Association for Neighborhood & Housing Development

Submitted electronically to the three federal bank regulatory Agencies:

Office of the Comptroller of the Currency (OCC):
https://www.regulations.gov/commenton/OCC-2022-0002-0001
Federal Deposit Insurance Corporation (FDIC) comments@fdic.gov
Federal Reserve Board of Governors: regs.comments@federalreserve.gov

August 5, 2022

Re: Comments & changes needed on CRA NPR: OCC Docket ID OCC–2022–0002; FDIC RIN 3064-AF81; Federal Reserve Docket No. R-1769 and RIN 7100-AG29

To Whom It May Concern:

I am writing on behalf of the Association for Neighborhood and Housing Development (ANHD) to submit comments on the interagency Notice of Proposed Rulemaking (NPR) to modernize the Community Reinvestment Act (CRA). We appreciate the three federal bank regulatory agencies working together on this thoughtful proposal to update and modernize the CRA, and are pleased to see several positive steps forward that have the potential to improve how banks operate in our communities. However, **we are concerned that the NPR fails to remedy the racial inequities it is intended to address and, in some cases, appears to run contrary to the agencies' stated goals and the statute itself. As such, we cannot support or endorse this proposal without significant changes.**

ANHD is a nonprofit organization made up of over 80 community groups across New York City with a mission to build community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. ANHD convenes NYC's Equitable Reinvestment Coalition (ERC) which is dedicated to holding financial institutions accountable for the wealth and racial inequities they helped create and continue to perpetuate[1].

The CRA is one of the most important laws we have to hold banks accountable for their obligations to serve and invest in local marginalized communities. The law has leveraged trillions of dollars and fostered meaningful investments, financial services, and partnerships in NYC neighborhoods. Yet, for all its benefits, the CRA has not kept up with significant changes in the banking industry, **nor has it addressed persistent racial disparities and inequities.** It has been nearly 45 years since the CRA was passed and the racial wealth gap is wider than ever. **The average Black and Latinx households earn approximately half as much as the average White household but only have about 15% to 20% the net wealth.**[2] The regulators themselves, ANHD, and our partners across the country have documented persistent racial disparities in banking and lending, resulting in fewer residential and small business loans, fewer branches, more harassment and displacement, and fewer resources for BIPOC people and communities.[3]

[1] https://anhd.org/project/equitable-reinvestment-committee
[2] https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.htm
[3] https://www.congress.gov/116/meeting/house/110580/witnesses/HHRG-116-BA15-Wstate-WeisbergJ-20200306.pdf

50 Broad Street, Suite 1402, New York, NY 10004 | Phone: 212.747.1117
www.anhd.org

This proposal represents the first major update of the CRA in over 25 years and likely the last for years to come. Now is the time to get it right for the historically - and currently - redlined communities this civil rights era anti-redlining law was meant to benefit.

We submit these comments, first with **this cover letter that includes ANHD and ERC's priorities** for CRA reform; **10 key recommendations** to address the shortcomings in this CRA proposal; and examples of **why they are needed for the proposal to better match the CRA's Purpose and Statute, and the Agencies' stated Priorities for reform.** Following this cover letter, we offer **detailed comments** related to our CRA recommendations and select questions in the NPR, with a summary of our recommendations at the top of each section. We also include a proposal for a more comprehensive analysis of multifamily lending and comments ANHD submitted to New York State's Department of Financial Services (DFS) regarding rulemaking to implement a new law requiring DFS to evaluate MWBEs on state CRA exams.

ANHD & ERC's Priorities for CRA Reform:

The comments throughout this letter are rooted in these top priorities for CRA reform that ANHD developed with members of our Equitable Reinvestment Coalition.

1. **Affirmative obligations to serve Black, Indigenous, and People of Color (BIPOC).**
    - The CRA should not be color-blind and must have an affirmative obligation to serve people and communities of color with responsive, impactful activities.

2. **Quality, Quantity, and Impact are important components of CRA.**
    - Banks must be evaluated on the quantity and quality of CRA activities: retail lending, community development finance, branches, banking products, and services.
    - There must be downgrades for harmful behavior, including products, practices, and patterns of lending that lead to harassment, displacement, high costs, and harm.

3. **Community Input and Community Needs must be at the heart of the CRA:**
    - Community input must be woven into the CRA processes at all levels, including the performance context and needs assessment; evaluation of bank performance; and additional areas where CRA records are considered, such as branch applications and notifications, mergers and acquisitions, and other applications.
4. **Assessment areas must Maintain Place-Based Local Obligations**
    - The CRA must maintain the placed-based commitment banks have to local communities.
    - Maintain assessment areas where banks have branches/ATMs, and expand to other areas where banks also do considerable business, such as lending and taking deposits
    - Any assessment area reform must maintain or increase quality reinvestment within large cities like New York City, while also directing capital to under-banked regions

ANHD's 10 Key CRA Recommendations to improve the CRA's impact and better match the agencies' priorities and the statute

(1) Advance the CRA to be race-conscious, not race-blind:

Add affirmative obligations to serve disaggregated Black, Indigenous, and People of Color (BIPOC) people and communities in all areas of CRA. Benchmark all categories by disaggregated race/ethnicity; enhance fair lending exams by making them more rigorous for any significant disparities in lending or deposit access, more transparent (fuller discussions in Performance Evaluations and clearer reporting on DOJ referrals), reliant on all sources of complaints, and by failing banks that discriminate. Add impact review to all tests for activities that close racial wealth gap and affirmatively serve BIPOC.

(2) Downgrades for harm and displacement to BIPOC residential tenants, homeowners, BIPOC-owned small businesses, and communities facing disparate climate impacts.

Extend place-based anti-displacement criteria to all categories of Community Development. Lower ratings for evidence of harm (eg: discrimination, displacement, fee gouging, high cost lending, branch closures, financing climate degradation) as evidenced by court cases, regulatory actions, investigations, consumer or fair housing group complaints or community contacts/comments

(3) Close The Loopholes that could exempt hundreds of banks, millions of loans, and millions of deposits and deposit accounts from analysis

Fix the major product line threshold to include all consumer loans that account for the lower of 15% of loans (count, not dollars) or 50 loans; do not raise asset thresholds; remove all exemptions for large banks below $10 billion assets, as well as limited purpose and wholesale banks with retail products~~;~~ Require inclusion of all affiliates and subsidiaries; Evaluate banks on the record of non-bank/FinTech entities with which they partner; Conduct branch and non-branch analyses of deposits and deposit products within local assessment areas (deposit/account-based and branch-based)

(4) Strengthen Community Input:

Exams and ratings must factor in community input through comprehensive needs assessment; proactive outreach; and soliciting and accepting other input via accessible digital, print, and in person channels and in multiple languages, including Community Benefits Agreements, online / social media, paper forms, and at community-based locations.

(5) Require Responsible Multifamily Lending Practices & Downgrade for Harm:

Comprehensively evaluate multifamily lending, with an evaluation of distribution, underwriting, affordability, building conditions, and treatment of tenants. Limit community development credit to subsidized housing; possibly also mission driven developers or others if the bank clearly demonstrates how the loan preserves or develops safe, stable, affordable housing; Downgrade for incidents of harm and displacement anywhere (whether or not a major product line). (detailed proposal in appendix)

(6) Elevate branching & access to banking:

Add assessment areas based on deposits/bank accounts; require all banks to pass branching/access to banking tests; expand analysis to include ways banks serve immigrants, ITIN holders, and limited English speakers; require actions before a branch closes in un(der)banked LMI/BIPOC areas; downgrade for closing branches in un(der)banked areas and require actions to mitigate harm; conduct local analysis of deposits, deposit products (branch-based and online)[4];. Consider adding an analysis of small business deposit distribution and deposit account qualities. Move credit products back to the retail lending test as a complement to more comprehensive analysis of products.

(7) Strengthen Community Development:

Evaluate loans and investments separately on the community development finance test to encourage LIHTC, grants, and EQ2s. All activities must benefit LMI and/or BIPOC people, communities, and small business owners. The impact review should also incentivize long-term affordability and local mission-driven entities, and strengthen connection to local needs and context, including scrutiny of "affordable" housing in LMI neighborhoods that doesn't meet local needs due to affordability levels or presence of market rate units that fuel displacement. Limit credit for prior-period loans to nonprofits; use impact reviews to incentivize unmet longer-term credit elsewhere. Ensure any list of qualified activities and any activities pre-approved are principles based and do not circumvent community input.

(8) Retail Test must go deeper, with focus on Quantity & Quality:

Evaluate for distribution and quality, such as pricing, terms, identifications accepted, access for ITIN holders, and language access. The test should separately evaluate loan purposes; prioritize loan originations; and limit investor loans to LMI and BIPOC homeowners, excluding any that harm or displace tenants. The test must raise the bar, and not foster a race to the bottom: raise benchmarks when banks perform far below demographics and focus on lending to and impact on small businesses (< $1M revenue and smaller), and LMI and BIPOC borrowers and business owners all tests. Incorporate a qualitative analysis of credit products and community input into final rating.

(9) Maintain and strengthen local obligations:

No bank can exclude counties within New York City, nor LMI and BIPOC communities within those geographies. Require banks to pass all component tests and all assessment areas. Strengthen local obligations to ensure investment in local mission driven CDFIs, CDCs, and other nonprofits. Include all forms of deposits; establish deposit-based benchmarks carefully so as not to reduce activities in large cities like New York City. Evaluate banks on how they assess and incorporate local needs by looking at who they engage, indicators they analyze, and how their plans and activities respond to those needs.

(10) Ensure Complete, Local, and Accessible Data

Make all CRA data public and accessible by location (census tract), race, income, and purpose; with additional details to supplement data not publicly available. ANHD's annual survey provides examples of data regulators could draw from, along with those of other similar organizations who routinely survey banks on their local CRA activities. Regulators can provide banks with templates and resources to accomplish this goal, and a central location to download and evaluate the data, similar to the CFPB's former system for HMDA data.

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[4] see FFIEC Q&A pages 37-38 for a model to implement, strengthen, and expand upon from the CRA today:

Why these recommendations are necessary to ensure the final rule matches the CRA's Purpose and Statute, and the Agencies' Priorities for reform

We truly appreciate the agencies working together towards a set of collective goals, including goals to strengthen the achievement and purpose of the statute, and to confirm that the CRA and fair lending are mutually reinforcing. Several parts of the proposal support these goals, but too many do not. Some move us backwards, while others appear to run contrary to the agencies' goals and the statute.

First, we believe a color-blind CRA goes against the statutory requirement to serve "the entire community," especially when communities of color of all income and class levels are parts of communities not being served and facing disparities. We also believe keeping the CRA color-blind goes **against the agency's goals** of "strengthening achievement and purpose of the statute" and "confirming that CRA and fair lending are mutually reinforcing". 98% of banks pass their CRA exams today in a system that includes a fair lending test, and despite persistent lending disparities. This coupled with harm done outside of fair lending - as when banks finance displacement - reinforces the urgent need to strengthen the system we have and improve upon it with stronger race-conscious policies.

Second, the myriad loopholes and exemptions go against the statute which states that all depository institutions must serve the "convenience and needs" of the communities in which they are chartered. **They also run counter to the agencies' goal** to strengthen the achievement and purpose of the statute. **These exemptions along with many of the proposals to "tailor" exams for bank size and business model go against the statute**, which requires banks to meet the convenience and needs of their communities; the law does not require regulators to meet the convenience and needs of banks.

Finally, the "institution-level" national assessment of deposits, deposit products, and credit products and the proposed structure **allowing banks to pass, even if they fail 40% of their assessment areas or fail component tests within assessment areas** both go against the **statutory requirement to serve local communities.** The national assessment is a step backwards from the system today, in which banks are to be evaluated on deposit products and services at the branch and non-branch level within their local assessment areas. Further, allowing a bank to pass when it fails to provide branches and banking equitably within an assessment area also goes against the obligation to meet the convenience and needs of the communities they serve, which explicitly include deposit needs.

Conclusion

Thank you for the opportunity to comment on this interagency proposal to modernize the CRA., the first major update of the CRA in over 25 years and likely the last for years to come. We offer these top 10 recommendations as concrete ways to strengthen the proposal so that it truly serves the redlined communities this civil rights era anti-redlining law was meant to benefit. We build and expand upon them in the detailed comments that follow. If you have any comments or questions, please contact Jaime Weisberg, ANHD's Senior Campaign Analyst for Responsible Banking: jaime.w@anhd.org.

Sincerely,

[redacted]

Barika X. Williams, Executive Director, ANHD

(1) Race-Conscious CRA with affirmative obligations and downgrades for harm and displacement

Why this matters:

- The statute states that banks must serve the "entire community", yet 98% of banks pass their CRA exams when large segments of the community - communities of color of all incomes and class - are not being served.
- The average Black and Latinx households earn about half as much as the average White household and only have about 15% to 20% as much net wealth.[5]
- 22% of New Yorkers are Black, 29% Latinx, but fewer than 10% of home purchase loans in New York City go to Black borrowers and fewer than 10% to Latinx each year; CRA-regulated banks make fewer than 5% of their loans to Black borrowers.
- 17% of the nearly 200 branch closures in New York City during the height of COVID (2020 & 2021) were in majority Black and/or Latinx neighborhoods already underserved by banks
- Communities of color face the highest risk of evictions in New York City. Before the pandemic, Latinx tenants were the most likely to be threatened with eviction[6] Since the pandemic hit, the rate of eviction filings in majority-BIPOC zip codes across New York State has been over twice as high as majority-white zip codes[7]

Summary of recommendations in this section

There are three fundamental components needed for the CRA to effectively address redlining and close the racial wealth gap, as it was intended to do: **Data by race/ethnicity, Affirmative Obligations and downgrades for harm, and Stronger systems to enforcement the law**. Our recommendations here and below reflect these.

- Create affirmative obligations to serve BIPOC people, small business owners, and communities, separate from income analyses
- Adopt the proposal to expand the discrimination analysis to include non-credit violations. It must be expanded further to include incidents of harm and displacement
- Benchmark and disclose all data (public and bank-reported) by race/ethnicity (disaggregated and benchmarked against respective populations).
- Disparate findings must trigger downgrades and investigations of fair lending violations and other forms of discrimination[8]. Fair lending examinations should be more robust, transparent, and incorporate evidence of potential discrimination from multiple sources such as fair housing organizations and state agencies, as well as community-led surveys and testimonies.

In the nearly 45 years since the CRA was passed, the racial wealth gap is wider than ever. The average Black and Latinx households earn about half as much as the average White household and only have about 15% to 20% as much net wealth. ANHD has documented persistent racial disparities in banking and lending, resulting in fewer residential and small business loans, fewer branches, more harassment and displacement, and fewer resources for BIPOC people and communities. We refer you to prior ANHD publications for additional details we compiled on racial disparities by banks and financial institutions, including:

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[5] https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.htm

[6] https://www.cssny.org/news/entry/race-evictions-new-york-city

[7] https://anhd.org/report/new-yorks-pandemic-rent-crisis

[8] NYC example: 22% of the population is Black, but fewer than 5% of loans by CRA-regulated banks go to Black borrowers.

- Congressional Testimony March 2020: Modern Day Redlining: https://www.congress.gov/116/meeting/house/110580/witnesses/HHRG-116-BA15-Wstate-WeisbergJ-20200306.pdf
- ANHD's ANPR comment letter (question 1, and throughout): https://www.federalreserve.gov/SECRS/2021/February/20210224/R-1723/R-1723_021621_137896_485675450682_1.pdf

It is widely understood that the CRA was passed as an anti-redlining law.[9] In fact, nearly every history of the CRA incorporates William Proxmire's words when the CRA was passed or similar sentiments, while also often raising inequities and disparities that persist to this day. This NPR is no exception; Proxmire's words are quoted up front on page 19:

> *As Senator William Proxmire, who authored the CRA legislation, testified when discussing its purpose: "By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans 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 a 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."*

The NPR then goes on to acknowledge the shortcomings of the regulatory framework: *"Even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent."*

Leadership among all three regulators also acknowledge this history and the CRA's role in addressing redlining and racism.

- **Former FDIC Chair and current Acting FDIC Chair Gruenberg at an event just last month (June 2022)**[10] *"As you well know, CRA was a response to the redlining practices of government housing programs and private sector lending institutions that denied credit to neighborhoods with poorer households and large minority populations." and prior to that at a 2018 event about the CRA reform proposed by the Trump Administration*[11] *"From the outset, the agencies made clear that the institutions would be evaluated on their* ***outreach and engagement with the community,*** *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."*

- ***Acting OCC Comptroller went even further in a Feb 2022 Speech***[12]: *"Discriminatory practices had been widespread for decades, including in government ... The passage of the CRA in 1977 was meant to help address these injustices" ... "Banks have made substantial investments of CRA dollars in LMI communities over the past four decades to the benefit of LMI individuals, small businesses, and communities. Nonetheless, s****ignificant disparities continue to exist in many LMI areas and are most prevalent for Black, Hispanic, and Native American communities*** *and borrowers across our nation." "Perhaps most worrisome, some challenges appear to be not just*

[9] See quote by Sen. William Proxmire connecting CRA's origin in combatting redlining, page 19 of proposal
[10] https://www.fdic.gov/news/speeches/2022/spjun1322.html
[11] https://www.fdic.gov/news/speeches/2018/spoct2918.html
[12] https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-15.pdf

persistent, ***but possibly getting worse.*** *" "****Remembering our history*** *and being open and honest about the challenges facing us today can help guide us as we move forward. I am confident that by working together – and with input from interested stakeholders like all of you – the OCC, the Federal Reserve, and FDIC can strengthen and modernize the CRA regulations in a manner that can meet the challenges of today and tomorrow."*

- ***Federal Reserve Chair Jerome Powell (June 2020)[13]:*** *"The Federal Reserve serves* ***the entire nation****. We operate in, and are part of, many of the communities across the country where Americans are grappling with and expressing themselves on issues of racial equality. I speak for my colleagues throughout the Federal Reserve System when I say* ***there is no place at the Federal Reserve for racism and there should be no place for it in our society.*** *Everyone deserves the opportunity to participate fully in our society and in our economy.*

  These principles guide us in all we do, from monetary policy, to our focus on diversity and inclusion in our workplace, and ***to our work to ensure fair access to credit across the country.*** *We will take this opportunity to renew our steadfast commitment to these principles.*

  We understand that the work of the Fed touches communities, families and businesses across the country. Everything we do is in service to our public mission. ***We are committed to using our full range of tools*** *to support the economy and to help assure that the recovery from this difficult period will be as robust as possible"*

And yet, despite their statements, data, and the experiences of impacted communities themselves who have shared their experiences with banks and regulators time and again, all they propose regarding race within the examination framework is to disclose already public data that will have no impact on the final rating. We appreciate and support the proposal to expand the categories of consumer violations that could lead to a downgrade to go beyond credit discrimination, but the fact that 98% of banks pass their CRA exams under the current system, despite clear *credit* disparities, makes us question the impact this will have on consumers without structural changes to policies and the practices to implement them.

There are three fundamental components needed for the CRA to effectively address redlining and close the racial wealth gap, as it was intended to do: **Data by race/ethnicity, Affirmative Obligations and downgrades for harm, and Stronger systems to enforce the law**. Our recommendations below reflect these.

Comprehensive, Complete Data, Disaggregated by race/ethnicity

Without good data, it is impossible to objectively document, evaluate, and hold banks accountable for racial disparities and inequities. Likewise, this data is also important to help banks and communities identify and target solutions to meet unmet credit needs. There are many examples to draw from that exemplify why this data is needed and how it could look.

Equitable Development Data Equity (EDDE) Tool. As part of a new law (Int 1572-2019) that ANHD members strongly advocated for, New York City was required to create this new tool that allows community members, organizations, and government to analyze a wide range of data at the community level and see the level of risk residents may face of being unable to stay in their home or neighborhood.

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[13] https://www.stlouisfed.org/news-releases/2020/06/12/chair-powells-remarks-on-racial-equality

The data is available in charts and maps, and allows comparisons across neighborhoods, racial groups, incomes.

ANHD's Displacement Alert Project provides a regularly updated data portal and maps of neighborhood and building level data on multifamily housing conditions, evictions, sales, and other information that are indicators of potential harassment and displacement.

The Home Mortgage Disclosure Act (HMDA) *offers* another great example of why the data is needed, how it has been improved in recent years, and consequences of data omitted. It was first created to identify geographical and income disparities. When it became clear that racial disparities were going undetected and unenforced, HMDA was updated to include race and became a powerful tool to identify and enforce fair lending laws.

Through HMDA, we have long been tracking residential mortgage lending trends and disparities at the census tract level across all lenders, types of lenders, and by lender. Data is wide and varied, including loan type, loan characteristics, and race/income/gender. For example, we can see that in recent years, fewer than 10% of home purchase loans go to Black borrowers and fewer than 10% to Latinx borrowers, well below their share of the population (22% Black and 25% Latinx). **Fewer than 5% of loans by CRA-regulated banks go to Black borrowers.** We can also see that Black and Latinx borrowers and Black neighborhoods are overrepresented by non-bank lenders and higher cost FHA loans.

