January 16, 2007

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

Via e-mail: regs.comments@ots.treas.gov
Attention: No 2006-44

To Whom It May Concern:

Opportunity Finance Network appreciates the chance to comment on the proposed changes relating to the Office of Thrift Supervision's (OTS) regulation of the Community Reinvestment Act (CRA). Opportunity Finance Network believes in a strong, well-enforced CRA that helps provide opportunities for all Americans.

We are pleased to see that the Office of Thrift Supervision has proposed to align its CRA exam with the rules adopted by the Office of the Comptroller of the Currency, the Federal Reserve, and the Federal Deposit Insurance Corporation. The CRA is stronger when it is evaluated and reported consistently among all financial institutions. Establishing the same standards for banks and thrifts makes it more likely that regulatory agencies and the general public can hold banks and thrifts accountable for serving the needs of communities. We strongly support the OTS enacting its proposal to align its CRA exam with those of the other agencies.

Alignment of CRA Regulation

Opportunity Finance Network strongly supports the OTS revising its rules to align with the other Federal banking agencies by eliminating the alternative weight option for large thrifts, defining small savings associations with between $250 million and $1 billion in assets as "intermediate small savings associations," and establishing the community development test for these thrifts. Opportunity Finance Network also supports the OTS' adoption of the proposed language on discriminatory or other illegal credit practices. The CRA rule issued by the other Federal banking regulators took the important step of codifying provisions stating that evidence of discriminatory, fraudulent, or other illegal practices will adversely affect a bank's CRA rating.. It is important that these lending practices count against an institution in a CRA exam.

Lending, services, and investment have ALL contributed to the CRA's success. Banks and thrifts have increasingly recognized that CRA-motivated lending is profitable as well as beneficial to low-income communities. Investments channel capital and products through organizations with expertise in serving emerging low- and moderate-income markets. The "service test" encourages banks and thrifts to become more active in the essential retail banking services needs of low- and moderate-income consumers. Low-cost bank accounts and individual development accounts, for example, are important tools to help low-income people build assets.

One way banks and thrifts have been able to meet the investment test is through investments in Community Development Financial Institutions (CDFIs). These investments represent an important way to increase capital flow to low-income communities. The successful partnerships between CDFIs and financial institutions, including those that result in Bank Enterprise Award

(BEA) program awards[1], illustrate that investment opportunities are available and can be part of a thrift's strategy for successful community reinvestment.

Missed Opportunities for Community Reinvestment

Though we appreciate the changes the OTS proposes, we still see missed opportunities to strengthen CRA regulation. Opportunity Finance Network has long advocated the following three improvements to CRA; particularly since the 1999 Gramm-Leach-Bliley Act "modernized" the financial services industry without commensurate reform to community reinvestment requirements.

1. **Expand CRA coverage to all financial service institutions that receive direct or indirect taxpayer support or subsidy.** After passage of the Gramm-Leach-Bliley Act, banks became nearly indistinguishable from finance companies, insurance and securities firms, and other "parallel banks." For example, banks and thrifts with insurance company affiliates have trained insurance brokers to make loans. Securities affiliates of banks offer mutual funds with checking accounts. Mortgage finance company affiliates of banks often issue more than half of a bank's loans, especially in the subprime markets. However, the CRA covers only banks, and therefore only a fraction of a financial institution's lending. To keep the CRA in step with financial reform, *all* financial services companies that receive direct or indirect taxpayer support or subsidy should comply with the CRA exam process.

   In the paper, "The Parallel Banking System and Community Reinvestment," Opportunity Finance Network uncovered a web of taxpayer-backed subsidies essential to the entire financial services industry. For example, federal guarantees and Treasury lines of credit have acted as a safety net against some nonbank insolvencies.

   Opportunity Finance Network strongly urges the OTS to mandate that all thrift activities of non-depository affiliates be included on CRA exams, including all financial institutions that are part of large holding companies. This change would accurately assess the CRA performance of thrifts that are expanding their lending activity to all parts of their company, including mortgage brokers, insurance agents, and other non-traditional loan officers.

2. **A financial institution's assessment area should be determined by how it defines its market.** Under the CRA, financial institutions are required to provide non-discriminatory access to financial services in their market and assessed according to where they take deposits. In 1977, taking deposits was a primary function. Today, financial institutions no longer just accept deposits, they market investments, sell insurance, issue securities, and are rapidly expanding the more profitable lines of business. In addition, the advent and explosion of Internet and electronic banking has blurred the geographic lines of assessment areas.

   Presently, CRA exams scrutinize a financial institution's performance in geographical areas where it has branches and deposit-taking ATMs. Defining CRA assessment areas based on deposits is at odds with the way financial institutions now operate. Moreover, it disregards the spirit of the CRA statute, which sought to expand access to credit by ensuring that financial institutions lend to their entire markets.

[1] The Treasury Department's Community Development Financial Institutions Fund (CDFI Fund) administers the Bank Enterprise Award Program (BEA), which provides incentives to insured depositories to increase their investment in underserved communities through investments in CDFIs.

Opportunity Finance Network recommends simplifying the definition of CRA assessment area according to a financial institution's customer base. For instance, if a Philadelphia bank has credit card customers in Oregon, it also has CRA obligations there. The obligations ought to be commensurate with the level of business in any market.

3. **The CRA should provide meaningful predatory lending protection.** The explosion of the largely unregulated subprime market has contributed to an increase in abusive lending practices that threaten to undo many of the community reinvestment gains of the last decade, and changed the face of the financial services industry. The new rule includes an excellent first step, but overall lacks adequate protection. Predatory lending strips billions of dollars from consumers and communities in the United States. Borrowers lose an estimated $9.1 billion annually due to predatory mortgages; $3.4 billion from payday loans; and $3.5 billion in other lending abuses, such as overdraft loans, excessive credit card debt, and tax refund loans. In order to meet fully the intent of CRA, regulators must see that banks and thrifts not only invest in communities, but also take meaningful steps to preserve the wealth created by those investments.

   A rigorous predatory lending standard would protect new homeowners created by the Administration's initiatives to increase minority and low-income homeowners, as these populations are among those most vulnerable to predatory lending. Opportunity Finance Network urges the OTS to develop a meaningful plan to stop predatory lending.

Thank you for the opportunity to comment. Again, we are pleased that the OTS has proposed to align its CRA exam with the other Federal banking agencies. We urge you to move forward with this proposal immediately. If you have questions or would like additional information on this comment letter, please do not hesitate to contact me at 215.320.4304 or mpinsky@opportunityfinance.net.

Sincerely,

Mark Pinsky

Mark Pinsky
President and CEO