LIHTC WORKING GROUP

November 19, 2018

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

Re: Docket ID OCC-2018-0008: Reforming the Community Reinvestment Act Regulatory Framework

Dear Comptroller Otting:

The LIHTC Working Group was established by Novogradac & Company LLP to provide low-income housing tax credit (LIHTC) industry participants a platform to work together to resolve technical and administrative LIHTC program issues. On behalf of the members of the LIHTC Working Group, we respectfully submit our comments on the Office of the Comptroller of the Currency's (OCC) Advance Notice of Proposed Rulemaking (ANPR) to modernize the Community Reinvestment Act (CRA).

The members of the LIHTC Working Group (LWG) strive to make the LIHTC program even more efficient in delivering benefits to help build affordable rental housing throughout the nation in a wide variety of different housing markets. Our group includes nonprofit and for-profit developers, property managers, lenders, syndicators, investors, accountants, lawyers and other LIHTC professionals.

Since its inception in 1986, the LIHTC has financed the production or preservation of more than 3 million affordable rental homes for veterans, seniors, working families, and people with special needs. Virtually all affordable housing developed in the United States depends on the LIHTC as the most important source of capital, making it the main tool for creating and preserving affordable rental housing.

With the last major revision to CRA regulations in 1995, the LIHTC has become a highly efficient public-private partnership over its more than three decades, and the CRA has been a primary motivating force in incentivizing private sector investment in affordable housing. An estimated 85 percent of annual LIHTC equity investment provided by banks subject to the CRA, according to the Affordable Housing Investors Council. According to Ernst & Young, when the banks investing in the LIHTC were surveyed about why they were motivated to make these investments, they responded that it was primarily to meet CRA obligations.

Proposed Streamlining Changes to CRA Examinations

In general, the LWG supports the OCC's effort to streamline the CRA evaluation process and to make the process more transparent and provide greater clarity and certainty to CRA examinations. However, we have significant concerns that replacing the current investment test structure with a single ratio would undermine the incentives that currently exist to invest in affordable housing and ultimately decrease affordable housing production.

We urge the OCC to retain a separate investment test to ensure that banks continue to have an incentive to make community development investments like the LIHTC and tax-exempt housing private activity bonds. A shift away from the current "large bank" three-test evaluation regime towards a single ratio may incentivize banks to shift toward an increased reliance on debt, especially mortgage debt, which typically are more liquid than LIHTC investments. Yet, equity investments are transformative for the communities that CRA is intended to support, with far-ranging impacts for residents as well as the surrounding neighborhoods. We encourage the OCC to continue to support the CRA's current role in incentivizing these types of investments.

If a separate investment test is not retained, the LWG encourages increased weighting for community development equity investments that are particularly impactful, like LIHTC and housing private activity bond investments. However, we have significant concerns about the single ratio concept, and care must be taken to ensure that a weighting methodology does not produce unintended consequences by decreasing equity investments relative to current levels. For example, if $1 of equity investment would now be worth $2 through increased weighting, an institution would be able to receive the same CRA consideration by providing only half as much equity. Depending how a simple ratio is structured and weighted, and to what baseline it would be compared, it could significantly decrease investment in the LIHTC and the resulting affordable rental housing production.

Redefining Communities and Assessment Areas

The concentration of CRA assessment areas around the depository and branch network has had a significant impact on the LIHTC market, affecting how much equity is available for affordable housing – in some cases leading to distortions in our nation's affordable housing landscape. Approximately three-fourths of LIHTC properties are located in areas where at least one of the top 20 U.S. commercial banks has CRA responsibility. Our nation's affordable housing footprint is thus more closely tied to where CRA obligations must be met, and not necessarily where affordable housing needs are the greatest. Indeed, the areas that are least attractive from a CRA investment test perspective are rural areas with some of the greatest affordable housing needs.

Equity pricing for LIHTC properties, and thus the amount of equity available for affordable housing, also varies widely between areas within and outside of the assessment areas of major commercial banks. It is not uncommon to see equity pricing differentials of 10 – 15 cents between LIHTC developments in areas with plenty of traditional AAs and those without. In the past 30 years, the pricing differential was as high as 35 cents. Lower pricing means less LIHTC equity is available for a property, leading to financing gaps that may prevent highly-needed projects from being financially feasible.

