GREATER ROCHESTER
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Jaclyn Rawlins
Examiner-In-Charge,
Canandaigua NB&T CRA Exam
Office of the Comptroller of the Currency
Syracuse Field Office
5000 Brittonfield Parkway, Suite A132
East Syracuse, NY 13057

Via email: Jaclyn.Rawlins@occ.treas.gov

RE: Canandaigua NB&T CRA Exam

Dear Ms. Rawlins:

We are writing to you on behalf of the Greater Rochester Community Reinvestment Coalition (GRCRC) to submit comments regarding Canandaigua National Bank's (CNB) CRA Exam conducted by the Office of the Comptroller of the Currency (OCC) and covering 2021-2023.

The Greater Rochester Community Reinvestment Coalition (GRCRC) was launched in 1993 to generate and continue discussions about lending patterns in Rochester. GRCRC, convened by Empire Justice Center, has met with numerous banks and state and federal regulators during CRA exams and mergers, and submitted dozens of data-driven comments to the appropriate state and federal regulators who have oversight of the banks. GRCRC, Empire Justice Center, and its predecessor organization the Public Interest Law Office of Rochester, have released seventeen analyses of home mortgage lending, small business lending, and access to credit over the past 31 years. The organizations use data driven analyses to identify strengths and weaknesses in lending patterns and to generate discussions with the top financial depositories in the Rochester NY MSA.[1]

[1] Our analyses include "#AllTogetherNow: Improving Small Business Lending in the Rochester NY Community" (found at: https://empirejustice.org/wp-content/uploads/2018/01/alltogethernow-s.pdf) and "Too Big to Fail...Too Poor to Bank: How Mainstream Financial Services Can Help Low-Income Working Families Succeed" (found at: https://empirejustice.org/wp-content/uploads/2018/09/Access-to-Credit-Report-2018-FINAL.pdf).

In preparing for these comments, we asked CNB to share its community development lending and investments and CRA-related grants (CDLI) with us. We used the numbers the bank shared with us in Table 10 to calculate the total reinvestments CNB has made in the Rochester community over the exam period and to estimate the percentage of deposits reinvested. We also thank CNB for sharing its 2023 small business lending data with us.

Thank you for meeting with us and Melissa Marquez, CEO of Genesee Co-op FCU in October, where we shared some of the comments here as well as what we are seeing in the Rochester NY market. We also met with CNB staff in October to review our tables and share about various community concerns and initiatives and hear about bank programs and products. We incorporated what we learned into this letter.

We shared a draft of this letter with CNB on October 31st. The bank sent us its responses on November 4th and 5th. We also met with the bank CEO, Frank Hamlin and CRA staff on the 5th and the 7th. We thank the bank for its quick turnaround and willingness to further discuss our varying perspectives about the current economic challenges and how they are impacting the bank and our community. Based upon our discussions, we have made changes and/or incorporated the bank's responses into this letter.

As of June 30, 2023, Canandaigua NB&T had \$3.6 billion in deposits at its 26 Rochester metropolitan statistical area (MSA) offices for 15.2 percent of the depository market, making CNB the 2nd largest bank in the Rochester NY MSA.[2] (See Table 1 in Appendix 1.) CNB currently has all its branches in the Rochester area. The bank recently announced that it will be expanding into the Syracuse market.[3] Given our experience with several large banks as they grew and focused less on smaller communities like the Rochester NY area, we will continue to monitor and engage with CNB. As this is the bank's first expansion outside the Rochester area, we fully expect CNB to continue its robust reinvestments here. In its response, CNB assured us that its commitment to this community will remain unchanged.

These comments focus on four areas:

- CNB's Reinvestment of Deposits into the Community
- CNB's HMDA/Mortgage Lending
- CNB's CRA Small Business Lending
- CNB's Response to Community Needs and Opportunities for Investment

[2] From the FDIC Market Share 2023 Report, as found at: https://www5.fdic.gov/sod/sodMarketBank.asp?barItem=2
[3] https://www.cnbank.com/cnb-news/syracuse-market-MCGY2P2C3R2RDJHNPKBS2W6NTZDI

CNB'S REINVESTMENT OF DEPOSITS INTO THE ROCHESTER COMMUNITY

We thank Canandaigua NB for sharing a detailed summary with us of its CRA-related investments for 2021 through 2023. This information, as well as our calculations from the mortgage lending and CRA small business lending data are shown in Table 10 in the Appendix to assess how much of CNB's deposits were reinvested into the Rochester community during the exam period and how this compares to previous exam periods.

CNB reinvested a total of $593 million in CRA-eligible loans, grants, and investments in the Rochester community between 2021 and 2023, the 3 years of the exam period. (CNB provided its 2023 CRA small business lending data, as the data is not yet publicly available.) As seen in Table 10 (Table 10a) in the Appendix, this included:

- $22.6 million in community development loans in the following categories:
  - 26 Affordable Housing loans
  - 14 Community Services loans
  - 4 Economic Development loans
  - 1 Revitalization and Stabilization loan
- $14.98 million in investments in 2 LMI mortgage-backed security pools and 1 medical/small business development
- $415,000 in CRA-eligible grants and donations, which is comprised of
  - $56,000 for 25 CRA-eligible affordable housing grants
  - $154,000 for 38 donations currently CRA-eligible
  - $205,000 in donations awaiting approval by CRA examiners[4]
- $348.5 million in mortgage loans to low-moderate income households and/or in low-moderate income census tracts.
- $206.5 million in CRA small business loans to businesses in low-moderate income tracts and/or to businesses with gross annual revenues under $1 million

We are basing our calculations on the percentage of deposits CNB is reinvesting in the Rochester MSA community on its 2023 deposits, as that is the last year of the data we are using. CNB invested a total of $592.8 million in the Rochester MSA during the current exam period, and the bank had $3.6 billion in deposits in 2023. We estimate that CNB reinvested 16.5% of its deposits into the Rochester community during the 2024 exam period (2021-2023), for an annualized average of $198 million or 5.5% of deposits. (See Table 10, Tables 10b & 10c.) CNB's

[4] The 1st 2 bullets are the donations that have been approved by the examiners as of the date of this letter. The bank is confident that an additional $155k from its United Way corporate donation and another $50k pending documentation will also be CRA eligible (3rd bullet), so we included them here and in Table 10 as part of community service.

annualized dollar volume of $198 million in reinvestments for this exam is 3.3% less than its 2021 exam, but still larger than its annualized reinvestments for the 2018 and 2011 exams.

CNB's Rochester MSA deposits have grown by 228% since the 2007 exam and its annualized reinvestments have grown by 471%. (See Table 10, Table 10c.) More recently, CNB's deposits grew by 54% from June 2019 to June 2023 (the 2021b. and 2024 exam period deposits), while its reinvestments declined by 3.3% between the 2021 and 2024 exam periods. This resulted in a substantial decline between the 2021 and 2024 exams in the bank's annualized percentage of deposits reinvested.

We notice that CNB had a lower level and rate of reinvestments this exam period compared to its 2021 exam, but still better than the bank's earlier exams. **CNB's annualized percentage of deposits reinvested in the Rochester community for this exam is 5.5%, 37% less than its 2021b. exam rate of 8.72%, but still greater than its 2007 exam rate of 3.13%.**

Since CNB's 2021 exam, GRCRC has commented on four other bank CRA exams. Canandaigua NB's 2024 exam reinvestment rate of 5.5% is better than some of the country's largest banks, but mixed when compared to the more local/regional banks. CNB's current reinvestment rate is significantly better than that of JPMorgan Chase (Rochester's 3rd largest bank), which had an annual reinvestment rate of 2.64% as of its 2024 exam (looking at 2020-2022) and that of KeyBank (Rochester's 4th largest bank), which had annual reinvestment rate of 2.85% as of its 2023 exam (looking at 2019-2022). However, CNB's current reinvestment rate falls in between its more regional peers. M&T Bank (Rochester's largest bank) had an annual reinvestment rate of 5.34% as of its 2023 exam (looking at 2019-3/2023), so CNB's reinvestment rate is slightly better than M&T's. Five Star Bank had an annual reinvestment rate of 7.6% as of its 2022 exam (looking at 2018-2021 and based on 2019 deposits), so CNB's rate is significantly lower than Five Star's.

CNB shared some concerns with us about this section of our letter:

- The bank's reinvestments during the last exam period were artificially inflated by 2020's PPP lending. "[D]uring the last review period there were $19.9M in PPP loans in LMI census tracts that counted in this category. As we know this was an anomaly and a program that only existed during this time period. What I see is a spike in our normal 5-5.5% normal and consistent investment level during the pandemic years. We've always been very proud of this investment level and do not think it should be compared in a negative way when this spike review period is the anomaly."
    - Our response: CNB's PPP lending looks to be split over 2 exams. The 2020 lending was included in the last exam and the 2021 PPP lending is included in this

exam. According to CNB's website,[5] the bank did a total of $526 million in PPP loans over the 2 years. Based on the data the bank shared with us during its 2021 exam, it did $256 million in 2020. This means the bank did $270 million in PPP lending in 2021, a portion of which is included in the bank's CRA eligible reinvestments for this exam period (to businesses in LMI tracts or to businesses with gross annual revenues under $1 million).

When we took out the bank's 2020 PPP lending to businesses in LMI tracts or to businesses with gross annual revenues under $1 million from its CDLI and CRA-eligible reinvestments, this reduced the bank's total 2021 exam period reinvestments from $614 to $551 million, its annualized reinvestments from $205 to $184 million, and its percentage of deposits reinvested from 8.72% to 7.83%. If we use these adjusted 2021 exam numbers to compare with the current exam, we find that the bank's 2024 annualized reinvestments of $198 million are greater than its 2021 annualized reinvestments of $184 million. However, due to the bank's significant growth in deposits, CNB's 2024 annual 5.5% of deposits reinvested is lower than the bank's adjusted 2021 annual 7.8% of deposits reinvested. (Note that the 2024 numbers here and in Table 10 include the CRA-eligible 2021 PPP lending.)

- Our comparison of CNB's current reinvestment rate of 5.5% for this exam with Five Star's annual reinvestment rate of 7.6% for its last exam does not make sense for 2 reasons: (1) There is only 1 year of overlap between the 2 exam periods. (2) Five Star's reinvestment rate for that exam included 2 years of PPP lending, while CNB's rate for this exam only includes 1 year of PPP lending.
    - Our response: (1) We shared with CNB during our meeting that there are only 1-3 CRA exams conducted of the area's top 8 banks each year, so this limits the peer comparison data, and rarely will the exam years of 2 banks line up. As we collect more of this information over time, we will be able to better see how banks move over time and compared to one another. Before we developed this reinvestment analysis, we had no data (other than anecdotal stories from coalition members, a review of bank products, the HMDA and CRA-small business lending data, and our intuition) on which to assess how a bank's total reinvestments were changing over time, the bank's reinvestments in relation to its deposits, or how a bank was performing in comparison with its peers. We are always looking for ways to improve this information and appreciate bank feedback on how to improve the model and what informs it.

[5] https://www.cnbank.com/cnb-article/small-business-lending-in-2021-and-beyond-MCWS6MTYF52BFVPPUSAT4CVOHG3E

(2) If we compare either of CNB's 2021 exam reinvestment rates--the adjusted rate of 7.8% of deposits (without the PPP loans) or the original rate of 8.7% (with 1 year PPP loans) to Five Star's 2022 exam reinvestment rate of 7.6% (which includes 2 years of PPP lending), we could see that CNB performed better than Five Star Bank in its earlier exam. However, even with 1 year of PPP loans included in the 2024 exam, CNB's reinvestment rate fell to 5.5% and is below that of Five Star's most recent exam. When Five Star's next exam comes up, we will be sure to also compare its reinvestment rate to its peers.

The Community Reinvestment Act obligates banks to serve the communities in which they are located. CNB has 26 branches in the Rochester NY MSA and holds 15.2% of the area's deposits. We have seen over the course of our long-term relationship with CNB that the bank has grown in its commitment to serving the Rochester community. And, as seen by its rate of 8.72% (with 1 year of CRA-eligible PPP loans) or 7.8% (without PPP loans) in reinvestments during its 2021 exam period, **we are optimistic that CNB can bring its annual reinvestment rate back up to 8% of area deposits, which is $288 million per year at the 2023 level of deposits.** While there are no hard and fast rules as to what a meaningful level of reinvestment is based on deposits, we consider the history of a bank's reinvestments, the reinvestments of the better-performing peers, and what we are asking of other peer banks.

We would be happy to work with CNB to find impactful and creative ways to increase its annual reinvestments by $90 million from its current average of $198 million and to explore what would be a meaningful level of reinvestments. Our coalition members share how the bank can begin doing this in the **Response to Community Needs and Opportunities for Investment** section below.

CNB'S HMDA LENDING IN MSA and UNDERSERVED COMMUNITIES

Our lending analysis focuses on originated loans. We examine lending from 2020-2023 to align with the publicly available data for the exam period with a baseline of 2019 before the exam period.

This section on CNB's HMDA lending is divided into the following categories:

- Total number loans and total dollar volume mortgage lending
- Home purchase loans
- CNB's lending compared to its peers

CNB’s Total Mortgage Lending

Total Loans

In 2023, CNB originated 754 mortgage loans (1st lien loans on owner-occupied (principal and secondary), 1-4 family site-built units) in the Rochester MSA, a decrease of 34% from 2022 and 71% from 2020.[6] (See Table 2 in Appendix). CNB’s total loan originations were at an all-time high in 2020, when 60% of its loans were refinance, home improvement, or HELOC loans. Then its loan originations steadily declined as Rochester’s housing market grew tighter and interest rates increased.

CNB’s lending in all formerly redlined communities also declined between 2020 and 2023, however at rates lower than the MSA’s 71% decline. Compared to 2020, CNB’s 2023 lending was:

- 69% lower in the city.
- 51% lower among Black/Latine households.
- 58% lower among low-moderate income households.
- 41% lower in low-moderate income census tracts
- 49% lower in majority nonwhite census tracts (50% or more BIPOC residents).

Despite its lower Rochester MSA lending in 2023, CNB distributed the same or more of its loans among the various categories in 2023 than in 2020 (see the bottom section of Table 2). CNB, however, still needs to work on originating higher proportions of its loans to these communities. In 2023, CNB’s distribution was less than that of all financial institutions (AFI) across all communities. Of the 754 loans CNB made in 2023,

- 8% were in the city, compared to 8% in 2020, and 13% for AFI
- 7% were to Black and Latine households, compared to 4% in 2020, and 12% for AFI
- 36% were to low-moderate income households, compared to 24% in 2020, and 42% for AFI
- 15% were in low-moderate income census tracts, compared to 7% in 2020, and 22% for AFI
- 5% were in nonwhite census tracts, compared to 3% in 2020, and 9% for AFI

[6] Empire Justice Center uses the Static HMDA LAR data from the CFPB website, at: https://ffiec.cfpb.gov/data-publication/.

Total Dollar Volume Lending

In 2023, Canandaigua NB originated an aggregate of $179.71 million in total mortgage lending (1st lien loans on owner-occupied (principal and secondary), 1-4 family site-built units). As seen by Table 3 in the Appendix, this was $371.7 million or 67% less than the bank's dollar volume of lending in 2020 and $100.4 million or 36% less than in 2022, rates of decrease similar to those for the total number of loans during the same time periods.

CNB's total dollar volume of lending also declined in all other categories, but mainly at lower rates than the 67% decrease in the MSA. Between 2020 and 2023, CNB's dollar volume of lending **decreased by**:

- 67% in the city
- 48% among Black and Latine households
- 53% among low-moderate income households
- 40% in low-moderate income census tracts
- 56% in nonwhite census tracts.

The proportions of CNB's dollar volume of lending going to other areas of the Rochester community in 2023 were similar to or greater than those of 2020 (see bottom section of Table 3), but still failed to match the proportions of all financial institutions (AFI) going to those categories.

Of the $179.7 million CNB originated in the Rochester MSA in 2023,

- 6% went to the city, compared to 6% in 2020, and 9% for AFI
- 5% went to Black and Latine households, compared to 3% in 2020, and 11% for AFI
- 20% went to low-moderate income households, compared to 14% in 2020, and 28% for AFI
- 9% went to low-moderate income census tracts, compared to 5% in 2020, and 15% for AFI
- 2% went to nonwhite census tracts, compared to 2% in 2020, and 6% for AFI

Note that, for every year, the proportions of the total dollar volume of lending going to these historically, and still, marginalized communities are less than the proportions of the number of loans going to them. This suggests that the mortgages, and home values, in these communities are on average lower than in other parts of the Rochester MSA.

CNB's Home Purchase Lending

Home Purchase Loan Originations

We also analyzed CNB's home purchase originations (1st lien loans on owner-occupied, (principal and secondary) 1-4 family site-built units). As can be seen by Table 4 in the Appendix, CNB originated 481 home purchase loans in the Rochester NY MSA in 2023, 35% fewer than in 2022, and 55% fewer than in 2020. These decreases likely reflect the tough home purchase market in the Rochester MSA and the nation's higher interest rates.

While CNB also made fewer home purchase loans in all the historically marginalized communities, many of the decreases were less than MSA decrease of 55%. Compared to 2020, CNB's 2023 home purchase loan originations were:

- 59% fewer in the city.
- 41% fewer among Black and Latine households.
- 55% fewer among low-moderate income households.
- 34% fewer in low-moderate income census tracts.
- 35% fewer in nonwhite census tracts.

CNB's distribution of its home purchase loans to traditionally redlined and underserved people and communities was mixed in 2023 compared to 2020, and it fell short in all categories when compared to all financial institutions (AFI) (see bottom section of Table 4). Of the 481 home purchase loans made by CNB in 2023,

- 10% were in the city, compared to 11% in 2020, and 15% for AFI
- 7% were to Black and Latine households, compared to 5% in 2020, and 14% for AFI
- 35% were to low-moderate income households, compared to 36% in 2020, and 39% for AFI
- 16% were in low-moderate income census tracts, compared to 11% in 2020, and 23% for AFI
- 6% were in nonwhite census tracts, compared to 5% in 2020, and 11% for AFI

A Note on AFI/All Financial Institution Comparisons

In its response and during our follow-up meeting, CNB shared its concerns around comparing the bank's distribution of lending to formerly redlined communities to that of AFI or all financial institutions. We agree with CNB that AFI includes non-banks and credit unions which are not held to the same fair lending regulations as a traditional bank. That is why AFI lending to formerly redlined communities is a baseline benchmark for us; banks with CRA obligations should be doing higher proportions of their lending in these communities than the overall average represented by AFI. In the Top 8 Bank Lending tables in the Appendix and in our analysis below, we review CNB's distribution of loans compared to each of the other top 8 banks and to the average distribution of the top 8 banks. All these banks have local CRA obligations.

CNB's Mortgage Lending Compared to Its Peers

GRCRC believes in the importance of comparing the lending of a bank to its peers. As Canandaigua NB is the 2nd largest bank in the Rochester area, we compare its lending to its closest peers, the other of the eight largest banks in the Rochester MSA. In 2023, CNB **ranked 2nd in deposits** in the Rochester MSA, with **15.2 percent of the market**, so these might be considered benchmarks as well.

<u>Total Mortgage Lending Compared to Peers</u>

Our first comparison is of the total number of mortgage originations by the top 8 banks (lst lien loans on owner-occupied (principal and secondary), 1-4 family site-built units). As seen on Table 5 in the Appendix, CNB originated 754 mortgage loans in 2023, making CNB the largest lender among the top 8 banks. While CNB's 6% Rochester MSA mortgage loan market share is substantially lower than its 15.2% depository market share, and its 1st place ranking among the top 8 banks is better than its 2nd place depository market share ranking.

Another way a depository can demonstrate its CRA commitment to a community is by maintaining market shares in the various target communities that are similar to or greater than its overall MSA market share (middle part of table). CNB has some work to do to meet its 6% MSA total lending market share in Rochester's historically redlined/underserved communities. In 2023, CNB had:

- 4% of the market in the city, and ranked 2nd among the top 8 banks.
- 3% of the market among Black and Latine households, and ranked 3rd among the top 8 banks.
- 5% of the market among low-moderate income households, and ranked 1st among the top 8 banks.
- 4% of the market in low-moderate income census tracts, and ranked 1st among the top 8 banks.
- 3% of the market in nonwhite census tracts, and ranked 5th among the top 8 banks.

CNB's distribution of its total lending to the five target communities was less than the distribution of all financial institutions (AFI) and the other top 8 banks, except for Lyons NB (bottom part of table).

Dollar Volume Lending Compared to Peers

In 2023, CNB made $179.7 million in mortgage lending in the Rochester MSA, capturing 7% of the market and ranking 1st among the top 8 depositories in the Rochester MSA. (See Table 6 in the Appendix.) As with its total loans, this is substantially less than CNB's depository market share but better than its 2nd place depository market share ranking. While it may not be feasible for a bank to capture 15% of the mortgage lending market, we want to point out that Canandaigua NB (the area's 2nd largest bank with 15% of the market) ranked 1st among the top 8 banks in the total number of loans and dollar volume of lending, capturing 6% and 7% respectively, of these markets.

CNB's dollar volume market share in underserved markets was less than its 7% MSA lending market share. The bank still ranked 1st among the top 8 banks in 3 of the categories. Among Rochester's various markets, CNB had a market share of:

- 5% in the city, and ranked 1st among the top 8 banks.
- 4% among Black and Latine households, and ranked 2nd among the top 8 banks.
- 5% among low-moderate income households, and ranked 1st among the top 8 banks.
- 4% in low-moderate income census tracts, and ranked 1st among the top 8 banks.
- 3% in nonwhite census tracts, and ranked 3rd among the top 8 banks.

In the distribution of its dollar volume of lending among the various Rochester community categories, CNB Bank failed to meet the percentages of AFI and the area's top 8 banks in all categories, except for Lyons NB (bottom section of Table 6).

Home Purchase Lending Compared to Peers

CNB Bank made 481 home purchase loans (lst lien loans on owner-occupied (principal and secondary), 1-4 family site-built units) in the Rochester MSA in 2023, over twice as many loans as, Lyons NB, the next best performing top 8 bank. This corresponds to 6% of the market, placing CNB 1st among the Rochester area top 8 banks in home purchase loan originations (see Table 7 in the Appendix). Again, while this is substantially less than its 15% depository market share, it is better than its 2nd place depository market share ranking.

CNB's home purchase loan market shares in all community categories were less than its Rochester MSA market share of 6%. The bank ranked 1st among the top 8 banks in lending to LMI households and in LMI census tracts. CNB captured:

- 4% of the market in the city, and ranked 2nd among the top 8 banks.

- 3% of the market among Black and Latine households, and ranked 3rd among the top 8 banks.
- 5% of the market among low-moderate income households, and ranked 1st among the top 8 banks.
- 4% of the market in low-moderate income census tracts, and ranked 1st among the top 8 banks.
- 4% of the market in nonwhite census tracts, and ranked 3rd among the top 8 banks.

CNB's distribution of its home purchase loans to the above categories was less than the distributions for AFI and for all but one of the top 8 banks.

<u>A Snapshot of CNB's Mortgage Lending in Monroe County</u>

Our coalition member, the **SW Street Liaison Office (the Office),** a service of the **19th Ward Community Association**, often does an analysis of a bank's lending in Monroe County and the 4 quadrants of the city of Rochester. For this letter, the Office did a search of Monroe County records for all variants of "CNB" for October 1, 2023 to October 1, 2024 and found 1,118 mortgages of all types.[7] We understand that the bulk of the mortgages captured are outside the exam period (January 1 to October 1, 2024). Still, we want to include this work by our coalition member, as we think it's useful to understand some of the concerns of our coalition and to inform the dialogue and learning between GRCRC and CNB.

Following is a summary of what the Office found. (See also attached memo.)

- Of 1,118 loans, 252 (22.5%) were for city of Rochester properties, and 866 (77.5%) were for properties in the rest of Monroe County.
    - Only 31 of the 252 city loans were in the SW Quadrant (densely built-up 19th Ward, Bull's Head, Corn Hill, Genesee-Jefferson, Mayor's Heights, Plymouth Exchange and Susan B. Anthony neighborhoods). There was no obvious reason for the imbalance.
    - 179 of the city loans (71%) were for investor-owners.
    - 58 of the city loans, or 23%, were to owner-occupants, of which 37 were home purchase loans. The rest were home equity loans and HELOCs.
    - 5 of the owner-occupant home purchase mortgages were $20,000 five-year forgivable loans from the FHLBNY Homebuyer Dream Program, "one 'bright spot'" in what was found.
    - 15 were mortgages on commercial properties, including the new Teen Empowerment Center on Genesee St.

