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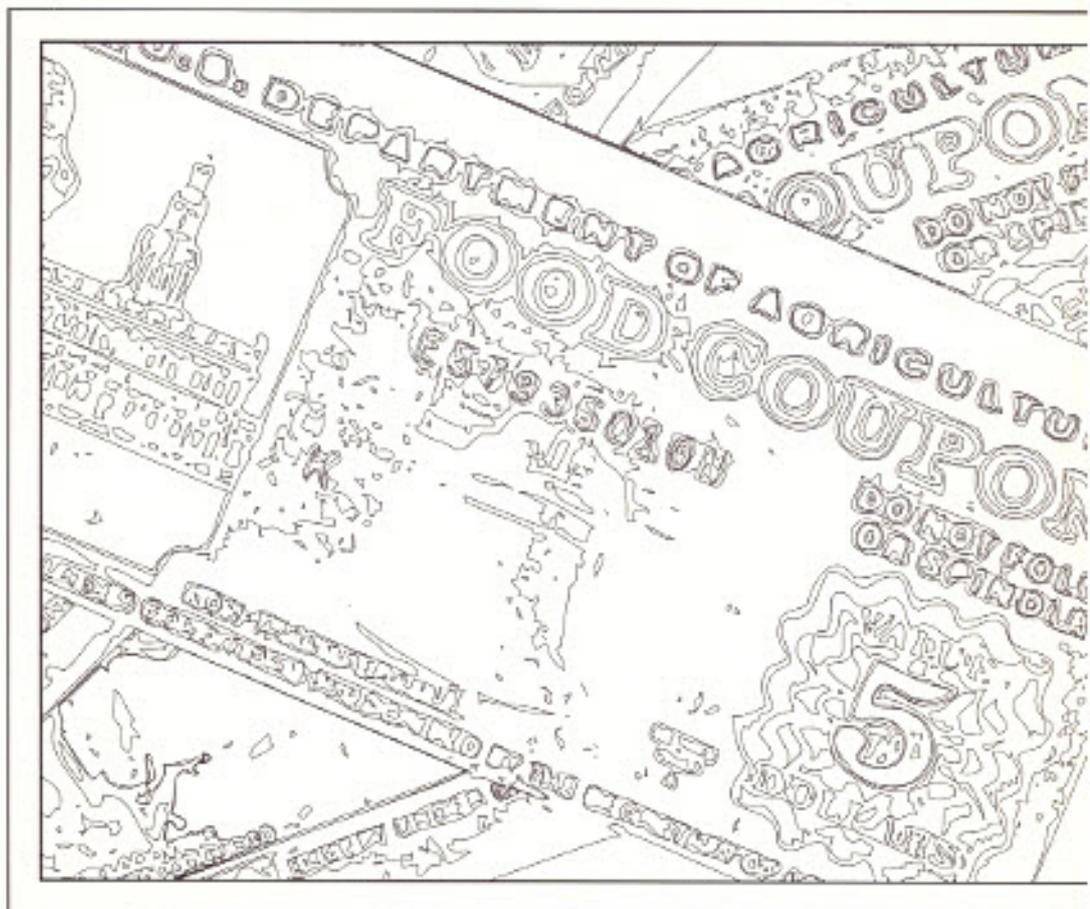
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The New Community Reinvestment Act Regulations: An Attempt to Implement Performance-Based Standards

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I. Introduction

On May 4, 1995, the federal banking regulatory agencies published new Community Reinvestment Act (CRA) regulations. /1/ This culminated a process began nearly two years earlier, in July 1993, when President Clinton called on the agencies to reform the CRA enforcement regime. The goal was to institute a regulatory scheme that emphasized lending performance over process, that was more objective and less subject to arbitrary interpretation, and that reduced unnecessary paperwork. /2/

With this presidential mandate, the agencies commenced a 21-month odyssey that included seven hearings around the country with more than 250 witnesses, two sets of proposed revisions to the CRA regulations, and nearly 14,000 comment letters. /3/ The new regulations will eventually completely replace the current regulations. /4/ This article describes and analyzes the new CRA regulations and their implications for low-income communities. It first puts the new regulations in context with a brief overview of the CRA and the current regulations.

