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**From:** Hurwitz, Evelyn S on behalf of Public Info
**Sent:** Friday, July 21, 2000 10:35 AM
**To:** Gottlieb, Mary H
**Subject:** FW: "Sunshine" Regulations

-----Original Message-----
From: PBBellamy@aol.com [mailto:PBBellamy@aol.com]
Sent: Friday, July 21, 2000 10:34 AM
To: public.info@ots.treas.gov
Subject: "Sunshine" Regulations

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

Attention: Docket No. 2000-44

Dear Sir or Madam:

I am the Executive Director of the Lorain County Reinvestment Coalition in Lorain, Ohio. I believe that the sunshine statute uses grossly unconstitutional methods to strike at the heart of the Community Reinvestment Act (CRA). The essence of the Community Reinvestment Act is to encourage members of the general public to articulate credit needs and engage in dialogue with banks and federal banking agencies. In this way CRA stimulates collaboration for the purpose of revitalizing inner city and rural communities. The sunshine statute, by making CRA-related speech suspect, threatens to reverse more than twenty years of bank-community partnerships and progress.

The sunshine statute requires banks, community organizations, and a large number of other parties to disclose private contracts to federal agencies if the parties engage in so-called CRA "contacts" or discussions about how to help the bank make more loans and investments in low- and moderate-income communities. As a private sector organization, I believe that we have an absolute and constitutionally guaranteed right to have any conversations with any entity we chose, so long as those conversations are not of a criminal nature.

Period.

As you might expect from the above remark, we will be prepared to file court

challenges to the enforcement of the sunshine regulations against us on the basis that they are an affront to the First Amendment and a disgusting, politically motivated and mean spirited abomination in what, we claim, is a free democracy.

Aside from that initial and overriding objection to the very basis of the proposed regulations, we find it troublesome that we have to disclose a contract we have with a bank and provide detail on how we spent grant or loan dollars under the contract. Many private sector organizations will simply do less CRA-related business since they will not want to deal with the disclosure requirements. The result will be fewer loans and investments reaching the communities we work in. Our job of revitalizing communities will become much harder.

CRA Contacts

Because of the profound damage that the CRA contact portion of the sunshine provision will cause, the Lorain County Reinvestment Coalition 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 constitutionality. In addition, the Federal Reserve Board has the discretionary authority to exempt agreements or contracts from disclosure based on CRA contacts. We ask the Federal Reserve to eliminate all CRA contacts as a trigger for disclosure.

Material Impact

Instead of using CRA contacts as a trigger for disclosure, we believe that the federal banking agencies should revise their material impact standard. The Lorain County Reinvestment Coalition believes that a CRA agreement or contract should not be required to be disclosed at all. However, if there must be disclosure, then it should be limited to situations where 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 that agreements are 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.

The agency interpretation of material impact will result in an unwieldy regulation. Simply put, hundreds, if not thousands of contracts with community development corporations and other organizations may have to be disclosed.

Senator Phil Gramm (R-TX), in a lengthy interview in the American Banker on June 9 suggests that disclosure requirements should apply to pledges that are made unilaterally by banks and that are not signed by non-governmental third parties. The Gramm-Leach-Bliley Act simply does not include unilateral pledges as contracts requiring disclosure. To make matters, worse, the Senator suggests that "any meeting between a community group and a bank about CRA investments should trigger disclosure requirements." An indefinite time period as the Senator suggests will result in enormous burdens by all parties in remembering and tracking any meetings or negotiations concerning loans, investments, and grants in traditionally underserved communities.

Means of Disclosure

We believe that the Federal agencies should 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.

In Conclusion

We believe that it is impossible for the so-called sunshine provision to be a constitutional regulation. However, 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 --- and challenge --- this counterproductive 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,

Paul Bellamy
Executive Director

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