April 8, 2020

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments, RIN 3064–AF22

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219
Docket ID OCC–2018–0008

Re: Community Reinvestment Act Regulations

Dear Madam or Sir:

Heartland Financial USA, Inc. is a mid-sized bank holding company based in Dubuque, Iowa. We represent a family of 11 community banks across the Midwest and Western United States. We have 115 banking centers with a wide variety of products and services, including consumer, commercial, and agriculture products. We operate in both rural and urban markets. Our banks are regulated by the FDIC and range in asset sizes from $533 Million to $2.3 Billion, with 8 of 11 currently subject to Intermediate Small Bank CRA procedures. Thank you for your leadership and hard work to draft a proposal on which stakeholders can provide feedback.

We are committed to the goals of CRA and to meeting the credit and financial services needs of our customers and communities. In addition to our network of branches, we offer online services including online, telephone and mobile banking. We participate in SBA, USDA, and FHA programs to enhance lending opportunities for small businesses and farms and assist individuals with homeownership. Our company provides paid volunteer hours to each employee annually to foster greater participation in our communities. We take pride in being engines of economic growth for our communities. However, CRA regulation has not kept up with the way consumers expect to use technology to access financial products and services. Supervision is unpredictable and inconsistent. This is particularly evident in a company such as ours where we experience concurrent CRA evaluations with multiple exam teams in several FDIC regions. Similar activities are treated inconsistently among the FDIC regions The need to update CRA has existed for years and will grow more pressing as technology and the financial services industry continue to evolve. We urge all three banking agencies – the OCC, FDIC, and Federal Reserve – to develop a final CRA rule that is issued on an interagency basis.

Qualifying Activities

Family Farms. Thank you for recognizing the importance of family farms to rural economies. In many rural areas, these farms are struggling with the growth of larger operations that can operate at lower cost and higher efficiency. We are in favor of including family farms in the list of qualifying activities. Greater clarity in the definition of a family farm would be beneficial. For example, would a farm where multiple related individuals are operating together under an LLC be considered a family farm?

Retail Loans. Regarding question 7. *Are certain types of retail loans more valuable to LMI individuals and geographies than other types*: Yes, retail loans that provide access to transportation, such as auto loans, are essential to LMI individuals in rural areas where public transportation is not available. Low-cost small dollar loans or overdraft lines of credit provide value to LMI individuals, enabling these individuals to access needed services in an emergency or save on overdraft fees. In addition, credit cards help individuals build a credit history. Building credit history allows individuals to obtain lower-cost auto and home loans in the future. Other types of retail loans, such as unsecured lines of credit, often carry high rates or fees that, while providing access to credit, can also lead LMI individuals into a cycle of debt rather than supporting financial growth and wellness. Recognizing that these types of credit are necessary to support individuals, these offer less financial benefit to LMI individuals.

CD Services. We applaud the agencies for recognizing the importance of bank employees providing services outside of their financial expertise, particularly in rural areas. However, the value of that financial expertise should not be overlooked. Higher level bank employees are more likely to serve the community in a way that utilizes their financial expertise, and outside of bank employees, there is a smaller pool of people with these skills. Therefore, services relying on financial expertise should be valued more highly. We suggest the agency offer a multiplier of .25 for services where financial expertise is utilized.

Regarding the quantification of CD services, the proposed requirement to quantify based on the average wage of the service being performed is overly burdensome. This would require each service to be reviewed and classified under a specific labor type. Once classified, the wage for each labor type would need to be determined. Finally, all hours performed under that labor type would be quantified using that wage. When considering the volume of different types of services, it would be less costly to report no qualified services and make up for the lack of services with CD loans or investments than to take the time to quantify the services performed. The suggested alternative of using a set value for all services would be less burdensome and achieve better results. Under the current regulation, services are quantified by number and/or hours served. Considering that processes are already in place to collect this information, it would be much less burdensome to continue to collect number of hours and then quantify using a multiplier, updated and published by the agency on the same frequency as the list of qualified activity examples. This multiplier must be of sufficient value for services to have an impact in the overall performance measures. For example, if 100 hours of service were conducted and multiplied by a wage of $36 per hour, these hours only provide $3600 toward the quantification. Those hours likely serve several community organizations, filling much needed volunteer positions to keep the organizations operating. With much less effort, a bank could make a $3600 donation to a single community organization, receiving the same CRA consideration, but providing a much smaller benefit to the community.

