August 31, 2010

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regs.comments@occ.treas.gov

Robert E. Feldman, Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
comments@FDIC.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors
Federal Reserve System
20th St and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: OTS-2010-0019
regs.comments@ots.treas.gov

Re: Interagency Request for comments relating to potential CRA Modernization:
Community Reinvestment Act Regulation Hearings
OCC (Docket No: OCC-2010-0011)
Board (Docket NO: R-1386)
FDIC (RIN 3064-AD60)
OTS (OTS-2010-0019)

Dear Sir or Madam:

Union Bank, N.A. ("UB") respectfully submits this letter in response to the interagency requests for comments relating to potential Community Reinvestment Act ("CRA") modernization. We greatly appreciate being given the opportunity to provide our comments.

UnionBanCal Corporation is the second largest commercial bank holding company headquartered in California, based on assets at March 31, 2010, and is a proud member of the Mitsubishi UFJ Financial Group (MUFG, NYSE:MTU), one of the world's largest financial organizations. UnionBanCal's primary subsidiary is Union Bank, N.A., which operated 339 banking offices and 561 ATMs in California, Washington, Oregon and Texas on March 31, 2010, as well as two international facilities. Following two FDIC-assisted acquisitions that took place in April 2010, the bank currently operates 396 banking offices throughout our footprint. We are a full service commercial bank providing a broad mix of financial services, including trust and investment management services, private banking, and consumer and business lending with expertise in commercial, middle market, corporate and real estate lending. The Bank serves commercial clients across the country, and has a retail customer base of approximately 1 million households.

Geographic Coverage
CRA has historically been place-based – involving the evaluation of financial institutions in the areas where they have a physical branch presence and receive their deposits. For traditional branch-based financial institutions, that remains a valid approach; however, there has been an undue emphasis placed on larger, more populated assessment areas designated as "full scope" assessment areas. In such areas, there is greater competition which leads to overheating the market leaving the less populated – and often poorer – markets unable to attract loans and investments to their regions.

For traditional branch-based banks, the expansion of assessment areas to include geographies without branches or physical deposit taking entities would undermine much of the value of CRA to local communities. Retaining current assessment areas based on branch location is in keeping with the underlying principles and spirit of CRA, which are tied to the gathering of deposits and the benefits of FDIC insurance. A traditional bank becomes a part of its local community through the physical presence of its lending and service personnel. As an active member of those small, neighborhood communities, a bank gains ability to determine the needs of the local community, and thus provides a variety of products and services to meet those specific needs. This cannot be done from a distance.

That said, placing primary emphasis on full scope assessment areas based upon where the most deposits are taken, rather than on where the needs are greatest, should be reconsidered. The present practice has created the unintended consequence of creating "credit deserts" in areas which have not been designated as full scope assessment areas for any large bank. Financial institutions should be encouraged to evaluate where there are unmet needs, and to take steps to meet them. Rather than having all of the large banks evaluated in the same few large full scope areas, each should be evaluated in the areas that they have designated as having the greatest need.

While we would not advocate that institutions be *required* to be evaluated in areas which are outside their branch footprint, UB would argue that when it makes sense for an institution to invest outside of its footprint, it be given favorable credit for doing so. The precedent has been established to take this position by the credit granted for community development activities in areas that have been declared distressed or underserved middle-income rural communities, and for those in designated disaster areas.

For non-traditional institutions which take a majority of their deposits through the internet, a broader definition of assessment area is more appropriate. It makes little sense to limit their evaluation to the limited area(s) where they have a physical presence; therefore, we would support the implementation of a broader test such as the CD Test used for Wholesale and Limited Purpose Banks.

CRA Performance Tests – Community Development
The Agencies requested comment on whether the existing CRA performance tests, and/or their thresholds be modified. In addition, comments were requested on community development. We have combined them into a single response. As a large bank, we have limited our comments to the large bank evaluation, which presently weights the Lending Test 50% and each of the Service and Investment Tests 25%.

One of the key tenants of the CRA is community development ("CD") activities, which are woven into all three tests; however, the present evaluation procedures do not adequately recognize the value and importance of these activities – particularly for lenders who are actively engaged in CD lending, investments and services. This opinion is widely accepted by lenders and community leaders, as well making this is an area in which a modification of the existing examination process could be endorsed by individuals from both sides of the aisle.

