82

July 21, 2000

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW, Third Floor
Washington, DC 20219

Attention: Docket No. 00-11

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551

Attention: Docket No. R-1069

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Attention: Comments/OES
Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Attention: Docket No. 2000-44

RE: Joint Notice of Proposed Rulemaking, *Disclosure and Reporting of CRA-Related Agreements*

The Federal Home Loan Mortgage Corporation ("Freddie Mac") appreciates the opportunity to provide comments on the Joint Notice of Proposed Rulemaking by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the "Agencies") entitled, *Disclosure and Reporting of CRA-Related Agreements* ("the Proposed Rule").[1]

Freddie Mac is a shareholder-owned corporation chartered by Congress in 1970 to create a continuous flow of funds to mortgage lenders in support of homeownership and rental housing. With the financing of our 25 millionth home mortgage in 1999, Freddie Mac continues to fulfill our public mission by making low-cost mortgage money more available for America's families. Our continuing success results from our commitment to provide access to mortgage credit at all times, our access to worldwide capital markets to meet the housing finance needs of America's families at the lowest possible cost and our continued efforts to reduce costs and improve the mortgage finance system.

[1] 65 Fed. Reg. 31962 (May 19, 2000).

1. OVERVIEW OF COMMENTS

The Proposed Rule seeks to implement provisions of the recently enacted Gramm-Leach-Bliley Act (the "GLB Act).[2] These provisions, found at Section 711 of the GLB Act, require nongovernmental entities or persons, insured depository institutions, and affiliates of insured depository institutions that are parties to certain agreements that are in fulfillment of the Community Reinvestment Act of 1977 (the "CRA")[3] to make the agreements available to the public and the appropriate agency and file annual reports concerning the agreements with the appropriate agency.

The Proposed Rule defines various terms necessary for determining which agreements are covered agreements and provides guidance for determining when a CRA contact has been made for purposes of identifying the parties whose agreements are covered by the GLB Act. Freddie Mac is commenting on the definition of the term "covered agreements" and on the determination of when a CRA contact has occurred. Specifically, Freddie Mac respectfully submits that the Proposed Rule should not encompass within the term "covered agreements" written materials that are executed or received by Freddie Mac in pursuit of meeting affordable housing goals and should not include within the scope of a CRA contact, any contact between any secondary mortgage market institution, including Freddie Mac, and an insured depository institution or affiliate during the regular course of business of purchasing loans or securities, or matters related thereto.

One of Freddie Mac's purposes is to "promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing."[4] In addition, pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the "GSE Act")[5], the Department of Housing and Urban Development ("HUD") sets annual goals for Freddie Mac's purchases of mortgages funding housing for low- and moderate-income[6] families, and mortgages for borrowers living in "underserved areas."[7]. As can be seen from the

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[2] Pub. L. 106-102, 113 Stat. 1338 (1999).
[3] 12 U.S.C. 2901 (1977)
[4] 12 U.S.C. Note to 1451 (b)(4) (1992).
[5] Pub. L. 102-550, 106 Stat. 3672 (1992).
[6] The term "low-income" means in the case of owner-occupied units, income not in excess of 80 percent of area median income; and in the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by the Secretary of HUD. The term "moderate-income" means in the case of owner-occupied units, income not in excess of median income; and in the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families, as determined by the Secretary of HUD. 12 U.S.C. 4502 (8), (10) (1992).
[7] The term "underserved areas" means either a census tract having a median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or a

footnotes below, the definitions of low-income and moderate-income, as well as, underserved areas are different than CRA definitions.

In furtherance of our statutory purposes and pursuant to the 1992 GSE Act, Freddie Mac purchases affordable mortgage portfolios originated by insured depository institutions as part of our affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families. Historically, many depositories have held affordable mortgage portfolios on their balance sheets in whole-loan form due to limitations that made these loans difficult to sell into the secondary market. To help overcome these limitations, Freddie Mac has developed credit enhancements that offer depositories the means to profitably sell these loans to us for cash, through securities swap executions, and in conjunction with Real Estate Mortgage Investment Conduit (REMIC) transactions. These transactions provide depositories with immediate liquidity and enable them to undertake further new targeted affordable lending activity.