Affiliate Lending. As a Company that has multiple affiliates in overlapping markets we ask for greater clarity regarding what constitutes “substantively conducted.”

Geographic Distribution. The proposal does not include consideration of home mortgage or consumer loans provided in LMI geographies. While we understand the concerns surrounding the gentrification of LMI geographies, strong communities are made up of all income levels. Removing credit for loans made in LMI geographies may encourage banks to make only loans to LMI individuals in these geographies, inadvertently driving a decline in income diversity. We suggest providing incentive for lending to a

diverse income population in these geographies, such as providing a multiplier for loans in LMI geographies that are also to LMI individuals. For example, a loan made in a LMI geography to a LMI individual could receive a 0.25% multiplier, promoting income diversity.

Assessment Areas

General. The proposal allows a bank to change its assessment area delineation once during each evaluation period. It is unclear in the proposal how this requirement will be applied in cases of branch openings or closures and in merger or acquisition situations. Is the bank obligated to retroactively serve the needs of these new communities to ensure the assessment area is only delineated once during the evaluation period? If the assessment area cannot be delineated at the beginning of the evaluation period, it will greatly increase the burden in meeting the needs of that assessment area. If the assessment area cannot be adjusted to include new facility-based geographies during an evaluation period, it increases risk that the new geography will not be equally served for multiple years until the next evaluation period begins. In the case of branch closures when an institution may leave a geography during an evaluation period, it will be overly burdensome to continue to meet the needs of that community. We recommend the agencies clarify the circumstances under which an assessment area delineation may change and the timing of when an assessment area delineation change takes effect.

Facility-Based Assessment Area. The proposal includes in the definition "surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans." While this is consistent with the current assessment area definition, this clause has historically created much uncertainty. If including this requirement, we strongly encourage "substantial portion" to be defined. When left open for individual interpretation, this allows for conflict. For example, in a past CRA evaluation, our bank defined its assessment area to include a geography that adjoined the geography where the bank's branch was located. The bank conducted a large amount of commercial and mortgage lending in this geography, as the geography was physically located across the street from the branch location. However, the examiner believed that this delineation was not appropriate, creating a situation where the delineation had to be appealed and defended at higher levels. We support including surrounding locations to allow for flexibility in situations where branch locations are physically located near the border of a geography. We ask that a definition be provided for "substantial portion of its qualifying retail loans." A suggestion for a definition is 15% of total qualified retail lending volume when combined with the adjacent Facility-Based Assessment Area. This would be in line with the requirement to conduct a geographic distribution test if a specific retail product makes up 15% or more of total retail loan volume.

Deposit-Based Assessment Area. We are generally supportive of the concept of a Deposit-Based Assessment Area and the requirement to delineate the assessment area at the smallest geographic level where a bank sourced five percent or more of its retail domestic deposits. However, including in these geographic levels an entire state or remaining geographic area of a state other than where it has a facility-based assessment area is overly broad and burdensome. For example, Institution A is required to delineate deposit-based assessment areas. Institution A operates primarily in Iowa. However, 5% of retail domestic deposits are taken from Illinois. These deposits are spread across several rural counties, with no county or MSA meeting the 5% threshold. Institution A is required to delineate the entire state of Illinois as its assessment area. The burden to meet the credit needs of the state, including large metropolitan areas such as Rockford and Chicago are now placed on Institution A. We suggest limiting

the 5% threshold to geographies no larger than a single county or MSA, allowing for contiguous counties or MSAs each meeting the 5% threshold to be combined into one assessment area.

