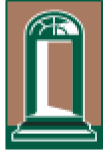


Merritt Community Capital Corporation
1970 Broadway, Ste. 250
Oakland, CA 94612

April 8, 2020

Chief Counsel's Office
Attn: Comment Processing, Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Robert E. Feldman, Executive Secretary
Attn: Comments, Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Community Reinvestment Act Regulations
Docket ID OCC-2018-0008
Docket ID FDIC-RIN 3064-AF22

Dear Chief Counsel and Executive Secretary,

Merritt Community Capital Corporation ("Merritt") is the only California based non-profit mission-centered provider of equity capital for affordable housing developments. For the past 30 years, we have been providing equity capital for some of the highest need and hardest to serve projects across California. In total, we have raised approximately $1B from twenty-six financial institutions to provide housing for approximately 30,000 people. Nearly all of our investors are Community Reinvestment Act motivated institutions.

Merritt is supporting the comment letters provided by The Affordable Housing Tax-Credit Coalition ("AHTCC") and The National Association of State and Local Equity Funds ("NASLEF") of which we are members (see attached letters). However, we thought it would also be helpful to provide some input on the real impacts of the proposed CRA regulation.

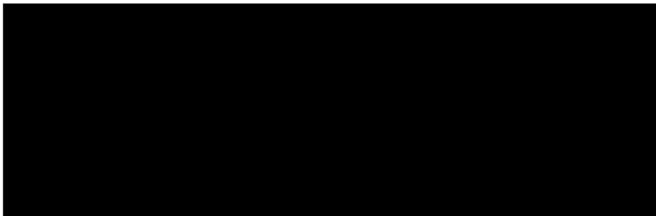
As a state-based institution in consistent and close contact with our investors and the people that the Community Reinvestment Act was meant to impact, we are extremely worried. Unofficially, we have been told that the combination of the (a) Community Development Threshold at 11% with 2% for community development, (b) expansion of the definition of qualifying activities to only 'partially' benefit low-income communities, and (c) double credit for affordable housing investments, will dramatically reduce the amount banks will invest in affordable housing. In some cases, we have been told investors will not be required to make new investments for years. Given the nations and California's affordable housing crises, I am sure that worries the OCC and FDIC greatly and is not the intent of the regulatory reform.

These comments were made before any impact from COVID-19 on investing in affordable housing began to be felt. As I am sure you are aware, COVID-19 is having a dramatic impact on investor appetite into affordable housing. We have started to see the impact of the proposed CRA reforms and COVID-19 such that some of the highest impact projects are receiving no investor interest; these projects have already been allocated credits on a competitive basis by the state and often have significant public support. In addition, such projects often have the greatest positive human and financial impact on our society by housing the formerly homeless, veterans, seniors, and extremely low-income families.

We are hopeful that the OCC and FDIC will provide the leadership necessary to modernize CRA to create transparency and predictability for financial institutions while ensuring the new regulations do not harm the communities it is meant to serve. At this time when we are experiencing a catastrophic health and economic crises related to COVID-19, as well as the ongoing crises related to affordable housing, our nation cannot afford to make it harder to provide affordable housing.

Thank you for your attention to these important concerns. Please feel free to reach out with any questions or concerns. We are here to work together to modernize CRA and serve our low-income communities.

Sincerely,



Ari Beliak
President and Chief Executive Officer
Merritt Community Capital Corp.

April 8, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW
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Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

SUBJECT: Community Reinvestment Act Regulations
OCC -- Docket ID#: OCC-2018-0008
FDIC – RIN 3064-AF22

To Whom It May Concern:

These comments are submitted on behalf of the National Association of State and Local Equity Funds, ("NASLEF"), an association of state and local based nonprofit organizations that raise equity capital for investment in Low-Income Housing Tax Credit ("Housing Credit") properties.

Background. NASLEF's 12 members operate in 42 states where our leadership in affordable housing advocacy, connection with community organizations, and knowledge of local markets creates high quality, strategic community investments, especially in underserved markets. Collectively NASLEF members represent about 10% of the national Housing Credit market, and have raised and invested almost $16 billion in affordable housing and over $1 billion in other community and economic developments. While our members also provide equity financing to for-profit development of Housing Credit properties, we concentrate in particular on nonprofit affordable housing development. In addition to our work financing Housing Credit developments, our members are involved in other community development activities that rely on bank participation incentivized by the Community Reinvestment Act ("CRA") including New Markets Tax Credit ("NMTC") investments and Community Development Financial Institution ("CDFI") lending.

