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TESTIMONY OF

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Before the

COMMITTEE ON BANKING, HOUSING, AND

URBAN AFFAIRS

Of the

UNITED STATES SENATE

March 1, 2006

Statement required by 12 U.S.C. 250:

The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

I. INTRODUCTION

Chairman Shelby, Ranking Member Sarbanes, and members of the Committee, I appreciate this opportunity to appear before you today on behalf of the Office of the Comptroller of the Currency (OCC) to further the goal of reducing unnecessary regulatory burden on America's banks. I also want to take this opportunity to again express our appreciation to Senator Crapo for his continuing dedication to this issue.

The OCC welcomes the opportunity to offer suggestions for reforms that would affect all depository institutions, and to discuss particular proposals affecting national banks and the national banking system. We appreciate your holding this hearing today and we welcome this initiative to pursue regulatory burden relief legislation.

The impact of unnecessary burdens is not one-dimensional – it's not simply a matter of bank costs. When unnecessary regulatory burdens drive up the cost of doing business for banks, bank customers feel the impact in the form of higher prices and, in some cases, diminished product choice. Unnecessary regulatory burden also can become an issue of competitive viability, particularly for our nation's community banks. Over-regulation neither encourages greater competition nor improved allocation of resources; to the contrary, it can shackle competition and lead to inefficient use of resources.

The regulatory burdens imposed on our banks arise from several sources. One source is regulations promulgated by the Federal banking agencies. Thus, as regulators we need to recognize that we have a responsibility to ensure that our regulations effectively protect

safety and soundness, foster the integrity of bank operations, and safeguard the interests of consumers, <u>and</u> do not impose regulatory burdens that exceed what is necessary to achieve those goals. We should be guided by these principles when we adopt new rules, and when we review and revise existing ones.

We also need to recognize that not all the regulatory burdens imposed on banks today come from regulations. Another source of regulatory burden is mandates of Federal legislation. Relief from some manifestations of unnecessary regulatory burden requires action by Congress. My testimony contains a number of recommendations for legislative changes to reduce unnecessary regulatory burden by adding provisions to law to provide new flexibilities, modify requirements to be less burdensome, and in some cases, eliminate certain requirements currently in the law.

My testimony will—

- Summarize how the Federal banking agencies are working together under the able leadership of Director Reich of the Office of Thrift Supervision (OTS) through the process required by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) to identify unnecessary regulatory burdens, highlight several regulatory initiatives that the OCC is pursuing with the other Federal banking agencies to reduce burden, and summarize important regulatory burden implications of actions of other agencies; and

- Summarize several of the OCC's priority legislative items for regulatory burden relief, provide an overview of some other legislative items that the OCC supports, and note additional comments about other legislative proposals.

II. REGULATORY INITIATIVES TO ADDRESS REGULATORY BURDEN

EGRPRA PROCESS

The OCC has been and continues to be an active participant in and supporter of the regulatory burden reduction initiative being led by OTS Director Reich. Under Director Reich's capable and dedicated leadership, the Federal banking agencies have been working together since 2003 to complete the regulatory review required under section 2222 of EGRPRA. On a 10-year cycle, section 2222 requires the Federal Financial Institutions Examination Council and each Federal banking agency to identify outdated, unnecessary regulatory requirements and, in a report to Congress, to address whether such regulatory burdens can be changed through regulation or require legislative action. The agencies are required to complete the publication and review cycle by September 2006 and then will submit the report to Congress shortly thereafter.

The Federal banking agencies – the OCC, the Board of Governors of the Federal Reserve System (Fed), the Federal Deposit Insurance Corporation (FDIC), and OTS – divided their regulations into thirteen categories for purposes of publishing those regulations for review as part of the EGRPRA process. In six public notices published between mid-2003 and the

beginning of 2006, the agencies have requested public comment in all categories of their rules. The comment period for the last notice published in early January 2006 requesting public comment on rules pertaining to Prompt Corrective Action and the Disclosure and Reporting of CRA-Related Agreements does not close until April 4. To date, we have received over 800 comments on our notices. Every comment received will be considered in formulating the agencies' recommendations for specific regulatory changes as well as legislative recommendations.

