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February 10, 2021

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution, NW
Washington, DC 20551
Docket No. R-1723; RIN 7100-AF94

Subject: Advance Notice of Proposed Rulemaking, “Community Reinvestment Act”

The National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) appreciate the opportunity to provide our comments to the Board of Governors of the Federal Reserve System (the “Board”) on the Advance Notice of Proposed Rulemaking regarding Docket No. R-1723 pertaining to Reforming the Community Reinvestment Act (CRA).

For more than 25 years, the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) have partnered on behalf of America’s apartment industry. Drawing on the knowledge and policy expertise of staff in Washington, D.C., as well as the advocacy power of more than 155 NAA state and local affiliated associations, NMHC and NAA provide a single voice for developers, owners, and operators of multifamily rental housing. One-third of all Americans rent their housing, and 40 million of them live in an apartment home.

The multifamily industry relies on the banking system to provide loans for acquisition, development, and construction activities. At the end of 2019, depository institutions held over \$513 billion of multifamily debt on their balance sheets, confirming the critical role these institutions play in providing capital and liquidity to our industry. Banks are also one of the major capital sources for affordable housing through their investments in Low Income Housing Tax Credits (LIHTC). We expect banks to continue to play a critical role in financing multifamily housing in the years ahead. In fact, according to a recent study conducted by Hoyt Advisory Services, the U.S. needs to build at least 4.6 million new apartment units by 2030 to accommodate household growth and losses to the existing stock.

The multifamily industry is an essential provider of apartment homes that serve households of all income levels, whether through new development, renovation, or the rehabilitation of existing apartments. This business model depends on ready access to debt and investment capital, which is often provided by the banking industry. Access to capital is particularly acute in neighborhoods that serve the needs of low- and moderate-income (LMI) residents. Regulations and rules that disrupt the flow of capital represent an area of significant concern to the multifamily sector.

CRA has long played a critical role in ensuring the banking industry serves the needs communities in which they operate and LMI households in particular. While CRA has played an important role, it is not without its limitations. Thus, the multifamily industry is encouraged by the Board’s effort to modernize the program that started in 1977 and has seen limited changes

since. With that in mind and guided by the principle that modernization efforts should be focused on ensuring banks serve communities in need, we offer the following specific comments. We focus both on specific questions the Board asks and key areas we believe the Board must consider as it develops a final rule.

Uniform Approach

All regulated industries operate more efficiently and effectively with a clear, measurable, and transparent set of rules. In setting out the objectives of the ANPR the Board included that as one of their objectives:

Increase the clarity, consistency, and transparency of supervisory expectations and of standards regarding where activities are assessed, which activities are eligible for CRA purposes, and how eligible activities are evaluated and assessed, while seeking to minimize the associated data burden and to tailor collection and reporting requirements.

With that in mind, we strongly encourage the three main banking regulators, the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation to work in concert to finalize a new framework that is harmonized among the regulators, a reality that does not exist today given the separate approaches each has undertaken to date.

Investment

We agree that today's methodology for determining assessment areas (AA) neither reflects the current nor the future state of banking. Relying on the geographic boundaries established by banks' brick-and-mortar branches does not accurately reflect where banks are active. Concentrations of community development (CD) activity from non- or limited- branch banks around the headquarters of the parent depository are reflective of the need to modify assessment criteria. In many cases, these banks over concentrate their CRA activities in restricted geographical areas resulting in a "fight" for limited lending or investment opportunities.

The LIHTC program, in which banks invest heavily to meet CRA requirements, is illustrative of the unintended consequences of imbalances brought on by current CRA rules. Due to the outdated AA determination, banks bid up the prices for LIHTC equity to a point where it is non-economic for the banks. As a result, investment in other areas in which LIHTC activity could be beneficial, but uncounted toward meeting required CRA investment levels, lags behind.

Establishing an AA determination process that recognizes modern banking and the broader geographic breadth of communities that banks without branches serve today is crucial. We support an expansion of AA outside of the current physical presence approach of branches and ATMs. While this may result in a decrease in demand for LIHTC equity in certain markets, as long as LIHTC equity is still recognized as supportive of CRA activity, the result may be that LIHTC is able to serve a wider geographic footprint.

Finally, although LIHTC is a crucial investment vehicle that supports the delivery of affordable rental housing for LMI households, banks could be encouraged to provide investment in other



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forms of affordable rental housing. NMHC and NAA members find it challenging to raise equity from investors for multifamily properties serving LMI households. Providing banks an incentive, such as a multiplier or weighting per dollar invested, could increase long-term investment in affordable housing. This approach must be balanced so that the overall dollar weighting or multiplier is not so high that it negatively impacts the total monetary investments banks make in multifamily real estate.

