NPH NON-PROFIT HOUSING ASSOCIATION OF NORTHERN CALIFORNIA
The Voice of Affordable Housing

August 5, 2022

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

Re: Community Reinvestment Act NPR Comments
FDIC: RIN 3064-AF81

Mr. Sheesley:

The Non-Profit Housing Association of Northern California (NPH) appreciates the opportunity to comment on the Notice for Proposed Rulemaking (NPR) for the Community Reinvestment Act (CRA). NPH offers the following comments acknowledging the amount of work and thoughtfulness that went into these proposed updates and the effort involved with coordinating multiple agencies for a single NPR. While some elements in the NPR may strengthen the CRA, overall we are concerned that the changes will have a negative impact on the amount of affordable housing built in the Bay Area.

Founded in 1979, NPH is the leading voice of the affordable housing movement of the Bay Area. As a membership organization of more than 750 affordable housing builders, advocates, and community leaders, the collective NPH community has created tens of thousands of affordable homes and supported hundreds of thousands of Bay Area residents and community members. Our members use Low Income Housing Tax Credits and many other sources of federal and state funding to produce affordable housing in one of the most expensive markets in the country.

Summary of Our Recommendations

- Allow CRA consideration for the full amount of investments made in LIHTC properties and prorated amounts for lending.
- Address racial disparity by collecting race and ethnicity data and evaluating banks on their lending across racial and ethnic groups

- Maintain the Investment Test as separate from the Lending Test to ensure investment in the LIHTC program.
- Make the Community Development Finance Test more rigorous with metrics and benchmarks and clear guidance on how performance translates to a score.
- Require that banks earn at least a "Low Satisfactory" on the CDFT to receive an overall "Satisfactory" grade.
- Allow affordable housing to count for community revitalization or climate resiliency points but do not double count it, which would lead to a reduction in investment.
- Prorate the CRA consideration for investments in Mortgage-Backed Securities to consider only affordable housing or other qualifying developments.
- Remove CRA considerations for investing in NOAH unless significantly more robust safeguards against property flipping are added.
- Allow for CRA considerations for investing in NOAH only for either nonprofit, mission-driven housing organizations or public entities – both with formal requirements for rent limits, affordability periods, and public oversight.
- Maintain the bank size thresholds, keeping institutions as Large Banks and Intermediate Small Banks and therefore still under the CRA.
- Overhaul the Community Engagement requirements to make them meaningful, using Community Benefits Agreements for an example of the possible rigor and oversight.

Consideration for LIHTC Investments

Along with many of our like-minded organizations, we welcome the proposal that allows consideration for the full amount of *investments* made in LIHTC properties, regardless of the share of affordable units but urges that CRA consideration be pro-rated for *lending* to those same developments. Loans support the market-rate units more than they support the income-restricted units that serve Low- and Moderate-Income (LMI) renters.

Agencies Must Do More To Address Racial Disparity

When it was adopted, the CRA was a landmark civil rights bill which sought to rectify the injustices of redlining practices by requiring banks to invest in all communities. NPH strongly encourages the agencies to make full use of their authority to collect data on race and ethnicity and use them in CRA exams the same way they currently evaluate how well a bank serves LMI communities. Disparities in lending between racial and ethnic groups persist even today and shape housing, economic, health, and other quality of life outcomes. NPH urges the agencies to consider race and ethnicity in any new CRA rulemaking.

Using income as the primary metric of assessment overlooks the context that the CRA was meant to address. Comprehensive demographic information – that includes race and ethnicity– supports the agencies' ability to evaluate the CRA's impact on restorative justice and its continued efficacy in driving investment into underserved communities. The agencies can bolster the fair lending reviews that accompany the CRA exams for any bank that performs poorly in the Home Mortgage Disclosure Act (HMDA) analysis of lending by race. Agencies can also use Section 1071 data concerning small business lending by race and gender of the business owner as a method of identifying potential cases for more thorough fair lending reviews. Without data on race and ethnicity, agencies cannot confidently show that the CRA is driving investment into underserved communities.

