

New York Bankers Association

**STATEMENT OF
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PRESIDENT AND CHIEF EXECUTIVE OFFICER
NEW YORK BANKERS ASSOCIATION**

**BEFORE THE
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON BANKS**

**JUNE 26, 2009
NEW YORK, NEW YORK**

Thank you for the opportunity to address the serious issues of mortgage fraud and subprime lending in New York State on behalf of the more than 160 banks and thrift members of NYBA and their 200,000 employees across the State of New York.

Discrimination in mortgage lending is illegal under State and federal law. The New York Bankers Association strongly supports these laws. Most recently, the Association has supported new laws against mortgage fraud. Just last month, President Obama signed into law The Fraud Enforcement and Recovery Act of 2009, which expands the authority of the Department of Justice to prosecute the perpetrators of mortgage fraud. Importantly, this law covers private mortgage brokers and other non-bank lenders, which made half of all the subprime loans in the U.S. since 2005, and which are only lightly regulated, if at all. The federal government has also authorized an additional \$165 million for the hiring of more fraud prosecutors and investigators.

Since the issue of predatory lending first came into public view about seven years ago, NYBA has played a leading role in developing solutions to the problem, even though many of our banks do not make subprime loans, and, (according to a study by Warren Traiger, attached as Exhibit A) less than 20% of the subprime loans, which have generated much of the recent concern were originated by banks at all. Nevertheless, our members have consistently supported strong legislation which would establish meaningful and workable uniform national standards in the subprime market designed to eradicate predatory practices, while not creating unnecessary impediments to the dream of home-ownership, particularly for moderate- and low-income Americans. The Federal Reserve Board last year adopted regulations patterned in part on New York's strong mortgage foreclosure law, but these rules have not yet gone into effect.

New York State remains in a far stronger position than many other states in combating predatory lending. And that, we believe, is due to the foresight of our State's leaders and their sensitivity to the importance of maintaining for its citizens access to appropriate credit through a vibrant banking system. Maintaining a public dialogue like this is one way to continue that progress – and we applaud you for continuing to focus on this important issue.

Even before New York State's comprehensive anti-predatory lending legislation -- one of the toughest such laws in the nation -- was signed into law in 2002, New York's bankers were quick to act on the problem. In 2001, our Association developed "Best Practices for High Cost Home Lending." (Exhibit B)

New York's tough high-cost home lending law is one reason that our State has not suffered the rates of foreclosure of many other States. In fact, New York is currently 37th of the 50 states in the rate of foreclosures. In fact, the State's foreclosure ratio has declined for 10 consecutive months. And while we believe that even one foreclosure is one too many, we can be assured that the laws and regulations in place here in New York are doing the job they were intended to do. Chief among our law's protective provisions are prohibitions against, among other things, balloon payments within the first 15 years of the loan, loan flipping, and negative amortization. The law also prohibits lending without a due regard to the borrower's

ability to repay, and prohibits lending without the borrower first receiving a comprehensive counseling disclosure, as well as a list of counselors to consult before committing to a loan. Importantly, too, the law - which is enforceable by the Attorney General - also provides a private right of action for borrowers and provides that on a finding of an intentional violation by the lender, the loan will be rendered void. Thus, many of the egregious practices we have heard so much about in recent months relating to high cost home loans, are prohibited under New York law.

In 2006, the New York State Legislature passed the Home Equity Theft Prevention Act – another effective measure and in whose development NYBA played an integral role. This statute goes a long way toward protecting a homeowner’s equity when facing foreclosure. And another recent law, requiring mortgage loan originators working for bankers and brokers to register and attain continuing education credits, will further help protect consumers from predators in the marketplace.

In 2008, the Governor signed Chapter Law 472, which expanded a number of the protections afforded to high cost mortgage borrowers to subprime and nontraditional mortgage borrowers. Additionally, it requires a 90-day pre-foreclosure settlement conference for those borrowers. NYBA worked tirelessly and cooperatively with the Legislature and the Executive branch throughout the legislative process to ensure that the final product would include uniform standards for the mortgage brokerage, lending and underwriting processes, not target the prime mortgage market and not eradicate the sub-prime market.

Additionally, the Federal Reserve Board, as mentioned above, has approved a final rule for home mortgage loans, which amends Regulation Z (Truth in Lending) and was adopted under the Home Ownership and Equity Protection Act (HOEPA). The rule prohibits unfair, abusive or deceptive home mortgage lending practices and restricts certain other mortgage practices, and also establishes advertising standards and requires certain mortgage disclosures to be given to consumers earlier in the transaction.

Seven years ago, when Congress and the State Legislature began to focus on this issue, NYBA set out to learn more about how the predators operate in our neighborhoods, and why many consumers become victims. We developed a pilot program with bank mortgage specialists and neighborhood churches. We learned much about the tactics that drive borrowers away from legitimate lenders and toward the predators. In response to what we learned, the banking industry stepped up its activity in two areas: education and access.

Financial education, or financial literacy, is not only the best defense against the predators, it is the best offense for consumers who want a financially secure future. A borrower must have basic knowledge about the mortgage process to navigate such a complex transaction. Financial education resources are plentiful in our communities. Not only do banks and thrifts hold home-buying seminars in their communities, they also provide significant funding for consumer groups and community advocates to help educate borrowers, and many even help borrowers in distress to stave off disaster through loans and grants.

The New York Bankers Association supports a number of financial education programs for all age levels. Notably, our national partner, Operation Hope, recently dedicated a Hope Center in Harlem. The mission of Operation Hope, and organizations like it, is financial empowerment through in-school curricula for children and young adults, as well as workshops, budget and credit counseling, and mortgage and small business lending counseling for adult consumers. Resources like this are making a difference and will help loosen the grip of the predators on our neighborhoods. Since opening the center in Harlem last year, Operation Hope is helping an average of three thousand members of the community each quarter with a range of financial issues from first-time home buying to start-up small business loan assistance. The program also recruits bankers and other financial professionals to teach basic money and credit management skills to school children in more than 50 public schools in the City.

Regarding access, banks and thrifts in New York are expanding into more and more neighborhoods every day. This has been good for competition and ultimately good for consumers because it means more choices and better alternatives to what the predators are offering. We support the State's Banking Development District program, which has now grown to nearly 40 across the State, and which has been instrumental in encouraging banks to set up shop in new neighborhoods. Recent enhancements made to the program by the State have helped to create more incentives for even more banks and thrifts to participate in the program.

The banking industry is committed to the cause of eradicating abusive loans and their devastating impact on families and communities in New York. As a result, we have consistently supported strong legislation which would contain the following key elements: (i) include uniform standards for the mortgage brokerage, lending and underwriting process; (ii) not target for further regulation the prime mortgage market, which has been an engine of the national economy - especially since the banking and thrift organizations which serve this market are already heavily regulated; and (iii) not effectively eradicate the subprime market, which plays an important and meaningful role for many New Yorkers in achieving the American dream of home ownership.

NYBA's members will continue to (i) support strong enforcement of current laws; (ii) commit resources to financial education for consumers of all ages and means; and (iii) increase access to banking services and legitimate loan products. We have much work to do, but we have made a great start here in New York. We remain committed to being a partner in the solution to this problem by working with the banking regulatory system, law enforcement and the judiciary to insure compliance with current laws. We will continue to work with the Legislature and the Governor on any new initiatives to ensure the flow of housing credit within a framework of appropriate safeguards.

Thank you.

Please also view our related 2009 report *The Community Reinvestment Act of 1977: Not Guilty*

**The Community Reinvestment Act:
A Welcome Anomaly in the Foreclosure Crisis**

**Indications that the CRA Deterred Irresponsible Lending
in the 15 Most Populous U.S. Metropolitan Areas**

January 7, 2008

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This study is not intended to provide and should not be relied on as a source of legal advice.

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Please also view our related 2009 report *The Community Reinvestment Act of 1977: Not Guilty*

ABOUT TRAIGER & HINCKLEY LLP

Traiger & Hinckley LLP offers a unique, integrated approach to providing fair lending counsel. We combine the expertise of our in-house analytical and legal fair lending groups to offer clients an effective and convenient means of implementing a strong compliance program, as well as responding to specific regulatory issues. Our lawyers and statisticians advise a wide range of institutions on complying with federal and state anti-discrimination laws, including the Fair Housing Act, Equal Credit Opportunity Act, Community Reinvestment Act, and Home Mortgage Disclosure Act.

