F&M BANK
Farmers & Merchants Bank of Central California

May 2, 2013

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

VIA E-MAIL TO comments@FDIC.gov

RE: Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment

Dear Mr. Feldman,

Farmers & Merchants Bank of Central California appreciates the opportunity to submit the following comments regarding the Interagency Questions and Answers regarding Community Reinvestment. These comments respond to the request for comments published in the Federal Register on March 18, 2013.

Proposal 1: §ll.12(h)—6: *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

Proposal 2: §ll.12(h)—7: *What is meant by the term ''regional area''*

In addition, the Agencies specifically request Commenters' views on the following:
□□Do the revised Q&As clearly convey the Agencies' intent that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will receive consideration?

While the Agencies have clearly strived to more clearly convey the intent, we believe that the proposal still allows for too much ambiguity in its application. An alternative approach may be to simply provide a more definitive meaning of what is considered "adequate". However, this proposal substitutes the "adequacy" test and adds complexity through the additions of "safe and sound manner", and "may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area." The former needs no specificity in the regulation as all institutions *should* operate in a safe and sound manner and the latter would make it more onerous for institutions to seek like-kind investments in its existing areas first or make a determination if the proposed investment or loan would be detrimental in the institution's assessment area—if such a determination could be made or—quantified in any measureable way.

□□Will this clarification of consideration in the broader statewide or regional area that includes an institution's assessment area(s) provide an incentive for banks to increase their community development activities or expand their opportunities to engage in community development activities?

This clarification, though well intentioned, may not provide the incentive that is intended since new tests have been created through the addition of "safe and sound manner" and "may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area," and may in fact cause institutions to exit investments and loans that support a broader statewide or regional area that includes an institution's assessment area(s) in response to these new tests for which the institution may find too onerous, time consuming or impractical to address.

□□Does ''community development activities being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)'' raise the same uncertainty as ''adequately addressed the community development needs of its assessment area(s)''? If so, how can the Agencies better describe the concept that a financial institution cannot ignore legitimate and financially reasonable community development needs and opportunities in its assessment area(s) to engage in community development activities elsewhere in the broader statewide or regional area when those activities will not provide any benefit to its assessment area(s)?

Yes, the new tests have the potential of creating as much uncertainty, if not more. The Agencies might want to consider defining those conditions under which the institution would be deemed to have adequately addressed the community development needs of its assessment areas, make an affirmative statement that priority and weight be given to activities that benefit its assessment areas, and that in addition, consideration will also be given to loans and investments outside its assessment areas.

□□Does removal of the portion of current Q&A §ll.12(h)–7 that discussed a diffuse potential benefit to an institution's assessment area(s) alleviate the confusion between the two Q&As and help to clarify that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will receive consideration?

Yes, the removal of this section does alleviate the confusion between the two Q&A's. However, this proposal also states," In addition, to prevent the misinterpretation described above, the Agencies propose to delete the rest of the Q&A, which currently states: ''When examiners evaluate community development loans and services and qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus, less responsive to assessment area needs.'' The Agencies believe this text is no longer necessary given the misinterpretation of the current language and the clarification that is being provided in proposed revised Q&A §ll.12(h)–6. This proposal is potentially confusing as it

indicates that the "rest of the Q&A" be deleted, then clearly outlines the part that is proposed to be deleted—which leaves the part beginning with "In addition...", however, the proposed text includes none of the remaining text. It might be clearer to simply state the rest of the Q&A will be deleted.

□□Is the proposed definition of ''regional area'' sufficiently clear and appropriately flexible?

Yes, the proposed definition is sufficiently clear and appropriately flexible.

Proposal 3: §ll.23(a)—2: *In order to receive CRA consideration, what information may an institution provide that would demonstrate that an investment in a nationwide fund with a primary purpose of community development will directly or indirectly benefit one or more of the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request Commenters' views on the following:
□□Would the proposed revised Q&A assist institutions that deliver products on a nationwide basis to address community needs in areas where they provide products and services?

N/A

□□When might nationwide funds be appropriate investments for regional or smaller institutions?

Nationwide funds may be appropriate for regional or smaller institutions when such funds are made for projects, or invested in organizations located in and serving the institution's assessment areas that fulfill a community development need. For example, an investment in a CDFI which has a national presence whose coverage area also includes the institution's assessment areas, regional or broader statewide area. Alternatively, it may also be appropriate when smaller institutions do not have the capacity, resources and oversight needed to support projects which larger institutions are more capable of providing but for which the assessment area is limited scope and thus not a priority.

