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LISC

July 21, 2000

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20551

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Manager, Dissemination Branch
Attention Docket No. 2000-5
Information Management & Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Sir or Madam:

Re: Proposed Rule on Disclosure and Reporting of CRA-Related Agreements
Docket No. R-1069

Local Initiatives Support Corporation (LISC) is pleased to offer comments on Disclosure and Reporting of CRA-Related Agreements ("Sunshine").

LISC helps neighbors build whole communities. In 20 years, LISC and its affiliates have raised from the private sector and provided over $3 billion to 2,000 nonprofit low-income Community Development Corporations (CDCs) across the country to produce almost 100,000 affordable homes and over 11 million square feet of commercial and industrial space. We also invest major resources in jobs and income programs, childcare facilities, youth programs, crime and security initiatives and many other programs that directly benefit low-income

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neighborhoods and their residents. CDCs have used LISC's funding to leverage an additional $4.6 billion from other sources.

Banks and thrifts are among our most important funding partners. Since 1979, LISC and its affiliated entities have received: 141 loans from 79 banks and thrifts totaling over $920 million; 333 investments from 93 banks and thrifts totaling $1.6 billion; and 1,877 grants from 379 banks and thrifts totaling $57.3 million. In 1999 alone, 142 banks provided 278 loans, investments, and grants to LISC and its affiliated entities totaling $480.9 million. It is clear that the so-called CRA Sunshine rules will have broad application to us.

General Comments

In general, the proposed rule bears little resemblance to the Congressional debate of CRA Sunshine. The Congressional debate focused on a few community groups receiving funds after obtaining commitments from banks in the process of mergers. At least one member of Congress asserted that these funds were obtained through coercion – even extortion -- and should not remain secret. The proposed rule, however, does not reflect the narrow focus of the Congressional debate. Instead, it would cover literally thousands of contracts each year between banks or thrifts and non-governmental entities or persons ("NGEPs") totally independent of any comments to regulators, let alone coercion. We appreciate the regulators' important efforts to limit the paperwork associated with annual reporting. Nevertheless, we doubt that public disclosure of so many private agreements will serve any real public purpose, and are concerned with the implication that routine transactions between banks or thrifts and private partners, including community organizations and other nonprofit organizations, are somehow inherently suspect.

Covered Agreements

Real estate related investments. The CRA Sunshine rules should not apply to real estate related investments, including direct investments and investments in pass-through entities (i.e., limited partnerships and limited liability companies) and real estate investment trusts.

The statute and proposed rule would exempt real estate (mortgage) loans. The statute does not even mention the term "investments" or speak directly to whether or how investments should be included. The regulators have used broad discretion to apply Sunshine to investments because they are said to have a material impact on a bank's CRA rating or a regulatory approval for a deposit facility.

If investments generally are to be covered, then the same principles that are applicable to loans – which the statute does directly address -- should also apply to investments. With respect to loan agreements, the statute provides an exception for mortgage loans, i.e. real estate loans, as well as to market-rate loans not made for the purpose of re-lending.

To apply Sunshine consistently to investments, the regulators should also exclude real estate investments, as well as market-rate investments not intended for reinvestment. To do otherwise would unwisely place the form of financing above its substance in setting public policy. For example, a mortgage loan would be exempt from Sunshine, but the purchase of that very same mortgage loan would be subject to Sunshine. A mortgage loan for a property would be exempt from Sunshine, but an equity investment in the very same property would be subject to Sunshine. Such inconsistencies would undermine the rule's credibility.

Disclosure of Covered Agreements

Expiration of disclosure obligation. We concur with the proposal to terminate the parties' obligation to disclose agreements 12 months after expiration of the agreement. However, a policy is required for agreements with no explicit term. We suggest that, in such cases, a party's obligation to disclose agreements terminate 12 months after the later of (1) the date the agreement is entered into or (2) the date on which funds under the agreement were last provided.

Annual Reports

We support and appreciate the general direction the regulators have taken with respect to annual reporting. We believe this direction reflects both Congressional intent and the practicalities of minimizing reporting burdens. However, we do have some specific comments.

Safe harbor use of IRS Form 990. We strongly support the preamble's statement that a NGEP may satisfy its annual reporting of general/unspecified purpose funds by submitting the IRS Form 990. However, the rule itself does not explicitly provide this safe harbor. This is an issue of great importance. It is integral to providing the clear guidance that NGEPs need in order to comply with the rules, as well as to fulfilling Congressional intent to minimize reporting burdens.

