

April 8, 2020

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

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

**RE: Community Reinvestment Act Regulations**

Dear Madam or Sir:

The Farmers & Merchants State Bank (F&M) is an independent community bank headquartered in Archbold, Ohio operating in the northwestern part of Ohio and the northeastern part of Indiana. It is a wholly-owned subsidiary of Farmers & Merchants Bancorp, Inc., a single bank holding company also located in Archbold, Ohio. The bank holding company's asset size was \$1,607,330 as of 12/31/2019. At the present time, F&M is an Intermediate Small Bank for current examination purposes. Having passed the asset size threshold at the end of 2019, F&M would be deemed a Large Bank for examination purposes in 2022. The Bank's primary regulator is the FDIC. Loan products offered include agricultural, commercial, home mortgage, and consumer loans, with commercial loans as a primary focus. F&M seeks to provide loan services in the communities where it has Offices, the surrounding areas, and the broader adjoining areas. Additionally, F&M seeks to provide deposit products and services that meet the diverse needs of the communities it serves, which further aids in funding the loan needs of its communities. As a community bank, F&M has a strong commitment to meeting the credit and financial services needs of its customers and communities.

F&M has 30 Offices located in northwest Ohio and northeast Indiana. Its Assessment Areas (AAs) encompass twelve contiguous counties, including seven counties in Ohio and five counties in Indiana. The geographies include counties in two Metropolitan Statistical Areas, Toledo, OH MSA and Fort Wayne, IN MSA, and two Non-Metropolitan Statistical areas with one in Ohio and one in Indiana. The communities served are predominantly rural areas and suburban communities. The AAs include all census tracts in Fulton, Defiance, Henry, Lucas, and Williams Counties in Ohio and the entirety of Allen, DeKalb, and Jay Counties in Indiana. The combined AAs also include portions of Hancock and Wood Counties in Ohio and Steuben and Allen Counties in Indiana. None of the tracts in the combined AAs are presently distressed

or underserved. The combined AAs include a total of 218 census tracts with none of these tracts designated as distressed or underserved. Of the AAs in urban areas, there are 36 low-income tracts, 27 moderate-income tracts, 54 middle-income tracts, 37 upper-income tracts, and 1 tract with no income designation. For the AAs in rural areas, there are there are 5 moderate-income tracts, 47 middle-income tracts, and 11 upper-income tracts.

As a community bank, F&M takes pride in promoting economic growth in its communities. The CRA regulations do provide challenges in that they are overly complex, unpredictable, and have not kept up with consumers' technology expectations for use and access to financial products and services. Thank you for your leadership on this initiative to update and modernize CRA regulations.

While this is an enormous undertaking, strong concern must be expressed that efforts to issue an interagency final rule lacks the involvement of all regulatory agencies working together. Without the collaboration and involvement of all agencies, further confusion, unpredictability, and inconsistency could easily result. Given the challenges to build consensus for change, it is important that final regulations can be sustainable, as well as comprehensive. We remain hopeful that this rulemaking process will include the Federal Reserve to build interagency support for CRA reform.

The following comments, observations, and recommendations are intended to express perspectives of our institution based on its business models, asset size, and geographic locations. Additionally, general consideration is also given to matters that impact the broader banking industry.

### **CRA Performance Measures**

We support the agencies' efforts to establish objective, quantifiable CRA metrics to evaluate compliance with regulatory requirements. *We have some strong concerns regarding the proposed performance measures and request the OCC and FDIC hold off from finalizing this section of the regulation.* We are in no position to provide input regarding the performance measures suggested in the proposal. Based on the unique data collection requirements, we are not able to capture or compile data to evaluate what this looks like and whether the 11%/6% standards are reasonable and further the purposes of the Community Reinvestment Act. Further studies and testing appear in order. Since the agencies subsequently issued a Request for Information, it would indicate regulators had limited data which hindered the ability to thoroughly test the proposed performance measures. Once there is sufficient data to run various scenarios, the performance measures could be re-worked and re-tested to establish viability.

Having no ability to capture and compile data to fully evaluate the performance measures, at a high level, the following matters cause us some great concerns:

- CRA performance measures place too heavy a reliance on a bank's balance sheet to measure CRA activity.
- We object to the proposed "haircut" for Loans sold within 90 days of origination. Retaining the servicing of mortgage loans and the ability to sell loans in the mortgage secondary market is part of a business model that insures suitable home loan products are available in the communities served.

