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Modernizing the Community Reinvestment Act
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I am Wade Henderson, President and CEO of The Leadership Conference on Civil and Human Rights. The Leadership Conference is the oldest, largest, and most diverse civil and human rights coalition in the United States. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. The Leadership Conference consists of more than 200 national organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups.

I appreciate the opportunity to speak to you today about reforming the regulations implementing the Community Reinvestment Act to bring it into line with the technological advances and global banking changes that were unimaginable when the Act was enacted 30 years ago. Modernizing the administration of the Act to keep up with these changes is essential to accomplishing its objective of securing financial institutions' compliance with their obligation to meet the banking needs of the communities they are chartered to serve.

This is an issue of particular importance to the civil and human rights community. Responsible banking services and sustainable credit and savings are essential tools with which American families build their economic security. Low- and moderate-income communities and communities of color continue to lag behind white middle class families in their access to these tools, with significant negative consequences for their economic well-being.

We believe that the Community Reinvestment Act continues to have an important role to play in encouraging financial institutions to serve these communities with responsible, sustainable banking services. The world has changed since the CRA was enacted in 1977, and the CRA must change with it. With several targeted, common-sense updates to the way CRA is administered and enforced, the banking agencies can go a long way toward improving institutions' compliance with their CRA obligations, and improving the economic well-being of millions of families who are struggling to make ends meet.

I. Overview

Banking services are critical to economic security. Depository Institutions enjoy valuable public privileges and are appropriately required to meet the needs of all members of the communities they are chartered to serve.

The Community Reinvestment Act was enacted in 1977 as part of an effort to eradicate the incidence and effects of insidious discrimination in the provision of essential financial services. In recognition of the public privileges that accompany the banking charter, the Community Reinvestment Act imposes on banks and thrifts the affirmative obligation to meet the needs of all segments of the communities they

serve, including low- and moderate-income neighborhoods and people of color. These communities and communities of color were disproportionately underserved by America's mainstream banking institutions in 1977, and remain so today.

The obligation to serve all parts of the community derives from the recognition that access to banking services is required for all aspects of modern economic life. Banking services provide a means for accumulating savings and managing household finances, and they facilitate basic day-to-day transactions such as converting checks to cash, paying bills, transmitting funds securely, and meeting household liquidity needs. Without the ability to perform these functions, economic opportunity is quite literally out of reach.

Yet low- and moderate-income communities and communities of color continue to rely on financial services outside the mainstream banking system for many financial needs. These financial services can be much more costly, and can make it harder for households to build wealth and financial security. An astounding 54% of African American households and 43% of Hispanic households are unbanked or under-banked, meaning they rely on alternative financial service providers such as check-cashers and payday lenders for some or all of their banking needs.[1] These unbanked and under-banked families pay hundreds or thousands of extra dollars each year for high-cost banking services from non-bank providers.

In the mortgage arena, communities of color were disproportionately underserved by mainstream financial institutions, and disproportionately targeted by non-bank subprime mortgage lenders who provided them with higher-cost, less sustainable loans than they qualified for.[2] Typically, these homeowners paid more for their loans than comparably qualified white homeowners, further eroding their economic foundation.[3]

These homeowners would have benefitted from the greater availability of CRA loans. Where low- and moderate-income borrowers did obtain mortgage loans from depository institutions, they were better served when the loans were made within the institutions' CRA "assessment areas" – i.e., the areas designated by the institutions for CRA compliance review – than without. Studies have shown that loans made by institutions within their CRA assessment areas were less likely to be "higher-cost" than those made in non-CRA assessment areas.[4]

Long before the recent economic crisis, the obligation of financial institutions to serve all parts of the community was rightly regarded as a *quid pro quo* for privileges such as the protection afforded by federal deposit insurance and access to the Federal Reserve's discount window.[5] The taxpayer-funded assistance to the financial services sector during the recent crisis, while certainly unfortunate, also highlights both the public privileges afforded to the financial sector and the importance of financial services to the common good. Low- and moderate-income families have paid three times over for the large financial institutions' investments in toxic mortgage securities: first, as homeowners devastated by the underlying mortgages, second, as taxpayers called upon to rescue these institutions from their poor investments, and third, as wage-earners disproportionately impacted by the unemployment and under-employment caused by the resulting economic contraction.

