NCSHA

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RE: Community Reinvestment Act, Joint Notice of Proposed Rulemaking, Docket (R-1769) and RIN (7100-AG29)

To Whom it May Concern,

The National Council of State Housing Agencies (NCSHA)[1] appreciates the opportunity to comment on the joint notice of proposed rulemaking to strengthen and modernize the regulation of the Community Reinvestment Act (CRA) recently issued by the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC).

We commend the agencies for working to update the CRA regulations to better fit today's banking market and practices, while ensuring that low- and moderate-income communities have access to the full, and evolving, array of banking institutions' resources.

[1]NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

We are pleased that the Board, FDIC, and OCC ("the agencies") are working jointly to establish common standards that will apply across the board to all federally-insured institutions, ensuring market certainty about banks' CRA obligations.

Executive Summary

The CRA has been one of our nation's most vital tools in catalyzing financing and investments for affordable housing and other crucial community development needs. It has incentivized banks to invest in two effective affordable housing finance tools: Low Income Housing Tax Credits (Housing Credits) and tax-exempt private activity multifamily residential rental private activity bonds and mortgage revenue bonds (Housing Bonds).

To continue and expand this strong track record, we believe the final CRA regulations must:

- Encourage banks to invest in Housing Credits, Housing Bonds, and HFA mortgage-backed securities (MBS)—including MBS purchases, lending, and letters of credit.
- Maintain a separate investment test, given its proven track record in promoting investment in Housing Credit equity and other affordable housing investments.
- If there is not a separate investment test, require that a certain threshold of a bank's community development financing activity include equity investments.
- Give equal weighting to banks' retail lending and community development activities.
- Allow banks to receive credit for community development financing and investment activities that occur outside their assessment areas.
- Eliminate the peer-based review system to allow banks that engage in substantial CRA activity to receive fair ratings that reflect their performance.
- Include lending, community development, and investment incentives to increase racial equity, reduce racial disparities, and better serve historically underserved and discriminated-against individuals and communities.

Housing Credits, Housing Bonds, and CRA: A Common Mission

HFAs are state-chartered housing agencies that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. They are primary providers of affordable home mortgage loans and down payment assistance, financing for affordable rental apartment development, and various kinds of direct rental assistance. Most state HFAs also provide financing for various kinds of community and economic development activities.

State HFAs collectively provide $45 billion in financing to assist more than 300,000 households every year. The overwhelming majority of people state HFAs serve are considered "low-income" and a significant share are "very low-income," based on federal definitions. Housing Credits and Housing Bonds are two of their most important tools.

The Housing Credit is our nation's most effective tool for financing the development of rental housing affordable to low-income Americans. By providing an incentive for private sector investment, the Housing Credit has financed more than 3.6 million apartments for low-income households, adding approximately 120,000 units to the inventory each year. In addition to the potential tax savings, banks are attracted to Housing Credit investments because they often earn CRA credit. A 2014 publication from accounting firm Cohn Reznik reported that "Roughly 85 percent of the equity for all LIHTC investments comes from banks subject to the CRA."[2]

Housing Bonds have historically served as HFAs' primary means of financing their affordable housing lending, and HFAs have utilized them to serve many of the borrowers and markets the CRA is intended to assist. HFAs utilize single-family Mortgage Revenue Bonds (MRBs) to help working families purchase their first homes. Through 2021, state HFAs have used MRBs to finance loans to help more than 3.4 million working families purchase a home. The MRB program is well-targeted to assist those borrowers most in need. The national median income for MRB borrowers in 2021 was 36 percent lower than the national median income.

Through Multifamily Bonds, HFAs finance the development of affordable rental housing that would otherwise not have been built in the private market. In total, state HFAs have financed more than 13,500 properties across the country using Multifamily Bonds, providing affordable rental housing to nearly 2 million families. Multifamily Bonds also help to support the construction of properties financed by Housing Credits, many of which would not be built without the bonds.

As with their Housing Credit investments, banks' CRA obligations play an important role in incentivizing them to purchase Housing Bonds. Some banks find that HFAs' public missions, strong track record, income-targeted programs, and superior loan performance make Housing Bonds an effective and responsible means for serving the low-income housing needs of the communities they serve. Bank investment in Housing Bonds lowers tax-exempt all-in borrowing rates, enabling the production of more affordable housing.

