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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 8, 2020

Re: Fifth Comment on OCC/FDIC CRA NPR: "The 75% Solution to Optimal CRA Reform"

The purpose of this comment is to provide the optimal public policy approach to the current CRA reform effort based on my CRA research and work since 1977.

This "75% Solution" provides approximately *75% of all of the public policy benefits* envisioned by the OCC and FDIC in their joint Notice of Proposed Rulemaking (NPR) *without incurring any new regulatory burden on 99% of banks.* Once this solution understood by banks, community groups, and regulators, it is hoped they will be supportive of this compromise approach.

The "75% Solution" contains the following key elements described in greater detail in this document:

1. The only banks subject to the proposed NPR regulations, starting January 1, 2021, will be the 1% of banks we will call "Very Large Banks," representing the 43 banks with $50 billion or more of assets, regardless of their primary federal regulator, plus those banks of any size subject to the original "5% Deposit Rule" for deposit-based Assessment Areas.

    a. Banks with Strategic Plans that are in neither of the above categories would also be required to adopt the proposed NPR regulations, unless the critically needed improvements to address underachieving banks and CRA Grade Inflation in that option, described in my Third Comment of April 4, 2020 have been implemented. Most of those Strategic Plan banks have previously selected the Large Bank exam as their preferred back-up procedure in the event they did not pass under their Strategic Plan.

    b. The above categories of banks represent approximately 75% of all bank assets in the U.S. as of December 31, 2019, yet they represent only 1% of all banks. These giant banks, including the four "League of Trillionaires" (i.e., JPM Chase, BOA, Wells Fargo, and Citibank), have the resources to implement the NPR regs.

    c. This means that 75% of all of the public policy benefits envisioned by the OCC and FDIC under their joint NPR will come to fruition. With fewer than a dozen Fed-member banks among the largest 1% of banks, the Fed, which has yet to come forward with a formal CRA reform proposal, should be willing to accept this compromise.

2. The remaining 99% of all banks will continue operating under the current exam procedures and rules of the existing CRA regs for three years, starting January 1, 2021, but any bank has a one-time option to adopt the NPR regs as of that date.

    a. Based upon comments to the ANPR and NPR, the existing regs for 99% of banks will be greatly improved with published *quantitative* ratings guidelines described below, also effective January 1, 2021, so bankers finally have some guidance on their most frequently asked question of "How much is enough?"

    b. Other improvements to existing regs suggested in the ANPR and NPR will be considered for implementation on January 1, 2021, but only if these improvements have widespread acceptance among bankers, community groups, and regulators; otherwise, the current regs will remain in place for three years with just the published quantitative ratings guidelines.

3. The costs and benefits of the NPR regs on the 1% of banks under them will be evaluated after three years to determine the feasibility of (a) applying the proposed NPR regs to all other banks, or (b) reverting to the existing CRA regs with the improvements noted above.

Several of the elements of this optimal approach were discussed in my previously submitted comments to the NPR and the OCC's ANPR as well as <u>The CRA Handbook</u> and numerous other CRA publications.

This is the fifth and final comment I have submitted 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, <u>Community Reinvestment Performance</u> (Probus Publishing, Chicago, 1993), received the only endorsement he ever gave to any CRA publication:

> *Dr. Thomas' book, <u>Community Reinvestment Performance</u>, 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).

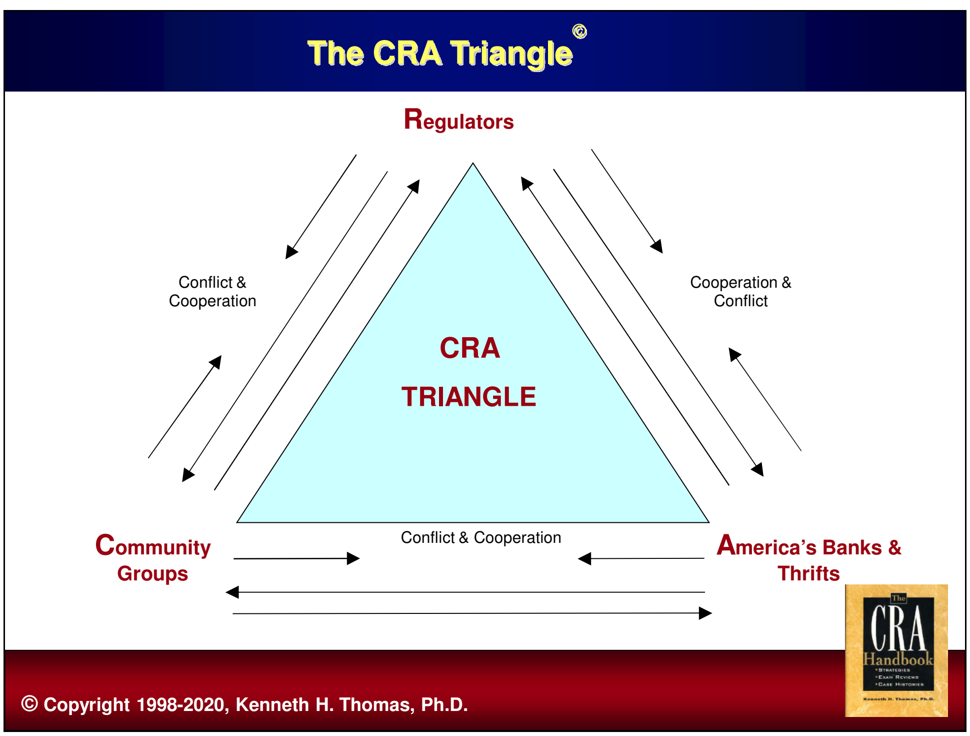
I was honored to receive the first "Award of Excellence" for that book from the National Community Reinvestment Coalition (NCRC), along with Representative Joseph P. Kennedy and Comptroller Ludwig.

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 CRA Triangle's Critical Role in Optimal CRA Reform

An optimal CRA reform must meet several public policy conditions that can best be understood by reference to The CRA Triangle© as described in The CRA Handbook. There are three corners to this equidistant triangle where there is an ongoing and often volatile dynamic tension among these three them:

1. **C**ommunity groups, ideally (but not always) representing community interests;
2. **R**egulators influenced and monitored by Congress and the Administration; and
3. **A**merica's banks and thrifts (excluding credit unions) subject to CRA, representing the interests of their owners.



The CRA Triangle represents an ideally balanced and proportioned model of consumer, government, and business interaction with three equal sides and angles where none is more important than another. Community groups and banks together form the base of this triangle, with regulators in the middle position, equidistant to both corners.

