August 31, 2010

Office of the Comptroller of the Currency
12 CFR Part 25 [Docket ID OCC-2010-0011]

Federal Reserve System
12 CFR Part 228 [Docket No. R-1386]

Federal Deposit Insurance Corporation
12 CFR Part 345 [RIN 3064-AD60]

Office of Thrift Supervision
12 CFR Part 563e [Docket ID OTS-2010-0019]

RE: Community Reinvestment Act Regulation Hearings

Dear Sir/Madam:

The Housing Partnership Network (HPN or Network) and Stewards of Affordable Housing for the Future (SAHF) would like to thank you for this opportunity to submit comments on your efforts to modernize the rules guiding the Community Reinvestment Act (CRA).

In the 15 years since the regulators last updated the CRA rules, the financial services industry has undergone dramatic changes. Likewise, the nation's housing and community development needs have changed in profound ways. The challenges today are often larger and more complex. We have also learned a great deal about what works and does not work. Financial institutions have increased their understanding of the needs and enhanced their product offerings, while the nonprofit institutions that are doing much of this work in the nation's communities have grown in strength and capacity. There is much more work to be done. The upcoming rewrite of the rules represents an opportunity to update CRA based on the changes in the market, to better align CRA with national housing and community development policy priorities, and, ultimately, to achieve greater positive outcomes for America's communities. We commend you for launching this important process.

The following letter provides you with our perspectives and recommendations for how you might strengthen CRA's impact. Our principal recommendations can be summarized as follows:

1. Add a new Community Development Test that encourages financial institution participation in a broad range of activities, including affordable housing and community development lending, investments, and services.

2. Better align CRA with other national housing and community development priorities, programs, and subsidies.

3. Provide greater incentives for banks to address national priorities and underserved communities that include communities outside their current assessment areas.

4. Provide full CRA credit for investments in qualified mission-oriented Community Development Financial Institutions (CDFIs) and nonprofit affordable housing development entities, even if these entities are located outside of the bank's assessment areas.

5. Reemphasize the practice of sustainable homeownership for low-income households, defined by responsible lending products and practices and coupled with housing counseling services.

<u>Who We Are</u>

HPN is a peer network and business alliance of 99 of the nation's top-performing nonprofit housing developers, owners, lenders, and housing counselors. The Network helps these strong, accomplished organizations increase their production and community impacts through a unique, member-driven cooperative that shares knowledge and innovation, pools resources to access the capital markets more efficiently, and shapes policy that reflects and enhances their practice. Through their partnerships with financial institutions, other businesses, government, and civic leaders, the Network's members tackle the most pressing housing and economic development challenges facing communities. Collectively, the Network's members have developed and/or financed more than 750,000 affordable homes and apartments, and have provided homeownership and foreclosure prevention counseling to more than 600,000 families.

SAHF is a 501(c)(3) consortium of nine sophisticated, non-profit, affordable housing providers who are committed to the long-term, sustainable affordability of multifamily rental properties for low-income families, seniors, and disabled individuals. SAHF members include: the Evangelical Lutheran Good Samaritan Society, Mercy Housing, National Church Residences, National Affordable Housing Trust, National Housing Trust, NHP Foundation, Preservation of Affordable Housing, Inc., the Retirement Housing Foundation, and Volunteers of America. Together, SAHF members own and operate housing in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands – providing homes to approximately 90,000 low-income households across the country. SAHF's members promote their shared ownership objectives, which embrace the notion that stable, affordable rental homes are critically important in people's lives.

What distinguishes the SAHF and HPN members is their ability to operate at scale. Additionally, most of these organizations are successful because they operate as social enterprises and work in partnership with the public, private, and civic sectors in their communities. Our members are mission-driven entities that are, first and foremost, dedicated to serving low-income people and communities, but are also running their organizations with strong management structures based on sound business principles.

