AFFORDABLE
HOUSING
TAX CREDIT
COALITION

Federal Deposit Insurance Corporation
James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
550 17th Street, NW
Washington, DC 20429

Re: Community Reinvestment Act RIN 3064-AF81

The Affordable Housing Tax Credit Coalition (AHTCC) appreciates the opportunity to comment on the Community Reinvestment Act (CRA) Notice of Proposed Rulemaking (NPR) issued by the Federal Reserve Board of Governors (Federal Reserve), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC) in May 2022.[1] Established in 1988, the AHTCC is a leading trade association in the affordable housing industry, comprised of over 230 organizations and businesses that advocate for affordable housing financed using the Low-Income Housing Tax Credit (Housing Credit). AHTCC members represent the full spectrum of stakeholders involved in providing affordable housing, including syndicators, developers, investors, state allocating agencies, and affiliated businesses and non-profits. Together, AHTCC members have financed or developed well over half of our nation's 3.6 million Housing Credit apartments.

The Housing Credit finances virtually all new affordable housing, and CRA motivates the vast majority of these investments. Total Housing Credit investment reached $22.4 billion in 2021, an estimated 84.8% – or $19 billion – of which came from banks motivated by CRA requirements.[2] Housing Credit pricing, which determines the amount of equity invested into Housing Credit properties, can vary by $0.20 for each $1.00 of Housing Credit between areas with the highest CRA demand and those with the lowest.[3] In other words, properties with the least CRA demand receive 20% less equity for the same amount of Housing Credits as properties with the highest CRA demand, rendering many properties in low-demand areas financially infeasible. With such a significant portion of Housing Credit investment impacted by CRA, and to such a large extent, our nation's ability to address the growing affordable housing crisis is closely tied to CRA regulations.

As the affordable housing crisis continues to worsen, the regulations impacting the Housing Credit must be stronger than ever, but the AHTCC is concerned that aspects of the interagency NPR may significantly reduce the motivation for banks to invest in the Housing Credit. Most notably, the AHTCC is concerned about (1) the proposed removal of the separate Investment Test, which currently drives Housing Credit investment, and 2) the higher weighting of the Retail Test over the Community Development Test, which may reduce the incentive to perform highly on the Community Development Test. To help ensure that CRA modernization does not significantly reduce the nation's ability to produce and preserve affordable housing by diminishing the incentive to invest in the Housing Credit, the AHTCC recommends the following changes be incorporated into the final CRA framework:

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[1] Note: Our comments do not represent the views of any individual member organization but are supported by the AHTCC as a coalition in our mission to support affordable housing.

[2] CohnReznick, "Housing Tax Credit Monitor," (2022). *Retrieved from: https://www.cohnreznick.com/-/media/resources/2022_housing-tax-monitor_march_2022.pdf*

[3] CohnReznick, "Housing Tax Credit Monitor," (2022). Retrieved from: *https://www.cohnreznick.com/-/media/resources/2022_housing-tax-monitor_august_2022.pdf*

Key Recommendations

1) Promote community development by altering the evaluation structure and rating requirements
    a. Evenly weight the Retail and Community Development Tests (page 11)
    b. Modify the community development subtests, for which we propose two alternatives (page 12):
        i. Include an Investment Subtest weighted at 20%, a Lending Subtest weighted at 25%, and a Services Subtest weighted at 5%.[4]
        ii. Weight the proposed Community Development Financing Subtest at 35% and proposed Community Development Services Subtest at 15%, and modify the Community Development Services Subtest to include a responsiveness assessment.
    c. Require at least a Low Satisfactory Community Development Test conclusion for a Satisfactory rating (page 14)
2) Incentivize equity investment through an institution-level metric and benchmark (page 14)
3) Identify reductions in institution-level equity investment volume (page 16)
4) Incentivize Housing Credit investments through the impact review, particularly by including the Housing Credit as an impact review factor (page 16)

Additional Recommendations

1) Refrain from giving partial consideration for other community development activities *[Questions 1, 17]* (page 19)
2) Establish guardrails for consideration of NOAH housing *[Question 5-6]* (page 19)
3) Limit churning of Mortgage-Backed Securities *[Question 9]* (page 20)
4) Include multifamily lending in the Community Development Test only *[Questions 60, 71]* (page 20)
5) Continue recognizing Allocation Letters to allocate consideration for funds with multiple investors *[Questions 117-118]* (page 21)
6) Provide comprehensive evaluator training with a focus on community development (page 22)[5]

The AHTCC appreciates the work of the Federal Reserve, OCC, and FDIC to issue an interagency proposal with the goal of expanding access to investment, credit, and basic banking services in low- and moderate-income (LMI) communities and for LMI individuals. In pursuit of this goal, the banking agencies should ensure that CRA continues to provide at least as strong of an incentive to invest in the Housing Credit as it does today.

NATIONWIDE IMPACT OF THE HOUSING CREDIT

Our nation's primary tool to finance the development of affordable rental housing, the Housing Credit has played an integral role in the production and preservation of 3.6 million affordable homes across the

[4] Note: For clarity, throughout this document we refer to the Community Development Test and Retail Test as "Tests," and the tests within those tests as "Subtests."

[5] Note: See Appendix on page 23 for Table of Contents.

country since its inception in 1986.[6] As a result, over 8 million low-income households, including veterans, seniors, low-wage workers, people with disabilities, and people who were formerly homeless, have benefited from safe, decent, and affordable rental housing.[7] The households served by the program have a median annual income of just $18,200 and over half of households make at or below 30% of Area Median Income (AMI).[8] If forced to pay market-rate rent, many would be just one unforeseen expense away from being unable to pay rent and facing eviction.

Living in affordable housing contributes to improved physical, mental, and economic benefits—the housing stability that is provided with having affordable rents helps low-income individuals gain and keep employment, while also leading to better health outcomes and reductions in domestic violence and substance abuse.[9] Housing Credit properties are also associated with educational success; for each additional year a child lives in a Housing Credit property, his or her chance of attending college for four years or more increases by 4.3%, and future earnings increase by 5.7%.[10]

The Housing Credit is also transformative for the broader communities in which properties are located. Since its inception, Housing Credit development has supported nearly 5.7 million jobs, and generated $223 billion in tax revenue and $643 billion in wages and business income.[11] By devoting less income to rent, residents have more to spend in support of the local economy – one study shows that Housing Credit properties boost local purchasing power by one-third, contributing to the retail vitality of the neighborhood and the availability of goods and services to residents.[12] Another study found that the introduction of affordable housing into a low-income neighborhood is also associated with lower crime rates, decreased segregation, and a 6.5% increase in the area's property values.[13] Additional regional studies have found that the introduction of affordable housing – and Housing Credit properties in particular – increases property values.[14]

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[6] National Council of State Housing Agencies, "State HFA Factbook: 2019 NCSHA Annual Survey Results," (2020). *Retrieved from:* https://www.ncsha.org/resource/state-hfa-factbook/

[7] ACTION Coalition, "The Low-income Housing Tax Credit's Impact in the United States," (2020). *Retrieved from:* https://static1.squarespace.com/static/566ee654bfe873621 1c559eb/t/5f49371ab849107398486479/1598633756198/ACTION-NATIONAL-2020.pdf

