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April 6, 2020

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

Re: RIN 3064-AF22
Community Reinvestment Act Regulations

Dear Ladies and Gentlemen:

EnerBank USA (“EnerBank” or “Bank”) greatly appreciates this opportunity to submit a comment letter in response to the joint Notice of Proposed Rulemaking issued by the Office of the Comptroller of the Currency (“OCC”) and the Federal Deposit Insurance Corporation (“FDIC”) that would modernize the regulations that implement the Community Reinvestment Act of 1977 (“CRA”). We commend the agencies for their willingness to take our comments under consideration in an effort to help ensure that the regulations and policies governing the CRA remain current and well matched to the many changes taking place in the banking industry and the communities we serve. We are very appreciative of the agencies efforts to modernize CRA regulations. Compliance with CRA regulations is a key part of our culture and we have achieved Outstanding CRA ratings since 2005.

As background, EnerBank is one of a growing number of branch-less banks. We are an industrial bank founded June 1, 2002 and headquartered in Salt Lake City, Utah. Our primary federal regulator is the FDIC and we are chartered and supervised at the state level by the Utah Department of Financial Institutions. EnerBank has a specialized business plan that currently focuses exclusively on home improvement lending to consumers on a nationwide basis. As a highly specialized institution, we provide home improvement loans to consumers via a network of approved strategic business partners and independent home improvement contractors. Strategic partners include manufacturers, distributors, franchisors, and major retailers of home improvement, remodeling, and energy saving products and services. As of December 31, 2019, EnerBank had \$2.7 billion in assets.

Strategic Plans

We support and commend the agencies in its preservation of the strategic plan option as a method of evaluation of CRA performance. As noted above, EnerBank’s business model is unlike a traditional retail or community bank that solicits transactional deposit accounts and loans primarily from consumers or businesses in its community. EnerBank does not solicit walk-in business or have tellers and does not maintain any traditional branches or ATMs. Virtually all business transactions are conducted over the phone or online. Moreover, EnerBank does not offer checking

or savings accounts. Additionally, the Bank lends to consumers on a nationwide basis. The distribution of our loans is consistent with the population distribution of the US. Only 1% of EnerBank's loans are made in its primary assessment area. Due to the nature of the Bank's business model, the strategic plan option has been the sole method by which EnerBank could meet the objectives of the CRA. A strategic plan is therefore highly relevant and important to the Bank.

We are of the opinion that tailored regulation works well and should continue to be part of the CRA regulatory framework. Current CRA regulations recognize that a one-size-fits all approach to CRA is undesirable, and in many cases simply not possible. With that in mind, it does not appear that the proposed rulemaking provides clear guidance, nor does it set standards for strategic plans. Rather, it simply confirms that a strategic plan option will be available. If this was done intentionally to retain flexibility, we would prefer an affirmative statement that specific standards for strategic plans will not be outlined in order to retain sufficient flexibility to address the different business models of a diverse banking industry. Furthermore, the proposed rule does not address whether banks submitting strategic plans would be required to adhere to the general framework established by the proposed performance standards (i.e., the CRA Evaluation Measure, distribution tests, and a Community Development Minimum). Strategic plan goals are intended to provide flexibility when considering banks performance contexts and business models. The agencies should therefore clarify that banks requesting strategic plans will not be confined to the performance measurement framework applicable to banks subject to the General Performance Standards. The strategic plan process should also allow banks to establish CRA performance goals that are fully customized to their institution. As such, we request that language similar to that currently provided by the FDIC in 12 C.F.R. §345.27(f)(1)(ii) be retained which provides that if an institution is unable to perform certain aspects of CRA such as lending and lending related activities, "a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy."

We also request that the agencies grandfather existing strategic plans. If the agencies adopt new CRA regulations, banks with existing strategic plans that have already been reviewed and approved by the FDIC should not be required to adopt a new strategic plan until the existing plan expires.

Additionally, we request that the agencies continue to process new strategic plans. Our current strategic plan runs through December 31, 2020. Based on the normal processing timeline, we will need to submit a new plan in May or June. It would be great if we could streamline the approval process for strategic plans in the new rule as well.

