HOLDING COMPANY

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April 8, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency (OCC)
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Email: CRA.reg@occ.treas.gov

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation (FDIC)
550 17th Street NW
Washington, DC 20429
Email: Comments@fdic.gov

Via Electronic Submission

Re: Reforming the Community Reinvestment Act Regulatory Framework
Docket ID OCC-2018-0008
RIN 3064-AF22

Dear Sir or Madam:

Thank you for providing the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding the modernization of the Community Reinvestment Act of 1977 (CRA). We appreciate the agencies' leadership of the much needed modernization of the CRA.

FirstBank is a Federal Reserve-regulated retail bank, with $20B in assets, with primary banking operations in Colorado. We also have a presence in the Phoenix metro area, and a small operation in the Coachella Valley in California. As a locally owned and organically grown organization, we have long been committed to safe and sound banking practices and serving the needs of the communities in which we do business. We strongly support the purpose of CRA and have long strived for strong performance, as it is the foundation of good business practice and we believe supporting the communities we serve is vital to the institution's long term success. The Bank supports many of the concepts necessary to modernize the framework to continue to encourage lending and investment in our communities and provide greater clarity and transparency for CRA-related activities and CRA performance evaluations. Our hope is for future collaboration and alignment with the Federal Reserve via an interagency rule to have a consistent CRA framework for all financial institutions.

Qualifying Activities

The Bank is in support of expanding the loan activities qualified under the CRA, specifically in the Community Development category. The creation of a publicly available, illustrative list of CRA-qualified activities would help the Bank understand and pursue activities that could receive consideration, and we encourage the agencies to make clear that examiners should not view CRA-eligible activities as being limited to those that are on the list. The Bank does note, however, that the expansion of other consumer "retail loan" types outside of what has historically qualified as receiving CRA consideration could bring operational and technical challenges that will be outlined in greater detail later on. FirstBank supports the pre-approval process for qualifying activities, however six months is too long of a waiting period especially if an evaluation request is concurrent with a loan request or investment bid. We recommend a sixty-day turnaround.

Banks should continue to receive Community Development credit for workforce development and job creation, as this is vital activity to many communities we serve. We urge the agencies to add back the "economic development" provisions into the final rule, to mirror what currently exists within the CRA. The Bank also supports raising the threshold of a small business loan from $1 million to $2 million, so long as banks have the ability to dictate whether or not the origination is attributed to the Lending Distribution Test as a small business loan or as an applicable Community Development loan for the Community Development Minimum. We have heard, in statements from OCC staff, that a bank would have the option as outlined above, and we urge the agencies to clarify this in the final rule.

On the topic of small business, we encourage the OCC and FDIC to coordinate with the CFPB and Federal Reserve on the definitions of small business loans for CRA purposes, Dodd Frank Act Section 1071 purposes (requiring financial institutions to collect and report data on lending to women-owned, minority-owned, and small businesses), and in the consideration of changes to the definition of a small business loan in the Call Report. Alignment on these definitions will create efficiencies and clarity in complying with the different regulations.

Assessment Areas

The Bank supports the idea of evaluating assessment areas both on where physical facilities exist and where deposits reside, as an acknowledgement to how the online and mobile delivery channels have changed banking access for the better within our communities. The vast majority of our Bank's deposits lie within our existing assessment areas, and we do not anticipate being impacted by the deposit-based framework at this time. In the future, however, factors such as expanding digital offerings to remain competitive within the industry and maintaining customer relationships that begin within our assessment areas but subsequently moved outside of them, could reduce the percentage of deposits held within our facilities-based assessment areas. The evolution of our bank over time could drastically change our CRA obligations into new assessment areas, and we encourage the agencies to ensure that these shifts—moved forward by customer demand, need, and behavior—do not negatively impact banks that are attempting to respond.

