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

The Affordable Housing Tax Credit Coalition (AHTCC)[1] appreciates the opportunity to comment on the Community Reinvestment Act (CRA) Advance Notice of Proposed Rulemaking (ANPR) issued by the Board of Governors of the Federal Reserve System (Board) in October 2020. Established in 1988, the AHTCC is a leading trade association of nearly 200 organizations and businesses that advocate for affordable housing financed using the Low-Income Housing Tax Credit (Housing Credit). AHTCC members represent the full spectrum of those involved in providing affordable housing, including syndicators, developers, investors, state allocating agencies, and affiliated businesses and non-profits. Together, AHTCC members have financed or developed well over half of our nation's nearly 3.5 million Housing Credit apartments.

While the Housing Credit finances virtually all new affordable housing, CRA motivates the vast majority of these investments – meaning our nation's ability to develop and preserve affordable housing is closely tied to and impacted by CRA. Total Housing Credit investment reached $18.3 billion in 2019,[2] an estimated 73 percent of which came from banks motivated by CRA requirements.[3] According to CohnReznick, a national accounting firm, "the largest single determinant of Housing Credit pricing is based on the CRA investment test value of a given property's location," with pricing differentials of 10 to 15 percent between Housing Credit developments in CRA "hot spots" and "deserts." Any changes to CRA could significantly affect the motivation to invest in the Housing Credit, the amount of equity invested, and the distribution of investments – and ultimately on our ability to build and preserve affordable housing.

The AHTCC appreciates the Board's goal to more effectively meet the needs of low- and moderate-income (LMI) communities, and we have provided recommendations that we believe will help the Board ensure the CRA continues to incentivize robust investment in affordable housing. Furthermore, we are hopeful that the Board's efforts will provide an opportunity for all three CRA regulators, including the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), to work toward a single rule that expands and strengthens CRA and enables our nation's financial services institutions to better respond to community needs.

<u>Impact of the Low-Income Housing Tax Credit</u>

The Housing Credit is our nation's primary tool to finance the development and preservation of rental housing that is affordable to low-income households, including essential workers, veterans, seniors, working families, people with special needs, and people who were formerly homeless. A highly efficient

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[1] Our comments do not represent the views of any individual member organization but are supported by the AHTCC as a coalition in our mission to support affordable housing.
[2] CohnReznick, "Housing Tax Credit Monitor," (2020). *Retrieved from:* https://www.cohnreznick.com/insights/housing-tax-credit-monitor
[3] CohnReznick, "Housing tax credit investments: Investment and operational performance," (2019). *Retrieved from:* https://www.cohnreznick.com/insights/2019-housing-tax-credit-investment-operational-performance

public-private partnership, the Housing Credit has financed nearly 3.5 million affordable homes since its inception in 1986,[4] serving a total of eight million households.[5] The households served by the program have a median annual income of less than $18,000,[6] and if forced to pay market-rate rent, many would be just one unforeseen expense away from being unable to pay rent and facing eviction.

With housing stability, residents of affordable housing experience improved well-being and economic benefits, according to numerous studies. Affordable housing helps low-income individuals gain employment and keep their jobs while also leading to better health outcomes and reductions in domestic violence and substance abuse.[7] Housing Credit properties are associated with educational success; for each additional year a child lives in a Housing Credit property, his or her chance of attending college for four years or more increases by 3.5 percent, and future earnings increase by 3.2 percent.[8]

The Housing Credit is also transformative for the broader communities in which properties are located. Since its inception, Housing Credit development has supported 5.2 million jobs, and generated $206 billion in tax revenue and $593 billion in wages and business income.[9] By devoting less income to rent, residents have more to spend in support of the local economy – one study shows Housing Credit properties boost local purchasing power by one-third, contributing to the retail vitality of the neighborhood and the availability of goods and services to residents.[10] The introduction of affordable housing into a low-income neighborhood is also associated with lower crime rates, decreased segregation, and a 6.5 percent increase in property values.[11]

