



State Street Corporation

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Office of the Chief Counsel  
ATTN: Comment Processing  
Office of the Comptroller of the Currency  
400 7th Street, SW, Suite 3E-218  
Washington, DC 20219  
Docket ID: OCC-2022-0002  
eRulemaking Portal: <https://regulations.gov/>

James P. Sheesley, Assistant Executive Secretary  
ATTN: Comments  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429  
RIN: 3064-AF81  
E-mail: [comments@fdic.gov](mailto:comments@fdic.gov)

Ann E. Misback, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Docket Number: R-1769; RIN: 7100-AG29  
E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

**Joint Notice of Proposed Rulemaking: Community Reinvestment Act**

Dear Sir/Madam:

State Street Corporation (“State Street”) welcomes the opportunity to comment on the joint notice of proposed rulemaking (“proposed rule”) issued by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System (collectively the “banking agencies”) regarding amendments to the regulations implementing the Community Reinvestment Act (“CRA”). The joint proposed rule follows two

previously issued requests for comment on CRA reform by the banking agencies, either collectively or individually, and is intended among other things, to update how CRA activities qualify for consideration, where CRA activities are considered and how CRA activities are evaluated.<sup>1</sup> We welcome the banking agencies' emphasis in the proposed rule on the implementation of a CRA framework that accounts for differences in bank size and business model, and we strongly support the decision to preserve a separate evaluation framework for wholesale and limited purpose banks that reflects the unique, yet important ways, in which these banks support the development needs of the low and moderate income ("LMI") communities in which they operate.

Headquartered in Boston, Massachusetts, State Street is a global custody bank which specializes in the provision of financial services to institutional investor clients, such as pension plans and mutual funds. This includes investment servicing, investment management, data and analytics, and investment research and trading. With \$38.2 trillion in assets under custody and administration and \$3.5 trillion in assets under management, State Street operates in more than 100 geographic markets globally.<sup>2</sup> State Street is organized as a United States ("US") bank holding company, with operations conducted through several entities, primarily its wholly-owned Massachusetts state-chartered insured depository institution subsidiary, State Street Bank and Trust Company ("SSBT"). Our primary prudential regulators, including for purposes of the CRA, are therefore the Massachusetts Division of Banks and the US Federal Reserve System.

We appreciate the opportunity to offer our thoughts on several of the matters raised in the proposed rule, especially as they relate to wholesale and limited purpose banks. This includes the treatment of various affordable housing initiatives and investments.

### **State Street CRA Program**

In keeping with their specialized business model, custody banks such as State Street, generally rely on the wholesale bank designation to design and operate their CRA programs, and each wholesale bank is robustly evaluated today using the Community Development Test, which combines an assessment of a bank's community development lending, qualified investments (including donations to non-profit entities) and community development services offered both within and outside of designated assessment areas (to the extent that the needs of the bank's designated assessment areas are otherwise adequately addressed). This evaluation includes an assessment of various qualitative factors, such as the complexity or innovativeness of the CRA activities, the responsiveness of the activities to the needs of the local communities in which the bank operates, and the extent to which the CRA activities could otherwise have been routinely provided by the private sector.

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<sup>1</sup> 'Joint Notice of Proposed Rulemaking: Community Reinvestment Act Regulations', Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation, Federal Register, Volume 85, Number 6 (January 9, 2020), and 'Advance Notice of Proposed Rulemaking: Modernizing the Community Reinvestment Act', Board of Governors of the Federal Reserve System, Federal Register, Volume 85, Number 202 (October 19, 2020).

<sup>2</sup> As of June 30, 2022.

