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CDFI THE COALITION OF COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

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

July 17, 2000

Dear To Whom It May Concern:

On behalf of the Coalition of Community Development Financial Institutions (CDFI Coalition), I appreciate the opportunity 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).

The CDFI Coalition represents more than 465 CDFIs working in all 50 states. CDFIs create new economic opportunities for businesses, individuals and communities that do not have access to the mainstream economy. By providing credit and technical assistance, these bridge institutions link unconventional borrowers to conventional financial markets. The CDFIs the Coalition represents have loaned and invested more than $5 billion in our nation's most distressed communities.

The proposed "sunshine provisions" promulgated under the Gramm-Leach-Bliley Act may well drastically reduce the cooperative ventures between community organizations and financial institutions. This effect would reverse the current tide of bipartisan commitment to encourage private-sector investment in New Markets and Renewal Communities. The following comments are written with the intention of reducing the damage to those ventures while recognizing the provisions of the statute.

For several decades, even preceding the Community Reinvestment Act, CDFIs have worked in partnership with banks and mainstream financial institutions to increase access to credit and capital to underserved communities. CDFIs conduct this activity because it is central to their mission, not as a means of coercing bank investment. The Coalition urges regulators not to cloud the environment that has resulted in more than $1 trillion in CRA-related finance since 1977.

CRA CONTACT

CDFIs are experts in developing partnerships. They work with mainstream financial institutions, community groups, governments, and neighborhoods to channel private investments into low-income, low-wealth, and underserved communities. CDFIs provide technical assistance to assist "unbankable" customers, demonstrate that poor urban and rural areas can be profitable markets, and can bring innovative and trailblazing products and services to disinvested areas. As part of this process, CDFIs form partnerships with banks to help both target their products effectively and work together to help customers access both mainstream and "alternative" financial products.

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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

That so much of CDFIs' routine dealings with banks constitute "CRA contact" highlights the difficulty in using CRA contact as the criteria for disclosure. Determining the lines between CRA-related business and routine business in bank-CDFI relationships, as well as which party initiated the "CRA contact," would require an arcane and exceptionally detailed set of regulations.

To save regulators, banks, and community groups from the burden of these fine distinctions, 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 Act for community groups, as well as for banks. The GLBA calls simultaneously for avoidance of undue burden and for full and detailed reporting. The only rational solution to the dilemma is to go back to the intent of the provisions which is apparently to discover causal connections between the granting of funds by financial institutions and the grantees' CRA comments. If that is the case, the reporting of key details will suffice.

Given the intent, the reporting requirements should include sufficient information to permit an understanding of the use of funds disbursed in accordance with a covered agreement but no more. Accordingly, where funds are used for general purposes an entity should be allowed to report using documents filed for other purposes as long as those documents contain key details.

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 to a CRA agreement.

PUBLIC COMMENT

The Sunshine provision strikes at the heart 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.

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. This provision raises serious concerns about violations of the First Amendment rights of involved parties.

OTHER RECOMMENDATIONS

The GLBA "modernized" the financial services industry without a corresponding expansion of the CRA. The Coalition feels strongly that community reinvestment provisions should apply to all financial service companies—and their affiliates—that receive direct or indirect taxpayer support or subsidy.

We understand the difficulties the regulatory agencies face in developing regulations for a confusing and contradictory statute. Our goal is to continue to increase the flow of credit and capital to underserved communities, and we urge you to keep those channels open as you interpret GLBA.

The CDFI Coalition appreciates the opportunity to comment on the proposed CRA Sunshine regulations. Thank you for considering our concerns and recommendations. Please contact me at 215.923.5363 if you have any questions.

Sincerely,

Laura Schwingel
Director