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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

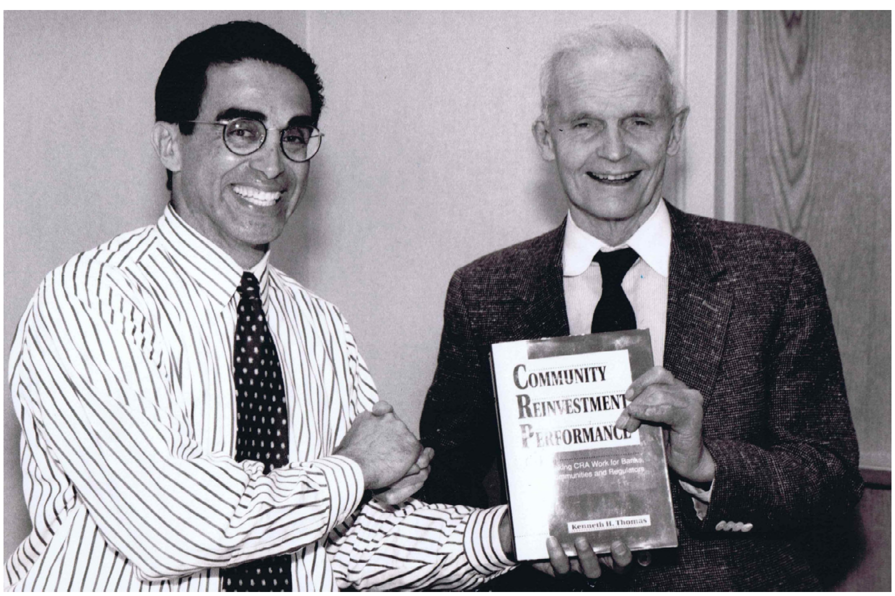
Re: Sixth CRA NPR Comment on "Why Community Groups,
Banks, and Examiners Should Oppose the NPR"

This is my sixth comment on this NPR on CRA Reform, and it is titled *"Why Community Groups, Banks, and Examiners Should Oppose the NPR."* 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 CRA Triangle©

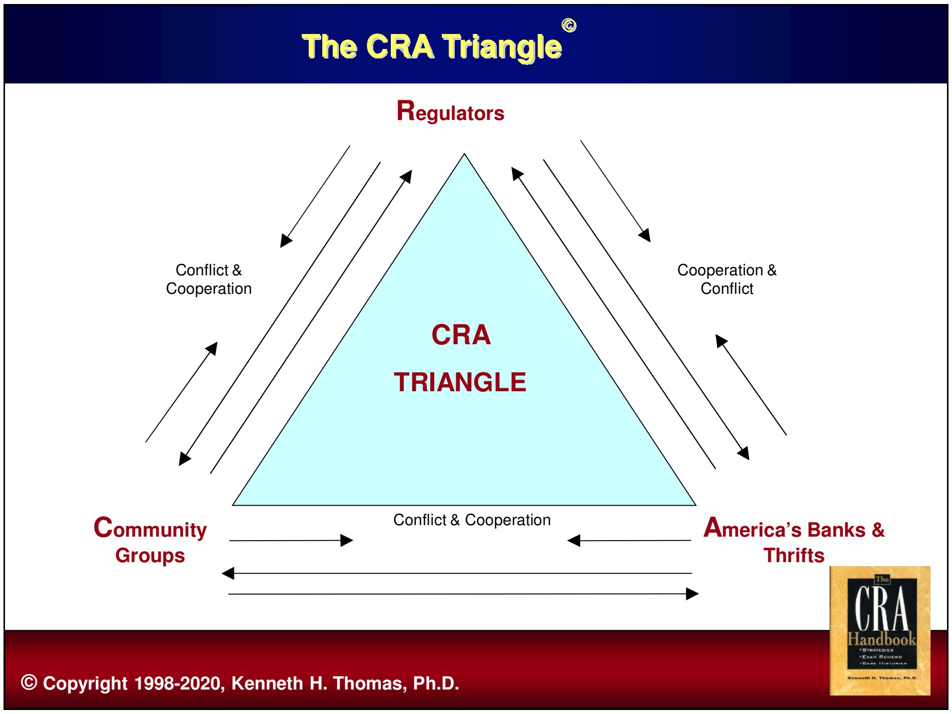
The concept of the CRA Triangle© was first discussed in Community Reinvestment Performance, and it formed the basis for all CRA discussions in that book as well as in The CRA Handbook.

There are three corners to the CRA Triangle:

The "C" is for **C**ommunity groups representing consumer interests.

