Community Reinvestment Act Joint Public Hearings, August 12, 2010
Panel One: Question and Answer

Elizabeth Duke:
Thank you and thanks for all of you for really staying on time. Because you did we actually have a pretty good length of time for questions, so how about Jennifer, if you will try to monitor and help us keep the questions and answers to about 10 minutes apiece. If my math is correct that should give us a little bit of buffer there, and for this round I'll begin and then in next round I'll pass on the opportunity to begin.

I'd like to focus on the idea of assessment areas and geographic assessment areas for a bit, recognizing what all of you have talked about, which is there are a lot of different types of banks now and so defining assessment areas as being specifically where the branches are, may not be appropriate. And Ms. Seidman, I know your tenure as director of the OTS you were a big proponent for revising assessment area definitions so could you give us an update of what your current views are on that?

Ellen Seidman:
Certainly. During my tenure at OTS we were faced with some of the original internet and non-branch banks, and the question we faced was how to evaluate those, the performance of those institutions, in a meaningful way that went beyond their headquarters city, because we understood very well from the very beginning as we charted those institutions that they would be lending in other than just their headquarters city and in fact lending primarily in other than just the headquarters city. We worked on various strategies, and I think actually OTS has been recognized as attempting to face this issue a little bit more aggressively than others, maybe because we started earlier, and essentially tried to say, Let's look at what you're doing all over the country and see if where you are you actually are serving a reasonable proportion of low and moderate income consumers.

I think that is an okay solution. I actually think there are better solutions that are now particularly, as I pointed out in my testimony with respect to community development in contrast to straight out mortgage lending or the kinds of things that are susceptible to more quantitative analysis. And I think we ought to take advantage of the fact that many, although not all by any means, of these non-branch entities are huge and have the resources of enormous holding companies behind them. And we ought to understand that those are the kinds of institutions that can really make a difference in places where the local entities are insufficient, are insufficiently large, are insufficiently skilled, you know just need more help in order to be able to accomplish, to meet the needs of the communities, and also where there are special kind, or not where but there are special kind of needs that require a good deal of expertise in order to you know be able to do tax credit housing for special needs populations, equitable transit-oriented development. I mean you name it, there are any number of these kinds of needs. And that's why I'm suggesting not that we you know give everybody 750 assessment areas because I frankly think that would be a mistake. The exams for the large banks already take too long and generate too much paper and too little real analysis, particularly on the community development side. But I think that if these very large and the non-branch entities were subject to what we're calling an institutional community development test, you would be able to better match their capacities with the needs across the country.

Elizabeth Duke:
Thank you. Ms. Hughes mentioned in her testimony that for JP Morgan Chase, I believe you said you go from 200 and something assessment areas to more than 700 if you tried to cover your entire footprint where you do business. So for Mr. Pinsky and Ms. Rand, how would changes in the geography of the assessment areas match up with, how would that impact some of the CDFIs and others that are providing services, in terms of matching their geographic reach and also if you expand from 200 and some to 700, then you may end up with less emphasis on the areas that you're already serving.

[inaudible background comment]

Mark Pinsky:
Just pick up a little bit on Ellen's comments earlier and what I was trying to say earlier, which is banks like Chase, most banks are very good at understanding, having a strategic way about their markets and choose which markets they choose to go into and which markets they choose not to go into and why. And some of them may be that it simply doesn't fit with the product mix, some of them may be that the cost of delivering the services are prohibitive or that there's a risk involved or things like that. And so I think that where, very often where CDFIs, not everywhere but very often where CDFI's and others play a role is sort of helping to understand how to get into those markets and so you know a great example of that going back maybe 10 years was charter school financing where CDFIs were really in the lead on that. I think banks recognized that might be a good thing but there was a lot of risk or seemed to be a lot of risk. They didn't know how to do it. They didn't know the players, they weren't on the ground and it led to some really constructive partnerships, not just for the banks and for the CDFI's but for the charter school developers and for the communities and there's been a lot of good outcome from that.

And so you know my sense of that is, I don't think of it so much as, and I'm sure you do, as going to 750 sort of assessment areas or service areas. I think of it as, how do you think in an integrated way across the banks business strategy and therefore a footprint, how it's going to serve those communities. And what I'd like to do and I thought you may a really good point when you said that you know even a bank has, with as much to offer as JP Morgan Chase, can't be all things to all people. And I think part of this notion is we need to understand how, whether it's JP Morgan Chase or any other bank, how they see themselves intervening in a community, what they see themselves able to do, what they think they're not able to do.