[7] According to the Office, the mortgages were for all property purchases, refinances, HELOCs and HELs.

John DeMott of the SW Street Liaison Office made the following observations with respect to the investor loans, "More than half of these loans were used to refinance properties that had been purchased previously, enabling investors to extract the appreciation in market value.…Some investor customers were located throughout the US, far from Monroe County. Typically, these customers were buying or refinancing properties in challenged City neighborhoods. 30 of the investor loans were "bundles" of 2 to 5 non-contiguous properties."

Mr. DeMott concludes, "Going forward we encourage CNB to seek a higher proportion of City of Rochester property mortgages, attract more owner-occupant mortgages, and scrutinize investor mortgage customers for practices that potentially destabilize City neighborhoods."

We ask CNB to financially invest in neighborhood-based organizations like the 19th Ward Community Association and the SW Street Liaison Office, as they are critical to supporting Rochester's neighborhoods and small businesses.

In our follow-up meeting with CNB, the bank shared with us what was missing from this analysis, thus undercounting the number of loans to owner-occupants. According to the bank, "A search for mortgages under CNB will only show mortgages that were originated by Home Town Funding Inc. that were placed in our portfolio. It will not show any of [the mortgages we originated and sold] on the secondary market. Most [of our] mortgages [sold] on the secondary market are owner occupied so by only searching "CNB" it will show a disproportionately high number of investor mortgages." We thank CNB for this clarification and will pass it along to Mr. DeMott.

<u>Racial Disparities in Homeownership and Lending</u>

In October 2023 the Office of the New York State Attorney General (OAG) released a report on racial disparities in homeownership, finding that, "People of color have lower rates of homeownership in New York,"[8] and that,

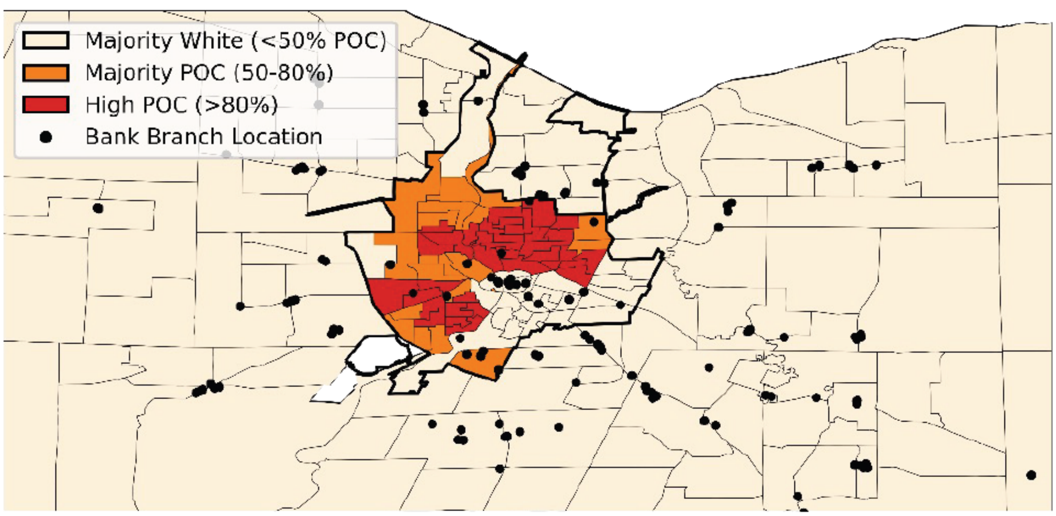
- Homeownership in the state is concentrated in white households and neighborhoods. White households are more than twice as likely to own their home as compared to Black or Latino households.
    - As documented by ESL FCU, the Black homeownership rate **in the Rochester area** is 33% while the White homeownership rate is 73%, a gap of 40 percentage points.[9]

[8] https://ag.ny.gov/sites/default/files/reports/oag-report-racial-disparities-in-homeownership.pdf, pp.19, 20.
[9] https://genwealthroc.org/findings/

- Lower homeownership rates for people of color are present in every single region in the state, showing the pervasive and systemic challenges to closing the homeownership gap.
- Statewide, 7.6% of purchase applications were from Black residents and 9.5% were from Latino residents, approximately half of each group's representation in the overall state population.
- People of color who apply for loans for purchase mortgages were more likely to be denied. In the Rochester MSA, a Black applicant is 68% more likely to be denied than a white applicant, when both applicants have the same profile of average loan amount, credit score, DTI, LTV, and income for POC applicants.[10]
    - o ESL's research also documents that Black borrowers face higher denial rates and higher interest rates.[11]

A look at the distribution of bank branches further illustrates the broken relationship between neighborhoods of color and lenders. The map of Rochester in Figure 5 shows bank branches [as of June 2022] almost exclusively located in majority white neighborhoods. Most residents in neighborhoods of color must travel much farther than their white neighborhood counterparts to reach a bank. [12]

Figure 5: Bank branches in Rochester



Source:
FDIC June 2022,
HMDA 2019-2021,
2020 ACS Data

The OAG report does not break out the data by lender. So, while it describes the problem in aggregate, it is not possible to pinpoint a specific lender and ask them to change specific practices.

[10]https://ag.ny.gov/sites/default/files/reports/oag-report-racial-disparities-in-homeownership.pdf, p. 20.
[11] https://genwealthroc.org/findings/
[12] https://ag.ny.gov/sites/default/files/reports/oag-report-racial-disparities-in-homeownership.pdf, p. 16.

In January 2024, the NYS Department of Financial Services (DFS) issued a report that describes lending by individual lenders. [13] The Rochester tables document lenders that originated at least 100 loans in the Rochester MSA. The report includes the number and percentage of loans to minority borrowers and in majority-minority census tracts.

The DFS found that in the Rochester MSA in 2022, [14]

- Canandaigua NB&T originated:
  - 4.3% of its loans in majority-minority tracts or 25 loans
  - 6.3% of its loans to minority borrowers or 31 loans
- Home Town Funding originated:
  - 13.6% of its loans in majority-minority tracts or 186 loans
  - 13.4% of its loans to minority borrowers or 155 loans

During our meeting with CNB, staff noted that its mortgage company participates in the Homebuyer Dream Program and is in the final stages of developing a special purpose credit program (SPCP). See more below on this.

It isn't just enough to have a program that gets 1st time homebuyers into homeownership. Homeownership must be sustained. In October 2024, the Urban Institute hosted a webinar on sustainable homeownership.[15] Many important points came up. They include the lack of wills for homes inherited by those in the Black and Brown communities that result in problems when surviving family members don't own clear title. Heirs' properties issues are a problem in Monroe County and a concern across the state. We shared this information and the webinar with CNB.

Considerations for a Special Purpose Credit Program

Research from Liberty St Economics (FRBNY)[16] documents that younger borrowers are struggling with credit card and auto loan payments. In 2021, delinquencies for borrowers in their 20s and 30s were at 3.5%, up from 1.5% in 2020. High rents are making it harder for millennials to save for a mortgage, when PITI would be lower than their rent. Hence the need for both larger grants for 1st time borrowers and flexible underwriting.

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13 https://www.dfs.ny.gov/system/files/documents/2024/01/2023_annual_minority_mortgage_lending_report_20240122.pdf
14 Ibid, pp. 51-52.
15 https://www.urban.org/events/sustainable-homeownership-and-wealth-preservation-communities-color?&utm_source=urban_events&utm_campaign=sustainable_wealth&utm_id=housing&utm_content=general&utm_term=home_ownership
16 https://libertystreeteconomics.newyorkfed.org/2023/02/younger-borrowers-are-struggling-with-credit-card-and-auto-loan-payments/

The median home price in the Rochester area is $200,000 (as of Q4 2024 and rents have increased. High rents and inflation in food and utilities make it virtually impossible for a tenant at 80% area median income to save. First generation, LMI borrowers also struggle to save the $20,000 plus needed for downpayment and closing costs. New York has high property taxes making homeownership more unaffordable. The mismatch of incomes and basic living costs mean that residents are living paycheck to paycheck. As described in another section below, the result of this is that, as of 2017, 50% of city of Rochester residents had subprime credit. While we understand the importance of saving for closing costs and down payment assistance, it seems that even the most responsible 1st generation families/1st time homebuyers from no-/low-wealth backgrounds will need a much larger infusion of down payment and closing cost assistance than has been the norm over the past few years.

To support successful homeownership among Rochester's Black and Brown families who continue to be impacted by the history of redlining and exclusion in this community, and considering income, rents and housing prices in Rochester, we believe a SPCP should:

- Include payment and closing cost assistance totaling $20,000 or above.
- Be a portfolio product with flexible underwriting.

According to CNB, the bank expects to roll out its SPCP in Q2 or Q3 of 2025 and became a participating lender in the Buy the Block program. In response to our draft letter, CNB said, "CNB Mortgage Company will offer qualified buyers through the Buy the Block program a mortgage loan with repayment terms up to 30 Years with loan amounts as low as $25,000. Loan to Values will be allowed up to 95% and Combined Loan to Values up to 105% including any grant/assistance program. The loans would be offered at a fixed rate of 4.00%. We expect to utilize this SPCP for not only Buy the Block end-loan financing but also for other mortgage initiatives within majority-minority tracts."

GRCRC is very pleased that CNB will be participating in Buy the Block and offering a SPCP with such an affordable rate in the current high-interest environment. While not pertinent to this exam, this product shows the bank's willingness to stretch to support affordable homeownership in formerly redlined neighborhoods.

CNB already offers the Homebuyer Dream Program[17] through its mortgage company, which as of 2024 offers a grant of $20,000 ($19,500 for down payment and other closing costs and $500 to help pay for nonprofit housing counseling). Borrowers must be 1st time homebuyers with incomes of less than 80% AMI to qualify. Funds are available from the Federal Home Loan Bank of NY (FHLBNY) from January through August.

[17] https://www.cnbank.com/you/mortgage/homebuyer-dream-program

The CDLI information CNB shared with us shows that from 2021-2023 CNB made 163-$10,000 Homebuyer Dream grants totaling $1.63 million. And, as seen above in the analysis done by the SW Street Liaison Office, CNB provided 5-$20,000 Homebuyer Dream grants in the city of Rochester and/or Monroe County in 2024. We thank CNB for finding a way to participate in this FHLBNY program. We understand that CNB will continue to participate in the Homebuyer Dream Program even after it launches its SPCP.

<u>The Added Challenge of Climate Change</u>

In addition to the ongoing harm from redlining and discrimination, the climate crisis will impact Black and Brown neighborhoods in many ways—extreme heat, tornadoes and other severe weather, and increased risk of flooding in low lying areas. These emerging issues are in the news and on the minds of policy makers and advocates.[18] Most of us recall Superstorm Sandy and the damage done to NYC and Long Island in 2012. Over the past couple of years, several parts of Upstate NY have had many inches of rain in a few hours. Ontario County, where CNB is headquartered, experienced flooding from extreme precipitation in July of 2023, when 6 inches of rain fell in 3 hours.[19] Steuben County, the Adirondacks,[20] and the Hudson Valley[21] have also experienced such events. Steuben County experienced flash flooding this past August due to the remnants of Tropical Storm Debby.[22] So far this year, New York State has seen a record breaking 31 tornadoes.[23]

This is in the mortgage lending section because homebuyers need property insurance to get a mortgage; and many weather events, including flooding, resulting from climate change are affecting the ability of homeowners to get adequate property insurance coverage at an affordable rate.

A recent New Yorker article[24] about climate risk and the homeowners insurance crisis shared some serious concerns from Lloyds of London, an insurer, and Aon, a reinsurance intermediary:

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[18] At hour 3 in this Urban Institute webinar on sustainable homeownership, panelists from the National Community Stabilization Trust, National Fair Housing Alliance, and the Urban Institute discuss these emerging issues. https://www.urban.org/events/sustainable-homeownership-and-wealth-preservation-communities-color?&utm_source=urban_events&utm_campaign=sustainable_wealth&utm_id=housing&utm_content=general&utm_term=home_ownership

[19] https://www.democratandchronicle.com/story/weather/2023/07/12/canandaigua-ny-flooding-2023-weather-new-flood-watch-ontario-wayne-counties/70407628007/

[20] https://suncommunitynews.com/news/111133/moriah-hit-hard-by-overnight-flooding/

[21] https://www.lohud.com/story/news/2024/08/19/weather-outlook-rain-westchester-rockland-putnam-hudson-valley-ny/74855354007/

[22] https://www.eveningtribune.com/picture-gallery/news/local/2024/08/09/photos-flash-floods-hit-steuben-county-in-canisteo-woodhull/74742183007/

[23] https://www.democratandchronicle.com/story/news/2024/09/10/two-more-tornadoes-added-to-new-yorks-record-breaking-total/75163405007/

[24] https://www.newyorker.com/news/the-financial-page/the-home-insurance-crisis-that-wont-end-after-hurricane-season

> "You'll never find an insurer saying, 'I don't believe in climate change,'" John Neal, the C.E.O. of Lloyd's of London, the insurance behemoth, told the Financial Times a few months back.
>
> "'The frequency and severity of weather-related losses are exponential.' Testifying to Congress last year, Eric Andersen, the president of Aon, the world's largest reinsurance intermediary, said, 'Just as the U.S. economy was overexposed to mortgage risk in 2008, the economy today is overexposed to climate risk.'"

The lack of flood insurance for homeowners as flood risk changes and spreads, like for the over 90% of the homeowners in Florida and North Carolina whose homes were damaged by Hurricane Milton and Helene, also requires solutions.

FEMA just published proposed updates to the flood maps for Ontario County, New York.[25] We will need to work with banks to ensure that BIPOC/LMI borrowers are not buying in areas at risk of flooding. We urge the bank regulators to start looking at climate risk. We shared some of this information with CNB during our October meeting.

Conclusion: CNB's Mortgage Lending

GRCRC believes that traditionally underserved families and communities benefit more when they obtain mortgages from lenders with a local depository presence than from little-regulated mortgage companies or lenders with no local CRA obligations. It benefits both the borrower and the bank when borrowers develop additional financial relationships with their mortgage lender. We believe CNB is becoming one of those lenders, particularly for the wider MSA. Still, together, the Rochester area top 8 banks are losing the advantage of multiple financial relationships; in 2023 they captured only 16% of the owner-occupied home purchase lending market, 3% less than 2022 and 6% less than 2020.

When we shared with CNB this disturbing decline in top 8 bank market share, staff noted that CNB understands that the tight housing market, interest rates, and products like Premium Mortgage's Cash Guarantee program [26] have been impacting all traditional banks. Premium Mortgage is often the 1st or 2nd largest mortgage lender in the Rochester MSA. According to CNB, with the Cash Guarantee, Premium Mortgage will buy the property of its approved borrower if the deal falls through, so the seller still gets their money. CNB consulted with the OCC about this program. The regulator has deemed it a prohibited behavior to have such an offering, so the bank has complied with this advice. CNB also noted that Premium Mortgage's

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[25] https://www.fema.gov/press-release/20241001/public-invited-review-flood-maps-ontario-county-new-york
[26] https://www.premiummortgage.com/blog/the-cash-guarantee

Cash Guarantee does not support affordable lending since the buyers need a large down payment. CNB asked Empire Justice to learn more about how this offering does not follow the regulations and hurts affordable lending and to join the bank in fighting it.

We want to state that the decline in top 8 lending has been going on for several years, not just since Cash Guarantee. As noted in our meeting, the largest of the top banks have been pulling out of the Rochester mortgage lending market for the past several years. While this creates opportunity for banks like CNB, it also means that banks and credit unions without CRA obligations or lightly regulated mortgage banks can also step into the breach.

We are pleased that CNB is the top mortgage lender among the top 8 banks in the Rochester area. And we believe that CNB can do more to increase its mortgage lending in the areas of our community that have historically been redlined and continue to be underserved, particularly our Black and Brown residents and neighborhoods of color. We are encouraged knowing that the bank is participating in the FHLBNY's Homebuyer Dream Program and is about ready to launch a special purpose mortgage product to support the Buy the Block initiative. GRCRC urges CNB to (1) to ascertain if its Homebuyer Dream grants are in fact reaching BIPOC 1st time homebuyers and to make changes based on the data, and (2) to evaluate its SPCP as soon as feasible and to expand it to reach borrowers of color outside of Buy the Block neighborhoods in other areas of the Rochester community. We recognize that this is a complicated housing environment for 1st time homebuyers. (For more on this see *Improving Housing Affordability for Renters and Owners* section below.)

In addition to these programs, we would like the bank to find other creative ways to support 1st time and LMI homebuyers in this challenging market. The Cash Guarantee is not the only way. We would be happy to brainstorm with CNB to figure this out.

CNB'S BANK SMALL BUSINESS LENDING

CRA Small Business Lending

Table 8 in the Appendix shows CNB's CRA small business loans and dollar volume of lending from 2019 to 2023. We are using 2019 as the base year here, as 2020 and 2021 included PPP loans, so the numbers are substantially larger than 2019 and 2022. CNB provided the data for 2023, as it is not yet publicly available. All financial institution (AFI) comparisons are of 2022.

Number of Small Business Loans

CNB made 1,235 small business loans in the Rochester MSA in 2023, 1% more than in 2019 and 8% less than 2022 (see top section of Table 8). The bank made more small business loans in all but one of the various categories in 2023 than in 2019.

In 2023, CNB made:

- 269 loans to businesses in low-moderate income census tracts, 5% more than 2019
- 1,059 loans of $100,000 or less, 3% more than 2019
- 228 loans of $100,000 or less to businesses in low-moderate income census tracts, 9% more than 2019
- 633 loans to businesses with gross annual revenues under $1 million, 2 loans less than in 2019
- 131 loans to businesses with gross annual revenues under $1 million in low-moderate income census tracts, 12% more than 2019

CNB performed similarly to all financial institutions (AFI) in 2022 in its distribution of small business loans to businesses in LMI tracts, businesses with gross annual revenues less than $1 million, and these smaller businesses in LMI tracts.

Dollar Volume of Small Business Lending

In 2023, CNB made $102 million in small business loans in the Rochester MSA. As seen at the bottom half of Table 8, this was 0.2% less than 2019 and 18% less than 2022. CNB decreased its average loan size by 2% to $82.6 thousand. The bank's dollar volume of small business lending in all the various categories was greater in 2023 than 2019.

In 2023, CNB made:

- $24 million in loans to businesses in low-moderate income census tracts, 6% more than 2019
- $42.8 million in loans of $100,000 or less, 33% more than 2019
- $9.4 million in loans of $100,000 or less to businesses in low-moderate income census tracts, 38% more than 2019
- $38 million in loans to businesses with gross annual revenues under $1 million, 10% more than 2019
- $8.6 million in loans to businesses with gross annual revenues under $1 million in low-moderate income census tracts, 61% more than 2019

CNB increased its penetration among businesses in LMI tracts and among businesses with gross annual revenues under $1 million in LMI tracts but decreased its penetration among businesses with gross annual revenues under $1 million. In 2022, the bank fell slightly short when compared to all financial institutions in the distribution of its dollar volume of lending to businesses in LMI tracts, but it outperformed AFI in its distribution to businesses with gross annual revenues under $1 million in LMI tracts and to businesses with gross annual revenues under $1 million.

It is likely that the decline in CNB's small business lending between 2022 and 2023 is due to the high interest rate environment. Despite this, the bank's lending did not decline as much in many of the categories, particularly its dollar volume of lending to businesses in LMI tracts.

CNB's Small Business Lending Compared to Peers

As with mortgage lending, we compare a bank's small business lending to its peers, the other depositories with the greatest market shares in the Rochester NY MSA. Table 9 in the Appendix compares the small business loans, dollar volume lending and market shares for the Rochester MSA's top 8 banks for 2022, the latest year for publicly available data. (Community Bank, the 9th largest bank, was substituted for Lyons NB, as Lyons did not report small business lending.)

<u>Number of Loans Market Share</u>

In 2022, with 1,343 loans, CNB captured 6.9% of the small business loan market in the Rochester MSA, making CNB the 2nd largest small business lender among the top 8 banks in terms of number of loans (see top part of Table 9). JPMC, a big small business credit card lender, made the most loans. CNB met or exceeded its MSA market share among businesses in LMI tracts, among businesses with gross annual revenues under $1 million, and among businesses with gross annual revenues under $1 million in LMI census tracts. In 2022, CNB had a market share of:

- 7% among businesses in low-moderate income census tracts
- 6.1% in loans of $100,000 or less
- 6.3% in loans of $100,000 or less to businesses in low-moderate income census tracts
- 6.8% among businesses with gross annual revenues under $1 million
- 7.1% among businesses with gross annual revenues under $1 million in low-moderate income census tracts

CNB underperformed the average of the Top 8 Banks in the distribution of its small business loans to businesses with gross annual revenues under $1 million, while exceeding the Top 8 averages in the percentage of its loans to businesses in LMI tracts and to businesses with gross annual revenues under $1 million in LMI census tracts.

Dollar Volume Lending Market Share

In 2022, with $123.9 million in lending, CNB captured an amazing 19% of the dollar volume of small business lending in the Rochester MSA, placing it 1st among the top 8 banks. (See the bottom half of Table 9.) CNB's dollar volume market share of 19% substantially exceeded its 15% depository market share, and its 1st place market share rank is better than its depository market share rank.

While CNB's dollar volume of lending market share among businesses in LMI tracts fell short of its overall MSA market share, its market shares among businesses with gross annual revenues under $1 million and businesses with gross annual revenues under $1 million in LMI census tracts exceeded its MSA market share. Compared to its overall dollar volume market share of 19.4%, in 2022 CNB captured:

- 17.4% of the dollar volume of lending to businesses in low-moderate income census tracts
- 18.2% of the dollar volume of lending for loans of $100,000 or less
- 19% of the dollar volume of lending for loans of $100,000 or less to businesses in low-moderate income tracts
- 22.2% of the dollar volume of lending to businesses with gross annual revenues under $1 million
- 21.9% of the dollar volume of lending to businesses with gross annual revenues under $1 million located in low-moderate income census tracts

CNB's average loan size in 2022 was $92,270, about $8,000 more per loan than in 2019. CNB falls in the middle of the top 8 banks on average loan size, which range from $13,380 to $195,560.

With respect to the distribution of its dollar volume of lending, CNB did not match the averages for the top 8 banks in dollar volume of lending to businesses in LMI communities, to businesses with gross annual revenues under $1 million, and to businesses with gross annual revenues under $1 million in LMI tracts (bottom of Table 9).

Small Business Lending Summary

To stabilize the economy, create jobs, and build wealth in the Rochester community, area businesses need access to affordable, responsible credit. This has been especially true as businesses continue to struggle with some of the highest inflation rates since the 1980s.

GRCRC is pleased that Canandaigua NB is now the Rochester area's biggest small business lender in terms of dollar volume among the top 8 banks and its 2nd biggest in terms of number of small business loans. This is an increase since before the pandemic when M&T was the largest dollar volume lender. It may have been that CNB started developing relationships with businesses through its PPP lending in 2020 and 2021, and these are now paying off.

We appreciate that CNB is doing significant proportions of its loans and dollar volume of lending to businesses with gross annual revenues under $1 million and to these smaller businesses in LMI tracts. These smaller businesses are where we find new businesses, especially those started and owned by Black, Brown and immigrant entrepreneurs. This suggests that CNB has found ways to work with Rochester area smaller businesses to help them access more affordable credit to help their businesses grow and thrive.

CNB BANK'S REINVESTMENT OF DEPOSITS INTO THE COMMUNITY, RESPONSE TO COMMUNITY NEEDS AND OPPORTUNITIES FOR INVESTMENT

Included in this section is information from several GRCRC members on local community development needs, how CNB has worked with and/or funded their organizations to address them, and suggestions on how CNB might help address emerging and ongoing needs.