This study is our third annual analysis of publicly available home purchase mortgage lending data. The prior studies of 2005 and 2004 lending data are available on our website. No lender commissioned or was otherwise involved in conducting any of these studies.

ACKNOWLEDGEMENTS

Traiger & Hinckley LLP gratefully acknowledges the important contributions to this study made by Del V.I., LLC, Geosegment Systems Corporation, and The Schoenkin Group, Inc.

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Purpose of Study

Much of the responsibility for the recent spike in foreclosure rates, one of the symptoms of the “subprime crisis,” has been placed on lenders who failed to appropriately assess the risks involved in the loans they originated. Such lenders allegedly overlooked weak borrower credit histories, high loan-to-value ratios, and sketchy borrower income documentation to originate high cost loans that were promptly sold to third parties. Federal Reserve Chairman Bernanke summarized the process that led to the crisis in congressional testimony last fall:

The originate-to-distribute model seems to have contributed to the loosening of underwriting standards in 2005 and 2006. When an originator sells a mortgage and its servicing rights, depending on the terms of the sale, much or all of the risks are passed on to the loan purchaser. Thus, originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans. Moreover, for some originators, fees tied to loan volume made loan sales a higher priority than loan quality. This misalignment of incentives, together with strong investor demand for securities with high yields, contributed to the weakening of underwriting standards.¹

This study isolates the 2006 performance of one category of mortgage lenders—banks originating loans in their Community Reinvestment Act (CRA) assessment areas, referred to herein as “CRA Banks.” Our hypothesis is that the CRA, which requires banks to help serve the credit needs of their local communities, including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound banking practices, may have deterred banks from engaging, at least in their local communities, in lending practices that fuel foreclosures.

To test our hypothesis, we analyzed 2006 Home Mortgage Disclosure Act (HMDA) data to compare the lending performance of CRA Banks² with other lenders in the 15 most populous U.S. metropolitan statistical areas (MSAs). Four areas relevant to the foreclosure crisis were reviewed: (1) the proportion of high cost loans; (2) the pricing of high cost loans; (3) the proportion of originated loans retained by the lender; and (4) the relationship between foreclosure rates and concentration of bank branches.

Summary Conclusions

Our study concludes that CRA Banks were substantially less likely than other lenders to make the kinds of risky home purchase loans that helped fuel the foreclosure crisis. Specifically, our analysis shows that:

- (1) CRA Banks were significantly less likely than other lenders to make a high cost loan;

¹ Testimony of Federal Reserve Board Chairman Ben S. Bernanke on Subprime Mortgage Lending and Mitigating Foreclosures, before the Committee on Financial Services, U.S. House of Representatives, September 20, 2007.

² In computing the lending performance of a CRA Bank, only loans originated by the bank are included. While a bank has the option of including affiliate lending in its CRA assessment (12 CFR §228.22(c)), only direct lending must be assessed. We note, however, that the conclusions of this report would not be affected by including affiliate lending in the lending performance of CRA Banks.

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- (2) The average APR on high cost loans originated by CRA Banks was appreciably lower than the average APR on high cost loans originated by other lenders;
- (3) CRA Banks were more than twice as likely as other lenders to retain originated loans in their portfolio; and
- (4) Foreclosure rates were lower in MSAs with greater concentrations of bank branches.

Discussion

(1) High Cost Loans

High cost loans³ are a primary driver of the foreclosure crisis, as borrowers who are unable to afford their mortgage payments default on their loans. There is a very high statistical correlation (0.816) between the proportion of lending that is high cost and the foreclosure rate in the MSAs analyzed.⁴ Default rates are expected to rise in 2008, as monthly payments increase on mortgage products that permitted borrowers to pay lower “teaser” rates for the first few years of a loan.⁵

- All Borrowers

Unlike other lenders, whose market share of high cost loans in the 15 most populous MSAs was greater than their overall market share, CRA Banks had a significantly lower market share of high cost loans than of all loans.

All Loan Market Share

2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

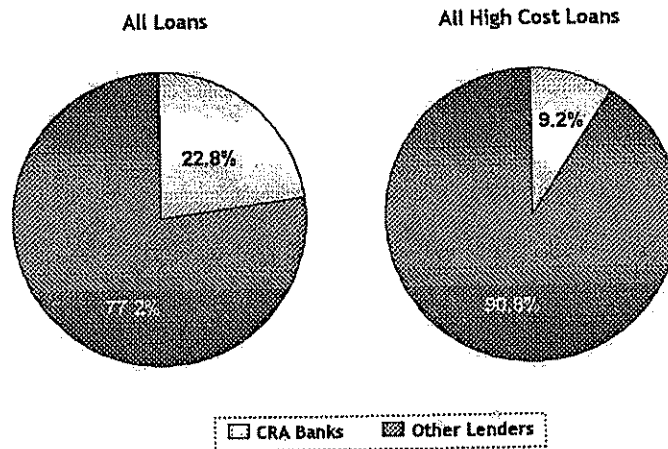


Figure 1

³ For first lien loans, HMDA requires lenders to report the spread between the APR and comparable Treasury yield, where the spread is at least three percentage points. These loans are deemed “high cost.” 12 CFR §203.4(b)(12).

⁴ See, Figure A-1 in Appendix A.

⁵ See, “Rising Rates to Worsen Subprime Mess Interest Payments Set To Grow on \$362 Billion In Mortgages in 2008,” *Wall Street Journal*, November 24, 2007, Page A1.

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Indeed, in each of the 15 most populous MSAs, CRA Banks were less likely than other lenders to originate a high cost loan. Overall, CRA Banks were 66 percent less likely than other lenders to originate a high cost loan.

