



New York City Council Passes Bill Establishing Advisory Board to Assess Depository Institutions

May 25, 2012

New York City Council Passes Bill Establishing Advisory Board to Assess Depository Institutions' Efforts to Address Financial Needs at Community Level

Introduction 485-A, titled *A Local Law to amend the New York City charter, in relation to the evaluation of depository banks* and known as the Responsible Banking Act, was introduced to the New York City Council ("the Council") on February 16, 2011. The bill was approved by the Committee on Finance on April 30, 2012, and the full body of the Council on May 15, 2012, by a vote of 44-4.¹ Mayor Michael Bloomberg has stated his intent to veto the bill,² but it appears that the bill's supporters in the Council have the votes to override the threatened veto.³ This proposed bill would amend Section 1523 and 1524 of the New York City charter. Currently Int. 485-A is scheduled to take effect ninety (90) days after it becomes law.

Summary of the Legislation

Section 1: Chapter 58 of the New York City charter would be amended by adding a new section 1525-A

1. *Establishes the Community Investment Advisory Board ("CIAB") within the Department of Finance (DOF).*

a. Board will conduct a "needs assessment" every 2 years, first to be published on the DOF website on or before March 1, 2014. In this process the board shall:

i. Assess the credit, financial and banking services needs of the City with emphasis on low-moderate individuals/communities.

1. must convene at least 1 public hearing in each borough.

2. must accept, review and consider public comments.

3. must consider the data collected under subdivision 3 of this section.

ii. Establish benchmarks, best practices, and recommendations for meeting needs identified by the "needs assessment" by considering data collected under subdivision 3.

b. Board will issue an Annual Report—first must be published on DOF website on or before March 1, 2015, and each March thereafter.

i. Report may be considered by the Banking Commission in reviewing a bank's application for designation or re-designation as a depository bank, covering the preceding fiscal year.

ii. Report will:

1. address how each designated deposit bank is meeting the needs pursuant to the "needs assessment" and subdivision 3 of this section.

2. evaluation of how each bank performed relative to benchmarks and best practices.

3. identify areas of improvement from past evaluations and areas to improve upon.

4. specifically identify any deposit bank's failure to provide information requested in writing by the board pursuant to subdivision 3.

5. summarize written comments submitted to the board pursuant to subdivision 4.

6. summarize the data collected by the board pursuant to paragraphs (a)-(g) of subdivision 3, and paragraph (h) (only information not deemed confidential or proprietary).

2. Board Members

a. Mayor or designee.

b. Comptroller or designee.

c. Speaker of City Council or designee.

d. HPD Commissioner.

e. DOF Commissioner.

f. Member of Community Based Organization or Consumer Protection designated by the Speaker.

g. Small Business Representative designated by the Speaker.

h. Banking Representative appointed by the Mayor.

i. All appointees will serve for a 4-year term, except Mayor, Comptroller, and Speaker who serve for the duration of their tenure.

3. Board shall seek to collect and consider the information at the census tract level regarding each bank's efforts to
:(SECTION 3 as mentioned above)

a. Address the key credit and financial needs of small businesses.

- b. Develop and offer financial services/products most needed by low-moderate income individuals and provide physical branches.
- c. Provide funding for affordable housing and economic development projects in low-moderate income communities.
- d. Address serious material and health/safety issues in foreclosure properties.
- e. Conduct consumer outreach, settlement conferences and similar actions relating to mortgage assistance and foreclosure prevention, including:
 - i. Total number of loans serviced and/or owned by the bank.
 - ii. Total number of loans that are 60 days delinquent.
 - iii. Total number of foreclosures commenced.
 - iv. Total number of foreclosures prevented through loan modification.
 - v. Short sales, deeds in lieu of foreclosure or other mechanisms.
 - vi. Total number of loan modification applications.
 - vii. Total number of loan modifications made and denied.
 - viii. Bank owned properties donated or sold at discount.
- f. Partner in the community development efforts of the city.
- g. Positively impact on the city and its communities through activities including, philanthropic work and charitable giving.
- h. Plan for and articulate how the bank will respond to credit, financial and banking service needs of the city identified by “needs assessment.”

