Association for Neighborhood & Housing Development

November 19, 2018

Comments regarding "Reforming the Community Reinvestment Act Regulatory Framework"

RE: Docket ID OCC-2018-0008

To Whom It May Concern:

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

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

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

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

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

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

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

Current Regulatory Framework

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No mention of Equitable Distribution of lending in the ANPR

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

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

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

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

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

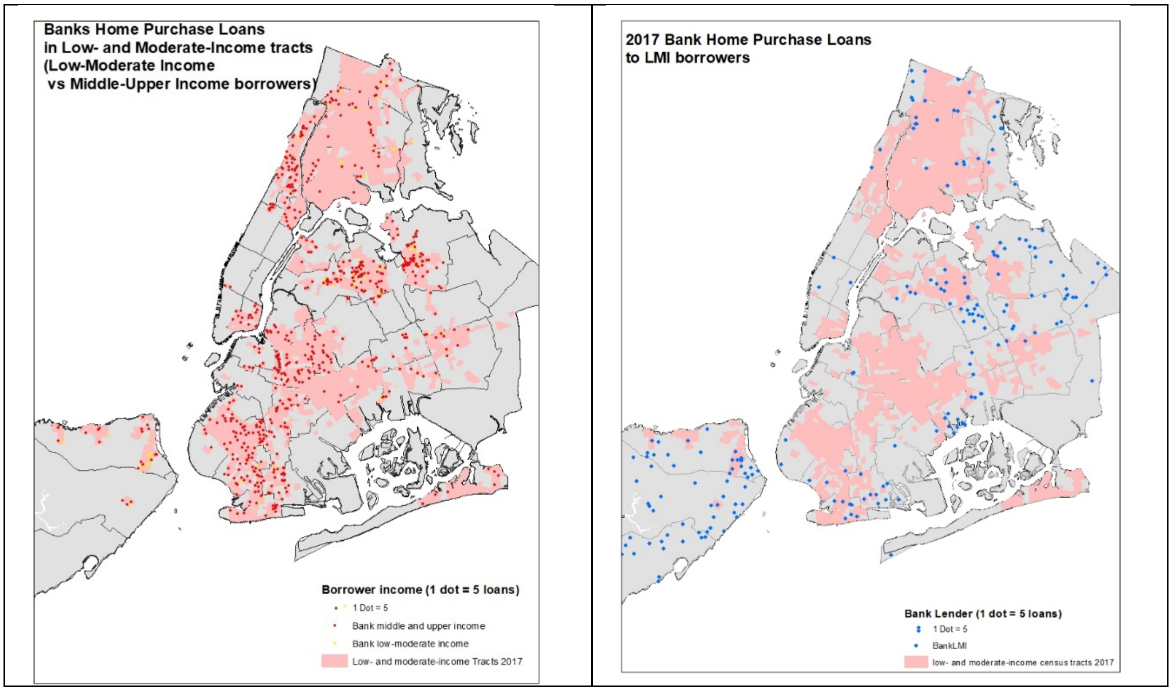
[4] http://furmancenter.org/thestoop/entry/new-report-analyzes-new-york-citys-gentrifying-neighborhoods-and-finds-dram

