ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, INC.

ANHD
50 Broad Street, Suite 1402
New York, NY 10004
Tel: (212) 747-1117

Comments of Benjamin Dulchin

Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) Community Panel for Boston Outreach Meeting May 4, 2015

ANHD represents over 100 nonprofit community organizations and Community Development Corporations (CDCs) that dedicated to building and maintaining affordable housing; creating and preserving quality jobs; and organizing to increase opportunities for both.

ANHD was part of the social movement that led to the passage of the CRA and has witnessed with great appreciation the enormous benefits of the law. Over the 35 years since the CRA was passed, New York City has developed one of the richest ecosystems and infrastructures in the country to build and preserve affordable housing and support other areas of community development. The CRA 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 300,000 units of affordable housing have been built across NYC using a mix of government subsidies that leveraged private bank investments brought to the table as a direct result of the CRA. CDC's account for roughly a third of this housing, and the housing they develop is permanently affordable and deeply affordable to reach the people who need it most.

We have also seen CRA dollars used effectively to support healthcare, education, immigrant communities, and more to improve our neighborhoods. NYC 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 NYC affordable for working-class residents and 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 with CDCs and neighborhood based organizations.

We believe the CRA is a necessary tool that needs to be utilized, enforced, and strengthened and not weakened in any way. We will focus our comments on the CRA with ways we believe it could achieve this. We very much appreciate that the regulators are looking at some of these areas – many comments mirror those we have already submitted as part of the CRA Q&A revision process.

Access to Banking

Any changes to the service test cannot come at the expense of branches. The service test 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 need for **bank branches** remains. The FDIC found that a third of all households use bank tellers as their primary method of account access, and that jumps to about 50% of seniors and low-income people. Just look at the Bronx, which has 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 ID typically cannot open an account online. Mobile and online banking should supplement, not replace, branches.

- But branches alone aren't enough if people can't use the products. Cost and access matter. The FDIC's study shows that the top main reason participants were unbanked includes not having enough money and high and unpredictable account fees. Numerous local studies in NYC echo these concerns, as well as issues related to ID and prior banking problems.

NYC just published the first ever community needs assessment as part of our new Responsible Banking Act[1]. Some of the top banking concerns that came from public comments and the online survey were: lack of bank branches, high cost of bank fees, and issues with access such as ChexSystem and ID requirements, and service for immigrants.

Exams should fully evaluate:

- **Branches** opened, closed, operating in LMI communities
- **Cost:** 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. **Transparency** is also critical so consumers clearly understand their options, know what to expect, and can compare products.
- **Access**: 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
- **Effectiveness**: Simply offering the product is not enough. The exam should report the number of accounts used, opened, and closed by LMI people and in LMI geographies and make judgments about 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 CRC's SafeMoney accounts offer good models[2].

Use of a product versus offering: Too many CRA PE's go to great lengths to describe a good product and then report a small amount of loans actually made. Simply offering the product is not enough – it must be affirmatively marketed and actually used effectively by LMI populations. If a bank can't demonstrate this, it shouldn't get CRA credit.

Race/Ethnicity: The CRA should never have been color blind. It came in response to explicit redlining based on race of the borrowers and communities. HMDA captures this data already and the small business improvements from Dodd Frank will provide more detail. It is time for CRA exams to explicitly evaluate a bank's record of lending to people of color and in communities of color.

Ratings: It is absurd that 98% of banks "pass" CRA exams with a Satisfactory or above[3]. A more nuanced rating system on a curve or with points or grades would be better. At the very least, there should be more gradation in the current rating. A bank with a final Satisfactory rating could have sub-ratings all Low Satisfactory, all high Satisfactory, or in between. We echo the recommendation of many to change

---

[1] http://www1.nyc.gov/assets/finance/downloads/pdf/ciab/2015/ciab-needs-assessment-report.pdf
[2] https://fdic.gov/consumers/template/template.pdf and http://calreinvest.org/crc-issues/safemoney%E2%84%A2-account
[3] http://www.ncrc.org/images/PDFs/ncrc20201520policy20agenda20web.pdf

the statute to allow a final rating of "Low Satisfactory" and "High Satisfactory". And an outstanding should be much harder to achieve, demonstrating true leadership, well above those of their peers.

Assessment Areas

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 rethink how assessment areas are drawn to reflect where a bank takes deposits, makes loans, and does business. This is not difficult to do; the former Office of Thrift Supervision (OTS) assessed performance in geographical areas with high numbers of loans beyond bank branch networks. 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 only limited scope reviews, but certainly a step in the right direction[4].

The new Q&A may provide incentives investments for wholesale or limited purpose banks beyond the one main office, but this only gives extra credit, with no connection to any performance context and no obligation to do so.

