From: Jaime Weisberg <Jaime.W@anhd.org>
Sent: Monday, April 06, 2020 2:53 PM
To: Comments
Subject: [EXTERNAL MESSAGE] RIN 3064-AF22 - ANHD's comments on CRA proposal
Attachments: ANHD Comments on CRA NPR April 6 2020.pdf; ANHD Response to OCC ANPR 2018-11-19.pdf; ANHD Testimony for HFSC hearing 3-6-2020.pdf

Good afternoon

Please see attached for ANHD's comments opposing the OCC and FDIC's CRA proposal. Along with two supporting documents, which are our ANPR comments and testimony submitted to the HFSC March 6, 2020

Thank you,

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April 6, 2020

Comments regarding "Reforming the Community Reinvestment Act Regulatory Framework"
OCC Docket ID OCC-2018-0008, RIN 1557-AE34, FDIC RIN 3064-AF22

To Whom It May Concern:

I am writing with regards to the Office of the Comptroller's (OCC) and Federal Deposit Insurance Corporation's (FDIC) Notice of Proposed Rulemaking (referred to as "NPRM" or "the proposal" throughout) seeking input on proposed changes to the Community Reinvestment Act (CRA). I am writing on behalf of the Association for Neighborhood and Housing Development (ANHD). ANHD is a nonprofit coalition comprised of over 80 neighborhood-based affordable housing and equitable economic development organizations and Community Development Corporations (CDCs) with over 40 years of experience in policy and organizing work related to bank reinvestment, affordable housing, and equitable economic development on behalf of New York City's low- and moderate-income (LMI), immigrant communities and communities of color. ANHD's work is rooted in its values of justice, equity and opportunity.

The CRA is one of the major civil rights laws that were passed in response to discriminatory policies and practices that locked people of color out of banking, credit, housing, employment, and education. It is one of the most important laws we have that holds banks accountable to local communities, requiring them to lend and provide services equitably, and to support community development in the areas where they do business. The CRA has leveraged two trillion dollars nationwide since 1996[1], and, in the past five years alone, ANHD has documented near or over $10 billion each year reinvested in New York City[2]. Thanks in part to the CRA, over 330,000 units of affordable housing have been built in the past 40 years, and a third of that by nonprofit developers. The CRA has leveraged and supported partnerships, products, and developments impacting low-income tenants facing harassment and displacement, low-income homeowners, small businesses and the community organizations, CDFI's and credit unions that support them.

We adamantly oppose the ideas presented in the NPRM. They would significantly weaken the CRA, leading to less investment, fewer loans and bank branches, and less meaningful investment. We also must note that the recent CRA guidance put out by all three federal regulators – the Federal Reserve System, FDIC, and OCC – related to the COVID-19 crisis includes aspects that would never be allowed under this proposal. They jointly offer favorable credit under the retail service and lending test for waiving fees, helping access bank accounts remotely or by ATM, and modifying loans, as well as for creating new loan products, grants and services that would help impacted communities[3]. The proposal before us now eliminates the three-prong test, eliminates analysis of banking products and ways to bank, and eliminates any analysis of responsiveness or innovativeness, such as the types of products a

[1] https://ncrc.org/what-the-community-reinvestment-act-means-to-lending-in-philadelphia/
[2] https://anhd.org/project/state-bank-reinvestment-nyc-annual-report
[3] https://www.federalreserve.gov/supervisionreg/caletters/CA%2020-4%20Attachment.pdf

bank may offer in response to the COVID-19 crisis or any other such disaster, not to mention the daily community credit and banking needs outside of any disaster.

We're also very concerned that the two agencies, the OCC and FDIC, are moving forward without the cooperation of the Federal Reserve Board, which has correctly stepped away from this flawed proposal. Banks should not be operating under different rules for community reinvestment.

ANHD members, led by our Equitable Reinvestment Coalition, identified these top three priorities for CRA reform:

1. **Banks should be evaluated on the quantity, quality and impact of their activities within the local communities they serve and based on the needs of these local communities. This cannot be done with a one-ratio evaluation that simply looks at dollars invested.**
    - Incentivize high quality, responsive activities that lift historically redlined people – people of color and low- and moderate-income people – out of poverty and help reduce wealth and income disparities.
    - Downgrade banks that finance activities that cause displacement and harm.
2. **Community input and community needs must be at the heart of the CRA**. Strong community needs assessment and community engagement should inform community needs and how examiners evaluate how well banks are meeting those needs.

3. **Assessment areas must maintain local obligations**. The CRA must maintain the current place-based commitment banks have to local communities. Banks should have additional assessment areas where they do considerable business (make loans / take deposits) outside of their branch network. These types of reforms must maintain or increase quality reinvestment where it is needed, including high need "CRA hot spots" such as New York City, while also directing capital to under-banked regions.

The proposal meets none of those criteria, and in fact, sets us backwards. Our comments will refer to some of the questions posed within the NPRM, to the important questions NOT proposed, and also refer back to these priorities. The proposal is a fundamental shift from the way the CRA works today, and a shift that guts the CRA. **Overall, we see three major threats to the CRA under this proposal, in addition to the flaws in the process.**

1. **How it Counts: the one-ratio metric and very weak retail test**
2. **What counts: Expansion of CRA eligible activity beyond the intent of the law**
3. **Where it counts: Dilution of local assessment areas and local obligation**

Flaws with the Process

Proceeding without the Federal Reserve Board

The OCC and FDIC are proceeding without the cooperation of the Federal Reserve Board, which correctly stepped away from this very flawed proposal. This now sets up a system whereby banks can operate under different regulatory regimes. For FDIC-regulated banks that are also chartered in states with local CRA laws, such as New York State, this also means that they will have two regimes under which they will be evaluated. Not only are the methodologies different, but the data collected and analyzed are vastly different. This means banks can shop around for the regulator they think will be easier on them, and some banks may abandon their state charter for a national one.

Allowing insufficient time to comment

The original 60 days (88 with delay in rule publication) was not sufficient. Despite the OCC's assertions that we have had enough time to discuss changes to the CRA[4], the public only had a short period of time to analyze this specific proposal, which goes even farther than what we had expected based on the Advanced Notice of Proposed Rulemaking (ANPR) in 2018 and materials provided by the OCC and discussed on the road tours in 2019, prior to the NPRM being released. The nuances are substantial and require time to fully understand and comment.

The agencies extended the comment period an additional 30 days, but that extension came just before the COVID-19 crisis began and thus had little effect. Recognizing the dangers, the federal agencies, including the FDIC and OCC, canceled their interagency conference just 3 days before the original deadline. Barely a week after that, nearly every organization, bank, and company in the country was adjusting to working from home or working in newly hazardous conditions. The crisis has been particularly hard in New York City, where ANHD and our members operate. **The agencies must suspend the comment period until after the crisis passes and allow organizations to focus on the immediate needs of the communities they serve.** They should not be rushing through a CRA rule that has such far-reaching consequences, especially at a time like this.

Lack of Data and Transparency

Despite the OCC's assertions that they want to increase clarity and transparency, the proposal is opaque and less transparent than what we have today. We currently have little access to CRA data, and none at the local level for community development lending. The proposal abandons the data we have access to, such as the Home Mortgage Disclosure Act (HMDA) database for 1-4 family and multifamily lending, the FDIC for branches and deposits, and the FFIEC for small business lending data. The proposal relies primarily upon balance sheet data – loans and investments already on the books regardless of when they were originated – and a modified version of deposits, neither of which are publicly provided at any local level, if at all.

Further, there is no data to support moving to this new system, nor the thresholds to reach the presumptive ratings or the impact it will have on communities and banks. The proposal refers to an analysis of 200 CRA exams, with no disclosure of the data nor what it entails – not the number of banks, asset sizes, geographies, business models, or regulators. Whereas the Federal Reserve Board created and publicly released a comprehensive database of over 6,000 exams from 2005 to 2017, for over 3,700 banks of a variety of sizes, business models, regulators, and geographies.[5] Further, Comptroller Otting claimed in the hearing on January 29th before the House Financial Services Committee that the OCC also analyzed the Federal Reserve's database, yet the proposal makes no reference to that larger database, which does not appear to have informed any of the metrics or analyses[6].

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[4] https://www.americanbanker.com/news/occs-otting-rules-out-longer-comment-period-for-cra-plan "We have been working for 18 months on this," Otting said. "And so I think it's plenty of time…."

[5] http://www.urban.org/sites/default/files/2020/01/09/lael_brainard_speech.pdf

[6] https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=406021

In further recognition that the OCC lacks the data necessary to support the NPRM, they issued a Request for Information to OCC-regulated banks to provide the relevant data that they clearly do not have. That data excluded FDIC-regulated banks and was due to the OCC the day after the NPRM comments were originally due. It was not made available to the public.

Questions Posed are the wrong questions and indicate that the OCC is not actually interested in feedback or in strengthening the CRA.

After two years of formal and informal community tours, dialogue, and written comments provided for the ANPR, the OCC put forth a full proposal that ignores most of the feedback, not to mention the thoughtful feedback that went into the 2010 CRA hearings and the paperwork reduction act ("EGRPPRA") process in 2015[7]. Some of the questions on the NPRM make it clear that they know there are major flaws in their approach and give the false impression that they are willing to compromise. But make no mistake, the OCC and FDIC put them forth as what they purport to believe to be the correct approach, **which is more complex, less transparent, and less responsive to community needs.**

We include our ANPR into this formal record, and reference it throughout, to provide more details on some of the areas cited. Specifically, we point to the discussion on downgrading banks for displacement, access to banks and banking, and the importance of quality, impactful activities, not solely a target dollar amount.

Just a few examples of questions not asked include the following, some of which will be discussed in more detail below.

- ***One-Ratio****:* The vast majority of the 1500+ comments in the ANPR – including ANHD's comments – opposed any form of a one-ratio approach that combines all types of CRA activities – retail and community development – together into one formula[8]. Yet the OCC and FDIC maintained that approach and do not even bother to ask if it is the right approach. The answer once again is NO – this is not the right approach.

- ***Arbitrary Thresholds:*** Even if a single metric were the right approach (it's not), there is no question posed about the proposed thresholds (11% for outstanding, 6% for satisfactory), and as mentioned above, we couldn't respond if we wanted to as we do not have any of the data the OCC used to come up with those thresholds. The OCC analyzed a mere 200 exams, all classified as large banks, despite the assertion that they included banks over $500 million and below that amount, which includes what are today classified as Intermediate Small Banks.[9] The NPRM does not disclose the data nor the assumptions they made with regards to the newly qualifying activities.

- **Allowing a bank to fail in 50% of its assessment areas and still pass its CRA exam**. Both agencies insist that they are open to feedback on declaring 50% as a sufficient percentage of

[7] ANHD comments: https://anhd.org/report/economic-growth-and-regulatory-paperwork-reduction-act-1996-egrpra-community-panel-boston
[8] https://ncrc.org/analysis-of-public-comments-on-the-community-reinvestment-act/
[9] NPRM Page 59, footnote. "The agencies used a sample of performance evaluations completed between 2011 and 2018. The sample contained data from over 200 exams for banks above the small bank asset size threshold, which adjusts yearly and is $1.284 billion for 2019"

assessment areas to pass in order to pass overall, and that they is open to raising that percentage, but let it be clear that Comptroller Otting's and Chair McWilliams's first suggestion was 50%. That means that they believe a bank can invest poorly or not at all in half of its assessment areas and that the bank should still pass its exam, possibly even with an outstanding.

- **Elimination of the Service test, which means no focus on increasing access to banks for unbanked and underbanked populations.** The 2018 ANPR did not ask *how* LMI branches and services should be analyzed, but *if* they should[10]. Community organizations nationwide were unequivocal that branches are important, as are responsive, affordable products. Yet, the OCC removed the service test entirely and any analysis of access to banks and banking. The NPRM now asks if the range of retail banking services should be provided in the performance context. This is an insult to the community members and advocates who have written volumes on why branches and bank products are important – in studies, testimonies, and comments going back to the first round of modernization discussions back in 2010. And then to suggest that it could go in the performance context makes no sense – the performance context is now almost entirely bank-written, not a formal part of the analysis, and only relates to qualified activities, so we are left to wonder how adding it to the performance context would have any impact as they are not part of a qualified activity. [***See PAGE 21 of ANPR comments for an in-depth discussion of this area***]

- **Elimination of community input and objective analysis in the Performance Context.** The proposal fundamentally changes the performance context and its role in CRA exams yet *asks no questions about that*. Under the current system, the performance context is meant to inform how banks are evaluated, with regards to a wide variety of factors: demographics, economic conditions, needs, opportunities, competition, bank business model and size. The performance context comes first and can be written by the bank, or an outside entity, or a combination of the two. The evaluation of needs and bank performance is also informed by community comments, which become part of a bank's public file which is accessible to anyone who requests it. Examiners are then meant to evaluate a bank's performance within that performance context. The proposal fundamentally changes that in three major ways. (1) it is 90% bank-written, (2) its purpose appears to be about why a bank could or couldn't meet the presumptive goals – basically giving banks a place to excuse any poor performance in the retail section, and (3) it eliminates the opportunity for the public to comment on a bank's performance at all. This is an area that should be strengthened not weakened. [***See Page 11 of ANPR letter for more about performance context***]

- **Banks conduct their own exams:** Under the current system, banks submit their list of qualified activities for examiners to evaluate, presumably in conjunction with public data accessed via HMDA, FDIC, and the FFIEC for the distribution tests. The new system asks banks to calculate their one-ratio metric, including multipliers, whereas examiners merely verify a sample. And given the lack of public data for much of the retail lending, there is little way for examiners to verify that either.

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[10] Page 22 of ANPR: *"Question 27: Should bank delivery channels, branching patterns, and branches in LMI areas be reviewed as part of the CRA evaluations?"*

- Page 78: *"Banks evaluated under the general performance standards would be required to collect and maintain their retail lending distribution tests results, CRA evaluation measures calculations, and presumptive ratings determinations."*
- Page 80: *"The agencies would review a sample of a bank's collected data that was used to determine the presumptive rating as part of a bank's CRA evaluation"*

Flaws with the Metrics

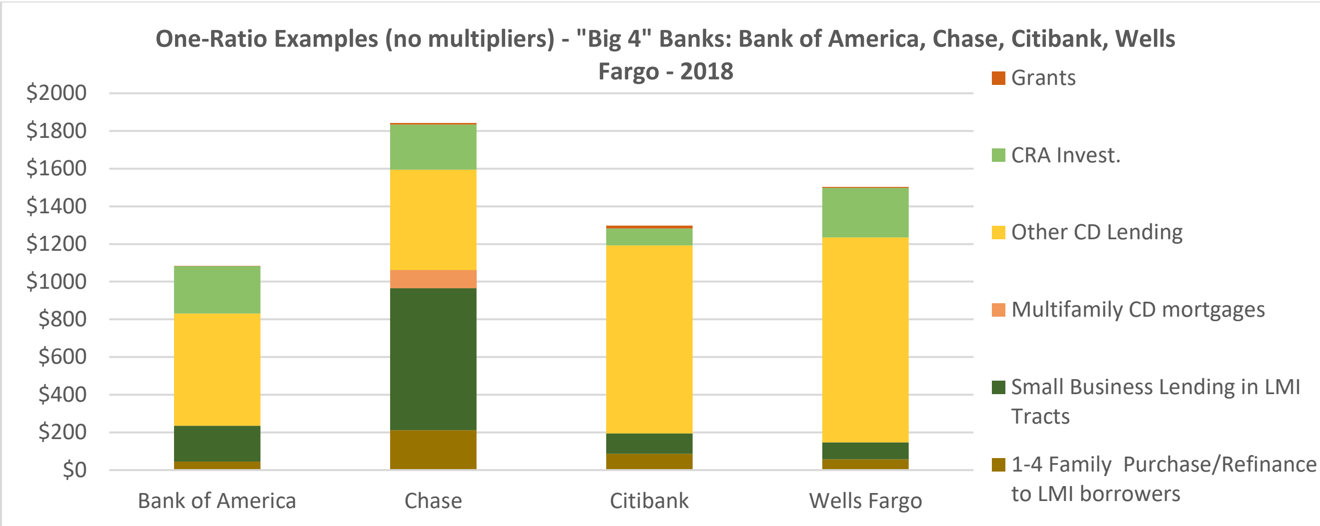
Combining all activities together, with multipliers, is a flawed approach

The concept of the one-ratio approach is to combine all CRA-eligible activity together and divide it by deposits to come up with the "CRA evaluation" and then a presumptive rating. As will be discussed further below, they are also increasing the numerator through additional CRA activities and multipliers and decreasing the denominator by **excluding brokered deposits – including municipal deposits**. Deposit types are not publicly disclosed by branch, or even assessment area. Also, it is unclear why municipal deposits wouldn't count – municipal deposits are *our public deposits,* as they come from taxes at all levels of government. Banks should have an obligation related to all their deposits.

The concept of one-ratio is flawed on many levels. **While we certainly want to see dollars coming into our communities, the type and impact of those dollars matter just as much, if not more**. A one-ratio approach focuses solely on the dollars and not on the impact or local needs. And the multipliers simply distort the formula, raising that numerator, making it easier for banks to reach the target goal. ANHD has long looked at the percentage of dollars invested to deposits, but we also understand that one lump-sum metric cannot be the main indicator and that there must also be a full evaluation of the quality of activities. ANHD publishes an annual *State of Bank Reinvestment in NYC* report where we look at a variety of factors related to CRA in New York City[11]. Percentage of reinvestment dollars to deposits is just one metric. We look at overall dollars to deposits, we split out "core" lending (retail and multifamily) from community development activity (CD loans, investments, and grants), and we do analyses of each category individually. We also have an indicator of quality based on factors beyond simply dollars and in categories that can't be monetized, such as branch products.

The chart below analyzes CRA activity in New York City by the "Big Four" banks, defined as being the banks with the largest assets and deposits in the US: JPMorgan Chase, Bank of America, Citibank, and Wells Fargo. As the chart below shows, smaller dollar loans are completely dwarfed by larger loans and investments. Community development loans and investments dominate the numerator, particularly for Bank of America, Citibank and Wells Fargo. However, all these banks do a considerable amount of credit card lending and other consumer lending, which will add to the numerator. Credit cards make up the bulk of Chase's small business loans, and we know they will get an additional boost from credit cards to LMI consumers. For most of the banks, retail lending is much smaller in comparison, even at Wells Fargo which is one of the largest 1-4 family lenders in the city. Across the board, grants are tiny in comparison. <u>Without doing anything different</u>, the numerator will increase due to the myriad activities the proposal includes that we don't have access to and will then be compounded by the multipliers for much of their community development activities.

[11] https://www.anhd.org/project/state-bank-reinvestment-nyc-annual-report



Deposits are an imperfect metric

This leads to another challenge with the metric, one that has always been the case even under the current system that includes some metric of community development loans and investments to deposits or pro-rated estimates of Tier One capital based on deposits. As one metric, it is fine to include, but it should not be the primary determinant of a bank's rating. For one thing, some banks book deposits in large cities, even if the business is elsewhere. Second, a bank may do considerable lending but not take deposits locally. Wells Fargo has only 24 branches in the City and $17 billion in deposits, versus Chase with over 350 branches and $512 billion in deposits. But Wells Fargo and its affiliates have consistently made the highest or second highest volume of 1-4 family lending in New York City for many years. Under the current system, they each have enough of a presence in New York City and surrounding counties for the New York – New Jersey Metropolitan Division to be designated a full-service assessment area, with a comprehensive analysis of lending, investments, and services. But under the new system, simply looking at deposits, they have vastly different obligations due to the difference in deposits, and even less obligation for that investment to be meaningful if they are already so far above the threshold that they no longer have to do anything else, as appears to be the case for Wells Fargo.

Examples of large banks national vs local deposits in New York City (June 30, 2018)						
	National Deposits (B)	**National Retail Deposits (B)**	**NYC Deposits (B)**	**Total NYC Branches**	**LMI branches**	**% LMI**
Bank of America	$1270	$1329	$70	123	40	33%
Chase	$1274	$1182	$512	359	119	33%
Citibank	$486	$458	$87	144	42	29%
Wells Fargo	$1270	$1235	$17	24	2	8%

Percentage of Branches in LMI tracts has little impact on raising or lowering metric

Even with all the multipliers and increases in what counts for CRA credit, it's unlikely Chase will come close to 6% of deposits, let alone 11% (although it must be noted that we do not have sufficient data to say that with total certainty, given their massive retail presence and loans/investments they have on their balance sheet). In any case, neither opening nor closing another 10 branches in LMI tracts makes a material difference to their score. They would be better off finding another assessment area where they can pass and just get extra credit for any deals or business they do in New York City that would go towards their bank-level metric. Bank of America and Citibank come closer and will likely reach a least 6% without doing any new targeted CRA activities because their other areas of business are so substantial (middle income rental housing, credit cards, auto loans, etc) and the loans they have remaining on their balance sheets. Meanwhile, Wells Fargo far exceeds the benchmark already, but does much less than the other banks in the way of local partnerships, programs, or products geared towards LMI New Yorkers. Not to mention they operate almost exclusively in Manhattan, with just two branches in the Bronx, and only two branches in LMI tracts, neither of which would reflect poorly on them in a CRA exam under the new proposal.

CRA Metric (2018 data)								
	NYC Deposits (B)	**CRA loans activity and metric (no multiplier)**		**CRA loans activity with Multiplier: Housing, investments, grants**		**With multiplier + .01*%LMI branches**	**closing 10 LMI branches***	**Opening 10 LMI branches**
Bank of America	$70	$1089	1.6%	$1890	2.70%	3.03%	2.95%	3.11%
Chase	$512	$1843	0.4%	$2636	0.52%	0.85%	0.82%	0.87%
Citibank	$87	$1298	1.5%	$2318	2.67%	2.96%	2.89%	3.03%
Wells Fargo	$17	$1503	9.1%	$2696	16.28%	16.37%	16.28%	16.78%
* Wells Fargo only has 2 LMI branches, so dropped to 0								

Further, the proposal eliminates the analysis of branch openings and closings. Banks are already closing too many branches and opening too few in low-income communities and communities of color. ANHD led Comptroller Otting of the OCC on a tour of Jamaica, Queens, in August 2019, where we drove over 20 minutes down a mixed residential and commercial corridor without encountering one bank branch as we passed by multiple check cashers and high-cost ATMs. Otting himself remarked on the lack of branches: *"Other than Carver Bank, I did not see one bank on that corridor during that whole journey down the corridor."* [12] This is not unique to Jamaica – it is pervasive throughout many areas of New York City and nationwide. Even within this context of branch reductions, a recent academic paper demonstrated that the CRA had a positive impact on keeping branches open in what would otherwise be bank branch deserts[13]. This new proposal could finally give banks the freedom to close some of these last branches in unbanked and underbanked areas of New York City and elsewhere, and certainly does nothing to incentivize them to open new branches in underserved areas, of which there are many.
The "access to banking" section of our ANPR comment letter goes into more depth on the need for both bank branches and affordable, accessible bank products. It is equally relevant to this comment period as to how bank accounts should be evaluated.

Multipliers mean banks can do half as much for the same credit and provide little incentive to do more meaningful smaller dollar activities.