In this ideal model, the regulators act as impartial referees between community groups and banks, attempting to fashion a "socially optimal" result benefiting both parties. The reference to optimal public policy in CRA reform is based on reaching the ideal balancing point through consideration of potential conflicts of interest, pressures, and other factors impacting each of the triangle's corners.

Even if there is general support for optimal CRA reform from all three corners, there will always be some elements within each corner with widely different views. That is, just as there can be conflict *among* the three corners of The CRA Triangle, there can also be conflict *within* them:

1. In the consumer corner, for example, we saw that one of the five community groups in the House Financial Services Committee hearing on CRA reform in January generally supported the NPR while the other four opposed it. Several community representatives, including some that met with the OCC, have offered general support for the NPR, although it appears the vast majority, at least based on NPR comments to date, have the opposite view.

2. In the regulatory corner, we have an unprecedented disagreement among the three federal bank regulators with the OCC putting out the ANPR alone in 2018 and then having the FDIC join with it in 2019. Meanwhile, the Fed has been sitting on the CRA reform sidelines. Other than a few general speeches by Board members and some data base efforts, they have not published any specific research findings or a formal CRA reform proposal.

3. In the bank corner, Small Banks, have expressed some support for the NPR, mainly because they are generally exempt from the extensive NPR proposal for Large Banks and also because the size of banks subject to the streamlined Small Bank exam procedures was expanded from $326 million in assets to $500 million. This, however, did not stop their ICBA trade group from asking that the small bank exemption be further expanded to $1 billion in assets and even beyond. Meanwhile, many Large Banks, most directly impacted by the new NPR regs, have voiced their serious concerns over its complexity and increased regulatory burden, especially in terms of data collection, record keeping, and reporting.

Remembering the Purpose of CRA Reform: Modernizing and Tuning it Up Rather Than Overhauling It

Many regulators, community groups, journalists, members of Congress and even some bankers unfortunately forget that the primary motivation for CRA reform was to *modernize* the law to account for technological advances such as digital banking and branchless banks.

Treasury Secretary Mnuchin stated very clearly on April 3, 2018 that "Forty years since the passage of CRA, it is time for modernization." In fact, the Treasury Department's main release on this topic was titled "CRA Modernization Recommendations," with their focus of improving CRA considering "technological advances in the financial industry."

Every time someone in Congress, the Administration or even from bank and consumer groups talks about the need for CRA reform, they start with some cliché about how technology is so different now with cell phones, the internet, branchless banking, etc. compared to 1995, the date of our last reform.

They then use the "CRA is outdated" argument as a Trojan Horse to try to totally reform (deform?) this successful and effective law, coming up with elegant and complicated solutions in search of a problem. Everyone agrees that CRA needs to be modernized to account for branchless and internet banking, but the regs only need to be *tuned up* rather than be totally *overhauled* as proposed in the NPR.

The Original 5% Deposit Rule Fully Addresses the CRA Modernization Issue

The only part of the joint Notice of Proposed Rulemaking by the OCC and FDIC that really addresses the modernization issue is the adoption of a variant of a previous reform concept known as the "5% Deposit Rule." This rule requires banks obtaining a relatively significant amount of their deposits from outside their headquarters community to benefit the areas sourcing those deposits.

The original 5% Deposit Rule would require *any bank* with 5% or more of its deposits in any Metropolitan Statistical Area to *reinvest a commensurate portion* of their CRA benefits there. This rule by the author was motivated by Senator Proxmire's focus on "reinvesting" deposits back into the communities from where they came.

The NPR, however, would limit this original 5% Deposit Rule to only banks that have more than half of their deposits emanating from outside their current Assessment Area(s) and not require any commensurate CRA benefit. Hopefully, the final rule will be changed to be consistent with the original proposal relevant to *all banks* with a *commensurate CRA benefit*.

Under the current regs, branchless banks like the credit card giants can reinvest up to 100% of their CRA benefits in their home office community. In the case of credit card banks, the primary beneficiaries are three "Sanctuary States," namely Delaware, South Dakota, and Utah that provide a safe harbor from state usury ceilings.

As a result, tens of billions of dollars of community development (CD) loans and investments and tens of thousands of hours of CD services have benefited Wilmington, Sioux Falls, and Salt Lake City at the expense of our large Metropolitan Statistical Areas (MSAs) sourcing their deposits.

With just 1.6% of our population and 1.7% of our businesses, these three states together represent a whopping $1.6 trillion in deposits or 12.8% of all FDIC-insured deposits as of June 30, 2019. In fact, South Dakota ranks 3rd largest in total deposits, Utah 6th, and Delaware 10th, despite their respective population rankings of 46th, 30th and 45th.

This misallocation of CRA resources is inconsistent with Senator Proxmire's Community *Reinvestment* Act, where he intended that federally-insured deposits be *reinvested* back into their community rather than some credit card-friendly city in a Sanctuary State a thousand miles away.

The current lack of adequate banking services and credit in "banking deserts" and Indian Country is an important CRA public policy issue. I am, however, more concerned about our Forgotten Cities being shortchanged by branchless banks sucking billions of dollars of deposits from them to be reinvested in distant Sanctuary States.

Some community groups and even bankers who misunderstand the original 5% Deposit Rule argue that it will not help banking deserts and Indian Country but rather result in more CRA benefits going to big cities.

However, that is exactly what the "reinvestment" in the Community *Reinvestment* Act means. That is, *reinvesting* deposits back into their sourced communities rather than *reallocating* them into other communities. And, who could argue that our "Forgotten Cities" like New York, LA, Chicago, and my hometown of Miami do not need additional CRA dollars for affordable housing and other big city problems, especially with the COVID-19 Pandemic.

Branchless banks may be garnering deposits from dozens of MSAs around the country, but only a handful of them will be generating 5% or more of their deposits where the 5% Deposit Rule is triggered.

Therefore, some or all of the deposits from the remaining MSAs and non-MSA communities can be reinvested anywhere in the nation, including banking deserts and Indian Country, under the 5% Deposit Rule.

The originally proposed 5% reinvestment rule should be adopted ASAP. This original reinvestment rule alone, assuming nothing else changes with CRA, is well worth all the current CRA reform efforts, because it truly modernizes this law consistent with Senator Proxmire's deposit reinvestment intent.

Very Large Banks Subject to the 75% Solution to Optimal CRA Reform

There are 43 banks with $50 billion or more of assets as of year-end 2019 according to the Federal Reserve Board. These Very Large Banks had a combined $13.6 trillion of assets or 72.5% of all industry assets ($18.7 trillion) as of that date, the most recent available with specific bank data.

