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From: Hurwitz, Evelyn S on behalf of Public Info
Sent: Wednesday, July 19, 2000 11:48 AM
To: Gottlieb, Mary H
Subject: FW: Docket No. 2000-44

-----Original Message-----
From: Rashmi Rangan [mailto:rashmi@bellatlantic.net]
Sent: Wednesday, July 19, 2000 8:43 AM
To: public.info@ots.treas.gov
Subject: Docket No. 2000-44

Attached, please find comments by DCRAC. You can also access our comments at www.dcrac.org/ots.htm.
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Via regular mail, fax (202) 906-7755 and email: public.info@ots.treas.gov

July 18, 2000

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

Re: Docket No. 2000-44

Dear Manager:

The Delaware Community Reinvestment Action Council, Inc. (DCRAC) submits this letter in response to the 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 the Office of Thrift Supervision (Docket No. 2000-44) for comments on regulations proposed by the agencies (the "proposed regulations") pursuant to the disclosure and reporting provisions of Section 711 of the Gramm-Leach-Bliley Act ("GLB"), Pub. L. No. 106-102, 113 Stat. 1338 (1999) ("Section 711").

We propose a very simple sunshine regulation.

- Reporting and disclosure requirements through:
  - IRS form 990.
  - An annual report.
- The triggers for reporting requirements annually are:
  - Grants by a bank of over $10,000.
  - Loans, by a bank, for the purpose of re-lending, of over $50,000.
- These triggers are for the purposes of sunshine only.
- These triggers are not for the purposes of a CRA exam, evaluation, merger, etc.,
  - Unless, a CRA context plainly and clearly appears.

We believe that the essence of the Community Reinvestment Act (CRA) is encouraging members of the general public to articulate credit needs and engage in dialogue with banks and federal banking agencies. The sunshine statute threatens to reverse bank-community partnerships and progress.

Sunshine's CRA contact provisions as promulgated in the law and the proposed legislation are so vague and broad that it will chill communications between the bank and its CRA partners. Not knowing what will and will not trigger sunshine will either demand extraordinary documentation of every spoken word to protect against a future witch-hunt. Or at the other extreme, not knowing what is and what is not covered, sunshine may dissuade any contact between a bank and its community.

Under the strict scrutiny, applied by the courts on a free speech issue, the Government must demonstrate a compelling reason to regulate speech and the regulation must be narrowly tailored to curtail the harm government seeks to prevent. DCRAC submits that the government has no compelling reason to curb free speech in the context of the Community Reinvestment Act, nor are the proposed regulations narrowly tailored to prevent a harm.

There is no compelling reason to curb CRA speech.

Other than Senator Phil Gramm's (R-TX) groundless accusations, DCRAC submits that there is NO REASON for a regulation governing CRA contact. In fact, DCRAC submits that the government failed to:

1. Document or detail any abuses that would warrant the scope of the proposed regulations.
2. Document that community organizations have engaged in corrupt or abusive practices.
3. Provide evidence that banks have engaged in unsafe or unsound practices to earn or maintain their CRA ratings.
4. Document that the current CRA Examination Procedures does not uncover abusive or unsafe practices.

We further argue that even if there was documentation and evidence of such abuses, the law and the proposed regulations do not prevent extortion and bribes. A bad actor does not need a CRA contact or a CRA context to engage in abusive practices.

Sunshine is vague and broad.

> "[A] vague and broad statute lends itself to selective enforcement against unpopular causes. In such circumstances, a statute broadly curtailing group activity leading to litigation may easily become a weapon of oppression, however, evenhanded its terms appear." NAACP v. Button, 371 U.S. 415 (1963).

No doubt CRA is an "unpopular cause". There is no doubt that Section 711 is "a weapon of oppression." Last year, Senator Gramm's staff proved that these concerns are genuine when they attacked CRA, on no grounds, and when they called numerous banks in search of examples of so-called extortionist CRA agreements. Sunshine "broadly curtail[s] group activity." How can banks and community organizations not be afraid to talk to each other for fear of endless investigations and witch-hunts?

The CRA Context is vague.

1. The preamble to the proposed rule suggests that an organization which is trying to help a bank improve its particular CRA rating, is subject t o sunshine, because a CRA contact has been made.
2. It further states that the "rule and the examples do not contemplate that a discussion or contact must include any particular words or phrases, such as "Community Reinvestment Act," "CRA" or "CRA rating" in order to be a CRA contact. Instead, the substance and context of the discussion or contact are the controlling factors."

