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February 16, 2021

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Email: regs.comments@federalreserve.gov

Via Electronic Submission

Re: Community Reinvestment Act
Docket No. R-1723
RIN 7100-AF94

Dear Sir or Madam:

Thank you for providing the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) regarding the Federal Reserve Board's modernization of the Community Reinvestment Act of 1977 (CRA). We appreciate the agency's focus on taking a comprehensive and measured approach to the modernization of the CRA.

FirstBank is a Federal Reserve-regulated retail bank, with $24B 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 the 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 Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) via an interagency rule to have a consistent CRA framework for all financial institutions. Over the next few pages, the Bank provides responses to a number of questions posed in the ANPR and, where possible, these responses are denoted with corresponding numeric questions from the proposal.

Assessment Areas and Defining Local Communities

The Bank supports the idea of evaluating assessment areas both on where physical facilities exist and where depositors reside or conduct business, 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 facility-based assessment areas, and we do not anticipate being impacted by a 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 move outside of them as a result of customers relocating, could reduce the percentage of deposits held within our facility-based assessment areas. The evolution of our Bank over time could drastically change our CRA obligations into new assessment areas, and we encourage the Board to ensure that these shifts—moved forward by customer demand, need, and behavior—do not negatively impact banks that are attempting to respond.

We are concerned that the Board's proposal to tailor facility-based assessment area definitions based on bank size—with large banks being required to delineate assessment areas, at minimum, at the county level—could have unintended consequences[1]. As an example, one of the Bank's six assessment areas is in the Coachella Valley of California and would have to expand significantly to include the entirety of the very expansive Riverside County. Our current Coachella Valley Assessment Area is relatively small when compared to the entire county, 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 would likely divert resources from developing and delivering targeted programs for low- and moderate-income (LMI) communities of focus and/or expanding innovative delivery channels that serve not only LMI communities, but the broader customer base as well. Furthermore, this required expansion of our assessment area into the western portion of Riverside County near the Los Angeles metro area could create customer confusion as an unaffiliated but similarly-named financial institution already operates multiple branches within in that community.

We strongly urge the Board to reconsider this assessment delineation method and allow for smaller, more intentional assessment areas similar to the current CRA framework to align with institutions' capacities and established market footprints. 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."[2]

Retail Lending Subtest

The Bank supports the Board's proposal to use tailored, dynamic thresholds to adjust across different communities and that reflect changes in the local business cycle for evaluating geographic and borrower distribution of our Bank's lending activities. For example, the idea of a retail lending screen—when appropriately adjusted for changes in economic conditions, cycles, and availability of lending opportunities—would be beneficial in providing the Bank timely insight into where we are sufficiently meeting the needs of the community, and where resources could be re-focused to support communities elsewhere[3]. While the Bank generally supports the concept, we caution the Board in setting benchmarks (or standards) based on loan volumes of the largest lenders within assessment areas, thereby downgrading any lenders that do not lend at the same or similar levels and/or potentially

[1] Question 5: Should facility-based assessment area delineation requirements be tailored based on bank size, with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties and smaller banks being able to delineate smaller political subdivisions, such as portions of cities or townships, as long as they consist of whole census tracts?
[2] From *Interagency Questions and Answers Regarding Community Reinvestment*, Section __.22(b)(2) & (3) "Geographic Distribution and Borrower Characteristics," A2
[3] Question 14: Is the retail lending screen an appropriate metric for assessing the level of a bank's lending?

underrepresenting what communities need. Instead we recommend setting benchmarks based on loan demand from community members within assessment areas, thereby focusing on one of CRA's objectives of meeting credit needs and ensuring benchmarks do not exceed or underrepresent actual, legitimate demand for credit[4]. Through incorporating this demand for credit and resulting capacity to lend within communities as a key component of the threshold determination, the benchmarks will begin to "right-size."

The Bank generally supports the presumption of "Satisfactory" by combining low- and moderate-income categories when calculating the retail lending distribution metrics[5]. As stated in the ANPR, this approach will reduce overall complexity which is appreciated especially when large banks monitor this performance across multiple assessment areas. In addition, combining the metrics allows banks and examiners to evaluate performance more holistically, and reduces the likelihood of setting a threshold beyond the capacity within the distribution category (for example, low income census tracts may not have the available capacity to have a meaningful benchmark set, whereas combining that capacity with moderate income census tracts can help set a higher benchmark within the collective category).

Within the ANPR, the Board contemplates updates to thresholds used in determining if an activity benefits a small business or small farm. The Bank encourages the Board to align these small business/small farm definitions to those in the regulation implementing Dodd Frank Act Section 1071 (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. The Bank cautions that periodically adjusting thresholds to account for inflation—a proposed approach within the ANPR—is counter to this desire for clarity and consistency[6].

As noted in the ANPR, the Board acknowledges that some stakeholders argue against mandatory inclusion of consumer lending, citing the burden of originating and reporting these loans. The Bank shares this sentiment, and is apprehensive to commit to a framework that requires reporting of loans our examiners have determined are not a "substantial majority" of our lending activities. If this same "substantial majority" approach is chosen in the new framework, the Bank requests that the threshold be clearly defined as a way to improve transparency and allow the Bank to prepare for future reporting activities if our consumer lending activity begins to approach that threshold[7].

