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Closing the Disability Gap: Reforming the Community Reinvestment Act Regulatory Framework

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I. INTRODUCTION

Since its inception over forty years ago, the Community Reinvestment Act (CRA) has encouraged banks to serve low- and moderate-income (LMI) neighborhoods and populations. Originally signed into law in 1977 to reduce discriminatory credit practices known as "redlining"[1] in LMI neighborhoods, the law mandates that banks provide support and opportunity for communities that are less economically stable through lending, investment, and service. The CRA is an example of public policy designed to spur private sector action, with particular attention to those at the bottom of the economic ladder.

People with disabilities make up a significant part of the LMI population yet the specific needs of this sizable subpopulation are often overlooked. In 2018, more than one quarter (27%) of working-age people with disabilities were living below the poverty level, over twice the rate of those without disabilities, and people with disabilities often are excluded from the labor market and economic opportunities.[2] In 1990, thirteen years after the enactment of the CRA, Congress passed the American with Disabilities Act (ADA), declaring that the "Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency."[3]

This Article examines approaches in law and policy that the CRA may align its goals with the ADA to require financial institutions to better identify and meet the needs of people with disabilities so that they are not left further behind in their struggle for economic opportunity, stability and mobility. It contends that this alignment is necessary because the CRA was enacted to encourage financial

1. COMMUNITY AFFAIRS, OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMMUNITY REINVESTMENT ACT 1 n.1 (2014), https://www.occ.gov/topics/community-affairs/publications/fact-sheets/pub-fact-sheet-cra-reinvestment-act-mar-2014.pdf ("'Redlining' refers to the practice whereby lending institutions refused to offer home loans in certain neighborhoods, based on the income, racial or ethnic composition of the area.").

2. NANETTE GOODMAN & MICHAEL MORRIS, NAT'L DISABILITY INST., ESTIMATED NUMBER OF ABLE ACT PARTICIPANTS (2015), https://treasurer.nebraska.gov/able/ABLE_Estimated_Participation.pdf; *see also* LISA SCHUR, DOUGLAS KRUSE & PETER BLANCK, PEOPLE WITH DISABILITIES: SIDELINED OR MAINSTREAMED? 28–33 (2013).

3. Americans with Disabilities Act Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 3553 (2008). *See generally* PETER BLANCK, MICHAEL WATERSTONE, WILLIAM MYHILL & CHARLES SIEGAL, DISABILITY CIVIL RIGHTS LAW AND POLICY: CASES AND MATERIALS (3d ed. 2014); Peter Blanck, *Americans with Disabilities and their Civil Rights: Past, Present, Future*, 66 U. PITT. L. REV. 687 (2005).

institutions, such as banks of all sizes, to address the credit needs of the communities that they serve, including low- and moderate-income neighborhoods.[4]

Certainly, since enactment of the CRA, the financial services industry has dramatically changed. In April of 2018, an Advanced Notice of Proposed Rulemaking (ANPR) circulated by the Office of the Comptroller of the Currency (OCC) presented an opportunity to advance what had become an outdated framework and sought to modernize the regulations that implement the CRA.[5] This Article additionally examines the ways in which an updated framework may aid regulated banks to more effectively serve the needs of their communities (e.g., at their physical locations and online), particularly LMI populations with disabilities.

In Part II, we provide an overview of the CRA. In Part III, we consider empirical evidence showing that people with disabilities make up a significant share of LMI neighborhoods, and that these individuals tend to be worse off than other LMI populations in their access to and use of financial services and achievement of valued financial outcomes. In Part IV, we propose a multifaceted approach to defining community development activities and evaluation of bank performance in ways to specifically address the needs of people with disabilities. Finally, we conclude in Part V, arguing that unless the financial needs of people with disabilities are addressed intentionally and directly as a focus of a modernized CRA framework, this group will continue to be unfairly excluded from the financial system and overlooked in inclusive community development activities.

II. OVERVIEW OF THE CRA

A. Background and Purpose of the CRA

The Community Reinvestment Act (CRA) was enacted in 1977 to address the concern that depository institutions were not meeting the credit needs of their entire communities.[6] It addressed the discriminatory practice of designating certain lower-income or minority neighborhoods as ineligible for credit, known as "redlining."[7] The CRA focused on the provision of credit to low- and moderate-income communities rather than on discrimination by race, sex, or other personal characteristics because existing laws, including the Equal Credit Opportunity Act, passed in 1974, and the Fair Housing Act, enacted as Title VIII of the Civil Rights Act of 1968, explicitly addressed discrimination in lending. The CRA clarified the

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4. *See* Reforming the Community Reinvestment Act Regulatory Framework, 83 Fed. Reg. 45,053 (Sept. 5, 2018) (to be codified at 12 C.F.R. Pts. 25, 195).

5. *See id.*, Reforming the Community Reinvestment Act Regulatory Framework, 83 Fed. Reg. 45,055 (proposed Sept. 5, 2018), https://www.federalregister.gov/documents/2018/09/05/2018-19169/reforming-the-community-reinvestment-act-regulatory-framework (last updated Sept. 5, 2018).

6. *See* COMMUNITY AFFAIRS, OFFICE OF THE COMPTROLLER OF THE CURRENCY, *supra* note 1.

7. *Id.* at 1.

expectation that "financial institutions must serve 'the convenience and needs,' including credit needs, of the communities in which they are chartered."[8] The obligation of financial institutions to serve their communities was seen as a *quid pro quo* for privileges such as the protection afforded by federal deposit insurance and access to the Federal Reserve's discount window.[9]

Three important legislative and regulatory changes have impacted the CRA since its inception. The Financial Institutions Reform and Recovery Act of 1989 required the appropriate Federal Agency to prepare written evaluations of bank performance and publicly disclose their findings in a four-tiered CRA examination rating system, with performance levels of "Outstanding," "Satisfactory," "Needs to Improve," or "Substantial Noncompliance."[10] In 1995, regulatory changes established a three-pronged CRA test based on performance in the areas of lending, investments, and services.[11] While the regulations placed the greatest emphasis on lending, they encouraged innovative approaches to addressing community development needs.[12]

In 2005, regulators made two significant changes.[13] First, they "streamlined" the evaluation criteria for a large number of banks by revising the threshold of what would be considered "small" banks and adding a category of "intermediate small" banks.[14] As a result, only banks with over one billion dollars in assets are subject to the three-pronged test.[15] Small banks are subject only to a lending test and "intermediate small banks," are subject to a lending test as well as a new community development test that is more flexible than the test applied to large banks.[16] Second, the 2005 revisions broadened the term "community development" to allow CRA credit for activities addressing "distressed and underserved nonmetropolitan middle-income geographies and designated disaster areas."[17]

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8. Ben S. Bernanke, Chairman, Fed. Reserve, The Community Reinvestment Act: Its Evolution and New Challenges, Address at the Community Affairs Research Conference (Mar. 30, 2007), *in* BD. OF GOVERNORS OF THE FED. RESERVE SYS., https://www.federalreserve.gov/newsevents/speech/Bernanke20070330a.htm#fn8.

9. *Id.*

10. Sandra F. Braunstein, Director, Div. of Consumer & Cmty. Affairs, The Community Reinvestment Act, Address Before the Committee on Financial Services, U.S. House of Representatives (Feb. 13, 2008), *in* BD. OF GOVERNORS OF THE FED. RESERVE SYS., https://www.federalreserve.gov/newsevents/testimony/braunstein20080213a.htm.

11. *History of the CRA*, FED. RESERVE BANK OF MINN., https://www.minneapolisfed.org/community/cra-resources/history-of-the-cra-new (last visited Apr. 27, 2019).

12. *Id.*

13. FED. DEPOSIT INS. CORP., COMMUNITY REINVESTMENT ACT INTERAGENCY EXAMINATION PROCEDURES (2006), https://www.fdic.gov/news/news/financial/2006/fil06033.html.

