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ACORN

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(Revised)

July 25, 2000

Communications Division
Office of the Comptroller of the Currency
250 E Street SW
Washington, DC 20019
ATTN: Docket No. 00-11

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th and C Streets NW
Washington, DC 20551
ATTN: Docket No. R-1069

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
ATTN: COMMENTS/OES

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

Dear Madam/Sir:

Please accept ACORN's attached comments on the "sunshine" provision in place of the copy that was delivered to your office on the afternoon of July 21.

Due to computer difficulties, our comments contained some typographical and grammatical errors and lacked the appropriate addresses. None of the changes in this revised version relate to the substance of our comments. Please contact us at (202) 547-2500 if you have any questions.

Sincerely,

Maude Hurd
National President, ACORN

Association of Community Organizations for Reform Now
National Office: 739 8th Street S.E., Washington, D.C. 20003 • 202-547-2500 FAX 202-546-2483

ACORN

July 21, 2000

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Washington, DC 20019
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Dear Madam/Sir:

Fifteen years ago this summer ACORN members signed the first CRA agreement with a bank in St. Louis, Missouri. Since then, thousands of community groups and lenders have signed hundreds of CRA agreements which have brought billions of dollars of mainstream financial services and loan products to underserved (particularly racial minority) communities.

Association of Community Organizations for Reform Now
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As you may know, ACORN strongly opposed the so-called sunshine provision when it was being considered in last year's "financial modernization" legislation.

Without any justification, this statute singles out the one class of bank contracts that specifically benefits the residents of low- and moderate-income communities -- disproportionately people of color -- who have suffered the most from bank redlining and discrimination. It subjects the partnerships formed through CRA agreements, which have enjoyed some success at repairing the damage of those historic patterns, to a whole range of interference and burdensome reporting requirements that do not apply to any other private contract. The sunshine provision does not have any legitimate public policy purpose but was primarily intended to hinder community organizations' efforts to push banks to improve their lending records in underserved communities.

In drafting the final regulations, the banking regulators should be aware of the shoddiness of the legislative process used in this case. The sunshine provision was never the subject of a single public hearing. In fact, it was never the subject of a single public forum where community organizations or depository institutions that enter into these agreements could respond to some of the outrageous charges being made. Instead, the final provision is the product of a back-room deal made by a handful of people with little knowledge about how CRA works on the ground or what the impact of the provision would be. The final language is a product of political convenience, an attempt to mollify an avowed opponent of CRA while enacting broader legislation backed by substantial corporate contributions.

As banking regulators, you are in the unenviable position of having to implement this provision. As you do so, it is important that you keep in mind how large the homeownership gap remains in our country and how many families have been helped through CRA agreements. Just last month, ACORN Housing Corporation celebrated a family from Philadelphia as the 30,000th recipient of a home purchase loan made through our CRA agreements with banks across the country. AHC expects to help an additional 6,000-plus low- and moderate-income families buy their own homes across the country this year.

ACORN also has First Amendment concerns about how the sunshine provision effectively penalizes those groups that speak out about whether a bank or thrift is meeting its obligations under CRA. However, as the regulators are tightly constrained by the statutory language in responding to these concerns, we will mostly refrain from mentioning those concerns in our comments on the proposed rule.

II.A.1,2 Definition of "CRA contact" and exemptions

Nowhere is the absurdity of the sunshine provision more evident than in the contortions the regulators undergo to define what does and does not constitute a "CRA contact" that triggers coverage. It requires regulators to make judgments about the "substance and context" of private discussions between banks and community organizations. It obliges regulators to investigate the motivations of a group that enters into an agreement with a

bank and then testifies about the bank's CRA performance. And it makes distinctions between CRA agreements and what it terms to be non-CRA agreements that do not reflect the history of the act.

The proposed rule's efforts to define a "CRA contact" fail most notably in its attempt to outline a timeframe within which contacts would be considered to be "CRA contacts". The proposed timeframes are arbitrarily narrow and fail to reflect the fact that hundreds of CRA agreements and partnerships between depository institutions and community groups have been made because of "CRA contacts" that were made outside the proposed timeframes.

ACORN has found that many times a contact has impact if it is made while a bank is contemplating an acquisition that is under negotiation, or that has been agreed to but not yet publicly announced. In our experience, which is perhaps as extensive as that of any community organization or depository institution, CRA contacts are most likely to produce CRA agreements when they are made between the time a merger or acquisition is announced and the time the application is formally filed. Certainly existing partnerships are most often renewed and expanded during this time. Increasingly, we find that few meaningful CRA agreements are reached after an application has been filed.

