

July 18, 2000

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

Attention: Docket No 2000-44

Dear Sir,

The Association for Neighborhood and Housing Development (ANHD) of New York City is deeply concerned about the proposed regulations implementing the Sunshine Provision. We find these regulations very confusing, vague in a number of areas and so sweeping as to create a very serious administrative burden on the broad universe of organizations, including our own, impacted by the regulations.

ANHD endorses the analysis of the regulations included in the comments of the National Community Reinvestment Coalition, of which we are a member. We believe the proposed regulations do indeed strike at the heart of the Community Reinvestment Act which has been the impetus for a myriad of effective bank/community organization neighborhood revitalization partnerships over the past twenty years. ANHD asserts unequivocally that there will be a reduction in these partnerships and a decrease in financial institution participation in community development if the proposed regulations are implemented.

Our two primary concerns are around the "CRA contacts" provision of the regulation and the interpretation of the "material impact" language of the statute.

Regarding CRA contacts, we urge the regulators to respond seriously to NCRC and others' comments that the provision may violate the First Amendment. We, too, ask that you refrain from implementing the regulations until you receive appropriate legal counsel on the regulations' constitutionality. In the event the provision does pass constitutional muster, we believe it is still so sweeping as to create a reporting and administrative burden which will discourage community organizations from publicly commenting on reinvestment issues and which will discourage financial institutions from lending to those organizations which do comment. In the comments that follow, ANHD has a number of

specific recommendations to narrow the scope of the contact provision to those CRA agreements which are the appropriate focus of the sunshine provision and to otherwise minimize the administrative burden placed on the public.

We also urge you to adopt NCRC's recommendation to change your interpretation of the "material impact" provision of the statute and to establish a fact-finding commission to evaluate how the "material impact" language of the statute can be integrated into the regulations. ANHD respectfully believes that the proposed interpretation that agreements committing to **any** level of CRA-related investments nullifies the explicit language of the statute mandating disclosure of only those agreements which have a material impact on a CRA rating or application.

The focus of the Sunshine Provision should be to encourage disclosure of broad-based agreements reflecting substantial commitments to increased lending and investments in multiple markets and assessment areas by financial institutions. Its reporting requirements should focus on reports by individuals and institutions who negotiated substantial commitments if they are also the direct beneficiaries of the agreements.

ANHD does not believe that the Sunshine Provision should cover the routine business activities of non-profits and banks as they discuss neighborhood revitalization strategies and as they work in partnership on community development initiatives.

The regulations as drafted would force our organization, and many of our 96 non-profit member organizations, to cease our CRA-related discussions with area banks and it would reduce the collaborative efforts we now participate in with local financial institutions.

Below are comments and recommendations specific to ANHD's experiences.

#### **About ANHD:**

ANHD is a twenty-five year old non-profit member organization serving and supporting non-profit neighborhood-based agencies engaged in community organizing and housing and community development in poor and working class neighborhoods throughout New York City. As a member trade association, ANHD provides training and technical assistance to our members to strengthen their capacity to create safe, affordable neighborhoods for lower income New Yorkers. With our ninety-six member groups, we also engage in advocacy to create and expand housing and community development programs and opportunities benefiting residents of low and moderate income neighborhoods.

The New York City economic landscape and the current housing market is such that effective community and economic development involves multi-layered partnerships among government, the corporate sector and community-based organizations. The active

participation by local financial institutions is an absolutely necessary ingredient in neighborhood revitalization.

Recognizing the importance of bank-community partnerships, ANHD has a Banking/Reinvestment Working Group composed of twenty of our member organizations. The working group monitors bank CRA performance, fosters collaborations between banks and community organizations and disseminates information on best practices in community development partnerships.

### **The Role of the Community Reinvestment Act In Our Neighborhoods:**

Because of the Community Reinvestment Act, our neighborhoods have seen the return of financial institutions which had abandoned them in the 1970s. Banks have served as the lynchpin in leveraging needed private investment in our neighborhoods and we can point to many innovative and successful community development initiatives our bank partners have implemented in our communities.

