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Statement of

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Office of Thrift Supervision

concerning

The Community Reinvestment Act: Thirty Years of Accomplishments, But Challenges Remain

before the

Committee on Financial Services
United States House of Representatives

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Testimony on The Community Reinvestment Act: Thirty Years of Accomplishments, But Challenges Remain

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I. Introduction

Good morning, Chairman Frank, Ranking Member Bachus, and Members of the Committee. Thank you for the opportunity to offer testimony on behalf of the Office of Thrift Supervision (OTS) to commemorate the 30th anniversary of the Community Reinvestment Act (CRA). The CRA continues to be a critical legislative milestone for financial institutions and the communities they serve throughout this country. I am very pleased to help celebrate the many and varied contributions that CRA has made in the past three decades to assist regulated institutions in meeting the credit needs of their communities, and particularly low-and moderate-income neighborhoods.

In my testimony today I will discuss (i) the role CRA has played in expanding access to financial services in underserved communities, (ii) the examination process and enforcement mechanisms in place to identify and address CRA issues, (iii) the CRA ratings distribution for savings associations, (iv) the impact of CRA ratings on corporate applications; (v) the ways CRA may be modified or expanded to increase its effectiveness and impact in the changing landscape of today's financial services industry, and (vi) other pivotal issues you have asked OTS to address during today's hearing.

II. The Role of the CRA in Serving Underserved Communities

The CRA was enacted on October 12, 1977 to combat mortgage redlining and discriminatory lending patterns and to encourage banks and thrifts to make concerted efforts to meet the credit needs of all segments of their communities, including low-and moderate-income areas. The legislation addressed vital needs at a crucial time in our history. The CRA helped to democratize credit availability by creating "a continuing and

affirmative obligation" for financial institutions to meet the credit needs of their communities. The CRA statute and implementing regulations also encouraged depository institutions and community-based organizations to work cooperatively and collaboratively to promote the accessibility of credit and related banking services to underserved communities.

The CRA and its implementing regulations[1] have encouraged: (1) the expansion of branches in low-and moderate-income neighborhoods; (2) the development of innovative and responsive retail products and services for low-and moderate-income households; (3) the use of flexible credit underwriting criteria; and (4) the formation of partnerships with local nonprofit entities to provide loans, investments and services that foster community and economic development.

The CRA has also provided the impetus for many financial institutions, often in partnership with community-based organizations, to revitalize low-and moderate-income neighborhoods through loans and investments. One notable illustration of how the thrift industry is meeting the needs of lower-income households is its leadership profile in the origination of multi-family housing loans, a frequent instrument used to finance affordable housing. As of September 30, 2007, OTS-regulated savings associations had approximately 4.14 percent of their assets in multi-family loans, in contrast to commercial banks, which had approximately 1.03 percent of their assets in multi-family loans.

The CRA has also contributed significantly to the rise in other types of community lending and investments, particularly small business and community development lending by savings associations. Beginning in 1996 through 2006,[2] OTS-supervised institutions generated substantial increases in the number and dollar volume of small business and community development loans. In 1996, OTS-supervised savings associations originated 36,342 small business loans totaling $3.5 billion. By 2006, savings associations originated approximately five million small business loans, totaling nearly $29 billion. This is particularly noteworthy given that small business lending is an important driver in the economic empowerment of low and moderate-income neighborhoods.[3]

In addition to small business lending, the dollar volume of community development loans savings associations have originated increased from approximately $2 billion in 1996 to nearly $10.5 billion in 2006. Such increases are attributable, in part, to CRA's focus on community development which has led to substantial

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[1] For the OTS, the CRA regulations are found at 12 CFR part 563e.

[2] Institutions collected and reported loan data in these categories, as applicable, as a result of revisions to the CRA regulations in 1995.

[3] According to a report issued by the Small Business Administration in August of 2007, small businesses employ about half of all private sector employees, pay more than 45 percent of total U.S. private payroll and have generated 60 to 80 percent of net new jobs annually over the last decade. US Small Business Administration, Office of Advocacy, Frequently Asked Questions, August 2007.

accomplishments in the creation of affordable housing for low- and moderate-income individuals, expansion of community services targeted to low–and moderate-income individuals, activities that promote economic development, and activities that revitalize and stabilize low- and moderate-income geographies.

