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CALIFORNIA REINVESTMENT COMMITTEE

July 21, 2000

Manager
Dissemination Branch
Information Management and Services Division
Office of thrift Supervision
1700 G Street NW
Washington DC 20552

2000 JUL 24 A 9:59

Re: Docket No. 2000-44

Dear Manager:

I am writing on behalf of the California Reinvestment Committee (CRC) to provide you with our comments on the proposed "Sunshine" regulations. The California Reinvestment Committee is a nonprofit membership organization of more than two hundred nonprofit organizations and public agencies across California. The CRC works with community-based organizations to promote the economic revitalization of California's low-income communities and communities of color. The CRC promotes increased access to credit for affordable housing and community economic development, and to financial services for these communities.

The sunshine statue strikes at the heart of the Community Reinvestment Act (CRA). The essence of the CRA is encouraging members of the general public to articulate credit needs and engage in dialogue with banks and federal banking agencies. CRA motivates dialogue and collaboration for the purpose of revitalizing inner city and rural communities. The sunshine statue, by making CRA-related speech suspect, threatens to reverse more than twenty years of bank-community partnerships and progress. Please consider the following comments as ways to maintain the legitimacy of CRA.

Definition of CRA Agreement

The statue clearly does not cover any unilateral declaration by a financial institution of CRA goals or objectives. Coverage only applies in cases of written agreement between a financial institution and non-governmental entities.

The definition of written contracts should include only those documents that reflect that all of the parties have fully considered and agreed to all the elements of that agreement. For instance, if a financial institution writes a letter to a non-governmental entity (or vice versa) that makes a CRA-related comment, absent any evidence that this is a mutually agreed upon document by both parties, then it should not be considered a CRA agreement.

The statute exempts a CRA agreement or written understanding from disclosure if it involves an individual mortgage loan. CRC believes that an agreement for making more than ten mortgage loans is simply an agreement that promises a bank to make a series of "individual" mortgage loans, and should be exempt as well.

The proposed rule defines a CRA agreement between a non-governmental entity and a depository institution or its affiliates. An unintended consequence of this is that depository institutions may have their affiliates make CRA agreements and then chose not to have their affiliates examined under CRA performance evaluations. CRC supports the idea that regulatory agencies automatically consider affiliates of depository institutions covered under any CRA agreement, in order to maintain the legitimacy of CRA and the nation's fair lending laws.

Definition of CRA Contact

CRC believes that the sunshine provision will violate the First Amendment. The statute specifically and exclusively targets non-governmental entities who have made "contact" with a regulatory agency or financial institution regarding the financial institution's CRA performance. As such, the proposed regulations violate the free speech and right to petition prongs of the First Amendment. CRC believes that the statue exposes the regulatory agencies to lawsuits.

The definition of a CRA contact is vague and inconsistent. Regulatory agencies appear to be clear that a CRA comment made by direct invitation of the regulators is exempt and a comment made in response to a general invitation of the regulators via public notice is not. CRC believes all comments to regulators should be treated the same however they are solicited.

The agencies suggest that comments made at "widely attended public venues" will not be considered CRA contact. Accordingly, CRC believes that if CRC member organizations make comments on a financial institution's performance at a CRC monitoring or negotiating meeting with a financial institution, this should not be considered CRA contact, since it is made at a widely attended public venue. This will significantly reduce the unfair targeting of non-governmental entities and allow the Community Reinvestment Act to continue its progress in forging relationships and dialogue between financial institutions and community groups.

The proposed regulations say that oral CRA contacts are included in the definition of a CRA contact. CRC believes that oral conversations are all subject to interpretation. It is difficult to document CRA contact. A bank may think it is making CRA contact with a non-governmental entity based on a conversation it had, but that same non-governmental entity who was party to that same conversation may interpret the conversation differently. There is too much room for error to include oral conversation as CRA contact, and CRC believes all CRA contact should be limited to written contact.

The proposed regulations also indicate that the words "CRA" do not have to be uttered in order for a "CRA contact" to have been made. This aspect convolutes the regulations. Non-

governmental entities will never truly know when a CRA contact has been made. The agencies need to specifically articulate and delineate all situations when a CRA contact has been made.

CRC believes that there should be time limits for when a CRA contact will trigger disclosure. Using extremely long time limits will chill discussions between community organizations and financial institutions. In particular, the proposed two year time limit is too long. Banks and community organizations may not even remember conversations that were held two years back. CRC supports following already recognized official time periods, such as the public comment time period for a merger, or in the case of CRA exams, the time period between when the exam is announced, and when the exam occurs.

Public Disclosure and Annual Reporting Requirements

CRC supports the use of the IRS 990 form as an acceptable form of disclosure. CRC believes that the agencies should specifically delineate which other tax forms will be acceptable forms of disclosure. It would also be useful for the agencies to prepare sample disclosure reports for other purposes in which the IRS 990 form is not acceptable. CRC also agrees that non-governmental entities should not be required to submit annual reports during the years in which they did not receive grants or loans under the agreement.

CRC believes that the obligation to disclose a covered agreement should terminate sixmonths after the end of the term of the agreement. The request is reasonable since anyone could submit a FOIA request to the appropriate agency should they wish to see the agreement after the six months. This time limit will also limit the burden on small non-profits who have limited capacity and/or resources.

If a CRA agreement stipulates the provision of funds over time without specifying a rate of dispersal, disclosure should be required only at the actual rate of dispersal. If no funds were distributed in a given year, no party is required to disclose for that year.

Thank you for consideration of these comments. If you have any questions, please feel free to contact us at 415-864-3980.

Sincerely,

Alan Fisher
Executive Director

Arthi Varma
Policy Advocate