2001

Enforcing the Community Reinvestment Act: An Advocate's Guide to Making the CRA Work for Communities

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Recommended Citation
17 N.Y.L. Sch. J. Hum. Rts. 129 (2000-2001)

Articles

Enforcing The Community Reinvestment Act: An Advocate's Guide To Making The CRA Work For Communities

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INTRODUCTION

The Community Reinvestment Act (CRA) is a federal law that requires banks to meet the credit needs of their entire communities, including low- and moderate-income (LMI) neighborhoods.[2] Since the CRA's enactment in 1977, banks have significantly increased their lending in LMI neighborhoods.[3] The primary movers behind enforcing the CRA have been community-based not-for-profit organizations. Through their effective use of the CRA, these organizations have successfully advocated for banks to lend more money to LMI neighborhoods to support affordable housing, small businesses, community development projects, and consumer credit needs. The purpose of this Guide is to introduce some of the main principles of the CRA to community advocates and to provide basic information about how the CRA can help to increase lending in their neighborhoods.

This is a time of great change and uncertainty in the financial services industry. Many of the circumstances that have supported community advocates' successes in enforcing the CRA are changing.

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[1] Professor of Law, New York Law School. I wish to thank New York Law School for its generous support of this work and the editors of the JOURNAL OF HUMAN RIGHTS for their great patience.

[2] 12 U.S.C.A. §§ 2901–2908 (West 1989 & Supp. 2000).

[3] *See* ROBERT E. LITAN ET AL., THE COMMUNITY REINVESTMENT ACT AFTER FINANCIAL MODERNIZATION: A BASELINE REPORT (2000). The National Community Reinvestment Coalition has estimated that banks have committed to lend more than $1 trillion to LMI and minority borrowers and neighborhoods in connection with their expansion applications. *See* NATIONAL COMMUNITY REINVESTMENT COALITION, CRA COMMITMENTS (1999). *See also*, Richard D. Marsico, *Shedding Some Light on Lending: The Effect of Expanded Disclosure Laws on Home Mortgage Marketing, Lending, and Discrimination in the New York Metropolitan Area*, 27 FORDHAM URB. L.J. 481 (1999) (measuring the impact on lending of the Home Mortgage Disclosure Act).

Banks are fewer in number and larger in size. They are national and international in scope. They are becoming increasingly complex institutions and now, with the repeal of the Glass-Steagall Act, banks can continue to expand the financial services they offer.[4] Banks are relying less on branches for providing services and more on the internet and other off-site means. As banks become larger and more comprehensive financial institutions, taking deposits and making loans may become less a part of what they do and it may become more difficult to enforce the CRA against them. It is as important as ever to make sure that community reinvestment is not lost in the mix of these changes. Hopefully, the tools described in this Guide will help community advocates do just that.

This Guide is divided into four parts. Part One summarizes the CRA law and regulations. Part Two reviews important information about banks for use in CRA-related advocacy and describes how to get it. Part Three describes a method for analyzing a bank's lending record. Finally, Part Four describes how to participate effectively in the CRA enforcement process, including a description of the various sorts of community reinvestment practices and programs banks have instituted to help improve their CRA records.

I. LEGAL STRUCTURE OF THE COMMUNITY REINVESTMENT ACT

Part One describes the legal structure of the CRA. It begins by introducing the CRA with a list of ten important things to know about the CRA. It then describes the CRA statute and the CRA regulations that implement it.

Ten Important Things to Know About the CRA

1. The purpose of the CRA is to fight redlining and to increase bank lending in LMI neighborhoods.

[4] *See* Symposium, *Financial Modernization: The Effect of the Repeal of the Glass-Steagall Act on Consumers and Communities*, 1 N.Y.L. SCH. J. HUM. RTS. (2001) [hereinafter Symposium].

Congress had two goals in mind when it passed the CRA in 1977.[5] First, it saw the CRA as a way to fight bank "redlining," or the outright refusal to lend in LMI, inner city, older, and predominantly minority neighborhoods. Second, it hoped that the CRA would result in more bank lending in such neighborhoods. As such, in order to comply with the CRA, it is not enough for a bank simply not to redline LMI neighborhoods. Instead, a bank must actually do something to meet the credit needs of LMI neighborhoods.

2. **The CRA covers all banks whose deposits are insured by the Federal Deposit Insurance Corporation.**

This includes foreign-owned banks, wholesale banks that do not have branches, internet banks, and other banks with a narrow purpose or limited business, as long as their deposits are insured by the FDIC. It does not include lenders that are not banks like mortgage companies or finance companies.

3. **Four federal agencies enforce the CRA. They each enforce the CRA as to a particular type of bank.**

Banking is a highly regulated industry. Banks are subject to numerous rules and regulations relating to virtually all aspects of the banking business. Four federal agencies are responsible for regulating banks, including compliance with the CRA. Each banking agency regulates a different type of bank. Many states also have bank supervisory agencies and laws similar to the CRA.

4. **The federal banking agencies enforce the CRA by examining the CRA record of a bank, issuing a written report with a rating, and taking the bank's CRA record into account when considering the bank's application to expand its business.**

As part of their regulatory function, each federal banking agency periodically sends examiners to a bank to determine whether it is in

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[5] *See* Richard D. Marsico, *Fighting Poverty Through Community Empowerment and Economic Development: The Role of the Community Reinvestment and Home Mortgage Disclosure Acts*, 12 N.Y.L. SCH. J. HUM. RTS. 281, 287–289 (1995) (describing legislative history of the CRA).

compliance with the banking laws, including the CRA. At the end of the CRA examination, the agency issues a written report describing its findings and containing one of four ratings. In addition to these periodic examinations, the federal banking agencies also evaluate certain bank expansion applications to ensure that the bank is capable of expanding and qualified to do so. One of the issues the agencies consider when a bank applies to expand its business is the bank's CRA record. An agency may deny an application if a bank has a poor CRA record or condition approval on improved performance.

5. There are four different tests for evaluating a bank's CRA record. A bank is evaluated under one of these tests based on the amount of its assets and the nature of its business.

The federal banking agencies have published nearly identical regulations to implement the CRA. The regulations contain four different tests for evaluating a bank's CRA record. Banks with $250 million or more in assets are evaluated according to their lending, investments, and banking services. Banks with less than $250 million in assets are evaluated according to the geographic distribution of their lending and their lending to borrowers of different incomes. Wholesale banks and limited purpose banks that have narrow product lines are evaluated according to their community development lending, investments, and services. Finally, any bank can opt to be evaluated under its own "strategic plan," which allows the bank to establish its own criteria for satisfactory CRA performance.

6. Data about bank lending is crucial to effective CRA advocacy.

Effective use of information about bank lending is an important part of CRA advocacy. Much of this information is readily available to the public. For example, the Home Mortgage Disclosure Act[6] (HMDA) requires banks to disclose a significant amount of information about their home mortgage lending. The CRA regulations require banks to disclose information about their small business lending and community development lending and a list of their branch locations and openings

[6] 12 U.S.C.A. § § 2801–2810 (1989 & Supp. 2000).

and closings. Finally, other banking laws and regulations require banks to disclose information about their corporate structure, business plans, loan portfolio, and financial health.

7. **Much of the important information about bank lending is available on the internet, either from the website of the Federal Financial Institutions Examinations Council (FFIEC), www.ffiec.gov , or the website of the bank's supervisory agency. Much of this information is also available directly from banks.**

The FFIEC website contains a bank's home mortgage, small business, and community development lending data. The website of the bank's supervisory agency, which is accessible via the FFIEC website, contains the bank's written CRA examination reports. This information is also available in a bank's public CRA file. The FFIEC and FDIC websites also contain other corporate and business information about banks.

8. **Community groups are the most effective enforcers of the CRA.**

The federal banking agencies have been unwilling to enforce the CRA as aggressively as community advocates would like or hold banks to strict lending standards. In the agencies' place, community groups have taken up the slack. They have carefully scrutinized bank lending records, urged banks to adopt lending programs designed to meet the needs of LMI communities, assisted banks in marketing the lending programs, participated in banks' CRA exams, filed written challenges opposing bank mergers with the bank's regulatory agency, and negotiated lending agreements with banks.

9. **The CRA enforcement process is accessible to community advocates.**

Members of the public are able to participate in the CRA enforcement process. Each of the federal banking agencies publishes a quarterly list of banks it is examining for CRA compliance and invites public input. When a bank files an expansion application covered by the CRA, the bank must file a newspaper notice of the application giving members of the public a chance to file written comments. Although the CRA enforcement process is legal in nature, formal legal training is not necessary to participate in the process.

10. **Several other laws complement the CRA, including the Fair Housing Act and the Equal Credit Opportunity Act.**

The Fair Housing Act[7] (FHA) and the Equal Credit Opportunity Act[8] (ECOA) are two important laws relating to lending to minority individuals and predominantly minority communities. They complement and supplement the CRA in coverage and enforcement. The FHA and ECOA are broader than the CRA in that they cover all lenders, not just banks. They also differ in the characteristics they protect: while the CRA focuses on income, the FHA and the ECOA protect against discrimination based on race, gender, and disability, among other characteristics. The CRA and ECOA cover all forms of credit, while the FHA covers housing-related credit transactions. Finally, while it is very difficult to enforce the CRA in court, the FHA and ECOA mandate strict penalties for violations, including monetary damages, and both can be enforced in court by private individuals or groups and by government agencies at the behest of private parties.

Description of the CRA Statute

The CRA is codified at Title 12 of the United States Code, Sections 2901 to 2908. The CRA states that banks have an affirmative obligation to help meet the credit needs of their local communities, including LMI neighborhoods. It requires the four federal banking agencies to examine individual banks periodically to assess their record of helping to meet credit needs, to publish the examination reports — including a rating — for each bank, and to take the bank's CRA record into account when considering a bank's application to expand its business.

The CRA covers only banks, which are defined as entities whose

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[7] 42 U.S.C. §§ 3601–3613 (1994 & Supp. IV 1998).

[8] 15 U.S.C. §§1691–1691f(1994 & Supp. IV 1998).

deposits are insured by the FDIC.[9] The CRA begins by reciting Congress' three findings in passing the law. First, banks are required to serve the "convenience and needs" of the communities in which they are chartered to do business. Second, "the convenience and needs of communities include the need for credit services as well as deposit services." Finally, banks "have continuing and affirmative obligation[s] to help meet the credit needs of the local communities in which they are chartered."[10]

The next section of the CRA requires each federal banking regulatory agency to use its authority when examining banks, "to encourage such institutions to help meet the credit needs of the local communities in which they are chartered. . .."[11] The agencies are to encourage banks to lend in their local communities "consistent with the safe and sound operation of such institutions."[12]

The CRA gives enforcement authority to four federal banking supervisory agencies (collectively the "federal banking agencies").[13] Each of these different federal banking agencies regulates a different type of bank. The Board of Governors of the Federal Reserve System (Federal Reserve) regulates state-chartered banks that are members of the Federal Reserve System. The Federal Deposit Insurance Corporation (FDIC) regulates state-chartered banks and savings banks that are not members of the Federal Reserve System. The Office of Thrift Supervision (OTS) regulates savings associations whose deposits are insured by the FDIC. Finally, the Office of the Comptroller of the Currency (OCC) regulates national banks.

The CRA gives the four federal banking agencies the supervisory authority to "encourage" banks to comply with the CRA on two occasions: when conducting a periodic examination of a bank's CRA record and when considering a bank's application to expand its business.[14]

The first opportunity for the federal banking agencies to

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[9] 12 U.S.C.A. § 2902(2).

[10] 12 U.S.C.A. § 2901 (a) (1)–(3).

[11] 12 U.S.C.A. § 2901 (b).

[12] *Id.*

[13] 12 U.S.C.A. § 2902 (1) (A)–(D). *See* Hicks v. Resolution Trust Corp., 736 F. Supp. 812, 817–818 (N.D. Ill. 1990) [hereinafter Hicks I].

[14] 12 U.S.C.A. § 2903.

encourage banks to help meet the credit needs of their communities comes when the agencies conduct a "CRA examination" of a bank's lending record. The CRA requires that, "[i]n connection with its examination of a financial institution, the appropriate federal financial supervisory agency shall assess the institution's record of meeting the credit needs of its community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution."[15]

When the examination is finished, the federal banking agency is to prepare a written evaluation of the bank's record of "meeting the credit needs of its entire community, including low- and moderate-income neighborhoods."[16] The written CRA performance evaluation must state the federal banking agency's conclusions about the bank's CRA performance, discuss the facts and data supporting the conclusions, and contain the bank's CRA rating and a statement describing the basis for the rating. The report presents this information — except for the rating— separately for each metropolitan area in which the bank has at least one branch. If the bank has branches in two or more states, the federal banking agency prepares a written report about the bank's overall CRA performance and a separate written report for each state in which the bank has at least one branch. There is also a separate report for the bank's record in the non-metropolitan areas of the state if the bank has at least one branch in a non-metropolitan area. The report assigns the bank one of four ratings: outstanding record of meeting community credit needs; satisfactory record of meeting community credit needs; needs to improve record of meeting community credit needs; or substantial non-compliance at meeting community credit needs.

