“Violating Your Way to an Outstanding Rating”

Testimony of Calvin Bradford for the National Training and Information Center (NTIC) before the Subcommittee on Domestic Policy of the House Committee on Oversight and Government Reform
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Thank you Chairman Kucinich and members of this Committee for this chance to review the performance of the federal agencies charged with the enforcement of the lending laws and the Community Reinvestment Act. My name is Calvin Bradford. I am a board member of the National Training and Information Center (NTIC).

Today, I want to convey to this Committee NTIC’s assessment after thirty-five years of work providing technical assistance, training, and research to the community-based organizations all across this country who first conceived of and proposed the twin towers of community banking and fair lending reform in the United States – the Home Mortgage Disclosure Act (HMDA) and the Community Reinvestment Act (CRA).

At the outset, NTIC wants to thank you, Mr. Chairman, for your long-standing concern and commitment to this area. I have brought with me the first written Community Reinvestment Act agreement that was signed on May 10, 1979. The agreement is between the City of Cleveland and First federal Savings and Loan Association of Cleveland. Signing for the City was Mayor Dennis J. Kucinch.

Looking back over the history of the CRA, there are three themes that stand out. First, in the vernacular of the CRA rating system, the record of community-based organizations in the communities which have suffered from lending discrimination and disinvestment must receive an “Outstanding” rating. Second, there are some lenders, particularly those working in partnership with their local communities, have done a “Satisfactory” job and a lesser number that have done an “Outstanding” job. Third, the federal agencies charged with the enforcement of the CRA have not risen above a “Needs to Improve” rating, and have too often fallen into “Substantial Noncompliance”.

In reviewing the failure of the regulatory agencies, there are six main points that NTIC wants to make clear and for which we will provide some examples.

- First, issues of racial and ethnic discrimination have been slowly and deliberately removed from the CRA process over the years. As a result, there are no CRA consequences for lenders that engage in discriminatory behavior. Indeed, I will give you one example where a lender seems to have violated its way to an “Outstanding” CRA rating.

  <u>Our recommendation is that the CRA should be changed to require an analysis of race-based lending as a component in the "lending test" for CRA compliance.</u>

- Second, almost no lender ever fails the CRA – and certainly no large lender fails the CRA. The current rating scale is designed for a financial depository to pass, regardless of its performance. Our examples of how discrimination is permitted, and even rewarded, will also show how unreliable and misleading the ratings are.

  <u>Our recommendation is that the CRA regulations, examination process, and examiner training need to be revised so that there is an accurate rating system to combat documented CRA grade inflation.</u>

- Third, the CRA ratings for large institutions with many operations in many different markets within a region or across the county are based on a full review in only selected markets. Therefore, as long as lenders get passing ratings in those selected markets, they can ignore the needs of their other communities with impunity. This undermines the very essence of the Community Reinvestment Act that a lender should define its communities fairly and serve the needs of <u>all communities</u> within all of its areas. The CRA was supposed to cover everyone. There should be no CRA free communities.

  <u>Our recommendation is that the CRA performance of a lender should be evaluated in all communities and that a poor record of service in any community should result in a failing rating for that community and should result in a mandatory lowering of the overall CRA evaluation.</u>

- Fourth, contributing the problems of grade inflation and misleading CRA evaluations is the provision that allows the lenders the option of picking and choosing which of its affiliates and subsidiaries to include in the CRA examination. This has become even more important and most mortgage lending has been shifted from depository itself to various affiliate and subsidiary mortgage companies and commercial credit companies. This leads to a financial institution's potential to manipulate its CRA rating. Currently, for example, a financial institution can own a predatory lender but include only those loans of other affiliates that would enhance its CRA rating. CRA performance evaluations do not reflect the total picture of a financial institution's lending practices without accurate descriptions of all lending activity. This is a practice that we believe is arbitrary and capricious on its face and requires no justification to defend our recommendation for change.

  <u>Our recommendation is that all affiliates and subsidiaries of the depository, including all subprime affiliates and subsidiaries, be included in the lender's CRA examination.</u>

- Fifth, NTIC is mindful of the heavy toll that abuses in subprime lending have taken on many low- and moderate-income and minority communities. Other panel members will focus in these issues. One would only add that many of the dire impacts of subprime lending, like the past abuses in FHA lending, result from a lack of creative conventional credit from regulated depository institution and their affiliates. In other words, subprime abuses that occur across entire communities are to some significant degree related to CRA failures that go unrecognized by the regulatory agencies. NTIC believes that our recommendations would go a long way toward protecting communities from further subprime abuses.

Our recommendation is that the HMDA disclosures be expanded to include additional separate data on points and fees and data on credit scores and loan-to-value ratios and that the CRA examinations specifically take account of patterns that concentrate high cost loans in low- and moderate-income and minority markets within any affiliate or subsidiary of the regulated institution or its parent company.

- Finally, the Home Mortgage Disclosure Act has provided the main source of assessing mortgage lending performance over the years. We believe that the present disclosure requirements still lack reasonable disclosure of the points and fees that define exploitation and discrimination. Also, the disclosure fails to indicate the two main drivers that set the pricing for high cost loans, credit scores and loan-to-value ratios.

Our recommendation is that the FFIEC and/or the Consumer Advisory Council to the Federal Reserve Board hold a series of meetings with representatives of the major community-based organizations and assistance providers in order to restructure the disclosure formats for the HMDA data, the CRA data, and the CRA ratings and Public Evaluation reports.

The Communities Have Done Their Job

The Community Reinvestment Act was designed to create the basis for a development banking industry for underserved communities in the United States. While there have been billions of dollars reinvestment in once redlining and ignored communities, the promise of a real development banking industry remains unfulfilled.

From the community perspective, community-based organizations have done their work. With few resources and sheer determination, these organizations have led the way in identifying underserved markets, proposing real business solutions, and developing the public-private partnerships to provide the structural and institutional support to channel needed reinvestment into rural, small town, urban, and minority communities. The community-based organizations often created structures or institutional vehicles to channel investments into economic development and housing rehabilitation and development activities when they did not already exist.

Since the CRA was implemented, community-based organizations have been responsible for the creation of hundreds of Community Reinvestment Act agreements and programs. I have been involved personally in projects that have reviewed hundreds of Community Reinvestment Act agreements, programs, and challenges. It is impressive to see the commitment and creativity of so many community-based organizations sometimes working with a few equally creative and committed individual bankers. These include state-wide or local activities in most of the districts or states represented by this Committee, such as in the Boston, Chicago, Indianapolis, Baltimore, Cleveland, New Britain, and Waterloo areas or regional or statewide agreements as in California, Florida.