II. Background

The CRA has played a critical role in ensuring credit to low- and moderate-income communities and encouraging banks to open new branches and expand services there. /5/ Federal Reserve Governor Lawrence Lindsey estimates that the CRA has directed between \$4 billion and \$6 billion a year to such communities. /6/

The CRA places an affirmative obligation on banks whose deposits are insured by the federal government to meet the credit needs of the communities in which they are chartered. /7/ The federal regulators must periodically assess the CRA record of the banks they regulate, issue a

public written assessment report, and assign one of four ratings: outstanding, satisfactory, needs to improve, or substantial noncompliance. /8/

Each federal banking regulatory agency in the current CRA regime has promulgated virtually identical CRA regulations, /9/ establishing the following 13 criteria for evaluating a bank's CRA record:

- (1) efforts to ascertain community credit needs;
- (2) management participation in CRA efforts;
- (3) CRA marketing efforts;
- (4) extent of lending in the bank's service area;
- (5) participation in insured government loan programs;
- (6) service area description;
- (7) geographic distribution of the bank's loans;
- (8) branch services, openings, and closings;
- (9) evidence of discrimination and illegal credit practices;
- (10) practices intended to discourage credit applications;
- (11) participation in community development projects;
- (12) the bank's ability to meet community credit needs; and
- (13) other relevant factors.

The CRA requires the regulators to take a bank's CRA record into account when evaluating a bank's application for a deposit facility. /10/ Any member of the public may file written comments opposing the bank's application for a deposit facility (known as a "challenge" or a "protest") with the bank's regulator on the grounds that the bank has a poor CRA record. /11/ Community groups from low-income areas have taken the lead in ensuring that the law is responsive to their needs. Frequently, community groups and banks settle challenges with written lending agreements. These agreements have resulted in an estimated \$7.5 billion in lending commitments for low-income and predominantly minority communities, and banks have unilaterally committed approximately \$23 billion in connection with their applications. /12/ Despite the CRA's success, many advocates feel it would be more effective if the standards were more specific and precise.

III. The New Regulations

The new regulations contain two major components: new performance standards for evaluating a bank's CRA record and new rules regarding maintenance, reporting, and disclosure of relevant information. /13/ The new regulations create a series of four new CRA performance tests. /14/ They also require banks, for the first time, to disclose information about their small business, small farm, and community development loans and to add more home mortgage loan reporting requirements. /15/ While the standards are not as strong as community advocates wanted, they do represent a step in the right direction.

A. Evaluating a Bank's Community Reinvestment Act Record

The new regulations establish three different performance tests for different types of banks. /16/ Retail banks with more than \$250 million in assets ("large retail banks") will be evaluated according to the lending, investment, and service tests. /17/ Wholesale or limited-purpose banks will be evaluated according to the community development test. /18/ Small banks will be subject to the small bank performance test. /19/ A fourth test, the strategic-plan option, will allow any bank, in consultation with community representatives and as approved by its regulator, to define its own individualized CRA obligations. /20/

1. Criteria Applicable to All Performance Tests

Although the four new CRA performance tests differ, the following provisions of the new regulations are applicable to all of the performance tests.

a. Community Reinvestment Act Performance Ratings

The regulators will continue to assign one of four ratings to a bank's overall CRA record: outstanding, satisfactory, needs to improve, and substantial noncompliance. /21/ In addition to issuing an overall CRA rating to a bank, the regulator will assign ratings to the various components of each of the performance tests. On several of the components of the various performance tests, the regulators will apply five criteria: outstanding, high satisfactory, low satisfactory, needs to improve, and substantial noncompliance. /22/

For the first time, regulators will publish a quarterly list of banks to be examined for CRA compliance. /23/ This should facilitate community groups' efforts to make their opinions about bank lending records known to regulators during the CRA examination process.

b. The Performance Context

When applying the CRA performance tests to banks, regulators will consider the "performance context," which includes the following factors: /24/ (1) demographic data; (2) information about

lending, investment, and service opportunities; (3) the bank's product offerings and business strategies; (4) the bank's capacity and constraints; (5) the bank's past performance and the performance of similarly situated lenders; and (6) the contents of the bank's public file.

c. Effect of Community Reinvestment Act Performance on Applications

When considering a bank's application for a deposit facility, the regulators will take into account the views of interested parties, and a bank's CRA performance may be the basis for denying or conditioning approval of an application. /25/

d. Effect of Discriminatory Lending Practices on Community Reinvestment Act Ratings

Evidence of discriminatory or other illegal credit practices will have an adverse impact on the bank's ultimate CRA rating. /26/ In determining the extent of this impact, regulators will consider the following: /27/ (1) the nature and extent of the evidence; (2) policies and procedures the bank has in place to prevent discriminatory or other illegal credit practices; and (3) any corrective action the bank has agreed to take.

e. Assessment Area Delineation

As under the current regulations, /28/ banks will be required to delineate the geographic area in which they will have CRA obligations. However, under the new regulations the following rules apply: /29/

-- Wholesale or limited-purpose banks. The assessment area must generally consist of one or more metropolitan statistical areas or one or more contiguous political subdivisions.

-- Large and small retail banks. The assessment area generally must (1) consist of one or more metropolitan statistical areas or contiguous political subdivisions; (2) include the census tracts in which the bank has its main office, branches, and deposit-taking automated teller machines(ATMs); and (3) include the surrounding census tracts in which the bank has made a substantial portion of its loans.

