

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

March 3, 2020

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: March 6, 2020, “Modern-Day Redlining: the Burden on Underbanked and Excluded Communities in New York”

The Subcommittee on Consumer Protection and Financial Institutions will convene a hearing entitled, “Modern-Day Redlining: the Burden on Underbanked and Excluded Communities in New York” on Friday, March 6, 2020, at 10:00 a.m. at the Jamaica Performing Arts Center, 153-10 Jamaica Avenue, Jamaica, NY. This single-panel hearing will have the following witnesses:

- **Jaime Weisberg**, Senior Campaign Analyst, Association for Neighborhood and Housing Development (ANHD)
- **Annetta Seecharran**, Executive Director, Chhaya CDC
- **Cathie Mahon**, President and Chief Executive Officer, Inclusiv
- **Noel Andrés Poyo**, Executive Director, National Association For Latino Community Asset Builders (NALCAB)
- **Bruce Marks**, Chief Executive Officer, Neighborhood Assistance Corporation of America (NACA)
- **Kim Saunders**, President and Chief Executive Officer, National Bankers Association (NBA)

Overview

The House Financial Services Subcommittee on Consumer Protection and Financial Institutions will hold a field hearing in Queens, New York on modern-day redlining and its implications on unbanked and under-banked communities. The hearing will address many of the findings from the Center for Investigative Reporting’s *Reveal* investigative study on bank discrimination in lending,¹ as well as a more recent *Newsday* investigative report on redlining in Long Island,² and a series of Consumer Protection and Financial Institutions Subcommittee hearings on the Community Reinvestment Act (CRA) and minority depository institutions (MDIs):

- 4/19/19 hearing on “The Community Reinvestment Act: Assessing the Law’s Impact on Discrimination and Redlining”;³
- 10/22/19 hearing on “An Examination of the Decline of Minority Depository Institutions and the Impact on Underserved Communities”;⁴

¹ Glantz, Aaron and Martinez, Emmanuel, “[Kept Out: For people of color, banks are shutting the door to homeownership.](#)” *Reveal*, Feb. 15, 2018.

² Ann Choi, Keith Herbert, Olivia Winslow, Arthur Browne, “[Long Island Divided](#)”, *Newsday*, Nov 17, 2019.

³ FSC, [The Community Reinvestment Act: Assessing the Law’s Impact on Discrimination and Redlining](#), Apr. 9, 2019..

⁴ FSC, [An Examination of the Decline of Minority Depository Institutions and the Impact on Underserved Communities](#), Oct. 22, 2019.

- 11/20/19 hearing on “An Examination of Regulators’ Efforts to Preserve and Promote Minority Depository Institutions”;⁵
- 1/14/20 hearing on “The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting’s Proposal.”⁶

Many residents of low- and moderate-income communities, and communities of color in New York, live in banking deserts, limiting residents’ access to financial products and services. Minority banks, credit unions, and Community Development Financial Institutions (CDFIs) play an important role in reaching under-served communities, as do community advocacy groups. Policymakers and community reinvestment advocates have raised concerns that the Office of the Comptroller of the Currency’s (OCC) proposed reforms to the Community Reinvestment Act (CRA) will threaten unbanked and underbanked communities such as Queens, NY, by removing incentives for maintaining and expanding branch networks in these communities, discounting CRA credit for mortgage origination, and undermining community development investments.⁷

