MERRITT
COMMUNITY CAPITAL CORPORATION

August 5, 2022

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429.

RE: Community Reinvestment Act Regulations, Comments RIN 3064-AF81

To James P. Sheesley:

Merritt Community Capital Corporation greatly appreciates the opportunity to comment on the Notice for Proposed Rulemaking (NPR) for the Community Reinvestment Act (CRA). We offer 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. Merritt has also signed on to the comments from the National Association of State and Local Equity Funds (NASLEF) and the Affordable Housing Tax Credit Coalition (AHTCC).

Organizational Background

Merritt is a mission-based non-profit that provides equity capital for affordable housing exclusively in California. We raise capital from CRA motivated banks and invest almost exclusively with community and mission-based non-profit affordable housing developers building the most critical, difficult, and impactful housing communities across California. Our partners tend to be smaller with a higher concentration of BIPOC and community-based developers, and the projects serve the lowest-income and highest need populations.

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Merritt has over 30 years of experience raising capital from CRA motivated banks and investing with non-profit developers, and has financed more than 10,000 affordable homes and invested over $1 billion dollars. We are the largest champion in California for programs supporting the next generation of affordable housing professionals via our Commitment to California initiative. Over the next 3 years the initiative will educate, train, and support over 800 professionals via scholarships, internships, and career development and is focused on equity, diversity, and inclusion.

In short, we are directly serving the populations and addressing the issues CRA is meant to incentivize. Due to our extensive relationships with CRA motivated banks, we feel confident providing feedback on the future impacts of the proposed regulations.

Primary Concern - CRA is the Primary Motivator for Investment in LIHTC

The Community Reinvestment Act's Investment Test is the primary motivator of Banks to invest in the Low-Income Housing Tax Credit. Banks represent 85%[1] of the investment dollars in the LIHTC market. Therefore, elimination or weakening of the investment test will put at risk most of the market for LIHTC and is expected to have a dramatic impact on the investment dollars that fund affordable housing. The reduction in investment dollars will directly lead to a reduction in all affordable housing units built. This will have a disproportionate negative impact on communities of color, very low-income households and individuals, special needs populations, and community and mission-based organizations.

The statement that CRA is the primary motivator of banks to invest in the LIHTC market is not hyperbole. The first and last question investors ask Merritt is, "what CRA 'credit' will be provided?" This is especially true for banks that do not have a dedicated Community Development Investment group, which represents most of our investors. CRA is so important that funds are structured around providing CRA credit and economics are determined by CRA need. The returns investors want (and our resulting ability to support the most deeply targeted projects) are dramatically impacted by CRA; within our portfolio the investor return can vary by over 50% based on CRA need.

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

With 85% of LIHTC investments supported by CRA motivated investors, removing the CRA requirement will have a devasting impact on the market. No market can sustain a dislocation of 85% of investors, and, unfortunately, recent history proves this point. Prior to the financial crisis, Fannie Mae and Freddie Mac were significant investors in LIHTC (but significantly less than 85%). When they left the LIHTC market the impact was so great that Congress created a tax-credit buy-back program to stabilize the market. This market interruption directly led to a substantial decrease in affordable housing production, required an increase in government support for the program (i.e. taxpayer subsidy increased), and nearly put many mission-based organizations out of business.

Since we already know the difference in investor returns in CRA and non-CRA markets, we can estimate the cost of disruption – a 20% reduction in equity capital to build affordable housing.[2] Such a dramatic reduction in equity capital would require enormous increases in local public subsidy to keep projects feasible and create an incentive or a necessity to build housing for higher AMI tenants so more permanent debt can be leveraged. Utilizing more public subsidy per unit or increasing tenant AMIs is likely to disproportionately impact smaller projects and those serving communities of color or special need populations. In addition, the non-profit developers that serve communities of color will be negatively impacted, which reduces not only their ability to provide affordable housing but also community services supported by fees earned by building housing.

Bank investors, especially smaller banks, have told us they will end or reduce their investment in LIHTC with the removal of the investment test. The primary driver is that Banks are lending institutions not investing institutions. LIHTC investment has always been an outlier of bank activities that had been supported because of the need for CRA. Additional issues are that LIHTCs longer term, higher risk (equity instead of debt), additional capital charges, and low current returns, make the investment comparably unattractive.