The CRA does not specify how frequently CRA examinations are to occur. It does, however limit the frequency of examinations for small banks with $250 million or less in assets.[17] The limit is tied to the bank's CRA rating. A small bank with an outstanding rating cannot be examined more than once every five years. A small bank with a satisfactory rating cannot be examined more than once every four years. These limits do not apply to a small bank that has an expansion

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[15] *Id.* at (1).
[16] 12 U.S.C.A. § 2906 (a) (1).
[17] 12 U.S.C.A. § 2908(a)-(c).

application pending.

The results of the CRA examination have taken on added importance under the Gramm-Leach-Bliley Act (GLBA), which repealed the Glass-Steagall Act and permits banks to engage in a broader array of financial services businesses than they had previously been allowed to.[18] Under the GLBA, a bank holding company (BHC) must become a financial holding company (FHC) to engage in these new financial services businesses, but a BHC will not be permitted to form an FHC unless all of the BHC's bank subsidiaries had at least a satisfactory CRA rating in their most recent CRA examinations.[19] Additionally, once formed, an FHC cannot engage in these new financial services businesses or purchase any company engaged in any of these new businesses if any of the FHC's bank subsidiaries had a less than satisfactory CRA rating on its last CRA exam.[20] In the case of a national bank, it must create a "financial subsidiary" to engage in the newly permitted financial services businesses, but the financial subsidiary is not eligible to engage in a newly permitted business or acquire a company that engages in such businesses unless the financial subsidiary and any of its affiliate banks had at least a satisfactory CRA rating in their most recent CRA exams.[21]

The second opportunity the federal banking agencies have to enforce the CRA comes when they are considering a bank's application to expand its business.[22] The agencies consider a bank's CRA record when considering six types of expansion applications, including an application to obtain a charter, obtain deposit insurance, establish a branch, relocate a home office or branch, merge with another bank, or obtain the assets or assume the liabilities of another bank.

The CRA does not explicitly give the federal banking agencies the authority to do anything other than consider a bank's CRA record in connection with an expansion application. Nevertheless, in their regulations, the federal banking agencies have given themselves the authority to deny an application if the bank has a poor CRA record.[23]

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[18] *See* Symposium, *supra* note 4.
[19] 12 U.S.C.A. §§ 1843, 2903 (c) (1).
[20] 12 U.S.C.A. § 1843 (l) (2).
[21] *Id*; 12 U.S.C.A. § 24A.
[22] For a description of this process, *see* 12 U.S.C.A. § 2902(3) and § 2903.
[23] *See* 12 C.F.R. §§ 5.13 and 25.29 (d) (OCC), § 228.29 (c) (2000) (Federal

Although the federal banking agencies have assumed the authority to deny a bank's expansion application on the grounds that the bank has a poor CRA record, the CRA regulations do not mandate a denial. Nor do the regulations make clear the weight the federal banking agencies will give to a poor CRA record when considering an expansion application. In addition, the courts give substantial deference to the decisions of the federal banking agencies on expansion applications challenged on CRA grounds.[24] It is thus difficult to challenge a banking agency's approval of an expansion application in court on the grounds that the bank had a poor CRA record. In addition, even if a banking agency denies an expansion application on CRA grounds, the bank can re-apply once it improves its record.[25]

The CRA does not include stronger enforcement mechanisms common to other anti-discrimination statutes. It does not create civil or criminal sanctions for violations.[26] It does not create a private cause of action.[27] Finally, it does not require a bank to make loans as a remedy

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Reserve), § 345.29 (d) (FDIC), and §563e.29 (d) (OTS).

[24] *See* Lee v. Board of Governors of the Federal Reserve System, 118 F.3d 905 (2d Cir. 1997) [herinafter Lee I] (court applied substantial evidence and abuse of discretion standards in challenge to regulatory approval of bank expansion applications on the grounds that the banks had not complied with the CRA); Corning Savings & Loan Assoc. v. Federal Home Loan Bank Board, 571 F. Supp. 396 (E.D. Ark. 1983), *aff'd*, 736 F. 2d 479 (8th Cir. 1984) (court applied rational basis test to agency decision upholding bank merger on CRA grounds); Washington v. Comptroller of the Currency, 1987 U.S. Dist. LEXIS 11474 (S.D. Ga. Nov. 24, 1987), *aff'd*, 856 F.2d 1507 (11th Cir. 1988). *See also In re* Inner-City Press/Community on the Move and Matthew Lee, Sup. Ct. N.Y. Co. May 15, 1996, Index No. 101018 [herinafter Lee II] (court applied rational basis test to challenge to regulatory approval of bank expansion application on the grounds that the bank had not complied with New York Sate's CRA law). Of the few reported decisions challenging application approvals on CRA grounds, none have been successful. *See, e.g.*, Lee I (petitioner lacked standing to challenge regulatory approval of bank expansion application); Kaimowitz v. Board of Governors of the Federal Reserve System, 940 F.2d 610 (11th Cir. 1991) (petitioner lacked standing to challenge regulatory approval of bank expansion application); Lee v. Federal Deposit Insurance Corp., 1997 U.S. Dist. LEXIS 13885 (S.D.N.Y. Sept.12, 1997) [hereinafter Lee III] (plaintiff lacked standing to challenge regulatory approval of bank expansion applications); Lee II (under New York State's version of the CRA, petitioners had standing to challenge regulatory approval of bank expansion applications but petition dismissed on the merits).

[25] *See* Hicks v. Resolution Trust Corp., 970 F.2d 378 (7th Cir. 1992) (no real sanction for CRA non-compliance) [hereinafter Hicks II].

[26] *See* Hicks II, *supra* note 25; Hicks I, *supra* note 13, at 817–818.

[27] *See* Lee I, *supra* note 24; Lee II, *supra* note 24; Harambee Uhuru School, Inc.

for a poor CRA record.[28]

Description of the CRA Regulations

The CRA statute is the first level of CRA law. Next are the regulations that implement it. Each of the four federal banking agencies has issued regulations that provide further detail about how they will enforce the law. The four sets of regulations are virtually identical. The regulations are published in Volume 12 of the Code of Federal Regulations. Specifically, the Federal Reserve's regulations are in Part 228, the FDIC's are in Part 345, the OCC's are in Part 25, and the OTS' are in Part 563e.

The regulations set forth the standards for evaluating a bank's CRA record. The regulations include provisions for evaluating a bank's "performance context" and defining its "CRA assessment area." The regulations describe the various tests for evaluating a bank's CRA record, how the CRA will be enforced, and additional information banks must disclose.

1. Performance Context

The CRA regulations require the federal banking agencies to evaluate a bank's CRA record in light of several different factors, known as the "performance context."[29] Among the factors that the federal banking agencies consider are median household income, the nature of the housing stock, and housing cost. The federal banking agencies also consider other factors that could affect a bank's ability to lend, including the economic climate, the size and financial condition of the bank, and the bank's product lines and credit offerings.

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v. Kemp, 1992 U.S. Dist. LEXIS 15125, at *17 (S.D. Ohio 1992); Yabsley v. Conover, 644 F. Supp. 689, 700–701 (N.D. Ill. 1986).

[28] *See* Washington, *supra* note 24.

[29] The "performance context" is described at 12 C.F.R. § 25.21 (b) (2000). For the sake of efficiency, only the OCC's regulations are cited in the following description of the CRA regulations. The other federal banking regulatory agencies' CRA regulations are virtually identical to the OCC's.

2. CRA Assessment Area

The CRA regulations require a bank to delineate the local community in which it has CRA obligations, known as its CRA assessment area.[30] The bank's supervisory agency evaluates the bank's CRA assessment area to make sure it is consistent with the rules. If the CRA assessment area is not delineated according to the rules, the federal banking agency designates a CRA assessment area for the bank on its own.

A bank's CRA assessment area cannot reflect illegal discrimination and cannot arbitrarily exclude LMI geographies. The delineated service area for retail banks must generally consist of a metropolitan area or connected political subdivisions in which the bank has its main office, branches, or ATMs, and in which the bank has made a substantial portion of its loans. The delineated service area for a wholesale or limited purpose bank must consist of one or more metropolitan areas or one or more connected political subdivisions such as counties, cities, or towns in which the bank has its home or branch office.

3. Performance Tests and Evaluative Standards

The CRA regulations recognize three types of banks and establish different criteria for evaluating their CRA performance.[31] First, retail banks with $250 million or more in assets ("large banks") are evaluated according to the lending, investment, and service tests. Second, retail banks with less than $250 million in assets ("small banks") are subject to the small bank performance test. Third, wholesale and limited purpose banks are evaluated according to the community development test. Finally, the CRA regulations permit any bank to elect to be evaluated for CRA compliance pursuant to a strategic plan.[32] The new regulations exclude certain "special purpose banks" entirely from CRA responsibilities.[33]

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[30] *See* 12 C.F.R. § 25.41 for a description of the rules regarding delineating a CRA assessment area.

[31] *See* 12 C.F.R. § 25.12 (a) (1)–(3).

[32] *Id.* at (a) (4).

[33] 12 C.F.R. § 25.11(3). Special purpose banks are banks that do not perform

a. Large banks

The CRA regulations establish three tests for evaluating the CRA record of large retail banks: the lending, investment, and service tests.[34] A large retail bank will receive one of five ratings on each of these three tests and then, based on these ratings, one of four overall CRA ratings.

The lending test evaluates the bank's home mortgage, small business, small farm, and community development lending.[35] There are five assessment factors under the lending test:[36]

1. Lending activity — the total number and dollar amount of the bank's loans within its service area.

2. Geographic distribution — the geographic distribution of the bank's loans, including:

   a. Proportion of the bank's loans in its service area;

   b. Dispersion of lending in the bank's service area; and

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commercial or retail banking services in the ordinary course of their business, other than incidental to their specialized operations. These include banker's banks and banks that only perform cash management services or serve as correspondent banks, trust companies, or clearing agents.

[34] 12 C.F.R. § 25.21 (a) (1).

[35] 12 C.F.R. § 25.22 (a) (1). A home mortgage loan is a home improvement or home purchase loan as defined by HMDA. 12 C.F.R. § 25.12 (m). A small farm or small business loan is a small farm or small business loan as defined in the instructions for the Consolidated Report of Condition and Income that banks are required to file with the FDIC. *Id.* at (u) and (v). A community development loan is a loan that has its primary purpose community development. *Id.* at (i). Community development means affordable housing for LMI individuals, community services targeted to LMI individuals, activities that promote economic development through small businesses or small farms, and activities that revitalize or stabilize LMI neighborhoods. *Id.* at (h). In addition, the federal banking agencies will consider a bank's consumer lending if consumer lending constitutes a substantial portion of the bank's business or at the bank's option if it collects the necessary data. 12 C.F.R. § 25.22(a).

[36] 12 C.F.R. § 25.22 (b) (1)–(5).

c. Total number and dollar amount of loans in LMI, middle-, and upper-income census tracts within its service area.

3. Borrower characteristics — the distribution of the bank's loans based on borrower characteristics, including the total number and dollar amount of:

a. Home mortgage loans to LMI, middle-, and upper-income individuals;

b. Small business and small farm loans to businesses and farms with gross annual revenue of $1 million or less; and

c. Small business and small farm loans by loan amount at origination.

4. Community development lending — including the number and dollar value of community development loans and their innovativeness and complexity.

5. Innovative or flexible lending practices designed to address the needs of LMI individuals or neighborhoods.

A bank receives one of five ratings on the lending test: outstanding; high satisfactory; low satisfactory; needs to improve; or substantial non-compliance.[37] Generally, its rating is based on whether its performance is excellent, good, adequate, poor, or very poor, respectively.[38]

The second test for large retail banks under the CRA regulations is the investment test. The investment test evaluates the bank's community development investments. There are four measures of a bank's investments: the total number and dollar amount of community development investments; their innovativeness or complexity; the bank's responsiveness to community development needs; and the degree to

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[37] 12 C.F.R. pt. 25, App. A § (b) (1).
[38] *Id.*

which the investments are not provided by other private investors.[39] The ratings and the standards for evaluating a bank's performance under the investment test are similar to the standards under the lending test.[40]

The final test for large retail banks is the service test.[41] The service test evaluates the bank's retail and community development banking services. The criteria include the bank's branch distribution by neighborhood income level, record of opening and closing branches by neighborhood income level, use of alternative systems for providing banking services such as ATMs, range of services provided, and extent of community development services.[42] The ratings under the service test are the same as under the lending and investment tests, and the criteria for assigning a rating are based on the extent of services and their accessibility to LMI persons.[43]

A large bank's overall CRA rating is based on a combination of its ratings on the lending, investment, and service tests. The bank receives a numerical score on each of the three tests based on its rating on each test. The numerical scores are weighted so that the lending test rating is worth at least twice as much as the investment or service tests:[44]

Component 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 Non-compliance	0	0	0

The bank's CRA rating is determined as follows based on its overall score:[45]

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[39] 12 C.F.R. § 25.23 (a) and (e) (1)–(4).
[40] 12 C.F.R. pt. 25, App. A § (b) (2).
[41] 12 C.F.R. § 25.24.
[42] *Id.*
[43] 12 C.F.R. pt. 25, App. A § (b) (3).
[44] 60 Fed. Reg. 22,168-22,170 (1995).
[45] *Id.*

Composite assigned rating	Points
Outstanding	20 +
Satisfactory	11-19
Needs to Improve	5-10
Substantial Non-compliance	0-4

In addition, the CRA regulations contain three rules for assigning ratings to a large retail bank that apply regardless of the numerical rating: a large bank that receives a lending test score of outstanding must receive at least a satisfactory overall rating; a large retail bank that receives outstanding ratings on the investment and service tests must receive at least a satisfactory CRA rating; and a large retail bank that does not receive at least a low satisfactory on the lending test cannot get a satisfactory rating.[46]

b. Small retail banks

The CRA regulations contain five criteria to evaluate a small bank's lending record: loan-to-deposit ratio; percentage of loans in assessment area; record of lending to borrowers of different income levels, small businesses, and small farms; geographic distribution of loans; and responsiveness to complaints.[47] A small bank is eligible for a satisfactory CRA rating if its loan-to-deposit ratio is reasonable, a majority of loans are in its service area, its distribution of loans among individuals and neighborhoods of different income levels is reasonable, and it is generally responsive to complaints from the community.[48] A small bank is eligible for an outstanding CRA rating if it meets all these standards and exceeds some. Finally, a small bank will receive a needs to improve or substantial noncompliance CRA rating depending on the degree to which it has failed to meet these standards.

c. Wholesale and limited purpose banks

A wholesale bank is a bank that is not in the business of

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[46] 12 C.F.R. § 25.28 (b).