NASLEF welcomes the opportunity to comment on the Office of the Comptroller of the Currency's (OCC) and Federal Deposit Insurance Corporation's (FDIC) Notice of Proposed Rulemaking (NPRM) regarding CRA, a law which we believe is critically important to the continued success of the Housing Credit program which is by far the most important federal program for affordable housing development and preservation. Commercial banks, encouraged by CRA requirements, provide around three-quarters of the equity capital for the Housing Credit program so any change in CRA that inadvertently reduces that demand could have a devastating impact on affordable housing development. While we may be able to maintain a sufficient amount of equity capital for the Housing Credit program, the question is what the price of that capital will be. If modifications to CRA have the effect of reducing bank demand, then we expect there to be lower credit pricing which necessitates higher property debt levels that reduce overall production and increase rents. During this housing affordability crisis, that is a result that must be avoided.

Our bank partners include intermediate small banks currently evaluated under the community development ("CD") test, large banks evaluated under the lending, investment and service tests, and wholesale and limited purpose banks evaluated under the CD test. We agree that the CRA regulatory framework should be modernized to reflect changes in the banking industry, and the NPRM includes some worthwhile changes but overall we have serious concerns that the proposed regulation will undermine our ability to serve low- and moderate-income communities. Since we raise equity capital for the Housing Credit program, our focus is on the Investment and Community Development tests for CRA, but the CDFIs operated by our members to support affordable housing, and the projects we fund must also have access to debt so we are also concerned about potential impact of CRA changes on the supply of debt capital for multifamily housing development.

As our members work with commercial banks to arrange equity financing for affordable housing, we are well aware of issues that arise which sometimes suggest a less than optimum application of the rules in ways that impede our business, cause a misallocation of capital among geographic areas, suggest inconsistent application of the rules, impose unnecessary burdens on banks, and create confusion about qualification for CRA credit. We support modifications to clarify and simplify the regulations but those objectives should not outweigh the fundamental purpose of CRA which is to make sure that insured depository institutions serve the communities in which they are located. The fundamental objective of CRA reform should not be to remove burdens from commercial banks to make their lives easier even if that is an appropriate value. Any rewrite of CRA regulations must be focused on continuing to ensure banks serve LMI communities.

Current Economic Climate

As we are all aware, this county, and indeed the world, are in perilous economic times as a result of the COVID-19 outbreak. At this time we do not know the extent of the economic calamity that we face in spite of unprecedented fiscal and monetary policy responses to the crisis. We do know that most of the low-income residents in the properties that we finance face substantial financial threats since they tend to work in service occupations that are the most likely disrupted by the shutdown of businesses in the food, hospitality and transportation sectors. Their loss of

income will impact the continued financial stability of Housing Credit properties, and indeed the full economic impact of the COVID-19 crisis is of overwhelming concern to providers of affordable housing, impacting not only current properties but development deals now in the pipeline. In our view, we cannot envision a worse time for bank regulators to adopt fundamental changes in a program which incentivizes loans and investments by banks to low-income communities. Regardless of the effective date of these changes, the mere adoption of new rules will undoubtedly begin to be factored into bank decision making immediately. Given the current health and economic crisis, we urge you to announce a delay in the consideration of these proposed regulations to avoid further disruption to the affordable housing sector.

Regulator Split

Because CRA is so fundamentally important to our mission in support of affordable housing, we have strong concerns about the durability of proposed changes to the regulations. We believe that changes to those regulations that are only adopted by two of the three CRA regulatory agencies increase the likelihood that this fundamental rewrite of the rules will be revisited in the not too distant future. We urge you to continue to engage the Federal Reserve Board to determine if a common position can be agreed upon between the bank regulators, an objective that we believe is important not only to organizations that benefit from CRA but also to banks that are subject to CRA regulation.

SPECIFIC COMMENTS

Overall goal of proposed rule to increase transparency and consistency in CRA. We support the objective of the proposed regulation to increase the transparency and consistency of CRA exams. We agree that CRA would be improved by identifying a list of qualifying activities and periodically updating that list. This increased transparency would serve both banks and their customers and create a more efficient regulatory system. We also support your proposal to establish a procedure whereby a bank can get confirmation of the qualification of a particularly activity to bring more certainty to the CRA process.

