National Association of Home Builders

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

Regulation BB; Docket No. R–1723
RIN 7100–AF94

RE: Community Reinvestment Act
Advance Notice of Proposed Rulemaking; Request for Comment

Submitted by Electronic Delivery: regs.comments@federalreserve.gov

Dear Ms. Misback:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I appreciate the opportunity to provide comments in response to the Advance Notice of Proposed Rulemaking (ANPR); Request for Comment issued by the Board of Governors of the Federal Reserve System (Federal Reserve) regarding the Community Reinvestment Act. The original purpose of the Community Reinvestment Act ("CRA" or "the Act"), to encourage banks to serve their communities, is as essential today as it was in 1977 when CRA was first enacted. However, as the financial services industry evolves so does the need for new approaches to meet the Act's statutory intent and NAHB agrees it is important to update and modernize the regulations to more effectively meet the needs of low- and moderate-income (LMI) families and communities and address inequities in access to credit.

NAHB is a Washington DC-based trade association representing, among others, companies involved in the development and construction of for-sale single-family homes, including homes for first-time and LMI home buyers, as well as the production and management of affordable rental housing. The ability of the home building industry to meet the demand for housing, including addressing affordable housing needs, is facilitated through CRA-driven loans and investments.

Background

The Community Reinvestment Act was first passed by Congress in 1977 to encourage depository institutions to help meet the credit needs of the local communities in which they are located, including LMI neighborhoods. The Act also was intended to combat redlining, when lenders looked outside their local communities for customers because local communities were deemed risky or unfit for investment due to the income, racial, or ethnic composition of the area. The Act requires the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC) and the Federal Reserve, collectively the federal banking regulators, to evaluate the CRA performance of the depository institutions each agency supervises. Based on an institution's performance in meeting the credit needs of its entire community, including LMI neighborhoods, it is assigned a CRA rating and issued a public performance evaluation by the examiner from its federal banking agency.

In August 2018, OCC, without FDIC or the Federal Reserve, issued an ANPR to gather public input on how to revise CRA regulations. The OCC received more than 1,500 responses to the questions posed in the ANPR. Those responses were shared with FDIC and the Federal Reserve and significantly shaped a Notice of Proposed Rulemaking released by OCC and FDIC in December of 2019. In May, 2020, OCC issued a final rule updating CRA regulations. However, OCC's final rule was not endorsed by either FDIC or the Federal Reserve and only financial institutions supervised and regulated by OCC will be required to comply. The OCC's new regulations were effective October 1, 2020, with a phased-in approach for compliance beginning January 1, 2023.

Responses to this ANPR will shape the Federal Reserve's eventual notice of proposed rulemaking to modify CRA. Representatives of the Federal Reserve have expressed hope that the proposal provides a foundation for all three banking agencies to converge on a consistent approach to modernizing CRA that has broad support among stakeholders. NAHB also is hopeful that a unified approach will be achieved.

Proposed Rule

The Federal Reserve has expressed concern that the legacy of discriminatory lending and systemic inequity in credit access remains in evidence today despite CRA's purpose and intent to address these inequities. In the ANPR, the Federal Reserve identifies broad principles that should be advanced by updated CRA regulations to ensure financial institutions provide access to credit and community development for LMI and minority households and communities. The ANPR lays out the agency's proposals and asks for significant input from stakeholders for ensuring CRA remains effective and relevant as the financial system evolves and the demographics of the population shift. The complex and comprehensive proposal has numerous broad objectives, including: Address changes in the banking industry; Bring greater clarity, consistency and transparency to performance evaluations by using metrics tailored to local market conditions; Strengthen implementation of CRA's core purpose to meet the wide range of retail banking needs for LMI households and communities; Clarify and expand eligible community development activities focused on LMI households and communities; Promote financial inclusion; Tailor performance tests to account for bank size and business model; Encourage bank activities in rural areas to recognize the unique needs and opportunities in these areas; and Minimize data collection and reporting burdens.

Currently, a bank is required to define a delineated assessment area or areas where it would receive CRA credit. Assessment area(s) are based on the geographic area(s) in which the bank has its main office, its branches and its deposit-taking automated teller machines (ATMs), as well as the surrounding geographic areas in which the bank has originated or purchased a substantial portion of its loans. In light of the growing use of online and mobile banking, the Federal Reserve's proposal considers whether to include deposit-based and lending-based assessment areas for large banks that conduct significant business outside of these facility-based assessment areas. For internet banks, the Federal Reserve considers the potential of nationwide assessment areas. However, the agency determined it would not eliminate facility-based assessments areas, acknowledging their importance to delivering banking products and services to individuals and communities. The Federal Reserve notes the particular importance of branches as the places where individuals develop personal banking relationships and obtain financial education. Branches are noted to be especially important in this regard to LMI consumers, small business owners, and low-income communities, including many rural communities.

