HOUSING PARTNERSHIP NETWORK

Social Mission. Private Enterprise.

November 19, 2018

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, S.W. Suite 3E-218
Washington, D.C. 20219

Re: Docket ID OCC-2018-0008

To Whom It May Concern:

Thank you for the opportunity to comment on the Advance Notice of Proposed Rulemaking to solicit ideas for building a new framework 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 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 is a social enterprise – we use private sector business practices to help our members achieve the mission of building more affordable housing in thriving communities.

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 275,000 affordable apartments and also develop single family homes. Banks work with both HPN and its members, providing debt, equity and expertise on a wide range of affordable housing and community development projects. CRA has been indispensable to these partnerships. Over the years, CRA has given banks the incentive to engage with community developers to improve neighborhoods and has been an enormously successful public policy.

General Comments:

The OCC's leadership on the need to update and modernize the CRA regulations is laudable, as is OCC's extensive outreach to CRA stakeholders. It is gratifying to see the recognition in the ANPR and the Treasury Department's report on CRA that CRA is an unusual and powerful law whose effectiveness needs to be maintained. CRA is a broad, affirmative obligation for the private market. CRA doesn't prohibit behavior; instead it lays out a broad goal that is to be met consistent with safe and sound banking. And CRA has succeeded in fostering an industry that tackles tough community development challenges.

As the banking industry and community development industry change, however, CRA regulatory policy has not kept pace and CRA needs to be updated to reflect technological change and interstate deposit taking. Not only has the banking industry changed, but the community development field has evolved a great deal since the CRA “lending,” “service” and “investment” tests for larger banks were created in 1995. At that time, the legislation creating Community Development Financial Institutions (CDFIs) had just passed. Thanks in part to the CDFI statute, CRA, tax credits, and other policies, a whole industry has arisen that provides credit to low-income communities and individuals on more favorable terms than the private market alone could provide. Community Development Financial Institutions (CDFIs), community development credit unions, community development banks, loan funds, community development corporations (CDCs) and other socially-motivated investors finance affordable rental housing, affordable homeownership, small businesses, economic development projects, community facilities like child care centers, and other projects that bring hope and jobs to low-income communities.

CRA, in combination with other policies mentioned above, has given financial institutions the motive and opportunity to invest in public-private partnerships with local CDCs and CDFIs, and sometimes local governments. These partnerships then invest in economic development projects, affordable housing, and other amenities that improve neighborhoods. Tax incentives like the Low Income Housing Tax Credit and the New Markets Tax Credit only work with private sector investment. Other programs that leverage private sector investment include the Treasury's CDFI Fund and programs at the Department of Agriculture and Small Business Administration.

Given how complex the current CRA regulations are, however, and how important bank financing is to low income communities, HPN recommends that OCC proceed in a measured way to streamline and improve the current system rather than to make wholesale changes that could have terrible unintended consequences. CRA is just too important to risk experimental changes that could result in the return of red-lining in large areas of the country. We agree with the need to modernize CRA, but it is important to get the policy right. A thoughtful, measured, incremental set of improvements to CRA could have a far more positive outcome than a radical change that ends up backfiring.

Consistency across bank charter type, size and business model is also an important value that the ANPR recognizes. For this reason, it would be useful for the OCC to propose changes that the other bank regulatory agencies, the Federal Reserve and the Federal Deposit Insurance Corporation are comfortable with. Given the complexity of the existing CRA regime, and the number of interrelated issues that impact how banks are examined and rated under CRA, it might be appropriate to issue another ANPR with the other regulators before moving onto a new proposed CRA rule. In fact, it would be useful for the regulatory agencies to hold field hearings on CRA as they did in 2010. There is much practical knowledge that can be gleaned

from stakeholders in diverse markets across the country.

The goals that the ANPR articulates of increasing the transparency, clarity and consistency of CRA examinations and ratings and updating CRA to reflect changes in the banking industry and the economy are commendable. These are goals that we support and there is much that the OCC could do to improve the current CRA structure and regulations to achieve this purpose. Certainly, it is overdue to modernize the CRA, and HPN commends Comptroller Otting for his leadership on this issue. However, it is not wise to wipe out most of the existing CRA regime in favor of a single metric. Instead, a series of thoughtful improvements and updates to CRA could achieve the stated goals of the ANPR with less disruption and uncertainly and without the danger of unintended consequences.