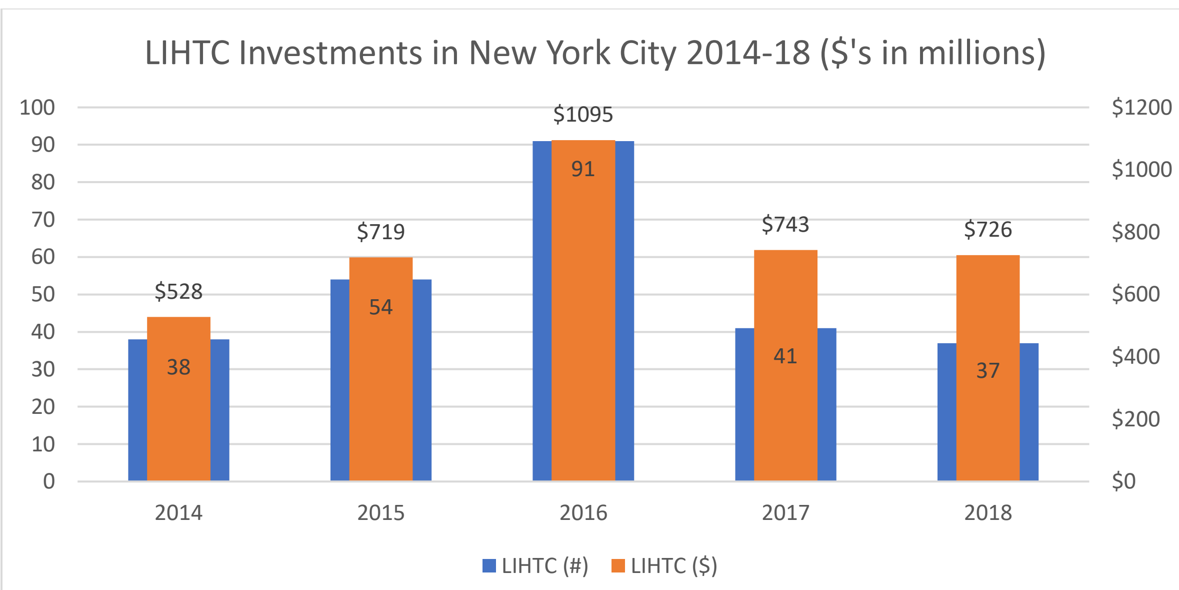
All the multiplier does is get the bank up to that target number more quickly, while doing nothing to incentivize high quality or impactful activities. They are completely unrelated to locally defined needs. Multipliers are not effective, and certainly not done with such a crude way to apply them. Practically all community development activities are multiplied – nearly all investments (aside from bonds and MBS's),

[12] https://news.bloomberglaw.com/banking-law/occs-otting-gets-educated-during-urban-bus-tour
[13] https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2019/wp19-36.pdf

grants, activities with CDFIs, and affordable housing loans. It would only further incentivize the large investments in these categories, while doing nothing to incentivize grants or smaller dollar loans to small businesses or individuals. In a high cost market like New York City, that could be a large development with housing affordable to New Yorkers earning up to 120% AMI, or $95,160, with rents up to $2,380. Nearly 70% of New Yorkers earn less than that; The median income of New York City is $61,000[14] and roughly 42% earning below $48,000[15]. Meanwhile, over 600,000 renters are low-income, so that type of project would be lucrative for banks, help their CRA performance, and ultimately do nothing to help the majority of New Yorkers who need deep affordable housing.

Grants and certain loans to nonprofits are tiny in comparison other large-scale developments. Doubling grants would do little to raise that numerator and would be overshadowed by doubling so many other categories comprised of larger deals, such as real estate deals, stadium investments, or large infrastructure projects, thus creating little incentive to make grants, and certainly less incentive to make grants to smaller neighborhood based organizations.

Another major concern with the multiplier is the impact it could have on the Low-Income Housing Tax Credit (LIHTC) market. New York City is home to many banks that have CRA obligations, which creates a healthy competition for LIHTC Tax Credits, thus driving up the price. In practice, this results in more dollars for affordable housing, which is critical to the development and rehabilitation of housing for low-income New Yorkers. The multiplier means a bank can do half as much for the same credit, which could reduce competition. That reduction, coupled with the reduction due to weaker assessment area obligations and the fact that investments, including LIHTC, will be counted as long as they are on the books, could be disastrous for this source of financing.



[14] https://www.cssny.org/news/entry/2017-hvs-fast-analysis
[15] https://anhd.org/blog/summertime-gladness-your-ami-cheat-sheet-here

Race to the largest, easiest deals, with less emphasis on smaller, more impactful deals

If banks are striving for one large target goal for dollars invested, they will choose to focus on larger deals, while shying away from smaller dollar loans: 1-4 family home loans to LMI borrowers, loans under $50,000 to very small businesses, loans to nonprofit developers, loans and investments in CDFIs, community development grants, and more. These are greatly needed, and any retrenchment would only exacerbate existing disparities.

These are just a few examples of local credit needs that have been documented through public data and local feedback from on-the-ground practitioners.

- **Support for nonprofit organizations to build affordable housing and support equitable economic development.** Loans and investments of all sizes can have a large impact when they go to mission-driven nonprofit developers that build and preserve permeant affordable housing for very low and low-income families, provide affordable space for and technical assistance to small businesses, and increase access to quality jobs.

- **Increase access to home loans to help people stay in their homes and buy homes:** Develop affordable home improvement loan products for LMI homeowners[16]. **Provide financial assistance to help LMI people and people of color purchase homes**. The percentage of home purchase loans to LMI borrowers and borrowers of color remains low. In New York City, this means offering loans with low down payment, financial assistance, and connection to housing counseling. It also means knowing the local market and offering products, accordingly, including loans for coops, limited equity coops, and products that are accessible to immigrants with language access, culturally competent staff, and possibly alternate forms of credit and ID's.

- **Support nonprofit CDFIs that lend to and support small businesses and other LMI New Yorkers**. CDFIs are an important source of credit for low-income, immigrant populations. Through the every-day work they do, as well as through second-look programs with banks, they also can help prepare borrowers for bank loans in the future. Lastly, CDFIs are much more high-touch than banks and provide technical assistance to help borrowers grow and maintain their businesses.

- **Increase access to affordable small business loans and lines of credit**. According to the Federal Reserve Banks, the greatest unmet need for small businesses are loans and lines of credit for under $100,000, with a significant number needing loans under $25,000[17]. They are looking for traditional loans and lines of credit. CDFIs can supplement, but they cannot reach the scale that banks can.

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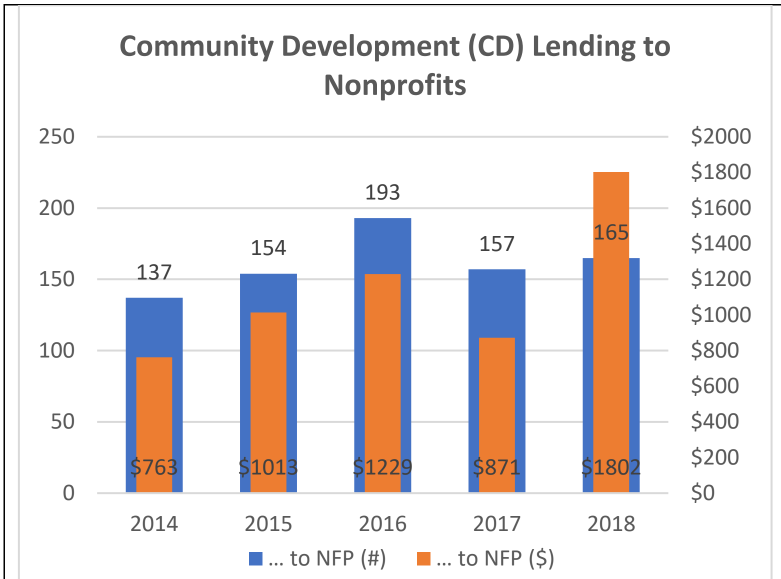
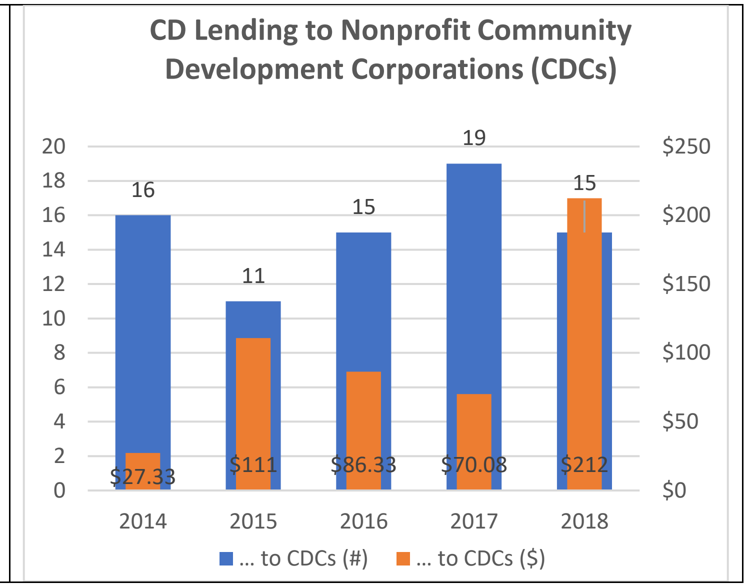
[16] https://s28299.pcdn.co/wp-content/uploads/2018/10/CNY002-AH-Summit-Report_v7_FINAL_online.pdf

[17] https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf





As discussed elsewhere, the addition of new ways to get CRA credit make it even worse. It's much more lucrative to finance a stadium or luxury housing in an opportunity zone than any of these types of activities. It's also easier to finance a large road or bridge project, or middle-income housing, or a business with $2 million in revenue than any of these activities.

Elimination of Qualitative Analysis: Complexity, Innovativeness, Flexibility, and Responsiveness
A key part of all three tests in today's CRA is a qualitative analysis of a bank's activity in each section, regarding complexity and innovation, and flexibility and responsiveness. That allows regulators to highlight and incentivize products and practices that are particularly responsive to local communities and encourage banks to try new things. These are just a few examples:

- Through its CRA plan and community advisory board, Valley National created new mortgage products, a second-chance checking account, and small business loans. The exam highlights the products and the number of people served, which is an improvement over prior exams[18].
- Santander Bank created an $11 billion CRA plan throughout its footprint and created a national advisory board and regional advisory boards. The subsequent CRA exam reflected some of the activities that resulted from this process.[19]
- Deutsche Bank has routinely continued and expand its Working Capital and SHARE programs to support nonprofit community development organizations. Their 2017 exam cites a commitment of $3.75 million over three years for one such program. This amount is small in comparison to the total $402 million they invested but is impactful and responsive and the kind of activity we'd want to see banks continue.[20]

[18] https://www.occ.gov/static/cra/craeval/dec19/15790.pdf
[19] https://www.occ.gov/static/cra/craeval/may18/25022.pdf
[20] https://www.federalreserve.gov/apps/CRAPubWeb/CRA/DownloadPDF/214807_20180618 (page 12)

Monetizing service test activities makes no sense

The volunteer portion of the service test has always been a measure of hours and quality. Like most areas of the CRA, it's certainly one that could be improved to incentivize more meaningful activities that increase access to financial services for low-income communities. But monetizing them as part of the metric is absurd. The dollars are related to the salary one would earn performing that function, which raises so many questions. What is the salary of a gardener, painter, accountant? Would they be entry level, unionized, advanced? And in any case, the overall dollar amount, similar to grants, is likely low compared to a larger real estate loan or investment. This is no longer required but rather one of many allowed activities. Nothing in this change will incentivize the types of services our communities need and will likely lead to a decline.

Evaluating and penalizing displacement and harm

CRA advocacy over the years has led state and federal regulators to better understand this phenomenon. In NY State, regulators officially declared they will not count any loans for CRA credit that are deemed to be destructive, either due to poor conditions or evidence of harassment and displacement[21], and from conversations we know that the FDIC and Federal Reserve often follow similar practices. The CRA has also been critical to fostering dialogue with multifamily lenders and has led to banks adopting best practices in their multifamily lending, as was the case with Signature Bank and New York Community Bank in New York City[22]. Others are also incorporating some of these principles into their lending practices, routinely checking against public sources of bad-acting landlords and talking with tenants and tenant organizers.

However, there is no way under the current regulation for a bank to be *downgraded* for doing harm if it isn't found to violate consumer laws or fair lending laws. The worst that happens is that a loan is not counted. For a bank with a high volume of lending, particularly multifamily lending on buildings where rents are currently affordable, this will have little impact. As we have said many times, including in our ANPR comment letter, **this is an area where the CRA could be greatly strengthened by (1) better evaluating the impact of a bank's lending and (b) allowing examiners the flexibility to lower a rating if a bank demonstrates patterns and behaviors of lending and banking that are problematic and leading to displacement or poor conditions.**

But, as is the case throughout, the current proposal does the opposite in three critical ways:

- As mentioned above, there is zero analysis of the distribution of multifamily mortgages in LMI tracts, such that banks could choose not to invest at all in lower-income tracts. Landlords are already using the new rent laws in NYC as an excuse to reduce maintenance and banks are using it as an excuse to pull back. This could further incentivize lenders to pull back on their lending in lower-income tracts.
- The community development test now includes naturally occurring affordable housing (NOAH), and removes the requirement to determine if LMI people are likely to live in the housing, as the units are not income-restricted.
- Removal of community input on the performance of a bank. This means regulators cannot consider community input in evaluating the record of the landlords a bank lends to in their

[21] https://www.dfs.ny.gov/system/files/documents/2020/03/il141204.pdf
[22] NYCB: https://anhd.org/wp-content/uploads/2017/11/NYCB-CRA-Pledge-2017-19.pdf and Signature: https://www.signatureny.com/about-us/community-development-0717

determination to count a loan or not. Rather than strengthen this critical part of the CRA, the proposal removes it entirely.

ANHD has long stated that regulators should evaluate the impact of community development lending, which is even more crucial if these loans are to have an increased weight on CRA exams. This means going beyond not simply the location of the loan, or even the rents. If the loan is not sustainable, or made irresponsibly, and people or small businesses are displaced, not only should it be discounted, but it should also impact negatively on a bank's CRA rating, similar as would happen if a bank made too few community development loans.

Nearly two-thirds of New Yorkers rent their homes. Multifamily lending in New York City is particularly critical for banks to understand, given the unique housing stock here and its importance to affordable housing for millions of New Yorkers. Rent-stabilized housing remains one of the most important sources of private, more affordable housing in New York City.

Access to credit is critical to maintaining this stock of housing in the City, especially in lower-income neighborhoods. But, these days, **lack of lending isn't the issue as much as the quality of that lending. Equally important to the volume of lending, if not more so, is that the loans are underwritten responsibly.** Speculative loans and loans to bad actor landlords open the door to a type of discrimination known as "*predatory equity*." Unlike the practice of redlining that locked people of color out of the housing market, predatory equity investors make loans in communities of color, in low-income communities, and where low-income people live, but base those loans on highly speculative underwriting. In these cases, the current rents do not support the costs of the loan and maintenance. Such loans have led to the widespread harassment and eviction of lower-income tenants in order to pay off the loan[23].

ANHD has developed a set of best practices for multifamily lending that we believe all lenders should adopt to proactively protect lower-income tenants, particularly in the stock of more affordable rent-regulated housing in New York City.[24] They include:

1. **Responsible underwriting.** All banks should ensure their loans are not made speculatively and do not encourage displacement, harassment, or neglect. We believe a best practice is to underwrite to a Debt Service Coverage Ratio of at least 1.2X, based on current in-place rents and realistic maintenance costs. In place rents must include preferential rents where the rent is set at an amount below the legally registered rent, and not predicated on raising those rents above what they are currently set at. The system is ripe for abuse[25]. There should be no funds set aside for buyouts (payment to urge someone to move out) or other costs that would displace tenants. The new rent laws in NY State will certainly minimize some of these tactics[26], but experience has taught us that the tactics are ever-changing and as such, the fundamental principle of underwriting to current rents and maintenance costs is critical.

[23] https://anhd.org/blog/wnyc-story-how-landlords-push-out-tenants-profit-through-predatory-equity
[24] https://anhd.org/wp-content/uploads/2017/06/ANHD_Best-Practices-in-Multifamily-Lending.pdf
[25] https://www.propublica.org/article/new-york-landlords-exploit-loophole-to-hike-rents-despite-freeze
[26] https://anhd.org/blog/victory-tenant-power

2. **Appropriate vetting of borrowers**. Banks should use all available resources to lend to responsible landlords who are dedicated to maintaining the stock of rent-regulated housing and respecting the rights of tenants in order to preserve this stock of affordable housing.

   Public data from local housing authorities and building departments, coupled with on-the-ground stories from tenants, can indicate if a building is in poor condition or if a landlord is otherwise harassing and displacing tenants. ANHD developed a Displacement Alert Project that banks and regulators can consult on a monthly basis to track buildings in their portfolio, or ones they are considering financing[27]. This flags buildings with indicators of potential risk for displacement based on recent sales and housing and building department complaints, violations, and permits. There are also numerous public lists on landlords with patterns of problematic behavior and buildings with problematic conditions, as well as news reports that banks can consult, and subsequently speak with organizers on the ground who are working with tenants.

3. **Responding to issues in buildings:** All banks should have a formal process to work with tenants and organizers to respond when problems arise in buildings they have loaned on, with the same goal of preserving affordable housing

New York Community Bank and Signature Bank officially adopted these practices in recent years. New York State's Department of Financial Services (DFS) also issued two sets of guidance for NY state-regulated banks related to both CRA exams and safety and soundness exams, both of which state clearly that banks have a responsibility to tenants via the loans they make[28]. No bank should get CRA credit for a loan that violates either set of guidance. **Regulators should also downgrade a bank's rating if they exhibit a pattern of behavior that violates either guidance**.

The stories of CRA-regulated banks making loans to bad acting and "predatory equity" landlords are numerous, all resulting in displacement, harassment, and terrible conditions that no human being should have to live with.[29]

Similar analyses can and should be developed for regulators to downgrade banks for other types of displacement and harmful practices, including, but not limited to:

- Displacement of small businesses and cultural institutions that anchor LMI communities and communities of color.
- Predatory and high-cost single family lending
- Harmful credit products and high-cost banking products

Balance sheet approach is complicated and absurd

The metric relies upon balance sheet dollars, versus new originations, and appears very complicated for banks to calculate, and impossible for the public to do meaningful analysis. The regulators have made no indication that they will make the data public, except in the aggregate, which gives no information at the local level, which would allow us to see if the bank is even meeting numerical targets in local markets. We won't even have public data, such as HMDA and FFIEC small business data, to rely upon

[27] https://reports.displacementalert.org/
[28] https://dfs.ny.gov/legal/industry/il141204.pdf and https://dfs.ny.gov/legal/industry/il180925.pdf
[29] http://chelseanow.com/2017/12/naughty-landlord-limbo-is-christmas-coal-for-nice-chelsea-tenants, https://anhd.org/blog/the-bad-boy-carveout, https://www.worstevictorsnyc.org

anymore to compare to as those are new originations per year. Outside of aggregate call report data, we currently have no idea how many loans are still on the books; we have no data on how many are to LMI borrowers, nor how many were made and sold, and there is no plan to make that local data available to the public. Nor is there any reason to move away from robust databases like HMDA and the small business data and especially not when the CFPB is mandated by law to create a HMDA-like database for small business lending that will make that data even better understood and useful for all CRA stakeholders, including community members, banks and regulators.

Using a balance sheet approach will reduce the number of new community development loans. Banks that have large dollar loans or investments on their books for a long period of time will have little incentive to make new loans or investments. While we do understand the need for patient capital, particularly loans that span longer than a CRA exam cycle, a purely balance sheet approach goes too far in the opposite direction and could disincentivize new loans. It also makes no sense for retail loans, especially residential loans, which don't need incentives for longer-term loans. It is unclear why they didn't simply match the protocol for investments that analyze both outstanding and new investments. We believe new originations should carry more weight, but existing loans still on the books that are demonstrated to meet a locally defined need should also be considered.

Minimal Distribution Tests will reduce lending to LMI borrowers, opens the door to redlining and harmful lending

Residential Lending

The one-ratio is clearly the driving force in the new CRA proposal, but the OCC included a retail distribution test as well for all consumer and retail lines of business that is just as flawed as the one-ratio approach. The proposal requires banks to meet either a demographic comparator, which means making loans at a rate of 55% of the demographics, or a peer comparator, which means making loans at a rate of peers.

Such a test is hugely problematic for a high-cost city like New York City where over 70% of the population are LMI. Banks will not make anywhere near the demographic comparator which sets a goal of making 40% of their loans to LMI borrowers, and thus the banks are left with the peer comparison test.

In 2018, 8% of all 1-4 family loans originated by banks were to LMI borrowers. This makes the peer comparator 5.2%, or 65% of that 8%. **That is an incredibly low bar, yet still half of the banks in NYC do not meet it.** 126 of 246 banks made fewer than 5.2% of their loans to LMI borrowers in 2018, as did 41 of the 77 banks that made 20 or more loans. This raises serious questions about the banks that don't meet the target, including some quite large banks like Wells Fargo, Citizens, First Republic Bank[30]:

- Would an otherwise outstanding bank get knocked down to satisfactory?
- Would the bank fail that assessment area?
- Would that matter if the bank passes in its other assessment areas?
- Will the performance context allow it to pass, regardless?

[30] It must also be noted that First Republic Bank only counts Manhattan as its assessment area where 2% of bank loans were to LMI borrowers. FRB made 8 of 683 loan (1.2%), meaning they didn't even meet that incredibly low standard. They also should not be allowed to have just one county in a city as their AA.

Also, there is no discussion as to whether the regulators will break out home purchase, refinance, and home improvement loans, nor how HELOC loans will fit in. Access to homeownership, particularly for LMI borrowers and borrowers of color, depend to a certain amount on affordable home purchase loans, especially loans with low down payments, access to pre-purchase counseling, and financial assistance – both bank-financed and in connection with other programs.

The CRA must look at the loans these populations need to access homeownership and to remain in their homes with access to credit for refinances and for repairs and improvements. Local neighborhoods know what their communities need; banks and CRA regulators must be attuned to those needs and ensure banks are meeting those needs.

Further, the proposal excludes any analysis of residential lending in LMI tracts. While it is true that upper-income borrowers do not need CRA to obtain a loan, and may unfairly benefit from "CRA loans", we must remember that the CRA is a direct result of redlining that was geographically based, predicated on outright racism and perceived higher risks in neighborhoods of color. Excluding analysis of lending in those neighborhoods could open the door to redlining once again, allowing banks to ignore low-income neighborhoods entirely, even for low-income borrowers, and potentially reduce lending levels which can increase the cost of credit in those neighborhoods. Further, this is one of the few areas where middle-income borrowers of color benefit from the CRA, which unfortunately is still colorblind, but should not be[31]. Black homeownership in NYC is just 27% and Hispanic 16%, both well below the 41% homeownership rate for whites. Fewer than 8% of all home purchase loans in any given year go to Black or Latino borrowers and the CRA doesn't analyze these trends, nor compare banks to one another in their record of lending to underserved borrowers who continue to face the legacy of redlining and persistent discriminatory policies and practices to this day. The CRA should remain true to its roots in fighting redlining and increasing access to credit for LMI people and communities.

