August 5, 2022

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
Attention: Ann E. Misback, Secretary
20th Street and Constitution Ave. NW
Washington, DC 20551
Regs.comments@federalreserve.gov

RE: Docket Number R-1769, RIN 7100-AG29

Submitted via email

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The Honorable Michael Hsu
Comptroller
Office of the Comptroller of the Currency
Attention: Comment Processing
Chief Counsel's Office
400 7th Street SW, Suite 3E–218
Washington, DC 20219

RE: OCC Docket ID OCC–2022–0002

Submitted via regulations.gov

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The Honorable Martin Gruenberg
Acting Chair
Federal Deposit Insurance Corporation
Attention: James P. Sheesley, Assistant Executive Secretary
550 17th Street NW
Washington, DC 20429
comments@fdic.gov

RE: Comments RIN 3064–AF81

Submitted via email

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Dear Chairman Powell, Comptroller Hsu, and Acting Chair Gruenberg:

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"). Stewards of Affordable Housing for the Future (SAHF) and its members appreciate the agencies' goal to modernize the CRA regulations to increase equitable access to banking services, including credit, for low and moderate income (LMI) communities and to adapt to the many structural and technological changes that have occurred in the banking industry in the two and half decades since CRA regulations were updated.

The interagency Notice of Proposed Rulemaking (NPR) is a welcome change from the disjointed proposed rulemaking marring CRA for the past few years, including the OCC's 2020 rulemaking that would have undermined and reduced investments and benefits to LMI communities.

Based on the decades of experience of SAHF, its members and its affiliate National Affordable Housing Trust (NAHT), this letter provides comments and recommendations to strengthen the CRA framework, and generally focuses on the NPR sections/questions relevant to Community Development investments, and especially to affordable housing.

SAHF also strongly believes that CRA regulations must do more to maximize statutory intent and the opportunity this rulemaking affords to address racial inequity and close the racial wealth gap. The NPR acknowledges that CRA was passed in response to redlining and that the "[racial] wealth gap and disparities in other financial outcomes remain persistent."[1] However, the NPR does not propose taking race into account for the purpose of a CRA review.

A focus on race is within the statutory confines of CRA, which has explicit references to race including allowing investments with Minority Depository Institutions to count for CRA credit. The law also requires reporting to Congress comparing depository institutions' lending in "minority neighborhoods" as well as other distressed areas. By failing to consider race during the CRA exam, this proposal falls short of the agencies' own objective to "strengthen the achievement of the core purpose of the statute." We urge the agencies to create a final rule that recognizes the context and intent of CRA as legislation meant to address the impacts of racial discrimination in banking.

About SAHF

SAHF is a collaborative of twelve mission-driven, multi-state non-profit affordable housing developers – Mercy Housing, Volunteers of America, National Church Residences, National Housing Trust, Retirement Housing Foundation, Preservation of Affordable Housing, The NHP Foundation, BRIDGE Housing, CommonBond Communities, Community Housing Partners, Homes for America, and The Community Builders. SAHF members preserve and develop affordable multifamily homes that expand opportunity and create dignity for low-income persons with disabilities, the elderly, families, and the homeless. SAHF members partner with the National Affordable Housing Trust (NAHT) – an affiliate of SAHF – which is a nonprofit low-income housing tax credit syndicator.

[1] 87 Fed. Reg., 33,888 (June 3, 2022)

By efficiently and creatively leveraging private, public and philanthropic resources, SAHF members have developed or preserved more than 149,000 affordable rental homes across the county, over half (56%) of which were financed using the Low-Income Housing Tax Credit (Housing Credit). Through this experience, SAHF members have seen first-hand how CRA motivates a large majority of Housing Credits and thus understand the impact that CRA reform could have on affordable housing production and preservation.

