

## Appendix C

December 19, 2000

TO: Board of Governors

FROM: Staff<sup>1</sup>

SUBJECT: Summary of comments received regarding the Board's proposed Regulation G that implements the CRA sunshine requirements of the Gramm-Leach-Bliley Act.

**Background:** On May 10, 2000, the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the "agencies") requested public comment on a regulation to implement the Community Reinvestment Act ("CRA") sunshine requirements of the Gramm-Leach-Bliley Act ("Act"). These requirements are included in a new section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

Section 48 applies only to written contracts, arrangements or understandings that (1) are entered into between an insured depository institution ("insured DI") or affiliate and a "nongovernmental entity or person" ("NGEP"), (2) are in fulfillment of the CRA, and (3) provide for an insured DI or affiliate to provide in any year cash payments, grants or other consideration in excess of \$10,000, or loans with an aggregate principal of more than \$50,000.

If an agreement is covered by the statute, the statute requires the parties to the agreement to make a copy of the agreement available to the public and the appropriate Federal banking agency. In addition, the parties

---

<sup>1</sup> Messrs. Alvarez, Fallon, and A. Miller, Legal Division; Messrs. Loney and Mann, and Ms. Ryan, Division of Consumer and Community Affairs.

to a covered agreement must file an annual report with the appropriate banking agency concerning payments made or received under the agreement.

**Summary of Comments:** The Board received 257 public comments on the proposal.<sup>2</sup> Commenters included 33 members of Congress; 7 state and local government officials; 24 banking organizations; 16 trade associations; 165 community-based and non-profit organizations and individuals; and 7 other business. The Appendix provides a complete listing of the persons who submitted comments to the Board.

Many commenters praised the agencies' efforts to streamline the disclosure and reporting obligations of parties to a covered agreement. In addition, many commenters commended the agencies' efforts to clarify which agreements are subject to section 48 and how a party to a covered agreement may comply with the statute's disclosure and reporting obligations.

Virtually all commenters, however, recommended one or more changes to the proposed rule. In this regard, most commenters expressed concern regarding the potential scope of the statute and the rule with many contending that the definition of a covered agreement in the proposed rule was overly broad and would cover a wide range of agreements between banking organizations and NGEPs that were not intended to be subject to the disclosure and reporting requirements of section 48. Many commenters also expressed concern that the statute and the rule would discourage banking

---

<sup>2</sup> This number includes 32 members of Congress who jointly submitted a single comment and five Reserve Banks. The comments of the Reserve

organizations from entering into agreements with NGEPs to provide loans, investments or banking services in their local communities.

The following provides an overview of the principal comments received by the Board on the specific provisions of the proposed rule. A detailed summary of the comments made by each commenter is available in the Secretary's Office.

I. Agreements Subject to Section 48

A. Definition of Covered Agreement

As noted above, section 48 and the proposed rule apply only to written "contracts, arrangements or understandings" that are entered into between an insured DI or affiliate and a NGEF, are in fulfillment of the CRA, and meet the \$10,000/\$50,000 value thresholds established by the statute. Approximately 23 commenters contended that the rule should apply only to legally enforceable contracts entered into between an insured DI and a NGEF. Commenters supporting this proposition argued that such an interpretation would narrow and clarify the scope of section 48. Some commenters also contended that section 48 was intended to cover only legally enforceable contracts since the statute provides that an agreement shall be unenforceable if any party to the agreement fails to comply with the disclosure and reporting obligations of the statute.

A number of commenters also requested that the agencies clarify or modify the examples provided in the proposed rule of actions that might constitute a written "contract, arrangement or understanding." For example, 17 commenters requested that the agencies clarify that a unilateral

---

Banks were similar in nature to the comments received from the public that are summarized in this document.

lending or investment pledge by an insured DI would not constitute a contract, arrangement or understanding with a NGEF. A member of Congress, however, asserted that a unilateral pledge made by an insured DI could be a covered agreement if it was made in response to previous actions by, or discussions with, a NGEF. Other commenters asked the agencies to clarify whether an insured DI would have an “arrangement or understanding” with a NGEF by responding to a general request from the NGEF for charitable contributions, or provide additional examples in the final rule of actions that would (or would not) constitute a contract, arrangement or understanding.

#### B. Exemption for Individual Mortgage Loans

Section 48 specifically exempts from coverage any agreement that is an individual mortgage loan and the agencies requested comment on what constitutes a “mortgage loan” for these purposes. The vast majority of the 53 commenters that addressed this issue suggested that the exemption should cover any loan that is secured by real estate. A small minority contended that a “mortgage loan” should be defined to include any loan made for real estate-related purposes, regardless of whether the loan was secured by real estate. A number of commenters, including 32 members of Congress, also asserted that investments in real estate also should be exempt under this provision.

#### C. Exemption for Agreements to Make Other Qualifying Loans

The statute also exempts from coverage any “specific contract or commitment for a loan or extension of credit . . . if the funds are loaned at rates [that are] not substantially below market rates and if the purpose of the loan or extension of credit does not include any re-lending of the borrowed

funds.” The agencies requested comment on whether this exemption is available only for a commitment to make a single loan or extension of credit, or would also be available to a general commitment by an insured DI to make multiple loans in its community over a period of time. One member of Congress stated that this exemption should be available only for a specific commitment to make a single loan (such as a loan commitment made to a small business), although 22 commenters asserted that a commitment by an insured DI to make multiple loans also should be exempt from coverage.

Commenters also were split on whether the agencies should define in the rule when a loan is made at “substantially below market rates” or for purposes of “re-lending.” Fifteen commenters requested that the agencies provide a standard for determining when a loan is made at “substantially below market rates,”<sup>3</sup> while four commenters believed the agencies should not define the phrase and, thus, provide institutions and NGEPS flexibility in determining whether a loan agreement qualified for this exemption. Nine commenters suggested that the agencies clarify and provide examples of when a loan would be considered made for purposes of re-lending.

