

LOW INCOME HOUSING TAX CREDIT WORKING GROUP, DIRK WALLACE

Proposal and Comment Information

Title: Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations with Significant Trading Activity, and Optional Adoption for Other Banking Organizations, R-1887

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Submitter Information

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Comments from the Novogradac LIHTC Working Group on Regulatory Capital Rule: Proposed Revisions to the Risk-Based Capital Framework for Category I and II Banking Organizations and Modifications to the Standardized Approach for Credit Risk



June 18, 2026

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RE: Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations With Significant Trading Activity, and Optional Adoption for Other Banking Organizations; OCC 2026-0265, RIN 1557-AF52; Federal Reserve Docket No. R-1887 RIN 7100-AH20; FDIC RIN 3064-AF29

Regulatory Capital Rules: Regulatory Capital and Standardized Approach for Risk-Weighted Assets, OCC RIN 1557-AF49, Federal Reserve RIN 7100-AH21, FDIC RIN 3064-AG23

To Whom It May Concern:

On behalf of the members of the Low Income Housing Tax Credit (LIHTC) Working Group, we appreciate the opportunity to comment on the Notices of Proposed Rulemaking (NPR) for regulatory capital rule amendments applicable to large banking organizations and to banking organizations with significant trading activity, as well as regulatory capital and the standardized approach for risk weights for other banking organizations, both published on March 27, 2026, proposed by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Federal Reserve Board"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "Agencies"). The members of the LIHTC Working Group are participants in the affordable housing community who work together to help resolve technical LIHTC policy issues and provide recommendations to make the LIHTC even more efficient in delivering benefits to help build and preserve affordable housing and serve low-income residents. Our group includes nonprofit and for-profit developers, syndicators, investors, lenders, lawyers and other affordable housing professionals. Moreover, we represent some banks that invest in LIHTC equity annually, to which the proposed regulations would apply. According to Novogradac analysis, the LIHTC equity market in 2025 was estimated at about \$25 billion, of which more than 80% were attributed to CRA-motivated financial institutions, and according to National



Association of Affordable Housing Lenders analysis of OCC data, 98% of LIHTC equity investments come from financial institutions with more than \$50 billion in assets, many of these institutions will be affected by the Proposed Rule.

Since its inception in 1987, LIHTC equity has been the most important source of capital for affordable rental housing finance, and the largest single financing source behind virtually all newly constructed or substantially rehabilitated affordable rental housing annually. Since 1987, the LIHTC has generated more than \$339 billion in equity investment, financed 4.13 million affordable rental homes, and housed more than 9.6 million low-income households, according to data from the National Council of State Housing Agencies (NCSHA) and analysis from the National Association of Home Builders (NAHB). It has also supported the creation of more than 6.8 million jobs for one year, generated more than \$773 billion in wages & business income, and spurred more than \$278 billion in tax revenue.

Not only does LIHTC have a strong record of economic impact, but it also targets the lowest income household. According to HUD's latest LIHTC Tenant Report, the median LIHTC household earned less than \$18,600 annually. Furthermore, 55% of the households earned at or below 30% of the area median income.

Despite this tremendous record of achievement, there are more than 12 million low-income renters nationwide that are severely cost-burdened, i.e., paying more than 50% of their income on rent, according to Harvard's Joint Center on Housing Studies (JCHS) State of the Nation's Housing report. Given this rental affordability crisis, and as the premier resource for affordable rental housing production, we urge the Agencies to reconsider its existing risk weighting for LIHTC equity investments.

In recognition of the strong historical performance of LIHTC properties, their deep federal support, and the importance of supporting robust investment in affordable housing, **the LIHTC Working Group urges the Agencies to apply a risk weight of 20% to equity investments and loans backed by LIHTC properties, and in no case should the risk weight exceed 50%.** This threshold more accurately reflects the risk profile of LIHTC investments and would support investment in affordable housing at a time a significant and well-documented housing supply shortage.