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[2] Per CohnReznick, non-CRA investment can vary by over $0.20 per $1.00 federal tax credit. CohnReznick, "Housing Tax Credit Monitor," (2022). Retrieved from: https://www.cohnreznick.com/-/media/resources/2022_housing-tax-monitor_august_2022.pdf

Since removing CRA motivated banks changes the investor mix in LIHTC to profit seeking investors, the types of organizations who facilitate LIHTC investment will change. Merritt is attractive to investors because it not only provides a market rate of return but also supports the community. Profit motivated investors are less likely to be interested in community benefits, and, therefore, mission-based organizations that most directly service communities of color, very low-income households and individuals, and special needs populations will be weakened.

In conclusion, removing the Investment Test runs contrary to Congressional intent to address challenges in predominantly minority communities that have suffered from decades of disinvestment and other systematic inequities. It also undermines the bipartisan Low-Income Housing Tax Credit program, which is our nation's primary tool for addressing the affordable housing crisis. The investment test has been amazingly successful at supporting the development of affordable housing and, we fear, its removal will be devasting. We request you evaluate whether the expected substantial cost of removing the Investment Test outweighs the benefits.

In regard to other specific questions/comments/suggestions on the NPR, we direct your attention to the National Association of State and Local Equity Funds (NASLEF) attached hereto as Exhibit A.

Please feel free to contact me at abeliak@merrittcap.org or (510) 444-7870 if you have any questions or would like further elaboration on our response.

Sincerely,

Ari Beliak,

[redacted]

President and CEO

Exhibit A – NASLEF CRA Letter

NASLEF

The National Association of State and Local Equity Funds

August 5, 2022

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

RE: Community Reinvestment Act Regulations, Docket ID OCC-2022-0002

To Whom It May Concern:

These comments are submitted on behalf of the National Association of State and Local Equity Funds, ("NASLEF"), an association of state and local based nonprofit organizations that raise equity capital for investment in Low-Income Housing Tax Credit ("Housing Credit") properties.

Background. NASLEF's 10 members operate in 38 states where our leadership in affordable housing advocacy, connection with community organizations, and knowledge of local markets creates high quality, strategic community investments, especially in underserved markets. Collectively NASLEF members represent about 10% of the national Housing Credit market, and have raised and invested almost $18 billion in affordable housing and over $1 billion in other community and economic developments. While our members also provide equity financing to for-profit development of Housing Credit properties, we concentrate in particular on nonprofit affordable housing development. In addition to our work financing Housing Credit developments, our members are involved in other community development activities that rely on bank participation incentivized by the Community Reinvestment Act ("CRA") including New Markets Tax Credit ("NMTC") investments and Community Development Financial Institution ("CDFI") lending.

NASLEF welcomes the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding CRA, a law which we believe is critically important to the continued success of the Housing Credit program which is by far the most important federal program for affordable housing development and preservation. Commercial banks, encouraged by CRA requirements, typically provide more than 80 percent annually of the equity capital for the Housing Credit program so any change in CRA that inadvertently reduces that demand could have a devastating impact on affordable housing development. We already know there can be over a 20% ($0.20) difference in areas with high CRA need versus low CRA need. The question is not if capital can be raised but at what price. If modifications to CRA have the effect of reducing bank demand, then credit pricing will be lower which will reduce the number of affordable housing units built. It will also shift the mix of affordable housing away from the lowest

AMIs to higher AMIs that can support higher rents and thus higher property debt. During this housing affordability crisis, that is a result that must be avoided.

While we appreciate the efforts of bank regulatory agencies to modernize the CRA rules, and recognize shortcomings in the current framework, we have very strong concerns that the NPR could undermine the Housing Credit program. We are specifically alarmed about the elimination of the investment test to be replaced with a community development (CD) financing test. We are not in the banking business and cannot know with any degree of certainty what the impact of the proposed framework will be, but in talking to our bank partners and the larger affordable housing community we have serious concerns that banks will be less incentivized to make equity investments in the Housing Credit program under the NPR since banks will be able to meet their CRA obligations largely through the retail lending and products tests, and to the extent banks focus on the CD financing test they will be able to meet their obligations through loans rather than investments.

There are many factors that favor bank lending over Housing Credit investment, beginning with the fact that the fundamental business of banking is to loan money, not to make investments. Bank personnel are trained as lenders and advancement through the institution is tied to lending expertise and experience. Adding to that bias toward lending is the higher risk associated with investments, the longer-term of such investments, the senior risk position of loans over equity, the greater liquidity of loans, and in most cases the less complexity involved with lending. Furthermore, banks face the risk that the projected return from their investments will not be realized if there is an interruption in their capacity to use federal tax credits. The business bias toward lending is accentuated by government regulations that require banks to set aside more capital for investments as compared to loans. These biases toward lending give us great fear that the elimination of the investment test will make it more difficult and costly to attract bank investment to affordable housing financed with the Housing Credit.

More broadly, we believe the elimination of an investment test will increase the industry's reliance on non-CRA investors, who are motivated solely by profit and indifferent to the affordable housing mission. This will have the greatest negative impact on mission-oriented organizations and those closest to low-income communities, including our members and their nonprofit development partners. This same effect is likely to arise by giving banks consideration at the institution level for any qualifying activities conducted nationwide.

Given these concerns, our strong preference is to retain an investment test as under the current CRA rules. Nevertheless, we recognize the commitment of the bank regulatory agencies to this new two-part test based on retail and community development activities and therefore propose the following modifications for your consideration.

Addressing the Threat to Affordable Housing Posed by the Elimination of the Investment Test

First, for large banks we recommend a modification to the relative weighting to put more emphasis on community development by equalizing the scoring so that the CD and retail tests each account for 50% of the total score. Given the greater impact of community development financing over community development services, we recommend financing account for 40% of the combined tests. Furthermore, to remove an implicit bias toward lending over investment, we recommend that community development lending not count for both the retail test and the CD test.

Second, we recommend requiring a minimum volume of equity investment relative to the level of deposits for each rating category so that a separate rating is assigned based on equity volume. As part of this recommendation, banks should not receive a higher score on the CD financing test than on this proposed equity investment test.

Third, investment in mortgage-backed securities (MBS) should be limited so that this easily utilized investment option does not overwhelm the CD financing test. As you know, it has been common practice under the current rules for banks to purchase MBS to achieve their CRA goals and then after a short hold, sell them which means multiple banks often get credit for the same loans. That heightens our concern that MBS under the proposed new rules will undermine the incentive banks have to make equity investments in affordable housing. To address this situation, we recommend that MBS not account for more than 20% of the institution level CD financing test and that there be a two-year holding period requirement, with retrospective review of the holding period applied to the next bank examination. In addition, we recommend that only the first purchase of MBS debt should be counted in the CD financing test. Finally, as suggested by Question 9 in the NPR, only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security should be counted.

Fourth, equity investment in the Housing Credit should count as a positive impact review factor for the community development test. It is important that the impact review factor for serving low-income households in the NPR -- defined as 50 percent AMI and below or, in the alternative, 30 percent AMI and below -- could exclude the share of units within a Housing Credit property affordable at 60 percent AMI or 80 percent AMI. Congress has made a judgment that the Housing Credit should be used to subsidize tenants up to 80 percent AMI as long as the property on average is affordable to tenants at no more than 60 percent of AMI. This supports deeper income targeting that is possible from the higher rents paid by 80% AMI households and allows deep rent skewing. Bank regulatory agencies should not second-guess this decision by Congress on how to best design the Housing Credit program.

We also share commonly expressed concerns that the peer-performance based scoring system embedded into each test could create an unintended “race to the bottom” since banks are unlikely to achieve an “outstanding” rating given the current scoring parameters. That is likely to create a situation where most banks will only be motivated to achieve a “satisfactory” rating. In general, strong CRA scoring should be awarded to banks that meet high community investment standards that address community needs, versus grading banks on a curve as compared to their peers. This leads us to further recommend that banks should not receive a higher overall rating than the rating they receive for community development financing and services.

Reconsider New Bank Size Thresholds that Could Reduce Community Development Financing

We are also concerned about the proposal to raise the bank size threshold and the potential impact that could have on community development financing, especially in smaller or rural markets where our members do considerable community development financing. The NPR would set new thresholds for small and intermediate banks which we understand would reclassify 779 banks that are currently intermediate banks as small banks, meaning they would no longer have community development finance responsibilities in the communities they serve. Reducing the number of banks that have community development responsibilities could have a negative impact on community development investment and financing, particularly in rural markets that already have less access to CRA-motivated bank capital.