Now, more than ever, there is a clear need for access to stable and affordable financial services in order to rebuild communities devastated by financial abuses and to help families maintain economic security. The Community Reinvestment Act could play a critical role in helping to ensure that banks meet this need.

The Leadership Conference

Technological and market changes in the banking sector necessitate corresponding changes in CRA enforcement.

CRA regulations have not kept up with the technological and market changes that have enabled many institutions to largely evade their CRA obligations. In a world of global banking, the CRA's focus on an institution's service to neighborhoods surrounding a physical branch location does not accurately reflect the activities of institutions that operate nation-wide and take deposits and make loans over the internet and telephone. Almost 60% of large bank lending occurs outside these institutions' assessment areas.[6]

Similarly, regulatory changes have enabled institutions to expand through the acquisition of non-bank affiliates whose activities are considered in their CRA assessments only if the CRA-covered institutions so choose. In fact, in 2005 and 2006, the height of the subprime lending spree, 12%-13% of "higher-cost" loans were made by affiliates of CRA-covered institutions.[7] Many of these affiliates engaged in predatory mortgage lending, stripping wealth from low- and moderate-income communities and communities of color, while being shielded from CRA review.

The CRA rating system does not adequately incent financial institutions to take their CRA obligations seriously. Due to regulatory grade inflation for CRA assessments, the vast majority of institutions have received "satisfactory" and even "outstanding" ratings for their CRA performance, notwithstanding the under-service communities receive. This reduces institutions' incentive to better meet their CRA obligations.

Depository institutions must do more to serve low- and moderate-income communities throughout the states where these institutions do significant business. This means offering simple, low-cost bank accounts (including savings accounts), without minimum balances, with low cost, "no overdraft" checking and transactional services that are easily accessed after business hours, after many low- and moderate-income wage earners return from work. The need for "basic banking" services has not gone away. Institutions must do more to meet this need.

At the same time, the CRA should support the one type of financial institution that has been serving low-moderate-income communities and communities of color assiduously: community development financial institutions (CDFIs). These institutions will never have sufficient resources to perform the role that mainstream depository institutions must play, but they are an essential part of any effort to meet the needs of underserved communities. The banking agencies can and should do more to incent CRA-covered institutions to support CDFIs with investments and loans.

Common-sense updates to CRA regulations could substantially improve compliance.

As detailed below, The Leadership Conference urges the banking agencies to improve the way covered institutions serve low- and moderate-income communities and communities of color wherever they transact business. At a minimum, we strongly recommend the following reforms:

1. **Revise "assessment area" evaluations to reflect the actual scope of bank activities.**

2. **Eliminate the loop-hole for activities by affiliates of CRA-covered institutions.**

3. **Address the needs of unbanked and under-banked consumers and promote affordable transaction and savings accounts to help build assets.**

4. **Strengthen access to affordable small-dollar consumer loans for banks of all sizes.**

5. **Better encourage community development loans and investments.**

6. **Improve CRA ratings to make them more accurate and descriptive, incent not just lending but fair and sustainable lending and banking services, and discourage lending and other services that are unsustainable, predatory or discriminatory.**

What the recent crisis has shown

Some critics blame CRA for the subprime mortgage foreclosure crisis. However this blame is misdirected. Fully 94% of subprime mortgage loans were made by institutions not covered by CRA, including affiliates that were excluded from CRA compliance review.[8] Contrary to the critics' claims, the subprime foreclosure epidemic was the result of predatory loans made to people who were shut out of, or steered away from, the mainstream financial institutions covered by CRA.

In fact, the majority of CRA-covered institutions report that their CRA Special Lending programs were either profitable or break-even.[9] Similarly, a report issued by the Federal Reserve Board in 2000 concluded that mortgage loans satisfying the low- and moderate-income element of the CRA's lending test proved to be at least marginally profitable for most institutions, and that many institutions found that CRA lending performed no differently than other lending.[10]

The experience of community development financial institutions likewise demonstrates that responsible lending to low- and moderate-income people is consistent with safe and sound lending practices. A recent report on the FY 2007 performance of community development financial institution ("CDFI") banks, found that the majority were profitable. These institutions operate over 71% of their branches in low- to moderate-income communities. Similarly, community development credit unions had a loan loss rate that was on a par with that of mainstream credit unions.[11]

These data highlight the effectiveness of responsible, sustainable lending to low- and moderate-income communities. By cracking down on predatory lending, and making responsible, sustainable banking services more fully available to underserved communities, the banking agencies can have a substantial impact on improving the lives of millions of families across the country.

