NAHRO
building communities together

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February 12, 2021

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

Re: Community Reinvestment Act Advance Notice of Proposed Rulemaking [Docket No. R-1723 and RIN 7100-AF94]

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments to the Board of Governors of the Federal Reserve System (the Board) regarding its "Community Reinvestment Act Advanced Notice of Proposed Rulemaking (ANPR)" published in the *Federal Register* on October 19, 2020.

Formed in 1933, NAHRO represents over 20,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers (HCVs), and receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. NAHRO members also frequently utilize the Low-Income Housing Tax Credit program to develop new affordable housing units across the country. NAHRO has the unique ability to represent public housing agencies, local redevelopment agencies, and other affordable housing developers of all sizes and geography.

## 1. Background

Enacted as a part of the 1986 Tax Reform Act, the Low-Income Housing Tax Credit (LIHTC or housing credit) is our nation's most successful tool for encouraging private investment in the production and preservation of affordable rental housing. LIHTCs have been a critical source of equity for almost 3 million affordable housing units over the last 30 years, providing affordable homes to 6.7 million low-income families and supporting 3.25 million jobs.[1] According to the Harvard Joint Center for Housing Studies, the Low-Income Housing Tax Credit (LIHTC) program added 570,000 affordable units between 2010 and 2018 alone.[2]

Virtually no affordable rental housing development would occur without LIHTC, and it has become a vital financing component for many of the federal, state, and local affordable housing programs in which NAHRO members engage. Owners or developers of projects receiving LIHTC must meet specific

[1] National Housing Trust. "Low-Income Housing Tax Credits." Retrieved from: https://www.nationalhousingtrust.org/low-income-housing-tax-credits.

[2] Harvard Joint Center for Housing Studies. "The State of the Nation's Housing 2019." Retrieved from: https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf.



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tenant income tests and a gross rent test. This can be met by having at least 20 percent of the project's units occupied by tenants with an income of 50 percent or less of area median income (AMI) adjusted for family size, at least 40 percent of the units occupied by tenants with an income of 60 percent or less of AMI, or at least 40 percent of the units occupied by tenants with income averaging no more than 60 percent of AMI with no units occupied by tenants with income greater than 80 percent of AMI. LIHTC deals are often complex and time-consuming, however the benefit of the tax credit matched with the Community Reinvestment Act (CRA) is critical in ensuring banks remain motivated to invest in LIHTC. The CRA is an important tool that encourages banking and lending institutions to lend necessary funding to affordable housing and community development projects by receiving favorable CRA consideration for community development activities. The CRA's community development test, including the community development loan and community development investment subtests, have played a large roll in this investment and have positively motivated banks to invest in LIHTC developments.

The CRA is a significant motivator for banks to invest in the development of new, affordable units across the country through the housing credit. This is critical as the demand for affordable housing continues to grow. According to HUD's 2019 report to Congress, there were 7.7 million households with worst case housing needs throughout the country.[3] Worst case housing needs include households that: pay more than one-half of their income for rent, live in severely inadequate conditions, or both. Harvard's 2020 State of the Nation's Housing report notes that there are only 57 affordable and available units for every 100 extremely low-income renters.[4] The need for new, affordable units is clear, and the CRA has been a critical motivator for banks to invest in new affordable housing development. In 2019, total housing credit investment reached $18.3 billion,[5] an estimated 73 percent of which came from banks motivated by CRA requirements.[6] As the CRA is so critical to LIHTC investment across the country, it is important to ensure that any changes to CRA regulations do not have negative effects on a bank's motivation to invest in LIHTC, the amount of equity invested in the housing credit, and the distribution of housing credit investments throughout the country.

## 2. General Comments

*Focus on Affordable Housing Investment*

NAHRO believes it is imperative that the Board's CRA regulations have an increased focus on activities that are responsive to affordable housing needs. NAHRO recommends that the Board create regulations that specify activities that interact with existing federal, state, and local community development initiatives, including LIHTC developments and public housing preservation programs, like the Rental Assistance Demonstration (RAD). These programs are viewed as particularly responsive to affordable housing needs and increase the amount of safe, secure, housing for low-income Americans throughout the country. Increasing housing stock and affordability ensures the viability and success of underserved neighborhoods. Engaging in these affordable housing activities should be considered required qualified community development activities.

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[3] HUD. "Worse Case Housing Needs: 2019 Report to Congress." 2019. Retrieved from: https://www.huduser.gov/portal/publications/worst-case-housing-needs-2020.html.

[4] Harvard Joint Center for Housing Studies. "The State of the Nation's Housing 2020." Retrieved from: https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2020_Report_Revised_120720.pdf.