Differentiation between general/unspecified purpose funds and specific purpose funds. The regulators should offer more clarification about whether funds are to be reported as general/unspecified purpose or specific purpose. The preamble (but not the rule) states that: "A specific purpose must be a purpose that is more limited than the categories of expenses enumerated below for the reporting of general purpose funds. In other words, funds or resources are not allocated or used for a specific purpose if they are allocated or used for general operational

expenses, to support the organization's general activities in the community, or to cover general compensation, administrative, travel, entertainment, consulting, or professional expenses." For example, LISC frequently receives funding restricted by geography (e.g., for use in one or several localities) or program activity (e.g., economic development). However, these funds are used to cover general operational expenses connected to those purposes as well as to make loans or grants to other organizations, or are used for two or more of the listed funding categories. Similarly, LISC's affiliates receive investment funds, the proceeds of which are used to cover the cost of placing and administering the funds, as well as to finance various community development projects. We would greatly appreciate clear guidance in the rule that such funds should be reported as general/unspecified purpose funds.

Duration of reporting requirement. We support the rule's determination that a NGEP is not required to file an annual report with respect to an agreement for any year in which it does not receive funds. This will substantially curtail unnecessary and burdensome filings.

Other definitions

Definition of "affiliate." Sunshine rules apply to agreements between insured depositories or "affiliates" and NGEPs. The regulators should clarify that the term "affiliate" does not include a limited partnership, limited liability company, or other entity in which the insured depository is not a general partner, managing member, or otherwise controls day-to-day decisions, respectively.

For example, an insured depository may, as a limited partner, purchase a 99% interest in a limited partnership sponsored by LISC. This "investment tier" limited partnership may in turn purchase a 99% limited partnership interest in a series of separate "project tier" limited partnerships, each sponsored by other NGEPs, which undertake the development and operation of separate community development activities. If the term "affiliate" is interpreted appropriately, then the insured depository's investment agreement with the investment tier partnership would be a covered agreement unless otherwise exempted.

However, it is also possible that the insured depository might be erroneously deemed to "control" the investment tier partnership and each of the individual project tier partnerships because the insured depository owns a majority interest in them, albeit as a limited partner. If so, then each of these partnerships could be erroneously deemed "affiliates," even though the insured depository is merely a passive investor with no active management authority for the limited partnership. In such case: (1) the agreements with or between the partnerships would not be subject to Sunshine, since all the partnerships would be "affiliates" of the insured depository and not NGEPs; but (2) all of the agreements between all of the project tier partnerships and all other NGEPs – which could easily

number literally in the hundreds in a large partnership structure -- would be subject to Sunshine if those NGEPs had made CRA contacts with the insured depository, its affiliates, or any of the limited partnerships. It would be practically impossible to ascertain whether such CRA contacts had been made. We cannot conceive that the Congress or the regulators intended this bizarre result. We ask that the final rule clarify this point.

Release of Information under FOIA

We are concerned about various matters regarding the disclosure of confidential and proprietary information.

In general, we are concerned that the approach contemplated in the proposed rule is unworkable. It requires regulators to review and rule on what could be a massive number of requests to withhold information, the great majority of which may never be sought by the public.

We believe it would be far more practical for the regulators to focus only on material actually sought by public. The parties could make an initial determination of what material may be withheld as confidential or proprietary. A member of the public could appeal this initial determination to the regulators, who would make a final determination after soliciting input from the parties to the agreement.

In addition, it is common for LISC to set up a financing pool with multiple bank and thrift participants, so that all four regulators would be asked the same questions regarding what information can be withheld with regard to identical financial contracts. Getting a prompt, consistent response from all four regulators would be essential to minimize confusion and respond to public inquiries. We urge the four regulators to provide for coordinated reviews as appropriate.

Moreover, the preamble states that the full coverage of the Freedom of Information Act may not apply. We strongly assert that the explicit statutory protection of propriety or confidential information should be respected and not compromised as a matter of policy. Moreover, as a practical matter, unless FOIA standards -- which are relatively well established and understood -- govern, a whole new set of complex policies will have to evolve over time and the four regulatory agencies will have to develop these policies jointly.

Response to Regulators' Questions

The regulators have invited responses to various questions. In our view:

- Provision of advisory or consulting services should not be subject to CRA.
- "Mortgage" should include any loan secured by real estate.
- A commitment for multiple loans with similar specific characteristics, such as for loans to several homes in connection with the construction of a subdivision, should be exempted on the same basis that each individual loan commitment would be exempted if considered separately.
- As a definition of "below-market" loan, we would suggest as a standard a rate that is more than two percentage points below the Applicable Federal Rate set monthly by the Treasury Department (and published in the *Wall Street Journal*. Different AFRs are set for short-term, mid-term, and long-term loans, and for both simple and compound interest structures.
- Other information should not be required as part of annual reports.

This concludes our comments. We appreciate your consideration.

Sincerely,

Benson F. Roberts
Vice President for Policy