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INTRODUCTION

The primary objective of United States bank regulatory policy is the promotion of the safety and soundness of the depository institutions system and the maintenance of public confidence in that system.[1] In that context, the Community Reinvestment Act's (CRA)[2] intention to encourage depository institutions "to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions,"[3] has often been viewed as an additional, but somehow extraneous, objective.[4] Few areas of depository institutions regulation have engendered the commentary and controversy that has accompanied the CRA.[5]

Typically, debate has focused on the question of whether or not

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1. *See, e.g.*, 12 U.S.C. § 1818(b)(1) (2000) (identifying safety and soundness as an objective of regulatory enforcement). *See generally* Michael P. Malloy, *Balancing Public Confidence and Confidentiality: Adjudication Practices and Procedures of the Federal Bank Regulatory Agencies*, 61 TEMP. L. REV. 723 (1988) (discussing policy objective of maintenance of public confidence).

2. Community Reinvestment Act of 1977, Pub. L. No. 95-128, 91 Stat. 1147 (codified as amended at 12 U.S.C. §§ 2901-2907 (2000)).

3. 12 U.S.C. § 2901(b) (2000).

4. *See* Hicks v. Resolution Trust Corp., 970 F.2d 378 (7th Cir. 1992) (seeking to balance CRA obligations with safety and soundness, and limiting effect of the CRA accordingly).

5. For legislative history of the CRA, see H.R. REP. NO. 95-236 (1977); H.R. CONF. REP. NO. 95-634 (1977), *reprinted in* 1977 U.S.C.C.A.N. 2884. *See generally* Symposium Issue, *Shaping American Communities: Segregation, Housing & the Urban Poor*, 143 U. PA. L. REV. 1285-1593 (1995) (various articles on the CRA); David Evan Cohen, *The Community Reinvestment Act—Asset or Liability?*, 75 MARQUETTE L.

state and federal CRAs can effectively achieve their objectives. In the last decade, empirical studies of the Texas market have suggested that CRA regulations have not increased the availability of banking services in low-income communities, and that the number of branches in low-income areas actually decreased in the period following the relevant regulatory changes.[6] Other commentators have temporized, arguing that it is yet to be determined whether state and federal CRAs can offset the effects of current federal interstate banking and branching policy[7] and the emerging industry consolidation resulting from interstate policy.[8]

Indeed, in the three decades since the enactment of the CRA, the U.S. banking market has become increasingly consolidated—and national—as opposed to diffuse and local in its structure. Increasingly, the dual banking system is becoming asymmetrical, with localized state-chartered institutions holding a declining proportion of assets in the U.S. banking system.[9] Regulatory realignment generally seems to lag behind the dramatic changes in the financial-services industry, including increasing globalization, consolidation within traditional sectors, conglomeration across sectors, and convergence of institutional roles and products.[10] The regulatory apparatus has responded to market changes with a heightened focus on reinvestment transactions and new data collection and reporting

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REV. 599 (1992); Michael E. Schrader, *Competition and Convenience: The Emerging Role of Community Reinvestment*, 67 IND. L.J. 331 (1992).

6. Leonard Bierman et al., *Regulatory Change and the Availability of Banking Facilities in Low-Income Areas: A Texas Empirical Study*, 49 SMU L. REV. 1421 (1996); *see also* Leonard Bierman et al., *Community Reinvestment Act: A Preliminary Empirical Analysis*, 45 HASTINGS L.J. 383 (1994).

7. Riegle-Neal Interstate Banking & Branching Efficiency Act (IBBEA) of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (1994) (codified at scattered sections of 12 U.S.C.). On the effects of the IBBEA on interstate banking and branching, see MICHAEL P. MALLOY, 2 BANKING LAW AND REGULATION §§ 2A.7-2A.7.4 (1994 & Cum. Supp.).

