Consumers Union
Nonprofit Publisher of Consumer Reports

August 11, 2010

Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Re: Docket ID OCC-2010-0011, R-1386, RIN 3064-AD60

Dear Sir and Madam:

Consumers Union is pleased to participate in this process to develop regulatory improvements to help to keep the Community Reinvestment Act (CRA) relevant and effective in the fast-changing U.S. marketplace for financial services. The great promise of CRA is that its requirement to serve the needs of all parts of the community will open banks' eyes to find, develop, and use business opportunities to serve low and moderate income individuals and their communities. We first set forth some goals and impacts that a well-implemented CRA *should* achieve, then examine the regulatory changes that will promote and support those outcomes.

1. CRA should achieve:

- Ongoing delivery of sustainable products and services which are wanted, needed and used by low and moderate income individuals.
- Ongoing delivery of sustainable products and services which are wanted, needed and used by entities serving the needs of low and moderate income communities.
- Making of investments and the provision of services which enhance economic stability and economic opportunities for low and moderate income individuals and communities.

2. To achieve these goals, CRA should produce these impacts:

- CRA products and services must attract customers.
- The products, conduct and policies of banks and of their affiliates must not undermine economic stability for low or moderate income individuals or neighborhoods.
- The business side of the bank must be engaged in designing, providing, and marketing products which meet the needs of low and moderate income individuals and communities.

- Low and moderate income consumers must be offered a variety of products and services suitable to their needs.
- The bank should see low and moderate income consumers and communities, and those entities who serve them, as being as important to the bank as any other customer segment.

3. Discussion of desirable CRA goals and impacts:

CRA should produce sustainable, wanted, needed, and actually used products, services, and investments. These products, services, and investments should serve low and moderate income consumers, plus organizations that promote economic stability and economic opportunity in low and moderate communities.

CRA products and services must attract customers: Significant product adoption or penetration within the target market should be a precondition to giving ratings credit to a deposit or credit product or service. A bank and its regulators should consider a CRA product, policy, or service qualifying for CRA consideration as successful when the product or deposit service is used, or the policy is invoked, not just when the product, service, or policy "sits on the shelf." Good product design and effective marketing and other outreach are essential to meet this goal. Banks market their non-CRA products aggressively and effectively. They should do the same for products for which they assert a CRA benefit. A banker wouldn't get much credit from the company's business leaders for developing a product that experiences low usage because it is not responsive to the needs of target customers, and the same should be true of CRA products that aren't nuanced enough to fit the true target market. The rapid growth in so-called "alternative" or "second-tier" financial services shows that there is plenty of market demand among low income consumers for financial products, so effective products should not remain underused.

The products, conduct and policies of banks and their affiliates must not undermine economic stability for low or moderate income individuals or neighborhoods: A product or service provided by the bank or any affiliate, subsidiary, or joint venture which undermines low or moderate income individual, family, or neighborhood stability must be strongly weighed as a "CRA negative." CRA can induce banks to compete with second-tier financial services providers; but the CRA must discourage, not encourage, banks from adopting the questionable, finance-draining practices that have become widespread in the alternative financial sector. This principle applies equally whether the adverse conduct is by the bank or by one of its affiliates.

This document serves as both the Consumers Union comments and the written testimony for Gail Hillebrand, Consumers Union's Financial Services Campaign Manager, for the August 17, 2010 hearing on CRA improvements. Consumers Union of U.S,, Inc., publisher of *Consumer Reports®*, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect Consumer welfare. Consumers Union's income is solely derived from the sale of Consumer Reports®, its other publications and services, fees, noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support. Ms. Hillebrand's experience with the Community Reinvestment Act dates to 1986, when she first became Consumers Union's representative to the California Reinvestment Committee, since renamed the California Reinvestment Coalition (CRC). Ms. Hillebrand served as a founding incorporator of the CRC, as its first board chair, and completed a long period of service on the CRC board. This comment/testimony is offered on behalf of Consumers Union.

The business side of the bank must be fully engaged in designing, providing, and marketing products which meet the needs of low and moderate incomes individuals and communities: Sidelining CRA into a staff function handled primarily by a compliance or community affairs unit deprives low and moderate income people and markets of the business talent and creativity of U.S. bankers. In spite of all of the ways that creativity went wrong in recent years, it is still essential that the same business talent be brought to "CRA products"[1] as to all other types of bank products.

