August 5, 2022

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Chief Counsel's Office
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 Low-Income Housing Tax Credit (LIHTC) 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 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 and preserve affordable housing and serve low-income residents. Our group includes nonprofit and for-profit developers, syndicators, investors, lenders, lawyers and other affordable housing professionals. Moreover, we represent a number of banks that invest in LIHTC equity annually, for which the CRA is a crucial incentive. According to the Affordable Housing Tax Credit Coalition, the LIHTC equity market in 2021 was estimated at about $23 billion, of which nearly 85% were attributed to CRA-motivated financial institutions.

Ever since the promulgation of the revised CRA regulations in 1995, the CRA has helped make the LIHTC the most successful affordable rental housing production and preservation incentive in the nation's history. The LIHTC is the most important source of capital for affordable rental housing finance, annually financing virtually all newly constructed or substantially rehabilitated affordable rental housing since its inception. Since 1987, the LIHTC has generated more than $220 billion in equity investment, financed nearly 3.6 million affordable rental homes, and housed more than 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 5.7 million jobs for one year, generated more than $643 billion in wages & business income, and spurred more than $223 billion in tax revenue.

Not only does the LIHTC have a strong record of economic impact, it also targets the lowest income households. According to HUD's latest LIHTC Tenant Report, the median LIHTC household earned less than $18,000 annually. Furthermore, 48% of the households earned at or below 30% of the area median income (AMI), and 66% earned at or below 40% AMI.

Despite this tremendous record of achievement, there are more than 10 million low-income renters nationwide that are severely cost-burdened, i.e., paying more than 50 percent of their income on rent, according to Harvard's Joint Center on Housing Studies (JCHS) State of the Nation's Housing report. While those at the bottom of the income spectrum—nearly 83% of renters with incomes at or below $15,000 are severely cost burdened—fare the worst, those cost burdens are increasingly affecting middle-income renters, with a 10% increase in the incidence of cost burdens among renters with incomes between $30,000 and $45,000. Given this rental affordability crisis, and as the premier resource for affordable rental housing production, we cannot afford to reduce LIHTC investment by reducing the CRA incentive for affordable housing investment and lending.

While we believe the proposed regulatory framework as outlined in the NPR represents an improvement over the regulations published by the OCC in June 2020, we are concerned that if the NPR is acted upon without significant changes, the LIHTC and affordable rental housing production and preservation could be harmed, and urge you to make changes to the NPR to ensure that the CRA continues to robustly support affordable rental housing production and preservation through the LIHTC. We believe our comments and suggestions, if incorporated into your proposal, will ensure the CRA continues to support and possibly increase LIHTC investment and the affordable rental housing production and preservation it finances to address the nation's growing rental housing crisis.

In December 2020, Congress voiced its support for increased LIHTC investment by its establishment of the 4% LIHTC floor and at least $1.25 billion in disaster LIHTC authority in the 2020 year-end tax legislation, which Novogradac conservatively estimates to increase 9% and 4% LIHTC allocations by at least $4.6 billion beyond what was projected for 2021. As a result, Novogradac's estimate of the 2021 newly minted LIHTC allocations is at least $26 billion. At a median LIHTC equity price of 91 cents per LIHTC dollar, which was the approximate median LIHTC equity price in 2020,[1] that would result in $23.7 billion of LIHTC equity in 2021, more than a 30% increase from 2018. If CRA regulations were to diminish the incentive for banks to invest in LIHTC equity, the efficacy of the newly authorized LIHTC to finance affordable rental housing would be significantly diminished.

[1] See https://www.novoco.com/resource-centers/affordable-housing-tax-credits/lihtc-equity-pricing-trends

Please see the following for a summary of our main CRA regulatory reform recommendations as well as responses to selected NPR questions below.

Summary of Main Recommendations

Our main CRA regulatory reform recommendations are focused on reforming assessment areas for purposes of CRA examinations, especially with regard to determining where and how equity investments are counted, and on the Community Development Test (and in particular the Community Development Financing Subtest).

Assessment Area Reform

We support the NPR proposal to allow consideration of community development activities outside of facility-based assessment areas. Currently, LIHTC demand and pricing are highest in areas with a concentration of large bank CRA assessment areas due to overlapping Investment Test requirements. This has long created a dynamic where underserved communities outside of bank assessment areas may remain unserved because LIHTC pricing is not high enough to make the development of affordable housing financially feasible. As the nation works to address the growing affordable housing crisis and many communities remain unserved, the incentive to invest in the LIHTC should be expanded to help support affordable rental housing production and preservation in all regions.

At times in its history, LIHTC equity pricing has differed between cities with a greater concentration of bank branches (e.g., San Francisco) and cities with fewer bank branches (e.g., Indianapolis), and this differential cannot be explained sufficiently by factors other than the CRA. In 2021, about 85% of all Housing Credit investment was made by banks motivated by CRA, meaning that $19 billion worth of investment was impacted by this equity pricing dynamic. If the incentive to invest in the LIHTC is expanded across the country, this amount is likely to increase, resulting in more affordable housing where it is most needed; if reduced, we will see a reduction in affordable housing development due to low equity pricing.

It is our goal that all types of communities can benefit from strong CRA incentives to invest in the LIHTC and the affordable housing it will yield. We believe the assessment area proposal in the NPR on its own would have this effect if inserted into the current CRA regulations. However, within the larger framework, we do not believe the NPR provides sufficient motivation for banks to significantly expand LIHTC investments outside of assessment areas, let alone maintain the current level of LIHTC investment within assessment areas, due to the removal of any emphasis on equity investments. To ensure the NPR proposal does not have the unintended consequence of reducing LIHTC investment and affordable rental housing production – in already underserved communities and banks' current assessment areas alike – we urge the Federal Reserve, OCC, and FDIC to incorporate our recommendations below.

