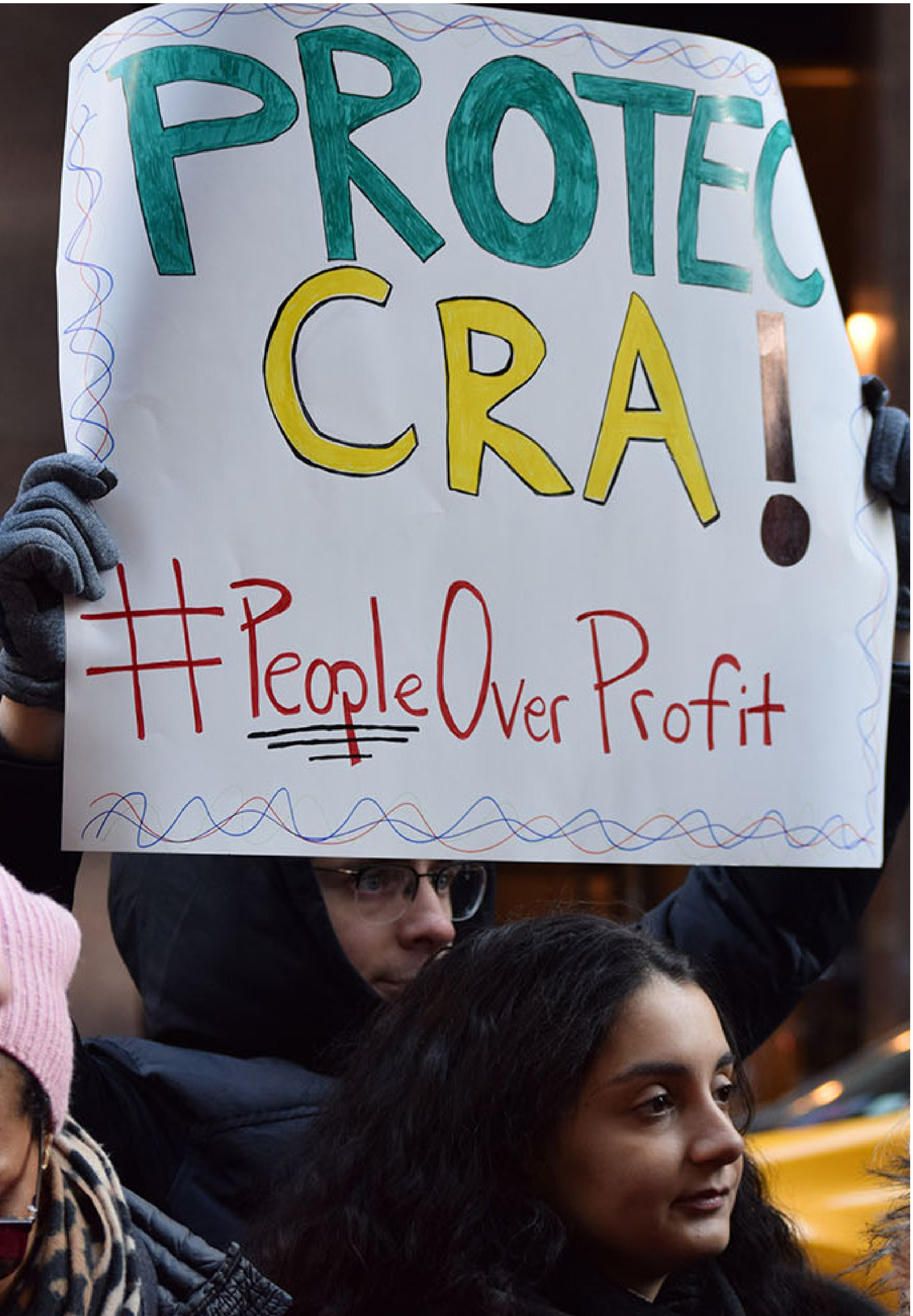
BANK REINVESTMENT AT RISK: OCC'S CRA RULE WILL HINDER COVID RECOVERY



2019

An updated State of Bank Reinvestment in New York City analyzing the OCC's final Community Reinvestment Act rule and its local impact during a global health pandemic

Association for Neighborhood & Housing Development

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An updated State of Bank Reinvestment in New York City analyzing the OCC's final Community Reinvestment Act rule and its local impact during a global health pandemic

ANHD builds community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. As a coalition of 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.

For more information on ANHD's reports and programs, please see www.anhd.org or contact:
50 Broad Street, Suite 1402, New York, New York 10004-2699
212-747-1117

Researcher & Writer: Jaime Weisberg
Cover & Design Layout: Melanie Breault

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The U.S. is in a global health pandemic and economic crisis right now that has claimed the lives of over 147,000 people nationwide and over 18,000 here in New York City. The economic and social consequences of the COVID-19 pandemic will persist long after the health crisis passes and require intervention at all levels of government. Black and Brown communities have suffered the most in illness, death, and economic hardship; if history is any guide, they will be the last to recover, if at all.

Financial institutions have a responsibility to aid in an equitable recovery through the Community Reinvestment Act (CRA). **The CRA is one of the civil rights era laws passed in response to systemic racism, redlining, and discrimination. It requires banks to direct money and investments to low-income communities.** The CRA has the potential to help address the persistent racial and income disparities this pandemic exposes and exacerbates and would help even more if it were updated thoughtfully. **But despite this potential and in the middle of the pandemic, the Trump Administration finalized a rule that drastically weakens the CRA for the nation's largest banks.**

These are the major aspects of the final CRA rule that would hinder recovery:

- **It prioritizes quantity over quality.** The primary determinant of a bank's rating will be a "one-ratio" metric of dollars reinvested divided by deposits, which prioritizes larger and simpler deals over smaller, more impactful activities. For example, rather than invest time and money providing small business loans to small and micro businesses, grants and investments in neighborhood based organizations on the front lines of COVID relief and recovery, or smaller home loans to lower-income borrowers, a bank can reach its targets more easily with fewer loans to larger businesses, large investments in self-storage facilities in opportunity zones, or roads passing through lower-income neighborhoods.
- **It provides no way to downgrade for harm or displacement.** The rule removes community input on bank performance and provides no systemic analysis of the impact of a bank's activities. For example, under the new system, regulators will not downgrade a bank if its products are high cost or supporting developers who are engaging in speculative behavior that contributes to harassment and displacement.
- **It minimizes the importance of bank branches and eliminates analysis of banking products.** The rule eliminates the analysis of branches opened and closed and of products and practices that increase access to banking, such as low-cost accounts and waived fees, all of which are needed for COVID-impacted customers to have access to money for daily necessities. The rule simply adds a measure of branches in low- and moderate-income census tracts to the metric.
- **It puts less focus on low-income, Black, and Brown communities.** Under the final rule, banks will be able to close branches in communities of color, make fewer loans to lower-income borrowers and small businesses, and serve higher income people. The rule also expands the list of activities that count for CRA credit, allowing banks to divert resources to larger businesses and larger projects that do not benefit these communities.
- **It takes the "community" out of the CRA by reducing local obligation and minimizing community input.** The final rule puts community input and needs second to meeting the one-ratio targets. The targets are based on activities established without an analysis of local needs and communities can no longer comment on individual bank performance. The overarching one-ratio metric is calculated at the national level, and in many cases, banks can fail to meet targets in 20% - 50% of their assessment areas and still pass their exam.

ANHD developed the following COVID Recovery Recommendations for Banks, but as outlined above, the OCC's final CRA rule minimizes or eliminates consideration of much of these.

- **Banks can support small businesses** with debt relief, waived fees, language access, technical support, affordable loans and financial support, and grants and capital to organizations that support small businesses. Banks that offer mortgage forbearance can pass on that relief to small business tenants who cannot afford their rent. Assist businesses with access to government relief, such as the Small Business Association (SBA)'s Payroll Protection Program (PPP).

- **Banks can support tenants** by ensuring borrowers respect the eviction moratorium, follow responsible multifamily lending principles, and fund tenant organizers. Banks that offer mortgage forbearance on rent-stabilized and unregulated buildings with residential and commercial tenants should add conditions to support tenants, including rent relief and proper maintenance. Banks should help transfer distressed assets to nonprofit preservation developers or tenant ownership.

- **Banks can support consumers** by waiving all banking fees; ensuring safe access to branches and ATMs; providing language access and accepting multiple forms of ID, including IDNYC; providing consumer debt relief; issuing a moratorium on debt collection; not allowing any negative credit reporting; and providing grants for financial empowerment and counseling.

- **Banks can support homeowners** with forbearance for up to a year with waived late fees and interest payments, access to permanent loan modifications based on ability to repay, and no negative credit reporting. This should be available to all struggling homeowners, even if they were behind on a mortgage pre-COVID. Banks can provide grants to housing counselors who help people navigate the system and prevent foreclosures.

- **Banks can support nonprofit developers and organizations** with loan forbearance and forgiveness, access to low-cost capital, additional grants for general operating support and operating subsidy, and by waiving or modifying grant requirements that could not be met due to COVID-19.

ANHD'S RECOMMENDATIONS FOR AN EQUITABLE CRA REFORM FRAMEWORK

The OCC's CRA rule should be withdrawn. The three bank regulators at the OCC, FDIC, and Federal Reserve must come together with impacted communities to preserve and strengthen the law:

- **Banks should be evaluated on the quantity, quality, and impact of their activities within the local communities they serve and based on the needs of these local communities**. Incentivize impactful, responsive activities that lift low-income, Black, and Brown people out of poverty, and help reduce wealth and income disparities. Downgrade banks that finance activities that cause displacement and harm.

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

- **Maintain local obligations**. The CRA must maintain the current place-based commitment banks have to local communities, with additional obligations where they do considerable business (make loans / take deposits) outside of their branch network. It must maintain or increase quality reinvestment where it is needed, both within "CRA hot spots" with many banks, such as New York City where capital is distributed inequitably, as well as under-banked regions.

Banks and regulators have an opportunity to respond to COVID in a meaningful way that will benefit the people most impacted by the pandemic, which are low-income, Black, and Brown communities. This report outlines how the OCC's approach puts these communities at risk and ways banks and regulators can better respond, now, and in the future.

INTRODUCTION

The U.S. is in a global health pandemic and economic crisis right now; over 147,000 people in New York City have been sickened with COVID-19 and over 18,000 have died[1]. Black and Hispanic New Yorkers are hospitalized and dying at twice the rate of white New Yorkers. Millions are staying home – both voluntarily and by government order – to keep those numbers from climbing higher and to slow the spread of the disease. This is a necessary response, but one with economic and social consequences that will persist long after the immediate health crisis passes. **Black and Brown communities have suffered the most in illness, death, and economic hardship.**

Massive and abrupt unemployment mean people are suddenly finding themselves with little or no money to pay for food, medicine, rent, mortgage, and other debts and expenses. An early CUNY study found that 29% of New Yorkers or someone in their household lost a job during the first two weeks of the shutdown; the rate was over 40% for Hispanic households and 33% for those who were earning less than $50,000. The job loss reached 35% for African Americans by the sixth week[2]. National data reveals similar trends where Black and Hispanic households lost income at higher rates than white households. Immigrants and people of color are overrepresented in the low-wage industries hardest hit by the COVID crisis and less likely to get relief. They are either putting their own health at risk working on the frontlines as essential workers, or out of work with little or no reserves to carry them through.

Financial institutions have an important role to play in COVID recovery thanks to a long-standing civil rights era law that requires banks to direct money and investments to low-income communities.

An equitable recovery requires action from all levels of government to ensure that the hardest hit communities have the resources they need. This means healthcare, access to quality jobs with the proper safety equipment, money to buy food and supplies, and rent and mortgage relief to cover the many months people are out of work due to stay-at-home orders or lack of jobs to return to. **While much of this relies upon government funding and programs, financial institutions have an important role to play in COVID recovery thanks to a long-standing civil rights era law that requires banks to direct money and investments to low-income communities.**

The Community Reinvestment Act (CRA) is one of the key civil rights laws passed in the 1960s and 1970s in response to widespread discriminatory policies and practices that locked people of color out of banking, credit, housing, employment, and education. Under the CRA, banks must lend and provide services equitably and support community development in the areas where they do business. **The CRA has led to trillions of dollars reinvested nationwide[3] and near or over $10 billion each year here in New York City.** It has fostered partnerships, products, and practices that are integral to the success of the community development movement, supporting affordable housing, small businesses, jobs, financial education, homeownership, and more.

However, even with these hard-earned civil rights era banking laws – the Fair Housing Act, Home Mortgage Disclosure Act, Equal Credit Opportunity Act, and the CRA – discrimination and redlining persist. **Unlike prior financial crises, the financial industry is not the primary culprit, but they are complicit in many of the disparities that are now exacerbated and, in some cases, in how inequitably relief is being distributed.**

The legacy of systemic redlining and discriminatory practices, together with practices that continue to this day, are now laid bare. Fewer than 10% of all home purchase loans in New York City went to non-Hispanic Black borrowers and fewer than 10% to Hispanic borrowers of any race in recent years. The rates are lower among CRA-regulated banks, as communities of color disproportionately receive loans by non-bank lenders. We know from federal data that Black and Hispanic households are 5 to 6 times more likely to be unbanked than white households[4] and that the median net worth of white families is 8 to 9.7 times higher than Hispanic and Black families, respectively. Rather than enforce and strengthen the nation's civil rights era laws, the Trump Administration is systematically chipping away at the laws and subsequent actions put in place to strengthen them. For example, the Administration is rolling back rules to affirmatively further fair housing and utilize disparate impact to prove discrimination, seeking to remove immigrants from public housing, hiding fair housing disclosure data reported through the Home Mortgage Disclosure Act, and now dismantling the CRA.

Every bank is regulated for CRA compliance by one of three federal agencies, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve Board. New York state also has a CRA law for state-chartered banks and mostly mirrors the federal law. In August 2018, the OCC officially began the process to "modernize" the CRA when they issued an Advanced Notice of Proposed Rulemaking that outlined their new framework. In December 2019, the FDIC joined the OCC to jointly propose a CRA rule that built upon that framework. Despite fierce opposition, the OCC diverted scarce government resources from fighting a new pandemic to finalize a rule that significantly weakens the CRA and, if it were fully implemented today, would seriously hinder COVID recovery. The final rule discourages the types of activities communities need to recover from COVID: smaller dollar residential and small business loans, bank branches and affordable products, and grants and investments in nonprofit organizations and affordable housing providers that are on the front lines serving COVID-impacted communities with affordable housing, food, small business supports, access to jobs, and more. The full rule will phase in over a few years, but the expanded list of CRA eligible activities takes effect in October 2020. The Federal Reserve stayed off both proposals, instead pursuing a more moderate approach to preserve and strengthen the law. The FDIC paused its involvement to focus on COVID and did not approve the OCC's final rule.

The CRA requires banks to act locally, but CRA exams typically analyze and report the data at larger geographic areas, and often over multiple years, making it difficult or impossible to understand what banks are doing each year in New York City. To fill this gap, ANHD surveys 24 banks on their CRA activities in New York City, including some of the largest banks in the country. This data informs a comprehensive annual report that ranks and compares banks on overall dollars invested, numbers of loans, activities broken down by category, loan count, amount, and characteristics indicating which activities appear more impactful.