[5] CohnReznick, "Housing Tax Credit Monitor," (2020). Retrieved from: https://www.cohnreznick.com/insights/housing-tax-credit-monitor

[6] CohnReznick, "Housing tax credit investments: Investment and operational performance," (2019). Retrieved from: https://www.cohnreznick.com/insights/2019-housing-tax-credit-investment-operational-performance

*Community Development Subtests*

In its ANPR, the Board proposes to combine two community development subtests – the loan subtest and the development subtest – under one community development financing subtest. NAHRO is concerned that this could reduce the direct incentive to make LIHTC investments as banks could rely more heavily on making loans than investments. Debt financing takes place over a shorter timeframe and is less complex and more liquid than tax credit investments, which makes it a more desirable alternative to banks. As such, banks could be more inclined to focus on lending, leading to a decline in affordable housing production and preservation.

*Small Bank Threshold*

NAHRO is also concerned by the Board's proposal to change to the "small bank" threshold. The ANPR proposes increasing this threshold, allowing significantly more banks to qualify as "small" than before. This is concerning as small banks are not subject to the community development test. Changing this threshold would decrease the motivation for banks that are now considered "small" to invest in their CRA-assessment areas as they do not need to perform qualified community development activities. This will potentially have a significant impact in investment in rural, less-populated regions that may not have large banks located therein.

Further, NAHRO recommends that all banks be required to perform qualified CRA community development activities. Small banks could be required to meet a lower standard than large banks, however it is critical that these banks meet CRA community development requirements. Often, smaller banks have more impact in low-income communities through the CRA as they are more closely tied to their local community than larger banks.

*National Assessment Area for Internet Banks*

The Board's ANPR focuses on delineating new deposit- or lending-based assessment areas to internet banks that do not have physical locations. The ANPR is considering assigning internet banks to nationwide assessment areas. NAHRO agrees with the Board that internet banks without any physical branch locations should be ascribed to certain assessment areas. However, we further suggest pairing national assessment areas with incentives for serving traditionally underbanked communities. Currently, the Board is developing a list of designated areas of need based on specific criteria included within the ANPR. NAHRO recommends the Board determine a threshold requiring banks to perform a certain portion of their national assessment CRA-qualifying activities in these areas. Focusing on designated areas of need would ensure CRA activity is not focused on only the easiest-to-serve communities, but to all communities in need across the country.

*Large Non-branch Bank Assessment Areas*

Large banks with physical locations that engage in substantial activity beyond their branch-based assessment areas should be assigned additional CRA-assessment areas as well. The concern is that assessing those large banks solely on branched-based assessment areas would result in most CRA investments being targeted in CRA-hotspots – areas that are easier to invest in, such as wealthier cities. This would limit a bank's CRA activities in rural, less-populated areas or lower-income areas, where banking activity occurs but no bank branches may be located. The proposal needs a stronger focus to serve designated communities of need and not only areas where investment or lending is easiest. NAHRO recommends that large non-branch banks that have at least 50 percent of their deposits originating from outside of a facility-based assessment area have the option to select a statewide assessment area for any state in which they derive 5 percent of their total deposits. This would promote more equitable investments across a range and variety of geographies.

### 3. Specific Questions

**QUESTION 8.** *Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?*

NAHRO recommends that large banks with physical locations that engage in substantial activity beyond their branch-based assessment areas be assigned additional CRA-assessment areas. Large non-branch banks that have at least 50 percent of their deposits originating from outside a facility-based assessment area should have the option to select a statewide assessment area for any state in which they derive 5 percent of their total deposits. This would ensure more equitable investments across a range and variety of geographies.

***QUESTION 10.*** *How should retail lending and community development activities in potential nationwide assessment areas be considered when evaluating an internet bank's overall CRA performance?*

NAHRO suggests pairing national assessment areas with incentives for serving traditionally underbanked communities. Currently, the Board is developing a list of designated areas of need based on specific criteria included within the ANPR. NAHRO recommends the Board determine a threshold requiring banks to perform a certain portion of their national assessment CRA-qualifying activities in these areas. Focusing on designated areas would ensure CRA activity is focused not only on the easiest-to-serve communities, but to all communities in need across the country.

***QUESTION 42****. Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?*

NAHRO does not believe the Board should combine community development loans and investments under one subtest. NAHRO is concerned that this could reduce the direct incentive to make LIHTC investments as banks could rely more heavily on making loans than investments and still meet their CRA requirements. Debt financing takes place over a shorter timeframe and is less complex and more liquid than tax credit investments, which makes it a more desirable alternative to banks. As such, banks could be more inclined to focus on loans, leading to a decline in affordable housing production and preservation.

