WACHOVIA

Wachovia Corporation
100 North Main Street
Winston-Salem, North Carolina 27150

180

July 27, 2000

DELIVERED BY ELECTRONIC AND REGULAR MAIL

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, D C 20551
Re: Docket No. R-1069

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW, Third Floor
Washington, D C 20219
Attn: Docket No. 00-11

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D C 20429
Attn: Comments/OES

Manager, Dissemination Branch
1700 G Street, NW
Information Management & Services Division
Office of Thrift Supervision
Washington, D C 20552
Attn: Docket No. 2000-44

Re: Proposed Regulation on the Disclosure and Reporting of Community Reinvestment Act-Related Agreements; 65 Federal Register 31961: May 19, 2000 -- Implementation of Section 711 (the "CRA Sunshine Law") of the Gramm-Leach-Bliley Financial Modernization Act of 1999

This letter is submitted on behalf of Wachovia Corporation and its subsidiary companies, including Wachovia Bank, N. A., The First National Bank of Atlanta-Delaware doing business as Wachovia Bankcard Services, and Atlantic Savings Bank, FSB (hereafter collectively referred to as "Wachovia"). The Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision ("the Agencies") were faced with a extremely difficult task in developing an implementing regulation for the broadly written CRA Sunshine Law.

Wachovia applauds your efforts and appreciates the opportunity to comment on the proposal.

Due to the complexity and detail of many of the issues related to this public disclosure law and due to the wide diversity of opinions on those issues, we understand that a revised proposal is contemplated. Wachovia believes that all interested parties would benefit from the insight gained in the current round of comments and strongly *recommends a second proposal* as the correct approach.

Wachovia's *comments at this juncture will focus on*:

- The need for industry *clarity on coverage* of the regulation, and
- *Ways to accomplish the Act's dual purposes* of (1) *preventing the inappropriate use of the Community Reinvestment Act as a leverage tool for money/other resources* during Agency decision periods for merger/acquisition/powers applications and examinations, without (2) *creating an unreasonable compliance burden.* Wachovia believes that coverage of the regulation can and should be narrowed, while still focusing light, as Congress desired, on agreements whose primary purpose is for CRA fulfillment.

Definition of Covered Agreement

Wachovia believes that *only legally-enforceable written agreements should be covered,* and that such things as exchanges of letters, informal commitments, unilateral pledges and the like should be excluded from the regulation.

- Inclusion of anything other than written, binding obligations or contracts will cause confusion in several areas, such as: who the other party is to the agreement, terms or conditions of the agreement, information that should be reported, and so forth. Also, anything other than a legally binding obligation or contract may be a "work in progress."
- While some terminology in the Sunshine Law may suggest inclusion of agreements beyond written, binding contracts (for example, the term "understanding"), other language in the statute reaches to legally enforceable agreements, and we believe the regulation can appropriately take that tack. (See Subsection (f) regarding willful failure to comply in a material way which would make an agreement "unenforceable" and Subsection (g) which bars the Agencies from enforcing any provisions of any agreement. Only legally enforceable agreements can be enforced.)

CRA Contact with Insured Depository Institution or Affiliate

Wachovia recommends that the *definition of a CRA Contact be narrowed* to apply only to situations where the contact's purpose is to *influence the institution's CRA performance record, its CRA examination rating, or the public's perception of that record or rating -- particularly through giving favorable or withholding negative comments, testimony and so forth at the time of applications or exams.* This kind of definition better fits Congress'

intent to prevent undue pressure being placed on institutions by non-governmental entities and persons ("NGEPs").

Wachovia also believes that *designee and time limits should be created.*

- Financial institutions should be able to *limit the persons with whom covered CRA Contact is made*. The larger the institution, the more critical such contact limitation will be, due to the number of bank and affiliate staff who are involved with the community. Designees could be, for example, both local and corporate CRA Officers or a company's executive officers, and this designation could be publicized in such places as the CRA public file and/or the CRA lobby notice. Lack of designation could make determining whether covered CRA Contact had occurred virtually impossible in institutions that have large employee bases, widely-distributed offices and multiple public-contact channels. Designation also would exclude many inconsequential contacts and include the relevant ones.
- We recommend a *bright-line time limit prior to the legal agreement.* Wachovia believes anything earlier than six months would have little relevance to a resulting action. Also, we urge that any contact that occurs after parties have entered into a contractual agreement not be included. Parties need to know, at the time an agreement is reached, whether or not it is covered. After-the-fact inclusion seems to run counter to the Act's intent of shining light on agreements that resulted from inappropriate use of CRA as leverage for receipt of money or other resources. Further, after-the-fact contact inclusion would be impractical, especially in large organizations, if contact designees are not allowed in the regulation.

Additional Exemptions from Covered Agreements or Exclusions from CRA Fulfillment

Wachovia is concerned that *numerous day-to-day business transactions and activities may unintentionally be covered* by the regulation as currently proposed. These clearly should be exempted/excluded by a final regulation. Doing so would meet the statute's requirement of no undue regulatory burden on financial institutions and NGEPs, while focusing on factors that have a "material impact" on Agency decisions on applications or CRA ratings and on agreements primarily for CRA purposes. Exclusion would also protect a financial institution's proprietary information about such things as pricing, market opportunities, product features, marketing communication plans, business expansion and strategies. Such exemptions/exclusions should include, for example, agreements with or about:

- Law firms employed in a lawyer/client relationship and consultants for CRA advisory services;
- Vendors of software and other tools used for CRA and/or fair lending analysis and assessment;
- Trade associations;
- Bank-owned or created NGEPs, such as community development corporations;
- Business partners, such as secondary market organizations, mortgage insurers, marketing/advertising/promotional agencies, and delivery channels/direct-mail organizations;

- Arms-length purchases of loans, mortgage-backed securities and other investment instruments in the primary and secondary markets, and
- Purchase or rental of branch space, utility services and the like.

Wachovia also agrees with the Agencies that *covered agreements should not include ones whose primary purpose is to ensure fair lending law compliance.* We believe that disclosure of agreements for such reviews, audits and employee training could have an unintended adverse effect upon fair lending/diversity efforts.

Qualifying Loan Exemptions

Wachovia recommends that:

- *Exempt mortgage loans include any loan secured by real estate, regardless of purpose.* Research to determine loan purpose or use of proceeds would be an unnecessary burden.
- A *flexible definition of "substantially below market rates" be provided* that will give clarity to financial institutions, while allowing for differences in products, markets and passage of time. A formula that incorporates a 200-basis-point margin, as suggested by the American Bankers Association, could be helpful. Any such definition should be proposed for industry comment before adoption.

Wachovia hopes that these comments will be helpful to the Agencies in crafting the final CRA Sunshine regulation.

Very truly yours,

{Signature affixed to original}

G. J. Prendergast
President and Chief Operating Officer