

Hearing Title:

**Modern-Day Redlining:
The Burden on Underbanked and Excluded Communities in New York**

Written Testimony

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My name is Jaime Weisberg, I'm a senior campaign analyst at The Association for Neighborhood and Housing Development (ANHD). ANHD is a nonprofit coalition comprised of over 80 neighborhood-based affordable housing and equitable economic development organizations and CDCs with over 40 years of experience in policy and organizing work related to bank reinvestment, affordable housing, and equitable economic development on behalf of New York City's low- and moderate-income (LMI) and immigrant communities and communities of color. ANHD's work is rooted in its values of justice, equity and opportunity.

Thank you to Congresswoman Waters, Congressman Meeks, and the members of this sub-committee for inviting me to speak on this important topic of Modern-day redlining as it relates to the Community Reinvestment Act modernization debate happening in Washington right now. As we've made clear over the past few months, we are adamantly opposed to the changes proposed by Comptroller Joseph Otting at the OCC and FDIC Chair Jelena McWilliams. Despite Comptroller Otting's stated goals, the proposal put forward is less transparent, more complicated, and will lead to less investment and less meaningful investment in low-income communities and communities of color.

ANHD has a deep respect for the Community Reinvestment Act (CRA). ANHD was founded just a few years before the CRA was passed. We understood then, as we do now, the importance of responsible investment in redlined communities. The CRA has leveraged \$2 trillion dollars nationwide since 1996¹, and, in the past five years alone, ANHD has documented near or over \$10 billion each year reinvested in New York City². Thanks in part to the CRA, over 330,000 units of affordable housing have been built in the past 40 years, and a third of that by nonprofit developers. The CRA has leveraged and supported partnerships, products, and developments impacting low-income tenants facing harassment and displacement, low-income homeowners, small businesses and the community organizations, CDFI's and credit unions that support them.

- ANHD led grassroots CRA advocacy with our members that resulted in two of the largest multifamily lenders in NYC – Signature bank and New York Community Bank – adopting a set of multifamily best practices that deter displacement and support tenants³. NY State's Department of Financial Services (DFS) has also adopted both CRA and safety and soundness guidance very similar to our best practices.
- Over the past 8 years, ANHD has been a part of multiple campaigns to secure CRA agreements and CRA plans
 - Santander Bank committed \$11 billion over five years throughout their footprint, including new bank branches and commitments to both retail and community development loans and investments.
 - Valley National and Sterling each were required to create CRA plans as a condition of contested mergers.
 - New York Community Bank created a three-year CRA pledge at the time of their combining their commercial and community bank entities, which included the multifamily best practices as well as additional commitments to increase access to banking and small business lending and to support community development.

¹ <https://ncrc.org/what-the-community-reinvestment-act-means-to-lending-in-philadelphia/>

² <https://anhd.org/project/state-bank-reinvestment-nyc-annual-report>

³ <https://anhd.org/project/multi-family-lending>

- ANHD supports members when banks are acting in ways that are harmful, and to foster connections for positive activities. This can be in the form of research, meetings with banks, and communication with bank regulators.
- ANHD consistently comments on bank CRA exams to provide on-the-ground analysis of what banks are doing well and ways they can improve, which often results in constructive dialogue and improvements in bank behavior. ANHD also sits on numerous bank advisory boards to inform their CRA plans and provide feedback on their activities. ANHD served for one year on the inaugural Community Advisory Board at the Federal Reserve Board.
- ANHD publishes an annual State of Bank Reinvestment in NYC (SOBR) report⁴, and ancillary reports on home lending⁵, documenting CRA activities citywide and among 25 banks operating in NYC, including the largest banks in the country. The SOBR report is a consistent analysis of how banks are doing individually and in comparison to one another, with a goal of raising the bar to increase impactful CRA activities citywide. The report is used by regulators and banks to demonstrate what is being done, and to identify ways they could improve across the CRA spectrum: Staffing, branches and bank products; multifamily lending; home lending; small business lending; and community development lending, investments and grants.

All of these types of agreements and partnerships are at risk with the proposed changes to the CRA.

But, for all its benefits, inequities persist. Modern-day redlining today typically refers to the discrimination that people and communities of color face in accessing loans, banking, and mainstream financial products. Central to this phenomenon is the dual financial system we have where higher-income households have access to lower-cost mainstream financial products and lower-income communities and communities of color are relegated to higher-cost non-bank providers, often with little to no regulation, such as check cashers, private ATMs, pawn shops, and non-bank lenders. While others in these communities still lack access to credit entirely, limiting their opportunities to thrive, be it through higher education, purchasing a home, securing capital for a small business, or buying a car. All these problems are intertwined with broader economic inequalities in access to quality jobs and safe, affordable housing. CDCs, CDFI's, and other nonprofits that work on addressing these issues struggle to access the resources they need to do their work: grassroots organizing of tenants and community members, lending to and supporting small businesses, building and preserving affordable housing, providing financial counseling, and providing access to affordable homeownership and home repair loans.

