February 15, 2021

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

Re: Docket No. R-1723 and RIN 7100-AF94, Community Reinvestment Act Advance Notice of Proposed Rulemaking (ANPR)

Dear Secretary Misback:

Thank you for this opportunity to provide comments on the Community Reinvestment Act (CRA) Advance Notice of Proposed Rulemaking (ANPR) issued by the Board of Governors of the Federal Reserve System (Board).

Preservation of Affordable Housing, Inc. (POAH) is a national nonprofit specializing in the acquisition, rehabilitation or redevelopment, and long-term preservation of at-risk affordable housing. Since its founding in 2001, POAH has successfully preserved or built nearly 12,000 units of affordable rental housing in 11 states and the District of Columbia at more than 120 properties, providing affordable homes for more than 20,000 Americans.

POAH has extensive experience financing the acquisition, renovation, or construction of a large portfolio of affordable and mixed-income housing communities across a broad range of American communities. The Low Income Housing Tax Credit (LIHTC) has been crucial financing tool to nearly all of this work, providing equity capital for more than 100 of POAH's affordable housing communities, supporting nearly 10,000 housing units in all. The LIHTC is responsible for nearly all of the affordable housing built and preserved in the US since the program was authorized in 1986 – a total of 3.2 million affordable housing units to date, providing homes for roughly 7.4 million low-income Americans.[1]

POAH sincerely appreciates the Board's thoughtful approach to the revision of the CRA regulations, and its openness to stakeholder feedback. We support the Board's objectives as expressed in the introduction to the ANPR – in particular, to ensure that regulated banks more effectively meet the needs of low- and moderate-income (LMI) communities; to increase clarity, consistency and transparency of supervisory expectations; and to tailor supervision to reflect differences across banks, local markets, and business cycles.

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1 https://static1.squarespace.com/static/566ee654bfe8736211c559eb/t/5cf911d25d942c00011286f8/1559826899394/Housing+Credit+Talking+Points+%28June+2019%29.pdf

We strongly support the Board's particular emphasis on addressing historical inequities impacting minority communities and individuals. Indeed, given the persistence of inequities stemming from historic discrimination, we would support increased requirements for reinvestment and support in LMI and minority communities by regulated institutions.

Given POAH's identity and experience as developer/owner of affordable housing communities, our comments are focused on the ANPR sections and questions relevant to Community Development (CD) investments in general and affordable housing in particular.

III. Assessment Areas

Question 3. *Given the CRA's purpose and its nexus with fair lending laws, what changes to Regulation BB would reaffirm the practice of ensuring that assessment areas do not reflect illegal discrimination and do not arbitrarily exclude LMI census tracts?*

We encourage the Board to ensure that assessment areas incorporate not only tracts where banks have branches or significant activity, but also LMI or minority communities within the same geographical area (city, county, MSA, state) where lower bank activity may reflect the legacy of redlining and other historic or present discrimination in the housing and finance sectors.

Question 9. *Should nationwide assessment areas apply only to internet banks? If so, should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas or by using some other threshold? Should wholesale and limited purpose banks, and industrial loan companies, also have the option to be evaluated under a nationwide assessment area approach?*

We strongly support the concept of nationwide AAs for internet banks, and for other banks with substantial deposit-taking outside their branch-based AAs, where qualifying CD activities would be limited to designated "areas of need". We would support application of such a requirement (for outside-AA investment in areas of need) to any banks with substantial deposit-taking beyond their branch-based AAs, above a relatively low threshold (for example, with outside-AA deposit-taking worth 25% or more of total deposits).

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?*

We would propose that banks with national AAs (internet banks and other banks with substantial deposit-taking outside of branch-based AAs) should be evaluated for CRA activity in their national AA on similar or equivalent metrics to those applied to branch-based AAs, and should be required to receive satisfactory score for their national AA performance in order to receive a satisfactory overall rating.

VII. Community Development Test

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?*

We strongly oppose the combination of loans and investments under a single CD Financing Subtest as proposed, because the elimination of the separate investment test would remove a significant driver of bank interest in equity investments in LMI and minority communities. Equity investments tend to be more complex, require greater due diligence, and carry greater risk than loans, and so without a separate investment test, we anticipate that many banks will choose to meet the CD Financing Subtest only or mostly with lending activity.