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

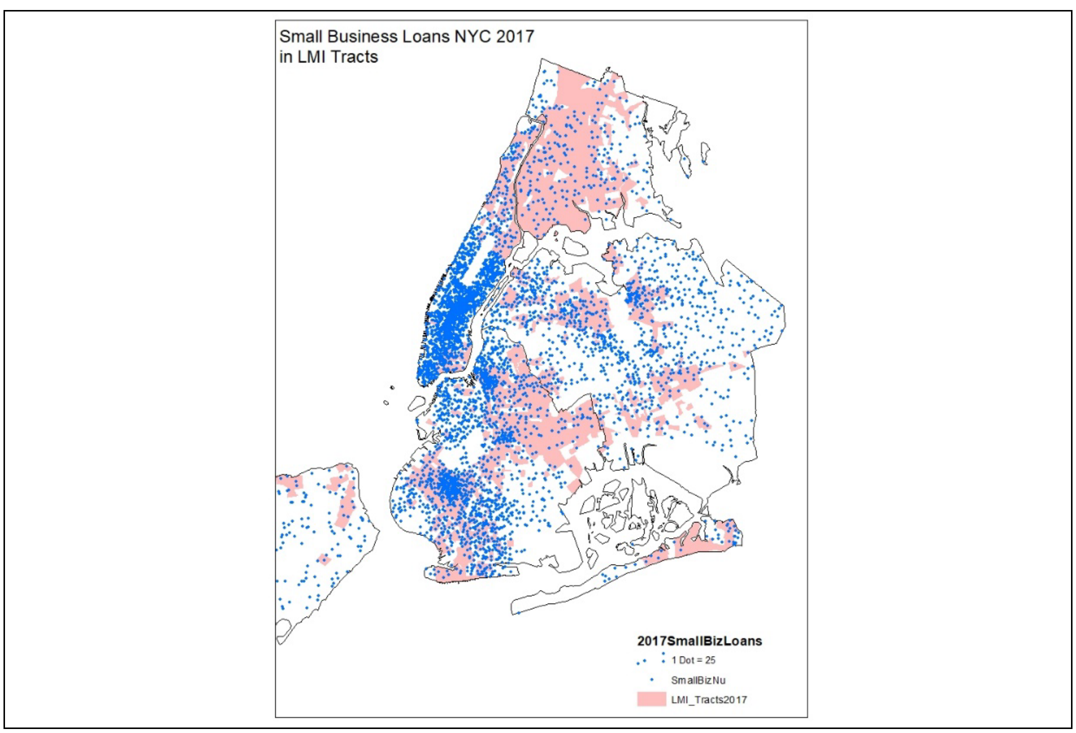
Likewise, if a local community indicates that particular types of loans are needed, then that should factor into the evaluation. For example, in December of 2017, ANHD member Cypress Hills Local Development Corporation held their annual CRA forum and they raised up the need for affordable home repair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

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

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



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



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

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

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

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

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

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

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

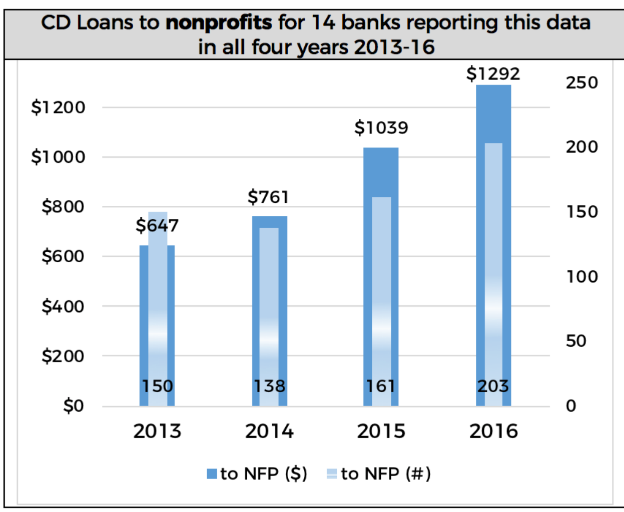
[9] https://s28299.pcdn.co/wp-content/uploads/2018/10/CNY002-AH-Summit-Report_v7_FINAL_online.pdf

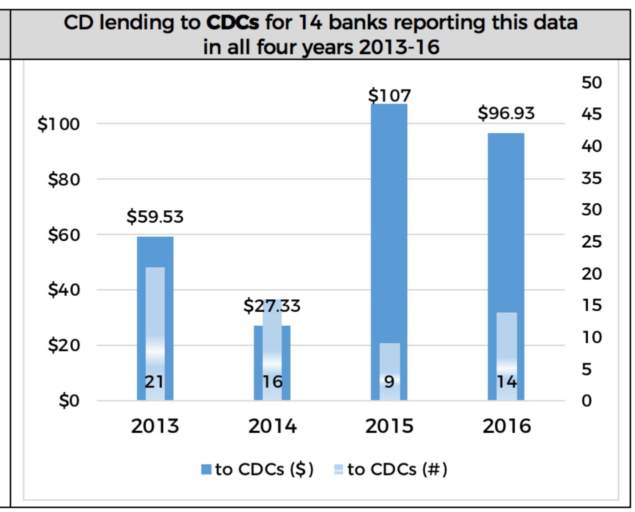
under $100,000, with a significant number needing loans under $25,000. They are not looking for credit card loans, but rather traditional loans and lines of credit. CDFIs are important to support, but they cannot reach the scale that banks can.

