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July 19, 2000

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

OFFICE OF  
THRIFT SUPERVISION  
DISSEMINATION BRANCH  
2000 JUL 24 P 12:06

Re: Disclosure and Reporting CRA-Related Agreements – Section 711 under Title VII of the Gramm-Leach-Bliley Act (GLB)

To Whom It May Concern:

The Leadership Council of the San Diego County CRA Roundtable wishes to submit commentary on the proposed rule that implements provisions of the recently enacted GLB Act. The purpose of the CRA Roundtable is to discuss and share CRA related issues that will help its lender members improve their CRA programs. To further this purpose, the Roundtable lender members have asked the Leadership Council to submit commentary on their behalf.

Our most recent Roundtable discussion dealt with Section 711 of the GLB Act. The conclusions of the discussion form the basis for our commentary. Although opinions may vary, we believe this letter represents the majority view of our membership. Please note that while the Roundtable hears from community organizations, public agencies, and regulatory bodies, this letter expresses the views of those financial institutions present at our CRA Roundtable discussion.

On its face, the GLB Act's objective appears to prevent the diversion of funds from CRA purposes for private gain. A foreseeable consequence, however, is the diversion of funds away from bona fide community reinvestment programs because these provisions provide a regulatory disincentive for lenders to engage in CRA programs. The regulatory burden of providing substantial additional documentation may cause depository institutions to reduce their CRA investments. Thus, the proposed rule as it is written, will not only create a negative impact on our lenders' CRA performance rating, but will also cause a divestment to the communities they serve. Further, the proposed rule may not accomplish its objective. Third-party agreements between depository institutions and advocacy groups that outline large CRA commitments could very well circumvent the reporting requirements because these agreements do not provide for direct payment to the non-governmental entity/person (NGEP).

In order to clarify, and improve, the proposed rule we offer the following:

**Definitions of “Covered Agreement” and “CRA Contact”**

The definition for “Covered Agreement” is too broad and does not clearly define what constitutes a “contract,” “arrangement” or “understanding.” While the rule indicates that general communications or solicitations do not constitute covered agreements, with current technology, a depository institution has no way to ascertain whether a written correspondence is a specific request or a general form letter.

The Leadership Council recommends the agencies modify the definition to include only those written agreements where the purpose for the contact initiated by the NGEF was for improving an institution’s CRA performance. We recommend the definition *not* include contacts by a NGEF that merely resulted in an agreement that met CRA performance reporting requirements. This revision accomplishes the GLB Act’s objective – deter “extortion” of the banks by community groups – while reducing lenders’ reporting requirements.

We also recommend that junior mortgages and equity lines of credit fall under “exempt” agreements, as they constitute individual mortgage loans. We further recommend that an agreement is “exempt” when the depository institution initiates the CRA contact, as these agreements do not fall under the purview of the GLB Act’s objective.

We ask for clarification on what is “relending,” as pertains to non-exempt extensions of credit.

The Leadership Council offers to the agencies an appropriate formula for determining a “substantially below market rate”: any credit arrangement where the rate is at least 2% below programs/products offered to majority of client base.

The definition for “CRA Contact” is also too broad. General discussions occur continuously on CRA matters that do not relate to CRA Performance. As such, any weekly/monthly conversation/visit could trigger a covered agreement. Further, the proposed rule does not provide a time limit for CRA contact. Based on the proposed rule, a CRA contact occurring 5 years prior will trigger a reporting requirement.

The Leadership Council recommends the agencies amend the proposed rule to require reporting only if a CRA contact occurs within 2 years of a covered agreement. Additionally, the mere requesting of information on a bank’s CRA efforts, or a loan officer meeting with a NGEF representative and describing the bank’s CRA loan programs *should not* constitute a contact. If this were the case, bank employees would not only be frustrated in their attempts to serve community needs, they would also be hindered in the general conducting of banking business. Thus, banks need clarification on who has the authority to establish a CRA contact and determining whether a contact

occurred. For example, how many people constitute a "widely held meeting" for a CRA Contact exemption?

### **Disclosure and Reporting**

Our members have several concerns regarding the disclosure and annual reporting requirements. Our primary concern is again that the proposed rule will result in reduced investments in the community due to increased regulatory burden. To avoid the reporting requirements, nonprofits may stop sending grant or loan requests to depository institutions. Additionally, banks may adopt investment/contribution policies that will limit amounts loaned/granted to NGEPS. Secondly, we have concerns about how much responsibility do depository institutions have over an NGEPS's reporting requirements. For example, declaring a contract unenforceable if the NGEPS has "willfully and materially" failed to comply with Section 711 could result in costly civil litigation against depository institutions through no fault of their own. Further, false or negative information made public through the annual reporting process could seriously damage the depository institutions' reputation.

The Leadership Council recommends the agencies amend the proposed rule:

- (1) Keep reporting requirements to a minimum to reduce the burden on governmental agencies, depository institutions, and regulatory agencies.
- (2) Allow for a consolidated report if an institution has 2 or more agreements (instead of the 5 now indicated).
- (3) Acknowledge that depository institutions will not be held responsible for a NGEPS's failure to comply with the reporting requirements.

We further request clarification on the following:

- (1) Who will be responsible to alert NGEPSs to their reporting responsibilities?
- (2) How will a depository institution be viewed if there was a good faith belief that an agreement was exempt and then it is discovered after the 30 day period has expired that it is a covered agreement?
- (3) How does an institution report an agreement that does not have specific terms or timetable on disbursement of funds? (For example, if an institution chooses to grant \$10,000 or less per year for an agreement that provides for \$40,000 in grants over 4 years, should it be reportable even though the aggregate exceeds the thresholds?)

In conclusion, the Leadership Council recommends that the agencies consider our proposed amendments and requests for clarification that meet the objective of the GLB Act without creating an unreasonable burden on financial institutions and the communities that they serve. We further recommend that the agencies carefully consider the impact on small community banks and the possible divestment in our communities that will result from increased regulatory burden. We support effective and efficient

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CRA regulation that responds to the need for increasing community investment and to the need for streamlined institution reporting.

Thank you for your anticipated response in making the suggested amendments and clarifications to the proposed rule.

Sincerely,

Members of the CRA Leadership Council on behalf of the San Diego CRA Roundtable



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