February 16, 2021

Association for Neighborhood & Housing Development

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Via email: regs.comments@federalreserve.gov

Re: Comments on Federal Reserve CRA ANPR: Docket Number R-1723 and RIN Number 7100-AF94

To Whom it May Concern:

I am writing on behalf of the Association for Neighborhood and Housing Development (ANHD) in response to the Federal Reserve Board ("Board")'s Advanced Notice of Proposed Rulemaking (ANPR) proposal to reform the Community Reinvestment Act ("CRA") rules. We appreciate the Board's interest in strengthening the CRA so that banks can better meet the credit needs of low-income communities and communities of color in New York City and throughout the state and country.

The CRA is one of the major civil rights laws that were passed in response to discriminatory policies and practices that locked people of color and entire neighborhoods out of banking, credit, housing, employment, and education. It is one of the most important laws we have that holds banks accountable to local communities, requiring them to lend and provide services equitably, and to support community development in the areas where they do business. The CRA has leveraged two trillion dollars nationwide since 1996[1], and, in the past five years alone, ANHD has documented near or over $10 billion each year reinvested in New York City[2]. 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.

As a result of this CRA engagement over the years, numerous banks have also made local commitments, created advisory boards and structures for ongoing engagement, opened new branches, and created products and partnerships to benefit low- and moderate-income(LMI) people, communities, and small businesses directly and through nonprofit housing developers, CDFIs, and other community organizations.

However, even with the CRA and the other hard-earned civil rights era banking laws – the Fair Housing Act, Home Mortgage Disclosure Act, Equal Credit Opportunity Act – discrimination, redlining, and harmful practices persist. And well over 95% of banks pass their CRA exams despite these persistent disparities.

We appreciate that the Federal Reserve Board chose not to support the OCC's CRA proposal and final rule[3]. **ANHD strongly urges all three federal bank regulators to work together on a CRA reform that raises the bar for banks**, incentivizing high-quality, responsive activities that address racial wealth, income and banking disparities and equitably serve historically redlined communities. The CRA must also do more to deter less impactful activities and penalize banks for harm, be it through multifamily lending that

[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] ANHD's State of Bank Reinvestment in NYC report released in 2020 demonstrated how the OCC's rule would hinder the types of CRA activities necessary for an equitable COVID recovery https://anhd.org/report/bank-reinvestment-risk-occs-cra-rule-will-hinder-covid-recovery

fosters harassment and displacement; high-cost products that target lower-income people, BIPOC, and BIPOC-owned small businesses; and disinvestment in LMI communities and communities of color. All activities should be assessed in relation to local community needs, centering these same communities in assessing those needs.

The comments throughout these questions refer to ANHD's top priorities for CRA reform, developed with members of our Equitable Reinvestment Committee.

The CRA should never have been color-blind. The CRA must give banks an affirmative obligation to engage, listen to, and serve people and communities of color with responsive, impactful activities and consequences for harm to these same communities. The following are our top priorities to ensure that banks benefit LMI and Black, Indigenous, People of Color:

1. **Quality, Quantity, and Impact are important components of CRA.**
    - Banks must be evaluated on the quantity and quality of CRA activities: retail lending, community development finance, branches, banking products, and services.
    - Downgrade for displacement and harm: There must be downgrades for harmful behavior, including products, practices, and patterns of lending that lead to harassment, displacement, high costs, and harm.
2. **Community Input and Community Needs must be at the heart of the CRA:**
    - Community input must be woven into the CRA process at all levels, including the performance context and needs assessment; evaluation of bank performance; and additional areas where CRA is taken into account, such as branch closures, mergers and acquisitions, and other applications.
3. **Assessment areas must Maintain Place-Based Local Obligations**
    - The CRA must maintain the placed-based commitment banks have to local communities.
    - Maintain assessment areas where banks have branches/ATMs, and expand to other areas where banks also do considerable business, such as lending and taking deposits
    - Any assessment area reform must increase the size of the pie: maintain or increase quality reinvestment where it is needed within large cities like New York City, while also directing capital to under-banked regions

High-level Summary of key points in our comments:

- We applaud and support the explicit questions about how to better serve communities of color. The CRA should never have been color-blind. The regulators should include an affirmative obligation to serve Black, Indigenous, and People of Color (BIPOC) and communities.
- We appreciate the strong emphasis on branches and affordable, accessible banking products, including ways to assess and address the lack of presence of banks in both densely populated, metropolitan areas as well as more sparse, rural communities. Branches are closing at a rapid pace, leaving already underbanked communities with fewer resources.
- The CRA must do a better job promoting responsible multifamily lending and deterring harassment and displacement. The CRA should include a robust multifamily analysis under the retail test. Banks should be incentivized to lend equitably in low-income communities and communities of color, and to adopt and adhere to responsible multifamily lending practices. They must be downgraded for harm and displacement. Regulators should incorporate similar downgrades for harm in other lines of business as well.
- We appreciate the goal to better serve the smallest businesses, but the framework does not do enough to achieve that goal. The retail small business lending and economic development

categories have potential to better serve small, BIPOC-owned businesses and the CRA must be strengthened to do so.

- Regulators must look at the wide range of 1-4 family and small business loans separately, such as low-income and moderate-income borrowers; home loan purpose (home purchase, refinance, and home improvement); small business loan types (loans and lines of credit, versus credit cards for example); businesses of varying sizes; small business loans of varying sizes. Focus on loan originations, and on owner-occupied versus investor homes. The CRA must incentivize banks to create and offer the products that communities need and downgrade for indications of higher cost or harmful products made to the communities the CRA is meant to serve.
- We appreciate the Board maintains branch-based assessment areas, eliminates limited scope assessments for underbanked areas, and proposes efforts to direct capital to designated underserved regions. Regulators must promote quality activities in underserved regions both within and outside of assessment areas. Lower-income communities of color throughout New York City are persistently underserved by traditional banking. Too often, they are also recipients of investments, products, and practices that displace people or extract wealth. We disagree with a national assessment area, and support ways to create more local assessment areas by internet and hybrid banks. This would foster more opportunities for consistent engagement and response by banks to help meet their financial and community development needs.
- We support the goal to increase community engagement, but the proposal lacks specific details in how to achieve that goal. Community needs and input must be central to the CRA process, with low-income and BIPOC voices centered throughout the process.
- We appreciate the attention to mission-driven entities like CDFIs, Community Development Credit Unions, and MDIs. Banks should be encouraged to invest in and support impactful, responsive entities within their assessment areas and beyond. Regulators must be cautious not to allow banks to invest instead of lending and banking themselves, or to compensate for poor performance. The credit must go together with analyses of the lending the bank does directly.
- The use of metrics must be complemented by rigorous qualitative analyses that factor into the ratings to ensure banks are truly responding to local needs, which will change over time in size and scope.
    - Metrics cannot allow a race to the bottom in either retail or community development. If the floor is too low, banks will stop when they reach the targets, even when they have the capacity to address other needs. Also, if numerical targets are the driving force, banks will support less impactful activities to reach targets, rather than spend time and resources responding to local needs.
    - In a high-cost market like New York City, the market benchmarks for retail lending are very low, such that targets below that could lead to less lending to LMI borrowers over time. For example, just 1% of home purchase loans went to low-income borrowers and 7% to moderate-income. The thresholds cannot be lower than those percentages.
- CRA loans, investments, and grants must be evaluated separately within the Community Development finance test and support high-impact activities, particularly those done with mission-driven nonprofit developers, CDFIs, and community organizations to build and preserve deep, permanent affordable housing; protect tenants from eviction and harm; support and preserve quality jobs and small businesses; and finance essential community services, while deterring and penalizing banks that finance harm or displacement.
- We support efforts to collect and monitor a wider range of CRA data for the public to review and analyze, and to inform regulators' analyses. The data should be accessible to assist with community engagement. Mapping should be used more often to analyze where activities are and are not going. This is especially important in dense metropolitan cities like New York City where

neighborhoods of color are neglected by banks and/or targeted with harmful or higher cost products.

- The matrices and weighting schemes for ratings are helpful to understand how regulators will be assessing banks, but we must note that when over 95% of banks pass today, certainty is not the issue. We appreciate the quality reinvestment activities fostered by the CRA, but the new system must also limit grade inflation that allows so many banks to pass in the face of persistent racial and economic disparities, disinvestment, and harmful policies and practices.
    - Quantity and quality are both important. We support the idea of impact scores for community development finance to assess quality. This can be strengthened and incorporated throughout the CRA tests.
    - Even if some areas of CRA weigh higher than others, banks should be expected to at least pass all areas of CRA: retail lending, branching and services, community development loans, and investments.
    - We support the expansion of legal violations that can lead to a downgrade. Regulators should downgrade for harm in all areas of CRA.

Thank you for the opportunity to comment. Please see below for detailed answers to many of the 99 questions on the ANPR. If you have any comments or questions, please reach out to Jaime Weisberg, Senior Campaign Analyst at ANHD: jaime.w@anhd.org.

Sincerely,

Barika X. Williams
Executive Director
Association for Neighborhood and Housing Development

This letter is co-signed by the following members of ANHD's Equitable Reinvestment Coalition (ERC)

Asian Americans For Equality
Banana Kelly Community Improvement Association
Business Outreach Center
CASA-New Settlement
Center for NYC Neighborhoods
Cooper Square Committee
Cypress Hills Local Development Corporation
Fifth Avenue Committee
Housing Organizer for People Empowerment in East BK
IMPACCT Brooklyn
Neighbors Helping Neighbors
Neighborhood Housing Services of Queens CDC, Inc.
Neighborhood Housing Services of Jamaica, Inc

ANHD Detailed Response to ANPR

Question 1. *Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?*

ANHD agrees with many of the objectives of the modernization. We particularly appreciate the recognition that CRA and fair lending responsibilities are mutually reinforcing and, as explained in question 2, believe the board should go further to create an affirmative obligation for banks to serve people and communities of color.

We also agree that promoting Community Engagement is critical, however we find little detail in the ANPR to support that goal. We elaborate on that area here and throughout. Community input must be woven throughout the CRA process. Currently CRA engagement is mostly passive, relying upon community members to submit comments. Few people know about this process, and likely not the people who are most impacted by a bank's CRA activities, be they good or bad. Further, CRA exams typically list just one or two community contacts solicited by the examiners.

Community engagement can and should be enhanced in the following ways:

- Centralize the performance context with a comprehensive community needs assessment. A team of regulatory agency staff should be dedicated to this process, incorporating public input, statistics (e.g., demographic data, unemployment numbers, housing burdens, etc.), and local studies that center low-income, BIPOC communities and people who face barriers to financial and economic inclusion.
    - Regulators should conduct proactive outreach on a regular basis partnering with community organizations to access relevant research and engage residents who speak multiple languages and have varied backgrounds and experiences.
    - Similarly, regulators should proactively solicit feedback from nonprofit community organizations on banking and credit needs and assets, and the extent to which financial institutions are collectively meeting (or not meeting) those needs or supporting those assets.
- Solicit feedback from community organizations related to individual banks. Regulators should broadly broadcast exam schedules and consider creating an accessible and user-friendly form with questions people can respond to.
    - Regulators should be required to speak to a representative set of community contacts for each bank exam. Contacts should span relevant issue areas (e.g., small business lending, tenant rights and well-being, nonprofit affordable housing development, affordable homeownership, and support for CDFIs), and also cover a diverse geography focusing on historically redlined areas.
    - Given the current context of mergers/acquisitions, service changes and branch closures that most negatively affect those living in LMI areas, regulators must prioritize proactive outreach to BIPOC communities through nonprofit community partners.
- Compare individual and collective bank performance to the needs expressed in your contextual research regarding products, language access, branches, multifamily lending practices, etc.,
- Incorporate community input into all qualitative analyses throughout the exam.
- Evaluate banks on the outreach they do. Set a high bar for the number of organizations banks must consult and the quality of that consultation. The CRA is a powerful tool to bring banks to the table. Strong community engagement, consultation, and partnerships are central to its success, and is mutually beneficial to banks and community organizations. Regulators can evaluate:
    - The breadth and depth of bank engagement with community organizations, ensuring their input is factored into the bank's CRA activities, products and practices. Do not allow banks

to avoid groups that have been critical of them. And, like the recommendation to regulators, the contacts should span geography and issue areas, such as small businesses, tenants and tenant organizers, housing developers, homeownership, CDFIs, making sure to connect to the bank's business model and areas of CRA activities, as well as new areas for the bank to consider.

- How well multifamily lenders engage with tenants and tenant organizers to implement multifamily lending best practices of responsible underwriting, properly vetting landlords, and responding to problems in buildings they finance. [see question XX]
- How community engagement informs bank CRA plans and how transparent banks are with their CRA plans and goals.
- The type of proactive outreach they engage in to market affordable and responsive products. Banks often cite low traffic as a reason for closing branches, even as people are lined up nearby at check cashers and even other banks. Rather than use that as an indication to adjust products and outreach and marketing practices, they close their branch. This calls into question the products, practices, and outreach they have done, and ultimately hurts the community.

Downgrades for displacement: While there is an objective to evaluate the impact of activities and response to local needs, the ANPR only references ways that a bank's level of responsiveness will increase its rating. We appreciate the questions about how to deter displacement, but there is no reference to downgrades for when a bank fuels displacement or otherwise causes harm, outside of a fair lending exam. This is a huge shortcoming of the ANPR, and we strongly urge regulators to incorporate consequences for harmful practices. It is simply not acceptable for a bank to harm communities on a systemic level through extractive and injurious practices and then to score highly on an exam because they reinvest some of those extracted dollars back into an area.

Similar to the changes in banking models, another objective to consider is how to encompass more lenders and lending, as nonbank lenders not covered by the CRA are becoming more prevalent and some bank loans are inconsistently examined, or never examined at all. There are a few possible mechanisms regulators could incorporate without changing the statute. One recommendation is to evaluate banks at the holding company level, which would require all the bank's activities to be evaluated together and could capture some loans that are currently considered optional as affiliate loans. For example, the Capital One Bancorp holding company holds both a retail bank (Capital One, NA) and a limited purpose credit card entity (Capital One Bank USA), each with its own CRA exam. The credit card entity is only evaluated under the community development test. The retail bank falls under the large bank test with the option, but not obligation, to include the credit card entity's retail loans as small business or consumer credit loans on the retail bank's CRA exam. The same was true for other large banks in the past, including JPMorgan Chase, Bank of America, Citibank, and HSBC, but all have since merged their credit card entities into the bank. Two other examples are BNY Mellon and Morgan Stanley, each of which has two banks with separate exams; activities from either bank can count on either CRA exam, as the bank or affiliate.

All banks, whether at the holding company or bank level, should be required to include their non-bank affiliate loans, rather than being optional as is the case now. Lastly, banks should be held accountable for the records of non-bank lenders with which banks have a formal relationship to ensure that the lender is meeting local needs. For example, numerous banks in New York City formally refer customers to Newtek for small business loans or Freedom Mortgage for home lending. Others partner with credit card lenders rather than offer credit card loans themselves. But the performance of these nonbank lenders has no impact on the bank's CRA exams. In this case, regulators could conduct an independent evaluation of the lender, and consider it as part of the qualitative analysis. If a bank is referring to a problematic lender, that should reflect poorly on them. Whereas if a lender is helping people get into responsible, responsive products, that could be considered favorable, likely as a retail service. If a bank is engaging in multifamily lending with a landlord who is using sources of private equity to meet loan to value requirements, and their private equity source is known to seek the displacement of existing tenants as part of their business model, this should qualitatively reflect poorly on the bank in their examination. On a related note, if a bank finances entities with problematic business models, such as payday lending, predatory lending, or other extractive businesses, that should also reflect poorly.

That said, we don't fully agree with all the stated objectives in the ANPR. For example, the objective to reduce burden on banks through analysis or data collection, or "tailoring" for size and model cannot come at the expense of community investment or the ability to measure the impact of such investment. We support smaller banks being able to operate, so that our city is not dominated by multinational corporations, but we must also keep in mind that most burden pales in comparison to the burden low-income communities and communities of color face when they lack access to banks, banking, loans, and the range of community development activities banks are meant to support, such as affordable housing, small business supports, quality jobs, and other services. Likewise, tailoring in such a way that reduces a bank's obligation is not a good objective for CRA, especially for banks already accustomed to having such an obligation, as is the case for Intermediate Small Banks. In fact, some banks should have more of an obligation and greater scrutiny, such as limited purpose credit card lenders. They should be required to serve equitably and provide lower-cost solutions and greater protections for LMI, and BIPOC populations and underserved populations within those categories.

Question 2*. In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?*

As the ANPR lays out, the legislators who wrote the CRA clearly understood the impact of redlining on communities of color and cited it as a reason for passing the law. FDIC Chairman Gruenberg also highlighted the strong role CRA plays in strengthening community engagement and serving historically redlined communities: "*From the outset, the agencies made clear that the institutions would be evaluated on their* ***outreach and engagement with the communit****y, their compliance with antidiscrimination and other consumer protection statutes, and the geographic distribution of their loans.* ***The intention to address redlining on the basis of income and race was evident, as was the community-based focus of the law****.*[4]"

Given these origins, and persistent disparities in lending today, the CRA should never have been color-blind. **Rather, we believe banks should have an *affirmative obligation* to serve borrowers and communities of color equitably.** For example, 22% of NYC is Black and 29% Latino, yet fewer than 8% of all home purchase loans in 2017 went to non-Hispanic Black borrowers and 8% to Hispanic borrowers of any race. It reached just 9% in each category in 2019. Consistently, Black and Latinx borrowers are denied loans at a greater rate, have fewer assets to purchase homes, and have been steered to higher cost products[5].