[47] 12 C.F.R. § 25.26 (a).

[48] *See* 12 C.F.R. pt. 25, App. A § (d) for a description of the small bank rating system.

extending home mortgage, small business, small farm, or consumer loans to retail customers, and has been designated by its supervisory federal banking agency as a wholesale bank.[49] A limited purpose bank is a bank that offers only a narrow product line to a regional or broader market and has been designated by its supervisory federal banking agency as a limited purpose bank.[50] The CRA regulations evaluate wholesale and limited purpose banks according to their community development lending, investments, and services.[51] The CRA regulations apply three performance criteria to a wholesale or limited purpose bank: total number and dollar amount of community development loans, investments, or services; their innovativeness, complexity, and unique nature; and the bank's responsiveness to community development needs. A wholesale or limited purpose bank will receive a CRA rating of outstanding, satisfactory, needs to improve, or substantial noncompliance based on whether its performance on these criteria was excellent, adequate, poor, or very poor.[52]

d. The strategic plan option

The final CRA performance test under the CRA regulations is the strategic plan option, an alternative available to any bank.[53] This option allows a bank to define for itself what constitutes a satisfactory CRA performance. A strategic plan must be in writing, contain measurable goals, and address lending, investment, and services. A bank that wishes to be evaluated according to the strategic plan option must submit its plan to it its federal banking agency for approval prior to adoption. Before the bank submits its plan to its federal banking agency for approval, it must seek public comment on the plan.

4. Enforcement

The CRA regulations contain several provisions relating to enforcing the CRA, including the effect that discriminatory lending

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[49] 12 C.F.R. § 25.12 (w).

[50] *Id.* at (o).

[51] The CRA performance tests for wholesale/limited purpose banks are described at 12 C.F.R. § 25.25.

[52] 12 C.F.R. pt. 25, App. A § (c).

[53] *See* 12 C.F.R. § 25.27 for a description of the strategic plan option.

practices will have on a bank's CRA rating and the effect that a bank's CRA record will have on its expansion applications. Evidence that a bank is engaged in discriminatory credit practices will have an adverse impact on the bank's CRA rating.[54] The degree of adversity depends on the extent and nature of the evidence and corrective action the bank has taken. The CRA regulations also state that the federal banking agencies will take a bank's CRA record and public comments about that record into account when considering a bank's application to establish a branch, relocate a branch, merge or consolidate with another bank, or acquire the assets or assume the liabilities of another bank.[55] The regulations state that when considering an application, a bank's CRA performance may be the basis for denying an application or conditioning approval of an application on an improved CRA record.

5. Data Disclosure Requirements

The CRA regulations require large retail banks to report the number of small business and small farm loans they made in each year according to the income level of the tract in which the business that received the loan is located.[56] The regulations also require large banks to report the total number and dollar amount of their community development loans, information about home mortgage loans outside the metropolitan area in which the bank has a home or branch office or outside of any metropolitan area, and a list of all branches opened and closed during the two previous years.[57]

II. IMPORTANT INFORMATION ABOUT BANKS AND HOW TO GET IT: EIGHT CRUCIAL DOCUMENTS FOR EFFECTIVE CRA ADVOCACY

There is a great deal of information available to the public about banks. This section identifies eight documents that contain essential information about a bank's CRA record and are readily available to the

[54] 12 C.F.R. § 25.28 (c).
[55] 12 C.F.R. § 25.29(a), (c), (d).
[56] 12 C.F.R. § 25.42 (b) (1).
[57] 12 C.F.R. § 25.42 (b) (2), (3); § 25.43 (a) (4).

public. This section divides the documents into two categories: those dealing with the bank's corporate structure and business operations and those dealing with its community lending record. This section describes the information in the documents and how to get them. Much of the information described below is available either from the website of the FFIEC or the webiste of the bank's supervisory agency. The addresses are as follows:

FFIEC	www.ffiec.gov
Federal Reserve	www.federalreserve.gov
FDIC	www.fdic.gov
OCC	www.occ.treas.gov
OTS	www.ots.treas.gov

The FFIEC's website contains information about bank lending that is not available on the federal banking agencies' websites and also contains links to each federal banking agency's website, so the FFIEC website is a good place to begin internet research.

Documents Relating to the Bank's Corporate Structure and Business Operations

Banks come in different shapes and sizes. A bank can be a privately held corporation or a publicly traded company. It can be a subsidiary of another corporation such as a "Bank Holding Company" (BHC) or "Financial Holding Company" (FHC), have subsidiaries of its own, or both. It can have affiliates or be a sole subsidiary. It can have several billion dollars in assets or a few million. It can be chartered by a state or by the federal government. It is regulated by one of four federal banking agencies and may also be regulated by a state agency. It can have many retail branches and offer a full range of consumer credit products such as home mortgage, small business, and consumer loans. It can have few branches and serve only wealthy clients, large corporations, or a particular market niche such as credit cards. It can do any of the above but exist only on the internet. It is important for community advocates interested in the CRA to develop profiles of neighborhood banks that identify these characteristics. The following four documents contain information that will help develop this profile.

1. The Bank's FDIC Profile

A good starting point for investigating a bank's structure is the bank's FDIC profile. Among the information about a bank that is available in the FDIC profile is the bank's official name and FDIC certificate number, the address of its main office, the number of branches it has, and the federal banking agency that regulates it.[58] The profile also gives the name of the bank's holding company, if any. The FDIC profile is available for all banks on the FDIC's website.

2. The Bank's Quarterly and Annual Reports

A bank's quarterly and annual reports contain information about the bank's assets and the nature of its business. A bank's reports are available to the public only if its stock is publicly traded, and even if its stock is publicly traded, if only a small number of shares are outstanding, the reports may not be available. If a bank is owned by another corporation such as a BHC, the bank might not issue annual or quarterly reports at all; information about the bank may be available in the BHC's reports. The bank's quarterly and annual reports are available from the bank or from the website of the Securities and Exchange Commission, www.sec.gov.

The bank's quarterly and annual reports contain information about the bank's size and financial health.[59] The reports disclose the bank's total assets, its net income, its capital-to-asset ratio, and the delinquency rates on its loans. The reports also contain information about the nature of the bank's business. This includes information about the geographic area in which it does business; its lines of business, such as home mortgage lending, small business lending, or credit card lending; the relative profitability of the different lines of business; and total loans outstanding.

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[58] For an example, *see, e.g.*, The Chase Manhattan Bank, *available at* http://www.ffiec.gov/nic/192.147.69.47/IDASP/rpt_Financial.asp (last visited Sept. 28, 2000).

[59] For an example, *see, e.g.*, Citigroup, Inc., Quarterly Report for the Period Ended June30, 2000, *available at* http://www.sec.gov/Archives/edgar/data/831001 /0001005477-00-005689.txt (last visited Sept. 28, 2000).

3. The Bank's Call Report

Every bank that is insured by the FDIC is required to file a quarterly financial report with the FDIC, known as the "Consolidated Report of Condition and Income" or "Call Report." Federally insured savings institutions file a "Thrift Financial Report" with the OTS. These reports are available via the FDIC's website.[60]

The Call Report contains a balance sheet, showing a bank's assets and liabilities. The balance sheet also shows the bank's total assets and the composition of its assets, including loans, securities, and cash. The Call Report includes a breakdown of the type and dollar amount of loans outstanding, including loans secured by real estate, commercial loans, construction and land development loans, and small business and small farm loans. It also includes a breakdown of liabilities, including the bank's total deposits categorized by source, including individuals, United States government, and states and political subdivisions. The Call Report also contains a statement of income and expenses. Among the interesting items of information are interest income on loans broken down to include interest on real estate, farm, commercial, and industrial loans, and credit cards. The statement also shows interest expenses on deposits and charge-offs on loans, including loans secured by real estate, commercial and industrial loans, and loans to individuals for household, family, and other personal expenditures.

4. The Uniform Bank Performance Report

The Uniform Bank Performance Report (UBPR) compares the performance of a bank on dozens of performance indicators to other banks in its peer group, meaning banks of similar asset size.[61] The UBPR, which is available on the FFIEC's website, www.ffiec.gov, is essential in analyzing the financial health and the lending and other

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[60] For an example, *see, e.g.*, The Chase Manhattan Bank, Consolidated Report of Condition and Income, January 1–June 30, 2000, *available at* http://www.ffiec.gov/www2.FDIC.GOV/call_ tfr_rpts/inform.html (last visited Sept. 28, 2000).

[61] For an example, *see, e.g.*, The Chase Manhattan Bank, Uniform Bank Performance Report, June 30, 2000, *available at* http://www.ffiec.gov/www2. Fdic.gov/ubpr/UbprReport/UB...BankCis=1&Name=The+Chase+Manhattan+Bank& (last visited Sept. 27, 2000).

business practices of a bank. Among the indicators relating to the financial health of a bank are the bank's net income as a percentage of average assets and the bank's risked-based capital to risk-weighted assets. Of particular importance to analyzing a bank's CRA record are comparisons on indicators such as loan-to- asset ratio and loan-to-deposit ratio. Another important indicator for CRA purposes is the percentage of the bank's loans by type of loan, including construction and development, 1–4 family residential housing, farms, multifamily housing, commercial and industrial, credit cards, and loans to individuals. Finally, several indicators in the UBPR are relevant to a bank's willingness and ability to make different sorts of loans, including the percentage yield on loans for real estate, commercial and industrial projects, individuals, and agriculture. The UBPR also shows the bank's cost of deposits, including transaction accounts, money market deposit accounts, and other savings deposits. Another statistic in the UBPR is net losses as a percent of assets by type of loan, including loans for real estate and commercial and industrial projects, loans to individuals, and loans for agriculture. The UBPR also shows the percentage of non-current loans by loan type.

Documents Relating to the Bank's Community Lending Record

Detailed information about a bank's home mortgage, small business, and community development lending is available to the public. A bank's CRA evaluation report and its CRA public file also contain important information about the bank and its lending practices.

5. The Bank's HMDA Report

The bank's HMDA report is available from the FFIEC's website and from the bank itself. The HMDA report shows various types of information about the bank's home mortgage lending, including, for each home mortgage loan application, the location of the property that is the subject of the application, type of application, result of the application, borrower race and income characteristics, and the racial composition and income level of the neighborhood where the bank made the loan.[62]

Specifically, the HMDA report shows:

Location of property:
*state;
*metropolitan area;
*county;
*census tract.

Type of application:
*home purchase loan insured by the federal government;
*conventional home purchase loan;
*home mortgage refinance loan;
*home improvement loan;
*multi-family residence purchase loan;
*loan on property that is not owner-occupied.

Result of the application:
*application granted;
*application denied;
*application withdrawn by applicant;
*application closed because incomplete;
*application granted but applicant turned loan down.

Borrower characteristics:
*income level — low-, moderate-, middle-, or upper-income;
*race--Native American, Asian/Pacific Islander, Latino, African-American, white;
*gender.

Characteristics of census tract in which property is located:
*median income — low-, moderate-, middle-, or upper-income;
*racial composition--less than 10 percent minority; 10-19% minority; 20-49% minority; 50-79% minority; 80-100% minority.

The HMDA report organizes this information into eight tables. Each of these tables presents totals for a bank in a single metropolitan

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[62] *See, e.g.*, Citibank, N.A., HMDA Disclosure Report, 1999, *available at* http://www.ffiec.gov/cgi-bin/pbisa60.d1...id=0000011461&as_inst_name=CITIBANK, NA (last visited Nov. 3, 2000).

area. Several of the HMDA tables cross-tabulate the HMDA data so that it is possible to compare the results for each type of application based on the race and income of the applicant or the racial composition and income level of the neighborhood where the bank made the loan.

