



April 7, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
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Washington, D.C. 20219
cra.reg@occ.treas.gov

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429
comments@fdic.gov

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

Ladies and Gentlemen:

CHN Housing Partners (“CHN”) appreciates this opportunity to comment on the Office of the Comptroller of the Currency’s (“OCC”) and Federal Deposit Insurance Corporation’s (“FDIC”) joint proposed rulemaking regarding the Community Reinvestment Act (“CRA”). We also provided comments in response to the OCC’s previous ANPR and appreciate the extent to which the agency incorporated the thoughts and concerns of the respondents into the proposed rules. We continue to support and advocate for the purpose of the CRA, which we believe is to require financial institutions to return the trust placed in them by their depositors by re-investing those deposits in the areas where their depositors live, work, and do business.

CHN Housing Partners is a 501(c)(3) non-profit corporation based in Cleveland, OH that focuses on leveraging the power of a permanent address to provide housing stability solutions to the 30,000+ unique families in four states that we serve annually. CHN, directly or through its affiliates, is an affordable housing owner/developer/ manager/builder, housing stability service provider, and mortgage lender. We and our clients are the direct beneficiaries of the re-investment made by our banking partners in our communities. **The regulatory motivation caused by the Community Reinvestment Act is the critical incentive for our financial institution partners to make these investments.** Without a robust interpretation of the CRA, we believe that our financial institution partners would have significantly less motivation to work with us to deliver the affordable housing, homeownership opportunity and housing stability services that we provide to the community.

CHN supports the idea of modernization of CRA to address the changes in the banking system that have occurred in the 40+ years since CRA was originally passed. In a lot of ways, the banking industry has fundamentally changed since then, but something that hasn’t changed is the critical need to maintain the robust incentives that CRA provides for financial institutions to re-invest in their communities by providing a diverse set of services, lending products and equity/philanthropic investments. The fact that financial institutions draw deposits and otherwise do business in our communities has not changed. What has changed is the means by which the financial institutions draw deposits and deliver services. In part this is a natural result of consolidation and centralization of decision making within the banking industry, but it is also an unintended consequence of the regulatory overreach of Dodd Frank. Whatever the reason for these industry changes, many financial institutions have become disconnected from the true needs of their communities, and we believe that the proposed rules as written would cause further disconnection and disincentive to make the investments truly needed by their communities. Although a number of changes in the proposed rules could be beneficial, when taken as a whole, the changes in the proposed rules would materially diminish the effectiveness of CRA to incentivize re-investment in this nation’s communities. **As a result, CHN opposes the adoption of the proposed rules.**

The following are specific items that CHN would like to address in the proposed rules:

Proposed Performance Evaluation Measure Would Diminish the Availability of Products and Disincentivize Innovation

Clearly, the current system of evaluation of financial institutions is overly complicated and inconsistently applied. We have heard that fact from our financial institution partners, and I, as the former National Equity Investment Manager of Key Community Development Corporation, the community development investment subsidiary of KeyBank, have seen that personally. That being said, the underlying issue is the administration of the regulations, not the structure of system itself. **It is critically important for any changes to CRA to continue to require and incentivize financial institutions to provide a wide variety of products, to re-invest in the geographies that they serve, and to innovate to serve the needs of their communities.** CHN opposes the proposed one ratio test that would collapse the lending, investment, and services tests into one performance metric.

1. Maintaining a wide variety of financial products.

The current structure of testing banks on their services, lending, and investment in the community accurately describes the categories of financial products needed in communities and ensures that diverse products to serve the community needs are available. If we were to fundamentally change the system in a way that does not create incentives for financial institutions to do the hard work of delivering credit and financial services directly to low income people and communities, we will see a further elimination of both the availability of bank branches in low income communities and the availability of financial services and credit to low income people. We will likely see a flight to safer and less costly executions such as fully guaranteed construction lending and small business lending to only the safest of small business credit risk profiles. When combined with the prescribed applicability of large, low-risk investments such as infrastructure projects and mortgage backed securities, financial institutions, even those who have a strong CRA platform, will have a significant economic and risk incentive to move to those type of large, low risk investments to maintain compliance with CRA rather than making the small margin, riskier investments needed in the community.