To more accurately reflect today's banking practices, we support an expansion of assessment areas beyond physical branches and deposit-taking ATMs, to include areas where banks accept deposits and do substantial business, including investments, loans and services. We also encourage, with respect to investments in the Low Income Housing Tax Credit, more clarity around when an investment outside of an assessment area will qualify for CRA credit. Current requirements that investments made into funds may qualify as long as it's part of a "broader statewide or regional area", or that direct investments may qualify provided that the bank has been "responsive" to the needs of its assessment areas, do not provide sufficient certainty to banks at the time of investment that the investment will be eligible for CRA credit. As a result, banks are not inclined to pursue LIHTC investments outside of their delineated investment areas.

The OCC should protect current flexibilities for investors to invest in regional LIHTC funds by providing more clear and consistent definitions of what constitutes a broader regional area. With respect to direct LIHTC investments or investments in statewide funds, the OCC should consider an expansion of assessment areas to the entire state.

It is also important to consider the issue of what it means to be "responsive" to the needs of its assessment areas. Such a term was never clearly defined in existing CRA guidance, leading to confusing and conflicting interpretation by bank examiners that ultimately result in most banks not to invest outside of assessment areas.

LIHTCs are a limited resource that are competitively allocated by state or local housing agencies in accordance with qualified allocation plans, which are intended to address the areas of the state that are most in need of affordable housing or otherwise are part of state designated redevelopment areas. Therefore, we advocate consideration of adopting regulations that provide that any investment in a project eligible to claim the LIHTC that is located in a state in which an assessment area is located be treated as within the assessment area. These changes would help encourage more LIHTC equity to flow to projects that have been determined to need investment rather than to concentrated high CRA demand markets.

Due to pricing inequities and lack of investment in rural and other distressed or underserved regions, we encourage increased weighting for rural areas, Native American areas, and distressed and underserved nonmetropolitan middle-income geographies. We also encourage allowing banks to meet CRA obligations through LIHTC investment in certain underserved areas outside their state assessment area – including rural and Native American areas, as well as Presidentially Declared Disaster Areas – once a certain share of investment in a bank's assessment area has been met.

Expanding CRA-Qualifying Activities

While the LWG understands the interest in expanding what types of activities qualify to meet CRA obligations, we urge the OCC to ensure that any expansion of eligible activities does not discourage investment in affordable housing, including investment in the LIHTC. Affordable housing should remain highly incentivized through the CRA given the magnitude of the affordable housing shortage in the U.S. For every 100 very low-income renters earning below 50 percent of area median income, only 56 homes are affordable and available, forcing millions of families to rent apartments beyond their means. Currently more than 11 million renter households spend more than half their income on rent, and that number is expected to increase to more than 14.8 million by 2025.

By devoting less of their income to rent, families have more money to spend in support of the local economy. A study of LIHTC properties in the Bronx, N.Y., found that developments there boosted estimated local purchasing power by one-third, contributing to the retail vitality of the neighborhood and the availability of goods and services to residents. When individuals spend too much on rent, they have little left over for food, healthcare and other necessitates. Studies have shown that the availability of affordable housing leads to better health outcomes, keeps families together, reduces domestic violence and substance abuse, and helps low-income individuals gain employment and keep their jobs.

We also propose that high-impact investments like LIHTC investments should be eligible for "safe-harbor" CRA credit. We support the recommendation from the Treasury Department's April 2018 memo to the banking regulators on CRA that "banks should be allowed to obtain a limited number of eligibility determinations in advance on specific loans, investments or services and any decisions requiring extensive regulatory consultation should then be able to be reduced to an exception basis only." We believe that any letters of intent to invest in the LIHTC should qualify as "safe-harbor" activities for purposes of the investment test.

Recordkeeping and Reporting

The LWG generally supports changes that will promote transparency in CRA performance, including the tracking, monitoring and comparisons of levels of CRA performance. We support more timely examination reports and more timely communication of the information to the public, as well as changes that increase transparency and give banks more guidance on which types of activities qualify for CRA consideration.

We appreciate efforts to improve the LIHTC program and look forward to working with the OCC as it finalizes its CRA modernization recommendations.

Please do not hesitate to contact me at Dirk.Wallace@novoco.com or (330) 365-5400 if you have any questions regarding our comments or if we can be of further assistance.

THE LIHTC WORKING GROUP

Very truly yours,

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