The term is particularly appropriate to describe what is happening in Jamaica, which has one of the largest concentrations of Black residents in the city and is persistently fighting to combat decades of redlining and discrimination. Large sections of Jamaica and other communities of color in New York City were deemed "high risk" according to the official HOLC redlining maps of the 1930's, and thus cut off from access to the FHA-backed mortgages that enabled many white families to purchase homes and move into the middle class. This was just one mechanism that helped them to build wealth that could be passed on from one generation to the next. While the HOLC ended in 1951, the Fair Housing Act wasn't passed until 1968, and the CRA nearly a decade later in 1977, during the period of what Professor Keeanga-Yamahtta Taylor called "predatory inclusion", in which low-income black families – many single mothers – were targeted for FHA loans, often to purchase severely dilapidated properties located in

⁴ Ibid 2

⁵ <https://anhd.org/report/black-and-latino-borrowers-locked-out-homeownership-new-york-city-new-data-and-analysis-shows>

segregated Black neighborhoods, while also being appraised at a value well above what they were worth⁶. We also know that then, and today, quality homes in Black neighborhoods are valued lower than similar homes in white neighborhoods. Most of the FHA loans in the 70's were made by non-bank mortgage companies in a system fueled by greed, exploitation, and collusion between all segments of the real estate industry. Not surprisingly, many of the loans were unsustainable and fell into foreclosure, leaving the families worse off than they were before they purchased the home. While the tools were different decades later, the greed and exploitation of Black and Brown tenants and homeowners were the same leading up to the 2008 foreclosure crisis. Jamaica was at the epicenter of the foreclosure crisis in New York City at that time. While foreclosures have gone down over the years, Jamaica still has some of the highest rates in the city. The CRA was not responsible for the predatory FHA lending, nor was it responsible for the 2008 crisis; the CRA has instead been a stabilizing force for those it has helped⁷. Now that system is at risk, which is concerning overall, and particularly worrisome in areas still underserved by CRA-covered banks who will have less incentive to better serve those communities. Through legislation and regulation, the Trump Administration is systematically stalling implementation of provisions of the Dodd Frank regulation, relaxing oversight, and deregulating banks on all fronts, including the CRA.

Modern Day Redlining in New York City

Modern-day redlining in NYC presents in various forms, none of which the proposed CRA regulation addresses:

1. Fewer loans for Black and Brown borrowers, yet more likelihood the loans they get will be costlier

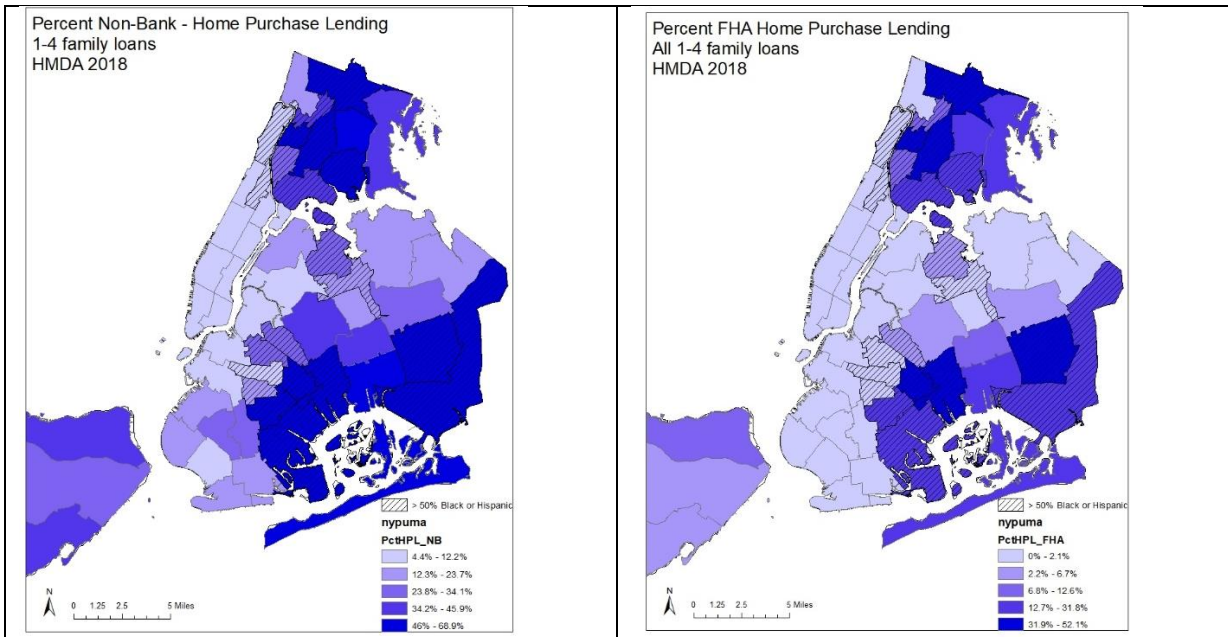
Fewer than 10% of all home purchase loans in any of the prior five years were to non-Hispanic Black borrowers and fewer than 10% were to Hispanic borrowers of any race. And when Black and Hispanic people are approved for loans, they are less likely to receive conventional mortgages by CRA-regulated banks. While FHA loans do allow for a low down-payment, they tend to be more expensive than conventional mortgages, and non-bank lenders often add on additional fees⁸. Whereas, the CRA has motivated many CRA-covered banks to develop affordable conventional mortgage products with low down payment and a low interest rate, and, at times, with financial supports in the form of down payment or closing cost assistance, waived PMI, and connection to HUD-certified counseling by a nonprofit agency. Non-bank lenders have no such obligation and no incentive to offer such programs. The CRA could be stronger on stopping CRA-regulated banks from pulling out of 1-4 lending entirely and getting more banks to offer affordable products and affirmatively market those products to communities of color⁹. Yet, the proposed regulation makes no mention of race or strengthened fair lending exams, and worse, eliminates any analysis of lending in LMI tracts, which opens the door to more redlining rather than find ways to reduce it.

