THE AFFORDABLE HOUSING TAX CREDIT COALITION

April 6, 2020

Chief Counsel's Office
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400 7th Street SW, Suite 3E-218
Washington, DC 20219

Robert E. Feldman, Executive Secretary
Attn: Comments, Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Community Reinvestment Act Regulations
Docket ID OCC-2018-0008
Docket ID FDIC-RIN 3064-AF22

The Affordable Housing Tax Credit Coalition (AHTCC)[1] appreciates the opportunity to comment on the Community Reinvestment Act (CRA) rule proposed by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). Established in 1988, the AHTCC is a leading trade association of nearly 200 organizations and businesses that advocate for affordable housing financed using the Low-Income Housing Tax Credit (Housing Credit). AHTCC membership represents the full spectrum of those involved in the nation's affordable housing delivery system, including syndicators, developers, investors, state allocating agencies, and affiliated organizations, and together have served more than 3.7 million households by financing or developing well over half of all 3.2 million Housing Credit properties.

While the Housing Credit finances virtually all affordable housing, CRA motivates the vast majority of these investments – making the Housing Credit's success closely tied to CRA. An estimated 73 percent of Housing Credit investment comes from banks motivated by CRA requirements,[2] meaning any changes to CRA could have significant effects on investment in the Housing Credit – and ultimately on our ability to build and preserve affordable housing.

Certain changes to CRA could have an especially significant impact when our ability to build and preserve affordable housing is already facing significant disruptions as a result of the current COVID-19 crisis. Construction delays and moratoriums, numerous financing hurdles, and the broader economic fallout are putting Housing Credit financing at risk and slowing efforts to house low-income households. This is especially concerning for over 3 million renter households who are already housing cost burdened and are solely employed by industries experiencing significant lay-offs and decreased operations (e.g. services, retail, transportation, and travel).[3] For these reasons, we encourage the OCC and FDIC to avoid

[1] Our comments do not represent the views of any individual member organization but are supported by the AHTCC as a coalition in our mission to support affordable housing investment.
[2] CohnReznick, "Housing tax credit investments: Investment and operational performance," (2020). *Retrieved from:* https://www.cohnreznick.com/insights/2019-housing-tax-credit-investment-operational-performance
[3] Whitney Airgood-Ibrycki, "Pandemic will worsen housing affordability for service, retail, and transportation workers," (2020). *Retrieved from:* https://www.jchs.harvard.edu/blog/pandemic-will-worsen-housing-affordability-for-service-retail-and-transportation-workers/

any changes through CRA reform that could further disrupt the safety and soundness of our affordable housing delivery system when it is so urgently needed.

The AHTCC appreciates the OCC and FDIC's goal of ensuring that the CRA reflects today's current banking practices and technology, and the need to update decades-old regulations. The comments and recommendations we have provided below are intended to support the provision of affordable housing to the low- and moderate-income people and communities that the CRA is designed to serve, at a time when it is needed more than ever.

The Impact of the Low-Income Housing Tax Credit

The Housing Credit is our nation's primary tool to finance the development and preservation of rental housing that is affordable to low-income households, including veterans, seniors, working families, people with special needs, and people who were formerly homeless. A highly efficient public-private partnership, the Housing Credit has financed more than 3.2 million affordable homes since its inception in 1986, with more than 110,000 homes typically being placed in service annually.[4]

Studies have shown that affordable housing helps low-income individuals gain employment and keep their jobs, while also leading to better health outcomes and reductions in domestic violence and substance abuse.[5] Housing Credit properties are also associated with educational success; for each additional year a child lives in a Housing Credit property, their chance of attending college for four years or more increases by 3.5 percent, and their future earnings increase by 3.2 percent.[6]

Additionally, investments in affordable housing drive economic activity and directly benefit communities. Since its inception, the development of Housing Credit properties has supported a total of 3.6 million jobs, generated $135 billion in tax revenue, and generated $344 billion in wages and business income.[7] By devoting less of their income to rent, families have more money to spend in support of the local economy. A study of Housing Credit properties in the Bronx, New York, 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.[8] The introduction of affordable housing into a low-income neighborhood is also associated with lower crime rates, less segregation, and a 6.5 percent increase in property values.[9]

