KENNETH H. THOMAS, PH.D
www.CRAHandbook.com
6255 CHAPMAN FIELD DRIVE
MIAMI, FLORIDA 33156

Voice (305) 663-0100
Fax (305) 665-2203

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

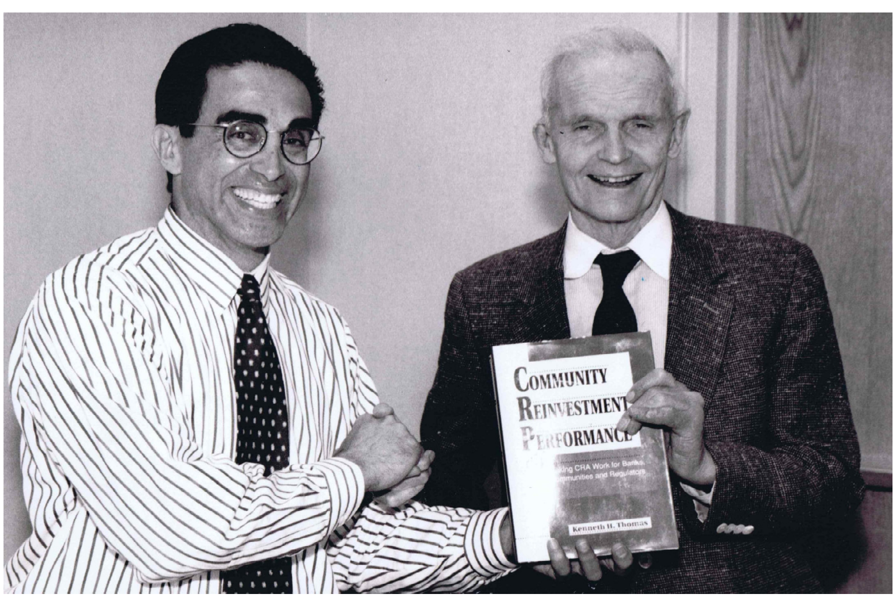
Re: Third CRA NPR Comment on "The Fed's Mission Creep and Overreach on CRA Reform"

This is my third comment on this NPR on CRA Reform, and it is titled *"The Fed's Mission Creep and Overreach on CRA Reform."* 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 Purpose of CRA Reform = Modernization

The primary motivation for CRA reform was to modernize the law to account for technological advances such as digital banking and branchless banks. This was originally stated in the referenced Treasury study and later by all of the regulators and even interested members of Congress.

This very simple fact has been forgotten not only by the Fed, FDIC and OCC but also by members of Congress and some community groups who are more interested in promoting their political views rather than modernizing CRA.

All of the regulators and members of Congress begin their sermonizing on CRA by saying how technology has changed since the last major reform of CRA in 1995 (and the creation of Intermediate Small Banks or ISBs in 2005).

But, instead of coming up with credible ways to modernize CRA to account for digital banking and branchless banks, the real purpose of CRA reform, they use this modernization goal as a Trojan Horse to politicize CRA and expand it to meet their own goals.

The Fed was recently criticized for "mission creep" by engaging in research on "social policy topics" like climate change and social justice reflecting political and normative views of unelected officials in what is supposed to be an independent government agency.

The best example of this regulatory mission creep by the Fed is the interagency document titled "Summary of Key Objectives of the Interagency CRA Proposal" from the Fed's website at https://www.federalreserve.gov/consumerscommunities/files/cra_npr_key_objectives_20220505.pdf.

True to the form of all mission creepers, this document first makes a general statement about the purpose of CRA and then mentions the need for modernization because of the *"significant changes in the banking industry*" since 1995 and 2005:

> The Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency recognize that CRA regulations must evolve to address the significant changes in the banking industry that have taken place since the last substantive interagency updates in 1995 and 2005.