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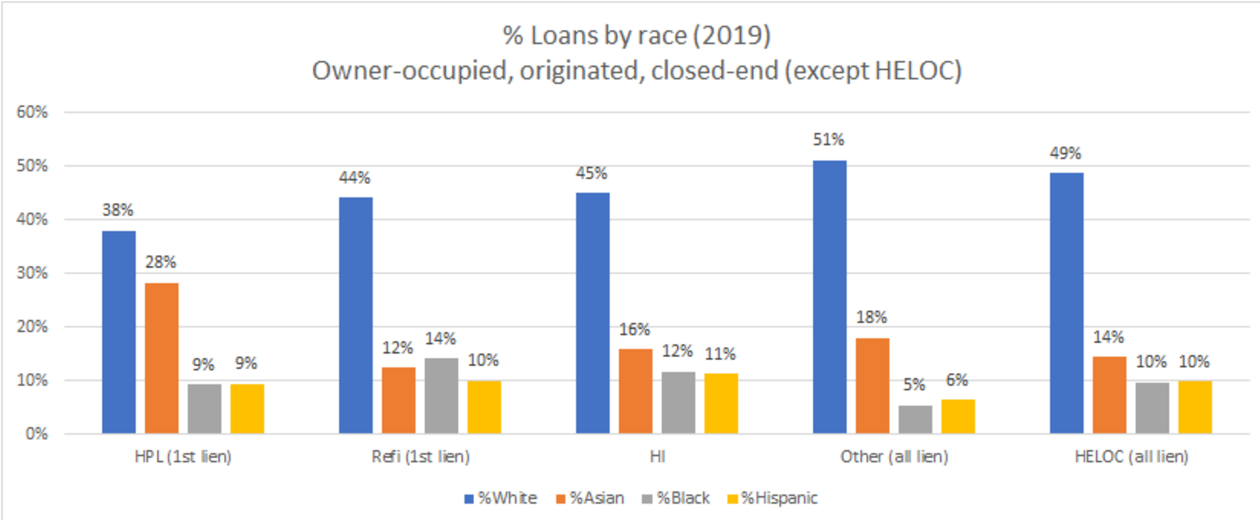
[4] https://www.fdic.gov/news/news/speeches/spoct2918.html

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



Likewise, while it's true that rates of unbanked households overall are declining, the rates of unbanked Black and Hispanic households are still 5 to 6 times that of white households (11% and 12%, respectively, versus 2% for white households)[6]. High rates of unbanked households correlate with both lower incomes and people of color, hence the rates of unbanked will be higher in low-income communities of color. An estimated 22% of Bronx residents are unbanked, with rates by neighborhood ranging from 15% to 31%[7]. One recent community-based study of a low-income community of color in the Bronx found that 24% of residents were unbanked.[8]

Modern day redlining, systemic racism, and discrimination persist to this day. This has been evident throughout the COVID-19 pandemic where Black and Latinx New Yorkers were hospitalized, dying at higher rates than their white counterparts[9] and face worse economic hardships due to the pandemic[10]. The Federal Reserve Board of New York found that 41% of Black owned businesses closed from February through April 2020, versus just 17% of white-owned businesses.[11] And more have closed since. The percentages of Hispanic and Asian owned businesses were also higher at 31% and 26%, respectively. Black and Brown owned businesses also faced lending disparities and discrimination long before COVID. Addressing such disparities are critical to short-term and long-term recovery within these communities who have long been underserved and poorly served. Prior to COVID, studies showed that Black and Latinx homeowners are underrepresented in homeownership in New York City[12]. According to a recent Federal Reserve study, Black families' median and mean net worth is less than 15 percent that of white families[13]

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[6] FDIC Survey of Household Use of Banking and Financial Services https://economicinclusion.gov/surveys/2019household/

[7] https://www.urban.org/interactive-map-where-are-unbanked-and-underbanked-new-york-city

[8] "*Crotona Park East/ Morrisania, Community Needs Assessment Summary of Findings*", WHEDco (2019) https://secureservercdn.net/50.62.88.95/85f.ca5.myftpupload.com/wp-content/uploads/2019/05/WHEDco_MAY-2019_Crotona-East_Community-Needs-Survey-Findings_Digital.pdf

[9] https://www1.nyc.gov/site/doh/covid/covid-19-data-totals.page

[10] "*Race and the Economic Fallout from COVID-19 in New York City*", CSS (July 2020) https://www.cssny.org/news/entry/race-and-the-economic-fallout-from-covid-19-in-new-york-city

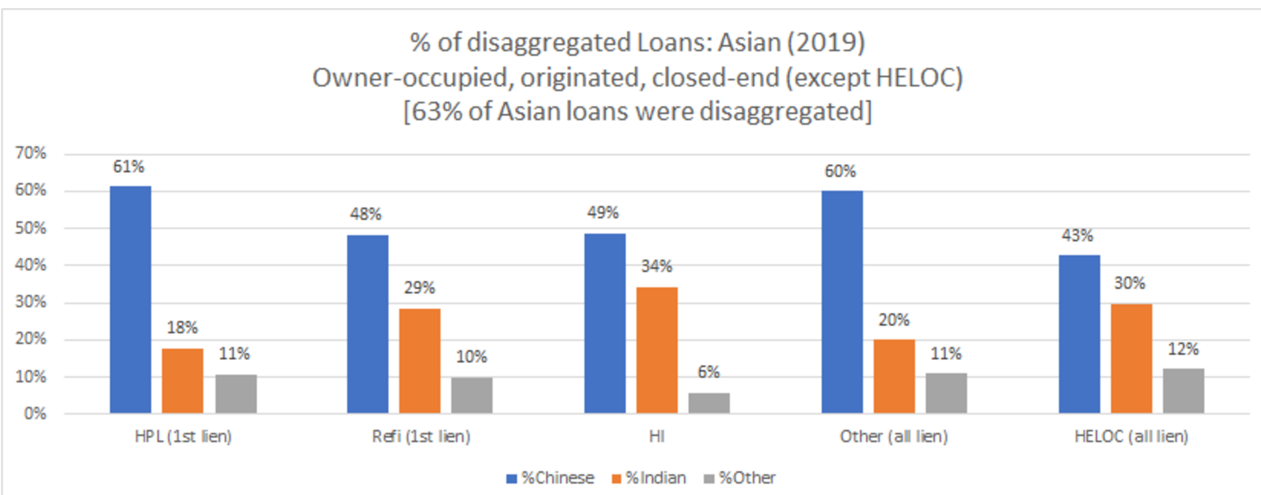
[11] https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy_COVID19andBlackOwnedBusinesses

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

[13] https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-20170927.htm

while the percentage for Hispanic families is not much higher. In fact, the median net worth for a white family without a bachelor's degree is 30% higher than the net worth for a Black family with a college degree and 22% higher than a Hispanic family with a college degree. The study also shows that Black and Hispanic families are much less likely to be able to borrow even $3,000 from family or friends for an emergency, so presumably the ability to borrow a higher amount for a down payment would be even lower. Even worse, a 2017 Federal Reserve survey found that Black and Hispanic adults are less likely to be able to afford monthly expenses at all, regardless of education in some cases[14]. 21% of college educated Black adults and 17% of college-educated Hispanic adults cannot pay their monthly bills versus just 10% of white adults. These same adults are also less likely to be able to weather an unexpected $400 expense.

We also cannot lose sight of the great needs within the diverse Asian community that are often overlooked. A report by the Asian American Federation sheds light on poverty rates within the Asian community in New York State and New York City[15]**. In New York State, the poverty rate among Asians is 18%, nearly double the 10% rate among whites**. For Black and Hispanic families, the rates are 23% and 26%, respectively**. In New York City, the Asian poverty rate increases to 20%.** We have sizable Pakistani and Bangladeshi populations in New York City, for whom the poverty rates are over 27%. The 2018 HMDA revisions now includes some disaggregated race data and shows disparities within the Asian category. Asian borrowers are broken down into Indian, Chinese, Korean, Vietnamese, Japanese, and "other Asians." "Other Asians'', which includes Pakistani, Bangladeshi, and Nepalese borrowers, make up about 17% of the NYC population, yet receive a much smaller percentage of loans. Additionally, for all populations, well represented or under-represented, examiners should also ensure that the products are affordable.



While CRA data may not get this granular for every region, it highlights the need to be attuned to local needs as banks develop CRA programs and to incorporate these needs within their CRA activities at those levels. And in areas where these populations live, all available data should be analyzed from HMDA, Dodd Frank Section 1071 (when it is enacted), geographic analysis, and other sources.

The fair lending portion of the CRA exam has always allowed banks to be downgraded for fair lending and other consumer violations, and we appreciate the Board for both recognizing that nexus and asking about other laws to incorporate. Under the law as it is today, the fair lending downgrade can only happen when

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[14] https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf

[15] http://www.aafny.org/doc/AAF_poverty_2018.pdf

it is connected to a lending or credit violation, and not to other laws. The proposal appears to expand to consumer laws outside of a lending or credit relationship, such as disparate access to bank accounts or fees associated with them, which we fully support. But that is not enough. Not all disparities lead to a violation, which highlights the need for stronger fair lending exams, but also demonstrates that harm can happen outside of that context. For example, evictions that disproportionately impact Black and Latinx renters are not likely to trigger a fair lending or credit violation as renters do not receive the credit. Also, violations are only one side of the equation. Given historic reality and current disparities, and the intent of the law in context, **banks should have an *affirmative obligation* to serve borrowers and communities of color equitably, and such analysis can be incorporated throughout the exam process:**

- **Performance Context and Community Input.** Include demographic data and maps in the performance context: homeownership, unbanked rates, branch distribution, income, unemployment, etc. Ensure that community engagement places BIPOC voices front and center. Banks and regulators should conduct proactive outreach to groups led by and serving communities of color.
- **Benchmarks**: Include retail and branching benchmarks to compare a bank's record of lending to Black borrowers, Asian borrows (disaggregated when the local population warrants it), and Latinx borrowers, which can also be disaggregated by ethnicity and race.
    - Complementary data will also help shed light on which communities are and aren't served, such as **maps and tables by income, race, and ethnicity**. The Board could invest in more sophisticated ways for communities to access the data online, so the demographic and bank data is accessible. Interactive maps and data analyses can be very impactful.
- **Impact Scores & Qualitative analysis**: Specific, intentional analysis of how a bank is reaching out to and serving underserved communities by race, income, and ethnicity.
    - Products/practices: Analysis of outreach, products, language access, cultural competency, and identification requirements. Incentivize responsive practices and products. This includes having staff who represent the community, and strong investment in hiring BIPOC people throughout the bank. Banks should be downgraded if they provide or finance subprime, high-cost loans and services.
    - Leadership: Analysis of work done with BIPOC led groups.
    - Credit for Positive impact: The CRA should incentivize banks to provide affordable housing, small business supports, and community development activities that help create wealth and opportunity for impacted communities.
    - Downgrades for displacement and harm. Violations of fair lending laws do not capture the totality of harm done to low-income and BIPOC communities. Evictions, poor conditions, and other displacement pressures disproportionately affect low-income, Black and brown communities and may not trigger fair lending violations. Banks must be downgraded if they are found to foster any type of displacement or turn a blind eye to these pressures brought to their attention. If there is explicit race analysis, it cannot be to merely incentivize credit flowing into communities of color; without proper guardrails and protections, some investments can and do cause more harm than the lack of credit. The 2008 housing crisis demonstrated that banks offered more responsible products and fewer subprime loans than nonbanks[16], but banks played other roles in the crisis such as securitizing subprime loans. Also, decades of "urban renewal" policies, inequitable

[16] https://www.federalreserve.gov/econresdata/notes/feds-notes/2015/assessing-the-community-reinvestment-acts-role-in-the-financial-crisis-20150526.html

rezonings and other large-scale projects, often supported by bank lending or investments, can displace and harm just as much as predatory and subprime lending.

- Make fair lending exams transparent so the public can see the analysis and outcome of the exam.

If the affirmative obligation is not possible under the law, regulators should allow for banks to improve their rating by serving BIPOC communities and use proxies such as underserved census tracts that are often communities of color, while expanding where downgrades can happen for harm to BIPOC communities.

We also note that rather than “minority,” we intentionally use different terminology. New language can pave the way for new outcomes in the world of community reinvestment. The language used in these comments comes from listening to our membership base, namely communities of color and historically redlined populations. While new language **is** never enough, it is a condition for new thinking and ways of achieving long-elusive outcomes. Defining communities as their population proportion is in many cases numerically inaccurate and reduces these communities to a point of comparison in relationship to the white population. As you’ll see in these comments, we use Black, Indigenous, and People of Color or BIPOC. We also elect to use Latinx, but at times use Hispanic to match terminology used in the Home Mortgage Disclosure Act (HMDA) and other studies.

Question 4*. How should the Board provide more clarity that a small bank would not be required to expand the delineation of assessment area(s) in parts of counties where it does not have a physical presence and where it either engages in a de minimis amount of lending or there is substantial competition from other institutions, except in limited circumstances?* ***Question 5.*** *Should facility-based assessment area delineation requirements be tailored based on bank size, with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties and smaller banks being able to delineate smaller political subdivisions, such as portions of cities or townships, as long as they consist of whole census tracts?*

Assuming the small bank definition remains the same (< $330 million in assets), this is a good approach. No smaller than a county for an Intermediate Small Bank. But there must be some caveats for banks that have their sole branch in a wealthy or white neighborhood. In New York City, it may make sense for a small bank to serve a low-income, immigrant neighborhood, for example, but no bank should be allowed to serve a predominantly white or upper-income community. Large banks should include the whole city - all five boroughs / counties - in their assessment area. As it is, there are large banks that only have branches in a subset of NYC counties and have no obligation to the rest of the city, often excluding the Bronx, which has the highest concentration of people of color, most people in poverty, and fewest bank branches. First Republic Bank, for example, serves only Manhattan, which has just a fraction of the city’s people of color and low-income residents, making thresholds much easier to meet. BankUnited only serves Brooklyn and Manhattan.

Question 6*. Would delineating facility-based assessment areas that surround LPOs support the policy objective of assessing CRA performance where banks conduct their banking business?*

Yes. The only question remains as to how to determine performance relative to deposits if the bank does not also have a branch presence.

Question 7. *Should banks have the option of delineating assessment areas around deposit-taking ATMs or should this remain a requirement?*

This should remain a requirement, and not be optional. Further, if a bank closes a branch in an LMI community or underserved neighborhood of color, they should, at the very least, be required to maintain a deposit-taking ATM and maintain the assessment area. However, as will be discussed further below, fewer banks should be allowed to close branches in these areas and more must be done to expand access to branches and banking.

Question 8*. Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?*

We agree that banks should be assessed on their lending patterns anywhere they lend. Given how few would be added with the "substantial majority" test, a simple threshold would make more sense. Another option to consider for banks that don't meet that threshold, especially for smaller or rural areas, would be if a bank without a physical presence makes up a certain percentage of lending there (for example, 5-10% of local lending). This could be evaluated by census tract or group of tracts, depending on the size. For banks that only make consumer loans, the threshold would be the simplest way as data does not yet exist to evaluate their percentage of the market.

Similarly, assessment areas can be determined by where banks take deposits or open accounts, as would be the case for banks offering checking and savings accounts only in a particular area (both internet banks and hybrid branch and online banks).

Question 9*. Should nationwide assessment areas apply only to internet banks? If so, should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas or by using some other threshold? Should wholesale and limited purpose banks, and industrial loan companies, also have the option to be evaluated under a nationwide assessment area approach? and* ***Question 10****. How should retail lending and community development activities in potential nationwide assessment areas be considered when evaluating an internet bank's overall CRA performance?*

No. Nationwide assessment areas are way too large to provide any sort of meaningful analysis.

We would consider an internet bank as one that does not conduct business from within a branch at all. As mentioned above, a branch-based bank can be evaluated where they have branches and in additional lending-based or deposit-based assessment areas.

Similarly, regulators can create lending- or deposit-based assessment areas for internet banks. Banks should be analyzed within these areas for equity (distribution metrics and quality of activity) and community development activity. This is especially important in dense municipal areas that appear to be "over banked", but where redlining persists, leaving out low-income communities of color. They can also be assessed where they do business outside of these population centers, either by meeting a threshold of loans or bank accounts or making a percentage of local business as much as is possible to ascertain. In addition to the lending and deposit-based assessment areas, regulators can analyze banks within all MSA's for equitable distribution of lending and banking, even if not all are designated as assessment areas with deeper community development obligations. This must include historically redlined neighborhoods as well as less sparse, underbanked regions.

Any bank advocating for a national assessment area is implying that they serve the whole country indiscriminately. First, they should be required to state so explicitly and demonstrate how they are serving the whole nation, and not just certain communities within the nation. If an internet or online bank's activities are concentrated in only a few areas, and/or exclude underserved historically redlined areas, it is not meeting its CRA obligations. Banks should be required to have some physical presence in areas where they do considerable business to respond to local community development needs beyond the products they offer.

