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TESTIMONY OF

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Before the

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

AND CONSUMER CREDIT

Of the

COMMITTEE ON FINANCIAL SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

September 22, 2005

Statement required by 12 U.S.C. 250:

The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

I. INTRODUCTION

Chairman Bachus, Ranking Member Sanders, Representative Hensarling, Representative Moore, and members of the Subcommittee, I appreciate this opportunity to appear before you today to discuss H.R. 3505, the Financial Services Regulatory Relief Act of 2005. Representatives Hensarling and Moore introduced this bill on July 28, 2005, and I commend them for taking the lead in sponsoring this important legislation. The Office of the Comptroller of the Currency (OCC) welcomes the opportunity to discuss the challenge of reducing unnecessary regulatory burden on America's banks and to offer suggestions for reforms, including some suggestions particularly affecting national banks and the national banking system.

Over the years, this Subcommittee has consistently addressed the need to reduce unnecessary burden on our nation's banks. We appreciate your continued efforts to pursue responsible regulatory burden relief legislation. Freeing banks from unnecessary burdens enables them to better meet the financial needs of their customers and their communities.

The Subcommittee's action on this legislation is even more important today in light of the Hurricane Katrina disaster that has devastated widespread areas in several states. While the legislative burden relief proposals in the bill supported by the OCC will benefit all banks, several of these items and others suggested by the OCC may be particularly helpful tenable banks to serve customers and communities in the disaster areas.[1] My testimony also

[1] *See, e.g.,* Section 601 (giving the Federal banking agencies flexibility to adjust examination cycles), and Section 401 (facilitating interstate *de novo* branching).

discusses other legislative proposals suggested by the OCC that may be beneficial in helping with the disaster relief, *e.g.,* increasing national banks' community development investment authority. In addition, as part of my testimony, I will summarize key actions that the OCC is taking to enable national banks to better assist their customers and communities affected by Hurricane Katrina.

Unnecessary regulatory burdens are not simply an issue of bank costs. For example, complying with unnecessary burdens requires banks to use valuable employee resources that may be better used to serve their customers and communities. Over-regulation neither encourages greater competition nor improved allocation of resources; to the contrary, it can shackle competition and lead to inefficient use of resources. Bank customers also feel the impact not only in the form of higher prices but also, in some cases, in the form of diminished product choices and services. Unnecessary regulatory burden also can become an issue of competitive viability, particularly for our nation's community banks and most particularly for our community banks in the disaster areas whose resources may have been stretched thin even before Hurricane Katrina.

Unnecessary regulatory burdens imposed on our banks arise from several sources. One source is regulations promulgated by the Federal banking agencies. We, as regulators, have the responsibility to ensure that our regulations effectively protect safety and soundness, foster the integrity of bank operations, safeguard the interests of consumers, <u>and</u> do not impose regulatory burdens that exceed what is necessary to achieve those goals, and thereby act as a drag on our banks' efficiency and competitiveness. We also need to be flexible to the extent allowable under law and consistent with safety and soundness to enable our banks to meet customer needs for services in extraordinary circumstances. At the OCC, we have undertaken a new, thorough "scrub" of the rules that we promulgate to identify any areas remaining where we can streamline processes or eliminate unnecessary requirements to further these goals.

However, not all the regulatory burdens imposed on banks today come from regulations promulgated by <u>bank</u> regulators. Thus, we welcome the interest of the Subcommittee in issues such as regulatory implementation of the Bank Secrecy Act (BSA) and anti-money laundering standards. In addition, actions by other regulators can affect regulatory burdens on banks. In this regard, the Securities and Exchange Commission's (SEC) recent decision to take some additional time to implement the broker "push-out" provisions of the Gramm-Leach-Bliley Act (GLBA) holds promise that those provisions can be implemented in a manner that is both faithful to GLBA's intent <u>and</u> not so burdensome as to drive established banking activities out of banks.

Another source of regulatory burden is mandates of Federal legislation. Thus, relief from some manifestations of unnecessary regulatory burden requires action by Congress. My testimony focuses on legislative recommendations that are supported by the OCC, many of which are included in H.R. 3505.

