HSBC

August 3, 2022

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1769
RIN 7100-AG29

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

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-2022-0002
RIN 1557-AF15

Re: Proposed Revisions to Regulations Implementing the Community Reinvestment Act of 1977 ("Proposal")

HSBC Bank USA, National Association ("**HBUS**" or the "**Bank**") welcomes the opportunity to provide the Agencies[1] with comments on the Proposal.[2]

HBUS is a nationally chartered bank headquartered in Tysons Corner, Virginia, with principal executive offices in New York City. HBUS is a U.S. subsidiary of HBUS Holdings plc, which is based in London and is one of the world's largest banking and financial service organizations. HBUS offers products and services to individuals, corporations, institutions, and governments, through its Wealth and Personal Banking, Commercial Banking, Global Banking, and Markets businesses.

We support the Agencies' commitment to better achieving the purposes of the Community Reinvestment Act ("**CRA**"). HBUS is proud to have attained an overall rating of Outstanding on its last performance evaluation, including Outstanding ratings in each of its six rating areas, and we intend to continue our commitment to serving our communities and low- and moderate-income ("**LMI**") neighborhoods. In pursuit of this objective, HBUS has worked closely with the Office of the Comptroller of the Currency ("**OCC**") to design a strategic plan that accounts for changes in its business model.

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[1] "Agencies" refers to the agencies issuing the Proposal: The Board of Governors of the Federal Reserve System ("**Board**"), the Office of the Comptroller of the Currency ("**OCC**"), and the Federal Deposit Insurance Corporation ("**FDIC**").

[2] Community Reinvestment Act, 87 Fed. Reg. 33,884 (proposed June 3, 2022).

HBUS believes that a flexible strategic plan option is essential to our ongoing CRA compliance, so the focus of our comment is the treatment of strategic plans under the Proposal. We commend the Agencies for enabling banks' existing strategic plans, or new strategic plans submitted for approval during the transition period, to remain in effect until the plan's expiration date. This continuity provides certainty for banks and allows carefully crafted strategic plans to run their course. We also agree with the Proposal's suggestion to publish draft strategic plans on the Agency and bank's websites for public comment.

But we are concerned that the strategic plan option has become disfavored under the Proposal because it is less workable and will no longer provide "a bank with the opportunity to tailor its CRA objectives to the needs of its community and to its own capacities, business strategies, and expertise."[3] Instead, as explained below, the Proposal restricts banks contemplating the strategic plan option to the same tests and standards set forth for traditional banks, which could not only force a change in business strategy to comply with the CRA, but could deprive communities of the benefits that flow from tailoring CRA objectives to community needs.

I. HBUS's Strategic Plan Builds on Its Documented History of Meeting the Credit, Investment, and Service Needs of its Communities

A. *Rationale for Strategic Plan*

In February 2020, HBUS announced an initiative to restructure its operations in order to ensure it could profitability operate in the United States on an ongoing basis. This initiative reduced the Bank's branch network and its ability to offer retail mortgages, two underpinnings of CRA compliance for most retail banks under the existing Lending and Service Tests. Fortunately, the strategic plan option afforded HBUS the opportunity to align its new strategy with its commitment to meeting the credit needs of its communities by allowing a shift in emphasis from direct retail lending to community development activity, leveraging our strong relationships with our community partners.

B. *Plan Details*

Working with the OCC, HBUS crafted a strategic plan to build on its Outstanding CRA performance by focusing on community development lending, qualified investments including grants to non-profit organizations, community development service, small business lending, qualifying mortgages, and donations. This focus is an extension of HBUS's long-standing strategy to form viable and flexible partnerships with CD intermediaries and high-capacity CD production organizations.

In addition, over the term of its strategic plan, HBUS will work with housing officials to foster the development of affordable housing, small business assistance, and neighborhood revitalization in LMI communities. HBUS's CD partnerships complement and enhance HBUS's

[3] OCC Bulletin 2019-39, "Community Reinvestment Act: Guidelines for Requesting Approval of a Strategic Plan," (July 31, 2019) https://www.occ.gov/news-issuances/bulletins/2019/bulletin-2019-39.html.

direct affordable housing, residential mortgage, and small business lending in LMI communities. The foundation of HBUS's strategic plan is our belief that the Bank's growth as a business is directly related to the growth and economic vitality of the communities we serve.

II. The Bank's Ability to Implement a Strategic Plan Seems Precluded or Limited by the Proposal

While strategic plans have been actively encouraged by the Agencies in the past, they now appear to be disfavored under the Proposal, which would create an inflexible and unworkable framework that could set up banks with different business models for failure, *i.e.*, less-than-satisfactory CRA performance.

A. The Agencies Should Not Discourage Banks from Pursuing the Strategic Plan Option

The language and suggested changes in the Proposal imply that the Agencies will no longer encourage strategic plans, and instead, actively disfavor them. Specifically, we reference the Agencies' request for feedback in Question 134,[4] which asks whether the strategic plan option should continue to be available to all banks or whether the Proposal *reduces the need* for a strategic plan option. Additionally, the Agencies twice describe the current regulations as providing "a great deal of latitude" to banks when designing a strategic plan and strongly imply a lack of "parity" between strategic plan banks and traditional banks.

We do not agree that the current strategic plan option results in a lack of "parity" between strategic plan banks and non-strategic plan banks; rather, the strategic plan option enables banks with different business models to show how they are meeting their CRA requirements by serving the needs of their communities in a way that is consistent with their business operations. We also emphasize that the "latitude" — or more appropriately, flexibility — under the current strategic plan option is essential to employ their business models work in furtherance of serving their communities.

Nor do we agree that the Proposal reduces the need for strategic plans. In fact, we believe that the need is demonstrated by HBUS's change in business strategy, which necessitated a change in CRA compliance from an emphasis on direct retail lending to community development. Moreover, any notion that strategic plans are not being adequately vetted is dispelled by the Proposal's expanded opportunities for community involvement in developing the plan and the Agencies' ultimate determination of whether a strategic plan should be approved. We also note that it is impossible to predict how CRA compliance might evolve for every bank, and strategic plans provide an effective mechanism to adapt to change.

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[4] Question 134. *Should the strategic plan option continue to be available to all banks, or do changes in the proposed regulation's assessment area provisions and the metrics approach reduce the need for the strategic plan option for banks with specialized business strategies?*

B. *Requiring that the Appropriateness of a Strategic Plan Election Be Assessed According to the Same Performance Tests and Standards that Would Otherwise Be Applied Precludes the Ability to Place a "Different Emphasis" on One or More Performance Categories*

The Proposal's standard for the appropriateness of a strategic plan election appears inflexible compared to the current regulations. While under the current CRA rules, strategic plan banks must address all three performance categories, banks may place "a different emphasis, including a focus on one or more performance categories . . . if responsive to the characteristics and credit needs of its assessment areas, considering public comment and the bank's or savings association's capacity and constraints, product offerings, and business strategy."[5]

By contrast, the Proposal contains no comparable language, providing that a bank must address the "*same* performance tests and standards that would otherwise be applied . . . *unless the bank is substantially engaged in activities outside the scope of these tests*. The draft plan must specify how these activities are outside the scope of the otherwise applicable performance tests and standards and why being evaluated pursuant to a plan would be . . . more appropriate . . . ."

The Proposal fails to acknowledge that a different approach may be more appropriate for a bank's business model and instead, without clarification, imposes a steep burden on strategic plan banks to demonstrate that they are "*substantially*" engaged in other activities. This appears to run counter to the Agencies' stated goal to "tailor performance standards to account for differences in bank size and business models and local conditions" and "provide greater clarity and consistency in the application of regulations."[6]

C. *Adherence to the Performance Tests for Traditional Banks, Some of Which Are Irrelevant to Banks Like HBUS, Defeats the Purpose of a Strategic Plan*

Under the Proposal, strategic plan banks are supposed to set measurable goals that mirror the standards and tests for traditional banks. However, the strategic plan option is most important for banks that do not fit into the performance tests and standards for traditional banks. For HBUS, many of these tests and standards are irrelevant given the changes to its business model. For instance, it would be impossible for HBUS to meet the requirements of the retail lending and retail products and services tests without changing its business strategy. But the Proposal offers no flexibility for HBUS to be evaluated under a different but equivalent standard appropriate for its business model.

III. The Lack of a Flexible Strategic Plan Option Would Have a Negative Impact on HBUS and the Communities It Serves

The purpose of the CRA is to encourage financial institutions "to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation

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[5] 12 C.F.R. § __.27(f)(1)(ii).

[6] Community Reinvestment Act, 87 Fed. Reg. 33,884, 33,885 (proposed June 3, 2022).

of such institutions."[7] CRA regulation should not be used as a tool to force a change in a bank's business strategy; rather, it should include a means of assessing whether a bank, regardless of business model, is actively meeting the needs of its communities. By restricting the strategic plan option to the same tests and standards as traditional banks, banks like HBUS will be forced to change their business strategy, resulting in harm to the bank's community development partners and communities it serves.

IV. Recommendations

The Agencies have historically touted the benefits of strategic plans, stating: "The CRA strategic plan evaluation option provides a bank with the opportunity to tailor its CRA objectives to the needs of its community and to its own capacities, business strategies, and expertise. Therefore, not all of the factors described in the regulations under other evaluation types would necessarily apply to each strategic plan."[8] Additionally, the CRA Interagency Q&As note that "institutions are provided flexibility in specifying goals" under a strategic plan.[9]

Accordingly, the Agencies should clarify that the strategic plan option remains a viable means of complying with CRA, consistent with past guidance. Because strategic plans are developed with community input, and because the Proposal would facilitate this community involvement, and ultimate approval rests with the Agencies, there should be no concern that communities will not be properly served by a bank under a strategic plan. In accordance with our above comments regarding the lack of flexibility and negative impact of the Proposal, we make the following recommendations:

- Under proposed 12 C.F.R. § __.27(f)(1), amend the appropriateness of the strategic plan election such that a bank need not show it is "substantially" engaged in activities outside the scope of the performance tests by deleting the word "substantially." Include language that a different approach may be more appropriate for a bank's business model.

- Under proposed 12 C.F.R. § __.27(f)(1), (2), and (3) when referencing that a strategic plan must address all performance standards and tests that would otherwise be applied, retain the language under the current regulations that "a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's or savings association's capacity and constraints, product offerings, and business strategy." This is consistent with past guidance that "not all of the factors described in the regulations under other evaluation types would necessarily apply to each strategic plan."

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[7] 12 U.S.C. § 2901(b).

[8] OCC Bulletin 2019-39, *supra* note 3.

[9] Q&A § __.27(f)(1)—1.

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Thank you for your attention to HBUS's comments on the Proposal. We would welcome the opportunity to provide any additional information that the Agencies may consider helpful.

Sincerely,

[redacted]

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Senior Vice President and CRA Officer
HSBC National Bank USA, NA