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America's Community Bankers®

Diane M. Casey
President & Chief Executive Officer

July 21, 2000

Ms. Jennifer J. Johnson
Secretary
Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Docket No. R-1069

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Comments/OES; RIN 3064-AC33

Communications Division
Third Floor
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, DC 20219
Docket No. 00-11; RIN 1557-AB85

Manager, Dissemination Branch
Information Management and
Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Docket No. 2000-44; RIN 1550-AB32

Re: Disclosure and Reporting of CRA-Related Agreements
65 FR 31962 (May 19, 2000)

Dear Sir or Madam:

America's Community Bankers (ACB) welcomes the opportunity to comment on the joint proposal[1] issued by the four federal banking agencies to implement the CRA disclosure and reporting requirements in Section 711 of the Gramm-Leach-Bliley Act (GLB). ACB represents the nation's community banks of all charter types and sizes. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

The proposal jointly issued by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), and the Office of Thrift Supervision (OTS) (the Agencies) implements the new disclosure and reporting requirements applicable to certain Community Reinvestment Act[2] (CRA) related agreements. The proposal:

[1] 65 Fed. Reg. 31962 (May 19, 2000).
[2] 12 U.S.C. 2901 et. seq.

- Identifies the types of written agreements that are covered by section 711 and defines many of the terms used in the statute;

- Describes how the parties to a covered agreement must make the agreement available to the public and the relevant supervisory agencies; and

- Explains the type of information that must be included in the annual report filed by a party to a covered agreement.

ACB believes that the proposal is overly broad and, if adopted as proposed, will result in a significant paperwork and regulatory burden for many insured institutions that will not be outweighed by any possible benefits. While the statutory provision itself is very broad, the proposal contains definitions that would include a wide array of arrangements in the scope of covered agreements and will lead to a number of negative consequences. Resources will be spent complying with the disclosure and reporting of CRA-related agreements and not serving the community. Fewer creative or innovative partnerships will be formed because of competitive and privacy concerns. Business arrangements beneficial to the community may be disrupted because of an unwillingness to disclose contracts. It is important that the Agencies develop an implementing regulation that will not impose undue burden, will not potentially harm competitive arrangements, and will not sacrifice the privacy of the parties.

Community-based institutions will have to allocate additional resources and develop a mechanism for determining whether a CRA contact has occurred. They will have to administer the disclosure and reporting process. All of these activities are costly and time consuming. Insured institutions of all types and sizes will have to develop a system for determining when a CRA contact has occurred based on the current definition. This will involve training all areas of the institution as well as monitoring the outside discussions of employees who serve on the boards of groups in the community. For larger institutions that serve multiple markets the disclosure and reporting burden will be immense. The administration of compliance will require the readjustment of systems and development of procedures to ensure that all covered agreements are captured.

ACB strongly opposes the proposal as drafted and believes it fails to satisfy the intent of Congress.

We request that the Agencies develop a second notice of proposed rulemaking based on the comments received. The issues are so complex and numerous, we believe that all interested parties would benefit from the additional insight gained from this round of comments. Going forward with this version, or even a slightly modified version, will be detrimental to average community bankers and their local partners who have worked diligently to foster strong working relationships to better their communities. Ultimately, it is in the best interests of insured institutions and their communities to develop a workable regulation.

General

Most ACB members are traditional home mortgage and community lenders. Service to community is the hallmark of business strategy and operations of ACB members. Commitment to homeownership, provision of financial services to families and businesses in the community, removing needless barriers to credit and investing in the community are important facets of the daily philosophy of management at ACB member institutions. As a result, one of the policies adopted by ACB's Board of Directors clearly states support for the goals and purpose of CRA. While ACB supports the intent of CRA, we have misgivings about its implementation and the extensive regulatory interpretation of what is a very simple statute. This proposal overlays an additional layer of complexity to an already elaborate compliance challenge for insured institutions. In addition, the nongovernmental entities and persons that are parties to the agreements, most of which are non-profits with limited budgets and staff, will face an enormous compliance burden.

