Capital One Financial Corporation
1600 Capital One Drive
McLean, Virginia 22102

April 8, 2020

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429
Attention: Comments, RIN 3064-AF22

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

Re: Community Reinvestment Act Regulations

Dear Madam or Sir:

The Community Reinvestment Act (the "CRA") continues to play an essential role in the facilitation of much needed credit and investment in communities throughout the country. Capital One Financial Corporation[1] ("Capital One") believes in the core principle underlying the CRA, that banks should serve the financial needs of their communities with an emphasis on meeting the needs of low- and moderate-income ("LMI") people and communities. We are proud of our CRA track record, including Capital One's sustained industry leadership in community development lending activities, and we seek to maintain a CRA program that meets both the technical expectations of CRA regulations as well as the spirit of the CRA. As banking patterns evolve, the CRA will remain critical to maintaining a focus on customers and communities most sensitive to these changes. Capital One fully supports a practical and modern CRA framework that maintains a strong commitment to the financial needs of LMI people and communities. That framework should also be sustainable through changes in customer expectations that drive transformation and innovation in the banking industry.

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[1]Capital One Financial Corporation (www.capitalone.com) is a financial holding company whose subsidiaries, which include Capital One, N.A., and Capital One Bank (USA), N.A., had $262.7 billion in deposits and $390.4 billion in total assets as of December 31, 2019. Headquartered in McLean, Virginia, Capital One offers a broad spectrum of financial products and services to consumers, small businesses and commercial clients through a variety of channels. Capital One, N.A. has branches located primarily in New York, Louisiana, Texas, Maryland, Virginia, New Jersey and the District of Columbia. A Fortune 500 company, Capital One trades on the New York Stock Exchange under the symbol "COF" and is included in the S&P 100 index.

Capital One appreciates the commitment of the Office of the Comptroller of the Currency (the "OCC"), Comptroller Joseph Otting, the Federal Deposit Insurance Corporation ("FDIC"), and Chairwoman Jelena McWilliams in issuing a Notice of Proposed Rulemaking ("NPR")[2] to modernize the CRA. The movement from an OCC-initiated Advance Notice of Proposed Rulemaking ("ANPR")[3] to a joint agency NPR expresses a collaborative approach that will be necessary to achieve a steady and sustainable regulatory outcome. We recognize the difficulty in designing a new CRA framework as there are no existing models to emulate, a determination of full and complete data is a challenge, and spirited viewpoints can be found among many stakeholders. We encourage the OCC and FDIC (the "Agencies") to maintain a commitment to collaboration in recognition that a general consensus of stakeholders exists in favor of the CRA being effective in meeting its purposes.

Capital One has worked closely with several trade associations to express our perspectives about the NPR. Thus, we are generally in alignment with the views expressed in the comment letters of the following organizations: the American Bankers Association, the Bank Policy Institute, the Consumer Bankers Association, and the National Association of Affordable Housing Lenders.

We are grateful for the opportunity to provide additional comments related to the modernization of CRA regulations. In our November 19, 2018 comment letter in response to the ANPR, we described core principles for the OCC to uphold as it engages in CRA reform. We noted that a bank, no matter its size or business model, should have the *flexibility* to meet CRA goals in a manner most appropriate for that bank. We asked for *certainty*, so that banks could be able to understand and rely upon clear and consistent CRA supervisory expectations. We encouraged *limited complexity*, requesting that any additional administrative or reporting burdens be imposed only if they are expected to result in significant benefits that outweigh the associated costs. Finally, we emphasized the importance of *proper validation* prior to the promulgation of a final rule to understand with reasonable confidence whether proposed changes to the CRA framework are designed to achieve their stated benefits, with outcomes that reflect a bank's record of CRA performance and support the statutory purposes of the CRA.

Our recommendations for enhancing the proposed rule are presented in the sections below. Following is a brief summary of our suggestions.

- Additional emphasis should be placed on the fact that the qualifying activities illustrative list consists of examples and does not list all qualifying activities.
- With respect to the qualifying activities confirmation process, the non-objection period should be reduced from six months to 30 days.

[2] Community Reinvestment Act Regulations, 85 Fed. Reg. 1204 (Jan. 9, 2020).

[3] Reforming the Community Reinvestment Act Regulatory Framework, 83 Fed. Reg. 45053 (Sept. 5, 2018).

- Incentives such as multipliers would be more effective than deposit-based assessment areas in eliminating CRA hot spots and banking deserts.
- The proposal undervalues originated retail loans that are not held in banks' portfolios; therefore, the Agencies should give more CRA consideration to loan originations than is currently proposed.
- The proposed additional data collection, recordkeeping and reporting requirements would place a significantly increased regulatory burden on the industry; therefore, the Agencies should thoroughly validate whether the benefits of the additional requirements appropriately justify the increased burden.

