Testimony of David M. Dworkin
President and CEO of the National Housing Conference
Before the House Financial Services Committee

January 14, 2020

Thank you, Chairwoman Waters, Ranking Member McHenry and distinguished members of the Committee. My name is David Dworkin, and I am president and chief executive officer of the National Housing Conference, the nation's oldest and broadest housing coalition. Founded in 1931, the National Housing Conference, or NHC, has advocated for affordable housing and community development for nine decades. Today our over 260 members include every sector of the housing industry, from housing developers, both for-profit and nonprofit, to state and local government agencies, lenders of all sizes, investors, builders, national associations and low-income housing advocates in every region of the country. No one sector makes up more than 20 percent of our membership.

NHC has been defending the American Home since 1931. We believe that everyone in America should have equal opportunity to live in a quality, affordable home in a thriving community. NHC convenes and collaborates with our diverse membership spanning the housing and community development sectors to advance our policy, research and communications initiatives and effectuate positive change at the federal, state and local levels. We have advocated for nearly every major piece of housing legislation including the Wagner-Steagall National Housing Act of 1937, the Fair Housing Act of 1968 and the Housing and Economic Recovery Act of 2008, to name just a few. Politically diverse and nonpartisan, NHC is a 501(c)3 nonprofit organization.

The Community Reinvestment Act of 1977 (CRA)[1] was enacted in response to concerns over disinvestment in low-income communities and persistent allegations of "redlining," the practice of avoiding investment in minority neighborhoods codified by the Home Owners' Loan Corporation (HOLC) in 1933 and the Federal Housing Administration in 1934.[2] While the Fair Housing Act of 1968 prohibited redlining and other forms of housing discrimination, these practices proved difficult to reverse. Even as lenders abandoned the formal practice of "redlining," the long-term legacy of its impact on communities as well as on the underwriting culture persisted. Research by economists at the Federal Reserve Bank of Chicago as recently as

[1] Pub. L. 95–128, title VIII, § 807, as added Pub. L. 101–73, title XII, § 1212(b), Aug. 9, 1989, 103 Stat. 527; amended Pub. L. 102–242, title II, § 222, Dec. 19, 1991, 105 Stat. 2306; Pub. L. 103–328, title I, § 110, Sept. 29, 1994, 108 Stat. 2364.

[2] Remarks by Martin J. Gruenberg, Member, Board of Directors, Federal Deposit Insurance Corporation on The Community Reinvestment Act: Its Origins, Evolution, and Future at Fordham University, Lincoln Center Campus; New York, New York, October 29, 2018

2018 continues to demonstrate that areas denied credit in the aftermath of the Great Depression of the 1930s continue to have lower property values, lower homeownership rates, and lower credit scores nearly 90 years later.[3] As Americans left cities for new suburban bedroom communities in the 1960s and 1970s, there was a growing disparity between where banks raised their deposits and where they invested, particularly in housing and mortgage finance. Congress sought to incentivize banks to invest in the communities where their branches were located. A high CRA rating was intended to provide that incentive.

When he introduced the CRA in 1977, Senate Finance Committee Chairman William Proxmire expressed hope that by incenting banks to rebuild and revitalize communities threatened by decline, the bill would ultimately prove good for the banking industry. This vision proved prescient beyond anyone's expectations.[4] Today, there is broad support for CRA among banks of all sizes, and throughout the housing industry as well as among civil rights and community advocates. To understand why the CRA continues to remain so important, one need only look at the numbers of minority homeownership in the 50 years since the passage of the Fair Housing Act. Overall, minority homeownership plummeted during the Great Recession, falling from 52 percent in 2004 to 46 percent in 2016.[5] The homeownership rate for African Americans is lower today than it was when the Fair Housing Act was passed in 1968. That is a national tragedy and serves as a clarion call for us to get this effort to modernize and improve CRA done right.

CRA requires federal banking regulators to examine covered financial institutions and determine how well they meet the needs of the communities where they are located. Banks receive ratings from Outstanding to Needs to Improve or Substantial Noncompliance. The vast majority are rated as Satisfactory.[6]

It is vital to consider the unique value of CRA within the banks that it governs. To ensure our banking system is strong and resilient, we want banks to be financially successful. We also know through the bitter experiences of the HUD 235 mortgage in the 1970s and the toxic and predatory loans that led to the Great Recession in the early 2000s, that irresponsible lending can devastate low- and moderate-income communities and the people who live in them. Thus, it is in our national interest that financial institutions compensate their employees on a risk-weighted return on capital to ensure they make safe, sound and successful investments. But these institutions are not monolithic entities. Different divisions compete against each other for access to capital, and that competition is governed by the compensation of individuals. CRA adds a community-friendly thumb on the scale to this competition by creating a formal and

---

[3] The Effects of the 1930s HOLC "Redlining" Maps (Revised August 2018) by Daniel Aaronson, Daniel Hartley , Bhash Mazumder. Federal Reserve Bank of Chicago Working Paper, No. 2017-12, 2017.

[4] Congressional Record, daily ed., June 6, 1977, S.8958

[5] Housing Vacancies and Homeownership (CPS/HVS), Homeownership Rates, US Census Bureau.

[6] The Effectiveness of the Community Reinvestment Act, Congressional Research Service (January 7, 2015) with data provided by the FFIEC.

measurable incentive to contribute to ensuring a satisfactory or outstanding rating. Water down CRA, and you dilute the impact that CRA has in empowering banks to focus on the harder and smaller but still profitable deals that often have a disproportionately positive impact on communities.