Equity – especially equity delivered through the Low Income Housing Tax Credit program – is absolutely crucial for the financial viability of nearly all affordable housing development and rehabilitation in LMI and minority communities. The CRA's current investment test has been shown to be the greatest single driver of the value of LIHTCs (and therefore of the total amount of equity they generate – a total of more than $10B annually). Removing the investment test would significantly impair affordable housing efforts across the country, and we urge the Board to reinstate the test as it refines its proposed updates to the CRA regime.

If a separate investment test is not retained, strong guardrails should be put in place to counteract the potential negative impact on investment volume. These "supplementary metrics" should include:

- Requirement for large banks to devote a certain percentage of their community development activities towards community development investments. The Board, using historic CRA performance data across all institutions, could establish a minimum threshold level of investment activity (as a percentage of its total community development activities) that a bank must meet in order to receive an Outstanding or Satisfactory rating.

- Requirement for large banks to maintain or increase their levels of investment activity from one evaluation period to the next. Following the Board's proposal to provide examiners with data on the percentage and dollar amount of a bank's community development activities that are loans, investments and contributions, banks should be required to explain if its volume of CRA eligible investments have declined significantly from one period to the next (taking into account cyclical patterns). If they have significantly decreased, then the bank cannot receive a satisfactory or outstanding rating unless a reasonable explanation is provided to the examiner.

- Long term equity investments that serve LMI people such as Housing Credit investments, New Markets Tax Credit investments and investments in CDFIs should receive the highest possible impact scores under the performance context review. These long term equity investments have more significant capital implications for banks and are a longer-term investment that have transformative impacts in communities and should be weighted accordingly. The Board proposes the creation of impact scores, which would combine performance context and other local information to determine a community development product's score on a scale of 1-3.The impact score could help mitigate some of the combined test concerns by incentivizing banks to participate in more complex community development activities. However, the three-point scale may not be nuanced enough to truly reward the most impactful community development activities. In line with the AHTCC, 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.

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 are concerned that the proposed CD Financing Subtest would use a simple ratio (the dollar value of qualifying CD financing activities compared to deposits in each AA) which would be insensitive to important differences between different kinds of financing activity - including impact, affordability, responsiveness, complexity, and other factors. These factors are not necessarily "qualitative" – many are quantitative and subject to measurement using available or reportable data. We are not convinced that the ANPR's proposed "impact scores" are sufficient as a solution to this problem, because they are overly simple and not sufficiently defined.

Accordingly, as noted above, we would urge the Board to reinstate a completely separate test for equity investments (because the impact of a dollar invested as equity is qualitatively different from a dollar loaned); and we also urge the Board to develop formulae for the CD Financing subtest which would make it more sensitive to variations in the quality or impact of qualifying activity – incorporating factors such as term, any discount to market-rate, the impact of the underlying qualifying activity (including depth of affordability), and so on. We respectfully disagree with the ANPR's assertion that "Information regarding the impact of activities on LMI communities, such as the number of housing units built, is not routinely available to examiners", and suggest that impact data of this kind should be a required component of regulated banks' compliance reporting to the Board.

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?*

Benchmarks could provide additional context for evaluators analyzing community development efforts, but without first correcting for CRA "hot-spots" and "deserts," local benchmarks could have the effect of exacerbating current trends, depending on how benchmarks are utilized. In other words, 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. We agree with the ANPR that says this "could result in performance standards that are very low in some assessment areas and very high in others," rendering the benchmarks less meaningful.

As the AHTCC suggests, one way to address CRA hot-spots and deserts would be to allow banks to receive credit at the assessment area level for Housing Credit investments made within the state in which a bank has one or more assessment areas. The ANPR proposes that a bank will receive credit at the state level for any community development loans or investments in the state, but 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. Further, if a bank has more than one assessment area within the state or multi-state MSA, 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, evening Housing Credit investments geographically and helping to limit CRA pricing distortions.

Question 46. *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?*

We appreciate the Board's sensitive and careful approach to setting thresholds for the CD financing metric which could inform or determine a bank's rating. As the threshold concept is refined, we urge the Board to prioritize approaches which ensure (1) growth in CD financing activity relative to the present-day baseline and (2) consistent CD financing activity throughout the evaluation cycle.

