

July 17, 2000

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Manager  
Dissemination Branch  
Information Management & Services Division  
Office of Thrift Supervision  
1700 G Street NW  
Washington, DC 20552

Attention: Docket No. 2000-44

To Whom It May Concern:

New Jersey Citizen Action (NJCA), the state's largest consumer watchdog organization, urges the Office of Thrift Supervision to make significant changes in the proposed "sunshine" regulations.

New Jersey Citizen Action has over 60,000 dues-paying individual and family members and more than 90 affiliate organizations, including religious organizations, senior groups, tenant organizations, community groups, unions and other organizations made up of working families and low- and moderate-income wage earners. Over the last ten years, NJCA has negotiated Community Reinvestment Act (CRA) agreements with 28 banks resulting in the pledging of more than \$8.8 billion in CRA products to the community, including discounted mortgages, loans to refinance, home improvement loans, and loans and investments for community and economic development. More than 10,000 families and individuals have come to Citizen Action's free Loan Counseling Service, which averages 1,000 mortgages a year to first-time homebuyers. Our **A Home of Her Own: Women's Housing Initiative** has reached out to almost 4,000 low- and moderate-income head-of-household women, encouraging them to take advantage of opportunities for first-time homeownership. NJCA has also initiated a Financial Education Program to bring low- and moderate-income residents, seniors, individuals with disabilities, new immigrants and others in financially underserved communities into the financial/technological mainstream by offering courses in Basic Banking, Money Management, and Consumer Education topics. In addition, NJCA has a special concern for consumers who have fallen victim to predatory lending practices.

We appreciate that the federal banking agencies had a difficult task of developing regulations for a confusing and mean-spirited statute, and that the regulatory agencies have taken steps to reduce burden for neighborhood organizations, banks, and other parties interested in community development. However, New Jersey Citizen Action believes that the sunshine statute strikes at the heart of the Community Reinvestment Act (CRA). The essence

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NJCA is an affiliate of US Action, a national progressive coalition

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of the Community Reinvestment Act is to encourage all members of the community to articulate their credit needs and engage in dialogue with banks and federal banking agencies. In other words, CRA stimulates collaboration in order to revitalize inner city and rural communities. The success of CRA is clearly evidenced in the findings of two recent studies released on July 17 by the U.S. Treasury Department and the National Community Reinvestment Coalition (NCRC). Both studies indicate that CRA loans are indeed profitable. In New Jersey, for example, almost every bank that has a CRA agreement with Citizen Action has exceeded its dollar goals for affordable lending. Without a doubt, the success of CRA in New Jersey, as well as throughout the nation, is due in part to strong bank-community partnerships. However, the sunshine statute, by making CRA-related speech suspect, threatens to reverse more than twenty years of these bank-community partnerships and progress, not only in New Jersey, but throughout the country.

The sunshine statute requires banks, community organizations, and a large number of other parties to disclose private contracts to federal agencies if the parties engage in so-called CRA "contacts" or discussions about how to help the bank make more loans and investments in low and moderate-income communities. As a private sector organization, New Jersey Citizen Action finds it troublesome that we have to disclose a contract between NJCA and a bank, and provide detail on how we spend grant or loan dollars under such a contract. Many private sector organizations will simply do less CRA-related business to avoid dealing with the disclosure requirements. The result will be fewer loans and investments reaching the communities with which we work.

### **CRA Contacts**

Given the profound damage that the CRA contact portion of the sunshine provision will cause, New Jersey Citizen Action asks that the federal banking agencies refrain from implementing the CRA contact rules until they have sought an opinion from the Department of Justice's Office of Legal Counsel regarding its constitutionality. In addition, the agency has the discretionary authority to exempt agreements or contracts from disclosure based on CRA contacts. New Jersey Citizen Action asks the Office of Thrift Supervision to eliminate all CRA contacts as a trigger for disclosure.