[8] U.S. Department of Housing and Urban Development, "2019 LIHTC Tenant Tables," (2021). Retrieved from: *https://www.huduser.gov/portal/sites/default/files/pdf/LIHTC-TenantReport-2017.pdf*

[9] Center on Budget and Policy Priorities, "Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children," (2015). Retrieved from: *https://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf*

[10] Elena Derby, "Does Growing Up in Tax-Subsidized Housing Lead to Higher Earnings and Educational Attainment?," (2020). Retrieved from: *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3491787*

[11] ACTION Coalition, "The Low-income Housing Tax Credit: Impact in the United States," (2022). Retrieved from: *https://rentalhousingaction.org/wp-content/uploads/2021/10/ACTION-NATIONAL-2021-NEW-LOGO-01-2.pdf*

[12] Enterprise Community Partners and Local Initiatives Support Corporation, "Affordable Housing for Families and Neighborhoods: The Value of Low-Income Housing Tax Credits in New York City," (2010). Retrieved from: *https://www.enterprisecommunity.org/download?fid=8099&nid=3831*

[13] Rebecca Diamond and Tim McQuade, "Who Wants Affordable Housing in their Backyard? An Equilibrium Analysis of Low Income Property Development," (2015). Retrieved from: *https://www.journals.uchicago.edu/doi/abs/10.1086/701354?af=R&mobileUi=0&*

[14] Richard Voith, Jing Liu, et. al., "Effects of concentrated LIHTC development on surrounding house prices," (2022). Retrieved from: *https://www.sciencedirect.com/science/article/pii/S1051137722000134?via%3Dihub*

Despite the Housing Credit's success, the need for affordable housing continues to outpace supply, particularly because the development of new affordable housing does not happen naturally in the market. According to the Harvard Joint Center for Housing Studies, typical "new construction adds supply primarily at the upper end of the market," and "chronic labor shortages and restrictive local land use regulations, among other factors, make it difficult for developers to build modestly priced housing."[15] Building material prices alone have increased over 20% in the past year, adding to the cost of construction and resulting rents.[16] Meanwhile, real estate trends show a rapid decline in the number of low-cost rentals. Between 2000 and 2018, the proportion of low-cost rentals declined from 36% of the total rental stock to just 23%.[17]

The increasingly short supply of affordable housing has resulted in high and worsening cost burdens for families. From 2009 to 2020 (the latest year for which data is available), nearly 1 in 4 renter households – over 10 million households – paid more than 50% of their income on rent.[18] With inflation up over 9% in the past year and rents up 15%, household budgets are being squeezed further – for very low income households, this burden can make paying for essentials, like rent and food, impossible.[19] Late January 2022 data showed that 20 percent of households with incomes below $50,000 were behind on rent, and 20 percent sometimes or oftentimes did not have enough to eat.[20]

Today, Americans – especially LMI households – urgently need more affordable housing. Maintaining a strong and stable Housing Credit market is imperative for the success of nationwide efforts to increase affordable housing supply, and to deliver the economic, health, wellbeing, educational, and broader community and societal benefits it affords.

Christina Plerhoples Stacy and Christopher Davis, "Assessing the Impact of Affordable Housing on Nearby Property Values in Alexandria, Virginia," Retrieved from: https://www.urban.org/research/publication/assessing-impact-affordable-housing-nearby-property-values-alexandria-virginia

[15] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2022," (2022). Retrieved from: https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf

[16] National Association of Home Builders, "Building Materials Prices Rise Further," (2022). Retrieved from: https://eyeonhousing.org/2022/04/building-materials-prices-rise-further/

[17] Alexander Hermann, "The Continuing Decline of Low-Cost Rentals," (2020). Retrieved from: https://www.jchs.harvard.edu/blog/the-continuing-decline-of-low-cost-rentals

[18] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2022," (2022). Retrieved from: https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf

[19] U.S. Bureau of Labor Statistics, "Consumer Price Index Summary," (2022). Retrieved on 7/15/22 from: https://www.bls.gov/news.release/cpi.nr0.htm

Redfin, "Rental Market Tracker: Typical U.S. Asking Rent Surpassed $2,000 for First Time in May," (2022). Retrieved from: https://www.redfin.com/news/redfin-rental-report-may-2022/

[20] U.S. Census Bureau, "Household Pulse Survey Data Tables," (2022). Retrieved from: https://www.census.gov/programs-surveys/household-pulse-survey/data.html

KEY FEATURES OF THE HOUSING CREDIT

Housing Credits are allocated by the federal government to state and local allocating agencies, which run competitive programs to determine which developments will receive credits.[21] Because the Housing Credit is a limited resource that is oversubscribed in every state, only properties that best meet the state's affordable housing priorities are awarded. This helps ensure that the Housing Credit is responsive to the needs of the low-income households and communities, which is the primary goal of CRA. See more information on the competitive allocation on Housing Credits in the section on "Include the Housing Credit as an Impact Review Factor."

Maximum rents for Housing Credit units are set at 30% of the household income limit for the unit, which is generally at or below 60% of AMI. Set-asides for more deeply targeted income levels and rents applicable to a portion of the units in a development at 30%, 40% and 50% of AMI are typical features promoted by Housing Credit allocating agencies. Typically, Housing Credit properties must remain affordable for 30 years, although some states require even longer periods of affordability. The amount of Housing Credits that can be allocated to a project is based upon the units in a project that are set-aside to meet the income and rent limitations, and the amount invested is directly related to the units meeting such limitations.

The Housing Credit has strong and long-standing statutory, regulatory, tax, and state agency requirements and policies, as well as sophisticated industry patterns of compliance and oversight. First and foremost, state allocating agencies perform multiple layers of underwriting and due diligence even prior to the awarding of Housing Credits to ensure the financial stability of the property and the success of plans to lease homes to low-income tenants. Housing Credits are not delivered to the investor until construction and lease-up are complete and all requirements have been met.

Ongoing compliance monitoring applicable to all Housing Credit properties include regular allocating agency audits of annual income certifications and related documentation to assure the rent and income set asides are being met, along with physical inspections to assure the safety and quality of the housing remains satisfactory. If the property falls out of compliance during the first 15 years of operations the tax credits can be recaptured from the investor. To prevent this, investors and/or syndicators responsible for Housing Credit funds perform strong due diligence and ongoing asset management. The strong oversight and engagement from state allocating agencies, investors, syndicators, and developers has resulted in the lowest foreclosure rate of any real estate asset class, at less than 0.57% cumulatively.[22]

As a result of this sophisticated structure, Housing Credit investments provide a targeted, accountable, and enduring solution to help address our nation's affordable housing crisis. In the context of CRA, there is no larger scale community development loan or investment program that is so clearly aligned with CRA's goals of serving LMI individuals and communities, and it is because of CRA that the Housing Credit continues to experience its current level of robust investment.

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[21] Note: See allocating agencies on the Novogradac & Co. website here: https://www.novoco.com/resource-centers/affordable-housing-tax-credits/application-allocation/state-lihtc-allocating-agencies

[22] CohnReznick, "Affordable Housing CRedit Report," (2021). Retrieved from: https://www.cohnreznick.com/insights/affordable-housing-tax-credit-study-report-2021

INTERSECTION BETWEEN THE HOUSING CREDIT AND CRA

The presence of strong CRA Investment Test requirements has played an essential role in creating an efficient Housing Credit program; investors provided developers with an average of $0.90 for each dollar of Housing Credit in April of 2022.[23] This strong pricing is not only important because it results in higher amounts of equity for affordable housing production and preservation, but also because it results in a strong federal subsidy program that uses taxpayer dollars efficiently. While the federal government has created many affordable housing initiatives over the past decades, the Housing Credit has stood out as its most effective, in part due to this efficiency. However, Housing Credit demand hangs in a delicate balance.

