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MODERNIZATION OR A MISSED OPPORTUNITY? THE COMPTROLLER OF THE CURRENCY UPDATES THE COMMUNITY REINVESTMENT ACT

I. INTRODUCTION

The Community Reinvestment Act (“CRA” or the “Act”) was enacted in 1977 as a safeguard to ensure that insured depository institutions meet the credit needs of their entire community, including low- and moderate-income neighborhoods.¹ The Board of Governors of the Federal Reserve System (“FRB”), the Federal Deposit Insurance Corporation (“FDIC”), and the Office of the Comptroller of the Currency (“OCC”) conduct periodic “performance evaluations” to determine whether these institutions distribute loans fairly and evenly among customers of all economic backgrounds.²

Banks and lawmakers alike have recently questioned whether the CRA adequately measures how banks extend credit and services to various demographic groups.³ Of the nation’s 5,644 depository institutions subject to CRA examinations, 96% receive a passing rate, with only 16 of North Carolina’s 949 respective branches and offices receiving a sub-par rating.⁴ While at first glance these numbers suggest financial inclusion by the overwhelming majority of banks, the current evaluation process does not adequately measure banks’ performance in light of CRA objectives or technological and regulatory changes in the banking industry.⁵

1. Community Reinvestment Act (“CRA”) § 30, 12 U.S.C. § 2901 (2012) (charging the appropriate federal supervisory agencies to encourage financial institutions to “help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.”).

2. FED. FIN. INST. COUNSEL, CMTY. REINVESTMENT ACT: BACKGROUND & PURPOSE (Sept. 6, 2018), <https://www.ffiec.gov/cra/history.htm>.

3. *See generally* Press Release, U.S. Dep’t of the Treasury, Treasury Releases Community Reinvestment Act Modernization Recommendations (Apr. 3, 2018) (describing the Treasury’s call for modernization of CRA).

4. FED. FIN. INST. COUNSEL, FFIEC INTERAGENCY CRA RATING SEARCH (Nov. 1, 2018), <https://www.ffiec.gov/%5C/craratings/default.aspx>; Memorandum from Treas. to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation 28 (Apr. 3, 2018).

5. *See* Scott Astrada, *BankThink: Otting Should Strengthen, Not Weaken, CRA*, AM. BANKER, June 29, 2018, 2:33 PM, <https://www.americanbanker.com/opinion/otting-should->

Comptroller of the Currency Joseph Otting has demonstrated his willingness to update CRA procedures in light of the Trump Administration's pledge to increase efficiency and effectiveness of financial regulation.⁶ On June 15, 2018, the OCC released a bulletin announcing modifications to supervisory policy and processes for CRA performance evaluations, and on August 28, 2018, released an *Advanced Notice for Proposed Rulemaking* ("ANPRM") seeking public comment on various improvements to the CRA.⁷ While the OCC was acting alone, its modifications and proposals were made after the U.S. Department of the Treasury released a report in June, 2017, which "comprehensively assess[e] how the CRA could be improved,"⁸ and a thirty-five-page memorandum on April 3, 2018, outlining weaknesses of the CRA and recommendations for its improvement.⁹ While these updates are intended to provide more accurate and reliable indicators of a bank's lending and investment activity across its community, the new protocol does not address the technological changes impacting banking operations.¹⁰

This Note addresses whether the OCC's recent updates to the CRA policy and procedures effectively meet concerns that the Act is antiquated. Part II explains the history of the CRA, and the process by which banks are evaluated under the Act.¹¹ Part III explains the various critiques of the CRA in its current state.¹² Part IV assesses the recent changes to the CRA.¹³ Part V evaluates how the proposed changes to the CRA inadequately meet the needs of borrowers and banks.¹⁴

strengthen-not-weaken-cra (discussing the history of lending discrimination that necessitates strong lending regulations via the CRA).

6. See Exec. Order No. 13,772, 82 Fed. Reg. 9965 § 1(f) (Feb. 3, 2017) (outlining the "Core Principles" of the Trump Administration's financial policy).

7. Advanced Notice of Proposed Rulemaking: Office of the Comptroller of the Currency, *Reforming the Community Reinvestment Act Regulatory Framework*, 83 Fed. Reg. 45053 (proposed Aug. 28, 2018) (to be codified at 12 C.F.R. §§ 25).

8. U.S. DEP'T OF THE TREASURY, A FINANCIAL SYSTEM THAT CREATES ECONOMIC OPPORTUNITIES, BANKS AND CREDIT UNIONS (2017).

9. Memorandum from the U.S. Dep't of the Treasury, to the Office of the Comptroller of the Currency, the Board of Governors of the Fed. Reserve System, and the Fed. Deposit Ins. Corp. 9 (Apr. 3, 2018) [hereinafter Memorandum from Treasury].

10. See *Modernizing the Community Reinvestment Act (CRA)*, AM. BANKERS ASS'N, <https://www.aba.com/Advocacy/Issues/Pages/modernizing-cra.aspx> (last visited Jan. 30, 2019) (claiming that the rules implementing CRA "have not kept pace with the times or with new technologies").

11. See *infra* Part II.

12. See *infra* Part III.

13. See *infra* Part IV.

14. See *infra* Part V.

II. CRA EXAMINATION PROCESS AND HISTORY

Congress passed the CRA to require the OCC, FRB and FDIC to use their authority when examining financial institutions to encourage insured depository institutions to “help meet the credit needs of the local communities in which they are chartered consistent with safe and sound operation.”¹⁵ These three agencies have since implemented various regulations guiding the processes for evaluation, both individually in specific provisions of the Code of Federal Regulations (“CFR”), and jointly via a series of Inter-Agency Questions and Answers.¹⁶ Since Congress granted these agencies discretion in determining how to evaluate banks’ community lending performance, it has repeatedly tightened the reins to require greater disclosure and a more objective system.¹⁷

Examination results were initially not made available to the public, but Congress passed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”) to amend the CRA and require regulators to provide more detailed written evaluations, publicly disclose CRA results, and establish a tiered rating system.¹⁸ Further, the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 required separate CRA performance assessments in each state where a bank maintains a physical presence.¹⁹ The following year, in 1995, the CRA examination process was modified to account for an institution’s size and business operations.²⁰ Most recently, the agencies decided to adjust the asset size thresholds for small and large institutions depending on the Consumer Price Index in 2005.²¹ But, while many have blamed CRA

15. Community Reinvestment Act (“CRA”) § 30(b), 12 U.S.C. § 2901(b) (2012).

16. *See generally* TREASURY, FED. RESERVE SYS. AND FDIC, COMMUNITY REINVESTMENT ACT: INTERAGENCY QUESTIONS AND ANSWERS REGARDING COMMUNITY REINVESTMENT, 81 Fed. Reg. 48506, 48506 (July 25, 2016) [hereinafter TREASURY INTERAGENCY QUESTIONNAIRE] (implementing the most recent form of the Inter-Agency Questions and Answers).