#### D. Exemption for NGEPS that Have Not Had a CRA Contact

Section 48 specifically exempts from coverage any agreement entered into by an insured DI or affiliate with a NGEPS “who has not

---

<sup>3</sup> Some commenters suggested specific formulas for determining whether a loan was made at “substantially below market rates.” For example, some suggested a loan would meet this standard if it was made at a rate that was more than (1) 2 percentage points below the rate on a Treasury security with a comparable maturity, or (2) 200 basis points or 25 percent below the market rate on similar loans.

commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the [CRA].” The proposed rule adopted the exemptive language of section 48 and provided examples illustrating actions that would, and would not, be a CRA contact. The examples generally indicated that a NGEF had a CRA contact if it (1) submitted comments or testimony to a Federal banking agency concerning the CRA record of performance of an insured DI, (2) had a discussion with the insured DI or affiliate about providing (or refraining from providing) comments or testimony about the CRA record of performance of the institution to a Federal banking agency, or (3) had other discussions with the insured DI or affiliate concerning the CRA rating or record of performance of the institution.<sup>4</sup>

Virtually all commenters addressed the CRA contact provisions of the proposed rule. A substantial majority of commenters, including a number of members of Congress, expressed concern that the examples of a CRA contact in the proposed rule were too broad and would cause a wide range of agreements to be covered that went beyond the types of contacts contemplated by the statute. Many of these commenters also asserted that the rule should provide more clarity on when a NGEF has had a CRA contact so that parties to agreements know whether there has been a CRA contact at the time they enter into an agreement. For example, approximately seven commenters asked the agencies to clarify that a CRA contact must relate to the CRA performance of an insured DI. However, several commenters, recommended that the definition should not be limited

---

<sup>4</sup> Some commenters indicated that the examples were helpful in providing guidance on the meaning of CRA contact.

to contacts concerning the CRA performance of an insured DI or CRA affiliate, but should instead include any contact with an agency or insured DI or affiliate about anything relating to the CRA.

Approximately 70 commenters, including 32 member of Congress, asserted that the agencies should define a CRA contact to mean only the submission of CRA-related comments or testimony to a Federal banking agency and discussions with a banking organization about providing or refraining from providing CRA-related comments or testimony to a Federal banking agency. Approximately 20 commenters, including one member of Congress, opposed limiting CRA contact in such a manner and stated that other types of discussions with a banking organization concerning the CRA should be considered a CRA contact under the statute.

Many commenters recommended that specific types of contacts should or should not be considered CRA contacts. For example, several commenters suggested that routine inquiries relating to the CRA, such as inquiring about an institution's CRA rating, obtaining information in an institution's CRA public file, or obtaining general information about the CRA should not be considered CRA contacts. Several commenters supported the example in the proposed rule that indicated that contacts made as a result of a direct request from an agency are not considered CRA contacts. Approximately ten commenters recommended that any contacts with a NCEP that are initiated by an insured DI or affiliate should also be excluded. Several commenters, however, indicated that it was unfair to exclude agency-initiated or institution-initiated contacts from the definition of CRA contact.

In addition, approximately 15 commenters opposed including discussions concerning the eligibility of an activity in the definition of CRA

contact. These commenters generally took the position that discussions about the eligibility of a specific product were not intended to be covered by the statute.

Approximately 13 commenters recommended that the agencies provide that a CRA contact has not occurred unless appropriate officials of the relevant banking organization and NGEF have knowledge of the CRA contact. These commenters asserted that an insured DI or affiliate could not be motivated to enter into an agreement with a NGEF by a CRA contact unless executive officers or other officials of the institution or affiliate have knowledge of the contact. Some commenters recommended that the agencies allow insured DIs and affiliates to self-designate certain officers and employees as the representatives who must have knowledge of a CRA contact.

More than 100 commenters expressed concern that the statute and proposed rule, by only covering agreements entered into by NGEFs that have a CRA contact with an agency or banking organization, may violate the First Amendment rights of individuals and entities to agreements to exercise free speech and to petition the government for a redress of grievances. Many of these commenters also requested that the agencies request an opinion from the Department of Justice or the judicial system concerning the constitutionality of the statute.<sup>5</sup> One commenter also asserted that imposing disclosure and annual reporting requirements on CRA-related agreements

---

<sup>5</sup> Some of these commenters also asserted that excluding agency initiated contacts exacerbates the burden on free speech by unfairly favoring some types of contacts, i.e., contacts initiated by an agency, over other types of contacts, i.e., contacts initiated by a NGEF.

exceeds the Federal government's authority to regulate interstate commerce because such agreements generally relate to intra-state activities.

Approximately 171 commenters, including 32 members of Congress, recommended that a CRA contact by a NGEF with an insured DI or affiliate be limited to only those contacts made within a specified period of time before the parties enter into an agreement. Commenters asserted that contacts concerning the CRA made long before an agreement is entered into are not likely to motivate the parties to enter into an agreement and requiring parties to maintain records of CRA contacts indefinitely would be extremely burdensome. Commenters suggested time periods ranging from thirty days to two years before the execution of an agreement. One member of Congress asserted that section 48 does not provide that a temporal relationship needs to exist between a CRA contact and an agreement and opposed including such a relationship in the rule.

In addition, many commenters, including 32 members of Congress, stated that the statute provides that CRA contacts can occur only before the parties enter into an agreement and opposed treating any contact after the parties enter into an agreement as a CRA contact. Approximately 18 commenters supported treating as a CRA contact some contacts that occur after an agreement is entered into. Other commenters recommended that a CRA contact be limited only to those contacts made during the public comment period on an application, or the period from when an examination is announced until it occurs, or is concluded.

#### E. Additional Exemptions

Section 48(h)(3) gives the Board (but not the other agencies) the authority to provide that an agreement is exempt from coverage even if a

CRA contact has occurred. Approximately 29 commenters recommended the Board use this authority to exempt from coverage agreements between NGEPs and insured DIs and affiliates that are made in the ordinary course of a business and with no intention of affecting the CRA performance of the institution or affiliate. Other commenters asked the Board to exempt all agreements relating to the purchase or sale of loans in the secondary market or mortgage-backed securities, consultants, law firms, trade associations, community development financial institutions, community development corporations, small business investment corporations and other community development investment partnerships, and owners or lessors of real estate.

Approximately 83 commenters requested that the agencies abandon altogether consideration of whether a CRA contact has occurred in determining whether an agreement is a covered agreement. These commenters recommended that covered agreements should instead be limited only to those agreements for an institution to make a greater number of loans, investments, and services in more than one of its markets.

