Memo

To: Board of Governors of the Federal Reserve System, OCC, FDIC, and OTS
From: ANHD
Date: August 9, 2010
Re: Docket ID OCC-2010-0010: Proposed Rulemaking Regarding the Community Reinvestment Act Regulation

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Over the past several years, the Association for Neighborhood and Housing Development (ANHD) has been working with our partners to develop sustainable solutions to the problem of overleveraged multi-family buildings, tens of thousands of which are experiencing physical and/or financial distress. As its been widely reported, the business model employed by these private equity-backed owners consisted of purchasing the property for a price that was unsupportable by current rents and relying on either a perpetually rising housing market or faulty underwriting assumptions and high levels of tenant turnover, especially through harassment, which would allow the owner to raise rents substantially. This business model has become known as "predatory equity." While thousands of working class tenants have been displaced, the business model as a whole has proven ineffective and left residents and neighborhoods across the city in an untenable position.

While tenant organizing and political intervention have been successful at preserving several at-risk buildings, neither advocacy organizations nor the city's housing agencies have not been able to develop the right mix of incentives or apply enough pressure to convince banks that it would be in everyone's best interest to acknowledge the true value of the properties and write down the value of the mortgage. Indeed, a February 2010 Congressional Oversight Panel Report on Commercial Real Estate found that many lenders seem to be engaging in the practice of "extend and pretend", where they delay loan modification in the attempt to "make banks appear stronger than they really are and provide an artificial floor for real estate prices." This inaction by banks is leading to declining building conditions and destabilization of communities.

ANHD believes that CRA is an important tool that can help incentivize the preservation of these overleveraged properties. It is unclear, however, what preservation minded- banking activities would count for CRA credit and if there is a way to ensure those community development activities received the greatest amount of credit possible. Thus, ANHD supports the proposed rule change to the CRA regulations, which would allow positive consideration for all community stabilization activities.

It may be useful to explain why ANHD believes that these activities warrant CRA credit. First, 60% of the city's housing units are in multi-family properties, making these buildings the predominant form of housing stock. Second, existing public and private foreclosure prevention efforts, which are targeted toward neighborhoods with a high percentage of single family homes, are not workable in many of the city's neighborhood where large apartment buildings dominate. Finally, if a multi-family building goes into foreclosure, the impact is felt more deeply and more broadly than in the case of a single-family home.

Therefore, ANHD believes that all activities that have an explicit purpose of stabilizing communities should be given consideration as community development activities. More specifically, ANHD believes the activities detailed below would foster preservation of overleveraged multi-family properties and advocates for a broad interpretation of the CRA regulations so that they and the widest range of interventions are rewarded.

- Discount Sale

  Similar to how banks may transfer Real Estate Owned-properties to mission driven organizations that are committed to rehabilitation and re-sale at an affordable price, banks that discount the sale of an overleveraged multi-family property should receive CRA credit. ANHD believes the value of the write down (i.e., the difference between the original mortgage and the discounted price) should count as an "in kind" donation and as such, be counted as CRA-eligible philanthropy under the investment test.

- Note Sale with Qualified Developers

  In the case that a bank is looking to sell a note on a multi-family building, it is ANHD's position that the bank should notify the local housing agency, such as the New York City Department of Housing Preservation and Development, prior to publicly marketing the debt. Working together, the bank and housing agency should seek proposals from qualified developers who are committed to maintaining the property as affordable housing over the long term. When this process results in the sale of the debt to a local not-for-profit or a mission-driven for-profit, the bank should receive CRA credit.

- Participation in "First Look" programs

  In cases where the bank is going to begin foreclosure proceedings or sell the debt, local housing agencies should have the opportunity to inspect the property and determine if it wants to facilitate its purchase by a third party. Similar to the note sale scenario outlined above, the bank and city would select the purchaser from a list of qualified developers and determine a price that reflects current rents and necessary rehabilitation work. Given this process will ensure the city has an option to remove at-risk buildings from the speculative cycle, ANHD believes CRA credit is warranted under the services test.

- Loan Modification

  While in most cases a sustainable solution would require a change in ownership, ANHD could support the current owner staying in place if the owner committed to improving building conditions and refraining from tenant harassment. Since the loan modification does not result in a new extension of credit, ANHD believes that this activity should be considered for CRA credit under the services test.

In addition, activities that demonstrate innovation and/ or fulfill an unmet need should receive extra consideration under the community development test. ANHD urges the four federal regulatory agencies to move forward with the proposed rule change and continue to use your broad authority to encourage New York City's financial institutions to be responsive to the problem of overleveraged properties.