HPN and our members advocate that the bank regulatory agencies make the following series of improvements to the existing framework of CRA to increase its impact and transparency. All of these changes together would create a rigorous and fair CRA that would increase lending and investment in low and moderate income neighborhoods.

- The lending, service and investment tests for large banks should be retained.
- The bank regulatory agencies should provide additional clarity about which activities qualify for CRA credit, including the designation of activities that serve National Needs -- low and moderate income people and places that can be identified with rigor and specificity.
- The way assessment areas are designated should be changed, especially for branchless banks.
- The bank regulatory agencies should build on the work of Federal Reserve Bank of San Francisco in providing banks with research data to inform the performance context for CRA exams[1].
- CRA examiner training should be improved and CRA performance evaluations should be provided to banks within 12 months of the completion of a CRA exam.

HPN's comments are organized by topics that flow from the questions asked in the ANPR. We will confine our answers to the ANPR questions to those about which we have direct experience in working with banks.

Adopting a metrics-based framework (ANPR Questions 7-12):

While there is a superficial appeal to adopting a simple ratio and uniformly applying it to all banks, upon further reflection this would not improve CRA administration. HPN opposes

[1] Laura Choi and William Downing, *Understanding Community Development Needs through the CRA Performance Context*, December 2014

reducing CRA compliance to a single metric. The diversity of both the banking industry and local economies make it impossible to come up with "one metric" that fairly rates banks. This is why an approach of improving the current system rather than radically changing it is preferable. Using a single metric framework oversimplifies CRA. The current system may be too complex but such a radical change would have unintended consequences and immense practical challenges.

There are several aspects of the "one metric" approach that are very challenging. If banks were 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 have 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.

The suggestion in the ANPR 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.

A single metric with a complex weighting scheme does not achieve the transparency and simplicity that the ANPR suggests is a worthy policy goal. Some of the benefits of simplicity and transparency that a single metric offers could be achieved by improving the CRA regulations as they apply to assessment areas and by designating investments in certain types of geographies and institutions that meet National Needs as presuming to receive CRA credit. This is a preferable approach that will be discussed later in this letter.

There are other conceptual difficulties with a single ratio. It is hard to see how a single ratio would not disadvantage rural areas and places with low property values. Banks with a nationwide footprint would have every incentive to concentrate their CRA activities in areas with high property values because it would be much easier to meet the CRA targets. If it is the same amount of work to make a $15,000 home mortgage in Detroit than it is to make an $850,000 condominium loan in a gentrifying part of New York City, a single metric would give

banks an incentive to lend in New York for CRA purposes.

It would be very difficult to include performance context in a metric based approach. Both local economies and the business strategies chosen by banks vary a great deal. Banks differ in whether they have branch networks, what types of lending they specialize in, and how they deliver their products. It is hard to imagine that the OCC could come up with a number that would make sense in all of these different contexts. In addition, local or regional downturns in the economy could render the single metric either too high or too low.

Improvements in the definition of assessment areas (ANPR questions 13 and 14):

The concept of "assessment areas" under CRA needs to be reconsidered. One of the most difficult regulatory issues is deciding where and how to give banks credit for lending, investment and services. Under the current system, banks have a strong incentive to lend and invest in the assessment areas that receive a full-scope CRA exam, and much less of an incentive to do business elsewhere. This results in some areas being "credit deserts" because they are not part of any major financial institution's CRA footprint.

Existing Qs and As address this problem to some extent by allowing banks to invest in community development "in a broader statewide or regional area" (BSRA) outside of assessment areas and receive CRA credit if they are adequately meeting the needs inside their assessment areas. This is a helpful clarification, but it would benefit from further definition:

A.) Regulators should define BSRA using the Census Bureau's regions[2] plus any contiguous states to the bank's assessment areas. This would provide clarity and predictability about whether an activity qualifies for CRA credit. Such a change would help lessen the disparities between areas that are in the assessment areas of many banks and are thus "CRA hot spots" vs. "CRA deserts" that are not in any banks' assessment areas.

