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February 16, 2021

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

Re: 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). Stewards of Affordable Housing for the Future (SAHF) and its members appreciate the Board's goal to modernize the CRA regulations to better achieve the statutory purpose of encouraging banks to invest in and serve low and moderate income (LMI) communities; increase clarity, consistency and transparency of supervisory expectations; and tailor supervision to reflect differences across banks, local markets, and business cycles. We also appreciate the Board's emphasis on CRA regulatory implementation to address ongoing systemic inequities, and its data-centered approach to analyze bank investment patterns and strengthen the system.

Based on the decades of experience of SAHF, its members and its affiliate National Affordable Housing Trust (NAHT), this letter provides comments and recommendations to strengthen the CRA framework, and generally focuses on the ANPR sections/questions relevant to Community Development investments, and especially to affordable housing.

Like many other stakeholders, SAHF opposed key aspects of the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC's) proposed rule on CRA reform –concerned that their approach would undermine and reduce investments and benefits to low and moderate income communities. We are hopeful now though that the Board's efforts here will provide an opportunity for all three CRA regulators, including the OCC and 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.

About SAHF
SAHF is a collaborative of thirteen mission-driven, multi-state non-profit affordable housing developers – Mercy Housing, Volunteers of America, National Church Residences, National Housing Trust, The Evangelical Lutheran Good Samaritan Society, Retirement Housing Foundation, Preservation of Affordable Housing, The NHP Foundation, BRIDGE Housing, CommonBond Communities, Community Housing Partners, Homes for America, and The

Community Builders. SAHF members preserve and develop affordable multifamily homes that expand opportunity and create dignity for low-income persons with disabilities, the elderly, families, and the homeless. SAHF members partner with the National Affordable Housing Trust (NAHT) – an affiliate of SAHF – which is a nonprofit low-income housing tax credit syndicator.

By efficiently and creatively leveraging private, public and philanthropic resources, SAHF members have developed or preserved more than 147,000 affordable rental homes across the county, over half (51%) of which were financed using the Low-Income Housing Tax Credit (Housing Credit). Through this experience, SAHF members have seen first-hand how CRA motivates a large majority of Housing Credits and thus understand the impact that CRA reform could have on affordable housing production and preservation.

Additionally, several SAHF members have also become certified Community Development Financial Institutions (CDFIs) to allow them to further leverage funding and build capacity in the communities they and their peers serve. While SAHF members do invest in broader community development in the communities that they serve, they are keenly aware that long term investments in housing are key to providing low and moderate income people the stability that helps them flourish and is the foundation for transforming neighborhoods. This is particularly true of those neighborhoods destabilized by redlining and other discriminatory policies and practices.

Based on the experiences of our members and our affiliate, NAHT, we offer the following recommendations to the Board on this ANPR:

- Maintain a separate community development investment test. If combined with loans under a single Community Development (CD) financing test, ensure strong guardrails are in place to counteract the potential negative impact on investment volume.
- 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, a step to address the CRA hotspot phenomenon.
- Ensure full community development data is collected and reported annually. Decades of critical investments in community development activities have gone under-reported and un-analyzed, posing serious consequences for stakeholders' ability to analyze bank investment patterns and strengthen the system.

We have also provided more detailed responses to the ANPR questions below.

ANPR Section 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?*

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The Board should ensure that assessment areas incorporate not only tracts where banks have branches or significant activity, but also LMI or communities of color within the same geographical area where lower bank activity may reflect the legacy of redlining and other historic or present discrimination in the housing and finance sectors.

Question 7. Should banks have the option of delineating assessment areas around deposit-taking ATMs or should this remain a requirement?

The Board should retain the requirement for banks to delineate assessment areas around deposit-taking ATMs, which are often the only banking facilities available in rural and highly distressed urban areas.

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?*

Any large non-branch bank with substantial activity of deposits originating from outside of facility-based assessment areas (e.g. 80 percent) should have the option to select a statewide assessment area for any state from which they derive at least 5 percent of their total deposits. This could help better serve those whom banks are deriving deposits without favoring large, populous cities, any large non-branch bank. A statewide assessment areas could also help to balance current CRA-driven Housing Credit investment geographically.

We share the concerns of other industry and community group stakeholders that a deposit-based assessment area approach "could result in additional assessment areas in wealthier and metropolitan areas, exacerbating the CRA hot spot dynamic" leaving regions with lesser deposits less incentives that CRA can provide. A lending-based approach may have a similar effect, and any efforts to use either approach should be rooted in data to avoid any unintended consequences.

