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Washington, D.C. 20219
Attn: Docket # 00-11

Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552
Attn: Docket # 2000-44

Re: Gramm-Leach-Bliley "Sunshine" Provisions of the Community Reinvestment Act (Joint Notice of Proposed Rulemaking)

Thank you for the opportunity to comment on the regulatory proposal to implement the Gramm-Leach-Bliley "Sunshine" Provisions of the Community Reinvestment Act (the "Proposed Rule" or "Proposal"). Household International, Inc., and its financial institution subsidiaries, Household Bank (Nevada), N.A., Household Bank (SB), N.A., Beneficial National Bank USA, and Household Bank, f.s.b. (collectively "Household"), respectfully provide comments to the Proposed Rule.

General Background

Household International, Inc., as the parent of four depository institutions subject to the Community Reinvestment Act ("CRA") is one of the largest issuers of MasterCard, VISA, and private label credit cards in the United States. In addition, one of those subsidiaries, Household Bank, f.s.b., originates auto loans, commercial credit card loans, and both secured and unsecured non-credit card

consumer loans. Household has been at the leading edge of CRA compliance over the past several years, with two of its credit card banks subject to the first CRA strategic plan approved by the Office of the Comptroller of the Currency ("OCC") and its thrift subject to the first CRA strategic plan approved by the Office of Thrift Supervision ("OTS"). In fulfillment of CRA, Household provides millions of dollars to organizations in its various assessment areas for reinvestment, lending, and general funding purposes. These funds are lent and donated as part of ongoing relationships that our institutions have developed with community leaders and other persons involved in community reinvestment.

While we recognize that many of the reporting burdens contained in the Proposal are mandated by Section 711 of the Gramm-Leach-Bliley Act ("GLB"), there may be areas where the length of the regulation, confusion and regulatory burden can be minimized. To this extent, we provide the following comments. (For ease of reference, all citations are to the OCC version of the Proposal.)

Covered Agreements, Section 35.2(a)

Some further clarification in this section could be useful, although we do not suggest lengthening the definition through detailed examples. One way to achieve the same point as some of the illustrations is to define what is a "writing" with shorter examples. For instance, it could be stated in the rule that a writing includes an exchange of letters concerning a grant, or a written commitment to participate in a loan pool in response to a written or oral request from a "person."

One other clarification that could be helpful would address the concern that, in the case, for example, where a bank invests as part of a consortium, only the initial "first level" of investment need be disclosed and reported on. For instance, a community organization may organize a group of banks into a partnership that invests in projects that are eligible for low-income housing tax credits. Such projects often span terms of over ten years, and may be highly complex. Consistent with safe and sound banking practices, participating institutions will perform a thorough review of the documentation and structure of the individual investments. Files and documentation including various subsidiary agreements related to these transactions maintained by the bank may be copious. However, for purposes of Section 711, it is our interpretation that only the initial commitment to participate in the partnership constitutes a "covered agreement." Thus, the rule should clarify that it is this commitment letter or agreement that should be subject to disclosure requirements, not the documents related to the subsequent partnership investments.

Exemption for Certain Loans, Section 35.2(b)(1)

We suggest that the terms "substantially below market rates" and "re-lending" be defined. A possible definition for "substantially below market rates" could relate to the bank's cost of funds at the time of loan origination. "Re-lending" should be determined by the intent of the transaction, for instance, to permit the organization receiving the funds to make loans using the funds that were borrowed or on deposit from the depository institution.

CRA Contacts, Section 35.2(b)(2)

Section 35.2(b)(2)(ii), providing examples of "CRA Contacts," is one of the longest and most confusing sections in the Proposal. Moreover, because it attempts to define various types of communication, it could easily discourage or "chill" speech that takes place between community organizations and financial institutions, a result at odds with the purpose of CRA. Thus, we suggest the examples be eliminated.

We recognize that Section 35.2(b)(2) restates the exemption provided in GLB for agreements entered into by an institution with an entity who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution concerning the CRA. This one exemption appears to be the only basis for the lengthy definition of "CRA contact." In the case of our institutions, and we suspect it is the case for many institutions, this exemption would likely not be available for our currently existing agreements that could be considered "covered" if entered into once the regulation is in effect. In the case of Household, because of the size of our institutions and the fact that we have virtually no traditional branch-based retail operations, all of our CRA compliance is managed by CRA officers and managers across the country. These individuals maintain contact with community representatives in their respective assessment areas, and manage all of the types of investments and grants that are considered "covered agreements" under Section 711. It would be ingenuous for us to argue that any "agreement" related to community development and handled by such an individual did not involve some comment or implicit understanding that the agreement concerned CRA.

As a result, in the interest of a shorter, more readable definition of "covered agreement," perhaps a more concise presumption could replace the lengthy definition of "CRA contact" and list of examples. For instance, the final rule could provide something to the effect that a "CRA contact" will be presumed in the case of any agreement that either (i) was entered into by a financial institution within 60 days of that institution's corporate application to an agency where CRA

performance is a factor in the agency's ultimate decision or (ii) is included by the institution with information it desires to be considered for its CRA rating as part of a CRA examination or in connection with a corporate application.[1] Something along these lines should cover the types of "agreements" that Senator Gramm was seeking to bring to light, while providing more a "bright-line" test that is less likely to endanger free communication between financial institutions and community representatives. As a final note, in cases that fall under the presumption, perhaps there could be a standard form that the institution could provide to the other party to the agreement noting that it considered the agreement to be subject to the Section 711 disclosure requirements.

Fulfillment of CRA, Section 35.2(c)

Generally, this section appears to include an appropriate definition. Our only concern is that, as noted in the preamble to the Proposal, the regulatory agencies take fair lending compliance into consideration when assigning an institution's CRA rating. This raises the question of whether an institution's agreement with a third party consultant, law firm, or other entity to assist it with fair lending compliance or other issues would be considered "covered" under the rule. In every such case, even the existence of these agreements should be considered confidential. There is no indication that these types of agreements were intended to be covered under Section 711, and an assurance in the final rule that such agreements remain confidential will only serve to aid fair lending compliance.

Confidentiality, Section 35.4(b)(ii)

This section as proposed allows a person, institution, or affiliate to maintain as confidential "only those portions of an agreement that the relevant supervisory agency determines are exempt from disclosure under the Freedom of Information Act." The problem with this section is that it provides no information regarding a process by which such a determination would be made. And, as the rule is currently written, it could put an enormous burden on the agencies determining whether countless sections of countless agreements would be considered exempt from disclosure under FOIA.

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[1] While this would appear to be an "after the fact" determination, in fact an institution would need to decide up front whether it ever wanted to use any part of the agreement for such purposes. If it did not disclose the agreement and follow the reporting requirements, the subject loans, investments or grants could never be used for CRA credit.

A more workable solution may be to first put the FOIA criteria (primarily confidential trade secrets, commercial or financial information) in this section[2] and then place the burden on the parties to the agreement to determine what should be confidential under this standard. At the same time, each supervisory agency will have, or can obtain, a copy of the full agreement. Should a member of the public request a document from the supervisory agency, or, request it from an institution and feel that too much of it has been withheld (or, that individual could go through the existing FOIA process in place at each agency to try to obtain a more complete version. Knowing that this route is available should encourage the parties to make a good faith effort to disclose as much as possible in the first instance so that the institution's supervisory agency need not get involved.

Disclosure, Section 35.4

The language of the statute requires institutions to make the agreements "available" to the public and the relevant supervisory agency. We are concerned that the requirement in the regulation that all covered agreements be kept in the public file and mailed to the regulators creates unnecessary burden that is not required by the statute, and may just lead to more confusion than enlightenment. While the public file is an appropriate place to start, we suggest that a more effective and less burdensome approach would be to keep a list of the agreements in the public file (including a short description of each agreement, the purpose, the parties, etc.). This list would be easier to read than searching through the public file (which, under the current proposal, could become the public filing cabinet or public filing room). Moreover, the rule could provide that individuals or regulators could request any of the agreements on the list, with an appropriate timeframe (ten days or so) for response. Finally, the rule could require that with each annual report filed under Section 35.5(e), an institution include this list of all agreement signed in the past 12 months.

Annual Reports, Sections 35.5(d), (e), (f)

The Proposal provides with respect to both "persons" and institutions that if they are party to five or more agreements, consolidated reporting is permissible. The reporting requirements are onerous enough that we suggest that consolidated reporting should be available in any case where an institution (or two or more institutions that are reviewed together for CRA purposes) is party to more than one agreement.

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[2] The section could read: "a person, insured depository institution, or affiliate may withhold from disclosure only those portions of an agreement that consist of confidential trade secrets, financial or commercial information."

As an added note, as the law and Proposed Rule allow "persons" to file their reports by providing them to the relevant institution (thereby requiring the institution to file the reports within 30 days), we believe that the regulation should include a statement to the effect that depository institutions have no responsibility for the accuracy or timeliness of the person's annual report other than to submit the report to the supervisory agency within 30 days of receipt. In addition, in order to greatly help institutions with widespread operations, that the rule should require a person choosing this option to submit the report to the attention of a specific person, such as the CRA officer or president of the affected institution.

Location of Regulation

We support the placement of the Section 711 regulations as separate from the existing CRA regulation, as it will be a clearer approach that will hopefully be more understandable particularly for parties to covered agreements who are not financial institutions.

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We appreciate the opportunity to comment on this proposal.

Sincerely,

Martha Pampel/met

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