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Oct 12, 2026

Office of the Comptroller of the Currency
Chief Counsel's Office
Attention: Comment Processing
400 7th Street, SW, Suite 1E-216
Washington, DC 20219

Jennifer Jones
Deputy Executive Secretary
Attention: Comments- RIN 3064-AG31
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

**Re: Community Reinvestment Act Regulations; Notice of Proposed Rulemaking;
Docket ID OCC-2026-0694; RIN 1557-AF57; RIN 3064-AG31**

To Whom It May Concern:

On behalf of the National Multifamily Housing Council ("NMHC") and the National Apartment Association ("NAA") (the "Associations") and their members – owners, managers, developers, and financiers of the nation's multifamily housing industry, we are writing to provide our comments in response to the notice of proposed rulemaking issued by the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") (together, the "agencies") to amend their Community Reinvestment Act ("CRA") regulations, 91 Fed. Reg. 52114 (August 12, 2026).

The Associations' members depend on bank lending and investment to build, preserve, and operate apartment homes, and CRA regulations influences how much of that capital is available and where it is allocated.

The Associations support the agencies' goals of making CRA clearer, more predictable, and less burdensome. Several parts of the proposal would advance those goals for rental housing finance, and we urge the agencies to keep them. Other parts, most notably the higher asset-size thresholds, would reduce the number of banks with a reason to lend to and invest in affordable rental housing. We are concerned that the result would be less capital for apartment production and preservation at a time when the nation needs more of both.

Our recommendations are summarized below and explained in the sections that follow.

1. **Keep the current asset-size thresholds.** If the agencies change them, the large bank threshold should be set no higher than the \$3.252 billion alternative. We oppose adopting the \$30 billion alternative raised in Question 1.



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2. **Reinforce, rather than offset, Congress's recent expansion** of the Low Income Housing Tax Credit ("LIHTC") and of banks' public welfare investment authority.
3. **Keep community development performance as a condition of a Satisfactory rating for intermediate banks and assign meaningful weight to that performance in the overall rating**
4. **Preserve a distinct and meaningful role for community development investment**, including LIHTC equity, alongside lending.
5. **Retain CRA consideration for grants and donations**, and reconsider the direct-use requirement and the 15 percent cap on indirect costs.
6. **Finalize the provisions that improve certainty for multifamily finance:** community development consideration for multifamily loans, the definition of complexity, the confirmation process, and the illustrative list of qualifying activities.
7. **Ensure multifamily lending does not fall out of the lending test** at banks where it is not one of the two largest product lines.
8. **Adopt a flexible standard for community development activity outside assessment areas** so that capital can reach smaller and rural markets.
9. **Coordinate with the Federal Reserve Board** so that banks, borrowers, and investors work under one consistent CRA framework.

CRA and the Financing of Rental Housing

For nearly fifty years, CRA has encouraged banks to meet the credit needs of the communities where they take deposits, including low- and moderate-income (LMI) neighborhoods. Its reach is substantial. One recent study found that CRA motivated more than \$430 billion in loans and investments in LMI communities in 2024 alone (Center for Affordable Housing Lending, *Incentive to Impact*, July 2026). Multifamily housing is among the largest beneficiaries of this lending and investment. Banks are a primary source of construction, acquisition, and permanent debt for apartment properties, and CRA consideration is one reason they compete for that business in LMI communities.

The link is strongest in the LIHTC program, the nation's main tool for producing and preserving affordable rental homes. Roughly 80 percent of LIHTC equity each year comes from bank investors motivated by CRA (Cohn Reznick, *2025 Affordable Housing Credit Study*). LIHTC yields are modest, and many banks could earn more through other lending and investment activity. However, one of their major motivations to invest in affordable housing is because the large bank examination includes a separate investment test.

Affordable apartment development and preservation often depends on several banks for a single transaction. A single property may involve a construction lender, a different permanent lender, a LIHTC investor, a credit enhancer, and a community development financial institution. Each participant weighs CRA treatment when it decides whether to join and at what price. Changes to



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the CRA rules, therefore, flow directly into the cost and availability of capital for affordable multifamily housing.

