

February 16, 2021

Board of Governors  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Suite 3E-218  
Washington, DC 20551

**Community Reinvestment Act Regulations  
1723 (AF94) Reg BB - Community Reinvestment Act**

To Whom It May Concern:

I am writing to strongly encourage your consideration of the below comments with regard to the Advance Notice of Proposed Rulemaking (ANPR) issued by the Board of Governors of the Federal Reserve System (Board) in October 2020 regarding the Community Reinvestment Act (CRA).

My remarks are on behalf of Community Affordable Housing Equity Corporation (CAHEC), the organization for which I have been President & CEO since 2002. As background, CAHEC was established in 1992 to assist in financing the development of affordable rental housing in North Carolina. Since its inception, CAHEC has raised and committed \$2.6 billion toward the development of over 35,000 housing units throughout the mid-Atlantic and southern states. Our core business has expanded to include property management, preservation; and the provision of equity and debt capital to a variety of low-income housing, energy, and revitalization efforts. I share these facts with the understanding that most of CAHEC's community impact would not be possible without investment from the banking community and guidelines of the CRA.

For context, approximately 80% of CAHEC's capital under management is sourced from CRA-based financial institutions. While these investors vary in asset size (\$1 billion to over \$2.5 trillion) and geographic footprint (Appalachia to the largest urban markets), their common beacon is adherence to the spirit and requirements of the CRA. It is this mandate-combined with their community development lending and investing (CDLI) activities via the low-income housing tax credit (LIHTC), new markets tax credit (NMTC), and community development finance institution (CDFI) programs-which has driven housing and community investment financing in our marketplace.

**RESPONSE TO SELECTIVE QUESTIONS**

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

While we don't have a specific recommendation with respect to a threshold of activity, we do believe assessment areas based on the location of loan production offices, ATMs and back-office operations would help expand the reach of CRA into rural and other areas of the country that have fewer bank resources. This will assist demand for investment in LIHTC properties that currently find it more difficult to attract such equity capital.

***Question 13:** Is \$750 million or \$1 billion an appropriate asset threshold to distinguish between small and large retail banks? Or should this threshold be lower so that it is closer to the current small bank threshold of \$326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?*



We do not support an increase in the small bank threshold because we are concerned this will remove incentives for small banks to invest in the LIHTC, NMTC, AND CDFI programs, especially undermining such activities in small, rural states which do not have a large bank presence. If the small bank threshold is substantially increased, it could be considerably more difficult to raise equity capital in certain areas of the country, requiring higher credit prices which would make affordable housing development using the LIHTC more difficult and result in less housing for low- and moderate- income households.

***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 are concerned that combining debt with equity will undermine bank incentives to make equity investments, especially since the volume of qualifying bank debt would be considerably greater than the volume of equity. Return profiles are not created equally, thus having both a loan and investment test helps to diversify efforts.

***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?*

The metric for the Community Development Test should be the numerator of community development equity and equity equivalent investments, relative to the denominator of deposits. We believe using an established bank lending line of commercial loans and products in the numerator would discourage banks from making more complex equity investments for LIHTC, NMTC, CDFI and small business investment company (SBIC) purposes. Furthermore, lending to community development organizations that are undertaking some form of economic development in low- and moderate- income areas should be considered under the community development test.

***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 area and over time?*

We support using local and national measures in two different metrics. However, the local metric of investing should be the main focus of the assessment area's CRA rating. Banks will have different concentrations of deposit-taking facilities between areas. The local deposit-taking metric is the most important, as that is the main focus of CRA and the community development test. The fractions illustrated in the proposed regulations seem appropriate.

***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?*

Setting specific metric thresholds for CRA evaluations is a positive move to help bankers gage how much to lend and invest in low- and moderate-income areas. Using the existing definitions of large, medium, and small bank groupings, one bank's metric can be compared to another "group metric" of banks in the same category by asset size and geographical area. The geographical areas are the most important factor for the "group metric." The Board should use comparisons among all banks in a specific geographic area in order to determine a local CRA rating. For example, New York city banks should not be compared to Richmond, VA banks. Annually, when the tables are updated, each bank can view its metric in relationship to the group metric for banks in the defined asset class based on geography. For each bank, a new metric for that year's investing should be illustrated. Thus, each bank would have two metrics per year. The group metric and the national metric.

