Testimony of
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Good afternoon. My name is Debby Goldberg, and I am a project director at the National Fair Housing Alliance (NFHA). NFHA is a national, non-profit organization dedicated to ending discrimination in all aspects of the housing market and to eliminating segregation. We work toward these goals through training and technical assistance, education and outreach, enforcement and public policy. Our members include private fair housing centers across the country, as well as state and local agencies with fair housing enforcement authority.

I want to thank you for the invitation to testify today about the Community Reinvestment Act (CRA) regulations and emerging trends in CRA. Time does not permit me to discuss all of NFHA's views on these issues, but we look forward to offering more detailed comments in writing.

The Community Reinvestment Act has been an important tool for expanding access to credit and banking services in underserved communities across the country, both low and moderate income communities and communities of color. However, neither the Act itself nor the implementing regulations have kept pace with changes in the financial services industry. As a result, CRA was not nearly as effective a tool as it might have been in preventing and containing the economic meltdown our country is currently experiencing. It was just one of many lost opportunities for the federal government to step in to prevent abuses in the marketplace that gave rise to the financial crisis. Borrowers and communities of color have been on the front lines of that crisis, suffering tremendous loss of wealth as well as economic, social and emotional security. In order to pull our communities and our country out of this crisis, we will need to deploy all of the tools we have, and probably some we don't yet have. CRA can and should be one of those tools. That makes this an extremely opportune time to consider ways to strengthen and improve the CRA regulations, and we appreciate the fact that your agencies are taking up that task.

Before we can move forward effectively, we must first look back to learn the lessons of the past. There are a great many lessons to learn, and today I want to focus on just a few that we believe are critical for ensuring that, in the future, credit and banking services are available on an equitable basis in underserved communities.

1. **We must eliminate the dual credit market.** The past few years have demonstrated that a marketplace in which regulation is fragmented, so that some parts of the market are regulated and others are not, works to the detriment of low and moderate income communities and communities of color. We saw this clearly in the way that subprime, adjustable rate mortgages – a product that was designed to fail - were targeted to these communities. We see similar patterns in terms of payday loans, refund anticipation loans and other high cost/high risk forms of credit, as well.

   In the CRA context, this dual market has played out in two key ways. First, depository institutions have offered different types of products inside and outside their CRA assessment areas.[1] It is noteworthy that CRA appears to have offered access to more sustainable products for people living inside those assessment areas. However, it is equally noteworthy that it has failed to offer the same access for those outside its assessment areas, where those same banks are *also* doing business. This suggests that we need a new approach to defining the communities that a bank serves, and where its CRA performance will be evaluated, one that is not tied solely to the location of its branches but encompasses all of the areas in which it operates.

   The second aspect of the dual market that must be addressed is the use of different channels to direct different products into different communities. The classic example is where an insured depository markets prime mortgage loans in higher income, often white communities, while in underserved communities its mortgage and finance company affiliates – whose activities are considered under CRA strictly at the bank's option - market riskier, more costly subprime loans. Looking at the lending institution as a whole, this differentiation of channels creates lending patterns that are, at best, unfair, and at worst, discriminatory. Because the regulatory agencies have not looked at lending institutions as a whole, these patterns have persisted to the detriment of the very borrowers and communities CRA was intended to benefit. Moving forward, we need a way to close this loophole, so that fragmented regulation cannot be exploited at the expense of fair access to credit. This can be accomplished through the CRA examination process and accompanying performance evaluations. It can also be accomplished by taking a more expansive view of the "convenience and need" factor that is one of the standards for evaluating bank holding company applications.

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[1] See, for example, Park, Kevin, "Subprime Lending and the Community Reinvestment Act," Joint Center for Housing Studies, Harvard University, November, 2008, which found that 9% of the subprime loans made to lower-income borrowers or in lower-income neighborhoods were made by insured depositories lending inside their CRA assessment areas. In contrast, 37% of such loans were made by insured depositories lending outside their assessment areas. Other research has reached similar conclusions. *See* Bhutta, Neil and Glenn B. Canner, "Did the CRA cause the mortgage market meltdown?" available at http://www.minneapolisfed.org/publications_papers/pub_display.cfm?id=4136, and "Paying More for the American Dream III," April 2009, a joint report by California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance, Neighborhood Economic Development Advocacy Project, Ohio Fair Lending Coalition and Woodstock Institute, available at http://nedap.org/resources/documents/PayingMoreFortheAmericanDreamIII_final.pdf.

2. **We must promote sustainability.** Another fundamental lesson of the current crisis is that sustainable credit must be a priority, and that assessing the sustainability of the credit that a bank makes available in underserved communities must be an integral part of the CRA examination process. We have seen all too clearly how unsustainable credit, whether in the form of 2/28 subprime adjustable rate mortgages, Option ARMs, interest-only loans or some other product yet to be dreamed up, can work to the detriment of borrowers, communities, lenders, and the economy as a whole. Federal banking regulators have been reluctant to make judgments about the quality or suitability of products offered by the institutions that they regulate. This reluctance has undermined the effectiveness of CRA as a tool to promote sustainable homeownership and sustainable communities. Hopefully, the soon to be established Consumer Financial Protection Bureau will prevent blatantly unsustainable products from flooding the financial marketplace in the future. However, the banking regulators will remain the front line of defense with respect to the vast majority of lending institutions. They will have a crucial role to play in preventing lenders from circumventing the rules, and in protecting underserved communities' access to fair credit.

