,694,941	FDIC	1/1/2014	0.30%	0.40%	33.33%
Sallie Mae Bank	Utah	15,055,885	FDIC	7/1/2016	1.20%	1.45%	20.83%
Stifel Bank & Trust[2]	Missouri	7,273,809	FRB	7/1/2015	0.67%	0.84%	25.37%
TriState Capital Bank	Pennsylvania	3,236,756	FDIC	1/1/2015	1.00%	1.35%	35.00%
UBS Bank USA	Utah	52,653,111	FDIC	1/1/2015	0.50%	0.60%	20.00%
Simple Average							36.06%
Simple Average excluding Department Stores National Bank[3]							30.57%
Weighted Average							31.25%
Ally Bank	Utah	111,306,727	FRB (Pending)	1/1/2017	$1.9B	$2.5B	31.58%

[1] CD Loans and Investment goals from final year of Strategic Plan (the percentages are typically of Total Assets or Average Total Assets; some Banks have goals for new originations only, while other Banks have goals for total/cumulative loans and investments, and some Banks have both).

[2] These banks have one or more goals expressed in specific dollar amounts (some of which are converted to % of assets above per either description in the plan or obtained from corresponding Call Reports)

[3] Ally Bank gave greater consideration to the Simple Average without Department Stores National Bank (the smallest in Total Assets) because of its disproportionately large 100% difference between "Satisfactory" and "Outstanding"

This table again clearly documents the widely divergent performance goals of these banks, which include some of the largest in the country, like Charles Schwab Bank (which recently bought TD Ameritrade) and Discover Bank:

1. Looking at the 11 of 13 banks using the combined ratio of Community Development (CD) Loans and Investments to total or average total assets for the final year of their Strategic Plan results in Satisfactory goals ranging from just 0.27% to 1.25%, a difference of nearly FIVE TIMES. Charles Schwab Bank, the largest bank on this list and the 13th largest in the nation, had the *lowest* Satisfactory goal of .27%, yet it received an OCC Outstanding rating in 2017.

2. The comparable Outstanding goals at these banks range from 0.37% to 1.60%, a difference of more than FOUR TIMES. Again, Charles Schwab Bank, with an overall Outstanding rating, had the *lowest* Outstanding goal on this list, and this suggests an *underachieving* bank.

3. The last column shows the percent increase required for the goals to move from a Satisfactory to Outstanding rating, and it again ranges from a low of just 10% to high of 100%, a difference of TEN TIMES. Once again, some banks would have to improve their Satisfactory performance by just 10% to get an Outstanding rating, while other banks would have to DOUBLE their performance to get that same rating.

5. The previously cited excerpt from Ally Bank's plan states that their $2.5 billion Outstanding goal represents .66% of average total assets. While this comparable level is not included in Table 7.2, it would be *below* the .95% average for that group, yet Ally Bank received an Outstanding rating. Their $1.9 billion Satisfactory goal, representing approximately .50% of their average total assets, is likewise not included in Table 7.2, but it to would be *below* the average (.72%) for that group.

Recommendation: Improve the Strategic Plan Option or Eliminate It

With differences in Satisfactory and Outstanding ratings ranging from FOUR to FIVE times more for some banks and the relative difference between the two ratings of TEN times, there is clearly way to much disparity in this self-regulating exam option. Unless it is improved with specific guidelines from the regulators and other enhancements (see below), this option should be eliminated.

The problem with this self-regulating Strategic Plan option, is that a bank, with the support of friendly community groups and an apparently automatic approval of the regulatory agencies, can set and easily meet its own benchmarks for either a Satisfactory or Outstanding level.

There is no other area of bank regulation in Safety and Soundness or Compliance where a bank sets its own regulatory performance evaluation standards for its desired rating. This is totally contrary to the use of CAMELS and other regulatory ratings where banks are objectively evaluated by their regulators, regardless of input from the banks themselves, community group, or other outside parties.

The NPR clearly states that all banks have the option to develop a Strategic Plan. It is therefore possible that this option will become the lowest common denominator of CRA evaluation procedures, if banks prefer this effectively self-regulated approach over the proposed exam procedures in the NPR.