Moreover, in addition to soliciting written comments, the Federal banking agencies, in conjunction with the Conference of State Bank Supervisors and state regulatory agencies, have held ten banker outreach meetings in different cities and regions throughout the country to hear first-hand the bankers' concerns and suggestions to reduce burden. In addition, the agencies have held four outreach meetings with consumer and community groups in different parts of the country and three joint outreach meetings with both bankers and consumer/community groups. Through the public comment process and these meetings, the agencies have made every effort to ensure that there is ample opportunity for consumers and the industry to participate in this process.

OTHER BURDEN REDUCTION REGULATORY INITIATIVES

The OCC constantly reviews its regulations to identify opportunities to streamline regulations or regulatory processes, while ensuring that the goals of protecting safety and soundness, maintaining the integrity of bank operations, and safeguarding the interests of

consumers are met. In the mid-1990's, pursuant to our comprehensive "Regulation Review" project, we went through every regulation in our rulebook with that goal in mind. We have since conducted several supplemental reviews focused on particular areas where we thought further improvements could be made. The following are several significant regulatory projects we are pursuing to identify and reduce unnecessary regulatory burdens.

Improving the Value and Reducing the Burden of Privacy Notices. The OCC, together with the other Federal banking agencies, the Federal Trade Commission, the SEC, and the Commodity Futures Trading Commission, has undertaken an unprecedented initiative to improve and streamline the privacy notices required under GLBA, consistent with current law. In an Advance Notice of Proposed Rulemaking in December 2003, the agencies asked for comments on whether to consider amending their respective privacy regulations to allow, or require, financial institutions to provide alternative types of privacy notices, such as a short-form privacy notice, that would be more understandable and useful for consumers and less burdensome for banks to provide. The agencies also asked commenters to provide sample privacy notices that they believe work well for consumers. Most significantly, the agencies pledged to engage in consumer testing before proposing changes to the privacy regulations.

The OCC and a number of the other agencies then engaged experts in plain language disclosures and consumer testing to assist in conducting focus groups and comprehensive, in-depth consumer interviews to find out what sort of information consumers need to understand and compare privacy practices, and the most effective way to disclose that

information to them. The object of the testing is to assess weaknesses with current notices, suggest alternatives that correct these weaknesses, and test these alternatives with consumers. This project has the potential to be a win-win for consumers and financial institutions. Shorter, more focused notices will lessen the burden on banks. And such notices will enable consumers to make more informed decisions about their personal information. The agencies expect to make public the results of this testing soon, as well as their decision about the need for additional testing. The results of this testing will provide the basis for the agencies' next steps in advancing the use of simplified notices.

Reducing CRA Burden on Small Banks. Another important burden-reduction initiative recently undertaken by the OCC, Fed, and the FDIC was amendments to our Community Reinvestment Act (CRA) regulations. The joint final rule became effective on September 1, 2005. The joint final rule made significant changes to the agencies' regulations that will benefit community banks. Prior regulation defined a "small bank" for purposes of CRA as a bank with assets of up to $250 million. Banks above that asset threshold were categorized as "large" banks for CRA purposes and were subject to a three-part test that separately assesses their lending, services, and investments in their assessment areas.

For purposes of CRA, the new joint final rule creates a new class of "intermediate" small banks, namely those with assets between $250 million and $1 billion. "Intermediate" small banks are subject to the streamlined small bank lending test and a flexible new community development test that considers a mix of community development lending, investment, and services that a bank provides, particularly in light of the bank's resources and capacities,

and the needs of the communities it serves. "Intermediate" small banks also are no longer subject to certain data collection and reporting requirements.

The new rule also provides additional flexibility with respect to qualifying "community development" activities. The new rule revises the "revitalize or stabilize" category of "community development" to provide that activities that revitalize or stabilize designated disaster areas or areas designated by the agencies as "distressed or underserved nonmetropolitan middle-income geographies" qualify as community development activities. Notably, banks' qualifying revitalization and stabilization activities to provide assistance to communities in the Hurricanes Katrina and Rita designated disaster areas are eligible for CRA credit under the rule. This change benefits banks of all sizes and the communities in the disaster areas that they serve.

The agencies' joint rule carefully balances the goals of reducing unnecessary regulatory reporting burdens with achieving the goals of the CRA. The agencies expect to issue final questions and answers that provide additional guidance on these new provisions within the next several days.