17. DARYLL GETTER, CONG. RESEARCH SERV., R43661 at 8, THE EFFECTIVENESS OF THE COMMUNITY REINVESTMENT ACT (2017).

18. 12 U.S.C. § 2906 (2012).

19. *Id.* § 2906(d) (removing restrictions on inter-state branching).

20. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE COMMUNITY REINVESTMENT ACT (Feb. 13, 2008), <https://www.federalreserve.gov/newsevents/testimony/braunstein20080213a.htm> (stating that the CRA was modified in 1995 in response to directive from President Clinton, ordering the respective agencies to make CRA regulations more performance based, clarify performance standards, and make examination procedures more consistent); Community Reinvestment Act Regulations, 60 Fed. Reg. 22156 (1995).

21. 12 C.F.R. § 228.12(u) (2012).

requirements for contributing to the 2008 financial crisis, few improvements have been made in recent years to reflect the current state of banking.²²

The OCC regulates national banks and federal savings associations, the FRB regulates state-chartered banks who are members of the Federal Reserve System (“FRS”), and the FDIC regulates insured state banks that are not members of the FRS.²³ Insured depository institutions are generally examined by their respective federal regulating agency every three years, or less frequently in the case of smaller banks.²⁴ The results of these examinations are measured by CRA Performance Evaluations, made public through the Federal Financial Institutions Examination Council (“FFIEC”), and are assigned a rating of Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance.²⁵

While performance evaluations depend on the size and type of bank evaluated, large banks with more than \$1.252 billion in assets have the most comprehensive test, consisting of the Lending Test, Investment Test, and Service Test.²⁶ All banks are subject to the Lending Test, which evaluates the number and dollar amount of home mortgage, small business, small farm, and consumer loans among all income levels within the bank’s assessment area.²⁷ The Investment Test assesses the investment’s dollar amount, complexity, and benefit to the assessment area, plus the degree to which these investments are not routinely provided by private investors.²⁸ Finally, the Service Test examines the availability and effectiveness of retail banking services, and how community development services are provided within the assessment area.²⁹ In addition, Intermediate Small Banks, Wholesale Banks, and Limited Purpose Banks are subject

22. *But see* Neil Bhutta & Daniel Ringo, *Assessing the Community Reinvestment Act’s Role in the Financial Crisis*, Federal Reserve Board (May 26, 2015), <https://www.federalreserve.gov/econresdata/notes/feds-notes/2015/assessing-the-community-reinvestment-acts-role-in-the-financial-crisis-20150526.html> (arguing that the incentive structure of the CRA contributed little to the 2008 sub-prime mortgage crisis).

23. *See* OCC, CRA QUESTIONS AND ANSWERS, DEP’T OF THE TREASURY, <https://www.occ.treas.gov/topics/compliance-bca/cra/questions-and-answers.html> (describing the regulatory landscape of CRA implementation).

24. *See id.* (stating that banks with \$250 million or less aggregate assets and an “outstanding” rating are examined no sooner than 60 months after the most recent examination, while banks of this size receiving a “satisfactory” rating are examined no sooner than 48 months after the most recent examination).

25. Memorandum from Treasury, *supra* note 9, at 28.

26. Memorandum from Treasury, *supra* note 9, at 29.

27. 12 C.F.R. § 25.22 (2012).

28. *Id.* § 25.23.

29. *Id.*

to Community Development tests that evaluate the number and amount of community development loans, qualified investments, and community development services, plus the bank's responsiveness to credit and community development needs within the assessment area.³⁰

CRA ratings are ultimately determined by adding the points received on the Lending, Investment, and Services Tests.³¹ Regulators use these ratings when considering a bank's application to expand deposit facilities by obtaining a national bank charter, opening new branches, relocating the home office or branch office, and merge or acquire other banks.³² However, while banks that receive below a "satisfactory" rating may be denied permission to expand their activities until improving their rating, there is no way to actually penalize banks for poor lending performances in their community.³³

III. CALLS FOR MODERNIZATION

A. *Changes in Technology and the Business of Banking*

Despite organizational and technological changes that have affected the banking industry, the CRA has failed to evolve since its enactment over forty years ago.³⁴ First, the practice of measuring CRA activity within assessment areas bound by a bank's physical geographic location is unrepresentative of a banks' overall activity—and thus outdated.³⁵ Since the CRA's birth, banking operations have expanded from traditional "brick and mortar" facilities—consisting of an institution's main

30. See 12 C.F.R. § 25.24 (codifying procedure for the service test); see also Memorandum from Treasury *supra* note 9, at 29 (designating Intermediate Small Banks as banks with between \$313 million and \$1.252 billion in assets).

31. See Memorandum from Treasury, *supra* note 9, at 30 (delegating the requisite point value for each rating).

32. 12 U.S.C. § 2902(3) (2012).

33. Memorandum from Treasury, *supra* note 9, at 31.

34. See Joseph Otting, *BankThink: We Have a Once-in-a-Generation Chance to Revamp CRA. Let's Use It.*, AM. BANKER, Aug. 30, 2018 (claiming changes to the regulatory framework "have failed to keep up with the evolution of how bank services are delivered, most significantly as a result of interstate branching and the digitization of service"); but see Riegle-Neal Act Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal Act"), 12 U.S.C. § 2906(d) (2012) (delineating CRA evaluation standards for institutions with interstate branches).

