

2013

Scoring The Banks: Building A Behaviorally Informed Community Impact Report Card for Financial Institutions

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Cover Page Footnote

Assistant Professor of Law, Albany Law School; J.D., Yale Law School; B.A., Fordham University. Formerly the Associate Director of the Urban Justice Center in New York City, a Skadden Fellow at The Legal Aid Society of New York, law clerk to the Honorable Constance Baker Motley, and staff attorney at New Haven Legal Assistance Association. This project was undertaken while the co-author was a Visiting Clinical Associate Professor of Law at Yale Law School during the 2011–12 academic year. This author would like to thank James E. Kelly and Timothy D. Lytton for their thoughtful comments on a previous draft of this work. He would also like to thank his research assistants on this project: Sherri Eckles, Konstandinos Leris, and Maksim Nemtsev.

VOLUME XVIII

2013

NUMBER 2



FORDHAM

JOURNAL OF
CORPORATE & FINANCIAL LAW

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Raymond H. Brescia^{*}
Sonia Steinway^{**}

ABSTRACT

The U.S. financial system faces a crisis. Unlike fiscal crises, this one is of consumer confidence and trust. Recent polls suggest that faith in American banks is at a forty-year low. Many blame the banking sector for having a significant role in causing and exacerbating the financial crisis of 2008, as well as the deep recession that has followed. Scandals, litigation, and a lack of accountability for conduct that has breached the public trust mean that many consumers of bank services are starting to call for greater transparency in banking practices, financial institutions that are more responsive to community needs, and a broader array of alternatives to traditional banks. Initiatives such as the Move Your Money campaign and Bank Transfer Day have captured the imagination of many bank customers who are looking to use their consumer clout to support financial institutions that are engaged in responsible practices. Perhaps as a way to counter this crisis in confidence, regulators, local governments and consumers alike seek ways to measure bank responsiveness to consumer wishes and community needs. This paper describes one such tool: the Community Impact Report Card (“CIRC”). Modeled on other grading systems—such as

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New York City's method for grading restaurants—and informed by principles of behavioral economics, CIRC is a tool designed to offer consumers a means through which they can easily comparison shop between banks. This comparison is based on those banks' effectiveness in meeting consumer demand for accessible and inexpensive products and services, and is also meant to encourage banks to strengthen the array of products and services they offer. By providing a range of information about the products and services offered by local banks, and generating a single score for each bank based on this information on a scale of 1–100, consumers will have an easily accessible way to compare how each bank serving the community is generally responsive to local needs and interests. Flexible and adaptable, CIRC system is designed to be tailored to the needs of local communities and to be applied to the array of financial institutions that serve them.

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INTRODUCTION

The U.S. financial system faces a crisis of consumer confidence.¹ According to recent polls, faith in American banks is at a forty-year low.² Consumers and financial experts alike blame banks for causing the 2008 financial crisis and the deep recession that followed. As a result, consumers are pushing for financial institutions to be more responsive to their needs, as well as seeking alternatives to the traditional banking sector. Campaigns such as the Move Your Money project and Bank Transfer Day have captured the imagination of many customers who are looking to use their consumer clout to support more responsive—and responsible—financial institutions.

As a way to counter this crisis in confidence, regulators, local governments, and consumers have attempted to measure bank responsiveness to consumer and community needs. This paper describes one such measuring tool, the Community Impact Report Card (“CIRC”). CIRC was initially used to provide consumers with information about bank products and services in the city of New Haven, but it was designed to be replicable in any community.

Community Impact Report Cards for all of New Haven’s consumer banks were published in October 2012 with the intent to create a dialogue between the New Haven community and the banks that serve it. CIRC serves two distinct audiences: first, consumers can use the ratings to easily compare across banks. By providing a range of information about bank products and practices, and generating a single score for each bank on a 100-point scale, consumers will be able to compare how each bank serves community needs. Second, CIRC is also

1. See, e.g., Dennis Jacobe, *Americans’ Confidence in Banks Falls to Record Low*, GALLUP (June 27, 2012), <http://www.gallup.com/poll/155357/americans-confidence-banks-falls-record-low.aspx>.

2. See *infra* text accompanying notes 8–12.

targeted to banks themselves, as an impetus to strengthen their array of products and services. In addition, CIRC serves a broader audience outside of New Haven; other communities are encouraged to use the CIRC methodology, while shaping and adapting the index to meet their own local needs.

According to its proponents, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) was intended to restore the public’s trust in the financial system.³ However, more than two years since its passage, trust in the financial sector is at one of its lowest points in history.⁴ Dissatisfaction with this state of affairs, combined with the bad publicity that has flowed from a series of more recent bank scandals, has left many consumers and communities feeling powerless to shape the behavior of financial institutions.⁵ In creating CIRC, our hope is that communities across the country will be able to shape and improve the behavior of the banks that serve them by offering consumers an easy means to assess the quality of the bank products and services available to them.

Over the last forty years, legislators, banking officials, courts, and consumer advocates have attempted to rein in financial services practices that they deemed harmful to local communities. Whether through the passage of the Fair Lending Act in the 1960s, the Home Mortgage Disclosure Act and the Community Reinvestment Act in the 1970s, efforts to rein in predatory lending in the 2000s, or the introduction of so-called Responsible Banking Ordinances in local communities today, communities have long needed tools to improve bank practices at the local level.⁶ CIRC is an attempt to build on this history with a new approach—based on transparency and consumer power—to improving bank practices at the local level.

A series of questions inspired the creation of CIRC: since regulating financial institutions is a complex task, and one that generally requires deep expertise, is there a way that consumers can encourage such institutions to be more responsive without having to become regulatory experts themselves? Are there simple to understand metrics

3. See *infra* text accompanying notes 55–56.

4. See *infra* text accompanying notes 8–12.

5. This state of affairs has led some to take action. For a discussion of some of these initiatives, including Move Your Money campaign and Bank Transfer Day, see *infra* text accompanying notes 13–16.

6. See *infra* Part I.B.

that the typical consumer can use to differentiate among bank products and services and compare banks to each other? Will consumers use these metrics when deciding where to bank? And can consumer behavior in turn influence bank behavior by encouraging a “race to the top,” wherein banks alter their practices in order to raise their respective scores, attract consumers, and thereby gain market share? CIRC is premised on the belief that each of these questions can be answered in the affirmative.

CIRC was undertaken by the city of New Haven in collaboration with the Community & Economic Development Clinic at Yale Law School.⁷ The central motivating principle behind the project is the belief that providing consumers with basic information about the products and services that banks offer will encourage these banks to be more responsive to community needs. This motivating principle is in turn inspired by several working presumptions. The first such presumption is that the typical consumer cares about bank practices when choosing where to bank, including fees assessed, the range of web-based services offered, branch locations and hours, and local lending practices. The second presumption is that consumers, armed with this information, will shop around and choose a bank that offers more flexible and accessible products and services. The third presumption is that banks will respond by striving to improve the range of products and services they offer.

This paper provides a detailed overview of the methodology behind the CIRC initiative and places the project in its historical context. With these goals in mind, it is organized as follows. Part I initially provides an overview of the extent to which the American public trusts, or does not trust, the financial sector. It then describes efforts to improve such trust through legislation, including the Home Mortgage Disclosure Act,

7. At the time this project was conceived and executed, author Raymond Brescia co-taught the Community & Economic Development Clinic at Yale Law School and author Sonia Steinway was a student in the clinic. Other students were also involved in the development of the CIRC project, including Yale Law students Lindsey Counts, Su Da, Elizabeth Kelly, Ming-Yee Lin, and Jin-Kang Nah; Yale School of Management students David Bisson, Katy Davis, Liz Greenberg, and Jen Leybovich; University of Connecticut School of Law student Bret Kupfer; and University of Michigan Law School student Seth Mohny. The authors are also grateful for the support of officials from the City of New Haven who were instrumental to the project, including New Haven Mayor John DeStefano, Elizabeth Benton, Rebecca Bombero, and Rosemarie Lemley.

the Community Reinvestment Act, and the recent financial reform legislation, the Dodd-Frank Act. Finally, it introduces some alternative approaches to the Community Reinvestment Act (“CRA”), including the rise of so-called “Responsible Banking Ordinances” in municipalities across the United States.

Part II highlights the value of market actor transparency in informing consumer behavior, as well as the importance of communicating information in accessible and understandable ways. As an element of this discussion, this Part addresses the usefulness of the technique of indexing. It then turns to several examples of existing consumer financial indexes. Finally, Part II discusses the need for an index that communicates local information to consumers regarding the banks that operate in their respective communities.

Part III provides a detailed overview of the CIRC index itself, including the metrics used, the relative weights assigned to them, and the point values distributed under the system. This Part also summarizes the results of our analysis of banks operating in the city of New Haven.

The final section, Part IV, explores ways that CIRC can be replicated in other communities, including alternative criteria for inclusion.

I. THE NEED FOR TRUST IN THE FINANCIAL SYSTEM AND EFFORTS TO PROMOTE SUCH TRUST THROUGH LEGISLATION

A. TRUST AND THE FINANCIAL SYSTEM

The American public’s trust in banks has hit a record low, according to the results of a recent Gallup poll.⁸ According to Gallup, just 21% of Americans have faith in the nation’s banks, the lowest recorded number since the poll was first taken in 1973.⁹ According to the Financial Trust Index,¹⁰ while few Americans trust national banks, particularly banks in which the government has a stake, trust in local banks and credit unions is relatively robust with 55% and 63% of

8. Jacobe, *supra* note 1.

9. *Id.*

10. The Financial Trust Index is a joint project of the Kellogg School of Management at Northwestern University and the Chicago Booth School of Business at the University of Chicago. *See About*, CHICAGO BOOTH/KELLOGG SCHOOL FINANCIAL TRUST INDEX, <http://www.financialtrustindex.org/about.htm> (last visited Dec. 23, 2012).