Also, given the extremely high cost of housing, it's beyond our understanding why the OCC and FDIC would prioritize and allow middle-income rental housing, versus middle-income homeownership opportunities. With 70% of New Yorkers LMI, and many well below 50% AMI, the need for rental housing at low and very low incomes (below 50% AMI) is extreme. Meanwhile, moderate and middle-income New Yorkers struggle to be able to buy a home, and low- and moderate New Yorkers need access to affordable home repair and refinance loans to stay in their homes.

Rather than reject any geographical analysis, we would want the regulators to do a thorough analysis of bank lending – to LMI borrowers and in LMI tracts, and then we make the same recommendation we do elsewhere: Listen to the local need and match bank performance to that, with a particular emphasis on displacement, which is the main concern for high-cost markets like New York City. The data will show if a bank is making all non-LMI loans in LMI tracts, which should be unacceptable. But the data will also show if a bank is making a set of loans to borrowers of color across the income spectrum, and if they are making loans both to LMI borrowers and in LMI tracts to ensure that LMI tracts are not left out. Regulators should also give extra consideration to banks that target their outreach, staffing, access to housing counseling, and financial support to lower-income borrowers and borrowers of color with affordable CRA loan products.

[31] We would never propose such a color-blind/race-blind solution but under the current system, this is the only way to affirmatively serve borrowers of color

Further, this removes any analysis of multifamily lending in LMI tracts. Disinvestment was not unique to single-family and small homes, it also applied to multifamily buildings that were starved of capital for needed repairs, and then in later years those same communities were flooded with irresponsible capital that led to cycles of both displacement and disrepair. It's important to ensure that lending continues in lower-income communities, and that the lending is done responsibly, which should be a part of the basic lending test.

We believe that the lending test should be made much more robust, before even getting to the community development portion of the test for banks that make multifamily loans as part of their business model. Regulators should look at the percentage of loans in LMI tracts, percentage of units affordable to LMI tenants (maintaining the analysis that the units are likely being rented to LMI tenants), and the practices of the bank to ensure that their lending preserves affordable housing and doesn't lead to displacement, based on housing conditions, evictions/tenant turnover, vacancies, and the record of the landlord using a variety of sources. ANHD's best practices (listed above) could be adapted to any CRA exam for multifamily lenders.

Distribution tests of consumer loans raises concerns

While we certainly want people of all incomes to have access to the credit they need, we have major concerns about simply looking at the distribution of consumer loans, and particularly higher-cost loans such as credit cards and many auto loans, and then also giving banks credit for these same loans to count for their one-ratio target goals. The combination within this proposal could inadvertently incentivize banks to make large volumes of credit card loans, auto loans, and other consumer loans without regard to fees, interest rates, and default rates. In this case, the total volume of lending to LMI consumers is less a concern than the terms, conditions, and costs for these consumers who may be better served by other products, or by not taking out a loan at all. In payday lending, for example, most borrowers end up paying more than they took out in the first place, and contrary to popular belief, were using the loans to pay for recurring expenses and not the sudden unexpected expense[32]. Thankfully New York State does not allow payday lending, but other states do, and banks would get CRA credit for them, even if local communities make it clear they are not helpful. The same would be true of subprime auto loans and other high-cost forms of credit that would now count for CRA credit.

Expansion of what qualifies for CRA credit means that nearly everything counts for CRA Credit, with less focus on LMI people or communities

Rather than modify qualifying activities to make them more impactful to LMI communities, the OCC and FDIC are incentivizing the largest, simplest deals with the one-ratio, while also counting many more activities for CRA credit, much of which include their regular business activities. This will simply make it easier for banks to get up to their target dollar goals without doing anything different, and certainly not doing anything more meaningful or responsive to local communities. It also includes multiple activities that don't benefit the target populations.

- **Increasing threshold for small businesses**. The agencies are proposing to raise the definition of a small business to $2M in revenue and the size of a small loan to $2M, while eliminating the analysis of loans of different sizes (eg: percentage of loans < $100,000, $100,000 -

[32] https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/01/payday-loan-facts-and-the-cfpbs-impact

$250,000, and $250,000 - $1M). These changes will make it harder for very small businesses to get credit – businesses that already struggle to access loans and supports. The Federal Reserve Banks found that 23% of all applicants among businesses with employees had funding shortfalls, and the shortfalls were particularly pronounced among newer, smaller, and weaker businesses, as well as businesses asking for smaller dollar amounts - $100 - $250K. The shortfalls were even more pronounced for non-employer firms, which are companies owned and solely operated by the same person. Further, the CFPB found that 95% of all small businesses had revenues below $1M, and 76% had revenues below $100,000[33]. Raising the thresholds will do nothing to help these millions of businesses access financing and supports and will likely make it harder.

- **Investments in Opportunity Zone funds in LMI Opportunity Zones**. The main criticism of the Opportunity Zone program is the lack of guardrails to ensure that it benefits the people it's meant to help[34]. The program is touted as having been created to bring capital to underserved areas and thus improve those neighborhoods, yet there are no conditions around the types of investments, some of which could displace the people they were supposedly meant to serve. It could be affordable housing or luxury housing; a community center with sports for low-income students or a national sports stadium that hurts local businesses; an industrial space for immigrant-owned manufacturing businesses or a self-storage facility that employs four people. Despite CRA's explicit purpose to benefit low-income people, communities, and small businesses, the proposed regulations allow for any investments, regardless of who benefits, with sports stadiums listed explicitly as an example of an acceptable investment.
- **Middle-income housing in high-cost markets.** New York City is one of the highest-cost markets in the country, and the biggest need expressed by ANHD members is for deep affordable housing, for the lowest income New Yorkers. The median income of New York City is $61,000[35] and roughly 42% earn below $48,000[36], both of which are well below the $73,000 AMI used for CRA purposes. Under the proposed guidelines, a bank could get credit for a building with 100% "middle income housing" affordable to New Yorkers earning up to 120% AMI, or $95,160, with rents up to $2,380. Nearly 70% of New Yorkers earn less than that, so that type of project would do nothing to help the majority of New Yorkers
- **Consumer loans to LMI borrowers**. All consumer loans, including credit cards, auto loans, small business loans, secured and unsecured consumer loans count as long as they are to LMI borrowers. The average interest rate for credit cards varies, depending on credit and type of card. The average for consumers with excellent credit is 14%, but that jumps to 23% for consumers with fair credit, and to 25% for store credit cards[37]. Not to mention the fees associated with late payments. Low-income people are more likely to have low or no credit score, making them more likely to have higher interest rates across all types of loans[38]. This metric could reward banks for making higher volumes of loans to low-income people and people of color, with no attention to the types of loans, terms or fees offered. NCRC found

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[33] https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf
[34] https://nextcity.org/daily/entry/whats-the-latest-on-opportunity-zones
[35] https://www.cssny.org/news/entry/2017-hvs-fast-analysis
[36] https://anhd.org/blog/summertime-gladness-your-ami-cheat-sheet-here
[37] Credit Card Landscape Report – Terms, Trends & More https://wallethub.com/edu/cc/credit-card-landscape-report/24927/#interest-rates_/
[38] https://www.urban.org/urban-wire/busting-credit-myths-can-help-low-income-americans-strengthen-their-financial-health

that credit card banks could easily reach their target goals by doing little to more than they are doing now, due to the volume of lending they do in their normal course of business[39].

- **Elimination of "Primary Purpose" as community development requirement**. Under the CRA today, community development activities must have a "primary purpose" of community benefit, which mainly means benefiting LMI people or communities or small businesses, thus ensuring that the majority of the project goes towards people the CRA was meant to serve. The proposal eliminates that requirement, such that a bank could get credit for even a marginal portion of an activity that benefits a target population, further inflating that numerator, getting them closer to the target dollar amount without making any additional effort. In their normal course of business, banks will often have some qualifying activity, but that in no way indicates any intentionality or effort to do so and would have happened without any incentive from the CRA. For example, a road could pass through an LMI tract and now the bank will get credit for that portion. Or a profitable housing development could include 1-2 units of housing affordable to LMI families.
- **Expansion of Volunteer services to all incomes, and activities unrelated to the provision of financial services.** First, the expansion includes activities unrelated to the provision of financial services. Second, the expansion allows them to serve people of all incomes, meaning banks are much more likely to engage in fun, team building, flashy activities, and less of the day-to-day type activities that help connect lower income people to financial services, such as credit counseling and financial education, or technical support to nonprofits to reach more people through their work. As such, bank employees could plant trees, paint benches, or bang nails for CRA credit, none of which help meet the credit needs of the CRA's target populations.

At the same time, the proposal **eliminates the economic development and revitalization categories**. As ANHD has written extensively, the economic development test is critically important and must be strengthened to promote quality jobs for low-income people and underserved communities[40]. Rather than take the time to get that category right, building upon the improvements made in 2005 and ensuring the jobs created and retained are quality jobs, the regulators essentially said it's too hard to do that and took it out entirely.

Elimination of key parts of the Service test on the CRA exam

In our ANPR comment letter, we said explicitly what many other advocates say as well: (a) Any changes to the service test, or CRA in general, cannot come at the expense of branches and (b) branches alone aren't enough if people can't use the products; cost and access matter.

Yet, the proposal minimizes the importance of branches and completely ignores ways banks can and should increase access to affordable, accessible bank accounts and products, all of which can't be – and shouldn't be – monetized and are thus ignored.

As mentioned above, the minimal branch calculation does little to nothing to incentivize a bank to open or keep open a branch in an LMI tract and does nothing to penalize a bank for closing a particular branch

[39] https://ncrc.org/ncrc-research-memo-impact-of-proposed-rule-making-on-major-credit-card-lending-banks/
[40] https://anhd.org/report/community-reinvestment-act-bank-reinvestment-and-opportunity-equitable-economic-development; https://anhd.org/report/billion-dollar-opportunity-nyc-expanding-bank-reinvestment-resources-equitable-economic

in an LMI tract, or benefit a bank for opening one in an unbanked area, because the analysis of specific branches opened or closed is eliminated.

Weakened Performance Context.

Current regulations apply the tests and standards in the context of the performance context. The performance context can be written by the bank, the regulators, or some combination of the two. It consists of a multitude of data including, but not limited to, demographic data, opportunities, products and offerings, capacity of the institution and external constraints. It looks at the bank's past performance and that of its peers. Lastly, it incorporates public comments and input with feedback on needs, opportunities, and *bank performance*.[41]

The proposal fundamentally changes the performance context. Under the proposal, the performance context is considered after the initial assessment of thresholds and targets. It is written almost entirely by the bank as a way for the bank to explain how its business model, infrastructure, and product offerings affected its ability to meet the standards and, similarly, how external factors influenced its ability to do so. Regulators can also consider the external environment, peer performance and public comments about *needs and opportunities* (but not bank performance).

In both cases, the regulators can consider other information, but are not required to.

This proposal represents a huge shift from the current system in three ways:

1. Today, banks are evaluated in the context of the performance context, whereas it is a secondary consideration in the proposal, and mainly as to why a bank couldn't meet the target goals – it's about capacity and opportunity, not about meeting locally defined needs.

2. The proposal specifically says the bank explains, so it couldn't be written by the regulators. Versus the current system where a bank or regulator, or both, contribute to the performance context. Today, it could also be written centrally by regulators in the community development division, as has been done by the Federal Reserve Bank of San Francisco[42].

3. Lastly, the proposal eliminates community input on bank performance, and limits it to needs and opportunities. This is a critical component of the exam that allows people working on the ground to provide feedback about areas a bank is doing well and areas they need to improve. ANHD and our members have used this tool extensively to further goals with banks, often leading to greater collaboration and a greater impact.

Assessment Areas and Online banking

Assessment Areas for Online Banks

We are very concerned about the changes to assessment areas. First, while the idea of managing online banks is laudable, the method proposed is not the right approach. The threshold to create a deposit-based threshold will likely lead to very large assessment areas – up to the state level – or will simply

[41] https://www.law.cornell.edu/cfr/text/12/25.21
[42] https://www.frbsf.org/community-development/publications/working-papers/2014/december/community-development-needs-cra-performance-context/

create assessment areas around already populated areas, such as New York, Chicago, Los Angeles, etc. While we certainly welcome new dollars in New York City, we are equally concerned about the local obligation to partner with local organizations and ensure those dollars are well spent. This proposal does neither.

It is important for banks that do considerable business in New York City, be it through deposit taking, lending, or other forms of banking, that they be required to lend and bank equitably with products and practices geared towards underserved communities. They should be subject to robust lending distribution tests across all product lines and an analysis of the types of products offered.
The thresholds should be based on both percentage of total deposits and loans, and also the percentage relative to the local market. A large bank like Wells Fargo, for example, will never have a significant portion of its loans in a rural area, but may represent a significant portion of the local lending market. Both should be considered.

Weakened Assessment Areas overall

While we appreciate that the branch-based assessment areas remain, the proposal overall greatly dilutes the impact of these assessment areas and dilutes the obligation of banks to meaningfully serve local communities. This is happening in multiple ways throughout the proposal:

1. **Banks can fail in 50% of their assessment areas and still pass their exam.** This is a huge problem for the large banks with multiple assessment areas. They will focus on the assessment areas where it's easier to reach the target dollars and lending ratios, and then go to the other areas when they can get deals that get them to their bank-level ratio. This could also put more pressure on the smaller banks to try to take up the slack with fewer resources to do so. They don't have as many assessment areas as the larger banks have and can't compete for many of the larger deals that the larger banks can get. Thus, they will be the banks that have to reach out to smaller nonprofits to do those deals and, ultimately, it will mean fewer banks doing those types of deals and fewer resources overall for mission-driven community development organizations.

2. **Lowers the bar for all assessment areas with the focus on the metrics over any measure of quality.** The OCC often says that this is a better proposal because only a small fraction of bank assessment areas are examined under the current system, and that all areas will be examined under the proposal, but that is disingenuous. It is true that only a few assessment areas get a "full-scope" evaluation, while others routinely get a less rigorous "limited scope". But this lowers the bar by assessing all areas under what can barely be called a limited scope exam.

3. **Focus on bank-level one-metric ratio.** The driving force is the bank-level metric, which is derived from the total of qualified loans, investments and services anywhere in the country – inside and outside of bank assessment areas. Thus, banks will look for the largest, simplest deals to be done anywhere they can, and focus on the local assessment areas second. This reduces the impetus to partner with local community development organizations to identify local strategies and focus on what those areas need. This will result in less activities, and certainly less meaningful investment in persistently underserved areas, be they rural or underserved urban areas, like we have throughout New York City.

There is no mention of race in the proposal

Understanding that the CRA is a color-blind law, the regulators should be doing everything possible to increase access to banks and banking for people of color through affirmative obligations and strengthening the fair lending component of the exam. But the proposal does none of that, and some of the proposed changes that value dollars over quality could inadvertently lead to fewer branches in low-income communities of color, fewer services, less housing, and less lending and banking to people of color. ANHD went into great detail in our ANPR letter (page 17) and the HFSC testimony on the racial disparities in credit, lending, and wealth, and the need to ensure that people of color are adequately served through the CRA.

Conclusion

Meaningful CRA reform could boost lending and access to banking for underserved communities by incentivizing high quality, high impact activities based on local needs, while discouraging and downgrading for displacement and activities that cause harm. Transparent and consistent exams would support these goals.

The proposal does the opposite of what it claims to do for banks or the community: It is **less transparent, more complicated, and will ultimately lead to less investment and less meaningful investment**. The formula to calculate the target metric is complicated, relies upon data banks don't currently collect, and removes key aspects of responsible banking that all communities need, such as branches, bank accounts, responsive lending products big and small, and strong community partnerships. Further, it no longer uses publicly available data for home lending, small business lending, and deposits, thus reducing the ways the public can verify and provide feedback on bank performance in those categories.

The OCC and FDIC should abandon this proposal and go back to the table with the Federal Reserve to come up with a plan that preserves the core of the CRA, truly addresses its shortcomings, and modernizes it to incorporate today's banking world.

Thank you for your attention to our comments. If you have any questions or need further information, I can be reached at Jaime.W@anhd.org or 212-747-1117 x23

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Association for Neighborhood and Housing Development

November 19, 2018

Comments regarding "Reforming the Community Reinvestment Act Regulatory Framework"

RE: Docket ID OCC-2018-0008

To Whom It May Concern:

I am writing on behalf of the Association for Neighborhood and Housing Development (ANHD) to submit comments regarding the Office of the Comptroller of the Currency's (OCC) Advanced Notice of Proposed Rulemaking (ANPR), "Reforming the Community Reinvestment Act Regulatory Framework."
ANHD builds community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. As a coalition of over 100 community groups across New York City, we use research, advocacy, and grassroots organizing to support our members in their work to build equity and justice in their neighborhoods and city-wide. ANHD values justice, equity and opportunity. We believe in the importance of movement-building that centers marginalized communities in our work.

Since our founding in 1974, ANHD has been helping to make New York City's community development and grassroots neighborhood-based groups among the most effective in the country by providing comprehensive training, robust capacity-building and apprenticeship programs, and high-impact policy research. ANHD's non-profit members have built over 123,000 units of affordable housing over the past 35 years in our city's most distressed neighborhoods; worked directly with tenants and homeowners to save thousands of at-risk affordable apartments and homes; and consistently shaped the housing policy landscape to better meet the needs of low- and moderate-income New Yorkers. Today, ANHD is committed to serving our member organizations and the causes they fight for, as they work in some of New York City's most marginalized, distressed, and struggling neighborhoods, directly touching the lives of approximately 450,000 low- and middle-income New Yorkers annually. The Community Reinvestment Act has been a critical tool both to support this work and hold banks accountable when they are not adequately serving our communities.

We appreciate the opportunity to submit comments on the CRA, which include these high-level recommendations:

1. **Preserve and Strengthen the CRA:** The CRA has a proven track record as an essential and effective tool to bring much-needed equity and opportunity to low- and moderate-income (LMI) communities by leveraging private dollars for housing, economic development, banking, and community development. There are many ways it could be strengthened, but we must do that by building upon the system we have today, rather than fundamentally changing the law in way that will weaken its impact.
2. **We strongly oppose the one-ratio idea, or any significant move in that direction**: CRA cannot be reduced to one target number, overall or even for individual assessment areas. **Banks must**

be evaluated on the <u>quantity and quality</u> of their activities within the <u>local communities they serve</u> and based on the needs of these local communities:

   a. **Equitable distribution of loans**: Ensure that loans are reaching the people and communities they are meant to serve – LMI people, immigrants, people of color.
   b. **Impact of their activities:** Incentivize impactful loans and investments that lead to deep and permanent affordable housing, access to quality jobs, and pathways out of poverty.
   c. **Consequences for harmful behavior:** There should be no CRA credit for loans that lead to displacement, harassment or poor conditions. There should be consequences for banks that engage in such activity.

3. **Community Input Is at The Heart of the CRA:** No rating system can be so simplistic and formulaic that it cuts out **community input. This is an integral part of the CRA**. This means making it easy for community members to comment on exams and applications; proactively soliciting community input for CRA exams and at times of mergers and expansions; and ensuring that the performance context is rooted in local community needs with both quantitative and qualitative data.
4. **The CRA must focus on historically redlined people and communities: LMI people and communities, people and communities of color.** First, the CRA cannot lose its focus on serving lower-income people and communities. Second, the **CRA should never have been color-blind**. The CRA came about as a direct result of redlining and discrimination against low-income people and communities of color, particularly Black and Hispanic families. Wealth and lending disparities persist among many of the same communities. Banks should also have an affirmative obligation to serve people and communities of color equitably.
5. **Modernizing Assessment Areas:** The banking world has changed, especially with the rise in online banks. Banks should maintain the local obligation they currently have around branches and ATMs, and also have additional assessment areas based on where they do considerable business, such as making loans or taking deposits. **However, any changes cannot lead to a loss of activity in existing assessment areas.** We also oppose the OCC's approach to expanding assessment areas to only consider them for "extra credit" as a way to amass CRA credit to reach a one-ratio target, with no incentive to serve local communities.
6. **Branches and Branch Products Matter:** 7.9% of households in the Metro NY area are unbanked, but that jumps to over 14% for Black and Hispanic households and 30% for very low-income households. **It is well understood that branches remain important** for access to banking, small business loans, and other services offered by banks. **But, branches alone aren't enough if people can't use the products.** The CRA should also evaluate the cost of branch and online products and how banks are or aren't reducing barriers to access the products, including cost, identification, and prior banking issues.
7. **Non-banks, limited purpose, and affiliate lenders**: Affiliates should no longer be optional to report on CRA exams. Limited purpose banks should be assessed on the products they offer. All non-bank lenders should be assessed under the CRA, but we recognize that may be statutory.
8. **Better data and examiner training:** The CRA could also be strengthened and better utilized by the community with more access to annual, local data and increased training for examiners to be able to evaluate banks on the quantity and quality of their activities.

Current Regulatory Framework

The ANPR asks about the state of the current regulatory structure of the CRA. While we recognize there are ways it could be strengthened, overall, we have a deep respect for the CRA with a proven track record as an essential and effective tool to bring much-needed equity and opportunity to LMI communities. We believe that the CRA is an essential and effective tool that must be preserved.

ANHD was part of the social movement that led to the passage of the CRA and we have witnessed with great appreciation the enormous benefits of the law. We saw what happened when banks were not investing in our neighborhoods, coupled with the legacy of discriminatory government programs that fostered racist policies and disinvestment in low-income communities of color. Buildings were in disrepair, landlords couldn't get loans to improve their buildings, individuals didn't have access to bank branches or home loans.

Over the 41 years since the CRA was passed, the CRA has leveraged trillions of dollars to support home lending, small business lending, and community development nationwide. Since 1996, banks have issued almost $2 trillion in small business loans and community development loans and investments in low- and moderate-income communities. Meanwhile, multiple studies demonstrate that CRA lending is more responsible than non-CRA lending and that CRA lending does not bear the blame for the subprime crisis, which was more directly fostered by non-bank independent mortgage companies that do not fall under the CRA. But of course, some of the largest banks in the country benefited by securitizing and profiting from these mortgages, giving them an increased obligation to serve the communities most harmed by these practices.

ANHD publishes an annual "State of Bank Reinvestment in NYC" report each year where we collect original data from 25 of the largest banks in New York City. The banks that participate do so because of the CRA and their commitment to reinvesting locally here in New York City, which is all or part of their assessment areas. Among the banks for which we have data, we have documented over $10 billion per year across the spectrum of community development reinvestments that benefit low and moderate-income (LMI) people and communities throughout New York City. In 2016 alone, we documented among these banks:

- $5.1 billion in community development lending (excluding multifamily mortgage community development loans), $2.2 billion in CRA-qualified investments, and $70 million in CRA eligible grants.
- $5.1 billion in community development multifamily mortgages, $272 million in home purchase and refinance loans to LMI borrowers, and $301 million in small business loans in LMI tracts.

Many banks have local CRA teams, with staff and resources devoted to New York City because they have a local obligation to serve New York City as one of their assessment areas. This includes staff who understand the local needs, know the organizations working in the city, and understand the range of government programs that support them. This has led to a multitude of programs, partnerships, products, and financing deals to further the mission of local nonprofits and CDCs. Without this obligation, we risk losing this long-term base of knowledge and resources that can continually respond to local needs.