35. See FED. RESERVE BANK OF KANSAS CITY, CONSUMER AFFAIRS: DELINEATION OF ASSESSMENT AREAS (Aug. 1, 2017), <https://www.kansascityfed.org/en/banking/fedconnections/archive/delineation-of-assessment-areas-8-1-17> (describing the process by which assessment areas are formed).

office, its branches, and deposit-taking ATMs—to a digital empire of online lending and mobile banking apps.³⁶ Customers’ physical presence is no longer required to deposit funds or take out loans.³⁷ Rather, a customer may maintain an account with a bank in California, withdraw cash, deposit checks, and take out loans with the touch of a screen—without even leaving the customer’s home in New York.³⁸ Today’s CRA examination process fails to account for the fact that banks no longer lend to customers strictly within their physical communities.³⁹ Instead, the evaluation should consider a bank’s lending activity overall, beyond geographic confines.⁴⁰

Banks are currently required to present one or more assessment areas for review, which include the institution’s main office, branches, ATMs, and surrounding geographies in which the institution has originated or purchased a substantial portion of its loans.⁴¹ However, the assessment area may not extend substantially beyond a metropolitan statistical area or state boundary.⁴² Because banks’ lending activity is no longer confined within a state or geographic region, this method of evaluation substantially limits banks’ comprehensive performance from CRA consideration.⁴³ In fact, examiners have increasingly begun to disregard

36. *Id.*

37. *See, e.g.*, SANTANDER BANK, *Bank Digitally and Confidentially*, <https://www.santanderbank.com/us/personal/banking/digital-banking/digital-banking-overview> (last visited Feb. 9, 2019) (advertising the ability to “Check your balance, deposit checks, pay bills, shop with Apple Pay, or transfer money virtually anywhere, any time”).

38. *Id.*

39. Kenneth Thomas, *Why Fintechs Should be Held to CRA Standards*, AM. BANKER, Aug. 24, 2018.

40. *Id.*

41. Tina M. Brinson, *Your Assessment Area and Performance Context*, FIN. DEPOSIT INS. CORP. at 3, (Oct. 27, 2016), https://www.fdic.gov/news/conferences/other_events/2016-10-27-banker-call.pdf (defining an assessment area as consisting of one or more MSAs (Metropolitan Statistical Areas), or one or more contiguous political subdivisions such as counties, cities, or towns, including geographies where an institution has its deposit taking facilities, and surrounding areas where a substantial portion of loans are made. The assessment area may not extend substantially beyond an MSA or state boundary, and may not reflect illegal discrimination or arbitrarily exclude low- and moderate-income areas).

42. *Id.*

43. *See* Lael Brainard, *Keeping Community at the Heart of the Community Reinvestment Act*, BOARD OF GOVERNORS OF THE FED. RESERVE SYSTEM (May 18, 2018), <https://www.federalreserve.gov/newsevents/speech/brainard20180518a.htm> (discussing the need for CRA assessments to adapt to how technological advances have changed branching operations).

a bank's assessment area, and are instead asserting that examiners should define the area that banks serve during the evaluation process.⁴⁴

If assessment areas based on counties, metropolitan statistical areas, or other measures of a bank's physical location present challenges to the precision of CRA evaluations, the concept of assessment areas may be unworkable for contemporary banks with non-traditional business models.⁴⁵ "Specialized banks"—wholesale, limited purpose, or internet banks—tend to have an even more limited presence in their designated assessment areas.⁴⁶ While many of these institutions are well-known across the nation, they also tend to carry a smaller asset base and thus lack the ability and physical presence to invest in community lending in one specific area.⁴⁷

The American Bankers Association ("ABA") argues that banks, rather than examiners, should define the assessment areas "based upon the market they can reasonably serve."⁴⁸ Meanwhile, the Treasury advocates for a framework that includes areas where the bank is physically located, as well as low- and moderate-income communities "outside of where the bank has its physical footprint, and in areas where the bank accepts deposits and does substantial business."⁴⁹ By using a broader sample for assessment based upon the realistic expectations of where the bank's customers live, the CRA would allow banks to address the needs among the entire customer-base, not just those who live within the assessment area.⁵⁰

Second, as consumers are faced with more options for loans as a result of improved banking technology, the CRA does not adequately account for alternative delivery systems.⁵¹ While the *Interagency*

44. AM. BANKERS ASS'N, CRA MODERNIZATION: MEETING COMMUNITY NEEDS AND INCREASING TRANSPARENCY 5 (2017), <https://www.aba.com/Advocacy/Documents/CRA-WhitePaper2017.pdf> [hereinafter ABA WHITE PAPER].

45. *But see* Brainard, *supra* note 43 (arguing that traditional branching operations are still crucial in rural communities).

46. ABA WHITE PAPER, *supra* note 44, at 7.

47. ABA WHITE PAPER, *supra* note 44, at 7.

48. ABA WHITE PAPER, *supra* note 44, at 5 (claiming that a "bank's size, strategy, and business model are relevant considerations as a bank determines the appropriate geography of its CRA program").

49. Memorandum from Treasury, *supra* note 9, at 6.

50. ABA WHITE PAPER, *supra* note 44, at 7.

51. Michelle Lazette, *As Branches Decline, How Do Bankers Continue to Comply with CRA?*, FEDERAL RESERVE BANK OF CLEVELAND (Nov. 9, 2016), <https://www.cleveland-fed.org/newsroom-and-events/publications/forefront/ff-v7n04/ff-20161109-v7n0401-as-branches-decline-how-do-bankers-continue-to-comply-with-cra.aspx> (describing the

Questions and Answers Regarding Community Reinvestment directs examiners to consider alternative systems for delivering retail products and services to the extent that they are effective in meeting the needs of low- and moderate-income individuals, banks receive inconsistent credit for these services.⁵² Regulators evaluate this activity under the Service Test, which determines the “innovativeness or complexity of qualified investments,” but the number of points these investments receive relative to others “is up to the regulator’s judgment given that no formal definition of ‘innovativeness’ or ‘complexity’ has been established.”⁵³ This test, which accounts for shifts in how banks provide financial services, “gets a fraction of the space devoted to the Lending Test” and “appears to have little impact on the provision of financial services to lower income individuals.”⁵⁴

On July 31, 2018, the OCC announced it would begin to accept national bank charter applications from fintech companies.⁵⁵ These companies target millennials by boasting convenience and aim to lower the cost of banking through their mobile-only platform.⁵⁶ While the OCC has demonstrated the agency’s willingness to consider non-traditional banking models for regulation, rather than a fintech charter, some experts fear that fintechs will not be held to the same community-lending standards as traditional banks due to their lack of physical offices.⁵⁷ Varo Money, for example—a Salt Lake City fintech company without physical branches—has received preliminary and conditional approval from the OCC to receive a national bank charter and will use the Salt Lake City combined statistical area for CRA compliance—despite operating

difficulties bankers face in predicting “how examiners will weigh branches and alternative delivery systems”).

