August 4, 2022

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

Re: Community Reinvestment Act: RIN 3064-AF81

The CRE Finance Council (CREFC) appreciates this opportunity to comment on the Notice of Proposed Rulemaking issued by Federal Reserve Board (Federal Reserve), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC), together (the Agencies), to modernize the Community Reinvestment Act (CRA) regulatory and supervisory framework (the "Proposal").[1]

Heightened Focus on Sustainability, Equity, and Inclusion. CREFC members welcome the financial industry's growing focus on sustainability and equity and inclusion. We believe that an effective CRA framework is essential to addressing persistent racial equity gaps and supporting low- and moderate-income (LMI) communities across the country. We appreciate, therefore, the Agencies' efforts to modernize and strengthen the CRA regulatory structure.

About CREFC. By way of background, CREFC comprises over 300 institutional members representing U.S. commercial and multifamily real estate investors, lenders, and service providers – a market with over $5 trillion of commercial real estate ("CRE") debt outstanding. CREFC members include various CRE finance industry participants, including different types of lenders (i.e., investment banks, commercial banks, debt funds, government-sponsored entities), sponsors and underwriters of commercial mortgage-backed securities ("CMBS"), investors and purchasers of CRE loans and CMBS products (insurance companies, pension funds, money managers, specialty finance companies, real estate investment trusts ("REITs")), and loan servicers, rating agencies, accounting firms, law firms, appraisers, and various due diligence service providers.

CREFC's Sustainability Initiative. CREFC launched a Sustainability Initiative in early 2021, devoting a significant amount of time and resources to helping our members develop expertise on and policy positions related to the intersection of climate change and CRE finance. We are now expanding our mandate to explore the social side of sustainability and CRE finance. Our members are most interested in identifying how our industry can help address the affordable housing crisis. We are, therefore, very pleased to have the opportunity to comment on this Proposal and look forward to sharing our recommendations with the Agencies.

[1] Department of the Treasury, Federal Reserve System, and Federal Deposit Insurance Corporation, *Notice of Proposed Rulemaking, Community Reinvestment Act*.

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Before delving into our comments, **CREFC would like to applaud the Agencies for incorporating key recommendations that we and others made in response to the Federal Reserve's Advance Notice of Proposed Rulemaking (ANPR) in 2021**:

- **Impact review of Community Development (CD) activities –** CREFC members support the recognition of both the quantity and quality of CD activities and believe that the Proposal's incorporation of "impact review factors" will encourage particularly high quality CRA activities. As stated in our response to the Federal Reserve's ANPR, "The proposed 'impact score' approach to complement banks' quantitative performance scores, for example, will incentivize innovative, impactful, and perhaps non-traditional CD activities that best meet communities' needs."

- **Combined consideration of CD loans and investments** – the Proposal recommends evaluating CD loans and investments together in the CD financing metric, rather than the current approach of examining them separately. CREFC members support the proposed combined approach. In our response to the Federal Reserve's ANPR, we stated that "combining CD investments and lending into a single subtest/score provides flexibility for banks to choose how best to reach their CRA CD financing requirements based on a community's needs at any given time, and effectively expands options for qualifying CD financing opportunities in over-banked CRA hot spots."

- **Expansion of CRA credit for qualifying CD financing activities in high-need areas** – in addition to evaluating banks' CD performance within their Facility-Based Assessment (FBA) areas, the Proposal recommends considering any additional qualifying activities that banks conduct outside their FBA areas. This approach would provide additional flexibility for banks to conduct qualifying activities outside their FBAs. As indicated in our response to the Federal Reserve's ANPR, it is widely recognized that the CRA regime's focus on physical location-based assessment areas has created so-called CRA "hot spots" for CD activities. In these areas, many banks compete for CRA credit in a limited universe of qualifying CD lending and investment opportunities. CREFC believes that the expansion of credit for activities beyond those local communities would serve more low- and moderate-income communities (so-called CRA "deserts"), and expand the pool of quality CD financing opportunities for banks' CRA dollars.

- **Broader universe of qualifying activities** – while the Proposal retains the current definition of CD services to include activities that have "as their primary purpose CD and are related to the provision of financial services," it also recommends considering other activities (e.g., human resources, legal services, and information technology) reflecting bank employee expertise. Additionally, the Proposal recommends that, in nonmetropolitan areas, banks receive consideration for certain volunteer activities that meet an identified CD need, even if unrelated to the provision of financial services. CREFC fully supports this recommendation since broadening the universe of qualifying activities meaningful to a particular area would provide a significantly greater benefit to the community than having banks crowding into a few activities. For example, many of our members have shared that conducting financial literacy classes in LMI areas has become a popular CD activity, but certain communities could potentially benefit more from other services (e.g., internship programs, job training courses, etc.).