Community Development Test

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 motivated largely by CRA requirements. Without CRA motivation, a significant amount of LIHTC investment demand would disappear, resulting in fewer affordable rental homes affordable to LMI households newly constructed or substantially rehabilitated.

Furthermore, the lowered equity pricing would likely render many of the most impactful affordable rental housing properties financially infeasible.

We believe a more equitable method to measuring CRA performance should be grounded in the current "large bank" three-test evaluation regime, where the relative merits of lending, investing and services are judged on their own and not pit against each other. Retaining an Investment Test or establishing a Community Development Financing Investment Subtest 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. Our review of the public comment letters in response to the OCC's proposed CRA regulations, its preceding NPR, and the Board's ANPR do not point to criticisms of the *design* of *a* three-test evaluation. Rather, the issues appear to be primarily systemic in nature, including the lack of concrete definitions for key concepts in the original statute as well as the difficulty of setting objective benchmarks that could equally apply to banks with different asset levels and business models, and in diverse communities with distinct investment needs. Furthermore, we understand that banks' use of mortgage backed securities to satisfy the Investment Test caused some concern and should be addressed. Such a concern about mortgage backed securities should NOT be the reason for eliminating the Investment Test in its entirety.

With respect to LIHTC investments, as noted above, eliminating the Investment Test or not establishing a Community Development Financing Investment Subtest, and evaluating all of a bank's CRA community development investments and loans in one test would enable banks to shift towards an increased (and potentially 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 LMI residents as well as the surrounding neighborhoods. Under the Basel III regulatory framework, banks are generally required to retain more Tier 1 capital for equity investments than most community development loans, especially seasoned multifamily loans, which are assigned a risk-weighting of 50% as opposed to the 100% for equity investments. Furthermore, equity investments are often more illiquid and frequently more expensive to originate than most community development loans. Without a focused incentive to provide equity investments, many banks will likely choose to fulfill most if not all of their community development financing test obligations with community development loans. Lastly, equity investments compromise a more significant component of the capital stack for affordable rental housing. For properties financed by 9% LIHTC, equity investment typically finances 60-80% of the total development costs while permanent hard debt is only 10-25%. Even for properties financed by 4% LIHTCs, equity is 30-40% while permanent hard debt typically is 15-30%.

Without CRA motivation, LIHTC investment would likely be substantially reduced. We encourage the Agencies 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.

Weighting of Proposed Retail Test over the Proposed Community Development Test for Large Banks

Our concerns over eliminating the Investment Test, which currently drives LIHTC investments, are made even more important given the higher weighting of the proposed Retail Test over the proposed Community Development Test which would further reduce the incentive for banks to perform highly on the Community Development Financing Test. As proposed in the NPR, a bank could achieve an overall Satisfactory rating with even a Needs to Improve conclusion on the Community Development Financing Test. This is a function of the weighting between the Retail Test (60%) and the Community Development Test (40%) and the proposed conclusion and rating point system. To prevent this result, we propose that the Retail and Community Development Tests be evenly weighted when determining a bank's overall rating should the Agencies decide to incorporate the proposed Retail and Community Development Tests into the final CRA framework. Furthermore, we recommend requiring at least a Low Satisfactory Community Development Financing Test conclusion for an overall Satisfactory rating and allow for an overall Outstanding rating if a bank achieves at least a Satisfactory conclusion on the Retail Test and an Outstanding conclusion on its Community Development Test.

Including the LIHTC as an Impact Review Factor.

We support the development of impact review factors to encourage activities that are responsive to community needs and opportunities, and request that the LIHTC be included as an impact review factor. The LIHTC is structured to respond to specific community needs, as is the goal of the impact review factors. A key feature of the LIHTC is the highly competitive process that state and local LIHTC allocating agencies administer to award only the most impactful proposed affordable rental housing that best meet the state or locality's affordable housing needs. Qualified Allocation Plans (QAPs) detail these needs and explain which types of properties can receive LIHTCs and the number of points that will be allotted for various property features – all of which are based on extensive public feedback.

The number of LIHTC applications far outpaces the allocations that can be awarded, which is limited by statute. Even in 2020, when the COVID-19 pandemic was impacting planned developments across the country, developers requested nearly 2.5 times as many LIHTCs as there was available allocation, according to the 2020 Annual Factbook from NCSHA. As a result, only the properties receiving the most points through the QAP process – those deemed the most impactful and which best meet affordable housing goals – are awarded LIHTCs. This structure has played a role in the success of the LIHTC over its 30-year track record and the provision of 3.6 million affordable rental homes.

Considering the responsiveness of the LIHTC in addressing state and local affordable housing priorities, we strongly urge that the LIHTC be named as an impact review factor. Including the LIHTC as an impact review factor could also be an important mitigating factor to counteract removal of the separate Investment Test or lack of a Community Development Financing Investment Subtest. However, the NPR does not make clear how impact factors would be integrated into the overall CRA conclusion and rating framework, so we request additional information and the ability to comment on the process prior to publication of a final rule. Below are additional features we believe should be included in the impact review framework to more thoroughly integrate the impact review factors into the CRA framework.

Conclusion

The CRA has been a crucial incentive for banks to invest in LIHTC equity and affordable rental housing production and preservation since 1995, and with an appropriate revised regulatory framework, will continue to be an essential incentive to help address the nation's affordable rental housing crisis, one that pre-dated 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 LIHTC and affordable rental housing.

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

By

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