

Via Electronic Submission

April 8, 2020

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

Re: Community Reinvestment Act Regulations

Dear Sir:

On behalf of Management of Merchants Bank of Indiana, thank you for your leadership in drafting a proposal on which stakeholders can provide feedback. We are responding to the request for comments on the Notice of Proposed Rulemaking (“NPR”) to transform the regulations that implement the Community Reinvestment Act of 1977 (“CRA”). Merchants Bank of Indiana is regulated by the FDIC and welcomes the opportunity to provide comments.

Merchants Bank of Indiana (“Merchants Bank”, “Bank”, “we”, “us” “our”) is a State Non-Member Bank chartered by the Indiana Department of Financial Institutions and is a wholly-owned subsidiary of Merchants Bancorp headquartered in Carmel, Indiana with approximately \$6.2 billion in assets. Merchants Bank has a unique business model that differs significantly from other more traditional community banks. The Bank has a limited physical branch presence operating out of six Indiana-based banking centers, in Carmel, Indianapolis, Richmond, Lynn and Spartanburg. The Indianapolis market area is an urban and suburban market and the Richmond/Lynn market area is largely rural. The Bank’s key business strategies include financing of multifamily housing and healthcare facilities in support of our subsidiary, Merchants Capital Corp., and mortgage warehouse financing, retail and correspondent residential mortgage banking, agricultural lending and traditional community banking.

We are committed to the goals of CRA and to meeting the credit and financial services needs of our customers and communities and take pride in helping to drive economic growth. We believe in the fundamental purpose of the CRA in that financial institutions should meet the credit needs of their local communities, including low-to moderate-income (LMI) borrowers and geographies. Development of strong communities is paramount to meeting the business objectives of soundness, profitability and growth.

Because of our unique business strategy, Merchants Bank’s CRA performance does not fit neatly within the current CRA regulatory framework. Recognizing the significant constraints that could be imposed when taking the CRA performance record into account in evaluating an application for acquisition, merger or branching activity, we sought and received approval of a CRA Strategic Plan for 2018-2020. Through this painstaking approval process, we experienced first-hand how the CRA regulation and supervision have become overly complex, are open to varying interpretations, have not kept up with the way consumers expect to use technology to access financial products and services, and are burdensome in ways that do not seemingly serve to promote

the outcomes the initial CRA legislation sought to achieve. The need to update CRA has existed for years and will grow more pressing as technology and the financial services industry continue to evolve.

Merchants Bank is strongly in favor of modernizing the CRA. We urge the OCC and the FDIC to work together with the Federal Reserve to develop a final CRA rule that is issued on an interagency basis to promote consistency and coordination that will yield desirable results through a tailored framework.

### **Assessment Areas:**

We support the agencies' recognitions that the CRA framework should reflect the proliferation and consumer use of online and mobile delivery channels, but we have significant concerns regarding the deposit-based Assessment Area as proposed. The preamble does not discuss why the agencies suggested 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment area where it receives 5 percent or more of its retail domestic deposits thresholds or how many banks they anticipate this would affect, particularly since mobile banking users are said to be concentrated in high population areas that typically are already served by banks. We believe this potential would entail significant change in the way that banks administer and are evaluated on their CRA programs and recommend regulators evaluate the impact these reforms would have on banks and communities in conjunction with the proposed performance evaluation measures to ensure the creation of deposit-based assessment areas would reduce CRA hot spots.

For purposes of determining the retail domestic deposits used in determining the deposit-based assessment area, the final rule should define Retail Domestic Deposits to exclude corporate deposits, sweep deposits, health savings accounts, prepaid cards, and reciprocal deposits. We agree that this term should exclude municipal deposits, deposits of foreign governmental entities, and brokered deposits and urge the agencies to consider how the FDIC rulemaking on brokered deposits and related legislative efforts would impact the proposed rule. Retail Domestic Deposits should be re-defined as deposits intended primarily for personal, household, or family use, as reported on Schedule RC-E, items 6.a, 6.b, 7.a(1) and 7.b(1). This approach more accurately represents a bank's capacity to engage in qualifying activities for individuals, small businesses, and small farms.

### **Qualifying Activities:**

The proposed qualifying activities criteria generally would include activities that qualify for CRA credit today, as well as other activities that are consistent with the purpose of CRA, but may not qualify. Because Merchants Bank has significant activity associated with providing financing for affordable housing rental projects, we support the expansion for inclusion of qualifying activities for community development loans, investments and services that "partially benefit" low-, moderate-, and middle-income individuals and families as outlined on page 194 of the proposal. We would like to request clarification as to what information is required to demonstrate these targeted individuals benefitted for the bank to receive credit.