Through this local obligation and staff, the CRA has helped develop one of the richest ecosystems and infrastructures in the country to build and preserve affordable housing and support other areas of community development in New York City. The law has fostered collaboration among governments, developers, nonprofit organizations, and banks that has led to the creation of a robust housing infrastructure with a wealth of CRA motivated capital to support it. Since the CRA was passed, over 330,000 units of affordable housing have been built across New York City using a mix of government subsidies that leveraged private bank investments brought to the table as a direct result of the CRA. Local nonprofit developers, including Community Development Corporations (CDCs), account for roughly a third of this housing, and the housing CDCs develop is permanently affordable and deeply affordable to reach the people who need it most. NYC's Housing Preservation and Development (HPD) agency estimates that every dollar of public spending on affordable housing in New York City generates approximately $4 in private investment, thanks in part to the CRA. LIHTC dollars are used for new construction and major rehabilitation projects and the construction activity produces 90,000 jobs nationwide every year. The market for LIHTC has already diminished as a result of the Tax Cuts and Jobs Act of 2017 and we can't afford to lose any more value to this important tool to build and preserve affordable housing.

We have also seen CRA dollars used effectively to support economic development, workforce development, support for immigrant communities, and more to improve our neighborhoods. New York City has come a long way since the days of the "burning Bronx". Neighborhoods are rebounding and the economy is improving. The struggle now is to make sure that the investments are distributed equitably to make our City affordable for low-income, working-class residents and people of color to ensure they have equal opportunities for employment, housing, and services. We are starting to see – and eager to see more – new and innovative ways to support equitable economic development, particularly in partnership with CDCs and neighborhood-based organizations. One new tool developed in recent years is the Industrial Development Fund created by the city's Economic Development Corporation (EDC) to support the creation and development of affordable manufacturing space[1]. It offers a new opportunity for banks to provide loans in conjunction with city capital and is an excellent example of how banks can use CRA dollars to support a tool that was developed out of community needs. Another bank subsequently created a new grant program to help nonprofit developers better prepare to access these new resources.

In this context, we are very concerned about some of the proposals and ideas put forth by the OCC that threaten to weaken the CRA in significant ways.

"A Modernized CRA": We oppose the one-ratio approach

The ANPR purports to offer two ideas for a modernized CRA, one of which would build upon the current regulatory framework, and the second which the OCC suggests would provide a more "transformational" approach. ANHD believes that the evidence strongly demonstrates that the CRA is not fundamentally broken. Building upon the current framework is the right way to address any weaknesses with the current law, rather than throwing it out and starting anew. We believe that the "one-ratio" approach that the OCC is proposing would substantially alter and ultimately weaken the CRA in ways that could never be recovered.

This "one-ratio" approach would assess banks on their total volume of CRA dollars loaned and invested and compare it to some measure of a bank's size. For example, a bank may have a target goal of reinvesting 10% of its deposits, or 8% of its assets.

[1] https://www.nycedc.com/program/nyc-industrial-developer-fund

The OCC justifies this change as a way to "simplify and clarify the CRA", and further describes it as being more "transparent and objective". With 98% of banks passing CRA exams, this is a solution to a problem that does not exist. We support banks being allowed to seek guidance on whether a particular loan or investment might qualify, but beyond that, there appears to be little uncertainty about passing an exam. CRA exams are inherently complex because the problems they are seeking to solve are complex. Exam procedures must allow examiners to be nuanced in evaluating how comprehensively banks are meeting the local needs of their communities. This can include benchmarks throughout the exam, building upon what we see in exams today, but there must also be space for qualitative analysis. We want the system to encourage banks to continuously seek out more ways to reinvest, and to strive for activities that are responsive to local needs. A passing grade should indicate a bank is indeed meeting local needs, and an outstanding should indicate a bank is doing more than its peers in quantity and quality with regards to increasing access to banking and credit and supporting community development. This is an integral part of the CRA process that should be maintained and strengthened.

One numerical goal cannot be the sole measure of a bank's CRA record and it cannot be done at a national level. By the OCC's proposal, all CRA activity will contribute to that total dollar amount – 1-4 family loans, small business loans, multifamily loans, and other community development loans, investments and grants. The sizes of these loans vary greatly based on a number of factors. A grant to a small nonprofit, or a loan to an LMI borrower, for example, is significantly smaller than a multifamily loan in an LMI tract. Likewise, a loan to a private, for-profit developer is likely to be much larger than a loan to a small nonprofit developer to build and preserve affordable housing. With one target numerical goal, banks will seek the easiest, largest deals and simply stop when the goal is reached.

Further, the ANPR suggests creating new assessment areas, outside of branch networks where banks do considerable business, and then looking at their CRA activity in these new areas "in the aggregate". And the idea of looking at one ratio suggests it could potentially happen for all assessment areas together – branch-based and new ones – as Comptroller Otting suggested in his June 2018 testimony before the Senate Banking Committee, where he said "establishing clearer, more transparent metrics for what banks need to do to achieve a certain CRA rating would allow stakeholders to understand how a bank is working to meet the credit needs of its community, provide a more objective base for examiner ratings, and allow regulators to report on aggregate activity to show a bank's overall performance[2]." With little to no local obligation, those dollars could potentially be concentrated in one or two geographic areas and neglect others entirely. This aggregate approach also raises statutory questions as it would go against the requirement to evaluate individual assessment areas.

Former FDIC Chair, and current FDIC board member, Martin J. Gruenberg raised similar concerns in a speech issued on October 29, 2018 at an event co-hosted by ANHD, the University Neighborhood Housing Program (UNHP), and Enterprise Community Partners.[3] "*A reliance on a single ratio of CRA performance could allow banks to pick and choose which communities to serve and which products and services to offer in those communities. It is not clear how it would be made compliant with the statutory requirement that the CRA evaluation be presented separately for each metropolitan area in which a bank maintains one or more branches. Such an approach could also undermine the incentive that banks currently have to develop constructive partnerships with community organizations. It is these partnerships between community organizations and banks that have been central to community development in low- and moderate-income neighborhoods throughout New York City and around the country.*"

[2] https://www.occ.treas.gov/news-issuances/congressional-testimony/2018/pub-test-2018-61-written.pdf
[3] https://www.fdic.gov/news/news/speeches/spoct2918.html

No mention of Equitable Distribution of lending in the ANPR

Another highly concerning omission in the ANPR is any reference to the statistical / distribution tests that are fundamental to the CRA. **Lending to LMI borrowers and small businesses must remain a main focus of the CRA**. The CRA came about as a direct result of redlining and disinvestment whereby banks were taking deposits locally in LMI communities and communities of color, but not providing credit to people in those communities. While some LMI and historically redlined neighborhoods are now inundated with capital, others still lack access to bank lending, and in most neighborhoods, lending is not reaching the populations the CRA was meant to serve. LMI people and people of color continue to struggle with access to banking and credit.

The ANPR poses multiple questions related to what should count as a "CRA-qualifying activity". Question 21 asks if all lending should count, or only loans to LMI borrowers and / or in LMI tracts. The question itself is curious, given all the factors CRA exams are already meant to take into account. But the way it is worded makes no mention of those ratios, but rather indicates they are looking for activities that would count towards that target number.

CRA exams currently evaluate the percentage of retail lending to LMI people, in LMI geographies and to small businesses:

- 1-4 family loans to LMI borrowers and in LMI tracts
- Multifamily lending in LMI tracts
- Small loans to businesses (loans under $1 million) based on the size of loan, the size of the business (under $1 million in revenue), and in LMI tracts.
- For banks that present consumer loans, they are also evaluated on lending to LMI people and in LMI tracts.

CRA exams must continue to evaluate percentages of loans to LMI borrowers and in LMI tracts. The tests could be even stronger by comparing to the percentage of the population, to peers, and to how they compare to lenders overall. They must evaluate these factors based on the local performance context, and not simply look for more loans that will help banks reach that target numerical goal. As speculative investment reaches more neighborhoods, the price of homes, residential rents, and commercial rents are rising rapidly, meaning that the cost of living in once-affordable and once-neglected neighborhoods is rising at such a rate such that the communities that helped rebuild them can no longer afford to stay. Thus, disproportionately high volumes of lending to predominantly non-LMI households in LMI census tracts may not be beneficial, especially in neighborhoods where lower-income families are being displaced. For example, the Furman Center identified 15 neighborhoods as "gentrifying", based on the rapid growth in rents in these formerly low-income neighborhoods[4]. These neighborhoods are particularly sensitive to the fact that LMI people can no longer afford to purchase homes there, if they ever could. Some are also historically Black and Latino neighborhoods, yet few people of color receive loans there. Other neighborhoods are vulnerable to speculation and displacement as well, particularly ones that have recently gone through a rezoning, such as East New York in Brooklyn and Jerome Avenue in the Bronx. These are areas that have been rezoned to allow for

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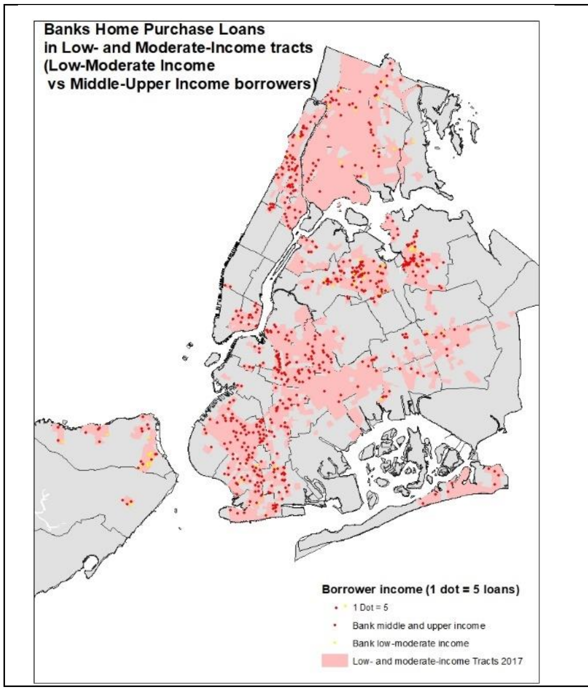
[4] http://furmancenter.org/thestoop/entry/new-report-analyzes-new-york-citys-gentrifying-neighborhoods-and-finds-dram

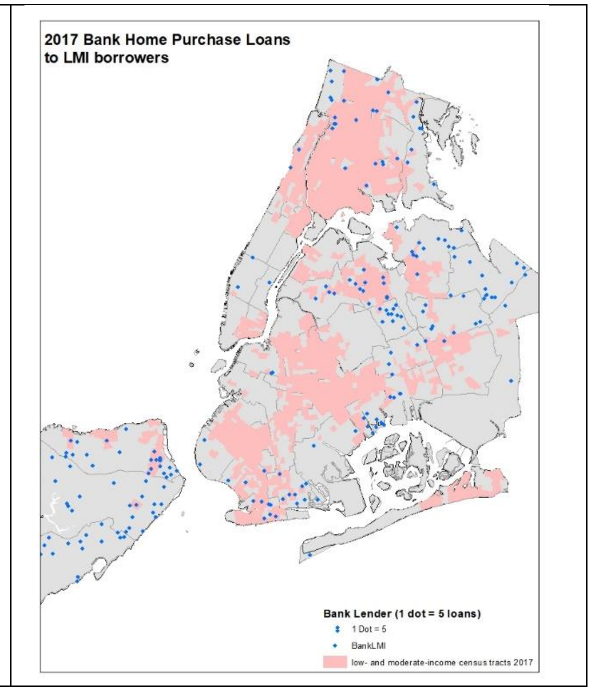
higher density buildings, which increases interest in development and drives up prices. It is critical that banks and regulators look at who is getting access to credit and banking, and who is benefiting to ensure that lending is meeting local needs as defined by the community.

Likewise, if a local community indicates that particular types of loans are needed, then that should factor into the evaluation. For example, in December of 2017, ANHD member Cypress Hills Local Development Corporation held their annual CRA forum and they raised up the need for affordable home repair loans to help LMI homeowners remain in their homes[5]. That need was echoed by a citywide report by the Center for New York City Neighborhoods (CNYCN), among other recommendations that will be referenced further in this document[6].

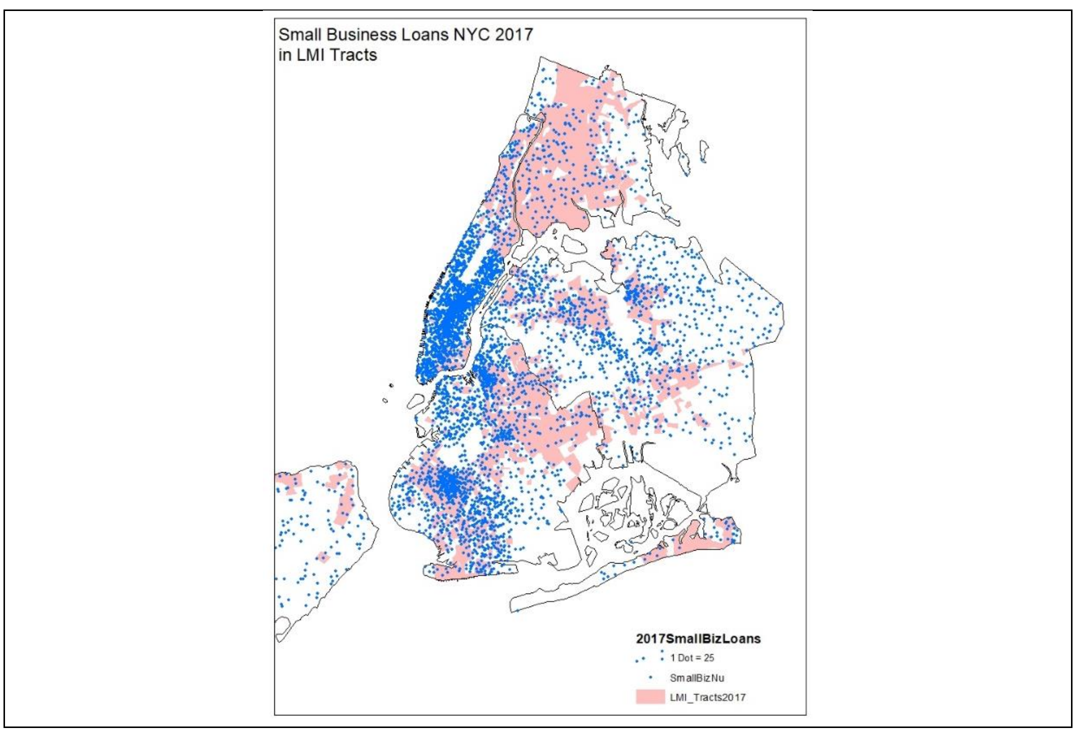
In New York City, fewer than 8% of all home purchase loans in 2017 went to LMI borrowers, despite the fact that the majority of households in NYC are below 80% AMI based on the larger metropolitan area[7]. While some banks are making efforts to support homeownership through products, financial assistance, access to pre-purchase counseling, and financing the creation of affordable homeownership, clearly more needs to be done, especially given the high and rising cost of home prices. Interestingly, we note that the distribution of loans to LMI borrowers are spread throughout the city, which may be promoting integration in a meaningful way. But, the map also shows that LMI borrowers are not getting loans in much of Manhattan and large parts of Brooklyn, including many that have already been identified as gentrifying. We also see large concentrations of loans to middle- and upper-income borrowers in LMI tracts in those same gentrifying neighborhoods where we know lower-income people and people of color live, and are being displaced or at risk of displacement, such as Bedford-Stuyvesant and Crown Heights in Brooklyn. The White population rose exponentially in Crown Heights and Bedford-Stuyvesant while the Black population declined 17%-23% in each[8]. Yet, in those districts in particular, which still maintain a sizeable Black population, very few loans go to Black borrowers of all income levels. ANHD found that fewer than 2% of all home purchase loans (1-4 family, owner-occupied, first-lien) went to LMI borrowers in 2016 and 2017 and just 6% of loans went to Black borrowers in both neighborhoods.

[5] https://anhd.org/blog/cypress-hills-ldc-gets-heart-community-reinvestment-act-local-banks-must-reinvest-locally
[6] https://s28299.pcdn.co/wp-content/uploads/2018/10/CNY002-AH-Summit-Report_v7_FINAL_online.pdf
[7] https://anhd.org/blog/your-gift-summer-here-anhd%E2%80%99s-ami-cheat-sheet
[8] https://comptroller.nyc.gov/wp-content/uploads/documents/NYC_Neighborhood_Economic_Profiles_2017.pdf





With regards to small business lending, large disparities remain as to where businesses are getting loans – overall and to small businesses. A third of all small loans to businesses, and a third of small business loans are in LMI tracts, but the distribution throughout New York City shows lower volumes in certain LMI and minority neighborhoods.



Given the high cost of living and running a business, the focus must remain on lending to these populations. Exams must also evaluate the products and practices of the bank to ensure that they are affordable, transparent, accessible, fair, and actually used by these target populations. The CRA remains an important tool to scrutinize and foster this lending. Simply allowing banks to get "CRA credit" for particular loans, even to LMI borrowers or geographies, will not hold them accountable if they are allowed to continue with a poor distribution of lending, or worse if their lending leads to displacement.

Quality matters as much as quantity. Community Input is critical to determining need and evaluating response

Banks must be evaluated on the quantity and quality of their activities within the local communities they serve and based on the needs of these local communities, with credit for positive activities and consequences for harmful behavior. A one-ratio concept cannot capture the depth and nuance needed to respond to truly local needs within individual communities.

The needs and opportunities of New York City will differ in many ways to even other large and urban cities like San Francisco, Oakland, or Chicago, and most certainly will differ from smaller, more rural and suburban communities throughout the country. Even within the city, demographics and needs can vary from neighborhood to neighborhood. Our housing stock is also unique, especially as it pertains to rent-stabilized housing. New York City is also constrained by geography; in many places, we cannot build out, only up. Municipalities around the country have their own set of constraints and their own set of tools to support community development. This is a problem that cannot be solved with simple formulas or weightings. In addition to the quantity of CRA-qualified loans, investments and grants, there must be a qualitative component that requires examiners to evaluate the activity as it compares to the local performance context for each bank – evaluate how well they are meeting local needs through investments and products, how they are partnering with local organizations, and how they are creating and utilizing new tools and programs.

If banks are striving for one large target goal for dollars invested, they will choose to focus primarily on larger deals, while shying away from smaller dollar loans: 1-4 family home loans to LMI borrowers, loans under $50,000 to very small businesses, loans to nonprofit developers, loans and investments in CDFIs, community development grants, and more. These are greatly needed and any retrenchment would only exacerbate existing disparities.

These are just a few examples of local credit needs that have been documented through public data and local feedback from on-the-ground practitioners.

- **Support nonprofit organizations to build affordable housing and support equitable economic development.** Loans and investments of all sizes can have a large impact when they go to mission-driven nonprofit developers that build and preserve permeant affordable housing for very low and low-income families, provide affordable space for and technical assistance to small businesses, and increase access to quality jobs.
- **Increase access to home loans to help people stay in their homes and buy homes:** Develop affordable home Improvement loan products for LMI homeowners[9]. **Provide financial assistance to help LMI people and people of color purchase homes**. As mentioned above, the percentage of home purchase loans to LMI borrowers and borrowers of color remains low, and decreased in 2017.
- **Increase access to affordable small business loans and lines of credit**. According to the Federal Reserve Board, the greatest unmet need for small businesses are loans and lines of credit for

[9] https://s28299.pcdn.co/wp-content/uploads/2018/10/CNY002-AH-Summit-Report_v7_FINAL_online.pdf

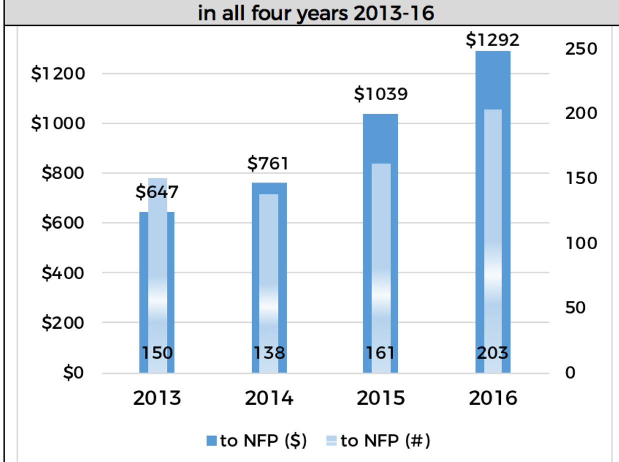
under $100,000, with a significant number needing loans under $25,000. They are not looking for credit card loans, but rather traditional loans and lines of credit. CDFIs are important to support, but they cannot reach the scale that banks can.

- **Support nonprofit CDFIs that lend to and support small businesses and LMI New Yorkers**. CDFIs are an important source of credit for low-income, immigrant populations. Through the every-day work they do, as well as through second-look programs with banks, they also can help prepare borrowers for bank loans in the future. Lastly, CDFIs are much more high-touch than banks and provide technical assistance to help borrowers grow and maintain their businesses.

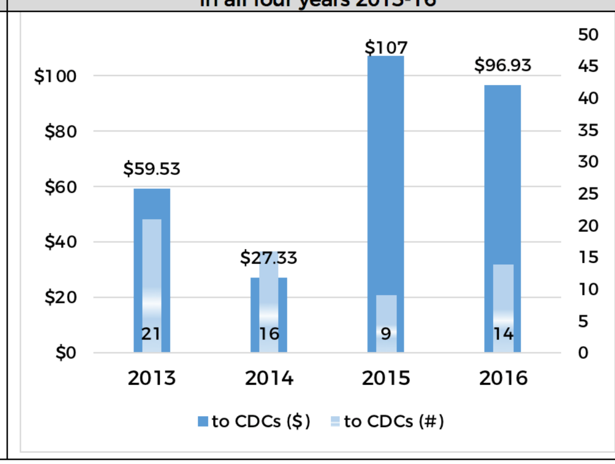
ANHD has been tracking loans and investments to nonprofits and also loans to CDCs in particular. Looking at banks for which we have data for 2013 through 2016, we note that lending to nonprofits increased, while lending to CDCs fluctuated, but is consistently much lower than nonprofits overall[10]. Of course, the universe of CDCs is smaller than that of nonprofits in general, but we would like to see trends increase at similar rates. These loans may be smaller, but they have the potential to be more impactful. With these and all loans, regulators should look at the impact they have on housing, jobs, and other community development purposes.

We also recognize that loans and investments are treated differently in some cases, such that outstanding investments from prior exam periods can receive CRA credit while only new community development loans can. This can inadvertently incentivize shorter-term loans over the longer term loans that CDFIs often need. One possible solution is to consider outstanding loans to CDFIs and similar entities like they do investments. However, we would not want this to reduce the number of loans banks make in the process. Regulators could separately consider new and outstanding loans, and/or allow for a bank to receive credit for being responsive if they maintain a long-term loan on their books, rather than renewing a loan for the sake of a CRA cycle.