4. Board shall publish all information collected pursuant to paragraphs (a)-(g) of subdivision 3 and non-confidential/proprietary information pursuant to paragraph (h) on DOF website by November 1 of the year preceding the issuance of the report.

- a. Public hearings must be held by December 15 following the publication.

5. On or before March 1, 2013, and on or before March 1, 2014, the board shall publish on DOF website, for each deposit bank, the information collected pursuant to subdivision 3.

Section 2: Subdivision 1 of Section 1524 of the New York City Charter is amended to read as follows:

1. *The banking commission shall, by majority vote, by written notice to the commissioner, designate the banks or trust companies in which all money shall be deposited.*

a. Banking commission shall notify the council within 30 days of receiving an application for designation or re-designation, and shall also notify the council within 30 days of approving or denying such application and the basis for denial.

Section 3: Paragraph (b) of subdivision 2 of Section 1524 of the New York City charter is amended to include:

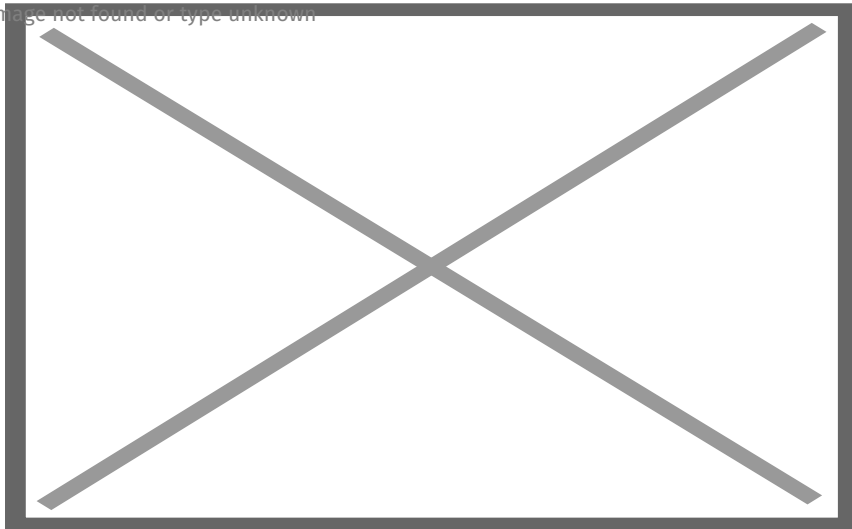
b. The banking commission shall post notice of any revocation of a bank or trust company's designation as a city depository on the DOF website and the reason for such revocation.

Section 4: This local law shall take effect ninety (90) days after it shall have become a law, except that the banking commission and the commissioner of finance shall, prior to such effective date, take such actions as are necessary to implement the provisions of this law.

Timeframe and Deadlines for the Bill

One public hearing will be held in each borough during this time

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*Between March 1, 2013, and March 1, 2014, the Banking Commission will begin their designation cycle, and begin to designate and redesignate depository banks.⁴

Effect of this Legislation on Depository Banks

It is important to recognize that the CIAB will only be empowered to act in an advisory capacity, and will have no power to compel depository banks to act or report information. However, this advisory board would still wield considerable authority.

The Banking Commission, which consists of the Mayor (who serves as Chair), the Comptroller, and the Commissioner of the Department of Finance (“the Commissioner”), must consider the findings and rankings of the CIAB when certifying or recertifying depository banks. However, The Banking Commission does not select the banks actually used by the City: the selection is made by City agencies themselves. Once the Banking Commission approves a bank to be designated as a depository, individual City agencies must apply to the Banking Commission for approval to open an account at one of the designated banks. When selecting a bank from the designated list, a City agency must use a designated bank’s community service rating in its process of selecting banking service providers.