Leading up to and following the financial crisis, it became clear additional data was needed on loan pricing, terms, and populations within specific race/ethnicity categories, which led to the changes proposed in Dodd Frank and finalized in time for the 2018 data. The upgrade also allowed us to better analyze the multifamily market in NYC by capturing segments of the market previously unreported and additional data on pricing and loan terms. With this new data, we can see disparities within the Asian population, such as **"Other Asian" (including Bangladeshi and Pakistani populations) being underrepresented and significantly higher rates of FHA and non-bank lenders among Indian and "other Asian" borrowers.** We can also see which banks have **multifamily loans that have the potential to fuel displacement,** as indicated by higher interest rates and interest-only loans. Our colleagues at NCRC find higher costs at non-bank lenders and an alarming increase in cash-out refinance loans in 2021.

Unfortunately, much is left out, due to decisions made during the rulemaking process and exemptions introduced by law through a bill which raised the reporting threshold from 25 loans to 100 loans and exempted banks making fewer than 500 loans from reporting the new pricing and loan term data. For example, local multifamily lenders like BankUnited, Emigrant Funding Corp, and Deutsche Bank no longer report to HMDA. In 2019, nine banks that originated over 50 1-4 family loans and ten banks that originated 20 or more multifamily loans were exempt from reporting the expanded data. Popular originated over 180 1-4 family loans and Abacus and Northfield near 100; Flushing made 155 multifamily loans. Omissions from the rulemaking process also inform additional data that should be included, as we had recommended, and should be added and/or supplemented by comprehensive CRA data, such as exact unit counts (versus ranges as in HMDA), levels of affordability, Debt Service Coverage Ratio (DSCR), programs utilized, and unsubsidized "NOAH" affordable housing and rent regulated housing. CRA must add back in data for banks excluded from HMDA or with reduced reporting requirements.

Affirmative Obligations and Downgrades for harm:

Outside of fair lending evaluations, the CRA does not incorporate race with affirmative obligations to serve BIPOC, nor exams that reflect any analysis by race, separate from income. As such, outside of protecting themselves from claims of discrimination, they have no obligation to address racial disparities and take steps to close the racial wealth gap. Nor do they have any consequences for harm that doesn't reach that bar. For these reasons, the categories of discrimination must be expanded and the exam process must incorporate both incentives for positive activities and deterrents and penalties for harmful practices.

Stronger systems to enforce the law*:*

Finally, regulation is only beneficial if it is fully implemented and enforced, with both incentives for positive activities and consequences for harm. The CRA today allows regulators to downgrade banks that exhibit evidence of discriminatory or other illegal credit practices. Yet, 98% of banks pass their exams even with the persistent disparities clearly demonstrated by HMDA data in residential mortgage originations, applications, and denials. FDIC branch data and unbanked surveys show clear disparities in branching and banking rates by race, and in BIPOC neighborhoods. The FFIEC CRA small business data shows disparities in access to loans in BIPOC communities, supplemented by surveys and studies showing disparities by borrower. And banks do not fail.

As evidenced by the history of the law and recent statements by regulators based on the data available today, the intent of the law is to address redlining and racial disparity. That cannot be done without full disclosure by race, and specific obligations and actions required to address the disparities evident in the data, as well as the stories and experiences of the people directly impacted by these disparities and outright harm.

Recommendations:

- The CRA must add affirmative obligations to serve BIPOC people, small business owners, and communities and downgrades for harm to the same populations. Upon which regulators would assess banks along similar benchmarks in the proposal and compare activities to the population and other banks. To which we have similar feedback on how benchmarks are established.
- Expand impact review and qualitative reviews in retail lending and retail services and products tests to give credit for activities that close the racial wealth gap by affirmatively serving BIPOC. Examples include Special Purpose Credit Programs targeted to BIPOC borrowers; affirmative marketing of affordable products; expanded access through alternative forms of identification, and credit scoring, language access, and products accessible to ITIN borrowers; responsible lending practices to prevent displacement.
- Benchmark and disclose all data (public and bank-reported) by race/ethnicity (disaggregated and benchmarked against respective populations). Disparate findings must trigger downgrades and fair lending / consumer investigations[14].

  Examples of data to benchmark and evaluate by race/ethnicity at the census tract level and by borrower characteristics
  - Existing datasets to benchmark and report data by race of location and borrower, and measures of pricing, terms, fees, loan characteristics: HMDA; 1071 when implemented / similar data as available prior; FDIC data on branch locations. Collect data from banks

[14] NYC example: 22% of the population is Black, but fewer than 5% of loans by CRA-regulated banks go to Black borrowers.

    - exempt from these datasets and similar data for consumer loans
    - Supplemental data on multifamily lending, such as outlined in our proposal and comments on HMDA rulemaking (unit count; rent-stabilized; affordability levels/programs; underwriting; evictions/displacement of BIPOC or LMI tenants) and transparency as to how banks adhere to responsible multifamily guidelines
    - Grants to BIPOC led organizations (disaggregated); community development loans or investments to BIPOC-led entities; data on the location and impact of activities on BIPOC tenants, residents, business owners, homeowners regarding factors such as jobs, affordability levels, tenant protection, etc.
    - Overdraft, maintenance, ATM, and other fees collected from BIPOC people, small business owners, and/or neighborhoods
- **Expand discrimination downgrade** to include incidents of **displacement and detrimental effects on BIPOC**, explicitly including BIPOC owned small businesses and BIPOC tenants in rental housing and commercial spaces, and communities of color facing disparate climate impacts. If there is a finding of discrimination, the bank should fail the exam. (see more details in "NOAH" / unsubsidized affordable housing section)
    - First, the burden must be put on banks to demonstrate how the activity meets the anti-displacement criteria through quality community input, responsible underwriting, and practices to support existing tenants and residents.
    - Regulators must also incorporate community testimony, surveys, and community gathered data, together with available local data and tools to identify indicators of displacement and actions taken to mitigate harm.
- Fair lending examinations should be more robust, transparent, and incorporate evidence of potential discrimination from multiple sources such as fair housing organizations and state agencies. They must also incorporate data from community sources, such as surveys, testimonies, and other data presented by people impacted by disparate and harmful actions..
- Adopt the proposal to expand discrimination analysis to include non-credit violations.

(2) Community Input & Community Needs: Exams, Performance Context, Mergers/Applications

Why this matters:

- **Community input and collaboration are essential to quality CRA activities.**
    - The most impactful Community Benefits Agreements and CRA plans require community input to craft and implement, as ANHD has seen over the years with banks like with Valley (2014), NYCB (2018 & pending 2022), Santander (2016), M&T (2022), and Sterling (2015). The plans in more recent years reflect lessons learned from what worked and didn't in earlier plans, but they all resulted in new products, stronger partnerships, and greater investments in mission-driven entities.
    - From ANHD's surveys and feedback from members, we know that banks with local CRA and community development staff who are knowledgeable about NYC needs and resources are more responsive to meeting local needs. These are the staff who sit on boards and credit committees, collaborate to develop responsive products and programs, and take the time to see through the most challenging projects.
- **Community input is too often ignored by banks and regulators, with few requirements to go deeper than they do today.**
    - ANHD and our members routinely submit lengthy CRA comment letters that go unmentioned on exams, nor any indication of if or how they factored into the ratings. This is especially the case when we present public records of landlords - and personal

testimonies of tenants living in those buildings – that banks finance despite persistent evidence of poor conditions and displacement pressures. Several landlords are also the subject of related lawsuits and settlements.

  - Banks are not required to create local CRA plans or enter into Community Benefits Agreement negotiations, nor adjust plans submitted to regulators, even when communities ask for that through the comment period, as was the case when ANHD submitted multiple comments to the OCC when Citizens Bank applied first to acquire HSBC's New York branches, and then to acquire Investors Bank. ANHD has made similar requests in the past during other merger comment periods and branch closures that were also dismissed.

Summary of Recommendations here:

- Centralize the performance context with a comprehensive community needs assessment by a dedicated team of regulatory agency staff, incorporating public input, local data; and local studies that center low-income, BIPOC communities and people who face barriers to financial and economic inclusion. Evaluate banks on how they are meeting these needs.
- Solicit feedback and conduct proactive outreach to community organizations, community members, small business owners, related to individual banks. Community Benefits Agreements (CBAs) are meaningful examples and should be encouraged, monitored, and enforced.
- Evaluate banks on the outreach they do. Set a high bar for the number of organizations banks must consult, the quality of that consultation, and how it informs their CRA plans and activities. This must include outreach to and engagement with non-English speaking community members.
- Any list of qualified community development activities or pre-qualification processes cannot circumvent meaningful community input, nor detract from meeting community-informed needs.
- All agencies must update their merger review process as the FDIC is doing, and expand to other applications like branch openings; institute an application process for branch closures, not simply a notification as it is today and which regulators cannot deny.

We strongly agree with the agencies that promoting community engagement is critical, however, similar to our comments on the ANPR, we find few details to support that goal. Simply adding an online portal and committing to continue email notifications is not at all sufficient, especially given how few people even know about commenting on CRA exams, and given the large populations that do not have access to computers and/or do not speak English.

Community input must be woven throughout the CRA process. We see few changes to the system today where communities are rarely consulted and comments are too often ignored when they are submitted, despite including detailed data and stories of how communities are impacted. CRA exams typically list just one or two community contacts solicited by the examiners, with little idea how even those impacted the outcome of the exam.

Recommendations to improve community engagement and community needs assessments

- Centralize the performance context with a comprehensive community needs assessment. A team of regulatory agency staff should be dedicated to this process, incorporating public input, local data (e.g., demographic data, unemployment numbers, housing burdens, etc.), and local studies that center low-income, BIPOC communities and people who face barriers to financial and economic inclusion.

- Regulators should conduct proactive outreach on a regular basis partnering with community organizations to access relevant research and engage residents who speak multiple languages and have varied backgrounds and experiences.
- Similarly, regulators should proactively solicit feedback from nonprofit community organizations on banking and credit needs and assets, and the extent to which financial institutions are collectively meeting (or not meeting) those needs or supporting those assets.
- NYC has myriad Local data sources to refer to about local conditions, needs, and trends impacting LMI and BIPOC people and neighborhoods. In addition to the sources in the NOAH multifamily section and proposal, ANHD developed and informed several resources to identify risks of displacement, such as:
    - **ANHD's Displacement Alert Project (DAP) portal and maps**: https://anhd.org/project/displacement-alert-project-dap
    - **NYC's Equitable Development Data Explorer (EDDE).** https://equitableexplorer.planning.nyc.gov/map/data/district
    - **ANHD's annual housing risk chart:** https://anhd.org/project/housing-risk-chart

  New York City has a robust network of community-informed research at the local and city level, on any number of topics. These must be consulted and inform exams.

- Solicit feedback from community organizations, community members, small business owners, related to individual banks. Regulators should broadly broadcast exam schedules and consider creating an accessible and user-friendly form with questions people can respond to.
    - Solicit and accept feedback through a variety of channels and in multiple languages, including but not limited to: QR codes and terminals at banks; social media; email and online forms; paper forms by mail and available at banks and community locations;
        - Materials and feedback mechanisms should be available in at least the Top 10 languages New York State identifies as requiring translation and interpretation. Currently those are Spanish, Chinese, Russian, Yiddish, Bengali, Korean, Haitian Creole, Italian, Arabic, and Polish.
        - Targeted local/branch-based outreach must reach the communities prevalent where the bank operates.
        - Outreach must be done through digital, print, and in-person in the community.
    - Regulators should be required to speak to a representative set of community contacts for each bank exam:
        - Span relevant issue areas, including organizations and practitioners focused on small business lending, tenant rights and well-being, nonprofit affordable housing development, affordable homeownership, and CDFIs,
        - Cover a diverse geography focusing on historically redlined areas.
        - Include a variety of organization types, making sure to include groups that engage in tenant and grassroots organizing; community based research and advocacy organizations; mission driven developers and practitioners; community service providers; nonprofit legal service providers;
        - Provide interpretation when requested by any of these organizations.
    - Given the current context of mergers/acquisitions, service changes and branch closures that most negatively affect those living in LMI areas, regulators must prioritize proactive outreach to BIPOC communities through nonprofit community partners.

- Community Benefits Agreements (CBAs) are meaningful demonstrations of incorporating community input. Regulators should encourage them, and monitor bank performance as a consideration on CRA exams and future bank applications. Failure to comply must impact applications, either through denials or conditional approvals, depending on the severity of noncompliance and community input.
- Compare individual and collective bank performance to the needs expressed in the contextual research regarding products, language access, branches, multifamily lending practices, etc.,
- Factor community input into all qualitative analyses throughout the exam, with transparency about the feedback and how it factored in.
- Evaluate banks on the outreach they do. Set a high bar for the number of organizations banks must consult and the quality of that consultation. The CRA is a powerful tool to bring banks to the table. Strong community engagement, consultation, and partnerships are central to its success, and are mutually beneficial to banks and community organizations. Regulators can evaluate:
  - The breadth and depth of bank engagement with community organizations, ensuring their input is factored into the bank's CRA activities, products and practices. Do not allow banks to avoid groups that have been critical of them. And, like the recommendation to regulators, the contacts should span geography and issue areas, such as small businesses, tenants and tenant organizers, housing developers, homeownership, CDFIs, making sure to connect to the bank's business model and areas of CRA activities, as well as new areas for the bank to consider.
  - Quantity and quality of bank Outreach to and engagement with non-English speaking communities through multilingual staff, translation of material, availability of interpretation for meetings
  - How well multifamily lenders engage with tenants and tenant organizers to implement multifamily lending best practices of responsible underwriting, properly vetting landlords, and responding to problems in buildings they finance. [see question XX]
  - How community engagement informs bank CRA plans and how transparent banks are with their CRA plans and goals.
  - The type of proactive outreach they engage in to market affordable and responsive products. Banks often cite low traffic as a reason for closing branches, even as people are lined up nearby at check cashers and even other banks. Rather than use that as an indication to adjust products and outreach and marketing practices, they close their branch. This calls into question the products, practices, and outreach they have done, and ultimately hurts the community.

Community Input & List of Qualifying activities & pre-qualification process

We appreciate the desire for banks and organizations to know ahead of time if an activity will count for CRA credit. And understand either may appreciate guidance from regulators to understand the new system. However, if not done properly, the impact could impede or circumvent community input and possibly reduce the volume of impactful activities.

For example, publishing a list of qualifying activities, even one listed as "non-exhaustive and non-definitive" could be taken as either and then imply that (a) all activities on the list count anywhere, even in a context where the impact is less favorable and/or (b) an activity not on the list does not qualify.

Further, a pre-qualification process would be done outside of the exam process, and as such, has the potential to circumvent meaningful community input.

Any List of qualified community development activities or pre-qualification processes cannot circumvent meaningful community input, nor detract from meeting existing or new community-informed needs.

- The list should be principles based, with examples highlighted periodically as meaningful activities and processes
- Rather than a pre-qualification process, offer guidance on how to best evaluate and document the community benefit purpose, ideally with data public for community members and organizations to provide input on and inform the final determination for the CRA exam.
- Expand and strengthen examiner training to ensure examiners can identify if an activity definitively falls under CRA or may need additional scrutiny and evaluation. Similar for banks who will be learning and implementing this new system.

Mergers & Applications: CRA Ratings & Community Input

We are dismayed the proposal offers no change to the merger process, but hopeful that the parallel process initiated by the FDIC leads to a similar interagency approach as regulators are taking with CRA. ANHD submitted detailed comments on that proposal. This must include a comprehensive review of a banks' CRA record, including activities outside of their assessment areas where they are newly entering; forward looking plans; and community input on both.

All three agencies should also update the review process for other deposit applications with a CRA review, especially branch openings. No bank should be allowed to expand to a non-LMI or non-BIPOC neighborhood after closing or failing to equitably serve already un(der)banked LMI and BIPOC communities, as is the case in many Black and Latinx neighborhoods today.

Regulators should also institute an application process for branch closures that they can also approve or deny, not simply allow banks to provide notification as they do today. At the very least, they should provide more notice of potential closures, more outreach to solicit input on the closure, and make a publicly available determination of the impact and what factored into the decision. NY State DFS publishes its determination, but provides no additional details as to how it arrived at the determination. As discussed further below, however, banks can close regardless of the outcome, and never fail an exam, or even the service test, for doing so.

(3) Close Loopholes, restore exemptions, & strengthen 4atings

Why this matters:

- Banks often cite low traffic and under-utilization as an excuse to close branches, even when they fail to provide products, staffing, and practices the communities they serve need. The proposal does not evaluate deposit products offered in branches, exempts banks under $10B from any product analysis, and only does so at the national level for banks over $10B assets.
- Some of the highest volume small business lenders are limited purpose credit card banks, exempt from any retail banking analysis. In NYC (2020), American Express made over 62K loans and 17.5K to small businesses under $1M Rev; Capital One's credit card bank made almost 7,800 loans (4400 to small businesses); Synchrony and WEX made 1700 and 980, respectively, with none reported to small businesses).
- Consumers and small businesses need access to safe, affordable loans, but hundreds and even thousands of loans - mostly small dollar loans - will remain in the shadows because they fall under the major product line threshold (eg: small business loans and open-ended residential loans); are not included in online assessment areas (online banking and consumer loans); and/or are made by limited purpose banks.

Summary of recommendations

- Make sure that all large banks are held to the same standards by closing the loopholes that exempt "smaller" large banks with $2B to $10B in assets.
- No bank should pass its exam if it fails up to 40% of its assessment areas, or pass in an assessment area where it fails component tests, especially in cases of displacement-financing, insufficient banking services, or branch closures in already underserved LMI and BIPOC communities.
- No classification or major product line threshold should exclude lines of business from analysis.
- Require banks to include all affiliates and subsidiaries (jointly evaluate CRA-regulated subsidiaries when under the same bank holding company) and factor in performance by non-bank lenders with which banks have a formal relationship
- Focus on loan originations, with credit granted elsewhere for impactful loan purchases from mission-driven lenders
- All consumer loans should be evaluated at the local level where they are concentrated (branch-based and online assessment areas) and evaluated for distribution and quality

The statute is clear that all regulated financial institutions are required by law to demonstrate that their deposit facilities serve the ***convenience and needs (credit & deposit services) of the communities*** and a**ffirmative obligation to help meet the credit needs of the *local* communities *in*** which they are chartered to do business. The proposal presents many loopholes and exemptions that inhibit regulators' ability to evaluate hundreds of banks and millions of loans and bank accounts on these criteria, while also carrying forward and exacerbating loopholes that allow banks to poorly serve or harm communities with impunity, while still being able to expand through mergers and new branches.

Just a few examples of the impact these loopholes will have in New York City include:

- Several of the **largest volume small business lenders are limited purpose banks,** including American Express, Discover, WEX, Synchrony and Capital One's credit card bank. Limited purpose banks receive no analysis of their small business loans, nor any of their consumer credit cards which may be used for personal or small business uses.

- **Online banks and lenders** like Goldman Sachs (Marcus), Ally bank, and Charles Schwab continue to have their retail banking and consumer products go unexamined at the local level, if at all
- As of 2020, **at least 23 banks chartered in New York State had assets between $2 and $10 billion dollars, thus exempting them from several areas of the new exam, including analysis of deposits and deposit products**. This includes banks active in NYC like Flushing, Amalgamated, Emigrant, Ridgewood, and Dime (Dime has since surpassed the $10B)
  - Emigrant sold all but 2 of its branches years ago, drastically limiting its ability to provide banking; Amalgamated recently closed all but 4 of its branches.
  - As expanded upon in the access to banking section, banks **over $10B** in assets are now exempt from *local* analysis of deposits, deposit products, and credit products.
- **Consumer loans other than residential and auto loans are left out of any comprehensive analysis**. Credit card and other unsecured loans; small dollar loans; credit builder/repair loans are all needed with affordable and responsible terms and rates. Yet, they go unexamined except possibly under the products test, and then only for positive qualities, but not harmful. in New York, credit card lenders are typically chartered out of state, with higher rates than state usury laws allow and recent studies have highlighted disparate trends in credit card usage, default rates, and pricing among younger and BIPOC customers[15],[16].
- Several banks like NYCB, Santander, Capital One, and BankUnited, to name a few, have pulled out of residential lending in recent years (without consequences), and often **refer to non-bank lenders,** as NYCB and Sterling do with Freedom Mortgage. These loans are not accounted for on exams. Others **refer to non-bank small business lenders a**nd rely upon **out of state banks for high-interest credit cards.** Meanwhile, banks are finding new and varied ways to partner with nonbanks and FinTech entities, all without any impact on bank exams, neither for benefits provided, or harm inflicted. This includes referrals, banking-as-a-service (BaaS), rent-a-charter, and more.
- Weighting systems and rating formulas **allow banks to fail in 40% of assessment areas.** Strict component weighting systems perpetuate today's system where **banks can pass, despite failing in major sections of their exams,** including branching and community development.
- The **major product line threshold has the potential to exclude hundreds of open-ended/HELOC loans and thousands of small business loans** from any analysis because they fall below the 15% of dollars threshold. Unfortunately, without data on auto lending, the new small business data, and potential other lines included, it is impossible to know how many will be excluded by this formula. Using data we have on lending in New York City from HMDA (1-4 family open ended, 1-4 family closed end, and multifamily loans) and CRA small business loans, we estimate exclusions like the following impacts:
  - Eight retail banks in 2019 and five in 2020 each originated and/or purchased anywhere from 1,000 to 18,000 small business loans that totaled less than 15% of their total retail dollars. This includes some of the largest banks such as Citibank, Wells Fargo, Bank of America, and TD Bank.

