January 22, 2007

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: Community Reinvestment Act - Interagency Uniformity, No. 2006-44
71 FR 67826 (Nov. 24, 2006)

Dear Sir or Madam:

America's Community Bankers ("ACB")[1] welcomes the opportunity to comment on the proposal[2] issued by the Office of Thrift Supervision ("OTS") that would amend its regulation issued to implement the Community Reinvestment Act ("CRA"). The amendments would make the regulation substantially similar to those promulgated jointly by the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), and the Board of Governors of the Federal Reserve System ("Federal Reserve").

ACB Position

ACB appreciates the OTS's work over the years to reduce the regulatory burden of CRA compliance for savings associations while maintaining the highest standards for performance under CRA. We do not believe the OTS's proposal to amend its regulation to substantially conform with the other agencies is necessary to ensure that savings associations are meeting the credit needs of their communities – all evidence shows that the OTS's current rule has not resulted in a decline in CRA activities of savings associations. As the preamble to the OTS proposal notes: "savings associations have an excellent record in the provision of credit, investments, and services in their markets, particularly in low- to moderate-income communities."[3]

ACB believes that the streamlining reflected in the OTS's current CRA regulation significantly reduces regulatory burden that outweighs potential benefits, if any, of uniformity with the other

[1] America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit *www.AmericasCommunityBankers.com*.
[2] 71 Fed Reg 67826 (Nov 24, 2006)
[3] Id. at 67828

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agencies. If uniformity is the goal, we believe the other agencies should adopt OTS's current approach.

Notwithstanding the above, we understand the OTS's desire to align its CRA regulation to those in place at the other agencies. In addition, we do not believe that the proposed changes to the OTS's CRA regulation will result in any negative effect on the way that savings associations serve the credit needs of their communities. However, if the OTS goes forward to adopt this proposal, we request that an adequate transition period be included with any final rule.

Background

In 1995, the four banking agencies issued substantially similar regulations to implement the CRA. Among other things, these regulations included a three-pronged lending, investment and service test in the examination criteria for large institutions, those institutions with $250 million or greater in assets. For those institutions with $250 million in assets or less, the agencies all adopted a streamlined examination procedure that primarily measured lending activities of the institution. In 2004, the OTS amended its CRA regulation to increase the threshold for small institution treatment to $1 billion in assets. In 2005, the OTS also amended its large institution examination procedures to permit more flexibility for those institutions with over $1 billion in assets. Finally, the OTS amended the definition of community development in its regulations to include certain activities in underserved rural areas and disaster areas.

A significant difference between the OTS's CRA regulation and those adopted by the other agencies is that the OTS regulation does not contain an intermediate category for those institutions between $250 and $1 billion in assets. For those institutions, in addition to a streamlined examination that focuses on lending, the Federal Reserve, OCC and FDIC adopted a community development test. Intermediate small institutions must satisfy both tests.

Elimination of Alternative Weights Under the Large Institution Test

ACB supported the OTS's amendment to the examination criteria for large retail associations that provides flexibility to associations to determine the weight that will be given to each of the three prongs (lending, investment and service) in the examination process. For those associations with over $1 billion in assets, the OTS permits the institution to determine the weighting for the three elements that comprise the large institution examination. Given the statutory restrictions on the lending and investment powers of savings associations, a flexible test that allows associations to get credit for lending activities over the 50 percent level is an appropriate mechanism for allocating credit for activities.

Frequently, it is difficult for savings associations to find investments that satisfy the criteria established in the rule and in the guidance issued by all of the agencies. We have heard anecdotally about associations that have had to purchase mortgage backed securities made up of loans that were not in the assessment area of the association or about which management felt unqualified to make a decision. While the preamble to the final rule issued in 1995[4] provided a

[4] 60 Fed Reg 22156 (May 4, 1995)

measure of comfort that the OTS would look flexibily at the proportion of lending and investments, the amended regulation provided an explicit alternative for institutions.

The proposal would reinstate the same three-pronged test for large retail associations that is applicable to other large institutions. The preamble to the proposal confirms the flexibility with which the OTS will view the lending and investment activities of large retail associations.[5] We urge the OTS to include an explicit statement on flexibility in the preamble to the final rule as well as in any examiner guidance that is issued. Given that a preamble does not have the same force as a regulation, it is important that examiners and others are aware of the view of the OTS in this regard.

The OTS asks whether any transition time is necessary for those large associations that have already changed or are in the process of changing the mix of activities. We suggest that large retail associations be given a minimum of an examination cycle to revise their lending and investment strategies in order to comply with any amended test. In some situations, even an examination cycle may not be long enough to make the necessary changes. Again, we urge the OTS to confirm that an association that has a strong lending program not be penalized to the extent that its investment activity is not as robust.

Community Development Test

The proposal would amend the OTS's CRA regulation to impose the intermediate small institution designation for those associations between $250 and $1 billion in assets and would require those institutions to meet a community development test as well as the streamlined lending test. ACB members are active in their communities in the area of community development. The local nature of many of the community development projects and investments allows community banks to be in a position to work with developers and others. Savings associations serve the credit needs of their communities by providing financing for homeownership but also for the infrastructure and other development needs that accompany the development of housing.

For small to medium sized associations, some community development projects are too large or complex, and we urge the OTS to provide examiners the flexibility to identify and work with those institutions that are attempting to make community development loans. This may be particularly helpful as small intermediate associations work to understand and comply with any new requirements. In addition, we suggest that the OTS issue guidance on the particular types of loans and investments that may be considered favorably under the community development test.

We request that the OTS include a transition period of at least one examination cycle for those intermediate small institutions that had reallocated their CRA activities based on the belief that the institution need only comply with the streamlined lending test. We believe that in many situations, savings associations will not have to avail themselves of the transition period, but for those associations that were under $250 million in assets until 2004 and are now between $250 and $1 billion, there may have to be some adjustment.

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[5] 71 Fed Reg 67828

When the Agencies adopted the community development test, ACB requested that the examiner guidance and other guidance be amended to provide information to institutions regarding community development activities. We reiterate our request. In addition, we urge the Agencies to work together to amend the questions and answers issued as guidance. If the goal of these proposed changes is to enable the public to measure the CRA activities of banks and savings associations, the guidance that is used by all institutions must be the same.

Indexing Asset Thresholds

When the Agencies issued the final amendments to the regulations that provided for the intermediate small institution category and the community development test, they provided that the thresholds of $250 and $1 billion would be adjusted annually based on the changes to the Consumer Price Index. In December 2006, the respective thresholds were amended to $258 million in assets and $1.033 billion in assets.[6] We strongly support including the same annual indexing requirement in any final rule that the OTS issues.

When the Agencies adopted the small institution streamlined examination procedures for those institutions with $250 million in assets or less in 1995, the number of institutions that fell below that level far exceeded that number today. Given the growth of community banks of all charter types and the consolidation in the industry at every level, the ability of the agencies to adjust the size thresholds will allow the relative sizes to keep pace with the industry.

ACB appreciates the opportunity to comment on this very important matter. Serving the credit needs of the community is the highest priority for savings associations, and we stand ready to work with the OTS as any changes are implemented. Please contact the undersigned at (202) 857-3121 or pmilon@acbankers.org or Janet Frank (202)857-3129 or jfrank@acbankers.org should you have any questions about this letter.

Very truly yours,

Patricia A. Milon
Chief Legal Officer and Senior Vice President,
Regulatory Affairs

[6] 71 Fed Reg 78335 (Dec.29, 2006)