CapitalOne

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Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
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Washington, D.C. 20552
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**Notice of Proposed Rulemaking**
**Community Reinvestment Act – Community Development, Assigned Ratings**
**Attention: Docket No. 2004-53**

Dear Sir or Madam:

Capital One, F.S.B. ("Capital One") is pleased to submit comments regarding the *Notice of Proposed Rulemaking: Community Reinvestment Act – Community Development, Assigned Ratings* issued on November 24, 2004 (the "Proposal.")

Capital One is a federal savings bank and offers a range of consumer and small business lending products including credit cards, small business loans, mortgages and installment loans as well as deposits. As of December 31, 2004, Capital One had $14 billion in managed loans outstanding and held $11 billion in deposits. Capital One is a subsidiary of Capital One Financial Corporation, a bank holding company and Fortune 500 company, one of the largest providers of MasterCard and Visa credit cards in the world, whose subsidiaries, as of December 31, 2004, collectively had 48.6 million accounts and $79.9 billion in managed loans outstanding.

Capital One is firmly committed to meeting the goals of the Community Reinvestment Act and its implementing regulations (together, the "CRA") and, more broadly, to meeting the credit needs of its communities including low- and moderate-income ("LMI") areas and individuals.

Capital One is not a traditional "brick and mortar" savings association, and therefore we especially appreciate the need for flexibility in the CRA and applaud the OTS for initiating its proposal to provide additional flexibility in the way CRA ratings are assigned. Like a traditional bank, Capital One makes loans and takes deposits. Unlike a traditional savings association, however:

- Capital One delivers financial services and products via mail, telephone and internet. As a "branchless" institution, Capital One does not maintain physical locations to deliver services.
- Capital One's products and services are available and accessible to customers twenty-four hours a day, 365 days a year.

Capital One was created and shaped by the needs and demands of the customers and communities it serves. Hence Capital One appreciates the value of CRA modifications that will enable Capital One and other institutions to tailor their CRA programs to the needs of the communities they serve, which are unlikely to align perfectly with a one-size-fits-all rating system.

Against that background, Capital One offers the following comments on the Proposal.

## General Comments

A strong CRA is important in meeting the needs of LMI geographies and persons. And, CRA will be stronger if it is flexible enough to enable an institution to tailor its CRA program to the particular needs of the communities and consumers that it serves. No two financial institutions are the same, and no two communities are the same. An institution's expertise, its market opportunities and the needs of its community are just a few of the factors that must be taken into account in making CRA decisions. No one knows these factors better than the financial institutions and communities themselves. Thus, regulations that give the maximum flexibility to the institution, while remaining within the spirit of the CRA, best serve the purposes of the CRA and, hence, the communities it was designed to help. We agree with the currently stated OTS policy to consider factors such as institutional products, business strategy and capacity and constraints, (69 Fed. Reg. 68257, 68260 [Nov. 24, 2004]), and believe that the current proposal to allow greater flexibility in weighting will substantially advance that policy.

We note that the Proposal submits a large number of wide-ranging questions for public comment. Should the comments that are submitted in response to those questions lead the OTS to consider adopting a regulatory regime substantially different from that proposed to date and discussed below, we urge the OTS to repropose that regime in a further round of notice and comment, rather than adopting a final rule, to allow Capital One and other interested parties a fair opportunity to comment on the regulation before it becomes final.

## Comments on Specific Questions

Capital One offers comments on the following specific questions posed in the Proposal.

***Would it be appropriate to provide the savings association flexibility in the way that CRA ratings are assigned by offering a choice of weights for the lending, service, and investment test within the large retail institution test?***

Yes. The capabilities, expertise and opportunities of each financial institution are unique. The needs of the communities they serve are similarly unique. CRA ratings should allow the institution the flexibility to assess the community's needs and properly address those needs through creative, profitable investments and loans. Just as the OTS has proposed, institutions should be permitted to make the allocation election at any time prior to the commencement of the institutions CRA examination by providing notice of the election to the OTS through its examiner.

***Are there ways OTS could make the process even more flexible than outlined in this proposal?***

Yes. Although the CRA accommodates wholesale and limited purpose institutions, recognizing that these businesses differ from traditional depository institutions, the CRA does not make adequate provision for financial institutions that exclusively employ alternative, non-branch delivery systems as their primary distribution channel. Additional flexibility for such institutions, such as Capital One, would increase other CRA-qualified efforts while accommodating the need for the financial services industry to evolve to meet changing market needs and competitive pressures. For institutions that have no branches, the option to give no weight to the current part of the service test that focuses on branch distribution and products accessible through brick and mortar locations, in exchange for a greater emphasis on lending and/or community development activities, would more strongly encourage institutions to engage in effective LMI community impact activities.

