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Statement of

John E. Bowman, Chief Counsel
Office of Thrift Supervision

concerning

Regulatory Burden Relief

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

House Financial Services Committee

September 22, 2005

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I. Introduction

Good morning, Mr. Chairman, Ranking Member Sanders, and members of the Subcommittee. Thank you for the opportunity to discuss H.R. 3505, the Financial Services Regulatory Relief Act of 2005, the regulatory burden relief legislation introduced by Congressmen Hensarling and Moore. I will discuss several of the regulatory burden relief priorities of the Office of Thrift Supervision (OTS) that are included in this bill, as well as ongoing OTS efforts pursuant to the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).

Removing unnecessary regulatory obstacles that hinder profitability, innovation, and competition in our financial services industry, and that also impede job creation and economic growth in the general economy, is an important and continuing objective of OTS. Although we have accomplished much in recent years to streamline and eliminate some of the burdens faced by the thrift industry, there remain many other areas for improvement. We are fully committed to work with you, Mr. Chairman, and the Members of the Subcommittee and full Committee to address these issues.

A. The EGRPRA Process

Before proceeding to my testimony, Mr. Chairman, I want to recognize the tireless efforts of you, Mr. Hensarling, Mr. Moore, and your staffs in pursuing regulatory burden reduction legislation. I know you are all familiar with our Director, John Reich, who has spearheaded the interagency EGRPRA regulatory burden reduction effort. As you know, Director Reich came over to the OTS in August, and he will continue to oversee the interagency EGRPRA effort. We look forward to working with the other agencies participating in the EGRPRA process to move this project forward. Director Reich has asked all of the agencies to identify those items from other agencies that can be supported via an interagency consensus. In this regard, the Director has asked each of the agencies to identify other agency items that they can support consistent with existing standards of safety and soundness, consumer protection, and sound public policy. The hope is that common agency consensus will facilitate enactment of H.R. 3505 or similar regulatory relief legislation.

As part of the EGRPRA outreach effort, in the past two years Director Reich attended ten outreach meetings with banks and thrifts, three meetings with consumer/community groups, and three meetings with both industry and consumer/community groups in attendance. Joining him at these meetings have been representatives of all of the federal banking agencies, the National Credit Union Administration, the Conference of State Bank Supervisors, various industry trade associations, and community representatives from a wide array of organizations.[1] In each of these meetings he has asked participants to identify regulatory requirements that they believe are outdated, unnecessary or unduly burdensome. Consistent with the review requirements of EGRPRA, this request includes consideration of both regulatory changes that can be made at the agency level and recommended legislative fixes to reduce regulatory burden.

As a result of these efforts, a growing number of legislative items and issues have gained support, and we hope to continue to add more as the participating agencies identify consensus provisions.

B. Hurricane Katrina Relief Efforts

A more immediate aspect of the regulatory burden reduction effort has been action the last several weeks by the financial regulators, both individually and collectively, to identify areas where we can take immediate steps to assist institutions affected by Hurricane Katrina to better serve their customers. Unlike previous natural disasters, the needs and issues presented by Hurricane Katrina are unprecedented and will take significantly longer time to address and resolve. For our part, in addition to participating in various interagency relief efforts, we have communicated with all of our institutions in the affected area and continue to do so to determine any additional resources that we can provide or actions that we can take to assist their short-term and longer term recovery. Attached to my statement is a press release that we issued that highlights some of the more immediate actions that institutions can take to assist their customers.

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1. For additional information on the EGRPRA process, please refer to the attached "EGRPRA Fact Sheet."

Among these actions are helping institutions to restore branch facilities, including temporary facilities, and encouraging thrifts in the affected areas to work with their customers and communities by:

- Considering temporarily waiving late payment charges and early withdrawal of savings penalties;
- Reassessing the current credit needs of their communities and offering prudent loans to help rebuild damaged property;
- Restructuring borrowers' debt obligations, where appropriate, by altering or adjusting payment terms;
- Soliciting state and federal guarantees and other means to help mitigate excessive credit risks; and
- Considering all available programs offered by the Federal Home Loan Banks.

In addition, in order to facilitate rebuilding efforts in the areas affected by Hurricane Katrina, among other things, we are working with institutions to grant emergency exceptions to applicable appraisal standards, and to provide for allowance of reasonable loan documentation deficiencies necessitated by thrift office relocation or personnel shortages. There are numerous other actions we have taken and that we continue to consider to assist thrift institutions to serve their customers and non-customers in the affected areas, as well as to educate institutions and the public on how to obtain the financial services they require and to avoid potentially fraudulent situations.

C. Most Pressing Industry Needs

Before discussing OTS's top legislative priorities, it is important to note that there are two areas not detailed in this statement that many of our institutions have identified as unduly burdensome—the Bank Secrecy Act (BSA) requirements and the rules under the Sarbanes Oxley (SOX) Act. Virtually all institutions raise these two issues as regulatory relief priorities; however, the impact of these statutory provisions is often most acute for smaller, community-based institutions that do not have the resources and wherewithal to implement the type of cost-effective, global programs required to address the monitoring of activities under these laws. While these laws are also problematic for larger institutions, smaller institutions are significantly more burdened by virtue of their size to develop and implement cost-effective solutions to address BSA and SOX requirements. This, in turn, imposes greater competitive stresses on smaller institutions relative to their larger competitors.

A recent BSA development is a proposal that we understand is supported by the Financial Crimes Enforcement Network (FinCEN) to except from filing certain currency transaction reports (CTRs) of so-called "seasoned customers." Eligible customers would include corporations and organizations that have maintained a depository account at an institution for at least 12 months and that includes activity that triggered a CTR filing within the 12-month period.

OTS is fully supportive of efforts to provide meaningful BSA relief to the institutions we regulate that are consistent with the requirements of the BSA and the needs of law enforcement. We will support any burden reduction proposal to streamline existing BSA requirements, provided it is supported by FinCEN and it provides meaningful relief that outweighs any diminished utility to the BSA.

Similarly, we are also open to working with the other federal banking agencies (FBAs), and the Members of this Subcommittee and the full Committee to identify ways to provide relief to all institutions, but particularly to smaller institutions, under the SOX Act.

D. OTS Legislative Priorities

OTS's highest priority items for regulatory burden relief legislation are:

- Removing the continuing duplicative oversight burden and disparate treatment of savings associations under the federal securities laws by providing savings associations the same exemptions as banks with respect to investment adviser and broker-dealer activities that each conducts on otherwise equal terms and under substantially similar authority.
- Eliminating the existing arbitrary limits on thrift consumer lending activities.
- Updating commercial lending limits for federal savings associations to enhance their ability to diversify and to provide small and medium-sized businesses greater choice and flexibility in meeting their credit needs.
- Establishing statutory succession authority within the Home Owners' Loan Act (HOLA) for the position of the OTS Director.