Americans trusting these institutions, respectively.¹¹ A recent op-ed by Ron Lieber of the *New York Times* captures the recent events that have shaken the public's faith in the financial system:

This week, the funky trading programs at Knight Capital sent many stock prices scattering. While most individual investors were not hurt, the company, a major player in stock trading, is reeling.

The breakdown at Knight comes on the heels of—well, take your pick. The trading debacle at JPMorgan? The Libor-fixing scandal? The Facebook initial public offering? The customer restitution that Capital One is paying for what the Consumer Financial Protection Bureau said was deceptive credit card marketing?

It's enough to give credence to the people who want nothing to do with the profit-making players of the American financial system.¹²

This drop in confidence in the financial system, most notably the public's lack of faith in large, national banks, has given rise to at least two new grassroots movements, Bank Transfer Day and the Move Your Money project. Consumer activist Kristen Christian started Bank Transfer Day in 2011 after growing frustration with fees at large banks, particularly Bank of America.¹³ The goal of the movement, as the name implies, is to convince consumers to transfer their accounts from large banks to small banks and credit unions, and thereby ultimately incentivize larger banks to lower their fees and otherwise become more consumer-friendly.¹⁴ The movement appears to have been successful; Bank of America, whose proposal to raise fees started as a catalyst for

11. Paola Sapienza & Luigi Zingales, *The Results: Wave 15*, CHICAGO BOOTH/KELLOGG SCHOOL FINANCIAL TRUST INDEX (July 24, 2012), <http://www.financialtrustindex.org/resultswave15.htm>. Similar to the Gallup poll cited, the Financial Trust Index found trust in national banks at 23% and trust in banks in which the federal government had a stake at 21%. *Id.* at fig.2.

12. Ron Lieber, *A Financial Plan for the Truly Fed Up*, N.Y. TIMES, Aug. 4, 2012, at B1, available at http://www.nytimes.com/2012/08/04/your-money/asset-allocation/a-financial-plan-for-the-truly-fed-up-your-money.html?pagewanted=all&_r=0.

13. See Aaron Passman, *How Kristen Christian Came To Launch Bank Transfer Day*, 15 CREDIT UNION J., no. 49, 2011 at 1, available at 2011 WLNR 26185840. 15_50/how-kristen-christian-came-to-launch-bank-transfer-day-1011578-1.html.

14. See *id.*

the movement, ultimately agreed to eliminate some monthly fees.¹⁵ Moreover, credit unions alone reportedly gained 40,000 new members on Bank Transfer Day itself, and 700,000 new members between September—when the movement was launched—and December of 2011—after Bank of America announced its change of heart.¹⁶

The Move Your Money project shares a similar goal with Bank Transfer Day: to convince consumers to move their accounts from large financial institutions to smaller banks and credit unions.¹⁷ However, its efforts go beyond Bank Transfer Day's by providing information about how to move money and where to move it to.¹⁸ Blogger Arianna Huffington and others initiated the Move Your Money campaign as a direct response to the "Too Big to Fail" phenomenon.¹⁹ Her goal was to reform the financial system by encouraging consumers to switch from large national banks to smaller "Main Street" institutions.²⁰ As with Bank Transfer Day, the Move Your Money campaign seems to have resonated with consumers; its website claims to have facilitated the transfer of over \$296 million from large corporate banks.²¹

Both Bank Transfer Day and the Move Your Money campaigns support consumers in choosing to transfer their funds from large, national banks to small, community institutions. However, neither campaign offers sufficient tools to consumers to assess the quality of the institution to which they are supposed to transfer their funds. While the Move Your Money campaign offers some assistance by providing a list

15. Candice Choi, *Bank of America Nixes \$5 Debit Card Fee*, BUSINESS WEEK (Nov. 1, 2011, 2:35 PM), <http://www.businessweek.com/ap/financialnews/D9QO3NO80.htm>.

16. CREDIT UNION NAT'L ASS'N, MONTHLY CREDIT UNION ESTIMATES: OCTOBER 2012 (Dec. 2012), available at <http://www.cuna.org/research/download/mcue.pdf>; Press Release, Credit Union Nat'l Ass'n, Tens of Thousands Keep Pace, Join Credit Unions on 'Transfer Day' (Nov. 8, 2011, 4:03 PM), <http://www.cuna.org/public/press/press-release/issues/tens-thousands-keep-pace-join-credit-unions-transfer-day>.

17. See MOVE YOUR MONEY PROJECT, <http://moveyourmoneyproject.org> (last visited Aug. 5, 2012).

18. *Id.*

19. *Id.*

20. Arianna Huffington & Rob Johnson, *Move Your Money: A New Year's Resolution*, HUFFINGTON POST BLOG (Dec. 29, 2009, 6:02 PM), http://www.huffingtonpost.com/arianna-huffington/move-your-money-a-new-yea_b_406022.html. The Big Six national banks cited are: JPMorgan Chase, Citibank, Bank of America, Wells Fargo, Goldman Sachs, and Morgan Stanley. *Id.*

21. See MOVE YOUR MONEY PROJECT, *supra* note 17.

of “approved” institutions based on an analysis by Institutional Risk Analytics, discussed below, consumers are mainly left to assume that “smaller and more local is better.”²² Might there be a way to test this hypothesis, and a system through which consumers can comparison-shop based on the products and services that banks offer? It is to this topic that we will return in Part III, *infra*.

The issue of the apparent lack of trust in financial institutions is a significant one, but it is not new. While trust in financial institutions has been higher in recent memory, questions about the role of financial institutions in meeting community needs have plagued such institutions for generations. Likewise, elected officials and regulators have attempted to legislate and regulate trustworthiness for decades. The next section explores some of these efforts; first at the national level, dating back to the banking reforms passed in the wake of the Great Depression, straight through to the financial reform efforts implemented in the wake of the financial crisis of 2008. It then discusses more recent local efforts designed to ensure that banks are meeting local community needs.

B. CAN TRUST IN THE FINANCIAL SYSTEM BE LEGISLATED?

What role can legislative and regulatory oversight play in strengthening trust in the financial system? One of the primary drivers of trust in the financial system is the provision of federal deposit insurance by the Federal Deposit Insurance Corporation, created by the Glass-Steagall Act of 1933.²³ The history of banking in the United States leading up to the Great Depression is marked by cyclical bank “panics” during which bank depositors faced the prospect of losing their funds when bank investments failed.²⁴ When consumer faith was shaken in a particular bank, customers might engage in a “run” on the bank, seeking to withdraw all of their deposits.²⁵ The federal

22. See *infra* Part II.C.1. for a description of this system.

23. Banking Act of 1933 (Glass-Steagall Act), ch. 89, 48 Stat. 162 (codified as amended at 12 U.S.C. §§ 1811–1832 (2006)).

24. See generally MURRAY N. ROTHBARD, A HISTORY OF MONEY AND BANKING IN THE UNITED STATES (2002).

25. See Gary Gorton & Andrew Metrick, *Regulating the Shadow Banking System*, in BROOKINGS PAPERS ON ECONOMIC ACTIVITY 281–83 (David H. Romer & Justin Wolfers eds., 2010) (describing bank panics of the 19th century), available at

government established the system of federal deposit insurance to prevent such runs; if depositors knew their money was safe, and guaranteed by the federal government, the thinking went, they would not attempt to withdraw their funds at the first signs of weakness in a bank's ledger sheet.²⁶ This intervention, coupled with the FDIC's safety and soundness examination, probably did more to instill a degree of trust in depository financial institutions than any other regulatory intervention in the financial sector.

However, the FDIC did not guard against all banking practices that threaten to erode consumer trust. In the 1960s and 70s, the Civil Rights Movement highlighted the legacy of discrimination in financial institutions.²⁷ As a result, legislators enacted several laws to ensure that banks were meeting their obligations to all communities.²⁸ For example, in 1968 Congress passed the Fair Housing Act ("FHA"), which banned discrimination in housing transactions, including mortgage lending.²⁹

Even with the passage of the FHA, fears remained that banks were still discriminating against communities of color, particularly in ways that were difficult to uncover.³⁰ As a result, Congress stepped in again, first passing the Home Mortgage Disclosure Act ("HMDA")³¹ in 1975. HMDA requires that banks report to regulators on their mortgage lending practices and further, that those reports be made available to the public.³² The legislation was motivated by the belief that shining a light on bank lending practices would encourage banks to refrain from discriminatory lending.³³

http://www.brookings.edu/~media/Files/Programs/ES/BPEA/2010_fall_bpea_papers/2010b_bpea_gorton.pdf.

26. See Thomas A. Brooks, *The Federal Deposit Insurance System: The Past and the Potential for the Future*, 5 ANN. REV. BANKING L. 111, 111–12 (1986).

27. DANIEL IMMERGLUCK, CREDIT TO THE COMMUNITY: COMMUNITY REINVESTMENT AND FAIR LENDING POLICY IN THE UNITED STATES 98 (2004).

28. *Id.*

29. Policy Statement on Discrimination in Lending, 59 Fed. Reg. 18266 (Apr. 15, 1994) (indicating that FHA applies to mortgage discrimination).

30. IMMERGLUCK, *supra* note 27, at 98.

31. 12 U.S.C. §§ 2801–2810 (2006).

32. *Id.*

33. For an overview of HMDA and its purposes, see Richard D. Marsico, *Looking Back and Looking Ahead as the Home Mortgage Disclosure Act Turns Thirty-Five: The Role of Public Disclosure of Lending Data in a Time of Financial Crisis*, 29 REV. BANKING & FIN. L. 205 (2009).

