Submitted via email to: comments@fdic.gov, regs.comments@federalreserve.gov, and Senior Deputy Comptroller for Bank Supervision Grovetta N. Gardineer

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

Grovetta N. Gardineer, Senior Deputy Comptroller for Bank Supervision Policy, Office of the Comptroller of the Currency, 400 7th Street, SW, Suite 3E-218, Washington, DC 20219

Ann E. Misback Secretary, Board of Governors of the Federal Reserve System,
20th Street and Constitution Avenue, NW, Washington, DC 20551

RE: Community Reinvestment Act Regulations [Docket ID OCC-2022-0002, RIN 1557-AF15; Docket No. R-[•] and RIN 7100-AG [•]; RIN 3064-AF81]

To Whom It May Concern:

On May 5, 2022, the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System (the "Board"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "the agencies") promulgated a Notice of Proposed Rulemaking, proposing major revisions to the implementing regulations of the Community Reinvestment Act of 1977, as amended ("CRA").

The Washington Housing Initiative Impact Pool, LLC ("Impact Pool") welcomes the opportunity to offer a different perspective on the proposed changes to the Community Reinvestment Act. The Impact Pool provides subordinate financing to 501(c)(3) non-profits and other mission-oriented owners to help them acquire naturally occurring affordable housing projects, and keep residents living close to their jobs by offering multifamily housing at affordable rental rates. The Impact Pool targets neighborhoods where growing demand and private investment are pushing up rents, making these neighborhoods increasingly unaffordable for current and future residents with LMI incomes.

Multifamily rental projects funded with the Impact Pool's capital voluntarily restrict a minimum of 51% of the units to households earning 80% or less of area median income ("AMI"). In addition, they voluntarily commit to an affordability covenant restricting the rents charged to such persons to no more than 30% of 80% of AMI and to periodic income certification of residents. In 2021 the OCC determined that an investment in the Impact Pool is consistent with the criteria in 12 CFR §25.04 and qualifies for CRA credit.

There are three focus areas where we feel our perspective as an investor and manager of affordable housing projects may provide valuable commentary to the agencies: (i) the definition of affordable rent; (ii) income verification; and (iii) letting other stakeholders as well as federally insured financial institutions subject to the CRA ("IDIs") submit activities for consideration.

Affordable Rent

The NPR makes a distinction between subsidized and unsubsidized affordable housing, also known as Naturally Occurring Affordable Housing ("NOAH"). To qualify for CRA credit, an unsubsidized housing project must be affordable for low- or moderate-income ("LMI") individuals. The NPR proposes to define

"affordable" as follows: "… the agencies propose that the rent for the majority of the units in a multifamily property could not exceed 30 percent of 60 percent of the area median income for the metropolitan area or nonmetropolitan county." However, the agencies permit subsidized affordable housing projects to, "…use the affordability standards set in each respective government affordable housing plan, program, initiative, tax credit, or subsidy, provided that the program has a stated purpose or bona fide intent of providing rental housing that is affordable to low- or moderate-income individuals."

The U.S. Department of Housing and Urban Development ("HUD") defines "moderate income" as greater than 50 percent and up to 80 percent of the AMI and affordable as paying no more than 30 percent of the family income on rent. Most government programs leverage these HUD definitions. The proposed NPR definition for CRA qualifying unsubsidized housing lowers the allowable rents that can be charged for a majority of the units to 30% of 60% of the AMI. This would create the unintended consequence of forcing unsubsidized housing projects to charge lower rents than subsidized housing projects, thus reducing the viability of NOAH projects and increasing the likelihood that these projects would be sold to purchasers seeking to maximize returns by increasing rents.

The NPR also proposes four additional qualifying criteria to provide assurance that low- and moderate-income families would be the actual parties renting the units. A qualifying project must meet at least one of these additional criteria: (i) located in an LMI census tract; (ii) purchased, developed, financed, rehabilitated, improved, or preserved by a non-profit organization with a stated mission of, or that otherwise directly supports, providing affordable housing; (iii) the property owner provides an explicit written pledge by to maintain rents affordable to LMI individuals for at least five years or the length of the financing, whichever is shorter; or (iv) the IDI provides documentation that a majority of the residents of the housing units are occupied by LMI individuals or families (e.g., documentation that a majority of residents have Housing Choice Vouchers). It would seem that these criteria should be sufficient to assure the agencies that the proposed project is benefiting low- and moderate-income families without also requiring them to charge rents lower than a subsidized housing project would charge.

The CRA requires that IDIs address the credit needs of their communities; however, it also requires the IDIs do this within the context of their "safety and soundness." This raises a fundamental question: can unsubsidized rental housing projects where the rents for a majority of the units could not exceed 30 percent of 60 percent of the AMI cover their costs? Operational expenses are a fixed cost to maintain safe and quality housing, regardless of rents charged. According to the National Apartment Association, 91% of rental revenue is used to cover costs such as operating expenses, debt service, capital investment, and property taxes[1]. Lowering rents that can be charged from 30% of 80% of AMI to 30% of 60% of AMI results in an approximately 40% reduction in Net Operating Income, which would leave NOAH projects without enough cash flow available to support debt service and capital needs and increase the attractiveness of selling the building for redevelopment, particularly in high-cost markets.

[1] National Apartment Association Survey of Operating Income & Expenses in Rental Apartment Communities

Income Verification

As noted previously, under NPR there are four additional criteria that an unsubsidized housing project must satisfy to qualify for CRA credit. We appreciate that the agencies have provided options. Taken together with the definition of affordable rents discussed above, it provides some unusual hurdles for unsubsidized affordable housing projects if a project is not developed by a non-profit and is not in an LMI census tract. The developer must charge lower rents than most subsidized rental properties on a majority of the units and must either pledge to keep the rents affordable for an extended length of time or provide income documentation. The agencies acknowledge that it is challenging to get income documentation. Moreover, current LIHTC/HUD income verification procedures are costly for landlords and burdensome for renters especially for projects where no subsidy is involved. There is little incentive for renters in an unsubsidized housing project to provide this documentation and a high-cost for landlords. We suggest that utilizing recent paystubs, credit reports, and other similar data that can be easily accessed by apartment operators should be sufficient to prove a renter's income for unsubsidized housing projects.

Submit information on Qualifying Activities

We are pleased the agencies are proposing to maintain a list of qualifying activities. However, we ask that they reconsider their proposal to have the application process open only to IDIs. Project developers have generally done extensive work on the demand for affordable housing projects and community needs. Additionally, these projects can require a complicated mix of financing partners and structures, features the agencies may consider *innovative*. The project developers are often best positioned to provide this information. As IDIs increasingly acquire deposits and make loans digitally and on a nationwide basis without regard to where they are chartered or operate retail branches, being able to identify qualifying activities and innovative strategies that could be available throughout the country via a publicly available list could further the agencies goals of providing transparency and meeting the credit needs of local communities. Finally, having the list publicly available could spur other groups to adapt some of the innovative concepts evident in the activities that are approved to be on the List of Qualifying Activities.

We thank you for the opportunity to share our comments.

Sincerely,

Brian Allan ("AJ") Jackson
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