Over the years, many local organizations have met with individual regulators to make their concerns known and to seek constructive solutions to the problems of poor CRA enforcement. NTIC has provided assistance to many of these local organizations and to the National People's Action and other coalitions and national level organizations seeking CRA reform. This has involved many meetings with individual regulators. NTIC organized a major meting in 2002 with representatives of all of the CRA regulatory agencies where the major recommendations for modernizing and reforming the CRA were presented, and it has assisted in several follow-up meetings with individual regulators since that time.

<u>The Failure of the Regulatory Agencies</u>

In spite of the efforts of community-based organizations and some creative lenders, those in charge of enforcing the Community Reinvestment Act have failed to achieve the goal of creating a development banking industry and have not provided adequate protection from continued redlining and disinvestment in many communities. We believe that what is most lacking is a commitment and serious enforcement effort by the federal banking regulatory agencies who have watered down the enforcement tools - the CRA examinations, public ratings and evaluations, and the review of challenges to branching and acquisition activities.

<u>The Failure to Account for Racial and Ethnic Discrimination</u>

The Home Mortgage Disclosure Act and the Community Reinvestment Act were created as the result of a national movement against redlining, led by the National Peoples Action. It was, it its heart, a movement to end discrimination against communities based on their race and ethnicity.

When we find that after more than two decades of experience with the CRA the financial regulatory agencies are still sanctioning blatant redlining, we can only conclude that there is fundamental failure of federal enforcement and that Congress needs to intervene.

While racial redlining and discrimination was a major factor in the drive to create the CRA, the final wording of the Act requires lenders to serve all parts of their community, including low- and moderate-income areas. This wording does not, as the regulators have sometimes argued, eliminate a focus of racial and ethnic discrimination in the CRA – for prohibitions against lending discrimination are already built into the Fair Housing Act and the Equal Credit Opportunity Act. The inclusion of the specific language about low- and moderate-income neighborhoods was meant to add this protected class so that urban, rural, and small town areas that were not predominantly minority would also be protected against disinvestment.

Initially, one of the twelve assessment factors was "evidence of discrimination or other illegal credit practices". Over the years, the fair lending aspects of the CRA examinations have been diminished. Today, the regulatory agencies in their public reviews do not include race or ethnicity in any of their tables for the lending test. All of their analyses are based entirely on various income ranges of borrowers or areas. What remains is only a factor that requires comment on whether the regulatory agency has found that the lender has violated fair lending laws – and, as we shall see in our examples – no action seems to cross this threshold.

NTIC believes that one of the best ways to demonstrate how discrimination has been permitted, and even rewarded, is to review cases where the regulators gave a lending institution passing CRA ratings during the same period when the U.S. Department of Justice filed charges of discrimination and reached settlements with these same lenders. We find this approach particularly revealing since the Department of Justice has been criticized by civil rights groups in recent years for cutting back on its fair lending enforcement activities. Therefore, the cases that have been brought can be seen as representing particularly blatant claims of discrimination.

Basic Redlining Cases

As background for these reviews, NTIC notes that the most fundamental principle of the CRA is that a lender should serve its locally defined community. Since the initial passage of the Act and its first implementing regulations, the primary standard has been that a lender define a local community that is both reasonable for its size and that does not avoid low-and moderate and minority communities. Many of the initial CRA challenges and responses by the regulatory agencies focused on this single issue.

The Community Reinvestment Act regulations require that the delineated community: "(1) must consist of whole geographies"; (2) may not reflect illegal discrimination; (and) (3) may not arbitrarily exclude low- or moderate-income geographies". [See Section 228.41(e) of the regulations as amended 1997.] These standards are also built into the CRA examination procedures. [See, for example, the FFIEC Community Reinvestment Act Examination Procedures for Large Retail Institutions, April 1997, at pages 3-4.]

Past discrimination has created both severe patterns of geographic racial segregation and a significant correlation between income and race (or ethnicity). As a result, if a lender actually did include all the low- and moderate-income communities in its local service area, it could not avoid including most of the minority communities as well. Therefore, if a regulator allowed a lender to define a service area that avoided significant minority communities, the regulator would almost always be guilty of allowing the lender to violate the most fundamental provision of the Community

Reinvestment Act by avoiding low- and moderate-income areas and by engaging in illegal discrimination as well.

In this context, we provide the following examples of racial redlining allowed by the CRA regulators but found by the Department of Justice (DOJ) to be in violation of the Fair Housing and Equal Credit Opportunity Acts, as well as in violation of the CRA:

The OTS and Mid America Federal

The Chicago metropolitan area is the largest African-American home lending market in the United States, and one of the largest Hispanic markets outside of the Southwest as well. Mid America is the largest independent thrift institution in the entire Chicago market. It is one of the largest mortgage lenders in the Chicago markets. Mid America is regulated by the Office of Thrift Supervision (OTS). Since 1994, the OTS has given Mid America four Outstanding ratings and one Satisfactory rating.

In 2002, DOJ filed suit against Mid America for violating the Fair Housing Act and the Equal Credit Opportunity Act.[1] In specifically citing Section 228 of the CRA regulations (Reg BB), the suit stated that, "In establishing its assessment area, also known as its community service area, boundaries under the Community Reinvestment Act of 1977, 12 U.S.C. §§2901-2906 ("CRA"), Mid America has, since at least 1996, excluded nearly all predominantly African American and African American/Hispanic neighborhoods in the Chicago MSA, even those located in close proximity to its branch offices." [See the attached map which reproduces the exhibit from the DOJ complaint.]

Even though it was a major lender in the white communities along Lake Michigan in the City of Chicago and in the northern suburbs, it defined its assessment area largely as a suburban area west of Chicago. Essentially, Mid America eliminated the minority communities within the City of Chicago and the southern suburbs.

According to the 2000 census, 91% of the low- and moderate-income census tracts in the City of Chicago, for example, are also minority census tracts. Looked at from another perspective, 86% of all the minority census tracts in Chicago are also low- or moderate-income census tracts. Thus, for many years, the Office of Thrift Supervision has allowed this major Chicago metropolitan area lender to exclude both low- and moderate-income and minority areas from its defined service area.

The DOJ suit cites the pattern of expansion of Mid America through the opening of branches in the Chicago metropolitan area. The complaint states that, "Mid America has engaged in a race-based pattern of locating or acquiring new offices. It has located or acquired new branch and other offices to serve the residential lending and credit needs of predominantly white areas but not those of predominantly African American or African American/Hispanic neighborhoods. Mid America has never opened any new full-service

[1] Copies of the complaints and consent decrees for this and the other DOJ cases cited in this statement can be found on the DOJ website at http://www.usdoj.gov/crt/housing/caselist.htm#lending.

branch office in a majority African American or African American/ Hispanic neighborhood. As of March 1, 2002, of Mid America's 33 branch offices, only one, Broadview, is located in a census tract in which a majority of the residents are African American. However, the Broadview branch is the only non-traditional office operated by Mid America. In contrast to all its other branch offices, the Bank's Broadview office consists solely of an ATM machine and a lobby area located inside a K Mart. Moreover, the level of services offered at the Broadview branch is substantially less than that offered at Mid America's other branches. Every other branch office offers mortgage lending or investment services, or both; neither is offered at the Broadview branch."