**High Cost Loans as a Percentage of Total Originations
by CRA Banks and Other Lenders**

2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

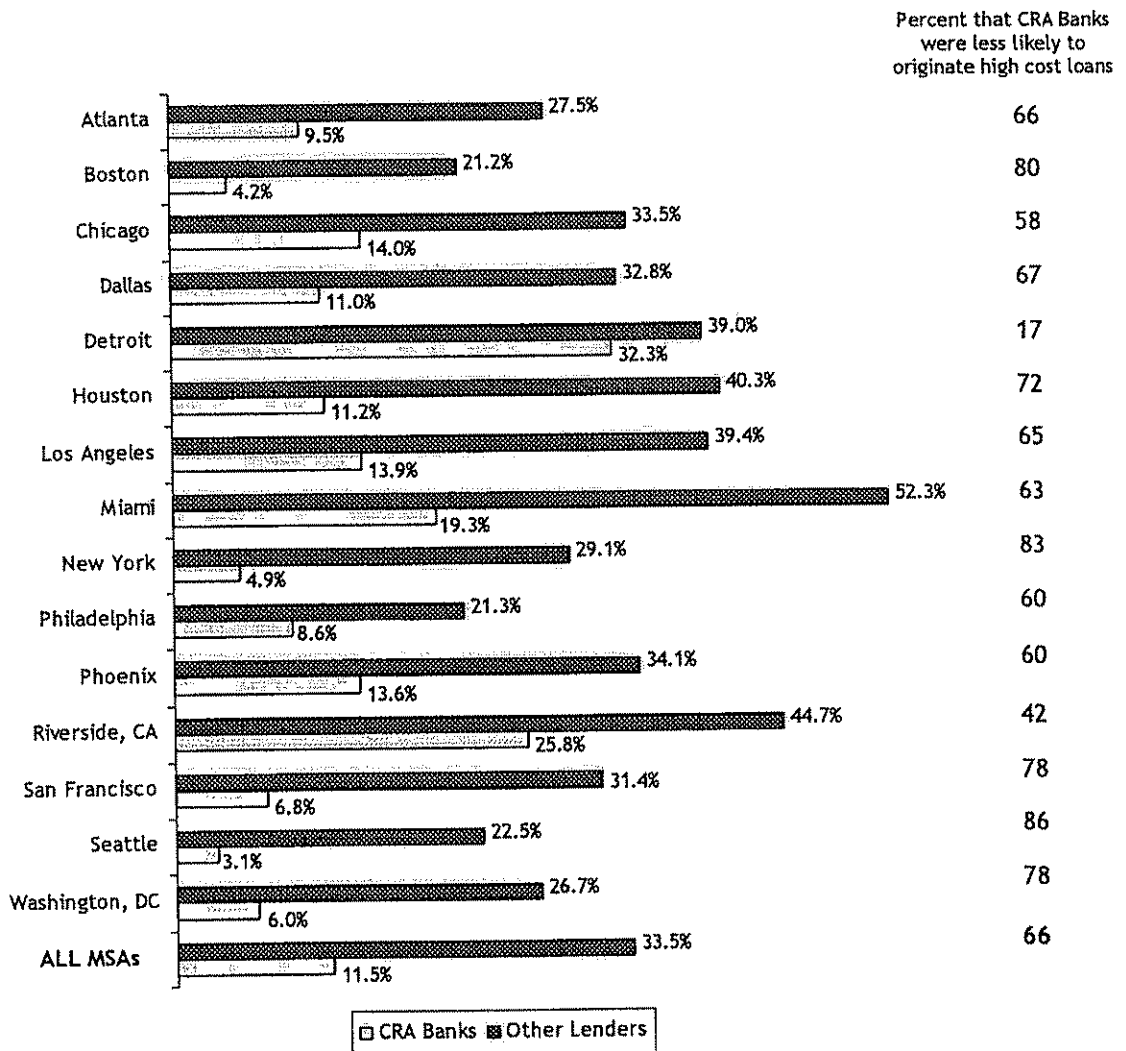


Figure 2

Significantly, the lower proportion of high cost loan originations by CRA Banks was not caused by CRA Banks being more likely to deny a loan application. In the 15 MSAs analyzed, CRA Banks were 16 percent less likely than other lenders to deny an application. (CRA Banks had a 15.2 percent denial rate; other lenders had an 18.1 percent denial rate.)

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- Low- and Moderate-Income Borrowers

The foreclosure crisis particularly impacts LMI borrowers:

[Lower-income borrowers] are increasingly devoting more than half of their income to housing costs. . . It is easy to imagine that for low-income households living at the margins of their budgets, even small increases in monthly housing costs can have a significant effect on their ability to cover living expenses and keep up with their monthly payments. If one considers the potential for other payment shocks, such as unforeseen medical expenses, the risks of default and foreclosure are even greater.⁶

Serving the credit needs of LMI borrowers is arguably the most important facet of a CRA performance examination, which evaluates a bank according to the number and amount of LMI loans originated or purchased in its assessment area.⁷ Like total lending, CRA Banks' market share of high cost loans made to LMI borrowers was significantly lower than their market share of all loans to LMI borrowers in the 15 most populous MSAs.

LMI Loan Market Share
2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

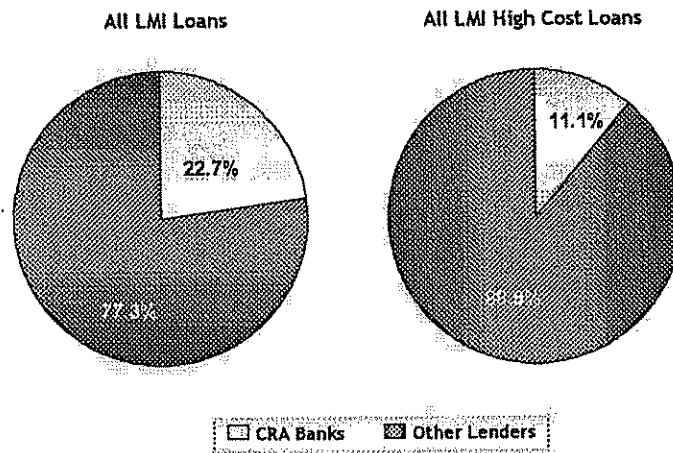


Figure 3

Overall, CRA Banks were 58 percent less likely than other lenders to originate high cost loans to LMI borrowers.

⁶ Cytron and Lanzerotti, "Homeownership at High Cost Recent Trends in the Mortgage Lending Industry," *Community Investments* (published by the Federal Reserve Bank of San Francisco), December 2006 (footnote omitted).

⁷ 12 CFR 228.22(b)(3).

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**High Cost Loans as a Percentage of Total Originations to LMI Borrowers
by CRA Banks and Other Lenders**

2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

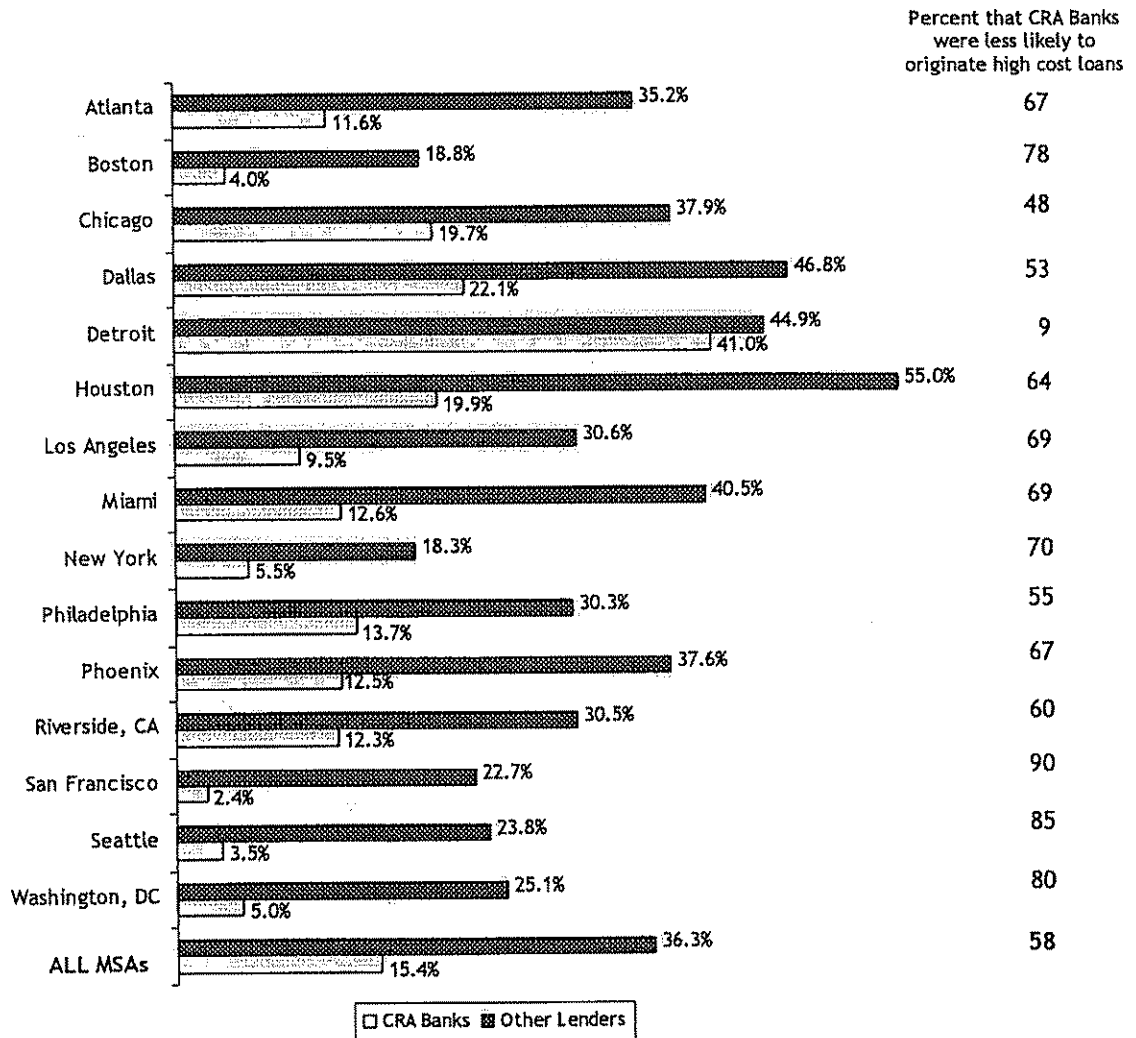


Figure 4

(2) APR on High Cost Loans

- All Borrowers

When CRA Banks did originate high cost loans, the average APR was appreciably lower than the average APR on high cost loans originated by other lenders. Overall, the average high cost loan made by CRA Banks was priced 68 basis points lower than the average high cost loan originated by other lenders.