OTHER BURDEN REDUCTION AREAS OF CONCERN

We also appreciate the Committee's interest in examining all sources of regulatory burdens imposed on banks today, including those that do not arise from regulations promulgated by bank regulators. We welcome the continued interest of the Committee in issues such as

regulatory implementation of the Bank Secrecy Act and anti-money laundering standards. This area presents particular challenges for burden reduction initiatives because the interests of law enforcement must be carefully weighed, and may outweigh, in some cases, the burden reduction benefits of particular proposals.

We also welcome the Committee's interest in ensuring that any broker rules promulgated by the Securities and Exchange Commission (SEC) to implement the so-called "push-out" provisions of the Gramm-Leach-Bliley Act (GLBA) are faithful to the law's intent and not so burdensome as to drive well-established banking functions out of banks.

In addition, we note that the Committee may consider ways to reduce the disproportionate burden that is being imposed on smaller banks and bank holding companies that are subject to the reporting requirements of Section 404 of the Sarbanes-Oxley Act of 2002. As you know, Section 404 directed the SEC to adopt rules requiring all registered companies to include information in their annual reports on management's responsibility for internal controls over financial reporting and also required independent auditors to attest to, and report on, management's assessment.

Recently, the SEC's Advisory Committee on Smaller Public Companies released a draft of its final report on its website that addresses, among other things, Section 404's high compliance costs for small companies. This draft of the report concludes that "relief is urgently needed" for smaller public companies so that they may cope with the

unanticipated escalating costs of complying with Section 404 that have disproportionately affected smaller companies.

III. LEGISLATIVE PROPOSALS TO ADDRESS REGULATORY BURDEN

The OCC has supported a package of legislative amendments that we believe will help reduce unnecessary regulatory burden on national banks and other depository institutions. These items generally are included in the matrix that Senator Crapo was instrumental in assembling. My testimony today will highlight some of those items.[1]

NATIONAL BANK OPERATIONS

Expanding the Eligibility for the 18-Month Examination Cycle. The OCC supports amending the Federal Deposit Insurance Act (FDIA) to increase the small bank threshold from $250 million to $1 billion so that more small banks may qualify to be examined on an 18-month rather than an annual cycle. Under current law, insured depository institutions with total assets of $250 million or less that are well capitalized, and, as of the most recent examination, are well managed and have a composite condition of "1" or "2" under the banking agencies' uniform rating system may be examined on an 18-month, rather than an annual cycle in a full-scope, on-site examination.[2] The proposal would change *only* the asset threshold and would not change any of the other requirements in the law.

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[1] Please refer to the appendices attached to my testimony before the Committee on June 21, 2005 for detailed explanations of the OCC supported items.

[2] In addition, the law requires that an eligible institution cannot currently be the subject of an enforcement action or the target of a change-in-control transaction during approximately the last year. Moreover, the

For national banks, increasing this threshold to $1 billion would mean that approximately 340 more national banks may qualify for the 18-month cycle. Today approximately 58% of all national banks are eligible for the 18-month cycle but, if the law were amended to raise the threshold to $1 billion, approximately 76% of all national banks could qualify. This change would ease the examination burden and associated costs for a meaningful number of qualifying national banks without raising safety and soundness concerns. Only the top-rated banks would be eligible for the extended cycle, and we would continue our active off-site monitoring oversight of these banks, as well as accelerating the timing of an on-site examination whenever developments warranted.

Repealing State Opt-In Requirements for *De Novo* Branching. Repeal of the state opt-in requirement that applies to national banks that choose to expand interstate by establishing branches *de novo* would remove a significant unnecessary burden imposed on national banks that seek to establish new interstate branch facilities to enhance service to customers. Under the Riegle-Neal Banking and Branching Efficiency Act of 1994 (Riegle-Neal), interstate expansion through bank mergers generally is subject to a state "opt-out" that had to be in place by June 1, 1997. Interstate bank mergers are now permissible in all 50 states. *De novo* branching, however, is permissible only in those approximately 23 states that have affirmatively opted-in to allow the establishment of new branches in the state. Approximately 17 of these 23 states impose a reciprocity requirement.

