Remarks by
John C. Dugan
Comptroller of the Currency
Before the
National Association of Affordable Housing Lenders
Washington, D.C.
February 12, 2008

It is a pleasure to be with you today at the 2008 Washington meeting of the National Association of Affordable Housing Lenders. I salute your important mission of "moving capital to those in need." And I commend you for your hard work in making both the Community Reinvestment Act – and the national banks' use of their public welfare investment authority – a success.

I also want to offer a few thoughts today on the future role of community reinvestment and public welfare investments. This assessment is especially timely in view of the challenges faced by many neighborhoods as a result of economic downturns and the impact of mortgage foreclosures.

Specifically, I want to discuss three topics: First, we urge Congress to restore the original scope of the public welfare investment authority of national banks. That is, we should enable national banks to invest in communities that include not just low- and moderate-income areas, but also *middle*-income areas in need of reinvestment and revitalization. Second, we urge a change to the CRA regulations to enable banks to obtain CRA credit for lending, investment, and service activities in distressed *middle*-income areas hit by foreclosures. Third, it's time to reflect on whether CRA should cover not just banks, but also *non*-banks that now provide so many of the same financial services as banks, especially mortgages.

We are now in the 31st year since CRA was enacted. I am repeatedly struck both by the remarkable evolution in the way the world now views CRA, and even more important, by the impressive results that the statute has helped to accomplish. CRA has undoubtedly improved conditions in many underserved and economically depressed communities throughout the country.

When enacted in 1977, the new law had a simple, straightforward goal: Stop redlining. If a bank takes deposits from a low- to moderate-income community, then it should reinvest part of those funds back into that community, generally through enhanced credit. CRA also had a simple yet powerful enforcement mechanism: A grading system where bad CRA marks could impair a bank's ability to expand through branching or acquisitions.

From these simple beginnings, CRA evolved. It expanded beyond lending to many other forms of investment in the community, as well as to a wide range of activities that enhance the availability and affordability of financial services to low- and moderate-income residents. The tactics to enforce CRA also evolved. Community organizations became much more sophisticated and aggressive in blocking bank expansion activities to obtain CRA concessions, and banks responded with equally sophisticated and aggressive tactics to achieve their expansion goals. When I last served in government, over 15 years ago, the watchword I would have used to describe CRA was "conflict": CRA activities were increasing, but banks and community groups spent a disproportionate amount of time fighting.

I am not here today to weigh in on that debate, which lingers in some quarters to this day. Instead, I would like to take note of and celebrate the quite different atmosphere that I have detected in many parts of the country since my return to government in 2005. Instead of "conflict," the watchword I would use today to describe this changed context is "cooperation" –

much more of it between banks and community groups, and much more facilitation and engagement by the OCC, which together have produced some very impressive and visible results. I can't pinpoint the moment that this change happened, or even explain exactly why it occurred. But somewhere along the way a number of banks and community groups decided that there was a lot more to be gained, both for their communities and their organizations, by seeking common ground rather than always fighting.

Indeed, your organization – the National Association of Affordable Housing Lenders – exemplifies these efforts at cooperation. The partnerships that you and others have forged between banks and community organizations have produced real, tangible benefits – ones that I have seen – in the form of new affordable housing and economic revitalization projects. That type of partnership is vital today as banks seek help from community organizations to reach out to their borrowers in order to try to refinance or modify mortgages in danger of foreclosure.

Let me add that the OCC has played its own important role in this evolution. Indeed, even before the enactment of CRA, the OCC issued an important legal interpretation of the National Bank Act in 1963 that authorized national banks to "make reasonable contributions to local community agencies and groups to further the physical, economic, and social development of their communities." That ruling was the starting gun for national bank community development investment. And that activity was reinforced by passage of the Community Reinvestment Act in 1977 and the codification of national banks' community development public welfare investment authority in 1992. Originally, national banks were authorized to make public welfare investments in an amount up to 10 percent of a bank's capital and surplus. This amount was raised in 2006, to the 15 percent level, but that legislation also created a problem, which I will discuss in a moment.

Although it is difficult to measure precisely the total dollar amount of loans, investments, and services that can be attributed to the CRA regime, some data confirm that it has led to very substantial levels of funding for community reinvestment activities. For example, recent reports by the Federal Financial Institutions Examination Council show that, in the single year of 2006, CRA lending by institutions required to report loan information included over $56 billion in community development loans; over $306 billion in small business loans; and over $12.5 billion in small farm loans. Taking a longer view over the past 15 years, we estimate that national banks' public welfare *investments* alone have exceeded $25 billion, and that their CRA-eligible *lending* has far exceeded even that amount.