8. Dwight Golann et al., *Introduction to the 1996 Annual Survey of Consumer Financial Services Law*, 51 BUS. LAW. 825 (1996). *See generally* John H. Huffstutler, *Bank Holding Company Restructuring Alternatives Following the Enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994*, Practicing Law Institute, Corporate Law & Practice Course Handbook Series (Dec. 1996) (noting three layers of CRA review applicable to interstate banks, as well as state regulation); Mark D. Rollinger, *Interstate Banking and Branching Under the Riegle-Neal Act of 1994*, 33 HARV. J. ON LEGIS. 183 (1996) (surveying potential effect of interstate banking legislation on banking industry).

9. *See* Richard Cowden, *Powell Says Falling State Bank Asset Share Highlights Inequities in Dual Banking System*, BNA BANKING DAILY (Sept. 27, 2005).

10. *See* Linda Micco, *GAO Says Changes in Financial Services Prompts Need to Assess Regulatory Structure*, BNA BANKING DAILY (Nov. 12, 2004) (discussing GAO analysis of lag in regulatory structure).

obligations,[11] but not necessarily by refining CRA regulation in response to the growing prevalence of a *national* banking market, as opposed to the *local* or home community envisioned by the CRA as originally conceived.[12]

I. CRA METHODOLOGY

The CRA does at least recognize the need to refine its methodologies for national markets that manifest themselves through interstate branching structures. However, these refinements do not directly respond to other national market structures, such as the national market for credit cards and other non-localized credit facilities,[13] or e-banking.[14] Thus, it would appear that further adjustment in the scope and implementation of CRA objectives may be required.

A. *Basic Methodologies*

The basic methodologies used to implement CRA policy are assessment and evaluation. In examining an insured depository institution,[15] the institution's appropriate federal financial supervi-

11. *See* 12 C.F.R. §§ 25.42, 228.42, 345.42, 563e.42 (2006) (imposing data collection, reporting, and disclosure requirements).

12. David E. Teitelbaum & John M. Casanova, *Regulatory Reform or Retread? The New Community Reinvestment Act Regulations*, 51 BUS. LAW. 831 (1996); *cf.* Charles R. Whitt, *Eleven Accuse NationsBank of Bias in Mortgages*, 8 LOY. CONSUMER L. REP. 6 (1996) (noting lawsuit against interstate-expanding NationsBank Corp., alleging mortgage-lending discrimination).

13. *See generally* Marquette Nat'l Bank v. First of Omaha Serv. Corp., 439 U.S. 299 (1978) (recognizing existence of national market for credit card services).

14. *See generally* Electronic Banking, 65 Fed. Reg. 4895 (Feb. 2, 2000) (announcing Comptroller proposed rulemaking on electronic banking); Electronic Activities, 67 Fed. Reg. 34,992 (May 17, 2002) (codified at 12 C.F.R. §§ 7.1002, 7.5000-7.5010; repealing 12 C.F.R. § 7.1019) (amending regulations to facilitate national bank use of electronic technologies).

15. The Gramm-Leach-Bliley Act (GLBA), Pub. L. No. 106-102, 113 Stat. 1338 (1999) (codified in scattered sections of 12, 15, 16, 18 U.S.C.), amended the CRA to direct that regulated financial institutions with aggregate assets not exceeding $250 million are subject to routine CRA examinations (*i*) not more than once every 60 months if the institution received a CRA rating of "outstanding" at its most recent examination; (*ii*) not more than once every 48 months if the institution received a rating of "satisfactory" at its most recent examination; and (*iii*) as deemed necessary by the appropriate federal banking agency, if the institution received a rating of less than "satisfactory" at its most recent examination. GLBA, § 712(a) (codified at 12 U.S.C. § 2908(a) (2000)). However, an institution remains fully subject to CRA examination in connection with any application for a deposit facility. *Id.* § 712(b) (codified at 12 U.S.C. § 2908(b)). On deposit facility creation, see *infra* Part I.B. In addition, the agencies may subject an institution to more frequent or less frequent examinations for reasonable cause. *Id.* § 712(c) (codified at 12 U.S.C. § 2908(c)).

sory agency[16] must assess its record of "meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution."[17] The assessment is based on a set of tests implemented in the agencies' CRA regulations. The data for these tests is derived from a number of sources specified in the regulations.[18] In effect, these sources establish the context within which CRA performance is assessed and evaluated.