Investigative Reports on Modern-Day Redlining and Banking Discrimination

Extensive research has confirmed continued patterns of discrimination in banking. For instance, a comprehensive report by the Center for Investigative Reporting found persistent discrimination in mortgage lending, and that “black applicants were turned away at significantly higher rates than whites in 48 cities, Latinos in 25, Asians in nine and Native Americans in three.”⁸ Similarly, extensive mystery shopper research found that loan officers from non-minority banks systematically discriminate against minority small businesses, including that, compared with minority testers, white testers were more frequently provided product information on loan fees (59.1% vs. 25.9%). Furthermore, minorities were more frequently asked to provide financial statements (82.8% vs. 50.0%), tax returns (86.2% vs. 52.4%), personal savings and investments (60.5% vs. 21.7%), credit card debt (42.5% vs. 13.0%), and auto loan debt (32.5% vs. 8.7%). Finally, minorities were less frequently offered help to complete the loan application (18.18% vs. 59.1%), were less frequently offered a business card (42.9% vs. 81.8%), and were less frequently offered help with future banking needs (42.9% vs. 68.2%).⁹ Finally, a three-year investigative report by Newsday of Long Island’s leading residential real estate brokers found extensive evidence of steering prospective home buyers based on race and ethnicity, consistent with outlawed redlining practices.¹⁰ Persistent discrimination in banking, and continued practices consistent with redlining, contribute significantly to the difficulties that minorities face in accessing capital and achieving scale, and help perpetuate the racial wealth gap in America.

A report published by the Association for Neighborhood & Housing Development (ANHD) found that in New York City, “Non-bank lenders are increasing their presence overall, and particularly to borrowers of color and in neighborhoods of color, while banks are retreating from lending to and in those communities, placing these communities at a greater risk of paying higher costs and making them vulnerable to risky behavior (as non-bank lenders have fewer oversights than CRA-regulated banks).”¹¹

⁵ FSC, [An Examination of Regulators’ Efforts to Preserve and Promote Minority Depository Institutions](#), Nov., 20, 2019.

⁶ FSC, [The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting’s Proposal](#), Jan. 14, 2020.

⁷ *Id.*

⁸ Glantz, Aaron and Martinez, Emmanuel, [“Kept Out: For people of color, banks are shutting the door to homeownership.”](#) Reveal, Feb. 15, 2018.

⁹ Bone, S., Christensen, G., and Williams, J., 2014, “Rejected, Shackled, and Alone: The Impact of Systemic Restricted Choice on Minority Consumers’ Construction of Self,” *Journal of Consumer Research*, 41: 451-474.

¹⁰ Ann Choi, Keith Herbert, Olivia Winslow, Arthur Browne, [“Long Island Divided”](#), Newsday, Nov 17, 2019.

¹¹ Jaime Weisberg, [“Black and Latino Borrowers Locked Out of Homeownership in New York City, New Data and Analysis Shows.”](#) Association for Neighborhood and Housing Development, Jun. 29, 2018. See figures 1 and 2 in the appendix.

The OCC – FDIC Community Reinvestment Act Notice of Proposed Rulemaking

The Community Reinvestment Act (CRA), enacted into law by Congress in 1977,¹² addresses how banks meet the credit and capital needs of the communities they serve. CRA was passed in response to redlining, a practice by which banks discriminated against prospective customers based primarily on where they lived, or their racial or ethnic background, rather than creditworthiness. In passing CRA, Congress affirmed that “regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business”, and for “each appropriate federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.”¹³ Congress has amended CRA several times since 1977.¹⁴

On August 28, 2018, the OCC issued an Advanced Notice of Proposed Rulemaking (ANPR), soliciting public comments on the OCC’s proposals for modernizing the CRA.¹⁵ The OCC’s ANPR drew nearly 1,500 comments.¹⁶ While some elements of the ANPR drew positive feedback, several key pillars of the ANPR drew significant resistance from a broad set of respondents, including most notably the consideration of a simple ratio approach to CRA evaluations, focused principally on total CRA activities against total bank assets. CRA advocacy groups and civil rights organizations have consistently raised the risk that such an approach risks decoupling the link between qualifying CRA activities from outcomes for target communities.