Thus, the Strategic Plan has the potential to be the CRA exam procedure of first choice and last choice for many banks not willing or able to obtain a Satisfactory or Outstanding rating under the proposed NPR exam procedures.

Required Improvements to Maintain the Strategic Plan Option

For the above and other reasons, it is recommended that the Strategic Plan option be eliminated OR significantly improved to correct the many problems identified above that are inherent in this exam procedure. This section will summarize five key areas of needed improvement to maintain this option.

The *first* and most important needed improvement is the publication of specific guidelines or benchmarks by the regulators for both Satisfactory and Outstanding ratings, so banks know the answer to one of the most important questions in CRA: "How much is enough?" The regulators must then require all submitted plans to have specific measurable goals based on these guidelines.

The use of averages, medians or other metrics from existing Strategic Plans as guidelines, as noted above, has the shortcoming of working from a biased group, since many of the existing plans (e.g., Charles Schwab Bank) have underachieving goals that would bias downwards the resultant guidelines.

For example, using data from both Ally Bank samples above, the annual combined ratio of Community Development (CD) Loans and Investments to average assets per year for all 23 banks where comparable data are available would average .64% for a Satisfactory and .84% for an Outstanding rating. Both of these possible guidelines are too low, since they include both CD loans and investments. The recommended guidelines detailed below are from The CRA Handbook, which is based on reviewing thousands of PEs since 1990.

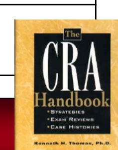
The CRA Handbook strongly recommends creating separate High and Low Satisfactory ratings, similar to that existing in Massachusetts, which has its own CRA regulations for state-chartered banks, credit unions, and even mortgage companies. [However, as a concession to their financial institutions, that state refers to "Low Satisfactory" ratings as just "Satisfactory."]

Using the five preferred rating designations, the recommended CD loan guidelines from The CRA Handbook are 1% for Outstanding, .66% for High Satisfactory, and .26% for Low Satisfactory ratings:

CRA Handbook Community Development Loan Guidelines©:

These guidelines are based on reviewing thousands of PEs ...but are NOT accepted or endorsed by any regulator:

Community Development (CD) Loan Rating	CD Loans/ Assets Ratio
Outstanding	1% or higher
High Satisfactory	.66 - .99%
Low Satisfactory	.26 - .65%
Needs to Improve	.11 - .25%
Substantial Noncompliance	0 - .10%



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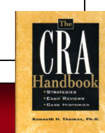
The comparable CRA investment guidelines from The CRA Handbook are similar at 1% for an Outstanding rating and .66% and .26% for High and Low Satisfactory ratings, respectively, as noted in the following chart:

CRA Handbook Investment Test Guidelines©:

These guidelines are based on reviewing thousands of PEs …but are NOT accepted or endorsed by any regulator:

Investment Test Rating	Qualified Investments/ Assets Ratio
Outstanding	1% or higher
High Satisfactory	.66 - .99%
Low Satisfactory	.26 - .65%
Needs to Improve	.11 - .25%
Substantial Noncompliance	0 - .10%



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This means that the *combined* CD loan and investment guideline for Strategic Plans comparable to the data cited by Ally Bank would be 2% for an Outstanding rating, 1.32% for a High Satisfactory rating, and .52% for a Low Satisfactory rating.

Accordingly, the above-cited .64% benchmark for a Satisfactory rating from the 23 banks cited in the Ally Bank plan would fall within the "Low Satisfactory" range using The CRA Handbook guidelines. However, the above referenced .84% benchmark for an Outstanding rating for those same 23 banks would be considered an example of "Grade Inflation," as it would be considerably lower than the 2% guidelines in The CRA Handbook.

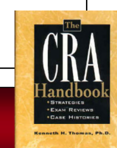
The CRA Handbook recommends using the *number* of CD services, often referred to as "instances" by the FDIC, as the appropriate metric for measuring CD service performance. This metric is preferred to other possible metrics such as the number of hours (used by Ally Bank), the number of employees or officers involved, the number of organizations contacted, or the number of LMI individuals or small businesses impacted. The basis for this preference is discussed in The CRA Handbook.