In addition, relative to our statutory purposes, Freddie Mac has undertaken a host of community based lending initiatives designed to promote affordable homeownership and rental opportunities. Freddie Mac's approach to community development lending is to act as a catalyst by establishing public-private collaborations that increase access to mortgage credit for underserved households (including low- and moderate-income and minority households) and by eliminating barriers to homeownership in targeted underserved communities. Our community development efforts involve designing creative solutions to meet the homeownership needs of specific populations in targeted market areas.

Section 711 of the GLB Act neither encompasses nor contemplates Freddie Mac's activities as described above. The legislative history surrounding the GLB Act is replete with clear examples of the types of organizations and the types of written agreements that Congress intended to be subject to the Act. There is no discussion of secondary mortgage market institutions during the course of debate on Section 711 of the GLB Act. Specifically, the legislative history is void of any discussion of government-sponsored enterprises such as Freddie Mac and void of any discussion of the GSE affordable housing goals or other aspects of the 1992 GSE Act. The act of omission of commentary with respect to entities like Freddie Mac by the architects of the GLB Act is persuasive evidence that Freddie Mac's affirmative steps to assist insured depository institutions to meet their obligations under the CRA are outside the scope of the Act.

Freddie Mac therefore recommends the following amendments to the Proposed Rule:

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median income at or below 90 percent of median income of the metropolitan area. 24 C.F.R. 81.2 (b) (April 1, 1998).

1. We recommend that the definition of the term "covered agreements" in the Final Rule exclude any written materials used by secondary market institutions to facilitate the financing of affordable housing for low-and moderate-income families and families living in underserved areas.

(a) We recommend that the Final Rule be limited to exclude from the scope of CRA contacts general discussions with an insured depository institution or affiliate concerning whether particular mortgage loans, services, investments or community development activities may assist such insured depository institution or affiliate with CRA compliance.

3. We recommend, alternatively, if the definition of CRA contact is retained in the Final Rule, the Federal Reserve Board should exercise its discretion in this area to provide an exemption for CRA contacts that occur in connection with the purchase of loans or securities, or the sale, marketing or securitization of loans by an insured depository institution or affiliate on an arm's length basis in the secondary market even where the negotiation of the agreement included a general discussion of the effect of the transaction on the CRA performance of the insured depository institution or affiliate.

2. FREDDIE MAC'S COMMENTS ON THE PROPOSED RULE

A. The Legislative History of Section 711 of the GLB Act makes clear that the drafters of the provision did not intend to include Freddie Mac's affordable low- and moderate-income housing activities.

The Legislative History of Section 711 of the GLB Act does not support an interpretation that Freddie Mac's activities to finance mortgages to low- and moderate-income homeowners and borrowers living in underserved areas should be within the scope of the section. Additionally, the GLB Act should not be interpreted to include any contractual provisions incident to that assist Freddie Mac in meeting its affordable housing goals, or to any arrangements Freddie Mac makes to purchase loans which may meet the CRA requirements of insured depository institutions in the normal course of our business.

First, on May 5, 1999, during Senate debate on the GLB Act, Senate Banking Committee Chairman Gramm made the following statement relating to the CRA provisions in the bill:

> "I have presented today, from redacted agreements, *secret agreements that have been entered into by community groups and banks*, three examples, the only three we have, where over and over again community groups are paid cash payments in return for them withdrawing

objections which they have made to banks taking specific action, or where they have agreed not to raise an objection."[8] (Italics added).

Second, on May 25, 1999, Congressman Bill McCollum (R-FL) introduced the "CRA Sunshine Act of 1999", H.R. 1931. In pertinent part the bill reads as follows:

"Sec. 45. CRA SUNSHINE REQUIREMENTS.

