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: Advance notice of proposed rulemaking; request for comment on the Community Reinvestment Act

Dear Ms. Misback,

The National Council of State Housing Agencies (NCSHA)[1] appreciates the opportunity to respond to the Federal Reserve System Board of Governors' Advance Notice of Proposed Rulemaking and Request for Comment on the Community Reinvestment Act (CRA). NCSHA represents the nation's state housing finance agencies (HFAs).

We commend the Board for pursuing modernization of its CRA regulatory and supervisory framework to better fit today's banking market and practices. NCSHA supports efforts to modernize CRA regulations by clarifying what activities qualify for CRA credit and updating where such activities must occur to receive credit.

We strongly recommend the Board advance changes to the CRA regulations that would establish stronger incentives for banks to increase and improve their support for low-income and underserved communities and their residents, including through more and better investments, lending, services, and community development activities, particularly to promote desperately needed affordable housing.

Executive Summary

The CRA has been one of our nation's most vital tools in catalyzing financing and investments for affordable housing and other crucial community development needs. It has incentivized banks to invest in effective affordable housing finance and community development programs, including Low Income Housing Tax Credits (Housing Credits) and tax-exempt private activity Housing Bonds.

[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

To continue and expand this strong track record, we believe CRA regulations must:

- Encourage banks to invest in Housing Credits, Housing Bonds, and HFA mortgage-backed securities (MBS)—including purchases, lending, and letters of credit or similar liquidity support.

- Maintain a separate investment test, given its proven track record in promoting investment in Housing Credit equity and other affordable housing and community development investments.

- Expand assessment areas or give at least partial credit for affordable housing and community development activities in areas outside traditional bank assessment areas, including rural and other underserved geographic markets, provided the bank receives a satisfactory or better rating in its most recent CRA examination.

- Drive significantly more investment and other banking activity into rural areas.

- Tackle historic and long-standing racial inequities in access to credit, government programs, and other resources and services.

Housing Credits, Bonds, HFA Mortgage-Backed Securities, and CRA: A Common Mission

HFAs are state-chartered housing agencies that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. Though they vary widely in their characteristics, including their relationship to state government, they share a common goal of providing affordable housing help to those of their constituents who need it.

State HFAs were created by their state governments to address the homeownership and rental housing needs of their states. As a group, they are the primary mission-based source of mortgage financing for lower-income households operating in their states, as well as in the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. In 2019, state HFAs provided $43 billion of financing to help more than 163,000 households achieve homeownership and help produce more than 143,000 rental homes.

They have achieved much of this work through the Housing Credit and Housing Bond programs, which HFAs administer in nearly every state. More recently, HFAs have dramatically increased their use of MBS through Fannie Mae, Freddie Mac, and Ginnie Mae to provide affordable housing options for lower-income families.

Housing Bonds historically have served as the HFAs' primary means of financing their affordable housing lending, and HFAs have utilized them to serve many of the borrowers and markets the CRA is intended to assist.

HFAs utilize single-family Mortgage Revenue Bonds (MRBs) to help working families purchase their first homes. Through 2019, state HFAs have utilized MRB-funded loans to help more than 3.3 million working families purchase their homes. These loans are highly targeted to persons with lower incomes, as demonstrated by the following facts about HFA bond-financed loans made in 2019:

- The median state HFA-assisted homeowner's income was $50,770—26 percent below the national median income and 47 percent less than the median income of all home buyers.
- 61 percent of HFA loans served borrowers earning at or below area median income.
- The average HFA loan amount was only 71 percent of the average FHA loan in 2019 ($153,942 compared to $216,695).

Additionally, HFAs have been effective in reaching home buyers of color, and, in many states, are the drivers of affordable homeownership opportunity for individuals and families of color, who, as a demographic, lost significant ground as homeowners during the last recession.

HFAs have used MBS and other financing executions to assist an additional 530,000 home buyers since 2014. Bank investments in both the primary and secondary markets for these MBS have helped lower rates and increase liquidity for HFA affordable housing programs. With their MBS programs, HFAs generally serve borrowers and market segments typical GSE seller-servicers do not. HFA borrowers are likely to have lower incomes, purchase lower-priced homes, and employ higher down payments than the average GSE borrower.

Through Multifamily Housing Bonds, HFAs finance the development of affordable rental housing that would otherwise not have been built in the private market. In total, state HFAs have financed nearly 14,000 properties across the country using Multifamily Bonds, providing affordable rental housing to more than 1.2 million families. Multifamily Bonds also help to support the construction of properties financed by Housing Credit investments, many of which would not be built without the Bonds.