Table One: Disposition of Loan Applications, by Location and Type of Loan

Table One shows, for each census tract in which the bank received an application in the metropolitan area, the result of the application. Table One also shows the total number of each type of loan the bank made on property outside of a metropolitan area in which the bank had a branch or home office.

Table Two: Loans Purchased, by Location of Property and Type of Loan

Table Two shows the loans the bank purchased, by census tract of the property in which the loan was made and type of loan.

Table Three: Loans Sold, by Characteristics of Borrower and Census Tract in Which Property is Located and by Type of Purchaser

Table Three shows the number of loans the bank sold to secondary market purchasers. It includes several different purchasers, including the Federal National Mortgage Association (Fannie Mae), the Government National Mortgage Association (Ginnie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), commercial banks, savings banks, life insurance companies, and affiliated institutions. Table Three shows total loans sold, and groups the total according to race, gender, and income of borrower, and racial composition and income level of the neighborhood in which the loan was made.

The next four tables, tables Four through Seven, are divided into six sub-tables, one for each type of the six different loan applications reported under HMDA.

Table Four: Disposition of Applications by Race, Gender, or Income of Applicant

Table Four shows metropolitan area totals for the disposition of each type of loan application according to the race, gender, or income level of the loan applicant.

Table Five: Disposition of Applications by Income/Race of Applicant

Table Five cross-tabulates some of the data in Table Four. It shows the disposition of each type of loan application by the applicant's race and income level combined. Table Five thus makes it possible to compare a lender's treatment of Native American, Asian/Pacific Islander, Latino, African American, and white loan applicants at various income levels, including, for example, LMI whites to LMI African-Americans.

Table Six: Disposition of Applications by Income and Gender of Applicant

Table Six is another cross-tabulation of some of the data in Table Four. Table Six cross-tabulates the income and gender information from Table Four.

Table Seven: Disposition of Applications by Race and Income Characteristics of the Census Tract in Which the Loan was Made

Table Seven shows three things. First, it shows the results of applications for each type of HMDA loan by the racial composition of the neighborhood. Next, it shows the same information by income level of the neighborhood. Finally, Table Seven cross-tabulates this information to show the results of applications by a neighborhood's racial composition and income level combined. Thus, it is possible to use Table Seven to determine a bank's relative treatment of applicants from neighborhoods that have the same median income but different minority percentage populations, including, for example, neighborhoods with 80 percent or higher minority population compared to neighborhoods with 80 percent or higher white population.

Table Eight: Reasons for Denial of Applications

Table Eight shows, for each type of HMDA loan, the total number and percentage of loan applications denied for any one of ten reasons, by race, gender, or income of the applicant. The reasons include debt-to-income ratio, employment history, credit history, collateral, insufficient cash, unverifiable information, credit application incomplete, mortgage insurance denied, and "other."

In addition to HMDA tables for individual banks, the FFIEC website also contains HMDA tables that show the results for all lenders in each metropolitan area in the United States.[63] These tables mirror the HMDA tables for individual lenders. In addition, these aggregate tables include a table that lists all the lenders who submitted HMDA data, a table showing the disposition of home mortgage applications by median age of the home in the census tract in which the loan was made, and a table showing the disposition of loan applications in central city areas compared to non-central city areas.

6. The Bank's CRA Disclosure Statement: Small Business and Community Development Lending

The CRA Disclosure Statement, which is the report about a bank's small business and community development lending that the CRA regulations require, is available on the FFIEC's website as well as from the bank.[64] The CRA Disclosure Statement provides, among other information, the total number and dollar amount of a bank's small business loans according to the income level of the neighborhood where the bank made the loan. CRA Disclosure Statements are available individually for each bank that makes a small business loan and in the aggregate for all lenders. The information is provided by county.

The CRA Disclosure Statement for individual banks contains several tables of information about small business lending:

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[63] *See, e.g.*, HMDA Aggregate Report, MSA 5600, 1999, *available at* http://www.ffiec.gov/cgi-bin/pbisa60.dl...RK,NY &as_table=ifas_page=1das_part=1 (last visited Nov. 3, 2000).

[64] *See, e.g.*, The Chase Manhattan Bank, CRA Disclosure Statement, *available at* http://www.ffiec.gov/cgi-bin/pbisa60.dl...RAAD/uo_disclosure/of_process_retrieve? (last visited Oct. 1, 2000).

Table 1-1: Small Business Loans by County — Originations

This table reports the total number and dollar amount of small business loans the bank originated according to the income level of the neighborhood where the bank made the loan. Table 1-1 reports whether the loan amount was less than $100,000, greater than $100,000 but less than or equal to $250,000, and greater than $250,000. Table 1-1 also reports total loan originations and total dollar amount of loan originations to businesses with gross annual revenues less than or equal to $1 million, also by census tract income.

Table 1-2: Small Business Loans by County — Purchases

This table is organized the same way as Table 1-1 but reports data about small business loan purchases rather than originations.

Table 2-1: Small Farm Loans by County — Originations

This table mirrors Table 1-1 but reports data about small farm loans.

Table 2-2: Small Farm Loans by County — Purchases

This table mirrors Table 1-2 but reports data about small farm loan purchases.

Table 3: Assessment Area/Non-Assessment Area Activity — Small Business Loans

This table reports data about small business loans within the bank's CRA assessment area and outside of its CRA assessment area. It reports total small business loans, total loan originations to small businesses with gross annual revenue of less than $1 million, and small business loan purchases.

Table 4: Assessment Area/Non-Assessment Area Activity —Small Farm Loans

This table is organized the same way as Table 3 but reports data for small farm loans.

Table 5: Community Development/Consortium Third-Party Activity

This table reports the total number and dollar value of the bank's community development loans and the total dollar value of those loans. It also indicates the total number and dollar amount of such loans that were made by the bank's affiliates.

Table 6: Assessment Areas by Tract

This table divides all the census tracts in the bank's CRA assessment area by median income relative to the area median income in increments of ten percent and shows the tracts in which the bank did and did not make a small business loan.

In addition to the CRA Disclosure Statements for particular banks, the FFIEC's website contains aggregate reports for all banks by county.[65]

Table 1-1: Small Business Loans by County

This table is similar to Table 1-1 for individual banks. The difference is that within each income level grouping, aggregate Table 1-1 also lists the total number and dollar amount of loans in each census tract in which a loan was made.

Table 1-1a: Small Business Lenders in Metropolitan Area — Originations

This table lists each small business lender in a metropolitan area, and states, by lender, the total number and dollar amount of small business loans, and the total number and dollar amount of loans to businesses with gross annual revenues less than or equal to $1 million. This table also shows for the metropolitan area the total number of small business lenders, total number of small business loans, total dollar value of loans, and total number and dollar value of small business loans to businesses with gross annual revenues less than or equal to $1 million.

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[65] *See, e.g.*, CRA Aggregate Report, MSA 5600, 1999; available at http://www.ffiec.gov/cgi-bin/pbisa60.dll/... &as_State=36+ +New+York+(NY)&as_County= (visited Oct. 1, 2000).

This table also reports these totals for each county within the metropolitan area.

Table 1-2: Small Business Loans by County — Purchases

This table is structured the same way as Table 1-1, but reports information for small business loan purchases.

Table 1-2a: Small Business Lenders in Metropolitan Area — Purchases

This table is identical to Table 1-1a, but reports data for small business loan purchasers and purchases.

Table 2-1: Small Farm Loans by County — Originations

This is identical to Table 1-1, but reports data for small farm loan originations.

Table 2-1a: Small Farm Lenders in Metropolitan Area — Originations

This table is identical to Table 1-1a but reports the data about small farm lenders.

Table 2-2: Small Farm Loans by County — Purchases

This table is identical to Table 2-1, but it reports data for small farm loans.

Table 2-2a: Small Farm Lenders in Metropolitan Area — Purchases

This table is identical to Table 2-1a, but it reports the data for small farm loan purchases.

7. The Bank's Written CRA Evaluation Report

The bank's written CRA evaluation report is available from the bank and also from the bank's regulatory agency's website.[66] Although the CRA evaluations differ based on the type of bank evaluated, all reports include certain common elements, including a demographic description of the bank's CRA assessment area, a corporate profile of the bank, a description of the results of the bank's separate fair lending exam, and a CRA rating with explanation. In addition to these common elements, each report evaluates the bank according to the particular performance criteria that apply to it, which in turn depends on the size of the bank and the nature of its business. Thus, the evaluation report for a large retail bank applies the lending, investment and service tests; the evaluation report for a small retail bank applies the five small bank performance criteria; the evaluation report for wholesale and limited purpose banks applies the community development investment and services tests; and the evaluation report for a bank electing to be evaluated under the strategic plan option includes an analysis of its performance under its own performance targets.

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[66] *See, e.g.*, the following Community Reinvestment Act Performance Evaluation Reports: Northern Trust Bank of Arizona, N.A., Office of the Comptroller of the Currency, July 6, 1999; First National Bank of South Dakota, Office of the Comptroller of the Currency, May 26, 1999; First National Bank of Clinton, Office of the Comptroller of the Currency, January 25, 1999; Citibank, N.A., Office of the Comptroller of the Currency, October 26, 1998; Household Bank (Nevada), N.A., Household Bank (SB), N.A., and Household Bank (Illinois), N.A., Office of the Comptroller of the Currency, July 6, 1998; Home Trust & Savings Bank, Federal Reserve Bank of Chicago, April 21, 1998; Somerset Savings Bank, SLA, Office of Thrift Supervision, April 6, 1998; Marquette National Bank, Office of the Comptroller of the Currency, January 26, 1998; Cenlar FSB, Office of Thrift Supervision, January 12, 1998; SunTrust Bank, Tallahassee, N.A., Office of the Comptroller of the Currency, October 14, 1997; Associates National Bank (Delaware), Comptroller of the Currency, May 30, 1997; Security Federal Savings Bank, Office of Thrift Supervision, December 23, 1997; Atlas Savings and Loan Association, Office of Thrift Supervision, December 22, 1997; Mercantile National Bank, Office of the Comptroller of the Currency, September 9, 1996; Key Bank, USA, National Association, Comptroller of the Currency, July 31, 1996. These reports are on file with the author and are also available on the examining federal banking agency's website.

Common Elements in CRA Performance Evaluation Reports

Demographic Profile of the CRA Assessment Area

The purpose of this demographic profile is to set the context within which to evaluate the bank's CRA record. The profile thus includes information about the area's economy, housing, small business, and median income. In particular, the profile can include the following information:

Assessment area description: size and location of assessment area; municipalities within assessment area.

Population: total population; total number of families; total number of households; total number of census tracts.

Income information: number and percentage of households below the poverty level and on public assistance; number and percentage of low-, moderate-, middle-, and upper-income census tracts; number and percentage of low-, moderate-, middle-, and upper-income households; number and percentage of families arranged by income level and income level of the census tract in which they live; median household income.

Housing: total number and percentage of owner-occupied units, renter occupied units, 1–4 family units, multi-family units, and vacant units according to income level of census tract in which the property is located; median housing price; median housing age; percentage of affordable units; number of affordable units available.

Miscellaneous: Description of principal employers and industries; description of community credit needs; credit needs as described by community contacts; unemployment rate.

Corporate Profile of the Bank

All CRA evaluation reports also include a corporate profile of the bank. The purpose of this profile is to evaluate the bank's ability to meet its assessment area's credit needs based on its size, financial health, and business plans. The bank's corporate profile can include the following:

Financial information: total income; total assets; compliance with regulatory capital requirements; existence of financial or other legal impediments; source of funds for loans.

Business activities and strategies: lines of business; services provided; office/branch locations.

Loan portfolio: total loans; total dollar value of loans; total dollar value of loans by type of loan (for example, 1–4 family residential, multi-family, nonresidential real estate, other real estate, commercial, and consumer); percentage of loan portfolio by type of loan; types of mortgages provided (for example, fixed and adjustable rate, residential and construction lending, government-insured, other low-income loan programs).

Corporate structure: affiliates; subsidiaries; holding company; recent acquisitions.

Competition: the bank's market share of deposits in assessment area; HMDA reporters in assessment area; number of banks in "peer group" based on similar asset size and nature of business.

Results of the Bank's Separate Fair Lending Examination

In addition to examining banks for compliance with the CRA, the federal banking agencies evaluate bank compliance with the federal anti-discrimination laws, including the Fair Housing Act and the Equal Credit Opportunity Act. Unlike the CRA examination report, the results of these evaluation reports are not available to members of the public. Nevertheless, the CRA regulations indicate that evidence of discriminatory lending practices could be a negative factor in assigning a CRA rating to a bank. Thus, the CRA evaluation report includes a description of the bank's fair lending evaluation.

The description of the results of the fair lending examination can take many forms, ranging from a statement that no violations were found, "technical" violations were uncovered, or substantive violations were discovered. Technical violations include things such as failure to give proper notices to rejected applicants or improper questions on application forms. Substantive violations include discrimination on account of a protected characteristic. In addition, if the agencies did uncover a violation, the report will describe any remedial steps the bank took or enforcement efforts the agency undertook.

