

**EMPIRE JUSTICE CENTER**

**FORECLOSURE PREVENTION PROJECT - SOUTH BROOKLYN LEGAL SERVICES**

**GOOD JOBS NEW YORK**

**NEIGHBORHOOD ECONOMIC DEVELOPMENT ADVOCACY PROJECT (NEDAP)**

**NEW YORK PUBLIC INTEREST RESEARCH GROUP (NYPIRG)**

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BY EMAIL

June 29, 2006

Robert Sihler  
Large Bank Licensing Division  
Office of the Comptroller of the Currency  
250 E Street, S.W.  
Washington, DC 20219

**Re: Comments in Opposition to JPMC-Bank of New York Acquisition Application**

Dear Mr. Sihler:

The five organizations listed above jointly submit these comments in opposition to the application by JPMorgan Chase Bank, National Association (“JPMC” or “Chase”), a national bank, for permission from the Office of the Comptroller of the Currency (“OCC”) to acquire certain assets and to assume certain deposits and other liabilities from The Bank of New York (“BNY”), a New York state-chartered member bank headquartered in New York City.

In addition, we reiterate our request that the OCC hold a public hearing on the merger, and vehemently oppose Chase’s statements that a public hearing is not warranted in this case. Indeed its arguments against a public hearing speak to Chase’s blatant disregard for the public interest. Chase misses the point entirely, in its letter to the OCC dated June 7, 2006, when it states that:

[T]he New York Groups have failed to demonstrate why their written comments do not present their views adequately and have failed to identify disputed issues of fact that are material to the OCC’s decision and that would be clarified by a public hearing.

The OCC has authority to hold a public hearing as a means to ensure that members of the public, without the means to file written comments, can provide vital information to the OCC that would have direct bearing on its decision. A public hearing would provide a necessary forum for raising material issues in dispute, including, but not limited to Chase’s contention that the merger would benefit the convenience and needs of communities. The OCC should hold a public hearing as a matter of basic public accountability.

Key reasons why Chase's application should be denied:

- By making, purchasing and securitizing predatory mortgage loans, Chase not only undermines community credit needs, but in fact harms and destabilizes low and moderate income communities;
- Chase engages in racially disparate lending practices, and fails to serve all communities equitably; and
- Chase is one of the country's top three issuers of usurious tax refund anticipation loans (RALs), a harmful loan product that gouges low income consumers, which the OCC should not tolerate.
- Chase expects to close up to 50 branches in New York City, as a result of the proposed merger. But Chase has not disclosed the location of these branches, claiming that it has yet to determine which branches it will close. The burden is on Chase to assure the public that it will not close branches in low and moderate income neighborhoods, and the OCC should press Chase to make a determination regarding branch closings in order to meaningfully evaluate the impact of the merger on communities.
- The proposed merger raises concerns about the over-concentration of deposits held by one bank. OCC should investigate the anti-competitive effects of the proposed merger. According to Chase's merger application, the combined Chase-BNY deposits would fall just a few percentage points below the state anti-competition index of 30%. The OCC must conduct an anticompetitive analysis of the merger, and publicly disclose its analysis and methodology.

#### **I. COMMENTERS REPRESENT A WIDE SPECTRUM OF NEW YORK COMMUNITIES AND CONSUMERS**

This comment letter is submitted on behalf of five New York-based organizations with long and proven track records of working with community groups and individuals to promote community reinvestment, financial justice, and fair and affordable access to mainstream financial services. Our groups have provided legal representation and mortgage and foreclosure prevention counseling services to thousands of New Yorkers aggrieved by predatory lending practices. Collectively, we have researched banks' community lending, investment and services records, educated groups about the Community Reinvestment and Home Mortgage Disclosure Acts, and pressed for government enforcement of these laws. We have sought accountability by city and state elected officials and financial services companies in relation to corporate retention agreements.