Discouraging Banks from Facilitating Qualified Contract and Right of First Refusal Abuses

Finally, we would like to bring to your attention and seek provisions within CRA that respond to fundamental threats to affordable housing that exists as a result of two loopholes in the Housing Credit program. To the extent that banks benefit from exploiting these loopholes, we strongly believe that this should be reflected in the scoring of Housing Credit investments and loans.

The first loophole is the Qualified Contract provision in the Housing Credit which permits some owners to get out of the extended use rent and income restrictions after 15 years in spite of the generous federal tax subsidies received to develop the property and maintain it as affordable for 30 years. While most states require housing tax credit recipients to waive their right to utilize the Qualified Contract loophole, many continue to permit such practices, particularly in bond deals. According to the National Council of State Housing Agencies, more than 100,000 units of affordable housing has been lost due to this loophole over the last several years, more than

10,000 units per year. We recommend that CRA be modified to discourage banks from facilitating this abuse. This could be accomplished either by denying any CRA recognition for future Housing Credit equity investments in properties that are permitted to utilize this loophole, or by taking into account the financing of such properties in the impact review. In addition, any MBS which includes debt that funds Qualified Contract eligible properties should be discounted based on the share of the security comprising such debt.

The second issue involves a special feature of the Housing Credit program which permits tax credit financing arrangements to create a right of first refusal that permits the nonprofit sponsor of the development to acquire full ownership of the property after 15 years for a discounted price. Major abuses of this provision have arisen in recent years as a result of outside capital coming in to the program and acquiring control of the limited partnership interest, typically through the acquisition of the upper tier fund managed by a tax credit syndicator. These outside investors, who were not parties to the original financing – commonly referred to as aggregators -- have taken advantage of ambiguities in the Housing Credit statute which are reflected in the financing agreement to deny nonprofits their rights of first refusal. This has led to scores of legal disputes, as well as litigation, that is resulting in the payment of hundreds of millions of dollars by nonprofits to aggregators who as a result are earning windfall profits on their investments.

While banks are not at the forefront of this abuse, and the industry does not defend such practices, as participants in multi-investor funds acquired by aggregators, they can passively benefit as limited partners in a fund that demands unanticipated payments to exit the property partnership. Because this pernicious practice has generated such high returns, we also understand that some banks that invest directly in Housing Credit deals have begun to make demands for exit payments not contemplated in the financing agreement. Furthermore, it is possible that some banks have provided financing to aggregators to acquire control of investor limited partnerships for the purpose of squeezing nonprofit right of first refusal holders.

There are several potential avenues available to address this abuse through CRA rules. First, it should be made clear that banks will receive no community development financing credit for loans to aggregators. Second, to the extent loans are provided to aggregators, the volume of such lending should be scored negatively in the impact review. Third, banks should be required to report whether they are partners in a multi-investor fund whose general partner has refused to recognize the nonprofit right of first refusal. To the extent the bank benefits from this, it should be scored negatively in the impact review. Fourth, to the extent that banks in their direct or proprietary Housing Credit investments refuse to recognize the nonprofit right of first refusal, and demand exit payments in excess of that contemplated in the financing agreement, that information should be reported to the appropriate bank regulatory agency and the amount of equity originally financed should be deducted from the CRA credit earned in the current CRA examination cycle. Finally, banks should receive positive impact scoring for future Housing Credit investments that include language in the financing agreement that protects the nonprofit right of first refusal along the lines of language required for all housing tax credit allocations by the housing finance agencies in New York City and Virginia.

We note that the Federal Housing Finance Agency has been working with Fannie Mae and Freddie Mac to have them adopt policies to address this abuse with regard to their Housing Credit investments that discourage doing business with entities that take advantage of these two loopholes. Both enterprises have policies in place while no restrictions currently apply to commercial banks who facilitate these practices.

RESPONSE TO SELECTIVE QUESTIONS

Affordable Housing Definition

Question 3. Is the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for low- or moderate-income (or, under the

alternative discussed above, for low-, moderate- or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low- or moderate-income individuals?

The "stated purpose or bona fide intent" should be evidenced by a Land Use Restrictive Agreement (LURA). The LURA should meet LIHTC requirements for rent and incomes or require rents not exceeding 30 percent of 80 percent of AMI. The Bank should also have to show for 80% AMI properties that the LURA restriction enables rents that are below market rents.

Question 4. In qualifying affordable rental housing activities in conjunction with a government program, should the agencies consider activities that provide affordable housing to middle-income individuals in high opportunity areas, in nonmetropolitan counties, or in other geographies?

While we support efforts to increase affordable housing development in high opportunity areas, we don't agree that providing CRA credit to loans on housing for middle income individuals in high opportunities areas and in nonmetro counties merits special CRA recognition absent some evidence that the debt and equity markets are not fully functioning to provide capital for middle income housing in these areas. Any CRA related incentives for affordable housing should be focused on LMI individuals and families, not the middle income.

Question 5. Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low- and moderate-income individuals, including properties where a renovation is occurring?

While we support extending CRA credit to debt financing provided to naturally occurring affordable housing, we believe some sort of standard should be in place to ensure that CRA credit is not extended for the acquisition of NOAH property that is then converted – with or without some rehabilitation expenditures – to market-rate housing. A standard should be adopted that requires a LURA for rents at 30% of 80% of AMI and provides full or partial credit based on the affordability of the property's rents during the term of the loan that is receiving CRA credit.

Question 6. What approach would appropriately consider activities that support naturally occurring affordable housing that is most beneficial for low- or moderate-income individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is low- or moderate-income, or in distressed and underserved census tracts, in order to encourage affordable housing in a wider range of communities, or would this expanded option risk crediting activities that do not benefit low- or moderate-income renters?

More important than geographic targeting is ensuring that the CRA credited debt supports continued affordability to LMI individuals and families. Regardless of location, financing the acquisition or rehabilitation of NOAH properties that are converted to unaffordable market rate rents should not receive CRA credit.

Partial Consideration

Question 1. Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities), or should partial consideration be limited to only affordable housing?

We believe partial consideration should be limited to affordable housing. While broadband, health care facilities or other infrastructure are important to any community, affordable housing achieves a higher public policy purpose and faces considerably more financing challenges that merit higher CRA priority. Further, the reform could inadvertently reduce investment in affordable housing by providing consideration for broadband, health care facilities or other infrastructure that would be built regardless of CRA incentives.

Question 2. If partial consideration is extended to other types of community development activities with a primary purpose of community development, should there be a minimum percentage of the activity that serves low- or moderate-income individuals or geographies or

small businesses and small farms, such as 25 percent? If partial consideration is provided for certain types of activities considered to have a primary purpose of community development, should the agencies require a minimum percentage standard greater than 51 percent to receive full consideration, such as a threshold between 60 percent and 90 percent?

If partial consideration is extended, we believe a minimum percentage of the activity should serve targeted individuals or geographies, at least 50%. To receive full consideration, the minimum percentage should be at least 80%.

Mortgage-Backed Securities

Question 9. Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low- or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?

We discuss our recommendations with regard to MBS in our comments above and want to stress again that the combining of MBS with Housing Credit investment within the community development financing tests poses great risk to the very effective incentives for Housing Credit equity investment in current CRA guidance. It is considerably easier for banks to meet CRA objectives through the purchase of MBS than it is through equity investment in the Housing Credit. In addition, Banks have been known to own MBS for short periods of time before selling them to another institution. Therefore, multiple financial institutions may benefit from the same one activity. Unless the NPR is modified from the current proposal, we believe it will significantly undermine affordable housing development financed through the Housing Credit.

Our answers are yes, you should consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security; and yes, only the initial purchase of a mortgage-backed security be considered for affordable housing.

Placed-based Definition

Question 17. Should the agencies consider additional requirements for essential community infrastructure projects and essential community facilities to ensure that activities include a benefit to low- or moderate-income residents in the communities served by these projects?

We question whether CRA incentives are necessary at all in most cases of essential community infrastructure and facilities. We don't question the value of such projects to the community, many of which already receive local government support. The question is whether reasonably priced financing is already available to such projects. If the market is fully able to serve such activities, CRA credit should be limited based on a strong correlation with benefits to LMI individual and families. In addition, by including essential community infrastructure and facilities that would already occur out of necessity, banks may reduce their investment in affordable housing.

Qualifying Activities

Question 31. Should the agencies also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity?

Yes, a list of nonqualifying activities should be provided, both to provide maximum transparency to banks and to direct their CRA activities in the right direction.

Activities Outside Assessment Area

Question 35. For the proposed factor focused on activities supporting MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs, should the factor exclude placements of short-term deposits, and should any other activities be excluded? Should the criterion specifically emphasize equity investments, long-term debt financing, donations, and services, and should other activities be emphasized?