Facility-based assessment areas for large banks would be modified to consist of whole counties to help meet the Federal Reserve's objective of additional predictability and consistency to the CRA examination and streamline the assessment area review process. The Federal Reserve suggests this change also may provide an incentive for large banks to lend in a broader area. Small banks would continue to be allowed to define facility-based assessments areas that include partial counties or portions of smaller political subdivisions, including portions of cities or townships, as long as they are composed of a least whole census tracts.

The Federal Reserve suggests a revised approach to evaluating a bank's CRA performance. The revised approach would introduce the use of standardized metrics to promote consistency, clarity, and transparency in the evaluation process. This addresses one of the criticisms of CRA's current performance evaluation approach that relies primarily on examiner judgment for evaluating retail and community development activities and determining ratings. The proposed use of metrics would evaluate a bank's performance in individual assessment areas and not performance for an institution as a whole. The use of performance context and qualitative aspects of a bank's performance still will be allowed in limited and transparent circumstances.

The ANPR proposes a Retail Test and a Community Development Test, each with a separate evaluation for a lending/financing subtest and a services subtest. Large banks would be evaluated under all four subtests in each of their assessment areas. The Retail Lending Subtest will use a metrics-based approach to evaluate how well a bank serves LMI census tracts (geographic distribution), LMI borrowers (borrower distribution), small businesses and small farms. Metrics would quantify this performance in every bank assessment area. Banks that pass determined thresholds for these metrics would receive a presumption of satisfactory in the Retail Lending Subtest in an assessment area. The approach to setting thresholds would be uniform across the country, but the thresholds would vary across communities, reflecting the economic conditions and opportunities in individual communities in different parts of the country. The ANPR proposes using loan counts, rather than dollar volume, in the geographic and borrower distribution metrics to best capture the importance and responsiveness of smaller dollar loans to the needs of LMI borrowers and smaller businesses and farms.

Under the Retail Services Subtest for large banks, examiners would evaluate delivery systems (i.e., branch distribution) and deposit products (i.e., checking accounts). The proposed approach would elevate the focus on deposit products offered and the degree to which these products are available and responsive to the needs of LMI individuals and LMI communities and use a combination of qualitative and quantitative data to determine a bank's performance evaluation.

As per the current CRA regulations, small retail banks, by default, would only be required to be evaluated for their retail lending performance in their assessment areas. Small banks would continue to be evaluated by the qualitative assessment of the current approach unless choosing to be evaluated under the new Retail Lending Subtest's metric approach. The Federal Reserve is considering allowing small banks that opt into the new Retail Lending Subtest's metric approach to have the option of requesting that retail services, community development activities, or both, also be considered when examiners establish their CRA performance ratings.

The ANPR proposes to broaden the definition of Community Development to include activities that support affordable housing, community services, economic development, and revitalization and stabilization. The ANPR proposes a metrics-based approach to evaluating activities under the Community Development Financing Subtest that would be tailored to the community development needs and opportunities within an assessment area. Additionally, the ANPR proposes combining consideration of community development loans and qualified investments, including originations, purchases, and activities held on the bank's balance sheet from a previous year, into one metrics-based Community Development Financing Subtest – a departure from the current community development financing assessment that assesses lending and investments separately.

The Federal Reserve considers revisions to the affordable housing definition. This includes clarifying the consideration of subsidized affordable housing, defining and incorporating consideration of unsubsidized affordable housing, providing *pro rata* consideration for mixed-income projects, and defining affordable housing activities that could be considered particularly responsive to the needs of LMI individuals and communities (e.g., proximity to public transportation). Current CRA guidance does not expressly clarify that unsubsidized affordable housing (often referred to as naturally occurring affordable housing) is eligible.

The ANPR proposes the potential use of "impact scores" to gauge impact and responsiveness for community development financing. Examiners could assign a score to a bank's community development financing activities based upon their assessment of its understood impact. The impact score for an assessment area would be evaluated together with the community development financing metric to establish a performance rating.

The Federal Reserve suggests a Community Development Services Subtest would focus a bank's attention on community development services and provide greater transparency and predictability in performance evaluations. Separately assessing and assigning community development services conclusions would facilitate a focus on these services and underscore their critical importance for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development.

For example, the ANPR proposes that banks will receive consideration for community development activities outside their assessment areas, as long as they are anywhere within an eligible state, territory, or region, defined as a state territory or region where the bank has a facility-based assessment area.

In speeches discussing the Federal Reserve's proposed CRA revisions, Lael Brainard, a member of the Board of Governors of the Federal Reserve System, has noted that the "legacy of discriminatory lending and systemic inequity in credit access remains in evidence today." To specifically address this concern and increase financial inclusion, the ANPR proposes special provisions for minority depository institutions (MDIs), women-owned financial institutions, low-income credit unions, and underserved areas that focus on low-income and minority communities by creating incentives for majority-owned banks to invest in MDIs and giving consideration for MDIs investing in other MDIs and in their own capacity. It also creates incentives for investments in Community Development Financial Institutions (CDFIs) and community development activity in underserved areas, including in Indian Country.