- Requiring banks to monetize community development services for the purpose of computing the CRA evaluation measures would be labor-intensive and would not appropriately recognize the intrinsic value of such services and could result in a decrease in volunteerism.
- Revise the denominator for calculating the CRA Evaluation Measure. Revisit and re-define Retail Domestic Deposits. To more appropriately represent a bank's ability to engage in qualifying activities of small businesses, and small farm loans, Retail Deposit Deposits could be better 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.b1 of the Call Report).
- Provide better clarification on how out-of-assessment area activities would be treated and whether there would be a minimum threshold of activity required.
- Further clarify the definition of Major Retail Lending Product Line would be helpful.
- Retail Lending Distribution Test needs a specific methodology for setting distribution benchmarks. Additionally, multiple examples and formulas should be provided to illustrate how the test would work in actual practice.
- Failure to meet the 2% Community Development Minimum should not result in an automatic rating of Needs to Improve. In some regions of the country, there are limited community development opportunities. Please specify that banks have the option to classify small business loans as either a community development loan or a small business loan. Additionally, please clarify if the Community Development Minimum includes donations. The current rule includes qualified donations in total qualified investments. Excluding donations from community development investments could have a significant negative impact.

### **CRA Qualifying Activities**

Illustrative List of CRA-Qualified Activities - The creation and maintenance of a publicly available, non-exhaustive, illustrative list of CRA-qualified activities has our support, as well as a list of activities that do not meet the criteria for CRA-eligibility is also supported. It is recommended the lists be maintained on an interagency basis. Additionally, we recommend development of a list that is searchable and organized by topic. In providing an illustrative list, banks would have less uncertainty as to what counts for CRA credit and be able to plan appropriate activities knowing they will receive credit.

CRA Preapproval Process - While we support the establishment of a process that would allow banks to confirm whether a proposed activity would receive CRA credit, we would encourage turnaround time for the preapproval process be 30 days or no longer than 60 days. Otherwise, opportunities would be lost in instances where an activity needs to be qualified before any engagement or involvement occurs.

Workforce Development and Job Creation – Banks should continue to receive community development credit for (1) financing small businesses that promote job creation, retention, and/or improvement for LMI individuals and communities; and (2) by financing intermediaries that invest in or lend to start-ups or recently formed small businesses. These “economic development” provisions should be added into the proposal in their entirety, both in the text of the regulations and also to the list of qualifying activities.

Pro Rata Credit – While we support the assignment of pro rata credit for activities that partially benefit LMI areas or individuals, there is no detail on how banks and examiners should quantify these activities. In some instances, it is challenging to determine the percentage of LMI benefit. Some community organizations (e.g., a battered women’s shelter). Examples should be provided on how pro rata credit is determined for different types of activities.

Small Business/Small Farm Loans – We support the increase in the loan amount cap and the increase to the Gross Annual Revenues limit. These changes were needed to reflect inflation over time and to more accurately depict a bank’s support for small business and small farm loans in the evaluation of its CRA performance.

Small Business Loans secured by Real Estate – The performance standards should count small business loans secured by residential real estate. The NPR would place reliance on specific Call Report lines that exclude loans to small businesses secured by personal real estate. This then arbitrarily exclude these loans from assessment for CRA unless the bank can demonstrate it took the real estate as collateral in an abundance of caution.

SBA’s size-eligibility Standards – There is concern with requiring banks to use the SBA’s size-eligibility standards to determine whether a loan to a business is a community development loan. Under the current rule, banks may opt to use the simple Gross Annual Revenues test to determine if a business is small. Use of the SBA standards imposes a significant burden, as they vary by industry type, and consider either number of employees or annual receipts in determining whether a business is small. *Please consider including the option to identify a business as small by cross-referencing to the proposal definition of a small business as a business with Gross Annual Revenues of \$2 million or less.*

Revolving Lines of Credit and Letters of Credit - We strongly encourage reconsideration of the approach proposed regarding Revolving Lines and Letters of Credit. Per Footnote 28 to the preamble of the proposed rules, it states that banks would continue to receive CRA credit for the funded portions of lines of credit, but generally would not receive CRA credit for other legally-binding commitments to lend, such as revolving credit lines and letters of credit. Please factor the commitments for revolving line of credit and letters of credit back into a bank’s CRA performance.