Table 1: Reinvestment Dollars Among Banks in ANHD Study 2015-18 ($s in billions)*

	2015	2016	2017	2018	2015-18	2017-18
New York City Deposits	$1072	$1224	$1233	$1236	15%	0.2%
Core Reinvestment (1-4 family home purchase/refi to LMI borrowers; small business loans in LMI tracts; multifamily CD lending)	$5.2	$5.9	$4.1	$4.2	-19%	3.0%
Community Development Reinvestment (CD lending, CRA-qualified investments, CRA-eligible grants)	$5.6	$7.1	$5.2	$6.4	14%	23%
Total Reinvestment Dollars	$10.8	$13.0	$9.3	$10.6	-1.7%	14%
Total Reinvestment Index ($s to local deposits)	1.0%	1.1%	0.8%	0.9%	-15%	14%
Average Index by bank	5.2%	4.9%	3.0%	3.1%	-40%	2.9%
Median Index by bank	2.7%	1.9%	1.3%	1.4%	-48%	11%

****ANHD includes a subset of total CRA dollars in these figures, so the official dollar count is higher.***

As Table 1 demonstrates, banks in New York City reinvest near or over $10 billion each year across the spectrum of activities. The annual bank reports typically go in depth regarding how those dollars impacted local communities, in both positive and negative ways. The report also documents gaps in meeting local needs and ways banks can respond. Because community input is a key part of the CRA, ANHD routinely comments on CRA exams and mergers, drawing upon this data and the experiences of our 80+ nonprofit community development members. **As a result of this CRA engagement over the years, numerous banks have made local commitments, created advisory boards, opened new branches, and created products and partnerships to improve their CRA impact.**

Due to the COVID crisis and the recent CRA reform developments, this year's report differs from those of prior years. **Instead of producing the comprehensive State of Bank Reinvestment report, this report analyzes bank-reported and public data to highlight what New York City communities need for an equitable COVID recovery and demonstrate how the OCC's final CRA rule would hinder that re**covery. This year's report uses bank reported and public data through calendar year 2018 and includes banks regulated by all three regulators, but the OCC's rule only applies to OCC-regulated banks.

The OCC's final rule should be repealed. The three bank regulators – the OCC, FDIC, and Federal Reserve – must go back to the table to reform the CRA together. They must collaborate with the communities impacted by an inequitable banking system to come up with an approach that maintains the core of the law and strengthens it to address longstanding shortcomings, evaluate newer banking models, and incorporate principles of racial equity throughout. Given the persistent racial disparities and changes in banking practices, the CRA needs to be strengthened, and it should not be weakened in any way.

BANK & GOVERNMENT RESPONSE TO COVID

Under the CRA, banks have an obligation to meet local credit needs. **This moment of crisis presents new opportunities for banks to respond to urgent needs, while also laying bare long-standing disparities for low-income people and communities, and people and communities of color.**

The federal bank regulators at the OCC, FDIC, and Federal Reserve recognized the role CRA-regulated banks can play in responding to COVID and quickly put out a joint guidance that gives favorable CRA credit for certain activities to help customers. They encouraged banks to waive banking and late fees and help people access bank accounts remotely or by ATM. They put out guidance on loan modifications and the need for small dollar loan products and community development loans, investments, grants, and services that help impacted communities with an emphasis on food and supplies, digital access, and small businesses. New York State's Department of Financial Services (DFS) also put out guidance – and subsequent emergency regulation – mandating New York State regulated banks waive certain fees and work with customers to provide loan forbearance[5]. The CARES Act and New York State legislature have added additional protections for homeowners and tenants where mortgages are held by the Government Sponsored Entities (GSE), Fannie Mae and Freddie Mac, and state-chartered banks. The guidance and regulation are good places to start, but they are insufficient and have been cobbled together, and some are starting to expire. Also, it must be noted that OCC-regulated banks are not covered by state regulations and many of the loans they make are not covered by CARES Act protections, particularly if they are held in portfolio or sold to a private-label security. Protections must be extended, expanded, and strengthened to include all banks and minimize burdens on consumers. They must also ensure that any loans, especially small dollar loans, are made based on the ability to repay. Much more can be done to protect COVID-impacted communities, and the priority of all forms of relief must remain with people most impacted, who are low-income and Black and Brown communities.

This moment of crisis presents new opportunities for banks to respond to urgent needs, while also laying bare long-standing disparities for low-income people and communities, and people and communities of color.

Since the pandemic began, banks have supported communities in multiple ways, such as modifying grant requirements, modifying loan terms, providing additional grants and capital to Community Development Financial Institutions (CDFIs) and nonprofits, and helping nonprofits and small businesses through the Small Business Administration (SBA) Payment Protection Program (PPP) loan process, which provides forgivable loans to allow businesses to keep people employed during the shutdown and slower pace of business. A small number of banks accept non-customers for PPP loans, and some are donating the PPP fees they receive to nonprofits to provide further COVID support. Many are also waiving banking fees and providing loan forbearance for mortgages, including some commercial and multifamily loans.

However, not all banks are responding the same way, and even banks that are helping in some areas might be harming in others. The starkest example was how inequitably the PPP program played out – it was administered through banks who could choose if they wanted to participate in the program and choose who to prioritize. This came in addition to other structural inequities outside of banks, such as the original payback period and amount required to be spent on payroll. **Collectively, this effectively locked Black and Brown business owners from this necessary relief, with some reports finding that just 1 in 10 such businesses received the funding they requested.** Similarly, in certain cases, banks can still freeze accounts, charge fees, and require lump sums after a mortgage forbearance for mortgages not covered by the federal guidance and regulation. The CRA should be a tool to incentivize the most impactful activities that communities need to survive and thrive. However, as will be discussed below, the final rule dismantles this tool by prioritizing dollars over the impact of those dollars and by fostering a system where banks race to the largest, simplest deals.

The types of activities that fall under CRA will be critical to recovery – home loans and small business loans, banking services, as well as investments in affordable housing, nonprofit lenders, economic development, and some neighborhood revitalization activities. Even under the current system, the hardest hit communities struggle to access these types of capital. All are at risk with the new framework adopted by the OCC at a time when the most adversely impacted communities will need these resources to recover from the economic fallout from the pandemic.

HOW THE FINAL OCC CRA RULE WILL HINDER COVID-19 RECOVERY

Racial and economic disparities existed long before COVID and those disparities are greatly exacerbated now as people struggle to pay for necessities, including food, medicine, rent, mortgage, and other debts. Congress took some steps to address these needs, but they were not enough and did not reach everyone, including some of the hardest hit communities.

For example, under the CARES Act, every American was supposedly entitled to a one-time stimulus check and access to expanded unemployment benefits. The CARES Act also created the PPP loan program to help keep small businesses in operation and people employed. These programs have helped, but are insufficient to meet all the needs, hard to access for unbanked people, and unavailable to undocumented immigrants and their families. The PPP program was the largest source of relief for small businesses and failed to adequately serve Black and Hispanic businesses. Under the CRA, banks have an obligation to equitably serve and respond to the community development needs of low-income people and communities, many of which are also Black and Brown communities. **Loans and relief for small businesses and homeowners; grants for food, rent, and other basic needs; support for nonprofit housing providers; and waived bank fees currently fall under the CRA and would help fill some of these needs' gaps. But the OCC's final rule would hinder recovery by minimizing or eliminating consideration of these activities.**

Loans and relief for small businesses and homeowners; grants for food, rent, and other basic needs; support for nonprofit housing providers; and waived bank fees currently fall under the CRA and would help fill some of these needs' gaps. But the OCC's final rule would hinder recovery by minimizing or eliminating consideration of these activities.

The rule weakens the CRA in four major ways that will be described throughout this report. First, the rule prioritizes quantity over quality, which reduces the incentives to provide small dollar loans and investments. Second, it minimizes the importance of bank branches and eliminates analysis of affordable banking services, both of which will be needed to access any COVID-related services and products, and to save and access money. Third, it puts even less focus on the historically redlined communities the CRA was meant to serve, particularly the low-income and Black and Brown communities who are disproportionately impacted by COVID. And lastly, it takes the community out of the CRA, minimizing the bank's local obligation, community input, and local needs, which should be front and center to respond to COVID in a meaningful way.

THE ONE-RATIO FRAMEWORK PRIORITIZES LARGER, SIMPLER DEALS OVER SMALLER, MORE IMPACTFUL ACTIVITIES NEEDED FOR COVID RECOVERY

Despite intense and near-unilateral opposition, the OCC instituted this new CRA rating system where the driving determinant is a "one-ratio" metric that measures the totality of their reinvestment dollars, increased by a complicated system of multipliers, and compares that to the bank's deposits. This is harmful because it prioritizes large and simpler deals over smaller, and more responsive activities that might have a greater impact, while doing nothing to stem harmful practices, such as loans that lead to displacement. It is simpler for a bank to get credit for a multifamily or commercial loan they would have made without the CRA. Likewise, it is simpler to make a loan to a larger more established business than to a small or microbusiness, particularly one that needs more support through the process. The final rule minimizes or eliminates from consideration the types of activities that will be needed for a full COVID recovery, such as smaller dollar loans, bank branches, affordable and accessible banking products, and investments in neighborhood-based nonprofit housing providers and other organizations responding to COVID needs. The preamble to the final OCC rule acknowledges they ignored this community opposition, *"Although commenters disagreed with the approach outlined in the proposal, the agency ultimately agreed with the minority of commenters who expressed support for the proposed framework."*

THE CURRENT SYSTEM AND NEW ONE-RATIO METRIC

For large banks, currently defined as banks with over $1.3 billion in assets, the CRA exam today involves a three-prong lending, investment, and services test in each of their local assessment areas. This means banks are evaluated separately on their loans (residential, small business, multifamily, and community development) and investments (grants, Low-Income Housing Tax Credits, New Markets Tax Credits, deposits in credit unions and minority-owned banks, and securities) with an analysis of volume, dollars, distribution to low- and moderate-income (LMI) borrowers and LMI tracts, as well as qualitative measures of responsiveness, innovativeness, and complexity. The service test evaluates branching, banking, and staff hours devoted to increasing access to financial services. Smaller banks have less rigorous, more streamlined exams. A bank receives a rating for each test, and in the geographic areas they operate in, which combine to determine a final rating. A bank will pass with either a "satisfactory" or "outstanding" rating and fail with either a "needs to improve" or "substantial noncompliance" rating. One reason cited for the new system was to provide banks with more certainty about how they can pass – 98% of banks pass under the current system, which means more rigor and scrutiny is needed and not a system that makes it easier to pass.

The new one-ratio metric puts the primary emphasis on total dollars to deposits. The formula is more complicated and less transparent than the system today and is riddled with ways for banks to easily reach target metrics, possibly through just their normal course of business, such as multifamily loans on private unsubsidized housing, commercial loans, infrastructure projects, and certain consumer loans, even if they do not target and benefit underserved populations or the bare minimum of additional community development activities. As will be described further in the report, this is already an issue to a certain extent and will be exacerbated with the new system. Regulators also exclude roughly 89% of banks from the final rule by raising the "large bank" threshold to $2.3 billion in assets and allowing more of those excluded banks to utilize more streamlined, less rigorous exams.

- The formula **increases the measure of dollars** through multipliers (2 to 4 times the credit for certain activities) and expanded activities that now count but do not benefit lower-income people or communities. It also uses a "balance sheet approach," which includes loans and investments on the books that could have been made years ago, rather than focus on loans originated during the evaluation period. In some instances, this can help incentivize more long-term patient capital, however without also looking at new originations, it can disincentive making new loans and investments if the targets are already met with loans made years ago.

- It **decreases the deposits against which the dollars are compared** by excluding brokered deposits and others, such as prepaid card deposits.

- The balance sheet approach means the CRA **utilizes data that is not in the public domain** and cannot be independently analyzed because balance sheets report data in the aggregate. Advocates fought to get more detailed home lending data in the Home Mortgage Disclosure Act (HMDA), such as pricing, disaggregated race data, and other loan characteristics. Similar data will be made available on small businesses loans when Dodd Frank Section 1071 is implemented. Neither of these data sources will be used on CRA exams, nor will FDIC-reported deposits.

ONE-RATIO METRICS FOR BANKS IN ANHD STUDY

ANHD has long looked at dollars as compared to deposits, as one of many aspects of a bank's obligation, with additional analysis of the impact of the banks' activities on LMI people and communities and small businesses. When looking at volume, ANHD measures **core reinvestment** (small business loans in LMI tracts, 1-4 family home and refinance loans to LMI borrowers, and multifamily community development mortgages[6]) and **community development reinvestment** (community development loans excluding multifamily mortgages, CRA-qualified investments, and CRA-eligible grants). The following table uses the same framework of core and community development reinvestment and estimates calculations to match the OCC's new metric, giving an indication of how banks will compare before any analysis of impact or quality are assessed. **The final one-ratio metric will be even higher with more multipliers applied and more activities counting for credit, either from partial credit for activities that only marginally benefit LMI people and communities or from activities that newly count for CRA credit, such as loans to larger businesses and financing for infrastructure.**

Table 2: Estimates of OCC one-ratio metric using public and bank-reported 2018 CRA data for activity and deposits in New York City
Thresholds have not been set for CRA ratings and do not consider quality or equity.

	Deposits	Core Reinvestment		Community Development:			Total Reinvestment		2x Multiplier for Affordable Housing, investments, and grants		
Bank	(billions)	Dollars (millions)	Core Metric	Dollars (millions)	CD Metric		Dollars (millions)	Metric	Dollars after multipliers (millions)	Metric	Final Metric adding .02 x %LMI Branches
Largest											
M&T	$3.6	$33.8	0.9%	$391	11%		$425	12%	$588	16%	16%
Wells Fargo	$16.6	$148	0.9%	$1355	8.2%		$1503	9.1%	$2696	16%	16%
Capital One	$25.6	$613	2.4%	$409	1.6%		$1022	4.0%	$1892	7.4%	7.9%
Santander	$9.2	$369	4.0%	$68	0.7%		$437	4.8%	$694	7.5%	8.1%
TD Bank	$20.6	$150	0.7%	$427	2.1%		$577	2.8%	$764	3.7%	4.2%
Citibank	$86.9	$195	0.2%	$1103	1.3%		$1298	1.5%	$2318	2.7%	3.3%
Bank of America	$69.9	$246	0.4%	$849	1.2%		$1095	1.6%	$1901	2.7%	3.4%
Chase	$511.6	$1063	0.2%	$780	0.2%		$1843	0.4%	$2636	0.5%	1.2%
HSBC*	$97.2										
Smaller											
NYCB	$10.9	$1304	12.0%	$191	1.7%		$1495	14%	$2805	26%	26%
Ridgewood	$2.9	$171	5.8%	$17	0.6%		$188	6.4%	$375	13%	14%
Sterling	$6.6	$194	3.0%	$178	2.7%		$373	5.7%	$633	9.7%	10%
Valley National	$2.3	$48	2.1%	$95	4.2%		$143	6.3%	$225	9.9%	10%
Signature	$27.9	$1061	3.8%	$348	1.2%		$1409	5.1%	$2428	8.7%	9.0%
Dime	$3.3	$47	1.4%	$13	0.4%		$60.3	1.8%	$116	3.5%	4.0%
Emigrant*	$0.6	$21	3.2%				$20.8	3.2%	$30		
Flushing*	$2.2	$51	2.3%				$51.0	2.3%	$51		
BankUnited	$5.2	$36	0.7%	$27	0.5%		$62.2	1.2%	$83	1.6%	2.1%
Apple	$7.8	$0.0	0.0%	$2.7	0.0%		$2.7	0.0%	$5	0.1%	0.9%
Popular*	$4.7	$9.8	0.2%								
Wholesale Banks**											
BNY Mellon	$122	$0.0		$538	0.4%		$538	0.4%		0.9%	0.9%
Deutsche Bank	$31.8	$0.0		$204	0.6%		$204	0.6%		1.2%	1.2%
Goldman Sachs	$105	$1.1		$687	0.7%		$689	0.7%		1.0%	1.0%
Morgan Stanley	$61.3	$1.1		$104	0.2%		$106	0.2%		0.3%	0.3%

** Insufficient data from bank to estimate (no community development data reported)*
*** Uses national deposits as these banks have only one or two branches; Morgan Stanley reports for their private bank, based in Westchester, which is smaller than the wholesale bank based in Utah*
Core Reinvestment: 1-4 family loans to LMI borrowers; small loans to small businesses and in LMI tracts; multifamily community development loans
Community Development: Remaining community development loans, CRA-qualified investments, grants
The final one-ratio metric will increase with additional multipliers, more activities that count for CRA credit, and loans and investments from prior years on the balance sheet

By this metric without multipliers, in 2018, Wells Fargo, Citibank, and Chase reinvested the most money, but that is just 1.5% of deposits at Citibank and 0.4% at Chase. When breaking out core dollars (small business, 1-4 family and multifamily lending) from community development loans, investments and grants, the picture changes with Wells Fargo, Citibank, and Bank of America leading community development, and Capital One, Santander, and Chase leading in core dollars. M&T and Wells Fargo are headquartered outside of New York City and have relatively low deposit bases in New York City, and thus rank higher on the index. However, Wells Fargo has just two branches in LMI tracts and one of the lower percentages of home loans to LMI borrowers whereas Chase has the largest deposit base by far, with over $512 billion in New York City, and consistently ranks very low in such a metric, while having relatively higher percentages of branches in LMI tracts, lending to nonprofits, and home lending to LMI borrowers. Signature, Sterling, and NYCB led among banks below $50 billion in assets, but Ridgewood's multifamily lending was significant as well. The wholesale banks rank lower because the formula uses national deposits and they do not engage in retail lending at any scale.