On December 12, 2019, the OCC and FDIC released a Notice of Proposed Rulemaking¹⁷ (NPRM) on CRA modernization. It is notable that, after months of consultation, the Federal Reserve did not join this NPRM due to concerns about certain elements of the proposed rulemaking. After initially establishing a 60-day comment period, a number of stakeholders requested an extension to provide a comment period of at least 120 days.¹⁸ On February 19, 2020, the OCC and FDIC announced a 30-day extension of the comment period to April 8, 2020.¹⁹ Key elements of the NPRM include:

1. **Qualifying activities:** The proposal expands the list of qualifying activities well beyond the current list. According to the OCC,²⁰ this expansion is intended to “encourage more capital, investment, lending, and services in LMI, rural and distressed communities.” The proposal also establishes a process for banks to submit proposed projects for approval as qualifying activities, requiring the agencies to provide a response within six months, failure of which would automatically make the proposal qualifying. Concerns have been raised that the proposal, and the

¹² P.L. 95-128, 91 Stat. 1147, title VIII of the Housing and Community Development Act of 1977, 12 U.S.C. § 2901 et seq.

¹³ 12 U.S. Code § 2901 - Congressional findings and statement of purpose.

¹⁴ For example, in 1989 following the savings and loans crisis, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) into law. FIRREA mandated CRA evaluation reports include two sections, with one kept confidential, and the other publicly available. In 1991, Congress required that examination data relevant to the determination of an institution’s rating be included in the publicly available section of CRA reports. The public section of CRA reports was to include the newly introduced four-tier rating of each institution, including 'Outstanding', 'Satisfactory', 'Needs to Improve', or 'Substantial Noncompliance', as well as supporting justification for the rating. In 1995, the CRA examination was customized to account for differences in bank sizes and business models. In 2005, the bank size definitions were revised and indexed to the Consumer Price Index.

¹⁵ OCC Bulletin 2018-24, Advance Notice of Proposed Rulemaking, “[Reforming the Community Reinvestment Act Regulatory Framework](#),” Aug. 28, 2018.

¹⁶ <https://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=OCC-2018-0008>

¹⁷ OCC and FDIC Notice of Proposed Rulemaking, “[Community Reinvestment Act Regulations](#),” Dec. 12, 2019.

¹⁸ For example, see [Comment Letter](#) from Community Development Bankers Association, Independent Community Bankers of America, National Association of Affordable Housing Lenders, and National Bankers Association.

¹⁹ FDIC and OCC Announce [30-day Extension of Comment Period for Proposed Changes to Community Reinvestment Act Rules](#), Feb. 19, 2020.

²⁰ OCC, “[Community Reinvestment Act Fact Sheet](#),” December 12, 2019.

accompanying list of sample projects, would increase CRA activity simply by allowing projects that show little or no demonstrable impact on low-and moderate-income and minority communities for which CRA was drafted to serve.

2. **Assessment areas:** Current CRA evaluations are focused on activity around a bank's branches and offices, which poses challenges for fintech activities and online deposit mobilization and lending. The proposal puts forward two types of assessment areas. Facility-Based Assessment Areas include branches, offices, and other physical locations used for deposits mobilizations, as well as surrounding areas where a bank has originated or purchased qualifying retail loans. For banks that source 50% or more of domestic deposits outside Facility-Based Assessment Areas, the proposal establishes Deposit Based Assessment Areas which are geographies where the bank sources 5% or more of its domestic retail deposits. When calculating the overall dollar value of CRA activity, the proposal also allows banks to include activities outside of the bank's assessment areas, raising additional concerns about decoupling the link to the original intent of CRA in redressing redlining.
3. **Measuring CRA Performance:** Under the proposal, CRA evaluation and scoring relies on the sum of two metrics. The first is a ratio of total qualifying activities to retail domestic deposits, to which is added 0.01 times the ratio of bank branches in LMI census tracts, under-served areas, distressed areas, and Indian country to total branches. Based on this, a bank's score will be as follows:
 - 11% or higher → Outstanding
 - 6% to 11% → Satisfactory
 - 3% to 6% → Needs to Improve
 - Less than 3% → Substantial Noncompliance

The structure of the formula and calculation gives overwhelming weight to the ratio of qualifying loans to total domestic retail deposits, with a marginal contribution for bank location. This methodology, combined with the broad expansion of qualifying activities and areas, raises serious concerns about an effective break of the historical link between this CRA proposal and the law's origins in redressing redlining and systemic discrimination in banking and lending. Under the proposal, the CRA exam will also include a Retail Lending Distribution Test, which uses a Geographic Distribution Test and a Borrower Distribution Test to evaluate the distribution of loans over an Assessment Area. Concerns with this approach include the elimination of specific evaluation of home mortgage lending in LMI areas, and the fact that these tests now count for less in the overall CRA examination, being pass/fail, with a low bar to pass.