#### F. Agreements in Fulfillment of the CRA

Section 48 applies only to agreements that are made pursuant to, or in connection with, “the fulfillment of the [CRA].” The statute defines fulfillment as a list of factors the agencies determine have a “material impact on an agency’s decision” to approve or disapprove an application for a deposit facility under the CRA or to assign a rating to an insured DI under the CRA. The proposed rule generally defined the list of factors by reference to the full range of lending, investment and service activities included in the performance tests and standards of the agencies’ CRA regulations.

A large number of commenters asserted that the proposed rule's list of factors was too broad and would result in a wide variety of normal business arrangements that were not intended to be covered by statute being treated as covered agreements. More than 100 commenters, including 32 members of Congress, stated that the agencies could narrow the scope of covered agreements by considering an activity to be in fulfillment of the CRA only if it involved a level of activities that are "material" to the CRA performance rating of an insured DI or to an evaluation of its CRA performance in an application for a deposit facility. Commenters also suggested that an agreement be considered to be in fulfillment of CRA only if it required an insured DI or affiliate to make a greater number of loans, investments, and services in more than one of its markets. Thirty-two members of Congress recommended that an agreement only be in fulfillment of the CRA if the value of the agreement exceeds a certain percentage of the insured DI's CRA activities.

Commenters also suggested other ways of limiting the type of agreements considered to be in fulfillment of the CRA. Some commenters supported considering an agreement to be in fulfillment of the CRA for purposes of section 48 only if it involved activities aimed at low- and moderate-income people or areas. Several commenters also requested the final rule provide that agreements with software providers and other consultants to provide CRA-related advice or software not be considered to be in fulfillment of the CRA.

To avoid interfering with the fair lending laws, the proposed rule's list of factors did not include activities designed to ensure compliance with Federal laws that prohibit discriminatory or other illegal credit practices. Approximately 10 commenters supported this approach.

### G. Calculation of Value of an Agreement

As discussed above, section 48 only applies to agreements that provide for an insured DI or affiliate to provide in any year cash payments, grants or other consideration in excess of \$10,000, or loans with an aggregate principal of more than \$50,000. The proposed rule required parties to calculate the value of an agreement based on the payments, grants or other consideration in a calendar year, rather than the fiscal year of the parties to the agreement. Approximately 10 commenters supported this approach while a few recommended allowing the parties to make the calculation by reference to the payments, grants and other consideration made during the fiscal year of the parties to the agreement.

The agencies asked comment on how to calculate the value of an agreement that has no specified term or timetable for disbursements of funds or other resources. Some commenters believed that the annual value of these agreements should be determined by amortizing the expected total value of the agreement over the life of the agreement, or by reference to actual disbursements, while others, including one member of Congress, suggested that the entire value be credited to the first year of the agreement. The agencies also requested comment on how to value an agreement that does not specify the amount of payments, grants, loans or other consideration to be provided under the agreement, such as an agreement for an insured DI to open a branch or to begin offering a new loan product. Commenters that addressed this issue suggested allowing the parties to estimate the value of the agreement in these cases or to assume that the agreement had no value.

## H. Treatment of Related Agreements and Multiparty Agreements

Section 48 requires multiple agreements among the same parties and “substantively related” contracts to be treated as a single agreement for purposes of the statute in certain circumstances. The proposed rule implemented these requirements by providing that separate agreements would be treated as a single agreement if they involved the same parties, were entered into within the same 12-month period and were each in fulfillment of the CRA. The proposed rule also provided that required separate contracts were “substantively related” if they were negotiated in a coordinated fashion. A few commenters supported these aggregation rules, while some other commenters either opposed aggregating separate agreement under any circumstances or suggested minor changes to the rule. For example, one commenter requested that the agencies modify the first aggregation rule to cover only agreements entered into during the same calendar year (rather than the same 12-month period).

The agencies also requested comment on how the rule should apply in circumstances where a covered agreement involves several parties and a CRA contact has been made by or concerning only one of the parties. Approximately 15 commenters stated that, in these circumstances, only those parties that were involved in the CRA-related discussions should be required to comply with the rule. Eighty-five commenters made an additional point that if a NGEF makes a CRA contact when negotiating an agreement on behalf of its “constituents,” the CRA contact should not be attributed to the constituents for purposes of determining whether the agreement is a covered agreement.

## II. Disclosure of Covered Agreements to the Public

### A. Method of Disclosing Agreements to the Public

The proposed rule required each party to a covered agreement to make the full text of the agreement available to any member of the public upon request for 12 months after the end of the agreement's term. Several commenters requested that the rule establish a fixed period of time, such as 30 days, within which a party must respond to a request for a covered agreement. Several commenters also stated that the length of time that a covered agreement must be made available to the public was reasonable, while others advocated a shorter time period, such as 6 months or 3 months, or no time period at all after the term of the agreement.

The proposed rule allowed a party to use a wide variety of means to make a covered agreement available to the public and permitted a party to recover copying and mailing costs for making the agreement available. The proposed rule also permitted an insured DI to fulfill the public disclosure requirement by using its CRA public file.

Commenters generally supported having maximum flexibility to make covered agreements available to the public and allowing parties to charge members of the public reasonable copying and mailing fees. A few commenters also requested that the agencies allow parties to charge a requestor for the cost of searching its records for covered agreements.

Many insured DIs and industry trade groups supported use of the CRA public file as a method of fulfilling the disclosure requirement. Some commenters requested that the rule permit insured DIs to fulfill the disclosure requirement by putting a list or summary of covered agreements in the CRA public file rather than a copy of the agreements. Many commenters also requested that affiliates of insured DIs that are parties to

covered agreements be permitted to fulfill their public disclosure requirements by using the CRA public file of an insured DI affiliate.

Several commenters also requested clarification concerning how a party should comply with the public disclosure requirements when a covered agreement consists of or involves multiple documents.

#### B. Proprietary and Confidential Information in Covered Agreements

Section 48 requires that covered agreements must be in their “entirety fully disclosed, and the full text thereof made available” to the public. Section 48 also requires the agencies to ensure that “proprietary and confidential information is protected” under the rule. In order to address these competing concerns, the proposed rule allowed a party to a covered agreement to withhold information in a covered agreement from public disclosure if the appropriate banking agency determined that the agency could withhold the information under the Freedom of Information Act (5 U.S.C. 552) (“FOIA”). The rule, however, provided that parties must disclose certain terms of the agreement, including the amount of payments or loans made under an agreement or the identity of persons or entities receiving funds under an agreement.

