TESTIMONY FOR
NEW YORK CITY COUNCIL HEARING ON RESOLUTION 247 (CRA)
June 8, 2010

Good morning. My name is Wendy Takahisa and I am pleased to present this testimony on behalf of Richard Neiman, the Superintendent of Banks for the New York State Banking Department ("Banking Department"). I am the Director of the Banking Department's Community Reinvestment Act ("CRA") Unit, which is part of the Consumer Services Division.

Banking Department Background

Established in 1851, the New York State Banking Department is the oldest bank regulatory agency in the nation. We regulate more than 3,300 entities providing financial services in New York State, including both depository and non-depository institutions. The total assets of the depository institutions supervised by the Banking Department exceed $2.4 trillion.

New York is one of only five states in the country that has a state-specific CRA statute (Banking Law §28-b) and implementing regulations (Part 76 of the General Regulations of the Banking Board). The law was enacted in 1978, one year after the federal statute, largely in response to concerns about the existence of redlining in poor and minority communities in the 1960's and 70's. More than 90 New York state-chartered banks are examined for compliance with the state statute. All of our banks are also examined for compliance with the federal CRA statute by a federal regulator, either the Federal Depository Insurance Corporation ("FDIC"), or the Federal Reserve Bank of New York, depending on whether the bank has opted to become a member of the Federal Reserve System. We attempt to conduct the CRA examinations concurrently with our federal counterparts to maximize consistency in examination processes and ratings. Thus, although the Council's proposed resolution focuses solely on CRA examinations conducted by the federal regulators, if Congress decides to adopt the resolution, the changes made to federal examination processes may affect the way the Banking Department conducts its own CRA examinations. Consequently, we are very interested in the outcome of Resolution 247.

The Foreclosure Crisis in New York

Although New York State has not been one of the hardest hit by foreclosure filings, there were a total of 50,309 1-4 family properties with foreclosure filings in 2009. States like New York were among the first to identify that a crisis was brewing with residential mortgage defaults and were fast to act on developing solutions. During 2008, the Banking Department, through the Governor's HALT (Halt Abusive Lending Transactions) Task Force, hosted eight Operation Protect Your Home forums across the state. Through these forums, which were designed to bring borrowers and lenders together face-to-face in an effort to avoid unnecessary foreclosures, the Banking Department reached out to more than 36,000 New Yorkers at risk of delinquency or foreclosure.

The Banking Department also has been active in addressing the residential mortgage crisis through its work with the Governor's office, assisting in the passage of the 2008 Mortgage Lending Reform Bill and the 2009 Mortgage Foreclosure Law. These laws addressed many of the predatory lending practices which increased the likelihood that homeowners would default on their mortgages. The laws also established important protections to help homeowners already in foreclosure. Some of the protections created were:

- mandatory pre-foreclosure notices to homeowners, including co-op owners, to encourage them to contact their lenders and seek help from housing counselors;
- requiring lenders to file information about each delinquent residential loan with the Banking Department within three days of sending a pre-foreclosure notice in order to track foreclosures and target resources to homeowners at risk of foreclosure;
- mandatory settlement conferences for homeowners in foreclosure to encourage resolutions that avoid foreclosure and;
- requiring the registration of mortgage loan servicers with the Banking Department.

In addition, the 2009 law specifically assists tenants who reside in foreclosed properties. In brief, the law requires that tenants be provided notice when their building is the subject of a foreclosure action and be informed of their right to stay in their apartments. The law gives tenants the right to remain in their homes for 90 days or the remaining term of their lease, whichever is greater, on the same terms and conditions that were in effect at the time of the foreclosure judgment and sale. The law also requires the party who obtains a judgment of foreclosure to maintain property that is vacant or abandoned but occupied by a tenant. Such property must be maintained in compliance with the New York Property Maintenance Code and, where occupied by a tenant, in safe and habitable condition.

The Banking Department also used $2million dollars obtained from settlements of prior enforcement actions to fund nonprofit housing counselor agencies and legal services programs to assist homeowners in default or foreclosure.