The table below ranks those banks by consolidated assets. The table also presents their city and state headquarters, number of domestic offices and bank classification (N= National, NM = Non-Member State, SM = Member State, SA = Savings Association, and SB = Savings Bank).

Member State (SM) banks have the Federal Reserve as their primary federal bank regulator, and the four largest, namely Bank of New York Mellon, State Street Bank, Goldman Sachs Bank, and Ally Bank, each have fewer than ten branches.

Non-Member State (NM) banks like Truist (the recent combination of BB&T and SunTrust Banks) have the FDIC as their primary federal bank regulator, and only a few of them (Discover Bank and UBS Bank) on the list below are branchless banks.

There are three Savings Associations (SA) on this list with the OCC as their primary federal regulator. The largest savings association, ranking #13 in the nation, is Charles Schwab Bank based in Nevada, and its primary federal regulator is the OCC. This branchless bank uses the Strategic Plan option, and the author's previously cited Third Comment of April 4, 2020 noted that this Outstanding-rated bank had the lowest Satisfactory and Outstanding performance goals of any bank in the cited samples.

The other two savings associations on this list are Synchrony Bank with four offices, electing to be examined as a Limited Purpose Bank and the branchless USAA Federal Savings Bank electing to be examined as a Large Bank.

There is one Savings Bank (SB) on this list, namely New York Community Bank, and its primary federal bank regulator is the FDIC. With 240 offices, this bank elected to be examined as a Large Bank.

Banks With $50 Billion or More in Assets
Ranked by Assets
December 31, 2019

RANK	BANK NAME	CITY	ST.	ASSETS (000)	CLASS	OFFICES
1	JPMorgan Chase Bank, NA	Columbus	OH	$2,337,646,000	N	5,050
2	Bank of America, NA	Charlotte	NC	$1,852,983,000	N	4,267
3	Wells Fargo Bank, NA	Sioux Falls	SD	$1,712,919,000	N	5,486
4	Citibank, NA	Sioux Falls	SD	$1,453,998,000	N	711
5	U.S. Bank NA	Cincinnati	OH	$486,004,220	N	2,845
6	Truist Bank	Charlotte	NC	$461,256,000	NM	2,956
7	PNC Bank, NA	Wilmington	DE	$397,703,264	N	2,391
8	Capital One, NA	Mclean	VA	$328,999,040	N	474
9	TD Bank, NA	Wilmington	DE	$320,471,996	N	1,237
10	The Bank of New York Mellon	New York	NY	$311,387,000	SM	9
11	State Street Bank and Trust Co.	Boston	MA	$242,148,000	SM	3
12	Goldman Sachs Bank USA	New York	NY	$228,836,000	SM	6
13	Charles Schwab Bank	Henderson	NV	$216,654,000	SA	1
14	HSBC Bank USA, NA	Tysons	VA	$172,887,701	N	225
15	Fifth Third Bank, NA	Cincinnati	OH	$167,845,100	N	1,223
16	Ally Bank	Sandy	UT	$167,492,000	SM	1
17	Citizens Bank, NA	Providence	RI	$165,742,416	N	1,085
18	Morgan Stanley Bank, NA	Salt Lake City	UT	$146,645,000	N	1
19	KeyBank NA	Cleveland	OH	$143,390,269	N	1,131
20	BMO Harris Bank NA	Chicago	IL	$137,588,093	N	588
21	The Northern Trust Company	Chicago	IL	$135,885,433	SM	64
22	MUFG Union Bank, NA	San Francisco	CA	$133,193,818	N	351
23	Regions Bank	Birmingham	AL	$125,641,000	SM	1,453
24	Capital One Bank (USA), NA	Glen Allen	VA	$124,626,681	N	1
25	American Express National Bank	Salt Lake City	UT	$121,931,159	N	1
26	Manufacturers & Traders Trust Co.	Buffalo	NY	$119,432,105	SM	803
27	First Republic Bank	San Francisco	CA	$116,263,634	NM	82
28	Discover Bank	Greenwood	DE	$112,384,202	NM	2
29	The Huntington National Bank	Columbus	OH	$108,739,378	N	917
30	Bank of the West	San Francisco	CA	$92,968,547	NM	554
31	BBVA USA	Birmingham	AL	$92,657,948	SM	642
32	Synchrony Bank	Draper	UT	$91,281,000	SA	4
33	USAA Federal Savings Bank	San Antonio	TX	$88,795,582	SA	1
34	Santander Bank, N.A.	Wilmington	DE	$84,670,854	N	588
35	Morgan Stanley Private Bank, N.A.	Purchase	NY	$83,036,000	N	2
36	Comerica Bank	Dallas	TX	$73,336,000	SM	442
37	Silicon Valley Bank	Santa Clara	CA	$69,942,929	SM	6
38	Zions Bancorporation, N.A.	Salt Lake City	UT	$69,171,552	N	440
39	UBS Bank USA	Salt Lake City	UT	$63,780,722	NM	1
40	City National Bank	Los Angeles	CA	$61,390,143	N	79
41	People's United Bank, NA	Bridgeport	CT	$58,343,490	N	452
42	New York Community Bank	Westbury	NY	$53,617,338	SB	240
43	Signature Bank	New York	NY	$50,621,162	NM	33

Source: Federal Reserve Board

Strategic Plan Banks Subject to the 75% Solution to Optimal CRA Reform

Any bank with a Strategic Plan among the 43 largest with assets of $50 billion or more would be subject to the 75% Solution and these include the following Very Large Banks:

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	2
Silicon Valley Bank	CA	37	$69,943	6

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.

Most large banks submitting Strategic Plans elect to be evaluated under the Large Bank exam procedures in the event they do not get a Satisfactory or Outstanding rating under their Strategic Plan exam. However, this is not really a problem, since the author's previously referenced comment noted that 42% of bank exams ever done under the Strategic Plan option received Outstanding ratings, which is THREE TIMES the comparable 14% of the nearly 77,000 exams since 1990 with that same rating.

Under the 75% Solution, the above banks with Strategic Plans would also be required to adopt the proposed NPR regs, unless (1) the critically needed improvements in the Strategic Plan option, especially specific performance goal guidelines to address underachieving banks and CRA Grade Inflation, described in the author's previously cited comment have been implemented or (2) in the event they are subject to the original 5% Deposit Rule for deposit-based Assessment Areas.

Original 5% Deposit Rule Banks Impacted by the 75% Solution to Optimal CRA Reform

There are two distinctions between the original 5% Deposit Rule and the NPR's 5% Deposit Rule:

1. The author's original 5% Deposit Rule pertains to *any bank* with 5% or more of its deposits in a geographic area like an MSA outside of its delineated Assessment Area (s) whereas the NPR 5% Deposit Rule pertains only to banks with more than 50% of their deposits emanating from outside of their Assessment Area(s). The first approach is preferred because banks should have a reinvestment responsibility in any geography where 5% or more of their deposits emanate.