14. *Id.*

15. *Id.*

16. *Id.*

17. FED. DEPOSIT INS. CORP., COMMUNITY REINVESTMENT ACT EXAMINATION PROCEDURES FOR SMALL INSTITUTIONS (2006), https://www.fdic.gov/news/news/financial/2006/fil-33-2006a.pdf.

Through all these revisions, the CRA has maintained a focus on requiring banks to provide lending and other services within their local communities, including low- and moderate-income areas, where banking institutions have a physical branch office and take deposits (also known as their CRA assessment areas).[18] However, as banks increasingly offer online services and draw in their customers from outside the geographic area in which they have a physical branch, the concept of a physical footprint has become outdated.[19]

In addition, the CRA has faced challenges in its approach to evaluating banks' compliance with the law:[20]

> Community advocates have pushed for tougher requirements and enforcement and many groups have issued reports highly critical of the regulators. Meanwhile, the banking industry has pressed for a decrease in the regulatory burden. Bankers would also like more predictability in the exam process, more precision as to how the ratings are determined, and a more consistent application of the regulations across agencies and even across examiners within each agency to minimize discrepancies from one exam to the next.[21]

The OCC is now seeking to modernize the CRA in an effort to "help regulated financial institutions more effectively serve the convenience and needs of their communities by encouraging more lending, investment, and activity where it is needed most; evaluating CRA activities more consistently; and providing greater clarity regarding CRA-qualifying activities."[22] The OCC believes that "[a] transformed or modernized framework also would facilitate more timely evaluations of bank CRA performance, offer greater transparency regarding ratings, promote a consistent interpretation of the CRA, and encourage increased community and economic development in low- and moderate-income (LMI) areas."[23]

B. Current CRA Regulatory Approach

Federal regulators, including the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (FDIC), conduct

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18. Barbara S. Mishkin, *Treasury Issues Recommendations for Modernizing the CRA*, CONSUMER FINANCE MONITOR (Apr. 5, 2018), https://www.consumerfinancemonitor.com/2018/04/05/treasury-issues-recommendations-for-modernizing-the-cra.

19. Id.

20. Mark A. Willis, *It's the Rating, Stupid: A Banker's Perspective on the CRA*, FED. RESERVE BANK OF S.F., https://www.frbsf.org/community-development/files/its_rating_stupid1.pdf (last visited Apr. 29, 2019).

21. *Id.*

22. Reforming the Community Reinvestment Act Regulatory Framework, 83 Fed. Reg. 45,053 (Sept. 5, 2018) (to be codified at 12 C.F.R. Pts. 25, 195).

23. *Id.*

CRA evaluations on large banks under their jurisdiction every three years, with an extended examination cycle for smaller banks.

Banks with different levels of assets have varying levels of evaluation of CRA performance. Large banks are subject to three tests: (1) the Lending Test, which is the number and amount of loans in the institution's assessment area, record of lending to borrowers of all income levels, number, amount, complexity and innovativeness of community development loans, and flexible lending practices; (2) the Investment Test, which assesses the dollar amount, complexity and responsiveness of qualified community development assessments that benefit a bank's assessment areas; and (3) the Service Test, which examines the availability and effectiveness of retail banking services in the designated assessment areas and the extent of community development services provided.[24] These tests are meant to focus on the target audience of LMI individuals and communities underserved by the nation's financial system.[25]

At the conclusion of the CRA evaluation a public report is provided, which presents the regulatory agency's conclusions regarding a particular bank's performance in lending, investment, and service. It also provides a rating of the bank's performance as outstanding, satisfactory, needs improvement, or substantial noncompliance.[26] A less than satisfactory rating may affect a bank's ability to expand its assets. An institution's CRA record is considered in applications for mergers and acquisitions and for expanding the number of branches. However, few banks have been subject to this penalty, and in 2014, only 2% of banks received low ratings.[27]

C. Disability and the CRA

Despite disproportionately high poverty rates among people with disabilities, the CRA did not mention this population in its first publication of regulations in 1978, nor in any of its subsequent amendments or agency published interpretations.[28] While the current CRA does not explicitly reference any specific sub-populations of the LMI population, banks must be well aware that the CRA was enacted as a response to prior discriminatory lending practices, such as redlining in African American neighborhoods. The Federal Financial Institutions Examinations Council, which provides data for banks to identify the LMI neighborhoods in their footprint, includes data on race but does not include information on disability.

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24 . *Community Reinvestment Act*, P'SHIP FOR PROGRESS, https://www.fedpartnership.gov/bank-life-cycle/topic-index/community-reinvestment-act (last visited Apr. 27, 2019).

25. *Id.*

26. 12 U.S.C. § 2906(b)(1)(A) (2012).

27. JOSH SILVER, NAT'L CMTY. REINVESTMENT COAL., THE COMMUNITY REINVESTMENT ACT AND GEOGRAPHY: HOW WELL DO CRA EXAMS COVER THE GEOGRAPHICAL AREAS THAT BANKS SERVE? 6 (2017), https://ncrc.org/wp-content/uploads/2017/05/cra_geography_paper_050517.pdf.

28. *See generally* FED. FIN. INST. EXAMINATION COUNCIL, A GUIDE TO CRA DATA COLLECTION AND REPORTING (2016), https://www.ffiec.gov/cra/pdf/2015_cra_guide.pdf.

Without identifying people with disabilities as a part of LMI populations, banks will likely overlook the specific needs of this population. For example, they may miss the unique challenges of providing housing that is both accessible and affordable. They may fail to ensure their retail banking apps meet the accessibility needs of people with a variety of functional limitations. Their financial education programs may not appreciate the complexities of making informed financial decisions faced by people with disabilities. Without specifying this population in a modernized CRA, regulators will not consider whether the needs of people with disabilities are being met when evaluating bank performance in lending practices, the availability and effectiveness of retail banking services, and related community development investments that impact this large segment of the underserved population.[29]

1. Historical Context of the CRA

It is important to consider the social and political context of people with disabilities in America at the time the CRA was signed into law, some forty years ago.[30] Children with disabilities, based on a new federal law, were first allowed to attend their neighborhood schools, ending historical patterns of exclusion.[31] Individuals with disabilities, who had committed no crime, were incarcerated in state and regional mental institutions (totaled more than 500,000 individuals nationwide).[32] There was no articulated or constitutionally-protected right to humane care and treatment.[33] There was no discussion or expectation of community life and participation in the workforce or the financial mainstream.[34]

Twenty-eight years ago, bipartisan support approved the Americans with Disabilities Act (ADA), signed by a Republican president, George Herbert Walker Bush.[35] On July 26, 1990, President Bush, at the signing of the ADA, made this

29. *See generally id.*

30. *See, e.g.*, Peter Blanck, *The First "A" in the ADA: And 25 More "A"s Toward Equality for Americans with Disabilities*, 4(1) INCLUSION 46, 46–51 (2016); Larry Logue & Peter Blanck, *Heavy Laden: Union Veterans, Psychological Illness, and Suicide*, CAMBRIDGE DISABILITY L. & POL'Y (2018); Karrie Shogren et al., *Supported Decision-Making: Theory, Research, and Practice to Enhance Self-Determination and Quality of Life*, CAMBRIDGE DISABILITY L. & POL'Y (2019).

31. *See generally* BLANCK ET AL., *supra* note 3; Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355.

32. *See, e.g.*, Peter Blanck, *Disability in Prison*, 26 U. S. CAL. INTERDISC. L. J. 309, 309–22 (2017); *Deinstitutionalization: A Psychiatric "Titanic"*, FRONTLINE (May 10, 2005), https://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html.

33. *Advancements in Treating Mental Health Disorders: A Historical Timeline*, THE RECOVERY VILL., https://www.palmerlakerecovery.com/co-occurring-disorders-treatment-manual/historical-timeline (last visited Apr. 27, 2019).

34. *Id.*; *see also* Peter Blanck, *Why America is Better Off Because of the Americans with Disabilities Act and the Individuals with Disabilities Education Act*, TOURO L. REV. (forthcoming 2019).

