March 30, 2020

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

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219
Docket ID OCC–2018–0008

Re: Community Reinvestment Act Regulations

Dear Madam or Sir:

Farmers and Merchants Trust Company of Chambersburg (F&M Trust) is pleased to have this opportunity to provide comments on the joint Notice of Proposed Rulemaking issued by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) that would modernize the regulations that implement the Community Reinvestment Act of 1977 (CRA).

Summary

F&M Trust supports the agencies' efforts to modernize the CRA regulation. However, we have concerns regarding the substance and complexity of the proposed performance measurements and the substantial costs required to implement this proposal and maintenance. Efforts to increase participation in CRA should recognize the differences between smaller community banks (over $500,000) and larger nationwide and international banks. Using deposit-based assessment areas exacerbate CRA hot spots and CRA deserts, thus undermining the purpose of the CRA. The rating systems should use a flexible method for determining the overall performance of the bank. Increased regulatory burdens should be reduced, not increased. Due to the unintended consequences written into this proposal, we request the agencies to refrain from finalizing this proposal pending extensive testing and incorporating a pilot program to further study the results prior to finalization. In addition, an interagency final rule should be adopted by all Federal banking agencies to help equalize competition.

Diversity of Banking System

The proposed performance measurement system does not consider bank business models, areas of specialization and unique community characteristics. We recommend that the final rule permit Small and Intermediate Small Banks to opt out of the General performance standards; and adjust the Small Bank and Intermediate Small Bank thresholds to $500 million and $2.5 billion.

F&M Trust was established in 1906 in the Cumberland Valley of South-Central Pennsylvania and has an asset size of $1.23 billion as of December 31, 2019. The location of the main office is within a two-hour

Under the current CRA rules, the Bank's assessment areas are based on geography and contiguous census tracts. Each assessment area consists of the geographic location of the main office, branches, and deposit-taking automated teller machines (ATMs). This method of delineating assessment areas works well for smaller community banks operating primarily through retail branches and is consistent with readily available census data.

We agree that the CRA regulation needs to be updated due to the increasing use of technology to deliver banking products and services. Unfortunately, adding a complex method of calculating additional data by using geocoded addresses of retail deposit account holders, including small business and small farms, will be extremely challenging, time consuming, and expensive. This will be particularly burdensome for smaller community banks in counties with low population densities.

Data Burden

We believe that the additional expense of collecting retail deposit data has been underestimated in the proposed rule. The proposed data collection, recordkeeping, and reporting requirements would create costly, ongoing data requirements that are considerably more complex than existing CRA reporting mechanisms. The proposed requirements are not compatible with the way bank systems are structured and reflect a fundamental misunderstanding of the burdens that will be imposed by the required information technology and systems changes as well as additional work to ensure data integrity. Data on retail deposits have never been captured, geocoded or reported in this manner before. Currently, these data fields were only based on consumer retail deposits and did not include the data for small business and small farm deposit holders. These new data requirements will necessitate additional geocoding, validating, testing and scrubbing prior to reporting. This is done by a Compliance Officer or CRA Officer. According to the Department of Labor and Statistics, the median wage for a Compliance Officer is $33.11 per hour. In smaller community banks, the compliance department is working on HMDA and other regulatory requirements with CRA being a smaller portion of the workload. The proposal increases data collection, geocoding, transaction testing data validity, and reporting, thus significantly increasing the compliance workload.

Addresses in rural areas and new developments are notoriously difficult to geocode and cannot be conducted by batch geocoding. We believe that it is important to determine an allowable percentage of accuracy for geocoding addresses before the software will allow these data to be used. An exception report should be provided to allow mismatched data to be reviewed for accuracy. In addition, misspellings of street addresses, inaccurate directional indicators, and even punctuation can provide inaccurate results. Providing a safe harbor for accuracy would be beneficial to the industry. Manually locating one mismatched address on a map using directions or an intersection may take up to 20 minutes for each mismatched record and is typically conducted by a Documentation Review Officer, Loan Processing Officer or CRA Officer. These types of manual processes should be calculated into the ongoing expense of these additional data requirements under the proposed rule.

Under the proposed rule, retail deposit data will require monitoring and re-delineating assessment areas if more than 50% of the deposits are made outside of the current assessment areas. Geocoding customer addresses home addresses may not provide the most accurate view of a customer's usage.

Many customers do not necessarily use the community office located near their residence. Instead, customers may frequently use a branch located near their work or in a hub of retail stores or offices. Residents of rural and underserved counties often commute long distances for work and may be where consumers conduct their transactions. Additionally, the largest concentrations of deposits are typically in urban areas where populations are larger; therefore, if assessment areas are based on the number of deposits, some rural areas, including underserved areas, could be excluded. Counties with larger populations centered around one or two larger communities will have more deposits centered in areas with higher incomes rather than in areas with the most need. This is counterproductive to the goals of CRA. As proposed, it appears the rule will create more disparities for vulnerable populations rather than reduce them by creating CRA hot spots and CRA deserts.

Prior to adopting a final rule, regulators should form an interagency taskforce of regulators and bankers with specialized, in-depth expertise in bank data systems, CRA regulations and reporting, HMDA, and Call reporting. This taskforce should be charged with developing data reporting requirements that support a more objective regulatory framework while considering the diversity in the U.S. banking system and working to minimize unnecessary data costs on banks.

Ratings Systems

We have concerns with the proposed CRA ratings systems and recommend that the agencies develop a ratings framework that is more flexible and does not include pass/fail components. While we appreciate the agencies' work to address the digital revolution and its impact on banking, we do not support the proposal's creation of deposit-based assessment areas. Among other things, deposit-based assessment areas would exacerbate CRA hot spots and CRA deserts.