CD Loans to **nonprofits** for 14 banks reporting this data in all four years 2013-16



CD lending to **CDCs** for 14 banks reporting this data in all four years 2013-16



The OCC also proposes to quantify some activities by giving them a monetary value, such as service hours by bank staff that have historically just been counted. We strongly oppose this concept. Will they next try to quantify the cost of opening and/or maintaining branches in LMI tracts? That would be absurd. This type of accounting merely inflates the numerator, getting them closer to that target goal, and does nothing to evaluate the impact of those activities or incentivize new activities. Furthermore, they should not be counted in the same category as loans and investments, but rather evaluated as to

[10] https://anhd.org/report/state-bank-reinvestment-new-york-city-2017

how well they foster more lending and investments that benefit LMI people and communities, how they help build wealth and assets, and how they support community development.

Community Input & Performance Context

Community input must remain an integral part of the CRA. Regulators and banks should proactively solicit community input from a variety of stakeholders to assess community need and evaluate how banks are meeting those needs. This should be done for CRA exams, as well as other times when CRA is taken into account, such as opening and closing branches.

The performance context is meant to be the basis for determining the local needs that banks can be addressing. This can be done by the banks or regulators, or both, and it often results in a shallow examination of local needs, with input from just one or two local contacts. The Federal Reserve Banks of San Francisco[11] and New York[12] have been piloting new and innovative ways to evaluate local performance contexts. They have compiled data on multiple factors, including public data on lending trends, demographics, economic trends, and housing and credit needs; local studies by academics and nonprofits; and conversations with local stakeholders. The CodeFi project from the Federal Reserve bank of New York has only produced "guidebooks" on two municipalities so far, but it is in its early stages and we believe the concept has the potential to reach more geographies at a greater scale in the future. These types of processes could serve as a model for all regulators.

A centralized performance context can and should serve as a reference for banks and examiners, but it should never take the place of the banks obligation to maintain communication with local community organizations. Community input should also be solicited by examiners at the time of exams and mergers.

A simple metrics and formula system doesn't allow for this type of input or qualitative analysis.

Evaluating and penalizing displacement and harm

Under the current regulation, in the FFIEC Q&A document, *Question §ll.22(b)(4)—2* asks how examiners consider community development loans in the evaluation of an institution's record of lending under the large bank test[13]. The answer states that "An institution's record of making community development loans may have a positive, neutral, or negative impact on the lending test rating" However, the negative aspect is constrained. What this part of the test says is that a high volume and quality of community development lending can improve the rating of a bank, perhaps elevating it to a high satisfactory from a low satisfactory, or to an outstanding from a high satisfactory. While that may encourage community development lending, other aspects of the regulation are troubling. It says that a bank with a poor record of retail lending can compensate with a high volume of community development lending and vice versa. Also, the "negative impact" they refer to here has to do with the volume of the community development lending, rather than the impact of that lending. We appreciate that the CRA has fostered dialogue and led to banks adopting a set of multifamily best practices, as was the case with Signature Bank and New York Community Bank. However, there is no way under the current regulation for a bank

[11] https://www.frbsf.org/community-development/publications/working-papers/2014/december/community-development-needs-cra-performance-context/

[12] https://www.newyorkfed.org/outreach-and-education/community-development/community-reinvestment-act/resource-guidebooks

[13] FFIEC Q&A document, §ll.22(b)(4)—2: (page 34)

to be downgraded for doing harm if it isn't found to violate consumer or fair lending laws. The worst that happens is that a loan is not counted. For a bank with a high volume of lending, particularly multifamily lending on buildings where rents are currently affordable, this will have little impact**. This is an area where the CRA could be greatly strengthened by (1) better evaluating the impact of a bank's lending and (b) allowing examiners the flexibility to lower a rating if a bank demonstrates patterns and behaviors of lending and banking that are problematic and leading to displacement or poor conditions.**

While quality community development lending deserves credit, it should not substantially raise the rating of a bank that makes loans inequitably to lower-income borrowers and communities or in any way discourage the retail lending that our communities need. In all cases, <u>quality must be taken as seriously as quantity</u>. ANHD has long stated that regulators should evaluate the impact of community development lending, which is even more crucial if these loans are to have an increased weight on CRA exams. This means going beyond not simply the location of the loan, or even the rents. If the loan is not sustainable, or made irresponsibly, and people or small businesses are displaced, not only should it be discounted, but it should also impact negatively on a bank's CRA rating, similar as would happen if a bank made too few community development loans.

New York is a city of renters; nearly two-thirds of New Yorkers rent their homes. Multifamily lending in New York City is particularly critical for banks to understand, given the unique housing stock here and its importance to affordable housing for millions of New Yorkers. Rent-stabilized housing remains one of the most important sources of private, more affordable housing in New York City; there are over one million rent-regulated units here, which is nearly half of all rental units. Rent-regulated units are typically more affordable, house more immigrants and people of color, and provide more rights and protections for tenants than un-regulated units.

Access to credit is critical to maintaining this stock of housing in the City, especially in lower-income neighborhoods. But, these days, **lack of lending isn't the issue as much as the quality of that lending. Equally important to the volume of lending, if not more so, is that the loans are underwritten responsibly.** Speculative loans and loans to bad actor landlords open the door to a type of discrimination known as "*predatory equity*." Unlike the practice of redlining that locked people of color out of the housing market, predatory equity investors make loans in communities of color, in low-income communities, and where low-income people live, but base those loans on highly speculative underwriting. In these cases, the current rents do not support the costs of the loan and maintenance. Such loans have led to the widespread harassment and eviction of lower-income tenants in order to pay off the loan[14].

ANHD has developed a set of best practices for multifamily lending that we believe all lenders should adopt to proactively protect lower-income tenants, particularly in the stock of more affordable rent-regulated housing in New York City.[15] They include:

1. **Responsible underwriting.** All banks should ensure their loans are not made speculatively and do not encourage displacement, harassment, or neglect. We believe a best practice is to underwrite to a Debt Service Coverage Ratio of at least 1.2X, based on current in-place rents and realistic maintenance costs. In place rents must include preferential rents where the rent is set at an

[14] https://anhd.org/blog/wnyc-story-how-landlords-push-out-tenants-profit-through-predatory-equity
[15] https://anhd.org/wp-content/uploads/2017/06/ANHD_Best-Practices-in-Multifamily-Lending.pdf

amount below the legally registered rent, and not predicated on raising those rents above what they are currently set at. The system is ripe for abuse[16]. There should be no funds set aside for buyouts (payment to urge someone to move out) or other costs that would displace tenants.

2. **Appropriate vetting of borrowers**. Banks should use all available resources to lend to responsible landlords who are dedicated to maintaining the stock of rent-regulated housing and respecting the rights of tenants in order to preserve this stock of affordable housing.

   Public data from local housing authorities and building departments, coupled with on-the-ground stories from tenants, can indicate if a building is in poor condition or if a landlord is otherwise harassing and displacing tenants. ANHD developed a Displacement Alert Project that banks and regulators can consult on a monthly basis to track buildings in their portfolio, or ones they are considering financing[17]. This flags buildings with indicators of potential risk for displacement based on recent sales and housing and building department complaints, violations, and permits. There are also numerous public lists on landlords with patterns of problematic behavior and buildings with problematic conditions, as well as news reports that banks can consult, and subsequently speak with organizers on the ground who are working with tenants.

3. **Responding to issues in buildings:** All banks should have a formal process to work with tenants and organizers to respond when problems arise in buildings they have loaned on, with the same goal of preserving affordable housing

New York Community Bank and Signature Bank officially adopted these practices in recent years. New York State's Department of Financial Services (DFS) has issued two sets of guidance for NY state-regulated banks that should serve as a model for all bank regulators. In 2014, they finalized the first set of guidance stating that loans contributing to poor conditions, harassment, and loss of affordable housing will not get credit under the CRA[18]. And just this year, they issued additional guidance relating to all multifamily lending that closely mirrors ANHD's best practices, stating that banks are accountable when their underwriting is predicated on tenant turnover or their borrowers are harassing and displacing tenants, regardless of whether or not a loan was submitted for CRA credit[19]. No bank should get CRA credit for a loan that violates either set of guidance. Regulators should also have the ability to downgrade a bank's rating if they exhibit a pattern of behavior that violates either guidance.

One particularly egregious example is the case of buildings formerly owned by Raphael Toledano. In 2015, a non-bank lender, Madison Realty Capital, made a $124 million loan to Raphael Toledano to purchase a 15-building portfolio in the East Village, well over the $94 million he paid for the buildings. A CRA-regulated bank made a collateral loan to Madison Realty Capital at the time, which enabled them to make this loan. *The Real Deal* quoted a veteran real estate investor regarding this deal, saying that Madison Realty Capital's $124 million loan to Toledano left him "over leveraged," and that Toledano is now "pushing up rents to pay off a high mortgage[20]." One of the mortgages Madison Realty Capital issued to Toledano went as far as to require him to spend $2 million of the loan exclusively on tenant buyouts or renovations – practices which often trigger huge rent increases when the tenant moves out. The New York State Attorney General subpoenaed loan documents and submitted a brief during the bankruptcy proceedings opposing Madison's bid to take over management of the buildings, describing

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[16] https://www.propublica.org/article/new-york-landlords-exploit-loophole-to-hike-rents-despite-freeze
[17] https://reports.displacementalert.org/
[18] https://dfs.ny.gov/legal/industry/il141204.pdf
[19] https://dfs.ny.gov/legal/industry/il180925.pdf
[20] https://therealdeal.com/issues_articles/toledanos-fast-and-rocky-ride/

this deal as "loan to own" scheme, meaning it was set up to fail[21]. Indeed, it did – these loans proved unsustainable and Madison Realty Capital foreclosed on Toledano in February 2017. Meanwhile, the media reported how the tenants suffered greatly under Toledano's ownership, facing irresponsible construction, lack of essential services, lead dust contamination, and frivolous lawsuits[22]. They continue to suffer long after the deal fell through[23].

The stories of banks making loans to bad acting and "predatory equity" landlords are numerous. Ved Parkash, for example, was in the news for years for his practices, and ranked at or near the top of the public advocate's worst landlord list in 2015 and 2016. In early 2017, someone from one of his buildings contracted a rat-borne illness that also killed someone else in the neighborhood[24]. While Parkash is not responsible for the death, he is responsible for not properly maintaining his buildings, including controlling the rat infestations, which tenants reported as an ongoing problem. Steve Croman was fined $8 million and jail time because of the tactics he used to harass and displace tenants in his buildings[25]. Icon Realty reached a settlement with NY City and State agencies due to dangerous construction tactics that led to displacement and harm of tenants in multiple buildings[26]. These are just a few examples and all have received loans from CRA-regulated banks.

Similar analyses can and should be developed for other types of displacement, including small businesses and cultural institutions that anchor LMI communities and communities of color.

Rating system

It is a telling fact about one of the actual weaknesses of the current CRA approach that 98% of banks pass their CRA exams. ANHD believes that it should be harder to pass CRA exams, not easier. Ratings should be much more nuanced as well to show when a bank is just barely passing, or doing better than peers. The four ratings may be statutory, but an accompanying numerical rating, such as a 0-100 scale, could indicate if a bank has an Outstanding, High Satisfactory, Low Satisfactory, or a lower grade of needs to improve or substantial noncompliance. A bank with a low-satisfactory rating may be motivated to do more to get to a higher grade if that were made public.

What Counts on CRA Exams: CRA must keep its focus on access to credit and banking, and support for community development, to benefit formerly redlined communities.

Questions 15-24 ask about the definition of community development and if it should be changed. In general, the definition of community development is effective. The regulation defines community development as activities that promote affordable housing, support economic development, revitalize and stabilize neighborhoods, and support community services to LMI people. Because of the very specific size and purpose test associated with economic development, some activities that increase access to jobs that aren't associated with financing a small business may fall under another category. Perhaps there are ways to even further align those categories, but it seems to capture a wide variety of

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[21] https://anhd.org/blog/the-bad-boy-carveout
[22] https://www.nydailynews.com/new-york/manhattan/city-test-east-village-buildings-high-lead-dust-levels-article-1.2628115
[23] http://chelseanow.com/2017/12/naughty-landlord-limbo-is-christmas-coal-for-nice-chelsea-tenants
[24] https://abc7ny.com/news/rat-disease-victim-lived-in-building-owned-one-of-nycs-worst-landlords-/1756723/
[25] https://ny.curbed.com/2017/12/21/16805412/nyc-landlord-steve-croman-sentencing
[26] https://www.wsj.com/articles/new-york-landlord-fined-500-000-in-tenant-harassment-probe-1506548133?tesla=y

activities and promote small businesses. As we say again and again, impact is most important. Some activities qualify mainly by where they are located, rather than on demonstrating that LMI people can move into better paying jobs and out of poverty.

The problems with the one ratio concept are exacerbated as the OCC seeks to **expand the activities that count for CRA credit,** thus inflating the total number of dollars reinvested to count towards that one metric. This includes counting more activities outside of assessment areas (see below), expanding the universe of activities that automatically qualify for CRA credit, and quantifying non-monetary activities such as service hours. Questions 10, 16, and 21, among others, ask about whether and how activities benefiting LMI people and communities should count. The fact that this the word "whether" is even raised is concerning. The CRA was passed as a direct response to redlining and disinvestment – lack of access to capital and banking – for LMI people and communities, and people and communities of color and lack of investment supporting community development needs, such as housing and jobs. These disparities continue to this day, particularly in high-cost cities like New York City. It is appropriate to ask how the CRA can better be targeted to serve these populations, but under the one-ratio system being proposed, it seems clear that the aim is to find which activities should count towards that target goal. As mentioned above, measuring the volume of lending isn't problematic, as long as it is directly correlated with the distribution of lending to LMI people and communities. We do appreciate if a particular bank makes a relatively high number of loans to LMI borrowers, but if it makes up a small percentage of their lending, it raises questions as to how equitably they are making their loans. Likewise, a bank that claims to be in the business of making a particular type of loan, but makes just a few loans at all, should compare unfavorably, even if the percentage to LMI borrowers is higher. But, by looking at both the volume and percentages, we can compare banks that may offer the products at different scales. **Offering affordable, responsible and responsive products with, for example, financial assistance, flexible lending criteria, and language access should receive favorable consideration if they are demonstrated to be used effectively.**

Expanding CRA to cover other types of retail consumer loans is appropriate, but again only if it is with an eye on equity and distribution of that lending, and not simply to inflate a numerator. For example, many banks make consumer loans that may or may not be evaluated: Goldman Sachs's new Marcus bank,[27] Capital One and Chase's credit card banks, and other stand-alone limited purpose banks like Discover, Synchrony, and American Express; as well as banks that make auto loans, small dollar loans, and student loans. Limited-purpose banks that offer a limited set of products should be evaluated on the products offered. Other banks that offer these loans should also be evaluated for volume, quality, and how they relate to locally identified credit needs. **High interest rates, high default rates, and other predatory practices should reflect negatively on a CRA exam, while flexible, affordable, accessible products should be incentivized and given favorable consideration**. Local CRA advocacy, for example, has led to banks offering low-cost bank accounts and credit building products, and that should be lauded.

The CRA already allows for other loans to be included and requires so if it is determined to constitute a substantial majority of a bank's business[28]. But significant holes remain, especially for limited purpose banks. Chase and Capital One may elect to include their credit card *small business* loans on the retail bank test, but it is optional, and non-small business loans are never evaluated. There is no requirement for the retail lending activity of limited purpose banks like American Express, Discover, WEX, and Synchrony to be evaluated on their consumer lending. Some include them in strategic plans, but that,

[27] https://www.marcus.com/us/en
[28] §____.22(a)(1)—2

too, is voluntary.   Regulators could go further to require it for banks that make such loans, even if they are not the majority of loans. And limited purpose banks should not be exempt from such analysis.

The purpose of the CRA must always stay front and center in deciding which activities to count. "CRA seeks to address one of the most intractable challenges of our financial markets – access to credit, investment, and basic banking services for underserved low- and moderate-income communities, both urban and rural.[29]" While there are many ways banks can do good in the world, and should, the CRA has this purpose and must keep that focus. Service activities in particular are meant to utilize the expertise of the financial sector to further these goals. Thus, while planting trees and hammering nails for housing are both laudable activities, they are not in line with the spirit of the CRA, whereas providing loans to people who need a mortgage to purchase that home or providing financing to build affordable housing – rental or home ownership – should of course continue to count. Likewise, providing technical expertise, such as sitting on credit committees, setting up accounting systems, providing technical support to small businesses are where banks can have a larger impact under the purpose of the CRA. Any service hours should be evaluated on how they are increasing access to banking and capital and supporting community development.   Again, impact matters. We should not be quantifying these hours to count towards any numerical goal.

Question 15 asks about the definition of community development and suggests that loans automatically count if they support projects, programs, or organizations with a mission, purpose, or intent of community or economic development. No more categories of loans should get automatic credit on CRA exams. Currently, SBICs are among the types of investments that automatically get CRA credit. Yet, barely a quarter of businesses financed through SBIC's are in LMI tracts and just 5-6% of businesses are MWBE or Veteran-owned (they are not broken out)[30]. Each SBIC, as with most investments, should be evaluated based on their performance. We also very much disagree that investments can be determined to qualify based on a mission statement. That tells you nothing about the actual work being done by the organization. If an entity is truly engaged in community development, that should be easy to demonstrate to regulators based on their activities, populations served, and outcomes and there should be an obligation to demonstrate as such.

Lastly, purchased loans should not count nearly as much as originations on CRA exams, if at all. It is much more impactful to originate a 1-4 family, multifamily, or small business loan, rather than purchase one, and no bank should be allowed to purchase loans simply to pass a CRA exam. Banks are meant to be in the business of serving customers with loans and banking products, and must do so directly. It completely defeats the purpose of the CRA. We recognize there are some instances where purchasing loans serve a purpose, such as from a CDFI or mission driven credit union to allow them to make more loans, but those are few and far between and should be evaluated on a case by case basis. If exams split out originated versus purchased loans, we could see the breakdown and how they are assessed based on community need. Same would apply to purchases of Mortgage Backed Securities, which in general have much less benefit than more strategic, impactful investments, such as LIHTC, EQ2's, grants, deposits, and other equity investments to support community development.

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[29] ibid 1

[30] https://www.sba.gov/sites/default/files/2018-02/Fiscal%20Year%20Data%20for%20the%20period%20ending%20September%2030%2C%202017.pdf

Race/Ethnicity: *the CRA should not be color-blind*

Question 17 asks if the CRA should expand beyond LMI populations, such as to people with disabilities. But we cannot dilute the purpose of the CRA, which came in response to explicit redlining that directly impacted and harmed borrowers and communities of color. People with disabilities who are LMI will already be included in the CRA. Providing financing for supportive housing, including for people with disabilities, is a common use of CRA dollars and well spent when it benefits LMI people with disabilities. We have networks of such developers throughout New York City that absolutely merit support[31].

The legislators who wrote the CRA clearly understood the impact of redlining on communities of color. Senator Proxmire stated: "by redlining let me make it clear what I am talking about. I am talking about the fact that [financial institutions] will take their deposits from a community and instead of reinvesting them in that community … they will actually or figuratively draw a red line on map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.[32]" Studies he commissioned just prior to the CRA passing showed that 90% of loans in Washington, DC, were made in surrounding Maryland and Virginia, and of the loans made in DC, 50% were in upper-middle class white areas[33].

In Chairman Gruenberg's recent remarks, he also highlights the strong role CRA plays in strengthening community engagement and serving historically redlined communities : "*From the outset, the agencies made clear that the institutions would be evaluated on their* ***outreach and engagement with the communit****y, their compliance with antidiscrimination and other consumer protection statutes, and the geographic distribution of their loans.* ***The intention to address redlining on the basis of income and race was evident, as was the community-based focus of the law****.*"[34]

Given these origins, and persistent disparities in lending today, the CRA should never have been color-blind. If there is any change to the populations evaluated under the CRA, it should be around access to credit and banking for people of color. 22% of NYC is Black and 29% Latino, yet fewer than 8% of all home purchase loans in 2017 went to Black or Latino borrowers, and that is worse than two to three years prior. Consistently, Black and Latino borrowers are denied loans at a greater rate, have fewer assets to purchase homes, and have been found to be steered to higher cost products[35]. Likewise, the rate of unbanked households in the New York Metro area was 7.9% in 2017, but that jumps to 15% for Black households and 18% for Hispanic households, versus just 2.8% for White households.[36] We can also see that very fewer small business loans are made in neighborhoods of color.

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[31] https://shnny.org/learn-more/what-is-supportive-housing/

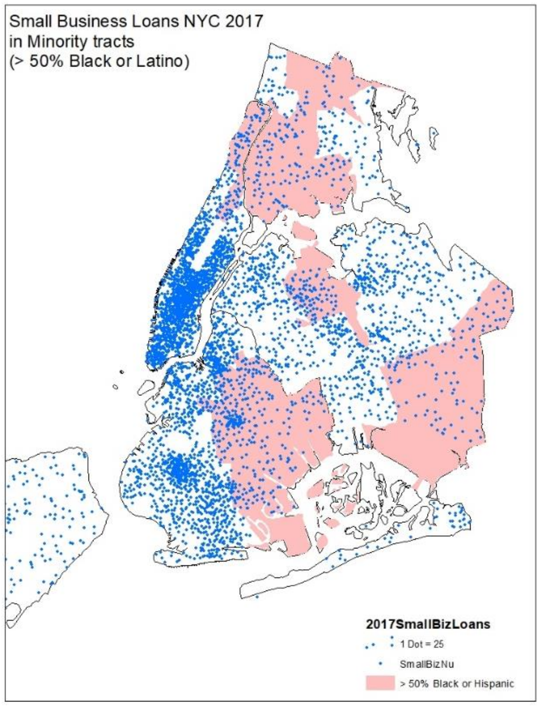
[32] https://ncrc.org/ncrc-analysis-of-the-advanced-notice-of-proposed-rulemaking-anpr/#_edn18

[33] https://www.nytimes.com/1975/05/26/archives/redlining-by-lenders-is-called-cause-of-old-communities-decay.html

[34] https://www.fdic.gov/news/news/speeches/spoct2918.html

[35] https://money.cnn.com/2018/02/27/investing/wells-fargo-sacramento-lawsuit-discriminatory-lending/index.html , https://www.theguardian.com/business/2015/jun/23/black-americans-housing-crisis-sub-prime-loan

[36] https://www.economicinclusion.gov/surveys/2017household/documents/tabular-results/2017_banking_status_New_York_Newark_Jersey_City_NY_NJ_PA.pdf



Much research demonstrates that the impact of redlining and discrimination persists in many aspects of life. Black and Hispanic homeowners are underrepresented in homeownership in New York City; they make up 45% of households, but just 30% of homeowners[37]. According to the latest Federal Reserve study, "Black families' median and mean net worth is less than 15 percent that of white families[38]". And the percentage for Hispanic families is not much higher. In fact, the median net worth for a White family without a bachelor's degree is 30% higher than the net worth for a Black family with a college degree and 22% higher than a Hispanic family with a college degree. They also found that Black and Hispanic families are much less likely to be able to borrow even $3,000 from family or friends for an emergency, so presumably the ability to borrow a higher amount for a down payment would be even lower. Even worse, a 2017 Federal Reserve survey found that Black and Hispanic adults are less likely to be able to afford monthly expenses at all, regardless of education in some cases[39]. In fact, 25% of White adults without a college degree were unable to pay their monthly expenses, whereas the percentage rises to 38% of Black adults and 33% of Hispanic adults *with a high school degree and some college.* 21% of college educated Black adults and 17% of college-educated Hispanic adults cannot pay their monthly bills versus just 10% of white adults. These same adults are also less likely to be able to weather an unexpected $400 expense.