35. *Remarks of President George Bush at the Signing of the Americans with Disabilities Act*, EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/eeoc/history/35th/videos/ada_signing_text.html (last visited Apr. 27, 2019).

statement of intent: "Together, we must remove the physical barriers we have created and the social barriers that we have accepted. For ours will never truly be a prosperous nation until all within it prosper."[36]

Since the time of widespread institutionalization, societal norms have changed and people with disabilities are more included in their communities.[37] Currently, record numbers of students with disabilities are graduating high school and moving on to higher education.[38] In the past two years, the Bureau of Labor Statistics shows increases in workforce participation for individuals with disabilities.[39] Still, two-thirds of working-age adults with disabilities are not participants in the labor force, economic participation for people with disabilities lags, and some public policies trap people with disabilities in poverty, forcing them to choose between receiving public benefits and saving for the future.[40]

New policies aim to ameliorate economic and social disparities. For example, with the passage of the Achieving A Better Life Experience (ABLE) Act, some eight million individuals with disabilities and their families may establish an ABLE account through one of forty state programs and many, for the first time, become savers and investors.[41] They now have a choice of strategies to grow their savings contributions tax-free, without fear of losing eligibility for diverse public benefits, including healthcare, Supplemental Security Income (SSI) payments, housing, and food assistance.[42] It is expected that over the next ten years, assets under management will grow to more than two hundred billion dollars.[43] However, less than 1% of eligible individuals and families have so far opened ABLE tax-advantaged savings accounts.[44]

Despite passage of legislation aimed at people with disabilities such as the ABLE Act, a broader and systemic set of barriers inherent to the financial services industry still create limitations to financial inclusion. CRA modernization is overdue for some twenty-two million working-age Americans with disabilities and one in five families with a member with a disability, including individuals over the age of sixty-five.[45] To address and assess the critical changes needed, it is

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36. *Id.*

37. *See* PETER BLANCK, THE AMERICANS WITH DISABILITIES ACT AND THE EMERGING WORKFORCE: EMPLOYMENT OF PEOPLE WITH MENTAL RETARDATION (1998).

38. Shaun Heasley, *Graduation Rate Improves for Students with Disabilities*, DISABILITY SCOOP (Dec. 5, 2017), https://www.disabilityscoop.com/2017/12/05/graduation-rate-improves/24485.

39. *Persons with a Disability: Labor Force Characteristics Summary*, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR (Feb. 26, 2019), https://www.bls.gov/news.release/disabl.nr0.htm.

40. *Id.*; David C. Stapleton, Bonnie L. O'Day, Gina A. Livermore & Andrew J. Imparato, *Dismantling the Poverty Trap: Disability Policy for the Twenty-First Century*, 84(4) THE MILBANK Q. 701 (2006), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2690299/pdf/milq0084-0701.pdf.

41. Michael Morris, Christopher Rodriguez & Peter Blanck, *ABLE Accounts: A Down Payment on Freedom*, 4 INCLUSION 21, 21 (2016); GOODMAN & MORRIS, *supra* note 2, at 2.

42. GOODMAN & MORRIS, *supra* note 2, at 2.

43. *Id.* at 8.

44. *Id.*

45. *Id.*

important to understand the population of people with disabilities, their likelihood to be LMI, and their significant economic and social challenges.

III. People with Disabilities

The term "disability" describes a diverse group of individuals.[46] A person's disability may be related to vision, hearing, movement, communication, cognition, or psychosocial issues, range from mild to severe, or constant or episodic.[47] A disability may occur at birth, old age, or anytime in between. It may be congenital or can arise because of chronic illness, injury, malnutrition, or aging.[48] Americans with disabilities are the largest minority group in the nation, comprising between 12% and 20% of the U.S. population (i.e., forty to fifty-seven million people).[49] One in five families has a family member with a disability.[50]

"The diversity of types and severity of disability, age of onset, income and race have significant implications for developing strategies that promote financial inclusion."[51] A wheelchair user faces different access issues than someone who is blind or who has a cognitive impairment. An individual born with a disability may have different needs than one who acquires their disability later in life after they have been educated, gained experience in the workforce, and accumulated assets. Low-income individuals with disabilities may need a different set of services than those with higher incomes. Individuals of color with disabilities may face negative stereotypes based upon either their disability or minority status, or both.[52]

A. Economic Challenges of People with Disabilities

Many people with disabilities face significant barriers to financial stability, and low or unstable income and inadequate health insurance coverage complicate

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46. *See* BLANCK ET AL., *supra* note 3. *See generally* Blanck, *supra* note 3; Peter Blanck, *The Burton Blatt Institute: Centers of Innovation on Disability at Syracuse University*, 56 SYRACUSE L. REV. 201 (2006).

47. Americans with Disabilities Act Amendments Act of 2008, *supra* note 3. *See generally* Dilip Jeste, Graham Eglit, Barton Palmer, Jonathan Martinis, Peter Blanck & Elyn Saks, *Supported Decision Making in Serious Mental Illness*, 81 PSYCHIATRY: INTERPERSONAL & BIOLOGICAL PROCESSES 28 (2018).

48. *Disabilities: Causes, Diagnosis and Management*, AM. INT'L MED. UNIV. (Feb. 25, 2017), https://www.aimu.us/2017/02/25/disabilities-causes-diagnosis-and-management.

49. LEWIS KRAUS, 2016 DISABILITY STATISTICS ANNUAL REPORT (2017), https://disabilitycompendium.org/sites/default/files/user-uploads/2016_AnnualReport.pdf.

50. ADA NAT'L NETWORK, PEOPLE WITH DISABILITIES: AMERICA'S LARGEST MINORITY (2012), http://www.adainfo.org/sites/default/files/Leadership-Network/Modules-1-5/5a-America-largMinorityFINAL.pdf.

51. NANETTE GOODMAN, BONNIE O'DAY & MICHAEL MORRIS, FINANCIAL CAPABILITY OF ADULTS WITH DISABILITIES 5 (2017), https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/01/ndi-finra-report-2017.pdf.

52. *See generally* Peter Blanck, *Justice for All? Stories about Americans with Disabilities and their Civil Rights*, 8 J. OF GENDER, RACE & JUST. 1 (2004).

financial decisions. Individuals with disabilities often have a tenuous connection with the labor force because they tend to be employed in low-wage and temporary jobs. They are often the "first fired and last hired" in economic downturns. For some, disability is only one of several stigmas they face. The nexus of race, poverty and disability adds barriers to financial stability for large segments of the disability community. Economic and social marginalization from racism, classism, ableism and other forms of discrimination create challenges to financial capability. For example, the poverty rate among adults with disabilities is more than twice the rate for adults with no disabilities (27% compared with 12%), and nearly 40% of African Americans and 29% of Latinos with disabilities live in poverty.[53]

LMI populations often face significant economic challenges. For people with disabilities, these challenges are magnified by the extra costs associated with the disability, such as unreimbursed health care expenditures, extra costs of housing, transportation, and assistive technology, and limited access to the labor market.[54] In some cases, the disability of a family member affects the ability of other family members to work for pay.[55]

National Disability Institute (NDI), in cooperation with the FDIC and the Financial Industry Regulatory Authority Investor Education Foundation (FINRA Foundation), finds that people with disabilities are a large segment of the LMI population and lag behind other LMI populations in the areas that the CRA is meant to address.[56]

Under the lending test, the CRA charges banks with providing credit to LMI individuals, yet almost one-quarter of working-age people with disabilities have an unmet need for credit. More than 40% turn to non-bank, often predatory, loan options such as pawnshops, rent-to-own programs, payday loans, refund anticipation loans or auto title loans to meet their credit needs. In addition to charging high interest rates, these types of loans do not report positive payment behavior to the credit agencies and thus do not help users to establish a credit history that would enable them to qualify for less expensive mainstream credit in the future.[57]

Under the service test, the CRA charges banks with delivering retail banking services and providing community development services including teaching financial education curricula for LMI individuals. Yet, 18% of people with disabilities are unbanked compared to 7% of people without disabilities and

53. GOODMAN ET AL., *supra* note 51, at 1.

54. *See* Kelly Edmiston, *Challenges Remain for the LMI Population*, FED. RESERVE BANK OF KAN. CITY (Oct. 2, 2018), https://www.kansascityfed.org/publications/community/connections/articles/2018/q22018/lmi%2010%202018.