2. The original 5% Deposit Rule requires a bank to reinvest CRA benefits back into the deposit-based Assessment Area commensurate with the proportion of deposits emanating from it. For example, if a credit card bank in Salt Lake City is obtaining 10% of its deposit from the New York metro area, the original 5% Deposit Rule would require that at least 10% of that bank's CRA benefits be reinvested there. The NPR Deposit Rule only requires a delineation of a new deposit-based Assessment Area without any specific CRA benefit reinvestment requirement.

The 75% Solution therefore would also include any banks *under $50 billion in assets* that are subject to the original 5% Deposit Rule for deposit-based Assessment Areas. For example, the following banks, among the nation's 100 largest by assets, have no branches and would likely fall in this category:

Bank Name	State	National Rank	Assets (000,000)	Domestic Offices
Bank of China	NY	44	$48,842,967	1
E*TRADE Bank	VA	48	$44,775,501	1
Banco Popular de Puerto Rico	PR	56	$41,627,000	1
Barclays Bank Delaware	DE	59	$33,871,000	1
Sallie Mae Bank	UT	62	$32,598,529	1
Raymond James Bank	FL	76	$26,468,603	1
TD Bank USA, NA	DE	93	$17,800,452	1
State Farm Bank, F.S.B.	IL	100	$16,424,788	1

Source: Federal Reserve Board

These additional eight banks alone would raise the above-cited 72.5% of all bank assets for the 43 banks listed above to 73.9%. The additional branchless banks and other subject to the original 5% Deposit Rule would likely push this ratio to the indicated 75% level.

The 75% Solution Maintains and Expands Multiple Exam Procedures for Different Sizes of Banks

One of the advantages of the 75% Solution is that it not only maintains all of the existing exam procedures for banks of different sizes and with different business strategies but also creates a new category for Very Large Banks, defined as those with $50 billion or more in assets. This expansion of exam procedures by size is consistent with the original 1995 reforms and 2005 adjustment to them.

One of the major goals of the 1995 reforms was to provide "appropriate flexibility" and regulatory relief to banks by distinguishing by size and unique business strategy. This is a very important goal for good CRA public policy, since it addresses the fact that smaller banks have limited resources to devote to compliance issues compared to larger banks. Also, the CRA performance of banks with unique business strategies must be evaluated differently from traditional banks.

Small banks or thrifts with assets under $250 million in the 1995 reforms were evaluated under streamlined Small Bank Exam Procedures, essentially a Lending Test with four key ratios, namely the Loan-to-Deposit, Assessment Area penetration, and Low-and Moderate-Income (LMI) geography and borrower ratios.

Large Banks with $250 million or more in assets in the original 1995 reforms would be evaluated under a 50% weighted Lending Test, a 25% weighted Investment Test, and a 25% weighted Service Test. The CRA Handbook provides valuable insight into how these ratios came about.

Both Wholesale and Limited Purpose Banks, generally referred to as Special Purpose Banks, each with unique business strategies different from traditional retail banks, would be evaluated under a Community Development Test, which considered community development loans, investments, and services.

To provide even more flexibility in the 1995 reforms, all banks and thrifts, regardless of size or business strategy, would have the option of developing a Strategic Plan where an institution, with community input and regulatory approval, would develop its own goals and benchmarks for performance evaluation.

Because of concerns over the increased regulatory burden on community banks, generally viewed as those of about $1 billion during the 1990s and early 2000s, an Intermediate Small Bank and Thrift category was created in 2005 for those banks in the approximate $250 to $1 billion range. Those asset thresholds grew with inflation and now stand at $326 to $1.305 billion.

The resultant Intermediate Small Bank in that range were examined by new ISB Examination Procedures with a 50%-weighted Lending Test similar to that for Small Banks and a 50%-weighted Community Development Test similar to that for Special Purpose Banks.

Data and Analysis Justifying Eliminating or Maintaining Various Exam Procedures

When something as important as CRA exam procedures are being modified or worse yet eliminated, after being in existence since 1995 and 2005, respectively, it is critical that there is supporting evidence documenting the need for such action.

The Scientific Method and even simple common sense would dictate that such major changes should only be contemplated after a thorough analysis has been done and published for peer review to document why a particular exam procedure should be modified or eliminated after being in existence so long.

To the best of my knowledge, there have been no such published comprehensive studies by any regulator or other researchers, other than that contained in The CRA Handbook. For that reason alone, these current designations and exam procedures should be maintained unless and until definitive research has documented the contrary. The 75% Solution is consistent with this view.

The only current exam procedures effectively being left intact under the joint NPR are for Small Banks and those banks with Strategic Plans, but even the Small Bank Exam Procedure would be modified under the NPR to allow banks up to $500 million in assets to be covered by it. 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 Day One.

In fact, my Third Comment to the joint NPR dated April 4, 2020 provided a thorough analysis as to why the Strategic Plan option should be significantly improved or, alternatively, *eliminated.* It is further ironic that the one CRA exam procedure that really should have been eliminated in the joint NPR was the only one totally untouched by it.

The much ballyhooed data base of over 6,000 Performance Evaluations from a sample of some 3.700 banks since 2005 by the Federal Reserve has been widely publicized by them. However, these "CRA Analytic Data Tables" are just that, tables of raw data with no actionable information or useful analysis resulting in needed knowledge in this space.

This is troubling, since the Fed likely spent millions of dollars on this data base effort, which reportedly included outsourcing the research to three private vendors last summer, amidst the discussions of CRA reform.

The Fed, with its seemingly unlimited resources, should make it a top priority to turn this raw data into helpful information and knowledge that can be used in the current CRA reform effort. Instead of continuing to sit on the CRA reform sidelines, the Fed needs to conduct a thorough analysis of this extensive data base to determine to whether or not there is any credible and documented evidence to:

1. Eliminate the ISB option;
2. Eliminate the Wholesale Bank option;
3. Eliminate the Limited Purpose Bank option;
4. Maintain the Small Bank Exam Procedures and expand this category to $500 million of assets;
5. Maintain (or improve or even eliminate, as my research suggests) the Strategic Plan option and,
6. Significantly modify the Large Bank Exam Procedures.

Based on my review of tens of thousands of Performance Evaluations since they became public on July 1, 1990, I have concluded that the six existing exam procedures, with the exception of the Strategic Plan option, have served the banking industry and their communities well. This finding is not only based on the 98% passing rate of CRA exams but also the substantial CRA and community development benefits annually provided to local communities.