(a) PUBLIC DISCLOSURE OF AGREEMENTS. — Any agreement entered into by an insured depository institution or affiliate with a nongovernmental entity or person made pursuant to or in connection with the Community Reinvestment Act of 1977 involving funds or other resources of such insured depository institution or affiliate shall be, in its entirety, fully disclosed, and the full text thereof made available to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution and to the public and shall obligate each party to comply with the provisions of this section."

In his floor statement, Congressman McCollum said as follows:

"CRA groups have reported over $9 billion in cash payments received or pledged by banks as a result of CRA activities. A total of $694 billion in CRA commitments have been made or pledged due to CRA. While these pledges are made and collected as a direct result of federal legislation, the details of these payments are often unknown because many agreements include confidentiality clauses. Congress never intended that CRA dollars be used for anything other than investing in low and moderate-income areas. There is concern that some CRA dollars are being used by *CRA activists* to pay for consulting fees, hiring contacts, administrative fees, and other nonloan activities. By shining light on the details of agreements made pursuant to CRA, *this Act would remove the mystery from deals between banks and CRA organizations* while ensuring that CRA truly benefits those that it was designed to benefit." (Italics added).[9]

Third, on October 12, 1999, the Senate Banking Committee began marking-up the Chairman's Mark of the GLB Act. Section 711 of the Chairman's Mark reads in relevant part as follows:

"Sec. 47. CRA SUNSHINE REQUIREMENTS.

(a) PUBLIC DISCLOSURE OF AGREEMENTS. – Any agreement entered into by an insured depository institution or affiliate with a nongovernmental entity or person made pursuant to or in connection with the Community Reinvestment Act of 1977 involving funds or other resources of such insured depository institution or affiliate –

[8] 145 Cong. Rec., S4787 (daily ed. May 5, 1999).
[9] 145 Cong. Rec., E1082 (daily ed. May 25, 1999).

A. shall be in its entirety fully disclosed, and the full text thereof made to the appropriate Federal Banking agency with supervisory responsibility over the insured depository institution and to the public; and

B. shall obligate each party to comply with this section."[10]

The Chairman's Mark and H.R. 1931 are identical.

Fourth, in the GLB Act as signed into law, the sunshine requirement, in pertinent part, reads as follows[11]:

"Sec. 48. CRA SUNSHINE REQUIREMENTS.

(a) PUBLIC DISCLOSURE OF AGREEMENTS. – Any agreement (as defined in subsection (e)) entered into after the date of enactment of the Gramm-Leach-Bliley Act by an insured depository institution or affiliate with a non-governmental entity or person made pursuant to or in connection with the Community Reinvestment Act of 1977 involving funds or other resources of such insured depository institution or affiliate –

A. shall be in its entirety disclosed, and the full text thereof made available to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution or and to the public by each party to the agreement; and

B. shall obligate each party to comply with this section."

The CRA sunshine requirements contained in federal law are substantively identical to both the Chairman's Mark and H.R. 1931.

Neither government-sponsored enterprises generally nor Freddie Mac specifically were discussed during the course of the hearings, mark-ups or floor debates relative to Section 711 of the GLB Act. In fact, in each instance regarding the sunshine provisions, particular emphasis is placed only on agreements between community organizations and insured depository institutions or affiliates. The omission of any discussion of Freddie Mac coupled with the explicit discussion of agreements between community

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[10] Chairman's Mark of S. 900, 106th Congress, 1st Sess., (October 12, 1999).

[11] "There has been a lot of talk about CRA. The bottom line is we have done several very positive things. First sunshine is the best disinfectant. How can people be held accountable if we don't know what they have been given money to do, how much money they have been given, and how they spend it. In this legislation, we have set out an ironclad process to guarantee us that information." Statement of Senator Gramm during consideration of the Conference Report on the GLB Act. 145 Cong. Rec. S13913 (daily ed. November 4, 1999).

organizations and insured depository institutions or affiliates during the course of debate on Section 711 of the GLB Act illustrate that Congress did not intend to include Freddie Mac's activities to finance low- and moderate-income homeowners and borrowers living in underserved areas within the scope of the CRA sunshine requirements.