⁶ Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (UNC Press, 2019)

⁷ <https://ncrc.org/there-you-go-again-cato-institute-joins-chorus-of-falsehoods-levied-at-the-community-reinvestment-act/>

⁸ <https://www.responsiblelending.org/research-publication/repairing-two-tiered-system-crucial-complex-role-fha>

⁹ In recent years, BankUnited, Capital One, and New York Community Bank stopped making 1-4 family loans, and Sterling National Bank stopped making all but "CRA loans" (loans to LMI borrowers and in LMI tracts)



2. Less access to bank branches and affordable banking products

Similarly, communities of color are less likely to be served by traditional bank branches, and conversely, more likely to be flooded with higher-cost check cashers, pawn shops, and - in states outside of New York State – payday lenders¹⁰. The FDIC itself found that over a quarter of households (26.2%) in the New York Metro area are unbanked or underbanked¹¹. 7.9% are completely unbanked, well above the 6.2% unbanked nationwide. This translates to 660,000 households in the NY metro area without access to a bank account. **The rates of unbanked households are much higher for people of color and low-income households:** 14.9% of Black households and 18% of Hispanic households are unbanked, versus 6% for Asian households and 3% for White households. 29% of households earning less than \$15,000 and 21.2% of households earning \$15,000-\$30,000 are unbanked. 30% of households without a high school degree are unbanked

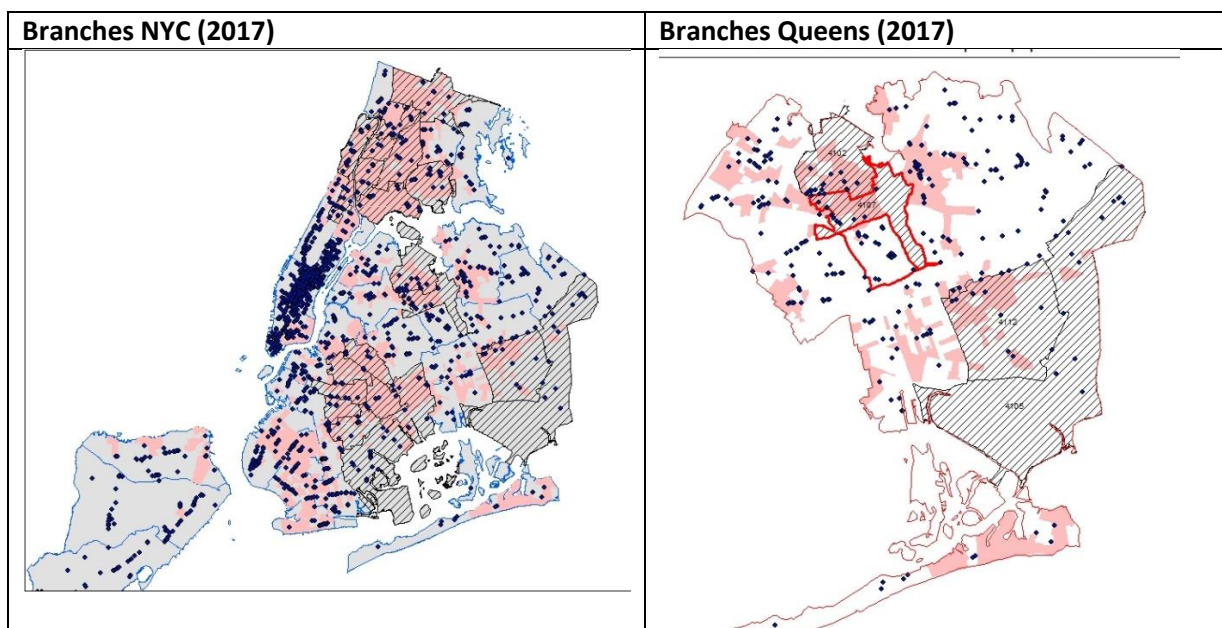
The rates of unbanked can be much higher in low-income communities of color. Using prior FDIC studies, the urban institute found that in 2013, much of the Bronx had unbanked rates of well over 20%, as did Bedford Stuyvesant, Brownsville, and East New York in Brooklyn¹². In Jamaica, 11% were unbanked and 31% underbanked. Just last year, ANHD member WHEDco conducted a study of over 400 residents in the Crotona neighborhood in the Bronx and found 25% to be unbanked¹³.

