1ST FIRST NATIONAL BANK

August 4, 2022

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20429

Re: Joint Notice of Proposed Rulemaking – Request for Comment: Community Reinvestment Act Docket ID OCC-2022-0002

Dear Madam or Sir:

We respectively submit this letter to the Office of Comptroller of Currency in response to its request for comment related to the Community Reinvestment Act ANPR. The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (Agencies) are seeking comment to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA). We thank the Agencies for their leadership and diligence in drafting a joint proposal on which stakeholders can provide feedback

RETAIL LENDING TEST

The proposal would raise the bar for the performance on the Retail Lending Test. As a result, an Intermediate or Large Bank would have to exceed past performance to attain the same CRA rating that it received on a prior exam. The Agencies believe that these heightened performance standards would incentivize banks to increase lending to underserved communities. This is an important goal. However, as explained below, the proposed benchmarks and ratings methodology may actually create a *disincentive* for certain types of lending and investment. For this reason, Agencies must ensure that new benchmarks and ratings methodologies are calibrated appropriately.

- *First*, in an attempt to standardize CRA evaluations, the proposal would apply the same performance metrics to all banks operating in an assessment area, regardless of whether the bank has a digital or a physical presence. Regulators should instead ensure any final rule does not competitively advantage or disadvantage certain business models.
- *Second*, the proposal is weighted too heavily on the Retail Lending Test, which would constitute 45% of a bank's CRA rating. Under this approach, a bank could not achieve an overall rating of Outstanding unless it receives an Outstanding rating on the Retail Lending Test, regardless of

how well the bank performs on the Community Development Test. The Agencies believe that a weighting of 45% appropriately emphasizes retail lending to LMI individuals and communities. However, over-emphasizing the Retail Lending Test could have unintended consequences. For instance, if a bank believes an Outstanding on the Retail Lending Test is unattainable, that bank may choose *not* to pursue an Outstanding on the Community Development Financing Test since the bank would not be capable of achieving an overall rating of Outstanding. In other words, the proposed benchmarks could create a *disincentive* for banks to stretch and do more community development lending and investing. This would be a highly undesirable outcome, particularly for communities that desperately need revitalization and are located outside of the assessment areas of most banks.

- *Third*, the proposed Retail Lending benchmarks may be unachievable and could incentivize unsafe and unsound risk taking. To obtain a High Satisfactory rating, a bank must meet 110% of the market benchmark or 90% of the community benchmark. For an Outstanding rating, a bank must meet 125% of the market benchmark or 100% of the community benchmark. Importantly, the proposal would evaluate banks on a relative basis rather than an absolute basis. We are concerned the proposed performance standards could create an unrealistic target, whereby it will be mathematically impossible for banks in an assessment area to meet the proposed thresholds. In other words, the proposed performance standards would create an automatic bell curve of ratings distributions within the Retail Lending Test. In fact, according to the preamble to the proposed rule, 34% of banks would fail the Retail Lending Test in their RLAAs and 39% would only receive a Low Satisfactory rating.

We strongly disagree with this approach. CRA performance benchmarks should be vigorous, yet achievable, and the expectation should be that all banks can meet or exceed the established standard—as is the case with all other consumer protection and safety and soundness regulations. Artificially high benchmarks could incentivize banks to engage in undue risk taking to comply with the regulation's performance standards. This would be disastrous for consumers, communities, and could increase risk in the financial system. Lastly, as stated above, the Retail Lending Test should not apply to a product that, by itself, would not trigger a RLAA designation.

We do support the provision that applies to Intermediate Banks and the Retail Lending Test. The proposal states when an Intermediate Bank fails the retail lending volume screen, that bank would not be limited to receiving only a conclusion of "Needs to Improve" or "Substantial Noncompliance" on the Retail Lending Test. Instead, the bank's outcome on the retail lending volume screen would be reviewed as an additional factor indicative of its lending performance and considered when reaching the Retail Lending Test conclusion.

BENCHMARKS AND RATING METHODOLOGY

We believe the performance benchmarks are overly complicated and may not be achievable for all banks. In addition, the Agencies should not hold RLAA banks to the same performance standards in an assessment area as a bank that has an extensive branch network in that location.

Furthermore, we caution the Agencies about the limitations of using census tracts to determine whether banks are getting products to LMI households. As you move away from metropolitan areas, there is less concentration and fewer LMI census tracts. In fact, in Iowa – as stated above - there are some bank assessment areas that contain no LMI census tracts – not because there are no LMI borrowers but because these census tracts are not primarily made up of LMI individuals. Not all LMI individuals live in LMI tracts. This is also true for multifamily loans.

ADEQUATE TRANSITION PERIOD

The Agencies propose to incorporate a transition period comprised of multiple "applicability dates." For the most burdensome aspects of the proposal (including RLAAs; new performance tests, standards, and ratings; and data collection and reporting requirements), the Agencies would provide a transition period of only one year. Twelve months is insufficient to implement the proposed changes for a rulemaking this comprehensive and complex.

In addition to parsing the highly technical rule, banks will need to:

- Apply new and complicated formulas to their existing CRA programs;
- Establish administrative oversight over newly designated RLAAs and ensure that they are properly incorporated into the bank's CRA program;
- Ensure that all assessment areas (new and existing) meet the rule's newly established performance benchmarks;
- Implement major data collection, recordkeeping, and reporting mechanisms that significantly exceed existing CRA requirements, including the establishment of data integrity procedures and controls; and
- Evaluate the cost-benefit of certain business lines and geographic markets considering the burden that the new RLAAs and performance metrics create.

CRA implementation will be a very heavy lift on its own. But, the proposed 12-month implementation period is especially unrealistic given that we will likely be required to implement the new CRA regulation in tandem with the CFPB's anticipated final Small Business Lending Data Collection Rule (Dodd-Frank Act Section 1071). Our same staff will be charged with implementing both new regulations, particularly as it pertains to overhauling technology systems and implementing new data collection and reporting mechanisms. This dual implementation will make the time pressures of a 12-month implementation period particularly acute.

Banks are not the only entities that must dedicate substantial resources to meet the time pressures of a new CRA rule. Banks are dependent on software vendors and core providers to furnish services that will be necessary to implement a new CRA framework. Regulators should solicit input from these third parties regarding the time that will be necessary to develop the requisite coding, programs, and systems necessary for banks to implement a final rule. In the case of prior rulemakings involving HMDA and TRID, bank implementation and testing of vendor products was delayed because third parties lacked sufficient time to develop systems changes. We urge the Agencies to draw upon these experiences when establishing the implementation period for the final CRA rule.

For the foregoing reasons, we request the Agencies provide an implementation period of at least two years following publication of the final rule in the *Federal Register*. We also recommend the Agencies provide extensive interagency training and support to help all banks understand and apply a new regulatory framework. Examiner training should also be conducted on an interagency basis. Lastly, for banks subject to reporting requirements, banks would be required to collect new data starting 12 months after the publication of the final rule. The Agencies stated they believe that the applicability date for this provision would give banks sufficient time to revise their systems for data collection and develop new procedures for implementation of the proposed regulatory framework. We strongly

disagree with this statement based on their own history of implementing changes to major regulations. Not only do we request additional time for implementation as stated above,
also strongly encourage the Agencies to amend the proposal regarding the start date of reporting. A starting date equal to the beginning of a calendar year after the implementation period has expired and not mid-year would be encouraged. For example, if the proposal were to be finalized in August of 2023 and a two-year implementation period were granted, the date of first reporting would be January 1, 2026 with first exams under this final rule beginning no earlier than January 1, 2027.

CONCLUSION

Thank you for the opportunity to comment on potential revisions to the regulations that implement the CRA. Updates to this regulation are long overdue, and the industry remains optimistic that it is possible to improve the effectiveness and administration of CRA on an interagency basis. We ask the Agencies to read and carefully consider ALL the comments submitted from industry stakeholders. We also thank the Agencies for their thoughtful consideration of our comments. For questions, please contact Bill R. Messerschmidt at 515-273-8913 or via the email address below.

Sincerely

8/4/2022

X

Bill R. Messerschmidt
Sr, V.P. - Compliance Officer
Signed by: Bill R. Messerschmidt

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