Growth in overall CD financing activity will require setting performance thresholds, if any, above current prevailing activity levels; and so we support the Board's intent to leave thresholds undefined until better data is in place regarding current activity. In the interim, we support the approach of using performance on the CD financing metrics (as refined in future rulemaking) for reference, but supplementing with examiners' reviews (ie, no presumptive ratings based on attainment of pre-defined thresholds).

Consistent activity across evaluation cycles could be threatened by the use of fixed thresholds, since banks may have incentives to cease or reduce CD financing activity (or subsets of CD activities) once a fixed threshold is attained – a problem which has been observed under the current CRA regulatory regime. We encourage the Board to ensure its evaluation approach is sensitive to bank CD financing activity levels over time, and not simply to aggregate activity over a given evaluation period.

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 strongly support the Board's stated intent to ensure that a revised CRA evaluation framework should incorporate the relative impact of different CD financing activities. However, we are not convinced the proposed "impact scores" are the right approach, because they are insufficiently sensitive (a 3-point scale) and subjective (applied by individual examiners).

If the Board proceeds with Impact Scores to incentivize high-impact activities, we would recommend moving away from a three-point scale that may not provide enough gradations to capture differences in impact and community responsiveness. Instead, the Board should use an impact score with a four or five-point scale. The Board should also reserve the highest scores solely for certain high impact community development investments, including Housing Credit investments. To provide additional clarity, the Board should develop a list of pre-approved activities and their corresponding impact scores.

We would encourage the Board to pursue the use of supplementary metrics to supplement the quantitative data available to examiners, banks, and the public – not only the aggregate CD financing metric proposed, but also activity by type (debt, equity, contributions); count of activities in each category; borrower/recipient data (including by MWBE status); and data on outputs (housing units by affordability level, jobs created). As noted above, we strongly support the use of an investment metric as a standalone test, and it may be appropriate to define additional performance thresholds relating to these "supplementary metrics" as well. These supplementary metrics will provide essential context without which examiners – and the public – cannot adequately assess regulated banks' performance or responsiveness to local needs.

VIII. Qualifying Activities

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 strongly support the Board's statement that as it "contemplates revisions to Regulation BB, an important goal is to ensure strong incentives for banks to provide community development loans and investments for the creation and preservation of affordable housing".

We support the inclusion of the financing of preservation or production of unsubsidized affordable housing within the definition of eligible affordable housing, but only to the extent such activities limit displacement and support long-term affordability. These protections should include limits on annual rent increases for residents as well commitments to affordability which extend at least ten years from the date of the activity in question. Providing CRA credit for activities which do not provide these protections would actually exacerbate the loss of affordability within the unsubsidized affordable inventory – it would be preferable not to provide credit for unsubsidized affordable housing at all.

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?*

We encourage the Board to continue to align its definitions of affordability with other major affordable rental housing programs, by using the "30% of income" standard and 80% of local Area Median Income (AMI), adjusted for household size, as the threshold for low income. As we note below, the evaluation of affordable housing activities should also be sensitive to the degree of affordability and the term of affordability protections.

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

We urge the Board to provide strong incentives for activities which support affordability for lower-income households (including "very low income" households below 50% AMI, and "extremely low income" households below 30% of AMI), the population where the nation's affordable housing crisis is most severe. As noted above, we encourage the Board to consider a multiplier which adjusts the dollar value of an eligible activity based on affordability, so that more deeply affordable units are worth more than 80% AMI units.

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?*

We support the continued use of pro rata credit for mixed-income projects, including for projects with less than 50% of units restricted as affordable. However, we *do not* support the proposal to "provide 50% consideration for projects that meet a minimum percentage of affordable units, such as 20%", since that approach would provide an unwarranted extra incentive to create minimally affordable projects. As noted elsewhere in the ANPR, new market-rate housing in LMI areas may actually contribute to the displacement of long-time residents.

Question 68. *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?*

We strongly support the proposal to consider a bank's community development activities in eligible states, territories and regions outside its defined assessment areas, to the extent that the bank's CD financing activity within its defined AAs is deemed satisfactory relative to some minimum threshold. As noted above, we would be in favor of evaluating CD activity beyond branch-based AAs for any bank with substantial deposits from beyond its defined AAs, targeted to designated areas of need (as discussed below). However structured, consideration of activities in designated areas beyond branch-based AAs is an important part of overcoming the "hot spots" and "deserts" prevalent under the current CRA regulatory regime.

