April 8, 2020

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th St SW, Suite 3E-218
Washington, DC 20219

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

RE: Request for Comment; Proposed Rule: Community Reinvestment Act Regulations (RIN 3064-AF22)

To Whom it May Concern,

The National Council of State Housing Agencies (NCSHA)[1] appreciates the opportunity to respond to the Office of the Comptroller of the Currency's (OCC) and Federal Deposit Insurance Corporation's (FDIC) January 9 Advance Notice of Proposed Rulemaking and Request for Comment on Community Reinvestment Act (CRA) regulations. NCSHA represents the nation's state housing finance agencies (HFAs).

The Community Reinvestment Act was enacted in 1977 to address geographical, income-based, and/or racial discrimination in investments and services offered by banks, particularly in low- and moderate income (LMI) neighborhoods. It was designed to help address the systemic legacy of redlining by promoting investment in communities that would otherwise be overlooked by covered financial institutions (banks).

The proposed amendments to the CRA regulations would substantially modify the existing approach to implementing and enforcing the CRA. We commend OCC and FDIC for working to modernize the CRA regulations to better fit today's banking market and practices. NCSHA supports efforts to

[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

modernize CRA regulations by "clarifying what counts, updating where activity counts, measuring performance more objectively, and making reporting more timely and transparent."

However, we have strong concerns that the proposed CRA amendments would not establish stronger incentives for banks to invest in low-income communities nor improve the types of investments, lending, services, and community development activities in which banks are likely to engage, let alone continue their current CRA activities.

Executive Summary

The CRA has been one of our nation's most vital tools in catalyzing financing and investments for affordable housing and other crucial community development needs. It has incentivized banks to invest in effective affordable housing finance and community development programs, including Low Income Housing Tax Credits (Housing Credits) and tax-exempt private activity Housing Bonds.

To continue and expand this strong track record, we believe the final CRA regulations must:

- Encourage banks to invest in Housing Credits, Housing Bonds, and HFA mortgage-backed securities (MBS)—including purchases, lending, and letters of credit or similar liquidity support.

- Maintain a separate investment test, given its proven track record in promoting investment in Housing Credit equity and other affordable housing investments.

- Give at least partial credit for affordable housing and community development activities in areas outside bank assessment areas, including rural and other underserved geographic markets, provided the bank receives a satisfactory or better rating in its most recent CRA examination.

- Drive significantly more investment and other banking activity into rural areas.

- Eliminate the "single-ratio" approach, which is likely to reduce banks' incentives to invest in Housing Credits, Bonds, and other affordable housing and community development activities.

Housing Credits, Bonds, HFA Mortgage-Backed Securities, and CRA: A Common Mission

HFAs are state-chartered housing agencies that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. They were created by their state governments to address the homeownership and rental housing needs of their states. As a group, they are the primary mission-based source of mortgage financing for lower-income households operating in their states. In 2018, state HFAs provided more than $37 billion of financing to help more than 156,000 households achieve homeownership and help produce more than 145,000 rental homes.

They have achieved much of this work through the Housing Credit and Housing Bond programs, which HFAs administer in nearly every state. More recently, HFAs have dramatically increased their use of mortgage-backed securities (MBS) through Fannie Mae, Freddie Mac, and Ginnie Mae to provide affordable housing option for lower income families.

Housing Bonds have historically served as HFAs' primary means of financing their affordable housing lending, and HFAs have utilized them to serve many of the borrowers and markets the CRA is intended to assist. Through 2018, state HFAs have utilized MRB-funded loans to help more than three million working families purchase their homes.

These loans are highly targeted to persons with lower incomes, as demonstrated by the following facts about HFA bond-financed loans made in 2018:

- The median state HFA-assisted homeowner's income was $57,039 — 10 percent below the national median income and 46 percent less than the median income of all homebuyers.
- 73 percent of HFA loans served borrowers earning at or below area median income. By contrast, FHA estimates that 56 percent of all its program loans went to borrowers earning at or below 115 percent AMI.
- The average loan size for HFA loans was 17 percent smaller than the average size of all FHA loans in 2018 ($171,084 compared to $206,041).