Importance of a Strong CRA

A continued, strong CRA is important for America's communities and its economic health. CRA was enacted in 1977 with this goal: "to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound operations." At its core, CRA is a social contract. In return for numerous advantages provided to firms in the financial services sector, CRA asks that financial institutions fulfill an affirmative obligation to provide access to credit and reinvest in the communities where they do business.

America's financial institutions enjoy a wide array of benefits provided by the public sector. The government has put in place a legal framework that allows financial institutions to operate with assurance that they can record and enforce liens against property and that the courts will enforce contracts. The nation provides significant economic benefits to private financial institutions through: more than $5 trillion dollars in low-cost, federally-insured deposits; access to the Federal Reserve window; Federal Home Loan Bank advances that reached nearly a trillion dollars in 2008; access to mortgage liquidity through Fannie Mae and Freddie Mac; and the availability of profitable lines of business where the federal government takes the credit risk through Federal Housing Administration (FHA), Rural Housing Service (RHS), Small Business Administration (SBA), and the Veterans Administration (VA) loan guarantees among others. Moreover, the recent financial crisis has clearly demonstrated that the financial sector enjoys a broader, implicit backing from the government. The demonstrated willingness by policy makers to step in and support the stability of the financial system also provides a backstop that contributes to the financial success of individual firms, their executives, their creditors, and their shareholders.

CRA has been positive for communities and for financial institutions. It has been particularly important in helping financial institutions overcome built-in biases in a bank's credit culture against low-income communities. CRA has caused financial institutions to take a second look at business opportunities in low-income communities and has led to innovations that have allowed many financial institutions to serve these communities profitably. Perhaps even more importantly, CRA has fostered strong partnerships among financial institutions, communities, and the organizations that serve those communities. These relationships have benefited all the parties. CRA encouraged the provision of responsible credit in service to communities in counterpoint to the irresponsible practices that helped trigger the financial crisis and undermine communities. Successful public/private partnerships have helped to bring the power of private capital to bear on the challenges of community development.

The Need to Modernize the CRA Rules

At the same time, it is important to update CRA in light of significant changes in the market since the rules were last rewritten in 1995. The financial services industry has changed in dramatic ways, with increased concentration of economic activities and resources in the largest firms. There have been new entrants with new business models and many prominent players have disappeared. There is greater horizontal and vertical integration across a variety of financial products and services within a single institution. The industry has adopted new, and more sophisticated, approaches to financial engineering and risk management, and the application of technology in deposit taking and other bank operations has been transformative. One obvious repercussion of the financial crisis and subsequent legislation is that this sector will continue to change in significant ways in the coming years.

The housing and community development field has learned many lessons over the years – and it continues to learn and evolve. The recent financial crisis has sharpened some of its understandings about what works and what does not work. We have witnessed excesses in single-family mortgage lending unrelated to CRA and the devastating effects these excesses have had on low-income communities, undoing many years of progress in many instances. We can no longer ignore the fact that our nation's housing policies under-regulated some forms of lending and overemphasized homeownership. We need to achieve a better policy balance in our support for homeowners and renters. Most low-income households are renters.

We have also learned that successful housing happens in a community context and successful affordable housing developments are critical for the health of a community and its residents. Affordable housing is a driver of local economic activity and local economies, as well as a platform for the success of low-income people and impoverished communities. Well conceived low-income housing not only provides a safe and affordable place to live, but it also provides its residents with access to decent jobs, transportation options, and the wide array of other important services in a healthy community – good schools, quality grocery stores, and accessible health care. We have learned of the increased need to break down the silos across various federal agencies – as well as the silos that exist across various bank divisions that could finance these developments.

And, we increasingly understand that we must look at affordable housing and community development in the context of a regional or metropolitan economy. The nation needs to develop mechanisms to support more environmentally sustainable approaches to development. We need to ensure that affordable and workforce housing are located where the jobs are – and/or where they are linked to transportation systems that take people to work – in order to ensure the economic growth of the region and the success of its lower-income residents.

