August 4, 2022

Chief Counsel's Office
Attention: Comment Processing, Office of the Comptroller of the Currency (OCC)
400 7th Street SW, Suite 3E-218
Washington, DC 20219

RE: Community Reinvestment Act Regulations, Docket ID OCC-2022-0002, Regulation BB, Docket No. R-1769

To whom it may concern,

The New Markets Tax Credit Coalition ("The Coalition") appreciates the opportunity to respond to the May 2022 Joint Notice of Proposed Rulemaking ("NPR") requesting public comment on the agencies' proposed overhaul of the Community Reinvestment Act ("CRA").

The Coalition is a national membership organization founded in 1998 to advocate on behalf of the New Markets Tax Credit ("NMTC") program. The Coalition is comprised of 150 community development organizations, investors, and practitioners with a shared interest in bringing jobs and opportunities back to America's low-income communities. Our members' work aligns closely with the intent of CRA.

Low-income communities often lack access to affordable, patient capital needed to improve community facilities, restore structures, and generate economic growth. Policymakers designed the NMTC to increase the flow of capital to businesses in these struggling communities by providing a modest tax incentive to private investors. The program has elicited strong participation and is achieving its purpose. Between 2003 and 2021, the NMTC delivered $120 billion in total project investments to low-income areas. For every $1 invested by the Federal government, the NMTC Program generates over $8 of private investment.

The following comments on the NPR would help continue the strong participation of banks in the NMTC program.

Summary of Recommendations:

- NMTC projects help communities make thoughtful, high-impact investments in areas of deep economic distress. We applaud regulators for including NMTC transactions as community development activities under the Community Development Financing test. We urge regulators to provide additional consideration for NMTC transactions under the qualitative impact review and to provide further consideration to NMTC projects when evaluating banks' responsiveness to community needs.
- We join other community development trade associations in urging regulators to preserve the separate investment test or to craft another robust mechanism to motivate both intermediate

and large banks to participate in the equity markets for the NMTC and other effective community development tax credits.

- Absent an investment test, we encourage regulators to provide additional weighting for NMTC investments in the quantitative portion of the Community Development Financing test and to score NMTC investments favorably in the qualitative impact review of community development financing metrics. It's important that the rule gives adequate weight to community development investments in the overall CRA evaluation because NMTC investments provide critical support for low-income areas.
- We join other community development trade associations in urging regulators to prioritize community development for large banks by increasing the scoring weight of the Community Development Test from 40 percent to 50 percent.
- We support the inclusion of "activities with Treasury-Certified CDFIs" as part of both the community development definition and as one of nine factors considered in the qualitative impact assessment.
- We support regulators' proposal to allow banks to receive CRA consideration for investing in CDFIs, regardless of their geographic location. This aspect of the NPR would bring more NMTC financing to Native Areas and rural CRA deserts.

Comment: We applaud regulators for including NMTC transactions as community development activities under the Community Development Financing test. We urge regulators to provide additional consideration for NMTC transactions under the qualitative impact review and to provide additional consideration to NMTC projects when evaluating banks' responsiveness to community needs.

The NMTC helps banks support many of the most challenging, complex, and wide-ranging community development projects in low-income communities. Given the extraordinary impact of NMTC investments, any changes to the CRA regulation should aim to maintain or strengthen the viability of the NMTC program. Many NMTC investments meet a half-dozen of the proposed criteria for community development. A vast majority (over 80 percent) of recent NMTC projects are in severely distressed communities that far exceed the statutory requirements for economic distress. Stiff competition for allocation, credits, and NMTC financing drives investments into communities experiencing decades of disinvestment, poverty, job losses, and population declines. Banks partner on NMTC investments with local organizations with deep ties to low-income communities, and the NMTC allocation application rewards revitalization proposals and business expansions that provide low-income residents with meaningful opportunities for socioeconomic advancement through quality, accessible jobs and projects with broad community support.

The credit is also one of the federal government's most effective tools for driving financial products and services to Black, Indigenous, and people of color ("BIPOC") communities and neighborhoods still suffering from the legacy of redlining. Following the passage of the National Housing Act of 1934, the federal Home Owners' Loan Corporation ("HOLC") designated urban neighborhoods by their risk profile with grades ranging from "A" (affluent suburbs) to "D" (areas deemed "hazardous"). A significant proportion of NMTC financing goes to communities designated Type-C or Type D by HOLC in 1935. An NMTC Coalition analysis of NMTC transaction data from 2003-2018 and HOLC data from the University of Richmond's Digital Scholarship Lab[1] found 1,025 NMTC projects totaling $18 billion in project financing in Type-C and Type-D neighborhoods. A separate analysis by the NMTC Coalition found of 2003-2020 NMTC transaction data found that more than half of NMTC projects are located in BIPOC communities[2]. An independent audit of the NMTC program by Summit Consulting found that – rather than simply shifting investment to up-and-coming neighborhoods with proximity to affluent communities - program participants were driving investment into areas of deep economic distress.[3]

Thanks to its flexibility, the NMTC helps banks meet a diverse range of community needs. The credit finances a wide variety of projects, including loan funds for BIPOC small businesses; new critical access hospitals and federally qualified health clinics; colocation of community goods and services at mixed-use, nonprofit hubs, and business incubators; YMCAs and YWCAs; industrial space and manufacturing business expansions; innovative early childhood education programs and facilities; Habitat for Humanity builds; ports, transportation infrastructure, and public transit; and even rural broadband. NMTC financing helps communities expand access to fresh food and healthcare services, restore vacant or abandoned buildings, launch vocational training centers, and create high-quality jobs, attributes that make it a perfect fit for banks seeking to meet community development needs.