Additionally, HFAs have been effective in reaching home buyers of color, and, in many states, are the drivers of affordable homeownership opportunity for individuals and families of color, which, as a demographic, lost significant ground as homeowners during the last recession.

HFAs have used MBS and other non-Bond financing executions to assist an additional 423,000 home buyers since 2014. Bank investments in both the primary and secondary markets for these MBS have helped lower rates and increase liquidity for HFA affordable housing programs. With their MBS programs, HFAs generally serve borrowers and market segments typical GSE seller-servicers do not. HFA borrowers are likely to have lower incomes, purchase lower-priced homes, and employ higher down-payments than the average GSE borrower.

Through Multifamily Housing Bonds, HFAs finance the development of affordable rental housing that would otherwise not have been built in the private market. In total, state HFAs have financed over 13,500 properties across the country using Multifamily Bonds, providing affordable rental housing to nearly 1.2 million families. Multifamily Bonds also help to support the construction of properties financed by Housing Credit investments, many of which would not be built without the bonds.

Banks' CRA obligations play an important role in incentivizing them to purchase and provide liquidity to Housing Bonds and HFA MBS. These incentives should be broadened and strengthened.

Though some aspects of the current system create obstacles to more bank CRA investment in Bonds and HFA MBS, many banks find HFAs' public missions, strong track records, income-targeted programs, and superior loan performance make Housing Bonds and MBS an effective and responsible means for serving the low-income housing needs of the communities they serve. Bank investment in Housing Bonds and MBS significantly contributes to lower borrowing rates, allowing HFAs to pass on those savings to lower income home buyers and renters.

The Housing Credit is our nation's most effective tool for financing the development of rental housing affordable to low-income Americans. By providing an incentive for private sector investment, the Housing Credit has financed more than three million apartments for low-income households, adding approximately 100,000 units to the inventory each year. In addition to the tax savings, banks are attracted to Housing Credit investments because they can use them to earn CRA credit. A 2014 publication from accounting firm Cohn Reznik reported, "Roughly 85 percent of the equity for all LIHTC investments comes from banks subject to the CRA."[2]

Possible Changes to the CRA Framework

The Investment Test

The proposed rule would eliminate the three existing separate "tests" of a bank's CRA compliance and performance — the "investment test," the "lending test," and the "services test" — and replace them with a single numerical ratio test that would quantify all of a bank's CRA-eligible activity and measure it against total deposits.

Research has shown that the "investment test" drives Housing Credit investment, as stated earlier. NCSHA is concerned the proposed change would diminish the regulatory incentive for banks to buy credits. Specifically, the "single-ratio" approach likely would result in deemphasizing Housing Credit, Bond, and MBS investment as compared to lending, because it is much easier for banks to make loans, especially in high-cost areas, than it is to underwrite equity investments.[3]

We strongly urge you to continue the separate investment test. In general, affordable housing and community development equity is more difficult to attract and often more impactful in communities than debt. Maintaining the investment test will ensure that banks continue to participate in the Housing Credit, Bond, and HFA MBS markets, leading to healthy competition and better pricing, thus increasing the amount of resources that can be devoted to developing and/or rehabilitating affordable housing.

It is also problematic that the proposed regulations would remove the lending and services tests. For example, under the proposed rule, banks would receive limited credit for physical branches in low- and moderate-income neighborhoods, which are still important even in an age of online and mobile banking. Continuing distinct tests for investments, lending, and services ensures that these vital activities receive the

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[2] Copeman, Fred, "What Do Higher LIHTC Prices Mean for Syndicators?" Affordable Housing News & Views, June 1, 2014. https://www.cohnreznick.com/insights-and-events/insights/what-do-higher-lihtc-prices-mean-syndicators

[3] Understanding OCC, FDIC Proposed Rule Reforming CRA Regulations, Novogradac & Company blog, December 30, 2019.

focus and emphasis the CRA requires banks to provide. It would violate the fundamental purpose of CRA to modernize the regulations in a manner that would reduce banking activity in these basic ways to low- and moderate-income households.

