Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Via email: regs.comments@ots.treas.gov

Attention: No 2006-17

To Whom It May Concern:

The Opportunity Finance Network (formerly the National Community Capital Association) appreciates the opportunity to comment on the proposed rule relating to the Community Reinvestment Act (CRA) and the proposed Questions and Answers providing guidance on the CRA. Opportunity Finance Network believes in a strong, well-enforced CRA that helps provide opportunities for all Americans.

We are pleased to see that the Office of Thrift Supervision has adopted the same definition of "community development" as the other regulatory agencies. Uniform examinations and standards had been an important hallmark of CRACRA among the four banking agencies, and we commend the OTS on returning uniformity to this aspect of the CRA process. In our letter of January 22, 2005, in response to OTS Docket 2004-53, we expressed grave concerns about the impact of the OTS's approach to community development, particularly on rural areas. We are pleased to see that the OTS has rescinded these provisions, and our comments on the proposed Q&A suggest ways in which the OTS could improve thrifts' investment in low- and moderate-income communities.

Opportunity Finance Network remains concerned that the OTS has significantly deemphasized the importance of investment and services with its two-part CRA exam. We urge the OTS to revise its CRA examinations and policies to promote thrifts' investment in and service to low- and moderate-income communities.

Comments on Proposed Questions and Answers
Generally, Opportunity Finance Network's comments indicates ways the OTS could clarify the CRA's intent to benefit low- and moderate-income people and communities, and offer suggestions for defining and evaluating the new "community development" criterion. Our comments are in the order of the specific proposed Q&As they reference.

Sec. 563(e).12(g)(4)-2: Opportunity Finance Network is concerned that the Q&A offers CRA credit for housing projects that do not include a low- and moderate-income component. The regulators should ensure that any housing project qualifying for CRA credit include low- and moderate-income households.

Sec. 563(e).12(g)(4)(ii)-1. We agree that the expiration of the disaster declaration is a clear and appropriate standard for measuring activity. However, a one-year lag may be insufficient to accommodate the extensive rebuilding necessary after major disasters. Under the best of circumstances, CDFIs work in markets and on projects that require time and effort; after a disaster, CDFIs' markets can be even more difficult to rebuild, and rebuilding in these markets generally begins well after efforts in other markets are underway. The complex deals required to service such markets take time to put together. A "lag period" longer than one year would facilitate bank-CDFI partnerships and could provide resources for rebuilding underserved communities.

Any "lag period" longer than one year, however, must clearly be to the benefit of low- and moderate-income people and communities. We urge the OTS to include in the Q&A provisions that any qualifying activity taking place more than one year after the expiration of the disaster declaration have concrete and obvious benefit to low- and moderate-income people and communities and that examiners will grant credit only if the activity is explicitly directed toward those markets.

Regardless of the length of the lag period, examiners granting credit for such activities should ensure that the activity, or plans for it, truly began during the disaster period or "lag period."

Sec. 563(e).12(g)(4)(ii)-2. We suggest that this Answer be changed to read, "The OTS will consider all activities that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, **PARTICULARY** those of low- or moderate-income individuals or neighborhoods." This small but significant change would keep CRA activities focused on those the law intends it to benefit.

Sec. 563(e).12(g)(4)(iii)-1. Opportunity Finance Network suggests that the Q&A note that nometropolitan geographies that are CDFI Fund Investment Areas meet the definition of "distressed" for purposes of the CRA. This Q&A specifically cites the United States Department of Agriculture designations defining a geography as "underserved," and the OTS should apply the same specificity to explaining "distressed." The OTS' proposed rule identified CDFI Fund Investment areas as qualified distressed areas, and we urge you to make that intent clear by including this statement in the Q&A. Banks and their CDFI partners would have a sound understanding that those areas qualify for CRA credit.

Sec.563(e)12(j) &563.12(i)-3. The OTS should add "post-purchase counseling" to the list of examples of community development services. Continued counseling and technical assistance can help prevent new homeowners from falling victim to predatory lending, and fledgling business owners avoid pitfalls. Banks that provide these valuable services should receive CRA credit for them.

