PRESERVATION OF AFFORDABLE HOUSING

August 5, 2022

Submitted via regulations.gov

Benjamin McDonough
Chief Counsel
Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218

Re: Docket ID OCC– 2022–0002

Submitted via email

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Regs.comments@federalreserve.gov

Re: Docket R-1769; RIN 7100-AG29

Submitted via email

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

Re: RIN 3064-AF81

Dear Chief Counsel McDonough, Secretary Misback, and Assistant Executive Secretary Sheesley:

Thank you for this opportunity to provide comments on the Community Reinvestment Act (CRA) Joint Notice of Proposed Rulemaking (NPR) 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) (together referred to as "the agencies").

Preservation of Affordable Housing, Inc. (POAH) is a national nonprofit specializing in the acquisition, rehabilitation or redevelopment, and long-term preservation of at-risk affordable housing. Since its founding in 2001, POAH has successfully preserved or built more than 12,500 units of affordable rental housing in 11 states and the District of Columbia at more than 125 properties, providing affordable homes for more than 20,000 Americans.

POAH has extensive experience financing the acquisition, renovation, or construction of a large portfolio of affordable and mixed-income housing communities across a broad range of American communities. Given POAH's identity and experience as developer/owner of affordable housing communities, our comments are focused on the NPR sections most relevant to Community Development (CD) activities in general and affordable housing in particular.

**1. Maintain a separate Investment Test**

POAH strongly opposes the NPR's proposal to eliminate the CRA's current standalone Investment Test because that test, currently worth 25% of the overall CRA score, is the primary driver of CRA-motivated investment in the Low Income Housing Tax Credit (Housing Credit) – which is, by an order of magnitude, the nation's largest funding source for affordable housing construction.

The Housing Credit is responsible for nearly all of the affordable housing built and preserved in the US since the program was authorized in 1986 – a total of 3.6 million affordable housing units to date, providing homes for roughly 8 million low-income Americans. And the CRA motivates the vast majority of LIHTC 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.[1]

The effect of CRA on Housing Credit investment can be clearly seen in Housing Credit pricing, which determines the amount of equity invested into Housing Credit financed affordable housing construction or renovation projects. Housing Credit pricing can vary by $0.20 for each $1.00 of Housing Credit between areas where CRA-driven demand is highest – that is, where several major banks must meet CRA Investment Test requirements – and areas outside of banks' assessment areas where CRA-driven demand is lowest.[2] As a result, properties with the least CRA demand can receive 20% less equity for the same amount of Housing Credits as properties with the highest CRA demand, rendering many properties with low CRA demand financially infeasible. With such a significant portion of Housing Credit investment impacted by CRA, our nation's ability to address the growing affordable housing crisis is closely tied to CRA.

The NPR's proposal to eliminate the separate Investment Test and replace it with a Community Development Financing Test (CD Financing Test) that includes both loans and investments will decrease the incentive for banks to make equity investments, including in the Housing Credit. Equity investments tend to be more complex, require greater due diligence, and carry greater risk than loans, and so without a separate investment test, banks may choose to meet the CD Financing test only or mostly with lending activity.

Any reduction in equity investments would have a significant detrimental effect on the creation and preservation of affordable rental homes across the US. Affordable housing properties typically cannot carry significant debt because their affordable rents do not offer substantial cash flows to service the debt. Equity investments – nearly always through the Housing Credit – are therefore key to achieving affordable rents in most communities. The absence of a standalone equity Investment Test would cause a reduction in the incentive to invest in the Housing Credit, leaving banks fewer opportunities to make CRA-eligible loans for affordable housing. Moreover, with a long list of worthy, credit-eligible lending activities, the proposed rule makes it highly likely that CRA-driven capital allocations will shift away from affordable housing.

If a separate investment test is not retained, strong guardrails should be put in place to counteract the potential negative impact on investment in the Housing Credit and other important community development equity investments. These should include an Investment "Sub-test" within the proposed CD Financing Test (the weighting of which should be increased – see below); an evaluation of equity investment activity levels at the institution level; and the incorporation of Housing Credit equity investment as an Impact Factor under the CD Financing Test.

These recommendations are further detailed in the Affordable Housing Tax Credit Coalition's comment letter, which is endorsed by POAH.

**2. Weight Community Development and Retail activities equally**

If the agencies proceed with the proposal to reallocate activities in the examination score between Retail and Community Development tests, the agencies should equally weight these two tests in the overall rating.