Demand for the Housing Credit, or the amount of equity that investors will provide developers for Housing Credits, is closely tied to CRA. Housing Credit demand is higher in areas where several major banks must meet CRA Investment Test requirements (a.k.a., CRA "hotspots"), and demand is lower where banks do not have Investment Test obligations (a.k.a., CRA "deserts"). Today, this differential commonly reaches $0.20, equating to nearly 20% of the equity available for a property in a CRA desert.[24]

The higher Housing Credit pricing offered in CRA hotspots helps to ensure the financial feasibility of developments in those areas. However, lower pricing in CRA deserts may render properties infeasible. In its Duty to Serve Plan, Freddie Mac provides an example of a 4 percent Housing Credit property in a rural area with a $540,000 funding gap, which would not otherwise occur if the property were in a nearby city with stronger CRA requirements.[25] Below is an illustrative and simplified example of a 9 percent Housing Credit property with a much larger gap given the increased amount of equity provided by the 9 percent Housing Credit. While the property is feasible in the CRA hotspot, it faces a $1,350,000 gap in an area with general median CRA requirements, and a $2,700,000 gap in a CRA desert. In all cases, the difference in equity is enough to render the lower-priced properties financially infeasible, leaving the residents without affordable housing options.

HOUSING CREDIT PRICE	$0.82	$0.92	$1.02
Housing Credit-eligible costs	$15,000,000	$15,000,000	$15,000,000
Housing Credit rate	X 9.00%	X 9.00%	X 9.00%
10-year flow of tax credits to the investor	X 10	X 10	X 10
Price paid for each dollar of Housing Credit in the investor market	X $0.82	X $0.92	X $1.02
HOUSING CREDIT EQUITY	**$11,070,000**	**$12,420,000**	**$13,770,000**

[23] Novogradac & Co., "LIHTC Equity Pricing Trends," (2022). Retrieved from: https://www.novoco.com/resource-centers/affordable-housing-tax-credits/lihtc-equity-pricing-trends

[24] CohnReznick, "Housing Tax Credit Monitor," (2022). Retrieved from: *https://www.cohnreznick.com/-/media/resources/2022_housing-tax-monitor_august_2022.pdf*

[25] Freddie Mac, "Freddie Mac Duty to Serve Underserved Markets Plan For 2018 –2021," (2020). Retrieved from: *https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FreddieMacDTSPlan_2018-2021.pdf*

HOUSING CREDIT PRICE	$0.82	$0.92	$1.02
Total project costs	$19,670,000	$19,670,000	$19,670,000
Gap financing available	- $5,900,000	- $5,900,000	- $5,900,000
Housing Credit equity	- $11,070,000	- $12,420,000	- $13,770,000
FINANCING GAP	$2,700,000	$1,350,000	$0

Housing Credit equity is determined by multiplying Housing Credit-eligible costs, the Housing Credit rate (9% or 4%), the 10-year term during which Housing Credits are delivered to the investor, and the Housing Credit price (determined by investor demand, namely CRA Investment Test requirements).

One of the most dramatic examples of the impact of CRA on Housing Credit pricing can be seen in the 2008 economic downturn, during which investor appetite for Housing Credits plummeted as institutional investors' taxable income decreased.[26] The Housing Credit's two largest investors – Fannie Mae and Freddie Mac – exited the market, and several institutional investors followed suit, 83% of which named unattractive yields as the most significant reason for leaving the market.[27] However, even as Housing Credit demand and pricing decreased nationally, CRA hotspots saw much smaller pricing reductions.

In 2008, cities with low levels of CRA assessment area concentration, like Cleveland, Milwaukee, and Indianapolis, saw an average $0.20 reduction in median tax credit pricing, whereas CRA hotspots, like New York City, San Francisco, and Chicago, saw an average reduction of only $0.12. The total difference in pricing between these cities was even more striking, reaching a differential of $0.38 between Indianapolis ($0.68) and San Francisco ($1.06), where 3 times as many top 20 bank branches were located. In further analyzing individual properties in Indianapolis and San Francisco, performance metrics such as occupancy rate, debt coverage, and cash flow were not significantly different between cities, meaning the pricing differential could only be determined by the difference in CRA requirements.[28]

It is important to note that, had Congress not enacted temporary measures to support Housing Credit investment, the pricing differential of $0.38 would likely have been higher.[29] This pricing differential also does not account for properties that received a credit allocation but could not move forward due to a financing gap caused by reductions in pricing—including those properties would have further increased the differential.

[26] Note: The Housing Credit allows investors to reduce their tax liability by $1.00 per $1.00 of Housing Credit. For more information on how the Housing Credit works, see https://www.taxcreditcoalition.org/how-the-housing-credit-works/

[27] Ernst & Young, "Low Income Housing Tax Credit Investment Survey," (2008). Retrieved from: https://www.novoco.com/sites/default/files/atoms/files/ey_study_carryback_100809.pdf

[28] CohnReznick, "The Community Reinvestment Act and Its Effect on Housing Tax Credit Pricing," (2013). Retrieved from: https://ahic.org/images/downloads/Research_and_Education/the_community_reinvestment_act_and_its_effect_on_housing_tax.pdf

[29] Note: The Tax Credit Exchange Program (TCEP) and Tax Credit Assistance Program (TCAP) were enacted in 2009 in recognition of the number of Housing Credit properties stalled due to reductions in Housing Credit pricing. TCEP allowed state allocating agencies to exchange Housing Credits for funding and the TCAP provided grant funding for Housing Credit properties.

The connection between CRA and Housing Credit pricing makes clear that CRA strongly impacts the Housing Credit market and the nation's ability to produce and preserve affordable homes. Especially in this volatile time period with dramatically increasing land, labor, and building costs, and inflation rates, it is critical that any changes to CRA do not not reduce the incentive to invest in the Housing Credit

EXPECTED IMPACT OF ELIMINATING THE SEPARATE INVESTMENT TEST

The current CRA Investment Test is the primary driver of Housing Credit investment nationwide. With 84.8% of all Housing Credit investment in 2021 coming from banks motivated by CRA requirements, the Investment Test largely determines demand for the Housing Credit, its pricing, and ultimately, the amount of equity provided for affordable housing development.[30] See above for more information about the connection between CRA and Housing Credit pricing.

The NPR proposal to eliminate the separate Investment Test with 25% weighting and replace it with a combined Community Development Financing Subtest with just 30% weighting – only a slightly higher weight, while adding all community development loans to the pool of qualifying activities – will likely decrease the incentive for banks to invest in the Housing Credit, reducing affordable housing production nationwide. This is supported by a July 2022 survey of Affordable Housing Investors Council (AHIC) members, which was jointly administered by AHIC, the AHTCC, and the National Association of Affordable Housing Lenders (NAAHL). Twenty-four large banks, all with assets over $10 billion, provided feedback on the expected impact of the NPR. **Forty-two percent of respondents** – representing $2.4 billion in yearly Housing Credit investment – **believed the removal of the separate Investment Test would have a negative impact on their bank's appetite to invest in the Housing Credit, potentially resulting in decreased Housing Credit investments in favor of eligible community development loans.**[31]

While we were unable to survey the full universe of banks that invest in the Housing Credit, if we extrapolate these results to the $19 billion of Housing Credit investments that stemmed from CRA-motivated banks in 2021, it's possible that nearly $8 billion of Housing Credit investment could be diminished going forward. Any reduction in Housing Credit investment will decrease Housing Credit pricing, creating financing gaps that could render many properties financially infeasible. To fill financing gaps, additional pressure would be put on already scarce public resources, or developers would need to reduce deep income targeting or eliminate supportive features or amenities, which can only go so far in today's environment of skyrocketing building costs.