Elimination of the separate investment test for large banks and adoption of a single metric presumptive rating. Under current CRA rules, one-quarter of the CRA score is derived from bank investments. This creates a strong incentive for banks to invest in the Housing Credit, and contributes to the critical role financial institutions have played in financing roughly three-fourths of all Housing Credit investments. If the new regulations diminish the incentive for financial institutions to invest in the Housing Credit, we could see a major disruption to affordable housing investment at a time when our nation is recovering from an economic crisis – while also still grappling with an existing affordable housing crisis. We urge a separate investment test for large banks be preserved.

We oppose replacing the lending, investment, service and community development tests with a presumptive rating based largely on the ratio of a bank's qualifying activities to the value of the bank's retail domestic deposits. Admittedly, we do not have enough information to comment on whether the proposed ratios (11% or higher to receive an outstanding ratings and 6% or higher to receive a satisfactory rating) would impose a meaningful obligation on banks but we have heard

comments from our bank partners that it would not be difficult to achieve an 11% ratio, especially with the expansion of the list of qualifying activities. Under the proposed rule, it is our understanding a bank could hold qualifying mortgage backed securities, finance a major infrastructure project, and do some qualifying consumer lending and meet the presumptive ratio tests with little effort. Our concern that banks will not face challenges in meeting these thresholds applies equally to the separate proposed 2% community development test. If what we are hearing is accurate, we would expect many banks to lose interest in making Housing Credit and other community development loans and investments. In fact, as we have also heard from some of our bank partners, this could result in the elimination of entire community development departments. Today, the professionals who work in these areas have a keen understanding of their LMI market areas and the products that enable their bank to achieve their CRA goals. If the presumptive rating can be met simply with the purchase of MBS and through consumer lending, there will be less attraction to affordable housing. While some affordable housing properties will be able to attract bank investment by raising investor yields (reducing credit pricing), the most difficult, impactful properties will struggle to obtain any financing.

We recognize that the proposed rules characterize the ratio tests as presumptive and continue to reference performance context as under the current rules but it is not at all clear how this might work for individual loans and investments and how a reference to a qualitative review will in fact influence what is fundamentally a quantitative test for CRA. If bank examiners are in fact expected to conduct performance reviews that examine the quality of loans and investments and how impactful they are on LMI communities, notwithstanding the presumptive ratio, the proposed regulations do not describe how that would work. Our fear is that in practice the only objective a bank will have under CRA is to engage in qualifying activities that meet the ratio to deposits test.

Recommendation: The final rule should preserve the investment test for large banks to ensure that CRA continues to incent banks to make community development investments and loans. While we do not support the presumptive ratio rating, based on our limited information we believe the ratios should be considerably higher than proposed, and before adoption of a final rule you should publish for further comment data showing what this would mean for individual banks based on their current qualifying activities. We also recommend any final rule go into greater detail with respect to how CRA examiners would consider performance context. While the proposed rule provides that the presumptive rating is contingent on performance context, and we are not clear to what extent performance context will in fact determine a bank's ultimate rating, and are concerned that the practice will be to almost entirely base a rating on the quantitative metrics in the rule. The rule should provide that notwithstanding the presumptive ratio, a bank must also be specifically judged within a performance context based on its Housing Credit and NMTC investments, CDFI and affordable housing loans, and grants to nonprofits.

List of qualifying activities. Our basic concern for the proposed presumptive rating ratios is heightened by the proposed expansion of qualifying activities for purpose of the larger CRA test and the narrower CD test. We oppose the proposal to include essential infrastructure and essential community facilities that only "partially", rather than "primarily" benefit LMI individuals and census tracts. If such activities primarily benefit LMI areas and populations they should counted only to the extent that they benefit LMI populations. Under the proposed rule,

major public projects that a local government has decided to approve or support on behalf of its entire population should not receive CRA credit simply because the project partially benefits LMI households. Using this approach essentially opens up all infrastructure and essential community facilities to partial CRA credit regardless of where it is located. CRA exists to encourage banks to undertake activities in support of LMI individuals and areas that they may otherwise not engage in. Infrastructure financing, especially that approved by local governments, does not need that encouragement. Giving CRA credit to banks for lending in support of major infrastructure projects such as roads, bridges, tunnels, telecommunications, transit, water utilities, sewage facilities, industrial parks, etc. will overwhelm their interest in activities that support affordable housing. The same can be said of bank financing of essential community facilities such as schools, libraries, parks, hospitals, and police and fire stations.