Of these four items, two are included in H.R. 3505. Section 201 of H.R. 3505 provides relief to savings associations under the federal securities laws. Section 212 of H.R. 3505 updates the commercial and small business lending authority of savings associations. In addition, section 208 of H.R. 3505 provides partial relief to savings associations (for auto loans) with respect to the existing consumer lending limits imposed on thrifts. I will explain all of these items in more detail and describe several other initiatives that we are recommending for enactment.

II. Revising the Federal Securities Laws to Eliminate Duplicative Regulatory Burdens for Savings Associations

OTS's most important regulatory burden reduction legislative priority is revising the federal securities laws so that savings associations are relieved of a duplicative burden imposed on them with respect to their investment adviser and broker-dealer activities. This is easily accomplished by revising the federal securities laws so that savings associations and banks are treated equally. As described more fully below, this involves exempting savings associations from the investment adviser and broker-dealer registration requirements to the same extent that banks are exempt under the Investment Advisers Act (IAA) and the Securities Exchange Act of 1934 (1934 Act).

Although the Securities and Exchange Commission (SEC) has issued several proposals purportedly to address the duplicative burden imposed on savings associations, the application of the federal securities laws in these two areas remains a needless additional burden with no additional supervisory benefit for savings associations. Significant disparities remain under the IAA, with savings associations subject to an entirely duplicative SEC oversight regime. Equally significant, it remains uncertain how the SEC will ultimately treat savings associations for purposes of the broker-dealer exemption. In the SEC's most recent iteration on this issue, it indicated that it would roll back an interim rule that had extended equal treatment to savings associations vis-à-vis banks for purposes of the broker-dealer exemption.[2] While these issues remain in flux, there has been nothing to indicate that we are heading in the direction of reducing needless duplicative oversight for savings associations under the federal securities laws.

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2. SEC Proposed Rule: Regulation B, Release No. 34-49879, approved by the Commission on June 2, 2004, released to the public on June 17, 2004, and published in the Federal Register on June 30, 2004.

Underscoring the case for eliminating these duplicative requirements is the fact that banks and savings associations provide the same investment adviser, trust and custody, third party brokerage, and other related investment and securities services in the same manner and under equivalent statutory authorities. With respect to the oversight and regulation of these activities, OTS examines investment and securities activities of savings associations the same way as the Office of the Comptroller of the Currency (OCC) and the other federal banking agencies examine the same bank activities—with savings association and bank customers equally well-protected.

To avoid the regulatory burden and substantial costs of this duplicative regulatory structure, some OTS-regulated savings associations have converted to banks (or to state chartered trust companies) to take advantage of the bank registration exemption. In addition, some institutions have avoided opting for a thrift charter in the first place because of the SEC registration requirements.

The different purposes of the various banking charters make our financial services industry the most flexible and successful in the world. While OTS strongly supports charter choice, that decision should be based solely on the merits of the charter—by choosing a charter that fits a particular business strategy—not on unrelated and extraneous factors such as SEC registration requirements and avoiding duplicative regulation under the federal securities laws. Institutions should be able to expand and diversify their product lines to meet customer demands within the boundaries of their existing charter authorities and without additional, redundant regulatory burdens, such as those imposed by the IAA and 1934 Act registration requirements.

The existing inequity under the federal securities laws undermines our collective efforts to maintain a strong and competitive banking system. Eliminating the unnecessary costs associated with the IAA and 1934 Act registration requirements—as set forth in section 201 of H.R. 3505—would free up significant resources for savings associations in local communities. It would also avoid the regulatory burden and substantial costs associated with a duplicative regulatory structure that has already dictated some institutions' charter choice—an issue recognized by former SEC Chairman Donaldson in the context of the discussion on the SEC's IAA proposal.[3]

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3. Comment of former SEC Chairman William Donaldson, at the April 28, 2004, SEC meeting discussing SEC Proposed Rule: Certain Thrift Institutions Deemed Not To Be Investment Advisers, Release Nos. 34-49639 (May 3, 2004).

A. Investment Adviser Registration

Prior to enactment of the Gramm-Leach-Bliley Act (GLB Act) in 1999, banks—but not savings associations—enjoyed a blanket exemption under the IAA. While the GLB Act slightly narrowed the bank exemption, banks may still provide investment management and advisory services to all types of accounts without registering as an investment adviser. The one exception is that a bank (or a department of the bank) must register when it advises a registered investment company, such as a mutual fund.

On May 7, 2004, the SEC issued a proposal providing a narrow exemption from IAA registration to savings associations that limit their investment management and advisory services to a limited range of accounts. Under the proposal, savings association fiduciary accounts are segregated into two categories. Savings associations that provide services to accounts that include only traditional trust, estate, and guardianship accounts would be exempt from registration. Savings associations providing services to accounts that include investment management, agency accounts and other accounts that the SEC has defined as not being for a fiduciary purpose would continue to be required to register as an investment adviser.[4]

The practical effect of this approach is that it provides an extremely limited exemption that does not provide meaningful regulatory relief for savings associations. This fact was made clear to the SEC Commissioners at a meeting last year when the SEC staff advised the Commissioners that none of the savings associations currently registered under the IAA—there are 44 savings associations currently registered (and 3 registered operating subsidiaries)—would be able to take advantage of the proposed exemption since all provide investment management and advisory services for both account categories.

While the SEC wants to apply the federal securities laws in two different manners depending on the business operations of a savings association, there is no distinction between these two categories of accounts under the HOLA and OTS regulations applicable to savings associations. The accounts in both categories are fiduciary accounts that receive the same protections under the HOLA and OTS regulations and are subject to similar examination scrutiny. There is no logical

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4. A more detailed description and comparison of bank and savings association activities, and applicability of the IAA to each, is set forth in an attachment to this statement.

basis why savings associations, unlike banks, need duplicative regulatory oversight by the SEC of account activities that OTS already supervises and examines. This is far from functional regulation, but rather over-regulation that accomplishes nothing in the way of a legitimate policy objective.

Savings associations registered as investment advisers have indicated to OTS that registration costs are substantial. IAA costs include registration fees, licensing fees for personnel, and audit requirements, as well as the many hours management must devote to issues raised by duplicative SEC supervision, examinations and oversight. Costs related to legal advice for IAA registration are also a factor. An informal survey last year of most of our largest IAA-registered savings associations indicated aggregate annual institution costs ranging from $75,000 to $518,200.

