August 5, 2022

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

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Benjamin W. McDonough
Chief Counsel
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Re: The Community Reinvestment Act (Docket No. R-1769 and RIN 7100-AG29—Board; RIN 3064-AF81—FDIC; and Docket ID OCC-2022-0002—OCC)

Ladies and Gentlemen:

We appreciate the opportunity to comment on the joint notice of proposed rulemaking (the "Proposal") issued by the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), and the Office of the Comptroller of the Currency (the "OCC," and together with the Board and FDIC, the "Agencies"), requesting comments concerning amendments to the regulations implementing the Community Reinvestment Act of 1977 (the "CRA").[1] We commend the Agencies for seeking the public's input on the Agencies' efforts to modernize the CRA Regulations in ways that would continue to encourage banks to serve the convenience and credit needs of their entire communities, including low- and moderate-income ("LMI") individuals and neighborhoods, and other individuals and areas of need throughout the United States.

---

1 *See* 87 Fed. Reg. 33884 (proposed May 5, 2022) (to be codified at 12 C.F.R. Parts 25, 228, and 345) [hereinafter the "Proposal"].

Our institutions are regional banking organizations that provide traditional retail and commercial banking products and services to our customers through a network of branches and deposit-taking Automated Teller Machines ("ATMs") across different regions of the United States.[2] Regional banking organizations play an important role in the United States economy. Our traditional retail and commercial bank business models focus on the banking and financial services needs of American consumers, small businesses, middle-market companies, large corporations and institutions, and state and municipal governments. Together, our institutions play a crucial role in helping meet the credit needs of our local communities, including LMI individuals and families residing in these communities.

We recognize that customer banking preferences have changed significantly since the time the CRA was adopted in the late 1970s, the CRA regulations were last comprehensively updated more than a decade ago, and more customers, including LMI customers, prefer to interact with their banks through non-branch channels, such as online banking, mobile banking, and ATMs. Banks are adopting to these changes in different ways depending on their business models. Our regional banking organizations, for example, operate expansive branch networks in many states and these branch networks are the foundation for how we meet the convenience and credit needs of our local communities. We combine this physical presence with digital channels and toll-free customer service centers that provide additional, convenient ways for customers to transact with us. In contrast, some banks today operate with a single branch or a handful of branches in a single geography, but market and offer their products and services nationally primarily through online and mobile channels (referred to as "digital" or "branchless" banks).

We write to comment on the retail lending assessment area (the "RLAA") and outside retail lending area (together, the "RLAA framework") aspects of the Proposal. As regional banking organizations operating through extensive, traditional branch networks, we support the Agencies' efforts to ensure "that [the] facility-based assessment areas would remain a cornerstone of the proposed evaluation framework."[3] In this context, we also support the Agencies' efforts to promote competitive equality in the CRA evaluations of our institutions and those banks that maintain extensive retail lending operations, but limited or no branch offices, in communities across the country through the concept of lending-based assessment areas. As discussed in greater detail below, though we support the efforts to level the playing field, we believe that applying the RLAA framework to traditional, branch-based banks as proposed would continue to competitively disadvantage such banks and would be inconsistent with the Agencies' longstanding, practical implementation of the CRA. Moreover, we believe that requiring regional banks like our institutions to delineate lending-based assessment areas is unnecessary, overly burdensome, and would ultimately undermine these banks' existing CRA programs as well as disincentivize their retail lending activities, especially in underserved communities, contrary to the objectives of the CRA.

---

2 Our institutions range in size, each with anywhere from around 100 to 2500 branches across as few as 8 and up to 30 states in the United States.

3 87 Fed. Reg. at 33916.

As an alternative, we encourage the Agencies to ensure the CRA regulations are flexible enough to accommodate the diverse ways that banks operate and meet the needs of their communities and promote the fair and equitable assessment of the CRA performance of institutions with different business models. A bank that engages in a majority of its retail lending in geographic areas where the bank maintains branches should continue to be able to define its assessment areas as the areas serviced by its branches. A bank that operates primarily via digital channels across many geographies, but has only a limited number of branches in a single geography, should have assessment areas that appropriately reflect the broader geographic areas in which the institution engages in retail lending.[4]

I. Applying the RLAA Framework to Traditional Banks Is Inconsistent with the Text, Purpose, and the Agencies' Well-Established Understanding of the CRA.