With the release of the first round of HMDA data, newspapers across the country uncovered the degree of bank disinvestment and redlining that appeared to be taking place.³⁴ In light of this information, Congress revisited the issue of bank practices in passing the Community Reinvestment Act.³⁵ The CRA is the main legislative and administrative mechanism through which regulators monitor the extent to which banks are meeting the needs of low- and moderate-income communities.³⁶ Congress passed the CRA to fight two bank practices that had a harmful effect on local communities: “redlining,” the practice of excluding certain communities from lending products; and “capital exportation,” taking deposits from consumers in one community and using those funds to support economic development in other communities.³⁷ The CRA was designed to be a “quid pro quo” with banks; because banks receive federal deposit insurance, they must in turn meet community needs.³⁸ The relationship between deposit insurance and the CRA is explicit: only “depository institutions” are covered by its terms.³⁹

34. Warren Dennis, *The Community Re-Investment Act of 1977: Its Legislative History And Its Impact On Applications For Changes In Structure Made By Depository Institutions to the Four Federal Financial Supervisory Agencies* 10 (Credit Research Ctr., Working Paper No. 24, 1978), available at <http://faculty.msb.edu/prog/CRC/pdf/WP24.pdf>.

35. 12 U.S.C. §§ 2901–2908 (2006).

36. For an overview of the CRA, see Michael S. Barr, *Credit Where It Counts: The Community Reinvestment Act and Its Critics*, 80 N.Y.U. L. REV. 513, 523–36 (2005).

37. Redlining is defined as “credit discrimination by a financial institution that refuses to make loans on properties in allegedly bad neighborhoods.” BLACK’S LAW DICTIONARY 1283 (7th ed. 1999). For a discussion of the origins of redlining, which can be traced to federal agency practices during the 1930s, see KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 197–98* (1985); DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 51–52, 199–201* (1993). For an argument that these agencies had little impact on any bank redlining practices, see Kristen B. Crossney & David W. Bartelt, *The Legacy of the Home Owners’ Loan Corporation*, 16 HOUSING POL’Y DEBATE 547, 568–71 (2005).

38. 123 CONG. REC. 1958 (1977) (statement of Sen. Proxmire). For a discussion of the link between the governmental benefits banks receive and the CRA, see Allen J. Fishbein, *The Community Reinvestment Act After Fifteen Years: It Works, but Strengthened Federal Enforcement Is Needed*, 20 FORDHAM URB. L.J. 293, 293 (1992) (citations omitted).

39. See 12 U.S.C. § 2902(2) (2006). The CRA explicitly adopts the definition of “insured depository institution” set forth in 12 U.S.C. § 1813, which provides that such

Furthermore, with a nod to preventing capital exportation, regulators only review bank practices within their CRA “assessment areas”: i.e., where they have branches and make a significant number of loans.⁴⁰

The goals of the CRA, HMDA, and FHA are undoubtedly laudable. Additionally, the predatory practices of unscrupulous mortgage lenders in communities of color during the subprime mortgage frenzy provide strong evidence that their protections are still relevant today.⁴¹ However, there have been many major changes in the financial industry over the last thirty years. Consumers today typically have different relationships with their banks than they did in the 1960s and 70s. Moreover, the CRA, HMDA, and FHA were not necessarily designed to facilitate comparison-shopping by consumers, but rather to improve regulatory oversight.⁴² Banks too have changed, and some of the practices that civil rights statutes were designed to combat are far less prevalent today than they were in the 1970s. Indeed, although redlining was the problem of that era, “reverse redlining,” or targeting certain communities for credit on unfair terms,⁴³ has loomed as a much more serious problem over the last decade.

an institution is “any bank or savings association the deposits of which are insured by the [Federal Deposit Insurance] Corporation” *Id.* § 1813(c)(2) (2006).

40. 12 C.F.R. § 25.21(b) (2012).

41. Recent high profile investigations and settlements related to discrimination in lending reveal that mortgage lending, particularly during the subprime mortgage frenzy of the last decade, had a particularly racial undertone, and thus the continuing need for the FHA and its protections seems apparent. See Charlie Savage, *Wells Fargo Will Settle Mortgage Bias Charges*, N.Y. TIMES, July 12, 2012, at B3, available at <http://www.nytimes.com/2012/07/13/business/wells-fargo-to-settle-mortgage-discrimination-charges.html> (describing fair housing settlements with Wells Fargo and Countrywide Financial for reverse redlining in subprime lending).

42. There is no easy way for consumers to gather information related to a bank’s compliance with the HMDA, the CRA, and FHA. HMDA data is complex, and difficult to gather. Determining FHA compliance would require an ability to search court dockets for lending discrimination cases involving a particular bank. While consumers could search the grades that banks receive under the CRA from their regulators, understanding the process through which regulators issue those grades can be a challenge. See Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice, 75 Fed. Reg. 11642 (Mar. 11, 2010).

43. Susan E. Hauser, *Predatory Lending, Passive Judicial Activism, and the Duty to Decide*, 86 N.C. L. REV. 1501, 1509 n.39 (2008) (defining the practice of reverse redlining).

Even in achieving its stated goals,⁴⁴ the CRA lacks teeth. Federal bank regulators grade covered banks on their overall CRA performance.⁴⁵ They are then supposed to take CRA grades into account when banks seek regulatory approval of covered transactions.⁴⁶ However, regulators almost never actually reject bank applications on CRA grounds: from 1985 to 1999, regulators rejected only eight out of over 92,000 bank applications (.01%) due to failing CRA grades.⁴⁷ A more recent study of bank applications filed with the Federal Reserve from 1988 through 2007 revealed that only .06% (again, eight applications) of over 13,000 applications were denied on any consumer-related grounds.⁴⁸

Moreover, even if regulators were more likely to use the CRA to prevent banking transactions, the reality is that the scope of the CRA is too limited to meaningfully impact banking practices.⁴⁹ Because of the CRA's focus on depository institutions in specific assessment areas, it had no effect on much of subprime lending—the practice that was at the heart of the financial crisis.⁵⁰ Indeed, by some estimates, 94% of subprime lending was beyond the scope of the CRA.⁵¹

Some commentators have argued that the CRA is largely to blame for the financial crisis, but such positions are hard to square with

44. Under the CRA, federal bank regulators are to use their oversight authority “to encourage [financial] institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.” 12 U.S.C. § 2901(b) (2006).

45. See 12 U.S.C. § 2906(b)(2) (2006).

46. *Id.* § 2903(a) (2006).

47. Barr, *supra* note 36, at 586 n. 342 (citing TREASURY DEP'T, APPLICATIONS SUBJECT TO CRA THAT WERE PROTESTED ON CRA GROUNDS (2000)).

48. *Foreclosures at the Front Step of the Federal Reserve Bank of Cleveland: Hearing Before the Subcomm. on Domestic Policy of the H. Comm. on Oversight and Government Reform*, 110th Cong. 63–64 (2007) (statement of Sandra Braunstein, Director, Division of Consumer and Community Affairs).

49. See Raymond H. Brescia, *Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act*, 60 S.C. L. REV. 617, 642–45 (2009).

50. *Id.*

51. Memorandum from Glenn Canner & Neil Bhutta, Div. of Research and Statistics, Bd. of Governors of the Fed. Reserve Sys., to Sandra Braunstein, Dir., Consumer & Cmty. Affairs Div., Bd. of Governors of the Fed. Reserve Sys. 3 (Nov. 21, 2008), available at http://www.federalreserve.gov/newsevents/speech/20081203_analysis.pdf.

reality.⁵² Nevertheless, even though it did not cause the financial crisis, the CRA, and the regulators who enforce it, certainly did not prevent the present crisis, nor did they prevent the predatory lending that has devastated low- and moderate-income communities in the wake of the financial crisis and the foreclosure crisis that is still being played out. And to return to our theme of trust in financial institutions, it is hard to argue that the CRA, weak as it appears to be, has done much to restore faith in financial institutions.

Although a law from the 1970s cannot be expected to engender faith in financial institutions today given the dramatic changes in the financial sector in the last thirty-five years, Congressional action in 2010 was explicitly designed to restore faith in financial institutions and the financial market.⁵³ It is to that legislation that we will now turn.

In July 2010, after months of negotiations and by a narrow margin, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, more commonly known as “Dodd-Frank” for its chief sponsors, Senator Christopher Dodd and Representative Barney Frank.⁵⁴ Throughout the negotiations of Dodd-Frank, many legislators and industry experts proclaimed the need to restore trust in the financial system.⁵⁵ Indeed, as the Senate report on the legislation makes clear,

52. Addressing the question of what role the CRA may have played, if any, in the financial crisis is beyond the scope of this paper. For a collection of some of these comments, see Brescia, *supra* note 49, at 626, n.43.

53. See *infra* text accompanying notes 55–56.

54. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified in various titles of U.S.C.) [hereinafter Dodd-Frank]. A year before the passage of Dodd-Frank, the leaders of the G-20 issued a statement of principles that were supposed to guide global efforts at financial reform. In the “Global Plan for Recovery and Reform: The Communiqué from the London Summit,” the leaders vowed to take several steps towards improving financial sector transparency and regulation. One of the six steps that needed to be taken included “strengthen[ing] financial regulation to rebuild trust.” See G-20, London Summit - Leader’s Statement 1 (Apr. 2, 2009), available at http://www.imf.org/external/np/sec/pr/2009/pdf/g20_040209.pdf.

55. See, e.g., *The Proposed Consumer Financial Protection Agency: Implications for Consumers and the FTC: Hearing Before the Subcomm. on Commerce, Trade, and Consumer Prot. of the H. Comm. on Energy and Commerce*, 111th Cong. 26 (2009) (statement of Michael Barr, Assistant Secretary for Financial Institutions, Department of Treasury) (“We must restore honesty and integrity to our financial system, in order to restore trust and confidence.”); *Enhancing Investor Protection and the Regulation of Securities Markets: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs – Part II*, 111th Cong. 166 (2009) (statement of Richard G. Ketchum, Chairman

one of the purposes of the legislation was to restore such faith: “We must restore responsibility and accountability in our financial system to give Americans confidence that there is a system in place that works for and protects them.”⁵⁶ The legislation included a wide range of reforms designed to strengthen regulatory oversight of the financial system. Among other reforms, it created the Consumer Financial Protection Bureau, a new federal agency designed to ensure that financial products and services are safe and effective.⁵⁷ The legislation also mandates the formation of the Financial Stability Oversight Council, an inter-agency entity designed to facilitate the sharing of information across agencies and departments, and to provide regulators a better view of systemic risks.⁵⁸

A full review of the reforms instituted by Dodd-Frank is beyond the scope of this paper. Suffice it to say, as the previous discussion makes clear, if one of the purposes of the Dodd-Frank legislation was to restore faith in the financial system, the current state of public opinion would clearly suggest that in the two years since its passage, the legislation has not yet met that goal.