Low and moderate income consumers must be offered a variety of products and services suitable to their needs. High-income consumers face a wealth, if not a welter, of choices from banks, for example in deposits, higher income consumers are offered non-interest bearing checking with associated perks such as safe deposit box fee waiver, interest-bearing checking, sweep accounts, etc. Low and moderate income consumers in different parts of the country may have needs or preferences for different types of accounts. For example, a "no teller unless essential" checking account that is perfectly acceptable to many users under 35 may fail to serve some people who are older or newer to the banking system. One size doesn't fit all across a bank's customer base, and there is no reason to think or pretend that it should do so for CRA-target customers.

The bank should see low and moderate income consumers and communities, and those entities who serve them effectively, as being as important to the bank as any other customer segment. The promise of CRA will remain unfulfilled until banks see low and moderate income consumers, and organizations who serve those groups, as important as customer segments to the bank's long term financial health as any other customer segment. Just as it has been said that "every good organizer works himself [or herself] out of a job," so every successful CRA product should bring an underserved community need into the banking mainstream, freeing up energy to address the next challenge faced by underserved consumers and turning those individuals from potential customers into satisfied ones.

Accurate, specific, comparable, and timely information about bank-by-bank CRA performance should be easily available to individual depositors, local and state government, institutional depositors, and others in the marketplace. The bank's CRA public file, the public portion of the CRA evaluation, and the most recent rating should all be required to be made easily available at the bank's website, and the public portion of all CRA evaluations and ratings should also be provided to the public at a single, searchable site hosted by the bank regulators.

4. Changes in CRA regulation and implementation to promote these goals and impacts:

Consumers Union makes the following recommendations, some of which are similar to those made by other groups.

A. Assessment areas:

- **CRA assessment areas should include all geographies which create revenue for the covered financial institution.** Exceptions, if any, to this rule should be limited to geographic markets where the level of participation is *de minimus* in light of the size of that market (not the size of the financial institution.) Assessment areas are too narrow due to the focus on physical location, deposit-taking facility location, plus surrounding geographies where lending is a substantial portion of the bank's lending. Banks use many non-branch channels for deposits, including the

[1] "CRA products" is shorthand, but also a misnomer. A key goal of CRA should be to bring low and moderate income consumers and communities into the mainstream of customers whom the banks compete to serve, not to sideline them as valuable principally to serve a regulatory goal.

internet; credit is increasingly delivered through channels and methods unlinked to branch or deposit-taking locations, and a bank's lending maybe very significant in a market even if it is not a significant portion of the bank's overall lending. Some groups have said that the tie should be to the source of the bank's profits. Consumers Union suggests that the assessment area should include the areas which are the sources of the bank's business and business opportunities, including credit extended, deposits garnered, non-deposit service revenue obtained, and investments made.

- **Banks must have a CRA obligation to serve rural and non-metro areas within or nearby their general geographic area, even if they have not sought market penetration in those areas.** A CRA service area should never look like a checkerboard, or an incomplete jigsaw puzzle. When banking was local, rural areas often had rural banks of sufficient size to serve the local market. Now that banking is increasingly regional or national, rural residents may be dramatically underserved if the banks who serve the closest urban areas have no obligation to rural residents and communities. Whether or not this obligation is applied to a very small, very local urban bank, it must apply to banks operating regionally and nationally.

B. Ratings inputs:

- **CRA ratings should give great weight to the level of actual penetration of the product or service into the target market.** A product which fails to achieve penetration has been poorly designed, ineffectively marketed, or does not match the underlying needs of the target community. Giving CRA credit to such products will eliminate any CRA-based incentive for the bank to do a better job. This does not mean that that CRA credit should be restricted only to deposit or loan products with a large volume, since "one size doesn't fit all." Products specifically designed for and used by subsets of the low and moderate income population may have small volumes because the target market itself is small. However, no credit should be given for products that are unused by the target market, whether due to poor product design, lack of marketing, internal disorganization within the retail or other distribution channel, or other reasons.
- **Serving only middle and moderate income, and not lower income consumers, must never be sufficient.**
- **CRA ratings should give a picture of the bank's performance overall, including both the positive and negative contributions of all of its affiliates, subsidiaries, and joint ventures.** Evaluating legally separate entities under the same brand at different times makes it hard to garner a complete picture of a banking entity's activities and of the impact of its business decisions on low and moderate income consumers and communities. The current system of allowing the performance of affiliates to be considered only at the bank's option values form over substance. In addition, violations of consumer protection laws should be an adverse factor whether they occur at the bank or its affiliates.
- **Adverse activities and policies must count adversely in CRA evaluation and rating.** It is wholly inconsistent with the concept of bringing low and moderate income consumers and communities into the banking mainstream for a CRA examination, evaluation, and ratings process to overlook abusive, predatory, or income-draining and wealth-draining policies or practices of the bank or any of its affiliates, subsidiaries, or joint ventures.
- **Second tier products should never enhance a CRA evaluation.** As other commenters have noted, making loans with terms or structures which are dangerous to the borrower should be a negative, not a positive, CRA factor. Fortunately, much evidence has shown that CRA was not a driver of dangerous mortgage loans. There is also more to meeting community needs for deposit

