DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

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MEMORANDUM FOR THE OFFICE OF THE COMPTROLLER OF THE CURRENCY, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE FEDERAL DEPOSIT INSURANCE CORPORATION

FROM: U.S. Department of the Treasury

SUBJECT: Community Reinvestment Act - Findings and Recommendations

The Community Reinvestment Act (CRA) of 1977 was enacted to encourage banks to meet the credit and deposit needs of communities that they serve, including low- and moderate-income (LMI) communities, consistent with safe and sound operations. Banks are periodically assigned a CRA rating by one of the primary regulators – the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC), collectively the CRA regulators – based on the bank's performance under the appropriate CRA tests or approved Strategic Plan.[1] CRA was enacted in response to concerns about disinvestment and redlining as well as a desire to have financial institutions "play the leading role" in providing the "capital required for local housing and economic development needs."[2]

The U.S. banking industry has experienced substantial organizational and technological changes; however, the regulatory and performance expectations under CRA have not kept pace. Interstate banking, mortgage securitization, and internet and mobile banking are just a few of the major changes that have come about in the past four decades. In this evolving banking environment, changes should be made to the administration of CRA in order for it to achieve its intended purpose.

In its June 2017 report to the President, A Financial System That Creates Economic Opportunities: Banks and Credit Unions ("Banks and Credit Unions report"), the U.S. Department of the Treasury (Treasury) committed to "comprehensively assess how the CRA could be improved" through solicitation of input from stakeholders, including banks, regulators, and consumer and community advocates.[3] Treasury indicated that it would perform a review of several aspects of the CRA framework, including:

- how banks' CRA activity is measured;
- harmonization of CRA supervision (given the oversight by multiple regulators);
- distribution of CRA geographic assessment areas; and

[1] See Appendix A for more background.

[2] Community Credit Needs: Hearings on S.406 Before the Senate Committee on Banking, Housing and Urban Affairs, 95th Cong. (1977) (statement of Chairman Proxmire).

[3] Treasury, *A Financial System that Creates Economic Opportunities, Banks and Credit Unions* (June 12, 2017), available at: *https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf*.

- the regulatory review and examination process.

Treasury believes it is important that a bank's CRA activity align with the needs of the communities that it serves, is made in a manner consistent with a bank's safety and soundness, and is subject to efficient and effective supervision that does not create unintended disincentives to serving communities as intended by the statute. Treasury encourages continued research efforts in order to help policymakers determine whether banks' CRA activities continue to align with the needs of the communities they serve and whether the regulators' rulemaking and supervision of the statute remains effective over time.

This memorandum focuses on regulatory and administrative changes that are consistent with the original intent of CRA, including common sense reforms that reduce the complexity and burden on banks, regulators, and community advocates.

Treasury's recommendations focus on four key areas:

- Assessment Areas. The concept of assessment areas originated within the banking environment that existed in 1977, when there was no interstate banking and deposits almost always came from the community surrounding a branch. Treasury offers recommendations for updating the definitions of geographic assessment areas to reflect the changing nature of banking arising from changing technology, customer behavior, and other factors.

- Examination Clarity and Flexibility. Both banks and communities would benefit from additional flexibility in the CRA performance evaluation process, including increasing clarity in the examination guidance. Treasury recommends improvements that could be made to CRA performance evaluation criteria that would increase the transparency and effectiveness of CRA rating determinations.

- Examination Process. Certain aspects of the examination process need to be addressed in order to improve the timeliness of performance evaluations and to allow banks to be more accountable in planning their CRA activity. Treasury recommends improvements that could be made with respect to the timing of CRA examinations and issuance of performance evaluations, and to the consistent use of census data throughout an assessment period.

- Performance. The purpose of CRA is to encourage banks to meet the credit and deposit needs of their entire community.[4] The law does not have explicit penalties for nonperformance. However, performance is incentivized as regulators must consider CRA ratings as a part of various bank application processes and performance evaluation reports are made available to the public. Treasury offers recommendations as to how the current regulatory approach to downgrades for violations of consumer protection laws and various applications from banks with less than a Satisfactory rating could be improved to incentivize CRA performance.

[4] 12 U.S.C. § 2901(b).

Treasury staff met with close to 100 stakeholders representing community and consumer advocates, academics and think tanks, financial institutions, trade associations, and law firms, among others. Treasury also met with all three CRA regulators and reviewed a wide range of data, research, and published material from both public and private sector sources, including the U.S. Government Accountability Office. A list of organizations and individuals who provided input to Treasury in connection with CRA is set forth in Appendix B.

Summary of Issues and Recommendations

Treasury considered a wide range of perspectives in evaluating potential approaches that would modernize and improve the administration of CRA. However, the challenges posed by the rapid evolution of the banking industry will continue to require additional evaluation by, and ideas from, the CRA regulators and others in order to properly align banks' CRA activity with the needs of the communities that they serve.

Treasury recommends broad changes to the fundamental administration framework of CRA, including the determination of geographic requirements for CRA activity and evaluation; expansion of the range of eligible CRA activities; more specific criteria for eligibility; and improvement in the timeliness of ratings.

A summary of the issues raised and Treasury's regulatory and administrative recommendations follow.

Assessment Areas

Current CRA regulations require a bank to delineate one or more geographic assessment areas within which a bank's regulator will evaluate a bank's record of meeting the credit needs of its community.[5,6] Although asset size and business model determine which CRA tests apply to a bank, all of the CRA tests measure a bank's performance within its assessment areas. A bank's delineation of its assessment area is not a separate CRA performance measure; however, the CRA regulators review whether assessment areas are consistent with CRA rules.[7]

Assessment areas for retail banks must include geographies in which a bank has its main office, its branches, its deposit-taking automated teller machines, and the surrounding geographies in which that bank has originated or purchased a substantial portion of its loans.[8] Wholesale banks, which are banks without retail customers, and limited purpose banks, which offer limited products (such as credit cards or auto loans), have the same rules for delineating assessment areas as retail banks. However, wholesale and limited purpose banks are not required to include the surrounding geographies from which the bank has originated or purchased a substantial portion of loans.[9]

The geographic area for retail and wholesale and limited purpose banks generally consist of one or more metropolitan statistical areas (MSAs),[10] and generally cannot extend substantially

[5] The OCC has CRA implementing regulations for the banks it supervises, 12 C.F.R. parts 25 (national banks supervised by OCC) and 195 (national savings associations supervised by the OCC). The FRB and the FDIC have CRA implementing regulations that are similar to the OCC regulations for the banks they supervise, 12 C.F.R. parts 228 (state-chartered member banks) and 345 (state-chartered nonmember banks). For simplicity, this report will refer to the regulations contained in 12 C.F.R. part 25, as the sections are largely the same across the various parts.

[6] 12 C.F.R. § 25.41.

[7] 12 C.F.R. § 25.41(a).

[8] 12 C.F.R. § 25.41(c).

[9] 12 C.F.R. § 25.41(b).

[10] 12 C.F.R. § 25.41(b), (c)(1).

beyond an MSA or state boundary.[11] A bank may adjust the boundaries of an assessment area to include a portion of a political subdivision that it reasonably can expect to serve, especially in cases where serving an assessment area (as originally prescribed) would be too large, of unusual configuration, or divided by significant geographic barriers.[12] However, a bank's delineation of its assessment area must consist only of whole geographies, may not reflect illegal discrimination, and may not arbitrarily exclude LMI geographies.[13]

Military banks, which are defined as banks "whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area," are not required to have geographic assessment areas.[14] These banks may delineate their entire deposit customer base as their assessment area.[15]

Banking has changed drastically since the enactment of CRA. However, as the industry has changed, the definition of assessment areas under CRA has not evolved at the same pace.

In 1977, most banks were local businesses that collected deposits through a finite number of branches, did not operate statewide, and were prohibited from operating on an interstate basis. Today, many banks have extensive interstate operations, as well as alternative delivery channels for providing services and accepting deposits.

Additionally, since 1977, many wholesale and limited purpose banks have emerged. These banks operate nationwide with limited or no physical presence in local communities. Many of these banks have office headquarters in geographies that do not account for a significant portion of the bank's business or deposits. In the case of these banks, CRA obligations to the areas surrounding their office headquarters do not serve the needs of the communities from which they draw deposits, or the needs of LMI communities. The current geographic assessment area framework for wholesale and limited purpose banks creates concentrated CRA obligations in states such as Utah and Delaware where a large number of wholesale and limited purpose banks have established their headquarters.

Another issue that emerged in Treasury's review is the lack of clarity as to how assessment areas are delineated for military banks. CRA regulations state that "notwithstanding the [geographic assessment area] requirements," banks "whose business predominantly consists of serving the needs of military personnel or their dependents" may define their assessment area as their entire deposit base.[16] Some military banks expressed concerns regarding the inconsistent interpretation of this provision and suggested that it is unclear if the inclusion of the customer base for military banks is in lieu of the geographic assessment area.

Recommendation: Treasury recommends revisiting the approach of determining assessment areas. CRA's concept of community should account for the current range of alternative channels

[11] 12 C.F.R. § 25.41(e)(4).

[12] 12 C.F.R. § 25.41(d).

[13] 12 C.F.R. § 25.41(e).

[14] 12 C.F.R. § 25.41(f).

[15] Ibid.