To get to the other side of that, CDFI's are in all 50 states but the capacity is unevenly spread. There's a challenge to be good partners, in this context, to banks and others, local governments, state governments, and so there's a capacity challenge to it. But I think that CDFI's generally, when they're successful and not all of them are, are organized around a very thorough and close to the ground analysis of what market needs are, what community needs are, they are in touch with that and they become a tremendous source of valued information for anyone who wants to think about how you make investments and how you engage in those communities. And so I think that it wouldn't on day one be a situation where a large bank would find partners everywhere they wanted to go. But I think that that interplay, together with community input, would be really powerful in sort of figuring out how do you develop distribution channels that are actually meeting the community needs that were intended to meet? So

Elizabeth Duke:
Okay. Ms. Rand?

Dory Rand:
And I agree with Ellen and Mark that the assessment and the evaluation have to be tied to a much better analysis of community needs. And I think Ellen's suggestion was really interesting about having an interagency you know geographic based assessment that gives opportunities for community input, third party input, into what those needs are that the evaluations are then judged against. And so that can be used also in determining where you get extra credit or where you decide to have assessment areas for investing in things like CDFI's that do serve that important intermediary role. And I don't think that using the standard that I suggested of a half percent market share in addition to where you have retail offices or agents is overly burdensome. I think it's the reality that if these financial institutions are in those markets, they have a corresponding obligation. Now if they're only a little bit in the market, they would have a smaller obligation, but if they're getting a huge amount of business out of a particular market, it doesn't make any sense to let them out of evaluation because the bank chooses not to have a branch there or chooses not to be evaluated there. As Dan Emerglock's gonna say later, you know when a teacher is giving a test you don't let the student pick which questions to answer.

Elizabeth Duke:
For Ms. Hughes and Mr. FitzGibbon if there were, if the agencies had come up with a list of a definition of needs in various communities and you also had some sort of test of where you were doing business in those communities, how might you respond to that? I mean I get this vision in my head of sort of like a big bridal registry where you have all of these needs listed and you can sort of, you know say well we'll take these pieces and you take those pieces kind of a thing. So can you give me some idea how you might adjust that?

Thomas FitzGibbon:
I think one of the questions becomes, as Mark and Dory have said this whole idea of a community needs assessment. The difficulty, of course, is I don't envy the examiners. I don't know if there are any examiners here –I guess there are a couple – is you know a CRA exam is every three years, if you're okay, right? Maybe longer if you're outstanding. The community needs evolve and change. Think about what's happened the last two years in terms of the economy and jobs and small business failures and things of that nature, real estate collapse. So how do you come up with a, what I would call a rolling community needs assessment that enables the examiner to, in a valuable way, evaluate how that institution is performing? How is it meeting that need as well as what the needs are over time? I think there's a way to do it and I believe the CDFI's, the municipalities and others who perform such evaluative analysis from time to time, could be very helpful in that process.

Dory Rand:

I wanted to suggest one additional thing. In addition to having a broader sort of interagency needs assessment of community needs with public input opportunities, I also think it would be great if every covered institution were required to publicize its strategic plan or its view of community needs and how it intends to address it. This would contribute to the transparency and the accountability so that even in between the many years between evaluations, if a bank had on its website, for example, each year this is what we see as community needs in our area. This is how we're going to address it. This is who our regulator is. Here's how to contact them to make it much easier for us to have public input because these occasions like today are few and far between. We need much more opportunity for public input.

Elizabeth Duke:
Ms. Hughes did you have anything you wanted to

Lela Wingard-Hughes:
Going back to the question that you asked of myself and Tommy FitzGibbon, I think that it's also important to keep in mind that as an institution is looking at community needs, which is a part of what we do in our performance context, is we have to also evaluate our response to those needs related to risk, related to what relates to responsible practices, related to how it fits in with the organizations business strategy. Mark put it very well is that there may be a plethora of needs out there, we may not as an individual institution be able to be all things to all people, but we may be able to bring our unique expertise, our unique capacity to bear on one or two or three or whatever, number of these types of needs, but not address them all.