The "R" is for **R**egulators, influenced and monitored by Congress and the Administration, representing the interests of the "public;" and,

The "A" is for **A**merica's banks and thrifts subject to CRA (excluding credit unions) representing the interests of their stockholders.



The above isosceles form of the CRA Triangle is an ideally balanced and proportioned model with three equal sides and angles where none is more important than another.

Community groups and banks together form the base of the triangle, with regulators in the middle position equidistant to both corners. In this ideal model of the CRA Triangle 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 within this triangle perspective. This policy ideal must consider the potential conflicts of interest, pressures, and other factors impacting each of the corners of the CRA Triangle.

While it is normally assumed that each corner will act in the best interests of its constituent group, this is not always the case. It is possible, for example, that conflicts of interest can exist at community groups being funded by banks or even at friendly regulators interested in going to work for a bank. Also, a community group or coalition may be more interested in helping its group versus the community it is supposed to serve.

Evaluating the NPR Through The CRA Triangle

The CRA Handbook explains that the best way to analyze anything and everything related to CRA is by evaluating it through its impact on the different corners of the CRA Triangle and the interrelationships among them.

Such an evaluation of the NPR through the CRA Triangle concluded that it is most definitely NOT in the best interests of any of the three corners, and it is therefore inconsistent with good CRA or public policy. In fact, as will be summarized below, the opposite is true.

The following three sections will identify several reasons why each of the three CRA Triangle corners, namely community groups, examiners and the industry, should oppose the proposed NPR.

Why Community Groups Should Oppose the NPR

1. Learning the new complicated system will be challenging for many community groups, as some may not have the willingness or ability to learn the new system.

2. The present system with its $500 billion of annual CRA benefits and huge (e.g., $100 billion) Community Benefit Agreements is working fine for most communities and their groups.

3. Many community groups want a much more race-based CRA vs. the present (LMI) income-based one.

4. About 800 current ISB Banks will become Small Banks without any Community Development Test requirements, thus having a potential adverse impact on hundreds of communities.

5. About 200 current Large Banks will become ISB Banks without separate Investment or Service Tests, thus having a potential adverse impact on their respective communities.

6. Branchless banks will NOT be required to reinvest their CRA deposit benefits in their sourced communities with the NPR's focus on Retail Lending Assessment Areas and Outside Retail Lending Areas. This will result in a continuation of "carpetbagger" banking.

7. Combining community development loans and investments in the NPR's proposed Community Development Financing Test may limit high-impact community development investments that benefit local communities if banks are able to satisfy their community development financing through large community development loans. There is no justification for the elimination of the stand-alone Investment Test.

Why Bank Examiners Should Oppose the NPR

1. Learning the new complicated system will be difficult for many overworked and other examiners who may not have the willingness or ability to learn the new system.

2. A new Congress in November 2022 and/or a new Administration in 2024 may rescind a new joint rule as was done last year by the Biden Administration.

3. Bank examiners prefer the current subjectivity in CRA ratings vs. the mainly objective formulae in the NPR. There will always be some subjectivity in CRA evaluations to properly account for Performance Context factors, as long as the subjectivity is not misused by "rogue" examiners.

4. Many of the cited NPR benchmarks do not exist and will lead to more complicated exams and more work for examiners.

5. The NPR's fourth new category of "Very Large" banks (Over $10 billion in assets) will increase examiner workload, especially as there is no justification for this new bank category.

6. FDIC and OCC examiners may not feel comfortable working in a Fed-dominated regulatory environment.

Why Banks Should Oppose the NPR

1. Learning the new complicated system will be very difficult for most CRA officers at community banks who may not have the willingness or ability to learn the new system.

2. The present system with fewer than 2% failing banks is working fine for most (98%) of the industry.

3. The NPR will result in a significant increase in failing CRA ratings. For example, these are the Fed-predicted failing Retail Lending Test ratings: 15% of Small Banks, 7% of ISBs, and 7% of Large Banks. If regulators and community groups want to increase the percentage of failing ratings, this can be done under the existing regs by simply enforcing them more strictly as is presently done by the FDIC.

4. The NPR will result in a significant increase in Low Satisfactory CRA ratings. For example, these are the Fed-predicted Low Satisfactory Retail Lending Test ratings: 24% of Small Banks, 38% of ISBs, and 40% of Large Banks. If regulators and community groups want to increase the percentage of Low Satisfactory ratings, this can be done under the existing regs by simply enforcing them more strictly as is presently done by the FDIC.

5. The NPR will result in a tremendous regulatory burden for Very Large Banks (over $10 billon in assets) and an increased burden for Large Banks (over $2 billion in assets). Yet, there is no rationale by the Fed for these or other new asset thresholds. If the Fed wanted to establish a new category of Very Large Banks, they should have defined it as being those with over $100 billion in assets to capture three-fourths of all industry assets.

