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NORWALK
FAIR
HOUSING
ADVISORY
COMMISSION

July 14, 2000

VIA FACSIMILE (202)906-7755
Manager, Dissemination Branch
Information Management & Services Division
Office of Trift Supervision
1700 G Street NW
Washington DC 20552

RE: Docket No. 2000-44

Dear Sir or Madam:

As the Fair Housing Officer for the City of Norwalk, Connecticut, I write to urge you to make significant changes to the proposed "sunshine" regulations. I appreciate the difficulty you have faced in developing regulations to implement a statute based upon fiction rather than fact, and which, on its face, would appear to run afoul of the First Amendment to the U.S. Constitution. I also am cognizant of the efforts you have already taken to reduce or shift burdens faced by local government agencies, neighborhood organizations, banks, non-profits, and other parties interested in community development.

In my opinion, however, the sunshine statute will do substantial harm to the Community Reinvestment Act ("CRA") itself and its spirit. The CRA has as its basis, its spirit, the goal of encouraging discussion between community and lending institutions, for the betterment of both. The lending institution is made aware of needs and business opportunities, which is to its advantage. The "community" (i.e., the customers of the lending institution) is then bettered by having financial needs met, be they loans for small businesses or home ownership. It is fact that communities, neighborhoods and cities are incalculably bettered (made more stable, suffer from less crime, have more employment, are a better tax base) by the infusion of capital resulting in new business and homeownership.

How does this relate to Fair Housing? In my view, there can be no Fair Housing without Fair Lending. And as a component of Fair Lending, I am involved with homeownership programs that serve the traditionally under-served market (minority and low-moderate income families). Thus, while Fair Housing activities may be exempted, fair housing advocates are also often involved in fair lending and homeownership activities. The lines between them are often blurred, even smudged. Can we put a protective umbrella over it all, by calling it Fair Housing? Or will it be separated out into component parts, making an element of fair housing subject to sunshine?

On a bi-annual basis, I am examining, analyzing and publishing studies regarding the mortgage lending data, and the patterns and practices of Norwalk's lending institutions (meaning the institutions with branches in our City). The studies analyze the number and value of mortgage loans to Whites, Blacks, Hispanics, low-moderate income persons and people living in low-moderate income census tracts. The purpose of the studies is to bring to light the practices of those institutions successfully lending to the aforementioned groups, and to encourage those with less successful lending practices to do better. Further, the banks have been invited to discuss the results, which many have done. Finally, representatives of the banks, local government, faith institutions and a non-profit (Neighborhood Housing Services of Norwalk, Inc., "NHS") have begun discussions and meetings with a view towards increasing good, sound mortgage lending business for the banks, thereby benefiting our community. No one has a gun to anyone's head; there have been no "demands" of any kind, no threats, no recriminations, and no "requirements" that the banks fund anything. Rather, it is with the view that what is good for the community is good business for the banks. All parties have been coming to the table. Most of the banks have been very interested in participating and meeting with community and religious leaders they might not otherwise know. Creating such relationships has an intrinsic value. Those lending institutions that have chosen not to participate have faced no penalty. After such meetings and discussion, several banks have decided to fund and/or increase funding for government (City of Norwalk) or non-profit (NHS) homeownership programs. Citibank is one such bank: it was the worst performer out of 8 banks studied based upon 1996 data. It took many steps to improve its lending record, many of which it developed and implemented on its own. However, as a direct result of discussing its poor record with me, it also decided to become involved in the City's and NHS' homeownership programs. Interestingly, the 1998 data indicates that Citibank was the best performer in our community in terms of mortgage lending.

Would these meetings, discussions, dinners, and get-togethers make us subject to the sunshine provisions? What if the meetings had minutes, or "agreements" as a result thereof? Would the fact that Citibank decided, after discussions with me, to fund such programs, now require me, NHS or the bank to report? And what would be the factual basis for such a requirement? A public, published study? Meetings in public places involving people in local government, ministers and bankers? This is hardly the stuff that constitutes extortion. The fact is, the sunshine provision will chill or worse yet, outright freeze, open, public discussion among members of the community (which community includes our lenders) on how to increase business and better the local community. This seems in direct contradiction to the goals of CRA and in direct opposition to all that is logical.

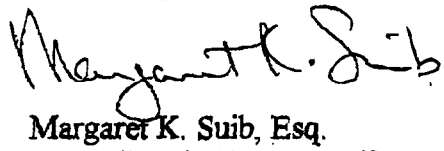
I am also concerned with the First Amendment issues. It appears to me that my studies, for example, analyzing data and expressing opinion, with absolutely NO commercial incentive, would be treated under a First Amendment analysis as private, non-commercial speech. Yet my studies, and the discussions and actions that ensue, might subject me to

these sunshine provisions, even though I would not be the recipient of any funds. If I were to be required to report about agreements arising out of my work, but to which I was not a party, or about the use of funds I did not receive, I am quite certain that I would stop analyzing such information. It seems evident that this direct impact on the exercise of the right of free speech (and arguably, association) would be violative of the First Amendment. Hence, I respectfully request that the federal banking agencies involved refrain from implementing the CRA contact rules until the Department of Justice's Office of Legal Counsel has been consulted and an opinion has issued regarding the constitutionality of these provisions. Further, under its discretionary authority, I would request that the OTS encourage the Federal Reserve Board to eliminate all CRA contacts as a trigger for disclosure. Alternatively, instead of defining any CRA contact as the trigger, the Federal Reserve Board should redefine "material impact" so that it is, in fact, "material". One idea is that an agreement should only be deemed material if it impacts more than one of a lender's markets, because only something of that magnitude would be large enough to impact a CRA rating or decision on a merger application, and/or those comments made while a merger application is pending, or during the CRA rating process. If there were any "extortionate" groups out there, they would be caught in such a web. A larger net would also catch thousands of honest, sincere, non-extortionate community groups whose work benefits both lenders and community. This is neither necessary nor likely to survive constitutional scrutiny.

Whatever reporting requirement is implemented, I don't think it should include those of us who will not actually receive monies, and I think it should be as simple as possible. Ideally, a form of reporting already required should be used. For example, IRS form 990 would be an acceptable means of disclosure, as it is already used by most non-profits.

In conclusion, what has been ineptly named the "sunshine" provision should be revised so as to not infringe on First Amendment rights, and so as to not chill or freeze public debate, discussion, association and efforts to revitalize our communities through small business and homeownership.

Yours very truly,



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