Create a Community Development Test

We strongly endorse proposals to create a new community development test among the CRA standards. Under the current system, community development lending, in particular, gets deemphasized when smaller volumes of community development loans are obscured by larger volumes of single-family lending. The new test would measure a financial institution's lending, investments, and services in support of the array of community and economic development activities critical to successful community development. The activities covered by the test could include: affordable rental housing development and preservation, single-family development and rehabilitation, community facilities, charter schools, and investments in small businesses and commercial real estate that provide jobs and essential community services. In distressed and underserved areas these activities are the building blocks to a better future.

It is important that the new test go beyond just measuring the number of loans or dollars invested. Implementation of a community development test should also strive to measure an investment's relevance to community needs and its impact in the community. This suggests that regulators should train examiners to look at both quantitative and qualitative performance measures. This process could begin by comparing CRA investments to an assessment of a community's needs. An impactful investment might score higher in CRA terms if it: is responsible for triggering other investments in the same community; provides access to services (like grocery stores, pharmacies, or community health clinics) that were previously not available; is housing that incorporates deep targeting for very low-income households; serves a particularly difficult to house population like chronically homeless veterans; or is linked to transit and demonstrably provides economic opportunities for its residents. Ultimately, the exam might also include some measure of the social return on investment.

In conjunction with a new community development test, financial institutions regulators should implement new mechanisms to collect, and make available to the public, data on the community development activities included in a financial institution's examination. In the short term it would be helpful if regulators increased the data collection through the Home Mortgage Disclosure Act (HMDA) to increase the coverage of the multifamily originations and include more data elements for analysis. New data should include size of the loan and/or property financed, whether units are available for rent or for ownership, the existence of federal rental assistance, and some measure of the rents charged as a way to better discern who is served by the property. Regulators should also evaluate if and how HMDA could be expanded to collect data on other community development lending and investments measured by the new rules so that the public can evaluate the adequacy of any institution's performance and financial institutions can better understand the markets in which they operate.

Align CRA with National Housing and Community Development Policies

We propose that the rewrite of the regulations adopt as a core objective a better alignment of CRA with other federal community development priorities and policies. Better alignment of the CRA rules with policy priorities reflected in the availability of federal subsidies and federal credit enhancements would move toward a more integrated system that supports and leverages private capital and enhances public/private partnerships.

Financial institutions regulators can use the upcoming rewrite to move the next version of the CRA regulations into greater alignment – as much possible under the respective statutes – with the program rules and targeting of federal subsidy and credit guarantees administered by the Department of Housing and Urban Development (HUD), the Low Income Housing Tax Credit and the New Markets Tax Credit, the Community Development Financial Institutions Fund (CDFI) at the Department of the Treasury, the RHS, the SBA, and other federal housing and community development programs. It would be valuable, efficient, and transformative if financial institution regulators could work to break down silos across these multiple programs and agencies and lead in moving toward a more integrated community development system.

The new rules should continue to reward regulated institutions for their purchase of community development loans from CDFIs or other specialized lenders not covered by CRA. At the same time, the new rules should guard against the ability of financial institutions counting loans and investments already counted once on a CRA exam on the exams of a second institution. We also would strongly encourage that you remain actively engaged in the ongoing changes occurring with the redesign of the housing finance system in the post-Fannie Mae/Freddie Mac world. It is especially important that the future secondary market institutions have rules that are complementary to the CRA requirements on primary market institutions. The new secondary market infrastructure should support CRA requirements by encouraging liquidity for affordable housing and community development loans and investments, and performing the traditional secondary market role of providing community capital through their access to global capital markets.

