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July 21, 2000

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW
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

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

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

Re: Proposed Regulation on the Disclosure and Reporting of CRA-Related Agreements; 65 FR 31961; May 19, 2000

On behalf of the Consumer Bankers Association,[1] we want to thank you for the opportunity to comment on the Joint Notice of Proposed Rulemaking regarding the Disclosure and Reporting of CRA-Related Agreements (the "Proposal").

[1] The Consumer Bankers Association (CBA) is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in community development, consumer finance (auto, home equity and education), electronic retail delivery systems, bank sales of investment products, and small business services. CBA was founded in 1919 and provides leadership and representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include 85% of the nation's largest 50 bank holding companies and hold two-thirds of the industry's total assets.

First, we wish to applaud the agencies' efforts in developing the Proposal. After considerable effort, you have offered an approach that—though we differ on some particulars—is thoughtful and comprehensive.

The overriding theme of our comments it is the need to maintain coverage that accomplishes the purposes of section 711 of the Gramm-Leach-Bliley Act ("section 711" or the "Act") while at the same time developing a manageable compliance regimen. We do not believe the Congress intended to create a significant compliance burden for financial institutions, but to prevent the application of the Community Reinvestment Act ("CRA") as a device to leverage grants or loans at a cost to the financial institution and its shareholders.

The Act clearly provides the agencies with the charge to keep costs to a minimum. It calls for each appropriate federal banking agency to prescribe regulations "requiring procedures reasonably designed to ensure and monitor compliance with the requirements" of the Act. The Act further requires that the regulations "do not impose an undue burden on the parties." Finally, the Federal Reserve Board is permitted to provide further exemptions under the section that provides an exemption for agreements where there have been no CRA contacts, consistent with the purposes of the Act, as well as to prevent evasions of that section.

The agencies are given explicit authority in this Act to create a regulation that is "reasonably designed to ensure...compliance." Yet we believe the rule could do more to achieve this end. It is the job of the agencies to take the substance of what is contained in the Act and make it work in the practical world of banks and banking, and in the context of the complex and arcane rules of CRA. We believe the Proposal, though it is an excellent beginning, has yet to achieve this, and our comments provide some suggestions and pose some further challenges in that direction.

We also recommend that a revised Proposal be reissued for comment, so that the final regulation can best achieve the goals intended by the Act. In a number of places throughout our comments, we point to areas in particular need of a further opportunity for comment.

What follows are our responses to the specific requests for comment posed in the Supplementary Information accompanying the Proposal. Throughout these comments, the word "institution" or "bank" means "insured depository institution or affiliate," except where the context clearly indicates otherwise, and the term "NGE" refers to "non-governmental entity or person."

II.A.1. Covered Agreements

The agencies invite comment on whether the rule should define the terms "contract," "arrangement" and "understanding" and, if so, what those definitions should be.

We recommend that an "agreement" be limited in scope to a binding contract or obligation. We recognize that the language of the Act defines an agreement to include an "understanding," which may suggest something less than a contract; however, the benefit of requiring a binding obligation is in the certainty and clarity it provides for both parties. In the absence of a contractual relationship, it is not always clear who the other party is to the agreement. Individuals, for example, may represent more than one NGE, and it may not always be clear—to the institution or the NGE—whose interests are being represented. More importantly, it is not always possible to determine with any certainty the terms or components of the agreement. Nevertheless, the Act calls for annual reporting of information relating to actions taken "pursuant to the agreement.[2]

For example, it would not be clear in the following circumstances when an exchange of letters constitutes a covered agreement, without the requirement of a binding contract to add certainty: A letter is received by a depository institution by a non-exempt NGE requesting that a branch of the institution be put in a particular neighborhood that would benefit the institution's CRA rating. The institution replies with a polite letter that a branch in that neighborhood is under consideration. Under the Proposal, there is no way to know whether or to what extent an "exchange of letters"—such as this example—"constitutes a written understanding" short of entering into the minds of the parties.

