Testimony of

America's Community Bankers

on

The Consideration of Regulatory Relief Proposals

before the

Committee on Banking, Housing and Urban Affairs

of the

United States Senate

on

March 1, 2006

F. Weller Meyer
Chairman, President and CEO
Acacia Federal Savings Bank
Falls Church, Virginia

and

Chairman
Board of Directors
America's Community Bankers
Washington, DC

Chairman Shelby, Senator Sarbanes and Members of the Committee, I am F. Weller Meyer, Chairman, President and CEO of Acacia Federal Savings Bank, Falls Church, Virginia. Acacia Federal Savings Bank has more than $1.25 billion in assets. Acacia Federal is a member of the UNIFI Group of companies, which are a diversified group of insurance and financial services businesses.

I am here this morning representing America's Community Bankers. I am the Chairman of ACB's Board of Directors. I want to thank Chairman Shelby for calling this hearing. We appreciate the leadership of Senator Crapo in crafting legislation to address the impact of outdated and unnecessary regulations on community banks and the communities they serve.

ACB is pleased to have this opportunity to discuss recommendations to reduce the regulatory burden placed on community banks. When unnecessary and costly regulations are eliminated or simplified, community banks will be able to better serve consumers and small businesses in their local markets. ACB has a long-standing position in support of a meaningful reduction of regulatory burden.

The need to adopt regulatory relief legislation is urgent. In 1990, the ten largest U.S. banks held 25 percent of U.S. banking assets. But by the end of 2004, the ten largest U.S. banks held 53 percent of banking assets. We believe that increased regulatory burden has played a significant role in the sharp decrease in banking assets controlled by community banks. All banks operate under a regulatory scheme that becomes more and more burdensome every year. But, community banks bear a greater relative burden of regulatory costs compared to large

banks. In the face of the increasingly complex regulatory requirements, many community banks have chosen to give up their separate charters and seek mergers with larger institutions. Community banks stand at the heart of cities and towns everywhere, and to lose that segment of the industry because of over regulation would be debilitating to those communities.

Community banks today are subject to a host of laws, some over a half-century old that originally were enacted to address concerns that no longer exist. These laws stifle innovation in the banking industry and put up needless roadblocks to competition without contributing to the safety and soundness of the banking system. Further, every new law that impacts community banks brings with it additional requirements and burdens. This results in layer upon layer of regulation promulgated by the agencies frequently without regard to the requirements already in existence.

The burden of these laws results in lost business opportunities for community banks. But, consumers and businesses also suffer because their choices among financial institutions and financial products are more limited as a result of these laws, and, in the end, less competition means consumers and businesses pay more for these services.

Community banks must also comply with an array of consumer compliance regulations. As a community banker, I understand the importance of reasonable consumer protection regulations. As a community banker, I also see how much it costs, both financially and in numbers of staff hours to comply with the often-unreasonable application of these laws. As a community banker, I see projects that will not be funded, products not offered and consumers not

served because I have had to make a large resource commitment to comply with the same regulations with which banks hundreds of times larger must comply.

ACB has a number of recommendations to reduce regulations applicable to community banks that will help make doing business easier and less costly, further enabling community banks to help their communities prosper and create jobs.

Priorities for Regulatory Relief

Anti-Money Laundering and Corporate Governance

Two areas of regulatory compliance that cause the greatest concern for all community bankers are the implementation of anti-money laundering laws and implementation of corporate governance requirements. ACB believes that significant changes in these two areas are warranted either through regulatory or legislative action.

Anti-Money Laundering

Community bankers fully support the goals of the anti-money laundering laws, and we are prepared to do our part to fight crime and terrorism. Community banks are committed to ensuring our nation's physical security and the integrity of our financial system. However, we are concerned about the unintended consequences caused by existing statutory and regulatory requirements.

First, community banks are concerned that law enforcement does not review or use much of the information that depository institutions must report to the federal government regarding

customers' financial transactions. FinCEN and law enforcement report that the Cash Transaction Report (CTR) database is littered with unhelpful CTRs.