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statute does not prohibit a Federal banking agency from conducting an examination more frequently than required if deemed necessary.

In many cases, in order to serve customers in multi-state metropolitan areas or regional markets, national banks must structure artificial and unnecessarily expensive transactions in order to establish a new branch across a state border. The OCC supports an amendment that would relieve these unnecessary and costly burdens.

Providing Relief for Subchapter S National Banks. Another priority item supported by the OCC is an amendment that would allow directors of national banks that are organized as Subchapter S corporations to purchase subordinated debt instead of capital stock to satisfy the directors' qualifying shares requirements in national banking law. As a result, the directors purchasing such debt would not be counted as shareholders for purposes of the 100-shareholder limit that applies to Subchapter S corporations. This relief would make it possible for more community banks with national bank charters to organize in Subchapter S form while still requiring that such national bank directors retain their personal stake in the financial soundness of these banks.

Simplifying Dividend Calculations for National Banks. Under current law, the formula for calculating the amount that a national bank may pay in dividends is complex, antiquated, and unnecessary for purposes of safety and soundness. The amendment supported by the OCC would make it easier for national banks to perform this calculation, while retaining safeguards in the current law that provide that national banks need the approval of the Comptroller to pay a dividend that exceeds the current year's net income combined with any retained net income for the preceding two years.[3] The amendment

[3] The same rules apply to state member banks but, in the case of state member banks, the Federal Reserve has approval authority.

would ensure that the OCC would continue to have the opportunity to deny any dividend request that may deplete the net income of a national bank that may be moving toward troubled condition. Other safeguards, such as Prompt Corrective Action, which prohibit any insured depository institution from paying any dividend if, after that payment, the institution would be undercapitalized (see 12 U.S.C. § 1831o(d)(1)) would remain in place.

Modernizing Corporate Governance. The OCC also supports an amendment that would eliminate a requirement that precludes a national bank from prescribing, in its articles of association, the method for election of directors that best suits its business goals and needs. Unlike most other companies and state banks, national banks cannot choose whether or not to permit cumulative voting in the election of their directors. Instead, current law requires a national bank to permit its shareholders to vote their shares cumulatively. Providing a national bank with the authority to decide for itself whether to permit cumulative voting in its articles of association would conform the National Bank Act to modern corporate codes and provide a national bank with the same corporate flexibility available to most corporations and state banks.

Modernizing Corporate Structure Options. Another amendment supported by the OCC is an amendment to national banking law clarifying that the OCC may permit a national bank to organize in any business form, in addition to a "body corporate." An example of an alternative form of organization that may be permissible would be a limited liability national association, comparable to a limited liability company. The provision also would clarify that the OCC by regulation may provide the organizational characteristics of a

national bank operating in an alternative form, consistent with safety and soundness. Except as provided by these organizational characteristics, all national banks, notwithstanding their form of organization, would have the same rights and privileges and be subject to the same restrictions, responsibilities, and enforcement authority.

Organization as a limited liability national association may be a particularly attractive option for community banks. Subject to applicable Federal and state tax rules, the bank may be able to take advantage of pass-through tax treatment for entities organized as limited liability companies (LLCs) under certain tax laws and eliminate double taxation under which the same earnings are taxed both at the corporate level as corporate income and at the shareholder level as dividends. Some states currently permit state banks to be organized as unincorporated LLCs, and the FDIC adopted a rule allowing certain state bank LLCs to qualify for Federal deposit insurance. This amendment would clarify that the OCC can permit national banks to organize in an alternative business form, such as an LLC, in the same manner.

Paying Interest on Demand Deposits. The OCC supports amendments to the banking laws to repeal the statutory prohibition that prevents banks from paying interest on demand deposits.[4] The prohibition on paying interest on demand deposits was enacted approximately 70 years ago for the purpose of deterring large banks from attracting deposits away from community banks. The rationale for this provision is no longer applicable today and financial product innovations, such as sweep services, allow banks

[4] This provision was included in H.R. 1224, the Business Checking Freedom Act of 2005, as passed by the House on May 24, 2005.

and their customers to avoid the statutory restrictions. Repealing this prohibition would reduce costs associated with establishing such additional accounts to avoid the restrictions.