ACB believes that the proposal as drafted will be a step back in the evolution of relationships between insured institutions and the communities they serve. The statute is drafted broadly and the proposal does not narrowly define the agreements covered by the requirements, with the result that many arrangements and agreements entered into in the regular course of day-to-day business may be subject to the disclosure and reporting requirements. The parties may not be inclined to enter into such agreements going forward. The irony of this proposal is the better that an insured institution is at forging partnerships or arrangements with nongovernmental entities or persons, the more significantly they will be burdened.

ACB recently issued a publication called *Models That Work*, a compendium of 50 successful local public-private partnerships across the country that have provided an opportunity for residents to have the American dream of homeownership. These creative and innovative strategies are diverse as the communities they serve – but have one common element – they work. Unfortunately, this proposal, as it is now written, may greatly inhibit such partnerships, to the detriment of the community. A copy of *Models That Work* is attached to this letter.

Both the statute[3] and the Conference Report language require that the Agencies ensure that the regulations prescribed do not impose any undue burden on the parties and that proprietary and confidential information is protected. The proposal does not ensure either of those things. The regulatory burden will be extensive. Many insured institutions, their community partners, and their business associates may not believe that they have entered into agreements or arrangements that must be disclosed. In fact, in many instances, the nongovernmental entity that is a party to an agreement with an insured institution may be the result of a business relationship and not the result of community partnership. The breadth of the proposal requires that confidential agreements may be required to be disclosed, agreements disclosed that will put one of the parties at a competitive disadvantage.

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[3] Pub. L. 106-102, 113 Stat. 1338 (1999).

ACB believes:

- The proposal must be redrafted to adequately reflect the intent of Congress and not to disrupt the creative and innovative partnerships that have made CRA successful;
- The proposal is overly burdensome and should more narrowly define the terms that trigger the disclosures and reporting requirements;
- An agreement should be a binding contract between the parties;
- The comment/testify alternative should be adopted to more narrowly determine whether a CRA contact has occurred;
- Disclosure requirements should not be triggered if there is more than six months between the CRA contact and the commitment by the insured institution or its affiliate and the CRA contact;
- The exemptions should be expanded to specifically include agreements with law firms, consultants, data providers and the secondary market agencies.

Background

The proposal implements the so-called CRA "Sunshine" provisions of Section 711 of GLB.[4] The statute amended the Federal Deposit Insurance Act to add a new Section 48[5] requiring the parties to certain CRA-related agreements to make the agreements available to the public and the appropriate federal banking agency.

The proposal applies to written contracts, arrangements, and understandings that are entered into by an insured depository institution or an affiliate and a nongovernmental entity or person, are entered into pursuant to or in connection with the fulfillment of CRA, and call for an insured depository institution or affiliate to provide cash payments or other consideration with an aggregate value of more than $10,000 in any year, or loans with an aggregate value of more than $50,000 in any year. Such an agreement is a "covered agreement." The proposal provides that an agreement may be covered even if the agreement is not legally binding on the parties.

A covered agreement generally would be considered in fulfillment of CRA if it involved the performance of any activity that might be considered material by the federal banking agency in evaluating CRA performance of an insured depository institution in a CRA examination, or application for deposit facility, or called for any person to provide comments or testimony to a federal banking agency concerning CRA performance of an insured institution. An agreement

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[4] Id.
[5] 12 U.S.C. 1831y.

would not be a covered agreement if it falls into one or more of the exemption categories outlined. The standard proposed to be used to determine whether an activity or contact is in fulfillment of CRA is the list of factors that the federal banking agencies have determined have a material impact on the agency's decision to approve or disapprove an application for a depository facility or to assign a rating to the institution.