**The following summaries describe each of our groups and constituencies we represent:**

- **Foreclosure Prevention Project, South Brooklyn Legal Services (SBLS)**, the first project of its kind in New York City, combines litigation, outreach, education and advocacy to combat predatory lending. Since the project's inception in 1998, SBLS has provided counsel and advice, referral services, or legal representation to several thousand at-risk homeowners in all five boroughs of New York City. The project has also served as a resource center for attorneys and advocates around the state who have clients who have been targeted for abusive loans. As a result, SBLS has detailed knowledge of the array of abusive practices used by predatory lenders, brokers, and contractors in New

York City and State, and the devastating effect that those practices have had on low and moderate income communities of color.

- **Good Jobs New York** investigates and publicizes ways in which public resources are allocated in the name of corporate retention. With this knowledge GJNY holds government officials and companies accountable to taxpayers, particularly when economic development agencies give subsidies to large corporations that threaten to leave New York City. ([www.goodjobsny.org](http://www.goodjobsny.org))
- **Empire Justice Center** is a multi-service non-profit organization that provides training and support to legal services and advocacy organizations outside of New York City. With offices in Albany, Rochester and White Plains, Empire Justice Center engages in impact litigation and policy analysis on behalf of low-income New Yorkers, traditionally in the areas of public benefits, disability law, healthcare, immigrant rights and domestic violence. Empire Justice Center created the consumer, housing and economic development unit to respond to an increase of foreclosures, predatory lending, predatory servicing and related consumer banking issues.
- **Neighborhood Economic Development Advocacy Project (NEDAP)** is a resource and advocacy center that works with community groups in New York City to promote community reinvestment and access to fair and affordable capital. NEDAP provides legal, technical and data support to groups seeking to hold banks and their regulators accountable to low income neighborhoods and communities of color. NEDAP has been instrumental in efforts to document and put an end to predatory lending in New York State. NEDAP is a founding member and the coordinator of New Yorkers for Responsible Lending (NYRL), a statewide fair lending coalition of more than 120 affordable housing, community revitalization, seniors, consumer, and legal services organizations, as well as community financial institutions.
- **New York Public Interest Research Group (NYPIRG)** is a not-for-profit, non-partisan research and advocacy organization. NYPIRG's staff of lawyers, researchers and organizers works with college students and other citizens to help develop citizenship skills and impact public policy. NYPIRG's work includes documenting bank redlining practices in New York State, producing reports on low-income banking issues and representing consumers in the state Legislature and local governments.

## II. THE OCC SHOULD HOLD A PUBLIC HEARING AND REQUIRE JPMC TO RESPOND PUBLICLY TO KEY QUESTIONS

Chase wrote a letter to the OCC in response to questions our groups raised with the bank. The letter contained virtually no meaningful content, and used empty legalisms to give the appearance of answering our questions. But Chase knows better, and we urge the OCC not to accept such non-substantive responses. At a minimum:

- Chase needs to identify the specific branches it expects to close in connection with the merger. This is fundamental to determining whether the proposed merger in fact serves community convenience and needs, and should be provided as a matter of public accountability.
- The OCC should require Chase to provide detailed small business lending information, *on the census tract level*, and on a market share basis.
- Chase should also be required to stop making usurious tax refund anticipation loans (RALs), which have been shown to harm not only low-income individuals but also to entire neighborhoods where RALs are overwhelmingly based.

### **III. THE PROPOSED ACQUISITION SHOULD NOT BE APPROVED BECAUSE IT DOES NOT MEET COMMUNITY CREDIT NEEDS**

#### **A. Chase Engages in Predatory Lending Abuses in Its Loan Originations, Purchasing & Securitization**

##### 1. Loan Originations

##### **Chase must stop originating No Income, No Asset (NINA) loans**

Chase entities have been originating a substantial volume of No Income, No Asset (“NINA”) loans. The NINA product is particularly susceptible to predatory lending abuses because NINA loans do not require borrowers to state or document their income or their assets. There appears to be no valid justification for the NINA product, where underwriters do not even consider the borrower’s income in underwriting the loan. Although there are also myriad abuses involved in the underwriting of stated income loans, that product is at least justified when borrowers have non-traditional income and need financing. However, the additional step in the NINA product of not even requiring income and assets to be stated benefits unscrupulous brokers, not borrowers. In originating a large volume of NINA loans, Chase puts itself in the company of some of the nation’s most abusive mortgage lenders.