C. EXPLORING LEGISLATIVE ALTERNATIVES TO REIN IN RISKY BANKING PRACTICES AT THE LOCAL LEVEL: THE INTRODUCTION OF RESPONSIBLE BANKING ORDINANCES

In general, bank regulation is a matter for state and federal, not local, governments. In recent years, however, a number of cities have also attempted to shape the behavior of financial institutions by passing ordinances designed to ensure that banks are providing “responsible loans, investments, and services for modest-income and minority

& Chief Executive Officer, Financial Industry Regulatory Authority) (“Creating a system of consistent standards and vigorous oversight of financial professionals —no matter which license they hold—would enhance investor protection and help restore trust in our markets.”).

56. U.S. SENATE COMM. ON BANKING, HOUS. & URBAN AFFAIRS, BRIEF SUMMARY OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT (2010), available at http://banking.senate.gov/public/_files/070110_Dodd_Frank_Wall_Street_Reform_comprehensive_summary_Final.pdf.

57. Dodd-Frank, Pub. L. No. 111-203, § 1011(a), 124 Stat. 1376, 1964 (2010).

58. *Id.* § 111(a).

neighborhoods.”⁵⁹ For many local communities, bank practices have had a serious impact on the municipal bottom line. Predatory lending practices, and the foreclosures that often follow, reduce municipal coffers by lowering property values for both foreclosed homes and neighboring properties, which in turn reduces the tax base.⁶⁰ Moreover, such practices often force municipalities to expend diminishing resources to monitor foreclosed properties that frequently become a magnet for crime, including prostitution, arson, and drug dealing.⁶¹ Since municipalities bear the brunt of improper financial practices, local officials have sought ways to rein in this conduct.⁶² One promising approach lies in municipal market power: since cities invest billions in pension funds, tax proceeds, and operating accounts, advocates argue that they can use this market power to encourage banking practices that support local reinvestment and priorities.⁶³

In recognition of their power as market actors, several localities have used local legislation—“responsible banking ordinances”—to direct municipal business toward more community-friendly banks.⁶⁴

These responsible banking ordinances have taken various forms. A typical ordinance mandates that a financial institution submit a detailed plan outlining the volume of both the home loans and small business loans it will make within the city, particularly in low- and moderate-

59. See *Background on Local Responsible Banking Ordinances*, Nat’l Comty. Reinvestment Coal. (“NCRC”), <http://www.ncrc.org/get-involved/hot-issues-take-action/item/754-responsible-banking-ordinances> (last visited Dec. 24, 2012).

60. See DAN IMMERGLUCK & GEOFF SMITH, WOODSTOCK INSTITUTE, *THERE GOES THE NEIGHBORHOOD: THE EFFECT OF SINGLE-FAMILY MORTGAGE FORECLOSURES ON PROPERTY VALUES 2* (2005), available at http://ftp.nw.org/network/neighborworksprogs/foreclosureresolutions/reports/documents/TGTN_Report.pdf.

61. See WILLIAM C. APGAR ET AL., HOMEOWNERSHIP PRES. FOUND., *THE MUNICIPAL COST OF FORECLOSURES: A CHICAGO CASE STUDY 10–11* (2005), available at http://www.995hope.org/wp-content/uploads/2011/07/Apgar_Duda_Study_Full_Version.pdf.

62. In addition to the local banking ordinances described here, see *infra* text accompanying notes 65–84, some cities, like Baltimore, have filed suits over what are alleged to be discriminatory lending practices that led to foreclosures and a diminished tax base. For a discussion of the Baltimore suit, see Raymond H. Brescia, *Subprime Communities: Reverse Redlining, the Fair Housing Act and Emerging Issues in Litigation Regarding the Subprime Mortgage Crisis*, 2 ALB. GOV’T L. REV. 164 (2009).

63. See NCRC, *REPORT FROM A NATIONAL CONVENING ON LOCAL RESPONSIBLE BANKING ORDINANCES*, 8 (2011), available at http://www.ncrc.org/images/stories/pdf/research/anhd_2011craconveningreport_7.13.2012.pdf.

64. *Id.*

income areas, before it can be awarded a city contract.⁶⁵ Financial institutions are then required to report their actual performance to the municipal government, where the city staff can compare the institution's goals to its actual performance and then make that information public.⁶⁶ Based on the data gathered, the municipality then decides with which banks the city will do business.⁶⁷

Cleveland, Ohio enacted the first responsible banking ordinance in 1990, long before the current crisis.⁶⁸ It is considered the basis for subsequent initiatives, as well as many of the ordinances being considered today.⁶⁹

In Cleveland, a bank must propose a four-year responsible banking plan which then must be approved by the city's Director of Community Development before the bank is eligible to contract with the city.⁷⁰ When the city awards contracts, financial institutions are judged on a point system, which includes such factors as: "how close they came to meeting various lending and investing goals, how many branches they opened in low- and moderate-income neighborhoods, and how many minorities and women they employ in executive positions."⁷¹

When the ordinance was first enacted, both small and large banks believed that compliance with the new reporting system would be too costly, and many anticipated that they would give up on city business altogether rather than comply with the new rules.⁷² In the years following the ordinance, however, many banks that stayed in Cleveland remained stable, and the city's percentage of under-banked and un-banked residents is lower than the national average, likely a testament to the ordinance's focus on assisting underserved communities.⁷³

65. See Ryan Holeywell, *Cities Using Deposits to Gain Leverage Over Banks*, GOVERNING: THE STATES AND LOCALITIES (May 2, 2012), <http://www.governing.com/blogs/view/responsible-banking-ordinances-2012.html>.

66. *Id.*

67. *Id.*

68. John Farley, "Q&A with Cleveland on Responsible Banking Law, New in NYC," METROFOCUS (May 25, 2012, 4:00 AM), <http://www.thirteen.org/metrofocus/2012/05/qa-with-cleveland-on-responsible-banking-law-new-in-nyc/>.

69. *See id.*

70. Holeywell, *supra* note 65, at 1.

71. *Id.*

72. *Id.*

73. *Id.* at 2.

In 2002, Philadelphia enacted its own ordinance, similar to Cleveland's.⁷⁴ In contrast to the Cleveland statute, through which a review committee evaluates bank plans and determines which banks are to receive municipal business, Philadelphia vests the power to enforce the statute solely with the City Treasurer.⁷⁵ Another difference between the two statutes is that Philadelphia does not mandate that the banks' plans and annual data reports be made available to the public.⁷⁶ Despite these differences, the main objective of the ordinances in both cities is the same: to require banks to propose and undertake viable reinvestment plans for a multi-year period.⁷⁷

Following the effects of the most recent financial crisis, coupled with the rise of the Occupy Wall Street movement, advocates and elected officials in several other major cities including New York, Los Angeles, Boston, and Pittsburgh began clamoring to enact their own local ordinances.⁷⁸

In 2010, the City Council of Los Angeles unanimously approved a responsible banking ordinance.⁷⁹ Like its predecessors, the Los Angeles ordinance creates a process for gathering and publicizing information about the history of service in the community, which is then used to determine if the bank can bid on city contracts.⁸⁰ Some of the information that the city plans to gather under the ordinance includes: how many branches each bank operates in underserved Los Angeles communities, how many times each bank has worked with homeowners to prevent foreclosures, and how many small business loans each bank would approve in the city.⁸¹ Not only will the information gathered be available to the council members when banks bid on city business in the future, it will also be available to the public so that individual consumers

74. See NCRC, SUMMARY OF LOCAL RESPONSIBLE BANKING ORDINANCES, 1 (2012), available at http://www.ncrc.org/images/stories/pdf/research/summary_responsiblebank.pdf.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. See Richard Alarcon, *Responsible Banking is Responsible Government*, HUFFINGTON POST (Feb. 27, 2012, 4:51 PM), http://www.huffingtonpost.com/richard-alarcon/responsible-banking_b_1301026.html.

80. *Id.*

81. *Id.*

will have the resources to make well-informed decisions when choosing where to bank.⁸²

On the same day that the Los Angeles City Council passed its ordinance, the City Council of New York City passed its own.⁸³ Currently, the city of New York invests billions of dollars of city deposits with thirty-one different financial institutions; New York City's ordinance will require all institutions seeking approval to contract with the city to be overseen by a new advisory council that will review banks'⁸⁴ lending to affordable housing projects as well as their handling of foreclosures. Although New York City's ordinance has been passed by the City Council, it has yet to go into effect.⁸⁵

Subsequently, other major cities such as Pittsburgh, Seattle, Portland, Kansas City, and Boston have either enacted or are considering their own legislation.⁸⁶

Despite the promise of these local ordinances in influencing banking practices, it is unclear whether they touch on some of the most pertinent issues to consumers. The Bank Transfer Day campaign, for example, was launched in response to high consumer banking fees, which are not addressed by any of the local ordinances.⁸⁷ Furthermore, the responsible banking ordinances, as currently drafted, only empower local authorities to assess the extent to which financial institutions appear to be meeting community needs, with little guidance as to what those needs might be. In the next section, we will discuss what consumers appear to want from banks, and explore how such consumer sentiment might be translated into an easy-to-access system that would permit consumers to compare across financial institutions.

82. *See id.*

83. *See* Willy Staley, *New York City Passes Responsible Banking Law, Bloomberg Plans to Veto*, MY BANK TRACKER (May 16, 2012), <http://www.mybanktracker.com/news/2012/05/16/new-york-city-passes-responsible-banking-law-bloomberg-plans-veto/>.