For purposes of assigning a CRA rating, all contacts made since the last CRA exam should be considered a CRA contact, since these contacts may impact the next rating.

Certainly many lenders and regulators believe that contacts between groups and banks outside of the proposed timeframes have impact. Throughout the years at various public forums and conferences, many sponsored by regulatory agencies, we have observed how representatives from groups to whom the banks have provided charitable donations for programs not connected in any way whatsoever to the bank's lending or investment activities will trot out to applaud the banks' community reinvestment activities. Lenders evidently believe those donations relate to their CRA performance, and the regulators agree to hear their testimony.

II.A.3. Fulfillment of CRA

ACORN strongly encourages the regulators to maintain much, but not all, of the proposed standard for determining if a CRA agreement has a "material impact" on a bank's CRA performance. The standard's first seven categories regarding a depository institution's performance accurately reflect the performance factors considered by the regulators in making determinations about an institution's CRA rating and its applications for deposit facilities. As such, any agreements that affect an institution's performance under those factors should be covered.

The proposed rule's eighth and ninth factors for triggering material impact should be eliminated. These factors clearly place additional burdens upon individuals who choose to exercise their right to free speech in efforts to influence public and civic affairs.

The statute requires the regulators to set out the factors regarding an institution's performance under CRA that affect ratings and application decisions; however, it does not provide any details on where thresholds should be set for the amount of activity regarding a factor that triggers coverage. In the absence of any specific language on thresholds, the regulators have taken the appropriate step of considering as covered any agreement that produces activity counting toward any of the factors. Even if the regulators had chosen to somehow establish some type of threshold for triggering coverage, it would be virtually impossible to implement because many agreements, at the time of signing, do not set exact details about how much business will be conducted through the agreements.

ACORN believes that the proposed rule's first seven factors for determining material impact accurately reflect both the legislative intent of the sunshine provision and the actual experience of community groups and lenders in using CRA to make material impacts on the conditions of low and moderate income neighborhoods. Furthermore, we believe that for regulators to determine that large numbers of CRA agreements **do not** have an impact on CRA ratings or application decisions would in fact amount to a form of falsified historical revisionism reminiscent of Stalin's Soviet Union. Such a step would devalue the indisputable historical fact that CRA agreements of all sizes and shapes have collectively contributed enormously to increasing the availability of mainstream financial services and loan products in underserved communities.

By extending coverage to agreements that affect banks' performance under any of the identified factors, the regulators will also help prevent depository institutions and their partners from engaging in any efforts to 'game' the reporting requirements by avoiding any reference to CRA or the bank's record of performance in certain lower income communities in the course of contacts that would otherwise clearly be regarded as CRA contacts. In the long term, such gamesmanship would have the unintended side effect of devaluing CRA's economic impact in our communities.

II.A.4. Value

The value threshold for coverage should be $10,000, regardless of when the funds were committed.

II.B.1. Public Disclosure of Covered Agreements

Congress and the Administration left to the regulators the task of resolving a fundamental conflict between two provisions in the statute -- requiring public disclosure of the agreements while at the same time directing, at section 711(h)(2)(A), "each appropriate Federal banking agency [to] ensure that ... proprietary and confidential information is protected." At the core of most CRA agreements is product information and the establishment of business relationships which would often be considered proprietary in all other contexts. If the regulators do not protect this information, the continued use of CRA agreements as an effective tool to bring mainstream financial services and lending to

low- and moderate-income communities, and especially communities of color, will be severely undermined. Considering the explosion of predatory lending in those same communities, the high-quality loan products made available through CRA agreements are needed now more than ever.

The logical standard for the regulators to follow in protecting proprietary and confidential information is the one established by the Freedom of Information Act (FOIA). The relevant piece from FOIA, found at 5 USC 552(b)(4), states that "[t]his section [FOIA] does not apply to matters that are ... trade secrets and commercial or financial information and privileged or confidential."

The regulators should not give precedence to the public disclosure requirement simply because that language appears to be more specific while the protection of proprietary and confidential information applies more broadly to all of Section 711. Members of Congress and Administration representatives involved in the final negotiations on the statutory language who had concerns about the release of this information directly targeted the requirement to protect proprietary and confidential information at the disclosure provision. Nowhere else in Section 711 are there any concerns about the release of proprietary or confidential information.