So I think it really is important to keep a balance here in terms of all the competing factors that an institution and a well run institution that's trying to service needs is on an ongoing mission, if you will, of trying to understand the needs of its communities and where it can help be a part of the solution.

Elizabeth Duke:
Thank you.

Martin Gruenberg:
Thank you, Governor Duke and if I may, let me begin by apologizing for showing up a few minutes late. I got caught in traffic coming in from the airport. And if I may I'd also like to thank Governor Duke and staff of the federal reserve for organizing today's hearing and thank the Federal Reserve Bank of Chicago for serving as a gracious host and also thank the panel for a very thoughtful set of statements and responses for what, in some ways, is the key issue for us to think about, the evolution of the financial markets over the last 15 years when the previous comprehensive review of CRA was done. Perhaps the most significant evolution has been the broadening of lending activity, apart from where an institution may have its branches located and the increasing use of electronic means, such as the internet to deliver financial services.

So trying to think about how CRA can be made relevant to that of all the market is both, I think a key issue and perhaps the trickiest issue we have to deal with because its presents challenges. If I may, I'd like to back into that issue a bit by finding what I perceive is common ground among the witnesses here, which is in regard to perhaps moving toward a single community development test. Right now the community development test is divided between the lending the services and the investment test and there seems to be some sentiment for moving toward a consolidated community development test to focus attention on that area. Is that a view that's shared by all of you or would any of you have a different view on that?

Ellen Seidman:
I think it is definitely something worth looking at, particularly vis-a-vis loans and investments. Right now you've got a situation where community development lending basically doesn't count. Community development investments do, so you get loan structure as investments, you get lots of credit for buying NBS and CRA areas. I mean it's just, it is not a system that encourages banks to really work on the true needs of the community and to meet them in a way that's most efficient. I think there are a couple of issues that need to be looked at before jumping wholesale into it, which is why I suggested an evaluation of the ISP test. One is that the most valuable investment in an intermediary is an equity investment. And that is true whether the intermediary is a for-profit institution or a nonprofit institution, a stock institution or a non-stock institution. And I think there is serious concern that those investments would dry up if they could be swamped by just making loans, which having more immediate and certain return. So I think that's an issue that needs to be dealt with. Figuring out the services side is also tricky because there are many things, many kinds of services that, well I think there are several kinds of services that clearly fall on the community development side, all of the assistance, which by the way I believe should be far broader than financial expertise systems. So you know if some bank is providing its HR assistance to a CDFI that should count, which it doesn't right now. That kind of stuff I think clearly goes on the community development side. But you know I know there are questions like well housing counseling, is that a community development activity or is that just a plain old financial service that ought to be under the services test? So I think there are issues that need to be considered but I really think that this is one well worth taking a careful look at and you've got a pilot out there, make use of it.

Dory Rand:
Marty, I don't have a problem with Ellen's suggestions about perhaps combining some of the lending and investment tests together. I do think it's important to have a separate test that deals with retail banking services. Basic banking services have always gotten short-shrift under CRA and it really needs to be updated. We're left with things like numbers of bank branches open and closed, ATM's and that's about it. And we have really important studies like the FDIC study on the unbanked and underserved that show how many millions of Americans don't even have a basic checking or savings account. We need to make sure that banks are serving those needs as that first step up the economic ladder and to collect that data and evaluate the banks, not just on having a product but on making sure it's being used in the community in a way that's affordable and sustainable. So we would like to see, for example, data collection on numbers of accounts, types of accounts, Census track location, number of new accounts opened, age of account, percent of bank income generated by fees, things like that to really make it a strength and service test.

Lela Wingard-Hughes:
If I could add back on the conversation of a community development test, I strongly believe that community development, particularly community development lending, is undervalued in the

current exam. I don't think that it doesn't count. It definitely counts, but it's a challenge when it is grouped with mortgage and small business lending for which there are publicly available benchmarks that really get to some really key metrics. And then you have an activity in the same test, really which is quite complex, isn't counted in terms of units but in terms of impact in a lot of cases. I think the current structure undervalues that and creates an odd mix of activity being evaluated in the same bucket, if you will. I think it also under, it doesn't give the appropriate level of consideration that there's a need for both rental housing in this country as well as home ownership. So this focus of 50 percent of your weight comes from the lending test, which is greatly influenced by mortgage lending activity, and then you would put our community development lending in there. It's probably not the best way of evaluating those types of activities. There's also the kind of the nexus between a lot of the community development lending activity and a lot of the community development investing activity. And we've disconnected those two pieces by putting them in separate buckets, and there's really no effective way, I believe right now, of evaluating their combined impact with the test being structured the way it is.

