Consumer Finance Monitor (Season 3, Episode 20): Community Reinvestment Act Reform: How Did We Get Here and Where Are We Going?

Speakers: Alan Kaplinsky and Kenneth Thomas

Alan Kaplinsky:

Welcome to the Consumer Finance Monitor Podcast where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. I'm your host Alan Kaplinsky. I chair the Consumer Financial Services Group at Ballard Spahr, and I am very pleased to be moderating today's program.

Alan Kaplinsky:

Before I introduce our very special guest today, let me just remind you that our Consumer Financial Services Group communicates with you through various media. In addition to our podcast, we also have our blog, which is also called Consumer Finance Monitor. We've hosted our blog since 2011 when the CFPB got stood up. We also regularly host webinars on subjects of interest to those of you in the industry. So if you want to subscribe to our blog or to get on the list for our webinars, you just visit us on our website at ballardspahr.com. If you like our podcast today, please let us know about it. You can leave us a review on Apple Podcasts, Google Play, or whatever platform you use for your podcasts.

Alan Kaplinsky:

So today, I'm very pleased that I'm joined by our special guest Kenneth Thomas, or as I will refer to Kenneth, I'll refer to him as Ken. Before I recite some of your very impressive accomplishments Ken, let me welcome you to Consumer Finance Monitor.

Kenneth Thomas:

Thank you, Alan. It's a pleasure to be here talking about my favorite topic.

Alan Kaplinsky:

Okay. So Ken, who has a doctorate, is by many accounts the nation's leading expert and author on the Community Reinvestment Act. We'll refer to it by its acronym, CRA. He has testified before Congress on numerous occasions, advised regulators, all the prudential banking regulators, the OCC, FDIC, Federal Reserve Board on CRA. He's trained federal bank examiners, and he's written numerous articles and two books on CRA, including the CRA handbook. Many of its recommendations in the handbook were implemented into current CRA regulations.

Alan Kaplinsky:

Most recently, he was asked by the Treasury Department and some individual bank regulators and members of Congress for his input on CRA reform. He's worked with banks, regulators, and even community groups in a consulting capacity since the 1977 CRA law was established. He's also launched and acted as chair of the board of trustees of two different nationwide CRA investment mutual funds, including the Community Development Fund. You can get more information on that at www.communitydevelopmentfund.com. That was launched in April 2016 and goes under the ticker symbol of CDCDX.

Alan Kaplinsky:

Ken has been on the board of a community bank for nearly 20 years. Also, most notably, received his doctorate from the Wharton School of the University of Pennsylvania where he taught banking and finance for 42 years. That is my alma mater, Ken. Unfortunately, I graduated from Penn, I hate to say it, from the Wharton School, got my BS there before you began to teach there. Ken is also a regular speaker and writer in the banking industry, mainly for the American Banker, but he's appeared frequently on ABC Radio, Bloomberg Radio and TV, CNN, CNBC, MSNBC, Nightly Business News, and NPR.

Alan Kaplinsky:

So again, a very warm welcome to you, Ken.

Kenneth Thomas:

Thank you, Alan.

Alan Kaplinsky:

This is how we're going to proceed today. I've tried to scope out with Ken the easiest way to explain to our listeners the history of the CRA and the evolution of the CRA. As I mentioned during my intro, it was enacted in 1977, a long time ago. Things were a lot different at that time. It was before there was such a thing as the internet or online banking, and there was really no interstate banking to speak of, of that time. And indeed, it was very unusual at that time for companies to be offering ... banks to be offering their products even by mail or telephone crossing state lines. That shows you what the situation was like back then.

Alan Kaplinsky:

I'm going to back there to 1977. Let's say from 1977, Ken, to 1989. What can you share with us about the origins of CRA with Senator Proxmire, who I think was what be considered the architect of that law?