I have further concluded that now is the time to add yet another CRA bank size category, namely Very Large Banks with assets of $50 billion or more, which should be subject to the more intensive exam procedures described in the joint NPR.

Banks Impacted by Eliminating Three of the Six Exam Procedures Under the Joint NPR

There were 5,186 banks and thrifts in the U.S. as of December 31, 2019 according to data from the Federal Reserve Board. The largest portion (61%) representing some 3,130 banks would be considered Small Banks with assets below $326 million based on that year-end data (although a bank must be above that cutoff for two consecutive year-ends to be categorized as an ISB).

About 27% of all banks or 1,418 in total are in the $326 million to $1.305 billion range and would be considered ISBs. The remaining 638 banks or 12% of all banks would be considered Large Banks, with the 43 largest or 1% of the total being Very Large Banks with assets of $50 billion or more.

A total of 103 or 2% of the 5,186 banks are evaluated under the Wholesale (34), Limited Purpose (22) or Strategic Plan (47) examination procedures, and these banks can be of any size but usually are among the largest banks.

The NPR's proposed elimination of the ISB category by defining Small Banks as $500 million or less would drop 594 or 42% of the 1,418 current ISBs into the Small Bank category, with the remaining 824 or 58% of ISBs being forced into the Large Bank category.

This would not be a problem for the 594 banks dropping to the Small Bank category, since they would now be exempt from the Community Development Test that comprises half of their overall rating. This is why the ICBA and many small banks and ISBs are commenting in support of expanding the NPR's proposed $500 million Small Bank threshold to $1 billion or even more.

However, the Assessment Areas of those 594 banks exempted from the Community Development Test would clearly be disadvantaged as would community groups within them. This is because the community development loans, investments, and services that have been provided by these banks to these local communities since 2005 would no longer be required and probably be eliminated. .

The 824 ISBs with assets between $500 million and $1.305 billion being forced into the Large Bank category under the NPR clearly would be most disadvantaged. This is because they would go from two relatively straightforward and equally weighted tests (i.e., the Lending and Community Development Test), which they have worked with going back as far as 2005, to the NPR's totally new and complex Large Bank exam procedures.

This major change would be counter to the original purpose of CRA reform of providing appropriate flexibility and regulatory relief for these 824 community banks. Rather than arguing for an exemption for these ISBs by expanding the Small Bank category to $1.0 or even $1.3 billion, the ICBA should be supportive of the 75% Solution where the status quo would remain for both Small Banks and ISBs, and no subgroup of them or their communities would be disadvantaged.

The 824 ISBs being forced into Large Bank status would be faced with a much larger regulatory burden to comply with the proposed exam procedures for such banks. This would adversely impact the profitability of these banks with the additional costs of understanding and complying with the new regulations versus the status quo.

The 34 Wholesale Banks and 22 Limited Purpose Banks being evaluated under the Community Development Test would migrate into the Small or Large Bank categories depending on whether or not they were below or above $500 million in assets. The Strategic Plan option would, of course, be an alternative for these and other banks.

As with ISBs, this means that several local communities and Assessment Areas of those banks no longer required to conduct community development activities would be adversely impacted. All Special Purpose banks would likely have an increased regulatory burden to learn and comply with new exam procedures.

The only CRA exam procedure that remains untouched under the NPR is the one involving Strategic Plans. The 47 banks with such plans at the present time would conduct CRA business as usual, absent some data and other new requirements that apply to all banks. We would expect many other banks, especially several in the two categories of Special Purpose banks, to consider submitting Strategic Plans.

In summary, the NPR will result in an adverse dislocation and regulatory burden impact for about 824 ISBs, 34 Wholesale Banks, and 22 Limited Purpose Banks. This represents a total of 880 banks or about 17% of all banks. On the other hand, there will be no such adverse impact on the 594 ISBs dropping down into the streamlined Small Bank category or the 47 banks with current Strategic Plans, a total of 641 banks.

Quantitative Ratings Guidelines for Existing CRA Regulations Under the 75% Solution

Based upon comments to the ANPR and NPR, the existing regulations for 99% of banks will be greatly improved under the 75% Solution with published *quantitative* ratings guidelines that will be effective January 1, 2021. Consequently, bankers will finally have some guidance on their most frequently asked question of "How much is enough?"

Qualitative vs. Quantitative CRA Ratings Guidelines

Any discussion of CRA ratings guidelines must first distinguish between qualitative and quantitative guidelines. The first set of guidelines are subjective, and the second set are objective. The relevant Performance Context of each bank must, however, take precedence over either set of guidelines.

All guidelines must be properly considered over the entire Review Period for each bank being examined. The fairest evaluations consider performance from the date of the previous exam to the current one, rather than just using the most recent annual data that happen to be the most convenient.

The following *qualitative* guidelines are most commonly used in evaluating and rating community development loans, investments, and services:

- Responsiveness
- Innovativeness
- Creativity
- Complexity
- Degree to which the activity is available through other banks or private investors

These qualitative guidelines, which are left to the discretion of examiners, are similar in concept to the more explicit "multipliers" proposed in the NPR. The problem with multipliers is that they do not adjust for relevant Performance Context factors (see author's Fourth Comment dated April 8, 2020).

For example, a fixed rule of applying a multiplier of two for investing in a CDFI minority bank Certificates of Deposits as compared to no multiplier for traditional Mortgage Backed Securities (MBS) secured by loans to LMI borrowers may be flawed if the bank being evaluated is in a market where affordable housing is the most critical credit need. In that case, MBS secured by loans to LMI borrowers are the primary vehicle for providing affordable housing, whereas the funds provided to a minority bank may or may not be used for that purpose.

An experienced on-site CRA examine, familiar with the market and the banks, would recognize this difference and the critical importance of MBS secured by loans to LMI borrowers as being most responsive to community credit needs. However, a bank receiving effectively half credit for such MBS secured by loans to LMI borrowers through the formulaic multiplier approach may reallocate resources to other less impactful investments in its Assessment Area or not do them at all.

Considerations for Quantitative CRA Ratings Guidelines

Specific quantitative guidelines are preferred when it comes to Lending Test ratios and especially community development activities. The first consideration in developing appropriate quantitative guidelines is deciding on the most relevant benchmark or denominator in the equation.

Possible quantitative benchmarks include assets, deposits, capital, total loans or investments, and even income measures. Based upon the analysis described in The CRA Handbook, the preferred benchmark is assets, since it represents the footprint of resources a bank brings to a community.

