

**From:** Hurwitz, Evelyn S on behalf of Public Info  
**Sent:** Friday, July 21, 2000 11:51 AM  
**To:** Gottlieb, Mary H  
**Subject:** FW: Sunshine Regulations

-----Original Message-----  
From: Kimberly Jones [mailto:kimberly@cdclf.org]  
Sent: Friday, July 21, 2000 11:37 AM  
To: public.info@ots.treas.gov  
Subject: Sunshine Regulations

Capital District Community Loan Fund, Inc.  
255 Orange Street  
Albany, NY 12210  
518/436-8586  
cdclf@cdclf.org

July 20, 2000

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

TRANSMITTED VIA EMAIL: public.info@ots.treas.gov

Re: Concern with "Community Reinvestment Act (CRA) Sunshine" regulations of Section 711 of the Gramm-Leach-Bliley proposed Act (GLBA) as published in the Friday, May 19th issue of the Federal Register (Vol. 65; No. 98).

To Whom It May Concern:

The Capital District Community Loan Fund, Inc. (CDCLF) is a not-for-profit community development financial institution (CDFI) operating in the Capital Region of New York State. Incorporated in 1985, CDCLF pursues its mission by pooling debt and equity capital from socially-concerned investors and then re-lending the capital to traditionally underserved borrowers. CDCLF urges you to make significant changes in the proposed "sunshine" regulations. The mean-spiritedness behind this law and the burden of this proposed rule would reverse the momentum of more than 20 years of successful partnerships to revitalize communities-building affordable housing, creating jobs, and developing child care and community facilities for economically disadvantaged people in our nation's poorest areas. We appreciate that the federal banking agencies had a difficult task of developing regulations for a confusing and mean-spirited statute. We also appreciate the fact that the regulatory agencies have taken steps to reduce

the "paperwork creation act" burden for neighborhood organizations, banks, and other parties interested in community development. We urge you to do even more.

We believe that the sunshine statute strikes at the heart of the Community Reinvestment Act (CRA). The essence of the CRA is to encourage members of the general public to articulate credit needs and engage in dialogue with banks and federal banking agencies. CRA stimulates collaboration for the purpose of revitalizing inner city and rural communities. The sunshine statute, by making CRA-related speech suspect, threatens to reverse more than twenty years of bank-community partnerships and progress.

#### CRA Contacts

CDFIs play an important role in financing community development because CDFIs make loans and investments where other financial institutions don't. Banks form partnerships with CDFIs to be conduits for loans and investments into the distressed communities that CDFIs seek to serve. To this end, banks, their affiliates, CDFIs, and other community investment organizations enter into a variety of contacts on a routine basis-including discussions of a bank's CRA performance. Banks also use CRA-related finance as part of an overall strategy to cultivate traditionally underserved markets, to grow new borrowers, and to make a profit. In addition, banks often initiate contacts with CDFIs to make investments in connection with the successful CDFI Fund's Bank Enterprise Award (BEA) Program, for which CRA-issues are incidental. This type of bank-initiated contact is clearly outside the intended scope of the act and should be exempt. Therefore, we urge the Federal Reserve Board to exercise its authority granted in Section 711 to exempt all CRA contacts that arise in the context and purpose of ordinary CRA business dealings, absent any coercive aspect.

#### Means of Disclosure

According to the statute's author, the intent of the Sunshine provision was to prevent community groups from "extorting" cash payments from banks in exchange for refraining from providing "frivolous" complaints in a bank merger application process. To be consistent with the statute, Capital District Community Loan Fund, Inc. recommends that disclosure should only be triggered by comments or testimony made in conjunction with CRA-related agreements during a CRA examination or a deposit facility application process.

In addition, if a CDFI provides marketing materials to a bank regarding CRA-related financial products or services, the materials themselves would not have a material impact on a bank's CRA rating-and should be exempt from the definition of CRA contact.

We recommend that regulators revise the material impact standard and make it, not CRA contact, the trigger for requiring disclosure under the proposed

rule.

#### Reporting

We applaud regulators' efforts to streamline reporting for special purpose funds. However, we recommend that the final rule state explicitly that a brief narrative description would satisfy the reporting requirement. Likewise, in the preamble, regulators confirm that a properly completed IRS Form 990, tax forms commonly filed by nonprofits, would fulfill the reporting requirements for general purpose funds. We strongly urge that the final rules should state explicitly that a Form 990 is acceptable for reporting general purpose funds.

The proposed rule would exempt non-governmental parties from the annual reporting requirements during the years in which they did not receive funds under a disclosed agreement. We strongly support this provision. Since CDFIs are in the business of re-lending funds, it would be difficult for the negotiating party to report on how funds were used by other parties.

Similarly, it would be 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 a reporting exemption for non-negotiating parties a CRA agreement.

#### Public Comment

The Sunshine provision strikes at the core of the Community Reinvestment Act-namely, encouraging public input into the credit needs of the communities in which banks do business and engaging in an exchange of information with banks and federal banking agencies. Community organizations and other interested parties would be more hesitant to talk to banks concerning lending and investing in underserved communities. In addition, the proposed regulation could violate groups' First Amendment rights and taint the CRA process. Banks and community groups would have to disclose their private contracts when community groups exercise their rights to testify before a federal agency or even talk informally to a bank about CRA issues.

#### Other Recommendations

1. Incorporate a "CRA Sunset Provision". In order to prevent tremendous waste of scarce public and private resources, a companion measure in the regulations should be considered. For instance, if after six CRA completed agreements, a regulatory agency finds no evidence of "extortion" or coercion, parties to the disclosed and reported agreements may request the Federal Reserve Board to "sunset" CRA Sunshine requirements for each party.

2. A bank's assessment area should be determined by how a bank defines its market. Increasingly, CRA is constrained by outdated regulations that do

not adequately recognize dramatic shifts in the financial services industry.  
To continue to make changes to financial services regulations without first  
"modernizing" CRA undercuts the goal of increasing bank activity in economically disadvantaged communities.

Under CRA, banks are required to provide non-discriminatory access to financial services in their market-assessed according to where they take deposits. In 1977, taking deposits was a bank's primary function. In 2000, banks no longer just accept deposits-they market investments, sell insurance, and issue securities and are rapidly expanding these more profitable lines of business. In addition, the advent and explosion of Internet and electronic banking has blurred the geographic lines by which assessment areas have been typically defined.

Therefore, defining CRA assessment areas based on deposits is at odds with the way financial institutions operate in this era of financial modernization. As another much-needed step towards modernizing the system of assessment, Capital District Community Loan Fund, Inc. recommends simplifying the definition of CRA assessment area according to a financial institution's customer base. The obligations ought to be commensurate with the level of business in any market.

3. Expand CRA coverage to all financial service institutions-and their affiliates-that receive direct-or indirect-taxpayer support or subsidy. The Gramm-Leach-Bliley Act paves the way for banks, finance companies, insurance and securities firms, and other "parallel banks" to affiliate with each other. Today, the term "bank" has fallen out of common usage and instead we talk about "financial service companies". As enacted in 1977, CRA covers only banks. To keep CRA in step with financial reform, it should be extended to all financial service companies-and their affiliates-that receive direct or indirect taxpayer support or subsidy.

## Conclusion

While it may be impossible for the so-called sunshine provision to be a non-meddlesome regulation, we believe 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. We must also add that we will be working with community organizations, local public agencies, banks, and other concerned parties to repeal this counter-productive statute so that the private sector will not be burdened with disclosure requirements simply because they want to do business in and help revitalize traditionally underserved neighborhoods. The Capital District Community Loan Fund, Inc. appreciates the

opportunity  
to comment on the proposed CRA Sunshine regulations. Thank you for  
considering our concerns and recommendations. Please contact us at  
518.436.8586 if you have any questions.

Sincerely,

Robert K. Radliff, Jr.  
Fund Manager