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[4] Department of Housing and Urban Development, "Characteristics of LIHTC Properties," (2019). *Retrieved from:* https://www.huduser.gov/portal/Datasets/lihtc/tables9517.pdf

[5] Center on Budget and Policy Priorities, "Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children," (2015). *Retrieved from:* https://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf

[6] Elena Derby, "Does Growing Up in Tax-Subsidized Housing Lead to Higher Earnings and Educational Attainment?," (2020). *Retrieved from:* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3491787

[7] ACTION Coalition, "The Low-income Housing Tax Credit's Impact in the United States," (2020). *Retrieved from:* https://static1.squarespace.com/static/566ee654bfe8736211c559eb/t/5d3b119100e485000184039b/1564152209836/ACTION-NATIONAL-2019.pdf

[8] Enterprise and Local Initiatives Support Corporation (LISC), "Affordable Housing for Families and Neighborhoods: The Value of Low-Income Housing Tax Credits in New York City," (2010). *Retrieved from:* https://www.enterprisecommunity.org/download?fid=8099&nid=3831

[9] Rebecca Diamond and Tim McQuade, "Who Wants Affordable Housing in their Backyard? An Equilibrium Analysis of Low Income Property Development," (2015). *Retrieved from:* https://www.gsb.stanford.edu/gsb-cmis/gsb-cmis-download-auth/405056

Affordable Housing Needs in the United States

Despite the Housing Credit's success, the need for affordable housing continues to grow in urban, suburban, and rural regions.[10] Rents are rising across the country, making the Housing Credit an even more essential tool to help meet the needs of the millions of Americans who pay more than half of their income towards rent. Even before the COVID-19 crisis, an estimated 10.9 million renter households – or one in four renter households –paid more than 50 percent of their income on rent (i.e. were severely housing cost burdened).[11] This figure is projected to rise to more than 14.8 million households by 2025.[12] With millions of households now out of work and feeling the strain of economic uncertainty due to the COVID-19 crisis, those numbers are likely to grow even more rapidly. Such severe housing cost burdens leave households with little left each month for health care, childcare, transportation, groceries and other necessities, and is especially challenging for the lowest income households, who may be just one unforeseen event away from eviction or homelessness.[13]

Contributing to the housing shortage, the supply of low-cost rental units continues to decline; from 2012 to 2017, the number of homes renting for $600 or below decreased by 3.1 million, while the number renting for $1,000 or more rose by 5 million. Meanwhile, the cost of land, labor, and materials have continued to increase so that, in most markets, only high-end developments are financially feasible without public subsidy.[14]

Supporting Community Development Through the CRA Evaluation Methodology

Two elements of the current CRA evaluation methodology primarily drive banks to invest in affordable housing: the separate investment test – which represents 25 percent of the total CRA score for most large institutions – and the limited number of qualifying activities that are included within the investment test. Under the proposed methodology, with investments and debt financing pooled, banks would weigh the benefits of investments against debt in determining which CRA-qualifying activities to pursue. In general, debt financing takes place over a shorter duration, and is less complex and more liquid than tax credit investments, making it a more desirable alternative. For these reasons, there is likely to be a substitution effect of loans or other types of CRA activities that are less impactful on capital charges replacing housing equity investment, ultimately decreasing Housing Credit investments.

Under the current CRA evaluation methodology, there is also a limited number of activities that may qualify for CRA credit, and that number is further limited within the separate investment test, providing a compelling incentive for banks to invest in affordable housing through the Housing Credit. The proposal to vastly expand the array of activities that qualify for CRA, many of which may be much less

