NEW ENGLAND HOUSING NETWORK

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Submitted via email to: regs.comments@federalreserve.gov

February 16, 2021

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

Re: Community Reinvestment Act ANPR

Docket: Number R-1723 and RIN Number 7100-AF94

Dear Secretary Misback:

I am writing on behalf of the New England Housing Network (NEHN), a broad coalition of affordable housing organizations from each of the New England states. Created in 1995, NEHN is the first regional organization in the country to advocate for a broad range of affordable housing issues and respond to changes in federal housing and community development programs.

NEHN appreciates the opportunity to comment on the Advanced Notice of Proposed Rulemaking (ANPR) issued by the Federal Reserve Board of Governors (the "Federal Reserve") regarding the Community Reinvestment Act (CRA) (Docket Number R-1723 and RIN Number 7100-AF94).

As outlined in further detail below, NEHN believes that the Federal Reserve's proposal includes many essential updates for CRA, but also recommends that the Federal Reserve strengthen certain components in order to meet the community development and credit needs of low- and moderate-income (LMI) communities.

Overview

The CRA is a critical component in the production and preservation of affordable housing. For example, the current CRA system allows for an active Low-Income Housing Tax Credits (LIHTC) market in New England. Many affordable housing developments are financed through the sale of LIHTC and many of our organizational member banks are primary investors in these credits. In New England, there have been 2,366 developments with 144,646 units built with the equity created through the sale of LIHTC.[1] As such, NEHN requests that credit be given for LIHTC investments at the assessment area level.

Any CRA reform must also advance the original intent of the law by assuring that banks provide access to capital and credit to LMI communities. Finally, CRA reform should include the Office of the Comptroller of Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) to create a consistent CRA framework across all three regulatory agencies.

[1] HUD's Low-Income Housing Tax Credit Database

NEHN has provided additional responses to the racial equity, community development, and affordable housing components of the Federal Reserve's ANPR below:

Racial Equity

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?

Our country continues to face racial inequalities that are borne from a lack of investment and access to credit in low-income and minority communities. NEHN agrees with the Federal Reserve's take that this can be attributed to "systemic inequities in credit access – due in large part to a practice known as "redlining" – along with a lack of public and private investment." The CRA's intent was to be a tool to address the long-lasting effects of this systemic racial discrimination. As such, NEHN recommends that the Federal Reserve focus on increasing lending and investments specifically targeted to communities of color and consider including race as a factor for CRA. One way for the Federal Reserve to address this is through the collection and tracking of data that is disaggregated by race. Instead of using explicit racial data, the current CRA uses income and geographic data in its place. The Federal Reserve should consider investing in systems and developing processes for collecting and reporting on performance data by race. This data should also be considered a factor in determining the "Needs to Improve" and "Outstanding" ratings.

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?

NEHN is supportive of the Federal Reserve's facility-based assessment area approach based on bank sizes. However, NEHN notes that these assessment areas should lead to targeted investments that benefit a greater number of LMI and minority households. As such, NEHN recommends that the Federal Reserve incorporate tracts with LMI populations and communities of color in the same assessment areas where there are lower banking and investment activities.

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?

NEHN understands the need to modernize the facility-based assessment-area approach to account for national internet banking institutions. Should the Federal Reserve proceed with a nationwide assessment area for national internet banks, NEHN recommends that the bank's CRA activity in their national assessment area be evaluated on similar metrics to those applied to branch-based assessment areas. In accordance with the Affordable Housing Tax Credit Coalition, NEHN recommends including incentives for serving traditionally underbanked communities. Without providing an incentive or mandate for local investments, banks will be allowed to find easier places to engage in community development activities without first responding to the needs of these underserved communities. CRA investment in easier to invest assessment areas cannot come at the expense of a bank's obligation to meet areas of need with little to no investments. As such, NEHN supports an incentive approach that includes a threshold which requires banks to perform a certain portion of CRA-qualifying activities in designated areas of need to achieve a Satisfactory or Outstanding rating.

Community Development Test and Qualifying Activities

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?

NEHN opposes the combination of the community development loans and investments under one subtest. The separate community development investment test provides an essential incentive for banks to participate in equity investments, such as LIHTC. These equity investments have proven impact for LMI communities and communities of color through the production and preservation of affordable rental housing. However, equity investments also have more comprehensive CRA requirements and carry greater risks than other lending activities. Banks may choose to meet the CD Financing Subtest only or mostly with lending activity, which would lower the value of LIHTC and be detrimental to affordable housing production. As such, NEHN recommends that the Federal Reserve reinstate the separate investment test. However, if a separate investment test is not retained, NEHN strongly urges the Federal Reserve to create protections for long term equity investments by expanding its impact scoring from 3 to 5 points and by providing the highest possible impact score for equity investment activities, particularly for LIHTC.

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?

NEHN has concerns regarding the proposed community development subtest, which would use a simple ratio of dollars of community development financing compared to deposits in each assessment area. As such, NEHN urges the Federal Reserve to reinstate a separate investment test that takes into account the increased impact of equity investments as opposed to loans.