### **Material Impact**

As an alternative to using CRA contacts as a trigger for disclosure, we believe that the federal banking agencies should revise their material impact standard. In particular, New Jersey Citizen Action believes that a CRA agreement or contract should not be required to be disclosed unless it requires a bank to make a greater number of loans, investments, and services in more than one of its markets. The federal banking agencies have proposed that agreements are subject to disclosure if they specify any level of CRA-related loans, investments, and services. However, only a higher number of loans and investments in more than one market is likely to have a material impact on a CRA rating or a decision on a merger application.

The agency interpretation of material impact will result in an unwieldy regulation. In other words, hundreds, if not thousands of contracts with community development corporations and other organizations may have to be disclosed. If the material impact standard is not changed, the federal agencies will be deluged with thousands of letters, written understandings, or contracts about different types of loans and grants made to nonprofit organizations and for-profit companies working in low and moderate-income communities.

Nonprofit organizations do not receive their grants or loans because of an agreement made when a bank was merging or before a bank's CRA exam. Nonprofit organizations receive grants or loans because banks want to do business in specific neighborhoods. To make the sunshine

regulation more reasonable, we suggest that it should focus on agreements made during the public comment period on a merger application or during the time period when a CRA exam is announced and when the exam occurs.

Senator Phil Gramm (R-TX), in a lengthy interview in the *American Banker* on June 9, 2000, suggests that disclosure requirements should apply to pledges that are made unilaterally by banks and that are not signed by non-governmental third parties. The Gramm-Leach-Bliley Act simply does not include unilateral pledges as contracts requiring disclosure. To make matters worse, the Senator suggests that, "any meeting between a community group and a bank about CRA investments should trigger disclosure requirements." An indefinite time period as the Senator suggests will result in enormous burdens by all parties in remembering and tracking any meetings or negotiations concerning loans, investments, and grants in traditionally underserved communities.

### **Means of Disclosure**

Under the procedures of general operating grants, New Jersey Citizen Action asks the Federal agencies to specify in the final regulation that the use of IRS Form 990 is an acceptable means of disclosure. In their preamble to the draft regulation, the federal agencies state that the 990 form provides more than enough detail for satisfying disclosure requirements. Codifying the use of 990 forms would simplify reporting requirements and reduce burdens for nonprofit organizations that are very familiar with the 990.

The public records from the Congressional deliberations over the Gramm-Leach-Bliley Act support the use of the IRS 990 form. The Manager's report accompanying the legislation states that a Federal income tax return is an acceptable means of disclosure. In addition, Representatives Jim Leach (R-IA) and John LaFalce (D-NY) engaged in a colloquy on the eve of the House vote on Gramm-Leach-Bliley in which they emphasized the use of Federal income tax returns as satisfying the disclosure requirements.

New Jersey Citizen Action also supports the proposed reporting procedures for specific grants. If a nonprofit organization received grants or loans for a specific purpose such as purchasing computers or providing financial literacy counseling, the organization should be able to comply with the disclosure requirement by describing the specific activity in a few sentences.

### **Who Must Report**


Additionally, New Jersey Citizen Action agrees with the Federal agencies that non-governmental parties should not be required to submit annual reports during the years in which they did not receive grants or loans under the agreement. While other organizations may have received grants and loans under the agreement, it would be logistically impractical for the negotiating party to report on how the grants and loans were used by the other parties. In many cases, large banks may be making relatively small grants to hundreds of community groups over a multi-state area. It is also unreasonable for the non-negotiating parties to be required to report since they may not even be aware that they received grants or loans because of a CRA agreement.

In conclusion, while it may be impossible for the so-called sunshine provision to be a non-meddlesome regulation, we believe that our suggestions reduce burden and the damage it causes to revitalizing inner city and rural communities. New Jersey Citizen Action urges the federal banking agencies to adopt our suggestions for streamlining the sunshine regulation. We must also add that we will be working with community organizations, local public agencies, banks, and other concerned parties to repeal this counter-productive statute so that the private sector will not

be burdened with disclosure requirements simply because they want to do business in and help revitalize traditionally underserved neighborhoods.

On behalf of our board, affiliates, individual members, and staff, New Jersey Citizen Action thanks you for considering our views with regard to this important matter.

Very truly yours,

A handwritten signature in cursive script that reads "Phyllis Salowe-Kaye".

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