August 5, 2022

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Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW,
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Re: Community Reinvestment Act Notice of Proposed Rulemaking Docket ID OCC-2022-0002/RIN 7100-AG/RIN 3064-AF81

To Whom It May Concern:

On behalf of the members of the Neighborhood Homes Tax Credit (NHTC) Working Group, we appreciate the opportunity to comment on the joint Notice of Proposed Rulemaking (NPR) regarding the Community Reinvestment Act (CRA) published by the Office of the Comptroller of the Currency (OCC), Federal Reserve Board of Governors (Board), and Federal Deposit Insurance Corporation (FDIC), together referred to as "the Agencies". The members of the NHTC Working Group are participants in the affordable housing community who work together to help resolve potential technical NHTC policy issues and provide recommendations to make the proposed NHTC even more efficient in delivering benefits to help build and preserve affordable owner-occupied housing in distressed communities. Our group includes nonprofit and for-profit developers, syndicators, investors, lenders, lawyers and other affordable housing professionals.

The proposed Neighborhood Homes Investment Act would apply the low-income housing credit's (LIHTC) successful incentive structure and administration to a different challenge: to revitalize struggling communities and expand affordable homeownership opportunities in communities where there is a private market failure by building and rehabilitating starter owner-occupied homes.

The LIHTC and the proposed NHTC have earned bipartisan support because they are based on the same broadly embraced principles 1) private market discipline, 2) state administration, 3) targeting and flexibility, and 4) positive economic and community impact.

The bipartisan Neighborhood Homes Investment Act (NHIA) is carefully targeted to distressed communities, which are also very often characterized by low- and moderate-income (LMI) census tracts, elevated poverty rates, and low home values. About 22% of metro census tracts nationwide, and 27% of non-metro census tracts would qualify, with additional flexibility for certain other non-metro census tracts. The proposed NHTC meets these communities where they are by offering tax credits sized to cover the gap between the cost of developing homes and the price at which they can be sold. The credits would be capped at 35% of development costs for modest owner-occupied homes; prices would be limited so they are broadly affordable; and high-income buyers would be excluded. These guardrails promote revitalization without gentrification.

The NHTC is limited to homeownership, but it is otherwise very flexible. It can build new owner-occupied homes or acquire and rehabilitate owner-occupied homes for sale, and special provisions would also allow using credits to rehabilitate homes for current homeowners. It can be used for detached homes, townhomes, two- to four-unit homes, condominiums, and cooperatives. Manufactured homes are eligible, provided they are permanently attached to a foundation and are titled as real property. A minimum level of rehabilitation prevents merely superficial improvements. All of these design elements are complementary to the goals of CRA.

Importance of CRA to the proposed NHTC

As with the LIHTC, the Working Group strongly believes that if Congress were to enact the NHTC, the CRA would be a crucial incentive for banks to participate in this tax incentive and make the NHTC as efficient a financing tool as the CRA has helped make LIHTC efficient since 1995.

We urge the Agencies to consider revising the NPR to accommodate the proposed NHTC. Given that the last substantial joint revision of the CRA regulations occurred in 1995, it is appropriate that the agencies should consider and accommodate financing tools that Congress may create in the next 25 plus years and that are aligned with the CRA's purpose to ensuring that banks meet the credit needs of the communities they serve.

Financing the construction or rehabilitation of owner-occupied homes (including condominiums and cooperatives) should receive CRA consideration if: (1) the homes are located in a LMI census tract or a distressed or underserved middle-income non-metropolitan census tract; and (2) the sales price does not exceed four times the AMI. Financing the rehabilitation or reconstruction of an already owner-occupied home (where no sale is involved) should qualify if the owner is either LMI or middle-income.

Many single-family homes in these neighborhoods are old or in need of improvement, and empty lots (sometimes where dilapidated homes were demolished) are common. These communities typically have relatively low rates of homeownership and little chance of attracting or retaining homeowners unless quality starter homes can be built or rehabilitated. While many of these prospective homeowners may be middle-income, not LMI, they are important to sustaining the diversity of incomes that neighborhoods need to support retail activity and community institutions ranging from youth sports leagues to churches. In a rural context, it is hard to keep or attract growing businesses because quality affordable starter homes are simply not available. Revitalizing both distressed urban and rural communities is very difficult unless these problems can be addressed. CRA is needed and well justified to support the construction and rehabilitation of owner-occupied starter homes.

To avoid providing CRA credit for constructing or rehabilitating expensive homes that could contribute to gentrification and displacement, we recommend limiting CRA credit to homes that sold for a price not exceeding four times the area median income (AMI). This limitation would ensure that the homes are broadly affordable to middle-income homebuyers. In cases where an already owner-occupied home is being rehabilitated, the owner should be either LMI or middle-income.

The Working Group urges the Agencies to consider the broader effect of blight and economic distress on LMI census tracts, which often acts to displace and exclude LMI households from suitable, safe, and healthy housing. Promulgating regulations that prevent any community development activity in these distressed areas that may be construed to displace or exclude any LMI households would be counter-productive and contrary to the aims of the CRA.

Conclusion

The CRA could be a crucial incentive for banks to invest in NHTC equity and affordable owner-occupied housing production and preservation. With an appropriate revised regulatory framework, the CRA will continue to be an essential incentive to help address the nation's affordable homeownership needs, which were pressing prior to the pandemic and has been exacerbated by it. We urge the Agencies to carefully consider the impact of any CRA regulatory reform that may limit or harm the incentive to invest in NHTC and owner-occupied housing in distressed communities.

We hope that you find these comments, considerations and recommendations helpful as you update the CRA regulations. Thank you in advance for your time and consideration. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,

Novogradac and Company LLP

Dirk A. Wallace

By

Dirk Wallace, Partner