4. **Small Community Banks and Specialized Banks:** Banks with assets under \$500 million will be able to opt-in to the new CRA framework put forward by the NPRM, or may continue to be examined under the current framework. The proposal also retains the current option for certain banks to develop a strategic plan, which would be subject to public comment. The proposal eliminates the current option for wholesale and limited purpose designations. All such banks would now have to conform with the updated CRA program.

Minority Banks and Credit Unions

Minority Depository Institutions (MDIs) outperform all other banks in terms of serving minority communities and LMI communities. Research confirms that MDIs and Community Development Financial Institutions (CDFI) play an active role in addressing persistent discrimination, as they are far

more likely to serve underbanked communities of color and LMI communities than both large banks, and non-minority community banks. MDIs are far more likely to be located in LMI communities with high representation of minority communities, and loan data confirms that MDIs lend to minorities at dramatically higher rates. Indeed, per the FDIC, the median share of estimated service area population living in LMI census tracts is 69% for African American MDIs, 45% for Asian American MDIs, and 30% for Hispanic American MDIs, compared to 26% for non-MDI noncommunity banks, and 21% for non-MDI metro-area nonfarm community banks.²¹ Similarly, lending disparities are dramatic across banks, with the median share of mortgage originations to African Americans by African American MDIs standing at 33%, 41% to Hispanic borrowers by Hispanic American MDIs, and 31% to Asian American borrowers by Asian American MDIs, compared to 1% or less in mortgage originations for each minority group by non-MDI metro area nonfarm community banks, and 2%-3% for non-MDI noncommunity banks.²² Similar data exists for small business lending, as 30% of MDI SBA 7(a) small business loans (the SBA’s largest financing program) were made in LMI census tracts, compared to 24% for non-MDI noncommunity banks, and 20% for non-MDI community banks.²³

Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires that banking regulators: “Preserve the number of minority depository institutions; preserve the minority character in cases of merger or acquisition; provide technical assistance to prevent insolvency of institutions not now insolvent; promote and encourage creation of new minority depository institutions; and provide for training, technical assistance, and educational programs.”²⁴ The FDIC Policy Statement defines MDIs as “any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals” or any such institution where “a majority of the Board of Directors is minority and the community that the institution serves is predominantly minority.”²⁵ The terms “minority” means any “Black American, Asian American, Hispanic American, or Native American”²⁶. The composition of MDIs has changed dramatically over the past two decades, with a notable near-disappearance of African American MDIs over this period.

Today, MDIs represent 2.8% of FDIC insured banking charters, 1.3% of assets, and 1.7% of banking offices.²⁷ By comparison, MDI Credit unions represent a 10% of all federally insured credit unions, although they tended to be smaller than their peers, with 87% of MDI credit unions reporting total assets of \$100 million or less.²⁸ Additionally, MDI credit unions “underperformed in all growth categories – including assets, membership, shares, loans, and net worth – compared to low-income credit unions, small credit unions, and federally insured credit unions overall.”²⁹

²¹ FDIC, “[2019 Minority Depository Institutions: Structure, Performance, and Social Impact](#),” 2019.

²² *Id.*

²³ *Id.*

²⁴ FDIC, [Policy Statement Regarding Minority Depository Institutions](#), last updated Apr. 20, 2014.

²⁵ FDIC, “[2019 Minority Depository Institutions: Structure, Performance, and Social Impact](#),” 2019.

²⁶ *Id.*

²⁷ *Id.*

²⁸ NCUA, “[2018 Minority Depository Institutions Annual Report to Congress](#),” 2018.