We urge regulators to provide additional consideration of NMTC transactions – the gold standard in community development financing – as part of the qualitative impact review. We ask that regulators provide additional consideration to NMTC projects when evaluating banks' responsiveness to community needs.

NMTC Impact in Low-Income Communities, 2003-2021:

- More than 8,000 NMTC projects directly created more than 1.1 million full-time-equivalent construction and permanent jobs.
- Nearly 2 million children benefit from NMTC financed schools, youth programs, and early childhood education initiatives.
- The NMTC supported the expansion of more than 2,500 manufacturing and industrial businesses.
- NMTC transactions supported the construction or rehabilitation of nearly 210 million sq. ft. of real estate.
- Over 1,200 NMTC projects (including 532 federally qualified health centers) expanded access to healthcare services for nearly 22 million patients each year.

Source: NMTC Coalition analysis of CDFI Fund Transaction Data and NMTC Coalition Survey Data, 2003-2021.

Comment: The proposed elimination of the Investment Test would undercut the NMTC and other community development tax credit programs and tilt the scales in favor of vanilla debt products over equity investments.

We commend regulators for explicitly listing NMTC transactions and investments into a community development entity as an eligible community development activity. However, we are concerned that

[1] The Digital Scholarship Lab and the National Community Reinvestment Coalition, "Not Even Past: Social Vulnerability and the Legacy of Redlining," American Panorama, ed. Robert K. Nelson and Edward L. Ayers, https://dsl.richmond.edu/socialvulnerability.

[2] In the NMTC Coalition's analysis, BIPOC communities are defined as census tracts where a majority of the residents are non-white according to the American Community Survey.

[3] "Compliance Review of New Markets Tax Credit Program." August 1, 2017, Summit Consulting.

the elimination of the investment test from the current CRA framework will have a detrimental effect on the NMTC equity markets, the equity markets for other community development tax credits, and the prevalence of equity investments in LMI communities.

Many of the federal government's most successful community development initiatives – including the NMTC - are contained in the tax code. Each year, community development tax credits deliver tens of billions in new financing to affordable housing, new community facilities, small businesses, clean energy, and other community revitalization initiatives. Given the alignment of these incentives with the intent of CRA, regulators should take extra care to avoid disrupting their respective equity markets.

Under the existing (1995) CRA framework and Q&A, a bank can receive consideration for its investments in Community Development Entities (CDEs) or the pro-rata portion of a loan originated by a CDE, based on the bank's percentage of equity ownership in the CDE. Nearly all NMTC transactions utilize the leverage structure, which pairs NMTC equity with debt from a leverage lender. In the case of leverage structure transactions, the equity investor and the leverage lender may receive CRA consideration based on the pro-rata share of their investment.

For banks, CRA's investment test often serves as a significant motivator for making tax credit investments. The characteristics of NMTC investments (e.g., relatively modest yields, longer duration, less liquidity) otherwise make them less attractive to banks. Without the Investment Test, banks could have a diminished appetite for investing in the NMTC. A decline in the price paid in exchange for NMTCs translates into a decrease in capital flowing to low-income communities.

We agree with other community development advocates that the proposal should provide additional weight to equity investments, EQ2, and other forms of advantageous financing. Under the NPR, these financial products seemingly receive the same weight as a vanilla term loam in the quantitative review, though the products would presumably receive weight under the qualitative impact review.

In addition to eliminating the Investment Test, regulators propose to increase the asset threshold for large banks to $2 billion. Large, CRA-motivated banks are the largest investors in NMTCs, accounting for the vast majority of NMTC equity investments. Institutions currently classified as large banks accounted for over 99 percent of NMTC investments reported in the NMTC Coalition's 2021 Survey of CDEs.

Unfortunately, many of these banks would be reclassified as intermediate banks under the proposed bank asset thresholds. In addition, many large banks participating in the program through the secondary syndication market would be reclassified as intermediate banks. These banks would see a significant reduction in their community development obligations.

Comment: Prioritize community development for large banks by increasing the scoring weight of the Community Development Test from 40 percent to 50 percent.

For large banks, the proposed weighting of 40 percent for community development and 60 percent for retail services undervalues the importance of community development. As a result, banks could scale back their community development activities without impacting their overall rating – which could have serious negative consequences on the community development finance ecosystem. Moreover, community development activities are often some of the most impactful ways banks reinvest in their communities. For these reasons, we join other industry stakeholders in proposing a 50/50 split between the Community Development and Retail Lending Tests.

Comment: We also support the regulators' inclusion of "activities with Treasury-Certified CDFIs" as part of both the community development definition and as one of nine factors considered in the qualitative impact assessment.

We were pleased regulators recognized and expanded the role of Treasury-certified CDFIs ("CDFIs") in their proposal. We support regulators' inclusion of activities undertaken with a CDFI in both the quantitative and qualitative evaluations of banks' CRA compliance. CDFIs are very active in the NMTC program and often work closely with banks to produce the most thoughtful and impactful revitalization efforts.

We support regulators' proposal to allow banks to receive CRA consideration for investing in CDFIs, regardless of their geographic location. The new regulation would bring more NMTC financing to Native Areas and rural CRA deserts.

We strongly support the proposal to allow community development consideration for bank investments in Treasury-certified CDFIs, both within and outside of a bank's geographic assessment area – as long as banks are meeting the needs of their facility-based and retail lending assessment areas. This will increase the volume of NMTC investment and other community development financing in regions lacking a bank presence, including underserved rural counties and Indian Country. We support all efforts to incentivize bank investments CDEs and CDFIs.