Kenneth Thomas:

Well, first of all, thank you again for this opportunity to discuss my favorite topic. Yes, Senator Proxmire from Wisconsin was the author of this act. He pushed very on it, and there were many people that fought him on it, most particularly the banking industry, even the Federal Reserve. They considered it at the time a form of credit allocation. They did not want it. The industry did not want it. However, community groups, mainly in Chicago, one of them in particular the National Training Information Center, NTIC with Gale Cincotta, she was very concerned about redlining.

Kenneth Thomas:

Redlining was very prevalent during that period. It's important to point out that redlining, the way it's used in CRA, is based on redlining a low and moderate income area based on income characteristics, not racial characteristics. There is a very big difference between the CRA, which focuses on income, particularly low and moderate income, and discriminatory laws like the ECOA that refer to racial discrimination. That's often confused. And for that reason, it's clear that CRA was not a civil rights act, but merely a law, a very simple law to say that banks, when they consider credit, must consider their entire community, including low or moderate income areas. It did say banks have to make a loan, does not say they have to make bad loans. It just says they have to consider their entire community when making a loan.

Kenneth Thomas:

This was considered credit allocation by the Federal Reserve. They pushed hard against it. But Senator Proxmire, Chairman of Senate Banking Committee up until 1988, basically got this through. Basically, I would say from 1977 to 1989, the period you mentioned Alan, the law sat dormant. No one really knew about it because the ratings were public. The information was in no one's hands, and nothing really happened until 1989.

Alan Kaplinsky:

Okay. And then in 1989, what happened then?

Kenneth Thomas:

Well, most major banking regulations in our country are as a result of a major financial crisis. For example, the Great Depression, the Great Recession. At that time, we had the S&L crisis if you remember, '88, '89, '90. And we had FIRREA, which was the S&L bailout. We had two congressmen. Actually, I had the opportunity to work with them briefly. Henry Gonzalez from Texas and Joe Kennedy from Boston. They pushed through an amendment that said, "Yeah, we're going to do the bailouts with FIRREA, but we are going to require that a portion of the CRA exam be made public along with the CRA rating."

Kenneth Thomas:

This was the first time in the history of banking, going back to the National Banking Act of 1850, or even before then that any bank rating was made public. And of course, being a student of banking since the '60s, I became very enthralled with that, and I immediately decided to look at every exam that was being made available to the public starting in July 1, 1990. So that was the watershed year for CRA. Not when it was passed in 1977, but in 1989 when FIRREA required the ratings to be made public. That's when everything turned around.

Alan Kaplinsky:

Yeah. Well, now prior to that, there were CRA ratings although they weren't being made public. Were the banking regulators using those ratings in assessing whether banks should be allowed to merge with another bank or should be allowed to branch? Were they being taken into consideration at that point, or did that happen in 1990?

Kenneth Thomas:

That actually happened later with some amendments. However, because the ratings were not public from 1977 to '89, there were no community groups that could provide input and complain about them. Remember Continental Illinois in 1989. We had one of the first major denials on CRA grounds at that time with a merger. There was some enforcement, but it was very lax because the community groups were not involved.

Kenneth Thomas:

I think it's important to point out something I noted in my first book I call the CRA Triangle, where I use the acronym C to refer to community groups, R to the regulators, and A, I forced it, America's banks and thrifts. So on one side you have the community groups representing the community. On the other side of the field, you have the industry. And the regulators, kind of in the middle like a referee. They are there to balance it. However, when community groups are not involved and they don't have the opportunity to comment on a rating because it's not public, nothing happens on that side. So that's why from 1977 to '89, without the publication of these ratings, the law basically was dormant.

Alan Kaplinsky:

Right. Then things started to happen, as you point out, in 1990 to 1995. But let's fast forward now to 1996 and the 20 years from that date. What happened after that? What reforms occurred, and were you involved in them?

