August 31, 2010

To: Federal Deposit Insurance Corporation (RIN 3064–AD60)
Federal Reserve Board (Docket No. R–1386)
Office of the Comptroller of the Currency (Docket ID OCC–2010–0011)
Office of Thrift Supervision (OTS–2010–0019)

From: Affordable Housing Investors Council
Affordable Housing Tax Credit Coalition
Enterprise Community Partners
Housing Partnership Network
Local Initiatives Support Corporation
National Housing Trust
Opportunity Finance Network
Stewards of Affordable Housing for the Future

Subject: **Community Reinvestment Act: Towards a sustainable national CRA policy for Low Income Housing Tax Credit (LIHTC) investments**

The organizations named above include investors, syndicators, community development financial institutions and nonprofit housing organizations involved with the Low Income Housing Tax Credit ("LIHTC"). We appreciate the agencies' review of Community Reinvestment Act ("CRA") rules and are pleased to submit comments on how CRA can better facilitate financial institutions' investments in LIHTC developments. These comments do not address broader CRA issues and are intended to complement other testimony or comments on CRA that several of the organizations have submitted individually. In the case of membership organizations, these comments do not necessarily reflect the view of every member. We appreciate the agencies' consideration of our comments and look forward to discussing them further.

**Current issues:**

The influence of CRA on financial institutions' LIHTC investment decision making has resulted in a seriously unbalanced market with disparities in pricing of 20%-30% between large metropolitan markets ("CRA hot spots") and the rest of the country, as well as limited investment demand on reasonable terms for non-metro rural and smaller metro communities.

The inability to serve all communities well undermines the viability of the LIHTC as a national policy. Additionally, limited opportunities for large LIHTC and other highly responsive investments in CRA hot spots often compel banks to meet CRA investment-

test volume targets though low-value investments, to lower their credit standards, or not meet CRA investment-test volumes at all.

CRA implementation policies explain much (though not all) of this disparity. Much has changed since the CRA rules for large banks were revised 15 years ago. The intervening time has seen the emergence of very large inter-state banks that receive full reviews of investment activities in a small minority of their assessment areas. Also during this time, some major banks have changed the way they collect deposits, including significant institutional and internet deposits unrelated to local branch networks that have traditionally defined CRA assessment areas. Further, a number of banks (e.g., credit card banks and former investment banks) are not based on local community branch networks at all. Finally, how much recognition is allowed for activities outside a bank's traditional CRA assessment areas remains unclear.

**Potential solutions:**

We applaud the bank regulatory agencies for considering changes to the CRA implementation policies. This process provides an opportunity to address imbalances in the LIHTC market within the context of a broader policy framework and increase responsiveness to local needs.

**Principles:**

- LIHTC practitioners agree that it would be helpful for the banking agencies to agree on clear and consistent CRA standards for LIHTC investments and related financing by financial institutions.

- The concept of "assessment areas" as currently defined for CRA purposes has counterproductive elements and should be reconsidered. Currently, bank markets are fragmented into too many small assessment areas.

- The system needs to recognize bank investments in multi-investor funds in a consistent and transparent way.

**A proposal to make CRA work better for LIHTC investments:**

We believe the following policies would dramatically improve the way CRA encourages LIHTC investments in all communities and address important housing challenges. This proposal does not address broader CRA policy issues.

1. The regulatory agencies should delineate a much smaller number of assessment areas: for example, one for each of the 50 to 100 largest metro areas and the remaining balance of each of the 50 states – a total of 100 to 150 areas nationwide. It is intended that 100-150 areas would be manageable and afford

sufficient flexibility to encourage financing in all communities. We believe that the current CRA system provides little effective motivation for LIHTC investment in smaller assessment areas or investment based on affordable housing needs, stifling activity that would happen if fully recognized on a predictable basis.

2. Financial institutions should get CRA credit for LIHTC investments based on both volume and their responsiveness to local or national LIHTC challenges (consistent, of course, with safety and soundness). Such LIHTC challenges could involve, for example: smaller developments; developments in rural areas, that contribute to comprehensive low-income community revitalization, or in economically distressed regions; serving homeless and other special needs populations that require supportive services; nonprofit and housing authority sponsors; preservation of federally assisted housing; solar or other renewable energy; rebuilding disaster areas; and transit-oriented development.

3. The current exam procedure, in which only a few full-review areas receive detailed attention while a larger number of limited-review areas receive only cursory attention, should be replaced. A much smaller number of assessment areas should enable LIHTC activities in all communities to receive full consideration based on both volume and responsiveness to local needs and performance context.

4. The performance of banks with traditional retail branch networks should be evaluated first by how well the bank has served its assessment areas where the bank has branches, takes deposits, and makes loans. Banks that addressed their local markets' needs at a satisfactory level in the aggregate on their most recent exam also should receive full credit toward their rating for LIHTC activities that meet local needs elsewhere or national challenges. This method of evaluation encourages investment based on community needs rather than solely on retail branch deposits.

5. Banks that take internet deposits or institutional deposits should have an obligation that can be fulfilled anywhere in the country based on the volume of activity and responsiveness to local needs and national challenges. Currently, only retail branch deposits – and not internet or institutional deposits – determine the location of CRA obligations. Similarly, credit card banks, wholesale banks, and other banks that do not operate locally should not have a local assessment area but should be able to fulfill their obligations anywhere in the country. This approach should make the system more responsive and flexible.

6. Banks that combine multiple business models – e.g., a bank that has a branch network in some markets and also issues credit cards more widely – should be evaluated on a composite basis; in effect, as the sum of its parts.

7. Banks should get equal credit for community development activities delivered directly or through a conduit (e.g., a multi-investor LIHTC fund) organized locally, statewide, regionally, or nationwide. The volume and responsiveness of the investment should matter, not the channel through which it is made.

8. These standards should be applied transparently and consistently across all of the bank regulatory agencies.