52. TREASURY INTERAGENCY QUESTIONNAIRE, *supra* note 16, at 48506.

53. GETTER, *supra* note 17, at 8.

54. William Apgar & Mark Duda, *The Twenty-Fifth Anniversary of the Community Reinvestment Act: Past Accomplishments and Future Regulatory Challenges*, FRBNY ECONOMIC POLICY REV., 169, 185 (June 2003), <https://www.newyorkfed.org/medialibrary/media/research/epr/03v09n2/0306apga.pdf>.

55. Press Release, Office of the Comptroller of the Currency, OCC Begins Accepting National Bank Charter Applications for Financial Technology Companies (July 31, 2018), <https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-74.html>.

56. *See generally* Lisa Prevost, *Mortgages for Millennials*, N.Y. TIMES (July 31, 2015), <https://www.nytimes.com/2015/08/02/realestate/mortgages-for-millennials.html> (describing the simplicity and prevalence of online mortgage applications).

57. *See* Hilary Burns, *Fintech Out to Start National Bank Clears One Hurdle but Faces More*, AM. BANKER, Sept. 13, 2018 (noting that credit unions are currently exempt from CRA regulation).

exclusively electronically.⁵⁸ It is clear that the regulators need to develop some set of uniform standards for evaluating these companies in order to avoid leniency by examiners and promote fair lending policies among this emerging form of banking.

Low- and moderate-income individuals frequently use the cash-checking businesses of branch banks, but receive subprime loans from less scrupulous digital sources which use automated systems to approve lending services.⁵⁹ Nonetheless, the Service Test component of the CRA, which compares the hours of operation and equality of access to branches to low versus higher-income individuals, does not adequately measure the automated systems for approving loans.⁶⁰ Consequently, lower-income individuals remain “underserved . . . to a greater degree than they are with respect to mortgage lending.”⁶¹ Rather than focusing on how banks’ alternative delivery systems are tailored to low- and moderate-income customers, critics claim the examination should consider whether these customers utilize these delivery channels.⁶² This could, in turn, encourage the aforementioned consumers to borrow from more reliable financial institutions accompanied with less risk.⁶³

B. Clarify Subjective Procedures and Reduce Discretion of Examiners

While the inter-agency approach of CRA examinations allows for a more nuanced evaluation process and cumulative regulation, it is not free of bureaucratic hurdles.⁶⁴ The CRA is often criticized for its inconsistent methodologies and measures of evaluation which can limit the

58. See Memorandum from the Office of the Comptroller of the Currency, to Mitchell S. Eitel, Re: Preliminary Conditional Approval of the De Novo Charter Application for the Proposed Varo Bank, National Association, at 2 (Aug. 31, 2018) (“[t]he bank does not plan to have any branches or deposit taking ATMs. The only location around which the bank could delineate an [assessment area] under the regulations is its proposed main office, which will be located in Sale Lake City, Utah.”).

59. William Apgar, Jr. & Christopher Herbert, *Subprime Lending and Alternative Financial Service Providers: A Literature Review and Empirical Analysis*, U.S. DEP’T OF HOUS. AND URBAN DEV., at vii, <https://www.huduser.gov/Publications/pdf/sublending.pdf>.

60. 12 U.S.C. § 25.23 (2012).

61. Apgar & Duda, *supra* note 54, at 185.

62. ABA WHITE PAPER *supra* note 44, at 6.

63. ABA WHITE PAPER *supra* note 44, at 6.

64. See Hannah Lang, *Fed’s Powell ‘Hopeful’ that Agencies will Come Together on CRA Reform*, AM. BANKER, Sept. 26, 2018 (describing the challenges of coordinating CRA reform across multiple agencies).

ability to compare the performance of different banks.⁶⁵ CRA examinations consist of a two-part test composed of a Small Bank Lending Evaluation, and Community Development Test, which measures a bank's loans, investments, and services separately.⁶⁶ The Lending, Investments, and Services Tests are applied inconsistently by the different banking agencies.⁶⁷

The Lending Test is also applied inconsistently, as the OCC measures market share while other agencies measure portfolio shares.⁶⁸ These are both adequate indicators of performance individually, but are incompatible when compared against each other.⁶⁹ Similarly, the measures used in the Investment Test—which evaluates CRA-related investments relative to a bank's capacity—depend on which agency performs the evaluation.⁷⁰ While most agencies compare a bank's investments to its assets, the OCC uses a ratio of investments to tier-one capital, complicating the way banks of similar sizes can be compared.⁷¹ Finally, in conducting the Service Test, the agencies differ in how much they consider branches not within the low- and moderate-income tracts “that are in close proximity to [low- and moderate-income] tracts, and disagree about “what close proximity means.”⁷²

Some evaluation standards even differ within the same agency that conducts the performance evaluation.⁷³ For example, in its 2013 examination of Capital One⁷⁴ and 2007 examination of JP Morgan Chase,⁷⁵

65. See ABA WHITE PAPER, *supra* note 44, at 1 (arguing that the CRA examination process needs more predictability and transparency); Getter, *supra* note 17, at 8; National Community Reinvestment Coalition, *Letter to the Treasury: Strengthening the Community Reinvestment Act*, NCRC (Feb. 5, 2018), <https://ncrc.org/letter-to-treasury/> [hereinafter NCRC Letter to Treasury].

66. FEDERAL DEPOSIT INSURANCE CORPORATION, COMMUNITY REINVESTMENT ACT (CRA), at 11, <https://www.fdic.gov/regulations/resources/director/presentations/cra.pdf>.

67. NCRC *Letter to Treasury*, *supra* note 65.

68. See NCRC *Letter to Treasury*, *supra* note 65 (stating that the market share compares the percent of total low- and moderate-income market captured by the bank with the percent of overall market captured by the bank).

69. NCRC *Letter to Treasury*, *supra* note 65.

70. NCRC *Letter to Treasury*, *supra* note 65.

71. NCRC *Letter to Treasury*, *supra* note 65.

72. NCRC *Letter to Treasury*, *supra* note 65.

73. Getter, *supra* note 17, at 8.

74. Public Disclosure: Comptroller of the Currency, Community Reinvestment Act Performance Evaluation, Capital One, National Association (Dec. 31, 2013), <https://www.occ.gov/static/cra/craeval/oct16/13688.pdf>.