Giving National Banks More Flexibility in Main Office Relocations. The OCC supports two amendments to national banking law that will give national banks more flexibility in making main office relocation business decisions. The amendment will reduce unnecessary burdens on a national bank seeking (1) to relocate its main office as part of a merger or consolidation transaction with another bank or banks *in the same state*, or (2) to relocate its main office to a branch location *in the same state*. These amendments are consistent with current law and would not permit a national bank to establish or retain a branch at any location within a state where it could not do so today.

The first such amendment would provide that a national bank that is merging or consolidating with another bank *in the same state* pursuant to national banking law (rather than Riegle-Neal which applies only to interstate mergers and consolidations), has the same opportunity to retain certain offices that it would have if the merger or consolidation were an interstate merger subject to Riegle-Neal. The amendment would allow a national bank, with the Comptroller's approval, to retain and operate as its main office any main office or branch of any bank involved in the transaction. This is the same result that Congress authorized for interstate mergers in Riegle-Neal, over 10 years ago.

Under the second amendment, national banking law would be amended to give any national bank more flexibility when relocating its main office to an already existing branch

location within the same state. However, the amendment would permit the former main office to be operated as a *branch* only if a branch at the same location could be established and operated under 12 U.S.C. § 36(c). Under 12 U.S.C. § 36, a national bank would be able to retain branches or operate a former main office as a branch when engaging in transactions or relocations covered by these amendments only if a state bank could establish and operate a branch at the same location. Thus, the amendments would not override state "home office protection" types of laws that restrict branch locations.

Enhancing National Banks' Community Development Investments. The OCC supports an amendment that would increase the maximum amount of a national bank's investments that are designed to promote the public welfare either directly or by purchasing interests in an entity engaged in making these qualifying investments, such as a community development corporation (CDC). We recommend increasing the maximum permissible amount of such investments from 10% to 15% of the bank's capital and surplus. The maximum limit only applies if the bank is adequately capitalized and only if the OCC determines that this higher limit will not pose a significant risk to the deposit insurance fund.

Today, more than 90% of national banks' utilization of this authority is in investments in community development entities engaged in low-income housing development projects. Losses associated with such projects have been very low. Benefits, in terms of provision of affordable housing stock and economic revitalization, have been significant. Allowing certain adequately capitalized national banks to modestly increase their community

development investments subject to the requirements of the statute will enable them to expand investments that have been profitable, low-risk, and beneficial to their communities.

The OCC evaluates all investments made under this authority, whether made by the bank directly or indirectly through its CDC, on a case-by-case basis to determine if the investment has a primary public welfare purpose. In practice, we "look through" the CDC to apply the same primary public welfare test as if the bank were making the investment directly. This approach ensures that the increased investment authority is focused on investments that promote the public welfare purpose of the statute.

Repealing the Geographic Limits on Bank Service Companies. The OCC supports removing the geographic restrictions on bank service companies (BSC). In light of the advent of interstate banking and branching under Riegle-Neal, it no longer makes sense to restrict the general operations of BSCs to the state where the BSC's bank shareholders or members are located and to require that all insured bank shareholders or members must be located in the same state. We support amending the statute to permit bank service companies to perform any services at any location where its bank shareholders or members could perform the same services. Our proposal, however, does not change the requirement in current law that a BSC may conduct activities that are not otherwise authorized and that are closely related to banking under the Bank Holding Company Act only with Fed approval.

OCC OPERATIONS

Improving Ability to Obtain Information from Regulated Entities. The OCC supports efforts to improve our ability to obtain information from regulated entities. In particular, we would like to call your attention to two specific amendments that we believe would significantly enhance the free flow of information between the OCC and the institutions that we supervise.

First, the OCC strongly supports an amendment that would ensure that no applicable privilege is waived when a person provides information to a Federal, state, or foreign banking regulator as part of the regulator's supervisory process.[5] There are conflicting court decisions on this issue that may impede a regulator's access to important supervisory information about a regulated banking institution. An amendment would be enormously beneficial to resolve the uncertainty so as to ensure that banks may freely provide information to regulators without fear that any applicable privilege may be waived. Amendments such as this one that enhance the dialogue between banks and regulators improve the supervisory process with added safety and soundness benefits.

