NEIGHBORHOOD HOUSING SERVICES OF NEW ORLEANS, INC.

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REBUILDING NEIGHBORHOODS THROUGH PARTNERSHIPS

NeighborWorks

July 20, 2000

Alan Greenspan
Chairman Federal Reserve System
20th and C Streets NW
Washington, D.C. 20511

Ms. Ellen Seidman
Director
Office of Thrift Supervision
1700 G Street NW
Washington, D.C. 20552

Mr. Jerry D. Hawke
Comptroller of the Currency
Office of the Comptroller
250 E Street SW
Washington, D.C. 20219

Ms. Donna Tanoue
Chairperson
Federal Deposit Insurance Company
550 17th Street NW
Washington, D.C. 20249

Re: *Proposed Section 711 Sunshine Regulations*
Gramm-Leach-Bliley Financial Modernization Bill

Dear Chairman Greenspan, Director Seidman, Comptroller Hawke and Chairman Tanou:

First I want to commend the agencies for doing as well as they did to draft regulations for what can best be described as an ill-conceived statute.

While we are all clear about the intent behind the statute, neither the statute as written nor the regulations as proposed, will accomplish this purpose. Most likely neither will expose those who use the CRA for personal gain or in an improper manner. That was the legislative intent of the Sunshine Provisions. as I understand the legislative history.

What the statute and regulation will likely accomplish, as is apparent from the comments that have already been submitted, is to undermine the very positive effect of the CRA statute, by discouraging banks and legitimate nonprofit organizations

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from entering into agreements that would be beneficial for both the bank and the community. It therefore turns the purpose of CRA on its head. CRA was intended to bring capital and credit into under-served communities. The unintended consequence of the statute and regulation will be to discourage this activity. As bank regulators you are perhaps in a better position than many Congresspersons to see the positive impact that the CRA has had not only for under-served communities but also for banking institutions who have successfully expanded their markets and created new, profitable lines of business. In essence the Sunshine provisions may have the effect of impeding the flow of capital into our poorer communities because either the banking institutions or the nonprofits will be discouraged from entering into agreements because of the burdens imposed by the statute and regulations.

The Sunshine provisions have another unintended consequence. It implicitly discourages community groups from providing information to regulators about the performance of a bank in their market. Congress determined, in enacting the Community Reinvestment Act that such input was valuable and necessary to ensure that banks met the credit needs of the communities they served. Community groups that elect, because of the Sunshine Act, not to comment on a bank's performance (either positively or negatively) are exempt from the provisions of the Act. A nonprofit may consciously decide not to provide what could otherwise be valuable information to a bank regulator as a means of avoiding the mandate of the Sunshine provisions. That is inconsistent with the intent of the Community Reinvestment Act. In this respect the Sunshine Provisions have serious First Amendment consequences.

The following are some of the specific concerns with the regulations, as drafted. While the regulations apply to all "non-governmental entities", these comments relate solely to the impact on nonprofit housing or community development organizations.

- The definition of "CRA Contact" is extremely broad.

  It would be interpreted as any conversation between a nonprofit and a bank regarding CRA. Therefore if at any time, I had any conversation with a representative of the bank concerning CRA, any business that is transacted between NHS and that bank would fall within the purview of the regulations assuming that it does not fall within a specific exemption. The regulation does not take into account the true nature of relationships that develop between nonprofits and banks.

  NHS is founded on the principal of a working partnership with banks. Five banks are represented on our board of directors and each of these directors is either directly or indirectly involved in the fulfillment of their bank's CRA objectives. It would defy imagination to say that as the director of NHS I never discuss CRA with the lenders on our board. But the business transactions that we enter into are not negotiated CRA agreements.

  Each year NHS receives contributions for operating support from many banks. While the bank may very well treat a contribution to NHS as helping to meet its CRA obligations, I have not agreed to testify or refrained from testifying as a condition of that support. The proposed regulations could be fairly interpreted to mean that because my board member and I had a conversation relating to CRA, their bank's contribution towards NHS' operating support would be a covered agreement. I do not believe that this is the intent of the statute.

- The broadness of the regulatory language will lead to conflicting interpretations of "covered agreements."

