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National Community Capital Association

July 13, 2000

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

Attention: Docket No. 2000-44
Via e-mail: public.info@ots.treas.gov

To Whom It May Concern:

On behalf of the National Community Capital Association, I am pleased to comment on the proposed "Community Reinvestment Act (CRA) Sunshine" regulations of Section 711 of the Gramm-Leach-Bliley Act (GLBA) as published in the Friday, May 19th issue of the Federal Register (Vol. 65; No. 98).

Founded in 1986, National Community Capital is a national financial intermediary representing 400 organizations that leverage public and private capital to revitalize our nation's poorest urban, rural, and reservation-based communities. Our 53 core Members are performance-driven community development financial institutions (CDFIs) have invested $1.3 billion—financing the construction and renovation of affordable housing, the start-up and expansion of small businesses, and the provision of essential services in economically disadvantaged communities. CDFIs include community development loan funds, community development credit unions, microenterprise loan funds, and community development venture capital funds.

Ironically, these proposed regulations come at a time when bipartisan policymakers and community development practitioners are developing new ways to incentivize investment in economically disadvantaged New Markets and American Renewal Communities—not discourage or penalize it.

The mean-spiritedness behind this law and the burden of this proposed rule would reverse the momentum of more than 20 years of successful bank/CDFI partnerships to revitalize communities—building affordable housing, creating jobs, and developing child care and community facilities for economically disadvantaged people in our nation's poorest areas.

Since 1977, banks and community groups have successfully negotiated more than $1 trillion in CRA-related agreements, with most of this total committed in the last few years. The proposed CRA Sunshine rule could drastically reduce the level of CRA-related finance, making it more difficult for National

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Community Capital and our members to achieve our primary mission of lending and investing in low- and moderate-income communities.

National Community Capital's comments focus on four areas and conclude with three overall recommendations.

CRA CONTACT
CDFIs play an important role in financing community development because CDFIs make loans and investments where other financial institutions don't. Banks form partnerships with CDFIs to be conduits for loans and investments into the distressed communities that CDFIs seek to serve.

To this end, banks, their affiliates, CDFIs, and other community investment organizations enter into a variety of contacts on a routine basis—including discussions of a bank's CRA performance. Banks also use CRA-related finance as part of an overall strategy to cultivate traditionally underserved markets, to grow new borrowers, and to make a profit.

In addition, banks often initiate contacts with CDFIs to make investments in connection with the successful CDFI Fund's Bank Enterprise Award (BEA) Program, for which CRA-issues are incidental. This type of bank-initiated contact is clearly outside the intended scope of the act and should be exempt.

Therefore, we urge the Federal Reserve Board to exercise its authority granted in Section 711 to exempt all CRA contacts that arise in the context and purpose of ordinary CRA business dealings, absent any coercive aspect.

DISCLOSURE
According to the statute's author, the intent of the Sunshine provision was to prevent community groups from "extorting" cash payments from banks in exchange for refraining from providing "frivolous" complaints in a bank merger application process.

To be consistent with the statute, National Community Capital recommends that disclosure should only be triggered by comments or testimony made in conjunction with CRA-related agreements *during* a CRA examination or a deposit facility application process.

In addition, if a CDFI provides marketing materials to a bank regarding CRA-related financial products or services, the materials themselves would not have a material impact on a bank's CRA rating—and should be exempt from the definition of CRA contact.

We recommend that regulators revise the material impact standard and make it, not CRA contact, the trigger for requiring disclosure under the proposed rule.

REPORTING
We appreciate the regulators' attempts to minimize the reporting burden of this "Paperwork Creation Act" for community groups, as well as for banks. However, the reporting requirements will be very cumbersome for small, nonprofit community groups that do not have sophisticated accounting systems. Therefore the flexibility of the reporting mechanism such as the ability to use existing documents is essential.

