



April 7, 2020

The Honorable Joseph M. Otting
Comptroller
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

The Honorable Jelena McWilliams
Chairman
Treasury and Federal Deposit Insurance Corp.
550 17th Street, NW
Washington, DC 20429

RE: Community Reinvestment Act Regulations
RIN 3064-AF22: Notice of Proposed Rulemaking, Docket ID OCC-2018-0008

Dear Comptroller Otting and Chairman McWilliams:

Thank you for the opportunity to comment on the changes to the Community Reinvestment Act (CRA) regulations which would be made under the Proposed Rule.

Preservation of Affordable Housing, Inc. (POAH) is a national nonprofit specializing in the acquisition, rehabilitation or redevelopment, and long-term preservation of at-risk affordable housing. Since its founding in 2001, POAH has successfully preserved or built more than 11,000 units of affordable rental housing in 11 states and the District of Columbia at more than 100 properties, providing affordable homes for more than 20,000 Americans.

POAH has extensive experience financing the acquisition, renovation, or construction of a large portfolio of affordable and mixed-income housing communities across a broad range of American communities. The Low Income Housing Tax Credit (LIHTC) has been crucial financing tool to nearly all of this work, providing equity capital for 102 of POAH's affordable housing communities, supporting nearly 10,000 housing units in all. The LIHTC is responsible for nearly all of the affordable housing built and preserved in the US since the program was authorized in 1986 – a total of 3.2 million affordable housing units to date, providing homes for roughly 7.4 million low-income Americans.¹

POAH is deeply concerned that by eliminating the CRA investment test, the Proposed Rule's changes would substantially reduce the impact of the Low Income Housing Tax Credit (LIHTC), damaging the nation's primary tool for producing and preserving affordable housing. **We urge you to restore a robust investment test prior to issuance of a Final Rule.**

CRA's current emphasis on equity investment in community development activity – expressed through a separate "investment test" worth 25% of the overall CRA rating – is crucial to the LIHTC's value and inseparable from its impact. CRA-regulated banks are responsible for about 73% of all LIHTC investment

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<https://static1.squarespace.com/static/566ee654bfe8736211c559eb/t/5cf911d25d942c00011286f8/1559826899394/Housing+Credit+Talking+Points+%28June+2019%29.pdf>

nationally. Moreover, a national study conducted by the accounting firm CohnReznick² concluded that the largest single determinant of LIHTC pricing is the CRA investment test value of a given property's location – an impact which CohnReznick estimated could be worth on average \$0.24 per credit, or roughly 24% of the value of each credit dollar (assuming then-prevailing average pricing of about \$1.00 per credit).

The Proposed Rule would eliminate the separate investment test, removing the most significant driver of the LIHTC's value. At present, the LIHTC generates approximately \$13 billion in annual investment nationally, with average pricing of \$0.94 per credit as of October 2019. If, as the study referenced above found, the CRA investment test is worth about \$0.24 per credit for the CRA-regulated banks representing 73% of the LIHTC market, the withdrawal of this pricing driver could reduce the leverage of this federal resource and lessen overall national private sector LIHTC equity investment by \$2.4 billion annually.

The Proposed Rule's 2% Community Development minimum (the "CD minimum") is deeply inadequate as a replacement for the investment test, for a number of reasons:

- 1. The 2% CD minimum is arbitrary, and probably represents a threshold lower than current CRA-eligible CD activity.** No single CD threshold is appropriate, given the widely variable performance contexts across American markets, and the variation in conditions in each market over time. POAH supports the establishment of market-specific CD investment thresholds, based on robust analysis of local market data, to be adjusted as local performance contexts evolve – and to be set at levels at least as great as current CRA-eligible activity. However, pending such analysis, the 2% CD minimum appears to be lower than current activity levels. Assessing a 2% CD minimum against total US deposits of approximately \$13 trillion yields a national-level CD minimum of about \$260 billion; but because the balance sheet approach could mean five years' worth of investments are counted, and many activities qualify for a 2X multiplier, the real threshold target may be more like \$26 billion. This equates to less than 10% of all multifamily lending originations – much of which would qualify for CD credit as affordable housing under the Proposed Rule's more relaxed definitions.
- 2. The CD minimum can be met through lending activities alone; there is no requirement for equity investment activity.** Bank equity investments generally carry higher internal capital charges than lending activities, which makes investing activities comparatively much less desirable. LIHTC investments, in particular, require more extensive underwriting and ongoing oversight, and banks optimizing activities to meet the CD minimum are much more likely to pursue lending activities with lower capital requirements and less demanding transaction structures.
- 3. The CD minimum can be met through a much broader range of activities than are currently eligible,** including numerous activities with very tenuous links to CRA's statutory focus on low- and moderate-income communities. Among this much broader menu of activities – including infrastructure and community facilities with "partial" or indeed incidental benefit to LMI households, as well as a much broader definition of affordable housing – many are likely to be more financially rewarding than LIHTC equity investments, to regulated banks seeking to optimize activities to pass the CD minimum.
- 4. The multiplier for CD investments (which would apply to LIHTC investments) may actually reduce aggregate LIHTC investment appetite among regulated banks.** POAH supports the emphasis placed on CD investments, affordable housing-related loans, and supports for CDFIs represented by the Proposed Rule's application of a 2X multiplier for these activities. However, when

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[https://ahic.org/images/downloads/Research and Education/the community reinvestment act and its effect on housing tax.pdf](https://ahic.org/images/downloads/Research_and_Education/the_community_reinvestment_act_and_its_effect_on_housing_tax.pdf)

combined with the fixed 2% CD Minimum threshold, this multiplier could actually reduce the volume of activity by regulated banks – by allowing them to satisfy the threshold with half as much activity.

For the reasons outlined above, we urge you to reinstate a robust investment test in the final rule.

In addition to our specific concerns relating to the investment test and its impact on the LIHTC, POAH has a number of serious concerns about the broader regulatory approach laid out in the Proposed Rule – many of which we also expressed in our comments on the Advance Notice of Proposed Rulemaking in late 2018:

1. The proposed CRA evaluation measure, which evaluates the dollar value of qualifying activities against a regulated bank's retail deposits, is inadequate because it ignores very significant differences in the impact-per-dollar of different CD activities. The proposed multiplier is insufficient as a mitigant of this problem. We oppose the use of the proposed CRA evaluation measure.
2. The proposal to set a single set of nationwide performance thresholds for the CRA evaluation measure is inappropriate as an approach to evaluate activities across local and regional market conditions which vary widely; and will not respond appropriately to changes in performance context over time. CRA performance standards should be responsive to local market conditions and local needs, and should incorporate communities' own expressions of their needs and priorities.
3. The Proposed Rule's expanded definition of CRA-eligible CD activities – including infrastructure and of other activities with only partial or ancillary benefit to LMI households – undermines CRA's statutory mission to focus on activities which primarily benefit LMI communities and people. We oppose the Proposed Rule's expanded definition of qualifying CD activities.
4. The Proposed Rule's evaluation of outstanding loans and investments – as opposed to new activity – could allow regulated banks, having attained a predefined threshold level of performance, to abruptly cease participation in CRA-related activities for the remainder of the assessment period, causing cyclical disruptions in local community development efforts within their AAs. We interpret banks' CRA obligation to meet the credit needs of their entire communities, including LMI neighborhoods, as a continuous one, which cannot and should not be satisfied by achieving a definite threshold and then “turning off the tap” until the next assessment period begins. We oppose evaluation based on this balance sheet ratio alone, and urge you to include measures of ongoing activity in the evaluation framework in the Final Rule.

Thank you once again for the chance to share POAH's thoughts on the Proposed Rule. Please do not hesitate to contact me at (617) 449-1016 with any questions or comments you may have.

Sincerely,



Andrew Spofford
Chief of Staff / Senior Vice President
Preservation of Affordable Housing (POAH)