Therefore, ACB suggests increasing the dollar value threshold that triggers CTR reporting. The current $10,000 threshold was established in 1970. When adjusted for inflation, $10,000 in 1970 is equivalent to more than $52,000 today. We understand that when the regulations were first implemented, there was very little activity over the $10,000 threshold. Today, however, such transactions are routine, particularly for cash intensive businesses. Raising the threshold does not mean that institutions will be relieved from monitoring account activity for suspicious transactions below the CTR reporting requirement. Increasing the threshold would enable financial institutions to alert law enforcement about activity that is truly suspicious or indicative of money laundering, as opposed to bogging down the data mining process by filing reports on routine business transactions.

Raising the CTR reporting threshold would provide benefits beyond regulatory relief for depository institutions. Increasing the threshold would help meet a 1994 Congressional mandate to reduce CTR filings by 30% and would provide law enforcement a cleaner, more efficient database.

Based upon data that FinCEN provided to the Bank Secrecy Act Advisory Group's ("BSAAG") CTR Subcommittee, increasing the reporting threshold to $20,000 would decrease CTR filings by 57 percent and increasing the threshold to $30,000 would decrease filings by 74 percent. The impact of raising the dollar value is even more astonishing for community banks.

An informal survey of ACB members conducted in June 2004 indicates that increasing the dollar amount to $20,000 would reduce community bank CTR filings by approximately 80 percent. Even with the dramatic change in the value of $10,000 over the past thirty years, ACB acknowledges that a $10,000 cash transaction is still a substantial amount of cash for an individual customer to deposit or withdraw from an institution. However, businesses of all sizes routinely conduct transactions over $10,000.

We also suggest that improvements be made to the exemption system that relieves financial institutions from filing CTRs on the cash transactions of certain entities, provided certain requirements are met. The exemption system was intended to reduce regulatory burden associated with BSA compliance, but many community banks report that the cost of using the exemptions outweighs any associated benefits. Many institutions have elected to automate the CTR reporting process and file on every transaction over $10,000. This compliance method is cost effective and exposes institutions to minimal compliance risk. But it also results in thousands, if not millions of CTRs being filed unnecessarily each year.

While many community banks do not use the exemption process, those that do would like to exempt customers more quickly than currently permitted by law. Before an institution can exempt a customer as a non-listed business or payroll customer, the customer must have maintained a transaction account with the bank for at least twelve months. The 12-month rule was adopted to ensure that an institution is familiar with a customer's currency transactions. ACB suggests that banks and savings associations be allowed more flexibility in exempting business customers from CTR requirements by modifying or eliminating the current 12-month

waiting period for new customer exemptions. ACB also supports the proposal adopted by the House Financial Services Committee in Title VII of the Financial Services Regulatory Relief Act of 2005 (H.R. 3505) to provide banks more flexibility in reporting of the cash transactions of their seasoned business customers.

Community banks are also concerned about the opportunity costs that result from the current statutory and regulatory regime. For example, new compliance software often costs more than $30,000 (and sometimes hundreds of thousands of dollars depending on the product) upfront and $5,000 each month thereafter. For many small community banks, this is a substantial investment. This is money that a bank could use to hire multiple tellers, hire a new loan officer to reach out to the community's small businesses, develop and market a new product or design special programs to reach unbanked persons.

Corporate Governance

The Sarbanes-Oxley Act contained much needed reforms, restoring investor confidence in the financial markets that were in turmoil as a result of the major corporate scandals at the beginning of this decade. Community bankers support that Act and other laws, like the Federal Deposit Insurance Corporation Improvement Act (FDICIA), that improve corporate governance, enhance investor protection and promote the safety and soundness of the banking system. However, the implementation of the Sarbanes-Oxley Act by the Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board (PCAOB) and the interpretation of those regulatory requirements by accounting firms have resulted in costly and

burdensome, unintended consequences for community banks, including, even, privately held stock and mutual institutions.

For example, the implementation of Section 404 of the Sarbanes-Oxley Act (Section 404) has created significant burdens for community banks. Section 404, which was modeled on internal control requirements in FDICIA, requires a statement in annual reports of management's assessment of the effectiveness of internal controls over financial reporting. Section 404 requires a company's independent auditors to attest to and report on management's assessment of the internal controls. However, in implementing Section 404, the SEC approved PCAOB Accounting Standard 2, which requires the external auditor to audit the internal controls of a company and opine directly on the effectiveness of the internal controls. Under FDICIA, the banking agencies generally permitted the external auditor to audit the CEO's attestation with respect to the internal controls – a much less costly auditing function. ACB believes that this change in practice is a significant cause of a dramatic increase in bank audit fees. Many publicly traded banks are reporting an increase in audit fees of 75 percent over prior years. Some banks are reporting audit fees equal to 20 percent of net income. Privately held and mutual banks also are experiencing significant increases in auditing fees because the external auditors are applying the same PCAOB standards to these non-public banks.

ACB has provided concrete suggestions to the banking regulators, the SEC and the PCAOB on ways to reduce the cost of compliance with internal controls and other requirements, while still achieving the important goal of improved corporate governance and transparency. We are pleased that the FDIC raised the FDICIA threshold from $500 million to $1 billion for the

internal control reporting and related audit requirements, which was a reform advocated by ACB. The change should significantly reduce costs for mutual and privately held stock banks under the $1 billion cap.

ACB urged the SEC and PCAOB to evaluate the significant audit costs involved with the implementation of Section 404 of Sarbanes-Oxley. ACB recommended that it is appropriate to provide relief from Section 404 to community banks that are already subject to heavy regulation and routine bank examinations.

The SEC's Advisory Committee on Smaller Public Companies will soon release for public comment recommendations that the SEC give exemptive relief from Section 404 to microcap and smallcap public companies that comply with enhanced corporate governance provisions. ACB supports the efforts of the panel to recommend a differentiated Section 404 regime based on the size of a public company's market capitalization and annual revenue. The proposals recognize that larger companies pose a proportionally greater risk to the investing public than smaller public companies, including community banks. ACB believes that through the Advisory Committee's efforts an appropriate balance can be struck between the goals of providing adequate regulation of internal controls and reducing unnecessary compliance costs for smaller companies.

Increasing the Capacity of Federal Savings Association to Engage in Small Business and Agricultural Lending *(Matrix No. 53)*

Today, savings associations are increasingly important providers of small business and agricultural credit in communities throughout the country. A high priority for ACB is a modest

increase in the business-lending limit for savings associations. In 1996, Congress liberalized the commercial lending authority for federally chartered savings associations by adding a 10 percent "bucket" for small business loans to the 10 percent limit on commercial loans. The Office of Thrift Supervision permits some limited commercial lending through a service corporation.

Even with this small accommodation, the "10 plus 10" limit poses a significant constraint for an ever-increasing number of institutions. Expanded authority would enable savings associations to make more loans to small- and medium-sized businesses, thereby enhancing their role as community-based lenders. To accommodate this need, ACB supports eliminating the lending limit restriction on small business loans while increasing the aggregate lending limit on other commercial loans to 20 percent. Under ACB's proposal, these changes would be made without altering the requirement that 65 percent of an association's assets be maintained in assets required by the qualified thrift lender test.

Increasing commercial lending authority would also greatly benefit rural communities, where the number of financial institutions is limited, by increasing the number of financial institutions that are actively engaged in lending to farmers, ranchers and small businesses. To successfully engage in agricultural lending, a savings association must employ personnel with expertise in agricultural lending. The current limits on commercial lending authority is a deterrent to the investment of resources needed for agricultural lending.

Unnecessary and redundant privacy notices *(Matrix No. 63)*

ACB strongly urges the elimination of required annual privacy notices for banks that do not share information with nonaffiliated third parties. Banks with limited information sharing

practices should be allowed to provide customers with an initial notice, and provide subsequent notices only when terms are modified. We do agree a notice should be sent, but it becomes an expensive burden to send it multiple times when once will more than suffice. Moreover, redundancy in this case does not enhance consumer protection; rather it serves to numb our customers with volume.

