BMO Financial Group

April 8, 2020

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

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

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Community Reinvestment Act Regulations
Docket ID OCC-2018-0008
FDIC RIN 3064-AF22

Dear Sirs:

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 Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC", and together with the OCC, the "Agencies") on January 9, 2020.

We recognize the important role that the CRA plays in the communities we serve. We strongly support the effort to update the CRA regulations to account for the changing nature of the financial industry and to make them clearer, simpler and more transparent for both financial institutions and communities.

We applaud the efforts undertaken by the Agencies to review comments from the Advance Notice of Proposed Rulemaking and to work with both banks and community stakeholders to understand their concerns and goals pertaining to the CRA and its impact on low and moderate income ("LMI") communities. We believe that the NPR proposes several constructive changes that help to accomplish the purposes above. Specifically, the clarity and transparency proposed in the CRA evaluation process, the general concept of established metrics by which to examine a bank's CRA activity, the list of qualifying activities, and the use of multipliers to give certain CRA activities more weight are all concepts that we believe will enhance the application of the CRA and the resulting benefit to communities, especially LMI communities. However, there are still several major areas within the NPR that should be further addressed in order to make the CRA a more viable, effective and current piece of legislation.

Overall, we agree with the various points and recommendations made in the comment letters submitted by the Consumer Bankers Association ("CBA") and the Bank Policy Institute ("BPI"). We appreciate the detailed thought each trade organization has put into analyzing the NPR and making recommendations to enhance the rule, while ensuring that it works with the current framework of its member financial institutions.

One major concern within the industry is that the proposed measurements and sources for data gathering have not been thoroughly assessed and could have unintended consequences on LMI communities. As a result of the unprecedented COVID-19 pandemic, we have been unable to obtain the information necessary to further analyze the proposed CRA measurements and provide more detailed comments. We, like others in the market, have allocated our resources to focus on increased employee, customer and community needs during this uncertain time.

Our hope was that the NPR would have provided more clarity and transparency to the current measurement framework, rather than create an entirely new framework. Without such clarity, and without the ability for the market to fully analyze any unintended consequences of the new framework, we remain concerned that the proposed changes will require banks to reallocate funds to comply with the new rule, rather than focus on more critical projects designed to respond to the best interests of our customers, employees and the communities in which we operate during this time of economic uncertainty.

Given the current economic situation, and without certainty as to unintended consequences of the new framework, we respectfully request that any implementation of a final rule be put on hold until there is more stability in the economic markets.

Nonetheless, we have identified a few points below that are raised in the above-mentioned trade organization comment letters that we would like to emphasize.

I. Definitions of Retail Domestic Deposits and Non-Branch Deposit Taking Facility

As stated in the trade organization comment letters, the inclusion of corporate deposits in the NPR's definition of "retail domestic deposits" is a significant point of concern for large banks like BMO with a high volume of corporate clients. Under the NPR, the location of a corporate account would be allocated to a company's headquarters, which oftentimes is a location chosen by the company to obtain tax or other corporate benefits that may not have any connection to the company's other locations or where the bank does business with the company. Since the proposed CRA evaluation measure depends largely on the number of "retail domestic deposits" that an assessment area and the bank have as a whole, inclusion of corporate deposit accounts would skew our CRA obligations towards areas that do not accurately reflect our relationships with our customers. If a main objective of the CRA is for a financial institution to serve the communities in which it is doing business, inclusion of corporate accounts in the definition of "retail domestic deposits" as proposed in the NPR does not help further this objective. Instead, this definition will lead to "hot spots" of CRA activity in areas that may be popular among companies to base their headquarters and may further exacerbate the unmet banking needs of underserved communities in need of investment.

Further, including corporate deposits in delineating "deposit-based assessment areas" under the NPR raises the same concerns. Instead of looking to areas where deposits are generated and banking is actually conducted as potential additional deposit-based assessment areas, we would need to look to the location of the headquarters of a company. As mentioned above, this would lead to artificial additional assessment areas where BMO does not actually conduct business or interact with customers. This type of assessment area would make it challenging for a financial institution like BMO to meet its CRA requirements since we may not have any relationship with the additional assessment area. In these cases, it would be extremely difficult to meet the various proposed CRA evaluation measures and tests, such as the retail lending distribution test and the community development requirements.

Similarly, in evaluating facility-based assessment areas, the definition of a "non-branch deposit-taking facility" in the NPR should be revised to clarify that a non-branch deposit taking facility is a banking facility (other than a branch) that is authorized to take *consumer* deposits, not all deposits generally. This change is consistent with excluding corporate deposits from the definition of "retail domestic deposits." This change is important to BMO as we have offices outside of our branch footprint area that are dedicated solely to commercial activity. These offices, such as our office in Los Angeles, California, focus primarily on meeting the lending needs of commercial clients. However, upon request, this type of office might assist a commercial client in making a deposit that would be processed through a BMO branch. This type of location should not be included as a "non-branch deposit-taking facility" for purposes of delineating assessment areas both because (1) these office locations are clearly not intended by the bank to be designated as deposit-taking facilities, and (2) these offices only assist commercial clients. Thus, to the extent that a bank employee at such location assists with making a deposit that would be processed through a branch, any such deposits would be limited to corporate deposits.

II. Deposit-Based Assessment Areas

We agree with the NPR that some form of additional assessment area is necessary to account for the changing ways that consumers are banking. We support the proposals made in the CBA letter with respect to "deposit-based assessment areas". The CBA letter raises several concerns and suggestions regarding the new concept of "deposit-based assessment areas". While we understand the Agencies' general objective of establishing deposit-based assessment areas given the increasingly online nature of the world we live in, we agree with the CBA that mandating deposit-based assessment areas will likely result in a bank having CRA obligations in either (a) areas that are already well served by banks with existing facility-based assessment areas, or (b) areas that the bank does not have any ties to, making it difficult to meet the CRA obligations.