The Bank's Rating and Explanation of the Rating

All CRA evaluation reports include one of four ratings for the bank: outstanding; satisfactory; needs to improve; or substantial noncompliance. The evaluation reports explain the basis for the rating. Among the factors that the federal banking agencies consider in assigning a rating are the bank's performance compared to other banks, its record of improvement since its prior examination, the local economy, and the financial condition of the bank.

Characteristics of CRA Evaluation Reports on Particular Types of Banks

Large retail banks

The CRA evaluation reports for large retail banks contain data about the bank's performance on the lending, investment, and service tests. Under the lending test, the report can contain information such as:

Assessment area loan concentration: percentage of all loans and loans by type in the bank's CRA assessment area.

Geographic distribution of loans: percentage of each type of loan in low-, moderate-, middle-, and upper-income neighborhoods; percentage of loans by income level of neighborhood compared to the percentage of the population living in each such neighborhood; percentage of loans by income level of neighborhood compared to owner-occupied housing supply in each such neighborhood; and percentage of loans by income level of the neighborhood compared to small businesses in each such neighborhood.

Distribution by borrower characteristics: Percentage of loans by type of loan to borrowers at different income levels.

Community development lending: Total number and dollar amount of community development loans; description of the loans.

Flexible or innovative lending practices: Participation in loan consortia; loans with flexible terms.

Under the investment test, the CRA performance evaluation report lists the type, number, and dollar amount of community development investments, and the number, recipient, type, and dollar amount of grants and contributions.

Under the service test, the CRA performance evaluation report lists information about the following:

Accessibility of service delivery systems: bank branches/ATMs in LMI tracts; proximity of branches/ATMs to LMI tracts; distribution of branches and ATMs by income level of census tract; branch closings and openings; availability of alternative delivery systems.

Community development services: Participation on boards of community development organizations; technical assistance to community development programs and projects; education and outreach efforts.

Small bank evaluation reports

The CRA evaluation report for a small bank contains information about the small bank CRA performance criteria. This includes the bank's loan-to-deposit ratio; its loan-to-deposit ratio compared to its peer banks; the percentage of the bank's total loans and total dollar amount of loans within the bank's CRA assessment area; the percentage of the bank's loans to persons at low-, moderate-, middle-, and high-income levels; these percentages compared to the average for all lenders in the assessment area and for peer banks; the percentage of the bank's loans within its CRA assessment area; and the percentage of the bank's loans in LMI census tracts and the bank's percentage compared to the percentages of other banks.

Wholesale and limited purpose bank evaluation reports

The CRA evaluation report for wholesale and limited purpose banks describe the bank's community development lending, investments, and services. It includes a description of the loans a bank has made and their purposes, amounts, and rates. It also includes a description of the terms, amounts, and purposes of the bank's investments and charitable grants. Finally, in connection with the bank's community development services, the report describes the bank's participation in not-for-profit community development organizations and the bank's participation in the development of unique lending programs.

Strategic plan option evaluation reports

The CRA performance evaluation reports for banks that have elected to be evaluated according to a strategic plan contains a description of the bank's goals, shows the bank's record at meeting those goals, and discusses the basis for the rating, including an analysis of the reason the bank met the goals or failed to meet the goals. The goals include lending, investment, and service goals. For example, depending on the bank's plan, a report might show the bank's goals for the total number and dollar amount of small business, affordable home mortgage, small farm, and community development loans compared to the actual number and dollar amount of loans the bank made. Regarding investments, the report could show the bank's goals for total number and dollar amount of community development investments, total number and dollar amount of participations in investment consortia, and total number and dollar amount of grants to community development organizations, and the extent to which the bank met the goals. The report also shows the bank's goals for services and its record at meeting the goals. This could include the number of lending-related educational seminars, hours of technical assistance to community development organizations, and provision of credit counseling services.

8. The Bank's CRA Public File

The CRA regulations require all banks to maintain a public file that contains at least six types of documents.[67] These include all written comments received from the public in the current calendar year and the two previous calendar years relating to the bank's CRA performance, the bank's most recent CRA performance evaluation, a list of the bank's branches and locations by address and census tract, a list of bank branches opened or closed in the current and previous two years by address and census tract, a list of services at each branch with a description of material differences in services, and a map of each bank CRA assessment area that identifies the census tracts it contains.

In addition to these disclosure requirements for all banks, there are several requirements for particular types of banks. If a bank is

[67] *See* 12 C.F.R. § 25.43 (2000) for a description of the required contents of the CRA public file.

required to report HMDA data, it must include its current HMDA Disclosure Statement and the statements for the previous two calendar years. If the bank elects to have the home mortgage disclosure record of any of its affiliates considered as part of its CRA performance evaluation, it must include the HMDA Disclosure Statement of its affiliate[s] in its file as well. A large bank must include in its public file a copy of its CRA Disclosure Statement regarding its small business and community development lending. A small bank must include in its public file its loan-to-deposit ratio for each quarter of the prior calendar year. A bank with a strategic plan must include a copy of the plan in its public file. A bank with a less than satisfactory CRA rating on its immediately previous exam must include in its public file a description of efforts it is undertaking to improve its record. Finally, if a bank elects to have its consumer lending evaluated for CRA purposes, it must, for each type of loan, disclose the total number and dollar amount of loans to low-, moderate-, middle-, and upper-income individuals; the total number and dollar amount of such loans located in low-, moderate-, middle-, and upper-income census tracts; and the total number and dollar amount of such loans located inside the bank's CRA assessment area and outside the bank's CRA assessment area.

III. ANALYZING A BANK'S CRA RECORD

As described in Part Two, detailed information about a bank's CRA record is readily available to the public. Hopefully, this Guide has provided enough information about how the CRA works and has described the available information and its importance in enough detail to provide advocates with a basis for applying the evaluative criteria in the CRA regulations to a bank's record to analyze how a bank is doing. However, it is not sufficient to leave things at that. Due to several deficiencies in the CRA regulations, analyzing a bank's CRA performance based on the existing CRA evaluative criteria does not give a full sense of a bank's record of meeting the credit needs of its community. This section outlines several weaknesses in the CRA regulations, describes an alternative method for analyzing a bank's CRA record that addresses some of these deficiencies, and shows how the alternative method works by applying it to the HMDA data of a hypothetical bank.

Ten Big Problems with the CRA Regulations, Evaluative Criteria, and Agency Examination Practices

There are ten big problems with the CRA regulations, evaluative criteria, and federal banking agency examination practices that result in CRA performance evaluations that do not provide a full picture of how a bank is doing at meeting its CRA obligations.

1. **The federal banking agencies do not consider a bank's lending record according to the race of the applicant or the racial composition of the neighborhood in which the property is located.**

The federal banking agencies do not evaluate a bank's record of lending to minority individuals or predominantly neighborhoods when conducting the bank's CRA performance evaluation. Although the federal banking agencies conduct a separate fair lending examination that they take into account when assigning a CRA rating to a bank, the standards of the fair lending examination and the CRA performance evaluations are not the same. The anti-discrimination laws prohibit discrimination, but by their terms they do not, like the CRA, place an ongoing obligation on lenders to meet the credit needs of the community.[68]

2. **The federal banking agencies do not employ a fixed set of data when evaluating a bank's lending record.**

Although the CRA regulations require the federal banking agencies to use certain data when evaluating a bank's CRA record, the agencies are able to pick and choose other data to use. In the absence of a fixed set of data, it is difficult to determine what data is important to the federal banking agencies when they are evaluating a bank's CRA performance and assigning a rating.

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[68] *See* the Fair Housing Act, 42 U.S.C. §§ 3601–3613 (1994 & Supp. IV 1998) and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691–1691f (1994 & Supp. IV 1998).

3. The federal banking agencies do not employ a determinative benchmark against which to judge a bank's lending record.

The federal banking agencies use various benchmarks to evaluate the quantitative data they employ, but none of them is determinative of the bank's CRA rating. As a result, it is difficult to discern the standards the agencies employ in enforcing the CRA.

4. A bank's rating is based on the subjective judgment of the examiner.

In the absence of a fixed set of data and a determinative benchmark for evaluating a bank's lending, the bank's CRA rating is left to the subjective judgment of the bank's examiner. This undermines confidence in the accuracy of the ratings. Frequently, the ratings the federal banking agencies assign to a bank are higher than community advocates think they should be, but in the absence of fixed data or determinative benchmark against which to evaluate the data, it is difficult to challenge the ratings persuasively.

5. The federal banking agencies generally do not consider a bank's record of receiving applications.

The federal banking agencies generally do not consider the number of loan applications a bank receives when evaluating the bank's CRA record. The number of applications a bank receives from a community is a sign of the bank's commitment to lend in that neighborhood and is a powerful indicator of the number of loans the community will receive and thus merits consideration in the bank's CRA evaluation.[69]

6. Federal banking agencies generally do not consider a bank's record of denying applications.

The federal banking agencies generally do not consider a bank's record of denying applications when evaluating the bank's CRA record. A bank's record of denying applications from a particular community relative to other communities is a good indicator of its treatment of that

[69] *See* Marsico, *supra* note 3, at 487, 525–526.

community relative to other communities and is also an indicator of the number of loans the community will receive.[70] It thus merits inclusion in the bank's CRA evaluation.

7. The CRA regulations do not require the federal banking agencies to consider the "quality" of a bank's loans.

The CRA regulations do not require the federal banking agencies to evaluate the "quality" of a bank's loans. They do not require the federal banking agencies to determine whether a bank's loans in an LMI neighborhood do more harm than good. As the growth of the "subprime" lending market in LMI neighborhoods and the resulting harm such lending does to such neighborhoods makes clear, however, it is imperative that the federal banking agencies evaluate whether the bank engages in harmful lending practices, and, if it does, to take this account in assigning the bank its CRA rating.[71]

8. The federal banking agencies do not consider the lending record of the bank's affiliates.

The federal banking agencies do not consider the lending record of the bank's affiliates when evaluating the bank's CRA record unless the bank elects to have the affiliates evaluated.[72] As a result, the bank is

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[70] *Id.* at 488, 525.

[71] Subprime lenders specialize in making higher-priced loans to borrowers with less than "A" rated credit. *See* RANDALL M. SCHEESSELE, 1998 HMDA HIGHLIGHTS 12 (Dep't of Hous. & Urban Dev., Office of Pol'y Dev. and Research, Working Paper No. HF-009 1999); Glenn B. Canner & Wayne Passmore, *The Role of Specialized Lenders in Extending Mortgages to Lower-Income and Minority Homebuyers*, 85 FED. RES. BULL. 709, 715–716 (1999); Bill Dedman, *Study Discerns Disadvantages for Blacks in Home Mortgages*, N.Y. TIMES, Nov. 14, 1999, at 18; Katharine Fraser, *Revised Fair-Lending Exams Include Subprime and Auto*, AM. BANKER, Sept. 14, 1999, at 2; Daniel Wise, *State Agencies Finally Reach Pact Over Lender Abuse*, N.Y.L.J., Sept. 23, 1999, at 1. Subprime lending is subject to abusive practices, including very high interest rates, negative amortization, hidden fees and penalties, and balloon payments, and subprime loans frequently result in a higher than average rate of foreclosure. Letter from John A. Joyce, Secretary of the New York State Banking Board, to Each Institution Addressed 2 (Dec. 28, 1999). *See also* Canner & Passmore, *supra* at 751; Dedman, *supra;* Heather Timmons, *Subprime Lender Delta Agrees to $6M Settlement with New York Attorney General*, AM. BANKER, June 24, 1999, at 28; Wise, *supra.*

[72] 12 C.F.R. § 25.22(c) (1) (2000).

not held accountable under the CRA for the practices of its affiliates, even if the bank controls or works closely with the affiliates. Thus, if the bank's affiliate engages in harmful lending practices, serves only upper-income or white neighborhoods, or engages in discriminatory lending practices, the bank is not accountable under the CRA.

9. **The federal banking agencies do not necessarily consider a bank's lending record in the entire metropolitan area in which it does business.**

The CRA regulations permit banks to define the geographic area in which they have CRA obligations. This permits banks to define their lending area to be comprised of only the upper-income portions of their community. Requiring a bank to define its service area as the entire metropolitan area in which it does business would prevent this.

10. **The CRA regulations do not require the federal banking agencies to compare a bank's record to all lenders in its area.**

Although the federal banking agencies frequently compare a bank's lending record to all lenders in the bank's area, the CRA regulations do not require the agencies to do so. As a result, the agencies are not bound by this comparison, and can excuse a weak comparison to all lenders with a strong comparison to only a few competitors.

An Alternative Method for Analyzing a Bank's Lending Record

Because of the limitations in the CRA law and regulations, community advocates must develop alternative ways for analyzing whether a bank is meeting its CRA obligations. This section describes one possible alternative method that addresses some of the deficiencies of the CRA performance evaluations. It is not meant to be the exclusive alternative. It stands on its own terms as a method for analyzing the lending record of a large retail bank in a relatively large metropolitan area. It also serves as an example for community advocates for developing different methodologies based on the type of bank they are analyzing and the needs of their communities. This alternative analysis examines lending to minority individuals and predominantly minority neighborhoods, it uses a fixed set of quantitative data and determinative benchmarks for evaluating a bank's lending, it compares the bank's lending record to the average lending record for all lenders in the bank's metropolitan area, it compares the bank's record among LMI and minority communities to its record in wealthy and white neighborhoods, it can be applied to all of the bank's affiliates separately, and it can combine the bank's record with its affiliates' records.