Capital is a misleading measure, since it puts stronger banks with high capital levels at a disadvantage, and this is contrary to good banking public policy. Whereas high capital levels are always preferred from a safety and soundness perspective, why should thinly capitalized banks benefit from inflated CRA measures based on their relatively low capital levels?

The second consideration in developing guidelines is that they must be based not on hundreds but rather *thousands* of actual CRA exams (PEs) of different sized banks in different markets over different time periods under different exam procedures. There have been about 77,000 PEs to date.

The guidelines recommended below are based on analyses of thousands of PEs going back to 1990. The Fed's recently released data base has the potential to be useful for this purpose, but such raw data is only helpful if it can be converted to useful information and knowledge through proper analysis.

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."]

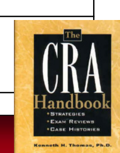
Recommended Loan-to-Deposit Ratio Guidelines

The first set of guidelines below are for the Loan-to-Deposit (LTD) Ratio. These guidelines result in "presumptive" ratings, which must be evaluated relative to the above-mentioned qualitative factors and, most importantly, a bank's Performance Context. For example, there are many cases where an LTD ratio below 50% is Satisfactory depending on a bank's Performance Context.

CRA Handbook Loan-to-Deposit Ratio Guidelines©:

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

Loan-to-Deposit Ratio Rating	Loan-to-Deposit Ratio
Outstanding	**80% or higher**
High Satisfactory	**65 - 79%**
Low Satisfactory	**50 - 64%**
Needs to Improve	**25 - 49%**
Substantial Noncompliance	**0 - 24%**



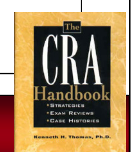
Recommended Assessment Area Penetration Ratio Guidelines:

The guidelines below are for a bank's Assessment Area Penetration Ratio. Again, it is possible that such a ratio below 50% may be Satisfactory depending on a bank's unique Performance Context.

<u>CRA Handbook</u> AA Penetration Ratio Guidelines©:

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

Assessment Area (AA) <u>Penetration Ratio Rating</u>	Assessment Area (AA) <u>Penetration Ratio</u>
Outstanding	80% or higher
High Satisfactory	65 - 79%
Low Satisfactory	50 - 64%
Needs to Improve	25 - 49%
Substantial Noncompliance	0 - 24%



Recommended LMI Borrower and Geography Considerations

<u>The CRA Handbook</u> also recommends every bank prepare a CRA Audit before an exam to be shared with examiners. A CRA Audit is basically a "shadow exam" where the bank or an independent outside CRA expert assigns specific ratings for all performance factors and tests and an overall rating.

<u>The CRA Handbook</u> carefully researched the feasibility of adopting LMI borrower and LMI geography guidelines for Assessment Areas (AA), but it was concluded that specific metrics are really not feasible. This is again a case where we must rely on examiner judgment, since the exclusive use of metrics relative to demographic and peer data as proposed in the NPR may lead to suboptimal results.

For example, using a fixed ratio such as 65% of relevant peer data may understate a bank's potential to serve its community, since it encourages banks to merely meet that goal rather than motivating them to exceed it. Examiners are in the best position to evaluate a bank's willingness and ability to meet the LMI borrower and geographic needs by considering Performance Context rather than simple ratios.

Examiners also have more discretion in terms of a deeper dive into these two LMI ratios. Consider, for example, the following possible LMI ratio examiner considerations from <u>The CRA Handbook</u>:

- Preference for LMI Borrower over LMI Geography
- Discretionary use of *Low* vs. Moderate Income within LMI
- Discretionary use of *Middle* vs. Upper Income
- Discretionary use of # of loans vs. dollar volume
- Similar approach for Small Businesses/Farms

Examiners also exercise discretion in comparing a bank's current LMI ratios to:

- Previous Review Period ratios (discretionary focus more on recent years)
- "Peer" or competitive banks (discretionary focus on one or two similarly situated banks)
- HMDA or other aggregates
- AA Demographics (e.g., % LMI census tracts, residents, households, or small businesses)

Recommended Guidelines for Community Development Activity

There are three sets of recommended guidelines for the different community development activities in the charts in this section.

The first chart below is for Community Development Loans, and an annual ratio of CD Loans to Average Assets as described in The CRA Handbook of 1% would qualify for an Outstanding rating.

The second chart below is for Community Development Investments. The comparable annual CRA investment guidelines from The CRA Handbook are similar at 1% for an Outstanding rating and .66% and .26% for a High and Low Satisfactory rating, respectively.

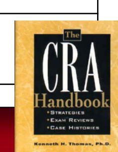
The third chart below is for Community Development Services. The CRA Handbook recommends using the *number* of CD services, often referred to as "instances" by the FDIC, as the appropriate metric for measuring CD service performance.

This metric is preferred to other possible metrics such as the number of hours, the number of employees or officers involved, the number of organizations contacted, or the number of LMI individuals impacted. The basis for this preference is discussed in The CRA Handbook. The chart below identifies the number of CD services per billion dollars of average assets per year that are consistent with different CRA 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:

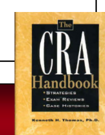
Community Development (CD) Loan Rating	CD Loans/ Assets Ratio
Outstanding	1% or higher
High Satisfactory	.66 - .99%
Low Satisfactory	.26 - .65%
Needs to Improve	.11 - .25%
Substantial Noncompliance	0 - .10%



CRA Handbook Investment Test Guidelines©:

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

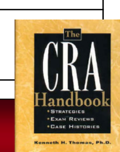
Investment Test Rating	Qualified Investments/ Assets Ratio
Outstanding	1% or higher
High Satisfactory	.66 - .99%
Low Satisfactory	.26 - .65%
Needs to Improve	.11 - .25%
Substantial Noncompliance	0 - .10%



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



Top Ten Possible Improvements to Existing CRA Regulations Under the 75% Solution

The following possible improvements to existing regulations under the 75% Solution should be considered for implementation on January 1, 2021, but only if they have general acceptance among bankers, community groups, and regulators as per The CRA Triangle. Otherwise, the current regs will remain in place for three years with just the above published quantitative ratings guidelines.

1. Separate High vs. Low Satisfactory ratings for individual tests and the overall ratings.

2. Cost-savings benefits for Outstanding rated banks such as an extended period between exams; for example, four years for Outstanding banks, three years for Satisfactory banks, two years for Needs to Improve banks, and one year for Substantial Noncompliance banks.

3. No multiplier for MBS secured by loans in LMI geographies; multiplier of 2 for MBS secured by loans to LMI borrowers and for investments in exclusive community development financing vehicles that have 100% of their funds supporting affordable housing for LMI borrowers or tenants; and multiplier of 3 for MBS secured by loans to LMI borrowers in Affordable Housing *Hot Spots* like Miami, New York, and San Francisco (see author's Fourth Comment).