The Federal Reserve proposes to broaden the range of qualifying community development services and activities for banks in rural assessment areas. Banks would receive CRA credit for volunteer activities that have a primary purpose of community development, but do not use the employee's technical or financial expertise as currently required. Further, CRA consideration would be given to activities that address local community needs generally, without having to demonstrate a primary purpose of community development.

To provide greater upfront certainty on how activities will be assessed, the proposal suggests the publication of an illustrative but not exhaustive list of qualifying community development activities and the development of a pre-approval process allowing banks to receive feedback in advance on whether proposed activities would be considered eligible for CRA credit.

NAHB Comments

NAHB members are interested in CRA because it motivates banks to participate in activities that support increased access to financing for home builders and developers, affordable mortgage credit for LMI families and families in LMI census tracts, the production of affordable owner occupied and rental housing and community and economic development. Like most stakeholders, NAHB believes CRA should not be abandoned. However, for CRA to be relevant going forward the regulations must be revised to take into account current banking practices, important public policy interests, and increased data availability. Significant developments in all these areas indicate the timing is appropriate and opportune for updated CRA requirements and new approaches for evaluating a bank's CRA performance.

NAHB's response to the ANPR focuses on areas most relevant to the expertise of home builders and developers and the association's commitment to affordable homeownership and rental opportunities for LMI and minority households. Our comments address aspects of the Federal Reserve's proposal that impact access to financing for construction of new homes, align with NAHB's housing advocacy priorities that call for policies to increase housing supply, increase affordable housing options, benefit LMI homeowners and renter households and lessen the compliance burden for community banks.

CRA is, and should continue to be, a major driver for banks to make loans and investments in affordable and workforce housing. Compliance with CRA mandates, and the impact of banks' CRA activities on regulators' approval of their future business or mergers, gives banks powerful motivation to lend in minority and LMI communities. It also has prompted banks to develop innovative mortgage products that enable LMI and minority households to achieve homeownership. Examples of these products include mortgage loan enhancements such as closing cost assistance, interest rate buy downs, and down payment assistance. The importance of CRA as a homeownership vehicle for minority and workforce households cannot be overstated, since homeownership is the most straightforward way for families to build wealth.

For rental housing, CRA has driven banks' equity investments in Low-Income Housing Tax Credit (LIHTC) apartment communities. Considering the essential role banks play in LIHTC investment, and the CRA's role in incenting banks' involvement, NAHB is particularly concerned that any changes to CRA should not adversely affect banks' investments in LIHTC properties. It is essential that current CRA incentives for banks to invest in LIHTCs are retained and expanded. In fact, NAHB recommends the Federal Reserve permit banks to receive CRA credit specifically for LIHTC investments outside of facility-based assessment areas in an eligible state, territory or region where that bank has at least one assessment area. We also recommend such LIHTC investments receive credit at the facility-based assessment area. Finally, NAHB strongly urges the Federal Reserve to carefully analyze the new rule's impact on the LIHTC program before finalizing its CRA regulations to ensure it will not adversely affect LIHTC investments.

The final rule should build on these CRA successes. Therefore, NAHB strongly urges the Federal Reserve to further incent and give preference to housing-related loans and investments, including LIHTC, in the final rule.

Guided by these principles, NAHB offers the following responses to the ANPR's specific questions.

Question 1. Does the Federal Reserve capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

Under current CRA guidance, construction and other temporary financing of the construction-only portion of a construction-to-permanent loan to a for-profit entity secured by residential real estate qualifies for CRA credit if it has a primary purpose consistent with the definition of community development and is intended for households earning 80 percent or less of AMI.

NAHB believes this approach to construction financing is too limited given the importance of growing the housing supply overall and, in particular, increasing the availability of affordable housing.

Financial Institutions play a direct and important role in supporting the production of new housing supply. According to NAHB surveys, commercial banks and thrift institution are listed as the primary source of financing for small to mid-sized builders and developers. According to NAHB's Survey on Acquisition, Development & Construction Financing, in the fourth quarter of 2020, 85 percent of respondents reported using banks and thrifts for land acquisition; 84 percent for land development; 86 percent for single-family speculative construction; and 83 percent for single-family pre-sold construction. Since NAHB began the quarterly survey in 2005, results consistently have shown that a high percentage of builders and developers rely on their banks for acquisition, development and construction (ADC) financing. Since ADC financing is essential to the production of housing, these financial institutions are key to assisting home builders and developers create much-needed new housing supply.

This nation has a housing affordability crisis stemming in large part from the lack of new housing supply, particularly at the entry level. NAHB estimates the country is short one million new single-family homes needed to meet current overall demand. As the Federal Reserve considers updates to CRA regulations that incent banks to focus resources in their local communities, the availability of affordable housing must be at the forefront of these considerations. Safe, decent and affordable housing is critical to the stability of a community and should be of the upmost priority.