The NINA product can be, and is, easily used to put lower income borrowers into unaffordable loans, which place them at a high risk of default and foreclosure. South Brooklyn Legal Services is finding that many of these NINA loans are arranged by mortgage brokers whose only incentive is to close the loan, whereby they reap a large commission and often an additional yield spread premium through the transaction.

*For example, Ms. V is an 85-year old African American woman who has owned her home in Brooklyn, New York since 1978. In late 2004, a broker induced her into a NINA refinance loan with Chase that raised her monthly mortgage payments by nearly \$1000, and was completely unaffordable. The standard loan application was completely blank where income and assets are supposed to be filled in. The mortgage broker collected \$15,014 in brokers’ fees between the broker commission and the yield spread premium, and Chase collected another \$6,679 in origination fees. Ms. V is now at serious risk of losing her long-time family home.*

NINA loans are incredibly risky and have high costs for low- and moderate- income communities. In one key industry study, the default rate for NINA loans was shown to be more than twice the rate for conventional mortgages. See Robert Stowe, *Pushing the Edge on Alternative-A*, Mortgage Bankers Association of America, February 1, 2004. While brokers receive higher fees and lenders are protected by the equity in the homes, homeowners who are induced into NINA loans are devastated by the financial and emotional costs of delinquency and foreclosure.

Chase must provide the community with responsible lending products, and stop originating NINA loans entirely.

**Chase must stop entirely its origination of “Simultaneous Seconds,” or “Piggyback” mortgages, or, at the very least, exercise a significantly higher standard of due diligence in the origination of such mortgages**

Chase entities have been originating a high volume of “Simultaneous Seconds,” or “Piggyback” mortgages, whereby two purchase loans are originated simultaneously, one typically at 80% LTV, and the other typically at 15% LTV or more. The second piggyback mortgage is generally at a very high interest rate, and is often a balloon mortgage. South Brooklyn Legal Services has found that the piggyback product is being widely used to leverage low- and moderate-income first-time homebuyers into financing that is entirely unaffordable, and that it is often used as financing for fraudulent property flipping schemes, in which first-time homebuyers are sold intentionally over-appraised properties.

*As an example, Ms. K, a 28 year-old single mother in Brooklyn, was recently sold a vastly over-appraised property by an unscrupulous real estate broker. The purchase was financed by two Chase piggyback mortgages, and the total monthly mortgage payments nearly doubled her monthly net income. Several months after she purchased the property, she is already in default.*

The apparent justification for the piggyback product is that it allows borrowers to purchase a property when they have little or no available money to put as a down-payment, and that it eliminates the need for private mortgage insurance. However, as the Mortgage Insurance Companies of America (MICA) states in its March 26, 2006 comment letter to the OCC on proposed guidance to lenders on “non-traditional” mortgages, “these loans are often called ‘piggyback’ mortgages due to the way in which a second lien is structured atop a first one to evade secondary-market LTV requirements or otherwise to structure a loan around traditional prudential underwriting standards.”

MICA goes on to state in its comment letter to the OCC:

Simultaneous seconds are among the most troubling of the products in the emerging non-traditional mortgage product spectrum. As *Dow Jones* recently observed, “they may be called ‘piggyback’ loans, but some analysts worry they could behave more like the big bad wolf – huffing, puffing, and blowing borrowers right out of their houses via defaults.”

Citing *Piggyback Loans May Increase Mortgage Default Risk*, Danielle Reed, Dow Jones

Newswires, August 26, 2005.

Given the extensive evidence that piggyback mortgages lead to high rates of default, that they are being used to leverage borrowers into unaffordable financing, and that they being widely utilized in property flipping schemes, Chase should either stop originating piggyback mortgages entirely, or else, at the very least, exercise an extremely high level of due diligence in its origination of piggyback mortgages.

**Chase must set high industry standards for responsible subprime lending.**

Chase must ensure that sound loan products are available on a direct, retail level to borrowers with less than perfect credit, particularly borrowers who live in historically underserved areas. Broker driven models for subprime lending have led to great abuses with vulnerable homeowners being targeted by unscrupulous mortgage brokers. Brokers, who make their living based on a percentage of the loan amount, steer borrowers into loans based on the amount of equity in their home, not on the amount they requested or the amount they can afford.