Reinvesting Deposits into the Community

We urge CNB Bank to actively work with GRCRC members and other organizations in the Rochester area to regain its former level of CRA-related lending and investments within the Rochester MSA to 8% a year. This would be about **$288 million per year** in reinvestments based on the June 2023 deposits, an increase of $90 million per year from the average for this exam. The bank can start by investing in some of the community development opportunities laid out in this section. (See section at the beginning of this letter for our analysis of the bank's reinvestments.)

First, we want to acknowledge and thank CNB for some of the ways the bank has supported the work of GRCRC member organizations. We summarize these in this next section, at times including suggestions for additional opportunities.

Specific Community Development Activities

GRCRC members shared with us the following community development activities that CNB is currently supporting.

Consumer Credit Counseling Service of Rochester (CCCSR) helps individuals and families build financial wellness and peace of mind through financial education and counseling. Each year, CCCSR helps more than 12,000 residents manage debt, improve their credit, increase their savings, and manage their money effectively. Nearly 75% of CCCSR's clients are considered low-to-moderate income (LMI) according to HUD standards and more than 50% are considered low income. CCCSR received $13,000 from Canandaigua National Bank (CNB) between 2021 and 2024 to support its counseling and education programs. This funding enhanced CCCSR's ability to offer impactful one-on-one credit and budget counseling and youth financial education throughout Monroe County.

Additionally, CNB refers many of its customers to the organization's credit counseling and first-time homebuyer services. In this regard bank customers are assisted with improving their credit, building better credit scores, paying down high-interest credit card debt, and qualifying for first-time homebuyer grants.

While not included in this CRA evaluation, in the Fall of 2024, CNB signed on as an official lending partner for CCCSR's **Driven2Success** program. Driven2Success helps LMI residents to obtain affordable auto loans for work purposes. As a lending partner, CNB serves as a crucial resource for credit challenged clients who would likely have very few options other than a maximum interest rate loan through a non-local lender. Through partnerships like this one with CNB, Driven2Success helps LMI clients to save an average of 8% APR on their auto loans and effectively address their work-related transportation needs.

We are grateful to CNB for its generous support of CCCSR and its programs.

CNB has also provided staff and financial support to the City of Rochester's Office of Financial Empowerment, by participating for 6 months on the Children Savings Advisory Group by providing a $2,000 grant to the **Financial Empowerment Center** last fiscal year to support financial counseling.

Canandaigua National Bank (CNB) has provided a generous $10,000 grant to **The Housing Council at PathStone**, demonstrating a shared commitment to fostering financial stability and advancing homeownership opportunities in our community. As The Housing Council continues to expand its **Financial Empowerment Center (FEC) Program**, which offers free, personalized financial counseling, the need for ongoing funding and strategic partnerships remains critical to sustaining and growing our impact. The FEC has a proven track record of helping clients improve their financial well-being, with outcomes such as higher credit scores, reduced debt, and increased savings. However, maintaining this vital program requires dedicated resources and close collaboration with community financial institutions like CNB.

The Housing Council sees tremendous potential in deepening its partnership with CNB to ensure FEC participants have access to safe, affordable banking products that support their financial wellness journey. In particular, the organization encourages CNB to consider further development of low-cost, accessible banking options tailored to the needs of its clients, as well as competitive mortgage products that allow first-time buyers to compete in today's challenging housing market. Together, CNB and The Housing Council can begin to close the significant homeownership gap between white and Black households in our region, fostering a more inclusive and resilient community.

While the $10,000 grant from CNB is deeply appreciated, The Housing Council looks forward to exploring additional opportunities for partnership and innovation to support the FEC program and empower its clients to achieve financial security and build wealth through homeownership.

The bank shared that there are organizations staff have strong partnerships with: Rochester Refugee Rehousing Services, Rochester Anti-Poverty Initiative, Consumer Credit Counseling Services, Greater Rochester Association of Realtors, Re-Imagine Rochester Housing Initiative, Beyond the Sanctuary and Project Ride.

While not applicable to this CRA evaluation, CNB informed us that the bank is sponsoring **Refugees Helping Refugees'** upcoming fundraising event.

Community Development Opportunities

GRCRC members share with us the needs in the Rochester community and initiatives, programs and needs of the member organizations. We then include these as opportunities in our comment letters as possible investment opportunities for the banks. We understand that each bank will not be able to invest in all these opportunities. We ask that CNB consider these on-the-ground perspectives when making decisions about products, investments and contributions so it can more effectively address the needs of the Rochester community and support low-moderate income and BIPOC communities.

Structural Racial and Income Inequality in Upstate New York

Incomes of working families have not kept up with rising housing, education, childcare and health costs. This has resulted in millions of Americans struggling to pay for basic necessities. As seen in a recent NYT Magazine article by Matt Desmond,[27]

- Nationally, "[r]ent has more than doubled over the past two decades, rising much faster than renters' incomes. Median rent rose from $483 in 2000 to $1,216 in 2021."

[27] https://www.nytimes.com/2023/03/09/magazine/poverty-by-america-matthew-desmond.html

- “From 2000 to 2022 in the average American city, the cost of fuel and utilities increased by 115 percent.”

Upstate New York had still not fully recovered from the financial crisis of 2008 when COVID-19 struck. Income inequality is exemplified in the post-industrial cities of upstate New York. The city of Rochester has the highest concentration of children living in poverty compared to cities of similar size in the United States. In 2019, Rochester came in dead last in a list of the country's 50 hottest job markets published by the Wall Street Journal.[28]

New Yorkers are feeling the financial strain of record high debt burdens, especially in upstate areas where poverty rates are some of the worst in the nation. The poverty rates in upstate cities such as Rochester (57%), Syracuse (56%), and Buffalo (53%), despite best efforts, show no signs of decreasing in any meaningful amount.

Rural areas across upstate are also deeply affected by poverty. According to a study by Common Ground Health,[29] the rural and urban areas of the Finger Lakes region of New York with the highest rates of poverty were also the areas with the lowest life expectancies. Not only does financial insecurity cost New York billions of dollars per year, it contributes to a public health crisis that cannot be ignored.

In 2017, the New York Federal Reserve issued a report on the credit profile of city of Rochester residents. The 2017 report looked at data at the ZIP Code level in the city of Rochester. This report found that more than 50% of city of Rochester residents had subprime credit. In some ZIP Codes 50 -75% of city residents had subprime credit. These ZIP Codes are majority nonwhite.[30]

Most bank branches have left these neighborhoods. Working families making $15-25 an hour can’t pay all their essential bills on time. These families may also have monthly incomes that are volatile. They may not have paid sick leave or a guaranteed minimum number of hours. They may not be sure how much money they will have at the end of the month. Given the high cost of housing, childcare, education and health care, the minimum wage and/or volatile incomes leave families in a situation where one or more bills are left unpaid. An unexpected car repair or medical bill throws their monthly expenses into crisis. Earlier research done by the Federal Reserve documents that 40% of Americans don’t have $400 in emergency savings.

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[28] https://www.democratandchronicle.com/story/news/2019/03/10/rochester-worst-job-market- country-wall-street-journal/3089794002/

[29] https://www.commongroundhealth.org/insights/library/premature-mortality-and-socioeconomic-status. Also see full report: https://media.cmsmax.com/ravk3pgz5ktlujs1r08ci/overloaded-the-heavy-toll-of-poverty-on-our-regions-health.pdf

[30] https://www.newyorkfed.org/data-and-statistics/data-visualization/community-credit-profiles/index.html#overview

There is a structural mismatch between incomes and expenses. According to research from the Federal Reserve Board, the median Black family in the under 35 age group had only $600 in wealth, compared with $25,400 among young white families.[31] This has a disparate impact on Black and Brown families, who have no intergenerational wealth, in how they access or rather fail to access credit.

Professor Lisa Servon documented the lives of working families who use check cashers and pay day lenders. Her book "The Unbanking of America" shows that working families make very complicated choices about using a check casher instead of their own bank.[32]

Empire Justice Center used her research to look at the underbanked in Rochester, New York. Our 2018 report "Too Big to Fail" found similar patterns in Rochester. Those who choose a check casher over their bank do so because their bank does not offer a product that fits into their lives.[33]

In February 2024 the National Consumer Law Center released an updated issue brief: "Past Imperfect: How credit scores "bake in" and perpetuate past discrimination.[34] The issue brief documents: "In 2021, the median credit score from Vantage Score for Black consumers was 639, while for white consumers it was nearly 100 points higher at 730 and Asian consumers' median was 752. Latino consumers were in between with a median score of 673."

"But the disparity in wealth is even more stunning: the typical Black family has a median wealth of only about 15 percent ($44,900) of the typical white family ($285,000). The typical Latino family similarly has only about 20 percent of the wealth ($61,600) of the typical white family."

Banks don't serve the needs of such families. Bank products are designed for customers who have disposable income at the end of the month. When families don't have enough money to pay for essentials, an unexpected decline in income or an emergency expense results in a subprime score. Families turn to predatory products to pay rent so they are not homeless, to pay the car loan so they can keep their job, or to buy groceries so they don't go hungry.

A 639-credit score means a Black family cannot qualify for a mortgage, given how mortgages are underwritten. As seen below, subprime auto loans further destroy credit. Subprime credit cards also make it hard to save or pay off debt. The wealth disparity means that Black families can't turn to each other for an emergency loan. In this comment letter we describe mortgage

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[31] https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm
[32] https://www.lisaservon.com/
[33] https://empirejustice.org/resources_post/report-big-fail-poor-bank-mainstream-financial-services-can-help-low-income-working-families-succeed/
[34] https://www.nclc.org/wp-content/uploads/2016/05/20240227_Issue-Brief_Past-Imperfect.pdf

loans, small dollar loans, and even auto products that build wealth rather than extract it. The NCLC issue brief also makes multiple recommendations to achieve that goal.

There is no shortage of predatory lenders who know how to make enormous profits by selling high-cost products to low-income borrowers. These products are set up for the consumer to fail and for the investors behind the products to make money. The interest rates/fees are abusive and designed to be vastly profitable with no relation to the risk taken by the lenders. Some loans are bundled into investment vehicles. The largest banks fund the companies that create and market these products.

We continue to work to change the laws to stop these practices that result in enormous profits for corporations, and financial hardship or worse in the life of working families. And we need responsible, affordable alternatives.

The CRA was passed in 1977 to address the decades of redlining that had been happening in our communities. While the law says banks should serve the entire community in which they do business, including low- and moderate- income (LMI) communities, redlining mainly happened in, and continues to happen in and impact, Black and Brown communities. This is why banks must make decisions about their CRA-related lending, investments, and grants through the lens of racial equity, as well as economic equity.

As in the rest of the nation, there is much work to be done in New York to come to terms with our history and to address structural racial and income inequality. We need to look at the laws and economic policies that perpetuate structural racism and keep communities segregated. We also need structural change to ensure that jobs pay a living wage. New York State must develop and foster an environment where affordable housing, health care, and quality childcare are a reality for all people.

At the institutional level, banks must shift policies, practices, and culture to align with racial equity, anti-oppression, and cultural humility. This includes work to:

- Become welcoming for all people particularly those who have been historically, and continue to be, marginalized.
- Assure employees, from the CEO down to staff underwriting loans, and those working with the public, are doing internal and interpersonal work (including implicit bias training) to address internalized racism and other forms of oppression.
- Find ways to go into the community to create ease/support for BIPOC and Black and Brown-owned businesses.

As part of its racial justice journey, CNB can take advantage of a project right in our community. **"Our Local History: Inquiry, Equity, Action,"**[35] formerly known as the Antiracist Curriculum Project, is dedicated to empowering K-12 educators, students, and community members through comprehensive classroom instruction and community workshops. Its team provides free, open-source educational resources designed to promote racial equity, civic engagement, and a deeper understanding of local history, systemic racism, and civil rights. Beyond schools, Our Local History's work extends into the broader community, where they collaborate with local organizations to facilitate workshops, film screenings, and discussions that inspire systemic anti-racist change.

GRCRC thanks CNB for its $750 contribution to Our Local History in 2021, which supported the project's mission. Looking ahead, we welcome future financial support to help Our Local History expand its impact in schools and community organizations across the six-county region (especially in Ontario County where they are working closely with Canandaigua and Victor Schools). Our Local History would also be honored to provide an engaging workshop for CNB staff on the history of redlining, banking, and civil rights in the region. In 2024, staff facilitated a highly impactful three-hour workshop for the senior leadership and staff at ESL Federal Credit Union, and they are happy to offer a similar experience for CNB.

In addition to its internal work, CNB can take other constructive actions to support BIPOC people, businesses, and communities. CNB can:

- Start tracking how much of its CRA related activities and support (lending, philanthropy, and community development loans and investments) goes to BIPOC people, businesses and organizations led by people of color, and BIPOC communities, and create specific goals to increase these levels of support over time.

- Partner with and/or support BIPOC-led organizations that CNB has not worked with in the past, including through investments, grants, and hiring local BIPOC-led vendors for supplies and services.

- Work with the Black and Brown residents of formerly redlined neighborhoods to address the vestiges of redlining and to build wealth and equity in ways that do not push-out lower income residents. <u>CNB will be taking a significant step in this direction when it launches its SPCP for Buy the Block homebuyers.</u>

[35] https://www.ccsi.org/ourlocalhistory/

Research from the University of Houston highlights the intersections of race and advertising. The results underscore the power of advertising and access on behavior.[36] We hope CNB will find this research helpful as the bank continues its work in Black and Brown communities as well as its internal work in addressing the legacy of racism in this country. We look forward to hearing how the bank is progressing in this critical work.

Supporting a Thriving Workforce

The mission of the **Urban League of Rochester, Inc. (ULR)** is to enable African Americans, Latinos, the poor, and other disadvantaged to secure economic self-reliance, parity and power, and civil rights. ULR currently provides financial empowerment education, housing education and first-time homebuyer supports, youth and education services, workforce development services, and business development education to improve the financial security and economic growth within our community.

ULR has been providing workforce development programs since 1967 and serves individuals with intersectional needs who face multiple barriers to employment and self-sufficiency such as substance abuse, involvement with the criminal justice system, low literacy levels, absence of a high school diploma, lack of adequate childcare and transportation, and other issues associated with systemic and concentrated urban poverty. Many of these challenges disproportionately affect people of color and low-income individuals due to historical inequities and racial discrimination such as but not limited to, racial profiling, poor distribution of resources and capital investment, and redlining and housing segregation. These disparities affect the individuals in ULR's workforce development programs and emphasize the importance of basic needs being met as well as service provision including direct assistance, referrals, and connection to resources, that is also intersectional.

ULR currently has four workforce development programs. We ask that CNB connect with the ULR to find out how to best support these programs. We would be happy to make an introduction. Its programs are:

- **YouthBuild** provides comprehensive services to disadvantaged youth ages 17-24. The program is recognized by the NYS Department of Labor as a Direct Entry Provider for apprenticeship programs. It provides hands-on construction and advanced manufacturing training using the Pre-Apprentice Certificate Training (PACT), Certified Production Technician Training, GED preparation, case management, job readiness training, job placement, personal development, and follow-up activities.

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[36] Hawkins, Jim and Penner, Tiffany, "Advertising Injustices: Marketing Race and Credit in America," (September 15, 2021). Emory Law Journal, Vol. 70, No. 1619, 2021, Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3924970.

- **The Growth Opportunities** program prepares justice-involved young adults ages 18 to 24 for entry into the workforce through job placement and paid work experiences. Services include case management, occupational training in construction, advanced manufacturing and food service, high school equivalency preparation, work experience placements, mentoring, supportive services, and leadership development.
- The **ULR Workforce Development for Under and Unemployed Individuals (WDUI)** program works with individuals of all ages to obtain industry recognized certifications and job placement in improved career paths. This program supports underemployed or unemployed individuals who reside in the most economically disadvantaged communities in Rochester. Through subsidized training programs, individualized career plans, and robust support services program participants are able to obtain better paying careers and a step toward economic self-reliance. Currently offered certifications include Mold Abatement Worker, Asbestos Handler, Lead Abatement Worker, OSHA 10, CCNA, Project Monitor, and NCCER.
- **Improving Reentry Education and Employment Outcomes (REE)**: This program supports justice-involved adults (18+) move from incarceration to successful and stable reintegration into the community. The program provides pre-release, transitional, and post-release services centered on the unique needs of each person. Services include attaining industry recognized credentialing in Asbestos Project Monitoring, Lead Abatement and Mold Abatement, CISCO Networking, COMPTIA Networking, and ServeSafe/Food Service Management. Wrap around services include GED/high school equivalency procurement, job readiness training, financial and digital literacy classes, and individualized supports to allow each participant to set and achieve their own personal and professional goals. Subsidized work experiences and committed partners help ensure low recidivism and give participants the stability needed to successfully reenter the community.

ULR has provided business development services since 1988. ULR's Entrepreneurship and Wealth Building Division currently houses a New York State Entrepreneurship Assistance Center (EAC), the Reimagine Workforce Preparation Program, and the Rochester Women's Business Center (RWBC) powered by the U.S. Small Business Administration. Services include basic business development education, assistance in starting or expanding a business, assistance in securing capital, networking opportunities, assistance in obtaining certifications to help them grow their business ventures. Examples of training topics include business startup, financial management, marketing, procurement, market research, laws, taxes, intellectual property, insurance, products and pricing, e-commerce, social media, cash flow management, and book and recordkeeping.

Bank Branches

Like most GRCRC members, the **Urban League of Rochester (ULR)** is very concerned about banking deserts, which impact our community's ability to open bank accounts and access lending or financial education services. As banks have closed branches in Rochester, especially in neighborhoods already impacted by a legacy of redlining, community members already impacted by systemic inequities such as lack of generational wealth and little access to transportation are unable to access branches in other neighborhoods. This lack of access to banks further exacerbates the extreme poverty in neighborhoods with banking deserts.

ULR's clients turn to mobile banking alternatives such as Chime due to limited accessibility to banks in the community and convenience. With Chime, consumers may use any ATM at the expense of a small fee.

To address the issues of banking deserts and use of neo-banking apps, we urge CNB to increase its branch presence in LMI areas of the city of Rochester, particularly areas where other banks have pulled out such as the southwest and northeast sections of the city and consider increasing the number of its branches along Rochester's bus lines and provide funding to community agencies that provide financial education and programming to underserved populations.

Abusive Auto Lending

One prevalent consequence of lack of access to sound credit and banking services is abusive auto lending. In the Rochester MSA and surrounding rural counties of the Finger Lakes and Western New York, where almost no viable public transportation options exist, cars are essential for getting to work, medical appointments, and accessing other basic services.

Without access to auto loans from banks, subprime auto lenders and "Buy Here Pay here" dealers are prevalent. These predatory dealers and lenders sell people cars with loan contracts that are designed to fail.

At $1.44 trillion, auto debt is at an historic high.[37]

Until recently, there was limited data/information on abusive auto lending. Research by Consumer Reports published in December 2021 sheds some light on the abuses.[38] Consumer Reports purchased almost a million loan files and documented the mismatch between credit scores and interest rates. In addition, many of the abusive auto lending practices are described at

[37] https://uspirg.org/news/usp/new-fed-data-reveal-auto-debt-historic-highs
[38] https://www.consumerreports.org/car-financing/how-loophole-ridden-auto-lending-laws-harm-consumers-a3113489289/

a panel discussion that included elected officials from Connecticut, as well as Ruhi Maker Esq. and Chuck Bell (Consumer Reports) from New York.[39]

The FTC's enforcement actions and the pending CARS rule document the abusive practices in auto lending.[40] (The rule was to take effect in July 2024 but is on hold pending litigation.) These practices include hidden fees for the dealership, and costly, yet worthless, extended warranties added to the contracts without the consumer's knowledge.

Most consumers are not even made aware of the terms of the loan at the time they purchase the car. The majority of documents are signed on a computer, by clicking a button that is often controlled by the salesperson or signed on paper with the salesperson's hand hiding pertinent information. Frequently consumers leave the lot with their car but not their contract. When they finally do receive the contract, they are shocked to learn that the car they purchased will cost them more than twice what they were told by the dealer. Because there is no cooling-off period for car sales, consumers are left with no recourse to return the car after learning it is unaffordable, and dealers will often direct consumers to the company that indirectly financed their loan, even though the consumers have only ever interacted with the dealer. All of this results in extremely high default rates--25% for subprime auto loans made at "Buy Here Pay Here" dealerships, compared to only 1% default rates for low-interest auto loans made by traditional banks. When individuals default on their auto loans, the lender will repossess the vehicle and auction it off for a fraction of the fair market value. In most instances, this leaves a large deficiency balance on the loan that the lenders will pursue in the courts by filing lawsuits against the consumers, again increasing what the loan costs by adding attorney's fees, court costs, and post-judgement interest. Without access to legal representation, many of these lawsuits result in default judgments against the consumers, even when there are legal defenses. Consumers will then end up paying for these cars for years after they surrendered them and for thousands of dollars more than they were ever worth. This results in a cycle of subprime credit that is almost impossible to break.

Just how predatory lenders do this is laid out in the complaint filed by the New York Attorney General and the CFPB against Credit Acceptance Corporation (CAC) in January 2023.[41] The complaint alleges that CAC advertised its loans as fixing credit. They were in fact designed to fail, end in repossession, and extract money from borrowers with impaired credit via inflated payments, repossessions, and judgments. CAC used a proprietary algorithm to pick the price, loan terms, and useless add-ons to maximize profit. This lawsuit could impact 1.9 million borrowers.

[39] https://drive.google.com/file/d/15kRAB6qV94VD3_RPYB_mzbvwnMWceowx/view
[40] https://www.ftc.gov/business-guidance/resources/ftc-cars-rule-combating-auto-retail-scams-dealers-guide
[41] https://ag.ny.gov/press-release/2023/attorney-general-james-and-cfpb-sue-auto-lender-cheating-thousands-new-yorkers

In September 2024 the Empire Justice Center joined the National Consumer Law Center and other advocates in an Amicus Brief in this CAC lawsuit (attached). Empire Justice Center has firsthand knowledge of some of the facts described above as a result of conversation with a CAC borrower. The borrower is still paying out a judgment on an abusive auto loan, which has prevented her from joining a first time homebuyer program.

As seen above, CNB is helping to address abusive auto lending by becoming a partner lender this year in CCCSR's **Driven2Success** program.

Access to Affordable Products for the Un- and Under-Banked

As seen in the NY Times article by Matthew Desmond:[42]

> "Every year: almost $11 billion in overdraft fees, $1.6 billion in check-cashing fees and up to $8.2 billion in payday-loan fees. That's more than $55 million in fees collected predominantly from low-income Americans *each day* — not even counting the annual revenue collected by pawnshops and title loan services and rent-to-own schemes."
>
> "According to the F.D.I.C., one in 19 U.S. households had no bank account in 2019, amounting to more than seven million families. Compared with white families, Black and Hispanic families were nearly five times as likely to lack a bank account. Where there is exclusion, there is exploitation. Unbanked Americans have created a market, and thousands of check-cashing outlets now serve that market….In 2020, Americans spent $1.6 billion just to cash checks."
>
> "Roughly a third of all payday loans are now issued online, and almost half of borrowers who have taken out online loans have had lenders overdraw their bank accounts. The average borrower stays indebted for five months, paying $520 in fees to borrow $375."

While brick and mortar payday lending is illegal in New York, online payday lending is used by many NY consumers because they don't know that payday lending is illegal in NYS and/or they need money for an emergency.

Financing remains a top challenge for clients enrolled in the **Urban League of Rochester's Entrepreneurship and Wealth Building programs**. It is their experience that individuals who seek assistance have significant barriers to accessing credit, which often begin with their credit worthiness, or lack thereof. Many do not have the seed money to launch their businesses and must apply for loans but are often denied financial packages. Loans continue to require higher credit scores for applicants to qualify. Although credit is purportedly softening, fewer loans are

[42] https://www.nytimes.com/2023/03/09/magazine/poverty-by-america-matthew-desmond.html

being issued by traditional and alternative funding sources and ULR's client base, primarily the underserved, struggle with subpar credit and other financial issues.

Banks can develop products and practices to address wealth extraction from low-moderate income consumers. Some smaller banks are now doing small dollar loans; they have found a way to make a profit while making these loans affordable.