The survey results may actually be conservative in estimating the negative impact on banks' appetite. Our survey respondent base consisted exclusively of banks with over $10 billion in assets, which does not capture the smaller, regional banks that are most likely to significantly reduce Housing Credit investment or exit the Housing Credit market entirely if they are not adequately incentivized to invest. For smaller teams with less capital, the complexity of the Housing Credit serve as a deterrent. Based on anecdotal evidence, many Housing Credit funds include investors with under $10 billion in assets, and while they may only be 10-20% of the market, they are important participants whose exit from Housing Credit investing would be felt across the board.

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[30] CohnReznick, "Housing Tax Credit Monitor," (2022). Retrieved from: *https://www.cohnreznick.com/-/media/resources/2022_housing-tax-monitor_march_2022.pdf*

[31] Affordable Housing Investors Council, "LIHTC Investor Survey on CRA Reform," (2022).

The survey also confirmed several of the reasons that, under a combined debt and equity ratio, banks are likely to substitute debt investment for equity investment. Survey respondents identified numerous structural features of Housing Credit investments that may make them less attractive than other eligible community development activities, including yields (named by 80% of respondents), capital charges (named by 66% of respondents), and compliance risks, liquidity, and term/duration (named by over 40% of respondents).[32] Additionally, under the Basel III regulatory framework, banks are generally required to retain more Tier 1 capital for equity investments than most community development loans, especially seasoned multifamily loans, which are assigned a risk-weighting of 50% as opposed to the 100% risk-weight for equity investments.

Survey respondents further explained that reduced Housing Credit investment resulting from the elimination of the Investment Test would put additional pressure on public sector gap financing to ensure financial feasibility, including the following examples:

> "Generally speaking, the elimination of the separate investment test will likely diminish equity investments in the [community development] space at a time more is needed, not less. [Housing Credit] deals are dependent on this equity and there are not adequate public sector resources to fill these gaps. To attract economic investors into this space to fill this gap will require significantly higher returns (lower pricing) further exacerbating current capital stack issues and making more projects less financially feasible."

> "Housing Credit investments are complex, long-term financial investments which can create structural disadvantages relative to other means to meet the potential new requirements. If available, many banks may default to simpler, more efficient and lower risk alternatives which could have the unintended and negative impact of reducing capital in the affordable housing space or distressed communities. Given [affordable housing] needs will not diminish, the natural outcome would then be to require more public sector funds to fill these [financing] gaps, so there is a risk of swapping existing private sector capital for increasingly limited and uneven (geographically) public sector capital."[33]

Lastly, survey respondents also noted concern that CRA changes are coming at a time when there are other potential threats to the stability and efficiency of the Housing Credit. Rising interest rates are increasing the cost of funds, which can reduce Housing Credit pricing. Unresolved issues relating to the implementation of a global minimum tax also has the potential to reduce investors' overall appetite for tax credits, also reducing Housing Credit pricing.[34] Not only could the elimination of the separate Investment Test decrease Housing Credit demand on its own, the effects could be worsened by other changes in the market.

If it is not possible to retain a separate Investment Test in the new CRA structure, we urge that strong mitigating factors be put in place to prevent a reduction in the incentive to invest in the Housing Credit, which would ultimately reduce affordable housing production and preservation and stall efforts to address the affordable housing crisis. Our proposed mitigating factors are explained in the "Key Recommendations" section below and summarized here:

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32 Affordable Housing Investors Council, "LIHTC Investor Survey on CRA Reform," (2022).

33 Affordable Housing Investors Council, "LIHTC Investor Survey on CRA Reform," (2022).

34 Affordable Housing Investors Council, "LIHTC Investor Survey on CRA Reform," (2022).

1. Include an Investment Subtest under the Community Development Test.
   - If an Investment Subtest is not included, then create an institution-level Equity Metric and Benchmark.
2. Measure new institution-level equity investments over time to identify reductions.
3. Include the Housing Credit as an Impact Review Factor, and create a High-Impact Metric and Benchmark.

KEY AREAS OF SUPPORT

ALLOWING FULL CRA CONSIDERATION FOR HOUSING CREDIT PROPERTIES

We support the NPR proposal to allow banks to receive consideration for the full amount of a loan or investment for a Housing Credit-financed project, regardless of the share of units that are considered affordable. We agree this is the correct approach due to the important role of the Housing Credit in achieving the goals of CRA and the Housing Credit's strong statutory and regulatory restrictions, which make it unnecessary to issue additional CRA-specific guidance. See the section on "Key Features of the Housing Credit," above, for our full response regarding the appropriateness of allowing full consideration for Housing Credit-financed properties.

ALLOWING CONSIDERATION OF COMMUNITY DEVELOPMENT ACTIVITIES OUTSIDE ASSESSMENT AREAS

We support the NPR proposal to allow consideration of community development activities outside of facility-based assessment areas, which could expand Housing Credit investment in currently underserved regions if the CRA-driven incentive to invest in the Housing Credit is strong enough.

Currently, Housing Credit demand and pricing are highest in areas with a concentration of large bank CRA assessment areas due to overlapping Investment Test requirements. According to CohnReznick, a national accounting firm, "the largest single determinant of Housing Credit pricing is based on the CRA Investment Test value of a given property's location" (see "Intersection Between the Housing Credit and CRA," above, for details).[35] This has long created a dynamic where underserved communities outside of bank assessment areas may remain unserved because Housing Credit pricing is not high enough to make the development of affordable housing financially feasible. In fact, one study found that 76% of Housing Credit properties are in zip codes where at least one branch of a top 20 bank (by total assets) is located.[36]

While the proposed flexibility to receive consideration outside of assessment areas would be a positive change, on the whole we are deeply concerned that the removal of the separate Investment Test will counteract these advantages. According to a recent survey of large banks, 25% of respondents'

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[35] CohnReznick, "The Community Reinvestment Act and Its Effect on Housing Tax Credit Pricing," (2013). Retrieved from: https://ahic.org/images/downloads/Research_and_Education/the_community_reinvestment_act_and_its_effect_on_housing_tax.pdf

[36] CohnReznick, "The Community Reinvestment Act and Its Effect on Housing Tax Credit Pricing," (2013). Retrieved from: https://ahic.org/images/downloads/Research_and_Education/the_community_reinvestment_act_and_its_effect_on_housing_tax.pdf

institutions would be highly likely and 42% of respondents' institutions would be somewhat likely to engage in Housing Credit investments in underserved CRA markets outside of current assessment areas because of the proposed flexibility to receive consideration outside of assessment areas. However, 42% of survey respondents also believed the removal of the separate Investment Test would potentially result in decreased Housing Credit investments in favor of eligible community development loans.[37]

To ensure the NPR proposal does not have the unintended consequence of reducing Housing Credit investment and affordable housing production – in already underserved communities and banks' current assessment areas alike – we urge the banking agencies to incorporate our recommendations below.