Online banks should also make community development financing accessible to unbanked and underbanked areas. Online banks purporting to serve the whole nation should be downgraded if they exclude underbanked areas and focus only on high-density regions.

The ANPR proposes mechanisms to drive community development finance to underserved areas, regardless of assessment area. Online banks should be assessed in how well they are reaching these areas. Branch-based banks continue to cite online banking as the reason they close branches, including in already underserved, underbanked, low-income, communities of color. This trend has exacerbated during COVID where banks appear to be using the pandemic as an excuse to close branches when we know that the need persists and will be there when the pandemic ends. As such, banks must be expected to continue to serve the areas they leave; if they removed a branch, they should demonstrate how they are serving it as well or better than they did with a physical presence.

In 2020 alone, New York City lost 100 branches, including three in parts of the Bronx that have long been underserved by traditional banks; they have fewer than 2 branches per 10,000 people (less than 1 in some cases). In one location, it left the community with no functioning commercial branches at all, leaving small businesses with no place to bank in person. This is especially challenging for any business that has cash deposits. For banks that insist online banking is better for those communities, they must be required to demonstrate that impact and maintain some physical presence, through staff and full-service ATMs.

We have the same response for limited purpose banks. Limited purpose banks often offer consumer products, typically credit card loans, which tend to have little or no scrutiny under CRA as these banks only have a community development test. Banks should be evaluated at the holding company level, which would capture some limited purpose lenders, and allow regulators to analyze the entire bank, rather than arbitrary distinctions based on a bank having one or more entities. Those that operate independently can delineate assessment areas based on where they lend or take deposits, with the requisite tests depending on the product and business model. Like online banks, they should also be evaluated for how well they reach unbanked areas with products and community development financing.

Wholesale banks by definition do not offer consumer products, and only have a community development test. However, if such a bank does offer consumer products, as is the case with Goldman Sachs, they should be evaluated on those products[17]. As with any bank, a national assessment area means they will have no local obligation or commitment. Wholesale banks are well suited to finance projects in underserved areas, especially those that are headquartered in states simply for tax purposes. But it should be noted that some are headquartered and have staffing in large cities, like New York City, where meaningful engagement is also needed. The Board should continue to evaluate them within the area they

[17] Goldman Sachs now has a consumer arm - we hope they are evaluated under the retail and service test moving forward, but for now are still classified as a wholesale bank. They should at least be evaluated like a limited purpose test…

are headquartered, do business, and also within underserved areas. They do not have the same obligation to provide smaller dollar loans, and thus can provide more community development financing.

The CRA works best when a bank has relationships with a local community to continually respond to areas of need. This is unlikely to happen if a bank can lend or invest anywhere. Thus, while encouraging banks to support projects in underserved areas nationwide, these same communities need a set of banks that have a presence and can build longer-term relationships and partnerships to support community development. A national assessment area is unlikely to foster such partnerships.

The proposal already offers a national assessment to drive dollars to underserved areas, which should work for banks of all business models, while maintaining the local obligation as well.

Question 11. *Is it preferable to make the default approach for small banks the current framework, with the ability to opt in to the metrics-based approach, as proposed, or instead the metrics-based approach, with the ability to opt out and remain in the current framework? and* ***Question 12***. *Should small retail banks that opt in to the proposed framework be evaluated under only the Retail Lending Subtest? Should large retail banks be evaluated under all four subtests: Retail Lending Subtest, Retail Services Subtest, Community Development Financing Subtest, and Community Development Services Subtest?*

All banks should fall under the new retail test for lending and branching. There is no reason to modify it for any bank. Ideally all banks would have all 4 tests, but if not, then allow the smallest banks (under $330 million) to continue as they do now without a community development financing test. They should also be evaluated on branching and access to banking. Intermediate Small Banks and large banks should have more robust analyses.

Question 13. Is $750 million or $1 billion an appropriate asset threshold to distinguish between small and large retail banks? **Or should this threshold be lower so that it is closer to the current small bank threshold of $326 million**? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?

The threshold should match the current test. Intermediate Small Banks ($326 million to $1.3B or so) are accustomed to having a community development test and should fall under the new system with quantity and quality. A 2017 NCRC study documented $9.3 billion in community development lending among nearly 400 CRA exams released in 2016 and estimated that about half of those dollars would be lost if the community development test were eliminated for this set of banks[18]. These investment dollars are critical anywhere they operate, and especially for smaller, rural areas that have fewer large banks.

Question 14. *Is the retail lending screen an appropriate metric for assessing the level of a bank's lending?*

Checking that a bank is lending makes sense, but the threshold seems low. In New York City, the ratio of the total loans (1-4 family and small business) originated and purchased to deposits is 4.3%; 30% of that is 1.3%. Among banks in ANHD's study, all but one bank with assets over $50 billion exceeds that with just a

[18] https://ncrc.org/intermediate-small-banks-forgotten-significant-resource-affordable-housing-community-development/

subset of lending[19]. Adding in purchased loans, other loan types, and all investor properties would likely put others over the threshold.

However, this low threshold does reveal some banks that no longer make consumer loans. New York Community Bank, BankUnited, and Apple, for example, do not make 1-4 family or retail small business loans, and thus would barely meet the threshold. Capital One pulled out of 1-4 family lending entirely and Signature never offered them at any scale. HSBC has been pulling back from consumer lending for years, and the threshold calculations could reveal varying levels of lending. Raising the threshold would ensure that banks lend to consumers in addition to their other lines of business.

However, many questions remain about the effectiveness of this type of screen:
- It is dollar based, whereas the rest of the analysis is volume of loans
- How does this encourage banks to offer more consumer products? And how does it deter them from pulling out. Banks are currently not required to offer consumer products like 1-4 family home lending or retail small business lending, even when it is a demonstrated need, and face no consequences if they pull out of such activity, as has happened over the years
- A question also remains for banks with outsized deposits, like JPMorgan Chase. Their $560 billion in deposits skews the overall ratio, and they may not reach the threshold, despite considerable lending.
- Lastly, for banks that fall under this threshold, it is unclear what type of analysis they will undergo. The four subtests provide a systematic analysis of a bank's lending patterns. Will the test be more rigorous or less? and how will a rating be determined based on distribution and quality?

As we'll discuss elsewhere, multifamily lending is a different type of product and makes sense to be excluded from the threshold, but also warrants a more systematic approach in the retail lending section.

Retail Lending Distribution Metrics for a Presumption of "Satisfactory"

Question 15. *Are the retail lending distribution metrics appropriate for all retail banks, or are there adjustments that should be made for small banks?*

No adjustments are needed for small banks. Every bank has an obligation to lend equitably, even if the volume is lower, which of course it will be.

Question 16. *Should the presumption of "satisfactory" approach* ***combine low- and moderate-income*** *categories when calculating the retail lending distribution metrics in order to reduce overall complexity, or should they be reviewed separately to emphasize performance within each category?*

No, the regulation should not combine low- and moderate-income categories, nor should it combine other categories, such as loan purpose, investor/owner-occupied, purchased/originated, etc.

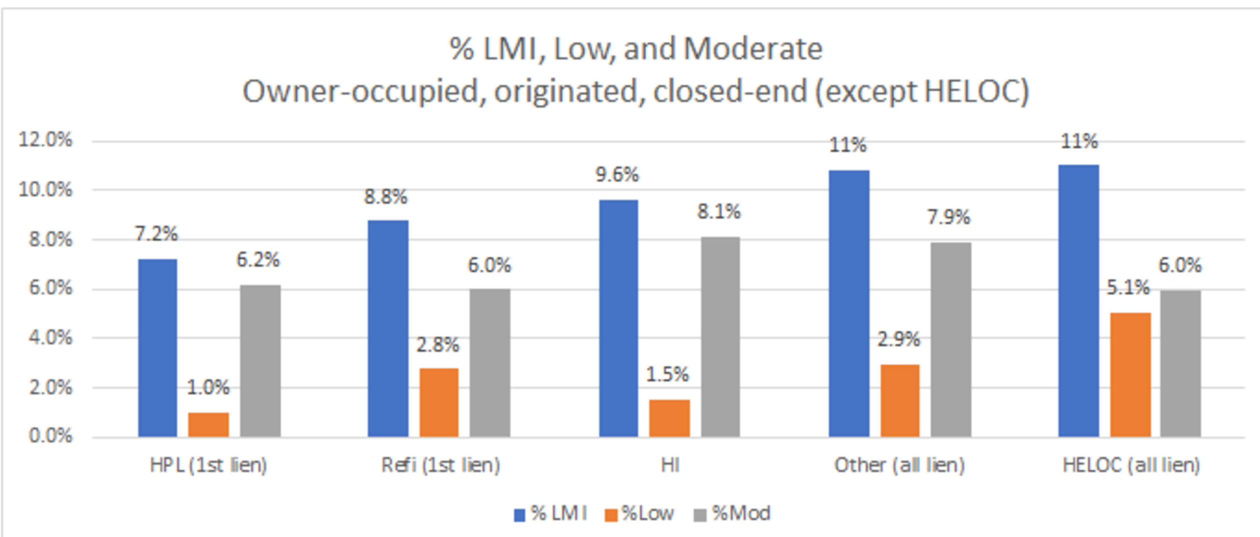
Once a formula is established, it should be straightforward to apply it to each loan type and income category, connecting to local needs for different loan purposes and disparities within each. For example, in New York City, half of all households are low- and moderate-income, but the distribution skews low-income - 33% are low-income and just 16% moderate-income. In 2019, barely 1% of home purchase loans

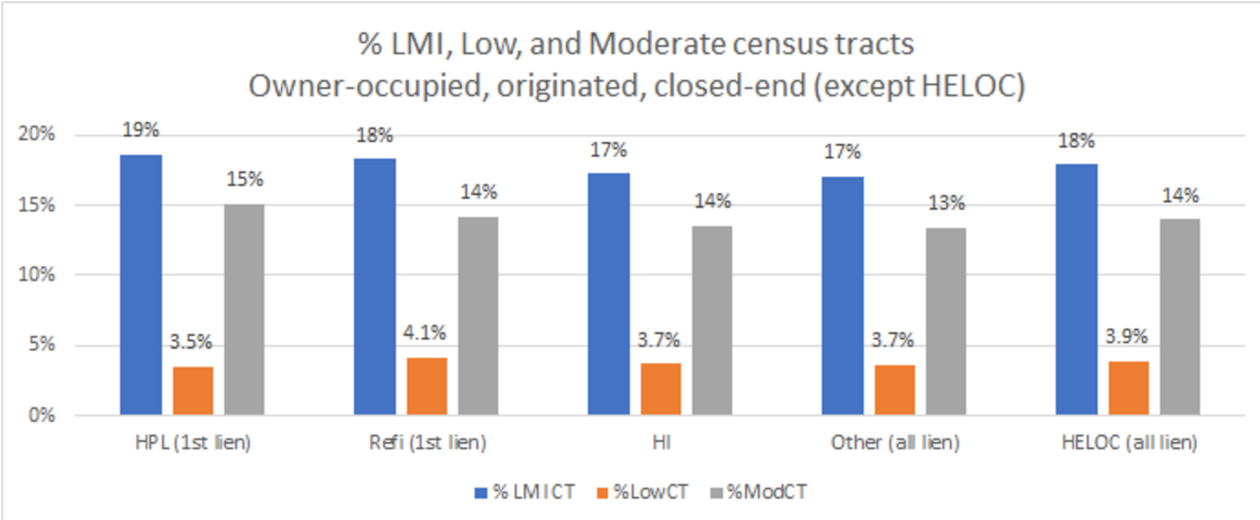
[19] 1-4 family, owner-occupied, closed-end and first-lien for purchase/refinance, and all small business loans originated

went to low-income borrowers and 6% of loans were to moderate-income borrowers. Disparities also exist in small business lending where 83% of businesses in New York City are below $1 million in revenue, yet just 43% of loans go to businesses of that size.

Additional analysis would reveal indications of gentrification and potential displacement, especially if loans in LMI tracts skew towards white and upper-income borrowers. The distribution of lending in LMI tracts better matched the demographics, but just 10% were to LMI borrowers, 12% to Black borrowers, and 13% to Hispanic. The percentage of Refinance and Home Improvement loans in LMI geographies were higher than home purchase loans, but citywide, nearly half of all these loans went to white borrowers. And, as mentioned below, the volume of home improvement loans remains very low, despite a persistent stated need.

Further, **64% of home purchase loans in LMI tracts went to upper income borrowers, 23% to middle-income.** Upper-income loans in particular, and those on the upper end of the middle-income scale can contribute to gentrification and displacement if it raises the cost of housing while existing homeowners do not have the tools and products needed to remain in their homes. The focus of CRA must be on LMI borrowers and, if they were to adjust that at all, it should be to increase access to homeownership for BIPOC. As mentioned in question 2, the CRA must also have an affirmative obligation to serve BIPOC.





(HPL = Home Purchase Loan; Refi = Refinance; HI = Home Improvement Loan; HELOC = Home Equity Line of Credit)

While of course the high cost of housing impacts the lending numbers, there are banks that do a better job of increasing access to homeownership for lower-income families and that must be encouraged and incentivized. Other areas of the CRA can support the creation of affordable housing for purchase.

The metrics must not facilitate a race to the bottom. The market benchmark is already so low that banks below that should not pass their exam for anything lower than the market performance, especially for loans to low-income, moderate-income, and borrowers of color. As it is, nonbanks are better serving borrowers of color, likely because banks do not have an affirmative obligation to serve them. But they mainly do so with higher cost FHA loans, versus the more affordable conventional loans, and even more affordable "CRA loans".

Just some examples that demonstrate the disparities in New York City
49% of households are LMI; 33% low-income

- 8.3% of all 1-4 family loans went to LMI borrowers in 2019, with just 3% to low-income. 70% benchmark would set these to just 5.8% to LMI; 2.1% to low-income
- 7% of home purchase loans went to LMI borrowers; 1% to low-income. 70% benchmark would set these to 4.9% and 0.7%, respectively.

86% of businesses in New York City are small businesses with revenues below $1 million

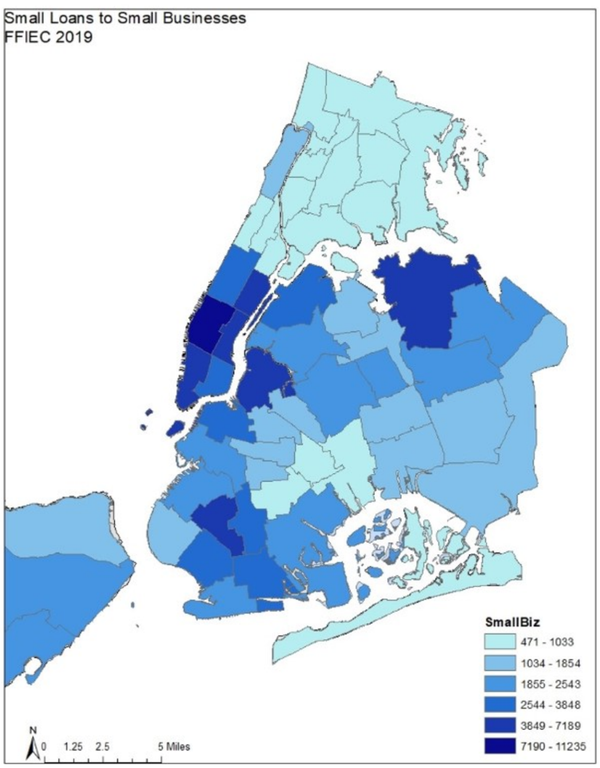
- 43% of small loans were to small businesses. 70% benchmark would set this to 30%.

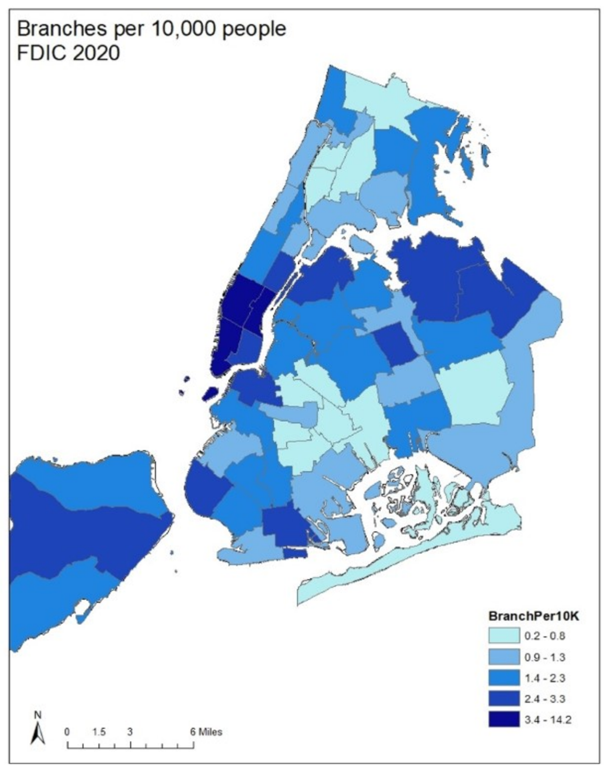
The geographic market and demographic benchmarks are closer, but given the borrower disparities, and persistent racial disparities, regulators must pay attention to loans in those areas to ensure they also support populations meant to benefit from the CRA.

