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ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA

July 21, 2000

DELIVERED VIA ELECTRONIC AND REGULAR MAIL

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW, Third Floor
Washington, DC 20219
Attention: Docket No. 00-11

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551
Re: Docket No. R-1069

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

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

Re: Disclosure and Reporting of CRA-Related Agreements - CRA Sunshine

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] offers the following comments on the proposed regulations that would implement the CRA Sunshine

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[1] ICBA is the primary voice for the nation's community banks, representing nearly 5,300 institutions at nearly 16,200 locations nationwide. Community banks are independently owned and operated and are characterized by attention to customer service, lower fees and small business, agricultural and consumer lending. ICBA's members hold nearly $439 billion in insured deposits, $526 billion in assets and more than $314 billion in loans for consumers, small businesses and farms in the communities they serve.

provisions, added to the Federal Deposit Insurance Act by section 711 of the Gramm-Leach-Bliley Act.

Generally, the statute requires non-governmental entities or persons and insured depositories (or affiliates of insured depositories) that are parties to "covered agreements" to make the agreements public and file annual reports concerning how funds provided under the agreements were actually spent. Agreements subject to the rule are those that involve funds or other resources of a bank or its affiliate of more than $10,000 in one year or loans that aggregate more than $50,000 in one year and that are made with someone that has had a "CRA contact" with the bank or its regulator. The requirement only applies to written agreements "made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act."

Statutory Intent, Scope and Regulatory Burden

During the debate on financial modernization, concerns were raised that some organizations used the Community Reinvestment Act (CRA) as a tool to "encourage" financial institutions to take certain actions or make certain investments in return for favorable comments to bank regulatory agencies – or to prevent unfavorable comments to the agencies -- about the CRA performance of the bank. As a result, the CRA Sunshine provision was added as section 711 of the Gramm-Leach-Bliley Act. The intent is to require agreements between banks and "non-governmental entities" to be disclosed, and to ensure that funds distributed under these agreements are properly spent. There was no intention to impact routine business operations of banks or to require disclosure of agreements involving the bank's day-to-day operations. Rather, the focus is on special agreements that directly impact the actions the bank and the non-governmental entities take that would specifically impact the bank's CRA performance.

The proposal issued by the agencies construes the statute very broadly, too broadly in our view. For example, under the proposal as drafted, a "non-governmental entity" would include a loan broker – and a contact from a loan broker wanting to sell loans 'in the bank's assessment area' would then be covered under the CRA Sunshine disclosure requirements. In addition, the proposal leaves many issues open until comments have been submitted by interested parties.

There is a very great potential burden for both banks and non-governmental entities in monitoring and administering the requirements of CRA Sunshine. In drafting a final regulation, the agencies should carefully consider the statute's mandate that the federal banking agencies should "ensure that the regulations prescribed by the agency do not impose an undue burden on the parties."[2]

For the foregoing reasons, the ICBA has suggested below a number of clarifications and changes the agency should implement in the final rule to help narrow the proposal's

[2] Gramm-Leach-Bliley, section 711, adding section 48(h) to the Federal Deposit Insurance Act.

scope in order to better match statutory intent, reduce burden for both banks and non-governmental entities, and reduce uncertainty and ambiguity.

Covered Agreement

One of the key elements of the proposal is the definition of what is considered to be a "covered agreement." To be considered covered, four criteria must be met:

- the agreement, arrangement or understanding must be in writing
- it must be made in connection with CRA
- the parties to the agreement must include a bank (or a bank affiliate) and a non-governmental entity
- there must be payments of more than $10,000 in one calendar year or loans in the aggregate principal amount of more than $50,000 in one calendar year

A general solicitation letter from a charity followed by a contribution from the bank or a unilateral pledge by a bank holding company to make a certain amount of community development grants or loans would *not* be covered.

In assessing which agreements are covered, the proposal would provide that an agreement would be covered even if not legally binding. The ICBA believes that this may be too expansive an interpretation that creates unnecessary ambiguity. If an agreement does not have to be legally binding to be covered it will create a substantial gray area about which agreements actually are covered by the terms of the rule. It will be simpler and cleaner if the final rule provides that an agreement must be legally binding in order to be covered by the CRA Sunshine provisions. This would also help clarify which parties are covered and therefore who must file reports.