Despite the Housing Credit's success, the need for affordable housing continues to outpace supply. The cost of labor, land, and materials continues to rise, making the development of only high-end properties financially feasible without public subsidy in many parts of the country. Meanwhile, real estate trends show a rapid decline in the number of low-cost rentals.[12] Between 2000 and 2018, the proportion of low-cost rentals declined from 36 percent of the total rental stock to just 23 percent.[13] As a result, since 2009, over 10 million renter households (nearly one in four) paid more than 50 percent of their income on rent.[14] This figure was projected to rise to more than 14.8 million households by 2025,[15] but with millions now

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[4] National Council of State Housing Agencies, "State HFA Factbook: 2019 NCSHA Annual Survey Results," (2020). *Retrieved from: https://www.ncsha.org/resource/state-hfa-factbook/*

[5] ACTION Coalition, "The Low-income Housing Tax Credit's Impact in the United States," (2020). *Retrieved from: https://static1.squarespace.com/static/566ee654bfe8736211c559eb/t/5f49371ab849107398486479/1598633756198/ACTION-NATIONAL-2020.pdf*

[6] U.S. Department of Housing and Urban Development, "Understanding Whom the LIHTC Serves: Data on Tenants in LIHTC Units as of December 31, 2017," (2029). *Retrieved from: https://www.huduser.gov/portal/sites/default/files/pdf/LIHTC-TenantReport-2017.pdf*

[7] Center on Budget and Policy Priorities, "Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children," (2015). *Retrieved from: https://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous.pdf*

[8] Elena Derby, "Does Growing Up in Tax-Subsidized Housing Lead to Higher Earnings and Educational Attainment?," (2020). *Retrieved from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3491787*

[9] ACTION Coalition, "The Low-income Housing Tax Credit's Impact in the United States," (2020). *Retrieved from: https://static1.squarespace.com/static/566ee654bfe8736211c559eb/t/5f49371ab849107398486479/1598633756198/ACTION-NATIONAL-2020.pdf*

[10] Enterprise and Local Initiatives Support Corporation (LISC), "Affordable Housing for Families and Neighborhoods: The Value of Low-Income Housing Tax Credits in New York City," (2010). *Retrieved from: https://www.enterprisecommunity.org/download?fid=8099&nid=3831*

[11] Rebecca Diamond and Tim McQuade, "Who Wants Affordable Housing in their Backyard? An Equilibrium Analysis of Low Income Property Development," (2015). *Retrieved from: https://www.gsb.stanford.edu/gsb-cmis/gsb-cmis-download-auth/405056*

[12] Joint Center for Housing Studies of Harvard University, "America's Rental Housing 2020," (2020). *Retrieved from: https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf*

[13] Hermann, Alexander, "The Continuing Decline of Low-Cost Rentals," (2020). *Retrieved from: https://www.jchs.harvard.edu/blog/the-continuing-decline-of-low-cost-rentals*

[14] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2020," (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*

[15] Enterprise Community Partners (Enterprise) and JCHS, "Projecting Trends in Severely Cost-Burdened Renters: 2015-2025," (2015). *Retrieved from: http://www.jchs.harvard.edu/sites/default/files/projecting_trends_in_severely_cost-burdened_renters_final.pdf*

out of work and feeling the strain of economic uncertainty due to the COVID-19 crisis, those numbers are likely to grow even more rapidly.

Summary of Recommendations

Overview:

The Housing Credit is integral to the nation's affordable housing delivery system and provides far-reaching impacts for LMI households and communities. As the nation's affordable housing crisis continues to grow, it is increasingly essential that any changes to CRA do not decrease the incentive to invest in the Housing Credit. Our recommendations below focus first and foremost on ensuring robust investment in the Housing Credit.