2. Maintaining a geographic tie to investment.

As mentioned above, one item has not changed in the financial system, financial institutions still draw deposits and do business in geographic areas. To provide any disincentive for a financial institution to do everything that it possibly can to re-invest within the communities that it serves is contrary to the purpose of CRA. We are opposed to the proposed rule changes that would provide incentives for financial institutions to elect to invest in other markets than the communities from which they draw deposits and in which they do business.

We understand that in some CRA hotspots in cities such as New York City and San Francisco and some hot regulatory markets such as Salt Lake City, UT where several banks are located because of the favorable tax and regulatory environment, there may be difficulty for financial institutions to meet a certain level of investment by way of doing large community development transactions such as LIHTC and NMTC deals. This should not mean that a financial institution should be able to elect to invest in a different part of the country rather than trying to do everything it can in its home markets. CHN operates in Cleveland and Detroit, two of America's largest cities that also happen to be within its top five poorest. These cities are resource scarce and need every dollar of investment that they can possibly get from the financial institutions that serve those markets. To allow for financial institutions to actively elect to invest outside of those markets to satisfy their CRA obligations without doing everything they can do to serve the 50.5% of children living in poverty in Cleveland, for example, would be a complete disservice to those children and their markets, no matter how worthy any other contemplated geographic areas or people may be.

We understand that some financial institutions such as wholesale, industrial or credit card banks may have unique circumstances that may otherwise require a unique solution to geographic considerations. **However, we should not structure an entire system to address the unique situation of those financial institutions. Instead, such financial institutions should have their own unique carve out to the regulation tailored to their unique situation.**

3. Maintaining innovation in our communities.

CRA is the critical incentive necessary for financial institutions to continue to bring innovative products and services to our low-income people and communities. Not only does it require the financial institution to bring those services, but because of competition with other financial institutions, the regulatory market causes the financial institutions to innovate to meet the needs of their communities. Any changes to CRA that would remove this incentive, such as moving to a one ratio test or specifically allowing for large, low-risk infrastructure and MBS transactions would reduce innovation and cause for the availability of less products and services in our low income communities and to our low income people.

Provide Specifically that a Financial Institution Can Count the Underlying Activities of a CDFI Toward its CRA Evaluation

Investment in Community Development Financial Institutions (CDFIs) is an effective and low to moderate risk method for financial institutions to invest in their communities. However, the way that investments are currently counted and proposed to be counted under the proposed rules do not create the most effective incentive for financial institutions to make such an investment. Under current and proposed rules, a financial institution could get lending or investment credit, but the credit is for the investment in the CDFI itself not specific credit for the underlying activities of the CDFI. **Instead, we request that a financial institution be allowed to elect to count the underlying activities of the CDFI toward fulfilling its CRA obligations as if the financial institution originated such activities itself.** For example, if the CDFI makes small business loans or HMDA mortgages, the financial institution investing in the CDFI should be able to take credit for the origination of the small business loans or HMDA mortgages as if the financial institution originated such mortgages itself in proportion to its investment in the fund through which the CDFI makes such small business loans or HMDA mortgages.

Maintain Lending to Middle to High Income People as an Eligible Activity in Low-Income Areas

The removal of lending to middle to high income people as an eligible activity in low-income areas is a mistake that will further concentrate poverty and limit the ability to revitalize communities. CHN, therefore, opposes it. **It is difficult for us to accept the proposition that the federal government should only incentivize financial institutions to make residential mortgage loans in low income communities to low income people rather than incentivizing residential mortgage lending that supports mixed income communities.** This will have a disproportionately negative and disparate impact on our low-income communities, particularly our communities of color and rural areas that will see a decrease in the availability of financial products to those communities and the resulting decrease in residential transactions. With even less transactions happening in our communities of color and rural areas, we will continue to see stagnant or depressed real estate markets in those communities, further decreasing the ability of families in those communities to realize the general wealth building tool that homeownership is.