[10] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2019," (2019). *Retrieved from:* *https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf*
[11] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2019," (2019). *Retrieved from:* https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf
[12] Enterprise Community Partners (Enterprise) and JCHS, "Projecting Trends in Severely Cost-Burdened Renters: 2015-2025," (2015). *Retrieved from:* *http://www.jchs.harvard.edu/sites/default/files/projecting_trends_in_severely_cost-burdened_renters_final.pdf*
[13] Joint Center for Housing Studies of Harvard University, "America's Rental Housing 2020," (2020). *Retrieved from:* *https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf*
[14] Joint Center for Housing Studies of Harvard University, "America's Rental Housing 2020," (2020). *Retrieved from:* *https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf*

burdensome than tax credit investments, is also likely to displace Housing Credit investments. Many of these activities are also less impactful for low-income communities and households and may allow banks to meet CRA requirements while doing less to meet community needs. For example, fulfilling CRA obligations through mortgage backed securities (MBS), infrastructure investments, or community facilities would allow banks to more easily meet community development targets through activities that may provide few direct benefits for low-income households, whereas equity investments supported by the Housing Credit are transformative for the communities that CRA is intended to support, with far-ranging impacts for residents as well as the surrounding neighborhoods.

The AHTCC believes that, in accordance with the CRA statute, it is essential for CRA to incentivize activities that have significant, direct impacts for low-income communities and families. For this reason, we support the OCC and FDIC's selection of the activities to receive double CRA credit under the new evaluation methodology (investments, loans to Community Development Financial Institutions [CDFIs], and loans to affordable housing.) However, the double credit Housing Credit investments would receive is not a sufficient incentive for banks to continue their current levels of investment, given the relatively small size of Housing Credit investments compared to the potential size of some other qualifying activities.

We urge the OCC and FDIC to ensure that any final evaluation methodology, including the combination of investments and debt, expansion of eligible activities, and specific weighting within the formula, does not discourage investment in affordable housing, including investment in the Housing Credit. With this goal in mind, we propose the following modifications.

Proposals:

- Circumscribe the list of qualifying activities that fit within the community development test, in particular to remove essential infrastructure and essential community facilities that only "partially," rather than "primarily," benefit low- and moderate-income individuals and census tracts. We also recommend moving MBS from the community development test to the retail lending test.

- Instead of awarding double credit to the three types of activities identified, we recommend that the OCC and FDIC require that, in order to receive a satisfactory or outstanding rating, a minimum level of the community development bucket (e.g. 1 percent of deposits, under the current 2 percent test) at the bank level should be in these favored activities (i.e. investments excluding MBS and bonds not issued by state and local housing finance agencies, loans to CDFIs, or loans to affordable housing.)

- In addition to the above, we recommend that the OCC and FDIC provide further guidance with respect to how the performance context review be undertaken for the entire category (e.g. 2 percent) of community development activities, with "safe harbor" products identified through which banks could automatically be considered "responsive" under the performance context review – which would include the Housing Credit.

Setting Community Development Thresholds that Meet Community Needs

In order to continue to support the intent of CRA by meeting the needs of communities in which banks operate, it is important to at least maintain the current level of investment in community development. At this juncture, it is unclear whether the proposed baseline metrics (6 percent and 11 percent of total activity, and 2 percent in community development lending and investments) will provide robust community benefit or as much Housing Credit investment as the CRA currently provides. We appreciate the OCC and FDIC soliciting additional data to support the determination of these thresholds and willingness to modify these thresholds if needed.

Given the importance of CRA in providing community development and fulfilling essential community needs, such as affordable housing, we urge the OCC and FDIC to ensure that the proposed thresholds will provide at least as much community benefit, affordable housing, and Housing Credit investment as the CRA currently provides. As the affordable housing crisis continues to worsen and the U.S. economy undergoes a severe retraction, strong CRA requirements are needed now more than ever.

Proposal:

- Once the OCC and FDIC review the supporting data from banks solicited after the proposed rule was issued, re-publish a proposed rule that clearly outlines the methodology behind the baseline metrics, providing stakeholders with the information necessary to determine the full impact of the proposed ratios.