When a regulation decides which speech triggers which government requirement on which parties, there is no way for the regulation to be consistent and fair. Banks and community organizations will never be certain when their contacts could trigger sunshine. Community organizations and banks will never know when agency-driven interpretations shift, making it impossible to know when speech triggers sunshine and/or subjects private persons to stiff penalties for violating Section 711. The broad scope of sunshine can apply to thousands of organizations that may use CRA-related speech in their conversations with banks.

Delaware's hundreds of organizations may not be aware of the Gramm-Leach-Bliley Act and may not be aware as to when their conversations with banks may trigger disclosure requirements.

- ❖ DCRAC proposes eliminating CRA context ONLY FOR THE PURPOSE OF SUNSHINE.

CRA Contacts.

CRA contact is " petition[ing] the Government for a redress of grievances."

1. Sunshine requires disclosure of private contracts ONLY when the non-governmental party:
   - ❑ Testifies to a Federal agency.
   - ❑ Discusses CRA issues with a bank.
   - ❑ Discusses about refraining from comments with a bank.
2. This communication is regarding conduct expressly authorized by the Community Reinvestment Act.

- ❖ DCRAC recommends that the Federal Reserve eliminate ALL CRA contacts as a trigger for disclosure.
  - ❑ The law grants the Federal Reserve Board discretionary authority to do so.
- ❖ Instead, DCRAC propose that the trigger for sunshine be:
  - ❖ Grants by a bank of over $10,000.
  - ❖ Loans, by a bank, for the purpose of re-lending, of over $50,000.

Senator Phil Gramm's proposals are unacceptable

- Senator Phil Gramm (R-TX), in the American Banker on June 9, 2000 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 does not include unilateral pledges as contracts requiring disclosure.
- The Senator also suggests, "any meeting between a community group and a bank about CRA investments should trigger disclosure requirements."

- This is contrary to the intent of Section 711 (h)(2)(A).

Who Must Report?

Since we question the constitutionality of sunshine, DCRAC recommends that disclosure should apply to every entity that receives a grant of $10,000 or more or a loan for re-lending for the amount of $50,000 or more.

- DCRAC recommends that a covered entity is one which receives:
  - Grants by a bank of over $10,000.
  - Loans, by a bank, for the purpose of re-lending, of over $50,000.

This recommendation addresses some other issues:

- Reporting during the years in which no grants or loans are made.
- Distinctions between advocacy and non-advocacy are erased.
- Distinctions between CRA-related and non-CRA-related are erased.
- Reporting and disclosure by a negotiating party, negotiating on behalf of other non-profit interests.
  - If the negotiating party is a covered entity, it must report.
  - If a non-negotiating party is unaware of the negotiations, but is a covered entity, it must report.
- Concerns with content-based control of free speech.
  - An entity that comments is a covered entity.
  - An entity that does not comment is a covered entity.
  - An entity that threatens comments is a covered entity.

Means of Disclosure

- DCRAC recommends that the following are adequate means of disclosure:
  - The IRS form 990
  - Annual reports.

There is basis for this recommendation.

- The preamble to the draft regulation supports the use of IRS form 990.
- The congressional deliberations over the Gramm-Leach-Bliley Act support the use of IRS form 990.
- The Manager's report accompanying the legislation supports the use of IRS form 990.
- 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.

Material Impact

- DCRAC recommends Material Impact be defined as "the triggers for reporting requirements" annually which are:
  - Grants by a bank of over $10,000.
  - Loans, by a bank, for the purpose of re-lending, of over $50,000.
    - These triggers are for the purposes of sunshine only.
    - These triggers are not for the purposes of a CRA exam, evaluation, merger, etc.,
      - Unless, a CRA context clearly and plainly appears.

The basis of these DCRAC recommendations are rooted in a belief that even if we enable one family, who never dreamed of becoming a homeowner become a homeowner, CRA's impact on this family is material. Certainly, charitable institutions such as a Grand Opera House or a Girls Scout have been known to comment favorably on an institution's CRA performance. Many institutions are known to receive CRA ratings based on this charitable support. Thus, we recommend the additional caveats, distinguishing between "covered entity" for the purposes of sunshine and for CRA evaluation, exam, or merger.

We are aware that our recommendations will place an inordinate burden on

- Housing, Small Business, and other counseling agencies.
- Small Business lending intermediaries.
- Local governmental agencies.
- Other non-profit and for-profit entities.
- Banks that give grants or loans, for re-lending.

Yet, we firmly believe that a simple regulation, such as we recommend, puts each party on notice and relieves an extraordinary burden that an ill-conceived law such as sunshine places on the genuine CRA movement.

Sincerely,

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Cc: National Community Reinvestment Coalition