Despite the CIAB’s advisory mandate, this legislation could considerably affect the practices of depository banks because of the ability of the CIAB to publish its reports and findings. Similar to the effect of the Community Reinvestment Act (“CRA”), the fear of public censure could force depository banks to act in a certain way.

In addition to the fear that reporting certain information could hurt depository institutions’ public image and consequently their bottom lines, there is also the fear that not reporting “voluntarily” could have the same effect. This legislation specifically reserves the right to publish any depository institutions failure to report requested information on the DOF website and this publication could have just as much consequence as a depository bank reporting negative information.

The information requested by the CIAB will be thorough and substantial, however, the information published on the DOF website will only be a summary. As Preston Niblack, the Director of the New York City Council Finance Division, put it: “While the information considered by the CIAB will be collected at the census tract level and very detailed, the information published on the DOF website will be summarized at the community, borough, and citywide levels of aggregation.”⁵ There are two problems related to the nature of the information requested. The first, as a highlight by much of the opposition to this bill, is that the sheer volume of reporting will be very onerous and create high operational costs for depository institutions, which costs will inevitably be thrust onto the consumer in the form of higher fees. In practice this regulation could end up hurting the very consumers it seeks to protect. Secondly, while the information reported may be very detailed it will only be published summarily on the DOF website and there is the risk seemingly benign information might be summarized in such a light as to portray a depository institution in a negative light.

Finally, much of the information that might be requested by the CIAB is already voluntarily reported according to Michael Smith, the President of the New York Bankers Association (“NYBA”). Mr. Smith believes that the Council could achieve its goals by accessing readily available public information that is routinely reported by banks and regulators, and thus save the City money.⁶ A summary of information routinely reported is attached to the bottom of this advisory.

Inter-Relation with the Community Reinvestment Act

The CRA is a federal law enacted in 1977 intended to encourage lending institutions to help meet the credit needs of communities in which they operate, including low- and moderate-income neighborhoods, by receiving federal deposit insurance.⁷ The CRA provides that banks have a “continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered,” but does not go so far as to prescribe the

services that a bank must provide.⁸

The CRA requires that federal financial institution regulators, the Federal Reserve System, the Federal Deposit Insurance Corporation, the office of the Comptroller of the Currency, and the Office of Thrift Supervision assess the record of each bank and thrift and consider such record in evaluation applications for charters, or for approval of bank mergers, acquisition, and branch openings.⁹

The CRA enforces its goals through the fear of public censure. The CRA issues every banking institution a rating and such rating is included in a written CRA performance evaluation report examining the bank's "record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods."¹⁰

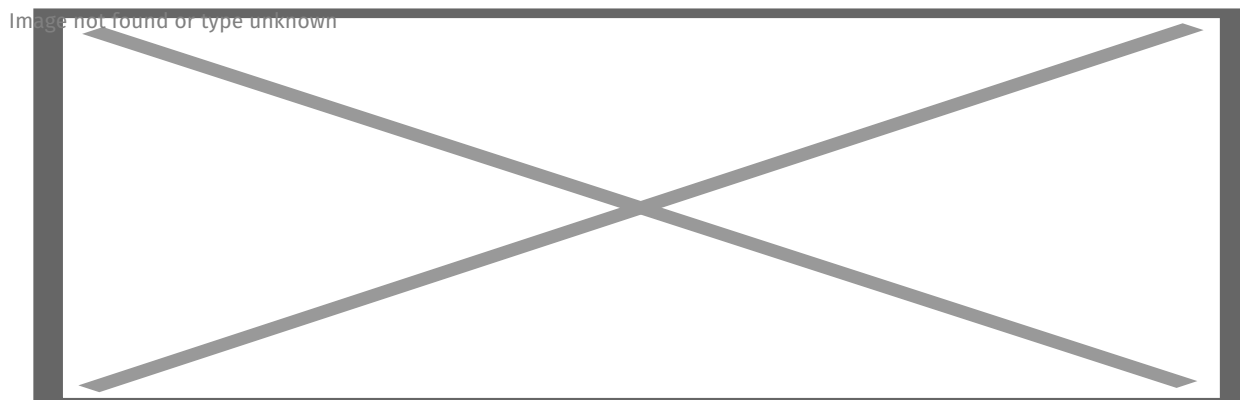
Since its enactment, the public disclosure of a bank's CRA rating has become very effective at changing the behavior of lending institutions. However, the Council feels the need for the added regulation because the CRA does not give specific criteria for rating the performance of depository institutions, and the fear is that New York City's depository institutions are not conforming to the heart and spirit of the CRA, though they may maintain a high rating.¹¹ The Council also fears that the CRA and the Banking Commission when certifying or recertifying a lending institution as a depository bank, place too much emphasis on the number of branches in low-income neighborhoods rather than the services provided. The hope is that the added reporting requirements of Int. 485-A will alleviate their fears by requesting additional disclosure with the threat of additional public censure.

