THE FINANCIAL SERVICES ROUNDTABLE

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July 26, 2000

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

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

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219
Docket No. 00-11

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

Dear Sirs and Madams:

The Financial Services Roundtable appreciates the opportunity to comment to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision (collectively, Athe agencies@) on the proposed CRA "sunshine" regulations authorized and required under Section 711 of the Gramm-Leach-Bliley Act. The Roundtable appreciates the work of the agencies in developing the proposed rules.

The Financial Services Roundtable is a national association whose membership is reserved for 100 companies selected from the nation=s 150 largest integrated financial services firms. The member companies of the Roundtable engage in a wide range of financial activities, including banking, securities, insurance, and other financial service activities. The mission of the Roundtable is to unify the leadership of large, integrated financial service companies in pursuit of three primary objectives:

To be the premier forum in which leaders of the United States financial services industry determine and influence the most critical public policy issues that shape a vibrant, competitive marketplace and a growing national economy;

$ To promote the interests of member companies in federal legislative, regulatory, and judicial forums; and

$ To effectively communicate the benefits of competitive and integrated financial services to the American public.

The Roundtable is a CEO-driven association that advocates the interests of integrated financial institutions primarily in the Congress, the federal agencies, and federal courts.

GENERAL COMMENTS

The Roundtable supports the policy objectives behind "CRA Sunshine," namely to promote accountability in CRA dealings and to assure that financial institution CRA activities provide benefits to residents of low- and moderate-income areas. However, the Roundtable believes that changes proposed in this letter will promote final regulations that meet the intended public policy objectives in a manner that reflects the existing operating practices and appropriately protects confidential information.

The Roundtable notes particularly that subsection (h)(2)(A) of Section 711 of the Gramm-Leach-Bliley Act requires that the agencies shall "ensure that the regulations prescribed by the agency do not impose an undue burden on the parties and that proprietary and confidential information is protected." The Roundtable encourages that agencies to consider this statutory provision when drafting the final regulations in this area.

SPECIFIC COMMENTS

Definition of Covered Agreements

The CRA Sunshine provisions of the GLB Act require disclosure of agreements "made pursuant to or in connection with the Community Reinvestment Act of 1977 involving funds or other resources...". The proposed rule states that an agreement may be considered to be a "covered agreement" even if the agreement is not legally binding. The Roundtable strongly disagrees with this interpretation.

Subsection (f)(1)(A) of the Act, addresses "material failure to comply" with covered agreements. This section elaborates on the enforceability of covered agreements by stating that if "the party to an agreement... willfully fails to comply with this section in a material way... the agreement shall be unenforceable." The Roundtable believes that the material failure to comply with the standard established in subsection (f), by addressing enforceability of covered agreements, provides clear evidence that disclosure requirements are intended to apply solely to agreements that are legally enforceable.

The rule of construction in this section further supports the view that an agreement must be legally binding to be covered by the sunshine provisions. Subsection (g) states that "no provision of this section shall be construed as authorizing any appropriate Federal banking agency to enforce the provisions of any agreement described in subsection (a).@ If the broader agency interpretation that an agreement not need be "legally enforceable" were to apply, there would seem to be no need for these enforcement provisions.

There are sound policy arguments in support of this more precise definition. Most notably, the Roundtable believes that the proposed definition of "covered agreement" would actually decrease, rather than promote transparency and "sunshine." Requiring voluminous disclosures is counter to the intent of this legislation.

Additionally, the Roundtable is concerned that applying the broader agency definition of "covered agreement" would place undue hardship and burden on financial institutions,

and therefore is inconsistent with subsection (h)(2)(A) of Section 711. Institutions create a great number of nonenforceable documents in connection with CRA loans, grants and payments. Further, it is often difficult to determine when a series of correspondence or documents becomes a written agreement. Absent a bright line standard (such as including only legally binding agreements) it would be nearly impossible to comply with this regulation because it will create a situation where institutions may be forced to retain and disclose large volumes of correspondences and related documents. Not only will this provide little public benefit, it will have the unintended result of imposing a great burden associated with loans and grants in low- and moderate-income areas. This is counter to the intent of CRA and not the intent of the CRA Sunshine provisions. Also, since subsection (h)(2)(A) requires the agencies to "ensure that the regulations prescribed ... do not impose an undue burden on the parties...@ including a "legally binding" standard seems appropriate.

Under this proposed revised standard that exempts unenforceable, conditional commitments that may not result in any exchange of consideration would not be included within the scope of the rule. For example, commitment letters that are subject to material conditions should not be deemed to be covered agreements. Consider the following to illustrate this point:

> Example. An insured depository institution or its affiliate enters into a letter agreement with a community development organization in which it agrees to lend such organization at a rate substantially below market rates subject to: (1) such organization obtaining additional loans of at least $500,000 that would rank *pari passu* with the institution's loan, (2) the favorable results of the institution's due diligence into the organization's finances and activities and (3) the organization's agreeing to allocate all community development loans made with such borrowed funds which are invested in certain markets to such an institution. This written agreement is not a covered agreement because each of the conditions to be performed is, in the context of the proposed transaction, material and each creates a substantial likelihood that no party will be obligated to perform thereunder.

Agreements with Person Who Have Not Made CRA Contact

The law specifically exempts from its scope "any agreement entered into by an insured depository institution or affiliate with a nongovernmental entity or person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the Community Reinvestment Act of 1977." The agencies ask for several specific comments addressing this exemption.

First, the Roundtable believes that contacts between a person and an agency, of which the financial institution is unaware, should not be subject to the scope of this regulation. This is appropriate becasue the contact could not have affected the institution's decision since it was unaware of the contact. Alternatively, each agency should be responsible for providing each financial institution with a list of the contacts that they have received regarding the individual institution.

Also, the Roundtable also believes that contacts made after an agreement is executed should be excluded from the scope of this regulation since the contacts could not have been considered during the loan or grant-making decision process. The tense used in this subsection of the statute supports this interpretation by excluding agreements when a person "has not" had a CRA contact.

Further, the rule should allow an institution to require that all contacts be directed to the specific person or office identified in the institution's CRA notice. This approach would establish a consistent set of expectations for depository institutions, persons and regulators for determining if the contacts were communicated to the responsible party at the institution. Each depository institution can and should put procedures in place to ensure that CRA-related discussions are directed to the appropriate individuals. However, "contacts" directed to employees or agents of the insured depository institution who are not involved in the institution's decision making process for CRA fulfillment should not be considered to fall within the definition of "contacts."

Additionally, the Roundtable suggests that comments or testimony that are in response to a direct request from a federal banking regulator should be excluded from the type of contacts covered by the regulations. In such cases, contacts are not being made by the party to influence the depository institution, but rather to respond to the regulator's request.

The Roundtable also recommends excluding certain routine inquiries, such as those regarding an institution's CRA rating. Additionally, the Roundtable suggests that a safe harbor be adopted describing certain additional communications that would not constitute "contacts" under the terms of the statute.

The agencies also ask for comments regarding whether there should be some specified period within which a CRA contact must occur in order to be considered as a contact for purposes of this regulation. The Roundtable supports including such a standard. Otherwise, institutions would face a nearly impossible task of collecting and retaining information forever if some reasonable time frame is not put in place.

Value

The statute applies only "to a group of substantively related contracts with an aggregate value of cash payments, grants, or other consideration in excess of $10,000, or with an aggregate
amount of loan principal in excess of $50,000, annually..." For purposes of this regulation, the Roundtable supports using a calendar year period when calculating the aggregate annual value of a CRA agreement. This approach will facilitate compliance with the final rule. Other approaches would likely place an unnecessary burden on financial institutions.

Related Agreements

In situations where a contact is made to one member who is part of a larger group of institutions providing a service, only the institution that receives direct contacted should

be considered to have had a contact. The statute supports this interpretation. It would be an inappropriate extension of the term "contacts" to include indirect contacts and attribution of the content of such contacts to parties that were not contacted directly.

Disclosure

The Roundtable agrees that including a covered agreement in the CRA file is an appropriate method of public disclosure. Additionally, the Roundtable suggests clarifying the regulation to allow affiliate companies of a financial institution that are covered by this rule to include their disclosures in that institution's public file if they will receive CRA consideration for the underlying activity.

The Roundtable suggests allowing institutions to have thirty days from completing an agreement until including the agreement in the public file. This will provide institutions with sufficient time to comply with this regulation.

The agencies ask for comment whether an institution should be allowed to file a consolidated report if it is party to two or more covered agreements. The Roundtable supports this concept.

Confidential Information

This issue is of great concern to the Roundtable since covered agreements might well contain confidential or proprietary information the disclosure of which could harm a recipient of a grant, loan or investment. Examples include: (i) information that raises security concerns, such as account numbers of individuals and organizations and (ii) non public information, such as unlisted phone numbers. Further, there might be circumstances where disclosure of terms, such as representations and warrantees, could materially harm the recipient of a grant or loan because it could, for example, expose the financial condition of the recipient. Covered agreements also might contain other information that could harm financial institutions and their affiliates, if disclosed, such as underwriting criteria and, in some circumstances, rates and terms. Requiring financial

institutions and their customers to divulge the specific terms and conditions for all CRA-eligible investments, as well as below-market rate loans and on-lending, conflicts with principles of privacy and customer confidentiality. Institutions need the flexibility to price products differently for different customers. Many issues come into play, including but not limited to: a) overall relationship with the customer; b) desire to build market share in a particular niche; or c) loss-leader to encourage deeper customer relationships. If institutions are forced to make these prices public, the results might be anti-competitive, as non-profits become privy to private customer terms and conditions that they can use to extract further concessions from banks. In addition, institutions would be able to see details of competitors' pricing, making the community development field subject to unintended risks. Accordingly, the Roundtable suggests that all of the information listed above be exempted from the disclosure requirements of this regulation.

Additionally, the agencies should identify in advance certain types of information that can be automatically withheld. Requiring the agencies to review all information would place unnecessary burden on both the financial institution and the agencies. For example, information such as account numbers and unlisted phone numbers should be included under such an exemption. Additionally, other information considered to be "private" under Title V of the Gramm-Leach-Bliley Act and its implementing regulations should be carved out from the disclosure requirements of this statute and regulation as well.

In addition, the Roundtable believes that institutions should not be required to disclose information while the agencies undertake their proposed review process to determine if specific portions of the agreement are proprietary.

The Roundtable would also support inclusion of a "good faith" standard whereby over-disclosure by an institution would not violate the statute or regulation.

CONCLUSION

The Roundtable thanks the agencies for consideration of its comments. The agencies face a difficult and complex task in developing regulations in this area that do not place an undue burden on financial institutions. If the Roundtable or any of our member companies can be of further assistance in this matter, please do not hesitate to contact me or Roundtable President Steve Bartlett at (202) 289-4322.

Sincerely,

Richard M. Whiting

Richard M. Whiting
Executive Director and
General Counsel