In summary, my testimony will—

- First, summarize the actions that the OCC is taking to assist national banks and their customers affected by Hurricane Katrina;
- Second, summarize how the Federal banking agencies are working together under the able leadership of the Office of Thrift Supervision (OTS) Director John Reich to complete the process required by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) to identify unnecessary regulatory burdens;
- Third, summarize some important regulatory initiatives that the OCC is pursuing with the other Federal banking agencies to reduce burden;
- Fourth, summarize some of the proposals that the OCC considers to be priority legislative items in H.R. 3505;
- Fifth, in the area of consumer protection, explain how we can both reduce unnecessary regulatory burden and more effectively use disclosures to provide information to consumers in a more meaningful way; and
- Sixth, provide an overview of several legislative items that the OCC supports that were not included in H.R. 3505.

II. REGULATORY INITIATIVES TO REDUCE BURDEN

<u>REGULATORY RELIEF FOR BANKS AND CUSTOMERS IN THE HURRICANE DISASTER AREAS</u>

The bank regulatory community – at the Federal and state levels – has worked together with outstanding teamwork to address the extraordinary dimensions of the aftermath of Hurricane Katrina. The four Federal banking agencies working with the National Credit Union Administration and the Conference of State Bank Supervisors (CSBS) immediately issued joint guidance urging insured depository institutions to consider all reasonable and prudent steps to assist customers' cash and financial needs in areas affected by the hurricane. Among the actions the Federal and state regulators have encouraged are:

- 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 customers to defer or skip some loan payments;
- Waiving late fees for credit cards and other loans due to interruption of mail and/or billing statements, or the customer's inability to access funds;
- Easing credit card limits and credit terms on new loans;
- Delaying delinquency notices to credit bureaus; and

- Encouraging institutions to use non-documentary customer verification methods for customers that are not able to provide standard identification documents.

In addition, the OCC has issued guidance on establishment of temporary branches, and branch- and employee-sharing arrangements. We also have compiled and published answers to frequently asked questions on additional topics including the Community Reinvestment Act (CRA), BSA, and various operational issues, including regulatory reporting requirements. We add additional questions and answers to our website as new issues surface.

Bottom line, consistent with our longstanding practice, the OCC will take into account the extraordinary circumstances impacting banks in the affected areas with respect to safety and soundness and compliance issues. We are committed to working with the banking industry and the other Federal and state financial regulators to respond to issues that arise in the aftermath of Hurricane Katrina and to minimize disruption and burden for banks and their customers in affected areas.

To that end, Comptroller Dugan, as Chairman of the Federal Financial Institutions Examination Council (FFIEC), earlier this week moved to establish a special FFIEC Katrina Working Group to facilitate the coordination, communication, and response to bank supervision issues that will arise in the weeks and months ahead in the aftermath of Hurricane Katrina. We are pleased that John Allison, Commissioner of the Mississippi Department of Banking and Consumer Finance, has agreed to participate as the FFIEC's

State Liaison Committee representative. In establishing the Working Group, Comptroller Dugan stressed that formation of the Working Group will facilitate interagency coordination and underscore each agency's commitment to assure that recovery efforts and concomitant resource commitments are supported at the highest levels of all participating agencies.

Finally, it is important to note, as the Subcommittee considers legislative proposals prompted by Hurricane Katrina, that legislation previously adopted by Congress in response to other disasters, contains provisions that were helpful before, and could be helpful now. I'm thinking in particular of provisions in the Depository Institutions Disaster Relief Acts of 1992, 1993, and 1997. One provision in those laws that I would call to your attention allowed the Federal banking agencies for a period of time to permit certain adequately capitalized depository institutions located in and serving customers in the affected areas to exclude deposits of insurance proceeds from their assets in their leverage capital ratio calculations for purposes of prompt corrective action requirements. As a result, these institutions were not adversely affected from a capital adequacy standpoint by the influx of deposits that were directly related to the damage and losses caused by the disaster. Another provision in those laws that you may want to consider is the provision that gave the Board of Governors of the Federal Reserve System (Fed) broad temporary authority to make exceptions to the Truth in Lending Act (TILA) for transactions in designated disaster areas, and to make exceptions to the Expedited Funds Availability Act (EFAA) for depository institution offices located in designated disaster areas. Consistent with safety and soundness and appropriate consumer protections, this authority would give the Fed the ability to waive TILA and EFAA requirements pursuant to authority that they may not otherwise have under other law to assist in the recovery efforts for banks, consumers, and communities in the disaster areas.

