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MEMO

From: Kenneth H. Thomas, Ph.D.

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

Date: August 5, 2022

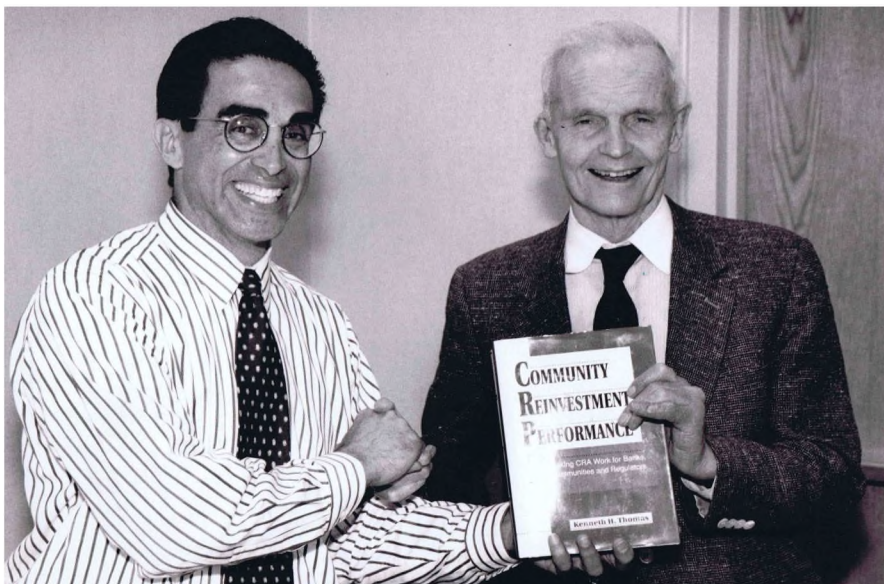
Re: Executive Summary of Six Comments on Why the NPR Should be Discarded and the Current CRA Regulations Should Remain With Some Improvements Plus the Addition of the 5% Deposit Reinvestment Rule for Branchless Banks

This is an Executive Summary of six comments on this NPR submitted under separate cover. Before summarizing them, I will first review my relevant background on CRA reform.

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

My Relevant Background on CRA Reform

My current and past expertise in CRA in general and its reform in particular are relevant to this comment. In short, I have spent the majority of my professional life since 1977 focused on the CRA. I was greatly honored to have known and spent time with former Senator William Proxmire, the “Father of CRA.” The following photo was taken in 1995.



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

I am proud of the fact that my first book on CRA, Community Reinvestment Performance (Probus Publishing, Chicago, 1993), received the only endorsement he ever gave to any CRA publication:

Dr. Thomas' book, Community Reinvestment Performance, is far and away the best analysis of government regulation that I have seen in any field. He spotlights the regulatory problems that continue in CRA and points out precisely how they are being overcome. CRA will benefit enormously from this superlative examination and report.

I have worked closely with numerous banks, community groups, and regulators on CRA since 1977, including training federal bank CRA examiners. Besides acting as a CRA consultant and being on the boards of various financial institutions, I am a cofounder and founder of two different CRA high impact mutual funds devoted primarily to providing CRA qualified investments to benefit LMI areas and people.

I had the privilege of testifying before Congress and federal bank regulators several times on CRA and related bank regulatory and public policy issues. Many of the recommendations in my books, including various CRA exam procedures and tests, were directly implemented into current bank regulations, and more details in this regard are found in The CRA Handbook (McGraw Hill, New York, 1998) at www.CRAHandbook.com.

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

In summary, I have a vested interest in getting CRA reform "right," which I define as being what Senator Proxmire intended. We got it right in 1995 when I worked with Comptroller Ludwig and his OCC staff on the last major reform of CRA, and that is my goal during the present effort.