NAHB recommends the additional provisions below should be included in final, revised CRA regulations.

Construction loans to builders and consumers for 1-4 family residential properties should be included in the definition of a home mortgage loan for CRA purposes under the Retail Lending Subtest.

NAHB recommends the Federal Reserve specifically include construction loans to builders and consumers in the definition of home mortgage loans when calculating the proposed geographic distribution metric for a bank's retail lending subtest if the loans are reported on Item 1.a. (1) of Schedule RC–C of the Call Report. NAHB believes expanding the definition of home mortgage loans to include construction loans to builders and consumers for 1–4 family residential properties and allowing this activity to be eligible for CRA credit would encourage banks to make more 1-4 family residential construction loans. Access to construction financing is a key ingredient for increasing housing supply. As noted above, small and regional builders rely on debt financing from their community banks. According to NAHB's research, such ADC lending has been tight. Loan data reveal the stock of such lending is off 61 percent[1] since the start of 2008.

NAHB agrees the geographic distribution metric of a bank's Retail Lending Subtest should include home mortgage loans to borrowers of any income level but located within an LMI census tract of an assessment area. Therefore, NAHB proposes that a home mortgage loan for home construction to a builder or consumer should be required to be used to build a home in an LMI census tract of a bank's assessment area, but the borrower should not be required to be an LMI borrower.

Development and Construction loans to for-profit entities that create new, for-sale affordable residential housing should continue to qualify for CRA credit under the Community Development Lending Subtest if the activity has a primary purpose of community development and is intended for households earning 80 percent or less of AMI.

[1] https://eyeonhousing.org/2020/09/construction-loan-volume-contracts-during-2q20/

The Federal Reserve proposes to revise the definition of community development to include affordable housing activities defined as those considered to be particularly responsive to the needs of LMI individuals and communities. NAHB recommends the Federal Reserve's definition of affordable housing activities include financing to for-profit entities for development and construction of new for-sale residential homes when the homes are located in an LMI census tract of a bank's assessment area and are affordable to LMI borrowers. New housing compliments the efforts to provide education, healthcare, childcare and other services to a community by ensuring that all community members have safe, decent housing opportunities. The economic and social impact of new housing development cannot be overstated as a contribution to community development and financing to support it should be considered CRA-eligible.

For small banks that do not have a community development test requirement, NAHB suggests these loans should qualify for CRA credit as home mortgage loans under the Retail Lending Subtest as discussed above.

Housing is an economic driver that is an important factor in revitalizing a community. Home building generates substantial local economic activity, including new income and jobs for residents, and additional revenue for local governments. NAHB estimates that one-year impacts of building 100 single-family homes in a typical local area include $28.7 million in local income, $3.6 million in taxes and other revenue for local governments, and 394 local jobs. These are local impacts, representing income and jobs for residents of an average metropolitan area or nonmetropolitan county, and other sources of revenue, (including permit fees) for all local jurisdictions within the local area. They also are one-year impacts that include both the direct and indirect impact of the construction activity itself, and the impact of local residents who earn money from the construction activity and spend part of it within the local area.

Furthermore, the annually recurring impacts of building 100 single-family homes in a typical local area include $4.1 million in local income, $1.0 million in taxes and other revenue for local governments, and 69 local jobs. These are ongoing, annual local impacts that result from the new homes becoming occupied, and the occupants paying taxes and otherwise participating in the local economy year after year. The ongoing impacts also include the effect of increased property taxes, based on the difference between the value of raw land and the value of a completed housing unit on a finished lot[2]. Clearly all residents, including LMI individuals and families, benefit from the increased economic activity that new residential construction activity generates.

Job training programs should be specifically defined as an eligible category of the Community Development Services Subtest.

NAHB recommends the Federal Reserve allow support for job training programs to be evaluated as a qualifying activity in the Community Development Services Subtest. The Federal Reserve is considering several options for revising the definition of community development services to include a wider range of activities that help to support local communities and address important community needs, while targeted to LMI individuals. NAHB believes job training programs can be extremely beneficial to the workforce needs of LMI communities and LMI individuals and families. For example, the Home Builders Institute (HBI) is a national organization providing career training in the building industry. HBI training programs are taught in local communities across the country to youth, veterans, displaced workers and other underserved populations and provide students the skills and experience they need for successful careers through pre-apprenticeship training, job placement services, mentoring, certification programs, textbooks and curricula. Serving on the boards, volunteering, donating or

[2] "The Economic Impact of Home Building in a Typical Local Area: Income, Jobs and Taxes Generated," by the National Association of Home Builders Housing Policy Department, April 2015. https://www.nahb.org/-/media/NAHB/news-and-economics/docs/economics/economic-impact/economic-impact-local-area-2015.pdf.

finding other ways to contribute to organizations that help individuals become skilled at trades will ultimately contribute to the economic well-being of individuals, their families and their communities. Qualifying communities might be determined by the unemployment rate, particularly the minority unemployment rate, in a bank's assessment areas.

