U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

January 19, 2005

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The Honorable James E. Gilleran
Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: Proposal No. 2004-53

Dear Director Gilleran:

We are writing to urge you to withdraw Proposal No. 2004-53 that would make a sweeping change to the definition of community development activity for purposes of Community Reinvestment Act (CRA) regulations. The proposal would expand the definition of a community development activity to include activities that benefit any individuals who reside in rural areas. As such, the proposal would shift the focus of community development activities away from the activities that actually benefit low- and moderate-income individuals to those activities that benefit any individuals, regardless of their income levels.

Rural Activities are Not the Equivalent of Low- and Moderate Income Activities

Not all activities in rural areas should be automatically be treated as qualifying activities for the purposes of the CRA. It does seem clear that the CRA calls for rural activities to be treated the same as urban activities; that is, they qualify for CRA credit if they are directed at aiding low- and moderate-income persons and communities.

Because this change would apply to all institutions regulated by the OTS, the impact of the change would be significant. OTS-regulated institutions with assets greater than $1 billion would also be exempted from any requirement to serve the needs of low and moderate-income individuals as long as they provided some activities that benefit individuals in rural areas. Institutions that conduct business in both rural and urban areas could decide not to meet the needs of low- and moderate-income individuals in their urban areas, but would still get satisfactory CRA ratings by financing housing developments next to golf courses for the affluent in rural locations.

A review of the legislative history of the CRA shows that there is no legal basis for treating all rural activities as the equivalent of activities directed toward low- and moderate-income persons and communities. The only reference to "rural," and a passing one at that, was made by Senator Proxmire at the time he introduced the CRA in the Senate. In discussing the need for the CRA, he pointed out that one of the assumptions underlying the CRA is that "private financial institutions are the main source of capital for domestic economic development, housing, and community revitalization, both in urban and rural areas." (Cong. Rec. S1958, Jan. 24, 1977.) He made no distinction between the two areas.

One of the only two changes adopted by the House-Senate Conference Committee from the Senate-passed version of the CRA was to "substitute consideration of the credit needs of 'the entire community, including its low and moderate income neighborhoods' for the credit needs of its 'primary service area.'" (H.Rep. 95-634, p. 76.) The focus of the CRA was intended to be on the needs of low- and moderate-income areas, without a distinction between urban and rural areas, and without equating rural areas with low and moderate income areas.

Consistent with the legislative history, there is no basis for an urban-rural distinction in the CRA itself. Section 804(a)(1) of CRA, for instance, requires Federal regulators to take into account an "institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods." Section 807(a)(1) of CRA requires Federal regulators to prepare "a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods." Both sections reflect the language of the Conference Report by their emphasis on serving low- and moderate-income neighborhoods, regardless of where they are located. The OTS proposal, as published in the Federal Register, also contains no economic, demographic, social, legal, or any other kind of analysis, to support treating rural activities, in and of themselves, as the equivalent of low- and moderate-income activities for the CRA

Large Institutions Should Not be Permitted to Choose Whether to Provide Services to, or Make Investments in, The Communities in Which They are Located

Secondly, we believe that the CRA obligations of large institutions ought not be reduced and that those institutions should continue to be fully evaluated on their lending, service and community investment performance. The effectiveness of the CRA would be lessened by allowing institutions to choose between providing services to, or make investments in, their communities. The result of allowing such selections, we fear, would simply be that institutions would stop trying to do the harder services and investments that their communities need and would instead, concentrate on whatever was easier to do, regardless of the needs of their communities. As noted in the October 1, 2004 comment letter on the FDIC's CRA proposal that was also signed by many of us and our colleagues, there is room for improving the investment test to encourage institutions to make complex investments, such as some for multi-family affordable housing, that currently do not qualify for CRA credit. It seems to us that it is preferable to expand the range of appropriate activities that qualify for CRA credit, such as remittances under the service test, and complex housing investments under the investment test, than it is to allow institutions to choose to avoid providing appropriate levels of both services and investments.

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