B. The definition of the term "covered agreement" should exclude any agreement by Freddie Mac to carry out low- and moderate-income housing initiatives in compliance with our Charter and the 1992 GSE Act.

As an initial matter, Section 711 of the GLB Act applies only to written agreements that are "made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act." Additionally, one of the parties to the written agreement must be an insured depository institution or an affiliate. Freddie Mac's written materials concerning low- or moderate-income housing opportunities available by investing in mortgage-related securities or memoranda of understanding concerning community development lending are made pursuant to our Charter and the 1992 GSE Act, wherein we are charged with facilitating the financing of affordable housing for low- and moderate-income American families. Such written materials or memoranda of understanding, therefore, have as the central purpose providing more affordable housing for low- and moderate-income American families.

Specifically, the memoranda of understanding entered into by Freddie Mac and community organizations do not meet one of the criteria to be considered a covered agreement; namely, an insured depository institution or affiliate is not a party to the memoranda of understanding. Similarly, the written materials between Freddie Mac and insured depository institutions or affiliates in the context of low- and moderate-income mortgage-related securities are not agreements "made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act." The exchange of written materials reflects Freddie Mac's responsibility to provide liquidity to the mortgage market so that the availability of affordable housing can be enhanced and homeownership can be increased. Furthermore, the written materials expressly state that no warranties or representations are made that securities backed by a package of mortgage loans will qualify as a CRA investment or assist institutions with CRA compliance.

Therefore, Freddie Mac respectfully recommends the following example for inclusion in the Final Rule:

Example ___: A secondary market institution and an insured depository institution or affiliate exchange written materials, during the normal course of business, regarding the sale, purchase or securitization of a package of mortgage loans. The secondary market

institution expressly states that it makes no warranties or representations that the securities backed by a package of mortgage loans will qualify as a CRA investment or assist institutions with CRA compliance. The written materials would not constitute a covered agreement under the regulation because the written materials are not made pursuant to, or in connection with, the fulfillment of the CRA.

C. *The Final Rule should be limited to exclude from the scope of CRA contacts, general discussions with an insured depository institution or affiliate concerning whether particular mortgage loans, services, investments or community development activities may assist such insured depository institution or affiliate with CRA compliance.*

The Agencies request comments on whether the rule can and should be limited to exclude from the scope of CRA contacts discussions with an insured depository institution or affiliate concerning whether particular loans, services, investments or community development activities are generally eligible for consideration by an agency under the CRA Regulations. Freddie Mac supports excluding from the scope of CRA contacts discussions with an insured depository institution or affiliate concerning whether particular loans, services, investments or community development activities may assist such insured depository institution or affiliate with CRA compliance. In carrying out our mission and duties pursuant to both our Charter and the 1992 GSE Act, marketing materials may be distributed to insured depository institutions or affiliates with a general discussion of the CRA. Such materials are solely an investment-marketing tool of an informational nature. Moreover, the information materials distributed by Freddie Mac do not discuss whether or how loans, services, investments or activities would impact a particular institution's CRA rating or performance.

These types of investment marketing tools are useful aids to facilitate affordable housing finance. They serve an important role in bringing liquidity to the market. If the secondary market is limited in its ability to market low- and moderate-income mortgage-related securities there is the possibility that, as a consequence, insured depository institutions will engage in less low- and moderate-income lending because they may find such loans to be less liquid. Congress did not mean for this unintended consequence to occur.

Therefore, Freddie Mac respectfully recommends the following example for inclusion in the Final Rule:

(iii) Examples of actions that are not CRA contacts. A secondary market institution sends a marketing publication to financial institutions offering investment information, including CRA investment information. An insured depository institution that receives

the marketing publication discusses with the secondary market institution the CRA investment information. A discussion of whether or how loans, services, investments or activities would impact a particular institution's CRA rating or performance does not occur.