We don't believe the proposed change in the NPRM will change the cost of providing financing for such activities but it will make it easier for banks to meet their CRA obligations banks at the expense of LMI individuals and areas. There will not be community benefit as a result of this expansion. Instead, it will move banks away from the often smaller, more difficult community investments that have been so impactful for LMI individuals and communities.

We also oppose your proposal to count middle-income housing as affordable housing if located in "high-cost" areas. To us, this seems to be antithetical to the reason CRA was enacted in the first place, to address red lining of LMI neighborhoods. This definition could significantly dilute the CD test making it more difficult to finance the most consequential affordable housing in favor of market rate housing that will have no difficulty securing financing.

Finally, the proposed rule provides that investments in Opportunity Zone Funds that are serving LMI communities would be given automatic CRA credit. While we would agree that many investments qualifying for Opportunity Zone tax benefits will benefit LMI communities, many others will likely be of more questionable value including the development of high-end hotels and other real estate investments that are technically within qualifying zones but do not impact LMI individuals and communities. In contrast to the Housing Credit and NMTC programs which are awarded federal tax credits based on a highly competitive process designed to achieve public policy objectives, Opportunity Zone tax subsidies are open ended without any test of community benefit other than location within a designated zone.

Recommendation: We recommend you modify the basket of qualifying activities that fit within the 2% CD minimum test to include essential infrastructure and essential community facilities related activities only if they "primarily benefit" LMI individuals and areas, and then only to the extent of the benefit. We recommend the financing of middle-income housing be a qualifying activity only if the bank can demonstrate that the project could not otherwise get financing, as determined by whether there is significant public or philanthropic financial support to make the project feasible. Finally, we recommend that investments in Opportunity Zone funds not automatically count toward the 2% minimum CD test.

Counting only on-balance sheet activities. The proposed rule would focus on a bank's balance sheet rather than giving full credit to investments and loans frequently traded such as MBS. CRA qualifying loans and community development investments would be valued based on their

average month-end on-balance sheet dollar value. We appreciate the purpose behind basing the test on assets that are held on the balance sheet to prevent banks from loading up with short term investments during the CRA exam, however, we are concerned that once a bank meets it qualifying ratio, it would have no incentive to continue its affordable housing efforts. This could particularly problematic for Housing Credit equity investments which are held on a bank's book for 15 years, and even more troublesome if such investments are double-counted as the rule proposes. Once a bank has met its 2% CD test, it may decide that there would be no CRA rationale to continue to participate annually in the Housing Credit investment market. This is in contrast to the current rules that look at originations and banks are incented to stay in the Housing Credit market year after year.

Recommendation:**.** Because the presumptive ratio test only counts bank activities that are on a bank's balance sheet, as discussed above we are concerned that banks will drop their LIHTC investment activities once the 2% test has been met. To avoid this result, we recommend that the rule factor into the ratings whether a banks has increased, maintained or decreased originations of affordable housing loans and investments significantly at the bank level relative to the prior assessment period. In order to receive a satisfactory or outstanding rating, a bank cannot have reduced annual Housing Credit investments and loans in excess of 20% without providing a reasonable explanation.

Multiplier for certain investments and loans for CD minimum requirement. While we appreciate your identification of this issue, we oppose double counting certain activities to reach the CD minimum. In the NPRM, you raise the question whether in fact the "multipliers may cause banks to conduct a smaller dollar value of impactful activities because they will receive additional credit for those activities. Are there ways the agencies can ensure that multipliers encourage activities that benefit LMI individuals and areas while limiting or preventing the potential for decreasing the dollar volume of activities (e.g., establishing a minimum floor for activities before a multiplier would be applied)?"

We believe your concerns are well placed; double counting will undermine bank demand for such loans and investments since the volume of such activities is so far less than other loan and investments that would be considered under the CD test. Even with double counting, CRA would not encourage banks to engage in such activities. The opposite would instead be the case: banks will make half the effort because they received double the credit.

Recommendation: Because the level of investment and lending toward affordable housing appears to be an area of concern to you, as it certainly is to us, we recommend that you replace the "multiplier" for investments, loans to CDFIs, and affordable housing with a requirement that, in order to receive an outstanding or satisfactory rating, the bank must invest a certain portion of its CDLI activities in these favored activities, so that a minimum percentage of the deposits at the bank level must be provided as investments (excluding MBS and municipal bonds not issued by state and local housing finance agencies), loans to CDFIs, or loans for affordable housing.