Sec.563(e) 12(t)4. We applaud the continued inclusion of CDFIs as explicit examples of qualified investments. We suggest that the OTS add the phrase "for low- and moderate-income individuals or in low- and moderate-income areas" to the section of this Answer that deals with state and municipal bonds.

Sec. 563(e).26(c)-1. Opportunity Finance Network supports the regulators' statement that "A bank may not simply ignore one or more of these categories [of loans, investments, and services]." The elimination of an explicit investment test was of great concern to Opportunity Finance Network in the revised Rule, and Opportunity Finance Network is pleased to see that the OTS understand the importance of these investments and expects banks to engage in them and in community development services. The Answer states that a bank may engage in activities "based on the bank's assessment of community development needs in its assessment area(s)…" We urge the regulators to go a step further, and rely not only on banks for an assessment of community needs but also state that other stakeholders including nonprofits, the banks' partners, and public agencies will have input as examiners determine banks' responsiveness to community development needs. We also urge the regulators to give primacy to considering "community needs" rather than "opportunities," to maintain the CRA's intent that banks affirmatively fulfill their obligations to all parts of their markets.

Weak CRA Examinations

Under the previous regulations, large thrifts with assets of more than $1 billion had performance evaluations that reviewed lending, investing, AND services to low- and moderate-income communities. The OTS proposal issued last year provides 50 percent weight to lending, and the remaining 50 percent of an exam weighs lending, investments, or services, or some combination thereof, based on the savings association's election for savings and loans with assets over $250 million. Instead of demonstrating a full range of services to their communities, thrifts are able to select their own examination criteria, without regard for the demand in their markets. Allowing savings associations to pick the services convenient for them, regardless of community need, is unacceptable.

The effected savings and thrift institutions that previously qualified for the three-part exam owned $1.1 trillion in assets or 87.4% of all thrift assets. States that have been hit the hardest by this rule include Delaware, Hawaii, California, Utah, Oklahoma, Virginia, Texas, Nebraska, and Washington.

Lending, services, and investment have ALL contributed to the CRA's success. Banks and thrifts have increasingly recognized that CRA-motivated lending is profitable to them as well as beneficial to low-income communities. Investments channel capital and products through organizations with expertise in serving emerging low- and moderate-income markets. The "service test" encouraged banks and thrifts to become more active in the essential retail banking services needs of low- and moderate-income consumers. Low-cost bank accounts and individual development accounts, for example, have been important tools to help low-income people build assets.

One way banks and thrifts have been able to meet the investment test is through investments in CDFIs. These investments represent an important way to increase capital flow to low-income communities. The successful partnerships between CDFIs and banks, including those that result in Bank Enterprise Award (BEA) program awards[1], illustrate that investment opportunities are available and can be part of a thrift's strategy for community reinvestment.

Under the OTS's rule, large thrifts see no penalty for neglecting pressing community needs. For example, if a savings association eliminates its investment test, there will be no requirement for the thrift to finance affordable rental housing via the Low Income Housing Tax Credit or finance small businesses via equity investment. Having allowed savings associations to create their own CRA exams will likely increase the amount of abusive payday loans, check-cashing schemes, and other high-cost services in low- and moderate-income communities, since thrifts can eliminate basic banking services after implementing their own self-created CRA exams.

Missed Opportunities for Community Reinvestment

The request for comment accompanying this Q&A invites public comment "on the proposed guidance, as well as any other community reinvestment issues." Opportunity Finance Network has long advocated the following three improvements to CRA, particularly since the 1999 Gramm-

[1] The Treasury Department's Community Development Financial Institutions Fund (CDFI Fund) administers the Bank Enterprise Award Program (BEA), which provides incentives to insured depositories to increase their investment in underserved communities; a primary way that award recipients accomplish these goals is through investments in CDFIs.

Leach-Bliley Act "modernized" the financial services industry without commensurate reform to community reinvestment requirements.