Kenneth Thomas:

Yes. Senator Proxmire contacted me 1990, '91, the early '90s. When I was writing my first book, he liked the fact that I had the first evaluation of literally a few thousand exams that were made public from 1990 to 1992. I found there was a lot of grade inflation, a lot of problems with it. Bankers were not happy with the law, especially when the ratings were being made public. A lot of banks were failing, maybe 10-15% of them. So in 1995, we had a major reform. This reform actually started when Senator Proxmire introduced me to Gene Ludwig, at the time the comptroller, and the OCC took the lead on reforming CRA from a process-based approach to more of a performance-based approach. So in three different sets of reforms, '93, '94, '95, they finally figured out the formal reform. And that's the one, 1995, that went into effect in 1996 that we're dealing with now. Those reforms that went into effect in '96 are the ones that we have in place as of this moment.

Alan Kaplinsky:

Okay. What has happened? How have the community banks and the regulators worked with the '95 regs? How has that worked?

Kenneth Thomas:

Well, again, there was a lot of problems, a lot of dissension. The banks were not happy. At the time in the early '90s, I stated in my first book, CRA was no doubt the least liked banking law of all. And remember, banking is the most heavily regulated industry in the world, American banking, and this was the most hated law by far. As a result, banks wanted some change. The FDIC and the OCC, and at the time we had the Federal Home Loan Bank Board, predecessor of the OTC. They worked pretty much together, but the Federal Reserve again challenged the first set of reforms in '93, again in '94, and finally they agreed upon something in '95. And as a result, those reforms were agreed upon by all the four regulators at the time, and we went forward from there.

Alan Kaplinsky:

Okay. Now, I'm going to go to 2017. We have the election in 2016. President Trump prevails. We have a lot of new faces at the financial regulators. By that time, there is a lot of opposition to CRA among the industry. I know because my clients had a deal with CRA all the time whenever they were being examined for CRA compliance, or if they needed to get regulatory approval for a merger, or they wanted to branch. And at that time, by now, online banking is everywhere. We've got some banks that only operate online. We've got interstate banking. It's been going on for decades at that point with banks issuing credit cards all over the country and offering all kinds of products, lending products all over the country. Why has CRA been such a top priority for the Trump administration?

Kenneth Thomas:

The first reason was when Trump was elected, of course everybody knew he was a businessman. That was one of the reasons why he was elected, not a politician, not a lawyer. All of the previous regulators, for the most part, they were really not business people. He brought in Treasury Secretary Mnuchin, who worked with a bank, former banker Comptroller Otting. Both of them worked together OneWest, the big institution that took over IndyMac in California. And then of course, the head of FDIC. She came from Fifth Third Bank. And even Jay Powell came from Wall Street. So these were business people familiar with how the laws worked rather than just being outside politician or lawyers not understanding the real days' hard work involved in CRA.

Kenneth Thomas:

In particular, Secretary Mnuchin and Comptroller Otting had some issues with the CRA when they were doing the IndyMac OneWest, especially the sale. And as a result, they came to Washington and they were very concerned about it. They had first-hand experience with it, and they wanted to do two things. They wanted to first modernize the law because, as you mentioned, a lot has changed since 1995 to the present, over 30 years roughly. And then second of all, most importantly, they wanted to make some improvements in it, especially where community groups could come in and hold up a merger.

Kenneth Thomas:

Some of these community groups, which I outlined in book, unfortunately some community groups work more for the group than for the community. Every time there was a merger, they would require some CRA plan, a merger or community benefits plan, which is not required by CRA. So it almost became an unwritten rule that to get a major merger approved, like with the Sun-BB&T merger with Truist, that they had to come up with big, multibillion-dollar plan when it was not required in CRA.

So they wanted to make that process a little more industry friendly, and also keep it in mind helping the community. They decided to make that a top priority for both Treasury and for the OCC.

Alan Kaplinsky:

Okay. You were involved, right? At that time, you were invited, I believe, to consult with the Treasury Department about it to express your views on CRA reform. What was your advice at that point, Ken?

Kenneth Thomas:

Yes. I was contacted by Treasury a few times, went to Washington. I met with them. I basically explained to them that, first of all, CRA to a large extent was very different than it was during the 1995 reform. Bankers, a lot of them learned to live with it. 98% of banks were getting passing ratings, which is the case today. CRA, where at one time it was one of the most expensive regulations, it was no longer the case. A Federal Bank of St. Louis study done a few years ago concluded that by far the most expensive regulation in banking is BSA. CRA ranks down number six at only 7% of compliance cost versus, say, 21%, three times that amount for BSA. They wanted to make CRA a little bit better, but not totally reform it.