We also know that without a strong CRA, we would again see the exodus of financial institutions from our neighborhoods. And, we know that the component of the CRA which makes the law effective is that which permits the public to comment on banks' CRA performance.

Our members have a wealth of experience and expertise in effective neighborhood revitalization programs and they have first hand knowledge of individual financial institutions' lending practices in their neighborhoods. ANHD brings this expertise to the table when submitting comments on banks' performance during a CRA evaluation or when an application has been filed with federal regulators. This expertise will be lost under the proposed regulations and regulators' ability to evaluate banks' CRA performance will be seriously weakened as a result.

### **Our Concerns**

**Some Case Studies:** Our concerns revolve around both the breadth of coverage of the reporting requirements and the reporting burden itself. We also have concerns particular to advocacy coalitions. To best highlight these concerns, and to provide context for our recommendations, we would like to first provide two brief case studies of recent CRA contacts we have had and the ensuing agreements which would be covered under the new regulations.

In calendar year 1999, ANHD responded to two bank mergers. In New York City, we have witnessed a continuing trend of mergers resulting in larger and larger financial institutions. These mergers are of particular concern to our membership because the

products and services offered by these larger banks are not targeted to lower income residents and the creation of mega-banks do not create an overall benefit to our communities. However, one positive aspect of these mergers has been that the new entities are better positioned to develop effective and substantial community development lending and investment programs. ANHD members weighed in on two critical mergers to ensure the new entities assumed an appropriate role in community development in relation to their colleagues of comparable size.

**Deutsche Bank/Bankers Trust:** Bankers Trust Company has played a very prominent role in supporting community development in New York City. The bank was a leader in developing creative responses to emerging issues in our neighborhoods and it consistently received outstanding evaluations for its CRA activities. When the bank was purchased by Deutsche Bank, our members were deeply concerned that Deutsche Bank, which had no presence in the City and which, as a foreign bank, was unfamiliar with CRA, would not continue Bankers Trust's important CRA-related programs.

ANHD, working with three of our member groups in coalition with several economic justice advocates, obtained a meeting with the Chairman of Deutsche Bank. We did **NOT** submit comments to the regulators during the comment period and we met with the Chairman after the merger was approved. At the meeting, we urged Deutsche Bank to increase Bankers Trust's existing community development budget and we asked the Chairman to attend a neighborhood tour where he could see first hand how banks, including Bankers Trust, were working with community groups to meet neighborhood credit needs.

As a result of the meeting, Deutsche Bank agreed to double over a five year period Bankers Trust's lending and investment in New York City. Bank leadership also attended a tour of a lower income community in the Bronx. Attached is a copy of the letter from the Chairman of Deutsche Bank committing to increasing its lending and investment over five years. The letter makes no specific commitment to any organization or program.

According to information provided at a Sunshine Workshop offered by the Federal Reserve Bank of New York, a CRA contact occurred and the letter constituted a covered agreement which would subject ANHD *and its ninety-six member organizations* to disclosure requirements if any of them should obtain a loan or grant of the requisite amount during the five year commitment period.

### **HSBC Acquisition of Republic National Bank**

Also in 1999, many of our member organizations contacted us around concerns about the HSBC acquisition of Republic National Bank. Republic had strong community development programming in the City, whereas HSBC did not have a significant presence in the area. Our membership's concerns were similar to

those raised by the Deutsche Bank acquisition: the acquiring bank had a weaker CRA track record than the bank being purchased and we were worried that the new entity's CRA programming would be modelled on the dominant bank's weaker programs. ANHD submitted comments to the Federal Reserve Bank which highlighted those concerns, which called for the preservation and expansion of the most effective CRA/community development programs of each bank and which called for an overall doubling of the combined banks' CRA lending and investment. This increase would bring the merged institution closer to the level of investment of banks of a similar size with a presence in the City. Seventeen member organizations signed on to the ANHD comment letter. ANHD and many of our members then met with the presidents of the two banks. After the meeting, the HSBC President sent ANHD a letter (attached), outlining the bank's expanded CRA commitment.