D. *Alternatively, if the definitions of "covered agreement" or "CRA contact" are not amended or modified, the Federal Reserve Board should exercise its discretion in this area to provide an exemption for CRA contacts that occur in connection with the purchase of loans and securities, or the sale, marketing or securitization of loans by an insured depository institution or affiliate on an arm's length basis in the secondary market even where the negotiation of the agreement included a general discussion of the effect of the transaction on the CRA performance of the insured depository institution or affiliate.*

The GLB Act grants the Federal Reserve Board the ability to determine, by regulation, that specific types of contacts are exempt and, consequently, that a related agreement is not covered by section 711. Freddie Mac respectfully recommends that the Board should exercise its discretionary authority to provide an exemption for CRA contacts that occur in connection with the purchase of loans and securities, or the sale, marketing or securitization of loans by an insured depository institution or affiliate on an arm's length basis in the secondary market even where the negotiation of the agreement included a general discussion of the effect of the transaction on the CRA performance of the insured depository institution or affiliate. These types of agreements are part of the day-to-day business operations of the secondary market and insured depository institutions. They do not involve any coercive activities. They simply represent the manner in which securities are bought and sold and loans are bought, sold or securitized.

Freddie Mac helps ensure that a stable supply of low-cost mortgages is available for families in every type of neighborhood all across America. Lower mortgage rates reduce housing costs for both owners and renters and contribute to higher homeownership rates. Stable mortgage flows help moderate cyclical swings in the housing market, which in turn stabilize broader business-cycle activity.

Freddie Mac's charter ensures that we maintain a constant focus on financing America's housing. One manner in which this objective is achieved is by purchasing, selling or securitizing portfolios of low- and moderate-income home loans – thereby providing liquidity to the market. This is part of our public mission. This mission intersects with the goals of the CRA. Thus, securitization of a portfolio of loans may fulfill Freddie Mac's public mission and subsequent purchase of the securities by an investor, may also

fulfill the objectives of the CRA for covered insured depository institutions.[12] The benefit to the consumer is the continued availability of affordable housing because Freddie Mac is able to facilitate financing.

Freddie Mac believes that the exemption described above preserves the expansion of home-financing opportunities facilitated by the secondary market and recognizes that these agreements and transactions are part of day-to-day business operations. Arm's length agreements in the secondary market pertaining to affordable housing for low- and moderate-income families and borrowers living in underserved areas -- even if such agreements involve a general discussion of CRA eligibility for sales of mortgages or purchases of securities as Qualified Investments within the meaning of the Agencies' existing CRA regulations and interpretative materials -- are not the types of agreements Congress had in mind when it passed the GLB Act. Further, the exemption would have the efficacious result of signaling to the market that the continued expansion of home-financing opportunities will not be adversely impacted.

Therefore, Freddie Mac respectfully recommends the following exemption for inclusion in the Final Rule:

Exemption. CRA contacts that occur in connection with the purchase or sale of loans and/or securities, or the sale by an insured depository institution or affiliate, on an arm's length basis in the secondary market, even where the negotiation of the agreement included a general discussion of the effect of the transaction on the CRA performance of the insured depository institution or affiliate, are exempted from coverage.

3. CONCLUSION

For the reasons discussed above, it is clear that Congress did not intend to include secondary market activities, such as the those engaged in by Freddie Mac, within the scope of the CRA sunshine requirements. The legislative history provides a myriad of examples of the types of organizations intended to fall within the purview of Section 711. Neither Freddie Mac nor the secondary mortgage market is identified by the drafters of the legislation for inclusion. Freddie Mac's business relations with insured depository institutions or their affiliates involve facilitating the financing of affordable housing for low- and moderate-income American families. Discussions of products, services, loans and investments pertaining to affordable low- and moderate-income housing are part of Freddie Mac's day-to-day business operations to facilitate such financing.

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[12] Peter E. Mahoney, *From Command to Demand: Creating Markets for "CRA Securities,"* 7 SPG J. Affordable Housing & Community Dev. L. 254 (1998). *See* FFIEC Agency interpretations cited and discussed therein.

Freddie Mac will continue to work with the Agencies to achieve our mutual goals of expanding homeownership opportunities and access to decent affordable rental housing.

We appreciate the opportunity to comment on the proposed rule. Please contact me if we may be of further service.

Sincerely,

Mitchell Delk