¹⁰ https://www.dfs.ny.gov/consumers/banking_money/payday_lending

¹¹ https://economicinclusion.gov/surveys/2017household/documents/tabular-results/2017_banking_status_New_York_Newark_Jersey_City_NY_NJ_PA.pdf

¹² <https://www.urban.org/interactive-map-where-are-unbanked-and-underbanked-new-york-city>

¹³ https://whedco.org/wp-content/uploads/2019/05/WHEDco_MAY-2019_Crotona-East_Community-Needs-Survey-Findings_Digital.pdf



As the maps show, part of that phenomenon is related to the lack of bank branches in these same neighborhoods. Middle and lower Manhattan are inundated with branches, but that is not the case in many communities of color, including Jamaica, which has very few branches. Location is not the only factor in people being unbanked. New Yorkers today face additional barriers to banking due to the costs and identification requirements associated with various bank products. The top barriers to having a bank account have to do with high and hidden fees, which include minimum balance requirements, overdrafts, and ATM fees, among other things¹⁴.

While we advocate for banks to offer affordable products that give low-income customers a way to enter or reenter the financial system, we must note how regressive our banking system: in order for a customer to avoid paying costly overdraft and bounced-check fees, they must pay roughly \$60 a year for a checkless-checking account that doesn't allow overdrafts. For full-service accounts, middle- and upper-income customers have the means to waive fees, but low-income people, especially without access to direct deposit, can be paying \$10 - \$15 a month plus any overdrafts they incur. Others are left out of the banking system entirely, relying on cash and high-cost services offered outside of a bank.

A 2016 Pew report on overdraft practices found that service charges on bank deposit accounts more than doubled from 1984 to 2015. They also found that most of the largest banks charge \$35-\$37 per overdraft. The customers most impacted by overdrafts earn less than \$50,000 a year¹⁵. In 2017, banks in the U.S. took in over \$11.5 billion in overdraft fees and \$6.1 billion in ATM and maintenance fees. ANHD's own study shows great variation in the fees and ways to waive those fees, which can mean the difference of tens and hundreds of dollars annually for individual consumers.

¹⁴ FDIC, 2017 *FDIC National Survey of Unbanked and Underbanked Households (October 2018)*, by Gerald Apaam, Susan Burhouse, Karyen Chu, Keith Ernst, Kathryn Fritzdixon, Ryan Goodstein, Alicia Lloro, Charles Opoku, Yazmin Osaki, Dhruv Sharma, Jeffrey Weinstein

¹⁵ Pew Charitable Trust, *Consumers Need Protection From Excessive Overdraft Costs* (Dec 2016): https://www.pewtrusts.org/-/media/assets/2016/12/consumers_need_protection_from_excessive_overdraft_costs.pdf

Immigrant populations face additional barriers to banking. Various studies highlight the importance of language access and cultural competency in effectively serving immigrant communities^{16,17}. Lack of identification poses another barrier to banking for immigrants. While all banks will accept a U.S. passport or a New York State driver's license, some go further to accept alternate forms of identification such as foreign passports or consular ID cards. Very few banks accept New York City's municipal identification card, "IDNYC," as a primary form of identification to open a bank account. As of this date, only five banks and seen credit unions accept it as primary identification.¹⁸ While we hope the new access to NY state driver's licenses helps open access to banks for immigrants, we believe banks should take the IDNYC; it is an officially recognized form of government ID and may still be the only identification someone has¹⁹.

In 2015, when the Responsible Banking Act was still in effect, the newly created Community Investment Advisory Board issued a comprehensive banking needs assessment, which included an analysis of check cashers locations as compared to bank branches. In the Bronx, the ratio of check cashers to population was almost the same as bank branches. While the ratio is lower in Queens, the concentration of check cashers varies greatly by neighborhood. Wealthier neighborhoods in northeast Queens have not one check casher, whereas they are prevalent in Black communities like Jamaica and low-income Hispanic neighborhoods, like Corona, and even more pervasive throughout the Bronx and parts of Brooklyn. Even in Manhattan where you can't walk five feet without tripping on a bank branch below 96th Street, we see the concentration of check cashers increase as bank branches decrease in upper Manhattan, consistent with a lower-income population and higher concentrations of Black and Brown New Yorkers.