Data Gathering

We believe that the proposed new data gathering requirements would create an undue burden on small and medium sized banks. The rule would make substantial changes to current rules concerning CRA data collection and reporting. We do not currently collect or track much of the data that would be included in the new requirements. The proposed data collection, recordkeeping, and reporting requirements contained within the proposed rule would create costly, ongoing data

requirements that are considerably more complex than existing CRA reporting mechanisms. Furthermore, it appears that the rule does not adequately address the costs that would be associated with implementing the new data requirements. Unlike many large commercial banks, EnerBank has only one individual in charge of CRA compliance and reporting. The Bank would therefore likely need to hire additional staff to assist in the gathering and processing of said information. Moreover, it will be very costly in terms of creating systems that could provide the data being requested. It is recommended that the data gathering, and reporting should be required only to the extent necessary to validate that the Bank's products and services qualify for CRA purposes which would in turn minimize unnecessary data costs to EnerBank.

Volunteer Service Hours

EnerBank and its employees see value in providing service to individuals in its community and see it as an essential way to connect and better understand community development needs. This is especially true of our senior management team, all of whom serve on boards of local non-profits. By sharing their expertise and providing these types of services, they are able to identify and determine where the Bank's funds would have the greatest impact in the community. Unfortunately, the proposed rule may incentivize banks to reduce their volunteer activities. As written, the proposed rule seeks to incorporate service into the CRA Evaluation Measure by requiring banks to monetize community development services. Banks would therefore have to calculate the value of the volunteer service based on hourly wage data provided by the Bureau of Labor Statistics for the type of work provided by bank employees. Additionally, directors of boards of non-profits are typically unpaid. Does that mean that the value of the time that our senior management takes to serve on these boards would be ascribed no value?

Monetizing volunteer hours in this way will likely have a negative impact on the ability of a bank to meet the CRA Evaluation Measure's 6 percent and 11 percent benchmarks as the value of volunteer activities would be underweighted relative to loans and investments. As a result, banks may be incentivized to make a single CRA investment rather than allowing employees to engage in numerous community service hours. This would serve as a huge detriment to the nonprofits in our community, especially those who have come to rely on Bank volunteers and the expertise that they provide. Furthermore, the burden of researching the hourly rate applicable to each activity and possibly having to prorate the calculation based on the extent to which there is a low- to moderate income benefit would be extensive. EnerBank therefore proposes using the compensation of each individual that performs service to calculate the value of community service.

Assessment Areas

While EnerBank supports the agencies' work to address the substantial organizational and technological changes that have impacted banking over years, it does not support the proposal's creation of deposit-based assessment areas.

As noted above, EnerBank has no branches and offers its products nationwide. As such, it does not compete with community banks for local loans or deposits in its assessment area. Rather, it relies on other funding strategies including, but not limited to, brokered deposits and deposits

offered over the internet. As the Bank does not focus on lending in its assessment area, a lending test would not work well for CRA purposes. That said, we continue to support the designation of a local assessment area that should be fully served for CRA purposes before credit is given to another assessment area. By connecting to the community in which we reside, it allows us to better understand the needs of the community and address those needs.

It should also be noted that the creation of deposit-based assessment areas have the potential to exacerbate CRA hot spots and CRA deserts. Moreover, it is possible that banks such as EnerBank, would have no other links to said communities. It would therefore be extremely difficult for the Bank to perform a needs assessment without having any of its employees residing in said communities. With that in mind, a reasonable alternative would be to allow the Bank to designate a secondary assessment where the Bank has affiliates. For example, EnerBank is a wholly owned subsidiary of CMS Energy Corporation ("CMS"), a company based out of Jackson, Michigan. Approximately 80 miles outside of Detroit, the needs in the area are likely substantial. By allowing the Bank to designate a secondary assessment area there, CMS could provide the expertise and contacts needed to fully assess the needs of the community and develop an impactful CRA Program. This would not only assist the Bank to direct CRA efforts in a quick and effective manner, it would allow the Bank, and its affiliate, to remain a pillar in terms of assisting residents in the communities in which they reside.

For these reasons, the Bank requests that the agencies revise the proposed rule to make deposits merely a factor that the agencies may consider in designating a secondary assessment area, but not a requirement. Additionally, it would be more beneficial and effective to continue requiring banks that raise deposits nationwide banks, such as EnerBank, to first do all it can to meet the needs of low- to moderate individuals in its primary assessment area and then give added credit for investments anywhere in the nation where the Bank or its affiliates are located.

We appreciate the willingness of the agencies to consider our comments and would be happy to discuss them further at your request.

Thank you,



Mark Fjeldsted
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EnerBank USA