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

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

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





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

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

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

Community Input & Performance Context

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

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

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

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

Evaluating and penalizing displacement and harm

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rating system

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

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

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

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

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

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

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

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

[27] https://www.marcus.com/us/en

[28] §____.22(a)(1)—2

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

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

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

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

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[29] ibid 1

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

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

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

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

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

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

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

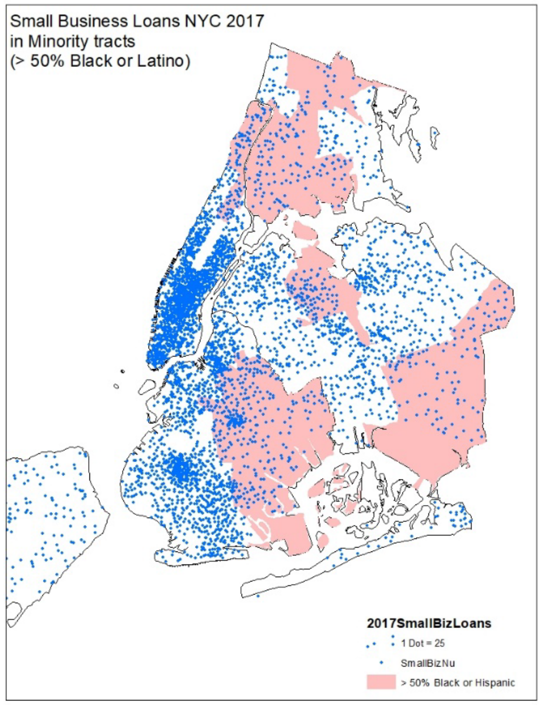
[32] https://ncrc.org/ncrc-analysis-of-the-advanced-notice-of-proposed-rulemaking-anpr/#_edn18

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

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

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

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



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

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

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

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

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

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

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

Small Business Lending

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

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

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

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

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

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

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

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

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

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

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

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

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

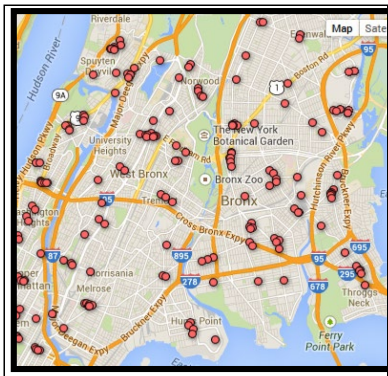
The CRA should be an incentive for banks to offer new products to meet the needs of small businesses, immigrant businesses, new businesses. They should be actively working to prevent the displacement of small businesses, both in high-cost, gentrifying neighborhoods as well as in distressed neighborhoods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

Access to Banking

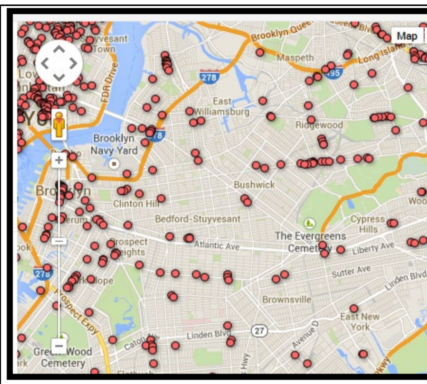
Any changes to the service test, or CRA in general, cannot come at the expense of branches. The CRA should evaluate how well banks provide the most fundamental services: a safe place for all consumers to deposit and withdraw their own money and access responsible financial products to save money and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

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

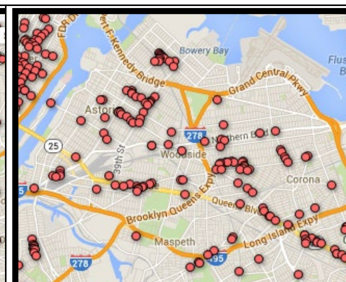
The need for bank branches remains. The FDIC found that 26% of all households use bank tellers as their primary method of account access, and that jumps to about 50% of seniors and 40% of low-income people[45]. The Bronx in NYC provides a stark example with one of the highest percentages of unbanked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



Large Sections of the Bronx lack branches



Bedford-Stuyvesant, Bushwick, East New York in Brooklyn lacks sufficient branches



Astoria Cove / Hallets Cove along the waterfront in Astoria/LIC lacks sufficient branches

Midtown, down to lower Manhattan is inundated with branches

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

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

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

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

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

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

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

Exams should fully evaluate:

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

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

Assessment Areas

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

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

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

[51] BankOn standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nonbank Lenders

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

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

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

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

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

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

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

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

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

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

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

Mergers and Applications

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

Data transparency and Examiner Training

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

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

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

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

Conclusion

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

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

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

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

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

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

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

Sincerely,

Benjamin Dulchin,
Executive Director