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January 22, 2007

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2006-44

Re: Community Reinvestment Act – Interagency Uniformity

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the Office of Thrift Supervision's (OTS) four proposed changes to its Community Reinvestment Act (CRA) rules. The changes – intended to promote consistency among banking regulators, facilitate objective evaluations of CRA performance and let the public make more effective comparisons between thrift and bank CRA performance – would:

- Eliminate the option of alternative weights for lending, investment and service tests for large thrifts (those with over \$1 billion in assets)
- Create a new tier of “intermediate small savings associations” between \$250 million and \$1 billion in assets subject to a new community development test
- Annually index the asset thresholds for small and intermediate small savings associations based on changes to the consumer price index (CPI)

¹ The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than \$876 billion in assets \$692 billion in deposits, and more than \$589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

- Clarify that evidence of discrimination or other illegal credit practices can affect a thrift's CRA rating

Summary of ICBA Position

While ICBA believes that the steps OTS has taken in the past – increasing the threshold for small thrifts, creating a uniform evaluation process for all thrifts with less than \$1 billion in assets, and injecting flexibility into the evaluation process for large thrifts – were the right steps to help the CRA achieve its fundamental goals, we also believe uniformity among the regulatory agencies for similar rules is important. Although ICBA would prefer the other agencies adopt the OTS position, we believe the OTS is doing the right thing to promote consistency and so ICBA supports the proposed changes.

Background

When the agencies substantially revised the CRA rules in 1995, they committed to re-examine them to ensure the revisions placed performance over process, promoted consistent evaluations and eliminated unnecessary regulatory burden. In 2004, the agencies proposed updating the rules by uniformly increasing the asset size limit for the streamlined small institution exam to \$500 million in assets. However, after much deliberation the agencies were unable to reach consensus. The Federal Reserve withdrew its proposal and the OCC announced it would not proceed further. Independently, the OTS raised the asset size limit for small savings associations to \$1 billion without regard to holding company affiliation. Then, in March 2005 the OTS adopted another revision to provide added flexibility for large thrifts (those with over \$1 billion in assets) by allowing them the option of departing from the regulation's pre-determined weights of 50% for the lending test and 25% each for the services and investment tests for assessing CRA performance.

Meanwhile, prompted in part by the OTS' actions, the FDIC, Federal Reserve and OCC created a different approach to evaluating CRA performance by raising the small bank asset size limit to \$1 billion but also creating a mid-tier of "intermediate small banks" between \$250 million and \$1 billion in assets to be evaluated on a community development test as well as the existing lending test.

As a result of all these changes, thrifts between \$250 million and \$1 billion in assets currently are assessed using different criteria than banks of the same size while thrifts over \$1 billion in assets have an option that allows them to be assessed under different criteria than the factors used for large banks. Stressing that thrifts have an excellent record of providing credit, investments and services in their markets, especially to low- and moderate-income communities, and while pointing out that savings associations "far outdistance banks and other lenders in originating multi-family housing loans," the OTS now believes uniform CRA rules will ultimately benefit thrifts. In a recent speech to bankers, OTS Director John Reich commented that, "the different procedures for evaluating CRA compliance by thrifts versus banks...does a disservice to thrifts," and that he found it "quite disturbing" that thrifts "have had to continually defend

their programs and activities because of the OTS's differing CRA rules."² Therefore, the agency is proposing these four new changes to bring the OTS rules in line with those of the other banking agencies. The overriding question, though, is whether greater uniformity outweighs potential disadvantages to the proposed changes.

Overview of ICBA Position

Fundamentally, ICBA believes the changes that OTS adopted earlier were the proper steps. Allowing large thrifts the flexibility to adopt an alternative system and having a uniform evaluation system for all thrifts with less than \$1 billion in assets were the most appropriate steps to properly evaluate thrifts' CRA performance. It is unfortunate that the other agencies did not choose to emulate the OTS, especially since the OTS actions in 2004 were critical for breaking the interagency logjam and allowing much needed progress on CRA. These changes help banks – and thrifts – offer products and services that benefit their communities instead of satisfying regulatory red tape.

At the same time, ICBA has long been a proponent of interagency uniformity in regulatory treatment. Barring a significant reason for disparate approaches for similar rules, ICBA finds that uniformity helps reduce burden – primarily by eliminating confusion among bankers and examiners. Therefore, we support the changes proposed by OTS.