KEY RECOMMENDATIONS

The Housing Credit is integral to the nation's affordable housing delivery system and provides far-reaching impacts for LMI households and communities. As the nation's affordable housing crisis continues to grow, it is increasingly essential that any changes to CRA do not decrease the incentive to invest in the Housing Credit. Our recommendations below focus first and foremost on ensuring continued robust investment in the Housing Credit by banks and mitigating the negative impacts expected if a separate Investment Test is not retained.

1) Evenly weight the Retail and Community Development Tests and modify the community development subtests, for which we proposed two alternatives:
    - Include an Investment Subtest weighted at 20%, a Lending Subtest weighted at 25%, and a Services Subtest weighted at 5%.
    - If an Investment Subtest is not included: Weight the proposed Community Development Financing Subtest at 35% and proposed Community Development Services Subtest at 15%,and modify the Community Development Services Subtest to include a responsiveness assessment.
2) Require at least a Low Satisfactory Community Development Test conclusion for a Satisfactory rating.
3) If an Investment Subtest is not included, create an institution-level Equity Metric and Benchmark.
4) Include an institution-level measure of new equity investments over time.
5) Include the Housing Credit as an Impact Review Factor, and include a High-Impact Metric and Benchmark.

In addition to our recommendations above, we urge the Federal Reserve, OCC, and FDIC to evaluate any final CRA regulations to ensure they will not have a negative impact on Housing Credit investment.

[37] Affordable Housing Investors Council, "LIHTC Investor Survey on CRA Reform," (2022).

PROMOTE COMMUNITY DEVELOPMENT BY ALTERING EVALUATION STRUCTURE AND RATING REQUIREMENTS

Evenly Weight the Retail and Community Development Tests

The proposed CRA rating structure could result in an environment in which fewer banks seek to achieve an Outstanding rating due to the increased difficulty in achieving an Outstanding conclusion under the Retail Test. As written, if a bank does not receive an Outstanding conclusion on its Retail Test, the bank cannot receive an Outstanding rating overall. This is a function of the weighting between the Retail Test (60%) and the Community Development Test (40%) and the proposed conclusion and rating point system. However, according to table 9 in the NPR (p. 251), none of the 44 largest banks – those with assets over $50 billion, which dominate the Housing Credit market – would currently receive an Outstanding conclusion on the Retail Test. If an Outstanding rating is virtually unattainable, it is possible that banks will instead have incentive to only aim for a Satisfactory Retail Test conclusion, and thus a Satisfactory rating overall.

As proposed in the NPR, a bank could achieve a Satisfactory rating with even a Needs to Improve conclusion on the Community Development Test. If a portion – or majority – of banks aim for a Satisfactory rating, the result could be severely diminished appetite to engage in community development for the purpose of the CRA examination. To prevent this result, we propose that the Retail and Community Development Tests be evenly weighted when determining a bank's overall rating. Greater emphasis on the Community Development Test would allow banks one more option for achieving an Outstanding rating and would motivate banks to excel on both tests considering their even impact on the overall rating, as detailed below.

> Under the proposed point system in the NPR, banks could receive an Outstanding rating through only two conclusion combinations:
> 1) Outstanding conclusion on both Retail and Community Development Tests
> 2) Outstanding conclusion on Retail Test and High Satisfactory conclusion on Community Development Test
>
> By evenly weighting the Retail and Community Development Tests, as we propose, banks could receive an Outstanding rating through three conclusion combinations:
> 1) Outstanding conclusion on both Retail and Community Development Tests
> 2) Outstanding conclusion on Retail Test and High Satisfactory conclusion on Community Development Test
> 3) New: High Satisfactory conclusion on Retail Test and Outstanding conclusion on Community Development Test

Evenly weighting the Retail and Community Development Tests would help to ensure that CRA modernization continues to incentivize robust community benefit.

Modify the Community Development Subtests

We propose two alternative ways to structure the subtests under a Community Development Test weighted at 50%, which would help ensure the volume of Housing Credit investment from banks is not reduced by CRA reform.

Preferred Option: Add an Investment Subtest Weighted at 20%

Retaining the separate Investment Test would ensure that banks continue to make equity investments at the current scale and prevent a significant reduction in the incentive to invest in the Housing Credit. If a separate Investment Test is not retained, we urge the inclusion of an Investment Subtest within the Community Development Test to mitigate these negative effects and to continue incentivizing equity investments.

We suggest the Investment Subtest be weighted at 20%, which is 5% lower than the current Investment Test to account for the banking agencies' goal of increasing CRA activities overall. Weighting the Investment Subtest at 20% would also allow for the Community Development Lending Subtest to be weighted at 25% to account for the banking agencies focus on lending. However, we urge the banking agencies to use available data to evaluate our proposed weighting of the Investment Subtest to ensure that it would incent at least as much equity as the current Investment Test.

We suggest the remainder of the Community Development Test be fulfilled by the Community Development Services Subtest with a reduced weight to 5%, which is more in line with the weighting of community development services under the current CRA examination. Many of the activities under the proposed Community Development Services Subtest could be evaluated under the Retail Services Subtest, with the exception of hours served on a Board of Directors, so we also suggest that all community development service activities that could qualify under the Retail Services and Products Subtest be shifted over to that test. This would further allow for our proposed reduction in weighting.

Alternative Option: Integrate Responsiveness Factors into Community Development Services Subtest, Including Assessments of Bank Equity Investment Activities

If a separate Investment Test is not retained and an Investment Subtest is not created, we suggest an alternative approach that would integrate community development responsiveness factors into the Community Development Services Subtest. For this approach, we suggest weighting the NPR-proposed Community Development Financing Subtest at 35% and the Community Development Services Subtest at 15%, but changing the Community Development Services Subtest to a Community Development Services *and Products* Subtest. The Community Development Services and Products Subtest would account for the degree to which community development products receiving consideration under the Community Development Financing Test are response to the needs of LMI communities and individuals, similar to the credit and deposit products portion of the Retail Services and Products Test. Factors that demonstrate responsiveness and determine the subtest conclusion could include those listed below, taking into account the safety and soundness of the bank:

- Providing a mix of products (i.e., equity investments, loans, and grants) to serve communities.
- Meeting or exceeding our proposed Equity Benchmark and/or High-Impact Benchmark (see "Include an Institution-Level Equity Benchmark" and "Include an Institution-Level High-Impact Benchmark").
- Providing similar or higher levels of equity investments in comparison to the average amount of equity investments provided over previous assessments (see "Include an Institution-Level Measure of New Equity Investments Over Time").

The table below shows our proposed weighting changes for the two alternatives compared to the weighting proposed in the NPR.

