November 18, 2018

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street SW., Suite 3E-218
Washington, DC 20219
Docket ID OCC–2018–008; RIN 1557- AE34

Subject: Advance Notice of Proposed Rulemaking, "Reforming the Community Reinvestment Act Regulatory Framework"

The National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) appreciate the opportunity to provide our comments to the Office of the Comptroller of the Currency (the "OCC") on the Notice of Proposed Rulemaking regarding Docket ID OCC-2018-008 pertaining to Reforming the Community Reinvestment Act (CRA) Regulatory Framework.

For more than 25 years, the National Multifamily Housing Council and the National Apartment Association have partnered on behalf of America's apartment industry. Drawing on the knowledge and policy expertise of staff in Washington, D.C., as well as the advocacy power of more than 160 NAA state and local affiliated associations, NMHC and NAA provide a single voice for developers, owners and operators of multifamily rental housing. One-third of all Americans rent their housing, and 39 million of them live in an apartment home.

The multifamily industry relies on the banking system to provide loans for acquisition, development and construction activities. Midway through 2018, depository institutions held over $466 billion of multifamily debt on their balance sheets confirming their importance to our industry[1]. Banks are also one of the major investors in affordable housing through their investments in Low Income Housing Tax Credits (LIHTC). In fact, according to a recent study conducted by Hoyt Advisory Services, the U.S. needs to build at least 4.6 million new apartment units by 2030 in order to accommodate household growth and losses to the existing stock.[2]

The multifamily industry is an important provider of affordably priced rental housing that serve all income levels, whether through new development, renovation or the rehabilitation of existing apartments. This business model depends on ready access to debt and investment capital to fund these activities, which are often provided by the banking industry. Access to capital is particularly acute in neighborhoods that serve the needs of their low- and moderate-income families. Regulations and rules that disrupt the flow of capital is a significant area of concern for the multifamily sector.

[1] Federal Reserve Mortgage Debt Outstanding Report, 2Q18

[2] "Build 4.6 Million New Apartments to Meet Demand and Control the Cost of Housing", www.weareapartments.org

The CRA has been a longstanding guidebook for the banking industry in evaluating how effectively they serve the needs of their community with a particular focus on low- and moderate-income families. While the CRA has played an important role, it is not without its limitations and thus we are encouraged by the effort undertaken by Treasury and the OCC to modernize a program that started in 1977 and has seen limited changes since.

Modernization should maintain an objective to serve those communities in need and to broaden the impact that banks can have. With that in mind, we offer some of our views on the most critical aspects of the proposed rule:

Investment

We agree that the methodology for determining assessment areas (AA) does not reflect the current, or future state of banking. Foundationally, relying on the geographic boundaries established by the brick and mortar branches of banking does not accurately depict where banks are active. Examples of concentrations of community development (CD) activity from non- or limited- branch banks around the headquarters of the depository is reflective of the need to modify the assessment areas. Many times, these banks overconcentrate their CRA activities in these limited geographical areas resulting in a "fight" for limited lending or investment opportunities.

One example of this imbalance is in the area of LIHTC where banks are the primary participant in this investment activity in serving the affordable housing needs of the communities they serve. Due to the outdated AA determination banks bid up the prices for LIHTC equity to a point where it is non-economic for the banks. As a result, other areas where LIHTC activity could benefit from investor activity – but may not have a concentration of current AA's – the pricing or even the demand for the LIHTC equity lags behind.

Establishing an AA determination process that recognizes modern banking and the broader geographic breadth of communities the banks serve today without branches is crucial. We support an expansion of AA outside of the current physical presence approach of branches and ATMs. While this may result in a decrease in demand for LIHTC equity in certain markets, as long as LIHTC equity is still recognized as supportive of CRA activity, the result may be a more balanced and broader reaching approach in seeking out this type of investment.

LIHTC is an important investment vehicle that supports the delivery of affordable rental housing for low- and moderate-income families, however, banks could be encouraged to provide investment in other forms of affordable rental housing. NMHC/NAA members find it challenging to raise equity from investors for multifamily properties serving low- and moderate-income families. Providing banks an incentive, such as a multiplier or weighted per dollar invested, could increase long term investment in affordable housing. This approach must be balanced to ensure the overall dollar weighting or multiplier is not too high so that it offsets the total monetary investments made by banks.

