THE AFFORDABLE HOUSING
TAX CREDIT COALITION

November 19, 2018

Office of the Comptroller of the Currency
Attn: Legislative and Regulatory Activities Division
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Re: Docket ID OCC-2018-0008: Reforming the Community Reinvestment Act Regulatory Framework

The Affordable Housing Tax Credit Coalition (AHTCC) appreciates the opportunity to comment on the Office of the Comptroller of the Currency's (OCC) Advance Notice of Proposed Rulemaking (ANPR) to modernize the Community Reinvestment Act (CRA). The AHTCC is a leading trade association of 170 organizations and businesses that advocate for affordable housing financed using the Low-Income Housing Tax Credit (Housing Credit). Established in 1988, the AHTCC membership has grown to represent the full spectrum of the affordable housing field, including syndicators, developers, investors, state allocating agencies, and other affiliated organizations. Our primary mission is to support our nation's affordable housing supply by protecting, strengthening and expanding the Housing Credit.

Since its inception in 1986, the Housing Credit has financed the production or preservation of more than three million affordable rental homes for veterans, seniors, working families, and people with special needs. Virtually all affordable housing developed in the United States utilizes the Housing Credit, making it the main tool for creating and preserving affordable rental housing. As rents continue to rise, the Housing Credit is becoming an even more essential tool to help meet the needs of the more than 11 million households who now pay more than half of their income in rent, leaving little left each month for health care, transportation, food and other necessities.

The Housing Credit has become a highly efficient public-private partnership over its more than three decades, and the CRA has been a primary motivating force in incentivizing private sector investment in affordable housing. The vast majority of private investors in the Housing Credit are motivated by the CRA, with an estimated 85% of Housing Credit capital provided by banks subject to the CRA. According to the accounting firm Ernst & Young, when the banks investing in the Housing Credit were surveyed about why they were motivated to make these investments, they responded that it was primarily to meet CRA obligations.[1]

The AHTCC appreciates the OCC's attention to ensuring that the CRA reflects today's current banking practices and technology, and the need to update decades-old regulations. We urge that any changes to the CRA continue to support robust investment in the Housing Credit, to ensure that our nation's primary affordable housing delivery mechanism is at least as efficient and effective as it is today. We provide these comments in the hopes of advancing both of these goals.

[1] Ernst & Young. "Low Income Housing Tax Credit Investment Survey – October 2009," (2009). *Retrieved from:* https://www.novoco.com/sites/default/files/atoms/files/ey_study_carryback_100809.pdf

Revising the Current Regulatory Approach to a Metric-Based Framework

The AHTCC supports the OCC's effort to streamline the CRA evaluation process and to make the process more transparent. However, we have significant concerns that replacing the current investment test structure with a single ratio would undermine the incentives that currently exist to invest in affordable housing and ultimately decrease affordable housing production.

We urge the OCC to retain a separate investment test to ensure that banks continue to have an incentive to make investments in critical products like the Housing Credit. A shift away from the current "large bank" three-test evaluation regime towards a single ratio may incentivize banks to shift toward an increased reliance on debt products, which typically are more liquid than Housing Credit investments. Yet, equity investments are transformative for the communities that CRA is intended to support, with far-ranging impacts for residents as well as the surrounding neighborhoods. We encourage the OCC to continue to support the CRA's current role in incentivizing these types of investments.

If a separate investment test is not retained, the AHTCC encourages increased weighting for community development equity investments that are particularly impactful, like Housing Credit investments. However, concerning the single ratio concept, care must be taken to ensure that a weighting methodology does not produce unintended consequences by decreasing equity investments relative to current levels. For example, if one dollar of equity investment would now be worth two dollars through increased weighting, an institution would be able to receive the same CRA consideration by providing only half as much equity. Depending how a simple ratio is structured and weighted, it could significantly decrease investment in the Housing Credit and the production and preservation of affordable housing in the assessment areas.

Redefining Communities and Assessment Areas

The concentration of CRA assessment areas around an outdated vestigial geographic footprint has had a significant impact on the Housing Credit market, affecting both where affordable housing is built and how much equity is available for affordable housing – in some cases leading to distortions in our nation's affordable housing landscape. According to CohnReznick, an accounting firm that specializes in affordable housing, roughly three-fourths of Housing Credit properties are located in areas where at least one of the top 20 U.S. commercial banks has CRA responsibility.[2] Our nation's affordable housing footprint is thus more closely tied to where CRA obligations must be met, and not necessarily where affordable housing needs are the greatest. Indeed, the areas that are least attractive from a CRA investment test perspective are rural areas with some of the greatest affordable housing needs.

Pricing for Housing Credit properties, and thus the amount of equity available for affordable housing, also varies widely between areas within and outside of the assessment areas of major commercial banks. According to CohnReznick, "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.[3] Lower pricing means less

[2] CohnReznick, "The Community Reinvestment Act and Its Effect on Housing Tax Credit Pricing," (2013). *Retrieved from: http://ahic.org/images/downloads/Research_and_Education/the_community_reinvestment_act_and_its_effect_on_housing_tax.pdf*
[3] Ibid.