Question 5. Should facility-based assessment area delineation requirements be tailored based on bank size, with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties and smaller banks being able to delineate smaller political subdivisions, such as portions of cities or townships, as long as they consist of whole census tracts?

NAHB believes assessment areas should be established to ensure the broadest range of LMI households benefit from CRA. The ANPR's proposal to require facility-based assessment areas for large banks to consist, at a minimum, of whole counties supports this objective.

NAHB is pleased the Federal Reserve also is considering ideas to award CRA credit for activities over expanded areas outside of the facility-based assessment areas.[3]

NAHB agrees with the Federal Reserve that defining assessment areas based on whole counties may not be appropriate for small banks. To require small banks to serve the needs of entire counties may set then up to fail or present a compliance burden if a small bank does not have the capacity and resources to serve the needs of a geographically large county. As noted in the ANPR, this could be a particular hardship when a bank is situated near a county border, is otherwise geographically remote from an area where it may have some lending activity but no branches, or faces substantial competition from other financial institutions within the same geographies.

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?

NAHB appreciates that the Federal Reserve's proposal maintains different CRA requirements for small banks and large banks and eliminates the current category of intermediate small banks to create more consistent evaluation standards. NAHB supports a reduced compliance requirement for small banks to lessen the potential cost of additional resources needed to incorporate and perform new business processes. Keeping costs reasonable for small, community banks helps them keep costs low for their customers. A threshold differentiating between large and small banks also is in keeping with other federal banking regulations that provide a reduced regulatory burden on community banks.

NAHB supports increasing the asset threshold to at least $1 billion to distinguish between small and large banks. The definition of a small bank currently is adjusted annually based on the change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), not seasonally adjusted, for each 12-month period ending in November, and rounded to the nearest million. NAHB suggests the Federal Reserve consider the same adjustment mechanism could be utilized starting at the determined threshold and beginning

[33] NAHB makes several comments in questions 68 – 70 about the best ways to provide CRA credit for activities over expanded geographies outside of the facility-based assessment areas. One of NAHB's most important comment urges the Federal Reserve to allow a bank to receive CRA credit at the facility-based assessment level(s) for LIHTC investments made outside of the facility based assessment area(s) but are located within in an eligible state or territory or eligible region that includes at least one assessment area for the bank.

in the twelve-month period beginning with the November immediately following the effective date of a final CRA rule.

Question 38. Should the Federal Reserve provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Federal Reserve continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?

A bank that purchases a non-securitized, or whole, mortgage loan directly from an originating lender or affiliate should receive the same credit as that allowed for an originated mortgage. To not allow a purchased mortgage loan to receive the same credit as an originated mortgage loan penalizes a bank's business model. Some banks may not have the resources for efficiently originating mortgages, but will need retail lending to comply with its CRA requirements. A bank also may find value in servicing mortgage loans in its assessment areas even though originating them is not economical. To the extent a purchased mortgage loan meets a bank's CRA-eligible requirements, it should be treated as equal to an originated one. Also, a bank's purchase of a qualified mortgage loan provides the originating seller capital from the proceeds of the sale that may be used to originate additional loans. Both the seller and the purchaser have contributed value under the intent of CRA.

Question 39. Are there other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals?

Issuing and selling mortgage-backed securities (MBS) provides lenders with capital to continue lending. A bank's purchase of MBS backed by loans that finance subsidized multifamily rental housing, loans for mixed-income housing that includes affordable housing for LMI families, or loans to LMI borrowers should receive CRA credit because it supports the seller's ability to originate additional CRA activities. Encouraging these transactions by allowing a purchaser to receive CRA credit when the MBS are backed by CRA-eligible loans will increase liquidity in the market and enhance pricing of the MBS - providing more money for the issuer to use for retail banking and community development activities. The Federal Reserve notes that some stakeholders are concerned that some banks rely heavily on purchases of qualifying MBS for CRA purposes instead of pursuing more impactful and responsive community and development activities, which often involve deeper engagement with communities and entail a greater level of complexity for the bank. Other stakeholders expressed concern that some banks purchase large amounts of MBS just prior to their CRA examinations and then sell them shortly afterwards to another bank, which has little positive impact in their community. NAHB does not believe that these concerns should preclude MBS-eligibility for CRA credit. Trading of these specialized MBS for any reason allows them to remain liquid, which will continue to be beneficial overall.

Question 42. Should the Federal Reserve combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

Under the new Community Development Financing Subtest, the Federal Reserve proposes to evaluate community development loans and qualified investments together. The subtest would evaluate new loans and investments made or originated during each year of an evaluation period, as well as loans and investments made or originated in a prior year and held on balance sheet. The Federal Reserve believes evaluating these activities under one subtest would give banks more flexibility to provide the type of financing—loans or investments—most appropriate to support their local communities without concern about meeting different evaluation criteria.