Along with small business and community development lending, OTS-regulated institutions continue to make sizable CRA-eligible investments. For example, a review of qualified investment data reported by OTS-regulated large institutions for 2006 and 2007 shows that current-year investments total approximately $899 million. Prior-period data totaling approximately $148 million represent investments made in previous years that are still carried on the institutions' books and given weighted consideration by examiners. The aggregate dollar volume of investments for these institutions is approximately $1.047 billion.

With respect to services, the OTS has also reviewed the branch distributions for savings associations from 2003 through 2006 to determine the number and percentage of branches located in low- and moderate-income geographies and the dollar volume of deposits made through those branch offices. During this four-year period, the average dollar volume of branch deposits located in low-and moderate-income areas amounted to approximately $212.4 million. That figure represents approximately 28 percent of the total volume of deposits in branches located in every census tract income level. The average number of branches located in low- and moderate-income geographies during the four-year time period is 1,969, which represents approximately 20.4 percent of savings associations' branches located in all census tracts. The percentage of branches in lower-income tracts is generally proportional to the level of deposits for those tracts.

During CRA examinations, OTS examiners consider whether an institution is offering products that are suitable for lower-income customers. In addition, we encourage institutions to review the services offered through their branch network to assess whether their branch locations are adequately serving low and moderate-income populations.

OTS Director John Reich has emphasized that a strong branch presence in low- and moderate-income communities is an effective delivery system to provide lower-cost financial products and services that stabilize neighborhoods. An important reason why OTS made our CRA regulations consistent with those of the other banking agencies is the ability to use the service test performance criteria to evaluate to what extent thrift institutions are providing retail and community development services in their market areas, consistent with safety and soundness principles and consumer protection laws. OTS will continue to emphasize the importance of maintaining and expanding branch networks in low- and moderate-income communities as an important financial services delivery system and an alternative to higher-cost financial services products offered by non-depository institutions.

III. OTS Examination and Oversight of CRA Compliance

On May 4, 1995, the federal banking agencies jointly published revised CRA regulations that dramatically refocused the way we evaluate CRA compliance. The revised regulations emphasized performance-based requirements and replaced the prior assessment factors that were criticized as rewarding process over measurable results. The revised regulations recognized that each institution's capacity to help meet community credit needs is affected by many factors. These factors include the institution's asset size and financial condition, product offerings and business strategy, legal impediments (such as investment and lending limits), local economic and market conditions, and the performance of regulated and unregulated competitors and similarly situated institutions, which could influence the supply of, and demand for, credit. The regulations required examiners to consider these factors, which comprise the institution's "performance context," when evaluating a financial institution's performance under CRA.

As a result of the revisions, the CRA regulations, policy guidance, and examination procedures embody clear, flexible, and sensible performance criteria that:

- Accommodate differences in institutions and the communities in which they operate;
- Minimize burden;
- Promote consistency and objectivity; and
- Allow examiners to exercise their judgment (within regulatory parameters), rather than unduly adhere to rigid, prescriptive procedures.

Currently, the CRA regulations and corresponding examination procedures provide different evaluation methods that address various institutional structures and operations. For small institutions with total assets under $250 million,[4] examinations entail using a streamlined assessment method that emphasizes lending performance. For intermediate small institutions – those institutions with total assets between $250 million and $1 billion – the assessment method evaluates both lending performance and the provision of community development activities (community development loans, qualified investments, and community development services). Large retail institutions – with total assets of $1 billion or more – are subject to CRA evaluations involving three performance tests that assess lending, investment, and service performance. Finally, for wholesale and limited purpose institutions, the assessment method focuses on community development lending, investments, and service activities.

In addition, the CRA regulations permit any institution, irrespective of asset size or business profile, the option to be evaluated under a strategic plan with specific performance goals pre-approved by the institution's regulator.