84. *See* Kate Taylor, *New York Council Wants Banks to Describe Efforts in Poor Areas*, N.Y. TIMES (May 14, 2012), <http://www.nytimes.com/2012/05/15/nyregion/council-wants-banks-to-describe-efforts-made-in-poor-areas.html>.

85. *See* SUMMARY OF LOCAL RESPONSIBLE BANKING ORDINANCES, *supra* note 74, at 3.

86. *Id.* at 1.

87. *See id.*

II. PROMOTING CONSUMER-ORIENTED BANKING PRACTICES

A. WHAT DO CONSUMERS WANT?

The success of both the Bank Transfer Day and Move Your Money campaigns reveals that customers are dissatisfied with current banking options, and are willing to take action accordingly.⁸⁸ In a global survey of over 18,000 banking customers, nearly 10% of consumers surveyed said they would consider changing financial institutions in the next six months.⁸⁹ The top reasons for moving their business to other institutions included quality of service (53%), fees (50%), and ease of use (49%).⁹⁰

One survey estimated that 5.6 million Americans switched banks in the fourth quarter of 2011, and of those, 26% claimed high fees convinced them to switch.⁹¹

Apart from lower fees, consumers are also looking for banks that provide personal service.⁹² In a Cisco bank consumer survey, 65% of respondents said they would favor bank branches that offered a wider range of services.⁹³ Despite the growing popularity of online banking,

88. CAPGEMINI & EFMA, 2012 WORLD RETAIL BANKING REPORT (2012), available at <http://www.capgemini.com/insights-and-resources/by-publication/world-retail-banking-report-2012/>.

89. *Id.* at 8.

90. *Id.* at 11.

91. Jim Van Dyke, 'Bank Transfer Day', *What Really Just Happened?*, JAVELIN STRATEGY & RESEARCH BLOG (Jan. 26, 2012), <https://www.javelinstrategy.com/blog/2012/01/26/%E2%80%98bank-transfer-day%E2%80%99-what-really-just-happened/>. These findings are consistent with other findings that show consumers are opposed to banking fees. In one consumer survey sponsored by Ally Bank, 84% of respondents said that they did not believe it was acceptable for banks to charge a fee for checking, 79% did not believe banks should charge a monthly account maintenance fee, and 77% believed that banks should not charge for ATMs. Press Release, Ally Bank, *Ally Bank Survey Explores Consumer Sentiment on Bank Fees* (Nov. 10, 2011), available at <http://media.ally.com/index.php?s=43&item=499>.

92. Jorgen Ericsson et al., *Winning Strategies for Omnichannel Banking: Cisco IBSG Global Research Reveals New Ways for Banks to Prosper in an Omnichannel World*, CISCO, 3 (2012), <http://www.cisco.com/web/about/ac79/docs/Cisco-IBSG-Omnichannel-Study.pdf>.

93. Press Release, Cisco Study: Consumers Want Banks to Offer More Personalized Access to Financial Services (June 20, 2012), <http://newsroom.cisco.com/press-release-content?type=webcontent&articleId=910154>.

“two-thirds (66 percent) of U.S.-based customers see their local branch as the most vital link with their bank, second only to cash machines.”⁹⁴

Potentially as a result of their desires for lower fees and more personalized services, consumer satisfaction surveys indicate that consumers are more satisfied with small banks and credit unions than large commercial banks.⁹⁵ “Credit unions scored a record high 87, on a 100-point scale, in the latest American Customer Satisfaction Index.”⁹⁶ On the other hand, “banks lost ground by some 1.3% to score 75, where they stood from 2003 to 2005 and again in 2008 and 2009.”⁹⁷ The scores were calculated based on a survey of 70,000 consumers and their experiences with personal banking services such as checking, savings, and personal loans.⁹⁸

Is there a way to connect these consumer needs with actual banking practices? The next section explores how the issues that consumers care most about—fees, interest rates, and customer service—could be incorporated into an easily accessible system that tells consumers how well banks are addressing those issues, and permits consumers to comparison shop between banks. This ability to comparison-shop would provide critical information to both consumers and banks as to what products and services are available in the market, allowing the former to shop around and encouraging the latter to improve the range of products and services they offer.

B. TRANSLATING CONSUMER DESIRES INTO USABLE DATA TO BUILD TRUST AND IMPROVE BANK PERFORMANCE

There have been some calls for a more “command-and-control” style regulatory regime in finance; i.e. through the return of the Glass-Steagall Act, which separated commercial from investment banking, or simply by placing a cap on the size of banks in order to limit the “Too

94. *Local Touch Should Be Key to Banks' Future Plans*, DESTINATION CRM (Apr. 17, 2012), <http://www.destinationcrm.com/Articles/CRM-News/Daily-News/Local-Touch-Should-Be-Key-to-Banks-Future-Plans-82021.aspx>.

95. Jennifer Waters, *Credit Unions Trounce Big Banks in Consumer Survey*, MARKETWATCH (Dec. 16, 2011), http://articles.marketwatch.com/2011-12-16/finance/30714772_1_smaller-banks-credit-unions-small-banks.

96. *Id.*

97. *Id.*

98. *Id.*

Big to Fail” problem.⁹⁹ However, like much consumer finance regulation, Dodd-Frank takes a disclosure-based approach in the apparent belief that providing sufficient information to consumers is enough to keep banks in line.¹⁰⁰ In order for such a regime to work, though, the disclosure must be easy to understand and accessible to the average consumer.¹⁰¹ Full transparency of every piece of information related to the modern financial system will not necessarily prove useful to the average consumer, nor will it necessarily lead to greater trust in that system. When disclosures are salient and accessible they can help foster trust that a given system is working the way in which it is intended, giving us confidence not only that we are being treated fairly, but also that those in whom we have placed our trust are engaging in ethical and lawful behavior. Particularly in the area of finance, transparency is central to trust, and the financial crisis has revealed the connection between a lack of transparency and a lack of trust in financial institutions and financial regulators alike.¹⁰²

99. For a discussion of some of the regulatory alternatives available to address the “Too Big to Fail” problem, see Jason Rudderman, *Eliminating Wall Street’s Safety Net: How a Systemic Risk Premium Can Solve “Too Big to Fail,”* 11 FLA. ST. U. BUS. REV. 39 (2012).

100. U.S. SENATE COMM. ON BANKING, HOUS. & URBAN AFFAIRS, *supra* note 56, at 2.

101. See, e.g., WILLIAM J. CONGDON, JEFFREY R. KLING & SENDHIL MULLAINATHAN, POLICY AND CHOICE: PUBLIC FINANCE THROUGH THE LENS OF BEHAVIORAL ECONOMICS 126 (2011) (arguing that a consumption tax on gasoline must be understood by consumers if it is to have the desired impact of reducing carbon emissions).

102. For an overview of the importance of trust in the financial sector, see Ronald J. Colombo, *The Role of Trust in Financial Regulation*, 55 VILL. L. REV. 577 (2010); see also Randolph C. Thompson, *Mortgage Backed Securities, Wall Street, and the Making of a Global Financial Crisis*, 5 AM. U. BUS. L. BRIEF 51, 57 (2008) (“[B]ecause financial institutions handle other people’s money, the conduct of these institutions must instill trust through transparency.”). See OFFICE OF THE SPECIAL INSPECTOR GEN. FOR THE TROUBLED ASSET RELIEF PROGRAM, QUARTERLY REPORT TO CONG. 9 (Oct. 26, 2010) [hereinafter SIGTARP QUARTERLY REPORT, OCT. 2010], available at http://www.sig tarp.gov/Quarterly%20Reports/October2010_Quarterly_Report_to_Congress.pdf (“Treasury’s unfortunate insensitivity to the values of transparency has led it to engage in conduct that risks further damaging public trust in Government.”); Speech, Timothy Geithner, Treasury Secretary, Introducing the Financial Stability Plan (Feb. 10, 2009), available at <http://www.treasury.gov/press-center/press-releases/Pages/tg18.aspx> (noting the connection between transparency and trust in the financial system). According to Alix Partners, a business consulting firm, transparency is one of

In his recent work on the interaction between regulation and outcomes, Cass Sunstein points to the importance of salience, transparency, and accessibility in designing disclosure-based regulations.¹⁰³

A central point is that disclosure policies should be based on an understanding of how people process information. For example, summary disclosure will not be helpful if it is ambiguous or unduly complex, or if it uses a scale that is not meaningful to consumers.¹⁰⁴

But disclosure by itself is not necessarily sufficient to ensure that information is accessible, valuable, and actionable for the average consumer.

As social scientists have emphasized, disclosure as such may not be enough; it is important to consider *how, not only whether, disclosure occurs*. Clarity and simplicity are often critical. In some cases, even accurate disclosure of information may be ineffective if the information is too abstract, vague, detailed, complex, poorly framed, or overwhelming to be useful.¹⁰⁵

One effective way to translate a range of information into an easily accessible tool is through an index. Indices, which combine a range of data points into a single scale or grade, have proven effective in translating a large amount of information into an easily accessible and easy-to-use format.¹⁰⁶ In particular, indices are a common way of

the four “foundational building blocks of consumer trust” for financial institutions (along with engagement, reliability, and “championing”). Whether rates and fees are communicated in an easy to understand fashion is an important component of this transparency. Alix Partners, *The Consumer Trust Imperative: Understanding—and Acting on—Trust as a Key Performance Driver*, ALIX QUARTERLY 3–4 (2012).

103. Cass R. Sunstein, *Empirically Informed Regulation*, 78 U. CHI. L. REV. 1349 (2011).

104. *Id.* at 1366.

105. *Id.* at 1369 (footnote omitted).