Although it is unlikely we will be required to delineate a deposit-based assessment area now, as the demand for online services increases, the footprint of our digital customers is anticipated to increase as well. It is important that the delineation requirements not only are reasonable when considering the business practices of large internet-based institutions, but will also be reasonable for smaller traditional banks in the future as digital footprints expand.

Deposit Market Share versus Retail Domestic Deposits. While deposit market share within a geography seems to be a better baseline for requiring banks to serve a community, the ability to determine and track these delineations would be much more burdensome than collecting only retail domestic deposits. To determine market share, the bank would first need to determine all geographies where it has taken deposits and then review the deposit market share for each of these geographies before delineating the assessment area. Relying solely on a percentage of retail domestic deposits allows an institution to delineate its assessment area without the need for additional external data sources. The burden of identifying deposit market share outweighs the additional benefit that would be created by using this alternate source. When considering the definition of retail domestic deposits, we urge the agency to exclude large commercial deposits from the definition. These large deposits could result in frequent fluctuations in deposit distribution, and do not accurately reflect an institution's ability to serve a given geography.

CRA Performance Measurement

Peer and Demographic Comparators. The proposal indicates Retail Product Distribution will be compared against demographic and peer comparators and a minimum threshold needs to be obtained. The proposal continues on to indicate banks may need to rely on private datasets to obtain the correct peer and demographic comparators. Please provide further clarification regarding the use of private datasets. If a bank purchases a dataset or relies on the dataset provided by an existing vendor, will it be guaranteed that this same dataset will be used in the evaluation results? If examiners will use their own dataset to determine evaluation datasets, we recommend that these datasets be made available to banks on a timely basis for self-evaluation as well. If private datasets selected by the bank will be utilized, will the final rule address potential sources for this data or guidelines to determine if a dataset is acceptable? Many intermediate small banks likely do not already have this type of data available, so purchasing private datasets will also increase the monetary burden of this rule for these banks. We also ask that the agency provide clarification on the timing of the peer and demographic comparator data. Will the data be compared against prior year peer data and demographic estimates for each year, census demographic data for mortgage and consumer lending, or peer and demographic data from the beginning or end of the evaluation period? Will peer data be released more timely to allow peer comparison of the most relevant data? When considering 3 to 5-year evaluation periods, peer and demographic data can fluctuate substantially, particularly in times of a recession or economic boom. Without more clarity around which comparator data will be relied on, it is hard to estimate the impact that the recommended thresholds will have on performance.

Retail Product Distribution Test. The proposal indicates to receive a Satisfactory or Outstanding rating at the bank level, a bank must pass all retail product distribution tests for every major product line with at least 20 originations in a substantial majority of assessment areas.

1. Please consider an alternative for banks with a small number of assessment areas. For example, we have a bank with two assessment areas and three major product lines, including Ag, Commercial, and Mortgage. In one assessment area, the bank passes the geographic distribution tests for all product lines and passes the borrower distribution in two out of three products. In the second area, the bank passes the borrower distribution in all products, but fails the geographic distribution in one product. The bank now fails both assessment areas and is unable to receive a Satisfactory rating overall. As a suggestion, for banks with less than 5 assessment areas, consider requiring the passing of a majority of distribution tests in each assessment area. Using the previous example, the bank would be subject to 5 distribution tests (2 geographic and 3 borrower) in each assessment area. The bank passes 4 out of 5 tests in each assessment area, so receives a pass rating for both. We recommend a threshold of 60% of distribution tests for a pass rating.
2. When considering banks that may have a small assessment area with very little lending volume, please clarify how an assessment area rating will be assigned for an area where there are no major retail lending products with at least 20 originations.