In the absence of greater certainty, managing compliance would be extremely difficult. Therefore, we would endorse a definition of "agreement" that requires a legally binding obligation.

II.A.2.a. Qualifying Loans

The agencies request comment on the application of this exemption to agreements that involve a commitment to make one or more loans or extensions of credit that meet the market rate and re-lending restrictions of the statute. In particular, comment is requested on whether this exemption provides an exemption only for a specific commitment to make a loan or extension of credit. In particular, comment is requested on whether this exemption provides an exemption only for a specific commitment to make a loan or extension of credit. Under this interpretation, the exemption would be available for a commitment by an insured depository institution or affiliate to provide a specific loan or extension of credit to one or more individuals or entities that is one market's terms and not for purposes for re-lending, such as a loan commitment typically made in the course of providing a line of credit to a small business. The agencies also request comment on whether this exemption includes an exemption for a commitment to make multiple loans that meet the Act's restrictions. Under this interpretation, a commitment to make any number or amount of loans that meet the Act's restrictions over a period of time would be

[2] Section (f)(1)(a) states that if the nongovernmental entity or person who is a party to an agreement willfully fails to comply with the Act in a material way, the "agreement shall be unenforceable." This section would appear to have no meaning if Congress intended that agreements did not have to be binding to begin with.

exempt from coverage. The agencies request comment on which interpretation of the exemption is more consistent with the language and purposes of the Act.

We support the disclosure of agreements with community organizations that are in fulfillment of CRA, none of which individually would otherwise have to be reported under the rule. We believe this is within the spirit of the Act, and an alternative construction, though permitted by the Act, might fail to capture a substantial number of agreements that were intended to be covered.

The agencies request comment on these exemptions. In particular, comment is invited on whether a mortgage loan includes any loan secured by real estate, or only a loan that is secured by real estate and made for the purchase or improvement of the real estate or for the refinancing of such a loan.

We would not draw a distinction between types of loans secured by real estate, other things being equal. The credit analysis used in extending such loans is similar in terms of the collateral that secures the loan, and we do not believe such a distinction is contemplated by the Act. We also recommend extending the mortgage exemption to mortgage-backed securities.

Comment is also invited on whether the agencies should define when loans are made at "substantially below market rates" and, if so, what that definition should be.

We are concerned that a bright-line test for "substantially below market rates" may fail to reflect differences among products, differences in geographies or differences over time. If it is necessary to set a threshold definition of "substantially below market," we recommend at least that the test be set forth in a proposed form, so that we may have an opportunity to comment on it before it is adopted.

II.A.2.b. Agreements With Persons Who Have Not Made a CRA Contact

The agencies request comment on various aspects of this exemption. In particular, the agencies invite comment on whether the rule should provide a more detailed definition of the exemption. The agencies also request comment on whether examples provided are appropriate and useful and, if so, whether other examples should be included or areas addressed with examples.

The agencies request comment on whether the rule should more specifically define the terms of the exemption for persons that have not made a CRA contact or more specifically define when a CRA contact has occurred and, if so, how a CRA contact should be defined.

In addition, the agencies request comment 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 under the CRA Regulations.

The concept of a "CRA contact" is critical to determining coverage under the Act. According the Act, a covered agreement does not include any agreement entered into by an insured depository institution or affiliate with a person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning CRA. Both the regulation and the preamble provide examples of the types of actions that would or would not be "CRA contacts" under the proposed rule. The preamble to the Proposal also suggests two alternatives that would narrow the scope the communication that would be considered a "CRA contact."

Nevertheless, as proposed and without further clarification, we believe that few institutions will be able to employ the exemption. The biggest problem is in determining, with any degree of certainty, whether anyone at the financial institution or at one of its affiliates has ever had any "contact"—however that term is defined—with the NGE. At many financial institutions, the size of the bank and its affiliates, the number of employees who have contact with the community, and the number of channels, makes the determination as to whether the bank or one of its affiliates has had a contact with any particular group virtually impossible. At larger institutions, in particular, there will be little if any opportunity to make use of the "CRA contacts" exemption, unless there is a way to reduce the risk of noncompliance. The result will be a large influx of unnecessary "CRA agreements" that were never intended to be part of the reporting requirement and that will burden the institutions and the regulators alike.

For this reason, it is critical that the institution has some certain means of knowing whether a person with whom it has entered into an agreement has had a "CRA contact." We recommend that the institution be permitted to limit the persons with whom a contact can be made, i.e. to persons with decision-making authority over CRA. The institution should be permitted to designate the person with such CRA responsibility, that is, the stipulated CRA Officer or the person with equivalent authority, regardless of his or her title. This would have the virtue of excluding the myriad inadvertent or inconsequential contacts that occur daily between employees of an institution and the community. At the same time, it would capture the vast majority of relevant contacts that ought to be included in the rule.

We recommend that a CRA contact would not occur if the NGE merely discusses with the institution or affiliate whether particular loans, services, or investments are <u>generally</u> eligible for consideration by an agency under the CRA regulations. The marketing of products and services to institutions often includes such general remarks concerning CRA eligibility, and these would not be considered CRA contacts under this alternative. However, a reference to whether or how loans, services investments, or activities would impact a particular institution's CRA rating or performance would continue to be considered a CRA contact.

We are also concerned about how the institution is supposed to determine whether the NGE that is the party to an agreement has ever had a CRA <u>contact with the agency</u>. We recommend that the agencies provide a list of relevant contacts periodically that the banks would could rely upon to determine if the agreement needs to be reported.

<u>Categories that should be excluded from CRA contacts.</u> Certain interactions, by definition, should be excluded from treatment as "CRA contacts." They are not the sort of contacts we

believe to have been contemplated by the Act, or are so broad as to prevent the practical application of the exception. These include:

1. Contacts initiated by an agency, e.g. examiners' meetings with community groups as a part of a CRA exam.

2. Contacts initiated by a bank or affiliate, e.g. an institution's report on its CRA performance to its Community Advisory Board or to community forums.

3. Public hearings and other public discussions related to the institution or affiliate.

4. Contacts made after an agreement is executed (as explained in greater detail below).

5. Routine inquiries about an institution's CRA rating or requests to review its CRA file.

6. Routine contacts requesting information about CRA or CRA regulations, and that are not in regard to the performance of the particular institution or its affiliate.

Additionally, the agencies request comment on whether there should be a temporal relationship between a CRA contact and when an agreement is made. In this regard, under the proposed rule, a covered agreement entered into in 2001 between an insured depository institution and a person would not be exempt if the person had submitted a comment to an agency concerning the CRA performance of the institution several years earlier.

For these reasons, the agencies specifically request comment on whether the rule should require that a CRA contact occur within a specified period, such as two years (or a shorter or longer period), before the parties entered into the agreement. Similarly, the agencies request comment on whether a CRA contact should include a contact that occurs after the parties enter into an agreement, such as within 90 days after the beginning of the term of the agreement, at any time during the term of the agreement, or some other period of time.

Unlimited time in which to determine whether or not there has been a "CRA contact" would create a serious practical problem. As worded, the Proposal places no limit on how far back the institution would need to go to determine if there has been a CRA contact with an NGE. This is a virtually impossible situation from a compliance management perspective. With the passage of time, information about communications becomes lost or unavailable; and as banks merge, restructure; and are acquired, and as employees come and go, accurate information about contacts becomes more difficult to obtain. In fact, the very nature of the institution or the NGE can change radically over time, and the longer the passage of time, the more likely they are to change.

Therefore, we recommend the adoption of a bright line temporal test for CRA contacts. We recommend only being concerned about contacts that occurred within a specified time prior to the agreement, which time would be determined by the agencies. However, we believe that anything shorter than several months would be inadequate, and anything longer than two years

would be excessive given the speed of our economy. We recommend that the agencies address this issue in a second round of comments, in order to identify an optimum amount of time to maximize the coverage and minimize the burden.

In addition, as noted above, we do not agree that a CRA contact should include a contact that occurs *after* the parties enter into an agreement. It is important that the parties know at the time an agreement is entered into, whether or not it is covered by the rule. If subsequent contacts can render an otherwise exempt agreement covered, every discussion between an institution or affiliate and an NGE would require the institution to review the records of every "agreement" (as defined by the rule) that was not previously reported. We believe this would be unworkable.

II.A.3. Fulfillment of the CRA

[T]he proposed rule provides that an agreement is in fulfillment of the CRA if it pertains to a "factor" that the agencies determine is "material" to an institution's rating or application – such as the institution's lending – rather than to the level of performance that the agencies determine is material to the CRA evaluation of that insured institution.

The agencies request comment on this reading of section 711 and on whether the list of factors properly identifies the "factors" that are material to a CRA evaluation.

We support this interpretation of Section 711.

*The agencies also request comment on whether the agencies have interpreted the statutory mandate to identify the "list of factors that * * * have a material impact" on an agency's decision to assign a CRA rating and to approve or disapprove an application under the CRA in a manner consistent with the language and purposes of section 711. In particular, comment is invited on whether the proposed list of factors that are considered to be in fulfillment of the CRA can and should be expanded, restricted, or altered consistent with the language and purpose of the Act. For example, although the agencies consider an insured depository institution's lending in all geographic areas and to borrowers of all income ranges for certain purposes in evaluating the institution's CRA performance, can and should the rule's list of factors focus on those types of lending (and other activities) that are reasonably likely to receive favorable consideration under the CRA Regulations, such as certain types of lending in LMI areas or to LMI borrowers?*

We agree that the rule ought to focus on those types of activities likely to receive *favorable* consideration under the CRA regulations.

The agencies note that the proposed rule's list of factors does not include performance of activities designed to ensure compliance with Federal laws that prohibit discriminatory or other illegal credit practices, such as [ECOA] and the [FHA]. . . . The agencies specifically request comment on whether this view is correct, or whether the list of factors should be expanded to include activities designed to ensure compliance with the fair lending laws.

We agree with this exclusion. We believe that there would be a detrimental and unintended impact associated with the inclusion of activities designed to ensure compliance with the fair lending laws in the list of factors that are material to an institution's CRA evaluation, and therefore subject to the Rule. One of the reasons that progress has been made in helping members of protected classes achieve homeownership has been the efforts of NGEs working in partnership with banks to educate and prepare potential homebuyers. Subjecting these organizations to the requirements of the Rule would subject them to potentially burdensome reporting requirements which could limit or deter their efforts on behalf of the protected classes. While the intent of the Rule is to require public reporting of agreements entered into in fulfillment of CRA, expanding its scope to include fair lending could decelerate fair lending activities and, therefore, we recommend that the Rule not apply to discourse or activities designed to enhance or ensure compliance with the fair lending laws.

Comment also is solicited on whether the list of factors should be expanded to include other activities. For example, the proposed rule's list of factors does not specifically include the provision of advisory or consulting services concerning CRA-related activities. Should the rule include a reference to these or other activities?

We agree that a number of categories of agreements need to be *explicitly* excluded, as not being in "fulfillment" of CRA. It is clear from the Act that, to be in fulfillment of CRA, an agreement must relate to factors that have "a material impact on the agency's decision...to approve or disapprove an application for a deposit facility...or...to assign a rating to an insured depository institution." Thus, agreements that are not considered by the agencies in such determinations are not within the scope of CRA agreements. Nevertheless, to avoid any ambiguity on the subject, it would be valuable for the rule to clearly delineate such agreements. Examples would include:

- Agreements with law firms to be employed in a lawyer/client relationship with the institution or affiliate;
- Agreements with consultants for advisory services that are not themselves within the scope of CRA;
- Agreements with trade associations;
- Software licensing agreements, such as agreements with for-profit vendors of CRA or fair lending tools, such as CRAWiz or Centrax.

Other types of agreements ought to be exempt from coverage under the agencies' authority to provide exemptions and to minimize the compliance burden. Examples include:

- Agreements with bank-owned or -created NGEs. We believe such bank-owned CDCs and loan funds are not the types of entities that were contemplated by the Act.
- Agreements with other institutions or affiliates.
- Agreements with standard business partners with whom an institution may have both CRA and non-CRA relationships (such as secondary market organizations and mortgage insurers).

II.A.4. Value

Under the proposal, an agreement that provides for payments to be made in any calendar year in excess of the dollar thresholds established by the statute is a covered agreement for its entire

term. The agencies believe that using a calendar year period for these calculations should facilitate compliance with the rule by providing all parties to a covered agreement a uniform basis for determining whether the agreement is covered by the rule and because the terms of an agreement may not coincide with the parties' fiscal years. The agencies invite comment on whether another 12-month period would provide a more appropriate basis for these calculations.

We support the application of the calendar year for value calculations to insure consistency with HMDA and CRA.

The agencies request comment on how the dollar thresholds in the statute should be applied in situations where an agreement does not have a specific term or does not specify a timetable for the disbursement of funds or resources under the agreement.

If the agreement does not have a specific term or timetable for disbursement and the total dollar amount committed meets the threshold of the rule, the agreement should be reported in its entirety only in the year it was signed. No assumption should be made that equal amounts over an equal period of time will be considered as part of the disbursement.

The agencies also invite comment on whether the rule should provide guidance on how to determine the value of an agreement that does not specify the amount of payments, grants, loans or other consideration to be provided under the agreement, such as an agreement for an insured depository institution to open a branch or to begin offering a new loan product.

We believe that the rule should give each party to a CRA agreement the discretion to determine, using its reasonable judgement, whether the value of such agreements exceeds the rules' $10,000 and $50,000 threshold.

II.A.5. Related Agreements Considered a Single Agreement

The agencies also request comment on how the rule and the exemption discussed above should apply in circumstances where a covered agreement involves several parties and a CRA contact has been made by or concerning only one of the parties.

When a contact is made with a single member of, for example, a lending group of institutions, only the party actually contacted should be considered under the regulations to have had a contact. We do not believe that the Act contemplates indirect contacts and the attribution of the content of such contacts to parties not actually in receipt of the original message.

The agencies request comment on the aggregation rules included in section ___.3, including the proposed definition of "substantively related contracts" and whether there are alternative definitions that would achieve the purposes of the statute. The agencies also request comment on how these aggregation rules should apply when a CRA contact has not occurred prior to one of the agreements or was made by only one of the persons that is a party to the agreements. For example, when a single person enters into two agreements with an insured depository institution

during a 12-month period, but engages in a CRA contact between the first and second agreements, should the first agreement be excluded from aggregation because a CRA contact had not occurred at the time it was entered into? Alternatively, should the agreements be aggregated because a CRA contact occurred prior to the second agreement and the agreements otherwise meet the requirements for aggregation under the rule?

As noted above, only CRA contacts that take place prior to a depository institutions reaching an agreement with a person should be relevant to the determination. Even if an earlier agreement had been entered into prior to a contact with a person who enters into another agreement with such institution, the contact should be deemed to relate only to agreements *after* the contact. This interpretation is consistent with the statute's requirement that a contact (or testimony) have occurred (or been provided) before the agreement is concluded.

II.B.1-4. Disclosure of Covered Agreements

The agencies request comment on all aspects of the rule's public disclosure requirements. Comment is sought on whether the rule should include illustrative examples of how a party may make an agreement available to a member of the public and, if so, whether there are additional methods (other than those discussed above) should be allowed for making an agreement available to the public. For example, should the rule explicitly allow a person to arrange for another entity or individual to make the person's covered agreements available to the public, or allow a party to recover reasonable fees for searching its records for a covered agreement.