Pursuant to the CRA, banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.[5] The statute requires that the public evaluation of CRA performance by the Agencies address those geographic areas "in which [the] regulated depository institution maintains one or more domestic branch offices."[6] Accordingly, one of the core requirements of the CRA's current implementing regulations is that each bank delineate so-called "assessment areas" in which its CRA performance will be assessed. In keeping with the plain text of the statute, the Agencies' CRA regulations currently define assessment areas as those areas where the bank's main office, branches, and deposit-taking ATMs are located and any surrounding areas in which it has originated or purchased a substantial portion of its loans.[7]

The Proposal departs from the Agencies' well-established approach for designating assessment areas by traditional, branch-based banks by requiring these banks, as well as others, to delineate an RLAA in any metropolitan statistical area ("MSA") or combined non-MSA areas of a state, outside of any facility-based assessment area, if the bank has originated, as of December 31 in each of the two preceding calendar years, a small number of home mortgage (100) or small business (250) loans in the area.[8] The Proposal's addition of an outside retail lending area would also essentially establish a third, nationwide assessment area comprising retail loans outside of RLAAs and facility-based assessment areas. For the home mortgage loan threshold, the Agencies relied on "the median number of home mortgage loans within a facility-

---

4 While we focus here on the RLAA framework set out in the Proposal, we note that the OCC's 2020 CRA Rule adopted a framework for delineating assessment areas based on deposits, which we believe would have promoted the fair and equitable assessment of the CRA performance of institutions with different business models. 85 Fed. Reg. 34734 (June 5, 2020). The OCC's 2020 CRA Rule would have required a bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of the bank's facility-based assessment areas to delineate deposit-based assessment areas where the bank receives 5 percent or more of its total retail domestic deposits. *Id.* at 34757. We believe this approach appropriately recognized the different business models of banks, while still ensuring the purpose of the CRA is achieved.

5 12 U.S.C. § 2901(a).

6 *Id.* § 2906(b)(1)(B).

7 *See, e.g.*, 12 C.F.R. § 25.41(c)(2).

8 *See* 87 Fed. Reg. at 33919.

based assessment area by a large bank."[9] For small business lending, "the agencies considered it appropriate to propose a higher threshold of 250 small business loans . . . because this level would result in a large share (62 percent) of bank loans that are currently outside of facility-based assessment areas being evaluated within [an RLAA]." [10] The specific thresholds for home mortgage loans and small business loans were set using data from 2019.

As an initial matter, we agree with the Agencies that technology has transformed the financial industry and how banking services are delivered and consumed.[11] We also strongly agree that these changes are most evident in digital banks that have a limited physical presence.[12] For such banks, the current CRA regulations may not adequately define the appropriate assessment areas, and the RLAA framework may be a fair and reasonable solution. But the Proposal does not explain why the RLAA framework is appropriate for traditional banks primarily serving the communities where they have branches. For more than a quarter century, the Agencies' rules have implemented the CRA by linking a bank's CRA public evaluation to its domestic branches, consistent with the text of the statute, to effectuate a key policy objective: encourage banks to serve the communities where they have branches and ATMs that take deposits—that is, financial resources—from community members. Unlike digital banks, traditional banks have and continue to serve their communities in accordance with the CRA, the existing rules, and the Agencies' policy objectives through their extensive, traditional branch networks. The Proposal simply applies the RLAA framework to all banks without explaining why such uniform application of the framework is appropriate despite the significant differences in operating models of traditional banks and other banks with few or no branches. The failure to distinguish among banks with different business models is contrary to the Agencies' stated objective to do so and represents a fatal flaw of the RLAA framework.

We support requiring the delineation of assessment areas centered around a bank's branch offices as well as applying the RLAA framework to banks with a predominately digital business model. We respectfully submit, however, that the Proposal does not provide adequate data or analytical support for applying the RLAA framework to traditional banks, as required under the Administrative Procedures Act (the "APA"), particularly where the Agencies are departing from longstanding policy that has created a significant reliance interest. An agency engaged in rulemaking must demonstrate that it engaged in reasoned decision-making by providing an adequate explanation for its decision.[13] An agency's justification for rulemaking cannot be conclusory; rather, the agency must be able to provide the "essential facts upon which the administrative decision was based" and provide evidence to support its determinations.[14] Moreover, as articulated by the Supreme Court in *FCC v. Fox Television Stations, Inc.*, there are

---

9 *Id.*

10 *Id.*

11 See *Id.* at 34009.

12 *Id.*

13 *Motor Vehicle Mfrs. Ass'n v. State Farm Auto Mutual Ins. Co.*, 463 U.S. 29 (1983).