[16] Ibid.

that exist for accepting deposits and providing services arising from the ongoing evolution of digital banking.

The current definition of assessment areas includes the geographies surrounding the bank's main office, branches, deposit-taking ATMs, and the surrounding geographies in which that bank has originated or purchased a substantial portion of its loans. In discussions with stakeholders, Treasury has determined that this method of directing CRA loans, investments, and services may exclude a substantial portion of the communities that the banks are effectively serving. Treasury advocates for a framework that not only includes areas where the bank is physically located, but also LMI communities outside of where the bank has its physical footprint, and in areas where the bank accepts deposits and does substantial business. Treasury believes that an approach that would allow banks to address needs that overlap with their entire customer base would improve the effectiveness of the CRA statute.

Ideally, this framework would allow banks to receive credit for CRA activity within their branch and deposit-taking footprint, and would also enable them to receive credit for investments in other LMI communities and identified areas as well.

Treasury believes that such an approach could be applied effectively to traditional banking organizations using alternative delivery channels, wholesale and limited purpose banks, and emerging "branchless" banks.

When considering the definition of assessment areas for military banks, Treasury recommends that the CRA regulators make it clear that if the requirements of 12 C.F.R. § 25.41(f) for military banks have been satisfied, the geographic assessment area requirements do not apply.

Examination Clarity and Flexibility

Successful administration of CRA depends on consistent and clear guidance for both banks and examiners. With this in mind, Treasury reviewed the current performance evaluation processes as well as the current examination guidance. CRA regulations and the 2016 Interagency Questions and Answers (Q&As)[17] provide some detail on CRA-eligible activities and how examinations will be administered. However, while examination procedures are developed on an interagency basis, each regulator provides additional guidance to its examiners. Further, each examiner's application of a regulator's policies and procedures varies, as each examination is conducted within a bank's particular performance context.

Both banks and community and consumer advocates support the need for increased clarity. They also noted that any measurements or metrics utilized by the various examination tests should allow for flexibility based on the performance context of a bank. In addition, to allow for predictability and accountability, they advocated for changes in policies or procedures to be implemented prior to the commencement of a bank's next assessment period, rather than applying these policies or procedures retroactively once an assessment period is already underway.

[17] 81 FR 48506-56 (July 25, 2016). The most recent Q&As supersede the previous version.

Lack of Process to Determine Eligibility Prior to Making an Investment

By design, CRA looks backward, creating a level of guesswork for banks when setting CRA goals for upcoming assessment periods. Banks commented on the need for formal communication channels between them and the CRA regulators where they could receive feedback on potential activity. Banks stated that in the past the CRA regulators provided written responses to inquiries on eligibility, which were made public for all banks to review and use to determine whether a certain activity would be eligible for CRA credit. However, that practice was discontinued due to staffing challenges, inadequate interagency coordination, time constraints, the various performance contexts of banks subject to CRA, and budget restrictions. Currently, there is no formal process available to aid in the determination of whether a loan or investment will qualify for CRA credit. The CRA regulators stated that the Q&As and publicly available performance evaluations are a sufficient means of communicating information on activity eligibility.

There is certainty surrounding certain specific categories of qualifying activity, such as single family mortgage loans or Low Income Housing Tax Credit (LIHTC) investments. But, despite examples provided in the Q&As, banks remain unclear about whether more complex, innovative, or infrequent types of products and services will receive credit (such as letters of credit, alternative delivery systems, and investments in or loans to infrastructure projects). This is the case even if it is clear that potential activities would be responsive to, or geared toward meeting the needs of, the communities they serve. It is also difficult for banks to determine how much weight will be given to various categories. This lack of clarity often leads to the concentration of investments in safe, guaranteed eligible activities, such as LIHTC investments.

The lack of defined terms for evaluating CRA-eligible activities presents problems for banks. Banks frequently invest considerable time and resources only to learn at the time of their performance evaluation that an activity is not considered eligible for CRA credit. In particular, banks noted the ambiguity of the terms “innovativeness,” “complexity,” and “responsiveness” used in CRA regulations, to describe CRA-eligible activities. For example, banks believe that the CRA regulators only consider activities “innovative” if the product or service is new to the market – a new offering provided by a bank in response to the clients’ needs is not considered “innovative.” Moreover, banks reported that they are often frustrated by their inability to determine whether an investment will receive CRA credit when comparing it to other investment opportunities that may offer a better financial return.

Recommendation: As currently implemented, CRA eligibility determinations are subject to vague and inconsistent interpretations. The long time lag between the examination period and the receipt of CRA ratings under current procedures makes this lack of clarity more acute, and quite unusual when compared against other regulatory processes and practices.

Treasury recommends that any framework for CRA reform should consider several key elements including:

- Expansion of the types of loans, investments, and services eligible for CRA credit;
- Establishment of clearer standards for eligibility for CRA credit, with greater consistency and predictability across each of the regulators; and

- Simplified record-keeping procedures, designed to make eligibility updates more regular and timely.

Treasury believes that by expanding the types of loans, investments, and services eligible for CRA credit and clarifying the eligibility criteria, the timeliness of ratings can improve – identified by stakeholders as a key goal of reform. Treasury advocates for leveraging existing regulatory standards for product reporting and definitions of loans and investments to more clearly align CRA with other regulatory procedures.

Further, banks should be allowed to obtain a limited number of eligibility determinations in advance on specific loans, investments, or services and any decisions requiring extensive regulatory consultation should then be able to be reduced to an exception basis only, providing consistency across banks operating in the same market, but under different CRA regulators. Such determinations should be made publicly available.

Treasury believes that expanding the universe of CRA-eligible activities would better align the regulatory regime with the intent of the CRA statute and would benefit all of the communities served by banks. As part of the inherent need for modernization of CRA administration, Treasury supports any reform effort that embraces innovative approaches to CRA eligibility definition, including technology-enabled approaches. This is particularly important in an ever-changing technology environment and a landscape that is trending toward virtual for the delivery of banking services.

Lack of Clarity and Inconsistent Application of Bank Performance Context

CRA regulations and guidance detail "a broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which an institution's record of performance will be evaluated."[18] These factors, collectively called the performance context, include: demographic and economic data; community-specific insights relating to the lending marketplace; investment and service opportunities in the assessment area; the bank's product offerings and business strategy; and the institutional capacity and constraints of the bank that affect its ability to respond to the needs of the assessment area.[19] The performance context also considers a bank's past performance, the performance of the bank's peers, and comments about a bank's performance from the public.[20] Consideration of a bank's performance context allows banks to highlight local factors and challenges.

The CRA regulators are responsible for establishing a bank's performance context; however, banks may provide input based on their unique knowledge of their assessment areas. Although this ensures that banks have voice in the development of the standard against which their CRA activity will be considered, providing such input can be burdensome and complicated for banks with limited resources or for banks with a large number of assessment areas. The level of detail and type of information provided by banks to the regulators is left to the discretion of the banks and is, therefore, frequently inconsistent. Some stakeholders suggested that the process for establishing a bank's performance context places too much weight on a bank's economic

[18] Q&A, §_.21(b)–1 Performance Context; *see also* 12 C.F.R. § 25.21(b).

[19] 12 C.F.R. § 25.21(b)(1)-(4).

[20] 12 C.F.R. § 25.21(b)(5)-(6).

indicators and does not place enough weight on the needs of communities. Banks suggested that regulators do not provide enough clarity as to which other banks constitute their peer group for comparison purposes. In addition, defining performance context can be challenging for examiners who do not have expertise in this area.

Recommendation: Treasury recommends revisiting CRA's definition of assessment area in order to take into account the realities of a rapidly changing banking industry. In the context of such a prospective change, further reform to the use of performance context as part of a CRA examination and to the fundamental nature of the rating determination process, should also be considered.

As currently implemented, Treasury believes that CRA regulation has too many subjective elements. This creates significant compliance burdens and related costs, without any commensurate gain in quality or execution of banks' CRA activity in the communities that banks are aiming to serve. The current restrictive nature of assessment areas, subjective performance context for individual MSAs, and the inconsistent nature of determining peer groups, all contribute to significant confusion and, therefore, inconsistency in the examination and ratings procedures.

Treasury recommends that the research and policy staff of the CRA regulators be involved in developing the performance context in advance of CRA examinations. This approach would allow economists and specialized staff to provide their expertise on the economic and business environment of the communities where the banks are operating as well as reduce the burden on CRA examiners.

Lack of Clear Guidelines for Examination Criteria

CRA regulations, Q&As, and publicly available examiner guidance lack clear guidelines for determining a bank's performance. Descriptions of the parameters used to weigh and score activities exist; however, the terms used to describe levels of performance, such as "excellent," "substantial," and "extensive," are undefined. For example, CRA regulations state (**bold** added):

> "[the agency] rates a bank's lending performance 'outstanding' if, in general, it demonstrates: (A) **Excellent** responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment areas(s); (B) A **substantial** majority of its loans are made in its assessment areas(s); (C) An **excellent** geographic distribution of loans in its assessment areas(s); (D) An **excellent** distribution, particularly in its assessment areas(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank; (E) An **excellent** record of serving the credit needs of highly economically disadvantaged areas in its assessment areas(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations; (F) **Extensive** use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income

individuals or geographies; and, (G) It is **a leader** in making community development loans."[21]

The number of points some CRA-eligible activities receive relative to others is determined by an examiner. There is no official quantity of CRA-eligible activities that determines when a bank is deserving of a particular rating.[22] Banks stated that they do not understand how to "meet the minimums."[23] For example, the metric for measuring the "geographic distribution" of loans is not clear (see Table 1 below). The publicly available guidance for assessing geographic distribution is limited, contributing to the banks' perspective that the level of activity (dollar amount or number of transactions) that needs to occur within an assessment area in order to be deemed Satisfactory, or to achieve a particular performance rating is not transparent or clearly articulated.