Mark Pinsky:
If I could just quickly add to that, I mean I think we need to just put on the table that certainly not all banks are alike, right or all banks are not alive, is another way of saying that, right? And I think that we need to recognize that, the community development test, yes I think it's important, as Ellen said I think it should be in the mix and we should figure that out. How you apply it may vary, in my mind, may vary depending on what the banks business strategy. If the banks that's totally focused on mortgage lending, you may take a different look at it. You may take a different look at it, you may view the community development on the test then you would if it were a, you know any other you know whether it's small lending or anything else.

So I just think that, I think that we need to get to the point to get to that idea that markets change quickly and business strategies change quickly and it's not so easy for regulations to change quickly. That we build in the ability to say it depends.

Thomas FitzGibbon:
I wanted to follow up on a couple of things that were brought up here. Number one is that for the large majority of banking institutions, suppositories in this country, they're not evaluated under the performance context. They're evaluated for lending, that's the largest number of them. And the community development test is an option for them and so I think one of the things we should consider in this whole process is whether or not the asset threshold is appropriate, right? Is it low enough, if you will and whether or not the community development test for those institutions not covered under the performance context should be a mandatory, or at least more than just an option for the depository itself? Second is, and I echo what Dory and others have said here, is that this whole -- I'm probably the only banker who's actually been there as a banker for the whole 33 years of CRA, in fact I go back before that when community development was something you did as a natural thing in your market. But this whole emphasis of lending service and investment that 50, 25, 25 is a real problem. And third, and Ellen I really have to say, [laughter] one of the issues is so often it's the story. How do you tell the examiner what you did and what the impact was? How do you articulate, as a lender, the fact that you provided HR sources or HR assistance for an institution? How that overall impacted that institution, that

organization in terms of its financial support, in terms of things of that nature so I think a great share of it is not just you know whether or not it's specifically identified as a financial services thing, but how does the institution itself articulate what it does?

Elizabeth Duke:
As we move on, Mr. White, as I would point out that had I not turned regulator I might have also been a banker through the entire history of the CRA.

[Laughter]

My time is up

Martin Gruenberg:
Well I'd like to thank the panelists for very insightful testimony. I'd like to start off by asking Ms. Wingard a question about a topic that was touched on by some of the other panelists and that relates to a bank coming up with its own capacity analysis and plan more or less or more to an option which exists today which is the strategic plan option that only a very small number of banks, particularly large banks, have chosen to avail themselves of. I'm interested in your views as to what you've heard from some of the other panelists, Ms. Wingard, regarding a strategic plan and whether or not that approach would have some appeal to JP Morgan Chase bank in addressing some of the challenges that have been raised regarding addressing the large geographic issues that have come up.

Lela Wingard-Hughes:
So JP Morgan Chase has not taken advantage, as you've noted, generally of the strategic plan option, as has very few banks. And part of that, I would say, is because, while we do plan, and we plan continuously, our plans are flexible and it is our view that they are proprietary, and then in some ways they are an element, they are continually moving and so we might review our plans, our goals, our strategies as our communities change, as our markets change, as the economy changes. And I think in expecting us, any institution, to share its business strategies and goals in a public forum subject to you know regular updates, etcetera, would be one of those things that makes the process overly burdensome. And in fact you know aiming for the best CRA ratings, aiming for trying to secure the deal, whether it's a tax credit deal, whether it's a loan, a community development loan, whatever it is, it's a competitive exercise. And so for us to kind of compete in that public forum by sharing our business plans, I think would be not only burdensome but not really feasible.

Dory Rand:
Well I'll just chime in that one of the bankers here that I spoke with this morning said that she thought using the strategic plan made a lot of sense and they were going to use it constructively to reach areas outside of their current assessment area where they know there are community needs that need to be met.