Congress has recently acted to expand that capital, both by increasing allocations of LIHTC and by allowing banks to invest more in the program. We discuss those measures in section 2 below.

Comments on the Proposed Rule

1. The asset-size thresholds should remain where they are

The proposal would treat banks with under \$1 billion in assets as small banks, banks with between \$1 billion to \$10 billion in assets would be treated as intermediate banks, and only banks with more than \$10 billion in assets would be large banks. Today, those asset thresholds sit at \$412 million and \$1.649 billion for intermediate and large banks, respectively. This is the change that concerns us most.

A bank's size category determines how much of its community development work is examined. Banks moved from intermediate to small would no longer face a community development test at all. Banks moved from large to intermediate would no longer face a separate investment test. Apartment lending in LMI communities, LIHTC equity, and related grants are closely tied to those tests.

The number of banks impacted by the proposal is significant. According to the National Association of Affordable Housing Lenders (NAAHL), 642 banks are classified as large today, and only 256 would remain so under the proposal, a decline of more than 60 percent.

The impact on LIHTC equity would be substantial. A survey by the Affordable Housing Tax Credit Coalition (AHTCC) found that banks with between \$1.649 billion and \$10 billion in assets invested at least \$1.6 billion in LIHTC equity over five years and as much as \$2 billion when the results are extended to the full market. These banks would retain a general community development obligation, but it is usually easier to meet that obligation with loans than with equity. Without an investment test, many banks may stop investing in LIHTC equity, resulting in a decrease in affordable housing construction and preservation.

Fewer investors mean less competition for credits, lower credit pricing, and fewer apartments built with the same public resources. That outcome would work against the LIHTC expansion Congress in 2025.

Smaller communities would bear the most harm. AHTCC found that about one-third of the LIHTC equity that banks in the affected size range invested through syndicators from 2021 to 2024 went to rural markets. Large metropolitan areas often have several large banks with overlapping assessment areas competing for the same properties. Rural and smaller markets frequently depend on one or two regional banks, and credit pricing in those areas is already lower.

We have considered the reasons the agencies give for the new thresholds and do not find that they support a change of this magnitude.



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First, the agencies explain that the proposal would restore the distribution of banks across size categories that existed in 1995. The share of banks in each category is not the CRA's purpose. The statute contemplates whether banks are meeting the credit needs of their communities. The relevant question is how much lending and investment would be lost, and the agencies' explanation of the thresholds does not address it. Consolidation since 1995 also means that many communities now depend on fewer institutions, which makes each remaining bank's obligation more significant, not less.

Second, the agencies point to Congress' use of \$10 billion as a threshold in the Dodd-Frank Act and later relief legislation. Those provisions concern consumer protection supervision, interchange fees, and prudential requirements. However, Congress has not applied that figure to CRA, and a line drawn for those purposes says little about a bank's capacity to invest in its community.

Third, the agencies cite regulatory burden. We agree that such burden matters and support reducing it. The proposal does so directly, through simpler public filing and notice requirements and reduced data collection. The agencies can deliver that relief without removing the community development and investment tests.

The proposal itself acknowledges that banks typically adjust their CRA programs when they become subject to the community development test. That is evidence that the test is working as intended and signals that banks released from the test will do less.

Recommendation. We urge the agencies to keep the current thresholds, which the Federal Reserve Board will continue to apply to state member banks. If the agencies raise them, the large bank threshold should be set as low as possible and no higher than the \$3.252 billion alternative described in the proposal.

2. The proposal would work against recent action by Congress to expand affordable rental housing

Congress has acted twice in the past two years to increase the supply of affordable rental homes through the LIHTC, and both measures depend on bank investment in affordable multifamily housing.

The *One Big Beautiful Bill Act* permanently increased LIHTC authority and reduced the bond financing test for the 4 percent credit so that more properties can be financed. These changes added to the volume and availability of credits that must find investors each year, making it more difficult to finance a new development if the proposed changes reduces the number of investors. Increased credit supply will achieve its intended effect only if investor demand and credit pricing remain sufficiently strong.