Background. LIHTC is the federal government's primary policy to mobilize private investment in the production and preservation of affordable rental housing. Since 1987, LIHTC has financed more than four million affordable rental units – almost all of the new and substantially rehabilitated affordable housing production in the United States over that period.¹ An expansion of and improvements to the credit enacted in 2025 will increase the volume of both 4% and 9% tax credits, which could create an additional 1.22 million affordable rental units over the next decade to help address the nation's affordable housing supply shortage.²

¹ National Council of State Housing Agencies, *State HFA Factbook: NCSHA Annual Survey Results 2024*, October 2025

² Peter Lawrence, *Final Reconciliation Bill Permanently Expands LIHTC, NMTC and OZ Incentive; but Does Not Include HTC Provisions*, Novogradac, July 3, 2025, <https://www.novoco.com/notes-from-novogradac/final-reconciliation-bill-permanently-expands-lihtc-nmtc-and-oz-incentive-but-does-not-include-htc-provisions>.

Both the state housing finance agencies (HFAs) and private investors underwrite LIHTC projects and monitor their operations on an ongoing basis. The tax credits are claimed over a 10-year period and are subject to a partial recapture of the tax credits if the property ceases to serve low-income residents at restricted rents within a 15-year period. The recapture exposure equals one-third of the credits already claimed and phases out over years 11-15. HFAs and project sponsors also have extended use agreements that preserve affordability for at least 30 years.

In a typical LIHTC transaction, the investors are limited partners in a partnership where the property developer/operator is the general partner. Nearly all of the tax benefits pass through to the limited partner investors, and these tax benefits – LIHTC plus depreciation and other taxable losses – are virtually the sole source of the investors' return. Investors do not expect, and generally do not receive, operating cash or disposition proceeds in excess of their exit taxes. Accordingly, LIHTC investments more closely resemble a fixed-income investment (where the income takes the form of a highly predictable stream of tax benefits) than a traditional real estate equity investment where variable cash flow and capital appreciation constitute the investors' return.

Commercial banks subject to the proposed capital rules are the dominant source of this LIHTC investment. Banks provided about 80% of all LIHTC equity investments in 2024, according to the Affordable Housing Tax Credit Coalition. Accordingly, bank capital rules have a material effect on the availability and pricing of LIHTC investments, which in turn will affect the volume and characteristics of affordable housing production and preservation. Substantial additional private investment will be needed to realize the full benefits of the recently-enacted expansion of and improvements to LIHTC. Setting risk weights that appropriately reflect the risk profile of LIHTC investments will ensure that the private investment required to further expand our affordable housing supply is not unnecessarily restricted.

LIHTC's Strong Performance and Unique Characteristics Justify a Lower Risk Weight. LIHTC equity investments are generally treated as a community development investment under section 24 (Eleventh) of the National Bank Act, which the current and proposed policies assign a 100% risk weight. This risk weight is inconsistent with the unique characteristics of LIHTC investments and with the documented performance of LIHTC investments over the tax credit's nearly 40-year history. The characteristics of LIHTC investments and these properties' strong performance record justify a risk weight of 20%. Additionally, the associated loans should also receive a 20% risk weight.