□□Some commenters indicated that current methods of ''earmarking'' investments, including through the use of side letters, are burdensome. Are such methods, in fact, burdensome and, if so, in what way?

Most investors are used to requests for side letters or confirmation that projects, organizations, or its funds benefit the institutions assessment area, regional area, or a broader statewide area that benefits the institution's assessment area. However, the removal of this portion of the Q&A would make investments in nationwide funds less burdensome while retention of some of the language with regards to, "Typically,

information about where a fund's investments are expected to be made or targeted will be found in the fund's prospectus, or other documents provided by the fund prior to or at the time of the institution's investment, and the institution, at its option, may provide such documentation in connection with its CRA evaluation" may be sufficient to ensure that some level of due diligence has been completed prior to an institution's investment that would be sufficient for CRA consideration in nationwide investments .

□□If the proposed revised Q&A is adopted, how should investments in nationwide funds be considered in an investing institution's CRA evaluation? Should there be a special category for investments in nationwide funds? How would such a category affect the amounts of an institution's investments at the assessment area and/or statewide levels?

Where there is a clear community development purpose through appropriate and sufficient documentation; consideration has always been given—though in varying degrees—to investments in nationwide funds. In most examinations, these investments are already delineated as broader, regional, statewide or nationwide funds separate and apart from investments in the institution's assessment area or included in the institution's assessment area when sufficient documentation has been provided. What is unclear is how much weight is given to nationwide funds in the institution's overall investment rating.

□□Alternatively, should investments in nationwide funds be attributed to particular states or assessment areas? If so, how can that be done in a meaningful manner, particularly if there is no earmarking by the fund?

If the proposal considers attribution of nationwide funds to particular states or assessment areas in lieu of a "nationwide" fund category, and no earmarking is required; then the fund prospectus, the record of the fund's past investments, anticipated investments and the level of these investments as a proportion of the total investments could be used as proxy for determining how investments in nationwide funds could be attributed to states or assessment areas.

□□If nationwide fund investments are attributed to particular states or assessment areas, how can the Agencies avoid double counting the same funds in the same assessment areas in different institutions' evaluations?

There would be no clear way in which the Agencies could avoid double counting the same funds in the same assessment areas in different institutions' evaluation that would not be onerous. Too many factors; including the timing of the investment or each institution's exam, coordination among the Agencies, ability to follow-the money, the investment levels of various institutions, etc. There would be a further burden to institutions which may induce them; prior to making an investment—to inquire from the fund manager which investor has already received investment credit and potentially be a deterrent to the institution making the investment which although may not benefit their assessment area—may benefit a broader, regional, or statewide fund which could include their assessment area.

Proposal 4: §II.12(g)(2)—1: *Community development includes community services targeted to low- or moderate income individuals. What are examples of ways that an institution could determine that community services are offered to low- or moderate-income individuals?*

The Agencies solicit comments on all aspects of this proposed revised Q&A. In addition, the Agencies specifically request commenters' views on the following:

□□Will the use of eligibility for free and reduced-price meals and Medicaid effectively identify individuals who are low- or moderate-income?

Yes, these are Federal and/or State programs, whose purpose are to serve low- or moderate-income individuals and should be considered an effective means of identifying low- or moderate-income individuals.

□□Will the use of these proxies reduce the burden on financial institutions and community organizations to obtain actual income and, thus, promote the provision of community development services?

The use of these proxies will reduce the burden for financial institutions and community organizations who because of government grants, for example, is limited to offering services only to low- or moderate-income persons. Many schools due to school districts, state, local, or federal laws or policies will not divulge income information of their students or parents.

□□Are there other commonly used proxies for low- or moderate-income that should be specifically included in the Q&A?

Proposal 5: §II.12(i)—3: *What are examples of community development services?*

The Agencies request comment on whether there are other activities that should also be included in this Q&A as explicit examples of community development services.

Activities that should be included as explicit examples of community development services should include:

- **Job interviewing skills and resume reviews for low- or moderate-income individuals through qualified organizations such as Work Net**
- **Teaching literacy programs or English As a Second Language courses for low- or moderate-income individuals.**

In this regard, CRA should be expanded to include asset building activities for low- or moderate-income individuals through broader means other than "services of the type generally provided by the financial services industry."