More than 65 commenters, including 32 members of Congress, expressed concern that the proposed rule may not adequately protect confidential and proprietary information that may be contained in a covered agreement from public disclosure. In this regard, more than 20 commenters generally indicated that covered agreements may contain a variety of proprietary and confidential information, such as information about new and innovative programs an insured DI is offering, underwriting standards for loans, competitive pricing information, or personal data that may otherwise

be protected under applicable privacy rules. The commenters asserted that requiring this disclosure could harm the competitive position of parties to covered agreements and, ultimately, dissuade insured DIs and their affiliates from entering into agreements with NGEPs that are in fulfillment of the CRA.

Commenters generally supported using FOIA as the standard for determining whether information contained in a covered agreement can be withheld from public disclosure. Commenters also asked the agencies to streamline the procedure for determining what information in a covered agreement could be withheld under FOIA, with many stating that the agency prior review procedures in the proposed rule was burdensome and time consuming. Commenters offered a variety of methods to streamline the process. For example, some recommended that the agencies permit a party to withhold any information that the party independently determines could be withheld under FOIA, or provide a list of the types of information in a covered agreement that a party could withhold without seeking a determination from an agency. Commenters suggested that this list could include personal identifying information, such as telephone numbers and medical information, and competitive information, such as an institution's cost of funds or financial modeling procedures.

### III. Disclosure of Covered Agreements to the Agencies

The proposed rule required each insured DI and affiliate that is a party to a covered agreement to file a complete copy of the agreement with each relevant supervisory agency within 30 days after entering into the agreement. NGEPs were required to provide a copy of covered agreements to the relevant supervisory agency within 30 days of receiving a request from the agency. The rule also provided that the obligation of a NGEP to

make a covered agreement available to an agency terminated 12 months after the end of the term of the agreement.

Commenters generally supported requiring NGEPS to make covered agreements available only upon request. Approximately 15 commenters recommended changes to the agency disclosure requirements for insured DIs and affiliates. Some recommended that insured DIs and affiliates, like NGEPS, only be required to make covered agreements available to a relevant supervisory agency upon request. Others recommended that insured DIs and affiliates be permitted to fulfill the disclosure requirement by filing a list of covered agreements with an agency or by including covered agreements in the CRA public file of the institution or an affiliated institution. One trade association also recommended that insured DIs and affiliates be able to charge an agency for the cost of copying and mailing a covered agreement to an agency.

Some commenters also suggested that the agencies allow insured DIs and affiliates to file covered agreements with the agencies on a periodic basis, such as once each quarter or once each year, rather than 30 days after entering into each agreement.

#### IV. Annual Reporting Procedures

Section 48 requires that each insured DI, affiliate and NGEPS that is a party to a covered agreement file a report at least annually relating to the covered agreement. The proposed rule required that each party to a covered agreement file an annual report for each fiscal or calendar year during the term of the covered agreement.

##### A. Reporting of Use of Funds or Other Resources Received by NGEPS

Section 48(c) requires an annual report of a NGEPS to include a detailed, itemized accounting of how a NGEPS used any funds or resources

received under a covered agreement during the previous year. The proposed rule required a NGEF to provide this accounting in one of two ways. If the NGEF allocated and used funds received for a specific purpose, the rule required the NGEF to describe the specific purpose for which the funds were used and the amount used for that purpose. For any funds received that were not used for a specific purpose, the rule required the NGEF to provide the total amount that the NGEF used during the year for each category of expenses included in the itemized list of expenses. These are:

(1) compensation of officers, directors, and employees, (2) administrative expenses, (3) travel expenses, (4) entertainment expenses, (5) payment of consulting and professional fees; and (6) other expenses and uses.

Commenters generally supported the itemized list and commenters, including 32 members of Congress, recommended that the agencies not use their statutory authority to expand the list of expense categories included in section 48(c)(3). The comments received concerning the proposed specific purpose reporting method were mixed. Some commenters supported the streamlined reporting procedures for specific purpose funds because they believed it would require the reporting of less information than the itemized list of expenses. Some commenters that supported this reporting method requested that the agencies provide NGEFs with the option of using the specific purpose reporting method or the detailed itemized list to report the use of specific purpose funds. More than 80 commenters recommended that the rule clarify that only a “brief” description of the specific purpose be required in the annual report. In addition, some commenters, including 32 members of Congress, requested additional guidance on when a NGEF would be considered to have received and used funds or other resources for a “specific purpose.”

Several commenters opposed the specific purpose reporting method. Some of these commenters, including one member of Congress, opposed the method on the basis that section 48(c) does not provide for this type of reporting. Others expressed concern that the proposed rule's definition of specific purpose funds was too broad or unclear.

#### B. Use of Other Reports in Annual Report

The proposed rule provided that the annual report of a NGEP may consist of, or incorporate, a report a NGEP may already prepare for another purpose, such as a tax form, financial statement or other annual report. The agencies indicated in the preamble to the proposed rule that Internal Revenue Service Return of Organization Exempt From Income Tax on Form 990, a tax form commonly filed by tax-exempt nonprofit organizations, requires information that is at least as detailed as the itemized list of expenses and could be used to fulfill a NGEP's reporting obligation. Commenters, including 32 members of Congress, expressed overwhelming support for allowing NGEPs to use documents prepared for other purposes to fulfill the rule's reporting requirements. Commenters in particular praised the agencies for allowing NGEPs to use a Form 990 to fulfill their reporting obligations and many requested that the agencies incorporate this guidance in the text of the final rule. Some commenters also requested that the agencies clarify whether a NGEP could use other tax forms, such as Short Form Return of Organization Exempt From Income Tax on Form 990EZ, to fulfill its annual reporting obligation. One commenter recommended that NGEPs that do not prepare Form 990s be exempt from the annual reporting requirements.

### C. Annual Reports of Insured DIs and Affiliates

The proposed rule generally required an insured DI or affiliate to include in its annual report its disbursement and receipt of payments, fees and loans under a covered agreement during the fiscal year and the aggregate amount and number of loans, investment and services all parties to the covered agreement made during the fiscal year. Several commenters requested that the agencies provide a standardized format insured DIs and affiliates could follow for filing annual reports and provide additional guidance on the level of specificity that must be provided in annual reports.