Stronger analysis of small business lending to promote small dollar loans to the smallest businesses. Throughout the ANPR, the Board expresses an interest in better serving the smallest businesses. However, there is little in the proposal to further that goal.

Small businesses need grants and small dollar loans. This is especially important during the COVID-19 pandemic, but important at other times, too. The CFPB found that 95% of businesses in the U.S. have under $1 million in revenue and 75% below $100,000[20]. They also found that 83% of businesses are non-employer firms, which means the owner has no paid employees. Studies have long shown an unmet need for small business loans to employer firms under $100,000 and, within that, under $25,000[21]. Smaller, Black-owned non-employer firms have an even harder time accessing financing. According to a recent Federal Reserve Study, Black-owned businesses have lower revenues and are more likely to operate at a loss[22]. Over 70% of Black and Hispanic-owned businesses reported financial challenges and higher credit risk than white-owned businesses. 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. At the outset of the COVID-19 pandemic, large banks shirked their responsibility to serve small businesses, 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, ANHD's analysis of the full PPP data set demonstrates inequitable lending distribution with low-income communities of color left out[23]. The patterns are similar to the inequitable bank small business lending and branches patterns pre-COVID:





[20] "*Key Dimensions in Small business Lending Landscape*", CFPB (2017) https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf

[21] Federal Reserve Banks, 2019, "Small Business Credit Survey, Report on employer firms", (page 10). https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf

[22] Federal Reserve Banks, 2019, "Small Business Credit Survey, Report on non-employer firms", https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-nonemployer-firms-report-19.pdf

[23] https://anhd.org/blog/new-yorks-small-businesses-left-out-paycheck-protection-program

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 in some instances on the breakdown of loans by size: loans under $100,000; loans between $100,000 - $250,000; and loans $250,000 - $1 million.

The loan sizes vary greatly by bank. The average loan size in New York City in 2019 was $300,000 and the median $235,000. These were slightly lower for loans to small businesses (revenue under $1 million), but still well over the stated needs of smaller dollar loans. Further, the banks that have averages closer to that lower range are credit card lenders or offer that as a major line of business. 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[24]. 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. In 2019, 91% of Capital One’s loans were made by the credit card bank. It is likely the ratio is similar at other large banks.

The final rule must benchmark and incentivize small business loans and lines of credit, an area that some banks are just starting to develop. During COVID, this can include reaching small business owners to access PPP loans, including those who are unbanked or not customers, which would also help them connect to credit post-COVID. We acknowledge there are differing opinions as to how PPP loans should count under CRA given that banks receive fees for the loans, and they are fully guaranteed. The loans should be easy to distinguish and analyze, with credit for banks that reach underserved businesses: BIPOC business owners, non-customers, unbanked businesses, immigrants with limited English, for example.

Specific metrics to consider, akin to what will be included when Dodd Frank Section 1071 is implemented:

- Loans of different sizes
- Different loan types (loan, line of credit, SBA loans, credit cards, merchant cash advance, etc.) with credit for products in high need and downgrades for those that are considered predatory or extractive.
- Loans to very small businesses (micro and small, well below $1 million revenue) - break out by range of businesses sizes. This can be by revenue and by number of employees
- Loans owned by Black, Indigenous, and People of Color
- New loans and renewals/refinances separately

Conduct separate analysis on 1-4 family loans: Loan purpose and investor vs owner-occupied
The ANPR does not ask about combining loan purposes, but that is another area that should be separated. Home purchase loans are critical to ensuring banks are helping people access homeownership, whereas refinance and home improvement loans can help people stay in their homes and, at times, also help meet other financial needs. The needs for these may vary by location.

For example, local advocates in New York City have for years been asking for an affordable home improvement product, which tend to be smaller dollars than purchase and refinance loans, and thus less profitable for banks. However, lower-income, Black and brown homeowners, need access to affordable credit in order to maintain their homes. Many bought their homes years ago and would have few if any

[24] Footnote 9 from bank/OCC study

options to remain in their neighborhood or even the city if they lost their home, and yet they risk that happening without being able to maintain it in good condition form themselves and any tenants that also live there. **In 2019, home improvement loans made up just 1% of owner-occupied loans and few banks offer products dedicated to this purpose.** The CRA should be a tool to encourage the creation and use of new products like this one. Only by benchmarking and evaluating these products will communities be served as they should be.

ANHD, and others, typically focus on owner-occupied loans, and often on first-lien loans, depending on the product. Investor properties differ in important ways, mainly that they are a business and not the owner's own home. We understand that it can be a means to build wealth for a lower income family and/or a BIPOC person, but it operates like any other rental property and should be evaluated for conditions, rents, and impact on affordable rental housing. The situation could be similar for owner-occupied 2-4 family homes where other units are rented out. While it may be challenging to fully evaluate rents and conditions in this stock of housing, regulators can take into account community input that indicates signs of neglect or displacement. A bank that focuses almost exclusively on investor properties, or does a considerable amount of such business, should ensure that the housing they finance is supporting affordable rental housing, and not fueling displacement or poor conditions. And that it is supporting individuals and not corporations to supply such housing.

Separate Purchased Loans from originated loans.
Loan purchases are distinct from loan originations. It takes more time, resources, and intentionality to create a CRA loan product and then market and originate loans to populations the CRA is meant to target. Banks should be encouraged to do so, especially now as so many are pulling out of the space entirely.

It may make more sense to include purchases as a community development activity if it proves to support home ownership or small businesses, such as by partnering with a CDFI lender, a smaller community lender, or an MDI. If it remains in the retail section, it should count as a qualitative analysis after benchmarks have been met.

Add Multifamily lending to the Retail Lending Test:

Multifamily mortgage lending should remain under the retail test, but with a much more robust analysis than exists today. Under the current CRA structure, banks are evaluated for the percentage of loans in LMI tracts and then a subset of those can get community development credit if they are determined to have affordable units[25]. In rare instances, loans will be removed for poor conditions or evidence of displacement, but it has never yet led to a downgrade. As we have been told, current CRA guidance and regulations do not allow for such downgrades to happen. We believe this to be a major failing/shortcoming of CRA and implore you to work with us on possible solutions. Also, consideration of LMI tenants is not part of the retail test as are LMI borrowers for home lending.

The retail test should include benchmarks for multifamily lending. Suggestions to consider measuring and benchmarking include:

- % Loans and units in LMI tracts: compare to multifamily buildings / units in LMI tracts
- % Loans / units affordable to low- and moderate-income borrowers compare to LMI population

[25] Prior to 2018, banks that made NY CEMA loans could choose to include them. They are now included in HMDA

    - Within this, regulators can benchmark the loans/units that are subsidized & income-restricted vs unsubsidized, as well as loans to nonprofit developers.
    - They can also benchmark loans to buildings with rent-stabilized units in New York City and similar housing protections elsewhere.
- Loan purposes to purchase, refinance, or take cash out for improvements or other uses
- Size of buildings financed

Additional analysis of quality can be incorporated into the qualitative analysis (**see question 22**) and factor into upgrade/downgrade. **ANHD recommends that the regulators work with stakeholders to finalize a robust quantitative and qualitative approach** that encourages lending to a range of subsidized, income-restricted, and unsubsidized affordable rental housing in a way that preserves affordable housing, affordable rents for small businesses, and protects tenants from harassment, poor conditions, evictions and displacement.

Question 17*. Is it preferable to retain the current approach of evaluating consumer lending levels without the use of standardized community and market benchmarks, or to use credit bureau data or other sources to create benchmarks for consumer lending?*

Expanding CRA to cover other types of retail consumer loans more methodically is appropriate, but only if it is with an eye on equity and distribution of that lending. For example, many banks make consumer loans that may or may not be evaluated. For example, Goldman Sachs's new Marcus bank[26] products are not evaluated because Goldman is still classified as wholesale bank, with only a community development test. Capital One and Chase's small business credit card bank loans will only be evaluated if they choose to include them as affiliates on the retail bank tests, while the remainder are never evaluated under the limited purpose exam. The same is true for other stand-alone limited purpose banks like Discover, Synchrony, and American Express; as well as banks that make auto loans, small dollar loans, and student loans. Limited-purpose banks, especially credit card lenders, should be evaluated on the products offered. Some of these banks include their loans in a strategic plan option, but that is a bank-designed exam that won't necessarily conform to the same benchmarks and also doesn't take into account pricing or other distribution metrics.

All banks that offer these loans should be evaluated for volume, quality, and how they relate to locally identified credit needs. **High interest rates, high default rates, and other predatory practices should reflect negatively on a CRA exam, while flexible, affordable, accessible products should be incentivized and given favorable consideration**. Local CRA advocacy, for example, has led to banks offering low-cost bank accounts and credit building products, and that should be lauded.

The CRA already allows for other loans to be included and requires so if it is determined to constitute a substantial majority of a bank's business[27]. But significant holes remain, especially for limited purpose banks. Chase and Capital One may elect to include their small business credit card loans on the retail bank test, but it is optional, and consumer credit card loans are rarely evaluated. There is no requirement for the retail lending activity of limited purpose banks like American Express, Discover, WEX, and Synchrony to be evaluated on their consumer lending. Some include them in strategic plans, but that, too, is voluntary.

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

[27] 28 §____.22(a)(1)—2

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

If there is an industry benchmark that works, we would be open to learning and exploring it. But if not, then a robust analysis of the quantity, distribution, and *quality* (pricing, marketing, etc.) would be a good step forward. A large volume of high-cost products is not the goal of a robust CRA, but access to affordable, responsive credit certainly is.

Question 18**. How can the Board mitigate concerns that the threshold for a presumption of "satisfactory" could be set too low in communities underserved by all lenders?* ***Question 19. *Would the proposed presumption of "satisfactory" approach for the Retail Lending Subtest be an appropriate way to increase clarity, consistency, and transparency?* ***Question 20.*** *Is the approach to setting the threshold levels and a potential threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark appropriate?*

We agree that it is appropriate to analyze how a bank is performing compared to its peers in the market as one aspect of an evaluation. However, as already discussed, the bar must not be set too low. If so, banks will stop when they reach any such targets. A bank must also, at the very least, meet a substantial number of the benchmarks across categories, incomes, race/ethnicity. Regulators can also see how banks perform year to year. Also, qualitative analysis, including public input and analysis of rates, pricing, and practices, must allow a regulator to maintain, upgrade, or downgrade the rating, depending on the analysis.

In a high-cost city like New York City, which also falls within a higher-income MSA, the analysis by income does not reflect the full set of needs. The percentage of loans to LMI borrowers and small businesses is well below their percentage of the population. As such, the market benchmark will be much lower than the community benchmark. However the thresholds are set, the approach should incentivize banks to increase lending to these populations and not lower the bar to allow banks to underperform or in any way lower the market performance because they are allowed to do less.

Question 21. *Will the approach for setting the presumption for "satisfactory" work for all categories of banks, including small banks and those in rural communities?*

The approach should be consistent by bank size. Any adjustments should account for low levels of lending to certain populations, such as high-cost markets like New York City.

If the final rating can correspond to low or high satisfactory, versus simply "satisfactory", then the 70% may make sense as a threshold indicating low satisfactory in many areas. But as said above, in New York City, 70% will allow banks to make very low percentages of loans to targeted populations in many cases.

Question 22. *Does the performance ranges approach complement the use of a presumption of "satisfactory"? How should the Board determine the performance range for a "satisfactory" in conjunction with the threshold for a presumption of "satisfactory"? How should the Board also determine the performance ranges for "outstanding," "needs to improve," and "substantial noncompliance"? and* ***Question 23.*** *Should adjustments to the recommended conclusion under the performance ranges approach be incorporated based on examiner judgment, a predetermined list of performance context factors, specific activities, or other means to ensure qualitative aspects and performance context are taken into account in a limited manner? If specific kinds of activities are listed as being related to "outstanding" performance, what activities should be included?*

This is a good complement to the metrics, but the range should be expanded to include low and high satisfactory ranges, rather than simply satisfactory. Also, this type of weighting would better fit into the first presumption, so that there is a presumption of low/high satisfactory. Presumption should not mean automatic pass. A robust performance context and community engagement piece will help determine the quality of lending and responsiveness of products and staff to determine the final rating in this section.

As mentioned above, in a high-cost market like New York City where banks performance is so low in lending to LMI borrowers and BIPOC borrowers, the ranges cannot allow a bank to pass by performing below the market. This is especially true for low-income borrowers who receive roughly 1% of home purchase loans and not much over that for other types of loans. **In 2019, banks make barely 5% and 8% of their home purchase loans to Black and Hispanic borrowers, respectively. Non-banks made 18% and 13% of their loans to Black and Hispanic borrowers, respectively.** Both are below the demographics, but as in prior years, nonbank lenders dominate and are concentrated in neighborhoods of color that banks are neglecting[28]. Non-banks also rely heavily on FHA loans, which are higher cost than conventional loans and affordable CRA loan products. 28% of non-bank home purchase loans were FHA loans versus just 2% of bank loans. But, that percentage jumps to 66% among non-bank loans to Black borrowers, and 18% among bank lenders. This perpetuates a two-tier system that locks Black and Latinx borrowers out of conventional loans[29]. Banks should get credit for responsive, affordable products for low-income and BIPOC borrowers, and downgrades for both lack of lending and also any indications of higher-cost products to these populations.

This is also a place to look at the **types of loans made in connection to need**. Investor loans should be split out from owner-occupied loans. If a bank makes a higher percentage of investor loans, it is not helping people build wealth through homeownership, as has long been a key goal of the law; if it does, it would be wealth created from people paying rent, which may be higher than the community can afford. Investor properties create rental housing, but without any analysis of quality or rent levels, the impact can be difficult to determine. Whereas affordable home purchase products are always needed and merit credit when marketed and used by LMI and BIPOC populations and connected to high-quality housing counseling. Also, if a bank makes affordable home repair loans in neighborhoods asking for that product, that should reflect positively.

A similar analysis makes sense for small business lending to ensure lending reaches the smallest and most marginalized business owners with products, support, and outreach. Banks must have staff, low-cost products, and technical assistance to help small businesses access loans. Because there is less emphasis on loans to very small businesses, the CRA has not fostered the same ecosystem as we have for 1-4 family lending. We lack the data to do the non-bank analysis for small business lending overall, but we noted similar dynamics with higher concentrations of non-bank PPP lending in BIPOC communities[30] and suspect similar trends in lending overall. A stronger CRA could lead to a similar set of bank small business products with connection to credit counseling and business support by nonprofit organizations; financial assistance; and lower rates. Also similar to 1-4 family lending, there is a need for better language access,

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[28] "Why is non-bank lending highest in Communities of Color?" https://anhd.org/wp-content/uploads/2017/10/Why-is-Non-Bank-Lending-Highest-in-Communities-of-Color_October-2016.pdf

[29] https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-repairing-two-tiered-system-fha-may2018.pdf

[30] https://anhd.org/blog/new-yorks-small-businesses-left-out-paycheck-protection-program

alternative credit scoring, and flexible underwriting. Banks that have a formal second look program with nonprofit lenders is also impactful.

Lastly, whether here or in the metrics, mapping must be used more to determine where banks are and aren't lending, overall and bank-by-bank. A bank may have a high percentage of loans to LMI borrowers, but all are concentrated in one small area. While this may indicate a productive partnership with a particular project, it would also show that the rest of the banks' lending is not down with the same equity in mind. On the positive side, mapping can also show where a bank's practices are working in one neighborhood and can be expanded to others.

Quality of Multifamily Lending

Lastly, this section must incorporate a robust analysis of the quality of multifamily lending. Banks cannot be evaluated simply on the loans they put forth for community development credit. Like with home mortgage lending, multifamily mortgage lending is often a business line done for profit, and not for CRA credit. Banks must be evaluated on the quantity and quality of this lending, which can modify a rating up or down, depending upon if it supports affordable housing or contributes to harm or displacement.

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-19 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[31]. This term refers to landlords, equity investors, and traditional lenders who buy or 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[32]. The term is now used more broadly to describe landlords that follow a similar playbook; and in the years since 2008, landlords have used old and new tactics to harass and displace tenants to make a bigger profit[33]. Tactics include hazardous construction that creates unsafe living conditions, aggressive buyout offers, lack of repairs, and lack of heat and hot water.

Under the qualitative analysis, regulators can give banks credit for loans that support income-restricted affordable housing, and more so for ones that are deeply affordable, permanently affordable, and otherwise support mission-driven developers. These types of loans likely represent a low percentage of a bank's lending, and should definitely be encouraged, **but that analysis alone is not enough**. Consider a neighborhood where a bank invests in a tax credit project but is also financing landlords who are harassing

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[31] *Predatory Equity: Evolution of a Crisis*, ANHD (2009) https://www.anhd.org/report/predatory-equity-evolution-crisis

[32] https://www.nytimes.com/2010/02/12/nyregion/12vantage.html

[33] http://www.thelodownny.com/leslog/2017/09/icon-realty-management-settles-with-state-ag-pays-500000-in-penalties.html

and displacing tenants. If you asked neighborhood residents, they would likely say the bank was doing more harm than good in the area. Omitting negative lending practices from an examination does a disservice to the people and neighborhoods CRA was designed to benefit. Responsible multifamily lending guidelines are a necessary tool for regulators to monitor banks and hold them accountable when their lending practices lead to harm, which can happen on any number of housing types, including some that have regulatory agreements as well as private, unsubsidized housing such as rent-stabilized housing in New York City or so called "NOAH" here and elsewhere. They also provide a framework for banks to lend in a way that minimizes harm, which should be a top priority of CRA modernization.