Test or Subtest	NPR	First Alternative	Second Alternative
Community Development Test	**40%**	**50%**	**50%**
Community Development Financing Subtest	30%	N/A	35%
Community Development Lending Subtest	N/A	25%	N/A
Community Development Investment Subtest	N/A	20%	N/A
Community Development Services Subtest	10%	5%	15%*

** Note: The Community Development Services Subtest in this case would be renamed as the Community Development Services and Products Subtest*

Require At Least Low Satisfactory Community Development Conclusion for Satisfactory Rating

The NPR proposes that a bank could receive a Satisfactory rating by achieving an Outstanding, High Satisfactory, or Low Satisfactory conclusion on the Retail Test along with a Needs to Improve conclusion on the Community Development Test. We urge that banks should not be issued an overall Satisfactory rating without achieving at least a Low Satisfactory on the Community Development Test. A Needs to Improve conclusion on the Community Development Test does not demonstrate a commitment to the community development needs of the bank's footprint and should not be allowable for a bank receiving a Satisfactory CRA rating.

INCENTIVIZE EQUITY INVESTMENT THROUGH A METRIC AND BENCHMARK

Include an Institution-Level Equity Metric

If an Investment Subtest is not created, it will be important to prioritize equity investments in another way. To do so, we urge the creation of an equity-specific metric and benchmark. The Equity Metric would be structured like the institution-level Community Development Financing Metric but would measure only community development equity investment (which would not include Mortgage-Backed Securities) in the numerator and deposit base in the denominator. An Equity Benchmark would be used to compare this metric to peer institutions. We suggest that the Equity Metric and Benchmark be integrated into the institution-level community development test or subtest conclusion, much like the current proposal integrates the Community Development Financing Metric and Benchmark.

Adequately incentivizing equity is crucial for affordable housing development, and other forms of community development, and is difficult for banks to provide. For properties financed by the 9 percent Housing Credit, equity investment typically finances 60-80% of total development costs while permanent hard debt covers only 10-25%. The remaining amount is covered by increasingly sparse gap financing, usually from federal, state, or local governments.[38] With Housing Credit equity serving as the most significant component of the capital stack, hardly any developments can move forward without it. Furthermore, it is much easier for a developer to obtain a loan than it is to obtain Housing Credit equity, because loans are easier and lower risk for banks to provide. The Housing Credit is considered a specialty

[38] Note: Learn more about how the Housing Credit works here: https://www.taxcreditcoalition.org/how-the-housing-credit-works/

product outside the range of commercial financing that banks routinely offer and requires banks to have special in-house expertise. This dynamic is also true for other forms of community development.

The NPR posits that a goal of the proposed combined Community Development Financing Subtest is to allow banks to pursue community development activities that best suit their expertise – whether those activities are loans or equity. By adding an Equity Metric, banks will still have the option to provide loans or equity, while also being measured against the investment expertise – including the nearly $19 billion invested in the Housing Credit in 2021 – that they have developed over the past 30 years.[39]

Considering the importance of equity investments for a comprehensive community development strategy and the possible substitution effect if equity investments are pooled with other community development activities, CRA must include special features to specifically incentivize equity investment and ensure that these critical investments continue at scale. Creating an Equity Metric and Benchmark would help to ensure that changes to CRA regulations do not have the unintended consequence of decreasing community development investment, particularly Housing Credit investment.

Include an Institution-Level Equity Benchmark

If a bank is providing relatively more equity investments than its peers, then it is strongly impacting community development, and that effort should be recognized on the CRA examination. We suggest the banking agencies encourage community development investment by rewarding large banks that meet a benchmark level of community development investments as a portion of their deposits in comparison to other banks. To do so, we suggest creating an Equity Benchmark, which would include the average dollar value of peer comparators' community development equity investment (not including MBS) in the numerator, and the annual average deposit base of peer comparators in the denominator. Like the Community Development Financing Subtest Benchmark, the standardized Equity Benchmark would be used to evaluate a bank's performance on our proposed Equity Metric.

There are several ways that an Equity Benchmark could be incorporated into the CRA evaluation. The Equity Metric and Benchmark could be integrated into the community development scoring system much like the current proposal integrates the Community Development Financing Metric and Benchmark. Alternatively, banks meeting or exceeding a benchmark level of equity investment, in comparison to its peers, could be eligible for an increase in its overall community development-related test or subtest, particularly if the bank is between two possible ratings. Additionally, relatively higher equity investment could be considered as a factor for an Outstanding rating. The potential effect of the Equity Metric and Benchmark on the bank's rating should be quantifiable and predetermined to the extent possible.

[39] CohnReznick, "The Community Reinvestment Act and Its Effect on Housing Tax Credit Pricing," (2013). Retrieved from: https://ahic.org/images/downloads/Research_and_Education/the_community_reinvestment_act_and_its_effect_on_housing_tax.pdf

IDENTIFY REDUCTIONS IN INSTITUTION-LEVEL INVESTMENT VOLUME

Include an Institution-Level Measure of New Equity Investments Over Time

As explained by one large bank providing over $300 million in Housing Credit equity annually, "there will be significant unintended consequences given the magnitude of the changes [in the NPR]." [40] One of these unintended consequences is likely to be a reduction in community development equity, including Housing Credit equity, if strong mitigating factors are not put in place. It will be important to have the means to measure any unintended consequences not just by viewing total Housing Credit equity over time, but also by tracking individual banks' new community development equity investments.

A bank's annual originations of equity investments should be measured from one CRA examination to the next to identify any sudden drop-offs in new equity investing, particularly in the early years of new CRA regulations. If there is a significant reduction in new equity investment volume, then examiners should be able to request an explanation for the variance.

Explanations for a significant reduction of equity levels could include cyclical market patterns, safety and soundness concerns, changes in tax position, 12 U.S.C. 24 or other regulatory constraints, or lack of available potential investments. By necessity, in the first year of the new CRA framework, banks would need to report data in a way that is directly comparable to the Investment Test data from the previous evaluation to offer a like comparator.

INCENTIVIZE HOUSING CREDIT INVESTMENTS THROUGH THE IMPACT REVIEW

Include the Housing Credit as an Impact Review Factor

Because the Housing Credit is thoughtfully structured to respond to specific community needs, as is the goal of the impact review factors, we strongly urge that it be included as an impact review factor.

A key feature of the Housing Credit is the allocation of Housing Credits to state and local allocating agencies, which distribute Housing Credits through a highly competitive process to only the most impactful properties that best meet the state or locality's affordable housing needs.[41] Qualified Allocation

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[40] Affordable Housing Investors Council, "LIHTC Investor Survey on CRA Reform," (2022).

[41] IRC Code Section 42(m) regarding QAPs provides as follows:

> (B)Qualified allocation plan
>
> For purposes of this paragraph, the term "qualified allocation plan" means any plan—
>
> (i)which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,
>
> (ii)which also gives preference in allocating housing credit dollar amounts among selected projects to—
>
> (I)projects serving the lowest income tenants,
>
> (II)projects obligated to serve qualified tenants for the longest periods, and
>
> (III)projects which are located in qualified census tracts (as defined in subsection (d)(5)(B)(ii)) and the development of which contributes to a concerted community revitalization plan, and

Plans (QAPs) detail these needs and explain which types of properties can receive Housing Credits and the number of points that will be allotted for various property features – all of which are based on extensive public feedback and are revised every one or two years to stay current. Below is a simplified example of how a QAP may be structured, based on the Wisconsin QAP.