Prior to joining NHC in 2018, I served as a senior housing policy advisor during five years under President Barack Obama and one under President Donald Trump. During the Trump administration's review of CRA in 2017, I was part of a small group who conducted nearly 100 meetings with a broad range of stakeholders including dozens of banking institutions of all sizes and many advocates of low- and moderate-income communities, including the National Community Reinvestment Coalition and the California Reinvestment Coalition. It is important to note that not one of these stakeholders, including the largest banks in the country, suggested that CRA be repealed. Instead, there was broad agreement across the political spectrum that CRA needed to be modernized. Treasury's memorandum to regulators of April 3, 2018 reflects this, as does the constructive reaction to it that a diverse group of advocates offered following its release.

One of the most frustrating aspects of the current CRA regulatory regime to these stakeholders is variations in application of the rules by different regulators, and by different examiners within the same regulatory agency. This is as problematic for advocates as it is for banks and must be resolved. There are too many credible reports of inadequately trained and inexperienced examiners whose limited knowledge of community development and assisted housing programs makes their reviews more difficult and sometimes problematic.

Another challenging area for banks as well as community advocates is the inconsistency in when reviews are conducted and how long it takes to get a final rating. Some banks are still waiting for their final rating from 2013-2015. By the time they receive them, many of the issues will have been addressed, or conditions will have changed, or concerns that could have been addressed in a timely fashion have been left to fester. Examination and rating schedules must be adhered to so they can be promptly explained or remediated.

Similarly, providing a greater degree of certainty over what activities will be considered positive contributors to a CRA rating so institutions can plan for the future while only having clear insight into the past through delayed exams and reviews would be a positive step.

These principles were endorsed by the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) in the rhetorical language of the Notice of Proposed Rulemaking (NPR), but in practice, the actual regulatory language is not consistent with the stated intent. NHC believes that for CRA modernization effort to be effective and sustainable, it must meet four fundamental tests. Any new CRA regulatory regime must:

1. Increase investment in communities that are currently underserved;

2. Benefit more low- and moderate-income (LMI) people, particularly people of color, who live in those communities;
3. Ensure that CRA lending and investment does not lead to displacement of the very people it is meant to help; and
4. Make both bank performance and government enforcement more transparent and predictable.

To provide comprehensive, detailed and useful comments on the proposal, has convened a group of two dozen of our members, spanning some of the nation's largest banks, nonprofit housing developers and community and civil rights advocates. Our work will be done under a very tight timeline, as the OCC and FDIC have only allowed for a 60-day comment period. As with our comment letter on the OCC's Advanced Notice of Proposed Rulemaking (ANPR), we believe that our diverse members can come together to help us provide a similarly detailed and constructive comment letter. We will be aided by a pro-bono legal team of attorneys from Nixon Peabody in New York, one of the best law firms in the country with a practice in housing and community development, and students from Georgetown Law School.

For these and many other reasons, the Federal Reserve Board (FRB) has refused to go along with the OCC and FDIC on its NPR. Fed Governor Lael Brainard laid out the Fed's vision of CRA modernization at a convening at the Urban Institute. The Fed's alternative to the OCC approach includes clearer metrics for evaluating bank performance, as well as a new transparent approach to assessing "performance context," or how banks are doing compared to their peers and the market overall. She also addressed one of the most important issues for any NHC member involved in the development or construction of affordable housing: the importance of separate retail and community development tests, which are conflated in the OCC's approach. "Evaluating all retail banks under a stand-alone retail test is important to stay true to the CRA's core focus on providing credit in underserved communities in an assessment area," she said. In contrast, she continued, an approach that combines both retail and community development evaluations risks incenting banks to "meet expectations primarily through a few large community development loans or investments rather than meeting local needs."

Governor Brainard also raised important safety and soundness concerns over a ratio-driven approach. "A uniform ratio that does not adjust with the local business cycle could provide too little incentive to make good loans during an expansion and incentives to make unsound loans during a downturn, which could be inconsistent with the safe and sound practices mandated by the CRA statute," she said. She noted that "industry commenters also expressed concern that discretionary adjustments to the uniform metric are likely to lag behind the economic cycle and undermine the certainty a metric purports to provide."

To mitigate this risk, the OCC approach dramatically reduces the threshold necessary to meet the test. FDIC Board member Martin Gruenberg stressed this in his opposition to the FDIC joining the OCC in the NPR, noting that a bank could gain an outstanding or satisfactory rating

by serving little more than half of its assessment areas at that level. Further, the data necessary to calculate the ratios has limitations, as the NPR itself acknowledges. Mr. Gruenberg has expressed concern that approving an approach that is dependent on future improvements in data collection and analysis is irresponsible. Like Governor Brainard, he has also expressed concern that banks would be incented to "focus their stronger community reinvestment-qualifying efforts on as few as half of their assessment areas while minimizing their efforts elsewhere."

NHC will prepare detailed comments on the NPR, which we will provide to the Committee. It is our hope that the OCC and FDIC will find common ground with the FRB and community advocates to reach agreement on a final rule that has broad, bipartisan support. In the absence of that consensus, NHC will join our colleagues in advocating for a repeal of the new rule and the drafting of a new ANPR by the next leadership team at these agencies. As I recently said in the American Banker, CRA modernization is "a once-in-a-generation opportunity. If modernization is done without broad support across the political spectrum, it's just another swing of the pendulum that will cost banks hundreds of millions to retool the compliance system, and hundreds of millions more when the pendulum swings back and they have to retool again." Even more importantly, it will do irreparable harm to millions of Americans who deserve better.

Thank you for this opportunity to share our views on this critically important issue.