Thomas FitzGibbon:
I think it's very important, although I think the proprietary nature of business plans, of large institutions, gives them a competitive advantage over small and middle market financial

institutions. Small and middle market financial institutions also plan. I mean we do, well we have, Sue LaPore is here, she can tell you, we go through a very significant, at one local bank that I used to be at, process of planning our work and working our plan. And there's nothing wrong, I think, with sort of sharing the general nature of the plans for the institution to address community development needs. I think that's something that frankly we do as an institution with our peers in this business. We don't hear a lot from the larger financial institutions because their plans are generally made in New York or Charlotte or someplace else. And so there's I think an opportunity for partnerships, strategic partnership, with the large money center banks and the regional banks if there's perhaps more open communication about where things, what the plans are for the institution.

Mark Pinsky:
Just a quick comment, one of the things that I've heard from a number of bankers, and I think it's a legitimate concern for them, is the amount of, sort of on the back end, the amount of conversation they need to have, you might say complaints they have to deal with right on the back end about why are you doing this and why are you doing that? It seems to me that you know absolutely the proprietary parts of any business strategy and they should be that. On the other hand, you know there are a lot of smart people who spend a lot of time figuring out what any, you know certainly what a bank strategy is and some of those are competitors and some of those are others. And I think that the idea of being able to be proactive and putting out a strategy is being able to sort of not only say here's what we're going to do and here's what we're not going to do and have that conversation up front with the community in some way, right? And sort of come to some agreement or agree to disagree. But it also then helps partners, particularly CDFI, say, okay we understand this is a market you don't think you can manage or doesn't fit with what you're trying to do because of the risk profile or because of the, you know, lack of familiarity or whatever, but if that's something, you know we can have a conversation with you about, if we think that's an important market, we can figure out how we can intervene in that market and perhaps bring it to market, in a sense. So I think there are advantages. I certainly respect the fact that you know I wouldn't want to give away my strategy if I were you either but I think there's some in between that is worth at least considering.

Lela Wingard-Hughes:
If I could just add one other thing, Barry and some of this might be semantics because I agree with something that Mark Pinsky said earlier about not making this an adversarial process. And so as you said we're preaching to the choir here. We're here because we care about the communities. We care about helping them thrive and we sit down with partners whether they be not for profits, whether they be financial intermediaries, what have you, and talk about what the needs are and where we are responsive or not responsive, in their view, what things we are doing to kind of take those kind of dialogues that are happening across our markets, across the country and call that a plan, is not what the plan is.

Those are really ascertainment and looking for opportunities to partner. We then go back to our shop and try to come up with our business plans. So I think the nuance is in the language here is, are we talking about outreach and ascertainment and kind of partnership conversations or are we talking about an institution’s real plans for delivering products and services and goals and things of that nature, which I still believe are proprietary.

Martin Gruenberg
From what I gather in hearing your responses, I think it gets to a question of how much is enough and where. And that's been the age old problem that we have faced as regulators, and I'm a little bit concerned from what I'm hearing that if we did move towards an approach that some of the panelists have proposed, that we'd fall back in the lap of the regulator to decide that question. Okay, well, you're in 800 quote unquote assessment areas because you have more than a half a percent activity, but I'm also hearing some of the panelists saying but how much you have to do if you only have a very small percent versus a very large would vary. But at the end of the day it would be up to the regulators, I think from what I'm hearing, to make that decision and it causes me some concern for us to be in the roll as regulators of having to make that decision given some of the comments that Ms. Wingard just made about the bank being in the best position of knowing where they have the capacity to do what.

So I don't know if anyone would like to respond to that observation but if so I'd be interested in hearing your comments.

Ellen Seidman:
I would like to respond. First of all in the end it is always the regulators and you can't get away from it. Refusing to in advance say how much is enough only creates a situation of great uncertainty and then after the fact saying whether enough has been enough.

And I think what, I know I'm advocating and I think several others, is trying to get more of that up front in a number of ways. The idea of actually assessing community needs on an interagency basis, you know you can pilot this, you can do it in a few places to start, you don't have to go whole hog all at once, but that gives you something to measure against. The idea of a strategic plan, you know I think we get into this well we want certainty, but we don't want to put something out there against, which we would be measured. The great advantage of a strategic plan was always that once you had it, you knew what you were going to be measured against. And so particularly for community development activities, which take a long time, which are collaborative, which are partnership based, we do require fairly frequently resources from other sources. You know doing it in advance and then knowing that it will count has some enormous value. You know, I don't think -- and then the third thing is this whole issue of examiner judgment. We've just got to get away from the notion that examiners can't exercise judgment. They exercise it all the time in the safety and soundness side and we've got to recognize that this is in some ways even harder and we've got to let them exercise it. We've got to train them well and we've got to have reviewers within the agencies who are trying to create some consistency across agencies and within agencies and all to some sophistication. But I think you can't get away from the fact that in the end, it is the regulators.

