Greater Rochester
Housing Partnership

May 4, 2005

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St. NW, Washington DC 20429
RE: RIN 3064-AC89

To Whom it May Concern:

The Greater Rochester Housing Partnership is glad to see the FDIC, OCC and FRB responding to the overwhelming number of public comments against the fall FDIC proposal. Although this new proposal is an improvement from the one proposed last year, it falls short in some key areas As seen below, I urge you to strengthen the proposed CRA regulations with respect to services, investments and small business lending data.

I am pleased that you have dropped the "community development criterion" that would have allowed mid-size or intermediate small banks (with assets between $250 million to $1 billion) to engage in only one of three community development activities: lending, investments or services; and that you are proposing that all three activities be required as part of a community development test. Banks must continue to be expected to engage in all three of these essential community development activities in order to pass their CRA exams.

The community development test will count for half of the grade and the lending test will count for the other half of the grade. A mid-size bank must score at least a satisfactory on both the lending test and the community development test in order to receive an overall passing rating of satisfactory. In contrast to the fall proposal, community development activities under the current proposal would be much more important as they would be considered by a test that receives a separate rating.

The FDIC proposal would have allowed all FDIC-supervised banks to engage in community development activities in all parts of rural counties, not just low- and moderate-income census tracts. Under the new proposal, community development activities for rural counties can be directed towards "underserved" areas, and then you ask how "underserved" should be defined. The new proposal offers a number of possibilities including using state-wide median income instead of non-metropolitan median income when determining which census tracts are low- and moderate-income. This method is an improvement over the fall proposal's suggestion that community development could be targeted to any census tract(s) in rural counties. We urge that the definition of "underserved" area in rural areas be strong enough to

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assure that community development activities are targeted to those areas that traditionally have been underserved, not to golf courses or vacation areas for the rich.

The new proposal also states that a bank's rating would be adversely affected by discriminatory and illegal credit practices that include violations of the Equal Credit Opportunity Act, the Fair Housing Act, the Home Ownership and Equity Protection Act, section 5 of the FTC Act, Section 8 of the Real Estate Settlement Procedures Act, and violations of Truth in Lending Act provisions regarding right of rescission. The extent of the adverse effect on ratings depends on the extent of the violation of these statutes. As these standards are currently in guidance, the proposal to move this to regulation is a modest, but important step.

Despite these improvements over the previous proposal, we are concerned with a number of issues regarding the new CRA exam for mid-size (intermediate small) banks:

1) *Branches no Longer Explicit Part of Exam.* Under the proposed regulations the retail portion of the service test is eliminated. The CRA exam for mid-size banks would no longer scrutinize the number and percent of branches in low- and moderate-income communities as a separate criterion. With the explosion in payday lending and other high-cost credit, banks must be held explicitly accountable for building and maintaining branches in low- and moderate-income communities

2) *Bank services will be looked at under new exam.* Bank services "intended to primarily benefit low- and moderate-income people" such as low-cost bank accounts and low-cost remittances will be evaluated under the new community development test for mid-size banks. We are concerned that federal regulators will not measure how many of these services actually reach low- and moderate-income customers, except occasionally as happens now We urge you to require mandatory collection of data on deposit accounts and other bank products by income level of borrower and census tract. This data collection would improve the rigor and consistency of the service exam.

3) *Reductions in publicly available data.* Under the proposed regulations, mid-size banks would no longer report CRA small business or farm lending data or community development lending data. Without this publicly available data, we will not know if these lenders are meeting the credit needs of small businesses, farmers, or the need for affordable housing and community development lending.

4) *Lower Levels of Investment.* The elimination of the separate investment test will probably result in lower dollar levels of investment. Banks are likely to make more investments under the current investment test because their investment performance is

more visible under a separate test than under a community development test which looks at community development lending and services as well as investments. If the regulatory agencies committed to comparing past levels of community development lending and investing with future levels under the new exams, then it is unlikely that banks could get away with significantly decreasing their levels of community development financing.

5) *Inflation factor.* The proposed regulations allow federal regulatory agencies to adjust the asset threshold for mid-size banks to take inflation into account on an annual basis. For example, the asset range is currently $250 million to $1 billion, but next year the range will be adjusted upward to reflect inflation As a result, more banks would be subject to the small bank or mid-size banks exams, while fewer banks would be subject to the large bank exam. Moreover, the inflation factor will reduce the range of bank financing and services flowing to communities that need them the most.

6) *Elimination of holding companies in asset calculation.* Another problem is that the consideration of holding companies in calculating assets will be eliminated by the proposal. Currently, if a small bank is owned by a holding company of more than $1 billion in assets, it is subject to the more comprehensive large bank exam because holding companies can provide financial resources to the small bank for complying with CRA.

7) *The rating scheme change* The mid-size banks currently can get low- and high-satisfactory as well as outstanding, needs to improve or substantial non-compliance on their lending, investment, and service tests. These five ratings provide for a more accurate depiction of performance than the four ratings found on the current small bank exam of outstanding, satisfactory, needs to improve, and substantial non-compliance. The new exam for mid-size banks will now have four ratings.

Sincerely,

Jean A. Lowe
President