



STATE OF MICHIGAN

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

LANSING

GRETCHEN WHITMER
GOVERNOR

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ACTING EXECUTIVE DIRECTOR

February 16, 2021

Ann E. Misback, Secretary
Board of Governors of The Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

RE: Proposed Community Reinvestment Act Regulations, 12 CFR Part 288 Regulation BB

Dear Ms. Misback:

The Michigan State Housing Development Authority (the "Authority") appreciates the opportunity to comment on the proposed changes to the existing regulations by which the Community Reinvestment Act ("CRA"), 12 U.S.C. Ch. 30, is implemented (the "Proposed Regulations").

The Authority reviewed the Proposed Regulations, and as indicated below, has responded to ten of the Federal Reserve's 99 questions deemed most pertinent to the Authority's vision of making Michigan a place where all people have quality affordable housing as a foundation to reach their full potential.

The Authority agrees that the CRA regulations are due for update, however, it respectfully suggests that the Federal Reserve consider tabling this commentary and rule-adoption procedure to a future date, for the following reasons:

- Given that President Biden's administration may not have yet fully articulated its goals for the banking industry in general, and affordable housing in particular, additional time should be afforded to give those goals due consideration in any new rulemaking.
- The impact of the COVID-19 crisis is ongoing, and its effect upon the country's economy is yet unknown. It may be prudent to afford additional time to study those effects, to allow data-driven decision making before committing to a course of action based upon pre-COVID economic conditions.
- The impact of the permanent 4% floor on the 4% Low-Income Housing Tax Credit ("LIHTC") included in the Fiscal Year 2021 Omnibus spending bill will have an unknown effect upon tax-credit valuation and associated financing. As the CRA is a significant, driving factor for LIHTC investment, allowing additional time to study the effect of that change to the LIHTC program, before enacting regulations based upon the previous LIHTC environment, would be prudent.
- The banking and finance industries have benefited from the consensus between the Federal Reserve, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation as to CRA rules. While the Authority is of the

opinion that the Federal Reserve’s rulemaking better reflects the legislative intent of the CRA than the recently adopted OCC/FDIC rules, this process may afford an opportunity to persuade the OCC and FDIC into accord with the Federal Reserve approach before the two separate systems are fully enacted.

If the Federal Reserve nonetheless chooses to proceed with the present rulemaking at this time, any such modernization must not lose sight of the fundamental purposes that Congress has enacted the CRA to address. Pursuant to 12 USC § 2901, the CRA’s stated purpose is as follows:

- Regulated finance institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business.
- The convenience and needs of communities include the need for credit services as well as deposit services.
- Regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.¹

In the late 1960’s and early 1970’s, Congress passed a series of statutes attempting to address discrimination in financial opportunities. These included the Fair Housing Act in 1968, the Equal Credit Opportunity Act of 1974, the Housing and Community Development Act of 1974, and the Community Reinvestment Act in 1977. The Congressional Findings of the Housing and Community Development Act of 1974, at 42 USC § 5301, summarize the fundamental point of this collective body of legislation, in which Congress found that “the Nation’s cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from – “

- the growth of population in metropolitan and other urban areas, and the concentration of persons of lower income in central cities.
- inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment.
- increasing energy costs which have seriously undermined the quality and overall effectiveness of local community and housing development activities.”²

The Authority has selected 10 of the 99 questions put forth by the Federal Reserve as to its proposed CRA rules, having identified those topics most pertinent to the Authority’s work for the people of the State of Michigan. It is the position of the Authority that the Proposed Federal Reserve Regulations would be far more effective than the OCC/FDIC CRA regulations at having a positive impact on low- and moderate-income persons and communities, in terms of housing stock and quality, homeownership, business development and community development. Some particular observations, discussed in more detail below, are as follows:

¹ 12 USC § 2901.

² 42 USC § 5301(a)(1)-(3).

- Using separate Retail Tests and Community Development Tests, with corresponding subtests, will better help and encourage bank investment in the LIHTC, the primary tax credit that drives low- and moderate-income housing development throughout the United States.
- Rather than focus on subsidized versus unsubsidized housing, a more helpful distinction is regulated versus unrelated. Regulated housing carries with it metrics for measuring successful impacts on LMIT communities.
- Any CRA compliance system must be designed to address fairness and access to housing and credit, and further serve to identify and explain discriminatory and other illegal credit practices. The Federal Reserve should base its standards upon data-driven metrics and should encourage investment and lending that carry with them mechanisms for gathering effective data that may demonstrate results.
- Allowing CRA compliance to be satisfied by considering activity in communities outside of the geographical low- and moderate-income communities where banks conduct business will serve to undermine access to housing and credit.

