February 16, 2021

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R-1723
RIN 7100-AF94

Re: ***Advance Notice of Proposed Rulemaking – Community Reinvestment Act***

Dear Sir or Madam,

The Conference of State Bank Supervisors ("CSBS")[1] appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking ("ANPR" or "Notice") issued by the Board of Governors of the Federal Reserve System ("Board") titled "Community Reinvestment Act." CSBS appreciates the Board undertaking the extensive and vital process of reviewing the existing Community Reinvestment Act ("CRA") regulations with the goal of improving and modernizing the regulatory framework to account for changes in the banking industry over time.

The Board's approach is a welcomed step towards creating a modernized CRA framework that better serves the needs of communities, including low and moderate income ("LMI") neighborhoods. CSBS also appreciates that the Notice contemplates a tailored supervisory approach which includes a combination of quantitative and qualitative metrics and tests as opposed to a single-metric or heavily focused dollar-based metric approach such as the framework that has been advanced by the Office of the Comptroller of Currency ("OCC").

Given the profound implications of this ANPR and any future rulemaking, CSBS recommends that:

- the Board, FDIC, and OCC work together to create a uniform and consistent CRA regulatory framework;
- the Board publish an illustrative, non-exhaustive list of qualifying community development activities that qualify for CRA credit;
- the Board continue to prioritize approaches that would exempt small banks from new data collection requirements and allow for existing data collections such as the Summary of Deposits ("SOD") data to be better utilized for purposes of CRA;
- the Board provide credit for activities that benefit Indian country, LMI areas, underserved areas, and distressed areas through physical branches and other means even if, such activities occur outside a bank's defined assessment area; and

[1] CSBS is the nationwide organization of state banking and financial regulators from all 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. CSBS supports the state banking agencies by serving as a forum for policy and supervisory process development, by facilitating regulatory coordination on a state-to-state and state-to-federal basis, and by facilitating state implementation of policy through training, educational programs, and exam resource development.

- The Board should provide more clarity on the inclusion of non-branch delivery channels in CRA evaluations and should ensure that the approach to non-branch delivery channels is consistent across the Agencies.

The Board, FDIC and OCC should work together to create a uniform and consistent CRA regulatory framework.

To truly create an effective, less burdensome, and updated CRA regulatory framework the Board, FDIC, and the OCC (the "Agencies") should work together in a coordinated effort to create a uniform and consistent CRA regulatory framework. The ANPR states that stakeholders have expressed strong support for the Agencies to work together to modernize the CRA. Chair Powell has also stated that the ANPR "is an important step forward in laying a foundation for the agencies to build a shared, modernized CRA framework that has broad support."[2] However, following the OCC's issuance of a final CRA rule in May 2020, the existing CRA framework is fragmented, with different rules applied to national and state-chartered banks.

CSBS has long maintained that the federal CRA regulatory framework should be applied consistently for banks regardless of their chosen charter type or their chosen primary federal regulator.[3] Adopting inconsistent federal CRA regulations would result in multiple practical and legal problems for banks and state regulators alike. For example, numerous banking organizations are multi-bank holding companies with a state member bank subsidiary and a state nonmember bank or national bank subsidiary. If inconsistent federal CRA rules are adopted, these banking organizations would have to run dual compliance systems for the OCC's new CRA framework and any future CRA framework by the Board and possibly the FDIC.

Furthermore, inconsistent federal CRA regulations could interfere with the ability of states to apply state CRA laws by putting states in a difficult legal situation with respect to interstate banking. State community reinvestment laws are generally modeled after the federal CRA regulations and apply to home state banks, member and nonmember, and branches of out-of-state banks, state and national.[4] But, in order to avoid conflict with federal requirements, states would have to adopt different community reinvestment rules patterned after the Board and the FDIC regulations with respect to home state member and nonmember banks, respectively. Adopting different community reinvestment rules for home state member and nonmember banks, would potentially result in state community reinvestment rules not applying to host state branches of out-of-state banks because they could then be construed as having a discriminatory effect between home state member banks and out-of-state national banks.