Lending

Housing affordability is a challenge confronting numerous neighborhoods across the nation. Many owners of apartment buildings offer unsubsidized affordable housing to (LMI) households without any form of governmental support. These naturally occurring affordable properties play an important role in supporting the communities they serve. Often these properties do not qualify or are difficult to qualify for CRA consideration since owners do not have access to current and ongoing resident income. We appreciate the Board's recognition of these assets and the request for information on how to include them in the CRA evaluation process.

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?*

We strongly support including all three of these types of housing for CRA consideration. That said, although we support the goal of maintaining affordability, we do not recommend requiring a pledge or other mechanism to retain affordability. There is no mechanism today that requires renters in an unsubsidized apartment to verify income annually with the owner of the apartment. One way the Board could qualify these housing types for CRA would be to evaluate the types of loans financing the underlying properties. For example, refinancing loans could qualify for CRA while permanent financing take out of a construction or rehabilitation loan could be excluded.

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?*

We appreciate the recognition of the difficulty in determining rental affordability for naturally occurring multifamily affordable housing. We support an alternative methodology to assess rental affordability and encourage the Board to examine the process followed by the Federal Housing Finance Agency (FHFA) in evaluating Fannie Mae and Freddie Mac. FHFA allows the determination of affordable housing through the use of rents in place in comparison to the area median income applicable to a property's location and does not require individual income levels of the residents.

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?*

Increasingly, multifamily properties serve residents of mixed incomes and also lease space for retail or other non-residential purposes. Banking regulators, under Q&A guidance, have attempted to address this reality by allowing consideration of the full amount of a loan or investment, but the process is complicated and not easily implemented. For example, some examiners have discounted consideration for loans or investments for a LIHTC property if less than half of the units are affordable. Similar treatment can arise for mixed-income housing developed under state and local policies. The Board should clarify that any loan or investment made in conjunction with a federal, state, or local government's affordable housing or other CD policy will meet the primary purpose test and, thereby, receive full consideration, provided that at least 20 percent of the beneficiaries are LMI households. The 20 percent standard is consistent with other federal affordable housing policies, including LIHTC, tax-exempt multifamily bonds, and the HOME Investment Partnerships program.

Community Development Financing

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?*

Owners of apartments seek out loans of various durations and types depending on their specific investment goals. Banks are currently incented to make shorter-term loans since they are treated differently than investments for CRA purposes. We agree with the assessment that recommends equating the treatment of debt or investment similarly over multiple evaluation periods. This is a strong motivator for banks to allocate patient capital whether through lending or investment and eliminates the unintended consequence of banks favoring shorter-term loans.

We recommend treating longer-term loans that span over more than one examination period the same as investments. Recognition over multiple years of lending activities along with investment activities must be tempered by the higher level of capital and higher risk devoted to investment activities.

Mortgage-Backed Securities Related to Affordable Housing

The Board is considering the appropriate CRA treatment of mortgage-backed securities, which play an important part in supporting liquidity and freeing up capital for lenders. By securitizing and selling off loans through a guaranteed uniform security, liquidity for the lender is greatly enhanced. However, to expand lending and investment activity, banks should be limited in their ability to purchase securities backed by CRA-eligible loans that were not originated by the bank. Such a restriction would encourage banks to directly lend and invest in the communities they serve and limit the recycling of existing loans among banks as a means of claiming CRA credit. Should the Board continue to allow the repetitive sale of MBS as CRA qualifying, it is recommended that a minimum holding period be required and / or that an average minimum holding period be applied. Such requirements would reduce the incentive for a bank to "load up" on qualifying CRA MBS just before an examination period.

Metric-Based Framework



We appreciate the goal of simplifying and increasing transparency of the evaluation of CRA activity by all participants. While the idea behind a simple ratio to assess CRA performance is appealing, many questions must be answered if this approach is taken. It is imperative that no matter the approach ultimately used, incentives must remain in place to promote investment and lending activity in those neighborhoods and families that need it the most.

NMHC and NAA appreciate the opportunity to comment on the ANPR and welcome the chance to work with the Board to develop and implement a framework that modernizes the current Act, provides clarity and certainty to depositories, moves the process to greater transparency, and offers the proper incentives to promote affordable rental housing.

Sincerely,

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