COMMUNITY
HOUSING CAPITAL
WHEN THE MISSING PIECE IS CAPITAL

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April 8, 2020

Ms. Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

RE: Proposed Rule – Community Reinvestment Act Regulations [85 FR 1204, RIN 3064- AF22]

Dear Chairman McWilliams:

As a national nonprofit and certified Community Development Financial Institution (CDFI), Community Housing Capital (CHC) appreciates the opportunity to provide our comments on the Notice of Proposed Rulemaking (NPR) for the Community Reinvestment Act (CRA). CRA has leveraged significant amounts of loans and investments for low-and-moderate-income (LMI) communities since its adoption in 1977. This law underscores the importance of motivating banks to provide loans and investments for affordable housing and economic development.

CHC is passionate about everyone's fundamental right to a high-quality and affordable place to call home. We believe that the expansion of low-and-moderate-income (LMI) housing is critical for increasing stability and creating pathways to economic prosperity, both for individuals and communities. The CRA's success to date has enabled CHC to invest $809 million in direct loan originations and leverage $2.5 billion in affordable housing development. These investments have created over 19,500 high quality homes for individuals and families.

Founded in 2000, CHC has a long history of aggregating loan capital and grants to finance the creation and preservation of safe affordable housing. To fulfill our mission, we partnered with NeighborWorks America to provide lending services to the more than 240 network organizations of nonprofit developers in rural and urban communities across the nation. The network organizations are the changemakers committed to improving and sustaining their communities. Our unwavering responsibility is to understand and respond effectively to the needs of the network organizations with innovative, complex, flexible, market-driven products and services. This partnership proved to be a catalytic collaborative with profound impact in local rural and urban communities of color across the nation.

The key to CHC's success has been its ability to build successful partnerships with many of the largest banks in the United States. CHC has served as a bridge connecting very important private financing and vitally important housing development initiated by the not-for-profit sector.

As you can see, the last twenty years have been one of strategic decisions, in conjunction with the CRA, to build partnerships with the mission to collectively transform communities in need of safe quality affordable homes. When contemplating the NPR for the CRA and the effect on us but also our partners, we remain steadfast in our resolve to preserve and strengthen the mandate of this critical law. The existing CRA system, albeit imperfect, has helped to achieve many successes in which to build upon. As such, we urge you to take into consideration our following comments on how CRA modernization could continue and possibly expand on its current success.

<u>General</u>

1. CRA must prioritize meeting the credit needs of local communities (where banks are located) first while balancing incentives created for banks to invest in people and places that have not been traditionally served through CRA. When considering this priority perhaps credit for nationwide activities should only be granted after assessment areas (AAs) are served.

2. CRA modernization must address the significant changes that have occurred in the financial services and banking industry since the late 1970. These include widespread bank consolidation and change in scale; the growth of online banking; subprime lending and the near universal adoption of risk-based pricing. CRA should be structured to incentivize maintaining a physical presence in communities where it is most needed—including LMI neighborhoods, rural communities, Native lands, and distressed communities.

3. CRA regulations should focus on incentivizing and rewarding banks for innovative, complex, and challenging activities that might not otherwise take place, not just giving credit for traditionally profitable activities conducted in the normal course of business. The spirit and intent of CRA was intended to achieve both activities but banks have remained cautious with more traditional activities.

4. The range in different bank business models means that one size can't fit all. New CRA regulations must take into account varying business models and speak to them, allowing banks and communities to partner in the ways that are most appropriate to address the community's credit needs within the scope of the bank's lines of business.

5. CRA regulations must also recognize that community credit needs vary from place to place and must encourage banks to be responsive to those local needs.

6. A rewrite of the CRA regulations should result in standards that are as strong or stronger than current standards.

7. NeighborWorks shares several of the Agencies' (i.e., the OCC and FDIC) goals. We support efforts to rewrite CRA in a manner that provides clarity and certainty, both for banks and their communities. We also support the goal of redistributing investment to address the issue of CRA "hot spots" and "deserts."

8. The current proposal is too flawed to be the basis of a final rule. The Agencies do not have enough data to fully understand the implications of the proposal, let alone to allow the public to evaluate it. Given the level of concern coming from the full range of stakeholders, the Agencies should collect and incorporate the public comments from this rulemaking and re-propose a new iteration of the rule rather than finalizing the rule on the basis of this proposal. Also, a one-year revisit after the rule has been implemented should take place by regulators allowing mitigation/resolution of any unintended consequences.