In concluding a CRA examination, the agency is required to prepare a written evaluation of the institution's CRA record,[19] consisting of a public section and a confidential section.[20] The public section is required to include: (*i*) the agency's conclusions for each CRA factor assessed, as identified in its regulations;[21] (*ii*) discussion of facts and data supporting its conclusions;[22] and (*iii*) the insti-

16. For definition of the term "appropriate Federal financial supervisory agency" for these purposes, see 12 U.S.C. §§ 2902(3)(A)-(D) (2000) (identifying Office of the Comptroller of the Currency (OCC) as supervisor for national banks, Federal Reserve Board (Fed) for state-chartered member banks and bank holding companies, Federal Deposit Insurance Corporation (FDIC) for insured state-chartered nonmember banks and savings banks, and Office of Thrift Supervision (OTS) for insured savings associations and savings and loan holding companies).

17. *Id.* § 2903(a)(1); *see* Hicks v. Resolution Trust Corp., 970 F.2d 378 (7th Cir. 1992) (limiting effect of the CRA). On application of the CRA requirements to financial holding companies, see 12 U.S.C. § 2903(c). In assessing an institution's record, the CRA discriminates between "majority-owned institutions" on the one hand, and "minority-" or "women-owned institutions" on the other. *Id.* § 2903(b). In assessing a majority-owned institution's record, the "agency may consider [the institution's] capital investment [in, and] loan participation and other joint ventures . . . with, minority- and women-owned financial institutions and low-income credit unions." *Id.* These activities may be considered only if they "help meet the credit needs of *local* communities in which such institutions and credit unions are chartered." *Id.* (emphasis added).

18. 12 C.F.R. §§ 25.21(b) (OCC regulations), 228.21(b) (Federal Reserve regulations), 345.21(b) (FDIC regulations), 563e.21(b) (OTS regulations) (2006).

19. 12 U.S.C. § 2906(a)(1) (2000).

20. *Id.* § 2906(a)(2).

21. *Id.* § 2906(b)(1)(A)(i); *see, e.g.*, 12 C.F.R. §§ 25.21-25.24, 228.21-228.24, 345.21-345.24, 563e.21-563e.24 (2006) (lending, investment, and service tests of OCC, Fed, FDIC, and OTS, respectively); *see also id.* §§ 25.25, 228.25, 345.25, 563e.25 (community development test for a wholesale or limited-purpose bank of OCC, Fed, FDIC, and OTS, respectively); §§ 25.26, 228.26, 345.26, 563e.26 (small bank performance standards of OCC, Fed, FDIC, and OTS, respectively). The conclusions must be presented separately for each metropolitan area in which the institution maintains a domestic branch office. 12 U.S.C. § 2906(b)(1)(B) (2000). For these purposes, "metropolitan area" is defined as "any primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area, as defined by the Director of the Office of Management and Budget, with a population of 250,000 or more, and any other area designated as such by the appropriate Federal financial supervisory agency." *Id.* § 2906(e)(2).

22. 12 U.S.C. § 2906(b)(1)(A)(ii). This discussion must be presented separately

tution's CRA rating, together with an explanation of the basis for the rating.[23] The confidential section contains any statements considered, in the agency's judgment, to be too sensitive or speculative to disclose to the examined institution or to the public.[24] It also contains any references that identify customers, institution officers, or employees, or any other person who has provided information to a state or federal supervisory agency in confidence.[25]

B. *Creation of a "Deposit Facility"*

An agency is also required to take a depository institution's CRA record into account in evaluating any application for a "deposit facility."[26] The term "application for a deposit facility" is defined for these purposes to mean any application for:

(*i*) a charter for a national bank or federal savings and loan association;[27]
(*ii*) deposit insurance, in the case of a newly chartered state bank, savings bank, savings and loan association, or similar institution;[28]
(*iii*) establishment of a domestic branch or other facility that can accept deposits;[29]
(*iv*) relocation of a home or branch office;[30]

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for each metropolitan area in which the institution maintains a domestic branch office. *Id.* § 2906(b)(1)(B).

