

Disclosure and Reporting of CRA-Related Agreements

I. OVERVIEW

Section 711 of the Gramm-Leach-Bliley Act (GLBA) added a new section 48 to the Federal Deposit Insurance Act (FDI Act) entitled “CRA Sunshine Requirements.” This section requires nongovernmental entities or persons (NGEPs), insured depository institutions (IDIs), and affiliates of insured depository institutions that are parties to certain agreements that are in fulfillment of the Community Reinvestment Act (CRA) to make the agreements available to the public and the appropriate agency and to file annual reports concerning the agreements with the appropriate agency. The interagency regulations implementing GLBA’s CRA Sunshine Requirements were published January 10, 2001. The GLBA CRA Sunshine Requirements and the implementing CRA Sunshine Regulations do not affect the Community Reinvestment Act of 1977, its implementing regulations, or the agencies’ interpretations or administration of that act or regulation.

L I N K S

 [Appendix A](#)

The CRA Sunshine Regulations identify the types of written agreements that are covered by the statute (referred to as covered agreements), define many of the terms used in the statute, describe how the parties to a covered agreement must make the agreement available to the public and the appropriate agencies, and explain the type of information that must be included in the annual report filed by a party to a covered agreement. However, neither GLBA nor the CRA Sunshine Regulations give the agencies any authority to enforce the provisions of any covered agreement.

The CRA Sunshine Regulations, entitled “Disclosure and Reporting of CRA-Related Agreements,” became effective April 1, 2001. As described in the Regulations and outlined in Attachment A, the disclosure requirements apply to covered agreements entered into after November 12, 1999, and the annual reporting requirements apply to covered agreements entered into on or after May 12, 2000.

II. DEFINITIONS

In addition to the definitions described below, § 533.11 of the CRA Sunshine Regulations provide other definitions, including ones for “affiliate” and “term of agreement”.

Covered Agreement:

A covered agreement is any contract, arrangement, or understanding that meets all of the following criteria –

1. The agreement is in writing.
2. The parties to the agreement include:
 - i. One or more insured depository institutions or affiliates of an insured depository institution; and
 - ii. One or more NGEPS.
3. The agreement provides for the insured depository institution or any affiliate to –
 - i. Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than \$10,000 in any calendar year; or
 - ii. Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than \$50,000 in any calendar year.
4. The agreement is made pursuant to, or in connection with, the fulfillment of the CRA.
5. The agreement is with a NGEPS that has had a CRA communication prior to entering into the agreement.

A covered agreement does not include:

1. Any individual loan that is secured by real estate; or
2. Any specific contract or commitment for a loan or extension of credit to an individual, business, farm, or other entity, or group of such individuals or entities if –
 - i. The funds are loaned at rates that are not substantially below market rates; and
 - ii. The loan application or other loan documentation does not indicate that the borrower intends or is authorized to use the borrowed funds to make a loan or extension of credit to one or more third parties.

CRA Affiliate:

A “CRA affiliate” of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination prior to the agreement. An insured depository

institution or affiliate also may designate any company as a CRA affiliate at any time prior to the time a covered agreement is entered into by informing the NGEF that is a party to the agreement of such designation.

CRA Communication:

A CRA communication is any of the following that meet the timing and knowledge requirements of § 533.3(b).

1. Any written or oral comment or testimony provided to a Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.
2. Any written comment submitted to the insured depository institution that discusses the adequacy of the performance under the CRA of the institution and must be included in the institution's CRA public file.
3. Any discussion or other contact with the insured depository institution or any affiliate about –
 - i. Providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate;
 - ii. Providing (or refraining from providing) written comments to the insured depository institution that concern the adequacy of the institution's performance under the CRA and must be included in the institution's CRA public file; or
 - iii. The adequacy of the performance under the CRA of the insured depository institution, any affiliated insured depository institution, or any CRA affiliate.

Examples of actions that are CRA communications may be found in § 533.3(c)(1), and examples of actions that are not CRA communication may be found in § 533.3(c)(2).

Fulfillment of the CRA:

Factors that are in fulfillment of the CRA:

1. Comments to a Federal banking agency or included in CRA public file - Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution; or
2. Activities given favorable CRA consideration - Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking

agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement –

- i. Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in 12 CFR 563e.22 of the CRA regulations, including loan purchases, loan commitments, and letters of credit;
- ii. Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in 12 CFR 563e.23 of the CRA regulations;
- iii. Delivering retail banking services, as described in 12 CFR 563e.24(d) of the CRA regulations;
- iv. Providing community development services, as described in 12 CFR 563e.24(e) of the CRA regulations;
- v. In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in 12 CFR 563e.25(c) of the CRA regulations;
- vi. In the case of a small insured depository institution, any lending or other activity described in 12 CFR 563e.26(a) of the CRA regulations; or
- vii. In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in 12 CFR 563e.27(f) of the CRA regulations.

Insured depository institution:

Insured depository institution means any bank or savings association whose deposits are insured by the FDIC and includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purpose of Section 8 of the FDI Act.

NGEP:

A nongovernmental entity or person (NGEP) is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

A NGEP does not include:

1. the United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

2. a federally chartered public corporation that receives federal funds appropriated specifically for that corporation;
3. an insured depository institution or affiliate of an insured depository institution; or
4. an officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of the above mentioned entities.

Relevant supervisory agency:

The relevant supervisory agency for a covered agreement means the appropriate Federal banking agency for:

1. each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;
2. each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and
3. any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.