Financial Literacy – We agree with the approach proposed. Financial education programs and homebuyer counseling should be considered qualifying activities. All financial literacy initiatives should receive CRA credit; credit should not be limited to providing financial education to LMI individuals or schools where more than 50% of the students qualify for free or reduced-fee meals.

Loans to Nonprofits – Loans to nonprofits should be included in the regulatory text, as well as in the list of qualifying activities.

Volunteer Service – We appreciate the proposal would no longer limit community development services to the provision of professional services.

Limit Gentrification – While the intent is to address gentrification concerns, we disagree with an approach that grants “no” CRA credit for loans to non-LMI borrowers in LMI areas. Doesn’t denying such credit go directly against the basic meaning of the CRA statute? As studies have shown, LMI individuals and families benefit from residing in mixed income neighborhoods. We believe that lending to all borrowers in an LMI designated area provides benefit to the entire community.

### **Assessment Areas**

We would ask that careful analysis and consideration be given to revisions of the Assessment Area concept in conjunction with the proposed performance evaluation measures. While each of these potential reforms is important, they would entail significant changes in the way a bank’s CRA program would be managed and evaluated. Significant changes to Assessment Areas and the adoption of CRA benchmarks would revolutionize CRA regulation. We suggest further evaluation of the combined impact that these reforms would have on banks and communities.

The proposal would require that both a Facility-based Assessment Area and a Deposit-based Assessment Area be no smaller than a county. This would then eliminate a bank’s ability to adjust their Assessment Areas based on the area that they “can reasonably serve”. There is no explanation why this change would be required. One can presume the approach proposed is intended to standardize CRA performance evaluation.

The proposal allows for changes to an Assessment Area once per “evaluation period”. What does this mean should a new Branch or deposit-taking ATM be placed in a new county or a new MSA?

We support the recognition that the CRA framework needs to reflect the proliferation and use of online and mobile delivery channels is clearly necessary. Physical branch locations are no longer the primary way many consumers conduct business with their bank. We have some strong concerns regarding the Deposit-based Assessment Area as proposed. In order to properly identify and evaluate the covered deposit accounts, it would be necessary to have further clarity on (1) better definition or redefinition of Retail Deposit Accounts as originally proposed; and (2) better explanation on how to geocode (county level or census tract level) covered deposit accounts in order to properly identify and delineate a Deposit-based Assessment Area. Currently, our core system does not provide a means to geocode deposit accounts, so it has been quite labor-intensive to conduct a straw analysis regarding the bank’s status. At the present time, it does not appear our bank would have any Deposit-based Assessment Areas. Falling within the threshold of a Large Bank (though only being a \$1.6 billion bank) this would be a huge undertaking to scrub existing accounts and maintenance the needed information in order to monitor for Deposit-based Assessment Areas. Further, depending on the location of a Deposit-based Assessment Area and being a bank our size, we would have concerns on how to provide sufficient CRA qualifying activities should a Deposit-based Assessment Area need to be delineated.

A word of caution, while there does not appear to be hard data, anecdotal evidence would lead us to believe that customers in metropolitan areas are more likely to open accounts and conduct their financial business online. Within metropolitan areas, it is the most affluent zip codes and census tracts where

consumers are most comfortable with technology. Should data subsequently prove the anecdotal evidence accurate, creating new Deposit-Based Assessment Areas could result in the need for attracting CRA activity where it is not needed, especially where there is already plenty of lending and investment activity.

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

As proposed, the data collection and reporting requirements are not compatible with the manner in which data collection processes and bank data systems are presently structured. Data does not generally reside in one single system within a bank. Some of the required data resides in a core system, additional or other data may be found in loan origination systems, and our bank has multiple loan origination systems for different loan products. These systems are not integrated and would thus require hours of labor to code, identify, and extract data in order to combine into a single report or file format. Bank systems are not set up to retain loan-level information in monthly or quarterly intervals. The proposal also refers to the Call Report for much of the lending data, and yet Call Report line items are created from multiple data feeds from several lines of business and departments across the bank.

