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Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW
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RIN 3064-AF81

CREA, LLC appreciates the opportunity to comment on the Community Reinvestment Act (CRA) Notice of Proposed Rulemaking (NPR) issued by the Federal Reserve Board of Governors (Federal Reserve), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC) in May 2022. CREA, LLC is a tax credit syndicator specializing in low-income housing tax credits, forming long term relationships with investors and developers that cultivate success and improve lives. Since inception, CREA has raised over $9.2 billion in equity and has properties under management in 48 states, D.C. and one U.S. territory.

The Low-Income Housing Tax Credit (Housing Credit) is our nation's primary tool to produce and preserve affordable rental housing, having financed the development of 3.6 million affordable homes since its inception in 1986.[1] While the Housing Credit finances virtually all new affordable housing, CRA motivates the vast majority of these investments. Total Housing Credit investment reached $22.4 billion in 2021, an estimated 84.8% – or $19 billion – of which came from banks motivated by CRA requirements.[2]

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 properties. 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.[3] 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

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

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

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

portion of Housing Credit investment impacted by CRA, our nation's ability to address the growing affordable housing crisis is closely tied to CRA.

As the affordable housing crisis continues to worsen, the regulations impacting the Housing Credit must be stronger than ever. **While we believe some elements of the NPR will strengthen Housing Credit investment, we are concerned that on balance the NPR will substantially reduce the incentive that CRA currently provides to invest in affordable housing, at a time when it is needed most.**

NPR Proposals that Will Strengthen the Housing Credit

The NPR includes two key aspects that we believe will benefit Housing Credit investment and help to even pricing disparities:

1. **Allowing consideration for the full amount of Housing Credit investments, regardless of the share of affordable units.**
    - We agree this is the correct approach, in consideration of the important role of the Housing Credit in achieving the goals of CRA and the Housing Credit's strong statutory and regulatory restrictions, which make it unnecessary to issue additional CRA-specific guidance.

2. **Allowing consideration of community development activities outside of assessment areas.**
    - As many communities disproportionately lack affordable housing, the incentive to invest in the Housing Credit should be expanded to help support affordable housing production and preservation in all regions. We expect the NPR could have the effect of evening pricing differentials between areas with the highest and least CRA demand if there is sufficient motivation for banks to invest in the Housing Credit.

Primary Concerns and Recommendations

However, we are concerned that aspects of the interagency NPR may significantly reduce the motivation for banks to invest in the Housing Credit. Most notably, we are concerned about:

1. **The removal of the separate Investment Test.**
    - Currently, the separate Investment Test weighted at 25% of the overall CRA score is the driver of CRA-motivated Housing Credit investment. Eliminating the Investment Test and replacing it with a Community Development Financing Test that includes both loans and investments will decrease the incentive for banks to make equity investments, including in the Housing Credit.
    - A recent survey of 24 large banks found that 42% of respondents – representing $2.4 billion in yearly Housing Credit investment – believe the removal of the

separate Investment Test would have a negative impact on their bank's appetite to invest in the Housing Credit, potentially resulting in decreased Housing Credit investments in favor of eligible community development loans. The survey was administered by the Affordable Housing Tax Credit Coalition, Affordable Housing Investors Council, and National Association of Affordable Housing Lenders, and is further detailed in their comment letters in response to the NPR.

- **If it is not possible to retain a separate Investment Test in the new CRA structure, we urge that strong mitigating factors be put in place to prevent a reduction in the incentive to invest in the Housing Credit**, which would ultimately reduce affordable housing production and preservation. Our proposed mitigating factors are explained below.

2. **Disproportionate focus on retail activities over community development activities.**

   - **Weighting between the Retail and Community Development Test:**
     - The NPR offers only two combinations of test conclusions for a bank to receive an Outstanding rating overall, both of which require an Outstanding conclusion on the Retail Test. However, none of the 44 largest banks would currently receive an Outstanding conclusion on the Retail Test, making an Outstanding rating virtually unattainable. As a result, banks may only be incentivized to aim for a Satisfactory rating overall, which can be achieved with only a Needs to Improve conclusion on the Community Development Test. **We urge that the Retail and Community Development Tests be instead weighted evenly** to provide banks with an additional test conclusion combination to achieve an Outstanding rating (High Satisfactory conclusion on the Retail Test and Outstanding on the Community Development Test), which will provide banks with more incentive to aim for an Outstanding rating overall and an Outstanding conclusion on the Community Development Test.