NAHB recommends that the Federal Reserve maintains an investment test in the form of a Community Development Investment Subtest. NAHB is concerned that the absence of a specific community development investment requirement could have the unintended consequence of reducing banks' investments in affordable rental housing—specifically, apartment communities constructed or preserved under the successful LIHTC Program.

Current CRA Incentives for banks to invest in LIHTC projects should be preserved, and NAHB strongly urges the Federal Reserve to increase incentives that maintain demand for LIHTC. The LIHTC program is the largest and most successful federal production program for affordable multifamily housing. It is a public-private partnership that represents exactly the type of community investment CRA should continue to incent. Since the LIHTC Program was created as part of the Tax Reform Act of 1986, it has produced and financed nearly 3.5 million affordable apartments. As LIHTC properties generally must remain affordable for 30 years or longer, they provide long-term rent stability for low-income households.

Without federal assistance, it is financially infeasible to construct new, unsubsidized affordable rental units. LIHTC has provided the federal assistance necessary for affordable housing construction, and the CRA investment test has been an essential driver for LIHTC demand. More than three-fourths of LIHTC investment comes from banks that are motivated by the current CRA investment requirements. Banks' LIHTC investments provide the equity that enables LIHTC project owners to maintain affordable rents for LMI tenants. If investor demand falls for LIHTCs, less equity will be available to construct or preserve this affordable housing. A reduction in credit pricing may jeopardize the development or preservation of future units. Less investor equity translates into fewer housing units.

NAHB believes a Community Development Investment Subtest is the most straightforward way to retain the incentive for large banks to invest in the LIHTC properties. Therefore, we strongly urge the Federal Reserve to include a Community Development Investment Subtest. At the very least, modified CRA regulations could establish a minimum investment level requirement under the Community Development lending and investment requirement.

Question 47. Should the Federal Reserve 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?

The Federal Reserve is skeptical of using multipliers to weight certain categories of lending and investment activities differentially in calculating the community development financing metric, to help give greater weight to activities that are considered by many stakeholders as especially impactful and responsive. Instead, the Federal Reserve proposes that examiners assign an "impact score" to each bank community development financing activity based on their assessment of its impact locally that could range from 1 – 3, with 3 being the highest. The Federal Reserve explains that impact scores would build on the current evaluation approach, in which banks submit data to demonstrate that their activities have a primary purpose consistent with the definition of community development and have the option to provide information to describe the qualitative aspects of activities, such as the number of housing units developed or the number of jobs created.

Using impact scores to provide some level of qualitative analysis is an intriguing new proposal. This concept has merit, but NAHB urges the Federal Reserve to provide more information about the criteria examiners will use to determine which activities correspond to each impact score, the level of complexity assumed for each score, and specific metrics or considerations examiners will use to determine the local impact of the community development loans and investments. For example, is there a certain number or percentage increase in new jobs, housing units or other indicators that the community development activities must produce to achieve the highest rating? This is an area for which examiner training will be extremely important. NAHB also wonders whether impact scores ranging from 1 to 5 would allow for more descriptive impact scores.

If the final CRA rule includes an impact score approach, LIHTC investments should receive the highest rating. LIHTC investments are generally longer term, more complex and less liquid than debt financing – and the CRA investment requirement is the main driver behind these investments. Consistent with CRA objectives, banks' LIHTC investments play an important role in revitalizing communities by generating significant economic activity. NAHB estimates that the total one-year impact of building 100 multifamily units in a typical local area supports 161 local jobs, over $8 million in local wages and salaries and more than $2.2 million in local taxes.[4] NAHB strongly encourages the Federal Reserve to ensure that incentives for banks to invest in LIHTC projects are maintained in the new CRA regulations. Once again, we request that the Federal Reserve carefully analyze the effect of the new rule on the LIHTC program prior to finalizing the CRA regulations. Without banks' investments in LIHTC projects, the negative impact on this critical source of housing and economic activity for LMI communities could be catastrophic.

Question 52. Should the Federal Reserve 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 Federal Reserve is contemplating new regulatory language that would specify that a housing unit would be considered affordable if it is purchased, developed, rehabilitated or preserved in conjunction with a federal, state, local or tribal government affordable housing program or subsidy, with the bona fide intent of providing affordable housing. This definition is intended to capture a wide variety of subsidies, including tax credit programs (such as LIHTC, federal government direct subsidies and state and local government direct subsidies for the production or preservation of affordable housing). These programs could be for rental or homeownership. The suggested language could also cover programs that are not monetary subsidies, but that have the express intent of producing or preserving affordable housing, such as a loan in support of a land bank program.