Table 1: Review Criteria for Geographic Distribution[24]

		Performance Ratings			
Characteristic	**Examiner Review**	**Outstanding**	**Satisfactory**	**Needs to Improve**	**Substantial Noncompliance**
Geographic Distribution of Loans	Determine if there is a sufficient number and income distribution of geographies to provide meaningful analysis. If yes, determine distribution of loans among low-, moderate-, middle- and upper-income geographies, using available bank loan data or sample. Identify groups of geographies, by income categories, where there is little or no loan penetration.	The geographic distributions of loans reflect EXCELLENT dispersion through the AA.	REASONABLE	POOR	VERY POOR

[21] 12 C.F.R. § 25, App. A (b)(1)(i) (emphasis added).

[22] Getter, D., *The Effectiveness of the Community Reinvestment Act*, Congressional Research Service (January 7, 2015), available at: *https://www.newyorkfed.org/medialibrary/media/outreach-and-education/cra/reports/CRS-The-Effectiveness-of-the-Community-Reinvestment-Act.pdf*.

[23] Perlmeter, E. R., *The CRA at 40: Law Remains a Cornerstone of Community Development*, Federal Reserve Bank of Dallas (December 2017), available at: *https://www.dallasfed.org/cd/cos/1701.aspx*.

[24] Federal Reserve Bank of Dallas, *A Banker's Quick Reference Guide to CRA* (as amended effective September 1, 2005), available at: *https://www.dallasfed.org/assets/documents/cd/pubs/quickref.pdf*.

Banks also expressed concerns regarding the ambiguity surrounding the percentage of a bank's lending activity that should fall within its assessment areas, also known as the In/Out Ratio. Banks stated that limited transparency exists regarding how examiners interpret a bank's In/Out Ratio, and what weight this ratio is given in the Lending Test. For example, some banks mentioned that after they were told by their examiners that having only 75 percent of their total lending occur within their banks' assessment areas would not be considered significant enough for them to receive a Satisfactory rating on the rating scale, they surmised that they should increase their within assessment area lending to at least 80 percent of total lending activities in order to achieve a Satisfactory rating on their performance evaluations. However, specific percentages are not provided to the banks as guidelines.

Treasury's review of examiner guidance provided little clarity for the issues raised by stakeholders. When seeking to understand the level of activity a Large Bank needs to undertake to satisfy the Lending Test, guidance was absent on both the quality and quantity of activity required. One regulator's Large Bank guidance document simply states, "No loan type (home mortgage loans, small loans to businesses, small loans to farms or consumer loans) is given any less consideration than another. The examiner needs to consider the volume of the bank's lending by type and community credit needs when determining the amount of weight each type of loan is given when arriving at overall conclusions under the Lending Test."[25] This uncertainty poses problems for banks when setting CRA goals and does not serve the interests of communities.

The CRA regulators recognize these challenges, yet stated that they are hesitant to provide specificity on scoring and rating determinations due to varying performance contexts and concerns that quantitative guidance could be perceived as the creation of federally mandated credit allocation requirements.

This lack of clarity also presents an issue when trying to compare like banks with one another for performance purposes. The absence of performance guidelines leads banks to review the performance evaluations of other banks and guess at what type and how much of an activity might be needed to achieve a particular rating. This challenge is compounded when the banks are not sure which other banks to consider their peers or, therefore, from which performance evaluations to draw when seeking to develop performance context-based guidelines. Further exacerbating the issue is the perception that, although the current CRA regulatory eligibility guidance is disseminated by the three CRA regulators collectively, the different regulatory agencies maintain different interpretations of various aspects of performance measurement. The resulting lack of consistency across CRA examinations limits the usefulness of banks comparing various peer group performance evaluations in an effort to develop quantitative or qualitative clarity or guidelines.

Recommendation: Treasury advocates for an approach to the administration of CRA that incorporates less subjective evaluation techniques. Establishing clear criteria for grading CRA loans, investments, and services will lead to more accountable outcomes, result in more

[25] OCC, *Large Bank CRA Examiner Guidance* (December 2000), available at: *https://www.occ.gov/news-issuances/bulletins/2000/bulletin-2000-35a.pdf*.

consistent, timely, and understandable ratings, and establish a basis against which banks can gauge their performance.

The actual “measurement” of CRA activity, like other regulatory standards such as liquidity, capital, and leverage should be reportable in a clear and transparent manner, allowing for better assessment of the impact of CRA activities. Such an approach would enable critics and supporters of CRA alike to measure the impact of CRA against a well-defined, consistent unit of measurement, such as total assets, capital, or another similar standard.

This approach would also allow banks to provide regular updates on CRA performance to the regulators and the public, while at the same time subjecting them to more regular accountability. Frequent CRA performance evaluations, as opposed to the current system that relies on multi-year assessment periods, could then be possible.

Inconsistent Examination Staffing, Practices, and Procedures

Stakeholders agreed that the problems stemming from a lack of clear guidelines are exacerbated by insufficient examiner training. Further, current procedures allow examiners to subjectively interpret and apply CRA examination policies and procedures. Banks stated that they find it difficult to understand how the individual component test ratings and the final composite rating are determined, noting that there is inconsistency in performance evaluations across and within agencies (among field examiners as well as between field examiner and headquarter reviews), particularly when evaluating qualitative factors such as complexity, innovation, leadership, and responsiveness.

Stakeholders commented that intra-agency inconsistency between headquarters’ examiners and field examiners result in unreliable and confusing messaging to banks. They also noted instances where examiner determinations were based on internal regulator guidance, or interpretations of official guidance, that had not been made public.

The CRA departments of all three CRA regulators are part of larger compliance divisions. Competing priorities and resource constraints have led regulators to abandon the practice of having dedicated specialized CRA examiners. In some cases, safety and soundness examiners or specialty examiners from other areas (such as Bank Secrecy Act/Anti-Money Laundering examiners) are tasked with conducting CRA exams. Stakeholders stated that the lack of CRA-specific examiners creates further uncertainty due to the limited experience of the examiners and lack of familiarity with a bank’s activities. This is of particular concern due to the subjective nature of the CRA examination process.

Challenges with Developing and Amending Strategic Plans

Banks seeking flexibility beyond the performance evaluation parameters set by traditional CRA examinations may elect the Strategic Plan option. Utilization of the Strategic Plan enables a bank to tailor its CRA goals and objectives to address the needs of its community, consistent with its business strategy, operational focus, capacity, and constraints.[26] The Strategic Plan is available because banks with unique business models and/or highly competitive assessment areas

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[26] FDIC, *Community Reinvestment Act: Guide to Developing the Strategic Plan* (Accessed January 2018), available at: *https://www.fdic.gov/news/news/financial/1998/fil9826b.pdf*.

are constricted by the rigidity of the test weights, making it difficult for them to achieve an Outstanding rating. In addition, the needs of the assessment area may not align exactly with the examination test weights.

Once the regulator has approved the plan and the plan has been implemented successfully for at least one year, the bank may elect to forego the traditional CRA tests.[27] A Strategic Plan may cover a period of up to five years and must include annual, measurable goals.[28]

A key benefit of Strategic Plans is the certainty that they provide to banks. Each bank sets its own performance standards required to achieve Satisfactory and Outstanding ratings. If the bank meets the criteria established in its approved plan, it receives the proposed rating.[29] The Strategic Plan option requires more community involvement in establishing a bank's CRA goals. Because of this involvement, many believe that such plans are more responsive to a community's credit needs than traditional CRA examinations.[30]

However, between 1996, when the Strategic Plan option first became available, and 2016, fewer than 70 banks executed Strategic Plans.[31] Banks that submitted or considered Strategic Plans identified the amount of time they must dedicate to incorporating public participation in plan development and the lengthy approval process as the primary reasons that the option is not utilized more frequently.[32] To use this option, a bank must conduct informal meetings with community representatives in the designated assessment area to identify and assess a community's credit needs. A bank must also establish specific and measurable goals, and must solicit formal comments from the public on the plan. These public planning requirements create a time-intensive process for banks with hundreds of assessment areas, and can be a deterrent that keeps banks from opting for the Strategic Plan. In addition, a bank's regulator can take up to 60 calendar days to approve a Strategic Plan after it receives a completed proposal.[33]

Another concern is that Strategic Plans follow similar parameters as Large Bank examinations, making banks question the benefit of pursuing them. According to the regulations:

> "A bank shall address in its plan all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and

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[27] 12 C.F.R. § 25.27(a).

[28] 12 C.F.R. § 25.27(c)(1).

[29] FDIC, *Community Reinvestment Act: Guide to Developing the Strategic Plan* (Accessed January 2018), available at: *https://www.fdic.gov/news/news/financial/1998/fil9826b.pdf*.

