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"Serving the Community Since 1969"

June 20, 2000

Manager, Dissemination Branch
Information Management & Services Divsion
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 2000-44

RE: Disclosure and Reporting of CRA-Related Agreements:
Proposed Rule 65 Fed. Reg. 31961-32002 (May 19, 2000)

Dear Sir or Madam:

The Anacostia Economic Development Corporation ("AEDC"), a community-based, nonprofit organization with a long history of serving the Anacostia area of Washington, DC appreciates the opportunity to comment on the proposed rule published by the Office of Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (the "Agencies"). This rule would implement the provisions of the Gramm-Leach-Bliley Act (the "GLB Act") that require the publication of information relating to agreements fulfilling certain obligations of insured depository institutions under the Community Reinvestment Act (the "CRA").

AEDC is a nonprofit with significant experience of the benefits that CRA-inspired agreements can achieve. After all, AEDC exists to bring development and services to under-served and under-privileged, east-of the-river communities in Washington, DC. Based upon this experience, AEDC not only wants to see the GLB Act disclosure requirements implemented in a way that does not eliminate these beneficial results, but also has concrete suggestions to achieve such an end.

CRA Contact

- *CRA Contact.* The proposed regulations seem to imply that a community group would now need to assume the burdensome task of keeping a record of every time it mentioned the CRA to a bank or federal banking agency. This aspect of the regulations contradicts the stated and implied intent of the statute it is intended to implement. The GLB Act clearly states that the federal banking regulators must "ensure that the regulations prescribed by the agency do not impose an undue burden on the parties." Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338, 711(h)(2)(A). These burdens may seem trivial, but they represent a significant administrative hardship for community groups and small non-profit organizations that are already overwhelmed by their responsibilities to fulfill the urgent need for affordable housing and economic development. Moreover, they do not even target coercive behavior by recipients of CRA funds [AL: Jacob, do you want to maintain the following text (I found a cite to use): "As the preamble suggests, the intent of Section 711 of the GLB Act is to eliminate the coercive aspect of the CRA. 65 Fed. Reg. 31962, 31968 (2000)."] According to these regulations, if a community group merely intended to educate a bank about how its interactions with the community group could be counted toward fulfillment of its statutory obligations under the CRA, then that community group would still be subject to disclosure and reporting obligations. For these reasons, we suggest that the intent of the Act would best be served by adopting a regulation that limits the definition of a "CRA contact" to (1) providing comments or testimony to an agency about a *particular bank*, or (2) contacting a bank about *that community group* providing or refraining from providing comments or testimony *to a federal banking agency* about *that bank.*

- *Temporal Limit.* As the preamble suggests, the proposed regulations would benefit from a temporal limit. 65 Fed. Reg. at 31968. A "CRA contact", defined at 65 Fed. Reg. at 31968, should not be perpetual; at some point the possibility of a coercive link is broken. Furthermore, it would be unduly burdensome for a community group to need to recall every CRA contact ever made with a bank for the purposes of ensuring compliance with disclosure and reporting obligations. For these reasons, we suggest that the definition of a "CRA contact" be limited to contacts made within six months of subsequently entering into a covered agreement.

- *Fulfillment of the CRA.* The language of the proposed regulations would allow "refraining from providing written or oral comments or testimony" to be included as an action in fulfillment of the CRA. 65 Fed. Reg. at 31969. Since it would be difficult for

community groups to keep a record of a non-action, we suggest that the definition would be improved by dividing it into two parts: (1) providing written or oral comments or testimony to a federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement, or (2) providing written comments to a bank that discuss providing or refraining from providing written or oral comments or testimony to a federal banking agency, and that are required to be included in the CRA public file of that bank.

- *Value of Services.* Under the CRA, a bank can receive credit for providing services that help meet the credit needs of the community. For example, some banks send executives or other employees serve on the board of a community group or lend other technical assistance. The proposed regulations suggest that the value of any "consideration" should be included in the disclosure and reporting obligations. 65 Fed. Reg. at 31985. If the value of technical assistance is included in the disclosure and reporting obligations, then the regulations should provide some guidance as to how to calculate the value of those services.