Banks' CRA obligations play an important role in incentivizing them to purchase and provide liquidity to Housing Bonds and HFA MBS. These incentives should be broadened and strengthened.

Though some aspects of the current system create obstacles to more bank CRA investment in Bonds and HFA MBS, many banks find that HFAs' public missions, strong track records, income-targeted programs, and superior loan performance make Housing Bonds and MBS an effective and responsible means for serving the low-income housing needs of the communities they serve. Bank investment in Housing Bonds and MBS significantly contributes to lower borrowing rates, allowing HFAs to pass on those savings to lower-income home buyers and renters.

The Housing Credit is our nation's most effective tool for financing the development of rental housing affordable to low-income Americans. By providing an incentive for private-sector investment, the Housing Credit has financed more than three million apartments for low-income households, adding approximately 100,000 units to the inventory each year. In addition to the tax savings, banks are attracted to Housing Credit investments because they can use them to earn CRA credit. A 2014 publication from accounting firm Cohn Reznik reported that, "Roughly 85 percent of the equity for all LIHTC investments comes from banks subject to the CRA."[2]

Possible Changes to the CRA Framework

Promote Racial Equity

The Board requests comment on what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities. We commend the Board for seeking stakeholder feedback on this issue.

The CRA was enacted to address the lack of investment in low-income communities and the persistent negative impact of redlining on them, in a specific context of historic discrimination based on race. The negative impact of these policies on these areas and on people of color generally persists and has increased by numerous indicators since the enactment of CRA: higher racial and economic segregation and lower property values, homeownership rates, and household credit scores to name just a few. CRA policy, bank evaluation, and research to date have been based on income and geographic proxies for race. Adding race more directly and explicitly in the formulation and execution of CRA regulations is overdue.

Although the Board recognizes racial inequities in its ANPR, its proposed remedies of considering underserved areas on exams and encouraging more financing to minority depository institutions may have only limited impact on systemic inequities. The proposals do not embed increasing access to credit to communities of color into the CRA exam and subtests.

NCSHA recommends that clear directives and numeric evaluation of efforts to increase racial equity be a more prominent part of the assessment of bank CRA performance, including comprising a core component of CRA exam tests and subtests related to lending, investing, and services. Incorporating assessment of lending, investment, and service in communities of color and to people of color would help address racial inequities. Adding racial criteria to impact scores and performance context would also help drive lending, investment, and services to areas and people who need and deserve them.

Retain a Separate Investment Test

The Fed proposes to establish a separate community development test and consolidate the investment test into a community development financing subtest covering lending and investment. NCSHA is concerned the proposed change would diminish the regulatory incentive for banks to buy credits and other investments. Specifically, this approach likely would result in deemphasizing Housing Credit,

[2] Copeman, Fred, "What Do Higher LIHTC Prices Mean for Syndicators?" Affordable Housing News & Views, June 1, 2014. https://www.cohnreznick.com/insights-and-events/insights/what-do-higher-lihtc-prices-mean-syndicators

Bond, and MBS investment as compared to lending, because it is much easier for banks to make loans, especially in high-cost areas, than it is to underwrite equity investments.[3]

We strongly urge you to continue the separate investment test, even if investment performance contributes to an overall community development score or measurement. In general, affordable housing and community development equity is more difficult to attract and often more impactful in communities than debt. Maintaining the investment test will ensure that banks continue to participate in the Housing Credit, Bond, and HFA MBS markets, leading to healthy competition and better pricing, thus increasing the amount of resources that can be devoted to developing and/or rehabilitating affordable housing.

Provide Some CRA Credit for Activity Outside Assessment Areas

The Board requests comment on CRA treatment of community development activities outside of assessment areas but generally would preserve the current approach of evaluating bank CRA activity in geographically defined assessment areas surrounding a headquarters, branches, and deposit-taking ATMs. Under current regulations, a bank is also ostensibly eligible for CRA credit in broader statewide or regional areas that include its assessment areas if the bank shows it is responsive to its assessment areas' needs.

We appreciate that the Board says it is "considering how to treat community development activities outside of assessment areas to help address discrepancies between so-called CRA 'hot spots' and 'deserts.'" We share the views many have expressed arguing the current assessment area policy is outdated and ineffective and disadvantages underserved areas, especially rural communities. Banks typically do not learn whether they have been determined to be "responsive" to their assessment areas for years after they have made, or not made, a financing decision. In addition, the regulatory definition of 'regional areas' is vague and confusing.