At present, CD lending receives favorable CRA credit in the Lending Test; however, it is difficult to ascertain how much credit is given. Based on a review of some CRA examinations, the credit appears "neutral" at best. There is an outcry among community activists and the regulatory community that more banks should get involved in banking the unbanked (or under-banked) populations. The Bank on California initiatives offer a good example of banks collaborating with public and private industry to move unbanked or under-banked individuals into mainstream banking. Considerable efforts have been expended on this initiative, which has resulted in the opening of tens of thousands of checking and savings accounts for formerly unbanked households; however, it remains unclear what, if any, real benefit this has on a bank's CRA rating. In order to continue to be engaged in these kinds of activities, lenders need to be encouraged to do so, and setting clear expectations around CRA credit would be well-received.

UB suggests the introduction of a new Community Development Test that would replace the Investment Test. This new test would evaluate the combined impact of CD lending, investments and services in a single test rather than be spread out as in the current three test model. CD activities to support the development and/or rehabilitation and retention of affordable rental housing, economic development projects, community facilities such as child care centers and charter schools, community loan funds, microfinance loan funds and other CD activities in LMI communities should qualify for this test. Rather than concentrating on the total volume of loans, the number of loans made should also be considered in order to encourage much needed smaller loans to nonprofits and small businesses that meet the definition of community development.

A precedent has been established for flexible evaluation standards. For example, today a bank is allowed to have Consumer lending efforts considered on a case-by-case basis depending on its business strategies and objective. We maintain that the introduction of a flexible CD Test is in keeping with the spirit of flexibility already in place within the regulation.

The introduction of the new test would require re-weighting of all three tests to account for the removal of CD activities from the existing Lending and Services tests, and to encourage banks to engage in these much needed activities.

While we support the development of this new CD Test, UB recognizes that not every bank actively engages in such activities. We recommend the Agencies consider giving financial institutions the choice of which approach they wish to adopt, since some institutions (including many community banks) are not significantly engaged in CD activity and do not have the resources and/or expertise to do so. They would then have the option to stay focused on their core activities, and not be driven into products that are not part of their business strategy.

Multi-Investor Funds
We recommend that full consideration be given for investments in Multi-Investor Funds when they are investing in a larger geographic region that includes the bank's assessment area.

The rule for applying credit has worked to the detriment of the purpose of CRA. It has created a disincentive to participate in regional and national funds that have been enormously beneficial in community development work. One of the success stories of CRA has been the development of these very effective funds. However, the current examination methodology is deterring bank participation. The need for some banks to get a "side letter" to demonstrate that the funds are being earmarked for the bank's assessment area makes it less likely for banks to want to participate. The problem is exacerbated because the need for side letters is inconsistent from bank to bank, as not all examiners require them and not all examiners accept them. The funds have suffered as have the communities they serve. This situation is further exacerbated by the fact that larger national banks often have significant overlap in "full scope" assessment areas which receive greater evaluative consideration, thereby creating undue competition in certain markets leaving other markets less desired and underfunded.

Small Business and Consumer Lending Evaluations and Data
Whether intentional or not, the current examination procedures tend to result in more weight being attributed to mortgage lending than small business lending. Almost daily, there are reports to suggest that a majority of new jobs created in the U.S. come from small businesses. President Obama is working with congressional leadership to enact stimulus for small business development activities. As such, financial institutions should not be penalized for having little or no mortgage lending activities, and no minimum weighting should be applied to mortgage lending operations.

Additionally, financial institutions should be rewarded for their lending activities that support lending to small businesses, regardless of the location of the business. Today, regulators place undue credit on the loans made to businesses located in LMI geographies in their evaluation of CRA performance. While lending in LMI geographies should continue to be encouraged and evaluated, this should not overshadow the importance of small business lending in all geographies. Small businesses are not like individual consumers or families, who are demonstrably low- or moderate-income, or live in LMI communities. A small business may be located outside an LMI community, while providing products or services that help a neighboring LMI community or employ individuals who are LMI. Conversely, simply by its location in an LMI geography a small business may not necessarily benefit that community, and may or may not even employ LMI individuals. Therefore, exam procedures should recognize that loans to businesses outside of LMI areas can equally benefit LMI individuals and geographies.