We are sensitive to concerns of gentrification and providing a market that permits people who have lived in an area to continue to live in an area long term. However, most of that concern is a result of local or state government action or inaction to address the issue. One primary argument is that as middle to high income people begin living in a neighborhood that is otherwise low-income, the property values may increase. This, in and of itself, is a good thing and reflects a real estate market that is beginning to function. However, as property values continue to rise, there is a potential tipping point where people who

have lived in the neighborhood for a long time or otherwise may want to live in that neighborhood can no longer afford it because of increased property taxes due to increased home values. This issue can be addressed and in many communities is being addressed at the local and state level by providing caps on increases of property values or property tax abatements or exemptions for LMI people.

Comments on Specific Criteria Outlined by Proposed Rules

CHN supports the efforts in the proposed rules to create more certainty for financial institutions by providing specific examples of eligible activities. Personally, when I worked at KeyBank, I saw how two functionally equivalent activities were deemed eligible by one examiner, but non-eligible by the next examiner. That sort of disparity in treatment is clearly unacceptable to most honest observers and creates uncertainty for financial institutions that cause them to take the more conservative position of not moving forward on a transaction because they are unsure whether it will CRA qualify.

With that said, we do have several specific comments to the list of eligible activities:

1. Infrastructure Investments. Financing infrastructure investments should not be an eligible activity for CRA purposes. We are opposed to it. Allowing for the finance of these low-risk, long-term, most often government backed investments would most likely cause a fundamental shift from financial institutions delivering financial products and services to low-income communities as a result of CRA to financial institutions seeing CRA as an administrative function that can be dealt with via large bond purchases and government finance. Additionally, although there is a need for infrastructure investment in the United States, this is due to lack of bonding and governmental capacity to undertake these improvements. The infrastructure finance and bond markets already have adequate liquidity, so there is not a need to provide a regulatory incentive to add liquidity to that market.
2. Mortgage Backed Securities. The purchase of mortgage backed securities should not be an eligible activity for CRA purposes unless issued by a state housing finance agency. We oppose it because we believe that a financial institution should be either originating or purchasing HMDA mortgages directly. However, we acknowledge that might not be the most effective method for every financial institution, so to the extent that purchasing mortgage backed securities is deemed an eligible activity, only the original purchase of the MBS by a financial institution, not any later transfer of the MBS between financial institutions, should be considered an eligible activity. Currently, there is a market between financial institutions that trade MBS between each other to meet HMDA lending activities. The original purchase of an MBS by a financial institution could logically be seen as adding liquidity to the mortgage market and, perhaps, beneficial. However, the further trade between financial institutions does not and should not be considered an eligible activity in any case.
3. Equity Equivalent Finance. We believe that equity equivalent finance to non-profits and CDFIs should be specifically included as an eligible activity. This low cost, long term, subordinated debt provides a critical source of capital for non-profits and CDFIs. There has been guidance overtime that such finance, also called an EQ2 is an eligible activity, but listing it specifically as a eligible activity would be preferred.
4. Investments with NeighborWorks Affiliates. We believe that investments with NeighborWorks affiliates should be specifically included as an eligible activity. Since 1978, the Neighborhood Reinvestment Corporation, DBA NeighborWorks America (NWA) has built a network of more than 250 of the nation's best community development organizations along with a support and accountability structure that reaches into underserved urban, suburban, and rural communities across the country. In addition, as a congressionally chartered corporation, NWA receives a congressional appropriation for their work, and is subject to the oversight of a board representing

the Federal Deposit Insurance Corporation, the Federal Reserve, the OCC, the U.S. Department of Housing and Urban Development, and the National Credit Union Administration Board. Any organization that becomes a charter member goes through both a rigorous admission process and regular evaluations of their community accountability and impact in underserved communities, which creates ongoing controls to ensure that they are engaging in what would otherwise be deemed eligible activities.