Opening branches is a privilege that should be granted only to institutions that have satisfied their CRA obligations. By continually allowing Mid America to expand, the OTS was rewarding a major lender in the nations largest African-American mortgage market for engaging in racial redlining – the very practice that led to the creation on the CRA in the first place.

While DOJ settled the case by requiring the lender to open minority branches, to pay $10 million for special minority loans to compensate for past discrimination, and to develop outreach programs and to participate in existing special loan programs, the OTS still gave the lender a rating of Satisfactory after noting the lawsuit (the only rating below Outstanding that the OTS gave this lender since 1992). The OTS noted that in light of the lawsuit it could "not find the lender had not violated the fair lending laws". As the lender complied with the settlement order, the OTS gave the lender credit for expanded lending and raised the rating to Outstanding. Thus, the actions that Mid America took as the result of a consent order by a Federal court were used to raise its rating to Outstanding.

<u>The Federal Reserve Board and Old Kent Bank</u>

Between 1997 and 2001, the Federal Reserve Board had given three Satisfactory CRA ratings to Old Kent Bank, a major lender in the Detroit metropolitan area.[2] During this period, Old Kent defined its assessment area in terms of several counties and parts of counties that encircled the City of Detroit, but excluded the City of Detroit itself. A review of the Public CRA Evaluation reports indicates that the Federal Reserve Board was clearly aware of this exclusion and that it accepted this exclusion of Detroit and evaluated Old Kent based on the service it provided to the predominantly white suburban areas only.

In 2006, DOJ filed suit against Old Kent for violating the Fair Housing Act and the Equal Credit Opportunity Act. In specifically citing Section 228 of the CRA regulations (Reg BB), the suit stated that, "Instead of defining its assessment area in accordance with Regulation BB, Old Kent Bank circumscribed its lending area in the Detroit MSA to exclude most of the majority African American neighborhoods by excluding the City of Detroit." [See the attached map which reproduces the exhibit from the DOJ complaint.] The complaint also indicates that "As of March 2000, Old Kent

[2] The 2001 rating was given after the FRB had approved the merger of Old Kent into First Third Bank.

Bank still did not have a single branch in the City of Detroit, where the population is more than 81% African American."

According to the 2000 census, 93% of the low- and moderate-income tracts in Detroit, are also minority census tracts. Looked at from another perspective, 86% of all the minority census tracts in Detroit are also low- or moderate-income census tracts. Thus, for many years, the Federal Reserve Board had allowed this major Detroit metropolitan area lender to exclude both low- and moderate-income and minority areas from its defined service area.

The DOJ suit cites the pattern of expansion of Old Kent through the opening of branches in the Detroit metropolitan area. The complaint states that, "As of January 1996, Old Kent Bank operated at least 18 branches in the Detroit MSA. Not a single one of these branches was located in the City of Detroit. As of March 2000, Old Kent Bank had expanded its business presence in the Detroit MSA to include a branch network of at least 53 branches, located in every county of the Detroit MSA. Virtually all of Old Kent Bank's branches were located in predominantly white suburbs." Opening branches is a privilege that should be granted only to institutions that have satisfied their CRA obligations. By continually allowing Old Kent to expand (and by later allowing the merger of Old Kent and Fifth Third), the Federal Reserve Board was rewarding a major lender for engaging in racial redlining.

The DOJ complaint also cited Old Kent for failing to provide equal lending services for both home mortgage and small business loans to the minority areas that were illegally excluded from its CRA lending community. As a result, DOJ engaged in a consent order requiring corrective actions that had not been ordered by the Federal Reserve Board.

<u>The FDIC and Centier Bank:</u>

Centier Bank is regulated by the FDIC. It serves a regional market in Northwest Indiana. The FDIC examined Centier four times between 1993 and 2003. Each time the bank was given a Satisfactory rating. This rating allowed the bank to continue to engage in branching and expansion activities which should have been denied had the institution bee given a failing CRA rating. Indeed, it has become clear that even when community challenges are made, a passing CRA rating provides the lender with a safe harbor. Therefore, challenges become a fruitless gesture for lenders with passing CRA ratings – and almost all lenders have passing CRA ratings.

While Centier's delineated service area literally surrounded the City of Gary (a predominantly African-American city), through at least most of 1999, almost all of the City of Gary, and all of Gary's predominantly minority census tracts, were excluded from the delineated community. In this year (according to the DOJ complaint), "the FDIC informed the Bank that its assessment area violated the CRA and its regulations." Even at this point, the FDIC continued to give the bank a Satisfactory rating.

In 2006, DOJ filed suit against Centier for violating the Fair Housing Act and the Equal Credit Opportunity Act. In specifically citing Section 228 of the CRA regulations (Reg BB), the suits stated that, "Instead of defining its assessment area in accordance with Reg BB, Centier long circumscribed its lending area in the Gary PMSA to exclude most majority-minority neighborhoods, including having two geographically separate assessment areas for many years. Until late 1999, Centier's CRA assessment area included only three majority-minority census tracts from Gary, East Chicago, and Hammond, despite the fact that a large number of minority tracts were adjacent to the non-minority tracts included in the assessment area." [See the attached map which reproduces the exhibit from the DOJ complaint.]

According to the 2000 census, 93% of the low- and moderate-income tracts in Gary, Indiana, are also minority census tracts. Looked at from another perspective, 87% of all the minority census tracts in Gary are also low- or moderate-income census tracts. Thus, for many years, the FDIC had allowed this major Northwest Indiana lender to exclude both low- and moderate-income and minority areas from its defined service area. In allowing the institution to continue to open branches in the areas outside of Gary, the FDIC was actually rewarding Centier for its discrimination.

The DOJ complaint also cited Centier for failing to provide equal lending services for both home mortgage and small business loans to the minority areas that were illegally excluded from its CRA lending community. As a result, DOJ engaged in a consent order requiring corrective actions that had not been ordered by the FDIC.

<u>Flagstar – Violating Your Way to an Outstanding Rating</u>

If the regulatory agencies can't identify discrimination as blatant as that described in these examples of DOJ cases, then there is a fundamental problem that surely requires Congressional action to be corrected. Still, one might try to set aside these cases by claiming that these all involved settlements where the lenders claimed that they did no wrong. That is, these cases did not involve court decisions that fair lending violations occurred. Let us turn, then, to a case where there were such legal findings.