Adjust Evaluation Framework to Promote Equity Investments

Under current CRA regulations, large banks must meet three tests to comply with CRA guidelines: the lending, service, and investment tests. The proposed rule would replace this system with four new tests: the Retail Lending Test, which would account for 45 percent of a bank's evaluation; the Retail Services and Products Test, which would account for 15 percent; the Community Development Financing Test, which would account for 30 percent; and the Community Development Services Test, which would account for 10 percent.

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[2] Copeman, Fred, "What Do Higher LIHTC Prices Mean for Syndicators?" *Affordable Housing News & Views*, June 1, 2014. https://www.cohnreznick.com/insights-and-events/insights/what-do-higher-lihtc-prices-mean-syndicators

The Community Development Financing Test includes activities, both lending and investment, that support affordable housing. All bank assistance for affordable housing and other community development financing activities, whether in the form of loans or equity investments, will count equally toward a bank's CRA score.

NCSHA appreciates that the proposed rule retains a focus on banks' support for affordable housing and other community development needs. That being said, we are greatly concerned that eliminating the separate investment test and replacing it with a comprehensive Community Development Financing Test that encompasses both loans and investments will over time substantially reduce banks' incentives to purchase Housing Credits, Housing Bonds, MBS, and other affordable housing and community development equity investments.

Generally, in a CRA context, banks find equity investments to be more costly and complicated, and less liquid, than lending activities. Further, under the Basel III regulatory framework, banks are required to hold more Tier 1 capital reserves for equity investments than most community development loans. For example, seasoned multifamily housing loans, one of the banks' more common community development financing activities, are assigned a risk-weighting of 50 percent, as opposed to the 100 percent for equity investments.

We strongly urge you to continue the separate investment test. In general, affordable housing and community development equity is more difficult to attract and often more impactful in communities than debt. Maintaining the investment test will ensure that banks continue to participate in the Housing Credit, Bond, and HFA MBS markets, leading to healthy competition and better pricing, thus increasing the amount of resources that can be devoted to developing and/or rehabilitating affordable housing.

If the agencies decide to go ahead with the consolidated Community Development Financing Test, we urge you to take steps to ensure banks make impactful equity investments in affordable housing and other community needs. Specifically, we recommend the agencies consider requiring that a minimum share of a bank's community development financing activities be equity investments in order for the bank to earn a rating of "Low Satisfactory" or higher on its Community Development Financing Test.

Establish Positive Impact Factor for Housing Equity Investments

The proposed rule would establish a new qualitative test to measure the impact of banks' community development activities when reviewing their performance under the Community Development Financing Test and the Community Development Services Test. The proposed rule would establish nine new impact factors as criteria for agency examiners when conducting CRA reviews. While such exams will be qualitative, examiners will be expected to consider how banks' CRA activities served each impact factor when determining a bank's rating.

Given the importance of the Housing Credit, Housing Bonds, and other affordable housing investments, and their relative complexity and costs compared to traditional lending, we suggest the agencies add a separate positive review factor for affordable housing equity investments, including Housing Credits and Housing Bonds. Such an impact factor could help ensure that banks continue to make such needed investments as part of their CRA compliance.

Equal Weighting for the Retail and Community Development Tests

Under the proposed rule, the two retail tests – Retail Lending and Retail Services and Products – would count for 60 percent of a bank's CRA score, while the Community Development Financing Test and Community Development Services Test would account for 40 percent. This unequal emphasis means that banks that score a "Low Satisfactory" on their community development tests may receive an overall CRA score of "Satisfactory" should they receive an "Outstanding" rating on their retail tests.

This unequal weighting could lead banks to focus more on their retail activities than community development because they tend to be less expensive and a larger part of their business models. To protect against this, we suggest that the retail and community development each account for 50 percent.

Specifically, the Retail Lending Test would account for 40 percent of a bank's score, the Retail Service and Products Test 10 percent, the Community Development Financing Test 40 percent, and the Community Development Services Test 10 percent. This will make it necessary for banks to focus on community development activities to achieve an overall CRA score of "satisfactory" or better.

Credit for Community Development Activities Outside of Assessment Areas

The proposed rule would generally preserve the current approach of evaluating bank CRA activity in geographically defined "assessment areas" surrounding a headquarters, branches, and deposit-taking ATMs, while expanding the assessment areas for the retail tests to include areas where banks originate a substantial amount of loans.