The Housing Credit is also relatively unique within the framework of CRA-eligible community development investments. The vast majority of the Housing Credit investor market is driven by banks seeking CRA credit, which directly impacts how much equity is provided to finance developments. There are pricing differentials of 10 to 15 percent between Housing Credit developments in CRA "hot spots" and "deserts," and at some points in the program's history, the pricing differential was as high as 35 percent.[16] As explained in Freddie Mac's Duty to Serve Plan, a typical rural "CRA desert" Housing Credit transaction may have a $540,000 funding gap compared to a Housing Credit transaction in a nearby city, rendering the rural property financially infeasible.[17]

The Housing Credit is also unique in its responsiveness to specific to state and local needs, as already determined by state agencies. Housing Credits are a limited resource and are competitively allocated to developers by state or local housing agencies in accordance with Qualified Allocation Plans, which are intended to address the areas of the state that are most in need of affordable housing. Housing Credits are also a limited resource set by Congress, with much higher demand than supply; only properties that best serve state and local needs will receive Housing Credits.

The suggestions we make below are centered on protecting this vital resource in any new regulatory proposal and ensuring that Housing Credit investment remains robust in all parts of the country, including underserved rural communities.

Community Development Financing Subtest Recommendations:

- Eliminating the separate investment test and instead combining loans and investment under one community development financing subtest could have the effect of reducing Housing Credit investment unless mitigating strategies are put in place. We urge the Board to retain the separate investment test, and if it is not retained, we suggest the following mitigating strategies:
    - Strongly **encourage community development investment** by rewarding large banks that meet a benchmark level of community development investments as a portion of their total community development activities.

[16] CohnReznick, "Housing tax credit investments: Investment and operational performance," (2020). *Retrieved from: https://www.cohnreznick.com/insights/2019-housing-tax-credit-investment-operational-performance*
[17] Freddie Mac, "Freddie Mac Duty to Serve Underserved Markets Plan For 2018 –2021," (2020). Retrieved from: *https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/FreddieMacDTSPlan_2018-2021.pdf*

- Allow examiners to **request an explanation if institution-level community development investment decreases significantly** compared to the previous assessment period. Explanations could include safety and soundness, Part 24 or other regulatory constraints, or lack of available investments.

- Expand the Impact Score assessments to a five-point scale, **giving Housing Credit investment and other community development investments the highest impact score**.[18]

- More fully integrate Impact Scores into the assessment methodology by setting a **high-impact community development benchmark at the state or institution level**.[19]

<u>Assessment Area Recommendations</u>

- We appreciate that the ANPR proposes that a bank will receive credit at the state level for any community development activities outside of assessment areas. However, to adequately incentivize activity outside of assessment areas and due to the unique aspects of the Housing Credit detailed above, we believe banks should **receive credit at the assessment area level for statewide Housing Credit investments made outside of an assessment area**.[20]

- To the extent the Board permits nationwide assessment areas for certain banks, we suggest pairing national assessment areas with **incentives for serving traditionally underbanked communities.** This would help ensure banks with national assessment areas are furthering the goals of CRA, rather than focusing activities on only the easiest-to-serve communities.[21]

In addition to our recommendations above, we strongly suggest that any final CRA regulations are first closely analyzed to **ensure they will not have a negative impact on Housing Credit investment**.

AHTCC Responses to Select Questions in ANPR Section II. CRA Background

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?*

In addition to better addressing the credit needs of minority individuals and communities, it is important to also provide these communities with better access to affordable housing. People of color are disproportionately housing cost-burdened, and the COVID-19 crisis is further exacerbating this disparity. Prior to the COVID-19 crisis, black and Hispanic renters had respectively nine percent and six percent higher rates of severe housing cost burden compared to white renters.[22] As of early December 2020, 13 percent of all white renters were behind on rent, while 28 percent of all black renters and 24 percent of all Hispanic or Latino renters were behind.[23]

[18] See more in our response to Question 42.
[19] See more in our response to Question 46.
[20] See more in our response to Question 45.
[21] See more in our response to Question 10.
[22] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2020," (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*
[23] United States' Census Bureau, "Week 20 Household Pulse Survey: November 25 – December 7," (2020). *Retrieved from:* *https://www.census.gov/data/tables/2020/demo/hhp/hhp20.html*

Federally subsidized affordable housing, including the Housing Credit, is an important tool to meet the affordable housing needs of low-income Americans, and especially people of color. People of color make up a disproportionately large share of Housing Credit residents – at least 31 percent of heads of households in Housing Credit properties are black, and at least 17 percent are Hispanic,[24] while respectively just 12 percent and 14 percent of all renter households are headed by people who are black or Hispanic.[25] Much of this imbalance is due to persistently high rates of poverty among people of color, which have resulted in part from the practice of redlining, which the CRA was designed to counteract.