The case of Flagstar Bank, FSB, represents that rare exception where we actually have proof of fair lending violations that we can compare to the public comments of the institution's regulator and to the CRA ratings given to the bank before and after the violations occurred. This case illustrates how even multiple legal findings of discrimination can lead a lender to an Outstanding CRA rating.

- Between February of 1994 and November of 2005, during which time the OTS gave Flagstar Bank "Satisfactory" and "Outstanding" CRA ratings, this lender was sued several times in federal court for issues related to discrimination in lending. Flagstar, in contrast, was found liable for discrimination at trial or by the court in at least two of these cases.

- In 1999, a jury in Detroit found Flagstar liable for discrimination against minority borrowers, and plaintiffs were awarded damages. Later the Sixth Circuit Court of Appeals upheld one of these findings. In 2003, in a national class action suit, a federal court in Indianapolis found a written pricing policy developed by Flagstar management in 2001 so overtly discriminatory that the court ruled against Flagstar on summary judgment. The policy explicitly stated that pricing would be different for minority and non-minority borrowers. It appears that <u>the discriminatory pricing policy was developed and implemented by Flagstar *while* the OTS was conducting its consumer compliance examination.</u>

- The OTS conducted five CRA examinations and never found Flagstar in violation of discrimination laws. During this time period, Flagstar was given a "Satisfactory" CRA rating four times and was elevated to an "Outstanding" rating <u>after</u> the summary judgment finding in 2003.

Flagstar was one of the nation's twenty largest mortgage lenders during the period covered by this litigation. It sold loans to both Fannie Mae and Freddie Mac and was one of the largest underwriters of FHA loans through certification granted by HUD.

Moreover, Flagstar was allowed to expand significantly during this time period by opening numerous branches, expanding into a new state, and expanding to additional metropolitan areas in these states. The approval of its applications to expand was based, in part, on its CRA ratings. As a result, during the period from 1994 through 2005, Flagstar grew from just over $500 million in assets to nearly $13 billion in assets.

The actions taken by Flagstar as a result of the settlement of suits in Detroit were actually used to raise its later CRA rating. After the Federal Court in Indiana forced the elimination of its written racial pricing policy, the OTS gave Flagstar an Outstanding rating, finding no violation of fair lending laws in spite of two legal decisions. <u>As bizarre as it seems, Flagstar seems to have literally violated its way to an Outstanding rating.</u>

<u>Providing Lenders with CRA Free Communities</u>

Another issue relates to which cities and areas are included in the examination process. Many communities outside of the largest metropolitan areas have been concerned that the high CRA ratings given to almost all the major lenders are based only on their alleged performance in the largest markets. This allows them to avoid smaller cities and rural areas and still gain the full protections of high ratings.

For instance, it took years of work from a small local organization, Sunflower Community Action in Wichita, Kansas, to get an enhanced examination of Bank of America's CRA performance in their community. The organization had significant concerns with the bank's denial rates to African Americans, branch locations and suggestions of ways for the bank to meet the credit needs of Latinos. It was even a battle for the group to get Bank of America to provide them with the appropriate decision maker.

The Wichita metropolitan area is the largest metropolitan area in the State of Kansas. It has the largest Hispanic population, the second largest African-American population, the largest Native American population, and the largest Asian population of any metropolitan area in Kansas. Over 28% of the total population of the Wichita metropolitan area is minority. Yet because Bank of America serves so many larger metropolitan areas, the Comptroller of the Currency did not weigh the bank's performance in Wichita equally.

It took years of research organizing and negotiation to get the comptroller to agree to add a more in depth evaluation of Wichita into the exam of just one single lender (Bank of America). The Comptroller should have taken this initiative itself and it should have required the review of the lending and investment patterns of all of its large lenders across all significant markets. Each community should not have to fight with each regulator over each lender across the entire country just because the regulatory agencies are not interested in the financial needs of citizens outside of the largest markets. The CRA was supposed to protect all citizens in all communities – not just those in the largest financial markets.

Grade Inflation and Its Impacts

We believe that the examples of redlining we have provided as well as the example of the exclusion of all but the largest metropolitan areas for full assessments of performance under the CRA supports our point that the present limited and poor level of CRA enforcement leads to grade inflation in several different ways. Of course, including all areas for full CRA assessments would not, in itself, correct the grade inflation that comes from simply ignoring redlining or poor performance that is not cited under the present forms of CRA evaluations.

The Impact of Bad CRA Enforcement

Bad examinations not only hurt the communities where the lender operates, but they can be used to block challenges. Having a passing CRA rating, Mid America, Old Kent, Centier, and Flagstar were all able to engage in branching and acquisitions in spite of their discriminatory behavior.

What signal does this regulatory behavior give to lenders? NTIC is concerned that lenders see the advantages of using the federal bank regulators to create a shield from investigation of their possible discriminatory lending. Moreover, existing regulated institution may see an advantage in switching their charters from one regulator to another in order to find safe harbor in the regulator with the worst record of fair lending and CRA enforcement.

Using Bad Federal Regulation as a Shield

There is a trend for independent lenders to acquire banks or savings institutions to expand their roles in financial markets. This has been a growing pattern for subprime lenders. NTIC is concerned that independent mortgage companies could try to fold their lending under the protection of the charter of their depository lenders in order to protect themselves from aggressive fair lending and consumer protection enforcement.

The example of Countrywide serves to illustrate this concern. In the first action taken based on racial disparities in subprime lending from the revised HMDA data, the Attorney General of the State of New York, now Governor Spitzer, found a pattern of racial lending and pricing disparities by Countrywide Home Loans in their 2004 HMDA data. By subpoena, further analysis of underwriting factors led the Attorney General to conclude that racial disparities existed even after controlling for underwriting factors. Countrywide reached a settlement agreement in November of 2006.[3]

When these same expanded HMDA data for 2004 were first released with the pricing data that allowed for improved identification of subprime lending patterns, the Fed identified a series of lenders whose racial disparities were significantly adverse. Each regulatory agency was provided with the list of its lenders that showed these disparities. The agencies were to investigate these disparities in more depth.

With little confidence in the federal regulatory agencies, many consumer groups looked to the sates' attorneys general or to their state civil rights enforcement agencies to investigate discrimination and violations of consumer protection laws. In the press announcement for the Countrywide settlement, however, then Attorney General Elliot Spitzer indicated that the federal regulatory agencies (specifically the OCC) were shielding regulated lenders from fair lending investigations by claiming federal exemption for enforcement. Indeed, the OCC has gone to court to prohibit state agencies from enforcing fair lending laws.