-- Rules for all banks. The assessment area (1) must consist only of whole census tracts; (2) may not reflect illegal discrimination; and (3) may not arbitrarily exclude low- or moderate-income census tracts, taking into account the bank's size and financial condition.

If the bank's regulator finds that the bank's delineation does not comply with the regulations, the regulator will designate an area that does comply with the regulations and will evaluate the bank's CRA performance in that area. /30/

f. Affiliate and Indirect Lending

Regulators will consider the lending and investment record of a bank's affiliates, but only at the bank's option. /31/ If a retail bank elects to have its affiliate lending or investments evaluated, it must report the necessary data for the affiliate. /32/ The regulator will consider the affiliate's loans only under the community development criterion of the lending test. /33/

A large retail bank or a wholesale or limited-purpose bank can ask its regulators to consider loans made by third parties, such as a consortium of banks, in which the bank has invested. /34/ For large retail banks, such indirect lending can be considered only under the community development component of the lending test. /35/

2. The Community Reinvestment Act Performance Tests

a. The Lending, Investment, and Service Tests for Large Retail Banks

Large retail banks will be evaluated according to three tests: the lending, investment, and service tests. /36/

i. The Lending Test

The bank's regulator will evaluate the bank's home mortgage, small business, small farm, and community development loans. /37/ The regulators will consider a bank's consumer lending only if it constitutes a substantial majority of the bank's business or if the bank elects to have it evaluated and the bank maintains the necessary data on consumer loans. /38/

The new regulations establish five criteria to judge a bank's lending:

(1) The total number and dollar amount of a bank's loans. /39/ They include home mortgage, /40/ small farm, small business, /41/ and consumer loans (if applicable).

(2) The geographic distribution of a bank's loans. /42/ The factors that the regulators will consider are (1) the proportion of loans in the bank's assessment area; (2) the dispersion of loans in its assessment area; and (3) the total number and dollar amount of loans in low-, moderate-, middle-, and upper-income census tracts. The regulators will consider the performance of similarly situated lenders and the bank's market share. /43/ They will not require a bank to lend evenly throughout its service area or to every census tract. /44/ However, the bank's lending record should not contain conspicuous geographical gaps that are not explained by the performance context. /45/

(3) The income level of the borrowers. /46/

(4) The total number and dollar amount of a bank's community development loans as well as the complexity and innovative character of the loans. /47/ A community development loan can be

outside of a low-income area as long as it is intended to benefit low-income people. /48/ However, loans not primarily benefiting low-income people or neighborhoods do not qualify. /49/ For example, a loan for upper-income housing in a low-income area does not count under the lending test. /50/

(5) Any innovative or flexible lending practices. /51/ By an innovative practice, the regulations mean one that serves low- and moderate-income borrowers in new ways or that serves groups of creditworthy borrowers not previously served. /52/

Once the bank's regulator evaluates each of these five lending test criteria, the regulator will assign one of five ratings to a bank's overall lending performance: outstanding, high satisfactory, low satisfactory, needs to improve, and substantial noncompliance. /53/ As a general matter, the ratings correspond to the following performance levels: /54/ outstanding (excellent); high satisfactory (good); low satisfactory (adequate); needs to improve (poor); substantial noncompliance (very poor).

ii. The Investment Test

The second test the regulators will apply to a large retail bank is the investment test. /55/ The regulators will evaluate a retail bank's "qualified investments" in community development projects. /56/ The new regulations establish four criteria to evaluate a bank's investments: /57/ (1) the total number and dollar amount of the investments; (2) their innovative character or complexity; (3) their responsiveness to credit and community development needs; and (4) the degree to which the investments are not made by other private investors.

After considering these factors, the regulators will assign one of five ratings to the bank: /58/ outstanding (excellent); high satisfactory (good); low satisfactory (adequate); needs to improve (poor); substantial noncompliance (very poor).

iii. The Service Test

The final test for large retail banks is the service test. /59/ The bank's regulators will evaluate the bank's system for delivering two types of services: retail banking and community development banking. /60/ The regulators will consider four performance criteria relating to the bank's retail banking services: /61/ (1) branch distribution among low-, moderate-, middle-, and upper-income census tracts; (2) record of opening and closing branches, particularly those located in low- and moderate-income census tracts; (3) the availability and effectiveness of alternative service delivery systems, such as ATMs, to low- and moderate-income tracts and low- and moderate-income individuals; and (4) the range of services offered to low-, moderate-, middle-, and upper-income individuals.