B.) The definition of adequately meeting the needs of assessment areas should be clarified as receiving a satisfactory or above on the bank's most recent CRA exam.

C.) Community development activity in limited scope review areas should be aggregated, receive a full scope review, and considered as part of the state rating rather than being ignored. This would give banks more of an incentive to meet credit needs in rural, non-metropolitan areas.

As more deposits are gathered outside of traditional deposit-taking branches of retail banks, CRA needs to be updated to reflect this reality. Designating assessment areas only around the

[2] "Census Regions and Divisions of the United States", United States Census Bureau, https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf,.

headquarters' of specialized banks does not take advantage of the true capacity of these institutions to invest in community development more broadly. It makes sense to allow wholesale, limited purpose and internet banks to get credit for CD investments nationwide commensurate with their nationwide deposit taking. For example, if a bank gets less than 10% of its deposits from inside of its assessment area, then it should get credit for 90% of its total community development investments nationwide. This also raises vexing questions about how evaluate banks that make most of their loans outside of their assessment areas. It is not necessarily the right answer to designate a plethora of new assessment areas, but a bank's obligations under CRA need to be commensurate with its market presence.

When CRA was passed in 1977, there was neither nationwide banking nor a community development industry. CRA encouraged banks to lend in the neighborhoods from which they took deposits. Today, in a world of nationwide banking and deposit taking and a wide array of mission-oriented community development conduits, like CDFIs, loan pools, or tax credit investment funds, it seems misguided to focus on only giving banks CRA credit where they take deposits. A better question to ask is "Is this high quality community development work that meets a need in a low- and moderate-income neighborhood?"

The agencies should consider different sorts of assessment area determinations for different sorts of financial institutions. True community banks that operate within one state should have community development responsibilities where they have branches. Larger institutions with branches in multiple states should have community development responsibilities where they have physical presence, but should also receive CRA consideration for lending and investments in nonprofit mission-oriented community development conduits like CDFIs that operate outside of their geography, as long as these institutions are meeting legitimate community development needs.

The largest financial institutions with nationwide branches pose a particular challenge. They should be evaluated on their performance in the largest metro areas where they have a physical presence, plus on a statewide basis for the balance of the those states, but they should also be scrutinized for their efforts in meeting National Needs such as serving persistent poverty counties, which will be discussed later in this letter. During the Great Recession, the regulatory agencies' action to give banks additional CRA credit for foreclosure response activities was a good example of using CRA to meet a designated national priority.

Limited purpose, credit card, and wholesale banks should be in a different category. They also should be evaluated on the basis of their national community development partnerships and not just on limited markets where they take deposits. In the case of these institutions, where deposits are booked is a banking law technicality. For these institutions, CRA performance should be judged more broadly in the context of their national financial presence and asset size.

Providing clarity about which activities counts for CRA consideration (ANPR questions 15-28):

Many of the policy objectives that are articulated in the ANPR about achieving more transparency, certainty and consistency in CRA administration could be achieved by additional clarity from the regulators about what counts for CRA. HPN and its members support the suggestion from Opportunity Finance Network, the CDFI Coalition, and others that the CRA regulations should explicitly allow Treasury Department-certified CDFIs the same status as current law provides for minority and women-owned depository institutions and low-income credit unions. This would mean that lending and investments in CDFIs would be given CRA consideration regardless of whether the CDFI's footprint overlapped with the bank's CRA assessment areas.

The Treasury Department's process of certifying CDFIs ensures that these institutions are mission-driven and serving low income people and low income places. The CRA regulations should also grant a similar presumption to nonprofit organizations that have gone through the rigorous underwriting and management review process that NeighborWorks America uses before making grants. Bank investments in organizations that have received this degree of third-party scrutiny should automatically receive CRA consideration. These would make CRA more predictable and impactful. If banks could have certainty that loans and investments in competent, mission-driven nonprofits whose management capacity and social purpose have been approved would qualify under CRA, it would both increase the flow of capital to good community development projects and would make CRA compliance simpler for banks. The dollar value of the activity should be considered, with additional credit for strategies that demonstrate that the institution has stretched to meet community development needs, consistent with safe and sound lending.