This analysis examines only a bank's home mortgage lending, because such lending is the only type for which sufficient data is available to do the analysis. Therefore, it does not measure a bank's entire CRA record, only that part relating to home mortgage lending. Finally, this analysis should not be applied to a bank that is engaged in subprime lending activities, as the analysis does not evaluate the quality of the loans. Such banks, in effect, do not qualify to have their lending evaluated according to a methodology that depends on how much lending they are doing.[73] Other quantitative measures could be applied to subprime lenders, focusing in particular on the extent to which they are targeting their efforts in minority communities.

This method for analyzing a bank's lending record has three key components.[74] First, the analysis measures a bank's lending record in four different "subject communities": LMI neighborhoods; LMI individuals; predominantly minority neighborhoods; and minority individuals.[75] For purposes of the analysis, each subject community has a control community whose key characteristic is opposite that of the subject community. The reason for this is the assumption that the bank's lending in the control community represents its "normal" level of lending absent prejudice or any other factors that may inhibit the bank from

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[73] Additionally, the methodology should not be applied to the subprime lending activities of a bank that is not primarily a subprime lender. However, HMDA data presently does not include enough information to make this distinction.

[74] This methodology was applied to lenders in the New York Metropolitan Area in 1998 in Richard Marsico, *New York Metropolitan Area Lending Scorecard: 1998*, 16 N.Y.L. SCH. J. HUM. RTS. 769 (2000).

[75] In the following analysis, an LMI neighborhood is a census tract with a median income of less than 80 percent of the metropolitan area median income. An LMI person has an income of less than 80 percent of the metropolitan area median income. A minority person is a Native American, Asian American, Latino, or African-American. A predominantly minority neighborhood has a minority population of 80 percent or higher.

lending in the subject community. The control community for LMI neighborhoods is upper-income (UI) neighborhoods.[76] The control community for LMI individuals is UI individuals.[77] For minority persons, the control community is white persons, and the control community for predominantly minority neighborhoods is predominantly white neighborhoods.[78]

Second, the analysis uses a fixed set of quantitative data. It evaluates three sets of data about a bank's home mortgage lending record in each subject community: loan applications received; loan originations; and loan applications denied.

Third, the analysis applies five different evaluative criteria to the data about a bank's home mortgage lending performance in each subject community and establishes a benchmark against which to measure the results. The first three criteria compare the bank's record in each subject community in the entire metropolitan area in which the bank does business to the metropolitan area average for all lenders in each subject community:

1. Percentage of applications received: The percentage of applications the bank received from each subject community compared to the percentage of applications all lenders received from each subject community.

2. Percentage of loans originated: The percentage of loans the bank originated in each subject community compared to the percentage of loans all lenders originated in each subject community.

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[76] In this analysis, a UI neighborhood is a census tract with a median income of more than 120 percent of the metropolitan area median income.

[77] In this analysis, a UI person has an income of 120 percent or greater of the metropolitan area median income.

[78] In this analysis, a predominantly white neighborhood has a white population of more than 80 percent.

> 3. Denial rate ratio: The bank's denial rate ratio in each subject community compared to the denial rate ratio for all lenders in each subject community.[79]

The remaining two criteria compare the bank's market share of loan applications and loan originations in each subject community in its metropolitan area to its market share in the corresponding control community in the metropolitan area:

> 4. Market share of applications: The bank's market share of all applications received from each subject community in the metropolitan area compared to its market share of all applications received from each corresponding control community in the metropolitan area.
>
> 5. Market share of loan originations: The bank's market share of all loan originations in each subject community in the metropolitan area compared to its market share of loan originations in each corresponding control community in the metropolitan area.

Finally, the analysis uses an objective method for evaluating a bank's record. The analysis assigns a "+" score to the bank for each criterion for which the bank beat the metropolitan area, and a "-" for each criterion where the bank lost. It also assigns a "+" to the bank where the bank's own performance in a subject community beat its own performance in the control community, and a "-" if the bank lost. Applying each of the five criteria to each of the four subject communities results in 20 "scores" for a bank. Once all 20 scores are tabulated, if the result is "+" overall, the bank has an above average lending record; if the result is "0," the bank has an average record; and if the result is "-" overall, the bank has a below average record.

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[79] The denial rate ratio is the percentage of applications the bank denied from a subject community divided by the percentage it denied from its control community.

An Example of the Analysis at Work

This section contains an example of how to do the analysis. Assume a hypothetical bank, Green Back Bank (Green Back). It does business in the Silverado Metropolitan Area (Silverado). Green Back is not a subprime lender and its primary loan product is conventional home mortgage lending. Green Back does not have any affiliates. This analysis will examine Green Back's conventional home mortgage lending in Silverado, using excerpts from hypothetical HMDA disclosure reports for Green Back and Silverado.

Assume that the following are excerpts from Green Back Bank's HMDA disclosure report for the Silverado Metropolitan Area.

GREEN BACK BANK
HMDA TABLE 4-2
CONVENTIONAL HOME MORTGAGE LENDING
RACE OR INCOME OF APPLICANT
SILVERADO METROPOLITAN AREA

RACE	APPLICATIONS	DENIALS	ORIGINATIONS
Native American	20	10	10
Asian	80	20	60
African-American	200	100	100
Latino	100	40	60
White	500	125	375
Other	50	10	40
Joint	90	30	60
Race not available	50	10	40
INCOME			
<50% median	50	25	25
50-79% median	50	25	25
80-99% median	200	65	135
100-119% median	100	40	60
≥120% median	500	125	375
Income not available	100	35	65

GREEN BACK BANK
HMDA TABLE 7-2
CONVENTIONAL HOME MORTGAGE LENDING
RACIAL COMPOSITION AND INCOME LEVEL OF NEIGHBORHOOD
SILVERADO METROPOLITAN AREA

RACE	**APPLICATIONS**	**DENIALS**	**ORIGINATIONS**
<10% minority	300	65	235
10-19%	200	60	140
20-49%	250	80	170
50-79%	150	60	90
80-100%	100	50	50
INCOME			
Low	100	70	30
Moderate	200	60	140
Middle	300	55	245
Upper	400	130	270

Assume now that the following tables are excerpts from the aggregate HMDA disclosure report for the Silverado Metropolitan Area.

SILVERADO METROPOLITAN AREA
HMDA TABLE 4-2
CONVENTIONAL HOME MORTGAGE LENDING
RACE OR INCOME OF APPLICANT

RACE	APPLICATIONS	DENIALS	ORIGINATIONS
Native American	3000	1200	1800
Asian	8500	2100	6400
African-American	25000	12000	13000
Latino	15000	7000	8000
White	50000	15000	35000
Other	10000	3000	7000
Joint	4000	1500	2500
Race not available	5000	1500	3500
INCOME			
<50% median	5000	2500	2500
50-79% median	5000	2400	2600
80-99% median	28000	10600	17400
100-119% median	28000	10300	17700
120% median	45000	14000	31000
Income not available	5500	2000	3500

**SILVERADO METROPOLITAN AREA
HMDA TABLE 7-2
CONVENTIONAL HOME MORTGAGE LENDING
RACIAL COMPOSITION AND INCOME LEVEL OF
NEIGHBORHOOD**

RACE	APPLICATIONS	DENIALS	ORIGINATIONS
<10% minority	40,000	10,000	30,000
10-19%	30,000	11,000	19,000
20-49%	20,000	8,000	12,000
50-79%	16,500	7,800	8,700
80-100%	10,000	5,000	5,000
INCOME			
Low	10,500	5,000	5,500
Moderate	20,000	10,000	10,000
Middle	36,000	15,000	21,000
Upper	50,000	11,800	38,200

Based on the data in these four tables, the analysis of Green Back's conventional home mortgage lending record proceeds as follows for each of the 20 evaluative criterion.[80] (The score for each criterion appears in parenthesis after the criterion).

Percentage of Applications Received: Green Back Bank — Silverado Metropolitan Area

1. Percentage of Applications from Minority Persons (-)

Green Back Bank — 40 percent

[80] This section includes instructions for calculating each percentage, ratio, or market share for Green Back Bank. It does not contain the instructions for calculating the percentages or ratios for the Silverado Metropolitan Area because the instructions are the same as for the bank, except that the aggregate HMDA tables must be used for the metropolitan area.

Calculation: 400 (total applications received by Green Back from all minority persons — Native American, Asian, African-American, Latino) ÷ 1000 (total applications received by Green Back from all persons according to race — derived by adding applications received from all applicants by race of applicant, including "Other" and "Race not Available," but not including "Joint," because "Joint" does not add additional applications but only elaborates on applications already counted)

Silverado Metropolitan Area — 44.2 percent

2. Percentage of Applications from LMI Persons (+)

Green Back Bank — 10 percent

Calculation: 100 (total applications received by Green Back Bank from LMI persons — income levels <50% median and 50-79% median) ÷ 1000 (total applications received by Green Back Bank from all persons according to income, including "Income not Available")

Silverado Metropolitan Area — 8.6 percent

3. Percentage of Applications from Predominantly Minority Neighborhoods (+)

Green Back Bank — 10 percent

Calculation: 100 (total applications received by Green Back Bank from predominantly minority neighborhoods — 80-100% minority population) ÷ 1000 (total applications received by Green Back Bank from all neighborhoods according to racial composition of neighborhood)

Silverado Metropolitan Area — 8.6 percent

4. Percentage of Applications from LMI Neighborhoods (+)

Green Back Bank — 30 percent

Calculation: 300 (total applications received by Green Back Bank from low-income and moderate-income neighborhoods) ÷ 1000 (total applications received by Green Back Bank from all neighborhoods according to income level of neighborhood)

Silverado Metropolitan Area — 26.2 percent

Percentage of Loans Originated — Green Back Bank — Silverado Metropolitan Area

5. Percentage of Loans Originated to Minority Persons (-)

Green Back Bank — 33.6 percent

Calculation: 230 (total loan originations by Green Back Bank to minority persons) ÷ 685 (total loan originations by Green Back Bank to all persons according to race)

Silverado Metropolitan Area — 39.1 percent

6. Percentage of Loans Originated to LMI Persons (-)

Green Back Bank — 7.3 percent

Calculation: 50 (total loan originations by Green Back Bank to LMI persons) ÷ 685 (total loan originations by Green Back Bank to all persons by income)

Silverado Metropolitan Area — 9.1 percent

7. Percentage of Loans Originated in Predominantly Minority Neighborhoods (+)

Green Back Bank — 7.3 percent

<u>Calculation</u>: 50 (total loan originations by Green Back Bank in predominantly minority neighborhoods) ÷ 685 (total loan originations by Green Back Bank in all neighborhoods according to racial composition of neighborhood)

Silverado Metropolitan Area — 6.7 percent

8. Percentage of Loans Originated in LMI Neighborhoods (+)

Green Back Bank — 24.8 percent

<u>Calculation</u>: 170 (total loan originations by Green Back Bank in low-income and moderate-income neighborhoods) ÷ 685 (total loan originations by Green Back Bank in all neighborhoods by income level)

Silverado Metropolitan Area — 20.7 percent

Denial Rate Ratio: Green Back Bank — Silverado Metropolitan Area

9. Denial Rate Ratio — Minority/White Persons (-)

Green Back Bank — 1.7

<u>Calculation</u>: Determine Green Back Bank denial rate to minority persons: 170 (total Green Back Bank denials to minorities) ÷ 400 (total applications to Green Back Bank from minorities) = 42.5%

Determine Green Back Bank denial rate to white persons: 125 (total Green Back Bank denials to whites) ÷ 500 (total applications to Green Back Bank from whites) = 25%

Determine Green Back Bank denial rate ratio: 42.5% (Green Back Bank denial rate to minority persons) ÷ 25% (Green Back Bank denial rate to white persons) = 1.7

Silverado Metropolitan Area — 1.4

10. Denial Rate Ratio — LMI/UI Persons (-)

Green Back Bank — 2.0

<u>Calculation</u>: Determine Green Back Bank denial rate to LMI persons: 50 (total Green Back Bank denials to LMI persons) ÷ 100 (total applications to Green Back from LMI persons) = 50%

Determine Green Back Bank denial rate to UI applicants: 125 (total Green Back Bank denials to UI persons--income 120% or higher of median) ÷ 500 (total applications to Green Back Bank from UI persons) = 25%

Determine Green Back Bank denial rate ratio: 50% (Green Back Bank denial rate to LMI persons) ÷ 25% (Green Back Bank denial rate to UI persons) = 2.0

Silverado Metropolitan Area — 1.6

11. Denial Rate Ratio — Predominantly Minority/Predominantly White Neighborhoods (-)

Green Back Bank — 2.0

Calculation: Determine Green Back Bank denial rate for applications from predominantly minority neighborhoods: 50 (total Green Back Bank denials of applications from predominantly minority neighborhoods) ÷ 100 (total applications to Green Back Bank from predominantly minority neighborhoods) = 50%