SSBT has been designated as a CRA wholesale bank since May 8, 1996, and under this designation we've maintained a comprehensive CRA program that is deeply responsive to the needs of the local community, and in particular, the local LMI communities in which we operate. This program includes substantial investments in affordable housing initiatives, Small Business Investment Company programs, and qualified mortgage-backed securities ("MBS") supporting LMI borrowers. Our CRA program also incorporates extensive community outreach, including the sponsorship, via the State Street Foundation, of local education and workforce development initiatives, such as Early College which supports underserved youth in Boston and Quincy, Massachusetts in pursuing college course work at no cost while in high school. Under our Executive Community Leadership Program, approximately sixty percent of State Street's Executive Vice Presidents serve on the boards of non-profit organizations, providing in the process their financial and professional expertise. We have achieved ten consecutive CRA ratings of 'outstanding' dating back to 2003, assisted during the last CRA examination period by \$1.39 billion in financial commitments.<sup>3</sup>

As such, we strongly support the goals of the CRA and we believe that our wholesale bank designation provides an appropriate foundation for ensuring our sustained commitment to the local communities in which we operate, in a manner that is responsive to, and draws strength from, the unique characteristics of our custody bank business model.

## **CRA FRAMEWORK FOR WHOLESALE BANKS**

### **Evaluation Framework**

Consistent with existing CRA regulations, the banking agencies propose the implementation of a separate evaluation framework for wholesale and limited purpose banks that is intended to recognize and account for their unique business models. This framework, essentially a modified version of the Community Development Financing Test, combines a qualitative assessment of a bank's community development lending and investment activities, with a quantitative assessment of the overall volume of these activities relative to an institution-specific metric designed to assess relative CRA capacity. Unlike for other banks, relative capacity for wholesale and limited purpose banks would be assessed under the proposed rule on the basis of a bank's 'total assets' rather than deposits. In addition, the banking agencies propose to provide wholesale and limited purpose banks with the option to request examiner review of their community development service activities under the Community Development Services Test, in order to potentially improve their overall performance score from 'satisfactory' to 'outstanding'.

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<sup>3</sup>Please see 'Public Disclosure: Community Reinvestment Act Performance Evaluation – State Street Bank and Trust Company' Federal Reserve Bank of Boston (September 27, 2021), table 3, page 10.

We strongly support the banking agencies' decision to maintain in the CRA regulations the wholesale and limited purpose bank designation, an approach which properly recognizes the broad diversity of business models among US banks and the important ways in which these diverse banks support the development needs of the LMI communities in which they operate. This includes custody banks, such as State Street, which have no retail clients or retail lending product lines, and which instead focus on the provision of financial services to institutional investor clients.

While the proposed rule indicates that a bank must file a request in writing with the appropriate banking agency in order to receive a designation as a wholesale or limited purpose bank, it's not clear whether this requirement is intended to apply to banks which already benefit from that designation. As previously noted, SSBT received the wholesale bank designation on May 8, 1996, and since that time we have developed and implemented a comprehensive CRA program that both reflects the unique characteristics of our custody bank business model and our strong commitment to serving the needs of the local communities in which we operate. As such, we believe that there is little practical value in requiring banks to seek re-designation as a wholesale or limited purpose bank under the revised CRA framework and we would urge the banking agencies to clarify in the final rule that this is not their intention.

Furthermore, while we welcome the banking agencies' decision to eliminate the use of a deposit-based metric for the purpose of assessing the relative CRA capacity of a wholesale or limited purpose bank, we are concerned that the use, as an alternative, of a bank's 'total assets' may also inadvertently result in a metric that fails to appropriately account for broad differences in industry business model. This includes in particular, various assets held by specialized banks, such as State Street, to accommodate core business functions and regulatory expectations that are wholly unrelated to the relationship that they have with the local communities (particularly LMI communities), in which they operate.

From the perspective of a custody bank, this includes for instance, central bank placements that are used to accommodate excess client deposit inflows, especially in periods of financial markets stress, short-term government debt that is held to meet regulatory requirements for liquid assets, and extensions of credit to clients used to facilitate the timely completion of payment and settlement activities, generally on an overnight basis. As such, we recommend that the banking agencies clarify in the final rule that the relative CRA capacity of a wholesale or limited purpose bank should be assessed by examiners on the basis of each bank's 'CRA-related assets', with careful consideration of business model considerations, rather than on the basis of 'total assets' generally.

### **Quantitative Benchmark**

The banking agencies request comment in the proposed rule on whether to establish a quantitative benchmark to help assess and compare the volume of community development financing activities provided by wholesale and limited purpose banks. Two potential solutions

are discussed. The first would subject wholesale and limited purpose banks to the nationwide community development financing test that the banking agencies intend to deploy to evaluate the relative performance of large banks generally (*i.e.* any bank with more than \$10 billion in total assets). The second would involve the development of a more targeted benchmark where the community development financing activities of wholesale and limited purpose banks would be evaluated relative other wholesale and limited purpose banks nationally.

