THE ENTERPRISE FOUNDATION

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July 21, 2000

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

To Whom It May Concern:

The Enterprise Foundation appreciates this opportunity to comment on the proposed rule regarding disclosure and reporting of Community Reinvestment Act (CRA) agreements as mandated by the Gramm-Leach-Bliley Act. We thank the OTS and the other federal bank regulatory agencies for attempting to reduce the burden of complying with the rule on community development organizations and other affected parties.

The Enterprise Foundation is a national nonprofit organization founded in 1982 by Jim and Patty Rouse. Our mission is to see that all low-income Americans have access to fit and affordable housing and the opportunity to move up and out of poverty into the mainstream of American life. Working with public and private partners, including a network of 1,500 nonprofit community groups, the Foundation provides low-income people with decent affordable homes, safer streets and access to jobs and child care. We have raised and invested more than $3.4 billion in loans, grants and equity to build or renovate 107,000 apartments and houses. Much of our work has been made possible by the CRA.

We recognize that the regulators faced a difficult task in developing regulations implementing ill-conceived and ill-defined provisions of the aforementioned Act. These "sunshine" provisions purportedly were intended to prevent community groups from "extorting" financial commitments from banks in return for pledges not to criticize banks' CRA lending performance. We are not aware of any such extortion and we doubt the sunshine provisions would do much to stop such extortion if it did occur.

What is clear is that the provisions attempt to undermine the very heart of the CRA by discouraging dialogue between banks and the public about whether banks are meeting the credit needs of the communities in which they do business. If implemented in their proposed form, these provisions threaten to curtail bank investment in distressed urban and rural neighborhoods. Our and our partners' mission to rebuild communities will become harder to achieve.

The CRA has been a vital tool in our community development efforts across the country. Following are just three examples of the CRA's indispensable importance to what we do:

- Under the CityHome program in New York City, the city conveys boarded-up houses to the local office of The Enterprise Foundation, which contracts with small builders to renovate the properties and community groups to find potential buyers. Banks--including Chase Manhattan, Citibank, Dime Savings Bank, Republic National Bank of New York and Fleet Bank--provide affordable mortgages on the properties. The program has enabled lower income New Yorkers to buy formerly abandoned brownstones and help stabilize neighborhoods all over the city. The CRA made much of this possible. Without it, the banks would have little incentive to participate.

- Bank of America has committed $500 million through Enterprise to finance more than 16,000 new homes for low-income families, including a $300 million investment in Low Income Housing Tax Credits through our Enterprise Social Investment Corporation (ESIC) subsidiary to build 10,000 houses and apartments across the country. The investment targets developments that typically have the most difficulty in raising equity, such as inner-city properties and those serving people with special needs. For example, in a Baltimore neighborhood that had seen no new residential development in more than 20 years, 47 new apartments for senior citizens have been built. This partnership between NationsBank and ESIC is due largely to the CRA.

- The Enterprise Foundation lends to nonprofit community groups to fund their housing development activities, such as acquiring property, financing construction activity and providing operating capital for developments in the early stage. In many cases, the money that Enterprise provides makes the difference between a development's success and failure. Since our loans average $250,000 for a duration of 12 to 24 months, the amount, term and risk associated with our portfolio is beyond the tolerance of most lending institutions. However, because we guarantee and underwrite the individual loans to nonprofits, because we have a proven track record for financial responsibility and because banks get CRA credit for their loans to us, twelve banks participate in our loan pool.

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The sunshine provisions require community organizations, lenders and a large number of other parties to disclose private contracts to federal agencies if the parties engage in certain CRA "contacts" or discussions about how to help a lender make more loans and investments in low- and moderate-income communities. As a private organization, we find it deeply troubling that we would be subject to significant reporting and disclosure requirements, backed by civil penalty, based solely on the nature and content of our contact with other private parties (i.e., banks). We are equally troubled by the broad authority the rule provides federal regulators to determine which types of communication between community groups and banks would trigger the disclosure requirements. The proposed rule's arbitrary exemptions from disclosure of some types of CRA contacts compound our concerns that the rule may violate the First Amendment.

We urge the regulators to refrain from implementing the final rule until they have received an opinion from the Justice Department's Office of Legal Counsel on the constitutionality of the proposed rule. If the regulators do not pursue this course, or if they do and the Justice Department affirms the proposed rule's constitutionality, we urge the regulators to make the following changes to the proposed rule:

Revise the "material impact" standard and make it, not CRA contacts, the trigger for requiring disclosure under the proposed rule. The proposed rule would require disclosure of any CRA agreement that specifies any level of CRA-related loans, investments and services. But only a higher number of loans and investments in more than one market is likely to have a material impact on a CRA rating or merger application decision. Furthermore, this provision, if it is not changed, would prove unwieldy for the regulators, which would be deluged with thousands of letters, written understandings and contracts.