106. See HEATHER K. GERKEN, THE DEMOCRACY INDEX: WHY OUR ELECTION SYSTEM IS FAILING AND HOW TO FIX IT 34 (2009) (“Rankings get more political traction than the alternatives, precisely because they reduce the data to their simplest form.”); DAVID ROODMAN, CENTER FOR GLOBAL DEVELOPMENT, BUILDING AND RUNNING AN EFFECTIVE POLICY INDEX: LESSONS FROM THE COMMITMENT TO DEVELOPMENT INDEX 2 (2006), available at <http://www.cgdev.org/content/publications/detail/6661>

presenting information to consumers. Examples include the Air Quality Index,¹⁰⁷ measures of Gross Domestic Product, and the Consumer Price Index.¹⁰⁸ Recently, the New York City Department of Health began issuing letter grades to restaurants based on their compliance with local health codes; the letter grade is essentially the product of an index, a compilation of a wide data set regarding restaurant practices.¹⁰⁹

Indices are especially prevalent in the world of finance, where massive quantities of data often figure into complex decision making. For example, there is the Financial Trust Index, described earlier. The methodologies employed by credit rating agencies¹¹⁰ and property appraisers¹¹¹ are likewise indices. In addition, investments in stock markets around the globe are often pegged to stock indices, including the Dow Jones Industrial Average.¹¹²

As with any disclosure-based approach, the index itself must be transparent and salient to be effective.

Composite indexes are useful tools for raising awareness of public policy issues. To work well, they must combine humility with a

(“*Indexes*, which distill large amounts of information into a few numbers, appear to be gaining popularity among policy advocates and researchers.”).

107. See *U.S. Air Quality Status and Trends Through 2008*, 20 AIR POLLUTION CONSULTANT 1.4 (2010) (discussing air quality index).

108. For information on the creation of the consumer price index, see *Consumer Price Index: Frequently Asked Questions (FAQs)*, U.S. DEP’T OF LABOR, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/cpi/cpifaq.htm/> (last modified Oct. 19, 2011).

109. See N.Y.C. Dep’t of Health & Mental Hygiene, *Restaurant Inspection Information*, NYC HEALTH, <http://www.nyc.gov/html/doh/html/rii/index.shtml> (last visited Aug. 5, 2012) (providing information on New York City’s restaurant grading system). Similarly, the National Highway Traffic Safety Administration (NHTSA) issues its vehicle safety ratings, which combine a range of information into an easily accessible tool, ultimately producing a star rating for each vehicle indicating its relative safety. See NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, <http://www.safercar.gov/Safety+Ratings> (last visited Aug. 5, 2012).

110. Mark Adelson, *Understanding Standard & Poor’s Rating Definitions*, 917 PLI/Comm 53, 58 (2009) (discussing credit ratings).

111. On the process of property appraisal, see David Geltner et al., *Appraisal Smoothing and Price Discovery in Real Estate Markets*, 40 URB. STUD. 1047 (2003). Of course, home values are then utilized in another, wildly popular index: the S&P/Case-Shiller Home Price Index. See *S&P/Case-Shiller Home Price Indices*, S&P, <http://www.standardandpoors.com/indices/sp-case-shiller-home-price-indices/en/us/?indexId=spusa-cashpidff—p-us—> (last visited Aug. 5, 2012).

112. For an overview of stock market indices, see *Market Indices*, U.S. SEC. & EXCH. COMM’N, <http://www.sec.gov/answers/indices.htm> (last modified Oct. 15, 2012).

clear sense of purpose, and incorporate judicious trade-offs between considerations that range from philosophy to mathematics to science to communications strategy . . . Perhaps the greatest design challenge is the tension between the desire for simplicity and the complexity of policy, which can lead turn an index into a black box . . . In the end, the test of an index is not whether it is right, but whether it draws people in to the work of institution and a world of ideas.¹¹³

Growing dissatisfaction with banks has led a number of outlets to create their own rating systems.¹¹⁴ Of the two that will be reviewed in the next section, one assesses and communicates the strength of and relative risk associated with financial institution ledgers, while another gauges the strength of financial institution investments in the community. These will each be reviewed in turn below.

C. THE USE OF ALTERNATIVE METRICS TO GAUGE BANK PRACTICES

There is no shortage of industry analysis of financial institution performance, safety, and soundness. Such analysis is rarely geared towards the needs of the typical consumer, however. This section highlights two analytic systems that attempt to assess the performance of banks in ways that consumers can appreciate. As the following discussion shows, these systems rate banks on their overall performance and do not assess the extent to which any particular financial institution serves any particular community.

1. Institutional Risk Analytics

Institutional Risk Analytics (“IRA”) reviews the holdings of financial institutions to determine the relative risk associated with their total portfolios.¹¹⁵ It prepares reports on the risk profiles of many financial institutions and offers those reports to paying subscribers.¹¹⁶ When the Move Your Money project was launched, IRA agreed to

113. ROODMAN, *supra* note 106, at 13.

114. *See infra* Part II.C.

115. *See* INSTITUTIONAL RISK ANALYTICS: CREATIVE RISK MANAGEMENT SOLUTIONS, <http://us1.institutionalriskanalytics.com/www/index.asp> (last visited Aug. 5, 2012).

116. *Id.*

supply a modified version of its reports free of charge.¹¹⁷ Through a web-based tool, visitors to the Move Your Money website can generate a list of local banks that meet two criteria: small size (defined as less than \$65 billion in assets) and a relatively strong portfolio of investments, according to IRA's metrics.¹¹⁸ Because IRA's information is proprietary and based on each financial institution's entire ledger, the IRA bank ratings system is not geared toward assessing the practices and investments of a bank as they relate to any particular community.¹¹⁹

2. National Community Investment Fund Social Performance Metrics

The National Community Investment Fund ("NCIF") is a not-for-profit investment trust that works to bring financial services to underserved communities.¹²⁰ It invests in what it terms Community Development Banking Institutions ("CDBIs"), financial institutions that provide financial products and services for the benefit of underserved communities and individuals.¹²¹ Some CDBIs are also certified as Community Development Financial Institutions ("CDFIs"), which enables them to receive Federal support, but requires compliance with U.S. Treasury reporting requirements.¹²² By definition, CDBIs are so-called "double bottom line" institutions, "which seek to balance their profit making and their positive social impact."¹²³ Any financial institution can qualify as a CDBI if it receives a certain score under the NCIF system, regardless of the nature of the institution—whether it be a large, national bank, a or small, community-focused institution.¹²⁴

As part of their efforts to identify CDBIs and encourage allocations to socially responsible investments, NCIF has developed an assessment

117. *Id.*

118. *See* MOVE YOUR MONEY PROJECT, *supra* note 17.

119. *See* INSTITUTIONAL RISK ANALYTICS: CREATIVE RISK MANAGEMENT SOLUTIONS, *supra* note 115.

120. *See About NCIF*, NCIF, <http://www.ncif.org/index.php/about/> (last visited Aug. 5, 2012).

121. DAVID PORTEOUS & SAURABH NARAIN, SOCIAL PERFORMANCE MEASUREMENT FOR CDFI BANKS (2007), available at http://www.ncif.org/images/uploads/SPM_for_CDFI_Banks.pdf.

122. *Id.* at 2. For information about the CDFI Fund, *see* U.S. DEPARTMENT OF THE TREASURY, COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND, <http://www.cdfifund.gov/> (last visited Aug. 6, 2012).

123. PORTEOUS & NARAIN, *supra* note 121, at 2.

124. *See id.* at 1–2.

tool that provides key information about the community development missions and programs of banks.¹²⁵ Through this tool, Social Performance Metrics, the organization reviews the extent to which the activities of financial institutions address the needs of underserved communities.¹²⁶ NCIF “has calculated the Social Performance Metrics value for every domestic bank and thrift from 1996 to the present.”¹²⁷ Through this system, NCIF combines financial performance information with social performance data to assess whether financial institutions are serving underserved communities.¹²⁸ Their hope is that socially responsible investors will use these scores when making investment decisions.¹²⁹

For example, CDBIs must have at least 50% of their branches in low-to-moderate income (“LMI”) census tracts.¹³⁰ NCIF’s system also requires CDBIs to have at least 40% of their HMDA reported loan originations and purchases (in dollars) located in LMI census tracts.¹³¹ In order to provide investors with access to the data behind these metrics, NCIF has established a searchable database that allows investors to input their parameters for social and financial performance (as a function of return on investment) and receive a list of all entities meeting those criteria.¹³²

However, the NCIF system is not designed to assess *local* banking practices, because the metrics are only relevant to each bank’s national practices.¹³³ Moreover, they do not incorporate the wide range of other consumer-related issues that may matter when choosing where to bank, including fees assessed.¹³⁴

125. See *NCIF Social Performance Metrics*, NCIF <http://www.ncif.org/index.php/services/spm/> (last visited Aug. 5, 2012).

126. *Id.*

127. *Id.*

128. *Id.*

129. *See id.*

130. SAURABH NARAIN & JOE SCHMIDT, “NCIF SOCIAL PERFORMANCE METRICS: A QUANTITATIVE APPROACH TO MEASURING THE SOCIAL IMPACT OF BANKS AND THRIFTS, AND TO INVESTING CAPITAL IN THE COMMUNITY DEVELOPMENT BANKING SECTOR” 6 (2008), available at : http://www.ncif.org/images/uploads/NCIF_SPM.pdf.

131. *Id.*

132. *Id.* at 11.

133. *See NCIF Social Performance Metrics*, *supra* note 125.

134. *See id.*

D. THE NEED FOR A LOCAL APPROACH GEARED TOWARDS RESPONDING
TO THE NEEDS OF LOCAL CONSUMERS AND COMMUNITIES

Despite the positive efforts by IRA and NCIF, we are not aware of any existing index geared toward assessing the performance of banks in any particular community. Each community is different, and the consumers that reside in it will likely have different needs. For example, a college town such as New Haven needs more banking options for students. A bank can saturate one market with branch locations, and fail to serve another. Banks can build branches in certain neighborhoods within a community, and neglect others. Bank personnel can speak the languages spoken by residents of the community, or not. Banks can place ATMs in accessible locations throughout a particular community, or choose to limit their availability to a few, select areas.

