April 8, 2020

By Electronic Mail

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219

Robert E. Feldman
Executive Secretary
Attn: Comments, Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Community Reinvestment Act Regulations, OCC, Docket ID OCC-2018-0008, FDIC, RIN 3064-AF22, 85 Fed. Reg. 1204 (Jan. 9, 2020)

Ladies and Gentlemen:

KeyCorp and KeyBank National Association (together, "KeyBank") appreciate the opportunity to comment on the Notice of Proposed Rulemaking ("NPR")[1] issued by the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "Agencies") seeking the public's input on the proposed revisions to the regulations implementing the Community Reinvestment Act of 1977 ("CRA").[2]

KeyBank is a regional bank headquartered in Cleveland, Ohio with approximately $146 billion in assets, $97 billion in outstanding loans, and $112 billion in deposits. We employ approximately 18,000 individuals and have a 15-state retail footprint stretching from Maine to Alaska, serving customers through over 1,100 community bank branches and more than 1,500 ATMs. KeyBank provides our approximately 3.5 million clients with a variety of financial services, including deposits, lending, cash management, and investment and financial advisory

1 85 Fed. Reg. 1204 (Jan. 9, 2020).

2 *See* 12 U.S.C. § 2901 *et seq.*; 12 C.F.R. pts. 25, 345.

services. KeyBank has a diverse and experienced Board of Directors and leadership team and an award-winning culture of diversity and inclusion.[3]

KeyBank is dedicated to philanthropy, community engagement, and sustainability and that dedication is central to the way we do business. We help our neighbors and neighborhoods thrive through a commitment to doing business fairly and responsibly and by making investments in the places where we live and work. This commitment and hard work are reflected in our longstanding "Outstanding" CRA rating. KeyBank has earned *nine* consecutive "Outstanding" CRA ratings from the OCC, dating back to the CRA's passage in 1977. KeyBank is one of the only banks to achieve this level of consistency in outstanding performance. In our most recent evaluation, for example, the OCC highlighted significant community achievements including: extending more than $4.6 billion in loans and equity to support development in underserved communities, which helped to stabilize and revitalize neighborhoods and provide affordable housing; lending $1.2 billion to small businesses in low-and-moderate income ("LMI") communities; making nearly $2 billion in mortgages to LMI individuals and communities; and serving LMI communities as more than 28% of KeyBank's branches were located in these areas.[4]

Since its enactment in 1977, the CRA has played a crucial role in ensuring that banks are meeting the needs of the communities they serve and by expanding banking products and services to underserved communities. We also believe the CRA regulations—which have not been substantially changed in several decades—need modernization and reform to ensure that they continue to serve their important purpose in the 21st century. The current regulations are outdated in many ways and they do not account for the significant changes in the way banks deliver services and the ways that customers expect to interact with banks.[5] The CRA was enacted in an era when banks were locally focused and provided few (if any) services outside of physical branches. The lack of clarity and transparency surrounding what activities will receive

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[3] We have been recognized, for example, by DiversityInc as one of the Top 50 Companies for Diversity and by Human Right Campaign as one of the Best Places to Work for LBGT Equality, and we were named to the 2020 Bloomberg Gender-Equality Index. We have also been consistently recognized by Points of Light as one of the most community-minded companies in the United States and as a top-ranked financial institution.

[4] In addition, KeyBank made an additional $16.5 billion commitment in 2017 to support LMI individuals and communities through a five-year National Community Benefits Plan. This groundbreaking agreement underscores our focus on helping clients and communities thrive and succeed. We have substantially exceeded those commitments thus far by delivering over $10.1 billion in community development loans and investments, mortgages, small business loans, and transformative philanthropy through September 2019.

[5] *See, e.g.*, Dep't of the Treasury, Memorandum for the OCC, the Board of Governors of the Federal Reserve System ("FRB"), & the FDIC, Community Reinvestment Act – Findings and Recommendations, 1 (Apr. 3, 2018) (stating that the "U.S. banking industry has experienced substantial organizational and technological changes; however, the regulatory and performance expectations under the CRA have not kept pace.").

