## CRA Assessment Area

### *Description of High Risk*

Generally, the lender's Community Reinvestment Act ("CRA") assessment area shows high redlining risk if it consists of a partial geography that inappropriately excludes majority minority census tracts. The "geography" is the MSA, Metropolitan Division ("MD"), county, city, town, or other political subdivision. In addition, the risk can be further confirmed if a map of the subject lender's CRA assessment area shows a "doughnut" or "horseshoe" pattern where applications or originations appear surrounding but not including the majority minority census tracts in the geographic area.

*Credit Unions and Nonbank Lenders*. The Community Reinvestment Act only applies to insured depository institutions; it does not apply to credit unions or non-bank lenders. In those situations, the lender's description of its "trade area" or other service area, if available, can be used for the analysis. Advocates can review the lender's website and other public materials (such as SEC filings) to determine if there is a description of the trade area.

### *How to Find the CRA Assessment Area Data and Mapping Tools*

A description of the lender's CRA assessment area can be found in the lender's most recent CRA Performance Evaluation, which is issued by its prudential regulator: the Board, the FDIC, or the OCC. The FFIEC publishes certain census, income and Metropolitan Area data for geographies, which can be accessed through the FFIEC Online Census Data System. The FFIEC also has a Geocoding and Mapping System, which provides Census demographic information relevant for the respective CRA assessment areas. Both tools can be found on the FFIEC's CRA website.

### *Appropriate Assessment Area*

Assuming there are no legitimate non-discriminatory reasons or business justifications for the subject lender's current assessment area (the Original Assessment Area), the Appropriate (or Revised) Assessment Area can be determined by including the full MSA, MD, or county, as appropriate, which includes all of the majority minority census tracts. Depending on the subject lender's business model, the Appropriate Assessment Area may or may not include all of the counties in the MSA or MD. However, the analysis will show which counties that contain majority minority census tracts should be included. Once the Appropriate Assessment Area is determined, it will then serve as the basis of analyzing the risks associated with the subject lender's Original Assessment Area, branch locations, and any potential lending disparities.

### *Metrics for Identifying a High Risk CRA Assessment Area*

The CRA assessment area risk can be identified through a simple analysis of the census tracts. The analysis can show the total number of majority minority census tracts in the Appropriate Assessment Area and the number of those tracts that are excluded by the lender's Original Assessment Area. Some simple division shows the percentage of majority minority census tracts excluded by the lender's Original Assessment Area.

# of Majority Minority Census Tracts
Excluded by the Lender's Original Assessment Area = **% of Majority Minority Census Tracts Excluded**
# of Majority Minority Census Tracts
In the Appropriate Assessment Area

The DOJ and CFPB complaint against BancorpSouth Bank can be used as an example. (*See United States of America and Consumer Financial Protection Bureau v. BancorpSouth Bank*, Complaint filed June 29, 2016 N.D. Miss.) In that case, the lender's Original Assessment Area excluded 123 of the 126 majority minority census tracts that were in the Appropriate Assessment Area (that included all of Shelby County), which meant that the lender's assessment area excluded 96% of the majority minority census tracts. While there is no exact percentage threshold to show risk, in this case, the census tract analysis clearly showed high redlining risk for the CRA assessment area risk factor. The complaint stated: "The Bank's exclusion of nearly all majority minority neighborhoods from its CRA assessment area reduced credit availability and investment in those neighborhoods and discouraged prospective applicants and lending in those neighborhoods."