EGRPRA PROCESS

Turning to the broader effort to eliminate unnecessary regulatory burden, the OCC is an active participant in and supporter of the regulatory burden reduction initiative being led by OTS Director Reich. Under Director Reich's capable and dedicated leadership, the Federal banking agencies have been working together to conduct the regulatory review required under section 2222 of EGRPRA. Section 2222 requires the FFIEC and each Federal banking agency to identify outdated, unnecessary regulatory requirements and, in a report to Congress, to address whether such regulatory burdens can be changed through regulation or require legislative action. The current review period ends in September 2006.

The Federal banking agencies – the OCC, the Board of Governors of the Federal Reserve System (Fed), the Federal Deposit Insurance Corporation (FDIC), and OTS – have divided their regulations into thirteen categories for purposes of publishing those regulations for review as part of the EGRPRA process. Since the first joint notice was published in mid-2003, the agencies have issued a total of five joint notices for public comment. To date, we have received over 800 comments on our notices, excluding comments on the fifth joint notice for which the comment period is still open. Every comment received will be considered in formulating the agencies' recommendations for specific regulatory changes, as well as legislative recommendations.

Moreover, in addition to soliciting written comments, the Federal banking agencies, in conjunction with the Conference of State Bank Supervisors and state regulatory agencies, have held a total of seventeen banker and consumer outreach meetings in different cities and regions throughout the country to hear first-hand concerns and suggestions to reduce burden. The last four meetings were held over the past two months. The EGRPRA meeting in late July was attended only by consumer organizations but the three meetings since then were attended by both bankers and consumer organizations and resulted in open-end useful interaction between these two groups on various regulatory burden relief proposals.

OTHER BURDEN REDUCTION REGULATORY INITIATIVES

The OCC constantly reviews its regulations to identify opportunities to streamline regulations or regulatory processes, while ensuring that the goals of protecting safety and soundness, maintaining the integrity of bank operations, and safeguarding the interests of consumers are met. In the mid-1990's, pursuant to our comprehensive "Regulation Review" project, we went through every regulation in our rulebook with that goal in mind. We have since conducted several supplemental reviews focused on particular areas where we thought further improvements could be made, and we have new efforts underway right now. The following are several significant regulatory projects that reduce unnecessary regulatory burdens. One was recently completed; one has great promise as a roadmap for a new approach to consumer disclosure requirements.

Reducing CRA Burden on Small Banks. Recently, the OCC, the Fed, and the FDIC finalized amendments to our CRA regulations. Before we recently amended our rules, a "small bank" was defined as a bank with assets less than $250 million and subject to certain other requirements. Banks above that asset threshold were categorized as "large" banks for CRA purposes and subject to a three-part test that separately assessed their lending, services, and investments.

The new rule creates a new class of "intermediate" small banks, namely those with assets between $250 million and $1 billion. "Intermediate" small banks are subject to the streamlined small bank lending test and a flexible new community development test that looks to the mix of community development lending, investment, and services that a bank provides, particularly in light of the bank's resources and capacities, and the needs of the communities it serves. "Intermediate" small banks also are no longer subject to certain data collection and reporting requirements.

In addition, the new rule expressly provides that banks' activities that revitalize and stabilize distressed or underserved rural areas and designated disaster areas, which would obviously include designated areas affected by Hurricane Katrina, are eligible for CRA credit. This change benefits banks of all sizes.

