NEW YORK HOUSING CONFERENCE

February 13, 2021

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.,
Washington, DC 20551

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

Re: Comments on Federal Reserve CRA ANPR: Docket Number R-1723 and RIN Number 7100-AF94

To Whom It May Concern,

We are writing on behalf of New York Housing Conference (NYHC) in response to the Federal Reserve Board (Board)'s Advanced Notice of Proposed Rulemaking (ANPR) proposal to reform the Community Reinvestment Act (CRA) rules.

NYHC is a nonprofit affordable housing policy and advocacy organization. We represent a statewide coalition of affordable housing practitioners, advocates and experts in real estate, finance and community development. As a broad-based coalition, our mission is to advance City, State and Federal policies and funding to support the development and preservation of decent and affordable housing for all New Yorkers.

The CRA is one of the most impactful policies in financing housing and community development. Banks represent one of the most important sources of affordable multifamily housing investment due to their investments in Low Income Housing Tax Credits (LIHTC) and Tax-Exempt Private Activity Multifamily Housing Bonds and loans and letters of credit to affordable housing developers. CRA also helps create new affordable homeownership opportunities and access to financing for low and moderate-income New Yorkers, offering the chance to build wealth and bring stability to neighborhoods. The Association for Neighborhood and Housing Development (ANHD) estimates that over 330,000 affordable multifamily housing units have been built in New York City alone due to CRA leveraged private loans and investments since the law's passage[1].

We appreciate the Board's interest in strengthening the CRA so that banks can better meet the credit needs of low- and moderate- income communities and communities of color in New York City and throughout the state and country. We support the Board's efforts to align all three regulators and believe this thoughtful process lays the groundwork to more effectively meet the needs of LMI communities, address inequities in credit and promote community engagement.

[1] ANHD. 2018. The State of Bank Reinvestment in New York City: 2018.

First, we believe that any CRA modernization must address some basic principles:

1. Increase investment in communities that are currently underserved
2. Benefit more low- and moderate-income households, particularly minority households, who live in those communities
3. Ensure CRA lending and investment does not lead to displacement of the very people it is intended to serve
4. Community input must be woven into the CRA process at all levels
5. Make both bank performance and government enforcement more transparent and predictable

We appreciate the Board's recognition that the CRA and fair lending responsibilities are mutually reinforcing, and for asking how the CRA can better serve people of color. Redlining, discrimination, and racial disparities in lending, banking, wealth, and income continue to this day. Banks must be evaluated on the quantity, quality and impact of their activities within the communities they serve to ensure they benefit underserved communities: low- and moderate-income people, and Black, Indigenous, and People of Color (BIPOC). The CRA should incentivize high-quality, responsive, impactful activities and downgrade for displacement and harm. We will respond to the ANPR proposal more broadly and answer some questions that are of particular interest to NYHC and our coalition.

Community Development Finance:

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

We support a comprehensive community development finance test. However, within that test, regulators must evaluate loans and investments separately to maintain incentives for banks to make investments. The high concentration of banks and a strong CRA obligation through the investment test have ensured banks compete for and make LIHTC investments in New York City and elsewhere. These can be complicated deals and provide a critical source of financing for affordable housing. In New York, LIHTC has helped finance more than 220,000[2] affordable rentals since the program began. Given its central role in creating and preserving affordable housing in New York and across the nation, we strongly believe that LIHTC investment should get special treatment in CRA examinations. We believe that special treatment of LIHTC in the CRA will help to encourage LIHTC investment and thereby help to address our nation's severe shortage of affordable rental housing. Renters across the nation are struggling to afford escalating rents, especially in high- cost cities. This problem is most acute for the lowest income renters, the majority of whom pay more than half of their income in rent[3]. According to the National Low Income Housing Coalition, the U.S. has a shortage of seven million rental homes affordable and available to extremely low-income renters, whose household incomes are at or below the poverty guideline or 30% of their area median income[4].

2Rental Action Campaign, New York State Fact Sheet:

https://static1.squarespace.com/static/566ee654bfe8736211c559eb/t/5f6ce56fc875a947f5083665/1600972145348/ACTION-NY-2020.pdf

3

https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf

4 https://reports.nlihc.org/gap

Question 47. *Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?*

We support both a quantity and quality metric. For loans and investments, dollars are important, but equally important is the impact of that activity. The Board must be careful not to drive banks to make the largest, simplest deals possible to meet a quantitative metric. The impact score should be broader than a scale of 1 to 3, and should prioritize a mix of the most impactful activities as determined by local communities, with a strong emphasis on mission-driven nonprofit entities. Many of these activities may be small by comparison, but the dollars will have a larger impact.