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?*

As noted above, we would support the expansion of geographic areas for CD activities to include designated areas of need, to the extent that the bank in question has achieved a threshold level of activity within its designated AAs. We would support the proposal to consider activities in designated areas of need within a bank's AA as particularly responsive.

Question 70. *In addition to the potential designated areas of need identified above, are there other areas that should be designated to encourage access to credit for underserved or economically distressed minority communities?*

As noted above, we generally support the expansion of geographic areas for CD activities to include designated areas of need, and we are supportive of the measures of need proposed in the ANPR. However, we encourage the Board to provide consideration only for CD activities which address the kind of need in a given targeted area – for example, to provide credit for economic development activities only in areas where the unemployment rate threshold is met.

In addition to the measures of need proposed in the ANPR, we encourage the Board to add an additional category to capture areas where affordability challenges are most pronounced – as indicated by households' housing cost burdens, for example.

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 would strongly support the development and maintenance of an illustrative list of CRA eligible activities, which would provide greater clarity for community development actors, banks, and other stakeholders. Such a resource should be updated as frequently as possible to add new kinds of activities which may emerge, with regular opportunities for public comment on both existing or proposed eligible activities.

X. Ratings

Question 78. *Would eliminating limited-scope assessment area examinations and using the assessment area weighted average approach provide greater transparency and give a more complete evaluation of a bank's CRA performance?*

We support this approach. In particular, we support the stated intention to make available in performance evaluations all of the underlying performance data in each assessment area to make the ratings process transparent.

Question 79. *For a bank with multiple assessment areas in a state or multistate MSA, should the Board limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas?*

Yes. We strongly support the Board's intent "to ensure that banks do not count on strong performance in a few assessment areas to offset persistently weak performance in numerous small assessment areas".

Question 80. *Barring legitimate performance context reasons, should a "needs to improve" conclusion for an assessment area be downgraded to "substantial non-compliance" if there is no appreciable improvement at the next examination?*

Yes, we would support this approach, which would reinforce the meaning of the finding "needs to improve".

Question 81. *Should large bank ratings be simplified by eliminating the distinction between "high" and "low" satisfactory ratings in favor of a single "satisfactory" rating for all banks?*

No. We are in favor of retaining that distinction, and in general of ensuring the evaluation ratings are as sensitive as possible so that they convey useful data to banks and community stakeholders.

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? //* ***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?*

As noted above, we have serious concerns with the proposed Community Development financing subtest metric, and strongly urge the Board to reinstate a separate Community Development investment test.

We also have deep reservations about the proposed approach for calculating the Community Development Test rating as illustrated in Table 7, by assigning apparently equal weight to the Financing and Services subtests to generate a single aggregate (average) rating for a given AA. We would contend that Community Development financing activities contribute significantly more to regulated banks' CD impact in LMI communities, making equal weighting inappropriate. Similarly, we would not endorse the proposed 60/40 weighting between the Community Development test and Retail Test ratings.

Because each category of activity evaluated under this rubric is crucial, and because it is probably impossible to devise a system for fairly assigning weights across activity categories which is appropriate across markets and business cycles, we strongly urge the Board to refrain from aggregating ratings across tests except at the institution level. Rather, each regulated bank's evaluation should indicate performance in each separate category of activity (CD lending, investment, and services; Retail lending and services) for each geography (AA, state, region, institution). Moreover, banks which display patterns of underperformance in certain activity categories should not be eligible for outstanding overall ratings.

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?*

As discussed above, we would encourage the Board to require CD activity in defined areas of need beyond a bank's designated AAs for any bank with substantial deposit-taking outside its branch-based AAs. We would propose that such activity should be factored into the bank's state and institution ratings on the same basis as other branch-based AAs (i.e., weighted for the share of deposits and loans taken or made in that geography outside of the bank's branch-based AAs).

Thank you once again for the chance to share POAH's thoughts on the ANPR. Please do not hesitate to contact me at (617) 449-1016 with any questions or comments you may have.

Sincerely,

Andrew Spofford
Chief of Staff / Senior Vice President
Preservation of Affordable Housing (POAH)