For Release Upon Delivery
10:00 a.m., February 13, 2008

TESTIMONY OF

ANN F. JAEDICKE

DEPUTY COMPTROLLER FOR COMPLIANCE POLICY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

OF THE

U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2008

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.

INTRODUCTION

Chairman Frank, Ranking Member Bachus, and members of the Committee, I am Ann Jaedicke, Deputy Comptroller for Compliance Policy, at the Office of the Comptroller of the Currency (OCC). I am pleased to appear before you today to discuss the Community Reinvestment Act (CRA) and the effectiveness of this law over the past three decades.

CRA began with a seemingly simple concept -- banks that take deposits from the local community where they are chartered have an obligation to help meet the credit needs of that community. Despite that modest goal, the original bill as introduced by Senator Proxmire was opposed by many on the grounds that it would effectively allocate credit to particular areas, substitute the judgment of the government for that of lenders in how best to meet the demand for credit, and undermine the safety and soundness of depository institutions subject to CRA. The proponents of the legislation prevailed, however, and CRA became law.

We are now in the thirty-first year since the CRA was enacted. Although the law has had its measure of criticism, more often than not the CRA has been praised as a constructive and creative response to the disinvestment faced by many, primarily urban, neighborhoods at the time the law was conceived. In our view, CRA has proven in the intervening years to have been a powerful force in effecting positive change by helping to

improve conditions in underserved and economically depressed urban and rural communities throughout the country.

This hearing offers an excellent opportunity to reflect on the CRA -- and to discuss the challenges we face going forward. To further this discussion, we offer the following perspectives:

- First, the CRA has proven to be a remarkably effective and resilient piece of legislation and has provided the federal banking agencies with the flexibility they need to respond to changing circumstances and community needs.

- Second, the CRA has acted as an incentive for insured depository institutions to provide billions of dollars in home loans, small business and farm loans, and community development investments and services in communities across the country.

- Third, CRA lending and investments have proven to be safe, sound, and generally profitable.

- And, fourth, there are opportunities to improve CRA going forward to respond to changes in financial markets. Among other things, revisions to the interagency CRA regulations could help address disinvestment faced by some middle-income communities, as well as low- and moderate-income communities, as a result of

increasing levels of mortgage foreclosures. In addition, as described in more detail below, we need to remove impediments that exist in other federal laws that currently prevent national banks from making such investments -- with or without changes to the CRA rules. Congress also may want to reevaluate the scope of the CRA itself to address a growing imbalance in the types of financial transactions that are covered, and those that are not covered, by CRA.

My testimony will describe the OCC's process for evaluating the CRA performance of national banks and address how CRA evaluations are affected by evidence of unlawful lending discrimination and other questions raised in the Chairman's letter of invitation. Next, my statement discusses the effectiveness of CRA, by looking at the amount of lending that has been attributed to the law, and by providing a few examples of specific projects across the country where CRA has made an impact. Finally, I will address the future of the CRA by describing three CRA-related suggestions recently made by Comptroller Dugan.

BACKGROUND

Congress passed the CRA in 1977 to encourage banks and thrifts to increase their lending and services to low- and moderate-income persons and areas in their communities, *consistent with safe and sound banking practices*.[1] The CRA applies only to banks and savings associations the deposits of which are insured by the Federal

[1] *See* 12 U.S.C. § 2901(a)(3), (b).

Deposit Insurance Corporation.[2] Affiliates of insured depository institutions that are not themselves insured depository institutions are not directly subject to the CRA, nor are credit unions or independent mortgage companies, for example.

The CRA requires each federal financial supervisory agency to assess the record of each covered depository institution in helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. The law also directs the agencies to take that record into account when deciding whether to approve an application by the institution for a deposit facility.[3] An application for a deposit facility includes an application to establish a branch, relocate a main office or branch, merge with or acquire another insured depository institution, or receive a banking charter.[4]

ASSESSING THE CRA PERFORMANCE OF NATIONAL BANKS

CRA Regulations and Examinations

Neither the CRA nor its implementing regulations provide specific thresholds or ratios applicable to the examination or application processes. Rather, the rules contemplate an evaluation of each lender's record, taking into consideration the individual institution's business model and the environment in which it operates. An