Ability of bank to meet satisfactory and outstanding ratings even if it fails in up to 50% of assessment areas. The proposed rule provides that a bank could not receive an outstanding or a satisfactory rating "unless it also received that rating in a significant portion, such as more than

50 percent, of its assessment areas and in those assessment areas where it holds a significant amount of deposits, such as more than 50 percent." Although this proposal is imprecise, we believe the threshold should be well above 50% and are particularly concerned that such a standard would have the most negative impact on rural areas that are already underserved. A great deal of our affordable housing financing supports properties in rural areas and our experience under the current CRA rules is that bank incentives for such investments and lending need to be strengthened. If banks can essentially ignore almost half of their assessment areas and still receive an outstanding, CRA will be fundamentally weakened as a means of encouraging banks to serve such areas.

Recommendation. We recommend a standard well above 50%, and as a means of encouraging greater CD activity in rural areas we recommend creating statewide assessment areas for the community development loans and investments that you propose to double count. Under this approach, a bank would be permitted to count these activities as being in its assessment area as long as the investment is made in the state in which it has one or more assessment areas; provided that the bank had received a satisfactory rating or higher.

CONCLUSION

In spite of generally shared criticisms of the current rules, we believe the Community Reinvestment Act has fundamentally been very successful achieving its objectives. It has increased the level of bank activity in service to LMI communities, and has been absolutely critical to the success of the Housing Credit program. The future of affordable housing in this country depends on CRA continuing to incentivize lending and investment to Housing Credit properties and we are deeply concerned that the proposed rule will severely undermine that activity. We urge you to closely review the comments you receive on and consider major changes to preserve the value of CRA to affordable housing and community development.

Thank you for your attention to our comments.

Bill Shanahan
President, National Association of State and Local Equity Funds

CAHEC
Cinnaire
Hawaii Housing Finance
Housing Vermont
Massachusetts Housing Investment Corporation
Merritt Community Capital Corporation
Midwest Housing Equity Group
Mountain Plains Equity Group
Northern New England Housing Investment Fund
Ohio Capital Corporation for Housing
St. Louis Equity Fund
Virginia Community Development Corporation

THE AFFORDABLE HOUSING TAX CREDIT COALITION

April 6, 2020

Chief Counsel's Office
Attn: Comment Processing, Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Robert E. Feldman, Executive Secretary
Attn: Comments, Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Community Reinvestment Act Regulations
Docket ID OCC-2018-0008
Docket ID FDIC-RIN 3064-AF22

The Affordable Housing Tax Credit Coalition (AHTCC)[1] appreciates the opportunity to comment on the Community Reinvestment Act (CRA) rule proposed by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). Established in 1988, the AHTCC is a leading trade association of nearly 200 organizations and businesses that advocate for affordable housing financed using the Low-Income Housing Tax Credit (Housing Credit). AHTCC membership represents the full spectrum of those involved in the nation's affordable housing delivery system, including syndicators, developers, investors, state allocating agencies, and affiliated organizations, and together have served more than 3.7 million households by financing or developing well over half of all 3.2 million Housing Credit properties.

While the Housing Credit finances virtually all affordable housing, CRA motivates the vast majority of these investments – making the Housing Credit's success closely tied to CRA. An estimated 73 percent of Housing Credit investment comes from banks motivated by CRA requirements,[2] meaning any changes to CRA could have significant effects on investment in the Housing Credit – and ultimately on our ability to build and preserve affordable housing.

Certain changes to CRA could have an especially significant impact when our ability to build and preserve affordable housing is already facing significant disruptions as a result of the current COVID-19 crisis. Construction delays and moratoriums, numerous financing hurdles, and the broader economic fallout are putting Housing Credit financing at risk and slowing efforts to house low-income households. This is especially concerning for over 3 million renter households who are already housing cost burdened and are solely employed by industries experiencing significant lay-offs and decreased operations (e.g. services, retail, transportation, and travel).[3] For these reasons, we encourage the OCC and FDIC to avoid

[1] 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 investment.
[2] CohnReznick, "Housing tax credit investments: Investment and operational performance," (2020). *Retrieved from:* https://www.cohnreznick.com/insights/2019-housing-tax-credit-investment-operational-performance
[3] Whitney Airgood-Ibrycki, "Pandemic will worsen housing affordability for service, retail, and transportation workers," (2020). *Retrieved from:* https://www.jchs.harvard.edu/blog/pandemic-will-worsen-housing-affordability-for-service-retail-and-transportation-workers/

any changes through CRA reform that could further disrupt the safety and soundness of our affordable housing delivery system when it is so urgently needed.