Exemptions

Mortgage Loans to Individuals. The statute clearly exempts certain agreements from coverage. The first exemption is for a mortgage loan to an individual. The ICBA believes that the final rule should clarify that this applies to any loan to an individual secured by real estate regardless of the purpose of the loan. This will simplify application of the rule by making it clear to which loans the exemption applies, thereby reducing burden.

Loans at Rates Not Substantially Below Market. The second exemption is for loans or loan commitments to individuals, businesses, farms or other entities provided funds are not loaned at rates substantially below market and provided that the purpose of the loan does not include re-lending to a third party. The ICBA believes it would be appropriate to interpret this exemption to include an agreement that covers multiple loans where each loan granted would otherwise be exempt if done separately. The statute requires a certain value for reporting, and while the individual loans have a monetary value, the umbrella agreement to make the loans does not have a monetary value *per se* and therefore should logically be exempt.

Under this second exemption, a loan or loan commitment must be at rates "substantially below market." Since this becomes the defining line for which loans are covered, the ICBA believes the final rule should include a specific definition of the term. The definition should not be left to individual interpretation and it should be clear and easily applied to minimize regulatory burden. Leaving it up to the individual invites confusion and contention as bankers struggle with how to interpret what is meant by "substantially below market." The ICBA recommends "substantially below market" be defined as a minimum of 200 basis points below existing market rates or prime. However, a bright line definition is needed to facilitate compliance and to reduce regulatory burden.

Loans Not for Relending. Similarly, the ICBA urges the agencies to define what is meant by "for the purpose of re-lending." The more specific the final regulation is, the less room there is for misunderstanding and confusion. While the term seems somewhat self-explanatory, it can be subjected to differing interpretations. The ICBA believes that a simple example of what is meant by re-lending will help settle this issue. Essentially, the term should mean funds advanced under the original agreement where it is clearly understood by all parties to that agreement that the recipient will in turn make loans to others using the same funds.

Agreements for Both Grants and Loans. In certain instances, a loan agreement may also include an agreement to provide grant monies to a community group or community development corporation. In that case, the proposal would provide that the agreement is not exempt from disclosure because it covers more than an individual loan. The ICBA believes this is appropriate *if* the grant portion meets the value test. Although we are concerned about the amount of reporting that will be required under CRA Sunshine, we believe that where the grant portion is clearly reportable, instead of only trying to report part of an agreement, it may be simpler to report the entire agreement, but the bank should have the option of either reporting the entire agreement or only that portion which covers the grant monies, at its discretion. However, if the bank and the non-government entity enter into separate agreements – one for loans and one for grant monies – the two agreements should be treated separately and not aggregated. In other words, a loan agreement should only be reportable if it is part of a unified whole that includes separate elements, e.g., grant monies, that are clearly reportable.

CRA Contacts. The final exemption under the statute and the proposal is that situation where there has been no "CRA contact" by the non-governmental entity. Therefore, it is important to define a CRA contact, which may take place with either the bank's regulator or the bank.

Generally, under the proposal a CRA contact with a bank's supervisory agency would take place when a non-governmental entity submits a comment to the agency about the past or future CRA performance of the bank. A CRA contact with the agency would *not* take place if the non-governmental entity is responding to a direct request from the agency to that person or if the comment is made by the non-governmental entity at a widely attended conference or seminar on a general topic (even though regulators might be present in the audience). Comments submitted in response to the agency's general invitation for public comment, e.g., in the *Federal Register*, would be considered a CRA contact.

One problem that arises is that a bank may or may not know if a contact has been made between the non-governmental entity and the bank's supervisory agency. It is not always a matter of public record that such contact has been made or the bank may be unaware of the contact. Therefore, to properly implement this definition of a CRA contact, the agencies should maintain a list of all such CRA contacts and directly notify an individual bank whenever a CRA contact takes place. Without such notification, it would be extremely unfair to hold the bank responsible for the CRA contact.

A non-governmental entity may also have a CRA contact with a bank. The proposal provides several examples of such CRA contacts:

- the person or entity discusses providing (or refraining from providing) comments to an agency about the CRA performance of the bank
- any comments from the person or entity that the bank must include in its public CRA file
- any contact with the bank about its CRA rating or performance
- contact to discuss actions to improve the bank's CRA performance
- contact to discuss the bank's responsibility to meet the *banking* needs of the community

The proposal would not require the contact with the bank to specifically mention CRA or related terms. Rather, the substance and context of the discussion would be controlling. For example, a general letter to businesses in the community urging them to make the community a better place would not count as a CRA contact nor would a general offering to sell loans to the bank. However, it *would* include an offer to sell loans if it were suggested the purchase would improve the bank's CRA performance.