The statute specifies that covered agreements be those between an insured institution and a nongovernmental entity or person. Exemptions are provided in the statute and the Federal Reserve is given the authority to adopt other specific exemptions. We note that the Agencies have failed to include any specific exemptions in the proposal pursuant to this authority. The statutory exemptions include:

- any individual mortgage loan;
- any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities, if the funds are loaned at rates not substantially below market rates and if the purpose of the loan or extension of credit does not include any relending of the borrowed funds to other parties; or
- any agreement between an insured depository institution or affiliate with a nongovernmental entity or person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution concerning CRA.

A Covered Agreement

ACB is concerned about the broad interpretation of "agreement." While the statute provides the definition: "any written contract, written arrangement, or other written understanding that provides for cash payments, grants, or other consideration..."[6] The proposal has broadened the definition in several respects. First, an agreement need not be legally binding.[7] This would mean that an informal arrangement based on a longstanding understanding would meet the definition if it were reduced to writing. We strongly believe that deeming a non-legally binding agreement to be an agreement for these purposes would significantly disrupt the normal business arrangements entered into by institutions and nongovernmental entities or persons.

We strongly recommend that an arrangement or agreement that is not legally binding on the parties not be considered a covered agreement. ACB believes that for an agreement to become a covered agreement, the parties must believe they have a binding contract. We request that the Agencies define the terms "contract," "arrangement" and "understanding" as they are defined in commercial settings. To do otherwise would create an alternative set of principles for contracts

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[6] Id.
[7] 65 Fed. Reg. 31965 (May 19, 2000).

that would conflict with and work at cross purposes to established business and commercial arrangements.

Further, the designation that a CRA contact has occurred is unnecessarily broad.[8] A discussion about CRA between an insured institution and another entity on a business matter should not be a CRA contact. Under the proposal, such a discussion can become a CRA contact if a discussion of the CRA performance of the insured institution is part of the conversation. We believe that a nongovernmental entity or person should have commented or testified regarding the institution and its CRA performance or such possibility discussed for a CRA contact to be initiated. Finally, fulfillment of CRA is the list of factors the Agencies determine to have a material impact on the agency's decision to assign a rating or approve an application. The list of factors does not make a distinction as to whether the materiality of the performance of the activity is taken into account relative to the size and business of the insured institution. Failing to make this distinction will also have the effect of disrupting arrangements entered into in the normal course of business.

We agree with the Agencies that a "covered agreement" must be between an insured institution and another party.[9] While a unilateral agreement by one of the parties may signal the intention to perform specified actions, either making a financial commitment or commenting on a CRA matter, an agreement requires the action of both parties.

CRA Contact

The triggering factor for most potentially covered agreements is the determination of whether there is a "CRA contact." The Agencies have separated the questions of whether there is a CRA contact into a number of examples and also have provided exemptions. The proposal also refers to CRA contact with a federal banking agency as distinguished from CRA contact with the insured institution or affiliate.

Examples of a CRA contact are provided in the proposal. Generally, such a contact would include the submission of comments to a federal banking agency on the CRA performance of an insured institution, contacting an institution or affiliate about providing, or refraining from providing, CRA-related comments to a banking agency, or contacting an institution or affiliate about the institution's CRA performance.

ACB agrees with the Agencies' determination that CRA contact with the agency should be even further broken down into whether the agency requested the comment or testimony or whether the party submitted comments in response to a widely disseminated request. If a nongovernmental entity or person is responding to a specific request for comments, this activity should not trigger a disclosure requirement. If the nongovernmental entity or person responds to general

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[8] Id. at 31966.
[9] Id. at 31965.

solicitation of comments by the agency, this would trigger the requirements of the proposal. However, ACB believes that there must be some nexus between the comment to the agency and a CRA contact.