Considering the disproportionate need for affordable housing among people of color and the CRA's statutory purpose, we urge the Board to ensure that any changes to CRA will expand the incentive to engage in community development activities that expand or preserve the nation's supply of affordable housing, in which the Housing Credit plays a key role.

AHTCC Responses to Select Questions in
ANPR Section III. Assessment Areas

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?*

To the extent the Board permits nationwide assessment areas for certain banks, we suggest pairing national assessment areas with incentives for targeting community development activities to traditionally underserved communities. The Board has already developed an initial list of designated areas of need, which could be the starting point for geographic specifications. An incentive to perform a certain portion of CRA-qualifying community development activities in designated areas of need would help ensure banks with national assessment areas are robustly furthering the goals of CRA, rather than focusing activities in easier-to-serve communities.

AHTCC Responses to Select Questions in
ANPR Section VI. Retail Lending Subtest Definitions and Qualifying Activities

QUESTION 38. *Should the Board provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Board continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?*

We support the Board's efforts to limit the churning of mortgage loans for CRA credit and suggest the Board provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate), which would provide a more streamlined review process and the greatest clarity.

Considering the limited direct benefit for low-income households, we are also in favor of the ANPR proposal to include the purchase of mortgage loans under the Retail Test, rather than the Community Development Test. Including mortgage loan purchases within the Community Development Test could

[24] U.S. Department of Housing and Urban Development, "Understanding Whom the LIHTC Serves: Data on Tenants in LIHTC Units as of December 31, 2017," (2019). *Retrieved from:* https://www.huduser.gov/portal/sites/default/files/pdf/LIHTC-TenantReport-2017.pdf
[25] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2020 Appendix Data Table," (2020). *Retrieved from:* https://www.jchs.harvard.edu/state-nations-housing-2020

cause the crowding out activities that are more technically and financially complex, higher risk, and require higher capital reserves, but that provide more expansive benefits for low-income households and communities.

AHTCC Responses to Select Questions in ANPR Section VII: Community Development Test: Evaluation of Community Development Financing and Community Development Services Performance

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?*

The separate investment test has been critical in motivating banks to put in place the expertise and resources to participate in the Housing Credit market. For that reason, we **strongly argue the Board retain the separate investment test**, which would ensure emerging banks retain the incentive to develop sophisticated community investment strategies.

Specifically, we are concerned that combining loans and investments into one test could reduce the direct incentive to make Housing Credit investments. Under the proposed methodology, banks would weigh the benefits of investment against debt in determining which CRA-qualifying activities to pursue. In general, debt financing takes place over a shorter duration and is lower risk, less complex, and more liquid than tax credit investments, making it a more desirable alternative. As a result, the Board's proposed methodology is likely to initiate a substitution effect of loans over other types of CRA activities that are less impactful on capital charges. With less incentive to make Housing Credit investments, affordable housing production and preservation could ultimately decrease.

If a separate investment test is not retained, strong parameters should be put in place to counteract the potential negative impact on Housing Credit investment volume. We suggest the following strategies, which could be used individually or together:

- **Strongly encourage large banks to devote a certain percentage of their community development activities toward community development investments**. The Board, using historic CRA performance data across all institutions, could establish a benchmark level of investment activity (as a percentage of a bank's total community development activity) that would be taken into consideration during the performance context review. For example, a bank that devotes a larger portion of its community development activity toward investments than its peer institutions could be eligible for an increase in its overall Community Development Financing Subtest score, particularly if the bank is between two possible ratings. Alternatively, a high investment benchmark could be considered as a factor for an outstanding rating. The potential effect of the investment benchmark on the bank's rating should be quantifiable and predetermined to the extent possible.

