

An Examination of Civil Rights Issues with Respect to the Mortgage Crisis
Barry R. Wides
Deputy Comptroller for Community Affairs
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Chairman Reynolds and members of the Commission, thank you for the opportunity to participate in today's briefing on the subprime mortgage crisis. My name is Barry Wides and I serve as the Deputy Comptroller of Community Affairs at the Office of the Comptroller of the Currency (OCC). The OCC is a bureau within the Department of the Treasury, which is charged with chartering, regulating, and supervising the national banking system. The OCC regulates and supervises more than 1,600 national banks and about 50 federal branches of foreign banks in the United States, accounting for nearly two-thirds of the total assets of all U.S. commercial banks, as of December 31, 2008.

Given the OCC's jurisdiction over national banks subject to the Community Reinvestment Act (CRA), I will focus my remarks on the erroneous connection that some have made between CRA and the current mortgage crisis.

Let me start off by assuring you, unequivocally, that CRA is not the culprit behind the abuses in subprime mortgage lending nor the broader credit quality issues in the marketplace, as some have suggested. CRA lending and investment has been responsibly underwritten and conducted in a safe and sound manner. The CRA was enacted by Congress in 1977 to encourage banks and thrifts to increase their lending and services to low- and moderate-income persons and areas in their communities *consistent with safe*

*and sound banking.*¹ It also requires the federal financial supervisory agencies to assess the record of each covered institution in helping to meet the credit needs of its entire community, including low- and moderate-income individuals and neighborhoods.

The CRA applies only to banks and savings associations whose deposits are insured by the Federal Deposit Insurance Corporation. Affiliates of insured depositories that are not themselves insured depository institutions are not directly subject to the CRA, nor are credit unions or independent mortgage companies.

Under regulations implementing CRA, financial supervisory agencies take a bank's performance under CRA into account when deciding whether to approve an application by a depository institution to establish a branch, relocate a branch or the main office, merge with or acquire another insured depository institution, or convert an insured depository institution to a national charter.

Neither the CRA nor its implementing regulations provide specific thresholds or ratios applicable to the examination or application processes. Rather, the rules contemplate an evaluation of each lender's record, taking into consideration the individual institution's business model and the environment in which it operates. An institution's capacity to help meet community credit needs is influenced by many factors, including its financial condition and size, resource constraints, legal impediments, and local economic conditions that could affect the demand and supply of credit. Examiners must consider these factors when evaluating an institution's performance under CRA.

¹ See 12 U.S.C. § 2901(a)(3), (b).

The CRA regulations prescribe different evaluation methods tailored to respond to differences in institutional size, structure, and operations.² However, the majority of assets in the national banking system are in banks governed by the “large bank” examination procedures. These procedures apply to institutions with assets over \$1.109 billion and include three tests: the lending test, the investment test, and the service test.

The lending test performance criteria focus on the number and amount of home mortgage, small business, small farm and community development loans originated and purchased in the bank’s assessment area(s), the distribution of the bank’s lending to individuals of different income levels and businesses and farms of different sizes, and the bank’s performance in lending to the geographies within its assessment area(s). The investment test is used to evaluate a bank’s record in helping to meet the credit needs of its assessment area(s) through investments with a primary purpose of community development, while the service test considers the retail and community development services that the bank has provided.

Generally, OCC examiners evaluate each large bank’s CRA performance every three years. Upon conclusion of the CRA examination, the OCC provides the bank with a written performance evaluation, which is a public document. By statute, the ratings that a bank may receive are Outstanding, Satisfactory, Needs to Improve, or Substantial Non-Compliance.

² *Id.* §§ 2902(2), 2903(a)(1), 1813(c)(2).

There has been much public discussion over the past several months concerning whether CRA may have contributed to the mortgage crisis. This discussion has focused on the connection between CRA-related lending to low- and moderate-income borrowers and what some allege to be a disproportionate representation in failing subprime loans.

The OCC and other Federal banking regulatory agencies have been looking at this question in some detail, and all four agencies have concluded that CRA was not responsible for the current mortgage crisis.³ In analyzing independent studies and comprehensive home lending data sets, we have concluded that only a small portion of subprime mortgage originations are related to the CRA.

CRA-related loans appear to perform comparable to or better than other types of subprime loans. For example, single-family CRA-related mortgages offered in conjunction with NeighborWorks organizations have performed on par with standard conventional mortgages.⁴ Foreclosure rates within the NeighborWorks network were just 0.21 percent in the second quarter of 2008, compared to 4.26 percent of subprime

³ See Remarks by John C. Dugan Comptroller of the Currency Before the Enterprise Annual Network Conference November 19, 2008 at <http://www.occ.treas.gov/ftp/release/2008-136a.pdf>; speech entitled "CRA: A Framework for the Future," Governor Elizabeth A. Duke, February 24, 2009 at <http://www.federalreserve.gov/newsevents/speech/duke20090224a.htm>; Remarks by FDIC Chairman Sheila C. Bair Before the Consumer Federation of America, December 4, 2008 at http://www.fdic.gov/news/news/speeches/archives/2008/chairman/spdec0408_2.html, speech entitled "The Community Reinvestment Act and the Recent Mortgage Crisis," Governor Randall S. Kroszner, December 3, 2008 at <http://www.federalreserve.gov/newsevents/speech/kroszner20081203a.htm#f6>; John M. Reich, Director of the Office of Thrift Supervision (OTS) in response to question posed at the OTS Housing Summit, Washington DC, December 8, 2009.