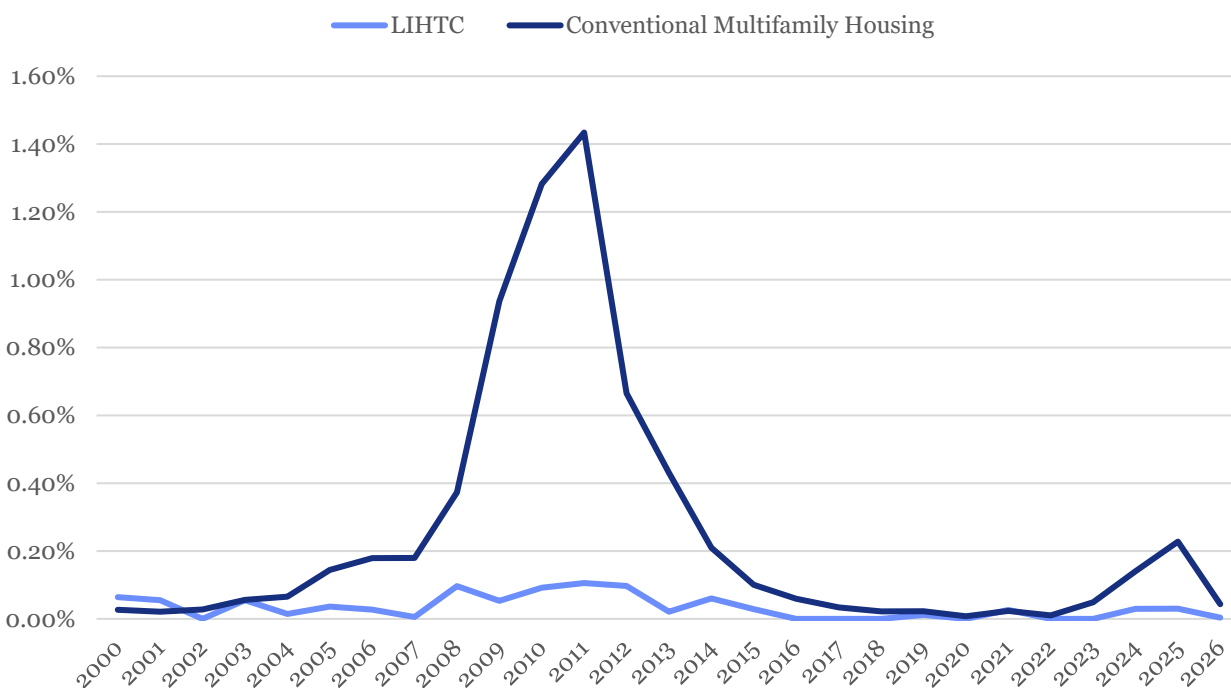
LIHTC properties have shown consistently strong performance and extremely low rates of recapture – which is the way LIHTC investors incur losses. IRS data show that both the incidence and the severity of losses from LIHTC recapture is extremely low. The LIHTC recapture rate averaged only 0.08% for tax years 2008-2021³, the same as the five-year cumulative default rate for municipal bonds between 2013 and 2022.⁴

³ Calculations by Novogradac using IRS Corporation income tax returns line item estimates (Publication 5108). Calculations include tax years 2008 through 2021 but omit data from 2020 and 2022 (the latest year for which data is available) because the IRS suppressed LIHTC recapture data in those two years to avoid disclosure of information for specific corporations.

⁴ Moody's Investors Service, *US municipal bond defaults and recoveries, 1970-2022*, July 19, 2023, https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/fixed-income/moodys-investors-service-data-report-us-municipal-bond.pdf.

LIHTC also demonstrates a strong performance relative to multifamily mortgages, which currently receive a 50% risk weight. The following chart compares the LIHTC foreclosure rate with the foreclosure rates for market rate multifamily housing. Multifamily foreclosures rose above 1.3% during the Great Recession, but the LIHTC foreclosure rate has typically stayed below 0.1% since 2002. It is important to note that even with the rise in financial stress during the Great Recession, multifamily mortgages were among the best performing loans and leases on banks' balance sheets.

Foreclosure Rates by Units



Source: Yardi; Novogradac



Another metric, LIHTC's *cumulative* foreclosure rate by net equity (total foreclosed net equity divided by total equity), tells a similar story. As the following chart shows, the cumulative foreclosure rate peaked at a very low level, below 0.5%, in the aftermath of the Great Recession and had decreased to 0.19% by 2024, as more properties have come online.

The Federal Reserve Board has consistently recognized LIHTC's outstanding performance and unique characteristics in setting the Dodd-Frank Act Stress Test risk shocks under a severely adverse scenario. In 2026, as in prior years, the relative fair value shock assigned to Section 42 (LIHTC) investments is only -4.9%, far lower than the -38% for real estate equity and -27.5% for real estate debt.

Given the strong performance of LIHTC investments, demonstrated both through project performance data and regulators' assessment of risk throughout the economic cycle, we urge you to reduce the risk weight applicable to these investments and associated loans to 20%. In no case,

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given their performance history, should the risk weight for LIHTC equity investments or their associated loans be more than the 50%, in line with statutory multifamily exposures.

We hope that you find these comments, considerations and recommendations helpful as you finalize the Proposed Regulations. Thank you in advance for your time and consideration. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,

Novogradac and Company LLP

By 

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