The system as a whole might also benefit if the regulators commissioned a performance context analysis for the largest metropolitan areas and for the balance of the states not covered by those metropolitan areas. The analysis could provide a needs analysis and a road map to which financial institutions could refer with some assurance that their activities are consistent with community needs and, therefore, consistent with the CRA responsibilities. The performance context analysis could draw from various processes already extant in the system, including comprehensive planning for HUD's community development programs, regional or state-wide growth plans, and state qualified allocation plans used in the Low Income Housing Tax Credit program. It might also incorporate financial market data such as the pricing of Low Income Housing Tax Credit investments in different geographies and indicative of credit and investment needs. The preparation of the performance context analysis on a regular schedule could help to ensure that CRA remains relevant to conditions in the economy and local markets. Having an analysis commissioned by the regulators for each area of the country would not only add some consistency and objectivity to the process, but it would also save money throughout the system vis-à-vis the current approach where lenders and examiners alike try to evaluate the performance context for CRA activities as part of the examination process.

Reexamine the Current Application of Assessment Areas

The process for designing the new CRA rule should reassess the concept of assessment area and consciously adopt mechanisms to encourage all banks to invest in underserved areas and other national priorities outside of the current retail footprints. One of the greatest challenges of the current CRA regime is that the assessment area approach has created geographies that are arguably over-served for certain types of CRA-eligible investments while other geographies with similar CRA-worthy projects have difficulty attracting investments. One way to achieve this is to create a set of national priorities and award CRA credit for investment activities consistent with those priorities.

These national priorities could fall into three categories: encouraging flows of capital into places currently underserved by the financial services sector; investing in activities of national importance; and addressing large, complicated challenges that exceed the capacity of local institutions.

One rationale for creating a set of national priorities under the CRA rules is that many financial institutions have a scale and a reach where their business interests greatly exceed their bricks and mortar retail footprint. In many cases, the capacity of these institutions to invest in affordable housing and community development activities exceeds the investment opportunities in their assessment areas.

As under the current system, in the new rules financial institutions should still have a responsibility to address the credit needs of the communities in which they take retail deposits. However, under an approach that also rewards investments in national priorities financial institutions might fulfill some of their CRA obligations by addressing these national priorities outside of their traditionally defined assessment areas. The regulations could allow a financial institution with some combination of retail, institutional, and internet deposits to allocate a proportionate amount of their CRA activities to those locations with a retail presence and the balance of its activities to these national needs and priorities. This mechanism would encourage financial institutions without extensive bricks and mortar facilities to meet CRA obligations by addressing national priorities. Further, banks seeking an "outstanding" rating on their exams could also point to their contributions to national priorities.

Underserved Areas – There are too many places in America, from the older cities that used to rely on a manufacturing economy to the high-poverty rural areas that are credit and equity starved. As part of a performance context assessment, regulators could map those geographies that are included in all bank assessment areas to identify those places that are well covered by multiple financial institutions with significant investment capacity and those places that are underserved by the financial services sector. CRA can help to encourage greater private investment in these places by including these in a national needs assessment and rewarding a financial institution for investing in these places – even if these fall outside the places where the financial institution takes retail deposits.

Activities of National Importance – There are also a set of national affordable housing, community, and economic development challenges that CRA could encourage banks to address by relaxing its attachment to assessment areas. Responding to natural disasters stands out as the most prominent example of this concept. Financial institution regulators recognized the need to encourage the flow of capital into the Gulf Coast following Hurricanes Katrina and Rita and provided special CRA consideration for investments in the region. More recently, financial institution regulators have proposed to provide CRA credit to financial institutions that invest in neighborhood stabilization activities even if these fall outside a financial institution's assessment area. These are important precedents for a regularized system that recognizes national needs and priorities and encourages financial institutions to build the capacity to address these.

Large, Complex Challenges – Among the national priorities that regulators could consider for CRA credit are affordable housing activities that require a specialization and scale within a financial institution that makes little economic sense if this activity only applies to assessment areas of limited geography. For example, the need for affordable housing preservation or permanent supportive housing for the homeless is national in scope, but for a financial institution to participate successfully requires specific expertise due to the complicated nature of the financing and the federal rules governing the assistance programs. The complexity of the financing and subsidy mix puts these activities outside the comfort zones of many smaller financial institutions. CRA should encourage and reward a financial institution for stepping up to this challenge and building the capacity to bring capital to bear.