Regarding the Community Development Financing and Services tests, the proposed rule maintains a focus on facility-based assessment areas, but also makes eligible for CRA credit banks' activities conducted at the state-level, multistate metro region-level, and nationwide.

NCSHA supports this proposed change. The ability for banks to receive credit outside their assessment areas will spur critical affordable housing investments in rural areas and other severely underserved markets.

For example, as mentioned above, the ability to receive CRA credit is many banks' primary motivator to invest in Housing Credits. While this has had a positive impact on the Housing Credit equity market, it has also caused banks' Housing Credit and Bond investments to be limited, for the most part, to their CRA assessment areas. This results in bifurcated Housing Credit and Bond markets. Properties located in urban areas with a concentration of banks receive a great deal of investor interest, which results in higher prices, while Housing Credits and Bonds for properties in rural and other underserved markets receive less interest and lower pricing.

Allowing banks to receive CRA credit for investments in Housing Credit, Bond, and HFA MBS activities outside of their assessment areas will help alleviate this disparity and increase financial assistance for the development of affordable housing in rural and other underserved communities.

Rethink Peer-Based Scoring System

NCSHA appreciates the agencies' intent behind proposing a new peer-based scoring system in which banks' final CRA score would be established by a system that compares them to other lending institutions, which is to ensure that high CRA ratings are given out only to those banks who exceed other banks' CRA performance.

We are concerned this proposal will make it difficult for banks to earn an "Outstanding" rating, meaning some banks that do in fact make substantial lending and investments will not be properly recognized, further reducing banks' incentive to engage in CRA activities. We urge the agencies not to go forward with this proposal and to consider alterative scoring systems.

Include Incentives for Activities that Increase Racial Equity

When Congress passed the Community Reinvestment Act in 1977, its stated purpose was to combat the discriminatory impact of years of redlining practices, which explicitly denied credit to African Americans and other people of color. Unfortunately, while CRA has triggered billions of dollars in affordable lending and community investment, minority households and communities remain substantially underserved.

In 2020, 72.1 percent of white households owned their home, compared to 61.7 percent of Asian-American households, 51.1 percent of Hispanic-American households, and 43.3 percent of African-American households.[3] A recent study found that, in each of the nation's 50 largest metro areas, African-American residents own a disproportionately small share of homes compared with their population.[4]

Given these circumstances, we urge the agencies in the final rule to encourage banks to engage in CRA-eligible activities designed to explicitly address racial discrepancies in lending and opportunity. For example, we are pleased that the agencies are considering including Special Purpose Credit Programs (SPCPs) in its list of activities that are eligible for CRA credit. SPCPs are a valuable tool for helping households of color and other underserved communities achieve the dream of homeownership. Nearly a dozen HFAs are exploring whether to launch their own SPCPs. We understand that many banks have

[3] 2022 Snapshot of Race and Home Buying in America, National Association of REALTORS®, February 2022.
[4] Black Americans Own Disproportionately Small Share of Homes in 50 Largest U.S. Metros, Jacob Channel, Lending Tree, April 5, 2022.

recently started or are currently considering such programs. Making them explicitly eligible for CRA credit will further encourage this activity and possibly incentivize more banks to consider offering SPCPs.

NCSHA urges the agencies to include SPCPs on its list of CRA-eligible lending activities in the final rule and to make it clear that lenders may receive CRA credit for other lending and investment activities designed to address racial inequities and increase service and outreach to historically underserved individuals and communities.

We also support the agencies' proposal to disclose large banks' mortgage borrower data by race and ethnicity, collected through the Home Mortgage Disclosure Act (HMDA), as part of their CRA performance evaluations. Such data is critical toward evaluating whether a bank is truly serving the needs of all consumers in its markets. In fact, the first release of HMDA data in 1976 helped to spark the passage of the CRA in 1977 by documenting the severe impacts of redlining.

Responses to Individual Questions

Question 3. **Is the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for low- or moderate-income (or, under the alternative discussed above, for low-, moderate- or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low- or moderate-income individuals?**

NCSHA appreciates that the proposed rule specifically states that the Housing Credit, HOME, and other local, state, and federal affordable housing programs are eligible for CRA investments. These programs are vital to our nation's effort to address the affordable housing crisis.

We recommend the agencies refrain from imposing affordability thresholds on these activities in order for them to be eligible for CRA credit. State and local governments often tailor their affordable housing programs to meet the specific needs of their constituents. Setting affordability thresholds for CRA credit in government affordable housing programs could reduce bank participation in those programs where market conditions require higher income limits, cutting off a valuable source of liquidity for such initiatives.