75. Public Disclosure: Comptroller of the Currency, Community Reinvestment Act Performance Evaluation, JPMorgan Chase Bank, N.A. (January 1, 2007), <https://www.occ.gov/static/cra/craeval/Aug08/8.pdf>.

the OCC counted branches in outside the low- and moderate-income tracts “as if they are within one half mile of an LMI tract” in its examination of JP Morgan Chase, but the OCC used a measurement of one mile in its examination of Capital One.⁷⁶ It is clear, therefore, that the *Interagency Questions and Answers Regarding Community Reinvestment* should be revised to include more specific procedures for which measurements should be used during the performance evaluation.⁷⁷

Ultimately, the lack of clear guidelines for examination criteria gives individual examiners too much discretion during performance evaluations.⁷⁸ The Treasury admitted in a memorandum published on April 3, 2018, that the CRA has “too many subjective elements,” which “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.”⁷⁹ In particular, individual examiners have the ability to determine either a narrow or broad scope of the examination, choose the number of points each bank receives for its respective CRA eligible activities, and interpret the percentage of bank’s lending activity that falls within its assessment areas—or In/Out Ratio.⁸⁰ In addition, there is no specific number of points required for a bank to earn each level of examiner rating.⁸¹ Current procedures “allow examiners to subjectively interpret and apply CRA examination policies and procedures.”⁸² Consequently, the Treasury—and interested parties across the ideological spectrum—advocate for a more clear-cut examination approach that would allow the results of similarly positioned banks to be more easily measured and compared.⁸³

C. *Other Criticisms of the CRA*

While critics have called for more clear and definite guidelines, the CRA also lacks inclusivity of certain characteristics that cannot be

76. NCRC *Letter to Treasury* *supra* note 65.

77. TREASURY INTERAGENCY QUESTIONNAIRE, *supra* note 16 at 48506.

78. NCRC *Letter to Treasury*, *supra* note 65.

79. Memorandum from Treasury, *supra* note 9, at 9.

80. See Memorandum from Treasury, *supra* note 9, at 3 (describing that examiner ratings are ultimately determined solely based on qualitative factors).

81. Memorandum from Treasury, *supra* note 9, at 10.

82. Memorandum from Treasury, *supra* note 9, at 12.

83. Memorandum from Treasury, *supra* note 9, at 12.

measured by rigid standards.⁸⁴ Many have suggested enhanced training of examiners as a solution that would allow those conducting the evaluations to have a better understanding of *why* these tests are being conducted, and which factors matter the most.⁸⁵ In addition, the ambiguity of these guidelines and the debate about how certain activities should be included in CRA evaluations demonstrate the need for greater communication between regulators and banks.⁸⁶

Critics have disputed whether the evaluation process should allow banks to receive CRA credit for more types of loans, investments, and services than those previously recognized.⁸⁷ The ABA argues that community development initiatives that would benefit a bank's entire community do not receive community development credits because current regulatory practices only recognize initiatives targeted to low- or moderate-income individuals, or which will "revitalize or stabilize disaster areas or underserved or distressed middle-income areas."⁸⁸ Meanwhile, the National Community Reinvestment Coalition ("NCRC") retorts that providing credit for financial education that broadly serves an entire community could allow banks to reduce their efforts targeting the low- and moderate-income communities specifically.⁸⁹

In addition, the NCRC and ABA disagree about whether small business lending should be considered for community development credit.⁹⁰ The ABA claims that small business loans and loans to non-profits with a community development purpose should be classified as community development loans in order to adequately measure the impact banks are having in their communities.⁹¹ Meanwhile, the NCRC claims that "doing so would double count small business loans and inflate the Lending Test rate."⁹² Nonetheless, this dispute demonstrates the lack of transparency in the CRA evaluation process.⁹³ Because the CRA "looks

84. ABA WHITE PAPER, *supra* note 44, at 12; NCRC Letter to Treasury, *supra* note 65.

85. ABA WHITE PAPER, *supra* note 44, at 12.

86. ABA WHITE PAPER, *supra* note 44, at 12 (claiming that "banks receive little to no communication from regulators until they are presented with the exam report months (and in some cases over a year) later.").

87. ABA WHITE PAPER, *supra* note 44, at 12.

88. *See* ABA WHITE PAPER, *supra* note 44, at 12 (listing financial literacy instruction and financing the construction of infrastructure and community service establishments such as hospitals as the initiatives that benefit a bank's entire community but do not receive credit).

89. NCRC Letter to Treasury, *supra* note 65.

90. NCRC Letter to Treasury, *supra* note 65; ABA WHITE PAPER, *supra* note 44, at 2.

91. ABA WHITE PAPER, *supra* note 44, at 4.

92. NCRC Letter to Treasury, *supra* note 65.

93. NCRC Letter to Treasury, *supra* note 65.

backward,” providing feedback potentially years after the evaluation process on whether investments are sufficient for CRA purposes, there is an established need for increased communication with CRA regulators, and a clear framework on which investments should receive credit.⁹⁴

IV. OCC MODERNIZATION EFFORTS

Recognizing the imperfections of the CRA in its current form, affiliated agencies have begun clearing the way to modernize the evaluation process.⁹⁵ Despite the Treasury memorandum suggesting improvements to the CRA, the OCC has largely acted alone to revamp the CRA.⁹⁶ It requested public comment in its ANPRM, and released a bulletin to “inform national banks, federal savings associations, and federal branches and agencies (collectively banks) about clarifications to OCC supervisory policies and processes regarding how examiners evaluate and communicate bank performance under the CRA.”⁹⁷ These proposals and modifications involve geographic constraints on assessment areas, the type of information considered in a performance evaluation, and changes to the timeline of the evaluation process.⁹⁸

A. *Geographic Factors*

One of the main sources of contention for the CRA is that, as banks evolve to use technology for desired services, the current protocol fails to account for the increasing spread of customers outside the geographic boundaries imposed by the assessment areas.⁹⁹ The OCC bulletin states that, “in evaluating the borrower distribution of loans outside a bank’s [assessment areas, the OCC] evaluates lending state by state and compares the level of bank lending to statewide demographic

94. Memorandum from Treasury, *supra* note 9, at 9.

95. Memorandum from Treasury, *supra* note 9, at 10.

96. Reforming the Community Reinvestment Act Regulatory Framework, 83 Fed. Reg. 45053, 45053 (proposed Aug. 28, 2018) (to be codified at 12 C.F.R. pts. 25, 195).