Second, the OCC supports an amendment that would permit all of the Federal banking agencies – the OCC, FDIC, OTS, and the Fed – to establish and use advisory committees in the same manner. Under current law, only the Fed is exempt from the disclosure requirements under the Federal Advisory Committee Act (FACA). Yet, all types of

insured institutions and their regulators have a need to share information and to conduct open and frank discussions that may involve non-public information about the impact of supervisory or policy issues. Because of the potentially sensitive nature of this type of information, the public meeting and disclosure requirements under FACA may inhibit the supervised institutions from providing the agencies their candid views. Importantly, this is information that any one bank could provide to its regulator and discuss on a confidential basis. It is only when several banks simultaneously do so in a collective discussion and offer suggestions to regulators that issues are raised under FACA. An amendment would cure this anomaly.

SAFETY AND SOUNDNESS

The OCC also supports a number of amendments that would promote and maintain safety and soundness and facilitate the ability of regulators to address and resolve troubled bank situations.

Enforcing Written Agreements and Commitments. The OCC supports an amendment that would expressly authorize the Federal banking agencies to enforce written agreements and conditions imposed in writing in connection with an application or when the agency imposes conditions as part of its decision not to disapprove a notice, *e.g.,* a Change in Bank Control Act (CBCA) notice.

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[5] Such legislation, however, should specifically provide that the privilege cannot be asserted against the banking regulator to whom the information is provided, in order to allow the regulator to use the information

This amendment would rectify the results of certain Federal court decisions that conditioned the agencies' authority to enforce such conditions or agreements with respect to a non-bank party to the agreement, such as a controlling company, on a showing that the non-bank party was "unjustly enriched." We believe that this amendment will enhance the safety and soundness of depository institutions and protect the deposit insurance funds from unnecessary losses.

Barring Convicted Felons From Participating in the Affairs of Depository Institutions. The OCC also supports an amendment to the banking laws that would give the Federal banking agencies the authority to prohibit a person convicted of a crime involving dishonesty, breach of trust, or money laundering from participating in the affairs of an *un*insured national or state bank or *un*insured branch or agency of a foreign bank without the consent of the agency. Under current law, the ability to keep these "bad actors" out of depository institutions applies only to *insured* depository institutions. Thus, for example, it would be harder to prevent an individual convicted of such crimes from serving as an official of an uninsured trust bank whose operations are subject to the highest fiduciary standards, than to keep that individual from an administrative position at an insured bank.

Strengthening the Supervision of "Stripped-Charter" Institutions. The OCC supports an amendment to the CBCA to address issues that have arisen when a stripped-charter institution (*i.e.,* an insured bank that has no ongoing business operations because, for example, all of the business operations have been transferred to another institution) is the

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as necessary to carry out its supervisory responsibilities.

subject of a change-in-control notice. The agencies' primary concern with such CBCA notices is that the CBCA is sometimes used as a route to acquire a bank with deposit insurance without submitting an application for a *de novo* charter and an application for deposit insurance, even though the risks presented by the two transactions may be substantively identical. In general, the scope of review of a *de novo* charter application or deposit insurance application is more comprehensive than the current statutory grounds for denial of a notice under the CBCA. There also are significant differences between the application and notice procedures. In the case of an application, the banking agency must affirmatively approve the request before a transaction can be consummated. Under the CBCA, if the Federal banking agency does not act to disapprove a notice within certain time frames, the acquiring person may consummate the transaction. To address these concerns, the OCC supports an amendment that (1) would expand the criteria in the CBCA that allow a Federal banking agency to extend the time period to consider a CBCA notice so that the agency may consider business plan information, and (2) would allow the agency to use that information in determining whether to disapprove the notice.

FEDERAL BRANCHES AND AGENCIES OF FOREIGN BANKS

The OCC also licenses and supervises Federal branches and agencies of foreign banks. Federal branches and agencies generally are subject to the same rights and privileges, as well as the same duties, restrictions, penalties, liabilities, conditions and limitations and laws that apply to national banks. Branches and agencies of foreign banks, however, also are subject to other requirements under the International Banking Act of 1978 (IBA) that are unique to their organizational structure and operations in the U.S. as an office of a

foreign bank. In this regard, the OCC is recommending amendments to reduce certain unnecessary burdens on Federal branches and agencies while preserving national treatment with national banks.

