PHFA
PENNSYLVANIA HOUSING FINANCE AGENCY

VIA ELECTRONIC DELIVERY

February 16, 2021

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

Re: Advanced Notice of Proposed Rulemaking, Community Reinvestment Act
Docket No. R–1723 and RIN 7100–AF94

Dear Ms. Misback:

The Pennsylvania Housing Finance Agency ("PHFA") respectfully submits this letter to the Board of Governors of the Federal Reserve System (the "Board") in response to the request for comments in the recently published advanced notice of proposed rulemaking, Community Reinvestment Act, 85 Fed. Reg. 66410 (Oct. 19, 2020) (the "Notice").

PHFA is a public corporation and instrumentality of government created by the Commonwealth of Pennsylvania to provide Pennsylvanians of modest means or specialized needs with access to safe, affordable housing opportunities. As a state Housing Finance Agency ("HFA"), we are accountable to our constituents, to elected officials and to an uncompensated board of directors. PHFA provides funding for and services more than fifty thousand single-family mortgage loans funded through its mortgage revenue bond ("MRB") program or through securitization by Fannie Mae or Ginnie Mae. PHFA also funds multifamily rental housing developments by allocating federal low income housing tax credits ("LIHTC"), issuing its tax exempt bonds and extending loans through its many different multifamily programs.

As a mission-driven organization, PHFA specifically tailors its programs to address the needs of low- and moderate-income ("LMI") people throughout Pennsylvania. Our programs benefit households in underserved rural communities. We also assist with the remediation of code violations in urban centers. We offer many programs, including: energy efficiency and repair loans; rehabilitation loans for manufactured housing; closing cost assistance and down payment programs for first time homebuyers; closing cost assistance, down payment assistance and home accessibility modification loans to homebuyers with disabilities; and the Homeowner's Emergency Mortgage Assistance Program ("HEMAP"). We offer no-cost housing counseling to consumers through a network of nonprofit counseling agencies, funded through a variety of state and federal grants as well as private sources. We administer the Pennsylvania Housing Affordability and Rehabilitation Enhancement ("PHARE") Fund and the Pennsylvania Community Revitalization Fund Tax Credit. We work closely with the Pennsylvania Department of Community and Economic Development to administer awards of federal HOME funds to benefit both single family residential homeowners and multifamily residential rental affordable housing developments.

As a state HFA and a mission-driven organization, PHFA respectfully submits the following comments to the Board's Notice that it intends to modernize the rules it has promulgated under the Community Reinvestment Act ("CRA"), 12 U.S.C. §§ 2901-2908.

Modernization Objectives

The Board's first question seeks comment on whether any additional objectives should be considered in modernizing its approach to the CRA. PHFA respectfully requests that the Board consider issues related to environmental justice while modernizing the CRA. As a mission-driven organization serving LMI people, PHFA has long seen the correlation between poverty and areas with higher rates of pollution, flooding and other environmental inequities. Although the Board includes disaster preparedness and climate resilience as potential eligible activities benefitting LMI people and communities in Question 62, environment inequities should be focused on more generally as an objective of the CRA, as is suggested by the Center for American Progress in the report it prepared detailing the ways it believes the CRA may address systemic environmental justice issues (*available at:* https://www.americanprogress.org/issues/economy/reports/2020/12/17/493886/cra-meet-challenge-climate-change/).

Assessment Areas

PHFA concurs with the Board's focus on addressing discrepancies between CRA "hot spots" and "deserts." As the LIHTC-allocating agency for Pennsylvania, PHFA has first-hand experience with the impacts overlapping CRA assessment areas may have on investment. LIHTC projects located in CRA hot spots often raise more equity than projects located elsewhere, multiplying the value of the credit. At the same time, LIHTC projects located in areas with less CRA demand may require additional subsidies to be feasible, due to smaller contributions of equity for the credits. As a stakeholder benefitting from CRA investment, PHFA encourages an approach that preserves the power of CRA competition to multiply the impacts of other programs like LIHTC while ensuring the benefits of competition are not exclusively concentrated in specific locations due to the locations of banking facilities.