Balances used for Calcuations. The proposal indicates average month-end on-balance sheet balances will be used to calculate loan and investment balances. While we recognize the intent of this proposal is to prevent banks from making short-term loans to receive credit and be given credit for the dollars actually held on the balance sheet, this presents additional challenges and concerns. First, this will require banks to review all existing loans on balance-sheet to determine qualification. The proposal indicates linking back to the call report balance will make the process easier. However, not every balance on the call report will be qualified, so using the call report as a source for accuracy verification is not realistic. Second, under this proposal, banks could hold a volume of existing loans sufficient to meet the requirements and then provide a limited amount of new volume in subsequent years. This would not achieve the spirit of the CRA. Maintaining the process of tying loan balances to new loan originations will allow banks to utilize existing procedures for data gathering and validation, while also continuing to provide a strong source of data that demonstrates a bank's commitment to continuously serving its community.

Revolving Lines of Credit. Under the proposal, a bank will only receive credit for the funded portion of revolving lines of credit. Revolving lines provide an important source of funding for small businesses and farms. This proposal would encourage banks to provide more closed-end credit, which limits funding flexibility and potentially increases interest expense while also requiring additional time for both the bank and borrower to approve and close on multiple loans. As noted above, we ask that the agency consider keeping the current process of using new loan origination balances in the performance measures calculation and consider the full commitment amount of revolving lines of credit. In addition, we recommend renewals continue to be included in the definition of an origination as well as adding consideration for the annual or regular review of lines of credit made on demand.

Community Development Minimums. The proposal appears to include only CD loan and investment balances in the calculations. Please clarify whether donations and services are to be included in this calculation. If not, donations and services will only be included in the overall performance measure, undervaluing the benefit of banks providing these essential services in communities. The services bank employees provide in the community are very important. Not only does this promote the image of the bank and the banking sector in general, it also helps community groups fill much needed volunteer

positions and continue to operate with their often-limited budgets. Likewise, smaller dollar donations, while not having the same dollar value impact as a large investment, have greater value to these small organizations that provide essential services to our communities. The importance of these aspects of CRA need to be recognized and given sufficient consideration in the performance measures.

Data Collection, Recordkeeping & Reporting

Home Mortgage and Consumer Loan Originations. The proposal indicates a bank would be required to collect and maintain information on home mortgage and consumer loan originations that do not qualify for CRA credit. The proposal does not provide a justification for collecting and maintaining this information or how this would further the purpose of CRA. This provision is overly burdensome and unnecessary to achieve CRA purposes. Therefore, we recommend removing this provision from the proposal.

Retail Domestic Deposit Accounts. The proposal indicates the value and physical address of each depositor must be collected and maintained for the end of each calendar quarter. The first challenge posed is obtaining the balance. Is the required balance the available balance or total balance if there are pending transactions or holds? Either core systems will need to be updated to be able to easily maintain and report on the quarter-end balances, or this balance data will need to be maintained outside of the core, presenting challenges with ensuring data is accurately extracted and stored. The second and greater challenge is posed by the physical address requirements. At the start, this will be a challenge for banks to obtain physical addresses on existing accounts opened prior to customer identification requirements to maintain a physical address. Even for customers where a physical address is present, the physical address is not always maintained in the same location or on the same system, so this will require merging data from multiple locations. As with the maintenance of balances, this will likely involve using a separate tracking system outside the core. Today the core system does not maintain prior address data, so if a customer requests an address change, the core will no longer have the prior quarter address.

Determining Location of Qualifying Activities. Thank you for providing details on determining location for loans, investments, and services in multiple circumstances. Assuming all on-balance sheet data must be collected and maintained, we ask that clarification be provided on the frequency of address collection. Can the address at the time of origination be applied for the life of the loan? Is this required to be reviewed more frequently for address changes? If required to be reviewed on a periodic basis, the burden of this provision will be greatly increased. Monitoring all accounts for address changes will take substantial changes to internal procedures and tracking systems. Also, please clarify how to handle location determinations for existing accounts. In regard to investments, when tied to multiple locations, the balance tracking requirements combined with the location tracking requirements becomes complex. For example, if we have an investment in a loan pool divided between three locations, not only will the month-end balance of the investment as a whole need to be tracked, but the balance associated with each location will also need to be maintained. On a small scale, this does not seem overly troubling, but when considering the numbers of investments maintained by banks of different sizes and then multiplying with the number of locations associated with these investments, the amount of time and resources required to meet these requirements balloons.