The preamble to the new regulations states that the regulators' emphasis in the service test will be on branches rather than alternative systems for service delivery because "convenient access to full-

service branches within a community is an important factor in determining the availability of credit and non-credit services." /62/

The regulators will consider two criteria relating to a bank's community development banking services: (1) the extent of the services and (2) whether the services are innovative and responsive to community needs. /63/

Using the following standards, they will assign one of five ratings to the service performance: /64/

-- Outstanding -- readily accessible services, improved branch access; services tailored to needs; leader in community development services.

-- High satisfactory -- accessible services; no harm from branch closings; services consistent with needs; high level of community development services.

-- Low satisfactory -- reasonably accessible services; generally no harm from branch closings; services consistent with needs; adequate community development services.

-- Needs to improve -- services unreasonably inaccessible; adverse impact from branch closings; inconsistent responsiveness to service needs; limited community development services.

-- Substantial noncompliance -- services unreasonably inaccessible to significant portions of community; significant adverse impact from branch closings; no responsiveness to service needs; few, if any community development services.

iv. Assigning an Overall Rating to Large Retail Banks

In assigning an overall CRA rating to a large retail bank, the regulators will first assign a rating and a corresponding numerical score for each of the three component tests: /65/

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 noncompliance

0
0
0

The regulators will then combine these scores to generate a composite rating for the bank: /66/

Composite assigned rating
Points

Outstanding

20 or more

Satisfactory

11 -- 19

Needs to improve

5 -- 10

Substantial noncompliance

0 -- 4

In addition, the new regulations list three guidelines that the regulators will follow when assigning an overall CRA rating to a bank. First, if the bank receives an outstanding rating on the lending test, it will automatically receive an overall CRA rating of at least satisfactory. /67/ Second, if the bank receives an outstanding rating on the service and investment tests and at least a high satisfactory on the lending test, it will receive an overall CRA performance rating of outstanding. /68/ Third, no bank may receive a rating of satisfactory unless it receives a rating of at least low satisfactory on the lending test. /69/

b. The Community development Test for Wholesale or Limited-Purpose Banks

The new regulations apply three performance criteria to wholesale and limited-purpose banks: /70/ (1) the total number and dollar amount of community development loans, investments, or services; (2) the innovative character, complexity, and unique nature of the loans, investments, and services; and (3) the bank's responsiveness to credit and community development needs.

The regulators will count loans, investments, or services that wholesale banks offer through third-party intermediaries that are outside the bank's assessment area provided that the broader area includes the bank's assessment area or, if the broader area does not include the bank's assessment area, provided that the bank has already met the needs of its assessment area. /71/

The regulators will evaluate the bank's performance under these criteria and then assign it an overall CRA rating. /72/ The ratings correspond generally to the following performance levels: /73/ outstanding (excellent); satisfactory (adequate); needs to improve (poor); substantial noncompliance (very poor).

c. The Community Reinvestment Act Performance Test for Small Banks

The regulators will apply five CRA performance criteria when evaluating a small bank's CRA record: /74/ (1) loan-to-deposit ratio; (2) percentage of loans in its assessment area; (3) record of lending to borrowers of different income levels and small businesses and small farms; (4) geographic distribution of loans; and (5) responsiveness to complaints.

A small bank will receive a satisfactory CRA rating if its performance under these criteria is reasonable. It is eligible for an outstanding CRA rating if it meets all the criteria for a satisfactory rating and exceeds some or all of them. /75/ It can receive a "needs to improve" or "substantial noncompliance" rating based on the degree to which it fails to meet the standards for a satisfactory rating. /76/

d. The Strategic-Plan Option

The strategic-plan option allows any bank to define, in consultation with community groups and as approved by its regulator, what will constitute a satisfactory CRA performance. The new regulations specify several aspects of a strategic plan and make several other provisions optional. /77/

A strategic plan must be in writing and must include measurable goals that address lending, investment, and services and that specify what constitutes a satisfactory performance. In addition, a strategic plan may include provisions that (1) identify goals that constitute an outstanding performance; (2) allow that, if the bank fails to satisfy the terms of its plan, it will be evaluated according to the appropriate test; or (3) contain a term of years, no more than five. If the strategic plan is for more than one year, it must include annual interim measurable goals.

In order to be evaluated under the strategic-plan option, the bank must submit its plan to its regulator for approval. /78/ Before submitting such a plan, the bank must seek informal public input while developing the plan and must formally solicit public comment on the plan for at least 30 days in a newspaper notice. /79/

In deciding whether to approve a plan, the bank's regulator will consider several factors, including the extent and breadth of the bank's loans, investments, community development activities, and

services. /80/ The bank's regulator will assign a satisfactory CRA rating if the bank substantially achieved its goals; an outstanding rating if it achieved all of its goals for a satisfactory rating and substantially achieved its goals for an outstanding rating; and a "needs to improve" or "substantial noncompliance" rating if the bank substantially failed to meet its goals for a satisfactory rating. /81/

B. Data Collection, Reporting, and Disclosure

1. Data Required to Be Collected and Maintained

All banks except small banks must collect and maintain certain data about their small business and small farm loans. These data include the loan location and amount of the loan and whether the small business or small farm had gross annual revenues of \$1 million or less. /82/

2. Data Required to Be Reported to the Regulators

All banks except small banks are required to report to their regulators certain data about their small business, small farm, home mortgage, and community development loans. /83/ The information they must report includes:

-- The total number and dollar amount of small business and small farm loans that are \$100,000 or less, up to \$250,000, and more than \$250,000.