The *21st Century ROAD to Housing Act* subsequently raised the limit on banks' public welfare investments from 15 percent to 20 percent of capital and surplus. Congress raised that limit so banks could invest more in LIHTC properties and absorb the added supply.



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The proposal moves in the opposite direction. It would remove the investment test from banks with between \$1.649 billion and \$10 billion in assets at the moment Congress has given them more room to invest. The higher public welfare investment limit matters most to many of these same banks. A larger limit accomplishes little if the banks it was meant to help no longer have a CRA reason to use it.

The result would be more credits available and fewer investors competing for them. Credit pricing would fall, each credit would raise less equity, and fewer apartments would be built than Congress intended. The agencies' threshold proposal would dilute much of what these two laws set out to accomplish.

Recommendation. The final rule should reinforce, not offset, the decisions Congress has made. Keeping the current thresholds and the investment test is the most direct way to ensure that the expanded availability of LIHTCs and the higher public welfare investment limit produce the additional housing Congress intended.

3. Community development performance should remain a condition of a Satisfactory rating for intermediate banks

An intermediate small bank today must earn at least a Satisfactory rating on both the lending test and the community development test to receive an overall Satisfactory rating. The proposal would require Satisfactory performance on the lending test only.

Combined with the proposed higher asset thresholds, this change would apply to every bank between \$1 billion and \$10 billion in assets. A bank in that range could do little community development work and still pass. Thus, while the community development test would remain in the rule, it would lose much of its practical force.

When community development results do not affect the rating, CRA gives a bank little reason to pursue them. Because CRA drives so much community development activity, that would be a serious setback for affordable housing.

Recommendation. The agencies should keep the current requirement that an intermediate bank perform satisfactorily on both tests. The agencies should also give community development performance meaningful weight in determining an intermediate bank's overall CRA rating, rather than allowing strong retail lending performance to render weak community development results immaterial.

4. Investment should keep a distinct role alongside lending

The proposal places greater weight on lending across the framework, which we agree is an important component to CRA. However, loans and investments are not interchangeable, and affordable rental housing needs both.

LIHTC equity typically supplies a large share of the capital in an affordable apartment development. No loan can replace it because the rents these properties charge cannot support that much debt. LIHTC equity commonly covers 50 percent to 75 percent of a property's financing.



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Banks nonetheless have several reasons to prefer lending when the rules allow them to choose. Equity investments require more capital, sit lower in the capital structure, are less liquid, depend on the bank's continuing ability to use tax credits, and demand specialized expertise outside ordinary commercial lending. A rule that enables loans to satisfy a bank's community development obligation will move banks away from equity.

Recommendation. The final rule should preserve a strong and balanced role for community development investment in examinations and ratings. It should not treat investment as secondary to lending, and it should not condition credit for investments on a showing of complexity.

5. Grants and donations should continue to receive CRA consideration

The proposal would give credit for a grant only when the recipient uses the funds directly for a qualifying program, project, or initiative. For large banks, the recipient's indirect costs could not exceed 15 percent. Banks and recipients alike would also need to obtain supporting documentation, creating an additional layer of compliance and reporting.

Grants are not the main source of capital for apartment housing, but they support the organizations that make affordable transactions possible. Nonprofit developers and community development corporations rely on flexible funding to pay for staff, site control, predevelopment work, resident services, and compliance. Those costs are often classified as overhead, yet properties do not get built or stay well run without them.

The proposal's own example demonstrates the problem. A grant in which 75 percent of the funds paid for direct services and 25 percent covered the recipient's internal expenses would earn a large bank no credit. The new documentation requirements would add cost for banks and recipients alike and would weigh most heavily on small organizations, including those serving rural communities.

Recommendation. The agencies should keep CRA consideration for grants and donations, including operating and capacity-building support for organizations with a community development mission. The agencies should not adopt the alternative in Question 10 that asks whether grants and donations should be removed from consideration altogether and should reconsider the direct-use requirement and the 15 percent cap.