Defining when a CRA contact has occurred promises to be very difficult to determine and one of the most contentious items under this new regulation. The more specific guidance that the regulatory agencies can provide, the more helpful it will be. However, the ICBA urges the agencies to provide as precise a definition as possible. For example, a general discussion with the bank about CRA should be exempt. To begin with, such general discussions will be difficult to monitor. And, while bankers and regulators are aware of the CRA, many average consumers are not; bankers tell us they sometime have to explain the CRA to customers, and such explanations should not be considered CRA contacts for purpose of this regulation.

The ICBA believes that the proposed examples and definitions are too broad. As a result, they encompass far too many situations and offer the potential for a great deal of unnecessary burden. One of the primary businesses of the banking industry is lending money, and CRA encompasses an analysis of the bank's lending pattern. By instituting an extremely broad application of CRA contact – as has been done in the proposal – virtually any discussion of lending activities could be considered a CRA contact. At a minimum, to be considered a CRA contact, the non-governmental entity should address the bank's CRA performance in specific and concrete terms.

In other words, to be a CRA contact, there should be a definite and direct nexus between the discussion that results in a specific action by either the non-governmental entity or the bank that will have an impact on the bank's fulfillment of its CRA requirements. Therefore, a general discussion about whether certain activities are eligible for CRA credit should not be a CRA contact for purposes of CRA Sunshine.

A broad interpretation of the term "CRA contact" leads to the very real danger that the distinction between what is and what is not a CRA contact will become very murky, confusing and highly contentious. As a result, the ICBA believes that the term "CRA contact" should be limited to those contacts related to providing CRA-related comments or testimony to an agency, or discussion with a bank about providing (or not providing) such comments. While the statute could be read much more broadly to include many additional situations, the ICBA believes that discussions when this provision was adopted would allow the agencies to implement a more focused interpretation that involves contact (or agreement not to contact) the bank's supervisory agency. Moreover, since one of the provisions of the statute provides that the regulators "shall ensure that the regulations prescribed by the agency do not impose an undue burden on the parties,"[3] it is a sensible approach to controlling what could otherwise become an excessive burden for both banks and non-governmental entities.

Examples of Non-CRA-Contacts Needed. It would be useful for the final rule to specifically identify instances where the CRA Sunshine provisions do not apply. For example, the ICBA does not believe that a contact from a loan broker, offering to sell loans to the bank that are in the bank's assessment area, should be covered by CRA Sunshine. While a loan broker may be able to determine that loans are in the bank's assessment area, the broker probably does not know or care about the makeup of the bank's loan portfolio and how the loans being offered will mesh with existing loans in the portfolio relative to the bank's CRA performance. The loan broker wants to make a sale and his/her interest is purely a commercial one. For the contact to be considered a CRA contact, there should be more to the discussion about how the bank can fulfill its CRA requirements than merely a mention that loans are within its assessment area, or that the loans are to low- and moderate income individual that qualify for "CRA credit." Ultimately, it must be recognized that the purpose for the loan broker's call is not to improve the bank's CRA performance or to help the bank fulfill its CRA obligations; rather, the purpose for the loan broker's call is to make a sale. If the loans are not purchased, the broker will merely contact another potential buyer but is very unlikely to criticize or comment on the bank's CRA performance or file a protest since that would discourage the potential of future sales to that institution.

The ICBA also believes that any contacts in connection with the bank's purchase or sale of loans in the secondary market conducted at arm's-length should also be exempt. These transactions are increasingly routine in today's real estate loan market, and to

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[3] Gramm-Leach-Bliley, section 711, adding section 48(h) to the Federal Deposit Insurance Act.

subject such routine transactions to disclosure and reporting requirements would increase costs at a time when margins on such transactions are already razor thin, making some transactions no longer economically feasible – and thereby hindering the ability of banks to provide credit. Secondary market transactions are part of the bank's day-to-day business operations, and should be considered outside the scope of the CRA Sunshine requirements.

There are many similar situations that should also be exempt from the coverage of the CRA Sunshine provisions. For example, software providers that furnish systems that help banks analyze the distribution of their loan portfolios. It is not logical to require these contacts or purchase agreements to be covered, and to require reports on such agreements seems well beyond the intent of Congress. Similarly, agreements that involve attorneys, auditors, accountants or consultants that provide a bank with advice on its CRA performance should be outside the scope of the reporting requirements and should be clearly excluded by an exemption in the final rule.

Temporal Relationship between Contact and Agreement. It would also be appropriate to place a limit on the amount of time between a CRA contact and the occurrence of an agreement in order for the agreement to be subject to the CRA Sunshine provisions. Without such a limitation, the ability of banks and non-governmental entities to track the nexus between contact and agreement will become a nightmare. The ICBA recommends a one year time limit, since many of the other provisions in the CRA Sunshine rule use a one year term. If the agencies determine that the nexus should be longer than one year, the ICBA strongly recommends that the contact not go farther back than the bank's most recent CRA examination to simplify bank record-keeping burdens.

The ICBA also believes that the agreement must occur *after* the CRA contact in order to be reportable. While it is possible that the first CRA contact could occur after an agreement has been entered, the final rule should allow the bank to make an assessment about whether an agreement is reportable is at the time the agreement is reached. At that moment, the bank and the non-governmental entity will both know whether they have had the necessary CRA contact to make the agreement reportable. If the final rule allows the CRA contact to come after the agreement, banks and non-governmental entities would be placed in the situation of constantly reviewing all discussions and all agreements, an extremely burdensome task. Rather, the only logical and sensible approach is to require the CRA contact to precede the agreement in order for the agreement to be reportable.

Fulfillment of the CRA

According to the statute, an agreement is covered only if it is made "in fulfillment of the CRA."[4] This will be defined by a list of factors established by the agencies that have been determined to have a "material impact" on an application to open a depository facility or to assign a CRA rating. The list includes factors evaluated by the agencies in conducting CRA examinations as well as providing or refraining from providing comments

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[4] Gramm-Leach-Bliley, section 711, adding section 48(e) to the Federal Deposit Insurance Act.

about the bank's CRA performance or written comments that would be included in the bank's CRA public file. Under these criteria, an agreement with a small bank would be "in fulfillment of the CRA" only if the agreement involves one of the activities within the scope of the small bank examination, e.g., mostly lending activities. Since only factors considered in evaluating the bank's CRA performance are covered, an agreement for the bank to provide employees for community service, which is not in fulfillment of the CRA, would not be "in fulfillment of the CRA" and therefore would not be covered by CRA Sunshine. The ICBA believes that this is appropriate for now, although it may require further refinement after experience with these requirements.

Value

An agreement is subject to disclosure only if it involves funds that aggregate more than $10,000 in one calendar year or if it is for loans with principal balances that aggregate more than $50,000 in one calendar year. The ICBA finds it appropriate to use the calendar year to make these assessments.

Under the proposal, to calculate the applicable amount, funds received by individuals or entities under the terms of the agreement would be counted even if those recipients were not party to the agreement. However, the amount would not include the value of a loan that would otherwise be exempt, e.g., an individual mortgage loan.

The proposal would provide that separate agreements involving the same parties in one calendar year would be aggregated to determine if the value limits have been reached, and the ICBA also agrees that this is appropriate. This avoids the temptation for parties to attempt to structure agreements to avoid the limits. However, the ICBA recommends that final rule require the parties be identical and not merely related or affiliated in some way for this aggregation to take place.

Similarly, agreements involving separate parties but that are negotiated in a coordinated fashion would be aggregated to determine if the value limits have been reached. While the ICBA finds this appropriate, the agencies should provide additional guidance, either in the final rule or in a separate issuance, that offers additional information about what is meant by "coordinated fashion" so that banks and non-governmental entities know with some certainty when this requirement applies. It should also be clear that this applies only when agreements are truly negotiated, and not in situations when identical or virtually identical form documents are used.

If an agreement does not provide for certain dollar payments to be made in a given year, then banks should be permitted to use the actual payments made under the agreement to determine whether the agreement is reportable. If so, the agreement should only be reportable in that year when the payments reach or exceed the value limits. However, because this may be extremely difficult for some banks to monitor, banks should also have the option of amortizing the value of the entire agreement over the life of the agreement, assuming payments will be made in equal installments each year, with the average annual payment being used to assess whether the agreement is reportable. This has the administrative advantage of allowing the bank to assess reportability at the time the agreement is entered without requiring constant monitoring. Especially for a bank that has a large number of agreements, monitoring and assessing could become an administrative nightmare.