II. Specific Areas of Needed Reform and Recommendation Improvements:

Substantial legal, technological and business changes have dramatically altered the business of banking over the last three decades, necessitating corresponding changes in CRA. The most important changes and needed reforms are detailed below.

A. Branch-based assessment areas no longer reflect the scope of institutions' activities, and are not an appropriate basis for measuring CRA compliance.

CRA was passed to require each appropriate federal financial agency to use its authority, when examining a financial institution, to assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operations.

The regulations require the agencies to assess CRA performance based on "assessment areas" which must "include the geographies in which the bank has its main office, its branches, and its deposit-taking RSFs [remote service facilities], as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans."

The geographic scope of bank operations has expanded substantially since 1977 due to, among other things, regulatory changes in the 1990s, and particularly the Riegle-Neal Interstate Banking and Branching Act of 1994, which eliminated most restrictions on interstate bank acquisitions and expanded banks' ability to operate in several states. The result has been a shift in the banking industry from local institutions serving communities in a single location, to one in which most of the top institutions operate nationwide in multiple locations.

In 1977, there were no nationwide depository institutions, and most federally-insured commercial banks and credit unions (54%) had just a single location, with no branches at all. By 2007, the proportion of single location institutions was down to 24%, and most of the top 25 institutions were operating nationwide, taking deposits and making loans in markets across the United States.[12] Today, large institutions conduct most of their lending activity outside of the localities where they maintain branches.

Technological advances have further revolutionized banking in a way that has expanded institutions' geographic reach. Institutions now provide transaction, credit and savings services over the internet and telephone to customers across the country, far from the institutions' physical branch locations.

Large banks today make only 40% of their Home Mortgage Disclosure Act (HMDA) loans in their assessment areas (2007 data), down from over 70% in 1990.[13] Moreover, due to the increasing concentration of the banking industry, these top institutions are claiming a larger share of all banking deposits, and holding a larger share of consumer loans than was the case in 1977.[14] And even small banks now make close to one-third of their HMDA loans outside of their assessment areas.[15]

Studies by staff from the Federal Reserve Board and Joint Center for Housing Studies found that loans made by banks in their assessment areas were less likely to be "higher-cost" (and potentially predatory) than non-CRA assessment area loans. Loans made within banks' assessment areas constituted 31% of lower priced loans to low- and moderate-income areas and borrowers, but only 9% of higher-priced mortgages to those groups. Similarly, 13% of loans by institutions and their affiliates within their assessment areas were "higher-cost" as compared with 41% outside their assessment areas.[16] Put plainly, CRA-covered institutions make better loans in areas that are subject to CRA examination. Expanding examination areas to cover the geographies in which institutions actually do business will both make the CRA examinations more reflective of institution's actual compliance, and will improve the quality and cost of credit available to low- and moderate-income households in those areas.

Moreover, limited purpose institutions (those offering a narrow product line such as credit cards) may designate one assessment area around a headquarters for assessment under the community development test (e.g. Salt Lake or Sioux Falls), regardless of the coverage of their credit products or their asset size.

For retail banking companies with significant lending or deposit-taking activities covering a much broader geographic area than their branch locations, the areas they are "chartered to serve" no longer relate solely to their deposit-taking locations. These institutions' service to their communities is more

The Leadership Conference

properly measured by the national scope of their activities, rather than the streets on which their branches happen to sit.

Recommended Reforms:

- Revise "assessment area" evaluations to reflect the actual scope of bank activities: Include more depository institution lending under CRA by broadening assessment areas, affording better coverage to consumers and communities.