Short-term deposit should not provide any CRA credit. Long-term (at least 3 to 5 years) and patient debt capital is necessary to underwrite the CDFI's activities. The activities that CDFI's underwrite normally require some form of "gap" financing to underwrite successfully. Thus, to become economically viable takes several years and requires the patient capital for that to happen. Donations to CDFI should receive full CRA credit.

Question 37. For the proposed factor of activities that support affordable housing in high opportunity areas, is the proposed approach to use the FHFA definition of *high opportunity areas* appropriate? Are there other options for defining *high opportunity areas*?

The FHFA definition applies to difficult to develop areas which is a concept created in the Housing Credit program for areas which have high construction, land and utility costs relative to median income. This definition was developed to permit higher levels of housing tax credit subsidies in such areas. It is not directly related to high opportunity areas which are typically thought of as higher income areas with low rates of poverty.

Question 47. The agencies propose to give CRA consideration for community development financing activities that are outside of facility-based assessment areas. What alternative approaches would encourage banks that choose to do so to conduct effective community development activities outside of their facility-based assessment areas? For example, should banks be required to delineate specific geographies where they will focus their outside facility-based assessment area community development financing activity?

Assuming banks meet the credit needs in their assessment areas, then we support giving full CRA credit for Housing Credit investments within the greater statewide or regional area. We do not support giving full CRA credit at the institution level for Housing Credit investments made anywhere. Our concern is that opening up CRA in this way will commoditize Housing Credit equity markets incentivizing investors to utilize national syndicators as they seek investments with the highest yield without regard to local needs.

Question 48. Should all banks have the option to have community development activities outside of facility-based assessment areas considered, including all intermediate banks, small banks, and banks that elect to be evaluated under a strategic plan?

Fundamentally, CRA is about banks meeting the credit needs of local communities where they raise deposits. Nothing is more critical to the notion of redlining than banks making loans and investments outside their assessment areas. Once banks meet the needs within all their assessment areas, then making loans outside that area is acceptable. The problem is that some investments outside the bank's assessment area may be easier than investments inside the assessment area – hence capital may be directed outside the assessment area, which is, whether intended or not, redlining at its core.

Question 60. Should multifamily lending be evaluated under the Retail Lending Test and the Community Development Financing Test (or the Community Development Test for Wholesale or Limited Purpose Banks)? Or should multifamily lending be instead evaluated only under the Community Development Financing Test?

Given our concern that the incentive to make Housing Credit and other investments will be severely undermined by the elimination of the investment test and the combining of investments with loans, we strongly believe that multifamily loans should <u>not be double counted</u> in both the retail lending test and the community development financing test.

Wholesale and Limited Purpose Banks

Question 131. How could the agencies provide more certainty in the evaluation of community development financing at the facility-based assessment area level? Should a bank assessment area community development financing metric be used to measure the amount of community development financing activities relative to a bank's capacity? If so, what is the appropriate denominator?

The denominator for the community development financing metric is "deposits" which should remain the core CRA principle for determining what amount and where the bank should conduct its activities.

Question 132. Should a benchmark be established to evaluate community development financing performance for wholesale and limited purpose banks at the institution level? If so, should the nationwide community development financing benchmark for all large banks be used, or should the benchmark be tailored specifically to wholesale and limited purpose banks?

To the extent that mapping deposit concentration of 3% to 5% (or more) of the institution's total deposits are areas that should have a required CRA response. After the areas of deposit concentration, the institution should be allowed to invest anywhere else.

CONCLUSION

In spite of some shortcomings in the current rules, we believe the Community Reinvestment Act has been very successful achieving its objectives. It has increased the level of bank activity that serves LMI communities, and has been absolutely critical to the success of the Housing Credit program. The future of affordable housing in this country depends on CRA continuing to incentivize Housing Credit lending and investment and we urge you to seriously consider our recommendations to make sure the proposed changes to CRA not undermine that activity.

Thank you for your attention to our comments.

[redacted]

Robert L. Newman

President, National Association of State and Local Equity Funds

CAHEC

Cinnaire

Evernorth

Hawaii Housing Finance

Massachusetts Housing Investment Corporation

Merritt Community Capital Corporation

Mountain Plains Equity Group

Ohio Capital Corporation for Housing

St. Louis Equity Fund

VCDC