The AHTCC appreciates the OCC and FDIC's goal of ensuring that the CRA reflects today's current banking practices and technology, and the need to update decades-old regulations. The comments and recommendations we have provided below are intended to support the provision of affordable housing to the low- and moderate-income people and communities that the CRA is designed to serve, at a time when it is needed more than ever.

The Impact of the Low-Income Housing Tax Credit

The Housing Credit is our nation's primary tool to finance the development and preservation of rental housing that is affordable to low-income households, including veterans, seniors, working families, people with special needs, and people who were formerly homeless. A highly efficient public-private partnership, the Housing Credit has financed more than 3.2 million affordable homes since its inception in 1986, with more than 110,000 homes typically being placed in service annually.[4]

Studies have shown that affordable housing helps low-income individuals gain employment and keep their jobs, while also leading to better health outcomes and reductions in domestic violence and substance abuse.[5] Housing Credit properties are also associated with educational success; for each additional year a child lives in a Housing Credit property, their chance of attending college for four years or more increases by 3.5 percent, and their future earnings increase by 3.2 percent.[6]

Additionally, investments in affordable housing drive economic activity and directly benefit communities. Since its inception, the development of Housing Credit properties has supported a total of 3.6 million jobs, generated $135 billion in tax revenue, and generated $344 billion in wages and business income.[7] By devoting less of their income to rent, families have more money to spend in support of the local economy. A study of Housing Credit properties in the Bronx, New York, found that developments there boosted estimated local purchasing power by one-third, contributing to the retail vitality of the neighborhood and the availability of goods and services to residents.[8] The introduction of affordable housing into a low-income neighborhood is also associated with lower crime rates, less segregation, and a 6.5 percent increase in property values.[9]

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[4] Department of Housing and Urban Development, "Characteristics of LIHTC Properties," (2019). *Retrieved from:* https://www.huduser.gov/portal/Datasets/lihtc/tables9517.pdf

[5] 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

[6] 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

[7] ACTION Coalition, "The Low-income Housing Tax Credit's Impact in the United States," (2020). *Retrieved from:* https://static1.squarespace.com/static/566ee654bfe8736211c559eb/t/5d3b119100e485000184039b/1564152209836/ACTION-NATIONAL-2019.pdf

[8] Enterprise and Local Initiatives Support Corporation (LISC), "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

[9] 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.gsb.stanford.edu/gsb-cmis/gsb-cmis-download-auth/405056

Affordable Housing Needs in the United States

Despite the Housing Credit's success, the need for affordable housing continues to grow in urban, suburban, and rural regions.[10] Rents are rising across the country, making the Housing Credit an even more essential tool to help meet the needs of the millions of Americans who pay more than half of their income towards rent. Even before the COVID-19 crisis, an estimated 10.9 million renter households – or one in four renter households –paid more than 50 percent of their income on rent (i.e. were severely housing cost burdened).[11] This figure is projected to rise to more than 14.8 million households by 2025.[12] With millions of households now out of work and feeling the strain of economic uncertainty due to the COVID-19 crisis, those numbers are likely to grow even more rapidly. Such severe housing cost burdens leave households with little left each month for health care, childcare, transportation, groceries and other necessities, and is especially challenging for the lowest income households, who may be just one unforeseen event away from eviction or homelessness.[13]

Contributing to the housing shortage, the supply of low-cost rental units continues to decline; from 2012 to 2017, the number of homes renting for $600 or below decreased by 3.1 million, while the number renting for $1,000 or more rose by 5 million. Meanwhile, the cost of land, labor, and materials have continued to increase so that, in most markets, only high-end developments are financially feasible without public subsidy.[14]

Supporting Community Development Through the CRA Evaluation Methodology

Two elements of the current CRA evaluation methodology primarily drive banks to invest in affordable housing: the separate investment test – which represents 25 percent of the total CRA score for most large institutions – and the limited number of qualifying activities that are included within the investment test. Under the proposed methodology, with investments and debt financing pooled, banks would weigh the benefits of investments against debt in determining which CRA-qualifying activities to pursue. In general, debt financing takes place over a shorter duration, and is less complex and more liquid than tax credit investments, making it a more desirable alternative. For these reasons, there is likely to be a substitution effect of loans or other types of CRA activities that are less impactful on capital charges replacing housing equity investment, ultimately decreasing Housing Credit investments.