Comment also is requested on whether affiliates of insured depository institutions should be permitted to disclose an agreement to the public by placing the agreement in the CRA public file of an affiliated insured depository institution.

We urge flexibility in the reporting format, in order to limit the burden on the parties and reduce the excessive use of paper. Institutions need to provide the agreements to the agencies in a manageable form. Larger institutions in particular will have many hundreds of agreements that would need to be reported throughout the year. Permitting them to use a streamlined format for reporting and disclosing the agreements—to both the agencies and the public—could dramatically reduce their compliance costs, and would at the same time reduce the unnecessary production and flow of paper.

We believe the Act supports this approach. It requires that an agreement "shall be *in its entirety fully disclosed*, and the *full text thereof made available* to the appropriate Federal banking agency....." [emphasis added]. Therefore, the Act draws a distinction between fully disclosing the agreement and making the "full text" available. We believe this language clearly supports the view that—at a minimum—the *substance* of an agreement should be disclosed and reported – in a form that may be determined by the regulation—and the text made available for review.

There are numerous ways to accomplish this, and we suggest that institutions be given flexibility to make agreements public in a number of ways; for example, placement of a list of agreements and/or the agreements themselves on a web site or in the public file. Given the large number of

agreements that could be included, and the fact that few people ever look in an institution's CRA public comment file, it should be permissible to include a *listing of agreements* in the file, and provide the agreements themselves upon request.

We also suggest that you consider permitting institutions to report agreements, at their option, once every six months, rather than mandating that disclosure be continuously made, as agreements are made. This would reduce the burden on the institutions substantially by allowing them to gather agreements and disclose them less frequently. Disclosing agreements year round would be unnecessarily costly for institutions that have many to report, and will not significantly benefit the agencies or the public.

II.C. Annual Reports

Are there additional ways that he agencies could reduce the reporting burden on persons consistent with the language and purposes of the Act? For example, should the agencies issue optional sample reporting forms that might be used by a person, insured depository institution or affiliate?

We support agency efforts to reduce the reporting burden. As noted elsewhere, this can be accomplished by permitting flexibility in reporting, and providing streamlined mechanisms.

To reduce burden, the proposed rule would allow an insured depository institution or affiliate that is a party to 5 or more covered agreements to file a single consolidated report relating to all the agreements. The agencies request comment on whether an insured depository institution or affiliate should be permitted to file a consolidated report if it is a party to 2 or more covered agreements, and whether the rule can and should allow an insured depository institution or affiliate to not file an annual report for any fiscal year in which the institution or affiliate did not provide or receive any payments, fees or loans under the agreement.

We support allowing consolidated reports. We also concur that an institution should not have to file an annual report in a year in which there are no covered agreements.

II.B.5. Treatment of Confidential or Proprietary Information;

The agencies welcome comment on whether covered agreements are likely to contain confidential or proprietary information the disclosure of which would harm the parties to the agreement given the definition of covered agreements.

The agencies also request comment on whether, and if so to what degree, such information may be withheld from public disclosure under section 711.

Covered agreements might well contain confidential or proprietary information the disclosure of which could harm a recipient of a grant, loan or investment. Examples include: (i) information that raises security concerns, such as account numbers of individuals and organizations and (ii)

non-public information, such as unlisted phone numbers. There might be circumstances where disclosure of terms, such as reps and warrantees, could materially harm the recipient of a grant or loan because it could, for example, expose the financial condition of the recipient.

Covered agreements might also contain information, such as underwriting criteria, rates and terms, that could harm financial institutions and their affiliates, if disclosed. Institutions need the flexibility to price products differently for different customers. Many issues come into play in pricing decisions, including but not limited to the overall relationship with the customer; the desire to build market share in a particular niche; and the desire to encourage deeper customer relationship. If institutions must make these prices public, the results might be anti-competitive, as non-profits become privy to private customer terms and conditions that they can use to extract further concessions from banks. In addition, banks would be able to see details of competitors' pricing, with unintended consequences on the market.

