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Docket No. RIN 3064-AD60
Additional CRA Hearing Comments
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In addition to my written comments and presentation at the Arlington CRA hearing on July 19, 2010, I am submitting these comments in response to certain questions and issues raised at that hearing and subsequent CRA hearings. My comments address four issues.

1. The inclusion of all of the holding company affiliates.

The importance of including all holding company affiliates as well as evaluating the performance of the holding company in all geographic areas where one or more of its affiliates maintains a significant market share is supported by the recent National People's Action report "Gaming the System"1[1] which compared the lending of the mortgage affiliates of the four largest bank holding companies to the lending of the banks themselves. The summary of findings states that:

> A. CRA Grades are unmoored from bank's actual community reinvestment performance Despite contributing substantially to the mortgage melt-down and financial collapse by their high-cost lending patterns, Wells Fargo, Bank of America, Chase and Citibank each received an "Outstanding" rating on their most recent CRA exams.
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> B. Big banks have used their affiliate lenders to issue a disproportionate amount of high cost loans, especially to minority and low-income borrowers.
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> - Big bank affiliates issued only 17% of the total loan volume, but were responsible for 46% of all the reported high-cost loans of the major banks.
> - More than one in four of big bank mortgage loans made to African American and Latino borrowers were made by their affiliate lenders.
> - Three out of every four African American or Latino customers of big bank affiliates received a high-cost loan
> - 24% of all big bank loans made to lower income borrowers were made by affiliate lenders.

1[1] National People's Action, *Gaming the System – How Wells Fargo, JP Morgan Chase, Citibank, and Bank of America Have Subverted the Community Reinvestment Law*, August 2010, page 4.

• 57% of low to moderate income customers of big bank affiliates received a high-cost loan.

C. Big banks and their affiliates have issued the bulk of their high-cost lending outside of their primary assessment areas and at a highly disproportionate rate to low income and minority borrowers.

• 65% of big banks lending fell outside of a full scope, primary assessment area review in 2008.
• Slightly more than 80% of high cost lending to low and moderate-income borrowers occurred outside full scope review assessment areas in 2008.

As I indicated in my written comments and presentation at the Arlington hearing, an updated CRA must assess the lending of all of the affiliates and must assess the lending in all areas where the holding company and its affiliates are active. In the current and future markets, the percentages of all loans issued by affiliates of bank holding companies are – and are going to be - even greater as the independent subprime lenders have largely disappeared or been absorbed into bank holding companies – with the largest of these lenders (Countrywide) becoming part of Bank of America. This will make these disparities for affiliate and direct bank lending within and outside of the present defined assessment areas even greater as one compares the FHA and conventional prime markets as well as the more limited subprime markets in the future.

2. The need to make the assessment of discrimination both in the definition of an assessment area and in lending or providing services a formal part of the CRA assessment and subject to an automatic failing rating where discrimination is found in the evaluation.

A recent CRA evaluation by the FDIC (which has generally been the agency that has been most responsible in CRA evaluations) provides a case study in how the present CRA gives lenders a pass on discrimination even when there are clear violations of the fair lending laws and the CRA regulations. I note as background that the Subcommittee on Domestic Policy of the House Committee on Oversight and Government Reform held hearings on predatory lending in March of 2007 and hearings on the CRA in October of 2007. At the March hearings, I provided several examples of cases where the regulators had given Satisfactory and Outstanding ratings to lenders that had been found liable in Federal courts of discrimination or that had been sued by the Department of Justice (DOJ) for discrimination. These cases involved both charging minorities higher rates and defining assessment areas so that minority markets were eliminated.

At the hearing on October of 2007, the representative of the OTS tried to defend raising the rating for Flagstar from Satisfactory to Outstanding immediately after it had been found liable for a written discriminatory pricing policy in a summary judgment decision in Federal court. The representative of the Federal Reserve denied specific knowledge of an Old Kent evaluation but maintained that there must have been some

acceptable reason found in the examination for allowing Old Kent to eliminate the entire city of Detroit while including the surrounding counties. The representative of the FDIC simply apologized for the past actions and committed to not letting it happen again in the future.