Limiting the types of accounts for which a savings association may provide investment management and advisory services to avoid IAA registration, as the SEC has proposed, has the likely effect of negating any meaningful exemption. Generally, institutions will not opt to enter the trust and asset management business line and then decide to forego the most profitable aspects of the business activity. In fact, from a safety and soundness standpoint, we would have to question the rationale behind such an approach. Savings associations providing investment management and advisory services should be encouraged to provide competitive products and services to the fullest extent practicable and without concern for arbitrary triggers that could significantly increase their compliance costs and supervision. This is particularly important from a regulatory burden reduction perspective when you consider that a bank competitor will incur none of the regulatory costs and burdens as a savings association for engaging in exactly the same activities.

Ironically, many of these same themes were cited as the basis for the SEC's recent rule exempting certain broker-dealers from the IAA registration requirements.[5] Minimizing duplicative regulation, changes reflecting developments and advances in industry practices, acknowledging underlying Congressional intent to carve out certain types of entities from IAA registration because of parallel federal oversight, and ensuring and maintaining consistent consumer protections are all reasons supporting the SEC's exemption for broker-

5. SEC Final Rule: Certain Broker-Dealers Deemed Not To Be Investment Advisers, Release No. 34-51523 (April 12, 2005).

dealers under the IAA. These same reasons support an IAA exemption for savings associations.

Duplicative registration and oversight without any additional supervisory or regulatory benefit is, as we all recognize, regulatory burden in its truest form. For the same reasons that SEC registered broker-dealers should not be subject to registration under the IAA, OTS-licensed savings associations should not be subject to IAA registration.

In addressing this issue, it is important to recall that in July 2000 an amendment was offered by Senator Bayh (on regulatory burden reduction legislation then pending before the Senate Banking Committee (SBC)) to extend the IAA exemption to savings associations so that savings associations and banks could compete equally in the provision of investment management and advisory services. During consideration of the amendment, the SEC represented to the SBC that legislation was not needed to resolve this problem since the SEC would be able to resolve the issue by regulation.[6] More than five years later the issue remains unresolved with virtually no likelihood of this changing given that the SEC's May 2004 proposal offers no relief to existing IAA-registered savings associations. This fact, alone, underscores why nothing short of a legislative solution is adequate to resolve this issue going forward.

While OTS submitted a comment letter to the SEC discussing why the proposed IAA rule is flawed, we are not optimistic that it will change anything given the history of this issue. After much discussion for several years between OTS and the SEC staff and SEC Commissioners, including the three past Chairmen, we have not made any headway toward a mutually satisfactory solution. We have no reason to believe that a comment letter outlining all of the discussions that we have already had with the SEC staff will sway the SEC's position on this issue. This further underscores the need for legislation such as section 201 of H.R. 3505.

B. Broker-Dealer Registration

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6. During deliberations on the Competitive Markets Supervision Act before the Senate Banking Committee in July 2000, Senator Bayh proposed an amendment to extend the IAA exemption to savings associations. As noted in Senator Bayh's statement and subsequent letter to the SEC (attached), the amendment was withdrawn pending the SEC's offer to resolve the issue by regulation.

A similar duplicative burden exists for savings associations under the broker-dealer provisions of the 1934 Act. Extending the current bank broker-dealer exemption to savings associations would eliminate this duplicative burden. Banks—but not savings associations—enjoyed a blanket exemption from broker-dealer registration requirements under the 1934 Act before changes were made by the GLB Act. The GLB Act removed the blanket exemption and permitted banks to engage only in specified activities without having to register as a broker-dealer. All other broker-dealer activities must be "pushed out" to a registered broker-dealer. The SEC issued interim broker-dealer rules on May 11, 2001, to implement the new "push-out" requirements. As part of the broker-dealer "push out" rules, the SEC exercised its authority to include savings associations within the bank exemption. This treated savings associations the same as banks for the first time for purposes of broker-dealer registration. In the interim broker-dealer rule, the SEC recognized it would be wrong to continue disparate, anomalous treatment between savings associations and banks.

The SEC postponed the effective date of the interim rule several times. It published proposed amendments to the interim dealer rule on October 20, 2002, and the final dealer rule on February 24, 2003. The final dealer rule gives savings associations the same exemptions as banks. On June 30, 2004, the SEC published in the Federal Register a new proposed rule (Regulation B) governing when a bank or savings association must register as a broker. Originally scheduled to go into effect on September 30, 2005, the SEC recently extended the effective date for Regulation B until September 30, 2006 in order to afford time to fully consider the comments received from the industry and other interested parties.[7]

Unlike the SEC's final dealer rule and interim broker rule, the new broker proposal would no longer treat savings associations the same as banks in all respects. Although savings associations would be treated the same as banks for purposes of the 11 statutory activities they may engage in without registering as a broker with the SEC, as provided by the GLB Act, three non-statutory exemptions provided banks would not be extended to savings associations. The SEC describes the three non-statutory exemptions as targeted exemptions that recognize the existing business practices of some banks. We understand that the SEC staff does not believe savings associations are engaged in the exempted securities activities and will only extend relief for savings associations to the securities activities they are currently performing. A separate analysis conducted by OTS, however,

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7. SEC Final Rule: Certain Broker-Dealers Deemed Not To Be Investment Advisers, Extension of Compliance Date, Release No. 34-52407 (September 12, 2005).

indicates that savings associations currently engage in all of the securities activities covered by the three additional exemptions. This information was forwarded to the SEC staff pursuant to their request. Moreover, since the exemptions apply to all banks—whether or not they are currently engaged in one of the exempted activities—this approach is not logical. OTS has strongly urged the SEC to remove this new disparity and the additional duplicative burden it imposes on savings associations.

As was the case in the SEC's investment adviser proposal, in issuing its proposed broker rule, the SEC passed on the opportunity to streamline its overlapping oversight of savings association broker-dealer activities by providing the equivalent treatment to savings associations as banks receive. In both instances, the SEC has proposed to treat savings associations differently than banks in fundamentally important respects. Both of these actions impose duplicative regulatory burdens and demonstrate the continuing, immediate need for legislation to provide relief to savings associations under the federal securities laws.

III. Removing Disparate Standards in Savings Association Consumer Lending Authority

Another important regulatory burden legislative proposal for OTS is eliminating an anomaly that exists under HOLA relating to the current consumer lending authority for savings associations. Currently, consumer loans are subject to a 35 percent of assets limitation, while there is no limit on loans a savings association may make through credit card accounts, even though the borrower may use the loan for the same purposes. Ironically, consumer loans subject to the 35 percent cap are typically secured loans, whereas credit card loans—subject to no savings association investment limit—are not secured. Removing the 35 percent cap on consumer lending will permit savings associations to engage in secured lending activities to the same extent that they may make unsecured credit card loans. Our hope is that this will increase savings association secured lending activities relative to unsecured credit card lending, thereby improving the overall safety and soundness of savings association loan portfolios, as well as providing burden relief.

Currently, section 208 of H.R. 3505 removes the 35 percent cap for auto loans made by savings association. For the reasons stated above, we believe eliminating the 35 percent cap makes good policy sense for all types of consumer loans, including auto loans, and we urge that the provision be amended accordingly.

