April 8, 2020

Chief Counsel's Office
Attention: 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

Via Email: cra.reg@occ.treas.gov
comments@fdic.gov

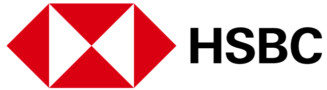
RE: Proposed Revisions to the Community Reinvestment Act Regulations
Docket ID OCC-2018-0008
FDIC RIN3064-AF22

To Whom it May Concern:

HSBC Bank USA National Association (Bank) is submitting these comments in response to the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) (Agencies) Notice of Proposed Rulemaking entitled Community Reinvestment Act Regulations (NPR).

The Bank thanks the Agencies for the time and effort they have expended to modernize the regulations promulgated pursuant to the Community Reinvestment Act (CRA). The NPR takes specific positive steps to have the CRA regulations reflect twenty-first century banking. Specifically, the Bank endorses the steps the Agencies have taken to: establish a set of metrics to examine a bank's CRA activity; delineating a list of qualifying activities; incentivizing banks to achieve an outstanding rating; setting clear demographic and market benchmarks annually; the use of multipliers to incentivize certain activities; and creating a framework for standardized, objective CRA evaluations of a bank.

The Bank endorses the contents and comments set out in the comment letter submitted by the Community Bankers Association (CBA) (CBA letter). Rather than recapitulate the contents of the CBA letter, the Bank seeks to highlight specific concerns with the proposed implementation of some of the



NPR's provisions. Concerns that the Bank believes the Agencies must review and address in the final rulemaking.

The Bank also endorses the American Bankers Association's recommendation that an advisory group consisting of banks' systems' experts, Call Report experts and any other relevant experts be enlisted to assist the Agencies in creating an objective data gathering and regulatory framework. Given the operational, financial and other data gathering challenges presented by the NPR, the Bank views this as a common sense solution to providing the information the Agencies are seeking, the information the banks need to comply with the proposed CRA information gathering requirements and the transparency that public interest groups want.

First, the NPR proposes to limit the CRA credit that a bank receives if it does not retain a loan on its balance sheet for ninety days or more. The Agencies have proposed this as a way to deter CRA loans from being "churned" or sold and re-sold from bank-to-bank. The CBA letter highlights this issue in the context of CRA loans that are sold to government sponsored entities (e.g. Fannie, Freddie and GNMA). While banks keep some mortgage loans in their portfolios, the current practice is for banks to sell loans in the secondary market. This facilitates banks' liquidity, enabling them to meet the financing needs of residential mortgage clients in low and moderate income communities. Banks, including this Bank, regularly purchase CRA loans. These loans are purchased from the originator. They are considered current production loans because they are not more than 90 days old. The loans are then securitized and sold in the secondary market. These securitizations are not marketed or advertised as CRA eligible. The loans cannot be disaggregated once they have been placed in a securitization pool and therefore cannot be churned. This practice provides liquidity to the originator and gives it the funds that it needs to engage in more CRA loans. Failure to give a bank full credit under these circumstances does nothing to abate the churn and does everything to cut off the flow of funds to CRA loan originators. The Bank recommends that loans purchased under these circumstances be given full CRA credit.

Second, is NPR's requirement that banks create assessment areas based on deposits. Currently, a bank's CRA obligation is based on its deposits (including large corporate customers' deposits), and its assessment areas are based around physical locations. The NPR requires a bank with 50% of its deposits derived outside its facility based assessment areas to create an assessment area in any area the bank has a 5% or greater deposit concentration. The Bank does not object to the NPR's creation of deposit based assessment areas. However, it does view including large corporate customer deposits in defining these assessment areas as causing a bank to reach the thresholds set out in the NPR based on one or two corporate depositors. This would require a bank with out-of-territory deposits in excess of 5% to create an assessment area in a location in which it has no physical presence or expertise. When evaluated on its own, an out-of-territory corporate deposit may seem large, but is insignificant when compared to a bank's overall deposit base or the total deposits of all banks in the market.