Therefore, we support the concept of a "Reinvestment Redistribution" as proposed by the CBA, which would deem internet deposits as being sourced from a broad U.S. cyber community, rather than from any particular geography, and would permit CRA obligations based on these deposits to be fulfilled with qualifying community development activities conducted anywhere in the U.S. This approach would help meet the Agencies' goal of increasing CRA activity in areas outside of a bank's facility-based assessment areas without creating more "hot spots" in large metropolitan areas that may already hold a large share of CRA activity. Through this proposal, a bank would also be able to more effectively perform CRA activities in non facility-based assessment areas based on the bank's overall operations strategy, rather than being tethered to a geographic area that does not fit into the bank's overall strategy. This would allow a bank to carefully and thoughtfully assess potential additional areas in which to conduct qualifying CRA activities.

III. Branches serving LMI customers

The NPR does not appear to specifically address whether branches that are located near but not in LMI census tracts are included as LMI branches in the assessment area metric calculations. In June 2018, the OCC released Bulletin 2018-17 that states "Any conclusion that a branch outside an LMI geography serves the needs of residents of the LMI area must be supported by evidence showing that the branch actually serves customers in the LMI area. For example, … evidence that bank customers reside in LMI geographies." Given this recent guidance in 2018, BMO has worked closely with our CRA examiner to document LMI servicing branches and has relied on this guidance in forming its branch business model approach to serve LMI communities and households. A major part of BMO's overall branch strategy has been to ensure there are sufficient branches to serve LMI customers regardless of whether the branches are located in LMI census tracts or adjacent to such tracts. Our focus has been on the availability of branches to successfully serve our LMI customers as opposed to the physical location of branches within an LMI census tract. This has been a successful strategy for us and has worked to serve the LMI customers well, as can be seen by our recent CRA evaluations. Any change from the recent guidance in 2018 could negatively impact LMI communities as banks would no longer receive CRA credit for LMI serving branches. Accordingly, we join with the CBA and BPI in requesting clarity on this issue and urge the Agencies to specifically include all branches that serve LMI customers in its metric calculations, regardless of whether they are in located in LMI census tracts.

IV. Consumer Lending

We strongly agree with the trade organizations that the reporting and evaluation of consumer loans should continue to only be at a bank's option and that the mandatory inclusion of consumer loans would constitute a significant expansion of a bank's affirmative CRA obligations. More importantly, we also agree with the points raised by the trade organizations regarding the potential negative impact that including consumer loans may have on the availability of safe, responsible consumer credit in the marketplace. We would further add that if consumer loans are retained as mandatory in the final rule, we urge the Agencies to consider only including consumer lending if it is a substantial majority of a bank's overall lending portfolio, including commercial loans. To clarify what constitutes a "substantial majority", instead of the retail lending distribution test thresholds provided in the NPR, we would propose increasing the threshold to at least 75% of a bank's loan portfolio based upon total loan dollars originated and net authorizations (as opposed to units) during the exam timeframe (including commercial loans), especially for consumer loans. By doing so, we would only assess the consumer loan products that are both a substantial part of a bank's lending portfolio and significant to the communities it serves. This would encourage banks to continue to make various types of consumer loans with appropriate safety and soundness measures.

Additionally, we agree with the CBA that including consumer loans in the CRA's reporting and evaluation requirements would impose additional data requirements for loans that may not be accurate given the nature of information collected at the time of making the loans. BMO - like many of our peers - generally does not verify income provided by the consumer for consumer loans, such as auto loans and credit cards. BMO may have information on the borrower's income based on the borrower's representations, but does not take any steps to confirm this information prior to closing or thereafter.

V. Support for additional recommendations made by trade organizations

Finally, we would like to voice our support for the following specific recommendations made in the trade organization comment letters:

a. Origination of loans should continue to receive full credit regardless of if the loan is sold within 90 days. The value of a bank's resources in originating a loan is significant and should not be discounted as proposed in the NPR.

b. Community development activities should continue to include financing of small businesses or small farms that promote economic development by supporting permanent job creation, retention, or improvement.

c. Investments in mortgage-backed securities and municipal bonds should be included in the list of qualifying activities that are eligible for a multiplier. Both activities are valuable tools that benefit LMI individuals and LMI areas and should be encouraged and rewarded with a multiplier when calculating a bank's CRA evaluation measure.

d. Banks should have the option to characterize loans between $1 million and $2 million, or loans to a small business or small farm with gross annual revenues in the $1-2 million range, as either community development loans if they are made for the primary purpose of community development or as small business/farm loans if necessary for their CRA assessment in smaller and/or rural markets.

e. Qualifying activities in rural census tracts, or distressed areas, underserved areas, disaster areas and Indian country, should also receive a multiplier since such areas typically require a greater investment in bank resources.

f. Geocoding for retail domestic deposit accounts should be performed on an annual basis and only for new accounts, known address changes, and when census data changes.

Thank you again 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. Clarifications and enhancements to the proposed rule as set forth above and in the letters submitted by the trade organizations will go far in helping to ensure that CRA remains in the forefront in the financial industry. We hope that this letter has been helpful in focusing the Agencies' further evaluation of the proposed rule and that the Agencies consider delaying the implementation of the final rule until the COVID-19 pandemic and the resulting economic uncertainty has subsided. Please do not hesitate to contact me if you have any questions or would like to discuss further.

Sincerely,

[redacted]

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