While this additional assessment area evaluation method does not directly impact the Bank, we are concerned that the limitation of delineating a deposit-based assessment area to a county as the smallest unit of measure could have unintended consequences. For example, one of the Bank's six assessment areas—the Coachella Valley Assessment Area in Riverside County, California—would have to expand significantly to include the entirety of Riverside County. Our current Coachella Valley Assessment Area is comprised of a collection of communities recognized by area government, businesses, and individuals. The immediate expansion of our assessment area outside of this established community would

undoubtedly change the expected distribution of our branches from examination teams to ensure our facilities network in the region serves a larger percentage of the county. Any expansion in retail locations requires a significant financial commitment for the Bank, and the investment associated with this would likely divert resources from developing and delivering targeted programs for low-to-moderate (LMI) communities of focus and/or expanding innovative delivery channels that serve not only LMI communities, but the broader customer base as well. We strongly urge the OCC and FDIC to reconsider this assessment delineation method and allow for smaller, more intentional assessment areas similar to the current CRA to align with institutions' capacity. Or, if a county remains the smallest delineation, it will be vitally important to confirm within the final rule that a bank "will not be penalized for lending in only a portion of that county, so long as the portion does not reflect illegal discrimination or arbitrarily exclude low- or-moderate-income geographies."[1]

Objective Method to Measure CRA Activity

Based on what has been made public by the supervisory agencies, the Bank is doubtful the thresholds established within the proposed rule will result in enough lending and investment availability within respective assessment areas for all covered financial institutions to earn Satisfactory or higher ratings. We encourage the regulatory agencies to publicly share data and analysis that confirms that any metric that is deployed to measure and grade CRA activity is able to be supported by sufficient opportunities within the market. While some opportunities can be created, there remains a finite amount of demand for services, investments, and loans at any point in time. The lack of publicly available data to support the metrics-based approach gives the Bank pause.

As mentioned in our Comment Letter on the Advance Notice of Proposed Rulemaking, quantitative benchmarks that do not consider economic cycles, local community needs, and available opportunities can create safety and soundness concerns. CRA addresses safety and soundness, indicating the regulation does *not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations.* Given the competitiveness within our existing environments, many deals are lost to organizations "buying" CRA credit and competing with these organizations would require the Bank to take on greater risk that is inconsistent with safety and soundness. A metric-based framework could continue to exacerbate this issue, driving institutions to merely hit a number target. Additionally, assigning greater weight or consideration to various CRA activities would be arbitrary without understanding market-specific conditions and availability within a specific geography.

Under the current regulatory framework, the investment test gives consideration to both new Community Development investments during the exam cycle and balances of outstanding Community Development investments purchased in prior exam cycles. We believe this treatment remains appropriate. However, the current lending test only gives consideration to originations and extensions during the current exam cycle. While this may be appropriate for certain types of lending, strong consideration should be given to treating Community Development loans in a similar manner as investments. We are very active in providing financing for Low Income Housing Tax Credit projects, providing construction and permanent financing for these projects. With few exceptions, these permanent financing loans remain outstanding for at least the required tax compliance period, which is normally 15 years. When a portfolio of these loans exist, they are more like long-term investments, and they impact origination capacity relative to commercial real estate concentration limits. An institution should be incented to hold these long-term assets by achieving CRA credit for outstanding balances.

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[1] From *Interagency Questions and Answers Regarding Community Reinvestment*, Section __.22(b)(2) & (3) "Geographic Distribution and Borrower Characteristics," A2