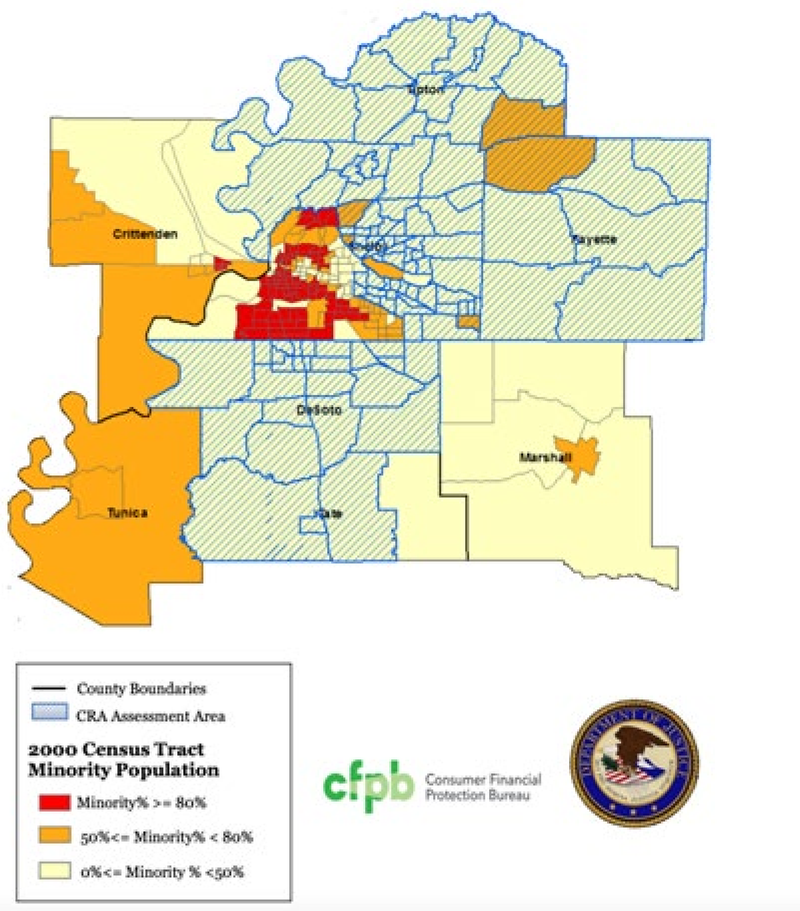
| CRA Assessment Area Analysis | |
|---|---|
| #Majority Minority Census Tracts Excluded by the Lender's Original Assessment Area | 123 |
| # Majority Minority Census Tracts in the Appropriate Assessment Area | 128 |
| % Majority Minority Census Tracts Excluded by the Lender's Original Assessment Area | 96% |

***Mapping the Assessment Area***

The CRA assessment area risk can be further confirmed by using a map to visually show that the lender has failed to include the majority minority tracts. In the BancorpSouth Bank case, the bank served the Memphis TN-MS-AR MSA, which consisted of the following eight counties: Fayette (TN), Shelby (TN), Tipton (TN), Crittenden (AR), DeSoto (MS), Marshall (MS), Tate (MS), and Tunica (MS). As depicted in the map below, the bank's Original Assessment Area consisted of a partial MSA and a partial county. The bank only included the whole counties of Fayette, Tipton, and DeSoto, and parts of the counties of Tate and Shelby. Most importantly, the map showed that that bank's Original Assessment Area excluded most of the majority minority census tracts in Shelby County, which contained most of the majority minority census tracts for the MSA. The lender's delineation resulted in a classic "horseshoe" pattern where the assessment area surrounded but did not include the majority minority census tracts. The map clearly demonstrated the risk of taking only a partial county that excluded most of the majority minority tracts.

**Exhibit A:**

**BancorpSouth Pre-January 2013 Assessment Area, Memphis MSA**




### *Additional Risk Considerations*

*Policy regarding "Undesirable" Areas*. The lender's redlining risk may be further elevated if the lender has a policy that states that the bank's "primary trade area" is its CRA assessment area and that loans made outside this trade area are "undesirable." That is, the redlining risk posed by a CRA assessment area that excludes communities of color can be further compounded by an official policy that discourages lending outside of that area. If the lender's CRA assessment area shows high risk, advocates should determine whether the lending policy is available and can be reviewed for this additional risk. (*See, e.g., United States of America and Community State Bank*, Complaint filed Jan. 15, 2013 E.D. Mich.)

*Changes to the Risk Profile*. The lender's risk may be further elevated in situations where the lender is engaged in a merger or acquisition, where the lender is opening or closing branches or loan production offices, or there are other changes that may impact the CRA assessment area.

If the lender is engaged in these changes to its risk profile, advocates should review whether the CRA assessment area is appropriate.

*Regulator Comments in the CRA Performance Evaluation*. The lender's risk may be further elevated if the regulator made comments in the CRA Performance Evaluation regarding weaknesses in the lender's CRA assessment area and the lender has not taken action to reduce the risk by expanding the assessment area to include more majority minority tracts. In this case, advocates should add the regulator's notes to their final determination of the lender's redlining risk.