[30] Havard, C., *Advancing the CRA—Using the CRA's Strategic Plan Option to Promote Community Inclusion: The CRA and Community Inclusion*, University of Baltimore School of Law (2006).

[31] FFIEC, *Interagency CRA Rating Search: Strategic Plans* (Accessed January 2018), available at: *https://www.ffiec.gov/craratings/default.aspx*.

[32] FDIC, *Community Reinvestment Act: Guide to Developing the Strategic Plan* (Accessed January 2018), available at: *https://www.fdic.gov/news/news/financial/1998/fil9826b.pdf*.

[33] 12 C.F.R. § 25.27(g)(1).

> credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy."[34]

Banks suggested that this regulation does not offer differentiation in terms of changing the category weightings from the traditional CRA examinations' various tests and stifles the selection of the Strategic Plan option by more banks.

Finally, while the Strategic Plan option aims to eliminate the potential risks inherent in CRA examinations by setting measurable goals prospectively, banks expressed concerns that they are implicitly responsible for managing and resolving issues created by factors outside of their control. For instance, if a bank desires to amend its plan due to a material change in circumstances during the term of a Strategic Plan, such as an economic or market downturn, the bank must request regulatory approval to amend the plan prior to the end of the Strategic Plan's assessment period.[35] As a part of this amendment process, even the smallest changes must undergo the public participation process used for the original development of the plan, opening up a complex plan to a lengthy and uncertain approval process.[36] Community involvement, while beneficial for the purposes of building consensus and delivering impact at the outset of an assessment period, can delay even the simplest amendments.

Overemphasis on Branch Network in the Service Test

A bank's physical presence (including its branches and its deposit-taking automated teller machines) remains a key component of a community's economic development ecosystem, particularly for local small businesses and LMI residents.[37] However, advances in technology have reduced the need for branch-based services and have lessened community reliance upon traditional "brick and mortar" branches.[38] The number of bank branches in the U.S. has decreased each year since 2009.[39] Further, the average monthly volume for bank teller transactions declined by 34 percent from 1992 to 2017, while internet transactions continue to grow.[40]

CRA guidance states that the Service Test assesses the distribution of the bank's branches, the services offered, the operating hours, and the accessibility and use of alternative delivery systems for both retail banking and community development services.[41] The Q&As state that "the service test performance standards place primary emphasis on full service branches while still considering alternative systems."[42] However, the lack of clear guidelines provides examiners with discretion on how much weight to place on the adoption of alternative delivery systems.

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[34] 12 C.F.R. § 25.27(f)(1)(ii).

[35] 12 C.F.R. § 25.27(h).

[36] Ibid.

[37] Nguyen, H., *Do Bank Branches Still Matter? The Effect of Closings on Local Economic Outcomes* (December 2014), available at: http://economics.mit.edu/files/10143.

[38] Federal Advisory Council and Board of Governors Record of Meeting (September 8, 2017).

[39] Stackhouse, J., *Why Are Banks Shuttering Branches?,* Federal Reserve Bank of St. Louis (February 26, 2018).

[40] Financial Management Solutions Inc., 2017 *FMSI Teller Line Study* (N.P., 2017).

[41] Federal Reserve Bank of Dallas, *A Banker's Quick Reference Guide to CRA* (as amended effective September 1, 2005), available at: *https://www.dallasfed.org/assets/documents/cd/pubs/quickref.pdf*.

[42] Q&A, §_.24(d)—1 Performance Criteria – Retail Banking Services.

Given this, banks and regulators continue to place a heavy weight on the establishment and maintenance of full-service branches, even as branch utilization continues to decline in favor of alternative delivery systems. Banks commented that the Service Test is heavily skewed toward the branch network, representing the majority of the test's weight.

Recommendation: Treasury believes that establishing a modernized, forward-looking approach to the Service Test is critical. The ongoing adoption of alternative delivery channels will continue to lessen the relevance of physical branches to all communities, including LMI communities, over time. In addition, expanding the framework of CRA-eligible services, whether internally provided by bank staff or contracted externally, should be encouraged in an effort to promote innovation and address the reality of advancements in technology.

CRA and Financial Education

Activities that build LMI consumers' financial capability – their knowledge, skills, ability, and opportunity to effectively use financial products and services to attain their goals – are widely recognized as CRA-eligible under the Service Test, as either a retail or community development service. These activities include a range of programs and services including financial counseling, credit repair, homeownership counseling, and classroom financial education for children. Despite differing views on how banks can and should contribute to financial knowledge and skill building, there is agreement that financial education is important to community reinvestment and that banks can and should play an important role in this work. There is generally agreement that the CRA regulators should provide greater guidance on how these activities will be considered under the Service Test and that guidance should encourage banks to support high quality financial education that leads to real impacts.

Understanding both the value of financial education and what is effective has increased greatly in the last decade, allowing for approaches with measurable effectiveness. Simply providing information on personal finance is not enough to help people take action toward improving their financial security; building capability is more complex. Advances in this field have been driven by research from federal agencies and private sector academics.[1] There is no one-size-fits-all-approach. However, it is clear that effective financial education needs to match the needs and goals of the consumer.

For children and youth in particular, recent research and analysis points to promising practices that can engage banks in effective ways. Providing children with access to their own bank accounts, and other types of hands-on learning such as through simulated economic activities, as well as work and entrepreneurship opportunities, hold substantial promise to improve financial knowledge, confidence, and interest in financial action.[2]

Increasing the professionalization of financial education, counseling, and coaching seems likely to yield sustainable positive progress and outcomes. For example, findings from a study of financial coaching programs demonstrate that coaching improved clients' financial outcomes, including credit, savings, and budgeting.[3] Similarly, a study of financial empowerment centers that provide free one-on-one financial counseling had similar outcomes, including opening accounts, establishing or increasing credit scores, reducing debt, and increasing savings.[4]

The CRA regulators should continue to work with the Financial Literacy and Education Commission to develop guidance and resources to enable banks to implement research-based strategies into their financial education activities that include measurements of effectiveness. These measures could be used to improve the quality and delivery of financial education and lead to better community outcomes. Banks should be encouraged to partner with and invest in professional experts who could deliver these services, rather than simply relying on existing bank staff. Innovative and demonstrated practices that are likely to have measurable outcomes on the financial knowledge, skills, and outcomes of LMI residents should be encouraged.

[1] Financial Literacy and Education Commission, *Promoting Financial Success in the United States: National Strategy for Financial Literacy 2016 Update* (2016), available at https://www.treasury.gov/resource-center/financial-education/Documents/National%20Strategy%202016%20Update.pdf.

[2] Corporation for Enterprise Development, *Financial Education and Account Access Among Elementary* Students (2014), available at https://www.treasury.gov/resource-center/financial-education/Documents/Financial%20Education%20%20Account%20Access%20Among%20Elementary%20Students%20Findings%20from%20the%20Assessing%20Financial%20Capability%20Outcomes%20You%E2%80%A6.pdf; FDIC, *The Promise of Youth Savings Programs* (2017), available at *https://www.fdic.gov/consumers/assistance/protection/depaccounts/youthsavings/youth-savings.html*; Batty, M., et al., *Evaluating Experiential Financial Capability Education: A Field Study of My Classroom Economy* (Sept. 15, 2016), available at *https://cfs.wisc.edu/2016/09/15/mce/*.

[3] Lienhardt, H., *Financial Coaching Census 2016* (2016), available at https://fyi.uwex.edu/financialcoaching/files/2017/06/AFN-Financial-Census2016-WEB-2.pdf.

[4] Cities for Financial Empowerment Fund, *An Evaluation of Financial Empowerment Centers Building People's Financial Stability as a Public Service* (2017), available at http://cfefund.org/wp-content/uploads/2017/07/FEC-Evaluation.pdf.

Examination Process

In addition to examination clarity and flexibility, stakeholders noted several administrative aspects of the examination process that should be improved. Timing delays, limited review of non-metropolitan assessment areas, and changes in census data mid-review may add unnecessary burden for banks when preparing for current and future examinations.

Timeliness of Performance Evaluations and CRA Ratings

Although there is one set of CRA regulations, each CRA regulator follows a different examination schedule.

Table 2: Large/Intermediate Small Banks Examination Schedule

CRA Rating	**FDIC**	**FRB**	**OCC**
Outstanding	12-36 months after most recent exam	24-36 months after most recent exam	36 months after most recent exam
Satisfactory	12-36 months after most recent exam	24-36 months after most recent exam	36 months after most recent exam
Needs To Improve	12-24 months after most recent exam	12 months after most recent exam	36 months after most recent exam
Substantial Noncompliance	12 months after most recent exam	12 months after most recent exam	36 months after most recent exam

Table 3: Small Banks Examination Schedule

CRA Rating	**FDIC**	**FRB**	**OCC**
Outstanding	60-72 months after most recent exam	60 months after most recent exam	60 months after most recent exam
Satisfactory	48-60 months after most recent exam	48 months after most recent exam	48 months after most recent exam
Needs To Improve	12-24 months after most recent exam	12 months after most recent exam	n/a
Substantial Noncompliance	12 months after most recent exam	12 months after most recent exam	n/a

The examination cycles for Large and Intermediate Small Banks are determined by the CRA regulators. The examination cycles for Small Banks were defined by the Gramm Leach Bliley Act.[43]

Banks and community and consumer advocates suggested that the amount of time that it takes to conduct CRA examinations and to disclose CRA performance evaluations publicly has become excessively long. There is no prescribed period in which the CRA regulators must publish performance evaluations. This leaves many banks with dated ratings. Further, delays in the release of performance evaluations can result in minimal time for a bank to respond and react to recommendations prior to the commencement of their next performance evaluation.