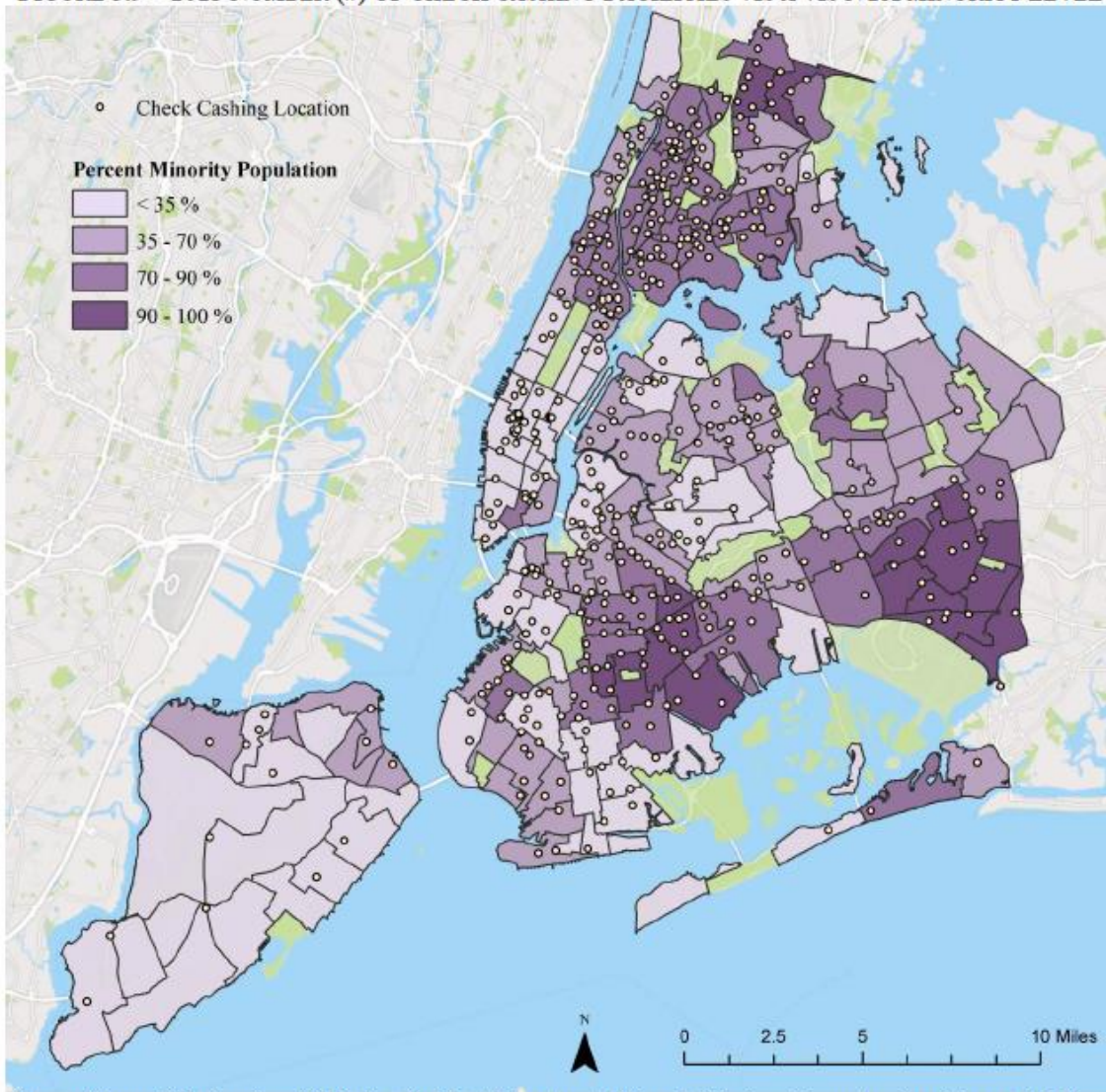
¹⁶ Northwest Queens Financial Education Network, *Bridging the Gap (Feb 2015)*: https://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Report_Bridging_the_Gap-ES_20150225.pdf

¹⁷ *Banking in Color* (August 2018) https://www.nationalcapacd.org/wp-content/uploads/2017/08/banking_in_color_report.pdf

¹⁸ Excluding First Republic Bank and People's United Bank that also require a Social Security Number, thus making undocumented immigrants ineligible with any identification, including the IDNYC.

¹⁹ <https://www.nydailynews.com/news/politics/ny-green-light-law-undocumented-immigrants-drivers-license-20191216-f727ljzmvvfireemcu4qlfcrji-story.html>

FIGURE 5.9 – 2013 NUMBER (#) OF CHECK CASHING FACILITIES VIS A VIS NTA MINORITY LEVEL



Source: Econsult Solutions, Inc. (2015); New York State Department of Financial Services; Census American Community 5-Year Survey, 2009-2013

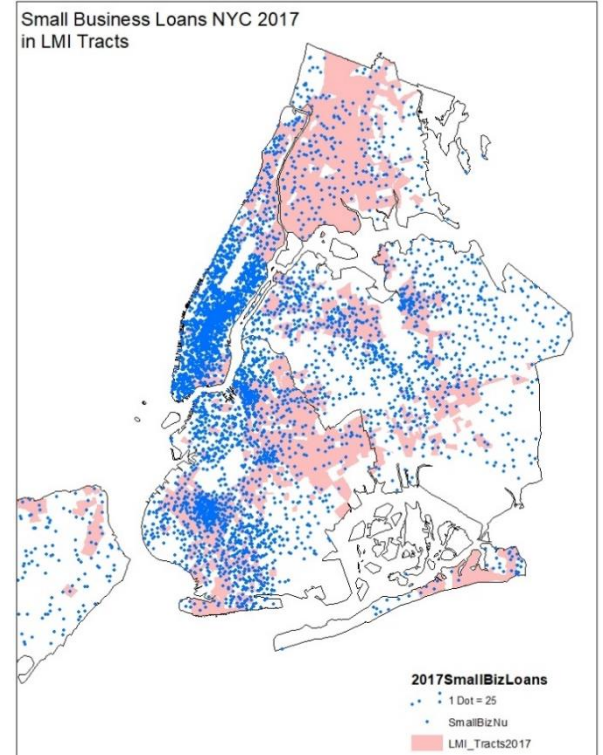
The proposed CRA regulations do absolutely nothing to address the ranks of the banked and unbanked. They reduce the branch analysis to a tiny fraction of the one-ratio metric and eliminate entirely the analysis of specific bank branch openings and closings as well as the analysis of banking products offered and utilized by LMI populations. Under this proposal, a bank could close every branch in Jamaica and have minimal consequences on its exam, if any, depending on where they are in their one-ratio metric. They could close LMI branches at 4pm and keep branches in wealthy areas open until 9pm, with no consequences. They have zero incentive to offer low-cost products, increase language access, or accept alternate forms of identification. All that analysis is gone at a time when it needs to be strengthened. This is particularly disappointing given the emphasis that the FDIC has put on increasing access to branches and banking through their bi-annual survey and model bank accounts.