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, the bank's CRA activity in their national assessment area should be evaluated on similar or equivalent metrics to those applied to branch-based assessment areas, and should be required to receive satisfactory score for their national assessment area performance in order to receive a satisfactory overall rating.

Consistent with the recommendations of the Affordable Housing Tax Credit Coalition, we also suggest paring national assessment areas with incentives for serving traditionally underbanked communities. The Board's initial list of designated areas of need be the starting point for geographic specifications. An incentive could include a threshold requiring banks to perform a

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certain portion of CRA-qualifying activities in designated areas of need to achieve a Satisfactory or Outstanding rating. This would ensure banks with national assessment areas are furthering the goals of CRA, rather than focusing activities on only the easiest-to-serve communities.

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?*

SAHF strongly opposes the combination of loans and investments under a single Community Development (CD) financing test, as this could remove a significant driver of bank interest in equity investments in LMI 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, banks may choose to meet the CD Financing test only or mostly with lending activity. Any reduction in equity investments would have a detrimental effect on the creation and preservation of affordable rental homes, which even in LMI communities are typically infeasible using only debt financing. Equity investments are key to achieving affordable rents in most communities.

If a separate investment test is not retained, strong guardrails should be put in place to counteract the potential negative impact on investment volume. The following strategies, which used together or independently, should be pursued:

- Require large banks to devote a certain percentage of their community development activities towards community development equity investments. The Board, using historic CRA performance data across all institutions, could establish a minimum threshold level of equity 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.
- Review the bank’s institutional investment track record against its assessment period performance. 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 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.

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?*

For banks that don't have a large base of deposits, the Board should consider measuring assets or undertake an analysis of the banks' historic community development activities to establish a set of peers; and from that data, create thresholds for banks to achieve in order to receive Satisfactory or Outstanding ratings. This strategy could effectively harness the bank's ability to manage risk and compete efficiently for high-quality business.

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.

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?*

As discussed in our response to Question 45, 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. Thresholds (e.g a certain portion of CD activities at the institution level, and a high-impact CD threshold set at the state or institution level) should be established for a minimum amount of CD required to achieve a Satisfactory or Outstanding rating.

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. We also support the Board's decision to not use multipliers in the community development evaluation methodology, as this could lead to an unintended consequence of the bank decreasing its overall investment activity. However, the proposed "impact scores" are insufficiently sensitive (a 3-point scale) and subjective (applied by individual examiners). We encourage the Board to pursue the use of feasible 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; and data on outputs (housing units by affordability level, jobs created).

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 a 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.

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?*

SAHF appreciates 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 support the definition of subsidized affordable housing included within the ANPR. We also support the inclusion of the financing of preservation or production of unsubsidized affordable housing within the definition of eligible affordable housing, but only if consideration is limited to transactions that adequately safeguard affordability. Regulators should consider CRA eligibility criteria for NOAH investments that will help ensure that units remain affordable beyond the first year or first assessment period. Location of units in an LMI community and underwriting to affordable rents alone are not proxies for affordability. This is particularly true in gentrifying neighborhoods or particularly tight housing markets where the neighborhood and renter population can change quickly. Owners can easily choose to underwrite a loan to affordable rents, but then increase rents and benefit from increased cash flow during the life of the loan. CRA consideration should clearly be awarded in instances where the owner is willing to commit to keep units affordable for the greater of the term of the loan or ten years. We recognize that some owner may intend to maintain affordability, but be unwilling to execute a long term affordability commitment and that it may still be desirable to provide CRA consideration for these transactions. CRA credit should be given only if an evidence-based indicator of sustained affordability can be identified and published by the regulators and used as a criterion. Without some sort of safeguard for affordability, awarding CRA credit for investment in unrestricted rental housing could have the unintended consequence of contributing to the displacement of LMI people by facilitating more activity in these areas that could drive up prices and ultimately result in rent increases.

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. 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?*

SAHF supports specifying certain activities as particularly responsive to affordable housing needs so as to provide added clarity and certainty for banks. As proposed in the ANPR, housing for very low-income, homeless or other harder to serve populations should be considered particularly responsive. We suggest also including service-enriched affordable housing as particularly responsive to affordable housing, recognizing that quality affordable homes enriched by services can improve life outcomes for residents and that an added incentive could help bring them to fruition due to higher costs of development and operations. To qualify, the service-enriched affordable housing should meet a developer or property-level certification to avoid incentivizing inadequate supports. SAHF and its affiliate the National Affordable Housing Trust have worked together to structure multiple creative investment funds that leverage tax credit investments with philanthropic funds to enhance affordable housing with the kinds of services and supports that can improve health and life outcomes. These innovative funds are small investments when compared to other activities but have had significant impact by shaping creative financing that leverages affordable housing to have a greater impact on health and well-being that may yield longer term savings and benefits.