Delays also complicate or alter the evaluation process for applications for deposit facilities, including mergers and acquisitions, and can impede a bank's ability to respond to issues raised in its performance evaluation.

Recommendation: Treasury concluded that the extended period of time between CRA examination periods is not constructive and should be addressed. Treasury found that, in practice, delays in the completion of examinations are longer than the indicated examination cycles of all three of the CRA regulators, and across banks of all sizes.

Treasury recommends that the CRA regulators standardize the CRA examination schedules. Treasury supports statutory changes, if necessary, that would enable more timely evaluations and ratings.

Scope of Examinations

The CRA regulators provide examiners with the discretion to designate assessment areas as either full scope or limited scope. Full scope assessment areas receive a comprehensive review employing all examination criteria in detail. Limited scope assessment areas receive a less detailed examination. CRA examinations provide short narratives on limited scope areas that report whether the performance was consistent or inconsistent with the bank's performance in full scope areas. Moreover, limited scope areas do not significantly impact the bank's overall rating or rating for individual states.[44]

The majority of banks' non-metropolitan assessment areas are considered limited scope and they typically have very few community development activities reported in their performance evaluations. Some stakeholders suggested that these limited scope examinations have the potential to cause restricted access to capital and banking services in non-metropolitan communities.

CRA Performance

The goal of CRA is to encourage banks to meet the credit needs of their communities, but the law does not have explicit penalties for poor performance. However, banks have an incentive to

[43] 12 U.S.C. § 2908.

[44] National Community Reinvestment Coalition, *The Community Reinvestment Act and Geography: How Well Do CRA Exams Cover the Geographical Areas that Banks Serve?* (April 2017), available at *https://ncrc.org/the-community-reinvestment-act-and-geography/*.

achieve Satisfactory or Outstanding performance ratings under CRA because regulators consider CRA ratings during the evaluation process for applications for deposit facilities, including mergers and acquisitions, and make performance evaluations available to the public.

Downgrades for Violations of Consumer Protection Laws

CRA is not a consumer protection law. The Consumer Financial Protection Bureau (CFPB) has no authority over the statute and regulators separate CRA examinations from safety and soundness and consumer protection law compliance examinations. However, CRA overlaps with some consumer protection laws, as CRA regulations state that an "evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by an affiliate whose loans have been considered as part of the bank's lending performance."[45]

Evidence of discriminatory or other illegal credit practices includes, but is not limited to, discrimination under the Equal Credit Opportunity Act and the Fair Housing Act as well as violations of the Home Ownership and Equity Protection Act, section 5 of the Federal Trade Commission Act, section 8 of the Real Estate Settlement Procedures Act and the right of rescission under the Truth and Lending Act.[46] In determining the impact of evidence of discriminatory or other illegal credit practices on a bank's CRA rating, the regulators consider the nature, extent, and strength of the evidence of the practices, policies, and procedures of the bank (or its affiliate if applicable) to prevent the practice; corrective action taken or committed to take, including voluntary action from self-assessment; and any other relevant information.[47]

In recent years, an increasing number of large banks have received downgrades of CRA ratings due to violations of consumer protection laws. In some cases, banks have been downgraded or double downgraded for violations related to products that were not part of their CRA performance evaluations (e.g., indirect auto lending).

In an effort to address the lack of clarity on these topics, on October 12, 2017, the OCC issued an update to its Policies and Procedures Manual to clarify the impact evidence of discriminatory or other illegal credit practices can have on CRA ratings.[48] According to the OCC, a determination of how evidence of illegal credit practices in a bank's CRA lending activities affects a bank's CRA rating is guided by two principles.

First, there must be a logical nexus between the bank's CRA rating and evidence of discriminatory or other illegal credit practices in the bank's CRA lending activity. The logical nexus principle considers whether the evidence of discriminatory or illegal credit practices directly relates to the bank's CRA lending activities. According to the principle, a composite rating downgrade should be based on strong evidence of "quantitatively and qualitatively material instances of discriminatory or illegal credit practices directly related to CRA lending activities that resulted in material harm to customers." The goal of the OCC principle is to

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[45] 12 C.F.R. § 25.28(c)(1).

[46] 12 C.F.R. § 25.28(c)(1)(i)-(v).

[47] 12 C.F.R. § 25.28(c)(2).

[48] OCC, *Policy and Procedures Manual*, PPM 5000-43 (Accessed January 2018), available at: *https://www.occ.gov/publications/publications-by-type/other-publications-reports/ppms/ppm-5000-43.pdf.*

ensure that banks are not penalized in their CRA assessments for minor violations or practices unrelated to CRA lending activities. The OCC also clarified that it is not its policy to lower a bank's CRA rating by more than one level.

Second, the OCC considers any remedial action taken by the bank. The remediation principle states that "if a bank has remediated or taken appropriate corrective actions to address the evidence of discriminatory or other illegal credit practices, the ratings of the bank should not be lowered solely based on the existence of the practice prior to the commencement of the CRA evaluation."

Recommendation: Treasury recommends that the CRA regulators adopt uniform guidance that considers whether there is a logical nexus between the CRA rating and evidence of discriminatory or illegal credit practices in the bank's CRA lending activities while also giving consideration to the remediation efforts undertaken by the bank. The logical nexus principle should evaluate whether the violation would adversely impact the appropriate CRA examination or Strategic Plan, while also considering whether it would have a material impact on the bank's ability to serve its entire community. For example, a UDAP violation for a credit product that was not considered as part of a bank's CRA performance would not have a logical nexus to the bank's rating and would not affect the rating. On the other hand, violations of consumer protection laws that involve substantial evidence of redlining would be more likely to impact a bank's CRA rating, as this would be inconsistent with serving the needs of the entire community.

Performance Evaluation Delays Due to Consumer Protection Law Investigations

CRA examinations are typically handled by examiners who are different from those who conduct consumer protection law compliance examinations. In cases where a bank is subject to the authority of the CFPB, consumer protection supervision and CRA performance evaluations are conducted by separate agencies on different examination cycles. Likewise, investigations and enforcement actions by regulators and the Justice Department are not coordinated with CRA examination cycles. Given this, delays have been caused by the withholding of ratings and performance evaluations until the CFPB, the Justice Department, or other regulators have completed their investigations and/or taken enforcement actions. This results in delays in banks' performance evaluations and in banks' CRA ratings becoming outdated.

Recommendation: Treasury recommends that CRA performance evaluations not be delayed due to pending consumer protection law investigations or enforcement actions. If evidence of a violation of a consumer protection law is discovered after the issuance of a performance evaluation, Treasury recommends that the evidence be reviewed and considered in the subsequent performance evaluation. In cases where evidence of discriminatory or illegal credit practices is verified after the issuance of the performance evaluation, Treasury recommends that an addendum be attached to a performance evaluation detailing the facts of the verified consumer protection law violation.

Impact of Less Than Satisfactory Ratings and Remediation

CRA ratings of less than Satisfactory impact banks' expansion plans. CRA requires regulators to take CRA performance "into account in its evaluation of an application for a deposit facility" by a bank.[49] Applications subject to this provision include new branch applications, branch or main office relocation applications, applications for mergers and acquisitions under the Bank Merger Act, and applications for charter conversions between regulators.[50] Other federal and state laws also require consideration of a bank's CRA performance. For transactions subject to the Bank Holding Company Act, the FRB considers the convenience and needs of the communities to be served, including the interested parties' CRA performance.[51] Bank holding companies that attempt to engage in securities or insurance business must qualify as financial holding companies, which, among other things, requires a CRA rating of Satisfactory or better.[52] Many large cities also require a Satisfactory rating for banks to conduct business with their governments.

A less than Satisfactory CRA rating has typically acted as an automatic denial of applications for new branches, which ultimately limits a bank's efforts to support their communities and improve their CRA rating. It makes sense that there is a negative consequence for banks that do not satisfy CRA requirements; however, this consequence does not consider how the automatic denial of the application negatively impacts the needs of LMI communities. Banks in this situation have had to wait until their next performance evaluation to implement expansion plans that could improve their ability to serve their entire community. Although it is possible for smaller banks to have their regulator conduct a performance evaluation in a timely manner upon completion of their CRA rating remediation processes, and outside of its typical examination cycle, this is not always possible for larger banks due to the size and complexity of these evaluations.

On November 8, 2017, the OCC clarified its Policies and Procedures Manual with an issuance holding that banks with less than Satisfactory ratings would continue to receive enhanced scrutiny, but the OCC could approve an application for a deposit facility after considering four factors.[53] First, the OCC will consider whether the less than Satisfactory CRA rating was issued recently, the severity of the less than Satisfactory rating (Needs to Improve or Substantial Noncompliance), and the progress made by the applicant bank to address the issues underlying the less than Satisfactory CRA rating. Second, the OCC will consider whether approval of the application would result in a material increase in the size of the applicant bank or the scope of its activities, and how such increase would affect the bank's ability to help meet the credit needs of the communities to be served. Third, the OCC will consider whether the proposed transaction would benefit the communities to be served, as well as the nature and extent of such benefits. Finally, the OCC will consider whether approving the application with conditions would be sufficient to ensure the bank will be able to achieve its CRA objectives, clearly further the specific goals of CRA, or significantly further fair access to banking services.

