NCSHA

November 19, 2018

Office of the Comptroller of the Currency
Attn: Legislative and Regulatory Activities Division
400 7th Street SW
Suite 3E-218
Washington, DC 20219

RE: Docket ID OCC-2018-0008, Reforming the Community Reinvestment Act Regulatory Framework

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) September 5 Advance Notice of Proposed Rulemaking (ANPR) seeking public input on possible amendments to its Community Reinvestment Act (CRA) regulations. NCSHA represents the nation's state housing finance agencies (HFAs).

We commend OCC for working to modernize the CRA regulations to better fit today's banking market and practices, while ensuring that low- and moderate-income communities have access to the full, and evolving, array of banking institutions' resources.

Executive Summary

The CRA has been one 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 two effective affordable housing finance tools: Low Income Housing Tax Credits (Housing Credits) and tax-exempt private activity Housing Bonds. Any changes made to the CRA regulations should continue to encourage banks to make Housing Credit and Housing Bond investments, and not reduce their current level of investments, so as help address our nation's acute shortage of affordable housing options.

[11]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.

Further, we encourage OCC to allow banks to receive CRA credit for activities outside their assessment areas if, in their most recent examination, they received a rating of "Satisfactory" or better for serving the needs of their prescribed assessment areas.

We also urge OCC to allow banks to continue to receive credit for investing in mortgage-backed securities (MBS) comprised of HFA-program loans and for letters of credit extended to HFA-issued Housing Bonds.

Finally, we ask that OCC further incentivize banks to support naturally occurring affordable housing that does not receive government subsidies and to provide CRA credit for equity investments in designated Opportunity Zones established pursuant to the Tax Cuts and Jobs Act of 2017 (P.L. 115-97).

Housing Credits and Bonds 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. Though they vary widely in their characteristics, including their relationship to state government, they share a common goal of providing affordable housing help to those of their constituents who need it. They have achieved much of this work through the Housing Credit and Housing Bond programs, which HFAs administer in nearly every state.

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 roughly 3 million apartments for low-income households, adding approximately 100,000 units to the inventory each year. In addition to the potential 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 that "Roughly 85 percent of the equity for all LIHTC investments comes from banks subect to the CRA."[2]

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. HFAs utilize single-family Mortgage Revenue Bonds (MRBs) to help working families purchase their first homes. Through 2016, state HFAs have utilized MRB-funded loans to help nearly 3.1 million working families purchase a home. The MRB program is well-targeted to assist those borrowers most in need. In 2016, the last year for which comprehensive data is available, the national median income for MRB borrowers was 21 percent of the national income.

[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

Through Multifamily 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 nearly 12,500 properties across the country using Multifamily Bonds, providing affordable rental housing to over 1 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.

As with Housing Credit investments, banks' CRA obligations play an important role in incentivizing them to purchase Housing Bonds. Banks find that HFAs' public missions, strong track record, income-targeted programs, and superior loan performance make Housing Bonds an effective and responsible means for serving the low-income housing needs of the communities they serve. Bank investment in Housing Bonds lowers tax-exempt all-in borrowing rates, enabling the production of more affordable housing.

Possible Changes to the CRA Framework

6. If the current regulatory framework is changed, what features and aspects of the current framework should be retained?

NCSHA supports OCC's efforts to streamline its CRA regulations and make them more transparent and sensitive to today's financial industry environment. We urge you to continue working with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve to align the agencies' CRA policies, guidelines, and procedures.

One aspect of the current CRA framework that the regulating entities should continue is 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. The CRA investment test has been essential in stabilizing the purchasing power of Housing Credits amidst recent market uncertainty.

Maintaining the investment test will ensure that banks continue to participate in the Housing Credit and Bond 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.

In addition, while we understand and support the OCC's interest in making CRA exams more objective and CRA performance more transparent, we are concerned that the "single ratio" model the OCC is considering could result in far less investment in the Housing Credit and Housing Bonds.

Qualifying Activities

15. How should "community and economic development" be defined to better address community needs and to incentivize banks to lend, invest, and provide services that further the purposes of the CRA? For example, should certain categories of loans and investments be presumed to receive consideration, such as those that support projects, programs, or organizations with a mission, purpose, or intent of community or economic development; or, within such categories, only those that are defined as community or economic development by federal, state, local, or tribal governments?

Given state HFAs' strong track record of responsibly and effectively supporting affordable housing and other community development efforts, we believe that the regulating agencies 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 that address crucial community needs.

In addition, we request that OCC allow banks to claim and receive CRA credit for letters of credit they extend to HFA Housing Bonds and other HFA debt. These letters of credit guarantee that the bank will pay the debt payments on a bond or other credit extension 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 HFAs' 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.

While offering substantial benefit to HFAs' affordable housing programs, letters of credit are extensions of credit for which banks face potential liability and must hold additional capital. In short, they provide a true benefit for HFAs and a true risk to the bank, making them worthy of CRA credit.

Another activity that the regulating entities should acknowledge as CRA-eligible activity is financing for development of "naturally occurring" affordable housing that does not receive any government program subsidies. According to the National Association of Affordable Housing Lenders, such developments account for 80 percent of the nation's affordable rental housing stock and its development and preservation will be key to combatting the affordable housing crisis.

Finally, we recommend that the CRA regulations be revised to provide for positive CRA consideration for equity investments in Opportunity Zones (OZ) as established in the Tax Cuts and Jobs Act. As OZs are by statute and regulation defined generally as economically distressed, low-income census tracts, they represent the kinds of communities that CRA was expressly intended to ensure banks serve.

18. Should consideration for certain activities that might otherwise qualify as CD be limited or excluded? For example, how should investments in loan-backed securities be considered?

NCSHA believes that banks should continue to be eligible to receive CRA credit for activities they engage in outside their assessment areas. The ability to receive such credit will spur critical affordable housing investments in severely underserved markets. To better incentivize such investments, OCC should revise its CRA regulations so that banks can more easily 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 some investments in Housing Credits and Housing Bonds outside of their assessment areas will help alleviate this disparity and finance the development of affordable housing in underserved communities.

At the same time, we believe that it is critical for CRA to retain its focus on having banks serve the communities they operate in. Therefore, we suggest that banks should only be able to receive CRA credit for activities located outside their assessment area 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 pursue other opportunities.

With regard to mortgage-backed securities (MBS), NCSHA requests that OCC continue to allow banks to receive credit for investing and purchasing MBS comprised of HFA program loans. HFAs access the MBS market to finance their affordable homeownership and rental programs. The proceeds they earn from selling the loans underlying the securities go right back into their programs, allowing them to administer sustainable lending programs.

The secondary market was particularly critical to HFAs during the recent economic downturn, when the low-interest rate environment negated the interest rate advantage that MRB-funded loans typically offer borrowers. Many HFAs began utilizing alternative executions, including selling MBS on the to-be-announced market (TBA).

Some have raised concerns that banks often "flip" MBS, purchasing them to receive CRA credit for a year and then selling them after the year is up, and have asked if such activities provide any real community benefit. While we understand this concern, there is no question that allowing MBS comprised of HFA program loans to be eligible for CRA credit will help sustain their liquidity, improving the price HFAs can get for their securities, increasing the resources available for HFAs to finance additional loans, and consequently having an important impact on community revitalization.

Consequently, we suggest that banks be able to receive CRA credit for all purchases of securities containing HFA program loans.

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

Sincerely,

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives