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Docket No. R–1769
RIN 7100–AG29
Submitted by Electronic Delivery: regs.comments@federalreserve.gov

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RIN 3064-AF81
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Docket ID OCC-2022-0002
Submitted by Electronic Delivery: https://regulations.gov

RE: Community Reinvestment Act
Joint Notice of Proposed Rulemaking; Request for Comment

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I appreciate the opportunity to provide comments in response to the Joint Notice of Proposed Rulemaking ("proposed rule" or "NPR"); Request for Comment issued by the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Insurance Deposit Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) regarding the Community Reinvestment Act. The original purpose of the Community Reinvestment Act ("CRA" or "the Act"), to encourage banks to meet the credit needs of the communities in which they are located, including low- and moderate-income neighborhoods consistent with the safe and sound operation of the bank, is as essential today as it was in 1977 when CRA was first enacted. However, as the financial services industry evolves so does the need for new approaches to meet the Act's statutory intent.

NAHB agrees it is important to update and modernize the regulation to more effectively meet the needs of low- and moderate-income families and communities and address inequities in access to credit and other financial services.

NAHB is a Washington DC-based trade association representing, among others, companies involved in the development and construction of for-sale single-family homes, including homes for first-time and low- and moderate-income home buyers, as well as the production and management of affordable multifamily housing. The ability of the home building industry to meet the demand for housing, including addressing affordable housing needs, is facilitated through CRA-driven loans and investments.

NAHB commends the agencies for working together to offer a joint proposal for modernizing CRA. We believe a final rule supported by all three federal banking regulators is more likely to provide clarity, consistency and transparency for banks and interested stakeholders. While several of the proposed reforms are positive, it will take time to ascertain the full effect of such a comprehensive and complex revision of the current CRA rule. Our comments and recommendations address our overarching concern that this NPR misses opportunities to enhance CRA's impact on affordable housing and increase housing supply.

Background

Increasingly, policy makers, regulators, lenders, and advocates are focused on seeking equity in access to housing and credit, including mortgage financing. There is considerable concern that the legacy of discriminatory lending and systemic inequity continues today despite numerous laws passed in the 1960s and 1970s to eliminate discriminatory practices in the housing and credit markets. The Fair Housing Act, passed in 1968, prohibits discrimination in renting or buying a home. The Equal Credit Opportunity Act (ECOA), passed in 1974, prohibits creditors from discriminating against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act.

The Community Reinvestment Act was enacted in 1977 not only to encourage and incent banks to meet the banking needs of the entire communities in which they have physical facilities, including low- and moderate-income neighborhoods, but specifically to combat the practice of "redlining." Redlining referred to a lender's refusal to make loans or offer financial services in communities deemed risky or unfit for investment due to the income, racial, or ethnic composition of the area. The Act requires the Federal Reserve, FDIC and OCC (collectively the "federal banking regulators" or "agencies") to evaluate the CRA performance of the depository institutions each agency supervises. Based on an institution's performance in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, it is assigned a CRA rating and issued a public performance evaluation by the examiner from its federal banking regulator.

This NPR comes more than two years after the OCC issued a proposed rule jointly with the FDIC in December 2019 and a final rule in May 2020 without the agreement of FDIC. Four months later, in September 2020, the Federal Reserve issued an advance notice of proposed rulemaking to revise the CRA regulation but did not include OCC or FDIC. The OCC rescinded the May 2020 Rule in December 2021. This current proposed rule is welcomed by stakeholders who believe an updated CRA regulation on which the three federal banking regulators are aligned offers a significant opportunity to achieve more equity in the financial arena for low- and moderate-income consumers, minorities and small businesses.

<u>Proposed Rule</u>

The proposed rule does not change CRA's core goal to expand access to credit, investments and basic financial services to low- and moderate-income individuals and families and in low- and moderate-income income communities. The revisions proposed by the agencies are intended to ensure CRA is considering how technology advances have expanded business opportunities for financial institutions, the continued inequities among consumers and communities in availability of credit, investments and financial services, the value of minority, women-owned and community development financial institutions, and the increasing threat to financial institution of climate-related risks and natural disasters. The agencies have outlined the following primary objectives to achieving their goal of a modernized CRA rule:

1. **Expanding access to credit, investment, and basic banking services in low- and moderate communities**
2. **Expanding assessment areas to adapt to changes in the banking industry, including mobile and internet banking**
3. **Tailoring CRA rules and data collection to bank size and business models**
4. **Providing greater clarity, consistency, and transparency in the application of the regulation**
5. **Tailor performance standards to account for differences in bank size, business model and local conditions**
6. **Providing a list of CRA eligible activities focused on low- and moderate-income communities and underserved rural communities**
7. **Provide greater transparency on lending to communities of color**
8. **Incenting bank collaboration with Minority-owned Depository Institutions (MDIs), Woman-owned Depository Institutions (WDIs), Low-Income Credit Unions (LICUs) or Treasury Department-certified Community Development Financial Institutions (CDFIs)**
9. **Incenting bank lending, investment, and services in rural communities and Native lands.**
10. **Encouraging bank investments in disaster preparedness and climate resilience activities in low- and moderate-income neighborhoods**

Expanded Assessment Areas

With the increasing use of technology, including mobile and internet banking, by consumers and banks to conduct financial transactions, the agencies have determined that CRA evaluations should reflect a bank's use of technology to meet the banking needs of communities outside traditional Facility-based assessment areas. The NPR would redefine assessment areas to capture a bank's activities in all areas in which it operates. CRA would continue to emphasize the importance of facility-based assessment areas where a bank has its main office, operates branches, has deposit-taking remote service facilities, i.e., ATMs, as well as surrounding areas in which it does a substantial portion of its lending activity. Large banks would be required to delineate Facility-based assessment areas consisting of entire counties or metropolitan statistical areas (MSA) including contiguous counties rather than portions of these geographies. Facility-based assessment areas for Intermediate and Small banks may be partial county designations, consistent with current practice and reflecting their smaller service areas. Large banks also would be subject to requirements in Retail Lending assessment areas outside Facility-based assessment areas that would consist of MSAs or nonmetropolitan areas of states in which a bank has lending concentrations of home mortgage and/or small business loans equal to at least 100 home mortgage loan originations or at least 250 small business loan originations in each of the preceding two years.

To ensure retail lending evaluations are comprehensive, both Large banks and some Intermediate banks also would be evaluated on lending in "outside retail lending areas," i.e., retail loans made outside of the Retail Lending assessment areas and Facility-based assessment areas.

CRA Tests Based on Bank Size

The NPR would set thresholds for defining Large, Intermediate and Small banks and apply different evaluation frameworks to each. Small banks would be those having average quarterly assets, computed annually, of less than $600 million in either of the prior two calendar years. Only a lending test would be applied to Small banks and they could choose to be evaluated either under the existing regulation's small bank lending test or opt into the new proposed Retail Lending Test. Intermediate banks would be those having average quarterly assets, computed annually, of at least $600 million and less than $2 billion in both of the prior two calendar years. Two tests would be applied to Intermediate banks. Intermediate banks would be evaluated under the new proposed Retail Lending Test and could choose to be evaluated either under the existing regulation's community development test or opt into the new proposed Community Development Financing Test. Large banks would be those having average quarterly assets, computed annually, of $2 billion or greater in both of the prior two calendar years. Four tests would be applied to Large banks: Retail Lending Test, Retail Services and Products Test, Community Development Finance Test and Community Development Services Test. The NPR proposes that certain provisions of the Retail Services and Products Test and Community Development Services Test would apply only to Large banks that had average quarterly assets, computed annually, of over $10 billion in the prior two calendar years.

The agencies propose to assign conclusions on the Retail Lending Test for Large and Intermediate banks at the state and multistate MSA levels based on the conclusions reached at individual Facility-based and Retail Lending assessment areas, as applicable. The agencies also propose to assign conclusions on the Retail Lending Test at the institution level by similarly combining conclusions from all of a bank's Facility-based and Retail Lending assessment areas, as applicable, as well as the bank's retail lending performance outside of its assessment areas.

CRA Performance Standards Tailored to Differences in Bank Size, Business Model and Local Conditions

<u>Retail Lending, Services and Products Tests</u>
Retail Lending Test*:* Large and Intermediate banks subject to the Retail Lending Test would be evaluated under two metrics. 1) Retail Lending Volume: A bank's retail loans in each delineated Facility-based assessment area relative to its deposit base in that assessment area would be compared to that of other banks in the area. Retail loans would include closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans and automobile loans. 2) Geographic and Borrower Distribution: Each major product line would be separately evaluated and have separate metrics for lending in low-income and moderate-income census tracts, lending to low- and moderate-income borrowers and lending to small businesses and small farms in a bank's Facility-based assessment areas, Retail Lending assessment areas (Large banks only) and outside retail lending areas. Closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans and automobile loans would be major product lines if the product meets a threshold of 15 percent of the dollar value of a bank's retail lending. The performance metrics would be compared to thresholds that "differ across assessment areas and across different business cycles based on local data that reflects credit demand and lending opportunities."

Retail Services and Products Test*:* All Large banks would be evaluated on branch availability and services and responsiveness of credit products and programs. Branch availability and services include branch openings and closings, branch hours of operation and services responsive to the needs of low-and moderate-income individuals and in low- and moderate-income communities, including remote service facility availability, i.e., ATMs. Credit products and programs include loans and deposit products that have features and cost characteristics responsive to the needs of low-and moderate-income individuals, small and very small businesses and farms and are conducted in cooperation with MDIs, WDIs, LICUs, or Treasury Department-certified CDFIs in a safe and sound manner.

Community Development Financing and Services Tests
Community Development (CD) Financing Test*:* Large banks, as well as any Intermediate Banks choosing to be evaluated under the CD Financing Test, will be evaluated on how well they help meet the community development financing needs of the bank's Facility-based assessment areas, states, multistate MSAs, and institution level areas, by providing community development loans and community development investments. The proposed test consists of two parts: a community development financing metric and an impact review (see below.) The community development financing metric would measure the aggregate dollar amount of a bank's community development loans and investments relative to its deposit base, rather than a separate and specific investment test.

Community Development Services Test: The CD Services Test evaluates a Large bank's record of helping to meet the community development services needs of the bank's Facility-based assessment areas, states, multistate MSAs, and institution level areas and evaluates the impact and responsiveness of the activities. CD services are activities that have the primary purpose of community development, are volunteer activities performed by bank board members or employees of the bank, and are related to the provision of credit, deposit, and other personal and business financial services. In non-metropolitan areas, CD services would include activities unrelated to the provision of financial services.

Impact Review: The impact review would be a qualitative consideration of how a bank's activities respond to CD Financing and CD Services needs and opportunities. Factors to be considered in the impact review include whether activities (i) serve persistent poverty counties, (ii) serve geographic areas with low levels of community development financing, (iii) serve low-income individuals and families, (iv) support small businesses or small farms, (v) benefit Native American communities, (vi) result in a new community development financing product or service, (vi) support an MDI, WDI, LICU or Treasury Department-certified CDFI, (vii) facilitate affordable housing in High Opportunity Areas, (viii) are qualifying grants or donations, (ix) reflect bank leadership through multi-faceted or instrumental support, or (x) result in a new community development financing product or service for low- and moderate-income individuals and families. A numeric threshold for measuring a bank's CD financing metric would be established.

List of CRA-Eligible Community Development Activities

An illustrative, but non–exhaustive list of community development activities eligible for CRA credit and the development of a pre-approval process allowing banks to receive feedback in advance on whether proposed activities would be considered eligible for CRA credit would be developed. Only banks evaluated under CRA would be permitted to submit proposed activities to the agencies for feedback to limit the requests received.

CRA Enhancements to Support MDIs, WDIs, LICUs and CDFIs

As noted in the proposed rule, MDIs, WDIs, LICUs and CDFIs have a mission of meeting the credit needs of low- and moderate-income and other underserved individuals, communities, and small businesses, which is highly aligned with CRA's core purpose. In addition, these organizations often have in-depth knowledge of local community development needs and opportunities, allowing them to conduct highly responsive activities. Community development activities will include activities undertaken by MDIs, WDIs, LICUs and CDFIs. The agencies propose investments, loan participations, and other ventures undertaken by any bank, including by MDIs and WDIs, in cooperation with other MDIs, other WDIs, or LICUs, would be considered eligible for CRA. The agencies also are considering whether activities undertaken by an MDI or WDI to promote its own sustainability and profitability should qualify for consideration. The NPR clarifies that all activities with Treasury Department-certified CDFIs would be eligible CRA activities. Currently, examiners may require extensive documentation that a CDFI assists low- income populations, even though CDFI certification by the Treasury Department is an indication of having a mission of community development.

Encouraging Bank Investments in Disaster Preparedness and Climate Resilience Activities

Current guidance does not explicitly include activities related to helping low- or moderate-income individuals, low- or moderate-income communities, small businesses, or small farms prepare for disasters or build resilience to future climate-related events. The proposed modifications to the definition of community development activities include certain "climate resiliency activities" in low- and moderate-income neighborhoods that could qualify for CRA consideration.

The NPR considers disaster preparedness and climate resiliency activities as activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. Disaster preparedness and climate resiliency activities are those conducted in targeted census tracts that meet the following criteria: (i) benefit or serve residents, including low- and moderate-income residents, in one or more of the targeted census tracts; (ii) do not displace or exclude low- and moderate-income residents in the targeted census tracts; (iii) must be conducted in conjunction with a federal, state, local, or tribal government plan, program, or initiative focused on disaster preparedness or climate resiliency that includes an explicit focus on benefitting a geographic area that includes the targeted census tracts.

Assigned Conclusions, Ratings and Weighting of the Retail and CD Tests

The proposed ratings approach is intended to increase clarity, consistency, and transparency and is grounded in the bank's performance in local communities. The proposed ratings approach would:

- Utilize a weighted average-approach to translate performance in all assessment areas into ratings, with weighting based on a hybrid share of loan and deposit dollars;
- Implement a standardized and transparent process for performance test conclusions at each geographic level (state, multistate MSA, and institution);
- Provide that discriminatory or illegal practices could adversely affect CRA rating.

The proposal distinguishes between *conclusions*, which generally refers to the bank's performance on a particular test at the assessment area, state, multistate MSA or institution level, and *ratings*, which refers to a bank's overall CRA performance across tests at the state, multistate MSA and institution levels. The agencies propose five categories of performance test conclusions (outstanding, high satisfactory, low satisfactory, needs to improve and substantial noncompliance). For ratings, the agencies would continue to use the four statutory categories (outstanding, satisfactory, needs to improve and substantial noncompliance).

The proposed ratings approach would combine a bank's *conclusions* for each applicable test according to a specified set of weights tailored to Large banks, Intermediate banks, and Wholesale and Limited Purpose banks. The proposal would apply this weighting approach for ratings at the state, multistate MSA, and institution level.[1]

Under the proposed rule, for Large banks, retail activities count for a combined 60 percent (45 percent Retail Lending Test + 15 percent Retail Services and Products Test) of the overall CRA rating. CD activities count for a combined 40 percent (30 percent CD Financing Test + 10 percent CD Services Test).

Affordable Housing Provisions

Affordable Housing Definition

The agencies propose a definition for affordable housing that includes four components:

(i) Affordable rental housing developed in conjunction with Federal, state, and local government programs;
(ii) Multifamily rental housing with affordable rents;
(iii) Activities supporting affordable low- or moderate-income homeownership; and
(iv) Purchases of mortgage-backed securities that finance affordable housing.

The proposed definition is intended to clarify the eligibility of affordable housing as well as to recognize the importance of promoting affordable housing for low- or moderate-income individuals.

Government Housing Programs

The agencies propose that a rental housing unit would be considered affordable housing if it is purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a Federal, state, local, or tribal government affordable housing plan, program, initiative, tax credit, or subsidy with a stated purpose or the bona fide intent of providing affordable housing for low- or moderate-income individuals. To qualify under the proposed definition, a government-related affordable housing plan, program, initiative, tax credit, or subsidy would need to have a stated purpose or bona fide intent of supporting affordable rental housing for low- or moderate-income individuals. The agencies propose this requirement to emphasize affordable housing activities benefitting low- or moderate-income individuals.

The agencies are not proposing a separate affordability standard for this prong of the definition and would rely upon the affordability standards set in each respective government affordable housing plan, program, initiative, tax credit, or subsidy, provided that the program has a stated purpose or bona fide intent of providing rental housing that is affordable to low- or moderate-income individuals.

Pro Rata Credit for Qualified Affordable Housing

The agencies propose that affordable housing developed in conjunction with Federal, state, local, or tribal government programs that have a stated purpose or bona fide intent to promote affordable housing would be

[1] Appendices C and D provide details on how to determine a bank's conclusions and ratings.

considered even if fewer than the majority of the beneficiaries of the housing are low- or moderate-income individuals. In such cases, the activity would be considered to have a primary purpose of affordable housing only for the percentage of total housing units in the development that are affordable. The pro-rata dollar amount of the total activity would be based on the percentage of units set aside for affordable housing for low- or moderate-income individuals.

The agencies propose a different approach for an activity that involves Low-income Housing Tax Credits (LIHTCs). Specifically, a bank would receive consideration for the full amount of the loan or investment for a LIHTC-financed project, regardless of the share of units that are considered affordable.

Naturally Occurring Affordable Housing

The agencies also propose a specified set of standards for naturally occurring affordable housing (NOAH) to qualify for CRA affordable housing consideration. NOAH refers to affordable low- or moderate-income multifamily rental housing that does not involve a government program, initiative, tax credit, or subsidy. To be CRA eligible, the proposal would require that the rent for the majority of the units in a multifamily property could not exceed 30 percent of 60 percent of the area median income (AMI) for the metropolitan area or nonmetropolitan county and these rents must reflect the rents used by the bank to underwrite the property, including post-construction or post-renovation monthly rents. A second proposed qualification stipulates the housing would also need to meet at least one of the following criteria in order to increase the likelihood that the units benefit low- or moderate-income individuals:

- (i) The housing is located in a low- or moderate-income census tract;
- (ii) The housing is purchased, developed, financed, rehabilitated, improved, or preserved by a non-profit organization with a stated mission of, or that otherwise directly supports, providing affordable housing;
- (iii) There is an explicit written pledge by the property owner to maintain rents affordable to low- or moderate-income individuals for at least five years or the length of the financing, whichever is shorter; or
- (iv) The bank provides documentation that a majority of the residents of the housing units are low- or moderate-income individuals or families, for example documentation that a majority of residents have Housing Choice Vouchers.

NAHB Comments and Recommendations

NAHB members are interested in CRA because it motivates banks to participate in activities that support access to financing for home builders, developers and remodelers, access to affordable mortgage credit for low- and moderate-income families and families in low- and moderate-income census tracts, the production of affordable owner occupied and rental housing and community and economic development. For CRA to remain relevant the regulation must be revised to account for current banking practices, emerging public policy interests, and increased data availability. Significant developments in all these areas indicate the timing is appropriate and opportune for updated CRA requirements and new approaches for evaluating a bank's CRA performance. While CRA must continue to meet the fundamental intent of the original rule, a revised rule should incorporate enough flexibility to evolve as the banking industry seeks to address the evolving needs of consumers and communities without being overly prescriptive and possibly being counterproductive.

Acquisition, Development and Construction Financing should be included in the Retail Lending Test to Increase Housing Supply

NAHB believes the NPR misses the opportunity to address one of the most important issues the housing industry is facing right now and is expected to be facing for the next few years. The proposal does not incent banks to support acquisition, development and construction (AD&C) financing to help home builders and developers increase the supply of single-family homes.

Last year, Freddie Mac estimated that the U.S. housing market was short 3.8 million homes at the end of 2020. The shortage especially has hurt first-time buyers. According to Freddie Mac's data, in the span of five decades entry level homes construction fell from 418,000 units per year in the late 1970s to 65,000 in 2020.[2] Access to construction financing is a key ingredient for increasing housing supply.

NAHB recommends the agencies include construction loans to home builders and borrowers for the construction of 1-4 family residential properties in the category of Retail Loans when assessing the volume of retail lending for Large, Intermediate and Small banks. We believe this would be an incentive for banks to make more construction loans. This incentive is important because commercial banks and thrift institutions are the primary source of financing for small- to mid-sized builders and developers. According to NAHB's Quarterly Survey on AD&C Financing, 85 percent of survey respondents indicated that commercial banks and thrift institutions were the primary source of credit for single-family pre-sold construction, 77 percent for single-family speculative construction, 71 percent for land development activities and 52 percent for land acquisition. The percentages for construction financing have been consistent since NAHB began the survey in 2005, which illustrates the outsized role banks have in the creation of new housing supply.

Construction Loans to builders or consumers should not be limited to Low- and Moderate-Income borrowers under the Retail Lending Test

NAHB believes the geographic distribution metric of a bank's Retail Lending Test should count construction loans to builders and borrowers of any income level as long as the homes being built are located within a low-income or median-income census tract of an assessment area. We believe this is practical because increased housing supply will support the economy in low-income and median-income census tracts regardless of the income of the homeowners.

All new housing compliments efforts to draw education, healthcare, childcare and other services to a community by ensuring community members have safe, decent housing opportunities. The economic and social impact of new housing development cannot be overstated as a contribution to community development. Financing to support new housing construction should be considered CRA-eligible.

NAHB estimates that, on a national level, building an average single-family home adds 2.90 jobs and $129,647 in local taxes.

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[2] *One of the Most Important Challenges our Industry will Face: The Significant Shortage of Starter Homes*, April 15, 2021. Sam Khater, Vice President and Chief Economist, Economic & Housing Research, Freddie Mac

Development and Construction Loans to for-profit entities that create new, for-sale affordable housing should be eligible for CRA credit under the Community Development Financing Test

Under the current CRA rule, activities that support affordable housing can be mortgage loans or other activities. Single-family mortgage loans qualify for CRA credit under the lending tests while activities that support the construction of affordable housing or other activities to promote affordable homeownership for low- and moderate-income individuals are considered affordable housing under the community development definition. The NPR notes that it is difficult to qualify new construction homes as affordable housing as there are no consistent standards in place to determine that single-family for-sale housing is affordable and likely to benefit low- and moderate-income individuals. Further, the NPR states it is difficult for certain single-family projects to qualify for CRA credit unless they are developed in partnership with a government program or non-profit organization that has a mission of providing affordable housing to low- and moderate-income individuals.

NAHB wants to ensure development and construction financing to for-profit home builders and developers for 1-4 family residential properties can receive CRA credit for Community Development Financing if the homes are affordable to low- and moderate-income borrowers and located in low- and moderate-income census tracts.

The economic and social benefits of new housing development is the same whether it is developed and constructed by a non-profit organization or a for-profit business. Under both scenarios, affordable new home construction should be considered CRA-eligible Community Development Financing.

NAHB recommends the agencies define affordability for new construction 1-4 family residential properties as affordable to households earning 80 percent or less of the area median income (AMI) and located in low- or moderate-income census tracts of a bank's assessment areas.

Revise the proposed rule to incent banks to maintain or increase investments in LIHTCs

Incentives include, but are not limited to:

- Either maintaining the current CRA investment test or, creating a new investment test within the CD Financing test;
- Allowing banks to receive CRA credit for LIHTC investment outside of the facility-based assessment areas (as proposed);
- Providing full CRA credit for LIHTC investment (as proposed); and
- Adding LIHTC as an Impact Review factor.

<u>Restore the CRA Investment Test or include a CD Investment Test within the CD Financing Test separate from CD Loans</u>

The LIHTC program is the largest and most successful federal production program for affordable multifamily housing. It is a public-private partnership that represents exactly the type of community investment CRA should continue to incent. The National Council of State Housing Agencies estimates the LIHTC Program has produced more than 3.6 million affordable apartments[3] since it was created in 1986. As LIHTC properties must generally remain affordable for 30 years or longer, they provide long-term rent stability for low-income households.

[3] "Housing Credit 2022 FAQs," National Council of State Housing Agencies. https://www.ncsha.org/wp-content/uploads/Housing-Credit-FAQs-2022.pdf (Accessed Aug. 1, 2022).

Consistent with CRA objectives, banks' LIHTC investments play an important role in revitalizing communities by generating significant economic activity. LIHTC construction creates well-paying construction jobs and generates tax revenue for local governments. Once built, these apartments require maintenance personnel, property management staff, and vendors to supply goods and services. Often, LIHTC developments become catalysts for neighborhood revitalization.

The CRA investment test has been an essential driver for LIHTC equity investments in affordable rental housing. More than three-fourths of LIHTC investment comes from banks, particularly large banks, that are incented by the current CRA investment requirements. Banks' LIHTC investments provide the equity that enables LIHTC project owners to maintain long-term affordable rents for low-income tenants.
Under the proposed CRA framework, both CD loans and CD investments are rolled into the CD Financing Test. NAHB is gravely concerned that eliminating the stand-alone CRA investment test for banks and evaluating a bank's CD Financing by combining CD investments with CD loans may shift banks' preferences for meeting their CRA obligations from LIHTC equity investments to CD loans.

NAHB strongly urges the agencies to ensure the incentives for banks to invest in LIHTC projects are maintained in the revised CRA regulations. As proposed, we believe demand for LIHTCs almost certainly will be weakened, leading to reduced prices and less upfront equity available to construct or preserve this affordable housing. Softer demand and price reductions for the housing credits could jeopardize the development of future units by making the projects financially infeasible. Less investor equity translates into fewer housing units.

Expanded assessment area for CRA credit for Community Development activities would be beneficial

NAHB appreciates and supports the agencies' proposal to expand the assessment area for which a bank can receive CRA credit for CD activities, including loans, investments and services, conducted anywhere nationwide outside Facility-based assessment areas. NAHB's comments on previous CRA modernization proposals advocated for allowing CRA credit outside of traditional facility-based assessment areas to address the problem many LIHTC property owners face when their apartments are in "CRA deserts" that lack investment outside of banks' traditional assessment areas.

Full CRA credit for projects regardless of the number of affordable units would be positive

NAHB appreciates that the agencies will consider the full amount of the loan or investment for a LIHTC-financed project as eligible for CRA credit regardless of the number of affordable units in the project. This decision is consistent with current guidance adopted in 2010 that clarified projects developed with LIHTCs had a bona fide intent of providing affordable housing.

Add LIHTC Investment as an Impact Review Factor

As previously discussed, the LIHTC program has a successful track record of facilitating new production and preservation of high-quality affordable rental housing for low- and moderate-income residents. It also generates employment and economic activity. LIHTC investment is the very type of program CRA should incent.

NAHB strongly urges the agencies to include all of these LIHTC equity investment incentives in the final rule.

Rental Housing financed with a government program should be considered affordable housing

NAHB supports considering a rental housing unit as affordable housing if it is purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a government program.

NAHB agrees that the agencies should rely on the affordability standards set by the various government programs and refrain from proposing a separate affordability standard for this prong of the affordable housing definition. Applications for affordable housing programs at all levels of government are often highly competitive. The agencies should defer to the respective federal, state or local government that approved the borrower's application and enforces compliance for the program. Adding additional standards or income verification mandates for this prong of the affordable housing definition is ill-advised. Extra standards would be redundant, add unnecessary burdens to banks wanting to make such loans, and further complicate the financing process for borrowers whose projects were already extensively reviewed and underwritten to ensure affordability for low-income and/or moderate-income tenants.