The primary agency to consider the findings of the CIAB will be the Banking Commission. The Banking Commission is already mandated to consider the CRA ratings for each bank as well as the CRA examination summary report. In addition, the Banking Commission already rates the community service of each bank filing for designation. In order for the CIAB to serve a meaningful role in the regulatory scheme, it will have to provide some novel information that is not already disclosed by the voluminous requirements of the CRA.

Possible Effect on Communities

In addition to the potential side-effects of this legislation listed above, the reported cost of instituting this bill does not support its potential impact for City tax-payers.

In the Fiscal Impact Statement, Director Niblack summarizes the cost associated with implementing this legislation in the following chart:¹²



However, the Department of Finance Commissioner David Frankel believes this accounting to be a little light. He sees this overreaching legislation and unnecessary beauracracy potentially costing taxpayers a minimum of \$1 million dollars in additional startup costs and \$500,000 annually thereafter.¹³

Another concern is that the increased operational costs could drive smaller lending institutions out of New York City and leave residents with fewer options for their banking needs. This would further consolidate the power of the finance world in large multi-national institutions such as JP Morgan Chase and Citibank rather than community bankers.

A Study by the Association for Neighborhood and Housing Development (“ANHD”), cited by Director Niblack in support for this legislation, found that larger banks neglect local communities to focus on national markets. As the Study put it: “A significant and frequent consequence of the transformation to national financial markets is that local markets and local neighborhoods receive less individualized attention. For instance, large banks tend to serve small borrowers with standardized loans and other products, such as lines of credit, mutual funds, and credit cards, rather than nonstandard loans, such as financing a startup or small business, which requires knowledge of the borrower and experience with the local market.”¹⁴ This provides even more reason not to burden smaller community banks with the additional operational costs this bill would levy upon them.

Opposition to the Legislation

Mayor Bloomberg highlighted his position that this bill is just over-regulation by an unqualified governmental agency in saying, “You would think that between the federal government and the state government we’d have enough bank regulations . . . I don’t know why the City Council thinks that they have the expertise to really add anything other than just adding costs to banks who try to comply.”¹⁵ In addition to the Mayor, there are several other prominent detractors of the bill.

David M. Frankel, Commissioner of the New York City Department of Finance

As Commissioner of the Department of Finance, Mr. Frankel would be charged with overseeing this legislation and housing the CIAB. Commissioner Frankel, although sympathetic to the plights this bill seeks to redress (foreclosure rates of single family homes, foreclosures issues arising from multi-family buildings being over-leveraged, and lack of sufficient access to credit for small businesses), opposes its enactment for several key reasons.