97. OFFICE OF COMPTROLLER OF THE CURRENCY, SUPERVISORY POLICY AND PROCESSES FOR COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATIONS: OCC Bulletin 2018–17 (2018), <https://www.occ.treas.gov/news-issuances/bulletins/2018/bulletin-2018-17.html> [hereinafter OCC Bulletin].

98. *Id.*

99. Josh Silver, *NCRC Analysis of OCC Bulletin 2018-17*, NAT’L COMMUNITY REINVESTMENT COALITION (June 20, 2018), <https://ncrc.org/ncrc-analysis-of-occ-bulletin-2018-17>.

comparators.”¹⁰⁰ While lending to small businesses and farms will not compensate for a poor lending performance within the assessment area, examiners may consider the distribution of these loans outside the assessment area.¹⁰¹ This certainly demonstrates a trend toward expanding the evaluation of a bank’s lending beyond the designated assessment area to include areas outside the branch with high lending volumes.¹⁰²

This expansive approach to examining retail lending outside the bank’s assessment areas could resolve some of the issues that have emerged while assessing online banking and mobile lending platforms.¹⁰³ By considering a bank’s performance outside of its assessment areas, this system incentivizes banks to continue lending to low- and moderate-income customers who do not live near a physical branch.¹⁰⁴ This could, for example, benefit customers in rural areas who have few options in terms of physical storefronts.¹⁰⁵ Rural banks will now face competitive pressure from their online counterparts who offer lower rates to a broader clientele.¹⁰⁶

The ANPRM additionally provides some avenue of guidance to regulate exclusively-online lenders.¹⁰⁷ As fintechs like Varo begin to receive national bank charters, the provision comparing the level a bank lends within particular states to its demographic comparators may be easily applied to banks with no physical branches.¹⁰⁸ Nonetheless, the OCC avoids burdening banks and their examiners by requiring them to analyze each and every state where the bank exists or purchases loans, but instead focuses on states “where the level of banking is sufficient to conduct a meaningful analysis of borrower distribution.”¹⁰⁹

100. OCC Bulletin *supra* note 97.

101. *See* Silver, *supra* note 99 (claiming that this implies that a bank’s lending outside the assessment area may elevate a satisfactory rating, but will not improve a failed lending test).

102. Silver, *supra* note 99.

103. *See* NCRC *Letter to Treasury*, *supra* note 65 (“[There should be an] expansion to include areas with significant amounts of retail lending outside of branch networks will also facilitate community development lending and investing in additional geographic areas.”).

104. NCRC *Letter to Treasury*, *supra* note 65.

105. Silver, *supra* note 99.

106. Silver, *supra* note 99.

107. Burns, *supra* note 57.

108. Burns, *supra* note 57.

109. OCC Bulletin, *supra* note 97.

B. *Type of Information Considered in the Performance Evaluation*

Another source of criticism lies in the highly subjective guidelines for examiners to conduct performance evaluations.¹¹⁰ First, it is often still unclear whether an activity is considered to promote economic development under the existing CRA standards.¹¹¹ In order to support community development, activities that promote economic development by financing small businesses and farms must meet both a “size” and a “purpose” test.¹¹² The recent OCC bulletin describes the size test as measuring “size eligibility requirements” while the purpose test ensures that activities have a community development goal.¹¹³ This bulletin clarifies some of the inconsistencies associated with the definition of community development, listing “loans, investments, and services that help to create, retain, and/or improve jobs for [low- and moderate-income] individuals, in [low- and moderate-income] geographies, or in areas targeted for redevelopment” by any level of government as meeting the purpose test.¹¹⁴ The notice further specifies that loans, investments, and services that help to retain jobs only count for CRA purposes when the loans demonstrate a community development purpose specifically enumerated by the agencies.¹¹⁵

This update removes some of the existing vagueness behind the community development qualifications, but does not resolve the debate over whether small business lending should qualify as community development.¹¹⁶ While the updates to CRA policy provide additional guidance to examiners, and eliminate subjectivity with regards to the “size” and “purpose” tests required for economic development to be considered to support community development, the OCC essentially sidestepped the real issue at hand—leaving banks uncertain about which activities comply with regulation, and ultimately necessitating further clarification.¹¹⁷

In addition, the OCC seeks to increase the scrutiny non-metropolitan assessment areas receive by modifying the standards for scope of

110. Silver, *supra* note 99.

111. OCC Bulletin, *supra* note 97.

112. FED. DEPOSIT INSURANCE CORP., “CRA – Understanding Community Development” Presentation at the FDIC New York Region Regulatory Teleconference (Feb. 6, 2004), <https://www.fdic.gov/news/conferences/ny/2015-08-13.pdf>.

113. OCC Bulletin, *supra* note 97.

114. OCC Bulletin, *supra* note 97.

115. OCC Bulletin, *supra* note 97.

116. OCC Bulletin, *supra* note 97.

117. OCC Bulletin, *supra* note 97.

examinations and effectively expand the amount of data considered overall.¹¹⁸ Currently, the Treasury reports that CRA examiners have the discretion to designate assessment areas as either full scope or limited scope.¹¹⁹ While full scope examinations consider both qualitative and quantitative factors, CRA examinations of limited scope assessment areas consider only quantitative factors, and include short narratives reporting whether the performance was consistent or inconsistent with the bank's overall performance—measured by full-scope reviews.¹²⁰

The majority of assessment areas subject to full-scope reviews are metropolitan statistical areas, whereas the majority of banks' non-metropolitan assessment areas receive limited-scope evaluations and generally report few community development activities in their performance evaluations.¹²¹ Because banks in non-metropolitan areas face less competition, low- and moderate-income customers in these regions have fewer options for borrowing—making the CRA even more important in these areas.¹²² It therefore seems counterintuitive that these assessment areas would receive less scrutiny.¹²³

Because full-scope evaluations are more time-intensive and burdensome, examiners might have an incentive to examine banks under a limited scope when possible.¹²⁴ The OCC's 2018 bulletin seeks to reduce the discretion given to examiners in deciding whether to evaluate under a full or limited scope.¹²⁵ First, the bulletin requires at least one assessment area to be evaluated with full scope procedures when a bank has multiple assessment areas within a single state.¹²⁶ This sets a baseline requiring a detailed examination of each state assessed.¹²⁷ In addition, narrative comments and conclusions for non-metropolitan statistical areas within a state will be presented in a combined narrative in the

118. OCC Bulletin, *supra* note 97.

119. Memorandum from Treasury, *supra* note 9, at 18.

120. Memorandum from Treasury, *supra* note 9.

121. Memorandum from Treasury, *supra* note 9.

122. See NCRC *Letter to Treasury*, *supra* note 65 (“More full scope designation to rural areas, in particular, will result in banks making more retail loans, community development loans, and qualified investments in rural areas”).

