BMO Financial Group

August 5, 2022

Via Electronic Submission (reg.comments@federalreserve.gov, cra.reg@occ.treas.gov, comments@fdic.gov)

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

James P. Sheesley
Assistant Executive Secretary
Attn: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Re: Community Reinvestment Act
FRB Docket No. R-1769; RIN 7100-AG29
FDIC RIN 3064-AF81
Docket ID OCC-2022-0002

Dear Sirs/Madam,

BMO Harris Bank N.A. ("BMO") appreciates the opportunity to comment on the Notice of Proposed Rulemaking ("NPR") for the Community Reinvestment Act ("CRA") issued by the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC") (collectively, the "Agencies") on May 5, 2022.

We recognize the important role that the CRA plays in the communities we serve. We strongly support the Agencies efforts to update the CRA regulations to adapt to changes in the banking industry, including internet and mobile banking, to make them simpler and more transparent for both financial institutions and communities, and to tailor CRA evaluations and data collection to bank size and type.

We are aware that the industry has put significant time and detailed thought into commenting on the NPR and making recommendations to enhance the final rule. To complement these efforts, we raise the following specific points and recommendations that we would like to emphasize.

Impact on Small Business Lending

BMO is concerned about the impact the NPR could have on availability of credit to small businesses by adding additional retail lending assessment areas ("RLAAs") outside of a bank's traditional CRA assessment areas as an additional trigger for CRA scrutiny. Accordingly, we respectfully request that the Agencies not include RLAAs as described in the NPR in the final rule.

The Agencies have historically evaluated a bank's CRA performance by reviewing its lending, investment, and service activities within the geographic area surrounding the bank's main office, branches, and deposit-taking ATMs (referred to generally as its "CRA assessment area") in light of the traditional connection between a bank's physical facilities and its customer base. A bank's CRA assessment area could also include surrounding areas in which the bank originates or purchases a substantial portion of its loans.

The NPR proposes to update the CRA assessment area approach for "large banks," defined as banks with at least $2 billion in assets, to include as RLAAs those geographic areas outside of the bank's traditional CRA assessment area where it has concentrations of retail loan originations when evaluating a bank's lending activities. A bank would be subject to this new approach if, for two consecutive years, it originates at least 100 home mortgage loans or 250 small business loans within a geographic area outside of its traditional CRA assessment area.

BMO is concerned that evaluating a bank's lending activity based on RLAAs outside of a bank's traditional CRA assessment area, where it may engage in only a modest amount of small business lending incidental to its overall lending activities, could lead to a decrease in the amount of small business loans available to borrowers and would violate the goal of CRA – to encourage investment by banks in the communities they directly serve. BMO worries that some banks may feel it necessary to curtail small business lending to avoid the additional responsibilities the NPR would impose to serve RLAAs where they maintain no branch presence and conduct limited lending activity. We believe it would strain the purposes of the CRA for banks to divert their efforts from serving their core communities to expand access to credit in markets where they may only incidentally operate based on business relationships with only a small number of borrowers.

Impact on Indirect Lending

While BMO disagrees that there is a need for RLAAs, if promulgated as written, considerations should be taken for varying types of small business lending. While the Agencies may feel that a bank that makes at least 250 small business loans in a geographic area should have some obligation under the CRA to serve the broader credit needs of that area, the fact that a bank originates loans in a geographic area does not necessarily mean that the bank maintains a meaningful presence in that area. This is particularly apparent with indirect lending.

In most indirect lending relationships, the dealer or seller that originates the loan chooses the lender. As the dealer or seller has the initial relationship with the borrower, banks have little control over the geographic distribution of their borrowers. Banks do not directly market indirect lending opportunities to borrowers and generally cannot direct outreach to LMI geographies, LMI individuals or companies with smaller revenues.

While auto lending is the most common example of indirect lending, small businesses frequently use indirect lending to obtain equipment financing, including the financing of transportation equipment. Trucking finance is unique even from auto lending as there are a relatively small number of trucking companies and they are not geographically diverse. Similar to the inherent realities that would result in boat dealerships being located near large bodies of water, trucking companies, and the dealerships that serve them, require a significant amount of land to operate and are most frequently located in a suburban or rural area, likely near a major highway system. Due to the limited number of trucking companies and the lack of geographic diversity, a bank with a heavy concentration of indirect trucking loans would not perform well in RLAAs under the NPR compared to its peers with a more balanced mix of traditional small business lending.

Ultimately, if the new RLAAs are required as proposed in the NPR, banks may be forced to make decisions about their trucking dealer relationships based on whether loans purchased from a particular dealer could trigger a new RLAA and whether the bank has the ability to meet the additional related CRA obligations in that area. In niche businesses such as indirect trucking finance, these types of decisions could have a significant impact on certain geographies and decrease the availability of credit overall. In the end, the proposed change may force truck dealers to look to non-bank lenders that are not regulated by the Agencies to meet their financing needs.

If the change proposed in the NPR is implemented in the final rule, indirect trucking loans originated through dealer relationships could drastically increase the total number of a bank's assessment areas nationwide even though those loans constitute a small portion of the bank's overall small business portfolio. Adding new assessment areas for a bank – outside its core communities – would not represent the investments an institution makes in its core communities and would unfairly impact its overall CRA performance.

Therefore, we ask that the Agencies not include the RLAA test proposed in the NPR in the final rule. If this test is included in the final rule, we ask that the Agencies exclude indirect lending from the calculation of the small business loan threshold. Short of this exclusion, the Agencies should increase the applicability thresholds significantly to ensure that new RLAAs are those that only capture geographic areas where banks have measurable market share.

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Partial Consideration for Other Community Development Activities

BMO also strongly encourages the Agencies to grant partial CRA consideration for important community development activities such as financing school bonds, health care facilities, and other essential infrastructure and community facilities. Our nation has tremendous infrastructure needs beyond affordable housing and providing partial CRA consideration for banks that finance those needs would provide a strong incentive for banks to work to ensure that those needs are met.

We appreciate the Agencies' concern that expansion of the activities that could qualify for partial CRA consideration would divert limited resources from projects specifically targeted to benefit low- or moderate-income people or communities. However, BMO does not necessarily believe that to be the case. Rather, we believe that expansion of the activities that could qualify for partial CRA consideration may encourage additional mixed projects, which may be broader in scale, from which low- and moderate-income people or communities will benefit.

For example, large scale infrastructure projects involve a significant investment of both capital and resources such that it is not often cost-effective to limit projects solely to low- or moderate-income communities. However, improving infrastructure in a community (e.g., roads, bridges, rail, sewer) greatly enhances the quality of life for individuals in low- or moderate-income communities who may benefit from a larger-scale project. Accordingly, we strongly encourage the Agencies to move away from the "all-or-nothing" approach set out in the NPR and adopt a more wholistic standard.

Thank you for the opportunity to provide input on this very important rule. BMO is very proud of the CRA activities and contributions we have made and will continue to make in our communities. The enhancements to the proposed rule as set forth above will help to ensure that banks are better able to focus their CRA activities to support the core communities in which they operate.

Sincerely,

[redacted]

David R. Casper
U.S. Chief Executive Officer
BMO Financial Group