

October 14, 2009

Chairman Barney Frank
Representative Waters
House Financial Services Committee
2129 Rayburn Office Building
Washington, DC 20515

RE: Reinserting the Community Reinvestment Act (CRA) back into the CFPA

Dear Chairman Frank:

It has been over two years since the American economy was devastated by reckless lending, and the House Financial Services Committee will soon mark-up seminal legislation establishing a Consumer Financial Protection Agency (CFPA) meant to avoid repeating such a catastrophe. While we applaud your commitment to take up the mantle of financial regulatory reform, we ask that you amend your proposal and place the Community Reinvestment Act (CRA) under the jurisdiction of the CFPA just as the President proposed.

As you have stated, the CFPA's central mission is to protect consumers from abusive and discriminatory lending. CRA is integral to protection against discriminatory, deceptive, and unsafe lending practices. Redlining, the refusal to lend to neighborhoods, and "reverse" redlining, saturating communities with abusive lending, have been experienced by communities of color for decades. CRA directly combats redlining and reverse redlining by requiring banks to serve all communities in a safe and sound manner. Depriving the CFPA of jurisdiction over CRA removes one of the most effective anti-discrimination laws from the CFPA's purview.

CRA has also played a key role in encouraging investments in community development activities that benefit low- and moderate-income people and underserved communities.

Thus, not only should CRA be under the jurisdiction of the CFPA but the CFPA should have explicit responsibilities to address community development concerns and issues in its CRA enforcement.

The same competitive pressures among the agencies for chartering and overseeing lenders have undermined enforcement of CRA just as severely as enforcement of other consumer protection laws. The existing agencies last undertook a major reform of CRA in 1995. In the subsequent fourteen years, the industry underwent such a profound transformation that bank lending was increasing faster in geographical areas outside the coverage of CRA exams than in geographical areas covered by CRA exams. Instead of reforming CRA to keep pace with industry changes, the existing regulatory agencies' most significant action since 1995 was to weaken CRA examination and data reporting requirements for mid-size banks with assets between \$250 million and \$1 billion. Fearing that depository institutions would choose the Office of Thrift Supervision as their regulator, the Federal Reserve, the FDIC, and the Office of the Comptroller of the Currency weakened their CRA examination

requirements in response to the drastic changes the Office of Thrift Supervision (OTS) had enacted.

The existing regulatory agencies have failed to adequately enforce CRA. The agencies have given passing ratings to 98 to 99 percent of banks and thrifts for several years. Academic studies indicate the likelihood of CRA grade inflation. Moreover, since 1988 the Federal Reserve Board states that of the 13,500 bank applications, it denied only 8 bank mergers due to community or consumer protection concerns. In addition, the regulatory agencies rarely imposed any consumer protection or fair lending conditions on banks when they approved mergers. Finally, after the Office of the Comptroller of the Currency (OCC) preempted state anti-predatory laws, the OCC did not refer a single lender for possible racial discrimination to the Department of Justice from 2004 through 2008. The OTS made only eight referrals during this time period. This lax oversight occurred as abusive lending was surging and banks were acquiring lightly regulated mortgage companies with large scale subprime lending operations.

Not only were the existing agencies ill-equipped to enforce CRA in the past, they will not be able to adequately enforce CRA in the future as CRA is expanded to cover non-bank institutions. If Congress passes H.R. 1479 or similar CRA expansion legislation, the logical outcome of the current regulatory landscape would be to add even more regulatory agencies overseeing CRA obligations applied to mainstream credit unions, mortgage companies, insurance firms, and investment banks. It is hard enough for the current bank agencies to agree to updates of the CRA regulation. If even more agencies would have to coordinate CRA regulation on an interagency basis as CRA modernization progresses, CRA regulation and enforcement would quickly become out-of-date. Placing CRA jurisdiction under the oversight of the CFPB is the only sensible policy choice in order to create the foundation for meaningful and lasting CRA modernization. The alternative is more regulatory stagnation and malaise.

Thank you for consideration of our views. Should you have any questions about this letter, please direct them to Josh Silver, Vice President of Research and Policy, National Community Reinvestment Coalition on 202-464-2708 (jsilver@ncrc.org).

Sincerely,

A New Way Forward
Accountable America
Americans for Financial Reform
Campaign for America's Future
Common Cause
Community Reinvestment Association of North Carolina
Consumer Action
Consumer Federation of America
Consumers Union
Demos
Empire Justice Center

Leadership Conference on Civil Rights
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Fair Housing Alliance
New Jersey Citizen Action
Public Citizen
Sargent Shriver Center on Poverty Law
The Sustainability Group at Loring, Wolcott & Coolidge
USAction
Western States Center
Woodstock Institute