We also cannot lose sight of the great needs in the Asian community that may be lost in the data, which is often not disaggregated. The category "Asian" represents a wide variety of countries with needs that vary as much. A new report by the Asian American Federation sheds light on poverty rates within the Asian community in New York State and New York City[40]. in New York State, the poverty rate among Asians is 17.8%, nearly double the 10% rate among Whites. For Black and Hispanic families, the rates are 23% and 25.7%, respectively. In New York City, the Asian poverty rate increases to 19.7%. We have

[37] https://s28299.pcdn.co/wp-content/uploads/2018/10/CNY002-AH-Summit-Report_v7_FINAL_online.pdf
[38] https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-20170927.htm
[39] https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf
[40] http://www.aafny.org/doc/AAF_poverty_2018.pdf

sizeable Pakistani, Bangladeshi, Chinese and Korean populations in New York City, for whom the poverty rates are 27.7%, 27.4%, 21.9%, and 18.4%, respectively. While the CRA data may not get this granular, it highlights the need to be attuned to local needs as banks develop CRA programs and to incorporate these needs within their CRA activities at those level.

All of this underscores the need for the CRA to address these stark racial and ethnic wealth disparities through access to credit, banking, and other community development activities that can help build wealth and assets through affordable housing, quality jobs, education and more. The fair lending portion of the CRA exam allows banks to be downgraded for fair lending and other consumer violations, but the OCC has taken steps to greatly weaken this and other parts of the CRA process for banks they regulate, by limiting downgrades in a bank's CRA rating when the bank engages in discrimination or other illegal credit practices[41]; creating exceptions for banks with failing CRA ratings that are seeking to merge or expand their operations[42]; and, lengthening some CRA exam cycles[43]. Also, that is only one side of the equation. Given historic and current disparities, banks should have an *affirmative obligation* to serve borrowers and communities of color with products, down payment assistance, and culturally appropriate products and practices.

HMDA captures some race and ethnicity data already for home lending, and will provide more through the disaggregated race and ethnicity data starting in 2018. The small business improvements from Section 1071 of the Dodd Frank Act would provide more detail on small business loans when it is enacted, which should happen swiftly, or can happen through CRA reporting separately. It is time for CRA exams to explicitly evaluate a bank's record of lending to people of color.

And we echo the recommendations of our colleagues at NCRC that fair lending exams should ideally take place at the same time as the CRA exam, but should not hold up its release. If discrimination is found during the exam period, a bank can be retroactively downgraded and the following exam can determine if such practices have changed and the bank now merits a passing score.

Small Business Lending

Supports for small businesses are an integral part of the CRA as it stands today and one that must continue and be strengthened.

Under the **retail test for large banks,** banks are evaluated on a number of factors on their small loans to businesses, which are defined as loans under one million dollars.

- Small loans to businesses: all business loans under $1M
  - Total volume of lending, inside and outside of the assessment area
  - Percentage of loans in LMI tracts
  - Percentage of loans by size category: <$100K; $100K-$250K; $250K-$1M
- Small loans to small businesses (business loans under $1M to businesses with revenue under $1M)
  - Total volume of lending
  - Percentage of loans in LMI tracts

As helpful as this data is, it is extremely limited:

41 https://www.occ.gov/publications/publications-by-type/other-publications-reports/ppms/ppm-5000-43.pdf
42 https://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/ppms/ppm-6300-2.pdf
43 https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-17.html

- Loan originations, renewals, refinances, are all treated the same.
- There is no way to distinguish between types of loans – line of credit, credit card, term loan, etc.
- Data on revenue size is also quite limited as it does not provide any more details about the revenue size of the businesses, and in many cases, it is not captured at all.
- There is no data on the business owners themselves, with regards to race, ethnicity, gender
- There is no data on loan size categories for loans specifically to small businesses, only for the total loans less than $1 million.
- Bank-specific data is only provided at the county level, and not at the census tract level

As mentioned above, Section 1071 of Dodd Frank would shed light on much of this information and provide much more useful data on how banks are meeting the needs of small businesses. But, rather than prioritize that new data, the OCC wants to muddy the waters even more by counting all loans to SBA small businesses. These can vary greatly in size, going up to 500-1500 employees in some cases, and well over $1 million in revenue.

The CRA already allows for consideration of lending to these SBA small businesses. If the loan is under $1 million, it would be included in the overall lending data, and if it's in an LMI tract, then it would contribute to the bank's percentage of lending in LMI tracts. And if the loan is over $1 million and is found to "promote economic development" by creating, preserving or improving jobs, they can get community development credit for that loan.

The CRA retail test should focus on loans to truly small businesses that struggle with access to capital. Revenue under $1M likely captures the majority of truly small businesses, and more data on actual revenue size would provide more insight.

Multiple studies over the years demonstrate that small businesses need smaller loans, well below $1M. The latest joint study by the 12 Federal Reserve Banks found that the majority of firms (55%) applied for less than $100K in loans (22% applied for loans below $25K); 20% applied for loans $100K-$250K and just 17% applied for loans for $250K-$1M[44]. The same study found that the vast majority of firms (87%) were looking for traditional loans and lines of credit – business loans, lines of credit, SBA loans, etc. Just 27% wanted credit card loans. Yet, this data gets lost in the CRA exams. We cannot get the breakdown in loan size for actual small businesses. And credit card loans are not separated out, except for the few banks with separate credit card banks (examples include American Express, Discover, WEX, Synchrony and the credit card banks of Capital One and JPMorgan Chase). The same study found that satisfaction rates were consistently higher with CDFI lenders, credit unions and small banks.

A local organization conducted a smaller study of businesses' access to banking and credit in the Fulton Street corridor of Brooklyn and found similar results to the Fed study. Many of the businesses cited challenges in expanding their business and paying operating expenses. Nearly half used business or personal credit cards to finance their businesses, yet just 11% applied for financing in the past year, with 40% of non-applicants being either debt-averse or feeling like they would be declined. Over 70% of the businesses had business bank accounts, the majority of which use bank branches near where they live or work. They also tended to apply for financing or credit cards at large or small banks, rather than CDFIs, credit unions, or online lenders. This represents significant opportunity for banks to reach out to local businesses and organizations serving them to understand these challenges and see where bank financing and technical assistance would be helpful. Here in New York City, in addition to lack of access

[44] https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2018/sbcs-employer-firms-report.pdf

to capital, businesses struggle to find affordable space to run their businesses and, absent rights to leases, often find themselves at risk of displacement, similar to residential tenants.

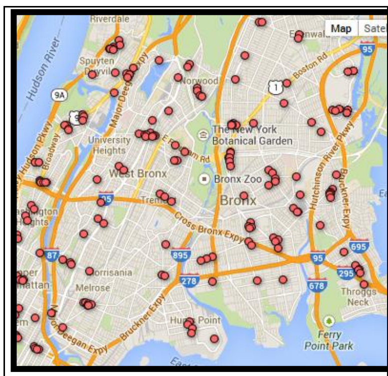
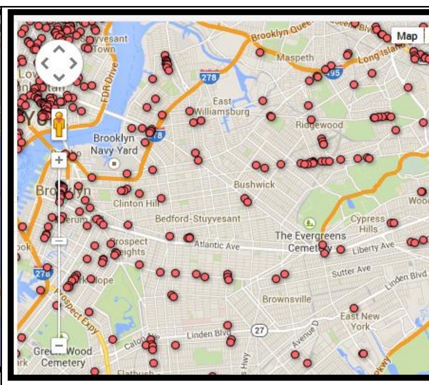
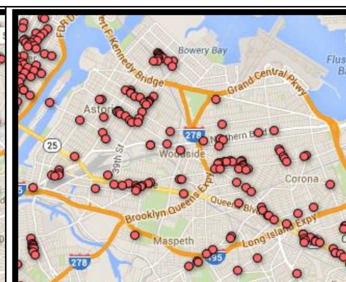
The CRA should be an incentive for banks to offer new products to meet the needs of small businesses, immigrant businesses, new businesses. They should be actively working to prevent the displacement of small businesses, both in high-cost, gentrifying neighborhoods as well as in distressed neighborhoods that lack resources across the board. The CRA should give credit for those activities and have consequences when banks are not meeting the needs responsibly.

Access to Banking

Any changes to the service test, or CRA in general, cannot come at the expense of branches. The CRA should evaluate how well banks provide the most fundamental services: a safe place for all consumers to deposit and withdraw their own money and access responsible financial products to save money and build wealth.

The latest FDIC study showed some improvement in the rate of the unbanked in 2017, but significant challenges and disparities persist. In the New York Metro area, 7.9% of households are unbanked, but that jumps to 15% for Black households and 18% for Hispanic, versus just 2.8% for white households. The rate is a shocking 30% for very low-income households and those without a high school degree.

The need for bank branches remains. The FDIC found that 26% of all households use bank tellers as their primary method of account access, and that jumps to about 50% of seniors and 40% of low-income people[45]. The Bronx in NYC provides a stark example with one of the highest percentages of unbanked residents and lowest percentages of bank branches per residents in the country. Also, immigrants and others without traditional identification typically cannot open an account online and continue to face challenges in opening accounts in person. Mobile and online banking should supplement, not replace, branches. Branches have historically been and continue to be distributed inequitably throughout the city. And even the overall statistics mask the fact that most branches are typically clustered along commercial corridors, leading many people to travel far to reach a branch.

			
Large Sections of the Bronx lack branches	Bedford-Stuyvesant, Bushwick, East New York in Brooklyn lacks sufficient branches	Astoria Cove / Hallets Cove along the waterfront in Astoria/LIC lacks sufficient branches	Midtown, down to lower Manhattan is inundated with branches

[45] https://www.fdic.gov/householdsurvey/2017/2017report.pdf

Federal Reserve Board Governor Lael Brainard summarized research about the importance of branches as well. "Recent studies measuring the impact of branch closures on credit availability in neighborhoods demonstrate that branches still matter, particularly with respect to accessing small business credit. The Federal Reserve Bank of New York found that access to small business credit declines and the rates for small business loans increase as the distance between the bank and the borrower grows. Similarly, the large majority of mortgage lending continues to be located in one or more of a bank's delineated assessment areas--that is, near a physical branch[46]."

Just last year, the Federal Reserve Bank stressed how important the local banking market is for small business lending, and that changes in concentrations of branches could affect lending with regards to volume and pricing. They cite research that documented a clear connection between local branches and small business loans: in 2013, the median distance to small businesses' primary financial institution was 2 miles[47].

Lastly, on-the-ground input from community organizations stresses this importance. Cypress Hills LDC has been hosting an annual CRA forum for years and calling for more branches in their neighborhood. A local branch closure meant the loss of a bank, as well as the credit building product they had been successfully utilizing. Even worse, this bank was part of NY States' Banking Development District (BDD) program, which provides low-cost deposits to bank so they can increase access to banking for LMI communities[48]. Likewise, organizations in central Brooklyn surveyed nearly 400 people and one of the main findings was that branches matter. 65% of respondents use a bank branch in their neighborhood and most use a branch or ATM to access their bank.

With regards to bank accounts, **branches alone aren't enough if people can't use the products**. Cost and access matter. The FDIC's study shows that the top reasons participants were unbanked include not having enough money and high and unpredictable account fees. Multiple studies on access to banking for low-income people, immigrants, and seniors highlight similar of issues. A local report on immigrant access to banking called "Bridging the Gap" was issued in February of 2015 by the Northwest Queens Financial Empowerment Network[49], which includes two ANHD members and to which ANHD served as an advisor on this publication. The Central Brooklyn study also revealed that fees are a considerable concern; two-thirds reported having paid overdraft fees in the prior year and nearly a quarter paid fees for going below a minimum balance. Consumers need affordable, accessible bank accounts with low minimum balances, low fees, and transparent fee structures. Banks must be welcoming to immigrants by accepting multiple forms of primary identification – **including municipal IDs like the IDNYC** – and have staff that speak the local languages and understand local cultures. Lower-income, immigrant consumers also need mechanisms to build wealth through savings accounts, loans, and credit-building products.

As online and digital banking continues to expand, banks must be held to a higher standard to demonstrate how their products are reaching LMI people, including seniors and immigrants, to ensure they are reaching them effectively through all channels. For banks that do considerable amount of lending online, those products and practices must be evaluated in their assessment area and in other areas where they do considerable business.

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46 https://www.federalreserve.gov/newsevents/speech/brainard20180518a.htm
47 https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm
48 https://www.dfs.ny.gov/banking/bdd.htm
49 https://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Report_Bridging_the_Gap_20150225.pdf

Exams should fully evaluate:

- **Branches** opened, closed, and operating in LMI communities, including hours of operation, languages spoken, and services offered.
- **Cost of banking, including** maintenance fees and requirements to waive fees. A bank account that requires a high minimum balance or direct deposit to waive the fee could be unattainable for many low-wage workers, immigrant workers, and self-employed. Also evaluate additional efforts to overcome barriers to banking and increase savings with products for people with lower incomes and low balances.
- **Fees**, such as overdrafts, insufficient funds, and penalties should be low, with the chance of being charged as minimal as possible. **Transparency** is also critical to minimizing fees and enabling consumers to clearly understand their options, know what to expect, and compare products.
- **Access**: look at the minimum amount to open account; the range of identifications accepted; and clear processes to bring people with prior banking issues back into the banking mainstream. Ensure banks offer at least one safe, low-cost product, while also ensuring that products with more features are still safe and transparent, and do not charge steep fees. (for example, a bank may offer a low-fee or no-fee no-overdraft checkless account, but then the full checking account costs $12 a month).
- **Effectiveness**: Simply offering the product is not enough. The exam should report the number of accounts used, opened, and closed by LMI people, if possible, and certainly by people in LMI geographies and assess their impact and effectiveness.

Regulators can then compare how alternate delivery models compare and supplement, while also evaluating other products, such as money orders, check cashing, prepaid cards, remittances, responsible small dollar loans, secure credit cards, and other credit building and wealth-building products. The FDIC Safe Accounts Pilot Program and the California Reinvestment Coalition's' SafeMoney accounts offer good models[50] as do the national BankOn standards for safe, affordable bank accounts[51].

Assessment Areas

First, we must note that banks that operate in New York City should be required to include the whole City as their assessment area. BankUnited, for example, only counts Brooklyn and Manhattan as its assessment areas. Worse, First Republic Bank only counts Manhattan, despite considerable lending activity in Brooklyn and some in other boroughs. We may be the only city that encompasses multiple counties, and that practice shouldn't be allowed.

And however assessment areas are defined, or re-defined, it is critical that the local obligation remain. Any attempt to weaken this system is dangerous, and likely unlawful. Former FDIC Chairman Martin Gruenberg recognizes this as well. "A reliance on a single ratio of CRA performance could allow banks to pick and choose which communities to serve and which products and services to offer in those communities. **It is not clear how it would be made compliant with the statutory requirement that the CRA evaluation be presented separately for each metropolitan area in which a bank maintains one or more branches**." Banks must be assessed on their lending, investment and services within their local assessment areas. They must assess local community needs and be responsive to those needs.

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[50] https://fdic.gov/consumers/template/template.pdf and http://calreinvest.org/crc-issues/safemoney%E2%84%A2-account

[51] BankOn standards

That being said, the banking world has changed – banks are bigger and more complicated and **assessment areas need to be updated to reflect this**. Traditional banks, limited purpose banks, and online banks make loans and take deposits outside of a branch network, yet assessment areas remain tied to branches. These include **credit card lenders, non-bank mortgage lenders, online banks,** and **prepaid debit card issuers**.

Regulators should maintain assessment areas around branches, and also expand how assessment areas are drawn to reflect where a bank takes deposits, makes loans, and does business. They should strive to capture at least 75% of a bank's lending or banking activity. This is particularly important for online-only digital banks, as well as banks that have a business model that spreads their business outside of their branch network.

Examples of online only banks are numerous and growing. But there are also banks with branches that do considerable lending online and/or outside of branch networks. Flagstar, for example, got a satisfactory on its last CRA exam, despite the fact that 93% of their lending was found to be done outside of their assessment area[52]. Likewise, Citizens Bank has the bulk of its branches in Pennsylvania and New Jersey, and some in 10 other states. But, the largest volume of lending was in New York State, where they have no branches or ATMs and thus are not assessed on their record of lending here. They made the 4th highest volume of loans by banks in NYC, but compared very poorly in the percentage of loans to LMI borrowers and loans to Black and Hispanic borrowers[53]. And their performance was well below that of the areas where they have assessment areas.

There is precedence to evaluate lending beyond branch networks. The former Office of Thrift Supervision (OTS) assessed performance in geographical areas with high numbers of loans beyond bank branch networks.

> Excerpt from Capital One, F.S.B. (2005 – OTS exam):[54]
> "COFSB markets and delivers its loan and deposit products on a nationwide basis. Consequently, it obtains deposit accounts and originates loans throughout the nation. In conducting this evaluation, the examiner analyzed COFSB's performance first in its assessment area. After determining that the lending performance in the assessment area was reasonable, **the examiner analyzed the Institution's lending performance in 20 other markets where COFSB conducts a significant proportion of its deposit and/or lending business**."

The OCC set a good precedence more recently by evaluating BofI Federal Bank's headquarter MSA as well as six states where the bank did a majority of business. These were more limited in their reviews, but the fact that they were factored into the final rating is certainly a step in the right direction[55].

> BofI is a non-traditional bank that gathers deposits and offers loans throughout the United States. **Consequently, the ratings are based on the Bank's CRA performance in the San Diego MSA, as well as performance in areas outside the AA where the Bank has originated or purchased a substantial portion of its loans and/or gathered a substantial portion of its deposits.** We identified six states (Arizona, California, Colorado, Florida, Texas, and Washington) where BofI has the highest number of loans and/or deposits.

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[52] https://www.occ.gov/static/cra/craeval/jun18/708412.pdf
[53] https://anhd.org/sites/default/files/hmda_white_paper_june_2018_final.pdf
[54] http://www.occ.gov/static/cra/craeval/OTS/CRAE_13181_20050718_64.pdf
[55] http://www.occ.gov/static/cra/craeval/oct13/716456.pdf

The new Q&A from 2013 may provide incentives for wholesale or limited purpose banks to make loans and investments beyond their one main office, but this only gives extra credit, with no connection to any performance context and no obligation to do so. This is particularly problematic for limited purpose banks that do considerable business outside of their assessment areas.

New York City has benefited greatly from the concentration of banks in New York City. The needs here are great and are not going to abate any time soon. Changes to assessment areas should "expand the pie" so to speak to increase the responsible investment flowing to our city. There must be a way to create new assessment areas where banks do considerable lending, while maintaining the areas around branches and maintaining and strengthening investment in areas that need it, such as New York City.

Ideally banks would have new assessment areas where they are assessed on their record of lending, investment and services within those new areas, in addition to their current assessment areas. At the very least, as has been done in the past in the examples listed above, they should be assessed on the retail products offered to ascertain if they are responsive to the local community. Regulators should assess the percentage of loans to LMI borrowers and people of color, loans to small businesses and in LMI tracts, banking products offered and utilized to increase access to banking for underserved populations. Banks that make multifamily loans should be assessed on lending in LMI tracts and also how those loans are contributing to affordable housing and whether or not they are contributing to poor conditions or displacement.

Affiliate lending, non-bank lending, and Limited Purpose Banks

Bank Holding Companies with multiple CRA-regulated banks; treatment of affiliate lenders; and limited purpose bank evaluations create confusion, duplication, inconsistencies and, in some cases, undermine the fundamental purpose of the CRA. These are just a few examples of the problems:

- **Under §__.42,** It is optional for a bank to include affiliates in their CRA exams, such that a bank could exclude an affiliate with a poor record of lending. And on exams, they are excluded from the inside/outside AA analysis. Non-bank lenders that are not bank affiliates are never evaluated under the CRA.

- **Under §__.25,** "Limited purpose" banks are evaluated only on their community development activity and not at all on the volume or distribution of their lending. While they may be included on that other bank's exam, the bank being examined is not evaluated on its record of lending.

  JPMorgan Chase & Company and Capital One are but two examples that are representative of many banks. Both are large national/multi-national corporations with multiple affiliates, including two CRA-regulated entities – one a national retail commercial bank (JPMorgan Chase Bank, N.A. and Capital One, N.A., respectively) and the other a limited-purpose credit card bank (Chase Bank USA and Capital One Bank USA). The commercial banks are assessed over multiple states, multiple cities, and on the full range of CRA related loans, investments, and services and each list the credit card bank as an affiliate. The credit card banks each lend nationwide, but are assessed only on their community development activities and only in one assessment area that in no way represents where they do the majority of their business.

- A Bank Holding Company with multiple CRA-regulated entities can pick and choose where to count certain loans and investments. For example, a bank with two CRA-regulated entities may count community development activity from one bank as an affiliate loan on the other bank's exam if that other bank needed credit. (per Section **§25.22**, we understand they can't count the same loan on two exams: **"(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase)"**

For example, Morgan Stanley, N.A.'s 2013 CRA exam lists Morgan Stanley Private Bank, N.A. as an affiliate for Community Development activity. But, Morgan Stanley Private Bank is also subject to a CRA review, such that its loans are split among the two banks.

Affiliate lending should no longer be optional to report. Regulators should fully examine the lending record of limited purpose banks and evaluate online banks and prepaid card issuers based on where they take deposits and make loans.

Regulators should conduct **<u>one evaluation for the bank holding company</u>** with all its CRA-regulated subsidiaries and non-bank affiliates. This would give a truer analysis of the company's record and, in the interest of reducing burden, create a more streamlined system to evaluate the bank holding companies.

Nonbank Lenders

1-4 family: Independent non-bank mortgage lenders dominate the 1-4 family market now nationwide, and are a growing presence in NYC, making up 30% of first-line, owner-occupied home purchase loans and nearly half of all refinance loans. This trend is happening at the same time as CRA-regulated banks are pulling out of 1-4 family lending entirely. In the past few years alone, Capital One, BankUnited, and New York Community Bank stopped making 1-4 family loans. Sterling National Bank has stopped all except "CRA loans" (loans to LMI borrowers and in LMI tracts). We note that while the percentage of lending to LMI borrowers is similar among banks and non-banks, the percentage of lending to borrowers of color is lower for banks than non-banks, due in part to non-banks making much higher volumes of FHA loans than banks. FHA loans serve an important role, mainly due to the low down-payments, but conventional CRA loans and other government programs, like NY State's SONYMA loans, are more affordable, and often provide additional financial assistance. Without a CRA obligation to serve borrowers of color, this two-tier system will continue. And the non-bank lenders have no CRA obligation at all, leaving them outside any CRA oversight – they have no incentive to offer low-cost products with financial assistance, no regulatory oversight of their products, no other obligation to reinvest, and no requirement to gather community input nor receive comments on their practices.

Multifamily: While banks continue to dominate the multifamily market, there exists a growing class of lenders – non-bank commercial lenders – that fall outside of regulatory oversight. By our analysis, and outside analysis, they make up roughly 10% of the market now[56]. These lenders are not regulated like banks and thus are not subject to the CRA or safety and soundness exams. If they do not meet certain asset or volume thresholds, they will not be included in Home Mortgage Disclosure Act (HMDA) either. These lenders may often do riskier deals with lower Debt Service Coverage Ratios (DSCR)[57], expect higher rates of return, and have no incentive under the CRA to support affordable housing or to protect tenants.