[2] *Id.* §§ 2902(2), 2903(a)(1), 1813(c)(2).
[3] *Id.* § 2903(a)(1), (2).
[4] 12 C.F.R. § 25.29(a). *See also*, 12 C.F.R. § 228.29(a) (FRB); 12 C.F.R. § 345.29(a) (FDIC); and 12 C.F.R. § 563e.29(a) (OTS).

institution's capacity to help meet community credit needs is influenced by many factors, including its financial condition and size, resource constraints, legal impediments, and local economic conditions that could affect the demand and supply of credit. Examiners must consider these factors when evaluating an institution's performance under CRA.[5]

The CRA regulations prescribe different evaluation methods tailored to respond to differences in institutions' structures and operations. For example, the regulation provides a streamlined assessment method for small institutions with assets of less than $265 million.[6] The small bank performance evaluation emphasizes lending performance by focusing on the bank's loan-to-deposit ratio, the percentage of loans made within the bank's assessment area, and the distribution of loans among borrowers and geographies of different incomes, and businesses of different sizes.[7] Intermediate small banks, those with assets of at least $265 million but less than $1.061 billion, are evaluated under the same lending performance criteria as small banks as well as under a separate community development test that considers the responsiveness of a bank's community development loans, investments, and services to the community development needs of their local communities.[8]

Large banks -- those with assets of at least $1.061 billion -- are evaluated under three tests: the lending test, the investment test, and the service test.[9] The lending test performance criteria focus on the number and amount of loans originated in the bank's

---

[5] 12 C.F.R. § 25.21(b).
[6] *Id.* at §§ 25.12(u)(1), 25.26(a).
[7] *Id.* at § 25.26(b).
[8] *Id.* at § 25.26(a)(2), (b)-(c).
[9] *Id.* at § 25.21(a).

assessment area, the distribution of the bank's lending to individuals and geographies of different income levels and to businesses of different sizes, and the number and amount of the bank's community development loans.[10] The investment test is used to evaluate the number and amount of the bank's investments with a primary purpose of community development,[11] while the service test considers the retail and community development services that the bank has provided.[12]

Banks that are designated as wholesale or limited-purpose institutions are evaluated only on their community development loans, investments, and services.[13] Finally, the regulations allow any institution, regardless of size or business strategy, the choice to be evaluated under an approved CRA strategic plan.[14] This provides banks the flexibility to be evaluated in conformance with their own customized CRA performance objectives.

Examiners request and review information relevant to a bank's CRA performance prior to beginning their CRA evaluation of the bank. Examiners review HMDA data, if the bank is a HMDA reporter, to gauge the number and amount of home mortgage loans and the loan distribution among borrowers and geographies of different incomes.[15] If the bank is a large bank subject to CRA data reporting requirements, examiners review CRA data regarding small business, small farm, and community development loans. Prior to

---

[10] *Id.* at § 25.22(b).
[11] *Id.* at § 25.23.
[12] *Id.* at § 25.24.
[13] *Id.* at § 25.25.
[14] *Id.* at § 25.27.
[15] *See* Large Institution CRA Examination Procedures, at pp. 1, 4 (Feb.2006), available at http://www.occ.treas.gov/ftp/bulletin/2006-17a.pdf; Small Institution CRA Examination Procedures, at p. 4 (Feb. 2006), available at http://www.occ.treas.gov/ftp/bulletin/2006-17b.pdf.

the examination, examiners often request additional relevant information from the bank.[16] For example, examiners may request information about (1) other relevant loan data that the bank would like examiners to consider; (2) investments that the bank has made that it would like considered; (3) branch location information, along with information about branches that were opened or closed during the examination cycle; (4) the types of banking products (loan and deposit) offered by the bank; (5) the bank's delineated assessment areas; and (6) the bank's performance context. Finally, in connection with a CRA examination, examiners review public comment letters filed with the bank concerning the bank's CRA performance, as well as "community contact" information described below, to help them evaluate the bank's responsiveness to community credit needs.[17]

Upon the conclusion of CRA examinations, the OCC provides banks with written performance evaluations (PEs), which, unlike banks' Reports of Examinations, are public documents.[18] In a PE, conclusions are made about each performance criterion for the type of bank evaluated (e.g., large, intermediate small, small, limited purpose, etc.). These conclusions are supported by facts and data, which may be found either in the narrative discussion of the PE or in tabular form. A bank's rating(s) are derived from the conclusions about each performance criterion. An intrastate bank will have only one rating – an overall bank CRA rating. An interstate bank will have a CRA rating for each state in which it has at least one branch or main office, a CRA rating for each multistate