23. *Id.* § 2906(b)(1)(A)(iii). The adjacent section of the CRA further requires the use of the following ratings:

(A) Outstanding record of meeting community credit needs;
(B) Satisfactory record of meeting community credit needs;
(C) Needs to improve record of meeting community credit needs; and
(D) Substantial noncompliance in meeting community credit needs.

Id. § 2906(b)(2)(A)-(D); *see, e.g.*, 12 C.F.R. §§ 25.28, 228.28, 345.28, 563e.28 (providing for assigned CRA ratings under OCC, Fed, FDIC, and OTS regulations, respectively). The ratings must be disclosed to the public. 12 U.S.C. § 2906(b)(2).

24. 12 U.S.C. § 2906(c)(2). The agency may disclose the confidential section, in whole or in part, to the examined institution if the agency determines that disclosure will promote CRA objectives. *Id.* § 2906(c)(3). However, such disclosure may not identify a person or organization that has provided information in confidence to a state or federal supervisory agency. *Id.*

25. *Id.* § 2906(c)(1).

26. *Id.* § 2903(a)(2). In evaluating an institution's record, the CRA distinguishes between "majority-owned institutions" on the one hand, and "minority-" or "women-owned institutions."

27. *Id.* § 2902(3)(A).

28. *Id.* § 2902(3)(B).

29. *Id.* § 2902(3)(C); *see, e.g.*, Corning Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd., 571 F. Supp. 396 (E.D. Ark. 1983), *aff'd*, 736 F.2d 479 (8th Cir. 1984) (upholding FHLBB approval of branch application in light of the CRA).

30. 12 U.S.C. § 2902(3)(D).

(*v*) merger, consolidation, or purchase/assumption requiring approval under the Bank Merger Act (BMA);[31] or,

(*vi*) acquisition of shares in, or the assets of, a depository institution requiring approval under federal holding company law.[32]

C. *Alternative Methodology*

Institutions may take advantage of an alternative mechanism for CRA assessment and evaluation offered by the agencies' CRA regulations—the development and implementation of a CRA strategic plan.[33] With an approved plan in effect and operating for at least one year,[34] with a maximum term of five years,[35] an institution's CRA record is assessed under the criteria of the plan developed by the institution, rather than under the lending, investment, and service tests imposed by agency regulations.[36] Institutions "with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of

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31. *Id.* § 2902(3)(E). On approval of mergers and similar acquisition transactions under the Bank Merger Act, see *id.* § 1828(c).

32. *Id.* § 2902(3)(F). The text of this provision refers to 12 U.S.C. § 1842, the appropriate Bank Holding Company Act provision, but it also continues to refer to the repealed savings and loan holding company provision of 12 U.S.C. § 1730a(e) (1988), which has been replaced by 12 U.S.C. § 1467a. The GLBA amended the CRA to provide that election by a bank holding company (BHC) to become a "financial holding company" (FHC) is not effective if the Fed finds that, as of the date of the election, not all of the subsidiary insured depository institutions of the company had received at least a "satisfactory" CRA rating at their most recent CRA examinations. GLBA, Pub. L. No. 106-102, sec. 103(b), 113 Stat. 1338 (1999). The GLBA also amends the Bank Holding Company Act of 1956 (BHCA), 12 U.S.C. § 1841 (2000), to require the appropriate federal banking agency to prohibit an FHC (or a bank, through a financial subsidiary) from commencing any new activity, or acquiring any company, under BHCA § 4(k) or (n), 12 U.S.C. §§ 1843(k), (n), or under the National Bank Act, *id.* § 24a, or the Federal Deposit Insurance Act, *id.* § 1831w(a), if the bank or any of its insured depository institution affiliates (or any insured depository institution affiliate of the FHC) fails to have at least a "satisfactory" CRA rating at the time of its last examination. *Id.* § 1843(l)(2). The prohibition ceases to apply once the bank and all of its insured depository institution affiliates (or all of the insured depository institutions controlled by the FHC) have restored their CRA performance rating to at least the "satisfactory" level. *See id.* (applying prohibition in relation to "most recent examination under the Community Reinvestment Act of 1977").