The Authority agrees that the CRA regulations are due for update, but any such modernization must not lose sight of the fundamental purposes that Congress has enacted the CRA to address. The Authority strongly suggests that the Federal Reserve consider and address the positions outlined above and set forth in greater detail below when preparing its final CRA rules.

Thank you again for the opportunity to submit comments on the Proposed Regulations. The Authority also wishes to acknowledge and thank the staff of the Michigan Economic Development Corporation for participating in the review of the regulations and preparation of the comments.

Sincerely,

Clarence L. Stone, Jr. Digitally signed by
Clarence L. Stone, Jr.
Date: 2021.02.16
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Clarence L. Stone, Jr.
Director of Legal Affairs
Michigan State Housing Development Authority

PLEASE SEE THE FOLLOWING PAGES FOR COMMENTS
ON SPECIFIC SECTIONS OF THE PROPOSED REGULATIONS

**COMMENTS ON THE PROPOSED REGULATIONS
BY THE MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY**

Executive Summary

Although the proposed Federal Reserve Community Reinvestment Act (“CRA”) Regulations, currently found at 12 CFR Part 228, have not been significantly amended since 1997, the newly proposed regulations demonstrate a significant departure away from the purpose of the CRA as explained by Congress. Pursuant to 12 USC § 2901, the CRA’s stated purpose is as follows:

1. Regulated finance institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business.
2. The convenience and needs of communities include the need for credit services and deposit services.
3. Regulated financial institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.

It is the position of the Authority that the adoption of the Proposed Federal Reserve Regulations is far more effective than the OCC/FDIC CRA regulations at having a positive impact on low- and moderate-income persons and communities, in terms of housing stock and quality, homeownership, business development and community development. Some particular observations, discussed in more detail below, are as follows:

- Using separate retail tests and community development tests, with corresponding subtests, will better help and encourage bank investment in LIHTC, the primary engine that drives low- and moderate-income housing development throughout the United States.
- Rather than focus on subsidized versus unsubsidized housing, a more helpful distinction is regulated versus unrelated. Regulated housing carries with it metrics for measuring successful impacts on LMI communities.
- Any CRA compliance system must be designed to address fairness and access to housing and credit, and further serve to identify and explain discriminatory and other illegal credit practices. The Federal Reserve should base its standards upon data-driven metrics and should encourage investment and lending that carry with them mechanisms for gathering effective data that may demonstrate results.
- Allowing CRA compliance to be satisfied by considering activity in communities outside of the geographical low- and moderate-income communities where banks conduct business will serve to undermine access to housing and credit.

The Authority agrees that the CRA regulations are due for update, but any such modernization must not lose sight of the fundamental purposes that Congress has enacted the CRA to address.

**SPECIFIC RESPONSE TO THE QUESTIONS OF THE PROPOSED REGULATIONS BY THE
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY**

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

The Authority appreciates the Board’s proposed evaluation framework and recognizes both that it appears to effectively address the Regulation’s enumerated objectives, and that those objectives are in accordance with the objectives of the CRA. The Authority suggests that basing CRA modernization upon data-driven decisions is an additional worthy objective. This is essential to understanding the communities that are to be served, and to help avoid incorrect assumptions or historical biases that lead to ineffective or harmful banking practices.

For example, CRA modernization properly considers the growth of internet banking. Many minority communities greatly benefit from the access to financial services this affords, but many are hindered by a lack of internet infrastructure. Conversely, many elderly and rural communities derive a greater benefit from in-person banking. Quality data and analysis of that data is a key tool the Board may use to help the banking industry and financial-services customers more effectively and efficiently.

Question 2. In considering how the CRA’s history and purpose relate to the nation’s current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

Qualifying financial activity must do more than merely “include” a benefit for low- and moderate-income persons. The clear legislative intent of the CRA is to reward financial activity that is primarily benefiting community development and serving LMI communities. Dilution of that focus would represent an improper shift from the CRA operating to benefit communities to the CRA operating to benefit the convenience of financial institutions. Qualifying activity evaluation rubrics must recognize the history of the financial industry and its relationship with minority communities such as red-lining and denial of credit access, but also be mindful of current and ongoing disparities.