### D. Annual Reporting Procedures

The proposed rule provided an exception to a NGEF's annual reporting requirements for any fiscal year during the term of a covered agreement in which the NGEF does not receive any funds under the agreement. A large number of commenters supported this provision and a few commenters, including one member of Congress, objected to the exception. Several commenters requested that the rule provide a similar exception from the annual reporting requirements of insured DIs and affiliates that do not make or receive payments, fees or loans under a covered agreement.

The rule permitted parties to file annual reports either on a fiscal or calendar year basis and required covered agreements to be filed with the relevant supervisory agency 6 months after the end of the year. The proposed rule implemented section 48 and gave NGEFs the alternative of filing annual reports within 5 months of the end of the year with the insured DI or affiliate that is a party to the agreement with instructions to forward the report to the relevant supervisory agency. Several commenters requested

that the period for filing annual reports be extended for a period of up to 10 months. Commenters also suggested that NGEPs be provided the same amount of time for filing a report with a counterparty as they have for filing with a relevant supervisory agency. Some insured DIs requested more than the 30 days that was proposed to file with the relevant supervisory agency annual reports of NGEPs that they receive.

Several commenters requested that the agencies develop procedures to permit parties to covered agreements to file annual reports with the agencies electronically. A few insured DIs requested that insured DIs be permitted to file annual reports on behalf of any affiliate that is a party to a covered agreement.

The proposed rule allowed parties of five or more covered agreements to file a consolidated report regarding those agreements. Approximately 15 commenters supported permitting consolidated annual reporting for any NGEF, insured DI or affiliate that is a party to two or more agreements.

The agencies also requested comment on whether a NGEF should be required to file an annual report after the end of a covered agreement's term if, by that time, the NGEF has not completely used all the funds or resources received under the agreement. One trade association supported requiring a NGEF to report uses of funds in years after the term of an agreement and no community organizations supported this.

#### V. Compliance Provisions

Section 48 includes two special compliance provisions applicable to NGEFs that are parties to covered agreements. The proposed rule implemented the requirement of section 48 that if the appropriate agency determines that a NGEF has willfully failed to comply with

section 48 in a material way, and the NGEF does not comply with the law after receiving notice and a reasonable period of time, the agreement is unenforceable against that NGEF by operation of section 48. The proposed rule also provided that the appropriate agency may order an individual to disgorge the funds and/or be prohibited from being a party to any covered agreement for up to 10 years if a court or other “body of competent jurisdiction” has determined that the NGEF has diverted funds or other resources received under a covered agreement.

Several commenters objected that these compliance provisions apply to NGEFs and do not apply to insured DIs and affiliates. Several insured DIs and trade associations supported the proposed rule’s provision that the effect of a material failure to comply with the statute by a NGEF will only make a covered agreement to which it is a party unenforceable only by the NGEF and will continue to allow the insured DI or affiliate to enforce the agreement. However, other commenters expressed concern that under the compliance provisions a NGEF risks having an agreement to which it is a party become unenforceable simply because the NGEF did not know the agreement was a covered agreement. Some of these commenters indicated that insured DIs and affiliates would not have the same risk because these compliance provisions are not applicable to them.

A few commenters also requested that rule provide that an agency must provide NGEFs with written notice of a material failure to comply with the statute. A few commenters also requested that the rule clarify the meaning of “body of competent jurisdiction.” Some insured DIs and trade associations requested that the agencies clarify that insured DIs and affiliates are under no obligation to assist NGEFs in complying with the statute and rule and that no party will be penalized for disclosing to the

public or filing with the a Federal banking agency more information than is required by the rule.

## VI. Comments on Definitions

A. Nongovernmental Entity or Person or NGEF. As a general matter, the proposed rule defined a NGEF to include any individual or entity other than the U.S. government, a state government, a unit of local government, an Indian tribe, any department, agency, instrumentality of such governmental entity. Insured DIs and affiliates and federally chartered public corporations that receive federal funds were excluded from the definition. More than 15 commenters indicated that the definition should be narrowed in one or more ways to exclude such institutions as government sponsored enterprises, community development financial institutions, credit unions, and quasi-public entities.

B. CRA Affiliate Treated as Insured DI. An insured DI may elect to have the activities of an affiliate considered by an agency in a CRA performance evaluation of the insured DI. The proposed rule referred to such affiliates as “CRA affiliates” and treated them as an insured DI under the proposed rule. Commenters generally did not oppose treating CRA affiliates as insured DIs, but recommended that an agreement that involves an affiliate should be a covered agreement only if the affiliate was considered a CRA affiliate at the time the parties entered into the agreement.

C. Relevant Supervisory Agency. The proposed rule generally defined a relevant supervisory agency for a particular covered agreement to be the appropriate Federal banking agency (as defined in section 2 of the Federal Deposit Insurance Act) for an insured DI or affiliate that is a party to a covered agreement or provides funds or other resources under the

agreement. Under the definition, more than one agency may be the relevant supervisory agency for a particular agreement. Several commenters expressed concern that requiring filings with multiple agencies under these circumstances could increase the burden of complying with the statute. Some commenters asserted that the rule should allow all filings to be made with one regulatory body, such as the Federal Financial Institutions Examinations Council, and asserted that such a procedure would reduce burden and help ensure the consistent review of confidential and proprietary information that may be contained in a covered agreement.

## **Appendix A**

### **Comment Letters on Proposed Regulation G (Disclosure and Reporting of CRA-related Agreements)**

#### **Federal Reserve District Banks**

1. Federal Reserve Bank of Philadelphia (Comment 202)
2. Federal Reserve Bank of Richmond (Comment 79)
3. Federal Reserve Bank of Atlanta (Comment 139)
4. Federal Reserve Bank of Kansas City (Comment 205)
5. Federal Reserve Bank of Dallas (Comment 70)

#### **Members of Congress**

6. The Honorable Evan Bayh, Senate (Comment 168)
7. The Honorable Richard H. Bryan, Senate (Comment 168)
8. The Honorable Christopher J. Dodd, Senate (Comment 168)
9. The Honorable John Edwards, Senate (Comment 168)
10. The Honorable Phil Gramm, Senate (Comment 100 and Comment 242)
11. The Honorable Tim Johnson, Senate (Comment 168)
12. The Honorable John F. Kerry, Senate (Comment 168)
13. The Honorable Paul S. Sarbanes, Senate (Comment 168)
14. The Honorable Jack Reed, Senate (Comment 168)
15. The Honorable Charles E. Schumer, Senate (Comments 168 and 186)
16. The Honorable Gary L. Ackerman, House of Representatives (Comment 168)
17. The Honorable Ken Bentsen, House of Representatives (Comment 168)
18. The Honorable Michael E. Capuano, House of Representatives (Comment 168)
19. The Honorable Julia Carson, House of Representatives (Comment 168)
20. The Honorable Barney Frank, House of Representatives (Comment 168)
21. The Honorable Charles A. Gonzalez, House of Representatives (Comment 168)
22. The Honorable Luis V. Gutierrez, House of Representatives (Comments 168 and 117)
23. The Honorable Darlene Hooley, House of Representatives (Comment 168)