33. 12 C.F.R. §§ 25.27, 228.27, 345.27, 563e.27 (2006).

34. *Id.* §§ 25.27(a)(1)-(4), (g) (OCC regulations, providing for assessment and approval of CRA strategic plan).

35. *Id.* § 25.27(c)(1).

36. *Id.* § 25.27(a). "The OCC's approval of a plan does not affect [an institution's] obligation, if any, to report data as required by [the regulations]." *Id.* § 25.27(b); *see also id.* §§ 25.27(b), 25.42.

its assessment areas."[37] In addition, "affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at [their] option, provided that the same activities are not considered for more than one institution."[38]

In principle, this alternative methodology could be responsive to the emergence of a national market structure, as opposed to the "local community" paradigm underlying the original CRA. For example, in evaluating the plan and deciding whether or not to approve it, the relevant agency applies criteria that could relate to broader markets:

> (*i*) [t]he extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans *among different geographies*, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;
> (*ii*) [t]he amount and innovativeness, complexity, and responsiveness of the [institution]'s qualified investments; and,
> (*iii*) [t]he availability and effectiveness of the [institution]'s systems for delivering retail . . . services and the extent and innovativeness of the [institution's] community development services.[39]

However, neither the statute nor the implementing regulations explicitly recognize a national market focus, as opposed to a "local community" focus, with respect to the alternative methodology.

D. *Impact of Interstate Banking and Branching*

The emergence of interstate banking and branching as a matter of federal depository institutions' policy has complicated CRA assessment and evaluation. To the extent that interstate branch structures are a manifestation of a national market, the special procedures applicable under the CRA to interstate branching may represent a more realistic approach to CRA responsibilities. Special procedures now apply to the assessment and evaluation of a depository institution with interstate domestic branches.[40] In these

37. *Id.* § 25.27(c)(3).
38. *Id.*
39. *Id.* §§ 25.27(g)(3)(i)-(iii), 228.27(g)(3)(i)-(iii), 345.27(g)(3)(i)-(iii) (emphasis added); *see id.* §§ 563e.27(g)(3)(i)-(iii).
40. For these purposes, the term "domestic branch" is defined to mean "any

situations, the agency must prepare a written evaluation of the entire institution's CRA record of performance[41] and a separate written evaluation for each state in which the institution maintains a domestic branch.[42] In situations in which the institution maintains domestic branches within one *multistate* metropolitan area, the agency is required to prepare a separate written evaluation of the institution's CRA record of performance within the metropolitan area.[43] This state-by-state evaluation is specifically required to include information "separately for each metropolitan area in which the examined institution maintains 1 or more domestic branch offices, and separately for the remainder of the nonmetropolitan area of the State if the institution maintains [any] domestic branch offices in the nonmetropolitan area."[44] The state-by-state evaluation must also describe how the "agency performed the examination of the institution, including a list of the individual branches examined."[45]

II. National Market Structure and "Local Community" Concerns Under the CRA

Beyond the theoretical possibilities of the alternative methodology[46] and the specific CRA provisions applicable to interstate branching,[47] nothing in the CRA or its implementing regulations explicitly recognizes the fact that U.S. banking structure is trending towards a national market and away from a "local community" structure. As a policy matter, of course, it may be argued that this trending in fact underscores the need for the CRA to persist in focusing the attention of regulators and the institutions subject to their supervision on the credit needs of local communities, to prevent their neglect as banks' strategic concerns naturally pull them away from local community concerns. On the other hand, one

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branch office or other facility of a regulated financial institution that accepts deposits, located in any State." 12 U.S.C. § 2906(e)(1) (2000).