CNB noted during our meeting that the bank is exploring small dollar loans. They estimate that the cost to the consumer for a 30–60-day loan would be one overdraft fee, so less expensive than several overdrafts. Advocates, however, recommend that the term of the loan be at least 4 months, so the borrower does not get caught in a cycle of debt. Recognizing that emergencies will arise, we encourage CNB to develop a small dollar loan for $500 - $1,000 that is low fee and is repaid over 4-5 months.

In addition, the CFE Fund's Bank On initiative works with financial institutions to develop safe, low-cost transactional accounts that meet the Bank On National Account Standards.[43] While CNB has an e-ssentials account[44] that meets the NYS Basic Banking Account requirements, these standards are not as robust as the Bank On National Account Standards.

CNB shared with us that it is starting its first product development of a Bank On offering this year and plans to have it roll out in 2025. **We are happy to hear this and ask CNB to work with our local Bank On Coalition and/or the CFE Fund to effectively market its new Bank On account.**

CNB's overdraft fee is $37 that is "charged each time we pay an overdraft for any transaction item over $5.00. There is no daily limit on the number of paid items that may incur a fee."[45] This "courtesy limit" is standard with all CNB checking accounts, including e-ssentials. CNB will authorize and pay overdrafts for checks and other transactions made using the customer's checking account or debit card number; it does not authorize overdrafts for everyday, one-time debit card transactions or ATM withdrawals.[46] GRCRC is very concerned that there is no daily limit on overdraft fees, meaning consumers can rack up hundreds of dollars in charges when writing checks or when automatic payments occur over a holiday or a weekend. We urge CNB to consider reducing its overdraft fees on all accounts.

Finally, CNB shared that the bank does "not charge to cash on-us checks. Many banks will not cash checks for non-customers and if they do they charge a fee. We feel that for the employees of our businesses that do not have accounts, we want to ensure they have quick and easy access to their paycheck. We want to have them avoid using check cashing services which take large

[43] https://bankon.wpenginepowered.com/wp-content/uploads/2022/08/Bank-On-National-Account-Standards-2023-2024.pdf
[44] https://www.cnbank.com/you/checking/compare-checking-accounts
[45] https://www.cnbank.com/you/checking/courtesy-limit
[46] Ibid.

portions of their checks." We appreciate this simple courtesy to the employees of business customers. It costs the bank relatively little and creates good will, while saving consumers hard-earned money.

Supporting Homeownership

The **Greater Rochester Housing Partnership (GRHP)** is a not-for-profit lender (a CDFI) dedicated to the creation and preservation of affordable housing in the Rochester NY region, including through construction lending and single-family homeownership programs. GRHP's single-family homeownership work includes the following: 1) acquisition-rehab-resale of vacant properties for purchase by first-time LMI buyers through HOME Rochester and Make Monroe Home; 2) new construction of energy efficient, single-family homes for purchase by first-time LMI buyers currently as a developer partner through the City's Buy the Block program.

Since 2002, the **HOME Rochester Program** has been rehabilitating vacant homes, revitalizing neighborhoods, and providing quality affordable homeownership opportunities in the City of Rochester. GRHP provides management services to the program as well as needed financing.

The **Rochester Housing Development Fund Corporation** (RHDFC), GRHP, and public and private partners of HOME Rochester have acquired and rehabilitated more than 850 vacant homes located in city of Rochester neighborhoods and sold them to first-time homebuyers. HOME Rochester properties are sold at prices that are affordable to low- and moderate-income homebuyers and that are in line with comparable values of similar neighborhood properties. HOME Rochester houses carry a 15-year affordability period (homebuyers agree to live in their houses for 15 years or sell to another income-eligible buyer during the affordability period). This program requirement ensures that the investment made to rehabilitate a HOME Rochester property results in affordable housing that is sustainable for at least 15 years. This residency requirement also ensures these homes remain owner-occupied for at least 15 years which in turn helps with neighborhood stability.

In 2019, the HOME Rochester model was expanded into suburban Monroe County. Through **Make Monroe Home**, the Rochester Housing Development Fund Corporation rehabilitates vacant county properties for purchase by LMI first-time homebuyers.

GRHP develops newly constructed, energy efficient homes for purchase by LMI first-time homebuyers on vacant parcels in the city of Rochester. Currently, GRHP (through its general contractor partner) is building new homes in targeted, formerly redlined areas through the City of Rochester's **Buy the Block Program**. To date, 19 homes have been completed and sold to income eligible first-time homebuyers. Five additional homes are currently under construction. More than 250 interested buyers applied for these 24 project homes (although a number of these applicants did not meet program qualifications). GRHP is in the process of assembling the financing to construct up to 16 newly constructed homes for purchase by LMI first-time homebuyers through Phase II of the Buy the Block program. For all these programs, homebuyers must be able to qualify for a conventional, fixed rate mortgage and contribute a minimum of $1,500 of their own money toward the purchase of the home. Mortgage lenders who offer products that fit with the characteristics of these programs (including underwriting that allows for the CLTV levels these programs carry) is key to their success. In addition, these programs would benefit from flexible sources of subsidy (foundation grants) that could be used to help cover the difference between total development cost and sale price and support the project's energy goals.

CNB has expressed interest with GRHP in developing a special purpose mortgage product to serve the LMI buyers of these homes. A portfolio product with no CLTV constraints along with a downpayment assistance incentive for the buyers would be a helpful way CNB can support this work.

As seen above, CNB expects to roll out its SPCP for Buy the Block in Q2 or Q3 of 2025.

The **Homeowner Protection Program (HOPP)** funds eighty-nine nonprofit legal services and housing counseling agencies, serving every county across New York State. These community-based organizations employ hundreds of specially trained lawyers and housing counselors to provide direct services to families facing threats to homeownership. **Empire Justice Center** is contracted by the New York State Office of the Attorney General under HOPP to oversee contracts and provide training and technical support to all grantees outside of New York City. As a statewide network of advocates and homeownership experts, HOPP believes that the systemic barriers to attaining homeownership for Black and Brown people also exist when it comes to preserving homeownership. HOPP advocates only have evidence of this anecdotally. To ensure that banks that service mortgages are equitably serving all communities in the world of homeownership, HOPP strongly urges them to be collecting and reporting demographic, including racial, data regarding defaults and loan modifications. For example, this data would include which borrowers experience default at what points during a loan, who is getting denied for loan modifications, and the reasons for denial. We urge CNB to work with HOPP and to model for other mortgage servicers how this data can be provided.

Other Community Opportunities

Improving Housing Affordability for Renters and Owners

On January 30th Empire Justice Center submitted comments to the City of Rochester on its proposed draft zoning code. The comments describe the housing crisis and recommend increased density of both affordable rental and homeowner units.[47]

Several sources show how housing prices have increased in the Rochester NY MSA.

- Based on anecdotal evidence, climate refugees from the Southwest and West are relocating to Rochester and making cash purchases.[48]
- A Rochester suburb has been ranked as the hottest zip code in the US with respect to home sales.[49]
- According to research by the Greater Rochester Association of Realtors (GRAR), the median sales price of a home in the Greater Rochester market rose to $200,000, more than an 11% increase over 2021 and almost 43% higher than in 2018.[50]
- Homes are going over the asking price, a recent first-time homebuyer shared in a January 2023 news story. "I was bidding up to $30,000 over the asking price," Clark explained. "What I found out was that was the bottom of a pile of 18 offers and the final sale price went for $70,000 over and it was an increase of $100,000 home value in four years."[51]
- A quick March 2023 search of homes in Rochester between $125,000 and $160,000 on Zillow showed only a handful of homes for sale.

There are over 55,000 rent burdened housing units in Monroe County, of which almost 30,000 are in the city of Rochester.[52] In a 2021 report, ACT Rochester found that over 2,000 city of Rochester landlords are marginal or predatory landlords (some out of state/country) and that they own 50% of the rental housing units in the city.[53] These landlords extract high rent from tenants who have limited choices due to the lack of affordable housing. Meanwhile, they do little to repair and maintain the properties.

CNB can increase housing affordability by supporting some of the rural housing-related programs described below, as well as increasing its support of those offered by GRHP (as

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[47] https://empirejustice.org/wp-content/uploads/2024/01/ROC-Draft-Zoning-Code-Empire-Justice-Center-Comments-01-30-2024-003.pdf
[48] Bank meeting with mortgage paralegal, March 2023.
[49] https://www.grar.org/brighton-ranked-no-1-on-realtor-coms-2022-hottest-zip-codes-in-america-list/
[50] https://rochesterbeacon.com/2023/03/09/the-road-to-rent-stability/
[51] https://www.rochesterfirst.com/economy/the-new-obstacles-making-rochesters-housing-market-more-expensive/
[52] U.S. Census Bureau (2016-2020). Tenure by Housing Costs as a Percentage of Household Income in the Past 12 Months American Community Survey 5-year estimates. Table B25106. Retrieved from https://censusreporter.org
[53] https://actrochester.org/tinymce/source/OtherReports/FINAL_MonroeRentalStudy_Nov2021.pdf, pp. 14-16.

described above). Specifically, CNB can provide deep subsidies/investments into GRHP's HOME Rochester and Make Monroe Home programs to make these programs rehabilitated properties affordable to lower income families. These properties are becoming increasingly unaffordable for families other than those near 80% of the area's median income due to higher rehabilitation costs, the post-COVID increases in housing prices in the Rochester area, and higher interest rates.

CNB can also help reduce the 40-point Black/white homeownership gap by helping increase the supply of homes for purchase by 1st generation, 1st time homebuyers. This might include increasing investments and/or community development loans for the development of homes that are affordable for such homebuyers and for affordable rental housing so young families can save for homeownership. We are working with ESL FCU on its **Greater Rochester Generational Wealth Initiative**.[54] The initiative is looking for partners to increase the supply of affordable owner- and renter-housing in the Rochester area and to increase the number of eligible homebuyers. We urge CNB to talk with ESL to see how they can work together for such a promising goal.

Also, refer to our section on Considerations for Special Purpose Credit Programs in our conclusion to the HMDA Lending section above for how CNB can improve the affordability of mortgage credit.

Needs of LMI Communities in Rural Areas

We ask that Canandaigua NB&T increase its support for programs that work with low-income households, particularly in rural communities, who are seeking to buy a home or make other essential large purchases, such as a car, but have a low credit rating or limited credit history.

For example, in rural Western New York, **Legal Assistance of Western New York (LawNY®)** can identify many ways in which CNB can meet the financial and investment needs of the LMI communities it serves. LawNY® is a long-standing legal services provider in the counties of Steuben, Chemung, Tompkins, Allegany, Cattaraugus, Chautauqua, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Tioga, Wayne, and Yates.

While a majority of CNB's branches are located in the urban and suburban areas of Monroe County, CNB does have branches in more rural-oriented areas of LawNY's service area, such as Ontario county. Additionally, CNB has the third largest market share of any bank in LawNY's

[54] https://genwealthroc.org

service area – making up 10.54% of the market share within LawNY's 14 counties.[55] Even the branches located in cities, such as Canadaigua and Rochester, provide critical financial services and lending opportunities to surrounding rural areas where bank branches and available financial services are scarce.

Liam O'Halloran-Veazey, a staff attorney employed at LawNY® to work on housing, consumer, and community reinvestment issues covering LawNY's more rural-oriented service area, points out that, bank closures, disinvestment, and limited access to safe credit and stable financial services deeply impact LMI communities in LawNY's service area. While small banks are struggling, it is essential that the more prominent regional banks operating in its rural service area step up and meet the credit, financial, and investment needs of the region.

According to Liam:

> "Homes in our rural area are relatively affordable compared to rents if mortgages are available to LMI households. In 2022, the median residential sales price in Allegany County, as listed by the NYS Department of Taxation and Finance, was $93,250 – one of the lowest levels of any county in New York state. For Steuben County, the average home sales price was $135,000. For the county of Ontario, where CNB has branches, the average was $260,000. For Wayne County, which adjoins Monroe and Ontario counties, the average home price was $181,000. All of these county averages are well below the state average, which was $305,000 in 2021 (excluding NYC) but is now estimated to be even higher.[56]
>
> "However, most of our legal services clients have low credit ratings or limited credit history, even though many have steady income from employment or social security benefits and favorable recent payment records. Despite the relatively low monthly payments required to amortize a mortgage, our clients and other consumers like them are trapped in more expensive rental housing.
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> "Many households, unable to get financing from banks, enter into one-sided, high interest and risky land contracts or "rent-to-own" agreements. Some of the finance companies

[55] Deposit Market Share Report (Allegany, Cattaraugus, Chautauqua, Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Yates), FDIC, https://www7.fdic.gov/sod/sodMarketRpt.asp?barItem=2.

[56] Statewide residential median sale price - excluding New York City, NY Dept. of Taxation and Finance, https://www.tax.ny.gov/research/property/assess/sales/stmedprice.htm; New York Housing Market 2024: Trends & House Prices, Forbes, https://www.forbes.com/advisor/mortgages/real-estate/new-york-housingmarket/#:~:text=Statewide%2C%20the%20median%20sales%20price,areas%20of%20New%20York%2C%20though.

> attract purchasers based on inflated internet advertising. Other finance companies market severely substandard homes typically bought at tax or mortgage foreclosure auctions. Many of the housing cases handled by our office involve defending clients in these oppressive arrangements or assisting them with the very difficult task of obtaining a deed for ownership, even when the buyers have made all their payments. Other cases involve title issues, such as the failure of the finance company or seller to pay property taxes, or the seller has failed to maintain their own mortgage payments. In a land contract or "rent-to- own" transaction, title problems of the seller can result in the loss of the buyer's investment in the home through a foreclosure action brought by a third party."

Liam and other advocates at LawNY propose the following ways that CNB can reinvest in rural Western NY and help lead the way in combating some of its LMI client communities' most pervasive issues.

1. Expand small dollar mortgage lending and FHA, VA, USDA lending.
2. Adopt more inclusive methods of evaluating an applicant's credit worthiness, such as consideration of positive rental history and utility payment.
3. Increase investments in credit/financial counseling coupled with credit-building programs.
4. Provide greater access to low-interest auto loans but increase oversight for auto dealers when doing indirect auto lending.
5. Provide community development investments to expand affordable housing for both rehabilitating existing affordable housing and developing new affordable housing.
6. Expand refinancing eligibility for LMI communities, especially to buyout LMI borrowers from risky land contracts and rent-to-own agreements.
7. Prioritizing keeping bank branches open or arranging to sell/donate branches to CDFIs well-positioned to maintain financial services to LMI communities (who are acutely vulnerable to branch closures).

LawNY® welcomes the opportunity to meet with bank staff to discuss the above proposals and other ways CNB can expand its community reinvestment activities in line with the needs of LMI communities in rural Western New York.

GRCRC urges CNB to work with LawNY to see how the bank can increase access to homeownership and responsible lending in the rural areas of NYS.

Language Access

Over 5.7 million people living in New York speak a language other than English. Of these, 2.5 million speak English less than well (i.e., they have Limited English Proficiency

(“LEP”)). Monroe County has a population of 741,770, of which 103,800 or 14% speak a language other than English at home (US Census Population Estimate, 2015-2019). This includes many Spanish-speaking American citizens who relocated from Puerto Rico to Monroe County after Hurricane Maria in 2017. Rochester also has a significant population of refugees who speak Arabic, Nepali, Somali, and Swahili. Rochester has the largest concentration of Deaf and hard-of-hearing residents in the country.

Since the last recession, **Empire Justice Center** has represented homeowners with foreclosure prevention and supported not-for-profit organizations throughout New York State. Based on its statewide and national work, Empire Justice identified patterns where foreclosure support organizations took advantage of unsophisticated homeowners in default. Many LEP borrowers who spoke no English and were new Americans were vulnerable to organizations that targeted them. Banks must serve LEP borrowers in-language to help them protect their scarce assets and wealth.

At our October meeting with CNB, the bank shared that it now uses TransPerfect translation services for those needing language translation or ASL interpretation at its branches or call-in center. TransPerfect offers live, in-person translation of 171 languages, as well as video capability for ASL interpretation. CNB also shared that it is now offering multi-lingual capability at its branches. Customers can request interpretation when seeking information about financial products.

It is our understanding that signage to request interpretation is well marked in branches.

We will introduce CNB to Deaf and hard-of-hearing advocates, and Ibero American Action League, as well as other members of the **Monroe County Language Access Coalition**. This information about CNB’s services for LEP, Deaf, and hard-of-hearing customers will be useful to the LEP community. The advocates can also provide “lived experience” feedback as they use CNB.

As of the date of this letter, FHFA and the CFPB have developed some guidance on the obligations of financial institutions to serve LEP consumers. **We urge the regulators at the Federal Reserve, the OCC, and the CFPB to develop final detailed guidance so that the majority of the LEP population is equitably served when accessing financial products and services.**

Empire Justice Center has advocated for language access in mortgage originations for over a decade. Fannie Mae and Freddie Mac now require mortgage lenders to collect information on borrowers’ preferred language, as well as any housing counseling services they’ve used. This information will enable lenders to make as much information as possible about their mortgages in the language the borrower understands best.

In September 2024, the National Consumer Law center released a report[57] on language access with recommendations for the regulators to require improvements to how banks serve LEP customers. Mortgage servicing in Spanish is one of the most important recommendations. This requires important notices and documents in Spanish as well as bilingual staff and/or interpreters when borrowers are behind in mortgage payments and need to understand their options. We will continue to work with stakeholders on improving language access for LEP New Yorkers.

We urge CNB to provide mortgage servicing communications on missed payments and/or loan modifications in Spanish.

Supporting CDFIs

Genesee Co-op FCU is a CDFI-Certified Credit Union serving primarily low-income people and people of color in Rochester, NY, one of the poorest cities in the country. Genesee Co-op has been rapidly growing to help more community members avoid predatory lending and build wealth. The credit union specializes in offering responsible and affordable car loans to underserved individuals and helping people buy their first homes. Genesee Co-op is looking for $2 million in non-member deposits at a 0% interest rate to support its lending in these communities. Such investments of 5 years or longer will allow the credit union to increase its affordable auto and home lending to low-income community members. GRCRC urges CNB to make significant patient investments in CDFIs like Genesee Co-op.

The **PathStone Enterprise Center, Inc. (PECI)** is a non-profit 501(c)(3) regional Community Development Corporation organized in 1997 and certified as a Community Development Financial Institution (CDFI) in 1998. PECI is the economic development and lending arm of PathStone Corporation with a service area that includes upstate New York between Buffalo and Syracuse and the western half of Puerto Rico. It is also an affiliate of **PathStone Corporation**, a multi-state community development corporation. Established in 1997, the Enterprise Center is a designated Community Development Financial Institution (CDFI). Its mission is to enhance individuals' and communities' economic self-sufficiency and quality of life through entrepreneurial training, technical assistance, access to financing for new and expanding businesses, and mortgage products for underserved borrowers.

A variety of government and private funds capitalize on PECI. PECI is a micro-lender for the SBA and USDA. PECI has received a loan and grant capital from New York's Empire State

[57] https://www.nclc.org/resources/cracking-the-code-understanding-and-overcoming-language-barriers-in-consumer-finance/

Development that it uses for re-lending. In addition, PECI has received Program Related Investments (long-term low-interest loans or grants) from six financial institutions and three foundations to make loans they cannot make in their service areas. These capital funds in the form of long-term, low-interest-rate loans, and operating grants are critical for CDFIs that provide loans and technical assistance to businesses that cannot get funded through traditional lenders.

The Enterprise Center at PathStone and Canandaigua NB&T have had a partnership for several years, focusing on helping small business clients. CNB refers clients to PECI who may not meet their loan application requirements or criteria for funding. In the past year, the bank referred six loan applicants, and PECI successfully approved loans for four of them, with a total of approximately $300,000 deployed.

In addition to the support of The Housing Council at PathStone and the PathStone Foundation, GRCRC asks that CNB consider providing such loans or grants to PECI, another arm of the PathStone Corporation.

GRCRC requests that CNB provide funds, in the form of low-interest loans, deposits and/or grants, directly to CDFIs like PECI and Genesee Co-op, as they strive to provide capital to small businesses in our community, particularly those owned by minorities, as well as affordable auto loans and mortgages to low-moderate income families, particularly Black and Brown families and recent immigrants.

Climate Change and a Just Transition

The Rochester area needs massive investments to meet our state and local climate goals, and we must make sure that many of these investments reach poor and BIPOC communities, which are disproportionately at risk to bear the brunt of climate change and its impacts.

The Climate Solutions Accelerator of the Genesee-Finger Lakes Region has ideas for how banks can evaluate their businesses through the lens of climate change, elect to move their businesses towards climate-friendly solutions, provide support for organizations that are doing this work in their footprint, and support lower income and BIPOC communities in the transition to net-zero greenhouse gas emissions. CNB can:

- Provide low-cost home improvement or refinance loans and other innovative financing products to people of color and low-moderate income households and tenant occupied buildings to make home energy efficiency projects more affordable and feasible. This will allow owners to weatherize, get heat pumps and heat pump hot water heaters, put in electric car chargers, and install solar panels, which will reduce energy costs, decrease families' carbon footprints and improve indoor air quality.

- Provide affordable financing for small businesses, particularly micro-businesses and Black and brown-owned businesses, that want to improve their energy efficiency and reduce their reliance on fossil fuels.
- Create community development financing goals and products to support projects that provide substantive opportunities for low-moderate income communities to benefit from the transition to renewable energy and reduce their use of fossil fuels, e.g. community solar, district geothermal.
- Invest in renewable energy, including geothermal, solar, wind, battery storage and other building energy efficiency investments, along with clean energy workforce development to support the growing demand of this transition.
- Require or strongly encourage borrowers to include energy upgrades in their renovation projects, especially for multifamily buildings that require major renovations.
- Include information about energy upgrades (and corresponding energy bill savings) and/or referrals to relevant energy programs (e.g., AMPED and other NYSERDA-funded Regional Clean Energy Hubs) as part of homebuyer/financial education programs.
- Provide philanthropic support to nonprofit organizations that are working to address environmental justice/climate justice and climate change.
- Reduce the bank's own carbon footprint.

GRCRC urges CNB to connect with these organizations to hear more about the important work they are doing to improve the Rochester community and to seriously consider their recommendations to advance the work.

CONCLUSION

Economic disparities and racial segregation in the Rochester community persist. Rochester is the 14th most segregated metro area in the US.[58] We have much work and introspection ahead of us to fully understand how structural racism and economic inequality continue to divide our communities and disproportionately harm Black and Brown communities, while ultimately harming us all.[59]

The current economic lay of the land, particularly high interest rates, the residual impacts of inflation, and the lack of affordable rental units and homes for first-time homebuyers means we need creative investments, programs, and products to make owner- and renter-housing more affordable and to increase support for those most impacted by today's economic situation—Black and Brown low-moderate-income first-time home buyers and small business owners. Rochester has many initiatives and organizations to increase the supply of housing, to support

[58] White-Black segregation. Appendix C. https://www.brookings.edu/wp-content/uploads/2022/05/A-2020-Census-Portrait-of-America_s-Largest-Metro-Areas_-Populati.pdf
[59] See Heather McGhee. 2021. **The Sum of Us: What Racism Costs Everyone and How We Can Prosper Together.**

lower income consumers to move closer to homeownership, and to provide technical assistance and financing for small businesses, several of which are described in this letter.

We are pleased to see Canandaigua NB participating in some programs that will benefit impacted communities including Driven2Success, Buy the Block with its special purpose mortgage product, and developing a BankOn checking account product. As we have noted throughout our letter there are many more opportunities for CNB to support families and communities still being impacted by the vestiges of redlining. These opportunities will help CNB to become the lead bank in our community while achieving an 8% reinvestment goal. We are pleased that CNB has read all of our suggestions and that the bank will continue to take them seriously and continue to develop offerings and consult with us in order to remain a strong advocate. We agreed to have quarterly meetings starting in the near future to make this happen.

GRCRC and its member organizations look forward to talking with CNB about how to best meet the needs of communities harmed by structural racism, economic inequality, and the climate crisis in ways that are compatible with safe and sound business practices.