Thomas Barnes:
Okay so we're outside the box now, right?

Voices:
Yeah

Thomas Barnes:
This is all new.

[Laughter]

Thanks everybody for participating today and it's an honor to be here. For the panelists, if you take the theory that there may be a community needs analysis done in some number of cities and it's also been mentioned by the certain panelists that there should be other folks subject to CRA, other than the FDIC insured institutions. Now take that idea and tell me how we do that. Who do we hold to this and how do we hold them? Ellen mentioned you know examiners in the classic sense and I'm sure in the credit union there's examiners but what about the other places you'd bring in? So who would you bring in and how would we look at them and how would we then make an overall determination?

Because one of the big problems I think we've had over time examiners on up is you're looking at a piece at a time, one financial institution at a time. And that's what's required but somehow you've got to find out if that whole communities needs are being met principally or not at all and somewhere in between is where most of it takes, particularly if you look at small institutions, and you can define small a whole bunch of ways. But you have an institution that's only doing business in a couple of assessment areas or one assessment area or a portion of you know, their assessment area is a portion of a large area, then it's both easy to understand what the expectations are, but difficult sometimes to say if they're meeting enough. So help me with who the new players should be in this and how we should look at them.

Ellen Seidman:
I might just say two things quickly and then I'll let, and then other people can talk. One is that in terms of existing statute, you know there is some limitation. I would certainly say however that any activity that is carried on within a bank holding company that could be carried on within a bank, the entity that carries it on ought to be covered. So you know now there is the danger that this will lead to pushing things out. It's sort of the same problem we ran into with subprime lending, and so I think it is, you know, there's some analysis that needs to be done here but I think that as long as entities are taking advantage of the structure of a bank holding company, they ought to be able to pick and choose which things are inside a CRA and which things are outside a CRA, if that thing could be done in a bank. You know, I think we need to deal with insurance or insurance underwriting at some other point, although insurance brokerage is okay. The second thing is on this issue of measurement of ,is the communities need really being assessed, really being met, that's why I put in the proposal for a community needs and capacity's analysis because what it does then is it gives everybody an understanding of what the overall needs are. And it allows an evaluation of what folks have done against those needs, and it's not piece meal, each institution at one at a time in each assessment area at the time the institution is examined. It's before the fact. It's community wide. It's something that everybody can shoot for.

Dory Rand:
I agree with Ellen, and would just add that if we go beyond the current statutory limitation to FDIC insured depository institutions to some of the other financial institutions that I mentioned,

then we have that much more capacity out there to meet the community needs and every financial institution doesn't have to be all things to all people, but if we have a comprehensive community assessment with community input then each financial institution can find its place where it can use its services and expertise in the best way and try and do that patchwork and put the pieces in place.

Thomas FitzGibbon:
I guess you're asking, Tom, Mr. Barnes, I'm sorry

Thomas Barnes:
No, Tom's fine

Thomas FitzGibbon:
Tom

[Laughter]

What you're asking is how do we get these other institutions, right, into review?

Thomas Barnes:
Remember we're here to serve the community and other needs

Thomas FitzGibbon:
But it's not easy, right, but nobody said this was going to be easy. 1991 the financial institutions reform, recovery enforcement act basically took the pound of flesh the banking institutions for RTC and for the failure of the thrift industry and said you will start to, these things are going to be public. You're going to be evaluated under 12 assessment factors, remember 12 assessment factors? I remember those.

And so what's happened? Well we bailed out Wall Street, right? In some cases we bailed out the insurance industry with AIG so maybe this isn't in the regulator's hands, maybe this is in Congress's hands. Which says, in effect, if the American public is going to bail out, by the way the RTC was chump change compared to what we're experiencing today, is we need to bring them in under the same rules and oversight for community development investment and lending that the regulated depositories are.