-- The aggregate number and dollar amount of loans to small farms and small businesses that have gross annual revenues of less than \$1 million.

-- The aggregate number and value of community development loans.

-- The location of each home mortgage loan application, origination, or purchase outside the metropolitan statistical area in which the bank has a home or branch office.

In addition, if a large retail bank seeks to have its consumer lending evaluated as part of the lending test, it must collect data about its consumer lending, including /84/ the type of loan, the loan amount and location, and the gross annual income of the borrower.

3. Data Required to Be Disclosed to the Public

The bank's regulator will prepare a CRA disclosure statement for large retail and wholesale banks. /85/ The disclosure statement will show the following information: /86/

-- Small business and small farm lending. This information will be divided into two parts, depending on whether the population of the county in which the loan was made was more or less than 500,000.

For loans in counties with less than 500,000 people, the information will include (1) the total number and dollar amount of small business and small farm loans in low-, moderate-, middle-, and upper-income census tracts; (2) a list grouping each census tract according to its income level; (3) a list showing each census tract in which the bank made a loan; and (4) the total number and dollar amount of loans to small businesses and small farms with less than \$1 million in gross annual revenue.

For loans in counties with a population of 500,000 or more, the disclosure statement will show the same information, except that instead of indicating the number of loans made in low-, moderate-, middle-, or upper-income tracts, the statement will report the total number of loans in tracts divided according to 0 -- 9 percent of the metropolitan statistical area median income, 10 -- 19 percent, etc., up to 120 percent, and all loans in tracts with more than 120 percent of the metropolitan statistical area median.

-- The total number and dollar amount of the bank's small business and small farm loans inside and outside of its CRA assessment area.

-- The total number and dollar amount of the bank's community development loans.

Under the current regulations, all banks are required to make available to the public a CRA file and to post a CRA notice. /87/ This obligation survives the new regulations, but the content of the file and notice is changed. /88/

Banks must continue to maintain certain information in their CRA public files. This information includes (1) all written comments about the bank's CRA performance; (2) a copy of the public section of the bank's most recent CRA assessment report; (3) a map of each of the bank's CRA assessment areas, including a list of the census tracts it contains; and (4) its Home Mortgage Disclosure Act (HMDA) disclosure statement. /89/

In addition, banks must include much new information that will be useful to community groups. This new information includes lists showing the (1) location by address and census tract of the bank's branches; (2) location by address and census tract of all branches the bank opened or closed in the previous two years; and (3) branch services the bank offers and any differences in services at particular branches. /90/

Banks that are not small banks must maintain additional information in their CRA public files. This information includes the following. /91/

-- Consumer lending. If the bank elects to have its consumer lending evaluated as part of the lending test, it must report the total number and dollar amount of its consumer loans (1) to low-, moderate-, middle-, and upper-income individuals; (2) located in low-, moderate-, middle-, and upper-income census tracts; and (3) located inside and outside the bank's CRA assessment area.

-- The CRA disclosure statement.

A few other miscellaneous provisions relate to information the bank is required to place in the public file. These include the following: /92/ Small banks are required to include a statement showing their loan-to-deposit ratios on a quarterly basis. Banks electing to be evaluated under the lending, investment, and service tests are required to include other information. A bank with a strategic plan must include a copy of that plan. Finally, a bank with less than a satisfactory rating must include a description of its attempts to improve its performance.

Each bank must make its CRA public file available for inspection at its main office. /93/ Interstate banks must make their CRA public files available at one branch within each state. /94/ Each bank must make available at each branch a copy of its most recent CRA assessment report and, within five days of the request, its CRA public file. /95/

Each bank is required to post in its main office and in each of its branches CRA notices that describe the bank's CRA obligations, the availability of information, the opportunity to comment on applications, and the opportunity to participate in the CRA assessment process. /96/

C. Transition Rules

The new regulations are effective in three stages. /97/ The three relevant dates are: January 1, 1996; January 1, 1997; and July 1, 1997.