We share the concern among stakeholders, including the National Association of Affordable Housing Lenders (NAAHL) and Stewards of Affordable Housing for the Future (SAHF), that the proposed rating structure could

[1] CohnReznick, "Housing Tax Credit Monitor," (2022). *Retrieved from:* https://www.cohnreznick.com/-/media/resources/2022_housing-tax-monitor_march_2022.pdf
[2] CohnReznick, "Housing Tax Credit Monitor," (2022). Retrieved from: https://www.cohnreznick.com/-/media/resources/2022_housing-tax-monitor_august_2022.pdf

result in an environment in which fewer banks seek to achieve an Outstanding rating as the only way to do so would be to first receive an Outstanding conclusion on its Retail Test -- a function of the weighting between the Retail Test (60%) and the Community Development Test (40%) and the proposed conclusion and rating point system. According to the Table 9 “Distribution of Reporter Banks Estimated Retail Lending Test Conclusions by Bank Assets” in the NPR, none of the 44 banks with assets over $50 billion (which also dominate the Housing Credit market), would currently receive an Outstanding conclusion for 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 then 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, we (with NAAHL, SAHF, and others) 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 motivate banks to excel on both tests considering their even impact on the overall rating.

**3. Focus on Community Development activities primarily benefiting LMI households.**

POAH supports the development and maintenance of an illustrative of CRA-eligible Community Development activities, but we urge the agencies to focus CRA eligibility on CD activities *primarily benefitting LMI households* in order to avoid diluting bank CD activities across a larger pool of potential activities (including activities with only partial or ancillary benefit for LMI households). In support of that goal, we offer these comments on the Community Development Definitions proposed in Section III of the NPR:

- **Do not provide CRA consideration for housing for households over 80% AMI.** CRA consideration should be reserved for housing affordable to, and reserved for, LMI households below 80% AMI. LMI households earning below 80% AMI are most severely impacted by the nation’s affordable housing shortage, and the updated CRA rubric should continue to focus bank CD activities on the households rather than allow CRA consideration for housing serving middle-income households (where lending and investments are likely to be more economic, and thus more attractive, for regulated banks).

  In this context, POAH would suggest that the proposed standard of government programs having a “stated purpose or bona fide intent” of providing affordable housing for LMI or middle-income individuals is inadequate, and that CRA activities should be required to meet the specific affordability standard proposed (shelter costs not exceeding 30 percent of 80 percent of median income). Similarly, we are opposed to the proposals to offer CRA consideration for middle-income housing in high opportunity areas.

- **Provide CRA consideration only for NOAH transactions that safeguard affordability.** So-called “Naturally Occurring Affordable Housing” (NOAH) is a critical resource in many communities, and we strongly support the agencies’ efforts to incentivize NOAH preservation efforts by providing CRA consideration for bank activities that facilitate this important work.

  However, we are concerned that unless binding, written affordability commitments are required for CRA consideration for NOAH financing activities, this CRA consideration could actually accelerate gentrification and displacement by supporting financing for purchasers or owners who plan to increase rents on currently affordable NOAH properties.

  Accordingly, we would urge the agencies to provide CRA consideration only for NOAH activities where the owner provides an explicit written pledge to maintain rents affordable to LMI individuals. We would support a minimum affordability term of 5 years, even if the term of the financing in question is shorter.

The other criteria proposed in the NPR – (i) location in an LMI census tract; (ii) nonprofit sponsorship, or (iv) documentation of current LMI occupancy – provide no assurance that the activity in question will actually support affordable housing for LMI people. It seems likely, indeed, that typical "repositioning" transactions by sponsors acquiring NOAH properties anticipating rent increases would qualify for consideration under criteria (i) and (iv).

- **Limit CRA consideration for MBS purchases.** We are concerned that, especially without a separate Investment Test, CRA activity will flow to activities like MBS that are less challenging for banks, and less impactful for LMI communities. Accordingly, we urge the agencies to constrain consideration for MBS activities to focus as much as possible on those transactions that are impactful for LMI communities. In particular, we would support the proposal to provide consideration only for the po rata share of affordable loans in a qualifying MBS, and only for the initial purchase of that security. We would also ask the agencies to consider limiting how much of a bank's CD activity can be generated through MBS activity to no more than 25% of total CD activity.

Thank you once again for the chance to share POAH's thoughts on the NPR. Please do not hesitate to contact me at (617) 449-1016 with any questions or comments you may have.

Sincerely,

[redacted]

Chief of Staff / Senior Vice President
Preservation of Affordable Housing (POAH)