They will not be evaluated under the new one-ratio rating but will be allowed to engage in the newly qualifying CRA activities. Morgan Stanley, Deutsche Bank, and Goldman Sachs all have local community development teams and have partnered with local nonprofits over the years. Prior reports outline these more extensively.

While CRA assessment areas are often larger than New York City, the deposits and activities would increase accordingly. This report analyzes thresholds for within New York City only. The final metric will certainly be higher with all the newly qualifying activities, such as loans still on the balance sheet, loans to larger businesses, activities that only peripherally benefit targeted populations, opportunity zone funds, essential infrastructure, and more, many of which will be done during their normal course of business. By our low estimate, five banks reinvested 6-11% of deposits, which was the threshold for a satisfactory rating under the initial proposal and four over 11% of deposits, the threshold for an outstanding rating under the initial proposal. **The thresholds to achieve satisfactory and outstanding were ultimately removed. OCC acknowledged they did not do enough research or even have sufficient data to set a threshold before the rule was proposed and will propose thresholds later.** If the threshold is lowered, more banks will pass without doing anything different and some could scale back considerably and still pass. If it is too high, banks could engage in unhelpful or even harmful activities just to meet the targets, such as lending more to landlords who displace tenants, making investments in opportunity zone funds for projects that displace local businesses, or targeting low-income people for high-cost consumer loans, many of which would qualify under the CRA. It is also possible that large banks very far below a threshold could choose to exclude New York City from their CRA activities except for the largest deals that contribute to their bank-level metric. Except for assessment areas that comprise 80% of a bank's deposits, banks can ignore 50% to 80% of their assessment areas[7].

The OCC's rule instead diverts attention away from the communities the CRA was meant to serve. It puts dollars before community input and local needs, which will lead to large deals and activities that do not benefit lower income people or communities.

By the original threshold, Wells Fargo could *decrease* activity considerably and still pass; without multipliers and any newly qualifying activities, they exceeded 6% of deposits. Whereas Chase would have to *increase* investment by billions, and it is still unclear if they would ever reach even 6%, but that is impossible to determine without knowing the qualifying activities on their balance sheet or the new activities that count for credit that will inflate the amount invested. A high target goal for investment dollars could be impactful, but only if done through a thoughtful, collaborative process based on input from and collaboration with local stakeholders to ensure those dollars are spent in a way that responds to local needs. **The OCC's rule instead diverts attention away from the communities the CRA was meant to serve. It puts dollars before community input and local needs, which will lead to large deals and activities that do not benefit lower income people or communities.**

Examples of The Types of Reinvestment Our Communities Need to Recover From COVID	Examples of Types of Reinvestment Low-Income Communities Do NOT Need to Recover
» Access to, preservation of, and construction of deep, permanent affordable housing for homeless, and very low and extremely low-income people » Systems to protect tenants from bad-acting landlords and to transfer distressed properties to nonprofit developers or tenant ownership. » Home loans, financial assistance, and housing counseling that allow low-income, Black, and Brown people to preserve and access homeownership » Forbearance and permanent loan modifications to allow homeowners to remain in their homes » New bank branches, no-cost accounts, language access, forgiveness of overdrafts and fees » Grants and loans to small businesses and organizations serving small businesses » Grants to community-based nonprofits supporting struggling New Yorkers	» Large developments that happen to have a few affordable units, but majority are unaffordable. » Multifamily loans where units are affordable, but kept in poor condition or owned by a landlord who harasses and displaces tenants » Police stations in distressed tracts » Luxury housing or self-storage facility in an opportunity zone » Portions of roads, highways, and sewers that pass through low-income areas » Business loans closer to the $1.6 million threshold for loan size and business size, with no loans under $150,000 or to very small businesses, particularly owned by immigrants, women, and people of color. » Large-scale grants that do not reach neighborhood-based organizations » High-cost auto loans and student loans

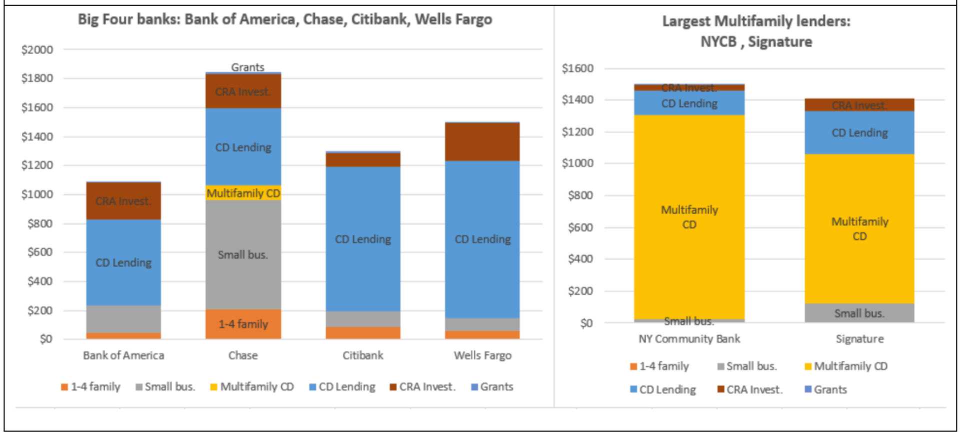
New York City has never wanted for capital. The problem is that the capital is not distributed equitably and responsibly to low-income, Black, and Brown people and communities, nor in response to locally defined needs, especially now as we struggle to recover from the COVID pandemic and economic crisis.

Communities in New York City have long been calling for smaller-dollar loans and investments that support small business owners, homeowners, tenants, neighborhood-based organizations, and nonprofit developers. ANHD's annual bank reports go into great depth on these needs, and those needs are even greater in response to the economic fallout from COVID.

SMALLER DOLLAR LOANS AND INVESTMENTS ARE ECLIPSED BY LARGER, MORE PROFITABLE DEALS

Under the OCC's final rule, banks will have less incentive to make smaller dollar loans, such as small business loans under $150,000 and 1-4 family home loans, grants, and smaller community development loans and investments. They are much smaller than more profitable large-scale real estate deals and other investments newly allowed under the CRA, such as investments in opportunity zone funds or infrastructure projects that pass through lower income communities. Some of these could cause harm or displacement if, for example, they finance a luxury housing development or self-storage facility, neither of which create housing or jobs low-income people

Chart 1: Single-metric examples demonstrating the different sizes of CRA activities in New York City in 2018

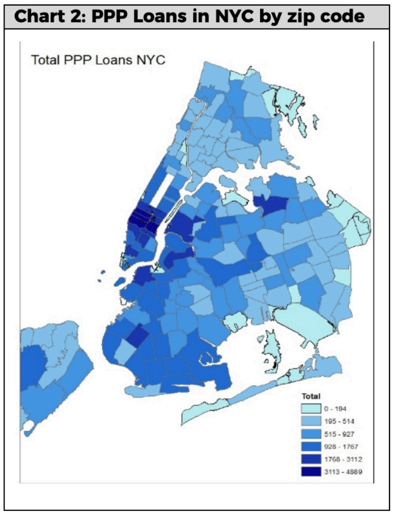


need. Regardless of the impact, if a bank meets its target goal by a few large projects, it will have less incentive to make other smaller dollar loans. As chart 1 shows, many smaller dollar loans and grants barely register when compared to larger loans and investments. The final rule creates a complicated system of multipliers for certain types of activities, purportedly to incentivize those activities, but **multiplying small dollar loans and grants by two to four times will do little to tip the scale in favor of the smaller and more impactful activities when the same two to four times credit is given for larger deals that get a bank closer to its target metric**.

Under the CRA today, one portion of the exam evaluates community development services where banks provide staff who help increase access to financial services. This could include activities such as financial education and support in accessing digital services and banking when required to stay at home, assistance to small businesses applying for PPP loans and other resources, and outreach to access loan forbearance and modification. Once again, rather than strengthening the category, the final rule eliminates any comprehensive analysis of services, replacing it with a way to quantify the hours as part of the metric. Like small dollar loans and grants, the total dollars attributed to service hours will likely be small and banks will have less incentive to provide such services.

SMALL BUSINESSES WILL BE HARMED UNDER THE FINAL RULE

Chart 2: PPP Loans in NYC by zip code



Small businesses need grants and small dollar loans to survive the crisis. 95% of businesses in the U.S. have under $1 million in revenue; 75% below $100,000 and studies have also long shown an unmet need for small business loans under $100,000 and even under $25,000.[8] In New York City, 48% of the city's small businesses are immigrant owned and struggle to survive and thrive due to lack of access to credit as well as high rents, harassment, and language barriers. Large banks are shirking their responsibility to serve small businesses during COVID, as evidenced by the many small businesses left out of the first round of the PPP. This prompted Congress and the US Treasury department to direct more resources to Community Development Financial Institutions (CDFIs) and small banks to fill the gaps. With more public scrutiny, the average loan size at some of the larger banks dropped below $100,000, but [that is not the case at all banks](). **Even with those changes, preliminary analysis of the full PPP data set demonstrates inequitable lending distribution with fewer loans in low-income communities of color (see chart 2). This is similar to the inequitable lending and banking patterns persistent pre-COVID (see chart 4 on the following pages).** Grants and forgivable loans are critical for businesses to manage COVID, given the slower pace to reopen and new measures they must take to keep employees and customers safe when they do reopen.

Under the CRA today, banks report all their business loans under $1 million. Banks are then evaluated on the total volume of their small loans to businesses, and the percentage that are "CRA loans", which are loans to small businesses (under $1 million in revenue) and loans in LMI tracts. Banks are also evaluated on the breakdown of loans by size: loans under $100,000; loans between $100,000 - $250,000; and loans $250,000 - $1 million. Rather than further incentivize smaller loans, the final rule incentivizes larger loans. It does this by adding all the CRA loans together for the one-ratio analysis, raising the thresholds of small loans and small businesses to $1.6 million, eliminating loan size analysis, and minimizing the analysis of lending to small businesses and to businesses in LMI tracts.

Table 3: 2018: Percentages of loans in LMI tracts; Average Loan size overall and in LMI tracts among small business loans (loans < $1M to businesses with revenue < $1M) ($'s in millions)

	Total			In LMI Tracts			
	#	$ (m)	Avg Loan	#	$ (m)	% in LMI (#)	Avg loan
Largest							
Citibank	10,967	$94	$8,527	3,973	$26	36%	$6,436
Capital One	6,660	$67	$10,004	2,809	$25	42%	$8,905
Credit Card Bank (97% of loans)	*6,494*	*$56*	*$8,672*	*2,756*	*$23*	*42%*	*$8,214*
Retail Bank	*166*	*$10*	*$62,127*	*53*	*$2*	*32%*	*$44,849*
Bank of America	7,199	$112	$15,531	2,803	$34	39%	$12,178
TD Bank	5,799	$99	$17,044	2,047	$35	35%	$17,113
Chase	28,714	$523	$18,214	10,216	$179	36%	$17,522
Credit Card Bank (98% of loans)	*27,838*	*$439*	*$15,757*	*9,999*	*$154*	*36%*	*$15,369*
Retail Bank	*876*	*$84*	*$95,912*	*217*	*$25*	*25%*	*$117,120*
Wells Fargo	1,958	$71	$36,458	426	$14	22%	$31,913
HSBC	1,398	$66	$47,000	370	$16	26%	$42,892
M&T Bank	150	$16	$104,747	35	$2	23%	$64,171
Santander	946	$65	$68,940	305	$23	32%	$74,400
Smaller							
Valley National	160	$33	$206,781	60	$11	38%	$178,017
Popular	20	$6	$275,500	16	$4	80%	$259,063
Sterling	72	$22	$304,514	23	$7	32%	$286,609
NYCB	68	$23	$344,515	19	$7	28%	$357,526
Signature	215	$84	$390,833	68	$27	32%	$392,176
Emigrant	19	$11	$571,684	5	$2	26%	$455,000
Flushing	94	$46	$492,564	48	$24	51%	$493,000

Excluding lenders that made fewer than 10 loans to small businesses
Santander gave supplemental data on their CRA loans that classified more loans as being to small businesses.

As Table 3 shows, the range of loan sizes varies greatly by bank, including some with average loan sizes below $20,000. Unfortunately, too many of these small dollar loans are credit card loans, especially by the largest banks. While credit cards serve a purpose, most small businesses lack access to traditional loans and lines of credit. Citywide, roughly 30% of all bank small business loans are made by limited purpose credit card banks and the percentage is higher with the credit card loans made by banks that do not separate them out[9]. Only Chase and Capital One still had separate credit card banks in 2018 and those entities account for over 95% of small business loans at each bank. It is likely the ratio is similar at other large banks.

The final rule will do nothing to incentivize small business loans and lines of credit, an area that some banks are just starting to develop, nor does it incentive banks to help nonprofits and small businesses access PPP loans and other COVID-related products and supports. Some banks took time to help businesses and nonprofits through the process, whereas others prioritized current clients and larger businesses. The micro businesses, sole proprietors, and unbanked businesses had very few, if any, banks they could turn to, leaving nonprofit CDFI lenders to do the hard work of finding and reaching these businesses, and do so with fewer staff and fewer resources than banks. Language barriers and lack of access to digital technology are additional barriers for the smalless businesses to identify and apply for loans and services, especially as the traditional in-person outreach tools are more limited during COVID.

Lending alone will not save businesses from the economic fallout from COVID. Businesses who were shut down or limited for months now must pay past due rent and expenses, and now have additional expenses to ensure safety of staff and customers with fewer customers and less revenue. They need relief from these expenses, such as grants, loan modifications, and forbearance. Also, banks often hold the mortgage on commercial buildings, which includes buildings with small business tenants. These businesses were at risk of displacement before COVID due to high and rising rents and that risk is much greater now. As will be recommended to protect residential tenants, banks that provide forbearance to commercial tenants should find ways to pass on that same relief to small business tenants.

HOMEOWNERS WILL BE HARMED UNDER THE FINAL RULE

The rule does nothing to encourage banks to provide affordable home loans or mortgage forbearance and permanent loan modifications which will be critical to helping homeowners stay in their homes over the long term.

