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January 16, 2007

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

Attention: 2006-44

Re: Community Reinvestment Act; Comments on Notice of Proposed Rulemaking

Dear Sir or Madam:

Bank Mutual is a federally chartered savings bank and is the fourth largest Wisconsin-based financial institution. We operate 76 bank offices throughout the State and one office in Minnesota. I have been actively involved in the Bank's CRA efforts for over fifteen years and, based on that experience and for the reasons stated herein, oppose those sections of the Proposed Rulemaking that would eliminate the alternative weight option adopted by the OTS on March 2, 2005 (the "2005 Regulation"). 70 FR 10024 (March 2, 2005).

Benefits of Alternative Weight Option. The 2005 Regulation was widely praised by financial institutions and trade groups as a model of regulatory reform. As summarized in the preamble to the 2005 Regulation, the industry believed that "the proposal would inject flexibility into the CRA process, allow thrifts to better serve their communities by allowing them to focus resources where they are most needed, and eliminate unnecessary regulatory burden." 70 FR 10024, 10028 (March 2, 2005). In adopting the 2005 Regulation, the OTS concurred with this judgment.

Under the arbitrary 50%-25%-25% weighting system (the "Fixed Weight System"), savings associations were often compelled to seek investment opportunities with little regard to their communities' actual needs. In Wisconsin, it was my experience that the primary vehicles relied upon by thrifts to meet the investment portion of the Fixed Weight System were housing authority bonds, community development funds and similar investments that were generally made at the state and regional level and despite an adequate market demand for such capital products. At the same time, however, this resulted in a diversion of resources away from the communities in which these institutions are actually located. In contrast to the Fixed Weight System are the free-market underpinnings of the alternative weight option, best summed up in the preamble to the 2005 Regulation wherein the OTS itself asserted:

> "[W]e have focused on the common-sense economic principle that allowing a savings association greater freedom to specialize in those things at which it is relatively more efficient should result in more, not less, *real* community development being delivered. Part of the idea behind allowing alternative weights is to not force a savings association to provide a service or make an investment that it cannot do efficiently – or that may not even be a central part of its business plan – and to encourage it to engage in activities at which it is relatively more efficient (i.e., where that savings association has a comparative advantage). By encouraging each savings association to meet its community development obligations through activities at which it excels, OTS anticipates gains in economic efficiency deriving from specialization. And these gains, in turn, will result in more effective, not less effective, community development." 70 FR at 10030 (March 2, 2005).

Given that the alternative weight option has been in effect less than two years and has not been provided sufficient time to prove itself, it would seem imprudent at this time to eliminate it and its potential benefits for the sole purpose creating interagency uniformity.

The 2005 Regulation was also cited for its regulatory restraint. The Community Reinvestment Act's mandate is that each financial regulator assess an "institution's record of meeting the credit needs of its entire community, including

low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution" (emphasis added). 12 U.S.C. §2903(a). The purpose behind the statute was intended simply to eliminate the practice of redlining by financial institutions. Given the statutory language of the CRA and its legislative history, the OTS "believe[d] it appropriate to allow institutions to be evaluated with greater emphasis on lending than at present." 70 FR at 10028 (March 2, 2005). In contrast to the 2005 Regulation, the regulations of the other financial regulators impose an obligation to undertake investments and services, activities that are extraneous to and beyond the scope of the CRA. In this regard, the 2005 Regulation far more prescriptive in implementing the actual requirements of the CRA. It would be unfortunate for the OTS at this time to revert to less-judicious regulations simply in the name of uniformity.

Investment Test Under the 1995 CRA Rule. The preamble of the Proposed Rulemaking makes much to do of the principle that a savings association with a strong lending record is still able to receive a satisfactory rating on the investment test while making few or no qualified investments. 71 FR at 67828 (November 24, 2006). I believe it is a mischaracterization of the regulations, however, to suggest that this principle provides large institutions the flexibility to focus their CRA efforts on lending.

When this principle was announced in the preamble to the 1995 Rule, it was done so in context of the "capacity and constraints" section of the performance context and was introduced in order to allow examiners to take into account statutory and supervisory limitations on an institution's investment authority. See 60 FR 22156, 22163 (May 4, 1995). As summarized by the 2001 Interagency Q&A Regarding Community Reinvestment:

> "[A] savings association that has made few or no qualified investments due to its limited investment authority may still receive a satisfactory rating under the investment test if it has a strong lending record." Q&A 21(b)(4), 66 FR 36620, 36631 (July 12, 2001). Emphasis Added.

As indicated in the Q&A, before an institution can rely on a strong lending record to overcome a limited investment record, it must first demonstrate that that record was the result of restrictions on its investment authority. In this regard, savings associations may invest up to 2% of their assets directly in real estate located in Empowerment Zones, Enterprise Communities, and areas covered by a neighbor-

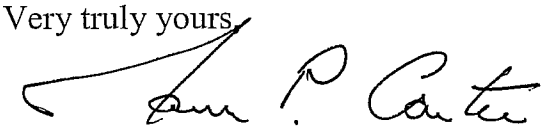
hood revitalization strategy under HUD's CDBG program, may invest up to 2% of their assets in service corporations and an additional 1% if the service corporation serves primarily community, inner-city, or community development purposes, may invest up to one-fourth of 1% of their total capital in community development investments of the type permitted for a national bank, and may make unlimited investments in instruments that are HUD-insured or issued by the National Housing Partnership Corporation, state housing corporations, and state and local governments. 12 CFR §560.30. See also *OTS guide to the federal laws & regulations governing community development activities of savings associations* (December, 1998). While this authority may constrain the investment activities of smaller thrifts, it will generally not similarly constrain larger thrifts due to their asset sizes and capital positions. As a result, larger thrifts with few or no qualified investments will nevertheless tend to receive either a "Needs to Improve" or "Substantial Noncompliance" under the investment test, regardless of how strong a lending record they may have. In turn, these thrifts are foreclosed from ever achieving an "Outstanding" composite rating and, even when earning a "High Satisfactory" on both the lending and service tests, will always score at the low end of the "Satisfactory" composite rating.

Consistency in Regulation. The purpose for the Proposed Rulemaking is to establish uniformity between the OTS and the other Federal banking agencies, and the sole purported benefit of such uniformity is apparently to allow for better comparative evaluations of CRA performance between financial institutions. However, just as rating both the Grand Canyon and Disney World as "outstanding" vacation spots yields little in the way of comparative evaluation, a generic rating system under either the existing or proposed system similarly does not allow for any meaningful comparative analysis between institutions – institutions achieve their ratings in disparate ways. The only definitive way to compare CRA performance among institutions is by digging into the actual details of their CRA Performance Evaluations. Accordingly, there is little benefit to be gained in the name of uniformity.

Moreover, savings associations have historically been the nation's home lenders. Given the unique character of the thrift industry, there are a number of areas where non-uniform regulation is deemed entirely appropriate, including the qualified thrift lender test and investment limitations. It seems similarly appropriate that the 2005 Regulation, recognizing the unique character of the thrift industry, is not and should not be uniform with that of the other federal financial regulators.

I greatly appreciate the opportunity to comment on the Proposed Rulemaking.

Very truly yours,



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