Sincerely,

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Appendix: *Tables 1-11*

Table 1: Offices and Deposits of all FDIC-Insured Institutions											
Deposit Market Share Report											
Deposits as of: June 30, 2023											
	Selected Market										
	Metropolitan Statistical Area(s):										
	ROCHESTER, NY										
						Outside of Market		**Inside of Market**			
Rank	**Institution Name**	**CERT**	**State (Hqtrd)**	**Bank Class**	**State/ Federal**	**No. of Offices**	**Deposits $000**	**No. of Offices**	**Deposits $000**	**Market Share**	**% US Deposits**
1	Manufacturers and Traders Trust Company	588	NY	SM	State	1,006	161,266,058	29	3,986,404	16.84%	2.4%
2	The Canandaigua National Bank and Trust Company	6985	NY	N	Federal	0	0	26	3,603,003	15.22%	100.0%
3	JPMorgan Chase Bank, National Association	628	OH	N	Federal	4,852	2,064,610,783	23	3,431,217	14.49%	0.2%
4	Keybank National Association	17534	OH	N	Federal	958	145,164,174	27	3,020,047	12.76%	2.0%
5	Bank of America, National Association	3510	NC	N	Federal	3,802	1,877,299,426	9	1,861,229	7.86%	0.1%
6	Citizens Bank, National Association	57957	RI	N	Federal	1,071	178,947,971	22	1,766,195	7.46%	1.0%
7	The Lyons National Bank	7151	NY	N	Federal	4	253,530	12	1,465,643	6.19%	85.3%
8	Five Star Bank	659	NY	SM	State	28	3,726,569	21	1,338,825	5.66%	26.4%
9	Community Bank, National Association	6989	NY	N	Federal	197	12,147,902	15	933,099	3.94%	7.1%
10	Genesee Regional Bank	26333	NY	NM	State	0	0	3	823,371	3.48%	100.0%
11	Tompkins Community Bank	609	NY	NM	State	57	5,792,703	8	710,346	3.00%	10.9%
12	The Upstate National Bank	13748	NY	N	Federal	2	25,726	1	185,683	0.78%	87.8%
13	Wayne Bank	698	PA	NM	State	27	1,573,282	2	159,722	0.67%	9.2%
14	Evans Bank, National Association	6947	NY	N	Federal	16	1,639,810	4	150,182	0.63%	8.4%
15	Generations Bank	16040	NY	SB	Federal	5	228,614	4	108,132	0.46%	32.1%
16	Northwest Bank	28178	PA	SB	State	141	11,966,579	2	77,035	0.33%	0.6%
17	Savannah Bank National Association	14619	NY	N	Federal	4	121,697	1	44,405	0.19%	26.7%
18	Woodforest National Bank	23220	TX	N	Federal	772	7,961,435	3	7,287	0.03%	0.1%
	Number of Institutions in the Market: 18				TOTALS	12,942	4,472,726,259	212	23,671,825	100	

Table 2: Canandaigua National Bank Total Mortgage Lending 2020-2023

Rochester, NY MSA

(1st lien loans on owner-occupied (principal & secondary), 1-4 family, site built units)

					2022-2023		2020-2023	
	2020	2021	2022	2023	# change	% change	# change	% change
MSA	2,643	2,064	1,149	754	-395	-34%	-1889	-71%
City	205	140	96	64	-32	-33%	-141	-69%
Black/Latino HH	102	106	64	50	-14	-22%	-52	-51%
Low-Mod Income HH	633	616	384	268	-116	-30%	-365	-58%
Low-Mod Income CT	192	135	160	113	-47	-29%	-79	-41%
Majority Non-White CT	75	61	52	38	-14	-27%	-37	-49%

					AFI
% of loans in:	**2020**	**2021**	**2022**	**2023**	**2023**
City	8%	7%	8%	8%	13%
Black/Latino HH	4%	5%	6%	7%	12%
Low-Mod Income HH	24%	30%	33%	36%	42%
Low-Mod Income CT	7%	7%	14%	15%	22%
Majority Non-White CT	3%	3%	5%	5%	9%

Note: Numbers include data from Canandaigua National Bank &Trust (all years) and Hometown Funding.

Table 3: Canandaigua National Bank Total Dollar Volume Mortgage Lending 2020-2023								
Rochester, NY MSA								
(Aggregate amount of 1st lien loans on owner-occupied (principal & secondary), 1-4 family, site built units, $000)								
					2022-2023		2020-2023	
	2020	**2021**	**2022**	**2023**	**# change**	**% change**	**# change**	**% change**
MSA	551,385	443,180	280,125	179,710	-100,415	-36%	-371,675	-67%
City	32,265	21,830	16,280	10,540	-5,740	-35%	-21,725	-67%
Black/Latino HH	18,460	20,160	12,070	9,610	-2,460	-20%	-8,850	-48%
Low-Mod Income HH	77,485	80,160	54,810	36,100	-18,710	-34%	-41,385	-53%
Low-Mod Income CT	26,950	17,595	27,360	16,145	-11,215	-41%	-10,805	-40%
Majority Non-White CT	9,405	6,935	6,450	4,130	-2,320	-36%	-5,275	-56%
					AFI			
% of lending in:	**2020**	**2021**	**2022**	**2023**	**2023**			
City	6%	5%	6%	6%	9%			
Black/Latino HH	3%	5%	4%	5%	11%			
Low-Mod Income HH	14%	18%	20%	20%	28%			
Low-Mod Income CT	5%	4%	10%	9%	15%			
Majority Non-White CT	2%	2%	2%	2%	6%			
Note: Numbers include data from Canandaigua National Bank &Trust (all years) and Hometown Funding.								

Table 4: Canandaigua National Bank Home Purchase Loans 2020-2023
Rochester, NY MSA
(1st lien loans on owner-occupied (principal & secondary), 1-4 family, site built units)

					2022-2023		2020-2023	
	2020	**2021**	**2022**	**2023**	**# change**	**% change**	**# change**	**% change**
MSA	1,060	915	740	481	-259	-35%	-579	-55%
City	112	95	67	46	-21	-31%	-66	-59%
Black/Latino HH	58	75	50	34	-16	-32%	-24	-41%
Low-Mod Income HH	380	349	252	170	-82	-33%	-210	-55%
Low-Mod Income CT	119	95	113	79	-34	-30%	-40	-34%
Majority Non-White CT	48	50	41	31	-10	-24%	-17	-35%

					AFI
% of loans in:	**2020**	**2021**	**2022**	**2023**	**2023**
City	11%	10%	9%	10%	15%
Black/Latino HH	5%	8%	7%	7%	14%
Low-Mod Income HH	36%	38%	34%	35%	39%
Low-Mod Income CT	11%	10%	15%	16%	23%
Majority Non-White CT	5%	5%	6%	6%	11%

Note: Numbers include data from Canandaigua National Bank &Trust (all years) and Hometown Funding.

Table 5: Top 8 Banks Total Mortgage Originations 2023

Rochester, NY MSA

(1st lien loans on owner-occupied (principal and secondary), 1-4 family, site built units)

Annual HMDA data	AFI	BOA	CNB	Citizens	Five Star	JPMC	KeyBank	Lyons NB	M&T	Top 8	OFI
MSA	12,328	117	754	345	169	129	219	366	292	2,391	9,937
City	1,616	36	64	70	51	30	53	6	61	371	1,245
Black/Latino HH	1,540	42	50	45	63	21	42	19	59	341	1,199
Low-Mod Income HH	5,229	70	268	217	108	63	116	106	148	1,096	4,133
Low-Mod Income CT	2,721	43	113	93	73	39	67	70	96	594	2,127
Majority Non-White CT	1,156	35	38	56	48	23	46	2	50	298	858
MARKETSHARE											
		BOA	**CNB**	**Citizens**	**Five Star**	**JPMC**	**KeyBank**	**Lyons NB**	**M&T**	**Top 8**	**OFI**
MSA		1%	6%	3%	1%	1%	2%	3%	2%	19%	81%
City		2%	4%	4%	3%	2%	3%	0%	4%	23%	77%
Black/Latino HH		3%	3%	3%	4%	1%	3%	1%	4%	22%	78%
Low-Mod Income HH		1%	5%	4%	2%	1%	2%	2%	3%	21%	79%
Low-Mod Income CT		2%	4%	3%	3%	1%	2%	3%	4%	22%	78%
Majority Non-White CT		3%	3%	5%	4%	2%	4%	0%	4%	26%	74%
Loans as %											
of MSA TOTAL IN:	**AFI**	**BOA**	**CNB**	**Citizens**	**Five Star**	**JPMC**	**KeyBank**	**Lyons NB**	**M&T**	**Top 8**	**OFI**
City	13%	31%	8%	20%	30%	23%	24%	2%	21%	16%	13%
Black/Latino HH	12%	36%	7%	13%	37%	16%	19%	5%	20%	14%	12%
Low-Mod Income HH	42%	60%	36%	63%	64%	49%	53%	29%	51%	46%	42%
Low-Mod Income CT	22%	37%	15%	27%	43%	30%	31%	19%	33%	25%	21%
Majority Non-White CT	9%	30%	5%	16%	28%	18%	21%	1%	17%	12%	9%

ource: FFIEC Home Mortgage Disclosure Act (HMDA) 2023 Snapshot National Loan Level Dataset, as of 5/1/2024, NY data downloaded from: https://ffiec.cfpb.gov/data-browser/data/2023?category=states&items=NY

Prepared by: Empire Justice Center, 585-454-4060

Table 6: Top 8 Banks Dollar Volume HMDA Lending 2023

Rochester, NY MSA

Total Dollar Volume of Lending (000's) (1st lien loans on owner-occupied (principal and secondary), 1-4 family, site built units)

DOLLAR VOL LENDING	AFI	BOA	CNB	Citizens	Five Star	JPMC	KeyBank	Lyons NB	M&T	Top 8	OFI
MSA	$2,409,910	19,975	179,710	49,865	27,985	25,145	41,545	90,040	49,010	$483,275	$1,926,635
City	$226,790	4,100	10,540	6,350	5,485	3,870	5,905	1,200	7,455	$44,905	$181,885
Black/Latino HH	$257,850	5,120	9,610	4,415	8,095	2,845	6,010	3,825	8,165	$48,085	$209,765
Low-Mod Income HH	$675,835	8,470	36,100	23,855	12,450	7,275	12,260	14,530	16,880	$131,820	$544,015
Low-Mod Income CT	$368,955	4,445	16,145	9,205	8,475	4,835	7,095	12,320	12,270	$74,790	$294,165
Majority Non-White CT	$135,360	3,615	4,130	4,730	4,760	2,975	4,290	270	5,610	$30,380	$104,980
MARKETSHARE											
		BOA	**CNB**	**Citizens**	**Five Star**	**JPMC**	**KeyBank**	**Lyons NB**	**M&T**	**Top 8**	**OFI**
MSA		1%	7%	2%	1%	1%	2%	4%	2%	20%	80%
City		2%	5%	3%	2%	2%	3%	1%	3%	20%	80%
Black/Latino HH		2%	4%	2%	3%	1%	2%	1%	3%	19%	81%
Low-Mod Income HH		1%	5%	4%	2%	1%	2%	2%	2%	20%	80%
Low-Mod Income CT		1%	4%	2%	2%	1%	2%	3%	3%	20%	80%
Majority Non-White CT		3%	3%	3%	4%	2%	3%	0%	4%	22%	78%
Loans as %											
of MSA TOTAL IN:	**AFI**	**BOA**	**CNB**	**Citizens**	**Five Star**	**JPMC**	**KeyBank**	**Lyons NB**	**M&T**	**Top 8**	**OFI**
City	9%	21%	6%	13%	20%	15%	14%	1%	15%	9%	9%
Black/Latino HH	11%	26%	5%	9%	29%	11%	14%	4%	17%	10%	11%
Low-Mod Income HH	28%	42%	20%	48%	44%	29%	30%	16%	34%	27%	28%
Low-Mod Income CT	15%	22%	9%	18%	30%	19%	17%	14%	25%	15%	15%
Majority Non-White CT	6%	18%	2%	9%	17%	12%	10%	0%	11%	6%	5%

ource: FFIEC Home Mortgage Disclosure Act (HMDA) 2023 Snapshot National Loan Level Dataset, as of 5/1/2024, NY data downloaded from: https://ffiec.cfpb.gov/data-browser/data/2023?category=states&items=NY

Prepared by: Empire Justice Center, 585-454-4060

Table 7: Top 8 Banks Home Purchase Originations 2023

Rochester, NY MSA

(1st lien home purchase loans on owner-occupied (principal and secondary), 1-4 family, site built units)

Annual HMDA data	AFI	BOA	CNB	Citizens	Five Star	JPMC	KeyBank	Lyons NB	M&T	Top 8	OFI
MSA	7,981	75	481	61	117	86	104	224	140	1,288	6,693
City	1,196	32	46	24	48	26	30	5	35	246	950
Black/Latino HH	1,147	33	34	22	60	17	25	14	42	247	900
Low-Mod Income HH	3,113	52	170	43	82	40	51	77	64	579	2,534
Low-Mod Income CT	1,851	35	79	26	65	34	39	46	57	381	1,470
Majority Non-White CT	872	31	31	23	46	21	26	2	32	212	660

MARKETSHARE		BOA	CNB	Citizens	Five Star	JPMC	KeyBank	Lyons NB	M&T	Top 8	OFI
MSA		1%	6%	1%	1%	1%	1%	3%	2%	16%	84%
City		3%	4%	2%	4%	2%	3%	0%	3%	21%	79%
Black/Latino HH		3%	3%	2%	5%	1%	2%	1%	4%	22%	78%
Low-Mod Income HH		2%	5%	1%	3%	1%	2%	2%	2%	19%	81%
Low-Mod Income CT		2%	4%	1%	4%	2%	2%	2%	3%	21%	79%
Majority Non-White CT		4%	4%	3%	5%	2%	3%	0%	4%	24%	76%

Loans as % of MSA TOTAL IN:	AFI	BOA	CNB	Citizens	Five Star	JPMC	KeyBank	Lyons NB	M&T	Top 8	OFI
City	15%	43%	10%	39%	41%	30%	29%	2%	25%	19%	14%
Black/Latino HH	14%	44%	7%	36%	51%	20%	24%	6%	30%	19%	13%
Low-Mod Income HH	39%	69%	35%	70%	70%	47%	49%	34%	46%	45%	38%
Low-Mod Income CT	23%	47%	16%	43%	56%	40%	38%	21%	41%	30%	22%
Majority Non-White CT	11%	41%	6%	38%	39%	24%	25%	1%	23%	16%	10%

Source: FFIEC Home Mortgage Disclosure Act (HMDA) 2023 Snapshot National Loan Level Dataset, as of 5/1/2024, NY data downloaded from: https://ffiec.cfpb.gov/data-browser/data/2023?category=states&items=NY

Prepared by: Empire Justice Center, 585-454-4060

Table 8: Canandaigua National Bank Small Business Lending 2019-2023

Rochester NY MSA (Inside and Outside Assessment Area)

Number of Loans	2019	2020	2021	2022	2023	2022-2023 # change	2022-2023 % change	2019-2023 # change	2019-2023 % change
Number of Loans Ranking									
Rochester MSA Total	1,217	4,976	3,658	1,343	1,235	-108	-8%	18	1%
Rochester MSA in LMI CT	255	956	727	289	269	-20	-7%	14	5%
Loan Amt <= $100,000	1,024	4,151	3,059	1,118	1,059	-59	-5%	35	3%
Loan Amt <= $100,000 in LMI CT	210	775	594	241	228	-13	-5%	18	9%
Bus. w. GAR < $1 M	635	678	485	680	633	-47	-7%	-2	0%
Bus. w. GAR < $1 M in LMI CT	117	123	84	146	131	-15	-10%	14	12%

% of Rochester MSA Loans In:	2019	2020	2021	2022	2023	AFI 2022
Rochester MSA in LMI CT	21%	19%	20%	22%	22%	21%
Loan Amt <= $100,000	84%	83%	84%	83%	86%	94%
Loan Amt <= $100,000 in LMI CT	17%	16%	16%	18%	18%	20%
Bus. w. GAR < $1 M	52%	14%	13%	51%	51%	51%
Bus. w. GAR < $1 M in LMI CT	10%	2%	2%	11%	11%	10%

Aggregate Amount of Loans (Millions of Dollars)	2019	2020	2021	2022	2023	2022-2023 # change	2022-2023 % change	2019-2023 # change	2019-2023 % change
Dollar Volume of Lending Ranking									
Rochester MSA Total	$102.25	$365.56	$258.68	$123.92	$101.99	-$21.93	-18%	-$.25	0%
Avg Loan Size (in thousands)	*$84.01*	*$73.46*	*$70.72*	*$92.27*	*$82.59*	-$9.69	-10%	-$1.43	-2%
Rochester MSA in LMI CT	$22.58	$80.10	$57.46	$25.51	$23.98	-$1.53	-6%	$1.40	6%
Loan Amt <= $100,000	$32.21	$121.87	$90.05	$47.98	$42.79	-$5.19	-11%	$10.57	33%
Loan Amt <= $100,000 in LMI CT	$6.82	$24.31	$18.50	$10.29	$9.39	-$.90	-9%	$2.56	38%
Bus. w. GAR < $1 M	$34.47	$47.51	$39.47	$49.40	$38.02	-$11.38	-23%	$3.55	10%
Bus. w. GAR < $1 M in LMI CT	$5.37	$8.81	$8.88	$9.79	$8.64	-$1.16	-12%	$3.27	61%

% of Rochester MSA Loans In:	2019	2020	2021	2022	2023	AFI 2022
Rochester MSA in LMI CT	22%	22%	22%	21%	24%	23%
Loan Amt <= $100,000	32%	33%	35%	39%	42%	41%
Loan Amt <= $100,000 in LMI CT	7%	7%	7%	8%	9%	8%
Bus. w. GAR < $1 M	34%	13%	15%	40%	37%	35%
Bus. w. GAR < $1 M in LMI CT	5%	2%	3%	8%	8%	7%

Notes: We are using 2019 as the base year here because it does not include PPP loans, which banks reported in 2020 and 2021. The 2023 data was supplied by CNB, as 2023 public CRA small business lending data is not yet out.

Table 9: Top 8 Banks Small Business Lending, 2022

Top 8 Depositories, Rochester, NY MSA

Number of Loans

	AFI	BOA	CNB	Citizens	Cmty Bk	Five Star	JPMC	KeyBank	M&T	Top 7	Top 8	OFI
Number of Loans Ranking												
Rochester MSA Total	19,566	871	1,343	115	124	94	3,462	677	579	7,141	7,265	12,301
Rochester MSA in LMI CT	4,101	197	289	32	29	27	627	166	112	1,450	1,479	2,622
Loan Amt <= $100,000	18,442	840	1,118	103	85	55	3,439	613	410	6,578	6,663	11,779
Loan Amt <= $100,000 in LMI CT	3,826	190	241	32	19	12	618	142	76	1,311	1,330	2,496
Bus. w. GAR < $1 M	9,953	553	680	90	95	52	2,359	348	358	4,440	4,535	5,418
Bus. w. GAR < $1 M in LMI CT	2,049	133	146	27	21	15	409	81	67	745	766	1,283

Marketshare

	BOA	CNB	Citizens	Cmty Bk	Five Star	JPMC	KeyBank	M&T	Top 7	Top 8	OFI
Rochester MSA Total	4.5%	6.9%	0.6%	0.6%	0.5%	17.7%	3.5%	3.0%	36.5%	37.1%	62.9%
Rochester MSA in LMI CT	4.8%	7.0%	0.8%	0.7%	0.7%	15.3%	4.0%	2.7%	35.4%	36.1%	63.9%
Loan Amt <= $100,000	4.6%	6.1%	0.6%	0.5%	0.3%	18.6%	3.3%	2.2%	35.7%	36.1%	63.9%
Loan Amt <= $100,000 in LMI CT	5.0%	6.3%	0.8%	0.5%	0.3%	16.2%	3.7%	2.0%	34.3%	34.8%	65.2%
Bus. w. GAR < $1 M	5.6%	6.8%	0.9%	1.0%	0.5%	23.7%	3.5%	3.6%	44.6%	45.6%	54.4%
Bus. w. GAR < $1 M in LMI CT	6.5%	7.1%	1.3%	1.0%	0.7%	20.0%	4.0%	3.3%	42.9%	43.9%	62.6%

Percentage of Rochester MSA Loans In:

	AFI	BOA	CNB	Citizens	Cmty Bk	Five Star	JPMC	KeyBank	M&T	Top 7	Top 8	OFI
Rochester MSA in LMI CT	21.0%	22.6%	21.5%	27.8%	23.4%	28.7%	18.1%	24.5%	19.3%	20.3%	20.4%	21.3%
Loan Amt <= $100,000	94.3%	96.4%	83.2%	89.6%	68.5%	58.5%	99.3%	90.5%	70.8%	92.1%	91.7%	95.8%
Loan Amt <= $100,000 in LMI CT	19.6%	21.8%	17.9%	27.8%	15.3%	12.8%	17.9%	21.0%	13.1%	18.4%	18.3%	20.3%
Bus. w. GAR < $1 M	50.9%	63.5%	50.6%	78.3%	76.6%	55.3%	68.1%	51.4%	61.8%	62.2%	62.4%	44.0%
Bus. w. GAR < $1 M in LMI CT	10.5%	15.3%	10.9%	23.5%	16.9%	16.0%	11.8%	12.0%	11.6%	10.4%	10.5%	10.4%

Total Amount of Loans (Millions of Dollars)

	AFI	BOA	CNB	Citizens	Cmty Bk	Five Star	JPMC	KeyBank	M&T	Top 7	Top 8	OFI
Dollar Volume of Lending Ranking												
Rochester MSA Total	$638.03	$25.17	$123.92	$5.14	$18.01	$18.38	$46.33	$33.82	$81.88	$334.64	$352.65	$285.38
Avg Loan Size (in thousands)	*$32.61*	*$28.90*	*$92.27*	*$44.67*	*$145.24*	*$195.56*	*$13.38*	*$49.95*	*$141.42*	*$46.86*	*$48.54*	*$23.20*
Rochester MSA in LMI CT	$146.91	$4.58	$25.51	$.82	$5.06	$6.84	$8.49	$10.75	$17.08	$74.07	$79.13	$67.78
Loan Amt <= $100,000	$263.66	$13.15	$47.98	$2.38	$4.36	$1.54	$39.46	$9.54	$13.84	$127.88	$132.24	$131.42
Loan Amt <= $100,000 in LMI CT	$54.18	$2.85	$10.29	$.71	$1.07	$.22	$7.71	$2.37	$2.50	$26.63	$27.70	$26.48
Bus. w. GAR < $1 M	$222.32	$9.31	$49.40	$2.59	$11.65	$3.81	$24.48	$8.38	$33.23	$131.20	$142.85	$79.47
Bus. w. GAR < $1 M in LMI CT	$44.76	$1.80	$9.79	$.60	$3.16	$1.65	$4.21	$2.20	$6.79	$27.04	$30.20	$14.56

Marketshare

	BOA	CNB	Citizens	Cmty Bk	Five Star	JPMC	KeyBank	M&T	Top 7	Top 8	OFI
Rochester MSA Total	3.9%	19.4%	0.8%	2.8%	2.9%	7.3%	5.3%	12.8%	52.4%	55.3%	44.7%
Rochester MSA in LMI CT	3.1%	17.4%	0.6%	3.4%	4.7%	5.8%	7.3%	11.6%	50.4%	53.9%	46.1%
Loan Amt <= $100,000	5.0%	18.2%	0.9%	1.7%	0.6%	15.0%	3.6%	5.2%	48.5%	50.2%	49.8%
Loan Amt <= $100,000 in LMI CT	5.3%	19.0%	1.3%	2.0%	0.4%	14.2%	4.4%	4.6%	49.2%	51.1%	48.9%
Bus. w. GAR < $1 M	4.2%	22.2%	1.2%	5.2%	1.7%	11.0%	3.8%	14.9%	59.0%	64.3%	35.7%
Bus. w. GAR < $1 M in LMI CT	4.0%	21.9%	1.3%	7.1%	3.7%	9.4%	4.9%	15.2%	60.4%	67.5%	32.5%

Percentage of Rochester MSA Loans In:

	AFI	BOA	CNB	Citizens	Cmty Bk	Five Star	JPMC	KeyBank	M&T	Top 7	Top 8	OFI
Rochester MSA in LMI CT	23.0%	18.2%	20.6%	16.0%	28.1%	37.2%	18.3%	31.8%	20.9%	22.1%	22.4%	23.8%
Loan Amt <= $100,000	41.3%	52.2%	38.7%	46.3%	24.2%	8.4%	85.2%	28.2%	16.9%	38.2%	37.5%	46.0%
Loan Amt <= $100,000 in LMI CT	8.5%	11.3%	8.3%	13.7%	5.9%	1.2%	16.6%	7.0%	3.1%	8.0%	7.9%	9.3%
Bus. w. GAR < $1 M	34.8%	37.0%	39.9%	50.3%	64.7%	20.7%	52.9%	24.8%	40.6%	39.2%	40.5%	27.8%
Bus. w. GAR < $1 M in LMI CT	7.0%	7.1%	7.9%	11.7%	17.5%	9.0%	9.1%	6.5%	8.3%	8.1%	8.6%	5.1%

Notes: Lyons NB reported no loans, so included the next largest bank--Community Bank (Cmty Bk). Top 7 does NOT include Cmty Bk.