- **Illustrative list and confirmation of qualifying activities** – a significant concern raised frequently by our members is the uncertainty regarding the qualification of particular CD activities: i.e., after-the-fact CRA assessments that conclude a long-term, complex project do not in fact qualify for CRA credit. CREFC is very pleased, therefore, that the Proposal seeks to "provide stakeholders with additional certainty when determining what CD activities qualify for CRA credit" via (1) a publicly-available illustrative, non-exhaustive list of activities eligible for CRA consideration that will be updated periodically; and (2) a process by which banks could confirm eligibility of CD activities for CRA consideration ex ante.

While the CRA impacts a broad range of credit needs in LMI neighborhoods, **CREFC will comment exclusively on CD financing activities.** Given our membership's focus on commercial and multifamily real estate finance, we will not be commenting on other major aspects of the Proposal, including the proposed changes to the assessment areas and associated weightings, which are a significant concern and are addressed extensively in other trade association letters.

Proposed definition of affordable housing

The Proposal states that "affordable housing" would be defined as: (i) affordable rental housing developed in conjunction with Federal, state, and local government programs; (ii) multifamily rental housing with affordable rents; (iii) activities supporting affordable LMI homeownership; and (iv) purchases of mortgage-backed securities (MBS) that finance affordable housing.

- **Affordable housing tied to government programs.** CREFC members do not believe that rental housing units must be associated with government programs in order to be considered affordable housing. However, we do appreciate the proposed recommendation that a rental housing unit definitely would be considered affordable housing if it is purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a Federal, state, local, or tribal government affordable housing plan, program, initiative, tax credit, or subsidy with a stated purpose or the bona fide intent of providing affordable housing for LMI individuals.

  Clear designations help ensure a bank can efficiently plan its expenditures and investment in CD activities. The Proposal provides helpful color on what types of government programs would qualify as affordable housing. It highlights certain government programs as potential examples (e.g., Project-Based Section 8 Rental Assistance, the HOME Investment Partnerships Program, and activities with rental properties receiving LIHTC) and states that they would need to have "a stated purpose or bona fide intent of supporting affordable rental housing for LMI individuals." Our members would also appreciate clarity on whether real estate tax abatements that support affordable housing are considered government programs and, therefore, would qualify as affordable housing under the CRA.

- **Multifamily rental housing with affordable rents.** CREFC's membership welcomes the Agencies' discussion and questions related to "multifamily rental housing with affordable rents," also known as "naturally occurring affordable housing." However, we believe that the qualifying criteria under the CRA are too restrictive.

  - **Overly stringent criteria.** The requirement that the rent for the majority of the units in a multifamily property cannot exceed 30% of 60% of the area median income (AMI) is particularly stringent, and unnecessarily restricts eligibility for properties with affordability levels at a higher percentage of AMI where many, but not all, of the units are occupied by LMI households. We recommend the Agencies adopt the 30% of 80% approach under consideration in the Proposal. Additionally, we urge the Agencies to recognize the affordability crisis in high-costs areas and allow up to 120% to 140% of AMI levels for cost-burdened geographies. This less restrictive approach for both standard and high-costs markets will promote affordable housing investments for more families.

    An 80% of AMI baseline and recognition of high costs areas would align with other federal definitions of affordable housing. For example, the Federal Housing Finance Agency's (FHFA) mission-driven criteria for the Government Sponsored Enterprises (GSE) multifamily caps uses an 80% of AMI level for naturally occurring affordable housing in standard markets. FHFA also recognizes cost-burdened areas in its mission-driven criteria, which allows loans targeting higher AMIs to qualify as affordable in those specific geographic areas.

Our members are also concerned that the proposed requirements, particularly one that requires the majority of units in a naturally occurring affordable housing property to meet the affordability standard in order to quality under CRA, does not adequately incentivize mixed income and inclusionary housing. The CRA should incentivize investment in buildings where affordable units are among market rate units by providing pro rata credit based on the percentage of affordable units in the property.

We appreciate the Agencies' desire to target those who have the most need. However, we believe that by focusing nearly exclusively on LMI areas, credit allocation would move away from LMI individuals and families who live in non-LMI neighborhoods.

The Agencies ask whether one of the additional criteria (location in a LMI census tract) should be expanded to encompass middle- and upper-income census tracts in which at least 50% of renters are LMI. Alternatively, the Agencies suggest an approach in which no geographic criteria are included. Under this option, activities qualifying as supporting naturally occurring affordable housing would instead be required to meet one of the other criteria (mission-driven non-profit organization, written affordability pledge, or tenant income documentation), in addition to the standard of rents not exceeding 30% of 60% of AMI. Our members strongly favor expanding the geographic criteria so that LMI individuals who live in non-LMI areas can still benefit from the CRA incentives.

- **Single-family rental.** The Agencies also wonder whether the proposed approach to considering naturally occurring affordable housing should be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing. Furthermore, they ask if consideration of single-family rental housing should be limited to rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met. CREFC membership believes that single-family rental should be treated the same way as multifamily rental. If they both meet the affordability criteria, they should both be eligible for CRA credit. LMI renters should be able to access housing opportunities that work best for their families, regardless of the type of rental home. Similarly, as discussed above, geographic criteria should not be considered; otherwise, we risk moving further away from mixed-income housing to an increasingly exclusionary framework.