Banks should also get credit for committing to and adhering to multifamily anti-displacement best practices in all forms of housing, subsidized and unsubsidized. Downgrade banks for lending to landlords who harass or displace tenants, and/or keep buildings in poor conditions. *ANHD's Best practices for multifamily lending include*[34]*:*

- **Responsible underwriting: Underwrite to current in-place rents and realistic maintenance costs**. For rent-stabilized buildings, we recommend a Debt Service Coverage Ratio (DSCR) of at least 1.2X[35]. In all cases, there should be no financial incentives or provisions to increase rent burden and displace tenants, be it through rent increases or reduced maintenance and services.
- **Appropriate vetting of borrowers**. Use all available resources to lend to responsible landlords who properly maintain the stock of rent-regulated and affordable housing and respect the rights of tenants. This includes consulting news reports and public lists; monitoring loan conditions, lawsuits, violations, and fines; and consulting with tenants and tenant organizers.
- **Responding to issues in buildings:** Create a formal process to work with tenants and organizers to respond when problems arise in buildings they finance. This could include hiring a tenant liaison or designating existing staff as a contact for tenants to reach out to. However it is structured, the bank has a vested interest in ensuring that tenants are living in good conditions, free from harassment and additional rent burden.

The California Reinvestment Coalition has a similar set of guidance for banks in California with their anti-displacement code of conduct[36]. Signature Bank and New York Community Bank officially adopted these best practices. Soon after, New York State's Department of Financial Services (DFS) created a set of guidance for state-chartered banks that are similar to these and offer another framework for regulators to utilize[37]. Banks should also get credit for transferring distressed properties to responsible mission driven developers, rather than selling the debt, or supporting the building being sold, to the highest bidder that is only seeking to make a profit. This will be especially important post COVID.

There is currently no structural way under the CRA for banks to be downgraded for patterns of displacement in buildings they finance. A bank can be downgraded for an insufficient volume of community development lending, but not for harmful practices. ANHD and our members have written

[34]*ANHD Multifamily Lending Best practices* https://anhd.org/wp-content/uploads/2017/06/ANHD_Best-Practices-in-Multifamily-Lending.pdf

[35] DSCR = Debt Service Coverage Ratio. It refers to the income required to pay the mortgage. DSCR < 1.0 means that the landlord does not have sufficient income to pay debt payments each month. Thus, a DSCR of 1.2 means the landlord has more than enough income to pay the debt, and less incentive to raise rents or reduce costs.

[36] California Reinvestment Coalition Anti-displacement code of conduct https://calreinvest.org/about/code-of-conduct/

[37] https://www.dfs.ny.gov/system/files/documents/2020/03/il180925.pdf

dozens of CRA letters over the years, documenting story after story of harm to tenants in rent-stabilized buildings, and none of it ever impacts the bank's CRA rating because of this limitation. Even if some of the loans are excluded, it is never enough to impact the volume of community development lending. Even one speculative multifamily loan impacts many people, as we saw with Madison Realty Capital and Signature's loans to a bad-acting landlord a few years ago that led to widespread harassment and displacement across multiple buildings[38]. And too often, the volume is well over just one bad loan. Examples ANHD and our members have documented:

- Loans to landlords who have appeared multiple times on the public advocate's annual worst landlord lists[39]. Landlords on this list own buildings with some of the worst conditions in the City and routinely receive loans from CRA-regulated banks.
- Stories of tenants who have gone months without cooking gas, received call after call from their landlord asking them to accept buy-out money to leave, hazardous construction that has resulted in lead dust contamination in young children, rats and roach infestations, and persistent lack of response to maintenance needs, large and small.
- Loans to landlords and non-bank lenders under investigation by the NY State Attorney General, many of whom ultimately settled, agreeing to pay tenants for the harm they endured. Recent examples include Icon Realty, Madison Realty Capital, Raphael Toledano, Steve Croman, Zara Realty[40].
- Loans with indications of distress as demonstrated by the Building Indicator Project database developed by the University Neighborhood Housing Program[41]. Please note we appreciate that this is a commonly used tool by regulators to identify loans that should be discounted, but large volumes will not trigger a downgrade.
- Loans to Buildings on the Certificate of No Harassment (CONH) Program pilot list is another indicator of problematic conditions[42]. 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.

It should be clear that a bank's rating can be adjusted up or down after such qualitative analysis and that the analysis is not simply extra credit. Banks should get credit for responsive products and practices. If a bank consistently underperforms and is taking steps to improve that haven't yet seen results, community comments can indicate that, with the expectation that the rating will increase in the next exam. We have seen a number of banks respond to community organizing pressures and improve their multifamily lending practices over the years, but additional regulation is necessary to make deeper, broader and systemic changes.

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[38] https://anhd.org/blog/bad-boy-carveout

[39] https://landlordwatchlist.com/landlords

[40] https://ag.ny.gov/press-release/2017/ag-schneiderman-gov-cuomo-mayor-de-blasio-announce-settlement-major-nyc-landlord ; https://ag.ny.gov/press-release/2020/attorney-general-wins-more-1-million-rent-credits-harassed-tenants-secures; https://ag.ny.gov/press-release/2019/notorious-landlord-raphael-toledano-pay-3-million-other-penalties-harassing-ny; https://ag.ny.gov/press-release/2019/attorney-general-james-announces-second-round-restitution-funds-croman-tenants; https://ag.ny.gov/press-release/2019/attorney-general-james-and-governor-cuomo-announce-lawsuit-against-queens

[41] https://unhp.org/projects/bip-hood-mac

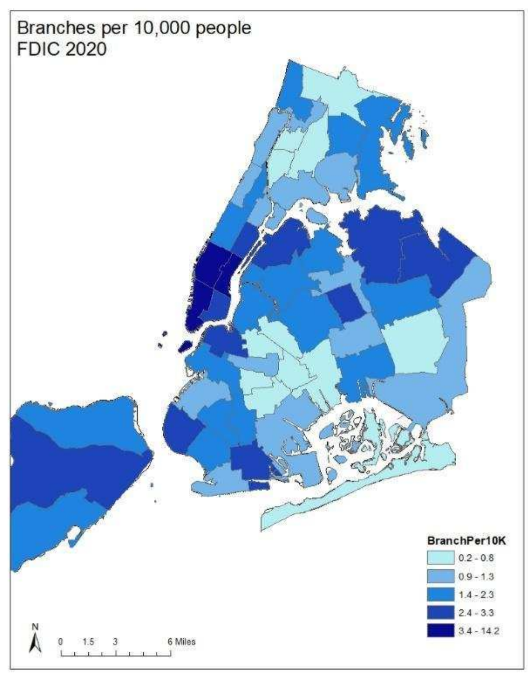
[42] https://anhd.org/project/coalition-against-tenant-harassment-cath

***Question 24**. In addition to the number of branches and the community and market quantitative benchmarks discussed above, how should examiners evaluate a bank's branch distribution?*

The benchmarks are a good place to start, but not enough. Branch locations can mean the difference between being banked, unbanked, and underbanked, especially in lower-income, high-density cities like New York City where few have cars and rely on walking or public transportation. Even if a bank meets all the distribution metrics about percentages in LMI tracts, it is likely not serving unbanked and underbanked neighborhoods. This is especially so in the Bronx which has the fewest rate of branches per population, highest rates of unbanked residents, and among the highest percentages of low-income people of color, long ignored or underserved by traditional banking. In this void, fringe financial services like check cashers and pawn shops have proliferated and offer convenient hours and side services such as selling metro cards, free or low-cost money orders, and lotto tickets that draw in customers. While bank branches in places like the Bronx tend to cluster in the largest shopping districts, these alternative financial outlets locate themselves in convenient walking distance scattered throughout neighborhoods, something we wish banks with quality financial products would take on for themselves. Similarly, local bodegas and delis often have for-profit ATMs that charge high fees. while branches are better than fees, there is ample opportunity to expand access to cash and basic service through bank-owned ATMs or as part of fee-free ATM networks.

Other metrics to consider would be branches located in BIPOC communities and/or neighborhoods with few branches per 10,000 people or the physical distance from nearby branches, giving extra credit for filling a void. Mapping would show a common trend in NYC where many banks cluster together, while ignoring other neighborhoods or parts of the neighborhoods entirely.

Banks should get credit for opening branches in unbanked, underserved low-income and BIPOC communities and have consequences for closing branches there.



***Question 25**. How should banking deserts be defined, and should the definition be different in urban and rural areas?*

In metropolitan areas like New York City, regulators should compare bank branches per population. And identify specific geographies where branches are inaccessible to many.

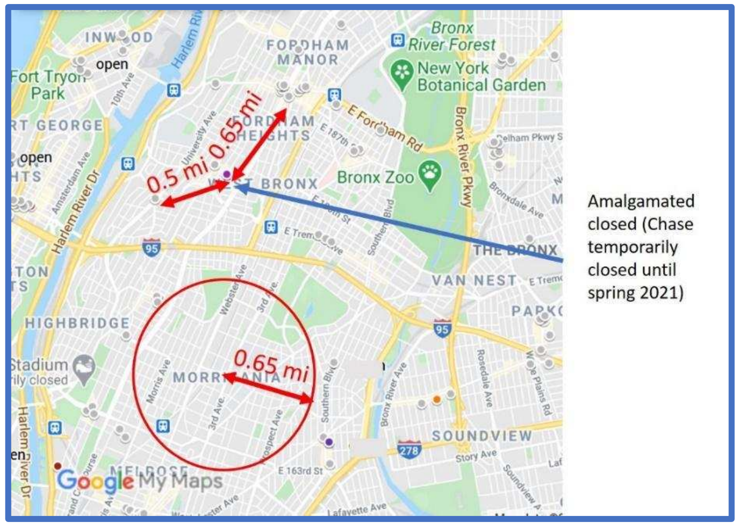
For example, in New York City, multiple low-income communities and communities of color have fewer than 1 branch per 10,000 people and most have fewer than 3[43]. These same communities often have an overabundance of higher cost services like check cashers, private ATMs, and pawn shops.

Within these same districts, there must be an analysis of distance between branches, particularly in high density, low-

[43] Communities here are defined by US Census Public Use Micro Areas (PUMAs), which are the closest proxy to community districts in New York City. https://www.census.gov/programs-surveys/geography/guidance/geo-areas/pumas.html

income communities. Some studies define a banking desert as a 10-mile area without a branch, whereas in New York City, even a half mile can be a burden for some.

For example, Amalgamated bank closed a branch in the Bronx and was determined by New York State Department of Financial Services to have had a negative impact on the neighborhood[44]. It was the only bank in the neighborhood and the nearest bank is a half mile away. The nearest Amalgamated is 4 miles away, which is a significant distance for people with no car or sufficient access to public transportation, and even worse during the pandemic. Further, even for people with access to a car or public transport, an hour trip to and from a bank can be a burden. More so for small business owners who relied upon having a branch close by to deposit money and conduct business and can't afford to be away from their shop for so long.



As will be discussed further down, access to a bank is only part of the solution. Banks must have products and practices that meet local needs.

Question 26*. What are the appropriate data points to determine accessibility of delivery systems, including non-branch delivery channel usage data? Should the Board require certain specified information in order for a bank to receive consideration for non-branch delivery channels?*

Yes, they should request information before giving credit. First, for banks with or without branches, it isn't enough to offer products (branch-based or otherwise) if they aren't used or accessible. For example, some of the largest banks offer low-cost, no overdraft products, yet still take in billions in overdraft and maintenance fees, raising questions about who is using them. Another bank only accepts New York City's municipal ID (IDNYC) as primary identification in its branches, thus when a branch closes, that also closes opportunities for immigrant populations to open an account.

Banks regularly track account activity at the branch level and customer level, and then use it to justify closing a branch in a low-income area. They often cite low usage as the reason for closing, even as nearby banks and check cashers have lines out the door. Yet the banks have no obligation to work with local community organizations to increase traffic, or change their behavior or products, to prevent closing the branch.

One recent example from Popular Bank, but not the only time we've heard it: "Basically, these were the most underperforming branches," Chief Executive Ignacio Alvarez said on a conference call last week. "In the end we felt that they probably subtracted more than they added to retail districts.[45]"

[44] https://www.dfs.ny.gov/reports_and_Publications/weekly_bulletins/wb20201009
[45] https://www.crainsnewyork.com/banking/popular-bank-close-more-quarter-local-branches

Thus, CRA exams should look at usage and also at what banks are doing to increase access to banking within these neighborhoods. They must be sure that people are in fact using online banking, rather than going to other in-person alternative services that are more convenient, if higher cost. Also, the switch to online banking excludes the many people who were unbanked or underbanked before the branch closed.

The CRA should serve as an incentive for banks to do everything possible to keep branches open in low-income communities of color and be penalized for leaving an underserved community with fewer branches. And for banks to find other ways to reach and serve unbanked and underbanked people with branch-based and alternate delivery channels.

Question 27. *Should a bank receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts? What types of data could banks provide to demonstrate that branches located in middle- and upper-income tracts primarily serve LMI individuals or areas?*

Banks should not get credit for the branch. However, the qualitative portion of the exam can give credit to banks that demonstrate they are serving LMI people in other ways, either through non-LMI branches or other non-branch delivery mechanisms.

The CRA must do more to keep and open branches in unbanked communities that have historically been and are currently underserved. As mentioned elsewhere, we encourage the CRA to be expanded to include serving people and communities of color. New York City does have middle income Black and brown communities that lack sufficient access to banks. A race / ethnicity analysis could capture this, while not undermining branches in LMI tracts.

However, with a race analysis throughout the exam, banks could get credit for branches in communities of color, even if they are not LMI. And should be recognized if the branch is serving LMI people and people of color.

Question 28. *Would establishing quantitative benchmarks for evaluating non-branch delivery channels be beneficial? If so, what benchmarks would be appropriate?*

This would be fine but must be done with community need in mind. Banks, and especially those that have branch networks, have an obligation to serve communities equitably. The fact that we have communities that have been calling for branches for years means purely online banking is not sufficient for many communities. Online banking is just the latest excuse for not serving these communities that have been unbanked for decades. This is especially important for underbanked, immigrant and BIPOC communities with poor internet access and multiple languages spoken. Further, small businesses often rely on banks close by to deposit and withdraw cash and access loans. In the absence of affordable bank loans, they will likely turn to online lenders with little or no oversight or consumer protections.

That being said, we want to incentivize banks to provide bank accounts equitably - via branches and other means - and to demonstrate how well they are reaching customers. They should get more credit for reaching unbanked and underbanked communities, which is inherently place-based, even as online, phone, and other non-bank services are not typically place-based. This may be in partnership with community organizations, libraries, and municipalities.

Benchmarks to measure:

- customer usage: by geography (LMI and communities of color) and customers (income, race/ethnicity, language, age)
- Accounts to people who had no account (either never had one, or are unbanked because they lost access to an account)
- cost of using non-branch delivery channels
    - specific costs: overdraft, maintenance, ATM fees and data on who is paying these fees, as they are likely to be by lower-income people.
- data to determine whether delivery channels are reaching LMI areas and individuals
- Where the products are offered - branches overall or in specific markets; online; or both.
- Types of identifications accepted and give credit for banks that make accounts available to undocumented immigrants, using municipal IDs, consular cards, or passports without a visa.
- Accounts that reduce Barriers to entry, such as waiving CheckSystems requirements.
- Business accounts opened - industries served, race/ethnicity of owner, income of owner
- usage of any responsive products offered (credit builder loans, small dollar loans, remittances, etc.)

Question 29. *What types of data would be beneficial and readily available for determining whether deposit products are responsive to needs of LMI consumers and whether these products are used by LMI consumers?*

First and foremost, regulators should assess local community needs, particularly in underbanked, low-income, communities of color. However, based on local studies, we have a good sense of the types of products and practices that are helpful. An analysis of banks offering the products and the use of products are essential.

Products offered, including checking and savings accounts, should focus on those tailored to meet the needs of LMI individuals and underserved people of color.
Examples cited in the ANPR include

- Low-cost transaction accounts which are accessible through debit cards.
- general-purpose reloadable prepaid cards.
- Individual development accounts.
- Accounts with low or no monthly opening deposit or balance fees.
- Accounts with low or no overdraft and insufficient funds fees.
- Free or low-cost government, payroll, or other check cashing services.
- Reasonably priced remittance services.

We also agree with the need to elevate and strengthen the evaluation of deposit products that are responsive to the needs of assessment areas, including evaluating the *usage* and *impact* of such products.

Other options to consider:

- Low-fee, affordable, accessible accounts, such as what is currently promoted by BankOn accounts that offer a combination of the above, including low amount to open, low balance requirements, low or no monthly fee, wide range of identifications accepted, no overdraft[46].

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[46] https://joinbankon.org/

- Traditional bank accounts that offer checks, but limit or prohibit overdrafts. Banks should not allow overdrafts incurred by debit card and ATM withdrawals and limit other means of overdraft and bounced-check fees.
- Accounts that reduce barriers to entry, such as people locked out due to prior banking issues like being in CheckSystems overdrafts or insufficient funds
- Wide range of identifications accepted, such as municipal ID's (IDNYC in NYC), consular ID cards, passports without a Visa, etc.
- Credit builder loans and products
- Responsive small dollar loans (not payday loans)
- Staff who represent the community: race, ethnicity, language, culture
- Partnerships with nonprofits?
- Free or low-cost money orders

Question 30*.* Are large banks able to provide deposit product and usage data at the assessment area level or should this be reviewed only at the institution level?