6. ISBs will be subject to the new complex Retail Lending Test resulting in a Fed-estimated significant increase in failing and Low Satisfactory ratings for it.

7. The elimination of the Investment Test will discourage banks from making high impact community development investments that currently benefit local Assessment Areas.

8. Small Banks may suffer from the regulatory "trickle down" effect if their CRA EIC and examiners may "unofficially" consider new Retail Lending Test benchmarks in the current simple four-ratio lending test.

9. All of eight stated objectives of the NPR, with the exception of the critical modernization goal, can be met through the existing regs and the Q&A process without the need for a complex major overhaul of a law that has been working fine since 1995.

10. Banking industry trade groups like the ABA and especially the ICBA should not accept rules that unfairly benefit smaller banks at the expense of larger ones; industry trade groups should represent their entire industry.

11. Banks have been under continuous net interest margin and other profitability pressures, and the current economic slowdown and forecasted Recession means that bankers must stay focused on the business of banking rather than being subjected to the tremendously increased regulatory burden of the NPR.

12. Banks bear the regulatory burden of CRA while other financial intermediaries with federal deposit insurance (credit unions) and without it (e.g., mortgage companies and fintechs) have no CRA responsibility. Yet, the NPR is basically silent about expanding CRA to these nonbank competitors to create a more level regulatory playing field..

13. At least one Fed Governor (an ex-banker) got it right in a rare NPR dissenting statement:

    - *"There are several provisions in the proposal that will impose significant costs and burdens on banks, specifically those with assets above $10 billion."*

    - *"Fundamentally, we do not know if the costs imposed under the proposal will be greater than the benefits."*

Tables Summarizing the NPR's New and Complex Tests and Data Requirements by Type of Bank

There are two tables at the end of this comment summarizing the NPR. Both of these tables were created by the law firm of Debevoise & Plimpton and are reproduced with their written permission.

The first table summarizes the different tests in the NPR by type of bank, including the new category of Extra Large banks with assets over $10 billion. This table also includes information for Wholesale and Limited Purpose Banks.

Bank	Asset Size	Subject to New Retail Lending Test?	Subject to New Retail Services & Products Test?	Subject to New Community Development Financing Test?	Subject to New Community Development Services Test?	Subject to Current (Intermediate Bank) Community Development Test?	Subject to Current Small Bank Lending Test?
Extra Large	More than $10b	**Yes**	**Yes** *(additional provisions apply)*	**Yes**	**Yes** *(additional provisions apply)*	No	No
Large	More than $2b	**Yes**	**Yes**	**Yes**	**Yes**	No	No
Intermediate	$600m-$2b	**Yes**	No	**(May opt in to replace current Community Development Test)**	No	**Yes**	No
Small	Less than $600m	**(May opt in instead of current Small Bank Lending Test)**	No	No	No	No	**Yes**
Wholesale and Limited Purpose	N/A	No	No	**Yes** – Tailored version of test	No	No	No

Source: Debevoise & Plimpton

The second table summarizes the different data requirements in the NPR by type of bank, again including the new category of Extra Large banks with assets over $10 billion as well as information for Wholesale and Limited Purpose Banks.

<table>
<tr><th>Bank</th><th>Deposit Data</th><th>Retail Lending Data</th><th>Community Development Financing Data</th><th>Community Development Services Data</th><th>Retail Services & Products</th><th>Assessment Area Delineation</th></tr>
<tr><td>Extra Large</td><td>Collect and report based on location of depositor</td><td>Collect and report automobile lending data + certain small business, small farm and home mortgage loans</td><td rowspan="2">Collect and report (in prescribed form) for creation of metrics & benchmarks</td><td>Collect and report (in prescribed form)</td><td>Collect (in prescribed form) + Digital and other delivery systems + Responsive deposit products</td><td>Report</td></tr>
<tr><td>Large</td><td>Optional to collect</td><td>Certain small business, small farm and home mortgage loans</td><td>—</td><td>Collect (in prescribed form)</td><td>Report</td></tr>
<tr><td>Intermediate</td><td>Optional to collect</td><td>—</td><td>Optional to collect (if opt in to CD Financing Test)</td><td>—</td><td>—</td><td>—</td></tr>
<tr><td>Small</td><td>Optional to collect</td><td>—</td><td>—</td><td>—</td><td>—</td><td>—</td></tr>
<tr><td>Wholesale and Limited Purpose</td><td>—</td><td>—</td><td>Collect and report for creation of metrics & benchmarks</td><td>—</td><td>—</td><td>Report</td></tr>
</table>

Source: Debevoise & Plimpton