In ANHD's comments and in follow up meetings with bank leadership, we called for expansion of specific programs operated by the bank; in no case did we urge expanded support for any particular organization, nor did the bank commit at any time to expanding support for any particular organization. Under the proposed regulations, ANHD *and its ninety-six member organizations* will be subject to reporting requirements if we receive loans or grant support from HSBC during the term of HSBC's commitment.

#### **Specific Concerns:**

- I. **CRA contacts by a Member Coalition Imposes an Obligation on Each of Its Individual Members, Including Those Members Unaware a Contact Even Occurred.** In the Deutsche Bank/Bankers Trust merger, ANHD staff and leadership of three of its member organizations had a CRA contact. In the HSBC/Republic merger, ANHD and seventeen member organizations had a CRA contact. However, according to information provided at a Federal Reserve Bank Sunshine Workshop, all ninety six of our member groups, including groups who had no knowledge of the contact, are considered to have a CRA contact.

ANHD does not have the capacity to individually poll all ninety-six of our member groups and obtain approval (or explicitly exclude members) each time we have a CRA-related contact with a bank or each time we submit comments to regulators. And we cannot incur an obligation on behalf of our members without their knowledge and consent. As a consequence, if the regulations are implemented as proposed, ANHD will no longer be able to carry out an important part of its work- fostering collaborations between banks and community groups and encouraging best practices in lending and investments among area financial institutions.

In the above case studies, our advocacy was appropriate and successful; limiting our ability to comment on bank performance will have a very concretely negative impact on area banks' CRA activities.

**II. There is no requirement that there be a logical connection between the CRA contact and a covered agreement.**

The above examples raise a number of issues on what is reported by whom and when.

Clearly the two agreements are substantial and should be disclosed. In fact, ANHD requested that both banks place copies of the agreements in their public files, we sent copies of the agreements to the regulators for *their* public files and we described the agreement in our newsletter which is circulated to several hundred subscribers in New York City. In the case of HSBC, we also called American Banker, which then ran a story on the commitment.

ANHD feels strongly that, while these contacts and ensuing agreements should be made public, they impose no reporting requirement on anybody. Neither the discussions nor the written commitments identify any institutions or individuals as beneficiaries of this increased commitment.

In the event any of the community groups actually participating in the negotiations later receive grant or loan support from either of the banks, we still do not believe the beneficiaries in this instance should be subject to a reporting requirement on the proceeds of the grant or loan. The CRA contact triggering the reporting requirement did not involve in any way any discussion of providing particular support to a particular group. The banks have no greater obligation to support the groups participating in the negotiations than they do to support agencies which were not involved in the discussion. While there is a direct connection between the contact and the broad commitments, there is no such connection between the contact and the specific loans and grants made to particular institutions. While the large, non-specific commitment should be made public, the contact should not trigger any reporting requirements for agencies who later receive loans and grants from the banks.

In pretty much every discussion ANHD leadership now has with any bank, the question comes up, at times half humorously, is this a CRA contact? Will it trigger reporting requirements? If we're discussing with a bank how it might increase its construction lending for low income housing, is that a contact? If ANHD later receives a \$15,000 grant from the same bank for new computers, is that reportable since we've had a contact?

Any final regulations need to make absolutely clear that if a CRA contact triggers a reporting requirement for a funding commitment, the contact must have involved direct discussion of that commitment.

**III. A Material Impact Standard Should Be Applied On Disclosure of Written Commitments and to Determine When Grant and Loans Received Must Be Reported.**

As discussed, ANHD believes that written agreements should be made available to the public if they meet certain criteria. We recommend adoption of the NCRC definition that an agreement should be made public if it commits to an increase in loans and investments in more than one of a bank's market areas.

