HOUSING PARTNERSHIP NETWORK

Social Mission. Private Enterprise.

April 8, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, D.C. 20219

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Community Reinvestment Act Regulations OCC --Docket ID#: OCC-2018-0008; FDIC –RIN 3064-AF22

To Whom It May Concern:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPR) to modernize the regulations that implement the Community Reinvestment Act (CRA) of 1977.

Housing Partnership Network (HPN) is a business collaborative of high-performing nonprofits that develop and finance affordable housing and community development projects. HPN members work in all 50 states, creating affordable housing and improving neighborhoods. HPN operates businesses that help improve the efficiency and impact of our members, such as a property and casualty insurance company that insures their apartments, a bulk buying business that helps them purchase the supplies they need to build and renovate housing, and a social purpose Real Estate Investment Trust that provides financing for affordable housing.

HPN's members are larger nonprofits that are able to tackle tough affordable housing challenges because they have strong business skills that enable them to manage real estate efficiently, and they also have a social mission to help residents improve their lives. HPN's members own and manage more than 282,000 affordable apartments, develop single-family homes and provide capital to underserved communities. Banks work with both HPN and its members by providing debt, equity and expertise on a wide range of affordable housing and community development projects. CRA has been indispensable to these partnerships.

The Community Reinvestment Act (CRA) was enacted in 1977 to prevent redlining and to encourage banks to help meet the credit needs of all segments of their communities, including low- and moderate-income neighborhoods and individuals. The CRA extended and clarified the long-standing expectation that banks will serve the convenience and needs of their local communities. Over the years, CRA has

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given banks the incentive to engage with community developers such as HPN and our members to improve neighborhoods and has been an enormously successful public policy.

We agree with the objectives outlined in the NPR make a regulatory framework that is "more objective, transparent, consistent and easy to understand." We support these goals in the context of remaining true to the primary purpose of the CRA statute: assuring that banks provide appropriate access to capital and credit to low- and moderate-income (LMI) people and places. Over the past 40 years, CRA has helped bring affordable housing, small businesses, jobs, and banking services to underserved communities. Any modernization must build on this successful record.

Important to have agreement on CRA regulation across banking regulators

Consistency across bank charter type, size and business model is key to achieving uniform application of the CRA obligation. For this reason, it would be useful for the OCC and FDIC to propose changes that the Federal Reserve could also support. Given the complexity of the existing CRA regime and the number of interrelated issues that affect how banks are examined and rated under CRA, we urge you to issue another NPR with all three banking regulators before moving onto a final CRA rule.

Performance evaluation outlined in NPR does not accurately reflect a bank's impact in a community

It is not wise to upend the existing CRA regime without more careful data collection and analysis. Instead, a series of thoughtful improvements and updates to CRA could achieve the stated goals of the NPR with less disruption, uncertainly, and without the danger of unintended consequences.

HPN opposes reducing CRA compliance to the performance evaluation outlined in the NPR. The diversity of both the banking industry and local economies make it impossible to come up with a set of formulas that fairly rate all banks. HPN would prefer an approach that improves the current system rather than radically changing it. The current system may be too complex but such a radical change would have unintended consequences and immense practical challenges.

<u>Disincentives Innovation</u>

If banks are evaluated by adding all of their CRA activities together and then dividing that total by a measure of bank size, banks would have no incentive to seek out the sort of innovative or complex community development loans or investments that have the greatest impact on local communities. The size of the transactions would become more important than their impact on the community. For example, Housing Partnership Network members formed a Real Estate Investment Trust called the Housing Partnership Equity Trust that invests in naturally occurring affordable housing in order to preserve apartments with affordable rents. The dollar value of bank equity investments in this sort of innovative structure is small compared with the volume of conventional mortgage lending that banks do, yet the impact of this type of innovation is large.

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Not Responsive to the Needs of the Community

The "performance measure" in the NPR collapses the lending, services, and investments tests under current law into one ratio. This allows banks more discretion on what types of CRA activity to participate in or ignore, as well as favors large dollar activities over smaller, potentially more impactful ones. Instead of the specific credit needs of a local market driving a bank's CRA activities, banks would be evaluated on their ability to meet a certain dollar volume goal to achieve a satisfactory or outstanding rating. Performance context, as it is defined in the current CRA regulations, would be an afterthought in the OCC-FDIC proposal. This flaw in the performance evaluation design is so fundamental that it outweighs any other positive changes included in the NPR.