There are also housing and community development challenges in many areas of the country that quite possibly exceed the capacity of local financial institutions. CRA should continue to encourage financial institutions with the scale and capital to help address these types of needs and challenges. New examinations should continue to emphasize and reward innovations, especially innovations that encourage increased flows of capital on a greater scale to affordable housing and community development activities. Examples of these types of investments might include transit-oriented development, large-scale multifamily housing and mixed-use developments, *de novo* interventions in larger rural and urban underserved geographies with limited private for-profit and not-for-profit capacity, and/or regional affordable housing and development strategies focused on low-income economic opportunity.

Investments in Community Development Entities

In the time since the CRA rules were last updated, the nonprofit sector has grown considerably. There have emerged a group of high-performing nonprofits – like the members of SAHF and HPN – that can operate at scale, across the entire country or in the region in which they are located. These organizations are mission-driven and have developed strong partnerships with financial institutions, the business community, local governments, and the philanthropic sector. Given their capacity, they can and do serve as strong counterparties and partners to the banks, doing the work in low-income communities that CRA was designed to encourage.

CRA should give full credit to investments in mission-oriented community development entities without regard to the location of these entities and the geographic footprint or assessment area of the financial institution making the investment. These organizations' missions could include serving low- and moderate-income communities and populations or meeting one of the broader identified national needs. Mission-oriented community development entities should include community development financial institutions, not-for-profit intermediaries, and not-for-profit, mission-oriented affordable housing or community development organizations. The treatment of investments in the entities would be similar to the current treatment of investments in minority-owned and women-owned banks or low-income credit unions. Financial institutions should get extra credit for helping to strengthen these institutions and build their balance sheets, for building effective partnerships with these institutions, and/or for helping to create and build these institutions in those places where the capacity has not yet been realized.

What is generally not appreciated by policymakers, lenders, and the public is how much the nonprofit sector has grown in scale and capacity since CRA was last updated. *Affordable Housing Finance* now lists 15 nonprofit organizations among the top affordable housing owners in America. These 15 nonprofit housing organizations alone own more than 122,800 units of affordable housing. The organizations on that list – as well as many others – have demonstrated the ability to step up to particularly challenging community needs and enter into complicated multimillion dollar real estate development or community development finance transactions. For example, BRIDGE Housing was the lead developer in Mandela Gateway, a $51.8 million mixed-income, mixed-use, transit-oriented development in Oakland. The Retirement Housing Foundation and other partners were able to preserve 10 properties totaling 1,582 units with total fixed assets of $195 million in New England. In 2007, Preservation of Affordable Housing, Inc, (POAH) completed a deal to preserve a portfolio of 7 properties in Massachusetts and then in 2008, acquired a portfolio of 5 properties in Florida – demonstrating that organization's geographic reach. In 2003 and 2004, Mercy Housing completed the acquisition of 30 Rural Housing Service properties in rural Washington of nearly 1,000 units. National Church Residences (NCR), which is based in Columbus, Ohio, acquired 6 senior housing properties from a for-profit entity in the Detroit area, and in the same transaction purchased a related company that now manages 19 properties. CommonBond Communities in Minnesota completed a $61 million refinancing of 17 Section 202 properties with 767 units that it had originally purchased from 17 different other nonprofit corporations. And, in the wake of Hurricane Katrina, HPN formed in the Gulf Coast Housing Partnership (GCHP). GCHP has emerged as a strong, regional non-profit development company that has leveraged more than $225 million for a production portfolio representing 1,594 units.