55. GOODMAN ET AL., *supra* note 51, at 9.

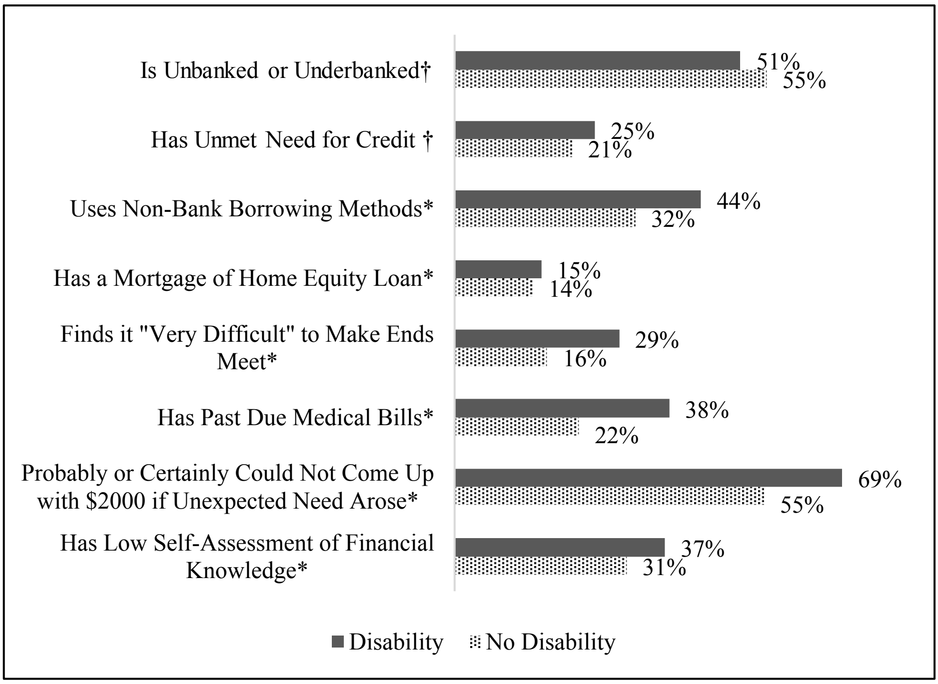
56. *See, e.g.*, *infra* Figure 1.

57. Lisa Rice & Deidre Swesnik, *Discriminatory Effects of Credit Scoring on Communities of Color*, 46 SUFFOLK U. L. REV. 935, 950 (2013), http://suffolklawreview.org/wp-content/uploads/2014/01/Rice-Swesnik_Lead.pdf.

another 28% are underbanked meaning they have a bank account but turn to potentially predatory non-bank services.[58] People with disabilities are also more in need of financial education services, compared to those without disabilities; they are almost three times (23% versus 9%) more likely to have extreme difficulty paying bills and almost half are forced to skip medical treatments, because of cost.[59]

Under the investment test, the CRA charges banks with providing investments and grants for community development, including affordable housing. Yet, increased competition for affordable and subsidized housing coupled with an inadequate supply of accessible housing is creating an ever-worsening affordability gap for low-income renters with disabilities.[60]

FIGURE 1: INDICATORS OF FINANCIAL INCLUSION AND FINANCIAL STRESS BY DISABILITY STATUS[61]



58. BD. OF GOVERNORS OF THE FED. RESERVE SYS. ET AL., COMMUNITY REINVESTMENT ACT: EXAMINATION PROCEDURES FOR SMALL INSTITUTIONS 15, 28 (Feb. 2006).

59. GOODMAN ET AL., *supra* note 51, at 3.

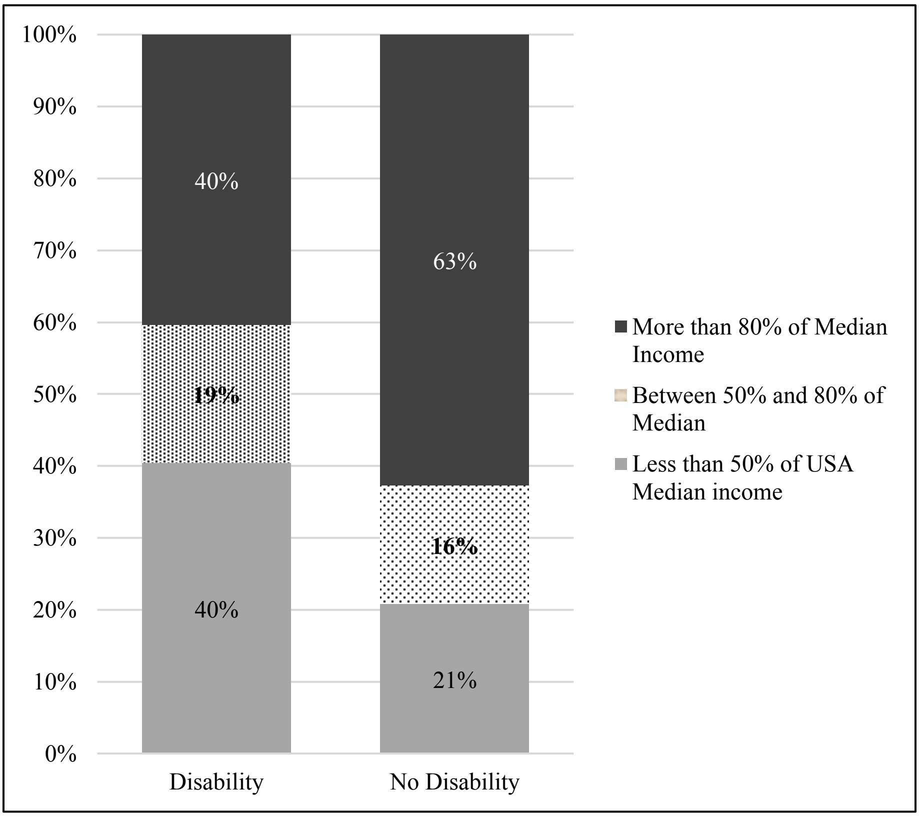
60. *Priced Out in the United States*, TECH. ASSISTANCE COLLABORATIVE (Dec. 22, 2018), http://www.tacinc.org/knowledge-resources/priced-out-v2.

61. † NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS, FDIC (2015); * INVESTOR EDUCATION FOUNDATION: NATIONAL FINANCIAL CAPABILITY STUDY, FINRA (2015).

B. People with Disabilities in the LMI Population

More than 60% of adults with disabilities are considered LMI, which means their household income is less than 80% of the median household income (*see infra* Figure 2).[62] Other data indicate that people with disabilities make up approximately 12% of the U.S. working-age population, yet they account for more than 40% of those living in long-term poverty.[63]

FIGURE 2: INCOME DISTRIBUTION AS PERCENTAGE OF U.S. MEDIAN HOUSEHOLD INCOME BY DISABILITY STATUS[64]



62. *See 2017 American Community Survey Public Use Microdata Sample for United States [SAS Data File]*, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_pums_sas_2017&prodType=document (follow "United States Population Records" hyperlink) (last visited Apr. 27, 2019).

63. Peiyun She & Gina Livermore, *Long-Term Poverty and Disability Among Working-Age Adults*, 19 J. DISABILITY POL'Y STUD. 244, 244–56 (2009).

64. *See 2017 American Community Survey Public Use Microdata Sample for United States [SAS Data File]*, *supra* note 62; *see also* GOODMAN ET AL., *supra* note 51, at 10.

