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Community Development Department
135 Main Street
San Francisco, CA 94105

July 14, 2000

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COMMUNITY DEVELOPMENT DEPARTMENT
JUL 14 2000 3:47 PM

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

Re: Proposed Regulations Regarding Disclosure and Reporting of CRA-Related Agreements;
12 CFR Part 533

Dear Sir or Madam:

California Federal Bank ("Cal Fed") welcomes the opportunity to comment on the above referenced proposed regulations (the "Proposed Rule") implementing the provisions of Section 711 of the Gramm-Leach-Bliley Act ("Section 711"). Cal Fed, based in San Francisco, California, is the nation's second largest federally chartered savings association.

The Proposed Rule is critical to the effective implementation of Section 711. Cal Fed believes that it is essential that the final rule be written in a manner that provides clear and practical guidance that meaningfully implements these statutory provisions while minimizing unnecessary regulatory burdens.

The following are our specific comments, organized generally in accordance with the order in which the identified subjects are discussed in the preamble to the Proposed Rule:

I. Executive Summary of Proposed Rule

Treatment of Covered Agreements Entered Into Prior to Effective Date of the Final Rule.
Given the time that will be needed to properly identify all agreements covered by Section 711, Cal Fed believes that six months would be an appropriate period of time before compliance with the requirements of the final rule is required.

II. Detailed Explanation of Proposed Rule

A. Definition of Covered Agreement

1. Covered Agreements

Definition of the terms “contract,” “arrangement,” and “understanding”. Cal Fed believes that these terms should be defined in the Proposed Rule, especially since the Proposed Rule intends to encompass “agreements” that are not necessarily legally binding. We are particularly concerned that such definitions be clear, unambiguous, and relatively easy to follow.

The definition should articulate clear principles that permit one to distinguish between a unilateral pledge or commitment, on one hand, and an agreement or understanding, on the other, particularly where written documents fail to evidence any obligation or commitment (legal or otherwise) on the part of the non-governmental entity or person (“NGEP”) as a *quid pro quo* for the institution's obligations or commitments.

Also, we suggest that the preamble clarify the concept of a “general written solicitation”. For example, must a letter reflect multiple addressees to qualify as a general written solicitation, or would it suffice if essentially the same letter (in content) is delivered to several institutions?

2. Exemptions for Certain Agreements

a. Qualifying Loans

Loans Substantially Below Market Rates. Cal Fed believes that the term “substantially below market rates” should be defined and suggests a 15% threshold as an appropriate test.

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

Defining the No Contact Exemption. An important provision of Section 711 is the exemption provided when an agreement is entered into with **no CRA contact** with either the bank regulatory agency or the insured depository institution. In order to give effect to this exemption, the implementing regulations must be clear and workable.

The Proposed Rule contemplates that a CRA contact could occur with any institution employee, irrespective of that employee’s responsibilities or position. As currently drafted, Cal Fed believes that it would not be feasible for larger institutions to verify that no contact ever took place between an NGEP and any one of its thousands of employees. Accordingly, without a clarifying definition of a CRA contact, Cal Fed is concerned, as a practical matter, that it would be compelled to assume that some contact occurred with respect to every agreement. This would effectively eliminate the no-contact exemption – a result contrary to the specific requirements of Section 711.

This would also place an extreme and unnecessary burden on institutions, which would either: (a) attempt at great expense to establish the absence of a CRA contact or (b) disclose potentially hundreds of agreements that are beyond the true scope of Section 711.

In order to fulfill the purpose of this exemption, and to avoid unnecessary regulatory burdens, Cal Fed proposes that contacts between a NGEF and an insured depository institution be defined to mean contacts, both direct and indirect, with an institution's "CRA officers." The term "CRA officer" would be defined as follows:

A CRA officer of an insured depository institution means a person who participates or has the authority to participate (other than in the capacity of a director) in the making of the policies of the institution concerning its compliance with the requirements of the Community Reinvestment Act (12 U.S.C. §§2901 *et seq.*) (the "CRA"), whether or not the officer has an official title related to the CRA. An officer will not be considered a CRA officer if such person (a) is excluded from participating in CRA policy making by a resolution of the board of directors and (b) actually does not participate in CRA policy making.

This suggested definition would focus CRA contacts on communications involving institution officers participating in CRA policy making. It would exclude the myriad of potential inadvertent or inconsequential contacts that could possibly occur between an insured institution and an NGEF. Indirect contacts would encompass communications between a CRA Officer and an NGEF that flow through an institution employee who is not a CRA Officer.

The agencies also requested comment on whether CRA contacts should be limited to those involving CRA-related comments or testimony to an agency or discussions with an insured depository institution or affiliate about providing (or refraining from providing) such comments or testimony to an agency. Cal Fed believes such a limitation would be appropriate. However, we believe that the existence of *quid pro quo* discussions bears more directly on the fundamental question of whether an agreement or understanding exists in the first place. In Cal Fed's view, without such a *quid pro quo*, there can be no agreement, understanding, or arrangement of the sort contemplated by Section 711.

Further, if CRA contacts are more broadly construed, we believe, in any event, that discussions regarding whether a particular activity qualifies under the CRA should not be included as a CRA contact.

With respect to the temporal relationship between CRA contacts and an agreement, Cal Fed believes that time frame limitations would be appropriate and should be articulated in the final rule.