- *Substantially Below Market Rates.* The definition of "substantially below market rates" is vague and burdensome. 65 Fed. Reg. at 31966. Either proposed definition (formula or comparable transaction) would require a community group to know and keep a record of what the market rate was for a comparable transaction with a comparable person at the time the loan was made. *Id.* The proposed regulations should provide further guidance on how community groups should seek to comply with this rule. In addition, the proposed regulations would also benefit from adding a definition for a loan made for the purpose of "re-lending."

- *Application to Other Entities.* The disclosure and reporting obligations do not seem to apply to agreements with Fannie Mae or Freddie Mac because they are not "insured depository institutions." 65 Fed. Reg. at 31962. In addition, the proposed regulations specifically exclude a "federally-chartered public corporation that receives federal funds appropriated specifically for that corporation" which might be read to refer to Fannie Mae and Freddie Mac. 65 Fed. Reg. at 31978. However, the preamble includes an ambiguous statement: "A nongovernmental entity that is affiliated with, or receives funding from, such a federally chartered public corporation, however, would be considered a 'person' under the rule, unless the entity independently qualified for an exclusion." 65 Fed. Reg. at 31978. The proposed regulations would benefit from greater clarity about whether

agreements between a community group and Fannie Mae or Freddie Mac are covered agreements. Given that the CRA does not extend to the activities of these groups, we can find no reason why an agreement between a community group and Fannie Mae or Freddie Mac should be a covered agreement.

- *Content of Filing.* The proposed regulations draw a distinction between "specific" and "general" expenses that is not found in the statute. 65 Fed. Reg. at 31975-6. There needs to more information on the distinction. In general, we support having the federal banking agencies issue an optional sample form to guide community groups.

- *Place of Filing.* Under the statute and proposed regulations, a community group must file with each appropriate federal banking agency. 65 Fed. Reg. at 31963. This poses a significant administrative burden for those community groups who are not acutely aware of the complexity of federal banking regulation, and would need to spend time discovering the identity of each federal banking agency that supervises the bank that is a party to one of its covered agreements. The proposed regulations try to minimize this burden by allowing community groups to submit the report to the bank which will then forward the report to the appropriate agency. 65 Fed. Reg. at 31964. The problem with this approach is that if the agency does not receive the report, the community group, rather than the bank, may face administrative sanctions. Clearly, the community group has more to lose if the agreement becomes unenforceable. To reduce these burdens and improve the chances for compliance, we suggest allowing the community groups to file with a single agency, such as the Federal Financial Institutions Examination Council ("FFIEC"). This would streamline the process, reduce the administrative burden on community groups, and fulfill the intent of the law.

- *Method of Filing.* The preamble discusses the possibility of making disclosures public by means of electronic communications, such as posting a covered agreement on a Web site. The proposed regulations would also benefit from clarifying whether community groups can file their annual reports with the federal banking agencies by electronic means (such as e-mail).
- *Administrative Hearing.* A community group stands to lose a substantial benefit if an agreement becomes unenforceable. The proposed regulations suggest that this enforcement provision becomes automatic after 90 days. 65 Fed. Reg. at 31978. It may be more appropriate to provide the community group with an administrative hearing before depriving it of such a significant such benefit.

- Enforcement Authority. The statute and proposed regulations clearly state that a federal banking agency does not have authority to enforce any provisions of a covered agreement. 65 Fed. Red. At 31964. The proposed regulations thus provide that a federal banking agency will not take action against a community group that has diverted funds unless a court of competent jurisdiction has so determined. 65 Fed. Reg. At 31978 and 31988. The proposed regulations should clarify who would have the authority to bring and action in a court of competent jurisdiction.

Conclusion

The record-keeping and reporting requirements should be as carefully tailored as possible to serve their purpose without overburdening legitimate nonprofit organizations with onerous regulatory hurdles. AEDC is conscious that unnecessarily broad regulations can hamper legitimate nonprofit fund-raising activities without protecting against the abusive practices the statute was intended to combat. Keeping in mind the necessity of permitting the former while curbing the latter, we urge the Agencies to revise the proposed rule along the lines we have suggested.

Sincerely,

Albert R. Hopkins, Jr.
President & CEO

cc: Dr. Jesse R. King, Chairperson, AEDC