6. Multifamily lending should not fall out of the lending test

The proposal would evaluate a large bank's retail lending only in its major product lines. Under the first option, those are the bank's two largest product lines by dollar volume and loan count.

Many banks are active apartment lenders even though multifamily is not one of their two largest lines. At those banks, multifamily lending would no longer be reviewed under the lending test. Loans that qualify as affordable housing could still be considered as community development loans. Other multifamily loans, including loans on moderately priced apartments that meet no formal affordability test, would receive no CRA consideration at all.



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Recommendation. The agencies should ensure that a bank's multifamily lending continues to receive consideration under the lending test, at a minimum at the bank's election, when it is not a major product line.

7. The agencies should finalize the provisions that improve certainty for multifamily finance

Several elements of the proposal would help banks finance apartment housing with greater confidence. We support each of them.

- **Community development consideration for multifamily loans.** The proposed definition of community development loan confirms that a loan for a multifamily dwelling may be considered a community development loan even when it has also been evaluated as a retail loan. Placing this in the rule text, for banks of every size, removes doubt and recognizes the dual role these loans play.
- **Complexity.** Affordable apartment transactions are layered. They commonly combine LIHTC equity, tax-exempt bonds, subordinate loans, and credit enhancement. The proposed definition of complexity recognizes investments, grants, and services are part of a typical multi-component financing and lending that requires specialized expertise. This definition describes affordable multifamily finance well, and banks that do this work should receive consistent credit for it.
- **Confirmation process.** A formal way for a bank to ask whether a specific loan, investment, grant, or service qualifies would reduce the hesitation that now surrounds mixed-income, unsubsidized, and other less conventional transactions.
- **Illustrative list.** A public, non-exhaustive list of activities that do and do not qualify would promote consistent treatment across examiners and regions.

8. Activity outside assessment areas should be governed by a flexible standard

The proposal would consider community development activity outside a bank's assessment areas once the bank has met a geographic flexibility standard inside those areas. Under the quantitative option, a large bank would need community development loans equal to 0.625 percent of allocated tier 1 capital, and investments and grants equal to another 0.625 percent, in each assessment area. Intermediate, wholesale, and limited purpose banks would need 1.25 percent of Tier 1 capital.

We support a clear path to credit for activity outside assessment areas. LIHTC investors and syndicators depend on banks that will place capital in many markets. We are concerned that a fixed numerical test, applied in every assessment area, would have the opposite effect. In heavily banked markets, it would push more capital toward a limited supply of eligible transactions and distort pricing. Sound projects in smaller metropolitan and rural markets, where few banks have assessment areas, would attract less interest regardless of their quality or their value to the community.



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Recommendation. The agencies should adopt the qualitative option or otherwise build enough flexibility into the standard so that it does not concentrate capital in a few markets and leave others without it.

9. The banking agencies should act together

The Federal Reserve Board has not joined this proposal. If the OCC and FDIC finalize it alone, national banks, federal savings associations, and state nonmember banks would follow one set of rules, and state member banks would follow another. CRA has been administered under a common interagency framework since its earliest regulations.

Apartment finance does not sort itself by bank charter. The banks in a single transaction are often supervised by different agencies. Under two sets of rules, the same loan or investment could qualify for one participant and not another. Banks would have to analyze each transaction under both. The proposed confirmation process would be available only to OCC- and FDIC-supervised banks. Many banking organizations also own banks with different charters and would have to run parallel compliance programs.

Recommendation. We urge the OCC and FDIC to work with the Federal Reserve Board toward substantively uniform rules, with coordinated transition, examination, and interpretive guidance. If full uniformity is not achievable, the three agencies should apply consistent standards to housing and community development transactions that involve multiple banks with varying supervisors.

Responses to Selected Requests for Feedback

We respond below to the questions that most directly affect multifamily housing finance.

Question 1. Should the intermediate bank threshold be raised to \$30 billion, with a higher small bank threshold such as \$10 billion?

We do not support this alternative and have concerns that it would only magnify the concerns raised in section 1 above.