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[56] https://therealdeal.com/la/2018/10/23/lending-tree-real-estate-debt-funds-now-have-a-57b-to-deploy/

[57] The Debt Service Coverage Ratio (DSCR) is an indicator of whether the payments on the mortgage debt can be supported by rent from the existing tenants. DSCR = Net Operating Income divided by annual debt service payments.

Madison Realty Capital is one such lender on our radar, as discussed earlier on with reference to their $124 million loan to Raphael Toledano to purchase a 15-building portfolio in the East Village, well over the $94 million he paid for the buildings. News coverage has documented some of the risky lending patterns that Madison Realty Capital maintains[58]. This particular loan led to harassment, displacement, and lead contamination, among other hardships for tenants. However, because Madison Realty Capital is not a bank and thus not regulated as banks are, there is no incentive for them to address the situation and little recourse to hold them accountable.

Madison Realty Capital is just one of many non-bank lenders on the landscape now. While not every non-bank lender acts irresponsibly, this system still creates an unequal playing field and puts tenants at further risk of displacement. This could be exacerbated by non-banks filling a void created by CRA regulated banks doing the right thing and refusing to finance known bad-actor landlords.

All lenders – banks and non-banks – should be held to the same standards to ensure that their loans support communities. They should be regulated under the CRA in such a way that requires them to lend equitably and invest in affordable housing and community development, and also holds them accountable for irresponsible loans that result in harassment, neglect, harm, or displacement.

Small Business and Consumer Lending: The rise in online small business and consumer lending, sometimes referred to as "marketplace lending", is also well documented and raises some concerns. According to a recent report by the Congressional Research Service, marketplace lenders make up a small percentage of the total consumer and small business market, but the dollars have been increasing[59]. They originated almost $26 billion of loans in 2017, up 34% from $19 billion in 2016. The rate was 163% from 2011 to 2015. New York State Department of Financial Service's survey of online lenders found similar trends where the majority of consumers were served by banks, but the number and dollar of loans made by online lenders has been increasing[60]. The Federal Reserve Bank small business survey found the percentage of firms applying to online nonbank lenders rose from 20% to 24% from 2015 to 2017. Over the years, significant concerns have been raised by these lenders that are not covered by traditional bank regulations, including the CRA. The DFS study found significant variations in interest rates charged and fees, and very little transparency in how fees are disclosed or included in APR calculations. While the satisfaction rates have been increasing in the annual Federal Reserve Bank small business credit survey, they remain significantly lower than traditional banks, large and small, and CDFIs. ANHD members that serve small business owners often tell stories of trying to help small business owners refinance out of expensive online loans they got into too quickly. Many were turned down by traditional banks and didn't know where else to go.

While we recognize that this may require a statutory change, there could be a way to include additional non-affiliate lenders if they have a contractual relationship with a bank, or if a bank participates in a loan with them, as was the case with Madison Realty Capital. For example, New York Community Bank and Sterling Bank, and likely others, have formal referral programs with Freedom Mortgage Company. Their CRA evaluations should be tied to that company's performance, especially for customers referred from their banks, and/or loans within their assessment areas. Similarly, others partner with New Tek for small business lending. Chase has been partnering with OnDeck and plans to continue for at least

[58] https://therealdeal.com/issues_articles/friend-to-some-foe-to-others/
[59] https://fas.org/sgp/crs/misc/R44614.pdf
[60] https://www.dfs.ny.gov/about/press/pr1807111.htm

another 3 years[61] and Citibank has been partnering with Biz2Credit[62]. Valley National has been partnering with Unison for a particular type of home purchase loan[63]. These banks and others should be evaluated on the effectiveness of these products on their customers and how customers are impacted in good ways and bad.

Mergers and Applications

The CRA is particularly impactful at times of mergers and acquisitions, as well as applications related to branch openings and closings. Banks should be required to have a forward-looking CRA plan at the time of mergers and should create these plans with local stakeholders. This would serve to ensure that the newly expanded institution leads to more resources for local communities, and not fewer, as is too often the case.

Data transparency and Examiner Training

The data on CRA activity is woefully inadequate. We get very little detail, it's inconsistent, and often not reported at a level that we can utilize, such as county or census tract. Community organizations should have annual information about bank community development loans and activities, ideally at the census tract level, or at least at the county level.

- Number and dollar amount of new community development loans, investments and services – multifamily mortgages should be split out as they are the only area that is allowed to be double-counted
- Outstanding investments that are counted on CRA exams.
- Category of CRA under which it received credit
- Type of entity receiving financing, such as a nonprofit, CDFI, for-profit developer, or municipality.
- whether it is a new loan, a renewal, a refinance.

Regulators should make available census tract level details about consumer loans by income of borrower, and race when available. We should also have detailed information on small business lending as required by Dodd Frank Section 1071.

Also, in order to better facilitate quality CRA exams, there should be better examiner training, and likely more examiners. The more examiners who understand the local context – needs, constraints, and opportunities, the better they can evaluate how banks are meeting those needs.

Conclusion

Meaningful CRA reform could boost lending and access to banking for underserved communities. CRA ratings must be reformed so the pass rate is no longer 98%. Assessment areas must be added that include areas outside of bank branch networks in which banks make high volumes of loans. Lending and

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[61] https://www.pymnts.com/smbs/2017/jpmorgan-chase-ondeck-extend-digital-banking-lending-partnership-for-smbs/

[62] https://www.reuters.com/article/us-citigroup-loans-internet/citigroup-quietly-launches-small-business-lending-website-idUSKBN15B2CK

[63] https://www.housingwire.com/articles/42618-valley-national-bank-and-unison-launch-5-down-program

access to banking for people and communities of color must be considered on CRA exams. Non-bank affiliates of banks must be included on CRA exams.

To ease bank anxiety about unclear aspects of the CRA, communications among the federal agencies, banks, and community groups could be improved. However, easing bank anxiety via the one ratio and diminishing the importance of branches, assessment areas, and public input will decrease lending and access to banking in the communities that need it the most. The federal agencies also must not establish easier exams for any category of banks that excuse them from current requirements for community development financing. We urge the OCC to go back to the drawing board and develop reform proposals with the Federal Reserve Board and the FDIC.

We thank you for the opportunity to submit these comments and ask you to consider them in your review.

Sincerely,

[redacted]

Benjamin Dulchin,
Executive Director

Hearing Title:

Modern-Day Redlining:
The Burden on Underbanked and Excluded Communities in New York

Written Testimony
Jaime Weisberg
Senior Campaign Analyst
Association for Neighborhood and Housing Development (ANHD)

Prepared for the United States House of Representatives
Subcommittee on Consumer Protection and Financial Institutions
March 6, 2020

My name is Jaime Weisberg, I'm a senior campaign analyst at The Association for Neighborhood and Housing Development (ANHD). ANHD is a nonprofit coalition comprised of over 80 neighborhood-based affordable housing and equitable economic development organizations and CDCs with over 40 years of experience in policy and organizing work related to bank reinvestment, affordable housing, and equitable economic development on behalf of New York City's low- and moderate-income (LMI) and immigrant communities and communities of color. ANHD's work is rooted in its values of justice, equity and opportunity.

Thank you to Congresswoman Waters, Congressman Meeks, and the members of this sub-committee for inviting me to speak on this important topic of Modern-day redlining as it relates to the Community Reinvestment Act modernization debate happening in Washington right now. As we've made clear over the past few months, we are adamantly opposed to the changes proposed by Comptroller Joseph Otting at the OCC and FDIC Chair Jelena McWilliams. Despite Comptroller Otting's stated goals, the proposal put forward is less transparent, more complicated, and will lead to less investment and less meaningful investment in low-income communities and communities of color.

ANHD has a deep respect for the Community Reinvestment Act (CRA). ANHD was founded just a few years before the CRA was passed. We understood then, as we do now, the importance of responsible investment in redlined communities. The CRA has leveraged $2 trillion dollars nationwide since 1996[1], and, in the past five years alone, ANHD has documented near or over $10 billion each year reinvested in New York City[2]. Thanks in part to the CRA, over 330,000 units of affordable housing have been built in the past 40 years, and a third of that by nonprofit developers. The CRA has leveraged and supported partnerships, products, and developments impacting low-income tenants facing harassment and displacement, low-income homeowners, small businesses and the community organizations, CDFI's and credit unions that support them.

- ANHD led grassroots CRA advocacy with our members that resulted in two of the largest multifamily lenders in NYC – Signature bank and New York Community Bank – adopting a set of multifamily best practices that deter displacement and support tenants[3]. NY State's Department of Financial Services (DFS) has also adopted both CRA and safety and soundness guidance very similar to our best practices.
- Over the past 8 years, ANHD has been a part of multiple campaigns to secure CRA agreements and CRA plans
    - Santander Bank committed $11 billion over five years throughout their footprint, including new bank branches and commitments to both retail and community development loans and investments.
    - Valley National and Sterling each were required to create CRA plans as a condition of contested mergers.
    - New York Community Bank created a three-year CRA pledge at the time of their combining their commercial and community bank entities, which included the multifamily best practices as well as additional commitments to increase access to banking and small business lending and to support community development.

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[1] https://ncrc.org/what-the-community-reinvestment-act-means-to-lending-in-philadelphia/
[2] https://anhd.org/project/state-bank-reinvestment-nyc-annual-report
[3] https://anhd.org/project/multi-family-lending

- ANHD supports members when banks are acting in ways that are harmful, and to foster connections for positive activities. This can be in the form of research, meetings with banks, and communication with bank regulators.
- ANHD consistently comments on bank CRA exams to provide on-the-ground analysis of what banks are doing well and ways they can improve, which often results in constructive dialogue and improvements in bank behavior. ANHD also sits on numerous bank advisory boards to inform their CRA plans and provide feedback on their activities. ANHD served for one year on the inaugural Community Advisory Board at the Federal Reserve Board.
- ANHD publishes an annual State of Bank Reinvestment in NYC (SOBR) report[4], and ancillary reports on home lending[5], documenting CRA activities citywide and among 25 banks operating in NYC, including the largest banks in the country. The SOBR report is a consistent analysis of how banks are doing individually and in comparison to one another, with a goal of raising the bar to increase impactful CRA activities citywide. The report is used by regulators and banks to demonstrate what is being done, and to identify ways they could improve across the CRA spectrum: Staffing, branches and bank products; multifamily lending; home lending; small business lending; and community development lending, investments and grants.

All of these types of agreements and partnerships are at risk with the proposed changes to the CRA.

But, for all its benefits, inequities persist. Modern-day redlining today typically refers to the discrimination that people and communities of color face in accessing loans, banking, and mainstream financial products. Central to this phenomenon is the dual financial system we have where higher-income households have access to lower-cost mainstream financial products and lower-income communities and communities of color are relegated to higher-cost non-bank providers, often with little to no regulation, such as check cashers, private ATMs, pawn shops, and non-bank lenders. While others in these communities still lack access to credit entirely, limiting their opportunities to thrive, be it through higher education, purchasing a home, securing capital for a small business, or buying a car. All these problems are intertwined with broader economic inequalities in access to quality jobs and safe, affordable housing. CDCs, CDFI's, and other nonprofits that work on addressing these issues struggle to access the resources they need to do their work: grassroots organizing of tenants and community members, lending to and supporting small businesses, building and preserving affordable housing, providing financial counseling, and providing access to affordable homeownership and home repair loans.

The term is particularly appropriate to describe what is happening in Jamaica, which has one of the largest concentrations of Black residents in the city and is persistently fighting to combat decades of redlining and discrimination. Large sections of Jamaica and other communities of color in New York City were deemed "high risk" according to the official HOLC redlining maps of the 1930's, and thus cut off from access to the FHA-backed mortgages that enabled many white families to purchase homes and move into the middle class. This was just one mechanism that helped them to build wealth that could be passed on from one generation to the next. While the HOLC ended in 1951, the Fair Housing Act wasn't passed until 1968, and the CRA nearly a decade later in 1977, during the period of what Professor Keeanga-Yamahtta Taylor called "predatory inclusion", in which low-income black families – many single mothers – were targeted for FHA loans, often to purchase severely dilapidated properties located in

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[4] Ibid 2

[5] https://anhd.org/report/black-and-latino-borrowers-locked-out-homeownership-new-york-city-new-data-and-analysis-shows

segregated Black neighborhoods, while also being appraised at a value well above what they were worth[6]. We also know that then, and today, quality homes in Black neighborhoods are valued lower than similar homes in white neighborhoods. Most of the FHA loans in the 70's were made by non-bank mortgage companies in a system fueled by greed, exploitation, and collusion between all segments of the real estate industry. Not surprisingly, many of the loans were unsustainable and fell into foreclosure, leaving the families worse off than they were before they purchased the home. While the tools were different decades later, the greed and exploitation of Black and Brown tenants and homeowners were the same leading up to the 2008 foreclosure crisis. Jamaica was at the epicenter of the foreclosure crisis in New York City at that time. While foreclosures have gone down over the years, Jamaica still has some of the highest rates in the city. The CRA was not responsible for the predatory FHA lending, nor was it responsible for the 2008 crisis; the CRA has instead been a stabilizing force for those it has helped[7]. Now that system is at risk, which is concerning overall, and particularly worrisome in areas still underserved by CRA-covered banks who will have less incentive to better serve those communities. Through legislation and regulation, the Trump Administration is systematically stalling implementation of provisions of the Dodd Frank regulation, relaxing oversight, and deregulating banks on all fronts, including the CRA.

Modern Day Redlining in New York City

Modern-day redlining in NYC presents in various forms, none of which the proposed CRA regulation addresses:

1. **Fewer loans for Black and Brown borrowers, yet more likelihood the loans they get will be costlier**

Fewer than 10% of all home purchase loans in any of the prior five years were to non-Hispanic Black borrowers and fewer than 10% were to Hispanic borrowers of any race. And when Black and Hispanic people are approved for loans, they are less likely to receive conventional mortgages by CRA-regulated banks While FHA loans do allow for a low down-payment, they tend to be more expensive than conventional mortgages, and non-bank lenders often add on additional fees[8]. Whereas, the CRA has motivated many CRA-covered banks to develop affordable conventional mortgage products with low down payment and a low interest rate, and, at times, with financial supports in the form of down payment or closing cost assistance, waived PMI, and connection to HUD-certified counseling by a nonprofit agency. Non-bank lenders have no such obligation and no incentive to offer such programs. The CRA could be stronger on stopping CRA-regulated banks from pulling out of 1-4 lending entirely and getting more banks to offer affordable products and affirmatively market those products to communities of color[9]. Yet, the proposed regulation makes no mention of race or strengthened fair lending exams, and worse, eliminates any analysis of lending in LMI tracts, which opens the door to more redlining rather than find ways to reduce it.

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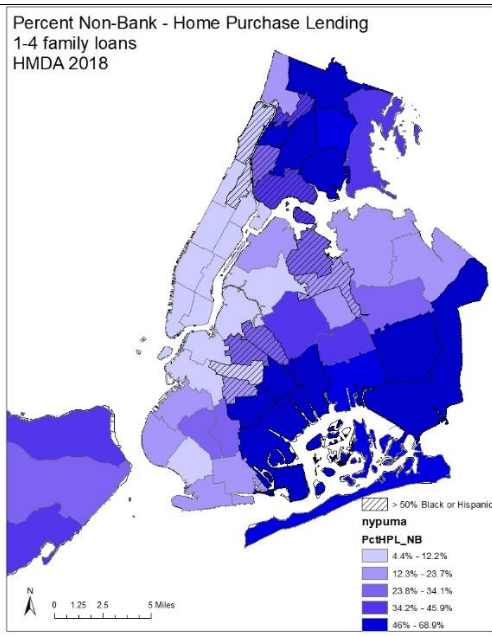
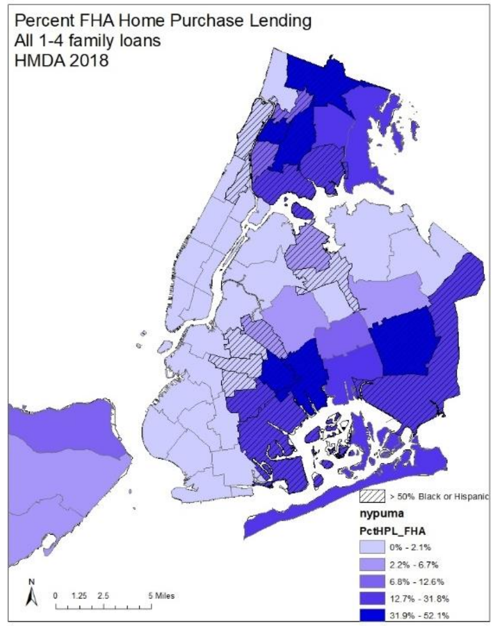
[6] Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (UNC Press, 2019)

[7] https://ncrc.org/there-you-go-again-cato-institute-joins-chorus-of-falsehoods-levied-at-the-community-reinvestment-act/

[8] https://www.responsiblelending.org/research-publication/repairing-two-tiered-system-crucial-complex-role-fha

[9] In recent years, BankUnited, Capital One, and New York Community Bank stopped making 1-4 family loans, and Sterling National Bank stopped making all but "CRA loans" (loans to LMI borrowers and in LMI tracts)



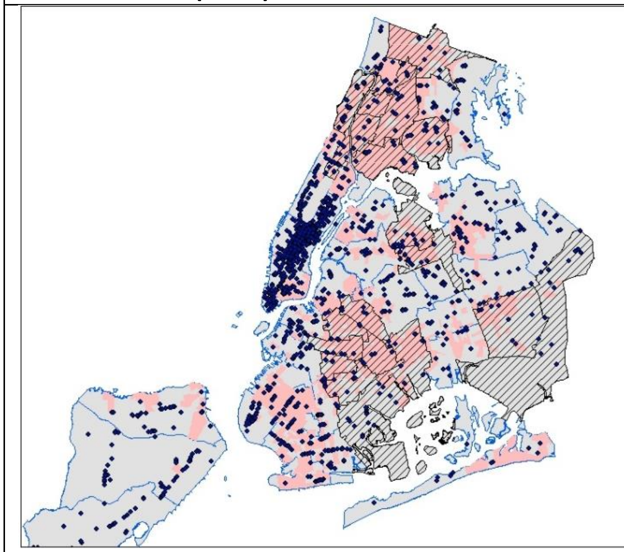
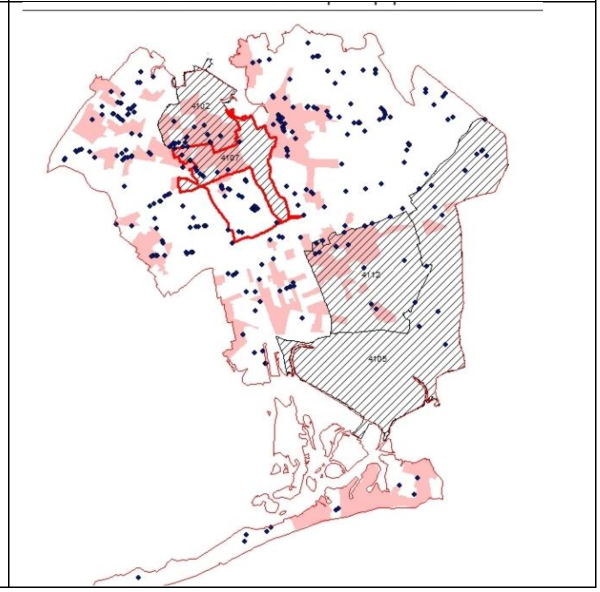


2. Less access to bank branches and affordable banking products

Similarly, communities of color are less likely to be served by traditional bank branches, and conversely, more likely to be flooded with higher-cost check cashers, pawn shops, and - in states outside of New York State – payday lenders[10]. The FDIC itself found that over a quarter of households (26.2%) in the New York Metro area are unbanked or underbanked[11]. 7.9% are completely unbanked, well above the 6.2% unbanked nationwide. This translates to 660,000 households in the NY metro area without access to a bank account. **The rates of unbanked households are much higher for people of color and low-income households**: 14.9% of Black households and 18% of Hispanic households are unbanked, versus 6% for Asian households and 3% for White households. 29% of households earning less than $15,000 and 21.2% of households earning $15,000-$30,000 are unbanked. 30% of households without a high school degree are unbanked

The rates of unbanked can be much higher in low-income communities of color. Using prior FDIC studies, the urban institute found that in 2013, much of the Bronx had unbanked rates of well over 20%, as did Bedford Stuyvesant, Brownsville, and East New York in Brooklyn[12]. In Jamaica, 11% were unbanked and 31% underbanked. Just last year, ANHD member WHEDco conducted a study of over 400 residents in the Crotona neighborhood in the Bronx and found 25% to be unbanked[13].

[10] https://www.dfs.ny.gov/consumers/banking_money/payday_lending
[11] https://economicinclusion.gov/surveys/2017household/documents/tabular-results/2017_banking_status_New_York_Newark_Jersey_City_NY_NJ_PA.pdf
[12] https://www.urban.org/interactive-map-where-are-unbanked-and-underbanked-new-york-city
[13] https://whedco.org/wp-content/uploads/2019/05/WHEDco_MAY-2019_Crotona-East_Community-Needs-Survey-Findings_Digital.pdf

Branches NYC (2017)	Branches Queens (2017)
	

As the maps show, part of that phenomenon is related to the lack of bank branches in these same neighborhoods. Middle and lower Manhattan are inundated with branches, but that is not the case in many communities of color, including Jamaica, which has very few branches. Location is not the only factor in people being unbanked. New Yorkers today face additional barriers to banking due to the costs and identification requirements associated with various bank products. The top barriers to having a bank account have to do with high and hidden fees, which include minimum balance requirements, overdrafts, and ATM fees, among other things[14].

While we advocate for banks to offer affordable products that give low-income customers a way to enter or reenter the financial system, we must note how regressive our banking system: in order for a customer to avoid paying costly overdraft and bounced-check fees, they must pay roughly $60 a year for a checkless-checking account that doesn't allow overdrafts. For full-service accounts, middle- and upper-income customers have the means to waive fees, but low-income people, especially without access to direct deposit, can be paying $10 - $15 a month plus any overdrafts they incur. Others are left out of the banking system entirely, relying on cash and high-cost services offered outside of a bank.

A 2016 Pew report on overdraft practices found that service charges on bank deposit accounts more than doubled from 1984 to 2015. They also found that most of the largest banks charge $35-$37 per overdraft. The customers most impacted by overdrafts earn less than $50,000 a year[15]. In 2017, banks in the U.S. took in over $11.5 billion in overdraft fees and $6.1 billion in ATM and maintenance fees. ANHD's own study shows great variation in the fees and ways to waive those fees, which can mean the difference of tens and hundreds of dollars annually for individual consumers.