The "Joint" NPR is Really A Fed Effort That Will Likely be Remembered as Another Fed Mistake

The so-called "joint" NPR is really a Fed initiative clothed as an interagency effort. This is important because of the Fed's tortured CRA history, which includes its failed efforts to derail the establishment of CRA in 1977 and its repeated efforts to water down the 1993-1995 reform efforts spearheaded by the OCC. Former Fed officials now run Treasury and the OCC.

The nearly 700-page NPR reminds me of a Ph.D. dissertation rather than the CRA regulatory reform that is needed to modernize the law to continue and increase reinvestment in our nation's Low- and Moderate-Income (LMI) communities to benefit LMI households.

I will therefore not dignify the 180 questions in the NPR with answers, because that entire effort should be discarded. This is because it is based on eight different objectives instead of the one and only goal of CRA reform that matters, namely modernizing it to account for branchless banks and digital banking. And, the NPR's solution to that critical modernization objective is totally wrong.

This CRA "mission creep" is not surprising as the NPR is hauntingly familiar to the Fed's September 2020 ANPR. In addition to the Fed's mission creep and its continued efforts to politicize CRA, we must remember that despite their more than 400 Ph.D. economists, their recent track record as our central bank has been very disappointing (e.g., "transitory" inflation). Their current NPR will likely go down in CRA history as yet another Fed mistake.

There is No Need for the NPR: The Current Regulations Need to be Modernized With the 5% Deposit Reinvestment Rule and Updated With Some Previously Suggested Improvements

Everyone agrees that CRA needs to be modernized to reflect the growth of branchless banks and digital banking, but that can best be done with the 5% Deposit Reinvestment Rule. It requires any bank with more than 5% of its deposits from a Metropolitan Statistical Area (MSA) to have a commensurate CRA reinvestment obligation there. The misguided NPR suggests the backwards concept of basing non-facility Assessment Areas on loans rather than deposits.

The intent of CRA and in fact its middle name is about the REINVESTMENT of deposits. Rather than reinvesting them in affluent neighborhoods or “hot spots” where they emanate, the 5% Deposit Reinvestment Rule requires the benefits to be reinvested in CRA “deserts” in the sourcing MSAs.

Similar to a Robin Hood Rule, giant internet, credit card, fintech and other branchless banks, which are harvesting tens of billions from the affluent communities of our largest MSAs, would be required to provide CRA benefits *in the LMI communities* in those same MSAs.

Who can argue with this rule other than the branchless banks that would have new reinvestment requirements OR the “sanctuary” cities of Salt Lake City, Sioux Falls and Wilmington where most of them are based that now receive 100% of the CRA benefits of the deposits from our large MSAs.

Besides this 5% Deposit Reinvestment Rule fix to modernize CRA, it will also benefit from many of the best ideas in the rescinded OCC Final Rule such as a list of qualifying community development activities and a regulatory prequalification procedure, some of which are in the NPR.

Together this modernization fix with some generally accepted improvements can be called “CRA Reform Lite” as compared to the complex and unnecessary 700-page overhaul in the NPR. Yes, CRA needs to be updated and tuned-up not totally overhauled as proposed in the NPR.

All of the other non-modernization goals for CRA reform supposedly being addressed by the NPR can be met through the existing regulations such as increased examiner training and more consistent enforcement among the three agencies.

The agencies, however, must be more mindful of the increased regulatory burden, especially on banks with assets over \$10 billion that are most adversely impacted by the NPR. Instead of those 135 banks that control 88% of industry assets, the NPR should have focused on the 32 banks with assets over \$100 billion that control three-fourths of industry assets.

Listing of Six Detailed NPR Comments That I Have Submitted Under Separate Cover:

1. “The NPR’s Comment Period Should Have Been Extended”
2. “The Fed’s Heavy Hand in this NPR”
3. “The Fed’s Mission Creep and Overreach on CRA Reform”
4. “The NPR Must Have the 5% Deposit Reinvestment Rule”
5. “The NPR’s Major Errors of Commission and Omission”
6. “Why Community Groups, Banks, and Examiners Should Oppose the NPR”