- **Review a bank's institutional investment track record against its assessment period performance.** If a bank's volume of CRA eligible investments, particularly Housing Credit investments, have declined significantly from one period to the next (taking into account cyclical patterns and the safety and soundness of the institution), then an examiner should be able to request an explanation for the variance. Explanations could include safety and soundness, Part 24 or other regulatory constraints, or lack of available investments. Reviewing banks' institutional investment track record against assessment period performance would ensure that changes to CRA regulations do not have the unintended consequence of decreasing community development investment, particularly Housing Credit investment, especially in the early years of newly implemented regulations.

- **Clarify that Housing Credit investments will receive the highest possible impact scores under the performance context review**. As discussed in response to Question 47, the three-point scale may not be nuanced enough to adequately differentiate and reward the most impactful community development activities. We suggest expanding this scale (e.g., to five points), and providing a unique assignment at the top of the scale for investment activities, particularly Housing Credit investments. In our response to Question 46, we also suggest further integrating impact scores into the community development evaluation.

In short, in the absence of a separate investment test, we believe it will be critical to provide special treatment for investments in general, and specifically for Housing Credit investments. In addition to our recommendations above, we **strongly urge that any final CRA regulations are first closely analyzed to ensure they will not have a negative impact on Housing Credit investment**.

QUESTION 43. *For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?*

We support the Board's suggestion to use deposits as the denominator of a community development financing or investment-specific ratio. However, we suggest honing the definition of deposits to include retail domestic deposits and consumer deposits specifically, and we recommend that deposits within assessment areas be based on the address of depositors.

QUESTION 44. *For wholesale and limited purpose banks, is there an appropriate measure of financial capacity for these banks, as an alternative to using deposits?*

We support evaluating wholesale and limited purpose banks under the Community Development Test, as the Board proposes. We recommend that the Board also consider, for banks that do not have a large base of deposits, to undertake an analysis of such banks' historic community development activities (both loans and investments) to establish peer comparators; and from this data, create benchmarks which banks should strive to achieve for Satisfactory or Outstanding ratings. This strategy would effectively harness banks' ability to manage risk and compete efficiently.

QUESTION 45. *Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment areas and over time?*

We appreciate that benchmarks could provide some additional context for evaluators analyzing community development efforts. However, without correcting for CRA "hot spots" and "deserts," it stands to reason that local benchmarks could have the effect of exacerbating current distortions in the market, depending on how benchmarks are utilized – an assessment area already receiving a relatively high level of community development activities against deposits would have a high benchmark, motivating banks to focus on that area to meet the benchmark, and an assessment area receiving a low level of community development activities against deposits would have a low benchmark, allowing minimal investment or lending to meet the standard. As is already explained in the ANPR, they "could result in performance standards that are very low in some assessment areas and very high in others," rendering the benchmarks less meaningful.

We suggest first utilizing local benchmarks to help address CRA "hot spots" and "deserts," incentivizing banks to increase activities in underserved communities, and then instituting national and regional benchmarks. Regional benchmarks may be necessary if the two national metrics (metro and non-metro) do not capture enough nuance to be used as a meaningful comparator for the majority of communities.

To address CRA "hot spots" and "deserts," we suggest allowing banks to receive credit, <u>at the assessment area level</u>, for Housing Credit investments made anywhere within a state in which a bank has one or more assessment areas. While we appreciate that the ANPR proposes that a bank will receive credit at the state level for any community development loans or investments in the state, we believe that it would provide more certainty to a bank if it were clear that such investments would be treated as serving the assessment area(s) in that state. If a bank has more than one assessment area within the state or multi-state metropolitan statistical area, the credit could be allocated evenly to each assessment area. This treatment would ensure underserved communities not within local assessment areas are still able to benefit from the incentive that the CRA provides, more evenly distributing Housing Credit investments geographically and helping to limit CRA pricing distortions.