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**Average Rate Spreads on High Cost Loans Originated
by CRA Banks and Other Lenders**

2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

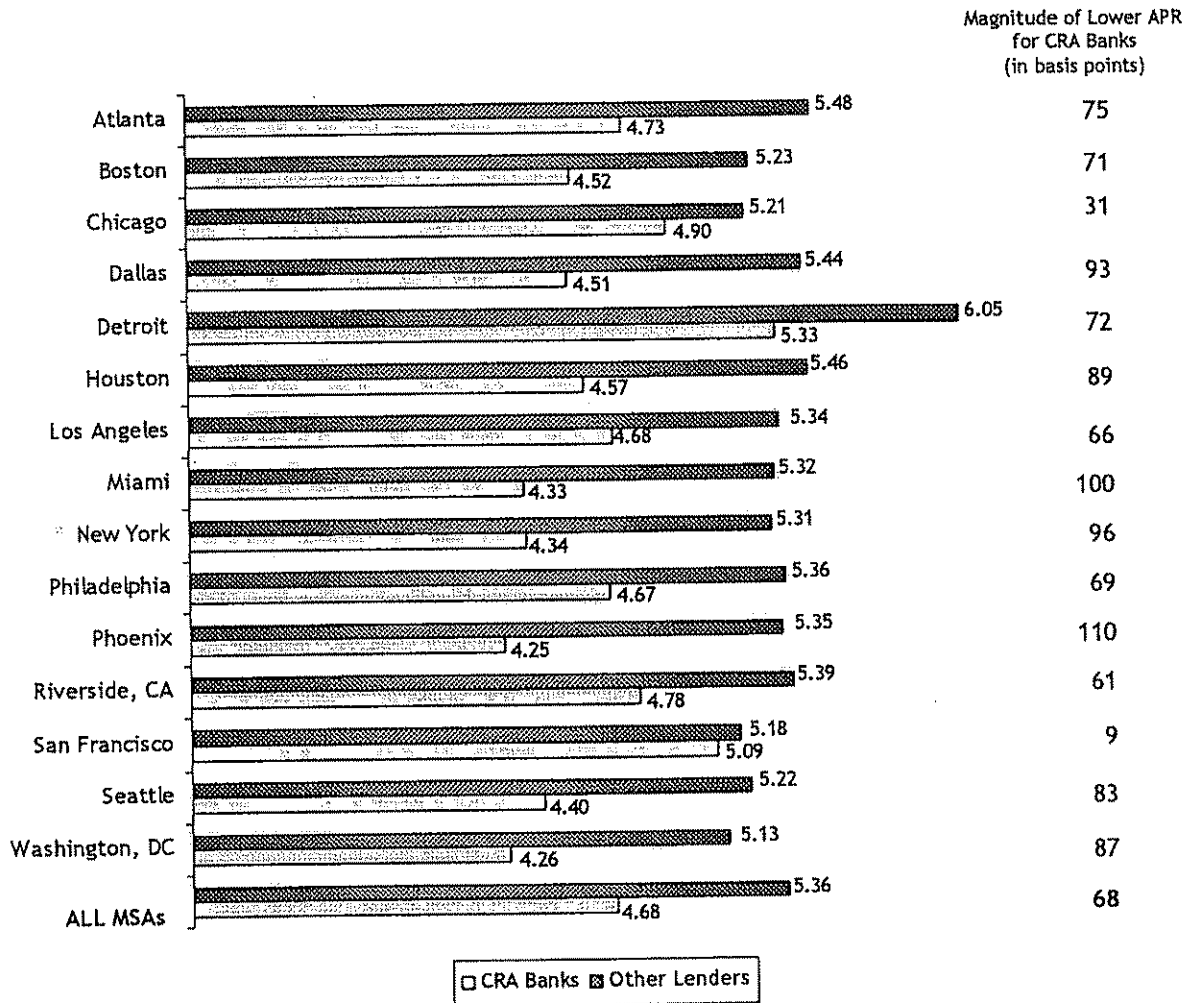


Figure 5

- LMI Borrowers

The APR difference on high cost loans originated to LMI borrowers was even greater than the difference for all loans. Overall, high cost loans made by CRA Banks to LMI borrowers were priced 74 basis points lower than high cost loans originated to LMI borrowers by other lenders.

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**Average Rate Spreads on High Cost Loans to LMI Borrowers
by CRA Banks and Other Lenders**

2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

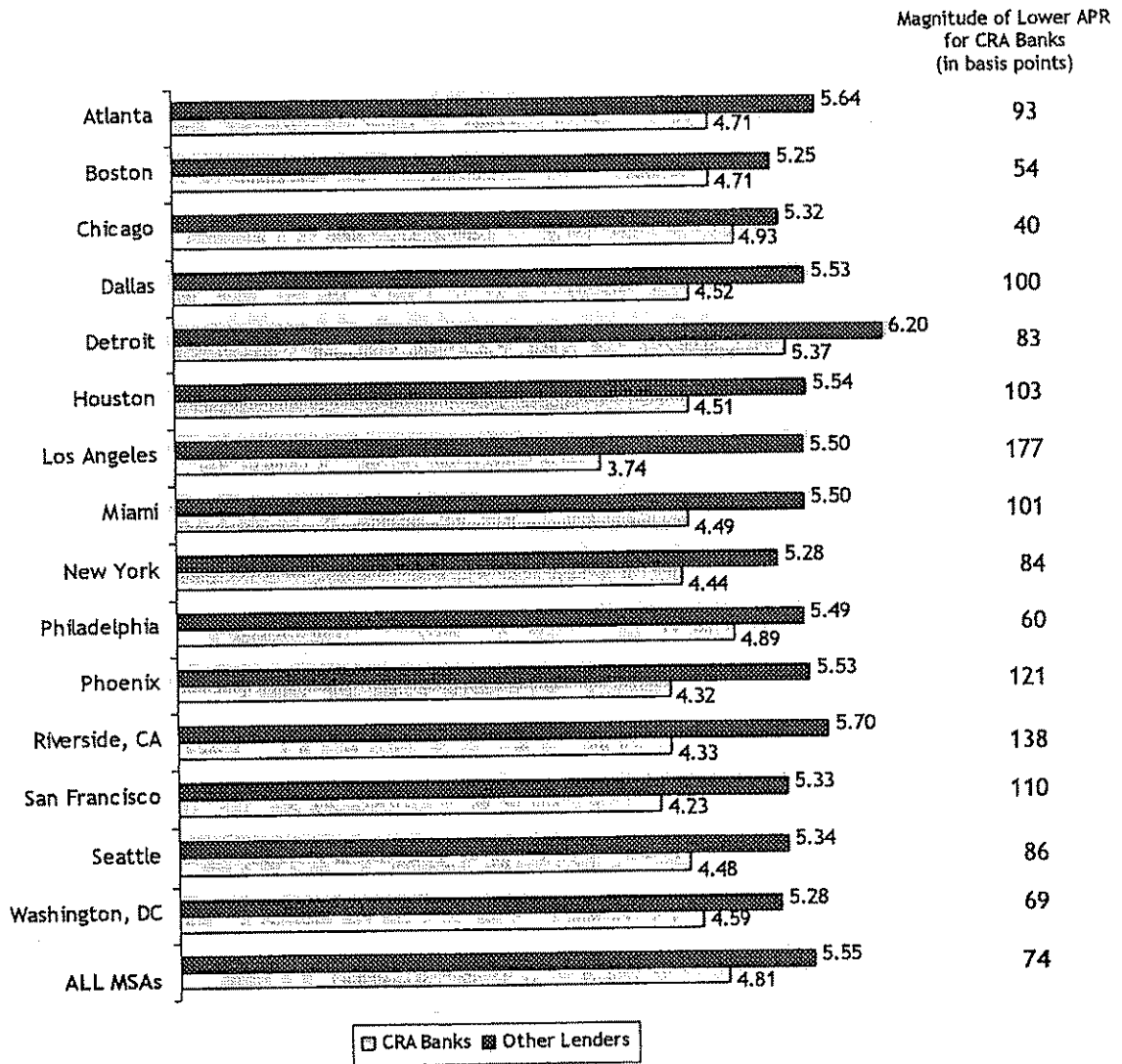


Figure 6

(3) Loan Retention

As noted by Chairman Bernanke above, “originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans.” Federal Reserve Governor Randall S. Kroszner recently added:

[T]he originate-to-distribute model can leave lenders with weaker incentives to maintain strong underwriting standards. In particular, originators who securitize may inadequately screen potential borrowers unless investors provide oversight and insist on practices that align originator incentives with the underlying risk.