14 *United States v. Dierckman*, 201 F.3d 915, 926 (7th Cir. 2000) (quoting *Bagdonas v. Dep't of the Treasury*, 93 F.3d422, 426 (7th Cir. 1996)); *Allied-Signal, Inc. v. Nuclear Reg. Comm'n*, 988 F.2d 146, 152 (D.C. Cir. 1993).

several criteria relevant to the review of rulemaking that represents a change in or rescission of previous agency policy.[15] The agency must, for example, at least acknowledge that it is departing from its prior policy position.[16] The agency must also provide "a more detailed justification" for a policy change where the previous policy has "engendered serious reliance interests that must be taken into account."[17]

Branch-based banks, including our regional banking institutions, have significantly relied over the past 45 years since the CRA was adopted on the fact that we would not have CRA obligations in geographic areas where we do not have any branches or deposit-taking ATMs in reaching a number of important business decisions. These include, for example, deciding whether and where to open a new branch and whether to extend a home mortgage or small business loan to a customer residing in an area where the bank does not have a branch. Had we known at the time that only a limited number of home mortgage or small business loans in an area outside of our retail branching footprint could have subjected our banks to a highly complex and burdensome new CRA compliance framework, we might have approached the business decision to engage in the activity in a different manner. While this letter does not attempt to focus on the burdens of compliance with the CRA proposal, one thing is certain: the Proposal woefully underestimates the expenditures of the private industry in complying with the Proposal. While the system changes and staff needed to implement a new CRA compliance framework as comprehensive and new as the one proposed will be tremendous, complying with the CRA is about more than just passing a test. It is about the effort needed to meet the needs of our entire communities. This is how each of our institutions has approached the CRA in the past, as is evident by the current Outstanding to Satisfactory CRA ratings that our institutions have each worked so hard to achieve.

Beyond the unneeded, unexplained, and fundamental shift in policy towards traditional banks, the Proposal does not explain critical elements of the RLAA framework such as why only 2019 data was used to set the thresholds associated with the delineation of RLAAs. The use of a single year's data departs from the Agencies' past practice in the CRA context where the Agencies, in order to account for the fluctuations within a business cycle, typically look to performance over a number of years to set benchmarks and thresholds for CRA evaluations.[18] Considering data over a period of years generally ensures that the relevant thresholds more accurately reflect actual performance, which is critical here because the RLAA requirements could have significant regulatory and economic consequences for decades to come. In addition, the Proposal uses mismatched criteria for establishing the thresholds of 100 home mortgage

---

15 556 U.S. 502 (2009).

16 *Id.* at 515.

17 *Id.* at 515–16. The Court explored this requirement further in *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 136 S.Ct. 2117 (2016). There, the Court explained that a "summary discussion" of the rationale for a change to a previous agency position "may suffice in other circumstances," however, where there has been "decades" of reliance on the policy, the agency must provide a "more reasoned explanation" for the change. *Id.* at 2126.

18 *See* 87 Fed. Reg. at 33939–42 (discussing of the various benchmarks relevant to the evaluation of a bank's retail lending performance over the evaluation period).

loans and 250 small business loans. The Proposal justifies the use of inconsistent criteria by explaining that the Agencies set the thresholds to "align with the amount of lending typically evaluated in a facility-based assessment area."[19] But this explanation suggests that the thresholds may not be the product of careful analysis but rather were picked to achieve a predetermined outcome, namely the uniform application of the RLAA framework, without properly accounting for traditional banks' business models.

The Proposal also does not explain how the outside retail lending areas are consistent with the CRA. The Proposal attempts to justify their creation by noting that such areas would allow for a comprehensive assessment of a bank's lending to LMI individuals and communities.[20] As the Agencies are aware, however, the CRA establishes obligations in the "communities in which [banks] are chartered to do business" and not in all communities across the United States.[21] Our institutions would see our assessment areas materially expand under the Proposal to span across most of the nation. The "*community*" of a regional banking organization, in particular, could not possibly include *the entire nation*. Congress clearly intended this language to provide some geographic limit on the scope of CRA evaluations, yet any such limitation is essentially read out of the statute by the Proposal.

In light of the foregoing, we respectfully submit that the RLAA framework should not be applied to banks with traditional, branch-based business models in the final rulemaking, since doing so would likely run afoul of the CRA and APA.

