April 8, 2020

VIA E-MAIL: www.regulations.gov

Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, D.C. 20219

Re: Notice of Proposed Rulemaking Regarding Community Reinvestment Act
Docket ID OCC-2018-0008

To Whom It May Concern:

The Council for Affordable and Rural Housing ("CARH") provides these comments as requested by the OCC in Docket ID OCC-2018-0008, regarding the Notice of Proposed Rulemaking concerning Community Reinvestment Act ("CRA") modernization (the "NPR").

CARH represents for-profit and non-profit companies providing affordable rural rental housing throughout America. For more than 40 years, CARH has served as the nation's premier association for participants in the affordable rural housing profession, including builders, owners, developers, managers, non-profits, housing authorities, syndicators, accountants, architects, attorneys, bankers, and companies that supply goods and services to the industry. CARH is the only association that solely represents the needs of the entire rural rental affordable housing industry.

CARH members regularly obtain loans or equity investments from financial institutions regulated under CRA. We support the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation's (collectively, the "Agency") effort to clarify and increase transparency of CRA regulations and its regulatory framework in general. As we stated in our comments to the Advanced Notice of Proposed Rulemaking in 2018, we support doing so in a way that preserves incentives to invest in affordable housing in rural areas. The NPR contains some changes that achieves this but also others that we believe are a step in the wrong direction. Our comments are organized by four key areas of change: (1) clarifying and expanding what qualifies for CRA credit; (2) expanding where CRA activity counts; (3) providing an objective method to measure CRA activity; and (4) revising data collection, record keeping, and reporting.

1. Clarifying and expanding what qualifies for CRA credit

The current regulatory framework encourages many eligible activities and investments that improve and develop communities, like the construction and preservation of affordable housing. We encourage the support of investments in qualified opportunity funds ("QOFs") in Opportunity Zones ("OZs"). Opportunity Zones, by definition, serve census tracts with high rates of poverty and below averages median family income. Providing clarity that investments in these QOFs will count toward CRA credit will help to provide much needed equity in neighborhoods with significant needs. We also support creating mechanisms for banks to seek confirmation from the Agency that an activity is a qualifying activity. By increasing the clarity of the CRA credit, banks will be more likely to invest in and develop more innovative products that meet the unique needs of many communities.

We are concerned with a number of the rural housing programs are not included in the non-exhaustive list of qualifying activities provided in the NPR. We are also concerned that key affordable housing programs used in rural America are not included or not clearly included. We realize this list is non-exhaustive, but regulated entities can be predicted to focus on activities known to be acceptable as contained in the list. And affordable housing, particularly rural affordable rental housing, already face many hurdles to development and preservation. Rural affordable rental housing tends to be small sized properties, under 50 units and often much smaller. Rural affordable rental housing tends to have to carry all of the costs of financing, development and construction as larger urban properties, increasing per unit cost.

The non-exhaustive list includes an investment in a QOF established to finance improvements to an athletic stadium in an opportunity zone that is also an LMI census tract. Although such a project could potentially benefit low-income communities, it is unclear to what extent banks would need to show benefit to low-income communities in order to obtain the CRA credit. Additionally, investment in Government programs, projects, or initiatives that "partially" or primarily benefit low to moderate-income ("LMI") individuals is included in the list but it is unclear how a "partial" benefit would be measured.

Affordable housing projects and programs typically include long-term, legally binding, specific limitations that require that occupancy of affordable housing properties or units be restricted to LMI individuals at affordable rents for a period of years, and thereby provide an objectively verifiable service obligation to LMI individuals. By including activities like infrastructure that only "partially" benefit LMI communities, the NPR in effect reduces the incentive for banks to make investments in Low-Income Housing Tax Credit ("Housing Credit") properties that have significant impact in LMI communities and are often longer term and more complex than debt financing.

We support expanding qualifying activities under the CRA, but we encourage doing so in a way that focuses on specific and measurable benefits to LMI communities and individuals. Additionally, we support specifically including and clarifying the following items in the non-exhaustive list of qualifying activities:

- Investments in or loans to properties benefited by Section 521 Rental Assistance from the United States Department of Agriculture Rural Development ("RD").
- Investments in or loans to properties benefited by Section 514 or Section 515 direct loans from RD. For example, many of our members seek first-lien mortgage loans from

financial institutions regulated under CRA for properties that continue to benefit from subordinated loans under these programs.

- Investments in properties with Section 516 farm worker grants from Rural Development.

