FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 345
RIN 3064-AF81

Joint notice of proposed rulemaking; request for comment.
Federal eRulemaking Portal – Regulations.gov: Go to https://regulations.gov/.
Enter "Docket ID OCC-2022-0002"

E-mail: regs.comments@federalreserve.gov . Include docket and RIN numbers in the subject line of the message.

My name is Kent M. Franzen and I am the Compliance Officer for Henderson State Bank in Henderson Nebraska. We are a small bank with less than 50 employees, our typical customer is an agricultural producer or a farm related business. Our comments on Docket ID OCC-2022-0002, CRA reforms, are as follows.

Question 51. Should the agencies adopt an asset threshold for small banks that differs from the SBA's size standards of $750 million for purposes of CRA regulations? Is the proposed asset threshold of $600 million appropriate?

> In the opinion of Henderson State Bank, the small bank category should be One Billion in assets and under and this limit should be adjusted for inflation routinely. Economic and repressive regulatory pressures continue to drive consolidation of existing charters with almost no startups. Small banks will be under extreme pressure the next few years as the multitude of regulation changes such as Section 1071 dictates are added to the regulatory load they must bear.

Question 141. The agencies propose to continue to evaluate small banks under the current framework in order to tailor the evaluation approach according to a bank's size and business model. What are other ways of tailoring the performance evaluation for small banks?

> As fulfilling regulatory mandates takes staff time, I propose that this limit not only include assets size adjusted for inflation but staff size in the form of FTE or Full Time Equivalent. We propose an asset limit of $1 Billion and or a staff size of 150 FTE and below should be considered as a small bank. This combination of standards should help ensure that a Bank has the staff available, along with the assets to handle the increased requirements of additional CRA scrutiny.

Question 11. Would lending to small businesses and small farms that may also support job creation, retention, and improvement for low- or moderate-income individuals and communities be sufficiently recognized through the analysis of small business and small farm loans and the qualitative review in the Retail Lending Test?

> The answer to this question, from our point of view, lies primarily with the evaluator of the information. The analysis for 2022 on our lending activity within our CRA Assessment Area indicates we have over 62% of our loan dollars located inside of it. We believe this is more than satisfactory and demonstrates the we "work where we live". However, technology is

making it easier to bank from a distance with electronic services and we are aware that we have substantial customers whose mailing addresses may be outside our designated CRA Assessment Area, some even out of state, that are obviously appreciative of the agricultural related financial expertise we offer. We request a routine review of the definition of the CRA Assessment Area, as technology and business consolidation both on the Bank and borrower sides of the transaction, may necessitate adjustments in this concept going forward in order to keep the CRA relevant overall. Failure to do this could allow the admirable intentions of the CRA concept to become another paving stone in the road to regulatory hell.

Question 36. Which of the thresholds discussed would be appropriate to classify smaller businesses and farms for the impact review factor relating to community development activities that support smaller businesses and farms: the proposed standard of gross annual revenue of $250,000 or less, or an alternative gross annual revenue threshold of $100,000 or less, or $500,000 or less?

If I am using the definition of gross annual revenue correctly, I would suggest a ceiling of $5 Million or less as gross annual revenue for a small business and this needs to be adjusted for inflation routinely.

Question 39. Should both small and intermediate banks continue to have the option of delineating partial counties, or should they be required to delineate whole counties as facility-based assessment areas to increase consistency across banks?

Is this question for the convenience of the Banks or the regulators? I see no reason why the Bank should not be able to choose an entire county or a single zip code, if loan activity in the area supports such a designation.

Question 41. How should the agencies treat bank business models where staff assist customers to make deposits on their phone or mobile device while the customer is onsite.

I am somewhat perplexed by the presence of this question. I am not aware of a single community Bank in Nebraska or anywhere else in the Midwest that would not help a depositor with any issue even closely resembling the situations described in the question, either in person or over the phone.

Question 42. Should the proposed “accepts deposits” language be included in the definition of a branch?

Yes.

Question 51. Should the agencies adopt an asset threshold for small banks that differs from the SBA’s size standards of $750 million for purposes of CRA regulations? Is the proposed asset threshold of $600 million appropriate?

This should be at $1 Billion or higher, adjusted for inflation annually.