Meeting the data collection and reporting requirements of the proposal would prove quite costly initially, as well as on an ongoing basis. An estimate of the one-time costs of data collection was not addressed within the proposal. Again, there is no detail on how the hours and dollar figures for ongoing recordkeeping and data collection were compiled. One would suspect this could vary widely from one bank to the next. For our bank which falls into the Large Bank status with over \$1.6 billion in assets, this would prove a huge undertaking and require additional individuals to conduct data collection, analysis, and reporting.

There are several challenges to be considered regarding collection and maintenance of required deposit data:

- For older deposit accounts, we do not always have street addresses.
- We are not set up to capture and retain quarterly values of deposits. Additionally, depending of the definition of Retail Deposit Accounts, certain deposit accounts would need to be excluded, the remaining information would need to be validated, and then retained during a minimum 3-year exam cycle.
- Our core system does not currently provide the capability to geocode deposits. Geocoding deposits will prove burdensome and expensive, especially for the rural areas represented in our market area.
- There is strong concern about geocoding depositor addresses to the census tract level. More errors occur when geocoding tools attempt to identify census tracts, especially in rural areas. This then results in manual research to establish the correct census tract location. While physical addresses, some mailing addresses do not easily translate well using geocode tools.

We have a concern about the burden to collect and maintain the requisite detail on qualifying loans, investments, and services. While having a “CRA Qualified” flag in the bank’s core system would be viable, this does not address the initial burden associated with proposed data collection requirements. Lenders



and their support staff would have to have sufficient knowledge and training to flag activities as qualifying; compliance and audit staff would have to verify each activity flagged to ensure it is a qualifying activity. Those activities that are deemed not qualifying would then have to be maintenance to remove the “CRA Qualified” flag.

Data collection on consumer loans would prove challenging. The proposal refers to Call Report lines, and yet the data feeding into the Call Report comes from more than one system. The products covered have information on residing in more than one origination system and they are not integrated. Additional time and resources would be required to extract the necessary data for the various systems, ensure it conforms to data requirements, and validate it. Currently, we do not geocode consumer loans.

There would be challenges to geocode the following:

- The proposal to geocode Community Development Loans is not practical. Community development loans may serve multiple locations, which would make it difficult to geocode such loans.
- Guidance would be needed to explain how banks should determine an investment’s location. Unlike a loan’s borrower or collateral, investments do not have a “location” that is easily identifiable. Investments may serve a broad geographic area.
- The location of a Community Development Service is not easy to identify. Thus, there would be additional challenges to geocode this information.

We strongly support the agencies’ decision to protect borrowers’ and banks’ privacy. Please retain this privacy protection in the proposal and do not publish loan-level data. However, we do wish to express concerns regarding data format and due dates as follows:

- If the proposed data collection requirements are finalized, we ask that the required formatting and additional guidance be published with the final rule. If the format and guidance are not released until later, banks and their vendors will not have appropriate time for programming, training, testing, and software selection necessary for data collection.
- Please provide banks time for data scrubbing before reporting or an examination takes place. The proposal does not state when banks must report data to agencies. Current CRA Rules required CRA data reporting by March 1<sup>st</sup> after the calendar year for which the data is collected. This lag period gives banks time to scrub data before submitting it.

### **CRA-Like Requirements for Credit Unions and Other Financial Firms**

Requirements to meet the financial services needs of all income demographics, including LMI individuals, should apply to all federally insured depository institutions.

- Credit unions receive significant government benefits to serve LMI individuals. Yet they are not presently required to demonstrate through measurable standards that they are meeting their service obligations.
- As the financial service industry continues to evolve and regulators entertain provision of special charters to financial technology firms, these charters should ensure that entities meet the convenience and credit needs of their communities.

And much like banks, any required CRA-like responsibilities should be evaluated and enforced through examinations.

Thank you for the opportunity to provide comments and observations regarding a proposal to modernize Community Reinvestment Act regulations. The OCC and FDIC's leadership in seeking recommendations that would benefit communities and provide further certainty and clarity is very much appreciated. The importance of interagency collaboration and coordination on joint rulemaking must again be reiterated.

Respectfully Submitted,

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