   When evaluating the CRA performance of banks that service loans, examiners should be looking at the bank's servicing practices as well as its record of loan originations. When borrowers have trouble making their mortgage payments, whether because of a major life event (death, divorce, illness, injury, etc.) or because of poor economic conditions like those many borrowers face now, the treatment they receive from their mortgage servicer can make the difference in whether they keep their home or lose it. Little systematic information is available to the public about loan servicing practices, and more is needed. We urge the regulators to consider collecting and disclosing comprehensive information about loan servicing, particularly loss mitigation, including information on the race, gender and national origin of the borrower. This would be extremely helpful for both CRA and fair lending enforcement purposes.

   Perhaps the most comprehensive set of data about loan servicing is the data currently being collected under the federal government's Home Affordable Modification Program, or HAMP. These data are not yet available to the public. However, the GAO has reviewed the practices of servicers participating in HAMP. It found notable inconsistencies in servicers' treatment of borrowers, creating the troubling prospect that similarly situated borrowers may not be receiving equal treatment under the program.[2] This kind of information should be considered when evaluating a lender's performance under CRA, and if banks are treating some borrowers unfairly, that should have a negative impact on their CRA rating.

3. **Assessing (and Pricing) Risk Fairly and Accurately.** More than three million households have gone through foreclosure over the last three years, and many millions more may face foreclosure before this crisis ends. 25.5% of consumers – 43.4 million people - now have FICO scores of 599 or lower, placing them in the

[2] US Government Accountability Office, "Troubled Asset Relief Program, Further Actions Needed to Fully and Equitably Implement Foreclosure Mitigation Programs," GAO-10-634, June 2010.

highest risk category for credit.[3] The implications of these numbers are profound. These people will have limited access to many forms of credit for a long time to come. They may not be able to get mortgages, insurance, credit cards, cars or cell phones. If they can obtain credit, they will be forced to pay more for it. They may be denied access to a place to live or even a job because of their credit scores. If we want families to get back on their feet, communities to regain stability, the housing market to level out and the economy to grow, we must make sure that credit flows again, and that it does so on fair and equitable terms.

It is critical that we gain an accurate understanding of why the credit system crashed. To what extent did mortgages fail because the borrowers were unwilling to make payments or because the loans themselves contained features that created risk. Was it the moderate-income homeowner, often a person of color, in a subprime ARM who was the problem? Or was it the fact that her loan contained a hefty two-year prepayment penalty, and that once her payments began increasing every six months they rapidly reached a level at which they could not possibly be affordable? Was it the aspiring homebuyer in a high cost market that was the problem? Or was it the Option ARM that allowed him to make a monthly payment that did not even cover the interest he owed, let alone the principal, so that his loan balance was growing from the very first payment?

Our current systems for assessing credit risk, in particular our reliance on credit scores and automated, does not differentiate between risk caused by borrower behavior and risk caused by loan features and terms. Popular analysis of the causes of the crisis tends to blame the borrower, without assessing the extent to which the loan product itself may have contributed to the loan performance. Research conducted by the UNC Center for Community Capital indicates that product features are a major determinant of loan performance.[4] It suggests that loans with risky features set borrowers up for failure. They are, in effect, self-fulfilling prophecies.

Moving forward, we need a better and more nuanced approach to assessing credit risk, one that distinguishes between risk associated with the borrower and risk associated with the loan product. Risk must not only be assessed accurately, it must be priced fairly. Otherwise, credit will be denied to (or overpriced for) millions of households who, with equitable access to products that are structured and priced fairly, would be perfectly responsible borrowers. This will impede our recovery from this crisis. Conversely, if risk is assessed and priced fairly, credit will flow again to the people and communities who need it. CRA should be a vehicle for making this happen.

[3] Connelly, Eileen Aj, "More Americans' Credit Scores Sink to New Lows," Associated Press, July 12, 2010, available at http://finance.yahoo.com/news/More-Americans-credit-scores-apf-490198280.html?x=0&sec=topStories&pos=5&asset=&ccode=.

[4] Ding, Lei, Roberto B. Quercia, Janneke Ratcliffe, and Wei Li, "Risky Borrowers or Risky Mortgages?" US Department of Housing & Urban Development Tuesday Series, October 28, 2008. Available at http://www.ccc.unc.edu/documents/HUD_Oct2008_final.pdf.

4. **Fair Lending and CRA.** Finally, I would be remiss if I didn't address the need for enhanced fair lending enforcement, and for strengthening the link between fair lending and CRA. For many years, fair lending enforcement has been lagging at all of the enforcement agencies, and it is our view that this contributed to the financial crisis. We urge all of the agencies to step up their fair lending enforcement efforts. We appreciate the link between fair lending compliance and CRA performance, but believe this link needs to be strengthened. No institution that discriminates should receive a satisfactory or better CRA rating. Further, when fair lending violations are found, more information about the nature and extent of the violations should be communicated to the industry and the public through the CRA evaluation.

These are just a few of the issues that must be addressed to bring CRA into the $21^{st}$ century and ensure that it achieves its potential as a tool to make credit and banking services available on an equitable basis in underserved communities. Thank you for the opportunity to testify today. I will be happy to answer any questions you may have.