services than access to services. CRA credit should depend in part on whether those services are of the same quality, no higher in price, and no riskier to use, than the deposit services offered to and used by middle income banking customers.[2]

- **Fair lending performance and actual loan distribution should be an important part of the CRA evaluation.** As others have proposed, fair lending deficiencies or an open fair lending investigation should be taken into account in CRA evaluations. Consumers and communities of color received a disproportionate share of mortgages with dangerous terms before the meltdown.[3] Poor fair lending performance by a bank creates an opportunity for abusive loans from other providers. Assessment of fair lending should include not only the questions of steering or disparate treatment, but also the actual lending patterns resulting from the bank's conduct of its business.

- **Branches should be equitably located to serve all communities:** Lack of a bank branch in a neighborhood means no branch service, inferior options for individuals and businesses for deposit service, and the lack of branch sales staff who may be incented to offer credit products. Branch location choices must not result in a disparate impact on low and moderate income communities or communities of color. However, focusing only on the record of opening and closing branches and not on the actual distribution of branches is a very slow path towards change. Consumers Union agrees with the recommendation made by the California Reinvestment Coalition (CRC) that branch locations should be at least proportional across the income spectrum of neighborhoods. This should be a positive CRA factor, and any lesser performance on the distribution of branches should be an adverse factor in the CRA evaluation and rating.

- **Qualitative and quantitative information are both essential.** A focus solely on quantity can lead to making and counting just the easier, higher volume types of loans and failing to even try to meet needs that can't be met with a cookie cutter product. A focus solely on quality may overweight programs which are too small to make a real impact in the community. As put by the CRC:

> "Qualitatively: Is the bank offering products that serve low-income people and people of color?" Consumers Union adds to this point that, in the qualitative portion of the evaluation, that the bank must do more than "offer" products. It must use at least same level of vigor, creativity, and effectiveness in the design and marketing of these products as for other products. As already noted, it must achieve market penetration for these products.
>
> "Quantitatively: Does the proportion of lending or services or investments to low-income people and communities match the proportion of the population represented by these communities?" The CRC comment goes on to describe a standard, for example, of lending to small businesses in low-income census tracts so that the proportion of loans in those tracts which mirror the proportion of small business in those tracts as compared to all small businesses in the assessment area.

---

[2] For example, a bank which provides a platform for prepaid debit cards without guaranteeing by contract that those cards receive full Electronic Fund Transfer Act protections relating to unauthorized use, despite the lack of clarity in Regulation E on that question, would be offering a second class product to unbanked and other consumers targeted for that card. The same would be true if a bank prepaid card program which was not set up to meet the conditions of the FDIC General Counsel Opinion #8 to achieve pass-through deposit insurance to fully protect cardholder balances in the event of bank failure.

[3] M. Oliver and T. Shapiro, *Sub-prime as a Black Catastrophe*, American Prospect (Oct. 1, 2008), posted at: http://www.allbusiness.com/economy-economic-indicators/economic-indicators-home/12003591-1.html;
TJ. Lardner, *Beyond the Mortgage Meltdown*, Demos (June 2008), downloadable at: http://demos.org/publication.cfm?currentpublicationID=272D8E4E-3FF4-6C82-565B9F271B089381.

C. Information about CRA performance for the marketplace:

- **CRA evaluations should include geographic and topical sub-category descriptions and sub-category ratings that indicate whether and how the bank is serving local and regional areas, as well as by rating factor.** Banking may be increasingly regional and national, but community needs and community concerns are often still local. Detailed sub-category descriptions and sub-ratings both by types of CRA activities and by localities will provide important information to individuals, local government, local nonprofits, and institutional investors. That information will be far more useful with a sub-rating number attached to it than with only a prose description.