As of January 1, 1996: The regulators began to apply the small bank CRA performance standards. A bank that elects to be evaluated under an approved strategic plan may submit its plan to its regulator. Large retail banks and wholesale or limited-purpose banks may be evaluated under the new tests if they submit the necessary information. The new CRA assessment area rules became effective for small banks, banks that submit a strategic plan, and large retail and special-purpose or wholesale banks that elect to be evaluated under the applicable revised tests. Finally, banks must begin to collect data about small business and small farm loans, and consumer, affiliate, and third-party lending if they elect to have this lending evaluated.

By January 1, 1997: Banks must begin to report to their regulators their small business, small farm, community development, and home mortgage lending. And the CRA assessment delineation rules become effective for all banks.

By July 1, 1997: The regulators will evaluate all banks under the applicable revised tests, and the rules regarding the CRA public file and public notice become effective.

IV. Conclusion

Overall, insofar as they emphasize lending rather than procedures, the new regulations represent a positive change. Community groups need to pay particular attention to several provisions of the new regulations because the provisions either promise to be helpful or may be harmful.

Lending discrimination. Regulators must continue to pay careful attention to lending discrimination when examining a bank for CRA compliance. To the extent that they do not do so, it will be up to community groups to bring lending data indicating disparate treatment to the regulators' attention.

Indirect lending. It is important that banks not be allowed to satisfy their CRA obligations through indirect lending. Otherwise, they will be permitted to withdraw from low- and moderate-income neighborhoods. Although the regulations indicate that large retail banks will not be able to satisfy their CRA obligations through indirect lending, community groups must be vigilant about the proper enforcement of this provision. In addition, although the new regulations do not require a bank's affiliates to be evaluated for CRA compliance, the affiliate's HMDA data are available, and groups should scrutinize them and inform the bank's regulator about any problems.

Subjective criteria. The regulations do not succeed in establishing objective criteria. There are no quantifiable standards or benchmarks for evaluating a bank's lending. The standards that the regulators will employ to evaluate a bank's record, described by terms such as "excellent" and "good," are entirely subjective. Thus, it will be up to community groups to help define these terms, and it is important that they be meaningful.

Examination schedule. By deciding to publish a schedule of the banks that will be examined each quarter, the regulators are signaling that they will be attaching a great deal of significance to the CRA examination results. It is important that community groups take advantage of this opportunity to make their voices heard.

Safe harbor. Although the regulators have explicitly disavowed placing a safe harbor from CRA challenges in the new regulations, there is always the chance that, in effect, a safe harbor will emerge for banks that score well under the new standards. It is important that community groups guard against this by continuing to evaluate bank lending records rigorously and raising problems with the bank's regulator.

Performance context. The regulators indicate that they will be consulting community representatives in developing the performance context. Nevertheless, community groups should take the initiative in approaching the regulators to share information with them. In particular, they should bring information about bank lending records and credit needs in their particular neighborhoods, as there is a risk that the regulators will overlook smaller neighborhoods and consider the "performance context" on a regional level, in effect smoothing over the needs of particular neighborhoods.

Consumer lending. Although consumer lending is crucial for low-income individuals, the new regulations do not include consumer lending unless a bank elects to do so. It is important for community groups to include consumer lending in their CRA evaluations.

Geographic distribution of lending. Under a surprising provision in the new regulations, banks will not necessarily be required to lend throughout their communities; however, the regulations qualify this by stating that any conspicuous gaps must be explained. It will be up to community groups to determine whether conspicuous gaps exist and to press banks and their regulators for explanations.

Emphasis on branches. In a potentially significant statement in the preamble to the new regulations, the regulators, for the first time, agree that branches are crucial to the provision of banking services and are more important than other forms of service delivery. Community groups should use this statement to argue that banks should open more branches in their communities.

Gentrification. For the first time, the regulators explicitly state that loans that may gentrify a low-income neighborhood will not get CRA credit.

Small business lending data. Although the new small business loan disclosure requirements do not require a bank to indicate the race and gender of small business applicants, community groups for the first time will be able to determine where a bank is making small business loans and whether the bank is neglecting low-income communities.

Footnotes

/1/ 60 Fed. Reg. 22156 (May 4, 1995) (to be codified at 12 C.F.R. pts. 25, 228, 345, 563e). The Community Reinvestment Act (CRA) can be found at 29 U.S.C. Secs. 2901 et seq. The four agencies that enforce the CRA are the board of governors of the Federal Reserve for state-chartered banks that are members of the Federal Reserve, the Office of the Comptroller of the Currency (OCC) for national banks, the Federal Deposit Insurance Corporation (FDIC) for state-chartered banks that are not members of the Federal Reserve, and the Office of Thrift Supervision (OTS) for thrifts and savings and loans. 12 U.S.C. Sec. 2902(1). Unless otherwise specified, these four agencies will hereafter be referred to collectively as the "agencies" or the "regulators."

