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From: Hurwitz, Evelyn S on behalf of Public Info
Sent: Wednesday, July 19, 2000 4:58 PM
To: Gottlieb, Mary H
Subject: FW: sunshine regulations

-----Original Message-----
From: Michael Chaney [mailto:chaney@flhousing.org]
Sent: Wednesday, July 19, 2000 7:56 PM
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Subject: sunshine regulations

July 19, 2000

Manager
Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street NW
Washington DC 20219

Attention: Docket No. 2000-44

As executive director of the Florida Housing Coalition, I urge you to make significant changes in the proposed "sunshine" regulations. The federal banking agencies had a difficult task of developing regulations for a confusing statute. I believe, however, that the sunshine statute strikes at the heart of the Community Reinvestment Act (CRA). The essence of the act is to encourage members of the general public to articulate credit needs and to engage in dialogue with banks and federal banking agencies. 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 other parties to disclose private contracts to federal agencies if the parties engage in so-called CRA "contacts" about how to help the bank make more investments in low- and moderate-income communities. Many private sector organizations may 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 Florida's communities.

CRA Contacts

Because of the profound damage that the CRA contact portion of the sunshine provision will cause, the Florida Housing 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. The Coalition asks 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, the Coalition believes
that the federal banking agencies should revise their material impact
standard. A CRA agreement 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
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. For example, Community Equity Investments Inc., a nonprofit
organization in Northwest Florida, recently received a $250,000 investment
from First Union Corporation to support its neighborhood revitalization and
affordable housing initiatives in the Florida panhandle. If the material
impact standard is not changed, the agencies will be deluged with thousands
of letters, written understandings, or contracts about these types of loans
and grants made to nonprofit organizations and for-profit companies working
in low- and moderate-income communities.

CEII did not receive its First Union investment as a result of an agreement
made when a bank was merging or before a bank's CRA exam. It received the
investment because First Union wants to do business in the neighborhoods of
the Florida panhandle. 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.

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

Under the procedures of general operating grants, the Florida Housing Coalition 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.

The Coalition 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.

Who Must Report

The Coalition 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.

In Conclusion

While it may be impossible for the so-called sunshine provision to be a non-meddlesome regulation, the Coalition believes 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.

Sincerely,

Tracy Suber
Executive Director
Phone # 850 878-4219