This type of analysis would help understand who is using which products and how well they are meeting local needs. Especially given how often online banking is used as a reason to close branches, including underbanked low-income communities, banks should be required to demonstrate how they are meeting those local needs with both branch and non-branch methods. Analysis should be done at the neighborhood level within assessment areas. If a bank closes a branch, they should be required to do widespread outreach and education to reach people via other methods. If they cannot do so, then they should be penalized.

Question 32. *How should the Board weight delivery systems relative to deposit products to provide a Retail Services Subtest conclusion for each assessment area? Should a large bank receive a separate conclusion for the delivery systems and deposit products components in determining the conclusion for the Retail Services Subtest?*

If the delivery system analysis includes both branches and account usage, then that category should definitely hold the most weight. As mentioned above, branches remain important, particularly in low-income communities and communities of color that have long lacked sufficient access to banks and banking. Banks often justify branch closures due to low traffic and low account usage, and thus should have a lower CRA rating when found to be insufficiently serving these communities with branches and products. This trend of branch closures is accelerating during COVID as people are limiting trips to banks and other institutions to minimize exposure. But it in no way reduced the need for physical branches; in many cases, people are sacrificing this one need to protect their health. That being said, people show up when they must to access their money. Even during this pandemic, there are times when lines are long outside of check cashers and some banks. Regulators must be cautious to not allow banks to use this moment in time to justify leaving a neighborhood with fewer branches, or in some cases none at all. Especially not in neighborhoods that have been persistently unbanked and underserved by banks long before COVID hit.

However, the types of products are also important. If a bank develops a product that communities ask for, they should get credit for that. For example, a credit builder product, small dollar consumer loan, or affordable personal or small business checking account. This could be done through a similar impact score as is done in the community development section. Development of the product would be responsive, and high usage would appear in the delivery system analysis. Likewise, if a bank is found to have a low usage of an affordable product, particularly in low-income communities of color, that should have a negative impact.

Lastly, banks should be penalized for harmful behavior. If a product is deceptive, predatory, or simply more expensive than those offered to higher-income or white customers, a bank should be downgraded. This should also be the case for products that are designed such that they charge higher fees for low-income people. Multiple studies show that low-income consumers are more likely to overdraft[47]. Further, an account that is fee-free only with direct deposit or high minimum balances means lower-income people are more likely to pay those fees, as they are less likely to meet either criteria.

Question 33. *Should the Board establish a major product line approach with a 15 percent threshold in individual assessment areas for home mortgage, small business, and small farm loans? and* ***Question 34.*** *Would it be more appropriate to set a threshold for a major product line determination based on the lesser of: (1) the product line's share of the bank's retail lending activity; or (2) an absolute threshold?*

Given the vast difference in size among different products, a 15 percent threshold can inadvertently leave out banks with large volumes of lending that are smaller dollars than other areas. For example, in New York City, Wells Fargo's home lending volume is so large that its 3,000+ small business loans may not equate to 15% of the bank's lending. To risk excluding that volume, or even one half that amount, would do a disservice to small businesses who need equitable access to credit from banks of all sizes.

A numerical threshold approach would work better, and matches other data analysis, such as HMDA or the impending CRA small business lending. For example, the CFPB originally set the HMDA threshold to 25 loans. While we want all loans included, examiners will put less weight on a small volume of lending. Setting a threshold would be more consistent, and qualitative analysis could still weigh some products lower than others, based on volume, not dollar amount. In the case of Wells Fargo, for example, both lines of business would warrant scrutiny, as well as their consumer lines.

From what we understand, this 15% does not include multifamily lending, which makes sense for this calculation. If that were included, fewer loans would likely be scrutinized as they are much larger in comparison. Given the number of people impacted by multifamily loans, all should be evaluated closely.

Question 35*. What standard should be used to determine the evaluation of consumer loans: (1) a substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?*
Question 36. *Should consumer loans be evaluated as a single aggregate product line or do the different characteristics, purposes, average loan amounts, and uses of the consumer loan categories (e.g., motor vehicle loans, credit cards) merit a separate evaluation for each?*

A standard based on the number of loans makes more sense than a dollar threshold, and we agree that loans should be evaluated by category. In these cases, high volume isn't as important as the quality of those products to ensure they are responsive and not predatory or extractive.

For example, while LMI communities deserve equal access to credit cards, the result should not be heavy marketing of credit cards that lead to high fees and interest revenue from customers who can least afford

[47] https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/04/heavy-overdrafters

them. In addition to distribution analysis, regulators should look at attributes of the debt: late fees, interest rates and interest collected.

Question 37. *Should the Board continue to define small business and small farm loans based on the Call Report definitions, or should Regulation BB define the small business and small farm loan thresholds independently? Should the Board likewise adjust the small business and small farm gross annual revenues thresholds? Should any or all of these thresholds be regularly revised to account for inflation? If so, at what intervals?*

Right now, regulators should keep the thresholds the same, with loan sizes and amounts of $1 million. In New York City, 86% of businesses are below $1 million and nationwide, that increases to 95% of all businesses[48].

Multiple studies over the years demonstrate that small businesses need smaller loans, well below $1 million. A recent joint study by the 12 Federal Reserve Banks found that the majority of firms (55%) applied for less than $100K in loans (22% applied for loans below $25K); 20% applied for loans $100K-$250K and just 17% applied for loans for $250K-$1M[49]. The same study found that the vast majority of firms (87%) were looking for traditional loans and lines of credit – business loans, lines of credit, SBA loans, etc. Just 27% wanted credit card loans. Yet, this data gets lost in the CRA exams. We cannot get the breakdown in loan size for actual small businesses. And credit card loans are not separated out, except for the few banks with separate credit card banks (examples include American Express, Discover, WEX, Synchrony and Capital One's credit card banks).

New York City is home to a wide range of small businesses, many of which are immigrant-owned and BIPOC owned businesses. These include street vendors, storefronts, delis and groceries, daycare centers, light manufacturing, and more. Not only do they provide a livelihood for the owners and workers, but they are a crucial part of the state's economy and culture. Access to affordable, appropriate credit is critical to their survival.

Under the current CRA structure, loans to larger businesses (up to 500 people in some cases) can qualify for community development credit if they can demonstrate job creation, retention, or improvement. While that portion of the exam can be challenging to comply with, it makes more sense to improve upon it, rather than include larger loans within this retail category.

The exam should also find ways to incentivize smaller, traditional loans (not credit cards) to small and very small businesses.

That being said, racial disparities persist across income and revenues. For example, some CDFI members of ANHD report Black and Latinx owned restaurants and construction companies with over $1 million in revenue struggle to access traditional bank financing. If loan or revenue sizes are increased, it should be with a goal to further racial equity, but even these larger loans would fit well under the economic development test and have a clear connection to jobs and all areas of CRA should be furthering racial

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48 Dunn & Bradstreet data from local CRA exams, CFPB "*Key Dimensions of Small Business Lending Landscape*" https://www.consumerfinance.gov/documents/4742/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf

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

equity. In both retail and community development, banks must be incentivized to make more loans to BIPOC owned businesses of all sizes.

Question 38. *Should the Board provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Board continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?* ***Question 39.*** *Are there other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals?*

The retail lending test should focus on originated loans, with more weight on owner-occupied loans. Loan purchases can be evaluated separately and be part of the qualitative analysis. Loans purchased from CDFIs, similar to warehouse lines of credit and other financing vehicles, can be valuable to enable CDFIs and maybe other smaller community lenders to make more loans. These could also be considered under the community development exam if they are deemed to support affordable homeownership or small businesses. But they simply are not equivalent to creating affordable products and getting them into the communities that need them, which requires staff, outreach, marketing and partnerships. They also appear more akin to community development finance as they are purchased in bulk, and not individually as is the case with originated loans.

Question 42*. Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?*

We support the idea of a community development finance test, but this change must be made very carefully. Community development lending makes more sense here than with the retail test, but we want to be sure not to lessen the importance of community development investments, which currently have their own separate test. Investments and loans are very different types of financing, and banks are much less likely to make CRA-eligible investments without the requirement under the CRA.

Regulators must evaluate loans, investments, and grants separately within this financing test.

Philanthropic grants are not repaid, and thus give banks no return on investment aside from public relations or CRA credit. Some of the most impactful CRA grants may not be as flashy as other donations that allow for more visibility, such as a performing arts center or a large museum. Without the CRA, banks would not make these investments, and even under the current system, smaller nonprofits, especially those led by BIPOC, struggle to obtain grants to sustain their operations.

Tax credit deals, like LIHTC and NMTC, are highly competitive because of the CRA. Recent corporate tax cuts already greatly reduced their value. They are also often difficult deals to make. If banks can more easily make loans and have less incentive to make investments for a CRA exam, they may pull out entirely, thus reducing competition and value for this important source of equity to build and preserve affordable housing in high-cost housing markets like New York City. Meanwhile, other investments like EQ2 may not be as competitive or as common as LIHTC, and the CRA provides banks with an incentive to make those as well.

At the same time, banks will often make less impactful investments to meet this requirement, such as investments in many SBIC's, or purchasing mortgage-backed securities. We do not believe mortgage-backed securities have nearly the same impact as some other investments, and as we saw in 2008, some of these have the potential to be extremely detrimental. A strong qualitative analysis is important to incentivize high impact activities while minimizing less impactful ones and not allowing for harmful ones. SBICs do not warrant automatic credit under the CRA. As with any investment, regulators should analyze the activity to determine if it benefits LMI people or BIPOC and communities.

Lastly, longer-term loans have long been an expressed unmet need because banks are incentivized to originate and renew loans every two to four years, depending on their exam cycle. We support efforts to incentivize longer-term loans, as they do for investments. However, regulators must make sure to place an emphasis on new loans, such that a bank cannot pass with only loans and investments still outstanding from prior exams. Another approach could be to use the new originations for the benchmarks and give higher impact scores to long-term capital if that is a stated need, both for loans and investments. Banks would be penalized for offering short-term loans solely based on the CRA exam cycle and not on the need of the entity receiving it. However it is done, the result must be to maintain and increase the incentive to make the loans and investments our communities need to build and preserve affordable housing, support quality jobs, and more.

Question 43*. For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?* ***Question 44****. For wholesale and limited purpose banks, is there an appropriate measure of financial capacity for these banks, as an alternative to using deposits?*

ANHD supports the use of deposits as the denominator. No metric is perfect, but if regulators choose one and remain consistent, it is fine. Often regulators use metrics like Tier One capital or assets for community development, but they will scale them based on deposit distribution, so the impact is likely the same or similar. It is easier to compare among banks when the denominator is the same. Whichever is used for wholesale and limited purpose - assets or deposits - banks must be expected to maintain or increase the quantity and quality of community development finance.

Question 45. *Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment areas and over time?* **Question 46.** *How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?*

We agree it makes sense to compare banks to one another, but similar to the retail metrics, we caution against any race to the bottom, such that the benchmark is set too low based on low peer performance or other factors. Nor do we want banks simply striving for dollars. When banks are focused on a numerical target, that may be all they focus on, often at the expense of the quality of activities. Even if they aim for quality, they could stop when they reach the target. We support the idea to monitor this over time as one way to evaluate how well the metrics are working.

And in this section, quality matters as much as quantity, if not more. Banks often find loans within their regular course of business that count for community development credit, likely due to the location of the loan. Examples may include commercial businesses on a strip mall or multifamily loans in lower-income tracts. It is important to have credit flow to these neighborhoods, but credit is less helpful if it supports subpar housing, larger businesses that pay low-wages, or fuels displacement. Similarly, banks may find large activities just to reach targets, even if they are not impactful to the communities the CRA is meant to serve.

Thus, for dollar analysis, regulators can look at a variety of factors to determine bank targets for a minimum level of investment, including total dollars to deposits across banks within the assessment area and across assessment areas. They can also look at a bank's past performance, so they aren't allowing a bank to reduce its level of lending and investments.

Question 47. *Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?*

The idea of an impact score makes sense and can complement the dollar metric, but the range should be larger like 1 to 10. Or at the very least, 1 to 5, to match the CRA ratings (Outstanding, High Satisfactory, Low Satisfactory, Needs to Improve, and Substantial Noncompliance)

ANHD has used quality scores along with dollar analysis to give credit for high impact activities, which has identified areas where banks excel or lag behind their peers. For example, ANHD evaluates qualities such as percentages of community development loans and investments to nonprofits, loans to CDCs, and grants neighborhood-based organizations. CRA regulators have access to more details than ANHD and have an opportunity to fully evaluate how well banks are meeting local needs. Dollars are important, but not nearly as important as the impact of those dollars. Often, smaller deals can have a greater impact on the people who benefit from the investments, such as deals with smaller mission-driven nonprofits who provide such benefits as deep and permanent affordable housing, space for small manufacturers, or technical support and loans to small BIPOC business owners.

For projects large and small, regulators can give more credit for high impact activities, which should be directly connected to local needs informed by community engagement. We would expect support for the following types of activities to be impactful anywhere:

- Permanent affordable housing and deep affordability for very low income and formerly homeless people. In New York City, we consistently need housing at 40% AMI, 30% AMI and below, and for the housing to be permanently affordable (not expiring in 30 or 40 years).
- Supportive housing for people with additional needs (seniors, people with mental health needs, people with disabilities, etc.)
- Quality jobs in industries that pay a living wage, or put people on a path towards financial stability
- Support for micro and very small businesses that provide jobs and contribute to the culture and sense of community of the neighborhoods
- Nonprofit developers and lenders, such as CDCs, CDFIs, and low-income credit unions.
- Grants to neighborhood-based organizations; grants to BIPOC led organizations and those that serve and empower historically redlined populations.
- Financing vehicles that organizations express are impactful, such as LIHTC, EQ2s, low-interest loans, zero-interest loans / recoverable grants. In New York City, this would also include financing that tends to be harder to obtain, such as for environmental reviews and other predevelopment costs, and acquisition loans.

Additional data regulators report and benchmark can incentivize and shed light on where investment is and isn't going. For example:

- Type of loan (construction, acquisition, line of credit, mortgage, predevelopment loan, etc.) or investment (LIHTC, NMTC, EQ2, other equity investments, bond purchases, etc.)
- Activities by category (Separate out loans and investments, both new and outstanding): Affordable Housing, Economic Development, Community Services, Neighborhood Revitalization
- Activities with nonprofits, and with local, community-based nonprofits like CDCs
- Activities with CDFIs and MDIs
- Details on CRA eligible Grants by category and size of nonprofit
- Additional data on affordable housing: Number of units affordable by income bracket; subsidized or with a regulatory agreement vs unsubsidized; nonprofit developers
- Additional data on economic development, such as the types of industries supported; wages; how workforce development weaves in; local hiring.

Question 48*. Should the Board develop quantitative metrics for evaluating community development services? If so, what metrics should it consider?* ***Question 49.*** *Would an impact score approach for the Community Development Services Subtest be helpful? What types of information on a bank's activities would be beneficial for evaluating the impact of community development services?*

The current definition of community development services is sufficient. We understand banks struggle to provide enough hours, and perhaps spend more time on measuring them than they could elsewhere but having a model of robust community engagement and quality community development activities overall should provide ample opportunity for quality service hours. In this case, quality is more important than quantity, but both are important.

Banks should be using these hours to provide financial services or offer expertise that cannot be gotten elsewhere. As valuable as it is to help build a house or paint a fence, such activities do not need a banker and are not the place for CRA, when bankers can be better suited to serve some of these same organizations by serving on credit committees, helping people purchase homes, help build the capacity of a nonprofit lender or developer; or provide other services related to community development.

Question 51*. Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?*

The CRA must keep its focus on LMI people, and these categories are no different. Rates of homeownership, unbanked and underbanked population are higher among LMI populations and the focus must remain on moving these people up the economic scale.

However, as suggested in question 2, we fully support an affirmative obligation to serve BIPOC and communities to address redlining and persistent racial disparities. If that were the case, there could be BIPOC who are not LMI and can receive CRA products. But both are needed to ensure that low-income BIPOC are not excluded.

Affordable Housing

Question 52*.* Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?

Multifamily mortgage lending is the only category of CRA where banks can "double count", such that they have a cursory retail distribution test and can get community development credit if the loan is deemed to have a community development purpose, most likely under affordable housing, but sometimes in other categories such as revitalization/stabilization. Banks cannot double-count any other loans. For example, 1-4 family and small business loans are only counted in the retail portion of the exam which looks at distribution by income and geography. They cannot count as community development loans.

On CRA exams, we often see mortgages secured by unsubsidized, rent-stabilized housing count for community development credit if the rents are deemed affordable and some estimate that LMI people are likely to live there. It is unclear if these are counting like any other unsubsidized housing, or if it's by nature of being rent-stabilized, which limits rent increases. Over one million households live in rent-stabilized housing in New York City; it is one of the most important stocks of private, unsubsidized affordable housing in the City and comes with more protections than market-rate, un-regulated housing. Adequate, responsible lending is crucial to the preservation of this housing, allowing landlords to invest in and maintain the housing. But bad lending is disastrous.