A related amendment would address a similar anomaly that exists with how savings associations compute so-called "qualified thrift investments" (QTI) under the qualified thrift lender (QTL) test. Currently, a savings association may count 100 percent of its credit card loans as QTI, but other consumer loans count as QTI only to the extent that these and other categories of loans do not exceed 20 percent of the savings association's "portfolio assets." This restriction is arbitrary, unduly complex, and unique to the thrift industry. It bears no relationship to the relative risks presented by the loans and, in our experience, the existing limit is irrelevant to the safe and sound operation of an institution. Removing this artificial limit would enable savings associations to perform more effectively as the retail institutions their customers need and expect, without impairing safety and soundness.

IV. Eliminating Obstacles to Small Business Lending by Federal Savings Associations

Another OTS legislative priority is reducing statutory limitations on the ability of federal savings associations to meet the small business and other commercial lending needs of their communities by providing businesses greater choice and flexibility for their credit needs. HOLA now caps the aggregate amount of loans for commercial purposes at 20 percent of a savings association's assets. Commercial loans in excess of 10 percent of assets must be in small business loans. OTS supports legislative provisions—such as that set forth in section 212 of H.R. 3505—that remove the current limit on small business lending and increase the cap on other commercial lending from 10 percent to 20 percent of assets.

In addition to being good for small business job creation and the economy, there are several reasons these changes make sense for savings associations. First, this will give savings associations greater flexibility to promote safety and soundness through diversification. Additional flexibility, particularly in small business lending, will provide opportunities to counter the undulations of a cyclical mortgage market. This will enable savings association managers to continue to meet their ongoing customers' mortgage and consumer lending needs, while providing additional resources to manage their institutions safely and soundly. In addition, some savings associations are at or near the current statutory limits and must curtail otherwise safe and sound business lending programs. Finally, this proposal will enable savings associations that have a retail lending focus to be able to achieve the economies of scale necessary to engage in this activity safely and profitably.

Small business lending is an integral component of job growth and employment in the United States.[8] This proposal would increase competition for, and the availability of, small business and other commercial loans now and in the future as savings associations develop this line of business. This will be particularly welcome to smaller businesses that have experienced difficulty in obtaining relatively small loans from large commercial banks that set minimum loan amounts as part of their business strategy—a problem that may increase with industry consolidation.[9] Finally, the proposal will also assist businesses that prefer borrowing from entities like savings associations that meet the needs of borrowers with personal service.

V. Agency Continuity – Creating Statutory Succession Authority and Modernizing Appointment Authority for the OTS Director

OTS urges Congress to authorize the Treasury Secretary to appoint one or more individuals within OTS to serve as OTS Acting Director in order to assure agency continuity. Similarly, it is important to modernize the existing statutory appointment authority for the OTS Director by permitting an appointee a new five-year term.

The first proposal would revise the current procedure of relying on the Vacancies Act to fill any vacancy that occurs during or after the term of an OTS Director or Acting Director. This would eliminate potential concerns and time constraints imposed by the Vacancies Act process under which OTS currently operates. The latter proposal would eliminate reliance on an antiquated appointment process that currently requires a new OTS Director to fill out the expiring term of a predecessor, rather than receiving a new five-year term.

We believe that both of these revisions are important and should be added to H.R. 3505 given our continuing focus on the stability of the financial system and the regulatory oversight agencies in the event of a national emergency. For

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8. There are currently 23 million small businesses in the United States, representing 99.7 percent of U.S. employers. These firms employ more than half of all private sector employees, accounting for 44 percent of the U.S. private sector payroll. Small businesses generate between 60 to 80 percent of all net new jobs annually, and are responsible for over 50 percent of the U.S. private gross domestic product. U.S. Small Business Administration, Frequently Asked Questions (March 2004).

9. See "The Effects of Mergers and Acquisitions on Small Business Lending by Large Banks." Small Business Administration Office of Advocacy (March 2005).

example, existing uncertainty about succession authority for an OTS Acting Director could impair the ability of OTS to act effectively and decisively in a crisis if an existing OTS Director or an Acting Director, such as me, suddenly was incapacitated as a result of an event arising from a national emergency.

The OCC has long-standing authority for appointing Deputy Comptrollers,[10] and both the FDIC and Federal Reserve Board have succession authority built into their operative authorizing statutes. One approach to ensure OTS continuity would be to amend HOLA to permit the Treasury Secretary to make the OTS appointments so each potential OTS Acting Director would qualify as an "inferior officer" under the Appointments Clause of the Constitution.

The safety and soundness of the banking system depends on regular, uninterrupted oversight by the FBAs. The reality of the appointments process is that there can be a delay of many months before a sub-cabinet level position is filled, and these delays have grown significantly over the last 20 years. An event resulting in numerous vacancies in the Executive Branch would, of course, exacerbate this problem. In light of these growing, and potentially greater, delays, it is important to promote stability and continuity within OTS by encouraging longevity within the position of the OTS Director, as well as to establish a statutory chain of command within OTS. Implementing these suggested changes will avoid the possibility of gaps in authority to regulate and supervise savings associations, eliminate uncertainty for the savings associations OTS regulates, and avoid potential litigation over whether the acts of OTS staff are valid.

The vacancy issue is of particular concern to OTS because we are the only financial services sector regulator that could be readily exposed to a vacancy problem. During a vacancy, OTS succession now occurs through the process of the Vacancies Act, which has inherent uncertainty regarding immediate succession when the OTS Director departs and limits the period an Acting Director may serve. The organic statutes of the other financial regulators minimize or avoid vacancy problems by providing for automatic and immediate succession or by vesting authority in the remaining members of a board or commission.

VI. Other Regulatory Burden Reduction Proposals

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10. 12 U.S.C. § 4.

OTS also recommends enactment of other important regulatory burden relief initiatives. We appreciate the opportunity to work with the Subcommittee staff on these and other provisions that will benefit the thrift industry.

A. Authorizing Federal Savings Associations to Merge and Consolidate with Non-Depository Affiliates

OTS favors section 203 of H.R. 3505, which provides federal savings associations the authority to merge with one or more of their non-depository institution affiliates, equivalent to authority enacted for national banks at the end of 2000.[11] The Bank Merger Act would still apply, and the new authority does not give savings associations the power to engage in new activities.

Under current law, a federal savings association may only merge with another depository institution. This proposal reduces regulatory burden on savings associations by permitting mergers with non-depository affiliates where appropriate for sound business reasons and if otherwise permitted by law. Today, if a savings association wants to acquire the business of an affiliate, it must engage in a series of transactions, such as merging the affiliate into a subsidiary and liquidating the subsidiary into the savings association. Structuring a transaction in this way can be costly and unduly burdensome. We support permitting savings associations to merge with affiliates, along with the existing authority to merge with other depository institutions.

B. Amending the International Lending Supervision Act (ILSA) to Support Consistency and Equal Representation

Two amendments to ILSA that we previously proposed would promote greater consistency among U.S. regulators in supervising the foreign activities of insured depository institutions and should be added to H.R. 3505.

1. Applying ILSA to Savings Associations

OTS recommends making federal and state savings associations (and their subsidiaries and affiliates) subject to ILSA on the same basis as other banking institutions. This will eliminate regulatory burden by promoting the uniform supervision of insured depository institutions. OTS is already covered by ILSA along with the other FBAs, but savings associations are not. In enacting ILSA,

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11. Section 6 of the National Bank Consolidation and Merger Act (12 U.S.C. § 215a-3).

Congress sought to assure that the economic health and stability of the United States and other nations would not be adversely affected by imprudent lending practices or inadequate supervision. A depository institution subject to ILSA must, among other things:

- Establish special reserves necessary to reflect risks of foreign activities; and

- Submit to the appropriate FBA quarterly reports on its foreign country exposure.

The legislative history of ILSA is silent on the international lending activities of savings associations because these institutions were not active in international finance in 1983. While savings associations maintain a domestic focus—providing credit for housing and other consumer needs within the United States—some savings associations have significant foreign activities. These include investing in foreign currency-denominated CDs, offering foreign currency exchange services, and making loans on the security of foreign real estate or loans to foreign borrowers. In addition, numerous savings and loan holding companies (SLHCs) have international operations (including several foreign-based holding companies) that provide opportunities for expanded international operations by the subsidiary savings association.

While OTS has broad supervisory powers under HOLA to oversee all activities of savings associations, their subsidiaries, and their affiliates, making savings associations subject to ILSA will enhance OTS's ability to carry out its responsibilities under ILSA and promote consistency among the federal regulators in supervising the foreign activities of insured depository institutions.

2. OTS Representation on the Basel Committee on Bank Supervision

Amending ILSA to support equal representation for OTS on the Basel Committee will enable OTS to share its expertise with respect to consolidated supervision of diverse, internationally active holding companies, one-to-four family and multifamily residential lending, consumer lending, and interest rate risk management. SLHCs operate in more than 130 countries, control over $6 trillion in assets, and their savings association subsidiaries originate almost one in every four residential mortgage loans in the United States. At $2.6 trillion in one-to-four family residential mortgage loan originations in 2004, this market stands as the largest credit market in the world, currently with over $9 trillion in outstanding loans.[12]

OTS currently participates in numerous Basel Committee working groups and subcommittees. Giving OTS a recognized voice on Basel will help assure that international bank supervision policies do not inadvertently harm savings associations or the numerous internationally active SLHCs.

C. Clarification of Citizenship of Federal Savings Associations for Federal Diversity Jurisdiction

Pursuant to federal diversity jurisdiction, a federal savings association may sue or be sued in federal court if the claim exceeds $75,000 and the parties are citizens of different states. OTS supports section 213 of H.R. 3505, which clarifies that, for purposes of determining diversity jurisdiction, a federal savings association is a citizen of its home state and, if different, the state in which its principal place of business is located.

Some courts have determined that if a savings association that is organized as a stock corporation conducts a substantial amount of business in more than one state, it is not a citizen of any state and, therefore, it may not sue or be sued in federal court under diversity jurisdiction. Section 213 would avoid this result, and also avoid a potential similar problem with respect to mutual savings associations. The general rule for an unincorporated association is that it is a citizen of every state of which any of its members is a citizen. If a court were to apply this general rule to mutual savings associations, those operating regionally or nationally with depositors across the country would find it difficult or impossible to establish diversity jurisdiction. Section 213 would establish a uniform rule governing federal jurisdiction when a savings association is involved and, accordingly, reduce confusion and uncertainty.

D. Enhancing Examination Flexibility

Current law requires the FBAs to conduct a full-scale, on-site examination for the depository institutions under their jurisdiction at least every 12 months. There is an exception for small institutions that have total assets of less than $250 million and are well-capitalized and well-managed and meet other criteria. Examinations of these small institutions are required at least every 18 months.

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12. See Mortgage Bankers Association Mortgage Finance Forecast (June 6, 2005).

When originally enacted in 1991, the small institution examination exception was available to institutions with assets less than $100 million (assuming the other statutory criteria were satisfied). This statutory threshold was raised to $250 million in 1994 for institutions in outstanding condition and meeting the other statutory criteria. In 1996, the FBAs were authorized to extend the $250 million threshold to institutions in good condition. Given the fact that the current threshold has been in place for more than eight years, OTS recommends considering whether the $250 million cap should once again be raised. If so, we support section 607 of H.R. 3505, which is endorsed by all of the FBAs, to increase the small institution threshold to $500 million for well-capitalized, well-managed institutions.

Section 607 would reduce regulatory burden on low-risk, small institutions and permit the FBAs to more effectively focus their resources on the highest risk institutions.

E. Removal of Qualified Thrift Lender Requirements with Respect to Out-of-State Branches of Federal Savings Associations

OTS also supports section 211 of H.R. 3505, removing the requirement that federal savings associations meet the QTL test on a state-by-state basis. This requirement is a superfluous regulatory burden because interstate savings associations may currently structure their activities to assure compliance with the state-by-state requirement. Thus, there is no meaningful purpose for maintaining this requirement. The QTL test should, of course, continue to apply to the institution as a whole.

F. Authority for a Savings and Loan Holding Company to Own a Separate Credit Card Savings Association

Another unnecessary and burdensome statutory provision is a limitation imposed on existing SLHCs that limits their activities (to those permissible for a multiple SLHC) for the acquisition or chartering of a limited purpose credit card savings association, but permits acquiring or chartering (without any activities limitations) of a substantially similar limited purpose credit card bank. This restriction arises out of the fact that a SLHC generally cannot own more than one savings association (unless acquired in a supervisory transaction), without being subject to the activities restrictions imposed on SLHCs owning multiple savings associations. Under the HOLA, a SLHC cannot charter or acquire a limited purpose credit card savings association, but can charter or acquire a limited purpose credit card bank without triggering the multiple SLHC restrictions or being treated as a BHC under BHC Act.

From a regulatory burden perspective, it makes no sense to subject a SLHC structure to an additional bank regulator, i.e., supervising the limited purpose credit card bank, simply because of a statutory activities limitation that provides the SLHC cannot own an otherwise permissible limited purpose credit card savings association that it can own if the entity is a bank. This result is illogical and excessive regulatory burden with no additional supervisory or regulatory benefit attached. We support section 216 of H.R. 3505, providing that a limited purpose credit card savings association is not deemed a savings association, or is excluded from consideration, in applying the activities restrictions imposed on multiple SLHCs under the HOLA.

G. Modernizing the Community Development Investment Authority of Savings Associations

OTS supports section 202 of H.R. 3505, updating HOLA to give savings associations the same authority as national banks and state member banks to make investments to promote the public welfare. Section 202 enhances the ability of savings associations to contribute to the growth and stability of their communities.

Due to changes made to HUD's Community Development Block Grant (CDBG) program more than 20 years ago, investment opportunities that meet the technical requirements of savings associations' current statutory community development authority are rare. As a result, OTS has found it cumbersome to promote the spirit and intent of Congress's determination to allow savings associations to make such community development investments. Currently, using its administrative authority, OTS may issue a "no action" letter when a savings association seeks to make a community development investment that satisfies the intent of the existing provision, but does not clearly fall within the wording of the statute or the "safe harbor" criteria issued by OTS for these investments. The no-action process, however, takes time, lacks certainty, and is clearly burdensome.

Section 202 closely tracks the existing authority for banks. Under this provision, savings associations may make investments primarily designed to promote the public welfare, directly or indirectly by investing in an entity primarily engaged in making public welfare investments. There is an aggregate limit on investments of 5 percent of a savings association's capital and surplus, or up to 10 percent on an exception basis.

H. Eliminating Geographic and Ownership Limits on Thrift Service Companies

OTS supports legislation authorizing federal savings associations to invest in service companies without regard to the current geographic and ownership restrictions. Current law permits a federal savings association to invest in a service company only if (i) the service company is chartered in the savings association's home state, and (ii) the service company's stock is available for purchase only by savings associations chartered by that state and other federal savings associations having their home offices in that states.

HOLA imposed these restrictions before interstate branching and before technological advances such as Internet and telephone banking, and they no longer serve a useful purpose. This restriction needlessly complicates the ability of savings associations, which often operate in more than one state, to join with savings associations and banks to obtain services at lower costs due to economies of scale or to engage in other approved activities.

Today, a savings association seeking to make investments through service companies must create an additional corporate layer—known as a second-tier service company—to invest in enterprises located outside the savings association's home state or with a bank. Requiring second-tier service companies serves no rational business purpose, results in unnecessary expense and red tape for federal savings associations and banks, and discourages otherwise worthwhile investments. While this proposal simplifies the ability of banks and savings associations to invest together in service companies, it does not expand the powers of savings associations or banks. The activities of the service company must be permissible investments under the rules applicable to the savings association or bank.

Currently, section 406 of H.R. 3505 would provide authority for savings associations to invest in bank service companies, and section 503 would eliminate geographic limits on thrift service companies. We support these provisions and will continue to work with Subcommittee staff to ensure that implementation of these provisions provides for a streamlined and efficient regulatory framework.

I. Streamlining Agency Action under the Bank Merger Act

OTS supports section 610 of H.R. 3505, which streamlines Bank Merger Act application requirements by eliminating the requirement that each FBA request a competitive factors report from the other three banking agencies and the

Attorney General. This means five agencies must consider the competitive effects of every proposed bank or savings association merger. The vast majority of proposed mergers do not raise anti-competitive issues, and these multiple reports, even for those few that do raise issues, are not necessary. The proposal decreases the number to two, with the Attorney General continuing to be required to consider the competitive factors involved in each merger transaction and the FDIC, as the insurer, receiving notice even where it is not the lead banking agency for the particular merger. This will streamline the review of merger applications while assuring appropriate consideration of all anti-competitive issues.

VIII. Conclusion

OTS is committed to reducing regulatory burden wherever it has the ability to do so, consistent with safety and soundness and compliance with law, and without undue impact on existing consumer protections. We support proposed legislation—such as H.R. 3505—that advances this objective. I want to thank you, Mr. Chairman, Mr. Hensarling, Mr. Moore, and the other Members who have shown leadership on this issue. We look forward to working with the Subcommittee to shape the best possible regulatory burden relief legislation.

EGRPRA Fact Sheet

- The Law: The Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA") requires the Federal Financial Institutions Examination Council (FFIEC), and each of its member agencies—the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTS)—to review their regulations at least once every 10 years, in an effort to eliminate regulatory requirements that are outdated, unnecessary or unduly burdensome. The law requires FFIEC and its members to consider both regulatory changes that can be done at the agency level and recommending possible legislative fixes to reduce regulatory burden.

- John Reich is Taking the Lead: In 2003, when FDIC Chairman Don Powell was Chairman of the FFIEC, he asked then FDIC Vice Chairman John Reich (now OTS Director) to head up this interagency effort. As FDIC Vice Chairman, he took the lead on this project for the past two years, working with the FDIC, FRB, OCC, OTS, and NCUA (although the NCUA is on a different track), and he has brought the project with him to OTS. The FFIEC members kicked off this project in June of 2003, with a press conference, in which all of the agency principals participated, as well representatives from the major industry trade groups.

- Banker Outreach Meetings: The agencies have been conducting banker outreach meetings around the country:

    - Over the last two and a half years, ten banker outreach sessions were held in Orlando, St. Louis, Denver, San Francisco, New York, Nashville, Seattle, Chicago, Phoenix and New Orleans.
    - The purpose of the meetings was to hear directly from bankers about the regulatory burden issues that most concern them and try to identify solutions.
    - More than 500 bankers (mostly CEOs), as well as representatives of the American Bankers' Association (ABA), the Independent Community Bankers of America (ICBA), America's Community Bankers (ACB), and the Conference of State Bank Supervisors (CSBS) and a number of state trade associations, participated in the ten meetings.

- More than 70 representatives from the FDIC, FRB, OCC, OTS and NCUA also participated in these meetings, including then FDIC Vice Chairman Reich, FDIC Chairman Powell, FDIC Director Curry, former Comptroller Hawke, Acting Comptroller Williams, and FRB Governors Olson and Bies.
- Agendas for each outreach meeting, as well as summaries of all of the issues raised, are available on the EGRPRA.gov website.

- Consumer Group Meetings: We have held three consumer and community group outreach sessions as well. The first one was on February 20, 2004, at the L. William Seidman Center in Arlington, Virginia. The second one was on June 24, 2004, in San Francisco, and the third one was on September 24, 2004, in Chicago. About 100 people participated in the three meetings. Agendas and summaries of the issues discussed at those meetings are posted on the EGRPRA.gov website.

- Banker/Consumer Focus Group Meetings: The agencies also sponsored three joint banker and consumer/community group focus group meetings in an effort to develop greater consensus among the parties on legislative proposals to reduce regulatory burden. The three meetings were held on August 25, 2005, in Washington, D.C., September 1, 2005, in Los Angeles, and September 8, 2005, in Kansas City.