24. The Honorable Jay Inslee, House of Representatives (Comment 168)
25. The Honorable Stephanie Tubbs Jones, House of Representatives (Comment 168)
26. The Honorable Paul E. Kanjorski, House of Representatives (Comment 168)
27. The Honorable John LaFalce, House of Representatives (Comment 168)
28. The Honorable Barbara Lee, House of Representatives (Comment 168)
29. The Honorable Carolyn B. Maloney, House of Representatives (Comment 168)
30. The Honorable Gregory W. Meeks, House of Representatives (Comment 168)
31. The Honorable Dennis Moore, House of Representatives (Comment 168)
32. The Honorable Bernard Sanders, House of Representatives (Comment 168)
33. The Honorable Max Sandlin, House of Representatives (Comment 168)
34. The Honorable Janice D. Schakowsky, House of Representatives (Comment 168)
35. The Honorable Nydia M. Velazquez, House of Representatives (Comment 168)
36. The Honorable Maxine Waters, House of Representatives (Comment 168)
37. The Honorable Melvin L. Watt, House of Representatives (Comment 168)
38. The Honorable Robert A. Weygand, House of Representatives (Comment 168)

**State and Local Government Entities and Officials**

39. The City of Chicago Department of Housing (Comment 137)
40. City of Rochester, New York (Comment 233)
41. National League of Cities, Washington, DC (Comment 74)
42. New York State Banking Department (Comment 216)
43. The San Diego Reinvestment Task Force, San Diego, California (Comment 63)
44. Swift County Rural Development Finance Authority, Benham, Minnesota (Comment 2)

45. Margaret K. Suib, Norwalk Fair Housing Officer, Norwalk, Connecticut (Comment 42)

### **Banking Organizations**

46. ABN Amro North America, Inc., Chicago, Illinois (Comment 180)
47. Allfirst Bank, Baltimore, Maryland (Comment 213)
48. AmSouth Bank, Birmingham, Alabama (Comment 129)
49. Bank of America Corporation, Charlotte, North Carolina (Comment 133)
50. Bank One, Chicago, Illinois (Comment 118)
51. The Chase Manhattan Bank, New York, New York (Comment 170)
52. Cole Taylor Bank, Skokie, Illinois (Comment 94)
53. Comerica Incorporated, Detroit, Michigan (Comment 176)
54. European American Bank, New York, New York (Comment 145)
55. First Bank Holding Company of Colorado, Lakewood, Colorado (Comment 65)
56. Harris Trust and Savings Bank, Chicago, Illinois (Comment 181)
57. Hibernia National Bank, New Orleans, Louisiana (Comment 20)
58. J.P. Morgan & Co. Incorporated, New York, New York (Comment 132)
59. Manufacturers and Traders Trust Company, Buffalo, New York (Comment 163)
60. Manufacturers Bank, Chicago, IL (Comment 241)
61. Mellon Financial Corporation, Pittsburgh, Pennsylvania (Comment 136)
62. Northern Trust Corporation, Chicago, Illinois (Comment 236)
63. The PNC Financial Services Group, Inc., Pittsburgh, Pennsylvania (Comment 179)
64. Scripps Bank, San Diego, California (Comment 209)
65. South Financial Group, Greenville, South Carolina (Comment 111)
66. Summit Bancorp, Wood Ridge, New Jersey (Comment 223)
67. UMB Financial Corporation, Kansas City, Missouri (Comment 222)
68. U.S. Bank, Johnstown, Pennsylvania (Comment 93)
69. Wachovia Corporation, Winston-Salem, North Carolina (Comment 221)

### **Trade Associations**

70. American Bankers Association, Washington, DC Comment 80)
71. America's Community Bankers, Washington, DC (Comment 149)

72. Community Bankers Association of New York State, New York, New York (Comment 164)
73. Consumer Bankers Association, Arlington, Virginia (Comment 148)
74. The Delaware Bankers Association, Dover, Delaware (Comment 200)
75. The Financial Services Roundtable, Washington, DC (Comment 218)
76. Independent Community Bankers of America, Washington, DC (Comment 195)
77. The Leadership Council of the San Diego County CRA Roundtable (Comment 208)
78. The Massachusetts Bankers Association, Boston, Massachusetts (Comment 198)
79. The Massachusetts Community & Banking Council (Comment 172)
80. Missouri Bankers Association (Comment 126)
81. National Association of Affordable Housing Lenders, Washington, DC (Comment 54)
82. New York Bankers Association, New York, New York (Comment 228)
83. Oklahoma Bankers Association, Oklahoma City, Oklahoma (Comment 144)
84. Texas Bankers Association, Austin, Texas (Comment 4)
85. Wisconsin Bankers Association, Madison, Wisconsin (Comment 146)

**Community-based and Non-profit Organizations and Individuals**

86. Abyssinian Development Corporation, New York, New York (Comment 238)
87. Advocate Community Development Corporation, Philadelphia, Pennsylvania (Comment 61)
88. Affordable Housing Clearinghouse, Lake Forest, California (Comment 99)
89. Affordable Housing Tax Credit Coalition, Washington, DC (Comment 150)
90. Alabama Multifamily Loan Consortium, Montgomery, Alabama (Comment 210)
91. Albany Community Land Trust (Comment 84)
92. Albuquerque Project Change, Albuquerque, New Mexico (Comment 128)
93. Anocostia Economic Development Corporation, Washington, DC (Comment 167)
94. Association of Community Organizations for Reform Now, Washington, DC (Comment 138)