Both the regulations and the examination procedures establish and promote evaluation methods based on objective data that institutions can also use to measure their

[4] The asset threshold for small and intermediate small savings associations is adjusted annually based on changes to the Consumer Price Index.

performance. Examiners use various data, against the backdrop of an institution's performance context, to assess a savings association's CRA performance. These data include the number and dollar volume of home mortgage and small business loans within the institution's delineated assessment area(s); the number and dollar volume of loans made to low-and moderate-income people, small businesses and small farms; and the extent of loan penetration in low-and moderate-income geographies. As noted previously, some institutions are also evaluated on their performance in providing community development lending, qualified investments, and community development services.

OTS CRA Realignment

In March 2007, OTS published a final CRA rule that brought our regulations back into alignment with the regulations of the other banking agencies in several key areas. Previously, in August 2005, the FDIC, FRB, and OCC issued a joint final rule that created a new community development test for intermediate small banks; adopted language that clarified how evidence of discrimination or practices that violate an applicable law, rule or regulation would adversely affect an institution's CRA rating; and established a provision to adjust asset thresholds for institutions annually for inflation based on the Consumer Price Index.[5] These changes support the core principles and policy objectives of CRA regarding lending to low- and moderate-income communities, making community development investments, and participating in services that stabilize and revitalize low- and moderate-income neighborhoods.

Other important changes include revising the definition of "community development." The OTS adopted this revision in April 2006, which was the first step in the CRA realignment process. The definition was expanded to include activities that revitalize or stabilize:

(A) Low- or moderate-income geographies
(B) Designated disaster areas; or
(C) Distressed or underserved, nonmetropolitan middle-income geographies designated by OTS based on:

    (i) Rates of poverty, unemployment, and population loss; or
    (ii) Population size, density, and dispersion. (Activities are deemed to revitalize and stabilize designated geographies based on population size,

[5] At the time of the 1995 revisions, the banking agencies had committed to review the regulations to ensure their effectiveness in assessing the CRA performance of different institutions and eliminate unnecessary regulatory burden. The category of "intermediate small bank/intermediate small savings association" was established in 2005 to evaluate institutions having total assets between $250 million and $1 billion using a more streamlined approach than the lending, investment and service tests under which large, retail institutions are evaluated. Although intermediate small institutions are evaluated under both a lending and community development test, they are no longer required to collect and report data on small business or small farm loans or the location of certain mortgage loans, thereby reducing the costly and time-intensive data collection and reporting burden for those institutions.

density, and dispersion if they help to meet essential community needs, including the needs of low- and moderate-income individuals.)

Making the OTS's CRA regulations and examination procedures uniform with those of the other banking regulators facilitates more consistent and effective evaluations of the CRA performance of banks and thrifts operating within the same market areas. In realigning our rule with that of the other banking agencies, OTS incorporated changes that reinforce longstanding CRA objectives when assessing the ongoing performance of savings associations in meeting the needs of their local communities.

The OTS CRA Examination Process

The OTS uses the Interagency CRA Examination Procedures to conduct routine CRA examinations on a regularly scheduled basis. Generally, OTS conducts a CRA examination of a savings association with total assets of $250 million or more, and with a prior rating of "Satisfactory" or better, every 24 to 36 months. For savings associations having total assets under $250 million and a CRA rating of "Satisfactory" or better, OTS examines every 48 to 60 months in accordance with the parameters set forth in Section 712 of the Gramm-Leach-Bliley Act. Savings associations of any asset size with CRA ratings less than "Satisfactory" may be examined as frequently as every 6 to 18 months.

As is the case with the other banking agencies, OTS has been criticized for "inflating" CRA ratings assigned to our savings associations. Our experience has shown that as the CRA regulations have become more performance-driven, and as institutions have become more conversant with their CRA obligations, banks and thrifts have enhanced and adapted their compliance management infrastructure to make more loans, investments, and services to comply with the Community Reinvestment Act. Furthermore, they have expanded their ability to make more complex and responsive products and services available and accessible to customers throughout their assessment area(s), which also contributes to higher CRA ratings.