- **A sufficiently large point scale should be used to distinguish among the huge majority of financial institutions awarded satisfactory ratings.** A more nuanced rating system is needed in order to bolster the meaning of the ratings; more accurately articulate the distinction between disparate bank performances; and give useful information to consumers, institutional investors, and others who may wish to know more about the social responsibility performance of a financial institution with whom they do business or are considering doing business. In 2009, fully 90.8% percent of all banks were rated as satisfactory,[4] according to an analysis by the National Community Reinvestment Coalition (NCRC). Such a broad grouping of similar ratings may obscure substantial differences in financial institution performance. NCRC has recommended developing a meaningful points scale, such as "1 to 100," to communicate more information. Consumers Union recommends that such system be developed and adopted as part of the CRA regulatory improvements.

- **Regulators should require an annual, public data disclosure by each CRA-covered financial institution of the types of data which feed into a CRA rating.** The financial markets are changing at a faster pace than the cycle of CRA exams. Consumers, governments, and institutional depositors have a legitimate interest in knowing the CRA performance of the banks they are doing business with or considering doing business with. As we have seen with HMDA, regular public disclosure of data in analyzable form can improve business behavior. The regulators should harness this power of the marketplace by developing, requiring, and making available to the pubic a standardized annual disclosure of CRA activities with categories, volume disclosure, comparison of bank size, and space for narrative to describe activities of special importance for which the numbers do not tell the complete story.

- **Regulators should require banks to put the CRA rating, the public portion of the CRA evaluation, and the CRA public file online.** The regulators should also offer a combined, public, searchable online database containing CRA ratings and the public portion of CRA evaluations.

- **Regulators should hold public hearings focusing on CRA performance and concerns before approving bank sales, mergers, and consolidations, particularly when community organizations in an affected area request hearings.**

- **Regulators should adopt and follow a policy of requiring acquirers of financial institutions to honor previously-made CRA commitments of the acquired institution, as a condition of approval for a sale, merger or acquisition, regardless of the reason for the sale or merger.** The CRC notes that a report from the California Small Business Task Force convened by the Federal Reserve Bank of San Francisco recommends: "require any acquirer of a regulated

[4] Testimony of John Taylor, NCRC, *Perspectives and Proposals on the Community Reinvestment Act*, before the Financial Institutions and Consumer Credit Subcommittee of the House Financial Services Committee, U.S. House of Representatives (April 15, 2010), p. 15.

financial institution to agree to honor any existing publicly-announced community reinvestment agreement or plans from the institution it acquires." Consumers Union agrees that this should be a minimum standard.

D. Endorsement of additional recommendations made by other groups:

We also support many of the recommendations made by community organizations working directly with the CRA on a day to day basis. These recommendations include:

- **Regulators should contact community organizations both in developing the performance context and during the conduct of CRA examinations.** (CRC)
- **Sampling which focuses on major metropolitan areas will not give an adequate or complete picture of whether rural needs are being served.** (CRC)
- **Loan servicing practices and loss mitigation practices and the results or lack of results achieved by those practices have a substantial impact upon low and moderate income communities and must be considered.** (NFHA)
- **Handling of REO property which puts bank-owned homes back into responsible ownership, such as by donation or below-market sale to nonprofits for rehabilitation and future home-ownership should be given positive CRA credit.** (WIN, LAFLA) The regulations already acknowledge the value of branch donation, and this should be updated to include donation of REO property. Sale of REO in bulk to investors, by contrast, may harm neighborhood stability and should be considered adversely when other alternatives were available. (WIN)
- **Community development credit for loans supporting the development multifamily housing should be conditioned on restrictions to ensure that the housing units will be dedicated to long-term affordability.** Deed restrictions are an effective way to ensure that housing developed for low income tenants or buyers remains part of the low income housing stock. Community development credit should promote low income housing as a long term resource, through deed restrictions to ensure continued affordability of the housing units. (CRC)
- **More data should be collected and revealed in the CRA evaluation, including size categories for loans to small businesses broken down by business sizes,** under $250,000 in annual revenue, $250,000 to $500,000 in revenue, and $500,000 to $1 million. This information will provide a better picture of whether smaller businesses are benefiting from these programs to the same extent as larger entities who also qualify under a definition of small business. (CRC)
- **For business loans and for loans to support community development, data should also be collected separately on whether loans are term or revolving, and on the annual percentage rate.** (CRC)

E. Disaster response:

The request for comment poses a question about the role of emergency response, such as disaster-related and other shorter term activities, in CRA evaluation. When a disaster strikes, credit is an essential part of recovery. Financial institutions may move into a disaster area to provide credit, investments or services that are badly needed and, if properly designed, priced, and marketed, can reduce the duration of economic dislocation associated with a disaster. However, care should be given not to overweight disaster assistance work outside a financial institution's CRA assessment area because that weighting could undermine the incentives for the financial institution to build links, programs, and product penetration in the low and moderate income neighborhoods and with the low and moderate income persons in the bank's assessment area.