The CRA is not doing nearly enough to protect tenants from unscrupulous landlords who harass or displace tenants through formal and informal evictions, offering buyouts (money to move out) and other inducements to leave, poor conditions, and lack of essential services. This is important at any time and especially so during a pandemic when people have nowhere to go and moving to a shelter or overcrowded home can contribute to further spread of this deadly pandemic.

A more robust retail exam would encapsulate the totality of a bank's multifamily lending, by looking at volume, distribution in LMI tracts, and percent of units affordable to LMI tenants, as well as a qualitative analysis of quality lending that incorporates upgrades or downgrades. The bar must be much higher for a bank to get community development credit beyond that. It cannot be overstated that banks choose which loans to put forth for community development credit, so it is incumbent upon regulators to ensure the lending truly meets a community development need.

The CRA should not be expanded to any other category of unsubsidized housing without strict provisions to preserve affordability and protect tenants, such as covenants or regulatory agreements, indicating long-term affordability and protections for tenants when the terms end. It's questionable if rent-stabilized housing should count for community development credit, especially if a robust retail test can serve to incentivize an equitable distribution of lending and ensure that the lending is done responsibly.

As stated in the retail section, regulators should work swiftly with stakeholders to construct a system that evaluates the totality of a bank's multifamily lending for quantity and quality, while still giving credit for lending to mission-driven affordable housing developers for deep and permanent affordable housing.

Question 53. What data and calculations should the Board use to determine rental affordability? How should the Board determine affordability for single-family developments by for-profit entities?
*[From Text of ANPR: **"Affordable" definition options**: (1) **based on AMI** using the standard that families should pay no more than 30% of their income toward housing. (2) **HUD Fair Market Rents (FMR)** or (3) **LIHTC rents** to determine rental affordability]*

If the board is following the CRA guidelines, they should ensure that housing is affordable to low-income families earning 50% of AMI and moderate 51-80% AMI so they pay no more than 30% of their income towards housing. The other measures proposed under HUD or LIHTC could also be used. As we understand, they often are used today.

Larger questions remain about the AMI used, which is well above the income in much of New York City because of wealthier surrounding counties. As ANHD demonstrates each year with our “AMI Cheat Sheet”, nearly 60% of New York City residents have incomes below 80% AMI, LMI by CRA definitions, and that rises to nearly all in some parts of the city[50]. Thus, housing considered affordable under the CRA may still be out of reach for local residents. There numbers are further exacerbated when we look at household of color. The CRA must do more to prioritize deep affordable housing that reaches people most at risk of displacement and homelessness due to rising rents and/or substandard housing.

Question 54*.* Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?

Rather than codify activities, they should focus on principles and practices, which would be CRA activities that promote Construction and preservation of quality housing:

- Long-term and Permanent affordability
- Deep affordability. In New York City, this would certainly include housing for extremely low-income, very low-income and low-income households, and housing for formerly homeless people. The levels of affordability should be driven by local needs.
- Housing built by community controlled actors including mission-driven developers, supportive housing and other developments that have ancillary benefits.
- Construction and preservation of affordable homeownership, such as limited equity coops.
- Funding for rental subsidies, tenant counseling and tenant organizing to support tenants in maintaining quality housing, free from harassment and evictions.
- Housing counseling: money to support pre-purchase counseling as well as post purchase and homeownership preservation counseling, which might include assistance to LMI homeowners to secure refinancing, tax exemptions, loans and other services to stabilize their homeownership, avoid predators and plan for the future.

These types of support are important at any time, and especially now as we continue to face an ongoing global pandemic that will reverberate for years to come. An equitable recovery depends in part upon responsive, responsible bank reinvestment that is done in collaboration with impacted communities.

The needs will vary from place to place. Transit-oriented development and any similar projects must take into account affordability and other ancillary benefits. Chances are that a project labeled “transit-oriented development” would be part of a larger development or project and, as such, local organizations should be consulted to ensure that it is meeting local needs with regards to depth of affordability, access, and other features of the project.

Additional factors to take into consideration are length of affordability, commitment to anti-displacement principles, projects developed with mission-driven, nonprofit developers. Also, financing vehicles like LIHTC are impactful and should get credit, particularly if they overlap with mechanisms for deeper affordability. Lastly, regulators must be attuned to financing needs that are challenging to meet; nonprofit developers often need grants and zero-interest or low-interest loans for pre-development costs and acquisition financing.

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[50] https://anhd.org/file/ami-cheat-sheet-2019

Question 55*. Should the Board change how it currently provides pro rata consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized affordable housing?*

In a high-cost, land-restricted area like New York City, the idea that any affordable housing is beneficial is false, especially when it is coupled with the creation of high-cost, luxury housing. For example, a luxury development with, say, 20% affordable housing provides needed affordable housing, but the remaining 80% luxury could drive up the cost of housing in the neighborhood and create more harm than good. The current system of full credit for 50% or more strikes a good balance, and pro-rata credit below that, with additional analysis of how the full project impacts the community. There shouldn't be additional credit for anything below that threshold. This is especially the case here in New York City where, because of wealthier surrounding counties, over half of the city is LMI. In many neighborhoods housing for 50% - 80% AMI is too expensive for local residents. Banks need every incentive to finance housing affordable to local residents in neighborhoods where incomes are well below 80% AMI, as is the case in many New York City neighborhoods. These same populations deserve access to housing built anywhere in the city.

Question 56. *How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?*

I think the categories are good, and should as always, relate to local need for community services. On income, any place that documents income is a good place to start, but that is not the case in all services. Geography, free Lunch and Medicaid are good proxies, as are good faith estimates of the clients an organization serves; presumably nonprofit service providers have to demonstrate this in other grantmaking settings. The bar should be higher for for-profit providers to demonstrate who they are reaching.

Question 57*. What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?* ***Question 58.*** *How could the Board establish clearer standards for economic development activities to "demonstrate LMI job creation, retention, or improvement"?*

ANHD has written extensively on this category in the past, including commenting on the 2014 Q&A revisions[51]. Our comments reference that this category should likely be called "small business economic development." When we wrote the comments, we felt that other categories of CRA could capture jobs and workforce development (e.g.: revitalization/stabilization or community services). The proposed workforce development changes would move some of that activity here, which we support.

It is worth noting that the goal to support small businesses and the goal to create living wage jobs are not necessarily one in the same, although they are of course connected. Local and BIPOC-owned small businesses - many well below the $1 million revenue threshold - are the heart and soul of New York City neighborhoods - they provide jobs, community spaces, and affordable products and services. The CRA can and must do more to support these businesses. Thus, we agree that for the smallest of businesses,

[51] "*Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment", ANHD, 2014* (page 8): https://www.federalreserve.gov/SECRS/2014/November/20141110/OP-1497/OP-1497_110614_129650_319337453583_1.pdf

particularly those that have few or no employees, that the size test is sufficient. However, the Board may want to study the average number of employees as connected to revenues, particularly for businesses closer to the $1 million in revenue threshold.

It is unclear which of these smallest businesses would fall into this category that have trouble meeting the purpose test. Most loans to businesses under $1 million in revenue would be counted under the retail test, and not as community development loans. Further, businesses financed through a CDFI would also count already. Following the 2014 revisions to the Q&A, CDFIs automatically meet the purpose test without having to demonstrate job creation, retention or improvement. If that is being revisited, then the CDFIs could demonstrate that they are financing small businesses without the additional purpose test.

This change appears to cover loans or investments to another type of intermediary, such as a nonprofit organization, that prepares a business for financing. Removing the purpose test could help foster investments in these entities and benefit the smallest businesses.

As outlined in Question 16, the retail test must place a stronger emphasis on smaller dollar loans (under $25,000 and under $50,000) to smaller businesses, and make sure more of the loans are traditional loans and lines of credit, and not just credit card loans.

For businesses over the threshold (currently proposed as $1 million), as our comments from 2014 demonstrate, there must be a higher bar for the types of jobs created, retained, or improved. The current language in the Interagency Q&A still specifies jobs "for low- and moderate-income people". The CRA should be doing more to create and retain quality jobs that pay above minimum wage, offer benefits, and/or have a clear path to a better paying job, with a focus on historically redlined populations who are LMI and BIPOC.

As elsewhere, community engagement can help identify sectors and employers that match these definitions. They can identify populations that stand to benefit from these opportunities and offer ways to connect people to those jobs.

Question 59*. Should the Board consider workforce development that meets the definition of "promoting economic development" without a direct connection to the "size" test?*

The CRA has always been unclear about how workforce development falls under the economic development category. These are likely CRA-eligible grants and would go to a nonprofit that would not be financing small businesses, directly or indirectly, for this purpose. The activity may qualify under another category of CRA, such as community service, but it makes more sense to fall under economic development. There still should be a clear demonstration of the impact of the workforce development. Soft skills that don't lead to a job are not nearly as impactful as local hiring practices, on-the-job training, sector-based training, or other strategies that connect people to jobs.

If the workforce development is paid for via a loan to a business, then the size test may make sense. For example, if a business provides this for its current or future employees, it should be a small business as defined by the SBA. Businesses larger than that are less likely to need credit.

Revitalization and Stabilization

Question 60*. Should the Board codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?*

We recommend the board not codify any specific activities. The needs will vary from place to place and should always be informed by a comprehensive performance context with community input.

All activities must be analyzed for their impact on LMI households, BIPOC, and small businesses that intersect with the same populations, as that must remain the focus of the CRA. Attracting new businesses must not come at the expense of the existing small businesses or residents. All too often, private developers and governments will dedicate considerable money and resources, including public money in the form of subsidies or tax breaks - to attract a large business, despite community opposition expressed because they recognize the damage that could be done. This was the case in New York City when city and state leaders were competing for Queens to be the chosen location for Amazon's new headquarters. It was ultimately stymied, but only after considerable public outcry about the impact it would have on low-income communities and BIPOC with rising rents and other pressures that would have lead to displacement of residents and small businesses[52]. ANHD routinely engages in similar advocacy around local land use rezonings to ensure that the changes truly benefit BIPOC[53]. A strong public engagement process will help regulators understand the impact of the large-scale developments that are often submitted under this category. And ideally the CRA promotes engagement among all parties to ensure that projects are driven by local communities in the first place, rather than communicating with them as an afterthought.

Question 61*. What standards should the Board consider to define "essential community needs" and "essential community infrastructure," and should these standards be the same across all targeted geographies?* ***Question 62****. Should the Board include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies?* ***Question 63****. What types of activities should require association with a federal, state, local, or tribal government plan to demonstrate eligibility for the revitalization or stabilization of an area? What standards should apply for activities not requiring association with a federal, state, local, or tribal government plan?*

The board should always be evaluating projects for their intent and impact, and driven by local community needs, including essential community needs, infrastructure, and government plans.

Climate change threatens the lives of communities nationwide and is connected to many of the natural disasters we are now facing. The CRA can help respond and mitigate that, but the activities should remain within the existing categories.

If a community needs assessment determines specific areas that would be most impactful in these categories, they should be encouraged and fostered. For example, New York City is still recovering from Superstorm Sandy in some areas, and we learned first-hand how vulnerable the City's coastal communities are to the more prevalent super-storms. Activities that strengthen and preserve housing for LMI people and BIPOC in those areas to better prepare for future storms are important.

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[52] https://www.fastcompany.com/90307779/urban-activism-works-amazon-canceling-hq2-proves-it

[53] https://anhd.org/issue/land-use-justice

There are myriad opportunities to incorporate energy efficiency and resilience. Examples may include weatherization of existing affordable housing, construction of energy-efficient housing, home repair loans to fix roofs, boilers, and leaky windows, and support of quality green jobs that contribute to a safer environment. Ideally CRA activities would complement other efforts that may fall outside of these categories.

Government plans vary greatly from place to place, as do the extent of their community engagement, priorities, and principles. No project should get CRA credit simply for being associated with a government plan, especially one that was designed without impacted BIPOC and low-income communities from the beginning.

Question 64. *Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions? Would designating these investments as a factor for an "outstanding" rating provide appropriate incentives?* ***Question 65****. Should MDIs and women-owned financial institutions receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions? Should they receive CRA credit for investing in their own institutions, and if so, for which activities?* ***Question 66****. What additional policies should the Board consider to provide incentives for additional investment in and partnership with MDIs?* ***Question 67****. Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?*

With regards to any investment at the national level, in MDI, CDFI, or credit unions, regulators must remain vigilant in not creating a national assessment area, even if the activity benefits CRA-targeted populations. Banks must focus their assessment areas. For banks with branch and lending based assessment areas, they must first ensure they are investing in local CDFIs, MDIs, and CDCUs, which can include national CDFIs that serve the assessment areas but must also include smaller institutions as they are likely to face bigger challenges accessing financing, while serving hard-to-reach populations: BIPOC-owned businesses, immigrant owned businesses, lower-income owners, under-banked and unbanked. As ANHD notes throughout this comment letter, large metropolitan assessment areas like New York City have neighborhoods that are persistently underserved by financial institutions. Banks need to serve those areas themselves and through mission-driven entities that serve them.

After that, the priority should be on entities that serve areas identified as unbanked and underserved. Without guidance, it is unlikely that a bank reaching out of its assessment areas will reach locally based CDFIs, and so those dollars will go to larger entities. Banks can't be allowed to compensate for poor local records and buy a good rating with a few loans or grants to large CDFIs or MDIs. Lastly, as with all areas of CRA, regulators should evaluate the record of the CDFI and MDI to ensure they are acting responsibly and responsively.

Question 68*. Will the approach of considering activities in "eligible states and territories" and "eligible regions" provide greater certainty and clarity regarding the consideration of activities outside of assessment areas, while maintaining an emphasis on activities within assessment areas via the community development financing metric?* ***Question 69****. Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?* ***Question 70****. In addition to the potential designated areas of need identified* *above, are there other areas that should be designated to encourage access to credit for underserved or economically distressed minority communities?*

With regards to both questions 68 and 69, however the formula is developed, banks must be accountable to local communities; we appreciate the continued attention to facility-based assessment areas. The designated area of need seems like a better approach than simply statewide or regional, as needs will vary within those areas. As is discussed throughout the letter, New York City has many banks, yet still has neighborhoods with persistent unmet credit, banking, and community development needs. If a bank in upstate New York is allowed to conduct community development activities outside of its assessment area, which would then include New York City, I would want that capital to go towards impactful activities in underserved areas. But the CRA would work better if those banks focused on their assessment areas and other areas of needs while holding New York City banks accountable to the many and varied needs throughout the city, and then in underserved neighborhoods outside of the City, be it in New York State or elsewhere.

Within assessment areas, regulators may also consider absence of quality activity in underserved neighborhoods within an assessment area as being unresponsive. To be clear, responsive credit anywhere, including deep affordable housing in high-income and low-income areas, is to be encouraged. But we cannot allow a CRA that passes banks while persistently undeserving the same neighborhoods year after year. Mapping is a tool that could be used more often to identify where banks are and aren't investing.

In addition to the qualities to identify distressed areas of need, regulators can consider areas with high levels of distressed buildings and small homes, high foreclosure rates, rent or housing burden, large unbanked and underbanked populations. Also, with regards to branches and ATMs, we agree about looking at areas with few branches and recommend they broaden to include areas with higher concentrations of Alternative Financial Service providers (AFS) as compared to branches. AFS providers include entities like check cashers, pawn shops and (outside of New York) payday lenders. Also, to note, we often urge banks to join networks such as AllPoint or MoneyPass which expand a bank's fee-free ATM network. However, few of these ATMs take deposits. Also, if a bank closes its last branch in a county and does not leave a bank-operated ATM, then that assessment area, or county in an assessment area, could be lost. In New York City, this could mean a whole county within the city, which is also why we believe banks should have to serve the entire city. This is more likely to happen in an already underserved neighborhood. Banks should be required to maintain that assessment area and be assessed on their activities in those neighborhoods.

Question 71. *Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?*

If the community development definitions are clear, then such a list shouldn't be necessary. However, we know that training for examiners is critical, and such training can be made available to the public to elaborate on and describe the types of activities that qualify. This would be similar to the interagency Q&A document today, but more accessible. This could spell out in plain language how a mixed-use housing development would get credit, or the type of jobs supported in an economic development project and ways to document that.

Extensive local analysis and community input and engagement should always inform what gets the most emphasis at the local level, but a list of principles and practices can be helpful, as well as examples of activities. This list can also highlight examples of activities that are considered highly responsive and impactful, that would connect to a bank's impact scoring, such as deep and permanent affordable housing, affordable accessible bank products, investments in local CDFIs to help struggling BIPOC owned businesses, such as the many who are directly impacted by the COVID-19 pandemic.

A database with examples of activities that have gotten credit in the past would also be very useful for community organizations, banks, and examiners. Advocates and practitioners can highlight examples that are impactful to encourage banks to do more such activities, and if there is debate over some that seem less impactful, it could offer an opportunity to analyze it and amend it to determine credit moving forward.

Question 72. *Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?*

A pre-approval process would benefit banks and practitioners. If there is a clear list of expectations, an examiner or regulator can compare the proposed activity to that criteria and offer a determination. If there is any uncertainty, regulators should establish a process that includes community input to make a final determination.

This process should go hand in hand with extensive, ongoing training for CRA officers, bankers, community organizations and practitioners, and examiners.