4. Published disclosures by regulators of any direct or indirect financial or nonfinancial assistance by financial institutions to community groups commenting on CRA policy or applications.

5. Lending credit focused on loans to LMI borrowers or small businesses.

6. Anonymous Hot Line and Chat Room staffed by experienced examiners for CRA questions.

7. Credit for all CD activities outside Assessment Areas(s) as long as a bank (not a regulator) determines it has satisfactorily met legitimate credit needs within its Assessment Area(s).

8. CRA appeals heard only by other two federal regulators vs. primary one of a bank.

9. Published examiner ratings like UBER ratings to identify "rogue" CRA examiners.

10. Annually revised published list of qualifying CD activities with an LMI focus.

Other CRA recommendations by the author since the publication of The CRA Handbook include:

1. Expansion of CRA to cover all Credit Unions; critics of this recommendation should look at the experience of Massachusetts, where credit unions have vastly different CRA ratings.

2. Expansion of CRA to cover all FinTechs operating with bank charters

3. Lower taxes, FDIC assessments, and/or FHLB/Fed borrowing costs for banks with Outstanding ratings, since banks need a real financial incentive for that rating not just an internet posting.

4. Regulators must explicitly state that M&A "CRA Plans" or "Community Benefits Plans" automatically expected by community groups on large deals are NOT required under CRA.

5. Transfer all CRA and Fair Lending activities to a restructured CFPB to insure exam and ratings consistency and avoid regulatory infighting

Top Ten Reasons Why Community Groups Should Support the "75% Solution" to Optimal CRA Reform

1. All of the existing CRA infrastructure and regs that community groups have learned since the 1995 reforms will still be relevant with the 75% Solution, with the exception of those relevant for the Very Large banks operating under the proposed NPR rules and branchless banks with deposit-based Assessment Areas.

2. All of the donations, grants, working arrangements, and financial and nonfinancial support that community groups currently get from 99% of all banks should remain in place under the 75% Solution, and this hopefully will be the case for the Very Large Banks implementing the NPR regs. If all banks with $500 million or more in assets were subject to the NPR regs, the tens of millions of additional regulatory costs to comply with the new system could have resulted in fewer dollars being available to community groups for donations and grants. This is because most banks, regardless of their size, only have so much money they are willing to commit to CRA. Community groups would certainly prefer that such limited funds be available to them and their community rather than being used to comply with complex new CRA regs.

3. The LMI focus of the current regs, which is so important to community groups and was so important to Senator Proxmire, will remain in place under the 75% Solution. The 1% of banks under the NPR regs will hopefully continue that same focus. This will be especially important to community groups focused on financial literacy efforts, where the LMI focus will be retained for 99% of all banks.

4. The focus on large dollar projects and the use of complicated quantitative measures in the NPR that community groups expressed great concern about, will not be relevant for 99% of all banks. The Very Large banks operating under the NPR regs should be very careful to avoid garnering CRA credits from possible community development projects cited in the NPR that were most strongly criticized by community groups, such as large dollar projects involving sports stadiums.

5. Community groups are rightfully concerned about the critical importance of retail banking services, especially the need for branches in CRA deserts, LMI geographies, Indian Country, and distressed communities. This focus on underbanked and nonbanked communities under the current regs will continue for 99% of all banks under the 75% Solution. Although Very Large Banks will receive marginal credit for such branches, it is hoped they will continue to emphasize retail as well as community development services.

6. Community groups, especially those that work with the most disadvantaged members of our society, the millions of newly unemployed workers, and the hundreds of thousands of small businesses that have been adversely impact by COVID-19, can now focus their resources on helping them rather than on CRA reform, since the status quo will remain for 99% of all banks.

7. Community groups and many other government watchdog groups have long complained about the special privileges of and government bailouts for "Too Big To Fail" (TBTF) banks. The 75% Solution is totally focused on these TBTF banks being the ones to implement the complex NPR reforms, since we expect more from them and they have the resources (and ultimate government backstop) to withstand the additional regulatory burden of the NPR.

8. Many of the largest community groups in our big cities will benefit from the original 5% Deposit Rule for deposit-based Assessment Areas. This is because the huge credit card and other branchless banks based in Salt Lake City, Sioux Falls, Wilmington and other cities in the Sanctuary States will now be required to provide community development activities in the big cities from where their deposits originated. This should benefit community groups in the big cities, as these banks should now be contacting them to ascertain the credit and other banking needs of their communities.

9. The proposed quantitative CRA rating guidelines for the 99% of banks operating under the current regs will allow community groups to better understand why banks in their communities got various ratings and how they might work with those banks to improve their ratings. Furthermore, community groups in the Assessment Areas of banks being contacted by regulators or the banks themselves to ascertain community credit and banking needs may be in a better position to work with those banks to help them improve their performance under these published quantitative guidelines.

10. Community groups and the banks they monitor will continue to benefit from community development loans, investments, and services of the 594 ISB banks with assets between $326 and $500 million that otherwise would be considered Small Banks under the NPR and therefore be exempt from the ISB Community Development Test. This is also the case for the Special Purpose banks with assets under $500 million. The potential loss of these community development activities under the NPR would clearly have an adverse impact on the local communities and Assessment Areas of at least 600 newly exempted banks.

Top Ten Reasons Why <u>Regulators</u> Should Support the "75% Solution" to Optimal CRA Reform

1. The OCC and FDIC will be able to take credit for 75% of the public policy benefits envisioned in their joint NPR under this compromise solution. It is a much better strategy than attempting to push through the NPR with continued opposition from community groups, several bankers, and especially the House Financial Services Committee and Democratic Senators who have clearly expressed their opposition to the NPR.

2. Chairman Jerome Powell and other Fed Governors should be anxious to sign on to this compromise proposal maintaining the status quo for all but a handful of member banks, so they can put the CRA reform controversy behind them and focus on the Fed's primary responsibility of helping the economy recover from the current Coronavirus Recession.

3. The Treasury Department, which oversees the OCC, should be anxious to support a compromise that will be implemented next year, instead of being in the middle of continued regulatory infighting and Congressional concern for the next several years. Secretary Mnuchin must focus all of his efforts on helping our economy recover from the COVID-19 Pandemic.

4. The House Financial Services Committee, which has been so super-critical of the OCC and the joint NPR, will hopefully consider this a victory and back off from trying to micromanage the OCC and continuing its unrelenting criticism of the Comptroller. That Committee and the rest of Congress have much more important things to worry about such as getting our economy back on track and helping our millions of households and businesses, especially unemployed workers and struggling small businesses, recover from the current Coronavirus Recession.

