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CONFERENCE OF STATE BANK SUPERVISORS

May 17, 2013

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Executive Secretary
Attn: Comments, FDIC
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Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
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Board of Governors of the Federal Reserve System
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Re: Interagency Questions and Answers Regarding Community Reinvestment

The Conference of State Bank Supervisors (CSBS) is pleased to comment on the March 18, 2013 notice and request for comment on the Interagency Questions and Answers Regarding Community Reinvestment (CRA Q&As) by the Federal Deposit Insurance Corporation (FDIC), Board of Governors of the Federal Reserve (FRB), and Office of the Comptroller of the Currency (OCC) (collectively, the agencies). As proposed, the agencies are facilitating CRA compliance for large banks in a manner that puts smaller institutions at a comparative disadvantage despite intrinsically supporting investment in their communities. The playing field for financial regulation should be even: large banks should not be permitted to skirt community responsibilities due to scale advantage by receiving CRA credit for investing in nationwide funds while small institutions are required to fulfill demonstrated local community reinvestment requirements.

Investment in Nationwide Funds Cannot be a Substitute for Investing in Communities.

The proposed CRA Q&A nationwide fund investment changes are not shy about their design for large banks: “investments in nationwide funds may be suitable investment opportunities, particularly for large financial institutions with a nationwide branch footprint or for other financial institutions with a nationwide business focus”¹ Regardless of whether an institution operates on a nationwide basis, the Community Reinvestment Act requires financial institutions to “serve the convenience and needs of the communities in which they are chartered to do business.”² This includes “the continuing and affirmative obligation to help

¹ 78 Fed. Reg. 16771 (March 18, 2013).

² 12 USC § 2901.

meet the credit needs of the local communities in which they are chartered.”³ Accordingly, banks of all sizes are explicitly required to invest in the communities where they do business, not satisfy regulatory requirements simply by paying nationwide funds without a demonstrable connection to activity in communities where deposits are taken.

In its current form, the CRA Q&As make it clear CRA credit can be received for investing in nationwide funds by demonstrating that the fund is expected to invest in the institution’s assessment area through earmarking, side letters, or other means of demonstrating the fund’s applicable community activity. Citing that this may be “burdensome,” the agencies propose to eliminate this portion of the CRA Q&As. As a result, institutions will be able to receive CRA credit for investment in nationwide funds without demonstrating a corresponding impact on the community. Conversely, small banks work hard to demonstrate their community investment work impacts their communities. This work may be “burdensome,” but it is clearly demonstrated in the communities served by community banks across the country.

The proposed CRA Q&As note that “[l]arge institutions with a nationwide branch footprint typically have many assessment areas in many states,” citing this as the impetus for broadly permitting investment in nationwide funds as satisfactory for CRA geographic requirements. This misunderstands what it means to be engaged with the community. Nationwide banks provide services in individual communities. Under the Community Reinvestment Act, they are required to invest in these “local communities in which they are chartered.” Small banks are constantly looking for ways to improve their communities, which takes time and resources. They should not have to expend more regulatory resources than their larger counterparts simply because their markets are smaller and truly community based.

A national footprint is not a substitute for acting locally.

Large institutions provide many essential services to the American financial system. However, the mere establishment of branches across the country and extension of credit in markets does not make an institution community focused. Indeed, prior to its collapse, Washington Mutual had a CRA rating of “Outstanding.”⁴ While branching across the country, this institution originated an unprecedented number of subprime loans, destabilizing the very communities its regulator deemed the thrift to be servicing. Communities require local input from their financial institutions, and to allow large financial institutions to avoid this interaction severely erodes the trust communities have in their institutions and the regulators responsible for ensuring they comply with the law.

³ Id.

⁴ See Washington Mutual Bank Community Reinvestment Act Performance Evaluation (November 7, 2006) available at http://www.ots.treas.gov/files/cra/CRAE_08551_20061107_64.rtf.

The CRA Q&As should be proposed through the FFIEC to ensure state and federal CRA requirements are not contradictory.

CRA requirements have been centrally located at the FFIEC for over thirty years.⁵ The State Liaison Committee of the FFIEC was created to facilitate state-federal coordination in areas of shared jurisdiction or interest. Currently, several states have state statutes similar to the Community Reinvestment Act.⁶ As a coordinating body, the FFIEC should act to promote consistency among the CRA requirements of states like New York and those of the FDIC and FRB. As a result of engaging in this proposal outside of the FFIEC, it is possible state law will not be satisfied where CRA credit is granted by the federal regulator if states require a local nexus for nationwide funds. This could result in additional regulatory burden for state chartered banks, despite their strong record of investment in the community. At a time when the chairman of the FFIEC is calling for greater regulator coordination,⁷ the effects of financial institutions on their local communities seems to be a place that deserves continued collaborative attention at the state and federal level.

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As the agencies continue to modernize the regulatory system, CSBS urges the agencies to focus on equal accountability between banks both large and small. Community banks operate to improve the neighborhoods they operate in, and should not be at a regulatory disadvantage to larger institutions that can satisfy the same requirements through investment in funds that do not necessarily improve the same neighborhoods.

Sincerely,



John W. Ryan
President & CEO

⁵ See, e.g., Proposal of a Revised Uniform Interagency CRA Rating System and Recommendation of its Adoption by FRB, FDIC, FHLBB, and OCC (March 12, 1981).

⁶ See, e.g. Conn. Gen. Stat. § 36a-30 et seq.; D.C. Code § 26-431.01 et seq.; Mass. Gen. Laws ch. 167, § 14,; NY CLS Bank § 28-b;; R.I. Gen. Laws § 19-9-4; Rev. Code Wash. (ARCW) § 30.60.010; W. Va. Code § 31A-8B-1 et seq.

⁷ See Remarks by Thomas J. Curry, Comptroller of the Currency, before the 49th Annual Conference on Bank Structure and Competition, Chicago, Illinois (May 9, 2013).