Kenneth Thomas:

So my main message to Treasury was CRA is working. It needs a tune up. It needs to be modernized, for sure, to account for internet banking, digital banking, branchless banks. It needs to be tuned up. It does not need a major overhaul. It needs a tune up. That was my main message to them. And at the same time, I was also contacted by the Congressional Black Caucus to discuss with them their options, because they were looking at potential reform, too. In the event the regulators didn't get it right, they wanted to have their plan B in effect. So I, at the same time, was consulting with them.

Alan Kaplinsky:

Okay. And then finally, the Comptroller of the Currency in 2018 issued an advance notice of proposed rulemaking. What was in that advance notice? I take it they asked a lot of questions, didn't really indicate what direction they were going in. Am I right?

Kenneth Thomas:

Exactly. At the time, importantly, this ANPR, advance notice of public rulemaking, was put out only by the OCC. Which was very unusual, because in '95 all of the three different steps of those reforms were put out by the agencies together, all four of them. In this case, the OCC acted unilaterally, which was very unusual, but they went ahead with it because they wanted to keep moving forward. As a result, we got about 1,500 comments. And by comparison, with the '95 reforms we got over 14,000 comments. Here, we got 1,500 comments with the ANPR. About 22% of them came from the banking industry, and the rest came from the general public.

Alan Kaplinsky:

Yeah. So how come the comptroller did it alone? How come the Fed and the FDIC didn't join in the ANPR?

Kenneth Thomas:

Both of the other agencies had their own mindset on where they felt CRA was going and what it was doing. They generally reflected the views of a lot of people in the industry, that CRA was working fine. Again, 98% of the banks were passing. It was not a heavy regulatory cost. It was number six on the list compared to other regulations. And for the most part, it was working. Everyone agreed it needed to be modernized, but there's a very big difference between modernizing the law to account for digital banking and then totally overhauling or reforming it. The OCC was pretty much of the latter mindset. They wanted a major overhaul versus the FDIC, but especially the Fed. They wanted more. Everybody wanted to modernize it, but they wanted more a tweaking and improvement of the law rather than a major overhaul of it.

Alan Kaplinsky:

Mm-hmm (affirmative). Okay. All right. We're not in 2020. The comment period very recently closed in April. How many comments were received this time, Ken?

Kenneth Thomas:

Well, the ANPR had 1,500 comments. And the NPR, which by this time the FDIC joined the law with the OCC, but the Fed was still on its own. The comments are still coming in. By my last count, we got approximately 1,950 comments. But this around, whereas the banking industry had 22% of the comments in the ANPR, they only had 9% of the comments this time. So less than a half of the comments came from banks, and most of them were not happy with the NPR. Most of the community groups were not happy. Almost across the board, almost all ... And I've read all of these 1,950 comments. Almost all of them were critical of the NPR, and I had submitted five of my own comments with my own criticism, as well.

Alan Kaplinsky:

Before we get to your criticism, Ken, what is in the notice of proposed rulemaking?

Kenneth Thomas:

The most important part of it, I believe, is the modernization part. I think to think of the NPR as in two parts. The modernization part to modernize it to account for branchless banks, and then the improvement/overhaul part. I was in favor, and most banks were in favor of a kind of a tune-up improvement, but the OCC went to a very far along step, a more extreme step of a total overhaul. The modernization step in the NPR is quite good. Basically saying that any branchless bank, mainly the credit card banks in Wilmington, Salt Lake City, and Sioux Falls that obtain deposits from all over the country will now have a CRA obligation in those communities where they get more than 5% of their deposits, as long as more than 50% of their deposit base comes from outside of their local assessment area, which is basically the county in either Wilmington, Salt Lake City, or Sioux Falls.