Question 52. Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?

A more effective rubric would be to define “regulated” versus “unregulated” affordable housing, rather than subsidized or unsubsidized. Where affordable housing is subject to regulation derived from federal, state, and local government subsidies, LIHTC investment, or municipal affordability controls such as alternative property-tax programs, there is necessarily some administrative mechanism in place beyond the financial institution and the owner/developer of the housing to ensure that the investment is properly directed and applied. For example, a LIHTC-allocating Public Housing Authority or tax-increment financing program has existing monitoring and compliance systems in place.

Further, unsubsidized affordable housing tends to be driven by a loss of value due to age, obsolescence of systems, and market fluctuations. Naturally occurring affordable housing requires subsidies to be updated and rehabilitated: there is no other mechanism to redress loss of value. Investment in subsidized and regulated housing should continue to be more heavily rewarded with CRA credit to encourage the development of quality affordable housing stock.

Question 53. What data and calculations should the Board use to determine rental affordability? How should the Board determine affordability for single-family developments by for-profit entities?

It would be helpful for the Federal Reserve to gather data on the volume of regulated affordable housing versus unregulated affordable housing, to be able to compare the scope of housing that is subject to mandated affordability requirements such as through housing subsidies, LIHTC, and other mechanisms, versus unregulated affordable housing. The LIHTC program, and public/private partnerships that grow out of U.S. Department of Housing and Urban Development financing programs, include extensive data-gathering and reporting requirements. This highlights the important difference outlined in the response to the preceding question: regulated housing is easily monitored and measured for its impact on a community; unregulated housing offers no objective metrics. Regulated housing involving both rent controls and income controls can be adjusted as the economy of local housing markets fluctuate; unregulated housing does not control for variables, and so the outcomes may be skewed by the effects of gentrification, historical and ongoing discriminatory practices, and other socio-economic forces not easily identified without data. Rewarding investment in LIHTC properties as the compliance rubric provides metrics for analyzing investments.

The goal of achieving single-family homeownership is a worthy one. But for-profit, single-family home financing is an area of significant risk for LMI communities.³ Granting CRA credit for partnering with non-profit and governmental entities that review financing terms, counsel, and inform homebuyers, will help the affected individuals better understand what constitutes quality, affordable, single-family homes, rather than the Board relying upon geographical or census-tract designations.

Question 54. Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?

The Authority recognizes as one of its guiding principles the use of “reliable data to make evidence-based and fiscally sound decisions to support our mission.” Any articulated list of activities should be weighted toward those activities shown by data to improve and expand affordable housing. LIHTC investment, for example, is recognized by the U.S. Department of Housing and Urban Development’s Office of Policy Development and Research as “the most

³ See 02/04/20 letter from twenty-four State Attorneys General to Jelena McWilliams, Chairperson, Federal Deposit Insurance Corporation, objecting to rule changes “that will open the floodgates to exploitive and predatory loans that trap consumers in a cycle of debt.” (Pg. 16 of 19).

important resource for creating affordable housing in the United States today.”⁴ There are a spectrum of affordable housing programs, both multifamily and single-family, that have demonstrated positive outcomes: LIHTC, HOME Investment Partnerships Program, the National Housing Trust Fund, and a wide variety of state-level lending and incentive programs. Awarding CRA credit for participation in existing systems that are known to result in quality affordable housing will best accomplish the Board’s goal of assuring responsiveness to affordable housing needs.

Question 55. Should the Board change how it currently provides pro rata consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized affordable housing?

Broad geographical categorization is not a suitable proxy for rewarding data-backed investment and financing activity. A stated goal of the Federal Reserve is to “ensure strong incentives for banks to provide community development loans and investments for the creation and preservation of affordable housing, both rental and owner-occupied.”⁵ Pairing LMI census tracts with a baseline area median income (AMI) level, as proposed in the draft Regulation BB⁶, is a vague, imprecise approach, insufficiently targeted at the express goals of the CRA. While participation in regulated/subsidized housing programs carries with it an administrative burden when compared to unregulated/unsubsidized housing programs, the outcomes are measurable. Rather than put the two concepts on equal or even pro-rata footing, the CRA should be used to encourage investment in regulated/subsidized housing for this reason.

Question 56. How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?