Housing Credit equity is available for a property, leading to financing gaps that may prevent highly-needed projects from moving forward.

To more accurately reflect today's banking practices, we support an expansion of assessment areas beyond physical branches and deposit-taking ATMs, to include areas where banks accept deposits and do substantial business, including investments, loans and services. We also encourage the OCC to provide more clarity around when an investment outside of an assessment area will qualify for CRA credit. The current Frequently Asked Question document permits banks to make investments outside of their assessment areas—either directly or through funds serving nationwide, regional or statewide service areas—provided that the "institution has been responsive to community development needs and opportunities in its assessment area(s)". However, this does not provide sufficient certainty to banks at the time of investment that the investment will be eligible for CRA credit. As a result, banks are not inclined to pursue Housing Credit investments outside of their delineated assessment areas.

The OCC could help facilitate more investments outside of bank assessment areas by, at a minimum, providing more clear and consistent definitions of what constitutes a broader regional area. In addition, 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 believe that banks should be given wider latitude to invest in Housing Credit properties outside of their assessment areas. We advocate consideration of adopting regulations that provide that: (i) any investment in a project eligible to claim the Housing Credit that is located in a state in which a bank's assessment area is located be treated as within the assessment area; and (ii) any Housing Credit investment in a fund that aligns with the bank's service area should be treated as located within the bank's assessment area. These changes would help encourage more Housing Credit equity to flow to projects that have been determined to need investment rather than to concentrated "CRA-hot" markets.

Due to pricing inequities and lack of investment in rural and other distressed or underserved regions, we encourage increased weighting for rural areas, Native American areas, and distressed and underserved nonmetropolitan middle-income geographies. We also encourage allowing banks to meet CRA obligations through Housing Credit investment in certain underserved areas outside their state assessment area – including rural and Native American areas, as well as Presidentially Declared Disaster Areas – once a certain share of investment in a bank's assessment area has been met.

Expanding CRA-Qualifying Activities

While the AHTCC understands the interest in expanding what types of activities qualified to meet CRA obligations, we urge the OCC to ensure that any expansion of eligible activities does not discourage investment in affordable housing, including investment in the Housing Credit. Affordable housing should remain highly incentivized through the CRA given the magnitude of the affordable housing shortage in the U.S. For every 100 very low-income renters earning below 50 percent of area median income, only 56 homes are affordable and available, forcing millions of families to rent apartments beyond their means.[4] Currently more than 11 million renter households spend more than half their income on rent, and that number is expected to increase to more than 14.8 million by 2025.[5]

We argue that investments in affordable housing, whether inside a low-income census tract or in a higher opportunity area, should be given special positive consideration for CRA credit; given the ways in which affordable housing directly impacts low-income households, in addition to benefiting the broader communities. Each year, the Housing Credit supports nearly 96,000 jobs and adds roughly $3.5 billion in taxes and other revenues to local economies.[6] Research has shown that the introduction of affordable housing into a low-income neighborhood is associated with lower crime rates, less segregation, and a 6.5 percent increase in property values.[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, N.Y., 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] When individuals spend too much on rent, they have little left over for food, healthcare and other necessitates. Studies have shown that the availability of affordable housing leads to better health outcomes, keeps families together, reduces domestic violence and substance abuse, and helps low-income individuals gain employment and keep their jobs.[9]

We also propose that high-impact investments like Housing Credit investments should be eligible for "safe-harbor" CRA credit. We support the recommendation from the Treasury Department's April 2018 memo to the banking regulators on CRA that "banks should be allowed to obtain a limited number of eligibility determinations in advance on specific loans, investments or services and any decisions requiring extensive regulatory consultation should then be able to be reduced to an exception basis only." We believe that any letters of intent to invest in the Housing Credit should qualify as "safe-harbor" activities for purposes of the investment test.

Recordkeeping and Reporting

The AHTCC generally supports changes that will promote transparency in CRA performance, including the tracking, monitoring and comparisons of levels of CRA performance. We support more timely examination reports and more timely communication of the information to the public, as well as changes that increase transparency and give banks more guidance on which types of activities qualify for CRA consideration.

---

[4] National Low Income Housing Coalition, "the Gap: A Shortage of Affordable Homes," (2018). *Retrieved from:* *https://nlihc.org/sites/default/files/gap/Gap-Report_2018.pdf*

[5] Ibid.; 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*

[6] National Association of Home Builders, "The Economic Impact of the Affordable Housing Credit," (2014). *Retrieved from:* *http://eyeonhousing.org/2014/07/the-economic-impact-of-the-affordable-housing-credit/*

[7] 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*

[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] 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*

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. Again, we thank the OCC for its efforts to improve upon CRA regulations and encourage the OCC to ensure that these changes continue to support an affordable housing delivery system that produces at least as much affordable housing as in the current regime.

If you have any questions regarding these comments, please contact Emily Cadik, Executive Director, at emily.cadik@taxcreditcoalition.org or 202.434.8288.

Sincerely,

Emily Cadik

Emily Cadik
Executive Director
Affordable Housing Tax Credit Coalition