The manner in which Congress intended for state community reinvestment laws to apply to interstate banking operations is a clear indication that Congress intended federal CRA regulations to be consistent

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[2] *See* Statement of Chair Jerome H. Powell (September 21, 2020), https://www.federalreserve.gov/newsevents/pressreleases/powell-statement-20200921.htm

[3] *See* CSBS Letter to the FDIC and OCC: Community Reinvestment Act Regulations (April 8, 2020) available here. In this letter, state regulators requested that "the Agencies should not create an inconsistent CRA regulatory framework across the federal banking agencies." Also, in commenting on a previous CRA reform proposal in 2004, we stated "CSBS supports consistency in the application of CRA rules for banks regardless of the type of charter they chose. Until recently, the rulemaking process of federal banking agencies reflected a goal of generally consistent application of the CRA. . . However, recently, the agencies' record of consistency in the adoption of CRA rules has unraveled. . . CSBS recommends that the FDIC assume a leadership role as the federal insurer of all banks and thrifts by bringing the federal agencies back to the table to identify a consistent approach to fulfill the initial intent of CRA when passed in 1977."

[4] *See* 12 U.S.C. §§ 36(f)(1)(A), 1831a(j)(1), 1831u(b)(3).

across the agencies. Inconsistent CRA frameworks create a dilemma for states that will potentially interfere with their ability to adopt and apply state community reinvestment laws. In sum, CSBS continues to believe that the federal CRA framework should remain the same regardless of the type of charter or regulator chosen. Given the multiple legal and practical problems that would result from creating an inconsistent CRA regulatory framework, CSBS urges the Agencies take a uniform approach. Doing so will reduce compliance burdens and increase regulatory certainty and transparency.

State regulators support the Board's intent to publish an illustrative, non-exhaustive list of qualifying community development activities to provide supervised institutions with increased clarity regarding activities that qualify for CRA credit.

Currently, as part of their CRA examinations, banks submit community development activities that have already been undertaken without any clear assurance these activities are eligible for CRA credit. Banks have expressed frustration that it is difficult to be certain that a loan or activity qualifies for CRA credit until they undergo an examination. To address this issue in part, the Board proposes to publish an illustrative, non-exhaustive list of eligible CRA activities as a means of clarifying what counts on CRA examinations.

CSBS appreciates the Board's efforts to provide upfront certainty regarding definite activities that qualify for CRA consideration. However, state regulators do acknowledge that as new, less common, or more complex or innovative activities arise, examiner judgment and the use of performance contexts to determine whether an activity qualifies for CRA purposes will still be warranted. In such instances, the Board should also layout a clear process for individual banks to receive timely guidance and clarity in advance on whether a certain activity that is not listed would qualify as a CRA activity. Further, a formal process should be adopted requiring the periodic review and revision of the list, which includes a mechanism for interested parties to request the inclusion of additional activities.

State regulators believe that providing greater upfront certainty will allow banks to better understand what activities qualify for CRA credit and lessen compliance burdens. In addition, providing a list of qualifying activities could encourage banks to participate in certain activities that they otherwise would have not engaged in. It will also allow examiners to apply a consistent approach when evaluating activities and investments for CRA credit. In sum, CSBS supports the Board's intent to publish an illustrative, non-exhaustive list of qualifying community development activities.

The Board should continue to prioritize approaches that would exempt small banks from new data collection requirements and encourages the Board to consider ways Summary of Deposits data can be improved or better utilized given its usage in many other rules.

Generally, the Board has attempted to limit the number of *new* data collection requirements proposed in the ANPR and instead stresses its desire to rely on existing data collection requirements, primarily Summary of Deposits ("SOD") data.

Currently, all banks are required to submit the annual SOD survey which records deposits by attributing them to a branch location, rather than the location of the depositor. The Notice indicates that the Board would utilize SOD data to measure the dollar amount of deposits assigned to branches within a bank's assessment area as the denominator. State regulators support the Board's efforts to rely on existing data collection requirements and to limit any new collection and reporting requirements.

Imposing new data collection requirements to address gaps in existing data collection, while retaining those existing data collection requirements despite the shortcomings in the data collected, would result in

unnecessary duplication, and increase the already substantial investments in systems and staff-related costs. Therefore, state regulators support the Board prioritizing approaches that would exempt small banks from new data collection requirements to help minimize regulatory burden.

Nevertheless, it is fairly evident that, in recording deposits by attributing them to a branch location, rather than the location of the depositor, the SOD data collection has serious shortcomings which limits its effectiveness in making meaningful CRA evaluations. This shortcoming is not unique to CRA. SOD data is also used to assess compliance with numerous other federal and state requirements and restrictions on geographic expansion via merger or branching including the prohibition on interstate deposit production, nationwide and statewide deposit concentration limits, and competitiveness analysis for merger applications (e.g., HHI). As with CRA, the manner in which the SOD data is collected limits its usefulness in these other regulatory contexts as well.