95. The Association of Neighborhood and Housing Development, New York, New York (Comment 58)
96. Association of Reinvestment Consortia for Housing (Comment 89)
97. Bank Watchers, Sparta, Wisconsin (Comment 81)
98. Brooklyn Community Housing and Services, Inc., Brooklyn, New York (Comment 234)
99. California Association for Microenterprise Opportunity, Oakland, California (Comment 30)
100. California Community Reinvestment Corporation (Comment 212)
101. California Reinvestment Committee, San Francisco, California (Comment 158)
102. Capital District Community Loan Fund, Inc., Albany, New York (Comment 123)
103. Catskill Mountain Housing (Comment 82)
104. Center for Community Change, Washington, DC (Comment 56)
105. The Center for Community Self-Help, Durham, North Carolina (Comment 143)
106. Charlotte Organizing Project, Charlotte, North Carolina (Comment 7)
107. Chelsea Neighborhood Housing Services, Chelsea, Massachusetts (Comment 29)
108. Chicago Association of Neighborhood Development Associations, Chicago, Illinois (Comment 114)
109. Chicago Rehab Network, Chicago, Illinois (Comment 72)
110. Coalition for a Better Acre, Lowell, Massachusetts (Comment 36)
111. Coalition for Consumer Rights, Chicago, Illinois (Comment 45)
112. The Coalition of Community Development Financial Institutions, Philadelphia, Pennsylvania (Comment 77)
113. Coalition on Homelessness and Housing in Ohio, Columbus, Ohio (Comment 3)
114. Coastal Enterprises, Inc., Wiscasset, Maine (Comment 22)
115. Community Action Committee of the Lehigh Valley, Inc., Bethlehem, Pennsylvania (Comment 17)
116. Community Advisory Council on Corporate Mergers (Comment 227)
117. Community and Economic Development Association of Cook County, Inc., Chicago, Illinois (Comment 154)
118. Community Housing Resource Center, Vancouver, Washington (Comment 12)
119. Community Investment Corporation, Chicago, Illinois (Comment 113)

120. The Community Preservation Corporation, New York, New York (Comment 171)
121. Community Scholars, El Paso, Texas (Comment 87)
122. Consumers Union, San Francisco, California (Comment 53)
123. Cypress Hills Local Development Corporation (Comment 190)
124. Dean Lovelace, Commissioner, City of Dayton, Ohio (Comment 214)
125. Delaware Community Reinvestment Action Council, Inc., Wilmington, Delaware (Comment 59)
126. Detroit Alliance for Fair Banking, Detroit, Michigan (Comment 71)
127. Detroit Entrepreneurship Institute Inc., Detroit, Michigan (Comment 235)
128. Ecumenical Community Development Organization, New York, New York (Comment 156)
129. Fair Housing Center of Greater Madison, Madison, Wisconsin (Comment 120)
130. Fair Housing Council of Northern New Jersey, Hackensack, New Jersey (Comment 116)
131. Fair Housing Center of Lake County, Waukegan, Illinois (Comment 98)
132. Fair Housing Council of San Gabriel Valley, Pasadena, California (Comment 204)
133. Fifth Avenue Committee, Brooklyn, New York (Comment 83)
134. First United Methodist Church, San Marcos, Texas (Comment 9)
135. Florida Housing Coalition, Tallahassee, Florida (Comment 226)
136. Fremont Public Association, Seattle, Washington (Comment 16)
137. Good Old Lower East Side, Inc., New York, New York (Comment 25)
138. Granite State Community Reinvestment Association, Concord, New Hampshire (Comment 106)
139. Greater Rochester Community Reinvestment Coalition, Rochester, New York (Comment 69)
140. The Greenlining Institute, San Francisco, California (Comment 33)
141. Highbridge Community Life Center, Bronx, New York (Comment 219)
142. Homeowner's Rehab, Inc., Cambridge, Massachusetts (Comment 31)
143. Housing Assistance Council, Washington, DC (Comment 108)
144. Housing California, Sacramento, California (Comment 46)
145. Housing Development Consortium of Seattle-King County, Seattle, Washington (Comment 91)
146. Housing Helpers, Inc., Riverside, Illinois (Comment 47)

147. Inglewood Neighborhood Housing Services, Inc., Inglewood, California (Comment 64)
148. Inner City Press / Community on the Move, Bronx, New York (Comment 55)
149. Interfaith Housing Delaware, Inc., Wilmington, Delaware (Comment 229)
150. Interfaith Organizing Project of Greater Chicago, Chicago, Illinois (Comment 32)
151. Inter-Neighborhood Housing Corp., Bronx, New York (Comment 225)
152. Isles, Trenton, New Jersey (Comment 66)
153. Ithaca Neighborhood Housing Services, Ithaca, New York (Comment 102)
154. The Jesuit Conference Board of the Society of Jesus in the United States (Comment 192)
155. Kennebec Valley Community Action Program, Augusta, Maine (Comment 159)
156. Lakefront SRO, Chicago, Illinois (Comment 207)
157. Laredo-Webb NHS (Comment 62)
158. Latin United Community Housing Association, Chicago, Illinois (Comment 152)
159. Lawyers Alliance for New York, New York, New York (Comment 90)
160. Leadership Conference on Civil Rights, Washington, DC (Comment 151)
161. India Pierce Lee (Comment 147)
162. Local Initiative Support Corporation, Washington, DC (Comment 197)
163. Lorain County Reinvestment Coalition, Lorain, Ohio (Comment 124)
164. Los Angeles Neighborhood Housing Services, Los Angeles, California (Comment 174)
165. Louise Cooper (Comment 165)
166. MAAC Project, National City, California (Comment 231)
167. Richard Marsico (Comment 141)
168. Maryland Center for Community Development, Baltimore, Maryland (Comment 51)
169. Massachusetts Association of Community Development Corporations, Boston, Massachusetts (Comment 104)
170. McAuley Institute (Comment 135)
171. John R. McCallister (Comment 109)