Question 73*. In fulfilling the requirement to share CRA strategic plans with the public to ensure transparency, should banks be required to publish them on the regulatory agency's website, their own website, or both? Would it be helpful to clarify the type of consultation banks could engage in with the Board for a strategic plan?* ***Question 74****. How should banks demonstrate that they have had meaningful engagement with their community in developing their plan, and once the plan is completed* ***Question 75****. In providing greater flexibility for banks to delineate additional assessment areas through CRA strategic plans, are there new criteria that should be required to prevent redlining?* ***Question 76****. Would guidelines regarding what constitutes a material change provide more clarity as to when a bank should amend their strategic plan?* ***Question 77****. Would a template with illustrative instructions be helpful in streamlining the strategic plan approval process?*

While some banks take the strategic option seriously, we are also concerned that the Strategic Plans option may become the option of choice for institutions not interested in CRA, as it provides a mechanism to defer CRA Planning until later in a charter or merger application process, through a process that it directs and that is opaque to community groups despite supposed community participation requirements.

Similar to what we recommended throughout the traditional CRA exam, CRA Strategic Plan requirements need to be strengthened by requiring more transparency regarding planning, groups outreached to, comments submitted, and bank responses, at a minimum. If not, the CRA Strategic Plan option should be discarded.

Please see **questions 1 and 2** for recommendations around community engagement. Banks should also not be allowed to use the strategic plan option to exclude certain products from scrutiny.

Question 78*. Would eliminating limited-scope assessment area examinations and using the assessment area weighted average approach provide greater transparency and give a more complete evaluation of a bank's CRA performance?* ***Question 79****. For a bank with multiple assessment areas in a state or multistate MSA, should the Board limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas?* ***Question 80.*** *Barring legitimate performance context reasons, should a ''needs to improve'' conclusion for an assessment area be downgraded to ''substantial non-compliance'' if there is no appreciable improvement at the next examination?*

ANHD supports eliminating limited-scope assessment area examinations. The weighted approach makes sense to some degree, especially for dense metropolitan areas like New York City. But we understand the tension around how to support and incentivize activity in less dense, less banked areas. We want CRA to "expand the pie" so to speak, so that activities go to all areas. Eliminating the limited scope is a very positive step forward in having a full evaluation of each area and ideally incentivizing more activities there.

The idea to limit a high rating with poor performance in other areas is one way to address this. Perhaps regulators can also look at specific assessment areas with persistently low ratings and factor that in.

Yes, we agree with this proposal to downgrade a needs-to-improve rating to substantial noncompliance when a bank shows no improvement over time. The board should consider a similar downgrade for banks that persistently have low satisfactory overall or in component ratings, demonstrating little effort to increase a bank's performance. They may warrant a needs-to-improve rating in those cases.

Question 81. *Should large bank ratings be simplified by eliminating the distinction between ''high'' and ''low'' satisfactory ratings in favor of a single ''satisfactory'' rating for all banks?*

No, ANHD does not agree with this assessment. Already, the scale is limited, with just three ratings for passing (outstanding, high satisfactory, and low satisfactory), and two for failing (needs to improve and substantial noncompliance). Eliminating high and low satisfactory ratings would mean a bank that barely passes would look the same as one that is at the high-end, striving for an outstanding. Ideally, we would have more than just these five ways to distinguish banks from one another, with more nuance to the rating and not less, to help understand where banks are doing well and have areas to improve. More nuance and gradation can help banks as well if they have something to strive for within the existing categories.

Question 82. *Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area conclusions? Should examiners have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?*

Assuming that these ratings were developed by a rigorous analysis of quantity, distribution, and quality, and with sufficient community input, then a matrix like these makes sense. The matrix should be redesigned to account for high and low-satisfactory ratings.

Further, we do agree that lending should carry more weight than retail services. Lack of lending in LMI or BIPOC communities is a clear indication of redlining and disinvestment. At the same time, harmful or predatory lending can be equally devastating for low-income communities of color. However, we note that a bank that fails the retail services test can still pass its exam and that raises concerns. Lack of branches and banking is directly connected to people and small businesses being able to access credit, and this portion of the exam has never been enough to bring appropriate levels of banking to redlined communities. **Banks should have to pass both parts of the retail test to get a passing rating.**

***Question 83**. For large banks, is the proposed approach sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels?*

The breakdown of 60% for retail and 40% for community development seems reasonable for weighting, but similar to what was said above, there must be the expectation to pass in both areas, even if some are higher than others.

***Question 84.** Should the adjusted score approach be used to incorporate out-of-assessment area community development activities into state and institution ratings? What other options should the Board consider? **Question 85.** Would the use of either the statewide community development financing metric or an impact score provide more transparency in the evaluation of activities outside of assessment areas? What options should the Board consider to consistently weight outside assessment area activities when deriving overall state or institution ratings for the Community Development Test?*

However the rating is derived, banks must pass in their assessment areas. They can't be allowed to make a large investment elsewhere to compensate for poor performance locally. Responsive work in an underserved area can then help them move towards a high satisfactory or even outstanding, depending on how they performed locally.

NCRC's idea of supplemental assessment areas is one to consider, so that these are not just extra credit activities.

***Question 87**. Should the Board specify in Regulation BB that violations of the Military Lending Act, the Servicemembers Civil Relief Act, and UDAAP are considered when reviewing discriminatory or other illegal credit practices to determine CRA ratings? Are there other laws or practices that the Board should take into account in assessing evidence of discriminatory or other illegal credit practices?*

ANHD agrees that violations of the Military Lending Act, the Servicemembers Civil Relief Act, and UDAAP be added as considerations when the Board is conducting fair lending reviews and considering them when determining CRA ratings. A bank is not serving credit needs in a responsible manner when it violates these laws. We also ask the Board to add violations of the Americans with Disabilities Act (ADA) to the list of statutes influencing fair lending reviews. Customers with disabilities need to be fully protected and have unfettered access to banking. This includes not only physical access to branches but also ease of use regarding websites and mobile banking.

However, important to note is that Regulation BB currently only applies to lending[54], and no other area of banking such as fees or practices related to bank accounts, or disparate impacts on people of color who aren't the ones directly accessing bank loans or services. A primary example of this is evictions, which

[54] https://www.ecfr.gov/cgi-bin/text-idx?SID=c8e631123a33426e705a883231556046&node=12:3.0.1.1.9&rgn=div5 section §228.28 (c)

disproportionately threaten the lives of Black and Brown tenants[55]. Tenants harmed by evictions were not the recipient of the loan; their landlord was. We support any expansion of CRA to include an analysis of non-lending products, such as bank account practices that lead to higher fees (overdraft, maintenance, ATM), remittances, money orders, etc. Low-income, Black and Hispanic households are unbanked at much higher rates than higher income and white households. Disparate fees and lack of access only exacerbate the harm these same populations face.

The CRA can also analyze populations who are excluded from access to bank accounts and financial products, such as undocumented immigrants, people with prior banking issues, limited English speaking customers, and people with disabilities. Banks should be held to federal anti-discrimination laws and expanded to any stronger local laws. New York City's laws, for example, have a large set of protected classes in housing and lending that may not be included in all federal laws, including immigration status, gender identity, and source of income[56].

Question 88. *Should consideration for an outstanding rating prompted by an investment or other activity in MDIs, women-owned financial institutions, and low-income credit unions be contingent upon the bank at least falling within the "satisfactory" range of performance?* ***Question 89.*** *Would it be helpful to provide greater detail on the types and level of activities with MDIs, women-owned financial institutions, and low-income credit unions necessary to elevate a "satisfactory" rating to "outstanding"?*

We agree with the goal of directing investments to MDIs, women-owned financial institutions, and low-income credit unions, but we must avoid a situation where a bank has subpar performance and can essentially buy their way to a higher rating. And also, not allow banks to "outsource" the toughest loans to other lenders. Even the satisfactory bar could allow for a bank with a low-satisfactory to raise its rating without addressing those disparities. Support for mission-driven entities is important and banks must also be incentivized to lend directly to underserved communities.

With regards to mission-driven institutions such as the ones listed, they should also first look towards these types of institutions within their assessment areas, and then those serving their assessment areas, before going outside. They should of course support institutions that offer products and practices that the community expresses a need for. This speaks to the need to expand how assessment areas are defined, so that more banks have underbanked areas as their assessment areas in addition to their metropolitan areas. This is especially the case for wholesale, limited purpose, and other internet banks, but also banks with an online presence. And, like anywhere in CRA, we do not support automatic credit to any entity without some analysis of their record and impact of the activities.

Question 90*. Is it appropriate to rely on SOD data for all banks, a subset of large banks with multiple assessment areas based on business model or the share of deposits taking place outside of assessment areas, or only for small banks and large banks with one assessment area? What standards would be appropriate to set for business models or the appropriate share of deposits taking place outside of assessment areas, if such an approach is chosen?* ***Question 91****. Is the certainty of accurate community development financing measures using bank collected retail deposits data a worthwhile tradeoff for the burden associated with collecting and reporting this data for all large banks with two or more assessment areas?*

[55] https://www.politico.com/news/2020/12/15/the-most-lopsided-economic-event-imaginable-wave-of-evictions-threatens-black-latino-tenants-445387

[56] https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/ProtectedClasses_Factsheet.pdf

The agencies and banks should move to a deposit collection system that is more accurate than the current SOD data collected by the FDIC. The agencies acknowledge that this data is not accurate when banks engage in significant deposit collection outside of areas with branches. Banks have the address of their deposit holders and can easily geocode them to the county and census tract level. HMDA and CRA small business databases have had this type of geocoding for decades.

As the board acknowledges, the transition may require up-front costs, but would decline after that. This type of data will be very important as regulators evaluate online lenders, both fully internet banks and hybrid banks that do business outside of their assessment areas. The tradeoff is worth any additional burden. It will be important to know where banks are doing business - taking deposits, making loans, opening accounts. This is critical nationwide, and also within assessment areas, to see if banks are opening accounts equitably and, even if they are, if they are also lending equitably with the deposits they have.

One thing to note, however, is that it may also redistribute banks that accept business deposits in one main branch, even if the businesses are elsewhere, as happens for New York City banks and likely other large cities. One concern, then, is that the reduced deposits could reduce a bank's CRA obligation and we caution against that happening. Expectations may need to be adjusted to account for that change in metrics in a city like New York.

Question 92*. Which approach for retail lending data collection would provide the best balance between data collection burden and the transparency and predictability of CRA examinations for small banks that opt into the metrics-based approach – using a sample of bank data drawn from each assessment area to generate the retail lending metrics, or the use of information maintained by a bank in a format consistent with its own internal operating systems?* ***Question 93.*** *Are there other approaches to data collection that would benefit small banks and should be considered?* ***Question 94.*** *What are the benefits and drawbacks of relying on examiners to sample home mortgage data for non-HMDA reporters and consumer loan data for all large banks, requiring banks to collect data in their own format, or requiring banks to collect data in a common Board prescribed format?*

The Board should require banks to collect data in a common Board prescribed format. This would standardize data collection and therefore make the data consistent and able to support the development of publicly available databases. The Board notes that the data currently used to analyze CRA performance for both home mortgage and consumer loans are loan amount at origination, loan location (state, county, census tract), and borrower income. Given the emphasis on racial equity, this should also include the other HMDA data, on race, ethnicity, and pricing, and similar data for consumer lending. This type of data is critical to fair lending analysis and other evidence of disparate impact and would be necessary to enforce an affirmative obligation to serve BIPOC.

Home mortgage data would be collected for non-HMDA reporters and consumer loan data would be collected in cases in which consumer lending is a major product line as discussed above. The minimum data points of location, dollar amount, and borrower income are relatively few, and additional data points are routinely collected for HMDA and should be collected as well, especially race and ethnicity and basic pricing. Once a system is in place, if it isn't already, it should not be unduly burdensome to collect the data in a Board prescribed format. The public would gain in terms of holding banks accountable for CRA performance and for being able to answer additional questions with more publicly available data such as the presence of CRA deserts and hotspots.

Question 95. *Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?* ***Question 96.*** *Is collecting community development data at the loan or investment level and reporting that data at the county level or MSA level an appropriate way to gather and make information available to the public?* ***Question 97****. Is the burden associated with data collection and reporting justified to gain consistency in evaluations and provide greater certainty for banks in how their community development financing activity will be evaluated?*

ANHD fully supports the collection of more detailed community development data for the public to see. This data is not public and nearly impossible to ascertain without asking banks directly, as ANHD has done for the past 10 years in our State of Bank Reinvestment in NYC studies. The data we collect helps us understand bank CRA activity year to year, which in many cases has fostered meaningful dialogue and led to new and more impactful activities. It also helps identify when banks fall well below their peers in terms of quantity and quality. But even what we have is not enough.
We support the Board's proposal to collect loan-level/investment-level data:

- Each community development loan or qualified investment includes the loan or investment amount
  - The ANPR states original or remaining on the balance sheet. We ask that you distinguish between new and existing loans
- Area(s) benefitted: This should be collected by census tract and reported at the census tract or PUMA level. The more granular, the better, especially in a high-density metropolitan city like New York City where disparities exist within counties.
- Community development purpose (e.g., affordable housing or economic development),
- Type of investments (e.g., equity investment or mortgage-backed security).
  - The type should be more specific, such as LIHTC, NMTC, EQ2 and other equity investments; deposits in credit unions; bond purchases, etc.)
  - Grants should be collected and reported separately and be easy to distinguish from other investments.
- Regulators should collect and report out additional data on the recipient type: Nonprofit developer, CDFI, CDC, MDI, for-profit, etc.

Additional information that would be helpful to have, either by loan or in the aggregate, would be more details on the type of loans offered, such as construction, acquisition, predevelopment loans; refinance loans; long-term versus short-term.

Similarly, details on the types of housing and jobs supported, such as sectors, jobs and wages; rent levels / affordability, and evidence of harm or displacement. For multifamily housing, this type of data is critical wherever it is analyzed, be it in community development or retail. Regulators need a comprehensive system to analyze how well banks are adhering to best practices in underwriting, vetting of landlords, and responding to issues in the buildings they finance. Similar analysis is critical throughout CRA to deter displacement and foster meaningful activities.

Ideally the public can evaluate the totality of the data at the census tract level. If it must be aggregated, the county should be the largest area reported, but in a dense city like NYC, PUMA would be better.

Question 98*. Would collecting information in a Board-provided standardized template under the Retail Services Subtest be an effective way of gathering consistent information, or is there a better alternative?*

We agree that a Board-provided standardized template would be a good way to collect consistent information for the retail services subtest. For the branch distribution analysis, the Board is considering collecting

- The number and location of branches
- ATMs
- Hours of operation by branch location
- Record of opening and closing of branch offices and ATMs

This list contains the necessary data for conducting the retail services subtest. The Board should create a public use database by combining the information that all banks subject to the retail services subtest must submit. In addition, the Board should develop CRA exam templates in which data in tables on CRA exams can be downloaded into Excel or other software. The board should also geocode the data and/or map it out so people can easily see where branches and ATMs exist and where they were opened and closed. The FDIC data is only by address and very onerous to geocode. The record of opening and closing branches are listed separately and equally challenging to map out. While out of the scope of this ANPR, the FDIC should do a better job of aggregating, geocoding, and mapping branch data for the public to examine in real time and provide feedback before a branch closes or opens. They should also have a similar database for ATM locations and openings/closings.

For non-branch delivery channels, the Board is considering a template that would include information regarding

Assuming this would be collected for each product, we support the following data points and add a few additional ones. And add any data on race/ethnicity as is possible.

- customer usage
- number of transactions (rate of adoption)
- cost of using non-branch delivery channels
    - We recommend adding specific costs: overdraft, maintenance, ATM fees and data on who is paying these fees, as they are likely to be by lower-income people.
- data to determine whether delivery channels are reaching LMI areas and individuals
- Regulators should evaluate where the products are offered - branches overall or in specific markets; online; or both.
- Regulators should evaluate the types of identifications accepted and give credit for banks that make accounts available to undocumented immigrants, using municipal IDs, consular cards, or passports without a visa.

A bank may offer a low-cost account, but steer customers to one that charges more, or only offer the account in certain markets and not others. A “free” account can be very costly if it is only free with a high minimum balance, or allows for overdrafts, ATM fees and other costs that lower-income customers are more likely to face.

The data should be presented separately for accounts originating via branches and via mobile/on-line methods. Banks may also only accept certain forms of identification in person, which is devastating if a bank leaves an area and it cannot be used online.

Regulators should also consider evaluating and benchmarking the business banking products as to how accessible and affordable they are to the very small businesses that the CRA is meant to serve.

For branch related services, the Board is considering collecting a standardized list of services offered that are responsive to LMI needs including

- bilingual/ translation services - the board should compare to dominant languages within certain communities. For example, Spanish is needed in many neighborhoods in NYC, but Nepalese or Bangladeshi may be specific to a smaller set of communities; a bank should get extra credit for offering that where it is needed.
- accommodation for people with disabilities
- free or low-cost government, payroll, or other check cashing services
- reasonably priced international remittance services

Lastly, even with these benchmarks, banks should connect to community needs. For example, Chase offered its Liquid prepaid card that was BankOn certified and widely celebrated. We too appreciated many of its features, but we and our local community were adamant that it should be a full bank account and not a prepaid card. The bank ultimately listened and now offers the account as a full bank account. Banks should be encouraged to listen to those local needs and respond.

The data should be public and accessible to see what products and services a bank offers, where they offer it, and the usage of the more affordable, accessible products and services.