Homeowners of color lost trillions in wealth from the 2008 financial crisis when bank greed and irresponsible behavior brought down the economy, leading to massive unemployment and debt. During that time, these underwater homeowners owed more than their homes were worth and were often left with no means to have their loans forgiven or modified to sustainable levels. This put both the homeowner and their tenants at risk of displacement. The COVID crisis has a different cause, but has created a similar phenomenon where low-income Black and Brown homeowners and their tenants are vulnerable to displacement if they are not able to access loan forbearance, financial relief, or loan modifications and they are forced to leave their homes. Some estimates say that as many as 30% of loans are not covered by federal COVID regulations, and regardless, implementation is just as important to ensure people know their rights and can access relief. For example, if homeowners are left with a large balloon payment at the end of a forbearance period or cannot modify their loan to account for reduced income, they will most certainly fall into foreclosure.

Thanks to CRA advocacy over the years, many banks now offer affordable mortgage products with low down payments, financial assistance, and connection to HUD-certified housing counselors. These programs are looked upon favorably under the current CRA system but will count for little or nothing under the final rule.

Meanwhile, lower-income and people of color still need access to loans to purchase, refinance, and repair a home. These loans are small compared to a large real estate deal or investment in an opportunity zone. Many factors are restricting credit in today's environment, but banks must find ways to allow homeowners to take advantage of the lower interest rates to purchase a home, reduce payments on existing loans, or to access a home repair loan to maintain their home.

Banks that support foreclosure prevention and homeownership should also incorporate grantmaking to housing counselors and dedicated bank staff to support new and existing customers. These count for very little CRA credit in a purely dollar-based metric, if at all.

Thanks to CRA advocacy over the years, many banks now offer affordable mortgage products with low down payments, financial assistance, and connection to HUD-certified housing counselors. These programs are looked upon favorably under the current CRA system but will count for little or nothing under the final rule as total dollars are the primary factor, while quality and impact are secondary. Banks could be reluctant to invest in creating or supporting new affordable lending programs if they will count for so little when the final rules go into effect. Already banks are pulling out of 1-4 family lending and the proposal does nothing to incentivize them to remain in that space.

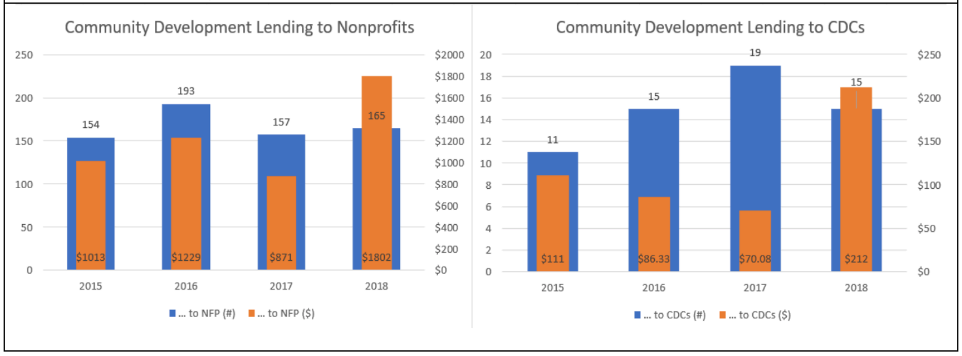
NEIGHBORHOOD-BASED NONPROFITS WILL BE HARMED UNDER THE FINAL RULE

Loans, investments, and grants to neighborhood-based nonprofits, including Community Development Corporations (CDCs), are most impactful in serving people impacted by the COVID crisis. They have been serving these communities for decades and are now doing more with fewer resources and increased cost of operations.

Neighborhood-based organizations, nonprofit CDCs, and nonprofit CDFI lenders have been critical to front-line COVID response efforts. Yet, many nonprofits face major funding shortfalls as critical sources of revenue disappear. Out of work clients cannot pay for services and some services cannot be done remotely, nonprofits had to cancel fundraisers, and governments are cutting funding. **Nonprofit housing providers face additional challenges of managing higher operating costs with fewer tenants paying rent.** They have always operated with thin margins to provide deep, long-term affordable housing. These organizations must ensure their spaces are kept clean and safe, adjust to providing services and conducting advocacy remotely, and in many cases provide and coordinate delivery of food and supplies. Meanwhile, CDFIs have had to pivot to connect businesses to the rapidly changing landscape of loans, grants, loan forbearance, and services. These same organizations will be critical to long-term recovery helping people find new work and return to work safely, providing affordable housing, preventing foreclosures, and supporting small businesses, while continuing to provide direct relief. They will do this while also continuing much of the work they were doing pre-COVID, including some who continue developing new affordable housing amid rising costs, fewer staff, and less funding. The nonprofit sector needs expanded and flexible grants and financing to allow them to respond to this moment.

The OCC's metric does nothing to encourage lending to these institutions. They include a pass/fail threshold for community development loans, but that is just a subset of the one-ratio approach and is purely volume based. The threshold in the proposal was 2% of deposits, but like all other metrics, the final percentage is yet to be finalized.

Chart 3: Community Development Loans to nonprofits and CDCs



As chart 3, table 4, and table 5 show, the volume and percentages of loans to nonprofit organizations and CDCs vary by bank. The larger banks over $50 billion in assets, including the wholesale banks, are more likely to have formal community development programs and dedicated staff, which often leads to more deals and partnerships with nonprofits, but even that is not guaranteed, and the numbers reflect their priorities and progress. TD Bank made the most loans to nonprofits in 2018. Chase, Capital One, and Morgan Stanley are also known for lending in this space, and Deutsche Bank for supporting CDCs in other programs over the years. Some banks, large and small, are developing community development programs because of CRA advocacy. Santander, Valley National and Sterling, for example, now have advisory boards that inform their CRA plans, and BankUnited has made strides to partner with local nonprofits. In general, however, the smaller banks tend to get more of their CRA credit from their lines of business, especially for multifamily lenders like NYCB, Signature, Ridgewood, and Dime who can get credit for loans where rents are found to be affordable, even if not income restricted under an affordable housing program.

Because of that phenomenon, and the importance of responsible lending throughout the entire portfolio whether or not the bank presented the loan for CRA credit, we exclude multifamily mortgages from this calculation and evaluate them separately in this report. Those same banks should also develop their community development programs to have a greater impact beyond their lines of business. The volume of non-mortgage community development loans is very low at these banks, but a positive note is that Apple, Dime and Ridgewood made all their non-mortgage community development loans to nonprofits; all of Apple's are to CDCs.

Table 4: 2018: Highest Percentages of Community Development Lending to nonprofits (NFP)

	2018			
	# to NFP (# / $)		% of all CD loans (# / $)	
Largest				
Chase	33	$438	85%	82%
TD Bank	45	$285	80%	83%
Capital One	18	$130	60%	42%
Santander	3	$17.6	60%	74%
Citibank	11	$446	48%	45%
M&T	6	$61.5	19%	17%
Smaller				
Apple	3	$2.5	100%	100%
Dime	3	$1.0	100%	100%
Ridgewood	3	$2.5	100%	100%
BankUnited	8	$22.0	80%	84%
Valley National	8	$87.2	80%	95%
Sterling	4	$38.0	36%	36%
Signature	12	$6.8	15%	3%
NYCB	0	$0.0	0%	0%
Wholesale				
Morgan Stanley	6	$52.5	100%	100%
Deutsche Bank	8	$56.6	40%	30%
Goldman Sachs	6	$102	40%	26%
BNY Mellon		$60.0		19%

Table 5: 2018: Highest Percentages of Community Development Lending to CDCs

	2018			
	# to CDCs (# / $)		% of all CD loans (# / $)	
Largest				
Capital One	10	$109	33%	35%
Citibank	2	$88.3	9%	9%
M&T	0	$0.0	0%	0%
Santander	0	$0.0	0%	0%
TD Bank	0	$0.0	0%	0%
Smaller				
Apple	3	$2.5	100%	100%
Sterling	2	$14.0	18%	13%
Valley National	1	$1.1	10%	1%
Signature	6	$0.6	8%	0%
BankUnited	0	$0.0	0%	0%
Dime	0	$0.0	0%	0%
NYCB	0	$0.0	0%	0%
Ridgewood	0	$0.0	0%	0%
Wholesale				
Deutsche Bank	0	$0.0	0%	0%
Goldman Sachs	0	$0.0	0%	0%
BNY Mellon		$0.0		0%

The volume of lending to CDCs is lower overall as they are a small subset of nonprofits, but banks can do more to reach out to and support mission driven nonprofit developers with affordable loans, grants, and investments to further their missions. These organizations persistently need affordable loans and lines of credit, as well as predevelopment loans and acquisition loans.

New York City's neighborhood-based organizations are integral to serving the communities the CRA was intended to support, which are LMI people and communities of color as well as small businesses.

Nonprofit developers and CDFIs also rely upon CRA-qualified investments such as Low-Income Housing Tax Credits (LIHTC), Equity investments, and New Markets Tax Credits (NMTC) that enable them to develop and lend. Yet banks often defer to easier investments such as purchasing bonds or mortgage backed securities. Prior ANHD reports go into more detail on these investments. As with all types of activities, the final rule will incentivize larger and simpler investments, rather than the kinds of investments CDCs and CDFIs rely upon, such as EQ2s and LIHTC investments. Some investments will stay on a bank's books for long periods of time, which means a bank will be less likely to make new investments when a prior investment gets them to their target goals.

In addition to loans and investments, nonprofits also rely upon sources of income that do not need to be repaid to sustain their operations. CRA-eligible grants direct resources to organizations and projects that are less likely to receive them without incentives, such as financial education, economic development, and affordable housing initiatives to lift people out of poverty.

Table 6: CRA-Eligible Grants 2017 and 2018 and Percentages to local deposits.

	2017			2018		
	Deposits NYC	Grants ($)	% Deposits	Deposits NYC	Grant s ($)	% Deposits
Largest						
Capital One	$26	$9.8	0.038%	$26	$9.7	0.038%
M&T	$4	$1.4	0.038%	$4	$1.4	0.038%
Wells Fargo	$18			$17	$5.4	0.032%
Santander	$10	$2.0	0.020%	$9	$1.8	0.019%
TD Bank	$20	$3.1	0.015%	$21	$3.6	0.018%
Citibank	$92	$20	0.022%	$87	$14	0.017%
Bank of America	$65	$2.6	0.004%	$70	$2.0	0.003%
Chase	$530	$7.9	0.001%	$512	$9.2	0.002%
Smaller						
NYCB	$10	$1.6	0.015%	$11	$1.2	0.011%
Dime	$4	$0.3	0.008%	$3	$0.33	0.010%
Valley National	$2	$0.2	0.010%	$2	$0.22	0.010%
BankUnited	$4	$0.3	0.007%	$5	$0.33	0.006%
Ridgewood	$3	$0.1	0.003%	$3	$0.09	0.003%
Sterling	$6	$0.2	0.004%	$7	$0.18	0.003%
Apple	$7	$0.2	0.002%	$8	$0.15	0.002%
Flushing	$2	$0.1	0.005%	$2		
Wholesale						
Goldman Sachs	$92	$11.5	0.013%	$105	$15	0.014%
Deutsche Bank	$33	$6.6	0.020%	$32	$4.5	0.014%
Morgan Stanley	$50	$4.3	0.009%	$61	$5.2	0.008%

Grants are also small in comparison to most other CRA activities, such as tax credit deals for housing or economic development or the less impactful purchase of mortgage backed securities. In 2018, total dollars granted in New York City ranged from under a hundred thousand to $15 million, and their percentage of deposits is very low across the board ranging from 0.002% to 0.038% of deposits. Banks understand that they must make grants as part of their CRA obligation, but even today, it can be challenging for smaller neighborhood-based organizations to access grants as more banks are consolidating grantmaking through fewer, larger organizations.

Under the new system, the single-ratio metric drives the rating. Applying multipliers to grants is unlikely to get banks much closer to their target dollar amounts, especially when they can get two to four times credit for other much larger real estate developments. At a time when more grants are needed for short and long-term COVID recovery, and for those grants to be targeted to needs identified by local organizations including general operating support and long-term grants, banks could instead retreat in search of larger deals to reach their target metric.

New York City's neighborhood-based organizations are integral to serving the communities the CRA was intended to support, which are LMI people and communities of color as well as small businesses. The CRA should ensure these organizations have the resources they need to further their missions, especially during this time of pandemic. The CRA should incentivize activities like these, with the greatest impact, and never allow for dollars that lead to harm in these same communities.

THE FINAL RULE PROVIDES NO WAY TO DOWNGRADE FOR HARM OR DISPLACEMENT

ANHD has long been calling for CRA modernization to allow regulators to downgrade a bank for displacement and incentivize best practices. Yet, the final rule does the opposite – it removes community input on bank performance and provides no systemic analysis of the impact of a bank's activities. For example, under the new system, regulators will not routinely assess if a bank is providing affordable products and supporting meaningful investments that lift people out of poverty. They also will not assess if its products are high cost or supporting developers who are engaging in speculative behavior that contributes to harassment and displacement. The one-ratio metric is the driving determinant and puts dollars above all else.

NO PENALTIES FOR DISPLACEMENT LENDING

Harassment and evictions are traumatic for tenants at any time, forcing tenants to live in poor and unhealthy conditions, spend time and money fighting evictions, or endure the stress and financial burden of finding a new home or becoming homeless. It is especially traumatic during the COVID pandemic where tenants face serious health concerns inside and outside their homes. Being evicted means risk of moving to a shelter, the streets, or doubling up, all of which increase the chances of someone contracting and passing on this deadly virus, posing risks to themselves and the community.

ANHD and allies coined the term "predatory equity" in the years leading up to and following the 2008 housing crisis. This term refers to landlords, equity investors, and traditional lenders who buy and finance buildings for more than the buildings could support with the current rental income. To pay back the money and make a profit, they use a variety of tactics to harass and displace lower paying tenants to raise the rents faster than what the rent guidelines board allows for rent-stabilized apartments. ANHD estimated that private equity investors held about 100,000 units of housing in New York City around that time, and documented the harm caused by these landlords and lenders, like Vantage who settled with the Attorney General for their practices. The term is now used more broadly to describe landlords that follow a similar playbook; and in the years since, landlords have used old and new tactics to harass and displace tenants to make a bigger profit. Tactics include hazardous construction that creates unsafe living conditions, aggressive buyout offers, lack of repairs, and lack of heat and hot water.

Over the years, ANHD has led campaigns to curb speculation by bank lenders, resulting most recently in the two largest multifamily lenders committing to a set of best practices. NYCB committed to the practices as part of an agreement negotiated during when they combined their two banks into one. Signature Bank committed after a two-year grassroots campaign, led by tenants impacted by bad-acting landlords financed by the bank. Just a few months later, New York State Department of Financial Services (DFS) issued similar guidance for all New York State-chartered banks.

Other policies have also been instituted to curb evictions and displacement. Early data indicates that the Right to Counsel Act is reducing evictions. This Act provides an attorney to tenants facing evictions in New York City. The Housing Stability and Tenant Protection Act (HSTPA) of 2019 also curbs many, but not all, of the abusive practices that displace tenants in rent-stabilized housing. However, harassment and evictions continue and, regardless, banks must be held accountable for the damage done prior to the laws passing. We also fear predatory equity practices will return once again. Private equity investors raised record funds in 2019, reaching $350 billion in the US; $103 billion in real estate funds. This raises concerns they will seek to profit from people who cannot afford to stay in their homes, apartments, and business spaces. This is even more urgent as eviction moratoriums lift, putting more tenants at risk of displacement. Unregulated residential and commercial tenants are particularly vulnerable as they are not covered by the protections granted to rent-stabilized tenants.