While these are impressive statistics, they don't capture the "on the ground" benefits of CRA. Banks, often in conjunction with community partners, have made loans and investments that have dramatically transformed distressed communities and helped build the personal assets of lower-income households.

I myself have witnessed this beneficial CRA impact during my travels around America as Comptroller. One great example is a revitalized neighborhood not far from where we are today – across the river in Anacostia. Thanks to community reinvestment beginning in 1995, neglected apartments were bought and renovated; a new community center was built alongside affordable condominiums; and new town homes replaced an abandoned, crime-filled apartment complex. A surge in private investment followed, and, with Washington's new baseball stadium not far away, I can assure you that you would be amazed by the transformation.

That story is impressive, but hardly unique. The East Liberty neighborhood that I visited in Pittsburgh is a very similar success story. One galvanizing reinvestment transformed a warehouse into a grocery store that attracted many new shoppers to the area. Other projects followed in rapid succession, including a $34 million commercial development promoted and financed by a bank-affiliated CDC. All told, development in this area has created more than 400 jobs, and at least $200 million in additional projects are planned or underway.

I could go on if I had more time with a number of similar examples of success that I have seen for myself, but I think you get the picture. CRA lending and investment by banks has worked.

Need for Legislation to Restore National Bank Public Welfare Investment Authority

But recent events also make clear that we shouldn't bask in the glow of past accomplishments, however significant they have been.

We are now facing bigger-than-ever challenges in trying to prevent disinvestment due to escalating numbers of foreclosures. A broad range of communities across the nation – not just low- and moderate- income neighborhoods, but also middle-income neighborhoods – currently are suffering the consequences of a spike in mortgage delinquencies and foreclosures. Foreclosed properties are not just empty houses. The absence of homeowners – and the gloomy sight of abandoned, deteriorating properties – can depress entire communities.

In turn, a community in economic distress can face significant hurdles in attracting new capital investment. As many here today know, one of these hurdles is the result of a change in 2006 to the federal law that authorizes national banks to make "public welfare" investments. While the change increased the aggregate *amount* of investments permissible for national banks, it simultaneously decreased the *types* of investments that may be made. Now, national banks and their CDC subsidiaries may make public welfare investments only if those investments "primarily benefit low- and moderate-income areas and people." While that limitation sounds sensible at first blush, the reality is quite different because the new standard precludes previously permissible investments that clearly promote the public welfare.

Let me give you a quite current example of what I mean. Under the new standard, national banks are now effectively *prohibited* from making direct equity investments to help foreclosure-plagued urban and suburban middle-income areas – even if the effect of such investments would be to help low- and moderate-income neighborhoods as well. Another example: under the statute, national banks can no longer make public welfare investments that are specifically encouraged by the CRA regulations, that is, investments that benefit designated disaster areas and underserved and distressed middle-income *rural* communities.

Likewise, indirect equity investments, such as investments in foreclosure relief funds, have also become more difficult. The fund must be able to assure the investing bank that its benefits flow primarily to low- and moderate-income areas and people. Where a fund provides benefits to communities made up of a mix of low-, moderate-, and middle-income census tracts, this may not be easy to do.

We have a pressing need to revitalize and stabilize *all* communities devastated by high levels of foreclosures. Many such communities are not neatly delineated by low-, moderate-, and middle-income census tract designations. Given these circumstances, federal policies should not restrict these investments simply because a community includes tracts designated by the Census nearly 10 years ago as "middle-income." Conditions since then have changed. Some of these communities have suffered significant declines in income levels and in local economic and housing conditions.

For example, it was recently reported in The New York Times that a middle-income suburb of Cleveland is plagued by high foreclosure rates. Maple Heights, located in Cuyahoga County, has a population of 27,000 people. Thirty percent of the subprime loans in the county are either delinquent or in foreclosure. The city ranks No. 1 in the county in foreclosures per capita and is in the top ½ of 1 percent nationally of all zip codes experiencing foreclosures.