5. Interpretation of List. If a specific list is included in the final regulations, we request that it be clear that the list is non-exhaustive and that evaluators be given specific guidance as such. We also advocate for regulators to have an efficient pre-approval process through which financial institutions can submit potential transactions for binding pre-approval to the extent that it is unclear whether a prospective activity will qualify under the regulations.

Weighting and Incentivizing Long-Term Lending and Investment

We appreciate and support the efforts to direct additional investment to CDFIs and affordable housing through the multipliers included in the proposed Eligible Activities rule. However, we do not believe that the rule provides adequate incentive to provide the long-term capital necessary for CDFI lending and affordable housing activities.

We believe that, in addition to providing some level of weighting for CDFI and affordable housing activities, a critical missing piece to encouraging long term lending and investment is to specifically allow for financial institutions to include the pro-rata portion of their eligible investments and permanent loans on their books as of the end of the CRA review period to be including in their overall assessment period activities.

Require Investment in Affordable Housing

We believe that financial institutions should be required to provide a certain level of lending and investment activities to support the development and preservation of affordable housing in their communities. Whether such lending or investment be through such activities as traditional lending and investment in LIHTC investments or naturally occurring affordable housing and whether such affordable housing be rental or owner occupied, providing additional liquidity into the affordable housing financial markets will have a significantly positive impact on the stability of our neighborhoods and country.

Support Transparency, Expediency and Investment in the CRA Examination Process

We appreciate the complexity of the work associated with completing CRA assessments and the hard work and dedication of the bank examiners. However, the time between the conduct of examinations and the receipt of results is too long, and we believe that the rule's move to objective performance metrics alone will not address the delay. Instead, we advocate for additional investment in the number of banking examiners, and the increase of technological, administrative, and financial support for the regulator's work. A years-long evaluation process denies a financial institution the ability to adjust their strategy to address the shortcomings identified by the examiner. Additionally, it is important to evaluate the activities of financial institutions quickly enough that the institution is being provided with information about their performance in a marketplace that has not changed radically from the marketplace they were operating in during the time period being evaluated.¹ We understand that shortening the time frames associated with completed examinations will likely require additional investments in support infrastructure and personnel

¹"Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose" remarks by Lael Brainard, Member, Board of Governors of the Federal Reserve System, January 8, 2020.

on behalf of the regulators but believe that the importance and the complexity of the work justifies this investment.

We also believe because of the complexity and specialized nature of the CRA examination process that the OCC and FDIC should make an investment in having CRA specialized examiners who have received in depth training on CRA and the programs and organizations that serve communities prior to undertaking examinations. It is unfair to financial institutions and to the communities that they serve if an examiner does not understand CRA and its many nuances prior to administering an examination.

Support Consistency Across Regulators

Consistency of regulation across the primary regulators of financial institutions is important for the safety and soundness of the financial markets and for delivery of financial products and services within our communities. For this reason, we oppose any rulemaking that does include the OCC, FDIC and Federal Reserve. Given the number of interrelated issues that impact how banks are examined, we would support the issuance of another notice of proposed rulemaking that is inclusive of all three banking regulators prior to moving to a final rule.

Conclusion

CHN Housing Partners appreciates the opportunity to provide comments regarding the proposed CRA regulations, and respectfully asks for your consideration of the recommendations and suggestions in this letter. We support change that truly modernize the Community Reinvestment Act to account for changes in the banking industry and our neighborhoods since 1977. However, we believe that the rules when taken as a whole would have a significant negative impact on the availability of capital for our low-income communities and population, and therefore, we oppose their adoption as currently written.

If you have any questions regarding our positions, or would like for us to offer further commentary, I can be reached at (216) 574-7100 or via email to knowak@chnhousingpartners.org. If the agency holds field hearings on the issue, we would be interested in participating and offering a more in-depth look at the issues facing our markets. Once again, thank you for the opportunity to participate in this process, and for the consideration that you have already shown to the ideas put forth by stakeholders on this issue.

Sincerely,

Kevin J. Nowak
Executive Director