Recommendation: Treasury recommends that the FDIC and FRB adopt policies and procedures that are generally aligned with changes adopted by the OCC for evaluating various bank

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[49] 12 U.S.C. § 2903.

[50] 12 C.F.R. § 25.29(a).

[51] 12 C.F.R. § 228.29(a)(2).

[52] 12 C.F.R. § 225.82(c)(1).

[53] OCC, *Policies and Procedures Manual*, PPM 6300-2 (Accessed January 2018), available at: *https://www.occ.gov/publications/publications-by-type/other-publications-reports/ppms/ppm-6300-2.pdf.*

applications. A bank with a less than Satisfactory CRA rating should continue to receive enhanced scrutiny, but more consideration should be given to the bank's remediation efforts to date and whether approving the application would benefit the communities served by the bank. It is inconsistent with the goals of CRA to limit a bank's ability to serve its entire community as a result of its less than Satisfactory rating. Treasury recommends that regulators use the application process as an incentive to encourage less than Satisfactory banks to commit to engaging in additional CRA-eligible activities in LMI communities.

Use of Community Benefits Plans

Applications for mergers and acquisitions are subject to public comment periods, with CRA performance ratings often serving as a major focus of comments. Adverse comments often result in significant delays to the approval process. According to FRB data, mergers and acquisitions applications to the FRB with no adverse comments are approved, on average, in 54 days while applications with adverse comments have previously taken an average of 190 days.[54] Satisfactory or Outstanding ratings do not preclude adverse comments from being submitted.

Banks that receive adverse comments during the public comment period for a merger or acquisition application often enter into community benefits plans with prominent community groups to demonstrate how they will meet the convenience and needs of the community.

Community benefits plans are also sometimes used by banks who have received less than Satisfactory CRA ratings as a part of their remediation plans. Community benefits plans often include specific lending and investment goals in designated LMI communities or a commitment to not close certain branches. Although stakeholders expressed concern that applications with adverse comments cannot be approved without a third party-generated community benefits plan, this is not an official position of the regulators. The regulators will consider third party CRA performance plans, but their contents are not monitored or enforced by the regulators.

Recommendation: Treasury recommends that the CRA regulators clarify that a community benefits plan is just one tool for demonstrating how a bank will meet the convenience and needs of the community, but that it is not required. A bank can choose to engage the community directly or with any credible intermediary or process that demonstrates to the regulator that the bank understands the needs of the community and has a plan for meeting those needs, consistent with its business model. The regulators should also make it clear that a community benefits plan, among other strategies, can be an effective tool for banks with less than Satisfactory ratings who are subject to enhanced scrutiny for their applications for deposit facilities. In these cases, the community benefits plan is a tool that could be used to demonstrate how the approved application would benefit the communities served.

Burden of Maintaining a Public File in the Branch

CRA regulations require a bank to maintain a public file at the main office and at one branch office in each state if the bank is an interstate bank.[55] Generally the public file is required to include written comments from the public related to CRA and responses to the comments, a copy

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[54] FRB, *Semiannual Reports on Banking Applications Activity* (Accessed January 2018), available at: *https://www.federalreserve.gov/publications/2017-september-semiannual-report-on-banking-applications-activity.htm.*

[55] 12 C.F.R. § 25.43(c)(1).

of the most recent CRA performance evaluation, a list of bank branches currently open, a list of bank branches opened or closed in the current and prior two years, a list of loan and deposit services offered at the branches and the transaction fees, a map of each assessment area, the number and amount of consumer loans (if included in the CRA performance evaluation), the bank's CRA disclosure statement, Home Mortgage Disclosure Act data from prior two years, and, if the CRA rating was less than Satisfactory, the quarterly reports on its efforts to improve the rating.[56] In addition, all branches of a bank are required to maintain a copy of the most recent CRA performance evaluation and a list of services provided by the branch.[57] Banks are required to ensure that the public file is updated as of April 1 of each year.[58]

The public file requirement was written when branches were the primary means of reaching customers. Today, banks have websites where all relevant information can be maintained and updated.

Recommendation: Treasury recommends that CRA regulations be amended to allow banks to store the public file electronically on the bank's website. However, consistent with current regulations,[59] any party, upon request, should be given access to a physical copy of the information in a bank's public file.

Additional Items

Although the previous sections covered the primary issues raised through Treasury's stakeholder engagement process, a number of additional issues warrant further exploration by the CRA regulators.

Disparate Treatment of Debt and Equity Investments

Community development investments are treated different from community development loans when considered for CRA credit. Loans to qualified entities are counted toward credit in the year originated, whereas equity investments made in those same organizations are counted each year that the investment is held. Banks receive CRA credit for community development investments reported during prior assessment periods that remain outstanding at the end of the current assessment period.

Banks and community and consumer advocates agree that borrowers benefit from access to longer term loans, yet CRA's disparate treatment of community development loans discourages banks from making community development loans that extend beyond one CRA assessment period. Recipients of CRA-eligible investments state that banks match the terms of the loans to the cycle of their CRA examination, which in some cases is not ideal for asset-liability matching purposes. For example, a Community Development Financial Institution (CDFI) may need a seven-year term loan to fund its small business loan program, but its partnering bank may only offer a three-year loan that is renewable every three years in order to receive CRA credit for the

[56] 12 C.F.R. § 25.43(a) and (b).

[57] 12 C.F.R. § 25.43(c)(2).

[58] 12 C.F.R. § 25.43(e).

[59] 12 C.F.R. § 25.43(d).

loan in multiple assessment periods. This creates an uncertain credit and interest-rate environment for the CDFI and increases the cost of underwriting for the lender.

Recommendation: Treasury recommends that community development loans receive the same annual consideration as community development investments. Longer term loans allow qualified entities to better match capital with the needs of the community. This recommendation could facilitate more capital for CDFIs and encourage more Small Business Administration lending to small businesses.

Inclusion of Affiliates in CRA Assessments

CRA regulations give banks the option to include the activities of their affiliates for consideration in their performance evaluations. Under the current CRA regulations, if a bank's affiliate performs poorly in LMI communities, the bank could unilaterally make the decision to not include this affiliate for consideration in its performance evaluation. Likewise, the bank could choose to include the affiliate only when the affiliate has performed well in LMI communities. Some stakeholders have suggested that, under the current CRA regulations, banks could strategically include their loans to higher income borrowers through their affiliates in order to increase the overall percentage of LMI loans originated by the bank, thus artificially inflating their CRA performance.

Recommendation: Treasury recommends that the CRA regulators evaluate their approach to affiliates in order to ensure that performance evaluations accurately reflect the CRA-eligible activity of the overall bank.

Impact of CCAR on CRA Investments

The largest U.S.-based bank holding companies (BHCs) are subject to the Comprehensive Capital Analysis and Review (CCAR), which reviews quantitative and qualitative aspects of a firm's capital planning process and its ability to maintain sufficient capital to continue its operations under expected and stressful conditions. Under CCAR, differing stress loss assumptions are made for certain public welfare investments (PWIs).[60] BHCs typically structure tax credit investments such as LIHTCs and New Markets Tax Credits (NMTCs) as distinct subsidiaries with limited liability structures that lower a BHC's overall losses by capping losses at each entity.[61] However, other PWIs with less complex structures are actually assigned higher loss projections when compared to LIHTCs and NMTCs. As a result, these PWIs are assessed higher capital requirements under CCAR than tax credit investments with capped loss structures. This differing capital treatment encourages concentration of activity in specific CRA-eligible

[60] 12 U.S.C. 24 (Eleventh) authorizes national banks to make investments, directly or indirectly, designed primarily to promote the public welfare, including the welfare of LMI communities or families, such as by providing housing, services, or jobs. In addition, OCC regulations, 12 C.F.R. Part 24, state that national banks can promote the public welfare through a variety of investments, including those in community and economic development entities and community development projects that develop affordable housing, foster revitalization or stabilization of LMI areas or other areas targeted for redevelopment by local, state, tribal, or Federal government, or provide equity or debt financing for small businesses that are located in such areas or that produce or retain permanent jobs for LMI persons. See *https://www.occ.gov/news-issuances/federal-register/12cfr24.pdf* for examples of PWIs.

[61] Cetorelli, N. and Wang, R., *Bank Regulation and Bank Complexity*, Federal Reserve Bank of New York (April 6, 2016), available at: *http://libertystreeteconomics.newyorkfed.org/2016/04/bank-regulation-and-bank-complexity.html.*

activities, such as LIHTCs, while discouraging other types of investments that benefit LMI communities, such as investments in naturally occurring affordable housing or CDFIs.

Recommendation: Treasury encourages the CRA regulators to review CCAR treatment for PWIs, including consideration of whether current capital standards are reflective of the actual performance of all PWIs, and whether the PWI category should be broken out into sub-categories where capital standards could be more appropriately measured and reflected.