⁴ See "Low-Income Mortgage Borrowers with the Benefit of Homeownership Counseling Do Substantially Better than General Market, According to New Foreclosure Analysis," NeighborWorks America, *News Release*, September 25, 2008.

loans and 0.61 percent for conventional conforming mortgages. Similar conclusions were reached in a study by the University of North Carolina's Center for Community Capital, which indicates that high-cost subprime mortgage borrowers default at much higher rates than those who take out loans made for CRA purposes.⁵ Overwhelmingly, CRA lending has been safe and sound.

The Federal Reserve Board (FRB) has reported extensively on these findings for all CRA loans. A FRB study of 2005 - 2006 Home Mortgage Disclosure Act data showed that banks subject to CRA and their affiliates originated or purchased only six percent of the reported higher-priced loans made to lower-income borrowers within their CRA assessment areas.⁶ The FRB also found that less than 2 percent of the higher-priced and CRA credit-eligible mortgage originations sold by independent mortgage companies in 2006 were purchased by CRA-covered institutions. FRB loan data analysis also found that 60 percent of higher-priced loan originations went to middle- or higher-income borrowers or neighborhoods and, further, that more than 20 percent of the higher-priced

⁵ Lei Ding, Roberto G. Quercia, Janneke Ratcliffe, Wei Li, "Risky Borrowers or Risky Mortgages: Disaggregating Effects Using Propensity Score Models," University of North Carolina, Center for Community Capital, October 2008.

⁶ See Federal Reserve Bank of Minneapolis' *Community Dividend* article entitled "Did the CRA cause the mortgage market meltdown?," Neil Bhutta, Glenn B. Canner, March 2009 at http://www.minneapolisfed.org/publications_papers/issue.cfm?id=293 Most subprime and Alt-A loans fall within the definition of high-cost (higher-priced). Although the definition of high-cost (higher-priced) loans under Regulation Z (which implements the Truth in Lending Act) was recently changed, for loans originated during the years covered by this study, the previous definition of high-cost applied, which covered loans where the spread between the annual percentage rate and the yield on Treasury securities of comparable maturity was 3 percentage points or more for first-lien loans and 5 percentage points or more for subordinate lien loans.

loans extended to lower-income borrowers or borrowers in lower-income areas were made by independent non-bank institutions that are not covered by CRA.⁷

OCC analysis of the lending of banks that we regulate also confirms that the vast majority of subprime loans were not originated by national banks supervised by the OCC. In 2006, subprime lending by national banks amounted roughly to 10 percent of the total of subprime mortgage originations by all lenders.⁸ Further, our analysis also shows that subprime and Alt-A loans originated by national banks defaulted at a lower rate than those originated by non-bank lenders.⁹ Our analysis compared the foreclosure start rates for loans originated between 2005 and 2007 that were placed in subprime and Alt-A securities. The loans originated by OCC-regulated institutions defaulted at roughly two-thirds the rate of comparable loans originated by non-bank lenders.

In conclusion, I want to reiterate my belief that CRA has made a positive contribution to community revitalization across the country and has generally encouraged sound community development lending, investment, and service initiatives by regulated banking organizations. Only a small percentage of higher priced loans were originated by CRA-regulated lenders to either lower-income borrowers or in neighborhoods in the banks' CRA assessment areas. Similarly, banks purchased only a small percentage of

⁷ Speech entitled "The Community Reinvestment Act and the Recent Mortgage Crisis," Governor Randall S. Kroszner, December 3, 2008 at <http://www.federalreserve.gov/newsevents/speech/kroszner20081203a.htm#f6>.

⁸ Testimony of John C. Dugan, Comptroller of the Currency, before the Committee on Financial Services of the U.S. House of Representatives, September 5, 2007, p. 2.

⁹ This analysis was based on LoanPerformance data. First American LoanPerformance databases track the delinquency and prepayment performance of 50 million active individual mortgage payments per month and provide loan-level information on more than \$2.2 trillion in nonagency mortgage-backed and asset-backed securities.

higher-priced, CRA-eligible loans originated by independent mortgage companies.

Finally, the performance of higher-cost loans originated by national banks is markedly better than loans originated by non-bank institutions.

Thank you for the opportunity to appear before you today. I would be pleased to respond to your questions.