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[15] Federal Reserve study of CUNY students: BIPOC and women students had lower credit card balances than their male/white peers, but Black and Hispanic students were much more likely to be delinquent on that debt. https://libertystreeteconomics.newyorkfed.org/2021/11/unequal-distribution-of-delinquencies-by-gender-race-and-education/

[16] Federal Reserve study: credit cards and retail cards are the predominant form of first-time credit for young people, who are also more likely to default on that debt. In 2019, 4.3% of credit card loans to 18-29 year olds were in default vs 2.3% in the next income bracket https://libertystreeteconomics.newyorkfed.org/2020/02/charging-into-adulthood-credit-cards-and-young-consumers/

- Only two banks in 2019 and five in 2020 reached the 15% threshold for open-ended loans, leaving out nine banks in 2019 and 11 in 2020 that made over 100 (up to 900) open-ended loans each year.

Recommendations

- Regulators must make sure that all large banks are held to the same standards, and **close the loopholes that exempt "smaller" large banks with $2B to $10B in assets**. They should also abandon the proposal to raise thresholds for bank size classifications.
- As mentioned below, **no bank should be allowed to pass its exam if it fails up to 40% of its assessment areas, or pass in an assessment area where it fails component tests**, especially in cases of displacement-financing or branch closures in already underserved LMI and BIPOC communities.
- **No bank classification or major product line threshold should exclude lines of business from analysis**. The major product line threshold should be 15% of dollars or 50 loans, whichever is lower. Limited purpose and wholesale banks can no longer be exempt from having their consumer and small business product lines evaluated, and other efforts to increase access to affordable, accessible credit for LMI and BIPOC residents and small business owners.
- Regulators should **require banks to include all affiliates and subsidiaries (jointly evaluate CRA-regulated subsidiaries when under the same bank holding company)** and **factor in performance by non-bank lenders with which banks have a formal relationship**
- No bank should be allowed to buy its way to a passing rating; regulators should **focus on loan originations,** with credit granted elsewhere for impactful purchases from mission-driven lenders, such as an impact score or as a community development activity as appropriate.
- **All consumer Loans should be evaluated at the local level where they are concentrated** (branch-based and online assessment areas) and evaluated for distribution and quality, as we recommend for other retail lending categories

(4) Maintain and Strengthen Local Obligations at the Assessment Area Level and Within

Why this matters

- New York City has five counties with over 8.4 million residents, among which two thirds are renters, 68% are BIPOC, and over 25% low-income. New York City's LMI and BIPOC people and communities experience significant well documented and unaddressed disparities in lending, banking, safe and affordable housing, and more.
- Nearly all banks serving NYC pass their CRA exams, despite these persistent disparities within the city. Assessment area designations may exacerbate this by focusing on too large an area when it includes surrounding counties in NY and NJ, while also allowing banks to exclude one or more borough (county) within NYC - typically the Bronx and/or Staten Island, whether or not they have branches in surrounding counties.
- The most responsive banks understand the myriad programs and resources in New York City, and have a deeper understanding of the needs within and across LMI, BIPOC, and immigrant communities. Such practices must be central to each bank's activities.

Summary of recommendations in section:

- ***Ratings***: Banks must pass all their component tests and pass in all their assessment areas in order to pass the exam. Downgrade and require action plans to correct and mitigate harm from branch closures, high and harmful fees, displacement financing, and other harmful activities

- **Assessment Areas:** No bank should be allowed to serve just part of New York City across the full CRA spectrum. In fact, given the population and needs here, the City should be its own assessment area. Create additional non-branch assessment areas based on online banking and consumer lending in local communities where banks operate;
- **CD finance:** Require banks to invest in local, mission-driven CDFIs, developers, and organizations within their assessment areas. State, multistate, and national evaluation must come second to that, and should focus on meeting the needs of local native and unbanked communities.
- **Deposits**: Include all deposits; evaluate deposits where they originate, and establish deposit-based benchmarks that "expand the pie" and do not reduce obligations for banks that take deposits outside of branch-based assessment areas, as could happen for NYC which has considerable long-standing unmet banking, credit, and community development needs .

As will be discussed in more detail in the "Access to banking" section, all areas of the exam must incorporate a local evaluation; deposits; deposit products; and credit products are no exception. The proposal to evaluate a major portion of the retail services and products test at the institution (national) level moves us backwards from where the CRA is today and goes against the statute.

The fundamental purpose of the CRA is to combat redlining and disinvestment in *local* communities. The statute clearly states: *"It is the purpose of this chapter to require each appropriate Federal financial supervisory agency ... to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institution"*

As such, we oppose any proposals that move away from that local commitment and evaluation, which have the potential to reduce activities, rather than increase them. This is already happening as banks expand their size, reach, and online presence. Banks are moving further away from their focus on local communities and the CRA must be a strong tool to combat that trend.

Ratings:

Under the proposal, a bank can **fail in up to 40% of its assessment areas, and fail several component tests and still get a passing "Satisfactory" rating**. This means, a bank could conceivably close all its branches in LMI and/or BIPOC communities and still pass within the assessment area and the exam as a whole. Even today, banks rarely fail their service test for branch closures in LMI or BIPOC communities. Similarly, a bank could pass despite failing to make community development loans or investments, or having a business model that finances landlords with records of harassment and displacement and industries that disproportionately harm BIPOC communities' from climate change.

Recommendations

- Banks must pass all their component tests and pass in all their assessment areas (especially branch-based AAs) in order to pass the exam.
- Downgrades and action plans to correct and mitigate harm from branch closures, high and harmful fees, displacement financing, and other harmful activities

Branch-based and Non-Branch/online assessment areas:

We support the regulators proposal to **keep branch/ATM-based assessment areas** to evaluate how banks perform where they have a physical presence. We also support the new **lending-based**

assessment areas to evaluate the equitable distribution of 1-4 family mortgages and small business loans outside of where banks have branches.

However, this represents just a small segment of the online banking and "new models" of banking the regulators seek to incorporate. Further, the proposal does not account for shortcomings of the current branch-based approach that allows banks to only designate a subset of New York City's boroughs (counties), rather than all five counties. From an analysis of CRA assessment areas, the majority of such cases exclude the Bronx and/or Staten Island[17]. While we have areas of needs throughout all five boroughs, it is particularly troubling to exclude the Bronx, which is majority LMI and/or BIPOC and underserved by banks. At least seven banks are examined exclusively in Manhattan, including First Republic Bank, Key Bank, and PNC Bank. Among the 25 banks that exclude the Bronx, several are large multi-state banks like Valley National, BankUnited, and the three just mentioned.

Recommendations

- No bank should be allowed to serve just part of New York City across the full CRA spectrum. In fact, given the population and needs here, the City should be its own assessment are
- Create additional non-branch assessment areas based on online banking and consumer lending in local communities where banks operate;
- Within all assessment areas (online and branch-based) evaluate products for quantity, distribution, and quality (pricing, terms, purpose & types of loans, etc), with additional qualitative analysis for features like financial assistance, non-traditional IDs and credit scores, language access, staffing models, and partnerships.

As will be discussed in more detail in the "Access to banking" section, all areas of the exam must incorporate a local evaluation; deposits; deposit products; and credit products are no exception. The proposal to evaluate a major portion of the retail services and products test at the institution (national) level moves us backwards from where the CRA is today and goes against the statute.

- Require a local, assessment area evaluation of all portions of the exam, especially deposit taking, deposit products, credit products, and usage of products. Rather than going broader, regulators must **ensure banks are serving communities equitably within branch-based and online assessment areas**. For example, several BIPOC communities (including much of the Bronx, Southeast Queens, and Cypress Hills) are persistently underserved by banks despite falling within a very well-banked assessment area overall.
- Regulators should refer to the FFIEC Q&A (page 37-38) for guidance today that should be better implemented and strengthened to ensure unbanked communities are better served.
- Require banks to pass all their assessment areas; Do not allow banks to pass if they fail in their community development or retail banking tests, or if they close branches in designated underserved areas as determined by data and local input.

Meeting Local Community Development Needs (we offer more in-depth feedback in the community development sections below)

We appreciate the intent of allowing community development credit anywhere to drive credit to underbanked, underserved areas. However, this cannot come at the expense of perpetuating unmet credit needs in a banks' assessment area, as already happens in LMI and BIPOC communities throughout

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[17] Data from FFIEC CRA file 2020; the actual number may be higher as some limited purpose banks list all five boroughs in their assessment area, despite having just one AA (eg: American Express)

New York City. Any activity outside of assessment areas must "expand the pie", such that they do not reduce service to areas they serve with branches. It is also equally likely banks will gravitate to easier to finance entities anywhere, versus similar unmet credit needs and communities as we have in New York City and exist throughout many communities, banked or unbanked.

Nor can the regulation allow banks to pass when they fail to serve entire communities, or significant portions of the exam within communities. The statute is clear that banks must be evaluated at metropolitan areas, and allows for evaluation within that. Evaluating online banking and deposit taking at the national level goes against the statute.

Recommendations:

- Require banks to invest in local, mission-driven CDFIs, developers, and organizations within their assessment areas. State, multistate, and national evaluation must come second to that, and should focus on meeting the needs of local native and unbanked communities.
- Require banks to pass all their assessment areas; As mentioned prior, do not allow banks to pass if they fail in their community development or retail banking tests.
- **Evaluate Deposits where they originate, but not at the expense of meeting local needs**:
    - We support the proposal to better capture deposits in the areas they are collected, especially to better understand banks' customer bases among individuals (ideally small businesses too).
    - The regulators ask if they should take out deposits, such as municipal deposits. We oppose that idea.
    - Maintain and increase activity in NYC - "expand the pie". Either of these changes could potentially reduce the deposit base considerably for banks headquartered in New York City. And with no similar community development benchmarks outside of branches, only serves to reduce obligations for banks that take deposits outside of branch-based assessment areas. This proposed change cannot reduce CRA obligations in New York City, or other cities with similar populations, disparities, and unmet credit needs. Regulators must evaluate the impact of this change and set benchmarks accordingly. We look forward to more activities not counting with stronger anti-displacement criteria, and need those activities replaced with more impactful activities.

(5) Community Development: Affordable Housing: Unsubsidized / NOAH multifamily housing; subsidized housing & other considerations

(5a) "NOAH" and other Multifamily Rental Housing (reference Question 5; Question 60) (Please see ***Appendix 1*** for a detailed proposal to operationalize these recommendations)

Why This Matters

- CRA regulated banks are the primary sources of debt financing on multifamily housing in New York City, including to landlords with public records of distress, poor conditions, and alleged harassment of tenants in their buildings. Yet banks bear no responsibility for these conditions and suffer no consequences on CRA exams for such lending.
- New York State's Department of Financial services, and several banks independently, recognize responsible multifamily lending to be a part of their CRA obligations. NYCB and Signature were the first to adopt ANHD's responsible multifamily lending best practices, which DFS's guidance closely mirrors. NYCB has since agreed to additional steps to better implement them internally, while others adopted them as part of Community Benefits Agreements. Several incidents of bank involvement have been very effective to get landlords to improve conditions for tenants, including meetings and walkthroughs with landlords, direct calls, and requiring actions taken as conditions for future financing.
- However, banks are not obligated to intervene, and too often ignore or dismiss tenant complaints, choosing to side with their client, the landlord. Even when they do step up, that typically comes after years of ignoring indicators of harm and distress, and sometimes after ignoring and dismissing direct communication from tenants outlining their concerns and asks, until they organize against the bank. Structural changes and stronger regulatory oversight and enforcement are critical to holding banks accountable to meeting the obligations they agreed to, including the ability to downgrade banks for harm.

Recommendations discussed in this section for a comprehensive evaluation of multifamily lending:

- ***Evaluate Distribution, Quality, & Underwriting:*** Loans & units in LMI / BIPOC tracts; units affordable to low- and moderate-income tenants and broken out by subsidized and unsubsidized (often referred to as "NOAH"); housing conditions; evictions (formal and informal); indications of underwriting that would foster displacement based on speculative projections or maintenance costs below what is needed to responsibly operate and maintain the building (indicators such as DSCR, LTV ratio, interest rates, and interest-only loans are places to start)
- ***Require banks to adopt and adhere to Responsible Lending Practices, which should be part of "Safety & Soundness" evaluations:*** The CRA requires loans to be made in a **"safe and sound manner".** New York State recognizes that loans made to landlords that foster harm or displacement run counter to safety and soundness. Federal regulators should do the same and adopt similar guidance for all rental housing lending. Until then, they must hold banks accountable to state-level guidance for all banks operating in that state, whether or not state-regulated.
- **Limit community development credit** for unsubsidized housing to mission driven developers and clear demonstrations of how the loan benefits LMI and BIPOC people and communities. Do not allow prior-period credit for NOAH housing to private developers.
- **Downgrade for harm & displacement:**
    - Extend the "place-based" community development anti-displacement criteria to affordable housing, stating explicitly that **activities cannot lead to the displacement or**

exclusion of LMI residents" and " do not have a detrimental effect on LMI individuals or communities or on other underserved communities."

- **Expand "fair lending" downgrades** for the institution to include incidents of harm or displacement of BIPOC tenants.

ANHD has long been calling for a more comprehensive evaluation of multifamily lending. Unfortunately, the regulators insist upon splitting it among the two tests, with a very limited analysis in the retail test and barely any additional criteria for inclusion as a community development loan. The questions asked in the NPR related to these choices presented to us in the NPR regarding major product line thresholds, which tests to include them in, and how to evaluate further demonstrate why the system today is insufficient and must change substantially.

However, the most compelling evidence of this failure should be th***e "displacement and detrimental effect"*** on LMI and BIPOC tenants that goes ignored and excused year after year after year. Under the CRA today, and as proposed in the NPR, **there is no structural way for banks to be downgraded for patterns of harm and displacement in buildings they finance.** This is the same system that lets 98% of banks pass despite clear disparities (sometimes as proven by the courts!) in direct lending and banking to BIPOC consumers, homeowners, communities, and small business owners - for which the regulators have the tools to downgrade them for this and do not.

ANHD and our members have written dozens of CRA letters over the years, documenting story after story of harm to tenants in rent-stabilized buildings, and none of it ever impacts the bank's CRA rating because of this limitation. Even one speculative multifamily loan impacts many people, as we saw with Madison Realty Capital and Signature's loans to a bad-acting landlord a few years ago that led to widespread harassment and displacement across multiple buildings[18].

But typically, the volume is well over just one bad loan at most banks. Examples ANHD and our members have documented to regulators and the banks themselves:

- Stories of tenants who have gone months without cooking gas, received repeated calls from their landlord asking them to accept buy-out money to leave, hazardous construction that has resulted in lead dust contamination in young children, rats and roach infestations, and persistent lack of response to maintenance needs, large and small[19].
- Loans to landlords who have appeared on the public advocate's worst landlord lists and Right To Counsel's Worst Evictors Lists[20]. These landlords own buildings with some of the worst conditions and most evictions in the City and routinely receive loans from CRA-regulated banks.
- Loans with indications of distress as demonstrated by the Building Indicator Project database developed by the University Neighborhood Housing Program[21]. Please note we appreciate that this is a commonly used tool by regulators to identify loans that should be discounted, but large volumes will not trigger a downgrade.
- Loans to landlords and non-bank lenders under investigation by the NY State Attorney General, many of whom ultimately settled, agreeing to pay tenants for the harm they endured. Recent

[18] https://anhd.org/blog/bad-boy-carveout
[19] https://anhd.org/wp-content/uploads/2017/04/Letter-to-Signature-Bank-Board-of-Directors-4-20-17.pdf
[20] https://landlordwatchlist.com/landlords ; https://www.worstevictorsnyc.org/
[21] https://unhp.org/projects/bip-hood-mac

examples include Icon Realty, Madison Realty Capital, Raphael Toledano, Steve Croman, Zara Realty, and Chestnut[22].

New Landlord Settlement Agreement August 5th:

As outlined in a blog ANHD issued following Signature bank's adoption of the best practices, it was strong tenant organizing and participating in the CRA process that led to this commitment.[23] However, without regulatory oversight, the impact of these and similar agreements are limited, as demonstrated by a very recent settlement announcement.

On August 5th, the last day of this CRA comment period, New York's Attorney General announced a new settlement, this time with Ink Properties.[24] Ink has also appeared on public lists, including the public advocate's Worst Landlord List and Stabilizing NYC's target list. Excerpts from the settlement include:

- **Business model predicated on buyouts and high turnover:** "The investment strategy of Ink Property Group LLC was to purchase small to medium-sized apartment buildings in New York City with low rents, **buyout as many tenants as possible** to surrender their tenancies and vacate their apartments, **perform renovations to apartments in order to make them more marketable,** and then **rent apartments to new tenants at the maximum deregulated rent** the market would allow"
- **Financing secured with false and fraudulent statements** *"For nearly all the properties where Respondents Ashourzadeh and Kahen held a majority ownership stake, Respondents took out a mortgage for purposes of acquiring each property and then refinanced the mortgage after one to three years. Typically, Respondents received acquisition financing from nontraditional lenders, including private equity, and then refinanced with traditional banks."* They further describe Ink submitting fake leases, where *"The names of these fake tenants were often the names of associates and family members of Respondents"*

ANHD has long utilized public records to show that Signature Bank is one of the traditional banks financing Ink, as referenced in the settlement, and is one of Ink's primary bank lenders. They financed several of the example buildings cited in the settlements. Signature has also long been aware of Ink's practices, going back at least to 2017 when Ink was included as a case study in a letter to Signature Bank's board of directors. ANHD, tenant organizers, and tenants themselves have shared additional stories and experiences with the bank and their regulators at DFS and the FDIC through CRA comment letters and direct communication with the bank. Their regulators were included in many of the written communications, including comments submitted at the time of CRA exams. Yet, they continued to lend to Ink Properties, and continue to pass their CRA exams.

Regulators must move towards a comprehensive analysis of a bank's multifamily line of business that recognizes impactful activities, but does not allow that to overshadow greater harm elsewhere. Consider a neighborhood where a bank makes a loan on a tax credit project or other affordable development, but

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[22] https://ag.ny.gov/press-release/2017/ag-schneiderman-gov-cuomo-mayor-de-blasio-announce-settlement-major-nyc-landlord ; https://ag.ny.gov/press-release/2020/attorney-general-wins-more-1-million-rent-credits-harassed-tenants-secures; https://ag.ny.gov/press-release/2019/notorious-landlord-raphael-toledano-pay-3-million-other-penalties-harassing-ny; https://ag.ny.gov/press-release/2019/attorney-general-james-announces-second-round-restitution-funds-croman-tenants; https://ag.ny.gov/press-release/2019/attorney-general-james-and-governor-cuomo-announce-lawsuit-against-queens ; https://ag.ny.gov/press-release/2020/ag-james-takes-action-protect-tenants-lead-poisoning

[23] https://anhd.org/blog/tenant-activism-behind-signature-bank%E2%80%99s-new-lending-policies

[24] https://ag.ny.gov/press-release/2022/attorney-general-james-stops-new-york-city-landlords-harassed-rent-stabilized

is also financing landlords who are harassing and displacing tenants. If you asked neighborhood residents, they would likely say the bank was doing more harm than good in the area. Omitting negative lending practices from an examination does a disservice to the people and neighborhoods CRA was designed to benefit.

As mentioned below, and elsewhere, limit consideration of prior-period loans to incentivize unmet credit needs for long-term patient capital, while not reducing new loans. Commercial loans made to private developers for non-subsidized housing are typically longer than a CRA cycle, and not the type of loan that needs incentive for long-term capital. In 2019, among banks making over 50 multifamily loans, **the average loan terms per bank ranged from 6.5 years to 25.7 years**, with most averaging closer to 10 years. Further, most loans were refinance loans, meaning banks are already likely to be getting credit for the same building multiple times. Counting prior period loans only inflates those numbers further. Even worse, this could lead to double credit for loans that at best, do little for the community and at most do harm, which is already a problem the first time they get credit.

Require banks adopt and adhere to Responsible multifamily lending guidelines. These are a necessary tool for regulators to monitor banks and hold them accountable when their lending practices lead to harm. Regulators have several to refer to, including ANHD's Multifamily Best Practices and California Reinvestment Coalition's anti-displacement code of conduct[25]. NY State's Department of Financial Services has also issued guidelines regarding loans eligible for CRA credit and for overall safety and soundness. Harm can happen on any number of housing types, including subsidized housing with regulatory agreements as well as private, unsubsidized housing such as rent-stabilized housing in New York City or so called "NOAH" here and elsewhere[26]. In addition to landlords who illegally refuse to take housing vouchers, like section 8 and other local programs[27]. These guidelines also provide a framework for banks to lend in a way that minimizes harm, which should be a top priority of CRA modernization.