Using the number of CD services as the preferred metric, the following chart identifies the number of CD services per billion dollars of average assets per year that are consistent with the five different CRA ratings:

CRA Handbook CD Services Guidelines©:

These guidelines are based on reviewing thousands of PEs …but are NOT accepted or endorsed by any regulator:

Community Development (CD) Service Test Rating	Number of CD *Services* per $1 Billion of Assets per Review Period Year
Outstanding	12
High Satisfactory	8 - 11
Low Satisfactory	6 - 7
Needs to Improve	3 - 5
Substantial Noncompliance	0 - 2



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To provide Strategic Plan banks with the necessary flexibility to allocate resources among alternative community development activities, the same approach that is used in the Community Development Test for Limited Purpose, Wholesale Banks, and Intermediate Banks would be recommended.

Specifically, depending on a bank's ascertainment of the credit and banking needs in its Assessment Area(s), the bank would determine the most appropriate mix of the three community development activities that would best meet those needs using the above-cited guidelines.

For example, a Strategic Plan bank setting its Outstanding performance goals under this revised approach might prefer a balanced activity goal of CD loans representing 1% of assets, CD investments representing 1% of investments, and 12 CD services per $1 billion of assets per year.

However, if that bank does not have the staff to conduct CD services, it may opt for a goal of CD loans at 1.5% of assets and CD investments at 1.5% of assets for that same rating. Moreover, if that same bank does not have the willingness or ability to make CD loans, it could set an annual goal of CD investments amounting to 3% of assets for an Outstanding ratings, because such investment are available to any bank.

The "right" mix of CD activities for a bank would be based on its evaluation of community credit and other needs and its desired CRA rating. Community input and performance context would be important considerations in determining the mix of CD activities, but this decision ultimately would be made by the bank rather than the regulator or any community group.

A *second* needed improvement to maintain the Strategic Plan exam alternative is to eliminate the "fail safe" option. Under the current regulations, a bank with a Strategic Plan has the option to provide an indication in that plan of whether or not it elects to be evaluated under another assessment method *if* the banks fails to substantially meet the Strategic Plan goals for a "Satisfactory" rating. Small, intermediate, large, limited purpose and wholesale banks are not provided this fail-safe option by the regulators, so it is time to eliminate this advantage from an already bank-friendly exam procedure.

A *third* needed improvement with the Strategic Plan alternative is full transparency on any and all material submitted to regulators regarding anything related to the development of the Satisfactory and Outstanding performance benchmarks. For example, a reader of the Ally Bank Strategic Plan, other than the regulator approving it, cannot really understand the basis for their rating benchmarks, since the relevant peer data and the bases for their goals were contained in two confidential exhibits.

A *fourth* needed improvement with the Strategic Plan option is to require banks submitting them to identify if they have given any direct or indirect financial or non-financial aid to any community group or other organization that submits a letter in support of a bank's Strategic Plan.

A *fifth* improvement, proposed in the current NPR, is that all banks submitting Strategic Plans are subject to the data collection, recordkeeping, and reporting requirements identified in the NPR, so there is a level playing field with other banks (except exempt small banks) not using the Strategic Plan option.

Assuming these five necessary improvements are made in the Strategic Plan option, it would be preferable to maintain this option and allow banks the flexibility to determine the most appropriate exam procedure to evaluate its CRA performance.

These improvements will also have the benefit of reducing the grade inflation that exists with several of the Outstanding-rated banks with Strategic Plans. Using published CRA ratings data from the FFIEC for the roughly 77,000 CRA exams conducted and publicly reported since 1990, we find that 14% of all banks under all of the exam procedures received Outstanding ratings, but the banks with Strategic Plans reported THREE times that amount with an incredible *42%* Outstanding result.

This begs the following question: "Are banks with Strategic Plans THREE times better in terms of Outstanding CRA performance than all other banks?" The present and past analyses I have conducted since 1998 suggest that this is not the case, and that the threefold difference in Outstanding ratings is simply due to grade inflation under the Strategic Plan option.

For these and other reasons identified here and in The CRA Handbook, it is more important than ever that the improvements recommended above be immediately implemented. If this is not the case, the best public policy alternative would be to simply eliminate the Strategic Plan option, since it is the one used by the fewest banks in the nation (only 47), and there is really no place for a self-regulating exam procedure in CRA.