Oral Statement of
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The Financial Services Regulatory Relief Act of 2002
House Subcommittee on Financial Institutions and Consumer Credit

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Chairman Bachus, Ranking Member Waters, and members of the Subcommittee, I appreciate this opportunity to discuss with you ways in unnecessary regulatory burden on America's banking system can be reduced, and to express the views of the Office of the Comptroller of the Currency on the Financial Services Regulatory Relief Act of 2002. Let me also begin by thanking Ms. Capito for sponsoring this bill, which includes sensible and appropriate regulatory burden relief for national banks and other financial institutions. My testimony this morning highlights a few of the provisions in the bill that we believe are especially important.

As the Subcommittee knows, effective bank supervision demands that we achieve a balance among several, sometimes competing, but equally important, objectives. One of these objectives is to foster banks' ability to conduct their business profitably and competitively, free from burdensome constraints that are not necessary to further the purposes of the banking laws.

The bill contains several provisions that further this objective by streamlining and modernizing aspects of the corporate governance and interstate operations of national banks. The OCC strongly supports these provisions.

For example, the bill modifies the so-called "qualifying shares" requirement currently in the National Bank Act, which has made it difficult for some national banks to

obtain favorable tax treatment as "Subchapter S" corporations. The "qualifying shares" provision requires every national bank director to hold a minimum equity interest in his or her national bank. Because of this requirement, however, some national banks end up with more shareholders than the law permits for a corporation wishing to elect "Sub S" status. Community banks are most disadvantaged by this result.

The bill solves this problem by authorizing the Comptroller to permit the directors of banks seeking Sub S status to hold subordinated debt instead of equity shares. Holding subordinated debt does not cause a director to be counted as a shareholder for purposes of Subchapter S. At the same time, the subordinated debt requirement achieves the same purpose as a requirement to hold equity shares because a director can only be repaid if all other claims of depositors and nondeposit general creditors of the bank are first paid in full.

Another sensible modernization in the bill eliminates a provision in current law that requires a national bank to have cumulative voting in the election of its directors. The bill permits a national bank to determine, at its option, reflected in its articles of association, whether or not to permit cumulative voting. This conforms the National Bank Act to modern corporate codes and provides national banks with the same corporate flexibility available to most corporations and state banks.

A third provision repeals the requirement in current law that a state must affirmatively enact legislation in order to permit national and state banks to conduct interstate expansion through *de novo* branching. The effect of current law is to require that, in many cases, banks must structure artificial and unnecessarily expensive transactions in order to establish a new branch across a state border. Banks and their

customers would benefit by this change, which would permit a bank to choose which form of interstate expansion that makes the most sense for its business needs and customer demands. Federal thrifts have enjoyed this type of flexibility for decades.

The bill also contains provisions that address a second, and fundamentally important, objective of bank supervision, and that is to promote and maintain the safety and soundness of the banking system. For example, the bill expressly authorizes the Federal banking agencies to enforce an institution-affiliated party's, or a controlling shareholder's, written commitment to provide capital to an insured depository institution. This provision would reverse the effect of some recent Federal court decisions, which have conditioned the agencies' authority to enforce such written commitments on a showing that the non-bank party was "unjustly enriched." By removing this impediment to our ability to hold parties to their commitments to provide capital, the new provision will enhance the safety and soundness of insured depository institutions and reduce losses to the deposit insurance funds.

My written statement touches on several additional amendments to current law that we believe would enhance the banking agencies' safety and soundness authority, reduce risk to the deposit insurance funds, and facilitate our enforcement efforts when wrongdoing does occur. We are working with the other banking agencies to develop these recommendations and hope that they can be included in the bill as it moves through the legislative process.

Mr. Chairman, on behalf of the OCC, we thank you for your support of this legislation. I will be happy to answer any questions you may have.