In effect, as Dory and others have said, American public has migrated from the local savings and loan, the local bank, to Wall Street in many ways, with stocks and bonds and mutual funds and things of that nature, so somehow, you know, it's not in your purview to get them under there but I think that pushing the envelope, certainly the FDIC with its role in providing insurance of accounts is one area where we can begin to see what the devastating impact of bad Wall Street leadership has done to the industry. To be able to push the envelope a little bit, I know the chairwoman and she's been a strong advocate for safety and soundness and for recovery here. So maybe it is Congress that needs to bring them in. But certainly there are things at the statewide level that we could be doing, for the insurance industry, which is state regulated, the mortgage banking industry, which is state regulated, and the mortgage broker, so pushing the states as well to provide more supervision.

Dory Rand:
And as far as Congress goes, what we would recommend is passage of the Community Reinvestment Modernization Act

Thomas FitzGibbon:
Right

Dory Rand:
1479

Thomas FitzGibbon:
Right, I'm sorry

Mark Pinsky:
We have an uneven playing field, right, that tends to lead to certain distortions, you know lots of ways, not just community reinvestment or community development activities but it certainly has that ramification. One way to think about this is to think, you know Tommy pointed out the scope of what was bailed out, the scope of sectors that were bailed out in some ways. And you know there's this interesting question you could say to folks, alright you could not have any CRA or community reinvestment obligations but you don't have any backing, right? You don't have FDIC. You don't have any other backing. Would you choose that or would you choose to have the backing or would you choose to have, you know including sort of the option of the bailout? I think in this environment certainly I think I know where most financial institutions would choose to go if that were the choice they were given. And by that I mean broadly. I don't mean just banks or other. And I think, look my view, my organizations view is that all financial institutions that rely in some way or another on taxpayer backing ought to have some obligation to be reinvesting in communities in some way or another.

Easier said than done, easier said than imagined, right but to do it, I don't know. I mean, my sense is that you have different regulators and different beyond the four of you, over much of the financial services industry coming out of the foreign belt. And you know if we made it a 15 year goal to figure out how to do that, if Congress chose to do that, I think that would be a good thing. It would be a lot of hard work, Tommy is right about that but I think that's where we need to get to in some way or you're going to continue to have these folks who can take it out of the holding company and put it somewhere else, you know and you know good for them. They should do that if they're given that chance to do it. It's legal. It's fine. But we need to make that not an option.

Lela Wingard-Hughes:
I still would like to suggest that we be extremely thoughtful about trying to make CRA the solution for a wider variety of concerns beyond just community reinvestment. And when I think about the, some of the proposals, the house bill that Dory mentioned and some of the other suggestions, I go back to, what are the problems we are trying to solve and what are the most

effective ways to solving them? And I don't always end up in a place that for a particular problem, CRA is the answer. So if there's a problem related to insurance, should that not be covered by the insurance regulations? I think those are things we need to keep asking ourselves is what's the appropriate solution for whatever the problem is we're trying to address.

Thomas Barnes:
So I have one more question from sort of that macro question, very, very smaller one with regard to assessment areas, should the financial institutions be allowed to have different assessment areas for different products?

Thomas FitzGibbon:
I never thought about that. It's an interesting prospect.

Mark Pinsky:
I would say yes

Lela Wingard-Hughes:
I think that's a very interesting question, particularly when it comes to community development. For investment in multi geography funds or investments, one of the attractive things about that is not only that it spreads risk, but it enables like the big syndicators who do the tax credit investing that creates a lot of the affordable rental housing in this country. They can serve both urban and rural markets by packaging a number of transactions in one offering. The challenge for institutions that have CRA assessment areas that they're trying to target their dollars too, is that a lot of times there are projects in those packages that are outside of an assessment area. A lot of times those are in rural communities or in smaller communities for the banks that are there, those smaller banks don't have the expertise that Ellen mentioned to be able to do these types of deals. So it does raise for the community development aspects in my mind, a question about, should there be greater flexibility in that broader regional area, if you will, for community development lending and investing.

Ellen Seidman:
I think you can go about it another way also and this is an also. This is not an or. When it's Mark's suggestion about investments in CDFI's counting just the way investments in women in minority on banks count all over, it doesn't matter whether the geography matches up, and the second possibility is this idea of an institutional test for the big institutions. On the brick and mortar test institutions it would be in addition to. On the non brick and mortar tests it would be the test, and that way you would have the ability to extend your activities, community development activities in particular, into areas that have the greatest need, without worrying about whether you're collecting deposits in that area.