Kenneth Thomas:

So this was very good. This was a very important, to me the most important part of the NPR because it was requiring these banks ... And these are big, big banks with, in my estimation, having about $1.6 trillion on deposits in those three states. Those three states, by the way, only account for about 1.2, 1.5% of population of businesses in the country but represent 13%, 10 times that amount in deposits because they're taking deposits from all of our big cities like New York, LA, Philly, Chicago, Miami and putting the CRA benefits in those three communities. That is not right, because CRA is about reinvestment. So that part of the NPR, if properly understood, was the most important part of it.

Alan Kaplinsky:

What else was in there in that NPR and particularly, I take it, the part of it that your critical about?

Kenneth Thomas:

Yes. Currently, we have six different exam procedures which are importantly designed to adjust for the size of the banks and the different business models. Being on the board of a bank for 20 years, I can tell you as a community banker you have a very different outlook on things than you would for a large bank, or especially one of the big, money center banks. So under the current regs, we have separate procedures for small banks, intermediate banks, which are roughly 326 million to 1.3 billion is assets, and large banks. So we have three size categories of banks, then we have separate exam procedures for wholesale banks, limited purpose banks, and what we call strategic plan banks. In total, there are about 100 of these latter three groups.

Kenneth Thomas:

The NPR basically eliminated the intermediate size category, which represent about 1,400 banks. They also eliminated exam procedures for limited purpose and wholesale banks, which represent another 50 or so banks. These are very big banks, by the way, foreign banks out of New York City and special purpose banks. For that reason, those banks are being forced into other categories. But the resultant NPR now has just two categories of size, small banks up to 500 million, and everything over that is considered a large bank. And then they've got this special category for strategic plan banks.

Kenneth Thomas:

This all right for the small banks because the small bank test was always relatively easy, four basic ratios, kind of like a pop quiz in school. It's a very simple test. However, the large bank test under the NPR is very complicated. It involves several different steps and procedures, several tests, very performance oriented, very quantified, very complicated. And for that reason, it's going to require in my opinion, and actually in the opinion of the regulators themselves, and really significant regulatory burden on banks learning it and then learning how to implement it.

Kenneth Thomas:

That's why so many banks are opposed, and quite frankly why community groups who are opposed. Because they didn't understand it, and they're basically happy with the current one. Kind of under the idea if it's not broken, why do we need to fix it? It needs to be improved. It needs to be tuned up. But when you take your car to a shop for a tune up, you don't want them telling, "Alan, I need to put in a whole new engine." You say, "No, I just wanted to tune up my plugs." In this case, we have a whole major overhaul. That was the problem.

Alan Kaplinsky:

You mentioned as you were explaining the notice of proposed rulemaking, the 5% deposit rule. How does that work with respect to these branchless banks, and what was the origin of that proposal?

Kenneth Thomas:

Yes. Back in 2017 when some of the fintech banks began applying for charters, I commented on them. These are banks like Robinhood, several of these fintechs. I commented to the FDIC, the OCC, and also to the Utah DFI. My comments were not complaints. They were all supportive of the applications, but only under the conditions that they followed the current CRA regs and had no exemptions from them. And one of my recommendations to these agencies were that if they were going to get approval as a fintech for a banking charter, they would have to have a requirement that when they take deposits from outside of their local market, which would easily be Wilmington, Salt Lake City, or Sioux Falls, they would have a CRA obligation in those markets commensurate with the amount of deposits they take out.

Kenneth Thomas:

So for example, in my hometown of Miami we have some very big internet banks advertising locally here from Utah. They're in the paper all the time in the Miami Herald. They have no branches here, but they take out tens of billions of dollars and they use those CRA benefits to benefit Salt Lake City. They should be benefiting Miami-Dade County because we have a major affordable housing problem here. So the requirement was very simple. If you take out 5% of deposits ... of your deposits come from Miami MSA, 5% of your CRA benefits should go back, should be reinvested. And this is what Senator Proxmire wanted, reinvestment of deposits. That's actually the middle name of CRA, reinvestment. That's what that 5% rule was about.