Improving the Value and Reducing the Burden of Privacy Notices. The OCC, together with the other Federal banking agencies, the Federal Trade Commission, the SEC, and the Commodity Futures Trading Commission, have undertaken an unprecedented initiative to simplify the privacy notices required under GLBA. Over a year ago, the agencies asked for comments on whether to consider amending their respective privacy regulations to allow, or require, financial institutions to provide alternative types of privacy notices, such as a short-form privacy notice, that would be more understandable and useful for consumers and less burdensome for banks to provide. The agencies also asked commenters to provide sample privacy notices that they believe work well for consumers, and to provide the results of any consumer testing that has been conducted in this area.

The OCC and the other agencies then engaged experts in plain language disclosures and consumer testing to assist in conducting a series of focus groups and consumer interviews to find out what sort of information consumers find most meaningful, and the most effective way to disclose that information to them. We expect that this consumer testing will be completed by the end of the year and will form the basis for a proposal to revise the current privacy notice rules. This project has the potential to be a win-win for consumers and financial institutions – more effective and meaningful disclosures for consumers, and reduced burden on institutions that produce and distribute privacy notices.

III. OCC SUPPORT FOR REGULATORY BURDEN RELIEF PROPOSALS IN H.R. 3505

The OCC also has recommended a package of legislative amendments that we believe will help reduce unnecessary regulatory burden on national banks and other depository institutions. Some of these items are discussed below, particularly the proposals that may be especially beneficial to community banks. In past testimonies before this Subcommittee, including our testimony on June 9, 2005, the OCC provided detailed summaries of our recommended legislative changes. Most of these items are included in H.R. 3505.

In addition, the banking agencies jointly recommended certain legislative changes to reduce burdens that have been identified as part of the EGRPRA process. The consensus items supported by the four Federal banking agencies also are discussed below and many of those items are included in H.R. 3505. As the legislative process moves forward, the agencies may jointly support additional items.

NATIONAL BANK-RELATED PROVISIONS

Repealing State Opt-In Requirements for *De Novo* Branching. Section 401 of H.R. 3505 includes provisions that would repeal the state opt-in requirement that applies to banks that choose to expand interstate by establishing branches on a *de novo* basis and would repeal the state age requirement for interstate mergers. These provisions would remove significant unnecessary burdens imposed on both national and state banks that seek to establish new interstate branch facilities to enhance service to customers. Under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, interstate expansion through bank mergers generally is subject to a state "opt-out" that had to be in place by June 1, 1997. Interstate bank <u>mergers</u> are now permissible in all 50 states. *De novo* branching, however, is permissible only in those approximately 23 states that have affirmatively opted-in to allow the establishment of new branches in the state. Approximately 17 of these 23 states impose a reciprocity requirement.

In many cases, in order to serve customers in multi-state metropolitan areas or regional markets, banks must structure artificial and often expensive transactions in order to establish a new branch across a state border. Community banks may not possess the resources to pursue these alternatives, and thus may be disadvantaged. And the circumstances of Hurricane Katrina illustrate another dimension to this issue as well. Community banks that seek to provide banking facilities to customers forced to relocate to other states may not be able to promise those customers the availability of banking facilities long-term, beyond the immediate emergency period, as a result of interstate branching restrictions. Larger banks, by contrast, may have more structural options available to them that enable them to retain customers that relocate to other states.

<u>**Providing Relief for Subchapter S National Banks**</u>. Another priority item supported by the OCC is the amendment in Section 101 of H.R. 3505 that would allow directors of national banks that are organized as Subchapter S corporations to purchase subordinated

debt instead of capital stock to satisfy the directors' qualifying shares requirements in national banking law. As a result, the directors purchasing such debt would not be counted as shareholders for purposes of the 100-shareholder limit that applies to Subchapter S corporations thereby permitting such national banks to attract additional shareholder investors. This relief would make it possible for more community banks with national bank charters to organize in Subchapter S form while still requiring that such national bank directors retain their personal stake in the financial soundness of these banks.