We recommend that the final rule exempt a CRA agreement or contract from disclosure unless it requires a bank to make a greater number of loans, investments and services in more than one of its markets. We also recommend that the final rule apply only to agreements made during the public comment period on a merger application or during the time period between when a CRA exam is announced and when the exam occurs.

Clarify exemptions for written agreements. The statute exempts a CRA agreement or written understanding from disclosure if it involves an individual mortgage loan. We believe that this provision should cover an agreement that pledges several mortgage loans in the future, since such an agreement is simply a commitment to make a series of individual mortgage loans. We believe this reference to "mortgage loan" should include any loan secured by real estate, not only home purchase, improvement or refinancing loans, for example. We recommend that the final rule clarify these points.

The statute also exempts "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 re-lending of the borrowed funds to other parties." We believe that a commitment to make multiple loans to individuals, businesses, farms or other entities should not necessarily have to name a specific business or organization in order to qualify for this exemption. We recommend that the final rule clarify this point.

We also believe that the reference to a "specific contract" should not limit the exemption to a contract with a specific organization or business or a specific loan. We believe that a CRA agreement committing a bank to make a specific number or dollar amount of loans in a specific geographical area should meet the criterion of a specific contract. We recommend that the final rule clarify this point.

Exempt "non-negotiating parties" from annual reporting requirements. The proposed rule would exempt non-governmental parties from the annual reporting requirements during the years in which they did not receive grants or loans under an agreement. We strongly support this provision. It is also unreasonable to require groups that were not party to the negotiations of a CRA agreement to report, since they may not even be aware that they received funds pursuant to that agreement. We therefore recommend that the final rule provide an exemption for non-negotiating parties a CRA agreement.

Strengthen confidentiality protections. The statute provides that "proprietary and confidential information is protected" in disclosures and annual reports. The proposed rule states: "A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or annual reports under [Freedom of Information Act] (FOIA) procedures." The proposed rule's preamble, however, notes that the statute's directive requiring that a covered agreement shall be in its entirety fully disclosed and made available to the public "may require disclosure of some type of information that an agency might normally be able to withhold from disclosure under FOIA."

This failure to provide full FOIA protection suggests that confidential and proprietary information may become publicly available, causing competitive or other harm to one or more of the parties to an agreement. Clearly, many lenders will be less likely to enter into CRA agreements if they believe proprietary information on their products and programs may become publicly available. This could lead to a reduction in bank investment in low-income communities. Furthermore, the process by which parties would request certain information <u>not</u> be made publicly available would be enormously cumbersome and time consuming for the parties as well as the regulators. The end result would be less timely disclosure. We strongly urge that the final rule state that CRA agreements covered by the rule will receive full FOIA protection.

Clarify that Form 990 will meet the annual reporting requirements. The preamble to the proposed rule, but not the rule itself, states that "a person may use a properly completed Internal Revenue Form 990 to fulfill the rule's reporting

requirements for general purpose funds." We recommend that the final rule explicitly state that the use of IRS Form 990 would meet the annual reporting requirements for use of general purpose funds.

Clarify annual reporting requirements for specific purposes. The proposed rule would require parties to CRA agreements to segregate in their annual reports funds allocated and used for "specific purposes" from those used for general purposes. Parties would be required to describe each specific purpose and the amount of funds allocated to it. An example in the preamble refers to a "brief description" of a specific purpose. Organizations should be able to comply with this requirement by describing the specific activity in a few phrases or sentences. We recommend that the final rule state explicitly that brief descriptions will meet this requirement and that the rule provide additional examples beyond the two in the proposed rule. We also encourage the regulators to prepare sample disclosure reports, as they contemplate in the preamble to the proposed rule.

Allow consolidated reporting of two or more agreements. The proposed rule would allow parties to five or more agreements to file a single consolidated annual report covering all its covered agreements. Thus, while a party to, say, 100 agreements would have to file only one report, a party to, say, four agreements would have to submit four reports. This arbitrary distinction makes no sense. The statute does not specify the number of agreements that can be reported in a consolidated report. We recommend that the final rule allow parties to two or more agreements to file a consolidated report.

Thank you for considering our comments. We urge the federal bank regulatory agencies to make these improvements to the proposed rule to minimize the damage it threatens to do to community-bank partnerships and progress.

Sincerely,

F. Barton Harvey

F. Barton Harvey III
Chairman and Chief Executive Officer