In all these instances, capable, effective nonprofit organizations with significant track records have demonstrated their abilities to address a particular and immediate affordable housing need at scale. There are many examples all across the country that we could point to. All of these transactions came on top of years of hard work in the field and were only possible given the experience, assets, skilled personnel and other resources these organizations could bring to bear. Regulators and the regulated banks should have increased confidence in this sector as counterparties and partners to financial institutions – and as a central element of the CRA delivery system.

What these strong nonprofit institutions most need to grow and sustain their businesses, *and increase their impacts*, is access to equity-like capital at the corporate level that they can use to leverage additional private capital for development and preservation projects. An investment in these institutions is investing in a stronger, more efficient housing and community development delivery system, one that is better able to partner with financial institutions and one that has the scale and ability to tackle increasing tougher challenges that are occurring across regions. CRA should include incentives for grants, equity, and equity-like *impact investments* in these types of institutions.

Similarly, the new rules could embrace creative approaches to the disposition of bank real estate owned inventory carried out in partnership with strong nonprofits. Favorable disposition activities could encourage the long-term preservation of multifamily housing assets as affordable housing resources and/or the repositioning of single-family properties in conjunction with a comprehensive neighborhood stabilization strategy.

The Nation's Commitment to Sustainable Homeownership

Despite the fallout from the subprime lending housing crisis, owning one's home will remain one of the foundations of American society, linked to upward mobility, lifestyle choices, and wealth building. One of the greatest risks of the financial crisis is that policymakers will learn the wrong lessons from the meltdown and back off efforts to address the homeownership aspirations of lower-income households. As your organizations have done a good job in demonstrating, it is very clear that CRA rules did not cause the foreclosure crisis. Irresponsible, fast profit, subprime lending did. Most of this abusive and irresponsible lending occurred outside of the regulated institutions as subprime lenders rushed in to take advantage of a vacuum created by the mainstream lenders. It is important that a stronger, modernized CRA create the incentives for good money to chase out bad money in low-income communities.

The new rules should not abandon CRA's important role in fostering homeownership for low-income families and low-income communities. Instead, the new rules should reinforce CRA's historical links to responsible, sustainable homeownership programs. There is significant experience with low-income homeownership models that include well underwritten loans and counseling support for borrowers. These approaches – often supported through CRA investments and loans – held up well through the crisis. The new CRA rules should continue to reward the introduction of innovative single-family purchase money mortgage products and encourage financial institution experimentation with new approaches and products that expand access to credit and opportunities including lease-purchase models and shared equity mortgages. These innovative tools are especially needed now as communities work to reposition and sell the foreclosed properties that plague many neighborhoods.

The rules should strengthen the role of those housing counselors who serve as trusted advisors to low-income and less sophisticated borrowers. A strong national housing counseling network can help guard against inappropriate lending creeping back into the system in the future. Specifically, the new rules could support housing counseling by revising the calculation of the services test to diminish the importance of branch locations and emphasizing counseling as an important community service.

Closing Remarks

We are writing today with a certain sense of urgency. In the midst of an economic downturn, the challenges in many communities have reached crisis proportions. While we realize that many of the proposed changes to CRA will require careful consideration before implementation, it is also the case that there are many things that the regulators could do today that would improve the climate for safe and responsible investments in low-income communities. A renewed attention to CRA requires both immediate and longer-term action. We urge you to sort through the many good ideas you have gathered throughout this summer's hearing process and implement those that can have a more immediate impact through expedited rule-making.

In closing, we want to reiterate our strong commendation to you for undertaking this important exercise. We hope these comments are useful in your deliberations and we thank you, in advance, for your consideration of these remarks. If you have any questions at all about these comments or would like any additional information or analysis from our organizations, please do not hesitate to contact our senior vice president for policy, Paul Weech, at 202-737-5973 or pweech@sahfnet.org.

Sincerely,

Thomas Bledsoe	Bill Kelly
President and CEO	President
Housing Partnership Network	Stewards of Affordable Housing for the Future