

TESTIMONY OF THE NEW YORK BANKERS ASSOCIATION
BEFORE THE
ASSEMBLY STANDING COMMITTEE ON BANKS
and the
ASSEMBLY SUBCOMMITTEE ON BANKING IN UNDERSERVED COMMUNITIES

Presented by Warren W. Traiger, Counsel, BuckleySandler LLP

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Good morning. My name is Warren Traiger, and I am pleased to appear on behalf of the New York Bankers Association (NYBA)¹ to testify regarding the state's Community Reinvestment Act.

NYBA and its members fully support the state law and its federal counterpart. Since enactment of the CRA 35 years ago, New York's banks have worked hand-in-hand with their communities, the state, and local governments to enhance the availability of loans and other banking services in low- and moderate-income neighborhoods throughout the state.

NYBA and its members have worked closely with the State to play a leadership CRA role and develop innovative programs. NYBA champions the Senior Crimestoppers Program, which helps prevent nursing home residents from becoming victims of theft and fraud, and the Banking Development District program, designed to encourage the opening of bank branches in underserved areas. NYBA and its members proudly support Governor Cuomo's Green Bank Initiative and its bold, new market-oriented approach to overcoming market barriers that currently prevent the widespread flow of private capital into the clean energy economy.

I am a proud, past counsel for NYBA, who has advised banks on CRA and fair lending compliance matters for 23 years. I also served as the Banking Department's Special Counsel for CRA during Superintendent Derrick Cephas's efforts to change the focus of CRA enforcement from process-oriented factors, like the number of times a

¹ NYBA is the trade group comprised of the commercial banks and thrift institutions that engage in the banking business in New York State. Its members have aggregate assets in excess of \$10 trillion and more than 200,000 New York employees.

bank spoke to community representatives, to substance-oriented factors, like how much lending the bank did in that community.

NYBA comes before you today to urge the continuation of New York's long-standing practice of closely coordinating its CRA enforcement with federal bank regulators and to advise against legislative action that would diminish the uniqueness of CRA.

New York's reform efforts, supported by NYBA, helped shape the milestone changes in federal CRA regulation under President Clinton, which similarly stressed quantitative over qualitative performance and eliminated the one-size-fits-all approach of the original rules, where every bank was examined under the same standards regardless of its size or business strategy.

There is little question that these changes created a regulatory framework that helped stimulate billions of dollars of bank loans, investments and services into low- and moderate -income communities.² But the federal bank regulators are aware that the current rules may need updating. Indeed, they held a series of nationwide hearings in 2010 and heard constructive suggestions for ways to improve CRA that were offered by advocates, the industry and state regulators, including New York. Perhaps because the federal regulators believe that changes to the law itself are necessary to meaningfully address these suggestions, there have not as yet been any proposed changes to the existing regulations.

New York should not jump into this breach by amending its own law or regulations. As this panel well knows, each bank covered by New York's CRA is also covered by the federal Community Reinvestment Act of 1977. New York chartered banks are subject to two CRA examinations and ratings, one from the Department of Financial Services (DFS) and another from the Federal Deposit Insurance Corporation (FDIC) or Federal Reserve Bank. This means that conformity between New York and federal CRA rules is absolutely essential for state-chartered banks, which unlike their federal counterparts, must maintain a CRA program that satisfies two distinct regulatory agencies. A lack of conformity can only cause confusion and place state-chartered institutions at a competitive disadvantage with their national counterparts.

² In its about to be published "The State of Bank Reinvestment in New York City: 2013," the Association for Neighborhood and Housing Development (ANHD), found that in 2011, New York City banks made community development reinvestments of \$9.69 billion, a more than 27 percent increase from 2010. The 2013 Report was not on the ANHD website as of December 3, 2013, but ANHD's 2012 Report is available at <http://www.anhd.org/wp-content/uploads/2012/11/ANHD-State-of-Bank-Reinvestment-in-NYC-2012-with-charts.pdf>.

For this reason, it has always been New York's policy to conform its CRA rules to the federal rules. However, aligning its rules with the federal rules does not mean that New York does not have an important CRA role. One way the state impacts CRA enforcement is by encouraging banks to direct resources toward those communities with the greatest needs. In July, DFS announced it would give special CRA consideration to banks that participate in projects that are part of the New York Rising Community Reconstruction Program to help localities develop recovery plans from the devastation caused by Superstorm Sandy.³

DFS cannot, of course, commit the federal banking regulators to afford the same degree of CRA consideration for these activities. But the DFS announcement notes that the agency considers its position "to be consistent with federal regulatory guidance on CRA," and that activities in designated disaster areas "are presumed to be CRA eligible by the Department and by federal agencies."

The DFS approach will almost surely be followed by the federal regulators, which look to local and state government to help identify and prioritize community development needs. These needs help inform federal CRA examinations, including those of national banks not subject to state law but with federal CRA responsibilities to serve New York communities. According to DFS's 2012 report to the Governor, its staff worked with representatives from the federal agencies in the aftermath of Sandy and held a forum for banks and community development financial institutions on current efforts to rebuild.⁴ We expect this collaborative process to continue not only on disaster recovery efforts, but on CRA efforts generally.

New York can also influence the types of activities that qualify, or fail to qualify, for CRA consideration. In September, DFS proposed denying CRA consideration for multifamily lending that "undermines" rather than "contributes to" the availability of affordable housing or neighborhood conditions.⁵ NYBA strongly supports affordable housing and understands the goals of DFS in publishing this proposal. However, should it be adopted, it is incumbent upon DFS to work closely with federal regulators to make certain that New York-chartered institutions are not confronted with different state and federal compliance standards with regard to which multifamily loans qualify for CRA.

³ "Industry Letter: CRA Credit in Designated Disaster Areas and the New York Rising Community Reconstruction Program" (July 31, 2013), found at http://www.dfs.ny.gov/legal/industry_circular/banking/il130731.pdf.

⁴ 2012 Annual Report of the New York State Department of Financial Services to the Governor and Legislature (June 15, 2013), found at http://www.dfs.ny.gov/reportpub/annual/dfs_annualrpt_2012.pdf.

⁵ "Guidelines for Bank Lending to Multifamily Properties Under the Community Reinvestment Act" (September 5, 2013), found at http://www.dfs.ny.gov/legal/industry_circular/banking/il130905.pdf.

Concerns about different state and federal CRA regulatory requirements are particularly acute for state-chartered banks headquartered in New York but with out-of-state branches. These interstate banks not only have state *and* federal CRA responsibilities in New York, they also have federal CRA responsibilities outside New York. Failure to take into account an interstate bank's non-New York CRA obligations, for example by not adjusting benchmarks for lending performance to recognize that not all the bank's deposits are derived from New York, can put these banks at a competitive disadvantage *vis-à-vis* their federally-chartered counterparts and create a disincentive for interstate banks to have a New York state charter.

Finally, the Association urges the Legislature to resist calls to alter the underlying purpose of CRA--encouraging banks to help meet the credit needs of their entire community, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. CRA recognizes that lower-income individuals and neighborhoods come in all races and ethnicities, and the law requires banks to serve those communities and individuals without regard to protected class status.

In sum, we respectfully urge the Legislature and DFS to adhere to New York's long-standing practice of closely coordinating its CRA enforcement with the federal bank regulators. This is a two-way street that benefits not only state-chartered banks which won't face conflicting compliance burdens, but also New York's national banks, which benefit from DFS's grassroots efforts to identify community development needs in New York.

Thank you and I'd welcome any questions.