April 8, 2020

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, DC 20219

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Community Reinvestment Act: Joint Notice of Proposed Rule Making
Docket ID OCC-2018-0008
FDIC RIN 3064-AF22

To whom it may concern:

We appreciate the opportunity to comment on the Proposed Rule Making regarding the pending modification so the Community Reinvestment Act (CRA). We respectfully request that you consider an alternative approach to the combined lending, investing, and services tests and that you provide additional clarity about how tax equity investments using the federal Historic Tax Credit[1] (HTC) are treated.

Background

National Trust Community Investment Corporation (NTCIC), is the for-profit subsidiary of 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 inception in 2000. NTCIC has provided tax credit financing of approximately **$1.6 billion** in capital for federal HTC, New Market Tax Credit, Solar Investment Tax Credit and Affordable Housing Tax Credit projects, equaling **186** transactions with over **$6.3 billion** in total development costs.

[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).

The investors we represent are US-based, worldwide banking institutions which are interested in finding federal community development tax credit investment projects to positively impact communities and offset their federal tax liability.

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. In particular, we seek 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 are many times a blighting influence on the community.

Provide Individual Floor for Lending, Investing & Services Tests

While we applaud the proposed rule changes with improvements to increase assessment and investment areas, we are concerned that the change to an aggregate quantitative balance sheet ratio to measure financial institution CRA compliance will chill tax equity investing.

The proposed rule changes would aggregate the lending, investing, and services tests currently applicable to financial institutions into a single test. We recognize that the creation of multipliers for certain activities is intended to encourage certain activities over others, but we are concerned that financial institutions would be able to achieve positive scores by redirecting three activities into one activity (for instance, redirecting "service" and "investment" activities into "lending"). We recommend that there should be a minimum floor for each category. The fear among the community development industries in which we participate is that the proposed changes will lead to a decline in equity investment, the amount of equity investors in the market and negatively impact the pricing of community development credits.

Clarify Treatment of Historic Tax Credit

We again would like to encourage the OCC and FDIC to allow investments in projects using the HTC to be automatically eligible for CRA treatment for financial institutions under your jurisdiction as the Historic Tax Credit Coalition outlined in comments to the Advance Notice of Proposed Rulemaking in November 2018.

As you may know, in the Tax Cuts and Jobs Act of 2017, Congress once again decided that the tax code should contain incentives for rehabilitating historic structures nationwide. The HTC does just that, spurring revitalization from urban downtowns to small-town Main Streets, to rural America. As a result of the HTC's permanent position in the tax code and its strong record of economic development in underserved communities, we call on you to extend automatic CRA consideration to all HTC transactions.

Through Fiscal Year 2019, the HTC has created approximately 2.7 million good-paying local jobs, leveraged $162 billion in private investment in our communities, used $30.8 billion in tax credits to generate more than $35.9 billion in federal tax revenue, and preserved over 44,000 buildings that form the historic fabric of our nation. The credit is used in both larger urban areas and smaller towns. In Fiscal Years 2017 and 2018, 35% of projects were in communities with populations under 100,000 in population. Further, the credit provides substantial benefit to smaller projects such as those that dot our nation's Main Streets and rural communities. Approximately 50% of projects are under $1 million in rehabilitation development costs (less than $200,000 in credits).

Inclusion of the federal HTC as an automatic qualifier would satisfy the goals of increasing investments in LMI 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. In looking at FY 2017 and FY 2018 HTC projects (most recent data available) using PolicyMap, over 77% of projects are located in New Market Tax Credit eligible census tracts which include census tracts where the poverty rate is 20% or greater or the area median income is 80% or less of the statewide. Additionally, looking at the projects through two distinct lenses, 60% of these projects are located in census tracts below 80% AMI and over 70% are in census tracts of greater than 20% poverty.

Further, allowing HTC projects to automatically qualify for CRA eligibility would be a more objective, metric-driven approach and would support a simplified and improved implementation of the CRA while better effectuating the law's directive to "encourage banks to serve their entire communities, including LMI neighborhoods, consistent with safe and sound operations."

A variety of investors currently invest for HTCs. These include numerous financial institutions regulated by the OCC and FDIC. Allowing CRA eligibility would add another layer of potential investors attracted to these projects, increasing the resources available for projects and making investments more valuable. This would be especially valuable for projects in LMI and other undercapitalized areas because they often face the biggest challenges to capital. Opening more of the market will both make these projects easier and, in some cases, will be the tipping point allowing a rehab project on a building that has otherwise sat idle. This will be particularly beneficial for communities across our country who are now facing even more dire economic circumstances as a result of the COVID-19 pandemic.

The HTC is inherently a very flexible credit. It can be used to finance a building that will host almost any business type. Very common uses include housing, retail and other commercial goods and services, community service providers, small businesses, and other uses that provide shelter, jobs, accommodation, and goods and services for LMI areas and individuals. A streamlined and effective approach would be to eschew a facts and circumstances analysis for each individual building to see how it meets the needs of targeted communities and instead consider that the impact of the credit across all projects is so significant and the impacts are so customized from transaction to transaction that all transactions should be eligible.

Both the Low-Income Housing Tax Credit (LIHTC) and the New Markets Tax Credit (NMTC) qualify for CRA credit and are deemed eligible because of the use of these community and economic development incentives. Putting the HTC on a level playing field with these other development credits would even further encourage its use in neighborhoods and towns that need it most, opening the path for banks to invest more in rehabilitation projects in the most vulnerable areas of our country.

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.

Under the proposed regulations, only a single example is provided: *Public welfare investment, under 12 CFR part 24, that will use tax credits from the Federal Historic Tax Credit Program to finance the adaptive reuse and renovation of a hotel into rental units with median rents that will not exceed 30 percent of 80 percent of the area median income.*

First, we recommend that this example be clarified to have only 60% of the units meeting the 30% of 80% area median income requirement, consistent with the example provided for new construction of mixed-income housing.

In addition, we recommend the following additional 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 in a New Markets Tax Credit-eligible census tract.

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 whose employees are predominantly low-to-moderate income individuals.

Conclusion

We urge the OCC and FDIC 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. Also as a result 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 that OCC and

FDIC allow CRA eligibility for HTC projects or at a minimum receive automatic eligibility when located in economically distressed census tracts and when paired with other community development incentives assisting low-income individuals and families. Again, we very much look forward to working with you throughout this process and welcome the opportunity to continue to stay engaged.

Sincerely,

[redacted]

Merrill Hoopengardner
President
National Trust Community Investment Corporation