The relationship between poverty and disability is well documented.[65] Disability gives rise to poverty by limiting employment possibilities and earnings (*see infra* Figure 3).[66] It imposes additional costs on families, such as medical bills, transportation, modifications to their home, and the cost of support from personal assistants.[67] It often reduces the labor force participation of other family members.[68]

At the same time, poverty gives rise to disability.[69] Children living in poverty are more likely to have conditions that lead to disability, such as asthma, chronic illness, lead poisoning, learning problems, and low birthweight.[70] People in more physically demanding low-income jobs are more likely to suffer workplace illnesses and injuries.[71] People in poverty are less able to treat disabling conditions and to mitigate their impact.[72] Limited access to high quality medical care and early intervention may mean that a condition goes untreated longer, increasing the potential for more severe long-term effects.[73] Inadequate educational opportunities also have long-term impacts including higher dropout rates from high school and college and fewer job opportunities.[74]

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65. *Id.* at 7.

66. *Id.* at 7–8.

67. *Id.* at 7.

68. CONG. BUDGET OFFICE, FACTORS AFFECTING THE LABOR FORCE PARTICIPATION OF PEOPLE AGES 25 TO 54 (2018), https://www.cbo.gov/publication/53452.

69. *See generally* Rebecca Vallas & Shawn Fremstad, *Disability is a Cause and Consequence of Poverty*, TALK POVERTY (Sept. 19, 2014), https://talkpoverty.org/2014/09/19/disability-cause-consequence-poverty.

70. James M. Perrin, L. Elizabeth Anderson & Jeanne Van Cleave, *The Rise in Chronic Conditions Among Infants, Children, and Youth Can Be Met with Continued Health System Innovations*, 33 HEALTH AFFAIRS 2099 (2014), https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2014.0832.

71. Sarah A. Burgard & Katherine Y. Lin, *Bad Jobs, Bad Health? How Work and Working Conditions Contribute to Health Disparities*, NCBI (Aug. 1, 2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3813007.

72. *Vulnerable Populations: Who Are They?*, AM. J. OF MANAGED CARE (Nov. 1, 2006), https://www.ajmc.com/journals/supplement/2006/2006-11-vol12-n13suppl/nov06-2390ps348-s352.

73. *Id.*

74. *See generally* MARTHA L. THURLOW & DAVID R. JOHNSON, CAL. DROPOUT RESEARCH PROJECT, THE HIGH SCHOOL DROPOUT DILEMMA AND SPECIAL EDUCATION STUDENTS (2011), http://cdrpsb.org/researchreport18.pdf.

FIGURE 3: SELECTED CHARACTERISTICS OF ADULTS WITH DISABILITIES[75]

	With Disability Percentage (Number)	**No Disability Percentage**
Employment Status (working age 18–65)		
Employed	35% (7 million)	75%
Unemployed (actively looking for work)	5% (1 million)	5%
Not in Labor Force	61% (13 million)	20%
Educational Attainment (population over age 25)		
Less than high school graduate	24% (8 million)	11%
High school graduate (includes equivalency)	34% (12 million)	26%
Some college or associate degree	27% (9 million)	30%
Bachelor's degree or higher	15% (5 million)	33%

Because people with disabilities are more likely than those without disabilities to have low- or moderate-incomes, they make up a sizeable portion of LMI neighborhoods. Using the area in and around Chicago, Illinois as an example, Maps 1 and 2 *infra* show the LMI neighborhoods (Map 1: LMI neighborhoods colored in pink) as defined by the Federal Financial Institutions Examination Council (FFIEC), compared to the prevalence of disability in those Census Tracts (Map 2: colored in dark blue).[76] LMI Census Tracts show the tendency for higher densities of people with disabilities.[77]

Also using examples from LMI areas in Chicago, Figure 4 *infra* shows that working-age people with disabilities are often disproportionately represented in those neighborhoods. Based on data from the American Community Survey (ACS) in Figure 4, adults with disabilities make up less than 11% of the population in the

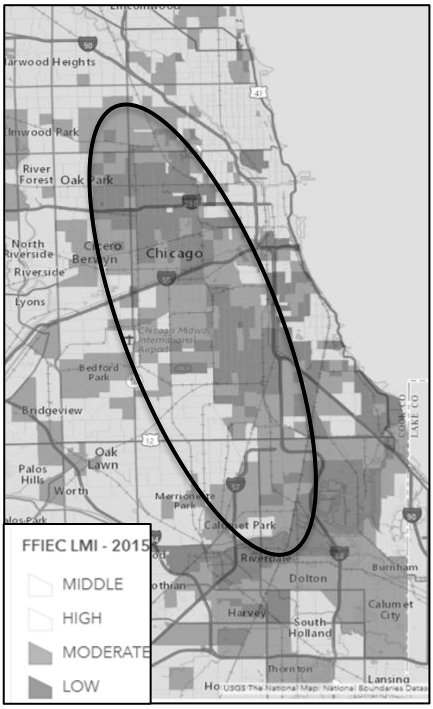
75. GOODMAN ET AL., *supra* note 51, at 11.

76. *See CRA_2015_Update*, ARCGIS REST SERVICES DIRECTORY, http://services1.arcgis.com/R3X0UpwHT1T712Oi/ArcGIS/rest/services/CRA_2015_Update/FeatureServer (follow "View In: ArcGIS.com Map") (last visited Apr. 27, 2019).

77. *Id.*

city of Chicago and the Chicago Metropolitan Statistical Area, yet they make up 12% to 17% of some LMI neighborhoods.[78]

MAP 1 (LEFT): LMI NEIGHBORHOODS IN CHICAGO AREA[79]
MAP 2 (RIGHT): PERCENTAGE WITH DISABILITY[80]



78. *See 2012–2016 American Community Survey 5-year Public Use Microdata Samples for Illinois [SAS Data File]*, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_pums_sas_2012_2016&prodType=document (follow "Illinois Population Records" hyperlink) (last visited Apr. 27, 2019).
79. *Id.* For a full-color version of this map please contact ngoodman@ndi-inc.org.
80. *Id.* For a full-color version of this map please contact ngoodman@ndi-inc.org.

FIGURE 4: WORKING-AGE DISABILITY AS PERCENTAGE OF LMI POPULATION IN SELECT HIGH LMI AREAS IN CHICAGO[81]

Area	Working-age LMI Population	Percentage of Working-age LMI Population with Disabilities
Chicago City (South): Auburn Gresham, Roseland, Chatham, Avalon Park & Burnside	36,292	17.2%
Chicago City (South): South Shore, Hyde Park, Woodlawn, Grand Boulevard & Douglas	38,272	16.1%
Chicago City (West): Austin, Belmont Cragin & Montclare	54,175	15.1%
Chicago City (South): South Chicago, Pullman, West Pullman, East Side & South Deering	35,189	14.5%
Chicago City (West): North & South Lawndale, Humboldt Park, East & West Garfield Park	66,567	13.5%
Chicago City (South): Chicago Lawn, Englewood/West Englewood & Greater Grand Crossing	48,555	11.9%

C. Disability Exclusion from the Financial System

Until their issues are intentionally addressed adequately, people with disabilities will be unintentionally excluded from the financial system and overlooked as a target of community development activities. Financial institutions have not specifically or fully targeted LMI populations with disabilities as part of investments in the development of workforce, technology infrastructure, affordable accessible housing, or financial capability, all aspects of community development addressed by the CRA.[82]

81. This Figure reflects the authors' analysis of the 2012–2016 American Community Survey Public Use Microdata. *See 2012–2016 American Community Survey Public Use 5-year Microdata Sample for Illinois [SAS Data file]*, *supra* note 80.

82. *History of the CRA*, *supra* note 11.

As a result of the present situation, housing development for LMI often critically miss the unique challenges of providing housing that is both accessible and affordable.[83] "FinTech" (i.e., financial technology) apps lack requirements to meet the accessibility needs of people with different types of functional limitations.[84] Financial capability programs rarely have counselors trained to understand the complexities of making informed financial decisions based on the interrelationships between income, assets, and limitations imposed by means-tested public benefits.[85]

Technological advances in the delivery of banking services are changing consumer behavior and preferences.[86] Research on the financial behavior of people with disabilities demonstrates that people with disabilities are lagging behind in their use of FinTech and internet-based products and services often because the services are either not accessible or not affordable.[87] CRA credit should be awarded to financial institutions that seek to close the "digital divide" and improve financial literacy for LMI individuals with disabilities and their family members, within and outside their assessment areas.