Under the current CRA evaluation methodology, there is also a limited number of activities that may qualify for CRA credit, and that number is further limited within the separate investment test, providing a compelling incentive for banks to invest in affordable housing through the Housing Credit. The proposal to vastly expand the array of activities that qualify for CRA, many of which may be much less

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[10] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2019," (2019). *Retrieved from:* *https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf*

[11] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2019," (2019). *Retrieved from:* https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf

[12] Enterprise Community Partners (Enterprise) and JCHS, "Projecting Trends in Severely Cost-Burdened Renters: 2015-2025," (2015). *Retrieved from:* *http://www.jchs.harvard.edu/sites/default/files/projecting_trends_in_severely_cost-burdened_renters_final.pdf*

[13] Joint Center for Housing Studies of Harvard University, "America's Rental Housing 2020," (2020). *Retrieved from:* *https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf*

[14] Joint Center for Housing Studies of Harvard University, "America's Rental Housing 2020," (2020). *Retrieved from:* *https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf*

burdensome than tax credit investments, is also likely to displace Housing Credit investments. Many of these activities are also less impactful for low-income communities and households and may allow banks to meet CRA requirements while doing less to meet community needs. For example, fulfilling CRA obligations through mortgage backed securities (MBS), infrastructure investments, or community facilities would allow banks to more easily meet community development targets through activities that may provide few direct benefits for low-income households, whereas equity investments supported by the Housing Credit are transformative for the communities that CRA is intended to support, with far-ranging impacts for residents as well as the surrounding neighborhoods.

The AHTCC believes that, in accordance with the CRA statute, it is essential for CRA to incentivize activities that have significant, direct impacts for low-income communities and families. For this reason, we support the OCC and FDIC's selection of the activities to receive double CRA credit under the new evaluation methodology (investments, loans to Community Development Financial Institutions [CDFIs], and loans to affordable housing.) However, the double credit Housing Credit investments would receive is not a sufficient incentive for banks to continue their current levels of investment, given the relatively small size of Housing Credit investments compared to the potential size of some other qualifying activities.

We urge the OCC and FDIC to ensure that any final evaluation methodology, including the combination of investments and debt, expansion of eligible activities, and specific weighting within the formula, does not discourage investment in affordable housing, including investment in the Housing Credit. With this goal in mind, we propose the following modifications.

Proposals:

- Circumscribe the list of qualifying activities that fit within the community development test, in particular to remove essential infrastructure and essential community facilities that only "partially," rather than "primarily," benefit low- and moderate-income individuals and census tracts. We also recommend moving MBS from the community development test to the retail lending test.

- Instead of awarding double credit to the three types of activities identified, we recommend that the OCC and FDIC require that, in order to receive a satisfactory or outstanding rating, a minimum level of the community development bucket (e.g. 1 percent of deposits, under the current 2 percent test) at the bank level should be in these favored activities (i.e. investments excluding MBS and bonds not issued by state and local housing finance agencies, loans to CDFIs, or loans to affordable housing.)

- In addition to the above, we recommend that the OCC and FDIC provide further guidance with respect to how the performance context review be undertaken for the entire category (e.g. 2 percent) of community development activities, with "safe harbor" products identified through which banks could automatically be considered "responsive" under the performance context review – which would include the Housing Credit.

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Setting Community Development Thresholds that Meet Community Needs

In order to continue to support the intent of CRA by meeting the needs of communities in which banks operate, it is important to at least maintain the current level of investment in community development. At this juncture, it is unclear whether the proposed baseline metrics (6 percent and 11 percent of total activity, and 2 percent in community development lending and investments) will provide robust community benefit or as much Housing Credit investment as the CRA currently provides. We appreciate the OCC and FDIC soliciting additional data to support the determination of these thresholds and willingness to modify these thresholds if needed.

Given the importance of CRA in providing community development and fulfilling essential community needs, such as affordable housing, we urge the OCC and FDIC to ensure that the proposed thresholds will provide at least as much community benefit, affordable housing, and Housing Credit investment as the CRA currently provides. As the affordable housing crisis continues to worsen and the U.S. economy undergoes a severe retraction, strong CRA requirements are needed now more than ever.

Proposal:

- Once the OCC and FDIC review the supporting data from banks solicited after the proposed rule was issued, re-publish a proposed rule that clearly outlines the methodology behind the baseline metrics, providing stakeholders with the information necessary to determine the full impact of the proposed ratios.