Alan Kaplinsky:

Let me give you a hypothetical. As a former professor at Wharton, I think this is fair game. What happens, Ken, in a situation where you have, let's say, an online bank located in Sioux Falls, South Dakota, not a large city, and the bank manages to take deposits all over the country, but in no metropolitan statistical area does it receive 5% or more of its deposits. Let's say in Sioux Falls in 1% of deposits, and all over the country in other metropolitan statistical areas it's getting less than 5% everywhere. Does it not have a CRA obligation?

Kenneth Thomas:

Under my proposal, and basically what I put into these comments on these fintech charters, was that they could then put those CRA benefits anywhere in the country. The problem right now, when they have to put all of it back in Sioux Falls assessment area, they are competing with other banks based there. Wells Fargo, Citibank, all the big banks based there. It becomes what we call a CRA hotspot. It happens to be, if you're a community bank there, you can't compete with these giant banks. So I would argue these fintechs, if they're under the 5% de minimus rule, they could then put their CRA benefits anywhere in the country. The could put them in Detroit, LA, Chicago, anywhere, regardless of where the deposits come from because they've not met the 5% requirement. But when they meet that requirement, that's ... And again, then when I put on my banker's hat, I consider that a ... Remember, we had a lot of rules in banking at the five and the 10% threshold. At 5% threshold, then you have a CRA obligation in that market.

Alan Kaplinsky:

Okay. All right. Now in connection with the CRA reform, I want to get to the outlook here. We're really not close to the finish line. I know you met with the Comptroller of the Currency and his team twice during the last year and this year to provide your input on CRA reform. You also, as you mentioned, submitted two comments on the ANPR and five comments on the NPR, with the last one proposing what you're calling the 75% solution to optimal CRA reform. Can you tell us what that's all about, and what do you think the likelihood is of that gaining widespread acceptance?

Kenneth Thomas:

I had the opportunity. I was invited twice by the comptroller to come to Washington. I met with him, and I found him to be a very fair person, very much concerned about communities, very much concerned about making CRA better. I explained to him the situation as I've explained here on the podcast. However, realistically, looking at the difference between now and 1995, in 1995 the reform was basically involved with banks and community groups going back and forth against each other. Now, it's much more. You've got basically community groups that have piled on against the OCC because of this reform, the fed obviously taking their own approach, and most importantly the House Financial Services Committee, they've been all over the OCC. This has become, unfortunately, more of a political football than anything else.

Kenneth Thomas:

I explained to the comptroller that there needs to be a plan B in effect. My recommendation for a plan B is very simple. We take the 43 largest banks, which I consider very large banks. Those are banks with 50 billion is assets or more. There's 43 of them. And we let them have a three-year test run with the NPR. All of the other banks, which are 99% of the other banks in American, they continue to operate under the current rules. We go for three years with this. These 43 banks represent 75% of all assets in America, including by the way the big branchless banks under the 5% rule. They go through three years, which would do one exam cycle, because it's about every three years. After three years, we reevaluate it and say if it makes sense, we can apply it to other banks. Or, if it doesn't make sense, then perhaps we either redo it or we go back to the status quo.

Kenneth Thomas:

The 75% solution is basically saying, "Take this burden, this regulatory burden, and put in on the 43 biggest banks. They're the ones that can handle it the easiest. Let all of the other banks continue with the status quo." This should be something that the ABA, the ICBA, the CBA should accept, because the big banks have the resources to do this. I've spoken, for example, with one of the top people at Bank of America, actually where I have some of my accounts. He told me they've got over 30 people working on the NPR. They actually submitted a comment. So they've got the resources to do the NPR, but most community banks don't. Banks under two, three, five, 10 billion, they really don't. They have to be focused on helping our communities and CRA, and especially now with COVID-19, helping the recovery go along. So if we could take CRA off the table, the 75% solution would just leave it with the big banks and let the 99% of other banks focus on putting out PPP loans and helping our communities, because that's what really the focus should be right now.