Without a focus on technology access and affordability, low-and moderate-income populations will fall further behind.[88] For people with disabilities, this means FinTech products must insure that information and communication technology (ICT) is fully accessible. This includes insuring that the technology has a full range of accessibility features that allows it to be navigated by people with a variety of disabilities. For example, it needs to be navigable by screen readers used by people who are blind, captioned videos that are accessible to people with hearing impairments and materials in simple language accessible to people with intellectual or learning disabilities. In the absence of robust accessibility features,

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83. *See* GABRIELLA CHIARENZA, FED. RESERVE BANK OF S.F., CHALLENGES OF AFFORDABLE HOUSING IN A NEW ERA OF SCARCITY, 25 CMTY. INVESTMENTS 2 (2013), https://www.frbsf.org/community-development/files/Chiarenza_CISP13.pdf.

84. Maria Lajewski, *Good Design is Accessible Design: Fintech's Reality Check*, FIN. SOLUTIONS LAB (Apr. 6, 2017), http://finlab.cfsinnovation.com/insights/04-2017/good-design-is-accessible-design-a-reality-check-for-fintech; *see generally* Peter Blanck, *The Struggle for Web eQuality by Persons with Cognitive Disabilities*, 32 BEHAV. SCI. & THE L., (2014); PETER BLANCK, EQUALITY: THE STRUGGLE FOR WEB ACCESSIBILITY BY PERSONS WITH COGNITIVE DISABILITIES (2014) [hereinafter EQUALITY].

85 . FINANCIAL CAPABILITY, OFFICE OF THE COMPTROLLER OF THE CURRENCY (2019), https://www.occ.gov/topics/community-affairs/publications/fact-sheets/pub-fact-sheet-financial-capability-jan-2014.pdf.

86. *Id.*; EQUALITY, *supra* note 84.

87. Jonathan Avila, *What You Need to Know About Digital Accessibility*, AM. BANKERS ASS'N. BANK MARKETING (Aug. 2, 2018), https://ababankmarketing.com/insights/what-you-need-to-know-about-digital-accessibility; Kristen Berman & Joanne Yeh, *BankThink Fintech's Achilles Heel: Reaching Low-income Consumers*, AM. BANKER (Oct. 16, 2017), https://www.americanbanker.com/opinion/fintechs-achilles-heel-reaching-low-income-consumers.

88. GOODMAN & MORRIS, *supra* note 2.

this important component of LMI customers will not have equal opportunity to use mainstream banking innovations.[89]

Online retailers learned the impact of failing to insure accessibility. Years ago, Target.com launched its website without ensuring their website was accessible to people with disabilities, particularly those who are blind.[90] The company was sued and eventually settled in a landmark decision, promising to ensure that its website met online accessibility guidelines and its employees would attend periodic training to ensure website accessibility stay current.[91] Amazon.com likewise entered into a settlement due to the inaccessibility of its website[92] in which Amazon.com agreed to make its website and affiliated websites fully accessible to people with disabilities who use assistive technology to navigate internet websites.[93]

Recently, public and private sector organizations have developed strategies to help lower-income populations improve their "financial literacy" and "financial capability" to better manage their financial lives, build and preserve assets, reduce their economic vulnerability and increase their financial well-being. These strategies combine elements of financial education with motivation strategies and one-on-one or group support. Most financial capability programs cover key issues such as budgeting, saving, debt, credit, taxes and financial products, which often are important to all populations. However, unless employees and staff are trained, they often overlook issues specific to people with disabilities such as physical, sensory, and cognitive accessibility, managing public benefits, using available savings mechanisms, and control of financial decision-making.[94]

IV. MODERNIZING THE CRA

OCC identified three components to their modernization effort: (1) appropriately defining the target population, (2) expanding the range of activities that qualify under the CRA, and (3) strengthening the evaluation criteria. We

89. *Id.*

90. *See generally* Nat'l Fed'n of the Blind v. Target Corp., 452 F. Supp. 2d 946 (N.D. Cal. 2006); EQUALITY, *supra* note 84; Peter Blanck, *Web Accessibility for People with Cognitive Impairments: A Legal Right?*, GLOBAL INCLUSION: DISABILITY, HUMAN RIGHTS, & INFORMATION TECHNOLOGY 41–57 (Michael Stein & Jonathan Lazar eds., 2017).

91. *See National Federation of the Blind (NFB), et al. v. Target Corporation*, DISABILITY RIGHTS ADVOCATES, https://dralegal.org/case/national-federation-of-the-blind-nfb-et-al-v-target-corporation (last visited Apr. 22, 2019).

92. *Amazon.com Structured Negotiations*, DISABILITY RIGHTS ADVOCATES, https://dralegal.org/case/amazon-com-structured-negotiations (last visited Apr. 27, 2019).

93. *Id.*

94. *See Information Brief: Addressing the Needs of Americans with Disabilities in Financial Capability Programs*, NAT'L DISABILITY INST. & FINRA INVESTOR EDUC. FOUND. (May 2018), https://www.realeconomicimpact.org/docslisting.aspx.

propose adding a fourth component (4) educating stakeholders. It is critical that disability be considered in each of these components.

A. Defining the Target Population

Currently, banks are required to focus their CRA activities in their "footprint," defined as the geographic area in which they have branches and deposit-taking ATMs.[95] As banks offer an expanding array of online services, their customers often live outside this geographic area. As a result, in important ways the footprint concept is outdated. Thus, whether the CRA moves away from the geographic definition of community, the target population must specifically include the recognition that LMI individuals is inclusive of individuals with disabilities to encourage banks to serve entire LMI communities.[96]

Defining community more broadly outside the traditional physical footprint of a bank further highlights the need to insure that online services and FinTech products are affordable, accessible, and responsive to the needs of people with disabilities.[97] Investment in closing the digital divide and improving digital financial literacy will help mitigate the possibilities that LMI populations with and without disabilities are left further behind.[98] As a result, particularly innovative and impactful activities that increase participation of LMI individuals with disabilities in mobile banking and access and use of FinTech products and services deserve additional consideration during CRA evaluations.[99] Should the CRA continue to use the geographic definition of the target population, banks need to recognize that information is available to identify concentration in geographic areas of LMI and underserved populations with disabilities.[100]

B. Expanding CRA Qualifying Activities

The CRA defines "Community Development" (CD) to include: (1) affordable housing for LMI individuals; (2) community services targeted to LMI individuals; (3) activities that promote economic development by providing financing for small businesses or small farms; (4) activities that revitalize or stabilize LMI geographies, distressed or underserved non-metro middle-income areas, or designated disaster areas; and (5) loans, investments, and services that support,

95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.*
100. *Id.*

enable, or facilitate Neighborhood Stabilization Program (NSP) eligible activities in designated target areas.[101]

This definition should be modified to specify that housing investment be targeted to projects that are affordable and accessible for all, that financial education and counseling address the specific needs of people with disabilities, and that consumer lending includes lending for specific disability-related needs such as assistive technology loans, home, and vehicle modifications.