II. Requiring Banks Primarily Conducting Business Through Traditional Branch Networks to Delineate RLAAs and Outside Retail Lending Areas is Unnecessary and Overly Burdensome and Will Disincentivize CRA Activities, Contrary to the CRA's Objective.

While we support the underlying objectives of the RLAA framework, we respectfully submit that requiring regional banks primarily serving the needs of their communities through branches, such as our institutions, to delineate RLAAs and an outside retail lending area is unnecessary to achieve the Agencies' objectives for the CRA and would be overly burdensome. The RLAA and outside retail lending area framework appears designed to address the unique CRA challenges presented by banks that operate primarily through digital means, with limited or no branches. The Proposal makes clear that bank branches play a critical role within the CRA framework[22] because they help to define and serve a bank's local communities.[23] To encourage banks to maintain and invest in their branch networks, the Proposal makes "facility-based

---

19 *Id.* at 33919.

20 *Id.* at 33920.

21 12 U.S.C. § 2901(a)(1).

22 87 Fed. Reg. at 33916.

23 *Id.* at 33917.

assessment areas . . . a cornerstone"[24] of CRA evaluations. The Proposal also recognizes, however, that many banks have opted to operate with few or no branches in response to changes in the banking industry, technology, and customer preferences in recent decades. Banks with few or no branches have a limited number of traditional facility-based assessment areas and, thus, face less of a regulatory burden from a CRA perspective compared to regional banks, even if their operations are otherwise similar in scope and breadth. Moreover, banks with a limited or no branch footprint could have a significant presence (without maintaining a branch office) within a community and not have their activities be subject to CRA evaluations. The RLAA framework seeks to address these challenges by attempting to establish parity between banks with different business models—namely, those that operate extensively through branches and those that have few or no branches—and by facilitating evaluation of banks' CRA performance in local markets.[25] Yet, uniform application of the RLAA framework would not create competitive equality among banks with different business models; it would continue to impose significant burden on, and competitively disadvantage, traditional banks by not creating appropriate exceptions or different thresholds to account for the fact that these banks already operate extensive branch networks, while digital banks do not.

Based on our experience, we agree with the Agencies that banks must dedicate significant time, staffing, and operational resources to become familiar with the local communities in a given geography and engage in meaningful CRA activities that are responsive to the communities' needs. Our institutions recognize the value that branches provide in helping banks learn about a community and improve safe and sound lending practices. Indeed, regional banks such as ours continue to strike the balance in favor of maintaining an extensive, traditional branch network—even as we embrace technology to improve our products, services, and customers' experience—to enable us to better understand and serve our communities and consistently achieve strong CRA performance. In our view, traditional banks should be given credit for incurring the significant costs of maintaining their extensive branch networks and not be subject to the RLAA framework if they are primarily conducting business within their facility-based assessment areas. Instead of rewarding traditional banks for operating extensive branch networks responsive to community needs, the Proposal would harm these banks competitively by treating them the same as those banks with a digital business model, operating with few or no branches. Accordingly, while the RLAA framework may be appropriate for banks with limited or no branch operations, it is completely unnecessary for traditional banks like ours that are already serving our communities through an extensive branch network in total alignment with the Agencies' policy objectives for the CRA.

Moreover, the burdens imposed by the RLAA framework is likely to discourage banks with traditional branch networks from engaging in CRA activities outside of their facility-based assessment areas. Regional banks like ours already expend tremendous resources to maintain our extensive branch networks and ensure meaningful performance in numerous facility-based assessment areas. In this respect, we already dedicate more economic resources to CRA compliance than our peers with limited or no branch operations. We shoulder even more costs to

---

24 *Id.* at 33916.

25 *Id.* at 33918.

effectuate retail activities when compared to nonbank retail lenders, including credit unions, that are not subject to the CRA. In this regard, requiring regional banks to take on the additional costs associated with the RLAA framework would further disadvantage us relative to other bank and nonbank retail lenders that either maintain limited branch operations or are not subject to the CRA at all.

In addition, the delineation of RLAAs would require a significant increase in our CRA-related staffing and costs. This has the potential to weaken the CRA programs of regional banks, detract from their focus on facility-based assessment areas, and, more importantly, diminish the ability of regional banks to serve the local communities in which we physically operate. For example, the RLAA requirements may force some traditional, branch-based banks to consider whether engaging in lending activities in so-called "banking deserts" or rural areas outside of the bank's facility-based assessment areas can be justified, when a minimal amount of lending in such areas could result in the burdens of having to designate, and be evaluated in, additional assessment areas. Thus, the RLAA framework and its associated costs and burdens are likely to function as disincentives that could constrict credit availability, potentially harming the underserved communities and consumers the regulatory framework is meant to protect.