The affordable housing development we advocate for is complex. Projects often involve multiple sources of financing and complex underwriting structures. They have long timelines, require significant expertise and must overcome many bureaucratic hurdles. For these reasons, it is extremely important that we do everything to support and incentivize this kind of development. For example, in New York a project for veterans developed by Concern for Independent Living, a nonprofit organization operating in Long Island and New York City, in partnership with St. James Church in the Bronx, will create 104 units of affordable and supportive housing and fund full restoration of the historic church. Challenges associated with developing on historic and landmarked sites elevated costs and delayed the project until a solution to the funding gap was found. This project involved many sources of funding and public and private stakeholders, creating a complicated development process. Had their lenders pulled out because of the complications that arose, these critically needed projects could not get done. **This is exactly the kind of high quality, high impact investment we want to see incentivized by the CRA.**

Responsible multifamily lending: Quantity and Quality: Downgrade for Displacement

Multifamily lending is essential in cities like New York, where rental housing is prominent. Nearly two-thirds of New Yorkers rent their homes. Ongoing investment in New York City's housing stock is important to maintain housing quality standards, especially in affordable housing and rent stabilized housing, offering rental protections for millions of New Yorkers. Access to credit is critical to maintaining this stock of housing in the City, especially in lower-income neighborhoods. **While the volume of lending is important, equally important, if not more so, is the responsible underwriting of loans.**

Incorporate a robust qualitative assessment to determine ratings. Give credit for deep and permanent affordability, subsidized affordable housing, and loans to mission-driven developers. Banks should also get credit for committing and adhering to multifamily anti-displacement best practices in all forms of housing, subsidized and unsubsidized. Downgrade banks for lending to landlords who harass or displace tenants, and/or keep buildings in poor conditions.

Best practices for multifamily lending include:

- **Responsible underwriting. Underwrite to realistic rents and maintenance costs**. For rent-stabilized buildings in New York City, underwriting must be based on current rents with modest escalations in line with state protections for rents and increases limited by the Rent Guidelines Board.
- **Appropriate vetting of borrowers**. Use all available resources to lend to responsible landlords who properly maintain the stock of rent-regulated and affordable housing and respect the rights

of tenants. This includes consulting news reports and public lists; monitoring loan conditions, lawsuits, violations, and fines; and consulting with tenants and tenant organizers.

- **Responding to issues in buildings:** Create a formal process to work with tenants and organizers to respond when problems arise in buildings they finance.
- **Responsible sales/transfers:** Banks should also get credit for transferring distressed properties to responsible mission driven developers, rather than selling the debt, or supporting the sale of the building, to the highest bidder that is only seeking to make a profit.

1-4 Family lending to access and preserve homeownership:

We support the board's proposal to evaluate borrower and distribution metrics and a separate qualitative analysis, with credit for responsive products and practices.

Question 20. *Is the approach to setting the threshold levels and a potential threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark appropriate?*

We agree that it is appropriate to analyze a bank's performance compared to its peers in the market as one aspect of an evaluation. However, the metrics here and throughout cannot allow a race to the bottom. In a high-cost city like New York City, which also falls within a higher-income metropolitan statistical area (MSA), the analysis by income does not reflect the full set of needs. For example, a benchmark set to 70% of the market performance in New York City would mean a bank could pass with fewer than 1% of its loans to low-income borrowers. However the thresholds are set, the approach should incentivize banks to increase lending to these populations and not lower the bar to allow banks to do less.

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

The retail lending test should focus on originated loans, with more weight on owner-occupied loans. Examiners should guard against unnecessary churning of these loans.

The qualitative analysis would evaluate a bank's products and practices in a meaningful way. Banks should be evaluated on how they respond to the needs of struggling homeowners during economic crises like the one created by COVID-19—for example, whether they allow forbearance with no lump sums, loan modifications and loan forgiveness. Also, banks should get credit for affordable CRA products that they market and originate to LMI borrowers and BIPOC, including products requested by local communities. Banks should also be downgraded for indications of disparate pricing, harmful products, neglect, or displacement.

Regulators should also evaluate how well banks support homeownership in other areas of the CRA as well, such as financing the **construction or preservation of affordable homeownership**, including limited equity coops; grants for **housing counseling and financial education**, staff to provide financial education or homebuyer classes; and **foreclosure prevention**.

Community Input and Community Needs must be at the heart of the CRA.

Community input needs to be woven into every aspect of CRA reform and is necessary to fully determine an area's needs and also inform a banks CRA compliance strategy.

- **Performance context and community needs:** In addition to gathering demographic and statistical data, regulators must conduct proactive outreach and consult research centered on LMI and BIPOC communities to identify local needs and evaluate how well banks are meeting those needs. This needs to be a representative sample by geography, populations served, and area of focus. Regulators should also work with community organizations to incorporate feedback from residents throughout the assessment areas.
- **Bank evaluation:** Regulators should have a similar process to gather feedback on individual banks. They should ensure the public knows about bank exams and engage in proactive outreach to solicit feedback. A similar process can be implemented at the time of mergers, branch openings/closings, and other applications that connect to CRA.
- **Banks should be evaluated on their community engagement.** Banks must also be evaluated on how well they engage community organizations and residents in their CRA plans and implementation.

Conclusion

Low- and moderate-income and BIPOC communities deserve access to affordable, accessible banking and credit; safe, affordable housing; quality jobs; and community services. The CRA must be preserved and strengthened with a robust analysis of quality and quantity; incorporating community input, and keeping a strong local commitment.

Thank you for this opportunity to comment.

Sincerely,

Rachel Fee
Executive Director
New York Housing Conference