

THE DIME SAVINGS BANK
OF NEW YORK, FSB

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Via e-mail and Fedex

Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street, N.W.,
Washington, DC 20552

Re: Disclosure and Reporting of CRA-Related Agreements
65 FR 31962 (May 19, 2000); RIN 1550-AB32
Docket No. 2000-44

Dear Sir or Madam:

The Dime Savings Bank of New York, FSB (the "Dime") wishes to offer the following comments on the proposed regulation "Disclosure and Reporting of CRA-Related Agreements" (the "Proposed Rule").

Dime is a \$25 billion federal savings bank serving customers and businesses through 127 branches in the New York City metropolitan area. Directly and through the over 200 offices of its North American Mortgage Company subsidiary, Dime provides consumer financial services and mortgage banking services throughout the United States.

Dime is dedicated to meeting the financial services needs of all consumers living in the communities we serve. This dedication has been recognized by the Office of Thrift Supervision, who has given Dime five consecutive "Outstanding" ratings under the Community Reinvestment Act ("CRA"). Dime is one of four financial institutions across the country to have achieved such an accomplishment.

We are concerned that the Proposed Rule presents numerous and significant compliance difficulties for depository institutions of any size. These difficulties include not only the cost of compliance, but the ability to determine whether the institution has inadvertently breached its requirements. As our comments, below, will make clear, the Proposed Rule is replete with uncertainties that may trap even the most diligent compliance function.

For example, § 533.2(b)(2) of the Proposed Rule excludes from coverage agreements where there has not been a CRA contact. Unfortunately, as drafted the Proposed Rule would consider a CRA contact to be made whenever a nongovernmental entity or person discusses with or contacts the institution concerning the CRA. This could be interpreted to include contacts with tellers, low-level loan officers and others who do not have the authority to enter into the types of agreements contemplated by the Proposed Rule. Given the size of Dime, for example, it would be nearly impossible to determine that there has not been a CRA contact at some level of the institution. We suggest that the Proposed Rule provide that a CRA contact be limited to contacts with senior management of the institution.

In order to further enhance an institution's ability to determine whether a CRA contact has been made, we suggest that the period of time between the contact and the date upon which the agreement is entered into be limited to sixty (60) days. An unlimited period of time, as currently provided in the Proposed Rule, would be nearly impossible to manage in light of employee turnover and bank merger activity. Since most applications for which the OTS is required to give consideration to an institution's CRA record provide for a 30-day public comment period, a 60-day window would ensure that those agreements entered into in contemplation of the application would be captured. CRA contacts that occur after an agreement is entered into by the institution should also be excluded, since to do otherwise would require the institution to be clairvoyant at the time the agreement is made and anticipate a future CRA contact.

The OTS should clarify the concept of a CRA contact with a Federal banking agency. We suggest that such contacts include only those initiated by the nongovernmental entity or person regarding the institution that is the party to the agreement. This concept should be further refined to include only those contacts with that institution's primary regulator and only those contacts not initiated by the regulator. As currently drafted, the Proposed Rule could be interpreted to include contacts with any Federal banking agency by a nongovernmental entity regarding any institution or regarding depository institutions in general. In addition, the institution should be permitted to rely on a certification by the nongovernmental entity or person that it has not made a CRA contact with a Federal banking agency. These changes will enhance the ability of an institution to determine whether an agreement would be covered by the Proposed Rule.

We would like to commend the OTS and the other Federal banking agencies that produced the Proposed Rule for providing a list of examples of contacts that would or would not be considered to be CRA contacts. We suggest that the agencies adopt a practice of adding to and updating these lists in a manner similar to the CRA "Questions and Answers" or to the Official Staff Commentary provided for a number of consumer protection regulations. The greater the detail the more certainty that will be provided.

We would suggest two additional examples of explicit exclusions from coverage.

First, agreements between an institution and its outside counsel should be made exempt. This is essential to ensure that an institution can obtain proper legal advice and representation. In addition, depository institutions often use outside law firms to file applications that are subject to review under the CRA, to advise on such applications and/or to represent the institution before Federal bank

Office of Thrift Supervision
July 21, 2000
Page 3

regulators regarding such applications. This exception should also extend to representation on behalf of, and advice to, a depository institution with regard to applications filed by another institution.

Second, software licensing agreements, including those with for-profit vendors of CRA or fair lending tools, should also be exempt. These agreements give depository institutions the ability to track their performance under CRA and fair lending laws. To unnecessarily burden depository institutions that use these tools would be to unnecessarily hamper compliance with the CRA.

The Dime appreciates this opportunity to comment on the Proposed Rule. If you have any questions regarding this comment letter, please feel free to contact me at (212) 642-7421.

Sincerely,

Donna M. Wilson