Determine Green Back Bank denial rate for applications from predominantly white neighborhoods: 125 (total Green Back Bank denials to predominantly white neighborhoods — <10 % minority population and 10-19% minority population) ÷ 500 (total applications to Green Back Bank from predominantly white neighborhoods) = 25%

Determine Green Back Bank denial rate ratio: 50% (Green Back Bank denial rate for applications from predominantly minority neighborhoods) ÷ 25% (Green Back Bank denial rate for applications from predominantly white neighborhoods) = 2

Silverado Metropolitan Area — 1.67

12. Denial Rate Ratio — LMI/UI Neighborhoods (+)

Green Back Bank — 1.3

Calculation: Determine Green Back Bank denial rate for applications from LMI neighborhoods: 130 (total Green Back Bank denials of applications from low-income and moderate-income neighborhoods) ÷ 300 (applications to Bank Green Back from low-income and moderate-income neighborhoods) = 43.3%

Determine Green Back Bank denial rate for applications from UI neighborhoods: 130 (total Green Back Bank denials of applications from UI neighborhoods) ÷ 400 (total applications to Green Back Bank from UI neighborhoods) = 32.5%

Determine Green Back Bank denial rate ratio: 43.3% (Green Back Bank denial rate for applications from low-income and moderate-income neighborhoods) ÷ 32.5% (Green Back Bank denial rate for applications from UI neighborhoods) = 1.3

Silverado Metropolitan Area — 2.1

Green Back Bank Market Share: Applications — Subject Community/Control Community

13. Market Share of Applications — Minority/White Persons (+)

Minority Persons: .8 percent

Calculation: 400 (total number of Green Back Bank applications from minorities) ÷ 51,500 (total number of applications from minorities in Silverado Metropolitan Area)

White Persons: 1 percent

Calculation: 500 (total number of Green Back Bank applications from whites) ÷ 50,000 (total number of applications from whites in Silverado Metropolitan Area)

14. Market Share of Applications — LMI/UI Persons (-)

LMI Persons: 1 percent

Calculation: 100 (total number of Green Back Bank applications from LMI persons) ÷ 10,000 (total number of applications from LMI persons in Silverado Metropolitan Area)

UI Persons: 1.1 percent

Calculation: 500 (total number of Green Back Bank applications from UI persons) ÷ 45,000 (total number of applications from UI persons in Silverado Metropolitan Area)

15. Market Share of Applications — Predominantly Minority/Predominantly White Neighborhoods (-)

Predominantly Minority Neighborhoods: 1 percent

Calculation: 100 (total applications to Green Back Bank from predominantly minority neighborhoods) ÷ 10,000 (total applications from predominantly minority neighborhoods in Silverado Metropolitan Area)

Predominantly White Neighborhoods: .7 percent

Calculation: 500 (total applications to Green Back Bank from predominantly white neighborhoods) ÷ 70,000 (total applications from predominantly white neighborhoods in Silverado Metropolitan Area)

16. Market Share of Applications — LMI/UI Neighborhoods (+)

LMI Neighborhoods: .9 percent

Calculation: 300 (total number of applications to Green Back Bank from LMI neighborhoods) ÷ 30,500 (total number of applications from LMI neighborhoods to Green Back Bank in Silverado Metropolitan Area)

UI Neighborhoods: .8 percent

Calculation: 400 (total number of applications to Green Back Bank from UI neighborhoods) ÷ 50,000 (total number of applications from LMI neighborhoods in Silverado Metropolitan Area)

Green Back Bank Market Share: Originations — Subject Community/Control Community

17. Market Share of Loan Originations—Minority/White Persons (-)

Minority Persons: .8 percent

Calculation: 230 (total number of Green Back Bank originations to minorities) ÷ 29,400 (total number of originations to minorities in Silverado Metropolitan Area)

White persons: 1.1 percent

Calculation: 375 (total number of Green Back Bank originations to whites) ÷ 35,000 (total number of originations to whites in Silverado Metropolitan Area)

18. Market Share of Loan Originations — LMI/UI Persons (-)

LMI Persons: .98 percent

Calculation: 50 (total number of Green Back Bank originations to LMI persons) ÷ 5,100 (total number of originations to LMI persons in Silverado Metropolitan Area)

UI Persons: 1.2 percent

Calculation: 375 (total number of Green Back Bank originations to UI persons) ÷ 31,000 (total number of originations to UI persons in Silverado Metropolitan Area)

19. Market Share of Loan Originations — Predominantly Minority/Predominantly White Neighborhoods (+)

Predominantly Minority Neighborhoods: 1 percent

Calculation: 50 (total number of Green Back Bank originations in predominantly minority neighborhoods) ÷ 5,000 (total number of originations in predominantly minority neighborhoods in Silverado Metropolitan Area)

Predominantly White Neighborhoods: .8 percent

Calculation: 375 (total number of Green Back Bank originations in predominantly white neighborhoods) ÷ 49,000 (total number of originations in predominantly minority neighborhoods in Silverado Metropolitan Area)

20. Market Share of Loan Originations — LMI/UI Neighborhoods (+)

LMI Neighborhoods: 1.1 percent

Calculation: 170 (total number of Green Back Bank originations in LMI neighborhoods) ÷ 15,500 (total number of originations in LMI neighborhoods in Silverado Metropolitan Area)

UI Neighborhoods: .7 percent

Calculation: 270 (total number of Green Back Bank originations in UI neighborhoods) ÷ 38,200 (total number of originations in UI neighborhoods in Silverado Metropolitan Area)

The results of this analysis can be placed on a chart showing the results of the calculation for each criterion and the +/- score.

GREEN BACK BANK
CONVENTIONAL HOME MORTGAGE LENDING ANALYSIS
SILVERADO METROPOLITAN AREA

	GREEN BACK	**SILVERADO**	+/-
Percentage of Applications			
1. Minority Persons	40	44.2	-
2. LMI Persons	10	8.6	+
3. Minority Neighborhoods	10	8.6	+
4. LMI Neighborhoods	30	26.2	+
Percentage of Originations			
5. Minority Persons	33.6	39.1	-
6. LMI Persons	7.3	9.1	-
7. Minority Neighborhoods	7.3	6.7	+
8. LMI Neighborhoods	24.8	20.7	+
Denial Rate Ratio			
9. Minority/White Persons	1.7	1.4	-
10. LMI/UI Persons	2.0	1.6	-
11.Minority/White Neighborhoods	2.0	1.7	-
12. LMI/UI Neighborhoods	1.3	2.1	+

MARKET SHARE-APPLICATIONS

13. Minority/White Persons	.8 (minorities)	1.0 (whites)	-
14.LMI/UI Persons	1.0 (LMI persons)	1.1 (UI persons)	-
15.Minority/White Neighborhoods	1.0 (minority neighborhoods)	.7 (white neighborhoods)	+
16. LMI/UI Neighborhoods	.9 (LMI neighborhoods)	.8 (UI neighborhoods)	+

MARKET SHARE-ORIGINATIONS

17. Minority/White Persons	.8 (minorities)	1.0 (whites)	-
18. LMI/UI Persons	.9 (LMI persons)	1.2 (UI persons)	-
19.Minority/White Neighborhoods	1.0 (minority neighborhoods)	.8 (white neighborhoods)	+
20. LMI/UI Neighborhoods	1.1 (LMI neighborhoods)	.7 (LMI neighborhoods)	+

TOTAL **0**

Several different conclusions about Green Back Bank's conventional home mortgage lending record can be derived from this analysis. Green Back Bank has a total score of 0, meaning that it has an equal number of + and - scores on the 20 evaluative criteria. Green Back thus has an average conventional home mortgage lending record. Regarding the various components of the analysis, Green Back Bank did well in receiving applications from the subject communities, receiving three + scores. It received two + scores in originating loans, and only one + for its denial rate ratio. These scores indicate that Green Back Bank does well in receiving applications from the subject communities and poorly in its treatment of applications from the subject communities relative to the control communities. If Green Back could improve its treatment of applications from the subject communities, it could originate more loans in them. Among the subject communities, Green Back Bank did poorest among minority persons, scoring - on each of the five evaluative criteria. It also fared poorly among LMI persons, scoring - on all but one of the five criteria. Green Back Bank scored nearly all

+ scores in minority and UI neighborhoods, but the fact that it did poorly among LMI and minority persons suggests that the bank was lending to whites and higher income persons in minority and UI neighborhoods, which does not necessarily meet the credit needs of the majority of residents of those neighborhoods.

IV. PARTICIPATING IN THE CRA ENFORCEMENT PROCESS

As described more fully in Part Two, the federal banking agencies have two opportunities to enforce the CRA: when conducting the bank's periodic CRA examination and when considering a CRA-approved expansion application from a bank. This Part describes how community advocates can participate in the CRA enforcement process through CRA examinations and bank applications.

CRA Examinations

The CRA examination process is ongoing and regular. The federal banking agencies are always examining banks, and any one particular bank is being examined, has just been examined, or will be examined. Participating in the CRA examination process is thus a predictable way for a community group to be involved in CRA enforcement. In addition, if a community group is unhappy with a bank's CRA record and is considering opposing an application should the bank make one, the group will bolster its credibility when opposing the application if it has already placed its concerns on the record during the examination process rather than waiting until the bank files its application. Finally, since banks that do not have a satisfactory CRA rating are not permitted to engage in expanded financial businesses, the stakes are higher for CRA examinations than they had previously been, creating more incentive for community advocates to participate in them.

In order to facilitate public participation in CRA examinations, each federal banking agency publishes a list of banks it is scheduled to evaluate for CRA compliance in the upcoming quarter, at least 30 days before that quarter begins.[81] The agencies distribute these lists via the mail and also place them on their websites. Any member of the public can comment on the bank's CRA record during the examination. Comments can be made to the relevant bank or its supervisory agency, and the agency will take these comments into account when conducting its CRA examination.

For example, if the Federal Reserve regulated the hypothetical Green Back Bank from Part Three and planned to examine Green Back Bank for CRA compliance in the upcoming quarter, it would publish this in its quarterly list of banks to be examined for CRA purposes, inviting any member of the public to submit comments. In response, a community group could submit to the Federal Reserve and the Bank the analysis of Green Back Bank's HMDA data described in Section Three, or any other relevant information about the Bank's CRA record. The Federal Reserve would have to take that comment into account when examining the Bank.

Banking Applications Covered by the CRA

As described in Part Two, a bank must seek permission to engage in certain business activities, including expanding its banking business, by filing an application with its supervisory agency. Some of these applications are covered by the CRA; in other words, the bank's supervisory agency must take the bank's CRA record into account in considering the application, must consider public comments on the application, and can delay, conditionally approve, or deny the application if the bank has a poor CRA record. The opportunity for community groups to participate in CRA enforcement through the bank application process is less predictable than participating in CRA examinations, as it is contingent on a bank's plans. Nevertheless, the opportunity for the public to file comments on a bank's application — commonly known as a CRA challenge or a protest — has been a crucial part of CRA's enforcement.[82] Frequently, after a community group files a CRA

[81] *See, e.g., FDIC News Release, FDIC Issues First Quarter CRA Examination Schedule* (December 1, 2000).

[82] *See* Robert C. Art, *Social Responsibility in Bank Credit Decisions: The Community Reinvestment Act One Decade Later*, 18 PAC. L.J. 1071, 1073–74, and n.10 (1987); Allen J. Fishbein, *The Community Reinvestment Act After Fifteen Years: It Works,*

challenge, the bank and the community group enter into negotiations leading to an agreement in which the bank commits to increase its lending in the group's community.[83] In recent years, in contrast to private agreements between banks and community groups intended to settle or prevent challenges to bank expansion applications on CRA grounds, many banks have made unilateral lending commitments in connection with their merger applications. The National Community Reinvestment Coalition ("NCRC") has published a catalogue of CRA agreements and commitments. As of 1999, NCRC had counted 360 agreements containing lending commitments totaling approximately $1 trillion.[84]

General Application Processing Guidelines

Each federal banking agency has detailed and different procedures for processing and considering expansion applications. In addition, each agency has different provisions for processing different types of applications. Each agency's general provisions governing the processing of applications are found in Title 12 of the Code of Federal Regulations. Specifically, the OCC's general procedures are at Part 5, the Federal Reserve's are at Parts 225 and 262, the FDIC's are at Part 303, and the OTS' are at Part 516. The different agencies' procedures for specific applications are sprinkled throughout Title 12 of the Code of Federal Regulations.

Despite these differences, there are some general procedures common to all four federal banking agencies that apply to most banking applications covered by the CRA.[85] The bank must file its application with its supervisory federal banking agency. Non-confidential portions of the application are available to the public. The bank must give public notice of the application in a newspaper of general circulation. The

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But Strengthened Federal Enforcement is Needed, 20 FORDHAM. URB. L.J. 293, 294, 296 (1993).