Lending

Housing affordability is a challenge in many neighborhoods across the nation. Many owners of apartment buildings offer unsubsidized affordable housing to low- and moderate- income families without any form of governmental support. These naturally occurring affordable properties serve an important part in supporting the communities that surround them. Often these properties do not qualify or are difficult to qualify for CRA consideration since owners do not have access to current and ongoing resident income. We encourage the OCC to examine the process followed by the Federal Housing Finance Agency (FHFA), in evaluating the GSEs, Fannie Mae and Freddie Mac, in determining affordability metrics. FHFA allows the determination of affordable housing through the use of rents in place in comparison to the Area Median Income (AMI) and does require individual income levels of the residents.

Owners of apartments seek out a variety of loan types from depositories ranging from short term to long term, depending on their specific investment goals. Banks are currently incented to make shorter term loans since they are treated differently than investments for CRA purposes. We agree with the Treasury's assessment in their report earlier this year where they recommended equating the long treatment of debt or investment similarly.

"Community development investments are treated different from community development loans when considered for CRA credit. Loans to qualified entities are counted toward credit in the year originated, whereas equity investments made in those same organizations are counted each year that the investment is held."[3]

We recommend treating longer term loans that span over more than one examination period the same as investments. Recognition over multiple years of lending activities, along with investment activities, must be tempered by the higher level of capital and higher risk devoted to investment activities.

Increasingly, multifamily properties have mixed income and mixed use within their physical footprints. Banking regulators, under Q&A guidance, have attempted to address this issue by allowing consideration of the full amount of a loan or investment but the process is complicated and not easily implemented. For example, some examiners have discounted consideration for loans or investments for a Low-Income Housing Tax Credit (LIHTC) property if less than half of the units are affordable. Similar treatment can arise for mixed-income housing developed under state and local policies. The OCC and its colleague agencies should clarify that any loan or investment made in conjunction with a federal, state or local government's affordable housing or other CD policy will meet the primary purpose test and thereby receive full consideration, provided that at least 20 percent of the beneficiaries will be low- or moderate-income (LMI) people. The 20 percent standard is consistent with such federal affordable housing policies as LIHTC, tax-exempt multifamily bonds, and the HOME Investment Partnerships program.

[3] U.S. Department of the Treasury Memorandum: Community Reinvestment Act - Findings and Recommendations, April 3, 2018

In response to one of the questions posed in the ANPR, it is recommended that in order to expand their lending and investment activity banks should be limited in purchasing securities backed by CRA eligible loans that were not originated by the bank in order to qualify for CRA lending activity. This would encourage banks to directly lend and invest in the communities they serve and limit the recycling of existing loans among banks in order to claim CRA credit.

Services

The CRA could far more effectively encourage financing for affordable housing, including through innovative financial products and delivery systems, if the regulations would provide greater clarity, certainty, and consistency with regard to how affordable housing activities will receive CRA consideration. Fair, accurate, and determinable standards, along with minimal subjectivity of interpretation by examiners, will allow banks to frame the best way to serve their communities subject to guardrails of activities.

Metric-Based Framework

We appreciate the goal of simplifying and increasing transparency of the determination of CRA activity by all participants. While the idea behind a simple ratio to determine CRA performance is appealing, it leaves many questions open in determining its ability to accurately assess performance. It is imperative that no matter the approach ultimately used, that incentives remain in place to promote investment and lending activity in those neighborhoods and families that need it the most. Prior to proposing any approach based on industry input, the OCC must provide the industry with back testing of a reasonable sample size of depositories of all types to assess outcome.

NMHC/NAA appreciate the opportunity to comment on the proposed rule and welcome the chance to work with the OCC to develop and implement a framework that modernizes the current Act, provides clarity and certainty to depositories, moves the process to greater transparency and provides the proper incentives to promote affordable rental housing.

Sincerely,

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