Parity Under the Securities Exchange Act and Investment Advisers Act *(Matrix No. 52)*

ACB vigorously supports providing parity for savings associations with banks under the Securities Exchange Act and Investment Advisers Act. Statutory parity will ensure that savings associations and banks are under the same basic regulatory requirements when they are engaged in identical trust, brokerage and other activities that are permitted by law. As more savings associations engage in trust activities, there is no substantive reason to subject them to different requirements. They should be subject to the same regulatory conditions as banks engaged in the same services.

In proposed regulations, the SEC has offered to remove some aspects of the disparity in treatment for broker-dealer registration and the IAA, but still has not offered full parity. Dual regulation by the OTS, the SEC, and the states makes savings associations subject to significant additional cost and regulatory burden. Eliminating this regulatory burden could free up tremendous resources for local communities. ACB supports a legislative change. Such a change will ensure that savings associations will have the same flexibility as banks to develop future products and offer services that meet customers' needs.

Enhancing Examination Flexibility *(Matirx nos. 42 and 169)*

Current law requires the federal banking agencies to conduct a full-scale, on-site examination of 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. Examination of these small institutions are required at least every 18 months.

A large majority of banks and savings associations are well-run institutions that do not require full-scale, on-site safety-and-soundness and compliance examinations every 12 months. ACB supports providing the federal banking agencies flexibility in establishing examination schedules in order to allocate examination resources to higher risk institutions. Section 601 of the Financial Services Regulatory Relief Act of 2005, H.R. 3505, provides this flexibility. ACB also supports increasing the cap for the small institution examination cycle from $250 million to $1 billion, as provided in section 607 of H.R. 3505. The proposal will reduce regulatory burden on low-risk, small institutions and permit the banking agencies to focus their resources. These two proposals would not alter the examination schedule for Community Reinvestment Act compliance.

Reducing Impediments to Residential Development Lending *(Matrix No. 88)*

Current law provides special authority to savings associations to lend the lesser of $30 million or 30 percent of capital to a single residential developer. However, the law limits this authority by artificially capping the per unit sales price in a development at $500,000 - making this special authority unavailable in high-cost areas. The overall limit of $30 million or 30% of

capital is sufficient to prevent concentrated lending to one residential developer. ACB supports eliminating the $500,000-per-unit limit as an unnecessary regulatory detail that creates an artificial market limit in high-cost areas.

Home Office Citizenship *(Matrix No. 58)*

ACB recommends that Congress amend the Home Owners' Loan Act to provide that for purposes of jurisdiction in federal courts, a federal savings association is deemed to be a citizen of the State in which it has its home office. For purposes of obtaining diversity jurisdiction in federal court, the courts have found that a federal savings association is considered a citizen of the state in which it is located only if the association's business is localized in one State. If a federal savings association has interstate operations, a court may find that the federally chartered corporation is not a citizen of any state, and therefore no diversity of citizenship can exist. Now that the Supreme Court has settled the question of diversity jurisdiction for national banks, federal savings associations are the only financial institutions that can be denied access to federal courts based on diversity jurisdiction. The change benefits consumers as well as federal savings associations by providing both sides clear authority to access federal courts.

Easing Restrictions on Interstate Banking and Branching *(Matrix No. 26)*

ACB strongly supports removing unnecessary restrictions on the ability of national and state banks to engage in interstate branching. Currently, national and state banks may only engage in de novo interstate branching if state law expressly permits. ACB recommends eliminating this restriction. The law also should clearly provide that state-chartered Federal Reserve member banks might establish de novo interstate branches under the same terms and

conditions applicable to national banks. ACB recommends that Congress eliminate states' authority to prohibit an out-of-state bank or bank holding company from acquiring an in-state bank that has not existed for at least five years. The new branching rights should not be available to industrial loan companies with commercial parents (those that derive more than 15 percent of revenues from non-financial activities).

Restrictions on Auto Loan Investments *(Matrix No. 82)*

Federal savings associations are currently limited in making auto loans to 35 percent of total assets. However, the law places no limit on the unsecured consumer credit card debt held by a federal savings association. A better policy is also to permit unlimited secured auto lending, which is a less risky activity than unsecured credit card lending. Removing this limitation will expand consumer choice by allowing savings associations to allocate additional capacity to this important segment of the lending market.

Streamlined CRA Examinations *(Matrix No. 78)*

ACB strongly supports amending the Community Reinvestment Act to define banks with less than $1 billion dollars in assets as small banks and therefore permit them to be examined with the streamlined small institution examination. According to a report by the Congressional Research Service, a community bank participating in the streamlined CRA exam can save 40 percent in compliance costs. Expanding the small institution exam program will free up capital and other resources for almost 1,700 community banks across our nation that are in the $250 million to $1 billion asset-size range, allowing them to invest even more into their local communities.

Bank Service Company Investments *(Matrix No. 94)*

Present federal law stands as a barrier to a savings association customer of a Bank Service Company from becoming an investor in that BSC. A savings association cannot participate in the BSC on an equal footing with banks who are both customers and owners of the BSC. Likewise, present law blocks a bank customer of a savings association's service corporation from investing in the savings association service corporation.

ACB proposes legislation that would provide parallel investment ability for banks and savings associations to participate in both BSCs and savings association service corporations. ACB's proposal preserves existing activity limits and maximum investment rules and makes no change in the roles of the federal regulatory agencies with respect to subsidiary activities of the institutions under their primary jurisdiction. Federal savings associations thus would need to apply only to OTS to invest.

Other Important Issues

Interest on Business Checking *(Matrix No. 3)*

Prohibiting banks from paying interest on business checking accounts is long outdated, unnecessary and anti-competitive. Restrictions on these accounts make community banks less competitive in their ability to serve the financial needs of many business customers. Permitting banks and savings institutions to pay interest directly on demand accounts would be simpler. Institutions would benefit by not having to spend time and resources trying to get around the existing prohibition. This would benefit many community depository institutions that cannot currently afford to set up complex sweep operations for their – mostly small – business

customers. This new authority should not be available to industrial loan companies with commercial parents (those that derive more than 15 percent of revenues from non-financial activities).

Eliminating Unnecessary Branch Applications *(Matrix No. 62)*

A logical counterpart to proposals to streamline branching and merger procedures would be to eliminate unnecessary paperwork for well-capitalized banks seeking to open new branches. National banks, state-chartered banks, and savings associations are each required to apply and await regulatory approval before opening new branches. This process unnecessarily delays institutions' plans to increase competitive options and increase services to consumers, while serving no important public policy goal. In fact, these requirements are an outdated holdover from the times when regulatory agencies spent unnecessary time and effort to determine whether a new branch would serve the "convenience and needs" of the community.

Coordination of State Examination Authority *(Matrix No. 70)*

ACB supports the adoption of legislation clarifying the examination authority over state-chartered banks operating on an interstate basis. ACB recommends that Congress clarify home- and host-state authority for state-chartered banks operating on an interstate basis. This would reduce the regulatory burden on those banks by making clear that a chartering state bank supervisor is the principal state point of contact for safety and soundness supervision and how supervisory fees may be assessed. These reforms will reduce regulatory costs for smaller institutions.

Limits on Commercial Real Estate Loans *(Matrix No. 87)*

ACB recommends increasing the limit on commercial real estate loans, which applies to savings associations, from 400 to 500 percent of capital, and giving the OTS flexibility to increase that limit. Institutions with expertise in commercial real property lending and which have the ability to operate in a safe and sound manner should be granted increased flexibility. Congress could direct the OTS to establish practical guidelines for commercial real property lending that exceeds 500 percent of capital.

Interstate Acquisitions *(Matrix No. 89)*

ACB supports the adoption of legislation to permit multiple savings and loan holding companies to acquire associations in other states under the same rules that apply to bank holding companies under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. This would eliminate restrictions in current law that prohibit (with certain exceptions) a savings and loan holding company from acquiring a savings association if that would cause the holding company to become a multiple savings and loan holding company controlling savings associations in more than one state.

Application of QTL to Multi-State Operations *(Matrix No. 54)*

ACB supports legislation to eliminate state-by-state application of the QTL test. This better reflects the business operations of savings associations operating in more than one state.

Applying International Lending Supervision Act to OTS *(Matrix No. 66)*

ACB recommends that the ILSA be amended to clarify that the ILSA covers savings associations. Such a provision would benefit OTS-regulated savings associations operating in foreign countries by assisting the OTS in becoming recognized as a consolidated supervisor, and it would promote consistency among the federal banking regulators in supervising the foreign activities of insured depository institutions.

OTS Representation on Basel Committee on Banking Supervision *(Matrix No. 67)*

ACB recommends another amendment to the ILSA that would add OTS to the multi-agency committee that represents the United States before the Basel Committee on Banking Supervision. Savings associations and other housing lenders would benefit by having the perspective of the OTS represented during the Basel Committee's deliberation.

Parity for Savings Associations Acting as Agents for Affiliated Depository Institutions *(Matrix No. 90)*

ACB recommends that the Federal Deposit Insurance Act be amended to give savings associations parity with banks to act as agents for affiliated depository institutions. This change will allow more consumers to access banking services when they are away from home.

Inflation Adjustment under the Depository Institution Management Interlocks Act *(Matrix No. 49)*

ACB supports increasing the exemption for small depository institutions under the DIMA from $20 million to $100 million. This will make it easier for smaller institutions to recruit high

quality directors. The original $20 million level was set a number of years ago and is overdue for an adjustment.

Mortgage Servicing Clarification *(Matrix No. 79)*

The FDCPA requires a debt collector to issue a "mini-Miranda" warning (that the debt collector is attempting to collect a debt and any information obtained will be used for that purpose) when the debt collector begins to attempt to collect a debt. This alerts the borrower that his debt has been turned over to a debt collector. However, the requirement also applies in cases where a mortgage servicer purchases a pool of mortgages that include delinquent loans. While the mini-Miranda warnings are clearly appropriate for true third party debt collection activities, they are not appropriate for mortgage servicers who will have an ongoing relationship with the borrower.

ACB urges the adoption of legislation to exempt mortgage servicers from the mini-Miranda requirements. The proposed exemption (based the Mortgage Servicing Clarification Act) is narrowly drawn and would apply only to first lien mortgages acquired by a mortgage servicer for whom the collection of delinquent debts is incidental to its primary function of servicing current mortgages. The exemption is narrower than one recommended by the FTC for mortgage servicers. The amendment would not exempt mortgage servicers from any other requirement of the FDCPA.

Repealing Overlapping Rules for Purchased Mortgage Servicing Rights *(Matrix No. 92)*

ACB supports eliminating the 90-percent-of-fair-value cap on valuation of purchased mortgage servicing rights. ACB's proposal would permit insured depository institutions to value

purchased mortgage servicing rights, for purposes of certain capital and leverage requirements, at more than 90 percent of fair market value – up to 100 percent – if the federal banking agencies jointly find that doing so would not have an adverse effect on the insurance funds or the safety and soundness of insured institutions.

Loans to Executive Officers *(Matrix No 93)*

ACB recommends legislation that eliminates the special regulatory $100,000 lending limit on loans to executive officers. The limit applies only to executive officers for "other purpose" loans, i.e., those other than housing, education, and certain secured loans. This would conform the law to the current requirement for all other officers, i.e., directors and principal shareholders, who are simply subject to the loans-to-one-borrower limit. ACB believes that this limit is sufficient to maintain safety and soundness.

Decriminalizing RESPA *(Matrix No. 80)*

ACB recommends striking the imprisonment sanction for violations of RESPA. It is highly unusual for consumer protection statutes of this type to carry the possibility of imprisonment. Under the ACB's proposal, the possibility of a $10,000 fine would remain in the law, which would provide adequate deterrence.

Eliminating Savings Association Service Company Geographic Restrictions *(Matrix No. 89)*

Currently, savings associations may only invest in savings association service companies in their home state. ACB supports legislation that would permit savings associations to invest in those companies without regard to the current geographic restrictions.

Streamlining Subsidiary Notifications *(Matrix No. 95)*

ACB recommends that Congress eliminate the unnecessary requirement that a savings association notify the FDIC before establishing or acquiring a subsidiary or engaging in a new activity through a subsidiary. Under ACB's proposal, a savings association would still be required to notify the OTS, providing sufficient regulatory oversight. No similar provision applies to national banks.

Authorizing Additional Community Development Activities *(Matrix No. 96)*

Federal savings associations cannot now invest directly in community development corporations, and must do so through a service corporation. National banks and state member banks are permitted to make these investments directly. Because many savings associations do not have a service corporation and choose for other business reasons not to establish one, they are not able to invest in CDCs. ACB supports legislation to extend CDC investment authority to federal savings associations under the same terms as currently apply to national banks.

Eliminating Dividend Notice Requirement *(Matrix No. 81)*

Current law requires a savings association subsidiary of a savings and loan holding company to give the OTS 30 days' advance notice of the declaration of any dividend. ACB supports the elimination of the requirement for well-capitalized associations that would remain well capitalized after they pay the dividend. Under this approach, these institutions could conduct routine business without regularly conferring with the OTS. Those institutions that are not well capitalized would be required to pre-notify the OTS of dividend payments.

Reimbursement for the Production of Records *(Matrix No. 97)*

ACB's members have long supported the ability of law enforcement officials to obtain bank records for legitimate law enforcement purposes. In the Right to Financial Privacy Act of 1978, Congress recognized that it is appropriate for the government to reimburse financial institutions for the cost of producing those records. However, the Act provided for reimbursement only for producing records of individuals and partnerships of five or fewer individuals. Given the increased demand for corporate records, such as records of organizations that are allegedly fronts for terrorist financing, ACB recommends that Congress broaden the RFPA reimbursement language to cover corporate and other organization records.

ACB also recommends that Congress clarify that the RFPA reimbursement system applies to records provided under the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (title III of the USA PATRIOT Act). Because financial institutions will be providing additional records under the authority of this new act, it is important to clarify this issue.

Extending Divestiture Period *(Matrix No. 98)*

ACB recommends that unitary savings and loan holding companies that become multiple savings and loan holding companies be provided 10 years to divest non-conforming activities, rather than the current two-year period. This would be consistent with the time granted to new financial services holding companies for similar divestiture under the Gramm-Leach-Bliley Act.

The longer time gives these companies time to conform to the law without forcing a fire-sale divestiture.

Credit Card Savings Associations *(Matrix No. 100)*

Under current law, a savings and loan holding company cannot own a credit card savings association and still be exempt from the activity restrictions imposed on companies that control multiple savings associations. However, a savings and loan holding company could charter a credit card institution as a national or state bank and still be exempt from the activity restrictions imposed on multiple savings and loan holding companies. ACB proposes that the Home Owners' Loan Act be amended to permit a savings and loan holding company to charter a credit card savings association and still maintain its exempt status. Under this proposal, a company could take advantage of the efficiencies of having its regulator be the same as the credit card institution's regulator.

Protection of Information Provided to Banking Agencies *(Matrix No. 100)*

Court decisions have created ambiguity about the privileged status of information provided by depository institutions to bank supervisors. ACB recommends the adoption of legislation that makes clear that when a depository institution submits information to a bank regulator as part of the supervisory process, the depository institution has not waived any privilege it may claim with respect to that information. Such legislation would facilitate the free flow of information between banking regulators and depository institutions that is needed to maintain the safety and soundness of our banking system.

Technical Amendments

ACB supports two additional technical amendments to federal banking laws. The first would give federal savings associations the same authority as national banks to invest in corporate debt securities that are the equivalent of commercial loans. The second would afford a federal savings association the same treatment that a national bank has with regard to the execution of state and local court judgments against the association.

Conclusion

I wish to again express ACB's appreciation for your invitation to testify on the importance of reducing regulatory burdens and costs for community banks. We strongly support the Committee's efforts in providing regulatory relief, and look forward to working with you and your staff in crafting legislation to accomplish this goal.