/2/ Id. at 22157.

/3/ Id. The two proposed revisions were published at 58 Fed. Reg. 67466 (Dec. 21, 1993) and 59 Fed. Reg. 51232 (Oct. 7, 1994).

/4/ 60 Fed. Reg. 22156 (May 4, 1995).

/5/ Id.

/6/ See Rubin Defends CRA But Backs "Sensible Regulatory Reform," Amer. Banker, May 5, 1995, at 3.

/7/ 12 U.S.C. Secs. 2901(a), 2902(2).

/8/ 12 U.S.C. Secs. 2903(1), 2906(a) -- (b).

/9/ See 12 C.F.R. pts. 25 (OCC), 228 (Federal Reserve), 345 (FDIC), 563e (OTS).

/10/ 12 U.S.C. Sec. 2903(a)(2). An application for a deposit facility includes five types of applications: (1) a charter for a national bank or federal savings and loan association; (2) deposit

insurance; (3) a new branch; (4) a branch or office relocation; or (5) a merger with or acquisition of the assets or liabilities of another bank. 12 U.S.C. Sec. 2902(3).

/11/ See 12 C.F.R. Secs. 5.10 (OCC), 262.3 (Federal Reserve), 303.6(f)(3) (FDIC), 542.92(j), 574.6(e) (OTS).

/12/ See Allen J. Fishbein, *The Community Reinvestment Act After Fifteen Years: It Works, But Strengthened Federal Enforcement Is Needed*, 20 *Ford. Urb. L. J.* 293, 303 (1993).

/13/ The new regulations are virtually identical for each agency. For convenience, citations to the new regulations in this article will be to the OCC regulations only. To avoid confusion when they are compared to the current regulations, citations to the current regulations will be to the Federal Reserve's CRA regulations, 12 C.F.R. pt. 228.

/14/ 12 C.F.R. pt. 25, subpt. B.

/15/ *Id.*, subpt. C.

/16/ See 12 C.F.R. Sec. 25.21(a)(1) -- (3).

/17/ 12 C.F.R. Sec. 25.21(a)(1).

/18/ 12 C.F.R. Sec. 25.21(a)(2). A wholesale bank is a bank that is not in the business of extending home-mortgage, small-business, small-farm, or consumer loans to retail customers and that has been designated by its regulator as a wholesale bank. 12 C.F.R. Sec. 25.12(w). A limited-purpose bank is a bank that offers only a narrow product line to a regional or broader market and that has been designated by its regulator as a limited-purpose bank. 12 C.F.R. Sec. 25.12(o).

/19/ 12 C.F.R. Sec. 25.21(a)(3). A small bank is a bank that, in either of the two previous years, had total assets of less than \$250 million and is independent, or a bank with less than \$250 million in assets that is an affiliate of a bank holding company with total assets of less than \$1 billion. 12 C.F.R. Sec. 25.12(t).

/20/ 12 C.F.R. Sec. 25.21(a)(4).

/21/ 12 C.F.R. Sec. 25.28(a).

/22/ 12 C.F.R. app A; 60 *Fed. Reg.* 22171 (May 4, 1995).

/23/ 12 C.F.R. Sec. 25.45.

/24/ 12 C.F.R. Sec. 25.21(b)(1) -- (7).

/25/ 12 C.F.R. Secs. 25.29(c) -- (d).

/26/ 12 C.F.R. Sec. 25.28(c).

/27/ Id.

/28/ 12 C.F.R. Sec. 228.3.

/29/ 12 C.F.R. Sec. 25.41(b) -- (e).

/30/ 12 C.F.R. Sec. 25.41(g); 60 Fed. Reg. 22171 (May 4, 1995).

/31/ 12 C.F.R. Secs. 25.22(c), 25.23(c).

/32/ 12 C.F.R. Sec. 25.22(c)(1).

/33/ 12 C.F.R. Sec. 25.23(c).

/34/ 12 C.F.R. Secs. 25.22(a)(3), 25.25(d).

/35/ 12 C.F.R. Sec. 25.22(a)(3).

/36/ 12 C.F.R. Sec. 25.21(a)(1).

/37/ 12 C.F.R. Sec. 25.22(a)(1).

/38/ Id. A consumer loans is defined as a loan to one or more individuals for household, family, or other personal matters, including motor vehicle, credit card, home equity, other secured, and other unsecured loans. 12 C.F.R. Sec. 25.12(k).

/39/ 12 C.F.R. Sec. 25.22(b)(1).

/40/ A home-mortgage loan is a home-improvement or home-purchase loan as defined by the Home Mortgage Disclosure Act, 12 U.S.C. Secs. 2801 et seq. 12 C.F.R. Sec. 25.12(m).