The Department also shares the City Council's concerns about the crisis unfolding in the multifamily mortgage arena. Currently, there is a total of $24.4 billion on the books of New York State chartered banks. Less than 3% of these loans are troubled. We cannot estimate how much of these funds represent mortgages on property in New York State because some of the banks involved, although chartered in New York, lend outside of New York. Nor do we have information on mortgages in New York made by banks that we do not supervise. Nevertheless, the problem is clear. A recent study[1] by the Citizens Housing and Planning Council estimated that close to 100,000 multifamily rental housing units in New York City are in buildings carrying loans far in excess of their ability to pay, and an additional 100,000 units are at risk throughout New York State. The fate of these buildings greatly affects the tenants who frequently see the building's operations and their living conditions deteriorate once a property goes into default, or foreclosure. Although they now have the right to remain when their building is foreclosed and the lender has the

[1] Shultz, Harold, "Debt Threat- *Saving Multifamily Rental Housing From Zombie Mortgages*," August 2009, Citizens Housing & Planning Council.

duty to maintain the foreclosed property, these tenants are still at risk that building owners facing default will stop maintaining their buildings during the foreclosure process and that lenders will not comply with their obligations to maintain the property after foreclosure. In any event, tenants in such buildings face an uncertain future.

In other cases, where the property mortgaged is a partially-built construction site, the default or foreclosure results in uncompleted housing and dangerous eyesores in many neighborhoods. The fate of these buildings also threatens the stability of neighborhoods, reducing property values in the communities where they are located and causing unemployment for those involved in the construction work. These job losses can themselves place formerly stable homeowners into default facing foreclosure of their properties.

Superintendent Neiman, one of five members appointed to the Congressional Oversight Panel created by Congress "to review the current state of financial markets and the regulatory system," has worked to bring attention to the problem of multifamily real estate. In May 2009, the Panel presided over a field hearing in New York City focusing on commercial real estate lending in New York City. Subsequently, in February 2010, the Panel issued a report on its findings, "Commercial Real Estate Losses and the Risk to Financial Stability." Although it is a national report, the relevance to New York City is clear.

The report notes that the commercial real estate cycle tends to lag behind the residential cycle and points out the risks posed by the current and projected condition of commercial real estate. The Panel offered several possible approaches to address the problem, including immediate write-downs of non-performing loans where necessary to reflect the true condition of those small and mid-sized banks holding high percentages of the weakest commercial mortgages. For larger banks, in addition to identifying a need for greater regulatory and market vigilance, the panel stressed that the regulators must not hesitate to require banks

to increase capital to offset prospective losses.[2] Notwithstanding the panel's suggestions, it is clear that additional innovative approaches to combating the crisis in commercial real estate are needed. Thus, we commend the Council's attempt to use CRA as one such innovative tool to address the lack of funding in the multi-family market.

CRA Credit as a Tool to Battle Commercial Real Estate Foreclosures

As the Council's resolution notes, CRA was enacted to encourage banks to make loans and investments and provide services throughout their communities, including low- and moderate-income ("LMI") communities. In addition, in high-cost areas, such as New York City, banks are also encouraged to work more broadly because it is understood that where housing costs are high, the ability to obtain mortgages is harder, especially for the LMI communities. Although different sized banks are subjected to different CRA examination protocols, all banks are examined for lending, including multifamily lending.

Under the CRA, lending to multifamily buildings is generally considered under the lending test, either as mortgage lending or as community development lending. Under the lending test, regulators generally look at new credit extensions in assessing whether a bank is meeting the credit needs of its community. A loan modification, which is a change in terms of an existing loan, would not be considered a new loan extension under CRA. That is why a bank is not typically given credit for loan modifications during CRA exams. However, through a prudent write-down, a bank may be able to transfer a multifamily property to a new responsible owner that will commit to maintaining the building for existing LMI tenants, or in the case of vacant or half-built developments, setting aside a portion of the units for affordable housing. The Banking Department encourages the federal agencies to consider giving banks CRA credit for the percentage of the write-down that supports the affordable housing units. As part of our overall CRA reform efforts, the Banking Department is considering these very measures. In addition to

[2] Further information can be obtained from the report, which is available at http://cop.senate.gov/documents/cop-021110-report.pdf

any direct dollar credit that we might give during a CRA exam, we are also determining what other factors to consider in weighing the significance of a particular transaction. Some factors we are reviewing include:

1) whether the new owner has the support of the community, which may be demonstrated by working with a not-for-profit community development corporation;
2) the length of time that the units will be set aside for affordable, low- and moderate-income housing; and
3) the amount of the write-down that is over and above the amount the bank could have obtained if the set aside for low- and moderate-income tenants was not in place.