The definition may also be expanded to include mobile financial services and the internet, which have quickly become dominant channels for banking over physical locations.[102] As we have discussed, there are multiple barriers to full participation for LMI populations, including individuals with disabilities.[103] There are challenges of a technical level of access in terms of broadband access, because of location and/or cost.[104] There are challenges of financial and digital literacy in terms of a fully usable and functional experience.[105] Community development activities need to recognize the rapid evolution of financial services that embrace the need to improve access and accessibility and financial and digital literacy.[106] CRA performance should provide incentives for banks to support infrastructure development that includes improved information and community technologies that ensure internet access in addition to availability of affordable hardware, software, and data plans.[107]

Expanding financial education and literacy, including digital literacy, among adults with disabilities is critical to insuring that people with disabilities can make full use of investments in infrastructure and accessible online tools. The modernized CRA should encourage banks to support programs and organizations that provide financial education, coaching, and counseling. [108]

For LMI individuals with disabilities, access to credit remains a significant barrier.[109] In the 2017 report from FDIC that offers the results of their National Survey of Unbanked and Underbanked Households, "four in ten working-age [households with a disability] (40.4 percent) had no mainstream credit, compared with 15.3 percent of working-age [households with no disability]."[110] In order to

101. 12 C.F.R. § 25.12(g)(1)–(4) (2019); *See Transcript*, COMMUNITY REINVESTMENT ACT JOINT PUBLIC HEARING (Aug. 12, 2010), https://www.federalreserve.gov/consumerscommunities/files/full_transcript_cra_20100812.pdf. (discussing the effectiveness of the regulations, and ways to expand the definition of community development).

102. *Id.* at 6.

103. *Id.* at 77.

104. *Id.* at 16.

105. *Id.* at 53.

106. *Id.*

107. *Id.* at 64.

108. *Id.* at 65.

109. *Id.* at 77.

110. *2017 Household Survey Results: The 2017 National Survey of Unbanked and Underbanked Households*, FED. DEPOSIT INS. CORP., https://www.economicinclusion.gov/surveys/2017household (last

reduce this disparity, small dollar loans have proven to be a positive way to improve credit history and make low and moderate-income individuals, including those with disabilities, more credit-worthy.[111]

The Pennsylvania Assistive Technology Foundation (PATF) documents the positive experiences of LMI individuals with disabilities utilizing small dollar loans to improve their credit score and access needed assistive technology.[112] PATF is one of only four Community Development Financial Institutions (CDFIs) in the country that offer assistive technology loans in collaboration with bank partnerships.[113] It is an example of a CRA qualifying activity that could be more widely replicated by other banks nationwide.

C. Strengthening Evaluation Criteria

Evaluation frameworks need to involve extensive community group participation in the development, testing, and refinement of metrics with qualifying activities complemented by community participation in the review process that includes all segments of the LMI community, including LMI populations with disabilities. Such participation should include opportunity for written comments on bank performance on each metric that are then shared with regulators. Of equal importance is the documentation of bank outreach efforts to engage community partners in all segments of the LMI population.

CRA-related data collection, recordkeeping, and reporting should support the tracking, monitoring, and comparison of individual bank performance levels over time and a comparative analysis of banks in the same assessment areas.[114] With the emergence of mobile banking and FinTech products and services, it is important that data collection, recordkeeping, and reporting separate CRA qualifying activities in the traditional physical footprint of neighborhood branches from larger geographic areas, where potential LMI customers are reached through mobile banking and FinTech.[115] If we are to examine systematically the impact of CRA activity on LMI neighborhoods and specific populations, data must be

visited Apr. 27, 2019). The FDIC uses the terms "disabled households" and "nondisabled households." The authors have edited this terminology here.

111. Christiana Nielson, *How to Improve Your Credit with a Personal Loan*, VETERANS UNITED NETWORK (May 22, 2017), https://www.veteransunited.com/money/how-to-improve-your-credit-with-personal-loan.

112. *What We Do*, PA. ASSISTIVE TECH. FOUND., https://patf.us/what-we-do (last visited Apr. 27, 2019).

113. ALTERNATIVE FINANCING PROGRAMS, https://patf.us/wp-content/uploads/2019/01/Alternative-Financing-Programs-List-January-2019.pdf (last visited Apr. 22, 2019); *CDFI Certification*, CMTY. DEV. FIN. INST. FUND, https://www.cdfifund.gov/programs-training/certification/cdfi/Pages/default.aspx (last visited Apr. 27, 2019).

114. COMMUNITY REINVESTMENT ACT JOINT PUBLIC HEARING, *supra* note 101.

115. GOODMAN & MORRIS, *supra* note 2.

disaggregated to document progress for LMI individuals with diverse sets of characteristics, including with disabilities.[116]

D. Educating Stakeholders

In a modernized CRA framework, regulators, financial institutions, and potential community partners need to be educated on the data and analytics that provide empirical evidence that people with disabilities are being left out of the financial mainstream.[117] These data sources will allow banks and regulators to identify areas with LMI populations with disabilities, to focus their investments, lending, and services to be responsive to this target audience.[118] Disability community partners will need to be educated about the purposes of CRA and opportunities for effective partnerships with financial institutions. Affordable housing developers, small businesses, Community Development Financial Institutions (CDFIs), community services targeted to LMI individuals, financial education and counseling programs, and workforce development programs need to modify their frameworks to be inclusive and responsive to the unique needs of LMI populations with disabilities.[119]

V. IMPLEMENTING A DISABILITY FRAMEWORK FOR CRA EVALUATION

A. Disability Framework for CRA Evaluation

We propose that the modernization of the CRA regulatory framework directly address the needs of LMI individuals with disabilities. CRA modernization is overdue for Americans with disabilities, who are at the bottom of the economic ladder, remain disproportionately unemployed and underbanked, and who continue to lack access to affordable and accessible financial products and services.[120]

Neither the 1978 CRA, nor any of the subsequent amendments or agency guidelines, consider people with disabilities as a part of LMI populations despite their disproportionately high poverty rate in all geographic areas nationwide.[121] This leads to two prime challenges:

1. Because people with disabilities are not specifically mentioned in the regulation, there is no evaluation of bank performance regarding

116. *Id.*

117. *Disability Datasets*, CTRS FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/ncbddd/disabilityandhealth/datasets.html (last visited Apr. 27, 2019).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

discriminatory lending practices, review of availability and effectiveness of retail banking services to meet this specific population's needs, and exploration of community development investments that target this specific audience; and[122]

2. Financial institutions are not encouraged to direct their community development, investment, and lending initiatives to directly service and provide opportunities for benefit to this population.[123]

Recently, the OCC has considered the opportunity to address these challenges.[124] The OCC is examining the ways banks should be expected and encouraged to provide more lending, investment, and financial services "where they are needed most," and to whom needs them most.[125]

Data about disability is available to support CRA bank evaluations.[126] Disability is identified on major national surveys, including the American Community Survey, National Health Interview Survey, American Housing Survey, Current Population Survey, FDIC Survey of Unbanked and Underbanked Households, and in non-governmental surveys such as the FINRA Investor Education Foundation Financial Capability Study.[127] These surveys provide empirical evidence that people with disabilities are being marginalized and left out of the financial mainstream.[128] These data sources enable banks and regulators to identify areas with LMI populations with disabilities to focus their work towards the proposed CRA evaluation criteria.[129]

CRA evaluations of bank performance that address the financial needs of LMI populations with disabilities must address the knowledge gaps of regulators, banks, and potential community partners.[130] In addition to education and training about the disability population in LMI neighborhoods and use of public data sets to document LMI disability populations in a bank's physical footprint, training and technical assistance is needed to identify community partners who support this target audience.[131] Development of a national database of CRA qualifying activities that have been approved by bank regulators, and that responds to the

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122. COMMUNITY REINVESTMENT ACT JOINT PUBLIC HEARING, *supra* note 101.

123. *Id.*

124. *Id.*

125. *Id.*

126. GOODMAN & MORRIS, *supra* note 2.

127. *Id.*; *National Health Interview Survey*, CDC, https://www.cdc.gov/nchs/data/factsheets/factsheet_nhis.htm (last visited Apr. 27, 2019); *Guidance for Disability Data Users*, U.S. CENSUS BUREAU, https://www.census.gov/topics/health/disability/guidance.html (last visited Apr. 22, 2019); *Guidance for Disability Data Users*, U.S. CENSUS BUREAU, https://www.census.gov/topics/health/disability/guidance.html (last visited Apr. 27, 2019).