/41/ Small-farm and small-business loans are defined under the new regulations as they are described in the instructions for the quarterly Consolidated Report of Condition and Income that banks are required to compile. 12 C.F.R. Secs. 25.12 (u) and (v).

/42/ 12 C.F.R. Secs. 25.22(b)(2)(i) -- (iii).

/43/ Id.

/44/ 60 Fed. Reg. 22165 (May 4, 1995).

/45/ Id.

/46/ 12 C.F.R. Sec. 25.22(b)(3).

/47/ 12 C.F.R. Sec. 25.22(b)(4). A community-development loan is a loan that has as its primary purpose affordable housing for low- or moderate-income individuals, community services targeted to low- or moderate-income individuals, activities that promote economic development by financing small businesses or small farms, activities that revitalize or stabilize low- or moderate-income geographies, and loans to community development financial institutions. 12 C.F.R. Sec. 25.12(h)(i); 60 Fed. Reg. 22160 and n.1 (May 4, 1995).

/48/ 60 Fed. Reg. 22159 (May 4, 1995).

/49/ Id.

/50/ Id.

/51/ 12 C.F.R. Sec. 25.22(5).

/52/ 60 Fed. Reg. 22165 (May 4, 1995).

/53/ 12 C.F.R. Secs. 25.22(e), app. A (b)(1).

/54/ 12 C.F.R. app. A (b)(1)(i) -- (v).

/55/ 12 C.F.R. Sec. 25.23(a).

/56/ "Qualified investments" include investments, grants, deposits, or shares in or to, among other things, financial intermediaries that facilitate lending in low-income areas; community development financial institutions; affordable housing and small business development projects, and not-for-profit organizations. 60 Fed. Reg. 22162 & n.3 (May 4, 1995).

/57/ 12 C.F.R. Sec. 25.23(e)(1) -- (4).

/58/ 12 C.F.R. Sec. 25.23(f) and app. A(b)(2)(i) -- (v).

/59/ 12 C.F.R. Sec. 25.24.

/60/ Community development banking services include providing technical expertise to not-for-profit entities involved in economic development, serving on a board of directors, credit counseling, or low-cost government check cashing. 60 Fed. Reg. 22160 & n.2 (May 4, 1995).

/61/ 12 C.F.R. Sec. 25.24(d)(1) -- (4).

/62/ 60 Fed. Reg. 22167 (May 4, 1995).

/63/ 12 C.F.R. Sec. 25.24(e)(i) -- (ii).

/64/ 12 C.F.R. Sec. 25.24(f), app. A(b)(3)(i) -- (v).

/65/ 60 Fed. Reg. 22168 -- 70 (May 4, 1995).

/66/ Id.

/67/ 12 C.F.R. Sec. 25.28(b)(1).

/68/ 12 C.F.R. Sec. 25.28(b)(2).

/69/ 12 C.F.R. Sec. 25.28(b)(3).

/70/ 12 C.F.R. Sec. 25.25(c).

/71/ Id.

/72/ 12 C.F.R. Sec. 25.25(f), app. A(c).

/73/ 12 C.F.R. app. A(c)(1) -- (4).

/74/ 12 C.F.R. Sec. 25.26(a)(1) -- (5).

/75/ 12 C.F.R. app. A(d)(2).

/76/ 12 C.F.R. app. A(d)(3).

/77/ 12 C.F.R. Sec. 25.27(f)(1) -- (4).

/78/ 12 C.F.R. Sec. 25.27.

/79/ 12 C.F.R. Sec. 25.27(d).

/80/ 12 C.F.R. Sec. 25.27(a)(3).

/81/ 12 C.F.R. app. A(e).

/82/ 12 C.F.R. Sec. 25.42(a).

/83/ 12 C.F.R. Sec. 25.42(b)(1)(i) -- (iv), (2), (3).

/84/ 12 C.F.R. Sec. 25.42(c)(1).

/85/ 12 C.F.R. Sec. 25.42(h).

/86/ 12 C.F.R. Sec. 25.42(d), (e), (h)(1)(i) -- (iv), (h)(2)(i) -- (iv).

/87/ 12 C.F.R. Sec. 228.5 -- .6.

/88/ 12 C.F.R. Sec. 25.43 -- .44.

/89/ 12 C.F.R. Sec. 25.43(c)(1) -- (6).

/90/ 12 C.F.R. Sec. 25.43(b)(2).

/91/ 12 C.F.R. Sec. 25.43(b)(1)(i) -- (iv).

/92/ 12 C.F.R. Sec. 25.43(b)(3) -- (5), (c)(1).

/93/ 12 C.F.R. Sec. 25.43(c)(1).

/94/ Id.

/95/ Id.

/96/ 12 C.F.R. Sec. 25.44, app. B.

/97/ 12 C.F.R. Sec. 25.51.