Alan Kaplinsky:

Okay. We have an election coming up in November. Nobody knows, obviously, whether Trump will be reelected or whether Joe Biden will win the election. I assume if Trump get reelected ... Well, let's go through both scenarios. Let's assume, Ken, that Trump gets reelected. Where does this thing ultimately ... When is it going to come to a head? Will the Federal Reserve ultimately join with the comptroller and the FDIC, or are they going to continue to go in their own direction? And then, I want to ask you the same question assuming that Joe Biden gets elected and the new Comptroller of the Currency, we end up with a new comptroller who's more to the liking of the Democrats, probably not somebody from the industry. Maybe it might be from a bank in Delaware now that I think about it, but maybe not. And new leadership and the Fed and also at the FDIC. So under either scenario, where's this thing going?

Kenneth Thomas:

Assuming President is reelected, I see the comptroller continuing to push this through. Even with the COVID breakout, there were requests to delay this. Another 30 days, he gave 30 days more to the comment period. They want another 60 days. He wants to keep this moving along. Remember, like Trump, like Mnuchin, he's a business person. They want to make things happen. They want to keep moving along, and he's pushing to get it done. So if Trump reelected, assuming he's in place, I see this going into effect the way it is, which could be very, very quickly. And obviously, I see the Fed at that point ... Remember, the Fed only has 15% of the banks by number. They have really only four big banks over 50 billion. Retail banks, they've got a total of 10. The six others are wholesale, limited purpose, or strategic plan banks. But there are smaller banks. They can continue under the status quo.

Kenneth Thomas:

It could be a bifurcated system, which is unfortunate for bankers because that brings up an unleveled playing field. Why should banks, because they just happen to be Fed regulated, those 15% have an easier approach than those that are not that way. But remember, banks under 500 million I'm not saying will get a free pass. They still have some additional regulatory data requirement. They're going to have it much easier than the intermediate banks. The banks between 500 million up to 1.3 billion, those are the ones, the former ISBs that'll have it very difficult.

Kenneth Thomas:

I see a lot of these banks, the what we call the new large banks, gravitating towards the strategic plan concept, which allows banks to do whatever they want. I consider it almost a form of self-regulation, Alan. Kind of like an open-book test where you set your own regs. You set your own rules, what's outstanding, what a satisfactory should be. Whereas, for example, only 20% of banks get an outstanding rating, the number is more like 40% of banks with strategic plans. It's much better, much easier, I believe. So I think we will see a lot of banks going to strategic plans.

Kenneth Thomas:

Now, to your second question. If Trump is not reelected, I see a lot of this dying. The fact that the Fed has held off is probably in anticipation of the fact that maybe if they keep punting ball and kicking it down the field, by the election comes around, that may actually happen. Maybe that's why they're doing it. I don't know. I focus on CRA, not politics. But obviously, there would be a sea change. And even with a change in the composition of the Senate going Democrat, that could be huge, because look what happened with Maxine Waters taking over House banking. That could be huge. So the politics will play a very important part of it. Again, this was not a big issue back in 1995. CRA was a community reinvestment issue. Today, it's heavily, unfortunately, a political issue.

Alan Kaplinsky:

Yeah. Okay. Is there anything? We've really come to the end of our show, Ken. But before we wrap it up, I just wanted to find out if there's any other points that you wanted to make that you haven't already made?

Kenneth Thomas:

Yeah. I would say the main point is if people are going to criticize the NPR, and it's 238 pages in length, they really need to read it first. They don't need to pick up somebody else's comment and just copycat it and just generally complain about it, because there's a lot of good stuff in there. Actually, a lot of good recommendations in there. Quite honestly, of the 1,950 comments, I only take maybe a dozen of them seriously, because those are written by people that I respect. Community group leaders I respect. People that I know really understand CRA. But just to generally criticize them ...