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?*

Investments in affordable housing restricted or subsidized in connection with a government program should receive full CRA credit if at least 20 percent of the units will be affordable for the term of the bank's financing. The primary federal affordable housing production policies – the Housing Credit, tax-exempt multifamily housing bonds, and the HOME Investment Partnerships program – all use 20 percent as their eligibility thresholds. To encourage banks to maximize the affordable housing created with their investments, we encourage the Board to make extra credit available for investments with a higher percentage (50% of more) of affordable units. For properties without federal or state funding, we suggest pro-rata credit for properties with less than 50 percent of homes affordable to low-income households, but full credit for properties with over 50 percent of homes affordable to low-income households.

Question 67. *Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?*

We support the Board's proposal to provide CRA consideration for activities completed in conjunction with a CDFI operating anywhere in the country, and we recommend that this credit be considered at the institution level. The need for community development products and services does not always align with readily identifiable or financeable opportunities in every assessment area, creating efficiencies that can be remedied through this proposal, which can be further strengthened by:

- Providing CRA credit for banks that invest in CDFI products designed to directly address racial inequity. Examples may include more flexible products that take steps to mitigate racialized perceptions of "risk" associated with borrowers of color; efforts that seek to remediate racialized disparities in application approvals and cost of capital; and mixed-income housing developments with a focus on racial and income integration.
- Clarifying "in conjunction with" a CDFI to include lending to or investing in the CDFI directly; lending into a fund sponsored and/or serviced by the CDFI; funding a CDFI's activities and supportive services, such as technical assistance; and more be included in

the regulators' definition.

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?*

Consideration of activities in designated areas beyond branch-based assessment areas should be an important part of overcoming the "hot spots" and "deserts" prevalent under the current CRA system, and as such we suggest allowing state-wide Housing Credit investments made outside of assessment areas to count toward the assessment area rating, as we discussed in response to Question 45.

As recommended by AHTCC, the Board should, in the next stage of rulemaking, provide additional guidance on methodologies for providing banks credit for investing in Housing Credit funds (e.g., multi-state, regional or national funds) in which only a portion of the activities will necessarily lie within the banks' designated assessment areas. Currently, banks in multi-investor funds require side letters to ensure their investments in the fund are tied to projects in their specific assessment areas, which drives up transaction costs, artificially limits investor demand, and further exacerbates CRA pricing inefficiencies. To provide more certainty to banks, and to address the items above, the Board should consider allowing banks count CRA credit for their investment in a larger geographic Housing Credit investment fund across all the their assessment areas that are within the geographic reach of the Fund. To prevent "double counting" banks would not be permitted to take credit in excess of the amount of their investment in a fund.

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 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 assessment areas. We would support the proposal to consider activities in designated areas of need within a bank's assessment area as particularly responsive, and that designated areas of need must be updated on short, regular intervals (such as on a biennial basis as proposed in the ANPR).

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. We urge the Housing Credit be included on the list of eligible activities considering its demonstrated ability to further the goals of CRA. It would also be helpful to have a relatively expedited process through which banks could receive guidance on whether new or novel transactions would be eligible for CRA consideration. This would encourage banks to be innovative in meeting community needs by allow them greater clarity on eligible activities.

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ANPR Section X: Ratings

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.

ANPR Section XI. Data Collection and Reporting

Question 95. Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?

We appreciate that the Board is seeking a mindful approach to data collection and reporting, minimizing burden while also enabling greater clarity, consistency and transparency. Decades of critical investments in community development activities have gone under-reported and under-analyzed, inhibiting a serious examination of bank investments and strengthening of CRA. We urge the regulators to report community development data by the type of product—loans, investments, grants, etc.—and by the category of activity—affordable housing, community services, economic development and activities that revitalize and stabilize low- and moderate-income communities. This data should be made publicly available and reported at various geographic levels to allow stakeholders to better target resources to underserved communities and communities of color, as well as identify efficiencies that strengthen the sector.

We would be happy to provide additional information on any of our comments. Please feel free to contact Althea Arnold, SVP Policy at aarnold@sahfnet.org or (202) 737-5972.

Sincerely,

Althea Arnold
Senior Vice President, Policy