Countywide presents a particularly interesting case in regard to the possible attempts of lenders to seek federal protection from fair lending enforcement. The parent corporation of Countrywide Home Loans is Countywide Financial Corporation. Since 1990, Countrywide Financial has owned a national bank – Countrywide Bank. In the same month that Countrywide Home Loans settled with the Attorney General of New York, it applied to the Office of Thrift Supervision to change its charter from a national bank to a federal savings bank. As of March 12 of this year, Countrywide Bank is now operating as a federal savings bank under the supervision of the OTS. Moreover, the parent company, Countrywide Financial Corporation, is now designated as a savings and loan holding company and is also regulated by the OTS. This places all of the lending activities of one of the nations very largest lenders under the supervision of the regulatory agency that provided an Outstanding CRA rating to a lender twice found liable for fair

[3] See the Attorney General of the State of New York, Civil Rights Bureau in the matter of Countrywide Home Loans, Inc., Assurance of Discontinuance Pursuant to Executive Law 63(15), November 22, 2006.

lending violations during the times it was being reviewed for consumer compliance by the OTS.

Countrywide's lending patterns have long been a concern for fair housing and community-based organizations. Prior to the present extreme concern over subprime lending and pricing disparities that has arising in the late 1990s, the steering of minorities and minority neighborhoods to FHA lending was the major concern as the concentration of FHA foreclosures harmed the housing markets and local economies of those areas. Indeed, one of the main reasons for the creation of he CRA was to help ensure a fair floe of conventional prime loans into minority and racially diverse communities.

Historically, Countrywide's lending has often raised concerns. In a detailed study of lending from 1995 to 1997 that I conducted with the Equal Rights Center in the Baltimore market area, we found that of the 2,779 home purchase loans made by Countywide in this market with a large number of African-America communities, there were only 70 conventional loans in minority census tracts (just 2.5% of the total).[4] [See the maps attached to this statement.]

Using data from a study of the Chicago and Washington, D.C. markets that I did for HUD for the years 1994 to 1996, Countrywide's lending shows clear pattern of shifting a larger percentage of its minority loans to FHA as it expanded its market in those metropolitan areas. In the Chicago market, the FHA share of all home purchase loans to African-Americans rose from 23% in 1994 to 49% in 1996, while the overall FHA share for the entire market remained constant. In the Washington market area, while the overall market share of FHA home purchase loans to African-Americans rose about 9%, Countrywide's share of FHA loans to African-Americans rose by 46%.

During this same time period, the National Fair Housing Alliance was conducting a nationwide testing program for lending discrimination under a grant from HUD. Countywide was one of the lenders for which NFHA found racial disparities in its tests related to FHA steering.

From data that I analyzed for Orange County, California from 1999 to 2001, Countrywide also showed large disparities in FHA lending by race in this market. The FHA share of loans made to white borrowers ranged from 5% to about 9%. Meanwhile, the FHA share of home purchase loans made to African-Americans ranged from 29% to 35%.

Given the consistency of these patterns, disparities in pricing for high cost loans now offered by Countrywide as one of the largest subprime lenders would certainly be a concern, particularly given the increasing foreclosure rate of high cost loans and their concentrations in communities of color. We would not expect the Federal Government to provide protection for lenders against the honest investigation of lending disparities by

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[4] See, *Crisis in Déjà vu: A Profile of the Racial Patterns in Home Purchase Lending in the Baltimore Market – A Report from The Public Justice Center*, May 2000.

agencies in state and local governments. We would be especially concerned if this protection is provided under the guise of Community Reinvestment Act enforcement.

Public Disclosure with a Hitch

The HMDA are a critical companion to the CRA in the area of home lending. While we commend the Federal Reserve for its expansion of the HMDA data into the area of pricing, we must indicate that there are still serious issues with the use of the HMDA. Many of these have already been raised in the hearings of the Subcommittee on Financial Institutions and Consumer Credit of the House Financial Services Committee last June – and the issues raised in those hearings should continue to be pursued.

I would, however, add one example of the kind of problem that needs to be addressed in the formats for making the public data available to – the public. It has always been the community-based groups that have fought for the CRA and that have initiated the most creative partnerships and programs. Most of the major programs today are based on these initiatives by local community groups, local development organizations, and their banking partners. For example, Fannie Mae created a flexible loan product with the National Training Information Center which required housing counseling and used non-traditional credit standards with very affordable mortgage insurance rates. This product had incredibly low defaults due to the borrower having contact with a local community organization. NTIC was able to use HMDA data to make the case that a product like this could bring credit to low and moderate income communities. Most recently, several lenders have worked with community organizations to create creative approaches to keep people in their homes. This happened partly due to the fact that foreclosure rates were increasing and many unsuitable loans (ARMS and interest only) were being made. NTIC is able to do research like this with few resources. Most are not equipped do engage in detailed statistical analysis of the HMDA data.

The FFIEC does provide easy access to CDs with the complete file of the raw individual loan application register data for each year. The raw HMDA data are important, but they generally require access to some sophisticated – and often expensive - software in order to aggregate the individual loan application records into meaningful categories for analysis and review.

Since the HMDA was implemented, sets of basic HMDA tables providing tabulations of data that can be used for many critical lending evaluations have been created by the FFIEC and printed and placed in local public depositories. The main advantage of these tables was that the raw individual loan data was aggregated into various categories and into census tract totals – both for all the lending in a metropolitan area and for each individual lender. Yet, these depositories did not always maintain these data well. These depositories were often far from a local community. Moreover, one could only copy down data or make copies of tables, but could not place these raw tabulations into simple spreadsheets where people could calculate simple patterns, such as the percentages of loans made to various areas or to racial, ethnic or income groups.

For the 2003 and 2004 HMDA data, the FFIEC created a special CD with what are essentially these public tables in an electronic format. The CD had an easy-to-use extraction program. Not only could you print out the tables, but, more importantly, you could load any table for any metropolitan area and any lender into a simple spreadsheet and easily make calculations and additional tabulations of your own. This provided a wonderful resource that could have helped to overcome the major obstacle to the use of the HMDA data by local community organizations – the need to tabulate the individual loan records into groups by borrower or geographic area characteristics. These pre-defined tables represented a valuable resource that technical assistance groups could have developed rather easily into training programs that would have allowed many local groups to use the HMDA data more quickly and effectively – and at the cost of only $10 for the disk for the entire nation.