CRA ratings

At the completion of every CRA examination, OTS publishes an evaluation of the institution's CRA performance under the applicable assessment method[6]. The evaluation contains the rating of the institution's performance in helping to meet the credit needs of its community and also provides a conclusion that describes and supports the basis for the rating. Like the other banking agencies, the OTS assigns a savings association one of four ratings: "Outstanding," "Satisfactory," "Needs to Improve," or "Substantial Noncompliance."

[6] Institutions are evaluated as a large savings association, small savings association, intermediate small savings association, a wholesale or limited purpose institution, or an institution that has an approved CRA strategic plan.

Of the 762 institutions[7] that were evaluated from January 1, 2002 to December 31, 2007, 221 were rated "Outstanding," and 532 were rated "Satisfactory." Nine institutions, approximately 1%, were rated below "Satisfactory," including eight savings associations that received a CRA rating of "Needs to Improve" over the six-year period, and one institution that was assigned a rating of "Substantial Noncompliance" during that time frame. The institution rated "Substantial Noncompliance" had assets of $33 million. Most of the institutions rated less than satisfactory appear to be located in nonmetropolitan areas and had assets under $300 million.

OTS has observed a correlation between the size and location of an institution and the probability of receiving a less-than-satisfactory CRA rating. Larger institutions with substantial compliance and risk management infrastructures generally receive a higher percentage of "Outstanding" CRA ratings, compared to smaller savings associations. It is important to note, however, that smaller community banks and thrifts can offset the lack of an elaborate compliance or CRA infrastructure by deploying resources that enable them to take a leadership posture in the provision of loans and investments. An example of this approach is a small institution that seeks out and makes CRA-qualified investments that may enable the small bank or thrift to receive an "Outstanding" rating.

Enforcement mechanisms for CRA compliance

The OTS's CRA regulations require that we evaluate a thrift institution's record of helping to meet the credit needs of its entire market area(s), including low – and moderate - income geographies, consistent with safe and sound banking operations. The institution's record of serving its local community credit needs is considered when we evaluate an application to open new branches or relocate an existing branch, undertake a merger or consolidation, and engage in other corporate activities.

As is the case with the other banking agencies, OTS publishes a notice of scheduled CRA examinations on a quarterly basis. The public is invited to submit comments about an institution's CRA performance as early as possible in the examination process; these comments are considered when evaluating the institution's record and assigning the CRA rating.

It is important to note, however, that the CRA and OTS's CRA regulations require the agency to consider the CRA performance record or proposed CRA plans in acting on various applications. OTS must consider the CRA performance of an institution in applications to relocate or establish branch or home offices, mergers or consolidations under the Bank Merger Act, control or acquisition applications under Section 10(e) of HOLA, and for charter conversions to the federal thrift charter from non-OTS regulated institutions. For new charter applications proposing to charter a federal thrift where no existing CRA performance exists, OTS will consider how the proposed charter intends to meet its CRA objectives. Our records show that OTS has not denied an application for CRA-related reasons during the past ten years.

[7] This figure includes OTS-supervised savings associations with a state or federal charter.

The most recent reports of examination by OTS or by the applicant's other federal regulator are reviewed for CRA performance as part of the application review process. These applications are also subject to publication requirements, inviting the public to submit written comments. Such comments may involve CRA considerations or the performance of an existing institution's performance in meeting the credit needs of its community, or may involve any other applicable regulatory criteria involved in rendering a decision, including (among other things) the financial capacity of the applicant, management resources, impact on competition, or other legal and regulatory considerations. Any comments received by OTS are considered during the application review process. The institution's record of performance may be the basis for denying or conditioning approval of an application by an institution or holding company, and the adequacy of the CRA plan may provide a basis for denying or conditioning approval an application for a new institution.

OTS also holds meetings with commenters when we determine that the meeting will benefit the decision-making process. This process provides an appropriate opportunity for input by community groups and other interested parties about an institution's CRA performance. Moreover, this process may culminate in the institution and the commenter(s) entering into a CRA Agreement, or an informal commitment by the institution to undertake additional CRA obligations to address the concerns raised by the commenters.

