



Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, DC 20552

Attention: No. 2004-53

By e-mail: [regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov)

Re: No. 2004-53--Proposed Changes to Community Reinvestment Act  
Regulation of the Office of Thrift Supervision

January 24, 2005

Dear Sir or Madam:

The Local Initiatives Support Corporation (LISC) appreciates this opportunity to comment on possible changes to the Community Reinvestment Act (CRA) regulations.

LISC helps neighbors build communities. Since 1980, LISC has marshaled more than \$5.7 billion from 3,100 investors, lenders, and donors. In over 300 urban and rural communities nationwide, LISC has helped 2,400 CDCs build or rehabilitate more than 147,000 affordable homes and almost 22 million square feet of retail, community, and educational space – totaling almost \$13 billion in development. As a result, hundreds of thousands of people have better lives and brighter futures.

CRA has been instrumental to our work. First, capital is the economic life-blood of every community, and it is especially necessary to low-income communities struggling to revive. CRA has been crucial to providing this capital. Second, virtually all of the housing and economic development activities we undertake involve loans or investments from insured depository institutions. Institutions frequently impress on us that CRA is important to their participation. While community development loans and investments are profitable and risks are manageable, this financing often requires special attention and other activities are often more profitable.

### **General Comments**

In general, we appreciate OTS's desire to add some flexibility to CRA rules. However, we cannot support favorable CRA consideration for CRA rural community development activities that do not primarily benefit low- and moderate-income (LMI) people or places.

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Moreover, while we have long supported combining community development lending, investment and services into a new community development test, we would not support ending requirements for investments or services, as the OTS has posed the issue. We explain our views in more detail below.

We are deeply concerned that OTS has again embarked unilaterally on CRA rulemaking. Until last year, joint rulemaking among the four CRA regulatory agencies promoted consistency and carefully considered and stable policies. OTS broke this pattern last year when it acted alone to raise the threshold for large bank examinations to \$1 billion in assets. Unilateral rulemaking is confusing to institutions and communities, and it invites a regulatory race to the bottom. Because the agencies depend on the institutions they regulate for fee revenues, agencies may fear that institutions will choose the charter that brings the most lax regulation. This creates an unstable regulatory structure. We urge the OTS to refrain from unilateral action and resume joint rulemaking with the other agencies.

We are also concerned that the OTS has used the preamble to this proposed rule on rural community development to open a mostly separate and open-ended inquiry on the structure of the CRA exam. We are concerned that OTS might decide to issue a final rule on fundamental CRA issues without going through a process of making a detailed proposal. When the OTS finalized the large bank threshold at \$1 billion, it did so after having proposed a threshold of \$500 million. The public was never asked to consider the \$1 billion threshold. Apparently, the agencies had not considered how raising the threshold would affect different communities, and the OCC and Federal Reserve Board withdrew their \$500 million proposal based on that consideration. We believe that the right process going forward would be to make a specific proposal, which can be fully considered and subject to public comment. Again, we believe that any such rulemaking should be undertaken jointly by all four regulators.

### **Rural Community Development**

We appreciate that rural areas are different in important ways from urban areas, and that CRA does not serve rural areas as well as it should. Very large banks tend to focus much more on metropolitan areas than rural areas, partly because CRA examiners do. Accordingly, rural areas are especially dependent on small and mid-sized institutions, but last year the OTS reduced the scope of CRA exams for institutions with assets under \$1 billion. The result is that CRA applies meaningfully to relatively few institutions in rural areas, and in many rural areas to no financial institutions at all. LMI people and geographies in rural America will find it harder to find the financing they need.

We oppose the OTS proposal to define rural community development to include activities that do not primarily benefit LMI people or areas.

- First, the proposal would for the first time sever the connection between CRA and LMI people and areas. LMI benefit is central to both the CRA law and spirit, and it must be maintained.
- Second, this new standard is so broad that it would include construction financing for luxury homes, golf courses, and prisons, none of which primarily benefit LMI people or places. An institution might even offset a poor home mortgage lending

record for LMI home buyers by financing these activities. Such a policy would undermine CRA and hurt LMI people and areas.

- Third, we do not support consideration of financing for large businesses and farms unless this financing would primarily benefit LMI people or places.

Nevertheless, we recognize that the existing definition of LMI may not work for all areas. There are many rural areas that are genuinely distressed but may not meet the LMI definition. We would be open to modifying the definition of LMI to address such situations, but we believe it is important to retain the principle that CRA should focus on LMI areas and people. We are also open to a narrow exception to provide for natural disaster areas.

### **Assigned Ratings Proposal**

We appreciate that OTS is interested in providing more flexibility in the way that CRA ratings are assigned. However, we strongly oppose the suggestions raised by the OTS that institutions no longer be required to provide investments and services. Making CRA consideration of these activities optional to institutions or eliminating their consideration outright would undermine the important benefits they now provide.

LISC has long advocated replacing the investment test with a community development (“CD”) test that would combine community development lending, investments and services, while keeping the lending and services tests mostly intact. We believe that a properly structured community development test would better serve communities. It would also provide more flexibility to institutions while maintaining requirements that institutions address these needs.

CD activities have driven the revitalization of numerous low-income communities. Investments in low-income housing, construction financing, and economic development financing have been essential to the development of housing and commercial real estate projects, which in many communities have reversed community decline and led to further reinvestment.

Yet the current rules do not adequately accommodate the range of CD activities that different communities need.

- CD activities are fundamentally different from large volume, standardized home mortgage and small business lending. Although volume is relevant, the key to good CD activities is how they add value to each community, based on its unique needs and opportunities. CD activities are best considered together, whether by an institution, community residents, or examiners. By separating CD lending, investments, and services, the current exam structure obscures the complete picture of an institution’s CD activities.
- CD lending is now part of the lending test, but is often overlooked because the volume pales in comparison to home mortgage lending. Some institutions complain that examiners give little consideration to CD lending, despite its importance to neighborhood revitalization.

- The current exam structure does not accommodate the different needs that communities have. For example, one community may need and offer opportunities for either investments or CD lending, but the current exam structure does not adequately allow for these differences.

A well structured CD test would consider CD lending, investments, and CD services as separate but related components. Primary weight should be given to CD lending and investment, and an institution would have to provide an adequate level of CD lending and/or investment to receive a satisfactory rating on the CD test. It should not be satisfactory for an institution to provide CD services – such as advising nonprofit organizations – but not CD financing. For additional discussion of a CD test, please see our comment dated October 17, 2001 to the inter-agency Advanced Notice of Proposed Rulemaking.

### **Conclusion**

This concludes our comments. We thank the OTS for considering them, and would be happy to provide additional information upon request.

Sincerely,

Benson F. Roberts  
Senior Vice President for Policy  
and Program Development