While some believe the proposed changes will facilitate comparisons among thrifts and banks, ICBA questions whether this is actually likely and whether such attempted comparisons are beneficial. There are many significant differences among communities across the United States and regional differences are often endorsed and celebrated by local chambers of commerce. These differences make truly valid comparisons difficult if not impossible.³ Moreover, community banks are integral parts of their communities and the viability of the institution goes hand-in-hand with the viability of the community, regardless of regulatory mandates for investment. And so ICBA also questions whether these changes will result in increased financing for low- and moderate-income communities that community banks are not already undertaking as a matter of good business and good citizenship.⁴

Alternate Weights for Large Thrifts

The first part of the proposal would eliminate the option for large thrifts to elect different weights for the lending, investment and services test (currently 50%, 25% and 25% respectively). When the OTS took this step, ICBA supported it, pointing out that “allowing larger institutions the flexibility to establish their own assessment matrix for CRA acknowledges the institution's understanding of its local market and individual

² Remarks of John M. Reich, OTS Director, to the America's Community Bankers Annual Conference, San Diego, California, October 15, 2006.

³ It is these differences among communities – along with differences among financial institutions – that make the performance context vital to the CRA evaluation process.

⁴ See, e.g., letter dated November 20, 2006, from the California Community Development Association on this proposal, which makes this point without explaining how the change would facilitate these investments, contrary to points raised by OTS Director Reich (see below).

business plan while still ensuring CRA requirements are met.”⁵ However, OTS stresses that even if the changes are adopted, large savings associations would retain the flexibility to focus CRA efforts on lending, and that statutory restrictions on thrift investments would still be considered when evaluating CRA performance. Moreover, large thrifts would still have the option of submitting a strategic plan as a way to be evaluated under more flexible criteria.

ICBA supported the OTS proposal to adopt an alternative weighting for large thrifts as a welcome means to offer flexibility and to encourage large thrifts to take those steps needed to meet the needs of their communities in the most appropriate fashion. While ICBA continues to believe OTS took the right step in March 2005 by adopting such a rule, ICBA supports the proposed change. While the flexibility in the alternative weighting system is a viable option that should be continued, consistency helps reduce regulatory burden by eliminating confusion caused by disparate approaches to similar regulations. ICBA finds that consistency among the agencies in this case outweighs the benefits of two different approaches, although we are disappointed that the other agencies have not conformed their rules to those of the OTS.

Transition Period. So large thrifts that relied on the alternate weighting option have time to adjust their policies and procedures, ICBA believes a transition period should be allowed to let them conform to the change. We recommend two years. This would allow thrifts to make changes to investment and lending portfolios when appropriate and not when external economic factors might make such changes disadvantageous.

Community Development Test

The second part of the proposal would create a mid-tier of “intermediate small savings associations” and adopt the community development assessment for those thrifts based on the same criteria used by the FDIC, Federal Reserve and OCC. OTS stresses these intermediate small savings associations already respond to community development needs, but that the changes would provide a more comprehensive framework for assessment and allow more ready comparisons between intermediate small banks and intermediate small thrifts.

Again, ICBA supports this change in the interest of consistency among the agencies and also recommends a two-year transition period to let intermediate small savings associations adjust.

Indexing Asset Thresholds

A further step proposed to make the OTS rules consistent with those of the other banking regulators would be to index the asset size limits for determining the criteria used to evaluate CRA performance. Recently, the FDIC, Federal Reserve and OCC indexed the limits that define a small bank as those with assets less than \$1.033 billion and an intermediate small bank as those with assets between \$258 million and \$1.033 billion.⁶ OTS proposes to use a similar method for indexing the thresholds for small and

⁵ ICBA comment letter to OTS, January 24, 2005, p. 7.

⁶ See, e.g., FDIC FIL-2-2007 issued January 9, 2007.

intermediate small thrifts. ICBA supports this change as a further means to promote consistency among the agencies. We also urge the OTS to immediately adjust the thresholds for thrifts to be consistent with those already in place for the other agencies.

Discriminatory or Other Illegal Credit Practices

Finally, OTS proposes following the other agencies by clarifying that evidence of discriminatory or other illegal credit practices could adversely affect a thrift's CRA rating. ICBA continues to believe the regulators have sufficient authority under other statutes and regulations to take appropriate steps against illegal credit practices. ICBA does not believe this proposal constitutes a substantial change from existing examination procedures, but we also question whether it is necessary to incorporate this provision under the CRA rules. We believe it would be more appropriate to use compliance examinations and fair lending reviews – better designed for this purpose – to identify and stop abusive lending. However, in the interest of uniformity, ICBA does not oppose this proposed revision.

Conclusion

In closing, ICBA supports the proposed changes as a means towards regulatory consistency. While we are disappointed that the CRA improvements by OTS have not been adopted by the other agencies, we believe the benefits of regulatory consistency outweigh the disadvantages of these proposed changes.

Thank you for the opportunity to comment. If you have any questions or would like additional information, please contact the undersigned by e-mail at robert.rowe@icba.org or by telephone at 202-659-8111.

Sincerely,



Robert G. Rowe, III
Regulatory Counsel