AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

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**Paul A. Smith**
Senior Counsel
Phone: 202-663-5331
Fax: 202-828-4548
psmith@aba.com

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

Re: No. 2004–54; EGRPRA Regulatory Review - Application and Reporting Requirements; Interim Final Rule; 69 Federal Register 68239; November 24, 2004

Dear Sir or Madam:

The Office of Thrift Supervision (OTS) has issued an interim final rule amending a number of its application procedures and reporting requirements in order to reduce regulatory burden. This is part of the OTS's compliance with the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), which requires the federal financial regulatory agencies to identify outdated, unnecessary, or unduly burdensome statutory or regulatory requirements and delete them. These changes will affect all savings associations in varying degrees. In general, the American Bankers Association (ABA) supports the changes, but opposes imposition of any additional conditions by OTS that might require new branch applications, as detailed below. The American Bankers Association brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership - which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks - makes ABA the largest banking trade association in the country.

The OTS interim final rule does several things to relieve regulatory burden. It revises the branch office and agency office application and notice requirements to eliminate applications for well-managed institutions and notices of short-distance relocations. ABA supports these changes.

OTS also makes consistent the publication and public comment procedures for various applications and notices, making all of them conform to the general rule requiring publication of a newspaper notice no earlier than seven days before the filing of the application and no later than the date of filing of the application. ABA supports these changes.

OTS is also revising the meeting procedures to eliminate the requirement that OTS must hold formal and informal meetings whenever a commenter makes a request for the meeting. Rather, the interim rule provides that OTS will grant meeting requests only when it finds that written submissions are insufficient to address facts or issues raised by an application, or it otherwise determines that a meeting will benefit its decision-making process. OTS may limit the issues to be considered at the meeting to issues that OTS decides are relevant or material. OTS may require a meeting on its own initiative. ABA supports these changes.

OTS also eliminates several obsolete rules, such as one requiring use of the "Equal Housing Lender" logo on advertisements for credit products other than housing-related loans. This conforms the OTS regulations to those of the other banking regulators. ABA supports these changes.

On the issue of branch and agency office applications, ABA opposes the imposition of any additional conditions that might require the FSA to return to filing branch and agency office applications. Under the interim rule, the OTS eliminates the application and notice requirements for re-designations of home and branch offices. The OTS also eliminates the application and notice requirements for re-designations of home and branch offices for FSA's that are highly rated. To be highly rated, an FSA meet all of the following conditions:

- A composite CAMELS rating of a 1 or 2 during the most recent examination.
- A CRA rating that was satisfactory or outstanding during the most recent examination.
- A compliance rating of 1 or 2 during the most recent examination.
- All of its capital ratios meet the standards of 12 CFR Part 567, both before and immediately following the establishment or relocation of the office.
- Not been notified by the OTS that the FSA is in a troubled condition.

OTS will require a highly rated FSA to solicit comment by publishing a newspaper notice indicating that it intends to change the location of a home or branch office or establish a new branch office. If no commenter makes a relevant objection to the proposed action during the 30-day period following the publication, an application or notice will not be required.

As noted above, ABA supports these changes. However, OTS states that it is considering adding an additional condition that an application or notice will be required if the FSA's investment in branch and home offices exceeds a specified limit or if the association is engaged in multiple branch expansions. OTS writes that branch offices can be costly to build and operate. Moreover, excessive growth can present other supervisory issues. OTS regulations currently limit the amount of the book value of a Federal savings association's investment in real estate used for office and related facilities to the amount of its total capital. OTS is concerned that this limitation may not be sufficient to ensure safe and sound operations.

First, it is unclear to the ABA whether the OTS is suggesting that it intends to reduce the permissible investment in premises from 100% of total capital to some lesser amount that the OTS would feel would be necessary for safe and sound operations. If that is what is suggested, then ABA does not support such a reduction. ABA notes that national banks' investment in premises is limited under 12 USC 371d to 150% of capital and surplus, if the bank is well-managed and well-capitalized. The national bank must give notice of acquisitions of property for premises within 30 days after the acquisition. Under 12 CFR 3.100, the OCC has interpreted "capital and surplus" to essentially mean total capital (Tier 1 and Tier 2). Thus it appears that the OTS's current limitation is stricter than that imposed on national banks and is sufficient to ensure safe and sound operations. Further, ABA notes that "investment in premises" and "total capital" appear to be reported on the Thrift Financial Report. Thus OTS can quarterly ascertain whether each thrift's investment in premises is within the limitation. ABA concludes that no additional condition is necessary. However, if the OTS does intend to lower this limit, then ABA believes that the notice given in this rulemaking is not sufficient, and OTS would need another, specific proposed rulemaking on amending the limit.

Also, ABA is concerned by the OTS's suggestion that "if the association is engaged in multiple branch expansions," then OTS might require branch applications to be filed by the FSA. It is unclear from this whether the FSA must decide that it is "engaged" in multiple branch expansions and provide notice of such engagement to the OTS, or whether this is an after-the-fact determination by OTS that would then require branch applications on future branches. It is also unclear what level of activity - planning, market research, or actual investment in premises - would be considered "engaged" by the OTS. Because of the several significant questions raised by this part of the interim rule, ABA urges the OTS not to impose any additional conditions at this time.

In conclusion, ABA supports the final adoption of the interim rule, but recommends that the OTS not impose any additional conditions that might require branch or agency office applications. OTS should conduct a new rulemaking, if the OTS concludes any additional conditions are needed. If the OTS has any questions about this comment letter, please call the undersigned.

Sincerely,

Paul Alan Smith

Paul Smith
Senior Counsel