The Single Ratio Test

In addition, while we understand and support the OCC's and FDIC's interest in making CRA exams more objective and CRA performance more transparent, we are concerned the "single ratio" model the proposed amendments would establish would result in far less investment in the Housing Credit, Housing Bonds, and HFA MBS.

A primary focus on the dollar volume of activity incentivizes banks to meet their targets in the fastest, easiest ways possible, rather than to focus on meeting community needs. Some of the most impactful CRA activities are complex, time-consuming, or illiquid, or require banks to hold more capital. CRA has provided an important counterweight to these obstacles.

Performance standards based solely on the CRA assets a bank holds on its balance sheet would discount or effectively ignore the degree to which banks originate and then sell loans and investments. Originating and selling loans on the secondary market provides important liquidity and is the standard practice for single-family and multifamily mortgages.

CRA should neither disrupt not discount these business practices, which provide essential opportunities to low-income communities and their residents. Banks with limited portfolio capacity will be unfairly punished by a CRA policy that ignores or greatly discounts loans they originate and sell. Banks that have greater portfolio capacity will be encouraged to retain existing loans rather than make new ones.

Double Credit

The proposed amendments attempt to mitigate the risk of decreasing qualifying bank investment activity by allowing banks to receive "double credit," in dollar terms, for certain investments, expressly including investments in Housing Credits. Housing Bonds and MBS would not generate the proposed double credit. We recommend the final rule expand the list of investments that would qualify for double credit to include Housing Bonds and MBS issued by HFAs or composed of HFA loans (HFA MBS).

We understand some repeated secondary market trading of MBS and Housing Bonds may have a diluted value and limited direct impact on borrowers. Therefore, limiting CRA credit for secondary market activities may be warranted.

Because primary market support for Bonds and HFA MBS is so important, we recommend the final regulations provide double credit for bank activity benefiting these activities. Differentiating this way between primary and secondary market activity would disincentivize bank usage of Bonds and MBS as a way to catch up on the lack of CRA performance, while pushing financial institutions to be more aggressive in buying Housing Bonds and HFA MBS during initial offerings, which more strongly benefit HFAs and their program users.

Qualifying Activities

The rule would significantly expand the types of activities that would qualify for CRA credit. Newly added or more generally encouraged activities would include community facilities, infrastructure, activities in Opportunity Zones, and naturally occurring affordable housing.

NCSHA supports the inclusion of naturally occurring affordable housing and targeted activities in Opportunity Zones, and urges the OCC and FDIC to retain these qualifying activities in final regulations. We are deeply concerned, however, that including infrastructure spending as a qualifying activity will dilute CRA's effectiveness in meeting its core mission—addressing disparities in bank investment, lending, and services to low-income communities. Similarly, providing CRA credit for Opportunity Zone investments without regard to type and impact seems overly broad. Investments in Opportunity Zones should only get CRA credit if they have a demonstrable benefit to low- and moderate-income individuals and communities.

Given state HFAs' strong track record of responsibly and effectively supporting affordable housing and other community development efforts, we believe the final regulations should allow any investments, services, and lending activities banks provide in connection with HFA programs to qualify as community development activities under CRA. This will increase lender support for critical HFA programs, while ensuring that banks direct their CRA activities towards projects addressing crucial community needs.

In addition, we request that the final rule explicitly allow banks to claim and receive CRA credit for letters of credit they extend to HFA Housing Bonds, lending programs, and other debt. These letters of credit guarantee that the bank will pay debt payments on bonds or other credit instruments should the issuer or third-party obligor be unable to do so. Letters of credit enhance the desirability of Housing Bonds to investors, increasing their liquidity and decreasing HFA issuance costs. In addition, letters of credit can also help HFAs tap other sources of financing, including warehouse lines, to finance affordable single-family and multifamily loans.

In addition, the rule would expand the circumstances in which banks receive pro-rata CRA credit for qualifying activities. Under the current regulations, banks receive credit for the pro-rata share of a loan or investment in mixed-income housing that includes a set-aside required by federal, state, or local government for LMI individuals.