We suggest that some consideration of these factors also be made by the federal regulators as they determine how Resolution 247 might be given effect.

The Banking Department notes that Resolution 247 asks the federal agencies to focus solely on stalled construction sites. However, these projects do not yet house any tenants who would be in danger of losing their homes. Thus, we would encourage the Council also to consider how to award CRA credit to banks that focus on preserving existing affordable rental units for existing LMI tenants.

Similarly, we note that Resolution 247 focuses on the need for affordable housing for middle-income tenants. As a high-cost market, New York City certainly needs housing for this population, but programs aimed at middle-income tenants already can be considered during a CRA exam. Thus, we urge the City Council, and our federal counterparts to ensure that appropriate resources are also directed towards LMI populations. It is unclear how many of the stalled construction projects which the Council seeks to have completed would provide affordable housing for LMI residents. To the extent that these projects do not include such units, we suggest that the resolution be modified to include this population.

Finally, as we consider the resolution and our own next steps we suggest that the Council determine whether the changes it seeks require

legislative or regulatory action. Currently, the resolution calls on Congress to amend the CRA statute, but it is not clear that this is what is needed. There is nothing in the federal statute that dictates the protocols for CRA exams. Instead, the details of how a CRA exam should be performed and which activities to assign CRA credit are contained in agency regulations. Thus, it would appear that the best avenue to produce the results sought by Resolution 247 lies in regulatory change. We make this observation because it is likely to impact the speed and ease of the resolution's adoption and implementation. Even if Congress acts and passes legislation incorporating Resolution 247's aims, that legislation must then be incorporated into regulations to give those aims any effect. Given that the problems you are trying to address will not wait, speed and ease of process are not minor considerations.

Conclusion

Completing the construction of or saving existing affordable multifamily housing is critical to the health of New York City's neighborhoods, especially Upper Manhattan and parts of the Bronx, Brooklyn and Queens. We do not expect this to be an easy task, so innovative solutions are needed.

Today, the New York State Banking Department is here in support of this step that the New York City Council is taking to use CRA in a creative way to address the multifamily foreclosure problem. Indeed, CRA encourages creative and innovative solutions to meet community credit needs, so exploring ways to further that goal makes sense. On behalf of the New York State Banking Department and Superintendent Neiman, I thank you again for this opportunity to present our thoughts on Resolution 247.

I welcome any questions.

Thank you.

ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, INC.

TESTIMONY OF
DAVE HANZEL, POLICY DIRECTOR, BEFORE
THE NEW YORK CITY COUNCIL
COMMUNITY DEVELOPMENT COMMITTEE

June 8, 2010

Good Morning. Thank you, Chairman Vann and Committee Members, for this opportunity to testify about Resolution 247-A.

My name is Dave Hanzel and I am the Policy Director of the Association for Neighborhood and Housing Development. ANHD is a not-for-profit membership organization of over 100 neighborhood-based housing groups across the five boroughs. Our members represent the full range of not-for-profit housing organizations - CDCs, affordable homeownership groups, supportive housing providers and community organizers. ANHD works with our members to advocate for comprehensive, progressive housing polices and programs to support affordable, flourishing neighborhoods for all New Yorkers, especially our lower income residents.

The Resolution before the Committee today is of great importance to ANHD and we would like to recognize the leadership of Council Member Vann and Council Member Reyna for their efforts to turn stalled construction projects into affordable housing. Resolution 247-A represents exactly the type of creative, proactive solution we need at this moment. As Committee Members may know, ANHD has been working to develop solutions to other predatory practices facing both multi-family rental and owner-occupied properties that are de-stabilizing our neighborhoods and threatening our city's affordable housing.