Geographical determinations should not allow financial institutions unilateral discretion to expand their CRA assessment area to include areas that may have no or little relation to the needs of low- and moderate-income persons, or who may be so geographically dispersed that any measurable positive impact on the intended population is minimal. Additionally, allowing the portioning of geographical assessment areas could encourage redlining, potentially leaving many communities behind. Permitting such behavior could bring us back to an era where financial institutions had the option to draw red lines around—and deny financial services to—poor neighborhoods and all neighborhoods of color.

Question 60. Should the Board codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?

⁴ See 06/05/20 HUD PD&R statement accompanying Low-Income Housing Tax Credits dataset release ([Low-Income Housing Tax Credits | HUD USER](#)); see also C.P. Scally, A. Gold, and N. DuBois: *The Low Income Housing Tax Credit: How It Works and Who It Serves*, 07/12/18, Urban Institute.

⁵ FR proposed Regulation BB, pg. 117 of 186.

⁶ FR proposed Regulation BB, pg. 118 of 186

While the concept of giving financial institutions more clarity as to what constitutes “qualifying activities” is a fair act of transparency, any definitional list must not dilute the purpose of the CRA. For example, the OCC/FDIC revised regulations⁷ expanded focus from the financial needs of low- and moderate-income persons to the entire community, including low- and moderate-income communities.⁸ Codification of an enumerated list may lead to unintended outcomes where activities are not weighted relative to each other. For example, equal credit may be given to multi-family housing financing for low-income persons and volunteer activities by bank staff. Small-business loans for minority-owned businesses in distressed areas may be given equal credit to financing municipal sewage-plant upgrades. By the express terms of the CRA, encouraging investment in low- and moderate-income people and their needs must take precedent over making CRA compliance more convenient for banks. Rather than enumerating a menu of activities, the intent of the CRA is better met by the Board articulating purpose statements of goals to be accomplished. An emphasis placed on data collection and demonstrated progress toward those goals should then be rewarded with CRA credit.

Question 61. What standards should the Board consider to define “essential community needs” and “essential community infrastructure,” and should these standards be the same across all targeted geographies?

As noted in the proposed rule, the current Federal Reserve system for addressing revitalization and stabilization involves “fact-specific review by examiners” to determine “whether activities revitalize or stabilize a qualified geography.”⁹ The Authority agrees with the asserted position of community stakeholders that “large-scale development and infrastructure projects may sometimes have a limited benefit for target geographies.”¹⁰ Any definition of “essential community needs” or “essential community infrastructure” will vary widely from state to state and across regions within a state. Any articulated guidelines need to provide for the input of those communities to be served. Broader categories, such as “rural,” “urban,” and “metropolitan” may afford flexibility to then gather the input of the communities to be served. As an alternative, or in conjunction with such designations, topic areas such as drinking water safety, sanitation systems, and transportation connectivity may be articulated. In addition to deriving these definitions with the input of the affected communities, needs and infrastructure should primarily, not incidentally or tangentially, serve the target LMI community to be served.

Question 63. What types of activities should require association with a federal, state, local, or tribal government plan to demonstrate eligibility for the revitalization or stabilization of an area? What standards should apply for activities not requiring association with a federal, state, local, or tribal government plan?

The advantage of the Board weighing CRA credit in favor of revitalization and stabilization investment that requires association with government plans is analogous to the “regulated vs. unregulated” affordable housing discussion above. Governments tend to have revitalization and

⁷ See 12 CFR Parts 24, 25, 35 and 192.

⁸ See 12 CFR § 25.41.

⁹ FR proposed Regulation BB, pg. 129 of 186.

¹⁰ FR proposed Regulation BB, pg. 131 of 186.

stabilization plans that prioritize the needs of their communities. Federal Reserve examiners therefore have an external, already established tool against which investment may be measured. In the context of revitalization and stabilization, which necessarily encompasses infrastructure, commercial and business development, and transportation connectivity, higher-need investment should correspond to higher CRA scores. Compliance with governmental plans is the best metric for measuring correlation to need.

For example, as part of its process for awarding LIHTC, the Authority prepares a Qualified Action Plan that articulates the affordable housing goals of the Authority and the State of Michigan. Bank investment in the Authority's LIHTC program can therefore be connected directly to priority areas of greatest need.

Unassociated revitalization and stabilization activity tied only to a general topic area and a geography have no metric by which it can be shown to benefit LMI communities in the manner the CRA requires. Such investment should be guided towards association with a government plan by heavily weighing CRA credit in favor of such association.