Simplifying Dividend Calculations for National Banks. Under current law, the formula for calculating the amount that a national bank may pay in dividends is both complex and antiquated and unnecessary for purposes of safety and soundness. Section 103 of H.R. 3505 would make it easier for national banks to perform this calculation, while retaining safeguards in the current law that provide that national banks (and state member banks)[2] need the approval of the Comptroller (or the Fed in the case of state member banks) to pay a dividend that exceeds the current year's net income combined with any retained net income for the preceding two years. The amendment would ensure that the OCC (and the Fed for state member banks) would continue to have the opportunity to deny any dividend request that may deplete the net income of a bank that may be moving towards troubled condition. Other safeguards, such as Prompt Corrective Action, which prohibit any insured depository institution from paying any dividend if, after that payment, the institution would be undercapitalized (*see* 12 U.S.C. § 1831o(d)(1)) would remain in place.

[2] *See* 12 U.S.C. § 324 and 12 C.F.R. § 208.5 generally applying the national bank dividend approval requirements to state member banks.

Modernizing Corporate Governance. The OCC also supports Section 102 of H.R. 3505 that would eliminate a requirement that precludes a national bank from prescribing, in its articles of association, the method for election of directors that best suits its business goals and needs. Unlike most other companies and state banks, national banks cannot choose whether or not to permit cumulative voting in the election of their directors. Instead, current law requires a national bank to permit its shareholders to vote their shares cumulatively. Providing a national bank with the authority to decide for itself whether to permit cumulative voting in its articles of association would conform the National Bank Act to modern corporate codes and provide a national bank with the same corporate flexibility available to most corporations and state banks.

Modernizing Corporate Structure Options. The OCC supports Section 109 of H.R. 3505 clarifying the OCC's authority to adopt regulations to permit a national bank to be organized other than as a body corporate. This provision would further clarify the OCC's authority to permit a national bank to organize in any business form. An example of such an alternative form of organization is a limited liability national association, comparable to a limited liability company. The provision also would clarify that the OCC may provide the organizational characteristics of a national bank operating in an alternative form, consistent with safety and soundness. Except as provided by these organizational characteristics, all national banks, notwithstanding their form of organization, would have the same rights and privileges and be subject to the same restrictions, responsibilities, and enforcement authority.

Organization as a limited liability national association may be a particularly attractive option for community banks. The bank may then be able to take advantage of the pass-through tax treatment for comparable entities organized as limited liability companies (LLCs) for purposes of certain tax requirements and eliminate double taxation under which the same earnings are taxed both at the corporate level as corporate income and at the shareholder level as dividends. Some states currently permit state banks to be organized as unincorporated LLCs and the FDIC adopted a rule allowing certain state bank LLCs to qualify for Federal deposit insurance. This amendment would clarify that the OCC can permit national banks to organize in an alternative business form, such as an LLC, in the same manner.

FEDERAL BRANCHES AND AGENCIES OF FOREIGN BANKS

The OCC also licenses and supervises Federal branches and agencies of foreign banks. Federal branches and agencies generally are subject to the same rights and privileges, as well as the same duties, restrictions, penalties, liabilities, conditions and limitations and laws that apply to national banks. Branches and agencies of foreign banks, however, also are subject to other requirements under the International Banking Act of 1978 (IBA) that are unique to their organizational structure and operations in the U.S. as an office of a foreign bank. In this regard, the OCC is recommending amendments to reduce certain unnecessary burdens on Federal branches and agencies while preserving national treatment with national banks.

Implementing Risk-Based Requirements for Federal Branches and Agencies. Section 111 of H.R. 3505 would allow the OCC to set the capital equivalency deposit (CED) for Federal branches and agencies to reflect their risk profile. The provision that is in the bill would prevent the OCC from setting the CED any lower than the minimum CED set by the state banking authorities for state-licensed branches and agencies in the state in which the Federal branch or agency is located. While we appreciate that Section 111 provides more flexibility than is currently the case, rather than the state floor limitation in the current bill, we would prefer an amendment that would allow the OCC, after consultation with the FFIEC, to adopt regulations setting the CED on a risk-based institution-by-institution basis. This approach would more closely parallel the risk-based capital framework that applies to both national and state banks.

SAFETY AND SOUNDNESS

The OCC also supports a number of amendments that would promote and maintain the safety and soundness and facilitate the ability of regulators to address and resolve problem bank situations.

Providing Flexibility in Adjusting the Examination Schedule to Allocate Examiner Resources More Efficiently. The OCC supports Section 601 of H.R. 3505 that would allow the Federal banking agencies to adjust the examination cycle for an insured depository institution if necessary for safety and soundness and the effective examination and supervision of insured depository institutions. Current law requires that an insured depository institution must be examined in a full-scope, on-site examination at least once every 12 months, unless it qualifies for an 18-month examination cycle. Small insured depository institutions with total assets of less than $250 million may be examined on an 18-month cycle. This amendment would give the agencies needed flexibility to adjust the examination cycle if necessary to better allocate examiner resources in a manner that is consistent with safety and soundness and the effective examination and supervision of insured depository institutions.

Enforcing Written Agreements and Commitments. The OCC supports Section 405 of H.R. 3505 that would expressly authorize the Federal banking agencies to enforce written agreements and conditions imposed in writing in connection with an application or when the agency imposes conditions as part of its decision not to disapprove a notice, *e.g.,* a Change in Bank Control Act (CBCA) notice.

This amendment would address the anomalous results of some Federal court decisions that conditioned the agencies' authority to enforce certain conditions or agreements with respect to a non-bank party to the agreement on a showing that the non-bank party was "unjustly enriched." We believe that this amendment would enhance the safety and soundness of depository institutions and protect the deposit insurance funds from unnecessary losses.

Barring Convicted Felons From Participating in the Affairs of Depository Institutions. The OCC also supports Section 603 of H.R. 3505 that would give the Federal banking agencies the authority to prohibit a person convicted of a crime involving dishonesty, breach of trust, or money laundering from participating in the affairs of an *un*insured national or state bank or *un*insured branch or agency of a foreign bank without the consent of the agency. Under current law, the ability to keep these "bad actors" out of depository institutions applies only to *insured* depository institutions. Thus, for example, it would be harder to prevent an individual convicted of such crimes from serving as an official of an uninsured trust bank – the operations of which are subject to the highest fiduciary standards -- than to keep that individual from holding an administrative position at an insured bank.

Strengthening the Supervision of "Stripped-Charter" Institutions. The OCC supports Section 409 of H.R. 3505 that would address issues that have arisen when a stripped-charter institution (*i.e.,* an insured bank that has no ongoing business operations because, for example, all of the business operations have been transferred to another institution) is the subject of a change-in-control notice. The agencies' primary concern with such CBCA notices is that the CBCA is sometimes used as a route to acquire a bank with deposit insurance without submitting an application for a *de novo* charter and an application for deposit insurance, even though the risks presented by the two transactions may be substantively identical. In general, the scope of review of a *de novo* charter application or deposit insurance application is more comprehensive than the current statutory grounds for denial of a notice under the CBCA. There also are significant differences between the application and notice procedures. In the case of an application, the banking agency must affirmatively approve the request before a transaction can be consummated. Under the

CBCA, if the Federal banking agency does not act to disapprove a notice within certain time frames, the acquiring person may consummate the transaction. To address these concerns, the OCC supports Section 409 to clarify that (1) a Federal banking agency may extend the time period to consider a CBCA notice so that the agency may consider business plan information, and (2) the agency may use that information in determining whether to disapprove the notice.

IV. REDUCING BURDENS AND ENHANCING EFFECTIVENESS OF CONSUMER COMPLIANCE DISCLOSURES

Many of the areas that are often identified as prospects for regulatory burden reduction involve requirements designed for the protection of consumers. Over the years, those requirements – mandated by Congress and initiated by regulators – have accreted, and in the disclosure area, in particular, consumers today receive disclosures so voluminous and so technical that many simply do not read them – or when they do, do not understand them.

No matter how well intentioned, the current disclosures being provided to consumers in many respects are <u>not</u> delivering the information that consumers need to make informed decisions about their rights and responsibilities, but they <u>are</u> imposing significant costs on the industry and consuming precious resources.