We strongly oppose the option of using the nationwide community development financing test developed for large banks to assess the CRA performance of wholesale and limited purpose banks since this would have the practical effect of undermining the banking agencies' intention to create a CRA framework that properly recognizes differences in industry business model. Furthermore, while we do not oppose the development of a potential benchmark that is specific to wholesale and limited purpose banks, we recommend that the banking agencies exercise great care when developing any such metric so that comparisons remain both equitable and business model specific. For instance, it would not in our view be appropriate to implement a benchmark that would compare the community development financing activities of a custody bank with those of a limited purpose bank specializing in the provision of credit card services.

### **CRA FRAMEWORK FOR INVESTMENT ASSETS**

#### **Treatment of Funds as an Entity**

When considering the CRA investment activities of banking organizations, we believe that the banking agencies should, as a general matter, recognize the use of eligibility tests based on the '*fund-as-entity*' level. For instance, the majority test for affordable multifamily housing investment funds serving a majority of LMI units or where the majority of capital is directed to LMI households, should be assessed on a *fund-wide* basis. Furthermore, the banking agencies should remain neutral with respect to what entity is best-suited to address non-CRA related considerations specific to legal, tax and investment matters. In particular, the banking agencies should not create circumstances that restrict the majority-of-units tests to lower-tier investments, properties, buildings, contiguous parcels, or parcels, 'entity' specific distinctions which are most suited to legal, tax and investment considerations outside of the CRA framework.

#### **Low Income Housing Tax Credits**

We strongly believe that low income housing tax credits ("LIHTC") are essential to addressing the affordability crisis in the US housing market and that the existing framework of statutory and regulatory requirements contained in Section 42 of the Internal Revenue Code ("Code") is effective and demonstrably in the interest of the public welfare. Accordingly, we support the decision of the banking agencies to provide full CRA credit for LIHTC investments, regardless of their individual complement of LMI households. We observe, in this respect, that Section 42 of

the Code already contains the concept of an ‘applicable fraction’ (*i.e.* the percentage of a project that is qualified low-income) that acts as an inherent control mechanism over the amount of tax credits attributable to the affordable portion of a multi-family project unit mix. In effect then, the amount of a LIHTC investment that a bank can claim for CRA credit is already directly tied to the proportion of the project units serving affordable LMI households. Furthermore, there is a deep and long-dated body of federal and state agency policy that adequately serves to ensure that LIHTC projects demonstrably serve a public interest and maximize the public utility of housing credits and bond programs, in a manner that make further CRA-specific guidance unnecessary.

### **CRA Treatment of Mortgage-Backed Securities**

Consistent with existing CRA standards, the banking agencies propose to provide full credit for investments in MBS which are comprised of a majority of loans to LMI borrowers, or loans that would otherwise qualify as affordable housing activity. We strongly support this approach which, as noted by the banking agencies, will help promote liquidity in the market for affordable housing development and thereby bolster the lending capacity of originating banks. Furthermore, this approach also recognizes the important role that investing banks, such as State Street, play in helping to meet at scale the credit needs of LMI communities throughout the US, through the purchase of affordable housing-related investment assets. We believe that it is important to recognize, in this respect, that there is no difference in the CRA benefit that LMI communities receive from either direct loans or indirect investments in affordable housing assets, and as such, both activities should be equally recognized for CRA credit.

Consistent with this view, we do not support the alternative approach discussed by the banking agencies that would limit the ability to obtain CRA credit to MBS that is purchased in the primary market. This is especially true in light of the authority that examiners would have under the revised CRA framework to disqualify activities that appear to have been ‘conducted purely for purposes of artificially increasing a bank’s metrics, such as (by) purchasing and then subsequently reselling a large investment in a short time frame, near the end of an evaluation period.’<sup>4</sup> Similarly, we do not support the implementation of an approach that would limit CRA credit only to those loans within an MBS that are provided to LMI borrowers, since this approach would vastly increase the complexity of CRA compliance for investing banks, without providing any material benefit to the volume and scope of affordable housing activities in LMI communities.