The Retail Lending Distribution Test should not be pass/fail, nor should a poor performance result in an automatic "Needs to Improve". Instead, a poor performance on the Retail Lending Distribution Test should be able to be offset by a strong performance in other areas. If a bank fails one geographic test for only one retail loan type, the bank should not fail the entire exam.

Failure to meet the two percent Community Development Minimum should not result in an automatic rating of "Needs to Improve". Different regions in the country have varying community development opportunities. Opportunities for community development are inherently limited in rural and/or underserved counties. In addition, some areas experience inflated competition for community development loans and investments, the terms of which can price local lenders out of the markets in their own geographies.

Increased Regulatory Burden

Major changes to regulations and the resulting consolidation in the banking industry has reduced the number of banks available to local communities. I would like to call your attention to the "Outlook for Housing" speech presented on January 16, 2020 by the Michelle W. Bowman of the Federal Reserve's Board of Governors at the 2020 Economic Forecast Breakfast, Home Builders Association of Greater Kansas City, Kansas City, Missouri in which she stated the following:

> The second challenge I want to highlight relates to the declining presence of community banks in the consumer real estate mortgage market. As regulatory burdens have risen, many community banks have significantly scaled back their lending or exited the mortgage market altogether. These developments concern me for several reasons. Home mortgage lending has traditionally been a significant business for smaller banks, and the decline in this business threatens a part of the banking industry that plays a crucial role in communities. Bankers who are present and active in their communities know and understand their customers and the local market better than lenders outside the area. Because of their local knowledge and customer relationships, they are often more willing to help troubled borrowers work their way through difficult times.

Governor Bowman's remarks not only emphasize the unintended consequences of additional regulatory burdens on community banks but serves to illustrate that smaller banks, such as F&M Trust, know and understand the needs of their communities and play a crucial role in their success and sustainability.

Loans to Non-LMI Borrowers in LMI Geographies

Under the proposed rule, loans to non-LMI borrowers residing in LMI geographies would not receive CRA credit. We oppose this change and urge the agencies to reconsider this restriction. This limitation runs counter to the plain meaning of the CRA statute. The CRA, since its passage in 1977, has required banks to serve the credit needs of their entire community, including (but not limited to) LMI individuals. Communities, and particularly LMI individuals, benefit when individuals from a mix of incomes live, work, shop, and go to school in the same area. Building quality housing for families of all life stages and income levels is an integral part of a smart growth approach (Smart Growth Planning Principles). Housing constitutes a significant share of new construction and development in any city, but its economic importance is sometimes overlooked. Housing options available in a community will influence families' economic opportunities, costs of living, and how much time they spend commuting each day. Diversifying housing options within existing neighborhoods can give everyone more choices about where to live. Diverse neighborhoods that contain people with different occupations, education levels, and incomes, as well as people from different cultures and racial backgrounds, require diverse housing options. Apartments, duplexes, single-family homes, and accessory dwelling units are all viable housing options that should be allowed by default. A range of housing options at different price points makes it easier for lower-income people to find housing in redeveloping neighborhoods.

Multi-family properties will not be purchased by LMI individuals. Instead, they are purchased by upper-income individuals, businesses, partnerships, corporations or associations for investment purposes in order to rent them to LMI individuals or families. The proposal could have a detrimental effect on LMI housing in smaller towns and cities where 5-10-unit properties are more prevalent.

We recognize and share the regulators' concerns over gentrification and displacement but do not believe that denying CRA credit for loans to non-LMI borrowers is an appropriate way to address potential gentrification. We urge the agencies to study this complex issue further prior to making such a drastic change that carries important public policy ramifications.

Testing and Analytics

To promote the longevity of a modernized CRA framework, the agencies must ensure that performance measures are well grounded in historical data. Testing should include data reflecting a wide range of economic conditions as well as bank business models, areas of specialization, and asset sizes. To augment this data testing, we recommend that the agencies conduct a pilot program involving a diverse set of institutions prior to adopting a final rule.

Scenario testing and/or a pilot program would help regulators assess how all aspects of a revised framework would perform in concert. The various elements of any updated CRA rule would not operate independently. Rather, changes to one section of the regulation will have down-stream impacts on other portions of the rule. For example, revisions to the definition of Retail Domestic Deposits will have implications for the benchmarks associated with the CRA Evaluation Measure and the two percent Community Development Minimum. This interconnectedness makes it especially important that banks, policymakers, and other CRA stakeholders have confidence that the proposed framework will yield cumulative results that promote banks' CRA support of their communities.

Sample size is an important issue in research. When a sample size is too small, the test fails to find what it set out to detect or produces a false negative result. When choosing a sample, there are two important issues: will the sample be representative of the population, and will the sample be precise enough. An unrepresentative sample will result in biased conclusions, and the bias cannot be eliminated by taking a larger sample. For this reason, sampling methodology is the first thing to get right. The second issue is precision. The larger the sample, the smaller the margin of uncertainty (confidence interval) around the results. However, there is another factor that also affects precision: the variability of what is being measured. The more data varies, the bigger the sample must be to achieve the same degree of certainty about the results. Data sampling in small, underserved, and/or rural counties may result in a greater margin of uncertainty and false negative results.

Conclusion

Thank you for an opportunity to provide comments on the proposed revisions to the Community Reinvestment Act. We are grateful for the agencies' solicitation of ideas in crafting a proposal. While our letter identifies significant concerns with the proposed rule, we remain optimistic that it is possible to improve the effectiveness and administration of the CRA following additional study, scenario analysis and possibly a pilot program to test the proposed framework before it becomes final. In addition, an interagency final rule should be adopted by all Federal banking agencies to ensure an equal playing field across the industry.

Respectfully,

[redacted]

Sheryl Snider, MSGeogES, CRCM
Compliance Officer and CRA Officer