In recent years, bank regulators and Congress have mandated that more and more information be provided to consumers in the financial services area. New disclosures have been added on top of old ones. The result today is a mass of disclosure requirements that generally do not effectively communicate to consumers, and impose excessive burden on the institutions required to provide those disclosures.

There are two arenas – legislative and regulatory – in which we can make changes to produce better, more effective, and less burdensome approaches to consumer disclosures.

With respect to legislation to improve disclosures, we can learn much from the experience of the Food and Drug Administration (FDA) in developing the "Nutrition Facts" label. This well-recognized – and easily understood disclosure is on virtually every food product we buy.

The effort that led to the FDA's nutrition labeling began with a clear statement from Congress that the FDA was directed to accomplish certain *objectives.* While Congress specified that certain nutrition facts were to be disclosed, it gave the FDA the flexibility to delete or add to these requirements in the interest of assisting consumers in "maintaining healthy dietary practices." The current disclosure is the result of several years of hard work and extensive input from consumers. The "Nutrition Facts" box disclosure was developed based on <u>goals</u> set out by Congress and then extensive research and consumer testing was used to determine what really worked to achieve those goals.

This experience teaches important lessons that we need to apply to information provided to consumers about financial services products—

- First, financial services legislation should articulate the goals to be achieved through a particular consumer protection disclosure regime, rather than directing the precise content or wording of the disclosure.
- Second, the legislation should provide adequate time for the bank regulators to include consumer testing as part of their rulemaking processes.
- Third, Congress should require that the regulators must consider both the burden associated with implementing any new standards, as well as the effectiveness of the disclosures.

With respect to the regulatory efforts to improve disclosures, as discussed above, we are today using consumer testing – through focus groups and consumer interviews – to identify the content and format of privacy notices that consumers find the most helpful and easy to comprehend. We are hopeful that this initiative will pave the way for better integration of consumer testing as a standard element of developing consumer disclosure regulations.

On another front, the OCC also took the unusual step several months ago of submitting a comment letter to the Federal Reserve Board on its Advance Notice of Proposed Rulemaking related to credit card disclosures, discussing both the development of the FDA's "Nutrition Facts" label and the efforts of the Financial Services Authority (FSA) in the United Kingdom to develop revised disclosures for a variety of financial products. Our comments highlighted some of the lessons learned from the FDA's and FSA's efforts and urged the Fed to take guidance from this experience:

- Focus on key information that is central to the consumer's decision making (provide supplementary information separately in a fair and clear manner);
- Ensure that key information is highlighted in such a way that consumers will notice it and understand its significance;
- Employ a standardized disclosure format that consumers can readily navigate; and
- Use simple language and an otherwise user-friendly manner of disclosure.

V. BANKING AGENCY CONSENSUS ITEMS

As a result of the dialogue between the Federal banking agencies – the OCC, the Fed, the FDIC, and the OTS as part of the EGRPRA process and other discussions over the last several years on regulatory burden relief legislation, it has become apparent that there are a number of items that we all support. Most of these items are included in H.R. 3505 or in other legislation.

In brief, the four Federal banking agencies all support amendments to Federal law that would—

- Authorize the Fed to pay interest on reserve accounts under the Federal Reserve Act (FRA);
- Provide that member banks may satisfy the reserve requirements under the FRA through pass-through deposits;

- Provide the Fed with more flexibility to set reserve requirements under the FRA;[3]
- Repeal certain reporting requirements relating to insider lending under the FRA (*see* Section 403 of H.R. 3505);
- Streamline depository institutions' requirements under the Bank Merger Act (BMA) to eliminate the requirement that the agency acting on the application must request competitive factor reports from all of the other Federal banking agencies (*see* Section 610 of H.R. 3505);
- Shorten the post-approval waiting period under the BMA in cases where there is no adverse effect on competition;
- Exempt mergers between depository institutions and affiliates from the competitive factors review and post-approval waiting periods under the BMA (*see* Section 610 of H.R. 3505);
- Improve information sharing with foreign supervisors under the IBA (*see* Section 612 of H.R. 3505);
- Provide an inflation adjustment for the small depository institution exception under the Depository Institution Management Interlocks Act (*see* Section 404 of H.R. 3505);
- Provide more flexibility in the application of the Flood Disaster Protection Act of 1973 for lenders to force-place new flood insurance, and for remedies available to Federal supervisors to address violations;
- Enhance examination flexibility under the Federal Deposit Insurance Act (FDIA) by increasing the small bank threshold from $250 million to $500 million so that more