- **Retail or CD designation of multifamily loans.** Multifamily loans are considered separately and may qualify for **both retail lending and CD** consideration if they meet the definition of affordable housing. Purchases of MBS that primarily consist of single-family mortgage loans to LMI individuals, or of multifamily affordable housing, are also considered as qualifying CD activities.

  We appreciate the Agencies' question regarding the correct place for multifamily lending; i.e., if it should be evaluated under the Retail Lending Test and the CD Financing Test or it should instead be evaluated only under the CD Financing Test. Under the current Proposal, multifamily lending would be picked up only under the retail lending test if it comprised 15% of the dollar value of a bank's retail lending in each facility-based assessment. Therefore, our membership prefers that multifamily lending be considered only under the CD Financing Test, which does not have a similar threshold. We are concerned that if affordable housing investments must meet the 15% retail lending threshold, banks might migrate to other activities that would more easily achieve CRA credit.

- **Purchases of mortgage backed securities (MBS) that finance affordable housing.** MBS would qualify as affordable housing when the security contains a majority of either single-family home mortgage loans for LMI individuals or loans financing multifamily affordable housing that otherwise qualifies under the proposed affordable housing definition. However, the Agencies seek feedback on alternative approaches that would create a more targeted definition of qualifying MBS.[2]

  Our members believe strongly that the Agencies should continue to award CRA credit for MBS purchases when the securities are backed by loans to LMI borrowers or loans that finance subsidized and affordable housing.

  MBS purchases provide valuable liquidity to the affordable housing market and will ultimately produce more CD lending for these important and impactful projects. Heightened liquidity opens up more origination pathways for smaller banks in particular. We would also note that in addition to boosting credit availability, robust secondary market demand for LMI loans drives better pricing for LMI consumers.

  As the Agencies themselves note, the "issuance and purchase of these securities may improve liquidity for affordable housing development and for lenders that make home mortgage loans to low- or moderate-income borrowers, which in turn allows them to make more loans to low- or moderate-income borrowers than would otherwise be possible."

Disaster Preparedness and Climate Resilience

- CREFC applauds the addition of "disaster preparedness and climate resilience" to the list of activities that could qualify as CD. CREFC members, particularly investors, have long viewed property resiliency as a key factor in the overall creditworthiness of their commercial real estate investments. The Proposal notes that this category "would encompass activities that help low- or moderate-income individuals and communities proactively prepare for or mitigate the effect of disasters and climate-related risks, for example, earthquakes, severe storms, droughts, flooding, and forest fires." To the extent these types of activities can make properties backing commercial real estate investments more resistant to disasters and other climate-related risk, our members strongly believe they should qualify for CRA credit. In fact, according to 67% of survey respondents to a recent CREFC member survey, property-level data is by far the most important information sought when making sustainability-related investment decisions.

- As discussed in the previous section on the definition of affordable housing, however, our members do not believe that disaster preparedness and climate resilience activities must occur in LMI areas in order to qualify for CD credit. We believe this approach unnecessarily penalizes LMI populations in non-LMI areas. Furthermore, assuming these activities meet certain requirements, we do not believe they need to be associated with a government program. Such a stipulation would likely limit the implementation of property hardening activities, leaving many sections of affordable housing vulnerable to storms and other climate-related risks.

[2] 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?

- The final rule should clarify that disaster preparedness and climate resiliency activities include energy-related activities—such as projects that provide access to renewable energy, including utility-scale projects—that benefit residents in targeted census tracts. LMI communities are particularly vulnerable to the effects of climate change, including extreme heat and weather events, and expanding the use of renewable energy is a critical part of combatting climate change and the challenges it brings. Additionally, the use of renewable energy and greater energy efficiency measures reduces energy costs, thereby increasingly the affordability of LMI housing.

    - The final rule should make clear that renewable energy activities (e.g., construction of a wind or solar power plant) can benefit residents, including low- or moderate-income residents, in targeted census tracts even if the plant where the renewable energy is generated is developed outside of the targeted census tract. Some sources of renewable energy, such as solar and wind farms, may be located outside of the population centers to which energy is transported.

    - Furthermore, as noted above, the proposed requirement that certain qualifying community development, including climate resiliency activities, be conducted "in conjunction with" a government plan, program, or initiative unnecessarily limits the types of activities for which banks may receive CRA credit. Although we believe that the agencies should omit this proposed requirement, if the agencies keep the requirement, they should provide that, in the climate resiliency context, such a plan, program, or initiative may be developed by a local utility.

Compliance and Implementation

- The Proposal recommends an applicability date of approximately 12 months after publication of a final rule for bank activities conducted on that date and forward. CREFC's members believe strongly that 12 months is an insufficient time period in which to create new assessment areas, collect data previously never collected, develop new systems to integrate this data, ensure data integrity, and train personnel. Instead, we urge the Agencies to allow for, at a minimum, a 24 month implementation period.

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We applaud the Agencies' efforts to modernize and clarify the CRA regime and we look forward to providing additional feedback and recommendations as this rulemaking process progresses.

Sincerely,

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CRE Finance Council