

Sunshine in Government Initiative **MEMBER ALERT**



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Financial Reform Package Delays Disclosure of Fed Assistance to Banks June 30, 2010

Introduction

The Sunshine in Government Initiative (SGI) is issuing this Alert to its nine member organizations to make those organizations, and their members, aware of a provision in the House-Senate compromise agreement to the financial reform legislation (the "Dodd-Frank Wall Street Reform and Consumer Protection Act," H.R. 4173) which will prevent meaningful oversight of how the Fed assists banks and other financial institutions.

Final votes in the House and Senate may come starting Wednesday. Leaders hope to send the package to the president's desk by the end of the week. As organizations dedicated to open government, we have -- perhaps -- today to ensure that Congress and the President uphold their dedication to open government.

The financial reform package: what's in it

The financial reform package agreed to by House and Senate negotiators would require the Federal Reserve to release information to the public about loans and other assistance to banks, but it will allow the Federal Reserve to delay disclosure of this information for up to two years. Given that we are not even two years into the current economic crisis, this Congressionally-mandated delay practically prevents any journalist from investigating banks and the public from learning in a timely manner about federal assistance to banks.

This provision -- discussed in greater detail below -- is precipitated in part by lawsuits filed by Bloomberg and Fox News against the Fed to force disclosure under the Freedom of Information Act (FOIA) about the Fed's assistance to banks during the financial crisis. Many SGI member organizations participated in amicus briefs filed before one or both federal courts who heard the case.

In the lawsuits, Federal Reserve Chairman Ben Bernanke opposed disclosure of short-term loans to banks. He feared disclosure could create a perception that banks taking loans from the Fed's discount window might feel stigmatized and may be less likely to seek the Fed's help weathering short-term cash flow problems. In the Bloomberg lawsuit, the court found these arguments too speculative to justify withholding under FOIA. The case has been appealed to the Supreme Court.

One concession to open government in this bill is a provision stating that these changes only apply prospectively; pending FOIA lawsuits such as Bloomberg's will not be affected. Another concession allows the Fed's chairman discretion to disclose the information at any time before the two-year milestone. The Fed's inspector general must study the impact of this exemption on disclosure and recommend whether to continue it.

Disclosure. Specifically, Section 1103(b) of the legislative text to the financial reform conference agreement (H.R. 4173) would require disclosure of details about emergency lending facilities, discount window lending programs, and open market operations operated by the Fed Reserve Board or one of the Fed's banks. The Fed's Board of Governors would be required to disclose the identities individuals and entities receiving assistance, the amount of money involved, the interest rate on loans, and collateral put up to secure loans.

The catch: Delay. The Board would make disclosures about credit facilities one year after the program ended. For discount window loans and other assistance, the Fed could delay release of the information for up to two years. The Fed's chairman could disclose these details earlier if the chairman determines such action is in the public interest and does not harm the effectiveness of the Fed's assistance programs.

Study. The agreement requires the Federal Reserve's inspector general to analyze the impact of the exemption from FOIA and recommend whether it should remain in effect. The inspector general must complete the report by the end of 2012.

Other transparency provisions. Section 1103 also adds transparency in other ways. The new consumer protection bureau that Democrats had been pushing would be subject to the Freedom of Information Act. The agreement requires the Fed to make audits and other reports easily available on its website.

The ask: Speak Out. The train is leaving the station on this one. We're not even sure we can catch it, as Congress seems poised to vote today. We hope that members of SGI's organizations will communicate to their members of Congress, to Congress as a whole and to the White House the fact that this is a clear threat to open government which in turns threatens our entire economy. Restricting access to these documents only increases the likelihood that the current economic crisis will continue, worsen and be repeated.

The Sunshine in Government Initiative (SGI) is a coalition of news associations promoting open, accessible and accountable government. Focused on the federal government, SGI's members include nine major media associations: **American Society of News Editors, The Associated Press, Association of Alternative Newsweeklies, National Association of Broadcasters, National Newspaper Association, Newspaper Association of America, Radio Television Digital News Association, Reporters Committee for Freedom of the Press and Society of Professional Journalists.**