Because the array of products and services that financial institutions offer can be dizzying, consumers need an easily accessible tool for identifying the ways in which local banks are responding, or not responding, to their particular needs. While the efforts of IRA and NCIF are laudable, neither fills this specific gap. The following section describes a new approach that attempts to fill the need for more consumer-oriented and community-focused information: CIRC. CIRC was originally designed for the New Haven community, but is easily transferrable to other communities.

III. THE COMMUNITY IMPACT REPORT CARD

We designed CIRC to incorporate metrics that reflect the types of products and services consumers seem to care the most about today. We rated each of New Haven's eleven banks¹³⁵ across thirty distinct categories, ranging from the percentage of Latino loan applicants approved in the city to the amount charged to bank customers in monthly service fees. Our goals were to develop a series of metrics that would gauge the extent to which banks are meeting the needs of the New Haven community and to provide consumers with an easily accessible method for comparing banks along these metrics. As the following discussion shows, we assigned point values in each category, with a total possible score of 100.

135. We determined which banks to review based on whether the bank had a physical consumer branch within city limits.

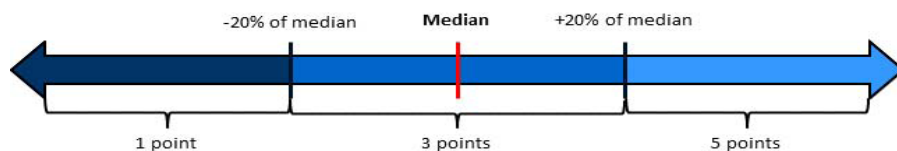
The data we considered falls into two basic categories: home loans and banking products/accessibility.

Our *home loan category* is calculated based on data reported by banks to the federal government under HMDA. We used HMDA data to assess each bank's lending practices in New Haven along the following criteria:

- The percentage of loan applications accepted – all applicants;
- The percentage of loan applications accepted – Latino applicants;
- The percentage of loan applications accepted – Black applicants;
- The percentage of loans made to applicants with incomes below the county average;
- The percentage of loans made in the city of New Haven compared to New Haven County;
- The total value of loans originated in New Haven as a percentage of loans made by each institution nationally.

Without being able to review the actual applications to determine a particular prospective borrower's creditworthiness, it is impossible to set a particular benchmark for how many loans a bank should make in a particular community, what applicants it should approve and reject, and how much lending by volume it should do. Accordingly, in order to gauge the practices of the banks we analyzed, we created metrics that assessed how the institutions measured up against each other. For each category, we assessed the median for the sample set (eleven banks), then assigned point values as follows:

- One point: the bank's percentage was at least 20% below the median;
- Three points: the bank's percentage was within 20% of the median (above or below);
- Five points: the bank's percentage was at least 20% above the median.



For example, the median percentage of home loan applications accepted in New Haven was 55.6%; 20% above and below the median

gave us a range of 44.4 to 66.7%. Because there were six categories worth up to five points each, a total of thirty points was allocated in the home loan category (i.e., 30% of the total score). Citibank had the most points in this section (twenty-six); People's United and Sovereign tied for the least (eight).

We used a range of 20% based on consultation with experts in the community banking field. To ensure that this was an effective approach, we ran sensitivity analyses on that range. Our results did not change if we used either a lower threshold (15%) or a higher one (25%); the banks had the same relationship to each other using either threshold, and no bank's score changed by more than two points.

We considered but ultimately did not include loan applicants' gender as a category because there was no practical difference between the banks when using this criterion.

Our *banking products/accessibility category* incorporates a variety of metrics that help differentiate between banks from the standpoint of New Haven consumers. For each bank, we collected¹³⁶ the following data:

- *Physical accessibility*: Number and location of branches in New Haven, hours open (e.g., Saturday/evening hours), online/mobile banking, multilingual staff at branches;
- *ATM locations and features*: Number and location of bank ATMs in New Haven, multilingual functionality, fees charged to non-customers, fees charged to customers using non-bank ATMs;
- *Personal savings accounts*: Monthly fee, minimum opening balance, minimum balance to avoid monthly fee;
- *Personal checking accounts*: Monthly fee, minimum opening balance, minimum balance to avoid monthly fee, overdraft penalty;
- *Small business accounts*: Monthly fee, minimum opening balance, transaction limit per month;

136. In all instances, data used in CIRC came from three sources: publicly available information (like that found on bank websites), site visits (to score categories like ATM language capabilities), and interviews with bank personnel (for information that was not readily available through public sources, like the languages spoken by bank personnel in a particular branch location). We accepted self-reported information by the banks at face value, under the assumption that consumers were similarly privy only to a bank's publicly-available information.

- *Other*: Acceptance of the ElmCity ID¹³⁷ or alternative identification, personal loan options, check cashing services for non-customers, alternative products (e.g., student accounts) offered.

Most of our categories were rated on a scale of one to three points, although two were graded on a binary scale (either one or two points). As a result, the total number of points available in this category was seventy, comprising 70% of the total grade. Bank of America and First Niagara tied for the most points in this section (fifty-one), and Wells Fargo had the least (thirty-nine). The following tables show the point values assigned under each metric.

Physical Accessibility

Branch locations: number	1: 1 New Haven branch; 2: 2 New Haven branches; 3: 3+ New Haven branches.
Branch locations: geographic distribution	1: 0-1 branch in an empowerment zones (based on HUD definition); 2: 2 branches in empowerment zones; 3: >2 branches in empowerment zones.
Opening hours	1: No Saturday or evening hours (past 6 PM); 2: Open either Saturday or evening hours; 3: Open Saturday and evening hours (at least 1 branch).
Online or mobile banking	1: Does not offer free online or mobile banking; 2: Offers free online and/or mobile banking capability for checking and savings accounts.
Multilingual staff	1: No staff members can speak a language other than English; 2: Offers staff members at each branch who can converse in two languages; 3: Offers staff members who can converse in more than two languages.

137. The Elm City ID card is a photo identification card issued by the City of New Haven and available to all residents of the city, regardless of their immigration status. See ELMCITY RESIDENT CARD, <http://www.newhavencard.net/nhcthome/IDCard.php> (last visited Aug. 5, 2012).

ATM Locations and Features

ATM locations: number	1: 0-2 ATM facilities in city of New Haven; 2: 3-4 ATM facilities in city of New Haven; 3: 5+ ATM facilities in city of New Haven.
ATM locations: geographic distribution	1: 0-1 ATM in empowerment zones (based on HUD definition); 2: 2 ATMs in empowerment zones; 3: >2 ATMs in empowerment zones.
Multilingual functionality	1: ATM offers services in English only; 2: ATM offers services in English and Spanish only; 3: ATM offers services in at least 3 languages, including English and Spanish.
Non-bank customer fees	1: Greater than \$2 fee per transaction for non-bank customers; 2: No greater than \$2 fee per transaction for non-bank customers; 3: No fee per transaction for non-bank customers.
Fee for using non-bank ATMs	1: Greater than \$2 fee per transaction for using non-bank ATM; 2: No greater than \$2 fee per transaction for using non-bank ATM; 3: No transaction fee for using non-bank ATM.

Financial Products

Personal savings accounts: fee structure	1: Bank charges \$4.50 or more a month for savings accounts; 2: Bank charges up to \$4.50 a month for savings accounts; 3: Bank offers no-cost savings accounts.
Personal savings accounts: minimum opening balance	1: More than \$50 balance to open account; 2: \$11-50 balance to open account; 3: Up to (and including) \$10 minimum to open account.
Personal savings accounts: minimum no-fee balance	1: Requires >\$500 average monthly minimum balance or >\$300 minimum balance at all times to avoid fees; 2: Requires between \$250 and \$500 average monthly minimum balance or between \$100 and \$300 minimum balance at all times before incurring fees; 3: Up to \$250 average monthly minimum balance or minimum balance of \$100 at all times without fees.

Personal savings accounts: account opening criteria	1: Does not accept alternative forms of ID to open account; 2: Accepts alternative forms of ID as secondary, but not primary, form of ID to open account; 3: Accepts Elm City ID Card or other form of alternative ID to open account.
Personal checking accounts: fee structure	1: Bank charges \$4.50 or more a month for checking accounts; 2: Bank charges up to \$4.50 for checking accounts; 3: Bank offers no-cost checking accounts.
Personal checking accounts: minimum opening balance	1: More than \$50 to open account; 2: \$26-50 to open account; 3: Up to (and including) \$25 minimum opening balance to open account.
Personal checking accounts: minimum no-fee balance	1: Requires >\$750 average monthly minimum balance or >\$500 minimum balance at all times to avoid incurring fees; 2: Requires up to \$750 average monthly minimum balance or \$500 minimum balance at all times to avoid incurring fees; 3: No minimum balance required.
Personal checking accounts: overdraft penalties	1: More than a \$35 overdraft penalty per transaction; 2: \$26-35 overdraft penalty per transaction; 3: Up to \$25 overdraft penalty (average of first five overdrafts) per transaction.
Personal loans	1: Offers no personal loan options; 2: Offers an array of personal loans options.
Check cashing: non-account holders	1: Will not cash checks for non-account holders; 2: Charges \$5+ to cash checks for non-account holders; 3: Charges up to \$5 to cash checks for non-account holders or offers free check cashing for checks written from bank.
Small business accounts: fee structure	1: Bank charges >\$10.00 for small business accounts; 2: Bank charges up to \$10.00 for small business accounts; 3: Bank offers no-fee small business accounts.
Small business accounts: minimum opening balance	1: More than \$100 to open account; 2: \$26-100 to open account; 3: Up to \$25 minimum balance to open account.

Small business accounts: usage criteria	1: Fewer than 250 transactions permitted per month without charge; 2: 250-400 transactions permitted per month without charge; 3: Over 400 transactions permitted per month without charge or no maximum usage criteria.
Alternative products	1: Does not offer alternative products; 2: Offers only student accounts; 3: Offers multiple alternative products (e.g., student accounts, last chance accounts, etc).