Responsible multifamily lending guidelines are a necessary tool for regulators to monitor banks and hold them accountable when their lending practices lead to harm. They also provide a framework for banks to lend in a way that minimizes harm. Multifamily lending best practices include: (1) responsible underwriting based on current rents (not projecting future, higher-paying tenants) and realistic maintenance and expenses; (2) comprehensive vetting of landlords to avoid lending to bad-acting landlords; and (3) responding when problems arise to help resolve issues and preserve affordable housing.

While some regulators are paying closer attention to responsible lending, none of these efforts have led federal regulators to require best practices, as New York State has done. The CRA does not allow regulators at any level to downgrade a bank for patterns of lending that violate either guidance. Regulators can only take a loan out of consideration for CRA credit, but if the bank's total volume of lending is still sufficient, the bank's rating will not be impacted. The CRA must encourage the highest

Table 7: 2018: Multifamily mortgages reported to ANHD as counting for community development credit and loans reported to HMDA with subsidized affordable units.

	Total Loans		HMDA 2018: buildings with affordable units (subsidized housing)			
	Total Loans	% that counted for CRA credit (#)	Any Aff Hsg	% w/ Any Aff. Hsg	>20% Aff	>80% Aff
Ridgewood	106	85%	0	0%	0	0
Signature	487	46%	0	0%	0	0
Capital One	*188*	*39%*	7	4%	-	-
NYCB	761	33%	17	3%	12	9
Santander	121	29%	11	9%	4	1
BankUnited*	11	27%	-	-	-	-
Dime*	62	26%	-	-	-	-
Apple	*94*	*24%*	0	0%	0	0
Sterling	67	12%	0	0%	0	0
Chase	503	9%	18	4%	14	3
Valley National	71	0%	2	3%	2	0
Flushing*	157		-	-	-	-

* Made fewer than 500 loans; exempt from reporting the new HMDA data

standards and deter financing that leads to displacement, either through speculative lending, financing bad acting landlords, or both.

Ridgewood, Signature, and Capital One reported the highest percentages of loans counting for CRA credit, but very few of the loans at those or any bank reported financing income-restricted, subsidized affordable housing. This means most received credit just by the rents and estimates as to incomes of tenants, typically based on location. This lending is important, but only if done responsibly.

New York City has a robust set of data sources that can help indicate which banks are financing problematic landlords and buildings in poor condition, including the University Neighborhood Housing Project (UNHP)'s Building Indicator Project, the Stabilizing NYC Coalition's target landlord lists, the public advocate's worst landlord list, Right to Counsel NYC Coalition's Worst Evictor lists, and tenants themselves who have identified other landlords with patterns of alleged harassment and poor conditions. According to analyses by the Right to Counsel NYC Coalition, for the past two years Signature, NYCB, and Capital One have the most loans made to the city's worst evictors. Buildings on the Certificate of No Harassment (CONH) Program pilot list is another indicator of problematic conditions. ANHD and our members led the campaign to pass the CONH program, which created a list of buildings where tenants are at risk of displacement, as indicated by persistent violations, poor conditions, and high tenant turnover. Owners of buildings on that list must prove that no harassment has taken place before they can get certain building permits. As the Table 8 shows, Signature, NYCB, and Chase have financed the highest number of CONH buildings. The buildings make up nearly 5% of NYCB and Signature's portfolios and these two banks each hold the loans on roughly 15% of all CONH buildings.

Banks have a responsibility to ensure that buildings they finance are kept in good condition and landlords are respecting tenants' rights. Banks and regulators should routinely be checking their portfolio and potential borrowers against all public lists, as more banks are doing. ANHD also has a strong network of tenant organizers and tenants who can provide additional information to supplement public data. In many cases, the loan is already made, and the damage already done, and banks must take responsibility for any harm tenants face at the hands of such landlords.

As mentioned above, there are times when speculative landlords cannot pay their mortgages with rents from the current tenants, typically when the loan was made with the assumption that lower-rent paying tenants would move out and be replaced with higher-paying tenants. When this tactic is successful, people are pushed out of their homes; and even when it is not and tenants refuse to leave their homes, they still face harassment as landlords try to find other ways to pay their expenses and make a profit often resulting in less maintenance, poor conditions, and rent increases. Prior to COVID, these loans were at risk of falling into foreclosure as more tenants had access to legal counsel and the HSTPA closed many loopholes that had allowed landlords to increase rents in the past. For example, the Act limits rent increases due to major capital improvements and removes the vacancy bonus that allowed landlords to raise rents 20% when a tenant vacated.

Table 8: Building Indicator Project Database, BIP Dec. 2019, for buildings financed in prior 10 years BIP Score > 800 indicates signs of physical and/or financial distress; Buildings on the Certificate of No Harassment (CONH) Pilot list indicate tenants are at risk of harassment and displacement												
	All		BIP>800				CONH					
	Bldgs	Units	Bldgs	% Bldgs	Units	% units	Bldgs	% Bldgs	% all CONH Bldgs	Units	% units	% all CONH units
Largest												
Bank of America	93	3,308	1	1.1%	98	3.0%	1	1.1%	0.1%	12	0.4%	0.1%
HSBC	58	1,778	4	6.9%	25	1.4%	1	1.7%	0.1%	6	0.3%	0.0%
Capital One	1349	59,806	16	1.2%	577	1.0%	16	1.2%	2.0%	804	1.3%	3.4%
Chase	3915	105,590	34	0.9%	979	0.9%	39	1.0%	4.9%	961	0.9%	4.1%
M&T	311	12,269	6	1.9%	85	0.7%	3	1.0%	0.4%	58	0.5%	0.2%
Santander	1041	43,310	7	0.7%	207	0.5%	14	1.3%	1.8%	595	1.4%	2.5%
TD Bank	283	13,431	2	0.7%	17	0.1%	1	0.4%	0.1%	32	0.2%	0.1%
Wells Fargo	354	39,950	8	2.3%	50	0.1%	4	1.1%	0.5%	368	0.9%	1.6%
Citibank	134	4,381	0	0.0%	0	0.0%	4	3.0%	0.5%	76	1.7%	0.3%
Smaller												
Popular	253	4,929	7	2.8%	216	4.4%	3	1.2%	0.4%	83	1.7%	0.4%
Signature	2694	74,371	41	1.5%	1,213	1.6%	127	4.7%	16%	3,597	4.8%	15.3%
Ridgewood	546	8,797	9	1.6%	109	1.2%	27	4.9%	3.4%	468	5.3%	2.0%
BankUnited	282	8,455	4	1.4%	102	1.2%	6	2.1%	0.8%	291	3.4%	1.2%
Emigrant	242	2,130	3	1.2%	24	1.1%	3	1.2%	0.4%	20	0.9%	0.1%
Dime	1210	30,104	9	0.7%	299	1.0%	10	0.8%	1.3%	264	0.9%	1.1%
NYCB	4075	172,378	27	0.7%	1,673	1.0%	104	2.6%	13%	3,619	2.1%	15.4%
Valley National	735	33,976	13	1.8%	268	0.8%	18	2.4%	2.3%	524	1.5%	2.2%
Sterling	1432	51,173	14	1.0%	398	0.8%	34	2.4%	4.3%	1,133	2.2%	4.8%
Apple Bank	485	29,301	3	0.6%	175	0.6%	2	0.4%	0.3%	160	0.5%	0.7%
Flushing	1457	24,685	8	0.5%	109	0.4%	11	0.8%	1.4%	413	1.7%	1.8%
Wholesale												
Goldman Sachs	36	600	3	8.3%	19	3.2%	0	0.0%	0.0%	0	0.0%	0.0%
BNY Mellon	160	11,857	6	3.8%	88	0.7%	2	1.3%	0.3%	54	0.5%	0.2%
Deutsche Bank	48	3,644	1	2.1%	8	0.2%	0	0.0%	0.0%	0	0.0%	0.0%
Morgan Stanley	34	1,345	0	0.0%	0	0.0%	0	0.0%	0.0%	0	0.0%	0.0%

Many loans now, and especially those that were made based on speculative assumptions, are even more likely to be unsustainable as more tenants are unable to pay rent; unemployment remains high and those who had access to expanded unemployment benefits are about to lose them when the program ends. While ANHD strongly advocates for government to provide rent relief, banks are also in a unique position to provide mortgage forbearance, and when they do provide forbearance, to urge borrowers to extend that relief to tenants, both residential and commercial. This is also a moment where banks can work with stakeholders and government programs to support the transfer of buildings to tenant ownership or more responsible owners, including nonprofit developers. Banks can also devote resources to such efforts, regardless of whether they hold the mortgage, by providing resources to CDCs to acquire and rehabilitate distressed properties.

Predatory and irresponsible multifamily lending is just one of many abusive practices banks engage in and that the CRA can and should seek to curb, together with other forms of regulation.

NO PENALTIES FOR PREDATORY OR HIGH COST LENDING TO CONSUMERS AND SMALL BUSINESSES

When people are financially vulnerable, companies offer products that may sound positive but in fact push people further into debt and financial distress. It happens time and again with overdraft products, merchant cash advances and other high-cost small business loans, auto loans, credit cards, and – in states outside New York – payday loans. When what is needed are small dollar loans, such as small business loans and lines of credit, credit builder loans, and affordable student loans. Since coming into office, the Trump administration has been chipping away at consumer protections designed to deter some of these products and practices, including most recently a rollback in the CFPB's payday lending rules that required an analysis of a borrower's ability to repay the loan[10]. While the OCC took out overdraft and credit card loans from consideration, they provide CRA credit for all other consumer loans to LMI borrowers and incentivize higher volumes to LMI borrowers to meet the one-ratio and distribution targets. The new system has no guardrails and could allow banks to get CRA credit for business lines that do not meet local needs, and potentially cause harm. And with still no method to downgrade for patterns of harm or displacement, and no incentive to provide responsive small dollar loans that are typically made at lower volumes, consumers remain vulnerable. Consumers and small businesses need small dollar loans, and the CRA should encourage them when the need is expressed, but only if made responsibly and affordably. In the time of COVID, consumers also need relief from loans they cannot pay with forgiveness or forbearance.

ANHD has long called for regulators to strengthen the CRA to better evaluate the impact of loans and investments and not simply allow loans that check a box. This means fully assessing local needs and evaluating bank activities in relation to those needs. It means benchmarking and evaluating activities, such as loans and investments to nonprofits, grants, analyzing depth and length of affordability, quality of jobs, quality of loan products and use of affordable products, and patterns of displacement. The final rule does the opposite – it automatically qualifies a long list of activities with little regard to local community need or impact and offers no way for communities to weigh in on how a bank is doing.

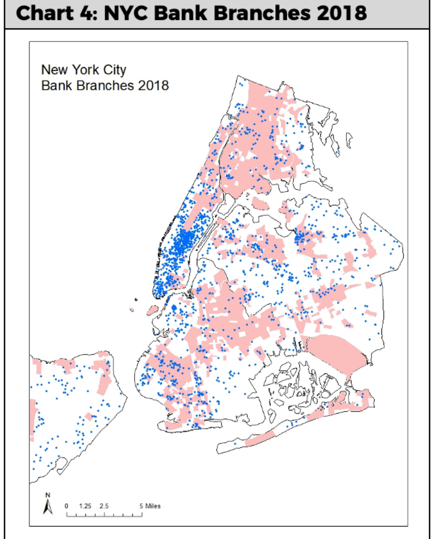
THE FINAL CRA RULE MINIMIZES THE IMPORTANCE OF BANK BRANCHES AND PRODUCTS

The OCC's final rule minimizes the importance of bank branches and eliminates analysis of affordable banking services. COVID highlights the need for more access to banks, closer to people's homes and with fewer fees and barriers to entry.

Under the CRA today, banks have a service test that evaluates banks on the percentage of branches in lower-income tracts, the impact of branches opened and closed, and some analysis of banking products. The test also evaluates the level of community development services bank staff provide, such as financial literacy, homebuyer courses, and technical support. The OCC's proposal eliminates the service test entirely, replacing it with a minimal analysis of branch locations, no analysis of branches opened and closed or banking products, and an attempt to quantify service hours that go towards the one-ratio target metric.

Bank branch locations have been inequitable for years, with mid- and lower-Manhattan inundated with branches while lower-income communities of color have few branches or none (see chart 4). Bank fees have also long been regressive as the poor are hit with maintenance and overdraft fees that the wealthy do not pay. **The 20 retail banks in this study took in $6.1 billion in overdraft fees and $2.85 billion in maintenance fees in 2018; over 85% of those fees went to just three banks – Chase, Wells Fargo, and Bank of America.** And now with COVID, people must stay close to home, so even if a bank branch were close to their place of work in Manhattan, they cannot access it as frequently, if at all. Banks in communities of color are more important than ever.

Chart 4: NYC Bank Branches 2018



The CRA proposal greatly minimizes analysis of branch locations in LMI tracts and eliminates any analysis of bank accounts or delivery mechanisms, except once again to say they will be analyzed in the performance context, with no systematic analysis or explanation as to how that will impact the rating. While numerous banks in our study accept the New York City Municipal ID (IDNYC) as secondary identification, and some accept alternative forms of identification such as consular ID cards, not all do and not one bank in this analysis accepts the IDNYC as a primary form of identification, which is needed to open a bank account.

Table 9: 2018 Branches, change in total branches from 2015 to 2018, and Overdraft fees

	Total	Low-income tracts	% Low-income	LMI tracts	% LMI	Branch # Change from 2015-18	Overdraft ($m)	OD/consumer trans. Deposits
Largest								
Chase	359	49	14%	119	33%	-13	$1967	3.0%
Bank of America	123	14	11%	40	33%	4	$1562	1.9%
HSBC	91	14	15%	27	30%	-3	$6.38	0.2%
Citibank	144	17	12%	42	29%	-8	$105	2.9%
Santander	70	5	7%	20	29%	-1	$58	1.1%
Capital One	116	10	9%	32	28%	-19	$166	6.5%
TD Bank	142	7	5%	35	25%	16	$554	24%
M&T	18	2	11%	2	11%	6	$124	5.6%
Wells Fargo	24	0	0%	2	8.3%	3	$1536	7.6%
Smaller								
Popular	34	6	18%	19	56%	0	$2.54	2.6%
Flushing	15	5	33%	8	53%	0	$0.52	0.7%
Ridgewood	25	0	0%	12	48%	0	$2.74	3.0%
Apple	53	10	19%	22	42%	2	$0.51	0.1%
Sterling	36	3	8%	12	33%	-11	$4.04	1.9%
Dime	21	4	19%	6	29%	3	$0.42	0.6%
NYCB	81	9	11%	22	27%	-4	$5.62	1%
Valley National	27	2	7%	7	26%	-3	$3.12	0.6%
BankUnited	4	0	0%	1	25%	-1	$0.48	0.8%
Signature	20	1	5%	3	15%	1	$0.57	4.6%
Emigrant	2	0	0%	0	0%	0	$0.00	0.0%

The rule also allows banks to count "LMI-adjacent" branches that serve LMI people, providing yet another way to inflate the bank's numbers. The percentage of branches is one important indictor to examine, to ensure bank branches are equitably distributed, but not the only factor in access to banking. Flushing, Apple, and Dime have the highest percentage of branches in low-income communities, whereas Popular, Flushing, and Ridgewood lead branching in LMI communities. Among the largest banks, Chase, Bank of America, and HSBC have roughly a third of their branches in LMI communities. Equally important are where the branches are located and where branches have opened and closed, as many are often clustered in the same commercial corridors, leaving communities of color in neighborhoods with few or none. Branch closures were prevalent before COVID and some reports indicate they will accelerate as banks use the pandemic as an excuse to close more branches, particularly in urban markets. Capital One leads in closures as they continue their focus on online banking, leaving customers with fewer in-person options. They are down 19 branches from 2015-18 and according to FDIC branch closure data, they closed another 31 from to 2018-19. In February 2020, they applied to close another 10. Sterling also has a history of branch closures, especially following acquisitions; they closed 11 branches from 2015 to 2018.