We believe that a separate material impact standard should be applied to grants and loans made under an agreement. In the event an organization or coalition of organizations has a CRA contact with a bank or regulator and then later receives a grant of over \$10,000 or loan of more than \$50,000, reporting requirements should only be triggered if the commitment in question does in fact have a real impact on a bank's CRA evaluation or on an application it submitted to the regulators. Not all \$50,000 loans, or even \$100,000 or \$200,000 loans should necessarily require the beneficiary to submit a report. A \$50,000 loan from one of the very largest banks in New York City would not by itself have any impact on that bank's CRA rating. It might however, impact the rating of one of our smallest banks. The regulators need to develop criteria to determine in what instance grants over \$10,000 and loans over \$50,000 do indeed impact a bank's CRA rating or an application it has submitted. Only those funding actions should be subject to the annual reporting requirement.

**IV. The regulations penalize groups who comment on banks' performance.** One way for banks to minimize their reporting requirements is to only make grants or loans to non-profits who did not have a CRA contact. In the case studies provided above, Deutsche Bank and HSBC could avoid sunshine reporting requirements entirely by choosing not to fund any of the ANHD members who participated in the CRA discussions, and instead only lend to groups with whom they did not have a CRA contact. As noted above, ANHD's members incurred no concrete benefit to their organizations through their CRA-related advocacy and now under the current provisions these agencies could in fact be penalized.

ANHD's members are leaders in the community development field; it is exactly these organizations who make strong partners for banks in community development initiatives. These are also the types of organizations who should be encouraged to comment on banks' CRA

performance. The proposed regulations create a bias against supporting the strongest organizations, thus weakening community development in general. The regulations also weaken the Community Reinvestment Act itself, since it is now in the community groups' self-interest **NOT** to comment on bank performance; as discussed above, it is exactly this encouragement of public comment that makes the CRA effective.

#### **ANHD's Recommendations:**

To facilitate disclosure of important CRA agreements while at the same time insuring the reporting requirements do not have a chilling effect on community groups' input into banks' CRA performance, we recommend the following:

- "CRA contacts" should be narrowed to those contacts made during the public comment period for an application or during the time a CRA performance evaluation is announced and when the evaluation is completed.
- A contact is only considered to have occurred on the part of organizations whose executive leadership signed a written comment or participated in a meeting with bank leadership or regulators. Organizations not directly participating in negotiations or discussions should not be considered to have had a CRA contact. In addition, the contact is only meaningful if it occurs between executive leadership, those decision-makers who can commit their respective organizations to a course of action.

For a CRA contact to trigger disclosure of an agreement, the agreement should:

- Be the direct result of the contact; the contact must have specifically addressed the content of the agreement.
- Have a "material impact" on a banks' CRA rating or on an application. As discussed earlier, this should be limited to agreements for increased lending and investment in more than one of a bank's markets.

For grants or loans made to an individual pursuant to a covered agreement, reporting should be required on the use of these funds only when:

- The beneficiary directly participated in negotiating the agreement.
- The agreement specified it would provide the support received to the organization or individual receiving it.
- The support received meets the threshold criteria of at least \$10,000 in grant funds or \$50,000 in loan funds.
- The support received has a material impact on a bank's CRA rating or an application.

Regarding the nature of the report:



- We endorse the proposal that a 990 will meet the requirement for organizational support and that a very brief description of how funds are used will suffice for project specific support.
- Organizations do not need to report on years in which they did not receive any funds under the agreements.

The above framework would ensure that large multi-year commitments were made public while at the same time ensuring that CRA-related speech is not discouraged. It would ensure accountability for those parties who negotiated agreements in which they themselves were substantial beneficiaries but would not require organizations to submit unnecessary reports for grants and loans they receive as part of their day to day operations.

Sincerely,

Irene Baldwin  
Executive Director