***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 believe that CRA rules should continue to encourage banks to undertake complex and innovative investments that have the most consequential impact on communities in alignment with state and regional economic development plans. The use of multipliers, impact evaluations, and supplementary metrics should only be assigned to the most complex community development transactions.

Community development investments and equity equivalent transactions are not normal banking practice and, thus, banks should be awarded some level of additional community development test credit (impact points) for making LIHTC and NMTC investments and CDFI loans/investments.

***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?*

The Board should include for CRA consideration (i) rental housing subsidized under a tribal government, and (ii) local, state or federal programs that are “affordable” to households with incomes up to 80% of area median income. Affordability should be based on the HUD standard using maximum rents (including utilities) that do not exceed 30% of household income.

Eligibility of unsubsidized, naturally occurring affordable rental housing presents more difficult questions since such property presumably does not include government-imposed restrictions on future rent increases and it could be unwieldy for lenders to insist on such conditions. For unsubsidized rental housing, eligibility should be based on (i) whether rents are affordable and (ii) the location of the property in low moderate income (LMI) areas or where the median renter is LMI.

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

Bank investments in LIHTC properties and investments/loans to CDFIs should be viewed as particularly responsive to affordable housing needs. Additional credit should be given to investment in more difficult to develop affordable housing that has deeper income targeting (below 40% of AMI), serves residents-including the homeless-in need of supportive services, and otherwise fulfills a critical housing need.

We also believe that CRA incentives can be significantly strengthened if banks are not given full credit for purchasing qualifying mortgage-backed securities (MBS); especially those that are made just prior to their CRA examinations and often sold shortly afterwards to another bank. We believe these practices have little positive impact in the community.

***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 providing pro rata credit for unsubsidized and subsidized affordable housing which permits a bank to receive a pro rata share where less than a majority of the dollars benefit LMI families or less than a majority of the beneficiaries are LMI. Where subsidized units are more than a majority, we recommend that there be no pro rata credit for those units affordable only to those income levels above 80% AMI.

We believe all bank activity in support of LIHTC development should receive full CRA credit. Affordable rental housing undertaken in conjunction with an explicit federal, state, or local government affordable housing policy or 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 – LIHTC, tax-exempt multifamily housing bonds, and the HOME Investment Partnerships program-all use 20 percent as their eligibility thresholds. More states and localities are supporting affordable housing through direct

funding, tax relief, and inclusionary zoning requirements. Aligning CRA with other governmental policies would promote consistency, clarity, simplicity, and efficiency.

**Question 66:** *What additional policies should the board consider to provide incentives for additional investment in and partnership with MDIs?*

The Board should clearly state that (i) that investing in MDI's will provide regulated financial institution with CRA recognition, and (ii) if the institution is a CDFI, then it is automatically recognized as assisting low- and moderate- income individuals and small businesses.

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

Banks should receive CRA community development test credit for lending and funding CDFI investments nationwide.

**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?*

The Board should clearly state designated areas of need and be particularly responsive to rural and Presidentially Declared Disaster Areas.

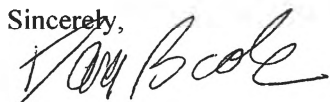
**Question 71:** *Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?*

The Board should (i) provide an illustrative, non-exhaustive list of activities that meet the requirements for CRA, and (ii) allow for additional guidance on transactions that fall outside of that list.

## CONCLUSION

CRA, in its current form, has been the driver for a host of community economic development and finance programs for nearly 35 years. It has catapulted various programs – namely the LIHTC, NMTC, and CDFI – into their present-day success. CAHEC believes the CRA has met, and at times exceeded, expectations. It has driven bank CDLI activity to LMI individuals and communities in a way that would otherwise have not occurred. This trend must continue – albeit with modernization efforts that reflect the dynamics of today's banking environment.

Sincerely,



Dana S. Boole  
President & CEO  
CAHEC