The mayor of Maple Heights says that middle-income residents living next to these empty houses are getting discouraged and leaving the community, and that the city as a whole is also suffering. Unfortunately, even though the city's median income is declining, it was classified as overwhelmingly middle-income at the time of the last census. This prevents most areas of the city from receiving national bank public welfare investments under the new standard.

Congress needs to fix this by restoring the original scope of the public welfare investment authority of national banks. The House of Representatives has already acted unanimously to do so, thanks to the bipartisan leadership of House Financial Services Committee Chairman Barney Frank, Ranking Member Spencer Bachus, and a broad coalition of support from banks and community groups, including NAAHL. The Senate should do likewise, so that banks could make equity investments in places like Maple Heights and help turn things around.

If Congress does this, and restores the standard that will help economically distressed middle-income areas in addition to low- and moderate-income neighborhoods, it will be adding another tool to our collective efforts to address the consequences of rising foreclosures. And, I might add, it will be providing an important additional source of economic stimulus for these communities.

Need for Changes to CRA Rules to Address Foreclosure Concerns

And we can do even more. That is, we can change the CRA regulations to encourage the full range of CRA-eligible activities in a broader range of communities devastated by foreclosures – and I would support an amendment to do just that. This amendment would provide CRA consideration for lending, investment, and services in middle-income communities that are distressed as a result of mortgage foreclosures and related economic factors affecting the area.

If the other regulators agree – and I would strongly urge them to do so – we can do this quite simply, and promptly, by proposing a revision to the definition of "community development" in the CRA rules. With this change, we would give favorable CRA consideration for – and encourage – loans, services, and investments in more communities suffering from the consequences of foreclosures. The Maple Heights situation I just described is an excellent example of where we ought to be encouraging new loans, services, and investments through CRA.

There is clear precedent for the proposed change. When the agencies recognized the need to expand the CRA rules in 2005, we revised the "community development" definition to provide CRA credit for underserved and distressed middle-income *rural* areas and for designated disaster areas. The change I am calling for today is consistent with the flexibility we have under the CRA statute to implement the law and to adapt our rules as necessary to respond to changing circumstances and changing community needs. We need to seize this opportunity to add another tool to help communities that are struggling to overcome the devastating effects of mortgage foreclosures.

Need to Reassess Original Scope of CRA

Finally, let me close with a question: Given the success of CRA, and the benefits that it can provide to economically stressed communities, why is the application of CRA restricted to depository institutions?

In the thirty plus years since CRA was enacted, there have been profound changes in the structure of the financial services industry and the types of companies that offer lending and other financial services. Previously, insured depository institutions provided most financial transactions of the type that are evaluated under CRA. But now many non-bank companies also are substantially involved in providing those products and services.

Indeed, when we look at the subprime foreclosure situation, the current coverage of CRA is perversely ironic. Insured depositories were by no means the main providers of the 2-28 adjustable rate subprime mortgages that have led to so many problems in communities around the country. Indeed, national banks and their subsidiaries originated only about 10 percent of all subprime mortgages in 2006. Yet only insured depositories are subject to CRA, and only these institutions are motivated by CRA to engage in activities that will help address the problem through community reinvestment and lending activities. In contrast, over half of subprime mortgages of the last several years – and the ones with the most questionable underwriting standards – were originated through mortgage brokers for securitization by non-banks, including major investment banks. Yet these non-banks, having played such a large role in the subprime mortgages that have caused such problems in communities nationwide, are not covered by CRA and therefore have no CRA incentive to address these problems. To me, that is a world stood on its head.

Covering some or all of these non-banks under CRA has the potential to generate substantial financial benefits. With all their financial resources, non-banks could bring billions of additional community reinvestment dollars to local communities. Non-banks could build on and enhance the substantial contributions already being made by banks for CRA purposes. Covering non-banks would also add a degree of transparency to the mortgage origination operations of these lenders, through the CRA public evaluations and public comment process.

In short, the time may be ripe to evaluate whether the CRA law, passed over thirty years ago, continues to be appropriate given the significant changes to the delivery of credit in our financial markets in the intervening years.

In closing, I want to thank you once again for your support and encouragement over the years. I salute your recent efforts to pass the much-needed restoration of the full scope of national banks' public welfare investment authority. Your support and advocacy have been invaluable in proving that community development lending, investment, and services can be good business. You are showing that, through community investment partnerships, our nation's communities can be rebuilt sustainably. We at the OCC look forward to working with all of you.

Thank you.