Definition of Community Development

Capital One recommends that a prorated CRA credit be given for any community development projects serving less than 50% LMI households. Limiting CRA credit only to those activities serving greater than 50% LMI households is a disincentive to the financing of mixed-income developments which are known to benefit the LMI households in them. Expanding the community development definition as we propose would encourage mixed-income developments and would be a very positive change for LMI households.

Flexibility in Definition of Community Development Service

The definition of community development services needs to be expanded to include all activities which may have a beneficial effect on sustaining and stabilizing LMI communities, similar to the definition of community development applied to loans and investments. Financial institutions, like other corporations, can and do serve their communities in many ways. Associates of Capital One and its affiliates currently spend more than 50,000 hours annually volunteering in their respective communities. However, despite the long-term economic benefit to the local or regional community, many meaningful activities, such as volunteerism with Habitat for Humanity, do not qualify for CRA credit. Creating incentives to broadening employee engagement in community service would advance the goals and favorable reputation of the CRA.

***Would it be appropriate for the alternative weights to require at least a 50 percent weight to lending, as proposed?***

No. For the very same reasons the OTS has proposed greater flexibility in the assigned ratings, it should not limit that flexibility by requiring a minimum 50% be allocated to the lending test. Some communities are simply "over-served" in terms of lending, leading to concessions being made in underwriting and lending terms, driven by CRA obligations and not by sound business strategy, upsetting the focus on safe and sound lending that the CRA was intended to preserve.

The dominance of the lending test, and its impact on the overall CRA performance evaluation, is an issue that affects all financial institutions. Granting institutions flexibility in weighting the different categories of activities would enable savings associations to carry out their CRA mission in a manner that best fits their business strategy, their organizational strengths and capacities, and the needs of their communities.

***Would a preferable alternative be to eliminate the investment test?***

A stable set of CRA regulations is critical both to the financial services industry and the communities intended to be benefited by CRA. Stability enables the financial markets to develop innovative financial solutions that meet both an institution's CRA obligations and the needs of LMI communities. Dramatic changes in CRA obligations can adversely impact both these constituencies by upsetting expectations, wasting prior efforts at innovation and acting as a disincentive to future innovation. Therefore, great caution should be taken in revamping this regulatory environment. CRA regulations should continue to focus on benefiting LMI geographies or individuals and to do so without eliminating any vehicle to achieve those ends.

With that in mind, Capital One opposes elimination of the investment test. Investments are a legitimate and critical tool for meeting the community development needs of LMI communities. Robust financial investment in community development often is the catalyst for attracting solid community development lending dollars, something that the lending tests and community service tests simply cannot make up for. Eliminating adequate CRA recognition for investments altogether could have a dramatic, negative impact on community development and the communities that are served. Moreover, community investments are often the best option for a financial institution having the expertise in this area, but unable, because of either regulatory or industry constraints, to perform well in other CRA test areas. Financial institutions that lack retail delivery systems or traditional lending operations must rely upon qualified investments, grants, and services to meet their CRA performance requirements. Without this option in meeting its CRA obligations, an institution without a traditional brick and mortar presence would be put to greater expense in meeting its CRA objectives while, in the end, achieving only questionable results for its shareholders.

## Conclusion

Capital One believes that the issues discussed above and the suggested revisions to the CRA will reduce artificial barriers and create the proper incentives to deliver capital and other benefits to the communities it serves. Flexibility in allowing institutions to focus on local community need and capitalize on their expertise and opportunities will benefit many other institutions and communities, too. Accordingly, Capital One strongly favors the preservation of CRA credit for community development investments, and, indeed, even more flexibility in using the investments in meeting CRA obligations. In so doing, the industry and regulators can together realize the goals for which CRA was created.

Capital One appreciates this opportunity to comment on this important regulation. Should you have any questions, please do not hesitate to contact Dorothy Broadman, Director of Global Corporate Citizenship, at (703) 720-2368, or me at (703) 720-2255.

Sincerely,

Christopher T. Curtis

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Associate General Counsel
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