*Overlap with HOLC Maps*. The subject lender's risk may be further elevated if its Original Assessment Area is similar to historically discriminatory maps. In the 1930's, the New Deal's federal Home Owners Loan Corporation ("HOLC") developed one of the most harmful policy decisions in the housing market by creating a mapping system that included race as a fundamental factor in determining the desirability of neighborhoods. To determine the risk that the subject lender is replicating historically discriminatory patterns, advocates should compare the subject lender's Original Assessment Area to mapping tools that depict the HOLC's original discriminatory maps.

### ***Common Arguments and Replies***

The lender may pose certain arguments in defense of the current assessment area. In some instances, the arguments may provide a reasonable explanation for the current delineation; in other instances, however, the arguments may warrant a reply and further discussion. Below are some common arguments and replies.

*Circular Reasoning Based on the Location of the Lender's Branches*. The lender may argue that its CRA assessment area is appropriate because it includes all the census tracts in each county in which the lender has a branch. Similarly, the lender may argue that it only included census tracts within a certain radius of its branches.

> *Reply #1.* This appears to be circular reasoning. The lender failed to serve communities of color by not opening or acquiring any new branches in majority-minority census tracts. The lender cannot then argue that it cannot serve communities of color because it has not historically served communities of color.
>
> *Reply #2.* The lender's argument regarding branch radius can be tested by using software to draw the asserted radius (for example, five miles) around the branches as well as any loan production offices. From there, an analysis can be conducted to determine whether the lender made any loans outside of that radius, particularly in non-majority minority census tracts.

*Limitations Based on the Lender's Size*. The CRA's implementing regulations allows a lender to adjust its CRA assessment area if it would be "extremely large" and may take into account the "bank's size." (Board: 12 CFR § 228.41(d), (e); FDIC: 12 CFR § 435.41(d), (e); OCC: 12 CFR § 25.41(d), (e)) The lender may argue that it cannot include majority minority census tracts in its CRA assessment area because it would make the CRA assessment area too large for a lender of its size.

*Reply*. The lender still would need to show some analysis of why it could serve an assessment area of a certain size with non-majority minority census tracts, while failing to serve the majority minority census tracts. Moreover, the analysis of lending disparities may show that peer lenders with a similar volume of applications (50% to 200% of the lender's application volume) were able to serve majority minority census tracts.

*Limitations Based on Significant Geographic Barriers*. The CRA's implementing regulation allows a lender to adjust its CRA assessment area based on "significant geographic barriers." (Board: 12 CFR § 228.41(d); FDIC: 12 CFR § 435.41(d); OCC: 12 CFR §25.41(d)) The lender may argue that it cannot include majority minority census tracts in its CRA assessment area because the lender cannot overcome certain geographic barriers, such as interstates or bodies of water.

*Reply*. In the present time, such barriers have posed fewer challenges as lenders now have many ways to reach borrowers. Moreover, this assertion can be tested by analyzing (a) whether the lender extends credit beyond similar barriers in non-majority minority census tracts, and (b) whether peer lenders are able to make loans in the excluded majority minority census tracts despite the supposed barriers.

*Authority to Enforce the Community Reinvestment Act*. The lender may argue that the consumer advocate does not have the authority to enforce the CRA.

*Reply*. The review of the CRA assessment area is not meant to signal enforcement of the CRA, but rather is evidence of the lender failing to serve majority minority census tracts without a legitimate non-discriminatory reason or business justification. Moreover, many lenders use their CRA assessment area as their trade area; loans made outside the CRA assessment area may be viewed as "undesirable," further discouraging providing credit to those communities.

***Conclusion***

In summary, if the lender's current CRA assessment area consists of partial geographies that exclude majority minority census tracts, then the lender has high risk for this risk factor.

| Risk Factor | Analysis | Risk Level |
|---|---|---|
| **Lending Analysis** | Statistically significant application or origination disparities | **High** |
| **CRA Assessment Area** | Partial geographies that exclude majority minority census tracts | **High** |
| **Branch Locations** | | |
| | ***Overall Redlining Risk*** | |