We excluded several previously considered categories because banks scored similarly, and thus failed to generate meaningful differences between the practices of the banks:

- Proximity to public transportation: all banks were within five minutes of a bus line;
- Direct deposit: all banks offered free direct deposit to customers;
- ATM services: all banks have at least one ATM in the city of New Haven that accepts deposits;
- Usage criteria for personal savings accounts: all banks were similar in following federal regulations with respect to the limit of six transactions per month,¹³⁸ although policies varied after that limit;
- Usage criteria for personal checking accounts: none of the banks set limits on transactions for checking accounts;
- Check cashing for account holders: none of the banks charged a fee to account holders, although some set limits on the amount of funds a customer could withdraw at one time;
- Small business accounts opening criteria: none of the banks required applicants to undertake any additional steps/fulfill additional requirements beyond submitting necessary paperwork.

Although there was variability in how banks scored on our index, no bank was perfect. First Niagara, the top-rated bank, scored 74/100, meaning there are definitely opportunities for improvement. At the same time, even People's United, our lowest-rated bank with a score of fifty-two, scored well in at least some categories.

138. See so-called "Regulation D," 12 C.F.R. § 204.2(d)(2) (2012).

Generally speaking, the results revealed several areas of concern in terms of bank practices in New Haven, including the following:

- At all but one bank, Latino and Black home loan acceptance rates lag behind the overall acceptance rate in the city, some by a wide margin.¹³⁹ At one bank (The Bank of Southern Connecticut), there were no Latino or Black applicants at all. At two other banks, no Latino or Black applicants were approved (TD Bank and RBS Citizen's, respectively).
- Although all banks offer at least one branch open on Saturday, only two of the eleven banks offer evening hours (past 6 PM) and only one (TD Bank) is open on Sundays.
- All banks charge non-bank customers a fee to use their ATMs, with the average fee close to \$3 per transaction.
- All but two banks (Citibank and People's United) charge fees to their own customers for using non-bank ATMs, with the average fee around \$2.
- Only one bank (JPMorgan Chase & Co.) accepts the Elm City ID card to open an account.
- All banks but one (First Niagara) charge monthly fees for checking accounts, with the average fee at around \$9, and the average minimum balance to avoid fees at over \$1,000.

At the same time, our analysis yielded several encouraging findings regarding bank practices in New Haven, including the following:

- All banks offer free online banking; only one (Wells Fargo) charges a fee for online bill pay.
- All banks but one (The Bank of Southern Connecticut) have multilingual staff; at two banks (Citibank and Webster Bank), services are offered in multiple languages (i.e., not just Spanish and English).
- All banks but one (The Bank of Southern Connecticut) have ATMs that offer services in languages other than English; roughly half offer services in multiple languages beyond Spanish and English.

139. The general home mortgage acceptance rate in the city is calculated by using HMDA data and determining the acceptance rate for all lenders in the city, regardless of whether they have a physical location in the city. Thus, by our calculations, "resident" banks in the city have a lower home mortgage acceptance rate for Black and Latino borrowers than non-resident banks.

- All banks but one (Citibank) offer savings accounts with relatively low monthly fees (\$5 and below).
- Most banks will cash checks for non-customers, albeit often only for checks written on their own bank and/or for a fee.
- Most banks offer alternative accounts, especially student savings/checking options.

By creating a multifaceted index system that reflects the specific interests and needs of New Haven consumers, we believe that this system will enable New Havenites to compare banks and choose the one that best meets their needs. In turn, our hope is that banks will respond to the index by improving their products and services. By no means do we believe this is the only method through which consumer and bank behavior could be shaped. Similarly, we do not believe our approach to metric setting, weighting, and scoring is the only way that a community could assess bank products and services. In the next section, we describe some alternative methods and approaches that different communities can take, and some enhancements to our system that other communities might adopt.

IV. ALTERNATIVE MODELS AND ENHANCEMENTS

The CIRC system creates an objective set of criteria, weights and scores them with rough equivalence, and generates a single score out of 100. Of course, there are many alternative approaches. The following discussion illuminates some of them and then touches upon some possible enhancements to our system.

A. ALTERNATIVE MODELS

While the variations are virtually endless, in this sub-section we will discuss potential alternative approaches around several central themes: setting objective criteria; identifying the range of metrics to score; establishing relative weights for the different scores; assigning different scores; issuing letter grades; and engaging in relative ranking.

1. Objective Criteria and Relative Scoring

In the CIRC system, we identified a series of metrics and determined an objective “ideal” under each criteria that we believe

represents the best practices in New Haven, such as the number of branches one could reasonably expect a bank to operate in a single community (three), the number of languages spoken by bank personnel (more than two), and the fee for cashing a check for a non-customer (no more than \$5). At the same time, we used relative ranking in assessing banks' home lending practices because we believe it is impossible to define objective criteria about lending without reviewing each bank's portfolio in-depth, with the caveat that we can identify some obvious red flags, like when a bank makes no loans to borrowers of certain demographics.

Of course, our approach is not the only one a community could implement to evaluate its local banks. Communities could choose to set higher goals for banks in the range of the products and services they offer, such as reserving the highest score for banks that provide no-fee checking and savings accounts. Or they could set purely relative benchmarks: e.g., a community could grade each bank against all other local banks in terms of the fees they charge, or the array of services they provide.

Similarly, just as we scored banks on their home lending practices relative to other banks in New Haven, communities could choose to set objective lending targets instead.

2. Identifying Metrics

We developed the criteria included in CIRC through discussions with industry experts, community leaders, regulators, and elected officials. Communities could certainly choose different criteria, choose only some of the metrics utilized in CIRC, and/or add additional criteria beyond the scope of CIRC.

3. Weighting

Under CIRC, a bank's scores on the products and services criteria comprise 70% of its overall score, with home lending scores accounting for the remaining 30%. We assigned relatively equivalent weights within each larger category: i.e., banks could receive up to three points in most of the products and services categories, and up to two points in just two. Similarly, each lending metric was given equal weight within the home mortgage category. Different communities could assign

certain metrics higher or lower weights, assuming they were to use the same metrics as CIRC.

4. Scoring

Through CIRC, banks can earn a range of scores, typically one to three points, based on their relative success in meeting relevant benchmarks. Communities can choose to vary the points assigned to the different metrics. Under CIRC, banks that do poorly in a particular metric generally receive one point under each metric, even if, for example, their ATMs offer services in English only. One simple variation a community could choose would be to assign no points to banks that fail to meet certain benchmarks in particular areas. Similarly, while CIRC generally assigns one to three points in most products and services categories, a wider spread could be used.

Communities could also vary the total number of points available (separate from, or in conjunction with, assigning different weights to different categories). For the sake of simplicity, under CIRC, banks can achieve a total of 100 possible points. Communities could obviously vary this number based on how they wish to assign points to each category. They could achieve further variations in weighting by varying the total points available under each category.

5. Assigning Individual Scores in Categories and Issuing Grades

CIRC's approach involves assigning a total score out of 100 points, but there is wide room for variation in assigning scores. For example, other communities could assign a range of different scores in different categories; or they could take a different approach to issuing a single score by, for example, issuing an overall letter grade on bank performance. These could be graded on a curve, relative to how all banks in a community fare, or they could be given grades based on pre-determined benchmarks: e.g., a bank receiving a score of seventy-five or lower could receive no higher than a C grade.

6. Relative Ranking and Tallying of Scores

The CIRC approach to issuing final "grades" for the banks consists of tallying the point values each bank receives under each metric into a single, numerical score. Individual consumers can also see the data

inputs that support those scores. While the banks naturally sort into a “ranking” based on the overall score, the score itself is not a reflection of any relative rank of the banks themselves. However, communities could choose different approaches to generating and presenting the final results of their scoring system.

Another common approach to indexing involves generating the results of rankings and issuing a score based on relative ranking rather than on raw scores. In other words, communities could assign numerical scores based on how banks rank relative to each other in a particular category (in our case, one through eleven), and then add those numerical scores under each category to arrive at a final score.

B. ADDITIONAL ENHANCEMENTS

Just as communities have many options from which to choose if the same categories as CIRC are used—namely, financial products and services and home lending—the number of possible categories of information that could go into each community’s system is also vast. This final section will discuss two potential enhancements that communities could consider, and which CIRC may undertake in future iterations of the project: (1) incorporating national information and (2) creating a user-directed interface to enable consumers to create their own individualized scoring systems.

Communities can choose to incorporate a range of publicly available information about financial institutions, from national lending criteria available through HMDA to 10-K filings for publicly traded institutions. Different incarnations of a bank rating system could use some or all of these national data points to enhance the range of information provided to consumers. Of course, doing so may detract from the purely local focus, but particular communities may nonetheless choose to do so in order to capture this additional information.

In addition, with appropriate technical expertise, communities could create an end-user focused, web-based platform that would empower consumers to make their own decisions on the shape of the system, tailoring it to best meet their own needs. For example, such a web-based platform could enable consumers to choose the criteria to include in their personal bank scorecards, assign points and weighting accordingly, and thus generate personalized scores for each bank. If a particular consumer is less interested in bank fees or home mortgage

lending, for example, he or she could jettison those criteria from the scorecard; similarly, that consumer could assign greater weight to small business lending categories and deemphasize the languages spoken by bank personnel at local branches.

The possibilities for such a web-based, consumer-customized interface are virtually infinite, and it is our hope that future iterations of CIRC, and other communities' approaches to it, will include such options.

CONCLUSION

As stated in the introduction to this piece, a series of questions inspired the creation of CIRC. Can consumers put pressure on banks to be more responsive without any particular expertise in bank regulation? Can consumers use a series of easily understood metrics to gauge bank responsiveness to consumer needs and interests? Can banks' scores on these metrics permit comparison-shopping by consumers? If consumers do use these metrics, will banks respond by improving the products and services they offer? The CIRC project described in this article is an attempt to develop an easy-to-use system to provide consumers with the information they need to compare banks operating in the New Haven community. In turn, our hope is that banks will respond to informed consumer behavior by enhancing their customer services: improving their products and taking a more proactive—and better-informed—approach to meeting consumer interests and addressing community needs.