Annual Reporting. The proposal does not address the method for reporting data. We ask the agency to use online, open-source reporting, similar to that used by the CFPB for HMDA data collection. Currently, data is submitted through web or email submission, using the CRA DES that must be downloaded to a local location. This is not compatible with the server-based systems used by many banks, where bank staff often only have access to server locations and not actual hard drive space. It also consumes extra time waiting for emailed edit reports, verifying and signing these reports, sending the reports back through email, and then waiting to receive a confirmation that it was received. This process often takes many days or even weeks. Providing a system that is able to adapt to technological changes will provide great benefit to banks. The proposal also does not address the reporting deadline. Please clarify whether the annual reporting requirements will remain similar to today with a March 1 deadline. With the reporting requirements including not only aggregated data, but also performance calculations and average balance figures, time will be needed after year-end to validate the data and perform the calculations.

Effective Dates and Compliance Dates

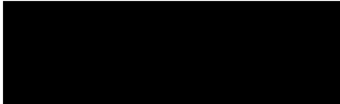
Transition Period. We thank the agency for recognizing the need for a transition period to implement the provisions of this rule. The proposal indicates the rule will be effective the first day of the first calendar quarter that begins at least 60 days after the issuance of the final rule, and reporting requirements are to begin two years after the effective date. We ask the rule's reporting requirements to be set to begin with a full calendar year. For example, under the current proposal, if the final rule is issued on May 30, 2020 it becomes effective on September 1, 2020. The reporting requirements become effective on September 1, 2022, and data for September 1, 2022 through December 31, 2022 is required to be reported in 2023. However, data for all of 2022 will need to be relied on to provide accurate reporting. We suggest updating the compliance date for reporting requirements to start on January 1 following the second year after the effective date of the rule.

Mergers and Acquisitions. The proposal does not address compliance with the CRA Performance Measures, assessment area delineation, data collection, or reporting requirements during a merger or acquisition scenario. We ask for clarification, accounting for different scenarios, including merger of two large institutions, merger of a large and small institution, and acquisition or sale of certain branches of another institution. We also ask for clarification regarding assessment area delineation for branch closures or openings, resulting in exiting or entering a geography. When considering mergers, we recommend consideration be made for the time it takes for merged institutions to integrate processing systems. Often there is a period of several months between a purchase of an institution and full system integration. During this timeframe, it would be difficult to aggregate data for the required performance measures. In addition, once data is aggregated, large changes can occur to performance and time is needed to evaluate these changes. For instance, the institutions may have different product lines, resulting in changes to the combined institution's major retail products requiring new or different retail distribution tests. The combined institution's retail domestic deposits will change, with multiple impacts, including meeting the community development minimums in each assessment area, bank level performance measures, and delineation of deposit-based assessment areas. With mergers, there are typically also changes in branch footprint, also creating the need to re-evaluate the facility-based assessment area. We recommend allowing multiple options for banks to choose from, such as the following examples: Collect and report separate data and performance measures until the end of the current evaluation period; Collect and report combined data starting at the beginning of the first

calendar year following merger; or Collect and report combined data beginning with the calendar quarter following merger. This will give banks the flexibility to adjust processes depending on the timing of system integrations and available data and resources for the applicable merger situation.

Thank you for the time and effort put toward modernizing CRA to better serve our communities in a more meaningful way. We ask that you consider the feedback we have provided to enhance this effort and develop reform that has a positive impact on both banks and the communities we serve. When considering these comments, please consider the impact that a change to one part of the proposal will have on other areas of the proposal. We ask that additional time is taken to ensure the proposed measures will translate into an effective, long-lasting rule that is able to adapt to our ever-changing economy and the technology that drives our communities.

Respectfully Submitted,



Gail Nunn, HMDA/CRA Data Manager, AVP
Chris Spellman, Corporate Compliance Director, SVP
Heartland Financial USA, Inc.