On the other hand, few people realized that this resource existed. It was not widely announced or highlighted. The CD has now been discontinued and replaced by a process where the tables can only be accessed online. This requires a rather high speed internet connection. One can print out a specific table (a PDF version), though this cannot be inserted into a spreadsheet. While the CD allowed a person to extract and load any individual table into a simple spreadsheet format, the online system only allows one to download the entire set of tables all streamed together in a single text file. For any but the smallest MSA, these tables typically have thousands of rows of data. For most of the tables, there is no row with a title or any other indication of where the table begins.

To extract one major table for the medium sized Wichita MSA (Aggregate Table 5-3), for example, one must search through 1,639 of the 3,488 rows of data to find where the table began. Even then, one needs to extract and review the picture (PDF) versions of the tables in order to identify the fields and exact data that indicate the beginning and end of the table one wants to use. Finally, unless one is skilled at locating and disabling all the various programs on their computer with pop-up blocking mechanisms, the data cannot be downloaded at all. Only after this sometimes painstakingly slow process can one effectively locate an individual table and use its data.

The existing CDs were eliminated and this convoluted online system was developed with no input from the community-based users of the HMDA data. Similar changes were made for the private mortgage insurance version of the HMDA data and for the CRA data. How ironic it is that the Fed would create such a potentially valuable set of tables and then make it as difficult as possible for people to use them.

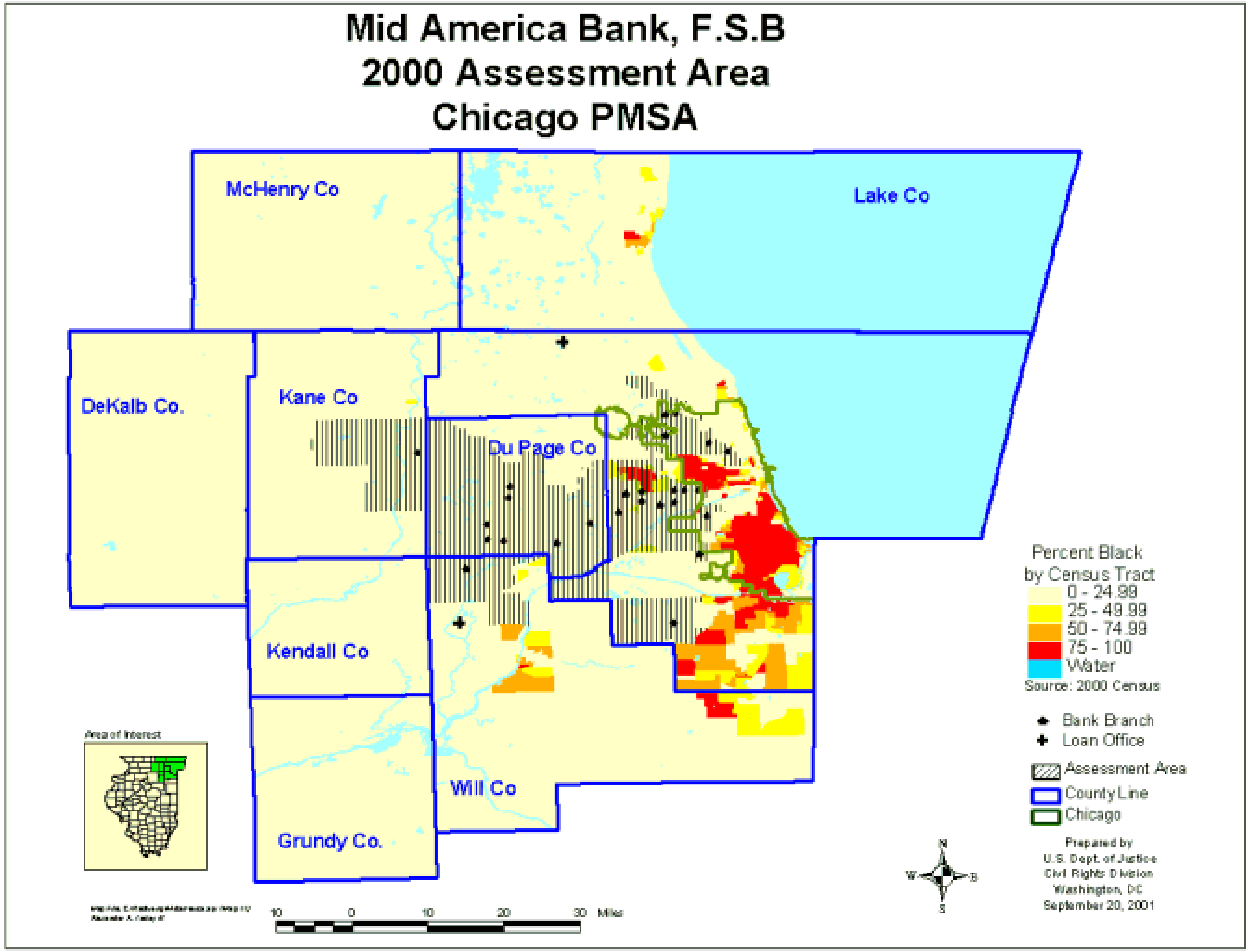
I was told by a person at the Fed who was managing this system that this was done to save people the cost of $10 for the CD. This indicates how out of touch the Fed is with the public users – or potential public users – of the HMDA data. The time that one needs to spend struggling with the online format certainly far exceeds the small fee for the CD with its convenient extraction program. It is time that the FFIEC, possibly through the actions of the Fed's Consumer Advisory Council, sets up a dialogue involving a wide range of community groups, technical assistance providers, and those who actually are involved in the collection and disclosure of the HMDA at the FFIEC so that the data can be collected and released in formats that actually support its use by the public – and not just by the regulatory agencies, lenders, and those organizations with access to skilled researchers with sophisticated computer systems and software.

Turning to the process for the release of the CRA ratings and the CRA Public Examination reports, the individual online systems for locating and downloading these reports is also difficult to use and confusing. In many cases, one cannot locate a CRA evaluation by entering the full name of the lending institution, but most actually enter only a partial name in order to get the system to retrieve the records. In the case of the Comptroller of the Currency, the new system no longer searches for all reports but requires that you first identify the exact year and month when the report you are seeking was released from within a matrix of 131 yearly and monthly links. How many of us looking for a history of CRA reports on an individual lender or even the report on the most recent examination know exactly which month of which year it was released? Essentially, the Comptroller's site is set up so that you can't search for a report unless you already know where it is. A person looking for all the historical evaluations on a lender would have to search individually through all 131 of these links. This is more than clumsy, it is outright obstructive.

Save Us from the Regulatory Malpractice

In summary, it appears to us that the law designed by citizens and enacted by Congress to create access to government regulated lending institutions for all people and all communities has been transformed into a vast bureaucratic system to protect the lending institutions from investigation criticism and accountability. The goal of creating a community development banking industry has been kept on life support by the constant nursing efforts of community-based organizations and their development partners. Meanwhile, the federal regulators who are granted all of the diagnostic and treatment powers continually cut off the blood supply to the CRA's vital organs.