For example, if a national organization chooses to comment on an application filed by an insured institution because it files comments on all applications, and subsequently the insured institution or an affiliate makes a contribution to the organization, there should be some reasonable belief that the events are related. If the national organization comments, and subsequently an insured institution makes a contribution meeting the other requirements of the proposal to a local chapter of the national organization, that action must not trigger a CRA contact. CRA is a locally based, geographically driven statute. Arrangements entered into with community and other groups are driven by local needs. Community banks determine their level of involvement with particular groups based on the experiences they have. To establish a system under which the comments of a non-local entity may trigger a disclosure requirement is carrying the requirements of the statute to an absurd extreme.

In connection with the CRA contact with the insured institution or affiliate, ACB believes that the proposal is so overly broad that it will lead to significant confusion about what is a CRA contact. In particular, because the Agencies state that a discussion or CRA contact does not have to include certain words or phrases, for example, CRA or CRA rating,[10] we believe that there is a too great a possibility that subjective judgments will be made about whether a CRA contact has occurred. The preamble states that the substance and context of the discussion will control.[11] This may lead to one party filing disclosures because it believes that a CRA contact has been made and the other party not making these disclosures.

If this standard is adopted in the final rule, we request that the Agencies not criticize insured institutions that in good faith did not believe that there had been a CRA contact because of their recollection of the substance and context of discussions. Alternatively, guidance should be developed to enable the parties to make more objective decisions.

The adoption of such a subjective standard for determining the existence of a CRA contact will damage the positive relationships developed by community banks, their partners, and their communities. Employees of the institutions will not be able to have informal conversations that address the needs of the community without fear that the conversation will require the disclosure of a business transaction that the community may need. This will disrupt cooperative work done in communities and will be a set back for community bankers who have diligently worked to serve the community's needs.

The preamble to the proposal discusses two alternative interpretations that would change the scope of the actions that would be considered CRA contacts. They are: the eligibility alternative

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[10] Id. at 31967.
[11] Id.

and the comment/testify alternative. Under the eligibility alternative, a person would not be found to have made a CRA contact if the person merely discussed with the institution or its affiliate whether certain loans, products, services, investments or community activities are generally eligible for consideration for purposes of meeting CRA requirements by a federal banking agency. The marketing of products and services to insured institutions may include a discussion of eligibility for credit under CRA. Such discussions may be useful for insured institutions and are a commonly accepted business practice. However, a discussion of the potential effect of the loans, services, investments or activities on a particular institution's CRA rating or its applications would be a CRA contact.

Under the second, comment/testify, alternative a person would engage in a CRA contact only if the person provides comments or testimony to a federal banking agency about the institution's CRA performance or discusses or otherwise contacts an insured institution or an affiliate about providing or refraining from providing comments or testimony to a federal banking agency or comments for a public file about such performance.

ACB believes that the comment/testify alternative, provides a more objective measure of whether a CRA contact has been made. The potential confusion that may arise as to whether particular business discussions are CRA contacts is significant. Because the decision in each case would be based on the facts and circumstances of the conversation, contact or transaction, there will be an enormous burden placed on insured institutions. The different groups within the institution must be attuned to what the others are doing, and the appropriate documents must be collected and filed.

For example, the lending area must let the CRA officer know if a conversation about CRA arises in a discussion with a nongovernmental entity or person because of the development of a new program. The new business area must let the CRA officer know if in the context of negotiations with a retail store the topic of CRA was brought up and what was said. Every time a new product or service is introduced resulting from a discussion with a nongovernmental entity or person, an analysis must be done about whether there was a CRA contact as part of the discussion.

Finally, irrespective of which alternative were to be adopted, a mechanism for determining whether a nongovernmental entity or person had refrained from commenting or testifying is impossible to imagine. Whether the Agencies could establish a system for monitoring the actions or the insured institution would have to take the word of the nongovernmental entity or person, the burden would be substantial. In fact, ACB questions the whole theory behind this element of the proposal. It is inconceivable that there is any mechanism that could be developed that would succeed, and we do not understand why the Agencies would even suggest such an alternative.

