19 November 2018

<u>**VIA EMAIL TO: REGS.COMMENTS@OCC.TREAS.GOV**</u>

Office of the Comptroller of the Currency
Attn: Legislative and Regulatory Activities Division
Docket ID OCC-2018-0008

Re: Reforming the Community Reinvestment Act Regulatory Framework

Ladies and Gentlemen:

The Affordable Housing Investors Council (AHIC) appreciates the opportunity to provide comments to the Office of the Comptroller of the Currency (OCC) on its advanced notice of proposed rulemaking. We support your goals to increase the consistency, transparency, and timeliness of the administration of the Community Reinvestment Act (CRA).

AHIC is a non-profit organization that seeks to strengthen the low income housing tax credit (LIHTC) as an efficient and effective tool for the development of affordable housing. Our membership is comprised of 60 corporations, primarily financial institutions, engaged in investing in affordable housing properties that qualify for these housing credits under section 42 of the Internal Revenue Code of 1986. <u>Our members represent more than 80% of the market for LIHTC equity and have invested more than $90 billion through this platform.</u> AHIC furthers our mission by developing best practices for the industry, providing educational opportunities to investors, creating a forum for investors to share their insights on issues facing the field, and promoting the investor's voice and perspective in this unique public/private partnership. **In light of its mission and membership, AHIC is keenly interested in how revisions to the regulatory framework of the Community Reinvestment Act would affect the housing credit and the low-income people who reside in LIHTC developments.**

Our concerns center around (1) ensuring that **changes to the CRA regulatory approach reflect the unique nature of LIHTC investments** and (2) making more efficient use of the private dollars supporting affordable housing through the **rationalization of assessment areas.**

CRA Regulatory Approach

Housing credit investments are unique among CRA-eligible activities, due to their (a) limited supply (b) complexity and duration as an investment vehicle and (c) critical role driving the creation of new affordable housing in the United States. Any changes in the regulatory approach to CRA should consider these factors.

The housing credit creates market incentives for the acquisition and development or rehabilitation of affordable rental housing. Corporate investors participate in the LIHTC program by making equity investments in affordable rental housing projects in exchange for receiving tax credits generated by the projects. LIHTC is the main focus for CRA compliance for most large banks, and it is key to many banks' lending activities through construction and permanent loans to housing credit-financed developments. Due to its low default rates, it fully meets the regulation's safety and soundness mandate, with prudent underwriting and asset management a hallmark of the industry**.**

However, It is important to remember that the 9% LIHTC market is in essence a closed system – the level of allocations to the states is determined by statute. The market is in essence a zero-game and <u>changes in the regulatory framework cannot produce more investments.</u>

But the regulatory framework can have a significant impact on the demand for housing credit investments from institutions subject to CRA. AHIC supports the OCC's goals of bringing greater clarity, consistency, and certainty to the evaluation process and of simplifying and streamlining the methodology. However, **if the regulatory framework is changed to a ratio system, it is crucial that LIHTC investing be weighted in a manner that reflects the duration, complexity, and social impact of the developments it finances.** In addition, financial institutions currently purchase housing credits to help meet their obligations under the **investment test**. Without the motivation of a separate investment test, it is possible that some financial institutions may default to other CRA-eligible activities that are of shorter duration and simpler to execute.

The housing credit is a <u>10-year investment, with a 15-year compliance period</u>. Additionally, because it is a tax-advantaged equity product, under Basel III capital requirements investments in LIHTC properties are assigned a risk weight of 100% that does not diminish over time, as is the case with loans.

It is also a relatively <u>complex investment vehicle</u>. And the complexity of the transactions is only growing, as many states increasingly require that LIHTC fund more supportive housing and/or mixed income and mixed use developments. State allocating agencies are directing housing credit resources to specific populations, including the chronically homeless, young adults transitioning out of foster care, formerly incarcerated individuals, and those with substance abuse and/or mental health challenges. Ensuring adequate social services are provided to support these residents adds to the complexity of the transactions. Transactions that include mixed income and mixed-use components, which many states and localities are demanding, similarly increase the layering of the capital stack. One AHIC member from a financial institution recently recounted investing in a deal with 12 sources of financing.

The housing credit is the <u>key driver of the creation of new affordable developments</u>, and there has never been a more critical time for the creation of new affordable housing: at least 37 percent of renter households – in every state in the country – spend more than 30 percent of their income on the cost of their homes. In many states, well over 25 percent of renters are paying more than half their income just to keep a roof over their heads.

Any changes to the regulatory framework, such as adoption of a performance based metric, should reflect these factors – limited supply, lack of liquidity, complexity, and centrality to addressing the affordable housing crisis – as compared to other CRA-eligible activities, in valuing the housing credit.

Rationalization of Assessment Areas

In the 9% LIHTC program, projects are first selected by state allocating agencies through competitive processes: developers propose projects to the agencies, which evaluate them based on each state's specific affordable housing goals. Therefore, investors do not have a direct impact on the determination of the locations of the projects, but can only seek to invest in development opportunities that have been chosen by the states from the applications developers submit. Some astute developers purposefully direct their applications to the state allocating agencies to areas where many banks have CRA obligations in order to maximize the price of their tax credits. And, because the supply of housing credits is limited and competition can be fierce, investment opportunities may or may not be available within a particular institution's assessment areas.

Compounding this is the new reality that, for some financial institutions, changes in banking technology and consumer preferences have decoupled their physical presence from where their customers are located. This has resulted in situations in which assessment areas for some entities providing services nationally are relatively small and, in some instances, concentrated.

Because of these factors, AHIC supports providing banks with more flexibility to pursue housing credit opportunities outside of their assessment areas. If the needs of their assessment areas are being adequately served, banks should be able to pursue LIHTC investing opportunities nationally to meet their CRA obligations. For those institutions with a strategic plan, once they meet a pre-determined level of community development activity inside their assessment areas, they should also be able to pursue LIHTC investing on a national level to meet their CRA obligations.

AHIC believes that these changes would result in a more rational distribution of investor equity to the advantage of underserved communities.

Finally, LIHTC investments are clearly defined in the statute as CRA eligible, and their treatment as such, regardless of the location of the development, its tenant mix, or other uses in the building, should continue without qualification.

Thank you for soliciting and considering these comments on CRA modernization and the potential impact on the LIHTC market. If you wish to discuss the above comments further, please contact the undersigned at (347) 392-9983 or jhertzog@ahic.org.

Respectfully,

THE AFFORDABLE HOUSING INVESTORS COUNCIL

Julie H. Hertzog
Executive Director