In addition to investments in CDFIs and NeighborWorks organizations having a presumption for CRA credit, the regulatory agencies should consider designating "National Needs" -- geographies and pressing needs that have a presumption for CRA credit. This would both simplify CRA and amplify its impact. For example, investments in census tracts that qualify for New Markets Tax Credit investments could be presumed to receive CRA credit. Persistent poverty counties[3] (those places that have had more than a 20% poverty rate for more than 30 years) would be another good candidate for CRA designation.

As we have suggested with CDFIs and NeighborWorks organizations, the regulatory agencies should look for objective designations made by third parties to choose low-income communities that would benefit from CRA investments. This would respond to the banking industry's desire for simpler and more certain CRA compliance without weakening CRA's

[3] "Persistent Poverty", United States Department of Agriculture, Economic Research Service, https://www.ers.usda.gov/data-products/county-typology-codes/descriptions-and-maps/#ppov

requirements. It also is a good solution to the problem of "credit deserts" – those communities that are not in any banks' assessment areas. It is often the poorest and most disinvested communities that do not have any deposit taking facilities that would most benefit from CRA financing. It is paradoxical that the current system makes it difficult for banks to get CRA credit investing in the places that need it most.

Another activity that would benefit about additional clarity about what counts for CRA is Naturally Occurring Affordable Housing (NOAH). Affordable rental housing without government assistance and income restrictions should be given favorable CRA treatment based on rent levels after renovation, rather than verification of tenant incomes. Preserving NOAH can be a way to protect residents of rapidly changing neighborhoods from displacement. If the NOAH is in "high opportunity" areas, it would harmonize CRA with other government housing policies to encourage banks to finance this housing stock. It is appropriate to give CRA credit for naturally affordable housing in LMI areas if the majority of the units have affordable rents and in middle or upper income geographies if at least 80% if the units have affordable rents. Adding CRA qualitative consideration for investments in naturally affordable housing done in conjunction with mission-oriented entities like social purpose REITs or nonprofit developers or loan funds that are committed to longer term affordability also makes sense.

Reporting and record keeping (ANPR questions 29-31):

As part of the improvements to the CRA regulations recommended by this letter, the agencies should make the treatment of loans made to nonprofits or CDFIs consistent with the treatment of equity investments. Banks get credit for all of the years of an investment even if it was made in a prior CRA exam period. Loans do not receive similar treatment and this discourages banks from offering longer term loans. Instead, banks are given an incentive to make shorter term loans and to renew them for each CRA exam cycle. This drives up transaction costs and serves no purpose. CRA should be encouraging longer term extension of credit to worthy projects that benefit low-income people and low-income communities.

A final clarification in the CRA regulations should be to give letters of credit (LOCs) full recognition and credit as loans since LOCs require the banks to reserve capital and assume credit risk. There are some structures like the CDFI Bond Guarantee Program that can require LOCs, and banks should get full credit for this sort of innovation.

There is much that the bank regulatory agencies can do to make CRA performance evaluations available in a timely manner after the conclusion of a CRA exam. With internal process reforms, the agencies could make performance evaluations and more data available to the public a timely manner. This would make the CRA exam process more transparent and impactful. There is no good reason that banks should be waiting for years for performance evaluations and be well into a new CRA exam cycle without knowing what their CRA rating is. These issues

are solely within the purview of the bank regulatory agencies to solve. CRA administration can be greatly improved with the adoption of the regulatory changes suggested in this letter, without resorting to the risky and simplistic mechanism of a single metric.

Thank you for your consideration of HPN's views on the CRA ANPR. Please contact me at siglin@housingpartnership.net if you would like to discuss these matters further.

Sincerely,

Kristin Siglin
Senior Vice President, Policy