Under the final rule, some banks could close 10 branches in LMI communities with little impact on their overall score, even if one of those closed is the last branch in an already underbanked community of color. For example, Bank of America has 33% of its branches in LMI tracts, which contributes to its one-ratio metric of 3.4%. The bank could close 10 of those branches and it would barely change the metric to 3.2%. Or, it could open 10 branches in LMI tracts, which nudges the metric to 3.5%. This system provides little incentive to add new branches or disincentive to close them.

In addition to branch locations, equally important is for banks to ensure their products are affordable and accessible to the people who live in those communities. This is important at any time, and especially now with so many families out of work, including immigrants and others who received insufficient or no government assistance or who faced barriers to accessing some or all assistance. TD Bank for example has been opening branches in recent years, including in lower-income communities. Like many banks, they provided some ways for COVID-impacted customers to waive fees, but overall, banking there can be costly; they took in the fourth highest amount of bank fees and their $554 million in overdraft fees represents 24% of consumer transactional deposits. They also do not offer a [BankOn]() or similar product, which is a low-cost, no-overdraft bank account. Chase, Citibank, Bank of America, and Wells Fargo all have BankOn products; Wells Fargo's is a debit card. The other basic banking products at these largest banks are also expensive for customers who do not meet minimum balance or direct deposit requirements, costing $10 or $12 per month. Some large banks and most smaller banks have accounts with low or no monthly maintenance fees, but more needs to be done to limit overdrafts and other fees. Low-income people should never pay those amounts, even outside of a pandemic.

For an equitable recovery, banks should reverse these trends of branch closures and high fees and instead open branches in underserved communities, reduce and eliminate extractive fees that fall on low-income customers, and serve more immigrants.

Another best practice for banks is to not allow customers to overdraft on ATM or debit card transactions. By law, banks must decline those transactions that would cause an overdraft fee, but in most cases, customers can opt to have the bank pay for the transaction, which triggers a high fee and overdraft debt. Chase, Bank of America, and Wells Fargo collectively took in $5.1 billion in overdraft fees, $2.4 billion in maintenance fees, and $1 billion in ATM fees in 2018, indicating that many customers are not using their BankOn products and paying too much for banking. It is not enough just to offer a product; banks should be evaluated on the use of the product. The data in Table 9 has total overdraft fees and their percentage of consumer transactional deposits, indicating which banks are doing more to limit overdrafts.

For an equitable recovery, banks should reverse these trends of branch closures and high fees and instead open branches in underserved communities, reduce and eliminate extractive fees that fall on low-income customers, and serve more immigrants by accepting the IDNYC as primary identification and providing services in languages other than English. This should be a requirement under the CRA and systematically evaluated, but the OCC's final rule does none of this and will give banks further incentive to reduce their footprint in already underbanked communities. This comes at a time when access to banks close to home is even more important as people are staying in their neighborhoods due to stay at home orders and job loss.

THE FINAL RULE PUTS LESS FOCUS ON LOW-INCOME AND BLACK AND BROWN COMMUNITIES

The final rule puts less focus on the historically redlined communities the CRA was meant to serve, which are low- and moderate-income people and communities and small businesses, while doing nothing to strengthen the law to explicitly benefit Black and Brown communities who are disproportionately impacted by COVID and bear the legacy of systemic redlining.

RACIAL DISPARITIES IN LENDING AND BANKING PERSIST

The CRA was passed in response to redlining and racial discrimination, yet it has always been colorblind. Aside from the fair lending test, banks are evaluated solely on lending to LMI people and small businesses and in LMI communities. It is long past time for the law to explicitly create an affirmative obligation to serve Black and Brown people and communities. Discriminatory lending patterns and practices are well documented for Black and Hispanic borrowers in all areas of banking, and the data reflects that history. Even an illness that should know nothing of race or income is disproportionately harming people of color. The legacy of redlining – coupled with discriminatory land use decisions and a myriad of other policies – has contributed to overcrowding and poor housing conditions, less access to healthcare, fewer quality jobs, lower savings to weather such disruptions, and ultimately to disproportionately high COVID-related sicknesses, hospitalizations, and death among Black and Brown communities.

As the maps in chart 5 show, the concentrations of home loans by higher-cost non-bank lenders and lack of access to bank branches and small business loans are just a few banking indicators that align with the concentration of COVID cases and where people of color live. These disparities have consequences for underserved communities. In addition to the banking and wealth disparities mentioned earlier, Black-owned businesses are more likely to operate at a loss than white-owned firms and less likely to have their funding needs met; just 17% of Black-owned non-employer firms had their funding needs met in 2019.

In New York City, barely 9% of all home purchase loans were made to Black or Hispanic borrowers in 2018. Starting in 2018, HMDA includes disaggregated race data where about half of the loans report disaggregated data for Asian borrowers. Among those, Filipino, Korean, and

Chart 5: Maps of COVID cases, people of color, non-bank loans, small business loans, and bank branches. The neighborhoods with the highest rates of COVID cases closely match where people of color live and maps that reflect historic and present inequities: non-bank lenders dominate and banks make fewer small business loans and have fewer branches.

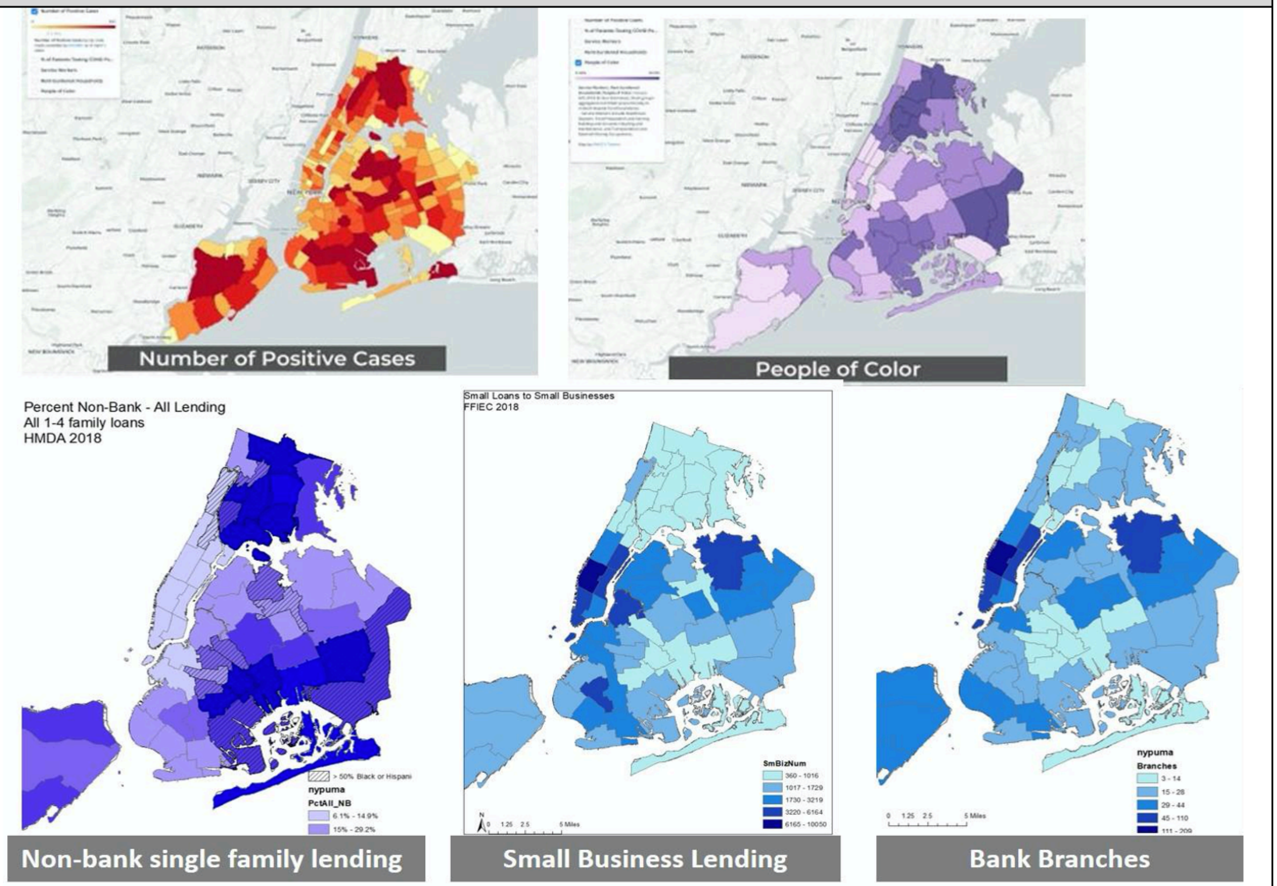
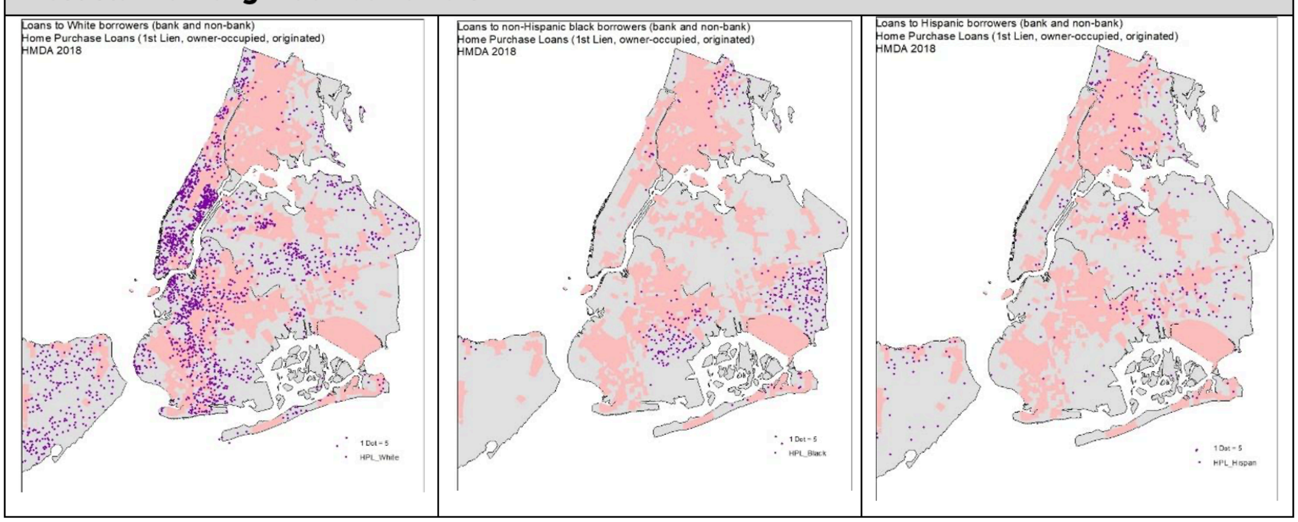


Chart 6: Maps of Home Purchase loans to White, Black, and Hispanic borrowers, 2018: The concentration of loans to Black and Hispanic borrowers correlates to neighborhoods with the highest percentages of loans by non-bank lenders that are not covered by the CRA. It is most stark among Black borrowers



"other Asian" are underrepresented compared to their share of the population. 17% of the city's population are classified as Other Asians, yet just 9.3% of home loans went to these populations. This includes Bangladeshi, Pakistani, and Nepalese communities, many of whom live and work in communities hit hard by COVID.

And as the maps in chart 6 show, loans to Black borrowers are most concentrated in neighborhoods dominated by non-bank lenders that are not covered by the CRA. Thus, it is unsurprising that the banks in this study performed worse than citywide averages, with only two exceeding it (see table 10): M&T 46 (44%), and Sterling 20 (38%)[11]; Santander came close with 43 loans (6.3%). The results are similar for Hispanic borrowers, but banks' records serving them were slightly better, with five banks exceeding the city average: Chase, M&T, Valley National, Sterling, and Popular.

Table 10: Home Purchase Loans to Black and Hispanic borrowers, 2018

	Total	Black	% Black	Hispanic	% Hispanic
Largest					
M&T	104	46	44%	23	22%
Santander	685	43	6.3%	40	5.8%
HSBC	266	13	4.9%	20	7.5%
Citibank	1884	91	4.8%	108	5.7%
Chase	4017	148	3.7%	465	12%
Wells Fargo	3721	134	3.6%	202	5.4%
TD Bank	389	14	3.6%	24	6.2%
Bank of America	1440	31	2.2%	47	3.3%
Smaller					
Sterling	52	20	38%	5	9.6%
Popular	42	2	4.8%	6	14%
Emigrant	22	1	4.5%	0	0.0%
Ridgewood	106	4	3.8%	5	4.7%
Valley National	143	3	2.1%	21	15%

1st lien, owner-occupied, originated; retail banks making 10+ loans

Non-CRA regulated entities are filling the gaps in neighborhoods of color, often with higher cost loans or extractive products, as is the case with places such as check cashers and pawn shops. The prevalence of non-bank lenders is particularly pronounced in southeast Queens, parts of the Bronx, and eastern Brooklyn, including East New York and Cypress Hills, all of which also lack adequate bank branches and have disproportionately high COVID cases in their Black and Hispanic neighborhoods. The cost to consumers is compounded by high cost products some banks offer, such as overdrafts and maintenance fees as discussed earlier.

LENDING TO LMI BORROWERS

In the final rule, the analysis of equitable lending to LMI people and communities comes second to the one-ratio target goal, further taking the focus away from historically redlined communities.

Under the CRA today, a main portion of the lending test is an analysis of the distribution of residential lending to LMI borrowers and in LMI tracts, as well as an analysis of small business lending on a number of factors, including size of business, size of loan, and geographic distribution. As with many parts of the CRA, this is an area that could be strengthened, but the final rule does the opposite. The one-ratio metric is clearly the driving force in the final CRA rule, but the OCC included a retail distribution test for consumer and retail lines of business that will do little to incentivize the small dollar loans communities need during COVID and recovery. The final rule creates a pass/fail system where a bank will pass if it meets either a demographic comparator that compares to the target population, or a peer comparator that compares to peer lending to the target population. The original proposal had set the demographic comparator to

55% and the peer comparator to 65%. For example, if 70% of the community is LMI, then the demographic comparator would be set at 38.5% (55% of 70%), and if 10% of loans went to LMI borrowers, then the peer comparator would be set at 6.5% (65% of 10%). These are drastically different thresholds to meet and banks will clearly choose the easier one.

As with the one-ratio thresholds, the OCC acknowledged that they did not do enough analysis to set the demographic and peer comparator percentages and removed them to be established later. In a high-cost city like New York City where over 70% of the population are classified as low- or moderate-income, if the comparator is anywhere near what it was in the proposal, most banks will not meet the demographic comparator in most categories and have no incentive to reach it with the lower peer comparator option. Further, the OCC will also only conduct the distribution tests for products where a bank makes 20 or more loans and that comprise 15% of the banks' retail lending, thus hiding more loans from public scrutiny. According to the Urban Institute, 15% to 30% of small business loans will be excluded from examination in the New York metro area.

Due to COVID, lower-income Black and Brown homebuyers and homeowners will need more financial assistance to purchase and repair homes, and foreclosure prevention services to remain in their homes. The CRA exams must reflect how well banks meet those needs.