<u>QUESTION 46</u>. *How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?*

As we explained in our response to Question 45, we recommend the evaluation methodology avoid local community development benchmarks to directly determine thresholds for future community development. A relatively low level of historic community development should not be an argument for a low level in the future but rather for increased development to address historic disinvestment. Further analysis should inform how benchmarks can encompass the need for more community development than has historically been provided.

Banks should be incentivized to make a minimum amount of community development investment, particularly if a separate investment test is not retained:

- A community development investment benchmark set at the institution level would help to determine if banks are providing an adequate amount of community development investment,

- A high-impact community development benchmark set at the state or institution level would help to integrate impact scores more fully into the evaluation framework and ensure that banks are not meeting their evaluation requirements through only the easiest or least impactful activities, and

- The regulations should provide for Housing Credit investments to receive the highest possible impact scores, considering the Housing Credit's unique structure and tested ability to respond to state and local needs.

QUESTION 47. *Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?*

We support the Board's decision to avoid using multipliers in the community development evaluation methodology, as they could lead to a bank decreasing its overall investment activity. We also support the Board's proposal to include supplementary metrics to detail banks' investment, loans, and contributions, which would provide additional transparency. As we explain in our response to Question 42, mitigating features should also be established to prevent a substitution effect of loans over investment, should the separate investment test be eliminated.

We also support the use of Impact Scores to incentivize high-impact activities, but are concerned that a three-point scale may not provide enough gradations to adequately capture differences in impact and community responsiveness. We suggest a gradation of five points, where the highest scores are reserved for investments, and the top score is reserved for only the highest-impact investments, necessarily including Housing Credit investments. To provide additional clarity for banks, the Board should develop a list of pre-approved activities and their corresponding impact scores.

We also request additional information regarding how impact scores would be used. It appears from the ANPR that the primary purpose would be determining the assessment area rating for the Community Development Test when two ratings are possible. We believe the scores should be more deeply integrated into the primary evaluation to better incentivize responsive and impactful activities. For example, the Board could develop a high-impact community development benchmark at the state or institution level that would and incentivize banks to demonstrate that a certain percentage of its community development activities are scored at the highest level of impact, as we also include in Question 46. Incentives could equate to additional points or tie to the achievement of an outstanding rating at either the state or institution level.

Impact scores and supplementary metrics will help quantify the otherwise subjective notion of "impact." While we agree that subjective evaluation is important to fully discern a bank's responsiveness to communities, the efficacy of any subjective, qualitative rating determined by evaluators will hinge on the evaluators' understanding of community development financing. Community development is complex, and we appreciate the Board's effort to provide evaluators with additional information about a bank's activities and local and national conditions. However, we urge the Board to also consider what training may be necessary to ensure evaluators have the requisite background to make appropriate subjective evaluations regarding community development activities and impact.

AHTCC Responses to Select Questions in
ANPR Section VIII. Community Development Test Qualifying Activities and Geographies

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?*

We appreciate the Board's goal to ensure strong incentives for banks to provide community development loans and investments for the creation and preservation of affordable housing, and we support the definition of subsidized affordable housing included within the ANPR.

We believe the definition of unsubsidized affordable rental housing should include parameters to help ensure that it serves LMI individuals. In agreement with the National Association of Affordable Housing Lenders, we support the proposal that rental housing not subject to tenant income restrictions should be considered as affordable housing if most of the property's rents are affordable when the financing is committed, and the property meets *one* of the following three additional standards:

1. The property is located in an LMI neighborhood (i.e., census tract),
2. Most renters in the neighborhood are LMI and most rents in the neighborhood are affordable, or
3. The owner agrees to maintain affordability to LMI renters for the life of the financing.[26]

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

We support specifying certain activities as particularly responsive to affordable housing needs in order to provide added clarity and certainty for banks, and strongly urge that the Housing Credit be included. The Housing Credit has a long and tested track record, having financed nearly 3.5 million affordable homes since it was established in 1986. Housing Credits are a limited resource allocated competitively based on state-specific affordable housing needs, meaning only the proposals deemed to be most impactful and aligned with state-set affordable housing goals are awarded Housing Credits.