Additionally, several SAHF members have also become certified Community Development Financial Institutions (CDFIs) to allow them to further leverage funding and build capacity in the communities they and their peers serve. While SAHF members do invest in broader community development in the communities that they serve, they are keenly aware that long term investments in housing are key to providing low- and moderate-income people the stability that helps them flourish and is the foundation for transforming neighborhoods. This is particularly true of those neighborhoods destabilized by redlining and other discriminatory policies and practices.

Based on the experiences of our members and our affiliate, NAHT, we offer the following recommendations to the agencies.

- Maintain a separate community development investment test. If combined with loans under a single Community Development (CD) financing test, ensure strong guardrails are in place to counteract the potential negative impact on investment volume.
- If the agencies opt for a single CD financing test, weigh the retail test and CD test equally (50%/50%) and incentivize equity investments through subtests and/or benchmarks.
- Focus Community Development Activities to those that primarily benefit LMI households, including automatic eligibility for nonprofits with strong oversight and core mission of serving these populations.
- Include Housing Credits, CDFIs and Service-Enriched Affordable Housing as impact review factors to encourage activities that are especially responsive to community needs.
- Consider ways to address racial inequities, including through more flexible products that take steps to remediate racialized disparities in the cost of capital; and mixed-income housing developments with a focus on racial and income integration.

Maintain Separate Community Development Investment Test

As opposed to current CRA regulations where a bank's CRA examination score is determined by a lending test (50%), and investment test (25%) and a services test (25%), the agencies propose to change the examination score for large banks to be determined by a retail lending test (45%), retail products and services test (15%), community development financing (investments and lending) test (30%), and community development services test (10%).

SAHF strongly opposes the combination of loans and investments under a single Community Development (CD) financing test, as this could remove a significant driver of bank interest in equity investments in LMI communities. 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 detrimental effect on the creation and preservation of affordable rental homes, especially that developed using the Housing Credit which even in LMI communities are typically infeasible using only debt financing.

Housing Credit properties typically cannot carry significant debt because the affordable rents allowed do not offer substantial cash flows to service the debt. Equity investments are therefore key to achieving affordable rents in most communities. The absence of an 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 volume. The following strategies, informed from the Affordable Housing Tax Credit Coalition's (AHTCC) recommendations, should be pursued:

1. Include an Investment Subtest under the Community Development Test
2. Include an institution-level Equity Metric and Benchmark
3. Include the Housing Credit as an Impact Review Factor, and include a High-Impact Metric and Benchmark

Support Community Development and Equity Investments in Rating Structure *(Q.139)*
If the agencies proceed with the proposal to reallocate activities in the examination score between retail and community development tests, the agencies should equally weigh them. We share the concern among stakeholders, including the National Association of Affordable Housing Lenders (NAAHL), that the current proposed rating structure could 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 (that 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 echo our colleagues at NAAHL and 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.

We also support the following two alternatives that could be employed under the Community Development test if that were to be weighted at 50%:

- Include an Investment Subtest weighted at 20% (5% lower than the current investment test to account for a suggested transfer of MBS to the retail side), a Lending Subtest weighted at 25%, and a Services Subtest weighted at 5%. The regulators should also use available data to evaluate this proposed weighting of the Investment Subtest to ensure that it would incent at least as much equity as the current Investment Test, excluding MBS.
- Weight the proposed Community Development Financing Subtest at 35% and proposed the Community Development Services Subtest at 15%, and modify the Services Subtest to include a responsiveness assessment (mirroring the responsiveness portion of the Retail Services and Products Test). Factors that demonstrate responsiveness and determine the subtest conclusion could include those listed below, taking into account the safety and soundness of the bank:
    - Providing a mix of products (i.e., equity investments, loans, and grants) to serve communities.
    - Meeting or exceeding the Community Development Benchmark, and our proposed Equity Investment Benchmark and/or High-Impact Benchmark (more details provided below).
    - Providing similar or higher levels of equity investments in comparison to the average amount of equity investments provided over previous assessments, as discussed further under Equity Metric.