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?

NEHN supports the Federal Reserve's proposed use of local and national benchmarks to evaluate community development financing performance. Benchmarks could allow for adjustments to local conditions and provide additional context for evaluators analyzing community development efforts. However, NEHN is concerned that these benchmarks can exacerbate current issues with CRA "hot-spots" and "deserts." To alleviate some of these issues, NEHN recommends that CRA credit be given to LIHTC investments at the assessment level that are made in areas within a state in which a bank has one or more assessment areas. This would allow areas of need that are not within local assessment areas to be able to benefit from the LIHTC investments in their communities.

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?

NEHN supports the Federal Reserve's efforts to revise the CRA evaluation framework by focusing on the impact of different community development investments and activities. However, as previously noted, NEHN recommends that the Federal Reserve expand both the proposed 3-point impact score scale and the community development financing metric. The impact scoring system should be expanded to a 5-point scale, provide equity investments with the highest impact score, and detail which activities would qualify for each impact score. Further, the Federal Reserve should develop supplementary metrics in addition to the community development financing metric, such as affordability levels of housing units built and types of debt and equity activities. These supplementary metrics will provide essential information to examiners and allow them to adequately assess banks' abilities to meet the needs of LMI and minority communities.

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?

Displacement and housing instability due to rising housing costs continue to be major issues for our region's urban and rural communities. CRA has been critical to the production and preservation of affordable housing in this regard. As such, NEHN supports the Federal Reserve's efforts to consider mechanisms that retain the affordability of subsidized and unsubsidized housing. NEHN agrees that CRA consideration should be given to unsubsidized or naturally occurring affordable housing (NOAH). However, NEHN only believes that credit should be given to unsubsidized housing that adequately provides affordability protections that limit displacement. CRA credit for transactions that do not have these protections will allow owners to increase rents while benefiting from CRA incentives during the life of their loan. For purposes of the CRA, unsubsidized affordable housing should be considered as housing without public funding in LMI communities where the majority of the units have affordable rents and similar housing in middle and upper income communities where at least 80% of the units are affordable.

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?

NEHN advises the Federal Reserve to continue to align its definition of rental affordability with the other 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?

NEHN supports specifying activities that could be viewed as particularly responsive to affordable housing and agree with the ANPR's approach of specifying housing for extremely low-income populations and individuals experiencing homelessness. Since the New England region also has a growing aging population, NEHN also recommends including senior affordable housing that keeps our seniors in safe and healthy homes and provides them with the services they need to age affordably. CRA helps to increase the value of tax credit investments – like LIHTC – which is an essential tool in building and preserving senior housing that supports the improved health outcomes of our seniors. Finally, NEHN recommends that the Federal Reserve specify certain activities that meet the affordable housing needs of our communities of color, specifically requirements that maintain a minimum level of new lending and investment in affordable housing in LMI communities.

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?

NEHN supports the Federal Reserve's expansion of geographic areas for community development activities that include designated areas of need and would support a proposal to consider activities in designated areas of need that were also in a bank's assessment areas 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?

NEHN encourages the Federal Reserve to consider other designated areas of need, including in areas that are highly segregated, suffer from persistent poverty, and are experiencing an affordability crisis where the overall housing costs for households are particularly burdensome.

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?

NEHN supports the development of an illustrative and public list of CRA eligible activities, which provide greater clarity on activities that count for CRA purposes. This list should be developed in consultation with CRA stakeholders and updated at least biennially. The list should also include LIHTC as an eligible activity given its impact on the communities the CRA was intended to serve.

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?

NEHN supports the Federal Reserve's proposal and appreciates its efforts to provide greater transparency to the ratings process by making performance data available for each assessment area.

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?

NEHN supports the Federal Reserve's proposal and appreciates its efforts to "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?

NEHN supports the Federal Reserve's proposal and appreciates its efforts to downgrade banks that do not show quantitative improvement at the next examination.

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?

NEHN does not support a simplification of the satisfactory ratings. NEHN also urges the Federal Reserve to retain the current high and low satisfactory ratings to incentivize banks to meet increased standards within the rating and to provide community stakeholders with a useful definition of what a satisfactory rating means.

Conclusion

NEHN agrees with the Federal Reserve's intent in modernizing CRA modernization and appreciates its comprehensive approach to prioritizing consistency and transparency. As noted, NEHN believes that CRA reform must create more access to capital and credit for underserved LMI and minority communities by incentivizing high impact equity investments.

NEHN urges the Federal Reserve to work with the OCC and FDCIC to create unified regulations that accomplish these goals.

We would be happy to provide additional information or answer any questions about the comments provided in this letter. Please feel free to contact Ryan Dominguez at rdominguez@chapa.org.

Thank you for the opportunity to comment.

Sincerely,

Ryan Dominguez
CHAPA Policy Analyst/NEHN Coordinator

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