Question 60: While we prefer a more comprehensive analysis, under the proposal today, multifamily lending should remain in both tests (not excluded from either), with more criteria in the retail test, such as percentage of loans in LMI tracts; percentage of units (using exact unit counts) in LMI tracts; percentage of units affordable to low and moderate-income tenants and if they are subsidized, unsubsidized and rent-regulated, or market rate; analysis of conditions; evictions and court cases. The community development test can further evaluate how well banks are adopting and adhering to responsible multifamily lending best practices. Both tests should allow for downgrades in the case of harm or displacement.

Further, multifamily lending banks should not be designated as limited purpose banks. First, they would lose the retail lending analysis other banks get for their multifamily lending. Second, most so-called monoline multifamily lenders do also make other types of loans that may be overshadowed by larger volume multifamily loans. Many also operate branches and offer bank accounts, all of which would be excluded from any analysis. In fact, we do not understand how retail banks such as these are allowed to offer such a limited range of products to consumers; classifying as a monoline lender furthers that low expectation rather than motivates them to widen their reach to the communities they serve with branches, bank products, and consumer loans.

[25] ANHD's best practices in **Appendix 1;** CRC Anti-displacement code of conduct: https://calreinvest.org/about/code-of-conduct/
[26] https://www.thecity.nyc/2021/4/5/22366758/new-yorkers-choose-streets-over-homeless-shelters
[27] https://www.nytimes.com/2022/05/25/nyregion/ny-vouchers-homeless-discrimination.html

Question 5: We greatly appreciate the attention in the proposal to preventing financing housing that becomes unaffordable post-renovation. This has long been an issue in New York City, especially before the rent stabilization laws were strengthened and no longer allow steep rent hikes from construction costs or upon vacancy in rent-stabilized housing; it can still happen in unregulated housing. However, the rent after renovation is just one of many factors to consider when evaluating bank financing of so-called NOAH housing.

We reiterate our proposal to evaluate multifamily lending comprehensively, with much more narrow criteria for community development credit. As outlined in our proposal, there must be a higher burden on the banks to explicitly demonstrate how the financing of non-subsidized affordable housing benefits the tenants. The CRA operates under the assumption that all financing of affordable housing - including unsubsidized housing - is beneficial to tenants, but too often that is not the case. ANHD member, University Neighborhood Housing Program (UNHP), was the lead researcher on a recent study of the impact of bank financing (debt) on housing conditions and evictions and found that **higher levels of debt - particularly on buildings in lower income Black and Latinx communities – correlated with higher rates of maintenance violations to unit and higher rates of evictions in buildings than those that did not take on additional debt[28].**

Simply lowering the affordability to 60% AMI does not solve the problem, least of all for the most vulnerable tenants earning well below that who could be displaced if the rent goes *UP* to that level post-renovation or by any other means. As mentioned further below, the same would be true for new construction of housing at 60% AMI in lower-income areas. For example, seven of 12 community districts in the Bronx have median incomes below 40% AMI, and over 60% of the population are rent burdened[29]. As such, the underwriting, whether or not it includes renovation costs, must ensure rents remain affordable to existing tenants. If renovation is happening upon vacancy, the financing should be underwritten to keep affordable rents at or near their pre-renovation levels; too often landlords use renovation as a tool to increase rents higher than the rent-stabilization laws would otherwise allow, thus pricing out people in the neighborhood, if not displacing existing tenants. Worse, as evidenced in the Ink settlement above and other settlements referenced in the footnotes, they do so after displacing tenants.

We also note that an affordability pledge of five years is not nearly long enough. If any landlord were to pledge affordability, it should be for the life of the tenancy, and extend to the life of the loan if that is longer, and further extended to account for refinancing with the same bank; future banks would have to confirm eligibility in similar ways to get credit.

Regarding the question about how to confirm LMI tenants are likely to live in the housing, it makes sense to focus on giving credit for housing in LMI tracts, and should extend to majority BIPOC tracts. Extending to where the median renter is LMI could be problematic if those rents are driven by a concentration of public housing or similar development, such that the remainder of rental housing is for higher income residents. Under the proposal, banks can already get credit in other areas if they can reasonably demonstrate that a majority of LMI tenants live in the building. However, the criteria for downgrades - whether or not a loan was presented for community development credit - must allow for

[28] https://unhp.org/publications/affordable-housing-research/gambling-with-homes-or-investing-in-communities-unhp-lisc-new-school-univer

[29] Risk chart

displacement of LMI and BIPOC tenants in any building, especially given how vulnerable the last few remaining LMI tenants are to displacement in a gentrifying community.

It is imperative that regulators extend the "place-based" community development anti-displacement criteria to affordable housing, stating explicitly that **activities cannot lead to the displacement or exclusion of LMI residents" and "do not have a detrimental effect on LMI individuals or communities or on other underserved communities."**

As ANHD wrote extensively in our ANPR comments, and in proposals submitted since then (included in ***Appendix 1,*** **regulators must move towards a comprehensive analysis of a bank's multifamily line of business**, that recognizes impactful activities, but does not allow that to overshadow greater harm elsewhere.

- **Expand the retail lending test to incorporate a comprehensive analysis of multifamily mortgage lending (not just those submitted for Community Development credit)**
    - ***Distribution & Underwriting:*** Loans & units in LMI / BIPOC tracts; units affordable to low- and moderate-income tenants and broken out by subsidized and unsubsidized (often referred to as "NOAH"); housing conditions; evictions (formal and informal); indications of underwriting that would foster displacement based on speculative projections or maintenance costs below what is needed to responsibly operate and maintain the building (indicators such as DSCR, LTV ratio, interest rates, and interest-only loans are good places to start)
    - ***Safety & Soundness:*** The CRA requires loans to be made in a **"safe and sound manner".** As such, federal regulators must adopt state-level safety and soundness guidelines in the states where banks operate (whether or not state-regulated), and should adopt these at the federal level. In NY State, our bank regulator at the Department of Financial Services issued safety & soundness guidelines for responsible multifamily lending.

- **For loans also submitted for community development credit**
    - **Limit credit to subsidized housing and mission driven developers**, with limited credit outside of that.
    - **For all loans - and especially for non-subsidized housing - require banks to explicitly demonstrate how each loan meets a community development purpose** by preserving and improving affordable housing for existing tenants, ensuring underwriting supports this for current tenants. Evaluate each loan for signs of distress or harassment: landlord record, building conditions, hazardous construction including lead paint violations, evictions and frivolous court cases.
    - **As mentioned below, and elsewhere, limit consideration of prior-period loans to incentivize unmet credit needs for long-term patient capital.** Loans to private for-profit landlords is not an unmet credit need that needs CRA to motivate.
    - Based on loans submitted, and additional review of portfolio by regulators and/or submitted by public comments
        - **Require multifamily lenders to adopt and adhere to responsible multifamily lending best practices, which should be integral to "safe and sound" loans.** All federal regulators should also adopt safety and soundness guidelines akin to New York's guidelines for responsible multifamily lending. If not, require banks to follow them within states that have such guidance.

    - **Downgrade for instances of harm and displacement** of LMI and BIPOC tenants, especially loans discounted by the anti-displacement criteria, but not limited to those. How can a bank pass CRA if it is found to foster displacement or harm?

- **Community comments** must factor into the evaluation and trigger a response from banks to mitigate the situation and prevent future incidents, which would also factor into the rating. In NYC, this is necessary to support other housing code enforcement mechanisms. Outside NYC, in an area with fewer tenant rights and protections, it could be the only means a tenant has to hold their landlord accountable for poor conditions and treatment.

(5b) Subsidized Affordable Housing, and considerations beyond multifamily line of business (unasked questions; Questions 1, 10)

Why it Matters:

- Mission-driven, non-profit developers leverage city public financing tools, most often along with equity, grants, and/or loans by CRA regulated banks - for their housing, industrial, and commercial work, and create the greatest public good for our communities.
- CDCs have a uniquely strong approach to development, and support local residents with community benefits, including deeper affordability, long-term affordability, support for essential community services, and authentic community control.
- Nonprofit developers have fewer resources and smaller balance sheets than most larger, for-profit entities. As such, they have a harder time accessing the capital they need, and at terms and rates they can afford to sustain their work long-term.

Recommendations discussed here:

- **Limit consideration of prior-period loans to incentivize unmet credit needs for long-term patient capital, while not reducing new loans.** Emphasis new loans that meet local needs; limit prior period loans for nonprofits and/or subsidized developments; and/or benchmark new originations and give higher impact ratings for long-term capital that meets local credit needs.
- **Separate Evaluation of Loans and Investments** in order to maintain the obligation to make both community development loans and investments, particularly high impact investments like Low Income Housing Tax Credits (LIHTC), grants, and Equity Equivalent Investments (EQ2s).
- **Expand anti-displacement criteria to affordable housing**.
- **Do not give credit for affordable housing that is out of reach to local communities**
- **Scrutinize pro-rata credit** where less than 50% units are affordable and the overall impact of the project fuels displacement.
- **Expand impact review** to include long-term/permanent affordability and support for mission-driven nonprofit developers

Question not asked: prior period loans

Under the CRA today, banks can get credit for community development investments made during the current exam cycle and investments still outstanding on the balance sheet from prior periods. The regulators propose to extend that to community development loans.

Longer-term loans have long been an expressed unmet need because banks prefer to originate and renew loans every two to four years, depending on their exam cycle, rather than meet this stated need and find new opportunities to lend. We support efforts to incentivize longer-term loans, as they do for investments. However, regulators must make sure to place an emphasis on new loans, such that a bank cannot pass with only loans and investments still outstanding from prior exams. Another approach could be to only allow prior period loans for nonprofits and/or subsidized developments, or use new originations for the benchmarks and give higher impact ratings for long-term capital that is a stated need, both for loans and investments. Banks should also be penalized for offering short-term loans solely based on the CRA exam cycle and not on the need of the entity receiving it, especially given that it would explicitly not be meeting a stated local need for longer-term loans. Nor should they get prior period credit for long term loans they would make without CRA motivation, as mentioned above for commercial multifamily mortgages to private for-profit., whereas a nonprofit developer may not have the same access to similar financing at all, or to the longer term loans they need. In fact, several nonprofits report having to renew certain loans or lines of credit every 1-3 years for CRA purposes.

Nonprofits need forward-looking long-term loans, and for them to be more affordable than what is available through other channels. However it is done, the result must be to maintain and increase the incentive to originate the loans and investments our communities need to build and preserve affordable housing, support quality jobs, and more.

Further, as discussed in the unsubsidized / NOAH section and elsewhere, without the stronger anti-displacement criteria in the affordable housing category, a bank could conceivably get credit over multiple exam cycles for a loan to a landlord that maintains a building in poor condition, harasses, and/or displaces tenants. This would come on top of credit they already get each time they renew (extend) or refinance the loan.

Question 1:
In general, we agree that the majority (50%) of dollars or beneficiaries is a reasonable criteria to get CRA credit in all categories. However, if there is evidence that CRA financing is needed in order for a smaller percentage to serve LMI or majority BIPOC populations, pro-rata credit could be considered, as may be the case in some broadband projects. Even there, banks must show how the initiative will increase access through outreach, financial assistance, and other means; not simply making it available.

We also urge the regulators to closely evaluate the credit for pro-rata housing credit. In some cases, the market-rate housing is high enough to cross-subsidize the affordable units, such that bank financing does not need to be further incentivized. And worse, there are instances where the market rate housing is significantly higher than average rents in the neighborhood, and/or the affordable housing is too expensive, both of which add to displacement pressure that may offset the benefit from any truly affordable units. Adding the anti-displacement criteria in all community development categories to discount projects that foster displacement or detrimental effects would help in such cases.

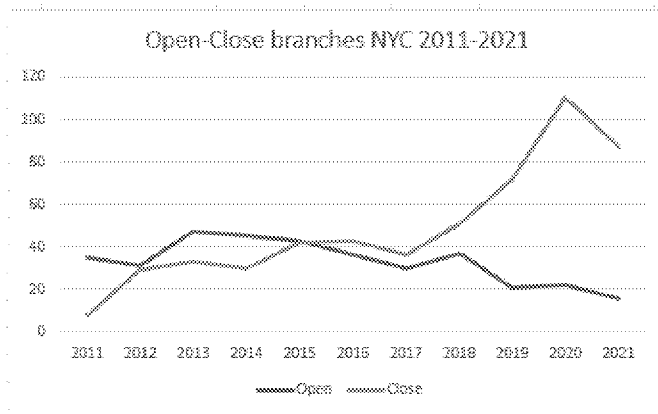
Question 10:
The definition appears to incorporate a wide variety of housing models, but in doing so, could uphold the system whereby banks gravitate to easier to finance projects, versus ones that may need further incentives, such as Community Land Trusts, limited equity coops, and financing of housing entering community ownership, as communities are seeking to do and financing of housing entering community ownership, as communities are seeking to do through legislation like New York State's Community Opportunity to Purchase Act (COPA) and Opportunity to Purchase Act (TOPA). Any such housing developed for LMI and BIPOC people and communities should qualify and be incentivized through impact reviews and other methods.

On the other hand, there must be stricter consideration of the type of housing being built in LMI and BIPOC communities. If the performance context and needs assessment indicates a strong need for deep affordability, and further demonstrates how higher-cost housing in low-income communities can foster displacement, that housing cannot qualify. As mentioned above, there must be downgrades for displacement, as much as credit for positive activities.

Finally, we are concerned about the proposal's impact on investments by combining loans and investments. Regulators should evaluate these activities separately within the community development finance test. This is particularly important for Low Income Housing Tax Credits (LIHTC) investments. By eliminating the requirement to make investments, the regulators could reduce competition for, and thus lower the price of LIHTC, which would mean a loss of money to develop affordable housing. There could be a similar negative impact if banks pull back on other investments, including grants and EQ2's.

(6) Stem the tide of branch closures and increase access to affordable, accessible banking for un(der)banked LMI and BIPOC.

Why this Matters:

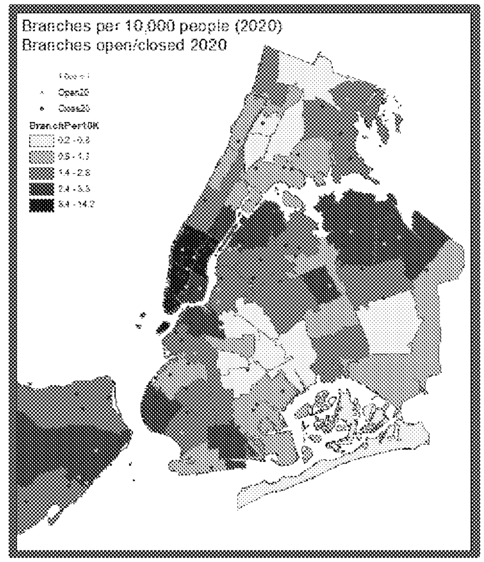


- Nearly 200 branches closed in 2020-2021; just 38 opened. 34 of the closures and just 6 openings were in majority Black and/or Latinx neighborhoods, which are already among the top 10 most unbanked neighborhoods in the city.
- 18% of Bronx households are unbanked (nearly double the NYC rate) and rates are much higher in several lower income Black and Latinx neighborhoods. 2020-21, 19 closures - and just 4 openings - were in the Bronx
- Banks continue to take in billions in overdraft, ATM, and maintenance fees, which disproportionately fall on LMI and BIPOC customers.

Summary of Recommendations below:

- **Strengthen and deepen geographic analysis: c**ompare to demographics & market by income and race/ethnicity, separately. No income-based credit for branches in Middle-upper income; investigate disparities by race/ethnicity
- **Analysis of opening & closing in Low & very low branch access** must stem the tide of branch closures, and lead to more opening in LMI/BIPOC areas, with obligations for banks to avoid and mitigate closures
- **Elevate branches and banking in ratings:** Do not let a bank pass if they fail to provide banking and deposit products equitably - in branches and through other channels - as can happen with strict numerical weighting systems. Evaluate branch products and services to ensure they are affordable and accessible to BIPOC, immigrants, limited english speakers, seniors, and others with barriers to banking. All banks must accept NYC's municipal ID (IDNYC)
- **Require Local (not national) analysis of deposits, bank account, and credit products and usage;** move credit product analysis to retail test. Expand upon NPR proposal and former FFIEC guidance. Consider expanding to also evaluate small business deposits and accounts. Downgrade banks for harm, including high and hidden fees for LMI and BIPOC customers.
- **No Exemptions:** Evaluate all banks (especially all large banks) on depositor locations, deposit products & usage; credit products and usage. No carveouts for banks under $10 billion assets or limited purpose or wholesale banks that offer deposit products.

Strengthen and deepen geographic analysis
Question 90 and 99, and questions not asked



We are pleased that the exam evaluates branches opened and closed, however, there is little discussion as to how branch closures will impact an exam. Given how little it seems to factor into the exam today, that must be clarified and strengthened.

When evaluating branching services to LMI people and communities, the focus must be on LMI communities. We also advocate for an analysis of activities by race, which may capture non-LMI communities that are majority BIPOC, and most likely Black and/or Latinx.

In NYC, using the data from the FDIC's study of unbanked households, NYC found that **37% of unbanked households are in just 10 neighborhoods**, which are also **predominantly Black and/or Latinx** and have lower incomes compared to the city as a whole[30]. They also have less access to the internet, fewer traditional bank branches, and more alternative financial institutions (AFIs) like check cashers and pawn shops, often with AFIs exceeding branches.

However, several majority Black communities also include middle-income tracts and remain underserved by traditional banks. For example, Jamaica, Queens (Queens Community District 12) has a large moderate and middle-income Black population, and fewer than 1 branch per 10,000 people - not much more than the low-income Black and Latinx communities in the Bronx. Nearly 75% of all home loans there were made by non-bank lenders. This is an area the CRA should be motivating banks to better serve.

In addition to geographic distribution, regulators could also look at branches per population and similar methodologies to calculate rates of unbanked and underbanked populations. The denominator for branches per population would depend on the size of the geography. For example, in NYC, we often look at the percentage of branches per ten thousand people by zip code or community district.

There should also be a deeper analysis as to where branches are located within an assessment area, and within neighborhoods. A bank may compare favorably in the percentage of branches in low or moderate-income tracts, but have none in persistently unbanked areas, as is the case for much of the Bronx. Or banks may be clustered in just a few areas, leaving others without access, as is the case for several neighborhoods in the Bronx.

However, a branch in, say, an upper-income area of lower Manhattan with over 14 branches per 10,000 people, may serve LMI people because they work in the area, but none could ever afford to live near that branch. They may also be forced to do all their banking during the work week, even if banking near home on a weekend or evening would be more convenient, but they lack access. No bank should get credit for a branch in such a community.

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[30] https://www1.nyc.gov/site/dca/media/pr070921-DCWP-Research-Finds-301700-NYC-Households-Are-Unbanked.page

Elevate Branch Access on Exams

We appreciate the extra attention on branches in LMI, and in low-access areas, but we question what impact this will have. How will this proposal lead to fewer branch closures in unbanked areas? How will it lead to more bank openings and better services? The regulators put forth pages of complicated formulas to identify areas lacking branches and then simply propose to provide a little extra credit for operating or opening there, but no penalties for closing in the same areas or failing to operate branches in the first place. Nor does the proposal describe how branch closures anywhere are factored inot the exam, except to say that they are part of the evaluation. The CRA today allows 98% of banks to pass despite closing branches in these areas or ignoring them completely. **How will this proposal meaningfully change that trend?** Under this new proposal, the analysis of branch distribution, openings, and closings all fall under this retail products and services test that counts for 15% of the exam (down from the service test that accounted for 25% of the exam before). While community development services are separated out, they also added in many more activities to this portion of the exam, including credit products.

Banks are required to meet the convenience and needs of the communities they serve, which explicitly includes deposit needs. No bank should be allowed to pass its exam if it fails to provide access to branches and accessible, affordable products equitably.

Low and very low branch access

***Questions 91 through 96:* We appreciate the extra attention on branches in "low- and very-low access" areas, but how will this proposal stop the branch closures in un(der)banked areas? How will it lead to more bank openings and better services?**

Defining "low and very low access": The first "low branch access" definition of two miles in "urban" areas is completely inadequate in a high-density city like New York City where tens of thousands of people can live within a city block and need access to a local bank branch. We also note that there is no clear definition of "urban" vs "suburban". A paper by the Pew Research center outlines numerous and conflicting definitions, concluding that the most accurate was based on perceptions, versus any objective definition[31]. Even within New York City - a city many would define as urban, we have very high-density and lower-density areas, including several that many would perceive as closer to being suburban. The second approach that accounts for local context and density has the potential to more accurately reflect unbanked and underbanked areas.