CRA Qualifying Activities

The qualifying activities criteria, coupled with the qualifying activities illustrative list, should provide banks with greater confidence in knowing whether or not a certain type of activity counts for CRA consideration prior to pursuing that activity. Although the Agencies state that the list is not exhaustive, we encourage the Agencies to both provide greater clarity in the list of activities and emphasize that not every CRA eligible activity is included on the list. Every precaution should be taken to ensure the examples are not interpreted as the rule so that newer practitioners (i.e., bankers or examiners) entering the CRA field will not be misguided by omissions from the list.

The specific examples on the proposed illustrative list are helpful, and it is equally important to add examples of common, traditionally recognized activities for clarity, with the understanding that this list is not exhaustive. Certain activities are not expressly noted on the illustrative list, despite having historically represented a substantial proportion of CRA qualifying activities. For example, under the "Financial literacy programs or education or homebuyer counseling" criterion, the illustrative list does not include financial education to students in K - 12 schools. In addition, the illustrative list does not include community services targeted to individuals who receive or are eligible to receive Medicaid. Activities to support skilled nursing or other medical facilities that primarily serve Medicaid patients have historically qualified for CRA purposes, consistent with the *Interagency Questions and Answers Regarding Community Reinvestment ("Q&A")*,[4] but are not on the illustrative list. For clarification purposes, we encourage the Agencies to include on the qualifying activities illustrative list those activities that frequently qualify under the existing rule and that will continue to qualify under the new rule. Doing so will make the implementation of any new rule less complicated by eliminating confusion as to whether these activities need to be pre-approved.

Additionally, we appreciate the proposed qualifying activities confirmation process as an option for banks to receive an official opinion from the Agencies on an activity's eligibility prior to engaging in that activity. For the confirmation process to be effective as a prequalification option, we recommend that the non-objection period reflect a more timely turnaround. We believe that an activity should be confirmed as a qualifying activity if the bank is not informed of

[4] 81 Fed. Reg. 48506, 48526 (Jul. 25, 2016).

an Agency objection within 30 days of submission of a complete *Qualifying Activity Confirmation Request Form*, as opposed to the proposed six months. A six-month non-objection period, during which banks are uncertain about potentially eligible activities, could lead banks to dedicate scarce resources to known qualifying activities while missing opportunities to allocate those resources to activities that may have a higher community impact.

Deposit-Based Assessment Areas

We would also like to draw the Agencies' attention to unintended consequences that seem possible in the proposed rule. For example, we understand that the Agencies would like to incent the elimination of CRA hot spots and banking deserts, as both circumstances lead to a lack of financial assistance to the areas that most urgently need the assistance. Yet, the NPR's proposed deposit-based assessment areas would expand banks' geographic CRA obligations to the areas most likely to have high concentrations of retail domestic deposits. As the bank with the nation's largest total internet-based deposits, we have a full appreciation for how deposits gathered over the internet, to a large degree, reflect population concentrations. Internet-based deposit concentrations tend to be located around population centers, which have greater numbers of banking facilities and are CRA hot spots, especially relative to rural and sparsely populated areas. Even though this element of the proposal would have minimal impact to Capital One, we wish to highlight that deposit-based assessment areas could exacerbate trends that push investment away from the areas of greatest need. We appreciate the Agencies' efforts to account for internet banking trends, and suggest that bank incentives, such as multipliers, may be a more effective approach than expanded assessment areas, in driving qualifying activities to underserved geographic areas.

Undervaluation of Loan Origination and Sale Models

Limiting the CRA credit given to originated retail loans that are not held in banks' portfolios may have unintended consequences, such as understating the impact of a loan origination that benefits LMI households and communities. Qualifying loan originations, even if held for only a short time on a bank's balance sheet, reflect the culmination of a bank's investment in a community and its borrowers. Due to the specialized expertise required to originate loans, banks incur operational, administrative, risk management, and regulatory costs prior to any loan appearing on their balance sheets. For example, the average cost for one of our lines of business to originate a CRA-qualified multifamily affordable housing loan is five times the annual maintenance cost for that same loan. Because the cost of originating loans is so much higher than the cost of maintaining loans, we encourage the Agencies to give more CRA consideration to loan originations than is currently proposed.

Furthermore, the length of time such loan is held on a bank's balance sheet after origination is not a reflection of a bank's CRA commitment or impact. Rather, the actions a bank takes regarding the sale of originated loans from its portfolio simply reflect safe and sound banking operations, such as the maintenance of proper liquidity. Proper liquidity allows banks to originate a greater number of affordable housing loans for LMI families. Related to this, selling loans to increase the availability of capital is the basis of government-sponsored enterprises such

as Fannie Mae and Freddie Mac and is a foundation of our housing finance system and secondary loan markets. As a course of business, Capital One generally sells Fannie Mae loans within 90 days of their origination. However, we service these loans and retain a portion of the risk associated with them for the lives of the loans. Accordingly, the new CRA regulations should reflect a level of CRA consideration for these originations commensurate with the resources expended to originate as well as service these loans and the continued retention of this risk.

Such transactions are essential to a bank's ability to operate in a safe and sound manner, as required by the CRA statute. Accordingly, we encourage the Agencies to preserve the full appreciation of community-based loan origination efforts, for both retail loans and community development loans, while not conflating certain other transaction types, such as mortgage-backed securities, that are not directly related to loan originations. A more targeted approach could address the concern of inflating performance where loans receive CRA credit multiple times across multiple banks. This could be accomplished by the Agencies codifying in the new rules the existing guidance in the *Q&A* that permits a loan to be counted only once as an origination and only once as a purchase. We are hopeful the Agencies will develop a more practical solution for retail loans originated and sold that supports standard and widely-effective banking practices. For consistency and all the reasons previously outlined, the Agencies should apply the final rule for retail loans sold to all loans originated and sold, including community development lending.

Regulatory Burden

As communicated in our comment letter in response to the ANPR, the effort to modernize CRA regulations should be guided by the goal of creating a framework that does not result in additional or unnecessary regulatory burden. As proposed, the NPR will require banks to make significant changes to processes and core systems to respond effectively to the data collection, recordkeeping and reporting requirements. The effort will not be as straightforward as creating one additional data field within these systems to indicate an activity is CRA-qualified. Rather, there will need to be more significant modifications to multiple data platforms to store and access newly required data elements, not currently captured or maintained in most core systems. In addition, this effort will include the implementation of substantial ongoing operational control requirements to ensure data integrity for the ongoing and frequent reporting that would be required under the NPR. These new requirements stand in stark contrast to the relative simplicity of the current processes needed to satisfy the existing CRA regulation.

Most of the disparity between the current processes and those necessary under the NPR relate directly to differences between predominantly aggregating origination activities over a bank's exam period under the current rule compared to much more labor-intensive processes of monthly or quarterly data aggregation from core systems along with the annual reporting requirements in the NPR.

Separate from the lending and investment core systems and process changes needed for CRA qualifying activities, allocating domestic deposits will require considerable time and resources simply because banks do not currently use customer addresses in the existing CRA framework or

in the current FDIC Summary of Deposits reporting. Also, bank deposit allocations by assessment areas, or on any geographic basis, do not exist as part of a bank's regular call reporting processes. To meet the proposed quarterly reporting requirements, many banks will need to identify tens of millions of customer records that comprise the Call Report total, then geocode and allocate those deposits to the appropriate assessment areas, all of which requires a significant amount of time not currently resourced.

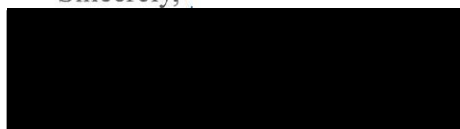
After the numerous initial modifications to core systems, data collection, and associated processes noted above, extensive effort will be needed to validate and ensure the integrity of this data on an ongoing basis.

If the final rule retains these reporting requirements, we recommend less frequent reporting as one way to reduce the new regulatory burden. Specifically, we suggest collecting year-end balances where quarter-end balances are currently proposed (i.e., domestic deposits) and quarter-end balances where month-end balances are currently proposed (i.e., major retail loan products and CD activities). There will likely be little variance from month-to-month for loans and from quarter-to-quarter for deposits, such that the proposed frequency of reporting in the NPR will not yield appreciably different data. In the event of a substantial occurrence (e.g., merger or acquisition) that materially impacts the data during the course of the year, banks should be allowed to provide additional data that would more appropriately reflect their deposits or CRA activities for that year.

We urge the Agencies to consider whether the costs to implement these systems and data collection changes and the additional ongoing reporting and quality assurance obligations are justified in light of the benefits of the additional data collection, recordkeeping and reporting requirements.

In conclusion, Capital One remains fully committed to pursuing the goals of the CRA and looks forward to continuing participation in the ongoing modernization efforts of the Agencies.

Sincerely,



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