NCSHA believes banks should receive CRA credit for desired activities they engage in outside their strictly defined assessment areas, particularly rural areas. The ability to receive such credit will spur critical affordable housing investments in severely underserved markets. To better incentivize such investments, CRA regulations should make it easier for banks to determine when they will receive CRA credit for activities outside their assessment areas.

For example, as mentioned above, the ability to receive CRA credit is many banks' primary motivator to invest in Housing Credits and Bonds. While this has had a positive impact on the market, it has also caused banks' Housing Credit and Bond investments to be limited, for the most part, to their CRA assessment areas. This results in bifurcated Housing Credit and Bond markets. Properties located in urban areas with a heavy concentration of banks receive a great deal of investor interest, which results in higher prices, while Housing Credits and Bonds for properties in rural and other underserved markets receive less interest.

[3] "Understanding OCC, FDIC Proposed Rule Reforming CRA Regulations," Novogradac & Company blog, December 30, 2019.

Allowing banks to receive CRA credit for investments in Housing Credit, Bond, and HFA MBS activities outside of their assessment areas will help alleviate this disparity and finance the development of affordable housing in rural and other underserved communities.

At the same time, it is important for CRA to retain its focus on having banks serve the communities where they are located and from which they draw deposits. Therefore, we suggest that banks should only receive CRA credit for activities located outside their assessment areas if, in their previous assessment, they achieved a rating of "Satisfactory" or better with regard to their CRA activities inside their assessment areas. This will ensure that banks' primary commitment remains to their communities while still offering an adequate incentive for them to pursue opportunities in other underserved communities and areas.

Expand and Clarify Qualifying Activities

The Board also seeks feedback on approaches to increase the upfront certainty about what activities qualify for CRA credit, including a process for banks and other stakeholders to obtain pre-approval that a particular activity qualifies for consideration and publication of illustrative lists of qualifying activities. The Board also discusses how to assign, measure, and limit CRA credit for a variety of activities.

NCSHA supports the inclusion of unsubsidized affordable housing, affordable housing and targeted community development activities in Opportunity Zones, and targeted community facilities and infrastructure, among other activities, and urges the Board to include these as qualifying activities in final regulations. We acknowledge the ANPR's careful discussion of how to restrict credit for community facilities and infrastructure to circumstances where a clear benefit to underserved or distressed communities can be clearly established. We support these concerns and agree lending and investment for such community facilities and infrastructure should qualify for CRA credit if such a benefit can be established. The same principle applies to activities in Opportunity Zones. We particularly support providing credit for affordable housing that might be included in such activities.

Given state HFAs' strong track record of responsibly and effectively supporting affordable housing and other community development efforts, we believe the Board should allow any investments, services, and lending activities banks provide in connection with HFA programs to qualify as community development activities under CRA. This will increase lender support for critical HFA programs, while ensuring that banks direct their CRA activities towards projects that address crucial community needs.

In addition, we request that the Board explicitly allow banks to claim and receive CRA credit for letters of credit they extend to support HFA Housing Bonds and other HFA debt. These letters of credit guarantee that the bank will pay debt payments on Bonds or other credit instruments should the issuer or third-party obligor be unable to do so. Letters of credit enhance the desirability of Housing Bonds to investors, increasing their liquidity and decreasing HFAs' issuance costs. In addition, letters of credit can help HFAs tap other sources of financing, including warehouse lines, to finance affordable single-family and multifamily loans.

We also thank the Board for raising and looking at pro rata consideration of certain qualifying activities. Under current rules, banks receive credit for the pro-rata share of a loan or investment in mixed-income housing that includes a set-aside required by federal, state, or local government for low- and moderate-income individuals.

We support providing pro-rata credit for community development activities that provide some benefit to, but do not necessarily primarily benefit, specified populations, entities, or areas. Such credit should be equal to the partial benefit provided.

Determining this partial benefit can be very challenging for tax-exempt bonds, particularly bonds used for homeownership when the sale of the bonds occurs before the proceeds are used to purchase mortgages. We urge the Board to allow for full credit for tax-exempt bonds, given that program rules ensure substantial community benefit and income and geographic targeting.

Maintain Incentives for Mortgage-Backed Securities Related to Affordable Housing

The Board says it is contemplating the appropriate CRA treatment of mortgage-backed securities. We caution the Board against changes that would diminish incentives to purchase MBS, either initially or in the secondary market. Such purchases add liquidity to the market and help reduce financing costs for MBS issuers and the renters and home buyers who ultimately benefit from the reduced costs. Maintaining robust credit would encourage banks to provide more liquidity to MBS, which would support increased financing for affordable housing.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives