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Office of the Comptroller of the Currency
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Washington DC 20219
Docket No. 05-04

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

Ms. Jennifer J. Johnson
Secretary,
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1225

To Whom It May Concern:

Local Initiatives Support Corporation (LISC) and The Enterprise Foundation appreciate the opportunity to comment on proposed rules under the Community Reinvestment Act (CRA). Enterprise and LISC are the nation's two largest nonprofit investors in low-income community development, having collectively provided over $10 billion. We consider CRA to be instrumental to urban and rural community revitalization, and have long been involved in CRA policies.

- We are pleased that the three banking regulators are proposing joint rules for CRA. We believe that uniform rules among the regulators promote a level field for all banks, and reduce confusion among institutions and communities. We were disappointed in 2004 when the FDIC proposed

CRA regulations unilaterally, and praise the agency for returning to collaboration with the Federal Reserve Board and the OCC.

- We support the proposed rules as an important improvement over the FDIC's previous proposal. In particular, the new proposal maintains meaningful consideration of community development activities for intermediate small banks with assets of $250 million to $1 billion, and maintains the principle that community development activities should benefit low-income people or distressed communities in order to receive CRA recognition. We urge the regulators to finalize this proposed rule with certain modifications and clarifications described below. The agencies first opened this regulatory review process four years ago. It is time to bring the process to a close. Extending the regulatory process further would add greatly to uncertainty and confusion to the detriment of communities, banks, and indeed the integrity of the CRA implementation process.

- We strongly support the two-test structure for intermediate small banks, including a lending test and the proposed community development test. We have long supported establishment of a community development test – even for large banks – for reasons we have detailed at great length in previous comments submitted throughout the regulatory review process, and we commend the regulators for adopting this one. We believe it is well structured.

    - We absolutely agree that a bank must pass both the lending and community development tests in order to pass the overall CRA exam. Otherwise, a bank could ignore an entire aspect of reinvestment with impunity. In such case we would be compelled to oppose strongly the entire proposal. We believe that each test should be equally weighted.

    - We agree that regulators should consider each of the three components of the community development test – investments, community development loans, and services – and the bank's responsiveness through such activities to community development needs and opportunities, in the context of the bank's capacities and business strategy. We also support the agencies intention not to "permit a bank to simply ignore one or more categories of community development. Banks should maintain or increase their community development financing going forward, and we urge the agencies to compare each bank's community development financing activities under the new rules with prior performance. We believe this approach balances community needs with banks' desire for regulatory simplicity.

- We understand that the regulators intended that a bank's record of locating branches in low- and moderate-income areas and otherwise serving low- and moderate-income people would be a central factor in assessing the bank's community development services, and urge the regulators to make that explicit in the final regulations.

- We oppose relieving intermediate small banks of their responsibilities to collect small business, small farm, and community development lending data. We believe that these data are important – and could be even more important in the future – to understanding lending patterns and expanding access to capital.

- With respect to community development definitions:

  - We support favorable consideration for affordable housing activities – i.e., where rents or prices are affordable to low-income residents, without requiring documentation that residents actually meet low-income criteria. We believe it is unrealistically burdensome for banks to document the actual incomes of residents, and that most affordable housing will actually serve low-income families. Without this new flexibility, many banks will be effectively denied CRA recognition for many affordable housing activities, most of which actually do serve low-income families but for which documentation of each family's income in not practical. This is a practical way to address a common frustration among banks and communities, and we commend the agencies for proposing it.

  - We support changing the low- and moderate-income standard for rural census tracts to 80% of the state median income or the national non-metropolitan median income, whichever is greater, from the current standard of state non-metropolitan area median. This is an important and rather difficult issue, in part because of the great diversity of rural community circumstances. We work extensively in low- and moderate-income rural areas and are very sensitive to the importance– and difficulty – of getting this policy right. We commend the agencies for raising the issue and analyzing it so carefully.

    - We believe it is important to maintain an 80% standard as the basis for low and moderate incomes. This is the long-standing benchmark, and it is consistent with other federal housing and community development standards.

    - However, the current denominator – state non-metro median – is too low, in part because non-metro incomes are generally much lower than metropolitan incomes. The result is that many activities that benefit genuinely low- and moderate-income rural census tracts and families do not receive recognition under CRA. This defeats the purpose of CRA.

- We suggest as an alternative denominator the greater of (1) the state median income or (2) the national non-metro median income. The first addresses the disparity within states between metropolitan and non-metro income levels. However, it cannot address the needs of predominately rural states where statewide incomes are especially low. Accordingly, we propose the second denominator where it is higher. We note that the national non-metro median income is significantly lower than the national median, let alone the national metro median. We further note that the CDFI Fund's criteria for rural investment areas include these alternative income standards. We believe this recommendation offers the right balance of rigor and flexibility.

o We are greatly relieved that the proposal drops the FDIC's earlier concept to permit virtually any rural activity to qualify as community development regardless of its connection to low- and moderate-income people or distressed communities. We also believe that rural area revitalization and stabilization activities – those where CRA recognition does not arise from individual beneficiaries, but rather because the activity contributes the revitalization or stabilization of an entire distressed rural area – deserve recognition if located in certain distressed census tracts or counties. These census tracts and counties would be in addition to census tracts that meet the income criteria discussed immediately above. In other words, if the census tract or county meets other distress criteria, an area revitalization or stabilization activity should be recognized under CRA even if the immediate census tract is not low-income. We believe this standard makes sense because some census tracts are clearly distressed even though they do not meet the census tract income test. We also believe that rural area revitalization and stabilization activities throughout a distressed county are valid even if the immediate tract does not meet distress criteria. As a practical matter, it may be necessary and appropriate to undertake area revitalization and stabilization activities throughout a distressed county, as opportunities permit.

We support the general approach taken by the CDFI Fund in defining its Investment Areas. We support the Fund's poverty

(20%) and unemployment (150% of national) standards. We also agree that population loss is a worthy criterion, but would prefer a standard based on loss over each of the last two decennial census periods (e.g., 1980 – 1990, and 1990 – 2000). In comparing this alternative with the Fund's standard (at least 10% population loss over the last decennial census period or 5% loss over the previous five years), we believe places with some population loss in two consecutive decades better reflects long-term economic decline. Please see the map prepared by USDA's Economic Research Service at http://www.ers.usda.gov/Emphases/Rural/Gallery/PopulationLoss.htm.

- We support the proposal to reduce a bank's CRA rating if it has violated federal anti-predatory lending or consumer protection laws. Absent this policy, a bank would perversely receive favorable CRA recognition for making abusive loans to low-income borrowers. We also support stating a broad policy in the rules, so that the agencies can use less formal and more nimble policy mechanisms to identify specific abuses in this rapidly changing area. Finally, we support applying this policy to a bank's lending outside its assessment area, as well as to lending by affiliates of banks. The agencies should use the full extent of their regulatory powers to eliminate abusive lending.

We appreciate the time and care the agencies have devoted to offering this proposal, and we thank the agencies for considering our comments. We would be happy to address any further questions.

Sincerely,

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