Homeowners with less than perfect credit must be able to get loans directly through Chase loan officers, rather than through brokers and a subsidiary company. Chase must offer homeowners with below perfect credit a range of responsible loan products. Chase must offer a second mortgage loan product for repair loans that does not require the homeowner to refinance their first mortgage at a higher interest rate just to get money for repairs. Further, Chase must commit to refinancing subprime loans with prime rate loans once a homeowner exhibits a regular payment history.

2. Chase Loan Purchasing Helps Fuel Abusive Property Flipping

South Brooklyn Legal Services has identified a serious problem with Chase's secondary market purchases of home purchase loans where properties have been flipped. Property flipping schemes that target first-time homebuyers are remarkably uniform: unscrupulous real estate brokers and speculators, sometimes marketing themselves as "one-stop shops" for homebuyers, advertise heavily with promises of low down payments or "no money down," and offer to guide prospective homebuyers through all aspects of the intimidating home purchase process. These real estate speculators bring in their own appraiser, property inspector, mortgage lender, and even attorney, all purportedly on the buyers' behalf. To cinch the deal, the brokers often state that the buyers are obtaining an FHA mortgage, and imply or outright misrepresent that the government has approved the transaction.

The real estate speculators purchase properties cheaply, often from homeowners in foreclosure, and then have them fraudulently over-appraised by appraisers that are part of the scheme. They then sell, or "flip" the properties to first-time homebuyers at an often vastly over-appraised price. Homebuyers later learn that the homes they bought are in poor condition, despite promises from the seller that the property would be fixed up for sale.

Lenders that purchase FHA mortgages are fully protected by the government guarantee, in a win-win situation. When homeowners struggle to make payments on the inflated mortgage, the

lenders reap profits on the over-appraised mortgage loan values. Conversely, when homeowners fall behind, the purchasing lenders foreclose, sell the properties through foreclosure auction, then collect the full principal and arrears on the over-valued mortgages through the FHA insurance fund. In our experience, the FHA guarantee unfortunately provides a disincentive for lenders to negotiate a resolution: even in cases where homeowners were clearly defrauded, lenders push for a foreclosure sale rather than an equitable resolution, in order to claim their full FHA payment. Increasingly, lenders are financing property flipping transactions with piggyback loans as well, to evade traditional LTV requirements. Like the refinance schemes, fraudulent property flipping transactions are disproportionately targeted at homebuyers of color in New York City. Recent public and private initiatives to expand homeownership by non-white families are being seriously undermined by this and similar patterns of apparent racial targeting and discrimination.

Chase has been involved in the purchase of many of these FHA and piggyback loans, and is holding many of the FHA loans in portfolio. (Chase more typically serves as trustee on the piggyback loans it purchases). Many of the loans that Chase purchases involve “one-stop shops” and lenders that are notorious for their involvement in property flipping schemes. The list of lenders that Chase purchases loans from includes Madison Home Equities (which was de-barred by HUD from making FHA loans because of a high incidence of over-appraisal), as well as Olympia Mortgage (which recently lost its license with the NYS Banking Department for engaging in fraud), Consumer Home Mortgage, and Mortgage Money Center, all of which have been sued in federal and state court for discrimination and fraud in connection with property flipping.

It is imperative that Chase act aggressively to ensure that it: (1) ceases to purchase loans where properties have been flipped; and (2) provides meaningful assistance to Chase borrowers who have already been targeted for property flipping schemes. Chase must conduct much more thorough due diligence on FHA purchases. Chase must particularly focus on zip codes where there is a high incidence of FHA foreclosures, such as the “hot zones” designated by HUD as high-risk areas in 2000. It must review deed records for evidence of properties being sold at a large markup within a relatively short period of time — there are several databases that are readily available on-line where this research can be done. Chase must re-appraise properties wherever there are indices of property flipping. It must also search on databases for patterns of property flipping among sellers and lenders, dialogue with community groups about problematic sellers and lenders, and refuse to buy loans where those sellers and lenders are involved.