41. *Id.* § 2906(d)(1)(A).

42. *Id.* § 2906(d)(1)(B).

43. *Id.* § 2906(d)(2). If the agency prepares a multi-state metropolitan area evaluation, the scope of the state-by-state evaluation, per § 2906(d)(1)(B), "shall be adjusted accordingly." *Id.* § 2906(d)(2).

44. *Id.* § 2906(d)(3)(A). *But cf. id.* § 2906(d)(2) (requiring state-by-state evaluation to be adjusted where separate evaluation is done of a multistate metropolitan area).

45. *Id.* § 2906(d)(3)(B).

46. *See supra* Part I.C.

47. *See supra* Part I.D.

might naturally inquire what or where the "local community" *is* in a national banking structure.[48]

Recent regulatory initiatives suggest some approaches that might reconcile continuing "local community" concerns in light of the emerging national market structure. These initiatives exhibit a more proactive approach to identifying and serving local community concerns, in contrast to the relatively passive approach of "encouraging" service of local community credit needs that is at the heart of traditional CRA practice.

A. *Community Development Services in Rural Areas*

In November 2004, the Office of Thrift Supervision (OTS) proposed changes to its CRA regulations,[49] including revision of the definition of "community development" to "encourage all savings associations to increase their community development lending, qualified investments, and community development services in rural areas, with a particular focus on increasing these underserved nonmetropolitan areas."[50] It also solicited comment on providing additional flexibility by assigning CRA ratings to encourage large retail savings associations to focus community reinvestment efforts on the types of activities needed by the communities that they serve,[51] or even by eliminating the investment test.[52] In March

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48. This is especially a concern when one is considering an e-banking enterprise, where the concept of "location" may be almost entirely notional. *See* 12 C.F.R. §§ 7.5008-7.5009 (2006) (interpreting locations of national banks conducting electronic activities and of national banks operating exclusively through the Internet).

49. Community Reinvestment Act—Community Development, Assigned Ratings, 69 Fed. Reg. 68,257 (Nov. 24, 2004) (codified at 12 C.F.R. § 563e).

50. "[U]nder the proposed expanded definition, community development would also include: (1) Community services targeted to individuals in rural areas; and (2) activities that revitalize or stabilize rural areas. Community development activities in rural areas would be covered even if the individuals or areas served were not low- or moderate-income." *Id.* at 68,258. The OTS did not propose a specific definition of "rural," but it did solicit comments on an appropriate definition. *Id.* at 68,259.

51. Prior to April 2005, the OTS assigned ratings to savings associations assessed under lending, investment, and service tests according to the following three rating principles:

> (1) A savings association that receives an "outstanding" rating on the lending test receives an assigned rating of at least "satisfactory";
>
> (2) A savings association that receives an "outstanding" rating on both the service test and the investment test and a rating of at least "high satisfactory" on the lending test receives an assigned rating of "outstanding"; and
>
> (3) No savings association may receive an assigned rating of "satisfactory" or higher unless it receives a rating of at least "low satisfactory" on the lending test.

