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PCRG
PITTSBURGH COMMUNITY REINVESTMENT GROUP

July 20, 2000

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

Attention: Docket No. 2000-44

To Whom It May Concern:

On behalf of the Pittsburgh Community Reinvestment Group (PCRG), I am urging you to significantly amend the proposed rules implementing the "sunshine" reporting provisions of Section 711 of the Gramm-Leach-Bliley Act ("GLB"), Pub. L. No. 106-102, 113 Stat. 1338 (1999) ("Section 711"). The proposed rules, released by the federal banking agencies on May 10, 2000, are extremely broad in application and pose a serious threat to the Constitutional rights and in turn the mission work of PCRG. In addition, achieving compliance with these proposed rules will prove difficult, if not impossible, due to the lack of a uniform set of reporting forms. With the penalties of noncompliance set so unreasonably high by these proposed rules, PCRG fears that reinvestment will be further undermined within the traditionally underserved neighborhoods of the city of Pittsburgh.

As a coalition of 27 community-based organizations, PCRG works in partnership with 13 financial institutions to increase investment in Pittsburgh's low- and moderate-income neighborhoods. Since 1988, these partnerships have resulted in more than $4 billion of private investment. During these 12 years, PCRG has always fully supported and operated in an environment of full disclosure. All of the written agreements and meeting minutes with our partner financial institutions are available to the public upon request. In fact, PCRG takes great pride in publicly promoting these agreements and meetings on a regular basis.

The proposed "sunshine" rules address a grossly overstated problem and one that is nonexistent here in Pittsburgh. By placing new and burdensome government mandates on community groups and banks, these rules have the potential to strictly limit future progress and even reverse past progress. Therefore, below PCRG has identified the primary areas of concern with the proposed rules. PCRG hopes that you sincerely consider adopting our amendment recommendations.

Broad Application of Disclosure Requirements Extend Beyond Material Impact

The proposed "sunshine" rules state that Community Reinvestment Act (CRA) agreements must be disclosed if they are made "pursuant to, or in connection with the fulfillment of the CRA of 1977." Fulfillment is defined as a "list of factors that the appropriate federal banking agency determines have a **material impact** on the agency's decision" to approve an application (including a merger application) or

assign a particular CRA rating. Therefore, any agreement that mandates **any** level of CRA-related lending, investments, and services is subject to disclosure. The additional thresholds of disclosure involve any grant over $10K or loan over $50K directed towards the non-governmental party negotiating the CRA agreement or any other non-governmental party on an annual basis.

PCRG strongly believes that the interpretation of material impact is overly broad and will amount to a widespread and burdensome requirement for both the regulatory agencies and the private sector. PCRG maintains that a CRA agreement has a material impact if it results in a bank making a higher number of loans, investments, and services to low- and moderate-income communities in more than half of a bank's assessment area and other markets discussed on a CRA exam. At the very least, the threshold should be if the CRA agreement is likely to affect a bank's CRA performance in more than one assessment area or market as a result of committing the bank to a higher level of loans, investments, and services in low- and moderate-income communities. It is imperative to narrow the scope of material impact, pursuant to more quantifiable and objective criteria, to CRA agreements that are more likely to have a material impact on a CRA rating or merger application.

With respect to the grant and loan amount thresholds, PCRG believes having such disclosures fails to truly serve the intent of the "sunshine" concept. Basing disclosure on the amount of a particular grant or loan amount will result in a cumbersome and undue burden for the private sector. In place of grant and loan amount thresholds, PCRG supports focusing on CRA agreements made during the public comment period on a merger application or during the time period of a CRA examination. This approach ensures "sunshine" will be both more reasonable and effective.

Beyond written CRA agreements, Senator Phil Gramm (R-TX) 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 tracking any meetings or negotiations concerning loans, investments, and services in traditionally underserved communities. Since the proposed rules clearly state that oral agreements are not subject to disclosure, PCRG believes nondisclosure should be logically extended to any and all meetings concerning the subject of CRA.

Allowing implementation of such broad disclosure, as defined by Senator Gramm, will severely harm the core foundation of PCRG's success, the Community Development Advisory Group (CDAG) process. Through CDAGs, PCRG community-based organizations and partner financial institutions regularly meet to address the needs of both parties in a constructive forum. Goals are jointly set and are often met, if not exceeded. Today, PCRG serves as a model for communities across the nation. PCRG absolutely opposes disclosure of any meetings aimed at promoting a healthy dialogue between our member groups and partner financial institutions.