Affiliate 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:

- 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.
- It is also optional for banks to report CEMA/MECAs, which are commonly used in lieu of traditional refinance loans, and very prevalent for multifamily buildings. On CRA exams, they are examined either with the HMDA loans or in the "other" category, depending on the regulator. This leads to underreporting and inconsistencies among banks and regulators for a set of loans that are critical to the NYC housing market.
- "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.
- 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.

Affiliate lending and MECAs 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. Regulators should consider conducting 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.

[4] http://www.occ.gov/static/cra/craeval/oct13/716456.pdf

Community Development

- **Economic Development** is one of the most misunderstood, underutilized categories of the CRA and needs more clarification. The CRA must provide incentives for quality jobs, and not perpetuate low-wage jobs. And, regardless of category (economic development or revitalization/stabilization), all CRA activities related to jobs and workforce development should be evaluated as to how well they create, retain and improve access to quality jobs that benefit LMI people in general, and especially people with multiple barriers to employment. This includes wages, benefits, training opportunities, and partnerships with nonprofit organizations. They should focus on how the activity meets local needs with a clear connection between needs and outcomes. A robust performance context that includes data analysis and conversations with a variety of stakeholders can give banks and regulators a good understanding of the types of jobs local communities need. Activities that generate low-wage jobs and jobs with little opportunity for economic mobility, or that lead to displacement of LMI people should not get CRA credit. The burden should be quite high for a low-wage job to be accepted, requiring documentation of a career path to better wages over time.
- **Community development weight**: While strong, 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 jobs are displaced, it should not get credit. There are many ways to evaluate if a multifamily building is overleveraged and if the building is in substandard conditions. Similar principles exist for businesses and jobs.

- **Small business lending** should really be just that – loans to small businesses, rather than loans under $1 million. All banks, regardless of assets size, should be required to report CRA small business data. CRA could evaluate lending to small businesses by revenue and by SBA standards of small business and make public more details on these parameters. If we really are to evaluate how well the smallest businesses are being served, we need additional categories in the data such as lending to businesses with revenues under $500,000 and $100,000 as well as the existing category of lending to small businesses with revenues under $1 million. We look forward to the implementation of Dodd Frank to gather additional small business data.

Access to Data: Ready access to meaningful, accurate, timely data is critical to assess a bank and the industry's CRA record

- Make public **CRA small business lending** data for each institution at the census tract level and allow cross referencing the size of loan data with revenue size data. Request and report revenue size of businesses, regardless of whether it was taken into account in underwriting, or at least explicitly report when it was not.
- Regulators should make **public yearly data for the aggregate and individual banks** on community development loans, investments, and grants originated and purchased, where they were made, and for what purpose.
- Create **standard tables** across all PE's with annual community development data broken out by location and purpose. We appreciate that the FDIC and Federal Reserve benchmark some of this data. However, the data is sometimes missing or inconsistent, making comparisons difficult. There are also vast **differences in the metric** against which loans/investments are measured: Assets, tier one capital, deposits. More consistency is needed.

- **Access to CRA data:** The FFIEC should provide a user-friendly up-to-date interface that links to all CRA-related data: HMDA, small business, community development lending and investments, performance evaluations, exam date, and date of most recent exam if not yet published

Community Participation / Community Input / Process

- **Ways to comment**: Include in the quarterly exam schedule a deadline for accepting comments and simple steps to comment. The FDIC now has a simple comment link and form that accepts attachments.
- **Proactively Solicit Community input**: In reality, very few people or organizations actually submit comment letters for CRA exams. ANHD greatly appreciates the regulators that do reach out to us. Systems could be put in place to help solicit regular feedback from multiple stakeholders and local data for each bank being evaluated.
- **Performance context**: The performance context should really explain the local contexts and opportunities to respond, based on a variety of sources. They rarely go beyond a few standard data points. The Federal Reserve Board of San Francisco has been doing new and interesting work to improve the performance context, creating a more meaningful tool to both assess bank performance looking backwards and to plan for more targeted, effective CRA activity going forward.

ANHD Comments from the first round of EGRPRA regulations under review:

- **Preemption**: The nature of banking is itself ever-changing and states and municipalities should have the ability to examine banking activities as they pertain to the needs of their local communities. Banks should not be exempt from Responsible Banking Ordinances and other local laws related to usury caps, access to banking, anti-payday lending laws, and other consumer protections.
- **Mergers and Acquisitions** are one of the few areas where the CRA is officially taken into account. The expedited process should be eliminated – no bank should be able to merge without explicitly outlining the public benefits that will result from the merger, ideally coupled with a formal CRA commitment with the local communities. Simply declaring that the merger will not impede the bank's ability to comply with the CRA is not a plan and should not stand in place of one. Regulators should also actively solicit community input.

We appreciate the opportunity to submit comments today and look forward to submitting a longer set of comments for this round, and continuing to participate in future rounds.