August 5, 2022

RE: Community Reinvestment Act, Joint Notice of Proposed Rulemaking, Docket (R-1769) and RIN (7100-AG29)

To Whom It May Concern:

The A Call To Invest in Our Neighborhoods (ACTION) Campaign appreciates the opportunity to provide comments to 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) on the joint notice of proposed rulemaking to strengthen and modernize the regulation of the *Community Reinvestment Act* (CRA).

The ACTION Campaign is a national coalition representing 2,400 national, state, and local organizations and businesses advocating to expand and strengthen the Low-Income Housing Tax Credit (Housing Credit). The Housing Credit is our nation's most successful tool for developing and preserving affordable rental housing and an estimated 73 percent of Housing Credit investment is CRA-motivated. Since it was created in 1986, the Housing Credit has helped finance nearly 3.6 million affordable homes, providing 8 million low-income households in all 50 states and all types of communities – including urban, suburban, and rural – with housing they can afford.

Without a subsidy like the Housing Credit, virtually no affordable rental housing production or preservation would occur, because rent levels affordable to low-income households are too low to cover total development costs and sustain a typical mortgage on a property. Further, as affordable rents will only allow for limited debt on a property, the infusion of equity by Housing Credit investors serves as the critical foundation upon which other layers of funding can rest.

According to research from the Joint Center for Housing Studies at Harvard University, nearly one out of every four families who rent their homes spend more than half of their income on rent. At a time when our nation faces a severe affordability crisis and a growing shortage of affordable housing – which has only been exacerbated by the economic fallout of Covid-19, rising inflation, and double-digit rent increases across the country – we urge banking regulators to ensure that any changes to CRA regulations do not have negative implications for the Housing Credit, but instead *broaden* CRA-motivated investor interest in the program.

We would like to again offer our appreciation to the Board, FDIC, and OCC for their strong commitment to strengthening and modernizing CRA regulations so that they best benefit LMI communities, and specifically applaud the proposed rule's automatic qualification of Housing Credit investments as CRA eligible. To ensure that the final regulations continue to incentivize investment in critical affordable housing activities through the Housing Credit, we are proposing several recommendations in response to banking regulators' request for comments.

Key Recommendations

1. ACTION is greatly concerned by the proposed rule's consolidation of the long-standing lending and investment tests into a single community development financing test.

Combining debt and equity activities into a single test assumes a false equivalence in the roles the two forms of capital play in community development and the ease with which those seeking to deploy CRA-motivated capital can access them. In general, it is easier for banks to make loans than equity investments. Equity: (1) requires banks to hold more capital; (2) is less senior in the capital stack; (3) is less liquid; (4) is not a primary product line; and (5) requires specialized expertise. By consolidating the two tests, equity investment for the Housing Credit will be harder to secure, as banks almost inevitably prefer making loans over equity investments.

In addition, because of differences in risk weights under Basel III, banks must hold double the Tier 1 capital for equity investments versus seasoned multifamily loans. Housing Credit properties typically cannot carry significant debt because the affordable rents allowed do not offer substantial cash flows to service the debt. The properties financed using 9% Housing Credits typically only carry 10–25 percent permanent debt, while those using 4% credits typically carry 15–30 percent. The equity investment in Housing Credits, however, usually finances 60–80 percent of the total development costs for 9% credits and 30–40 percent in the case of 4% credits.

Further, we are concerned that the absence of an equity investment test could cause a reduction in the incentive to invest in the Housing Credit. With reduced equity investment in Housing Credit developments, there will also be fewer opportunities for banks to make CRA-eligible loans for affordable housing, particularly without additional gap financing. An estimated 85 percent of equity investment in the Housing Credit comes from banks; if demand for the Housing Credit drops, pricing will also fall. Moreover, with a long list of worthy, credit-eligible lending activities, the proposed rule makes it likely that CRA-driven capital allocations by banks will shift away from affordable housing.

Given the pervasive shortages of affordable rental housing across the country, we urge the Board, FDIC, and OCC to take the utmost care not to undermine the flow of CRA-motivated equity investment that forms the base of the capital stack for affordable housing upon which millions of families rely.

We also urge banking regulators to name equity investment in the Housing Credit as a positive impact review factor for the community development test, given that state and local allocating agencies distribute Housing Credits through a highly competitive process to only the most impactful properties that best address the state or locality's affordable housing needs. Equity investments in Housing Credit properties should always be given positive consideration for the full investment. The proposed language regarding the impact review factor for serving low-income households – 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 that are necessary to support the deep affordability as a result of the internal cross-subsidization made possible by income mixing.

Finally, it is important that at a minimum, community development services be kept at the same set-aside threshold that they are currently evaluated at – that is, 5 percent rather than the 10 percent as proposed. As there are no specific set-asides for community development investments or lending in the proposed rule, there is no reason to increase the set-aside for services. Community development investment and lending should instead constitute a greater percentage of the bank's community development test score.

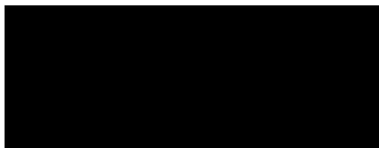
2. ACTION also calls for equal weighting of the retail and community development tests, rather than the 60/40 retail/community development weighting currently proposed. We are concerned the proposed weighting will incentivize banks to focus largely on the retail side of the equation and forego efforts to achieve a strong score on the community development side, which includes investment in the Housing Credit. Moreover, banks should not receive a satisfactory rating unless they achieve at least a satisfactory rating on the community development financing and services tests first.

   In addition, we are concerned the peer-performance based scoring system embedded into each test could create an unintended negative feedback loop among peers as it is unlikely for banks 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 (with the differentiation between "high satisfactory" and "low satisfactory" essentially moot, given that statue only allows for four categories – "outstanding," "satisfactory," "needs to improve," and "substantial noncompliance"). 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.

A strong Housing Credit investor market is critical to the health of our nation's affordable housing delivery system, and as currently envisioned in the NPR, the changes to CRA could lead to substantially less Housing Credit production. **The ACTION Campaign encourages the Board, FDIC, and OCC to ensure that the final CRA regulations establish a clear and powerful incentive for covered financial institutions to invest at least as much in the Housing Credit as they do now.** This will help ensure that the CRA is driving the most impactful community development loans and investments in this time when communities nationwide are sorely in need of safe, quality, affordable housing.

We appreciate the opportunity to provide comment, and please do not hesitate to reach out to ACTION co-chairs, Scott Hoekman with Enterprise Community Partners (shoekman@enterprisecommunity.com) or Jennifer Schwartz with the National Council of State Housing Agencies (jschwartz@ncsha.org), with any questions. Thank you for your consideration.

Sincerely,



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