The suggestion in the NPR that inequities like this could be addressed by weighting some types of loans or investments higher than others does not solve difficulties like those raised above. If different types of loans and investments had different weights, it could have the unintended consequence of banks cutting back on activities that had a higher weight because they could reach their targets with less investment. Banks also might choose to do easier activities in order to meet the CRA requirements and avoid doing the more impactful but time-consuming loans or investments.

Lack of Data to Support Ratios

Even if the performance evaluation is adopted as currently drafted, the ratios set in the NPR are not supported by data**.** Given the lack of published data, we do not know with any level of certainty whether the proposed metrics (11% total, 2% CD) are appropriate metrics to judge whether a bank is undertaking sufficient activities to support LMI individuals and neighborhoods. To adequately determine the impact of the proposed metrics, the OCC and FDIC should develop and share the data requested after the proposed rule was released, and then re-publish a proposed rule with a better understanding of the full impact of the proposed presumptive ratios.

Consumer Lending Should be Excluded

Consumer lending should be excluded from data collection and from the retail lending distribution analysis. Access to consumer loans, such as credit cards and auto loans, is abundantly available to consumers including low- and moderate-income borrowers without adding an incentive through CRA. In addition, requiring all banks to meet consumer lending distribution metrics could promote credit products to low- and moderate-income consumers on unfavorable terms, especially since consumer loans do have the same protections that are included in mortgages.

Alternative Recommendation

If the Agencies are committed to pursuing the performance evaluation measure. We would suggest you look at the alternative outlined in the National Association of Affordable Housing Lenders' (NAAHL) comment letter which proposes three fully rated tests that would contribute to a bank's CRA rating at both the assessment area and bank levels: the CRA evaluation measure, retail lending distribution, and community development (CD).

List of eligible activities in NPR is overly broad and gets away from intent of CRA

We appreciate the attempt to add more transparency and consistency to CRA rules by being clearer about what counts for CRA. However, the range of activities that qualify as community development activity under the NPR is overly broad. Of most concern are investments in community facilities, essential infrastructure, municipal bonds, and mortgage-backed security products that may only partially benefit low-income communities or low-income persons could represent a very sizeable portion, if not the entirety, of community development investments for banks. These types of activities may be much more attractive from an economic standpoint than affordable housing, without providing commensurate community impacts.

<u>Multiplier Not Adequate to Incentivize Bank Activity</u>

The multiplier for some community development activities is unlikely to incentivize investments. Double weighting for CDFIs, affordable housing, and other activities will not likely be a sufficient motivation for banks to seek out these investments. We appreciate that the proposed regulations single out certain types of loans and investments for favorable treatment. However, in comparison to many of the other activities and investment types in the qualifying community development loans and investment bucket, the investments receiving multipliers are considerably smaller, more complex, and less liquid. The double weighting of these investments in and of itself will not likely cause banks to seek out these activities.

<u>NeighborWorks Organizations Should Be Included in Eligible Community Development Activities</u>

We appreciate the addition of capital investment, loan participations or other venture undertaken in conjunction with CDFIs to the list of qualified activities and would encourage the final rule also include NeighborWorks organizations to that list.

<u>Alternative Recommendations</u>

Limit the activities eligible for community development credit. HPN suggests circumscribing the basket of qualifying activities that fit within the CD test, in particular to remove essential infrastructure and community facilities that only "partially," rather than "primarily," benefit LMI individuals and census tracts.

Create a minimum threshold for activities with greater impact. Replace the "multiplier" for favored activities with a requirement that in order to receive a satisfactory or outstanding rating, a minimum level of the community development bucket (e.g. 1 percent of deposits, under the current 2 percent

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test) at the bank level should be in these favored activities (i.e. investments excluding MBS and bonds not issued by state and local housing finance agencies, loans to CDFIs, or loans to affordable housing.)

Require that banks maintain a certain minimum level of new lending and investment in affordable housing. We recommend that the OCC and FDIC factor into ratings whether banks have increased, maintained, or decreased originations of affordable housing loans and other preferred investments significantly at the bank level relative to the prior assessment period.

Conclusion

As the nation faces economic uncertainty in light of the coronavirus crisis, the role of CRA investments in vulnerable communities is now more important than ever. We urge you to work with the Federal Reserve on a new proposed rule based on data and comments you have received in response to this NPR so that a modernized CRA can continue to meet its purpose while being more objective, transparent, consistent and easy to understand. If you wish to discuss any points in this letter further please contact Shannon Ross, Vice President, Policy at ross@housingpartnership.net. Thank you for your consideration of our comments.

Sincerely,

Shannon M Ross

Shannon Ross
Vice President, Policy
Housing Partnership Network