We strongly support the creation of a publicly available, non-exhaustive, illustrative list of CRA-qualified activities, as well as a list of activities that do not meet the regulation's criteria for being CRA-eligible. These lists should be maintained on an interagency basis to promote consistency and regulators should solicit public comment on the types of activities that should receive automatic credit. Ideally, the list should be searchable and organized by topic and updated on an ongoing basis. The pre-approval process for determining CRA credit is a critical piece in assisting banks in their community development efforts in seeking confirmation in advance that a proposed activity is deemed to qualify. However, the period of up to six months for the agency to issue a determination is too long. We believe that establishing a shorter response period such as three months would be more responsive to the institution in attempting to meet the needs of the community it serves.

### **Performance Measures – Strategic Plans:**

We support the agencies' efforts to establish quantifiable CRA performance metrics. As an institution that currently operates under a CRA strategic plan, we are encouraged to see the retention of the strategic plan option in the proposed rule, however, we believe regulators should clarify that banks requesting strategic plans will not be confined to the performance measurement framework applicable to banks subject to the General Performance Standards. This would allow an institution seeking to be evaluated under the strategic plan option to tailor its CRA objectives to the needs of the community based on its own capacities, business strategies, and expertise. The strategic plan provides certainty in the performance evaluation process and allows the bank to focus on execution of the approved performance measures to achieve a satisfactory performance rating. The agencies should consider incorporating strategic plan guidance (such as is contained in OCC Bulletin 2019-39 (July 31, 2019)) into the final rule so that all agencies are consistent in the requirements for strategic plans.

The proposal would require that banks post proposed strategic plans on the applicable regulator's website to allow public comment in addition to the traditional requirement for publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan. Regulators should clarify the role that comments play, what topics are in scope and how they would be weighted when evaluating approval of the strategic plan.

The proposed period for the plan approval process which allows six months from the time the applicable agency receives the complete plan with a possible extension for good cause for no more than 90 days. This nine-month approval timeframe is too long and should be shorted to 90 days with an additional 30-day extension for good cause. Additionally, regulators should clarify that a plan amendment would be approved within 90 days.

For institutions currently evaluated under an approved strategic plan, the regulators should grandfather existing plans through the term of the approved plan, unless the institution opts to submit a new strategic plan for approval.

### **Data Collection and Reporting Requirements:**

As proposed, the data collection and reporting requirements for banks evaluated under the general performance standards or the strategic plan would be significantly expanded. The proposal does not recognize that the required data generally do not reside in a single system within the bank and none of these systems are integrated to streamline the reporting process requiring hours of labor to identify and extract data to be combined in reports. The initial and ongoing costs associated with setting up systems for data collection recordkeeping requirements outlined in §345.19 for *Performance standards data* and *Qualifying activities and retail domestic deposit data* will be overly burdensome. It appears that drastically increased requirements for recordkeeping and reporting on additional loans as well as the address locations of our deposit account customers will necessitate utilizing more personnel for collecting, compiling, reviewing, and periodically reporting the mandated data. The expense for more personnel allocated to CRA-related duties will be in addition to increased costs for software enhancements and updates that will be needed to document the information for purposes of complying. We urge the regulators to provide data formatting specifications, clarify due dates for submission of the annual reports and restrict publication of identifying data in order to ensure privacy protections.

The proposed annual data reporting requirements creates risk for institutions evaluated under a strategic plan that does not exist today. Strategic plan banks would be required to collect and file the same data as if they

were operating under the General Performance Standards. It is unclear as to what level or degree the reported information will be made public. We have concerns that data reported by the strategic plan institution could be misinterpreted because report readers would not necessarily be aware that a bank is operating under a strategic plan and would lack context or appear to be deficient when compared to peer institutions that are operating under the general performance standards.

We appreciate the opportunity to submit our comments as you undertake this comprehensive update of the CRA regulations and commend you on your efforts to modernize CRA so that financial institutions may continue to effectively meet the CRA objectives to serve the financial needs of all demographics within their service areas, consistent with safe and sound banking.

Sincerely,

A solid black rectangular redaction box covering the signature area.

Carol E. Gassen, CRCM  
VP, Chief Compliance Officer, CRA and BSA Officer