### **Preservation Funds and Affordable Housing**

The banking agencies ask in the proposed rule whether changes should be considered to ensure that the intended definition of ‘affordable housing’ is sufficiently clear and appropriately inclusive of activities that support the housing needs of LMI communities, including activities

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<sup>4</sup> Proposed Rule, page 312.

that involve complex or novel solutions, such as community land trusts, shared equity models and manufactured housing. Beyond the fairly traditional business of making individual investments or loans in various housing partnerships, a relatively recent development in the affordable housing industry are investments made by banks in preservation funds. These investment structures are designed to serve public welfare investment criteria, including those investing in ‘naturally occurring affordable housing’ (“NOAH”) that do not benefit from a government subsidy. Financing responsible NOAH investments is, in our view, a clear example of a complex and novel market solution that should receive CRA consideration. We therefore strongly support the inclusion of preservation funds in the definition of ‘affordable housing’ and recommend that the banking agencies foster a permissive environment for the eligibility of such housing, *especially where there is no subsidy benefit*, in instances where there is a ‘stated purpose’ or ‘*bona fide*’ intent of providing affordable housing for LMI households. Furthermore, we believe it is reasonable to allow an explicit written pledge by the property owner to maintain rents affordable to LMI individuals for the lesser of a period of five years, or the length of the underlying financing, as one of several alternatives to demonstrating that ‘purpose’ or ‘intent’.

The banking agencies note in the proposed rule that NOAH as a category of housing poses unique challenges in terms of ensuring benefits for LMI communities. This includes the lack of a consistent way to confirm renter income for these properties, in contrast to properties that receive government subsidies. The banking agencies seek to address this concern by clarifying that this category of affordable housing can receive CRA credit subject to certain specified standards. Most importantly, the agencies propose that the rent for the majority of the units in a multifamily NOAH property may not exceed 30% of 60% of the median area income, while also seeking views on an alternative 80% median area income standard.

We believe that the proposed 60% standard is unnecessarily restrictive and that the moderate-income category captured by rents (and incomes) in the 60% - 80% band not only addresses a critical need in providing affordable workforce housing, but is also an appropriate public policy target for LMI communities that are unserved by rental assistance programs and tax credits. We therefore strongly recommend that the eligibility standard for NOAH investments remain at 80% of area median income. We observe, in this respect, that the banking agencies should view the public resource requirement represented by NOAH properties as highly attractive given the lack of a public subsidy, and therefore particularly worthy of support in the deployment of private capital.

### **CONCLUSION**

Thank you again for the opportunity to comment on the important matters raised within the proposed rule. To summarize, State Street strongly supports the banking agencies’ decision to maintain a separate CRA evaluation framework for wholesale and limited purpose banks in recognition of their distinct business models and the various, value-added ways in which they currently meet the requirements of the CRA rule. While we recognize the desirability of moving

away from a deposit-based metric for the purposes of assessing the CRA activities of wholesale and limited purpose banks, we are concerned that the intended use of 'total assets' as an alternative may also create an imprecise understanding of the relative CRA capacity of wholesale and limited purpose banks and therefore recommend instead examiner focus on an individual bank's 'CRA-related assets'. We strongly oppose the use of a nationwide benchmark developed for assessing the CRA performance of large banks generally to assess the CRA performance of wholesale and limited purpose banks, and we also caution that any alternative benchmark should carefully reflect important differences in industry business model among such banks.

We recommend the use of the 'fund-as-entity' standard when assessing the CRA eligibility of investment assets. Furthermore, we strongly support CRA credit for LITHC and for MBS investments that qualify as affordable housing activity, and we urge the banking agencies not to implement a mandate that would limit CRA credit to the purchase of MBS in the primary market. Finally, we recommend certain clarifications to the proposed rule to better support banking industry investments in NOAH projects that do not benefit from government subsidies.

Please feel free to contact me at [jjbarry@statestreet.com](mailto:jjbarry@statestreet.com) should you wish to discuss the contents of this submission in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "JJ Barry", with a stylized flourish at the end.

Joseph J. Barry