Chase must also ensure that borrowers who have been targeted by property flipping are given every fair opportunity to keep their home. Before it initiates a foreclosure action, Chase must do property flipping reviews for all FHA borrowers in default, to ensure that the borrower is not losing their home due to the over-valuation of their property. If property flipping is indicated, Chase must be open to flexible and creative solutions to keep borrowers in their homes, outside of the normal FHA loss mitigation options. This must include a willingness on the part of Chase to write down the principal of the loan where necessary to the value that it should have been if not for the over-appraisal, as well as a willingness to adjust interest rates downward to make the mortgage affordable. To help facilitate these changes, Chase must create an arm of its loss mitigation department that is knowledgeable about property flipping, and that has the will and

authority to use creative and flexible solutions to prevent targeted borrowers from losing their homes in foreclosure.

Chase must clearly specify how it will prevent the future purchase of loans that are based on over-appraisal and flipping, and it must commit to systematically ensuring that Chase borrowers do not lose their homes as a result of home purchase fraud.

### 3. Chase's Insufficient Due Diligence in Securitization of Refinancing Loans Harms Borrowers

Chase's focus in due diligence in its purchase of refinance loans seems to be on "high-cost" loans, as defined by federal and state laws. While this is a first step, Chase's scrutiny must go further. Most predatory lenders today do not make "high-cost" loans as defined under federal or state law because there is no market for them; instead, abusive lenders make refinance loans that are under the high-cost thresholds, but are unaffordable at their inception, or give the borrower no tangible net benefit. Chase should therefore look to other facts in loans as indicators that a loan may be predatory. These factors include, but are not limited to: high debt-to-income ratios; the plausibility of various types of stated income given the age or circumstances of certain borrowers; loans that leave the homeowner with substandard residual income; loans made to borrowers who are susceptible to loan flipping because they have a history of repeated refinancing; adjustable rate loans or balloon loans made to borrowers with fixed incomes; loans that have been flipped within a short period of time; the inclusion of mandatory arbitration agreements; and the inclusion of prepayment penalties especially when coupled with adjustable interest rates. Furthermore, Chase should not purchase NINA loans in the secondary market, for the reasons outlined above.

Chase should exercise particularly heightened due diligence where it is buying loans or securitizing pools of loans from zip codes that have high rates of subprime foreclosures. Chase has the opportunity to become an industry leader by setting forth stringent due diligence standards that effectively weed out abusive loans and lenders from Chase's portfolio. It is certainly in Chase's interest to do so. While Chase has repeatedly claimed that it lacks the ability to examine mortgages for compliance where it is the Trustee on a securitization pool, it certainly has the authority and standing in the industry to insist that thorough due diligence is conducted on pools of loans that Chase is putting its name on. If an underwriter on such a pool is unwilling to do thorough due diligence, Chase should not agree to serve as Trustee on such pool.

Chase also must set up a mechanism to review purchased refinance loans when they go into default and before they go into foreclosure, to ensure that Chase is not foreclosing on a borrower who has been targeted by a predatory loan. In order to help facilitate this, Chase must set up a team that is knowledgeable about the dynamics of predatory refinance lending, and is thus in a good position to offer creative solutions to assist at-risk borrowers, whether or not they are represented by an attorney.

Chase must become an industry leader in the due diligence standards that it sets for secondary market purchases on which Chase stands as assignee or trustee.

**Chase must improve its due diligence on the home purchase loans that it purchases in the secondary market, and must engage in strict due diligence to ensure that it is not purchasing or securitizing predatory refinance loans.**

4. Chase's Mortgage Servicing and Loss Mitigation Department are Sub-par

Following the merger with Bank One and in response to consumer advocates' pressing for Chase to improve its servicing and loss mitigation departments, Chase created the "Homeownership Preservation Office." The office, created for the use of advocates and housing counselors, is appears to be staff by just a few employees. To our knowledge, Chase does not advertise the office, and the vast majority of advocates and counselors around the country are not aware that such an office exists. Although Chase personnel who staff the office are responsive and cordial, advocates have not experienced a consistent improvement in the quality of Chase's substantive intervention in individual cases. Too often, Chase appears more concerned with rushing the foreclosure process and adhering to rigid internal guidelines than seriously trying to work out solutions for borrowers.