- First Request for Public Comment: In June, 2003, the FFIEC agencies issued a request for comment on our overall regulatory review plan and the first three categories of regulations—Applications and Reporting, Powers and Activities, and International Operations. In response to this request, we received 19 comments letters with more than 150 recommendations to change various rules and regulations.

- Second Request for Public Comment: On January 20, 2004, the agencies issued a second notice requesting comments on the lending-related consumer protection regulations, which include the rules on Truth-in-Lending (Regulation Z), the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act (HMDA), and others. That comment period closed on April 20, 2004. We received almost 600 comment letters and e-mails in response to that notice, mostly from bankers.

- Third Request for Public Comment: On July 20, 2004, the agencies published their third request for public comment, which was on the consumer protection regulations that are related to deposit accounts/relationships and all of the other consumer protection rules (except those related to lending). The regulations were put out for a 90-day comment period, which closed on October 18, 2004.

- Fourth Request for Public Comment: On January 18, 2005, the FDIC Board of Directors authorized the publication of the fourth request for public comment, which is on the money laundering, safety & soundness and securities regulations. This notice was published on February 3, 2005, for a 90-day comment period, which closed on May 4, 2005.

- Fifth Request for Public Comment: On August 11, 2005, the agencies published the fifth request for public comment, which is on banking operations, officers & directors as well as rules of procedure. The regulations are out for a 90-day comment period that will close on November 9, 2005.

- Ongoing Analysis of Regulatory Burden Issues: Dialogues among the regulators are underway to determine how we can best respond to industry concerns and fulfill our obligations under EGRPRA to eliminate outdated, unnecessary, or unduly burdensome rules. Agency staff is currently analyzing all of the comments/suggestions received to date and will recommend appropriate changes to the regulations and/or underlying legislation.

- Taking Action with the Other Agencies to Reduce Regulatory Burden: Since launching the EGRPRA effort in June 2003, progress has been made on several fronts. Over the past year, we have accomplished the following on an interagency basis:

    - Raised the CRA small bank threshold from $250 million to $1 billion, eliminating consideration of holding companies, but including a new community development test (for FDIC, FRB and OCC).

    - Issued an Advanced Notice of Proposed Rulemaking soliciting comment on ways to improve the Privacy Notices required under the Gramm-Leach-Bliley Act. This comment period closed on March 29, 2004. Staff is now conducting some consumer testing on possible short-form notices.

- Issued guidance to bankers on how to structure Customer Identification Programs to meet the requirements of the USA Patriot Act, with more guidance to follow.
- Significant work and development with the Financial Crimes Enforcement Network (FinCEN) and various law enforcement agencies to streamline the filing requirements for Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs).

- Congressional Action:
  - On May 12, 2004, and again on June 9, 2005, then Vice Chairman Reich testified before the House Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services. The Vice Chairman expressed his views concerning the effect of regulatory burden on community banks.
  - On June 22, 2004 and again on June 21, 2005, the Vice Chairman testified before the Senate Banking Committee (SBC), along with representatives from the other federal banking agencies (FBAs), on a number of specific regulatory relief proposals.
  - On July 28, 2005, Congressman Jeb Hensarling introduced H.R. 3505, the Financial Services Regulatory Relief Act of 2005.
  - Senator Crapo is working on a regulatory relief bill that he is targeting to introduce some time this fall.
  - The agencies are working closely with staff from the appropriate House and Senate committees to craft appropriate regulatory relief bills hopefully to be enacted during this Congress.

- Legislative List: As part of then Vice Chairman Reich's Senate testimony last year, he mentioned a number of possible legislative proposals, including:
  - Exempting certain merger transactions from a competitive factors review by the Department of Justice and other agency review processes as well as from post-approval waiting periods.
  - Shortening the post-approval waiting time on mergers for 15 to 5 days when there are no adverse effects on competition.

- Eliminating the requirement that, in certain merger transactions, each FBA must request a competitive factors report from the other three banking agencies as well as the Attorney General.
- Eliminating the requirement for prior written consent to establish branches for well-managed, well-capitalized and highly-rated institutions.
- Eliminating the annual privacy notice requirement for institutions that do not share personal information with third parties.
- Allowing consumers additional flexibility to waive their 3-day right of rescission in certain real estate transactions.
- Providing increased flexibility under the Flood Insurance program by making certain amendments to the Flood Insurance Act.
- Repealing the CRA Sunshine law.

- Legislative Matrix: At the end of the SBC hearing, Senator Crapo asked then Vice Chairman Reich to prepare a matrix of all of the legislative recommendations made at the hearing and get back to him with the positions of the agencies on those recommendations. We have completed the matrix and it has been provided to SBC staff.

- EGRPRA Website: For more information about this interagency regulatory burden reduction project, please visit our EGRPRA website at: www.EGRPRA.gov

Federal Financial Institutions Examination Council

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Press Release

For Immediate Release **September 19, 2005**

FFIEC FORMS WORKING GROUP TO ADDRESS FINANCIAL INDUSTRY ISSUES AFTER HURRICANE KATRINA

WASHINGTON, D.C. (Sept. 19, 2005) — The Federal Financial Institutions Examination Council (FFIEC) is announcing the formation of an interagency working group to enhance the agencies' coordination and communication on, and supervisory responses to, issues facing the industry in the aftermath of Hurricane Katrina. The group, composed of senior level supervision officials from each member agency and the FFIEC's State Liaison Committee, will build upon the cooperative efforts, already in place, among the federal and state financial institution regulators.

In announcing the formation of the working group, FFIEC Chairman John C. Dugan noted that one of the clear lessons learned from the initial days following Hurricane Katrina is the need to provide institutions with clear, timely, and consistent information on issues of concern. "The FFIEC is committed to working with the industry and affected institutions to respond to issues that may arise as the industry continues its efforts to facilitate recovery to communities and customers in the Gulf Coast area affected by Hurricane Katrina," Chairman Dugan noted. "My colleagues and I have instructed the working group to call upon any needed resources across our respective agencies and the FFIEC's established task forces to accomplish this goal."

For additional information concerning the formation of this working group, please contact Tamara J. Wiseman, Executive Secretary for the FFIEC, at 703-516-5590.

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Board of Governors of the Federal Reserve System
Conference of State Bank Supervisors
Federal Deposit Insurance Corporation
Joint Release **National Credit Union Administration**
Office of the Comptroller of the Currency
Office of Thrift Supervision

For immediate release **September 1, 2005**

Agencies Encourage Insured Depository Institutions to Assist Displaced Customers

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (the agencies), and the Conference of State Bank Supervisors are asking insured depository institutions to consider all reasonable and prudent steps to assist customers' and credit union members' cash and financial needs in areas affected by Hurricane Katrina. The agencies are working with state regulatory agencies, financial industry trade groups, and affected financial institutions to identify customer needs and monitor institutions' restoration of services.