Discriminatory Practices and CRA Ratings

The CRA rule issued by the Office of the Comptroller of the Currency, the Federal Reserve, and the Federal Deposit Insurance Corporation took the important step of codifying provisions that a bank's CRA rating will be adversely affected by evidence of discriminatory, fraudulent, or other illegal practices. We urge the OTS to adopt this provision and to add a Question and Answer indicating that a bank will automatically undergo a fair lending exam to test for compliance with federal anti-predatory and anti-discrimination law when the bank or one of its affiliates makes a high concentration of subprime loans to minorities, the elderly, women, low-income borrowers or to communities recovering from natural disasters and experiencing shortages of credit.

Expand CRA coverage to all financial service institutions that receive direct or indirect taxpayer support or subsidy.

After passage of the Gramm-Leach-Bliley Act, banks became nearly indistinguishable from finance companies, insurance and securities firms, and other "parallel banks." For example, banks and thrifts with insurance company affiliates have trained insurance brokers to make loans. Securities affiliates of banks offer mutual funds with checking accounts. Mortgage finance company affiliates of banks often issue more than half of a bank's loans-especially in the subprime markets.

However, CRA covers only banks, and therefore only a fraction of a financial institution's lending. To keep CRA in step with financial reform, all financial services companies that receive direct or indirect taxpayer support or subsidy should comply with the CRA exam process.

In the paper, "The Parallel Banking System and Community Reinvestment," Opportunity Finance Network uncovered a web of taxpayer-backed subsidies essential to the entire financial services industry. For example, federal guarantees and Treasury lines of credit have acted as a safety net against some nonbank insolvencies.

Opportunity Finance Network strongly urges regulatory agencies to mandate that all lending and banking activities of non-depository affiliates must be included on CRA exams, including all banks that are part of large holding companies. This change would accurately assess the CRA performance of banks that are expanding their lending activity to all parts of their company, including mortgage brokers, insurance agents, and other non-traditional loan officers.

A bank's assessment area should be determined by how a bank defines its market.

Under CRA, banks are required to provide non-discriminatory access to financial services in their market and assessed according to where they take deposits. In 1977, taking deposits was a bank's primary function. In 2004, banks no longer just accept deposits, they market investments, sell insurance, issue securities, and are rapidly expanding the more profitable lines of business. In addition, the advent and explosion of Internet and electronic banking has blurred the geographic lines by which assessment areas are typically defined.

Presently, CRA exams scrutinize a bank's performance in geographical areas where a bank has branches and deposit-taking ATMs. Defining CRA assessment areas based on deposits is at odds with the way financial institutions now operate. Moreover, it disregards the spirit of the CRA statute, which sought to expand access to credit by ensuring that banks lent to their entire markets.

Opportunity Finance Network recommends simplifying the definition of CRA assessment area according to a financial institution's customer base. For instance, if a Philadelphia bank has credit card customers in Oregon, it also has CRA obligations there. The obligations ought to be commensurate with the level of business in any market.

CRA should provide meaningful predatory lending protection.
The explosion of the largely unregulated subprime market has contributed to an increase in abusive lending practices that threaten to undo many of the community reinvestment gains of the last decade, and changed the face of the financial services industry. The new rule includes an excellent first step but overall lacks adequate protection. Predatory lending strips billions of dollars from consumers and communities in the United States. Borrowers lose an estimated $9.1 billion annually due to predatory mortgages; $3.4 billion from payday loans; and $3.5 billion in other lending abuses, such as overdraft loans, excessive credit card debt, and tax refund loans. In order to meet fully the intent of CRA, regulators must see that banks and thrifts not only invest in communities but also take meaningful steps to preserve the wealth created by those investments.

A rigorous predatory lending standard would protect new homeowners created by the Administration's initiatives to increase minority and low-income homeowners, as these populations are among those most vulnerable to predatory lending. Opportunity Finance Network urges the OTS to develop a meaningful plan to stop predatory lending.

Thank you for the opportunity to comment. If you have questions or would like additional information on this comment letter, please do not hesitate to contact me at 215.320.4304 or mpinsky@opportunityfinance.net.

Sincerely,

Mark Pinsky
President and CEO