BOK FINANCIAL

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April 8, 2020

Via Electronic Mail – Comments@fdic.gov
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Robert E. Feldmana
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AF22

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Docket ID OCC-2018-0008

Re: Community Reinvestment Act Regulations

Ladies and Gentlemen:

BOK Financial (BOKF) is a $42 billion full-service commercial banking organization with branches serving Oklahoma, Texas, New Mexico, Arizona, Colorado, Kansas, Missouri, and Arkansas. We also serve customers in all fifty states via either digital delivery channels or certain business units with an inherently national scope. We appreciate the opportunity to provide comments on the Notice of Proposed Rulemaking (NPR) published on January 9, 2020 (hereinafter the "Proposal") by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) seeking to modernize and strengthen the Community Reinvestment Act (CRA) regulation by creating a framework that is more objective, transparent, consistent, and easy to understand. We appreciate the hard work that went into the proposal and understand it is intended to encourage greater investment in communities through increased lending, investments, and services that benefit low- and moderate-income individuals, families and communities. Additionally, we recognize the Proposal is intended to encourage CRA activity in those areas that may be underserved by the current regulations.

BOKF is committed to meeting the credit and financial services needs of our customers and communities. Additionally, BOKF focuses on supporting our communities in the areas of basic needs, education, economic development, and providing strong support to our local United Way affiliates. We support changes to the CRA that retain a focus on providing community support and involvement while meeting the needs of our individual communities. While BOKF supports many components of the Proposal, we also feel it is our obligation, as a community leader and advocate, to bring to light certain concerns with the proposed changes to the CRA, which are further detailed below.

Qualifying Activities

BOKF supports the clarification and expansion of Qualifying Activities proposed in the rule. All banks, and ultimately the communities we serve, will benefit from the establishment of clear criteria for the types of activities that qualify for CRA credit. BOKF supports the following proposed changes:

- **Frequently Updated Published List of Qualifying Activities:** The existence of a list of Qualified Activities will provide the clarity necessary to encourage banks to make loans and investments and participate in activities that benefit the LMI community but for which they may not currently receive CRA credit. While the OCC proposes to update the list every three years, BOKF recommends that the list be updated more frequently. BOKF agrees that it is important for banks to maintain that clarity, and we believe that more frequent updates would be prudent in meeting this objective.

- **Confirmation Process:** BOKF supports and encourages the ability of banks to request confirmation that an activity qualifies for CRA credit prior to the initiation of the activity, as it will assist BOKF in making strategic decisions about lending and investment activities, and will incentivize us to "think outside the box" to meet the needs of the communities we serve. However, we recommend the timeline for confirmation be shortened from six (6) months to no more than three (3) months. This will support the reporting requirements outlined in the framework and allow the requesting bank to adjust if the activity is not confirmed.

- **Expanded Criteria for Qualifying Activities:** BOKF also supports the inclusion of a broader range of qualifying activities within the list. In particular, BOKF supports the addition of affordable housing that benefits middle-income individuals or families in high-cost areas. There is a critical need for affordable housing in communities all across the U.S. For instance, in Denver, Colorado, a city in which BOKF has a physical presence, a recent report shows that there are only 41 affordable and available units per 100 households for low-income individuals, and 87 such units per 100 households for moderate-income.[1] But limited affordable housing is also affecting middle-income households in high-cost areas. A report of the Joint Center for Housing Studies of Harvard University identified 20 metro areas in which more than 30 percent of middle-

[1] Andrew Aurand, Dan Emmanuel, Daniel Threet, Ikra Rafi, & Diane Yentel, *The Gap: A Shortage of Affordable Rental Homes*, National Low Income Housing Coalition (March 2020), *available at* https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2020.pdf.

income households spend more than 30 percent of their incomes on housing (which is considered by HUD to be housing-cost burdened), and this may create difficulty in affording rent as well as other necessities.[2]

The addition of investments in facilities like schools and hospitals is likewise a welcome change. Although these facilities might not be located directly in an LMI community, it is appropriate to incentivize these investments where they will still benefit LMI individuals or geographies. BOKF contends it is essential that this change is not detrimental to other qualifying investments that directly target and impact LMI individuals, families, and communities.

