August 5, 2022

OCC: https://www.regulations.gov/commenton/OCC-2022-0002-0001
FDIC Federal Deposit Insurance Corporation: comments@fdic.gov
Federal Reserve Board of Governors: regs.comments@federalreserve.gov

Re: **CRA NPR Comments**
OCC: Docket ID OCC-2022-0002
FDIC: RIN 3064-AF81
Federal Reserve: Docket No. R-1769 and RIN 7100-AG29

To Whom It May Concern:

EAH Housing appreciates the opportunity to comment on the Notice for Proposed Rulemaking (NPR) for the Community Reinvestment Act (CRA). We acknowledge the incredible amount of work and critical thinking that went into these proposed updates, especially given the coordination of multiple agencies for a single NPR. As a non-profit affordable housing developer our comments are meant to ensure that the Act continues to support the development of affordable housing, particularly investments in Low Income Housing Tax Credits (LIHTC), which is the most critical financing tool for this purpose.

EAH Housing is guided by our mission to serve the most vulnerable households at the deepest levels of affordability and has more than 50 years of experience developing, managing, and advocating for affordable housing. Since our inception, we have developed more than 106 properties in 87 communities throughout California and Hawaii, comprising over 8,400 apartments providing healthy and affordable housing to over 25,000 residents. As the housing crisis has deepened and escalated, EAH has actively advocated policymakers to deliver feasible housing options for our most vulnerable and at-risk community members – consistent with that, EAH has invested a significant level of our working-capital to establish the internal capacity and expertise necessary to program and sustain the residential communities that we develop and manage. It is with this background and experience that we respectfully submit the following comments for your consideration.

CRA should maintain separate Community Development and Investment Tests
For the continued development of affordable rental housing it is essential that the CRA regulations maintain separate community development lending and investment tests. Banks constitute roughly 85% of the LIHTC investment market nationally and generally would not make these investments absent CRA consideration. Due to the required ownership interest in a development, investing in LIHTC is a more costly and risky approach than lending. Given the opportunity to obtain equal CRA credit for lending and investing in affordable housing, banks primarily will pursue the former. The result would be a drastically reduced demand and pricing for LIHTC which would dramatically decrease the production of affordable rental homes both in California and across the nation. Unfortunately, aggregating lending and investing in a single metric fails to address banks' preference for lending over investing.

Community Development Finance Test
Metrics and benchmarks for the community development finance test should be established that are equally rigorous and objective as those created for the Retail Lending Test.

CRA credit for investing in mortgage-backed securities should only be prorated for the portion of the securities that are from affordable housing or other qualifying investments, and only for the first purchase of the security. Investments in these securities should also be discounted in comparison to more beneficial qualified CRA actions since they yield comparatively less public benefit and are highly liquid.

Affordable housing should be permitted under other categories, for example community revitalization or climate resiliency, but should not be double counted.

Mixed-income Properties
We support granting full consideration to *investments* in mixed-income LIHTC properties (because the credit itself already is pro-rated) but recommend that CRA consideration be pro-rated for *lending* to such developments. A significant portion of any such loan supports market-rate units which do not serve LMI populations. Similarly, we support pro-rating consideration for both lending and investment in non-LIHTC mixed-income properties based on the percentage of affordable homes.

Maintain Bank Size Thresholds
The NPR would change the threshold for sizes of banks, reclassifying many and relieving some of CRA requirements. 217 banks currently deemed "large banks," would be reclassified as "Intermediate Small Banks," and, as a result, would only have to voluntarily be subject to the CDFT and excuse them from obligations to place branches in LMI communities. The agencies also propose reclassifying 779 "Intermediate Small Banks" to "Small Banks," which would excuse them from CRA requirements for community development finance. EAH Housing urges the agencies to not to reclassify these banks because they have been complying with the CRA for several years and their reclassifications would significantly curtail reinvestment activity.

Reconsider the CRA's Community Engagement
The current CRA rules and the implementation of them suggest that, even under this NPR, community input will not be solicited or respected. In the experience of our members, agencies do not solicit community comments on exams. When communities do provide them, agencies often ignore them. The requirement for community contacts have not been taken seriously and rarely do banks find a local, community-specific contact.

To start to rectify, banks and the relevant agencies should:

- Post all comments received on their websites and be required to provide a response.
- Clearly disclose contact information for key staff.

The agencies should:

- Solicit community stakeholder input on the performance of particular banks for CRA exams and during mergers and provide ninety days to the public to comment.
- Default bank mergers to public hearings when public commenters raise concerns.
- Scrutinize bank merger applications to ensure that community credit needs, convenience and needs, and public benefit standards are met.

- Routinely review all existing consumer complaints, community comments, CFPB and agency investigations during CRA exams and merger reviews
- Solicit community groups for their views on bank practices relating to climate, displacement, discrimination, and other harms.

Community Benefits Agreements should be encouraged as evidence that a bank can meet applicable community needs and convenience and needs standards, and regulators should condition merger approvals on ongoing compliance with CBAs.

We appreciate your consideration of these comments and look forward to the adoption of revised regulations.

Sincerely,

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