The potential negative impact on applications is one strong enforcement mechanism the Congress established in connection with CRA. Additional enforcement may be carried out by the banking agencies through the examination and supervisory process. In our experience, enforcement actions warranted for CRA are generally reflective of other challenges with an institution's compliance program that are also addressed through the supervisory process. An institution that has demonstrated less-than-satisfactory CRA performance may require an enforcement action to address problems identified. In recent years OTS has taken several enforcement actions against savings associations for failing to satisfactorily comply with their obligations under the Community Reinvestment Act including cease and desist orders and the assessment of civil money penalties.

Process for evaluating institutions

Since the inception of the CRA regulations, OTS has considered, as an indicator of CRA performance, evidence of discriminatory or other illegal credit practices. When such evidence is present, it is an adverse factor in the final rating. Indeed, the evaluation of every financial institution covered by CRA has considered, as an indicator of performance, evidence of discriminatory or other illegal credit practices. Section 563e.28(c) of the OTS CRA regulations indicates that a finding of discrimination or other illegal credit practices will adversely affect a savings association's CRA performance, along with other factors such as the nature and extent of the evidence, the policies and procedures that the savings association has in place to prevent discrimination or other illegal credit practices, and corrective action that the savings association has undertaken

or has committed to take, particularly voluntary corrective action resulting from self-assessment and other relevant information.

Evidence of discriminatory or other illegal credit practices considered as part of the CRA evaluation includes, but is not limited to:

- Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;
- Violations of the Home Ownership and Equity Protection Act;
- Violations of section 5 of the Federal Trade Commission Act;
- Violations of section 8 of the Real Estate Settlement Procedures Act; and
- Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

Since 1990, there have been 37 instances in which the OTS downgraded the CRA rating of an institution in response to evidence of discriminatory or other illegal credit practices.

Both CRA and fair lending compliance are critical elements of the compliance examination function at OTS. A thrift institution's CRA assessment must reflect not only its record of meeting the credit needs of the communities it serves but also its compliance with fair lending laws.

As part of our efforts to enhance our examination capabilities, we have added staff resources, including a Fair Lending Specialist based in Washington, to augment fair lending subject matter experts in our regional offices. We have worked to develop important fair lending econometric models and tools. We have provided additional training to our examiners, and, during the past 18 months, we have undertaken a systemic review of our compliance policies and examination procedures to identify areas to strengthen our overall effectiveness in examining savings associations' compliance with federal consumer protection laws.

Potential expansion of CRA

CRA has played a significant role in increasing lending to low-and moderate-income borrowers and communities. However, more can be done. OTS has supported legislative initiatives to bring additional housing, services and jobs to low-and moderate-income families and communities throughout the nation.

One such proposal, which Chairman Frank has spoken in support of, advocates making CRA applicable to credit unions. We believe all depository institutions should participate in CRA to increase the provision of financial services to low-and moderate-income families and communities.

OTS understands there may be practical obstacles to applying the current CRA model to non-depository institutions. For example, it would be difficult to define assessment areas for institutions such as financial holding companies and mortgage

banking companies. Nevertheless, OTS is committed to actions that increase access to credit and wealth for low-and moderate-income families and, if Congress would like to pursue a dialogue about the benefits of modernizing CRA to include all financial institutions, we would be happy to participate.

Factors that impair the effectiveness of CRA

OTS has advocated and supported legislation to remove unnecessary barriers that limit growth and stability of low-and moderate-income communities.

First, Director Reich has made recommendations, for inclusion in additional federal economic stimulus, which would increase the ability of OTS-supervised institutions to engage in small business and commercial lending. Small business and commercial lending are keys to economic growth and recovery, particularly in low- and moderate-income areas. Both would help build vibrant communities by permitting institutions to expand existing lending programs to address local, regional, and national constrictions on credit availability. The proposal would remove the cap entirely on small business lending and increase the cap on other commercial lending from 10 percent to 20 percent. The Home Owner's Loan Act (HOLA) now caps the aggregate amount of loans for commercial purposes at 20 percent of savings institutions assets. Any commercial loans in excess of 10 percent must be small business loans. Earlier versions of this proposal were included in legislation passed by the House in both the 108th and 109th Congress. We would like to see quick action on this proposal.