Over the past several years, ANHD has identified almost 100,000 units of affordable rental housing that were purchased by speculative owners backed by predatory equity. We estimate that up to 54,000 of these apartments may be at risk of going into foreclosure because their predatory equity-backed landlords over paid for the properties and were unsuccessful at removing working class tenants in favor of more affluent residents. Unfortunately, as these properties move toward default, a new wave of vulture investors looms that is eager to continue the model of paying a price that is not supported by current rents. Looking to stop this cycle, ANHD has worked aggressively with lenders, HPD, elected officials, tenants and our members to not only ensure building conditions are maintained, but more importantly to facilitate the transfer of these properties to preservation-minded purchasers. Banks, however, have been incredibly reluctant to acknowledge the true value of the property and write down the value of the initial mortgage. As in the case of stalled construction projects, banks would rather wait and hope market conditions improve rather than admit they made a bad loan, acknowledge the loss and put the propety into productive use.

Like you, we believe the bank's CRA obligations could be a key point of leverage in getting the banks to do the right thing with these troubled properties whether they are stalled construction projects, buildings controlled by predatory equity developers, or owner-occupied homes that have become bank-owned due to a foreclosure. Since our founding in the mid-1970s, ANHD has been engaged in Bank Reinvestment advocacy. ANHD regularly meets with banks to communicate the community development needs and opportunities in neighborhoods across the city, submits comment letters to the bank's regulators during their CRA performance exams, conducts research on the level of lending, investment and services provided by the city's 25 largest banks, and advocates for legislative and regulatory changes to the CRA to make sure it remains a powerful tool in helping to meet the credit needs of low- and moderate-income New Yorkers.

One of the messages that we have consistently shared with both the banks and their regulators over the past three years is that the problems created by predatory lending are devastating our communities and that any action taken by the bank to rectify the problem should be both encouraged and rewarded. While Resolution 247-A could spur Congress to make the banks' obligations in this regard more explicit, we believe banks already have incentives under CRA to make the type of loans needed to enable the property's use as affordable housing.

Under the lending test, a bank receives at least partial CRA credit if the project is located in a low- or moderate income census tract and the loan is intended to revitalize or stabilize the neighborhood. Thus, the current regulatory structure should reward a loan made by a bank that facilitated its transition to affordable housing provided it was located in a LMI neighborhood.

Additionally, under the lending test, the bank is evaluated on both the number and dollar amount of their loans in low- and moderate-income areas as well as qualitative factors like the loan's responsiveness, whether or not the loan meets a need that is not routinely met, and the loan's innovativeness or complexity. Unfortunately, for the most part, banks are no longer going the extra mile to demonstrate their commitment to meeting the community's credit needs by making conventional as well as non-cookie cutter loans. And regulators overly rely on quantitative criteria in determining whether or not the bank's lending should be deemed satisfactory or not. One of ANHD's primary recommendations for CRA reform is that regulators place greater emphasis on these qualitative indicators. It is ANHD's sense that if banks knew these activities were rewarded, potentially at an even higher rate than their conventional loans, it would make them more willing to acknowledge the loss and turn them into affordable housing. If members of the City Council echoed ANHD's call for greater emphasis on qualitative factors like innovativeness, it would go a long way to pushing regulators to require banks to engage in this type of lending.

We would like to raise one specific concern regarding the proposal to raise the household Area Median Income limit to 130% for rental units and 165% of AMI for homeownership. New York City's housing programs define "low-income" as those households earning less than 80% AMI and "moderate-income" as those earning up to 120% AMI. For the purpose of CRA, however, low-income is defined as households earning below 50% of AMI and moderate-income goes up to 80% AMI. Although the proposed increase in eligible AMI does not look drastic using the city's definition, it is a substantial expansion of who CRA was designed to serve. If expansion is

needed to make the financing work, one possible alternative would be to cap eligible household income for either rental or homeownership projects at 120% AMI, which would align it with city guidelines.

Also, it would be unfortunate if Resolution 247-A had the unintended consequence of enabling banks to shift their lending, investment and services from low- and moderate-income residents and communities to more affluent areas. One possible scenario we could envision would be for a bank to re-allocate the bulk of its lending from the five boroughs to the surrounding suburbs and still meet their CRA obligations. Thus, if the adopted changes went forward as proposed, we would urge the Resolution to make it clear that the increase in eligible AMI was only applicable to loans related to stalled construction, predatory equity and/or Real Estate-Owned properties.

Again, thank you for your attention to this matter and for the opportunity to testify. I would be happy to answer any questions.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 247-A

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Dave Hanzel

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(PLEASE PRINT)

Name: Wendy Talkhouse

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I represent: MSBD

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