AHIC | AFFORDABLE HOUSING INVESTORS COUNCIL

15 February 2021

Board of Governors of the
Federal Reserve System

Via Email to regs.comments@ federalreserve.gov

Re: Community Reinvestment Act Regulations (Docket No. R–1723 and RIN 7100–AF94)

Ladies and Gentlemen:

The Affordable Housing Investor's Council ("AHIC") welcomes the opportunity to comment on the proposal by the Board of Governors of the Federal Reserve System ("Board") to revise the agency's Community Reinvestment Act ("CRA") regulations.

AHIC is a non-profit organization that seeks to strengthen the low income housing tax credit ("housing credit") as an efficient and effective tool for the development of affordable housing in the United States. Our membership is comprised of 60 corporations, primarily financial institutions, that invest in rental properties that qualify for these housing credits under section 42 of the Internal Revenue Code of 1986. Our members represent 80% of the current market and have invested more than $100 billion in this unique public/private partnership. AHIC furthers our mission by developing best practices in underwriting and asset managing housing credit investments.

AHIC's members share your goals to increase the consistency, transparency, and timeliness of the administration of the CRA and appreciate your outreach to the banking and advocacy communities to collaboratively craft solutions to mutually recognized problems. Our responses to selected items from the 99 questions laid out in the advance notice of proposed rulemaking are focused on those that relate to affordable housing investment, with the goal of ensuring that any new regulations support, rather than jeopardize, the robust provision of affordable housing to needy Americans.

• CRA and The Housing Credit

One of the motivating factors in the creation of the CRA was the impact that redlining had on diminishing the availability of decent, affordable housing in the affected communities. In establishing the housing credit, which was born of a bipartisan law signed by President Reagan in 1986, Congress recognized that the private sector is ideally suited to provide the necessary capital and discipline to address the challenges of housing production at scale.

The housing credit is now the main tool for creating and preserving affordable rental housing. It has financed more than 3.5 million homes for eight million households, serving veterans, seniors, the formerly homeless, people with special needs, and working families – from teachers and nurses to administrative employees and social workers.

The housing credit is also currently the key vehicle for financial institutions seeking to meet their obligations to invest in underserved neighborhoods under CRA: currently more than 80% of the private capital flowing to the housing credit comes from CRA-motivated financial institutions.

Despite the successes under the program, from Alabama to Wyoming, from our largest cities to our smallest rural towns, there is a growing affordable housing crisis in the United States. In its 2020 *The State of the Nation's Housing Report,* the Joint Center for Housing Studies at Harvard University notes the following.

- 20.4 million renter households paid more than 30 percent of their incomes for housing in 2019; the total number of cost-burdened renters last year was 5.6 million higher than in 2001.
- The economic fallout from the COVID-19 pandemic has amplified the rental affordability crisis. About one in five renters earning less than $25,000 was behind on rent in September.
- Renter households of color have suffered disproportionately from the pandemic's impact: 23 percent of Black, 20 percent of Hispanic, and 19 percent of Asian renters were behind on their rents by late September, or about twice the 10 percent share of white renters.
- Despite the economic crisis, rents remain out of reach for many low- to moderate-income tenants. Reductions in rents have been concentrated in the luxury market: overall rents were down just 0.6 percent nationwide in the third quarter of 2020, driven by a decline of 2.2 percent in high-end properties.

According to the National Low Income Housing Coalition, the U.S. has a shortage of seven million affordable rental homes for extremely low-income renters. The housing credit is virtually the only resource driving the preservation and production of new, below-market rate apartments around the country.

<u>We are concerned that some contemplated changes to the CRA would result in disruptions to the housing credit market, diminishing the resources flowing to the program and shrinking the number of new homes it creates in a period of unprecedented need.</u>

- ## Impact of the Proposed Regulations on Affordable Housing

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?*

As is widely noted in the literature about the housing credit market and CRA, the current system has resulted in areas colloquially known as "CRA hot spots," where there is fierce CRA-motivated competition for housing credit investments. Delaware, Salt Lake City, and the largest east and west coast cities are among the hot spots. Rural communities, smaller Midwestern markets, and Native lands have been sardonically denominated "CRA not" locales.