Retail Services Subtest

The Bank is in support of the Board's approach to provide greater emphasis on evaluating non-branch delivery channels (as compared to the current CRA framework) as the industry is trending more and more into this service space. As an option, the Board could consider requesting data on the usage of

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[4] Question 18: How can the Board mitigate concerns that the threshold for a presumption of ''satisfactory'' could be set too low in communities underserved by all lenders?
[5] Question 16: Should the presumption of ''satisfactory'' approach combine low- and moderate-income categories when calculating the retail lending distribution metrics in order to reduce overall complexity, or should they be reviewed separately to emphasize performance within each category?
[6] Question 37: Should the Board continue to define small business and small farm loans based on the Call Report definitions, or should Regulation BB define the small business and small farm loan thresholds independently? Should the Board likewise adjust the small business and small farm gross annual revenues thresholds? Should any or all of these thresholds be regularly revised to account for inflation? If so, at what intervals?
[7] Question 35: What standard should be used to determine the evaluation of consumer loans: (1) A substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?

mobile/online banking within LMI census tracts as compared to usage across all income tract levels as a way to quantitatively evaluate penetration of the delivery channel within these communities[8]. While quantitative approaches to non-branch delivery channels may be difficult to compare "apples to apples" across banks, FirstBank supports even more structured guidance to examination teams so that they can execute qualitative evaluations more consistently.

The Bank also supports the ability to submit, for consideration, branches in middle- and upper-income census tracts that are adjacent to LMI tracts as a means for delivering services to LMI individuals or areas; the Bank has found that these branches, will not technically in the target census tracts by legal address, do substantially support providing access to banking services to LMI individuals and areas[9].

Regarding deposit products, the Bank believes it is appropriate for this topic to be evaluated in its own prong of the retail services subtest, as it emphasizes the importance of ensuring that these products are designed to benefit and be accessible to LMI individuals; this is an enhancement to the current CRA framework where these products are evaluated on a limited basis. With that said, the Bank cautions the Board in developing reporting expectations to prove this accessibility or adoption in a manner that does not accurately demonstrate usage within LMI groups. For example, in order to quantify usage of deposit products by LMI individuals, income information would need to be determined in one of two ways: either through comprehensive analysis of customer deposits aggregated over a certain time period to derive estimated income levels, or through the collection of income information directly from customers. The former option has obvious flaws, as assuming income strictly based on deposit activity is not likely to be accurate, and this analysis across a bank's entire customer database would require significant resources and ongoing costs. The latter option—collecting income information at account opening but also likely re-collecting on a consistent basis to ensure the data is accurate—also has its potential shortcomings. While some banks may collect this information as part of their customer due diligence process for Bank Secrecy Act compliance, this is far from standard across the industry. Furthermore, requesting this information at account opening may be off-putting for some prospective customers; the requirement could result in unbanked and underbanked individuals deciding to forgo establishing a deposit relationship, which is counter to the intent of the CRA[10].

Community Development Financing Subtest

The Board's recommended approach to combine the evaluation of community development loans and investments is agreeable to the Bank. As noted in our comment letter on the OCC's then proposed rule in 2020, 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 portfolios of these loans exist, they are more like long-term investments, and they impact

[8] Question 26: What are the appropriate data points to determine accessibility of delivery systems, including non-branch delivery channel usage data? Should the Board require certain specified information in order for a bank to receive consideration for non-branch delivery channels?
[9] Question 27: Should a bank receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts? What types of data could banks provide to demonstrate that branches located in middle- and upper-income tracts primarily serve LMI individuals or areas?
[10] Question 29: What types of data would be beneficial and readily available for determining whether deposit products are responsive to needs of LMI consumers and whether these products are used by LMI consumers?

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[11].

The ratio of dollars of community development financing activities to deposits, alone, is not an adequate measure of the Bank's capacity to lend or invest in an assessment area[12]. Instead, this ratio only represents what the Bank was successful in obtaining based on availability and level of competition; the capacity may be higher in certain areas, but external factors limit successful originations. Similar to comments made earlier in the retail lending subtest section, the Bank is concerned that the proposed community development financing quantitative metric compared to a local and national benchmark does not go far enough in considering economic cycles, local community needs, and available opportunities. By excluding these community-specific factors in the calculation, this rulemaking could inadvertently oppose current CRA regulation acknowledgments in *not requiring 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, without additional overlays to account for the availability of such financing activities and the institutions' level of effort in the respective assessment areas, could continue to exacerbate this issue, driving institutions to merely hit a number target through more risky practices or to be downgraded without regard to available opportunities and efforts[13].

"Impact scores" were proposed as a way to adjust the community development financing activities conducted to the relative impact within the community. While this approach could provide greater transparency into the examination team's consideration of qualitative factors in determining assessment area conclusions, the Bank feels that this approach only quantifies the activities that were successfully obtained. It would be more impactful to step back and incorporate additional calculations in the initial metric to more accurately reflect the needs of the community and availability of lending opportunities. Then, when the Bank is able to meet those more realistic targets set by the more robust metrics, the performance, alone, will speak for itself[14].