In this context, the Department of Justice filed suit against First United Security Bank in Alabama for pricing discrimination in its home loans and for defining its CRA assessment areas in such a way that they excluded large minority communities. In the complaint, DOJ specifically cites the CRA regulations that require that assessment areas include whole counties unless there are clear barriers to such inclusions or because such inclusions would make the assessment areas unreasonably large. DOJ cited First United for excluding sections of counties that included significant minority populations. The complaint was supported by maps showing the assessment areas and the locations of minority populations outside of, but adjacent to, these areas. While the complaint and the settlement were filed in 2009, my understanding is that DOJ had been reviewing the case since 2005 or 2006.

The FDIC began a CRA examination of First United in December of 2005, but did not release the rating and Public Evaluation until July 7, 2009. Given that small bank evaluations such as the one for First United (with assets of $621 million) generally take from a few weeks to a few months, this evaluation was stretched over more than three and one-half years. During this time, in October of 2007, the FDIC had committed to a more robust review of discrimination in the hearings of the Subcommittee on Domestic Policy of the House Committee on Oversight and Government Reform.

On the positive side, after years of investigation by DOJ and years of delay in completing the CRA evaluation, the FDIC lowered the bank's rating from a history of "Satisfactory" ratings to "Needs to Improve". Nonetheless, there are troubling issues in the evaluation.

First, the only consideration of discrimination in the entire evaluation was in the last paragraph of the 23 page report which stated:

> **FAIR LENDING OR OTHER ILLEGAL CREDIT PRACTICES REVIEW**
>
> Substantive violations of the anti-discrimination provisions of the fair lending laws and regulations were identified during the concurrent fair lending review of First United Security Bank. The FDIC has reason to believe pattern or practice violations of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 et seq., the Federal Reserve Board's implementing regulation ("Regulation B"), 12 C.F.R. Part 202, the Fair Housing Act ("FHA"), 42 U.S.C. 3605, and the Department of Housing and Urban Development's implementing regulations ("HUD's Fair Housing Regulations"), 24 C.F.R. Part 100, have occurred in connection with the lending activities of First United Security Bank. In consideration of the seriousness of these violations, which involved a pattern or practice of discrimination on the basis of race, the institution's CRA performance evaluation

> has been lowered to a "Needs to Improve" rating. The discriminatory violations are considered to be bank wide although limited to one product line. (at page 23)

It is clear from this statement that the FDIC was concerned about the home lending issues that it had referred to DOJ years before for investigation. But no mention is made of the redlining issue in the assessment areas. Indeed, the CRA evaluation simply accepts the given assessment areas and bases its review on how well the bank served the needs of these disproportionately white and moderate- and middle-income areas. How could DOJ have so clearly identified the assessment area redlining while it was not even mentioned by an agency that had been called on the carpet by a Congressional committee and, as a result, had committed itself to a new vigilance in this area?

Second, while the FDIC gave the bank a Needs to Improve Rating, it actually gave the bank a Satisfactory rating on both the Lending Test and the Community Development Test (the two tests applied in an intermediate small bank evaluation). The summary of the lending test concluded:

> **Lending Test**
>
> The bank's performance under the Lending Test depicts a satisfactory record of providing for the credit needs of its assessment areas. The following facts support this rating:
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> • The loan-to-deposit ratio of the bank reflects a more than reasonable responsiveness to community credit needs.
> • A majority of the bank's home mortgage, small business, and small farm loans were extended to borrowers residing within its assessment areas.
> • The bank's lending activity reflects adequate penetration among borrowers of different incomes and businesses of different sizes.
> • The bank's level of lending in moderate-income census tracts is adequate.
> • The bank has not received any CRA-related complaints since the last evaluation. (at page 1)

Meanwhile, of course, both DOJ and the FDIC had found a pattern of discriminatory lending. Paragraph 21 of the DOJ complaint states that, "Statistical analysis of First United Security Bank's residential real estate-related loan applications and originations for 2004-2006 show that each year First United Security Bank has served the credit needs of residents of majority-white census tracts of the Alabama Market Area to a significantly greater extent that it has served the residential real estate-related credit needs of the residents of majority-black census tracts in the Alabama Marker Area."

