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MEMO

From: Kenneth H. Thomas, Ph.D.

To: Chair Jerome Powell & Vice Chair Lael Brainard via Docket No. R-1769 and RIN 7100-AG29;
Acting Comptroller of the Currency Michael Hsu via Docket ID: OCC-2022-0002; and,
Acting Chairman of the FDIC Martin J. Gruenberg via Docket No. RIN 3064-AF81

Date: August 5, 2022

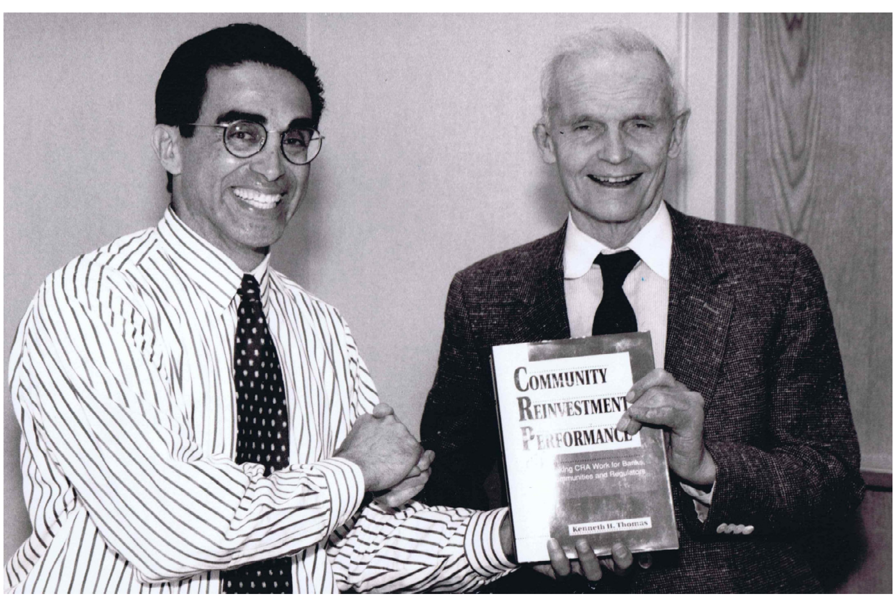
Re: First CRA NPR Comment: "The NPR's Comment Period Should Have Been Extended"

This is my first comment on this NPR on CRA Reform, and it is titled *"The NPR's Comment Period Should Have Been Extended."* Before providing more details on this comment, I will first summarize my relevant background on CRA reform.

My comments represent my personal views and not those of any university, financial institution, company, or other organization with which I am or previously have been associated.

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." The following photo was taken in 1995.



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 am a cofounder and founder of two different CRA high impact mutual funds devoted primarily to providing CRA qualified investments to benefit LMI areas and people.

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" 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 Importance of Hearing from Both Community and Industry Interests

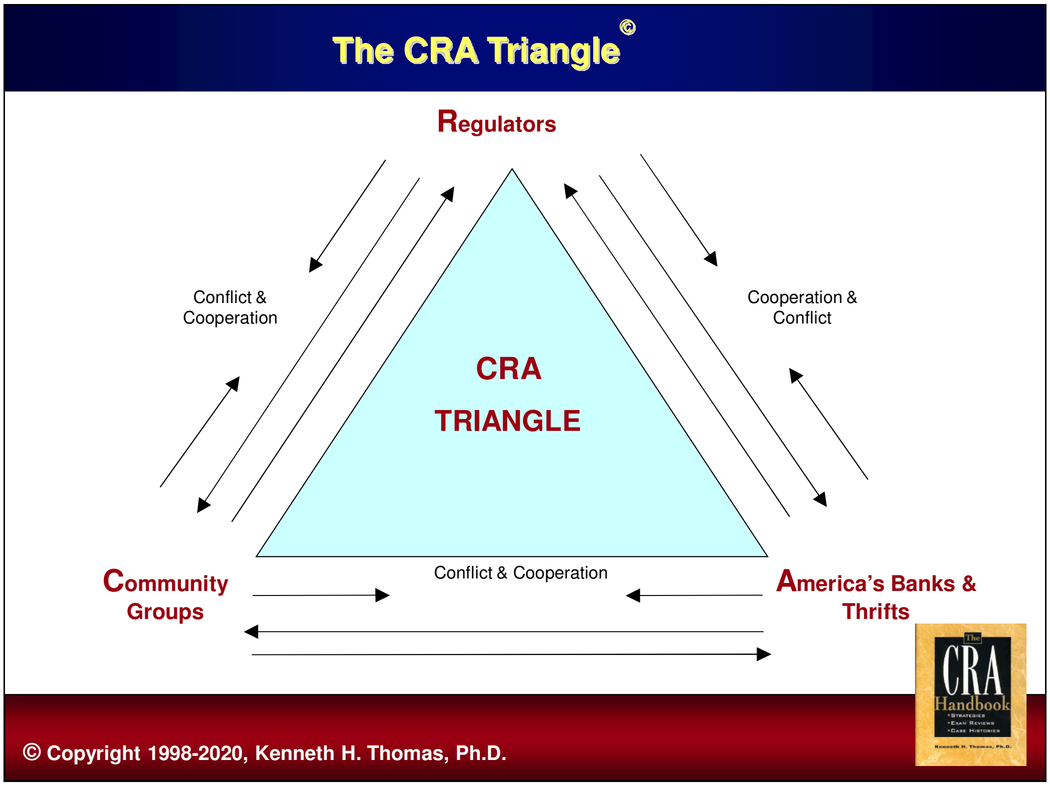
Optimal CRA reform must meet several public policy conditions that can best be understood by reference to the CRA Triangle© as described in The CRA Handbook. There are three corners to this equidistant triangle where there is an ongoing and often volatile dynamic tension among them:

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.