3. Lack of access to lending for small businesses

Small businesses also suffer from the lack of bank branches as there are direct connections between bank branches and small business lending. The public data on small business lending matches these patterns. These are all loans under \$1M made to businesses with revenue under \$1M: new loans and renewals, credit cards, traditional loans, and lines of credit. We look forward to the implementation of Dodd Frank section 1071, which will shed more light on small business lending by banks and non-banks.

95% of businesses have under \$1 million in revenue²⁰ and the greatest need for capital is in the smallest of businesses, and at smaller dollar amounts²¹. They already struggle to access loans, prompting businesses to go without needed financing; to turn to family and friends; or worse to go to a predatory online lender or other service that would cost more than a bank or CDFI.

Rather than address those challenges to increase access to lending and supports for small businesses, the OCC and FDIC are doubling the threshold of small business revenue size and loan size, and eliminating the analysis of loans of different sizes (eg: loans < \$150,000; \$150,000 - \$250,000; \$250,000 - \$1,000,000)



4. Gentrification and displacement of low-income communities of color.

The CRA was passed in the late 1970s when the City was suffering the consequences of severe disinvestment; banks refused to invest in working class neighborhoods and communities of color. One only need see images of the dilapidated, abandoned buildings of that time to understand why we cannot afford to go back to those days. Today, however, many communities face the opposite problem: overinvestment and speculation, rather than disinvestment. Too many of the loans in communities that once faced divestment and neglect now go to bad actors who are more interested in speculative profits than in respecting tenants' rights to remain in their affordable home.

These "predatory equity" investors make loans and investments to developers in low-wealth communities of color, but they base those loans on highly speculative underwriting that assumes rents in the building will rise significantly, often by harassing and pushing out lower-income tenants out of their units and replacing them with higher paying renters. While many of those loopholes have been closed, we know that some landlords will find new loopholes to exploit and others will reduce maintenance to raise their income.

While the CRA has been a tool to get banks to adopt better multifamily lending practices, and given regulators a way to discount loans that are deemed problematic, it has never offered a way for banks to

²⁰ https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf

²¹ <https://www.newyorkfed.org/smallbusiness>

be downgraded for patterns of financing that foster displacement and poor conditions. Rather than address that, the one-ratio approach eliminates analysis of impact and takes away any structural ways for tenants and community organizations to provide feedback on banks that are financing displacement. Further, the proposal eliminates geographic analysis of multifamily lending, such that banks can cease to lend on multifamily buildings in LMI tracts without any consequences.

Since coming into office, Comptroller Otting has held tours and dialogues in DC and across the country. He and his staff met with stakeholders across the spectrum – Banks, Community organizations like ours, CDFIs, etc – and assured us all he wanted to improve the CRA – make it more consistent, transparent, effective. We also met with FDIC Chair McWilliams in Washington DC just over a year ago and she, too, assured us there would be no one-ratio and that our concerns would be heard. They took all this information – our input, concerns, and priorities and completely rejected it.

Critique of the Notice of Proposed Rulemaking (NPRM)

Flaws in the process

Proceeding without the Federal Reserve Board

The OCC and FDIC are proceeding without the cooperation of the Federal Reserve Board, which correctly stepped away from this very flawed proposal. This now sets up a system whereby banks can operate under different regulatory regimes. For FDIC-regulated banks that are also chartered in states with local CRA exams, such as New York State, this also means that they will have two regimes under which they will be evaluated. Not only are the methodologies different, but the data collected and analyzed are vastly different. This means banks may shop around for the regulator they think will be easier on them, and that banks may abandon their state charter for a national one.

Allowing insufficient time to comment

The OCC and FDIC released the proposal just before the December holidays, and initially allowed just 60 days to comment. Despite the OCC's assertions that we have had ample time to discuss changes to the CRA²², the public has only had a short period of time to analyze this specific proposal, which goes even farther than what we had expected from the ANPR and materials provided on the road tour prior to the NPRM being released. The nuances are substantial and require time to fully understand and provide detailed comments. At the last minute, they added an additional 30 days, which is still less than 60-day extension banks and community organizations were requesting.

Lack of Data and Transparency

Despite the OCC's assertions that they want to increase clarity and transparency, the proposal is opaque and less transparent than what we have today. We already have little access to public CRA data, and none at the local level for community development lending. The proposal now abandons the data we do have access to, such as HMDA for home lending, FDIC for branches and deposits, and FFIEC data on small business lending. By relying upon balance sheet data, we will have less information on how many of the loans in the numerator are new versus existing loans.