III. CRA Assessment Areas Should Accommodate Different Business Models.

We encourage the Agencies to ensure the CRA regulations are flexible enough to accommodate the diverse ways that banks operate and meet the needs of their communities and promote the fair and equitable assessment of the CRA performance of institutions with different business models. Banks that engage in a majority of their retail lending in geographic areas where they maintain branches should continue to be able to define their assessment areas as the areas serviced by their branches and deposit-taking ATMs. A bank that operates only a limited number of branches in a single geography should have assessment areas that appropriately reflect the broader geographic areas in which the institution primarily engages in retail lending.

Accordingly, the Agencies should reconsider the thresholds and criterions for imposing the RLAA framework. The Proposal solicits public comment on whether a large bank with a "significant majority" of its retail loans in its facility-based assessment areas should be exempted from delineating retail lending assessment areas and, if so, how the exemption should be defined.[26] We strongly support an exemption from the RLAA framework—including outside retail assessment areas— for banks that *primarily* conduct their retail lending through branch networks. Accordingly, we believe the RLAA framework, as a threshold matter, should only apply to a bank that engages in 50 percent or more of its total home mortgage and small business lending outside of its facility-based assessment areas. A bank that is subject to the RLAA framework should then establish an RLAA only in an area where the bank engages in a *significant amount* of retail lending compared to the bank's total retail lending. The Agencies should not look to a one-size-fits-all, arbitrary threshold based on the total number of loans, but instead should tailor the RLAA threshold to the size of a bank's retail lending business. This approach would appropriately recognize that the current facility-based assessment areas are

[26] *See* Question 46, 87 Fed. Reg. at 33921.

effective in evaluating the CRA performance of banks that primarily make retail loans to customers in areas where they have branches and, moreover, tailor performance obligations to the activity in question.

IV. Conclusion.

We applaud the Agencies' efforts to provide greater clarity and transparency to the CRA evaluation process, and we support the goals of reform. As highlighted in this letter, however, the Proposal's RLAA framework does not need to be applied to regional banks like our institutions because our extensive branch networks already allow us to effectively serve our communities in alignment with the Agencies' policy objectives. The requirements are also too burdensome and unworkable when applied to regional banks like our institutions. Specifically, the RLAA framework requirements would impose significant regulatory, operational, and staffing burdens on regional banks; force these banks to spread limited resources thin; and place these banks at further competitive disadvantage to other banks and nonbank lenders that operate limited branch networks or are not subject to the CRA at all. Ultimately, the RLAA framework requirements would likely cause significant adverse changes to regional banks' CRA programs and level of activities, including in banking deserts and other underserved communities. In light of the foregoing, we respectfully urge that final rules exempt banks operating primarily through branch networks, like our institutions, from the RLAA and outside retail lending area requirements or, alternatively, establish different, higher thresholds for applying the RLAA framework that recognizes the costs and burdens for banks with traditional branch-based business models and that ensures competitive parity between these banks and those primarily utilizing digital business models.

If you have questions regarding the content of this letter or would like more information on the same, please do not hesitate to contact any of the individuals listed in the Annex to this letter.

Sincerely,

BOK Financial
First National Bank of Omaha
Regions Bank
PNC Bank, National Association
Truist Bank
UMB Bank, National Association

Annex

Contact Information

Jo Ann Stall
SVP, Chief Compliance Officer
BOK Financial
JStall@bokf.com

Chris Turner
Director, Corporate Compliance CRA
First National Bank of Omaha
ChristineTurner@fnbk.com

Elizabeth H. Taylor
EVP & Head of Government Affairs
Assistant General Counsel
Regions Financial Corporation
Elizabeth.H.Taylor@regions.com

Ursula C. Pfeil
Deputy General Counsel, Regulatory Affairs
The PNC Financial Services Group, Inc.
Ursula.Pfeil@pnc.com

Ebony Sunala Johnson
Senior Vice President, Associate General Counsel for Public Affairs
Ebony.S.Johnson@truist.com
Truist Financial Corporation

Dana Dorssom
SVP/Director of Corporate Compliance
Dana.Dorssom@umb.com
UMB Bank, National Association