Elizabeth Duke:
Okay, thank you very much. This has been a very informative panel. I will reward you with time to take a minute --

[Laughter]

--and leave us with whatever thought you think is important to leave us with or something that you haven't had a chance to say in this first part. Want to start?

Ellen Seidman:
I think we've actually said a lot here today. I do want to echo what Mark and Dory and some others said, which is that you really are operating at a big disadvantage because of the structure of the financial services system. And we've just seen a major reform in which there will be a much more unified regulatory way of looking at the financial services industry and building on that, in order to extend the obligation to serve community needs, should indeed be a long term goal. You shouldn't be doing this forever with one hand tied behind your backs.

Mark Pinsky:
Just thank you and thank you again for convening this. It's been great. And thanks to my panelists who've offered many great ideas.

I think that what we need, we need to get to a point where we understand what we're talking about here is not CRA as that other thing out there, but CRA as or investing in our communities and investing in long term and low wealth people in places and communities as sort of fundamental to our common well being. And I think we tend to lose that in this discussion. And I know that, I know that at you know the regulatory industries and the banks and some of the non banks, there are people who understand that and believe that very much but until we make that the culture of this conversation I think we're gonna be pushing a rock up a hill, and it becomes very difficult. And so I think one of the goals here has to be to understand the value of what gets done from this and whether it's through CDFIs or CDCs or direct lending investing or services, that we need to understand that ought to be part of sort of the core business strategy of what we're doing here so

Lela Wingard-Hughes:
Okay and I think this has been a very important conversation and I thank you for including my institution as a part of the conversation. I guess one of my, if I want to just make one point is that I think in a lot of the process and kind of the parameters that we find ourselves in when we're looking at CRA exams, kind of we could cut up into numbers and where it's done and not in paying enough attention to the qualitative impact that it makes on the quality of life in the communities in which we do business, in which we live, in which we work and that big picture of the qualitative and the impact needs to be really thought about at the top of the list here and not get so hung up on the minutia.

Dory Rand:
Thank you again for doing these hearings and inviting me to participate. I want to emphasis the importance of public input throughout the process, not just today but as CRA is modernized. Also I agree with Governor Duke that we need to focus on impacts, not just process. I agree with Lela that we need to focus more on quality but quantity and data is still important. And I think there's a way that those ideas can be incorporated into a better grading system.

Right now we have a lot of grade inflation almost everybody gets a satisfactory or higher. Maybe bring satisfactory down to where it should be. That's average, and in order to get to an outstanding rating and to get other incentives or benefits from an outstanding rating, that you have to go above and beyond in certain ways and maybe that's where some additional, you know, quality or complexity or innovation gets factored in so that we don't end up with banks like Tommy described who are not outstanding at all and somehow ended up with an outstanding grade.

Thomas FitzGibbon:
I also want to thank you for allowing me to come and talk today. I think, speaking for those who toil in the field, the community development people in the banking industry, the folks in the nonprofit industry are trying to sort through this sort of very difficult economic condition that we're in, is that whatever comes out, that there's real clarity and consistency. Those who have to go into the boardrooms and beg and plead for resources to help their community because that's their profession, because that's what they're supposed to do, need to have real clarity and consistency whatever comes out so that they can go in armed with the information necessary to make things happen, make things happen in their own community.

There are some wonderful people in this business on the banking side and on the community development side, who want to do the right thing. And there's a lot of banks frankly who want to pass. They don't want to fail. This is the only publicly documented part of the examination process, and so I think they want to do the right thing too as well.

And last but not least, we're into a cycle here where it's about preservation of the industry. And so this next year to two years is really going to be a difficult time in the community development field, both as CDFI's and as professionals in the industry, to be able to get resources from the depositories due to the very difficult economic environment that we're in. So we're looking to you, we're looking to the regulators for the kind of guidance that will give all of us the kind of information that will make things happen.

Elizabeth Duke:
Well thank you. Thank you to all of you. You set the bar high in this first panel.

Female Voice:

Okay so now we have our scheduled break and we're gonna start at 11:00. So if I can ask panel 2 to be at your places at about 5 to 11:00 so we can start at 11:00.