The release of proprietary information is a major threat to the innovations that are at the heart of successful CRA agreements. For banks and thrifts to successfully establish a presence in a financially underserved neighborhood often requires working with community partners to build visibility and trust within the community. Innovative initiatives must be implemented in these new markets to build market share of deposits and loans. Working in concert with their community-based partners, depository institutions often attempt a variety of strategies to reach their goals. These often involve concessions on loan pricing, terms and conditions; extraordinary community outreach and marketing campaigns; financial support and technical assistance to community based housing counseling agencies, financial intermediaries, or small-business incubators; and employee resource allocations to adopt-a-school or other educational institutions. Often times these strategies and tactics are detailed in the various written communications that occur between the bank and its community partners through the CRA process.

The innovative strategies developed through the CRA process for creating market penetration and building market share in lower income communities must be considered confidential. Forcing banks to publicly disclose the details of these experiments to their competitors, rather than protecting the information as proprietary, would discourage banks from taking on the risk of innovation by greatly reducing the potential competitive advantage and financial gain that would be gained from success. In fact, without confidentiality, competitive advantage would lie in letting someone else take the risk and bear the cost of innovation (i.e., determining what works and what doesn't), and then merely copycatting any success that is identified. In such an environment, innovation and prudent risk/reward calculations would soon disappear.

These categories are not defined, for example, by the Financial Accounting Standards Board in its Statement of Financial Accounting Standards, *Financial Statements of Not-for-Profit Organizations.* Nor is there a uniform definition for these terms provided under federal grant reporting regulations. FASB requires that a nonprofit's financial statement of activities present expenses of the organization's operations functionally between "program services and administrative and general." Those expenses which cannot be functionally categorized are allocated among functions based upon management's estimate of usage applicable to conducting those functions.

Under FASB standards, expenses for acquiring computer equipment might very well be apportioned between "program services" and "administrative", according to their functional use. Thus, if one computer was used by the accounting department to prepare payroll and accounts payables for the agency, including (but not exclusively for) the housing counseling division, and 3 computers were used by housing counselors to provide counseling services, then under FASB 25% of the cost of the equipment would be allocated to "Administrative" and 75% would be allocated to "Program Services". However, on IRS Form 990, the entire expense would simply be reported under "Equipment."

It is totally unclear under the proposed gobbly-gook in the proposed rule how the computers should be accounted for. Is "specific purpose funds" the same as the FASB "program services"? Such ambiguity is an open invitation for unscrupulous congressional committee chairmen opposed to the CRA and its advocates to engage in political witch-hunts under the guise of investigating "financial reporting irregularities."

c. Use of Other Reports

We strongly agree with the proposed rule's standard of allowing partners to file their Internal Revenue Form 990s to meet the reporting requirements. This position is in line with the legislative history -- the statute, the conference report, and the Leach-LaFalce colloquy on the House floor -- urging that the reporting burden be minimized and existing documents used as much as possible.

d. Consolidated Annual Reports Permitted

We agree that nongovernmental parties with a number of CRA agreements should be allowed to file a consolidated annual report; however, the only logical cutoff for allowing consolidated reporting is when a party has two or more reports. It does not make any sense to set an arbitrary cutoff at five reports so that a partner with four CRA agreements has to file four separate annual reports while a partner with six or sixty agreements only has to file one consolidated report.

We also support the proposed rule's extension of the consolidated reporting option to depository institutions. Lenders often have several CRA agreements with many groups. These often involve overlapping geographical boundaries and product mixes. It is often

impossible to allocate performance to any particular agreement. Lenders should be able to consolidate all CRA lending into a single report.

II.C.3. Contents of Banks and Thrifts' Annual Reports

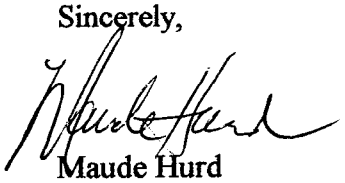
From our conversations with various bank officials, we understand they have strong concerns that the reporting requirements are impossibly vague and that the expense of reporting will be very high. These issues need to be carefully examined so that they do not discourage banks from entering into CRA agreements to improve their lending performance in underserved areas. Unfortunately, we also understand that Senate Banking Committee Chairman Phil Gramm has been using the weight of his office to try to intimidate banks into not expressing their concerns to regulators. It is somewhat of an ironic position for a politician who so freely bandies about irresponsible charges of extortion.

II.C.4. When and Where Must Annual Reports be Filed

In the interest of minimizing the reporting burden, bank partners should be able to use whatever fiscal year they follow in submitting annual reports on their activities to the banking regulators.

Thank you for your consideration. Please contact us at (202) 547-2500 if you have any questions.

Sincerely,



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National President, ACORN