Accordingly, state regulators believe that comprehensively reforming the SOD data collection itself—for instance, by attributing deposits to depositor location rather than branch location—could be worthwhile not only for CRA but also for these other regulatory schemes. However, if such a comprehensive reform were to be undertaken, it is imperative that state regulators have access to the data reported regarding the location and value of deposits. In particular, state regulators would need access to any new or revised deposit dataset to assess compliance with and the potential need to recalibrate numerous state laws—including state branching and merger restrictions, statewide deposit concentration limits, and state escheat laws. But, absent such a comprehensive reform to existing data collection requirements, state regulators, again, support the Board's intention to rely on existing data collections and prioritizing approaches that would exempt small banks from new data collection requirements.

The Board's CRA framework should provide credit for activities that benefit Indian country, LMI, underserved, and distressed areas through physical branches and other means even if, such activities occur outside a bank's defined assessment area.

The Board's ANPR would broaden considerations for retail lending activities conducted in Indian Country to address high poverty rates in those areas and a relative lack of banking services. The Board's proposed approach would make retail activities in Indian Country located both inside and outside of a bank's assessment area eligible for CRA consideration, as long as a bank satisfies the needs of its own assessment area. State regulators support this approach but suggest that the Board also consider providing similar credit for activities that benefit LMI, underserved, or distressed areas that are equally in need of investment and support.

Since the CRA was last updated over two decades ago there has been a significant reduction in the number of branches and other banking offices in the United States. LMI areas, both rural and urban, have endured the brunt of this shift away from physical office locations. At least one study has shown that the current CRA framework has helped reduce the emergence of banking deserts in lower income neighborhoods by reducing the risk of branch closure in these areas.[5] The presence of physical branches in low-income communities has been particularly important in overcoming credit barriers by helping to ensure more convenient access to banking services at a lower cost to communities and small businesses in these areas.

Small, local banks have an outsized physical presence in LMI, underserved and distressed areas relative to their share of domestic deposits. Indeed, based on 2018 data, 47 percent of the total number of bank

[5] *See* Lei Ding and Carolina K. Reid, "The Community Reinvestment Act (CRA) and Bank Branching Patterns", Federal Reserve Bank of Philadelphia (2019).

offices located in distressed and/or underserved census tracts were offices of banks with total assets less than $500 million. This is a staggering percentage given that the total number of offices of these small banks only constituted 16 percent of the total number of bank offices in the industry that year. Further, of the small bank offices located in distressed and/or underserved census tracts, 90 percent were offices of local banks, that is, banks without any interstate branches. CSBS believes that the greater presence of small, local banks in areas most in need of banking services should be recognized and encouraged in some manner by the Board.

The Board should provide more clarity on the inclusion of non-branch delivery channels in CRA evaluations and should ensure that the approach to non-branch delivery channels is consistent across the Agencies.

The ANPR states that the Board intends to evaluate all bank delivery systems by increasing focus on non-branch delivery channels. State regulators recognize the CRA's role in encouraging banks to maintain branches in LMI areas and their local communities. However, state regulators also recognize the changing landscape of banking and the growing presence of non-branch delivery channels. State regulators request greater clarity as to what an increased focus on non-branch delivery channels in CRA evaluations would entail. State regulators are in the process of reviewing state laws governing non-branch delivery channels and how they might affect the multi-state operations of banks. We would be eager to collaborate with the Board as it further pursues CRA modernization to ensure that our efforts are coordinated and, more generally, to understand how CRA reform related to non-branch delivery channels may impact their use by banks.

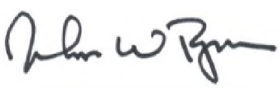
As explained above, state regulators believe that the federal CRA framework should be consistent across the Agencies, and this includes how non-branch delivery channels are and are not addressed by the federal CRA framework. The approach taken by the Board with respect to non-branch delivery channels should not differ from the approach taken by the other Agencies.

Conclusion

CSBS appreciates the Board's current efforts and request for input to modernize the CRA regulatory framework. As expressly recognized by Chair Powell, it is imperative that the Agencies come together to create a uniform and consistent CRA regulatory framework. One of the primary reasons for these modernization efforts was to be more transparent and objective, while also reducing any inappropriate burdens created by CRA evaluations. A consistent federal CRA framework is absolutely necessary in order to achieve these goals.

CSBS believes that taking into account the above considerations regarding qualifying activities, data collection, and the scope of CRA evaluations will enhance the effectiveness of the federal CRA framework going forward. CSBS and state regulators are willing and eager to consult with the Board regarding any points highlighted in this letter as the Board continues the CRA modernization effort.

Sincerely,



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