**B. HMDA Data Reveal Disparate Lending Patterns Based on Race**

NEDAP conducted a preliminary analysis of JPMC's Home Mortgage Disclosure Act (HMDA) data for 2004 and 2005, for the New York City metropolitan area (MA) as well as for parts of upstate New York where two of the commenters are based.<sup>1</sup> The HMDA analysis shows significant discrepancies in Chase's lending patterns, based on race. Though there is much to say regarding Chase's mortgage lending in New York City and State, this comment focuses on the following points:

- (1) *Upper income* black Chase borrowers in NYC have a greater likelihood of getting a high cost or "threshold" loan<sup>2</sup> than *low income* white borrowers;
- (2) Chase's proportion of "threshold loans" is strikingly higher in upstate cities
- (3) Chase has carved out a niche in New York of primarily serving high income, white borrowers and neighborhoods; and
- (4) A disturbingly high percentage of Chase loans have no race reported, at a significantly higher level than all HMDA reporters combined.

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<sup>1</sup> One reason for the delay in submitting this comment letter is that prior to the end of the comment period, JPMC issued to groups, including NEDAP, three different versions of the 2005 Home Mortgage Disclosure Act (HMDA) Loan Application Register data. NEDAP, which has extremely limited staff resources, devoted dozens of hours analyzing home mortgage lending data for Chase that turned out to be defective. NEDAP discovered discrepancies in the data when another organization asked NEDAP to review its HMDA findings. NEDAP ultimately ascertained that the other group's data findings were based on completely different data, and contacted Chase to inquire about the glaring inconsistencies between the two data sets. Chase then sent NEDAP a new set of 2005 HMDA data, which did not match either of the two previously provided. NEDAP ended up wasting precious time and resources poring through defective data, and had to start the research anew with the new data set. NEDAP urges the OCC to get to the bottom of these data discrepancies and carefully analyze JPMC's 2005 data for the New York metropolitan area (MA).

<sup>2</sup> Reference to high cost or "threshold loans" in this section refers to the definitions set forth in the HMDA regulations.

1. High Cost/“Threshold” Loans

As Table 1 shows, the percentage of Chase’s high cost, or “threshold,” refinancing loans was almost six times higher in census tracts in which the population is more than 75% black and Hispanic.

Table 1. PERCENTAGE OF CHASE’S CONVENTIONAL REFI LOAN ORIGINATIONS THAT WERE HIGH-COST LOANS BY BORROWER RACE AND NEIGHBORHOOD RACE<sup>3</sup>  
New York City

Census Tract Minority Population Percentage:

<b>Borrower Race:</b>	<b>0%-15%</b>	<b>15%-25%</b>	<b>25%-50%</b>	<b>50%-75%</b>	<b>75%-100%</b>	<b>NYC</b>
<b>White</b>	4.79	4.75	5.70	8.97	24.53	6.59
<b>Asian</b>	1.37	0	7.32	4.00	21.05	5.88
<b>Hispanic</b>	5.00	5.00	12.86	10.00	28.85	15.61
<b>Black</b>	23.08	10.00	26.19	13.51	26.40	24.57
<b>No race</b>	3.55	3.68	6.83	10.68	24.31	9.94
<b>TOTAL</b>	4.36	4.20	8.46	9.73	25.60	11.29

2. Chase’s “Threshold” Lending is Significantly Higher in Upstate New York than in New York City

The percentage of Chase’s high cost, or “threshold,” loans is many times higher in cities such as Buffalo, Rochester and Albany, as well as in rural communities throughout the state. (See Table 2.) Chase’s approach to mortgage lending in upstate New York communities is markedly different from its business in New York City.

TABLE 2. PERCENTAGE OF CHASE’S CONVENTIONAL 1ST LIEN REFINANCING LOAN ORIGINATIONS THAT ARE HIGH-COST<sup>4</sup>  
UPSTATE NEW YORK VERSUS NEW YORK MSA

	<b>White Borrowers</b>	<b>Non-White Borrowers</b>	<b>No Race Reported</b>	<b>All Borrowers</b>
Buffalo MSA	32.50%	53.85%	42.86%	37.57%
Rochester MSA	28.57%	57.89%	8.94%	25.31%
Albany MSA	36.05%	50.00%	22.22%	34.43%
Rural NYS	39.25%	47.06%	43.64%	40.36%
Upstate NY	34.85%	47.25%	20.40%	32.61%
NYC (5 counties)	6.59%	18.27%	9.94%	11.29%
NY MSA	8.53%	18.85%	9.14%	11.75%

<sup>3</sup> First lien refinancing originations, Chase 2005 HMDA data (consolidated).