[16] *See* Comptroller's Handbook, Community Reinvestment Act Examination Procedures, at 117-119 (May 1999) (Comptroller's Handbook), available at http://www.occ.treas.gov/handbook/craep.pdf.
[17] Comptrollers Handbook, *supra* n.16, at 35.
[18] *See* 12 U.S.C. § 2906(b); 12 C.F.R. § 25.42(a)(2).

metropolitan area if it has at least one branch or main office in more than one state of the multistate metropolitan area, and an overall bank CRA rating. By statute, the ratings that a bank may receive are "Outstanding," "Satisfactory," "Needs to Improve," and "Substantial Noncompliance."[19]

The CRA statute, as amended by the Gramm-Leach-Bliley Act, limits the frequency of CRA examinations in institutions with aggregate assets of not more than $250 million that were rated Outstanding or Satisfactory in the most recent CRA examination. Such a national bank may not be subject to a CRA examination more often than (1) once every 60 months, if it received an Outstanding rating on its most recent examination; or (2) once every 48 months, if it received a Satisfactory rating on its most recent examination. The statute provides the OCC with discretion to examine such banks more or less frequently, however, upon reasonable cause, as determined by the OCC.

For banks with total assets of $250 million or less that received a rating of less than Satisfactory in the most recent CRA examination, the statute provides the OCC with discretion to conduct routine CRA examinations as frequently as the OCC deems necessary.[20] The OCC ordinarily will begin a CRA examination for these institutions within 36 months of the close date of the prior examination.[21] For banks with assets of more than $250 million, CRA examinations are ordinarily scheduled to begin within 36 months after the close date of the last CRA examination. In response to a question posed in the Chairman's letter of invitation asking for examples of any criticisms we may have

[19] 12 U.S.C. § 2906(b)(2).
[20] 12 U.S.C. § 2908(a)(3).
[21] The OCC uses the term "close date" to refer to the supervisory office approval date.

received regarding the adequacy of our CRA examination process, we occasionally hear complaints when particular examinations have not met these target timeframes.

OCC examiners throughout the country conduct CRA examinations of national banks. Our examiners are assisted by a team of OCC Community Affairs Officers with respect to aspects of these evaluations. Among other things, OCC examiners and Community Affairs Officers conduct discussions with various representatives of the community in connection with each CRA examination. These “community contacts” typically are people who know about local community credit needs and who may have information about how well the bank undergoing the examination has been helping to respond to those community needs. Community contact discussions help OCC’s examiners understand community perceptions about the bank’s performance, and also help to identify additional credit and community development opportunities for the bank.

In order to share the best practices we have seen in the community reinvestment arena and through the examination process, OCC Community Affairs Officers also consult with national banks to assist them in crafting their community development plans and CRA strategies. They conducted over 350 such consultations with national banks on a variety of CRA matters in 2007, and have conducted a total of over 1,000 such consultations during the past five years. Most recently, they have been consulting with banks about to reach the intermediate small bank and large bank thresholds, to ensure that they understand their new CRA performance requirements. This type of support often

facilitates the institution's participation in new types of community development projects and investments.

A financial institution's CRA rating and CRA record play an important role in its public profile and reputation, as this information is made available to the public. Federal banking regulators are required to make CRA ratings public.[22] In addition, agency regulations require financial institutions to keep a public file that includes information about their CRA activities, a copy of all public comments on their CRA record, and a copy of the public section of their most recent CRA performance evaluation.[23]

In the letter of invitation, you asked for specific information about the CRA ratings of national banks, including the percentage of banks that received a rating below "Satisfactory" during the last six years, and about whether there is any correlation between size of the institution and its rating. Since 2000, an average of eighty-five percent of national banks that were evaluated for CRA performance received a "Satisfactory" rating, fourteen percent received an "Outstanding" rating, and around one percent received a "Needs to Improve" rating. The CRA ratings assigned by the other federal banking agencies are generally consistent with the OCC's figures, in that the greatest percentage of institutions receive a "Satisfactory" CRA rating and few, if any, receive a rating lower than "Satisfactory."