CRA credit, and how those activities will be weighed during the evaluation process, have proven to be serious impediments to banks maximizing investments in communities.[6]

As we noted in the letter we submitted in response to the OCC's Advanced Notice of Proposed Rulemaking ("ANPR"), KeyBank is keenly interested in the Agencies' ongoing efforts to modernize the CRA.[7] We appreciate the Comptroller's continued leadership on CRA reform, and we commend the Agencies for taking the lead in the CRA modernization efforts. We believe that the NPR is an important step towards modernizing the CRA and we are hopeful that the rulemaking will provide a forum for stakeholders to comment on the proposal so that the Agencies are able to further improve the proposal while remaining consistent with the original intent of the law.

Our comments are intended to highlight perspectives unique to KeyBank. As part of the NPR process, KeyBank also participated in the development of several membership organization letters. These letters were submitted by: American Bankers Association, Bank Policy Institute, Consumer Bankers Association, the Affordable Housing Tax Credit Coalition, the Affordable Housing Investors Council, the National Association of Affordable Housing Lenders, and the LIHTC Working Group. We generally agree with most of the comments in these letters and encourage the Agencies to consider them. We also encourage the Agencies to consider comments submitted by community groups. Those comments contain important perspectives about ways the proposal may impact communities and areas. The comments in our letter are intended to provide specific feedback as it relates to the potential impact the proposed rule could have on our investments in communities and the way we do business.

As a general matter, we are supportive of reforms that we believe are likely to increase investment in LMI communities and to LMI individuals. In our view, the NPR would make numerous changes that will have this beneficial effect. Most notably:

- Qualifying activities: The proposal would require the Agencies to publish a list of qualifying activities that will be periodically updated, and it would also create a process for banks to receive confirmation that an activity is qualifying in advance. The current lack of clarity in the regulations can make it difficult to predict whether activities will be eligible for credit and more impactful investments will be made where there is better understanding of how activities will be treated during CRA evaluations.[8]

- Metric-based standards: We conceptually support the shift to a more transparent and metric-based set of standards for judging performance. If calibrated

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6 *See id.* at 6–7.

7 83 Fed. Reg. 45,053 (Sept. 5, 2018) (ANPR).

8 FRB, Record of Meeting of Community Advisory Council, 4 (Oct. 21, 2016) ("Overall, the increased clarity in the Q&A should lead to more dialogue among banks, community groups, and government on how to work together to expand the ecosystem of policy tools and CRA-eligible activities that intentionally support all aspects of equitable economic development.").

correctly, we think these metrics will serve to increase investment because banks can strategically target areas and communities with greater certainty and therefore better meet community needs.

- Indian country: The proposal incentivizes additional investment in Indian country and more generally encourages greater penetration of consumer lending products to LMI individuals, which should help to expand access to credit for LMI communities.

- Incentive for Outstanding Rating: We also support the addition of incentives for banks to obtain an outstanding CRA rating.[9] The current rule creates little regulatory incentive for institutions to work towards an outstanding rating. While achieving this level of success is integral to our values at KeyBank, maintaining that level of investment requires a substantial commitment from both a resource and financial perspective. The additional incentive in the proposal may encourage banks to increase investments in communities.

Although we are supportive of these types of changes, the proposal will benefit from fine-tuning in a final rule.

Despite our general support, we also are concerned that certain aspects of the proposal could inadvertently reduce investment in communities and disincentivize institutions from engaging with LMI individuals. KeyBank has made a purposeful decades-long commitment to communities and we have built a business model that focuses on meeting customer needs and building strong relationships with local partners. This type of community commitment needs to be preserved and encouraged in a final rule. More generally, although we are supportive of a shift to clearer standards, we are concerned that the move to an evaluation based almost entirely on formulas will make it harder for examiners to flexibly consider the overall impact of investments. This flexibility in evaluation is an important piece of the current CRA evaluation process and it encourages innovation in products and services. We have identified the following areas of concern in particular:

First, we are concerned that some proposed changes could result in decreased investment in community development projects, particularly in affordable housing, and that the proposal will shift dollars to qualifying activities that are less time and capital intensive. KeyBank is one of the top affordable housing lenders in the country and we have spent significant time building a business that meets community needs. Although we support an expanded list of qualifying activities, the ability of banks to receive credit through less resource intensive activities will reduce the importance of community development activities in CRA evaluations.[10] The Agencies address this problem by assigning a 2x multiplier for community development investments and affordable housing loans, but the multiplier may need to be higher to account for the true costs of making these investments. For example, many affordable housing investments

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9 85 Fed. Reg. at 1227 (discussing five-year evaluation cycle for banks with outstanding rating).

10 85 Fed. Reg. at 1229–34 (listing qualifying activities).

and loans are made only after a lengthy process, which can include working with the developer to arrange low income housing or new market tax credits, and they then often entail ongoing monitoring for compliance with applicable tax requirements during the life of the investment.. These off-balance sheet activities effectively are given no credit under the NPR. In addition, the balance sheet focused methodology in the NPR also understates the value of legally binding, yet unfunded commitments to lend.[11] These are commonly used in affordable housing financing and they are a valuable way to provide flexible financing. These types of commitments should receive credit and could potentially be weighted using a set of conversion factors similar to what is used in the regulatory capital rules.[12] The issues noted above are magnified by the removal of the investment test from the proposal; the investment test currently creates a significant incentive for banks to make equity investments directly into public welfare entities that is not replicated in the NPR.[13] The lack of affordable housing in the United States is a serious problem that KeyBank has been working to address, and we encourage the Agencies to revise the proposal to ensure that affordable housing and other community development projects continue to be financed at a maximal level.

Second, the NPR provides insufficient credit for banks that originate loans and then sell them on secondary markets or securitize them. The NPR quantifies loans based on the average dollar value for each month the loan or investment is on-balance sheet.[14] We understand that this measure is intended to encourage long-term and sustainable investments into communities, and we support that goal.[15] That said, we are concerned that the NPR significantly undervalues the costs and importance of banks originating loans and that it could cause problems with the functioning of important secondary markets for loans, including for retail and multi-family mortgages. As a matter of practice, institutions routinely sell loans on the well-established secondary market soon after origination because this frees up capital so that the bank can engage in additional lending. This practice is also consistent with the goals of many government-sponsored loan programs. There is no sound policy justification for such an unfavorable treatment of loan originations. To the contrary, the final rule should include additional credit for banks that engage in direct originations due to the significant costs associated with originating loans. A bank that is directly originating loans needs to build and staff lending infrastructure, including hiring loan officers, it needs to engage in marketing and advertising, and it must develop compliance programs to ensure that loans are consistent with consumer protection laws and other regulations. A bank that is directly originating loans is also more likely to be an

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11 85 Fed. Reg. at 1212 n.28 ("Banks would continue to receive CRA credit for the funded portion of lines of credit but generally would not receive CRA credit for other legally-binding commitments to lend, such as revolving credit lines and letters of credit.").

12 *See* 12 C.F.R. § 3.33.

13 *See* 12 C.F.R. § 25.23 (investment test).

14 85 Fed. Reg. at 1244.

15 *See, e.g.*, 85 Fed. Reg. at 1213 (". . . the proposal seeks to address the concern that the current framework gives too much CRA credit to certain activities . . . regardless of how long they remain on a bank's balance sheet . . .").

engaged member of the community and be responsive to community needs. To the extent that banks need to keep loans on the balance sheet longer to ensure that they receive sufficient CRA credit, the balance-sheet based metric will also reduce the capital available for making additional loans, which could thereby decrease the credit available to LMI communities. The punitive treatment for sold loans is particularly misplaced where servicing rights are retained by the institution—the institution continues to have a relationship with the customer that will hopefully lead to the provision of other banking products and services. The treatment is also inconsistent with the Basel III capital rules, which recognize that the ownership of servicing assets entails an ongoing financial commitment by the bank even where the loan is sold.[16]

Third, under the NPR, lending activity and investments are valued the same by using the "month-end on-balance sheet dollar value."[17] Under the current rule, the methodology focuses on the value of loans originated or purchased during the assessment period in a more holistic manner.[18] We are concerned that this change in methodology could diminish the importance of banks originating loans to LMI individuals on an ongoing and consistent basis. This could then reduce the overall availability of credit for LMI individuals because a bank could achieve sufficiently high ratings by holding loans on the balance sheet without taking steps to directly meet community needs during the entire assessment period.

Fourth, we encourage the Agencies to reconsider the way retail deposits are calculated under the NPR. The inclusion of corporate and commercial deposits could skew the location of lending and investment activities away from the areas where the institution's LMI customers live. Under the proposed CRA Evaluation Measure Test, for example, the amount of qualifying activity is divided by the total of retail domestic deposits located in the assessment area.[19] In the case of a bank that has substantial commercial or corporate deposit relationships in a particular area, the inclusion of those deposits would drive the bank's CRA activities to that location to the detriment of others. This outcome is compounded by the fact that depositors in LMI areas often tend to have lower deposit account balances and may already be understated in the proposed test. It is also likely that corporate and commercial deposits will be located predominantly in larger urban markets, exacerbating the problem of "CRA deserts" in rural areas. Like the Agencies, we believe that it is important for banks to invest and lend in the areas where they have a large depository and branch footprint, and we think that the final rule would better reflect that goal if corporate and commercial deposits are excluded from the definition of "retail domestic deposit."

Fifth, we are also concerned that the elimination of the service test in the NPR will change how banks serve their communities and will reduce the overall effectiveness of those activities. The existing service test focuses on the manner in which a bank ensures that it is

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16 *See, e.g.*, 12 C.F.R. § 3.22(d)(1) (reduction in capital for mortgage servicing assets).

17 85 Fed. Reg. at 1214, 1244.

18 12 C.F.R. § 25.22(a).

19 85 Fed. Reg. at 1218, 1245.

meeting the specific and localized needs of all of its customers.[20] The proposed rule runs the risk of missing critical nuances of how banks serve their communities through their branch system, including the bank's responsiveness and innovation in providing services. Although the proposed retail lending distribution tests and CRA evaluation measure assess some similar content (*e.g.*, distribution of branches), the proposed tests do so in a formulaic manner that is focused on balance sheet dollar totals and that removes the more holistic assessment that is possible under the current rule.

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KeyBank appreciates the opportunity to provide comments to the NPR and respectfully asks for the Agencies' consideration of the recommendations and suggestions in this letter. KeyBank's commitment to helping clients and communities thrive is at the heart of how we do business, and our decades-long "Outstanding" CRA ratings are a testament to that commitment. It is our sincere hope that the comments received by the Agencies will allow the CRA regulations to be modernized in a manner that increases overall investment into LMI communities and that ensures the CRA remains effective into the future. If you have any questions regarding the content of this letter or would like more information on the subject, please do not hesitate to contact the undersigned at (216) 689-4327. Thank you.[21]

Respectfully Submitted,

Key[redacted]

By: [redacted]
Don Graves
Head of Corporate Responsibility and
Community Relations

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20 12 C.F.R. § 25.24 (service test); *see also* 81 Fed. Reg. 48506, 48542 (July 25, 2016) (§ __.24—Service Test) (describing the wide variety of topics currently considered when evaluating banks under the service test).

21 We also encourage the Agencies to defer finalizing a rule until the COVID-19 pandemic ends. The unprecedented events have caused enormous disruptions in financial markets and in communities, and like many institutions, we are devoting substantial resources to ensure that we continue to meet client and community needs during this difficult time. The proposed changes to the CRA rules are significant in scope and we believe it would be prudent for the Agencies to defer making these changes until the current situation ends.