First, Mr. Frankel believes the City has adequate authorities already in place that have been dealing with these issues and who can continue to do so. He cites to several examples of City agencies addressing these issues competently. The Office of Financial Empowerment helps low-income New Yorkers connect with financial services and provides one-on-one financial counseling through its Financial Empowerment Centers to help New Yorkers reduce their debts.¹⁶ To deal with foreclosure prevention, assistance, and expansion of credit opportunities, the Commissioner highlights the Center for New York City Neighborhoods (“CFNYCN”), which addresses the problem of single-family foreclosures. The CFNYCN has assisted nearly 16,000 homeowners with counseling and legal services and has submitted nearly 7,000 loan modification requests with homeowners.¹⁷ In the field of multi-family foreclosures, the Department of Housing Preservation and Development, along with

Council Speaker Quinn, launched the Proactive Preservation Initiative, which identifies and treats buildings in physical decline before they fall into disrepair.¹⁸ Finally, the Department of Small Business Services has worked with banks to expand access to credit for small business throughout the City.¹⁹

Secondly, Commissioner Frankel believes that passing this legislation would lead to unwarranted regulatory intervention into the banking industry. This bill would ostensibly make the Department of Finance into a banking regulator according to the Commissioner, however, neither his department nor any City entity has the expertise, resources or legal authority to command this broad role contemplated by the legislation. Mr. Frankel even suggests that by passing this legislation the City could be entering into an area where the federal government regulates in an overarching scheme and possibly subject the City to a federal lawsuit.

Thirdly, the passage of this legislation would completely overhaul the mandated responsibilities of the Department of Finance with respect to the operations of the Banking Commission (“to provide for the reception and safekeeping of all moneys paid into the treasury of the City and for the payment of all moneys”) through the creation of the CIAB.²⁰ The proposed biennial community level “needs assessment” an annual report to evaluate if and how well NYC designated depository banks are meeting the needs of the City’s numerous communities would directly usurp the functions of the federal and state governments. For example, if the Banking Commission were to consider the findings in these reports when it considers applications of banks to hold City funds, then it would interfere with the CRA’s rating system requirement that banks report their activities at the community level for evaluation of whether the needs of the community are met.²¹ Further, as mentioned above, the Banking Commission already considers the federal CRA ratings and related State ratings in reviewing a banks designation or re-designation application.

Commissioner Frankel also does not support the bill because of the risks posed by several possible unintended consequences of the legislation. For one, the bill creates a high cost of compliance for banks to meet the robust reporting requirements which could decrease the quality and quantity of banks seeking to do business with New York City. These additional operating costs could put smaller community banks out of business and leave the consumer with fewer options for their banking needs. Finally, Mr. Frankel fears that the annual bank reports could be interpreted by the public and businesses to mean that one bank has a stronger financial condition than another, rather than referring to each bank’s ability to address community needs as contemplated.²²

Michael P. Smith, President and CEO of New York Bankers Association (“NYBA”)

Mr. Smith has vehemently opposed the enactment of Int. 485-A both in a statement submitted to the Committee on Finance and the Committee on Community Development, as well as an additional memorandum in opposition dated April 30, 2012.

The primary concern elucidated by Mr. Smith is the inherent subjectivity of the ranking criteria put forth by this legislation, and the reputational risk such criteria could inappropriately create.

Mr. Smith also fears that the legislation could require that information that provides a competitive advantage for individual banks could be made public under this proposal. As an example, the proposal calls for the publication of bank strategic plans, however strategic planning is exactly the process by which a bank attempts to distinguish itself from competing banks.²³

NYBA is concerned that the criteria for the rating represent an inappropriate “backdoor mandate” for which products and services a bank may offer. As Mr. Smith puts it: “If banks are to be evaluated based upon their record of meeting the credit needs of the community, beyond what is intended by CRA, then we believe it possible that the Department of Finance would penalize with a low ranking certain institutions for their lack of subprime products, for example.”²⁴

If you have any questions or concerns regarding Introduction 485-A or the Responsible Banking Act, please contact Daniel Devine at [516-357-3826](tel:516-357-3826) or via e-mail at ddevine@cullenanddykman.com

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