We support and appreciate the inclusion of the RD Section 538 program within the non-exhaustive list of qualifying activities. However, the 538 is a low and moderate income program, and is in the incorrect low income category. The 538 program often is coupled with Section 514 and 515 programs, and provides housing for low and very low income persons. But the nature of the program as a standalone program is to provide workforce housing and expand the supply of affordable housing in rural America, Also, we see that the list includes "a loan to a non-profit developer" related to the Section 538 program, but the 538 program borrowers are individuals, nonprofit and for-profit corporations, partnerships, state or local public agencies, limited liability companies, trusts or Indian tribes. This limitation would thwart Section 538 lending. We appreciate that the list is non-exhaustive. However, the rule as proposed will reduce the supply of affordable housing in rural America because the list of approved uses only "partially" benefit LMI community and individuals. We believe it is crucial to be explicit and expansive about CRA opportunities in crucially important programs like the ones listed above, particularly when that leads to leverage of existing Federal programs and provides direct benefit to LMI individuals.

2. Expanding where CRA activity counts

When considering the goals of the CRA, we agree that it is important to note that the communities that banks serve are no longer anchored to the physical presence of the bank. As financial institutions continue to modernize their services, they increasingly reach communities outside of their physical geographic presence. We support efforts to expand the geographic scope of CRA investments beyond the physical presence of a bank.

However, we are concerned that the "deposit-based" assessment would leave out LMI communities and individuals in need while also encouraging concentrations in certain geographies, which may be contrary to the overall needs of the area. We propose allowing for the expansion of the assessment areas to match the overall needs of the areas each bank serves. For example, the Agency could allow for expansion of assessment areas to include those federally assisted LMI rental housing within larger geographies, such as any Housing Credit property within the same state or states as the financial institution's current assessment area or areas. This would provide greater incentives to banks to invest in communities utilizing their services without the presence of a branch while also guaranteeing that investment benefits LMI populations, a primary beneficiary of Housing Credit properties and other federally assisted LMI rental housing.

3. Providing an objective method to measure CRA activity

The NPR proposes three main areas of assessment: (i) the retail lending distribution test, (ii) a CRA evaluation measure, and (iii) the community development minimum. We are concerned by the elimination of a distinct investment test because investments in affordable housing in rural areas have tremendous positive impact within those communities. In particular, in certain rural communities, Housing Credit investments are effectively the only way for developers to acquire much-needed equity, without which it would be impossible to preserve and maintain the community's affordable housing stock when existing rents are not sufficient to service debt. Investments in Housing Credits is crucial when the increases in rents needed to service debt are not feasible for low-income tenants, as is often the case in high-needs rural communities. Rather, the NPR seems to focus on the amount of investment rather than the type of investment. For example, the community development minimum standard divides the value of community development loans and investments by the quarterly value of retail domestic deposits. This standard ignores the significant impact that investments in Housing Credits to smaller rural properties will have on the LMI individuals in those communities. We encourage the Agency to retain a distinct investment test to ensure that incentives to make meaningful investments are preserved.

We also encourage the Agency to provide clarity on the basis for setting a 2% overall CRA activity threshold of community development loans and investments in order to achieve a "satisfactory" or "outstanding" rating. We support methods to ensure that community development loans and investments remain integral to high CRA ratings, but it is unclear whether the underlying data supports that demonstrating that 2% of overall CRA activity consisted of community development loans and investments is indicative of advancing the purpose of the CRA, which is to provide much needed investment to LMI individuals and communities.

4. Revising data collection, record keeping, and reporting

The proposed changes under the NPR would require a certain level of data collection and recordkeeping. Although we support the collection of data related to CRA activity to better measure the effectiveness of the activity, we also recognize the burdens associated with data collection and retention, especially on smaller banks in rural areas. We support a flexible approach to these requirements so that these banks can meet their data collection requirements without undue administrative or financial burden.

CRA has created incredible opportunities for growth in rural areas. We support efforts to expand qualifying activity and assessment areas because such expansion can lead to even greater assistance to LMI individuals and communities in rural areas. However, we reiterate our support in achieving this expansion in ways that preserves the CRA's focus on LMI individuals and communities.

We appreciate the opportunity to submit these comments, and we hope the above-noted comments will be considered along with other comments from the public. Should you require any additional information, please contact me, Colleen Fisher, at (703) 837-9001 or (703) 837-9001.

Sincerely,

Colleen M. Fisher

Colleen M. Fisher
Executive Director