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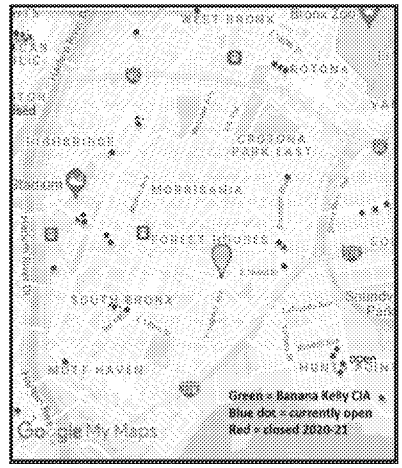
[31] https://medium.com/pew-research-center-decoded/evaluating-what-makes-a-u-s-community-urban-suburban-or-rural-159f9d082842



Further, in high-density, lower-income, and BIPOC communities - especially Black and Latinx - even one branch is often insufficient for the population and long-standing unmet banking needs. The definition of "low" and "very-low" should connect to branches per population and rates of unbanked and underbanked populations. The regulators should also consider community input in making a final determination, especially if the formula determines that an area is not an area of low or very low branch access and local communities can articulate why more is needed and/or why the existing branches are not sufficiently serving their community. New York State's bank regulator has only publicly listed one bank in three years as being problematic, even when those branches close in objectively underbanked areas of New York City. Community input often tells a different story.

Worse, several banks have used low-traffic as a rationale for closing in underbanked communities, rather than reevaluating and repurposing their products and services. For example, Popular bank closed 25% of its branches in 2020-21, including one in the South Bronx where roughly 30% of residents do not have a bank account.

In an announcement leading up to the closures, the bank's CEO said: *"Basically, these were the most underperforming branches," Chief Executive Ignacio Alvarez said on a conference call last week. "In the end we felt that they probably subtracted more than they added to retail districts.[32]"* As the accompanying map shows, ANHD member Banana Kelly, a neighborhood=based CDC, is located near this branch and knows first-hand the impact of not having branches and affordable banking options for their residents and community members who too often must rely upon prepaid debit cards, private ATMs, check cashers, and other higher cost non-bank options.

Sonya Ferguson, a leader at ANHD member organization Banana Kelly Community Improvement Association, understands this issue personally. Sonya serves as the president of the Block Association on Kelly Street in the South Bronx, a block made famous in the 1970s when longtime residents took over abandoned buildings and used sweat equity to create community-owned housing. Sonya laments the impact of the lack of bank branches in the area. She knows all too well that while some folks make the long hike to the singular bank branch on Southern Boulevard or a larger cluster in the further-away Hub at Third Ave and E. 149th Street, many on the block rely on local check cashers, pawnshops, and bodegas to handle their financial transactions[33].

Yoselin Genao Estrella, Executive Director of NHS of Queens and an active ANHD member put it well when she testified at a July congressional hearing about CRA modernization: *"We see this phenomenon often in our neighborhoods where financial institutions create self-fulfilling prophecies by not providing the adequate products and services in LMI bank branches and then "justifying" bank closure due to lack of business activities.[34]"*

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[32] https://www.crainsnewyork.com/banking/popular-bank-close-more-quarter-local-branches
[33] https://anhd.org/blog/how-branch-closures-impact-hard-hit-communities
[34] https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-genao-estrellay-20220713.pdf

While credit unions can be meaningful points of access for local communities, they should not be part of the calculation. Some are limited in who they can serve (eg: only municipal workers, employees, union members, military) and may not benefit the local community at large. A low-income credit union is more likely to be mission driven to serve the local community, but like most non-profit and mission-driven entities, they cannot serve at the same scale as banks, and are often making up for insufficient access by traditional financial institutions, as was the case with a newly opened credit union in the Bronx that came about in response to a closure by a CRA-regulated bank[35]. In either case, credit unions are not CRA regulated, and their presence should in no way reduce a CRA-regulated bank from its obligation to serve the same community. In fact, banks should have an obligation to *complement* and - in the case of low-income credit unions - support the credit union, in addition to providing services directly.

For example, Sterling Bank (now Webster) recently closed a branch in a Bronx neighborhood where residents are considerably lower income, more Black and Latinx, and less banked than much of the city. A set of local organizations (all ANHD members) quickly responded and contested the closure, but despite public comments and despite CRA obligations to serve communities like the one they were leaving, the branch still closed. The groups did not stop there - they took the opportunity to push Sterling to meet their CRA obligations by financing a new credit union, as a means to mitigate the harm caused by not adequately serving the community through the branch, and then further by closing entirely. The closure and subsequent financial support for the credit union is a good example of both the CRA's strength and its failings, as summed up by UNHP staff in a recent article[36]

> *"We negotiated a strong agreement with the bank that seeks to make up for the harm done by the recent branch closing," Abrahamson said. "We believe that their investment in our efforts will impact the banking game in the Bronx by bringing access to affordable and solid banking to neighborhoods beyond the largest commercial districts, and in particular for residents who feel they don't need, trust or could afford mainstream products and lending."*

Fundamentally, though, the burden should not fall so heavily on impacted communities to make up for the services banks are meant to be providing to meet their obligations under the CRA. Banks like Webster and others should absolutely support credit unions like Webster is doing here, but not as a substitute for providing affordable, accessible services themselves. Further, **they could have followed Ridgewood Bank's lead and stayed open when communities protested a branch closure[37]**, and could have still supported a credit union to expand access beyond that.

Key Recommendations

- Maintain credit for opening & operating in un(der)banked communities. Define low and very-low access in such a way that the rule leads to branches operating and opening in areas (not "nearby") with few branches and higher concentrations of un(der)banked populations,
- Stronger consideration of branch closures overall; Downgrade for closing in a low/very low branch access area - require and evaluate steps to avoid closure and, if closed, an action plan to mitigate harm after a branch closure in LMI and majority BIPOC communities
- Do not allow a bank to pass its CRA exam if it fails the branching/service test, including strong attention to branches and products and services offered, as discussed in the following section.

[35] https://www.cutimes.com/2022/07/21/how-a-cu-is-literally-rolling-out-financial-services-to-the-underserved/
[36] https://www.cutimes.com/2022/07/21/how-a-cu-is-literally-rolling-out-financial-services-to-the-underserved/
[37] https://www.norwoodnews.org/ridgewood-savings-bank-sedgwick-avenue-branch-to-remain-open-finally/

Otherwise, they can expand by merging and/or open branches elsewhere after having abandoned communities they are meant to serve.
- Evaluate branches in low- and moderate-income tracts - no credit (by income) for branches in Middle-Upper income. Conduct a separate analysis by race/ethnicity (majority BIPOC tracts, disaggregated within that) with investigations for major disparities by race/ethnicity
- Use mapping and community comments to identify and investigate if majority BIPOC neighborhoods are excluded, or disproportionately have fewer services.

Branch Services & Deposit Products: Branch-based and online/non-branch delivery

We strongly oppose the proposal to conduct this analysis at the institution level and not at the assessment level, and with more nuanced analysis within. The proposed approach goes against the letter and spirit of the law, which specifies banks are to serve the local communities in which they operate. This was the reason we and many others advised against a national assessment level in prior proposals and have been supportive of steps regulators are taking elsewhere in this proposal to capture local lending activity outside of branches. But they failed to do so for online banking, and, worse, seem to be moving away from the local analysis banks are supposed to be getting today.

Regulators must conduct a <u>local analysis</u> of deposits/deposit accounts/credit products: Under the proposal, the regulators fail to create deposit-based assessment areas, and then further reduce local obligations for banks that do have branches, even as banks insist that online/digital banking is the reason for closing branches in already underserved communities. Further, the regulators recognize in the NPR (page 286) that banking and credit needs vary between local communities *"The agencies recognize that credit needs vary from community to community and that bank retail lending products and programs, as a result, can vary to meet these different needs. To that end, the proposal does not provide a specific list of retail lending products and programs that qualify under this provision."* Yet, they fail to look at how banks are meeting these needs within local communities.

Recommendations: (In addition to the recommendations below)
- **Conduct a <u>local analysis</u> of deposits/deposit accounts/credit products:**
- **Do not let a bank pass if they fail to provide banking and deposit products equitably, as can happen with strict numerical weighting systems**
    - Responsive credit products can't make up for closing branches, and insufficient banking products.
    - There must be downgrades and deterrents for high and regressive fees, such as overdraft, maintenance, and ATM fees.
    - Under proposal, branching/banking is part of a test that is 15% of exam - won't affect final rating pass or fail (today service test is 25% and also won't bring down a rating, if they fail at all)

The proposal Reduces obligations banks have under the CRA today: In 2016, federal bank regulators updated CRA guidance in the interagency Q&A document, in which they made significant improvements to the service test. This was done to better evaluate bank account qualities along with branching. As such, regulators are already supposed to examine banks for products and services offered and their usage. **In fact, the CRA would be more impactful if this part of the exam were more uniformly and consistently implemented - requiring much of the data currently optional (as proposed for a subset of banks required to capture where they take deposits), rather than the system as proposed that**

removes the local analysis and exempts hundreds of banks from any such analysis or data collection. Even more so if they were to add new assessment areas based on deposits and deposit accounts.

Select excerpts from the FFIEC Interagency CRA Q&A document (pages 37-38) which applies to **all large banks, which** have the service test conducted in **each assessment area**: (edited for clarity and space; bold added for emphasis)[38]

§II.24(a)—1: How do examiners evaluate retail banking services and community development services under the large institution service test?
… examiners consider the availability and effectiveness of an institution's systems for delivering banking services, particularly in LMI geographies and to LMI individuals; the range of services provided in low-, moderate-, middle-, and upper-income geographies; and the degree to which the services are tailored to meet the needs of those geographies. Examples of retail banking services that improve access to financial services, or decrease costs: ***low-cost deposit accounts****; electronic benefit transfer accounts and point of sale terminal systems; individual development accounts; free or low-cost government, payroll, or other check cashing services; and reasonably priced international remittance services.*

§ II.24(d)—1: How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?
[After reinforcing the importance of branches] Under the service test, ***alternative systems for delivering retail banking services are considered only to the extent that they are effective alternatives*** *in providing needed services to low- and moderate- income areas and individuals*

§ II.24(d)(3)—1: How do examiners evaluate alternative systems for delivering retail banking services?
… No matter the means of delivery, examiners evaluate the extent to which the alternative delivery systems are available and effective in providing financial services to [LMI] geographies and individuals….

Examiners may consider a variety of factors, including: *Ease of access,* ***whether physical or virtual; cost to consumers, as compared with the institution's other delivery systems;*** *range of services delivered; ease of use;* ***rate of adoption and use;*** *and reliability of the system. Examiners will consider any information an institution maintains and provides … such as data on customer* ***usage or transactions***

§II.24(d)(4)—1: How do examiners evaluate the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which those services are tailored to meet the needs of those geographies?
Examiners review information provided related to the ***range of services offered*** *and how they are tailored to meet the particular needs of [LMI] geographies.*

Examiners always review the information that ***institutions must maintain in their public files:***
A list of services generally offered at their branches*, including*

- *their hours of operation; available loan and deposit products; transaction fees, descriptions, where applicable, of* ***material differences in the availability or cost of services*** *at particular branches to see how the services are [or aren't] tailored to the convenience and needs of its assessment area(s), particularly LMI geographies or LMI individuals. …*

Examiners also review any other information provided by the institution, such as data regarding

[38] https://www.govinfo.gov/content/pkg/FR-2016-07-25/pdf/2016-16693.pdf

- *the* ***costs and features of loan and deposit products; account usage and retention****;* ***geographic location of account-holders;*** *the availability of information in* ***languages other than English****; and any other relevant information demonstrating that its services are tailored to meet the needs of its customers in the various geographies in its assessment area(s).*

Branch Services & Digital/Online Delivery, Deposit Products

Evaluate deposit locations; branch-based and non-branch-based products and usage; (questions 97 and 107)

Branch Services:

We appreciate the attention to branches operating, opened, and closed, as branches are critical to serving already underbanked, underserved LMI and BIPOC communities. As will be discussed below, we **strongly urge the regulators to maintain and strengthen the system to evaluate deposits and deposit products offered in branches and online and through other channels.**

We also appreciate the analysis of **how equitably services are offered among branches of different income levels, such as the examples listed:** Extended business hours; Providing bilingual/translation services; Free or low-cost check cashing services, including government and payroll check cashing services; Reasonably priced international remittance services; and Electronic benefit transfer accounts

Language access must extend to ATM and other remote facilities as well to ensure limited english speakers are equitably served through all physical channels.

In addition to these services, we recommend adding the following and any others raised through local input gathered by banks and regulators

- Free or low-cost money orders. These typically cost close to $5 at banks, whereas they are free or lower cost at many check cashers and post offices.
- Access for people with prior banking issues, such as those flagged in Chexsystem
- Types of services offered in branches, and sufficient staffing to support local needs. In addition to closing branches, banks are cutting staff and attempting to meet those needs with ATMs. As the regulators allow for new models of branches, including ones that help people with digital activities, they must also make sure that they don't further a two-tier model where upper-income areas have staff to talk to readily while LMI communities wait in long lines to speak to a banker or see a teller.
- Staff and services that demonstrate cultural competency.
- Consumer loans offered, such as credit builder/repair loans and small dollar loans, and staff who can assist customers and businesses in accessing other financial products and/or connect to community-based organizations and CDFIs when they cannot access bank products.
- Range of identifications accepted for ITIN holders and others without a social security number, including passports without a visa and consular IDs. The regulators should also make clear that banks in NYC can and should accept the NYC municipal ID (the "IDNYC") as a primary form of identification. This is especially important in branches as even banks that accept it often do not do so online, which they should also be encouraged to do. Further, banks should not be given credit if they accept it, but require a social security number as well, as is the case with First Republic Bank[39].

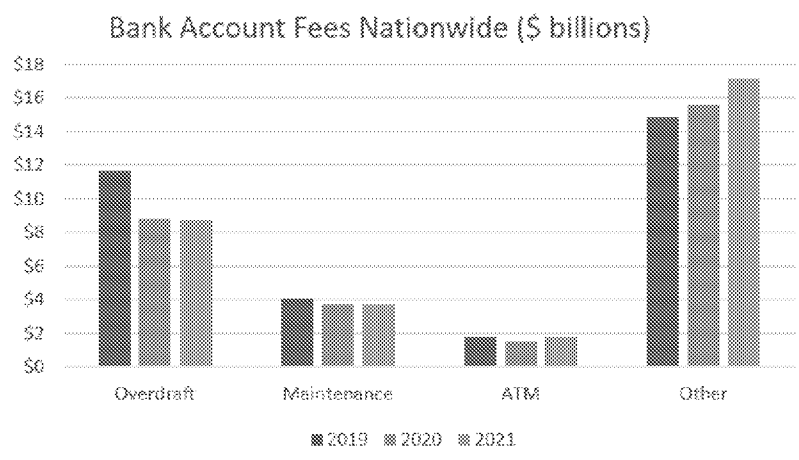
[39] https://www1.nyc.gov/site/idnyc/benefits/banks-and-credit-unions.page

Deposits, Deposit Products, and Usage:

First, there must be no Carveouts or exemptions for banks under $10 Billion. As will be repeated throughout, we strongly disagree with excluding any large banks (as proposed for banks under $10 billion) from an evaluation of the quality of their bank accounts offered in branches and online.

Regulators must evaluate - at the assessment area level and within - deposit products offered in branches and through other means like online/mobile/etc, and the usage of the different products and their respective costs, terms, and features. Quality, accessible, affordable products must be marketed, offered, and utilized, especially in areas with high rates of un(der)banked populations. At the same time, regulators must ensure it does not result in a two-tier system that further limits access to credit or other banking products moving forward, as may happen if people are led to prepaid debit cards versus full bank accounts. If anything, **banks should be moving towards a progressive - not regressive - system** where higher income customers pay for banking while lower-income consumers do not.

Even during COVID in 2020 and 2021, banks took in over $8.8 billion in overdraft fees annually, and barely reduced the billions they extracted in ATM fees and monthly maintenance fees. Studies routinely show that these types of fees disproportionately impact BIPOC. One study found Black adults paid an average of $12 a month for checking accounts; Hispanics g $14 a month, versus just $5 a month among white adults[40]. As well as more recent studies reporting how bank overdraft fees harm low-income consumers and communities of color, who are already disproportionately excluded from the banking mainstream[41].



Due to their size and reach, just a handful of banks account for over half of each of these fee categories. Just four banks comprised over 50% of all overdraft fees citywide: Chase, Wells Fargo, Bank of America, and TD Bank. Just three banks accounted for over 50% of all ATM and maintenance fees citywide: Bank of America, Chase, and Wells Fargo.

However, banks much smaller than that are charging similarly high fees, if not more so, and may be one of the few banks around in some communities. The Brookings Institute study showed several such banks that rely upon consumer fees as a primary source of income, including several below $10 billion in assets[42]. They are also correct to point out that banks under $1 billion in assets do not even report this data on call reports, leaving their practices completely in the dark. All banks must be held accountable for their regressive fee structures.

[40] https://www.cnbc.com/2021/01/13/black-and-hispanics-paying-twice-amount-banking-fees-than-whites-survey.html
[41] https://www.responsiblelending.org/research-publication/banks-must-stop-gouging-consumers-during-covid-19-crisis
[42] https://www.brookings.edu/opinions/a-few-small-banks-have-become-overdraft-giants/

Regulators should also consider doing a similar analysis of small business customers, ideally connected to business size and race/ethnicity of owner, but at the very least by census tract location, as proposed for consumers.

We support the proposed availability features and recommended additions:

- **low-cost features** (i) accounts with no overdraft or insufficient fund fees; no or low minimum opening balances; no or low monthly maintenance fees; and free or low-cost checking and bill payment services.
    - **Recommend adding:** no inactivity fee; no charge to transfer from savings to cover an overdraft; no fees for debit-card transactions, or other deposit/withdraw transactions

- **features facilitating broad functionality and accessibility:** (i) in-network ATM access, (ii) debit cards for point-of-sale and bill payments, and (iii) immediate access to funds for customers cashing government payroll, or bank-issued checks
    - **Recommend adding:** access to no-fee ATM networks or waive fees for out-of-network ATMs; partnerships with credit unions to expand access to ATMs for customers;
- **features facilitating inclusivity of access:** (i) features facilitating inclusive access by persons without banking or credit histories, or (ii) with adverse banking histories
    - **Recommend adding:** accept non-traditional IDs, including passport without a Visa; consular and cedula cards; municipal IDs like NYC's IDNYC; ensure language access online, in person, and by phone;

We support the proposed Usage analysis:

- (i) the **number of responsive accounts opened and closed** during each year of the evaluation period in low-, moderate-, middle-, and upper-income census tracts, respectively; (ii) the % of total responsive deposit accounts compared to total deposit accounts for each year of the evaluation period; and (iii) marketing, partnerships, and other activities that the bank has undertaken to promote awareness and use of responsive deposit accounts by LMI individuals.
    - **Recommend adding analysis** usage of higher-cost products and fees, including overdraft, ATM, and maintenance fees by geography - with local assessment of fees collected, as they are only available at the national level now through the FFIEC call report.

(7) Small business Lending & Economic Development

(7a) Retail Lending: Small Business Lending

Why it matters:

- Persistent unmet credit needs for very small, BIPOC-owned, immigrant-owned businesses
    - (racial disparities); (credit card vs loan/line of credit)
    - In 2021, as in prior years, 76% of small businesses needed loans and lines of credit; just 26% needed credit card loans.
    - Satisfaction w/ lenders.... price/terms/etc
- 81% of businesses are non-employer firms (only owner or family); 98% of non-employer firms re < $1M revenue; Over 90% of all small businesses in NYC are < $1M rev in NYC;
- Millions of loans will be excluded from analysis, either because of bank classification or not meeting the major product line threshold

Summary of Recommendations:

- Loan size: Adopt the proposed analysis of loans to businesses $250,000 to $1 million in revenue and under $250,000 in revenue; add a category for businesses under $100,000.
- Race: conduct separate analysis of businesses to disaggregated BIPOC-owned businesses
- Limit credit for businesses over $1 million in revenue and/or non-BIPOC owned in LMI and majority BIPOC tracts;
- Include analysis of loan quality, and loans offered compared to local needs. Evaluate loan pricing and terms to ensure products are meeting local needs and not extracting wealth, as could be the case with high-interest credit cards, or other higher-cost products. Likewise, they should compare the types of loans made to local needs. For example, small business credit cards or other high-cost loans, versus the more-needed traditional loans and lines of credit.

The CFPB estimates that 95% of businesses have under $1 million in revenue[43]. More recent federal reserve surveys reveal that 81% of businesses are non-employer firms (only owner or family), of which 98% have less than $1 million in revenue. The federal reserve's CRA data tables show that 90% of all businesses in New York City - 93% of businesses in LMI tracts - have less than $1 million in revenue. However it is calculated, surveys consistently demonstrate the unmet credit needs of businesses well below that size[44]. These same studies also show that BIPOC owned businesses of all sizes face greater credit needs than white-owned firms, but that they also tend to be smaller than white-owned firms.