Data Collection, Recordkeeping, and Reporting

The Bank foresees many logistical and financial challenges associated with the NPR's approach to tracking and reporting lending, investment, and service activities to evaluate CRA performance. For example, the cost and complexity of system changes to report average quarterly deposits, obtain and retain geocoding of all applicable deposits, and incorporate product lines we haven't historically reported for CRA consideration (namely consumer retail loans) are expected to be significant and will not be one-time costs. We ask agencies to keep in mind that many, if not the majority, of the proposed recordkeeping-related modifications will not change the level at which banks serve their communities. In many cases, banks are already serving their communities at high levels and/or through the proposed activities. Therefore, changes in banks' performance is not necessarily required in order for them to sufficiently meet need. Rather, the proposed changes will simply create initial and ongoing burden on banks by requiring initial shifts in their recordkeeping methodologies, along with ongoing balance sheet and other data gathering tasks for the types of activities that banks are already engaging in and that are already serving their purpose of helping communities. As proposed, this burden would be expanded to include an even greater number of activities (some of which will require data collection even though they are non-qualifying). The proposal's data collection, recordkeeping, and reporting requirements will result in too much emphasis being placed on the administration of the CRA and can inadvertently redirect focus toward tracking and measuring performance. While we support and appreciate this effort to make CRA evaluations more clear and consistent, we also believe the priority is to serve communities—not to administrate metrics. In this regard, unfortunately, the burden of collecting and reporting will not outweigh any benefit that may result from the major recordkeeping-related changes being proposed. Instead, the bank believes that leveraging existing reporting on CRA and HMDA originations would provide a much better denominator than the proposed "balance sheet" approach.

The requirement to quantify the value of Community Development services based on the compensation for the type of work engaged by the employee providing the service is seen by the Bank as time-consuming and burdensome. While service activity within the community is a cornerstone of FirstBank's efforts to support the communities in which we operate, the method of tracking the value of the provided service would undoubtedly require more staffing resources to collect, evaluate, and report. The increased costs could be significant for some banks, so much so that it would not be in their best interest to pursue these types of activities and would lessen the positive impact of bank volunteerism in communities that oftentimes depend on the partnerships with those banks. Additionally, the compensation for the type of work engaged by the employee does not necessarily reflect the value or impact of the service to the particular organization or community.

Overall: Unintended Consequences Need Critical Evaluation

As we have outlined in many of the sections above, the decisions in the proposed rule and actions taken by the OCC and FDIC could have unintended consequences that may only become clear further into the future. Some concerns foreseen and highlighted by Bank management include:

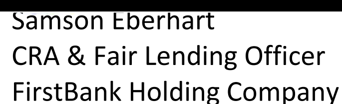
- Differences in funding strategies – If loans that were originated for sale are to be considered less favorable than loans held in portfolio (as is outlined within the NPR), it would have a negative impact on banks who may sell loans as a risk mitigation strategy because they are now incented to hold loans on their books for longer; this could, in turn, increase both the banking system's interest rate risk and credit concentration risk.
- "Charter shopping" – If the banking agencies do not become aligned in a final rule, the bifurcated system of evaluating banks for CRA compliance could encourage banks to evaluate

the differences in the frameworks and choose their regulator based on how the framework will best suit them.

- Increased risk tolerance – If banks are able to maintain a Satisfactory or higher CRA rating just by meeting a set of metrics and minimum thresholds not commensurate with the business model, size, market area, or economic cycle, it may require institutions to take on greater risk that is inconsistent with safety and soundness.
- Inability to adapt to local and economic conditions – If metrics are imbedded within a regulation, they cannot be changed in the future without going through a rulemaking process. Economic conditions will change over time; similarly, investments and opportunities will continue to vary by market area and be impacted by state and local governmental direction. Any such metrics should be flexible to adapt to changing conditions over time.

In addition to the comments noted above on the content of the NPR, the Bank encourages the agencies to give strong consideration to deferring any further rulemaking in light of the COVID-19 pandemic. The economic and societal impacts of this global outbreak are uncertain, and the expectations established in a rulemaking may not align with or be supported by the economic cycle into which our country will soon enter. This modernized rule cannot be effectively designed and administered during a crisis with so many unknowns and therefore should be postponed, in order to ensure that financial institutions are able to adequately support the entire communities in which they operate.

Thank you for your consideration of our comments. If you have any questions or need clarification on any issue raised, please contact me at (303) 462-6176; Danielle Vaughan, President of Compliance at (303) 275-1796; or David Kelly, Chief Risk Officer at (303) 235-1321.



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