[3] These first three amendments dealing with the reserve requirements were included in H.R. 1224, the

small banks may qualify to be examined on an 18-month rather than an annual cycle;[4] and

- Provide that the Federal banking agencies will review the requirements for banks' reports of condition under the FDIA every five years and reduce or eliminate any requirements that are no longer necessary or appropriate (*see* Section 606 of H.R. 3505).

VI. COMMENTS ON OTHER LEGISLATIVE PROPOSALS NOT IN H.R. 3505

Some other important proposals supported by the OCC are not part of H.R. 3505. We urge the Subcommittee to consider them as this legislation moves forward. We note that these items may be particularly beneficial to banks in providing assistance to communities and customers in the Hurricane Katrina affected areas.

Enhancing National Banks' Community Development Investments. The OCC supports an amendment to the National Bank Act that would increase the maximum amount of a national bank's investments that are designed primarily to promote the public welfare either directly or by purchasing interests in an entity primarily engaged in making these investments, such as a community development corporation. We recommend increasing the maximum permissible amount of such investments from 10% to 15% of the bank's capital and surplus. The maximum limit only applies if the bank is adequately capitalized

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Business Checking Freedom Act of 2005, as reported by the House Financial Services Committee and as passed by the House on May 24, 2005.

[4] As discussed in my testimony, the OCC also supports Section 601 of H.R. 3505 enhancing examination flexibility under the FDIA by giving the Federal banking agencies the discretion to adjust the examination

and only if the OCC determines that this higher limit will not pose a significant risk to the deposit insurance fund. Today, more than 90% of national banks investments under this authority are in low-income housing tax credit projects and losses associated with such projects are minimal. Allowing adequately capitalized national banks to modestly increase their community development investments subject to the requirements of the statute will enable them to expand investments that have been profitable, relatively low-risk, and beneficial to their communities.

Giving National Banks More Flexibility in Main Office Relocations. The OCC supports an amendment to national banking law that will reduce unnecessary burdens on a national bank seeking to relocate its main office within its home state. The amendment would provide that a national bank that is merging or consolidating with another bank *in the same state* pursuant to national banking law, rather than the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal) which applies only to interstate mergers and consolidations, has the same opportunity to retain certain offices that it would have if the merger or consolidation were an interstate merger subject to Riegle-Neal. The amendment would allow a national bank, with the Comptroller's approval, to retain and operate as its main office any main office or branch of any bank involved in the transaction in the same manner that it could do if this were a Riegle-Neal transaction. This would give a national bank more flexibility when making the business decision to relocate its main office to a branch location within the same state.

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cycle for an insured depository institution if necessary for safety and soundness and the effective examination and supervision of insured depository institutions.

Paying Interest on Demand Deposits. The OCC supports the amendments to the banking laws to repeal the statutory prohibition on banks paying interest on demand deposits, that were included in H.R. 1224, the Business Checking Freedom Act of 2005, as reported by the House Financial Services Committee and as passed by the House on May 24, 2005. The prohibition on paying interest on demand deposits was enacted approximately 70 years ago for the purpose of deterring large banks from attracting deposits away from community banks. The rationale for this provision is no longer applicable today and financial product innovations, such as sweep services, allow banks and their customers to avoid the statutory restrictions. Repealing this prohibition would reduce burden on consumers, including small businesses, and reduce costs associated with establishing such additional accounts to avoid the restrictions.

VII. CONCLUSION

Mr. Chairman, on behalf of the OCC, we welcome these hearings. The OCC strongly supports initiatives that will reduce unnecessary burden on the industry in a responsible, safe and sound manner, including appropriate initiatives to assist in the Hurricane Katrina recovery effort. We would be pleased to work with you and your staff to make that goal a reality.

I would be happy to answer any questions you may have.