- In any state where an institution has at least $10 million in deposits or loans, the institution's CRA compliance should include low- and moderate-income neighborhoods in that state. This does not mean that every low- or moderate-income neighborhood in the state must receive loans, but rather that, in the aggregate, these communities need to be served on the same market share level that the bank has for other neighborhoods.

B. Because of the increased lending that CRA-covered institutions are doing through affiliates—including predatory lending—all affiliate activities should be part of the assessment of CRA compliance.

Much of the large banks' geographic expansion was accomplished through the acquisition of non-depository mortgage banking affiliates. Over the years, CRA-regulated institutions have increasingly conducted their mortgage lending through these affiliates. Yet under current CRA regulations, the lending activities of bank affiliates are not considered as part of the institution's CRA examination, unless the institution itself so chooses. The result is that a significant proportion of large bank lending activity is shielded from CRA review. For this reason, all affiliate activity should be evaluated for CRA compliance.

Much of the affiliate lending merits significant attention for CRA purposes. Affiliates of CRA-regulated institutions accounted for 12 to 13 percent of "higher-cost" mortgages in 2005 and 2006[17]. This lending was frequently predatory and often featured interest rates that increased dramatically in a short period of time, while carrying substantial penalties for refinancing prior to the rate increase. Many low- and moderate-income families saw their hard earned equity stripped away, and millions lost their homes. A large proportion of the families who were steered into these unsustainable loans would have qualified for less costly, more sustainable loans.[18]

The result of abusive mortgage lending by subprime mortgage lenders, including bank affiliates, has been a reversal of the economic gains made by African-American and Hispanic families over the last several decades. A study by the Center for Responsible Lending has found that, as a share of the population of homeowners as of 2006, an estimated 17% of Hispanic homeowners, and 11% of African-American homeowners, (as compared with 7% of non-Hispanic white homeowners) already have lost or are at imminent risk of losing their home.[19] The impact on neighborhoods of color is severe: The Center for Responsible Lending estimates that between 2009 and 2012, $194 and $177 billion, respectively, will have been drained from African-American and Hispanic communities in the "spillover" affects of nearby foreclosures.[20] Unsustainable and predatory lending destroys wealth and devastates neighborhoods. Such lending by an institution's affiliates should not evade consideration as part of the institution's CRA compliance review.

The Leadership Conference

Under current regulations, discriminatory or otherwise illegal credit practices by affiliates do not impact an institution's CRA rating where the institution does not choose to include the affiliate in its CRA evaluation. This makes no sense, and actually encourages institutions to make use of the affiliate structure to undermine the purposes of CRA. As stated in a 2004 letter to the Agencies from eight members of the House Financial Services Committee, including then-Ranking Member Frank, "[T]he corporate structure of the financial institution should not be determinative of whether an institution's lending activity is consistent with its obligations under CRA." For this reason, all affiliate activity should be evaluated for CRA compliance.

Recommended Reform:

- Eliminate the loop-hole for activities by affiliates of CRA-covered institutions: Consistently consider banks' affiliate lending, services and investment activities in the CRA evaluation of the related depository institution, in order to take into account their benefits and any risks. Predatory, unsustainable or discriminatory lending by an affiliate should negatively impact the CRA rating of the related institution.

C. Low- and moderate-income communities and communities of color remain severely under-served by mainstream financial institutions, making them even more vulnerable to high-cost and often predatory alternative institutions and products.

The expansion in financial services available to households served by mainstream depository institutions has been matched by a complete or near-complete lack of basic banking services for a large proportion of the households in low- and moderate-income communities and communities of color.

A recent FDIC survey found that 7.7% of U.S. households (approximately 17 million adults) are completely unbanked. Adding the number of households that are "under-banked" – that is, those who rely on alternative financial services providers, such as check-cashers, money-order providers, or payday lenders for at least some of their financial needs – the proportion of American households that are inadequately served by mainstream financial institutions is staggering: Over one-quarter of U.S. households, comprising approximately 60 million adults nation-wide. [21]

For communities of color, the picture is bleaker still: Almost 54% of African-American households are either unbanked or under-banked (21.7 % of African-American households are completely unbanked). The same holds true for 43.3% of Hispanic Households (19.4% of Hispanic households are unbanked), and 44.5% of American Indian and Alaskan households (15.6% of American Indian and Alaskan households are completely unbanked).[22]