[83] *See* Robert B. Avery et al., *Trends in Home Disclosure Lending: Consolidation and the Community Reinvestment Act*, 86 FED. RES. BULL. 81, 86 (1999); Fishbein, *supra* note 82, at 298-300.

[84] *See* CRA COMMITMENTS, *supra* note 3.

[85] The description in this paragraph is based on 12 C.F.R. pts. 5 (OCC) (2000), 225 (Federal Reserve), 262 (Federal Reserve), 303 (FDIC), and 516 (OTS)

notice must contain the name of the bank, a description of the proposed transaction, notice of the opportunity to comment, the name and address of the bank's agency for filing comments, the availability of the application, and the deadline for filing comments. Generally, the deadline for filing comments is short. In some instances, a bank may be eligible for "expedited processing" of its application, meaning faster processing times than normal. Any member of the public may file a written comment with the bank's supervisory agency opposing the bank's application on grounds enumerated in the relevant law, including a poor CRA record. The relevant federal banking agency may arrange for a private meeting between the bank and the representatives of the organization that filed the comment, and may hold a public hearing at which the agency invites members of the public to make statements about the proposed transaction. Finally, the agency will make a decision on the application, including an approval, a denial, or a conditional approval. The conditional approval may contain provisions requiring the bank to improve its CRA record in certain ways.

If a community group enters into a lending agreement with a bank, it may have to make the agreement available to the public and its federal banking agency and report annually on compliance with the agreement to its federal banking agency.[86] The community group must report a lending agreement if it is in writing, requires the bank to make grants of at least $10,000 or loans totaling $50,000, is made pursuant to or in connection with fulfillment of the bank's CRA obligations, and is made with a community group that had a "CRA communication" with a bank.[87] An agreement is pursuant to or in connection with fulfillment of the bank's CRA obligations if, in connection with the agreement, the community group agrees to provide or not to provide comments to a federal banking agency about the bank's CRA record, or if the bank agrees to undertake any other lending, investment, or service activity that is likely to receive favorable consideration by the bank's federal banking

[86] *See* Disclosure and Reporting of CRA-Related Agreements, 66 Fed. Reg 2052, 2088–2090 (2001)(to be codified at 12 C.F.R. §§ 35.6 and 35.7). Each federal banking agency has promulgated virtually identical disclosure regulations. *See id.* (to be codified at 12 C.F.R. pts. 35 (OCC), 207 (Federal Reserve), 346 (FDIC), and 533 (OTS)). For the sake of efficiency, the following description of the regulations cites only the OCC's regulations.

[87] *See* 66 Fed. Reg. at 2084–85 (to be codified at 12 C.F.R. § 35.2).

agency in evaluating the bank's CRA performance.[88] A "CRA communication" is a communication to a bank or a federal banking agency about the bank's CRA performance or any communication with the bank about providing or not providing comments to a federal banking agency about the bank's CRA performance, provided that the communication occurred no more than three years prior to the date of the agreement.[89] Willful failure to comply with the reporting requirements for CRA-covered agreements can render an agreement unenforceable.[90]

Eight Important Things to do When a Bank Files Notice of An Application

Generally, community groups interested in effectively enforcing the CRA should be regularly monitoring bank lending practices in their neighborhoods, preparing analyses of bank lending and other related activities, and engaging in discussions with the regulatory agencies and banks about ways for banks to improve. If interested in challenging bank applications, advocates should be alert for notices of applications and actively laying the groundwork for a challenge, because once a bank files notice of an application, there is very little time to file comments and much work to do. Once a bank files notice of an application, community advocates must take several immediate steps if they wish to file comments and negotiate a CRA lending agreement, including the following.

1. Learn the Agencies' Regulations for Processing the Application

As described earlier in this Part, although there are certain common aspects to the rules governing application processing, each agency has different regulations, and each agency has different rules for different types of applications. It is important to learn exactly which regulations apply to the particular application at issue and to become familiar with them to ensure that no deadlines are missed or opportunities lost.

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[88] *Id.* at 2087–88 (to be codified at 12 C.F.R. § 35.4).

[89] *Id.* at 2086–2087 (to be codified at 12 C.F.R. § 35.3 (a) and (b)).

[90] *Id.* at 2090 (to be codified at 12 C.F.R. § 35.9).

2. Contact the Agency

It is important to contact the relevant federal banking agency to make it aware that there is interest in the application. Each agency has headquarters in Washington, D.C. and regional offices throughout the country. Notice of an application may contain the name of a contact person at the regional office and from there, the community group can find out whom to contact in Washington. Each agency also has a community affairs division, with representatives in both the regional offices and in Washington. Advocates should contact the relevant community affairs representatives as well.

3. Contact the Bank

If the community group is not already in discussions with the bank about its CRA record, it is important to contact the bank to let it know the group is interested in the bank's application and to set up a meeting to discuss the group's concerns and possibly reach a lending agreement. Ideas for provisions of such agreements are described more fully below.

4. Get a Copy of the Application

The relevant federal banking agency must make the bank's application available to the public upon request. Each application differs based on the transaction involved, but generally, applications must contain information such as a copy of the transaction agreement, financial data, and a list of the bank's directors, and must describe the transaction, the impact the transaction will have on competition, the branches to be opened or closed, how the transaction will effect the convenience and needs of the community, the bank's past CRA record and future CRA plans, and any legal issues involved. The bank has the right to designate certain portions of its application confidential, but community groups can challenge this designation.

5. Confirm Deadlines

It is important to be aware of and confirm all filing deadlines. In connection with this, it is especially important to determine whether a bank is seeking expedited processing of its application. If the bank is, fast action must be taken to challenge the bank's eligibility for expedited processing. Otherwise, the opportunity for obtaining a full investigation of the bank's CRA record by the bank's supervisory agency in connection with the application might be lost. If more time is necessary to file comments, the community group can file a request for an extension which must explain the reason an extension is necessary. It is not easy to obtain an extension, so it is unwise to count on getting one.

6. **Prepare Comments**

Comments must be in writing and must address legal issues about the bank's CRA record. The comment can contain any information about the bank's CRA record. For example, referring to Part Three and the hypothetical Green Back Bank, a comment could contain any information about Green Back Bank's CRA record, including the analysis of its conventional home mortgage lending record described in Part Three. The comment can request a private meeting with the bank and its supervisory agency. It can also request a public hearing, and must explain why a hearing is necessary as opposed to submitting papers only. The bank will receive a copy of the comment and have an opportunity to respond.

7. **Organize and Get Help**

It is difficult for a community group to carry out a CRA challenge to a bank merger on its own. It is generally a good idea to seek out other community groups interested in challenging the bank and to obtain advice from organizations experienced in working with the CRA. A list of such organizations is contained in the Appendix.

8. **Generate Publicity**

It is also generally a good idea to generate publicity about challenges to bank mergers by issuing press releases and holding press conferences. Frequently, public attention to issues about bank lending generates interest in banking issues that can lead banks to change and improve their practices. In connection with this, it is also often a good idea to enlist the support of local politicians interested in reinvestment issues.

Nine Key Characteristics of CRA Commitments and Agreements

Although all agreements and commitments are different, they have several common characteristics. Nine key characteristics are described below. When advocates are negotiating an agreement with a bank, it is a good idea to keep these in mind.[91]

1. **Specific Numerical Lending Commitments**

Commitments and agreements frequently include provisions committing the bank to make a specific number or dollar amount of loans in a particular time period. For example, in 1997, Washington Mutual signed a ten-year, $120 billion lending commitment with the California Reinvestment Committee, the Greenlining Coalition, the Washington Reinvestment Alliance, and other community groups. The agreement committed the bank to make $80 billion in single-family home lending to minorities, LMI persons, and borrowers in LMI neighborhoods. It also committed the bank to make $25 billion in small business loans; 75 percent of the loans for less than $50,000.[92]

2. **Covered Communities**

Commitments and agreements generally target LMI neighborhoods and individuals and predominantly minority neighborhoods and individuals. They also have focused on women- and minority-owned small businesses.

3. **Loan Categories**

Commitments and agreements generally include the sorts of loans that are most important to the subject communities, including single-family housing, multi-family housing, small and very small business, consumer, and economic development projects.

[91] This section is based on CRA COMMITMENTS, *supra* note 3, at 13–42, and Richard Marsico, *A Guide to Enforcing the Community Reinvestment Act*, 20 FORDHAM. URB. L. J. 165, 265-274 (1993).

[92] *See* CRA COMMITMENTS, *supra* note 3, at 15, 28.

4. Lending Terms and Criteria

Commitments and agreements frequently contain provisions making it more likely that LMI and minority persons will qualify for the committed loans. These include provisions granting lower interest rates, smaller down-payments, waived or reduced fees and costs, and reduced points. They also include provisions agreeing to modify underwriting criteria for loans, particularly those criteria relating to credit history, employment history, source of income, obligation ratios, and loan-to-value ratio. Finally, agreements may provide for a second review of rejected loan applications from target communities.

5. Marketing and Outreach

Commitments and agreements include provisions committing the bank to conduct more marketing and outreach efforts in the subject communities, including participating in loan counseling programs with local community organizations, offering mortgage seminars, advertising in local newspapers, undertaking officer call programs to potential borrowers, and working with local community groups to promote loan products.

6. Banking Services

Agreements and commitments contain provisions to offer more and improved banking services in the subject communities, including offering low- or no-fee bank and checking accounts, cashing government checks, opening new branches, expanding hours of existing branches, and offering 24-hour ATM services.

7. Support for Local Not-for-Profit Institutions

Agreements and commitments contain provisions to support, through loans, grants, or deposits, local non-profits specializing in community economic development, including community development financial institutions such as community development credit unions, community development loan funds, and community development banks; community development corporations; and community-based organizations.

8. Government-Sponsored Loan Programs

Commitments and agreements often contain provisions committing banks to participate in government-sponsored lending or development programs such as Federal Housing Administration and Veterans Administration loan programs for home mortgages, Federal Home Loan Bank affordable housing loan programs, housing finance agency bonds, low-income housing tax credits, and Small Business Administration loan programs for small businesses.

9. Loan Pools and Consortia

Finally, the agreements and commitments often include provisions by which banks join loan pools or other loan consortia designed to make more loans in the subject communities.

Ideas for Provisions in a Lending Agreement with Green Back Bank

If the hypothetical Green Back Bank filed a merger application, a community group challenged it, and they were negotiating to settle the challenge, the group might seek commitments from the Bank to improve the weaknesses in its record. For example, Green Back Bank did poorly in originating loans to LMI and minority persons. To address this, the group could seek a commitment from the Bank to make a certain number or dollar amount of loans to LMI and minority persons. Alternatively, the Bank could commit to having a market share of originations to LMI and minority persons equal to or greater than its market share of loans to UI and white persons. The bank could also seek to make the same percentage of loans to LMI and minority persons as the overall percentage of loans all lenders in the metropolitan area made to LMI and minority persons. Second, Green Back Bank fared poorly in denial rate ratios. In order to improve its treatment of applications from the subject communities, it could commit to a number of steps, including modifying its underwriting criteria, participating in government loan programs and private loan consortia, offering loan counseling programs in conjunction with local non-profits, and offering a second review of rejected applications from the subject communities. Finally, among the subject communities, Green Back Bank fared worst with minority persons, receiving " - " scores on all five evaluative criteria. In order to remedy this, in addition to the provisions described above, the Bank might undertake outreach, advertising, and marketing efforts targeted at minority individuals.

CONCLUSION

This Guide has been intended to provide community advocates with information and advice about how to enforce the Community Reinvestment Act in their communities. Hopefully, it will be useful to community advocates seeking to use the tools the law makes available to increase bank lending in their communities. These advocates, in turn, can continue the tradition of using the CRA to leverage billions of dollars for loans to support affordable housing, small business, and economic development in their communities that might not otherwise have been made without the CRA and community advocates' hard work.

APPENDIX

Organizational Resources

ACORN
739 8th St., SE
Washington, D.C. 20003
(202) 547-2500

California Reinvestment Committee
474 Valencia St., Suite 110
San Francisco, CA 94103
(415) 864-3980

CANICCOR
P.O. Box 426829
San Francisco, CA 94142
(415) 885-5102

Center for Community Change
1000 Wisconsin Ave., NW
Washington, D.C. 20007
(202) 342-0567

Community Reinvestment Association of North Carolina
P.O. Box 755
Henderson, NC 27536
(252) 492-6298

Consumers Union
1666 Connecticut Ave., NW, Suite 310
Washington, D.C. 20009
(202) 462-6262

Inner City Press/Community on the Move
P.O. Box 416, Hub Station
Bronx, New York 10455
(718) 716-7540

National Community Reinvestment Coalition
733 15th St., NW, Suite 540
Washington, D.C. 20005
(202) 682-8866

National Training and Information Center
810 North Milwaukee Ave.
Chicago, Ill., 60622
(312) 243-3035

Neighborhood Economic Development Advocacy Project
299 Broadway, Suite 706
New York, NY 10007
(212) 393-9595

ONE
364 Boylston St., 3rd Floor
Boston, Mass. 02116
(617) 424-7693

Woodstock Institute
407 South Dearborn, Suite 550
Chicago, Ill. 60605
(312) 427-8070