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Manager
Dissemination Branch
Information Management & Services Division
Office of Thrift Supervision
1700 G Street NW
Washington, DC 2000-44

Dear Office of Thrift Supervision:

ROSE Community Development appreciates this opportunity to comment on the proposed rule regarding disclosure and reporting of Community Reinvestment Act (CRA) agreements as mandated by the Gramm-Leach-Bliley (GLB) Act. We thank the federal bank regulatory agencies for taking steps in the proposed rule to reduce the burden of complying with the rule on community development organizations and other affected parties.

ROSE is a nonprofit organization that develops affordable housing and produces other economic improvements in outer southeast Portland, Oregon. Outer southeast Portland neighborhoods suffer from a lack of investment that is manifested in many ways. The homeownership rate has dropped from about 75% in the 1960s to 50% today. Approximately one house in three suffers from serious deterioration. The unemployment rate is twice that of the Portland metro region. Since 1992, ROSE has been working to reverse these trends. Our organization has developed more than 190 units of affordable housing. We also created the Child Care Neighbor Network, a support program for parents and home child car providers. These efforts have thrived because of the close working relationship that has developed between our organization and the lending community. Banks and other financial institutions support ROSE because it is good business to do so. The Community Reinvestment Act has fostered these kinds of productive partnerships for 20 years.

We recognize that the regulators faced a difficult task in developing regulations implementing ill-conceived and ill-defined provisions of the aforementioned Act. These "sunshine" provisions purportedly were intended to prevent community groups from "extorting" financial commitments from banks in return for pledges not to criticize banks' CRA lending performance. We are not aware of any such extortion and we doubt the sunshine provisions would do much to stop such extortion if it did occur.

What is clear is that the provisions attempt to undermine the very heart of the CRA by discouraging dialog between banks and the public about whether banks are meeting the credit needs of the communities in which they do business. If implemented in their

proposed form, these provisions threaten to curtail bank investment in distressed urban and rural neighborhoods. Our mission to revitalize our community and the similar missions of thousands of organizations nationwide will become much harder to achieve.

The sunshine provisions require community development organizations, lenders and a large number of other parties to disclose private contracts to federal agencies if the parties engage in certain CRA "contacts" or discussions about how to help the bank make more loans and investments in low- and moderate-income communities. As a private organization, we find it deeply troubling that we would have to disclose a contract we have with a bank and provide detail on how we spent funds under the contract. The proposed rule's arbitrary exemptions from disclosure of some types of CRA contacts compound our concerns.

We urge the regulators to refrain from implementing the final rule until they have received an opinion from the Justice Department's Office of Legal Counsel on the constitutionality of the proposed rule and the underlying statute. If the regulators do not pursue this course, or if they do and the Justice Department affirms the proposed rule's constitutionality, we urge the regulators to make the following changes to the proposed rule:

Revise the "material impact" standard and make it, not CRA contacts, the trigger for requiring disclosure under the proposed rule. The proposed rule would require disclosure of any CRA agreement that specifies 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 merger application decision. Furthermore, this provision likely will prove unwieldy for the regulators, which would be deluged with thousands of letters, written understandings and contracts.

A CRA agreement or contract should be exempt from disclosure unless it requires a bank to make a greater number of loans, investments and services in more than one of its markets. We also suggest that the proposed rule apply only to agreements made during the public comment period on a merger application or during the time period between when a CRA exam is announced and when the exam occurs.

Exempt "non-negotiating parties" from annual reporting requirements. The proposed rule would exempt non-governmental parties from the annual reporting requirements during the years in which they did not receive grants or loans under an agreement. We strongly support this provision. It would be difficult, if not impossible, for the negotiating party to report on how funds were used by other parties. It is also unreasonable to require groups that were not party to the negotiations of a CRA agreement to report since they may not even be aware that they received funds pursuant to that agreement. We recommend that the final rule provide an exemption for non-negotiating parties a CRA agreement.

Strengthen confidentiality protections. The GLB act provides that "proprietary and

confidential information is protected" in disclosures and annual reports. The proposed rule states: "A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or annual reports under [Freedom of Information Act] (FOIA) procedures." The proposed rule's preamble, however, notes that the statute's directive requiring that a covered agreement shall be in its entirety fully disclosed and made available to the public "may require disclosure of some type of information that an agency might normally be able to withhold from disclosure under FOIA."

This failure to provide full FOIA protection suggests that confidential and proprietary information may become publicly available, causing competitive or other harm to one or more of the parties to an agreement. Clearly, many lenders will be less likely to enter into CRA agreements if they believe proprietary information on their products and programs may become publicly available. This could lead to a reduction in bank investment in low-income communities. Furthermore, the process by which parties would request certain information not be made publicly available likely would be enormously cumbersome and time consuming for the parties as well as the regulators. The end result would be less timely disclosure. We strongly urge that the final rule state that CRA agreements covered by the rule will receive full FOIA protection.

Clarify that Form 990 will meet the annual reporting requirements. The preamble to the proposed rule states, "a person may use a properly completed Internal Revenue Form 990 to fulfill the rule's reporting requirements for general purpose funds." We suggest that the final rule explicitly state that the use of IRS Form 990 would meet the annual reporting requirements for use of general purpose funds.

Clarify annual reporting requirements for specific purposes. The proposed rule would require parties to CRA agreements to segregate in their annual reports funds allocated and used for "specific purposes" from those used for general purposes. Parties would be required to describe each specific purpose and the amount of funds allocated to it. An example in the preamble refers to a "brief description" of a specific purpose. Organizations should be able to comply with this requirement by describing the specific activity in a few phrases or sentences. We recommend that the final rule state explicitly that brief descriptions will meet this requirement and that the rule provide additional examples beyond the two in the proposed rule.

Thank you for considering these comments. We urge the federal bank regulatory agencies to make these improvements to the proposed rule to minimize the damage the underlying statute threatens to do to community-bank partnerships and progress.

Sincerely,

Nick Sauvie

Nick Sauvie
Executive Director