<u>Set-Asides</u>

- 32.5%: General Housing
- 25%: Rural Set-Aside
- 12.5%: Preservation Set-Aside
- 10%: Nonprofit Set-Aside
- 10%: Supportive Housing Set-Aside
- 10%: Innovative Housing Set-Aside

Set-asides determine the proportion of Housing Credits that will be awarded to each category

<u>Points</u>

- Serves Lowest-Income Residents – max of 60 points
- Areas of Economic Opportunity – max of 28 points
- Rehab/Neighborhood Stabilization – max of 25 points
- Supportive Housing – max of 15 points
- Rural Areas Without Recent HTC Awards – max of 8 points
- Lower-Income Areas – max of 5 points
- Veterans Housing – max of 5 points

Points are allotted within each set-aside to determine which properties will receive allocations within each set-aside

The number of applications for Housing Credits far outpaces the amount that can be awarded, which is limited by statute. Even in 2020, when the COVID-19 pandemic was impacting planned developments across the country, developers requested nearly 2.5 times as many Housing Credits as there was available allocation.[42] As a result, only the properties receiving the most points through the QAP process – those deemed the most impactful and which best meet affordable housing goals – are awarded Housing Credits. This structure has played a role in the success of the Housing Credit's over 30-year track record and the provision of 3.6 million affordable homes.[43]

As discussed previously, we are very concerned that the proposal to combine investments and loans into a single test will reduce the incentive for banks to make equity investments, including Housing Credit investments. Including the Housing Credit as an impact review factor would be an important mitigating factor to counteract this change. In our recent survey of large banks, respondents were asked to choose proposals that they believed would help to ensure that CRA modernization does not disrupt the Housing Credit market, and including equity investments as an impact review factor was the top choice. Eighty-three percent of respondents recommended including equity investments as an impact review factor, and 60% of respondents that ranked their recommendations listed the addition of an equity impact review factor as their most potentially impactful recommendation.[44]

It is important to emphasize that equity investments, in general, are more impactful and more difficult to provide than debt products. As also detailed in the section "Include an Institution-Level Equity Metric," Housing Credit equity serves as the most significant component of the capital stack for affordable rental

(iii)which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

[42] National Council of State Housing Agencies, "State HFA Factbook: 2020 NCSHA Annual Survey Results," (2021). Retrieved from: *https://www.ncsha.org/resource/state-hfa-factbook/*

[43] ACTION Campaign, "The Low Income Housing Tax Credit," (2022). Retrieved from: *https://rentalhousingaction.org/wp-content/uploads/2021/10/ACTION-NATIONAL-2021-NEW-LOGO-01-2.pdf*

[44] Affordable Housing Investors Council, "LIHTC Investor Survey on CRA Reform," (2022).

housing development. Without it, affordable housing developments are highly unlikely to move forward. As detailed in the section "Potential Impact of Removing the Separate Investment Test," Housing Credit equity is also more difficult to attract than debt, in part because it has a longer duration, higher risk and capital charges, greater complexity, and less liquidity. For these reasons, the Housing Credit deserves a higher impact evaluation than community development loans to provide a fairer evaluation of a bank's community development financing activity.

In addition to our recommendation to include the Housing Credit as an impact review factor, we are also concerned that the NPR does not make clear how impact factors would be integrated into the overall CRA conclusion and rating framework. We request additional information and the ability to comment on the process prior to publication of a final rule. Below are additional features we believe should be included to integrate the impact review factors more thoroughly into the CRA framework.

Include a High-Impact Metric (Question 126)

To integrate the impact review factors more thoroughly into the CRA framework, we suggest the creation of a High-Impact Metric and Benchmark, which could be integrated into the institution-level community development test or subtest conclusion much like the current proposal integrates the Community Development Financing Metric and Benchmark.

For the numerator of the High-Impact Metric, the number of impact review factors applicable for the bank's community development activities would be summed (e.g., if a bank performed 10 activities that included 1 impact factor, and performed 5 activities that included 2 impact factors, the numerator would be 20). For the denominator of the metric, the total number of community development activities included in the bank's CRA examination would be summed. In this way, banks would receive extra consideration for activities that incorporate more than one impact review factor.

Include a High-Impact Benchmark (Question 126)

An institution-level High-Impact Benchmark would allow evaluators to compare a bank's High-Impact Metric to peer comparators. Using a similar structure as the High-Impact Metric described above, the numerator of the institution-level High-Impact Benchmark would average across peer comparators the sum of impact review factors relating to community development activities. The denominator of the benchmark would average across peer comparators the total number of community development activities included in the bank's CRA examination.

There are several ways that a High-Impact Benchmark could be incorporated into the CRA evaluation. The High-Impact Metric and Benchmark could be integrated into the community development scoring system much like the current proposal integrates the Community Development Financing Metric and Benchmark. Alternatively, banks meeting or exceeding a benchmark level of high-impact activities, in comparison to its peers, could be eligible for an increase in its overall community development-related test or subtest, particularly if the bank is between two possible ratings. Additionally, a relatively higher level of high-impact activities could be considered as a factor for an Outstanding rating. The potential effect of the High-Impact Metric and Benchmark on the bank's rating should be quantifiable and predetermined to the extent possible.

ADDITIONAL RECOMMENDATIONS

Refrain from Giving Partial Consideration for Other Community Development Activities (Questions 1, 17)

CRA should incentivize activities that have significant, direct impacts for LMI individuals and communities. We agree with the NPR statement regarding the consideration of other community development activities that "partial consideration of activities could result in a significant expansion of the activities that could qualify, and thereby serve to divert limited resources from projects specifically targeted to benefit low- or moderate-income people or communities." We also agree with stakeholder feedback pointing out that large-scale infrastructure projects may have limited benefit for targeted geographies and LMI residents. With these concerns in mind, the banking agencies should not provide partial consideration for community development activities outside of affordable housing.

Other types of community development activities should receive CRA consideration only if a majority of the beneficiaries are LMI. As also explained by the National Association of Affordable Housing Lenders in their comment letter, about 30% of the national population is LMI, meaning that many activities would generally achieve about that degree of LMI benefit as a matter of course without any targeting or intentionality. Conferring CRA credit in these cases would dilute CRA's consideration of community development activities that primarily benefit LMI people and places.

Establish Guardrails for Consideration of NOAH Housing (Question 5-6)

The development of rental housing that is affordable to low-income households is not something that happens naturally because it is simply economically infeasible to perform new construction or a substantial rehabilitation of a property and to pay off the necessary debt and operating expenses with affordable rents alone. As a result, most Naturally Occurring Affordable Housing (NOAH) has not seen significant investment, and may be affordable because it is of a lower physical standard or otherwise less desirable than housing with more expensive rent. It stands to reason that promoting investment in this type of housing would be a worthy cause for CRA, but we caution that strong guardrails should be put in place to ensure that NOAH housing receiving CRA consideration is indeed serving low-income households and is safe, quality housing.

As further detailed in the section "Key Features of the Housing Credit," the Housing Credit – and many other government programs – require the income certification of all residents to verify that residents meet the pre-determined income restrictions. While it may come with some challenges, the process of verifying income has become commonplace for millions of affordable housing units across the country, and the result is targeted programs that address the housing needs of low-income Americans. These programs, including the Housing Credit, should continue to be strongly incentivized by CRA. For NOAH to also receive CRA consideration, low-income occupancy verification should be required within one-year of occupancy. To this point, housing financed by government programs should not receive automatic CRA consideration unless the program serves low-income households.