If, in the context of a multi-party agreement, a CRA contact has been made with respect to only one of the parties, the non-contact exclusion should continue to apply to each NGEF for which a contact was not made.

c. Request for Comment on Additional Exemptions

Cal Fed suggests that the final rule include specific exemptions including: (a) transactions initiated by an institution and (b) activities by its consultants, lawyers, sellers of CRA products and services and other third parties which assist the institution with its CRA performance but whose activities are not reviewed during the CRA examination. We also recommend exempting standard business partners with whom an institution may have both non-CRA and CRA relationships (such as secondary market organizations and mortgage insurers including Fannie Mae, Freddie Mac, PMI, and the Federal Home Loan Banks).

3. Fulfillment of the CRA

Concerning the definition of "fulfillment of CRA", Cal Fed believes that a list which includes all factors considered in a CRA examination would not appropriately reflect the element of materiality included in Section 711. The list should be restricted to material factors. As the factors that are material will vary from institution to institution, Cal Fed suggests that an opportunity be provided where an institution could submit for its regulator's approval a list of activities that would not be deemed material to that institution's CRA performance.

With regard to fair lending considerations, Cal Fed concurs that fair lending performance should not be included in the list of factors for the "fulfillment of the CRA."

4. Value

Cal Fed suggests that the calendar year be used for value calculations to insure consistency, for example, with HMDA and CRA reporting. If an agreement does not have a specific term, it should be disclosed, but annual reporting should be required only if the minimum threshold is met for the 12 month reporting period.

5. Related Agreements Considered a Single Agreement

b. Substantively Related Contracts

In those situations when an agreement precedes a CRA contact by more than 90 days, Cal Fed believes that the agreement should be exempted and not be aggregated with any other agreements.

6. CRA Affiliate Treated as Insured Depository Institution

Cal Fed believes that the final rule should not require an institution or CRA affiliate to inform the NGEF when an agreement concerns a CRA affiliate. Such a requirement would be impractical in many circumstances. We believe that it should be the responsibility of each party to ascertain whether or not it has reporting requirements.

B. Disclosure of Covered Agreements

1. Disclosure to the Public

Cal Fed believes attention should be focused on finding methods to limit burden and reduce excessive use of paper. To that end, we suggest that institutions be given the flexibility to make agreements public in a number of ways, for example, placement of a list of agreements and/or the agreements themselves on its web site or in the public file. To facilitate access for those without Internet access, we suggest that a listing of agreements be placed in the public file and a contact phone number be included for requesting a copy of the agreement. Cal Fed suggests the option of providing such a list with the ability to request the full document because it is our experience that very few people look at the public file, or request a copy of our CRA Performance Evaluation or CRA Statement (when the latter was part of CRA compliance).

Cal Fed suggests that the requirement that an institution make an agreement publicly available terminate upon maturity or last funding under the agreement, whichever is later. We also suggest that the 30-day requirement for making the agreement public and sending it to the agency be expanded to include an option that an institution may disclose agreements no less than every six months. This would reduce burden substantially by allowing an institution to gather agreements and disclose them simultaneously and less frequently. Disclosing agreements year round would be very cumbersome. Because reporting is required annually, delaying disclosure of an Agreement up to six months would not undermine the goals of Section 711.

5. Treatment of Confidential or Proprietary Information

Protecting the confidentiality of proprietary information contained in agreements to be disclosed under the Proposed Rule is a significant concern of Cal Fed. Disclosure of proprietary information would place the disclosing institution at a competitive disadvantage. Cal Fed suggests that the final rule identify types of information that will be held confidential (for example, that underwriting criteria and pricing be deemed as proprietary and confidential).

Cal Fed believes that the availability of a regulatory agency review to protect confidential proprietary information is valuable, but is concerned about the potential time delays of such a process. As a consequence, there will be instances when an institution would delay entering into an agreement until a decision has been received from its regulator. We also suggest that an institution be permitted to delay making an agreement public until it has received the regulator's determination.

C. Annual Reports.

3. Contents of Annual Report of Insured Depository Institutions and Affiliates

Cal Fed agrees that an institution should be permitted to file a consolidated report if it is a party to two or more agreements. An institution should also be permitted to send a copy of the agreement (*e.g.*, request letter and cover letter to a grant) if it contains the required reporting information, rather than be required to include it in a summary document. These types of provisions will help to reduce compliance burdens. We also concur that the institution should not have to file a report in any year that it did not provide or receive payments above the minimum thresholds.

4. When and Where Must Annual Reports Be Filed

To reduce the chances of lost or misdirected communications, Cal Fed suggests that annual reports sent by an NGEF to an institution be directed to the attention of the institution's CRA officer and identified as a report under Section 711.

D. Compliance Provisions

If a regulatory agency sends a notice of non-compliance to an NGEF, Cal Fed suggests that a copy of such notice also be delivered to the affected institutions.

III. Placement of Proposed Rule

Cal Fed believes strongly that the Proposed Rule should be kept separate from the CRA regulations. This will make clear that the Proposed Rule will not effect the evaluation of an institution's CRA performance.

Office of Thrift Supervision

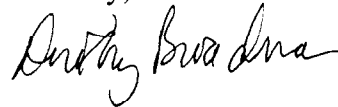
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To reiterate, Cal Fed believes that it is essential that the final rule be written in a manner that provides clear and practical guidance that meaningfully implements these statutory provisions while minimizing unnecessary regulatory burdens. Further, every effort should be made to prevent the disclosure of confidential proprietary information.

We hope that our comments are helpful in these regards and appreciate the opportunity afforded to us to comment on the Proposed Rule. If you have any questions regarding this letter, please feel free to contact the undersigned at (415) 904-1223.

Sincerely,

A handwritten signature in black ink, appearing to read "Dorothy Broadman". The signature is written in a cursive, flowing style.

Dorothy Broadman
Senior Vice President