²⁹ *Id.*

Appendix

Figure 1. Percentage of Home Purchase Lending in New York City Overall and by Bank vs. Non-Bank Lenders³⁰

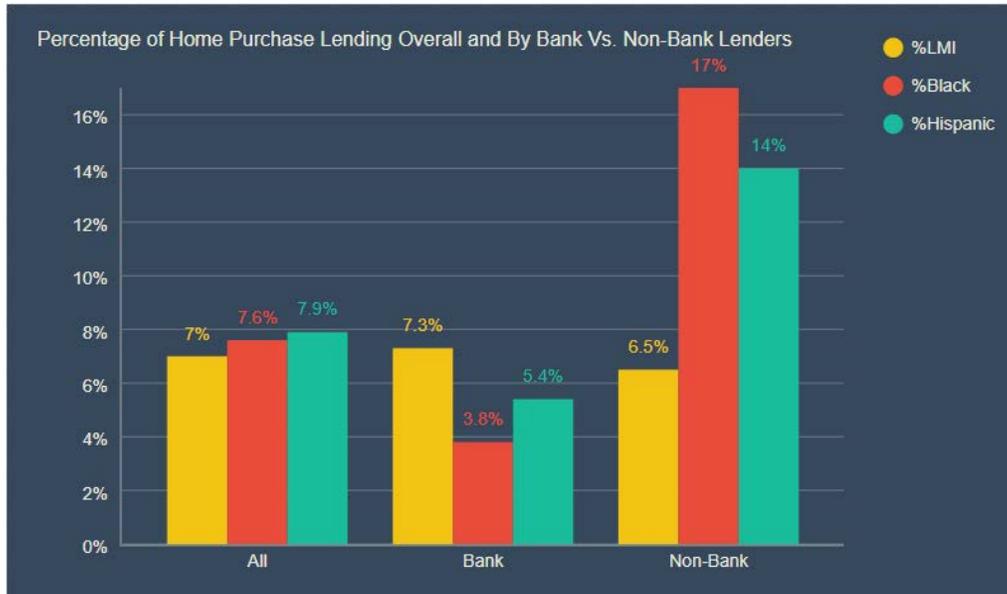
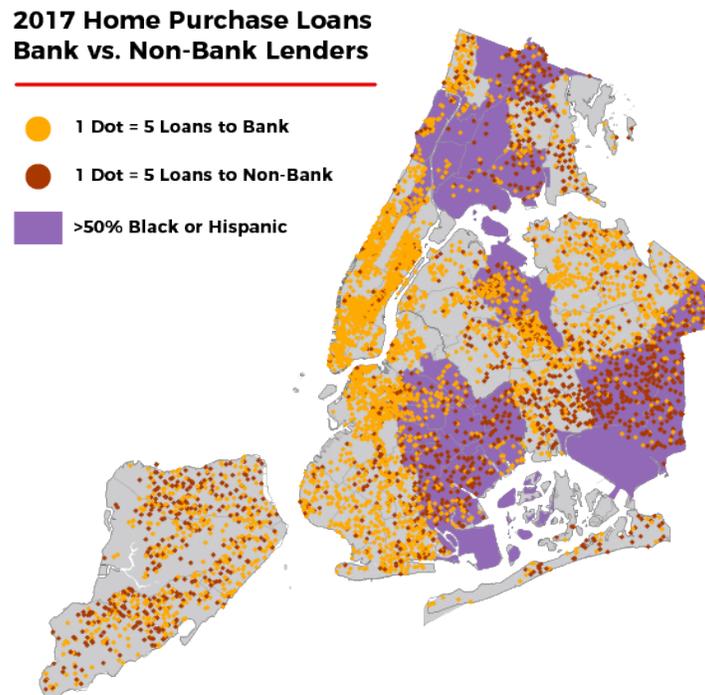


Figure 2. New York City Home Purchase Loans, Bank vs. Non-Bank Lenders³¹



³⁰ Jaime Weisberg, "[Black and Latino Borrowers Locked Out of Homeownership in New York City, New Data and Analysis Shows.](#)" Association for Neighborhood and Housing Development, Jun. 29, 2018.

³¹ *Id.*