AFI: All Financial Institutions

OFI: Other Financial Institutions

Prepared by: Empire Justice Center, 585-454-4060

Table 10

Table 10a: Canandaigua National Bank and Trust Community Development Lending, Investments and Grants and CRA Eligible Mortgage and Small Business Lending Eligible Mortgage and Small Business Lending Rochester MSA (in thousands) 2024 Exam Period (2021-2023)					
	Economic Development	Affordable Housing	Neighborhood Stabilization	Community Services	Total
Community Development Loans	$136	$16,825	$1,773	$3,857	$22,591
Community Development Investments	$11,000	$3,978			$14,978
CRA-Eligible Grants/Donations		$71	$10	$334	$415
Subtotal	$11,136	$20,874	$1,783	$4,191	$37,984
Special Mention: FHLBNY Homebuyer Dream		$1,630			$1,630
Mortgage Lending*		$348,490			$348,490
Small Business Lending**	$206,530				$206,530
Total	$217,666	$369,364	$1,783	$4,191	$593,004

Note: * Includes all HMDA mortgage originations to low-moderate income households and/or in low-moderate census tracts (unduplicated)

** Includes CRA Small business loans in low-moderate income census tracts and to businesses with gross annual revenues under $1 million (unduplicated).

Numbers provided by Canandaigua NB&T, except for mortgage and small business lending, which were calculated by Empire Justice Center. CNB provided the 2023 small business data, as it is not yet publicly available.

Table 10b: Percentage of Canandaigua NB&T's Rochester MSA Deposits Reinvested in Community			
		% Deposits Reinvested	
	Deposits (millions)	Entire Exam Period	Annualized
2024 Exam Period (2021-2023)	$3,603	16.46%	5.49%
2021 Exam Period (2018-2020, a.)	$2,880	21.30%	7.10%
2021 Exam Period (2018-2020, b.)	$2,346	26.16%	8.72%
2018 Exam Period (2015-2017)	$2,132	15.62%	5.21%
2011 Exam Period (2008-2010)	$1,447	13.95%	4.65%
2007 Exam Period (2005-2007)	$1,100	9.40%	3.13%

Table 10c: Canandaigua NB&T Deposits Versus CRA-Related Reinvestments & % Deposits Reinvested in the Rochester NY Community				
	Deposits (millions)	Total Reinvestments (millions)	Annualized Reinvestments (millions)	Annualized % Deposits Reinvested
2024 Exam Period (2021-2023)	$3,603	$593	$198	5.49%
2021 Exam Period (2018-2020, a.)	$2,880	$614	$205	7.10%
2021 Exam Period (2018-2020, b.)	$2,346	$614	$205	8.72%
2018 Exam Period (2015-2017)	$2,132	$333	$111	5.21%
2011 Exam Period (2008-2010)	$1,447	$202	$67	4.65%
2007 Exam Period (2005-2007)	$1,100	$104	$35	3.13%
2021-2024 Change (#) b.	$1,257	-$21	-$7	-3.23%
2021-2024 Change (%) b.	53.60%	-3.34%	-3.34%	-37.07%
2007-2024 Change (#)	$2,503	$489	$163	2.35%
2007-2024 Change (%)	228%	471%	471%	75%

Note: a. using June 2020 deposits; b. using June 2019 deposits. We are including calculations using 2019 deposits here, as the OCC noted that many banks are holding an excess of deposits in 2020 due to COVID stimulus money paid to municipalities and individuals.

Attachments

STREET LIAISON
19th Ward Community Association
P.O. Box 24754, Rochester NY 14624
585.328.6571 19thward@19thwca.org
www.19wca.org

DATE: October 28, 2024

TO: Empire Justice Center

RE: CNB Bank Mortgage Lending Observations

In anticipation of the pending CRA review an informal look at the past 12 months of CNB mortgage lending numbers in Monroe County was undertaken. Some observations are below.

Period: The most recent 12 months, from October 1, 2023 to October 1, 2024

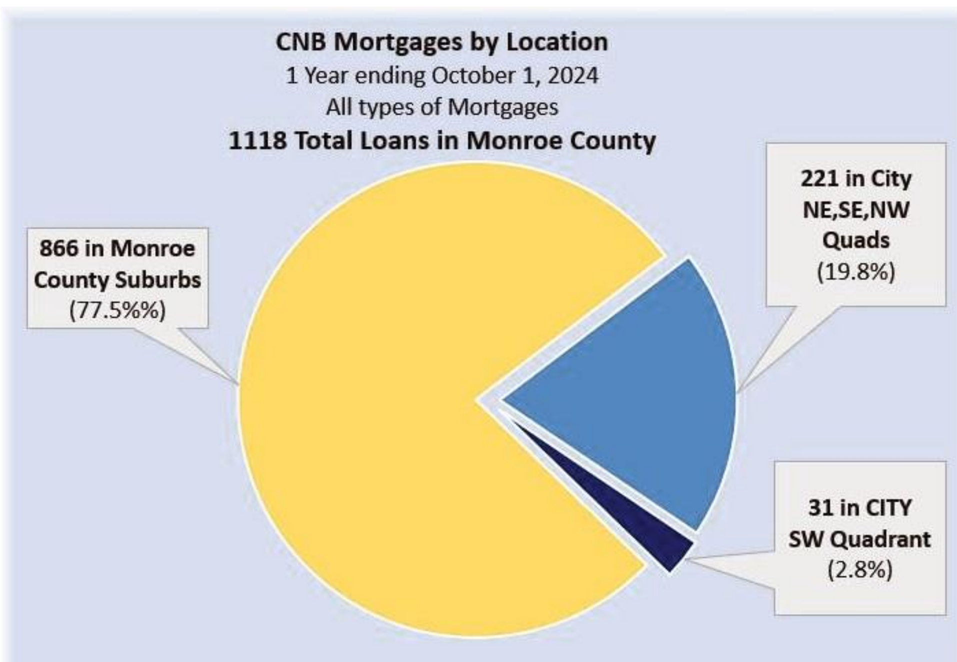
Source: Monroe County Records, searching for all variants of "CNB"

Total: Found 1118 mortgages of all types in Monroe County during the12 months.

Mortgage Types: included were for <u>all</u> property purchases, refi's, HELOC's and HEL's

Observations:

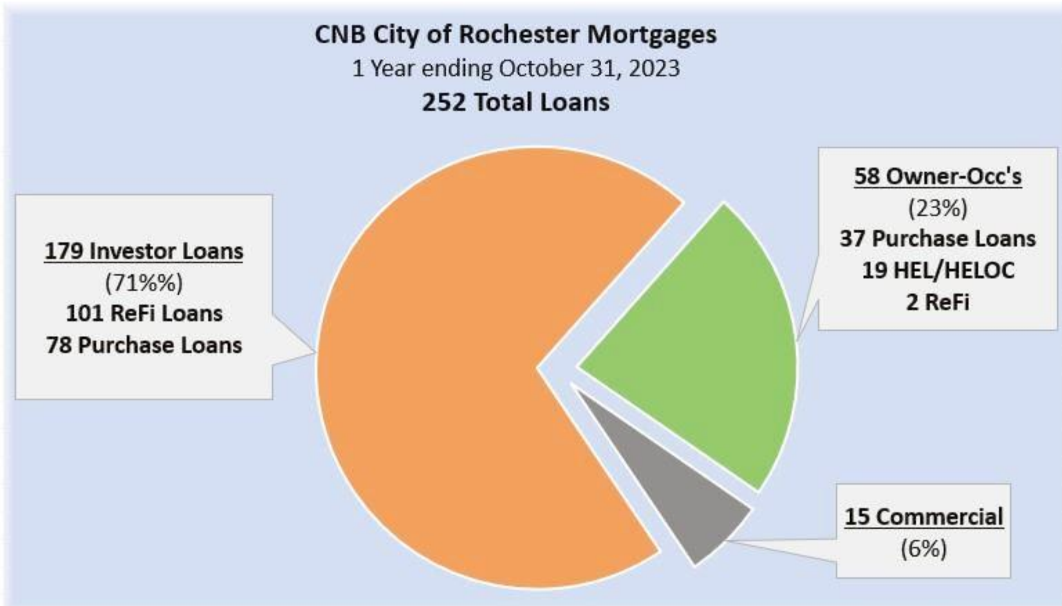
- **City vs Suburbs**: Of 1118 loans, 866 (77.5%) of all mortgage types were placed outside the City compared to 252 (221+31) for City of Rochester properties.



- **Southwest Quadrant vs other parts of the City**: Of the 252 City loans, only 31 were in the SW quadrant The SW quadrant includes the densely built-up 19th Ward, Bull's Head, Corn Hill, Genesee-Jefferson, Mayor's Heights, Plymouth Exchange and Susan B. Anthony neighborhoods. There was no obvious reason for the imbalance.

A closer look at the 252 City of Rochester mortgages was undertaken to discern differences in mortgage customer types and mortgage products.

The chart below provides additional observations when the numbers of owner-occupant mortgages are compared to the numbers of non-resident investor loans.



- **Investors are primary customers** – 71% of CNB mortgages in the City of Rochester were placed for investor-owners. Included were properties ranging from single-family homes to large apartment buildings with mortgages into 7 figures.

  More than half of these loans were used to refinance properties that had been purchased previously, enabling investors to extract the appreciation in market value. The lesser portion of mortgages were used for new purchases.

  Some investor customers were located throughout the US, far from Monroe County. Typically, these customers were buying or refinancing properties in challenged City neighborhoods.

  30 of the investor loans were "bundles" of 2 to 5 non-contiguous properties.

- **Owner-occupants are not a priority** – Only 23% of CNB mortgages went to City owner-occupants. About 2/3 were used for a home purchase. The remaining 1/3 were HEL's and HELOC's.

- **One "bright spot"** was that 5 of the owner-occupant home purchase mortgages were $20,000 five-year forgivable loans from the FHLBNY Homebuyer Dream Program.

- **Commercial mortgages** – CNB provider mortgages for a small number of non-residential commercial City properties, including the new Teen Empowerment property on Genesee St.

Going forward we encourage CNB to seek a higher proportion of City of Rochester property mortgages, attract more owner-occupant mortgages, and scrutinize investor mortgage customers for practices that potentially destabilize City neighborhoods.

Sincerely,

John DeMott

C: Josie McClary, President, 19th Ward Community Association

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CONSUMER FINANCIAL PROTECTION BUREAU and THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiffs,

v.

CREDIT ACCEPTANCE CORPORATION,

Defendant.

Case No.: 1:23-cv-000038 (JHR)

MOTION OF CONSUMER FEDERATION OF AMERICA, THE NATIONAL CONSUMER LAW CENTER, CONSUMER REPORTS AND EMPIRE JUSTICE CENTER FOR LEAVE TO FILE REVISED *AMICUS* BRIEF IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S REVISED MOTION TO DISMISS

PLEASE TAKE NOTICE that Consumer Federation of America, the National Consumer Law Center, Consumer Reports and Empire Justice Center respectfully move for leave to file the accompanying revised amicus brief, attached hereto as Exhibit A, in support of Plaintiffs' Opposition to Defendant's Revised Motion to Dismiss. The basis for amici's motion and the interest of amici are both set forth in the proposed brief.

Dated: October 4, 2024

Counsel for *Amici*:

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October 2024, a true and correct copy of the foregoing was filed with the Clerk of the United States District Court for the Southern District of New York via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

By: /s/ Andrew Pizor
Counsel for *Amici*:
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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CONSUMER FINANCIAL PROTECTION BUREAU and THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiffs,

v.

CREDIT ACCEPTANCE CORPORATION,

Defendant.

Case No.: 1:23-cv-000038 (JHR)

AMICUS CURIAE REVISED BRIEF OF CONSUMER FEDERATION OF AMERICA, NATIONAL CONSUMER LAW CENTER, CONSUMER REPORTS, AND EMPIRE JUSTICE CENTER IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S REVISED MOTION TO DISMISS

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October 4, 2024

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IDENTITY AND INTERESTS OF *AMICI CURIAE*

This brief is submitted by Consumer Federation of America, the National Consumer Law Center on behalf of its low-income clients, Consumer Reports, and Empire Justice Center. Each party advocates for consumer protections in auto- and credit-related issues, particularly for low-income consumers and consumers of color, and has extensive knowledge and expertise regarding the consumer experience of purchasing and financing a motor vehicle.

Consumer Federation of America (CFA) is a national association of over 250 nonprofit organizations that advances the consumer interest through research, advocacy, education, and service. CFA investigates consumer issues and publishes research that assists policymakers and individuals, and it advances pro-consumer legislation at the national and state levels. CFA has worked with federal and state enforcement agencies to provide research and perspective about the need for additional consumer protections in the purchase and financing of motor vehicles.

The National Consumer Law Center (NCLC) is a national nonprofit research and advocacy organization that works for consumer justice and economic security for low-income and other disadvantaged people, including consumers who have purchased and financed motor vehicles. NCLC provides information, legal research, and policy analysis to Congress, state legislatures, administrative agencies, and courts, and has long been a leading advocate for consumers in the auto finance space, striving to protect them against unfair practices. NCLC has a particular interest in this case because it has important implications for low-income people buying cars. NCLC publishes a 21-volume Consumer Credit and Sales Legal Practice Series, including Unfair and Deceptive Acts and Practices (10th ed. 2021) and Automobile Fraud (7th ed. 2022). NCLC frequently appears as *amicus curiae* in consumer law cases before trial and appellate courts throughout the country. NCLC seeks to bring transparency and fairness to the markets for cars and car finance. Through its Working Cars for Working Families project, NCLC seeks to ensure that the lack of a car does not stand in the way of families' ability to become economically successful and to promote solutions to help car-ownership efforts for struggling families to get and keep a car.

Consumer Reports (CR) is an independent, nonprofit, and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR also advocates for laws and corporate practices that are beneficial for consumers. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities facing today's consumers, and provides ad-free content and tools to six million members across the United States. As a core part of its work, Consumer Reports engages in extensive research, testing, and reporting to help consumers make informed choices regarding cars and auto financing, and advocates for strong consumer financial protections in the car-buying process.

Empire Justice Center advocates for consumer protections to advance economic justice. In 1993, Empire Justice Center launched the Greater Rochester Community Reinvestment Coalition to promote access to safe and affordable credit and fair lending patterns in Rochester. Empire Justice Center met with numerous banks and with state and federal regulators during Community Reinvestment Act exams and mergers and submitted dozens of data-driven comments to the regulators responsible for overseeing the banks. Empire Justice Center documented Credit Acceptance Corporation's pattern of abusive subprime auto lending by identifying borrowers with loans designed to fail. Empire Justice Center shared this information on numerous occasions in testimony and meetings with the New York Attorney General's office, the New York Department of Financial Services, and the Consumer Financial Protection Bureau.

INTRODUCTION AND SUMMARY OF ARGUMENT

As leading advocates for low-income consumers generally, and for those purchasing and financing motor vehicles, *Amici* write to explain three points. First, that even as cars are essential to economic well-being in the United States, escalating costs have made acquiring them an increasingly opaque and risky process, exacerbated by deceptive activities, as those alleged of Credit Acceptance Corporation (CAC or Defendant) in the Complaint. Low-income consumers, such as those the Complaint describes as CAC's typical consumers, are particularly vulnerable because of their relatively low rates of financial literacy and limited understanding of complex financial transactions. Second, that creditor behaviors such as those alleged in the Complaint have been found by numerous courts to be unfair, deceptive, or unconscionable, and the CFPB's enforcement of its statutory authority to pursue unfair, deceptive and abusive conduct is wholly consistent with the intent of Congress when it created the CFPB. Finally, contrary to the hyperbolic conclusory statements made in the Revised *Amicus* brief provided in support of the Defendant, that if this case were to result in a ruling that the alleged behaviors are illegal, financing of used cars for low-income borrowers will still be available from the many other creditors currently doing business without engaging in the behaviors alleged in the Complaint.

ARGUMENT

The heart of the factual allegations and claims made in the Complaint filed by the Consumer Financial Protection Bureau (CFPB) and the New York Attorney General is that CAC created a business model to finance the purchase of used vehicles with blatant disregard for whether the consumer-borrowers could successfully complete these transactions.[1] Indeed, the Complaint alleges that CAC developed an algorithm to determine the percentage CAC could expect to collect from each consumer that would dictate the terms of the transaction with that consumer, including the price for the car, to ensure that CAC profited from each financing transaction.[2] The result, the Complaint alleges, is that for 39% of the financing made nationwide, and 25% of the financing made in New York State, CAC *expected the transactions to fail.*

Plaintiffs also allege that CAC's borrowers were typically low-income, with limited credit options,[3] and that CAC took unreasonable advantage of these consumers' lack of understanding about the secretly inflated cost of the loans.[4] Defendant responds by stating that its consumers were capable of understanding the contracts and their own financial situations, and had the ability to compare the price of vehicles offered with CAC to a comparable "Blue Book" value to deduce the disproportionately high price, concluding that consumers therefore had "free and informed choice" to seek a vehicle or financing elsewhere.[5] However, CAC's arguments are contrary to decades of well-established research about the economic realities of purchasing and financing a vehicle. The effect of CAC's behavior, as alleged by the Plaintiffs, on low-income consumers, for whom access to private transportation is essential yet increasingly out-of-reach, is to compound the difficulties faced by CAC's consumers.

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[1] *See, e.g.,* Complaint, *Consumer Fin. Prot. Bureau v. Credit Acceptance Corp.*, Case No. 1:23-cv-00038, at ¶¶ 8, 9 (S.D.N.Y. Jan. 4, 2023) [hereinafter Complaint].

[2] *See id.* at ¶¶ 25, 26, 27.

[3] *Id.* at ¶ 25.

[4] *Id.* at ¶¶ 183-185.

[5] Memorandum of Law in Support of Credit Acceptance Corporation's Revised Motion to Dismiss, *Consumer Fin. Prot. Bureau v. Credit Acceptance Corp.*, Case No. 1:23-cv-00038, at 31-32 (S.D.N.Y. Mar. 14, 2023) [hereinafter CAC Rev. Motion to Dismiss].

I. The Complaint alleges that CAC exploits the needlessly complex and opaque auto sale and financing process to the detriment of highly vulnerable consumers.

A. Cars are essential but exorbitantly expensive for low-income consumers.

Plaintiffs describe CAC's consumers as highly financially vulnerable, having a median credit score of 546, and a median income of $35,000.[6] This median consumer credit score is considered deep subprime by most metrics, and the income level is only approximately $10,000 higher than the federal poverty line for a family of three.[7] It is a well-established fact that people rely on cars for economic mobility; but for CAC's highly vulnerable consumers, cars are a means to survival and often the key to escaping poverty.[8] Cars provide access to work, decrease reliance on public transportation,[9] contribute to higher household incomes,[10] and they provide access to health care, food security, [11] and educational opportunities. Cars are critical for economic mobility, and they facilitate survival for the typical low-income, credit-stressed CAC consumer, such as Ms. B. cited in the Complaint, who earned $9 per hour while supporting two minor children.[12]

For these lower-income consumers who financed their car through CAC, the purchase of a vehicle is often their most significant financial transaction. For most Americans, only buying a

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[6] Complaint, *supra* note 1, at ¶ 20.

[7] *Id*.

[8] Raj Chetty & Nathaniel Hendren, Harvard University and NBER, *The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates* 70 (May 2015), *available at* https://scholar.harvard.edu/files/hendren/files/nbhds_paper.pdf.

[9] The Chetty & Hendren study showed that shorter commute times, which are often possible only with a car, are one of the strongest factors in helping families escape poverty. *Id*.

[10] *See* David A. King, Michael J. Smart, & Michael Manville, *The Poverty of the Carless: Toward Universal Auto Access,* 42(3) Journal of Planning Education and Research 464–481 (Feb. 2019), *available at* https://journals.sagepub.com/doi/abs/10.1177/0739456X18823252.

[11] *See* Jonathan C. Martinez, Jeanne M. Clark, & Kimberly A. Gudzune, Preventive Medicine Reports, *Association of Personal Vehicle Access With Lifestyle Habits and Food Insecurity Among Public Housing Residents* (Mar. 2019), *available at* https://www.sciencedirect.com/science/article/pii/S221133551830158X###.

[12] Complaint, *supra* note 1, at ¶ 31.

house is more expensive. The cost of vehicles is also steadily increasing, particularly for used vehicles, which CAC primarily finances.[13] The average price of used cars is over $25,000, up approximately 29% in just the past five years, which is only $8,000 less than the median annual gross income of CAC's consumers.[14] Even very old cars with substantial mileage have increased significantly in price, and the supply of these vehicles is particularly limited.[15] The negative impact on CAC's consumers caused by the steady increases in used vehicle prices is exacerbated by the alleged behavior of CAC that further inflates prices.

These increased costs create higher levels of risk for CAC's borrowers. The average amount financed for car purchases by consumers with very low credit scores (necessitating what is described as "subprime" or even "deep subprime" transactions) is between $19,950 and $21,918; and monthly payments for used cars average over $500 (a substantial proportion of the income of a consumer such as Ms. B described in the Complaint, who earned $9 an hour). The average term for these transactions is now over sixty months.[16] Longer payment terms may lower the monthly payments to an amount these consumers can afford, but this also increases their risks. These longer terms on older used cars enlarge the risk that the cars will mechanically fail before the loans have been repaid. It also means that, for most of the loan term, consumers will

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[13] *Id.* at ¶ 1.

[14] Cox Automotive, Data Point, *Notable Increase in Reported Sales Drives Used-Vehicle Inventory Lower in July*, (Aug. 16, 2024), *available at* https://www.coxautoinc.com/market-insights/used-vehicle-inventory-july-2024/ .

In 2024, this average used car sale price of $25,000 represents 100% of the annual income for a family of three living at the federal poverty line ($25,820), and 1/4 of the annual median income for a family living in the U.S. ($102,800) *See* Gloria Guzman & Melissa Kollar, United States Census Bureau, Income in the United States: 2023, at Fig. 1 (Sept., 2024), *available at* https://www2.census.gov/library/publications/2024/demo/p60-282.pdf.

[15] *See* Cox Automotive Data Point, *supra* note 14 (noting that "affordability remains challenging for consumers, and supply is more constrained at lower price points and that the lower the price the tighter the inventory with vehicles priced under $15,000 having just a 31-day supply.)

[16] Melinda Zabritski, Experian, State of the Automotive Finance Market: Q2 2024, at 44 (Sept. 5, 2024). 2023), *available at* https://www.experian.com/content/dam/noindex/na/us/automotive/finance-trends/2024/experian-safm-q2-2024.pdf [hereinafter Experian Q2 2024].

owe more for their cars than they are worth. This situation, described as having negative equity, creates long-term cascading effects for these consumers. A recent report from the CFPB found that consumers who financed negative equity from a prior loan into a new vehicle loan were more than twice as likely to have their account assigned to repossession within two years.[17] These cost factors exacerbate the risk of default, repossession, judgment, and garnishment of income and wages to pay off deficiency balances.[18]

The Complaint describes the high rates of default and the financial harms consumers suffered when they were not able to pay their loan contracts, including the loss of their vehicle and a cycle of remaining debt obligations.[19] For CAC consumers, losing a car also means losing access to jobs, and other facets of economic mobility, contributing to the very cycle of financial distress that Plaintiffs allege brought consumers to CAC at the outset.[20] Plaintiffs allege that CAC has structured a business model to target consumers who are the most likely to need a vehicle[21] and the least likely to be able to afford the exorbitantly high prices charged.[22]

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[17] Consumer Fin. Prot. Bureau, Negative Equity in Auto Lending 16 (June 2024), *available at* https://files.consumerfinance.gov/f/documents/cfpb_negative-equity-in-auto-lending-report_2024-06.pdf. The report also found that the consumers who financed negative equity had monthly payments that were over 25% higher than those without negative equity or with positive equity, had lower credit scores, lower income, and longer loans terms, and had higher loan-to-value and payment-to-income ratios.