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The originate-to-distribute system is thus not only a potential source of risk to the financial system but also raises concerns regarding consumer protection.⁸

CRA Banks were more than twice as likely as other lenders to retain originated loans in their portfolio. While banks in general would be expected to retain more loans than non-depository lenders, our study also found that CRA Banks were significantly more likely to retain loans they originate in their CRA assessment areas than banks without CRA responsibilities in those areas (Non-CRA Banks). As indicated below, this distinction held for all loans, high cost loans, loans to LMI borrowers, and high cost loans to LMI borrowers.

Proportion of Loans Held in Portfolio
2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

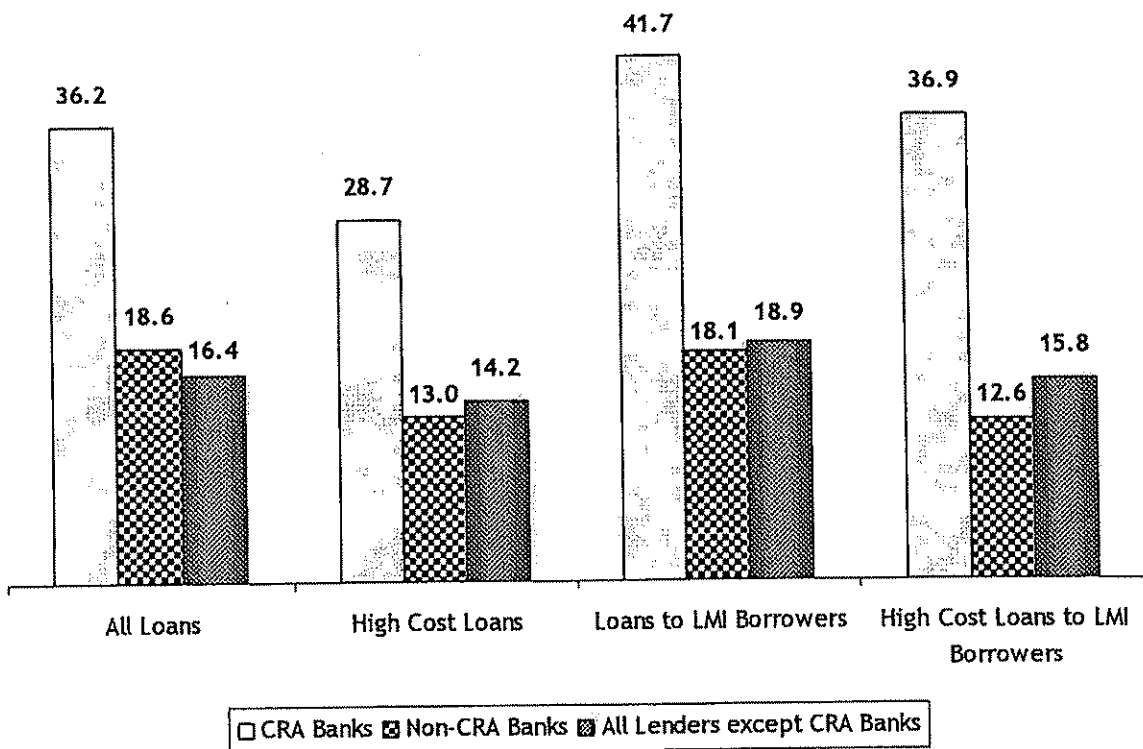


Figure 7

With few exceptions, these overall findings were reflected in the findings for each metropolitan area analyzed. Please see Figures A-2 through A-5 in Appendix A for details.

⁸ Speech of Governor Randall S. Kroszner at the Consumer Bankers Association 2007 Fair Lending Conference, Washington, D.C., November 5, 2007.

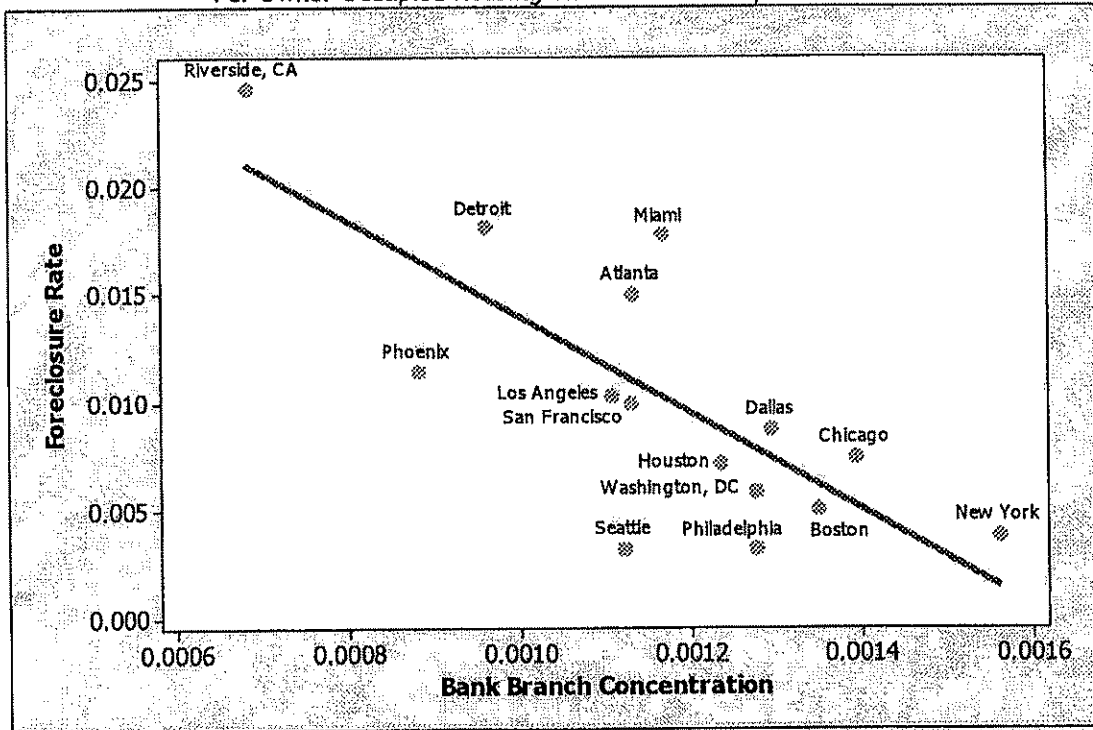
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(4) Bank Branch Concentration and Property Foreclosure Rates

Foreclosure rates are lower in metropolitan areas that have proportionately more bank branches. For the reasons explained below, we suspect that the CRA's focus on service to communities where a bank's branches are located may have caused CRA Banks to more carefully underwrite loans and, consequently, make fewer nonperforming loans.

Overall, our study found a very high negative statistical correlation (-0.764) between the number of bank branches and the number of properties with foreclosure filings per owner-occupied housing unit. The graph below contrasts each MSA's foreclosure rate to its proportional number of bank branches. Note the trend line which indicates that the higher a metropolitan area's concentration of bank branches, the lower the foreclosure rate there.

Foreclosure Rates and Bank Branch Concentration
Per Owner-Occupied Housing Unit in 15 Most Populous MSAs



Sources: Foreclosure data is for the third quarter of 2007 and derived from RealtyTrac's® press release dated November 14, 2007; bank branch data is from the FDIC.