   - **Needs to Improve Community Development Test conclusion allowable for Satisfactory rating:**
     - Under the NPR, a bank could receive a Satisfactory rating by achieving an Outstanding, High Satisfactory, or Low Satisfactory conclusion on the Retail Test along with a Needs to Improve conclusion on the Community Development Test. **We urge that banks should not be issued an overall Satisfactory rating without achieving at least a Low Satisfactory on the Community Development Test.**

Key Recommendations to Mitigate Negative Impact of Removing the Separate Investment Test

If the separate Investment Test is not retained, we recommend the following changes be incorporated into the final CRA framework to help ensure that CRA modernization does not diminish the incentive to invest in the Housing Credit and ultimately the nation's ability to produce and preserve affordable housing:

1. **Modify the community development subtests, for which we propose two alternatives[4]:**

    - **Include an Investment Subtest weighted at 20%.**
        - We propose adding an Investment Subtest under the Community Development Test, weighted at 20%, to ensure that community development equity investments continue to play an important role in the CRA evaluation. Mortgage-Backed Securities should not be included in this subtest considering the limited direct benefit for low- and middle-income households.[5] We suggest the rest of the Community Development Test be fulfilled by a Community Development Lending Subtest weighted at 25% and a Community Development Services Subtest weighted at 5%. Regarding the Community Development Services Subtest, any services also applicable under the Retail Services and Products Test should be shifted over to the Retail Services and Products Test.

    - **Weight the Community Development Financing Subtest at 35% and modify the Community Development Services Subtest to include a responsiveness assessment.**
        - As an alternative, we suggest weighting the NPR-proposed Community Development Financing Subtest at 35% and the Community Development Services Subtest at 15%. Under this proposal, the Services Subtest should be renamed as the Community Development Services and Products Subtest and should be modified to account for the responsiveness of the Community Development Financing Test (including the benchmarks proposed below), mirroring the responsiveness portion of the Retail Services and Products Subtest. In this manner, a more thorough evaluation of the bank's mix of products, including provision of equity, could be part of the assessment.

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[4] Note: Both alternatives assume adoption of our second recommendation to weight the Retail and Community Development Tests evenly at 50%.

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

The table below shows our proposed weighting changes for the two alternatives.

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

* Note: Subtest renamed as the Community Development Services and Products Subtest

2. **Measure banks' new equity investments over time.**

   - A bank's annual originations of equity investments should be measured from one CRA examination to the next to identify any sudden drop-offs in new equity investing, particularly in the early years of new CRA regulations. If there is a significant reduction in new equity investment volume, then examiners should be able to request an explanation for the variance. Explanations for a significant reduction of equity levels could include cyclical market patterns, safety and soundness, tax position, 12 U.S.C. 24 or other regulatory constraints, or lack of available potential investments.

3. **Include an institution-level Equity Metric and Benchmark.**

   - If an Investment Subtest is not created, it will be essential to ensure that equity investments are prioritized in another way. To do so, we urge the creation of an equity-specific metric and benchmark. The Equity Metric would be structured like the institution-level Community Development Financing Metric but would measure only community development equity investment (which would not include Mortgage-Backed Securities) in the numerator and deposit base in the denominator. An Equity Benchmark would be used to compare this metric to peer institutions.
   - We suggest that the Equity Metric and Benchmark are integrated into the institution-level community development test or subtest conclusion, much like the current proposal integrates the Community Development Financing Metric and Benchmark. Alternatively, banks meeting or exceeding a benchmark level of equity investment activity, in comparison to its peers, could be eligible for an increase in its overall community development test or subtest, particularly if the bank is between two possible ratings. A high Equity Metric in comparison to the benchmark could also be considered as a factor for an Outstanding rating.

4. **Include the Housing Credit as an impact review factor.**

   - A key feature of the Housing Credit is the allocation of Housing Credits to state and local allocating agencies, which distribute Housing Credits through a highly competitive process to only the most impactful properties that best address the state or locality's affordable housing needs. Considering the responsiveness of the Housing Credit in addressing community needs, we strongly urge that the Housing Credit be named as an impact review factor.

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

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

Very truly yours,

[redacted]

Jeffrey A. Whiting
Chairman & CEO