In response to Questions 8, PHFA encourages an expansion of the applicability of lending-based assessment areas to permit banks with physical locations to invest outside of the geographic footprint of their physical facilities. Such an approach, if thoughtfully designed, would ensure that LMI census tracts continue to benefit from CRA demand while increasing competition for CRA activities in areas that have historically lacked CRA investment. To further ensure new geographies are served by CRA investment, the Board should consider delineating assessment areas with a loans-per-capita measure rather than by the raw number of loans produced in an area. As explained in a report by the National Community Reinvestment Coalition ("NCRC"), the loans-per-capita metric has the potential to re-prioritize assessment areas, mitigating the concentrating effects of facility-based assessments (*available at:* https://www.ncrc.org/how-can-geographical-areas-on-cra-exams-work-for-branchless-banks/).

Questions 9 and 10 concern the application of nationwide assessment areas. PHFA urges the Board to reconsider permitting nationwide assessment areas. As the NCRC details in the report above, loans-per-capita metrics may be used to delineate the areas served by branchless banks. If, however, the Board decides to adopt nationwide assessment areas, PHFA encourages the Board to adopt controls to incentivize banks with nationwide assessment areas to focus their activity in CRA deserts.

Community Development Subtest – Avoiding Disruptions to LIHTC Investment

Question 42 requests comment on whether the Board should combine community development loans and investments for consideration under a single subtest. PHFA urges caution to avoid any impact on the ability of LIHTC to serve LMI communities. Since its creation, LIHTC has become the most widely used program for building and preserving affordable rental housing, and it is responsible for millions of units of housing. Areas with high CRA demand have long been associated with higher credit pricing, increasing the impact of LIHTC on a project level.

However, recent changes to the tax code have lowered corporate tax liabilities, impacting demand for LIHTC. At the same, increases in the allocation of LIHTC to each state have also increased supply of the credits. Finally, pandemic-related losses may impact the demand for credits to offset profits reduced or eliminated by COVID-19. Because of these economic pressures, the amount of equity that may be raised with LIHTC has been generally declining and may be expected to continue to decline. While PHFA welcomes the additional allocation of LIHTC and the recent effect of the "4% fix" to increase the credit rate for projects funded with tax-exempt bonds, we are concerned that changes to CRA regulations may unintentionally weaken demand for LIHTC and impact the ability of the program to raise capital for affordable housing.

For these reasons, PHFA urges the Board to carefully weigh the potential consequences of changes to the community development subtests. Historically, CRA-driven investment has been a multiplier of the power of LIHTC to build and preserve affordable housing units. The Board should continue to maximize the ability of the CRA to drive investment into the development of affordable housing.

Community Development - Financial Education and Housing Counseling

In Question 51, the Board seeks feedback on whether financial literacy and housing counseling activities should be eligible for CRA credit without regard to income levels. PHFA's network of nonprofit counseling agencies specifically targets its programs to serve LMI consumers and homeowners facing foreclosure. Although these programs do not require income verification for consumer participation, housing counseling from an approved counseling agency is generally a prerequisite to receiving a single-family mortgage loan from PHFA. PHFA's loan programs are designed to assist LMI consumers, and PHFA requires income certifications to ensure borrowers participating in its MRB program comply with the purchase price and income limits mandated by the Internal Revenue Service, or, for loans sold into other securities, the requirements of insurers, guarantors and investors. Counseling provided through PHFA's programs therefore serves primarily LMI consumers, although all may participate, regardless of income. We are confident that an investment by a bank in a financial education or housing counseling program administered by an HFA or a similar governmental or non-profit entity will likewise serve LMI consumers, without independent verification of the income of participants.