NAHB commends the Federal Reserve for its thoughtful definition of affordable housing. This definition will continue to cover housing units traditionally considered affordable, such as apartments subsidized through HUD or USDA programs, and LIHTC units, but it will also encompass innovative solutions such as down-payment assistance for LMI borrowers and loans in support of a land bank program. NAHB further recommends that these eligible affordable programs be included in the Federal Reserve's list of activities approved for CRA credit. For "affordable" housing, as defined by the Federal Reserve, NAHB recommends deferring to the federal, state or local government program rules that set affordability standards for those units.

Current CRA guidance does not expressly clarify that unsubsidized affordable housing (i.e. naturally occurring affordable housing) is eligible for credit. The Federal Reserve is considering several options to clarify that preservation and production of unsubsidized affordable housing is eligible for community development CRA credit. The Federal Reserve is considering a definition for eligible unsubsidized affordable housing requiring that the rent be affordable, and the unit(s) be located in either an LMI geography or a geography where the median renter is LMI. These two criteria are intended to be a proxy for tenant income certification to determine that the

[4] Ibid.

housing benefits LMI households. The Federal Reserve is also considering alternatives to define unsubsidized affordable housing.

NAHB appreciates the Federal Reserve's efforts to clarify CRA eligibility for unsubsidized affordable housing. The Federal Reserve's proposed definition is thoughtful and pragmatic.

In the case of "unsubsidized affordable" units, the Federal Reserve suggests affordable rents could be calculated based on area median income (AMI) using the standard that families should pay no more than 30 percent of their income toward housing, using HUD Fair Market Rents (FMR) or using LIHTC rents to determine rental affordability. NAHB appreciates that the Federal Reserve is seeking comment on this issue. There are positive and negative arguments for using any of these measures. We urge the Federal Reserve to conduct further study on this question, and especially consider the impact on the long-term financial solvency of the property by using any of these measures.

Alternatively, the Federal Reserve could simply assume that its proxies for income certifications in unsubsidized affordable housing (i.e. the property is located in an LMI geography or in a geography where the median renter is LMI) are appropriate substitutes for income certifications and sufficient evidence that rents will be affordable to LMI households.

NAHB believes the primary consideration for providing CRA credit to unsubsidized affordable housing should be that LMI households are served as a result of the loan or investment. However, it is also important to ensure that even affordable rents provide sufficient income for the long-term viability of the property.

Question 54. Should the Federal Reserve specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?

The Federal Reserve is considering specifying certain activities that could be viewed as particularly responsive to affordable housing needs. Such activities could include, but would not be limited to, the financing of new or rehabilitated affordable housing units that include renewable energy facilities, energy-efficiency upgrades, or water conservation upgrades. The Federal Reserve also is considering whether financing of housing that is close to public transportation, often referred to as "transit-oriented development," should be designated as particularly responsive. Finally, housing for very low-income, homeless or other harder to serve populations would be considered particularly responsive.

The current housing affordability crisis is a supply-side problem. There are simply not enough housing units to meet the demand—particularly for LMI households. Therefore, NAHB urges the Federal Reserve to consider loans and investments that facilitate production of new single-family and multifamily housing for LMI households as particularly responsive to affordable housing needs.

CRA is intended to ensure banks meet the deposit and credit needs of the communities they serve, including LMI neighborhoods and LMI households. Extending CRA credit for loans tied to renewable energy facilities, energy-efficiency, water conservation and transit-oriented development are extraneous considerations that do not meet the stated purpose of CRA and should not be included.

Question 55. Should the Federal Reserve change how it currently provides pro rata consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized affordable housing?

Under the Federal Reserve's current CRA "primary purpose" guidance, a bank can receive full credit for a loan or investment if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes. For mixed-income housing where less than a majority of the dollars benefit LMI families or less than a majority of the beneficiaries are LMI, a bank can receive a *pro rata* share.

The Federal Reserve notes several ways to approach this question. One option would be continuing to provide the same *pro rata* consideration where 50 percent or fewer of the units are affordable. Another option would be to provide 50 percent consideration for buildings or projects that meet a minimum percentage of affordable units, such as 20 percent. Another consideration is whether *pro rata* treatment should be the same for unsubsidized affordable housing, compared to subsidized affordable housing or buildings subject to affordable housing set-asides required by federal, state or local governments.

For properties that meet the Federal Reserve's definition of affordable housing,[5] NAHB supports full CRA credit for properties in which 20 percent of units serve low-income households at or below 60 percent of AMI. For unsubsidized affordable housing NAHB recommends *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. Mixed income properties create socio-economic diversity. Renting to higher income residents gives the apartment owner the financial means to operate a financially sound property while providing affordable rents to LMI families.

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?

The Federal Reserve is considering approaches for providing greater clarity regarding where a bank's community development financing and services activities are eligible for CRA consideration, and for encouraging activities in areas with high unmet needs. First, the Federal Reserve is proposing an approach that would consider community development activities anywhere within states, territories or regions where a bank has at least one facility-based assessment area, with the activities counted towards the state or institution rating. In addition, the Federal Reserve is considering designating geographic areas of need where banks could conduct activities outside of assessment areas.[6] The Federal Reserve believes that these approaches could help alleviate the CRA hot spots and deserts dynamic and increase community development lending and investment in areas where they are needed the most.