I would be glad to respond to any questions or concerns that you may have and NTIC would be glad to provide the Committee with additional information on points and issues that could not be addressed adequately in our limited time here today.


Mid America Bank, F.S.B
2000 Assessment Area
Chicago PMSA
McHenry Co
Lake Co
DeKalb Co.
Kane Co
Du Page Co
Kendall Co
Will Co
Grundy Co.
Area of Interest
Percent Black
by Census Tract
0 - 24.99
25 - 49.99
50 - 74.99
75 - 100
Water
Source: 2000 Census
Bank Branch
Loan Office
Assessment Area
County Line
Chicago
Prepared by
U.S. Dept. of Justice
Civil Rights Division
Washington, DC
September 20, 2001
10
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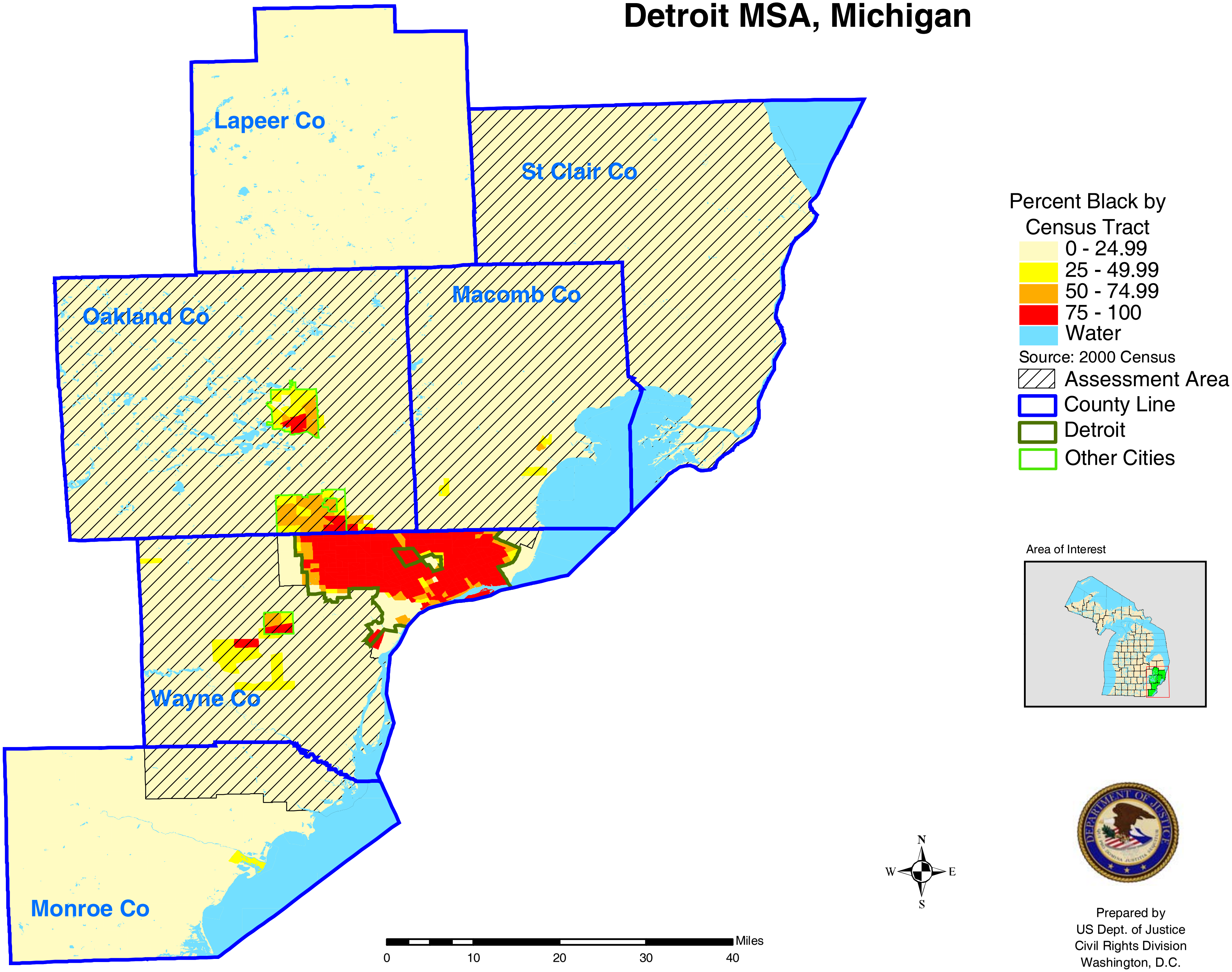
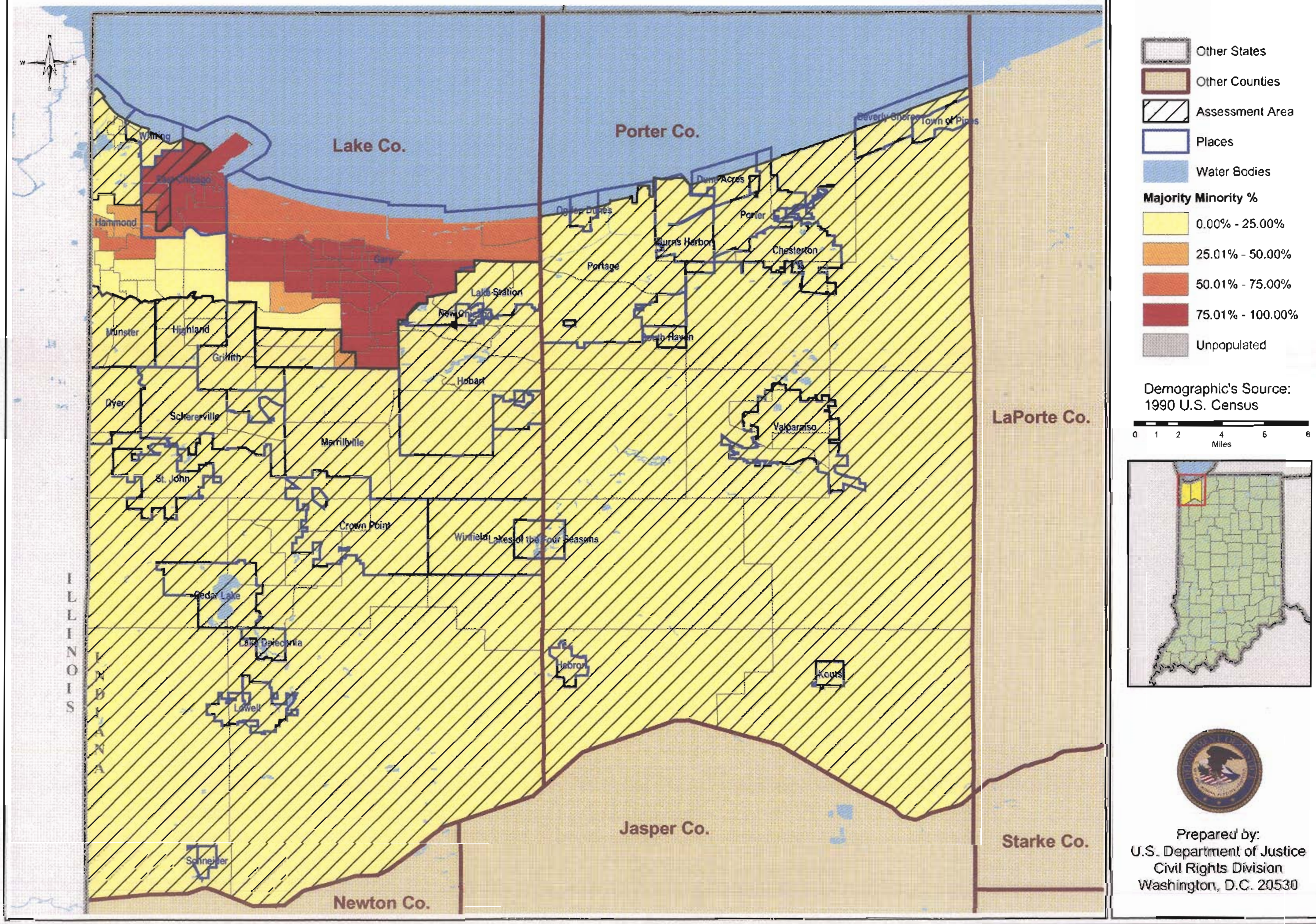
Old Kent CRA Assessment Area as of March 2000
Detroit MSA, Michigan