For more than one-third of unbanked households, one of the reasons survey respondents selected for not having an account was not having enough money to need one – suggesting the absence of accounts structured for low-dollar consumers. Other reasons commonly given are not writing enough checks to make an account worthwhile, and high minimum balance requirements. Among the unbanked households that were previously banked, nearly one-third closed their account because of the costs of maintaining it (i.e., minimum balance requirement, service charges, and overdraft fees).[23]

These households' fears of excessive fees are well-founded: In the area of overdraft fees, for example, institutions have charged their customers $23.7 billion per year in overdraft fees to cover overdrafts of $21.3 billion. This means consumers had to repay $45 billion for $21.3 billion in very short-term credit.

The Leadership Conference

Low- and moderate-income consumers can ill-afford the risk of incurring such high-cost debt. The FDIC survey findings, and in particular the experiences of previously banked consumers who left due to high fees and costs, demonstrate the need for simple, low cost services for clients with small-balance accounts.[24]

The costs of being unbanked or under-banked are extremely high. A Brookings Institution study calculated that lower-income families spend hundreds or thousands of extra dollars each year for basic financial services.[25] Moreover, without a bank account, it is difficult to establish credit, or to obtain a loan from a mainstream financial institution.[26] It is also difficult to accumulate liquid savings for emergencies, or store cash without risk of theft, loss, or destruction in the event of fire. While there is a proliferation of expensive payment services and triple-digit APR small loans, there is no segment of the alternative financial sector that offers savings opportunities.

In the mortgage arena, communities of color were targeted by non-bank mortgage lenders who provided them with higher-cost, less sustainable loans. These non-bank lenders were in some instances affiliates of CRA-covered institutions whose CRA evaluations did not take into account the frequently predatory nature of their affiliates' lending practices. In fact, affiliates of CRA-regulated institutions accounted for 12 to 13 percent of higher-cost mortgages.[27]

Recommended Reforms:

- Address the needs of unbanked and under-banked consumers and promote affordable transaction and savings accounts to help build assets. CRA examinations should evaluate the extent to which banks offer convenient, affordable transaction and savings products and asset-building activities, for low- and moderate-income people, wherever they live.

- For banks of all sizes, the "Services Test" should apply to evaluate the characteristics, quality and actual volume of savings and transaction products designed for low- and moderate-income consumers.

- For large banks, change the core criteria for Services Test to include three equally-weighted factors where good performance is required for a Satisfactory rating:

    - Demonstrate that reasonable access to services is provided to low- and moderate-income areas and consumers, through delivery systems, including branch distribution and alternative access (e.g. work place, shopping place and remote options), for the full range of banking products.

    - Demonstrate access to affordable, transparent transactions and savings accounts specifically designed and marketed to meet the needs of low- and moderate-income consumers. The bank should be evaluated based on both design of product features and product volume. A showcase product with no volume is show without substance. Institutions' market share for products designed for low- and moderate-income consumers should be on a level with their market share for other consumers.

The Leadership Conference

- Demonstrate a reasonable level and variety of community development services that support asset building for low- and moderate-income consumers and/or address small business needs.

- Require large banks to receive at least a "Satisfactory" rating on the new Services Test in order to get a composite "Satisfactory" rating.

- For small and intermediate small banks, add an explicit factor for considering the volume and design of savings and transaction products developed to meet the needs of low- and moderate-income customers.

D. Low- and Moderate-income communities and communities of color are too often forced to rely on extremely high-cost and often unscrupulous lenders to meet their small-dollar liquidity needs. CRA regulations should encourage institutions to provide affordable small-dollar loans.

Low- and moderate-income consumers and people of color have severely limited opportunities for obtaining small, affordable consumer loans. According to the 2009 FDIC survey, 28% of unbanked and 40% of under-banked households use alternative credit products such as payday, pawn shop or refund anticipation loans. These products are extremely high-cost, with APRs in the hundreds. Every month, under-banked households divert funds needed for essential purchases in order to service their high-cost consumer debt. As unemployment rises, and family budgets are stretched to the breaking point, high-cost debt service materially undermines the economic stability and health of these families.