We further recommend that banks should be required to receive at least a Low Satisfactory Community Development Test conclusion for a Satisfactory rating. The NPR proposes that 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. A Needs to Improve conclusion on the Community Development Test does not demonstrate a commitment to community development needs and should not be allowable for a bank receiving a Satisfactory CRA rating.

Other Recommendations to Incentivize Equity Investments

Should the agencies not be able to maintain a separate community investment test, we urge them to mitigate the potential negative effects by continuing to emphasize equity investments within the CRA evaluation. Below are two proposals from AHTCC to do so:

Equity Investment Metric

- Create an institution-level Equity Metric used to measure banks' levels of new community development equity investment over time and to set goals for equity investment levels. The

Equity Metric would be structured like the institution-level Community Development Financing Metric but would measure only community development equity investment (not including Mortgage-Backed Securities) originated during the assessment period in the numerator and deposit base in the denominator.

The Equity Metric should be used to track a bank's total new equity investment levels over time. If the numerator of a bank's Equity Metric decreases significantly from one assessment period to the next (taking into account cyclical patterns and the safety and soundness of the institution), then an examiner should be able to request an explanation for the variance. Explanations for a significant reduction of equity levels could include safety and soundness, tax position, 12 U.S.C. 24 or other regulatory constraints, or lack of available investments. By necessity, in the first year of the new CRA framework, banks would need to report data in a way that is directly comparable to investment totals from the previous evaluation to offer a like comparator. The agencies should also consider setting a minimum Equity Metric for a bank to receive an Outstanding conclusion to ensure the CRA regulations do not have the unintended consequence of decreasing community development investment, particularly Housing Credit investment.

Equity Investment Metric Benchmark and/or High-Impact Benchmark

- Reward large banks that meet a benchmark level of new community development investments as a portion of their total community development activities in comparison to other banks. An "Equity Benchmark" would include the average level of peer comparators' community development equity investment (not including MBS) originated during the assessment period in the numerator, and the average deposit base from peer comparators in the denominator. The Equity Benchmark would establish a benchmark level of new equity investment activity that would be taken into consideration when determining a bank's community development-related conclusions.[1] The potential effect of the Equity Benchmark on the bank's rating should be quantifiable and predetermined to the extent possible.

Targeting Eligible Community Development Activities

The agencies' proposed list of community development activities includes affordable housing; economic development that supports small businesses and small farms; community supportive services; revitalization activities; essential community facilities; essential community infrastructure; recovery activities in designated disaster areas; disaster preparedness and climate resiliency activities; activities with minority depository institutions (MDIs), women's depository-institutions (WDIs), low-income credit unions (LICUs), and Community Development Financial Institutions (CDFIs); financial literacy; and qualifying activities in Native Land Areas.

While we strongly support the development and maintenance of an illustrative list of CRA eligible activities, which would provide greater clarity for community development actors, banks, and other stakeholders, this list may prove to be too broad –providing credit for activities that may have only an

[1] Note: See section on "General Evaluation Structure" for our proposal to change the Community Development Test and subtest structure.

ancillary impact on LMI households. Instead we urge the agencies to more narrowly focus activities receiving full CRA credit for those that *primarily benefit LMI households.* This could include eliminating or minimizing consideration for (1) housing for households over 80% AMI; (2) naturally occurring affordable housing (NOAH) without a binding affordability commitment; (3) revitalization activities other than those that primarily benefit LMI households; (4) purchases of mortgage-backed securities after their initial issuance.

We also support the automatic credit for activities conducted with or in conjunction with CDFIs, recognizing the need for mission-based capital to underserved communities, and that this will also help streamline the credit process for both banks and CDFIs. SAHF encourages the agencies to expand this automatic credit for activities conducted in partnership or in conjunction with nonprofits that have strong oversight and a core mission and charter serving LMI households, such as those holding a charter from NeighborWorks America.

