National Trust Community Investment Corporation
a subsidiary of the National Trust *for* Historic Preservation

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FDIC: comments@fdic.gov
Federal Reserve Board of Governors: regs.comments@federalreserve.gov

Community Reinvestment Act: Comments-Notice of Proposed Rule Making
OCC: Docket ID OCC-2022-0002
FDIC: RIN 3064-AF81
Federal Reserve Board of Governors: Docket No. R-1769 and RIN 7100-AG29

To Whom It May Concern:

We appreciate the opportunity to comment on the Proposed Rule Making regarding the pending modification of the Community Reinvestment Act (CRA). As an organization with a deep track record in making investments in low-income and distressed communities, we appreciate your efforts to modernize and improve the CRA. To ensure that financial institutions continue to use proven community development incentive tools and provide financial services in the most needed areas, we respectfully request that you maintain a strong investment test and incorporate more significant consequences if financial institutions do not meet a satisfactory score on the investment test or fail to serve communities of color.

We also ask you to provide further recognition of the value of tax equity investments, specifically including the federal Historic Tax Credit[1] (HTC), especially when: 1) the end use predominantly employs low-income individuals; 2) used with other community development incentives that directly target low-income individuals; 3) used in rural communities or in communities with persistent poverty, which federal community development incentives have difficulty penetrating.

Background

National Trust Community Investment Corporation (NTCIC) is a wholly-owned subsidiary of a national nonprofit organization, the National Trust for Historic Preservation[2]. NTCIC has been deeply involved in raising and investing capital to benefit low- and moderate-income communities and other distressed areas nationwide since its inception in 2000. NTCIC has provided tax credit financing of nearly **$2 billion** in capital for federal HTC, New Markets Tax Credit (NMTC), Solar Investment Tax Credit and Affordable Housing Tax Credit projects, equaling over **200** transactions with over **$8 billion** in total development costs.

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1 26 USC § 47, formally referred to as the Rehabilitation Tax Credit

2 The National Trust for Historic Preservation in the United States is a private nonprofit organization chartered by Congress in 1949 to "facilitate public participation" in the preservation of our nation's heritage, and to further the historic preservation policy of the United States. *See* 54 U.S.C. § 312102(a). With more than one million members and supporters around the country, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government. In addition, the National Trust has been designated by Congress as a member of the federal Advisory Council on Historic Preservation, which is responsible for working with federal agencies to implement compliance with Section 106 of the National Historic Preservation Act. *Id.* §§ 304101(8), 304108(a)

NTCIC operates as a tax-credit syndicator and the investors we represent are U.S.-based, worldwide banking institutions interested in finding federal community development tax credit investment projects to positively impact communities and offset their federal tax liability.

Comments on Proposed Rule

We oppose any elimination or weakening of the investment test. As an entity that primarily raises investment capital from banks, NTCIC's intention in providing this response is to ensure that tax equity investment is a reliable tool and motivating factor for banks when considering a myriad of lending and investment options. We urge regulators to maintain the separate investment test or create a new test to motivate participation by both intermediate and large banks' equity investment markets for community development tax credits.

If the rule eliminates the investment test, we encourage regulators to provide additional weighting for the NMTC and Low-Income Housing Tax Credit (LIHTC) which are statutorily designed to serve low-income communities and low-income individuals. We also encourage regulators to provide additional weighting to Historic Tax Credit projects when located in rural areas, areas of persistent poverty or when twinned with either of these investments. We request that you provide additional weighting for the quantitative portion of the Community Development Financing Test and to score these investments favorably in the qualitative impact review of community development financing metrics.

For large banks, we urge regulators to elevate the importance of community development by increasing the scoring weight of the Community Development Test from 40 to 50 percent. As national housing advocates have noted, it appears difficult to receive an "Outstanding" score for the Retail Lending Test. As long as a bank receives a "Low Satisfactory" score on the Retail Lending Test, a bank can score "Needs to Improve" on the Community Development Test and still receive an overall "Satisfactory" rating. This is a low standard that most banks should exceed. We are concerned that banks may reduce their community development activities with minimal impact to their overall rating, which will negatively impact community development financing nationwide. Community development activities are some of the most transformative and impactful ways to invest in their communities. With these concerns in mind, we echo other industry voices to encourage regulators to adopt a 50/50 split between the Community Development and Retail Lending.

Additionally, banks should be responsible for providing data on their services to minorities in their communities and deficiencies should lead to meaningful consequences. For instance, if the Home Mortgage Disclosure Act data shows that the bank has failed to serve all of its community, it should not pass its CRA exam. Banks should not be able to pass if they are not serving people of color in their community or are only offering expensive products that do not serve the needs of the community.