The provision of affordable small consumer loans should be an essential component of institutions' service to these communities. Yet currently, consumer lending is not an important element of the great majority of CRA examinations.[28] Moreover, credit card and other "limited purpose" banks are not evaluated at all based on consumer lending, but solely on a "Community Development Test." These tests should be revised to more accurately measure these institutions' provision of affordable small loan products to low- and moderate-income individuals.

Recommended Reforms:

- Change CRA regulations to clearly provide an incentive for institutions of all sizes to address the small-dollar consumer lending needs of low- and moderate-income individuals. This does not mean short-term loans, but simply small-dollar loans. For example:
  - For large banks: Consistently include consumer lending programs designed for, and made accessible to, low- and moderate-income people in the "Lending Test," and require data collection to document the targeted loans. This would provide an incentive for targeted programs, but not require all lenders to collect data on credit cards or other traditional consumer loans.
  - For limited purpose banks (generally offering one credit product, such as a credit card or auto loans): add a criterion to the existing Community Development Test to encourage innovative and effective access to affordable, small-dollar loans or other

The Leadership Conference

affordable consumer credit for low- and moderate-income individuals and small businesses.

- For small and intermediate small banks: Include additional language in the rule and ratings guidance to enhance consideration of small consumer loan programs as a feature of the small bank lending test, so that such lending would be considered consistently, particularly for a high satisfactory or outstanding rating.

E. Community development financial institutions have expertise in meeting the needs of under-served communities, and this expertise can be leveraged by encouraging CRA-covered institutions to support them.

For many unbanked and under-banked consumers, the only responsible services to which they have access are those provided by community development financial institutions ("CDFIs"). CRA examinations should place greater emphasis on the institutions' loans, grants and investments in CDFIs aimed at meeting the needs of underserved communities. In addition to serving low- and moderate-income households with direct loans, savings accounts, and other financial services, CDFIs also fund revitalization projects in low- and moderate-income communities. These projects improve the safety and quality of life in these communities, stabilize the housing stock and enable small businesses to establish themselves.

Many low- and moderate-income communities have been devastated in the recent crisis, and are urgently in need of assistance to rebuild. CDFIs are critical to this effort.

CDFIs did not even exist in 1977. Today, the Department of the Treasury, through its Community Development Financial Institutions Fund, has a process for certifying CDFIs and supporting their work. The banking agencies have the opportunity through CRA regulations to expand CDFIs' capacity for supporting and revitalizing underserved communities. The regulations should encourage bank lending and investment in CDFIs for community development purposes, i.e., affordable housing, community services for low- and moderate-income individuals, financing economic development for small businesses and community revitalization of low- and moderate-income or distressed areas.

Recommended Reforms:

- Better encourage community development loans and investments. Consider a new community development test for large retail banks (consistent with what is generally required for intermediate small banks, but focused more strongly on lending and investments).

- Enhance guidance that emphasizes community development activities for achieving higher ratings for the small and intermediate small banks. Some specific approaches could include:

    - Separate consideration of community development lending from the retail lending test, and consider it with community development investments as part of a new community development test for all large banks. The test would measure financing through lending or investments in community development purpose projects. It would also continue to favorably consider targeted grant funding.

- Require large banks to achieve at least a "Satisfactory" rating for the community development test to receive a composite "Satisfactory" rating.

- Enable small banks to receive regular consideration (not just "extra credit") for community development lending or investments as one factor on which they are evaluated.

- Enable banks to make community development loans or investments, regardless of whether they are part of their normal geographic assessment area, if they achieved a "Satisfactory" on all tests at their last examination.

F. CRA evaluations have not properly assessed, encouraged, or rewarded institutions' CRA compliance, and have not imposed sufficient negative consequences for predatory, unsustainable or discriminatory practices.

The current CRA evaluation system neither properly assesses nor encourages CRA compliance. A large part of the problem is grade-inflation – that is, the vast majority of institutions receive very favorable assessments despite a wide range of performance records. Put another way, the range of grades is too narrow to properly distinguish excellent performance from the mediocre or wholly inadequate. Additionally, while CRA exams entail several components – large banks are evaluated by lending, services and community development tests – it is too easy for institutions to achieve high ratings overall while underperforming on one of the component tests.