Nonbanks and CRA

The increasing market share of nonbanks in the market for loans eligible for the CRA Lending Test may have implications for the future effectiveness of CRA. For example, data shows that the total nonbank origination share for Fannie Mae, Freddie Mac and Ginnie Mae has increased from 30 percent in 2013 to 60 percent in 2017.[62] In addition, 2015 data suggests that the share of nonbank originations in the small business lending market had risen to 35 percent.[63] This increasing market share by nonbanks places more pressure on CRA-regulated banks, whose Lending Test evaluations are largely based on mortgages and small business loans. Banks have recommended that regulators consider this change to the credit markets when evaluating the performance context for CRA examinations. Banks and community groups have also suggested that regulators consider whether the same market failures that apply to the market for bank loans also apply to the market for nonbank loans.

Recommendation: Treasury encourages the CRA regulators to continue to monitor the impact of the emergence of nonbanks on the effectiveness of CRA. More research should be conducted on the extent to which nonbanks are meeting the credit needs of LMI communities, with a particular focus on loans guaranteed by the Small Business Administration and Federal Housing Administration.

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[62] Urban Institute, *Housing Finance at a Glance: A Monthly Chartbook, February 2018* (February 2018).

[63] Jagtiani, J. and Lemieux, C., *Small business lending after the financial crisis: A new competitive landscape for community banks*, Federal Reserve Bank of Philadelphia (March 2016).

Appendix A: Background

CRA was enacted in response to concerns that federally insured banks were not making sufficient credit available in the local areas where they were chartered and operated, primarily due to the assertion of disinvestment and redlining practices. CRA was also motivated by a desire to have banks "play the leading role" in providing the "capital required for local housing and economic development needs."[64]

Disinvestment is the practice of collecting deposits from local neighborhoods for use outside of those communities at the expense of addressing the local area's housing, agricultural, and small business credit needs. In the late 1970s, concerns about disinvestment extended to rural bankers who accepted deposits from local communities, but then engaged in more lucrative lending and investment opportunities in urban centers. Redlining is the practice of denying services, either directly or through selectively raising prices, to residents of certain geographies. Redlining is generally based on the race, color or ethnicity of residents of particular communities, and often adversely affects LMI neighborhoods. Redlining and disinvestment may overlap when the redlined community is also a source of deposits.

The practice of redlining became apparent in the 1930s and continued until Congress addressed the practice with fair lending laws in the 1960s. As part of the Civil Rights Act of 1968, Congress passed the Fair Housing Act prohibiting discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability. Later, as enacted in 1974 and amended in 1976, the Equal Credit Opportunity Act prohibited creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, use of public assistance, or for exercising their rights under the Consumer Credit Protection Act. Although these fair lending laws were on the books when CRA was passed, there was the belief that they did not fully address geographic discrimination and its impact on access to credit in LMI communities.

In 1975, Congress passed the Home Mortgage Disclosure Act (HMDA) to provide loan-level information and ensure better compliance for depository institutions relative to lending discrimination. Data collected pursuant to HMDA enabled lawmakers to assess the degree of both racial and geographic housing discrimination, prompting policymakers to seek incentives for banks to do more to reverse discriminatory practices. Signed into law in October 1977, CRA was designed to address geographic discrimination that was not previously successfully addressed by regulators and various legislative and regulatory regimes.

The administration of CRA has evolved over the years through various legislative and regulatory actions. CRA originally required that reports not be made available to the public, but required that regulators consider CRA performance in evaluating bank merger or expansion proposals. In the early years it was believed that CRA was largely ineffective, mainly because performance evaluations were not public and banks were evaluated based on their intentions rather than actual

[64] Community Credit Needs: Hearings on S.406 Before the Senate Committee on Banking, Housing and Urban Affairs, 95th Cong. (1977) (statement of Chairman Proxmire).

outcomes. To highlight the ineffectiveness of CRA, community groups point to data that demonstrated in the first decade of CRA that some regulators conducted no exams and only 8 out of 40,000 applications for a new branch, merger, or new financial holding company were denied due to CRA.[65] The concerns of advocates peaked in 1988 when a series of articles by Bill Dedman in the Atlanta-Journal Constitution, for which he later won a Pulitzer Prize, looked at the continued practice of redlining and disparities in access to credit in LMI communities.[66]

In an effort to promote transparency and the efficacy of the CRA ratings process, Congress used the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) to amend CRA to require the regulators to:

- provide more detailed written evaluations;
- publicly disclose the CRA reports; and
- establish a tiered rating system.[67]

FIRREA also expanded HMDA data to include race, gender, and income and to allow for analysis with census tract data.[68]

Two years later, Congress expanded the disclosure requirements to include publication of both the data and the factual findings used to support the rating assigned to a bank.[69] The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 further amended CRA by requiring separate CRA performance assessments in each state where a bank maintains a presence.[70]

Noteworthy revisions also took place in 1995, when the regulators updated the CRA regulations in an effort to better account for differing institutional sizes and business models and to make the exam process more objective, more relevant, and less burdensome for smaller banks.[71] Ratings were also updated to the current four level scale.[72]

The last major revision to the regulation was in 2005. Bank size definitions were revised to "Small Banks," "Intermediate Small Banks," and "Large Banks."[73] In addition, the 2005 revisions included language that any evidence of discrimination or credit practices that violate an

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[65] Apgar, W. and Essene, R., *The 30th Anniversary of the CRA: Restructuring the CRA to Address the Mortgage Finance Revolution, Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act*, Federal Reserve Banks of Boston and San Francisco (February 2009), available at *https://www.frbsf.org/community-development/files/revisiting_cra.pdf*.

[66] The Atlanta Journal and The Atlanta Constitution, *The Color of Money* (May 1-4, 1988), available at: *http://powerreporting.com/color*.

[67] 12 U.S.C. § 2906.

[68] 12 U.S.C. § 2803(b)(4).

[69] 12 U.S.C. § 2906(b)(1)(A).

[70] 12 U.S.C. § 2906(d).

[71] Ludwig, E., et al., *The Community Reinvestment Act: Past Successes and Future Opportunities, Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act*, Federal Reserve Banks of Boston and San Francisco (February 2009), available at *https://www.frbsf.org/community-development/files/revisiting_cra.pdf*.

[72] 12 U.S.C. § 2906(b)(2).

[73] Getter, D., *The Effectiveness of the Community Reinvestment Act*, Congressional Research Service (January 7, 2015).

applicable law, rule, or regulation by any affiliate whose loans were part of the bank's lending performance would adversely affect an agency's evaluation of a bank's CRA performance.[74]

Administration of CRA

CRA only applies to depository institutions insured by the FDIC. CRA does not apply to trust banks, credit unions, or nonbanks. CRA is governed by the 1977 statute as amended (12 U.S.C. § 2901 *et seq.*), the CRA regulations (12 C.F.R. parts 25, 195, 228, and 345), and the 2016 Interagency Questions and Answers.[75] The FDIC, FRB, and OCC administer CRA for the insured depository institutions for which they are the primary federal regulators.

Table 4: Total Depository Institutions by Regulator, 2018

		$ in millions			
Regulator	**Total Institutions**	**Total Assets**	**Average Assets per Institution**	**Total Deposits**	**Average Deposits per Institution**
FDIC	3,617	$2,935,844	$812	$2,303,812	$637
FRB	817	$2,816,492	$3,447	$2,234,093	$2,735
OCC	1,210	$11,753,175	$9,713	$8,910,930	$7,364
Total	5,644	$17,505,511		$13,448,835	
Total FDIC-insured depository institutions as of 2/26/18; financial data as of 12/31/17; Source: FDIC					

CRA Performance Evaluations and ratings are made public through the Federal Financial Institutions Examination Council (FFIEC). Banks are assigned a rating of Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance based on the bank's performance as evaluated under the various CRA tests and examination procedures.

CRA regulations require a bank to delineate one or more geographic assessment areas within which a bank's regulator will evaluate a bank's record of helping to meet the credit needs of its community.[76] Assessment areas for retail banks must include geographies in which a bank has its main office, its branches, its deposit-taking automated teller machines, and the surrounding geographies in which that bank has originated or purchased a substantial portion of its loans.[77] Wholesale banks, which are banks without retail customers, and limited purpose banks, which offer limited products (such as credit cards or auto loans), have the same rules for delineating assessment areas as retail banks, but are not required to consider the surrounding geographies from which the bank has originated or purchased a substantial portion of loans.[78]

[74] 12 C.F.R. § 25.28(c).

[75] 81 FR 48506-56 (July 25, 2016).

[76] 12 C.F.R. § 25.41.

[77] 12 C.F.R. § 25.41(c).

[78] 12 C.F.R. § 25.41(b).

CRA performance evaluations include different tests depending on the size and type of bank evaluated. Annual thresholds are set for Large, Intermediate Small, and Small Banks, updated and indexed to the Consumer Price Index.