We are also concerned that some of the terms required to be released could directly conflict with principles of privacy and customer confidentiality. Institutions will need clear guidance on what is required notwithstanding common law, statutory or contractual protections against the release of private or confidential customer information. And, as noted below, a safe harbor is needed to protect those who may inadvertently and in good faith overdisclose, since the guidelines may not always be sufficiently clear.

If covered agreements typically contain particular types of information that may be properly withheld from public disclosure under section 711, should the rule specify these types of information and allow the parties to withhold this information without seeking prior agency review or in lieu of the agency review process?

The Rule should specify certain types of information that parties can withhold without using the agency review process. This would include anything that is needed to protect privacy or confidentiality, including account numbers and unlisted phone numbers. In addition, an institution should be permitted to withhold any information that may reveal its underwriting or cost-of-funds.

In regard to pricing, we recommend that the institution be permitted to report the dollar amount of the agreement in tranches, or ranges—to be determined by the agencies—above the threshold amounts for reporting. This would both simplify reporting—without significantly reducing the value of the information being provided—and protect the proprietary information regarding the exact pricing set forth in the agreement.

The agencies also invite comment on whether the proposed agency review process is useful and practicable and whether there are alternative or additional procedures that the agencies can and should implement under section 711 to protect confidential and proprietary information.

While we agree that the agency review process will be useful, we are concerned that it will be unduly burdensome on the parties to the agreements and on the resources of the agencies unless the agencies *also* carve out categories of information that can always be withheld. In the absence of such delineated categories, the review requirement will lead to an unduly large volume of

requests for protection, because parties may need to submit virtually all their agreements, even agreements for which there might never be a request for information from the public.

In addition, we recommend that, where there are multiple parties to an agreement an that are regulated by different agencies, the parties should be permitted, at their discretion, to send the document to just one agency for review and that that agency's determinations be dispositive for all the parties.

The agencies also invite comment on whether the rule should specifically permit a party that has requested agency review of a covered agreement to delay disclosing the agreement to the public until the agency rules on the request.

To protect information that may be deemed confidential, parties should be allowed to delay disclosing those parts of the agreement until the agencies rule on the request. However, the parties should be required to disclose the remaining parts of the agreement.

Finally, the agencies should clarify that a good faith overdisclosure of private or confidential information is not in violation of the Act. Institutions may find themselves in an awkward position as they attempt to determine in each case when the requirements of the Act supersede the need to maintain confidentiality or privacy of the information in the agreement. Should they err on the side of disclosure, they will be in need of a "safe harbor" from potential liability.

III. Placement of Proposed Rule

The agencies request comment on whether users would find it more convenient if the proposed rule were incorporated into the agencies' existing CRA Regulations and, if so, how the agencies could make clear that the rule does not in any way affect the CRA.

We strongly support the decision to maintain separate rules from CRA Regulations. Incorporating them in the CRA Regulations would only create confusion and leave the misimpression that they are part of CRA, affecting the evaluation of an institution's performance.

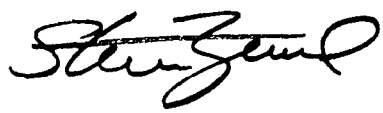
IV. Regulatory Flexibility Act

The agencies request public comment on all aspects of the collections of information contained in this proposed rule, including how burdensome it would be for persons, insured depository institutions, and affiliates to comply with each of the reporting and disclosure requirements of the proposed rule.

We believe that implementation of the proposed rule will require substantial resources by insured depository institutions and their affiliates. According, we encourage the agencies to adopt a regulation that minimizes regulatory burden, consistent with the requirements of Section 711.

Thank you for the opportunity to provide our comments. If we can be of any further assistance, please let us know.

Very truly yours,



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