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April 07, 2020

The Honorable Joseph M. Otting
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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

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

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

Thank you for the opportunity to provide comments on the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC)'s joint proposed rule on Community Reinvestment Act Regulations. Formed in 1971, National Housing and Rehabilitation Association (NH&RA) is a national trade association of over 300 affordable housing and multifamily owners, developers, investors and professionals. Our members rely on well-functioning and clear Community Reinvestment Act regulations to finance and develop affordable housing throughout the country.

The Community Reinvestment Act (CRA) of 1977 was passed to redress the discriminatory practices by banks, which took deposits from African American communities but refused to make loans to and invest in those same communities because of the federally supported redlining practices that denied homeownership and wealth building opportunities to African Americans. While this history has been well chronicled and does not need to be repeated here, it is worth reminding ourselves of the aims of the CRA legislation.

Community Development Loans and Investments Category

We are deeply concerned that the expanded community development loans and investments (CDLI) category strays too far from housing and do not believe that the doubling of credit for Low-Income Housing Tax Credits investments is a sufficient incentive for banks to continue their current levels of investments in these types of activities.

The Low-Income Housing Tax Credit (LIHTC) is our nation's primary tool for developing and preserving virtually all affordable housing, and has financed more than 3.2 million affordable homes through public-private partnerships. The primary drivers for investment in LIHTC are reduced tax liability and CRA

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credit, with an estimated 73 percent of LIHTC investments coming from CRA motivated banks.[1] If the proposed expansion of CDLI categories is adopted, investment in housing will be spread too thin to achieve any substantial impact, especially given the relatively small size of these investments compared to the potential size of the other qualifying activities.

The proposed expanded CDLI category includes a wider range of products and asset classes, including affordable housing, community facilities (e.g. hospitals, municipal buildings), essential infrastructure (e.g. roads, sewers), CDFIs, mortgage-backed securities (MBS) and municipal bonds. Several other tools like the Community Health Needs Assessments from the Patient Protection and Affordable Care Act of 2010, the U.S. Department of Transportation's Better Utilizing Investments to Leverage Development (BUILD Transportation Discretionary Grant program) and loans through the Small Business Administration precisely target some of the new items in the CDLI category. CRA should not be tuned into a jack of all trades, master of none.

We appreciate that the proposed regulations single out certain types of loans and investments (including LIHTC) for favorable treatment. However, in comparison to many of the other activities and investment types in the CDLI category, LIHTC investments are considerably 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.

We urge the OCC and FDIC to remove essential infrastructure and essential community facilities that only "partially," rather than "primarily," benefit low- and moderate-income individuals and census tracts.

Single-Ratio Approach

The elimination of the separate investment test and shift to a single-ratio approach, which would require banks to invest six and eleven percent of their deposits in "qualifying activities" to achieve satisfactory and outstanding scores, respectively, may reduce demand for affordable housing. Examining only balance sheets, and not originations, could mean that banks that have met their single-ratio targets based on their current balance sheet assessment would limit or halt new investment activity. LIHTC investments would be particularly vulnerable to this reaction because the credit would stay on balance sheets (earning double credit) for a long duration – part of the program's design to maintain housing affordability for the long-term.

It may also mean that banks seek out a few large investments to meet their CRA obligations. The new CRA guidance must balance the needs of low- and moderate-income communities while considering overall dollar amounts.

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[1] CohnReznick, "Housing tax credit investments: Investment and operational performance," (2020). Retrieved from: https://www.cohnreznick.com/insights/2019-housing-tax-credit-investment-operational-performance

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We recommend that the OCC and FDIC consider originations of loans or investments in affordable housing in addition to balance sheet activity. Alternatively, we propose factoring into ratings whether banks have decreased originations of affordable housing loans and investments significantly at the bank level relative to the prior assessment period. We also support CDLIs, including LIHTC, receiving credit for the full amount at the time of commitment.

Assessment Areas

We support the modernization of CRA assessment areas to address the concentrations of CRA investments around banks' outdated physical footprints. However, the approach in the proposed rule will not sufficiently address this issue. Creating deposit-based assessment areas for non-branch based banks may encourage more investments in large, high cost markets like New York, Boston, Los Angeles and San Francisco, where there is already a high concentration of CRA-driven investment, without encouraging investment in rural areas. The allowance to fail examinations in some assessment areas will further exacerbate this point.

We propose that certain CDLIs (i.e. investments, loans to CDFIs and loans for affordable housing) be eligible for CRA credit if they are made in a state where the bank has one or more assessment areas, so long as the bank has achieved at least a satisfactory rating in that assessment area in the prior rating period.

Conclusion

We appreciate the need for and attempt to modernize the CRA to provide more clarity and certainty to banks and to account for the rise of online banking by updating assessment areas. We remain concerned about the OCC and the FDIC's approach, which does not have the support of the Federal Reserve Board. CRA modernization is a once-in-a-generation opportunity. Given that, we hope that the OCC and the FDIC will take the time to fully consider the public comments, as well of those of your fellow regulator, to build a modernized regulatory framework that both meets the urgency of the day and serves us well for many years to come.

Certain changes to CRA could have an especially significant impact when our ability to build and preserve affordable housing is already facing significant disruptions as a result of the current COVID-19 crisis. Construction delays and moratoriums, numerous financing hurdles and the broader economic fallout are putting LIHTC financing at risk and slowing efforts to house low-income households. This is especially concerning for over 3 million renter households who are already housing cost burdened and are solely employed by industries experiencing significant lay-offs and decreased operations (e.g. services, retail, transportation and travel).[2] For these reasons, we encourage the OCC and FDIC to avoid

[2] Whitney Airgood-Ibrycki, "Pandemic will worsen housing affordability for service, retail, and transportation workers," (2020). Retrieved from: https://www.jchs.harvard.edu/blog/pandemic-will-worsen-housing-affordability-for-service-retail-andtransportation-workers/

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any changes through CRA reform that could further disrupt the safety and soundness of our affordable housing delivery system when it is so urgently needed.

Once again, NH&RA appreciates the opportunity to provide the OCC and FDIC with this feedback. We would be happy to discuss any specifics you might have regarding these comments or other subjects of concern. Please feel free to contact me directly with any questions at 202-939-1753.

Sincerely,

Thom Amdur
President