Prepared by
US Dept. of Justice
Civil Rights Division
Washington, D.C.

Percent Minority (Non-White NH) Population by Year 1990 Census Tract
December 1998 Assessment Area
Gary MSA, Indiana



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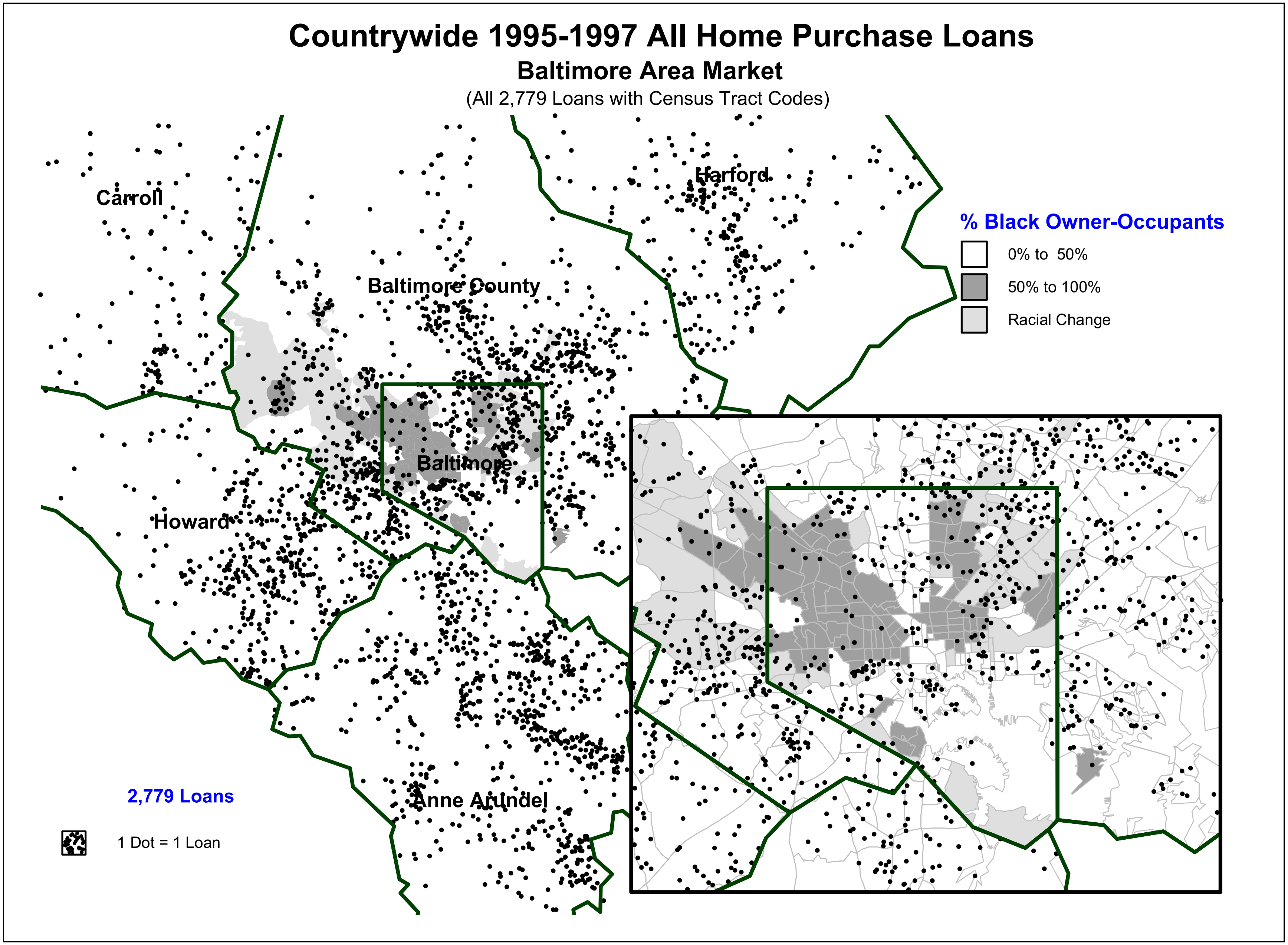
U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20530


Countrywide 1995-1997 All Home Purchase Loans
Baltimore Area Market
(All 2,779 Loans with Census Tract Codes)
Carroll
Harford
Baltimore County
Baltimore
Howard
Anne Arundel
% Black Owner-Occupants
0% to 50%
50% to 100%
Racial Change
2,779 Loans
1 Dot = 1 Loan

Countrywide 1995-1997 African-American Conventional Loans

Baltimore Area Market

(70 Loans Out of 2,779 Total Home Purchase Loans with Census Tract Codes)