Subsidized Affordable Housing (Q. 3,4): SAHF appreciates the agencies' goal to ensure strong incentives for banks to provide community development loans and investments for the creation and preservation of affordable housing, and support the definition of subsidized affordable housing included within the NPR. We also strongly support the proposal in the NPR to allow banks to receive consideration for the full amount of a loan or investment for a Housing Credit-financed project, regardless of the share of units that are considered affordable, given the Housing Credit's strong statutory and regulatory restrictions, which make it unnecessary to issue additional CRA-specific guidance. While this is a positive step forward, it is unclear why other qualified affordable housing including those financed using HOME or PBRA are not afforded the same treatment. The NPR does provide pro-rata credit for properties with less than a majority of units that are restricted but we would urge the agencies to provide full CRA credit if at least 20 percent of the units will be affordable for the term of the bank's financing. The primary federal affordable housing production policies – the Housing Credit, tax-exempt multifamily housing bonds, and the HOME Investment Partnerships program – all use 20 percent as their eligibility thresholds. To encourage banks to maximize the affordable housing created with their investments, we encourage the Board to make extra credit available for investments with a higher percentage (50% of more) of affordable units. For properties without federal or state funding, we suggest pro-rata credit for properties with less than 50 percent of homes affordable to low-income households, but full credit for properties with over 50 percent of homes affordable to low-income households.

Unsubsidized/ NOAH (Q. 5,6): We also support the inclusion of the financing of preservation or production of unsubsidized affordable housing within the definition of eligible affordable housing, but only if consideration is limited to transactions that adequately safeguard affordability. The agencies propose positive CRA consideration for activities focused on unsubsidized housing, often referred to as "naturally occurring affordable housing" or NOAH, as long as the CRA financing targets rental affordability at 30% of 60% of area median income (AMI). While a more targeted standard than LMI, underwriting to affordable rents alone are not proxies for affordability. This is particularly true in gentrifying neighborhoods or particularly tight housing markets where the neighborhood and renter population can change quickly. Regulators should consider CRA eligibility criteria for NOAH investments that will help ensure that units remain affordable beyond the first year or first assessment period. Owners can easily choose to underwrite a loan to affordable rents, but then increase rents and benefit from increased cash flow during the life of the loan. CRA consideration should clearly be awarded in instances where the owner is willing to commit to keep units affordable for the greater of the term of the loan or ten years. We recognize that some owner may intend to maintain affordability, but be unwilling to execute a long-term affordability commitment and that it may still be desirable to provide CRA consideration for these transactions. CRA credit should be given only if an evidence-based indicator of sustained affordability can be identified and published by the regulators and used as a criterion. Without some sort of safeguard for affordability, awarding CRA credit for investment in unrestricted rental housing could have the unintended consequence of contributing to the displacement of LMI people by facilitating more activity in these areas that could drive up prices and ultimately result in rent increases.

Consider Impacts of Revitalization Activities (Q. 15,16)
SAHF members are deeply committed to place-based investments as a means to create meaningful opportunities for LMI households, and address decades of racial inequities. Through revitalization and place-based investments, CRA credit can encourage the preservation and development of affordable housing, facilitating access to healthy food and exercise, supporting job creation and strengthening access to high-performing schools. The NPR proposes significant changes to its definition of revitalization and stabilization– expanding the categories beyond revitalization activities undertaken with government plans, programs or initiatives; essential community facilities; essential community infrastructure; and recovery activities in designated disaster areas to also include disaster preparedness and climate resiliency activities and activities in Native Land Areas. Each of these definitions has a geographic focus (e.g., low- or moderate-income census tracts) where the activities must occur; has standardized eligibility criteria that require the activity to benefit local residents, including low- or moderate-income residents, of the targeted geographies; has the eligibility requirement that the activity must not displace or exclude low- or moderate-income residents in the targeted geography; and each definition provides that the activity must be conducted in conjunction with a government plan, program, or initiative that includes an explicit focus on benefitting the targeted geography.