An agreement that provides for payments in excess of the limits in one calendar year would be a covered agreement under the proposal during the entire term of the agreement, even though the amounts provided in other years might be less than the minimum amounts. This part of the proposal would institute a double standard, one requirement for banks which must report every year and one requirement for non-governmental entities that must only report in that year when payments exceed the value limitations. The ICBA believes that banks should be allowed the same option as non-governmental entities and not be required to report in those years when the payment does not meet the value requirement. However, a bank should not be penalized if it determines that it is easier to report every year, whether payments in one year meet the value criterion or not.

Disclosure

The GLB and the proposal require that each party to a covered agreement make a complete copy of the agreement available to any member of the public on request. A bank could meet this obligation by placing a copy of the agreement in its public CRA file and making it available in accordance with the CRA regulations that apply to the public CRA file. The proposal would allow the bank to recover reasonable costs for copying and mailing the file on request. The ICBA agrees that this is an appropriate means of disclosures and finds it only appropriate that a bank be able to recover reasonable costs for copying and mailing this information. The ICBA also recommends that the final rule allow banks to recover reasonable fees for any research connected with locating and furnishing an agreement.

Under the rule, the obligation to make the agreement available would end 12 months after the agreement terminates (after that period, copies would still be available from the bank's regulator under the Freedom of Information Act). The ICBA agrees that banks should not be required to make these available for more than 12 months after the agreement has ended. To do otherwise would make a bank's CRA public file unwieldy and cumbersome.

Filing the Agreement with the Agency

Under the proposal, banks would be required to file a copy of the agreement with their supervisory agency. Since banks will be required to file copies of the agreement with their regulator, to "reduce burden," non-banks would only have to make the agreement available to the appropriate regulatory agency on request (the non-bank would have 30 days to comply with such a request).

It is important to recognize that the statute only requires that the agreement be "made available" to the appropriate supervisory agency.[5] While the bank must file an accounting with the agency and report the existence of the agreement, there is no specific requirement in the statute that the full text of the agreement actually be filed with the agency. The ICBA believes that it would be much less burdensome and much more practical for banks to notify the agencies of the existence of these agreements in their annual report but not require a routine filing of the actual text of agreements.

All banks undergo regular CRA examinations, and that would be the most appropriate time for the agencies to review these agreements and to ensure that the bank has been filing the appropriate information. Since many of these agreements may be long and complex documents, requiring them to be filed as a matter of course will be a burdensome requirement for both banks and regulators. If the bank includes the agreement in its CRA public file, since the agency has the ability to request a copy of the agreement at any time, the requirement that the full text of every agreement be filed with the agency is an unfair and unnecessary burden on banks.

Confidential or Proprietary Information. Since the filing of an agreement might entail confidential or proprietary information – for both the bank and the non-governmental entity -- the proposal would allow a party to request the relevant supervisory agency to withhold certain portions of the agreement from public disclosure. Under the terms of the proposal, the agencies would use the relevant Freedom of Information Act (FOIA) guidelines in determining what can and what cannot be withheld from public disclosure. However, the agencies point out the GLB requires disclosure of the full agreement which could include information that might otherwise be withheld under FOIA, e.g., the amount of payments of loans to be made under an agreement (including individual account numbers or information detailing a particular bank's underwriting criteria).

At a time when there is a great deal of attention being given to protecting privacy, the final CRA Sunshine rule should include a mechanism to facilitate the protection of the privacy of the parties involved. The ICBA supports a procedure that allows the parties to request the appropriate agency to review and provide guidance on which portions of an agreement may be redacted before full disclosure.

Moreover, once such a request has been filed, the bank or non-governmental entity making the request and any other parties to the agreement should be allowed to presume that the information covered by the request may be considered confidential and not subject to disclosure until a ruling has been received from the appropriate agency (including any appeals that may apply). The ability to request such a determination could be especially important if the bank and the non-governmental entity or entities that are parties to the agreement disagree on what may and may not be disclosed – or whether the entire agreement is subject to disclosure.