Implementing Risk-Based Requirements for Federal Branches and Agencies. The OCC supports an amendment to the IBA to allow the OCC to set the capital equivalency deposit (CED) for Federal branches and agencies to reflect their risk profile. We prefer an amendment that would allow the OCC, after consultation with the Federal Financial Institutions Examination Council, to adopt regulations setting the CED on a risk-based institution-by-institution basis. This approach would closely resemble the risk-based capital framework that applies to both national and state banks.

OTHER RECOMMENDATIONS FROM THE EGRPRA PROCESS

As a result of the dialogue between the Federal banking agencies – the OCC, the Fed, the FDIC, and the OTS – and the banking industry as part of the EGRPRA process and other discussions over the last several years on regulatory burden relief legislation, it has become apparent that we all support amendments that would –

- Authorize the Fed to pay interest on reserve accounts under the Federal Reserve Act (FRA);[6]

[6] Some of the amendments to the FRA discussed above were included in H.R. 1224, the Business Checking Freedom Act of 2005, as passed by the House on May 24, 2005.

- Provide that member banks may satisfy the reserve requirements under the FRA through pass-through deposits;
- Provide the Fed with more flexibility to set reserve requirements under the FRA;
- Repeal certain reporting requirements relating to insider lending under the FRA;
- Streamline depository institutions' requirements under the Bank Merger Act (BMA) to eliminate the requirement that the agency acting on the application must request competitive factor reports from all of the other Federal banking agencies;
- Shorten the post-approval waiting period under the BMA in cases where there is no adverse effect on competition;
- Exempt mergers between depository institutions and affiliates from the competitive factors review and post-approval waiting periods under the BMA;
- Improve information sharing with foreign supervisors under the IBA;
- Provide an inflation adjustment for the small depository institution exception under the Depository Institution Management Interlocks Act; and
- Provide that the Federal banking agencies will review the requirements for banks' reports of condition under the FDIA every five years and reduce or eliminate any requirements that are no longer necessary or appropriate.

OTHER COMMENTS

We would like to take this opportunity to also make you aware of our views on another legislative proposal that may be under consideration.

Maintaining Parity Between Permissible Securities and Stock Investments of National Banks and State Member Banks. One amendment that has been suggested to the Committee would be to repeal 12 U.S.C. § 335.[7] While the amendment has been described as removing limitations on the powers of state member banks, it would, in fact, liberalize the authority of state member banks to invest in stock and other investment securities. Repealing 12 U.S.C. § 335 would result in permitting state member banks to invest in stock and investment securities that are impermissible for national banks.

This change would undo the long-standing parity that similarly limits national banks' and state member banks' permissible investments in stock and investment securities – a parity framework that dates back to the 1933 Glass-Steagall Act and was carefully maintained when GLBA was enacted in 1999. Portions of § 335 were enacted in 1999 as part of the GLBA compromise relating to financial subsidiary activities. Consistent with the parity framework, this key language in § 335 provides that state member banks' financial subsidiaries are subject to the same limitations and prudential safeguards that apply to national banks' financial subsidiaries. This sentence was the result of a carefully crafted compromise to ensure that parallel firewalls, safeguards, and rules were applied to financial subsidiaries of national and state member banks.

[7] 12 U.S.C. § 335 states:

> "State member banks shall be subject to the same limitations and conditions with respect to the purchasing, selling, underwriting, and holding of investment securities and stock as are applicable in the case of national banks under paragraph 'Seventh' of section 5136 of the Revised Statutes, as amended [12 U.S.C. § 24(Seventh)]. This paragraph shall not apply to an interest held by a State member bank in accordance with section 5136A of the Revised Statutes of the United States [12 U.S.C. § 24a] and subject to the same conditions and limitations provided in such section."

IV. CONCLUSION

Mr. Chairman, on behalf of the OCC, I thank you for your leadership in holding these hearings. The OCC strongly supports initiatives that will reduce unnecessary burden on the industry in a responsible, safe and sound manner. We are pleased to continue to work with you and your staff to make that goal a reality.

I would be happy to answer any questions you may have.