The agencies remind the public that deposit insurance is in full force and that money in FDIC- or NCUA-insured accounts is protected by federal deposit insurance. The agencies also note that a priority is to provide customer access to deposit accounts and other financial assets. Many financial institutions are implementing contingency plans, including procedures for consumers to have access to ATMs and use of their debit cards.

The financial services community through its various trade associations is working together to assist affected institutions. The agencies encourage financial institutions to assist affected institutions and consider all reasonable and prudent actions that could help meet the critical financial needs of their customers and their communities. To the extent consistent with safe and sound banking practices, such actions may include:

- Waiving ATM fees for customers and non-customers
- Increasing ATM daily cash withdrawal limits
- Easing restrictions on cashing out-of-state and non-customer checks
- Waiving overdraft fees as a result of paycheck interruption
- Waiving early withdrawal penalties on time deposits
- Waiving availability restrictions on insurance checks
- Allowing loan customers to defer or skip some payments
- Waiving late fees for credit card and other loan balances due to interruption of mail and/or billing statements or the customer's inability to access funds
- Easing credit card limits and credit terms for new loans
- Delaying delinquency notices to the credit bureaus

The agencies, in consultation with FinCEN, also encourage depository institutions to be reasonable in their approach to verifying the identity of individuals temporarily displaced by Hurricane Katrina. Under the Customer Identification Program requirement of the Bank Secrecy Act, depository institutions must obtain, at a minimum, an individual's name, address, date of birth and taxpayer identification number or other acceptable identification number before opening an account. The Customer Identification Program requirement provides depository institutions with flexibility to design a program that uses documents, non-documentary methods or a combination to verify a customer's identity. Moreover, the regulation provides that verification of identity may be completed within a reasonable time after the account is opened. Recognizing the urgency of this situation, the agencies encourage depository institutions to use non-documentary verification methods for affected customers that may not be able to provide standard identification documents, as permitted under the regulation. A depository institution in the affected area, or dealing with new customers from the affected area, may amend its Customer Identification Program immediately and obtain required board approval for program changes as soon as practicable.

The agencies note that these measures could help customers recover their financial strength and contribute to the health of the local community and the long-term interest of financial institutions and their customers when undertaken in a prudent manner. The agencies recognize that the needs and situation of each financial institution and its community and customers are unique. The actions above may not be feasible or desirable for all institutions and many institutions may provide additional services from those identified.

The agencies will continue to monitor closely the situation and needs of insured depository institutions and their customers and will provide additional guidance, as required, to help address those needs. Institutions in need of assistance in dealing with customers affected by the hurricane should contact their primary supervisors.

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Regulatory Burden of SEC Proposed Exemptive Relief

Investment Advisor Registration

Type of Account or Service Provided	National or State Charter Banks and Trust Companies Exemptive Relief	SEC Proposed Exemptive Relief for Savings Associations
<u>Accounts without Investment Management or Advice Responsibilities</u> ▪ Trust Accounts ▪ Court Accounts ▪ Agency/Custodial Accounts	Yes Have exemptive relief	Yes Have exemptive relief – did not previously have to register
<u>Trust Accounts</u> (with investment management or advice responsibilities) ▪ Personal Trust ▪ Employee Benefit Trust ▪ Charitable Trust	YES Have exemptive relief	**NO** **Savings associations will not have exemptive relief or burden reduction**
<u>Court Accounts</u> (with investment management or advice responsibilities) • Executor ▪ Administrator ▪ Guardian ▪ Conservator	YES Have exemptive relief	**NO** **Savings associations will not have exemptive relief or burden reduction**
<u>Agency Accounts</u> (with investment management or advice responsibilities) ▪ Individuals ▪ Personal Trusts ▪ Employee Benefit Plans and Trusts ▪ Corporate Entities ▪ Charities ▪ Mutual Funds ▪ Hedge Funds ▪ Common Trust Funds • Collective Investment Funds	YES Have exemptive relief (unless providing investment advice to a mutual fund, in which case the department or division of the bank or trust company providing the advice must register as an investment adviser)	**NO** **Savings associations will not have exemptive relief or burden reduction**

Evan Bayh

STATEMENT OF SENATOR EVAN BAYH
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
COMPETITIVE MARKET SUPERVISION ACT
SAVINGS ASSOCIATION EXEMPTION FROM THE INVESTMENT ADVISORS ACT
July 13, 2000

One of the bills that is before us today is the Competitive Market Supervision Act. This bill, which I have co-sponsored, does two important things for the people of the United States. First, the bill reduces securities fees for a large number of Americans. These fees, while relatively small, put an unnecessary burden on all investors, including those with retirement funds or pension funds. Second, the bill would provide for pay parity for Securities and Exchange Commission professional employees, by permitting the SEC to bring their pay in line with that of employees of other financial regulatory agencies. The SEC is charged with ensuring that investors receive the highest level consumer protections. This bill would help the SEC to attract – and retain – the best minds to fulfill its obligations to the American people.

On a separate issue, I have become aware of disparate treatment between savings associations and banks under the Investment Advisors Act. This Act exempts banks from its scope but does not exempt savings associations. This differing treatment puts savings associations at a competitive disadvantage, without reason. A similar disparity used to exist under a related law, the Investment Company Act of 1940; however, last year the Gramm-Leach-Bliley Act corrected the discordant treatment.

In the past few months, my staff has had discussions with the Securities and Exchange Commission and industry representatives. The SEC has determined that it has the statutory authority to exempt individual institutions and groups of institutions – including savings associations – from the scope of the Investment Advisors Act. Since the SEC has concluded that this parity issue may be resolved through rulemaking and has agreed to work with the industry to reach such resolution, I withhold legislative involvement. I appreciate their commitment and look forward to their resolution.

August 18, 2000

The Honorable Arthur Levitt
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Chairman Levitt:

As you are aware, on July 13, 2000, the Senate Banking Committee held a markup on S. 2107, The Competitive Market Supervision Act, among other legislation. Although I was unable to attend the markup, I submitted a written statement for the record. I thought you might be interested in seeing a copy of the statement, which I attached for you.

In my written statement, as a co-sponsor of S. 2107, I reiterated my belief of the appropriateness of the legislation and its benefits to Americans. Separately, I commented on the Securities and Exchange Committee's rulemaking initiative to exempt savings associations from the Investment Advisors Act. Savings associations should be provided a level playing field with banks, which historically have been exempt from the Act. Because SEC staff determined that this parity issue may be resolved through rulemaking and agreed to move forward with the rulemaking process, I withheld legislative action at the July 13 markup. I look forward to the SEC's timely resolution of this issue.

If I or my staff may be of assistance in this rulemaking effort or other matters, please do not hesitate to call.

Sincerely,

Evan Bayh

Evan Bayh