5. All of the regulators, including the Treasury Department, as well as both aisles of Congress should be willing to accept this 75% Solution compromise, which will continue the CRA status quo for 99% of all banks. The regulators and Congress should understand that our banks need to focus on helping our economy recover through the various government lending and other assistance programs rather than spending their valuable time trying to understand complex new CRA regs under the NPR.

6. None of the regulators completed the necessary research and analysis to conclude that the existing CRA regs and the majority of exam procedures are somehow suboptimal and problematic where they must be replaced with the NPR. Everyone agrees on the need for modernization, which is adequately handled by the original 5% Deposit Rule, but there is no documented need for a wholesale overhaul of CRA as envisioned by the NPR.

7. CRA examiners and their supervisors will not be required to learn a totally new CRA examination system for 99% of the banks they regularly evaluate. The Very Large Banks are normally examined by a special cadre of examiners, so the impact on the bank examination force will be limited.

8. Examiners should be receptive of the proposed CRA performance rating quantitative guidelines for the 99% of banks under the current regs. Importantly, the examiners will not be accused of being overly subjective on their ratings, other than the continued use of qualitative guidelines, for example, in determining if a community development activity is responsive, innovative, etc. Examiners will still have the final say on the individual test and overall CRA ratings, but they will be in a much better position to explain the basis of these ratings to bankers and community groups with these published quantitative guidelines.

9. The different treatment of Very Large Banks under the proposed NPR regs is consistent with existing CRA protocol where we have separate exam procedures for Small Banks, Intermediate Small Banks, and Large Banks. Just as we added a new size category for ISBs in 2005, ten years after the 1995 CRA reforms, we are now, some 25 years later, adding yet another size category for the largest of the large banks.

10. The OCC, which has been the unfortunate target of considerable criticism by not only community groups but especially the House Financial Services Committee, will hopefully be able to work more effectively with them on other more critical community, banking, and economic issues including helping our economy recover from the Coronavirus Recession.

Top Ten Reasons Why <u>Nearly All Banks</u> Should Support the "75% Solution" to Optimal CRA Reform

1. The only banks that will likely *oppose* the 75% Solution are the 43 Very Large banks required to implement the NPR regs. These banks, including many branchless ones, have long benefited from many TBTF and other advantages not available to the more than 5,000 other banks. Consequently, their adoption of the NPR regs is a small price to pay considering the value of these other benefits they have and will continue to receive. Also, banks with $50 billion or more in assets have been subject to enhanced supervision and regulation under the Dodd-Frank Act and other laws and regulations, so this should be nothing new for them.

2. While it would be logical to assume that branchless and other banks subject to the 5% Deposit Rule would oppose any new regulation dictating deposit-based Assessment Areas, the fact is that these banks will now have many more CD options around the country, instead of competing with other giant banks for limited opportunities in the Sanctuary States. This new rule would not impose an undue regulatory burden, since it is standard operating procedure for every well-managed bank in the country, but especially branchless banks, to geocode their deposits at least down to the zip code level.

3. The 99% of banks that will be able to maintain the CRA status quo for at least three years and their trade associations should enthusiastically support the 75% solution. This is because these banks can continue CRA business as usual and not worry about learning a new CRA infrastructure, retraining staff, etc. Moreover, these banks should also be supportive of the proposed quantitative guidelines for different ratings, since they will know, for the first time, "How much is enough?"

4. The 99% of banks under this proposal will be able to maintain the CRA status quo, which means roughly 98% of banks passing their CRA exams and only 2% failing. Instead of worrying about learning and implementing a new CRA infrastructure, 99% of banks can now focus on more pressing problems like helping their communities respond to the COVID-19 pandemic, not to mention other ongoing regulatory issues like CECL and BSA.

5. The 99% of banks keeping the CRA status quo will be able better manage their regulatory burden, which requires a continual focus on BSA, which is, by far, the most costly regulation for banks according to a study by the Federal Reserve Bank of St. Louis. This regulatory burden argument is especially critical for the 824 ISBs between $500 million and $1.305 billion in assets; the Special Purpose Banks with assets over $500 million; and, the nearly 600 banks with assets between $1.305 and $50 billion. This is because these three categories, totaling more than 1,400 banks, would have been forced into the complex and costly NPR requirements for Large Banks as compared to their existing relatively straightforward and familiar exam procedures.

6. The 99% of banks maintaining the CRA status quo will be able to continue their existing working relationships with local community groups and other organizations in their Assessment Area(s). For example, many banks work with and support local community groups providing important financial literacy services to LMI individuals. Since the NPR allows CRA credit for financial literacy efforts to everyone, not just LMI individuals, this could possibly result in the impacted banks cutting back or possibly terminating their existing relationship with certain community groups that focus on LMI financial education.

7. None of the industry groups, including the ABA or ICBA, have ever done a comprehensive study of CRA, including analyzing thousands of CRA exams, where they concluded that the current CRA regs, which have been in effect since 1995, have been a serious problem for the industry. With 98% of banks passing their CRA exams and CRA ranking as just the sixth most costly regulation according to a study by the Federal Reserve Bank of St. Louis, the ABA or ICBA never asked for a major overhaul of CRA as we now have with the NPR. They and everyone else agreed we needed to modernize the law to account for branchless banks and digital banking, but the original 5% Deposit Rule for deposit-based Assessment Areas has adequately addressed that issue. These and other trade groups representing community banks should therefore support the 75% Solution.

8. The three-year period proposed to evaluate the impact of the NPR on Very Large Banks should allow each of them to go through at least one exam in their normal three-year exam cycle. The 99% of other banks will be able to continue their normal exam protocol, unless they opt in to the NPR, although this would be rather unlikely.

9. Limited Purpose Banks and Wholesale Banks as well as Intermediate Small Banks (ISBs) will be able to maintain their existing exam procedures they have worked with since 1995 or 2005, respectively, instead of being forced into a new category and having to learn and implement new exam procedures. This is also the case for Strategic Plan banks, other than those that are Very Large Banks or those subject to the original 5% Deposit Rule, although it is hoped that the most critically needed improvements in the Strategic Plan option previously recommended by the author are implemented.

10. Community banks in Salt Lake City, Sioux Falls, and Wilmington and other CRA "hot spots" in the three Sanctuary States will no longer have to compete with the giant branchless banks there for community development loans, investments, and services. This is also the case for community banks based in headquarter cities of other branchless banks that receive substantial portions of their deposits from around the country.