Figure 8

Foreclosure rates are obviously impacted by a range of economic and demographic factors, including, according to the Federal Reserve Bank of Boston, housing prices and unemployment rates.⁹ However, the negative correlation between bank branch concentration and foreclosure rate was substantially higher in absolute value than the correlation between

⁹ Gerardi, Shapiro, and Willen, "Subprime Outcomes: Risky Mortgages, Homeownership Experiences, and Foreclosures," Federal Reserve Bank of Boston Working Paper 07-15 analyzing homeownership experiences in Massachusetts, December 3, 2007.

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foreclosure rate and unemployment rate (0.574)¹⁰ and slightly higher in absolute value than the negative correlation between foreclosure rate and change in housing prices (-0.721).¹¹

A bank's CRA responsibilities to a community emanate from the presence of a branch there¹² and, as noted above, a bank's record of serving the credit needs of LMI borrowers in its community is arguably the most important facet of CRA compliance. In addition, CRA examinations assess a bank's distribution of branches and its "record of opening and closing branches, particularly branches located in LMI geographies or primarily serving LMI individuals."¹³ The CRA's emphasis on branches may have helped limit the proportion of high cost lending for two reasons.

First, ready access to a bank branch allows a borrower to conveniently apply for a mortgage loan directly from a local institution. This obviates the need to use a mortgage broker, where loans are often more expensive.¹⁴ In its review of 2004 HMDA data, Federal Reserve Board staff noted:

[T]he incidence of higher-priced lending was significantly higher for borrowers who lived outside the assessment areas of lenders covered by the CRA than for those who lived inside these areas. The HMDA data do not provide a reason for this pattern, but several explanations that warrant further research are possible. For example, the difference may be due, at least in part, to a reliance on different delivery channels for loans within and outside these lenders' assessment areas.¹⁵

Second, the CRA's mandate to serve local communities may, albeit indirectly, encourage CRA Banks to more closely scrutinize the creditworthiness of borrowers who submit loan applications at their assessment area branches. The more loans a CRA Bank makes in its assessment area, especially to LMI borrowers, the greater the likelihood that examiners will conclude it is fulfilling its CRA obligations. Therefore, in order to compete with other lenders in their CRA assessment area, CRA Banks may price loans more aggressively there. Heightened scrutiny of a borrower's creditworthiness minimizes the likelihood of mistaking a person with good credit as a poor credit risk. It may also have the collateral effect of reducing the likelihood that a CRA Bank would inadvertently offer higher cost loans to prospective borrowers who actually qualify for less expensive loans. The lower loan rates, and the fact that creditworthiness has been thoroughly investigated before the loan is approved, may also contribute to the lower foreclosure rates associated with these loans.

¹⁰ Unemployment rate is for the September 2007 civilian labor force (not seasonally adjusted) from the U.S. Department of Labor.

¹¹ Third quarter 2007 annual percent change in median sales price of existing single-family homes (not seasonally adjusted) from the National Association of REALTORS®.

¹² 12 CFR 228.41(c)(2).

¹³ 12 CFR 228.24(d)(2).

¹⁴ See e.g., Joint Center for Housing Studies, Harvard University, "Credit Capital and Communities; The Implications of the Changing Mortgage Banking Industry for Community Based Organizations," March 9, 2004 at 4.

¹⁵ Avery, Canner, and Cook, "New Information Reported Under HMDA and Its Application in Fair Lending Enforcement," Volume 91 Federal Reserve Bulletin Number 3 (Summer 2005).

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Conclusion

Our study suggests that without the CRA, the subprime crisis and related spike in foreclosures might have negatively impacted even more borrowers and neighborhoods. Compared to other lenders in their assessment areas, CRA Banks were less likely to make a high cost loan, charged less for the high cost loans that were made, and were substantially more likely to eschew the secondary market and hold high cost and other loans in portfolio. Moreover, branch availability is a key element of CRA compliance, and foreclosure rates were lower in metropolitan areas with proportionately greater numbers of bank branches.

Prior to the foreclosure crisis, some had suggested that the boom in subprime mortgage lending, by easing access to credit for LMI borrowers, rendered the CRA irrelevant or obsolete.¹⁶ However, the demise of subprime lending, even if only temporary, and the lower proportion of high cost loans made by CRA Banks even when the subprime market was thriving, suggest that the CRA still has a vital role to play.

Of course, CRA Banks, even in their own assessment areas, have a relatively small portion of the mortgage market. In the 15 metropolitan areas analyzed, the CRA Bank market share of all loan originations was less than 25 percent, limiting the law's impact on the subprime crisis.

Because the vast majority of mortgage lending is done by other entities, some have suggested extending CRA-like obligations to other lenders as a way of limiting the volume of high cost loans and the problems associated with them. While extending the CRA to bank affiliates and subsidiaries that lend in the bank's community may have some merit, we believe that the presence of local brick and mortar branches was as important a reason for CRA Banks' better performance than fear of a less than satisfactory CRA evaluation.

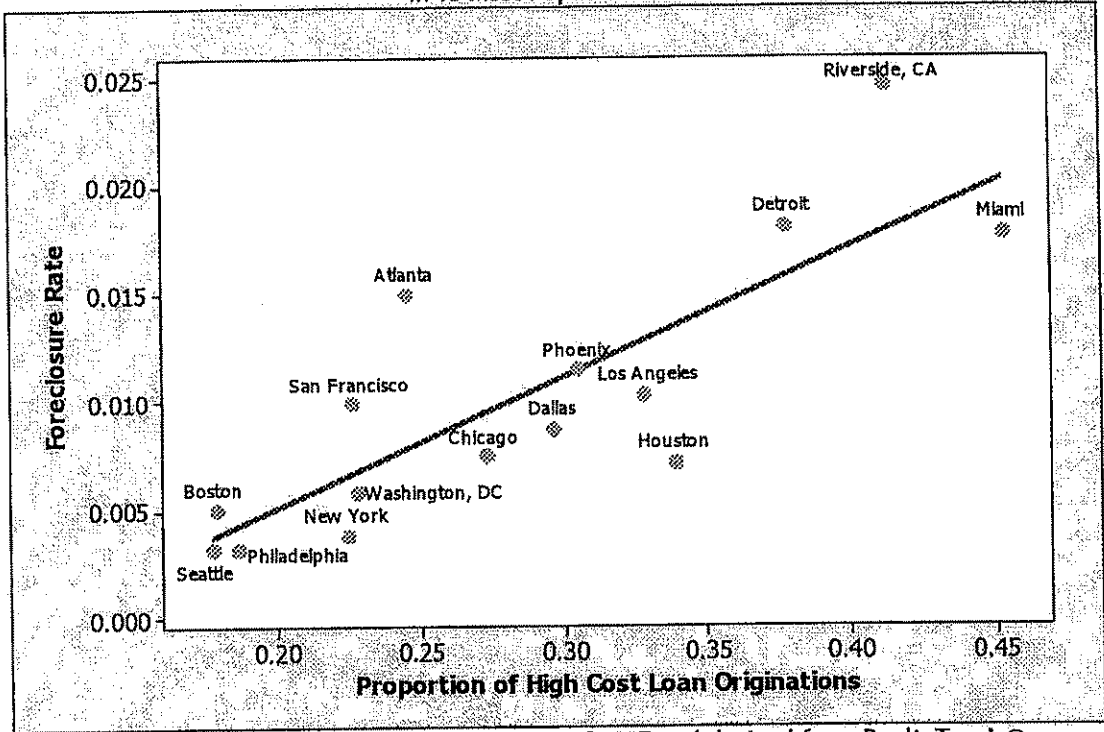
Branches demonstrate a bank's commitment to and investment in a community. The ongoing interaction between bankers and residents that occurs at a deposit-taking branch provides insight into credit needs that may enable banks to make more reliable assessments of borrowers' creditworthiness and to avoid making loans that are likely to default. In addition, by providing borrowers with a convenient location at which to apply for mortgage loans, branches may serve as a magnet for attracting creditworthy borrowers. Without a branch nexus, it is doubtful whether the same benefits can be realized for other lenders.

¹⁶ See, e.g., "Gunther, 'Should CRA Stand for 'Community Redundancy Act'?', *Regulation* (The Cato Review of Business and Government) Vol. 23, No. 3, 2000.