Id. at 68,260. Pre-2005, "approximately 50 percent weight [was] given to lending, and

2005, OTS issued amendments in final form.[53] In the final rule the OTS did change the way it assigns CRA ratings, but deferred action on revisions to the definition of "community development."[54]

After receiving over four thousand comments on the proposal (the vast majority opposed to the proposed changes), OTS decided nevertheless "to provide additional flexibility in assigning CRA ratings to encourage large retail savings associations to focus their community reinvestment efforts on the types of activities the communities they serve need, consistent with safe and sound operations."[55] Specifically, the amended regulations provide additional flexibility to each savings association evaluated under the large retail institution test to determine the combination of lending, investment, and service it will use to meet the credit needs of the local communities in which it is chartered, consistent with safe and sound operations, with a minimum 50 percent weight given to lending activities. The amendment became effective on April 1, 2005.[56]

B. *The CRA and Designated Disaster Areas*

In March 2006, the Office of the Comptroller of the Currency (OCC), the Fed, and the FDIC issued final guidance for financial institutions covered by the CRA, including a clear indication that banks can earn credit under the implementing rules for activities

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approximately 25 percent weight [was] given to services and investments." *Id.* "Rather than mandating changes to the weights assigned to lending, investments, and services under the large retail institution test, the OTS . . . solicit[ed] comment on providing flexibility in those weights." *Id.* at 68,262. The OTS indicated that it

> would not allow less than a 50 percent weight to lending[, but t]he remaining 50 percent would weigh lending, investments, or services, or some combination thereof, based on the savings association's election. As a result, each savings association could choose to have OTS weigh lending anywhere from 50% to 100% for that association's overall performance assessment, services anywhere from 0% to 50%, and investments anywhere from 0% to 50%.

Id. For an illustrative example provided by the OTS *see id.* at 68,263.

52. *Id.* at 68,264.

53. Community Reinvestment, 69 Fed. Reg. 51,611 (proposed Aug. 20, 2004) (to be codified at 12 C.F.R. §§ 345.12(g)(1), (2), and (4), (u), 345.26(a)(4), (a)(5), (a)(6)(b)(1), (2), (3), (4)(i) and (ii), Appendix(A)(d)(1) and (2)(ii), and (iv)).

54. In this regard, OTS noted that: "The Federal Deposit Insurance Corporation (FDIC) has also issued a proposal to expand the definition of 'community development.'" Community Reinvestment Act—Assigned Ratings, 70 Fed. Reg. 10,023 (proposed Mar. 2, 2005) (to be codified at 12 C.F.R. §§ 563e.21(a)(1), 563e.28 (a), (b), (d)). "OTS is deferring action on this portion of its proposal to allow for further opportunities for consideration of, and coordination on, these and other proposals." *Id.* at 10,024.

55. *Id.* at 10,028.

56. *Id.* at 10,023.

that benefit 2005 hurricane-damaged areas far into the future.[57] In its final form, the guidance generally takes the position that banks will receive CRA credit for activities intended to benefit disaster areas for 36 months from the date of designation of a disaster area.[58] The period during which bank activities will be eligible for CRA credit may be extended as the agencies deem such an extension appropriate.

The interagency notice also specifically referred to the circumstances surrounding hurricanes Katrina and Rita in 2005:

> Agencies plan to extend substantially the time periods for recovery-related activities in the Gulf Coast areas designated as disaster areas because of hurricanes Katrina and Rita beyond 36 months from the dates of the disaster designations because of the demonstrated community need for long-term involvement by financial institutions in helping to address the widespread devastation caused by these hurricanes.[59]

CONCLUSION

The CRA remains focused on local community credit needs, at a time when emerging national market structures may call into question the continuing relevance and efficacy of traditional approaches to community reinvestment. This is not to suggest that the underlying policy values of the CRA can or should be displaced. However, new approaches must be explored to reconcile CRA objectives with contemporary market structure. Revision and adjustment within CRA regulatory methodologies may be one appropriate response. Recent developments suggest other useful approaches to reconciling these policy objectives, including direct targeting of such national problems as service to rural areas and disaster relief. Making appropriate adjustments may well clarify the larger policy debate over the effectiveness and desirability of the CRA itself.

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57. Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice, 71 Fed. Reg. 12,424-34 (Mar. 10, 2006).

58. *Id.* at 12,431-34.

59. *Id.* at 12,427.