Regarding the critical issue of CRA reform, something that has not been done in a major way since 1995, the regulators have a responsibility to make sure they get input from both community and industry interests. This is particularly important when a proposed regulation is long and complex, as is definitely the case with the current NPR.

Comparing the Current Joint NPR to the 1995 CRA Reform Effort and the 2020 OCC/FDIC Joint NPR

The 1995 CRA reform process got it "right" because it was the result of three different proposals (1993, 1994, and 1995) over a roughly three-year period with over 14,000 comments, seven public hearings, and meetings with over 250 stakeholders.

The current "joint" NPR, which is really the handiwork of the Federal Reserve (Fed) as described in a subsequent comment, is unfortunately being rushed with a very short 90-day comment period for a very long and complicated proposal. There have been NO public hearings on the current NPR.

A similar NPR comment period timing issue arose during the joint OCC/FDIC NPR on CRA reform in 2020 when a 60-day comment period was heavily criticized by community groups and others.

As pointed out at https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-19.html and https://www.americanbanker.com/news/regulators-extend-cra-comment-period-bowing-to-congressional-pressure, that comment period was extended to 90 days after considerable community group, industry and congressional pressure

That joint OCC/FDIC NPR (RIN 3064-AF22) released on 12/12/2019 was 238 pages in length and the Federal Register version released on 1/9/2020 was 62 pages in length. By comparison, the current "joint" NPR that was released on 5/5/2022 was 679 pages in length (2.85 times longer) and the Federal Register version released on 6/3/2022 was 183 pages in length (2.95 times longer).

Thus, the current joint NPR is approximately THREE TIMES LONGER and infinitely more complicated than the previous OCC/FDIC NPR. For this reason alone, the current comment period should have been extended at least 30 days and more likely 60 days. However, a 180-day extension resulting in an overall 270-day comment period, three times longer than the current or previous one, could be justified based on the current NPR's length and complexity relative to the previous one.

Multiple Requests for Extension of Comment Period Were Denied by the Regulators

Numerous community groups, members of Congress and a rare joint effort by TEN different banking trade groups requested a minimal 30-day extension for the current NPR. Here is the front-page of the 5/31/2022 banking industry letter spearheaded by the ABA and ICBA:

May 31, 2022

Submitted via email to: comments@fdic.gov, regs.comments@federalreserve.gov, and Senior Deputy Comptroller for Bank Supervision Grovetta Gardineer

James P. Sheesley
Assistant Executive Secretary
Attention: Comments RIN 3064- AF81
Federal Deposit Insurance Corporation
550 17th Street, NW,
Washington, DC 20429.

Grovetta Gardineer
Senior Deputy Comptroller for Bank Supervision Policy
Office of the Comptroller of the Currency
400 7th Street, SW, suite 3E-218
Washington, DC 20219.

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551.

RE: Community Reinvestment Act Regulations [Docket ID OCC-2022-0002, RIN 1557-AF15; Docket No. R-[•] and RIN 7100-AG [•]; RIN 3064-AF81]

To whom it may concern,

On May 5, 2022, the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("The Board"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "the agencies") promulgated a Notice of Proposed Rulemaking, proposing major revisions to the implementing regulations of the Community Reinvestment Act.[1] Our banking trade associations[2] appreciate the efforts that the agencies have undertaken to release this proposal and do not underestimate the difficulty of revising an important and complicated regulatory framework on an interagency basis. We commend the agencies for the hard work they have done so far.

[1] Available at: https://www.fdic.gov/news/board-matters/2022/2022-05-05-notice-dis-a-fr.pdf.

[2] Undersigned trade associations include: the American Bankers Association, the Association of Military Banks of America, the Bank Policy Institute, the Community Development Bankers Association, the Consumer Bankers Association, the Housing Policy Council, the Independent Community Bankers of America, the Mortgage Bankers Association, the National Association of Affordable Housing Lenders, and the National Bankers Association. *See* Appendix for a description of these groups.

The regulators on a joint letterhead on 6/29/2022 summarily rejected this request on the grounds that they believed a 90-day comment period was *"reasonable and sufficient…to provide meaningful input."* This was a surprising and disappointing response from this corner of the CRA Triangle charged with protecting the public interest on this critical reform issue.

