LIHTC WORKING GROUP™
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October 29, 2021

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

Re: Docket ID OCC-2021-0014 (Community Reinvestment Act Regulations)

To Whom It May Concern:

On behalf of the members of the Low-Income Housing Tax Credit (LIHTC) Working Group, we appreciate the opportunity to comment on the Office of the Comptroller of the Currency's (OCC) Notice of Proposed Rulemaking (NPR) regarding the Community Reinvestment Act (CRA). The members of the LIHTC Working Group are participants in the affordable housing community who work together to help resolve technical LIHTC policy issues and provide recommendations to make the LIHTC even more efficient in delivering benefits to help build affordable housing and service low-income residents. Our group includes nonprofit and for-profit developers, syndicators, investors, lawyers and other affordable housing professionals. Moreover, we represent banks that invest in LIHTC equity annually, for which the CRA is a crucial incentive.

Many of the gains seen through the LIHTC can trace their origins to the revisions made to the CRA regulations in 1995. The CRA has helped make the LIHTC the most successful affordable rental housing production incentive nationwide. Since 1987, the LIHTC has provided more than $208 billion in equity investment, produced nearly 3.5 million affordable rental homes, and housed 8 million low-income households, according to data from the National Council of State Housing Agencies (NCSHA) and analysis from the National Association of Home Builders (NAHB). It has also supported the creation of more than 5.5 million jobs, generated more than $617 billion in wages & business income, and spurred more than $214 billion in tax revenue.

Despite this tremendous record of achievement, many still suffer due to a lack of affordable housing. More than 10.5 million low-income renters nationwide are severely cost-burdened, i.e., paying more than 50% of their income on rent, according to Harvard's Joint Center on Housing Studies State of the Nation's Housing 2021 report. Difficulties are not relegated to low-income households as rent burdens are moving up the income ladder. There is no question that those at the bottom of the income spectrum continue to fare the worst—nearly 82% of renters with incomes at or below $25,000 are severely cost burdened. At the same time, cost burdens are increasingly affecting middle-income renters, with the percentage of cost burdened households among those earning $50,000 to $74,999 increasing from 12% in 2001 to 26% of these households in 2019. These housing problems have been exacerbated by the COVID-19 pandemic, the effects of which have yet to be fully understood and will be felt for years to come. Given this rental affordability crisis and the ongoing effects of the pandemic, the importance of the CRA cannot be overstated. As the premier resource for affordable rental housing production, it is imperative that the CRA continue to incentivize LIHTC investment through the CRA affordable housing investment and lending requirements.

To this end, we applaud the OCC's proposal to effectively rescind the CRA final rule published by OCC on June 5, 2020, and replace that rule with rules based on the 1995 CRA rules, as revised, issued by OCC, Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC). By reverting back to the 1995 rule, as revised, the OCC's CRA rule would be aligned with the current Board and FDIC CRA rules, which the OCC states would "facilitate on-going interagency work to modernize the CRA rules and create consistency for all insured depository institutions (IDIs)."

The NPR states that OCC, in evaluating how to develop a CRA framework to replace the 2020 final rule, focused on (1) creating consistency and transparency in the rules applicable to IDIs; (2) limiting burden on banks, their communities, and examiners; and (3) ensuring that the OCC continues to advance the purpose of the CRA—to encourage banks to help meet the credit needs of their entire communities, including LMI neighborhoods, consistent with safe and sound operations. By working toward these goals, OCC would help to allay the fears many in the housing and community development industries expressed when the 2020 final rules were being considered. In our Apr. 2020 comment letter, the LIHTC Working Group expressed its concerns with the provisions in the final CRA rule that could have substantially harmed the LIHTC and affordable rental housing production. At the time, we believed our comments and suggestions would ensure the CRA continues to support and possibly increase LIHTC investment and the affordable rental housing production it finances to address the nation's growing rental housing crisis. We ask that as the OCC, Board and FDIC work together to design and issue joint CRA rules that our previous comments be considered.

One such recommendation urged the OCC to consider originations of equity investments, in addition to balance sheet activity, when evaluating CRA performance. Maintaining a separate Investment Test keeps in place the incentive for banks to make equity investments in LMI communities throughout its assessment areas or bank-wide. Banks typically must reserve more than twice the capital for equity investments than for loans, which imposes a much higher cost on banks for making equity investments than for making loans. A separate Investment Test ensures banks will not choose to meet their CRA requirements entirely through debt products, especially mortgage debt, which is typically more liquid than equity investments such as those in LIHTCs.

The LIHTC was designed by Congress to foster long-term investments in low-income communities through the investment of equity, and it depends greatly on equity investments by banks that are driven largely by CRA requirements. Without CRA motivation, a significant amount of LIHTC investment demand would disappear. Retaining an Investment Test (as well as Lending Test and Service Test) in the CRA regulations would ensure that banks continue to have a focused incentive to meet the needs of LMI communities from all three critically important perspectives. A shift away from the "large bank" three-test evaluation regime towards evaluating together all of a bank's CRA activity (lending, investment, and services) would enable banks to shift toward an increased (and perhaps exclusive) reliance on debt products, reducing and perhaps eliminating equity investments such as those in LIHTCs. Such equity investments must be committed for an extended period of time (15 years in the case of LIHTCs), and such long-term commitments were designed to be, and surely are, more transformative for the communities that CRA is intended to support than traditional debt products, with far-ranging impacts for low- and moderate-income residents as well as the surrounding neighborhoods.

Without CRA motivation, LIHTC investment would likely be substantially reduced. We encourage the OCC and FDIC to continue to support the CRA's current role in incentivizing these types of investments, thereby avoiding the potentially unintended consequence of incentivizing banks to limit (or eliminate) their LIHTC investments that otherwise may best meet the needs of their LMI communities.

That the OCC will be working with the Board and FDIC on a joint proposal to modernize the CRA rules, as recommended in our 2020 comment letter, will provide the consistency and clarity member banks will need moving forward and reduce any burdens faced by those banks who are examined by more than one agency. We would like to reiterate that having different methods of evaluation would create significant regulatory burden on these banks and result in confusion for community groups attempting to develop community projects using multiple CRA qualification definitions, as well as reviewing Performance Evaluations. We also ask that both the short-and long-term effects of the COVID-19 pandemic on LMI and rural communities be considered when designing future rules.

The LIHTC Working Group and its members hope to be a resource for OCC and the agencies as they move forward with their efforts to modernize CRA regulations. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance. Thank you in advance for your time and consideration.

Yours very truly,

Novogradac and Company LLP

By

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