Evaluating Banks' Consistent Support of Low-Income Households

The Housing Credit remains on banks' balance sheets for 15 years, which is a feature of its successful design that ensures properties remain affordable for the long-term. This design works well with the current CRA system, which requires banks to continue originating qualified investments throughout the CRA evaluation period of two to three years. However, under the proposed rule, banks would be able to halt new CRA investments once their evaluation targets are met based on their current five-year (for those with a previous outstanding rating) balance sheet assessment. This could result in flurry of bank activity in the beginning of a banks' CRA cycle, followed by a lull during which communities are no longer being served. Because the Housing Credit will remain on balance sheets for 15 years, banks would benefit from a Housing Credit investment at twice the value for at least three CRA cycles, even though the properties have already been placed in service.

Today, there is a consistent demand for the Housing Credit largely due to the current structure of the CRA, which provides needed affordable housing across the country. In order to continue supporting a robust affordable housing delivery system, we urge the OCC and FDIC to alter the balance sheet proposal so that long-term investments like the Housing Credit are not inadvertently decreased.

Proposal:

- Consider originations of loans or investments in affordable housing (including the Housing Credit), in addition to balance sheet activity. Alternatively, factor into ratings whether banks

have decreased originations of affordable housing loans and investments significantly at the bank level relative to the prior assessment period.

- Continue to provide credit for the full amount at the time of commitment for community development investments, including the Housing Credit.

Incentivizing Proven Community Development Tools Where They Are Most Needed

We appreciate the OCC and FDIC's focus on updating banks' outdated assessment areas, which currently create concentrations of CRA activity and distort Housing Credit pricing. 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," with pricing differentials between 10 – 15 percent between Housing Credit developments in "CRA-hot" and "CRA-not" areas, and at some points in the program's history the pricing differential was as high as 35 percent.[15] Currently, the areas that are least attractive from a CRA investment test perspective are rural areas with some of the greatest affordable housing needs.

However, the approach in the proposed rule is unlikely to sufficiently eliminate the distortions in affordable housing investment between CRA-hot and CRA-not areas. Rather, deposit-based assessment areas for non-branch-based banks are likely to shift hot spots to areas with high populations, for example high-cost markets like New York, Boston, Los Angeles, and San Francisco, where there is already a high concentration of CRA-driven investment. Regions with a lower amount of deposits – rural, lower-income, and less-populous areas – will continue to miss out on the benefits associated with the strong incentive that CRA provides. The allowance to fail examinations in up to 49 percent of assessment areas and still receive a satisfactory or outstanding score will further exacerbate this point by allowing banks to prioritize more lucrative areas.

Since Housing Credits are a limited resource that are competitively allocated by state or local housing agencies in accordance with state Qualified Allocation Plans, which are intended to address the areas of the state that are most in need of affordable housing or otherwise are part of state designated redevelopment areas, we urge the OCC and FDIC to give banks wider latitude to invest in Housing Credit properties outside of the proposed assessment areas. Our recommendation would help to balance Housing Credit investment geographically.

Proposal:

- Allow certain community development loans and investments which are provided double credit in the proposed rule (i.e. investments excluding MBS and bonds not issued by state and local housing finance agencies, loans to CDFIs, and loans for affordable housing) to be eligible for CRA credit throughout a state in which the bank has one or more assessment areas, so long as the bank has achieved at least a satisfactory rating in that assessment area in the prior rating period.

[15] CohnReznick, "Housing tax credit investments: Investment and operational performance," (2020). *Retrieved from:* https://www.cohnreznick.com/insights/2019-housing-tax-credit-investment-operational-performance

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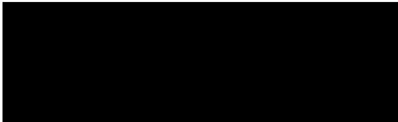
The AHTCC appreciates the profound role the CRA has played in supporting a robust affordable housing market and contributing to the Housing Credit's three decades of success in providing affordable housing for those who need it most. We urge that any changes to the CRA continue to support robust investment in the Housing Credit to ensure that, at a time when our nation faces a severe affordability crisis, growing shortage of affordable housing, and instability from the COVID-19 crisis, our nation's affordable housing delivery system is at least as efficient and effective as it is today.

If you have any questions regarding these comments, please contact Emily Cadik, Executive Director, at emily.cadik@taxcreditcoalition.org or 202.434.8287.

Sincerely,



Emily Cadik
Executive Director
Affordable Housing Tax Credit Coalition