Community Development Services Subtest

FirstBank has long recognized the value community development services has within our assessment areas, seeing it as a cornerstone of our efforts to address community needs and collectively ensure a thriving community. As such, the Bank generally supports the Board's approaches to use both qualitative and quantitative factors to evaluate a Bank's performance in this space.

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[11] Question 42: Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

[12] Question 43: For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?

[13] Question 46: How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?

[14] Question 47: Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?

The idea to revise the current framework to allow for activities that support community development, regardless of being tied to providing our financial expertise, will allow the Bank to be a greater positive impact in the geographies we serve. As currently proposed, this provision would only apply to rural areas in which the Bank operates, which provides unnecessary complexity to the identification, tracking, and submission of those service activities when a bank has employees in both geographies. Instead, the Bank recommends that any volunteer service could become a qualifying activity—so long as the organization/community served meets a community development purpose—and this consideration should be available in both rural and metropolitan areas[15].

Similarly, financial literacy and housing counseling activities greatly benefit communities, even to those who are not considered low- and moderate-income. For example, many communities of color or communities with limited English proficiency are in great need of these educational opportunities, and the Bank is already offering these services to assist these disadvantaged groups in accessing the information they need to make informed financial and housing decisions. Unfortunately, it is oftentimes difficult to obtain the income levels of these attendees or it is determined that the income levels are not considered LMI, so the services cannot be submitted for consideration. The Bank supports expanding the consideration of these services without having to obtain the income levels of the beneficiaries[16].

Community Development Activities

The Bank is in support of the creation of a publicly available, illustrative list of community development activities as it would provide the Bank clarity in understanding activities to pursue that would assuredly receive consideration. We are also pleased to see in the ANPR that the Board intends the list to be non-exhaustive; in the same way that we do not want the list to dissuade banks from pursuing more innovative activities not listed, we also encourage the Board to make clear that examiners should not view CRA-eligible activities as being limited to those that are on the list[17].

FirstBank supports the pre-approval process for qualifying activities, especially with the opportunity to receive a decision on specific activities where existing illustrative lists and statutes are unclear on the eligibility. This pre-approval process will be valuable so long as the process is timely—a thirty- or sixty-day turnaround seems appropriate. There is concern that, as usage of the pre-approval process increases, access to it will be limited if commensurate staffing resources cannot match demand[18].

Data Collection and Reporting

The Bank is appreciative that the Board acknowledges the tradeoff between minimizing the data collection and reporting burdens, while also enabling greater clarity, consistency, and transparency through the use of metrics. While not as precise, the Bank believes that using existing deposit data

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[15] Question 50: Should volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development, receive CRA consideration for banks in rural assessment areas? If so, should consideration be expanded to include all banks?

[16] Question 51: Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?

[17] Question 71: Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?

[18] Question 72: Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?

reporting in the retail lending and community development financing subtests would be preferred over the alternative of collecting, geocoding, and reporting all applicable retail deposit data into the corresponding assessment areas. As the vast majority of the Bank's deposits are generated within our facility-based assessment areas, we believe that the Statement of Deposit data could be reliably used to set the Bank's metrics—so long as the thresholds upon which those metrics are evaluated have economic cycle and availability data to "right size" the expectations to what the Bank has the ability to meet[19].

One other concern is that the cost and complexity of system changes to report product lines the Bank hasn't historically reported for CRA consideration (namely consumer retail loans) are expected to be significant and will not be one-time costs. For this reason, we support the idea that the reporting and evaluation of these loans be optional, as is the case under today's CRA framework[20].

As communicated in previous comment letters on CRA modernization, we ask that the Board 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; 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 shifts in their recordkeeping methodologies for the types of activities in which the banks are already engaging and that are already serving their purpose of helping communities.

Overall: Unintended Consequences Need Further Evaluation

As we have outlined in many of the sections above, the considerations in the ANPR and actions taken by the Board have positive intent but could have unintended consequences that may only become clear further into the future. Some concerns foreseen and highlighted by Bank management include:

- Inability to adapt to local and economic conditions – If metrics, as proposed, 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.
- 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.
- "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.

[19] Question 90: Is it appropriate to rely on SOD data for all banks, a subset of large banks with multiple assessment areas based on business model or the share of deposits taking place outside of assessment areas, or only for small banks and large banks with one assessment area? What standards would be appropriate to set for business models or the appropriate share of deposits taking place outside of assessment areas, if such an approach is chosen?

[20] Question 94: What are the benefits and drawbacks of relying on examiners to sample home mortgage data for non- HMDA reporters and consumer loan data for all large banks, requiring banks to collect data in their own format, or requiring banks to collect data in a common Board prescribed format?

Thank you for your consideration of our comments. If you have any questions or need clarification on any issue(s) raised, please contact me at (303) 462-6176.

Sincerely,

Samson Eberhart
CRA & Fair Lending Officer
FirstBank Holding Company