One possible way of incorporating this feedback – especially in the concerning absence of a standalone Investment Test – could be through the creation of new equity metrics for evaluating banks. The Affordable Housing Tax Credit Coalition (AHTCC) has suggested a ratio of an institution's new Community Development equity investments (without mortgage-backed securities) compared to their total deposit base. This could be used to set minimum ratios for certain ratings for banks of a similar size – and aggregated data about the banks' ratios could help establish industry benchmarks. This ratio could help investors and advocates understand not only a bank's present and past portfolio but how they compare to other banks.

Maintain the Separate Investment Test

The LIHTC program is the country's most significant program dedicated to producing and preserving affordable housing – and it relies on the CRA's steadfast encouragement for banks to invest. Many NPH member organizations rely on the LIHTC program to help finance and build affordable housing to serve the Bay Area and are concerned about the changes in the NPR.

In the NPR, the agencies have suggested significant changes to the Investment Test, which concern us greatly. The Investment Test is the primary incentive for a bank to become involved in LIHTC. The NPR combines this Investment Test with others, diluting the importance of the Investment Test and, therefore, reducing the incentive for banks to invest in LIHTC. That reduced incentive will result in less competition for housing credits, which in turn will result in less equity for affordable housing developers that are awarded credits – for a constant level of federal funding. With less equity, developers will build fewer units or units with less affordable rents – if the development is financially feasible at all. The impact evaluations mentioned in the

NPR to make up for this significant change to the Investment Test are not convincing, so NPH urges the agencies to keep the Investment Test separate and weighted significantly.

If the Investment Test is combined with the Lending Test, as it is proposed, this would have drastic ramifications for our member organizations, who already have a daunting task in front of them: building affordable housing in one of the most expensive environments in the country.

Other Concerns on The Community Development Finance Test
In the NPR, the proposed Community Development Financing Test (CDFT) is built around subjective metrics when it should be rigorous, objective, and on par with the metrics used for the Retail Lending Test. Guidelines that detail how performance would actually be measured and translated into a score are necessary. The proposed rule is also structured in such a way that a bank could receive a "Low Satisfactory" score on the Retail Test and a "Needs to Improve" score on the CDFT, yet still receive a "satisfactory" overall grade. NPH recommends that no bank should receive an overall "Satisfactory" unless they receive at least a "Low Satisfactory" grade on the CDFT.

Similar to the aforementioned prorated CRA credit for lending to mixed-rate developments, 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. Additionally, because these investments yield comparatively less public benefit and are still very liquid, investments in these securities should be discounted in comparison to more beneficial qualified CRA actions.

Affordable housing should also be permitted under other categories – community revitalization or climate resiliency, for example – but if it is double counted, this will negatively impact reinvestment activity.

Current Credit for NOAH Investment Would Accelerate Displacement
The NPR's proposal to allow CRA consideration for many types of investments in Naturally Occurring Affordable Housing (NOHA) is concerning because of its lack of safeguards. NPH is concerned that, under the NPR, the CRA would reward banks for purchasing, renovating, and reselling homes for significant profit in neighborhoods that have historically faced divestment – accelerating displacement and gentrification. The only entities that should be permitted to do this – and for only partial CRA consideration – are mission-driven nonprofits or public entities, who

are 1) formally required to keep the units affordable, e.g. to 80% of the Area Median Income (AMI), HUD's Small Area Fair Market Rent (FMR), or with substantial commitments to an affordability period, like 30 years, and 2) subject to monitoring by a third-party public entity.

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. NPH 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 some of this situation, 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.

Thank you for your work on this NPR, the work that will go into compiling and responding to the many concerns submitted, and your consideration of the comments we have made here. If you have any questions about the content of this letter, please do not hesitate to reach out to J.T. Harechmak at jt@nonprofithousing.org or (415) 989-8160.

Sincerely,

[redacted]

Amie Fishman
Executive Director
Non Profit Housing Association of Northern California (NPH)