First Amendment Violations

Under the proposed "sunshine" rules, particular CRA agreements or written understandings are subject to disclosure when community groups (among other non-governmental parties) testify to a federal agency or discuss CRA issues with a bank. Disclosure is also required if a community group and a bank engage in discussions aimed at refraining comment surrounding a pending merger application or CRA exam. Further compounding the issue, the proposed rules make

arbitrary exceptions for what counts as a CRA contact or discussion about CRA for the purpose of triggering disclosure requirements.

PCRG asserts that the proposed "sunshine" rules raise serious Constitutional concerns. In particular, the proposed rules violate the free speech and right to petition components of the First Amendment. The significant reporting obligations place real and substantial burdens on speech and the right to redress grievances. The selective carve-outs of what constitutes a CRA contact taints the entire CRA process by criminalizing in effect the words and work of community groups.

PCRG predicts that the level of CRA-related lending and investing will drastically be reduced if the CRA "contact" provision remains in the "sunshine" rules. With such a provision intact, establishing future partnerships between community groups and banks will be highly difficult. Considerable confusion will remain about when a CRA contact or mere speech triggers disclosure requirements. A logical outcome will be fewer CRA agreements, resulting in fewer loans and investments reaching traditionally underserved communities.

Furthermore, the proposed "sunshine" rules strike at the heart of CRA. The essence of CRA is encouraging members of the general public to articulate credit needs and engage in dialogue with banks. CRA motivates dialogue and collaboration for the purpose of revitalizing economically distressed communities. The proposed rules, by making CRA-related speech suspect, threatens to reverse the tremendous progress of PCRG over the past 12 years.

PCRG recommends obtaining an opinion from the Department of Justice's Office of Legal Counsel regarding the constitutionality of the CRA "contact" provision prior to implementation. In addition, PCRG urges the Federal Reserve Board to exert its discretionary authority to exempt CRA agreements from disclosure requirements. PCRG firmly maintains that CRA-related speech is not grounds for disclosing CRA agreements.

Vague Disclosure Procedures Complicate Compliance

Two types of disclosure are required under the proposed "sunshine" rules. The first type is disclosing the complete text of the CRA agreement. The second type involves annual reports provided by community groups concerning the use of grants and loans and annual reports provided by the lending institutions concerning grants, loans, and investments they made under the CRA agreement.

Concerning general operating grants and loans, the proposed "sunshine" rules require that non-governmental parties must provide a list indicating if the grant or loan was used for compensation, administrative expenses, travel, entertainment, consulting, professional fees, and other expenses. In the preamble to the proposed rules, the federal banking agencies state that the use of tax reports and other forms are acceptable if they include the required information. However, the agencies also state that the IRS 990 Form and other tax forms they inspected require more detailed information. It remains unclear which IRS tax forms are sufficient for reporting purposes.

PCRG recommends that the federal banking agencies clearly stipulate in the proposed "sunshine" rules which tax forms are acceptable. It is our belief that the IRS 990 Form serves as an adequate means of disclosure. Support for our belief can be found in the public record from

the Congressional deliberations over the Gramm-Leach-Bliley Act. The Manager's report accompanying the legislation states that, "The Managers intend that the appropriate federal supervisory agency may provide that the non-governmental entity or person fulfill the requirements of subsection *c* by the submission of its audited financial statement or its federal income tax return."

In Conclusion

Throughout the 12 year history of our organization, PCRG has experienced a number of threats to its mission of community reinvestment. However by far, the proposed "sunshine" rules represent the greatest threat yet. If implemented, the broad application of these rules will have a chilling effect on the entire CRA process. In short, these rules translate into fewer loans, investments, and services for our most vulnerable communities.

Furthermore, the proposed "sunshine" rules extend in an assault on our most basic Constitutional freedoms. The proposed rules stigmatize the First Amendment rights of freedom of speech and freedom to petition the government for a redress of grievances. Encouraging silence by attempting to criminalize words sets a dangerous precedent not merely for us within the arena of community development, but for all of us as Americans.

The final insult of the proposed "sunshine" rules lie in the factor of compliance. The proposed rules simply fail to spell out the appropriate means of disclosure. In fact, even the lawmakers and regulators often contradict each other when attempting to define the basic parameters. Therefore, compliance with these already complex rules will prove even more difficult and burdensome without a clearly defined set of reporting documents.

PCRG strongly believes our recommendations reduce the potential burden and damage posed by the proposed "sunshine" rules to our low- and moderate-income neighborhoods. We urge the federal banking agencies to adopt these recommendations for streamlining the proposed rules. Without adoption of such common sense measures, the continued revitalization of Pittsburgh's low-wealth communities will be in grave jeopardy.

PCRG thanks you for consideration of the views of our 27 member organizations in this important matter.

Sincerely,

Edward Brandt/lnb

Edward Brandt
PCRG First Representative