The Housing Credit also requires physical inspections that result in the provision of safe, decent, and high-quality affordable housing. Under the proposal, NOAH does not have physical condition requirements, meaning a bank could lend to NOAH that is only affordable because it has deteriorated physically. To prevent the financing of housing that is not physically sound; physical inspections should be mandated for

CRA consideration of NOAH. We would also emphasize our view that NOAH should not qualify for the impact review factor for serving households under 50% of AMI unless physical standards can be verified and there is a commitment to long-term affordability.

At the bare minimum, NOAH housing should provide rents that are affordable for low-income households, which should be set at 30% of the income limits for the units. To receive CRA consideration for the duration of the financing, continued affordability should be required.

Limit Churning of Mortgage-Backed Securities (Question 9)

Mortgage-Backed Securities (MBS) have limited direct benefit for low-income households.[45] Including MBS within the Community Development Test without any limits could cause the crowding out of other eligible activities, like the Housing Credit, that are more technically and financially complex, higher risk, and require higher capital reserves, but that provide more expansive benefits for low-income households and communities. We agree with the limits proposed by the National Association of Affordable Housing Lenders, which is detailed in their comment letter and summarized here:

1) Only the portion of the MBS attributable to CRA-qualified loans should be considered. Loans not meeting CRA eligibility should be disregarded to avoid over-stating their volume. Single family loans within an MBS pool would be considered individually. Multifamily loans within an MBS would be treated consistently with CRA policy – i.e., the entire loan would qualify if at least 51% of units serve LMI households.
2) Banks should be required to hold MBS for which CRA consideration is claimed for at least two years, measured annually on a weighted portfolio basis. Applying the test on a portfolio basis would allow banks some flexibility while discouraging short-term holdings. In particular, this approach would discourage banks from purchasing MBS at the end of a year or exam period unless it has held other MBS for sufficiently longer periods to maintain the two-year average holding period.

3) At the institution level, not more than 25 percent of a bank's Community Development Test activity should be credited for MBS (excepting CDFI-issued MBS, which do not benefit from a deep liquid market). MBS should not be a primary way for a bank to fulfill its overall Community Development Test financing responsibilities at the institution level.

Include Multifamily Lending in the Community Development Test Only (Questions 60, 71)

Loans for multifamily housing should be considered under the Community Development Test only so that CRA consideration is limited to activities serving LMI individuals. As noted in the NPR, the geographic distribution of a bank's multifamily loans, which is the focus of the Retail Test, does not indicate whether LMI individuals benefit from the loans. Multifamily lending that receives CRA consideration should be focused on the provision of affordable housing for low-income households, which is already considered in the Community Development Test.

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[45] Kenneth Brevoort, "Does Giving CRA Credit for Loan Purchases Increase Mortgage Credit in Low-to-Moderate Income Communities?," (2022). Retrieved from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4100514

Note: The analysis by Kenneth Brevoort shows bank purchases of CRA-eligible loans do not affect lending in LMI communities. Instead, CRA-induced purchases are fueled by delayed loan sales to Government Sponsored Enterprises that provide little benefit to the communities the CRA is meant to help.

Including affordable multifamily housing loans in the Community Development Test and Retail Test would also result in the double-counting of these loans, and double-counting would yield double the incentive for banks to make affordable housing loans, rather than equity investments. As we describe in the section "Include an Institution-Level Equity Metric," equity investments are essential for the production and preservation of affordable housing and a comprehensive community development strategy, but they are more difficult and costly, and higher risk than loans. Double counting affordable housing loans would only amplify banks' preference for loans, exacerbating the substitution effect of loans over investments that would result from combining both activities in the Community Development Financing Test.

As further explained by the National Association of Affordable Housing Lenders in their comment letter, there are several other reasons to consider multifamily loans in the Community Development Test only, including (1) multifamily loans are commercial real estate loans, not retail loans, (2) contrary to the proposed metric, some loans in LMI census tracts should not receive CRA consideration (e.g., properties supporting gentrification or displacing residents) and some loans outside of LMI census tracts should receive CRA consideration (e.g., properties providing affordable housing in areas of opportunity), (3) HMDA data are too limited to support a reliable metric, and (4) multifamily lending for most banks would not exceed the 15% major product lines test.

Continue Recognizing Allocation Letters to Allocate Consideration for Funds with Multiple Investors (Questions 117-118)

Currently, CRA consideration for Housing Credit investments in funds with multiple investors and multiple property investments in various markets – which make up roughly 70% of Housing Credit equity[46] – is geographically allocated to investors based on letters between tax credit syndicators that administer the funds and the bank investors in those funds. There is a very thorough "allocation letter" (a.k.a. "side letter") process to make sure that (1) there is no duplication of banks receiving geographic credit for the same project unless the total amount for that specific project is specifically split among designated banks, and (2) that a bank receives geographic allocations of specific projects only up to the total amount invested by that bank. We believe the banking agencies should continue to allow banks appropriate flexibility in the geographic allocation of community development investments by recognizing allocation letters.

We are concerned that the NPR could require a different approach that would diminish the ability of banks to receive their intended CRA consideration for Housing Credit investments made in syndicated funds. Specifically, Section 14 of Appendix B could require all community development dollars to be geographically allocated at the county level in instances where a bank makes an equity investment, for which it is legally liable for the entire amount from the date of closing, but the fund does not call all the capital in the first year. This proposal does not look prospectively to provide how to allocate dollars during the time period that a bank is legally obligated to advance capital when called, but the fund has not yet called and/or deployed 100% of the bank's total investment amount. This is often the case for Housing Credit Investments and other funds that deploy capital over a period of several years.

[46] CohnReznick, "Housing Tax Credit Monitor," (2022). Retrieved from: *https://www.cohnreznick.com/-/media/resources/2022_housing-tax-monitor_march_2022.pdf*

We suggest that the banking agencies revise Section 14.a to specifically include the widely established and accepted practice of geographic allocation by allocation letters. We also recommend that the allocations be based upon the committed capital for investment and not on the timing in which such capital is actually invested in a particular project.

Provide Comprehensive Evaluator Training with a Focus on Community Development

Impact scores and supplementary metrics will help quantify the otherwise subjective notion of "impact." While we agree that some subjective evaluation is important to fully discern a bank's responsiveness to communities, the efficacy of any subjective, qualitative rating determined by evaluators will hinge on the evaluators' understanding of community development financing. Community development is complex, and we appreciate the proposals to provide evaluators with additional information about a bank's activities and local and national conditions. However, we urge the banking agencies to also consider what training may be necessary to ensure evaluators have the requisite background to make appropriate subjective evaluations regarding community development activities and impact. Additionally, all banking agencies should employ dedicated CRA examiners whose roles are focused on CRA evaluation, which will help to ensure that evaluators gain the expertise necessary to make well-informed assessments.

CONCLUSION

CRA has played a profound role in supporting robust affordable housing investment and contributing to the Housing Credit's three decades of success in providing affordable housing for millions of households in need. We urge the Federal Reserve, OCC, and FDIC to ensure that any changes to CRA will support at least as much community benefit, affordable housing, and Housing Credit investment as CRA currently provides. As the affordable housing crisis continues to worsen, strong CRA incentives are needed now more than ever.

If you have any questions regarding these comments, please contact Emily Cadik, Chief Executive Officer, at emily.cadik@taxcreditcoalition.org or 202.935.1217.

Sincerely,

[redacted]

Emily Cadik
Chief Executive Officer
Affordable Housing Tax Credit Coalition

APPENDIX: TABLE OF CONTENTS

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