Evaluating Banks' Consistent Support of Low-Income Households

The Housing Credit remains on banks' balance sheets for 15 years, which is a feature of its successful design that ensures properties remain affordable for the long-term. This design works well with the current CRA system, which requires banks to continue originating qualified investments throughout the CRA evaluation period of two to three years. However, under the proposed rule, banks would be able to halt new CRA investments once their evaluation targets are met based on their current five-year (for those with a previous outstanding rating) balance sheet assessment. This could result in flurry of bank activity in the beginning of a banks' CRA cycle, followed by a lull during which communities are no longer being served. Because the Housing Credit will remain on balance sheets for 15 years, banks would benefit from a Housing Credit investment at twice the value for at least three CRA cycles, even though the properties have already been placed in service.

Today, there is a consistent demand for the Housing Credit largely due to the current structure of the CRA, which provides needed affordable housing across the country. In order to continue supporting a robust affordable housing delivery system, we urge the OCC and FDIC to alter the balance sheet proposal so that long-term investments like the Housing Credit are not inadvertently decreased.

Proposal:

- Consider originations of loans or investments in affordable housing (including the Housing Credit), in addition to balance sheet activity. Alternatively, factor into ratings whether banks have decreased originations of affordable housing loans and investments significantly at the bank level relative to the prior assessment period.

- Continue to provide credit for the full amount at the time of commitment for community development investments, including the Housing Credit.

Incentivizing Proven Community Development Tools Where They Are Most Needed

We appreciate the OCC and FDIC's focus on updating banks' outdated assessment areas, which currently create concentrations of CRA activity and distort Housing Credit pricing. According to CohnReznick, a national accounting firm, "the largest single determinant of Housing Credit pricing is based on the CRA investment test value of a given property's location," with pricing differentials between 10 – 15 percent between Housing Credit developments in "CRA-hot" and "CRA-not" areas, and at some points in the program's history the pricing differential was as high as 35 percent.[15] Currently, the areas that are least attractive from a CRA investment test perspective are rural areas with some of the greatest affordable housing needs.

However, the approach in the proposed rule is unlikely to sufficiently eliminate the distortions in affordable housing investment between CRA-hot and CRA-not areas. Rather, deposit-based assessment areas for non-branch-based banks are likely to shift hot spots to areas with high populations, for example high-cost markets like New York, Boston, Los Angeles, and San Francisco, where there is already a high concentration of CRA-driven investment. Regions with a lower amount of deposits – rural, lower-income, and less-populous areas – will continue to miss out on the benefits associated with the strong incentive that CRA provides. The allowance to fail examinations in up to 49 percent of assessment areas and still receive a satisfactory or outstanding score will further exacerbate this point by allowing banks to prioritize more lucrative areas.

Since Housing Credits are a limited resource that are competitively allocated by state or local housing agencies in accordance with state 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, we urge the OCC and FDIC to give banks wider latitude to invest in Housing Credit properties outside of the proposed assessment areas. Our recommendation would help to balance Housing Credit investment geographically.

Proposal:

- Allow certain community development loans and investments which are provided double credit in the proposed rule (i.e. investments excluding MBS and bonds not issued by state and local housing finance agencies, loans to CDFIs, and loans for affordable housing) to be eligible for CRA credit throughout a state in which the bank has one or more assessment areas, so long as the bank has achieved at least a satisfactory rating in that assessment area in the prior rating period.

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[15] CohnReznick, "Housing tax credit investments: Investment and operational performance," (2020). *Retrieved from:* *https://www.cohnreznick.com/insights/2019-housing-tax-credit-investment-operational-performance*

THE AFFORDABLE HOUSING
TAX CREDIT COALITION

The AHTCC appreciates the profound role the CRA has played in supporting a robust affordable housing market and contributing to the Housing Credit's three decades of success in providing affordable housing for those who need it most. We urge that any changes to the CRA continue to support robust investment in the Housing Credit to ensure that, at a time when our nation faces a severe affordability crisis, growing shortage of affordable housing, and instability from the COVID-19 crisis, our nation's affordable housing delivery system is at least as efficient and effective as it is today.

If you have any questions regarding these comments, please contact Emily Cadik, Executive Director, at emily.cadik@taxcreditcoalition.org or 202.434.8287.

Sincerely,

Emily Cadik

Emily Cadik
Executive Director
Affordable Housing Tax Credit Coalition