Instead of focusing on this one and only one mission of modernization, the mission creepers at the Fed shamefully expanded this singular goal into eight different goals to supposedly "update" CRA:

> Building on previous regulatory actions, feedback from stakeholders, and research, the agencies seek comment on a proposal to update CRA regulations with eight key objectives:
>
> 1. Strengthen the achievement of the core purpose of the statute.
> 2. Adapt to changes in the banking industry, including mobile and online banking.
> 3. Provide greater clarity and consistency in the application of the regulations.
> 4. Tailor performance standards to account for differences in bank size, business model, and local conditions.
> 5. Tailor data collection and reporting requirements and use existing data whenever possible.
> 6. Promote transparency and public engagement.
> 7. Ensure that CRA and fair lending responsibilities are mutually reinforcing.
> 8. Create a consistent regulatory approach among all three banking agencies.

The Fed shamefully demotes the real modernization goal of CRA to the second position on its list of eight goals. This overstepping by the Fed is another example of their mission creep.

The fact is that all of the other seven listed goals can be accomplished within the current regulatory framework through the traditional Q&A process and more effective enforcement of the current regs. Rather, they are taking advantage of the modernization loophole to promote other goals.

An example is the NPR's planned expansion of the definition of community development loans from the current four to 11 categories. However, there are many examples of CRA Performance Evaluations (PEs) under the current regs that already give CRA credit for all of those new categories. Like most of the NPR, much CRA ado about nothing.

Another example is the continued drumbeating by the regulators that the NPR will "*raise the bar*" for CRA performance and lead to fewer Outstanding ratings and more failing and Low Satisfactory ratings. However, this can be done under the current regs by simply increasing enforcement and being "tougher cops" on the CRA regulatory beat instead of coming up with new complex rules.

This point can be documented by simply comparing the portion of failing and Outstanding ratings at the three regulators *under the current regulations.* Such an analysis usually concludes that the OCC is a relatively "easy" CRA grader giving out a much lower percentage of the former and much higher percentage of the latter vs. the opposite ratings by the relatively "tough" grading FDIC.

For example, using the most recent monthly CRA ratings that were just released by the OCC at https://occ.gov/topics/consumers-and-communities/cra/perfomance-evaluations-by-month/2022/cra-performance-evaluations-jul-2022.html, seven (or 31%) of the 22 ratings for July were Outstanding vs. 15 (69%) with Satisfactory ratings; there were no failing ratings.

Of the 12 ratings for the most recent month of July 2022 by the Fed as reported at their website at https://www.federalreserve.gov/apps/CRAPubWeb/CRA/BankRatingResult?sort=OverallRating_Desc&sortdir=ASC, one (8%) was Outstanding and 11 (or 92%) were Satisfactory; there were no failing ratings.

By comparison, just two (or 4%) of the 47 ratings by the FDIC in their most recent release at https://www.fdic.gov/resources/bankers/community-reinvestment-act/monthly-list-of-examined-banks/2022/craaug22.html?source=govdelivery&utm_medium=email&utm_source=govdelivery were Outstanding; 44 (94%) were Satisfactory; and, one (2%) rating in the current report was a failing rating.

As a result, we see that the percentage of Outstanding ratings for the three regulators differ considerably, ranging from a low of 4% at the FDIC and 8% at the Fed to a high of 31% at the OCC, despite the fact that they all use the same 1995 exam procedures.

Looking at all 1,112 CRA ratings by all agencies last year according to www.FFIEC.gov, we find that both the Fed (183) and the OCC (185) had about the same number of ratings. There was only one failing rating between both agencies, and that was at the OCC. Looking at Outstanding ratings, the OCC again led all agencies with 23% in that category vs. 14% at the Fed. However, only 6% of all of the 744 ratings last year by the FDIC were Outstanding.

Thus, these comparative ratings suggest that the OCC is about FOUR times easier than the FDIC and the FED is more than TWO times easier than the FDIC in terms of giving Outstanding ratings last year. Fully 2% of all FDIC ratings were failing compared to 0% at the Fed and just under 1% at the OCC.

If the regulators want to "raise the bar," they can simply become tougher CRA cops (like the FDIC) under the current regs instead of creating an entire new and complicated examination framework as proposed by the NPR.

The Fed and the other agencies they brought into this current NPR must go back to the original Treasury report and their own mission statements and stay focused solely on the goal of CRA modernization. Rather than making modernization #2 on their list of "eight key objectives," this should be the one and ONLY objective of CRA reform, and the proper way to meet that goal is with the 5% Deposit Reinvestment Rule (see subsequent comment).