While we strongly support the agencies' proposal that activities not displace or exclude LMI residents in the targeted geography, we urge the agencies to define 'targeted geography' to sufficiently consider larger community revitalization projects. Temporary relocation, where there is a right to return and one for one unit replacement (even if not on the original parcel), should not be considered displacement in revitalization plans.

Support Community Development in Underserved Markets
Currently, Housing Credit demand and pricing are highest in areas with a concentration of large bank CRA assessment areas due to overlapping Investment Test requirements. This has long created a dynamic

where underserved communities outside of bank assessment areas may remain unserved because Housing Credit pricing is not high enough to make the development of affordable housing financially feasible. We therefore commend the agencies' proposal to allow large banks to be able to consider community development activity without regard to whether it takes place inside facility-based assessment areas, in states where a bank has facility-based assessment areas but outside those boundaries, in multi-state areas, or nationwide as it could be a key part of overcoming the "hot spots" and "deserts" prevalent under the current CRA system.

We also commend the agencies for the proposal to provide CRA consideration for activities completed in conjunction with a CDFI operating anywhere in the country, and we recommend that this credit be considered at the institution level. The need for community development products and services does not always align with readily identifiable or financeable opportunities in every assessment area.

Impact Review Factor *(Q. 34,35,36)*
SAHF supports the development of impact review factors to encourage activities that are responsive to community needs and opportunities in the community development financing and services test. We recommend that the following be included as impact review factors:

- Service-enriched affordable housing is particularly responsive to community needs recognizing that quality affordable homes enriched by services can improve life outcomes for residents and that an added incentive could help bring them to fruition due to higher costs of development and operations. To qualify, the service-enriched affordable housing should meet a developer/enterprise level or property-level certification to avoid incentivizing inadequate supports. SAHF and its affiliate the National Affordable Housing Trust have worked together to structure multiple creative investment funds that leverage tax credit investments with philanthropic funds to enhance affordable housing with the kinds of services and supports that can improve health and life outcomes. These innovative funds are small investments when compared to other activities but have had significant impact by shaping creative financing that leverages affordable housing to have a greater impact on health and well-being that may yield longer term savings and benefits.

  The NPR proposes includes a proposed factor of "supporting affordable housing in high opportunity areas" and asks about using the FHFA definition of high opportunity areas. This definition is limited to quantifiable poverty measures and state QAP definitions but may not address a more holistic view of opportunity. Incorporating service-enriched housing could be a good counterbalance.

- Housing Credit, as a key feature of the program 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 meet the state or locality's affordable housing needs.
- CDFIs given the role they play in providing tailored, flexible, affordable and accessible capital to community partners.

- Special Purpose Credit Programs (SPCPs) allowing lenders to create credit products with favorable terms that are targeted to historically underserved classes — including by race. Low Income Investment Fund (LIIF) and NAHT's Black Developer Capital Initiative (BDCI), is a key example of this, providing capital to support the growth of Black-led for-profit and nonprofit affordable housing developers.

The agencies should also consider ways in which to improving the Impact Review Factor process, including:

- The agencies should consider what training may be necessary to ensure evaluators have the requisite background to make appropriate subjective evaluations regarding community development activities and impact. Additionally, all bank regulators should employ dedicated CRA examiners whose roles are focused on CRA evaluation, which will help to ensure that evaluators gain the expertise necessary to make well-informed assessments.
- As the NPR does not clearly explain how impact factors will be integrated into the CRA conclusion and rating framework, we request additional information and the ability to comment on the process prior to a final rule.

We would be happy to provide additional information on any of our comments. Please feel free to contact Althea Arnold, SVP Policy at aarnold@sahfnet.org or (202) 737-5972.

Sincerely,

[redacted]

Althea Arnold
Senior Vice President, Policy