Under the CRA today, banks already get credit for "small business" loans defined by loan size - not business size - as loans under $1 million, among which a significant volume likely goes to businesses over $1 million in revenue. Lack of data has hindered the deeper analysis we expect to be able to conduct when Dodd Frank Section 1071 is implemented. We understand the intent to match reporting under that new small business data reporting structure, but 1071 is recording lending to businesses up to $5M revenue simply to capture as many loans as possible for a racial equity analysis.

Detailed recommendations:

- ***Keep focus on Small Businesses, under $1 million and smaller:*** We support the proposed analysis of loans to businesses under $250,000 in revenue and suggest adding a category for

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

[44] Federal Reserve Board CRA data tables https://www.federalreserve.gov/consumerscommunities/data_tables.htm

businesses under $100,000 in revenue as well. However, we are concerned that the new definition of "small business" gives credit for lending to businesses with up to $5 million in revenue, especially as most businesses in the country are under $1 million in revenue.

- ***Evaluate by race, separate from income:*** The CRA must also evaluate loans to businesses by disaggregated race and ethnicity overall, and among small businesses, and in majority BIPOC neighborhoods. Disparate trends must impact ratings and trigger fair lending evaluations.

  BIPOC businesses tend to be smaller than white-owned businesses, but BIPOC businesses of all sizes face greater challenges and barriers to accessing credit. A 2017 NCRC study found that banks were twice as likely to offer white entrepreneurs help with their small business loan applications compared to Black entrepreneurs[45]. Numerous federal reserve bank surveys demonstrate lower approval rates, greater funding shortfalls, and higher rates of discouraged borrowers among BIPOC business owners. The failures of the initial rollout of tPPP lending only reinforce this argument and show why programs must be built with racial equity from the start. In the first few weeks of the program, at a time when businesses most needed relief, the majority of loans went to larger businesses in wealthier neighborhoods. Even months later, ANHD found significant disparities in New York City, leaving out BIPOC neighborhoods and industries dominated by smaller, BIPOC owned businesses. Similar to residential lending, we also found non-bank PPP lenders to be more prevalent in communities of color[46]. New York State has already taken the lead in this area by adding an analysis of lending to MWBEs on CRA exams for state regulated banks.

- **Narrow geographic distribution tests:** The geographic distribution test will give credit for any of the small business loans in LMI tracts, but with no analysis by race of owner or business size, loans could skew towards larger and/or white-owned businesses and less so to persistently underserved small, micro, BIPOC-owned, and immigrant-owned businesses. R**egulators must focus on small and BIPOC-owned businesses in LMI/BIPOC communities**, to ensure they are benefiting - and not displacing - these marginalized business owners.

- **Quality analysis: Include analysis of loan pricing and terms** to ensure products are meeting local needs and not extracting wealth, as could be the case with high-interest credit cards, or other higher-cost products. Likewise, they should **compare the types of loans made to local needs.** For example, while we recognize that credit cards serve a purpose and should be available as needed, small businesses often report needing traditional loans and lines of credit, and less so credit cards, but the largest small business lenders are credit card lenders. Further, there is no analysis as to how well the credit cards are meeting needs with terms, pricing, and fees.

- Finally, as previously discussed above, the major product line threshold must be based on loan counts, not dollars, so as not to exclude high volume small business lenders where the total dollars falls below 15% of total retail dollars, and make sure to include all lenders, including limited purpose banks that make up a large percentage of the small business lending market.

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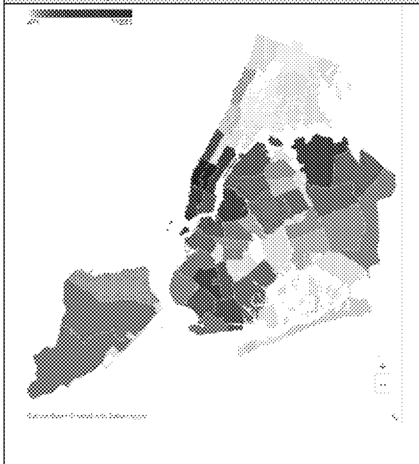
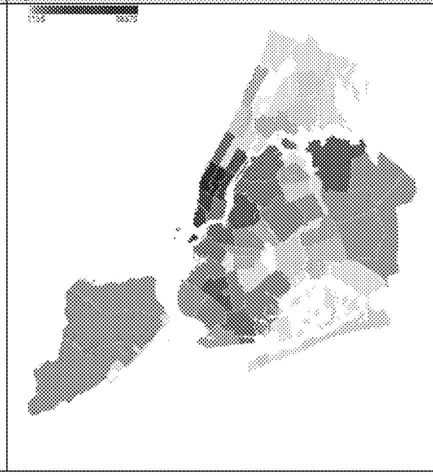
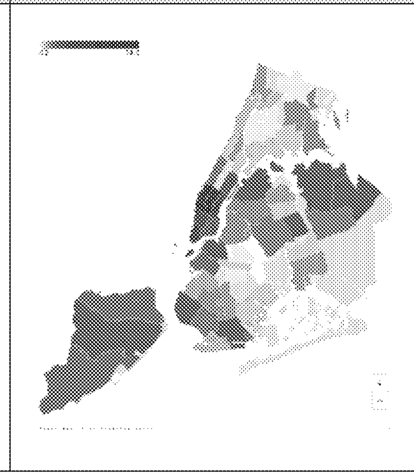
[45] https://ncrc.org/study-documents-discrimination-black-entrepreneurs/

[46] https://anhd.org/blog/new-yorks-small-businesses-left-out-paycheck-protection-program

Small Business Loans 2019 (Loans < $1M to businesses < $1M Revenue) – 2020 matches distribution	All Small Loans 2020 (including PPP, which don't often capture revenue) (Loans < $1M to businesses any size)	Branches per 10,000 people June 30, 2020
		

(7b) Community Development: Economic Development

ANHD has written extensively on this category in the past, including commenting on the 2014 Q&A revisions[47] and further in our ANPR comments (question 57). Our comments in both reflected that this category should likely be called "small business economic development." While we understand the challenges and limitations of this portion of the exam, it was always meant to increase opportunities for LMI and BIPOC people to build wealth through quality jobs and entrepreneurship.

We fear that the changes proposed move further away from both goals by removing any analysis of jobs for LMI people or in LMI communities, and increasing the size of businesses included, and continuing with a color-blind approach.

Questions 11 (jobs)

The goal to support small businesses and the goal to create quality, living wage jobs are not necessarily one in the same, although they are of course connected. Local and BIPOC-owned small businesses - many well below the $1 million revenue threshold - are the heart and soul of New York City neighborhoods - they provide jobs, community spaces, and affordable products and services. The CRA can and must do more to support these businesses.

No, job creation, retention, and improvement are not sufficiently recognized under the lending test. Ensuring equal access to capital for the most vulnerable businesses may or may not support quality jobs, simply because of how hard it can be to support living wages with such high rents, high cost of materials, and increasing competition from Amazon and big box stores. However, they are important to the fabric of the community, providing crucial cultural connections, services, and resources. They may also be the only source of employment for people with barriers to employment, including undocumented immigrants, people with criminal records, people juggling irregular schedules to

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47 *"Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment", ANHD, 2014* (page 8): https://www.federalreserve.gov/SECRS/2014/November/20141110/OP-1497/OP-1497_110614_129650_319337453583_1.pdf

accommodate childcare, or people choosing not to deal with discrimination in the workplace. All of which elevate the need for other areas of community development, including affordable housing, childcare, universal health care and other social supports.

As we noted in our ANPR letter, we agree that for the smallest of businesses, particularly those that have few or no employees, that the retail lending test may be sufficient without additional job tests. However, as businesses get closer to $1 million in revenue, and certainly above that, there should be a closer analysis of the impact on communities with regards to jobs created, retained, and improved as well as impact on other local small and BIPOC-owned businesses.

The lending test as written classifies a small business as having up to $5 million in revenue. A bank could get credit for such large businesses in LMI tracts. Despite being much better positioned to offer quality jobs, the bank has no obligation to demonstrate that it does, nor to demonstrate who is getting the job. It could be a high-cost gym in an industrial zone catering to wealthier, white New Yorkers, a retail store paying minimum wage, or a light manufacturing plant offering recent immigrants better paying jobs. We support the idea of a qualitative review in the lending test, but with few details and none related to jobs, it does not ensure the test would support financing for quality jobs in the larger businesses.

Question 13 (connection to LMI/BIPOC):
We have concerns that the economic development category is now completely devoid of any connection to LMI people or communities, while simultaneously supporting larger businesses, up to $5 million in revenue. While $5 million businesses may not be the largest businesses, especially as compared to the Amazons and Walmarts of the world, they are also not the ones most in need of capital and additional supports that fall under this category. By including them, banks have less incentive to serve the small and BIPOC-owned businesses they are already undeserving and excluding.

Given the choice between financing WeWork or some other shared space in a majority white, wealthy community and financing an affordable light manufacturing space operated by a nonprofit developer in a lower income, BIPOC community, banks will choose the former over and over again.

Which means that the persistent need for affordable rental spaces for retail stores, manufacturing businesses, and other businesses in BIPOC neighborhoods goes unmet, as do needs for technical assistance, and other forms of financing.

On a related note, we are also dismayed SBICs continue to get automatic credit when, by their own reporting, they barely reach the communities the CRA is meant to serve. A 2018 SBA study reported that **barely a quarter** of businesses financed reached underserved businesses, **collectively defined** as "LMI, women, minority or veteran owned companies or companies led by a woman or minority[48]".

There should be stronger incentives and obligations for all forms of financing under this category to support smaller businesses and BIPOC owned businesses most in need of the capital and technical support categories listed.

For larger businesses, there should be an analysis of how they benefit people and communities by looking at BIPOC-owned businesses and, separately, the types of jobs created or retained. Yet, such an activity could qualify under this proposal. Government programs and intermediaries routinely collect

[48] https://www.sba.gov/document/support--sbic-program-overview

data on the businesses they finance and serve, making this type of data accessible for regulators to evaluate, both here and under the lending test when Section 1071 is finalized.

Regarding workforce development: When we wrote the ANPR comments, we felt that other categories of CRA could capture jobs and workforce development (e.g.: revitalization/stabilization or community services). We supported proposals to move workforce development to the economic development category, while also recognizing the challenge in granting credit if it is tied to financing a small business. The regulators now propose taking it out again, moving to community services. Wherever it falls, we ask that the activity be identified as such to allow for analysis, as we are hoping in all community development data disclosure.

Meeting CDFI needs and Local Obligations

It is unclear now if loans and investments in small business focused CDFIs will fall under economic development or the separate community development category for CDFIs more broadly. However the activities are classified, the data should identify the type of activity, and the CRA must direct banks to meet the needs of local CDFIs, especially those with a targeted focus on LMI and BIPOC communities, regardless of whether or not they finance elsewhere. All may be doing great work, but the local institutions often have less access to bank capital than larger, national institutions. They are also at times forced to accept less favorable terms, as could happen more if banks do not have to invest in them.

(8) Community Development: Broadly and other consideration

Why it matters:

- Strong local CRA obligations are critical to the work of mission-driven, nonprofit developers, lenders, and organizations. Banks with strong local community development departments and staff result in more impactful activities due to more intentional outreach, partnerships, and resources.
- Too few community development activities go to nonprofits, and even fewer to community-based CDCs
- The racial wealth gap is wider than ever; 50% of renters and 79% of rent-burdened households are low-income; low-income communities of color are disproportionately impacted by evictions and other displacement pressures, projects and facilities that cause environmental harm and health problems; hospital closures; and more.

Top recommendations:

Community organizations, nonprofit developers, and CDFIs depend upon bank financing motivated by and leveraged through the CRA to support their missions. We appreciate the attention to volume, the impact review incentives for deeper affordability and grants, and new categories specific to broadband access and climate resiliency. Still, **more can be done to ensure that any activity that gets credit benefits local communities, and that banks are deterred from activities that cause harm**.

Separate Loans & Investments: (as mentioned above): As mentioned elsewhere, regulators should **evaluate loans and investments separately** within the community development finance test to ensure banks don't cease to make investments. We are most concerned about the possible impact on Low Income Housing Tax Credit (LIHTC) investments, which are a critical source of equity for affordable housing. The investment test also incentivizes other forms of investments, such as EQ2 investments and grants, which could also be impacted if investments aren't required.

Limit / Caution on prior-period loans and investments: While we appreciate that adding credit for prior-period loans may incentivize longer-term patient capital, as is the reasoning behind prior-period investments, neither should allow banks to substantially reduce originations of impactful loans, nor give additional credit for less impactful activities. This would come on top of credit they already get each time they renew or refinance the loan. Banks should be penalized for refinancing or renewing loans for CRA purposes and limit credit for prior-period loans and investments to mission driven nonprofit developers, lenders, and organizations. Any other credit should either come in the form of impact scoring, or limited to cases that clearly demonstrate how it meets a community need that was not being met before because of this CRA limitation. Further, regulators should evaluate new originations separate from prior-periods to ensure banks continue to make new originations, even if the volume from past years meets any volume tests.(see multifamily NOAH for more discussion)

Expand Anti-displacement criteria to all community development categories
Regulators must **extend the place-based anti-displacement criteria** to all community development categories and allow **downgrades for activities discounted by that criteria, or otherwise found to contribute to displacement or harm**. As recommended above, they must also be explicit in the regulation that it includes "detrimental harm to LMI and underserved populations"

Strengthen Impact Review:
We appreciate that the proposal includes both a quantitative and qualitative review. We encourage the qualitative review to feature prominently on the exam, and in such a way that it allows for the rating to go up or down, depending on the impact of the activity, as evaluated by regulators and community comments.

We appreciate the categories proposed, and recommend the following to improve upon it:

- **Expand the impact review** to include activities that close the racial wealth gap; finance long-term/permanent affordable housing; support mission-driven nonprofit developers
- **Evaluate for negative impacts** that can bring the rating down, especially when incidents of harm or displacement are uncovered in activities submitted or through other sources like community comments.
- **Incorporate local context and don't just check off boxes:**
    - Connect activities to locally identified needs, with explanation as to how the need was identified and how the activity meets those needs.
    - Downgrade if "affordable" housing does not meet local needs, as can happen if the AMI levels are far above the local neighborhood incomes
    - Ensure banks do not get "extra credit" by checking off impact score categories when the activity does not meet a local need (eg: 60-80% AMI housing in a high-poverty community; financing a business space that caters to wealthy business owners and not local small and BIPOC-owned businesses)

All activities must benefit LMI or BIPOC people, LMI communities, and majority BIPOC communities.

There must be **no credit for activities that do not explicitly benefit LMI or BIPOC** people (tenants, homeowners, business owners, employees), small businesses (under $1M revenue, and smaller categories below that), LMI communities, and majority BIPOC communities. This includes the recommendations discussed in the economic development section, as well as reverting back to ensuring financial education is geared to LMI people and communities. Any expansion would be to BIPOC people, which would fall under race-conscious evaluations.

Additionally, regulators should **reconsider the presumption that any government plan benefits local communities**. That may be true in some cases, and at such times, it can factor into impact reviews to incentivize cooperation and participation. However, here are also many instances when government plans run counter to local LMI and BIPOC community needs, and banks should not be incentivized to further such plans[49]. Proactive outreach and community input can inform the benefits and harms of specific activities presented for CRA credit.

Related, we agree that the majority (50%) of dollars or beneficiaries is a reasonable criteria to get CRA credit. Any pro-rata credit should only be considered if there is evidence that CRA financing is needed in order for a smaller percentage to serve LMI or majority BIPOC populations, and with clear explanations as to how the activity benefits those communities. As mentioned in the affordable housing section, we also urge the regulators to closely evaluate the credit for pro-rata housing credit. In some cases, the market-rate housing is high enough to cross-subsidize the affordable units, such that bank financing does not need to be further incentivized. And worse, there are many instances where the market rate housing is significantly higher than average rents in the neighborhood, which adds to displacement pressure that may offset the benefit from the affordable units. Adding the community development criteria in other categories to discount projects that foster displacement or detrimental effects would help in such cases.

Comprehensive, Accessible, local data is critical to holding banks accountable

CRA exams are conducted every two-three years, and often within assessment areas much larger than the communities groups serve. The data is presented at the assessment area level and, depending on any number of factors, may be presented annually or in the aggregate, and with varying levels of detail about the activity or purpose, usually incorporating just a few examples. The limited data is very challenging to utilize in any meaningful way.

ANHD members are located throughout the five boroughs of New York City, which falls within the larger NY-NJ-White Plains Metropolitan Division that spans several other counties across two states. ANHD members often focus on just a few neighborhoods within one of NYC's boroughs, with a few reaching beyond that to other neighborhoods or across boroughs. Many also participate in coalitions and collaboratives within and outside of ANHD to amplify their messages and work together on issues that span across city neighborhoods. Yet, no community development data is available at the local level.

For this reason, ANHD annually surveys banks on their CRA activity in New York City, which we use for our State of Bank Reinvestment reports to highlight city trends and compare banks to one another each year. We also use the data for CRA comments at times of exams and applications like mergers and branch openings, as well as in conversations with banks about their activities in NYC in any number of settings.

ANHD's data shines light on local CRA activities (new originations) by year, specific to NYC, including number of loans/investments; dollars spent; breakdown for affordable housing and economic

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49 https://anhd.org/blog/why-you-don%E2%80%99t-want-these-city-planners-be-your-doctor

development, and how many of those went to nonprofit developers, CDCs in some cases, and grants to neighborhood based community organizations. We greatly appreciate the banks that participate in our annual survey to provide this data, but even citywide data this doesn't allow for the nuanced analysis needed to see how well specific neighborhoods are or aren't being served, as we get with residential lending in HMDA, branches operating/opening/closing by the FDIC, and will soon have for small business lending data through 1071.

Several banks also provide local data (also usually at city level or other geographies -sometimes by borough) to their community advisory boards. This typically begins in the context of tracking community benefits agreements, but we find banks often continue such reporting (quarterly or biannually) because of its value in making meetings more productive when there is data to demonstrate the banks' progress, areas of strength to continue and expand, and areas in which to improve. In recent years, these have also offered opportunities for banks to establish more of the kind of race-conscious goals we are asking CRA regulators to establish, and allow banks to report out on their progress in meeting these goals. This type of data means the community input can be more targeted and impactful to identify strategies and solutions moving forward.

In order to evaluate how well banks are serving their local communities as a whole, and within them, we **need public data, and from as many banks as possible** - we appreciate that it currently includes all large banks, wholesale, and limited purpose.

We appreciate the community development data proposed, which should be made public at the census tract level.

- name of organization or entity, activity type, community development purpose; activity detail, which may include, for example, whether the activity was a low-income housing tax credit investment or a multifamily mortgage loan; indicators of the impact of the activity; location information; other details, such as indicators of whether the bank has retained certain types of documentation, such as rent rolls, to assist with verifying the eligibility of the activity; and the allocation of the dollar value of the activity to specific geographies, if available.

Recommendations for additional data points, which (as discussed at the top) should be available by census tract and disaggregated by race and ethnicity of location, director or owner, and beneficiaries.

- Origination vs purchased; new origination vs prior-period
- Detail on organization: nonprofit/for-profit; type of entity (CDFI, private business, government, CDC, private developer, SBIC, etc;
- Length of loan/investment and other characteristics
- If housing is subsidized or not, and level of affordability; length of affordability; other parameters such as homeless shelter, supportive housing, etc
- Activity beyond just: LIHTC and multifamily mortgage; eg: NMTC, EQ2, loan, line of credit
- Jobs created/retained, characteristics of employed,
- Identify grants and characteristics of organization: BIPOC-led (disaggregated), size, "catchment area" (local/county/city/state/national)
- Also include activities presented, but not accepted - and why not accepted

(9) Retail Lending Test: Residential 1-4 family mortgages

Why it Matters

- 22% of New Yorkers are Black; 29% Latinx yet fewer than 10% of home purchase loans each year go to Black or Latinx borrowers; fewer than 5% of loans by CRA-regulated banks go to Black borrowers.
- Black borrowers and borrowers in majority Black neighborhoods are underrepresented by CRA-regulated banks and overrepresented by non-bank lenders, often with higher-cost FHA loans versus conventional loans.
- 63% of East New York homeowners have unmet home repair needs; communities there for years have been calling for home repair products; barely 1% of NYC loans are home repair loans.

Summary of Recommendations here:

- Focus on loan originations. Only give credit for loan purchase to mission driven lenders, and do so through community development credit and/or qualitative reviews.
- Evaluate owner-occupied homes separate from investor-owned properties. Any evaluation of investor properties must evaluate their impact on communities, ensuring they build wealth for LMI or BIPOC people, and do not fuel harm or displacement for similar populations
- Maintain focus on lending to -and impact on - LMI and BIPOC residents and borrowers in LMI and BIPOC communities.
- Separate loan purposes and evaluate for quality, including metrics related to pricing, terms, and fees, which can then be supplemented with qualitative reviews of products and community input.
- Ensure benchmarks raise the bar, and do not foster a race to the bottom. Passing with just 1.4% of loans to low-income borrowers and less than 5% to moderate-income risks a race to the bottom.

Homeownership remains an important path to wealth creation and developing intergenerational wealth. Yet, too often BIPOC communities are locked out of homeownership opportunities, targeted with predatory products, and face limited opportunities to accumulate wealth due to lower appraisal values.

Just 26% of Black households in New York City are homeowners and 18% of Latinx households, versus over 40% for White and Asian households. Black homeowners are heavily concentrated in just a few neighborhoods, where residents and homeowners lack access to traditional branches and financing by CRA-regulated banks[50]. The homeownership rate for Latinx New Yorkers is low throughout the city.

We appreciate the proposed data-driven framework and acknowledge that it could combat grade inflation, but we have concerns about its overall impact without significant changes.

Regulators must focus on **originated loans, and not loans banks purchase.** Only give credit for loan purchases from mission driven lenders, and do so through community development credit and/or qualitative reviews.

Regulators must prioritize owner-occupied homes over investor-owned properties, and focus on

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[50] https://anhd.org/report/black-and-latino-borrowers-locked-out-homeownership-new-york-city-new-data-and-analysis-shows and https://www.nytimes.com/2021/08/17/realestate/new-york-black-homeowners.html

originations, not loans banks purchase from other lenders. Any evaluation of investor properties must focus on their impact on communities, ensuring they build wealth for BIPOC communities while not fueling harm or displacement for these populations. Several ANHD members have documented troubling trends in New York City where investors are buying up homes at greater rates, and subsequently reducing the stock of affordable homes that LMI and BIPOC first time homebuyers could potentially purchase.

- Chhaya CDC found that the share of non-owner-occupied mortgages for one to four-family homes more than doubled in the last decade, and more and more of those homes are being bought by corporations, thus reducing the number of "neighbor-landlords" who are more likely to have connections to the communities their tenants live.[51]
- The Center for NYC Neighborhoods also found that in 2017, investors purchased over one-third (38%) of the homes that sold at prices within reach of middle- and working-class families in New York City, dramatically diminishing the supply of homes affordable to those households[52]

Regulators should evaluate loan purposes separately: Purchase, refinance, repair
If the CRA is to meaningfully increase access to homeownership, regulators must look at the number of home purchase loans banks are making, separate from refinance and home repair loans. Incorporating home repair and refinance loans impedes regulators ability to see how well banks are helping people become homeowners.

Likewise, refinance and home repair loans support people in maintaining homeownership, but as we know all too well from the 2008 financial crisis, that is only if the loans are made responsibly and affordably. Regulators should also be closely evaluating other efforts to keep people in their homes, including loan modifications, forbearance, and other foreclosure prevention mechanisms.

Finally, separate analysis is important to see how well banks are responding to communities' needs for specific products, as is the case for **New York City communities that have long been asking for home repair loans**. For example, a report by the Center for NYC Neighborhoods found that 63% of East New York homeowners they surveyed reported an unmet home repair need. Cypress Hills LDC contributed to that report, and has for years been advocating directly to banks to offer home repair loans, which very few offer to this day[53]. Only recently have we gotten two banks (M&T and NYCB) to commit to offering such loans, and both happened through community benefits agreement negotiations at the times of mergers. We appreciate those opportunities and the banks for entering into the process, but the CRA should be fostering such responsiveness on its own, and not require banks to grow and expand to do so.

Regulators must incorporate an analysis of loan pricing and terms of consumer products to ensure products are meeting local needs and not extracting wealth.

This is especially the case for open-ended HELOC loans, but pertains to all loans. Likewise, regulators should **evaluate how well loan products match local needs.** For example, is a bank offering HELOCs when communities call for traditional home repair loans? Do they include limited equity coops where needed? Has a bank ceased to offer loans that communities need, as is the case with the many banks that stopped making mortgages?

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[51] https://chhayacdc.org/wp-content/uploads/2019/11/Chhaya_Investor-Invasion_July2019-4.pdf
[52] https://cnycn.org/wp-content/uploads/2018/04/Center-Flip-Report_April2018.pdf
[53] https://anhd.org/blog/cypress-hills-ldc-gets-heart-community-reinvestment-act-local-banks-must-reinvest-locally

We feel there is a fundamental disconnect in many of the questions in the NPR (eg: question 67 and others) that ask if a product or business line should be evaluated under a metrics-based retail test OR qualitatively under the service tests. They seem to indicate that the metrics analysis is mutually exclusive from a qualitative analysis.

We agree that equitable distribution is important, which is why we raise the persistent disparities in lending to Black and Latinx borrowers in New York City, especially in accessing homeownership. However, a quantitative analysis by regulators should not stop there. It should include an evaluation of pricing, terms, and other factors that benefit or harm the populations the CRA is meant to serve. This applies to home lending, credit cards, and other consumer loans. We do not need to increase the volume of high-cost credit cards to LMI people if they will be subject to punitive late fees, high interest rates, and other expensive terms. But, if that is the reason against a quantitative analysis, that should be an indicator that the line of business may be harmful to more vulnerable populations and that they need to adjust their products to meet the need for such short-term, unsecured loans. The same would be true for other consumer loans, especially open-ended / HELOC loans.

Further, the *products* evaluation of the *"Retail Services and Products Test"* is only at the institution level, not local, and only grants positive credit for responsive products, and not negative/downgrades for problematic practices and products. We prefer that the qualitative analysis be on the retail test along with a more comprehensive metrics analysis of pricing, terms and other fees.

The metrics must not allow a race to the bottom, as could happen in a high-cost market like NYC where a bank can pass with just 1.4% of home loans to low-income borrowers, who make up 27% of NYC's population.

We are glad that the market benchmark includes non-banks, or the benchmark would be even lower than it is, and lower than it would be if calculated for Black and Latinx borrowers. Nonbanks are better serving borrowers of color and LMI borrowers in some instances, partly because banks do not have an affirmative obligation to serve borrowers of color, and non-banks are filling in the gaps to Black and Latinx borrowers. However, non-banks are mainly doing so with higher cost FHA loans, versus the more affordable conventional loans, and even more affordable "CRA loans" that typically come with financial assistance, connection to housing counselors, and other features to increase access and affordability. While not at the same scale as Black and Latinx borrowers, we also find that Indian and "Other Asian" borrowers are much more likely than other Asian subgroups to receive loans from non-banks, and to receive FHA loans. If banks are allowed to pass below the market performance, they may eventually move the market down, not up. This is particularly concerning when the much higher community (demographic) benchmark shows how poorly banks are serving these communities today.

According to the Federal Reserve Board's own tables (2019) for the Metropolitan Division (MD) in which NYC is located: the ***market benchmark for mortgage lending*** to pass in NYC (low-satisfactory) for low-income borrowers is 1.4% (80% of Market at 1.7%) and moderate-income is 4.8% (80% of 6%). Meanwhile, the **community benchmark** is considerably higher: 17% (low) and 9.6% (moderate).

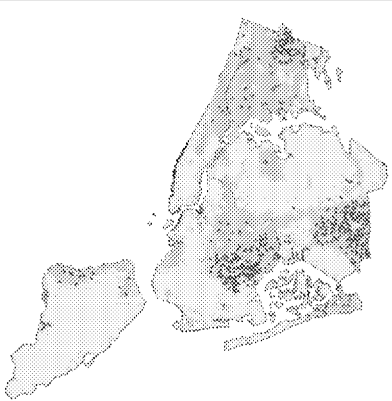
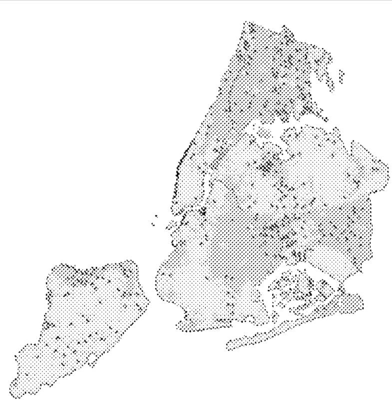
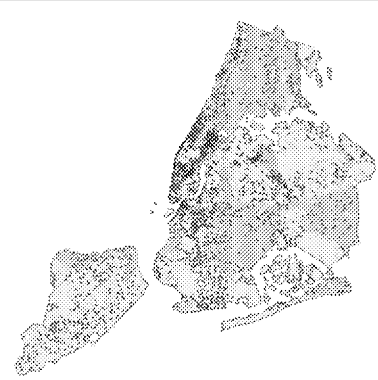
Similar disparities appear with borrowers of color. For example 22% NYC residents are Black and 25% Hispanic, but just 10.3% loans went to Black borrowers in 2019 (5.6% by CRA-regulated banks) and 8.8% to Hispanic (6.9% by banks). Percentages are slightly lower for home purchase loans alone, highlighting greater barriers to entering homeownership.

Non-banks would exceed one community benchmark with 18% of their loans to Black borrowers. Neither meet the benchmark to Hispanic/Latinx, but non-banks are closer and with higher-cost FHA loans. **Non-banks make up 63% of loans to Black borrowers and 50% to Hispanic/Latin**x, **versus just 34% to white borrowers.** Just 8% of non-bank loans to white borrowers are FHA, versus 42% to Black and 30% to Hispanic. Even among banks, where less than 1% of all their loans are FHA, 11% of their loans to Black borrowers were FHA, 4.5% to Hispanic, and less than 0.5% to white

The proposed considerations for "market failures" should be adopted and apply to New York City, even with the high cost of housing. For example, the idea of a weighted proposal could address these concerns, if done in such a way that it motivates banks to increase lending to the communities the CRA was meant to serve. In the case of homeownership, it could simultaneously motivate banks to finance the construction of affordable homeownership while also increasing lending on existing homes through greater financial assistance, affordable products, accessible products, and lending on homes not as easily financed like coops and limited equity coops.

Further, when banks fall far short of the community benchmark to underserved BIPOC, as is already the case to Black and Latinx borrowers, as well as underserved Asian populations, as the data shows to Filipino and "other" that would include Bangladeshi and Pakistani populations, regulators must automatically conduct a full fair lending evaluation and call for corrective action.

Similarly, regulators should **evaluate who gets loans in LMI/BIPOC communities** to ensure they are benefiting - and not displacing - LMI and BIPOC people. This is especially important in a high cost city like New York City. The CRA is not needed to further lending to non-LMI borrowers nor (as the maps below show) to white borrowers into LMI or BIPOC communities, but it can be an impactful tool to increase access to homeownership for LMI people and BIPOC, including non-LMI people of color who often have less wealth and fewer resources for the down payment and other costs to access homeownership even if their income can sustain a mortgage.

Home purchase loans in NYC 2019 (1 dot = 5 loans), Shaded: majority Black and/or Latinx census tracts		
		
Non-Hispanic Black 9.3% of 1st lien, home purchase (11% of all loans)	**Latinx** 9.4% of 1st lien, home purchase (9.6% of all loans)	**Non-Hispanic White** 45% of 1st lien, home purchase (41% of all loans)

Appendix 1:
ANHD and ERC Proposal for Evaluating Multifamily Lending in the Community Reinvestment Act (CRA), and similar principles can apply to other areas of CRA

This proposal offers concrete ideas for operationalizing a comprehensive evaluation of multifamily lending under the CRA to deter harm by requiring banks to adopt and adhere to anti-displacement best practices, and downgrading for financing that contributes to harm or displacement.

(1) Enhance Multifamily mortgage lending on the Retail Lending Test
   - Distribution tests
   - Quality / process analysis, including expectation to adhere to responsible multifamily lending practices

(2) Higher bar for community development
   - Redefine affordable housing in a way that explicitly does not allow housing that harms or displaces tenants.
   - Incorporate community input & data from needs assessment regarding multifamily housing
   - Option 1: ONLY income-restricted/deed-restricted housing for community development credit (as always, emphasis on deep, permanent affordability)
   - Option 2: allow "NOAH" / "Naturally occurring affordable housing" but with a much higher bar for credit

(3) Downgrade for harm and/or displacement

(1) Enhance Multifamily mortgage lending on the Retail Lending Test to evaluate the full portfolio and set a baseline expectation of lending equitably and responsibly
Note: multifamily currently gets a very cursory analysis in CRA, barely any in most cases. This proposal would fundamentally change that system.

- Evaluate for equitable distribution and affordability: location (LMI, BIPOC tracts) and analysis of affordable units (subsidized and unsubsidized)
  - Problematic if (a) redlining and no lending in BIPOC communities or target BIPOC/LMI communities with no protections for communities there and/or (b) few affordable units / only luxury housing and/or (c) few subsidized affordable units.
  - Evaluate affordability over time, to ensure rents are not going above affordable levels, or rising faster than local guidance allows, such as NYC's rent guidelines board annual/biannual increases.
  - Evaluate turnover and evictions for signs of displacement. Turnover rates for affordable units tend to be low, and especially for rent-controlled and rent-stabilized units, so higher turnover can be indicative of problematic behavior.
- Process/Due diligence: **Quality analysis**
  - **Require banks to adopt and adhere to responsible lending practices** - make it clear banks have an obligation to keep housing safe and affordable, as much as landlords do. *[SEE BELOW FOR MORE DETAILS ON THIS IN NYC, but principles hold everywhere, using all available data]*
    - Responsible underwriting criteria: Loans must be underwritten based on current rents/tenants and true costs to maintain a building, including day-to-day maintenance and capital reserves for future repairs/upgrades. There must not

be any financial incentives for rent increases that could lead to displacement, or disinvestment if rents do not increase at that pace.
        - Proper vetting of landlords to avoid lending to bad actors, and especially not without additional protections when the loan is made
        - Actions when problems arise, including engaging with tenants, community organizations, and other stakeholders to address issues
    - Evaluate how banks adhere to the practices
        - Evaluate responsible lending policies
        - Evaluate monitoring process: Ongoing monitoring of portfolio conditions and treatment of tenants, interaction with tenant organizations, and demonstrable evidence that best practices are helping
        - Affordability over time, evictions/tenant turnover, change in rent levels (knock out loan if unaffordable over time; factor into displacement analysis)

Create a much higher bar for a loan to be accepted for additional community development credit. This is especially the case for NOAH, but important in all cases. (principles extend to other types of loans, outside of housing)

Redefine affordable housing: Affordable housing should be defined as housing that is safe, stable and affordable to low- and moderate-income families.

- **Affordable**: Affordable to LMI families, with deeper analysis to ensure housing is affordable to the community in which the housing is located
    - One idea: if in an LMI tract being used as a proxy when income restrictions are not available, housing must be affordable to the incomes in that tract / community
- **Stable**: Housing must be affordable over time, not just at origination.
    - Underwriting must support long-term affordability and proper maintenance, both day to day and in the case of larger repairs. No financial incentives to raise rents
    - Banks cannot underwrite to future rents above what current tenants can afford, even if below 60% AMI as proposed in NPR
    - No evictions or high turnover.
    - Landlord does not have a record of harassment, evictions, high turnover, or displacement
- **Safe**
    - Housing is in good condition, or have a concrete plan for repairs that is communicated to and agreed-upon by tenants
    - Landlord does not have a record of operating buildings in poor conditions and violations.

Community Needs / Needs assessment: In all cases, ensure that the loans being submitted for community development credit reflect a comprehensive needs assessment and strategy to meet those needs. Not simply loans done in the normal course of business that happen to check the box.

Option #1: Only allow CRA credit for loans that contribute to long-term affordable housing that is income- and/or deed-restricted and where the bank can demonstrate that the loan is contributing to long-term safe affordable housing at affordability levels that meet local needs.

- Building is in good condition, and if not, there is a time-limited, concrete plan to improve conditions as may be needed if a mission driven developer acquires a building in need of significant renovations and improvements

- Responsible underwriting contributes to safe, stable affordable housing
- Landlord has a demonstrable track record of managing affordable housing and maintaining affordability
- Plan to address issues that arise, before or after loan is made, with evidence that plan worked

Option #2: Allow NOAH housing, but only under strict conditions

Income-Restricted/Deed-restricted/Subsidized Housing: only allow credit if the bank can demonstrate that the loan is contributing to long-term safe affordable housing at affordability levels that meet local needs.

- Building is in good condition, and if not, there is a time-limited, concrete plan to improve conditions, as may be needed if a mission driven developer acquires a building in need of significant renovations and improvements.
- Responsible underwriting contributes to safe, stable affordable housing
- Landlord has a demonstrable track record of managing affordable housing and maintaining affordability
- Plan to address issues that arise, before or after loan is made, with evidence that plan worked

Unsubsidized "NOAH" housing (includes rent-stabilized)
Only allow credit if bank demonstrates:

- Affordability to LMI / BIPOC tenants (and current analysis of likelihood that LMI tenants live there, such as by being in an LMI tract, or other analysis)
- Responsible Underwriting practices and how it will maintain affordability and good conditions over time. Including analysis of current conditions and plans to improve poor conditions without raising rents for tenants
- Maintained affordability over time, no evictions, low tenant turnover,
- Process to vet the landlord: report on analysis and expectations set out to landlord (eg: via an MOU or stricter conditions in mortgage)

Downgrade for harm and displacement - and create a corrective plan:

- We are exploring numerical metrics that should be reported, benchmarked, and monitored, with requirements for banks to fill in data not publicly available.
  For example:
  - % of new loans / portfolios, and issues since last exam
  - Landlords: vetting process
    - Landlords on public watchlists
    - Court cases against landlord
    - Press & tenant input
  - Housing conditions, such as violations by type (at time of loan origination, and annually): NYC housing B & C violations (most serious), Dept of Building (DOB) violations, etc
  - Evictions & tenant Turnover and characteristics of those displaced.
  - Number of units and families housed
- Downgrade possible If banks continue lending after issues raised and not resolved
- Downgrade possible if Insufficient policies and/or enactment of policies
- **Triggers in response to public comments (and similar concerns identified by regulator-directed research)**
  - **TENANT LETTER TO BANK TRIGGERS AN OBLIGATION BY BANK**

        - Visit buildings, talk to tenants, and take action to address issues, working with tenants as much as possible to craft that plan of action.
        - Report back to regulators and tenants on actions taken
        - Regulators must review these when evaluating banks. Inaction or worsening conditions must trigger a downgrade.
        - **Report findings publicly, such as on CRA exam**
    - **LETTER TO REGULATORS ABOUT BUILDINGS / LANDLORDS TRIGGER MORE SCRUTINY**
        - Deeper dive into underwriting, landlord, conditions.
        - If multiple landlords identified, do a deeper analysis of full portfolio and practices, and where they are falling short
        - Regulators can visit buildings, talk to tenants, convene meetings and can trigger downgrade if evidence of harm (violations, visual evidence, conversations with tenants, visit, etc)
        - **Report out on findings publicly, such as on CRA exam**

- **Downgrade for harm and require a corrective plan**
    - Any indicator of harm requires downgrade and a corrective plan / action plan for the bank to follow

ANHD's Multifamily Best Practices (updated and more detailed from what we have on our website)

Banks must adopt and adhere to **multifamily anti-displacement best practices** in all forms of housing, subsidized and unsubsidized. Downgrade banks for lending to landlords who harass or displace tenants, and/or keep buildings in poor conditions.,

- **Responsible Underwriting** with a DSCR of 1.2X or more in rent-stabilized buildings, underwriting to current rents (including preferential rents) and realistic expenses with transparent benchmarks for Maintenance & Operation (M&O) as well as reserves for capital costs, with no financial incentives in the mortgage to increase rents over time, such happens at times in NYC's rent-regulated buildings when landlords raise preferential rents to registered rents, or pass on costs related to Major Capital Improvements (MCIs) or Individual apartment Improvements (IAI)s. Nor should they have a any incentive to cut back on maintenance
    - Create a **memorandum of understanding** for borrowers to sign at closing (and/or outlined in the mortgage) laying out the bank's expectation that the borrower maintain the building in good condition, follow lead mitigation laws, not harass tenants, and preserve affordable housing. This is especially important during an ongoing pandemic when evictions cause even more harm than before.
    - **Clarify "good repair" clause** in mortgage, so it's more specific and easier to enforce if any non-monetary clause can be, and/or for the bank and tenants to refer to if the borrower doesn't comply. (there isn't a standard definition of "good repair")
    - **Make lead mitigation more front and center in the mortgage** to make sure borrowers know the severity of it
- **Proper Vetting of Landlords,** taking all steps possible to avoid lending to bad-acting landlords with patterns of harassment, displacement, eviction filings, and poor conditions. Banks should identify landlords with problematic records and histories.