The evidence that the Housing Credit serves the most underinvested communities is clear. In some of the most underserved rural areas, the Housing Credit provides a disproportionately high percentage of the multifamily rental housing stock. For example, in rural regions of Persistent Poverty Counties[27] and the Lower Mississippi Delta,[28] the Housing Credit provides 40 percent and 39 percent of all multifamily rental housing, respectively – an amount over three times higher than the national average and one and a half times higher than the average in other rural areas. For these reasons and more detailed in our introductory comments, we argue that the Housing Credit is particularly responsive to affordable housing needs.

We agree that housing for very low-income, homeless, and other harder to serve populations should also be considered particularly responsive, considering the need for properties serving the aforementioned groups and the added incentive necessary to bring them to fruition due to the high cost of development and operations. We suggest "harder to serve" populations include veterans, people with disabilities, and seniors. We also suggest considering a geographic scope for particularly responsive affordable housing, which could focus on high-opportunity, rural, and tribal areas, again due to the increased cost or difficulty in providing affordable housing in these areas.

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[26] 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

[27] PPCs are counties for which decennial census data shows poverty rates of at least 20 percent since 1990. The study found that, in rural regions of PPCs, the Housing Credit provides 40 percent of all multifamily rental housing - an amount three times higher than the national average and one and a half times higher than the average in other rural areas. Sourced from: Freddie Mac, "Spotlight on Underserved Markets: LIHTC in Rural Persistent Poverty Counties," (2020). *Retrieved from: https://mf.freddiemac.com/docs/lihtc_persistent_poverty_counties.pdf?_ga=2.144102133.1178134337.1608330267-1072611062.1607617388*

[28] Freddie Mac, "Spotlight on Underserved Markets: LIHTC in Rural Lower Mississippi Delta," (2019). *Retrieved from: https://mf.freddiemac.com/docs/lihtc_in_lower_mississippi_delta.pdf*

<u>QUESTION 55</u>. *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?*

We suggest allowing full credit for any property in which 20 percent of units are set aside for low-income households at or below 60 percent of area median income if the property also receives funding from a federal, state, or local government affordable housing policy or program. For unsubsidized affordable rental housing, we suggest pro-rata credit for properties in which 20 to 50 percent of units are affordable to low-income households and full credit for properties in which over 50 percent of homes are affordable to low-income households.

<u>QUESTION 61.</u> *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?*

The AHTCC believes that CRA should incentivize activities that have significant, direct impacts for low-income communities and families. Furthermore, we agree with stakeholders, which noted in the ANPR, "large-scale development and infrastructure projects may sometimes have limited benefit for targeted geographies." We suggest that essential infrastructure and essential community facilities qualify for CRA credit only if they primarily benefit low-income individuals and communities.

In relation to the Housing Credit, the two elements of the current CRA evaluation methodology that primarily drive banks to invest in affordable housing are the separate investment test and the limited number of qualifying activities that are included within the investment test. Eliminating the separate investment test, while simultaneously expanding the array of activities that qualify for CRA credit under the Community Development Test, could have the effect of displacing Housing Credit investments with activities that may also be less impactful for low-income communities and households and may allow banks to meet CRA requirements while doing less to meet community needs. Considering the vast and growing need for affordable housing and the Housing Credit's key role in financing affordable housing, we urge the Board to put it place safeguards to ensure any changes to CRA regulations do not decrease the incentive to invest in the Housing Credit.

<u>QUESTION 68</u>. *Will the approach of considering activities in "eligible states and territories" and "eligible regions" provide greater certainty and clarity regarding the consideration of activities outside of assessment areas, while maintaining an emphasis on activities within assessment areas via the community development financing metric?*

The approach proposed in the ANPR may provide additional certainty and clarity. However, it may not adequately address the disparities between CRA "hot spots" and "deserts," which should be a priority for CRA reform.[29] Because the Board is still determining how evaluators will consider community development activities made at the state level but outside of assessment areas, it is not possible to know if there will be adequate incentive to act outside of assessment areas. We suggest allowing state-wide Housing Credit investments made outside of assessment areas to count toward the <u>assessment area rating</u>, as we discussed in response to Question 45.