Timing of CRA Contact

The proposal does not include any temporal relationship between the CRA contact and the entering into an agreement. The Agencies ask whether the regulation should require that the contact be made within a specific period of time prior to the entering of the agreement. ACB believes that there must be a time frame within which the CRA contact is made and the agreement entered into. We suggest that six months is the appropriate time period. We do not believe that the CRA contact and the commitment are necessarily related to one another if more time has passed. Given the nature of what may be determined is a CRA contact, it may be impossible to tell whether the agreement is a covered agreement if time has elapsed. We do not believe that a CRA contact made after the agreement is executed should trigger the disclosure and reporting requirements.

Fulfillment of CRA

The statute requires that the Agencies identify a list of factors that have a material impact on an agency's decision to assign a CRA rating or to approve an application. As part of the proposal, the Agencies have enumerated the factors from the regulation that implements CRA.[12] Additional factors have been added to include the providing or refraining from providing comments concerning the performance of the insured institution or that would be considered part of the public file. We think that it useful for the Agencies to adopt factors that are already familiar to insured institutions and their affiliates. Further, if these are the factors used by the agencies in determining a CRA rating or the disposition of an application, they are material. Using factors that are in the CRA implementing regulation is appropriate. We believe that the factors should be included, but that specifying a level of performance would be cumbersome for the agencies and for insured institutions. If a level of performance were specified, the review of the arrangements would be more complex and time consuming.

ACB agrees that the list of factors should not be expanded to include the performance of activities designed to ensure compliance with federal laws that prohibit discriminatory or other illegal credit practices. The example given in the preamble amply illustrates the concern that arises if activities to monitor fair lending are included in the factors.[13] Disclosure of an agreement to engage mystery shoppers would have the negative consequence of the activity not being undertaken. We also believe that the list of factors should not include the provision of advisory or consulting services concerning CRA activities.

We are concerned that, while the factors the Agencies might consider to be material to decisions are appropriate, the application of factors to each situation may not be easy. The activities described in the list of factors may be more or less material depending on the size of the

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[12] Id. at 31968.
[13] Id. at 31970.

institution and the nature of its business. We do not believe that threshold levels should be set out in the regulation, but there should be de minimis standards for the performance of activities.

Exemptions

The agencies provide several examples and alternatives to describe the exemptions in the preamble.[14] For example, it is explained that the exemption for any individual mortgage loan would apply to any one mortgage loan, regardless of the interest rate or the type of borrower. There are two alternative interpretations offered for the exception for any specific contract or commitment. The first interpretation would apply the exemption to any specific contract or commitment to make one loan of any type to any borrower, so long as the funds are loaned at rates not substantially below market rate and the funds are not for relending.

The second possible interpretation would apply the exemption to any specific contract or commitment to make any number of loans of any type to any number of borrowers if the funds are loaned at rates not substantially below market rate and if the funds are not for the purpose of relending. This interpretation would exempt a broader range of agreements. For example, exempted would be lending agreements that exclusively call for an institution to make a targeted dollar amount of mortgage loans available to individual borrowers at market rates in a particular area.

At a minimum, as part of any final rule the Agencies must provide additional guidance about the statutory exemptions. For example, guidance about what is meant by "below market rate" is needed and how much below would be "substantial." We request that the Agencies establish a threshold that will take into account variations in local market conditions, underwriting criteria, and what is customary in developing specialized lending programs.

ACB urges the Federal Reserve use the authority granted to it in the statute to specify types of agreements that are exempt from the requirements. Insured institutions and their affiliates frequently enter into contracts or arrangements with consultants, law firms or data firms to help them comply with their CRA requirements. Such agreements might otherwise meet the criteria, but we believe that they are the type of contract entered into every day that must not be disclosed. The insured institution does not want competitors to know that it is developing a revised plan with the help of these entities, and the other parties do not want others to know about arrangements they have made. Insured institutions will stop seeking improvements in their community lending programs if they are required to disclose the internal details of the plans. The result will be that communities, families, and businesses will suffer.

The secondary market agencies and the Federal Home Loan Banks all have programs developed to assist insured lenders in complying with their CRA obligations. While the transactions between these entities and insured institutions may be exempt under the more general statutory

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[14] Id. at 31968.

exemptions, we believe that specific reference to them must be made in the rule. The arrangements that we believe must be specifically exempt from the requirements of the rule are agreements between insured institutions and their affiliates and the secondary market agencies and the Federal Home Loan Banks that are entered into in the normal course of business. We request that in addition to providing these specific exemptions, the definition of nongovernmental entity or person be amended to include the secondary market agencies and the Federal Home Loan Banks. We believe that any hint that these agreements are covered agreements will have a chilling effect on the business among the parties. Again, diminishing the effectiveness of these programs will only serve to negatively impact the good work underway in communities.

Value

The agencies propose that all cash payments, grants, other consideration and loans provided in a calendar year by the insured institution or the affiliate under a covered agreement, except any exempt funds or loans, be considered in determining whether an agreement meets the statute's dollar thresholds. Comment is requested on how to apply the dollar thresholds when the agreement does not have a specific term, a specific disbursement schedule, or when the agreement does not specify the value of the activity. We agree that the value of each of the payments except exempt payments should be aggregated into one disclosure.

Aggregation of Agreements

Related agreements are to be considered single agreements under several circumstances. First, agreements entered into by an insured institution and its affiliates with the same nongovernmental entity or party during a 12-month period must be considered a single agreement, regardless of whether the individual agreements meet the dollar value thresholds. The consolidated agreement is considered a covered agreement if it meets the dollar thresholds and other criteria for a covered agreement.

Second, substantively related contracts negotiated in a coordinated fashion must be considered a single agreement, even if the contracts involve different nongovernmental entities or persons (but the same insured institution) and each contact is not in fulfillment of CRA. The consolidated agreement is considered a covered agreement if it is in fulfillment of CRA and meets the other criteria for a covered agreement. We believe that to the extent possible agreements should be aggregated for disclosure purposes. Nevertheless, because of the complexity of the administrative task involved for insured institutions, the method of disclosure should be as flexible as possible. For many insured institutions, aggregation will be an operational hurdle that may take enormous resources to accomplish.

Disclosure

The proposal requires each party to a covered agreement to make the agreement available on request to any member of the public. Insured institutions and affiliates would be required to file a covered agreement with the appropriate federal banking agency within 30 days of entering into the agreement. Nongovernmental entities or persons would be required to make a covered agreement available to the banking agencies on request. The parties may withhold from public disclosure those portions of a covered agreement that the appropriate federal banking agency determines may be withheld under the statute and the Freedom of Information Act.

Each party must file a report with the appropriate federal banking agency annually during the term of the agreement. The report of the nongovernmental entity or persons must contain an accounting of the funds received under the covered agreement were used. The proposal provides for a streamlined reporting procedure for funds or resources that a nongovernmental entity or person receives under a covered agreement and allocates for a specific purpose.

A nongovernmental entity or person would not be required to file a report for a year in which no funds were received under a covered agreement. The proposal would allow a nongovernmental entity or person to use a report prepared for other purposes, such a federal tax return or financial statement, to fulfill the reporting requirements, if appropriate. The annual report of an insured institution or affiliate must contain information on payments, loans, and services provided under the agreement.

We believe that disclosure for all parties must be as free of burden as possible. If the use of documents prepared for other purposes is possible for both insured institutions and nongovernmental entities or persons, they should each be permitted to use such disclosures. Because of the nature of some of the agreements, we strongly request that the Agencies develop a mechanism for all parties to the agreements to have comfort that competitive information or other proprietary information be kept confidential.