CRA Eligible Activities – HFA Programs as Eligible Activities

In response to Questions 71 and 72, PHFA encourages the Board to categorically designate the activities of HFAs to be eligible activities under the CRA. Designating HFA programs as eligible activities would simplify CRA due diligence for financial institutions investing in HFA activities while incentivizing investments in programs administered by mission-driven organizations with a proven track record. Given the results detailed in the comment letter submitted to the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation by the National Council of State Housing Agencies (*available at* https://www.ncsha.org/wp-content/uploads/NCSHA_Comments_on_Proposed_CRA_Regulations_4.8.2020.pdf), designation of HFA activity as CRA qualifying activity would simplify compliance for financial institutions while ensuring that investments benefit the constituents served by the HFA.

If the Agencies do not categorically designate HFA activity as eligible activities under the CRA, then, in the alternative, PHFA respectfully requests the Agencies include PHFA's programs in an illustrative list of eligible activities under the CRA. PHFA's statute expressly states it exists for the public purposes of, among other things, alleviating hardships limiting access to credit or contributing to insufficient access to housing opportunities while also stimulating investment in housing and neighborhood revitalization. *See* 35 P.S. §§ 1680.101-.102. PHFA's programs primarily benefit LMI Pennsylvanians and Pennsylvanians with specialized housing needs. PHFA requests that the following programs administered by PHFA be included on any illustrative list adopted by the Board.

- Capital Magnet Fund – PHFA administers a loan program funded by the Capital Magnet Fund ("CMF") of the Community Development Financial Institutions Fund of the U.S. Department of the Treasury.

PHFA's CMF program focuses on preserving existing affordable housing developments, and, at the programmatic level, more than one half of the total units receiving CMF funds from PHFA are restricted to rents affordable to households earning 50% or less of area median income ("AMI").

- Community Revitalization Fund – The Community Revitalization Fund is administered by PHFA with funds generated through the Pennsylvania Mixed-Use Development Tax Credit. The program funds selected mixed-use developments included in a community's neighborhood revitalization plan with all of a development's residential units restricted to rents affordable to households earning 80% or less of AMI.
- Financial Education and Housing Counseling – PHFA administers a network of non-profit housing counseling agencies providing financial education and counseling services to LMI consumers, as discussed in more detail above.
- Housing Bonds – PHFA issues its bonds to fund both single-family mortgage loans made to LMI families through its MRB program and loans to multifamily residential rental developments providing affordable housing through exempt facility bonds. These tax-exempt issuances must meet strict Internal Revenue Service requirements, ensuring the programs benefit LMI homebuyers and renters.
- LIHTC – PHFA is the state housing credit agency designated to allocate LIHTC in Pennsylvania. LIHTC projects in Pennsylvania must commit to a forty-year extended use period under the current qualified allocation plan, ensuring the LIHTC benefits LMI renters for decades.
- Mortgage Backed Securities – Following the financial crisis of 2008, PHFA began pooling single family loans originated through its programs in mortgage backed securities ("MBS") issued by Fannie Mae and Ginnie Mae. The issuance of MBS permitted PHFA to continue its single-family lending programs during a period of limited appetite for municipal bonds like those issued by PHFA.
- PennHOMES – The PennHOMES program provides multifamily residential rental projects with an interest free source of financing paid back from a project's excess cash flow. Projects receiving a PennHOMES loan from PHFA commit to restricting at least one-half of assisted units for households at or below 50% of AMI, with the remaining units restricted to households at or below 60% of AMI.
- PHARE – Under its PHARE program PHFA provides funding to Pennsylvania counties and municipalities, multifamily residential rental developments and other applicants that provide housing related services. Under its PHARE Plan, PHFA targets PHARE funding to address housing needs throughout the Commonwealth while using PHARE funds to leverage other sources of financing and investment. Multifamily projects receiving PHARE funds from PHFA must commit to restricting at least 30% of units to be affordable to households at or below 50% of AMI.

Thank you for your time and your consideration of these comments. Please feel free to contact Leonidas Pandeladis at lpandeladis@phfa.org if you have any questions or wish us to provide any additional clarifications regarding our comments on the Notice.

Sincerely,

Robin L. Wiessmann

Robin L. Wiessmann
Executive Director & CEO