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Wisconsin Rural Development Center, Inc.

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Manager, Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G street NW
Washington DC 20429

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Attention: Docket No. 2000-44

The Wisconsin Rural Development Center (WRDC) submits this letter in response to a joint request by the Office of the Comptroller of the Currency (Docket No. 00-11), Federal Reserve System (Docket No. R-1069), Federal Deposit Insurance Corporation, and Office of Thrift Supervision (Docket No. 2000-44) for comments on regulations proposed by the agencies (the "proposed regulations") pursuant to disclosure and reporting provisions of Section 711 of the Gramm-Leach-Bliley Act, Pub. L. No.106-102, 113 State. 1338 (1999) ("Section 711").

The WRDC would urge you to make changes in the proposed "sunshine" regulations. We believe that the regulation, as it is now proposed, has one sole purpose: to undermine the effectiveness of the Community Reinvestment Act (CRA). We appreciate the agency's efforts to reduce the burden of this chilling and mean-spirited statute, however, the statute as it is now proposed is designed to strike at the heart of the CRA. Since 1977, the CRA has encouraged members of the public to enter into constructive and meaningful dialogue with lending institutions and federal regulators to assist in meeting the credit needs of often underserved low-income and minority populations. The sunshine statute, which attempts to place a "gag" on CRA-related speech, threatens to undo over 20 years of community-bank cooperation.

It is our understanding that the statue requires banks, community organizations, and other parties to disclose private contracts to federal agencies if the parties engage in so-called CRA "contacts". These "contacts" have, and should continue to be, private and voluntary arrangements between parties on how best to meet the credit needs of the community. At the heart of the argument for disclosure is the concern that parties may be "extorting" monetary pledges from lending institutions. WRDC finds no basis for that assumption or argument. Since "section 711 does not authorize any agency to enforce the provisions of any covered agreement" (Federal Register Sec I, pg. 31964) contacts that result in usually fee-for-service arrangements are not covered under the CRA. Consequently, when a lending institution enters into a voluntarily partnership with a community organization, these agreements (whether carried out or not) do not provide a basis on which to gauge an institution's CRA performance.

In the Federal Reserve Board Order of October 14, 1998 to approve the merger of Norwest Bank with an into Wells Fargo, the Board states, "The Board recognizes that communications by depository institutions with community groups provide a valuable method of assessing and determining how to best meet the credit needs of the community. Neither the CRA nor the CRA regulations of the federal supervisory agencies, however, require depository institutions to enter into agreements with any organization. *The Board, therefore has viewed their enforceability as private contractual matters between the parties and has focused on the existing record of performance by the applicant and the programs that the applicant has in place to serve the credit needs of its communities.*" [Emphasis added]

Simply, if voluntary agreements made between lending institutions and community groups do not provide a basis for CRA performance then there would appear to be little incentive to enter into what some depository institutions (or Senators) may consider as "extortive" agreements. Since as the Board stated, they focus "on the existing performance by the applicant and the programs that the applicant has in place," there would be little immediate value gained by an institution for entering into any agreement. The intent and rationale for implementation of the proposed sunshine statute is clearly flawed.

In addition, because of serious potential First Amendment violations, WRDC asks that the federal banking agencies refrain from implementing the CRA contact rules until they have sought an opinion from the Department of Justice's Office of Legal Counsel regarding its constitutionally. It is also our understanding that under section 711; agencies have the discretionary authority to exempt agreements or contracts from disclosure based on CRA contacts. We would ask the agencies to eliminate all CRA contacts as a trigger for disclosure.

Instead of using CRA contacts as a trigger for disclosure, we believe that the federal banking agencies should revise their material impact standard. WRDC believes that a CRA agreement or contract should not be required to be disclosed unless it requires a bank to make a greater number of loans, investments, and services in more than one of its markets. The federal banking agencies have proposed those agreements be subject to disclosure if they specify any level of CRA-related loans, investments, and services. But only a higher number of loans and investments in more than one market is likely to have a material impact on a CRA rating or a decision on a merger application. To make the sunshine regulation more reasonable, we suggest that it should focus on agreements made during the public comment period on a merger application or during the time period when a CRA exam is announced and when the exam occurs.

Under the procedures of general operating grants, WRDC asks the Federal agencies to specify in the final regulation that the use of IRS Form 990 is an acceptable means of disclosure. In their preamble to the draft regulation, the federal agencies state that the 990 form provides more than enough detail for satisfying disclosure requirements. Codifying the use of 990 forms would simplify reporting requirements and reduce burdens for nonprofit organizations that are very familiar with the 990.

The public record from the congressional deliberations over the Gramm-Leach-Bliley Act support the use of the IRS 990 form. The Manager's report accompanying the legislation states that a Federal income tax return is an acceptable means of disclosure. In addition, Representatives Jim Leach (R-IA) and John LaFalce (D-NY) engaged in a colloquy on the eve of the House vote on Gramm-Leach-Bliley in which they emphasized the use of Federal income tax returns as satisfying the disclosure requirements.

WRDC also supports the proposed reporting procedures for specific grants. If a nonprofit organization received grants or loans for a specific purpose such as purchasing computers or providing financial literacy counseling, the nonprofit organization should be able to comply with the disclosure requirement by describing the specific activity in a few sentences.

WRDC agrees with the Federal agencies that non-governmental parties should not be required to submit annual reports during the years in which they did not receive grants or loans under the agreement. While other organizations may have received grants and loans under the agreement, it would be logistically impractical for the negotiating party to report on how the grants and loans were used by the other parties. In many cases, large banks may be making relatively small grants to hundreds of community groups over a multi-state area. It is also unreasonable for the non-negotiating parties to be required to report since they may not even be aware that they received grants or loans because of a CRA agreement.

While it may be impossible for the so-called sunshine provision to be a non-meddlesome regulation, we believe that our suggestions reduce burden and the damage it causes to revitalizing inner city and rural communities. We urge the federal banking agencies to adopt our suggestions for streamlining the sunshine regulation. We must also add that we will be working with community organizations, local public agencies, banks, and other concerned parties to repeal this counter-productive statute so that the private sector will not be burdened with disclosure requirements simply because they want to do business in and help revitalize traditionally underserved neighborhoods.

Sincerely,

Marv Kamp

WRDC Reinvestment Coordinator