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Appendix A

**Foreclosure Rates and Proportion of High Cost Loans
in 15 Most Populous MSAs**



Source: Foreclosure data is for the third quarter of 2007 and derived from RealtyTrac's® press release dated November 14, 2007

Figure A-1

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Loan Retention Proportions for Each MSA

Proportion of All Loans Held in Portfolio

Metropolitan Area	CRA Banks	Non-CRA Banks	All Lenders Except CRA Banks
Atlanta	36.4%	14.0%	19.6%
Boston	46.4%	24.9%	24.3%
Chicago	28.8%	27.9%	17.0%
Dallas	37.9%	22.8%	16.1%
Detroit	16.2%	24.8%	18.0%
Houston	34.4%	12.0%	18.2%
Los Angeles	42.5%	19.0%	14.9%
Miami	36.2%	12.9%	13.1%
New York	34.8%	19.4%	16.8%
Philadelphia	34.4%	16.5%	13.7%
Phoenix	37.1%	20.7%	15.9%
Riverside, CA	31.6%	12.9%	13.9%
San Francisco, CA	53.5%	21.5%	15.3%
Seattle	37.7%	22.8%	14.6%
Washington, DC	39.6%	11.8%	16.2%

Figure A-2

Proportion of All High Cost Loans Held in Portfolio

Metropolitan Area	CRA Banks	Non-CRA Banks	All Lenders Except CRA Banks
Atlanta	33.7%	12.7%	14.5%
Boston	30.0%	14.3%	13.9%
Chicago	20.2%	18.3%	14.0%
Dallas	64.4%	15.4%	17.1%
Detroit	10.3%	24.9%	18.4%
Houston	52.5%	8.8%	15.8%
Los Angeles	24.3%	8.3%	15.7%
Miami	30.2%	11.9%	11.5%
New York	26.3%	12.8%	12.1%
Philadelphia	28.6%	13.5%	12.9%
Phoenix	46.5%	16.0%	14.9%
Riverside, CA	21.8%	5.4%	14.4%
San Francisco, CA	24.0%	11.2%	13.9%
Seattle	48.6%	17.7%	15.9%
Washington, DC	25.4%	11.5%	11.8%

Figure A-3

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Proportion of All Loans to LMI Borrowers Held in Portfolio

Metropolitan Area	CRA Banks	Non-CRA Banks	All Lenders Except CRA Banks
Atlanta	51.8%	11.3%	19.7%
Boston	56.1%	23.7%	27.5%
Chicago	30.4%	19.5%	16.4%
Dallas	54.3%	32.0%	20.5%
Detroit	15.2%	19.9%	20.8%
Houston	50.3%	7.7%	18.4%
Los Angeles	40.6%	49.3%	37.8%
Miami	50.3%	15.4%	18.8%
New York	37.6%	19.6%	20.5%
Philadelphia	43.1%	12.3%	13.1%
Phoenix	42.4%	15.1%	15.0%
Riverside, CA	33.2%	11.1%	24.0%
San Francisco, CA	56.8%	33.6%	25.2%
Seattle	35.7%	19.1%	16.9%
Washington, DC	50.3%	10.4%	19.9%

Figure A-4

Proportion of All High Cost Loans to LMI Borrowers Held in Portfolio

Metropolitan Area	CRA Banks	Non-CRA Banks	All Lenders Except CRA Banks
Atlanta	35.4%	9.6%	13.6%
Boston	30.8%	13.6%	16.8%
Chicago	26.6%	14.9%	13.2%
Dallas	77.4%	19.3%	18.7%
Detroit	10.1%	20.5%	19.6%
Houston	62.2%	5.5%	15.9%
Los Angeles	84.1%	62.5%	63.7%
Miami	42.5%	12.8%	12.9%
New York	33.6%	13.3%	14.6%
Philadelphia	28.5%	10.5%	11.6%
Phoenix	48.0%	14.7%	14.2%
Riverside, CA	41.4%	9.3%	43.8%
San Francisco, CA	62.5%	17.6%	37.4%
Seattle	48.8%	13.2%	17.4%
Washington, DC	30.8%	8.1%	11.3%

Figure A-5

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Foreclosure Rates and Bank Branch Concentration
Ranked by Foreclosure Rates in 15 Most Populous MSAs

Metropolitan Area	# of Properties with Foreclosure Filings ¹	# of Owner Occupied Housing Units ²	Foreclosure Rate ³	# of Bank Branches ⁴	Proportion of Bank Branches ⁵
Riverside, CA	20,664	838,093	0.0247	570	0.00068
Detroit	22,876	1,261,188	0.0181	1,210	0.00096
Miami	24,144	1,357,812	0.0178	1,583	0.00117
Atlanta	18,940	1,261,351	0.0150	1,428	0.00113
Phoenix	11,242	979,314	0.0115	862	0.00088
Los Angeles	22,338	2,170,255	0.0103	2,401	0.00111
San Francisco	8,988	906,476	0.0099	1,023	0.00113
Dallas	11,618	1,327,280	0.0088	1,718	0.00129
Chicago	17,355	2,328,139	0.0075	3,244	0.00139
Houston	8,500	1,182,763	0.0072	1,460	0.00123
Washington, DC	7,699	1,318,546	0.0058	1,683	0.00128
Boston	5,471	1,082,956	0.0051	1,461	0.00135
New York	13,939	3,609,780	0.0039	5,632	0.00156
Philadelphia	4,912	1,533,934	0.0032	1,956	0.00128
Seattle	2,639	819,357	0.0032	918	0.00112

¹ Source: RealtyTrac® November 14, 2007 press release on third quarter 2007 metropolitan area foreclosure rates.

² Source: U.S. Census Bureau's 2006 American Community Survey.

³ # of Properties with Foreclosures per Owner Occupied Housing Unit.

⁴ Source: Federal Deposit Insurance Corporation, as of June 30, 2007.

⁵ # of Bank Branches per Owner Occupied Housing Unit.

Figure A-6

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Appendix B

Methodology

This study examined HMDA-reported conventional, owner-occupied, first lien, home purchase loans (“Loans”) originated in 2006 in the 15 most populous MSAs according to the U.S. Census Bureau as of July 1, 2006. For each MSA, Federal Financial Institutions Examination Council data was obtained on each HMDA-reported origination and HMDA-reporting institution and on the CRA assessment areas of every bank that filed a CRA Disclosure Report (“CRA-reporting bank”). Using this data, each Loan was categorized based on whether it was a high cost Loan, whether it was originated to an LMI borrower, the type of lender originating it, and where it was originated.

Definitions

High Cost Loans (also known as subprime loans) – Loans designated by HMDA as having rate spreads because their Annual Percentage Rates (“APRs”) were at least three percentage points higher than the yields on comparable maturity Treasury securities.

Average Rate Spread – The rate spread is the APR minus the yield on the Treasury security with a comparable maturity and is only reported for High Cost Loans. The average rate spread for a geography is the mean rate spread (i.e., the sum of the rate spreads divided by the total number of High Cost Loans).

LMI Borrower – A borrower whose income is less than 80 percent of the Area Median Income. For a borrower located in an MSA, the Area Median Income is the median family income for the MSA.

Loan held in Portfolio – A Loan with a HMDA-reported Type of Purchaser code of “0,” indicating the Loan was not sold during 2006.

Correlation – A commonly used measure of the strength and direction of a linear relationship between two variables (obtained by dividing the sample covariance of the variables by the product of their sample standard deviations). Correlation ranges from +1 to -1. If one variable tends to increase as the other decreases, the correlation is negative. Conversely, if the two variables tend to increase together the correlation is positive. The stronger the linear relationship between the variables, the higher the absolute correlation between the variables. Therefore, if there is a perfect linear relationship between two variables the correlation is 1 (either positive or negative); if there is no linear relationship between the two variables the correlation is zero.

Notes

- 1) In Figures 8, A-1, and A-6, foreclosure property figures for Nassau and Suffolk counties in New York, Lake County in Illinois, and Kenosha County in Wisconsin are based on estimates. Foreclosure figures for Rockingham and Strafford counties in New Hampshire included in the Boston foreclosure figure were obtained directly from RealtyTrac® rather

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than from the November 14, 2007 press release on third quarter 2007 metropolitan area foreclosure rates.