We also thank the agencies for proposing to allow banks to receive CRA credit for the entire amount of any Housing Credit investment, not just the share of the project that includes income-targeted affordable housing units. This will make Housing Credits, the primary source of financing for affordable housing, a more attractive investment for banks. It also recognizes that the project as a whole provides a meaningful contribution to community development and increases the supply of desperately needed housing.

We suggest the final rule provide banks full credit for investments in multifamily Housing Bonds as well, not just the share of projects that includes affordable units. Housing Bonds are designed to serve low-income renters: multifamily developments financed by Housing Bonds must set aside at least 40 percent of their apartments for families with incomes of 60 percent of AMI or less, or 20 percent for families with incomes of 50 percent of AMI or less.

At the same time, many Housing Bond-financed developments serve some residents with incomes above this limit to achieve income-mixing and other worthy goals. In addition, Housing Bonds are also often a source of financing for Housing Credit properties. Allowing banks to receive full credit for all Housing Bond investments will help HFAs secure affordable financing for such projects.

Question 5. **Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low- and moderate-income individuals, including properties where a renovation is occurring?**

NCSHA supports the agencies' decision to include support for naturally occurring affordable housing (NOAH) as a CRA-eligible activity and urges the agencies to include bank lending and investments for NOAH in the final rule.

While government programs administered by HFAs and other agencies are crucial towards meeting our nation's affordable housing crisis, affordable housing projects that do not receive government funding still account for a large majority of the affordable housing units available. According to the National Association of Affordable Housing Lenders, such developments account for 80 percent of the nation's affordable rental housing stock, so its development and preservation will be key to combatting the affordable housing crisis.

Regarding income requirements and other standards that NOAH must meet to be eligible for CRA credit, we urge the regulators to listen closely to stakeholders with experience in developing such housing to develop standards that will ensure that CRA supports naturally occurring affordable housing that both supports low- and moderate-income populations and remains economically viable.

Question 9. **Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low- or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?**

NCSHA requests that the agencies continue to allow banks to receive credit for investing and purchasing MBS comprised of HFA program loans. HFAs access the MBS market to finance their affordable homeownership and rental programs. The proceeds they earn from selling the loans underlying the securities go directly to income-targeted individuals or go right back into their programs or operations, allowing them to administer sustainable lending programs.

The secondary market was particularly critical to HFAs during the recent economic downturn, when the low-interest rate environment negated the interest rate advantage that MRB-funded loans typically offer borrowers. Many HFAs began utilizing alternative executions, including selling MBS on the to-be-announced market (TBA). In 2021, nearly 65 percent of HFA-program homeownership loans were financed by non-MRB sources.

Selling MBS on the TBA market has proven to be a strong source of funding for HFAs' down payment assistance programs, a key part of their efforts to help low-and moderate-income families purchase a home. Saving for a down payment is perhaps the primary barrier to affordable homeownership for low- and moderate-income families and people of color. More than two-thirds of renters cited saving for a down payment as an obstacle to homeownership, according to the Urban Institute.[5] Many of these households are otherwise able to afford a home mortgage but are finding it increasingly difficult to amass the requisite savings for a down payment.

HFAs have decades of experience responsibly lending to low- and moderate-income home buyers and are the largest source of down payment assistance in the market today. In 2021 alone, HFAs provided down payment assistance to nearly 120,000 borrowers, accounting for 85 percent of all HFA program loans that year. NCSHA studies have shown that state HFA loans with down payment assistance generally outperform loans that include down payment assistance from other programs.

Some have raised concerns that banks often "flip" MBS, purchasing them to receive CRA credit for a year and then selling them after the year is up, and have asked if such activities provide any real community benefit. While we understand this concern, there is no question that allowing MBS comprised of HFA program loans to be eligible for CRA credit will help sustain their liquidity, improving the price HFAs can get for their securities. This will further allow HFAs to finance down payment assistance and affordable first-mortgage loans, allowing them to expand homeownership opportunities to underserved consumers.

Therefore, we recommend that banks be able to receive CRA credit for all purchases of securities containing HFA program loans.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

[redacted]

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives

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[5] "Barriers to Accessing Homeownership Down Payment, Credit, and Affordability," Goodman, et. al., 2018, Urban Institute.