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An Affiliate of the National Association of Counties

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April 8th, 2020

Chief Counsel's Office, Attention:
RFI CRA 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

To whom this may concern,

On behalf of the National Association for County Community and Economic Development (NACCED), we respectfully submit the following comments in response to the Notice of Proposed Rulemaking (NPR) for building a new framework to modernize the regulations that implement the Community Reinvestment Act of 1977 (CRA). We appreciate the opportunity to provide feedback and recommendations on the proposed CRA modernization regulations.

The National Association for County Community and Economic Development (NACCED) was established as an affiliate of the National Association of Counties (NACo) in 1978 to develop the technical capacity of county government practitioners that administer federally-funded affordable housing, community development, and economic development programs benefiting low- and moderate-income households. NACo also supports these comments.

The CRA has been extremely successful over the last 40 years meeting the credit needs of low- and moderate-income (LMI) communities and their residents and driving investments in the Low-Income Housing Tax Credit (Housing Credit), the New Markets Tax Credit (NMTC), and Community Development Financial Institutions (CDFI) that provide affordable housing, community development, services, and more to vulnerable populations.

The CRA is the major driver of private investment in affordable housing, and we urge that any changes to CRA allow the affordable housing community to maintain at least current levels of investment and production. While NACCED recognizes the need for some modernizations to this critical law, there are important aspects of the current regulations that must be preserved and enhanced to protect the original intent of CRA. While these comments do not attempt to identify all of the existing actions that might ultimately be required to achieve these goals, we are using this opportunity to comment on several issues that NACCED and its members view as particularly important to ensuring CRA continues to serve and enhance LMI communities.

For over 30 years, Housing Credit has been a model public-private partnership program, bringing to bear private sector resources, market forces, and state-level administration. It has financed roughly 3 million apartments since 1986, providing more than 6.7 million families homes they can afford. Virtually no affordable rental housing development would occur without the Housing Credit. Financial institutions are incentivized to invest in the Housing Credit partly because of the need for CRA credit. Additionally, the Housing Credit provides banks with a secure and profitable investment while fulfilling their CRA requirements.

Housing Credit is the primary tool for developing and preserving virtually all affordable housing and has financed more than 3 million affordable homes through public-private partnerships. The vast majority of Housing Credit investment – more than three-fourths – comes from banks that are motivated by CRA requirements.

At a time when our nation faces a growing shortage of affordable housing, NACCED urges the OCC and FDIC to ensure that our nation’s primary affordable housing delivery mechanism is at least as efficient and effective as it is today. NACCED strongly discourages any changes to CRA that would reduce banks’ demand for investing in the Housing Credit, which could disrupt the affordable housing market and significantly decrease our member’s ability to provide housing to low-income households who need them.

Specifically, we are concerned with the following aspects of the OCC and FDIC’s approach in the proposed rule on CRA modernization and believe they will cause harm to affordable housing tools such as the Housing Credit:

- Expansion of Qualifying Activities: The expansion of qualifying activities is too broad and should be narrowed in scope as these types of activities may be much more attractive from a business management standpoint than affordable housing, without providing commensurate community impacts. NACCED recommends the FDIC and OCC limit the activities eligible for community development credit. Further, the proposal redefines community development to include large infrastructure projects like stadium improvements in LMI Opportunity Zones, which further encourages banks to seek out larger deals over smaller loans to meet the ratio for the total dollar volume metric.

  NACCED proposes the OCC and FDIC circumscribe the list of qualifying activities that fit within the community development test, in particular to remove essential infrastructure and essential community facilities that only “partially,” rather than “primarily,” benefit low- and moderate-income individuals and census tracts. We also recommend moving MBS from the community development test to the retail lending test.

  In addition to the above, we recommend that the OCC and FDIC provide further guidance with respect to how the performance context review be undertaken for the entire category (e.g. 2 percent) of community development activities, with “safe harbor” products identified through which banks could automatically be considered “responsive” under the performance context review – which would include the Housing Credit.

- Redefined Assessment Areas: As households across the country switch their bank accounts from physical branch locations to online banking and other financial options, the footprint banks have on communities changes. While it is important to modernize the CRA geographic assessment area to accurately reflect a financial institution’s obligations to communities across the country, it is important to make sure such changes don't shift resources away from current CRA assessment areas that have continuing critical needs. Any changes made to assessment areas should enhance, and not compete with, CRA obligations in current assessment areas. It would be unproductive to shift resources from one area with sustained unmet needs to meet the needs of another area. Instead, we propose allowing community development investments in any part of the state where a bank does business to qualify for CRA credit.

- Evaluating Banks' Consistent Support of Low-Income Households: There is a consistent demand for Housing Credit largely due to the current structure of the CRA, which provides needed affordable housing across the country. In order to continue supporting a robust affordable housing delivery system, we urge the OCC and FDIC to alter the balance sheet proposal so that long-term investments like the Housing Credit are not inadvertently decreased. NACCED also recommends the OCC and FDIC consider the originations of loans or investments in affordable housing including the Housing Credit, in addition to balance sheet activity. Alternatively, we recommend they factor into ratings whether banks have decreased originations of affordable housing loans and investments significantly at the bank level relative to the prior assessment period.

Furthermore, we urge the OCC and FDIC to work with the Federal Reserve to propose an interagency rule that will augment the progress that the CRA has had in investing in Low- and Moderate- Income Communities.

NACCED and its members would like to thank OCC and the FDIC for giving us the opportunity to provide comments and to assist in efforts to modernize the regulations that implement the CRA. NACCED believes the above stated recommendations promote the mission and intent of CRA and further address the housing affordability gap that persists across the country. If you have any questions about the above comments, please contact me at ldemaria@nacced.org.

Sincerely,

Laura DeMaria
Executive Director
National Association for County Community and Economic Development