- **Involvement in local chambers of commerce as all chambers are focused on economic development—which includes job creation and retention for low- or moderate-income individuals or promotions of businesses for which a majority of small businesses would be included.**

The Agencies should re-evaluate the narrow standard of "provision of financial services" to include a broader array of services that bank employees may be able to provide to an organization whose mission meets a CRA community development purpose. Many of these organizations depend on volunteers for many activities that are not CRA qualified. However, the current "financial services" standard turn employees away from these capacity building opportunities to other activities for which there may be limited opportunities such as board memberships or committees—and that also require time commitments that the majority of bank employees who are non-salaried are not able to commit. Examples of a few include:

- **Collecting, organizing, sorting, and delivering food for the homeless.**
- **Building a Habitat Home or serving as site coordinator.**
- **Collecting donations of household items, pricing, and selling on behalf of Salvation Army.**
- **Volunteering to serve food, work a fire-works booth, or otherwise provide a service in an event for which funds raised will benefit a qualified organization.**

Proposal 6: §ll.12(t)–9: *How do examiners evaluate loans or investments to organizations that, in turn, invest in instruments that do not have a community development purpose, and use only the income, or a portion of the income, from those investments to support their community development purpose?*

The Agencies solicit comments on this proposed new Q&A generally, but in particular, would like comments addressing the following:
□□Is the proposed new Q&A sufficiently clear?

The proposed new Q&A is sufficiently clear. However, it also would require new tests to be met 1) the organization must invest in an instrument that has a primary purpose of community development for the institution to receive full credit and 2) only the amount of the investment income can be considered rather than the entire amount of the investment if the instrument does not meet this test.

□□Will the proposed Q&A encourage or discourage investments or loans in organizations with a community development mission?

This proposed Q&A will discourage investments or loans in organizations with a community development purpose. Most organizations are already struggling to find funding *<u>and instruments</u>* which would generate the most income to support their organization. This proposed Q&A not only subjects organizations to an additional test but also severely limits instruments they *could* invest in. The Agencies should not be in the

position of prescribing the types of instruments *a community development organization* should purchase if inconsistent with their bylaws, rules, financial risk, etc. as regardless of the instrument used, the *usage* of any income derived would be for a community development purpose. Alternatively many institutions could opt for alternative qualified CRA investments in which they would receive full credit or may just simply provide a donation (this may be reduced as 1) donations do not generate a rate of return other than a reduction in tax liability and 2) donations are generally not considered by Agencies as creative or innovative and therefore likely to receive greater weight on an exam). Thus many worthy organizations would be left without a means to support their organization.

□□Does the proposed Q&A provide the flexibility necessary to encourage community development activities, whether direct, indirect, or through the provision of capital investments, in connection with an organization with a primary purpose of community development?

This proposed Q&A would not encourage community development activities unless all related activities and instruments meet this new test.

Proposal 7: §ll.22(b)(4)–2: *How do examiners consider community development loans in the evaluation of an institution's record of lending under the lending test applicable to large institutions?*

The Agencies solicit comments on this proposed new Q&A. In particular, comment is requested on the following:
□□Does the proposed Q&A recognize the appropriate value of community development lending, while allowing flexibility based on performance context consideration?

While community development lending has always been evaluated and considered in the CRA exam, this proposed Q&A does not address the concerns of commenters which relate to how much *weight* should be given to community development loans in an exam. A clearer set of guidelines should be established for institutions based on *their* business model and performance context. For example, institutions whose business model is lending primarily to large C & I concerns, commercial developers, and agri-businesses with less focus on small business, farm, or mortgage lending should be given greater weight for community development lending with less emphasis on small farm, small business, or mortgage.

□□Will this proposed Q&A help to promote additional community development lending?

This proposed Q&A standardizes how the Agencies will provide a conclusion regarding community development lending as a positive, neutral, or negative impact. It also provides examples of how community development loans may compensate for other factors but falls short of providing any weight.

□□Does this proposed Q&A appropriately clarify the consideration given to community development lending as one of the five performance criteria under the lending test?

No, further consideration should be given to the institutions business model and weight given to community development loans in light of this.

□□Does this proposed Q&A raise any issues that the Agencies will need to address with revised ratings guidance? If so, what are they and how should they be addressed?

No.

Respectfully Submitted,

Cassandra Angello

Cassandra Angello
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Farmers & Merchants Bank of Central California
"Where Banking is Easy!"