Sources banks should consult for landlords and buildings include, but are not limited to the following, some of which are specific to NYC, but banks should do all possible to identify relevant lists and sources in their neighborhoods:

- High rates of violations, liens, judgements against landlord or building
- Lists of distressed assets, such as UNHP's Building Indicator Project and HPD's distressed building lists, and buildings in the city's Alternative Enforcement Program (AEP)
- Public Advocate's Worst Landlord List in NYC
- Local coalition lists such as Stabilizing NYC coalition's target list and Right to Counsel's Worst Evictor list in NYC
- News reports of problematic landlords and buildings
- Landlords under investigation or with active cases filed by the NY Attorney General, in housing court, or other legal jurisdictions
- Landlords identified by tenants and tenant organizers through regular roundtables, or other direct communication with the bank

- **Responding to issues in buildings:** Create a formal process to work with tenants and organizers to respond when problems arise in buildings they finance. This could include hiring a tenant liaison or designating existing staff as a contact for tenants to reach out to. However it is structured, the bank has a vested interest in ensuring that tenants are living in good conditions, free from harassment and additional rent burden. The banks should also have a process to help **transfer distressed properties** to preservation minded developers or tenant ownership

- More proactive and ongoing monitoring and outreach out to ANHD/Tenant organizers
    - If the bank makes a loan to someone who raises flags (a) notify the orgs when it happens and (b) actively monitor those properties to evaluate the decision and be ready to respond if problems arise: rents, vacancies, conditions, violations, etc (***"Flags"*** include, but not limited to: high BIP / distress, AEP, worst landlord, worst evictor, Stabilizing NYC, negative press, lawsuits, elevated eviction levels (new data from OCA), reports to bank)
    - Ongoing monitoring of portfolios overall - conditions, vacancies, evictions, permits - maybe also acquisitions by landlords?
- Data regarding implementation of best practices. Regular updates with practices, policies, and data to demonstrate that the bank is complying with the best practices against measurable goals.
    - Steps the bank is taking to identify potentially problematic landlords ("caution list") - lists, brought to attention, unresponsive,
        - Actions taken when identified pre/post loan
        - Actions taken to mitigate problematic conditions and behaviors, and actions taken when this does not happen

Appendix 2: Copy of ANHD Comments to DFS Submitted January 2022
Evaluating MWBEs on New York State CRA Exams

Meredith Weill
Deputy General Counsel, Consumer Protection and Financial Enforcement
Department of Financial Services
One State Street, 20th Floor
New York, NY 10004
Submitted via email: Meredith.Weill@dfs.ny.gov

January 3, 2022

RE: Proposed amendment to 3 NYCRR 76, Compliance with Community Reinvestment Act Requirements

Dear Ms. Weill:

I am writing on behalf of The Association for Neighborhood and Housing Development (ANHD) to comment on the proposed regulation that empowers NYS Department of Financial Services (DFS) to evaluate how well New York regulated banks are meeting the credit needs of minority- and women-owned businesses (MWBEs) under the new amendment to the NYS Community Reinvestment Act (CRA)[54].

ANHD is a member organization made up of over 80 community groups across New York City. Our mission is to build community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. We also convene the Equitable Reinvestment Coalition which is dedicated to holding financial institutions accountable for the wealth and racial inequities they helped create and continue to perpetuate.

As ANHD has written extensively over the years, given the origins of this civil-rights era law, and persistent disparities in lending today, the CRA should never have been color-blind. **Rather, we believe banks should have an *affirmative obligation* to serve borrowers and communities of color equitably.** The legislators who wrote the CRA clearly understood the impact of redlining on communities of color and cited it as a reason for passing the law back in 1977. FDIC Board Member and former Chair Gruenberg also highlighted 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 community, 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.***[55]"

We were pleased to see NY state Governor Hochul indicated a similar sentiment when she announced the final passage of a law adding non-bank lenders to NY State's CRA (bold/underline added for emphasis): "This expansion of the New York Community Reinvestment Act further strengthens this state's commitment to ensuring all New Yorkers have the opportunity for homeownership," **Governor Hochul said.** "This legislation will ensure everyone has fair and equal access to lending options in their

[54] Data required per recently passed law, A03235 / S03223 https://nyassembly.gov/leg/?term=2019&bn=S03223
[55] https://www.fdic.gov/news/news/speeches/spoct2918.html

pursuit of purchasing a home, **especially in communities of color which continue to be impacted by the effects of the pandemic and have historically faced many more hurdles when seeking a mortgage**."[56]

We applaud the legislature for taking a step in that direction by amending New York State's CRA law to require an evaluation as to how well banks lend to and serve minority- and women-owned businesses (MWBEs) as part of their obligations under the law.

While possibly outside the scope of this rulemaking, **we also urge DFS to take this opportunity to identify other ways to explicitly incorporate race in New York State's CRA**. As we have written to the federal regulators as they modernize CRA at the national level, we believe such an analysis is consistent with the purpose and intent of the law, as a tool to combat redlining[57].

Small Business Needs remain unmet, particularly for BIPOC-owned, immigrant-owned businesses

Small businesses – particularly BIPOC- and immigrant-owned businesses – were hit hard during COVID in the face of voluntary and mandatory shutdowns, disruptions due to illness, increased expenses to keep themselves safe, and fewer customers with money to spend. As of May 2021, the number of small businesses open in New York City was down 40% from pre-pandemic levels[58]. Early reports found that nationwide, 22% of businesses permanently closed from February to April 2020, and within those closures, Black-owned businesses were hit the hardest, with 41% closed, followed by 32% of Latinx-owned businesses and 26% of Asian-owned businesses, versus just 17% of white-owned businesses[59]. Given that fewer than 25% of businesses in our region were owned by BIPOC to begin with, these statistics are alarming[60].

The pandemic exacerbated inequities that were in place long before the pandemic, impacting their ability to pay high and rising rents, combat harassment and displacement pressures, and access affordable banking services and capital. All these factors directly impacted their ability to weather the pandemic. As such, the long-standing racial wealth and access disparities contributed to worse financial health and inequitable access to relief during COVID for BIPOC business owners[61].

While the data on small business lending is extremely limited in most cases, using a combination of the public lending data we have, coupled with surveys and studies, it is clear that banks and financial institutions have not been adequately serving small businesses. As referenced above, some of these disparities and unmet credit needs have been documented broadly in the Federal Reserve Banks' annual small business credit surveys.

As ANHD has found from analyzing publicly available data, small businesses are not being adequately served by financial institutions in New York City.

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[56] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202111011
[57] Page 7 (Question 2): https://www.federalreserve.gov/SECRS/2021/February/20210224/R-1723/R-1723_021621_137896_485675450682_1.pdf
[58] https://tracktherecovery.org/
[59] https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy_COVID19andBlackOwnedBusinesses
[60] https://www1.nyc.gov/assets/sbs/downloads/pdf/businesses/BENYC-briefing-paper.pdf 2.1% of businesses are Black-owned, approx 10% Hispanic, approx 20% Asian
[61] https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color

Average small business loan sizes indicate banks are relying heavily on credit card loans or on loans too large for many small businesses to access[62]. The range of loan sizes varies greatly by bank among the institutions lending in NYC, including some with average loan sizes below $20,000. Unfortunately, too many of these small dollar loans are credit card loans, especially by the largest banks. While credit cards serve a purpose, most small businesses lack access to traditional loans and lines of credit. Citywide, roughly 30% of all bank small business loans are made by limited purpose credit card banks and the percentage would be higher if we were to include the credit card loans made by banks that do not have separate credit card entities[63]. Only Chase and Capital One still had separate credit card banks in 2018 and those entities account for over 95% of small business loans at each bank. It is likely the ratio is similar at other large banks if we could separate them out.

Second, analysis of recent small business and branching patterns citywide shows that the distribution of both bank branches and loans remains inequitable, with fewer branches and loans in BIPOC communities; the disparities are most pronounced in Black and Latinx communities.

Access to Financial Services – branches and loans – are lower in BIPOC communities, and most pronounced in Black / Latinx communities.

While we do not have data by race of borrower, we can analyze distribution of lending where we see the similar racial disparities as appear in access to banking and home lending.

Citywide, every year, we find small business lending is largely concentrated in lower Manhattan and other whiter, wealthier communities, which also partly reflects the inequitable distribution of businesses established in New York City. 47% of census tracts in New York City are majority Black and/or Latinx, but just 21% of small business loans were in these communities; Just 6.8% of small business loans were

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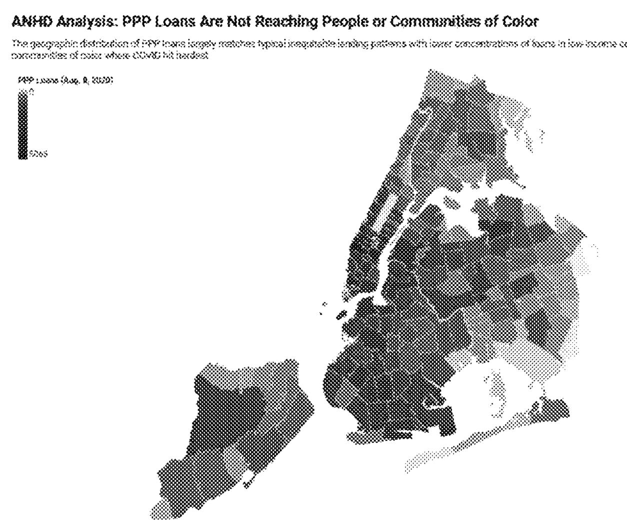
[62] https://anhd.org/report/bank-reinvestment-risk-occs-cra-rule-will-hinder-covid-recovery

[63] Limited purpose credit card banks are banks that only make credit card loans, such as American Express, Discover, Synchrony, Chase Bank USA, and Capital One Bank USA (the latter two are part of the banks' holding companies). Limited purpose credit card banks are only be evaluated on their community development activity unless they chose to have their consumer loans evaluated using the "strategic plan" option, which allows a bank to submit a plan for their CRA activities.

made in majority-Black census tracts. The patterns of small business lending closely match the patterns of bank branches and correlate with studies demonstrating the connection between branches and lending[64]. These same business owners also need access to branches and banking to establish credit and conduct day-to-day banking, which for some may involve depositing large amounts of cash at the end of the day, which cannot be done at an ATM, if one is even available to accept deposits. In many cases, small business banking needs mirror those of individuals. Black and Latinx households are five to six times more likely to be unbanked than white households[65]. These same populations are more likely to be sole proprietors and tend to have weaker banking relationships and rely more upon personal funds[66].

Small Business Administration (SBA) data on the COVID relief Paycheck Protection Program (PPP) was one of the only times we've had public access to loan-level small business data by lender, including banks and non-banks, and characteristics of businesses served. With this data, ANHD found that hard-hit communities of color were locked out of the first rounds of funding, which was most urgently needed to keep businesses there open[67]. For example, we found that:

- **PPP loans did not reach people or communities of color** - The geographic distribution of loans largely matches pre-existing inequitable lending patterns, with lower concentrations of loans in low-income communities and communities of color where COVID hit hardest.
- **Nonbank lenders are more prevalent in communities of color and with smaller businesses -** The percentage of PPP loans by nonbanks are higher in communities of color - communities that have fewer traditional bank branches and higher rates of unbanked people. These nonbank and additional online-only lenders were also more likely to make loans under $150,000, meaning small businesses did not have the same access to traditional banks for PPP loans.
- **Loans did not reach the industries that needed them the most** - 30% of loans went to businesses that are more suited to working remotely and less likely to need as much relief. Whereas, just 50% went to "face-to-face" industries that needed it most when they had to shut down or reduce operations.



For all these reasons, we are eager to see analysis of MWBEs explicitly in bank CRA exams and support its swift implementation.
We offer this letter to provide feedback on DFS's proposed regulations to implement the new MWBE requirement, including how it may incorporate data to be collected under Dodd Frank 1071[68].

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64 https://ncrc.org/relationships-matter-small-business-and-bank-branch-locations/
65 https://economicinclusion.gov/surveys/2019household/documents/yoy-analysis.html?where=MSA_Unbanked_New_York_Newark_Jersey_City_NY_NJ_PA_2019_YOY_Analysis
66 https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2021/sbcs-report-on-firms-owned-by-people-of-color
67 https://anhd.org/blog/new-yorks-small-businesses-left-out-paycheck-protection-program Analysis of PPP lending in NYC through Aug 8, 2020
68 https://www.consumerfinance.gov/1071-rule/

Definitions proposed in the Regulations (bold/italics added)

"Minority" is proposed to be defined as any person who is a member of one of the following groups: (1) Black (2) Hispanic/Latino (3) Native American or Alaskan native (4) Asian and Pacific Islander.

ANHD supports this definition and asks that DFS expand to incorporate the disaggregated categories currently in HMDA and proposed in Section 1071 regulations under consideration. We are pleased that it does not mirror MWBE certification language, and that it does not require such certification, as that specifies requirements for residency or citizenship. But we also note that the state has a slightly more nuanced set of Asian categories that could be used until Section 1071 is released, but full disaggregated race data is much more preferable, ideally with additional data specific to NYC populations.

As we wrote in our 1071 comment letter, the "other Asian" category in HMDA includes Bangladeshi and Pakistani populations who make up 6% and 8% of New York City's Asian population, respectively, and much higher in certain neighborhoods. It would be helpful to have access to this demographic breakdown. Similarly, Dominicans make up a larger percentage of the New York City population than Puerto Ricans, yet the Hispanic breakdown only includes Puerto Rican, Mexican, and Cuban. It would be helpful to have Dominican, and possibly further breakdown such as Colombian, Ecuadorian, and Honduran.

"Minority-owned business" is proposed to be defined as: more than 50% of the **ownership OR control** of which is held by one or more minority individuals. And **"Women-owned business"** defined: more than 50% of the **ownership OR control** of which is held by one or more women

We appreciate that this definition does not depend upon a business being certified as an MWBE. However, we note that the definition differs from most definitions of MWBE by using "OR" rather than "AND" when looking at ownership and control.

NY State MWBE definition: Under Article 15-A of the Executive Law, an MBE is a business enterprise in which at least fifty-one percent (51%) is owned, operated **AND** controlled by [specific "minority" categories"]

Section 1071 proposed definition: require more than 50% of the ownership interest **AND** more than 50% of the profit/loss resides with women or members of a minority group.

"Application" proposed definition. For the purposes of this section only, the term "application" means an oral or written request for a loan or other extension of credit that is made in accordance with procedures used by a banking institution for the type of credit requested, and shall not mean (i) reevaluation, extension, or renewal requests on an existing business credit account, unless the request seeks additional credit amounts, or (ii) inquiries and prequalification requests

DFS is redefining an application at the same time as the CFPB is considering similar changes related to Section 1071; the two should match up and capture as many loans as possible.

In response to this definition, we make the same recommendation we are making to the CFPB, which is to reconsider the exclusions listed, especially with regards to reevaluation, extension, or renewal requests, which are currently included in the FFIEC CRA small business data that DFS presumably will be using elsewhere in its exam.

In this pre-1071 phase, it is important that the data include the same data used elsewhere on CRA exams and that any difference provides more information,not less. In which case, DFS can and should use this new data for all small business lending, perhaps pulling out loans under $1 million to match existing methodology for the small business part of the CRA analysis. We urge DFS to collaborate with, and encourage, the CFPB to create a strong, detailed set of data in 1071 that they can utilize when it is available.

In addition to CRA consistency, refinances and renewals are important components of the credit market. Many businesses took out loans before COVID hit, and possibly during COVID. They have been and continue to apply to refinance and restructure these loans. If they are not able to do so, it can impact their ability to operate moving forward. Similarly, the ability to renew a line of credit is important, as the loss of that line means the loss of available credit, and could hinder their ability to access a similar loan elsewhere. The data should be included and separated from new originations. DFS, and the CFPB, should consider counting as an application any inquiry in which a borrower's credit is pulled.

Changes proposed to Lending Test:

DFS inserted MWBEs into the lending test overview, which now reads: "lending activities by considering a banking institution's home mortgage, small business, **MWBEs**, small farm, and community development lending." They also add **MWBEs** to the components of the lending tests so as to evaluate (a) total lending to MWBEs (b) geographic distribution of MWBE loans in assessment area and LMI tracts; and (c) distribution of loans that are to MWBEs. DFS also added MWBE to the qualitative analysis: "The banking institution's use of **innovative or flexible lending practices** in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies, or **MWBEs**."

Changes to two of four Community development categories

DFS inserted MWBE into **community services** ("(2) community services targeted to LMI individuals or **MWBEs**", and **economic development** "(3) activities that promote economic development by financing businesses, including **MWBEs**, or small businesses / farms"

We ask DFS to implement a more nuanced analysis in lending and community development. The way the regulations are written indicates that all loans to MWBEs will be combined. We already see limitations in analysis of small business lending with very small businesses combined with businesses closer to the $1 million revenue limit.

DFS should at the bare minimum evaluate loans to "minority-owned" businesses separately from women-owned businesses and should ultimately evaluate the different categories listed separately by race and ethnicity, and allow for disaggregated race data analysis when that is available. DFS should also consider analyses based on business size within the MWBE categories and within small business analysis overall. CRA evaluations should tie directly to needs identified in the performance context which will show unmet credit needs among specific populations and the smallest businesses.

Further, wherever this data is used on CRA exams, DFS has an opportunity to evaluate different types of loans to see how they are meeting local credit needs. For example, DFS can evaluate loans and lines of credit separate from credit card loans, as they meet different needs.

Finally, we strongly urge DFS to incorporate this new data and the full 1071 data into its fair lending analysis. Not only can they see if banks are or aren't lending, but they can also analyze pricing and loan characteristics among MWBEs as compared to white-owned and male-owned businesses. They should be doing similar analyses in home lending for both banks and non-banks when the latter is finalized. Redlining persists in many communities, but we also see a prevalence of non-bank mortgage lenders in Black and Latinx communities, often relying upon higher-cost FHA loans.

Data Collection & Pending Section 1071 data

The proposed regulation states: "Subject to the requirements of this section, in the case of any application by a business to a banking institution for credit, **the banking institution shall: (1) inquire whether the business is a minority- or women-owned business**, …."

This language indicates that banks will collect data and record if a business is or is not an MWBE. However, the proposed language further down suggests that lenders may only need to collect loan data for minority- or women-owned businesses when it states "In general. As applicable, each banking institution shall **compile and maintain a record of the information provided by any applicant identifying itself as a minority- or women-owned business** pursuant to a request under subdivision (b) of this section, or a record that an applicant declined to provide such information."

it is important that DFS clarify in its final regulation that all lenders need to report the data for all loan applications, not only applications from minority- or women-owned businesses. This is critical to evaluate the lending landscape and how well MWBEs are being served. It is also necessary to implement the proposed changes to the lending test that evaluates the "distribution of loans that are to MWBEs." This would be akin to how examiners look at the percentage of 1-4 family loans to LMI borrowers and small business loans to businesses under $1 million in revenue. This is also necessary to implement the changes to the lending test that will evaluate the "distribution of loans that are to MWBEs.".

Please make it clear in the final regulation that lenders need to collect this informative set of data for all business loan applicants. We also urge DFS to make this invaluable data available to the public, so we can use it in our advocacy work and to engage with banks

DFS proposes to collect the following information for each application
(i) the number of the application and the date received;
(ii) the type and purpose of the loan or other credit being applied for;
(iii) the amount applied for, and, if approved, the amount approved
(iv) the type of action taken and the date of such action
(v) the census tract of the principal place of business
(vi) the gross annual revenue of the business in the prior fiscal year
(vii) whether the business is a minority-owned business, a women-owned business, or both, (or declined to answer one/both)

(viii) any additional data that the Department determines would aid in fulfilling the purposes of this section.

Data such as this would be invaluable and should be made public for external evaluation by all stakeholders, as we expect and are strongly recommending in our comments for Section 1071 data. It is unclear how usable the data will be without consistent categories, such as we have in HMDA and as proposed for 1071 (eg: options to choose related to credit type, actions taken, etc.), but we are eager to see it in any form and ask that banks be allowed to provide multiple uses of the funds. They should also specify if it is a new origination, refinance, or renewal.

Given that this is being developed concurrent with the 1071 rulemaking, we strongly urge DFS to move to 1071 as soon as that becomes available, and only deviate if DFS is gathering information that is not captured in 1071 that would add to our understanding of the market and can be appended to 1071 data. Otherwise, the data will be challenging to compare. Also, we do not want a system where banks can choose to submit the data set that makes them look better, which could be the case if DFS's data is less detailed than the final 1071 data and thus misses aspects of disparities or discrimination.

Within this context and in the pre-1071 period, we ask that DFS add the number of employees. To be consistent with 1071, you would capture the number of owners and number of non-owner employees (full time, part time, and seasonal together).

We are pleased that DFS specifies banks be required to ask about MWBE status, regardless of how application is received (mail, in person, phone, internet), but see that they must also notify in writing that it's not required and can't be used against the applicant. We recommend DFS offer language for lenders to use that encourages borrowers to provide the data. The universal loan application offers an example of such language[69]:

"The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the housing needs of communities and neighborhoods are being fulfilled. For residential mortgage lending, Federal law requires that we ask applicants for their demographic information (ethnicity, sex, and race) in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to provide this information, but are encouraged to do so"

Thank you for this opportunity to comment. We look forward to seeing this analysis within CRA exams and fair lending tests for state-chartered banks. For more information, please reach out to Jaime Weisberg, ANHD's Senior Campaign Analyst for responsible banking (jaime.w@anhd.org, 718-637-3054)

Sincerely,

Barika X. Williams
Executive Director
Association for Neighborhood and Housing Development

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[69] https://singlefamily.fanniemae.com/media/7896/display