[22] *See* 12 U.S.C. § 2906(b); 12 C.F.R. § 25.28; 12 C.F.R. § 228.28 (FRB); 12 C.F.R. § 345.28 (FDIC); and 12 C.F.R. § 563e.28 (OTS).
[23] *See, e.g.,* 12 C.F.R. § 25.43 (OCC); 12 C.F.R. §228.43 (FRB); 12 C.F.R § 345.43 (FDIC); 12 C.F.R. § 563e.43 (OTS).

Banks large and small recognize that their CRA ratings have the potential to affect their business reputation. However, it is not surprising to find that banks with the greatest assets generally tend to have high CRA ratings. The largest institutions have both more public visibility and more resources to devote to CRA activities, and achieving and maintaining an "Outstanding" CRA rating is a corporate objective set by senior management at many of these banks. In addition, banks seeking to open or relocate a branch, or merge, consolidate with, or acquire another institution, know that they have a better chance for expeditious approval if they have high CRA ratings.

In this regard, your letter asked about the impact of CRA ratings on corporate applications. Banks with less than "Satisfactory" overall CRA ratings as a rule do not file corporate applications subject to CRA review and consequently the OCC has denied one application on the basis of a "Needs to Improve" CRA rating during the past ten years. Aside from ratings, CRA performance affects the OCC's evaluation of an application for a deposit facility in other ways as well. In particular, a CRA record that displays weakness in certain areas can have an impact on the terms and conditions under which approval may be granted and, thereby, contributes to "enforcement" of the CRA.

Banks are required to publish notice of their application -- and to solicit public comment on the application. Public comments are a valuable, critical component of the application process. They can provide information on potential weaknesses in CRA performance that should be evaluated. Therefore, in addition to taking the bank's CRA record into account, the OCC also carefully considers any public comments that have

been received before making a decision on an application, and will require applicants to respond satisfactorily to any issues raised.

The OCC generally relies on written information submitted during the application process, including public comments, to reach a decision on an application. The public may request that we hold a public hearing or other meeting to discuss CRA and other matters related to the application. For example, on occasion, we arrange meetings between the applicant and persons who have submitted adverse comments on the application to discuss their concerns. However, we generally find that the information we need to evaluate an application is best obtained during the public comment period through a process of an information exchange in which the applicants are required to respond in writing to written comments about CRA-related concerns.

As noted above, banks typically do not file an application if the applicant has less than a "Satisfactory" overall CRA rating. Thus, "enforcement" of the CRA is not accomplished solely through denials of applications by banks with poor CRA ratings. Indeed, in a number of instances when concerns are raised in connection with an application, either by the public or through our evaluation of the record, about a bank's CRA performance or compliance with fair lending and consumer protection laws, the OCC has obtained specific commitments from the institution to address those concerns. In addition, in some instances, the OCC has imposed conditions on our approval of an application to address CRA and related issues. Finally, some proposals may not proceed

as initially planned, and applications may not be filed, based on preliminary discussions with the OCC about potential CRA-related concerns about the proposal.

CRA and Fair Lending Enforcement

Since 1978, one of the factors taken into consideration during a CRA performance evaluation has been evidence of prohibited discriminatory or other illegal credit practices.[24] When the OCC and the other banking agencies revised their CRA regulations in 1995, evidence of discriminatory or other illegal credit practices was expressly included in the regulation as a factor that *could* adversely affect a bank's CRA evaluation.[25]

In 2005, the agencies further revised their joint CRA regulations to clarify that a bank's evaluation *would be* adversely affected by discriminatory or other illegal credit practices by the bank regardless of whether the practices involve loans in the bank's assessment areas or in any other location.[26] The revised rule further provided that a bank's CRA evaluation *would be* adversely affected by evidence of discrimination or other illegal credit practices by any affiliate in connection with loans inside the bank's assessment areas, if any loans of that affiliate have been considered at the bank's election in the bank's CRA evaluation.[27] The adverse effect on the bank's CRA rating of illegal credit practices by an affiliate is limited to affiliate loans within the bank's assessment