In addition, the agencies should consider including in the final rule a list of the types of information that a bank may presume to be confidential or proprietary and therefore may

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[5] Gramm-Leach-Bliley, section 711(a)

redact from disclosure without going through a request and determination procedure, such as account numbers, etc.

Annual Reports

GLB requires each party to a covered agreement entered into on or after May 12, 2000 to file an annual report relating to the agreement. The proposal would allow a non-bank to omit filing a report for any year in which that party does not receive funds under the agreement. However, the proposal would adopt a different standard for banks and require the filing of a report during each year of the agreement, regardless of whether funds are disbursed. The ICBA believes that this distinction is inappropriate. Both banks and non-governmental entities should be subject to the same filing requirements. The statute provides that the annual report should detail the payments, fees and loans made or received during the year[6] and, by inference, if no funds or payments change hands, no report is required. Either both banks and non-governmental entities should be required to report in years when no funds are exchanged, or neither should be required to report.

The ICBA does not believe that the final rule must specify additional detail on these reports. However, it should be clarified that information about loans that would otherwise be exempt should be excludable. More important, the ICBA believes that the final rule should include model report forms or samples of reports that both banks and non-governmental entities can refer to as they prepare their reports. Model report forms prepared by the agencies would ensure that the information is reported in a consistent manner, offer a guideline for those filing the reports to ensure that all necessary information is included, and would avoid each bank or non-governmental entity having to "re-invent the wheel."

If the bank is party to five or more agreements, the proposal would allow it to file a consolidated report. The proposal does not explain how the number five was derived, but the ICBA believes that a bank should be permitted to file a single report with its supervisor that details information on **all** covered agreements that the bank is party to, regardless of their number, whether one, two, or five or more.

When and Where to File Annual Reports

The proposal would allow filing on either a calendar year or fiscal year basis. An annual report would be due within six months after the end of the year. The ICBA finds that this time frame permits sufficient time for banks to collect and prepare the pertinent information.

Non-banks would be allowed to file the report with the bank and request the bank to file their report with the appropriate regulatory agency. The ICBA does not believe this is appropriate. According to the proposal, banks are in the best position to know which

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[6] Gramm-Leach-Bliley, section 711, adding section 48(b) to the Federal Deposit Insurance Act.

agency is their primary supervisor and therefore can best handle the filing of the report with the correct agency. However, this places an unfair burden on banks. There are many simple ways for non-governmental agencies to determine a bank's primary supervisor, including asking the bank. Such information is also readily available on the FDIC's Web site. Banks will have sufficient burden with tracking and collecting information on their own agreements for these new annual reports. There is no reason to make a bank responsible for the reporting requirements of other parties as well (which then raises the question of what kind of liability the bank incurs for the filing of the information provided by another party, and what responsibility the bank has to ensure the correctness of the information). It would be much more straightforward and less confusing to require the non-governmental entity to file its own report with the appropriate banking agency. If a report is incorrectly filed, the agency can forward it to the appropriate agency and notify the filer of the correct address for any future filings.

The ICBA also recommends that the final rule make provisions to allow these reports to be filed electronically.

Additional Issues

The proposed rule only includes examples that outline what is deemed to be a covered agreement. The ICBA believes that it would be useful to include other examples throughout the rule to illustrate how the provisions apply. This is a complex rule, and the more guidance that can be offered, the easier it will be for both banks and non-governmental entities to comply.

The ICBA also recommends that definitions of other terms, such as "contract," "affiliate," "control" and other terms be defined in the final rule. The more precise the definition, the less likely there are to be questions about how certain terms apply, and the less likely there are to be disagreements about applicability.

Because the proposal has so many broad definitions and because so much additional interpretation was left to consider following public comment, it is not inconceivable that the agencies may find it difficult to reach a consensus among all the comments that are filed in response to the proposal. The agencies should consider going out for additional public comment to better focus some of the issues that are being addressed in this proposal. This is especially important due to the potential burden this reporting requirement could have on non-governmental entities and on banks.

Finally, the ICBA notes that the rule will institute new requirements for banks and for non-governmental entities. As a result, there is likely to be confusion and uncertainty as compliance programs are instituted to comply with the complexities of this reporting. Therefore, we urge the bank regulatory agencies to continue to monitor developments and to furnish additional guidance, similar to the FFIEC's CRA Q&A, that is updated regularly.

Thank you for the opportunity to comment.

Sincerely,

Thomas J. Sheehan
President