- 2) Calculations for “All MSAs” combine figures for the 15 most populous MSAs, effectively causing MSAs with more Loans to have greater weight.
- 3) The denial rates referred to on Page 2 are for submitted applications and therefore exclude purchases and preapprovals. The figures also exclude HMDA filers who did not originate at least one loan in 2006.

Lender Categories

The study categorized each Loan according to the type of lender that originated it.

CRA Banks – CRA-reporting banks making mortgage loans subject to the CRA (*i.e.*, in their assessment area) in the 15 most populous MSAs.

Non-CRA Banks – Banks that filed a CRA report but whose assessment areas did not include the MSA analyzed.¹⁷

Other Lenders / All Lenders Except CRA Banks – Lenders that were not CRA Banks.

Description of the 15 Most Populous MSAs

The following counties and/or cities comprise the each of the 15 most populous MSAs reviewed:

Atlanta: MSA 12060 Atlanta-Sandy Springs-Marietta, GA – Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton counties in Georgia

Boston: MSA 14460 Boston-Cambridge-Quincy, MA-NH – Norfolk, Plymouth, Suffolk, Middlesex, and Essex counties in Massachusetts; Rockingham and Strafford counties in New Hampshire

Chicago: MSA 16980 Chicago-Naperville-Joliet, IL-IN-WI – Cook, DeKalb, DuPage, Grundy, Kane, Kendall, McHenry, Will, and Lake counties in Illinois; Jasper, Lake, Newton, and Porter counties in Indiana; Kenosha County in Wisconsin

Dallas: MSA 19100 Dallas-Fort Worth-Arlington, TX – Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall, Johnson, Parker, Tarrant, and Wise counties in Texas

¹⁷ The CRA Bank and Non-CRA Bank categories exclude Loans made by banks that did not file a CRA Disclosure Report, presumably because they did not meet the asset size threshold. These Loans constituted 1.6 percent of all Loans made in the 15 most populous metropolitan areas.

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Detroit: MSA 19820 Detroit-Warren-Livonia, MI – Wayne, Lapeer, Livingston, Macomb, Oakland, and St. Clair counties in Michigan

Houston: MSA 26420 Houston-Baytown-Sugar Land, TX – Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties in Texas

Los Angeles: MSA 31100 Los Angeles-Long Beach-Santa Ana, CA – Los Angeles and Orange counties in California

Miami: MSA 33100 Miami-Fort Lauderdale-Miami Beach, FL – Broward, Miami-Dade, and Palm Beach counties in Florida

New York: MSA 35620 New York-Northern New Jersey-Long Island, NY-NJ-PA – Nassau, Suffolk, Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, and Westchester counties in New York; Middlesex, Monmouth, Ocean, Somerset, Essex, Hunterdon, Morris, Sussex, Union, Bergen, Hudson, and Passaic counties in New Jersey; Pike County in Pennsylvania

Philadelphia: MSA 37980 Philadelphia-Camden-Wilmington, PA-NJ-DE-MD – Bucks, Chester, Delaware, Montgomery, and Philadelphia counties in Pennsylvania; Burlington, Camden, Gloucester, and Salem counties in New Jersey; New Castle County in Delaware; Cecil County in Maryland

Phoenix: MSA 38060 Phoenix-Mesa-Scottsdale, AZ – Maricopa and Pinal counties in Arizona

Riverside, CA: MSA 40140 Riverside-San Bernardino-Ontario, CA – Riverside and San Bernardino counties in California

San Francisco: MSA 41860 San Francisco-Oakland-Fremont, CA – Alameda, Contra Costa, Marin, San Francisco, and San Mateo counties in California

Seattle: MSA 42660 Seattle-Tacoma-Bellevue, WA – King, Snohomish, and Pierce counties in Washington

Washington, DC: MSA 47900 Washington-Arlington-Alexandria, DC-VA-MD-WV – District of Columbia, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, and Warren counties and Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park cities in Virginia; Frederick, Montgomery, Calvert, Charles, and Prince George's counties in Maryland; Jefferson County in West Virginia



January 14, 2002
The New York Bankers Association
High Cost Home Lending "Best Practices"

The New York Bankers Association (NYBA) opposes predatory lending practices and is committed to working with state and federal officials to help combat this problem through consumer education and community-based programs. Among other things, NYBA members support education initiatives designed to make consumers more financially aware and to protect them against predatory lending practices. Members are also committed to the full enforcement of existing federal and New York laws and regulations designed to combat predatory lending practices.

To go even further to protect consumers, NYBA has developed these Best Practices to provide guidance to NYBA members in developing lending policies for Covered Loans in the State of New York (that is, those home loans which currently fall within the scope of federal and New York State regulatory high cost home loan thresholds.) These guidelines are not intended to be an exclusive description of the various ways in which NYBA members can develop and implement effective home lending practices designed to safeguard consumers.

No lending without due regard to repayment ability . NYBA members should not make Covered Loans without regard to the individual consumer's repayment ability. In this regard, when making Covered Loans, NYBA members may consider, among other things, the consumer's current and expected income, credit history, current obligations, and employment status and other financial resources (other than the consumer's equity in the dwelling which secures repayment of the loan).

Limitations on credit insurance. Credit insurance on Covered Loans should always be completely at the option of the consumer. NYBA members support full disclosure of all credit insurance terms and conditions. Where applicable, consumers should be made aware that although single premium credit insurance is financed over the life of the loan, insurance coverage may not extend for the full loan term. Members presently offering single premium credit insurance on Covered Loans, where practicable, will offer a monthly payment credit insurance product in lieu of (or as an alternative to) single premium credit insurance provided that such a product is approved by the state and necessary procedures are in place.

Limitations on refinancings. In the event a NYBA member refinances its own Covered Loan with a new Covered Loan within one year of the refinanced loan's origination (or such longer time as permissible under applicable law or regulation), it will charge points only on the new money in the new loan. Alternatively, at the member's option, where permissible, the member may refund the points on the old loan. "New money" is the amount by which the new principal exceeds the payoff amount of the old loan. As a matter of principle NYBA members will only refinance an existing loan if there is a reasonably anticipated present or potential benefit to the customer of the refinance.

Limitations on negative amortization. NYBA members should not make a Covered Loan

where the contract provides for a payment schedule with regular periodic payments that cause the principal balance to increase. This provision does not apply to negative amortization as a consequence of a temporary forbearance or restructure sought by the consumer.

Limitations on demand clauses. NYBA members should not enter into a Covered Loan that contains call provisions that permit the member, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply when repayment of the loan has been accelerated: by default; pursuant to a due-on-sale provision or pursuant to some other provision of the loan agreement; or where there is fraud or material misrepresentation by the consumer in connection with the loan; or where there is any action or inaction by the consumer that adversely affects the member's security for the loan or any rights of the member in such security.

Limitations on increased interest rate upon default. No Covered Loan may contract for any increase in the interest rate after default. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan agreement, provided the change in the interest rate is not occasioned by the event of default or a permissible acceleration of the indebtedness.

Limitations on advance payments. No Covered Loan may include terms under which any periodic payments required under the loan are paid in advance from the loan proceeds provided to the obligor. This provision does not apply to rehabilitation or similar loans where the property is currently uninhabitable and advance payments are offered as an option to the borrower during the rehabilitation process.

Limitations on mandatory arbitration. NYBA members should not enter into a Covered Loan with a mandatory arbitration clause unless the arbitration clause complies with the rules set forth by a nationally recognized arbitration organization, such as the standards set forth in the Statement of Principles of the National Consumer Dispute Advisory Committee.

Reporting to credit bureaus. NYBA members shall report at least quarterly to a nationally recognized consumer credit reporting agency the payment history information of consumers on payments due to them on Covered Loans.

Limitations on payments of proceeds to home improvement contractors. NYBA members shall not pay a contractor under a home-improvement contract from the proceeds of a Covered Loan other than by an instrument payable to the consumer or jointly to the consumer and the contractor or, at the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the member, and the contractor prior to the disbursement of funds to the contractor.

Verification of broker licensure. A Lender shall verify that each mortgage broker with whom it does business in connection with Covered Loans holds a valid license or other authorization currently in effect to do business within New York State.

Notice to Brokers of Fair Lending Policies. The Lender will make mortgage brokers, with whom it does business in connection with Covered Loans, aware of its fair lending policies.