Revise the definition of "naturally occurring affordable housing" for purposes of CRA affordable housing consideration

NAHB strongly recommends increasing the affordability standard for NOAH rents from 30 percent of 60 percent AMI to 30 percent of 80 percent AMI. It is extremely difficult to provide affordable housing without a rental subsidy. Allowing more economic diversity among the tenants with the higher affordability standard will help facilitate financial sustainability for the property, and as the agencies noted, is more consistent with other properties using an 80 percent AMI affordability standard where many, but not all, of the units are occupied by LMI households.

The agencies should strike or revise the second proposed criterion of NOAH, which confers CRA eligibility for a NOAH property with affordable rents if the housing is purchased, developed, financed, rehabilitated, improved, or preserved by any non-profit organization with a stated mission of, or that otherwise directly supports, providing affordable housing. NAHB strongly believes that for-profit and non-profit housing providers should compete on a level playing field. The agencies have provided no solid rationale for conferring preferential treatment on non-profit housing providers solely on the basis of their non-profit tax status. NAHB strongly urges the agencies to either remove this criterion or revise it to include both non-profit and for-profit affordable housing providers.

NAHB is concerned about the feasibility and workability of the fourth proposed criterion of NOAH, which calls for the bank to provide documentation that the majority of the housing units are occupied by low- or moderate-income individuals or households. The agencies correctly recognize that banks will be challenged to obtain this documentation. NAHB is concerned that the unintended consequence of this option could lead banks seeking CRA credit to impose new burdensome administrative requirements on multifamily borrowers.

The weighting for rating the Retail and Community Development Performance Standards for Large Banks should be revised to provide an equal emphasis on the Retail Lending and Community Development Tests

NAHB strongly urges the agencies to weight Retail and Community Development Performance Standards for Large Banks at 50 percent and 50 percent respectively, consistent with the agencies' proposed weighting for Intermediate Banks. NAHB has considerable concern that the current 60 / 40 percent weighting in favor of retail activities will drive Large banks' CRA ratings, and therefore, their compliance strategies. Important CD activities, particularly LIHTC equity investments, are disincented under the current 60 / 40 weight in favor of retail activities. The unintended consequence of this weighting likely would reduce the demand for LIHTCs, which in turn would reduce the equity apartment owners' need to maintain long-term affordability for low-income tenants and may make some projects infeasible.

Change the thresholds to define Small, Intermediate and Large Banks

Currently, banks under $346 million are evaluated as Small Banks and subject only to the existing Lending Test for CRA; banks with assets from $346 million to $1.384 billion are evaluated as intermediate small banks and are subject to the existing Lending Test and Community Development Test. Banks with more than $1.384 billion in assets are considered large Banks and are subject to the most stringent CRA tests – Lending Test, Service Test and Investment Test.

The thresholds proposed in the NPR for delineating Small, Intermediate and Large Banks are considerably higher and would require banks up to $600 million to follow Small Bank requirements. Banks up to $2 billion would be required to follow Intermediate Bank requirements.

NAHB suggests the agencies consider modifications to the bank thresholds. Specifically, we recommend that banks up to $3 billion be considered Small Banks and therefore subject to either the current CRA lending test or allowed to opt into the proposed Retail Lending Test. Under numerous federal banking regulations, the federal agencies have made concessions to reduce the regulatory compliance burden for community banks. For example, banks with assets under $10 billon may adopt a simple leverage ratio to measure capital adequacy instead of a risk-based capital regime; banks with assets under $5 billion have reduced call reports; and banks with assets under $3 billion can qualify for an 18-month examination cycle instead of a 12-month examination cycle. NAHB believes the compliance burden of the proposed NPR would be significant for smaller lenders and more should have the opportunity to opt into the new requirements rather than be required to comply.

Conclusion

Thank you for your consideration of NAHB's comments. For more information, please contact Rebecca Froass, Director of Financial Institutions and Capital Markets, at rfroass@nahb.org or Michelle Kitchen, Director of Multifamily Finance, at mkitchen@nahb.org.

Sincerely

[redacted]

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