In 2018, 8% of all 1-4 family loans originated by banks were to LMI borrowers, which would have set the peer comparator at 5.2%. Half of the banks in New York City do not meet this very low bar. And if that were to become the goal, it would drive the bar down even further. 41 of the 77 banks that made 20 or more loans in 2018 met this target. Such a system raises serious questions about the rating of banks that do not meet the target, including large banks like Wells Fargo, Citizens, and First Republic Bank that would fail under the original threshold. The rule provides little clarity as to whether the bank's rating would go down and how far, or if the performance context would routinely serve as a rationale for low performance and prevent a failing rating. Further, if a bank must pass in only 50% to 80% of its assessment areas, it may choose to ignore areas where it is far below the thresholds and focus on the areas where it is easier to meet the target goals.

There is no discussion as to whether the regulators will break out home purchase, refinance, home improvement loans, or HELOC loans. The volume of home improvement loans, for example is persistently low across the board, despite calls for banks to develop and market such products[12]. Nor is there any systematic analysis of quality lending, as is done when analyzing how "responsive" and "flexible" a bank is on today's exam: low down payments, lower interest rates, access to pre-purchase counseling, and financial assistance.

Due to COVID, lower-income Black and Brown homebuyers and homeowners will need more financial assistance to purchase and repair homes, and foreclosure prevention services to remain in their homes. The CRA exams must reflect how well banks meet those needs. A robust analysis of products offered and utilized is an important component of the exam that will be eliminated under the single-metric approach. This comes just as the CFPB started reporting more detailed data on race, pricing, and other loan characteristics.

Looking specifically at home purchase loans (1-4 family, owner-occupied, first-lien), among all banks in New York City, the percentage to LMI borrowers is 7.5%. Under the OCC's original proposal, that would set the peer comparator at a low bar of 4.8%. Wells Fargo barely exceeded it, and Bank of America, Ridgewood, Popular and Emigrant did not (see table 11). Only three banks exceeded 10% of loans to LMI borrowers: Sterling at 44%, M&T at 20%, and Chase at 12%, with Chase making the highest volume by far. Two others came close – HSBC at 9.4%, Citibank at 9.1%.

Table 11: Home Purchase Loans (HPL) overall and percentage to LMI borrowers, HMDA 2018 (1-4 family loans, owner-occupied, first-lien)

	HPL	HPL LMI	% LMI
Largest			
M&T	104	21	20%
Chase	4017	474	12%
HSBC	266	25	9.4%
Citibank	1884	171	9.1%
TD Bank	389	30	7.7%
Santander	685	44	6.4%
Wells Fargo	3721	190	5.1%
Bank of America	1440	50	3.5%
Smaller			
Sterling	52	23	44%
Valley National	143	12	8.4%
Popular	42	2	4.8%
Emigrant	22	1	4.5%
Ridgewood	106	0	0.0%

Perhaps if the OCC were willing to fail more banks for low performance or failure to provide additional services, this could be one positive aspect of the rule. But, with no clarity as to how the qualitative data in the performance context will be used, and no opportunity for communities to provide input on banks, it is very likely that it will serve as a reason to raise a failing rating due to contextual circumstances described by the bank.

As mentioned above, banks are rapidly pulling out of the 1-4 family lending space entirely, putting more borrowers into the hands of non-bank lenders, unregulated by the CRA and thus not examined regularly for distribution or loan characteristics. Capital One, BankUnited, NYCB, and Apple ceased making 1-4 family loans in recent years, and other banks made very few to begin with. Sterling now only makes "CRA loans" (loans to LMI borrowers and in LMI tracts) and refers others to Freedom Mortgage. NYCB refers to the same company. The OCC's rule will evaluate even fewer loans by excluding bank affiliates and some bank lines of business. Affiliates are non-bank entities owned by a bank. Under the current system, banks have the option to include their loans on any portion of the exam, including 1-4 family, small business, and multifamily. Rather than make them mandatory as most commenters requested, they decided that they cannot be included. Affiliates should be mandatory to include, and banks should be held accountable for non-bank lenders to which they formally refer customers for loans, such as the case with Freedom Mortgage for some banks.

GEOGRAPHIC ANALYSIS OF MULTIFAMILY LENDING

While the final OCC rule retained a geographic analysis of 1-4 family lending, they excluded the geographic analysis of multifamily lending in LMI tracts, which helps ensure that landlords in those communities have access to loans to maintain buildings in good condition. Unlike single-family lending, banks still make most multifamily loans citywide and cannot be allowed to ignore lower-income areas. This is especially important now to ensure that the communities most impacted by COVID get the resources they need to keep people in their homes and that those homes are in good condition.

As Table 12 shows, NYCB and Signature consistently make the highest volume of multifamily loans in New York City. Both make a significant portion of their loans in LMI tracts, but Signature ranked second each year, with 73% in 2017 and 63% in 2018, while NYCB ranked fourth each year at 68% and 57%, respectively. Ridgewood's 70% ranked first in 2018 and third in 2017.

Table 12: Top Multifamily Lenders and Percentages of loans in LMI tracts				
	2017		2018	
Bank	All	% LMI	All	% LMI
Ridgewood	132	70%	106	70%
Signature	462	73%	487	63%
Flushing	173	64%	157	61%
NYCB	537	68%	761	57%
Capital One	228	61%	188	56%
BankUnited	24	58%	11	55%
Dime	135	33%	62	52%
Santander	130	57%	121	49%
Chase	445	49%	503	45%
Sterling	64	75%	67	37%
Apple	65	25%	94	32%
Valley National	79	22%	71	31%

Even with this geographic analysis, the CRA has not been successful enough in deterring banks from lending to landlords who harass and displace tenants, as described above and as evidenced by the banks who continue to lend to known bad-acting landlords. **As a part of the basic lending test, ANHD recommends that the CRA ensure that lending continues in lower-income communities, and that the lending is done responsibly to preserve safe, affordable housing.** This includes preserving affordability in rent-stabilized and "naturally occurring" affordable housing that are not income-restricted. This analysis should be separate from the community development lending that would encourage banks to support deep, permanent affordable housing that takes more time and effort, and might not be done through their normal course of business.

Non-bank lenders are a factor in multifamily lending as well, although not at the same scale as 1-4 family lending. Following years of advocacy by ANHD and allies, HMDA now captures much more comprehensive multifamily lending data in New York, allowing us to better analyze these trends[13]. The 2018 HMDA data shows that just 5.3% of all multifamily loans were made by non-bank lenders. However, even one bad loan can impact a lot of people, as we saw with Madison Realty Capital's loans to a bad-acting landlord a few years ago that led to widespread harassment and displacement across multiple buildings. 14% of all buildings financed by non-bank lenders in 2018 have over 100 units, and that rises to 25% of similarly sized buildings in the Bronx where over 7% of all multifamily loans are made by non-bank lenders. These lenders are not regulated by the CRA, nor by safety and soundness banking laws.

The final rule also includes distribution tests of consumer and small business loans. As with residential lending, the thresholds are not yet determined as to what would be a passing or failing level of lending. As mentioned above, this system of analysis also raises concerns given the lack of guardrails and consumer protections, with no systematic analysis of quality, responsiveness, or impact.

MORE ACTIVITIES COUNT FOR CRA CREDIT

The rule greatly expands what counts for CRA credit with activities that provide little to no benefit for low-income, Black and Brown communities. Under the current system, most community development activities must have a "primary purpose" of community development, typically meaning 50% or more of the activity is determined to benefit LMI people or communities. Under the new system, in addition to the new categories added for credit, banks can get partial credit for activities that happen to touch upon a low-income community, even if it serves just a few LMI people and even if the bank would have done that activity under their normal course of business. Already, many activities count for CRA credit that are done under normal course of business, regardless of quality, even if it creates low-wage jobs or sub-standard housing. Rather than reign that in and add more analysis of impact, the rule would expand that universe exponentially.

These are some examples of activities that will count towards a bank's one-ratio metric that could detract from the types of activities impacted communities have long needed, especially to recover from this economic crisis:

- **Infrastructure projects and essential community facilities such as roads, bridges, and even police stations:** While some projects may be deemed necessary, such as a hospital or community facility, the bank could get partial credit for such activities in wealthier areas if they happen to pass through a low-income community or serve a few low-income people.
- **Investment in funds to be used in certain designated low-income communities known as "opportunity zones":** This could include financing for luxury housing, self-storage facilities, or athletic stadiums. While stadiums were taken out of the OCC rule as explicitly qualifying, there is nothing in the rule that appears to preclude them if they are financed through an opportunity zone fund in an LMI tract. These types of investments will do little to benefit people out of work or with reduced hours who need affordable housing and quality jobs.
- **Consumer loans to LMI people, regardless of the terms or any analysis of ability to repay:** Some of these loans were rarely beneficial to building wealth, and less so now when consumers need relief from outstanding debt and access to low-interest loans. Thanks to community pressure, the OCC removed credit cards and overdraft loans. Consumer loans should be analyzed, but that analysis must be more than simply dollars and should analyze what need they are meeting and how. They should not be allowed to simply help banks achieve their dollar targets, especially if they are high-cost or extractive.
- **High-cost housing in a low-income area.** First, loans will now qualify as affordable housing if the rents are affordable to LMI people, with no attempt to determine that lower-income people are likely to live there. Second, because the "primary purpose" test is eliminated, the bar is much lower as to what counts. A bank could get credit for the affordable units in a middle- or upper-income project, even if the units comprise a small percentage of all units and if the community determines that the overall project is likely to lead to displacement. This already happens for "affordable" housing that is out of reach for the local community, which is common in New York City because the area median income is calculated with surrounding counties and often higher than the incomes of the local neighborhood.
- **Larger small business loans:** As mentioned above, the OCC's rule raises the thresholds for loan size and business size to $1.6 million, despite the persistent challenges very small businesses faced accessing small dollar loans pre-COVID and even more so during this pandemic. The original proposal had removed the economic development category entirely. In yet another admission that the rule was rushed and not well thought out, they put the category back in with an explanation that they had not intended to remove it. This is positive, as workforce and economic development are important to COVID relief, but they did little to strengthen the category to ensure they are supporting small businesses and quality jobs for the people who need them most.

Adding race to the CRA would allow banks to offer additional CRA loan products benefiting people and communities of color that might not be low- or moderate-income; and it would also ensure that people of color are equitably served within the traditional CRA activities that benefit low- and moderate-income people and communities. Strengthening the law to evaluate the impact of lending in low-income neighborhoods and communities of color is also critical to assess who is getting loans in LMI communities, to ensure it includes LMI people and people of color, and that the lending does not foster displacement of existing low-income, Black and Brown residents. Non-bank lenders should also be covered by the CRA, especially given their prevalence in communities of color. Explicitly adding race would require legislative changes, but under the current system, regulators can use existing structures to analyze race, such as benchmarking data in the fair lending analysis and analyzing needs and response as part of the qualitative analysis. Nationally, Black, Asian, and Hispanic populations reached unemployment rates at or close to 16% in June, versus 11% for white populations. A report by the Center for NYC Affairs found that New York City unemployment reached 25% by May. They also found that job loss due to the pandemic was concentrated among people living in the Bronx, Queens, and Brooklyn and in industries that tend to employ people of color and pay lower wages, such as service and retail jobs. Over 90% of Bronx residents are Hispanic, and over two-thirds of Queens and Brooklyn residents are Black, Hispanic, or Asian. **Evaluating CRA activities in communities of color is particularly important in response to COVID given the widespread job loss and economic burden they face.**

THE FINAL RULE TAKES THE "COMMUNITY" OUT OF THE CRA

THE RULE MINIMIZES LOCAL ASSESSMENT AREAS AND LOCAL OBLIGATIONS

Under the CRA, banks designate "assessment areas" in which they are evaluated on their CRA activities. Under the current system, these geographic areas typically include within a Metropolitan Statistical Area (MSA) where a bank has branches. New York City is part of the NY-NJ-White Plains MSA, which also includes six surrounding counties in New York and New Jersey.

While the final rule maintains the branch-based assessment areas, it adds areas for internet banks and reduces the obligation to serve assessment areas in two critical ways: (1) the bank-level single-metric ratio is assessed without regard to any assessment area and can include activities anywhere nationwide, and (2) a bank can ignore 20% to 50% of its assessment areas and still pass its exam.

One positive change in the final rule is that a bank must pass in assessment areas where they hold 80% of their deposits, but banks that do not meet that criteria can fail in 20% to 50% of their assessment areas and still pass the overall exam. As such, banks will have less incentive to maintain partnerships with community organizations in specific geographies, such as New York City. They will likely reduce community development staff and especially staff dedicated to these geographies, and instead focus on identifying core business deals that meet the broadened CRA definitions. Even where they do have an obligation, the one-ratio approach incentivizes this change in priorities and banks will be more business-driven, not community driven.

Another stated purpose of the final rule was to direct capital to unbanked and underbanked areas, such as native lands and banking deserts, but the rule does little to address that. While the bank-level one-ratio does allow for CRA activity in such areas, it also allows activity in large populous cities that will likely have more opportunity for the high-dollar investments needed to reach target goals. The rule also does no analysis of retail loans and branches in those underserved areas. Even within a so-called "over-banked" city like New York City, there are whole neighborhoods that have few or no bank branches and lack access to banking, lending, and community development resources.

The same will happen for online banks that designate assessment areas where they take 5% of their deposits. For some, that could be as large as a state, and for others it will likely be from already populous cities, neither of which will create new local obligations. It also ignores where banks lend if it does not coincide with where they take deposits. The local obligation needs to be strengthened, and not weakened. The CRA must incentivize banks to partner with local community organizations to create CRA plans that address local needs both citywide, and down to the neighborhood level. There should be mechanisms to do so in rural and urban underbanked areas.

THE RULE MINIMIZES THE ROLE OF COMMUNITY INPUT AND COMMUNITY NEEDS

The CRA works best when a bank collaborates with local stakeholders to understand and respond to local needs. This is especially important now as communities who are still in the midst of a pandemic are working to safely reopen and help people return to work, school, and daily life, including low-income, Black and Brown people who are out of work, in debt, and excluded from some or all financial relief. The CRA was designed with this framework in mind. Under the CRA today, banks and regulators lay out a "performance context" against which banks are evaluated – this is an assessment of local needs and opportunities, based on public data and community input. Regulators also accept comments from the public on how banks are responding, and then assess the CRA activities and products a bank offers in response to those needs and comments. Community input is also an integral part of a bank merger application process, resulting in meaningful CRA commitments.

This portion of the exam can be strengthened in many ways and is exactly what is needed for an equitable recovery: banks at the table responding to locally-defined community needs. Yet**, the final rule relegates the community needs assessment to an afterthought, is mostly bank-written, and eliminates community input on individual bank performance.**

The final rule relegates the community needs assessment to an afterthought, is mostly bank-written, and eliminates community input on individual bank performance.

The list of qualified activities was generated outside of community input and will get credit absent community input on their need and impact. Some activities on the list meet well known needs in general, such as affordable housing, while others may not. Regardless, the specific responses to local needs will play out differently from community to community. For example, the types of housing needed, levels of affordability, and jobs supported can vary from place to place, as well as among the populations being served. As regulators contemplate how to direct more dollars to communities of color, those same communities must be at the table in planning how those dollars are spent. Banks should be required to sit down with community organizations prior to a CRA cycle, or a merger, and create a comprehensive plan for their CRA activities and a plan to evaluate the work. Under the final rule, this process is an afterthought. The rule vaguely references that all qualitative analysis to go into the performance context, either to inflate the dollars with larger multipliers or to be considered after the thresholds are met, with no guidance on how it will impact the rating and no way for communities to provide comments on how a bank is performing.

CONCLUSION & RECOMMENDATIONS

The CRA as it is today can be an integral component of COVID recovery. A stronger CRA would be even more impactful to recovery and helping address long-standing systemic income and racial disparities. It has the potential to boost lending and access to banking for underserved communities by incentivizing high quality, high impact activities based on local needs, while discouraging and downgrading for displacement and activities that cause harm. This final rule does the opposite. It creates a more complicated, less transparent system that will hinder the types of activities communities need in response to COVID and addressing long-standing disparities.

ANHD and our members have developed the following recommendations for banks to help with COVID recovery and following that, a set of principles that should inform any CRA reform. When CRA exams evaluate bank response to COVID, they should consider how well banks follow these recommendations.

SUPPORT FOR AFFECTED SMALL BUSINESSES & THEIR EMPLOYEES

Small businesses are suffering because of COVID-19. Many small businesses, especially those led by people of color and immigrants, have long struggled to stay open considering rising costs and lack of access to financing. Many small businesses and their employees are now hit hard as they have had to reduce employees or shut down entirely. Banks should take the following actions to support small businesses:

- Banks should suspend loan payments and commercial mortgage payments for businesses that are suffering a slowdown or closure due to COVID-19. Waive fees and interest accrued and extend the loan to reflect the amount due. They should also reduce the cost of banking by waiving monthly maintenance, overdraft, and transactional fees, forgiving past overdrafts, and waiving ATM fees for out-of-network banks and for customers of other banks. Banks should also ensure all outreach materials and customer services are in multiple languages.

- Banks should provide grants and capital to Community Development Financial Institutions (CDFIs) that serve small businesses. CDFIs need resources to provide grants, zero-interest loans, technical support, and other affordable loan products. It is also important for banks to lend directly with affordable loans to small businesses of all sizes. Banks should also make PPP loans to businesses and facilitate the forgiveness process, regardless of whether they are customers.

- Banks should continue and expand grants for nonprofits serving small business owners and employees affected by COVID-19, particularly those providing financial relief and assistance to low-income and immigrant small business owners. Businesses may also need support to operate remotely, including but not limited to technical support and equipment to work remotely, support to conduct banking online, and assistance creating an online presence. Lastly, the high cost of rent has long been a challenge for small businesses and is even more so now. Banks that offer mortgage forbearance can pass on that relief to small business tenants that cannot afford their rent.

PROTECTION FOR TENANTS IN MULTIFAMILY BUILDINGS

Low-income tenants have long been vulnerable to displacement by landlords looking to bring in higher-paying tenants. During this period of extreme financial duress, that pressure is sure to increase. The state's recent eviction moratorium is a positive step, but will require additional response by banks, especially when the moratorium expires:

- Banks should ensure all borrowers know about and follow the eviction moratorium and prevent evictions when it expires. One way to do so would be to monitor vacancies that take place during the COVID-19 crisis and report to the Department of Financial Services (DFS) if a landlord is evicting tenants. New York State DFS must also ensure banks continue to follow the full responsible multifamily lending guidelines for CRA loans and lending in general with responsible underwriting, proper vetting of landlords, and responding when issues arise. They should update the guidance to include a mandate that their borrowers respect the eviction moratorium and protect tenants from eviction. Banks should also fund organizations that are working with tenants to respond to the crisis through direct tenant support and advocacy.
- Banks that offer mortgage forbearance on rent-stabilized and unregulated buildings should add conditions to support tenants, including full support of eviction moratorium, rent relief for residential and commercial tenants, commitment to maintain building and respond promptly to tenant needs, and referrals to city agencies and nonprofits who can support tenants during this crisis.
- Lastly, banks should institute and finance programs that help transfer distressed properties to tenant ownership or preservation-minded developers, with an emphasis on nonprofit CDCs with a track record of providing deep affordability and permanent affordability.

ACCESS TO BASIC BANKING SERVICES

Banks make tens of billions each year in monthly maintenance, overdraft, and ATM fees. During normal times, this is a hardship for low-income clients, and the situation has only gotten worse with COVID, where it is even harder for people to make ends meet. Banks should respond swiftly:

- Banks should reduce the cost of banking by waiving all monthly maintenance fees, providing free money orders and remittances, and waiving outstanding overdrafts and any overdraft fees moving forward. They should also waive all out-of-network ATM fees and check-cashing fees for customers and non-customers to allow people to bank closer to home. They should ensure immigrants can access affordable banking by providing adequate language access and accepting alternate forms of ID, including the IDNYC, for all transactions.
- Banks should take additional steps to ensure people have access to cash and credit and are not penalized for failure to make payments due to a pandemic. They should refuse to garnish wages or freeze bank accounts, cease repossessions and debt collection, and not report late payments to credit bureaus. They should waive late fees and interest payments on credit cards for anyone who cannot pay all or some due to COVID-19. For longer-term loans like auto or personal loans, implement loan forbearance, which means to extend the loan, suspend payment and interest due, and add the outstanding loan amount to the end of the loan.

- Lastly, banks should continue and expand grants, and refer customers, to nonprofits serving consumers affected by COVID-19, particularly those working with low-income, immigrant, and limited English proficient populations. Financial counselors can help people transition to online banking and navigate the system to resolve banking issues. Banks can also provide or connect to additional financial supports.

SUPPORT FOR LOW-INCOME HOMEOWNERS

In order to prevent displacement and further financial hardship for low-income, Black, and Brown homeowners during this economic crisis, banks should be doing everything possible to ensure homeowners and tenants can remain in their homes without fear of eviction or further financial hardship:

- Banks should allow COVID-impacted homeowners who cannot pay their mortgages to defer the payments for up to a year and have any late fees and interest payments waived with no negative credit reporting. At the end of the forbearance, servicers should instead extend loan terms and provide permanent loan modifications as needed. This should apply to all home loans, regardless of which investor owns the loan.
- Foreclosures should not be started, continued, or completed and foreclosure sales should both be put on hold during this period. The process must be simple and swift for any homeowner who requests it and outreach and materials must be provided in multiple languages and promote widely. Banks should provide a single point of contact to navigate the system and refer borrowers to HUD-approved housing counselors.
- Banks should continue and expand grants for nonprofit organizations serving homeowners affected by COVID-19, particularly HUD-approved counselors and service providers working with low-income people, people of color, and limited English proficient homeowners. Housing counselors are critical to helping borrowers navigate the new programs being put in place by lenders and government agencies as well as regulations around foreclosures and evictions.

SUPPORT FOR NON-PROFIT AFFORDABLE HOUSING PROVIDERS & NONPROFIT COMMUNITY ORGANIZATIONS

Nonprofits are always on the front lines, serving the most vulnerable populations. ANHD members serve low-income people of color who are the hardest hit by this financial crisis. These organizations are now simultaneously having to attend to internal work and staff needs, while also continuing to serve impacted communities with housing, loans, services, and supports.

Nonprofit developers do not have the same financial cushion as for-profit developers, as they put more of the money they receive back into their buildings in maintenance and services. With many tenants out of work and unable to pay the rent, they are left with a huge cash flow crisis, meaning they have few resources remaining to maintain the buildings while also meeting their expenses and debt obligations. It is critical that banks provide additional supports for nonprofit housing providers and other CDCs:

- Banks should provide loan forbearance and forgiveness for nonprofit developers impacted by the COVID-19. This may be for projects in progress that are halted or delayed, multifamily buildings they manage, buildings they occupy, or loans, lines of credit, and investments used to serve their clients and members. Banks should waive or modify grant requirements that could not be met due to COVID-19. They should also provide additional grants that are flexible and can be used for general operating support or operating subsidies.

RECOMMENDATIONS FOR AN EQUITABLE CRA REFORM FRAMEWORK

The OCC's final CRA rule should be withdrawn entirely. The three bank regulators at the OCC, FDIC, and Federal Reserve must go back to the table to reform the CRA together. They must collaborate with the communities impacted by an inequitable banking system to come up with an approach that maintains the core of the law and strengthens it to address longstanding shortcomings, evaluate newer banking models, and incorporate principles of racial equity throughout.

Any CRA reform must reflect the following community priorities:

- **The CRA must evaluate the <u>quantity, quality and impact</u> of a bank's activities.** This means **banks should get credit for impactful activities that help lift historically redlined people out of poverty**. The CRA was passed in response to redlining and disinvestment in low-income communities of color. Low- and moderate-income people and people of color continue to suffer the impact of disinvestment and irresponsible investment and products. In New York City, **quality community development activities** include loans and investments that support deeply, permanently affordable housing; mission-driven developers, neighborhood-based community organizations, and CDFIs; and quality jobs in sectors that pay well and are accessible to underserved populations. **Quality retail activities** include maintaining and expanding bank branches and providing affordable loans and banking products to underserved small businesses; first-time homebuyers and existing homeowners; and consumers.

  CRA examiners should specifically evaluate the impact of activities on people of color in addition to lower-income people. As part of this evaluation, **they must downgrade banks for harmful behavior,** including patterns of lending that lead to harassment, displacement and harm.

- **Community input and community needs must be at the heart of the CRA.** Strong community needs assessment and community engagement should inform community needs and how examiners evaluate how well banks are meeting those needs. Community input must be a key component of the CRA process to help evaluate how well banks are meeting local needs. This applies to CRA exams, and applications where a bank's CRA record is considered, including bank mergers and branch openings and closings. The CRA can and should foster collaboration with community organizations and lead to more investment and more impactful investment.

- **Assessment areas must maintain local obligations**. The CRA must maintain the placed-based commitment banks have to local communities. Regulators should maintain assessment areas where banks have branches and ATMs and expand to other areas where banks also do considerable business, such as lending and deposit-taking. Any assessment area reform must increase the size of the pie: maintain or increase quality reinvestment where it is needed, including high need "CRA hot spots" such as New York City, while also directing capital to under-banked regions.

Banks and regulators have an opportunity to respond to COVID through implementing and modernizing the CRA in a meaningful way that will benefit the people most impacted by the pandemic, which are low-income, Black and Brown communities. The OCC's approach puts these communities at risk and must be repealed. Our communities deserve better.

METHODOLOGY & NOTES

Since 2008, ANHD has submitted detailed annual information requests to New York City's largest banks to better understand how well they are serving our communities through lending, investment, and services. ANHD aims to get full data from every bank, but for those who do not respond to some or all, we use data solely in the public domain. This year's report uses bank reported and public data through calendar year 2018. The data we used for the annual reports includes the following sources:

» CFPB data for HMDA 1-4 family lending and multifamily lending

» FFIEC for small business lending

» FDIC for New York City deposits, bank branches not supplied by the bank, Tier 1 capital, assets, and national deposits (we use deposits, asset, and Tier 1 capital data from June 30th to match FDIC branch-level reporting periods)

» Bank-reported data on staffing, community development loans, CRA-qualified investments, and CRA-eligible grants.

ANHD often compares banks to their peers, using these categories to classify banks by size:

» **Largest banks:** Retail Commercial and Savings Banks with $50 billion or more in assets.

» **Smaller banks:** Retail Commercial and Savings Banks with fewer than $50 billion in assets.

» **Wholesale banks:** These are commercial banks that are not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect. They provide financial services to other large corporations or governments. For CRA purposes, they are evaluated by more narrowly defined standards, limited to community development loans, investments, and services, and not on retail loans, branches, or banking products.

Select notes on CRA Reform and this report:

- Only OCC-regulated banks are covered by this new rule. Bank regulators among banks in this study.
    - **OCC:** Bank of America, BankUnited, Chase, Citibank, Capital One, HSBC, Morgan Stanley, Santander, Sterling, TD Bank, Valley National, and Wells Fargo.
    - **FDIC & NY State Department of Financial Services:** Apple, Dime, Emigrant, Flushing, NYCB, Ridgewood, and Signature.
    - **Federal Reserve Board & NY State Department of Financial Services:** BNY Mellon, Deutsche Bank, Goldman Sachs, M&T, and Popular.
- For the estimate of the metric, we use the following data:
    - **Community Development Reinvestment:** All originated CRA-eligible loans and CRA-qualified investments and grants, excluding multifamily mortgages that are reported to HMDA

- **Core Consumer & Commercial Lending Reinvestment:** 1-4 family home loans to low- and moderate-income borrowers, HMDA-reportable multifamily community development loans, and small business CRA loans (loans under $1 million to businesses in LMI tracts and to businesses with revenues below $1 million). The reinvestment in Table 1 includes a smaller subset of 1-4 family loans (only 1-4 family home purchase and refinance, owner-occupied, loans to LMI borrowers) and small business loans (only small business loans in LMI tracts)

1. Data retrieved on July 24th from NYC's COVID tracking site https://www1.nyc.gov/site/doh/covid/covid-19-data.page

2. CUNY School of Public Health COVID-19 tracking survey, weeks 2 and 4 https://sph.cuny.edu/research/covid-19-tracking-survey/

3. Taylor, J & Silver, J, 2009, "The Community Reinvestment Act: 30 Years of Wealth Building and What We Must Do to Finish the Job"https://www.frbsf.org/community-development/files/cra_30_years_wealth_building.pdf

4. FDIC, National Survey of Unbanked and Underbanked Households, 2017 (page 3): https://www.fdic.gov/householdsurvey/2017/2017report.pdf

5. DFS's emergency regulation for banks: https://www.dfs.ny.gov/system/files/documents/2020/03/re_new_pt119_nycrr3_text.pdf ; and further details on consumer rights during COVID are found here: https://coronavirus.health.ny.gov/know-your-rights

6. Multifamily community development loans count as community development loans, but ANHD splits them out and analyzes them separately. Most are unsubsidized rent-stabilized housing and not part of a community development program. ANHD believes all such loans should be evaluated for their quality and impact on the tenants who live there, and not only loans submitted for CRA credit.

7. Banks with 5 or fewer assessment areas must pass in 50% of their assessment areas; banks with more must pass in 80% in order to pass their exam.

8. Federal Reserve Banks, 2017, "Small Business Credit Survey, Report on employer firms", (page 6). https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2018/sbcs-employer-firms-report.pdf

9. Limited purpose credit card banks are banks that only make credit card loans, such as American Express, Discover, Synchrony, Chase Bank USA, and Capital One Bank USA (the latter two are part of the banks' holding companies. Limited purpose and wholesale banks are not covered by the new system. Goldman Sachs has a consumer line called Marcus that has never been evaluated under the CRA and under this new system, will remain that way, because the bank is still classified as a wholesale bank. Likewise, limited purpose credit card banks would only be evaluated on their community development activity unless they chose to have their consumer loans evaluated using the "strategic plan" option, which allows a bank to submit a plan for their CRA activities.

10. The CFPB's final payday lending rule rescinds the underwriting provisions of the 2017 rule. The final rule rescinds the mandatory underwriting provisions. The rule can be found here: https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-final-rule-small-dollar-lending/ and an NPR news analysis: https://www.npr.org/2020/07/07/888499021/cfpb-strips-some-consumer-protections-for-payday-loans

11. Sterling now only makes "CRA loans" which are loans in LMI Tracts and to LMI borrowers – other borrowers are referred to Freedom Mortgage; NYCB refers all borrowers to Freedom Mortgage

12. CNYCN, 2017 "East New York: Preserving Affordability in a Face of Uncertainty", https://s28299.pcdn.co/wp-content/uploads/2017/03/ENY-report-full.pdf ; ANHD blog on Cypress Hills LDC's annual bank reinvestment forum https://anhd.org/blog/cypress-hills-ldc-gets-heart-community-reinvestment-act-local-banks-must-reinvest-locally

13. NY CEMAs are a type of mortgage made in NY State, typically for refinances, that are used to lower mortgage recording taxes. They were long excluded from HMDA until the 2015 rule was finalized and implemented for the 2018 data.