There is one step that every financial institution should be encouraged to take, and which would serve every community in its assessment area. That is to develop and have ready a disaster underwriting program. In September 2005, after Hurricane Katrina, Consumers Union and other 18 other consumer and community groups raised the issue of post-disaster credit scores giving an unfairly negative prediction of individual credit risk in light of the widespread disruption of housing, jobs, and even mail delivery.[5] We pointed out that a missed payment in the wake of a regional disaster should not be treated as having the same predictive power as an ordinary missed payment. We asked Fair, Issac to develop a "Disaster Information Shield" which would automatically exclude from consideration in all FICO score cards negative payment information generated for one year after the disaster about any borrower whose address was in the Katrina disaster area at the time of the disaster. Fair, Issac responded to our groups with a prompt and serious discussion of the issues, but declined to develop the disaster scoring information shield, indicating that lender demand drives credit score development and adoption.

Later that month, Consumers Union and five other national organizations asked the three major credit bureaus to preserve in the credit files of persons with a disaster zone address on the date of the disaster a flash frozen pre-disaster credit score that would be provided along with any post-disaster score. In essence, the flash frozen score would have helped consumers to make the case to lenders that they were good risks before the disaster, and would be again despite the temporary economic and infrastructure disruption. This could have been of particular use to persons who migrated out of the disaster area after the disruption in their lives. The bureaus failed to engage with us on this issue.[6]

Five years after Katrina, CRA hearings are being held in a region that could experience an earthquake-related disruption of jobs, housing, and infrastructure on a scale at least as large as that of Katrina, and yet, we still have no disaster-tolerant credit scoring model. This is a deficiency in national disaster preparedness. Banks can and should develop disaster underwriting practices before a disaster hits one of their service areas. Every bank that serves an area which could be subject to an earthquake, a hurricane, an oil spill, a terrorist event, or another form of natural or man-made disaster could serve its communities by preparing to be as at least as ready to evaluate credit fairly and to make loans after a disaster as it is to restore the functioning of its depositary and back office functions. **CRA credit should be given to banks which prepare and have ready for use a turn-key disaster underwriting program for use in their own local and regional markets, including adapting the credit scoring models they use to avoid a negative impact on consumers due to disaster-related disruptions in jobs, housing, and infrastructure.**

Conclusion:

Consumers Union supports both regulatory and statutory modernization of the Community Reinvestment Act for three underlying reasons. First, as a participant in the civil society, Consumers Union has a deep interest in a fairer, more economically just society, with increased opportunities for upward mobility and with no persons, families, or neighborhoods left behind. The Community Reinvestment Act is a crucial tool in moving toward that goal, through the collaborations it sparks between banks and community groups and by facilitating the provision of products and services to low and moderate income individuals

[5] Letter of September 12, 2005, from Consumers Union and others to Mr. Thomas Grudnowski of Fair, Issac, http://www.consumersunion.org/pub/core_financial_services/002656.html.

[6] This work is described in a Consumers Union press release of October 6, 2005. http://www.defendyourdollars.org/2005/10/credit_reportin.html.

and communities. Second, as a consumer organization, Consumers Union works toward a financial services marketplace which provides fair and sustainable products to all consumers. The Community Reinvestment Act presents an opportunity to induce banks to develop, sustain, and implement an attitude of treating low and moderate income consumers as potential customers and turning those persons into actual customers, to the ultimate benefit of both the consumers and the bank.

Finally, as a consumer organization, we often have the job of using legislation, regulation, the media spotlight, and consumer education to induce consumers and the government to say "Stop" to practices that drain income from low and moderate income families or interfere with wealth formation. Consumers of financial services may accept costly and poorly structured financial products because those are the only products on offer, or are the only products effectively and consistently marketed to them. The great promise of the CRA, and the challenge of CRA regulatory improvement, is to implement the CRA in a way that induces banks to compete for and win the business of low and moderate income consumers, and of those who serve those communities, with fair terms and sustainable products.

Very truly yours,

Gail Hillebrand
Senior Attorney, and
Financial Services Campaign Manager
Consumers Union of U.S., Inc.
1535 Mission Street
San Francisco, CA 94103
www.defendyourdollars.org