515 King Street, Suite 300, Alexandria, VA 22314-3137
Telephone (703) 684-1029 Fax (703) 684-1219
Community Financial Services Association of America

May 16, 2005

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Petition for Rulemaking to Preempt Certain State Laws

Dear Mr. Feldman:

The Community Financial Services Association of America ("CFSA") appreciates the opportunity to comment on the issues presented in a petition filed by the Financial Services Roundtable regarding the application of certain state laws to state banks. CFSA is the national trade association for the payday-advance industry, representing the owners of more than one-half of the estimated 22,000 payday-advance retail outlets in the United States. CFSA's members include state-licensed lenders and state-chartered banks.

Most state banks that offer payday advances do so in conjunction with CFSA members, which provide loan marketing and administrative support for the state bank. State banks engaged in payday lending are subject to a comprehensive examination guidance issued by the FDIC, which imposes both safety and soundness and consumer protection standards on the banks, including capital and reserve standards.

Additionally, state bank members of CFSA are subject to the association's own responsible practices and appropriate consumer rights and protections (i.e., our "Best Practices"). CFSA's Best Practices require all members to comply with all applicable federal and state laws and regulations; to disclose fully the terms and cost of each transaction; to limit renewals of payday advances; to encourage consumers to use this service responsibly by informing consumers of the intended use of the product and by notifying them of credit counseling alternatives; to provide consumers with a next-day right of rescission; and to refrain from the threat or pursuit of criminal action for collection purposes.

CFSA supports, in its entirety, the petition filed with the FDIC by The Financial Services Roundtable. State banks play a vital role in the economic growth and development of our economy. As such, the FDIC should exercise its interpretative authority to ensure that the

interstate operations of state banks are competitive with national banks, and that a state may not unfairly discriminate against out-of-state, state banks.

The application of home state law to activities conducted by a state bank in a state in which the bank does not have a branch is a natural extension of the authority Congress granted to state banks in the Riegle-Neal Amendments of 1997 ("Riegle-Neal II"). Likewise, FDIC interpretations of Section 104 of the Gramm-Leach-Bliley Act ("GLBA") and Section 27 of the FDI Act would clarify the scope of these authorities.

CFSA is particularly interested in Section 104 of GLBA. We believe that Section 104 establishes a broad preemption standard that invalidates any state law that restricts the federally authorized activities of a depository institution in a discriminatory manner. That standard applies not only to the depository institution, but also to any affiliate or other person engaged in the activity with the institution. Thus, Section 104 can serve as a powerful check on anti-competitive state laws.

Unfortunately, in the five years since the enactment of GLBA, Section 104 has remained untested. This is due, in part, to confusion over the scope of the provision. Therefore, we urge the FDIC to issue a rule or interpretation that, at a minimum, clarifies that (1) Section 104 applies to all lending and other activities authorized or permitted by GLBA; (2) the four discrimination standards in Section 104(d)(4)(D) are to be read in the disjunctive as separate standards[1]; and (3) that the reference to "other persons" in Section 104(d)(4)(i) should be read to include other depository institutions.[2]

Your consideration of our views is appreciated.

Sincerely,

D. Lynn DeVault
President

[1] Although the four discrimination standards set forth in clause (D) are joined by the word "and," we believe they are intended to be read as separate standards, only one of which needs to be satisfied for a state statute to be discriminatory. That they are separate standards is apparent from the fact that they each establish a different standard aimed at different circumstances. For example, subclause (i) applies to state laws that "by their terms" have an "adverse" impact on depository institutions in comparison to any other person. On the other hand, subclause (ii) applies to state laws that are "interpreted or applies" so as to have a "substantially more adverse" impact on depository institutions in comparison to any other person that is not a depository institution. The word "and" is used in clause (D) rather than the word "or" because the clause is written in the negative.

[2] It is reasonable to read the reference to "other person" to include other depository institutions. The term "other person" is not limited, conditioned or qualified in any manner. On the other hand, in Section 104(d)(4)(D)(ii), the term is limited to other persons that "are not depository institutions." Thus, it is apparent that Congress knows how to limit the term, but did not do so for purposes of the discrimination standard in Section 104(D)(4)(D)(i).