July 29, 2010

Regulation Comments
Chief Counsel's Office
ATTN: OTS-2010-0019
Office of Thrift Supervision
1700 G. Street, N.W.
Washington, DC 20552

Re: OTS-2010-0019 - Community Reinvestment Act Regulation Hearings

Dear Sir or Madam:

The South Carolina Appleseed Legal Justice Center (SC Appleseed) thanks you for convening Community Reinvestment Act (CRA) Regulation hearings and fully supports the strengthening of the CRA through regulatory rulemaking. SC Appleseed is a non-profit legal organization that advocates on behalf of low-income persons throughout South Carolina. Our organization is dedicated to creating and supporting systemic change by working through the courts and legislature in the areas of civil law that are most pressing to low-income persons in our state. These areas include health care, education, housing, community economic development, consumer law, public benefits, family and elder law, and immigration issues. As part of our involvement in community economic development issues, we work diligently to support strong and fair laws that promote economic growth and stability for low-income individuals and families.

SC Appleseed applauds the Office of Thrift Supervision's intention to improve the CRA. However, we must stress that regulatory action alone is not sufficient. To maximize safe lending and investment in communities, Congress must take steps to ensure that the CRA is applied broadly throughout the financial industry. The need for this broad application is evident when looking at the ongoing foreclosure and economic crises. Neglect of certain parts of the CRA regulation has meant that the CRA has not been utilized as powerfully as it could be. In order to realize the full potential of the CRA, we believe that the changes outlined below should be implemented as soon as possible.

First, we suggest that the assessment areas on CRA exams cover the majority of banks' loans. Currently, only 25% of all home purchase loans made by banks are operating in their assessment areas. This means that the majority of bank loans are being made outside of assessment areas. It also means that these loans are subject to less scrutiny. Research has shown that bank loans outside assessment areas are more likely to be high-cost loans than loans in assessment areas since

they are not scrutinized by CRA exams. Your agency was the one agency that went beyond the official assessment areas on CRA exams for non-traditional thrifts. Even those exams, however, only covered a minority of the thrifts' loans. We support a significant improvement upon your agency's precedent by including the majority of bank and thrift loans on CRA exams.

Secondly, we support the mandatory inclusion of mortgage company affiliates on CRA exams. Currently, the CRA allows banks the option of including their mortgage companies and other non-depository affiliates on CRA exams. This option to exclude certain affiliates provides an incentive for banks to include those affiliates that perform well under the CRA but exclude those that are engaged in risky or discriminatory policies. We believe that all non-depository affiliates should be included on CRA exams to ensure the affiliates are affirmatively responding to credit needs in an appropriate manner.

Third, CRA exams should explicitly examine lending and services to minority borrowers, businesses, and communities. Much research indicates that minorities receive larger percentages of subprime loans than non-minorities, creditworthiness notwithstanding. To lessen these disparities, lending and branching by race of borrower and neighborhood could be considered on CRA exams. Prior to the 1995 changes to the CRA regulation, lending to minorities was an assessment factor. We urge Congress and the OTS to revive these criteria as assessment factors on CRA exams.

Fourth, CRA exams should be improved by including more meaningful distinctions in performance. Such distinctions are not possible with a scale of only four possible ratings. Additional ratings such as "Low Satisfactory", "High Satisfactory", and other ratings could be added to the existing four ratings. These minor changes to the CRA exam would create a more rigorous exam that promotes safe lending from institutions.

Since the frequency of mergers (which have traditionally been a major means of CRA enforcement) has declined and will likely to continue to do so, we suggest that additional enforcement mechanisms be put in place. Such mechanisms include the requirement that institutions receiving a low rating in any assessment area or a low rating overall be required to submit CRA improvement plans. These plans should be subject to public comment and other public scrutiny.

Additionally, fair lending reviews could be made more rigorous to probe for evidence of illegal and discriminatory lending. Fair lending reports on CRA exams should consist of more detailed explanations of the fair lending tests used instead of the one or two sentences currently on most CRA exams. Further, fair

lending tests could be improved by including a review of whether an institution financed an unsafe or unsound loan.

We recognize that many banks do perform at an outstanding level on CRA exams. While we applaud banks that are showing superior CRA performance, it is important that these banks not be rewarded for their performance by lessening the frequency of their CRA exams or by allowing exemption from merger review. We believe that lessened scrutiny of banks that perform well will only result in a decline in CRA performance rather than further improvement in performance.

Sixth, CRA small business data should be enhanced to include the race and gender of small business borrowers. In addition, requiring census tract level disclosure of community development loans and investments, types of deposit accounts by census tract location of the residence of bank customers, and data on the type of consumer lending by borrower demographics and census tracts would promote access to affordable consumer loans and to basic bank services. Other publicly available data that holds lenders accountable, such as the Home Mortgage Disclosure Act data, has played a vital role in increasing responsible lending to traditionally underserved borrowers. By applying a similar rationale, enhanced CRA data could provide similar benefits.

Finally, we are supportive of banks receiving favorable CRA consideration for investing in multi-regional funds for purposes like Low-Income Housing Tax Credits for banks that respond very well to the needs in their assessment areas. Investing in multi-regional funds helps to serve diverse geographical areas, including rural areas. However, we are concerned that allowing such favorable consideration for all banks would remove the focus from the banks' existing duty to properly serve the consumers in their assessment areas. Therefore, we strongly feel that this favorable consideration should be limited to banks that have ratings of "Outstanding" because these banks would have already met the needs of those in their assessment areas.

It is undeniable that the financial crisis has had an extremely deleterious effect on low-income households across the nation. SC Appleseed believes that the regulatory agencies can contribute to sustainable economic recovery by updating the CRA regulation as outlined in this letter. We also believe that Congress must take action to apply the CRA to non-bank institutions including mainstream credit unions, independent mortgage companies, insurance firms, and investment banks.

Again, we appreciate the opportunity to address these issues with the OTS. Should you like additional information regarding our views on this issue, please

do not hesitate to contact me at 803-779-1113 ext. 104 or at cstewart@scjustice.org.

Sincerely,

Clanitra L. Stewart
SC Appleseed

cc: Senator James DeMint
Senator Lindsey Graham
Representative J. Gresham Barrett
Representative Henry E. Brown, Jr.
Representative James E. Clyburn
Representative Bob Inglis
Representative John M. Spratt, Jr.
Representative Joe Wilson