[29] We further discuss CRA hot spots and deserts in our comments on ANPR Section III.

We also recommend that, in the next stage of rulemaking, the Board provide additional guidance on methodologies for providing banks credit for investing in Housing Credit funds in which only a portion of the activities will necessarily lie within the banks' designated assessment areas (e.g., multi-state, regional or national funds).

QUESTION 69. *Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?*

We support the inclusion of the designated areas of need and the criteria defined in the ANPR. We particularly support including rural areas, tribal areas, and areas where the local benchmark for the community development financing metric is below an established threshold. We also suggest two additions to the list of designated areas of need: distressed and underserved nonmetropolitan middle-income geographies, and Presidentially Declared Disaster Areas.

We also recommend that the designated areas of need retain their designation long enough to plan for multi-year projects. For example, any designated areas of need identified at the start of a bank's assessment period should receive credit even if the designation has changed by the end of the assessment period. The bank should also receive credit in any new designated areas of need that may be determined during its assessment period.

QUESTION 71. *Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?*

We support the development of an illustrative, non-exhaustive list of activities that meet the requirements for CRA, in order to provide banks with as much clarity and certainty as possible. Banks should also have the ability to request additional guidance on transactions that may not fit cleanly within the definition of an eligible activity. We urge that the Housing Credit be included on the list of eligible activities, considering its demonstrated ability to further the goals of CRA.

AHTCC Responses to Select Questions in ANPR Section X: Ratings

QUESTION 82. *Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area conclusions? Should examiners have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?*

Several aspects of the proposal in the ANPR would increase transparency. However, it is unclear to what extent and how transparently features focused on impact, such as impact scores or subjective examiner assessments, will be integrated into the evaluation, which will be essential to ensure the best possible result from CRA regulations. We further discuss this concept in response to Question 47.

We also believe an examiner should include within the evaluation the extent to which a bank's volume of CRA-eligible investments, particularly Housing Credit investments, may have declined (if applicable) from one period to the next (taking into account cyclical patterns and the safety and soundness of the institution). Reviewing banks' institutional investment track record against assessment period performance would ensure that CRA reform does not have the effect of decreasing community development investment, particularly Housing Credit investment, especially in the early years of newly implemented regulations, as we further discuss in response to Question 42.

QUESTION 83. *For large banks, is the proposed approach sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels?*

While the standardized approach would increase transparency, we suggest that the Community Development Test and Retail test be weighted evenly to help ensure the Board's proposal will provide robust community benefit and maintain at least the current level of investment in community development. Further, we hope the Board will consider our parameters detailed under Question 42.

QUESTION 84. *Should the adjusted score approach be used to incorporate out-of-assessment area community development activities into state and institution ratings? What other options should the Board consider?*

We appreciate the Board's efforts to incorporate into the evaluation methodology activities outside of assessment areas and believe that incentivizing out-of-assessment area community development investments will require providing sufficient certainty to banks regarding the credit they will receive. As we describe in response to Question 45, one option would be to allow banks to receive credit at the assessment area level for Housing Credit investments made within a state in which a bank has one or more assessment areas. If a bank has more than one assessment area within the state, the credit could be allocated evenly to each assessment area. This treatment would provide banks the certainty needed to make investments outside of assessment areas while evening current Housing Credit pricing differentials and benefiting communities that are not currently able to benefit from the powerful incentive that CRA provides.

Conclusion

CRA has played a profound role in supporting robust affordable housing investment and contributing to the Housing Credit's three decades of success in providing affordable housing for millions of households in need. We urge the Board to ensure that any changes to CRA will support at least as much community benefit, affordable housing, and Housing Credit investment as the CRA currently provides. As the affordable housing crisis continues to worsen, strong CRA incentives are needed now more than ever.

If you have any questions regarding these comments, please contact Emily Cadik, Executive Director, at emily.cadik@taxcreditcoalition.org or 202.935.1217.

Sincerely,

Emily Cadik

Emily Cadik
Executive Director
Affordable Housing Tax Credit Coalition