If, under the current regulations, and even after two public hearings devoted to the failure to take account of discrimination in CRA evaluations, the best of the regulatory

agencies still gives a lender a passing grade on the lending test when it is clearly aware of discrimination in its lending, this should provide clear evidence that the regulations need to be changed to provide a formal and complete review of discrimination as part of the CRA evaluations and public evaluations.

3. Matching CRA credit to the capacity and scope of the holding company

One comment at the Arlington hearing provides a context for this comment. The representative of Citigroup devoted his time to promoting his institution's participation in Individual Development Accounts (IDAs) as a valuable CRA program. These accounts provide some matching funds to a select group of savers. Because of the need for various sources of matching funds, the number and scope of IDAs is limited. While he mentioned that Citibank was involved in almost 4,000 IDA accounts nationally these accounts were also assisted by several other "partners". The present research suggests that increased savings with counseling does assist households in achieving their goals – though the studies need to separate out the effects of saving itself from the effects of counseling.

Pilot projects have an important place in the development of programs that eventually can become "mainstream banking". While efforts to increase the savings of populations that are presently unbanked or might be seen by some as "underbanked" is an important CRA activity, the issue here is about what weight to give the third largest holding company and third largest bank in America for a program that, no matter how useful to those who get to participate, is unlikely to ever serve a significant share of a bank's customers. Indeed, if one looks at the Citibank web site under savings account, there is no mention of IDAs.

Perhaps a cataloguing of best practices and creative programs and experiments would provide a foundation for a more soundly-based measure of what activities should be expected and what activities should be granted different ratings in relation to the capacity and scale of entire holding companies.

4. How do you tell a good loan from a bad loan (program or service)

To begin with, we all need to recognize that there will inevitably be some products or services where there are legitimate different opinions about their value to different populations. FHA-insured loans, for example, have historically been a source for helping first-time homebuyers reach their goal. On the other hand, FHA loans have also been used to exploit racial markets, undermine racially changing communities, and lure minorities into fraudulent or unsound loans. Some subprime loans did create opportunities for a limited set of households in unique and temporary financial situations – but they were not sound as the main products for an entire community of borrowers. Therefore, the context within which a product is used and not simply the product itself must be evaluated.

On the other hand, most of the time, it should be clear if a product or service is likely to provide a benefit to the customer. Surely, the findings and reports of the newly created Consumer Finance Protection Bureau should provide a basis for judgment for the regulatory agencies in future CRA evaluations.

At least in the housing market, many once experimental programs have led to standardized products for special markets, such as the GSE community homebuyer programs (which were not a source of the GSE losses). The loan programs of NeighborWorks that were once experimental have become mainstream products for low- and moderate-income borrowers and neighborhoods. Such standardized products should receive positive credit.

In general, any products that involve some form of speculation on the future condition of a borrower or of a property are likely to involve high risks and be unsound if not used very sparingly. Generally, products that reward the provider based on volume or that provide for variable forms of compensation are going to encourage unsound behavior. Fortunately, many of the unsound lending practices have been prohibited in recent legislation and regulations.

On the other hand, given the retrenchment of the lending industry into more conservative and restrictive underwriting standards, we need to ensure that claims of soundness are not used to restrict lending based on discriminatory practices or impacts or based purely on income. In this regard, it is important to provide for an increased role for community participation in the CRA process. This should not only involve an increased provision for challenges and comments on a holding company's performance or applications, but it should provide favorable treatment for special CRA programs and agreements.

The Great Recession has beaten many communities back to their disinvested state before there was a CRA. For several decades, reinvestment based on models that originally come from CRA agreements and partnerships brought billions of dollars back into these communities. If we seriously want to help the communities now suffering from the recession, we need to encourage new models and new programs – and the return of programs that have worked in similar conditions in the past. This means giving significant CRA credit not only to ongoing programs, but to new pilot programs, experiments, and projects that are developed through CRA agreements and partnerships. Historically, while the banks have provided billions in reinvestment lending, the models through which the funds have passed have been almost universally developed from community initiatives and not the banks.