Question 62. Should the agencies adopt a size standard for small business loans and small farm loans that differs from the SBA's size standards for purposes of the CRA? Is the proposed size standard of gross annual revenues of $5 million or less, which is consistent with the size standard proposed by the CFPB in its Section 1071 Rulemaking, appropriate? Should the CRA compliance date for updated "small business," "small business loan," "small farm," and "small farm loan" definitions be directly aligned with a future compliance date in the CFPB's Section 1071 Rulemaking, or should the agencies provide an additional year after the proposed updated CRA definitions become effective?

Consistent standards and definitions across regulations are generally appreciated and help maintain consistency.

In researching this comment response, I came across this document;
Statement of CFPB Director Rohit Chopra, FDIC Board Member, on the Notice of Proposed Rulemaking Regarding the Community Reinvestment Act

In it we found the following statements that need reply comments, in addition to the proposed NPR, in our opinion. The text in italics are quotes from Mr. Chopra's document.

> *"Given their essential role, chartered banks receive substantial public benefits, including access to Federal Reserve System loans, the ability to accept deposits insured by the Federal Deposit Insurance Corporation, and access to other public safety net programs to keep them stable."*

Henderson State Bank is appreciative of the FDIC coverage for our deposits. The rest of the story is that all covered institutions, including ourselves, pay significant premiums to the FDIC in exchange for this coverage, it is not "given" by the government. In fact, several years ago, the industry prepaid extensive premiums in order to maintain and strengthen the FDIC fund. In addition, we also pay fees for each examination by the FDIC or the State Department of Banking. Then there is the tracking of and reporting on customer accounts and activities, including but not limited to OFAC, 314(a), CTR's, SAR's, Customer Due Diligence (CDD) etc. and soon Section 1071, that are unfunded mandates. So, we will agree to disagree with Mr. Chopra on the Banking industries perceived balance of government benefits provided vs unfunded mandates imposed.

> *"The banking landscape created by this banking exodus is one where 65% of existing banking deserts and 81% of potential banking deserts are located in rural areas."*

> *"The loss of local banks means the loss of local knowledge of the rhythms of rural communities, small businesses, and small farms – three groups that rely on in-person banking services. Local banks best understand the credit needs of the people and businesses that comprise rural and small-town economies. Rural small businesses, for example, report greater dissatisfaction with the lack of cost transparency of products and services offered by online lenders."*

When will the regulatory bureaucracy including the FDIC, OCC, Federal Reserve and especially the CFPB, acknowledge that the regulations they author and administer have played a prominent role in the decline of rural independent bank charters, and the spread of banking deserts? Domineering and excessively complex regulation will naturally place a larger competitor strategic advantage over a smaller one. Such rules also establish a high barrier to entry into the business. Just look at the number of de-novo bank charters before Dodd-Frank adoption vs the lack of charters after it, as proof of this point.

> *"I am pleased that the proposal takes steps to minimize duplicate data reporting by financial institutions. The framework for evaluating banks will continue to rely on the required Home Mortgage Disclosure Act data reporting, and, once a small business lending data collection rule is finalized, the framework will rely on small business lending data reported by financial institutions."*

As I have some idea of what it will take to comply with the small business lending data, aka Section 1071 reporting, so I must disagree with Mr. Chopra's sentiment above. If there are not significant changes to the proposed 1071 mandates this regulation alone will result in accelerated small bank charter consolidation. We believe there will be significant retirements of small bank senior lending officers spurred to make their exit earlier than anticipated because of Section 1071. The estimate I have given our Board is that 1071 compliance will cost about $150.00 per loan or application, in software, staff time, auditing, reporting, data security, etc. So, forgive us if we do not get all warm and fuzzy after reading Mr. Chopra's exultation of the silver lining of Section 1071, as it relates to CRA.

> *"Fifth, the proposal helps to recognize banks that assist low- and moderate-income communities with clean energy transition and climate resiliency."*

Where is the Congressionally approved statutory language that authorizes Green New Deal environmentalism being forced into Community Reinvestment Act requirements? A citation as to the CFR section would be appreciated.

> *"In 2020, nonbank mortgage companies originated over 60% of all reported mortgages in the country. 15 Given that the public subsidizes mortgage lending by these nonbanks, federal policymakers should continue to consider ways to ensure all mortgage lenders are serving all qualified applicants, especially in neighborhoods that have been historically excluded."*

We agree Mr. Chopra, there are not enough community banks issuing mortgages in rural areas. We believe the primary impediment to community banks issuing mortgages is the needlessly complex compliance requirements of the TILA-RESPA regulations along with HOEPA and HPML constraints. Most community bankers I know would happily be more active in the mortgage space for many reasons, but the profits are too slim to put up with all of the compliance baggage these loans drag with them.