172. George Mercier, Las Vegas, Nevada (Comment 1)
173. Metropolitan Milwaukee Fair Housing Council, Milwaukee, Wisconsin (Comment 85)
174. Millers River Community Development Corporation, Athol, Massachusetts (Comment 14)
175. Mon Valley Initiative, Homestead, Pennsylvania (Comment 162)
176. Muscatine's Center for Strategic Action, Muscatine, Iowa (Comment 103)
177. National Affordable Housing Preservation Associates, Tuscaloosa, Alabama (Comment 206)
178. The National Center on Poverty Law, Chicago, Illinois (Comment 107)
179. National Community Capital Association, Philadelphia, Pennsylvania (Comment 27)
180. National Community Reinvestment Coalition, Washington, DC (Comment 28)
181. National Congress for Community Economic Development, Washington, DC (Comment 57)
182. National Federation of Community Development Credit Unions (Comment 189)
183. The National Housing Conference (Comment 140)
184. National Neighborhood Coalition, Washington, DC (Comment 101)
185. National Neighborhood Housing Network, Washington, DC (Comment 75)
186. The National Training and Information Center (Comment 182)
187. The Neighborhood Assistance Corporation of America, Jamaica Plain, Massachusetts (Comment 131)
188. Neighborhood Economic Development Advocacy Project, New York, New York (Comment 177)
189. Neighborhood Housing of Scranton, Scranton, Pennsylvania (Comment 201)
190. Neighborhood Housing Services, New York, New York (Comment 73)
191. Neighborhood Housing Services of Chicago, Inc., Chicago, Illinois (Comment 60)
192. Neighborhood Housing Services of Dimmit County, Inc., Carrizo Springs, Texas (Comment 203)
193. Neighborhood Housing Services of Great Falls, Great Falls, Montana, (Comment 193)

194. Neighborhood Housing Services of Greater Nashua, Inc., Nashua, New Hampshire (Comment 230)
195. Neighborhood Housing Services of New Orleans, Inc., New Orleans, Louisiana (Comment 217)
196. Neighborhood Housing Services of Santa Fe, Inc., Santa Fe, New Mexico (Comment 76)
197. Neighbors Helping Neighbors, Inc., Brooklyn, New York (Comment 86)
198. NeighborWorks HomeOwnership Center, Utica, New York (Comment 110)
199. New England Housing Network (Comment 105)
200. New Hampshire Community Loan Fund, Concord, New Hampshire (Comment 125)
201. New Jersey Citizen Action, Hackensack, New Jersey (Comment 92)
202. New Jersey Community Loan Fund, Trenton, New Jersey (Comment 121)
203. New Mexico Community Development Loan Fund, Roswell, New Mexico (Comment 157)
204. NEWSERD Community Development Corporation, Denver, Colorado (Comment 122)
205. The Norcam Group, Northern Cambria, Pennsylvania (Comment 15)
206. Oak Park Regional Housing Center, Oak Park, Illinois (Comment 78)
207. Ogontz Avenue Revitalization Corporation, Philadelphia, Pennsylvania (Comment 35)
208. Ohio Community Reinvestment Project (Comment 5)
209. Organization of the NorthEast, Chicago, Illinois (Comment 52)
210. PA Low Income Housing Coalition, Glenside, Pennsylvania (Comment 95)
211. People's Emergency Center, Philadelphia, Pennsylvania (Comment 43)
212. Philadelphia Association of Community Development Corporations, Philadelphia, Pennsylvania (Comment 39)
213. Pico Union Housing Corporation, Los Angeles, California (Comment 24)
214. Pittsburgh Community Reinvestment Group, Pittsburgh, Pennsylvania (Comment 115)
215. Pratt Area Community Council, Brooklyn, New York (Comment 18)
216. Promesa Housing Development Fund Corp., Bronx, New York (Comment 220)

217. Rainbow/Push LaSalle Street Project, Chicago, Illinois (Comment 184)
218. Renaissance Economic Development Corporation, New York, New York (Comment 188)
219. The Resurrection Project, Chicago, Illinois (Comment 49)
220. River City Community Development Corporation, Elizabeth City, North Carolina (Comment 239)
221. Rocky Mountain Rural Housing Association, Denver, Colorado (Comment 88)
222. Rose Community Development, Portland, Oregon (Comment 19)
223. Rural Development & Finance Corporation, San Antonio, Texas (Comment 23)
224. Sacramento Mutual Housing Association, Sacramento, California (Comment 160)
225. Seedco, New York, New York (Comment 96)
226. Sober Living Network, Santa Monica, California (Comment 215)
227. Southwest Michigan Community Action Agency, Benton Harbor, Michigan (Comment 48)
228. Spanish American Merchants Association, Hartford, Connecticut (Comment 34)
229. Spokane Housing Authority, Spokane, Washington (Comment 13)
230. Spokane Low Income Housing Consortium, Spokane, Washington (Comment 67)
231. Statewide Emergency Network for Social and Economic Security, Albany, New York (Comment 44)
232. Statewide Housing Action Coalition, Chicago, Illinois (Unnumbered Comment)
233. The Tampa Bay Community Reinvestment Corporation (Comment 68)
234. Texas Association of Community Development Organizations, Austin, Texas (Comment 6)
235. The Texas Community Reinvestment Coalition, Austin, Texas (Comment 21)
236. Traczyk, Christine, (No Address) (Comment 240)
237. Troy Rehabilitation and Improvement Program, Inc., Troy, New York (Comment 127)
238. Unidos Para La Gente, San Marcos, Texas, (Comment 10)
239. The United States Conference of Mayors, Washington, DC (Comment 50)
240. United Tenants of Albany, Albany, New York (Comment 211)

241. United Way of Metropolitan Atlanta, Atlanta, Georgia  
(Comment 166)
242. The Unity Council (Unnumbered Comment)
243. Unity Neighborhood Housing Program, Bronx, New York  
(Comment 40)
244. Vermont Slauson Economic Development Corporation, Los Angeles,  
California (Comment 38)
245. Vivian Becker, Executive Director of Pratt Area Community Council,  
New York, New York (Comment 199)
246. Washington Community Reinvestment Association (Comment 97)
247. Washington Reinvestment Alliance, Seattle, Washington  
(Comment 11)
248. Will Feed Community Organization, Inc., Chicago, Illinois  
(Comment 178)
249. Wisconsin Rural Development Center (Comment 134)
250. Woodstock Institute, Chicago, Illinois (Comment 41)

**Other Businesses**

251. Bethex Federal Credit Union, Bronx, New York (Comment 8)
252. Fannie Mae, Washington, DC (Comment 169)
253. The Federal Home Loan Bank of Chicago, Chicago, Illinois  
(Comment 112)
254. The Federal Home Loan Mortgage Corporation, Washington, DC  
(Comment 130)
255. New York Clearing House Association, New York, New York  
(Comment 232)
256. PCi Services, Inc., Boston, Massachusetts (Comment 37)
257. 3Ci Community Development Consulting, Dayton, Ohio  
(Comment 196)