Many of the agreements that will have to be disclosed if the proposal is adopted contain confidential business and personal information. Given the emphasis on consumer privacy on Congress and among the regulators, it is hard to understand why the Agencies have not included a method by which confidential business data can be kept confidential. The statute specifically requires the Agencies to ensure that proprietary and confidential information be protected. If insured institutions and the entities with whom they do business are afraid that competitive information will be disclosed they will not do business with one another. Equally as important, however, is the need to protect consumer information that may be inadvertently disclosed. Finally, arrangements with community groups will be diminished or nonexistent because of the disclosures.

Use of Examples

ACB appreciates the use of examples in the preamble and in the proposal. Examples of what is intended can clarify or reduce confusion for insured institutions trying to comply with the requirements. We suggest that language be included in both the preamble and the final regulation to ensure that it is clear that the examples are illustrative of the types of arrangements that meet certain definitions and that many other types of arrangements may also meet the definitions. We also suggest that the preamble or the final regulation clarify that if an insured institution in good faith follows the implicit guidance in the example, they will not be criticized.

Electronic Filing

ACB suggests that the Agencies consider permitting insured institutions to file any required disclosures and reports electronically. This would minimize the burden created by the additional disclosures.

Regulatory Flexibility Analysis

Each of the Agencies is required to provide a regulatory flexibility analysis as part of the development of the proposal. The Agencies seek input on the estimated burden that the proposal would impose on insured institutions and their affiliates. ACB believes that the proposal as drafted will impose a significant regulatory burden on insured institutions and their affiliates. While the precise number of institutions that will be effected and to what degree cannot be known until the definitions and exemptions are finalized, we believe that every insured institution will experience a significant regulatory burden as a result of the disclosure requirements. For some insured institutions, the burden will be overwhelming, based on the size of the institution and the degree of involvement it has within each of the communities it serves.

The statute does not provide an exemption for smaller or less complex institutions, but it does direct the Agencies to promulgate a regulation that does not unduly burden the parties. ACB strongly requests that the Agencies work to determine the level of regulatory burden that will be imposed and that the significant operational impact of the proposal be thoroughly reviewed.

We believe that the burden of compliance with this proposal will seriously impact the ability of insured institutions to work with community partners to better serve their communities and that many commercial arrangements will be disrupted. One of the negative impacts is that the way that insured institutions be able to do business will be forced to change.

Conclusion

ACB has significant concerns about this proposal. It is extremely broad and we believe will require compliance by a number and variety of entities and insured institutions that are should not comply. The competitive concerns and the privacy issues are significant reasons that insured

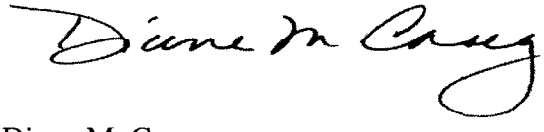
institutions and nongovernmental entities and persons will be negatively affected by this proposal.

ACB believes the proposal must be redrafted to adequately reflect the intent of Congress and not to disrupt the creative and innovative partnerships that have made CRA successful; that the proposal is overly burdensome and should more narrowly define the terms that trigger the disclosures and reporting requirements; an agreement should be a binding contract between the parties; the comment/testify alternative should be adopted to more narrowly determine whether a CRA contact has occurred; there should be no more than six months between the CRA contact and the commitment by the insured institution or its affiliate and a CRA contact after the execution of an agreement should not trigger the requirements; and the exemptions should be expanded to specifically include agreements with law firms, consultants, data providers, and the secondary market agencies.

We strongly urge the Agencies create another proposal reflecting on the comments received, and issue it for comment before issuing a final rule.

ACB appreciates the opportunity to comment on this important matter. If you have any questions, please contact Charlotte Bahin at (202) 857-3121 or cbahin@acbankers.org.

Sincerely,



Diane M. Casey

Attachment: *MODELS THAT WORK.*