If banks under \$10 billion were treated as small banks, more than 1,500 banks, about 36 percent of all banks, would have no community development expectations. Those banks reported nearly \$27 billion in community development loans in 2024, roughly 35 percent of the national total.

A \$30 billion large bank threshold would do further damage to investment. AHTCC reports that banks with between \$10 billion and \$30 billion in assets account for more than twice as much LIHTC debt and equity as banks with between \$1.65 billion and \$10 billion in assets. NAAHL estimates that 17 states would lose at least half of their large banks with investment requirements.

Supervisory thresholds used to identify community banks for other purposes serve different ends. They are not a measure of whether a bank has the capacity to invest in its community. We urge the agencies not to adopt this alternative.

Question 9. Are there alternative standards for limiting indirect costs for community development grants? Do the proposed guardrails do enough?



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We do not believe a cap on indirect costs is the right measure. As explained in section 5, costs labeled indirect often pay for the staff and predevelopment work that produce affordable housing. A fixed percentage cannot distinguish that spending from waste.

If the agencies want assurance that grants serve a community development purpose, the better test is to assess the mission and activities of the recipient. A grant to an organization whose primary purpose is community development should qualify, including when it funds general operations.

Question 10. Should the agencies eliminate all grants and donations from CRA consideration?

We do not support this suggestion. Removing grants or donations from CRA would take away a major reason banks support nonprofit housing developers, housing counselors, and resident service providers. These organizations form much of the pipeline for affordable apartment development, especially in rural and other hard-to-serve markets. Loans and investments cannot substitute for this funding.

Question 12. Does the proposed definition of complexity enhance the rule's focus on meeting community credit needs?

We support recognizing that multi-component financings and lending that requires specialized expertise are complex. Affordable apartment transactions fit that description, and the definition should lead to more consistent credit for them.

Our concern regards how the definition is used. It should add recognition for difficult transactions. It should not reduce the consideration given to investments that stand on their own.

Question 14. Should the agencies require community development investments and services be complex?

No. A complexity requirement would exclude many investments that meet real needs and would add a new source of uncertainty for banks deciding whether to invest. Complexity should remain a factor that can enhance consideration, for banks of every size, and not a condition of receiving it.

Question 18. Should affordable housing include rental housing for middle-income individuals in high-cost areas?

Yes, in markets that are high-cost middle income families often struggle to find housing whether rental or ownership that is affordable. In those markets home prices often put ownership out of reach for many of those households. Such households often rent but many are cost burdened. Bank financing for apartments that provide housing they can afford meet a real community need.

This consideration should stay limited to those markets. CRA's primary focus should remain on low- and moderate-income households, and a broad definition of high-cost area would dilute it.

Question 19. Should the agencies define a high-cost area, and how?



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A definition would provide certainty for both banks and examiners. The agencies should also consider a measure that uses HUD's Fair Market Rents. Under that approach, housing would qualify at rents up to the Fair Market Rent in markets where the Fair Market Rent exceeds 30 percent of 80 percent of area median income. Fair Market Rents rest on a long-established and transparent national method.

Questions 21 and 22. Should naturally occurring affordable housing partnerships with nonprofit organizations be exempt from the rent standards?

One rent standard should apply to all unsubsidized affordable housing regardless of ownership. The rent test is what shows that the housing is affordable. Nonprofit ownership or control is valuable supporting evidence that a property will serve LMI renters over time, and the agencies can recognize it in that way. It should not replace the rent standard.

Conclusion

NMHC and NAA support a CRA framework that is clear, consistent, and workable for banks of different sizes and business models. The proposal makes real progress toward that goal in its treatment of multifamily loans, complex transactions, and advance confirmation of qualifying activities.

The test of the final rule will be its results: whether apartments continue to be built and preserved in the communities that need them, including smaller and rural markets. We urge the agencies to keep the current asset-size thresholds, preserve meaningful community development and investment expectations, retain consideration for grants, and move forward together with the Federal Reserve Board.

We welcome the opportunity to serve as a resource as the agencies complete this rulemaking. Please contact Matthew Berger, mberger@nmhc.org with any questions.

Sincerely,

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