Our next recommendation is to update the authority for savings institutions' community development investments. Changes are needed to HOLA to clarify the types of investment opportunities that meet the technical requirement of the law. Originally, savings institutions could readily determine the areas in their region that qualified under HOLA for providing investments for underserved and distressed communities. However, due to changes that evolved in HUD's Title I program (which is the current reference in the HOLA), savings institutions now find their authority to invest in these HUD qualified investments unclear. Another issue that OTS believes should be addressed is the current aggregate limit of two percent of assets in community development investments.

The community development investment authority of savings associations can be clarified by revising and updating HOLA to permit savings institutions to invest in entities engaged in making public welfare investments. H.R. 1066, which passed last year, would accomplish this by: (1) amending HOLA to eliminate the HUD Title I reference and, instead, reference investments that support the public welfare and (2) revising the cap from 2 percent of assets to 15 percent of capital and surplus. We believe these changes to HOLA would greatly enhance the ability of savings associations to assist low-and moderate-income communities and families.

H.R. 1066 would also restore these previously qualifying categories of investments. Unfortunately, the Senate has not yet acted on this legislation. We hope the Senate will act soon to pass this important legislation to enable banks to make public

welfare investments that bring housing, services and jobs back to needy communities by clarifying the existing community development investment authority of federal savings associations. Finally, H.R. 1066 is also important to ensure that banks and thrifts may engage in cooperative partnerships to enhance available capital for public welfare investments that support struggling communities.

The House of Representatives has been very active on these issues in the past. We are hopeful that the Senate will act on this legislation that we believe would go a long way to increase savings institutions' ability to serve these needs.

IV. Improve the Effectiveness of CRA

Reaching the Unbanked and Underbanked

The banking regulators continue to explore how CRA can provide incentives to encourage banks and thrifts to develop more affordable deposit products and services that will expand financial literacy to unbanked and underbanked customers. An estimate by the Federal Reserve indicates that approximately 10 percent of American families are unbanked and approximately 45 million people lack access to credit. Studies have shown that 46 percent of African-Americans and 34 percent of Hispanic Americans do not have an account at an insured bank or thrift institution. These figures indicate that, despite the great strides realized by financial institutions under CRA, many families remain outside of the financial services mainstream.

There are many partners, both public and private, working to reach the unbanked and underbanked in many communities throughout the country. The OTS is participating in the FDIC's Alliance for Economic Inclusion (AEI), which is a national initiative to form a network of local coalitions to help underserved populations in nine markets throughout the country. The purpose of AEI is to expand financial access and increase market competition by delivering measurable results. In each of these markets, AEI is forming coalitions of local financial institutions, community organizations, and local and state agencies to identify viable strategies to work around the barriers that impede underserved target populations from participating in the financial mainstream. Products and services include basic checking and savings accounts, low-cost remittance products, small-dollar loan programs, and responsible mortgage lending products. The demand for responsible mortgage products for nonprime borrowers has assumed much greater significance in view of the current subprime mortgage market turmoil.

The OTS is also working with the thrift industry in a number of initiatives to facilitate the expansion of quality financial products and services to unbanked and underbanked people. Our efforts include encouraging the creation of savings association CRA programs that develop products suitable for entry-level consumers and, as was noted earlier, we are committed to continuing these efforts.

Furthermore, the banking agencies are proposing Interagency Question and Answer (Q&A) policy guidance that provides examples of community development

services, which would include low-cost financial products and services that benefit low - and moderate - income persons.

Supporting Minority-Owned Financial Institutions

Consistent with the OTS CRA realignment, OTS has joined the other banking regulators in proposing guidance to permit non-minority – and non-women-owned financial institutions to receive favorable CRA consideration for investing in minority-- and women-owned institutions and low-income credit unions, which would assist these institutions in meeting their local community credit needs. The minority- or women-owned institution or low-income credit union need not be located in, and the activities need not benefit, the assessment area(s) of the non-minority– or non-women-owned institution, and need not even be located in the same state or region as the minority– or women-owned institution or low-income credit union. This is an important addition to the interagency CRA guidance and reflects the statutory intent of CRA to promote investments in, and support for, minority–owned financial institutions.