[18] Zhengfeng Guo, Yan Zhang, & Xinlei Zhao, Office of the Comptroller of the Currency, A Puzzle in the Relation Between Risk and Pricing of Long-Term Auto Loans 2, 4-5, 20 (June 2020), *available at* https://www.occ.gov/publications-and-resources/publications/economics/working-papers-banking-perf-reg/pub-econ-working-paper-puzzle-long-term-auto-loans.pdf (finding motor vehicle financing with six-plus-year terms have higher default rates than shorter-term financing during each year of their lifetimes, after controlling for borrower and loan-level risk factors).

[19] Complaint, *supra* note 1, at ¶ 10.

[20] *Id.* at ¶¶ 88-93.

[21] *See* Adam Hardy, Money, *Who Gets the Option to Work From Home? There's a Huge Disparity Tied to Income* (June 27, 2022), *available at* https://www.nasdaq.com/articles/who-gets-the-option-to-work-from-home-theres-a-huge-disparity-tied-to-income (noting that while 75% of workers making $150,000 or more have the option to work from home, only 47% of people earning between $25,000 and $49,999 have this option).

[22] *See* Complaint, *supra* note 1, at ¶ 25 (alleging that the median CAC borrower had an annual gross income of $35,000).

B. The existing complexity in the vehicle purchase and financing process is exacerbated by deceptive and abusive practices.

In response to the Plaintiffs' claims that Defendant's algorithm that secretly inflated vehicle prices was deceptive and abusive to consumers, Defendant takes the position that its consumers were capable of ascertaining and declining to pay a disproportionately high sales price on their own. But the Complaint alleges that CAC hid from them the components that went into the pricing.[23] Regardless, CAC's argument is contradicted by the Federal Trade Commission's (FTC) extensive research and analysis about how consumers purchase and finance a vehicle.[24] Throughout the FTC's Combating Auto Retail Scams rulemaking proceeding, the FTC has described the arduous process involved in purchasing a car:

> In addition to the expense, the process of buying or leasing a vehicle is often time-consuming and arduous. It can take several hours or days to finalize a transaction, on top of the hours it can take, particularly in rural areas, to drive to a dealership. Consumers may need to take time off work or arrange childcare, and families with a single vehicle may be forced to delay other important appointments due to the length of the vehicle-buying or -leasing process.[25]

The FTC acknowledges the harm to consumers when they cannot compare vehicle prices or when the prices are hidden from them. Consumers waste time responding to deceptive advertising ploys and end up paying more for the vehicle because they are unable to accurately comparison shop.[26] These disadvantages described by the FTC in the "normal" auto marketplace do not account for the aggravating factors alleged in the Complaint: that the finance company has pulled the levers to set the price for the dealer, incentivize add-on packing, and hide the true

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[23] *See, e.g.*, Complaint, *supra* note 1, at ¶¶ 2, 5, 7, 60, 62-64, 67, 69, 76, 87, 131, 175.

[24] Federal Trade Comm'n, Combating Auto Retail Scams Trade Regulation Rule, 89 Fed. Reg. 590 (Jan. 4, 2024) [hereinafter FTC CARS Rule].

[25] *Id.* at 593.

[26] Federal Trade Comm'n, Motor Vehicle Dealer Trade Regulation Rule, Notice of Proposed Rulemaking, 87 Fed. Reg. 42,012, 42,022 (July 13, 2022).

costs of financing from the consumer, as alleged by the Plaintiffs in this case. Comparison shopping is therefore impossible when the price is only provided after the consumer has provided their personal information to a dealer who then relies on an algorithm to generate a customer-specific price. It is not an overstatement to conclude that CAC's consumers were fighting with both arms tied behind their backs.

In this case, Plaintiffs allege that Defendant CAC's software generates vehicle pricing information based on each consumer's personal information[27] -- information that is not shared with the consumer. Consumers are presented with a "vehicle price" that does not only represent the price of the vehicle but inflates the price to include (but hide) the cost of credit for that consumer. CAC's position that consumers had "free and informed choice" to simply obtain and review a comparable "Blue Book" value to avoid paying CAC's secretly inflated vehicle prices[28] is unrealistic, given the time-consuming, expensive, and confusing array of information currently endemic in the process, including not only car prices but condition of the vehicle. It further belies reality to expect that a low-income, credit-stressed consumer is on equal footing with a dealership and one of the largest subprime creditors in the country to simply negotiate a better price. Essentially, CAC is alleged to have deliberately exploited this informational and situational imbalance in ways that are very damaging to its consumers.

However, determining the purchase price charged for the car is only the first part of the transaction. The financing process presents numerous additional opportunities to capitalize on consumers' confusion and lack of bargaining power. Credit transactions by their very nature are

[27] Complaint, *supra* note 1, at ¶ 48.

[28] *See* CAC Rev. Motion to Dismiss, *supra* note 5, at 31.

complicated and beyond most consumers' ability to understand.[29] The overwhelming majority of the population in the United States does not understand how to calculate how much interest will be charged on a simple loan with a specific number of payments.[30] Yet the process of financing a vehicle involves multiple separate decisions, each of which impacts the monthly cost and total cost of the transaction. These include the basic purchase price of the car, the interest rate charged, the duration of the financing, the amount of the down payment (and how it will be paid), whether more is owed on a trade-in than it is worth, if add-ons will be added to the transaction, and, if so, at what price.[31] Each of these multiple pricing variables is complex, subject to negotiation, yet impacts the costs to consumers.[32] These transactions perplex even sophisticated consumers.

Both the FTC and the CFPB have recognized the complexities of auto financing. The FTC's CARS Rule is designed to bring some clarity to the auto financing process, because that federal agency has determined that "[p]roviding consumers with accurate and timely pricing and financing information is critical, especially in the context of motor vehicle sales and leasing,

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[29] *See Till v. SCS Credit Corp.*, 541 U.S. 465, 481-482, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (2004) (recognizing that the subprime auto finance market is not "perfectly" competitive and that creditors have much more information about the market than do consumers).

[30] National Ctr. for Educ. Statistics, Adult Literacy in America 100 (Sept. 1993) (the advertisement included all the information necessary to make the calculation: number and amount of monthly payments, and loan principal). *Cf.* Annamaria Lusardi & Olivia S. Mitchell, *Baby Boomer Retirement Security: The Roles of Planning, Financial Literacy, and Housing Wealth*, 54 J. Monetary Econ. 205, 207, 216 (2007) (fewer than 18% of surveyed adults between the ages of 51 and 56 could calculate compound interest at 10% on $200 over two years); Macro Int'l Inc., Design and Testing of Effective Truth in Lending Disclosures 52 (2007), *available at* http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081218a8.pdf; Annamaria Lusardi & Olivia S. Mitchell, *Financial Literacy and Planning: Implications for Retirement Wellbeing*, Pension Research Council, Working Paper No. 1, at 4, 7 (2006) (noting that only 67% of surveyed adults, many over fifty, could correctly determine whether, after five years of interest at 2% on $100, they would have less than, more than, or exactly $102), *available at* https://pensionresearchcouncil.wharton.upenn.edu/wp-content/uploads/2015/09/PRC-WP-2006-1.pdf; Danna Moore, Wash. State Univ., Soc. & Econ. Sci. Research Ctr., Tech. Rep. No. 03-39, Survey of Financial Literacy in Washington State: Knowledge, Behavior, Attitudes, and Experiences (2003) (finding approximately 30% of respondents do not understand that if interest compounds, it builds on itself), *available at* https://www.sesrc.wsu.edu/sesrcsite/papers/files/dfi-techreport-FINAL2-16-04.pdf.

[31] *See* Consumer Fin. Prot. Bureau, Consumer Voices on Automobile Financing 3 (June 2016), *available at* https://files.consumerfinance.gov/f/documents/201606_cfpb_consumer-voices-on-automobile-financing.pdf [hereinafter CFPB Consumer Voices study].

[32] *Id.* at 4.

where such information has proved singularly confusing to consumers."[33] Similarly, a CFPB study about the consumer experience of auto financing found that many consumers are baffled by the vehicle financing process.[34] The CFPB study explains how each of the single, interrelated pieces of an auto financing transaction (like the interest rate or a longer financing term) can impact multiple parts of the financing arrangement.[35] Notably, even during standard (as opposed to subprime) negotiations about auto financing, the interest rate may change several times.

Defendant CAC is in a powerful position to take unfair advantage of these complexities because lower-income consumers who are desperate to finance the purchase of a vehicle are more likely to take on riskier, expensive credit products without fully understanding the transaction than are more sophisticated consumers. Multiple analyses show that consumers with lower levels of financial literacy are more susceptible to financial abuse and are also the most likely to use the most expensive forms of credit.[36] Consumers with less education are also more likely than those with more education not to shop for credit,[37] often because they are not aware that credit shopping is possible, or they do not know how to do it. Also, a significant number of consumers who use alternative financial services (such as high-cost credit products) assume that

[33] Federal Trade Comm'n, Motor Vehicle Dealer Trade Regulation Rule, Notice of Proposed Rulemaking, 87 Fed. Reg. 42,012, 42,022 n. 23 (July 13, 2022)

[34] CFPB Consumer Voices study, *supra* note 29, at 9, 14, 23.

[35] *See id.* at 7-9.

[36] This relationship has been studied extensively in the mortgage context. *See, e.g.*, Brian Bucks & Karen Pence, Fed. Reserve Board, Do Homeowners Know Their House Values and Mortgage Terms? 18–22 (2006) (borrowers, particularly low-income borrowers, underestimate caps on life time interest rates in adjustable rate mortgages), *available at* http://www.federalreserve.gov/pubs/FEDS/2006/200603/200603pap.pdf; Consumer Fed'n of Am., Lower-Income and Minority Consumers Most Likely to Prefer and Underestimate Risks of Adjustable Mortgages 3 (July 26, 2004) (consumers cannot calculate the increase in the payment in an adjustable rate mortgage, and they minimize the interest rate risk by understating the increase in the payment; problem is present for all categories, but particularly pronounced for younger, poorer, less educated, and non-white consumers), *available at* http://www.consumerfed.org/elements/www.consumerfed.org/file/housing/072604_ARM_Survey_Release.pdf.

[37] Finra Investor Educ. Found., Financial Capability in the United States—2012 Report of National Findings 22 (May 2013), *available at* https://finrafoundation.org/sites/finrafoundation/files/NFCS-2012-Report-Natl-Findings.pdf.

those are their only option. *Amici* know from experience and research that consumers often are not aware of available credit choices and are simply responding to the best-advertised product.

The Complaint alleges that Defendant CAC takes unreasonable advantage of these consumers and implements a marketing strategy designed to capitalize on the insecurity of highly vulnerable consumers who have even less ability to comparison shop.[38] The Complaint points to Defendant's use of advertisements such as "10 Dealerships. 10 Denials. 1 Easy Solution."[39] Plaintiffs allege that consumers respond to CAC's solicitations believing that their precarious financial situation limits their options for the purchase and financing of a vehicle, and CAC seizes on this business opportunity by training its dealers to emphasize "that CAC is the consumer's only opportunity to secure financing."[40] The findings by federal agencies and other researchers underscore how these statements impact the consumers that CAC targets.

II. The Complaint has sufficiently alleged that CAC's conduct is abusive and deceptive.

Defendant and its *Amici* attempt to distract the Court from analyzing whether the Plaintiffs have plead facts sufficient to support claims for relief in the Complaint with protracted analyses of unrelated CFPB enforcement actions and the Truth in Lending Act (TILA). The Complaint includes allegations of deceptive and abusive conduct – not violations of TILA. Scattered citations to U.S. Supreme Court ruling in *Loper-Bright* as a sweeping critique on the CFPB cannot form the basis for a dismissal of the Complaint. The Complaint alleges facts sufficient to support the claims that Defendant CAC's conduct is abusive and deceptive.

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[38] Patricia A. McCoy, *Rethinking Disclosure in a World of Risk-Based Pricing*, 44 Harv. J. on Legis. 123, 139–149 (2007) (noting that subprime consumers are subject to "risk-based pricing," whereby they do not receive financing terms until much later in the negotiation process, limiting their ability to effectively comparison shop).

[39] Complaint, *supra* note 1, at ¶ 92.

[40] *Id*. at ¶ 93.

A. The CFPB has authority to address abusive improvident lending.

The CFPB has authority, articulated in 12 U.S.C. § 5531, to bring enforcement actions concerning unfair, deceptive, or abusive acts or practices (UDAAP). Abusive acts include those which take unreasonable advantage of consumers' lack of understanding about the material risks, costs, or conditions of a product or service. [41] The Complaint alleges that Defendant CAC took unreasonable advantage of consumers' lack of understanding about (i) the costs of the loans, which CAC obscured by hiding part of the cost of credit in the amount financed, (ii) the magnitude of the harm that would result upon default, and (iii) the risk of defaulting and suffering negative consequences as a result.[42]

Defendant and its *Amici* distract from the abusiveness and deception claims and argue that the Court should dismiss the claims because Defendant CAC purportedly complied with TILA. However, the Complaint does not allege that CAC is liable for violations of TILA, and its claims are grounded in deception and abuse. Moreover, the CFPB has made it abundantly clear to lenders like CAC that technical compliance with TILA does not insulate them from liability for UDAAP violations.[43]

Despite Defendant's reliance on its position that TILA does not require it to consider the consumer's ability to repay the loan, a critical feature of the abusiveness alleged in the

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[41] 12 U.S.C. § 5531(d).

[42] Compl. 181.

[43] *See* CFPB Consumer Laws and Regulations 10, *available at* https://files.consumerfinance.gov/f/documents/cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf ("[A] transaction that is in technical compliance with other federal or state laws may nevertheless violate the prohibition against UDAAPs. For example, an advertisement may comply with TILA's requirements, but contain additional statements that are untrue or misleading, and compliance with TILA's disclosure requirements does not insulate the rest of the advertisement from the possibility of being deceptive.").

Complaint is that CAC did not merely *ignore* consumers' ability to repay the financing.[44] Rather, CAC is alleged to have created a lending model that maximizes its own income from the credit extended even when it predicted that a substantial proportion of its consumers would not be able to pay their financing in full.[45] The Complaint explains that CAC uses the information about consumers, obtained from the dealers before the credit is extended, to establish an amount that CAC will incentivize the dealer to charge a particular consumer for the car.[46] CAC's analysis of the amount they can expect the consumer to pay to CAC throughout the life of the transaction is thus used to determine the price of the car, rather than its condition or any other objective criteria.[47] While CAC has capped prices at 115% of the highest Black Book or Blue Book value since 2019, such a cap is inadequate to provide any real limit to the price increase in the vehicle due to financing. The result, according to data included in the Complaint, is that 39% of CAC's extensions of credit made nationally and 25% of CAC's financings made in New York State are expected to fail,[48] and this projected failure rate is borne out by actual defaults.[49]

There is a name for these transactions: *improvident lending*. The idea that a creditor would enter into transactions with a high expectation of default and repossession seems counter intuitive, however some creditors find it profitable to do so. This was evidenced by the

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[44] *See, e.g.,* Complaint, *supra* note 1 at ¶¶ 3 ("CAC's lending model is indifferent as to a consumers' [sic] ability to repay loans . . ..") and 28 ("CAC does not use the information it collects from potential borrowers, the score, or the projected net collections to assess the consumer's ability to repay loans in full.").

[45] *See id* at ¶¶ 26 ("Rather than assess its borrowers' reasonable ability to repay, CAC uses the personal and financial data that it gathers from them to predict the net expected collections on each transaction.") and 27 ("The score represents CAC's best estimate, at origination, of the percentage of total amounts owed that CAC expects to collect.").

[46] Complaint, *supra* note 1, at ¶¶ 33, 34, 35.

[47] *Id.* at ¶¶ 46–55.

[48] *Id.* at ¶ 8.

[49] *Id.* at ¶¶ 44, 109.

nationwide explosion of irresponsible lending that led to the subprime mortgage meltdown in the early years of the twenty-first century.[50] As CFPB Director Chopra explained:

> Usually, lenders make money when people pay their bills. The incentives are aligned… Some lenders exploited that indifference [to consumer failure] by profiting handsomely off making loans to people who lacked understanding that they would not be able to make their payments.[51]

This crisis, of course, spurred Congress to pass the Consumer Financial Protection Act of 2010, create the CFPB and provide it with the statutory authority to address abusive conduct. Rather than a "regulatory overreach," Plaintiff's Complaint and the abusiveness claims are consistent with (and in fact underscore) the very reason that Congress passed this legislation and created a federal agency to address these market failures. Members of Congress at that time explicitly acknowledged that the 2007-08 financial crisis was caused by conduct that is strikingly similar to the allegations in this case: insufficiently underwritten loans that included abusive terms, and intentional structuring consumer debt obligations to benefit certain investors when consumers were unable to pay their loans and suffered tremendous harm.[52] It designed the CFPB in the wake of this nationwide financial collapse, giving it a third, distinct authority to address abusive conduct to add to other federal law prohibiting deceptive and unfair conduct.

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[50] *See, e.g.*, United States Dep't of Justice, Press Release, Deutsche Bank Agrees to Pay $7.2 Billion for Misleading Investors in its Sale of Residential Mortgage-Backed Securities (Jan. 17, 2017), *available at* https://www.justice.gov/opa/pr/deutsche-bank-agrees-pay-72-billion-misleading-investors-its-sale-residential-mortgage-backed ("[T]he Bank's conduct encouraged shoddy mortgage underwriting and improvident lending that caused borrowers to lose their homes because they couldn't pay their loans."); Amy Loftsgordon, Nolo, Understanding the Foreclosure Crisis, *available at* https://www.nolo.com/legal-encyclopedia/understanding-the-foreclosure-crisis.html ("In fact, between 2007 and 2012, more than 12 million homes went into foreclosure. What led to this wave of foreclosures? Many factors contributed. But, mainly, the sheer number of abusive, predatory, and unaffordable subprime mortgage loans made in the early 2000s led to the crisis.").

[51] Rohit Chopra, *Enforcing the Post-Financial Crisis Ban on Abusive Conduct* 14 U.C. Irvine L. Rev. 625, 634 (May 1, 2024).

[52] *See* S. Rep. No. 111-176, at 11, available at: https://www.congress.gov/congressional-report/111th-congress/senate-report/176/1; *see also* Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report, at 191-192 (2011), available at: https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf

B. Courts have repeatedly found improvident lending schemes to be illegal.

CAC argues that the Complaint should be dismissed for failure to state a claim because, *inter alia,* the Complaint asserts "unprecedented theories of deceptive acts and practices under the Consumer Financial Protection Act of 2010 ("CFPA"), New York General Business Law ("GBL") § 349 and New York Executive Law ("EL") § 63(12)."[53] These statements are misleading at best, as many courts have found improvident lending to be illegal.

Courts have found improvident lending schemes to constitute unfair or deceptive acts and practices (UDAPs) on multiple occasions.[54] Often, the courts have determined that a creditor violated a statutory UDAP prohibition because the creditor "knew or should have known" that the debt would not be repaid.[55] For example, the Eastern District of New York held that

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[53] CAC Rev. Motion to Dismiss, *supra* note 5, at 3-4.

[54] *Frappier v. Countrywide Home Loans, Inc.*, 645 F.3d 51 (1st Cir. 2011) (Mass. law; genuine issue of material fact as to whether lender was liable under UDAP law), *on remand*, 2013 WL 1308602 (D. Mass. Mar. 31, 2013) (finding that mortgagor was not liable under UDAP law), *aff'd*, 750 F.3d 91 (1st Cir. 2014), *cert. denied*, 574 U.S. 827, 135 S. Ct. 179, 190 L. Ed. 2d 51 (2014);); *Young v. Bank of N.Y. Mellon*, 848 F. Supp. 2d 1182, 1192–1194 (D. Haw. 2012) (allowing consumer to go to trial on claim that lender violated UDAP statute by making unaffordable mortgage loan to older disabled woman); Solomon v. Falcone, 791 F. Supp. 2d 184, 190–191 (D.D.C. 2011) (denying motion to dismiss); *Haymer v. Countrywide Bank*, 2011 WL 2790172, at *4 (N.D. Ill. July 15, 2011) (denying motion to dismiss claim that lender and broker violated UDAP statute by giving consumer unaffordable mortgage loan) , *clarified by* 2011 WL 3205365 (N.D. Ill. July 28, 2011); *Schwartzbaum v. Emigrant Mortg. Co.*, 2010 WL 2484181 (S.D.N.Y. Apr. 22, 2010) (Mag.) (refusing to dismiss UDAP claim; citing allegation that lender offered loan without regard to consumer's inability to repay it), *adopted in relevant part, rejected in part on other grounds*, 2010 WL 2484116 (S.D.N.Y. June 16, 2010); *Johnson v. NovaStar Mortg., Inc.*, 698 F. Supp. 2d 463 (D.N.J. Mar. 15, 2010) (lender may have violated UDAP unconscionability prohibition by funding foreclosure rescue transaction, manipulating appraisal, concealing costs, and issuing mortgage without regard to homeowner's repayment ability); *Gilroy v. Kasper*, 2008 WL 591049 (D.N.H. Mar. 3, 2008) (denying motion to dismiss claim that lender violated prohibition against unfair and deceptive practices by, *inter alia*, making mortgage loan while knowing consumer could not repay it); *Orcilla v. Big Sur, Inc.*, 198 Cal. Rptr. 3d 715 (Cal. App. Ct. 2016) (reversing dismissal of complaint alleging that mortgage loan for which payments exceeded borrowers' income was unconscionable, and its enforcement was UDAP violation); *Drakopoulos v. U.S. Bank*, 991 N.E.2d 1086 (Mass. 2013) (origination of a home mortgage loan that the lender should recognize at the outset that the borrower is not likely to be able to repay violates UDAP statute); *Moronta v. Nationstar Mortg., L.L.C.*, 41 N.E.3d 311 (Mass. App. Ct. 2015) (citing balloon payment, among other things, as indication of unaffordability).

[55] *Williams v. First Gov't Mortg. & Investors Corp.*, 225 F.3d 738 (D.C. Cir. 2000). *See also Findlay v. Cardwell*, 2013 WL 12343710 (D.D.C. May 16, 2013) (fact question whether loan broker knew that homeowner had no reasonable ability to repay loan); *Carroll v. Fremont Inv. & Loan*, 636 F. Supp. 2d 41 (D.D.C. 2009) (denying motion to dismiss UDAP claim that lender knew or should have known of inflated appraisal and falsified income, imposed numerous unreasonable costs that it knew the borrowers could not afford, and took advantage of

consumers stated a claim by alleging that the defendants induced them to enter into a home mortgage loan by submitting an inflated appraisal and misrepresenting that the payments would be affordable.[56] In *Opportunity Management Co. v. Frost,*[57] a Washington intermediate appellate court upheld a jury's verdict that a lender committed a UDAP violation by lending money to a borrower it knew did not have the income to repay. Instead, the lender relied on the loan-to-value ratio, *i.e.*, the fact that the value of the property securing the loan was sufficient to repay it. The court applied the FTC definition of unfairness: whether the practice offends public policy; whether it is immoral, unethical, oppressive, or unscrupulous; and whether it causes substantial injury to consumers. The court held that the jury could reasonably conclude that making the loan based on the value of the collateral was unethical or unscrupulous and caused substantial consumer injury. More recently, courts have repeatedly applied unconscionability standards to find loan terms illegal, even when state lending law did not expressly prohibit the charges or terms.[58]

While much of the development of the concept of improvident lending as a UDAP violation has taken place in the context of mortgage cases, a number of cases address such claims

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consumers' age and disability); *Hughes v. Abell*, 634 F. Supp. 2d 110 (D.D.C. 2009) (denying motion to dismiss claim that creditor violated UDAP statute by making loan that would consume almost half of borrower's income and could adjust upward after two years), *lender's motion for summary judgment denied on same grounds*, 867 F. Supp. 2d 76 (D.D.C. 2012).

[56] *Vaughn v. Consumer Home Mortg., Inc*., 2003 WL 21241669 (E.D.N.Y. Mar. 23, 2003). *See also Coveal v. Consumer Home Mortg., Inc*., 2005 WL 704835 (E.D.N.Y. Mar. 29, 2005) (denying motion to dismiss on similar allegations).

[57] 1999 WL 96001 (Wash. Ct. App. Feb. 16, 1999), *review denied*, 989 P.2d 1137 (Wash. 1999).

[58] *See In re Donohue*, 2020 WL 419727, at *3 (Bankr. N.D. Cal. Jan. 27, 2020) (finding procedural and substantive unconscionability where lender charged 240% interest on a $4,000 line of credit; loan's "240% interest rate shocks the conscience"); *De La Torre v. CashCall, Inc.*, 422 P.3d 1004, 1009–1010 (Cal. 2018) (interest rate is a contract term subject to the unconscionability doctrine even in the absence of a usury ceiling); *Forsythe Fin., L.L.C. v. Yothment*, 2022 WL 3330471 (Ohio Ct. App. Aug. 12, 2022) (reversing dismissal of UDAP claim against credit services organization that arranged a small-dollar loan for a fee of double the loan proceeds; noting that unaffordable lending and excessive price are factors in determining unconscionability under UDAP statute).

outside of the mortgage context. For instance, the United States District Court District of Massachusetts, in *Kaur v. World Business Lenders, L.L.C.*, [59] found that the doomed to fail doctrine, previously largely addressing mortgage cases in Massachusetts, represented a common law concept of unfairness relevant to a business loan secured by the business owner's house. An appellate court in Connecticut held that it was an unfair practice under the state UDAP statute make a loan with knowledge that the borrower could not repay it unless it was refinanced by a second loan, and refusing to allow the borrower an opportunity to discuss or evaluate the terms of the second loan.[60]

C. The Court can consider the vulnerability of consumers and complexities of the law in evaluating abusiveness.

In considering whether Defendant CAC took "unreasonable advantage," of consumers' lack of understanding, the Court is required to "evaluate the facts and circumstances that may affect the nature of the advantage."[61] It is therefore appropriate for the Court to consider the circumstances described in this brief, including the vulnerability of the consumers Defendant CAC targeted.

The Complaint alleges that most of CAC's consumers are low-income "with limited credit options," and we explain that consumers with these characteristics are generally less financially literate, less able to shop for credit, and are at a significant disadvantage when purchasing a vehicle. Other courts have similarly considered the circumstances of the consumer in UDAP cases. A 1933 United States Supreme Court case, interpreting "unfair methods of competition," (the FTC Act was subsequently amended to prohibit "unfair practices") found

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[59] 440 F. Supp. 3d 111 (D. Mass. 2020). See also *Commonwealth v. Fremont Inv. & Loan*, 897 N.E.2d 548 (Mass. 2008).

[60] Monetary Funding Group, Inc. v. Pluchino, 867 A.2d 841 (Conn. App. Ct. 2005)

[61] Consumer Fin. Prot. Bureau, Statement of Policy Regarding Prohibition on Abusive Acts or Practices, 88 Fed. Reg. 21,883, 21,886 (Apr. 12, 2023).

unfair the sale of candy involving games of chance because the practice exploits a *category of consumers*—in that case, children—who are unable to protect themselves and because the amount of candy received for the purchase price depends on chance or a lottery, long deemed contrary to public policy.[62] This Court should consider the vulnerability of the consumers involved,[63] such as the low-income, credit-challenged consumers targeted by CAC.

The complexities of auto financing described in Section I are also relevant to the Court's consideration of circumstances creating an "unreasonable advantage." For example, a federal court found that the CFPB adequately pleaded claims of abusiveness where it alleged that borrowers lacked an understanding of the law applicable to the loans in question and how those laws affected repayment obligations.[64] This conclusion was based on the fact that the loans were void under state law and that the creditor sought to collect on these loans, which the consumers did not understand that they did not owe. This was actionable even when the creditor did not interfere with the borrower's understanding and did not fail to disclose material loan terms,

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[62] *Fed. Trade Comm'n v. Keppel & Bros*., 291 U.S. 304, 54 S. Ct. 423, 78 L. Ed. 814 (1933). *See also Colgate v. Juul Labs, Inc.*, 402 F. Supp. 3d 728 (N.D. Cal. 2019) (denying motion to dismiss unfairness claim against electronic cigarette manufacturer for targeting minors by luring them into addiction before they are mature enough to make informed decisions).

[63] *See, e.g.*, *Aquilina v. Certain Underwriters at Lloyd's*, 465 F. Supp. 3d 1088, 1100–1102 (D. Haw. 2020) (refusing to dismiss unfairness complaint; insurers should have been aware of homeowners' unique vulnerabilities and concerns and should not have provided insurance that excluded lava damage without searching for insurance that provided this coverage).

[64] *See Consumer Fin. Prot. Bureau v. Think Fin., L.L.C.*, 2018 WL 3707911 (D. Mont. Aug. 3, 2018). *See also* Proposed Stipulated Final Judgment & Order*, Consumer Fin. Prot. Bureau v. NDG Fin. Corp.*, Case No. 1:15-cv-05211-CM (S.D.N.Y. Feb. 1, 2019), *available at* https://files.consumerfinance.gov; Complaint, *Consumer Fin. Prot. Bureau v. Golden Valley Lending, Inc.*, Case No. 1:17-cv-03155 (N.D. Ill. Apr. 27, 2017), available at https://files.consumerfinance.gov; Complaint, *Consumer Fin. Prot. Bureau v. NDG Fin. Corp.*, No. 1:15-cv-05211-CM (S.D.N.Y. July 31, 2015), *available* at www.nclc.org/unreported; Consent Order, *Consumer Protection Bureau v. Colfax Capital Corp.*, CFPB No. 2014-CFPB-0009 (July 29, 2014), *available at* https://files.consumerfinance.gov; Complaint, *Consumer Fin. Prot. Bureau v. CashCall, Inc.*, Case No. 1:13-cv-13167-GAO (D. Mass. Mar. 21, 2014), *available at* www.nclc.org/unreported. *Cf. Consumer Fin. Prot. Bureau v. NDG Fin. Corp.*, 2016 WL 7188792 (S.D.N.Y. Dec. 2, 2016) (finding that practice could be abusive because it materially interferes with consumers' ability to understand; court did not reach question of whether it takes unreasonable advantage of a consumer's ability to understand), *reconsideration denied*, 2016 WL 7742784 (S.D.N.Y. Dec. 19, 2016); *Consumer Fin. Prot. Bureau v. CashCall, Inc.*, 2016 WL 4820635 (C.D. Cal. Aug. 31, 2016) (finding practice deceptive, so not having to reach whether practice was also unfair or abusive).

because the court found that the creditor was taking advantage of the consumers' lack of understanding.

The allegations that Defendant CAC then hid the cost of credit along with the magnitude and risk of harm from these consumers under these circumstances are sufficient to allege that it took unreasonable advantage.

D. CAC need not have communicated directly with consumers to be liable for the deception claims.

The CFPB's authorizing statute does not include a definition of "deception," but the Court has applied the longstanding interpretation of the FTC in such instances.[65] The FTC's Deception Policy Statement explains that deception includes a misrepresentation of a material fact that is likely to mislead a consumer acting reasonably in the circumstances.[66] The Complaint alleges that Defendant CAC deceived consumers by misrepresenting the true cost of credit and key financing terms. Defendant and its *Amici* argue that the deception claims fail because Complaint does not allege that CAC had direct contact with consumers. However, a party need not have direct contact with consumers to be liable for fraud, UDAP, or deception.

In denying an auto finance company's motion for summary judgment on a UDAP claim, the United States District Court of the Southern District of West Virginia explained that the assignee's alleged liability derives from its action in allegedly planning, managing, and executing a scheme involving the creation of false pay stubs, false down payments, and charging an

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[65] *See* Consumer Fin. Prot. Bureau v. RD Legal Funding, L.L.C., 332 F. Supp. 3d 729, 772–73 (S.D.N.Y. 2018) (relying on *CFPB v. NDG Fin. Corp.*, 2016 WL 7188792, at *14 (S.D.N.Y. Dec. 2, 2016), which quotes the elements of deception in *FTC v. Med. Billers Network, Inc.*, 543 F. Supp. 2d 283, 303 (S.D.N.Y. 2008)), *aff'd in part on other grounds, rev'd in part on other grounds*, 828 Fed. Appx. 68 (2d Cir. 2020), *on remand*, 592 F. Supp. 3d 258 (S.D.N.Y. Mar. 16, 2022), *abrogated on other grounds by* Consumer Fin. Prot. Bureau v. Law Offices of Crystal Moroney, P.C., 63 F.4th 174 (2d Cir. 2023).

[66] Fed. Trade Comm'n, FTC Policy Statement on Deception (Oct. 14, 1983), *available at* http://www.ftc.gov/bcp/policystmt/ad-decept.htm.

acquisition fee hidden in the vehicle price.[67] It rejected the arguments made here by CAC that UDAP statutes do not provide for derivative liability against those who do not deal directly with consumers.

The party devising the deceptive scheme can be held liable even if they did not directly make the misrepresentation to the consumer.[68] The Maryland Court of Appeals, examining the liability of a loan officer and an appraiser in a property flipping scheme, found both liable to the consumer for fraud and UDAP violations. The loan officer met with the speculator at the beginning of the scheme, advised the speculator about how to secure FHA loans for the home buyers, and gave them paperwork to use to falsify the source of down payments and closing costs. The loan officer then worked with the speculator to generate inflated sales prices. At closings, the loan officer's conduct helped confirm the buyers' impression that the speculator was working for them. The appraiser's role was to issue inflated appraisals that exaggerated the homes' features and compared them to non-comparable properties. These acts established that the loan officer and appraiser were liable for fraud and UDAP violations. The court was not troubled by the fact that the appraisals were not communicated directly to the home buyers, because the appraiser's deception so infected the transaction that it would be deemed to have been committed in the sale.[69]

Third parties that can be liable for their involvement in deceptive schemes even where the mechanics are carried out by others. One example is an FTC enforcement action against a

[67] Knapp v. Americredit Fin. Servs., Inc., 245 F. Supp. 2d 841 (S.D. W. Va. 2003).
[68] Cain v. Arthrocare Corp., 2006 WL 1892545 (E.D. Mo. July 10, 2006) (communication with ultimate consumer is unnecessary; denying motion to dismiss UDAP claim against manufacturer based upon misrepresentation by omission of a material fact for failure to disclose medical device's propensity to fail)
[69] Hoffman v. Stamper, 867 A.2d 276, 294–295 (Md. 2005)

company that developed computer software intended to deceive consumers through a program used by merchants to fictitiously represent car loans as advantageous over cash purchases.[70]

Another court has found an automobile finance company liable "without question" for UDAP violations when it trained dealership employees to use a bait-and-switch tactic that deceived consumers about the true costs of leasing a car as opposed to buying it.[71] However, it still upheld denial of the claim because the consumer failed to introduce evidence showing that the training sessions had actually caused the dealership to use the bait-and-switch tactic in the sale to the plaintiff. The Plaintiffs' government enforcement action targeting a host of sales by CAC here does not require the proof of causation required in that matter.

III. Auto creditors do not need to resort to abusive and deceptive conduct to extend credit to credit-challenged, low-income consumers.

A. Many auto creditors make loans to consumers like CAC's customers without engaging in the alleged misconduct.

Defendant CAC's *Amici* argue that the Plaintiffs' enforcement of the consumer protection regulations as plead in the Complaint would "significantly restrict the availability of credit to consumers, particularly those in the subprime market."[72] This argument is simply wrong, as it is rooted in an incorrect characterization of the allegations in the Complaint. Rather than hurting consumers, denying the motion to dismiss and finding that the facts in the Complaint form the basis for claims that Defendant's conduct was deceptive and abusive will significantly improve the fairness and transparency in the auto credit market for consumers in subprime credit transactions.

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[70] Automatic Data Processing, 5 Trade Reg. Rep. (CCH) ¶ 23,049 (F.T.C. 892 3107 1992) (consent order).
[71] General Motors Acceptance Corp. v. Laesser, 718 So. 2d 276 (Fla. Dist. Ct. App. 1998). (creditor's instruction of dealership employees in bait-and-switch tactics and methods of concealing transaction's true cost violates UDAP statute, but claim fails because causation not shown).
[72] *Amicus Curiae* Brief of American Fin. Servs. Ass'n et al., *Consumer Fin. Prot. Bureau v. Credit Acceptance Corp.*, Case No. 1:23-cv-00038, at 19 (S.D.N.Y. Mar. 21, 2023).

The deceptive and abusive conduct pleaded in the Complaint is *not* standard across the industry, and it is certainly not a necessary business model to extend credit for the successful purchase of vehicles by credit-stressed consumers. Banks, credit unions, finance affiliates of large auto manufacturers, and buy-here-pay-here dealers also finance the purchase of cars for these consumers; recent data shows that finance companies as a whole represent only about 14% of motor vehicle financing in the U.S., while captive lenders provide the largest share of auto financing.[73] Even for consumers with subprime credit scores, large finance companies like CAC provide about 19% of the financing, roughly the same as banks.[74]

Many other lenders that specialize in providing vehicle financing for subprime consumers do so without the need to inflate vehicle prices deceptively and abusively as the Complaint alleges CAC does. Community development financial institution (CDFI) credit unions[75] also work directly with lower-income, credit stressed consumers to provide access to affordable vehicle financing. For example, the Genesee Co-op Federal Credit Union, a CDFI located in Rochester, New York, recently testified to the New York Department of Financial Services about the success of its auto lending program, which refinances abusive auto loans and makes new loans to credit-challenged consumers with affordable, success-driven terms:

> You may hear from other lenders that it is impossible to lend to people at rates similar to ours because of the risk. We have demonstrated over many years, that we are able to have a loan portfolio of auto loans to these exact same people at substantially lower rates that perform exceptionally well. We believe lenders and

[73] Experian Q2 2024 at 7.

[74] Jasper Clarkberg, Jack Gardner, & David Low, Consumer Fin. Prot. Bureau, Data Point: Subprime Auto, Loan Outcomes by Lender Type, Data Point No. 2021-10 (Sept. 2021) *available at* https://files.consumerfinance.gov/f/documents/cfpb_subprime-auto_data-point_2021-09.pdf.

[75] Community development financial institutions are private sector financial intermediaries that focus on providing financial services to economically disadvantaged communities. They are funded through the U.S. Department of the Treasury by the CDFI Fund, which was created in 1994 to promote "economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs)." United States Dep't of the Treasury, Community Development Financial Institutions Fund, *available at* https://www.cdfifund.gov/.

> dealers are not only stripping wealth from low-income New Yorkers but are discriminating specifically against people of color.[76]

One Detroit credit union, a Michigan CDFI, also specializes in refinancing predatory auto loans through a program called "Refi My Ride."[77] This program has helped over 1,000 consumers save $4.7 million by refinancing their auto loans to a lower rate (sometimes even reducing the rate by 50%) and structuring the terms of the loan to facilitate consumer success instead of failure.

High-cost creditors, like those whose interests are represented by Defendant's *Amici,* frequently claim, as a way to justify their high-cost credit, that providing financing to subprime consumers is more expensive and riskier. However, the Plaintiffs allege in this Complaint that Defendant CAC goes a step further, predicting that its consumers would experience significant rates of failure, and using that information about particular consumers to encourage dealers to set car prices that include that risk, thus ensuring its profits regardless of the outcome to consumers. This additional level of planned disregard for its consumers is what separates CAC's conduct from that of most other creditors who extend subprime credit to consumers.

B. The loan failure rates pleaded in the Complaint are much higher than available data for other auto creditors.

To the extent that the Court considers the potential impact of this ruling on other auto creditors, some of whose interests are represented by Defendant's *Amici*, it is notable that CAC's

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[76] *See* New York State Dep't of Fin. Servs. Hearing on Consumer Protection (Feb. 2020) (testimony of Daniel Apfel, Chief Operating Officer of Genesee Co-op Federal Credit Union), attached as EXHIBIT 1.
[77] *See* Inclusiv, CDFI Credit Unions Build Inclusive Economies 9 (Spring 2021), *available at* https://www.inclusiv.org/wp-content/uploads/2021/06/CDFI-CUs-Build-Inclusive-Economies-2021.pdf.

delinquency, default and repossession rates are significantly higher than those of other auto creditors.[78] Plaintiffs allege that for consumers with a CAC score of 70 or lower:[79]

- Approximately 20% had experienced at least one repossession,
- 60% experienced a 30-day delinquency within the first year, and
- 39% experienced a 60-day delinquency within the first year.[80]

Contrast this with data about other auto lenders. The Federal Reserve Bank of New York's quarterly data reflects that from 2015 to 2021 (the relevant period in the Complaint), no more than 5% of all auto financing contracts were ninety-plus days delinquent.[81] This is the point at which many creditors will repossess the vehicle. Data from Experian's automotive finance market reports indicate that between 2016 and 2020, only 3.5 to 5.2% of financing transactions from finance companies (like CAC) were in a 30-day delinquency, and 1.4 to 2.0% were in a sixty-day delinquency.[82] Even data about subprime auto borrowers reflects that thirty-day delinquency rates have not been higher than 9.3% since 2010 for this population of consumers.[83] While the data comparisons are not perfectly aligned, it is clear that CAC's rate of delinquencies

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[78] Unfortunately, unlike student loans or mortgages, there is a dearth of robust, publicly available data about auto lending. Therefore, although the comparisons here are not perfect, they merit attention by the Court simply because of the size of the gap in the delinquency rates between CAC's lending contracts and other auto lending contracts. This is the subject of an ongoing initiative by the CFPB to enhance publicly available auto lending data. *See* Ryan Kelly, Chris Kukla, Ben Litwin, & Ashwin Vasan, Consumer Fin. Prot. Bureau Blog, Enhancing Public Data on Auto Lending (Nov. 17, 2022), *available at* https://www.consumerfinance.gov/about-us/blog/enhancing-public-data-on-auto-lending/.

[79] Complaint, *supra* note 1, at ¶¶ 25-26 (describing the CAC borrower "score").

[80] *Id*. at ¶¶ 103-104.

[81] Federal Reserve Bank of N.Y., Research & Statistics Group, Quarterly Report on Household Debt and Credit 2023: Q1, at 12 (May 2023), *available at* https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2023Q1.

[82] Melinda Zabritsky, Experian, Automotive Industry Insights: Finance Market Report Q4 2020, at 17 (Mar. 2021), *available at* https://www.autofinancenews.net/wp-content/uploads/2021/03/2020-Q4-Auto-Finance-News-Industry-Pulse.pdf; Melinda Zabritsky, State of the Automotive Finance Market Q4 2017, at 6, 8 (Mar. 2018), *available at* https://www.experian.com/assets/automotive/quarterly-webinars/2017-q4-safm.pdf.

[83] Ben Eisen & Gina Heeb, *More Auto Payments Are Late, Exposing Cracks in Consumer Credit*, The Wall St. J., Feb. 18, 2023, *available at* https://www.wsj.com/articles/more-auto-payments-are-late-exposing-cracks-in-consumer-credit-3cbc2382.

is much higher than other auto creditors, *even than those lending to the same type of credit-challenged consumers*.[84] These statistics show that Defendant's *Amici* clearly do not represent all auto creditors.

Even worse, Plaintiffs allege that while consumers suffered the disastrous consequences of these disproportionately high rates of delinquency, default, repossession, auction, judgments and garnishments, CAC managed to predictably earn a profit.[85] Publicly available data indicates that between December 2009 and December 2021 CAC's market value increased dramatically from less than $1.3 billion to over $10 billion.[86]

CONCLUSION

The Court should deny Defendant's motion to dismiss. The Plaintiffs' enforcement of the consumer protection laws as plead in the Complaint will improve the fairness and transparency in the auto credit market by addressing the problematic practices of CAC. Allowing this matter to proceed to discovery and a determination on the merits will ensure that the abusive and deceptive conduct at issue in the Complaint is no longer permitted to plague the auto credit marketplace and punish lower income car buyers.

[84] Most available data points to delinquency and default percentages at a single moment in time rather than the percentage of consumers who had experienced a delinquency or default during their contract term, as alleged by the Plaintiffs. Regardless, the differences in the statistics for other auto creditors are significant.

[85] Complaint, *supra* note 1, at. ¶ 111.

[86] MacroTrends, Credit Acceptance Market Cap 2010-2023/CACC, *available at* https://www.macrotrends.net/stocks/charts/CACC/credit-acceptance/market-cap.

DATED: October 4, 2024

Respectfully submitted,

NATIONAL CONSUMER LAW CENTER

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October 2024, a true and correct copy of the foregoing was filed with the Clerk of the United States District Court for the Southern District of New York via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

By: /s/ Andrew Pizor

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EXHIBIT 1

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TESTIMONY OF DANIEL APFEL, CHIEF OPERATING OFFICER of GENESEE CO-OP FEDERAL CREDIT UNION at NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES HEARING

Date: Thursday, February 20
Time: 5:30 -7:30 p.m.
Location: M. Dolores Denman Courthouse
50 East Avenue, Rochester, NY 14604

Thank you for having me here. My name is Daniel Apfel and I am the Chief Operating Officer at Genesee Co-op Federal Credit Union. Genesee Co-op FCU is a community development credit union with almost 4,000 members based here in Rochester, serving people from across the entire community. We especially focus on serving the low-income community, including people of color and refugees. I am here tonight to raise awareness of the disparities based on race we see in auto-lending. We hold a portfolio of 262 used car loans and made 95 loans in 2019. Approximately 40% of those loans were refinances.

The vast majority of these refinanced auto loans are made to people who received their car loan at a dealership, often at high interest and loaded with service contracts or mechanical car repair coverage. Although borrowers of all kinds come in with these high-priced loans, a consistent pattern of discrimination has emerged. We see that while white members receive subprime loans of 12, 13, or 14 percent, Black and Latinx members with a similar credit profile usually are paying higher rates of 18, 19 or 20%, often up to the auto loan cap of 24.99%.

As an example, I want to share the stories of two members whose financial profiles were similar when they came to us, one white, one a person of color. The first member, who I will call Jennifer, is the person of color. She had a credit score of 650. Her loan rate was 16.59 percent. Another member, who I will call Jane, was white and had a credit score of 633. Jane's rate from the dealer was 12—4.59 % less even though she had worse credit. We refinanced their loans at 6.24% and 8.24% respectively.

This is a common occurrence. The credit profile of the borrower and the loan have similar attributes, even when the loan-to-value of the car and the debt-to-income ratio of the borrower are virtually identical. We believe the primary, or even only difference is the race/ethnicity of the borrower. So, for low, moderate- and middle-income borrowers, being Black or Latinx results in a 5-10% markup. We believe that this is almost certainly discrimination based on race. We see enough of these to believe this practice is widespread and not limited to a few dealers who are bad actors.

Genesee Co-op
Federal Credit Union

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Abusive auto loan rates are increasingly being identified as an issue that needs the attention of regulators. The mainstream press, as well as research, has identified the increased prevalence of auto loans with very high LTVs. These cars stop running before the loan is paid. When the consumer then buys another car, dealers refinance the unpaid balance into the new loan. That leads to higher and higher loan to values ratios and higher payments for low-income borrowers. Dealers also add products like the maintenance contracts that I discussed earlier to the price of the car, thus inflating the loans and making them even more unaffordable.

Such practices trap consumers in a cycle of subprime credit that is almost impossible to break. These lenders are stripping wealth from the communities that most need them. This practice makes it impossible for families to take the first step to develop savings, build assets and wealth, and eventually become homeowners.

You may hear from other lenders that it is impossible to lend to people at rates similar to ours because of the risk. We have demonstrated over many years, that we are able to have a loan portfolio of auto loans to these exact same people at substantially lower rates that perform exceptionally well. We believe lenders and dealers are not only stripping wealth from low-income New Yorkers but are discriminating specifically against people of color.

On behalf our Board and Membership, thank you for your visit to Rochester and your attention to this important issue.