Measures that push larger banks toward lending would most likely push them away from investing. According to Ernst and Young, up to 85 percent of LIHTC investments are made by banks that are "motivated to meet their CRA obligations."[7] If there are easier ways for banks to meet their CRA obligations outside of LIHTC investment, then investment in LIHTC would naturally decrease.

***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?*

[7] Ernst & Young. "Low Income Housing Tax Credit Investment Survey – October 2009," (2009). Retrieved from: https://www.novoco.com/sites/default/files/atoms/files/ey_study_carryback_100809.pdf.

NAHRO recommends that the Board include subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing for CRA considerations.

Unsubsidized affordable rental housing should receive favorable consideration if the property's rents are affordable when the financing is committed, and the property meets one of the following three standards:

1. The property is in an LMI neighborhood (i.e., census tract).
2. Most renters in the neighborhood are LMI and most rents in the neighborhood are affordable.
3. The owner agrees to maintain affordability to LMI renters for the life of the financing.[8]

***<u>QUESTION 54</u>.*** *Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?*

NAHRO recommends that the Board create regulations that specify activities that are particularly responsive to affordable housing needs, including LIHTC development and public housing preservation programs, like the Rental Assistance Demonstration (RAD). These programs are viewed as particularly responsive to affordable housing needs and increase the amount of safe, secure, housing for low-income Americans throughout the country. Increasing housing stock and affordability ensures the viability and success of underserved neighborhoods.

Although the public housing inventory is an integral component of our nation's infrastructure, chronic underfunding of the Public Housing Capital and Operating Funds through appropriations, coupled with burdensome over-regulation, has placed the inventory at risk. Residents in aging units face increasingly unhealthy and unsafe conditions due to a mounting capital needs backlog. Sadly, Capital Fund appropriations, which provide funding for the rehabilitation and modernization of public housing units, lag dangerously behind accruing modernization needs. At the same time, funding for operations – through the Operating Fund – endured deep cuts over the past decade, forcing PHAs to forgo critical maintenance functions, further jeopardizing the long-term sustainability of many properties.

Many Public Housing Agencies (PHAs) have utilized RAD, which permits PHAs to convert their public housing properties to the Section 8 platform. This allows for increased access to private capital for rehabilitation and modernization. Many PHAs utilize housing credits during the RAD conversion process to redevelop their public housing properties. Specifying the use of the housing credit for RAD transactions should be viewed by the Board as an activity that is particularly responsive to affordable housing needs.

Aside from public housing preservation, LIHTC investments writ large should also be considered particularly responsive to affordable housing needs. LIHTC is our nation's most successful tool for encouraging private investment in the production and preservation of affordable rental housing and has been an important financing tool for PHAs to upgrade their public housing stock and develop non-traditional affordable housing developments. The Housing Credit has been a critical source of equity for almost 3 million affordable housing units over the last 30 years, providing affordable homes to 6.7 million low-income families and supporting 3.25 million jobs. Virtually no affordable rental housing development would occur without LIHTC, and the Housing Credit is now a vital financing component for many of the federal, state, and local affordable housing.

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[8] For more information, see the full proposal from the National Association of Affordable Housing Lenders here: http://naahl.org/wp-content/uploads/2017/12/Unsubsidized-affordable-rental-housing-under-CRA-v3.pdf

***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?*

For the purposes of the Board's CRA regulations, it is critical that "essential community needs" and "essential community infrastructure" result in direct benefits and positive impacts to low-income communities. NAHRO agrees with community stakeholders who note that "large-scale development and infrastructure projects may sometimes have limited benefits for targeted geographies." As such, NAHRO believes there should be a requirement or test for banks to demonstrate their investment in these activities is predominately, not partially, benefitting low- to moderate-income (LMI) areas and that there is not a significant chance that these investments may have a greater benefit to non-LMI areas than neighboring LMI areas.

## 4. Conclusion

NAHRO appreciates the opportunity to comment on the Board's CRA Advanced Notice of Proposed Rulemaking. The CRA is a substantial motivator for banks to invest in LIHTC, a critical source of equity for the development of new affordable housing. As the CRA is so important to LIHTC investment across the country, it is necessary to ensure any changes to CRA regulations do not have negative effects on a bank's motivation to invest in LIHTC, the overall amount of equity invested in the housing credit, and the distribution of housing credit investments throughout the country. LIHTC is one of the most important tools available for developing new affordable housing units. Investment in the housing credit will be critical as the demand for affordable housing continues to grow. Strong CRA regulations that motivate banks to invest in LIHTC are imperative to ensure this need is met.

Thank you,

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