²² <https://www.americanbanker.com/news/occs-otting-rules-out-longer-comment-period-for-cra-plan> "We have been working for 18 months on this," Otting said. "And so I think it's plenty of time...."

Further, there is no data to back up these new ideas, including the thresholds to reach the presumptive ratings and the impact it will have on communities and banks. The proposal refers to an analysis of 200 CRA exams, with no disclosure of what that data entails – not the number of banks, asset sizes, geographies, business models, or regulators. Whereas the Federal Reserve Board created a comprehensive database of over 6,000 exams from 2005 to 2018, for over 3,700 banks of a variety of sizes, business models, regulators, and geographies.²³ They intend to make that database public²⁴. Further, Comptroller Otting claimed in the hearing on January 29th before the House Financial Services Committee that he and the OCC analyzed the Fed’s database, yet the proposal makes no reference to that larger database, which does not appear to have informed any of the metrics or analyses.

In further admission that the OCC lacks the data necessary to back up the NPRM, they issued a Request for Information to OCC-regulated banks to provide the relevant data. That data is due to the OCC the day after the original deadline for NPRM comments, there is no indication that it will be made public, and regardless, that data certainly wouldn’t be ready for release before the April 8th comment deadline.

Questions Posed in the NPRM are the wrong questions and indicate that the OCC is not actually interested in feedback or strengthening the CRA.

After two years of formal and informal community tours, dialogue, and written comments, the OCC put forth a full proposal that ignores much of that feedback and fundamentally dismantles the CRA. Not to mention the thoughtful feedback that went into the 2010 hearings and the EGRPPRA process in 2015²⁵. In fact, some of the questions on the NPRM make it clear that even they know that there are major flaws in their approach and give the false impression that they are willing to compromise. But make no mistake, the OCC and FDIC put them forth as what they purport to believe to be the correct approach, which is more complex, less transparent, and less responsive to community needs.

Just a few examples include the following.

- ***One-Ratio:*** The vast majority of the 1500+ comments in the ANPR opposed any form of a one-ratio approach by combining all CRA activities – retail and community development – together into one formula²⁶. Yet the OCC and FDIC stuck with that approach and do not even bother to ask if it is the right approach, nor if the thresholds are the correct ones.
- ***Arbitrary Thresholds and thoroughly untransparent process:*** Even if a single metric were the right approach (it’s not), there is no question posed about the chosen thresholds (11% for outstanding, 6% for satisfactory), and we couldn’t respond if we wanted to as we do not have any of the data the OCC used to come up with those thresholds. The OCC analyzed a mere 200 exams, all classified as large banks under the current system.²⁷ The NPRM does not disclose how many banks that represents, nor their range of sizes, business models,

²³ http://www.urban.org/sites/default/files/2020/01/09/lael_brainard_speech.pdf

²⁴ Q&A at Urban Institute presentation

²⁵ ANHD comments: <https://anhd.org/report/economic-growth-and-regulatory-paperwork-reduction-act-1996-egrpra-community-panel-boston>

²⁶ <https://ncrc.org/analysis-of-public-comments-on-the-community-reinvestment-act/>

²⁷ NPRM Page 59, footnote. “The agencies used a sample of performance evaluations completed between 2011 and 2018. The sample contained data from over 200 exams for banks above the small bank asset size threshold, which adjusts yearly and is \$1.284 billion for 2019”

- regulators, or geographies. Nor do they disclose the assumptions they made with regards to the newly qualifying activities.
- **Allowing a bank to fail in 50% of its assessment areas and still pass its CRA exam.** The regulators insist that they are open to feedback on 50% as a sufficient percentage of assessment areas to pass in order to pass the exam, and that they are open to raising that percentage, but let it be clear that their first suggestion was 50%. That means that they believe it's ok if a bank invests poorly or not at all in half of its assessment areas and that the bank should still pass its exam, possibly even with an outstanding.
 - **Elimination of the Service test, which means no focus on decreasing the ranks of the unbanked and underbanked.** The 2018 ANPR did not ask *how* LMI branches and services should be analyzed, but *if* they should²⁸. Community organizations nationwide were unequivocal that branches are important, as are responsive, affordable products. Yet, the OCC removed the service test entirely and any analysis of access to banks and banking. Then, the NPRM asks if the range of retail banking services should be provided in the performance context. This is an insult to the community members and advocates who have written volumes on why branches and bank products are important – in studies, testimonies, and comments going back to the first round of modernization discussions back in 2010. And then to suggest that it could go in the performance context makes no sense as it only seems to relate to qualified activities, so we are left to wonder how adding it to the performance context would have any impact as bank accounts are not a qualified activity.
 - **Elimination of community input and objective analysis in the Performance Context.** The proposal fundamentally changes the performance context and its role in CRA exams yet *asks no questions about that*. Under the current system, the performance context comes first and is meant to inform how banks are evaluated, with regards to a wide variety of factors: demographics, economic conditions, needs, opportunities, competition, bank business model and size. The performance context can be written by the bank, a regulator, or a combination of the two. The evaluation of needs and bank performance is also informed by community comments, which become part of a bank's public file – accessible by anyone who wants to see it. Examiners are then meant to evaluate a bank's performance within that context. The proposal fundamentally changes that in three major ways. (1) it is 90% bank-written, (2) its purpose appears to be about why a bank could or couldn't meet the presumptive goals – basically giving banks a place to excuse any poor performance in the retail section, and (3) it eliminates the opportunity for the public to comment on a bank's performance at all.
 - **Banks conduct their own exams:** Under the current system, banks submit their list of qualified activities for examiners to evaluate, in conjunction with public data accessed via HMDA, FDIC, and the FFIEC. The new system asks banks to calculate their one-ratio metric, including multipliers, whereas examiners merely verify. And given the lack of public data for much of the retail lending, there appears little way for examiners to verify that independently.