The creation of **deposit-based assessment areas would lead to further concentration of resources instead of encouraging investment in underserved geographies such as Puerto Rico, rural communities, and Native lands.** AHIC has heard from our members and other banks that their new deposit-based assessment areas would overwhelmingly be based in cities such as New York City, Los Angeles, San Francisco, and other major markets. <u>Deposit-based assessment areas do not advance the fundamental mission of CRA to encourage the flow of community development capital to communities most in need; instead, they reinforce a system that privileges major population centers with concentrations of wealth.</u>

In our November 2018 comments to the Office of the Comptroller of the Currency regarding Docket ID OCC-2018-0008, AHIC encouraged the regulators to provide banks with more flexibility to pursue housing credit opportunities outside of their assessment areas to improve the flow of capital to less populous and less wealthy communities. **We believe that institutions should receive credit for investment activities across the country, once they have achieved a satisfactory level of performance in their assessment areas.**

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?*

Housing credit investments are in many ways unique among CRA-eligible activities, due to:

- The **limited supply**, as established by Congress,
- The power of state allocating agencies in determining the **siting of developments**, which may or may not be located in an institution's assessment area(s),
- Their **complexity**, which is only growing as allocating agencies increasingly direct housing credit resources to specific populations or demand mixed income and mixed-use components; one AHIC member from a financial institution recently recounted investing in a deal with 12 sources of financing,
- Their **duration** as a 10-year investment vehicle with a compliance period spanning 15 years, and their
- **Critical role** in driving the creation of new affordable housing in the United States.

Furthermore, under **Basel III capital requirements**, a bank's investments in housing credits are assigned a risk weight of 100% that does not diminish over time, as is the case with loans.

Because of these factors, **we have encouraged all regulators to retain a separate investment test**: without the motivation of an investment test, regulated institutions could find other CRA-eligible activities that have shorter durations and/or are simpler to execute more attractive than housing credit investments and shift their resources.

If the Board decides consider the current book value of community development loans, in addition to originations, a separate investment test is even more critical to ensure affordable housing is not adversely affected.

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?*

Any housing development with a specified deed restriction or Land Use Restrictive Agreement (LURA) to retain affordability should be considered for CRA. The preservation of this affordable housing once its restricted period has expired, as well as the support of naturally occurring affordable housing (NOAH), should also be eligible. Unsubsidized developments that are underwritten to be affordable according to HUD Fair Market Rents or 30% of Area Median Income should qualify; future CRA credit could be predicated on maintaining affordability by certifying rent levels at the time of the subsequent examinations.

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?*

As noted in Question 52, unsubsidized developments that are underwritten to be affordable according to HUD Fair Market Rents or 30% of Area Median Income should qualify for consideration; future CRA credit could be predicated on certification of the rent levels during subsequent examinations.

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

It is important that qualitative distinctions be made among the types of activities banks are undertaking, with differential weightings in the CRA performance framework. This will encourage them to pursue more challenging opportunities that are most responsive to community needs and have a greater impact, not just defaulting to those easy to execute. As noted above, housing credit investments are unique among CRA-eligible activities due to their complexity, illiquidity, and duration as an investment vehicle spanning 15 years, as well as the power of state allocating agencies to determine the siting of developments based on criteria they designate in their scoring rubrics. **Because of these factors, investments in federal housing tax credits should be considered to be particularly responsive to community needs.**

Because of the further challenges in financing and executing **supportive housing developments** that provide special needs populations with enhanced services, the Board should provide additional recognition for these investments.

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?*

AHIC supports the Board's current pro rata consideration for affordable housing.

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

Yes. As noted elsewhere, AHIC supports CRA consideration for affordable housing investments across the nation; this would include those made in conjunction with CDFIs.

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?*

AHIC supports CRA consideration and designation as particularly responsive activities in any designated area of need, regardless of whether it is in an institution's assessment area.

Thank you again for the opportunity to provide this feedback. If you have any questions, please contact the undersigned by phone at 347.392.9983 or by email at jhertzog@ahic.org.

Respectfully submitted,

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