The guidance will include examples of activities undertaken by a majority-owned financial institution in cooperation with a minority– or women–owned financial institution or low-income credit union that would receive positive CRA consideration. The examples include making deposits or capital investments, purchasing loan participations, or providing technical expertise to assist a minority– or women–owned institution or low-income credit union improve its lending policies and practices.

Minority banks and thrift institutions play a significant role in providing home mortgage loans, loans to small businesses and other valuable financial products and services in many low-and moderate income communities. Particularly in today's volatile mortgage market, it is imperative that the regulators continue to support minority institutions through the supervisory process, as a key channel in the provision of access to mainstream financial products and services in underserved communities.[8]

Foreclosure Mitigation

In July 2007, the OTS, along with the other federal banking agencies, issued for comment several proposed Questions and Answers (Qs&As) to clarify the types of foreclosure prevention activities eligible for CRA favorable consideration. A proposed Q&A will provide examples of community development services, which will highlight that credit counseling that assists low– and moderate-income borrowers in avoiding foreclosure on their homes, will receive CRA favorable consideration. Another proposed Q&A will note that establishing loan programs that provide relief to low– and moderate-income homeowners facing foreclosure is another type of lending activity that would warrant favorable consideration under CRA.

[8] The OTS program to support minority institutions is outlined in the OTS Policy Statement on Minority Institutions at www.ots.treas.gov.

In addition to the proposed Qs&As, the existing interagency Q&A policy guidance published in July 2001 provides positive CRA consideration for lenders that offer loan programs that include financial education components on how to avoid abusive or unsuitable lending activities. Existing guidance also states that favorable CRA consideration will be given to lenders that offer programs to transition borrowers from loans with higher rates and fees to lower-cost loans, consistent with safe and sound lending practices. The expanded guidance is part of the growing list of tools that regulators, lawmakers, and the financial services industry have advanced to counter the mounting number of foreclosures nationwide.

V. What Lies Ahead

The availability of responsible lending programs for all borrowers, both prime and subprime, is critical to sustain affordable homeownership and to ensure that the American dream of home ownership remains attainable. The OTS believes this point is particularly important in the context of the 30th anniversary commemoration of the Community Reinvestment Act. We believe policy solutions to current challenges facing the mortgage market, families and communities should not unintentionally reverse hard fought gains to democratize and expand credit access to low and moderate income borrowers.

The current challenges in the mortgage market have prompted both new and reinvigorated alliances between banks and thrifts and the nonprofit sector to avoid foreclosures and preserve neighborhoods. Many community organizations are also stepping up their efforts to offer foreclosure mitigation assistance, including counseling programs, and implement strategies to preserve and maintain foreclosed properties in their neighborhoods to prevent a further erosion of property values and related problems

Irresponsible underwriting and in some cases abusive lending practices, primarily by nonregulated mortgage industry participants, has created substantial financial hardship for many homeowners. These abusive lending practices have also disrupted the broader credit markets and the securities industry. As members of the Committee are aware, the OTS recently issued an Advanced Notice of Proposed Rulemaking relating to unfair or deceptive acts or practices, which sought public comment on approaches the OTS should consider in determining whether, and to what extent, additional regulation is needed to ensure customers of OTS-regulated entities are treated fairly. Our efforts in this important area continue and we intend to move forward with a proposed rulemaking to establish a clear set of rules and standards for thrift institutions in this area.

VI. Conclusion

OTS-supervised savings associations have an exemplary record in the provision of credit, investments, and services in their markets, particularly in low-and moderate-income areas. The CRA has provided the impetus for many financial institutions, often in partnership with community-based organizations, to revitalize low-and moderate-income neighborhoods through loans and investments.

The need to provide both short-term and longer-range relief to expand access to credit and ensure market stability may well shape future CRA changes. The OTS is committed to maintaining a robust CRA examination and fair lending oversight process, and to ensuring the strongest environment we can provide to safeguard consumer protections. We look forward to working with members of this Committee to determine additional efficient and effective regulatory responses, including CRA, to recent market conditions.