128. GOODMAN & MORRIS, *supra* note 2.

129. *Id.*

130. *Id.*

131. *Id.*

community development and financial service needs of LMI individuals with disabilities would accelerate adoption of CRA qualifying activities by banks of all sizes.[132] One part of a disability policy framework requires community outreach to disability-related nonprofit groups serving LMI individuals with disabilities and documentation of investment, lending, and financial services that are responsive to identified needs.[133] As the performance context of a CRA exam seeks to provide baseline information about the institution, its community and competitors, community needs information on identified populations, including people with disabilities, is needed.[134]

The performance context should also examine the bank and the community perspective.[135] When evaluating external factors, community input should be taken into consideration with the examination of disaggregated data for LMI populations including the disability population.[136] Performance context may include focus on economic trends and documentation for which demographic groups have, or are expected to have, the most financial challenges.[137]

CRA modernization should additionally encourage community organizations to assess future needs and conditions, as do banks, and share these analyses with banks and OCC/FDIC.[138] "Community Contacts" may be subject to measurement, rather than only serving as cursory summaries within a CRA exam.[139] Banks and community groups should complete community need performance context analyses involving a diversity of perspectives including stakeholders from identified populations, such as people with disabilities.[140]

An updated CRA should have an "inclusive community development" imperative that runs throughout the regulatory framework. The inclusion of LMI individuals with disabilities must result in dedicated, disability-related lending, investment, and financial service access and use. The OCC should integrate disability throughout the regulatory framework it intends to modernize, such that banks are recognized for their efforts when any initiative they support meets disability-related objectives. For example, a bank may provide an investment in a CDFI to support lending for affordable housing development. The bank and CDFI should focus on the accessibility of a number of units beyond minimum federal standards. An investment in financial education and counseling should require outreach and partnerships with the disability community. A new regulatory framework should emphasize that a disability perspective is to be used to assess the CRA valuation of a project.

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132. *Id.*
133. *See* COMMUNITY REINVESTMENT ACT JOINT PUBLIC HEARING, *supra* note 101, at 22, 93.
134. *See id.* at 93.
135. *See id.*
136. *See id.*
137. *See id.* at 98.
138. *See id.* at 93.
139. *See id.*
140. *See id.*

The essential elements of a disability framework to CRA modernization should include the following elements of defining the target population, expanding qualifying community development activities, strengthening evaluation criteria and educating Stakeholders:

Defining the Target Population

1. Inclusion of LMI populations with disabilities in a definition of "community," in terms of analysis of LMI neighborhoods, distressed areas, and specific LMI populations.

Expanding Qualifying Community Development Activities

2. Regulator published examples of CRA qualifying activities for banks that respond to the financial needs of LMI individuals with disabilities with products and services that are accessible and affordable, and investment and lending that advances inclusive community development (e.g., affordable and accessible housing, workforce development, technology infrastructure, and financial and digital literacy).

Strengthening Evaluation Criteria

3. Reasonable standards to meet documentation requirements to prove inclusion of LMI individuals with disabilities in community development investment activities.

4. Required outreach to community groups in the disability community to be part of community need and performance context analysis.

5. CRA exam requirements that banks provide baseline information on investment, lending, and financial services, which are responsive to the LMI disability population in their geographic physical footprint and outside service areas.

6. Performance scores and bank reporting to establish quantitative and qualitative metrics to be measured and weighted to support this target audience.

Educating Stakeholders

7. Training and technical assistance provision by regulators with national disability subject matter experts to increase awareness and knowledge about LMI individuals with disabilities, their inclusion in LMI neighborhoods, potential partnership opportunities with nonprofits focused on this population, and examples of CRA qualifying activities and documentation needed. Aid banks to achieve the best possible results for themselves in translating new knowledge about the LMI disability population and their financial needs to investments, lending, and services, with assistance from current data and analysis. At a national and community level, expert and consumer input from the disability community should be encouraged and demonstrate a value-added return for all parties.

B. Examples of Qualifying Inclusive CRA Activities

Based on the experiences of banks nationwide over the past five years, there has been progress in development of CRA activities that benefit the economically vulnerable population of people with disabilities and their families. The topics and listing presented below is one starting point to spur discussion at a national and community level. It is meant to further define, educate, and inform future qualifying CRA activities that support LMI neighborhoods and LMI people across the spectrum of disabilities.

1. Community Development Activities

1. Support affordable and accessible housing for LMI individuals with disabilities including ownership and multi-family rental housing that is inclusive for individuals with and without disabilities.
2. Promote economic development of small businesses owned (e.g., wholly or shared ownership) by people with disabilities with access to capital for startup and/or growth.
3. Provide loans to businesses in an LMI area and nearby areas that employ at least 7% people with disabilities.[141]
4. Fund infrastructure development to increase broadband access and computer hardware and software to improve technology use and literacy.

141. *See generally Regulations Implementing Section 503 of the Rehabilitation Act*, OFFICE OF FED. CONTRACT COMPLIANCE PROGRAMS, U.S. DEP'T OF LABOR, https://www.dol.gov/ofccp/regs/compliance/section503.htm (last visited Apr. 27, 2019) (Section 503 of the Rehabilitation Act requires federal contractors take affirmative action to recruit, hire, promote, and retain individuals with disabilities, with a goal of employing 7% individuals with disabilities.).

5. Provide credit counseling and financial capability services to address the complexities of making informed financial decisions based on the interrelationship between income, assets, and public benefits.

2. Qualified Investments

1. Make investments in CDFIs and Community Development Banks to support assistive technology loans, and home and vehicle modification loans, for LMI populations with disabilities.
2. Make investments in nonprofit organizations that help LMI populations with disabilities by improving financial literacy, supporting informed decision-making about debt and credit, and offering financial education and coaching in one-to-one and group sessions.
3. Support workforce development programs, such as apprenticeships, internships, certifications, and on-the-job skills training, in order to improve skills and enable LMI individuals with disabilities to work.
4. Support bank employees' collaboration with disability nonprofits so that they can share their expertise in financial services and strategic decision-making to increase affordable and accessible housing, jobs, and inclusive career development in addition to expanding access to FinTech tools and services.
5. Make investments in technology infrastructure and digital literacy to close the digital divide for improved access to FinTech products and services for LMI individuals with disabilities.

3. Qualified Lending

1. Direct small dollar loans to improve access to credit and credit scores.
2. Provide consumer loans for assistive technology purchases and home and vehicle modifications.
3. Require local and state governments to engage in community development activities that target underserved populations with disabilities.
4. Provide small business loans for entrepreneurs with disabilities.
5. Support borrowers that construct or rehabilitate community facilities located in LMI geographies and serve people with disabilities (i.e., Independent Living Centers, Assistive Technology Demonstration and/or Recycling Centers, and Business Incubators that intentionally provide support for entrepreneurs with disabilities).

VI. Conclusion

Vibrant communities are best supported when economic opportunities are inclusive of LMI populations, including people with disabilities. Twenty-eight years after the passage of the ADA and more than forty years after the passage of the CRA, there is an opportunity to reexamine the approaches, roles, and responsibilities of regulated financial institutions to proactively address the financial access and economic opportunity needs of people with disabilities.

CRA modernization will help financial institutions work cooperatively and proactively with the disability community to meet the intent of the ADA to "advance economic self-sufficiency, equality of opportunity, and community participation,"[142] and the intent of the CRA to meet the credit needs of LMI neighborhoods and individuals with disabilities who have financial need.

CRA modernization will enable the OCC to make performance reviews consistent and objective, expand coverage to LMI individuals with disabilities to improve their access to affordable and accessible products and services, and encourage banks to provide data so that regulators and community members may compare individual bank performance. Consumer participation may be strengthened by CRA modernization. Targeted communities should actively participate in identifying needs, reviewing and commenting on performance plans, and implementing inclusive community development activities. Ensuring that all Americans have full and equal access to affordable and accessible financial products will increase trust and confidence in the mainstream banking system. It will improve the national economy and, importantly, help LMI neighborhoods pursue the American Dream.

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142. BLANCK ET AL., *supra* note 3.