Under the proposed regulations, all community development activities providing some benefit to, but do not necessarily primarily benefit, specified populations, entities, or areas would receive pro-rata credit equal to the partial benefit provided. We support retaining this approach and using it to provide more CRA credit than currently provided for Housing Bond and HFA MBS investments.

A related issue arises because the proposed rule would provide that banks "would only receive credit in the calculation of their CRA evaluation measure … for the dollar value of MBS for the period the investment remains on-balance sheet." For example, if a bank purchased a qualifying MBS on January 1, 2019 and sold the MBS on February 1, 2019, the bank would receive one twelfth of the value of the MBS when it calculated its annual qualifying activities value.

We recommend the final regulations reject this overly narrow approach. Providing banks credit for their investments on a broader basis and without limits based on how long they hold those investments would encourage banks to provide more liquidity to Bonds and HFA MBS.

At the very least, we urge you to amend the proposed rule to provide CRA credit for bank support of Housing Bonds and HFA MBS. Often banks will engage with HFAs throughout the structuring of Bond and MBS transactions or enter into upfront agreements with HFAs. These transactions and agreements reduce HFA financing costs and lead to lower housing costs for home buyers and renters.

Assessment Areas

The rule generally would preserve the current approach of evaluating bank CRA activity in geographically defined "assessment areas" surrounding a headquarters, branches, and deposit-taking ATMs, as well as areas where a bank conducts a significant volume of retail lending. Under current regulations, a bank is also ostensibly eligible for CRA credit in broader statewide or "regional areas" that include its assessment areas if the bank shows it is responsive to its assessment areas' needs.

We share the views that many have expressed that the current assessment area policy is outdated, ineffective, and disadvantages underserved areas, especially rural communities. Banks typically do not learn whether they have been determined to be "responsive" to their assessment areas for years after they have made, or not made, a financing decision. In addition, the regulatory definition of "regional areas" is vague and confusing.

The proposed rule would attempt to address these problems by adding the requirement that banks receiving half or more of their deposits from outside their current assessment areas make any area with at least five percent of deposits a new CRA assessment area.

NCSHA believes banks should receive CRA credit for activities they engage in outside their assessment areas, particularly rural areas. We suggest additional double-weighting or some similar kind of extra consideration for bank activities in rural areas. The ability to receive such credit will spur critical affordable housing investments in severely underserved markets. To better incentivize such investments, the final regulations should make it easier for banks to determine when they will receive CRA credit for activities outside their assessment areas.

For example, as mentioned above, the ability to receive CRA credit is many banks' primary motivator to invest in Housing Credits. While this has had a positive impact on the market, it has also caused banks' Housing Credit and Bond investments to be limited, for the most part, to their CRA assessment areas. This results in bifurcated Housing Credit and Bond markets. Properties located in urban areas with a heavy concentration of banks receive a great deal of investor interest, which results in higher prices, while Housing Credits and Bonds for properties in rural and other underserved markets receive less interest.

Allowing banks to receive CRA credit for investments in Housing Credit, Bond, and HFA MBS activities outside of their assessment areas will help alleviate this disparity and increase financial assistance for the development of affordable housing in rural and other underserved communities.

At the same time, we believe it is critical for CRA to retain its focus on having banks serve the communities in which they operate. Therefore, we suggest banks should only be able to receive CRA credit for activities outside their assessment areas if, in their previous assessment, they achieved a rating of "Satisfactory" or better with regarding to their CRA activities inside their assessment areas. This will ensure that banks' primary commitment remains to their communities while still offering an adequate incentive for them to support CRA-eligible activities in other areas.

Coronavirus Relief

We commend the OCC, FDIC, and Federal Reserve for promptly announcing they would provide positive CRA consideration for bank efforts to help communities address their needs related to the coronavirus and COVID-19. We recommend the final regulations also include some mention of and mechanism for awarding CRA credit to banks for liquidity and other assistance provided to entities coping with direct and indirect consequences of pandemics such as the coronavirus crisis or other major disasters--and specifically the related liquidity concerns raised by homeowner and multifamily owner forbearance and eviction protections.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

[redacted]

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives