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Via Electronic Submission

August 5, 2022

Chief Counsel's Office
Attn: Comment Processing
OCC
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

James P. Sheesley, Assistant Executive Secretary
Attn: Comments RIN 3064-AF81
FDIC
550 17th St NW
Washington, D.C. 20429

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave NW
Washington, DC 20551

RE: Community Reinvestment Act Notice of Proposed Rulemaking: Docket ID OCC-2022-0002

To Whom It May Concern:

Woodforest National Bank® ("Woodforest", or "Bank") appreciates the opportunity to provide the Office of the Comptroller of the Currency (OCC), the Federal Reserve System, and the Federal Deposit Insurance Corporation (FDIC) with its comments on the Notice of Proposed Rulemaking (NPR) for improving and modernizing the regulations of the Community Reinvestment Act (CRA). The Bank appreciates the issuing agencies for seeking input on ways to enhance the CRA Regulations so insured depository institutions can continue to serve the credit needs of their communities, including low- and moderate-income (LMI) individuals and families.

Headquartered in The Woodlands, Texas and operating across 17 states, Woodforest is an interstate financial institution with total assets of $9.38 billion. As of December 31, 2021, Woodforest employed over 4,400 persons and operated over 760 branches in 127 CRA Assessment Areas (AAs). With branches predominantly located inside of Walmart® store lobbies ("in-store branches"), the Bank enjoys the busiest lobby in banking with unparalleled opportunity to build community relationships and provide financial solutions for residents of all income levels. Woodforest is not a mortgage lender. It is a commercial and community development lender, though its primary retail lending products are small-dollar loans to consumers and small businesses.

Woodforest applauds the efforts of the issuing agencies to establish transparent guidelines for CRA performance and to streamline evaluations, allowing banks to quickly identify and address community needs. The Bank agrees with the objectives to:

- Create an updated CRA evaluation framework with tailored performance standards based on bank asset sizes and business models;
- Establish new CD Activity criteria, a confirmation process, and a publicly available illustrative list of qualifying activities;
- Retain CRA Performance Context as a significant part of the evaluation process;
- Retain a bank's ability to be evaluated under a strategic plan; and
- Provide transition provisions under which any new compliance dates would be phased in over a two-year period following the new rule's publication in the Federal Register.

Woodforest also believes, however, the proposed new rule, and, specifically, its Retail Lending Test, would diminish the critical roles community development activities and small-dollar lending play in meeting the credit needs of communities. The Bank therefore offers the following recommendations to implement a modernized CRA that is impactful, efficient, and consistent with the spirit of the original law passed in 1977.

1. **The heavily weighted Retail Lending Test would diminish community development lending (CDL) and community development investment (CDI) while forcing unique banks into a one-size-fits-all model.**

   The dominant 45% weighting of the dollar volume-based Retail Lending Test would create significant unintended consequences for communities and unique banking models alike. By combining CDL and CDI into a single "Community Development Financing Test" weighted at only 30% of the rating scale, the proposed new rule would cost LMI communities impactful loans and investments for the sake of more retail lending dollar volume. While this tradeoff may be intentional, it fails to consider adequately the many banks that are not structured to offer large retail loans due to the specific needs of their markets. Woodforest, for example, most recently earned an "Outstanding" CRA Performance Evaluation (PE) rating largely because it filled an important industry gap of small-dollar lending and because it executed an innovative, complex, and responsive CDL and CDI strategy. **While this unique model would score poorly in the proposed Retail Lending Test, it is the most appropriate and effective model for the markets Woodforest serves.** By virtue of its in-store retail model, the Bank proudly fills an industry gap of serving many low-deposit customers who often require high-touch, in-person engagement for banking services. This important niche occupied by Woodforest, which carries with it significantly low deposit market share in nearly all of its AAs, is less conducive to high dollar volume retail lending.

   The most significant unintended consequence, however, is that banks whose models are not positioned to earn an Outstanding Retail Lending Test rating will also find it mathematically impossible to earn an overall Outstanding Exam rating. This bleak fact would diminish these banks' incentive to pursue an Outstanding

Community Development Financing Test rating (why seek Outstanding in any test if overall "Satisfactory" is a bank's ceiling?). LMI communities would receive less CDL and CDI as a result.

2. **The Retail Lending Test would reduce the incentive for small-dollar lending, which would be a victory for predatory lenders who are creating debt traps across the nation.**

   The U.S. faces an epidemic of LMI consumers caught in debt traps. Without reasonable credit options, these consumers repeatedly borrow from payday, title, and other short-term, high-interest lenders to pay emergency expenses. **The issuing agencies as well as the U.S. Consumer Financial Protection Bureau (CFPB) have publicly advocated for solutions to this predatory lending problem through several publications.**[1] Notably, in Woodforest's most recent CRA PE, the Bank's primary retail lending product – the small-dollar ReLi Unsecured Line of Credit (UC ReLi®) – was recognized as "innovative" for offering "alternative affordable financing to LMI consumers who might otherwise be interested in 'pay day' and other types of predatory loan products."[2]

   The proposed new rule would reverse the agencies' momentum to encourage responsible small-dollar lending. The unsecured small-dollar loans consumers need would be evaluated as part of the "Retail Products and Services Test," a portion of the exam weighted at only 15% of a bank's CRA evaluation. Relegating consumer small-dollar loans to such a minimal weight diminishes the banking industry's incentive to offer them. Further, a bank can pass the Retail Products and Services Test without originating small-dollar loans at all, thereby nearly eliminating the incentive. While Woodforest agrees with encouraging banks to partner with CDFIs in small-dollar lending programs, such a small-scale solution would not adequately combat the national predatory lending epidemic.

   Other types of small-dollar loans, such as those to microbusinesses, are also undervalued. While these loans would be evaluated under the heavily weighted Retail Lending Test, their contribution to it would be extremely minimal since the test rewards higher loan dollar volume as a percentage of deposits. **Small-dollar loans do not produce high-dollar lending volume.** It would take 100 small-dollar microbusiness loans of $3,000 to equal just one mortgage loan of $300,000. It is essential to incentivize responsible small-dollar lending, not diminish it.

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[1] Sourced Publications: **(1)** News Release 2018-51, "'Comptroller Urges Banks to Meet Consumers' Short-Term, Small-Dollar Credit Needs'", 5/23/2018; **(2)** OCC News Release 2020-40, "Federal Agencies Encourage Banks, Savings Associations and Credit Unions to Offer Responsible Small-Dollar Loans to Consumers and Small Businesses Affected by COVID-19", 3/26/2020; **(3)** OCC Bulletin 2020-54, "Interagency Lending Principles for Offering Responsible Small-Dollar Loans", 5/20/2020; **(4)** Federal Reserve Board of Governors, "Economic Well-Being of U.S. Households in 2021", 05/2022; **(5)** "CFPB Data Point: Payday Lending", 03/2014.

[2] Woodforest National Bank CRA Performance Evaluation, 6/24/2019, at page 4.

3. **The minimum lending dollar volume screen of the Retail Lending Test would, over time, create a bias against branches not well-positioned to generate high lending dollar volume.**

   Many factors determine whether a branch can produce high lending dollar volume, not least of which is a bank's deposit market share. As deposits are a key source of lending capital and a reflection of a customer base's debt capacity, low-deposit branches are at a comparative disadvantage in lending dollar volume. Even if such branches were distributed in LMI geographies and were supportive of the bank's Retail Products and Services Test, this support would be overshadowed by their minimum utility in the Retail Lending Test. A bank must *first* pass the Retail Lending Test just to pass the CRA Exam, and this would be no small challenge. The proposed new rule states that more than half of all banks would be positioned to earn a "Low Satisfactory" or worse in the Retail Lending Test.[3] With stakes so high, banks would look to compensate for low-deposit, weaker lending branches. The Retail Lending Test, stated simply, would impose a higher economic cost on a bank's decision to operate these types of branches and physical branches in general.

   Additionally, the pass-fail nature of the Retail Lending Test volume screen would create an anti-competitive environment for banks with comparatively low deposit market share. Rather than finding ways to be innovative and responsive within the context of their specific market needs and business models/capacities, which would be the most impactful use of their resources, such banks would be forced to focus disproportionately on lending dollar volume. In this environment, the development of responsive products, such as small-dollar loans that meet the needs of microbusinesses and often un/underbanked consumers, would receive far less industry priority. This would be a loss for both banks and communities. Once again, numerous banks proudly serve many low-deposit customers who often require high-touch, in-person engagement for banking services. Incentives for serving such customers with innovative products and services should be increased, not crowded out by the Retail Lending Test.

4. **The preservation of Performance Context (PC), while appropriate, does not offer sufficient assurance that banks with unique business models can pass the CRA Exam under the proposed new rule.**

   The proposed new rule provides that a bank's business model may be considered one of the PC "institutional capacity and constraints" that could help a bank pass the dominant, dollar volume-based Retail Lending Test (and, therefore, the overall Exam). This PC contingency does not provide sufficient assurance for banks with

[3] Proposed New Rule, Table 9 to Section__.22, page 251.

unique business models. **Further, Woodforest's goal is to earn Outstanding performance evaluations, not just passing scores.** Outside of the strategic plan option, the proposed new rule offers no way for banks to receive examiner pre-approval of their business models. Relying on PC alone to pass the CRA Exam would place unique banks in a precarious position.

5. **Insufficient time is provided for banks to provide data-driven and tested comments, and for banks to implement the many new systems, analyses, and metrics proposed in the nearly 700-page proposed new rule.**

To avoid damaging unintended consequences, Woodforest recommends that the Retail Lending Test be assigned significantly less exam weight relative to other tests, and that it not incorporate a pass-fail "volume screen" that is biased against banks with unique business models. In addition, Woodforest submits the Addendum attached hereto, which identifies a non-exhaustive list of relevant questions posed in the NPR. The Bank is hopeful these recommendations will be helpful to the OCC, the FDIC, and the Federal Reserve Board as the rulemaking process moves forward. If you have any questions regarding the content of this letter or would like more information, please contact Doug Schaeffer, EVP, CRA Executive Director at (832) 375-2124 or dschaeffer@woodforest.com. Once again, thank you for the opportunity to comment.

Sincerely,

James D. "Jay" Dreibelbis
President and CEO
Woodforest National Bank

Douglas A. Schaeffer
EVP, CRA Executive Director
Woodforest National Bank

Addendum: Select NPR questions relevant to Woodforest

Question #14, page 86: "Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)? If so, are there appropriate standards for plans, programs, or initiatives? Are there alternative options for determining whether place-based definition activities meet identified community needs?"

Woodforest Response: Government plans, programs, or initiatives should **not** be prerequisites for the CRA qualification of place-based definition activities, such as revitalization/stabilization. In both urban and rural low-income communities, local governments often lack the financial capital, human capital, and time necessary to create such plans and initiatives themselves. Rather, they rely on winning competitive grant funds to hire this work out to third-party professionals. CRA qualification should not be dependent upon whether or not a low-income community was able to secure a planning grant. Banks should be allowed to document objectively local data related to poverty, disinvestment, and other relevant indicators in order to qualify their place-based activities.

Question #69, page 179: "Should the agencies adopt a qualitative approach to evaluate consumer loans? Should qualitative evaluation be limited to certain consumer loan categories or types?"

Woodforest Response: Qualitative evaluation of consumer loans, especially small-dollar consumer loans, is critically important. Responsible small-dollar consumer lending must be incentivized to combat title, payday, and other types of short-term, high-interest predatory lending that continues to create debt traps throughout the nation. As stated in this letter, small-dollar consumer and business lending is disincentivized in the proposed new rule as they are both assigned extremely minimal weight in the performance evaluation rating scale.

Question #73, page 193: "Should large banks receive a recommended Retail Lending Test conclusion of 'Substantial Noncompliance' for performance below a threshold lower than 30 percent (e.g., 15 percent of the market volume benchmark) on the retail lending volume screen?"

Woodforest Response: No. The market volume benchmark fails to consider adequately banks like Woodforest whose business models are not structured to generate high-retail lending dollar volume due to the specific needs of their markets. Further, **the proposed new rule's evaluation metrics should exclude corporate deposits, as they will create distortions and damaging unintended consequences.** Corporate deposits are used primarily by large corporations, investment funds, and pension plans to manage liquidity, with balances varying from week to week and even day to day. They are separate from deposits related to personal, household, family, and small business/farm use, each of which more accurately represent a bank's local capacity, standard CRA obligations, and the original intent of the CRA regulation. Including corporate deposits is an unbalanced way to measure a bank's CRA activities relative to deposits because they over-inflate the calculation's denominator (deposits) while contributing minimally to the numerator (loans/investments). Further, because corporate deposits are concentrated in metropolitan AAs, including them will intensify the very geographic "CRA hot spots" the agencies wish to balance out over a bank's broader territory. Inflated CRA obligations in hot spot AAs will, in turn, divert available bank resources from non-metropolitan AAs and "banking deserts."

Question #84, page 229: "Should the agencies use loan count in conjunction with, or in place of, dollar volume in weighting product line conclusions to determine the overall Retail Lending Test conclusion in an assessment area?"

Woodforest Response: Woodforest believes that evaluating loan count in conjunction with or in place of dollar volume in the proposed Retail Lending Test would be an insufficient solution. As previously stated, the Retail Lending Test should be assigned significantly less exam weight relative to the other Exam tests, and it should not incorporate a pass-fail "volume screen" that is biased against banks with unique business models.

Question #106, page 295: "Should special purpose credit programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals?"

Woodforest Response: Yes. The CRA should encourage banks to apply creativity and flexibility in their implementation of special purpose credit programs to meet credit needs.

Question #134, page 359: "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?"

Woodforest Response: Strategic plans should be an available option to all banks and not just those with specialized business strategies. Indeed, objectively defining a "specialized business strategy" would be prohibitively difficult as all banks possess strengths, weaknesses, opportunities, and threats unique to them and their ever-changing environments. Along these lines, Woodforest is concerned with the reduced level of flexibility found in the proposed new rule's strategic plan guidance. Requiring CRA strategic plan banks to meet the same performance tests and standards as other banks would undermine the original point, which was to allow unique institutions to be evaluated on how well they meet community credit needs within the context of their business models. Woodforest recommends retaining strategic plan rules in their current form.