Corporations and their deposits tend to be clustered in high density population areas. Requiring a bank to create an assessment area as a result of having a large out-of-territory deposit customer will further exacerbate the lending rich versus lending desert issues that this NPR intended to ameliorate. Excluding commercial deposits from the proposed new requirement would enable banks to focus on their retail customers rather than the origin of their deposits when making CRA loans. In addition to creating lending rich and further exacerbating lending deserts, requiring a bank to create an assessment area in an area in which it has no presence will impose the same assessment criteria on a bank with one

corporate depositor and a bank with its corporate headquarters and deep retail roots in a city. Imposing the identical requirements on a bank with a deposit that is large enough to trigger CRA requirements but represents less than 1% of the deposits held by financial institutions in the same area presence creates both safety and soundness concerns as well as artificial competition with local banks that have much deeper and historical understandings that can be drawn upon when assessing potential low and moderate retail loans in the same area. It will require a bank to create an infrastructure to identify and evaluate loans and make substantial CRA investments in an area that it does not have a physical presence or expertise. This precludes a bank from making CRA loans in lending deserts and Indian Country. The Bank urges the Agencies to provide a floor beneath which banks with a large corporate deposit base do not have to create an assessment area. This floor should be determined by the percentage of the area's total deposits that are represented by the out-of-territory bank's corporate deposit.

The Agencies have predicated a lot of the NPR on inaccurate or outdated views of how banks gather information. Particularly that the information gathered is used for a single, specific purpose and that the information gathered is not easily repurposed for uses it was never intended to be put to. For example, the Agencies' unrealistic reliance on Call Reports for information Call Reports do not provide. Most banks have invested in systems that enable them to aggregate information that is only used for regulatory reporting purposes. These systems do not gather CRA relevant data (e.g. address, income eligibility). While a bank may have a single lending platform for mortgages, many banks, including this Bank, have four or more lending systems that generate commercial loans. The system used to gather and aggregate data is used solely for regulatory reporting purposes and is not able to provide loan level data. Having banks rely on the Call Report information to determine CRA eligible activities poses a number of challenges. Call reporting allows a bank to report obligations at the customer level, not the individual loan level. A customer may have several loans with the bank not all of which will qualify for CRA. The activity that is mapped to the Call Report is based on the customer, not the loan, making it impossible to use Call Report information to specifically identify the CRA eligible loans. The suggestion that a loan officer can check a box to flag a CRA eligible loan is predicated upon the Agencies' unrealistic expectation of the first line's CRA expertise. Box checking does nothing to resolve the issue of CRA loan identification. Many community development loans and investments are directed to more than one geography, so geocoding is not an appropriate manner for qualifying these loans. In order to identify these loans, it would require the Bank to engage in an intensive manual process reviewing each customer's loans to determine CRA eligibility. None of the systems the Bank uses were created with this sort of a use in mind, making most of steps discussed in this paragraph manual processes.

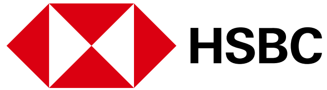
Over the years, banks have been consolidating through merger and acquisition. Many of the consolidating banks had incompatible systems of record at the time of merger. Culling the information the Agencies are seeking from these legacy systems will be a manual process. Gathering the information the Agencies are seeking cannot be derived from a Call Report and will be a very costly endeavor for any bank. Not only is this a significant regulatory burden, but it comes at a significant cost to the bank due to additional resources that would have to be dedicated to the evaluation. The current NPR would require banks to perform this intensive, manual review on a monthly basis. While the Bank concurs that CRA eligible loans remaining on a bank's books should continue to receive credit, it disagrees that the Call Report is the appropriate source for identifying CRA activity, especially when identifying community development loans.

Additionally, Call Reports only contain information about outstanding balances. Using Call Report's outstanding balances to determine the credit a bank would receive from a CRA loan is a significant departure from the way that banks receive CRA credit today. Currently, CRA credit is based on the loan commitment. At the time the commitment is made a bank puts 100% of the loan on its books and includes it in its risk weighted assets calculation. This Bank has a number of Community Development Financial Institution (CDFI) customers. They prefer that the Bank extend them revolving credit lines, not term loans. The revolving credit lines enable the CDFI to draw on the funds on an as-needed basis which enables the CDFI to manage its books, interest charges and not over extend itself. It would not be financially viable for the Bank to extend revolving credit to these CDFIs if it were only to receive credit on the outstanding balance and it would not be financially beneficial to the CDFI to have to take out a term loan, placing more credit outstanding on its books than it requires.

Furthermore, Call Report information that the Agencies seek to use to define CRA loans is not defined by an examination period. The loans that form the basis of the Call Report information may be on a bank's books for an extended period of time. A bank should not be required to go back to the borrower repeatedly to get updated financial information for a loan to retain it CRA status. It is intrusive for the borrower, outside common practice (leading to heightened borrower concerns) and expensive for the bank. The Bank reaffirms its support of the CBA's recommendation that the income information collected from the borrower at the time of application be used to evaluate the loan throughout its CRA eligibility, regardless of the age of that application.

Next, is the NPR's requirement that consumer loans be included in the retail lending test. The Bank is of the opinion that including consumer loans in the lending test should be optional. In this Bank's experience, low and moderate income borrowers are not seeking consumer credit. Many consumer loan products do not rely on income information in extending the credit. Since borrower income is the primary determinant of CRA eligibility, including these products would work against the bank in the majority of tests being prescribed by the NPR. If the Agencies were to include consumer loans in a bank's retail lending test, it may well have the unintended consequence of having banks offer low and moderate income customers consumer loans with risk adjusted pricing (i.e. higher cost to offset the default rate) in order to meet its retail lending test requirements. Despite the NPR's recommendation, the Bank cannot rely on the data feed(s) that come from its Call Reports to identify consumer loans. These loans come from many different parts of the Bank, different data feeds and software platforms, none of which are integrated. Building a consumer credit data aggregation system in order to report on a product that a bank's customers don't want is expensive and wasteful. Including the information in a retail lending test could have disastrous consequences for a borrower who received a higher-priced loan or a bank that did not properly price the loan and experienced substantial losses from the product marketed. The Bank proposes that banks be encouraged to create consumer loan products that meet the specific needs of low and moderate income customers and that a bank, at its option, can submit those lending activities for consideration under the CRA.

Fifth, is that the NPR requires that the retail distribution test be applied equally to every bank, across all assessment areas, regardless of size or market share and imposes the same criterion on all peer lenders in a geography whether there is a physical presence or not. This methodology does not take into consideration a bank's market share within an assessment area and places the same burdens and expectations on a bank with a small presence in a market and holds less than 2% of the market share as it does a bank with deep market penetration and 50% of the market share. The Bank believes it would be more equitable if the retail distribution test not apply to banks that hold a market share of 2%



or less of the deposit market share, or maintains two (2) or fewer branches in an assessment area (excluding a main office). This will help to balance the inequity in the infrastructure between banks with a large presence and those with a small footprint in the assessment area. This is particularly important given the impact of failing the retail distribution test on a bank's overall CRA rating.

Last, is the NPR's failure to give credit to bank branches that are outside low to moderate income communities but serve those communities. Currently the CRA's performance test permits counting branches located in middle and upper income census tracts that serve the needs of a low or moderate income community. The NPR only permits branches located in low and moderate income neighborhoods to be used in evaluating a bank's CRA performance. In high density population areas, it is not uncommon for upper and middle income census tracts and bank branches to be adjacent to low to moderate income neighborhoods. The branches located outside the low to moderate income neighborhoods serve and service these low to moderate income customers. Banks should not be penalized for having multiple brick and mortar branches adjacent to the low to moderate income neighborhoods. The current performance test should not be changed in any manner that would disallow credit for a bank for the services it does provide albeit outside a low to moderate income census tract.

While the above reflects the Bank's individual concerns, the Bank also wishes to reiterate that the issues and concerns set out in the CBA letter are the Bank's as well. The Bank encourages the Agencies to engage in frank and open dialog with all interested parties before issuing a final rule.

Again the Bank wishes to thank the Agencies for putting the NPR out for comment and taking the time to review and consider the views that the Bank has expressed in it comment letter.

Very truly yours,

Mark A. Steffensen
SEVP and General Counsel