Technical assistance to small businesses is treated inconsistently in the current examination procedures. The current Q&As make clear that CD services that provide technical assistance to small businesses will receive favorable consideration. However, in the event that a lender makes a loan to or investment in a nonprofit that provides technical assistance, no CRA credit is provided *unless* the majority of the businesses served have a revenue size of $1 million, or it can be proven that the majority of jobs created by these businesses are for LMI individuals. The level of research necessary to meet that criteria renders these loans essentially ineligible for CRA

consideration. We request that credit be consistently applied to lending, investments and service activities.

The new Dodd-Frank Act introduces new small business reporting requirements within the Equal Credit Opportunity Act ("ECOA"). We encourage the Agencies to align CRA reporting requirements with that of the ECOA in order to improve data integrity and reduce regulatory burden associated with reporting small business lending, and to avoid confusion for the general public. Little can be accomplished by adopting multiple definitions and reporting requirements.

Consumer lending activities should remain optional. Mandatory consumer coverage might actually result in the erosion of the core mission of the CRA: to promote community development activities.

Effect of Evidence of Discriminatory or Other Illegal Credit Practices on CRA Performance Evaluations

CRA was established to encourage banks to help meet the credit needs of their *entire* communities, including low- and moderate- income (LMI) households and neighborhoods, subject to safe and sound banking. While the Fair Housing and the Equal Credit Opportunity Acts, among others, were designed to provide comprehensive safeguards for consumers in minority groups, CRA remains the <u>only</u> federal law that focuses on the needs of the population that are not considered "protected classes", but may be historically under-banked or underserved and the focus needs to remain on those households and neighborhoods. While it is time to make change to the CRA regulation, as the agencies consider expanding its reach, we recommend that it be flexible and focused so that banks can allocate resources to what is most critically needed over time. We hope the agencies will avoid trying to make CRA all things to all people which would stretch resources too broadly and dilute its effectiveness.

UB advocates that the Equal Credit Opportunity Act, Fair Housing Act, Home Ownership and Equity Protection Act, Real Estate Settlement Procedures Act, Truth in Lending Act, and Federal Trade Commission Act each provide their own penalties, outside of the CRA. Banks are routinely examined for compliance with these regulations. During these exams the bank's practices are also examined, and penalties levied if violations are identified. Further, with the expanded regulatory review that will be incorporated as a result of the Dodd-Frank Act, UB sees no benefit to including additional penalties into the CRA. Currently, the Agencies' evaluations of CRA performance are adversely affected by evidence of discriminatory or other illegal credit practices as outlined in the CRA rules. Consistent with this view, we contend that the regulation should remain unchanged in this area.

Ratings and Incentives

Financial institutions should be incented to stretch to obtain an "Outstanding" CRA rating. Incentives could range from streamlined exams or reduced frequency of exams to a safe harbor (or expedited process) for regulatory applications. Today, the activities necessary to achieve an Outstanding are not clear from exam to exam or between agencies, so that financial institutions that wish to achieve an Outstanding have to take extraordinary steps to be innovative and creative. Without incentives, banks may elect to reduce their CRA investment.

UB suggests that the Agencies consider public recognition as another way of rewarding those banks that achieve an Outstanding rating. Following the model of the "Good Housekeeping Seal of Approval", a CRA seal of approval which a qualified bank is authorized to use in marketing materials demonstrating that it is an outstanding CRA bank would have appeal.

In conclusion, as the CRA regulation is reformed, it is important to ensure that CRA remains a sustainable, strong and effective means of benefiting banks' communities by keeping it focused on its core purpose; including flexibility to emphasize local community need; ensuring a strong link with safe and sound practices; and minimizing unnecessary costs associated with compliance.

We thank you for this opportunity to comment on potential CRA reform, and appreciate your consideration of our views. Should there be any questions, or if further information is needed, please feel free to contact either of us as listed below.

Sincerely,
UNION BANK, N.A.

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