[24] 12 C.F.R. § 25.7(f) (1979).
[25] 60 Fed. Reg. 22,156, 22,183 (May 4, 1995) (*codified at* 12 C.F.R. § 25.28(c) (1996)).
[26] 70 Fed. Reg. 44,256, 44,267 (Aug. 2, 2005) (*codified at* 12 C.F.R. § 25.28(c)(1)(i) (2006)).
[27] *Id.*

areas because, under the regulation, a bank may elect to include as part of its own CRA evaluation only those affiliate loans that are within the bank's assessment areas.[28]

Therefore, at each CRA examination, examiners refer to a bank's fair lending evaluation to determine the effect on the bank's CRA evaluation of evidence of lending discrimination, if any, and the examiner's findings are discussed in the PE. If no evidence of discrimination is found, this also will be noted in the PE. In determining the impact of a substantive fair lending violation or abusive lending practice on a bank's CRA rating, the interagency CRA regulations require the agencies to consider a number of factors. These factors include the nature, extent, and strength of the evidence of a violation; the policies and procedures the bank has in place to prevent the practices at issue; any corrective action the bank has taken or has committed to take; and any other relevant information.[29] Decisions about the impact of evidence of illegal discrimination on a bank's CRA rating are made on a case-by-case basis and supported in the bank's report of examination and CRA PE.

THE IMPACT OF CRA

Although it is difficult to quantify with precision the total dollar amount of loans, investments and services that can be attributed to CRA, some data indicate that the CRA has led to very substantial levels of funding for community reinvestment activities. These data are useful to note today, because they lend credence to the widely held view

[28] *Id.* at p. 44,263.
[29] 12 C.F.R. § 25.28(c)(2).

that the law has been effective in achieving the goals set by Congress over thirty years ago.

For example, data collected by the federal banking agencies indicates substantial levels of lending related to CRA performance by banks. Recent reports by the Federal Financial Institutions Examination Council (FFIEC) on CRA lending by institutions required to report loan information under the CRA regulations show that over $56 billion in community development loans, $306 billion in small business loans, and $12.5 billion in small farm loans, were originated or purchased by CRA-covered depository institutions in 2006 alone.[30]

Looking at one component of the CRA contributions of national banks supervised by the OCC -- public welfare *investments* -- we estimate that, over the past fifteen years, national banks have made over $25 billion of such CRA-eligible investments.

While these are very impressive statistics, they do not capture the "on the ground" impact on distressed communities of individual loans and investments made by banks, often in conjunction with community partners, as a result of CRA. One example is the revitalization of the distressed neighborhoods not far from this hearing room. Across the river in Anacostia, neighborhoods got a boost starting in 1995 when a bank-owned community development corporation (CDC) bought and renovated neglected apartments and built a new community center. The bank CDC went on to partner with two community-based organizations, creating affordable condominiums in the same

[30] *See* http://www.ffiec.gov/hmcrpr/cra072607.htm.

development, and building new affordable town homes on the site of a nearby abandoned and crime-filled apartment complex. The developments made their mark on this neighborhood, which Comptroller Dugan saw first hand during a visit there. Private investment has followed and the area has regained its standing as a desirable place to live.

To take another example, the Comptroller also visited the East Liberty neighborhood in Pittsburgh, which is undergoing significant revitalization as a result of the CRA. In East Liberty, one CRA project begun in 2002 has acted as a catalyst for other investments and transformed a warehouse into a successful grocery store that attracted new shoppers to the area. Other nearby projects have followed, including a $34 million commercial development promoted and financed by a bank-affiliated CDC using New Markets Tax Credits and other funding sources. Development in this area has created more than 400 jobs, and at least $200 million in additional projects are planned or underway.

It is important to remember that the fundamentals of *safe and sound* banking practices have kept these CRA loans and investments profitable over the years. Low Income Housing Tax Credit investments, for example, have performed well with default rates among the lowest of any class of commercial real estate. Other incentives, such as New Markets Tax Credits, CDFI funds, and other investment vehicles, also have performed well over the past three decades to bring bank capital to underserved areas in a safe, sound, and sustainable way. Generally speaking, returns on CRA-eligible loans and investments in housing and community projects across the country have been favorable.

As a result, CRA activities over the years have come to be viewed more in terms of "good business," that add social capital and hard assets to the community as well as profitability to an institution's bottom line, rather than as a "tax" on the operations of the institution.