Kenneth Thomas:

For example, that 5% rule. There are a lot of people out there. Even recently a congressman from New York wrote a piece in the American Banker saying that it's going to hurt local LMI areas, low and moderate income areas in New York. It's quite the opposite. That 5% rule, let's say New York City. We get tens of billions of dollars. Tens of billions come of out of New York MSA into these credit card bank, and they're being lent in those three areas. Wilmington, Sioux Falls, and Salt Lake City. Under this 5% proposal, they're not going to put the money back to the rich people in New York, not to Central Park. It's going to go to the low and moderate income distressed areas of New York, the areas that are suffering most from COVID-19 where our first responders, where our policemen or firemen live. That's the areas that are going to be helped.

Kenneth Thomas:

So it's almost like a Robin Hood proposal, taken from the rich area of New York and then reinvesting back into the poor, low and moderate income areas. That message never got across because so many people criticized it without really understanding it. So that's the main message I would leave. If you're going to criticize the comptroller, if you're going to criticize the OCC, criticize the NPR, first take their time and understand it and read it before you criticize it, because there is a lot of good stuff in there.

Alan Kaplinsky:

Okay. Well, thank you so much, Ken, for being our guest today and sharing your thoughts on an extremely important topic. Important to the banking industry, important to communities. Really important to anyone who deals with banks.

Alan Kaplinsky:

Let me ask you just one other thing it just occurred to me that we didn't cover. The CRA only covers depository institutions. How come it doesn't cover non-banks?

Kenneth Thomas:

One of my first recommendations in actually both of my books and what I told the comptroller when I met with him ... Actually, he invited me back a third time in March, but because of COVID we couldn't do it. The number one thing on my list has always been CRA for credit unions and, of course, any type of depository that takes FDIC or any type of federally insured deposit. Look at the State of Massachusetts. They have a CRA not just for banks and thrifts, but for credit unions and even mortgage banks. If you look at their results, and I just got one in today, some credit unions do an outstanding job in Massachusetts. Some do an average, and some do a poor job. That's the reason why we need CRA for credit unions and also for fintechs, and for anyone involved in the financial sector.

Kenneth Thomas:

That's my concern. If you want to get into banking and have a banking charter, and you want to have the benefits of federally insured deposits and all of the other benefits we provide through treasury, too big to fail, everything else. That's like a tax if you will, a price you have to pay, CRA. I was taught this from Senator Proxmire, and I believe my goal has always been to try to think about how Senator Proxmire would do this. This is how I think he would want it, that CRA should be applied to these other institutions as long as they're taking insured deposits.

Alan Kaplinsky:

Ah. Yeah, but that's the key, as long as they're taking insured deposits. If they're not taking insured deposits, but they're funded through other sources, commercial paper or debt securities that are registered with the FCC, then I take it you do not think should CRA should apply.

Kenneth Thomas:

Yeah. At that point, it would depend on individual cases. For example, take Quicken Loans, one of the biggest, the biggest of all. The State of Massachusetts actually did a rating of them, and they had an issue. They followed an order. They got it worked out. I mean, if I'm going to take a mortgage, my first place I'll go is going to be to Quicken Loans. There's no doubt. They don't have FDIC insured things. However, they have other regulations that cover them. So as long as the other regulations that cover them, CFPP and other consumer protection regulations are in effect, I would say those should be sufficient. Also, there should be fair lending regulations as well covering them. As long as they have other consumer protection regulations in effect across the board, that would be fine. But I basically would focus CRA on anything with the depository insurance. That's why I was so concerned with the fintechs.

Alan Kaplinsky:

All right. Got it. Okay. Well, Ken. Again, thank you for being our guest today. I want to thank all of our listeners who have downloaded the podcast today and remind you to visit our website www.ballardspahr.com where you can subscribe to our podcast show. Also, you can subscribe on Apple Podcast, Google Play, Spotify, or whatever your favorite podcast platform may be. Don't forget to check out our blog, also called Consumer Finance Monitor, for daily insights of the consumer finance industry. If you any questions or suggestions for our show, please email us at podcast@ballardspahr.com. And stay tuned each Thursday for a new episode of our show. Thank you again.