²⁸ Page 22 of ANPR: “Question 27: Should bank delivery channels, branching patterns, and branches in LMI areas be reviewed as part of the CRA evaluations?”

Summary of Concerns with the substance of the Proposal

1. **The one-ratio metric (“CRA Evaluation” in the proposal) is the primary determinative factor:** The one-ratio approach values dollars over impact, quantity over quality, thus **minimizing the role of community input and community needs and incentivizing larger deals over smaller, more impactful ones.** This means fewer loans to first-time homebuyers, low-income homeowners, and small businesses; fewer financing options for smaller nonprofits to build and preserve deep affordable housing; fewer grants to nonprofits for tenant organizing or direct services.
 - a. The one-ratio metric includes a very weak boost for branches in LMI tracts and eliminates entirely the analysis of branches opened or closed as well as any evaluation of hours, languages, or products offered.
 - b. The CRA was passed in response to redlining, where banks refused to lend in certain communities. Despite that history and evidence that redlining and discrimination persist, the proposal will likely exacerbate the practice as it eliminates any analysis of residential lending in LMI tracts and makes no effort to strengthen fair lending analyses. This applies to both 1-4 family lending and multifamily lending. Further, the pass/fail retail test is much less rigorous than the current system and will likely result in a race to the bottom, as banks merely have to perform at 65% of their peers. And there is no clarity as to what happens if a bank does not meet that metric.
 - c. The proposal cuts community input out of the process. Under the proposal, community members can comment on needs and opportunities, but not on the performance of a bank.
2. **There is no mention of race.** Understanding that the CRA is a color-blind law, the regulators should be doing everything possible to increase access to banks and banking for people of color through affirmative obligations and strengthening the fair lending component of the exam. But the proposal does none of that, and some of the proposed changes that value dollars over quality could inadvertently lead to fewer branches, fewer services, less housing, and less lending and banking to people of color.
3. **The proposal expands what counts for CRA credit with activities that benefit larger businesses and higher-income families, as well as activities that barely benefit lower-income people or communities and others that could displace these communities.** Under this proposal, banks can get credit for activities that could harm or displace LMI communities, such as opportunity zone financing for athletic stadiums or luxury housing; high-cost credit card loans; and financing landlords who harass and displace tenants. They can get credit for financing middle-income housing in New York City with rents over \$2,000; loans to “small businesses” with up to \$2 million in revenue; roads and bridges that merely pass through an LMI tract. This means less affordable housing for low-income New Yorkers who already lack sufficient housing; fewer loans to small businesses that already struggle to access financing; fewer home loans to low- and moderate-income borrowers.
4. **The proposal greatly expands where banks can get CRA credit, allowing banks to invest more outside of local assessment areas, which minimizes local community needs and partnerships.** Under the new proposal, banks can get a low or failing grade in half of their

assessment areas and still pass their CRA exam if they meet their target dollar goals for the entire bank. The bank-level evaluation combines CRA-qualified dollars loaned invested in all the assessment areas combined, as well as qualified activities anywhere, regardless of assessment area. While some of these areas may need investment, that investment cannot come at the expense of the obligation to meet local needs. Further, all investments, regardless of location, should be analyzed for their impact on historically redlined communities.

This is the wrong approach. ANHD's banking committee, the Equitable Reinvestment Coalition, came up with a set of principles for CRA reform. **We will not support any reform that doesn't include these principles to preserve and strengthen the CRA, and not weaken it in any way.**

1. **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.** This cannot be done with a one-ratio evaluation that simply looks at dollars invested.
 - Incentivize high quality, responsive activities that lift historically redlined people – **people of color and low- and moderate-income people** – out of poverty and help reduce wealth and income disparities.
 - Downgrade banks that finance activities that cause displacement and harm.
2. **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.
3. **Assessment areas must maintain local obligations.** The CRA must maintain the current place-based commitment banks have to local communities. Banks should have additional assessment areas where they do considerable business (make loans / take deposits) outside of their branch network. These types of reforms must 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.

Meaningful CRA reform could 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. Transparent and consistent exams would support these goals.

The proposal does the opposite of what it claims to do for banks or the community: It is less transparent, more complicated, and will ultimately lead to less investment and less meaningful investment.

The OCC and FDIC should abandon this proposal and go back to the table with the Federal Reserve to come up with a plan that preserves the core of the CRA, truly addresses its shortcomings, and modernizes it to incorporate today's banking world.

Thank you for the opportunity to submit this testimony