BANK OF AMERICA

August 26, 2022

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

RE: File RIN 3064-AF85 Notice of Proposed Rulemaking: Assessments, Amendments to Incorporate Troubled Debt Restructuring Accounting Standards Update

Dear Mr. Sheesley,

We appreciate the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") Notice of Proposed Rulemaking: Assessments, Amendments to Incorporate Troubled Debt Restructuring Accounting Standards Update (the "Proposal") that would remove troubled debt restructurings (TDRs) from the calculation of deposit insurance assessment rates.

Because the accounting principles generally accepted in the United States ("GAAP") eliminated the recognition and measurement guidance of TDRs through the issuance of Accounting Standard Update No. 2022-02 ("ASU 2022-02"), Financial Instruments – Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures, we support the removal of TDRs from the applicable deposit insurance assessment ratios. The disclosure requirements of ASU 2022-22 are limited to the current reporting period and the 12 month period after a modification event. We believe this change is an improvement as many borrowers who experience financial difficulties often do so on a temporary basis and, similarly, their increased credit risk is temporary.

Our comments to the questions put forth in the Proposal are included in Appendix A. We appreciate the opportunity to express our views on the Proposal and would welcome further discussion with the FDIC on this topic. Should you have any questions regarding our views in this letter, please feel free to contact Christopher Ackerlund (980.386.3025) or me (980.387.6061).

Sincerely,

Michael Tovey
Corporate Controller
Bank of America Corporation

Appendix A

The following are our responses to the questions posed by the FDIC.

Question 1: *The FDIC invites comment on its proposal to include modifications to borrowers experiencing financial difficulty in the definition of restructured loans, used in part to determine the underperforming assets ratio, and in the definition of refinance, used in part to determine the higher-risk assets ratio. Does the proposal appropriately meet the objective to incorporate updated accounting standards under ASU 2022-02 into the large and highly complex bank scorecards?*

We agree the Proposal generally meets the objective to incorporate updated accounting standards under ASU 2022-02 into the large and highly complex scorecards. However, we urge the FDIC to consider limiting the data on modifications to borrowers experiencing financial difficulty to those loan modifications that occurred in the prior 12 months from the reporting date of the assessment. While this would not result in a full alignment, it would further align the scorecards' reporting requirements to be consistent with the disclosure requirements of ASU 2022-02, which are noncumulative and limited to modifications that occur in the current reporting period, and reduce additional reporting burdens of having to report cumulative amounts of modifications to borrowers experiencing financial difficulties. ASU 2022-02 requires the disclosure of certain modifications to borrowers experiencing financial difficulties for the current reporting period and then certain performance disclosures for modifications to borrowers experiencing financial difficulty in the 12 months after the modifications. For example, ASC paragraph 310-10-50-42(a)(3) states:

> "For each period for which a statement of income is presented, an entity shall disclose the following information related to modifications of receivables that are in the form of principal forgiveness, an interest rate reduction, an other-than-insignificant payment delay, or a term extension (or a combination thereof) made to debtors experiencing financial difficulty during the reporting period:
>
> a. By class of financing receivable, qualitative and quantitative information about:
>   3. Receivable performance in the 12 months after a modification of a receivable made to a debtor experiencing financial difficulty"

We think a significant reporting improvement resulting from ASU 2022-02 is the removal of the designation and measurement requirements for classifying and measuring TDRs that resulted in a loan having a TDR designation throughout its remaining life, (commonly referred to as "once a TDR, always a TDR" concept). Under the once a TDR, always a TDR concept, borrowers who were no longer experiencing financial difficulties and performing under their contractual terms would still be disclosed in a bank's total outstanding TDRs due to the accounting guidance being restrictive in the ability to remove the TDR designation. In other words, good credit customers would be included in the TDR totals and potential misinterpreted to have higher credit risk. Under ASU 2022-02, cumulative totals are no longer required, which is an improvement as it removes the potential for a misinterpretation that the credit risk applicable to all outstanding loans that were previously modified to borrowers experiencing financial difficulties are a higher credit risk through their remaining life.

As noted above, the ASU 2022-22 disclosure requirements are limited to the current reporting period and the 12 month period after a modification event. We believe this change is an improvement as many borrowers who experience financial difficulties often do so on a temporary basis and that, similarly, their increased credit risk is temporary. As the borrower's situation improves, their credit risk decreases. Therefore, aligning the scorecard reporting requirements to the reporting requirements of ASU 2022-22 would result in an improved methodology for capturing higher credit risk loans in the calculation of the scorecard ratios. Additionally, it would remove the additional reporting burden that would be required to comply with a cumulative scorecard requirement.

Question 2: *The FDIC invites comments on the expected effects of the proposal on large and highly complex institutions.*

As you noted in the Proposal, the quantitative effect of the FDIC's proposal on the impacted ratios is uncertain at this time as we are still implementing the changes under ASU 2022-02. However, as noted above, the operational effect of the FDIC's proposal will add reporting requirements that are not required under ASU 2022-02 and do not reflect unique economic phenomena supporting such treatment.

Question 3: *The FDIC invites comment on the reasonable and possible alternatives described in this proposed rule. Are there other reasonable and possible alternatives that the FDIC should consider?*

Notwithstanding our comments to Question 1, we believe the second alternative the FDIC considered should be revisited to remove restructured loans from the definition of underperforming assets entirely and not incorporating the new data on modifications to borrowers experiencing financial difficulty.

An important item included in the CARES Act was the temporary relief granted to banks from reporting certain TDRs that were due to the COVID-19 pandemic. In addition, interagency guidance was issued that provided banks with additional relief from reporting TDRs for COVID-19-related modifications. The intent of these relief measures was to encourage financial institutions to work prudently with borrowers who were or may have been unable to meet their contractual payment obligations because of the effects of COVID-19 by removing the negative TDR accounting consequences. By including restructured loans in the Proposal, there is the potential that banks could potentially be discouraged from actively working with their borrowers in both normal economic scenarios and, more importantly, in stressed economic cycles due to the accounting consequences. For example, assume Bank A and Bank B are similar, including their loan borrowers' characteristics. If Bank A actively engages with its borrowers on modification programs while Bank B is more selective about offering modification programs, Bank A will have a higher amount of modifications of loans to borrowers experiencing financial difficulty. On a simplified comparative basis, Bank A will then incur a higher FDIC assessment than Bank B. While the example provides a simplified illustration, it demonstrates that the potential exists for a higher assessment as a result of a bank's modification program strategies. Therefore, the inclusion of restructured loans could have the effect of being a discouraging factor for banks to provide modifications to borrowers experiencing financial difficulty as a result of the modification being within the scope of ASU 2022-02.

By removing restructured loans from the Proposal, the potential for the unintended consequence of discouraging lenders from actively offering modifications to avoid the additional FDIC assessment could

be prevented. In addition, as noted above, we believe that modifications to borrowers experiencing financial difficulties assists borrowers with temporary credit scenarios and, over the long run, including restructured loans as a higher risk or underperforming asset will not be an accurate representation of those loans. Therefore, we believe it is reasonable to remove restructured loans from the definition of underperforming assets entirely and not incorporating the new data on modifications to borrowers experiencing financial difficulty.