  I anticipate that banks will be far more likely to report most transaction they enter into as fulfillment of their CRA obligation as a "covered agreement" and will report them as such. As a nonprofit, I may just as reasonably assume that because I did not specifically enter into negotiations with the bank for this purpose, the agreement does not fall within the mandate of the regulation. Therefore there will be over-reporting by the banks and under-reporting by the nonprofits. This will result not because the nonprofit is trying to hide a nefarious agreement, but through an honest difference of opinion as to the intent of the agreement. However, the nonprofit will be at far greater risk of sanctions for not filing than the bank.

- The proposed regulations should explicitly exempt projects that are funded through the Federal Home Loan Bank Affordable Housing Program.

The Affordable Housing Program is a statutorily mandated program administered by the Federal Housing Finance Agency. Each Federal Home Loan Bank must set aside 10% of its earnings to fund AHP. Unlike any other funding program, applications for AHP may only be made through the member banks, most often in partnership with a nonprofit organization. Because AHP seeks to leverage its funding with commitments from the member banks and because the intent of the program is to foster partnerships between nonprofits and its members, members will often agree to provide financial support or lending concessions as part of an AHP application.

Given the nature of this program and the oversight exercised by the Federal Home Loan Banks and the Federal Housing Finance Board, these agreements receive a high degree of scrutiny. They therefore should be exempted from the purview of the Sunshine provision. As currently drafted, the regulations could be interpreted to require reporting of most AHP grants, even though the actual grant is a pass through of funds from the Federal Home Loan Bank through the member bank.

- The regulations should specify the type of documentation that may be submitted in lieu of a Sunshine Report.

I applaud the drafters attempt to ease the burden of this regulation by allowing the submission of reports that are otherwise prepared in the normal course of business such as tax returns. The regulations should also specifically allow the submission of an audited financial statement prepared on behalf of a nonprofit by a Certified Accounting Firm that complies with the OMB Circular A-133 as a substitute for a tax return. This represents an independent, thorough review of the organization's financial statements. The regulations should permit either submission of a 990 tax return or an audit to satisfy the reporting requirements.

The timing of submission of these reports should be expanded. Generally, a nonprofit must file its audit within six months of the end of their fiscal year. It would be helpful to expand the time to submit the audit to seven to eight months after the end of the fiscal year.

- Because of the mandate that is being imposed upon nonprofits, the regulations should address the manner by which nonprofits throughout the country will be educated about the statute and regulation.

The nonprofit community is not regulated like the banks. There is no federal agency charged with the regulation of the nonprofit community development industry. Therefore, who will bear the burden of informing nonprofits of their responsibility under the statute and regulation? Who will be responsible for explaining and interpreting the regulation? The responsibility cannot be properly or fairly placed on the banks. Because the sanction for noncompliance by a nonprofit results in the unenforceability of the agreement, banks who are not acting in good faith, would have an incentive not to inform a nonprofit that the agreement must be reported.

Although ignorance of a law is not a valid defense to violation of that law, many nonprofits will fail to comply with the regulation through genuine ignorance of the mandate. Absent a methodology of informing and explaining the statute and regulation to all nonprofits, a nonprofit should not be penalized for failure to file if they did not reasonably know of the obligation.

- The statute and regulation will not comply with the mandates of the "Paperwork Reduction Act of 1995."

Assuming a moderate to high degree of compliance with the Sunshine provisions, the result will be millions of pages of paper being submitted to each of the bank regulatory agencies that will do nothing but sit in a file cabinet. The reports and submissions will serve no useful purpose, nor is it likely that they will even be reviewed by anyone upon submission. The reality is that probably less than 1% of all CRA agreements, whether formal or informal, are of interest to anyone but the parties to the agreement. That is because the agreements either achieve good ends within a community or, at worse, are innocuous. The statute is casting a very wide net to "catch" a very few "bad actors." In the process, it is increasing the paperwork burden of both the nonprofit and the bank. The banks already complain about the paperwork burden created by compliance with CRA.

I trust that the bank regulatory agencies support the purpose of the Community Reinvestment Act. I trust that you have seen its tremendous value in our communities. I therefore trust that you will continue, as a result of the comments received, work to ensure that the Sunshine Provisions do not have the unintended consequence of thwarting the value and utility of CRA.

Sincerely,

Lauren Anderson

Cc: Senator Mary Landrieu
Congressman William Jefferson
Congressman Richard Baker