<u>Qualifying Activities</u>

1. CRA credit should be limited to activities that truly serve LMI community needs. The list should not be so broad as to dilute the value of more impactful activities. The following specific limitations should be included:
   - Credit should be given for homebuyer education and counseling and financial capability services only for LMI customers. Grants and loans to nonprofit organizations to support these purposes should be explicitly included as eligible activities in the regulations.
   - We support limiting CRA consideration to only those mortgages that are made to LMI borrowers, except in distressed places where an intentional revitalization strategy is underway. In these communities, mortgages for households up to 120% should be eligible activities.
   - Revenue and loan size limitations for small business/farm should be maintained, not increased. The focus should remain on small enterprises, and credit availability for small loans is much more limited.
   - Credit should only be allocated for Qualified Opportunity Fund (QOF) investments that otherwise qualify for CRA credit. Simply being located in an Opportunity Zone does not mean that LMI communities directly benefit from the activity.
   - Infrastructure financing should only be eligible when it is undertaken with applicable federal programs designed to spur infrastructure investments in places where they might not otherwise be able to secure financing. While rural and distressed communities often struggle to secure financing for infrastructure projects, these resources are more readily available in urban and suburban areas. This limitation ensures that LMI communities are the beneficiaries of these activities and encourages credit to flow to projects where it may not otherwise be available.

2. A revised CRA must strike a better balance between counting only new originations and being predicated exclusively on a bank's balance sheet. While the balance sheet

approach does incentive long-term credit, it is also important to ensure that banks provide continuous service.

3. Banks should receive automatic credit for work undertaken with a NeighborWorks Organization (NWO). Like other federally certified organizations, these mission-driven organizations undergo rigorous financial and management assessments prior to receiving their charters and on an ongoing basis thereafter. Activities relating to partnerships with NWOs, including loans and grants, should be explicitly included in the regulations describing qualified activities.

4. The NPR recommends that CDFIs be accorded the same treatment as Minority Depository Institutions, Women's Depository Institutions and Low-Income Credit Unions for bank investments outside their assessment areas. Allowing banks to receive CRA credit outside their assessment areas for activities clearly targeting LMI people and places such as investments in CDFIs is a positive reform.

5. The transparency embraced by the NPR in providing and updating an illustrative list of CRA qualifying activities is welcomed. A public list of CRA eligible activities provides clarity and certainty, helping banks make better investment decisions without waiting years after engaging in a transaction to find out if an activity qualifies for CRA credit. Still, it should be noted that just because an activity may appear on a list of CRA eligible activities does not guarantee any bank will choose to conduct that activity. Highly impactful community development activities such as investments in Indian country will be competing against much larger deals that may allow the bank to meet its dollar volume ratio more quickly and simply.

6. Eligibility should be preserved for economic development/neighborhood revitalization activities.

Assessment Areas and Geography

1. With the growth of online banking and branchless institutions, CHC agrees with the Agencies that traditional AAs no longer reflect the geographic landscape of banking. While existing AAs should be preserved, additional ones should be demarcated to more appropriately define the communities to which banks have a responsibility.

2. The Agencies' proposal to create deposit-based AAs, however, does not adequately capture where new AAs should be. Simply identifying concentrations of deposits will not address the issue of CRA "hot spots" and "deserts." Geographic disparities in deposit size make it unlikely that concentrations of deposits can serve as a proxy for concentrations of actual depositors. Instead, the deposit-based AAs will be concentrated in areas that are already well served by financial institutions, and where other banks already have AAs. "Deserts" will remain underserved, while "hot spots" will only see consistent or increased competition for CRA activity.

3. Our partner, NeighborWorks, encourages the Agencies to explore a market-share based AA system, whereby AAs would be defined in places where a bank captures a significant portion of the local market. A study of this concept would assess whether deposits, loans, or some combination are the most appropriate indicator, as well as what appropriate thresholds might be. Following this analysis, the Agencies should re-propose regulations to allow the public to comment on this approach.

4. We support giving credit to all activities in Indian country, distressed areas, and underserved communities, regardless of whether they are located in a bank's AA as long as an institution can demonstrate that it has made reasonable efforts to meet the needs in their own assessment areas.

5. The NPR recommends the creation of a new type of assessment area to complement the existing "facility-based" assessment areas in effect under current CRA regulations. Under the proposal, markets where a bank collects 5% of its deposits would become "deposit-based" assessment areas. This reform is aimed at addressing how the banking industry has evolved to include banks with no or limited "bricks & mortar" presence. It is unlikely that the creation of "deposit-based" assessment areas will do enough to address the "CRA deserts" problem facing rural, Native and other low-wealth markets today. Communities with high concentrations of low-income residents are unlikely to generate the level of bank deposits to trigger the creation of a deposit-based assessment area. Similarly, low population communities are also likely to be missed. If the NPR allows banks to define the boundaries of a deposit-based area, this is likely to lead to the creation of many market areas in which very few meet the 5% threshold. More guidance must be given to the definition of a market area.

6. Under the proposal, a bank cannot receive a Satisfactory or an Outstanding rating unless it also receives that rating in a "significant portion" of its assessment areas. The NPR proposes that 50% be the threshold used to determine a "significant" portion of a bank's assessment area. A bank should not be able to obtain a Satisfactory or Outstanding rating in a CRA exam if CRA activities meet the performance evaluation measures in only half of the bank's assessment areas.

In summary, CHC believes that NeighborWorks America (NWA) and the Opportunity Finance Network (OFN) are industry leaders ensuring that CRA Regulatory Reform is properly undertaken. With them, we respectfully submit our comments and urge regulators to take them seriously.

Sincerely,

[redacted]

Paul Mazzarella, Chairman
Community Housing Capital