Similarly, it is too easy for institutions to receive positive ratings notwithstanding discriminatory or predatory lending or bank accounts with high overdraft fees and other wealth-stripping features, either by affiliates or outside their assessment areas.

Ninety percent of all banks receive a composite "Satisfactory" rating. Less than 1% of banks receive a "Needs to Improve" or a "Substantial Noncompliance" rating. Approximately 9% of all banks receive "Outstanding" ratings. Of the largest institutions, those with over $10 billion in assets, the majority are receiving "Outstanding" ratings. This is true notwithstanding the large proportion of low- and moderate-income communities that are not adequately served. Thus, institutions have limited incentives to engage in activities that address CRA objectives at a higher level or to strengthen performance.

The CRA rating system is the only enforcement mechanism for CRA compliance. Failures in CRA ratings thus undermine the CRA overall. Improvements are needed to ensure that only truly satisfactory compliance achieves a "satisfactory" rating, and only those institutions whose performance is outstanding receive the agency endorsement associated with an "outstanding" rating.

Recommended Reforms:

- Improve CRA ratings to make them more accurate and descriptive; incentivize not just lending but fair and sustainable lending and other services; and discourage lending and other services that are unsustainable, predatory or discriminatory. Revise the CRA regulation and the ratings system to ensure a transparent, public evaluation of significant differences in bank performance and to clarify that lending that is not safe and sound will negatively affect the CRA rating. Consider some or all of the following approaches:

The Leadership Conference

- Include in the CRA regulation a provision stating that loans that are originated in a manner that fails to promote sustainable borrowing, or are otherwise not compliant with regulation or regulatory guidance, will not be considered positively as responsive to community needs and will negatively affect the CRA rating.

- For all banks, revise the ratings approach to differentiate levels of satisfactory performance. Composite bank, State and multi-state MSA ratings should include a short descriptor that designates "high" and "low" satisfactory or simply "satisfactory" performance. Include these descriptions in monthly ratings press releases and on the FFIEC web sites. Also, enhance the searchable database of all available bank ratings, including composite and, where applicable, test ratings at the State and multi-state MSA levels.

- For large banks, consider each test to have equal weight, requiring a satisfactory level of performance in each for a composite rating of "Satisfactory." The alternative would be to seek approval for a Strategic Plan.

- For large banks, in each test, add more specific performance criteria to clarify what is needed for a "Low Satisfactory", "High Satisfactory" or "Outstanding" rating.

III. Conclusion

Low- and moderate-income communities and people of color continue to lag behind white middle class families in their access to essential banking services. Without these services, families are at a disadvantage as participants in modern economic life. Mainstream banking institutions have a well-justified legal obligation to serve all communities in which they transact significant business, and must do more to provide credit, savings, and transaction services designed to meet the needs of low- and moderate-income households. The Community Reinvestment Act continues to have a significant role to play in encouraging institutions to meet this obligation. To fulfill this role effectively, the enforcement mechanisms established by regulation must be updated to keep pace with the many changes that have taken place since CRA was enacted. By making these changes, the banking agencies will help ensure that the benefits of economic opportunity are more fully shared by all segments of our communities.

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[1] FDIC National Survey of Unbanked and Underbanked Households (Dec. 2009) at 15 http://www.fdic.gov/householdsurvey/ ("FDIC Survey")

[2] Vertical Capital Solutions, Historical Performance of Qualified vs. Non-Qualified Mortgage Loans, February 2010 (on file with CRL) (30 percent of the borrowers in the sample, which included all types of loans and borrowers, could have received a safer loan); *see also* Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy As Housing Boomed, Industry Pushed Loans To a Broader Market*, Wall Street Journal at A1 (Dec. 3, 2007) (61 percent of subprime loans originated in 2006 "went to people with credit scores high enough to often qualify for conventional [i.e., prime] loans with far better terms.").