123. See NCRC *Letter to Treasury*, *supra* note 65 (“Applying more full scope designation to rural areas, in particular, will result in banks making more retail loans, community development loans, and qualified investments in rural areas.”).

124. See OCC Bulletin, *supra* note 97 (describing the processes for conducting full- and limited-scope evaluations).

125. OCC Bulletin, *supra* note 97.

126. OCC Bulletin, *supra* note 97.

127. OCC Bulletin, *supra* note 97.

performance evaluation—as will metropolitan divisions within the same metropolitan statistical areas—and reviewed as a whole using either full- or limited-scope procedures as applicable.¹²⁸ Consequently, more assessment areas—both metropolitan and non-metropolitan—will be reviewed in greater detail more frequently.¹²⁹

Moreover, the June 2018 OCC bulletin provides guidance to examiners for determining the scope for evaluating the assessment area.¹³⁰ This “comprehensive approach” considers such factors as the lending, investment, and service needs in the assessment area, the number of banks in each assessment area (especially when few financial service providers operate in the assessment area), the importance of the examined bank to serving each assessment area, the length of time since the assessment area has been reviewed under full scope procedures, and public comments about the bank’s performance in the assessment area.¹³¹ Finally, the bulletin requires a bank’s performance in both full and limited scope assessment areas to be considered for the area conclusion—increasing the importance of limited scope evaluations.¹³² These changes will encourage examiners to scrutinize banks’ activity in small metropolitan and rural communities, rather than focusing merely on communities with more options when it comes to lending.¹³³

By setting clear standards for which assessment areas should receive full scope evaluation, and increasing the possibility that each assessment area will be subject to a full scope evaluation at some point in time, these changes will efficiently expand the amount of data reviewed under the CRA.¹³⁴ The rotating system will ensure that areas will be subject to greater scrutiny over time, but examiners will still be spared the intensity of requiring every assessment area to be evaluated under a full scope.¹³⁵ The increase in data for consideration will allow examinations to be more flexible, whereas the guidance on which areas should receive heightened scrutiny will eliminate inconsistencies across examiners.¹³⁶

128. OCC Bulletin, *supra* note 97.

129. OCC Bulletin, *supra* note 97.

130. OCC Bulletin, *supra* note 97.

131. OCC Bulletin, *supra* note 97.

132. OCC Bulletin, *supra* note 97.

133. See *NCRC Letter to Treasury*, *supra* note 65 (discussing the importance of conducting more full-scope examinations on rural communities).

134. *NCRC Letter to Treasury*, *supra* note 65.

135. *NCRC Letter to Treasury*, *supra* note 65.

136. See *Treasury Issues Recommendations for CRA Modernization*, ABA BANKING J. (Apr. 3, 2018), <https://bankingjournal.aba.com/2018/04/treasury-issues-recommendations->

While the OCC still has room to clarify the definition of community development, the bulletin demonstrates a trend toward striking balance between objectivity and flexibility.¹³⁷

C. *Changes to the Evaluation Process*

Proposed changes to the timing of performance evaluations and the application of investigation results involving potential discriminatory or other illegal credit practices have received the bulk of attention coming from critics of the OCC's June 2018 bulletin.¹³⁸ Just nine days after the bulletin's release, the nine members of the Senate Committee on Banking, Housing, and Urban Affairs voiced their concerns with these provisions, asking that the Comptroller of the Currency question these implementations, and requesting that he rescind the bulletin.¹³⁹ These provisions are also the subject of criticism from the NCRC.¹⁴⁰

First, the bulletin extended the CRA examination cycle for some banks.¹⁴¹ The examination cycle for banks with more than \$250 million in assets and thirty or more rating areas on the previous CRA evaluation will be extended from thirty-six months to forty-eight; meanwhile, banks with less than thirty rating areas on the previous CRA evaluation remain subject to a thirty-six-month cycle.¹⁴² NCRC claims that a four-year cycle can allow banks to demonstrate lax CRA efforts during the first two years of an exam cycle while increasing their efforts the last two years.¹⁴³

The Senate Committee on Banking corroborates these claims, arguing that while performance evaluations "often take too long and can leave banks with dated ratings and the public with inadequate information about a bank's current performance," a more sensible policy change would have "maintained or shortened the 36-month exam cycle rather

for-cra-modernization/ ("[T]he changes to the CRA serve as '[a]djustments that enhance the transparency, consistency, and predictability of the supervisory process . . .,' said American Bankers Association President and CEO Rob Nichols.").

137. OCC Bulletin, *supra* note 97.

138. OCC Bulletin, *supra* note 97.

139. Letter from U.S. Senate Comm. on Banking, Hous., & Urban Affairs to Joseph M. Otting 2 (July 24, 2018), <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2018/08/CRA-letter.pdf> [hereinafter Senate Letter to Otting].

140. Silver, *supra* note 99.

141. OCC Bulletin, *supra* note 97.

142. OCC Bulletin, *supra* note 97.

143. Silver, *supra* note 99.

than lengthening it to 48 months.”¹⁴⁴ Modernization efforts should seek to streamline the evaluation process, enhance predictability, promote consistency, and ultimately encourage investing in low- and moderate-income communities.¹⁴⁵ By extending the time between evaluations, the OCC is instead allowing banks to act more unpredictably and inconsistently, compensating for poor performance toward the end of their evaluation cycles.¹⁴⁶

Second, the proposed rules will allow performance evaluations to be published if investigations involving potentially discriminatory or otherwise illegal credit practices are not resolved within ninety days after a performance evaluation is considered final for issuance to the bank, rather than holding the exams open until the conclusion of these investigations, as was previously done.¹⁴⁷ Any findings of discriminatory or illegal credit practices after the issuance of a performance evaluation will be considered in the following CRA evaluation and penalized retroactively.¹⁴⁸ This change has been criticized by progressive interest groups and democratic politicians for allowing examiners to give banks more leeway, considering a bank’s corrective measures over their illegal practices in the subsequent CRA rating.¹⁴⁹ Coupled with the extension in evaluation cycles, this provision is especially dangerous because examiners have even more time to discount a bank’s discrimination since its discovery.¹⁵⁰

