BANK OF AMERICA

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

Re: Community Reinvestment Act Regulations (Docket ID OCC-2018-0008; RIN 1557-AE34; RIN 3064-AF22)

To Whom It May Concern:

Bank of America appreciates the opportunity to comment on the Office of the Comptroller of the Currency's ("OCC") and the Federal Deposit Insurance Corporation's ("FDIC") (collectively "the agencies") joint proposal to revise the agencies' Community Reinvestment Act ("CRA") regulations. The effort to modernize the CRA is commendable and we very much appreciate that the OCC and FDIC have gone to considerable lengths to understand the challenges and recommend solutions.

At Bank of America, our purpose is to make financial lives better through the power of every connection. We deliver on that purpose by driving Responsible Growth: We have to grow by focusing on serving our clients; we have to manage our risk well; and our growth has to be sustainable, meaning we share our success, we focus on operational excellence, and we strive to be a great place to work for our teammates.

Core to our commitment to responsible growth is our awareness of the role we play to help drive economic growth and prosperity for individuals, households, families, and businesses, including in our Low- and Moderate- income ("LMI") communities. We are committed to the clients and communities we serve.

Bank of America's recent CRA rating of Outstanding demonstrates our commitment to supporting LMI individuals and communities and helping them to grow financially and thrive.

Bank of America's Support for the CRA

We support efforts to ensure that the CRA remains an essential part of the structure for sustaining and revitalizing communities. Bank of America recognizes that as the banking industry evolves, modernizing the CRA's regulatory framework is important to ensure that LMI communities have access to financial opportunities and resources to help promote economic development.

Since the CRA was enacted in 1977, Bank of America has supported the spirit and value of the CRA. The Act has been instrumental in helping millions of Americans become homeowners, providing millions of affordable rental housing units, enabling small businesses to grow, and encouraging catalytic investments in underserved neighborhoods. Bank of America, N.A.'s achievement of a total of eight Outstanding CRA ratings and one Satisfactory rating demonstrates our commitment to, and advocacy of, using the CRA to positively impact LMI individuals and communities.

Guiding Principles for CRA Reform:

Four principles guide Bank of America's approach in being proponents of CRA reform:

- **Flexibility:** CRA reform should increase the flow of capital to underserved areas and reflect the changes in both the industry operating environment and customer behaviors. Reform should reflect the evolution in technology, changing consumer behavior in banking channel preferences and adoption of technology that allows for continuous access to various banking delivery channels 24/7.
- **Efficiencies:** CRA reform should ensure a balance of resources to meet community needs, regulatory requirements and a strong banking industry in order to foster more investment and lending in LMI areas and access to LMI customers.
- **Differentiation:** CRA reform should be responsive to the diversity of bank size, scope, and delivery channels.
- **Safety and Soundness:** The CRA should ensure that CRA evaluations reinforce good decisions fostering sustainable growth as well as balanced risk and reward.

With these principles in mind, Bank of America reviewed the agencies' proposed rulemaking and identified a number of provisions that may not be consistent with the goal of modernizing CRA while preserving its effectiveness to provide LMI individuals and communities with access to credit and promote long-term improvement in economic outcomes.

Bank of America has worked with several industry trade organizations to articulate our concerns and offer solutions. The Bank has also engaged with community advocate partners to understand their concerns. Bank of America shares the goal of the industry and community advocates to continue to promote and advance economic opportunity through a robust CRA framework. Of particular importance are the following recommendations:

Mortgage Originations and Use of Balance Sheet Value in the CRA Evaluation Measure

The proposal's CRA Evaluation Measure gives banks credit for the outstanding dollar value of retail loans on a bank's balance sheet.

Specifically, as it relates to home loans, the focus on balance sheet value would have the unintended consequence of diminishing the availability of credit for LMI communities. This policy change would run counter to the CRA's central purpose.

Bank of America's ability to sell its originated loans on the secondary market, thereby moving the loans off the Bank's balance sheet, makes more capital available to lend in LMI communities. The proposed rule, however, would incentivize banks to keep loans on their balance sheets in order to maximize CRA credit, potentially limiting the capital available to make loans. Such an outcome would run counter to the CRA's intended purpose of expanding access to credit, particularly in LMI communities. Bank of America believes the CRA Evaluation Measure should give credit for a qualifying retail loan's origination value rather than the balance sheet value.

In addition, Bank of America has invested considerably in the infrastructure necessary to originate loans that are responsive to LMI community needs and circumstances. Our Neighborhood Lending team's mission is to meet the homeownership needs of LMI clients by connecting them to the wide range of financial products and services the Bank of America enterprise has to offer.

Increase Value for Branches Serving LMI Communities

Branches can play an important role in the financial well-being of residents in LMI communities. The proposed rule significantly devalues branches' importance in LMI communities and represents a significant departure from the current impact to the Service Test.

Currently, if the proportion of a bank's branches serving LMI tracts aligns with the distribution of LMI population, the bank receives favorable consideration, resulting in a High Satisfactory or an Outstanding rating on the Service Test, which accounts for 25% of the overall rating. Although the proposed rule properly seeks to account for the evolution of banking services, we believe the proposed approach goes too far in its treatment of branch distribution. Bank of America advocates for branches that serve LMI communities to receive greater weight in the CRA Evaluation Measure.

First, the proposed rule's method of evaluating branch distribution fails to take into account the distribution of the LMI population that the CRA is intended to help. The proposed rule would calculate the contribution of a bank's branch distribution to the overall Evaluation Measure by considering the proportion of the bank's branches that are located in LMI areas, Indian country, underserved and distressed areas as a percentage of its total branches. Under this approach, in order to achieve the maximum available credit for branch distribution, 100 percent of an institution's branches would have to be located in LMI areas. A more appropriate measure of a bank's branch effectiveness in serving LMI communities is to also consider the LMI population in that market in the Evaluation Measure. This proposed approach would more appropriately value a bank's service of LMI communities by tying the measurement to the relative size of the LMI population whom the CRA is intended to benefit.

Second, branches located near LMI tracts can often quite effectively serve the needs of LMI communities*.* The final rule should count branches that serve LMI communities, such as branches that are adjacent to LMI census tracts, to the same extent as branches that are located in LMI census tracts.

Third, although we agree with some industry and advocacy groups that the proposed rule's multiplier for calculating the branch distribution contribution to the Evaluation Measure is too low, we believe the multiplier should be even greater than proposed by some industry groups. Even doubling the proposed rule's multiplier would mean that branch distribution would account for a maximum of 2% of a bank's overall Evaluation Measure. In our view, this does not appropriately measure the investment that banks make in branches that serve LMI areas, nor the value of those branches to LMI communities.

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Finally, if the agencies adopt the final rule as proposed, Bank of America urges the agencies to take into consideration the operational impact of responding to the COVID-19 pandemic as the agencies consider the implementation timeframe. To that end, Bank of America recommends extending the implementation of data collection, recordkeeping and reporting requirements to three years.

Bank of America remains steadfast in our commitment to the communities we serve and appreciates the opportunity to comment on the OCC's and FDIC's joint proposal on CRA regulation.

Sincerely,

[redacted]

Alberto Garofalo
Chief CRA Officer and Community Banking & Development Executive
Consumer and Small Business