Congress of the United States

Washington, DC 20515

October 1, 2004

The Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: RIN 3064-AC50

Dear Mr. Chairman:

We are writing in opposition to the Federal Deposit Insurance Corporation's (FDIC) proposed revisions to the regulations implementing the Community Reinvestment Act (CRA). We believe the proposal would undermine the intent of the CRA by decreasing the regulatory incentives for mid-sized banks to make investments to and provide services for underserved communities. The proposal would also mistakenly shift the focus of community development activities away from activities that benefit low-and moderate-income individuals to activities that benefit any individuals who reside in rural areas, regardless of their income.

Missed Opportunity to Update CRA Procedures

As some of us indicated in our April 2 letter on the joint agency CRA proposal earlier this year, exempting mid-sized financial institutions from the investment test does not address the underlying problem with how investments are currently evaluated. The investment test has been criticized for not adequately encouraging institutions to make complex investments that are critically needed in low- and moderate-income communities such as for multi-family affordable housing. This proposal, like the earlier one, does not solve this problem. Instead of trying to remedy the problem of having a significant portion of financial institutions chasing after the same type of community investments, the proposal would simply eliminate the mandatory investment requirement for mid-sized financial institutions. While the proposal allows mid-sized institutions to count qualifying investments toward their CRA evaluation, it would not require them to make such investments, unlike the current regulation. It would be better for the FDIC to give CRA credit for some of the complex investments that currently do not qualify, rather than leave the evaluation criteria for investments unchanged while reducing the number of institutions that must make them.

Mid-Sized Banks Should Not be Subject to a Less Stringent CRA examination

Currently, a financial institution is considered a small bank if it has less than $250 million in assets and is independent or affiliated with a holding company with total bank assets of less

than $1 billion. The CRA exam for a small bank has been streamlined since 1995 and focuses primarily on an institution's lending record. In contrast, for large banks, the CRA exam is more comprehensive. In addition to a review of the institution's lending record, the exam reviews the institution's record of investments in and services to the communities in which they are located.

The proposed revision would significantly increase the number of financial institutions subject to the less stringent small bank CRA examination. Because about 96 percent of the banks regulated by the FDIC have assets under $1 billion, only about 229 institutions (or about 4 percent of FDIC-regulated banks) would be subject to a comprehensive CRA exam under the new proposal. If the proposal goes into effect, it is estimated that about eight states (Alaska, Arizona, Idaho, Minnesota, Montana, New Mexico, West Virginia, and Wyoming) would have no FDIC-supervised banks and 36 states would have five or fewer FDIC-supervised banks, that would be subject to the more comprehensive CRA exam. We are concerned, as expressed in the April 2 letter on the joint agency CRA proposal, that mid-sized banks that are no longer subject to the broader CRA exam would no longer have any regulatory incentives to provide investments and services that benefit low- and moderate-income individuals such as lifeline banking accounts and remittances.

Although the proposal would attempt to minimize the adverse impact of this change by subjecting banks with assets of $250 million to $1 billion to mandatory community development performance criterion, this criterion falls short. Instead of a rigorous three-part CRA exam reviewing a bank's investments, services, and lending performances, the community development criterion would allow a mid-sized bank to choose just one of three types of activities that would be subject to review under the CRA exam.

The proposal would also exempt mid-sized banks from collecting, maintaining, and reporting data on small business and farm loans that are originated or purchased by the bank. The lack of transparency on small business lending by mid-sized banks could limit the ability to hold these banks accountable for compliance with consumer protection laws and, by extension, could reduce the pressure on the banks to provide loans to small businesses and farms.

Community Development Activity Should Be Focused on Activities that Benefit Low- and Moderate-Income Individuals

The proposal would make a sweeping change to the definition of community development activity for purposes of 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.

This change is fundamentally flawed and could dilute resources away from underserved populations. This proposal, for example, could result in CRA credit being given to banks that

make jumbo loans to corporate executives for vacation retreats located in rural areas. A bank could be deemed to have provided community services to individuals in rural areas by merely placing copies of the FDIC's "Money Smart" brochures on its counters. Obviously, neither of those activities would serve the same benefit to low- and moderate-income individuals as other types of services such as basic banking accounts or remittances.

Because this definitional change would apply to all banks regulated by the FDIC, the impact of the change would be significant. Approximately 229 FDIC-regulated banks 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. Banks 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.

The urban-rural distinction under the proposal is not one that has any basis 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." Nowhere in CRA is there any mention that rural areas are to be treated as the equivalent of low- and moderate-income neighborhoods. The FDIC proposal, as published in the Federal Register, also contains no economic, demographic, social, legal, or any other kind of analysis, to support making rural the equivalent of low- and moderate-income for CRA. Instead, the notice in the Federal Register contains, again with no analysis, a statement that "many community organization commentators expressed concern about investments and service to rural communities."

For the reasons stated above, we urge you to withdraw the revised provisions implementing the CRA regulations.

Sincerely,

Rep. Barney Frank

Rep. Maxine Waters

Rep. Bernard Sanders

Rep. Carolyn B. Maloney

Rep. Luis V. Gutierrez

Rep. Melvin L. Watt

Rep. Gregory W. Meeks

Rep. Barbara Lee

Rep. Michael E. Capuano

Rep. Wm. Lacy Clay

Rep. Stephen F. Lynch

Rep. Rahm Emanuel

Rep. Artur Davis

Rep. Janice D. Schakowsky

Rep. Louise McIntosh Slaughter

Rep. Eddie Bernice Johnson

Rep. John Conyers, Jr.

Rep. Michael H. Michaud

Rep. Chaka Fattah

Rep. Carolyn C. Kilpatrick

Rep. Bennie G. Thompson

Rep. Danny K. Davis

Rep. Rosa L. DeLauro

Rep. Eliot L. Engel

Rep. Jim McDermott

Rep. Robert A. Brady

Rep. Edolphus Towns