Currently, banks establish assessment areas based on where they have a physical presence. This process does not ensure that all communities that need financial services are included in an assessment area. In areas where banks tend to congregate, such as urban, metropolitan areas, there often are an abundance of banks competing to service the same assessment areas to fulfill their CRA requirements. The competition creates "CRA hotspots" within the assessment areas.

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[5] See question 52 for the Reserve's proposed definition of affordable housing and unsubsidized affordable housing.

[6] See questions 69 and 70.

This situation is frequently observed by LIHTC developers. Banks fiercely compete for LIHTC equity investments located within their assessment areas. Unfortunately, other deserving LIHTC projects located outside of the assessment areas do not receive the same consideration.

NAHB commends the Federal Reserve for acknowledging the problems with CRA "hot spots" and "CRA deserts." At a time when so many LMI households struggle to find affordable housing, it is appropriate to consider innovative solutions that address housing affordability for LMI households outside of facility-based assessment areas.

The Federal Reserve proposes to provide CRA credit at the bank's state or institutional level for community development activities outside of their facility-based assessment areas. However, NAHB urges the Federal Reserve to provide CRA credit to banks at the *facility-based assessment area specifically for LIHTC investments* in "eligible states and territories" and "eligible regions." When there are multiple facility-based assessment areas in the eligible state or territory, the credit for the LIHTC investment(s) outside those areas should be distributed evenly among the bank's facility-based assessment areas within the state or territory. NAHB agrees with the Affordable Housing Tax Credit Coalition (AHTCC) that this approach would better ensure that underserved communities outside of facility-based assessment areas are still able to benefit from the incentive that the CRA provides, evening Housing Credit investments geographically and helping to limit CRA pricing distortions.

Question 69. Should the Federal Reserve 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 Federal Reserve is considering whether a bank should receive consideration for activities outside of its eligible state(s), territories and regions if the activity is located in designate areas of need. The Federal Reserve is exploring the following criteria for defining areas of need:

- Economically distressed rural or metropolitan areas that meet certain criteria, for example an unemployment rate that is persistently 1.5 times the national average or a persistent poverty rate of at least 20 percent;
- Areas where the local benchmark for the community development financing metric is below an established threshold.
- Areas that have low levels of home mortgage or small business loans as identified by lending data.
- Areas with limited bank branches or ATMs.
- Targeted geographies designated by other federal agencies that exhibit persistent economic distress, such as: Federal Native Areas; Appalachian Regional Commission or Delta Regional Authority Areas; and Colonias areas.

NAHB agrees that these are appropriate criteria for designated areas of need, and we support the Federal Reserve's idea to publish and update a list of designated areas of need on an annual or biennial basis.

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?

NAHB strongly recommends adding Presidentially Declared Disaster Areas to the designated areas of need. In addition, the Federal Reserve should also consider adding underserved or distressed nonmetropolitan middle-income geographies.

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?

NAHB supports the ANPR's inclusion of an illustrative, but non-exhaustive list of activities that meet requirements for CRA consideration. We believe updating this list periodically and allowing for public notice and comment on activities to be added or removed from the list will create transparency and allow for the sharing of innovative ideas.

Question 72. Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?

NAHB believes there is a benefit to all stakeholders for a pre-approval process to allow banks to obtain confirmation that a specific activity would qualify for CRA credit prior to embarking on an activity. The bank should have the option of submitting enough information on the proposed activity to obtain confirmation that the activity would qualify for CRA-eligibility. NAHB also recommends that a process for requesting confirmation that an activity would qualify for CRA credit should include a specific timeframe for a response from the Federal Reserve. A bank should receive a response within two to three months to prevent a bank from missing an opportunity or otherwise being disadvantaged.

These actions will help ensure consistency by the banking examiners when reviewing banks' activities, ensure consistency and transparency regarding qualified activities and encourage creativity by banks looking to meet unique needs in their communities. In fact, NAHB's response to OCC's ANPR in 2018 included these suggestions.

Conclusion

NAHB supports the Community Reinvestment Act and its implementing regulations that promote stable and thriving communities across the country. A consistent approach to meeting CRA objectives with clear rules will allow all community participants to take advantage of the opportunities that stem from a bank's CRA activities. Although OCC already has finalized changes to CRA regulations for its regulated institutions, NAHB believes there still is an opportunity for the banking regulators to come together to develop regulations that can be implemented consistently for all regulated institutions. We encourage OCC, FDIC and the Federal Reserve to issue a final rule jointly that is supported by all three federal banking agencies.

Thank you for your consideration of NAHB's comments. For more information, please contact Rebecca Froass, Director of Financial Institutions and Capital Markets, at rfroass@nahb.org or Michelle Kitchen, Director of Multifamily Finance, at mkitchen@nahb.org.

Sincerely,

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