<sup>4</sup> First lien refinancing originations, Chase 2005 HMDA data (consolidated).

### 3. Chase's Lending in NYC Reflects Classic Redlining

Although the newly reported threshold loans (deservedly) receive attention in comments groups have filed against this merger, discrepancies in loan originations by race are perhaps even more alarming. Analysis of Chase's market share of conventional home purchase loans, broken down by borrower income as well as census tract income and race characteristics, reveals the following:

#### *Low Income Census Tracts:*

- Chase's has a 26% market share of conventional home purchase loans made to low income census tracts in which the population is overwhelming white (> 85%).<sup>5</sup> By contrast, its market share is only 8% in low income census tracts in which the population is predominantly non-white (between both 50% and 75%, and between 75% and 100%).
- Chase did not report borrowers' race on approximately 20% of the home purchase loans it originated in New York City's low income census tracts.

#### *Moderate Income Census Tracts:*

- A similar pattern holds true in moderate income census tracts: Chase has a 23% market share of home purchase loans in overwhelmingly white census tracts. Its market share in predominantly nonwhite census tracts (50%-75%) is 12.5%, and 13% in census tracts more than 75% nonwhite.

#### *Upper Income Census Tracts:*

- Chase's market share of home purchase loans in overwhelmingly white census tracts is 17.5%. Chase's market share of loans to upper income borrowers drops to 7.7% in census tracts with populations between 50% and 75%, and to 5.3% where the population is more than 75% nonwhite.

### 4. Chase Fails to Report Race on a Disproportionately High Number of Mortgage Loans

Chase fails to report race in its HMDA data for a disturbingly high proportion of its conventional home purchase mortgage loans in NYC. Chase's non-reporting of race is especially glaring for loans made in predominantly white census tracts – approaching one out of every three loans Chase made in census tracts in which more than 85% of the populations is white. It is likely that the borrowers are also white, suggesting that the race disparity in Chase's lending is even starker than described above.

#### **C. Chase Small Business Lending**

In response to our groups' questions about its small business lending in low income neighborhoods, Chase reiterated numbers already contained in its merger application to the OCC.

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<sup>5</sup> FFIEC; Chase 2004 HMDA data (consolidated).

The OCC should require Chase to provide a market share analysis of its small business lending in low and moderate income census tracts.

#### **D. Pressing Consumer and Economic Justice Issues**

##### 1. Chase's RALs Harm Low Income Communities

#### **JPMC should be required to terminate making usurious refund anticipation loans.**

How to take its merger application seriously when Chase touts its 2005-2006 Earned Income Tax Credit Campaign (EITC) at the same time that Chase is one of the country's top issuers of tax refund anticipation loans (RALs)? It is well documented that RALs gouge EITC recipients in particular, and sap them of their income credits the one time of the year that many low-income families receive a major income boost. No doubt, RALs are extremely lucrative for Chase and its RALs-issuing counterparts. Indeed it is easier for Chase to rationalize RALs to the public – and perhaps also its regulators – than payday loans. That is, unlike payday loans, which the OCC has found to be unsafe and unsound, Chase and others depict RALs as a matter of consumer choice, and relatively benign as a seasonal product received only once a year during tax time. But RALs are wholly analogous to payday loans, in structure, risk, and harm to borrowers. In the case of RALs, Chase is hiding behind its national bank charter to circumvent state usury laws. Chase would argue that RALs are not illegal. We argue that Chase's RALs are an abusive product that directly harms communities.<sup>6</sup>

At best, Chase's EITC-related activities are directly undermined by its RALs business. At worst, Chase is cynically promoting free and low cost tax preparation assistance for low income families, with one hand, while it shamelessly grabs a piece of their EITC and tax refunds with the other.