IMPROVING CRA FOR THE FUTURE

As Comptroller Dugan said yesterday, the CRA clearly has accomplished a great deal providing incentives to bring needed credit and capital investments to underserved communities. But, recent events also make it clear we should not bask in the glow of past accomplishments, however significant they have been. Thirty years after the CRA was enacted, we continue to face daunting problems of disinvestment and community economic distress, including in communities affected by the turmoil in the mortgage markets. I would like to describe three proposals suggested by Comptroller Dugan related to CRA and community revitalization that address these issues.

Need for Legislation to Restore National Bank Public Welfare Investment Authority

It is important to recognize that as much as the CRA has helped strengthen communities since its inception, there is more that can be done to help revitalize and stabilize our nation's communities. One step is to remove needless impediments in federal law -- not in the CRA itself -- that prevent national banks making investments that

would help some of these communities. The federal law that authorizes national banks to make "public welfare" investments was amended a little over a year ago by the Financial Services Regulatory Relief Act of 2006. While these amendments increased the aggregate *amount* of investments permissible for national banks, they simultaneously decreased the *types* of investments that may be made.

For more than fifteen years before the law was changed, national banks were authorized to make "investments designed to primarily promote the public welfare, *including* the welfare of low- and moderate-income communities or families." However, the 2006 amendments cut back on this authority and restricted it to investments that promote the public welfare by "benefiting *primarily* low- and moderate-income communities or families." Now, national banks and their CDC subsidiaries may make public welfare investments only if those investments primarily benefit low- and moderate-income areas and people. In other words, national banks (including a CDC subsidiary) are now effectively *prohibited* from making direct equity investments to help foreclosure-plagued urban and suburban middle-income areas. And indirect investments, such as investments in foreclosure relief funds, also become more difficult because the fund must be able to assure the investing bank that its benefits flow primarily to low- and moderate-income areas and people. Where a fund provides benefits to communities made up of a mix of low-, moderate-, and middle-income census tracts, this may not be easy to do as a practical matter.

One immediate result of the 2006 amendment was to prevent national banks from continuing to make certain public welfare investments that previously had been authorized -- and that are specifically encouraged by the CRA regulations. For example, banks may receive favorable CRA consideration for making investments that benefit designated disaster areas and underserved and distressed middle-income *rural* communities. But, the authority of national banks to directly make these CRA-eligible investments in middle-income communities was eliminated by the 2006 amendments described above.

In addition, the 2006 amendment prohibits national banks from making investments that would provide mixed-income affordable housing -- *in areas targeted by state and local governments for revitalization and pursuant to the local government's development plan* -- if, for example, less than 50 percent of the multifamily housing units are to be occupied by low- or moderate-income people or if the government-designated revitalization area is not a low- or moderate-income census tract.

Comptroller Dugan has been very appreciative of the leadership of Chairman Frank and Representative Bachus in recognizing the anomalous results of the 2006 amendments and achieving unanimous, bipartisan passage by the House of Representatives of H.R. 1066, which would restore the broader preexisting public welfare investment standard. A comparable bill recently has been introduced in the Senate, but it has not yet been acted on.

The need for Congress to enact this legislation has taken on greater urgency recently. A broad range of communities across our nation, including neighborhoods classified as "middle income" in the 2000 Census, are suffering the adverse consequences of rising mortgage delinquencies and foreclosures. Foreclosed properties are not just empty houses. The absence of homeowners and empty, deteriorating properties can depress entire communities.

The Comptroller pointed out in his remarks just yesterday that there is a pressing need for new community development investments that will help revitalize and stabilize *all* local communities devastated by high levels of foreclosures. Many communities are not neatly delineated by the low-, moderate-, and middle-income designations used for census purposes. Federal policies should not prevent these revitalizing investments simply because a community contains tracts designated by the Census nearly 10 years ago as "middle-income." Conditions have changed since then, and some of these communities have suffered significant declines in income levels and in local economic and housing conditions.

The OCC strongly urges that the public welfare investment authority of national banks be restored by enacting legislation like H.R. 1066. In doing so, Congress would be adding an important tool to our collective efforts to address the risks and consequences of rising foreclosures. For example, restoring the public welfare investment authority for national banks would permit them to make capital investments in funds that are targeted to mortgage foreclosure relief in all American communities, including middle-income

areas. Paired with a CRA incentive described below, investments of this type by national banks and other depository institutions would also provide an important additional source of economic stimulus to communities in distress.

Need for Changes to CRA Rules to Address Foreclosure Concerns

There is another step we could take to address foreclosure relief in the context of the CRA regulations themselves. Just yesterday, the Comptroller proposed an important CRA regulatory initiative to address the community disinvestment issues affecting the broad range of communities that are being hard hit by the rising tide of mortgage defaults and foreclosures. Currently, the CRA rules recognize community development investments that are targeted to low- and moderate-income areas and distressed or underserved rural areas in need of "revitalization and stabilization."

The Comptroller urged the development of a CRA incentive for additional mortgage relief efforts in middle-income communities significantly affected by the subprime mortgage turmoil as well. Specifically, he called for a targeted amendment to the interagency CRA regulations. This amendment would provide a CRA incentive for community development investments that revitalize and stabilize middle-income urban and suburban communities that are "distressed" based on unprecedented levels of foreclosures and related economic factors. With this change, the banking agencies could give favorable CRA consideration for -- and thereby encourage -- loans, services, and investments in more communities suffering from the consequences of foreclosures.

We believe that we should be able to propose this change in the very near term by revising the definition of "community development" in the CRA rules. As noted above, there is precedent for such an approach: when the agencies recognized the need to expand the CRA rules in 2005, we revised the "community development" definition to provide CRA credit for underserved and distressed *middle-income rural areas* and for designated disaster areas. The change that the Comptroller called for yesterday is consistent with the flexibility we have shown in implementing the CRA to adapt our rules to respond to changing circumstances and changing community credit needs.

Changing the CRA regulations in this manner will provide incentives for all types of community development activities by insured depository institutions. However, it is important to emphasize that unless Congress restores the public welfare investment *authority* of national banks as described above, distressed middle-income communities facing the effects of rising foreclosures and related problems will continue to be deprived of investments by some of the largest banks in the country -- even if the CRA rules are revised.

Need to Reassess Original Scope of CRA

Finally, it is obvious that in the thirty years since the CRA was enacted, there have been profound changes in the structure of the financial services industry and the types of companies that offer loans and other financial services. While insured depository institutions previously may have provided most financial transactions of the type that are evaluated under CRA, now many *non-bank* companies provide such

financial products and services.[31] In light of these developments, a legitimate question may be raised: What are the public policy reasons for continuing to restrict the application of CRA to insured depository institutions?

Indeed, when we look at the subprime foreclosure situation, the current coverage of CRA is perversely ironic. Insured depositories were by no means the main providers of the 2-28 adjustable-rate subprime mortgages that have led to so many problems in communities around the countries. Indeed, national banks and their subsidiaries originated only about 10 percent of all subprime mortgages in 2006. Yet only insured depositories are subject to CRA, and only these institutions are motivated by CRA to engage in activities that will help address the problem through community reinvestment and lending activities. In contrast, over half of subprime mortgages of the last several years – and the ones with the most questionable underwriting standards – were originated through mortgage brokers for securitization by nonbanks, including major investment banks. Yet these nonbanks, having played such a large role in the subprime mortgages that have caused such problems in communities nationwide, are not covered by CRA and therefore have no CRA incentive to address these problems.

Covering some or all of these non-banks under the CRA has the potential to bring billions of additional community reinvestment dollars to local communities, and it would build on and enhance the substantial contributions already being made by banks for CRA

[31] *See* Apgar and Duda, *The Twenty-Fifth Anniversary of the Community Reinvesment Act: Past Accomplishments and Future Regulatory Challenges*, FRBNY Economic Policy Review, at 12, 19 (2003). (The authors note the links between lending and bank branch-based deposit gathering on which CRA was based has weakened dramatically in recent years and recommend that Congress consider expanding the CRA to cover non-depository institutions that provide mortgage credit.)

purposes. It also would add a degree of transparency to the lending operations of these non-bank lenders, through the CRA public evaluations and public comment process. In addition, extending CRA to non-bank providers would address disparities in the civic responsibilities imposed on companies that are competing to offer comparable financial products and services.

As the Comptroller said yesterday, the time may be ripe to evaluate whether a legislative determination, made over thirty years ago, about the scope and coverage of CRA continues to be appropriate given the significant changes to the delivery of credit in our financial markets in the intervening years.

CONCLUSION

Thank you, Mr. Chairman, for the opportunity to appear before you today. I would be pleased to answer any questions you might have.