Board of Governors of the Federal Reserve System
Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation

June 29, 2022

Ms. Lilly Thomas
ICBA Executive Vice President
Independent Community Regulatory Policy
1615 L Street, NW, Suite 900
Washington, DC 20036

Mr. Michael Marshall
ICBA Director of Regulatory Legal Affairs
Independent Community Regulatory Policy
1615 L Street, NW, Suite 900
Washington, DC 20036

Dear Ms. Thomas and Mr. Marshall:

Thank you for providing the letter of May 31, 2022, signed by ten trade associations,[1] requesting an extension of the comment period for the Community Reinvestment Act notice of proposed rulemaking (NPR).[2]

The Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (agencies) issued the NPR on May 5, 2022. The agencies established a comment period for the NPR that ends on August 5, 2022, and believe the length of the comment period is reasonable and sufficient for commenters to review the proposal and provide meaningful input. Therefore, the agencies do not plan to extend the comment period.

To assist your review, the agencies' staffs would be pleased to meet with any of the signatories to answer questions about the NPR.

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[1] The trade associations were the American Bankers Association, the Association of Military Banks of America, the Bank Policy Institute, the Community Development Bankers Association, the Consumer Bankers Association, the Housing Policy Council, the Independent Community Bankers of America, the Mortgage Bankers Association, the National Association of Affordable Housing Lenders, and the National Bankers Association.

[2] 87 Fed. Reg. 33,884 (June 3, 2022).

The ABA made the following statement before the House Subcommittee on Consumer Protection and Financial Institutions at https://www.aba.com/advocacy/policy-analysis/examining-the-unified-proposed-rule-to-modernize-the-community-reinvestment-act two weeks later on 7/13/2022:

> **D. Provide Sufficient Time for Banks to Provide Meaningful, Data-Driven Comments**
>
> Leadership of the banking agencies have repeatedly emphasized the need for robust public comments in order to best assure that a final rule is calibrated appropriately. As Acting FDIC Chairman Martin Gruenberg observed at during a recent panel discussion, "Nothing is perfect and it is a large, complicated rule. We assume there is a lot there that we didn't get right or may have missed or could be improved." [7]
>
> Nevertheless, the agencies denied a request by ten banking trade associations to extend the proposal's comment period by only 30 days. We do not understand the agencies' rationale in denying this request or why the agencies are proceeding with a comment period that is too short relative to the scope and magnitude of changes being proposed. As history has demonstrated, complex regulatory overhauls that are rushed tend to have little staying power or require extensive amendments and/or interpretations. Revisions or clarifications during the already abbreviated one-year implementation period would make compliance even more difficult.
>
> In recent years, multiple iterations of CRA modernization have created modernization fatigue. While there may be pressure to "just get it done," regulators, banks, and other stakeholders have come too far and worked too hard to rush the final stage of this important work. Communities, regulators, and banks would benefit from an updated regulatory framework that achieves this initiative's stated objectives *and* stands the test of time.
>
> We will continue to work diligently to provide thoughtful comments on the overall framework that the agencies have proposed. However, policymakers should be aware that the 90-day comment period is insufficient for banks to provide fulsome, data-driven comments on the complicated formulas, benchmarks, and thresholds set forth in the nearly 700-page proposed rule. This is particularly the case for community banks that are classified as "large banks" for CRA purposes.

Why Did The Fed (and FDIC and OCC) Reject the Banking Industry's Legitimate Time Extension?

The ABA (above) properly stated that *"We do not understand the agencies' rationale in denying this request or why the agencies are proceeding with a comment period that is too short relative to the scope and magnitude of changes being proposed."*

Of the several possible reasons in my opinion why the Fed (and the FDIC and OCC) is rushing this NPR to *"just get it done*," the most logical explanation is a purely political one. As pointed out in a subsequent comment, the Fed (and the OCC controlled by a former Fed official) have unfortunately made CRA reform more of a political rather than policy effort.

In my opinion, the politically-minded Fed and its friends in Treasury and the OCC realize the high likelihood that the November 2022 elections will result in a Republican Congress, which could rescind the current NPR in the same way the current Democratic Congress was successful in having the OCC rescind their May 2020 Final Rule. Any extension of the very short 90-day comment period could jeopardize their efforts to get the NPR into a Final Rule.

Another possible reason for the denial of the extension request is that the more time that bankers, community groups and other analysts are allowed to dissect and decipher the very complex current NPR and its multiples formulae, the more they will realize what a mistake the NPR is and why it must be totally rejected.

It took the Fed about 20 months to effectively transform its September 2020 ANPR into the present NPR, so the minimal three-month comment period should have clearly been extended at least a month and probably longer.

As will be documented in subsequent comments, the optimal approach to CRA reform at the present time, the one I believe would be in the best interests of all corners of the CRA Triangle and that would be most consistent with what Senator Proxmire envisioned, is what I call *"CRA Reform Lite"* which would *maintain the existing regs* and:

> (1) modernize them to account for branchless banks using the 5% Deposit Reinvestment Rule (see subsequent comment), and
>
> (2) improve them with some of the best ideas from the OCC's Final Rule like an approved list of and pre-qualification procedures for community development activities.