We applaud regulators' efforts to streamline reporting for special purpose funds. However, we recommend that the final rule state explicitly that a brief narrative description would satisfy the reporting requirement. Likewise, in the preamble, regulators confirm that a properly completed IRS Form 990, tax forms commonly filed by nonprofits, would fulfill the reporting requirements for general purpose funds. We strongly urge that the final rules should *state explicitly* that a Form 990 is acceptable for reporting general purpose funds.

The proposed rule would exempt non-governmental parties from the annual reporting requirements during the years in which they did not receive funds under a disclosed agreement. We strongly support this provision. Since CDFIs are in the business of re-lending funds, it would be difficult for the negotiating party to report on how funds were used by other parties.

Similarly, it would be unreasonable to require groups that were not party to the negotiations of a CRA agreement to report since they may not even be aware that they received funds pursuant to that agreement. We recommend that the final rule provide a reporting exemption for non-negotiating parties a CRA agreement.

PUBLIC COMMENT

The Sunshine provision strikes at the core of the Community Reinvestment Act—namely, encouraging public input into the credit needs of the communities in which banks do business and engaging in an exchange of information with banks and federal banking agencies. Community organizations and other interested parties would be more hesitant to talk to banks concerning lending and investing in underserved communities.

In addition, the proposed regulation could violate groups' First Amendment rights and taint the CRA process. Banks and community groups would have to disclose their private contracts when community groups exercise their rights to testify before a federal agency or even talk informally to a bank about CRA issues.

OTHER RECOMMENDATIONS

National Community Capital proposes a "CRA Sunset Provision".

In order to prevent tremendous waste of scarce public and private resources, a companion measure in the regulations should be considered. For instance, if after six CRA completed agreements, a regulatory agency finds no evidence of "extortion" or coercion, parties to the disclosed and reported agreements may request the Federal Reserve Board to "sunset" CRA Sunshine requirements for each party.

A bank's assessment area should be determined by how a bank defines its market.

Increasingly, CRA is constrained by outdated regulations that do not adequately recognize dramatic shifts in the financial services industry. To continue to make changes to financial services regulations without first "modernizing" CRA undercuts the goal of increasing bank activity in economically disadvantaged communities.

Under CRA, banks are required to provide non-discriminatory access to financial services in their market—assessed according to where they take deposits. In 1977, taking deposits was a bank's primary function. In 2000, banks no longer just accept deposits—they market investments, sell insurance, and issue securities and are rapidly expanding these more profitable lines of business. In addition, the advent and explosion of Internet and electronic banking has blurred the geographic lines by which assessment areas have been typically defined.

Therefore, defining CRA assessment areas based on deposits is at odds with the way financial institutions operate in this era of financial modernization. As another much-needed step towards modernizing the system of assessment, National Community Capital recommends simplifying the definition of CRA assessment area according to a financial institution's customer base. For instance, if a Philadelphia bank has credit card customers in Oregon, it also has CRA obligations there. The obligations ought to be commensurate with the level of business in any market.

Expand CRA coverage to all financial service institutions—and their affiliates—that receive direct—or indirect—taxpayer support or subsidy.

The Gramm-Leach-Bliley Act paves the way for banks, finance companies, insurance and securities firms, and other "parallel banks" to affiliate with each other. Today, the term "bank" has fallen out of common usage and instead we talk about "financial service companies". As enacted in 1977, CRA covers only banks. To keep CRA in step with financial reform, it should be extended to all financial service companies—and their affiliates—that receive direct or indirect taxpayer support or subsidy.

In our 1996 paper "The Parallel Banking System and Community Reinvestment", National Community Capital uncovered a web of taxpayer-backed subsidies essential to the entire financial services industry. For example, federal guarantees and Treasury lines of credit have acted as a safety net against some nonbank insolvencies. In October 1998, the Federal Reserve Board drove this point home convincingly when it intervened to structure a massive bailout of Long Term Capital Management by several taxpayer-subsidized banks.

National Community Capital appreciates the opportunity to comment on the proposed CRA Sunshine regulations. Thank you for considering our concerns and recommendations. Please contact me at 215.923.4754 if you have any questions.

Sincerely,

Mark Pinsky

Mark Pinsky
President and CEO