##### 2. Chase must eliminate cash access surcharges in New York EBT delivery.

Several years ago, Chase acquired Citigroup's Electronic Benefit Transfer (EBT) operations, including the EBT contract for New York State. Chase knew when it acquired the New York contract that there was a systemic issue regarding the shifting of cash access fees onto poor people in New York City who, as of late 1999, must receive their cash assistance benefits through EBT. In its application to the OCC, Chase states:

... JPMorgan Electronic Financial Services has earned a reputation as a national leader in providing quality EBT services for Food Stamps, Temporary Assistance to Needy Families and various other supplemental cash programs. ... EBT eliminates cumbersome processes and paper handling associated with the distribution of paper coupons and

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<sup>6</sup> We are aware that the OCC's preemption ruling is not the subject of these comments, but are nonetheless compelled to point out that the ruling (which we consider flagrant over-reaching) led Chase to relinquish its NYS charter for a national one. This change in Chase's charter has proven bad for New York communities; without a role for state and local regulators, we are extremely hard-pressed to find public accountability in connection with this merger.

checks, reduces the risk of fraud related to theft and misuse, assists eligible recipients of government benefits with a convenient, private payment solution, and allows for 24/7 customer service access by phone. Application at 41.

It is questionable why Chase would tout its EBT services in the merger application, and particularly in its update on CRA activities since its last CRA exam, when Chase is well aware that the EBT program, as implemented, is sapping millions of dollars from low income New Yorkers in the form of cash access surcharges.

On several occasions over the past years, NEDAP and other groups have discussed with Chase the need to eliminate surcharges public benefit recipients pay to obtain access to their cash assistance benefits. Chase persistently cites the state contract as a reason for not eliminating the high cash access fees that almost half of all EBT users pay in New York City. If Chase is committed to serving the convenience and needs of low income New Yorkers through EBT, it should negotiate with the state to provide a direct deposit option, which would not only bring TANF recipients without a bank account into the banking mainstream, but also provide Electronic Fund Transfer Regulation E protections, currently not afforded to EBT users. It should also ensure that there are no surcharges on cash access for EBT users – as a matter not only of corporate accountability and responsibility but also as a way to meet the convenience and needs of communities.

**E. Failure to Adhere to Job Retention Agreements, for which Chase and BONY Received Massive Public Subsidies, Undermines NYC Communities**

**The merger may have harmful impact on the New York economy, and result in significant job loss and potential violation of Chase's and Bank of New York's job retention agreements with New York.**

Both Chase Manhattan and Bank of New York are recipients of generous public subsidies contingent on their ability to meet employment commitments. In 1989, the New York City Industrial Development Agency signed a 25-year deal with Chase, authorizing incentives worth up to \$237.7 million if the bank retains an average of 4,500 employees. To the extent that Chase has not lived up to its agreement, it has proven not only a poor corporate citizen but also has undermined the needs of communities.

Bank of New York benefited from several economic development subsidy programs intended to revitalize the New York City economy following the September 11<sup>th</sup> attacks. A developer received \$114 million of triple tax-exempt Liberty Bonds to build the Brooklyn office tower that houses Bank of New York. In addition, the bank itself received \$37.5 million in Community Development Block Grant funds contingent on remaining in New York for seven years and retaining 6,160 workers in its Lower Manhattan offices, 1,400 workers in its Brooklyn offices, and 140 workers in its Midtown offices.

In light of these substantial public commitments of foregone tax revenue, it is imperative that the proposed merger not undermine the commitments both banks made to retain a minimum number of New York City employees. Failure to adhere to these agreements is evidence that the merger

does not serve the public interest, and the OCC must consider these issues when evaluating the merits of the proposed merger.

#### **IV. CONCLUSION**

For the reasons set forth above, we continue to call on the OCC to hold a public hearing, as a matter of fundamental public accountability and to ensure that disputed issues of fact are adequately addressed. We also call on the OCC to deny the merger application. At a minimum, the OCC must investigate Chase's harms to communities raised in this comment letter, and condition any approval of the merger by imposing specific requirements on Chase that it end each of the harmful and discriminatory practices described above.

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