[3] Higher-rate conventional mortgages were disproportionately distributed to borrowers of color, including African-American, Latino, American Indians, Alaskan Natives, Native Hawaiians, Pacific Islanders, and Hispanic borrowers. *See* R.B. Avery, G.B. Canner, and R.E. Cook, Summer 2005. "New Information Reported under HMDA

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[4] Canner and Bhutta, "Staff Analysis of the Relationship between the CRA and the Subprime Crisis" (Nov. 2008) www.federalreserve.gov/newsevents/speech/20081203_analysis.pdf at 7.
[5] Federal Reserve Board Chairman Ben S. Bernanke, "The Community Reinvestment Act: Its Evolution and New Challenges," Speech at the Community Affairs Research Conference, Washington, D.C. (March 30, 2007) http://www.federalreserve.gov/newsevents/speech/Bernanke20070330a.htm#f2
[6] "The CRA within a Changing Financial Landscape," Avery, Courchane and Zorn (Feb. 2009) at 41 www.frbsf.org/publications/community/cra/cra_within_changing_financial_landscape.pdf (hereafter "Avery, Courchane and Zorn").
[7] Canner and Bhutta at 7.
[8] Staff Analysis of the Relationship between the CRA and the Subprime Crisis, Nov. 21, 2008, Board of Governors of the Federal Reserve, Division of Research and Statistics (available at http://www.federalreserve.gov/newsevents/speech/20081203_analysis.pdf).
[9] "CRA Special Lending Programs," Avery, Bostic and Canner, Federal Reserve Bulletin (Nov. 2000) at 723, www.federalreserve.gov/pubs/bulletin/2000/1100lead.pdf (Ninety-three percent of responding CRA-covered institutions so reported).
[10] Board of Governors of the Federal Reserve System, "The Performance and Profitability of CRA-Related Lending, A report submitted to Congress pursuant to Section 713 of the Gramm-Leach-Bliley Act of 1999." (July, 17, 2000) at 45-46, www.federalreserve.gov/boarddocs/surveys/craloansurvey/cratext.pdf
[11] The CDFI Data Project, Fiscal Year 2007, Seventh Edition, "Providing Capital, Building Communities, Creating Impact" http://www.opportunityfinance.net/industry/industry_sub1.aspx?id=248
[12] Avery, Courchane and Zorn at 35, 36.
[13] Avery, Courchane and Zorn at 41.
[14] The market share of total deposits held by top 25 CRA-regulated institutions grew from under 20% in 1977 to over 50% by 2007. Similarly, the top 25 institutions held 15% of consumer loan dollars in 1977, and held fully 70% in 2007. Avery, Courchane and Zorn at 36.
[15] Avery, Courchane and Zorn at 41.
[16] Canner and Bhutta at 8.
[17] Canner and Bhutta at 7.
[18] See Congressional Oversight Panel, Special Report on Regulatory Reform(2009) http://cop.senate.gov/documents/cop-012909-report-regulatoryreform.pdf at 31;
[19] Bocian, Li and Ernst, "Foreclosures by Race and Ethnicity: The Demographics of a Crisis (June 18, 2010) at 3, www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf
[20] Id.
[21] FDIC Survey at 11.
[22] FDIC Survey at 10.
[23] FDIC Survey at 24-25.

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[24] Center For Responsible Lending, "Quick Facts on Overdraft Loans," http://www.responsiblelending.org/overdraft-loans/research-analysis/quick-facts-on-overdraft-loans.html last visited on July 12, 2010.

[25] Matt Fellowes, "From Poverty, Opportunity: Putting the market to Work for Lower Income Families" at 20-35 (The Brookings Institution Metropolitan Policy Program, July 2006) http://www.brookings.edu/metro/pubs/20060718_findings.pdf

[26] Michael S. Barr, "Banking the Poor," 21 Yale J. on Reg. 121, 138 (2004).

[27] Canner and Bhutta, "Staff Analysis of the Relationship between the CRA and the Subprime Crisis" (Nov. 2008) at 7, www.federalreserve.gov/newsevents/speech/20081203_analysis.pdf

[28] Under the Large Bank lending test, consumer lending is only required to be reviewed if it is a "substantial majority" of the bank's business or, for targeted small-dollar loan programs, if requested by the bank (as "responsive lending activities"). Large banks have approximately 15% of assets in consumer lending (June 30, 2009 call report data). Participation in consumer lending is not necessarily considered under the small and intermediate small bank performance criteria.