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[14] FDIC, 2017 *FDIC National Survey of Unbanked and Underbanked Households (October 2018)*, by Gerald Apaam, Susan Burhouse, Karyen Chu, Keith Ernst, Kathryn Fritzdixon, Ryan Goodstein, Alicia Lloro, Charles Opoku, Yazmin Osaki, Dhruv Sharma, Jeffrey Weinstein

[15] Pew Charitable Trust, *Consumers Need Protection From Excessive Overdraft Costs* (Dec 2016): https://www.pewtrusts.org/-/media/assets/2016/12/consumers_need_protection_from_excessive_overdraft_costs.pdf

Immigrant populations face additional barriers to banking. Various studies highlight the importance of language access and cultural competency in effectively serving immigrant communities[16],[17]. Lack of identification poses another barrier to banking for immigrants. While all banks will accept a U.S. passport or a New York State driver's license, some go further to accept alternate forms of identification such as foreign passports or consular ID cards. Very few banks accept New York City's municipal identification card, "IDNYC," as a primary form of identification to open a bank account. As of this date, only five banks and seen credit unions accept it as primary identification.[18] While we hope the new access to NY state driver's licenses helps open access to banks for immigrants, we believe banks should take the IDNYC; it is an officially recognized form of government ID and may still be the only identification someone has [19].

In 2015, when the Responsible Banking Act was still in effect, the newly created Community Investment Advisory Board issued a comprehensive banking needs assessment, which included an analysis of check cashers locations as compared to bank branches. In the Bronx, the ratio of check cashers to population was almost the same as bank branches. While the ratio is lower in Queens, the concentration of check cashers varies greatly by neighborhood. Wealthier neighborhoods in northeast Queens have not one check casher, whereas they are prevalent in Black communities like Jamaica and low-income Hispanic neighborhoods, like Corona, and even more pervasive throughout the Bronx and parts of Brooklyn. Even in Manhattan where you can't walk five feet without tripping on a bank branch below 96th Street, we see the concentration of check cashers increase as bank branches decrease in upper Manhattan, consistent with a lower-income population and higher concentrations of Black and Brown New Yorkers.

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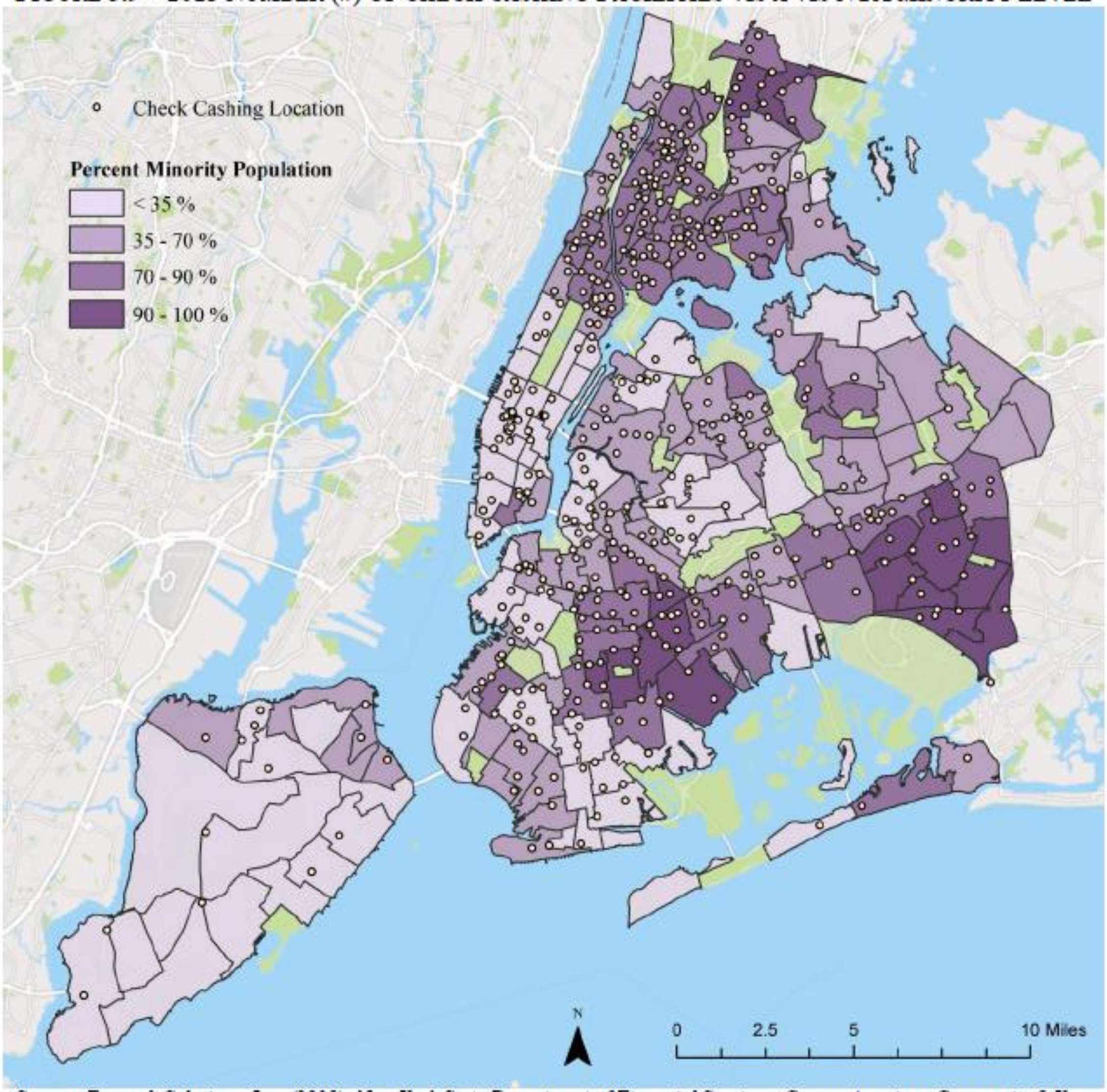
[16] Northwest Queens Financial Education Network, *Bridging the Gap (Feb 2015):* https://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Report_Bridging_the_Gap-ES_20150225.pdf

[17] *Banking in Color* (August 2018) https://www.nationalcapacd.org/wp-content/uploads/2017/08/banking_in_color_report.pdf

[18] Excluding First Republic Bank and People's United Bank that also require a Social Security Number, thus making undocumented immigrants ineligible with any identification, including the IDNYC.

[19] https://www.nydailynews.com/news/politics/ny-green-light-law-undocumented-immigrants-drivers-license-20191216-f727ljzmvvfireemcu4qlfcrgi-story.html

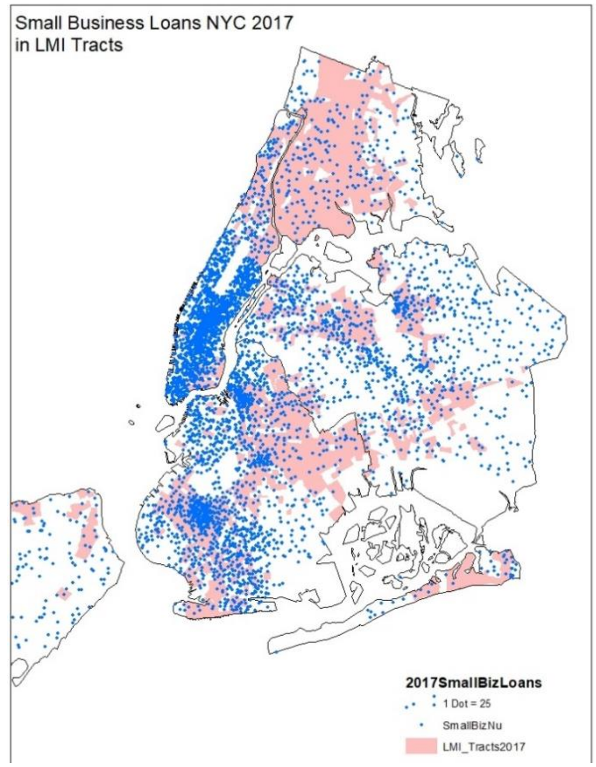
FIGURE 5.9 – 2013 NUMBER (#) OF CHECK CASHING FACILITIES VIS A VIS NTA MINORITY LEVEL



Source: Econsult Solutions, Inc. (2015); New York State Department of Financial Services; Census American Community 5-Year Survey, 2009-2013

The proposed CRA regulations do absolutely nothing to address the ranks of the banked and unbanked. They reduce the branch analysis to a tiny fraction of the one-ratio metric and eliminate entirely the analysis of specific bank branch openings and closings as well as the analysis of banking products offered and utilized by LMI populations. Under this proposal, a bank could close every branch in Jamaica and have minimal consequences on its exam, if any, depending on where they are in their one-ratio metric. They could close LMI branches at 4pm and keep branches in wealthy areas open until 9pm, with no consequences. They have zero incentive to offer low-cost products, increase language access, or accept alternate forms of identification. All that analysis is gone at a time when it needs to be strengthened. This is particularly disappointing given the emphasis that the FDIC has put on increasing access to branches and banking through their bi-annual survey and model bank accounts.

3. **Lack of access to lending for small businesses**



Small businesses also suffer from the lack of bank branches as there are direct connections between bank branches and small business lending. The public data on small business lending matches these patterns. These are all loans under $1M made to businesses with revenue under $1M: new loans and renewals, credit cards, traditional loans, and lines of credit. We look forward to the implementation of Dodd Frank section 1071, which will shed more light on small business lending by banks and non-banks.

95% of businesses have under $1 million in revenue[20] and the greatest need for capital is in the smallest of businesses, and at smaller dollar amounts[21]. They already struggle to access loans, prompting businesses to go without needed financing; to turn to family and friends; or worse to go to a predatory online lender or other service that would cost more than a bank or CDFI.

Rather than address those challenges to increase access to lending and supports for small businesses, the OCC and FDIC are doubling the threshold of small business revenue size and loan size, and eliminating the analysis of loans of different sizes (eg: loans < $150,000; $150,000 - $250,000; $250,000 - $1,000,000)

4. **Gentrification and displacement of low-income communities of color.**

The CRA was passed in the late 1970s when the City was suffering the consequences of severe disinvestment; banks refused to invest in working class neighborhoods and communities of color. One only need see images of the dilapidated, abandoned buildings of that time to understand why we cannot afford to go back to those days. Today, however, many communities face the opposite problem: overinvestment and speculation, rather than disinvestment. Too many of the loans in communities that once faced divestment and neglect now go to bad actors who are more interested in speculative profits than in respecting tenants' rights to remain in their affordable home.

These "predatory equity" investors make loans and investments to developers in low-wealth communities of color, but they base those loans on highly speculative underwriting that assumes rents in the building will rise significantly, often by harassing and pushing out lower-income tenants out of their units and replacing them with higher paying renters. While many of those loopholes have been closed, we know that some landlords will find new loopholes to exploit and others will reduce maintenance to raise their income.

While the CRA has been a tool to get banks to adopt better multifamily lending practices, and given regulators a way to discount loans that are deemed problematic, it has never offered a way for banks to

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[20] https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf

[21] https://www.newyorkfed.org/smallbusiness

be downgraded for patterns of financing that foster displacement and poor conditions. Rather than address that, the one-ratio approach eliminates analysis of impact and takes away any structural ways for tenants and community organizations to provide feedback on banks that are financing displacement. Further, the proposal eliminates geographic analysis of multifamily lending, such that banks can cease to lend on multifamily buildings in LMI tracts without any consequences.

Since coming into office, Comptroller Otting has held tours and dialogues in DC and across the country. He and his staff met with stakeholders across the spectrum – Banks, Community organizations like ours, CDFIs, etc – and assured us all he wanted to improve the CRA – make it more consistent, transparent, effective. We also met with FDIC Chair McWilliams in Washington DC just over a year ago and she, too, assured us there would be no one-ratio and that our concerns would be heard. They took all this information – our input, concerns, and priorities and completely rejected it.

Critique of the Notice of Proposed Rulemaking (NPRM)

Flaws in the process

Proceeding without the Federal Reserve Board

The OCC and FDIC are proceeding without the cooperation of the Federal Reserve Board, which correctly stepped away from this very flawed proposal. This now sets up a system whereby banks can operate under different regulatory regimes. For FDIC-regulated banks that are also chartered in states with local CRA exams, such as New York State, this also means that they will have two regimes under which they will be evaluated. Not only are the methodologies different, but the data collected and analyzed are vastly different. This means banks may shop around for the regulator they think will be easier on them, and that banks may abandon their state charter for a national one.

Allowing insufficient time to comment

The OCC and FDIC released the proposal just before the December holidays, and initially allowed just 60 days to comment. Despite the OCC's assertions that we have had ample time to discuss changes to the CRA[22], the public has only had a short period of time to analyze this specific proposal, which goes even farther than what we had expected from the ANPR and materials provided on the road tour prior to the NPRM being released. The nuances are substantial and require time to fully understand and provide detailed comments. At the last minute, they added an additional 30 days, which is still less than 60-day extension banks and community organizations were requesting.

Lack of Data and Transparency

Despite the OCC's assertions that they want to increase clarity and transparency, the proposal is opaque and less transparent than what we have today. We already have little access to public CRA data, and none at the local level for community development lending. The proposal now abandons the data we do have access to, such as HMDA for home lending, FDIC for branches and deposits, and FFIEC data on small business lending. By relying upon balance sheet data, we will have less information on how many of the loans in the numerator are new versus existing loans.

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[22] https://www.americanbanker.com/news/occs-otting-rules-out-longer-comment-period-for-cra-plan "We have been working for 18 months on this," Otting said. "And so I think it's plenty of time…."

Further, there is no data to back up these new ideas, including the thresholds to reach the presumptive ratings and the impact it will have on communities and banks. The proposal refers to an analysis of 200 CRA exams, with no disclosure of what that data entails – not the number of banks, asset sizes, geographies, business models, or regulators. Whereas the Federal Reserve Board created a comprehensive database of over 6,000 exams from 2005 to 2018, for over 3,700 banks of a variety of sizes, business models, regulators, and geographies.[23] They intend to make that database public[24]. Further, Comptroller Otting claimed in the hearing on January 29th before the House Financial Services Committee that he and the OCC analyzed the Fed's database, yet the proposal makes no reference to that larger database, which does not appear to have informed any of the metrics or analyses.

In further admission that the OCC lacks the data necessary to back up the NPRM, they issued a Request for Information to OCC-regulated banks to provide the relevant data. That data is due to the OCC the day <u>after</u> the original deadline for NPRM comments, there is no indication that it will be made public, and regardless, that data certainly wouldn't be ready for release before the April 8th comment deadline.

Questions Posed in the NPRM are the wrong questions and indicate that the OCC is not actually interested in feedback or strengthening the CRA.

After two years of formal and informal community tours, dialogue, and written comments, the OCC put forth a full proposal that ignores much of that feedback and fundamentally dismantles the CRA. Not to mention the thoughtful feedback that went into the 2010 hearings and the EGRPPRA process in 2015[25]. In fact, some of the questions on the NPRM make it clear that even they know that there are major flaws in their approach and give the false impression that they are willing to compromise. But make no mistake, the OCC and FDIC put them forth as what they purport to believe to be the correct approach, which is more complex, less transparent, and less responsive to community needs.

Just a few examples include the following.

- ***One-Ratio****:* The vast majority of the 1500+ comments in the ANPR opposed any form of a one-ratio approach by combining all CRA activities – retail and community development – together into one formula[26]. Yet the OCC and FDIC stuck with that approach and do not even bother to ask if it is the right approach, nor if the thresholds are the correct ones.
- ***Arbitrary Thresholds and thoroughly untransparent process:*** Even if a single metric were the right approach (it's not), there is no question posed about the chosen thresholds (11% for outstanding, 6% for satisfactory), and we couldn't respond if we wanted to as we do not have any of the data the OCC used to come up with those thresholds. The OCC analyzed a mere 200 exams, all classified as large banks under the current system.[27] The NPRM does not disclose how many banks that represents, nor their range of sizes, business models,

[23] http://www.urban.org/sites/default/files/2020/01/09/lael_brainard_speech.pdf
[24] Q&A at Urban Institute presentation
[25] ANHD comments: https://anhd.org/report/economic-growth-and-regulatory-paperwork-reduction-act-1996-egrpra-community-panel-boston
[26] https://ncrc.org/analysis-of-public-comments-on-the-community-reinvestment-act/
[27] NPRM Page 59, footnote. "The agencies used a sample of performance evaluations completed between 2011 and 2018. The sample contained data from over 200 exams for banks above the small bank asset size threshold, which adjusts yearly and is $1.284 billion for 2019"

regulators, or geographies. Nor do they disclose the assumptions they made with regards to the newly qualifying activities.

- **Allowing a bank to fail in 50% of its assessment areas and still pass its CRA exam**. The regulators insist that they are open to feedback on 50% as a sufficient percentage of assessment areas to pass in order to pass the exam, and that they are open to raising that percentage, but let it be clear that their first suggestion was 50%. That means that they believe it's ok if a bank invests poorly or not at all in half of its assessment areas and that the bank should still pass its exam, possibly even with an outstanding.
- **Elimination of the Service test, which means no focus on decreasing the ranks of the unbanked and underbanked.** The 2018 ANPR did not ask *how* LMI branches and services should be analyzed, but *if* they should[28]. Community organizations nationwide were unequivocal that branches are important, as are responsive, affordable products. Yet, the OCC removed the service test entirely and any analysis of access to banks and banking. Then, the NPRM asks if the range of retail banking services should be provided in the performance context. This is an insult to the community members and advocates who have written volumes on why branches and bank products are important – in studies, testimonies, and comments going back to the first round of modernization discussions back in 2010. And then to suggest that it could go in the performance context makes no sense as it is only seems to relate to qualified activities, so we are left to wonder how adding it to the performance context would have any impact as bank accounts are not a qualified activity.
- **Elimination of community input and objective analysis in the Performance Context.** The proposal fundamentally changes the performance context and its role in CRA exams yet *asks no questions about that*. Under the current system, the performance context comes first and is meant to inform how banks are evaluated, with regards to a wide variety of factors: demographics, economic conditions, needs, opportunities, competition, bank business model and size. The performance context can be written by the bank, a regulator, or a combination of the two. The evaluation of needs and bank performance is also informed by community comments, which become part of a bank's public file – accessible by anyone who wants to see it. Examiners are then meant to evaluate a bank's performance within that context. The proposal fundamentally changes that in three major ways. (1) it is 90% bank-written, (2) its purpose appears to be about why a bank could or couldn't meet the presumptive goals – basically giving banks a place to excuse any poor performance in the retail section, and (3) it eliminates the opportunity for the public to comment on a bank's performance at all.
- **Banks conduct their own exams:** Under the current system, banks submit their list of qualified activities for examiners to evaluate, in conjunction with public data accessed via HMDA, FDIC, and the FFIEC. The new system asks banks to calculate their one-ratio metric, including multipliers, whereas examiners merely verify. And given the lack of public data for much of the retail lending, there apperas little way for examiners to verify that independently.

[28] Page 22 of ANPR: *"Question 27: Should bank delivery channels, branching patterns, and branches in LMI areas be reviewed as part of the CRA evaluations?"*

Summary of Concerns with the substance of the Proposal

1. **The one-ratio metric ("CRA Evaluation" in the proposal) is the primary determinative factor:** The one-ratio approach values dollars over impact, quantity over quality, thus **minimizing the role of community input and community needs and incentivizing larger deals over smaller, more impactful ones**. This means fewer loans to first-time homebuyers, low-income homeowners, and small businesses; fewer financing options for smaller nonprofits to build and preserve deep affordable housing; fewer grants to nonprofits for tenant organizing or direct services.
    a. The one-ratio metric includes a very weak boost for branches in LMI tracts and eliminates entirely the analysis of branches opened or closed as well as any evaluation of hours, languages, or products offered.
    b. The CRA was passed in response to redlining, where banks refused to lend in certain communities. Despite that history and evidence that redlining and discrimination persist, the proposal will likely exacerbate the practice as it eliminates any analysis of residential lending in LMI tracts and makes no effort to strengthen fair lending analyses. This applies to both 1-4 family lending and multifamily lending. Further, the pass/fail retail test is much less rigorous than the current system and will likely result in a race to the bottom, as banks merely have to perform at 65% of their peers. And there is no clarity as to what happens if a bank does not meet that metric.
    c. The proposal cuts community input out of the process. Under the proposal, community members can comment on needs and opportunities, but not on the performance of a bank.

2. **There is no mention of race.** Understanding that the CRA is a color-blind law, the regulators should be doing everything possible to increase access to banks and banking for people of color through affirmative obligations and strengthening the fair lending component of the exam. But the proposal does none of that, and some of the proposed changes that value dollars over quality could inadvertently lead to fewer branches, fewer services, less housing, and less lending and banking to people of color.

3. **The proposal expands what counts for CRA credit with activities that benefit larger businesses and higher-income families, as well as activities that barely benefit lower-income people or communities and others that could displace these communities.** Under this proposal, banks can get credit for activities that could harm or displace LMI communities, such as opportunity zone financing for athletic stadiums or luxury housing; high-cost credit card loans; and financing landlords who harass and displace tenants. They can get credit for financing middle-income housing in New York City with rents over $2,000; loans to "small businesses" with up to $2 million in revenue; roads and bridges that merely pass through an LMI tract. This means less affordable housing for low-income New Yorkers who already lack sufficient housing; fewer loans to small businesses that already struggle to access financing; fewer home loans to low- and moderate-income borrowers.

4. **The proposal greatly expands where banks can get CRA credit, allowing banks to investment more outside of local assessment areas, which minimizes local community needs and partnerships.** Under the new proposal, banks can get a low or failing grade in half of their

assessment areas and still pass their CRA exam if they meet their target dollar goals for the entire bank. The bank-level evaluation combines CRA-qualified dollars loaned invested in all the assessment areas combined, as well as qualified activities anywhere, regardless of assessment area. While some of these areas may need investment, that investment cannot come at the expense of the obligation to meet local needs. Further, all investments, regardless of location, should be analyzed for their impact on historically redlined communities.

This is the wrong approach. ANHD's banking committee, the Equitable Reinvestment Coalition, came up with a set of principles for CRA reform. **We will not support any reform that doesn't include these principles to preserve and strengthen the CRA, and not weaken it in any way.**

1. **Banks should be evaluated on the quantity, quality and impact of their activities within the local communities they serve and based on the needs of these local communities**. This cannot be done with a one-ratio evaluation that simply looks at dollars invested.
    - Incentivize high quality, responsive activities that lift historically redlined people – **people of color and low- and moderate-income people** – out of poverty and help reduce wealth and income disparities.
    - Downgrade banks that finance activities that cause displacement and harm.

2. **Community input and community needs must be at the heart of the CRA**. Strong community needs assessment and community engagement should inform community needs and how examiners evaluate how well banks are meeting those needs.

3. **Assessment areas must maintain local obligations**. The CRA must maintain the current place-based commitment banks have to local communities. Banks should have additional assessment areas where they do considerable business (make loans / take deposits) outside of their branch network. These types of reforms must maintain or increase quality reinvestment where it is needed, including high need "CRA hot spots" such as New York City, while also directing capital to under-banked regions.

Meaningful CRA reform could boost lending and access to banking for underserved communities by incentivizing high quality, high impact activities based on local needs, while discouraging and downgrading for displacement and activities that cause harm. Transparent and consistent exams would support these goals.

The proposal does the opposite of what it claims to do for banks or the community: It is less transparent, more complicated, and will ultimately lead to less investment and less meaningful investment.

The OCC and FDIC should abandon this proposal and go back to the table with the Federal Reserve to come up with a plan that preserves the core of the CRA, truly addresses its shortcomings, and modernizes it to incorporate today's banking world.

Thank you for the opportunity to submit this testimony