Much of the CRA’s influence on community lending practices comes from the deterrent threat imposed by ramifications for non-compliance, as banks receiving less than a satisfactory rating on CRA examinations may be blocked from branching, merging, or converting charters.¹⁵¹ However, this provision would allow banks to make these critical business moves even after findings of deficiencies.¹⁵² In order to most effectively deter banks from engaging in illegal and discriminatory credit practices, and to prevent examiners from having too much influence on

144. See NCRC *Letter to Treasury*, *supra* note 65.

145. Senate Letter to Otting, *supra* note 139, at 1.

146. See Senate Letter to Otting, *supra* note 139, at 1 (criticizing the proposed changes to the evaluation timeline); Silver, *supra* note 99.

147. Senate Letter to Otting, *supra* note 139, at 1.

148. OCC Bulletin, *supra* note 97.

149. Silver, *supra* note 99; Senate Letter to Otting, *supra* note 139, at 1.

150. OCC Bulletin, *supra* note 97.

151. See Getter, *supra* note 17, at 15 (describing the incentives for receiving a positive CRA rating—and punishments for less-than-“satisfactory” ratings).

152. Silver, *supra* note 99.

the results of performance evaluations, the CRA ratings should be downgraded as closely as possible to the illegal behavior so these ramifications are felt strongly in conjunction with the violation.¹⁵³

V. CONCLUSION

While the OCC's updates to the antiquated CRA provide workable standards that reduce discretion given to individual examiners, they fail to fully improve the predictability of the rating process and enhance banks' certainty of their performance before the examination.¹⁵⁴ While the last two components of the June bulletin—extending the evaluation period for large banks to forty-eight months, and applying results of investigations retroactively—are perhaps meant to ease the burden placed on banks during the examination process, the ends may be reached by much less contentious means.¹⁵⁵

CRA regulators have long faced pressure to increase the communication between banks and agencies before the evaluation process so that banks know whether they are complying before receiving their results.¹⁵⁶ While the bulletin mentions increasing the communication between examiners and OCC supervised banks *during* the performance evaluations, it does not address communication with banks *before* these evaluations begin.¹⁵⁷ Furthermore, the bulletin makes no mention of coordinating the measures of assessment and comparison across agencies—or even individual examiners—during the evaluation processes mentioned above.¹⁵⁸ It seems counterintuitive that the OCC would make efforts to modernize the CRA on its own, given that a great source of criticism lies in the unpredictability of the CRA's multi-agency structure.¹⁵⁹ With more certainty of the status of their compliance, banks would be able to maximize

153. OCC Bulletin, *supra* note 97; Silver, *supra* note 99.

154. *But see* Memorandum from Treasury, *supra* note 9, at 2 (describing the goals of CRA modernization as including “examination clarity and flexibility.”).

155. Silver, *supra* note 99.

156. *See* ABA WHITE PAPER, *supra* note 44, at 13 (recommending in 2017 that “banking agencies provide more transparency regarding how CRA ratings are assigned.”).

157. OCC Bulletin, *supra* note 97.

158. OCC Bulletin, *supra* note 97.

159. *See* Evan Weinberger, *Bank Branches to Stay in Community Lending Rewrite, Agencies Say*, BLOOMBERG BNA (Oct. 3, 2018), https://www.bloomberglaw.com/document/XANL07R8000000?bna_news_filter=securities-law&jcsearch=BNA%25200000016635d6d20fa3ef7ffe969d0001#jcite (“But neither [FDIC nor FRB] joined the OCC's August outline.”).

their service to the community while promoting cooperation and efficiency for these regulatory bodies during the examination process.¹⁶⁰

The OCC does provide parameters that eliminate subjectivity for some of the evaluation's qualitative measures.¹⁶¹ The requirements for which assessment areas should receive full versus limited scope evaluations help to ensure CRA compliance by banks in less heavily populated areas.¹⁶² Plus, the description of activities that promote economic development lists some factors for meeting the purpose test in order to shed light on which activities count toward "community development."¹⁶³ However, the bulletin fails to eliminate the most glaring uncertainty surrounding the definition of community development by staying silent as to whether small business lending counts as community development.¹⁶⁴ This move leaves the area subject to more debate in the future—and open to the discretion of the examiner.¹⁶⁵

Despite these shortcomings, the OCC's modernization efforts do fall in line with objectives for adapting to changes in technology and the business of banking.¹⁶⁶ The bulletin has enumerated protocols for assessing how banks are lending outside their assessment area by comparing the distribution lent outside assessment areas state-by-state to statewide demographic competitors.¹⁶⁷ This provides guidance for fintech companies with few (if any) physical branches, and banks with customers operating via mobile applications outside the assessment area.¹⁶⁸ Lending to those who do not live near a physical branch can bridge the divide between urban and rural users—with the latter often facing more difficulty obtaining loans.¹⁶⁹

The OCC's efforts to modernize the CRA certainly improve specific areas of the evaluation process, but as a whole, the larger issues with the inter-agency construction remain unsolved.¹⁷⁰ As these proposals

160. ABA WHITE PAPER, *supra* note 44, at 13.

161. Silver, *supra* note 99.

162. See OCC Bulletin, *supra* note 97 (listing activities considered to promote economic development for the purpose test).

163. OCC Bulletin, *supra* note 97.

164. Silver, *supra* note 99.

165. Silver, *supra* note 99.

166. Memorandum from Treasury, *supra* note 9, at 6.

167. OCC Bulletin, *supra* note 97.

168. ABA WHITE PAPER, *supra* note 44 at 13.

169. NCRC *Letter to Treasury*, *supra* note 65.

170. Kriston Capps, *It's Time to ReWrite Fair Lending Rules. (Just Not Like This.)*,

make their way through the OCC, the FDIC, FRB and OCC may miss a crucial opportunity to improve the regulatory process that controls the fate of community lending across demographics.¹⁷¹

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CITYLAB (Aug. 31, 2018) <https://www.citylab.com/equity/2018/08-its-time-to-rewrite-fair-lending-rules-just-not-like-this/568804/>.

171. NCRC *Letter to Treasury*, *supra* note 65.

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