- **Credit for Community Service:** BOKF supports the inclusion in the Proposal of community support services that serve LMI individuals or families as Qualifying Activities, regardless of whether those services relate to financial expertise. BOKF values its commitment to working with our community partners, and welcomes opportunities for its employees to participate in a wider variety of service activities that are responsive to the particular needs of our communities. Attention should be given to the effect these additional activities have on LMI communities and borrowers. For example, BOKF employees participate in Reading Partners, a one-on-one tutoring program designed to help children master basic reading skills, which currently is not a Qualifying Activity but will be included under the proposed changes.

We have also identified the following two areas of concern which prompts the need for change to the Qualifying Activities section of the Proposal:

- **Reduction of credit for retail loans sold within the first year of origination:** In order to address concerns that certain loans are frequently traded between banks to inflate CRA activity, the Proposal provides that retail loans sold within 90 days of origination will receive 25% credit for CRA reporting. In addition, the OCC clarified in a recent Q&A that banks will only receive full credit for loans originated if they are held by the bank for a full year on its balance sheet. This element of the Proposal will ultimately incentivize the purchase of loans over the origination of loans, which is a problematic consequence. Importantly, this will not be beneficial for LMI communities. GSE's frequently provide the most beneficial products for LMI borrowers. Additionally, incentivizing the sales of loans after a year has the potential to create a burden on borrowers because their loans could be moved to different institutions for servicing after they have already established payment practices. This will cause confusion for customers and significantly increase the risk of missed or late payments. We ask that the final rule reflect the importance of originating loans to LMI borrowers and providing CRA credit for serving the needs within our own communities without requiring the loans to be held for an entire year. An alternative approach to meeting the intended purpose of the Proposal could include the reduction of credit for loans purchased instead of reducing the amount of credit for loans originated.

[2] Joint Center for Housing Studies of Harvard University, *American's Rental Housing 2020, available at* https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf.

- **Retail loans in LMI geographies are not included as a Qualifying Activity:** The Proposal no longer gives credit to loans originated in LMI geographies, and will only allow credit for LMI loans based on borrower income. BOKF recommends that the agencies include retail loans originated in LMI geographies, regardless of the income of the borrower, in the list of Qualifying Activities. LMI geography should remain a consideration in any efforts to modernize the CRA, as it encourages investment in LMI communities and, oftentimes results in an increase of affordable housing available to LMI families. Providing this type of financing in LMI communities encourages income diversity, lowers the exposure to poverty for all residents, and is associated with better outcomes for low income children growing up in these neighborhoods.

Assessment Area

BOKF supports the agencies' efforts to update the definition of an Assessment Area and has little concern with the addition of deposit-based Assessment Areas.

CRA Performance Evaluation

BOKF is very supportive of an objective and quantifiable evaluation measure that allows each bank to clearly identify the path to a successful CRA outcome. However, the various proposed methods of calculation are very complicated and problematic. These concerns are highlighted below.

- **Negligible Credit for Bank Branches:** While BOKF recognizes that the industry has changed with technology, bank branches still provide a valuable and important means of access to financial services for LMI communities and small business owners. A recent study published by the Federal Reserve Bank of Philadelphia recognizes that the CRA has motivated banks to keep their branches open in LMI communities, and that "changing the way assessment areas are defined may have unintended consequences for bank branch coverage."[3] For these reasons, BOKF strongly recommends that the agencies increase the credit given to banks for maintaining traditional "brick and mortar" branches in LMI communities. The agencies propose a multiplier of merely .01 for maintaining branches in these communities. BOKF encourages and recommends that the agencies use a larger multiplier in order to incentivize banks to maintain and grow their physical presence in LMI communities. Adjusting the multiplier to .025 would be more appropriate and would indicate the level of importance that the agencies place on branch location. As of December 2019, 26.03% of BOKF's brick-and-mortar branches and deposit-taking ATMs are located in LMI census tracts, yet the impact of those branches on the CRA Evaluation Measure is calculated as .26%. This negligible credit provides very little incentive for banks to establish additional branches or maintain existing branches. Rather, using the 6% Satisfactory benchmark, the branch distribution accounts for approximately 4% (.26%/6% = 4.33%) of the CRA Evaluation Measure. In comparison, under the existing CRA framework,

[3] Quentin Brumment & Davin Reed, *The Effects of Gentrification on the Well-Being and Opportunity of Original Resident Adults of Children*, Federal Reserve Bank of Philadelphia Community Development and Regional Outreach Discussion Paper (July 2019), *available at* https://www.philadelphiafed.org/-/media/community-development/publications/discussion-papers/discussion-paper_cra-and-bank-branching-patterns.pdf?la=en

branch distribution credit is well above that threshold and accounts for the majority of the Service Test which is 25% of the current overall CRA rating determination.

- **Retail Lending Distribution Test:** BOKF supports the application of a threshold before requiring a retail lending distribution test. However, the proposed level of 20 or more originations in a single Assessment Area creates the opportunity for significant variance in the test results based on the addition or subtraction of one or two LMI loans within the data set. Raising the level to 50 originations in the Assessment Area before requiring the test would provide a more meaningful evaluation of meeting the needs within the community. We encourage a change in the threshold.

- **Service Activity Valuation Inequities:** The Proposal quantifies the value of services based on the compensation for the type of work engaged in by the employees providing the services as reflected in the Bureau of Labor Statistics calculation of the hourly wage for that type of work. Adopting this approach would create inequities between geographical regions. For example, 100 hours of community service may be valued very differently depending on the region of the country in which those activities are performed. This is both discouraging and inequitable. Institutions with the same number of service hours but vastly different hourly rates based on location alone would not produce a consistent result. We recommend the final rule include a national multiplier that provides sufficient incentive for bank employees to perform the services that the community needs.

- **Community Development Lending and Investments Test:** The single 2% test for Community Development (CD) lending and investments could have a negative impact on important investment activity by favoring larger investment opportunities in metropolitan areas over smaller opportunities in rural areas or causing banks to focus primarily on large CD lending opportunities instead of investments. The low income housing tax credit (LIHTC) program is significant to the construction and rehabilitation of affordable housing units in our country. BOKF’s LIHTC investment and lending activity over the last 10 years has been key to addressing this need in our communities. Over time, the method of determining CRA performance as set out in the proposal could result in a shift to shorter duration activities which may not be as impactful for this critical need.

Data Collection, Recordkeeping, & Reporting

While BOKF agrees with the importance of modernizing the CRA to meet the stated goal of creating a framework that is objective, transparent, consistent, and easy to understand, this should be achieved without imposing the proposed significant additional data reporting requirements. The Proposal utilizes an average month-end outstanding amount on the balance sheet for any qualifying loan or community development investment. Calculation of this amount will require additional integrations and data from multiple systems on a monthly basis with annual calculations performed at year-end. We recommend instead that the CRA Evaluation Measure calculation includes credit for the full origination amount in the first year of the loan or investment and a portion of credit for subsequent years the loan is on the balance sheet at year-end.

There are also system changes that would be required with the proposed changes. The requirement to evaluate retail deposits based on the address of the account holder puts strain on the geocoding capability of current systems. The additional recordkeeping requirements would draw information from multiple loan, deposit, and investment systems, and require additional resources for data integrity reviews. Finally, enhancements would be required to produce and maintain the calculations related to the methodology. A conservative estimate of additional system, licensing, and employee costs ranges from $175,000 to $200,000.

Finally, the CFPB is still in the pre-rule stage on regulations to implement Section 1071 of the Dodd-Frank Act, and it is possible that banks will be faced with inconsistent definitions and data collection requirements when this rulemaking moves forward.

We appreciate the opportunity to comment on the Proposal and offer our support in working with the OCC and FDIC to implement effective improvements to the CRA. Please contact me by email (jstall@bokf.com) if you have additional questions.

Sincerely,

[redacted]

Jo Ann Stall, CRCM
Chief Compliance Officer