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James S. Keller
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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

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

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551
Docket R-1069

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

Ladies and Gentlemen:

The PNC Financial Services Group, Inc. ("PNC"), Pittsburgh, Pennsylvania, is submitting this letter to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the "Agencies") in response to the Agencies' request for comment of their joint notice of proposed rulemaking concerning the Disclosure and Reporting of CRA-Related Agreements, which would implement Section 711 of the Gramm-Leach-Bliley Act ("the GLB Act"). 65 Fed. Reg. 31,962 (2000). Section 711 of the GLB Act requires nongovernmental entities or persons ("NGE/Ps"), insured depository institutions, and affiliates of insured depository institutions, that are parties to certain agreements that are "in fulfillment" of the Community Reinvestment Act of 1977 (the "CRA Act") to make the agreements available to the public and to the appropriate Agency and to file annual reports with the appropriate Agency concerning such agreements.

PNC is one of the largest diversified financial service organizations in the United States, with $74.3 billion in assets as of March 31, 2000. Its major businesses include regional banking, corporate banking, real estate finance, asset-based lending, asset management, global funds services and mortgage banking. PNC's full-service subsidiary banks have offices in Delaware, Indiana, Kentucky, New Jersey, Ohio and Pennsylvania.

PNC acknowledges and appreciates the time and effort that the Agencies have devoted to the Proposal, and recognizes that the Agencies are attempting to implement Section 711 in a way that both fulfills the requirements of Section 711 and, at the same time, does not impose undue burdens on financial institutions or on the recipients of grants, investments and certain CRA-qualified loans. Nevertheless, we share the concerns of the American Bankers Association ("ABA"), Community Bankers Association, the Financial Services Roundtable, and others who have addressed the need to develop a manageable compliance regimen while at the same time accomplishing the purposes of Section 711. Section 711 explicitly states that "each appropriate Federal banking agency shall ...ensure that the regulations prescribed by the agency do not impose an undue regulatory burden on the parties...." The focus of PNC's comments is on ways in which the Proposal could be revised, and examples could be included, that would provide financial institutions objective guidance in determining whether contacts are outside the scope of the regulation. In this regard, PNC has particular comments on the definition and examples of "CRA contacts" provided in the Proposal. PNC is also providing comments on the disclosure of agreements. It should also be noted, however, that PNC concurs in the comments submitted by the ABA and others, including those comments regarding the definition of "covered agreements," "fulfillment" of CRA, CRA contacts, disclosure of agreements, and treatment of confidential and proprietary information.

CRA Contacts

The concept of a "CRA contact" is critical to determining coverage under Section 711. According to Section 711, 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 the 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 Agencies have requested comment on various aspects of this exemption. In particular, the Agencies have requested 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.

PNC believes that under the Proposal, without further clarification, few institutions would be able to employ the exemption. One of the biggest problems would be 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 an NGE/P. At an organization the size of PNC, where a large number of employees have contact with the community through numerous channels, the determination as to whether the bank or one of its affiliates has had a contact with any particular group would be virtually impossible. 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 would be the unnecessary reporting of a large number of "CRA agreements" that were never intended to be part of the reporting requirement and that will burden financial institutions and the Agencies alike.

For this reason, it is critical that financial institutions have greater certainty in knowing whether an NGE/P with whom it has entered into an agreement has had a "CRA contact." We recommend that the Proposal permit a financial institution to limit the persons with whom a "CRA contact" is made. One suggestion would be to include as "CRA contacts" only those discussions with or contacts with officers at the institution, or reported to those officers at the institution, who have authority to approve payments or grants in excess of $10,000, or loans in excess of $50,000, made pursuant to or in connection with the fulfillment of the CRA Act. This would have the virtue of excluding the myriad of inadvertent or inconsequential contacts that occur daily between employees of an institution and the community. At the same time, it would capture those contacts that should be included in the rule.

PNC also recommends that a CRA contact would not occur if the NGE/P merely discusses with such officers at the financial institution or its affiliates whether particular loans, services, or investments are generally eligible for consideration by an agency under the CRA regulations. The marketing of products and services to financial 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 quite concerned about how a financial institution is supposed to determine whether the NGE/P that is the party to an agreement has ever had a CRA contact with an Agency. We recommend that the Agencies periodically provide to financial institutions a list of relevant contacts that could be relied upon to determine if an agreement needs to be reported.

There are also certain interactions that, by definition, should be excluded from treatment as "CRA contacts." 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. Contacts made after an agreement is executed. (See discussion below.)

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

5. Routine contacts requesting information about the CRA or CRA regulations, and that are not in regard to the performance of the institution or affiliate with whom the CRA agreement is being entered into.

6. Contacts with tax exempt organizations (other than those that have community development as their primary purpose).

7. Contacts with Small Business Investment Companies (or SBICs). Although CRA credit may be obtained for investments in SBICs, these do not appear to be the types of NGE/P's that Section 711 is intended to include.

Temporal Relationship between a CRA Contact and an Agreement

The Agencies have requested comment on whether there should be a temporal relationship between a CRA contact and when an agreement is made. 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. The Agencies have specifically requested 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 have requested 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.

PNC believes that an unlimited time period 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 financial institution would need to go to determine if there has been a CRA contact with an NGE/P. This would appear to create a virtually impossible situation from a compliance management perspective. With the passage of time, information about communications becomes lost or unavailable and, as financial institutions merge, restructure, and are acquired, and as employees come and go, accurate information about contacts would become more difficult to obtain.

Accordingly, PNC recommends the adoption of a bright line temporal test for CRA contacts. We recommend including only those contacts that occurred within one year prior to the agreement. Based upon our experience, rarely would there be a period of time longer than one year between a CRA contact and an agreement. Accordingly, a one-year time period should capture most relevant contacts. Any longer time period would add significant regulatory burden without furthering the purposes of the GLB Act.

In addition, as noted above, we believe that a CRA contact should not include any 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 a financial institution or affiliate and an NGE/P would require the financial institution to review the records of every "agreement" (as defined by the rule) that was not previously reported. This is simply unworkable.

Disclosure of Covered Agreements

The Agencies have requested comment on all aspects of the rule's public disclosure requirements. PNC urges flexibility in the reporting format in order to limit the burden on the parties and reduce the excessive use of paper. Financial institutions need to provide the agreements to the agencies in a manageable form. Larger institutions such as PNC 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—both to the Agencies and the public-- could dramatically reduce compliance costs, and would at the same time reduce the unnecessary production and flow of paper.

We believe that Section 711 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, Section 711 draws a distinction between fully disclosing the agreement and making the "full text" available. We believe this language clearly supports the view that 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, including, for example, placement of a list of agreements on the financial institution's web site or in its public file for CRA statements. Given the potential bulk of the agreements that could be included, and the fact that few people generally review an institution's public file for CRA statements, it should be permissible to include a listing of agreements in the public file for CRA statements, and provide the agreements themselves as requested.

As another means of reducing unnecessary costs, we 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 the burden substantially by allowing an institution to gather agreements and disclose them simultaneously and less frequently. Disclosing agreements year round would be cumbersome. Because reporting is required annually, delaying disclosure of an agreement up to six months would not undermine the goals of the GLB Act.

Finally, PNC joins the ABA and other commenters in urging the Agencies to reissue the revised proposal for another round of comments.

Thank you for the opportunity to comment on the proposed regulations. Please feel free to contact us if you have questions about, or would like further information concerning, PNC 's comments.

Sincerely yours,

/s/

James S. Keller

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