Justification for Historic Tax Credit Inclusion

We seek greater recognition for CRA eligibility for HTC projects, which attract investors to historic rehabilitation and revitalization. HTC investments bring critical capital to the rehabilitation of previously vacant or underutilized historic structures that were once an important part of a community's physical and cultural fabric but have fallen into disrepair and often times, have become liabilities to their communities. Since 1978, over 47,000 historic buildings have been rehabilitated using the HTC[1]. Recent economic studies by the National Park Service, Rutgers University, and PolicyMap demonstrate from FY2017-FY2020[2], 74-79 percent of these projects were located in economically distressed census tracts, eligible for the NMTC. Many times, HTC projects are twinned with other community development incentives like LIHTC and NMTC. Please recognize the value of these projects serving low-income individuals, contributing to the development of local services, resources, and opportunities in these communities, as stand-alone investments, and especially when twinned with other community development incentives that directly target low-income individuals.

Both the LIHTC and NMTC qualify for CRA credit and are deemed eligible because of the use of these community and economic development incentives. The HTC should automatically qualify when paired with these transactions to further encourage the use of existing historic properties as the home for affordable housing and other low-income community serving uses. This would further open the path for banks to invest more in rehabilitation projects in the most vulnerable areas of our country.

Further, the HTC provides substantial benefit to smaller projects such as those that dot our nation's main streets and rural communities. Approximately 50 percent of HTC projects are under $1 million in rehabilitation development costs (less than $200,000 in credits). It is difficult for federal community development incentives to penetrate small town and rural communities, despite large numbers of low-income individuals. Most of the time, these projects are "too small" for most of these federal incentives that directly target low-income communities and the soft costs associated with the transactions are insurmountable. The HTC defies the odds by penetrating these smaller markets. Since about 75% of projects are located in economically distressed areas and with the inability for federal incentives to reach these communities, the federal HTC should be an automatic qualifier to satisfy the goals of increasing investments in low-to-moderate income (LMI) communities and other distressed and underserved areas, expanding the types of activities eligible for CRA consideration, and reducing the cost and burden related to evaluating CRA performance to financial institutions serving these communities.

HTC projects should receive automatic qualification in the following communities that are either:

- Persistent poverty counties, defined as any county with a poverty rate of 20 percent or more in the 1990 and 2000 census along with the most recent Small Area Income and Poverty Estimates from the American Community Survey; or

- Communities that are eligible based on the USDA Rural Development definition, defined as any area other than cities or towns whose population exceeds 50,000 and any urbanized areas adjacent or contiguous thereto.

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1 Federal Tax Incentives for Rehabilitating Historic Buildings, FY2021, page 5

2 Economic Impact Reports for the HTC (FY2020, page 4; FY2019, page 3; FY2018, page 9; FY2017, page 5)

Qualifying Activities: Request for Additional Examples

To the extent you choose to make clarifications only to the qualifying activities examples noted in the proposed regulations, we encourage you to add additional examples to clarify how the HTC should be treated as CRA eligible. The proposed regulations indicate there has been significant feedback supporting an illustrative list of examples for investments that can qualify under for community development financing examples, we support such a list and we recommend the following examples:

An investment that will be eligible for tax credits from the Federal Historic Tax Credit Program to finance the adaptive reuse and renovation of a historic property that is also receiving financing by any other party to the transaction in connection with the Federal Low-Income Housing Tax Credit or New Markets Tax Credit.

An investment that will be eligible for tax credits from the Federal Historic Tax Credit Program to finance the adaptive reuse and renovation of a historic property into a hotel, retail business, restaurant, manufacturing facility, healthcare and/or senior facility, grocery store or social service organization, whose employees are predominantly low-to-moderate income individuals.

An investment that will be eligible for tax credits from the Federal Historic Tax Credit Program to finance the adaptive reuse and renovation of a historic property in persistent poverty counties, defined as any county with a poverty rate of 20 percent or more in the 1990 and 2000 census along with the most recent Small Area Income and Poverty Estimates from the American Community Survey OR communities that meet USDA Rural Development Areas B&I definition.

Conclusion

Thank you for the opportunity to comment of the proposed rule. In conclusion, we urge regulators to ensure that the proposed changes will lead to increased equity investment, more equity investors in the market, and positively impact the pricing of community development credits. Please strengthen the consequences of not meeting satisfactory scores with the investment test and financial institutions not serving communities of color. Also, because of the HTC's strong and verifiable track record of direct and indirect investment in LMI areas as well as its success in doing so, we ask that regulators allow CRA eligibility for HTC projects when paired with other community development incentives, assisting low-income individuals and families and when the end use employed predominantly low-income individuals. We also ask regulators to provide automatic CRA eligibility of the HTC when used in small towns and rural areas or areas of persistent poverty, where most federal community development incentives are not able to serve these individuals.

Sincerely,

[redacted]

Merrill F. Hoopengardner
President