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NATIONAL CONGRESS FOR COMMUNITY ECONOMIC DEVELOPMENT
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July 14, 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

Dear Madam or Sir:

NCCED is the national trade association that represents the nation's 3,600 community based development organizations. We have been the membership organization for CDCs for thirty years. As is our custom, the basis for the following comments is extensive discussion with our membership at state association conferences, on a listserv, and during conference calls. In addition, we had draft comments on our website for a month and our members provided feedback. Our comments are as follows.

The National Congress for Community Economic Development (NCCED) urges you to make significant changes in the proposed "sunshine" regulations. While we appreciate the steps the regulatory agencies have taken to reduce the burdens of this statute for neighborhood organizations, banks, and other parities interested in community development, we believe that this provision has real problems for the community based development organizations (CDCs) that we represent.

The nation's 3,600 community development organizations have spent years developing strong partnerships with banks. We would not have been able to develop these partnerships without a strong Community Reinvestment Act (CRA).

We believe, however, that the sunshine statute strikes at the heart of CRA. The essence of CRA is to encourage members of the general public to articulate credit needs and engage in dialogue with banks and federal banking agencies. CRA stimulates collaboration for the purpose of revitalizing inner city and rural communities.

The sunshine statute, by making CRA-related speech and agreements subject to excessive disclosure requirements, threatens to reverse more than twenty years of bank-community partnerships and progress.

Our 1,000 dues paying member organizations frequently engage in "CRA contacts." We often discuss how banks can make more loans to homeowners and business-owners in our community. In fact, the banks are often proud of their agreements and work in our community.

Regulations are burdensome for community organizations

It is troublesome that CDCs will have to disclose a contract they have with a bank and provide detail on how grant or loan dollars are spent under the contract. This will require CDCs to generate new budgets and report new contracts for each bank they work with. While this is an administrative burden on CDC staffs that are already overworked, we are more troubled by the effect it will have on CRA banking partners.

Regulations are burdensome for banks

Today's banking environment is very competitive. Banks compete with each other for customers. In our experience, banks tend to be competitive in their pricing and products with other banks.

Disclosure of private contracts could cause them problems. The agreements our members are able to negotiate are based on a long relationship of mutual respect. It would not be good to have new customers visiting banks with past CDC deals in hand and demand the same terms.

Banks frequently do not want to share their information or agreements with other banks. Banks will not be likely to want anyone to request similar terms without having similar relationships or deals.

In addition, the rule requires that CDCs report everything through the bank that already feels burdened by paperwork. Our fear is that many banks will simply do less CRA-related business since they will not want to deal with the disclosure requirements. The result will be fewer loans and investments reaching communities. Our members' work of revitalizing communities will become much harder.

"CRA Contacts" should not trigger disclosure

Because of the profound damage that the CRA contact portion of the sunshine provision will cause, we ask 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 Federal Reserve Board has the discretionary authority to exempt agreements or contracts from disclosure based on CRA contacts. We have asked the Federal Reserve to eliminate all CRA contacts as a trigger for disclosure.

Regulations should not apply to real estate investments

In addition, CRA Sunshine rules should not apply to real estate investments.

The statute does not even mention the term "investments." The regulators have used broad discretion to apply Sunshine to investments apparently because Sunshine covers agreements in "fulfillment" of CRA, i.e., involving factors that have a material impact on a bank's CRA rating or a regulatory approval for a deposit facility. Since investments are part of the CRA exam, the regulators applied Sunshine to investments even though the statute itself does not discuss investments.

If investments are covered, then the same principles that are applicable to loans – which the statute does directly address – should also apply to investments. To do otherwise would unwisely place this form of financing above its substance in setting public policy.

With respect to loan agreements, the statute provides an exception for mortgage loans, i.e. loans secured by real estate. To apply Sunshine consistently to investments, the regulators should also exclude investments secured by real estate.

We also believe that exemption should be provided for home mortgage loans and for small business loans that are not substantially below market rates.

Material impact

Instead of using CRA contacts as a trigger for disclosure, we believe that the federal banking agencies should revise their material impact standard. We recommend 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. But 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. Simply put, hundreds, if not thousands of contracts with community development corporations and other organizations may have to be disclosed. Our member community development organizations do not receive grants or loans as a result of an agreement made when a bank was merging or before a bank's CRA exam: they received the grant or loan because the bank wants to do business in their neighborhoods.

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, my organization 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. It would also ease the reporting burden on the banks.

The public record 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.

NCCED 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 nonprofit organization should be able to comply with the disclosure requirement by describing the specific activity in a few sentences.

Who must report

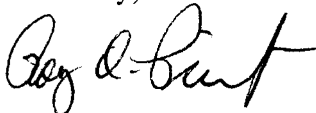
NCCED agrees with the Federal agencies that non-governmental parties should not be required to submit annual reports during the years in which they did not receive grants or loans under the agreement. While other organizations may have received grants and loans under the agreement, it would be logistically 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.

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 community organizations that revitalize inner city and rural communities. We urge the federal banking agencies to adopt our suggestions for streamlining the sunshine regulation.

We must also add that we will be working with our members, national associations such as the National Community Reinvestment Coalition, 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.

Sincerely,



Roy O. Priest
President and CEO