Large Banks, currently banks with more than $1.252 billion in assets, have the most comprehensive test, which includes:

- The Lending Test, which evaluates within the assessment area the number and dollar amount of home mortgage, small business, small farm, and consumer loans; the geographic distribution of loans, including loans to LMI communities; borrower characteristics including a distribution of loans to borrowers of all income levels; the bank's community development lending; and the bank's innovative or flexible lending practices used to address the credit needs of LMI individuals or geographies;

- The Investment Test, which assesses the dollar amount, complexity, responsiveness of qualified community development investments that benefit a bank's assessment areas, and the degree to which qualified investments are not routinely provided by private investors; and

- The Service Test, which examines the availability and effectiveness of retail banking services as well as the provision of community development services in the designated assessment areas.[79]

Intermediate Small Banks, currently banks with between $313 million and $1.252 billion in assets, are subject to a Lending Test plus a Community Development Test that evaluates community development loans, qualified investments, and community development services, as well as responsiveness to community development needs.[80]

Small Banks, currently banks with less than $313 million in assets, are subject to the same Lending Test as Intermediate Small Banks, but are not subject to the Community Development Test.[81]

Wholesale and Limited Purpose Banks are subject to a separate Community Development test, which evaluates the number and amount of community development loans, qualified investments, and services; the use of innovative or complex qualified investments, community development loans or services; and responsiveness to credit and community development needs.[82]

The point system used to track a large, retail institution's performance is provided in Table 5. The Lending Test is considered the most important test, as evidenced by the fact that it maintains the greatest weighting of the three tests.

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[79] 12 C.F.R. § 25.22-25.24.

[80] 12 C.F.R. § 25.26

[81] Ibid.

[82] 12 C.F.R. § 25.25.

Table 5: Points Assigned by Test

Rating	Lending	Investment	Service
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

A large, retail institution's composite rating is assigned by adding all of the component test ratings (Table 5). According to interagency examination guidance, a bank cannot receive a composite rating of Satisfactory or higher unless it receives at least Low Satisfactory on the Lending Test.

Table 6: CRA Composite Ratings

Rating	Total Points
Outstanding	20 or more
Satisfactory	11 – 19
Needs to Improve	5 – 10
Substantial Noncompliance	0 – 4

CRA regulations also allow banks to request approval of a Strategic Plan to assess the bank's CRA performance.[83] The Strategic Plan option provides a bank with the opportunity to construct its CRA plan prospectively to fit the needs of its communities. The regulator assesses a bank's record of helping to meet the credit needs of its assessment areas under a Strategic Plan if the bank has submitted the plan to the regulator; the regulator has approved the plan; the plan is in effect; and the bank has been operating under an approved plan for at least one year.[84] Although a bank is given great flexibility when crafting its Strategic Plan, a bank is required to engage the public in developing and amending the plan.[85]

In addition to providing a public rating on a bank's CRA activity, regulators consider CRA ratings as a factor when banks request permission to engage in certain activities, such as opening branches or purchasing another bank. Banks with a CRA rating below Satisfactory may be

[83] 12 C.F.R. § 25.27(e).

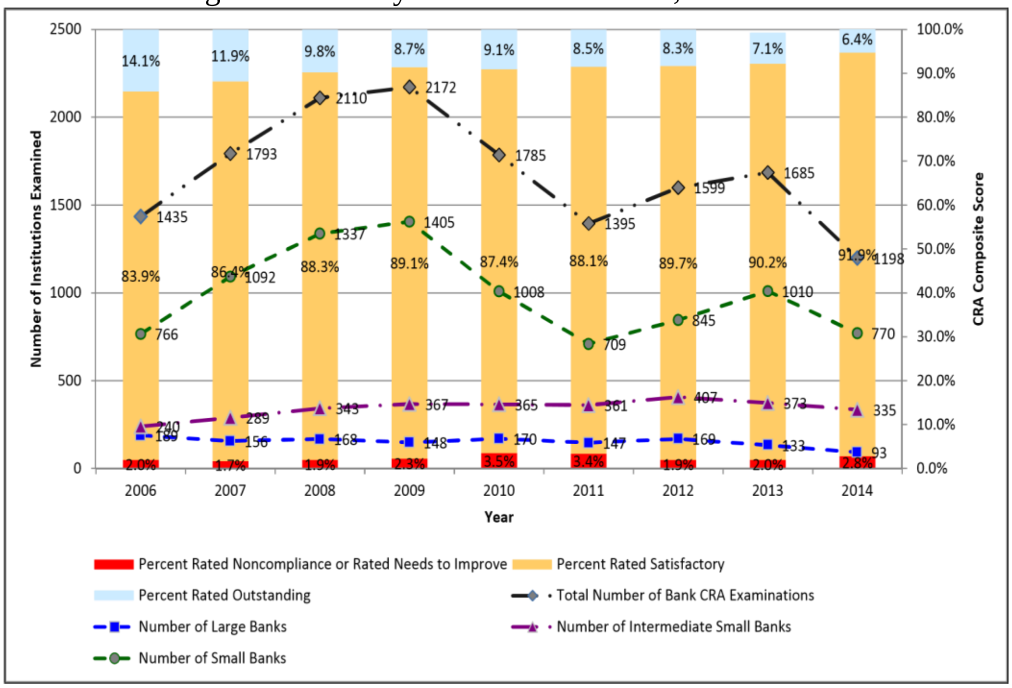
[84] 12 C.F.R. § 25.27(a).

[85] 12 C.F.R. § 25.27(d).

denied permission to open branches or purchase another bank until Satisfactory or Outstanding is achieved.

As shown in Figure 1, the majority of banks, approximately 97 percent, received an Outstanding or Satisfactory rating between 2006 and 2014. However, the percentage of banks that received an Outstanding rating has declined considerably since 2006.

Figure 1: Summary of CRA Examinations, 2006 – 2014



Source: Data provided by the FFIEC CRA Rating Search, available at http://www.ffiec.gov/craratings/default.aspx. Graphic provided by Getter, D., *The Effectiveness of the Community Reinvestment Act*, Congressional Research Service (January 7, 2015).

Appendix B: Participants List

CRA Regulators

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

Community and Consumer Advocates

Association for Neighborhood and Housing Development
California Capital Financial Development Corporation
California Reinvestment Coalition
Center for Responsible Lending
Consumer Federation of America
East Los Angeles Community Corporation
Fair Housing Council of the San Fernando Valley
Housing Assistance Council
Manhattan West Asset Management
National Asian American Coalition
National Community Reinvestment Coalition
National Community Renaissance
National Congress of American Indians
National Disability Institute
National Diversity Coalition
National Fair Housing Alliance
Operation Hope
UnidosUS
Woodstock Institute

Academics and Think Tanks

Ellen Seidman, The Urban Institute
Chris Herbert, Joint Center for Housing Studies, Harvard University
Kenneth H. Thomas, The Wharton School at the University of Pennsylvania
Lawrence White, New York University
Lei Ding, Federal Reserve Bank of Philadelphia
Mark Willis, New York University
Raphael Bostic, Federal Reserve Bank of Atlanta

Banks

Abacus Federal Savings Bank
Ally Bank
Bank of America
BankPlus

BBVA Compass Bancshares, Inc.
Capital One Financial Corporation
Central Bancompany, Inc.
Chain Bridge Bancorp, Inc.
Charles Schwab Bank
Citigroup Inc.
Fifth Third Bancorp
First Horizon National Corporation
First Midwest Bank
First National of Nebraska, Inc.
F.N.B. Corporation
Goldman Sachs Bank USA
Independent Bank
Industrial Bank
JPMorgan Chase Bank
KeyBank
Mechanics Bank
M&T Bank
Morgan Stanley Bank
Pan American Bank
PNC Bank
Regions Bank
Royal Business Bank
Santander Bank
Seacoast Commerce Bank
TD Group US Holdings
Union State Bank
United Bank
U.S. Bank
Wells Fargo Bank
Whitney Bank
Wilmington Savings Fund Society, FSB

Trade Associations

Affordable Housing Investors Council
American Bankers Association
Association of Military Banks of America
Community Development Bankers Association
Consumer Bankers Association
Credit Union National Association
Housing Partnership Network
Independent Community Bankers of America

Michigan Bankers Association
Mid-Size Bank Coalition of America
National Association of Affordable Housing Lenders
National Association of Federally-Insured Credit Unions
National Association of Government Guaranteed Lenders
National Bankers Association
National Housing Conference
National Federation of Community Development Credit Unions
Opportunity Finance Network
Utah Bankers Association

Law Firms

Buckley Sandler LLP
Covington & Burling LLP
Hudson Cook LLP
Simpson Thacher & Bartlett LLP
Wachtell, Lipton, Rosen & Katz

Other Industry Stakeholders

CohnReznick
Community Investment Corporation
Local Initiatives Support Corporation
Massachusetts Housing Investment Corporation
Novogradac
Promontory
The Clearing House
U.S. Chamber of Commerce

Acronyms and Abbreviations

Acronyms and Abbreviations	Terms
BHC	Bank Holding Company
CCAR	Comprehensive Capital Analysis and Review
CFPB	Consumer Financial Protection Bureau
CRA	Community Reinvestment Act
CRA regulators	FDIC, FRB, OCC
CDFI	Community Development Financial Institution
FDIC	Federal Deposit Insurance Corporation
FRB	Board of Governors of the Federal Reserve System
FFIEC	Federal Financial Institutions Examination Council
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989
HMDA	Home Mortgage Disclosure Act
LIHTC	Low Income Housing Tax Credit
LMI	Low- and Moderate- Income
MSA	Metropolitan Statistical Area
NMTC	New Markets Tax Credit
OCC	Office of the Comptroller of the Currency
PWI	Public Welfare Investment
Q&As	Interagency Questions and Answers
Treasury	U.S. Department of the Treasury